GUIDE

TO THE

CIVIL LAW

OF THE

PRESIDENCY OF FORT WILLIAM,

CONTAINING

ALL THE UNREPEALED REGULATIONS, ACTS, CONSTRUCTIONS AND CIRCULAR ORDERS OF GOVERNMENT

SUPPLIED FOR THE PUBLIC SERVICE

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GUIDE

TO THE

CIVIL LAW

OF THE

PRESIDENCY OF FORT WILLIAM,

CONTAINING

ALL THE UNREPEALED REGULATIONS, ACTS, CONSTRUCTIONS AND CIRCULAR ORDERS OF GOVERNMENT

SUPPLIED FOR THE PUBLIC SERVICE

GOVERNMENT OF INDIA HOME DEPT LIBRARY

TO WHICH IS PREFIXED

AN EPITOME OF EVERY ENACTMENT AND RULE.

COMPILED BY

JOHN CLARK MARSHMAN.

E. I. COLLEGE

CORRECTED TO THE 31ST DECEMBER, 1841.

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PREFACE.

On the reconstruction of the Native Judicial Service, by Lord William Bentinck, in 1831, the Compiler of the present work, published a Guide for the Principal Sudder Ameens, Sudder Ameens and Moonsiffs, which comprized all the Regulations which were connected with the determination of suits in their Courts. A new edition of that publication has been for some time required. During the past ten years, however, the powers of the Uncovenanted Judges have been materially augmented, and the jurisdiction of the Principal Sudder Ameens has been extended to all causes, of whatever value. They may be said to occupy, in some respects, the same position in the judicial establishments of this Presidency in which the Provincial Courts were originally placed; and appeals from their decisions and orders, in suits above 5000 Rupees in value, lie direct to the Sudder Court, without the intervention of the Zillah Courts. It became apparent, therefore, that a work suited to the present order of things must embrace nearly the whole circle of Civil Law. The Compiler was induced from this consideration to include in the work now offered to the public, every unrepealed Regulation, Act, Construction, and Circular Order in this department of law, in the hope that it might form a Directory for the Judicial Service.

The arrangements which have recently been made with a view to improve the administration of justice, through the Uncovenanted Judges, seem to render the publication of a work, similar to the present, desirable. The situations of Principal Sudder Ameen and Sudder Ameen are in future to be bestowed only on those who have acquitted themselves acceptably in the lower grade of Moonsiffs. The efficiency of the service is thus made to depend in a great degree on the selection of duly qualified individuals for this subordinate post. Hence it has been resolved that candidates for Moonsiffships shall be subjected to a rigid examination to ascertain the extent of their acquaintance with the laws, and that those who pass the ordeal successfully shall receive diplomas of fitness, which will entitle them to appointments. The numerous candidates for this office, are thus placed in a position resembling that of the Israelites who were required to make bricks without straw. Few of them are sufficiently acquainted with English to be able to obtain from the English version of the laws, the means of passing a creditable examination; and the Circular Orders and Constructions have never been translated into the vernacular tongues. Those who have a tolerable knowledge of English, however, find it difficult to provide themselves with the requisite publications, in as much as a copy of the Regulations, Orders and Constructions is seldom procurable under 300 Rupees. But those who are wealthy enough to procure this Library, still find themselves on the broad ocean of the law, without chart or compass. The legislation of the half century which has elapsed since the publication of Lord Cornwallis's Code, exhibits a vast and confused mass of enactments, from which it is scarcely possible for them to discover the actual state of the law. In the present work the legal student will find every unrepealed Law, Construction and Order, clearly arranged within the small compass of about Five Hundred pages, and an Epitome, which in half that space affords him a clear view of the whole system of legislation, which he is required to master, at an expence which need deter no man from the study of it.

The work consists of two parts, the Text and the Epitome. The Text which forms the body of it, contains every Regulation, Act, Construction, Circular Order and Government Order to the

close of 1841, as published by Authority, and arranged under Seven Chapters and two hundred and eighty-four Sections. The Regulations are printed in a larger type, that the reader may be able to distinguish them at a glance from the rules of subordinate authority. The Epitome, prefixed to the Text, follows the same arrangement, and presents the quintessence of every enactment and rule in short and simple language. It has been the object of the Compiler to render it as full as possible, without making it a mere transcript of the original; that the reader might obtain from a perusal of it, an adequate view of all the enactments which relate to any particular subject. The figures attached to each Rule in the Epitome point to the page in the Text in which the original is to be found, which will of course be consulted for particular details. A list of all the Regulations, Constructions and Orders quoted in the work is also given, to enable the reader to discover in what connection they are to be found. To render the work available in the Western Provinces, a reference is made to the corresponding enactments for Benares and the Ceded and Conquered Provinces, in all cases in which the original Regulations have been extended to them. In some instances, an enactment or rule, which appeared to bear upon two or more subjects, has been repeated under the respective Sections; but the repetition appeared less likely to be objected to than the obscurity which might have been otherwise occasioned.

The *Appendix* to the work has been inserted at the earnest recommendation of several friends, on whose judgment the Compiler placed much reliance. It contains those enactments regarding the Rates of Pottahs, the Sale of Putnee Talooks, the Sales of Land for Arrears of Revenue, the process of Distraint, Documentary Stamps, and Forcible Dispossession, to which the Civil Courts have frequent occasion to refer, and upon which many of their judgments are based. The *Addenda* contain the Regulations, Constructions and Orders regarding the Limitation of Time for the institution of Suits, and the Registration of Deeds and Documents. These enactments it is proposed to repeal by two Acts, of which the drafts have been for some time before the public; and the Compiler was in hope that they would have become law in time to be included in the present collection at the end of the volume; but as there is at present no expectation of this, he has been under the necessity of giving the existing enactments. *

The Compiler has been much indebted, more especially for the arrangement of the work, to the Civil Code drafted by Mr. Millett, which was superseded by the appointment of the Law Commission. Mr. Augustus Prinsep's admirable abstract of the Civil Regulations has also afforded him essential assistance. To Mr. Hawkins, the Register of the Sudder Dewanny Adawlut, who was so kind as to examine the Epitome with great care, and to point out redundancies and supply deficiencies, he embraces this opportunity of offering his grateful acknowledgments.

The Compiler has only to add, that a version of the Guide in the Bengalee language is now in the Press; but the necessity of giving original translations of all the Constructions and Orders, and of the whole of the Epitome, will necessarily delay its appearance.

Serampore, 1*st March*, 1842.

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1805	14	9	3	311
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1814	23	19	2	211
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1814	23	47	1	58
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1821	2	2		33
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1822	6	2		303
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,,	,,	23	2	283
,,	,,	,,	3	282
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1823	6	2		296
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1824	4	2		537
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1825	1	2		169
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,,	,,	,,	2	402
,,	,,	,,	3	402
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1828	3	5		263
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,,	,,	,,	4	227
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1832	7	10		62
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1833	5	2		7
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,,	8	2	1	10

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OF THE REGULATIONS, CONSTRUCTIONS AND CIRCULAR ORDERS.

CHAP. I.

CONSTITUTION AND JURISDICTION OF THE CIVIL COURTS.

SECT. I.

Rules for the formation of the Code of Regulations.

1. Reasons for the formation of a Regular Code in 1793.—*Reg.* 41, 1793, *Sect.* 1.—*page* 1.

2. All rules and orders passed by the Governor General in Council, in the various departments of law, and affecting in any respect the rights, persons, or property of those who are subject to the Courts, shall be framed into a Regulation and printed and published as hereafter directed. —*Reg.* 41, 1793, *Sect.* 2.—*p.* 1.

3. The Regulations passed annually shall be numbered; the number of each Regulation, and the year of its enactment, will be inserted at the top of every page.—*Reg.* 41, 1793, *Sect.* 3.—*p.* 2.

4. Every Regulation shall have a title, expressing concisely the subject of it.—*Reg.* 41, 1793, *Sect.* 4.—*p.* 2.

5. There shall be a Preamble to every Regulation stating the reasons for its being enacted.—*Reg.* 41, 1793, *Sect.* 5, *Cl.* 1.—*p.* 2.

6. If a Regulation repeals or modifies a former Regulation, the reason of such repeal or modification is to be detailed in the Preamble.—*Reg.* 41, 1793, *Sect.* 5, *Cl.* 2.—*p.* 2.

7. Every Regulation will be divided into Sections, and where necessary, the Sections into Clauses; both will be numbered.—*Reg.* 41, 1793, *Sect.* 6.—*p.* 2.

8. Mode in which reference is to be made to any preceding Regulation, or to the Section or Clause in any Regulation.—*Reg.* 41, 1793, *Sect.* 7.—*p.* 2.

9. The subject of every Section and Clause shall be inserted opposite to it.—*Reg.* 41, 1793, *Sect.* 8.—*p.* 2.

10. Paper on which the Regulations are to be printed.—*Reg.* 41, 1793, *Sect.* 9.—*p.* 2.

11. A copious index to the Regulations passed in each year, will be prepared and bound up with them.—*Reg.* 41, 1793, *Sect.* 10.—*p.* 2.

12. 13. Mode in which the printed copies of the Regulations are to be disposed of.—*Reg.* 41, 1793, *Sect.* 11 *and* 12.—*p.* 2.

14. The Civil and Criminal Courts of Justice are to be guided in their proceedings and decisions by the Regulations, thus framed, and by no other.—*Reg.* 41, 1793, *Sect.* 13.—*p.* 3.

15. In the English drafts of the Regulations, the same designations and terms are to be applied to the same description of persons and things, in order to preserve uniformity throughout the Judicial Code.—*Reg.* 41, 1793, *Sect.* 14.—*p.* 3.

16. Every Regulation with the marginal notes will be translated into the Persian and Bengalee language by persons officially appointed to the duty.—*Reg.* 41, 1793, *Sect.* 15.—*p.* 3.

17. The Translator will preserve in his translation the same uniformity in the designations and terms applied to persons and things, as is directed with regard to the English Code. When he has occasion to insert the designation or name of a person or thing, not before used, he will subjoin an explanation of it.—*Reg.* 41, 1793, *Sect.* 16.—*p.* 3.

18. The Translator will revise the proof sheets of the translations, and correct all errors of the press.—*Reg.* 41, 1793, *Sect.* 17.—*p.* 3.

19. The Translator will translate the laws into plain and easy language, and reject all uncommon words. He will adopt the idiom of the native languages, instead of giving a close verbal translation of the English draft.—*Reg.* 41, 1793, *Sect.* 18.—*p.* 3.

20. One part of a Regulation is to be construed by another.—*Reg.* 41, 1793, *Sect.* 19.—*p.* 3.

21. If a new Regulation differs from a former Regulation in whole or in part, the new enactment, will be considered a virtual repeal of the old one, so far as they differ, if the new Regulation evidently implies a negative.—*Reg.* 41, 1793, *Sect.* 20.—*p.* 3.

22. If a Regulation that rescinds another Regulation is itself rescinded, the original Regulation is to be considered as revived.—*Reg.* 41, 1793, *Sect.* 21.—*p.* 3.

SECT. II.

Rules for Proposing Regulations.

23. The Judges and Magistrates of the Zillah and City Courts, and the Judges of the Courts of Sudder Dewanny and Nizamut Adawlut are empowered to propose Regulations in matters coming under their cognizance.—*Reg.* 20, 1793, *Sect.* 2.—*p.* 4.

24. If a Judge or Magistrate of a Zillah or City Court, thinks it advisable to propose a Regulation, he will draft it according to the rules given in Section 1.—*Reg.* 20, 1793, *Sect.* 3.—*p.* 4.

25. The Regulation so drafted will be transmitted [now] to the Register of the Sudder Dewanny.—*Reg.* 20, 1793, *Sect.* 4.—*p.* 4.

26. The Sudder Court, will submit the proceedings and documents to Government, with a letter containing their own opinion on the subject of the proposed Regulation.—*Reg.* 20, 1793, *Sect.* 9.—*p.* 4.

27. The Sudder Court may require any information on any points touching the proposed Regulation from the Judge or Magistrate, submitting their queries and the answers received to them, to Government.—*Reg.* 20, 1793, *Sect.* 10.—*p.* 4.

28. If the Sudder Court deems it advisable to adopt the proposed Regulation, they will submit it, framed according to their opinion, with a separate letter stating their reasons for any alteration they may make, to Government.—*Reg.* 20, 1793, *Sect.* 12.—*p.* 5.

29. All Regulations proposed to Government by the Sudder Courts are to be drafted in the usual form.—*Reg.* 20, 1793, *Sect.* 14.—*p.* 5.

30. The Governor General in Council will reject or adopt any Regulation that may thus be submitted to him.—*Reg.* 20, 1793, *Sect.* 15.—*p.* 5.

SECT. III.

Promulgation of the Regulations, and suggestions for the correction of Errors.

31. A Regulation is to be considered as promulgated from the date of the receipt of the English copy of it.—*C. O. 7th June,* 1833.—*p.* 5.

32. The production of a Government Gazette of any Presidency containing an Act of the Legislative Council, shall be held in all Courts, a sufficient proof that the Act has been so passed.—*Act* 10, 1835.—*p.* 5.

33. All European officers, exercising important civil functions, should be aware, that it is the wish of Government that when they perceive any thing in the general system of the laws, or in their practical application, calculated to injure the public interests, they should not be restrained from bringing the subject forward merely by the consideration that the case does not fall within the scope of their immediate functions.—*C. O. 22nd April,* 1825.—*p.* 5.

SECT. IV.

Constitution of the Zillah and City Courts.

34. The Courts of Dewanny Adawlut for the trial of civil suits, in the first instance, will be denominated after the Zillah or City in which they are established.—*Reg.* 3, 1793, *Sect.* 2.—*p.* 5.

[*Here follow the denomination of the various Courts in Bengal and Behar.*]

35. The special jurisdiction of the Zillah and City Courts will extend throughout the districts and places included in their jurisdiction.—*Reg.* 3, 1793, *Sect.* 4.—*p.* 6.

36. The Zillah of Moorshedabad is abolished, and the mehals composing it are annexed to the jurisdiction of the city of Moorshedabad, and the Zillah Beerbhoom.—*Reg.* 1, 1806, *Sect.* 2.—*p.* 6.

37. The late Dutch factories at Calcapore, Dacca, Fulta, Balasore and Patna, are annexed respectively to the City jurisdictions of Moorshedabad and Dacca, to the Zillah Jurisdictions of the 24-Pergunnahs and Cuttack, and the City of Patna.—*Reg.* 18, 1825, *Sect.* 2, *Cl.* 2.—*p.* 6.

38. The districts comprized in the Zillah of Burdwan are formed into the Zillah of Burdwan and the Zillah of Hooghly.—*Reg.* 36, 1795, *Sect.* 7.—*p.* 7.

39. The town and settlement of Chinsurah is annexed to the Zillah of Hooghly.—*Reg.* 18, 1825, *Sect.* 2, *Cl.* 1.—*p.* 7.

40. The Zillah of 24-Pergunnahs is formed by *Reg.* 7, 1806, *Sect.* 2.—*p.* 7.

41. 42. The Thannahs of Chitpore, Maniktullah, Tazeerhaut, Nowhazary and Sulkeah are united to the Zillah of the 24-Pergunnahs by *Reg.* 8, 1832, *Sect.* 3.—*p.* 7.

43. The Zillahs of Dacca Jelalpore and Backergunge are formed by *Reg.* 7, 1797, *Sect.* 2.—*p.* 7.

44. 45. The places comprized in the jurisdiction of the City of Dacca, and the Zillah of Dacca Jelalpore are formed into one district, denominated the Zillah of Dacca.—*Reg.* 5, 1833, *Sect.* 2 *and* 3.—*p.* 7.

46. The Courts of Zillahs Ramghur and Jungle Mehals are abolished.—*Reg.* 13, 1833, *Sect.* 2.—*p.* 7.

47. That portion of the Ramghur and Jungle Mehal districts not included in the jurisdiction of the Agent of the Governor General, may be annexed by Government to any other district.—*Reg.* 13, 1833, *Sect.* 7.—*p.* 7.

48. A Civil Court is established in the Zillah of Cuttack.—*Reg.* 14, 1805, *Sect.* 3.—*p.* 7.

49. A Civil Court is established in the City of Benares, and in the districts of Mirzapore, Ghazeepore and Juanpore.—*Reg.* 7, 1795, *Sect.* 2, *Cl.* 1.—*p.* 7.

50. The Zillahs of Moradabad, Bareilly, Etawah, Furruckabad, Cawnpore, Allahabad and Goruckpore are formed by *Reg.* 2, 1803, *Sect.* 2.—*p.* 8.

51. The Zillah of Futtehpore is formed by *Reg.* 6, 1826, *Sect.* 2, *Cl.* 1.—*p.* 8.

52. The Zillahs of Allyghur, Seharunpore (Northern and Southern divisions,) Agra and Bundlekhund are formed by *Reg.* 8, 1805, *Sect.* 3, *Cl.* 1.—*p.* 8.

53. The City of Delhi, and the conquered territory on the right bank of the Jumna which are assigned to H. M. Shah Allum are not subject to British Law.—*Reg.* 8, 1805, *Sect.* 4.—*p.* 8.

54. The Courts established in the Zillahs specified in Rule 52, will be denominated after the Zillahs in which they are established.—*Reg.* 8, 1805, *Sect.* 5.—*p.* 8.

55. The Pergunnah of Goverdhun is annexed to the district of Agra.—*Reg.* 5, 1826, *Sect.* 2.—*p.* 8.

56. The elakeh of Khundeh, and certain villages in the Pergunnah of Choorkee are annexed to the district of Bundlekhund.—*Reg.* 2, 1818, *Sect.* 2.—*p.* 8.

57. The Pergunnahs of Sonk, Sonsa, and Sahar are annexed to the Zillah of Agra.—*Reg.* 12, 1806, *Sect.* 2.—*p.* 8.

58. The lands in the jaygeer of Calenger are annexed to the Zillah of Bundlekhund.—*Reg.* 22, 1812, *Sect.* 3.—*p.* 8.

59. 60. The Northern division of Seharunpore will be denominated the Zillah of Seharunpore, and the Southern division the Zillah of Meerut.—*Reg.* 4, 1818, *Sect.* 2, *Cl.* 2.—*p.* 9.

61. The Deyra Dhoon is annexed to the district of Seharunpore.—*Reg.* 4, 1817, *Sect.* 2.—*p.* 9.

62. The tract of land situated near the town of Bethoor is separated from the jurisdiction of the Civil and Criminal Courts.—*Reg.* 1, 1832, *Sect.* 2.—*p.* 9.

63. The Governor General in Council may, by an order in Council, create new Zillahs, and alter the limits of existing Zillahs.—*Act* 21, 1836.—*p.* 9.

64. The Zillah and City Courts will use a Circular Seal, with a suitable inscription. It will remain in the custody of the Judge.—*Reg.* 3, 1793, *Sect.* 6.—*p.* 9.

65. Each Zillah and City Court will be superintended by one Judge, who, previous to entering on his Judicial duties, will take an oath before the Governor General, or any one he may commission to administer it.—*Reg.* 3, 1793, *Sect.* 3.—*p.* 10.

66. When, from the accumulation of civil causes in a Zillah or City Court, it may appear necessary, the Governor General in Council, at the recommendation of the Sudder Dewanny Adawlut, or otherwise; if it appear expedient, will appoint any number of *Additional Judges* for the Zillah or City, who, previously to entering on the duties of their office, will take the oath prescribed for the Zillah Judges.—*Reg.* 8, 1833, *Sect.* 2, *Cl.* 1.—*p.* 10.

67. The Additional Judges will perform such part of the Judicial duties of the Zillah or City Judge, as the Governor General in Council may assign them; in the performance of which they will exercise the same powers, and be guided by the same rules, as the Zillah or City Judge.—*Reg.* 8, 1833, *Sect.* 2, *Cl.* 2.—*p.* 10.

68. The Zillah and City Courts will be held in a large and convenient room, in the city or place where they are established, three times a week, and oftener, if needs be. When unable to hold a Court three times a week, the Judge will report the cause to the Sudder Dewanny Adawlut. Such reports are not to be made when the court is shut during the established holidays. No rule, order, proceeding or decree is to be made but on court days, and in open court.—*Reg.* 3, 1793, *Sect.* 5.—*p.* 10.

69. The Judges will enter in their monthly statements a memorandum, giving the number of days they have sat in the Civil, and the number in the Criminal Court. They will also note the number of days the Court was shut on account of Sundays, or holidays, or from any other cause during the month.—*C. O. 7th Dec.* 1828.—*p.* 11.

70. All Judicial officers are prohibited in the strongest manner from transacting public business in their private dwellings.—*Cir. Ord. 3rd July*, 1829.—*p.* 11.

SECT. V.

Zillah and City Judges.—Rules regarding Leave of Absence.

71. Any Zillah or City Judge, desirous of quitting his station, will apply for permission to the Governor General in Council, and except in cases of emergency, will not leave his station till such permission has been obtained. The application will state the purpose and the period for which leave is desired, and the name of the person on the spot to whom the charge of the office will devolve, if not otherwise provided for.—*Reg.* 4, 1796, *Sect.* 2.—*p.* 11.

72. All leaves of absence solicited by the Civil and Session Judges, will in future be submitted to the Sudder Court and not to Government direct.—*Govt. Ord. 9th Jan.* 1838.—*p.* 11.

73. The Governor General, when granting such leave of absence, will determine whether the temporary charge of office shall be delegated to an Assistant on the spot, or whether another person shall be especially appointed to the vacancy; or he will make other suitable provision for the emergency of the case. Notice of this determination will be immediately given to the Judge, to the person appointed to act for him, and to the Sudder Court.—*Reg.* 4, 1796, *Sect.* 3.—*p.* 11.

74. The Zillah and City Judges, having thus obtained leave of absence, will report the day of their departure and of their return to the Governor General, and the Sudder Court.—*Reg.* 4, 1796, *Sect.* 4.—*p.* 12.

75. The Zillah and City Judges, when applying for leave of absence, will transmit, in the prescribed form, a statement of the business depending before them, both in the Civil and Criminal Courts.—*C. O. 4th Jan.* 1811.—*p.* 12.

76. Whenever the Judge may have occasion to deliver over his office, he will state in his letter his authority for doing so, the date of the order under which he acts, and the nature of the power vested in the relieving officer.—*C. O. 5th Dec.* 1834.—*p.* 12.

77. All Judges, on delivering over charge of their offices, will furnish the officer who relieves them, with a list of all unanswered letters, and of all periodical reports and statements which, having become due, have not been forwarded to the Sudder.—*C. O. 25th Sept.* 1835.—*p.* 12.

78. Any officer in the Judicial department obtaining leave of absence, will forward to the Auditor's office certificates signed by the person to whom he may deliver over his office, and from whom he may again receive charge of it, specifying the dates on which he may have relinquished and resumed charge.—*C. O. 31st Oct.* 1809.—*p.* 12.

79. The Sudder Court will report to Government whenever any Zillah or City Judge or Assistant may omit to arrive at the station to which he is appointed, within a reasonable time, due allowance being made for the distance he has to travel, and for any unavoidable delay in delivering over charge of his late office to his successor.—*C. O. 17th Jan.* 1806.—*p.* 12.

80. The Court will give their own sentiments on the subject of the delay to Government, who will then determine whether the person who has made the unnecessary delay, should be considered to have forfeited his salary, under the rules of the 20th November 1797; or will pass such orders on the subject as may appear necessary.—*C. O. 17th Jan.* 1806.—*p.* 12.

81. The principle of the foregoing rules, will also be considered applicable, to all persons in the Judicial line who may at any time obtain leave of absence. The Sudder Court will report to Government when any such person may neglect to rejoin his station within the period limited by his leave.—*Cir. Ord. 17th Jan.* 1806.—*p.* 13.

SECT. VI.

Zillah and City Judges.—Duties of Assistants in charge of their office.

82. When the charge of the Judge's office shall from any casualty devolve on the Assistant on the spot, without any special provision having been made by Government, he will report the case immediately to the Governor General, and till he receives orders, will confine himself to the discharge of his own proper duties, and only exercise such part of the powers of the Judge as are necessary to execute the process of the Superior Courts, to preserve the peace of the district, or to provide for such cases of emergency as will admit of no delay.—*Reg.* 4, 1796, *Sect.* 5.—*p.* 13.

83. When the current duties of the Civil and Session Judge of a Zillah or City may devolve on an Assistant, or other Covenanted European Officer, (not being vested by Government with the full power of Judge,) he will confine himself to the exercise of such powers of the Judge as may be necessary for the immediate execution of the process of the Sudder Court, for issuing warrants under sentences of the Nizamut Adawlut, making returns to them, for transmitting proceedings to the Sudder Court in criminal trials, for executing the process of other Zillah or City Courts, and for such cases of emergency as admit of no delay.—*C. O. 6th Feb.* 1835.—*p.* 13.

84. The Assistant in charge is competent to cause the execution of the decrees from which appeals have been preferred, to be stayed; taking the usual security from the party against whom the decree was given.—*Con. No.* 1038.—*p.* 13.

85. Such Assistant in charge of the Judge's office is authorized to receive new suits of whatever description; to refer to the subordinate Courts such as may be cognizable by them; and in suits exclusively cognizable by the Judge to summon the defendant and receive his answer, as well as any written documents, or lists of witnesses offered by the parties or their vakeels, in pursuance of orders previously passed by the Judge; but no farther, unless there appears to be urgent reason for taking the deposition of the witnesses, in which case he may take or cause to be taken the depositions of such witnesses under the general rules.—*C. O. 6th Feb.* 1835.—*p.* 13.

86. He may receive sums deposited in cases of mortgage, or as Vakeel's fees, and pay such sums which had been previously ordered by the Judge. He may conduct any summary enquiries which require immediate attention and process; summarily investigate the indigence of paupers, and the validity of securities. He may execute the orders previously passed by the Judge for the sale of land in execution of decrees, or stay the sale pending the examination of objections and claims. But an Assistant or other Officer may not hold such investigation, or issue orders for

the sale of such property, except when it is of a perishable nature.—*C. O. 6th Feb.* 1835.—*p.* 14.

87. In explanation of Section 3, of the above order, the Sudder Court ruled that an Assistant in charge, is competent to suspend the execution of an order passed by the Judge for the sale of property, if in the exercise of a sound discretion, on a perusal of the petition objecting to the sale, it appeared right to do so; but he cannot hold an investigation with a view to ascertain the truth or otherwise, of allegations or claims contained therein.—*Con. No.* 998.—*p.* 14.

88. When a summary appeal from the decisions of Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, an Assistant in charge is not at liberty to make any enquiry into the merits of the case; but must simply record the date of its presentation and let it lie over for the next coming Judge.—*Con. No.* 998.—*p.* 14.

89. The Assistant in charge will also cause to be prepared and forwarded any statement or report which the Judge is required to submit to the Sudder Courts, or to Government.—*C. O. 6th Feb.* 1835.—*p.* 14.

90. The Officer in charge of the current duties of the Judge is also allowed to give leave of absence for a limited time, and when urgently necessary, to the Vakeels and Amlahs of the Civil and Session Judge's establishment. This will be considered as the 5th Rule of the above Circular.—*C. O. 11th Oct.* 1839.—*p.* 14.

91. An Assistant in charge of the office of Judge may summon parties charged with resistance of civil process, examine the witnesses for or against the prosecution, and hold the offenders to bail till the arrival of the Judge who must pass the final sentence.—*Con. No.* 1080.—*p.* 14.

SECT. VII.

Zillah and City Judges.—Reports on their Official Conduct.

92. In hearing appeals from the Zillah Courts, every Judge of the Sudder Court will note any points which materially appear to affect the character of the lower Court. When it appears that the proceedings of the lower Courts in any case have been remarkably well or remarkably ill conducted, the Sudder Judge will make a note of it for the united consideration of the Court. The Court will determine how these notes are to be used so as to express their collective opinion of the quality of the business done by every Zillah Judge.—*Govt. Not. 20th Dec.* 1836.—*p.* 15.

93. The Sudder Court will make a special report regarding any district, in which matters are going wrong, and a regard for the public interests renders it necessary to take immediate steps to remedy the evil. In cases of less importance it will be sufficient for the Court to notice any serious defects in the administration in their annual report.—*Govt. Not. 20th Dec.* 1836.—*p.* 15.

94. At present the Annual Report of the Sudder Court gives the number of cases decided and the number of miscellaneous judicial orders passed by the Zillah Judge, and the number of days employed in Sessions business. Their Report will in future state the number of appeals, regular and special, lodged against those decisions and orders, the result of all the appeals from each Judge decided on during the year, and the number of days each Judge has sat for civil business.—*Govt. Not. 20th Dec.* 1836.—*p.* 15.

SECT. VIII.

Zillah and City Judges.—Enquiry into their official misconduct and into that of public functionaries.

95. Whenever either Sudder Court or any of the Sudder Boards are of opinion that substantial grounds exist for a regular enquiry into the truth of charges of official misconduct against any officer under their control, who is not removable but with the sanction of Government, they will submit the documents on which their opinion is founded, with a statement of the charges, distinctly drawn up, to the Governor of Bengal, or the Lieutenant Governor of the North West, as the case may be.—*Act* 26, 1839, *Sect.* 2.—*p.* 15.

96. Any such charge or information may be preferred direct to either Sudder Court, or to

quire the accused parties to explain or reply to any matters which appear to need explanation, and make such further enquiries as they may deem requisite.—*Act* 26, 1839, *Sect.* 3.—*p.* 16.

97. Any such charge or information may be preferred to any Judge, Magistrate, Commissioner, or Collector, for any acts committed within their jurisdiction. They will examine the complainant circumstantially on oath or solemn affirmation, and transmit his deposition to the Sudder Court or Boards according as the accused person may be subject respectively to those authorities.—*Act* 26, 1839, *Sect.* 4.—*p.* 16.

98. The Sudder Courts or Sudder Boards will not act on such charge or information, unless the complainant declare on oath or affirmation that he believes the facts on which the charge is grounded to be true.—*Act* 26, 1839, *Sect.* 5.—*p.* 16.

99. The Sudder Courts or Sudder Boards may dismiss any such charge, if they see no substantial reasons for entering on the enquiry. When they may dismiss such charge, or information, they will submit the same to the Governor of Bengal, or the Lieutenant Governor of the North West Provinces.—*Act* 26, 1839, *Sect.* 6.—*p.* 16.

100. The Sudder Courts and Sudder Boards may, at any stage of the enquiry, require the complainant to furnish sufficient security that he will attend and prosecute the charge to a conclusion. Whenever such security is required, all proceedings will be stayed till it is furnished.—*Act* 26, 1839, *Sect.* 7.—*p.* 16.

101. If any such matter affecting such officer shall appear in the course of any proceedings which may come before, or be reported to the Sudder Courts or Sudder Boards, they will act on such matter, and institute such enquiry on oath or affirmation, as they deem necessary for a reference to Government, although no charge should have been preferred. In such cases, it will not be necessary before acting on, or instituting the enquiry, to require any oath or affirmation to the truth of such matter.—*Act* 26, 1839, *Sect.* 8.—*p.* 16.

102. If the Governor of Bengal, or of the North West Provinces, on such reference, should concur with the authorities who have submitted it, or if either Governor, from any information laid before him, in respect of officers not subject to the Courts and Boards, should deem it necessary, to institute proceedings against such officer, he will appoint one or more Commissioners to make a regular and formal enquiry into the truth of the charges.—*Act* 26, 1839, *Sect.* 9.—*p.* 17.

103. On the appointment of any such Commission, the Governor of Bengal or Agra will determine whether it shall be placed under the control of the Sudder Courts or Boards, or act immediately under the authority of Government. All Commissioners so appointed will be guided by the instructions they may receive from their respective Governments.—*Act* 26, 1839, *Sect.* 10.—*p.* 17.

104. The Commissioners thus appointed, will take an oath before entering on their duties.—*Act* 26, 1839, *Sect.* 11.—*p.* 17.

105. If a Commissioner appointed under Act 26, 1839, has not subscribed the oath required by Section 11, before an officer authorized to administer it, his proceedings are invalid.—*Con. No.* 1289.—*p.* 17.

106. When a Commission of enquiry has thus been appointed, Government will determine whether the conduct of the prosecution shall be left to the accuser, or undertaken by Government. In the latter case, the Governor of Bengal or Agra will nominate proper persons to conduct it on behalf of Government.—*Act* 26, 1839, *Sect.* 12.—*p.* 17.

107. The Commissioners thus appointed, after receiving the charge, and the documents connected with it, will call on the accused for his reply; examine on oath or affirmation the witnesses named by the accuser, and the accused; and receive any farther written documents, and take any farther evidence, which may appear necessary to a discovery of the truth or falsehood of the charges.—*Act* 26, 1839, *Sect.* 13.—*p.* 17.

108. For the discharge of these duties, the Commissioner or Commissioners will be vested with the powers exercised by the Zillah and City Judges, except that all process for the attendance of witnesses, and all compulsory process will issue through the Zillah and City Judge in whose ju-

risdiction the Commission may be held, and will be executed by the Judge in whose jurisdiction the person on whom the process is to be served may reside.—*Act* 26, 1839, *Sect.* 14.—*p.* 18.

109. On the close of the evidence for the prosecution and defence, the accused will be at liberty to record any observations on the result of it which he may think necessary for the vindication of his conduct. The accuser, or Government prosecutor, will also be at liberty to record any remarks on the subjects of the prosecution.—*Act.* 26, 1839, *Sect.* 15.—*p.* 18.

110. As soon as possible after the conclusion of the enquiry, the Commissioner will submit either to Government, or to the Sudder Court or Board, as he may have been directed to act under the one or the other, the proceedings under the commission, as well as a translation of papers not in English, a summary of the pleadings or evidence, and his own opinion on the merits of the case.—*Act* 26, 1839, *Sect.* 16.—*p.* 18.

111. Government, on a consideration of the Report, may direct the Commissioner to take farther evidence, or to give farther explanations of his opinion.—*Act* 26, 1839, *Sect.* 17.—*p.* 18.

112. When such a Report of the Commissioner is submitted to the Sudder Courts or Boards, they will, after due consideration of it, and obtaining any farther evidence or explanation which may be necessary, submit the whole of the proceedings and documents to Government, together with their opinion whether any and what charges have been established.—*Act* 26, 1839, *Sect.* 18.—*p.* 18.

113. When a Commission may thus be appointed, Government will determine, on a view of the nature and circumstances of the case, whether the accused officer shall be suspended from his office; and if so, whether he shall be permitted to draw the established allowances of his office or not.—*Act* 26, 1839, *Sect.* 19.—*p.* 18.

114. Government, on a consideration of the Report and proceedings submitted, will pass such judgment as may appear most consonant to the principles of justice, and consistent with the powers possessed by it. If it appear to Government fit that the accused should be prosecuted in a competent Court of law, the necessary instructions will be issued to the officers of Government. But whatever proceedings may be held, or whatever decision may be passed by Government, individuals deeming themselves aggrieved by any public officer, may at all times seek redress in the ordinary forms, prescribed by law.—*Act* 26, 1839, *Sect.* 20.—*p.* 19.

115. Nothing in this Act will be construed to repeal the provision respecting the suspension and dismissal of Principal Sudder Ameens contained in Regulation 5, 1831, Section 26, or of Deputy Collectors, in Regulation 9, 1833, Section 25. On any such reference as is mentioned in Section 26, or Section 25, (as above) being made to the Governor of Calcutta or Agra, he may appoint a Commission or Commissioners to make regular enquiry into the charges and imputations which have been brought against a Principal Sudder Ameen, or a Deputy Collector in manner, as directed by this Act and subject to its provisions.—*Act* 26, 1839, *Sect.* 21.—*p.* 19.

SECT. IX.

Zillah and City Judges.—Employment of their private servants on public duties, and vice versâ.

116. The whole of the Judicial officers of Government are forbidden, on pain of dismissal, to employ their private servants, or other persons not being public officers, in the discharge of any part of their public duties, or in the execution of any public duty in which the person so employed may not have been duly authorized to act.—*Reg.* 8, 1825, *Sect.* 2, *Cl.* 1.—*p.* 19.

117. This prohibition extends to all individuals not being duly constituted officers of the Court: that description of persons alone can be legally employed in the transaction of any official duties. But this enactment does not preclude persons not in office in the Court from taking copies of public documents, for the use of private individuals, and at their expense.—*Con. No.* 407.—*p.* 19.

118. This prohibition does not extend to the employment of individuals, not in the public service, in the copying of papers and proceedings, or in similar functions: for the due execution of which, however, the proper officers are responsible. But the rule in the Regulations prohibiting

Judicial Officers so employing directly or indirectly their private servants of any description, remains in full force.—*Reg.* 3, 1829, *Sect.* 6.—*p.* 20.

119. The whole of the Judicial officers are equally forbidden to employ their public servants, not being peons, or inferior servants in personal attendance on them, in the performance of any private duty or trust.—*Reg.* 8, 1825, *Sect.* 2, *Cl.* 2.—*p.* 20.

120. If any native officer now on the public establishment, shall be disqualified by the above prohibitions from continuing to hold office, he must be immediately removed from his post; any neglect of this requisition, will subject the party committing it to the penalty stated in the foregoing section.—*Reg.* 8, 1825, *Sect.* 3.—*p.* 20.

121. In the future nomination of native officers, the Judges and other Judicial officers making the nomination, are required to state explicitly that the person so nominated is not disqualified under the provisions of this Regulation.—*Reg.* 8, 1825, *Sect.* 4.—*p.* 20.

SECT. X.

Zillah and City Judges.—Prohibition of borrowing from, or lending to Natives, under their official influence.

122. All Covenanted Civil Servants are prohibited, on pain of dismissal from office, from borrowing money from or incurring debt to any native officer under their authority or influence, or from any person in any manner dependent on, or connected with those officers.—*Reg.* 7, 1823, *Sect.* 2, *Cl.* 1.—*p.* 20.

123. All covenanted Civil Servants are prohibited from borrowing money from or incurring debt to, any manager or guardian, executor, ameen, &c. or from any person officially accountable to them, or from the known agent, surety, relative, connection, or dependent of such person.—*Reg.* 7, 1823, *Sect.* 2, *Cl.* 2.—*p.* 21.

124. All covenanted Civil Servants are prohibited, on pain of dismissal, from borrowing money from, or incurring debt to any Zemindar, talookdar, ryot, or any person possessing real property, or residing in, or having a commercial establishment in the city, district, or division to which their authority may extend.—*Reg.* 7, 1823, *Sect.* 3.—*p.* 21.

125. All persons are forbidden to lend money, or to become creditors, to any covenanted officers of Government, in contravention of the above rules. Any one who may commit a breach of these rules will forfeit to Government a sum equal to that for which he may have so illegally become creditor.—*Reg.* 7, 1823, *Sect.* 4.—*p.* 21.

126. Any officer of Government in the covenanted service, who, at the expiration of one year from the promulgation of this Regulation, shall be still indebted to any person from whom, according to these rules, it would be illegal for him to borrow, shall make known the circumstance to the Governor General; should he fail to do so, he will incur the same penalty as if the debt had been subsequently contracted.—*Reg.* 7, 1823, *Sect.* 5.—*p.* 21.

127. In like manner, if any covenanted servant, hereafter appointed to office, may be indebted to a person from whom it would be illegal for him to borrow while holding such office, he shall make known the circumstance to the Governor General before entering on office; should he fail to do so, he will incur the same penalty as if the debt had been contracted subsequently.—*Reg.* 7, 1823, *Sect.* 6.—*p.* 21.

128. Suits for the recovery of penalties under this Regulation may be instituted under the special instructions of the Governor General, and will be conducted by an officer appointed by Government. An appeal will lie from the judgments passed in this as in other cases, and the judgment will be enforced under the provisions for the execution of the decrees of Civil Courts.—*Reg.* 7, 1823, *Sect.* 8.—*p.* 21.

129. No creditor of a Zillah or City Judge shall be appointed to an official situation on the establishment of the person whose creditor he may be. The controlling authorities will carefully ascertain whether the persons recommended for vacancies by European Officers are their creditors or not, and will make full enquiries on the subject.—*Reg.* 21, 1814, *Sect.* 2.—*p.* 22.

130. The rules in the above Section will be equally applicable to the relatives or dependents of

such creditors; the former as well as the latter are equally precluded from being thus employed on the establishments of any of the public Officers above described.—*Reg.* 21, 1814, *Sect.* 3.—*p.* 22.

131. Any native causing himself to be appointed to any office, or knowingly accepting office contrary to Regulation 21, 1814, shall forfeit to Government a sum equal to ten times the yearly salary attached to his post.—*Reg.* 7, 1823, *Sect.* 7.—*p.* 22.

132. The Judges as well as all covenanted officers are prohibited lending money directly or indirectly to any proprietor, farmer, dependant Talookdar, under farmer or ryot, or to their sureties. Such loans are not recoverable in any Court of Judicature.—*Reg.* 38, 1793, *Sect.* 2.—*p.* 22.

SECT. XI.

Zillah and City Judges.—Correspondence with suitors, or with other Courts.

133. The Zillah and City Judges are forbidden to correspond by letter with parties in suits depending before them, or respecting matters cognizable in the Courts. Any party having any thing to represent to the Court, will do so in writing, either in person or through a vakeel. The Court will pass an order according to the laws, and deliver a copy of it, under the judicial seal, to the party or his vakeel.—*Reg.* 3, 1793, *Sect.* 19.—*p.* 22.

134. The Judges will not correspond by letter with the superior Courts on any cause or matter before those courts, or on matters on which they are not specially empowered so to correspond. When a Judge has occasion to communicate to the superior Court any information required of him, which he may deem it necessary to submit, he will certify it by a writing under his official seal and signature.—*Reg.* 3, 1793, *Sect.* 19.—*p.* 23.

135. The Sudder Court will issue to the Zillah Courts all processes, decrees and orders in the native language, enclosed in an English precept. The Zillah Courts will adopt the same mode of communication with the Court, and in certifying any information or making any return, will enclose in an English certificate or return, copy or extract from the Persian proceedings, with full particulars, and any original documents requisite, without English translates, unless by special order.—*C. O. 20th April*, 1801.—*p.* 23.

136. The miscellaneous correspondence of the Courts not immediately relating to particular cases, or affecting particular parties, will continue to be carried on in English.—*C. O. 20th April*, 1801.—*p.* 23.

137. In all cases in which the Zillah Judge has certificates or returns to make to the Sudder, or any application to other Courts, or to the Collector, or to other European Officers of Government for papers or information, copies or extracts from their Persian proceedings, containing the substance of the application, should be enclosed in a short English address. If it be a case in which the Court is empowered to issue an order to a European officer, the Persian copy of such order, or extract from the proceedings should be enclosed in an English precept, duly signed and sealed, requiring performance of the order within the limited time, or sufficient reason for its non execution.—*C. O. 12th Oct.* 1803.—*p.* 23.

138. Whenever any proceedings on miscellaneous cases are referred for the opinion, orders or information of the Sudder Court by the Zillah and City Judges, a statement of the case and of the point or points referred for opinion, should be submitted in the letter accompanying the proceedings.—*C. O. 27th Feb.* 1812.—*p.* 23.

139. But the official letters which may be despatched from the Judge's office are to be numbered in one continued series from the beginning to the close of the year.—*C. O. 27th Nov.* 1835.—*p.* 24.

140. Since the promulgation of Regulation 5, 1831, the Zillah and City Judges are ordered to carry on their general correspondence, and submit the periodical details of establishments directly to Government, or to the Sudder Dewanny Adawlut.—*C. O. 2d March*, 1832.—*p.* 24.

141. References which the Judicial officers may find it necessary to make to the Nawaub of Bengal, will be transmitted through the Superintendent of Nizamut affairs.—*Reg.* 19, 1805, *Sect.*

SECT. XII.

Nomination to the Offices of Principal Sudder Ameen, Sudder Ameen and Moonsiff.

142. The following rules are laid down by the Governor General for the future nomination, permanently or temporarily, to the offices of Principal Sudder Ameen, Sudder Ameen, and Moonsiff. —*C. O. 14th June*, 1833.—*p.* 24.

143. If the Commissioner and the Judge agree in nominating the same individual, the Judge will prepare a statement and forward it to the Commissioner, who will fill up the head "Remarks by the Commissioner," sign it, and forward it to Government.—*C. O. 14th June*, 1833.—*p.* 24.

144. If they should not agree, the Judge will still forward the statement to the Commissioner, who will state his objections under the proper head, and return it to the Judge, with a similar statement of the person whom he would recommend. If the Judge, on consideration, prefers the Commissioner's nominee, he will fill up the statement with "Remarks by the Judge" in the Commissioner's statement, sign it, and forward it to Government. But if the Judge adheres to his own nomination, he will return the Commissioner's statement, with his remarks to that effect, and also his objections to the Commissioner's nominee. If the Commissioner adheres to his own opinion, he will forward both statements to Government.—*C. O. 14th June*, 1833.—*p.* 24.

145. Under the 11th head of the statement, it should be noticed, whether the nominee is related to or connected with any persons in office, or possessed of rank or influence or wealth, in that or any other district, and the degree of estimation in which he was held in the district in which he has been employed, or had resided.—*C. O. 14th June*, 1833.—*p.* 24.

146. Under heads 12 and 13, the Commissioner and the Judge will distinctly state what opportunities they have had of becoming acquainted with the character and qualifications of the nominee. —*C. O. 14th June*, 1833.—*p.* 24.

147. The Judge and Commissioner will seek and select persons, otherwise duly qualified, who may be known and generally respected as men of integrity and high character.—*C. O. 14th June*, 1833.—*p.* 24.

SECT. XIII.

Appointment of Principal Sudder Ameens.

148. The Governor General may appoint to any Zillah or City, one or more Principal Sudder Ameens.—*Reg* 5, 1831, *Sect.* 17, *Cl.* 1 —*p.* 25.

149. The office of Principal Sudder Ameen is open to natives of India of any class or religion. The Principal Sudder Ameen will be appointed by the Governor General in Council, and receive his Sunnud from Government, under the signature of the Judicial Secretary.—*Reg.* 5, 1831, *Sect.* 17, *Cl.* 2.—*p.* 25.

150. No person shall be incapable of being a Principal Sudder Ameen, Sudder Ameen or Moonsiff, in the Bengal Presidency, by reason of place of birth or by reason of descent.—*Act* 8, 1836, *Sect.* 1.—*p.* 25.

151. The Principal Sudder Ameen will receive such monthly allowance as the Governor General in Council may fix.—*Reg.* 5, 1831, *Sect.* 17, *Cl.* 3.—*p.* 25.

152. The Principal Sudder Ameen before entering on his judicial duties, will make the solemn declaration required by Reg. 18, 1817, Sect. 2, before the Judge of the Zillah or City, in which he may be employed.—*Reg.* 5, 1831, *Sect.* 17, *Cl.* 4.—*p.* 25.

153. The Native Judicial Officers will in future make a solemn declaration to the same effect with the form of oath heretofore prescribed.—*Reg.* 18, 1817, *Sect.* 2, *Cl.* 2.—*p.* 25.

154. The form of the Declaration is originally given in *Reg.* 13, 1793, *Sect* 4.—*p.* 25.

155. The Principal Sudder Ameen will use such seal as Government has directed in the *C. O. 8th March*, 1833.—*p.* 26.

156. The Principal Sudder Ameen may be stationed at other places than the fixed station of the Zillah or City Judge; in that case, Regulation 2, 1821, Section 11, and Reg. 3, 1824, Sect. 2, Clauses 2 and 3, will apply to him.—*Reg.* 7, 1832, *Sect.* 17.—*p.* 26.

157. On any vacancy occurring in the office of Principal Sudder Ameen, the Sudder Court will select and nominate to Government the three Sudder Ameens best qualified to fill the vacant appointment.—*Govt. Ord. 30th July*, 1836.—*p.* 26.

158. The Sudder Court will, when practicable, put the names of the three Sudder Ameens in the order of their merit, or when their merit is equal, include their names in brackets.—*Govt. Ord. 30th July*, 1836.—*p.* 26.

159. No person who has not served in the grade of Sudder Ameen will be eligible for a Principal Sudder Ameenship.—*Govt. Ord. 30th July*, 1836.—*p.* 26.

160. The Principal Sudder Ameens are to be apprized that a specific report containing the names of all those whose conduct and proceedings may appear to merit distinction, will be submitted annually to Government.—*C. Q. 7th Oct.* 1836.—*p.* 26.

161. No Principal Sudder Ameen or Sudder Ameen should be appointed to a district to the inhabitants of which he is largely indebted.—*C. O. 26th March*, 1832.—*p.* 26.

SECT. XIV.

Prosecution of Principal Sudder Ameens.

162. A Principal Sudder Ameen is liable to a criminal prosecution for official corruption, extortion or other misdemeanor, and on conviction will be liable to fine and imprisonment. But he cannot be prosecuted for want of form or for error in his proceedings or judgments. No process can issue against him for corruption, extortion or oppression, unless the City and Zillah Judge considers that there is reason to believe the charge well founded.—*Reg.* 5, 1831, *Sect.* 26, *Cl.* 5.—*p.* 26.

SECT. XV.

Appointment of Sudder Ameens.

163. The existing establishment of Sudder Ameens is revised. The selection and number of those officers will be regulated as the Governor General in Council may direct. The office is open to individuals of any class or religious persuasion.—*Reg.* 5, 1831, *Sect.* 13.—*p.* 26.

164. The Sudder Ameen will receive a Sunnud from Government.—*Reg.* 23, 1814, *Sect.* 65, *Cl.* 2.—*p.* 27.

165. The Sudder Ameen, previous to entering on his judicial duties, will sign a solemn declaration before the Judge.—*Reg.* 23, 1814, *Sect.* 66.—*p.* 27.

166. Form of the Declaration.

167. The provisions of Sect. 9 and 10, of this Regulation, are applicable to the office of Sudder Ameen; and he will hold his Court ordinarily at the station of the Judge.—*Reg.* 23, 1814, *Sect.* 67.—*p.* 27.

168. The Sudder Ameen may be stationed at any other place than the fixed station of the Judge. In that case the provisions of Regulation 2, 1821, Section 11, and Regulation 3, 1824, Section 2, Clauses 2 and 4, will apply to him.—*Reg.* 7, 1832, *Sect.* 17.—*p.* 27.

169. The Sudder Ameen will use such seal as is directed in *C. O. 8th March*, 1833.—*p.* 27.

170. On any vacancy occurring in a Sudder Ameenship, the Sudder Court will select from the several district lists, (after obtaining any other information,) and submit for the consideration of Government, the names of the three Moonsiffs, best qualified for the vacant appointment.—*Govt. Ord. 30th July*, 1836.—*p.* 27.

171. No Sudder Ameen will be appointed except he be one of the three Moonsiffs recommended by the Sudder Court, and unless he has served as a Moonsiff for at least twelve months before the recommendation.—*Govt. Not. 4th August*, 1840.—*p.* 27.

172. 173. Sudder Ameens will not receive as a compensation for their judicial labours, either the institution fee or stamp duties; but in lieu thereof, such monthly allowances as the Governor General in Council may fix.—*Reg.* 13, 1824, *Sect.* 2, *Cl.* 1, 2.—*p.* 28.

174. The Mahomedan and Hindoo Law Officers of the Zillah Courts are not to be considered *ex-officio* Sudder Ameens, but are eligible like other individuals.—*Reg.* 5, 1831, *Sect.* 14, *Cl.* 2.

175. In a certain number of districts of the Bengal Presidency, the best qualified Moonsiff has been nominated to discharge the duties of *Sudder Ameen* of the district, in addition to his regular duties as Moonsiff of the Sudder station. To this Sudder Ameen all suits between 300 and 1000 Rupees are referred. Suits under 300 Rupees, he will try as Moonsiff; suits from that mark up to 1000 Rupees, he will dispose of as Sudder Ameen.—*C. O. 3rd April*, 1835.—*p.* 28.

SECT. XVI.

Sudder Ameens.—Civil Actions and Criminal Prosecutions against them.

176. 178. Sudder Ameens are liable to an action in the Civil Courts for corruption, extortion and oppression, or any unwarranted act of authority. The Judge, on proof of the charge will subject him to pay situable damages and costs to the injured party.—*Reg.* 23, 1814, *Sect.* 10, *Cl.* 1, *and Sect* 67.—*p.* 29.

177. 178. Sudder Ameens are liable to a criminal prosecution for corruption, extortion, or other misdemeanor committed in discharge of their duty; and on conviction will be subjected to fine and imprisonment. No Sudder Ameen can be prosecuted for want of form or error in his judgments or proceedings. No process can issue against him for extortion, &c. unless the Judge has sufficient reason to believe the charge well founded.—*Reg.* 23, 1814, *Sect.* 10, *Cl.* 2, *and Sect.* 67.—*p.* 29.

179. Such actions against the Sudder Ameen must be preferred to and tried by the Zillah and City Judges, subject to an appeal to the Sudder Court.—*Govt. Ord. 15th Jan.* 1834. *No.* 7.—*p.* 29.

SECT. XVII.

Moonsiffs.—Rules regarding their Examination, Appointment and Jurisdiction.

180. The existing establishment of Moonsiffs is revised. The selection and number of Moonsiffs will be regulated as the Governor General in Council may please to direct. The office is open to individuals of any class or religious persuasion.—*Reg.* 5, 1831, *Sect.* 3.—*p.* 29.

The Rules regarding the *Examination* of Moonsiffs are as follows:

181. At each of three Zillah Stations in the North West Provinces, and four in Bengal, a Divisional Committee of Examination will be appointed. It will consist, besides such persons as Government may think fit, of the Commissioner, the Judge, the Magistrate, and the Principal Sudder Ameen or Ameens of the station.—*Rules for the Examination of Candidates for Moonsiffships, 4th Aug.* 1840, *Par.* 1.—*p.* 29.

182. All candidates for Moonsiffships will send in their applications for examination to a Zillah Judge of the division in which they desire to be examined, at least two months before the examination. No such application will be presented to a Judge who is a member of the Examining Committee.—*Ibid*, 2.—*p.* 29.

183. The Zillah Judge, after ascertaining that nothing exists against the character of the candidate, to disqualify him for the privilege of examination, will certify that he may be examined.—*Ibid*, 3.—*p.* 29.

184. The Divisional Committee will meet twice at least in the year to examine the candidates whom the Judges have certified for examination.—*Ibid*, 4.—*p.* 30.

185. The examination will be conducted in such manner as the Sudder Dewanny Adawlut may from time to time prescribe.—*Ibid*, 5.—*p.* 30.

186. At the conclusion of the examination, the Committee will grant to the candidates they may deem proper, diplomas of fitness for Moonsiffships, after a form prescribed by the Sudder Court, forwarding to the Court certified lists of the candidates thus passed.—*Ibid*, 6.—*p.* 30.

187. The possession of such diplomas will entitle candidates to be recommended by the Judges and Commissioners, and to be appointed by the Sudder Court, to Moonsiffships, in preference to candidates who have no diplomas.—*Ibid*, 7.—*p.* 30.

188. If, from having received no application from a passed candidate, the Zillah Judge should recommend for a vacant Moonsiffship a candidate without a diploma, the Sudder Court will appoint to the vacancy any one from among the passed candidates who is willing to accept the appoint-

ment; but the Court will not delay the appointment to enquire whether the party is willing or not to take it. If no application from a passed candidate is before them when the Judge's nomination of a candidate without a diploma reaches them, they will appoint him provisionally, subject to his obtaining a diploma at some future time.—*Ibid*, 8.—*p*. 30.

189. If any person who has not obtained a diploma be thus appointed a Moonsiff, he must present himself to the Divisional Committee at the first half yearly examination next ensuing. If he then fails to obtain a diploma, the appointment will be deemed vacant.—*Ibid*, 9.—*p* 30.

190. If hereafter from any proceeding or information officially before him, any Judge has reason to believe that a Moonsiff under his control, not previously examined, is not sufficiently qualified for his duty, he may, with the concurrence of the Commissioner, require him to present himself at the next half yearly examination of the Committee, to be examined. Any Moonsiff who may refuse to submit to such an examination or who may fail, on being examined, to obtain a diploma, will forfeit his appointment, and will not be reappointed till he obtain a diploma of fitness. —*Ibid*, 10.—*p*. 30.

191. The examination will be partly vivâ voce, and partly written answers to prepared questions.—*Additional Rules*, 8*th Dec*. 1840, *Par*. 1.—*p*. 30.

192. The questions will be framed by the Sudder Court from the Civil Regulations and Rules of practice, and will be forwarded by them to the Examination Committees.—*Ibid*, 2.—*p*. 30.

193. The questions will be answered by the Candidates without reference to books or other sources of information before two members of the Committee. The several members will examine the replies and report on the eligibility of the candidates. They may give their replies in whatever language they please, but the Committee must satisfy themselves that they have a competent knowledge of the principal vernacular languages of the country.—*Ibid*, 3.—*p*. 31.

194. After the candidates have delivered their written replies, the papers of a Moonsiff's case will be read to them *seriatim*, the final decree excepted, and they will be required to record their opinion on the points at issue, and the manner in which the suit ought to be decided. The opinions thus recorded will be examined by the whole of the Committee, that they may judge of the capacity and intelligence of the candidates.—*Ibid*, 4.—*p*. 31.

195. The replies of the successful candidates to the written questions will then be forwarded to the Sudder Court.—*Ibid*, 5.—*p*. 31.

196. The oral examination will be conducted at a full meeting of the Committee, who will examine each candidate separately by questions from the Regulations on every subject connected with the Courts of the Native Judges.—*Ibid*, 6.—*p*. 31.

197. The examination being completed, the Committee will grant to the candidates they deem proper, Diplomas of fitness for employment as Moonsiffs according to the prescribed form, and forward lists of the passed candidates to the Sudder Court.—*Ibid*, 7.—*p*. 31.

198. The Mofussil Committees will grant Diplomas only to those candidates who have answered the whole of the questions forwarded by the Sudder Court. If a Mofussil Committee is of opinion that a candidate who has not answered the whole of the questions is otherwise eligible to the office of Moonsiff on special grounds, they will forward his written replies, with the grounds of their opinion to the Presidency Committee, who will decide whether he shall receive a Diploma or not. But this rule does not apply to the Presidency Committee.—*Ibid*, 8.—*p*. 31.

199. When the members of a Committee are equally divided in opinion for and against granting a Diploma, the candidate shall be considered ineligible.—*Ibid*, 9.—*p*. 31.

200. No member of a Committee will vote regarding any candidate to whom he is related.—*Ibid*, 10.—*p*. 31.

201. Candidates rejected at one sitting of a Committee, will be entitled to a second examination, at the expiration of any period the Committee may fix. Such candidates however, must renew their Certificates of character from the Zillah Judge.—*Ibid*, 11.—*p* 31.

202. The Zillah Judges to whom application may be made for Certificates of character, will make due enquiries to ascertain that the applicant is of respectable connections, good character, and suitable attainments, and then certify that he may be examined. Should the re-

sult of the enquiry not be satisfactory, or should the applicant not produce proper credentials, the Judge will not comply with his application.—*Ibid*, 12.—*p.* 31.

203. The form of the Certificate.—*Ibid*, 13.—*p.* 31.

204. The certificate will then be transmitted to the Sudder Court, who, if they are aware of no objection will certify as follows. Form of the Certificate.—*Ibid*, 13.—*p.* 32.

205. If a candidate appears before a Committee and they are aware of objections to his examination, on the score of character, they will decline his examination, state their objections on the face of his certificate, and send it up to the Sudder for orders.—*Ibid*, 13.—*p.* 32.

206. Form of Application and Certificate of a candidate for examination, before the Committees. —*C. O.* 19*th April*, 1841.—*p.* 32.

207. The Zillah Judges will nominate through the Commissioner of the Division to the Sudder Court, all individuals proposed as Moonsiffs.—*Govt. Ord.* 30*th July*, 1836.—*p.* 33.

208. The Judge of each district will annually furnish the Sudder Court with the names of the three most zealous, capable and trust worthy Moonsiffs, to be entered, if possible, in the order of their estimated merit. The names of those whose claims are equal will be included in brackets. —*Govt. Ord.* 30*th July*, 1836, 2.—*p.* 33.

209. The local jurisdictions of the Moonsiffs will ordinarily correspond with those of the Police Thannahs; the Cutcherry will be established in situations most centrical or convenient for business.—*Reg.* 23, 1814, *Sect.* 6, *Cl.* 1.—*p.* 33.

210. The jurisdiction of the Moonsiffs will have the same denomination, as that of the Police Thannah.—*Reg.* 23, 1814, *Sect.* 6, *Cl.* 2.—*p.* 33.

211. Two or more Police jurisdictions, however, may be included in the jurisdiction of one Moonsiffs. Where the office appears unnecessary, it may be abolished. The Sudder Court may order the Cutcherry to be removed from one place to any other in the same jurisdiction which may be deemed more convenient.—*Reg.* 23, 1814, *Sect.* 7.—*p.* 33.

212. Whenever a Moonsiff may be thrown out of employment by the abolition of his appointment and through no fault of his own, the Judge will make a report on his qualifications, character and past conduct through the Commissioner.—*C. O.* 21*st Nov.* 1834.—*p.* 33.

213. The number of Moonsiffs in a Police jurisdiction may be increased, if necessary, at the recommendation of the Zillah or City Judge, by the Sudder Court.—*Reg* 2, 1821, *Sect.* 2.—*p* 33.

214. The Zillah Judge is not competent to remove a Moonsiff from one jurisdiction to another without a reference through the Commissioner to the Sudder Court.—*Con. No.* 832.—*p.* 33.

215. The Moonsiffs will use a brass seal, an inch and a half square, with an inscription in Persian and Bengalee or Nagree.—*C. O.* 8*th Jan.* 1836.—*p.* 33.

216. In these seals the word, 'Thannah' will be omitted, and the Sudder station at which the Moonsiffs may ordinarily reside, or by which the Moonsiffship may be distinguished, will be inserted.—*C. O.* 15*th April*, 1836.—*p.* 34.

217. All the rules contained in the Regulations which authorize the Moonsiffs to receive as a compensation for their trouble the institution fee or stamp duty, are rescinded.—*Reg.* 5, 1831, *Sect.* 12, *Cl.* 1.—*p.* 34.

218. The Moonsiffs will receive in lieu of such fees and compensation, such monthly allowances as the Governor General may fix.—*Reg.* 5, 1831, *Sect.* 12, *Cl.* 2.—*p.* 34.

219. The Moonsiffs appointed under the rules of 1831, will only be entitled to their salaries from the day on which they may take charge of their offices.—*C. O.* 20*th July*, 1832.—*p.* 34.

220. No person can legally exercise the judicial functions of a Moonsiff until his appointment has been sanctioned by the Sudder Court. Any decisions or order passed in violation of this rule will be null and void.—*C. O.* 6*th Nov.* 1835.—*p.* 34.

221. A Moonsiff on being appointed to his office, will receive a Sunnud from the Judge, [latterly, from the Sudder Court] and previously to entering on his duties, will take or subscribe an oath, or, with the Judge's permission, a solemn declaration.—*Reg.* 23, 1814, *Sect.* 11.—*p.* 34.

222. Form of the Oath or solemn Declaration.—*App. to Reg.* 23, 1814, *No.* 2.—*p.* 34.

223. A copy of the Sunnud under the Judge's official seal and signature, will be permanently fixed in a conspicuous place in the Moonsiff's Cutcherry.—*Reg.* 23, 1814, *Sect.* 12.—*p.* 34.

224. In order to secure the regular attendance of the Moonsiffs at their offices, they will draw up according to a prescribed form, a daily statement of the work disposed of by them, which will be submitted monthly to the Judge.—*Western Provinces only. C. O. 14th Oct.* 1837.—*p.* 35.

225. On the closing of the Cutcherry for the day, the number of cases, regular and miscellaneous, brought before or decided by them during the day, will be entered in the statement. The Judge on receiving it, will carefully revise it. If the absence of a Moonsiff from his Cutcherry be not satisfactorily accounted for, or if the work done be unusually small, the Judge will call for explanations and pass orders.—*Western Provinces only. C. O. 14th Oct.* 1837.—*p.* 35.

226. Moonsiffs are forbidden to sell property distrained for the recovery of arrears of rent.—*Act* 1, 1839, *Sect.* 1.—*p.* 35.

227. Moonsiffs are forbidden any longer to act as Agents on the part of Zemindars in distraining the property of defaulting tenants.—*C. O. 24th Jan.* 1840.—*p.* 35.

SECT. XVIII.

Moonsiffs.—Civil Actions and Criminal Prosecution.

228. Moonsiffs are liable to a Civil action for corruption, extortion or any oppressive or unwarranted acts of authority; and on conviction will be adjudged to pay suitable damages and costs to the injured party.—*Reg.* 23, 1814, *Sect.* 10, *Cl.* 1.—*p.* 35.

229. Moonsiffs are also liable to a criminal prosecution for corruption, extortion, or other misdemeanor, and on conviction will be subject to fine and imprisonment. But they will not be prosecuted for want of form, or error in their proceedings; and no process will be issued against a Moonsiff charged with corruption or extortion, unless the Judge sees reason to believe that the charge is well founded.—*Reg.* 23, 1814, *Sect.* 10, *Cl.* 2.—*p.* 36.

230. Civil Suits against the Moonsiffs for corruption, extortion, or any oppressive or unwarranted act of authority, will be received and tried by the Zillah and City Judge, subject to an appeal to the Sudder Court.—*Govt. Ord.* 15*th Jan.* 1834, *No.* 7.—*p.* 36.

231. A charge of bribery, corruption or extortion against a Moonsiff, is cognizable, in the first instance, only by the Civil Judge, who after the requisite preliminary enquiry, will either give or refuse his assent to a criminal prosecution, which, in the former case should be conducted by the complainant before, and be disposed of by, the Magistrate.—*Con. No.* 781.—*p.* 36.

232. This however is not to be considered as barring the right of the Judge to direct the vakeel of Government to prefer a charge of bribery against a Moonsiff, and to conduct the criminal prosecution on the part of Government, whenever he may deem this measure expedient for the ends of Justice.—*Con. No.* 781.—*p.* 36.

233. When alledged misdemeanors and other criminal acts are charged against a Moonsiff, the Zillah Judge, if he sees reason to believe the charges well founded, ought to make over the case to the Magistrate, to be disposed of according to law, directing the Government pleader to prosecute on the part of Government.—*Con. No.* 1069.—*p.* 36.

SECT. XIX.

Officiating Moonsiffs.

234. Whenever on the death, absence, resignation or suspension of a Moonsiff, it may be necessary to appoint some one to act *ad interim*, the Zillah Judge will depute some one to take charge of the current duties of the office. The Moonsiff thus in charge will confine himself to such part of the duties as are indispensibly necessary for the immediate execution of the processes of the superior Courts. He may also receive any new civil suits, issue notice to, or summon the defendant, and receive his answer; as well as any written documents or lists of witnesses which may be presented in pursuance of orders previously passed. He will exercise no other power in such suits, unless it be urgently necessary to take the deposition of witneses. In this case, he

will report the circumstance to the Judge, who may authorize him to take them.—*C. O. 6th Nov.* 1835.—*p.* 36.

235. The Moonsiff thus in charge may receive any sum which parties may deposit on account of the execution of decrees; and pay to parties or decree-holders sums which have been already ordered to be paid by the Judge, or other competent authority; he may also conduct summary enquiries specially required by the Judge or other competent authority.—*C. O, 6th Nov.* 1835, —*p.* 37.

236. 237. The officer thus placed in charge of the current duties of the Moonsiff's office, will receive one fourth the usual salary; or 25 Rupees per mensem. But an officiating Moonsiff, acting with full powers in the absence of a Moonsiff on leave, or during his suspension, will receive one half the salary, or 50 Rupees a month. This rule is not applicable to Principal Sudder Ameens, or Sudder Ameens, as the persons who officiate for them are already in judicial employ; in the one case as Sudder Ameens, in the other as Moonsiffs.—*C. O. 18th Feb.* 1840.—*p.* 37.

SECT. XX.

Transit of Moonsiffs.

238. The general rate of progress of a Moonsiff when transferred from one jurisdiction to another, is fixed at five coss a day, Sundays excepted. One week in addition is allowed him to prepare for the journey.—*C. O. 15th May*, 1840.—*p.* 37.

239. If the Native Judge exceed this allotted period, he will be considered as absent without leave, and lose his salary for the term of this excess.—*C. O. 15th May*, 1840.—*p.* 37.

240. If any officer so transferred, should obtain leave for any additional period over the licensed term, he will be subject to the usual deduction of salary for the time exceeding that allowed for transit.—*C. O. 29th May*, 1840.—*p.* 38.

SECT. XXI.

Uncovenanted Judges.—Disqualification, Suspension, Dismissal, and Fine.

241. It is not necessary in all cases to obtain legal proof of disqualification in a Principal Sudder Ameen or Sudder Ameen. But whenever a Zillah and City Judge has reason to believe such an officer disqualified by neglect of duty, incapacity, notorious corruption or gross misconduct, he will state the grounds of this belief to the Commissioner of the Division. If he concurs in opinion with him, they will jointly submit a report to the Governor General in Council, who, should he be of opinion that sufficient grounds exist, is competent to direct the removal of such Principal Sudder Ameen or Sudder Ameen. No such officer however can be removed from office without the sanction of the Governor General in Council.—*Reg. 5, 1831, Sect. 26, Cl 1.*—*p.* 38.

242. These rules are applicable to Moonsiffs, except that the Report suggesting the removal is to be made to the Sudder Dewanny Adawlut, who will exercise in reference to Moonsiffs, the same power which is vested in the Governor General in respect of Principal Sudder Ameens and Sudder Ameens.—*Reg. 5, 1831, Sect. 26, Cl. 2.*—*p.* 38.

243. The Zillah and City Judge may, when it appears urgently necessary, suspend any of the three grades of Judges, without previous communication with the Commissioner. If the Commissioner does not concur with the Judge regarding the removal of these officers, the Judge may submit his own opinion, with a copy of the Commissioner's dissent, to the Governor General in Council, or to the Sudder Court.—*Reg. 5, 1831, Sect. 26, Cl. 3.*—*p.* 38.

244. A Commissioner may recommend the removal of any of these Uncovenanted Judges on grounds assigned; but it must be submitted through the City and Zillah Judge, whose assent or dissent will accompany the recommendation to the Governor General in Council, or to the Sudder Court.—*Reg. 5, 1831, Sect. 26, Cl. 4.*—*p.* 38.

245. Reg. 5, 1831, Sect. 26, Cl. 3 and 4, expressly define the respective powers of Judges and Commissioners regarding the suspension of Moonsiffs. The Judge is by Cl. 3, vested with power to suspend on urgent necessity. By Cl. 4, the Commissioner may recommend the removal of

a Moonsiff, but the recommendation must be submitted to the Sudder Court through the Judge. The Commissioner has no power to suspend a Moonsiff.—*Con. No.* 908.—*p.* 39.

246. This rule of 1831, Reg. 5, Sect. 26, is to be particularly attended to, as it is of the greatest consequence that the persons filling the office of Principal Sudder Ameen, Sudder Ameen and Moonsiff, should be removed immediately after their disqualification through neglect, incapacity, corruption or misconduct is known. Such disqualification cannot be concealed from both Judge and Commissioner, if they adopt the ordinary means in their power of ascertaining the truth.—*C. O.* 14*th June*, 1833.—*p.* 39.

247. When a Judge has occasion to suspend a Moonsiff, he will make a special report to the Sudder Court within ten days and on the conclusion of the enquiry, make a report. If the Moonsiff remain under suspension at the end of the month, the reasons which have prevented the conclusion of the enquiry, will be detailed in the civil statement of regular suits for the month, and each succeeding month, till he is finally removed or restored; which fact will be noticed in the statement of the month in which it may occur; and a special report will also be made to the Sudder Court —*C. O.* 6*th Nov.* 1835.—*p.* 39.

248. No Uncovenanted Judge, who may be suspended from office will suffer any deduction from his salary, if restored. The allowance which his *locum tenens* draws, will be an extra charge upon Government.—*C. O.* 12*th Feb.* 1841.—*p.* 39.

249. If the suspended Moonsiff, Sudder Ameen, or Principal Sudder Ameen be dismissed from office, the whole of the salary will be allowed to the person who may actually have performed the duties of the office.—*C. O.* 12*th Feb.* 1841.—*p.* 39.

250. In cases of minor misconduct, the Judge may impose a fine on the Moonsiff or Sudder Ameen not exceeding 20 Rupees; his order will be final.—*Reg.* 23, 1814, *Sect.* 9, *Cl.* 3.—*p.* 39.

SECT. XXII.

Uncovenanted Judges.—Salary and Allowances.

251. The monthly allowance to Moonsiffs is fixed at 100 Sonat Rs. per mensem, inclusive of establishment, and 10 Rs. a month for stationary.—*Govt. Ord.* 1*st Nov.* 1831.—*p.* 39.

252. The monthly salary of Sudder Ameens is fixed at 250 Sonat Rupees per mensem, and 50 Sonat Rupees for establishment and stationary.—*Ibid.*—*p.* 39.

253. The monthly salary of Principal Sudder Ameens is fixed at 400 Sonat Rs. per mensem, and 100 Sonat Rupees for establishment and Stationary.—*Ibid.*—*p.* 39.

254. These rules were modified in October 1837, and the personal allowance of one fourth of the existing Principal Sudder Ameens and Moonsiffs was raised, respectively from 400 to 600, and from 100 to 150 Rs. a month. The persons who were to receive these superior allowances were to be selected by Government on the report of the Zillah and City Judge confirmed by the Sudder Court.—*Govt. Ord.* 2*nd Oct.* 1837.—*p.* 40.

255. At the same time, the allowance for establishment and stationary was raised in the case of the Principal Sudder Ameen from 100 to 150; of the Sudder Ameen from 50 to 80; and of the Moonsiff from 10 to 40 Rs. a month and the net personal salary of the Moonsiffs, not promoted to the superior class was fixed at 100 Rs. a month.—*Govt. Ord.* 2*d Oct.* 1837.—*p.* 40.

256. The allowances of the Uncovenanted Judges will commence from the date on which they may take charge of their offices.—*Govt. Ord.* 2*nd Oct.* 1837.—*p.* 40.

SECT. XXIII.

Uncovenanted Judges.—Borrowing or lending money within their jurisdiction.

257. The uncovenanted Judges are prohibited, on pain of dismissal, from employing or retaining on their establishment any private creditor, or relative, dependant or surety of such creditor, or borrowing money from any Zemindar, Talookdar, ryot or other person possessing real property or residing in, or having a commercial establishment in the city, district or division to which their authority may extend.—*Govt. Ord.* 14*th July*, 1834.—*p.* 40.

258. If any uncovenanted Judge, now in debt, may at the end one year after this, be still indebted to any person from whom it would be illegal for him to borrow, he will make known the circumstance to the Zillah Judge to be communicated to the higher authorities. If such intimation be not given, the same penalty will be incurred as if the debt had been contracted subsequently to the proclamation.—*Ibid.*—*p.* 40.

259. If any person who may be a candidate for the office of any of the uncovenanted Judges, may be indebted to a person from whom it would be illegal for him to borrow while holding it, he must make known the circumstance when preferring his application to the Zillah Judge that it may be communicated to the superior authorities. Failing to do so, he will, if appointed to the office, incur the same penalties as if the debt had been incurred subsequently to his appointment. —*Ibid.*—*p.* 41.

260. All Uncovenanted Judges, and Law officers are prohibited, under pain of dismissal, from being engaged in any trading speculations.—*Govt. Ord. 29th Dec.* 1835.—*p.* 41.

261. If any of these Judges or Officers are now engaged in trading speculations, or if such speculations should descend to them by inheritance, they will make known the circumstance within one month to the Zillah Judge or the Register of the Sudder Court, and terminate their connection with such transactions as soon as possible. Should he be unable to do so within one year, he will resign his situation, or report the circumstance to the Judge or Register, who will submit it to Government or to the Sudder Court, with his opinion as to the propriety of allowing the officer a further period for terminating his transactions. Failing to do so, those officers will be liable to the same penalty as if they had engaged in trade subsequently to their appointment.—*Ibid.*—*p.* 41.

262. Candidates for those appointments will certify that they are not engaged in trade. If after their appointment, it is discovered that they were engaged in trade at the time of their application, they will be liable to dismission.—*Ibid.*—*p.* 41.

SECT. XXIV.

Uncovenanted Judges.—Application for Promotion.

263. The Sudder Court having received numerous direct applications for promotion to vacancies, accompanied with original testimonials, which require to be returned to the applicants, have laid down the following rules:

264. A record is kept at the Sudder Court of the services, merits and qualifications of every class of judicial officers; the names of those who have distinguished themselves are annually brought to the notice of the Court. On the occurrence of a vacancy, the claims of every officer are taken into consideration, and arrangements made accordingly.—*C. O. 6th March,* 1840.—*p.* 41.

265. It is unnecessary for the Native Judicial officers to bring forward their claims individually. But it should be understood that every officer is entitled to make those representations to the superior authorities he may think conducive to his interests; and the Judges are required to forward any representations of this nature which the Native Judges may desire to submit to the Sudder Court.—*C. O. 6th March,* 1840.—*p.* 41.

266. The same indulgence is extended to Moonsiffs and other functionaries who have lost their situations by the introduction of the new system, or on the reduction of temporary offices.—*C. O. 6th March.*—*p.* 42.

267. Any application which may be hereafter forwarded to the Sudder Court direct by the Native Judges, will not be answered; and no documents received with such applications will be returned, except by an application from the parties in the prescribed form and manner.—*C. O. 6th March,* 1840.—*p.* 42.

268. The Judges are directed to abstain from forwarding to Government representations from the Uncovenanted Judges, or officers attached to their Court relating to their services, it being the wish of Government that all persons desirous of bringing their claims to its notice should do so themselves by post.—*C. O. 30th Oct.* 1840.—*p.* 42.

269. This is not to be considered as rescinding the Circular Orders of the 29th September

1837, (Rules 302—304 of this Chapter,) or of the 6th March 1840, (Rules 263—267 of this Chapter).—*C. O. 10th Oct.* 1840.—*p.* 42.

SECT. XXV.

Uncovenanted Judges.—Leaves of absence and deduction of allowances.

270. Applications for leave of absence on private affairs will be addressed by the Uncovenanted Judges to the Judge of the district, who may refuse it. If he thinks it should be granted, he will submit it, with his own opinion to the Sudder Court, and a statement of the amount of business pending before the applicant.—*Govt. Ord, 29th Jan.* 1833.—*p.* 42.

271. The Sudder Court will pass an order on the application of the Moonsiffs.—*Ibid.*—*p.* 42.

272. The Sudder Court will submit the application of the Principal Sudder Ameens and Sudder Ameens with their opinions to Government. The determination of Government will be communicated in a separate letter to the Judge of the district, and leaves of absence will be published in the Official Gazette.—*C. O. 4th Sept.* 1840.—*p* 42.

273. Any Uncovenanted Judge absenting himself from his district without leave will lose the whole of his salary during his absence.—*Govt. Ord. 29th Jan.* 1833.—*p.* 42.

274. Any Uncovenanted Judge absent from his station, with leave, will lose during his absence half his allowances.—*Ibid.*—*p.* 42.

275. But these Judges will be subject to no deduction if absent on permission during the Dusserah and Mohurrum vacations.—*Govt. Ord. 15th Sept.* 1834.—*p.* 42.

276. If his absence be prolonged beyond the vacation by sickness, and therefore unavoidable, and if he can satisfy the Judge by medical certificate or otherwise that his absence was occasioned by illness, he will be subject to no deduction for the period in excess of the vacation, but if unable thus to satisfy the Judge, his whole allowance will be deducted for the period in excess of the vacation.—*C. O. 10th April,* 1840.—*p.* 43.

277. If the Uncovenanted Judge be absent more than a month, and the state of his file render it necessary to appoint some one to act for him, the officiating functionary will receive during his incumbency half the personal allowance, and the whole of that given for establishment, stationary, &c. The remaining half is all that the fixed incumbent is entitled to.—*Govt. Ord. 29th Jan.* 1833.—*p.* 43.

278. When an officer of a lower grade officiates for one of a higher grade, he will draw half the personal allowance of each appointment, and the whole of the allowance for establishment and stationary.—*Govt. Ord. 29th Jan.* 1833.—*p.* 43.

279. Any person deputed to take charge of a Moonsiff's office will receive one fourth the Moonsiff's salary, or 25 Rs. a month.—*C. O. 6th March,* 1840.—*p.* 43.

280. The increased allowance to Principal Sudder Ameens and Moonsiffs authorized on the 2d Oct. 1837, is to be considered as entirely personal, and no part of it will go to those who may officiate for them. When an Uncovenanted Judge is absent on leave, his Amlah will suffer no deduction of salary.—*Govt. Ord. 12th March,* 1839.—*p.* 43.

SECT. XXVI.

Vacations.—The Mohurrum and Dusserah Festivals.

281. The adjournments of the Courts are to be restricted, as far as possible, to the established Hindoo and Mahomedan holidays according to the lists prepared by the Sudder Dewanny Adawlut on consultation with its Law Officers.—*C. O. 6th April,* 1816.—*p.* 43.

282. Though the same Hindoo festivals are not equally observed in all parts of the country, the adjournment of the Courts will be guided, as far as local usages admit, by that list [which being in the native language, will be found in the Bengalee version.] The aggregate number will be reduced as much as possible.—*C. O. 6th April,* 1816.—*p.* 43.

283. This order is not intended to make any alteration in the established adjournment of the Civil Courts for thirty days at the Dusserah, and fifteen days at the Mohurrum.—*C. O. 4th Sept.* 1816.—*p.* 44.

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284. The Court's previous order of Nov. 30th, 1815, relative to the return of the Native Officers and pleaders at the end of the prescribed periods is still in force, and must be strictly attended to.—*C. O. 4th Sept.* 1816.—*p.* 44.

285. The Courts are required to be very careful that no more holidays are allowed than those specified in the Circular Order of 6th April, 1816.—*C. O. 26th February,* 1830.—*p.* 44.

286. The Courts will be annually closed during the Dusserah and Mohurrum festivals; the former will continue one month, the latter fifteen days. When the two festivals coincide, the holidays will be blended, and no separate adjournment will be necessary except so far as the fixed period for the one shall extend beyond the fixed period for the other.—*Reg.* 3, 1798, *Sect.* 2. —*p.* 44.

287. The Sudder Court, however, may dispense with the rule for the periodical vacations of the Civil Courts, whenever from the arrears of business, or other cause, in any particular Court, it may appear expedient that the vacations should not take place —*Reg.* 1, 1806, *Sect.* 10. —*p.* 44.

288. The adjournment of the Courts for the Mohurrum vacation, will commence on the 1st day of the month of Mohurrum, and continue fifteen days.—*C. O. 31st May,* 1803.—*p.* 44.

289. The Native Judges are at liberty to visit their families during the Mohurrum and Dusserah festivals, without any reduction of their allowances, with the permission of the Judges.—*C. O. 10th May,* 1833.—*p.* 45.

290. The Zillah Judges may therefore grant leave to the Uncovenanted Judges during these vacations, merely reporting to the Sudder Court the names of the Officers to whom leave has been given. But when they may apply for leave in excess of the vacations, a reference must be made, under the Orders of Sept. 4th, 1840, for the permission of the Sudder Court or of Government.—*C. O. 26th March,* 1841.—*p.* 56.

291. Their pay will be subject to no deduction, when absent on leave duly obtained at the two festivals above named; but if absent for any period beyond those holidays, they will be subject to a deduction for the whole period of their absence, inclusive of vacations.—*C. O. 26th Sept.* 1834.—*p* 45.

This provision is thus modified:

292. Any absentee under such circumstances, who either before or after his return, can satisfy the Zillah Judge by a medical certificate, that he was unable to return in the proper time on account of sickness, will be subject to no deduction of salary. If unable thus to account for his absence, he will lose the whole of his salary, for the period in excess of the vacation; but to no deduction for the term of the vacation.—*C. O. 27th Sept.* 1840.—*p.* 45.

293. Moonsiffs are not liable to a deduction from their salaries when absent from their stations with the Judge's permission, on any of the established holidays.—*Con. No.* 953.—*p.* 45.

SECT. XXVII.

Uncovenanted Judges.—Correspondence.

294. All official communications will be made to the Moonsiffs by Roobukaree, and not by perwannah and urzee.—*C. O. 19th Oct.* 1838.—*p.* 45.

295. Moonsiffs, within the same jurisdiction, who may have occasion to correspond with each other upon business before their Courts, may do so by Roobukaree direct, instead of communicating through the medium of the Judges.—*C. O. 10th April,* 1840.—*p.* 45.

296. Moonsiffs will forward all communications to Covenanted Officers as heretofore through the European Judges, except communications to officers who are parties in suits before them, which will be addressed direct to them.—*C. O. 1st Dec.* 1837.—*p.* 45.

297. Moonsiffs will, as heretofore, forward all communications they may have to make to Covenanted Officers, through the district Judges, to whom they are subordinate.—*C. O. 16th Nov.* 1839.—*p.* 46.

298. Official communications in the Native languages between European Covenanted Officers

and Principal Sudder Ameens and Sudder Ameens, must be made by Roobukaree.—*C. O. 19th Oct.* 1832.—*p.* 46.

299. Principal Sudder Ameens and Sudder Ameens, will correspond direct by Roobukaree with all Covenanted Officers of Government, except the Secretaries to Government, the Sudder Adawlut, (with the exception of references in suits above 5000 Rs.) the Sudder Board, or Residents at foreign Courts, Agents to the Governor General, or any Military Officers.—*C. O. 16th Nov.* 1839.—*p.* 46.

300. As it respects communications with the three first named authorities, excepted in the preceding paragraph, and with Military Officers, the present practice will be continued.—*C. O. 19th Nov.* 1839.—*p.* 49.

301. When a Principal Sudder Ameen or Sudder Ameen has occasion to address officially a Resident at a foreign Court, or a Governor General's Agent, on any matter connected with a suit before him, he will transmit a simple Oordoo kyfeeut, or statement of the particular matter, to the Judge, to whom he is subordinate, who will forward it under an English letter to the Resident or Agent, with such request as the reference may seem to call for.—*C. O. 16th Nov.* 1839.—*p.* 46.

302. 303. The Native Judges will submit their communications on the various subjects connected with their official situations to the Sudder Court through the Zillah Court, that the Zillah and City Judges may have an opportunity, when it appears necessary, of recording their own sentiments on the reference.—*C. O. 29th Sept.* 1837 —*p.* 46.

304. This rule is not to be considered applicable to appeals preferred by them against the orders of the Zillah and City Judges. Such appeals will continue to be preferred, as usual, on stamp paper, and through a regular vakeel or agent.—*C. O. 29th Sept.* 1837.—*p.* 46.

305. The Native Judges of every grade will correspond direct with natives of rank.—*C. O. 16th Nov.* 1839.—*p.* 46.

306. The Native Judges are directed to observe a proper respect towards all natives of rank with whom they may be required to correspond on official matters, and will employ the form aud style used on such occasions by the European Judge of the district. Natives of rank, will be required to pay proper respect to Native Judges, and adopt the style of address laid down in the Circular Order 6th July, 1838.—*C. O. 16th Nov.* 1839.—*p.* 46.

SECT. XXVIII.

Uncovenanted Judges.—General Rules.

307. No person by reason of place of birth, or descent, is incapable of being a Principal Sudder Ameen, Sudder Ameen or Moonsiff at this Presidency.—*Act* 8, 1836, *Sect.* 1.—*p.* 47.

308. Every British born subject or his descendant, who may be appointed a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, shall, in respect of all official Acts, be liable to the same proceeding criminal and civil, and be amenable to the same tribunals, as if he were not a British born subject—*Act* 8, 1836, *Sect.* 2.—*p.* 47.

309. The fixed allowance to be drawn by Principal Sudder Ameens, Sudder Ameens, and Moonsiffs by Government Orders, Oct. 2, 1837, for establishment and stationary, must be bonâ fide appropriated to that purpose. They will submit to the Judge a statement of the manner in which it is intended to be expended, which the Judge will revise so as to see that a larger amount is not set down than is necessary.—*C. O. 2nd March*, 1838.—*p.* 47.

310. The Native Judges are to be addressed by the public functionaries in their correspondence with them, in a particular form, and with a particular title, for which see the body of the work.—*C. O. 6th July*, 1838.—*p* 47.

311. The Zillah Judges on delivering over charge of their offices, will record a minute with their opinion respecting the Principal Sudder Ameens, Sudder Ameens and Moonsiffs employed under them, for the use of their successors, and eventually for the information of the Sudder Court and Government.—*C. O. 7th Dec.* 1838.—*p.* 48.

312. The situation of Native Judge of any grade will not be held conjointly with that of Mahomedan Law Officer of the Zillah Court.—*C. O. 5th Feb.* 1836.—*p.* 48.

313. The Uncovenanted Judges are required to decide suits, according to the following rate by the month :

Principal Sudder Ameens, with only original suits on their files, ... 20
Ditto with original suits and appeals, ... 25
Sudder Ameens, ... 20
Moonsiffs, ... 25

This is the *minimum*, not the *maximum*. Whenever they do not decide this number of suits, they will explain the reason. It is the duty of the superintending authorities to see that the explanations are inserted in the monthly statement and that they are satisfactory, warning the inferior Courts in case of neglect or inattention, and bringing to the notice of the Court all cases in which their warnings have had no effect.—*C. O. 25th Jan.* 1833.—*p.* 48.

314. Whenever the Uncovenanted Judges are unable to decide the prescribed number, because no more admitted of decision, it is expected that the deficiency will be counterbalanced by a larger number of decisions passed in Miscellaneous cases, otherwise the excuse will not be admitted.—*C. O. 6th Nov.* 1835.—*p.* 48.

315. The Uncovenanted Judges are especially forbidden to select undefended suits and cases easy of decision without reference to their order on the file, or their date of institution, in order to make up the number of suits prescribed by the Circular Orders. This practice is to be strictly prohibited. They will bring on for trial the causes depending in their Courts according to the order in which they may have been filed.—*C. O. 3rd July*, 1840.—*p.* 48.

SECT. XXIX.

Persons amenable to the Courts.

316. Act 53, Geo. III. Clause 107, ceases to have effect in the Company's territories from the 1st of June, 1836.—*Act* 11, 1836, *Sect.* 1.—*p.* 49.

317. From that day no person in India by reason of place of birth, or by reason of descent, shall in any civil proceeding whatever, be excepted from the jurisdiction of any of the undermentioned Courts: The Courts of Sudder Dewanny—of the Zillah and City Judges—of the Principal Sudder Ameens—and of the Sudder Ameens, under the Presidency of Fort William.—*Act* 11, 1836, *Sect.* 2.—*p.* 49.

318. Suits in which European British subjects, European foreigners, or Americans, are parties, which were instituted prior to Act 11, 1836, are still referrible to Principal Sudder Ameens, and Sudder Ameens.—*C. O. 26th Aug.* 1836.—*p.* 49.

319. This Act, (11 of 1836,) does not take away any exemption to which any person may be entitled by virtue of his office, and consequently judicial functionaries who were not liable to civil actions in the Courts specified in the Act on account of alleged injuries committed in their official capacity before the passing of the Act, will not be liable now.—*Con. No.* 1051.—*p.* 49.

SECT. XXX.

Matters cognizable by the Civil Courts.

320. The Zillah and City and subordinate Courts, may take cognizance, according to their respective jurisdictions, of suits regarding the succession or right to real or personal property, landrents, revenues, debts, accounts, contracts, partnerships, marriages, caste, claims to damage for injuries, and generally, all claims of a civil nature, provided the property to which the suit relates, be situated, or the cause of action has arisen within the jurisdiction of the Court, or the defendant, when the suit commenced, was a resident within it.—*Reg.* 3, 1793, *Sect.* 8.—*p.* 50.

321. Disputes between ryots and those from whom they are entitled to demand pottahs, regarding the rates of pottahs will be determined in the Civil Courts according to the Pergunnah rates. —*Reg.* 4, 1794, *Sect.* 6.—*p.* 50.

322. The above rule will also be applicable to the renewal of pottahs which may expire or become cancelled under *Reg.* 44, 1793.—*Reg.* 4, 1794, *Sect.* 7.—*p.* 50.

[The rules in 321 and 322, refer of course only to regular suits.]

323. In like manner, the Civil Courts will determine the rights of every description of land-

holder and tenant when regularly brought before them by whatever law or usage those rights may be ascertainable.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 8.—*p.* 50.

324. If A, residing in the Mynpooree district, contracted with B. resident in the Cawnpore district, to deliver produce at a factory in the Furruckabad district, and he failed to fulfil his contract, A may sue him in the Mynpooree or Cawnpore district, but not in the Furruckabad Court. —*Con. No.* 866 —*p.* 50.

325. In the case of a debt contracted in Calcutta, and the debtor's residing temporarily within the jurisdiction of a Zillah or City Judge, the Sudder held that a complaint was not cognizable in that Court; that a suit could only be instituted in the Court, where either the cause of action had arisen, or the defendant resided as a fixed inhabitant, at the commencement of the suit. The circumstance of his being an occasional resident or having available property in the place did not subject him to the jurisdiction.—*Con. No.* 797.—*p.* 50.

326. In the case of a debt contracted at Nagpore (a foreign territory) the bond regarding which was executed at Allahabad, and the defendants, at the date of the institution of the suit, were residing at Nagpore, the suit was declared not cognizable in a British Court.—*Con. No.* 351.—*p.* 51.

327. The Sudder Dewanny Adawlut has also decided, that in the case of a Serberakar of a mokururee muhal, situated in Nuddea, who resides in Rajshahye, any suit for the recovery of excess of rent he may have levied, will be tried in the court within the jurisdiction of which the land lies, not of that in which he resides.—*Con. No.* 73.—*p.* 51.

328. All suits and complaints relative to marriage are to be heard in the Civil Courts, and not by the Magistrate.—*Con. No.* 148.—*p.* 51.

329. In a case in which fine and imprisonment have been awarded to the defendant on account of the abduction of the plaintiff's wife, such criminal sentence does not bar the institution of a civil suit for any pecuniary losses alledged to have been sustained by the husband in consequence of the act.—*Con. No.* 1251.—*p.* 51.

SECT. XXXI.

Suits regarding Estates which lie in different Districts.

330. Suits founded on right of inheritance should include the entire claim arising out of the same cause of action. If the property be situated in two or more jurisdictions, it should be brought in the Court in whose jurisdiction the greater portion is contained.—*C. O. 11th Jan.* 1839.—*p.* 51.

331. This rule (330) cannot affect the rights of other individuals having claims on the same property, who may not have joined in the plaint.—*C. O. 11th Jan.* 1839.—*p.* 51.

332. If the property be in the same Zillah, but in different Moonsiffships, and the aggregate do not exceed the sum within their cognizance, the Moonsiff in whose Court the suit is brought under the above rule, previously to issuing any process, will apply to the Judge for authority to try it. But when the property is situated in different Zillahs, he will apply to the Sudder Dewanny Adawlut, through the Judge, for authority to proceed. The same rule will be observed by the Judge regarding suits of this description instituted in the first instance in his Court.—*C. O. 11th Jan* 1839.—*p.* 52.

333. When the property lies partly in the Lower and partly in the Western Provinces, the Judge before whom the suit is instituted, will apply to the Sudder Dewanny Adawlut to which he may be subordinate, who, after communicating with the other Court, will issue the necessary instructions—*C. O. 11th Jan.* 1839.—*p.* 52.

334. The reasons on which these rules are founded are, that an opposite practice would give rise to conflicting judgments in different Courts, about the same time, in regard to separate portions of an estate included in the same cause of action; that it would frequently alter entirely the original jurisdiction of the Courts regarding the cognizance of such claim—and would sometimes deprive the defendant of his right of appeal to the Sudder Court, and occasionally indeed to the Queen in Council.—*C. O. 11th Jan.* 1839.—*p.* 52.

335. In a dispute regarding the boundaries of estates situted in different jurisdictions, the suit must be instituted in the Court in whose jurisdiction the plaintiff maintains that the property lies. —*S. D. R. Vol.* 3, *page* 382.—*p.* 52.

SECT. XXXII.

Suits not cognizable by the Civil Courts.

336. No Judge, European or Native, will try any cause in which either party is his creditor.—*C. O. 26th March*, 1832.—*p.* 52.

337. The Civil Courts are prohibited entertaining any cause which appears to have been heard or determined previously in a Court of competent jurisdiction. Doubts regarding the competence of the former jurisdiction will be resolved by the Sudder Dewanny Adawlut.—*Reg.* 3, 1793, *Sect.* 16.—*p.* 52.

338. If after B. has preferred a claim, the Zillah Judge discovers that a suit has already been instituted in reality for the same cause of action, and was at the time pending in appeal to him from the decision of the Sudder Ameen, he is fully competent to dismiss the suit of B without issuing any notice to the other party to appear and answer to it.—*Con. No.* 999.—*p.* 52.

339. If a suit has been instituted in one Civil Court, no other Civil Court will entertain a suit for the same cause of action. On proof the institution of a prior suit, the Court in which the second suit is instituted, will dismiss it with costs against the transgressing party. If any one, having commenced a suit in a Civil Court, shall, while it is pending, or after a decree has passed, institute another suit for the same cause of action in another Court, or shall, institute a suit which may appear frivolous, vexatious or groundless, the Court will dismiss it with costs against the plaintiff and fine him, committing him to close custody till the fine is paid. —*Reg.* 3, 1793, *Sect.* 12.—*p.* 53.

340. The Civil Courts will not entertain any suit instituted in a fictitious name; in all such suits the plaintiff will be non-suited.—*C. O. 29th July*, 1809.—*p.* 53.

341. The Court of the 24-Pergunnahs will not entertain any suit relating to any immovable property or any boundary dispute touching lands situated within the specified limits of the town of Calcutta, nor any suit against a person who may be an inhabitant of the town when the suit commenced, or who may become a resident, after it is instituted. Such suits are entirely exempt from the jurisdiction of the Court of the 24-Pergunnahs; but that Court may entertain a suit regarding marriage or caste, not involving any money or valuable thing, though the cause of action may have arisen, or the defendant may reside within the limits of the town of Calcutta.—*Reg.* 3, 1793, *Sect.* 17.—*p.* 53.

342. In reference to this Section, the Sudder Court has ruled that where the plaintiff and defendant are residents of Calcutta, but the cause of action is to recover possession of land situated within the jurisdiction of the 24-Pergunnahs, the suit is cognizable by the Court of that Zillah.—In Harington's Analysis, vol. 1. the Section above is construed to signify that the Zillah and City Court cannot take cognizance of any suits for land or other real property situated within the limits of Calcutta; nor any *personal actions* against the fixed inhabitants of that town, which may not be for arrears of revenue, or may be legally considered exclusively cognizable by the Supreme Court.—*Con. No.* 991.—*p.* 54.

343. The Civil Courts are prohibited entertaining any suits regarding any matter cognizable in the various Criminal Courts, except for contempts and perjuries committed in open Court as prescribed in Sections 14 and 22, Reg. 4, 1793.—*Reg.* 3, 1793, *Sect.* 18.—*p.* 54.

344. The Civil Court will not receive any action of debt or personal action against any Officer, or other Military person, not being a European British born subject, if the value in question does not exceed Two Hundred Rupees, and the defendant was of such description when the cause of action arose. Such actions of debt are cognizable only before a Military Court.—*Reg.* 20, 1810, *Sect.* 22.—*p.* 55.

345. The Civil Courts will not entertain any action of debt against any Military persons, at

any station or cantonment, or any person within the description of persons described in the Statute 4, Geo. 4, Chap. 81, Sect. 57, such Military person being a European British subject, if the value of the thing in question does not exceed 400 Rupees, and the defendant was a person of this description when the cause of action arose. All such actions have been declared cognizable only in a Court of Requests composed of Military Officers and not elsewhere.—*Reg.* 20, 1825, *Sect.* 3, *Cl.* 1.—*p.* 55

346. Officers and Soldiers being European British subjects are still amenable to the Local Civil Courts, except in actions of debt and personal actions not exceeding 400 Rupees in value or amount.—*Reg.* 20, 1825, *Sect.* 3, *Cl.* 3.—*p.* 55.

347. The Provisions of Reg. 20, 1810, Sect. 22, (Rule 344,) are still in force.—*Reg.* 20, 1825, *Sect.* 3, *Cl.* 1.—*p.* 55.

348. There are therefore two rules with regard to these cases; the one for European British subjects, registered as attached to Bazars, and residing in cantonments, British soldiers, Officers, &c. No suits regarding such persons can be tried in the Civil Courts except the value or amount exceed 400 Rupees. The other rule is for European foreigners, native soldiers, natives, &c. registered as residing in cantonments; regarding such persons, no suit can be tried in the Civil Courts except the value of it be above 200 Rupees.—*C. O. 27th March*, 1829.—*p.* 55.

349. If A. and B. have dealings in a Military cantonment but do not reside there; and A. obtains a decree against B in the Military Court of Requests; and B demurs to the jurisdiction; and on the award being enforced, sues in the Civil Court for the recovery of the sum paid under the award, the Civil Court cannot entertain such a suit.—*C. O. Feb.* 13, 1841.—*p.* 56.

350. The Civil Court is not competent to receive a suit for actual costs against a plaintiff whose complaint has been dismissed in a Criminal Court.—*Con. No.* 367.—*p.* 56.

351. A bidder at a public sale, who has been fined by a Collector, cannot sue the Collector for a return of the fine in a Civil Court, supposing it to have been levied by distress or otherwise. —*Con. No.* 1201.—*p.* 56.

352. Cases decided by the Criminal authorities under the Rules of Reg. 7, 1819, Sect. 6, are not open, to a Civil action.—*C. O.* 31*st Aug.* 1838.—*p.* 56.

SECT. XXXIII.

Suits cognizable and not cognizable by Moonsiffs.

353. Moonsiffs are empowered to try and determine all original suits of the following descriptions:—*Reg.* 5, 1831, *Sect.* 5, *Cl.* 1.—*p.* 56.

354. For money or other personal property, not exceeding in amount or value 300 Rupees, if the claim include the whole amount of the demand, and be not for damages on account of alleged personal injuries, or for personal damages of whatever nature.—*Reg.* 5, 1831, *Sect.* 5, *Cl.* 2.—*p.* 56.

355. For the property or possession of land or other real property (excepting land held exempt from rent) the computed value of which does not exceed 300 Rupees; provided the land be situated, or the cause of action may have arisen, or the defendant when the suit commenced, may be a fixed resident, within the limits of the Moonsiff's jurisdiction.—*Reg.* 5. 1831, *Sect.* 5, *Cl.* 3.—*p.* 56.

356. The word "property" in Clause 3, means the proprietary right in, not the rent, of Lakhraj land. Suits therefore for the rent of Lakhraj land are cognizable by Moonsiffs.—*Con. No.* 950.—*p.* 56.

357. Suits for the property or possession of land held exempt from the payment of revenue, are not under the provisions of Clause 3, Sect. 5, Reg. 5, 1831, cognizable by Moonsiffs, though the circumstances of the land being rent free or exempt from the payment of revenue may not be disputed by the parties.—*Con. No.* 825.—*p.* 56.

358. If a person lays claim to a piece of land which both parties allow to be rent free, and on which a house is situated, and the purchase money in the bill of sale includes the price of the land and the building, such suit, being for the possession of rent free land, is not cognizable by Moonsiffs.—*Con. No.* 950.—*p.* 57.

359. An *undefended* suit for an instalment below 300 Rupees on a Bond for an aggregate sum above that amount :—also an *undefended* action for an arrear of rent below 300 Rupees due on a farming engagement or lease of higher value, is cognizable by a Moonsiff.—*C. O. 16th July*, 1841.—*p.* 57.

360. The prohibitions contained in Reg. 23, 1814, Sect. 13, Cl. 2, are applicable to the suits above mentioned.—*Reg.* 5, 1831, *Sect.* 6, *Cl.* 4.

361. Moonsiffs are prohibited entertaining suits in which they themselves, their relatives, or dependants, or creditors, or the vakeels of their Courts, or in which a British subject, a European foreigner, or an American may be a party.—*Reg.* 23, 1814, *Sect.* 13, *Cl.* 2.—*p.* 57.

362. But it was subsequently ordained that no person whatever by reason of place of birth, or descent, is exempted from the jurisdiction of the Courts of Moonsiffs, in any civil proceeding whatever connected with arrears or exactions of rent.—*Act* 3, 1839, *Sect.* 3.—*p.* 57.

363. Moonsiffs are empowered to receive, try and decide claims to arrears of rent, preferred as regular suits, or claims by under tenants and others desirous of resisting the distraint of their property, or the attachment of their persons, or who may prefer a claim for damages on account of such acts. To such claims the prohibition to the Moonsiffs to award damages, in Regulation 23, 1814, Section 13, or other Regulation will not be applicable.—*Reg.* 8, 1831, *Sect.* 11.—*p.* 57.

364. In suits for an instalment or balance of money due on a bond, of which the amount is beyond the Moonsiff's jurisdiction, if the original bond be brought in question, and its validity must be determined, the Moonsiff cannot try the suit. If the question refers only to the fact whether the instalment has been paid or not, the Moonsiff may decide it.—*C. O. 31st Aug.* 1832.—*p.* 57.

365. Indemnificatory claims to an arbitrary amount of damages in respect of marriage, breach of contract, slander, &c. are not cognizable by Moonsiffs. But if a claim is preferred for a specific loss sustained by expenses actually incurred in prosecuting a marriage afterwards broken off, such claim is within the competency of a Moonsiff to decide under Reg. 5, 1831, Sect. 5, Cl. 2.—*Con. No.* 1257.—*p.* 58.

366. Moonsiffs are prohibited from receiving and acting on petitions for the arrest of defaulters presented by Zemindars under Regulation 7, of 1799, Section 15, Clause 2.—*C. O. 13th July*, 1832.—*p.* 58.

367. The Zillah Judge may bring up for trial before themselves or Principal Sudder Ameens, or Sudder Ameens suits pending before a Moonsiff, or refer suits from one Moonsiff to another.—*Reg.* 23, 1814, *Sect.* 47.—*p.* 58.

SECT. XXXIV.

Suits cognizable by Sudder Ameens.

368. Sudder Ameens are empowered to try and decide original suits for money, or other personal property, or for the property or possession of real property, the amount or value of which, calculated according to Regulation 10, 1829, does not exceed 1000 Rupees. But no suit will be referred for trial to a Sudder Ameen in which he himself, or his relatives, or dependants, or the vakeels or officers of his Court may be a party.—*Reg.* 5, 1831, *Sect.* 15, *Cl.* 2.—*p.* 58.

369. From the 1st day of June 1836, no person, whatever, by reason of descent will be excepted in any civil proceeding whatever from the jurisdiction of the Sudder Ameens under the Presidency of Fort William.—*Act* 11, 1836, *Sect.* 2.—*p.* 58.

370. Whenever a Judge may retain on his own file suits which he is authorized to refer to a Sudder Ameen, he will record his reasons for so doing.—*Reg.* 5, 1831, *Sect.* 24.—*p.* 58.

371. The Zillah Judge is strictly requested to abstain from retaining on his own file original suits which from their amount are referrible to Sudder Ameens.—*C. O. 2d Nov.* 1832.—*p.* 58.

372. The Zillah Judge is ordered immediately to transfer to the file of the Sudder Ameens all suits in which Government or its officers may be a party, which from their amount may be cognizable by those officers. If the Judge retains any such suits on his own file, he will submit a list of them to the Sudder Court and explain his reason for so doing.—*C. O. 23rd Feb.* 1838.—*p.* 58.

SECT. XXXV.

Suits cognizable by Principal Sudder Ameens.

373. The Zillah Judges are authorized to refer to the Principal Sudder Ameen any suits depending or instituted in their Courts for real and personal property of which the amount and value, calculated according to Regulation 10, 1829, does not exceed 5000 Rupees. But no suit will be referred to a Principal Sudder Ameen in which he himself, or his relatives or dependants, or the vakeels or officers of his Court may be a party.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 1.—*p.* 59.

374. From the 1st day of June 1836, no person, within the Company's Territories shall, by reason of descent be excepted in any civil proceeding from the jurisdiction of the Principal Sudder Ameen.—*Act* 11, 1836, *Sect.* 2.—*p.* 59.

375. So much of Regulation 5, 1831, Section 18, Clause 1, which provides that no suit be referred to a Principal Sudder Ameen, in which the Vakeels or Officers of his Court may be a party, is repealed.—*Act* 27, 1838, *Sect.* 1.—*p.* 59.

376. In such cases, when by reason of the above clause, a suit cannot be referred to a (Principal) Sudder Ameen, because he himself, or his relatives or dependants are a party, and when the Zillah Judge cannot refer it to any other competent authority, the Sudder Court may, by an order of its Register, transfer the suit to some other Zillah or City Court subordinate to it, and the Judge of that Court may thereupon refer it in the same manner as if it had been originally instituted in the Court of such other Zillah.—*Act* 27, 1838, *Sect.* 2.—*p.* 59.

377. Regulation V. 1831, Section 18, is modified. No Zillah or City Judge at this Presidency will be precluded, by reason of the amount or value of the property regarding which a suit is instituted, from referring it to any Principal Sudder Ameen.—*Act* 25, 1837, *Sect.* 1.—*p.* 60.

378. The Court of Sudder Dewanny, by an order signed by its Register, may order a Zillah or City Judge to transfer any Civil proceedings, Miscellaneous or Summary, to a Principal Sudder Ameen. All such cases will be disposed of by him according to the rules prescribed for the guidance of the Zillah and City Judges. An appeal from the order of the Principal Sudder Ameens will, in such cases, lie in the first instance to the Zillah and City Judge, and specially to the Sudder Dewanny.—*Act* 25, 1837, *Sect.* 8.—*p.* 60.

379. In carrying this Regulation into effect, the Judge is ordered immediately to transfer from his own file to that of the Principal Sudder Ameen, all suits above the value of 5000 Rupees; all suits under Section 30, Regulation 2, 1819: and all suits in which the Government or its officers may be a party, according as the suits may be cognizable by the Principal Sudder Ameens. The Judge is competent to retain any such suits, and also all original suits on his own file, for sufficient reasons; but a list of the suits retained, and of the reason for retaining them must be distinctly submitted to the Sudder Court.—*C. O.* 23*rd Feb.* 1838.—*p.* 60.

380. Suits in which the documentary evidence may be in English will not be referred to the Principal Sudder Ameen, unless he be acquainted with that language.—*C. O.* 23*rd Feb.* 1839.—*p.* 59.

381. The above Rule (380) is thus modified.—*C. O.* 18*th Oct.* 1839.—*p.* 60.

382. But the mere circumstance that the initial petition recites the existence of an English document in support of a claim, will not constitute a necessary ground for retaining the suit on the Judge's file. Such suits will be referred like all others, in the first instance to the tribunals in which, under the existing laws, they are cognizable.—*C. O.* 18*th Oct.* 1839.—*p.* 60.

383. After such suit has been referred to the Principal Sudder Ameen or the Sudder Ameen, he will proceed as ordered in Regulation 26, 1814, Sections 10 and 12, and when any party tenders an English document as evidence, will require him to file with it a translation in the vernacular tongue; otherwise it will not be received. The Court will then transmit the original and translation in the same mode as is laid down for transmitting exhibits, and with the same precaution, to the Zillah Court, for consideration and orders.—*C. O.* 18*th April*, 1839.—*p.* 60.

384. If upon inspecting the original and translated documents, it appears to the Zillah Court

lish indispensible to a correct adjudication of it, the Judge will recall it, and place it on his own file. If, however, the English writing be confined to a simple account, bill, or other document, the Judge, after satisfying himself of the accuracy of the translation, and correcting it, if necessary. will return the papers to the inferior Court with instructions to proceed with the case.—*C. O. 18th Oct.* 1839.—*p.* 60.

SECT. XXXVI.

Suits cognizable and not cognizable by the Zillah Judges.

385. The Zillah and City Court, after the promulgation of Regulation V. 1831, has primary jurisdiction in all suits above 5000 Rupees.—*Reg.* 5, 1831, *Sect.* 27, *Cl.* 3.—*p.* 61.

[By preceding enactments the Zillah Judges have jurisdiction in all cases below 5000 Rs.]

386. Suits under Regulation 4, of 1812, instituted, or defended by the public officers on behalf of Sovereign Native Princes, will be tried and determined in the Zillah and City Courts.—*Govt. Ord. No.* 3, 15*th Jan.* 1834.—*p.* 61.

387. 388. 389. Suits against Uncovenanted Judges for corruption, extortion, oppression, or any oppressive or undue exercise of authority; and against the law officers of the Zillah and City Courts for corruption or extortion, or against Cauzees for undue and illegal practices in the discharge of their duties, will be heard and determined by the Zillah and City Judges, subject to an appeal to the Sudder Court.—*Govt. Ord. No.* 7, 8, 9, 15*th Jan.* 1834.—*p.* 61.

390. Suits against a Collector for sums of money demanded or received by him for his own use from any proprietor, farmer, or purchaser of land, or any surety, or for acts done by him repugnant to the Regulations, and not involving a claim to sums legally received on behalf of Government will be tried by the Zillah Judges.—*Govt. Ord. No.* 17, 15*th Jan.* 1834.—*p.* 62.

SECT. XXXVII.

Suits cognizable by the Uncovenanted Judges.

391. Regular suits to set aside the summary awards of Collectors for land rent, are cognizable, according to their amount, by Principal Sudder Ameens, Sudder Ameens and Moonsiffs.—*Reg.* 7, 1832; *Sect.* 10.—*p.* 62.

392. Suits instituted for damages against Police Darogas, and their subordinates for corruption, extortion, oppression, or illegal acts, are cognizable according to their amount, by Principal Sudder Ameens, Sudder Ameens and Moonsiffs.—*Govt. Ord. No.* 14, 15*th Jan.* 1834.—*p.* 62.

The following suits are also cognizable by the Uncovenanted Judges with the exception of cases in which a European Officer of Government may be concerned.

393. Suits instituted by a proprietor against a Manager or Guardian for acts contrary to the Regulations or the orders of the Court of Wards, or for breach of trust, during their guardianship. —*Ibid.*—*p.* 62.

394. Suits preferred by proprietors, farmers or their sureties against Ameens and Tehseeldars to whom lands are committed, in case of arrears of revenue or execution of decrees, for embezzlement, or injury to the estate or farm.—*Ibid.*—*p.* 62.

395. Suits for corruption against a Collector's Ameen who is partitioning an estate.—*Ibid.* —*p.* 62.

396. Suits against a Collector's peons, horse or foot, for exacting or receiving subsistence money from defaulters.—*Ibid.*—*p.* 62.

397. Suits instituted against the officers (not Europeans) at the stone quarries in the Western Provinces for undue exaction.—*Ibid.*—*p.* 62.

398. Sudder Ameens and Moonsiffs are not prohibited from trying suits in which other Sudder Ameens and Moonsiffs, or their dependants may be concerned.—*Con. No.* 692.—*p.* 62.

399. Uncovenanted Judges are not restricted by the Regulations from trying and deciding suits regarding the right in Slaves; but it is highly inexpedient that such suits should go before a native, if a reference of them to a European Judge be practicable.—*Con. No.* 1022.—*p.* 62.

SECT. XXXVIII.

Suits cognizable either by the Covenanted or the Uncovenanted Judges.

400. The suits described in the four following Rules will be received and decided by the Court to which the officers may be subject. If the amount be beyond the competence of that Court, it will be forwarded to the Judge who will refer it to another competent Court, or place it on his own file. Suits against the Ministerial Officers of the Criminal Courts will be preferred to the Judge, who will refer them to a competent subordinate Court or retain them on his own file.—*Govt. Ord. 15th Jan.* 1834.—*p.* 63.

401. Suits by the parties in a cause against their pleaders for injury or damages sustained by any breach of the Regulations, or from fraudulent conduct or malpractices in the management of the suit.—*Ibid.*—*p.* 63.

402. Suits against vakeels of the Moonsiff's Courts for breaches of trust, fraud, or wilful misconduct.—*Ibid.*—*p.* 63.

403. Suits against the Ministerial officers of the Criminal Courts (the Sudder Nizamut Adawlut excepted) for corruption or extortion.—*Ibid.*—*p.* 63.

404. Suits against the Ministerial Officers of Sudder Ameens or Principal Sudder Ameens for extortion, corruption or misconduct.—*Ibid.*—*p.* 63.

405. The Government orders of the 15th January 1834, provide that the following suits, not involving charges respecting the honour of the officers concerned, should be instituted before the Zillah Judge, who after making the preliminary enquiries prescribed in Reg. 2, 1814, will either try them himself or refer them to one of the subordinate Courts. But suits which it may be necessary to prosecute or defend through the vakeel of Government must be tried at the fixed station of the Zillah or City Court.—*Govt. Ord. 15th Jan.* 1834.—*p.* 63.

406. Suits against Collectors, Salt Agents, Collectors of Customs, Mint and Assay Masters, and their respective assistants and native officers, for any acts done in their official capacity in opposition to the Regulations.—*p.* 63.

407. Suits against Government by individuals considering themselves aggrieved under the Regulations by an act done by any of the aforesaid officers of Government pursuant to a special order originating with the Governor General in Council, the Commissioners of Revenue, the Sudder Board of Revenue, the Boards of Customs, Salt and Opium.—*p.* 63.

408. Suits by proprietors, farmers, and their sureties in confinement, (or otherwise,) for alleged arrears of Revenue, against a Collector or Tehseeldar, to try the justness of the demand.—*p.* 63.

409. Suits by a defaulter against the Collector, to shew cause why he is detained in confinement with a view to his release.—*p.* 63.

410. Suits of proprietors, farmers, or their sureties against Government, to try the validity of their engagements, or for acts done by the Collector in conformity to special orders of the Government, or the Commissioners, or Sudder Board of Revenue.—*p.* 64.

411. Suits for damages against Collectors for unnecessarily causing the attendance of proprietors and others.—*p.* 64.

412. Suits against a Collector for withholding payment of Pensions.—*p.* 64.

413. Suits against the Collector or Government for withholding the payment of compensations for sayer duties.—*p.* 64.

414. Suits against local Agents for illegal acts.—*p.* 64.

415. Suits to reverse sales of Putnee Talooks irregularly conducted by the Collector—*p.* 64.

416. Suits instituted to reverse the summary decisions of Collectors making or revising settlements.—*p.* 64.

417. Suits on the part of Government against Benamee purchasers or revenue officers, illegally purchasing lands at public sales.—*p.* 64.

418. Suits by proprietors against Government, the Collector, his officers and others, to annul public sales.—*p.* 64.

419. Suits against proprietors, farmers and sureties for resistance of revenue processes.—*p.* 64.

420. Suits against a Collector and individuals for property in and possession of an estate, a portion thereof, and for the transfer of names in the Collector's Registers.—*p.* 64.

421. Suits for damages against the native officers of Collectors for unauthorized acts.—*p.* 64.

422. Suits by Collectors against the heirs of deceased native officers for Government claims of money, papers and accounts.—*p.* 64.

423. Suits by a native officer or his surety against the Collector to contest the demand for money, papers or accounts.—*p.* 64.

424. Suits by a Collector against his Tehseeldars for arrears of revenue.—*p.* 64.

425. Suits by the Opium Agent against defaulting Opium ryots for a return of advances, with interest and fines.—*p.* 64.

426. Suits to revise arbitration awards respecting the delivery of too liquid opium.—*p.* 64.

427. Suits by the ryot against the Opium Agent or his officers for the confiscation of alleged and adulterated opium.—*p.* 64.

428. Suits against Opium Agents and their Native Officers of all descriptions, for acts done in their official capacity.—*p.* 64.

429. Suits by an Opium Agent or any Officer of Government against any person, or vice versâ, on any matter relative to the cultivation, provision, transportation, sale, purchase, or possession of opium, not provided for by the Regulations.—*p.* 64.

430. Suits by Molungees, Beeparrees, &c. for return of advances with costs and damages against a Salt Agent in cases of compulsory engagements.—*p.* 65.

431. Suits by such individuals against covenanted or uncovenanted European assistants and native officers of a Salt Agency for the same transgression. Suits against gomashtahs for the same transgression.—*p.* 65.

432. Suits against Salt Agents, their Assistants (covenanted or uncovenanted Europeans,) and native officers, for any breach of the Salt Regulations.—*p.* 65.

433. Suits against Agents, their Assistants, uncovenanted European and Native officers, for improper application of the rules for serving judicial processes on persons engaged in the Salt manufacture.—*p.* 65.

434. Suits for damages for the seizure of Salt by Native officers of Government (except Salt Officers,) not authorized to make such seizures, or by such, being authorized, when the Salt was covered by a pass.—*p.* 65.

435. Suits against the officers of the Salt Agents and of Superintendents of Salt Chowkies for regular seizure not duly reported.—*p.* 65.

436. Suits for damages against officers seizing Salt alleged to be adulterated, to reverse the Magistrate's award for confiscation.—*p.* 65.

437. Suits for damages against the officers of Government for improper seizures of Salt alleged to be adulterated.—*p.* 65.

438. Suits between Salt Agents, Superintendents of Chowkies, or any officer of Government, and any persons or any matter relative to the manufacture, provision, transportation, sale, purchase or possession of Salt, not provided for by Regulation 10, of 1819.—*p.* 65.

439. Suits against Treasury Native Officers for refusing legal tenders.—*p.* 65.

440. Suits for the fining and dismissal of such Native Officers for receiving improper coin.—*p.* 65.

441. Suits for damages against Collectors, Salt Agents, Mint and Assay Masters and their respective officers for any breach of the coinage Regulation.—*p.* 65.

442. Suits for dismissal and damages against public officers of Government and individuals for refusing certain legal tenders mentioned in Regulation XLV. 1802, Section 50.—*p.* 65.

443. Suits for damages against Police officers, or informers of illegal seizures in reference to the Sylhet Chunam trade.—*p.* 65.

444. Suits against Government to reverse the Magistrate's order of confiscation of alleged contraband articles mentioned in Regulation I. 1799, Section 6.—*p.* 65.

445. Suits for damages against the Stone Quarry officers and others for illegal seizures.—*p.* 65.

446. Suits against the Collector to reverse his orders of confiscation.—*p.* 65.

447. Suits by claimants against Government and the arbitrators for compensation or damages in reference to Lands required for public purposes and Salt manufacture.—*p.* 65.

448. Suits by proprietors against Government for the repossession of their lands become unfit for the purposes of the Salt manufacture.—*p.* 66.

449. Suits against the Commissioner of Revenue, and Supervisor of river navigation and his people for official acts under this Regulation.—*p.* 66.

SECT. XXXIX.

Transfer of Suits.

450. The Courts of Sudder Dewanny, may, by an order, authenticated by their Register, direct that the cognizance of any original suit or appeal brought before any Zillah Court, be transferred to any other Zillah or City Court subordinate to the same Sudder Court.—*Act* 3, 1837, *Sect.* 1.—*p.* 66.

451. The Sudder Court, on thus transferring the cognizance of any Civil suit from one Zillah Court to another, will record on its proceedings the reasons for such transfer.—*Act* 3, 1837, *Sect.* 2.—*p.* 66.

452. All suits cognizable by the Moonsiffs will be ordinarily tried by them. But a Zillah or City Judge may receive such suits and try them himself, or refer them to any other court subordinate to his authority, whenever he may see sufficient reason for so doing.—*Reg.* 5, 1831, *Sect.* 7.—*p.* 66.

453. The general practice of referring suits cognizable by Moonsiffs to Sudder Ameens is objectionable. But as Reg. 23, 1814, Sect. 47, is still in force, such cases may on special reasons, to be assigned by the Judge in each instance, be referred to Sudder Ameens or Principal Sudder Ameens.—*Con. No.* 833.—*p.* 66.

454. The Zillah Court is competent, under Reg. 5, 1831, Sect. 7. to transfer cases from the file of the Moonsiff to that of another officer of the same or of a superior grade. Whenever he may thus transfer cases exceeding fifteen in number, he will report it for the information of the Sudder Court. All such transfers will be duly entered in the column of remarks.—*C. O. 7th Dec.* 1838.—*p.* 66.

SECT. XL.

Jurisdiction of the Civil Courts in regard to Lands under settlement by the Revenue authorities.

455. Any suit brought before a Court of Justice to set aside a decision made in conformity with the rules below will be nonsuited with costs.—*Reg.* 9, 1833, *Sect.* 9.—*p.* 67.

When a judicial question is depending before a Collector, or officer employed in making settlements under Reg. 7, 1822, and it appears to that officer proper that it should be decided by arbitration, he will, under instructions from the superior Revenue authorities, fix a time for the parties to produce an award.—*Reg.* 9, 1833, *Sect.* 5.—*p.* 67.

If the parties neglect or refuse to produce the award within the term limited, the Collector or revenue officer will summon a Punchayeet to be composed of three or five persons to try the matter at issue.—*Reg.* 9, 1833, *Sect.* 6.—*p.* 67.

After duly considering the statements and evidence of both parties, or in case of the default and recusance of either, those of the party in attendance, the Punchayeet will declare their opinions, and the sentence of the majority will be recorded. The superior Revenue authorities will issue rules of practice for the guidance of the officers or the Punchayeet.—*Reg.* 9, 1833, *Sect.* 7.—*p.* 67.

No appeal will be allowed from such decisions; they will be enforced and maintained unless the Commissioner should, for special reasons, direct the case to be submitted to another Punchayeet.—*Reg.* 9, 1833, *Sect.* 8.—*p.* 67.

456. Any such suit instituted by a Landholder or farmer, who has not conformed to the rules

will be liable to damages for these illegal acts, at the discretion of the Courts.—*Reg.* 9, 1833, *Sect* 15.—*p.* 67.

The village accounts kept in the manner and form prescribed, will be prepared in duplicate, one for deposit with the Patwarrie; the other at the Collectorate. Where Canongoes are established, a third copy will be deposited in that office.—*Reg.* 9, 1833, *Sect.* 12.—*p.* 67.

The several accounts, above alluded to, instead of being delivered at the end of every six months, will be furnished at such periods as the Boards may direct. They will be open to general inspection.—*Reg.* 9, 1833, *Sect.* 13.—*p.* 67.

Any landholder or farmer who may neglect, or refuse to conform to that rule, will be incompetent to oust a ryot from his land on any pretext, or to distrain his property, or to sue him in any Court of justice.—*Reg.* 9, 1833, *Sect.* 14.—*p.* 68.

457. If a suit be instituted regarding a boundary dispute, and an Ameen is deputed to make local enquiries, and before the decision is given in the Civil Courts, the Collector decides the dispute; in this case the progress of the civil suit will still continue, and take its course.—*Con. No.* 1128.—*p.* 68.

458. It is not competent to the settlement officer to interfere with regard to awards of Court given previously to the period of his appointment, unless by order of the Court, or the consent of parties.—*Con. No.* 1128.—*p.* 68.

459. A case of disputed boundary is under litigation in the Moonsiff's Court. While it is undecided, the Settlement officer comes down and appoints a Punchayeet. Meanwhile the Moonsiff decrees it in favor of one party, and the Punchayeet base their award on that decree. It was held by both Courts that the Zillah Judge was competent to admit an appeal in this case from the Moonsiff's decision, even with the chance of reversing the arbitration award.—*Con. No.* 1128.—*p.* 68.

460. It is not competent to a revenue officer, making settlements under Reg. 9, 1833, or any other enactment, to interfere regarding any case pending before a Civil Court at the date of the settlement, either as an original suit or appeal.—*Con. No.* 1128.—*p.* 69.

461. It is not competent to a revenue officer making settlements, to interfere in any case which has been judicially decided, either as an original suit or in appeal, unless the interference took place by order of the Court, or with the consent of the parties.—*Con. No.* 1128.—*p.* 69.

462. 463. No case can be tried by the Revenue authorities, in which the cause of action arose more than one year previous to the complaint. Only such cases can be taken up as regards the extent of interest of parties in possession, and the decison of which is necessary to a due allotment of the Government Jumma. All old and extraneous claims must be left to the decision of the Civil Courts.—*Con. No.* 1128.—*p.* 69.

SECT. XLI.

The Nazim of Bengal.

464. When it is brought to the notice of the Judge that both parties in any suit, are servants or relations of the Nazim of Bengal, or of the Nizamut family, the parties are to be referred to him for justice. When a complaint is referred by one not so situated against a servant or relative of the Nazim, the Judge may decide it himself, or refer it to his Excellency, taking care in all matters and at all times to pay proper attention to the dignity and long established rights of the Nawaub. In all cases in which the plaintiff or defendant may prefer the jurisdiction of the Court to that of the Nazim, the Judge will hear and determine the suit himself.—*Reg.* 16, 1793, *Sect.* 10.—*p.* 69.

465. The Agent for the Governor General at Moorshedabad, is competent to institute suits in the Civil Courts on the part of the Nazim, and to conduct them as plaintiff or appellant.—*Reg.* 19, 1825, *Sect.* 2.—*p.* 70.

466. If any suit is instituted against His Highness, the ordinary notice will be issued upon the Agent to the Governor General, who will conduct the defence on the part of his Highness.—*Reg.* 19, 1825, *Sect.* 3.—*p.* 70.

467. No security will be demanded from, and no attachment will issue against His Highness or the Governor General's Agent; but should the Court require the payment of any costs, damages, or sums of money, or the delivery of lands, if there be any unreasonable delay after order duly made and served on the Agent, the Court will transmit a copy and a translation of the decree or order to the Persian Secretary, when the Governor General will issue the necessary order.—*Reg.* 19, 1825, *Sect.* 4.—*p.* 70.

468. Suits instituted under Regulation 19, of 1825, on the part of the Nawaub Nazim, by the Agent of the Governor General at Moorshedabad, and suits instituted against His Highness, will be received and determined in the Zillah and City Court.—*Govt. Ord. No.* 2, 15*th Jan.* 1834.—*p.* 70.

469. Suits in which both parties are servants or relatives of the Nizamut family, or in which a servant of the Nazim may be sued by one of a different description, will be preferred to a Zillah and City Court, but the Judge may refer any such suit to the Principal Sudder Ameens, and Sudder Ameens.—*Govt. Ord. No.* 1, 15*th Jan.* 1834.—*p.* 70.

SECT. XLII.

The Nawaub of Furruckabad.

470. The authority of the Court of Furruckabad does not extend to the person of the Nawaub. If a complaint be preferred against any of his dependants, it is to be referred to him in the first instance, and on his not doing justice speedily and satisfactorily, the plaintiff may bring the case into the Zillah Court where it will be decided.—*Reg.* 2, 1803, *Sect.* 8, *Cl.* 1, 2.—*p.* 70.

471. It must remain with the Judge, on the shewing of the plaintiff, to determine whether the delay in the decision of the case has been such as to warrant his receiving the suit on the ground that the plaintiff has not received speedy justice.—*Con. No.* 843.—*p.* 70.

472. The decision passed by the Nawaub should be enforced by himself, by means of the influence which he is supposed to possess over his dependants. The Courts are neither called upon nor anthorized to aid in their execution; and the Nawaub is not vested with any special authority with this view by the Regulations.—*Con. No.* 843.—*p.* 71.

473. The Nawaub has no authority to receive or act on petitions of plaint, except on reference from the Judge of the Zillah Court. All decisions passed by the Nawaub, without such reference, are therefore null and void.—*Con. No.* 843.—*p.* 71.

474. A defendant dissatisfied with the decision of the Nawaub has no right of appeal. In becoming his dependant he has, according to the Regulations, voluntarily subjected himself to his authority in civil matters.—*Con. No.* 843.—*p.* 71.

475. The same rule is applicable to the successor of the old Nawaub. During his minority or other disqualification, all suits properly referrible to the Nawaub, will be referred to his guardian or principal manager.—*Con. No.* 162.—*p.* 71.

476. In a case, during the minority of the Nawaub in which the defendant was related to his guardian, it was still decided by the Sudder Court, that the case must be submitted for the decision of the guardian.—*Con. No.* 785.—*p.* 71.

477. Any person unable to obtain the execution of a decree passed by the Nawaub of Furruckabad in six weeks, may sue out execution of it in the Zillah Court of Furruckabad, and the Judge will execute it, as though it was a decree of his own Court.—*Act* 12, 1836.—*p.* 71.

478. Suits in which both parties are servants or relations of the Nawaub, or widows or descendants of the old Nawaub, or in which such persons are defendants only, must be preferred to the Judge, but he may refer them to the Principal Sudder Ameen, or Sudder Ameen.—*Govt. Ord.* 15*th Jan.* 1834.—*p.* 71.

SECT. XLIII.

Special Rules regarding the Rajah of Benares.

479. When a written complaint is preferred against the Rajah of Benares, or the Principal Mahajuns of the City, or against the connections of the Raja, the usual security will not be demanded from them; but a notice will be issued with a short account of the nature of the demand, and

fixing a day for them to appear in person or by vakeel, to answer the claim. If they fail to appear as required, they will forfeit their privilege. But this privilege extends only to original suits. In cases of appeal, they will give the same security as other persons.—*Reg.* 8, 1795, *Sect.* 10.—*p.* 72.

480. The Courts of Justice will not take cognizance of complaints relative to undue exactions of revenue, or breach of engagement regarding pottahs or the resumption of free lands in the Rajah's patrimony of Gungapore. The parties must be referred to the Raja or his Dewan. If they obtain not justice there, they will apply to the Collector, who will decide their cases justly and equitably, according to the agreement concluded with the Raja on 27th of October, 1794. Those who consider themselves aggrieved, may apply in the first instance to the Collector, who, by reference to and communication with the Raja, will cause substantial justice to be done.—*Reg.* 15, 1795, *Sect.* 3, *Cl.* 1.—*p.* 72.

481. Extract from the Treaty of Oct. 27, 1794.—*Reg.* 15, 1795, *Sect.* 3, *Cl.* 2.—*p.* 73.

482. The above Regulation is modified as follows.—*Reg.* 7, 1828, *Sect.* 2.—*p.* 73.

483. The superintendence of the mehals will be vested in such officer as the Governor General may appoint.—*Reg.* 7, 1828, *Sect.* 3.—*p.* 73.

484. To secure the inhabitants the blessings of Justice, a Native Commissioner will be maintained by the Raja in each Pergunnah, to take original cognizance of Revenue causes.—*Reg.* 7, 1828, *Sect.* 16.—*p.* 73.

485. The nomination of individuals to the office will be made by the Raja, but he will previously communicate all the particular information he has obtained of them to the Commissioner, who, in cases of notorious profligacy, may withhold his concurrence.—*Reg.* 7, 1828, *Sect.* 17.—*p.* 73.

486. No Native Commissioner will be removed without sufficient cause; in all cases of removal the Raja will act in concert with the Commissioner.—*Reg.* 7, 1828, *Sect.* 18.—*p.* 73.

487. The Native Commissioners will be liable to a criminal prosecution for corruption, extortion, or gross misdemeanor; and on conviction will be subject to fine and imprisonment.—*Reg.* 7, 1828, *Sect.* 19.—*p.* 73.

488. The Native Commissioners may receive, try and determine all suits preferred to them against any inhabitant of the jurisdiction, relative to land or interests in it, if the cause of action arose twelve years previously to the institution of the suit.—*Reg.* 7, 1828, *Sect.* 20.—*p.* 74.

489. This is not meant to bar the cognizance of suits for the rent, revenue, or produce of lakraj lands.—*Con. No.* 1224.—*p.* 74.

490. In trying and determining these suits, the Native Commissioners will be guided by the Rules contained in Regulation 23, 1814, and on points not expressly provided for, by the rules prescribed for the guidance of the Zillah Courts.—*Reg.* 7, 1828, *Sect.* 21.—*p.* 74.

491. The Native Commissioners may take cognizance of suits in which a British subject, or a European foreigner, or an American may be a party.—*Reg.* 7, 1828, *Sect.* 22.—*p.* 74.

492. The decision of the native Commissioners will be executed by themselves under the general rules prescribed for the execution of decrees; but if the case be appealed, they will be guided by instructions from the Superintendent.—*Reg.* 7, 1828, *Sect.* 23.—*p.* 74.

493. The proceedings of the Native Commissioners will be subject to the revision of the Superintendent. If an appeal be preferred to him within six months, he may call for the papers and confirm, modify or annul the decision of the Native Commissioner; but the Governor General may supersede the decision of the Superintendent.—*Reg.* 7, 1828, *Sect.* 24.—*p.* 74.

494. The penalties prescribed in the Regulations, for resistance of process, will be applicable to the cases for which this Regulation prescribes.—*Reg.* 7, 1828, *Sect.* 25.—*p.* 74.

495. Except as distinctly provided for in this Regulation, the administration of the Mehals herein referred to, will be regulated by the principles and spirit of the existing Regulations and where they may not be applicable, by equity and good conscience.—*Reg.* 7, 1828, *Sect.* 26.—*p.* 74.

SECT. XLIV.

Independent Chiefs.

496. With regard to the interference, whether of our tribunals or political officers, in civil cases, against the subjects of independent chiefs, the complainant must be left to seek justice from the legitimate superior of the party against whom he has a claim, unless that party be resident or possess property within the British territories. The British officers are not to take cognizance of civil claims preferred against independent chiefs, whether by their own subjects or by others, or of cases of any description between independent chiefs, and persons residing in or possessing property in their dominions. Interference can seldom be justified, except where the sufferer is entitled to protection by some positive engagement.—*C. O. 4th March*, 1836.—*p.* 75.

SECT. XLV.

Suits in which Sovereign Native Princes are interested.

497. When Sovereign Native Princes, whether residing in the British territories or not, shall, as individuals, have claims to prefer to lands or other things cognizable in the Civil Courts, the Governor General will order the suit to be instituted on their behalf in the proper Court, through the medium of the public officers.—*Reg.* 4, 1812, *Sect.* 2, *Cl.* 1.—*p.* 75.

498. If a suit be instituted by a Zemindar or other person, for land or other property in the occupancy of a Native Prince, the Governor General may order such suit to be defended by the public officers.—*Reg.* 4, 1812, *Sect.* 2, *Cl.* 2.—*p.* 75.

499. Such suits will be conducted by the Collectors, aided by the Government Vakeels, under the directions of the Board, who will be furnished with full instructions from Government.—*Reg.* 4, 1812, *Sect.* 3.—*p.* 75.

500. In all such cases and appeals, the Court which passes judgment, in addition to the copies of the decree required to be delivered to the parties, will transmit a summary of the decree to the Judicial Secretary of Government, to be laid before the Governor General, who will act as may seem to him most just and prudent.—*Reg.* 4, 1812, *Sect.* 4.—*p.* 75.

501. Suits instituted or defended by the Officers of Government on the part of Sovereign Native Princes, (Regulation 5, 1812,) will be received and decided by the Zillah Judges.—*Govt. Ord. No.* 3, 15*th Jan.* 1834.—*p.* 76.

SECT. XLVI.

Persons not connected with the Courts, convicted of bribery and extortion.

502. If a native servant, or dependant of a Civil Judge, shall extort or receive any money from any one on account of any suit, he shall be committed as for a contempt of Court, and punished with a fine equal to three times the amount, or by imprisonment, or with corporal punishment. He will be discharged and never entertained again. If he does not appeal, or an appeal shall not lie, or if the decision be confirmed in appeal, a report will be made to the Governor General, who will decide whether the offender shall not also be declared incapable of serving the Government in any capacity.—*Reg.* 13, 1793, *Sect.* 11.—*p.* 76.

503. All such suits are to be received by the Principal Sudder Ameen, Sudder Ameen, or Moonsiff, as they may be cognizable by one or the other. A suit thus received, will be immediately forwarded to the Judge, who will, at his discretion, either try it himself, or refer it to a subordinate Court. In all such cases, a special or regular appeal will lie to the Sudder Court.—*Govt. Ord.* 15*th Jan.* 1834.—*p.* 76.

504. The same rule applies to the servants of Uncovenanted Judges.—*Govt. Ord.* 15*th Jan.* 1834.—*p.* 76.

SECT. XLVII.

Minors.

505. Minority in the case of Hindoos and Mahomedans extends to the expiration of their 18th year.—*Reg.* 26, 1793, *Sect.* 2.—*p.* 76.

506. The rule contained in the above section, extends to proprietors of joint undivided estates, for which a manager is appointed.—*Reg.* 26, 1793, *Sect.* 3.—*p.* 77.

507. Minors will be sued under the protection and joint names of their guardians.—*Reg.* 10, 1793, *Sect.* 32, *Cl.* 1.—*p.* 77.

508. The Surberakar or manager should, in all cases affecting the real or personal estate of the Minor, sue and defend in the Civil Court, under instructions from the Court of Wards; but he has no right to the services of the Government pleader.—*Con. No.* 335.—*p.* 77.

509. In the case of a minor, whose estate is not under the Court of Wards, the executor or guardian stands in the place of the minor, and will be subject to all the rules of suit and defence to which the minor himself would be subject were he not a minor.—*Con. No.* 335.—*p.* 77.

SECT. XLVIII.

Miscellaneous.

510. Sums accruing through fines, or from deductions from the pay of the Establishment, are not to remain in the public offices, but are to be carried to the credit of Government.—*C. O. 6th Aug.* 1841.—*p.* 77.

511. All references and applications which the Zillah and City Judges were in the habit of transmitting to the Board of Revenue, will be transmitted to the Revenue Commissioner.—*C. O. 13th March*, 1829.—*p.* 77.

512. All advertisements for sales or notices issued by the Collector, and intended to be fixed up in the Civil Courts, will be sent with the Collector's superscription, to the Judge, with a request that he would cause them to be read and fixed up in his Court Room; and he will act accordingly. Any notice which the Judge may intend to be in like manner affixed in the Collector's Cutcherry, will in like manner be sent to him.—*C. O. 9th April*, 1817.—*p.* 77.

513. The Judge will take especial care that there is no delay in publishing the advertisements received in his office for the sale of estates on account of arrears of revenue.—*C. O. 10th Aug.* 1838.—*p.* 78.

514. It is the duty of every public functionary to receive charge of public property when the officer in charge of it is unable from any circumstances to retain it.—*C. O. 23rd Nov.* 1838.—*p.* 78.

515. In the spelling of native names, in all letters and statements, the orthography of the original is to be adhered to as closely as possible.—*C. O. 18th May*, 1832.—*p.* 78.

516. The Judicial Officers are ordered to introduce the new system of Weights into all branches of the departments under their control.—*C. O. 1st May*, 1835.—*p.* 78.

517. The most noble the Governor General in Council concurs in the opinion, that it is not derogatory to the dignity of a Court of Justice, nor disrespectful to any of its officers, for natives to appear in them in slippers, and that they be not prevented from wearing their slippers accordingly.—*C. O. 2nd Sept.* 1802.—*p.* 78.

518. Provision is made in the new Post Office Rules for the franking of all letters bonâ fide on the public service, relative to the business of their office, by Sudder Ameens, and by all Moonsiffs and Native Judicial officers.—*C. O. 16th Dec.* 1836.—*p.* 78.

519. All despatches of consequence, particularly those containing original proceedings and other papers, requiring particular security, must, during the rains, be made up under a double cover of wax.—*C. O. 9th Sept.* 1813.—*p.* 78.

520. Parcels of proceedings sent by bangy, must be made up in the best wax cloth procurable. —*C. O. 19th Sept.* 1823.—*p.* 78.

521. All parcels transmitted by dawk bangy, should be enveloped in two or three folds of strong country paper and plain cloth; otherwise the contents of the packages are likely to be injured by the melting of the wax from the application of hot dammer.—*C. O. 21st May*, 1824.—*p.* 79.

522. In all practicable cases, paper parcels of proceedings should be made up in parcels of 25 sicca weight, and sent on different days by the regular dawk.—*C. O. 21st May*, 1824.—*p.* 79.

523. The authorities are desired to sew up the ends of bangy parcels before sealing them. Parcels not thus securely fastened will not be received at the Post Office.—*C. O. 28th Feb.* 1840.—*p.* 79.

CHAPTER II.

MINISTERIAL AND LAW OFFICERS AND VAKEELS OF THE COURTS—PAUPERS—STAMPS.

SECT. I.

Ministerial Officers of the Zillah and City Courts.

1. No public office can be claimed on the ground of inheritance. The Governor General may abolish any office when he considers it unnecessary to continue it.—*Reg.* 5, 1804, *Sect.* 24.—*p.* 80.

2. The final appointment and removal of the native Ministerial Officers and Vakeels of the Zillah Court rests with the Judge, subject to such orders as the Government or the Sudder Dewanny Adawlut may see fit to issue.—*C. O. 2d March*, 1832.—*p.* 80.

3. The Zillah and City Judge is competent of his own authority to appoint and remove his Ministerial Officers and Vakeels, without applying for the confirmation of the Sudder Court; subject however to the control of that Court, or of Government, when either may see reason to interfere. —*C. O. 13th April*, 1832.—*p.* 80.

4. Whenever a Zillah or City Judge may see cause for the removal of any of the head Ministerial Officers of his Court for misconduct, incapacity or other cause, he will communicate to the officer the grounds of his opinion and call upon to state what he has to say in his defence.—*Reg.* 5, 1804, *Sect.* 6.—*p.* 80.

5. Whenever the Zillah Judge may see cause to remove a native officer with a salary of 10 Rs. a month and upwards, he will communicate the grounds to the officer, and call on him to state what he has to say in his defence.—*Reg.* 5, 1804, *Sect.* 16.—*p.* 80.

6. The officers of Government in the Judicial department, are positively prohibited from making any alteration in the distribution of the salaries of the Ministerial Officers, or in the number and designation of them, without the express sanction of Government.—*Reg.* 5, 1804, *Sect.* 23. —*p.* 80.

7. A list of the officers and salaries of the Native officers will be openly suspended in the Cutcherries of each Zillah.—*C. O. 21st June*, 1815.—*p.* 81.

8. The Civil and Session Judges are desired to report to the Sudder Court, the removal or resignation of the Sheristadar, Peshkar, and Nazir, within ten days after it may have taken place. They will also report the names of those who may be hereafter appointed to those offices, according to a prescribed form, and within the same period after nomination.—*C. O. 20th Nov.* 1840. —*p.* 81.

9. The Sheristadars and other head Native officers of the Civil Court, previous to entering on their duties, will execute a written declaration, which will be found in the body of the work.—*Reg.* 13, 1793, *Sect.* 4.—*p.* 81.

10. The Ministerial Officers of the Zillah and City Courts, will hereafter make and subscribe in open Court before the Judges, a solemn declaration to the same effect with the form of oath

heretofore prescribed, (Regulation 13, 1793, Section 4,) substituting the word "declare" for "swear."—*Reg.* 18, 1817, *Sect.* 2, *Cl.* 2.—*p.* 82.

11. The Judges will attest the same as publicly read and subscribed before them, and will enforce a due observance of the rule contained in it, by the Native Officers appointed to act under them.—*Reg.* 18, 1817, *Sect.* 2, *Cl.* 3.—*p.* 82.

12. The rules above, respecting the execution of a written declaration, are extended to the Native Record-keepers and Native Treasurers of the Civil Courts, and all other Native Officers of Government holding any situation of trust and responsibility.—*Reg.* 18, 1817, *Sect.* 3.—*p.* 82.

13. The Governor General in Council, or the Court of Sudder Dewanny Adawlut, may order the removal of a Native Officer of the Civil Courts, upon just and sufficient grounds.—*Reg.* 8, 1809, *Sect.* 13.—*p.* 82.

14. The imposition of heavy fines on Native Officers of the Courts, is strongly disapproved of by the Court of Directors. When they refuse to perform their official duty, their office should be at once transferred to others.—*C. O. 7th Aug.* 1840.—*p.* 82.

15. The Nazirs who, under Regulation 7, 1825, Section 3, may be employed in the sale of personal or real property in execution of decrees, are not entitled to receive any commission on the proceeds of such sale.—*Con. No.* 509.—*p.* 82.

16. The Judges are empowered, at their discretion, to employ their Head Clerk in certain duties detailed in the body of the work.—*C. O. 25th Aug.* 1841.—*p.* 83.

SECT. II.

Purchase or possession of Landed Property by the Ministerial Officers of the Zillah and City Courts.

17. The Native Officers in the Judicial Department are not restricted from purchasing lands at the public sales. But to guard against the exercise of undue influence in the management of lands required by them, they will, on the 1st of January of each year, report the lands, both Malgoozaree and Lakraj, which they hold, in whatever part of the country. Of the list thus given in, the Judges will furnish the Collectors with a copy.—*C. O. 25th July*, 1811.—*p.* 83.

18. The Collectors will inform the Judges whenever it may come to their knowledge, that any Native Officers belonging to their Courts, hold lands which have not been duly reported.—*C. O. 25th July*, 1811.—*p.* 83.

19. The Native Officers will be liable to dismission, if in any case they should fail to furnish the information required above, or commit abuse in the management of the lands.—*C. O. 25th July*, 1811.—*p.* 83.

20. The foregoing provisions are applicable as well to the Law as to the Ministerial Officers of the Court.—*C. O. 25th July*, 1811.—*p.* 83.

21. These provisions are intended to include all lands held by Native officers in the Civil Courts, whether in property or in farm, or under any other tenure whatever. The same rule is extended to the Vakeels employed in the several Civil Courts.—*C. O. 15th Aug.* 1811.—*p.* 83.

22. On the appointment of any Native Judicial or Ministerial Officer in the Courts, the Judge will require of him a schedule of any landed property he may be possessed of, and explain to him that any subsequent acquisitions of the same description, must be communicated within one month from the date of the acquisition. Should he fail to do so, or should he have wilfully omitted any property in his schedule, he will be liable to dismission.—*C. O. 27th Feb.* 1835.—*p.* 84.

23. All such schedules will be transmitted to the Collector's office for record.—*C. O. 27th Feb.* 1835.—*p.* 84.

24. The rule is applicable to all present incumbents.—*C. O. 27th Feb.* 1835.—*p.* 84.

25. Such schedules will not however be required from officers receiving a less salary than 20 Rupees a month.—*C. O. 10th April*, 1835.—*p.* 84.

26. This schedule will include not only land of which the proprietary right is vested in the public officer, but any land or other real property, whatever may be the tenure by which he may

hold it. The description of the tenure will be recorded in the schedule. These schedules will be registered in the Collector's offices.—*C. O. 29th May*, 1835.—*p.* 84.

SECT. III.

Civil action against Ministerial Officers of the Zillah Courts for corruption, extortion, or embezzlement.

27. The Native Ministerial Officers of the Court, the Law Officers excepted, are amenable to it for acts of corruption or extortion. The Courts may receive such a charge when preferred against them. Previously to its being received, the Courts will require the complainant to make oath, or subscribe a declaration to the truth of it, and give security to prosecute the charge without delay. Without the oath or declaration, and the security, the Courts will not receive the charge.—*Reg.* 13, 1793, *Sect.* 9, *Cl.* 1.—*p.* 84.

28. The Sudder Dewanny Adawlut may receive charges of corruption or extortion against any Ministerial Officer of a Zillah Court, though not relating to any matter before them, or decided by them, if the complainant can prove that he preferred the charge in the first instance to the Zillah Judge and offered to make oath to the truth of it, and to give the security, but that the Court refused or omitted to receive it. On his making the declaration, and giving the security, the Sudder Dewanny may then order the Zillah Court to receive the charge.—*Reg.* 13, 1793, *Sect.* 9, *Cl.* 3.—*p.* 85.

29. But if any person shall charge a Ministerial Officer of a Zillah Court with corruption in any matter depending before the Sudder Court, or decided by it, the Sudder Court may receive it without further enquiry, and on the complainant's making the required oath or declaration, and giving the security, may refer it to the Zillah Court.—*Reg.* 13, 1793, *Sect.* 9, *Cl.* 3.—*p.* 85.

30. Such charges of corruption or extortion are to be considered as Civil actions, and prosecuted in the Civil Courts.—*Reg.* 13, 1793, *Sect.* 9, *Cl.* 7.—*p.* 85.

31. Whenever a Native Ministerial Officer, against whom an action may be brought to recover money illegally extorted or received, shall be proved to have taken any part or the whole of the money or property, the Court will adjudge him to refund it, (if money) with interest, not exceeding 12 per cent. per annum, and to pay full costs to the plaintiff. But the Court cannot award a fine.—*Reg.* 3, 1827, *Sect.* 3.—*p.* 85.

32. The decree will be enforced like other decrees. If the officer thus condemned do not appeal, or if an appeal do not lie from the decision, a copy of the decree will be transmitted to the Governor General. If it be appealed and confirmed, the appellate Court will report it to the Governor General, who may declare the delinquent incapable of serving Government hereafter. The Court may suspend an officer in such circumstances till the final decision is passed.—*Reg.* 13, 1793, *Sect.* 9. *Cl.* 8.—*p.* 86.

33. If any person prefer a charge of corruption or extortion against a Ministerial Officer, and it be not proved, the accused may sue the accuser for damages in any Civil Court.—*Reg.* 13, 1793, *Sect.* 9, *Cl.* 12.—*p.* 86.

34. From the date of this Regulation, the party from whom money may have been corruptly taken, need not bring a Civil action to recover it. If the charge be substantiated in a Criminal prosecution, a certified copy of the conviction will be sufficient to enforce the refund of the amount with interest, on application from the aggrieved party to the Civil Court, on the stamp paper appointed for miscellaneous petitions.—*Reg.* 3, 1827, *Sect.* 5.—*p.* 86.

35. When a suit is instituted in the Civil Court for the recovery of sums said to have been taken as bribes by the Sheristadar of the Collector's office, it is to be tried as in common actions for debt.—*Con. No.* 807.—*p.* 86.

SECT. IV.

Criminal prosecution against the Ministerial Officers of the Zillah and City Courts, for corruption, extortion or embezzlement.

36. A Civil action against the Law or Ministerial Officers of the Courts to enable persons who

may be aggrieved to obtain redress, is not meant to preclude a Criminal prosecution in cases of corruption, extortion or embezzlement, which may appear to call for exemplary punishment. —*Reg.* 18, 1817, *Sect.* 6, *Cl.* 1.—*p.* 86.

37. Whenever a Law or Ministerial Officer may not, by the civil action, have been subjected to penalties for extortion, and there appears sufficient grounds for a Criminal prosecution against him for corruption, extortion or embezzlement, he is liable to a Criminal prosecution before the Magistrate, and on conviction, will be subject to the discretionary punishment ordained in Regulation 2, 1813, Section 3.—*Reg.* 18, 1817, *Sect.* 6, *Cl.* 2.—*p.* 87.

38. A report will be made to the Governor General of such convictions and sentences, to enable him to determine whether the offender shall be declared incapable of again serving Government.—*Reg.* 18, 1817, *Sect.* 6, *Cl.* 3.—*p.* 87.

39. In modification of the above rule, it is enacted that any such Law or Ministerial Officer, shall be liable to a Criminal prosecution, according to Regulation 18, 1817, Section 6, Clause 2, whether the civil action shall have been brought or not, and whatever may have been its result. —*Reg.* 3, 1827, *Sect.* 4.—*p.* 87.

40. A Magistrate is competent to pass final sentences of punishment on conviction of such offences, to the extent of his powers, if he consider such punishment adequate to the degree of criminality in the accused. If otherwise, he will commit the prisoner for trial before the Criminal authorities.—*Con. No.* 237.—*p.* 87.

41. The Criminal prosecution will be public, and will be conducted by the Vakeel of Government.—*Con. No.* 58.—*p.* 87.

SECT. V.

Summary Proceedings for recovering embezzlements of money and for compelling the delivery of papers by the Native Officers of the Zillah and City Courts.

42. Whenever a Native Officer, attached to a Civil Court, is charged with having embezzled property paid into the Court to which he is attached, or officially received by him, or when the Judges have reason to suspect such embezzlement, they will institute a summary enquiry to ascertain the truth of the charge or suspicion, and call on the Native Officer to give security for attendance during the enquiry. If the security be not given, and if it appear necessary during the enquiry, the Judge may place him in the custody of peons, or confine him in the Dewanny Jail till he gives the security, or his detention appears no longer necessary.—*Reg.* 18, 1817, *Sect.* 7, *Cl.* 2.—*p.* 87.

43. If, from this summary enquiry, it appears that public money has been embezzled by him in his official capacity, he shall be required to pay it into Court. On his failing to do so, it shall be recovered from him and from his security by the usual process of recovery in execution of the judgments of the Civil Courts.—*Reg.* 18, 1817, *Sect.* 7, *Cl.* 3.—*p.* 88.

44. A similar mode will be pursued when any Native Officer withholds public accounts which it is his duty to prepare and furnish, and not only will the immediate delivery of them be ordered, but a fine to Government will be imposed on the offender.—*Reg.* 18, 1817, *Sect.* 7, *Cl.* 4.—*p.* 88.

45. Any person dissatisfied with the judgment of the Zillah Court, may prefer a summary appeal from it under the rules applicable to appeals, and if he give security for performing the decree of the appellate Court, the execution of that of the lower Court may be suspended.—*Reg.* 18, 1817, *Sect.* 7, *Cl.* 5.—*p.* 88.

46. A summary enquiry into cases of embezzlement by Ministerial Native Officers, may be conducted by the Judge under Regulation 18, 1817, Section 7; but he cannot commit the delinquent for trial before the Commissioner of Circuit. That duty belongs to the Magistrate to whom the Judge must send his proceedings. The Magistrate will then act on his own judgment, and either release the person charged with the offence, or commit him.—*Con. No.* 691.—*p.* 88.

47. Whenever it is proved according to Regulation 18, 1817, Section 7, that a Native Officer

has embezzled money or property duly paid him on any account connected with his office, the European controlling Officer will refund it to the injured party from the public treasury, without reference to the solvency or otherwise of the defaulter or his surety. Government will adopt such measures for recovering the money so refunded as may appear expedient.—*Reg.* 3, 1827, *Sect.* 6.—*p.* 88.

48. In cases of alleged injuries to parties from the neglect or misconduct of the Nazirs of the Civil Court, a summary investigation and decision upon claims of recovery is not allowed. The claimants must institute a regular suit, which should be tried and decided as speedily as possible. Security may be taken from the Nazirs to perform the judgment of the Court.—*Con. No.* 53.—*p.* 88.

49. The Nazirs of Civil Courts are not liable to pay the amount of sums due by those who escape from their custody, unless collusion on their part be proved.—*Con. No.* 53.—*p.* 88.

SECT. VI.

Security from Native Ministerial Officers entrusted with property.

50. Security should be taken from Treasurers, Nazirs, and other Officers, who, in the discharge of their duty, are entrusted with money or other property, public or private. Their sureties must bind themselves to make good all losses sustained by the default or fraud of the officer. The amount of property to be pledged by the surety, and entered at the foot of the bond, must be regulated by circumstances, and by the sums likely to be left in the hands of the officer. The surety must bind himself not to sell or alienate the property pledged until he is released from his responsibility.—*C. O. 23rd Sept.* 1831.—*p.* 89.

51. Care must be taken to ascertain the sufficiency of the security. It is also to be periodically verified during the last week of December in each year. A report of the verification is to be submitted according to the prescribed form.—*C. O. 23rd Sept.* 1831.—*p.* 89.

52. The report ordered in the Circular Order above quoted, must be furnished on or before 1st of February. At the foot of the form prescribed by that Circular, (which should be written on foolscap) the Officer will certify that he has revised the securities of the subordinate officers and considers them good and sufficient.—*C. O. 16th Dec.* 1836.—*p.* 89.

53. Should the judicial officers neglect to furnish this indispensible information, and any embezzlement take place, their conduct will be reported to Government.—*C. O. 16th Dec.* 1836.—*p.* 90.

54. The Sudder Court will satisfy themselves annually, that the officers under their jurisdiction have instituted the enquiries necessary to establish the validity of the security furnished by the officers who hold situations of pecuniary trust. When the Officers who furnish the annual report, vouch for the sufficiency of the security in each case, they thereby render themselves responsible for the public funds entrusted to their Ministerial Officers; and will be held accountable for any insufficiency of security that may subsequently be experienced.—*C. O. 3rd July,* 1835.—*p.* 90.

55. The Zillah Judges and the heads of office cannot be too distinctly apprized that they must be held responsible for the conduct of their Native Officers; since general and long protracted abuse can be referred only to supineness on the part of the European officers.—*C. O. 2nd Oct.* 1817.—*p.* 90.

56. Kazanchies, Tehsildars and other officers entrusted with public money are stricly forbidden to use it for their own benefit, or that of others.—*Reg.* 2, 1813, *Sect.* 2.—*p.* 90.

57. Any person infringing this rule, will be deemed guilty of a misdemeanor, and on conviction will be liable to punishment, not to stripes or hard labor, but to imprisonment for seven years. If that punishment appear inadequate, the record of the trial will be transmitted for the final sentence of the Nizamut Court.—*Reg.* 2, 1813, *Sect.* 3.—*p.* 90.

58. It will be the duty of the Boards to report to Government all convictions and sentences which may take place under this Regulation; that Government may consider whether the guilty person should be declared incapable of serving the state hereafter in any public capacity.—*Reg.* 2, 1813, *Sect.* 4.—*p.* 90.

59. This enactment is not intended to repeal the Mahomedan law relative to the offence of embezzlement, which being punishable under that law, the offender may be committed for trial to the Criminal Courts.—*Con. No.* 543.—*p.* 90.

SECT. VII.

Establishment of Naibs, Mirdahs, and Peons, in Zillah and City Courts.

60. The Nazirs of the several Courts are allowed to appoint their own Naibs, and the Mirdahs and peons employed under their direction, and to fill up vacancies, subject to the approbation of the Judges, and to the responsibility prescribed in Regulation 13, 1793, Section 2. They may also remove such persons if they can state sufficient reason to the Judge's satisfaction, but not without his previous knowledge and sanction.—*Reg.* 5, 1804, *Sect.* 12.—*p.* 91.

61. The Nazirs will enter into a penal obligation for the good behaviour of their naibs, mirdahs, and peons.—*Reg.* 13, 1793, *Sect.* 2.—*p.* 91.

62. When a summon or process is issued against a defendant or witness, or any person not residing at the place where the Court may sit, and to serve which, a peon may be necessary, the peon will be paid by the party by whom the summons or process is issued, four annas a day, except in districts where a less sum is customary, in which case he will receive the lower rate.—*Reg.* 4, 1793, *Sect.* 20.—*p.* 91.

63. The name of each peon deputed to serve the process, the amount of his tulubana, and the number of days allowed for serving it, will be specified on the back of each summons. No greater number of peons than two are to be employed in serving each process; and one peon only is to be sent, except when the Judge may consider two necessary.—*Reg.* 4, 1793, *Sect.* 20. —*p.* 91.

64. Such parts of Regulations as allow tulubana to peons serving processes, who are not in the receipt of a fixed monthly salary, from Government, are thus modified.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 1.—*p.* 91.

65. The Judges will call on their Nazirs for a list of the peons employed in the execution of process, who do not receive a monthly salary, and select a sufficient number of the fittest. Their names will be registered with the following particulars; the names of their fathers, their age, place of abode, and a descriptive roll of their persons.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 2.—*p.* 91.

66. The Nazirs are strictly forbidden, on pain of dismissal, to employ in the service of any process, a peon either not registered as above, or not on the public establishment, without special authority.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 3.—*p.* 92.

67. These registered peons will be furnished with a uniform badge of office, to distinguish them from the regular chuprassies; the belt will be paid for out of their tulubana. The Judge will frame a table for regulating the tulubana demandable for serving the process, according to the Regulations or to general usage. The table will contain an enumeration of the Police Jurisdictions, or other local divisions, the computed distance of the centrical part of such divisions from the Sudder Station, and the number of days calculated according to the distance for which tulubana is to be allowed in serving the process within each division.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 4.—*p.* 92.

68. The table will be suspended in the Cutcherry of the Judge, Magistrate and Collector. No tulubana will ever be allowed at a higher rate, or for a greater number of days, than may be recorded in it, without a special written order from the superior authority.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 5.—*p.* 92.

69. The amount of tulubana will be specified on the back of each process, and must be paid to the Nazir by the person taking out the process previous to its being executed. A receipt will be endorsed on the process by the Nazir, specifying the amount, and the person from whom it was received.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 6.—*p.* 92.

70. When two or more processes are served by the same peon, the Judge who may order it shall determine and record on the back or face of the process, in what proportions the tulubana is to be paid by each party.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 7.—*p.* 92.

71. When the process shall have been executed and returned, the Nazir will pay the person three-fourths of the tulubana received, and take the other fourth himself.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 8.—*p.* 92.

72. The Judges will take every possible precaution to prevent illegal and undue exactions of diet and subsistence money under the name or pretence of tulubana.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 9.—*p.* 92.

73. The Nazir may be permitted to use his own discretion in advancing to the peon, when he sets out, such portion of the tulubana as he may consider necessary for his subsistence while serving the process.—*Con. No.* 1084.—*p.* 93.

SECT. VIII.

Ministerial Officers in the Courts of Native Judges.

74. All Ministerial Officers of the Courts of Moonsiff, Sudder Ameen, and Principal Sudder Ameen, will be nominated and appointed by those Courts respectively, subject to the general control of the Zillah and City Judges, and the Court of Sudder Dewanny.—*Act* 25, 1837, *Sect.* 12, —*p.* 93.

75. The law does not require the confirmation of the Zillah or City Judge to the appointment by the subordinate Judges of their Ministerial Officers. By the word "general control" is understood, that the interference of the Zillah Judges will be exercised only with a view to prevent the appointment of improper persons, or the dismissal, without good and sufficient cause, of persons already appointed.—*Con. No.* 1160.—*p.* 93.

76. The Native Judges are not at liberty to dismiss the Amlahs of their Courts to make room for others. No officer is to be dismissed except on the score of misconduct or incapacity. They are not to compel or require an officer to resign his situation as long as he continues to discharge his duties in a correct and efficient manner.—*C. O. 5th Sept.* 1838.—*p.* 93.

77. The general control over the appointment of Ministerial Officers of Native Judges vested as above in the Civil Judge, includes the duty of seeing not only that no improper person is appointed, but that no one, once placed on the establishment, is dismissed, except for good and sufficient reason. Any person who may consider himself improperly dismissed, may therefore appeal to the Judge, who may direct his restoration if it appears expedient.—*C. O. 5th Sept.* 1838.—*p.* 93.

78. Any case of this description characterized by flagrant impropriety, will be visited with the severe displeasure of the Sudder Court.—*C. O. 5th Sept.* 1838.—*p.* 93.

79. The names of the officers on the establishment of the subordinate Courts, will be registered in the office of the Zillah Judge, and the receipt for their salary will be sent in by the officer under whom they may be employed, accompanied by his own.—*C. O. 2nd March,* 1838.—*p.* 93.

80. The Sudder Ameens are prohibited from appointing their own connections to situations on their own establishment.—*C. O. 31st Dec.* 1830.—*p.* 93.

81. The Ministerial Officers of the Sudder Ameens and Principal Sudder Ameens shall be liable to the same penalties for corruption, extortion, or other misconduct as the officers of the Zillah Courts are liable to under the Regulation.—*Reg.* 5, 1831, *Sect.* 25, *Cl.* 2.—*p.* 94.

82. This rule is extended to the Ministerial Officers of the Moonsiff's Courts.—*Act* 25, 1837, *Sect.* 11.—*p.* 94.

83. Suits against the Ministerial Officers of Native Judges, will be received and decided by the Courts to which they are attached; but if the amount sued for be beyond the competence of such Court, the Judge may refer it to some other competent Court, or retain it on his own file. —*Govt. Ord. No.* 13, 15*th Jan.* 1834.—*p.* 94.

84. The Ministerial Officers of all the Civil Courts, of whatever nation or creed, when on duty in the interior of their districts, will be allowed for travelling charges a sum equal to three-tenths of their salaries.—*C. O. 20th Sept.* 1839.—*p.* 94.

85. A Moonsiff imposing a fine on any of his Ministerial Officers, can neither levy nor remit it

without the Judge's permission, but if the order has not been recorded or signed by the Moonsiff, he may remit it without reference.—*Con. No.* 85.—*p.* 94.

SECT. IX.

Nazirs and Peons employed by Native Judges.

86. The Sudder Ameens and Principal Sudder Ameens will appoint Nazirs in their Courts, and Clause 8, Section 14, Regulation 26, of 1814, will be applicable to them.—*Reg.* 7, 1832, *Sect.* 5, *Cl.* 5.—*p.* 94.

87. The Zillah Judges will call on the Native Judges for a list of the peons they propose to employ for the service of Civil processes, and select a sufficient number for that purpose, and cause their names to be registered, with the names of their fathers, their age, place of abode, and a descriptive roll of their persons.—*Reg.* 7, 1832, *Sect.* 5, *Cl.* 2.—*p.* 94.

88. The nomination of Muskoory peons under the above Clause, rests with the subordinate judicial officers; and the Judge is required to select from among the persons nominated, those whom he considers the fittest for duty.—*Con. No.* 762.—*p.* 95.

89. When the process is served by any officer of the Court, and not by the party himself, the Native Judges are strictly forbidden to employ any but registered peons, except with the Judge's express permission.—*Reg.* 7, 1832, *Sect.* 5, *Cl.* 3.—*p.* 95.

90. The rules in Clauses 4, 5, 6, 7, Section 14, Regulation 26, of 1814, are applicable to the peons thus employed by the native Judges. The duties assigned to the Nazir of the Judge's Court, will be performed by the Moonsiff himself. The tulubana levied in those cases will be only three-fourths of what is levied in the Judge's Court, and the Moonsiff will appropriate no part of it to himself.—*Reg.* 7, 1832, *Sect.* 5, *Cl.* 4.—*p.* 95.

91. The Sudder Ameens are to be guided in regard to tulubana, by the rules in force for the guidance of the Zillah and City Judges previously to the enactment of Regulation 5, 1831, namely, the enactments in Regulation 26, 1814, Section 14, Clauses 4, 5, 6, 7.—*Con. No.* 668.—*p.* 95.

92. The summons from the Moonsiff's Court was heretofore ordered to be served by the Vakeel of the party, or the party himself, in which case no fee was paid for serving it. But whenever the party in the suit may desire to have the summons served by a peon, the Moonsiff may levy Tulubana for that purpose.—*Reg.* 7, 1832, *Sect.* 5, *Cl.* 1.—*p.* 95.

93. The Judges will revise the list of peons now employed in the Moonsiff's Courts, and after ascertaining the number required, will select the fittest persons to be so employed. He will cause the Moonsiff to register the name of each peon, and that of his father, the number of his badge, his age, his place of abode, and a description of his person.—*C. O. 28th Aug.* 1840.—*p.* 95.

94. The Moonsiff will not employ any peon not thus registered in serving a process, without recording a special order on the proceedings and making a note to that effect on the back of the process.—*Ibid.*—*p.* 95.

95. The peons thus registered, will receive a belt and badge of office, duly numbered, and will pay for it themselves.—*Ibid.*—*p.* 95.

96. The Moonsiff will frame a table for regulating the Tulubana according to the usage of the Moonsiffships. The table will contain the computed distance from the Sudder station of the Moonsiffs to the extreme parts of his jurisdiction. The number of days for which tulubana is to be allowed on issuing the process within the Moonsiffship, will be calculated with reference to the computed distance of the principal towns or villages from the Sudder station of the Moonsiff.—*Ibid.*—*p.* 96.

97. This table, after having been revised and approved by the Judge, will be suspended for general information in the Court-house of the Moonsiff, and no higher sums or greater number of days will be allowed than are prescribed in the table, without a special order from the Moonsiff, which is to be recorded on his proceedings.—*Ibid.*—*p.* 96.

98. This tulubana must be paid previously to the issue of the process. The Moonsiff will endorse on the process a receipt, specifying the amount, and the person from whom it was receiv-

ed. After the execution and return of the process, he will pay the sum in deposit to the Muzkooree peon.—*Ibid.*—*p.* 96.

99. Tulubana so paid, will be entered in a Register according to the prescribed form.—*Ibid.*—*p.* 96.

100. Any peon demanding tulubana or diet money, in addition to the appointed sum specified by the Moonsiff on the back of the process he executes, will be dismissed and made liable to such other punishment as the Regulations warrant.—*Ibid.*—*p.* 96.

101. The Moonsiffs will take every precaution to prevent any illegal exactions of diet or subsistence money in addition to tulubana. No person on their establishment is entitled to any *Meeran*, or share of tulubana.—*Ibid.*—*p.* 96.

SECT. X.

City, Town and Pergunnah Cauzies.

102. Cauzies are stationed in the cities, towns, and pergunnahs, to prepare and attest deeds of transfer and *other law* papers, to celebrate marriages, and to perform religious ceremonies prescribed by the Mahomedan law, to sell distrained property, and to pay charitable pensions and allowances; and they will not be liable to dismissal except by Government.—*Reg.* 39, 1793, *Sect.* 1.—*p.* 97.

103. The term 'other law papers' is held to include Powers of Attorney, the authentication of which is within the competence of a Cauzy; but the Court is at liberty to call for farther evidence, if there is reason to doubt the due execution of the instrument.—*Con. No.* 436.—*p.* 97.

104. If a Cauzy attests a deed for land situated in a pergunnah of which he is not the Cauzy, and executed out of his jurisdiction, that attestation is to be considered entirely unofficial, and of no greater weight than the attestation of any unofficial persons.—*Con. No.* 14.—*p.* 97.

105. All ecclesiastical acts, such as the celebration of marriages, the performance of religious duties, or ceremonies, if done by any other Cauzy than the one appointed to that peculiar jurisdiction, are valid. But the drawing up and the attestation of papers and making a record of them, to be legal, must be performed by the Cauzy of the jurisdiction in which the property is situated.—*Con. No.* 1042.—*p.* 97.

106. The Zillah Court cannot summarily interfere to put a Cauzy into possession of his pergunnah, unless some decree sanctions such a proceeding.—*Con. No.* 1042.—*p.* 97.

107. The Cauzee ul Coozat of Bengal, Behar and Orissa, or head Cauzy, will be appointed by the Governor General, and will not be removable from office, except for incapacity or misconduct or private profligacy, duly proved to the satisfaction of Government.—*Reg.* 39, 1793, *Sect.* 2, *Cl.* 1.—*p.* 97.

108. The head Cauzy will use a seal with a suitable inscription.—*Reg.* 39, 1793, *Sect.* 2, *Cl.* 2.—*p.* 97.

109. The office of Cauzy is not hereditary.—*Reg.* 39, 1793, *Sect.* 5.—*p.* 97.

110. When the office of a pergunnah, city, or town Cauzy, becomes vacant, the Judge will report the vacancy to the Sudder Court and recommend some one for the office. The name of the person recommended will be communicated to the head Cauzy, who, if he deem him on any ground unqualified, will report the same. The Sudder Court may appoint such person or not, or appoint any one else, who appears more fit. If the head Cauzy sees no objection to the Judge's nominee, he will so report to the Sudder Court. The person appointed will receive a sunnud from the head Cauzy.—*Reg.* 39, 1793, *Sect.* 4.—*p.* 98.

111. The Zillah and City Judges will submit all nominations of city and pergunnah Cauzies, for the approval of the Sudder Court in the forms prescribed in *C. O.* 14*th Dec.* 1832.—*p.* 98.

112. The Sudder Court is empowered to confirm the appointment, removal and resignation of the Cauzies of cities, towns, and pergunnahs, on receiving the reports prescribed in Sections 5, 6 and 9, Regulation 5, 1804.—*Reg.* 8, 1809, *Sect.* 4, *Cl.* 1.—*p.* 98.

113. The Cauzies in the cities, towns, or pergunnahs, will not be liable to be removed but for in-

capacity, misconduct, or private profligacy. They will use a seal with a suitable inscription.—*Reg.* 39, 1793, *Sect.* 3, *Cl.* 1.—*p.* 98.

114. The rules contained in the five preceding Sections, (in which are included 5 and 6, given below,) are applicable to the Cauzy ul Coozat, and the Cauzies of cities, towns, and pergunnahs.—*Reg.* 5, 1804, *Sect.* 10.—*p.* 98.

When the Cauzies of the Mofussil may be desirous of resigning their offices, the Zillah and City Courts will receive and record such resignation in their public Cutcherries, and transmit the same to the Sudder Court.—*Reg.* 5, 1804, *Sect.* 5.—*p.* 98.

When the Zillah Judge may see cause for the removal of a Cauzee, he will communicate to him the grounds of his dissatisfaction, and call upon him to state what he may have to say in his defence.—*Reg.* 5, 1804, *Sect.* 6.—*p.* 98.

When the Mofussil Cauzy may have been guilty of gross misconduct, such as to require his immediate suspension, the Zillah and City Judge may suspend him, and if necessary, nominate another to act for him till the pleasure of the Sudder Court is known.—*Reg.* 5, 1804, *Sect.* 6.—*p.* 99.

115. The head Cauzy will also report, on every such occasion that may come to his knowledge, to the Governor General.—*Reg.* 39, 1793, *Sect.* 6, *Cl.* 2.—*p.* 99.

116. When the Zillah and City Judge sees cause for the removal of a Cauzy, for misconduct or neglect of duty, incapacity or other disqualification, he will report it to the Sudder Court, who will act as appears most expedient.—*Reg.* 8, 1809, *Sect.* 4, *Cl.* 2.—*p.* 99.

117. The Cauzies stationed in the Zillahs and Cities may be sued in the Civil Court for undue practices in the discharge of their duties.—*Reg.* 39, 1793, *Sect.* 11.—*p.* 99.

118. No Ministerial Officer of a Court or Vakeel shall be eligible to a Cauzieship, and no Cauzy to the situation of Ministerial Officer of Vakeel.—*C. O. 6th Dec.* 1839.—*p.* 99.

119. This rule will not interfere with the Circular Orders of 13th January, 1837, which empowered the Judge to appoint the City and Pergunnah Cauzies to perform the miscellaneous duties therein enumerated.—*C. O. 6th Dec.* 1839.—*p.* 99.

120. With reference to Regulation 23, 1814, Section 8, Clause 1, Cauzies are eligible to the situation of Moonsiff, but in the event of their ever becoming involved in unseemly disputes with parties suing or sued in their Court, in respect of fees claimed for the performance of marriage ceremonies, affixing seals to documents, or doing other acts as Cauzies, they will be removed from the office of Moonsiff.—*C. O. 6th Dec.* 1839.—*p.* 99.

121. The Governor General is at liberty to abolish the office of Cauzy at any place were the continuance of such an office may appear unnecessary.—*Reg.* 39, 1793, *Sect.* 3, *Cl.* 2.—*p.* 100.

122. The Judge of the Zillahs will fix the residence of the Cauzies stationed in the pergunnahs in the most central places, in order that the distrainer of property and those whose property is distrained, may have ready access to them.—*Reg.* 39, 1793, *Sect.* 9.—*p.* 100.

123. The Head and other Cauzies will keep copies of all deeds they may draw up or attest, and will affix to them their seals and signatures. They will keep a list of such papers. On their death, resignation or removal, the list and the papers will be delivered complete to their successors.—*Reg.* 39, 1793, *Sect.* 7.—*p.* 100.

124. With a view to a better attainment of the objects of the Registration of Deeds by the pergunnah Cauzies, those officers will enter copies of all deeds attested by them in books to be furnished by the Zillah Courts, paged throughout, and attested by the Judge's signature and properly bound up. A list, according to a prescribed form, will be forwarded to the Judge monthly of the deeds so attested and registered. The books themselves, when filled up, will be forwarded to the Zillah Judge to be deposited among the records of the Court.—*C. O. 28th Sept.* 1838.—*p.* 100.

125. The Zillah Judges may nominate the City and Pergunnah Cauzies to perform the duties prescribed for *Ameens* in Regulation 23, 1814, Sections 50, 51, 52 and 53.—*C. O. 13th Jan.* 1837.—*p.* 100.

126. The rules regarding Cauzies have not been affected by the late enactments of 1831, and

distrain property will be found in Regulation 7, of 1799, Section 6, Clause 3.—*C. O. 1st Nov.* 1833.—*p.* 101.

127. The Cauzies in cities, towns, and pergunnahs will exact no fees for drawing up, or attesting papers, or celebrating marriages, or performing any religious ceremonies they have been accustomed to perform, except such as may voluntarily be given them by the parties.—*Reg.* 39, 1793, *Sect.* 8.—*p.* 101.

128. A Pergunnah Cauzy may sue to recover what he considers himself entitled to for fees of office; but it is for the Court to determine how far the claim may be admitted. The payment of fees is entirely voluntary.—*Con. No.* 1042.—*p.* 101.

129. The Cauzies will be furnished with copies of all Translations of the Regulations.—*Reg.* 39, 1793, *Sect.* 10.—*p.* 101.

130. A Cauzy cannot, without the express permission of the hakim or ruling power, legally appoint a deputy. A Deputy Cauzy is an officer not acknowledged or mentioned throughout the Regulations.—*Con. No.* 707.—*p.* 101.

131. No Cauzy can delegate his essential functions, such as the power of affixing his seal to documents, to an irresponsible agent, not recognized by law. His residence at a distance from his nominal jurisdiction, and his appointment of a Naib to act by proxy, are irreconcilable with a due discharge of his duties.—*C. O. 6th Dec.* 1839.—*p.* 101.

132. But this does not prohibit the agency of a deputy in the performance of such acts (as the solemnization of marriages, the parties being willing) which may be legally done by others than Cauzies.—*C. O. 6th Dec.* 1839.—*p.* 101.

133. Cauzies are stationed in the City of Benares, and the towns of Mirzapore, Ghazeepore, and Juanpore, and the pergunnahs in the province of Benares, to perform the same duties assigned to Cauzies in the lower Provinces; and the rules passed for the latter will apply to the former.—*Reg.* 49, 1795, *Sect.* 1.—*p.* 101.

134. The head Cauzy of Bengal, Behar, and Orissa, will also be head Cauzy of the province of Benares.—*Reg.* 49, 1795, *Sect.* 2, *Cl.* 1.—*p.* 102.

135. The inscription on the seal of the head Cauzy of Benares.—*Reg.* 49, 1795, *Sect.* 2, *Cl.* 2. —*p.* 102.

136. The Rules contained in Reg. 39, 1793, from Section 3 to Section 11, regarding the Cauzies in the lower Provinces, are extended to those in the Benares Province; only they will consider the prescriptions in Reg. 45, 1795, and Reg. 34, 1795, as the rules for their guidance regarding the sale of property distrained for rent or revenue, and the payment of pensions.—*Reg.* 49, 1795, *Sect.* 3.—*p.* 102.

SECT. XI.

Law Officers of the Zillah and City Courts—their appointment and removal.

137. The Law Officers in the several Courts will consist of persons well versed in the law, and of unblemished moral character.—*Reg.* 12, 1793, *Sect.* 3.—*p.* 102.

138. The Pundits and Mouluvees will attend the Courts to expound the Hindoo and Mahomedan laws.—*Reg.* 4, 1793, *Sect.* 15.—*p.* 102.

139. The existing system regarding the appointment of Pundits is abolished. Provincial Pundits will be appointed, having jurisdiction, as Law Officers over a certain number of districts, with a salary of 150 Rs. a month. Four Circles will be established, the Presidency Circle comprising eight districts; the Dacca Circle, with six districts; the Moorshedabad Circle, with seven districts; and the Behar Circle, with five districts.—*C. O. 11th Dec.* 1840.—*p.* 103.

140. The Mahomedan Law Officers, previously to entering on the discharge of their duties, will take and subscribe the oath prescribed in *Reg.* 12, 1793, *Sect.* 5, *Cl.* 1.—*p.* 103.

141. The Pundits of the Courts, previously to entering on their duties, will take and subscribe the declaration given in *Reg.* 12, 1793, *Sect.* 7.—*p.* 104.

142. Instead of the oath, they will subscribe a solemn declaration to the same effect with the

143. The Judges before whom such declarations are required to be made, will attest the same as publicly read and subscribed before them, and enforce a due observance of the rule therein contained.—*Reg.* 18, 1817, *Sect.* 2, *Cl.* 3.—*p.* 104.

144. The rules contained in Regulation 5, 1804, Reg. 8, 1809, and Reg. 18, 1817, are modified; but the power of the Sudder Dewanny to confirm the removal of the Law Officers of the Zillah and City Courts is not altered or affected.—*Reg.* 11, 1826, *Sect.* 2.—*p.* 104.

145. The Law officers of the Zillah Courts will be appointed by the Governor General.—*Reg.* 11, 1826, *Sect.* 4, *Cl.* 1.—*p.* 104.

146. When a vacancy may occur, the Judge will nominate for the approbation of the Governor General, a person duly qualified, with a full report regarding him, and will state whether he has obtained the prescribed certificate of qualifications. The Governor General will either confirm the person nominated, or order his examination, or appoint another and better qualified person.—*Reg.* 11, 1826, *Sect.* 4, *Cl.* 2.—*p.* 104.

147. No person will hereafter be appointed a Hindoo or Mahomedan Law officer, who has not obtained a certificate of qualification (vide the body of the work, Appendix A. or B.) after having undergone an examination before a Committee appointed by the Governor General.—*Reg.* 11, 1826, *Sect.* 5, *Cl.* 1.—*p.* 105.

148. Annual examinations will be held of candidates for the post of Law officer, the result of which will be reported to the Governor General. The successful candidates will receive a certificate according to the form A given in the Appendix to *Reg.* 11, 1826, *Sect.* 5, *Cl.* 2.—*p.* 105.

149. When the Courts may nominate a person as Law officer who has not obtained a certificate, the Governor General will issue such orders as appear proper for the examination of such person.—*Reg.* 11, 1826, *Sect.* 5, *Cl.* 3.—*p.* 106.

150. The Committee of the Presidency will report the result of the examination above alluded to, for the information of Government; if the candidate be declared duly qualified, he will receive a certificate of qualification.—*Reg.* 11, 1826, *Sect.* 5, *Cl.* 4.—*p.* 106.

151. When a Zillah Court may see cause for the removal of a Law officer on the ground of misconduct or neglect of duty, incapacity, or other disqualification, the Judge will make a report to the Sudder Court, who will pass such order as may appear necessary, or direct farther enquiries.—*Reg.* 8, 1809, *Sect.* 4, *Cl.* 2.—*p.* 106.

152. The Sudder Court is empowered to confirm the removal or resignation of any of the Law officers of the Zillah and City Courts.—*Reg.* 8, 1809, *Sect.* 4, *Cl.* 1.—*p.* 106.

153. The rules of C. O. 23d March, 1838, regarding the closing of the Criminal Courts are applicable to Law officers.—*C. O. 26th March*, 1341.—*p.* 106.

The Rules regarding the purchase or possession of landed property by the Ministerial officers of the Zillah and City Courts, given in Sect. 2, of this Chapter, page 83, are applicable to Law officers.

SECT. XII.

Civil Action against Law Officers for Corruption, Extortion, or Embezzlement.

154. The Rules prescribed in Section 9, Regulation 13, 1793, regarding charges of corruption or extortion against the Ministerial officers of the Courts, are applicable to similar actions against Law officers.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 1.—*p.* 106.

155. If the Law officer against whom a decree for corruption has been passed, should appeal, and give the securities required by Regulation 5, 1793, Section 12, the decree will not be carried into execution.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 3.—*p.* 107.

156. The Zillah Courts will enforce all decrees that they may pass, adjudging their Law officers guilty of corruption, or extortion, if the decree be not appealed, and will send copies of them to the Governor General.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 4.—*p.* 107.

157. The Sudder Dewanny will send the Governor General a copy of every decree they may pass adjudging a Law officer guilty of corruption or extortion, within a week after passing it.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 6.—*p.* 107.

158. A Zillah Court, adjudging a charge of corruption not proved, will transmit a copy of its decree to the Governor General, if the prosecutor does not appeal from it. The same rule will apply to the Sudder Dewanny.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 8.—*p.* 107.

159. The Governor General is empowered on receiving the decree either to dismiss the offender, or both to dismiss him and to declare him incapable of serving Government again. The Governor General also reserves to himself the option of suspending any law officer, thus charged, till a final decision has been passed.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 7.—*p.* 107.

The same rules are enacted regarding *the Criminal Prosecution of Law Officers* which apply to similar charges against Ministerial Officers. They will be found in Section 4, of this Chapter.

SECT. XIII.

Pensions to Public Servants.

160. Superannuation Pensions will be granted only to the superior class of public servants indicated in the list given in the body of the work.—*Rules, 4th Jan.* 1831.—*p.* 107.

161. With the exception of Native Judges and Law officers, the applicant must have been employed in the public service 20 years.—*Ibid.*—*p.* 108.

162. The applicant must be incapacitated for farther employment by old age, protracted ill health, loss of sight, or other bodily or mental infirmity.—*Ibid.*—*p.* 108.

163. The character, conduct, and past services of the public servant must be favourably certified by the Officer or Officers under whom he may have been employed, and must appear to be such as to entitle him to the favourable consideration of Government.—*Ibid.*—*p.* 108.

164. Whenever it may be judged expedient to grant a pension to a public officer whose case may come within the foregoing provisions, the amount of the pension shall be limited as follows. —*Ibid.*—*p.* 108.

165. *First.* If the period, during which the individual may have been actually employed in the public service, shall be more than twenty years, but less than thirty years, the amount of the pension shall not exceed one third of the monthly salary or authorized official allowances of such individual, calculated on an average of five years previously to the date of the application for such pension.—*Ibid.*—*p.* 108.

166. *Second.* If the period of actual service shall have been thirty years or upwards, the amount of the pension shall not exceed one half of the salary or authorized allowances of the individual calculated in the manner above stated.—*Ibid.*—*p.* 108.

167. *Third.* For Law Officers and Native Judges, the period of 15 years shall be substituted for that specified in Clause *First*, and 22 years for the terms mentioned in the *Second* Clause.—*Ibid.* —*p.* 108.

168. *Fourth.* The rules and pensions shall be fixed on a graduated scale, within the prescribed limitation, with reference to the responsibility and arduousness of the employment, the degree of merit of the individual, and the nature and length of his service.—*Ibid.*—*p.* 108.

169. A pension will hereafter be granted by Government to the family, or any member of the family of a deceased public servant, only when such servant shall have been killed in the execution of his public duty, or shall have died in consequence of wounds or accidents sustained therein.—*Ibid.*—*p.* 108.

170. Should cases arise, which are not sufficiently provided for in these rules, or in which, from special circumstances, Government may be pleased to deviate from them, such pension shall be considered only as temporary and provisional, until the grant shall have received the sanction of the Honourable the Court of Directors.—*Ibid.*—*p.* 108.

171. When an application is made to Government for a pension for a public officer, the application will contain the following particulars.—*Ibid.*—*p.* 108.

172. *First.* The name, caste, age, and place of residence of the individual for whom the pension may be solicited; the situation in which he may be employed at the time when the applica. tion may be made; the total period during which the individual may have been employed in the

public service, and the various official situations in which he may, from time to time, have been so employed.—*Ibid.*—*p.* 108.

173. *Second.* The monthly amount of the salary or official allowances of the individual in question, on an average of three years, previously to the date of application.—*Ibid.*—*p.* 108.

174. *Third.* The causes by which the individual may have been rendered incapable of discharging any longer the duties of his office, whether by extreme old age, prolonged sickness, or other mental or bodily infirmity.—*Ibid.*—*p.* 108.

175. *Fourth.* His general character, conduct, and past services, in the official situations which he may have held.—*Ibid.*—*p.* 108.

176. If the officer making the application, shall be unable, either from his personal or official knowledge, to furnish the whole of the specific information above required, he shall call upon the individual in whose favour the application may be made, to furnish a written statement (to be verified by his oath or solemn declaration if required,) on such of the points above noticed as may be necessary.—*Ibid.*—*p.* 109.

177. If the individual shall be rendered incapable of further service by prolonged sickness, loss of sight, or other bodily or mental infirmity, a medical certificate to that effect will also be transmitted with the application.—*Ibid.*—*p.* 109.

178. Each application for a pension under the foregoing Rules shall be made by the head of the office, under whom the individual may be employed in a letter to Government, and accompanied by a Register in the form hereto annexed.—*Ibid.*—*p.* 109.

179. Lapses of pensions shall be communicated to the Civil Auditor as soon as possible after the occurrence; the officers in charge of Treasuries from which pensions are paid, will appoint a proper person of their establishment to report all lapses to them, and along with themselves be responsible for the fulfilment of this rule.—*Ibid.*—*p.* 109.

180. No pension shall be payable in arrear for a period exceeding six months without the express sanction of Government, unless the cause of the suspension of payment shall have been the neglect, order or act of some public officer, and beyond the control of the pensioner: when the Civil Auditor, on a reference being made to him, shall exercise his discretion in passing arrears for payment, or submit a report to Government.—*Ibid.*—*p.* 109.

181. It shall be the duty of the Civil Auditor to exercise a vigilant control over this class of pensions, and to bring to the notice of Government all instances in which, in the granting of superannuation pensions, any of these rules may be departed from, unless he shall be distinctly informed that a special exception has been made in the individual instances.—*Ibid.*—*p.* 109.

182. The Civil Auditor will also lay before Government, at the end of each official year, a statement exhibiting a comparison between the amount of pensions which have lapsed, and those granted during the year, and as a check against the fraudulent continuance of pensions beyond the actual term of the pensioner's lives, he will regularly compare the periodical decrement of life among the pensioners of each year, with the usual duration of life, and where lapses do not occur in the proportion that might be anticipated, he will institute suitable enquiries to ascertain whether fraud has actually been committed, and report to Government.—*Ibid.*—*p.* 109.

183. Pensioners making application for pensions on the rules above given, will verify the facts stated in their memorials by affidavits before a Magistrate.—*Ibid.*—*p.* 109.

184. List of the several classes of subordinate officers in the Civil Department, who are considered to have claims to Superannuation Pensions from Government.—*Ibid.*—*p.* 109.

Form of application.—*Ibid.*—*p.* 110.

SECT. XIV.

Vakeels in the Courts of the Zillah Judge, the Principal Sudder Ameen, and Sudder Ameen.—Their appointment.

185. The post of Vakeel is open to all Natives of India, whatever be their religious belief or persuasion.—*Reg.* 5, 1831, *Sect.* 30.—*p.* 111.

186. In the nomination and appointment of Vakeels, the Zillah and City Courts are required to give a preference to those who have been educated at the Mahomedan or Hindoo Colleges, established or supported by Government, if they are in other respects qualified.—*Reg.* 27, 1814, *Sect.* 3, *Cl.* 3.—*p.* 111.

187. Any native student who may have been educated at one of the Public Institutions, and received a certificate of proficiency in the Laws and Regulations, shall be entitled to receive a sunnud of appointment as Vakeel in a Zillah or City Court, unless the number of Vakeels already practicing should be so great as to make his admission inconvenient, in which case it will be postponed. Every such person will subscribe the usual declaration, and be subject to all the rules appointed for Vakeels.—*Reg.* 11, 1826, *Sect.* 6.—*p.* 111.

Form of Certificate.

188. Persons who may be appointed Vakeels in the Zillah Courts or the Sudder Court, will receive, on unstamped paper, a Sunnud of appointment from the Court.—*Reg.* 27, 1814, *Sect.* 4, *Cl.* 1.—*p.* 112.

Form of Sunnud.

189. The Sunnud will be recalled and cancelled, when the Vakeel is dismissed, dies, or resigns.—*Reg.* 27, 1814, *Sect.* 4, *Cl.* 2.—*p.* 112.

190. If a Vakeel who has been dismissed, evades or disobeys the order for delivering up his Sunnud, the Zillah Court is competent to punish him for evasion of process, or contempt of Court.—*Con. No.* 1083.—*p.* 112.

191. The Zillah and City Judges may appoint and remove the Vakeels of their Court of their own authority, subject to the control of the Sudder Court, or Government, when either may see occasion to interfere.—*C. O. 13th April*, 1832.—*p.* 112.

192. Every Vakeel, previously to being allowed to practice, will take and subscribe the oath appointed in this Regulation, or a solemn declaration in its stead.—*Reg.* 27, 1814, *Sect.* 5, *Cl.* 1.—*p.* 112.

Form of Declaration.

193. The Vakeels attached to one Court are not to be allowed to plead in another Court. But this is not to prevent the Judge from making a distribution of his vakeels among the subordinate Courts.—*Reg.* 27, 1814, *Sect.* 16.—*p.* 113.

194. The Vakeels in the Zillah Courts are not allowed to act as Mooktars in the Court of the Commissioner of Revenue.—*Con. No.* 602.—*p.* 113.

195. The Zillah Judges will assign to the Court of each Sudder Ameen, such a number of the authorized Vakeels as may be necessary. The whole of the rules in force regarding the Vakeels of the Zillah Courts will be applicable to those employed in the Sudder Ameen's Court.—*Reg.* 23, 1814, *Sect.* 72.—*p.* 113.

196. The Zillah Judge will authorize any of the Vakeels of his Court, or those attached to the Sudder Ameens, to practice in the Courts of the Principal Sudder Ameens.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 3.—*p.* 113.

197. The Zillah Judge may receive petitions of plaint from any authorized agent, or any duly empowered Vakeel, attached to the Zillah Court or that of the Principal Sudder Ameen or Sudder Ameen. Such petitions should be encouraged to be filed by the Vakeels of that Court to which they will ordinarily be transferred for trial.—*C. O. 18th Dec.* 1840.—*p.* 113.

198. The Zillah Judge should make such an allotment of the pleaders among the several Courts as may appear most convenient. The pleaders should ordinarily be allowed to plead only in the Courts to which they have been nominated.—*C. O. 18th Dec.* 1840.—*p.* 113.

199. As the Vakeels in the Courts of the Principal Sudder and Sudder Ameen are in fact Vakeels of the Judge's Court, the whole of the Regulations in force regarding the authorized Vakeels of the Zillah Courts are applicable to those employed in their Courts.—*Con. No.* 802.—*p.* 113.

The following rules, enacted for Vakeels in the Courts of Sudder Dewanny Adawlut, have

200. The office of pleader in the Courts of Sudder Dewanny Adawlut will be open to all persons of whatever nation or religion.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 2.—*p.* 113.

201. Any person desirous of practising as an authorized pleader in that Court, or any person desirous of employing an agent, not being an authorized pleader, to conduct his business before that Court, will apply to the Court, and if a majority of the Judges be in favour of the application, a license will be granted, authorizing the appointment of such pleader or general agent, and the number of pleaders previously licensed will be held as no reason for rejecting the application.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 3.—*p.* 114.

202. Any person desirous of employing an agent, not being an authorized pleader, to conduct a particular suit, will present a petition to that effect, and the Judge to whom it may be referred, may comply with, or reject the application. If it be rejected, an appeal may be made to the Court collectively, which will be decided by the majority.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 4.—*p.* 114.

203. Agents admitted to plead, will perform all the acts in the management of those particular suits entrusted to them, that an authorized pleader would perform. They will be subject to the same fines and penalties as authorized pleaders for contempt of Court, neglect, and other misbehaviour.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 7.—*p.* 114.

204. The provisions of Regulation 12, 1833, authorize parties to appoint more than one general agent for the conduct of suits and other business. The party appointing such agents should be required to state in his power of attorney, that he acknowledges the acts jointly and severally performed by them, in the discharge of their duties as agents, to be binding on him.—*Con. No.* 1210.—*p.* 114.

205. A pleader appointed under the provisions of Regulation 12, 1833, Section 2, can practise, *under the Rules contained in that enactment*, in the Judge's Court only, but under Regulation 5, 1831, Section 13, Clause 3, he may be authorized to practice in the Court of the Principal Sudder Ameen under the rules in force in that Court.—*Con. No.* 1168.—*p.* 114.

SECT. XV.

Vakeels in those Courts.—Dismissal.

206. Pleaders in the Courts are liable to be dismissed for encouraging litigious suits, wilfully delaying suits, refusing without sufficient cause to carry them on after having accepted a vakalutnamah, or for fraudulent practices, neglect or other misconduct, or for gross profligacy.—*Reg.* 27, 1814, *Sect.* 6.—*p.* 114.

207. Pleaders will use due precautions to ascertain the real names and identity of their clients. Any pleader who may receive and file a vakalutnamah under a fictitious name, will be liable to dismissal from his office.—*Reg.* 27, 1814, *Sect.* 8.—*p.* 115.

208. Any pleader who may knowingly furnish an opinion likely to promote an unfounded or litigious suit, or to discourage the amicable adjustment of claims, will be liable to be dismissed. If after furnishing such dishonest opinion he be employed as a pleader in the suit, his fees will be liable to be forfeited by order of the Court, either to Government or to his client.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 6.—*p.* 115.

The following rule enacted for the Vakeels in the Courts of Sudder Dewanny Adawlut, has been extended to all Civil Courts, those of Moonsiff's excepted.

209. The Sudder Court may deprive an authorized pleader of his license, and at any stage of the proceedings prevent an agent from conducting the cause, if the pleader is guilty of such misconduct as the majority of the Judges may consider deserving of such punishment.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 9.—*p.* 115.

210. If a pleader be dismissed from his situation by a Judge, he cannot be permitted to practice by his successor, unless permission has been obtained from the Sudder Court to review the order for dismissal.—*Con. No.* 1082.—*p.* 115.

SECT. XVI.

Vakeels in those Courts.—Minor Penalties.

211. Every Vakeel or authorized Pleader in any Court, who may present for the purpose of being filed any paper, petition, deed, instrument, or document, which requires to be stamped, not bearing a proper stamp or not endorsed, or on paper bearing a counterfeit stamp, unless signed by a vender, will forfeit five times the amount of the stamp which ought to have been used, or five times the difference, if an improper stamp has been used. The fine will be levied by the officer presiding in the Court.—*Reg.* 10, 1829, *Sect.* 18, *Cl.* 1.—*p.* 115.

212. If the Collector discovers any irregularity of this kind, he will move the Court in which the Vakeel or other person so offending may practise, to inflict the penalties; and the Judges of those Courts will try the case, and their decision as to whether the penalty has been incurred or not, shall be final.—*Reg.* 10, 1829, *Sect.* 18, *Cl.* 2.—*p.* 116.

213. No discretion in this matter is left with the presiding Judge.—He is bound in all cases positively to levy the penalty from the Vakeel or Mooktar.—*Con. No.* 1120.—*p.* 116.

214. The Uncovenanted Judges are competent of their own authority and without previous reference to the Judge, to realize any fines imposed by them in reference to the Clause above quoted, subject to the usual course of appeal.—*C. O. 7th June,* 1839.—*p.* 116.

215. The Zillah Judges are directed to exert themselves to the utmost to secure the due observance of the Stamp Regulation in all suits brought before them.—*C. O. 3rd Feb.* 1832.—*p.* 116.

216. The Zillah and City Courts may suspend any Vakeel, guilty of an act of gross fraud or misconduct.—*Reg.* 27, 1814, *Sect.* 11.—*p.* 116.

217. The parties in any cause may prosecute their pleaders in the Civil Courts of Judicature for any damages or injury they may have sustained from any breach of the Regulations on the part of their pleaders, or from any fraudulent conduct or mal-practices committed by them.—*Reg.* 27, 1814, *Sect.* 12, *Cl.* 1.—*p.* 116.

218. If a pleader fail to attend in Court on any day fixed for the transaction of civil business, and shall omit to notify in writing his inability to attend, through indisposition, or other sufficient cause, the Court will fine him for the first offence, Fifty Sicca Rupees; for the second offence, within One Hundred Sicca Rupees. For a third offence he will be liable to dismission.—*Reg.* 27, 1814, *Sect.* 14, *Cl.* 1.—*p.* 116.

219. If a pleader shall be guilty of disrespect to the Court, in open Court, the Court may fine him to the extent of one hundred rupees.—*Reg.* 27, 1814, *Sect.* 14, *Cl.* 2.—*p.* 116.

220. Fines imposed on pleaders by Sudder Ameens, must be reported to the Zillah Judge, who will confirm or modify or remit them.—*Reg.* 27, 1814, *Sect.* 15, *Cl.* 1.—*p.* 117.

221. All orders of a Judge imposing fines on pleaders, are to be final. The fine will be levied from the fees due to the offender, or by the process for the execution of decrees.—*Reg.* 27, 1814, *Sect.* 15, *Cl.* 2.—*p.* 117.

222. The Courts will point out to the Vakeels such parts of the pleadings as are irrelevant, or objectionable, and record their censure of any Vakeel, whose conduct in opposition to the preceding rules may deserve animadversion. If a Vakeel repeats such misconduct, he will be liable to forfeit the amount of the fee in the suit, or to a fine not exceeding twenty Rupees.—*Reg.* 27, 1814, *Sect.* 9, *Cl.* 3.—*p.* 117.

SECT. XVII.

Vakeels in those Courts.—Their Duties.

223. The Vakeels are enjoined not to file any plaint, answer or other pleading, without previously ascertaining that it has been duly prepared according to the Regulations; that it contains no unnecessary repetitions; no terms of personal abuse of the opposite party, or any one connected with him; no groundless imputations on any Court or public officer; but contains only what is

material to the suit. Every pleading filed by an authorized Vakeel, must be signed by him in token of his approval of its contents.—*Reg.* 27, 1814, *Sect.* 9, *Cl.* 1.—*p.* 117.

224. The Vakeels are required to examine the documents which their constituents may propose to exhibit previously to their being filed, and ascertain, previously to summoning any witnesses, the specific points they are expected to prove.—*Reg.* 27, 1814, *Sect.* 9, *Cl.* 2.—*p.* 117.

225. The Sudder Dewanny Adawlut will exercise their discretion in removing from his office any pleader who may be guilty of any of the acts above mentioned, or who may be otherwise deemed unfit for his post.—*Reg.* 27, 1814, *Sect.* 10, *Cl.* 1.—*p.* 117,

226. Whenever a Zillah Court may be of opinion that a pleader in his Court or any of the subordinate Courts is unfit for his situation, through having been guilty of any of those acts, or is otherwise unfit for his situation, he will report the case with his opinion to the superior Court, who will pass such order thereon as may appear proper.—*Reg.* 27, 1814, *Sect.* 10, *Cl.* 2.—*p.* 118.

227. All petitions, motions or applications made on behalf of parties in a suit on which the fees prescribed in Sections 23 and 32 have been paid, are considered as paid for by the fee allowed in the above sections. After a pleader has been engaged by a Vakalutnamah, he will make all such motions, and do all such acts as may be requisite relative to the suit in which he has been entertained, not only during the trial, but after the decision has been passed, till the final judgment has been enforced.—*Reg.* 27, 1814, *Sect.* 34.—*p.* 118.

228. When a decision has been pronounced incomplete, and the case is ordered to be tried *de novo*, the defendant's Vakeel must refund the amount paid him; and the Court which may eventually decide the case, will award him an adequate remuneration for the trouble he has taken in the matter.—*Con. No.* 1105.—*p.* 118.

229. A Vakalutnamah executed on the original institution of a suit, unless cancelled by the party or otherwise set aside, is operative and in full force, till the final judgment has been enforced; and consequently is full authority for the vakeel to superintend the execution of the decree confirmed on appeal.—*Con. No.* 852.—*p.* 118.

230. The Civil Courts may permit any Vakeel of their Courts to be arbitrators, subject to the several rules and provisions in force for referring suits to arbitration.—*Reg.* 27, 1814, *Sect.* 19.—*p.* 118.

231. Pleaders will give written receipts, on unstamped paper, for all accounts, writings, or documents which may be delivered to them by their clients in the course of any suit or process. If a pleader refuse to return such documents, the Court will cause them to be restored.—*Reg.* 27, 1814, *Sect.* 36.—*p.* 118.

232. Whenever a Vakeel may present a second or special appeal, he will sign the petition, and certify, that he has duly considered the grounds stated for a second appeal, and considers them sufficient.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 3.—*p.* 119.

233. The authorized pleaders of the Zillah and City Courts cannot, without the sanction of the Judge, officiate as agents or Mooktars before the Magistrates, or their Assistants. This prohibition however does not apply to the Government Pleaders.—*Reg.* 27, 1814, *Sect.* 17.—*p.* 119.

234. The Civil Courts will cause the Translations of the Regulations to be deposited on a table expressly allotted for the purpose, to be open for public inspection and to be publicly read in their Cutcherries. They will require the native pleaders to take copies of any of those which relate directly or indirectly to the administration of Civil Justice.—*Reg.* 27, 1814, *Sect.* 40.—*p.* 119.

SECT. XVIII.

Vakeels in those Courts.—Engagements between Client and Vakeel.—Change, resignation, or death of Vakeels.

235. The established pleaders of the Zillah or City Courts are not required to attend the trial of summary suits at a distance from the fixed station of a Judge.—*Reg.* 2, 1821, *Sect.* 10, *Cl.* 3.—*p.* 119.

236. No person is prohibited from appearing and pleading his own cause in person, in any of

237. When a party may be desirous of retaining a Vakeel to prosecute or defend a civil suit, he will execute to him a Vakalutnamah, constituting him pleader in the cause, and binding himself to abide by and confirm all the acts of the pleader. The party will attest the instrument by his seal, signature or mark before two credible witnesses, who will likewise attest it in the same manner. The witnesses will attend the Court, and verify the Vakalutnamah, when needful.—*Reg.* 27, 1814, *Sect.* 21, *Cl.* 1.—*p.* 120.

238. Such Vakalutnamahs, may be filed by the Mooktars of parties in a suit. Vakalutnamahs, executed by such agents, duly authorized, are as good and valid as those executed by the principals themselves.—*Con. No.* 417.—*p.* 120.

239. Such Vakalutnamahs are to be written on the stamp paper prescribed in Sch. B, Regulation 10, 1829.—*Reg.* 27, 1814, *Sect.* 21, *Cl.* 2.—*p.* 120.

240. The Vakeel, having consented to undertake the suit, will affix his signature to the back of the Vakalutnamah, with the date; after which he cannot be employed in the same cause against the party who may have retained him.—*Reg.* 27, 1814, *Sect.* 22.—*p.* 120.

241. Any party in a suit, who may be dissatisfied with the conduct of his pleader, may at any stage of the trial, previously to the decision, withdraw the power delegated to him, and appoint another. He will present a petition to the Court, stating these circumstances, and file a new Vakalutnama in the name of the new pleader. But all acts done by the first pleader on the part of his client before his dismissal, are to be held valid. On the termination of the suit, the Court will, in the exercise of its discretion, award to the first pleader any portion of the fee to which he may appear justly entitled.—*Reg.* 27, 1814, *Sect.* 12, *Cl.* 2.—*p.* 120.

242. If a pleader cannot attend the Court through indisposition or other sufficient reason, he will notify it in writing to the Court on unstamp paper, and the hearing of the cause will be postponed, unless the party may commit it to any other pleader, or be willing to plead the cause in person. If the cause be entrusted to another pleader, it will only be necessary to endorse on the Vakalutnamah a declaration that the client has appointed another pleader, either temporarily or permanently. When the case is decided, the Court will divide the fees between them equitably.—*Reg.* 27, 1814, *Sect.* 13.—*p.* 121.

243. Whenever a Vakeel may die, or be removed from, or voluntarily resign his situation, the Judge will notify the same in a publication, to be affixed in his own Cutcherry and elsewhere. The publication will enumerate the several depending cases in which the Vakeel was employed, and require the parties who employed him to attend in person or to substitute another Vakeel within six weeks. In such cases, no new Vakalutnamah will be necessary; it will be sufficient to endorse on the back of the original one a declaration by the party or his mooktar, that another Vakeel of the Court has been appointed in lieu of the former.—*Reg.* 27, 1814, *Sect.* 18, *Cl.* 1.—*p.* 121.

244. Such a publication will be considered a good and sufficient notice. If any party do not attend, or appoint another Vakeel, within the limited period, and cannot shew sufficient cause for his neglect, the Court will proceed as in case of default.—*Reg.* 27, 1814, *Sect.* 18, *Cl.* 2.—*p.* 121.

245. A similar notification will be issued on the death, resignation or removal of a pleader in the Sudder Court. The publication will be affixed in the Zillah Courts in which it may appear necessary to publish the same, with reference to the depending causes in which the Vakeel may have been employed. The period allowed to persons to substitute another Vakeel, shall not be less than three months.—*Reg.* 27, 1814, *Sect.* 18, *Cl.* 3.—*p.* 121.

246. The principle of the preceding rules will apply to cases in which the decision of suits may be materially delayed by the protracted indisposition of a pleader, or by his continued inability, to attend the Court from any other cause which may be expected to be permanent, or of considerable duration.—*Reg.* 27, 1814, *Sect.* 18, *Cl.* 4.—*p.* 121.

247. Whenever a pleader duly entertained by a party may have commenced a cause, and for no fault of his, another pleader may be employed in his stead, the Court in which the suit is decided or terminated, will adjudge to the pleader so employed at the commencement of the suit

(or if he be dead, to his heirs or legal representatives) a due and equitable portion of the established fee.—*Reg.* 27, 1814, *Sect.* 18, *Cl.* 5.—*p.* 122.

248. When two or more Vakeels are thus employed in the same suit, a single Vakalutnamah only need be filed.—*Reg.* 27, 1814, *Sect.* 30, *Cl.* 2.—*p.* 122.

SECT. XIX.

Vakeels in those Courts.—Legal Opinions.

249. The authorized Vakeels of the Zillah and City Courts, may receive fees for legal opinions under the following provisions:—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 1.—*p.* 122.

250. Any person desirous of obtaining the opinion of an authorized pleader, regarding the legal validity and sufficiency of any claim, right or title, and the expediency of prosecuting or defending it in the Civil Courts, may submit a written statement of his claim to the pleader whose opinion he wishes to obtain under his seal, signature or mark.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 2.—*p.* 122.

251. The pleader to whom such statement may be submitted, after considering the law and the facts of the case, and the arguments and proofs which may be adduced, will furnish the party with a written declaration of his opinion, and of the grounds, upon which it may be formed.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 3.—*p.* 122.

252. If the pleader who may have furnished such written opinion, be attached to the Sudder Court, he will be entitled to a fee of twenty-four Rupees. If to a Zillah or City Court, to a fee of eight rupees.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 4.—*p.* 122.

253. But a pleader who may have received a Vakalutnamah in any suit instituted in a Civil Court, cannot receive the fee above prescribed for any such opinion in connection with such suit.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 5.—*p.* 122.

The penalty for furnishing an opinion calculated to promote the institution of unfounded or vexatious suits is given above, at Rule 208.

254. The Vakeels in the Sudder Ameens' and Principal Sudder Ameens' Courts, may equally furnish legal opinions, and are equally entitled to the fee.—*Con. No.* 802.—*p.* 123.

SECT. XX.

Vakeels in those Courts.—Their Fees.

255. In all regular suits instituted, either originally or in appeal, after the 1st of February 1815, in any of the Zillah or City Courts, or the Sudder Dewanny Adawlut, [or the Courts of Principal Sudder Ameens and Sudder Ameens] the following is to be considered the legally authorized scale of fees for the Vakeels.—*Reg.* 27, 1814, *Sect.* 25, *Cl.* 1.—*p.* 123.

256. In suits for money, effects, or for other personal property, or for immovable property, if the amount or value of the claim, estimated according to the provisions of Section 14, Regulation 1, 1814, [Regulation 10, 1829,] shall not exceed 5,000 Sicca Rupees, five per cent.—*Ibid.*—*p.* 123.

257. If the amount or value shall exceed 5,000 rupees, and shall not exceed 20,000 Sicca Rupees; on 5,000 as above, and on the remainder, two per cent.—*Ibid.*—*p.* 123.

258. If the amount or value shall exceed 20,000 Rupees, and shall not exceed 50,000 Rupees; on 20,000 as above, and on the remainder, one per cent.—*Ibid.*—*p.* 123.

259. If the amount or value shall exceed 50,000 Sicca Rupees, and shall not exceed 80,000 Sicca Rupees; on 50,000 as above, and on the remainder, eight annas per cent.—*Ibid.*—*p.* 123.

260. If the amount or value shall exceed 80,000 Rupees, the fee to the Vakeel shall be One thousand Rupees, and shall in no instance exceed that sum, however great may be the value or amount of the suit in which such Vakeel may be employed.—*Ibid.*—*p.* 123.

261. In all the preceding calculations, all fractions of Rupees are to be rejected in calculating the fees.—*Reg.* 27, 1814, *Sect.* 25, *Cl.* 2.—*p.* 123.

The three following rules [No. 262—265] will apply only when the Vakeel's fees may have been voluntarily deposited in Court by the parties.

262. The Vakeels will receive the full amount of their fees, without any deduction. The Vakeel will give a receipt for every sum paid him by a Civil Court on account of his fees on a stamp paper according to No. 45, Schedule A. Regulation 10, 1829.—*Reg.* 27, 1814, *Sect.* 25, *Cl.* 3. —*p.* 123.

263. 264. The above rule is thus modified, when the aggregate amount of fees payable to a Vakeel, in two or more suits, may not exceed 16 Rupees, he may give a consolidated receipt for the whole amount, instead of a separate receipt for each case; but in the receipt he must specify the sum receivable in each suit.—*Reg.* 19, 1817, *Sect.* 10, *Cl.* 1 *and* 2.—*p.* 124.

265. When the Court passes a decision, whether upon an investigation of the case or otherwise, the fees of the pleaders deposited in the Court will be paid to the persons entitled to receive them; this payment will not be postponed in consequence of an appeal.—*Reg.* 27, 1814, *Sect.* 29.—*p.* 124.

266. If the decree be given against the defendant or respondent, and the whole of the demand of the appellant or plaintiff be decreed to him, a sum equal to the whole of the fees of his pleader shall be adjudged to the plaintiff or appellant, in addition to the other costs which may be awarded to him. But if only a part of the money or property claimed, is decreed to the plaintiff or appellant, a sum bearing the same proportion to the money or to the value of the thing decreed, as the fee did to the demand, is to be decreed and added to the costs, which may be awarded to the plaintiff or appellant.—*Reg.* 27, 1814, *Sect.* 26, *Cl.* 1.—*p.* 124.

267. If the suit of the plaintiff or appellant be dismissed, whether upon an investigation of the merits or otherwise, the plaintiff, or appellant will be charged with the fees of his own pleader and with those of the defendant or respondent.—*Reg.* 27, 1814, *Sect.* 26, *Cl.* 2.—*p.* 124.

268. But if such payment of pleaders' fees should not appear just or equitable, the Civil Courts may exercise their discretion in charging the fees of the pleaders to the parties respectively, in equitable proportions.—*Reg.* 27, 1814, *Sect.* 26, *Cl.* 3.—*p.* 124.

269. When a suit in which one party may have been permitted to plead as by a pauper, may be decided with costs in favour of the adverse party, and such pauper cannot make good the full amount of the costs awarded against him, the Courts may return to the adverse party, any portion of the fee deposited by him on account of his Vakeel which may appear expedient; and pay the remaining portion of it to the Vakeel entitled to receive it, so it be a reasonable remuneration for his trouble. The Courts will also endeavour to realize the remainder of the fee due to such Vakeels from any property which may subsequently be found to belong to the pauper.—*Reg.* 27, 1814, *Sect.* 28.—*p.* 124.

270. If a suit be withdrawn or dismissed on default without a determination upon the merits of the case, before all the requisite pleadings shall have been filed, pleaders on either side will be entitled to only a fourth of the established fee. If withdrawn or dismissed on default after all the requisite pleadings shall have been filed in Court, to one half the fees. The fees in both these cases, will be charged to the plaintiff or appellant withdrawing the suit, or suffering it to be dismissed on default, together with all the admitted costs incurred by the defendant or respondent. —*Reg.* 27, 1814, *Sect.* 31, *Cl.* 1.—*p.* 125.

271. The same rule is applicable to cases adjusted by Razeenama; but the fees of the pleaders and other costs will be paid by the parties in such manner and proportions as may be agreed on and inserted in the Razeenama.—*Reg.* 27, 1814, *Sect.* 31, *Cl.* 2.—*p.* 125.

272. To entitle the respective pleaders in cases withdrawn or dismissed on default to one half the amount of the established fees under the above provision, it is necessary that the whole of the requisite pleadings should have been filed.—*Con. No.* 1052.—*p.* 125.

273. When a case has been decided in favour of the plaintiff without an examination of its merits, on the acknowledgment of the defendant, and without a Razeenama, the vakeels are entitled to the full amount of the Stamp fees.—*Con. No.* 209.—*p.* 125.

274. In cases adjusted by Razeenama, after evidence has been completed, the vakeels are entitled to their whole fees in like manner as if no Razeenama had been admitted.—*Con. No.* 418.—*p.* 125.

275. The parties in a suit may entertain two or more pleaders, who shall either divide the authorized fee between them, or be paid as may have been mutually agreed upon. All stipulations to this effect will be distinctly stated in the Vakalutnamah; otherwise it will be construed to entitle the whole of the Vakeels appointed by it to an equal division of the established fee and no more.—*Reg.* 27, 1814, *Sect.* 30, *Cl.* 1.—*p.* 125.

276. The party thus employing two or more vakeels in the same suit, may file a single Vakalutnamah.—*Reg.* 27, 1814, *Sect.* 30, *Cl.* 2.—*p.* 125.

277. If the party shall agree to pay to each of his Vakeels the full amount of the authorized fee, the opposite party will in no case be required to make good more than the fee of one of those pleaders, or such part of that fee as may be adjudged against him by the Court. The fees of the other pleader will be considered as a separate expense, not to be reimbursed in any case whatever.—*Reg.* 27, 1814, *Sect.* 30, *Cl.* 3.—*p.* 126.

278. When a Vakeel is employed by two defendants in the same suit, under separate Vakalutnamahs, he is entitled to receive from each the full amount of fees ordained in Section 25, Regulation 27, 1814.—*Con. No.* 500.—*p.* 126.

Where two separate Vakeels are employed by two separate defendants, they are each entitled to the full amount of fees, and the whole amount of fees so due, is chargeable to the plaintiff, if the suit be dismissed.—*Con. No.* 500.—*p.* 126.

279. When a pleader may be employed in such summary appeal, the Courts will award him such fee not exceeding one fourth of the fee in a regular suit, as may appear a fair compensation for his labours.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 11.—*p.* 126.

280. The rule prescribed in Regulation 26, 1814, Section 3, Clause 11, relative to the pleader's fee in summary appeals, will be applicable to all original summary suits in which a pleader may be appointed.—*Reg.* 19, 1817, *Sect.* 9, *Cl.* 2.—*p.* 126.

281. It will not be necessary to make any deposit for the fees of pleaders in summary suits or appeals. Whatever fee may be awarded to the pleaders will be paid into the Court by the party responsible for the payment of it, within such time as the Court may fix, under penalty of making good, by the usual process of recovery, any additional sum the Court may award in consideration of the delay.—*Reg.* 19, 1817, *Sect.* 9, *Cl.* 3.—*p.* 126.

282. In all applications for the admission of special and summary appeals, and in all cases wherein the Regulations do not require the fees of the Vakeels to be deposited, pleaders may make their own terms with their constituents.—*Reg.* 9, 1831, *Sect.* 7, *Cl.* 1.—*p.* 126.

283. The amount of compensation voluntarily agreed upon in such special and summary appeals, will be specified in the Vakalutnamah, and will not exceed one-fourth the fee to which the pleader would have been entitled, if the matter had been brought forward in a regular suit.—*Reg.* 9, 1831, *Sect.* 7, *Cl.* 2.—*p.* 127.

284. The Court to which the application may be preferred regarding such fees in special and summary appeals, may reduce the amount of compensation, if it appears unnecessarily large or exorbitant.—*Reg.* 9, 1831, *Sect.* 7, *Cl.* 3.—*p.* 127.

285. In such cases of fees in special and summary appeals, the Courts need not issue any process or order for realizing the pleader's fees under the above rules. But when it may appear just and proper to award the recovery of the pleader's remuneration from another party, the Court may direct it to be levied in the manner prescribed for the execution of decrees.—*Reg.* 9, 1831, *Sect.* 7, *Cl.* 4.—*p.* 127.

286. The provisions in the 7th Section, above quoted, have reference to the Zillah and City Courts as well as to those of the Sudder.—*Con. No.* 711.—*p.* 127.

287. Vakeels are entitled to a fee of 4 annas for every miscellaneous petition, application and

motion they may make in Court, except in suits in which they may have received a Vakalutnamah.—*Reg.* 27, 1814, *Sect.* 34.—*p.* 127.

288. Such fees for miscellaneous petitions need not be deposited in Court, but will be paid at such time as the party may agree with his Vakeel. When the Court may deem the Vakeel entitled to farther remuneration for such miscellaneous business, it may award a farther sum and charge it to either party, as may seem fit, but it must never exceed one-fourth of the established fee which would have been payable on a regular suit.—*Reg.* 27, 1814, *Sect.* 35.—*p.* 127.

289. In appeals from Moonsiffs and Sudder Ameens, Vakeels will receive the same fees as if the suit of appeal were a regular original suit tried before the Judge.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 3, *and Sect.* 73.—*p.* 127.

290. The provisions of Regulation 27, 1814, are not intended to apply to Vakeels who may be employed in the Courts of the Moonsiffs, under Regulation 23, 1814.—*Reg.* 27, 1814, *Sect.* 39, *Cl.* 1.—*p.* 128.

291. If a suit be referred to a Sudder Ameen, the deposit which had been made of the pleader's fees, must be kept for the vakeel employed to prosecute the suit in the Sudder Ameen's Court. If he be not the pleader who was employed to file the plaint, the Judge may award to the latter *four* annas, or such fee as he considers adequate.—*Con. No.* 197.—*p.* 128.

292. The security required by the Regulations to be furnished to stay the execution of decrees appealed from, is exclusive of costs; payment of costs, of which the fees of pleaders form a principal part, should invariably be enforced, though execution may be stayed in other respects.—*Con. No.* 110.—*p.* 128.

The following enactments, by which all preceding rules regarding pleader's fees have been modified, are in force in all Civil Courts, those of Moonsiff's excepted.

293. Parties employing authorized pleaders in the Sudder Court [or in the Zillah and City Courts, or in the Courts of the Principal Sudder Ameen or Sudder Ameen] may settle with them for the remuneration for their services; the amount will be specified in the Vakalutnamah, and they will not be required to make any deposit in Court on this account, unless they wish to do so for the pleader's satisfaction. But a larger amount than the fee payable under the existing Regulations will not be chargeable in the costs of suit to the losing party, as a remuneration for the opponent's pleader.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 5.—*p.* 128.

294. Private engagements between parties and their pleaders, when contested, will be settled by a regular suit, and no miscellaneous application for that purpose will be received in any Court.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 6.—*p.* 128.

295. It having been asked, whether the Rule above (294) extended to pauper suits, it was replied, that it was applicable to all suits in which private engagements existed between parties and pleaders.—*Con.* 28*th May*, 1841.—*p.* 128.

296. If any suit be transferred from one Court to another, the Court deciding the suit will determine the amount of remuneration to be assigned to the pleaders previously employed in the other Court. All such deposits for pleader's fees will be kept in deposit till the case has been decided, when the amount awarded to the pleaders will be paid them.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 8.—*p.* 128.

297. The provisions in Clause 8, as above, are applicable to all Courts to which causes may be transferred for trial from other Courts.—*Reg.* 12, 1833, *Sect.* 3.—*p.* 128.

298. When a party gaining a cause, may have employed in the conduct of it a special agent under Regulation 12, 1833, Section 2, Clause 4, instead of a regular Vakeel, he shall not be entitled to recover from the losing party a reimbursement of the remuneration granted to that agent, nor will the Court award it.—*C. O.* 28*th June*, 1839.—*p.* 129.

SECT. XXI.

Mooktears.

299. One proved act of gross misconduct is sufficient to warrant a general rejection of the Mooktear.—*Con. No.* 809.—*p.* 129.

300. When a general Power of Attorney has been presented for the purpose of being attested, it may be returned by the Court to the parties filing it.—*Con. No.* 917.—*p.* 129.

301. A Principal Sudder Ameen may be employed to attest Mooktarnamahs required to be filed in other Courts. As Mooktarnamahs are not mentioned in Regulation 20, 1812, Section 7, the Principal Sudder Ameen must be cautioned against registering such papers, or levying any fee or gratuity for attesting them.—*C. O. 3rd April*, 1835.—*p.* 129.

SECT. XXII.

Government Pleaders.

302. One or more of the authorized pleaders of the Sudder Court, and the Zillah Courts, will be appointed to conduct or defend suits on the part of Government. They will be furnished with a sunnud, drawn up according to the prescribed form, under the signature of the Judicial Secretary to Government.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 1.—*p.* 129.

303. Form of the Sunnud.—*p.* 130.

304. The Government pleaders will undertake all causes they may be directed to plead by orders from Government, or which are directed to be carried on at the public expense, on receiving an order to that effect from any officer authorized to superintend such suits. The order of Government, or of such officer, will be filed in Court and be recorded with the proceedings.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 3.—*p.* 130.

305. The Government pleaders are prohibited from giving advice to any party opposed to Government, or from being concerned directly or indirectly, on their behalf, in any Civil suit or proceeding, carried on for Government. In all other suits, they may plead for either of the parties. —*Reg.* 27, 1814, *Sect.* 37, *Cl.* 4.—*p.* 130.

306. The Government pleaders will be paid the same fees in causes pleaded at the public expense, as other pleaders employed in cases between private individuals; and under the same rules and restrictions.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 5.—*p.* 130.

307. In pleading suits for Government, they will be subject to all the rules prescribed for the guidance of pleaders when engaged for private individuals, except in cases otherwise specially directed by any Regulation.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 6.—*p.* 130.

308. The public authorities, entrusted with the management of public suits, may associate any other authorized pleader with the Government pleader, when it may appear necessary. Such pleader will be furnished with a Vakalutnamah and be entitled to the same fees, and act under the same rules and restrictions as if he were employed by a private individual, subject to the rules in Cl. 5, (306.)—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 7.—*p.* 130.

309. The Government Vakeel may be employed in conducting all Criminal prosecutions on the part of Government.—*Reg.* 27, 1814, *Sect.* 17.—*p.* 131.

310. Government Vakeels will undertake the cause of Invalids, free of cost, at the desire of the Collector.—*Reg.* 1, 1804, *Sect.* 14.—*p.* 131.

311. When a vacancy may occur in the office of Government Vakeel in the Courts, the Court will not nominate his successor, but report the circumstance to Government.—*Reg.* 13, 1829, *Sect.* 4, *Cl.* 2.—*p.* 131.

312. It will rest with Government to ascertain which of the pleaders of the Court is best fitted to succeed to the vacancy and to appoint him accordingly.—*Reg.* 13, 1829, *Sect.* 4, *Cl.* 3. —*p.* 131.

SECT. XXIII.

Vakeels in Moonsiff's Courts.

313. No person will be allowed to plead or act as a Vakeel in the Moonsiff's Court, unless he be a relative, servant or dependant of the party in the action, or have received a sunnud from the Zillah or City Judge.—*Reg.* 23, 1814, *Sect* 15, *Cl.* 1.—*p.* 131.

314. If at any time it appears essentially necessary, the Zillah Judges may appoint a sufficient number of persons to act as Vakeels in the Moonsiff's Courts, and give them sunnuds accord-

ing to the prescribed form. The Judges will not exercise the discretion thus vested in them but when they are convinced of the expediency of it.—*Reg.* 23, 1814, *Sect.* 15; *Cl.* 2.—*p.* 131.

Form of the Sunnud.—*p.* 131.

315. The Vakeels will be sworn to a faithful discharge of their duties, and will be liable to a civil action and a criminal prosecution for breaches of trust, fraud, or professional misconduct. They will not be removed from their offices unless the Zillah Judge is satisfied of their delinquency, incapacity, or profligacy, or shall consider it inexpedient to continue them in the Court; in which case, he may always recall and cancel their sunnuds.—*Reg.* 23, 1814, *Sect.* 15, *Cl.* 3.—*p.* 132.

316. When a Zillah Judge may thus dismiss a Vakeel in a Moonsiff's Court, no appeal will lie to the Sudder Court.—*Con. No.* 846.—*p.* 132.

317. These Vakeels will settle their own fees with their constituents. The fees thus voluntarily agreed on, will be specified in the Vakalutnamah, which will be written on stamp paper, and the Moonsiff may include the fees in his judgment against the party cast.—*Reg.* 23, 1814, *Sect.* 15, *Cl.* 4.—*p.* 132.

318. This rule is modified. Moonsiffs will not award to Vakeels or Mooktears pleading in their Courts, a higher fee than 5 per cent. on the amount or value of the claim. They will not issue process for realizing any fee, but may include it in their decree.—*Reg.* 7, 1832, *Sect.* 11.—*p.* 132.

319. Vakalutnamahs in Moonsiff's Courts may be received on unstampt paper.—*Con. No.* 950.—*p.* 132.

320. The Regulations do not require the Zillah and City Judges to interfere in regard to the remuneration of Vakeels by clients in the Moonsiff's Courts. The Judge will only intimate that if a party chooses to change his vakeel, he is bound to remunerate both vakeels.—*Con. No.* 990.—*p.* 132.

321. Suits against the Vakeels of Moonsiff's Courts for all breaches of trust, or wilful misconduct committed by them in their professional capacity, will be received and decided by the Moonsiff, but if the suit be beyond his competence, the Judge may transfer it to another and competent Court, or retain it on his own file.—*Govt. Ord. No.* 11.—*p.* 132.

SECT. XXIV.

Ameens.

322. No Moonsiff will in future be called on to perform any of the miscellaneous duties prescribed in Sections 50, 51, 52, 53, Regulation 23, 1814, (given below) except in special cases, to be recorded on the proceedings.—*C. O. 13th Jan.* 1837.—*p.* 132.

323. The Zillah Judges will select and appoint as many duly qualified persons as they think fit to act as Ameen for the performance of those miscellaneous duties. They may also nominate the city and purgunnah Cauzies to that duty.—*C. O. 13th Jan.* 1837.—*p.* 132.

324. The Ameens thus appointed, will furnish security for their personal appearance and the due discharge of the duty.—*C. O. 13th Jan.* 1837.—*p.* 133.

325. Each Ameen will receive a regular sunnud describing his jurisdiction, which should correspond with that of the Moonsiff, unless special reasons exists for dividing a Moonsiff's jurisdiction, or for uniting two or more under one Ameen.—*C. O. 13th Jan.* 1837.—*p.* 133.

326. The Ameens will receive the same commisson of one anna in the rupee which was allowed to Moonsiffs, and they will perform their duties under the same rules which are applicable to Moonsiffs under the Regulations.—*C. O. 13th Jan.* 1837.—*p.* 133.

327. The Ameen will perform the duties entrusted to him in person, and will not be permitted to act by Deputy.—*C. O. 13th Jan.* 1837.—*p.* 133.

328. Lists of the persons so appointed will be affixed in all the Courts, European or native, in the district, and an annual list will be furnished of them to the Sudder Court.—*C. O. 13th Jan.* 1837.—*p.* 133.

329. But the Judges are not prohibited from deputing the officers of their own establishment to perform these duties when it appears necessary.—*C. O. 13th Jan.* 1837.—*p.* 133.

330. The native Judges are requested to conform to the orders of this Circular, when they have occasion for an Ameen to perform miscellaneous duties.—*C. O. 13th Jan.* 1837.—*p.* 133.

331. It being necessary to ascertain that the Ameens perform their duty in a satisfactory manner and with promptitude, and that no more are appointed than are necessary, the Ameens will submit a monthly statement of the mode in which they have employed each day.—*C. O. 4th June,* 1841.—*p.* 133.

332. Ameens, appointed as above, have the constructive power under Regulation 7, 1825, Section 2, Clause 3, of selling real as well as personal property, in satisfaction of decrees.—*C. O. 7th Feb.* 1840.—*p.* 133.

The duties transferred from the Moonsiffs to the Ameens are as follows:—

333. In questions which may arise before a Court, relative to the adjustment of accounts in revenue or mercantile transactions, or regarding the boundaries of lands and houses, the right of way in roads or pathways, or any rights in forests, commons, rivers, lakes, ponds, wells, reservoirs, waters, or watercourses, the quantity or description of land, or the rent to which it is liable, and generally in all questions of local rights or usages, which require local investigation, the Judge may depute an Ameen to conduct them.—*Reg.* 23, 1814, *Sect.* 50, *Cl.* 1.—*p.* 134.

334. The Judge will furnish the Ameen with such part of the proceedings or such detailed instruction as may be necessary for his information or guidance, and enjoin him either to take the evidence in the presence of the parties, or their Vakeels, and transmit it to Court, or to transmit it with his own opinion on the points at issue.—*Reg.* 23, 1814, *Sect.* 50, *Cl.* 2.—*p.* 134.

335. The Ameen's proceedings will be received as evidence in that specific matter; but the Judge, if dissatisfied with his proceeding may make such further enquiry as may be requisite and pass such order as may seem equitable.—*Reg.* 23, 1814, *Sect.* 50, *Cl.* 3.—*p.* 134.

336. The Judge may also employ the Ameen in delivering over formal possession of lands, houses, or other real property, in conformity with decrees, regular or summary.—*Reg.* 23, 1814, *Sect.* 51, *Cl.* 1.—*p.* 134.

337. Previously to issuing any instructions to the Ameen, the Judge will require the plaintiff or defendant, as circumstances may require, to pay into Court a sum adequate to the Ameen's remuneration, but such sum will not exceed the expense which would have been incurred if an officer of the Court had been employed in it.—*Reg.* 23, 1814, *Sect.* 51, *Cl.* 2.—*p.* 134.

338. This sum the Ameen will be entitled to, except the duty has been performed in a negligent, unjust, or improper manner, in which case it will be returned to the parties.—*Reg.* 23, 1814, *Sect.* 51, *Cl.* 3.—*p.* 134.

339. The Ameens may be employed by the Court in the attachment or sale of personal property, for the purpose of realizing the amount of fines or of decrees, regular or summary, and will be entitled to a commission of one anna in each Rupee.—*Reg.* 23, 1814, *Sect.* 52.—*p.* 134.

340. The Judges may employ the Ameens in ascertaining and reporting on the sufficiency of securities, and the indigence of paupers.—*Reg.* 23, 1814, *Sect.* 53.—*p.* 134.

341. The Judges are not precluded from employing the authorized officers of the Court in the execution of the various duties above named.—*Reg.* 23, 1814, *Sect.* 54.—*p.* 134.

342. The officer called upon to sell property attached for rent, is entitled to be reimbursed the expenses actually and necessarily incurred by him, though no sale should take place. If these expenses be not paid, he is authorized to realize them by the sale of such part of the attached property as may be necessary for that purpose.—*Con. No.* 714.—*p.* 135.

343. The power of employing an Ameen in any of the duties above mentioned, has been extended, as regards the execution of decrees, to the Native Judges, who are empowered to execute their own decrees, under the same rules which are applicable to Zillah and City Judges.—*C. O. 13th Jan.* 1837.—*p.* 135.

344. When an Ameen is employed in investigating the sufficiency of securities tendered to the Sudder Court or to the Zillah Courts, and the circumstances of parties wishing to sue as paupers, no fees can be levied for his remuneration. If it appear therefore objectionable to employ on

those duties, persons who do not receive any fees, the Judge is at liberty, as heretofore, to confide them to the Nazir or the Moonsiffs.—*Con. No.* 1078.—*p.* 135.

345. With regard to enquiries directed by the Judges of other districts, the question whether fees can be levied or not must depend on the nature of the enquiry.—*Con. No.* 1078.—*p.* 135.

346. As the Ameens are Ministerial officers of the Zillah Courts, it is competent to a Zillah Judge to dismiss an Ameen of his own authority, subject to the usual appeal.—*Con. No.* 1271. —*p.* 135.

347. The Moonsiff is competent, like all other judicial officers, to depute an Ameen for the purpose of local investigations, and he will be guided by the Regulations on this head applicable to Zillah Courts.—*C. O. 26th July*, 1833.—*p.* 135.

348. In cases of disputed property regarding lands, houses, their limits and boundaries, the Courts may depute an Ameen to investigate them. He will be sworn not to receive from the parties any thing beyond the sum allowed by the Court. The Ameen's report will be received as evidence. The Court may order a reasonable sum to be paid him for his trouble, which will be added to the costs; but no unnecessary expence is to be incurred.—*Reg.* 4, 1793, *Sect.* 17.—*p.* 135.

349. The Judges may depute Vakeels to make local enquiries as Ameens, but it is in general a measure of doubtful expediency.—*Con. No.* 901.—*p.* 136.

SECT. XXV.

Paupers.—Plaintiffs and their Suits.

350. No persons will hereafter be allowed to institute a suit as a pauper, unless the Court in which his petition may be presented is satisfied on due examination, that there is probable cause for instituting the suit.—*Act* 9, 1839, *Sect.* 1.—*p.* 136.

351. The Zillah Judges cannot delegate to any other authority the duty of making the enquiry contemplated in the above Section, in the case of parties applying to sue in formâ pauperis. —*Con. No.* 1285.—*p.* 136.

352. Petitions to sue as paupers remaining undisposed of at the date when Act 9, 1839, came into force, are considered subject to the rules provided by that law.—*Con. No.* 1229.—*p.* 136.

353. When the application of a party to institute a suit in formâ pauperis has been rejected by the Judge, under the power vested in him by Act 9, the Judge is not competent of his own authority to receive a second application from the same party relative to the same matter. It must be regarded as an application for a review of judgment and treated accordingly.—*Con. No.* 1229.—*p.* 136.

354. No person can institute or defend a suit as a pauper, unless the amount or value of the thing claimed shall exceed 64 Rupees.—*Reg.* 28, 1814, *Sect.* 3.—*p.* 136.

355. No person can institute a suit as a pauper for damages on account of loss of caste, slander, abusive language, assaults, or personal injuries, or for the possession or recovery of deeds or papers, or for fines, forfeitures, or pecuniary penalties on account of a breach of the Regulations. —*Reg.* 28, 1814, *Sect.* 4.—*p.* 136.

356. But a Khoodcasht ryot may sue as a pauper for damages sustained in consequence of ejectment, or for damages arising from being deprived of water for the purpose of irrigation. Such suits are cognizable by Moonsiffs. Suits for ejectment are, however, summarily cognizable by the Collector under Regulation 8, 1831.—*Con. No.* 919.—*p.* 137.

357. A person adjudged to be the slave of another is entitled to appeal against the decision in formâ pauperis.—*Con. No.* 1009.—*p.* 137.

358. Any person desirous of instituting a suit as a pauper, will appear before a Zillah or City Court with a petition written on the stamp paper prescribed for miscellaneous petitions. If the suitor be a female of rank, who is exempted from appearing personally in a Court, the petition may be presented by a Mooktear or Agent.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 1.—*p.* 137.

359. The proviso contained in Reg. 28, 1814, Section 5, Cl. 1, is applicable at the discretion of the Sudder Court to any party desirous of appealing as a pauper in that Court.—*Act* 19, 1840. —*p.* 137.

360. The petition will contain a general statement of the nature or grounds of the demand, the value of the thing claimed, the name of the person to be sued, and a Schedule of the whole real or personal property of the petitioner and its estimated value.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 2.—*p.* 137.

361. The Court, or one of its authorized officers, will then take an examination of the suitor; or, in the case of a female of rank, of her agent, with regard to the points above noticed, and question him on oath or on a solemn declaration, particularly about the property he may have recently mortgaged or transferred.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 3.—*p.* 137.

362. The Judges may appoint a Sudder Ameen to take this examination, and to make these enquiries. But no final order for admitting a pauper shall be passed by a Sudder Ameen, nor shall pauper plaintiffs be committed to custody, in pursuance of Section 11, Regulation 21, 1814, by the Sudder Ameen, without the Judge's order.—*Reg.* 13, 1824, *Sect.* 4, *Cl.* 4.—*p.* 138.

An Ameen may also be thus employed. Vide No. 304.

363. The Court will admonish the petitioner that any wilful misrepresentation, or falsehood, or fraudulent concealment of any material fact regarding the property in his possession, or recently transferred, will subject him to be tried and punished for perjury. The petitioner or agent will subscribe his examination, and the Court will authenticate it.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 4.—*p.* 138.

364. If it appear that he is possessed of property sufficient to defray the expense of the suit, or has recently transferred, sold, or mortgaged property with the view of being admitted to sue as a pauper, the Court will refuse to admit his suit in that form and refer him to the general rules.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 5.—*p.* 138.

365. If there be ground for suspecting that the suitor is possessed of property, or has recently transferred property, beyond what he has acknowledged or stated, the Court may issue a notice to the adverse party, stating that if he appears within a reasonable time, he will be permitted to shew cause why the suitor should not be allowed to sue as a pauper. The Court may also summon witnesses, or institute a local enquiry, to ascertain whether he has recently transferred, or is then possessed of, property beyond that stated in his examination.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 6.—*p.* 138.

366. A plaintiff who has not instituted his suit as a pauper, cannot afterwards in the course of it, be admitted to proceed as a pauper, on proof of his poverty. But he may be admitted to appeal as a pauper, on producing satisfactory proof of poverty.—*Con. No.* 186.—*p.* 138.

367. If at the time, or subsequently, it be established that the petitioner, or if a female, her agent, has been guilty of wilful perjury, the Court will not only reject the prayer, and, if the cause be depending, non-suit the plaintiff, but cause him to take his trial for the offence.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 7.—*p.* 138.

368. A plaintiff originally admitted to sue as a pauper, who may subsequently, while the suit is pending, become possessed of sufficient property to nullify his plea, may be called on to pay up the original stamp duty, under penalty, if he neglect to do so, of being non-suited.—*Con. No.* 904.—*p.* 139.

369. If none of these objections exist, and the petitioner should not appear to be possessed of property sufficient to enable him to defray the expenses of the suit, the Court will admit him to sue as a pauper, on his finding two good securities, being house-holders, for his appearance when required.—*Reg.* 28, 1814, *Sect.* 6, *Cl.* 1.—*p.* 139.

370. A Judge is not authorized, however, to demand sureties for the appearance of the agent of a pauper female plaintiff, and such agent cannot be committed to jail, if his suit appear unfounded, vexatious, or wilfully exaggerated.—*Con. No.* 777.—*p.* 139.

371. When the required security has been given, if the pauper cannot prevail on any of the Vakeels to plead for him, and he cannot plead for himself, the Court will require one of the authorized pleaders to act for him.—*Reg.* 28, 1814, *Sect.* 7, *Cl.* 1.—*p.* 139.

372. The Court will state on the record of the trial, its reasons for appointing a pleader for

the pauper; and the order of the Court shall be a sufficient authority for the Vakeel to act, without a Vakalutnamah.—*Reg.* 28, 1814, *Sect.* 7, *Cl.* 2.—*p.* 139.

373. No stamp duty will be required from the pauper. The plaint, reply, and other pleadings, and his applications for receiving exhibits and summoning witnesses, may be written on unstampt paper. The notice to the defendant, the summons for witnesses, and other processes, will be served through the chupprassies of the Court, without any expense to the plaintiff. The copy of the decree, and copies of orders or proceedings, will be furnished him on unstampt paper.—*Reg.* 28, 1814, *Sect.* 8.—*p.* 139.

374. Hazir Zaminee bonds in pauper cases, are not exempted in the above enumeration, from the stamp dues, and must therefore be written on stamp paper.—*Con. No.* 1063.—*p.* 139.

375. Where the pauper appoints a Vakeel, the Vakalutnamah must also be drawn up on stamp paper.—*Con. No.* 261.—*p.* 140.

376. In all suits instituted in formâ pauperis, the pleadings on the part of the defendant, and all papers filed on his part, which, by Schedule B. Regulation 10, 1829, are required to be on stamp paper, may be written on unstamped paper. Copies of orders or proceedings will also be given to the defendant on unstamped paper. The defendant will not be required to deposit Vakeel's fees. At the conclusion of the suit, the Court will calculate the whole of the stamp fees which would have been payable, if the suit had not been instituted in formâ pauperis and charge them to the party cast, or the parties respectively, as may seem reasonable.—*Act 9* 1839, *Sect.* 2.—*p.* 140.

377. A defendant, in a suit instituted by a pauper, is not permitted to demur summarily, on the ground of the illegality of the claim, or the exaggerated valuation of the property claimed. These objections must be offered in answer to the plaint in the first instance.—*Con. No.* 821.—*p.* 140.

378. The provisions of Act 9, 1839, have equal reference to the respondent in an appeal, as to the defendant in an original suit.—*Con. No.* 1250.—*p.* 140.

379. A pauper plaintiff, dissatisfied with an interlocutory order passed while his suit is pending, and desirous of appealing from it, may obtain a copy of such order or proceeding on plain paper.—*C. O. 1st Nov.* 1839.—*p.* 140.

380. The privilege of plain paper is confined to the order or proceeding from which the appeal is preferred, and does not include copies of documents and other papers which paupers appealing may be desirous of filing, to support their objection to these orders or proceedings. These must be written on stamp paper.—*C. O. 1st Nov.* 1839.—*p.* 140.

381. When the suit is concluded, the Court will calculate the costs on account of stamp fees and other legal expenses, which would have been incurred had the plaintiff not been permitted to sue as a pauper, and charge the same in the decree on the party cast, or the parties respectively, in equitable proportions.—*Reg.* 28, 1814, *Sect.* 9.—*p.* 140.

382. If the pauper plaintiff gain his suit, the Court will order the defendant to make good the Vakeel's fees, or such part of them as the Court may decree.—*Reg.* 28, 1814, *Sect.* 10, *Cl.* 1.—*p.* 140.

383. A person admitted to sue as a pauper, whose suit has been dismissed with costs, is liable to confinement at the instance of the defendant, if he fail to pay the amount adjudged against him, and of course in common with all other insolvent debtors is equally entitled to the benefit of the Act, Reg. 2, 1806, Sect. 11.—*Con. No.* 110.—*p.* 141.

384. If the plaintiff be cast, the Court will levy from the defendant such part of the established fee for his own pleader, as may appear an adequate compensation, leaving the remainder to be recovered from any property of the plaintiff which may subsequently be discovered.—*Reg.* 28, 1814, *Sect.* 10, *Cl.* 2.—*p.* 141.

385. The Vakeel of a pauper plaintiff, whose claim is dismissed, is not entitled to receive any portion of the fee deposited by the defendant.—*Con. No.* 740.—*p.* 141.

386. If the plaintiff shall not establish his claim, and the Court decrees that the suit was un-

founded, vexatious, or wilfully exaggerated, and the plaintiff do not pay his own fees, and the fees and charges of the opposite party, he shall be committed to prison without labour, for a period not exceeding six months.—*Reg.* 28, 1814, *Sect.* 11, *Cl.* 1.—*p.* 141.

387. Paupers, whose suits may thus prove on trial to be groundless and vexatious, will be confined in the Dewanny Jail.—*Con. No.* 57.—*p.* 141.

388. When a pauper is thus confined, the subsistence money during the confinement must be paid by Government.—*Con. No.* 9.—*p.* 141.

389. The order for confinement shall be immediately executed, and not suspended on account of an appeal. But the plaintiff may at any time obtain his discharge by paying into Court the full amount of costs and expenses awarded against him in the decree.—*Reg.* 28, 1814, *Sect.* 11, *Cl.* 2.—*p.* 141.

390. If the pauper plaintiff abscond, and his sureties do not procure him, and the order for his imprisonment cannot be carried into effect, the sureties shall make good the full amount of costs awarded. If they refuse or fail to do so, they will be committed to jail for six months without labour.—*Reg.* 28, 1814, *Sect.* 11, *Cl.* 3.—*p.* 141.

391. The sureties of paupers are in such cases liable only to imprisonment for six months; the amount of costs due from the principal cannot be levied from the goods of his security.—*Con. No.* 922.—*p.* 142.

392. The confinement of the pauper plaintiff, or his sureties, will not preclude the Court from realizing the costs and expenses, adjudged against a pauper plaintiff, by selling any property which may belong to him, either at the time of the decree or subsequently.—*Reg.* 28, 1814, *Sect.* 11, *Cl.* 4.—*p.* 142.

393. When a suit instituted by a pauper is dismissed, and the proceeds arising from the sale of his property is not sufficient to pay all expenses, the Vakeel's fees will be paid first, and other claims will be satisfied in such a manner as may appear to the Judge equitable, an appeal of course lying from his decision.—*Con. No.* 621.—*p.* 142.

394. After the payment of vakeel's fees, the dues of Government for stamp fees have the next claim. After these have been paid, the order of satisfying other claims will be determinable by the circumstances of the case, whether they be the claims of Government for other costs or those of other parties.—*Con. No.* 1258.—*p.* 142.

395. The Civil and Criminal Courts cannot receive from any persons professing to be paupers any miscellaneous petitions or applications, which are required to be written on stamp paper, except on paper of the required stamp.—*Reg.* 28, 1814, *Sect.* 19.—*p.* 142.

396. When a plaintiff has been admitted to sue as a pauper, the Judge may refer the cause for trial to a Sudder Ameen, and the Sudder Ameen will proceed in it as in the case of other suits referred to him, subject to the provisions of *Reg.* 28, 1814.—*Reg.* 13, 1824, *Sect.* 4, *Cl.* 2.—*p.* 142.

397. The provisions relative to pauper defendants, appellants or respondents, will be applicable to such persons in suits before the Sudder Ameen. But no person will be admitted by the Sudder Ameen to prosecute or defend a suit as a pauper, without a written order to that effect from the Judge.—*Reg.* 13, 1824, *Sect.* 4, *Cl.* 3.—*p.* 143.

398. Moonsiffs are forbidden to receive suits in formâ pauperis; but the Judge may refer such suits to them for investigation.—*Reg.* 5, 1831, *Sect.* 5, *Cl.* 5.—*p.* 143.

399. No stamp duty is leviable in pauper suits instituted in the Judge's Court, and afterwards referred to Moonsiffs for decision.—*Con. No.* 945.—*p.* 143.

400. But as no establishment of chupprassies is retained in the Moonsiff's Court, it will be advisable to refer such cases generally to Sudder Ameens at the Sudder station, where the process may issue through the chupprassies of the [redacted] Court. Where such cases are referred to Moonsiffs, the summons and other process will issue in the mode described in Regulation 23, 1814, Section 29, Clause 4.—*C. O. 26th July*, 1833.—*p.* 143.

401. When a pauper suit has been referred for trial to a Moonsiff, the Moonsiff will forward to

the Judge's Court a copy of his decree, for the information of the Government pleader, that he may take the necessary steps for asserting the rights of Government in respect to stamp duties according to the orders he receives from the Revenue Department.—*C. O. 12th June*, 1840.—*p.* 143.

SECT. XXVI.

Appeals in Pauper Suits.

402. The proviso contained in Reg. 28, 1814, Sect. 5, Cl. 1, in regard to females of rank, will be applicable at the discretion of the Sudder Courts, to any person desirous of appealing to those Courts as a pauper.—*Act* 19, 1840.—*p.* 143.

403. Any party desirous of appealing as a pauper, will present a petition to the Court in the mode prescribed in Section 5, of this Regulation, to the Court by which his appeal may be cognizable.—*Reg.* 28, 1814, *Sect.* 12, *Cl.* 1.—*p.* 143.

404. This petition must be accompanied with an authenticated copy of the decree, a schedule of the whole property of the petitioner and its value, and a statement of the grounds of appeal. —*Reg.* 28, 1814, *Sect.* 12, *Cl.* 2.—*p.* 144.

405. If the original judgment does not appear erroneous or unjust, or if there does not appear sufficient cause for further investigation, the Court will refuse to admit the petition of appeal.—*Reg.* 28, 1814, *Sect.* 12, *Cl.* 3.—*p.* 144.

406. But the petitioner may still institute his appeal as a regular appeal, on performing the conditions prescribed for persons not paupers.—*Reg.* 28, 1814, *Sect.* 12, *Cl.* 4.—*p.* 144.

407. Should the Sudder Court refuse to admit an appeal in formâ pauperis from [redacted] of a lower Court, in which the sum awarded amounted to 50,000 Rupees, their order will be final; and no appeal will lie from such order to the Privy Council.—*Con. No.* 1025.—*p.* 144.

For the recent modification of the rules regarding Appeals to the Privy Council, see the last Chapter.

408. When the Court refuses to admit the petition of appeal, and the pauper institutes his appeal as a regular appeal, he may accompany his petition of appeal with the copy of the decree of the lower Court which he obtained on plain paper.—*Con. No.* 1217.—*p.* 144.

409. The rules contained in Sections 12 and 13, Regulation 28 of 1814, are applicable to any pauper appellant, whether he was a pauper in the original suit or not. If the appellant appeared originally as a pauper, he would, under Section 8 of that Regulation, be at liberty to file a copy of the decree of the lower Court on plain paper.—*Con. No.* 1207.—*p.* 144.

410. If on the perusal of the petition, the Court considers the original decree unjust or erroneous, or that there is ground for further investigation, it will admit the appeal, subject to Sections 5 and 6 of this Regulation. Sections 7, 8, 9, 10 and 11, will also be applicable to persons appealing as paupers.—*Reg.* 28, 1814, *Sect.* 13.—*p.* 145.

411. If the decision in an original suit be passed in favour of a pauper plaintiff, and the adverse party should appeal it, the rules contained in Sections 7, 8, 9 and 10, will be considered applicable to the respondent or original plaintiff, if the execution of the decree shall have been suspended during the appeal.—*Reg.* 28, 1814, *Sect.* 14.—*p.* 145.

412. If the decree in favour of a pauper plaintiff be reversed in appeal, the stamp fees paid by the appellant shall be returned to him, and such portion of the deposit for his Vakeel's fees as may be deemed reasonable. The amount of such stamp duty and deposit, and all other costs will be recovered from any property the respondent may at any time be found to possess.—*Reg.* 28, 1814, *Sect.* 15.—*p.* 145.

413. The payment of fees in pauper as well as in other cases, cannot be stayed on the ground that an appeal has been instituted from the first decision.—*Con. No.* 776.—*p.* 145.

414. If a defendant in any original suit, or respondent in any appealed suit (except in cases provided for in Section 14) be desirous of pleading as a pauper, he will appear in person or by an agent before the Court in which the suit may be depending, in conformity with Section 5, Clause 1, of this Regulation, and present a schedule of the whole of his property and its estimated value. —*Reg.* 28, 1814, *Sect.* 16, *Cl.* 1.—*p.* 145.

415. The Court will then proceed in conformity with Clauses 3, 4, 5, 6 and 7 of Section 5 of this Regulation.—*Reg.* 28, 1814, *Sect.* 16, *Cl.* 2.—*p.* 145.

416. If the Court finds that he is not possessed of property sufficient to defray the expenses of the suit, and can neither plead it himself, nor get any one else to do so; the Court will give the petitioner the same advantages as are allowed to pauper plaintiffs in Sections 7, 8, 9 and 10 of this Regulation, and no security will be required from the defendant or respondent, except for personal appearance.—*Reg.* 28, 1814, *Sect.* 16, *Cl.* 3.—*p.* 145.

417. The rules in this Regulation (28 of 1814,) apply only to regular suits and appeals; not to summary suits or appeals.—*Reg.* 28, 1814, *Sect.* 17.—*p.* 146.

418. The provisions in Regulation 28, 1814, respecting appeals in formâ pauperis from decisions passed in original suits, are to be considered applicable to second or special appeals thus preferred.—*Reg.* 2, 1825, *Sect.* 5.—*p.* 146.

419. A Principal Sudder Ameen is not authorized to receive an answer to a plaint from a defendant in formâ pauperis without the sanction of the Judge; as the Judge alone can determine the question of pauperism.—*Con. No.* 949.—*p.* 146.

420. An application from a pauper appellant to stay the execution of a decree given against him, pending the appeal, must be drawn out on stamp paper of the value prescribed for petitions presented to the Courts in which they may be filed.—*Con. No.* 1132.—*p.* 146.

421. Copies of orders passed in execution of a decree which a pauper would be required by law to file with his petition of appeal, if he appealed it, are to be given him on plain paper.—*C. O. 1st Nov.* 1839.—*p.* 146.

422. Copies of the proceedings and judgments of the Sudder Dewanny in appeal to the King in Council, will be furnished without expense to paupers, and written on unstamped paper.—*Reg.* 28, 1814, *Sect.* 18.—*p.* 146.

SECT. XXVII.

Stamps.

423. In the opinion of the Governor of Bengal, Regulation 10, 1829, is held to rescind all previous Regulations relating to the imposition, levying and collecting of Stamp duties.—*Con. No.* 987.—*p.* 146.

The Rules regarding *Documentary Stamps* are comprised under Forty-six heads in Schedule A. They will be found in the Appendix to this Volume.

The following are the enactments respecting *Judicial Stamps.*

424. In addition to the duties chargeable on Deeds, Instruments and Writings, specified in Schedule A, there will further be levied under the Presidency of Fort William, duties on Law Papers, specified in Schedule B, of this Regulation, and no papers shall be filed, exhibited, received, or admitted in any Court of the description stated to require a Stamp, unless the same shall be duly stamped.—*Reg.* 10, 1829, *Sect.* 17.—*p.* 147.

425. As the vakeels are sometimes accustomed to use the larger and more valuable stamp paper for trivial purposes, they are required to adhere to the rules given in the body of the work, which specify the different uses to which the several numbers or sizes of stamp paper are to be applied. —*C. O.* 10*th Aug.* 1832.—*p.* 147.

Schedule B.

426. I. Bail Bonds, Mochulkas, Recognizances, Security Bonds, (Hazir or Fial Zamin) whether of specified amount, or with penalty of a specific sum of money, when furnished and filed under special order of a Court;—will be charged as Petitions to the Court ordering the same. When executed between individuals not by order of the Court, they will be charged as Bonds in Schedule A. *Exemption.* Mochulkas taken on the release of Prisoners from the Fouzdaree Jail.—*Reg.* 10, 1829, *Sch. B.*—*p.* 147.

427. It is erroneous to write Security bonds on the same sheet of paper with the principal deed, where the stamp used was only that required for the latter instrument. Such deeds are wholly inadmissible as evidence against securities.—*C. O. 27th Oct.* 1837.—*p.* 147.

428. The object of this Circular Order (427) is simply to explain the law for the protection of the public interests; not to declare deeds drawn up under those circumstances inadmissable, provided they be legalized. Parties holding such documents are at liberty to apply to the revenue authorities to have the proper stamp affixed to them, so as to make them legal evidence in the Courts. —*Con. No.* 1147.—*p.* 148.

429. Under the head of exemptions, should be included Mochulkas and Recognizances taken from prosecutors and witnesses to secure attendance at criminal trials; those Mochulkas may be taken on plain paper.—*Con. No.* 679.—*p.* 148.

430. Security Bonds taken by Police Officers, under the Regulations, should be drawn out on unstampt paper.—*Con. No.* 710.—*p.* 148.

431. Security Bonds for costs of suit entered into by order of a Civil Court, should be written on the stamp prescribed in Regulation 10, 1829, Schedule B, Article 7, for petitions presented to the Court requiring the security.—*Con. No.* 555.—*p.* 148.

432. II. COPIES OF DECREES in all Regular suits, for an amount exceeding 150 Rupees, calculated in the manner explained under the head Plaint. When passed in Zillah or City Courts, or by Sudder Ameens, *One Rupee;* when passed in the Sudder Court, *Four Rupees.*—*p.* 148.

433. The exemptions in the foregoing Clause, are not applicable to any original suits or appeals instituted in the Zillah Courts, subsequently to the passing of this Regulation, whether tried by the Ziliah Judges, or referred to the subordinate Courts.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 3.—*p.* 148.

434. Regulation 5, 1831, Section 9, Clause 3, declares that no suits, however small the amount instituted in Zillah Courts, will be exempt from stamp duty, whether eventually referred to the subordinate Courts or not.—*C. O. 24th Jan.* 1834.—*p.* 148.

435. III. COPIES OF REVENUE AND JUDICIAL PROCEEDINGS, ACCOUNTS, STATEMENTS, REPORTS, and the like, filed on Record and taken out for use or reference, or when left on Proceedings in place of originals withdrawn;—per sheet, *Eight annas.* Each sheet will be of a size not exceeding that fixed for Copy Paper, (No. 3 of the Stamp office,) and will be written on one side thereof.—*Reg.* 10, 1829, *Sch. B. Art.* 3.—*p.* 149.

436. Both the application for the copy of the Proceeding or Order, and the copy itself, should be on stamp paper; the stamp paper assigned for the application, being of a different value from that on which the copy is to be written.—*Con. No.* 773.—*p.* 149.

437. Government has determined, that Copies of Deeds and other Exhibits, or papers not being proceedings, accounts, statements, or the like, provided for by Art. 3, Sch. B, Regulation 10, 1829, should, when made for record in the Courts in lieu of originals returned to the parties, be written on plain paper.—*Cir. Ord. 2d Jan.* 1835.—*p.* 149.

438. V. EXHIBITS,—when filed or entered on the Proceedings of any Regular suits, will be accompanied by a Petition, Durkhaust, or Application, stamped according to the number, at a rate for each Exhibit,—in the Courts of Sudder Ameen, of *Eight annas;* in the Courts of the Zillah and City Judges, of *One Rupee:* before the Revenue Commissioner, or in the Sudder Dewanny Adawlut, of *Two Rupees.*—*Reg.* 10, 1829, *Sch. B. Art.* 5.—*p.* 149.

439. VI. MOOKHTARNAMAHS, VAKALUTNAMAHS, and other POWERS, required to be filed for the conduct of suits, Regular or Summary, or of Proceedings of any kind, pending before the Revenue Authorities,—to be charged as prescribed for Petitions presented to those Courts and Authorities. *Exemptions.* Mooktarnamahs, executed by Native Officers and soldiers, belonging to the regular corps, on the Military Establishment of the Presidency of Fort William.—*Reg.* 10, 1829, *Sch. B. Art.* 6.—*p.* 149.

440. VII. PETITIONS, DURKHAUSTS, or APPLICATIONS, addressed to any of the undermentioned authorities in relation to matters pending before them in their official capacities, when not otherwise specified or provided for in the Schedule.

If to a Sudder Ameen, or to a Collector of Land Revenue, or of Customs, or to an officer of the Salt and Opium Department exercising Judicial Powers, or to a Magistrate, Joint Magistrate, or to a Zillah or City Adawlut, per sheet, *Eight annas.*

If to a Commissioner of Revenue and Circuit, or other authority exercising powers superior to the Zillah Adawlut, *One Rupee.*

If to the Sudder Dewanny or Nizamut Adawlut, or to the Sudder Board of Revenue or Board of Customs, Salt and Opium, per sheet, *Two Rupees.*

The following are the Exemptions: (*a*) All charges and informations respecting crimes and offences, not bailable under the Regulations.

(*b*) Petitions from prisoners, convicts, persons under examination, or otherwise in duress, or under restraint of the Court or its officers.

(*c*) Petitions of appeal presented to Magistrates against Choukeedary Assessment.

(*d*) Communications made to Magistrates in regard to Police matters not intended for record.

(*e*) Petitions to Collectors or officers making settlements, relating to matters connected with the Assessment of Lands, the ascertainment of rights, or to other matters affecting the settlement of the Government Revenue on Lands, if presented pending the formation of such settlement.

(*f*) Petitions to Boards or Commissioners of Revenue relating to the same.—*Reg.* 10, 1829, *Sch. B. Art.* 7.—*p.* 150.

441. Petitions in summary suits are to be taxed as Petitions under Article 7, Schedule B.—*Con. No.* 583.—*p.* 150.

442. Petitions from prisoners confined in Jail under civil process, will be received on plain paper, only when they relate to their treatment in Jail.—*C. O. 28th May*, 1830.—*p.* 150.

443. VIII. PLAINT—PETITION OF PLAINT IN SUITS AND APPEALS INSTITUTED IN ANY NATIVE COURT—for the recovery of any sum of money or to obtain possession of any interest, matter, and thing, will be written on a stamp varying according to the amount or value of the property claimed. The scale of charges for stamp paper from 1 Rupee to 2000 Rupees, will be found in the body of the work.—*Reg.* 10, 1829, *Sch. B. Art.* 8.—*p.* 150.

444. IX. PLEADINGS—JUDICIAL—Every ANSWER, REPLICATION, REJOINDER and SUPPLEMENTARY PLEADING filed in any suit, shall be written as follows: In the Courts of the Sudder Ameen, on paper of the value of *Eight annas.* In the Zillah and City Courts, *One Rupee.* In the Sudder Dewanny Adawlut, *Four Rupees.*

Note. The Pleadings in the Sudder and Mofussil Special Commissions, and other extraordinary Courts, will be regulated by the Rules of Practice established, or that may be established by those Courts respectively.—*Reg.* 10, 1829, *Sch. B. Art.* 9.—*p.* 150.

445. So much of the rule contained in Schedule B. Reg. 10, 1829, as prescribes that the pleadings in the Zillah Courts shall be written on stamp paper of the value of One Rupee, is modified. The pleadings will be written on paper of the value of 4 Rupees, whenever Reg. 5, 1831, may be introduced into a district. But in original suits for property not exceeding 1000 Rupees, and in cases of appeal from the decisions of Sudder Ameens and Moonsiffs, the pleadings will be written on paper of the value of One Rupee.—*Reg.* 7, 1832, *Sect.* 3.—*p.* 151.

446. The specific objections to a judgment appealed from, if not stated in the petition of appeal, must be filed in a separate pleading. For such pleadings the stamp stated in Reg. 10, 1829, Sch. B. Art. 9, is to be used.—*Con. No.* 556.—*p.* 151.

447. The exemption from stamp duty under Regulation 3, 1817, included all cases, in whatever Courts tried, below 64 Rupees. This was extended by Regulation 10, 1829, Schedule B. Article 9, to cases not exceeding 150 Rupees. By Regulation 5, 1831, Sect. 9, cases tried before Moonsiffs, to whatever amount, are exempt from stamp duty. There is no subsequent enactment affecting this last rule. Regulation 5, 1831, Section 9, Clause 3, however, enacts that no suits, however small the amount, which are instituted in the Zillah Court shall be held exempt from stamp duty, whether eventually referred to the subordinate Courts, or retained on the Judge's file. Regulation 7, 1832, Section 3, prescribes the amount of stamp in cases instituted in the Zillah Courts; viz. 4 Rupees in cases above 1000 Rupees, and 1 Rupee in original cases not above 1000 Rupees, as well as in appeals from Sudder Ameens and Moonsiffs.—*Con. No.* 767.—*p.* 151.

448. X. RAZEENAMAHS, RUFANAMAHS, SOOLUHNAMAHS, or the like; that is to say, any written application, whereby or according whereunto a suit pending in a Civil Court shall be adjusted, or be capable of adjustment without argument in Court, and award of the presiding Judge, or other officer—shall bear the stamp required for a pleading in the Court wherein it may be filed.

If the suit be dismissed on such application before the pleadings have been completed, the plaintiff will be entitled to receive back the entire amount of the said stamp duty. Provided always there be no exception taken to the paper or endorsement thereon.

If the pleadings have been completed, and the case has been called up for decision; or is on the list of causes ready for hearing, the plaintiff will receive back half the amount of stamp duty paid on the plaint.

If the adjustment by Razeenamah or Sooluhnamah be such as to require a decree to pass on which process of execution can be taken out, the plaintiff will not be entitled to any refund of the stamp duty so paid.—*Reg.* 10, 1829, *Sch. B. Art.* 10.—*p.* 151.

449. The stamp fee is not be returned in cases of *dustburdaree*, but only when a *Razeenamah* has been actually filed.—*Con. No.* 977.—*p.* 152.

450. The object of Art. 10, Sch. B. in authorizing the Courts to refund the whole or a portion of the stamp duty paid on the plaint, being to encourage so complete an adjustment of the matter in dispute as should render it unnecessary for the Court to exercise any other interference; when the plaintiff may apply to the Court either to recover the costs of suit, or to do any other act of that nature, he is not entitled under that Article to refund of the stamp duty.—*C. O. 20th July*, 1838.—*p.* 152.

451. XI. WITNESSES.—PETITIONS OR APPLICATIONS for the summoning or examination of witnesses, according to the number of persons named,—to be charged as exhibits. And no witnesses shall be summoned or examined in a Regular suit, unless his name is included in a Petition or Application in writing given in as above.—*Reg.* 10, 1829, *Sch. B. Art.* 11.—*p.* 152.

Rule. Nothing herein contained will be deemed or considered to alter or affect the rules in force, in regard to paupers.—*Ibid.*—*p.* 152.

CHAPTER III.

TRIAL AND DECISION OF SUITS.

SECT. I.

Language to be used in the Courts.

1. After the 1st December 1837, the Governor General in Council may generally or locally dispense with any provisions of the Regulations which enjoin the use of the Persian language, in any Judicial proceedings, and prescribe the language and character to be used in them.—*Act* 29, 1837, *Sect.* 1.—*p.* 153.

2. The Governor General in Council may delegate the powers thus given him to any subordinate authority.—*Act* 29, 1837, *Sect.* 2.—*p.* 153.

3. The President of the Council of India having delegated these powers to the Deputy Governor of Bengal, His Honour directs, that in the districts comprized in the Bengal division of the Presidency, the Vernacular language be substituted for the Persian in all Judicial proceedings.—*C. O. 9th Feb.* 1838.—*p.* 153.

4. The Bengalee translations of the Regulation of 1793, is to be considered the model of Bengalee, both as it regards the style and the terms of legal proceedings.—*C. O. 2d April*, 1841.—*p.* 153.

5. All proceedings addressed to the Assistant to the Agent of the Governor General at Hazareebaug, or Lohardugga, may be written in Oordoo.—*C. O. 23rd Nov.* 1838.—*p.* 153.

6. In the North Western Provinces, the use of Persian in all civil proceedings, pleadings, petitions, and writing, of whatever description, is directed to be abandoned in all Courts, and Hindoostanee substituted for it. Hindoostanee pleadings, petitions, and other writings may however be received with a Persian translation.—*C. O. 19th April*, 1839.—*p.* 154.

7. In the North West Provinces, the pleadings and proceedings will be recorded in clear intelligible Oordoo, (or Hindee, where current). The native Ministerial officers will not merely substitute a Hindoostanee for a Persian verb at the end of a sentence, under the mistaken idea that this practice will be considered as fulfilling every object in view.—*C. O. 19th April*, 1839.—*p.* 154.

8. In the North West Provinces, the Judges and the Judicial Officers are to exact from the pleaders and vakeels, and all parties moving the Court, a written Hindoostanee style and phraseology of a certain standard of correctness,—such as a well bred native, not acquainted with Persian, may adopt in his common discourse. The Courts will also exact a clear and legibly written character in all manuscript papers filed, on pain of their rejection.—*C. O. 19th April*, 1839.—*p.* 154.

9. The Oordoo language will in future be the language of record in all proceedings and orders in the Sudder Dewanny and Nizamut Adawlut, at the Presidency. It will be written in the Persian character.—*C. O. 5th July*, 1839.—*p.* 154.

10. Civil proceedings and papers transmitted to the Sudder Court, written either in Bengalee, Persian or Oordoo, will not be accompanied with translations.—*C. O. 5th July*, 1839.—*p.* 154.

11. All papers in the Mug, Ooriya and other dialects, will be accompanied with Oordoo translations.—*C. O. 5th July*, 1839.—*p.* 154.

12. In the districts in which the Oordoo or the Bengalee language is current, parties in Civil Courts may present all petitions and pleadings in any language they think most suitable for their purpose; but any document which may not be written in the Persian, Oordoo or Bengalee, must be accompanied by translations in one of these three languages. The same rule applies to Bewustahs and Futwas.—*C. O. 5th July*, 1839.—*p.* 154.

13. The authorities in the Bengal districts will correspond with each other in the Vernacular language, and with the Courts of other districts, in Oordoo. The same rule will be applied, *mutatis mutandis*, in Cuttack and the other provinces subject to the jurisdiction to the Courts.—*C. O. 5th July*, 1839.—*p.* 154.

14. The Authorities of the districts in which Oordoo is current, will be required to take measures for introducing the Nagree character in writing that language.—*C. O. 5th July*, 1839.—*p.* 154.

15. This measure, however, must be introduced in the most gradual and careful manner, so as not to obstruct public business.—*C. O. 1st Nov.* 1839.—*p.* 155.

16. The Judical Officers are forbidden to introduce the use of Nagree in writing Oordoo, without the special sanction of Government.—*C. O. 13th Jan.* 1840.—*p.* 155.

17. A European defendant in a Civil suit, filing his pleadings and petitions in the vernacular language, may add English translations on unstamp paper.—*Con. No.* 1035.—*p.* 155.

SECT. II.

Plaints in the Zillah Courts.

18. No complaint will be received but from the plaintiff, and no answer but from the defendant, or their respective Vakeels. No person is permitted to do any act or to be heard vivâ voce, in any stage of a cause, but the parties, their Vakeels or witnesssses.—*Reg.* 4. 1793, *Sect.* 2.—*p.* 155.

This enactment is modified by Act 25, 1837, which allows parties to employ an Agent.

19. Petitions of plaint may be received by the Zillah Judge, agreeably to Reg. 4, 1793, Sect. 2, from any authorized agent, or any duly empowered vakeel attached to the Court of the Judge, the Principal Sudder Ameen, or Sudder Ameen. The Judge should encourage such petitions to be filed by the vakeels of that Court to which they will ordinarily be transferred for trial.—*C. O. 18th Dec.* 1840.—*p.* 155.

20. A managing *Gomasta*, however, under the known powers vested in him, may institute and defend suits, and carry on all concerns connected with the *Kootee* of which he is ostensible representative, without producing any authority from his principals for so doing.—*Con. No.* 75.—*p.* 156.

21. Every plaint will state precisely the matter of complaint, and the total amount or value of the property or money demanded; the name and residence of the person complained against, and the time when the cause of action arose. It will be signed by the complainant or his vakeel. It will also be signed, numbered and dated in the order in which it is received by the Judge, and registered in a Book by an officer of the Court, appointed to copy and register complaints.—*Reg.* 4, 1793, *Sect.* 3.—*p.* 156.

22. There can be no objection to a Judge pointing out officially to a party in a suit the proper mode to be followed by him when he sees occasion to do so.—*Con. No.* 705.—*p.* 156.

SECT. III.

Limitation of time for the cognizance of suits.

The enactments on this subject were materially modified by the draft of an Act, under the consideration of the Legislative Council, while this sheet was passing through the press. As it will probably become law, by the time the volume is published, it will be given in the Addenda.

SECT. IV.

Valuation of Suits.

23. In suits for land paying revenue to Government, if forming one entire mehal, or a specific portion of it, with a defined jumma, the value in the Ceded and Conquered Provinces and Cuttack will be assumed at the amount of the annual jumma payable to Government; and where the land has been assessed in perpetuity, at three times the amount of the annual jumma.—*Reg.* 10, 1829, *Sch. B. Art.* 8.—*p.* 156.

24. In suits for Lakheraj lands, at eighteen times the amount of the annual rent by computation.—*Ibid.*—*p.* 156.

25. In suits for damages, compensation for injury, loss of caste, and the like, at the value computed by the plaintiff.—*Ibid.*—*p.* 156.

26. In suits for houses, gardens, and other things of value, not of the description above specified, and for any interest in Malgoozaree lands, not capable of valuation, as above, at the estimated selling price.—*Ibid.*—*p.* 157.

27. If the land, the right of pre-emption of which is claimed, be land paying revenue to Government, either as an entire mehal, or a specific portion of it with a defined jumma, the cause of action must be estimated at three times the amount of the Sudder jumma; if lakheraj, at eighteen times the amount of the computed annual rent; if land paying revenue to Government, but neither an entire mehal, nor a specific portion of it, with a defined jumma, at the estimated selling price.—*Con. No.* 1047.—*p.* 157.

28. As no provision has been made for the valuation of cases where the land is neither situated in the Ceded and Conquered Provinces, nor permanently assessed, the distinction laid down in the *first* part of the Note annexed to Regulation 10, 1829, Sch. B. Art. 8, (Rule 26,) should be observed.—*Con. No.* 1143.—*p.* 157.

29. A practice having prevailed of computing the amount of action in suits for lands paying revenue to Government, not forming an entire estate, or a specific portion of it with a defined jumma,

at the annual produce of the lands; the Sudder Court calls attention to the 4th paragraph of the note on Art. 8, Sch. B. Regulation 10, 1829, (Rule 26,) which requires the amount to be computed at the estimated selling price of the land sued for.—*C. O. 23rd Aug.* 1833.—*p.* 157.

30. If an Ijardar sue for possession of a certain portion of land, not being rent free, nor an entire mehal paying revenue to Government, nor a specific portion of one, he will lay his suit at what he may consider the value of his interest in the thing claimed.—*Con. No.* 702.—*p.* 157.

31. Suits instituted with a view to fix the jumma of ryot's holdings should be laid at one year's rent.—*Con. No.* 1272.—*p.* 157.

32. In suits brought by a mortgager to regain possession of property mortgaged, the value of the suit and the amount of stamp, should be calculated on the value of the property, and not on the sum for which the property was mortgaged.—*Con. No.* 957.—*p.* 157.

33. If the cause of action be one and the same, a plaintiff may sue for two or more distinctly assessed mouzahs, or mehals, in one and the same action, laying his plaint at the aggregate value of the whole sued for.—*Con. No.* 577.—*p.* 157.

34. The amount or value of the property claimed is to be calculated in Sicca Rupees. The Sicca Rupee will be taken as the standard coin for estimating the powers of the Native Judges in the investigation of suits.—*Con. No.* 1068.—*p.* 158.

35. A petition claiming a share of the property sued for, in consequence of a notice under Regulation 5, 1831, Sect. 6, Cl. 4, in a Moonsiff's Court, need not be written on stamp paper.—*Con. No.* 706.—*p.* 158.

36. When a Zemindar claims from a tenant a higher rent than he has been accustomed to receive; the value of the suit will be computed at the yearly enhanced rent which forms the matter of dispute.—*Con. No.* 811.—*p.* 158.

37. In plaints for the recovery of a sum of money due on a bond or agreement less than the whole sum for which the bond was executed, the sum of money for which the suit is instituted, should regulate the amount of the stamp, not the whole amount under the bond, which is not claimed.—*C. O. 31st Aug.* 1832.—*p.* 158.

38. But if the plaintiff means in reality to try the main question of the bond, and under pretence of suing merely for the instalment, files his plaint on a stamp equal to that instalment only, he will be non-suited in every Court.—*C. O. 31st Aug.* 1832.—*p.* 158.

39. The practice of excluding the fractional parts of a Rupee from calculations is irregular. Any sum, however small, which constitutes an excess, requires an increase of stamp.—*Con. No.* 874.—*p.* 158.

40. The petitions for regular appeals under Regulation 2, 1819, Sect. 30, Cl. 7, as well as all the pleadings, exhibits, &c. connected therewith; and in like manner the second or special appeal, with all its pleadings, exhibits, &c. is liable to the full amount of stamp duty prescribed in Reg. 10, 1829, Sch. B. Art. 8.—*Con. No.* 987.—*p.* 159.

41. Suits for a farm leasehold of any denomination during a limited term, or for any interest in the land during a limited period only, must be considered as falling under the general rule laid down in the fourth paragraph of the note on Article 8, Schedule B. Regulation 10, 1829. (Rule 26)—*Con. No.* 1101.—*p.* 159.

42. Petitions of complaint preferred against the officers of Government in their official capacity, under Regulation 2, 1814, should be written on stamp paper of the same value as all other plaints.—*Con. No.* 1116.—*p.* 159.

SECT. V.

Cases in which suits have been undervalued.

43. Every plaint will specify the value of the thing claimed; if it be understated in the proportion of *ten* per cent. and the plaintiff have not before the completion of the pleadings, filed a second plaint as appointed in Regulation 26, 1814, Section 7, Clause 1, the defendant will be entit-

led to a non-suit, and the Courts are required to pass judgment accordingly, any thing in the existing Regulations to the contrary notwithstanding.—*Reg.* 10, 1829, *Sch. B. Art.* 8.—*p.* 160.

44. If, during the trial, it appears that the plaint has been filed on a stamp of less than the prescribed value, and the Court is of opinion that the error was not intentional or fraudulent, the plaintiff or appellant will be permitted to file a duplicate on stamp paper of such value as shall complete it to the full amount required by law.—*Reg.* 26, 1814, *Sect.* 7, *Cl.* 1.—*p.* 160.

45. If on the trial of any summary appeal preferred under Reg. 13, 1808, Sect. 4, the appellate Court is of opinion that the suit from its amount was not cognizable by the lower Court, but that the irregularity arose from no fraudulent intention, the appellate Court may direct the lower Court to refund the stamp duty paid on instituting the suit, and the plaintiff shall be permitted to institute his suit *de novo* in the proper Court.—*Reg.* 26, 1814, *Sect.* 7, *Cl.* 2.—*p.* 160.

46. If the defendant deny the statement of the value of the suit as alleged by the plaintiff, and allege it to be such as not to be cognizable in the Court in which it was instituted, the Judge, previously to entering on the merits of the case, will make all suitable enquiry to ascertain whether it be cognizable or not in his Court, and pass an order accordingly, leaving either party to appeal from that decision. No such objection to the plaintiff's statement of the cause of action, will be received unless offered in the first instance in answer to the plaint. No appeal will be admitted from the orders of the Judge, unless preferred in one month after the order was passed; or unless sufficient cause can be shewn for the delay.—*Reg.* 13, 1808, *Sect.* 4, *Cl.* 1.—*p.* 160.

47. Whenever the defendant in a regular suit may plead, that the plaintiff has understated the value of the property sued for, either to evade the stamp duty, or to render the suit not cognizable in appeal to the Privy Council, the Judge, or Principal Sudder Ameen, before the pleadings are completed, will enquire as to the correctness of the allegation; and pass such order as may appear just, leaving the party dissatisfied to prefer a summary appeal to the Sudder.—*C. O. 19th June*, 1840.—*p.* 161.

48. The objection of the defendant to the plaintiff's valuation should generally be brought forward in his answer to the plaint. The presiding Judge, after a summary enquiry, will, if the value has been underrated without a fraudulent intent, permit the plaintiff to file a supplementary plaint, as provided for in Section 7, Regulation 26, 1814. This decision will be liable to alteration or reversal, in a regular or summary appeal. Cases may arise in which, though the defendant has not objected to the valuation, the appellate Court may deem it necessary to notice and rectify it.—*Con. No.* 1046.—*p.* 161.

49. A summary appeal may be had from a non-suit passed under Reg. 10, 1829, Sch. B. Art. 9, if the plaintiff can shew that the value of the property claimed has not been understated by him, and that the order passed by the Sudder Ameen or Principal Sudder Ameen was erroneous.—*Con. No.* 872.—*p.* 161.

The following are the latest rules on this subject:

50. In the event of its coming to the knowledge of the Court of original jurisdiction or appeal that the plaint in any suit has not been written on paper of the proper stamp, the plaintiff will be non-suited, if any fraud be apparent; or directed to file a duplicate plaint, if no fraud be presumable.—*Cir. Ord. 20th Aug.* 1841.—*p.* 161.

51. If the error of valuation in the original suit be discovered in appeal, the appellate Court, if the more lenient process be determined on, will retain the case on the file, and return the plaint and decree, to the lower tribunal, that a duplicate plaint may be filed, and the necessary alteration made in the costs; and on the return of the document, proceed to determine the case on its merits.—*C. O. 20th Aug.* 1841.—*p.* 161.

52. In suits of the nature described in Cl. 4, of the note to Reg. 10, 1829, Sch. B. Art. 8, the objection of the defendant to the plaintiff's valuation of property must be brought forward in his answer to the plaint. No such objection can be urged as a matter of right by the defendant in any subsequent stage of the proceeding, either in the Court of original jurisdiction, or of appeal. Nor shall the appellate Court try the question of inferior valuation except on a summary or regu-

lar appeal from the orders of the inferior Court. When such appeal is made, the appellate tribunal will proceed agreeably to Reg. 26, 1814, Section 7, Cl. 2, if no fraudulent intention is apparent.—*C. O. 20th Aug.* 1841.—*p.* 161.

SECT. VI.

Zillah and City Courts—Notice to Defendants in Civil Suits.

53. When a Civil suit has been instituted in the prescribed mode, the general first process against the defendant, instead of the old mode of summons and requisition of security, will be a notice to him, containing a short statement of the demand, requiring him to attend in person, or by vakeel, and deliver a reply to the plaint within a specified day.—*Reg.* 2, 1806, *Sect.* 2, *Cl.* 1. —*p.* 162.

54. If the defendant has an accredited agent at the Court, generally and specially empowered to receive for his client, judicial notices which may not be required to be served personally, the notice will be tendered to him, and he will either acknowledge the receipt of it by endorsement, or desire it to be served on the person of his client by an officer of the Court.—*Reg.* 2, 1806, *Sect.* 2, *Cl.* 2.—*p.* 162.

55. This clause is considered by the Court as clearly recognizing the admission of general powers of Attorney, or Mooktars; but in receiving or rejecting this description of agent, much must be left to the discretion of the local authority.—*Con. No.* 512.—*p.* 162.

56. If the defendant has not an accredited agent at the Court, or if he has not been empowered, or declines, to receive the notice, and if the defendant should reside within the jurisdiction of the Court, the notice will be served on him through the Nazir by a single peon, who will simply require an acknowledgment to be endorsed on it by the defendant. If he be absent, the notice must be acknowledged by his principal agent, or his representative. If the defendant be resident within the jurisdiction of another Court, the notice will be transmitted to the Judge of that Court to be served through him, as above. If he be resident within the jurisdiction of no Zillah Court, and the suit be still cognizable, from the landed property claimed being situated within its jurisdiction, or, in other cases, from the cause of action having arisen within it, the notice, in cases of landed property, will be served on the defendant's agent in charge of the land. In other suits, the Court will convey the notice to the defendant in such manner as may be most certain and convenient.—*Reg.* 2, 1806, *Sect.* 2, *Cl.* 3.—*p.* 162.

57. 58. If the defendant abscond, or cannot be found, or shut himself up, so that the notice cannot be served, the Nazir will return that he has been unable to serve it. The Judge will then cause a Proclamation to be stuck up in the native language in the Court-house, with a copy of the notice, stating that if the defendant does not appear in fifteen days, the case will be tried ex-parte. A copy of the proclamation and notice will also be affixed on the outer door of the defendant's usual residence, or in a conspicuous place in the village where he resides. The Nazir will return the proclamation to the Court with an endorsement stating the times and the places in which it has been fixed. If the defendant does not appear at the time fixed in the proclamation; or if he neglect to appear in the specified time, after having been served in person or by Vakeel with the notice, as ordered above; or if, on appearing, he refuses to answer the plaint, or makes other default, the Court will proceed to try the case ex-parte, and, after examining the plaintiff's allegations and the depositions of his witnesses, will give judgment as if the defendant had appeared, answered, and entered into proof.—*Reg.* 2, 1806, *Sect.* 3.—*Reg.* 4, 1793, *Sect.* 11.—*p.* 163.

59. In the spirit of these rules, whenever a defendant appears at any time before the decision of the suit, and proves satisfactorily that the default was not wilful, he will be permitted to file his answer, though an ex-parte examination had begun; and to adduce evidence on it, if the merits of the case appear to require it.—*Con. No.* 375.—*p.* 163.

60. A party being in attendance on a Criminal Court in bail to answer a Criminal charge, is not liable to arrest on civil process.—*Con. No.* 885.—*p.* 163.

61. A person being in attendance upon a Collector to defend a suit pending before that of-

ficer, is protected from arrest under Civil process: the protection will last as long as he is in attendance, or coming to, or returning from Court.—*Con. No.* 893.—*p.* 163.

62. Where an individual has borrowed money and has removed to another part of the country, leaving property in the place where the debt was contracted, and fails to return within a reasonable period, a regular suit may be instituted against such property, though there should be no defendant to be sued, and the Courts will proceed as laid down in Regulation 2, 1806, Section 2 and 3.—*Con. No.* 854.—*p.* 163.

SECT. VII.

Zillah and City Courts.—Security for the Defendant's appearance.

63. If the defendant shall appear in person, or by Vakeel, and deliver his answer to the plaint, and no reason subsequently appear to require security for his appearance during the trial, he shall be allowed to defend it to its termination, without being called on to give security. But if the Judge has reason to believe, that the defendant intends to abscond, or to withdraw from the jurisdiction, he may, either on the institution of the suit, or while it is depending, issue a process, requiring the defendant to give security for his appearance, as prescribed on the issue of summons in Regulation 4, 1793, Section 5, under penalty of being committed to close custody till the security be given, or the decree of the Court complied with; or until an attachment of property has taken place to secure the ultimate judgment in the cause. The security bond, will in substance correspond with that prescribed by Reg. 11, 1797, Sect. 3, and in fixing the extent of the security, the Judge is authorized to exercise the discretion vested in him by Reg. 3, 1802, Sect. 2.—*Reg.* 2, 1806, *Sect.* 4.—*p.* 164.

64. But if the defendant has actually absconded into another jurisdiction before the process instituted under Regulation 2, 1806, Section 4, can be served on him, the rule contained in that enactment cannot apply to him. If he has been arrested by the Court into whose jurisdiction he has removed, he will be released, and the Court in which the suit was instituted will proceed to try the case *ex-parte*, if he does not appear.—*Con. No.* 888.—*p.* 164.

65. If the Judge, under the option given him in the Section above (4) should refuse to take security from the defendant, an appeal from such order will lie to the Sudder Court.—*Con. No.* 963.—*p.* 164.

66. The form of the security bond.—*Reg.* 11, 1797, *Sect.* 3, *Cl.* 1.—*p.* 165.

67. The Judge will fix the extent of the security required for the personal attendance of the defendant, exercising his own discretion regarding the responsibility of the security. In the first instance he will demand only such security as may be necessary to secure his attendance during the trial. If at any time in the course of the trial, the security appear insufficient, the Judge may require additional security.—*Reg.* 3, 1802, *Sect.* 2.—*p.* 165.

68. If a defendant for whose appearance security may have been taken, do not appear, or appearing, refuse to answer, the plaintiff may institute a suit against the securities, and recover from them what he may prove to be due from the defendant; or he may proceed against the defendant, as defendants are to be proceeded against who have been served with summons and do not appear, or appearing, refuse to give answer.—*Reg.* 4, 1793, *Sect.* 12.—*p.* 165.

69. In case the defendant shall be a Hindoo or Mahomedan woman of rank or quality, which would render it improper for her to appear in a Court, the Judge will issue no compulsory process to compel her to appear and make answer, but will issue a summons requiring her to appear in person, or by Vakeel, at a certain time to answer the complaint and abide the orders of the Court.—*Reg.* 4, 1793, *Sect.* 13.—*p.* 165.

70. When a guardian may be a defendant jointly with his ward in a civil suit, the securities above named will not be demanded from the guardian.—*Reg.* 55, 1795, *Sect.* 2.—*p.* 165.

SECT. VIII.

Zillah and City Courts.—Security from Defendant for the execution of the decree—Attachment of his property.

71. If it be shewn to the satisfaction of the Judge that the defendant intends privately to dispose of his property, or by withholding the public dues, to cause the public sale of it, or to remove any personal property from the jurisdiction of the Court, to evade the execution of the decree, the Judge may call on him for adequate Malzaminy security; and if it be not given, may attach his property to the amount of the cause of action, or as much as may be deemed necessary to secure the execution of the decree.—*Reg.* 2, 1806, *Sect.* 5, *Cl.* 1.—*p.* 166.

72. No attachment of the lands of the defendant is to be made until the Judge is satisfied by proof that there are sufficient grounds for requiring Malzaminy security, and until the defendant has failed to furnish it within a reasonable time.—*Con. No.* 190.—*p.* 166.

73. A mere entry into the compound does not authorize the officer in charge of a process to break open an outer door in order to serve it.—*Con. No.* 745.—*p.* 166.

74. The property of a European defendant is equally liable to attachment with that of a native when there is reason to believe that he intends to abscond, or withdraw himself, or remove his property, the detention of which is necessary to the satisfaction of eventual judgment.—*Con. No.* 588. —*p.* 166.

75. It is not the mere oath of the plaintiff that is sufficient to prove that the defendant intends to remove his property, and to justify its attachment.—*Con. No.* 588.—*p.* 166.

76. The defendant may legally alienate his property until the time when the proclamation of attachment has been issued.—*Con. No.* 588.—*p.* 166.

77. Under Section 5, Regulation 2, 1806, the Judge may cause the attachment of the defendant's property, though situated in another jurisdiction.—*Con. No.* 665.—*p.* 166.

78. The same course should be pursued in attachments under Section 5, Regulation 2, 1806, as when the attachment is made in execution of a decree, the ulterior object in both cases being the same.—*Con. No.* 916.—*p.* 167.

79. The attachment will be made by a written order of the Court, and proclaimed on the spot, or affixed in some conspicuous place where the property is situated, after which any private alienation of it during attachment is illegal and void, and any unauthorized removal of the property to evade the sequestration, will be punished according to the Regulations in force concerning a resistance of the Court.—*Reg.* 2, 1806, *Sect.* 5, *Cl.* 2.—*p.* 167.

80. In suits for landed property of considerable value, where it may be necessary for the purposes of justice to divest the defendant of the management of his property, till the suit be decided, or Malzaminy security be given, the attachment will be made through the Collector, in the manner prescribed [in Regulation 5, 1827.] But in other cases, the attachment shall not, without special reasons to be recorded, remove the defendant from the management of the property, till a decision be passed in the Zillah Court, nor be construed to preclude any act of the defendant relative to the property, inconsistent with the attachment.—*Reg.* 2, 1806, *Sect.* 5, *Cl.* 2.—*p.* 167.

81. Upon the decision of the suit, the Court shall pass such order, regarding the attached property, as may appear just and conformable with the judgment given. If the decree be against the defendant, all his right and interest in the property (save arrears of rent due from land, or other bonâ fide claims entitled to a prior satisfaction), will be held answerable for the execution of the judgment. If the plaintiff's case be dismissed, or be not fully established, he will reimburse the defendant all expense and loss arising from the attachment, as part of the costs of suit.—*Reg.* 2, 1806, *Sect.* 5, *Cl.* 3.—*p.* 167.

82. Whenever any property may thus have been attached, the cause shall be tried and concluded as speedily as possible, without reference to the order in which it was instituted. The attachment will also be taken off at any time during the trial on the delivery of sufficient malzaminy security. —*Reg.* 2, 1806, *Sect.* 6.—*p.* 167.

83. When personal bail or security for money may be demanded from a party in a Civil suit, and he shall tender a deposit of money or Company's paper, it shall be accepted for Mal or Hazir-zaminy security, and be carefully kept by the Treasurer of the Court, to be restored or disposed of, as the Court may direct on the termination of the cause, or when the object for which the deposit was made, is accomplished.—*Reg.* 2, 1806, *Sect.* 8.—*p.* 168.

SECT. IX.

Zillah and City Courts.—General Rules of attachment of Land by order of the Civil Courts.

84. Whenever a Zillah Court may deem it necessary to provide for the management of landed property, it will issue a precept to the Collector to hold the land in attachment, and to appoint a person to manage it, under good security. If any person interested in the estate is dissatisfied with the selection made by the Collector or with the subsequent conduct of the manager, he may appeal to the Board (Revenue Commissioner) who will either confirm the appointment, or order another manager to be chosen.—*Reg.* 5, 1827, *Sect.* 3.—*p.* 168.

85. The precept of the Zillah Court will describe specifically the land to be attached, and the attachment will not be taken off without a further precept.—*Reg.* 5, 1827, *Sect.* 4.—*p.* 168.

86. The intent of this Regulation is to prevent the attachment of lands by a Civil Court, and to devolve that duty on the Revenue officers. A Civil Judge therefore, cannot depute an Ameen to attach lands, in pursuance of a decree; he must issue his instructions to the Collector.—*Con. No.* 752.—*p.* 168.

87. The provisions of the Regulation quoted above are general, and include rent free land as well as land paying revenue to Government; when therefore it may be necessary to attach such free lands, it must be done by a precept to the Collector.—*Con. No.* 1039.—*p.* 168.

SECT. X.

Zillah and City Courts.—Process.

88. Every process, rule, order, or decree of the Courts will be served through the Nazir, without application to any one, or interference from others.—*Reg.* 4, 1793, *Sect.* 13.—*p.* 169.

89. Any Judicial officer whatever, having authority to issue any kind of process, may, when he thinks proper, personally superintend the execution of the same.—*Reg.* 1, 1825, *Sect.* 2.—*p.* 169.

90. The expense of all processes on behalf of the plaintiff, must be specified on the back of each summons, and paid into Court previously to their being issued; a receipt will be endorsed on the process in each instance by the nazir, specifying the amount, and the person from whom it was received.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 6.—*p.* 169.

91. Processes will be written or printed in the Persian or Bengalee language and character, for Bengal and Orissa: for all other provinces in the Persian or Hindoostanee language, and the Persian and Nagree characters.—*Reg.* 4, 1793, *Sect.* 20.—*p.* 169.

By recent enactments the Bengalee language is to be used in Bengal, and the Oordoo in the North West Provinces.—*p.* 169.

92. In Zillah Cuttack, the Ooriya language and character will be used instead of the Bengalee. —*Reg.* 14, 1805, *Sect.* 11.—*p.* 169.

SECT. XI.

Zillah and City Courts.—Execution of their Process within the limits of the Supreme Court.

93. Any process issued by any Court in the Mofussil, may be executed within the limits of Calcutta in manner following: A copy of such Process authenticated by the Court, accompanied by a translation in the English language, will be presented to any Judge of Her Majesty's Courts, who may thereupon, endorse and direct the same to be executed within the local limits of Her Majesty's Courts by the Sheriff, or by any Justice of the Peace.—*Act* 23, 1840, *Sect.* 1.—*p.* 169.

94. Upon the delivery of every such Process so indorsed to the Sheriff, he will note the date of the delivery, and execute it as if it had issued originally from a Court of the Crown, and had been

delivered at the date on the memorandum. The Sheriff will make no distinction as to priority between the execution of any Process of the Supreme Court, and any Process under this Act. But every Process, whether original, or indorsed as above, will, amongst each other, be subject to the same rules touching the mode and order of execution, as are now established in respect of Processes originally issued from the Courts of the Crown.—*Act* 23, 1840, *Sect.* 2.—*p.* 170.

95. The Sheriff will be liable to be proceeded against in the Courts of the Crown for all matters touching the execution of any Process executed under this Act, as if it had originally issued from any of Her Majesty's Courts of Justice. All persons and property seized or detained under any Process under this Act, will be dealt with as if such persons or property had been seized or detained under a Process issued from any Court of the Crown.—*Act* 23, 1840, *Sect.* 3.—*p.* 170.

96. All persons disobeying or obstructing the execution of any Process indorsed under this Act, will be punishable in Her Majesty's Courts of Justice, as if the same had issued from such Courts. In the case of process for the attendance of witnesses, Her Majesty's Courts will be governed by the like rules touching expences and other matters which are established in regard to subpœnas issued from such Courts.—*Act* 23, 1840, *Sect.* 4.—*p.* 170.

97. In the case of persons seized or detained by virtue of Process under this Act by a Justice of the Peace, or Sheriff, it will be his duty, if so required by the indorsement of the Judge, to deliver the party in custody to such persons as may be particularly specified in the indorsement, and who shall have been charged with the execution of the Process by the authority originally issuing it; and to cause the party in custody to be conveyed to any place within the Company's territories beyond the local limits of the jurisdiction of the Supreme Court.—*Act* 23, 1840, *Sect.* 5.—*p.* 170.

98. In the case of any Process required to be indorsed under the authority of this Act, the Judge who shall be required to indorse it, may remit it for amendment to the authority which issued it, if it appear defective in any matter of form.—*Act* 23, 1840, *Sect.* 6.—*p.* 170.

99. In the case of any Process required to be indorsed under this Act, for the seizure or detention of any person, the Judge, who shall be required to indorse it, may direct by indorsement that bail, (the amount and number of Sureties to be specified in such indorsement) may be taken; and for this purpose to call for such documents and to make such enquiry as he shall think proper.—*Act* 23, 1840, *Sect.* 7.—*p.* 171.

100. The following detailed instructions are issued on the subject of Act 23, 1840.—*C. O. 1st March*, 1841.—*p.* 171.

101. Every process will be forwarded in an envelope to the address of the Deputy Sheriff of Calcutta, with a letter drawn up agreeably to a given form.—*Ibid.*—*p.* 171.

102. Any money which it may be necessary to send to the Deputy Sheriff, will be remitted through the general Treasury by the Collector of the District.—*Ibid.*—*p.* 171.

103. All subordinate Judicial officers will submit the processes of their Courts, which may require execution under Act 23, 1840, to their European principal, to be forwarded to the Deputy Sheriff.—*Ibid.*—*p.* 171.

104. All processes will be drawn up agreeably to the forms marked B. and C., or to such other forms as may from time to time be circulated by the Sudder Court.—*Ibid.*—*p.* 171.

105. The party, at whose requisition any witness may be summoned, must be prepared to pay to the witness any expences the Judges of the Supreme Court may think proper.—*Ibid.*—*p.* 171.

106. The Zillah Judges will be careful that their own processes are drawn up correctly, and that the processes of the subordinate Courts are drawn up agreeably to these rules and to the Regulations of Government.—*Ibid.*—*p.* 171.

107. A return will be made to the Sudder Court on the 1st of September, of the number and description of processes issued from the Courts under the provisions of Act 23, 1840, and the expence, incurred by the parties on this account.—*Ibid.*—*p.* 171.

108. 109. Form of letter to be addressed to the Sheriff of Calcutta.—*p.* 171.

110. Form of Summons.—*p.* 172.

111. Form of Proclamation for the attendance of the Defendant.—*p.* 172.
112. Form of Subpæna.—*p.* 172.
113. Form of warrant for the apprehension of a Witness.—*p.* 172.
114. Form of warrant for security to be furnished by a Defendant.—*p.* 173.
115. Form of Security Bond to be executed by a Defendant.—*p.* 173.
116. Form of Writ of Sequestration.—*p.* 173.
117. Form of Writ of execution against the person.—*p.* 174.
118. Form of Writ of execution against the effects.—*p.* 174.

SECT. XII.

Zillah and City Courts.—Resistance of Process.

119. If any person, not being a zemindar, talookdar, or farmer, shall resist, or cause to be resisted, any process, rule, order, or decree issuing from a Zillah or City Court, the Court, on proof of the resistance, on oath, will cause the offender to be summoned to answer the charge. If the offender shall abscond, or shut himself up in a house, or retire to any place so that the summons cannot be served on him, the Court will proceed against him as ordered against other persons absconding, so that a process cannot be served on them.—*Reg.* 4, 1793, *Sect.* 25.—*p.* 174.

120. The object of the summons above alluded to, is to give the summoned party an opportunity of defending himself against the charge, which is distinct from ordering his apprehension after conviction. A person thus summoned is at liberty to answer the charge through a Vakeel and is not required to appear in person.—*Con. No.* 1216.—*p.* 175.

121. If the offender shall not appear, or if he shall appear, and the Court, on hearing his answer and the evidence he produces, is of opinion that he is guilty of the charge, the Court will adjudge him to pay such fine to Government as, in consideration of his circumstances and of the offence, may appear just.—*Reg.* 4, 1793, *Sect.* 25.—*p.* 175.

122. A fine imposed in conformity with Section 25, as above, may be levied under the same rules as are applicable to the execution of decrees of Court, that is, either by the sale of property or the confinement of the person.—*Con. No.* 1214.—*p.* 175.

123. If the offender should not prefer an appeal within the limited time, the Court will proceed to levy the fine, by the same process by which its own decrees for sums of money are carried into execution.—*Reg.* 4, 1793, *Sect.* 25.—*p.* 175.

124. The Zillah Judge himself is expected to dispose of all common cases of resistance of Civil process. He should make over to the Magistrate only those cases which may have been attended with acts of violence.—*Con. No.* 1033.—*p.* 175.

125. On such occasions, in the event of a legal arrest, by a warrant from the Civil Courts, and a forcible rescue, the Magistrate will not order the Police forcibly to enter the house where the person rescued may be, but the Civil Court will proceed against the offender agreeably to Regulation 4, 1793, Section 25.—*Con. No.* 765.—*p.* 175.

126. When the Judge of one district may be called on to aid the process of another district, he will back it with his official signature and send one or more peons to assist in executing it. In ordinary cases therefore, any resistance of such process must be considered as a resistance of the process of the Court within whose jurisdiction it took place, and is cognizable by the Judge of that Court.—*Con. No.* 1115.—*p.* 175.

127. If a Zemindar, Talookdar, or Proprietor of land resist or cause to be resisted any process of the Court, the offender is to be summoned to answer the charge. If he abscond, or so conceal himself that the summons cannot be served on him, the Court will proceed as in the case of other persons absconding, so that the process cannot be served on them. If he shall not appear at the prescribed time, or, if appearing, the charge be proved against him, the Court will decree his Zemindary, Talook or estate, forfeited from the date of the decree.—*Reg.* 4, 1793, *Sect.* 22.—*p.* 176.

128. If the case be not appealed within the time limited for appeals, the Court will forward a

copy of its decree of forfeiture to the Governor General in Council.—*Reg.* 4, 1793, *Sect.* 22—*p.* 176.

129. If the offender appeal to the Sudder Court, and that Court should confirm the decree, it will transmit a copy of the decree and the proceedings to the Governor General.—*Reg.* 4, 1793, *Sect.* 22.—*p.* 176.

130. The Governor General, within four weeks after receiving the decree adjudging the estate forfeited, may either confirm the forfeiture, or commute it for a fine. In the latter case, the Court which transmitted the decree, on receiving notice of the fine, will proceed to levy it. If within four weeks the Governor General should not order the decree to be executed, or commute the forfeiture, the decree is to stand good against the offender. In this case, as well as in case the forfeiture is confirmed, the Court will request the Collector to depute an Ameen to sequester the lands, and collect the revenues. If the lands are too small to bear the expense of an Ameen, the nearest Tehseeldar will be ordered to take charge of them and he will act under the same responsibility as the Ameen.—*Reg.* 4, 1793, *Sect.* 22.—*p.* 176.

131. Section 22, as above, is not considered to authorize or to intend a sequestration of lands, till the judgment of forfeiture be confirmed.—*Con. No.* 2.—*p.* 176.

132. When the decree adjudging the lands forfeited is confirmed, or stands good, the Governor General may either confer the rights possessed by the offender on his heirs, on their agreeing to make good all sums due to Government on account of the lands forfeited, and to pay the fixed public revenue assessed on them; or, if the forfeited land be a dependant talook, on their agreeing to pay the revenue payable from it to the proprietor within whose estate it is situated. Or, the Governor General may order the lands to be disposed of by public sale.—*Reg.* 4, 1793, *Sect.* 23.—*p.* 177.

The same rules are applicable precisely to the case of resistance on the part of a farmer.

133. The Governor General, on receiving the decree of foreiture, in regard to a farm, may either order it to be executed, or commute it to such a fine, as, from the circumstances of the offending farmer, he may consider adequate. If the offender be not desirous of continuing in his farm, the Governor General may not only impose a fine on him, but compel him to retain it till the term expires. If the decree of forfeiture be confirmed, the Court will without delay send a copy of the decree to the Collector. If the lease of the offender be annulled, and a balance be due to Government at the close of the year in which it is annulled, both the farmer and his security will be considered answerable for it, and the Collector will proceed against them in the usual mode. The offender is permitted to prosecute as usual, the dependant Talookdars, under-farmers, and ryots for rent due to him.—*Reg.* 4, 1793, *Sect.* 24.—*p.* 177.

134. An appeal preferred against the decree of a Zillah Court decreeing the forfeiture of an estate for resistance of process, is to be received as a Regular appeal.—*Con. No.* 198.—*p.* 177.

135. By Reg. 5, 1831, Sect. 28, Cl. 3, all suits decided by a Zillah Court, are appealable to the Sudder Court. When, therefore, a Zillah Judge may pass a decree adjudging the forfeiture of lands or fine, for resistance or evasion of process, an appeal will lie to the Sudder, without reference to the amount of the annual jumma, produce, or fine. In such cases, the Judge will wait the period of appeal.—*Con. No.* 780.—*p.* 178.

136. In all these cases of resistance, if the Judge, whose order has been resisted, thinks the imposing of a fine a more adequate punishment than the forfeiture of an estate or farm, he is allowed to impose a fine, as on persons not landholders or farmers, subject to the same course of appeal.—*Reg.* 9, 1799, *Sect.* 3.—*p.* 178.

137. In modification of the preceding rules, it is enacted, that the decree of forfeiture of an estate or farm is not to be deemed final, until confirmed by the Governor General, and will not be carried into execution till his confirmation has been actually received.—*Reg.* 9, 1799, *Sect.* 3.—*p.* 178.

138. A Civil Judge, in cases of resistance of the process of his Court, is not at liberty to call

upon the Magistrate to enforce his orders; he must pursue the course laid down in the Regulation.—*Con. No.* 1209.—*p.* 178.

139. Suits in reference of the process of the Zillah and subordinate Courts, with a view to the forfeiture of estates, or cancelling of farms, will be tried in the first instance by the Court whose process may have been resisted, subject to the ordinary course of appeal. If the subordinate Court be not competent to try it, a report should be made to the Judge, who will exercise his own discretion, in referring it to some other Court.—*Govt. Ord. No.* 4.—*p.* 178.

SECT. XIII.

Neglect of the party in possession of the disputed land to discharge the public revenue.

140. When any person claiming the proprietory right in a mehal, has instituted a suit for the recovery of it, if the party in possession shall neglect to discharge the public revenue payable on it, and it be advertised for sale for arrears, the plaintiff may apply to the Court to be put in possession of the contested mehal, on paying up all arrears and expences, and giving security as hereinafter provided. The Court, on receiving this application, will give information of it to the defendant or his Vakeel, and if he neglect to pay up all arrears, with interest and charges, by noon of the Court day next preceding the day fixed for the sale, the Court will receive the amount tendered by the plaintiff, and cause him to be put in possession of the mehal, subject to the rules for taking security in the case of appellants and respondents in Regulation 13, 1808, Section 11, Clause 4. The amount thus received will be transmitted to the Collector.—*Reg.* 11, 1822, *Sect.* 29.—*p.* 179.

SECT. XIV.

Procedure of the Zillah and City Courts.—Pleadings.

141. The Judges of the Zillah Courts will take up suits for trial in the order in which they may be filed, except when the Regulations direct otherwise. If the Judge for special reasons brings on a cause before its turn, he will state them distinctly on the record of the trial. The Register will enter in a book the causes for the trial of which a day has been appointed, and on the day fixed, call them on for trial in that order. A paper, with a list of the causes and of the day appointed for hearing them, will be affixed in the Court room seven days before the day of trial.—*Reg.* 4, 1793, *Sect.* 19.—*p.* 179.

142. If the defendant shall appear in person or by Vakeel, the Court will fix a day for him to answer the complaint, which period may be enlarged at its discretion.—*Reg.* 4, 1793, *Sect.* 5.—*p.* 179.

143. If the defendant shall not appear at the time limited in the notice, or on receipt of the summons, or having appeared, refuse to answer, the Court, on examining the plaintiff only, and the deposition of his witnesses, will try the cause *ex-parte* and give judgment as if the defendant had appeared, answered, and entered on proof.—*Reg.* 2, 1806, *Sect.* 3.—*p.* 179.

144. In the spirit of this rule, whenever a defendant appears at any time antecedent to the decision, and proves that the default was not wilful, he should be permitted to file his answer, though the *ex-parte* investigation has begun, and to adduce evidence if the case requires it.—*Con. No.* 375.—*p.* 179.

145. The pleadings in the Courts of the Zillah and City Judge will be written on paper of the value of Four Rupees, except in original suits for property not exceeding One Thousand Rupees in value and amount, in which case the pleadings will continue to be written on stamp paper value One Rupee.—*Reg.* 7, 1832, *Sect.* 3.—*p.* 180.

146. All pleadings and petitions required to be written on stamp paper, must be written in a fair legible hand, and be prepared according to the existing usage with regard to the size of the writing, the space between the words, and the number of lines in each page.—*Reg.* 26, 1814, *Sect.* 5, *Cl.* 2.—*p.* 180.

147. When the defendant neglects or refuses to file his rejoinder within the time fixed, the

Court will record the refusal or neglect, and proceed with the trial as if a rejoinder had been regularly filed.—*Reg.* 26, 1814, *Sect.* 6, *Cl.* 2.—*p.* 180.

148. If from mistake, inadvertence, or other cause, the plaintiff has neglected any thing material to the suit, the Court will allow him to file a supplementary complaint. The defendant is to be allowed to deliver an answer to the supplemental complaint on a day to be fixed by the Court, and both parties will reply and rejoin in the same manner as on the original complaint, but no other.—*Reg.* 4, 1793, *Sect.* 5.—*p.* 180.

149. In like manner, if the defendant has from mistake or inadvertence, omitted to insert in his answer any thing material to his defence, the Court will allow him to file a supplemental answer. But only one supplemental plaint, and one supplemental answer can be filed.—*Reg.* 4, 1793, *Sect.* 5.—*p.* 180.

150. No supplemental complaint or supplemental pleadings will be admitted, unless the Court, from a perusal of the pleadings and a consideration of all the circumstances alleged by the parties, shall deem it proper to admit them.—*Reg.* 26, 1814, *Sect.* 6, *Cl.* 3.—*p.* 180.

151. When the defendant has delivered in his answer, the plaintiff is to reply to it on the next Court day, but he may not introduce any new matter into his reply. He will either acknowledge the defendant's answer to be true, or deny particular facts, or the general truth of all the facts, or the competency of the answer.—*Reg.* 4, 1793, *Sect.* 5.—*p.* 180.

152. The defendant will rejoin on the same day, but is not at liberty to introduce into his rejoinder any new matter. He will simply deny the truth of the plaintiff's reply, or those parts which he means to dispute, and aver the truth or competency of his own answer and no farther pleadings are to be admitted.—*Reg.* 4, 1793, *Sect.* 5.—*p.* 181.

153. The prescribed pleadings must be completed and read in open Court before any exhibits are filed, or witnesses summoned for either party, unless special and sufficient reason be given for taking the immediate deposition of a witness before the pleadings are completed.—*Reg.* 26, 1814, *Sect.* 10, *Cl.* 1.—*p.* 181.

SECT. XV.

Zillah and City Courts.—Default of the Plaintiff before the pleadings are complete.

154. If a plaintiff shall neglect to proceed in his suit for six weeks, it is to be dismissed, unless he can shew sufficient reason for his neglect. The Court will award costs to the defendant according to its discretion. The Court will record on the proceedings, its reason for dismissing the suit or allowing the plaintiff to prosecute it, after he has neglected to proceed in it for six weeks.—*Reg.* 4, 1793, *Sect.* 10.—*p.* 181.

155. Plaintiffs in causes dismissed under Reg. 4, 1793, Section 10, have the option of reinstating them under the Regulations.—*Con. No.* 266.—*p.* 181.

156. The intent and meaning of the provision above is, that if the plaintiff neglects for six weeks to perform any act required of him in the prosecution of his suit, it will be dismissed. Before the judgment of dismissal be passed against him, he is to be called on by a notice to shew cause for his neglect, and such cause, if it be established, and be good and sufficient in itself, will save the dismission.—*C. O. 5th Nov.* 1812.—*p.* 181.

157. If a plaintiff who has omitted to proceed in his cause for six weeks, be not in attendance in person or by Vakeel, the Court will call upon him to attend and shew cause for his neglect, by the process prescribed in Regulation 4, 1793, Sections 5 and 11. On due proof of the service of this process, if the plaintiff fail to attend, the cause will be dismissed.—*C. O. 5th Nov.* 1812.—*p.* 181.

158. If a plaintiff neglects for six weeks to do any act required, and has appointed a vakeel, the Judge is at liberty to call on him to shew cause for neglect, and strike off the suit if a satisfactory reason be not given. But if the plaintiff be not present, either in person or by vakeel, the notice prescribed in the Order of the 5th November, 1812, must be served on him, requiring him to shew cause why the suit should not be struck off.—*Con. No.* 938.—*p.* 181.

SECT. XVI.

Zillah and City Courts.—Notification of the points to be established in the case.

159. If from the pleadings, the points at issue cannot be ascertained, or if farther explanations be necessary, the Court will, on the day on which the suit may first be brought to a hearing, make such enquiries as may be necessary, to ascertain the precise object of the action, and the grounds on which it is maintained, and record the result on the proceedings.—*Reg.* 26, 1814. *Sect.* 10, *Cl.* 2.—*p.* 182.

160. The Court will then consider and record the point or points to be established by either party, and will proceed to take evidence from them on such points.—*Reg.* 26, 1814, *Sect.* 10, *Cl.* 3.—*p.* 182.

161. In like manner, if proof be required on any other points in the course of the trial, such points shall be recorded on the proceedings, and the proper party called on for the requisite evidence. No exhibit will be filed, and no witness summoned, except declared to be in proof or refutation of some point on which the Court has directed evidence to be taken.—*Reg.* 26, 1814, *Sect.* 10, *Cl.* 4.—*p.* 182.

162. The rules contained in Section 10, Regulation 26, 1814, with a view to ascertain the precise object of the action, the grounds on which it is maintained, and the point or points to be established by the parties respectively, when the suit is first brought to a hearing, after the pleadings are completed, and before any exhibits are filed or witnesses summoned, is considered of the highest importance, and the Judge is required to give particular attention to them.—*C. O. 7th Aug.* 1817. —*p.* 182.

163. The proceedings which the Judge is required to draw up by Section 10, Regulation 26, 1814, must be invariably submitted with the record, to the Sudder Dewanny Adawlut, in case the suit is appealed to that Court. The omission of those proceedings is very inconvenient, particularly where the appellant pleads that the Judge refused to receive documents tendered, or to summon witnesses named by the party.—*C. O. 5th Aug.* 1836.—*p.* 182.

SECT. XVII.

Zillah and City Courts.—Notice to the parties to file Exhibits and name Witnesses.

164. When the rejoinder has been filed, the Court, on a fixed day after the pleadings have been completed, (of which eight day's notice is to be given to the parties,) will examine the truth of the complaint by the oaths of the parties, if they consent mutually to that mode of examination, and of the witnesses they may produce.—*Reg.* 4, 1793, *Sect.* 6.—*p.* 182.

165. That the parties may be prepared to file their exhibits, to name their witnesses, and to furnish explanations of the case, previous notice of eight days will be invariably given by the Courts of the day on which a suit will be brought to a hearing.—*Reg.* 26, 1814, *Sect.* 12, *Cl.* 1.—*p.* 183.

166. For this purpose it will be sufficient to affix a notification in the Court House of the number of the suit, the names of the parties and their vakeels, and the date on which it will be brought to a hearing; and this notice will be considered in force until the suit is heard.—*Reg.* 26, 1814, *Sect.* 12, *Cl.* 2.—*p.* 183.

167. A Court is competent to dismiss a case on default, on the first hearing after the notice prescribed in the Court's Circular Order of the 5th Nov. 1812, has been issued, if the defaulter be not able to shew sufficient reason for default. In such cases, the issue of the notice prescribed in Regulation 26, 1814, Section 12, Cl. 1, is not necessary; that notice being intended to call on the parties, not to file their pleadings, but to file their exhibits and to name their witnesses. If the defaulting party shews sufficient cause for default, and has been admitted to plead, he will of course be entitled to the notice of eight days.—*Con. No.* 406.—*p.* 183.

168. In cases decided *ex-parte* under Regulation 2, of 1806, Section 3, the notice of eight days prescribed by the above Rule, (Regulation 26, 1814, Section 12,) is necessary to the plaintiff to make that decision legal. The decision of the case *ex-parte* does not exempt him from the neces-

sity of proving his suit, and he is entitled to the notice before he is compelled to exhibit his proofs. —*Con. No.* 406.—*p.* 183.

169. In the Zillah Courts, after due notice shall have been given, if either party is not prepared to file his exhibits, or the names of his witnesses, or to furnish explanations, and shall not assign sufficient reason for the delay, the Court is authorized to impose a fine on him equal to a fourth of the stamp duty. For a second neglect, after due notice shall have been given, the Court may impose a second fine, or proceed as in other cases of default.—*Reg.* 26, 1814, *Sect.* 12, *Cl.* 3.—*p.* 184.

SECT. XVIII.

Witnesses in Zillah and City Courts.

170. Petitions or applications for summoning or examining witnesses, according to the number named, must be written on stamp paper of the same value as that charged in reference to Exhibits; and no witness will be summoned or examined in a regular suit, unless his name is included in a petition or application in writing, given in as above.—*Reg.* 10, 1829, *Sch. B. Art.* 11.—*p.* 184.

171. Parties are not allowed to bring their own witnesses without making application to the Court. No witness can be examined in a regular suit without a durkhast on stamp paper.—*Con. No.* 182.—*p.* 184.

172. All *ism nuveesees*, or the names of witnesses, must as heretofore be charged as "exhibits," and written on stamp paper of the value of One Rupee.—*Con. No.* 1088.—*p.* 184.

173. To procure the attendance of witnesses, the Zillah Court, on the requisition of the parties or their vakeels, will issue a summons to them, provided they be not Hindoo or Mahomedan women of rank, whom, according to the custom of the country, it would be improper to compel to appear in a Court. The summons will specify at whose request it is issued, and require the witness to appear in Court on the specified day, and depose touching the matters in dispute.—*Reg.* 4, 1793, *Sect.* 6.—*p.* 184.

174. The principle of the rule by which persons employed in the public service are exempted from the payment of the ferry toll, is held applicable to witnesses summoned to attend the Civil and Criminal Courts.—*C. O.* 31*st July*, 1817.—*p.* 184.

175. If a witness so summoned, shall not attend on the day specified, or refuse to give evidence, or to sign his deposition, and if it be proved to the satisfaction of the Judge on oath, that the evidence of the witness is material to the case, he will issue an order (dustuck) to the Nazir, to seize and bring the witness before the Court, and impose on such witness, not having attended, a fine not exceeding 500 Rupees until he shall consent to give his evidence or sign his deposition. —*Reg.* 4, 1793, *Sect.* 6.—*p.* 184.

176. This clause which requires proof on oath (not the prosecutor's oath exclusively) that the evidence of a witness is material, is applicable only to the case of a witness summoned and not attending. When a witness has attended and refuses to give evidence, or to sign his deposition, no new proof is to be called that the evidence of the witness is material.—*Con No.* 159. —*p.* 185.

177. When a witness named by the plaintiff, has been duly summoned and has neglected to attend, it is incumbent on the Judge to call on the plaintiff's council, according to Regulation 4, 1793, Sect. 6, to satisfy him by evidence on oath that the witness was material; and he is not to strike the cause off the file till he has explicitly called on the party so to proceed.—*Con. No.* 1126.—*p.* 185.

178. But this fine of 500 Rupees cannot be imposed on a witness on whom a summons has not been actually served.—*Con. No.* 465.—*p.* 185.

179. A witness, upon whom a summons may not have been personally and actually served, although no doubt exists that the summons was carried by the serving peon to his residence, and all proper means used to serve it, cannot be proceeded against by dustuck (warrant of arrest), or fine.—*Con. No.* 487.—*p.* 185.

180. If a witness on whom a summons has been duly served, neglects to attend, and evades the second process of the dustusk, a fine, not exceeding 500 Rupees, is to be imposed on him.—*Con. No.* 487.—*p.* 185.

181. If a witness, on whom a summons has been served, fails to attend, and a (warrant) dustuck is issued to seize him, and he evades the warrant, a proclamation is to be issued requiring his attendance within a certain period. If he should neglect to attend in time, the Judge will impose on him a fine not exceeding 500 Rupees, and proceed to levy the same by the attachment and sale of his property.—*Con. No.* 172.—*p.* 185.

Though the Regulations do not require the Proclamation, yet it seems to have been pointed out by the Sudder Court as the proper mode of procedure in order to give the witness every advantage before proceeding to levy the fine.—*p.* 185.

182. 183, are inserted inadvertently, they being repetitions of 175 and 176.

184. If a person named as a witness, has in his possession books, accounts, papers such as Muhajun's books, or other evidence material to the elucidation of the case, and neglects or refuses to produce them, or to assign satisfactory reason for not producing them, the Court may impose on him a fine of 500 Rupees, and confine him till the documents are produced.—*Con. No.* 270.—*p.* 186.

185. If a person named as a witness, has incurred any expense in attendance, the Court will award him a reasonable sum to cover it, whether he be examined or not. If this sum be not paid immediately by the party summoning him, or secured to him, that party will lose the benefit of his evidence; and the Court, after passing the decree, will confine him till the sum is paid.—*Reg.* 4, 1793, *Sect.* 6.—*p.* 186.

186. Notices to officers and persons employed in the salt manufacture, to appear as witnesses will be served during the manufacturing season, in the same manner as if they were parties in the case, but the Judges will be careful not to issue such notices except when their attendance may be necessary; and, on their appearance, to examine and dismiss them with all practicable expedition.—*Reg.* 10, 1819, *Sect.* 21, *Cl.* 8.—*p.* 186.

187. The Judges are empowered, in cases of necessity, to order the personal attendance of any person connected with the salt manufacture, as a witness, during the manufacturing season, any thing in the Regulations to the contrary notwithstanding, and to cause process to be executed on him. But in such cases, the Judge will record his reasons for this deviation from the rules, and will state in the summons or notice, that it has been especially ordered to be so executed in virtue of his discretionary power: but he will not unnecessarily exercise this power.—*Reg.* 10, 1819, *Sect.* 21, *Cl.* 9.—*p.* 187.

188. The discretionary power granted by Clause 9, as above, to Judges and Magistrates, is equally vested in those authorities in regard to persons employed in the Chokey department.—*Reg.* 10, 1819, *Sect.* 28.—*p.* 187.

The penalty for not being prepared with the names of witnesses will be found at Rule 169.—*p.* 187.

SECT. XIX.

Oaths.

189. Instead of any oath or declaration now authorized, or required by law, every individual of the Hindoo or Mahomedan persuasion, within the Company's territories, will make the affirmation appointed by Act 5, 1840. (See the body of the work).—*Act.* 5, 1840, *Sect.* 1.—*p.* 187.

190. If any person making such an affirmation, shall wilfully and falsely state any thing which, if it had been sworn before the passing of this Act, would have amounted to perjury, he will be subject in all Courts to the punishment ordained for perjury.—*Act* 5, 1840, *Sect.* 2.—*p.* 187.

191. Any person causing or procuring another to commit the offence, will be subjected to the punishment ordained for those convicted of subornation of perjury before the passing of this Act.—*Act* 5, 1840, *Sect.* 3.—*p.* 187.

192. Transmission of the translations in Bengalee or Oordoo of the Affirmation enjoined to be taken by Hindoo and Mahomedan deponents.—*C. O. 3d April*, 1840.—*p.* 187.

193. The term used to designate the Supreme Being will be adapted to the persuasion of the parties.—*C. O. 3d April,* 1840.—*p.* 187.

194. It is not required that the deponent should sign his name to any written affirmation, but he will read it out in Court, or the declaration should be read to him, and repeated by him before giving his deposition. At the heading of his deposition, it should be stated that he has been sworn according to Act 5, 1840.—*C. O. 3d April,* 1840.—*p.* 187.

195. The provisions of Sect. 2, (Rule 190,) should be explained to persons giving evidence in the Court.—*C. O. 3d April,* 1840.—*p.* 187.

SECT. XX.

Deposition of Witnesses in Zillah Courts.

196. No person by reason of any conviction for any offence whatever shall be incompetent to be a witness in any stage of any Civil cause.—*Act* 19, 1837.—*p.* 188.

197. The deposition of every witness will be taken vivâ voce in open Court, in the language of the province, and reduced to writing in that language which the witness may desire. It will be subscribed with his name or mark.—*Reg.* 4, 1793, *Sect.* 6.—*p.* 188.

198. The deposition of a European witness must be recorded in English.—*Con. No.* 1035.—*p.* 188.

199. The Judges of the Zillah Courts may employ their assistants or principal native officers in taking down the depositions of witnesses when they cannot do it themselves, provided that they be taken in open Court, in the presence of the parties, or their pleaders, and attested by their signature. If any question or dispute arise in taking the deposition of a witness so examined, the Judge will enquire into it and pass a suitable order.—*Reg.* 24, 1814, *Sect.* 11, *Cl.* 1.—*p.* 188.

200. But the administration of civil justice in the Zillah Courts will be essentially promoted, if the depositions of witnesses be taken by the Judges themselves instead of being referred by the enactment above, to the native officers as authorized in cases of necessity.—*C. O. 7th Aug.* 1817.—*p.* 188.

201. When an assistant, or native officer, is thus employed, the provisions above must be carefully observed, and he must be informed by a roobukaree, (in pursuance of Section 10, Regulation 26, 1814,) of the point or points on which the examination is to be taken; and the parties and their vakeels are not to question the witnesses upon other points. But as it is the evident intention of the Regulations, and also most desirable that the witnesses, whenever practicable, should be examined vivâ voce by the Judge, the grounds of necessity which compel him to employ a native officer to examine them, must, in every instance, be recorded on the proceedings which contain the order of examination.—*C. O. 7th Aug.* 1817.—*p.* 188.

202. Whenever a deposition is thus taken before a native officer, he will affix his signature to it in token of its having been taken before him.—*C. O. 25th Oct.* 1822.—*p.* 189.

203. Previously to rejecting evidence on any particular point, as unnecessary, the Judge is advised to consider whether such evidence, though not necessary for his own satisfaction, may not be deemed requisite by the Judge to whom the case may be brought on appeal.—*C. O. 25th Oct.* 1822.—*p.* 189.

204. If the witness be a native woman of rank, whom it would be improper to compel to attend a Court, the Zillah Judge will commission three creditable women, who are to be sworn to execute the commission, faithfully to examine the witness on the usual affirmation, on written interrogatories, to be delivered by both parties or their Vakeels if both parties desire to examine the witnesses.—*Reg.* 4, 1793, *Sect.* 6.—*p.* 189

SECT. XXI.

Zillah and City Courts.—Examination of absent Witnesses.

205. All Regulations for taking the examination of absent witnesses in any Presidency, are hereby repealed.—*Act* 7, 1841, *Sect.* 1.—*p.* 189.

206. Its several Judges may, in any civil proceeding, upon the application of any of the parties, order the examination, upon interrogatories or otherwise, before any officer of any such

Court, or any other person named in the order, of any witnesses within the jurisdiction of the Court. It may issue a Commission to any other Court to examine witnesses at any place out of such jurisdiction upon interrogatories or otherwise, and give suitable directions for taking such examinations. Any Court to whom such Commission is directed, shall take the examination in open Court in all cases where witnesses are able to attend, and are not exempted from attendance by law, or at the discretion of the Court. Such Commissions for the examination of witnesses out of the jurisdiction, may be directed otherwise than to some Court, under special circumstances. All Commissions issued and Orders made by any Court of the East India Company, and which are required to be executed within the local limits of any of Her Majesty's Supreme Courts, shall be directed as hereinafter mentioned.—*Act* 7, 1841, *Sect.* 2.—*p.* 189.

207. When any order is made for the examination of witnesses within the jurisdiction of the Court wherein the proceeding may be depending, the Court or any Judge of it, may command the attendance of any person at his own place of residence or elsewhere, and may order him to produce all necessary documents. The wilful disobedience of such an order shall be punishable as a contempt of Court. Every person whose attendance shall thus be required, will be entitled to the like payment for expenses and loss of time as in cases in which such expenses are now allowed. —*Act* 7, 1841, *Sect.* 3.—*p.* 190.

208. Every Court or person thus authorized to take the examination of witnesses, may take them upon oath or affirmation. Any person making the same, who shall wilfully and corruptly give any false evidence, will be deemed guilty of perjury, and every person causing or procuring another person to commit the offence of perjury hereby defined, shall be guilty of subornation of perjury.—*Act* 7, 1841, *Sect.* 4.—*p.* 190.

209. Before any Order or Commission for the examination of any witnesses under this Act is issued, the Court or Judge issuing the same, shall be satisfied that there is good reason for believing that the witness will be unable to attend, for suitable causes, at the usual time for examination. Before granting any such Commission, the Court will particularly enquire as to the present residence of the witnesses whose deposition is to be taken under such Commission, and also as to the Court of the same degree as the Court granting such commission, or of inferior degree, which may be nearest to the place of residence of the witness, and the Commission shall ordinarily be directed to such Court of equal or inferior degree as may most conveniently execute the same. If there be doubt as to which is the most convenient Court of equal or inferior jurisdiction, the Commission may be directed to the Judge having jurisdiction within the district within which the Commission is to be executed. The Judge will at his discretion execute the Commission in his own Court, or direct it to any subordinate Court within his district. No deposition taken under this Act, except as hereinafter mentioned, will be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant without collusion more than fifty coss from the place where the Court is held, or exempted by law, or at the discretion of the Court, from personal appearance in Court, or unless the Court shall at its discretion dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same; after the witness shall be produced and shall have delivered his testimony, the Court at its discretion may authorize the reading of the deposition. And all depositions taken under this Act, being duly certified, may be read, at the discretion of the Court, without proof of the signature to such certificate.—*Act* 7, 1841, *Sect.* 5.—*p.* 191.

210. Any Court other than one of Her Majesty's Courts, or any Judge thereof, may issue such Commissions and such Orders as are indicated in the second and third Section of this Act to be executed within the local limits of the jurisdiction of any of Her Majesty's Courts, and all such Commissions and Orders, except when directed otherwise than to a Court, shall be directed to a Court of Requests having jurisdiction within such limits or any part thereof.—*Act* 7, 1841, *Sect.* 6.—*p.* 191.

211. Such Commissions and Orders may be issued for execution under this Act within the Territories of Princes and States in alliance with the East India Company, and all persons within such last mentioned territories being in the service of the East India Company, are hereby required to pay obedience thereto, and for disobedience thereof shall, on being found within the jurisdiction of the Court, or Judge issuing any such Commission or order, be punishable in like manner, as if such offence had been committed within such jurisdiction, and for giving false testimony under the same, shall be punishable by any Court of justice within the Territories of the East India Company.—*Act* 7, 1841, *Sect.* 7.—*p.* 191.

212. Whenever the evidence of any absent witness shall be required out of the jurisdiction of the Court in which the proceedings for which the evidence is wanted may be pending, and the Commission shall be directed to any Court, such Court may punish the wilful disobedience of any such Order as aforesaid as a contempt, notwithstanding it shall not itself have made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony.—*Act* 7, 1841, *Sect.* 8.—*p.* 191.

SECT. XXII.

Zillah and City Courts.—Perjury.

213. The crime of Wilful Perjury is declared to be, given intentionally and deliberately before a Court of Judicature, Magistrate, or other authorized public officer, a false deposition on oath, or solemn declaration, relative to some judicial proceeding, Civil or Criminal, on a point material to the issue of it.—*Reg.* 2, 1807, *Sect.* 4, *Cl.* 1.—*p.* 191.

214. Subornation of Perjury is declared to be the crime of procuring or causing another person to commit the offence of perjury.—*Reg.* 2, 1807, *Sect.* 4, *Cl.* 2.—*p.* 191.

215. If a witness, or any person be guilty of wilful perjury before a Zillah Court, the Judge will commit the offender to close custody, to take his trial before the Sessions Judge.—*Reg.* 4, 1793, *Sect.* 14.—*p.* 191.

216. The Zillah Magistrates shall not receive any charges of perjury from parties in Civil suits, against the witnesses on either side or subornation of perjury against the adverse party. All individuals, whose attendance is required in the Civil Courts as plaintiffs, defendants or witnesses, are not liable to a prosecution for perjury, unless committed to take their trial by the Zillah Judge.—*Reg.* 3. 1801, *Sect.* 2.—*p.* 192.

217. These rules regarding the perjury of witnesses, are equally applicable to any allegation of perjury or subornation of perjury against witnesses in a Civil suit or proceeding before a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, or an arbitrator, or an officer employed by a Civil Court in any local enquiry, or in the execution of civil process. In such case of perjury or subornation of perjury before any other officer than the Zillah Judge, the charges will be referred to the Zillah Judge by the subordinate officer, with his sentiments on the case. If the Judge is of opinion that there are sufficient grounds for bringing the accused to trial, he will record his opinion, and direct whether he shall be admitted to bail, or committed to custody. An authenticated copy of this order will then be transmitted to the Magistrate, that the accused may be brought to trial before the Sessions.—*Reg.* 17, 1817, *Sect.* 14, *Cl.* 2.—*p.* 192.

218. A person charged with giving money to witnesses in a Civil suit to influence their evidence, cannot be committed for trial under the above provisions (Rule 217).—*Con. No.* 504.—*p.* 192.

219. Persons charged with perjury, or subornaton of perjury, shall not be admitted to bail unless specially authorized by the Court, under whose directions they are committed for trial.—*Reg.* 2, 1807, *Sect.* 5.—*p.* 192.

220. In case of perjury before the Civil Courts, whether before the Judge or a subordinate Court, the commitment should be made according to Regulation 17, 1817, Section 14, Clause 2, by the Judge, who will determine whether the persons committed are to be admitted to bail or not. The duty of the Magistrate is to cause the attendance of the parties and the witnesses before the

Court which is to try them. When the Civil Judge has made a commitment, the case cannot be tried by him as Session Judge; it must be referred to the Commissioner.—*C. O. 29th May*, 1835.—*p.* 193.

221. In cases of perjury before the Register of Deeds, the Zillah and City Judges will proceed in conformity with the above enactment, viz. Reg. 17, 1817, Sect. 14, Cl. 2.—*Con. No.* 611.—*p.* 193.

222. A conviction of perjury may be had without the confession of the accused.—*Con. No.* 656.—*p.* 193.

SECT. XXIII.

Zillah and City Courts.—Exhibits.

For the Stamp Duty on the petition for filing Exhibits, see the last Section of the last Chapter, Rule 438.

223. In lieu of filing a separate application for the admission of each exhibit and the attendance of each witness, it will be sufficient to file one or more applications or lists, including any number of exhibits and the names of any number of witnesses; provided the applications be written on one, two, or more sheets of stamp paper, the total value of which corresponds in amount with that of the paper which would have been required, if the application for each exhibit or witness had been written separately.—*Reg.* 26, 1814, *Sect.* 22.—*p.* 193.

224. Vakalutnamahs, moktarnamahs, arbitration bonds, security bonds for appearance, or for the payment of costs, or performance of a decree, or staying or enforcing its execution, which may be executed in any original suit or appeal, are not liable to the stamp duty on exhibits.—*Reg.* 26, 1814, *Sect.* 24.—*p.* 193.

225. Every exhibit or written evidence (except exhibits proved by absent witnesses,) will be produced in open Court at the trial. If it be disputed, it must be proved by the examination of sworn witnesses, whose depositions will be reduced to writing and signed. Every exhibit will be marked with some letter or number to identify it; and the letter or number is to be referred to in the deposition proving it. Exhibits proved by witnesses not present in Court, will be marked also, and referred to, in the depositions, and endorsed and minuted as having been read in the Court.—*Reg.* 4, 1793, *Sect.* 6.—*p.* 193.

226. As objections have been taken in the Sudder Dewanny Adawlut to Exhibits filed in the lower Courts, on the ground that they had been altered since the date of their execution, which when originally filed, passed without question or doubt regarding their authenticity; and as there is reason to believe that such documents have been altered by interested persons, it is necessary to check this serious evil. The Record-keeper in the Zillah Court, or any other trust-worthy officer, is therefore ordered to certify in the presence of the parties, or their Vakeels, the actual state, at the time of filing, of all original documents exhibited as proofs in the Court, and to note any interpolations, erasures, or other alterations then apparent. Similar precaution will be observed at the time of despatching them. The original documents filed by the parties, will be sent with the original depositions of the witnesses of both parties, under seal, in a separate cover, each parcel duly endorsed, and accompanied by a list of the contents and the certificates required.—*C. O. 29th July*, 1836.—*p.* 194.

227. If an Exhibit be rejected by a Zillah Judge, he will endorse on it the word "rejected," together with the names of the parties in the cause, the name of the party who produced it, the date and the cause of its being rejected. He will sign the indorsement, and return the document to the person who produced it.—*Reg.* 4, 1793, *Sect.* 6.—*p.* 194.

228. This section refers to documents not produced in proper time, or rejected for other good and sufficient reason, not to documents proved or suspected to be forgeries, which should not be returned to the parties.—*Con. No.* 139.—*p.* 194.

229. Where the original exhibits filed in a suit are missing, the parties are at liberty to file copies.—*Con. No.* 869.—*p.* 194.

SECT. XXIV.

Zillah and City Courts.—Forgery.

230. The same penalties, which are ordained for perjury or subornation of perjury, are equally applicable to charges of forgery, which crime is declared to include all fraudulent and injurious fabrications, or alterations of written deeds, or written or printed papers, of whatever description, and counterfeit seals or signatures thereto, and the illicit imitation of any public stamp or stamp paper. Persons convicted of procuring or causing any such forgery, will be liable to the same punishment, as those who actually commit the forgery at the instigation of others.—*Reg.* 2, 1807, *Sect.* 4, *Cl.* 3.—*p.* 195.

231. Fraudulently issuing and publishing as true, or fraudulently giving effect to, or attempting to give effect to fabricated deeds and papers, knowing the same to be false and fabricated, is also a crime punishable in the Criminal Courts.—*Reg.* 17, 1817, *Sect.* 10, *Cl.* 1.—*p.* 195.

232. Any persons convicted in a Criminal Court of any of these offices, will be sentenced to imprisonment not exceeding seven years. In cases of an aggravated nature, or of a repetition of the offence, the offender will be sentenced to public exposure by tuhseer. In case of a repetition of the offence, the Criminal Courts will sentence the offender to augmented punishment.—*Reg.* 17, 1817, *Sect.* 10, *Cl.* 2.—*p.* 195.

233. Measurement papers must be considered as coming within the denomination of "deeds and papers," the fraudulently publishing which as true, or otherwise fraudulently giving effect to, or attempting to give effect to which, knowing the same to be false and fabricated, is declared by Regulation 17, 1817, Section 10, to subject the offender to the punishment prescribed for forgery.—*Con. No.* 1061.—*p.* 195.

234. By analogy to the rules laid down in the case of perjury, it is not competent to a Magistrate to entertain a charge founded on the alleged forgery of a document which has been exhibited in a Civil Court, unless the Judge has ordered or permitted the prosecution.—*Con. No.* 454.—*p.* 195.

235. Persons charged with forgery will not be admitted to bail, unless especially authorized from the Court under whose directions they are committed for trial.—*Reg.* 2, 1807, *Sect.* 5.—*p.* 195.

236. Forgeries committed in any miscellaneous cases, are equally liable to be tried in the Courts. But if the Zillah Judge should make the commitment, it is not to be tried by him as Session Judge, but by the Commissioner.—*Con. No.* 838.—*p.* 196.

237. If the civil suit in which the document said to be a forgery was filed, is pending before a Zillah or City Judge in appeal, he may commit the party, who is supposed to be guilty of having forged or filed it, knowing it to be forged, to be tried by a Criminal Court. If the appeal has been decided, the forgery can only be brought to the notice of the Civil Judge, by obtaining the sanction of the Sudder Court to revise the judgment.—*Con. No.* 572.—*p.* 196.

238. When a Native Judge is trying a case, if he thinks that a document brought before him is a forgery, and that the party who filed it, knew it to be such, he should send the case to the Zillah Judge, who is competent to proceed against the person, as if the matter has occurred in a suit instituted before him.—*Con. No.* 572.—*p.* 196.

239. It is not competent to the Civil Judge, to commit for trial any party to a civil suit or other person on a charge of fraud. He should make over the case to the Magistrate, who will act according to the Regulations.—*Con. No.* 1225.—*p.* 196.

SECT. XXV.

Zillah and City Courts.—Particular Investigations.

240. The Judges are forbidden to allow a report of any matter of fact, with a view to passing a decree, to be made to them by any officer of the Court, or by any other persons, except in cases in which special authority may be given by the Regulations.—*Reg.* 4, 1793, *Sect.* 16.—*p.* 196.

241. The Civil Courts are forbidden to call on the Treasurer of their establishments to report regarding the trustworthiness of account books in the native languages.—*C. O. 4th Feb.* 1840.—*p.* 196.

242. Whenever there may be occasion to examine native account books, the Zillah Judge should, if possible, call in the aid of assessors. Where this is not feasible, Ameens should be appointed at the expense of the parties to inspect the books either at the Muhajun's house, or in Court.—*C. O. 4th Feb.* 1840.—*p.* 197.

243. In the trial of regular suits by the Zillah Courts or in miscellaneous cases, when the adjustment of accounts regarding the execution of decrees, mercantile and revenue transactions, the investigation of disputes between landlord and tenant, and other special matters of account, fact and usage, may be requisite, the Judge may refer them to the Sudder Ameen for adjustment or investigation.—*Reg.* 23, 1814, *Sect.* 76, *Cl.* 1.—*p.* 197.

244. The Judge will furnish the Sudder Ameen with such part of the proceedings and such detailed instructions as may be necessary, and instruct the parties or their agents to attend him during investigation.—*Reg.* 23, 1814, *Sect.* 76, *Cl.* 2.—*p.* 197.

245. The instructions will distinctly specify whether the Sudder Ameen is merely to transmit his proceedings in the case, or also to report his opinion on it.—*Reg.* 23, 1814, *Sect.* 76, *Cl.* 3.—*p.* 197.

246. The proceedings of the Sudder Ameen will be received as evidence, unless the Judge is dissatisfied with them; in which case he will make such farther enquiry as may appear necessary, and pass such orders as he deems right and proper.—*Reg.* 23, 1814, *Sect.* 76, *Cl.* 4.—*p.* 197.

247. In consequence of the salary received by the Sudder Ameen, he will not be entitled to receive any additional compensation for the performance of this duty. But if any necessary expence has been incurred in the enquiries or adjustments, the Judge may order that expenditure to be paid by one or both parties, as may appear just.—*Reg.* 13, 1824, *Sect.* 5.—*p.* 197.

248. Under the general spirit of Regulation 5, 1831, the Sudder Court is of opinion that the Clauses above are applicable equally to Principal Sudder Ameens.—*Con. No.* 815.—*p.* 198.

249. The Native Judges are entitled to the payment of their expenses when deputed to make local enquiries by a superior Court; but not when these local enquiries are made for their own satisfaction, or at the request of the parties.—*Con. No.* 172.—*p.* 198.

250. In causes pending before the Zillah Court concerning rent or revenue between the various classes of the agricultural community, the Judge is empowered to refer to the Collector for his report any accounts which may be necessary to the decision of the suit. The reference will be made by a precept, in which will be specified the accounts referred, the papers sent to elucidate them, and the time by which the report is to be made. The Judge may command the parties and their vakeels, and their witnesses to appear for examination before the Collector, and empower him to administer oaths to them. The Collector will submit his report duly attested, at the prescribed time, or account for delaying it. The Judge will confirm, alter, or set aside his report, at his own discretion and pass a decision in the case. But the Judge will not refer to a Collector, any accounts regarding suits in which he, or his public officers, or private servants, or Government may be a party.—*Reg.* 8, 1794, *Sect.* 13.—*p.* 198.

251. The Zillah Courts are at liberty to issue precepts to the Collectors, directing them to carry their orders into execution within a period fixed by the Court, or to assign reasons for not completing the order in the specified time.—*Con. No.* 968.—*p.* 198.

252. The Zillah Courts, when they have occasion to refer to the Registers of landed property, may apply to the Collectors for an original register, or an attested copy of it, and the Collectors will furnish them.—*Reg.* 8, 1800, *Sect.* 15.—*p.* 199.

For the rules regarding the deputation of Ameens to make local investigations, vide Chap. 2, Sect. 24.

SECT. XXVI.

Zillah and City Courts.—Punishment of Frivolous and Vexatious Suits.

253. If any suit shall be commenced in any Court, which may appear to be frivolous, vexatious, or groundless, the Judge will not only dismiss it with costs against the plaintiff, but fine him in such amount, as according to his circumstances in life may appear proper, and confine him till the fine be paid.—*Reg.* 3, 1793, *Sect.* 12.—*p.* 199.

254. Any one instituting a vexatious or litigious suit, will be fined, and committed to close custody till the fine is paid.—*Con. No.* 1096.—*p.* 199.

255. The Civil Courts are not at liberty to fine covenanted officers of Government when parties in Civil suits, for official acts done in the course of their duty by express orders of a superior authority.—*C. O. 25th Jan.* 1833.—*p.* 199.

256. If a covenanted officer institute a suit without the sanction of a superior authority, and the suit be adjudged vexatious, the Court may fine him.—*C. O. 25th Jan.* 1833.—*p.* 199.

257. A covenanted officer of Government instituting a suit with the sanction of a superior authority, which he is bound to obey, is not liable to a fine, though, in the judgment of the Court, it be vexatious.—*C. O. 25th Jan.* 1833.—*p.* 199.

258. No Court is at liberty to fine a Board, or superior authority, for directing a subordinate authority to institute a suit which in the judgment of the Court may be deemed vexatious.—*C. O. 25th Jan.* 1833.—*p.* 199.

259. An appellate Court is not competent to fine a respondent in an appeal case, for having instituted in the lower Court a suit which the appellate Court may consider to have been vexatious.—*C. O. 25th Jan.* 1833.—*p.* 199.

SECT. XXVII.

Zillah and City Courts.—Assistance of respectable Natives in the trial of Civil Suits.

260. The Governor General may grant the powers specified below to any European officer presiding in a Civil Court, to be exercised in any particular suit, or in all suits, and in any specified district, or in any part of the country. The Governor General may revoke and annul the grant of such powers when he may see reason so to do.—*Reg.* 6, 1832, *Sect.* 2.—*p.* 200.

261. Europeans, presiding in a Civil Court, when thus empowered, may avail themselves of the assistance of respectable natives in the trial of all original or appealed suits in either of these ways.—*Reg.* 6, 1832, *Sect.* 3, *Cl.* 1.—*p.* 200.

262. By referring the suit or any point or points to a Punchayet, who will conduct their enquiries apart from the Court and report the result. The reference and the answer will be in writing and will be filed in the suit.—*Reg.* 6, 1832, *Sect.* 3, *Cl.* 2.—*p.* 200.

263. By appointing two or more assessors, the opinion of each of whom will be given separately and discussed. Those opinions may, in certain cases, be recorded in writing in the suit.—*Reg.* 6, 1832, *Sect.* 3, *Cl.* 3.—*p.* 200.

264. By employing them more nearly as a Jury, to attend during the trial and suggest points of enquiry. If no objection exists, the Court will procure the required information, and after consultation, they will deliver their verdict. The mode of selecting the Jurors and other matters, are left to the Judge's discretion.—*Reg.* 6, 1832, *Sect.* 3, *Cl.* 4.—*p.* 200.

265. But the decision, under either of these modes of proceeding, is vested exclusively in the authority presiding in the Court.—*Reg.* 6, 1832, *Sect.* 3, *Cl.* 5.—*p.* 200.

266. In carrying this Act into effect, no compulsion is to be used. By no construction of any Regulation is the Judge authorized to compel the attendance of persons who are reluctant, voluntarily to render their services.—*C. O. 18th Jan.* 1833.—*p.* 200.

267. The requisition of oaths from persons so employed is unadvisable.—*C. O. 18th Jan.* 1833.—*p.* 200.

268. The provisions of this Act are entrusted to all the Zillah and City Judges, temporary or permanent, to whom are confided the higher powers conferred by Reg. 5, 1831.—*C. O. 18th Jan.* 1833.—*p.* 201.

SECT. XXVIII.

Zillah and City Courts.—Decrees—Copies of Decrees and Documents.

269. When the parties have been heard, the witnesses on both sides examined, and the exhibits received and considered, the Court will give judgment according to justice and right, and order all costs to be paid to the party in whose favour the decree is given.—*Reg.* 4, 1793, *Sect.* 7.—*p.* 201.

270. Where no specific rules exist, Judges are to act according to justice, equity and good conscience.—*Reg.* 3, 1793, *Sect.* 21.—*p.* 201.

271. As the Regulations do not contain any specific provisions on the subject of Bankruptcy, the Judges, in deciding such cases, will exercise the discretion vested in them as above, leaving the parties dissatisfied with their orders to appeal to the Sudder Court.—*Con. No.* 716.—*p.* 201.

272. The Judges will insert in their decrees the names of the witnesses whose depositions have been taken, the title of every exhibit read, the amount of the annual produce of the land, or the sum of money, or value of the property decreed. The decree will be sealed with the seal of the Court, signed by the Judge, and dated on the day on which it is passed.—*Reg.* 4, 1793, *Sect.* 26.—*p.* 201.

273. The Judges are required to pay particular attention to this rule, especially to that which refers to the *value of the thing decreed*, that the Sudder Court may be enabled to judge whether decrees presented to them with petitions of appeal, are appealable or not. If any objection has been offered by the defendant to the plaintiff's statement of the cause of action, as appealable to the Sudder or not, the determination passed on this objection, and the amount declared to be the real cause of action, is also to be stated in the decree.—*C. O. 27th April*, 1796.—*p.* 201.

274. The Lower Courts are ordered to insert in their decree, when it comprises the separate liabilities of several defendants, holding under distinct titles, the amount due by each defendant, in order that the parties concerned may not be debarred from their individual right of appeal.—*Con. No.* 849.—*p.* 201.

275. That the Sudder Court may be enabled duly to exercise the powers vested in them, the several Courts of subordinate jurisdiction, will invariably record the point or points at issue between the parties, and the grounds on which their judgment is given.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 7.—*p.* 202.

276. The Courts will insert in the decrees, all sums paid or payable by the parties on account of stamp fees, compensation for the expenses of witnesses, subsistence money to peons, and all costs and expenses of suit. Such costs will be ultimately charged on the party cast, or on the parties respectively, in such proportions as the Court deem equitable.—*Reg.* 27, 1814, *Sect.* 27.—*p.* 202.

277. The Courts are forbidden to decree the payment of any Bond or Tumsook, unless it shall be proved to have been executed before two credible witnesses, or the actual payment of the sum demanded on the bond, or an equitable consideration for it, shall be proved to have been received. This will not extend to Bills of Exchange, receipts or notes of hand, in the determination of which, the custom of the country is to be abided by.—*Reg.* 3, 1793, *Sect.* 15.—*p.* 202.

278. The Zillah Judge (either at the time of making the decree or on a subsequent day, of which due notice will be given to the parties or their Vakeels,) within ten days after passing the decree, will deliver or tender to the parties, in open Court an authenticated copy of it, noting the date on which it was tendered, or delivered. If either of the parties may not be present when the decree is passed, or on the day fixed for the delivery of the copies, after notice as above, or shall refuse to take the copy, when tendered, it is to be deposited among the records of the Court, and the cause of non delivery noted upon it in writing.—*Reg.* 4, 1793, *Sect.* 26.—*p.* 202.

279. Every decree and final order in the Zillah Court is to be prepared and ready for transcription within ten days after it has been passed.—*C. O. 20th Sept.* 1839.—*p.* 202.

280. Copies of decrees in all regular suits calculated in the manner explained under the head *Plaint*, when passed in the Zillah and City Courts, will be charged One Rupee.—*Reg.* 10, 1829, *Sch. B. Art.* 2.—*p.* 202.

281. When a party is desirous of obtaining an authenticated copy of a decree, he will furnish the Court by whom the decision is passed, with one, two, or more rolls of stamp paper, as may be necessary for transcribing it.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 8.—*p.* 203.

232. When such stamp paper may have been furnished, the Sheristadar or other Officer will endorse on it the date of its being furnished, the name of the party on whose account it is presented, and the number of the suit it refers to; and grant the party a receipt for it on unstamp paper. The copy of the decree will then be duly prepared and authenticated, and delivered or tendered to the party or his vakeel in open Court. The day of the delivery or tender, will be endorsed on it.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 9.—*p.* 203.

283. The Sheristadar of the Court will state on the back of the copy furnished, the information required in Regulation 26, 1814, Section 8, Clause 9, with an explanation of the cause of delay whenever the decree is not furnished within one month from the day when the stamp paper was supplied.—*C. O.* 18*th May*, 1832.—*p.* 203.

284. Similar instructions will be issued to the subordinate Courts.—*C. O.* 18*th May*, 1832.—*p.* 203.

285. The period which may elapse between the period when the stamp paper may be furnished and the copy of the decree tendered, will be deducted from the period allowed for instituting an appeal.—*Con. No.* 413.—*p.* 203.

286. The whole of the stamp paper required for the copy of a decree, should be given in at once by the party applying for the copy. If a portion only has been given in before the preparation of a decree, the whole quantity must be made up by the time the decree is ready for transcribing. No deduction in calculating the time for appeal will be allowed for any delay occurring after that period in completing the quantity of paper needed.—*C. O.* 8*th May*, 1840.—*p.* 203.

287. The *decree nuvees* will certify on the back of the decree, the date on which it was ready, and his having notified to the party requiring it the additional paper needed for engrossing the same, procuring a written acknowledgment of such intimation on the back of the decree, by the party or his vakeel. If neither be in attendance, he will report it to the Judge, who will record the fact for future reference.—*C. O.* 8*th May*, 1840.—*p.* 203.

288. From the date of this intimation, or of the Judge's order recording the absence of the parties, to the date of filing the additional stamp, no allowance will be made in calculating the period of appeal. If, in transcribing the decree, a farther supply of paper is found to be required, the same principle will be followed. But this latter contingency can scarcely happen, except from the carelessness of the copyist.—*C. O.* 8*th May*, 1840.—*p.* 204.

289. The copy of every decree or order given by the Judge, will have endorsed the particulars given in the body of the work, in order to fix the time an appellant is to be allowed as a deduction from the period prescribed for appealing, through delay in furnishing him with the copy of the decree. The same rule will be most strictly enjoined on the Principal Sudder Ameen, Sudder Ameen, and Moonsiffs.—*C. O.* 8*th May*, 1840.—*p.* 204.

290. In all original suits or appeals in which Government may be a party, the Court passing judgment, will, in addition to giving copies of the decrees to the parties, transmit a copy to the Judicial Secretary for the information of the Governor General in Council. Such copies need not be on stamp paper, but must be duly authenticated, and accompanied by a translation in English. —*Reg.* 2, 1805, *Sect.* 9.—*p.* 204.

291. If the Government be cast in any of the Courts, the officer entrusted with the management of the suit, will send a copy of the decree and proceeding to the Governor General in Council, or to the Board under which he acts, with his objections to the decision. The Board will then address Government, transmitting their opinion; and Government will order the case to be appealed or not, as may be advisable. The costs and damages awarded against Government, will be defrayed from the Treasury.—*Reg.* 3, 1793, *Sect.* 11.—*p.* 204.

292. That the Registers of landed property may be duly kept up, the Zillah Courts are directed to send to the Collector a copy of every decree which they may pass, or enforce, regarding

any zemindary, independent talook, or other land paying revenue, or concerning the possessior of it. The Judge will send the decree within ten days after he may pass or receive it, duly attested, and accompanied with a short abstract, specifying the date of the decree, the names of the pergunnah, talook, turuf, village, or portion of it, the names of the persons last in possession, the person to whom it has been decreed, and if the land be decreed to two or more persons, the share awarded to each.—*Reg.* 4, 1793, *Sect.* 9.—*p.* 205.

293. In future the Judicial Authorities will furnish the Collector only with copies of those decrees regarding land paying revenue to Government which are final, and of which execution shal have been taken out.—*C. O. 5th Oct.* 1838.—*p.* 205.

294. The Courts will also send the Collector an abstract statement of every decree they may pass, or may receive for execution, by which the proprietary right in, or possession of, Lakraj land is affected, in order that the Collectors may be enabled to make the necessary entries in the quinquennial Registers of free lands.—*Reg.* 58, 1795, *Sect.* 3.—*p.* 205.

295. Paper of European manufacture, bearing the proper stamp, will be used in all such copies of decrees furnished to the parties in regular or summary suits by the Zillah Courts.—*Reg* 26, 1814, *Sect.* 16, *Cl.* 1.—*p.* 205.

296. Copies of decrees remaining as records in the Courts, will be on unstamp paper of European manufacture, similar in size and description to the paper bearing the stamp and prescribed for the copies delivered to the parties.—*Reg.* 26, 1814, *Sect.* 16, *Cl.* 2.—*p.* 205.

297. The Courts are requested to pay particular attention to Regulation 26, 1814, Section 16, Clause 2, which requires that copies of decrees intended to remain with the records of the Court, shall be written on unstamp paper of European manufacture.—*C. O. 30th June*, 1837. —*p.* 206.

298. Copies of proceedings, orders, statements, or other papers for record or transmission to other Courts or public officers, will be written on the usual unstamp paper.—*Reg.* 26, 1814, *Sect.* 16, *Cl.* 3.—*p.* 206.

299. Individuals are not precluded from making copies of judicial or revenue papers for their own use on unstampt paper, but if such copies be not made on stamp paper, they cannot be authenticated with the official seal of a public officer and will not be received as evidence.—*Reg.* 26, 1814, *Sect.* 16, *Cl.* 4.—*p.* 206.

300. Copies, or the counterpart of any deed or instrument attested, to be a true copy and furnished to the party to be given in evidence, will pay the same duty as prescribed for the original Deed.—*Reg.* 10, 1829, *Sch. A. Art.* 20.—*p.* 206.

SECT. XXIX.

Zillah and City Courts.—Contempts.

301. If any person shall be guilty of a contempt of Court in open Court, or unduly arrogate the authority of the Court, or be guilty of illegal exertions of judicial authority in his own cause, the Court, considering the circumstances in life of the offender, will subject him to a fine not exceeding 200 Rupees, and confine him till it is paid.—*Reg.* 4, 1793, *Sect.* 21.—*p.* 206.

302. The Zillah Courts are also empowered to commute this fine when not paid, to an imprisonment not exceeding two months.—*Reg.* 12, 1825, *Sect.* 6, *Cl.* 1.—*p.* 206.

SECT. XXX.

Zillah and City Courts.—Razeenamahs.

303. A Razeenamah, that is to say, any written application whereby a suit pending in a Civil Court, shall be adjusted, or capable of adjustment, without argument in Court, or award of the Judge, must be written on a stamp of the same value as that required for a Pleading.—*Reg.* 10, 1829, *Sch. B. Art.* 10.—*p.* 206.

304. If the suit be dismissed on such application before the pleadings have been completed, and the case called up, the plaintiff will receive a Certificate from the Court, on presenting which

to the Collector, he will receive back the entire amount of stamp duty, if there be no exception taken to the paper or endorsement.—*Reg.* 10, 1829, *Sch. B. Art.* 10.—*p.* 207.

305. If the pleadings have been completed, and the case called up for decision, or is on the list of causes ready for hearing, the plaintiff will receive a certificate for half the stamp duty paid on the plaint.—*Reg.* 10, 1829, *Sch. B. Art.* 10.—*p.* 207.

306. If the adjustment by Razeenamah or Soluhnamah be such as to require decree to pass on which process of execution can be taken out, the plaintiff will not be entitled to any refund of the stamp duty.—*Reg.* 10, 1829, *Sch. B. Art.* 10.—*p.* 207.

307. The stamp duty is not to be returned without the filing of the *Razeenamah.*—*Con. No.* 208.—*p.* 207.

308. The stamp duty will not be refunded, in cases of Dustburdaree, in which a plaintiff voluntarily relinquishes the prosecution of his claim, but does not file a regular Razeenamah.—*Con. No.* 977.—*p.* 207.

309. The Treasurer is prohibited from paying the refund of stamp fees to any vakeel or mooktar, unless he is authorized by a special clause in his vakalutnamah or mooktarnamah to receive them. When no such authority is produced, the money will remain in deposit till claimed by the party himself.—*C. O. 3rd Jan.* 1834.—*p.* 207.

310. The existing practice of forwarding to the office of the Superintendent of Stamps for examination; petitions of plaint filed in suits adjusted by Razeenamah, previous to making the refund of the stamp duty, is to be discontinued.—*C. O. 2nd Aug.* 1839.—*p.* 207.

311. The Judge will continue to send to the Collector every original petition of plaint, on which the stamp duty is to be refunded on the adjustment of the suit by Razeenamah.—*C. O. 29th May,* 1840.—*p.* 208.

SECT. XXXI.

Zillah and City Courts.—Costs.

For costs in Regular Suits, vide Rule 276 of this Chapter.

312. The Sudder Court is of opinion, that the same rules which regulate the award of costs in Regular cases, should be applied to Miscellaneous cases. They have therefore determined to adopt this rule in future.—*Con. No.* 1155.—*p.* 208.

313. The Rules which govern the award of costs in regular suits, must be considered equally applicable to Miscellaneous cases.—*C. O. 10th Aug.* 1838.—*p.* 208.

SECT. XXXII.

General Rules regarding the control of the Uncovenanted Judges by the Zillah Judges.

314. 1. All original suits instituted before the Judge, to be at once transferred to the proper tribunals for decision.—*C. O. 15th Jan.* 1841.—*p.* 208.

315. 2. All appeals from the Uncovenanted Judges, to be heard and revised as soon as practicable after the prescribed forms can be observed.—*Ibid.*—*p.* 208.

316. 3. The Zillah Judges will obtain, under the Circular Order, No. 65, 19th October, 1832, the sanction of the Court of Sudder Dewanny Adawlut to the transfer of a proportion of the appeals from the decisions of the Moonsiffs and Sudder Ameens, to the Principal Sudder Ameen for decision, agreeably to Section 16, Regulation 5, 1831. These applications to be submitted whenever the number of suits pending before the Principal Sudder Ameen may be less than 200.—*Ibid.*—*p.* 208.

317. 4. They will carefully superintend the state of the Civil business before the Uncovenanted Judges, and ascertain, that the suits are brought to an early decision, and not allowed to lie over beyond six or eight months without special reasons.—*Ibid.*—208.

318. 5. They will transfer, agreeably to Section 8, Act 25, 1837, (for which authority is hereby granted) to the Principal Sudder Ameen, for disposal, all miscellaneous cases instituted and

pending under Headings Nos. 5, 6, 7, 8, 10, 11 and 12, together with any other miscellaneous matters legally transferable under the Regulations, to that officer.—*Ibid.*—*p.* 208.

319. 6. They will check all irregular pleadings, and ascertain that the Uncovenanted Judges pay due attention to this important subject, as well as to the proper preparation of their own decrees.—*Ibid.*—*p.* 208.

320. 7. They will strictly abide by the provisions of the Regulations and the instructions of the Court, in the admission of special appeals and reviews of judgment.—*Ibid.*—*p.* 208.

321. 8. They will bring to the immediate notice of the Court, in the prescribed manner, all instances of gross neglect or incapacity on the part of the Uncovenanted Judges, and in like manner take every proper opportunity of bringing forward the claims of those officers, who, from their zeal, diligence, and attention, are deserving of promotion to a higher grade.—*Ibid.*—*p.* 208.

SECT. XXXIII.

Trial of Suits by Moonsiffs.—General Rules.

322. Moonsiffs will themselves investigate suits in a public Cutcherry, and not allow their officers, dependants, or others to interfere. In receiving and determining suits, they will be guided by the rules prescribed for them in this Regulation (23.) On points not expressly provided for in this Regulation, they will observe as nearly as possible the rules prescribed in the Regulations for the guidance of the Zillah Courts.—*Reg.* 23, 1814, *Sect.* 14.—*p.* 209.

323. The Moonsiffs will try all causes in the order in which they may have been filed or numbered. But the Zillah Judge, for sufficient reasons, may order a Moonsiff to hear and determine any particular suit or suits without regard to the regular order of the file.—*Reg.* 23, 1814, *Sect.* 26.—*p.* 209.

324. The rules in the existing Regulations regarding the period within which suits may be admitted in the Zillah and City Courts, and the mode of computing the value of the property in litigation, will be applicable to suits preferred to the Moonsiffs.—*Reg.* 5, 1831, *Sect.* 5, *Cl.* 6.—*p.* 209.

325. All suits within the competency of a Moonsiff to decide, will be ordinarily instituted in his Court. But the Judge may, for sufficient reasons, receive and try such suits himself, or refer them to any other Court subordinate to him.—*Reg.* 5, 1831, *Sect.* 7.—*p.* 209.

326. The Moonsiffs are required to decide on their merits, *twenty-five* suits a month. Whenever a less number of suits is decided, the following Circular Order will be applicable to them:—*C. O.* 21*st Sept.* 1832.—*p.* 209.

327. The Sudder Ameens, in submitting the monthly report of causes decided by them, will explain the reason of more causes not having been decided, whenever they have not decided the required number. The Zillah Judges will record whether they consider the reasons satisfactory or not.—*C. O.* 12*th March*, 1817.—*p.* 209.

328. The Sudder Court will not in future admit as valid the common excuses, that the "files were in an unforward state;" that "parties had failed to attend and to file their proofs;" that "witnesses had not attended," &c. unless the Zillah Judge certifies that he considers these reasons sufficient.—*C. O.* 21*st Sept.* 1832.—*p.* 209.

329. As the neglect of parties, may arise from want of method in the Moonsiffs, those officers are particularly required to pay strict attention to Regulation 4, 1793, Sections 5, 6 and 10; to Regulation 23, 1814, Sections 19, 21, 22 and 27; and to Regulation 26, 1814, Section 12.—*C. O.* 21*st Sept.* 1832.—*p.* 210.

330. A Moonsiff has the power to call for the record of a case from any Court through the Zillah Judge. But if any particular paper is required, the party who wishes to file it, should obtain an attested copy of it in the usual manner.—*Con. No.* 1259.—*p.* 210.

331. If a ryot be sued for rent in a Moonsiff's Court, he cannot remove the suit to the Collector's Court by merely asserting that the land for which the rent is demanded is rent-free. The point at issue is not the validity of the alleged rent-free tenure, but the fact of the ryot's having

paid or not paid rent for the year previous to that for which the suit is instituted. The Moonsiff will decree such rent as appears due, and leave the ryot to establish his right to hold the lands free, by a suit instituted under Section 30, Reg. 2, 1819.—*Con. No.* 696.—*p.* 210.

SECT. XXXIV.

Trial of Suits by Moonsiffs.—Plaint.

332. In suits instituted before a Moonsiff, the plaint will be written on stamp paper agreeably to the rates specified in Regulation 10, 1829, Schedule B. Article 8.—*Reg.* 5, 1831, *Sect.* 8, *Cl.* 2. —*p.* 210.

333. It is optional with the parties to file several stamps, the aggregate value of which will be equal to the amount prescribed by law, or one stamp of full value, with other sheets of plain paper attached to it.—*C. O. 28th Aug.* 1840.—*p.* 210.

334. The plaint will state precisely the ground of complaint, the name and residence of the person complained against, and the time when the cause of action arose; the total sum of money or property claimed, and whatever material circumstances may elucidate the transaction.—*Reg.* 23, 1814, *Sect.* 17.—*p.* 210.

335. In suits instituted in the Moonsiffs' Courts, they will discourage the insertion of irrelevant matter, or terms of abuse. The plaint, on being received, will be signed, numbered, and dated. The number of the suit, the names of the parties, the date of receiving the plaint, the amount claimed, and the subject matter of it will then be entered in a book to be kept by the Moonsiff. Two blank columns will be left in the book; one for the entry of the date of decision, and an abstract of the final order, with all particulars and the amount of the costs; the other, shewing the date on which copies of the decrees were furnished or tendered to the parties. The Zillah Judges are required to inspect these books once a year, and for this purpose they will order the Moonsiffs to transmit them to their Courts during the Dusserah or Mohurrum vacations.—*Reg.* 23, 1814, *Sect.* 18.—*p.* 211.

SECT. XXXV.

Trial of Suits by Moonsiffs.—Notice—Proclamation.

336. When a Civil suit has been instituted in the prescribed mode, the Moonsiff will issue a notice to the defendant containing the number of the suit, the names of the parties, and a short statement of the demand, and requiring him to attend in person or by vakeel, and deliver an answer within a specified day.—*Reg.* 23, 1814, *Sect.* 19, *Cl.* 1.—*p.* 211.

337. When such notices are served from a Moonsiff's Court, the Moonsiff will deliver it to the plaintiff or his vakeel. The plaintiff may either serve it in person or by another; if by another, the name of the person to be employed will be endorsed on the notice by the Moonsiff.—*Reg.* 23, 1814, *Sect.* 19, *Cl.* 2.—*p.* 211.

The rules regarding the service of processes from Moonsiffs' Courts, will be found at Chap. 2, Sect. 9, at the 91st and subsequent rules.

338. The person serving the notice, will require of the defendant an acknowledgment on the back of having seen it. He will farther cause some of the defendant's neighbours, or the putwaree or mundul of the village, or the muhullahdar of the ward, to witness the execution of it; and in his report he will state the names of such witnesses.—*Reg.* 23, 1814, *Sect.* 19, *Cl.* 3.—*p.* 211.

339. When the defendant is employed in the Salt and Opium departments, the notice will be sent under a sealed cover to the Resident or Agent, or native Officer, superscribed with the official seal and signature of the Moonsiff. The Resident or other officer will cause the notice to be duly served, and acknowledged by the defendant; and then return it to the Moonsiff.—*Reg.* 23, 1814, *Sect.* 20.—*p.* 212.

340. When such notice shall be issued from a Moonsiff's Court, if the defendant, on being served with it, do not appear in person or by vakeel, in the specified time; or, if appearing, he refuse to answer the plaint, the Moonsiff will try the cause ex-parte, and after examining the

plaintiff's evidence in support of his claim, give judgment, in the same manner as if the defendant had appeared and made answer.—*Reg.* 23, 1814, *Sect.* 21, *Cl.* 1.—*p.* 212.

341. But before trying the cause ex-parte, the Moonsiff will make such enquiries of the person who served the notice and of the witnesses, as to be satisfied that it was duly served on the defendant.—*Reg.* 23, 1814, *Sect.* 21, *Cl.* 2.—*p.* 212.

342. Instances having occurred of ex-parte decrees having been passed for the rent of lands of which the decree holder was not in possession, all the Native Judges are particularly required to attend to Regulation 23, 1814, Section 21, which prescribes that evidence shall be taken in proof of the plaintiff's claim in cases tried ex-parte, in like manner as if the defendant had appeared, and made answer.—*C. O. 24th Sept.* 1832.—*p.* 212.

343. When a defendant, to whom notice may thus have been issued, absconds, or conceals himself, or cannot be found, or refuses to give the required acknowledgment, the person serving the notice, will certify this fact on the back of it, and require some respectable persons in the vicinity to certify on the back of the process that the defendant cannot be found or refuses to give the required acknowledgment.—*Reg.* 23, 1814, *Sect.* 22, *Cl.* 1.—*p.* 212.

344. When such a return is made, the Moonsiff will issue a Proclamation, and affix it in his own Cutcherry, and on the outer door of the defendant's usual residence, or some other conspicuous place. It will contain a copy of the original notice, and state that if the defendant does not appear in fifteen days in person or by vakeel, the case will be tried and determined without the appearance or answer of the defendant.—*Reg.* 23, 1814, *Sect.* 22, *Cl.* 2.—*p.* 212.

345. Although, when the above enactment was passed, the process of the Moonsiff's Court was served by the party himself, and is now served by regular peons, yet the Sudder Court consider it imperative on the Moonsiff, in every instance previous to trying the case ex-parte, to take the evidence of witnesses to the actual service of the process, and not to content himself with the evidence of the peon alone.—*Con. No.* 775.—*p.* 213.

346. If the defendant still neglects to appear at the expiration of the time limited in the proclamation, the Moonsiff will try and determine the suit ex-parte, with the same precautions and in the same manner as prescribed in Section 21, Clause 2, of this Regulation.—*Reg.* 23, 1814, *Sect.* 22, *Cl.* 3.—*p.* 213.

347. When a defendant, in a suit pending before a Moonsiff, resides in the division of another Moonsiff, it will be sufficient to have the process backed by the Moonsiff in whose jurisdiction the defendant resides.—*Con. No.* 701.—*p.* 213.

348. The processes of the Moonsiffs, intended to be served in another Zillah, should be issued through the channel and under the signature of the Judge.—*Con. No.* 1235.—*p.* 213.

349. Moonsiffs are strictly forbidden to require mal or hazir zaminee from defendants or to attach their property. But if the Moonsiff be convinced that the defendant means to abscond, or to dispose of his property to defeat the ends of justice, he will report the case to the Judge, who will pass such order as appears necessary, under Regulation 2, 1806, Sections 4 and 5. The Judge may cause those orders to be executed by the Moonsiffs or by the officers of his own Court.—*Reg.* 23, 1814, *Sect.* 23.—*p.* 213.

350. The Sudder Court has decided, that although Moonsiffs are now allowed to execute their own decrees, still, under the provision above quoted (349) which is not repealed, they must make a reference to the Judge previous to requiring security from defendants, or attaching their property in default of such security, in cases still pending.—*Con. No.* 772.—*p.* 213.

351. The provisions contained in the existing Regulations relative to the trial and decision of suits cognizable by Moonsiffs, are applicable to those instituted before those officers under Regulation 5, 1831.—*Reg.* 5, 1831, *Sect.* 8, *Cl.* 3.—*p.* 213.

SECT. XXXVI.

Trial of Suits before Moonsiffs.—Pleadings.

352. Vakalutnamahs filed in cases before Moonsiffs will be received on plain paper.—*Con. No.* 798.—*p.* 214.

353. When the defendant shall attend personally, or by Vakeel, within the time limited, or subsequently, before the plaintiff's evidence or proofs have been received, he will be allowed to take a copy of the plaintiff's petition, and to file his answer.—*Reg.* 23, 1814, *Sect.* 24.—*p.* 214.

354. The Moonsiff will discourage as much as possible the insertion in the answer of irrelevant matter, or any terms of abuse or reproach.—*Reg.* 23, 1814, *Sect.* 25, *Cl.* 1.—*p.* 214.

355. In suits before Moonsiffs, if the defendant's answer be a simple denial of the matter of the plaint, no farther pleadings will be necessary. But if it contain any plea or allegation which requires a reply on the part of the plaintiff, or which may be necessary to bring the dispute to a distinct issue, or to which the plaintiff may be desirous of replying, he will reply on the next Court day. He will introduce into his reply no new matter not contained in his plaint; but will either simply acknowledge or deny the truth of the facts in the answer of the defendant.—*Reg.* 23, 1814, *Sect.* 25, *Cl.* 2.—*p.* 214.

356. The defendant will rejoin on the same day; he will introduce into his rejoinder no matter not contained in his answer, but simply deny the truth of the plaintiff's reply, in whole or in part, and aver his own statements, No farther pleadings whatever will be admitted before the Moonsiffs. —*Reg.* 23, 1814, *Sect.* 25, *Cl.* 3.—*p.* 214.

357. If A sues B to recover real property in B's possession, and before its decision, the rights and interests of B are sold in satisfaction of a decree of Court, the Moonsiff in such a case may receive an application from A to make C a party in the suit.—*Con.* 17*th Sept.* 1841.—*p.* 214.

358. In the Moonsiff's Courts, the pleadings need not be written on stamp paper.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 2.—*p.* 214.

359. In the Moonsiff's Courts, if a plaintiff delay to file his reply or a defendant his rejoinder, within the period fixed, the Moonsiff need not postpone the suit, but may proceed with it as if they had been filed.—*Reg.* 23, 1814, *Sect.* 25, *Cl.* 5.—*p.* 214.

360. The Moonsiff need not issue notice to plaintiffs under Circular Order 5th Nov. 1812, requiring them to appear in six weeks, to shew cause why their suits should not be thrown out on account of default. Eight days or a fortnight is a sufficient time to be allowed in ordinary cases for this purpose.—*Con. No.* 758.—*p.* 215.

361. In the Moonsiff's Courts, after the answer has been filed, if the parties or either of them fail to appear in person or by vakeel when the suit is called on, the Moonsiff will suspend the trial, and affix a notice in his Court, stating that the suit will be called up again after a fixed period, not being less than ten days. If the plaintiff do not appear in that time, in person or by vakeel, the suit will be dismissed; if the defendant fails to appear, it will be tried *ex-parte*.—*Reg.* 23, 1814, *Sect.* 27, *Cl.* 1.—*p.* 215.

362. If the plaintiff absent himself previous to the service of notice on the defendant, or before the reply be filed, the suit cannot be proceeded in, and must be dismissed.—*Con. No.* 870.—*p.* 215.

363. On the dismissal of a suit under Regulation 23, 1814, Section 27, Clause 1, and Regulation 26, 1814, Section 12, Clause 3, the plaintiff is at liberty to institute a new suit for the same claim, as if the case had not been heard.—*Con. No.* 870.—*p.* 215.

364. If there has been no decision on the merits of the case, but merely a dismissal pronounced on default, the omission of the word *non-suit*, cannot bar the claim of the plaintiff to the admission of a summary appeal.—*Con. No.* 870.—*p.* 215.

365. In modification of Con. No. 1226, it is declared that Reg. 23, 1814, Sect. 10 and 12, are applicable to the Courts of the two higher grades of Native Judges, but not to those of Moonsiffs. —*C. O.* 20*th Aug.* 1841.—*p.* 215.

366. If the suit be dismissed without an investigation of its merits, and either party appeal from the decision of the Moonsiff, the appellate Court will try the case on its merits, or remand it back to the Moonsiff, or refer it to some other competent authority for investigation.—*Reg.* 23, 1814, *Sect.* 27, *Cl.* 2.—*p.* 215.

367. The Moonsiffs will try suits depending before them by hearing the pleadings, examining

exhibits, and taking the depositions of witnesses. They may also examine the truth of the claim by the oaths of the parties, if they mutually consent to it.—*Reg.* 23, 1814, *Sect.* 28.—*p.* 215.

368. The Zillah Judges are desired to inform the uncovenanted Judges, that it is their duty to see that the vakeels and agents, attached to their Courts, draw up "the plaint," "the answer," "the reply," and the "rejoinder," as also "the reasons of appeal," and "the reply," thereto, in strict conformity to the Regulations, and the Sudder Court will hereafter hold any officer, who may be proved to be generally inattentive to this important subject, to have been guilty of gross neglect of duty, bringing him within the provisions of Section 26, Regulation 5, 1831.—*C. O. 8th Jan.* 1841.—*p.* 216.

SECT. XXXVII.

Trial of Suits by Moonsiffs.—Witnesses.

369. The Moonsiff is authorized to summon witnesses who may not attend at the requisition of the parties, if they be subject to his jurisdiction, and be not women whose rank makes it improper that they should appear in public. The evidence of such women will be taken as prescribed in Regulation 4, 1793, Section 6.—*Reg.* 23, 1814, *Sect.* 29, *Cl.* 1.—*p.* 216.

370. If a Moonsiff requires the compulsory attendance of a witness out of his jurisdiction, he will apply to the Zillah Judge, who will issue the necessary process for procuring his attendance, either through his own officer, or through the Judge, or Moonsiff in whose jurisdiction he resides.—*Reg.* 23, 1814, *Sect.* 32, *Cl.* 1.—*p.* 216.

371. If the witness reside at a considerable distance from the Moonsiff's Cutcherry, or if it be otherwise improper to compel his attendance, the Moonsiff may submit to the Judge written interrogatories drawn up by himself, or suggested by the parties. On receiving them, the Judge will proceed to obtain the evidence in the mode described in Regulation 4, 1793, Section 6.—*Reg.* 23, 1814, *Sect.* 32, *Cl.* 2.—*p.* 216.

For the mode of obtaining the examination of absent witnesses, vide Section 21 of this Chapter.

372. The summons to witnesses issued by the Moonsiff, will specify the number of the suit, the name of the party to whom it is issued; and the name and residence of the witness, and require them to appear on a specific day and give their depositions.—*Reg.* 23, 1814, *Sect.* 29, *Cl.* 2.—*p.* 216.

373. The application for summoning witnesses before a Moonsiff, need not be on stamp paper. —*Reg.* 5, 1831, *Sect.* 9, *Cl.* 2.—*p.* 216.

374. The Moonsiffs will deliver the summons to be served by the party or his vakeel, or through any person chosen by them; but the name of the person to be employed in this duty must be notified to the Moonsiff and endorsed on the summons previously to its delivery.—*Reg.* 23, 1814, *Sect.* 29, *Cl.* 4.—*p.* 216.

375. But as the strict observance of this rule may be attended with inconvenience, whenever the party may be desirous of having the summons served by a peon, instead of serving it himself, the Moonsiff may levy Tulubana for that purpose.—*Reg.* 7, 1832, *Sect.* 5, *Cl.* 1.—*p.* 217.

The Rules regarding the service of the Moonsiff's process by peons will be found at Chapter 2, Section 9, No. 92—101.

376. If a person on whom the summons has been served, shall not attend on the prescribed day, the Moonsiff may attach any property belonging to him found within his jurisdiction. If after a reasonable time subsequent to the attachment he does not appear, and it be proved by the plaintiff's oath, that his evidence is material, the Moonsiff will report the matter to the Judge, who will use his discretion in issuing further process to compel his attendance, as if the case were depending before himself.—*Reg.* 23, 1814, *Sect.* 31, *Cl.* 1.—*p.* 217.

377. If this farther process be insufficient to procure his attendance, the Judge, at his discretion may impose on such witness a fine equal to the amount of the property in dispute. The fine will be realized under the general provisions for executing decrees.—*Reg.* 23, 1814, *Sect.* 31, *Cl.* 2.—*p.* 217.

378. If a witness, duly summoned, attend at a Moonsiff's Court, but refuse to give evidence, or

to sign his deposition, the Moonsiff may fine him. The Moonsiff will not realize this fine on his own authority, but report it to the Judge, who will either remit, or modify, or confirm it, and realize it under the provisions for enforcing decrees.—*Reg.* 23; 1814, *Sect.* 31, *Cl.* 3.—*p.* 217.

379. The Moonsiffs are forbidden to confine or otherwise punish witnesses. They are enjoined to take their depositions with all possible speed, that they may not be exposed to vexatious or unnecessary detention.—*Reg.* 23, 1814, *Sect.* 33.—*p.* 217.

380. The Moonsiffs may take the deposition of witnesses without any solemn declaration, whenever the parties or their Vakeels may voluntarily and mutually agree to it.—*Reg.* 23, 1814, *Sect.* 35.—*p.* 217.

381. The Moonsiffs will carefully prevent the parties or their vakeels instructing or intimidating witnesses, or putting leading questions to them, suggesting a particular answer, or questions regarding the personal character of the parties, or irrelevant questions.—*Reg.* 23, 1814, *Sect.* 36.—*p.* 218.

382. The deposition of every witness will specify his name, and that of his father, (if a woman, of her husband,) his religion, caste, profession, age and residence, and it will be subscribed with his name or mark.—*Reg.* 23, 1814, *Sect.* 37.—*p.* 218.

For cases of Perjury or Subornation of Perjury before Moonsiffs, vide Rule 217 of this Chapter.

383. Moonsiffs will summon as witnesses those who are engaged in the salt and opium manufacture, as directed in Section 20, of Reg. 23, 1814, respecting the issue of notice to defendants. Moonsiffs will not summon them unnecessarily, and on their attendance, will examine and dismiss them with all practicable expedition.—*Reg.* 23, 1814, *Sect.* 30.—*p.* 218.

SECT. XXXVIII.

Trial of Suits by Moonsiffs.—Exhibits.

384. No fees will be levied on Exhibits filed in a Moonsiff's Court, and exhibits will be received without any durkhast, or application. Moonsiffs will be careful not to admit or file an exhibit or receive in evidence any obligation, instrument, bond, deed or document, either as an original or a copy, which may not be executed on stamp paper of the description ordered by the Regulations.—*Reg.* 23, 1814, *Sect.* 38, *Cl.* 1.—*p.* 218.

385. If the Moonsiff entertains doubts whether the document presented to him as an exhibit has been written on paper bearing the prescribed stamp, he will transmit it to the Judge, and be guided by his instructions either in receiving or rejecting it.—*Reg.* 23, 1814, *Sect.* 38, *Cl.* 2.—*p.* 218.

386. Applications for filing Exhibits in Moonsiff's Courts need not be written on stamp paper.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 2.—*p.* 218.

387. The Moonsiff will date, sign, or seal every exhibit filed in a suit before him, and mark it with some letter or number to identify it, which letter or number will be distinctly referred to in the depositions, the proceedings or the decree.—*Reg.* 23, 1814, *Sect.* 38, *Cl.* 3.—*p.* 218.

388. When the Native Judges have occasion to examine and scrutinize Native account books, they will appoint *Ameens* as directed in the case of European Judges by *C. O. 4th Feb.* 1840.—*p.* 219.

The rules regarding Exhibits passed in reference to Zillah Courts, and inserted as Rule 226 of this Chapter, are made applicable by Circular Order, 29th July, 1836, to the Courts of Moonsiff's and other Uncovenanted Judges.

SECT. XXXIX.

Administration of the Mahomedan and Hindoo Law of Inheritance by Moonsiffs.

389. In all cases of inheritance or succession to landed property, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to regulate the decision. In all such cases where doubts arise, the Moonsiffs will obtain an exposition of the law from the Law Officers of the Zillah Courts. This will not preclude a farther reference to the Law Officers

of those Courts upon such points of law as may arise upon the cause in case of appeal. When the plaintiff is of a different religious persuasion from the defendant, the decision is to be regulated by the law of the latter, in cases in which the defendant is either a Mahomedan or Hindoo.—*Reg.* 5, 1831, *Sect.* 6, *Cl.* 2.—*p.* 219.

390. In cases in which the above rule cannot be applied, Moonsiffs will act according to justice, equity, and good conscience.—*Reg.* 5, 1831, *Sect.* 6, *Cl.* 3.—*p.* 219.

391. The rules in the Clause above regarding succession, are applicable exclusively to Moonsiff's Courts.—*Con. No.* 706.—*p.* 219.

392. For the subsequent modification of the Law of Inheritance as to real property, vide Regulation 7, 1832, Section 9.

393. In suits concerning the succession or right of inheritance to real property, Moonsiffs will publish in the most public manner a written notification of the claim preferred, with a requisition for all who have a claim to the property to prefer it in a limited time; and they will invariably adjudge the property in their decree to all the claimants in the proportions to which they may be respectively entitled.—*Reg.* 5, 1831, *Sect.* 6, *Cl.* 4.—*p.* 219.

394. The claimants of property under this Clause will present their petitions on unstamp paper. —*Con. No.* 706.—*p.* 220.

395. Reg. 12, 1833, Sect. 2, Cl. 6, is applicable to all suits, in which private engagements exist between parties and their pleaders.—*Con.* 28*th May*, 1841.—*p.* 220.

SECT. XL.

Decrees of Moonsiffs.—Fines—Resistance of Process.

396. If a party, vakeel, or witness be guilty of disrespectful conduct to a Moonsiff, in open Court, he may impose a fine on him, but instead of realizing it of his own authority, will report it to the Judge, who will either remit, modify, or confirm the fine; and in the two latter cases, levy it under the provisions for executing decrees.—*Reg.* 23, 1814, *Sect.* 42.—*p.* 220.

397. The enactments contained at Rule 302 of this Chapter, are extended to the Courts of Sudder Ameens and Moonsiffs. All fines for contempt of Court, imposed by a Moonsiff, must be reported for the information and orders of the Zillah Judge, in the same manner as fines on witnesses are directed to be reported.—*Reg.* 12, 1825, *Sect.* 6, *Cl.* 2.—*p.* 220.

398. In cases of the resistance of process of a Moonsiff, he should report the case for the orders of the Judge.—*Con. No.* 701.—*p.* 220.

399. A Moonsiff is competent to ascertain the fact of resistance of a process of his Court or other contempt, and determine the amount of fine which he thinks ought to be levied; but prior to levying the fine, he must report the case for the orders of the Judge.—*Con. No.* 1262.—*p.* 220.

400. The Native Judges are competent of their own authority, without reference to the Judge, to realize by the usual process, fines imposed under the Stamp rule of Regulation 10, 1829, Section 18, Clause 1, subject to the usual course of appeal.—*C. O.* 7*th June*, 1839.—*p.* 220.

SECT. XLI.

Decrees of Moonsiffs.

401. When the parties have been heard, the witnesses on both sides examined, and the exhibits received and considered, the Moonsiff will give judgment according to justice and right.—*Reg.* 23, 1814, *Sect.* 39.—*p.* 220.

402. In the Moonsiff's Court, the Decree will specify the names of the parties and of the witnesses, and the titles of the exhibits. It will contain an abstract statement of the material facts alleged in the pleadings, and an elucidation of the grounds and reasons on which the decree is passed. It will state specifically the sum of money, or the value or amount of the personal property adjudged; and the amount of costs and damages payable by each party.—*Reg.* 23, 1814, *Sect.* 40.—*p.* 221.

403. If any claim appear to the Moonsiff evidently litigious and vexatious, he will adjudge

suitable costs and damages against the plaintiff, and insert the same in his decree.—*Reg.* 23, 1814, *Sect.* 40.—*p.* 221.

404. The rules above do not authorize the imposition of a fine, for a litigious or vexatious suit. Fines are leviable on account of Government. The damages which may be awarded belong to the party entitled to them. In such cases, the damages form part of the decree, and unless the party interested should appeal, the decree will be executed without reference to the Judge.—*Con. No.* 966.—*p.* 221.

405. The Moonsiff, after passing the decree, will cause two copies of it to be prepared, which will be signed and sealed by him; and one week after the date of the decree, tender the copies in open Court, to the parties or their vakeels. He will endorse on the back the date on which they are tendered; and if either or both parties fail to attend, or refuse to receive the copies, the fact will be certified on the back of the decree.—*Reg.* 23, 1814, *Sect.* 41, *Cl.* 1.—*p.* 221.

406. The rule prescribed for the Zillah Judges for endorsing on the copies of the decrees delivered or tendered by them, and inserting in their records, the date of delivering or tendering them, will be carefully observed by the Native Judges.—*Reg.* 2, 1805, *Sect.* 8.—*p.* 221.

407. The Moonsiff will, as heretofore, prepare and tender to the parties, copies of each decree or final order they may pass, within one week from the date of passing it. In suits cognizable by Moonsiffs, but referred to Principal Sudder Ameens or Sudder Ameens (Act 25, 1837, Section 5,) the same rule will prevail.—*C. O. 20th Sept.* 1839.—*p.* 221.

408. Any Moonsiff who may be guilty of wilfully misstating, or falsifying, or causing to be misstated or falsified, the date and purport of the endorsement ordered as above to be written on the copies of the decrees, or of keeping back such copies of the decree, to defeat the object of appeal, shall, on proof thereof, be liable to be dismissed, and also subjected to a discretionary fine.—*Reg.* 23, 1814, *Sect.* 41, *Cl.* 2.—*p.* 221.

409. The copies of decrees directed to be tendered to parties by Moonsiffs, need not be written on stamp paper.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 2.—*p.* 221.

410. The Moonsiffs are strictly enjoined to endorse on every copy of a decree or order, the date on which the party, after due notice, failed to attend, in person or by vakeel, and the copy was accordingly deposited among the records.—*C. O. 8th May,* 1840.—*p.* 222.

SECT. XLII.

Razeenamah in Moonsiffs' Courts.

411. Regulation 13, 1824, Sect. 3, Clauses second and third, are applicable to cases adjusted by Razeenamah in Moonsiffs' Courts.—*Reg.* 7, 1832, *Sect.* 6, *Cl.* 2.—*p.* 222.

412. In original suits before the Sudder Ameens, if the Razeenamah be filed before the pleadings are completed and read, the full amount of the stamp duty will be refunded to the party, or to his legal representative. A moiety of the stamp duty so paid will be refunded, if the Razeenamah be filed after the pleadings have been completed.—*Reg.* 13, 1824, *Sect.* 3, *Cl.* 2.—*p.* 222.

413. The Sudder Ameens are required to submit to the Zillah Judges, to whom they are subordinate, a monthly statement of the Stamp duties receivable by parties under Clause 2. The Judges after having verified the statements, will take the necessary measures to cause payment to be made to the parties in pursuance of Reg. 26, 1814, Sect. 25.—*Reg.* 13, 1824, *Sect.* 3, *Cl.* 3.—*p.* 222.

414. Razeenamahs filed in Moonsiffs' Courts need not be drawn out on stamp paper.—*C. O. 20th July,* 1838.—*p.* 222.

415. The following method is to be adopted in cases in which there are no Tuhseeldars in the district, or in any particular purgunnah, for repaying to plaintiffs in suits decided by Razeenamah the value of the Stamp to which they are entitled.—*C. O. 9th Aug.* 1833.—*p.* 223.

416. On the adjustment of a case by Razeenamah, the plaintiff should petition the Moonsiff on plain paper. The Moonsiff, endorsing on the petition the number of the suit, and the date of decision, will forward it to the Judge, who, when he has ascertained its correctness by reference to the

Nuthee, will grant the prescribed Certificate and transmit it to the Collector. That officer, after ascertaining the genuineness of the paper, will return the plaint to the Judge with the amount to be refunded. The money will be sent to the Moonsiff, who will return it to the party, and forward his receipt to the Judge.—*C. O. 9th Aug.* 1833.—*p.* 223.

417. Any Moonsiff or Sudder Ameen, directing the refund of the Stamp fee in cases adjusted by Razeenamah, will send to the Collector the Stamp paper on which the plaint was written, with the certificate required in Reg. 10, 1829, Sch. B. The Collector will transmit it to the Stamp Office for examination. On its return to his office the Collector will return it to the Moonsiff, with an order for payment on the nearest Tuhseeldar; or where there is no such officer, on the Treasury of the District. The Moonsiff will deliver the order to the party, with directions to apply to the Tuhseeldar, or Treasurer, who will carefully retain the order in his office.—*C. O.* 10*th May*, 1833. —*p.* 223,

418. In such cases, however, the Moonsiffs and Sudder Ameens should deliver to the parties both the Judge's authenticated Certificate and the Collector's Orders for payment, and they will deliver both documents to the nearest Tuhseeldar, and claim the refund from him.—*C. O.* 14*th Nov.* 1834.—*p.* 223,

SECT. XLIII.

Trial of Suits by Sudder Ameens.—General Rules.

419. Original suits referred to a Sudder Ameen, will be tried and determined according to the provisions of Regulation 23, 1814.—*Reg.* 5, 1831, *Sect.* 15, *Cl.* 3.—*p.* 223.

420. In points not provided for in Regulation 23, 1814, the Sudder Ameens will be guided as nearly as may be practicable by the rules laid down for the Zillah and City Court.—*Reg.* 23, 1814, *Sect.* 74.—*p.* 224.

421. The Sudder Ameens are themselves to investigate the suits referred to them in a public Cutcherry, and are not to allow their officers, servants, or dependants, or any other person to interfere.—*Reg.* 23, 1814, *Sect.* 71.—*p.* 224.

Regarding the number of suits which a Sudder Ameen is required to decide in the month, vide Rule 326 of this Chapter.

422. Under the provisions of Act 25, 1837, suits in which the Government or its officers may be a party, are referrible to Sudder Ameens.—*Con. No.* 1112.—*p.* 224.

423. The rules contained in the following Sections of the Regulation (23 of 1814,) enacted for Moonsiffs, are also applicable to suits before Sudder Ameens: Sections 18 and 23, Clause 4, Sect. 25, Sections 26, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 46, 47, 48 and 49.—*Reg.* 23, 1814, *Sect.* 73.—*p.* 224.

Plaints and Stamps.

Regulation 23, 1814, Section 18, (Rule 335 of this Chapter) is applicable to Sudder Ameens. —*Reg.* 23, 1814, *Sect.* 73.—*p.* 224.

For the value of the stamp paper on which Petitions of Plaints must be written, vide Chap. 2, Rule 443.

424. If a Sudder Ameen nonsuits a case, under Article 8, Schedule B. Regulation 10, 1829, on the ground that the property claimed has been understated, a summary appeal will lie, if the plaintiff can shew that the value of the property was not understated, and that the decision of the Sudder Ameen was erroneous.—*Con. No.* 872.—*p.* 224.

For the Stamp duty on Petitions, Applications and Durkhasts presented to the Sudder Ameen, vide Chap. 2, Rule 440.

425. It is optional with the parties to file several stamps, the aggregate value of which will be equal to the amount prescribed by law for engrossing petitions of plaint or appeal, or one stamp of full value, with other sheets of plain paper annexed to it.—*C. O.* 28*th Aug.* 1840.—*p.* 224.

426. Whenever a Zillah Judge may refer to a Sudder Ameen, or a Principal Sudder Ameen, a suit within the competence of a Moonsiff to decide, such suit will be subject to the same rules as it regards Stamp fees and Appeals, as if it had been received and tried by the Moonsiff in the first instance.—*Act* 25, 1837, *Sect.* 5.—*p.* 225.

Notice.

427. Every notice, summons, attachment, or other process relating to any cause depending before a Sudder Ameen, will be signed and sealed by him, and issue through his own officers, and not as heretofore through the Nazir of the Court under the Judge's signature.—*Reg.* 5, 1831, *Sect.* 15, *Cl.* 4.—*p.* 225.

428. The process of Principal Sudder Ameens, and Sudder Ameens, in suits pending before them, is to be issued under Clause 4, Section 15, Regulation 5, 1831, through peons entertained in the same manner and subject to the same rules as those employed heretofore under the Nazir of the Zillah Court, but without the interference of that officer, which is expressly forbidden. The Sudder Ameens and Principal Sudder Ameens are entitled to no profit from this source. The peons entertained will be registered and distinguished by badges, as provided by Section 14, Regulation 26, 1814.—*C. O. 11th May*, 1832.—*p.* 225.

429. Processes of the Principal Sudder Ameens, and Sudder Ameens, required to be enforced in another Zillah, must be issued under their seal and signature as prescribed in Regulation 5, 1831, Section 15, Clause 4, and with reference to Regulation 2, 1806, Section 2, Clause 3, be sent by the Sudder Ameen to the Judge of the Court in which they are to be executed.—*Con. No.* 1235.—*p.* 225.

430. Con. No. 859 is rescinded. In modification of Con. No. 1226, it is declared that Reg. 36, 1814, Sect. 10 and 12, are applicable to the Courts of Principal Sudder Ameens and Sudder Ameens.—*C. O. 20th Aug.* 1814.—*p.* 225.

Security.

Regulation 23, 1814, Section 23, (Rule 349 of this Chapter,) is extended to Sudder Ameens by Reg. 23, 1814, Sect. 73.

Pleadings.

For the value of the Stamp in pleadings before the Sudder Ameens, vide Chap. 2, Rule 444, 445, 446 and 447.

The reservation made by Reg. 25, 1837, Sect. 5, (No. 426 of this Chapter,) must also be carefully attended to in reference to Pleadings.

Vakeels.

For Vakeels in Sudder Ameen's Courts, vide Chapter 2, Rule 195.

Witnesses.

Reg. 23, 1814, Sect. 33, (Rule 379 of this Chapter,) Sect. 36, (Rule 381,) and Sect. 37, (Rule 382,) are extended to the Courts of Sudder Ameens by Reg. 23, 1814, Sect. 73.

For rules regarding Perjury in the Courts of Sudder Ameens, vide Rules 217, 218, 219, and 220 of this Chapter.

For the Stamp fees on applications, for summoning witnesses, vide Chap. 2, Rule 451.

For rules regarding Tulubana, vide Chapter 2, Rule 91.

Notice to file Exhibits and summon Witnesses.

For rules on this subject, vide Rules 165, 166 and 169, of this Chapter.

Exhibits.

The rules contained in Reg. 23, 1814, Sect. 38, Clauses 1, 2 and 3, (Rules 384, 385 and 387 of this Chapter) are made applicable to Sudder Ameens by Reg. 23, 1814, Sect. 73.

For the stamp duty on petitions regarding the filing of Exhibits, vide Chapter 2, Rule 438.

Decision and Decree.

The rules contained in Reg. 23, 1814, Sect. 39, (Rule 401 of this Chapter,) Sect. 40, (Rule 402) and Sect. 41, Cl. 1 and 2, (Rules 405 and 408) are extended to the Courts of Sudder Ameens by Reg. 23, 1814, Sect. 73.

For the stamp duty on Copies of Decrees, vide Chap. 2, Rule 432.

The reservation in Act 25, 1837, Sect. 5, given at Rule 426, of this Chapter, is to be carefully attended to in regard to Decrees.

431. The Sudder Ameen will prepare and tender to the parties copies of each decree or final order, within one week from the date of them.—*C. O. 20th Sept.* 1839.—*p.* 226.

Razeenamah.

432. In original suits in the Courts of Sudder Ameens, if the Razeenamah be filed before the pleadings are completed and read, the full amount of the stamp duty paid on the institution of the suit will be returned; if after the pleadings have been completed and read, only a moiety of the stamp duty.—*Reg.* 13, 1824, *Sect.* 3, *Cl.* 2.—*p.* 226.

433. The Sudder Ameens will submit to the Judges a monthly statement of the stamp duty receivable by the parties under the above Clause; and the Judges, after examining the statement, will cause the amount to be refunded.—*Reg.* 13, 1824, *Sect.* 3, *Cl.* 3.—*p.* 226.

Fines.

434. The Sudder Ameens cannot realize by their own authority any fines they may impose. In such cases they will report the case to the Zillah Judge, who will remit, or modify, or confirm the fine, and proceed to realize it in the mode prescribed for the execution of decrees.—*Reg.* 23, 1814, *Sect.* 74.—*p.* 226.

435. When the Zillah Judge has modified or confirmed the order of a native Judge imposing a fine, he will proceed to realize it under the same rules as are prescribed for the execution of decrees. The Judge may refer his order in such cases to the native Judge for execution.—*Con. No.* 1020.—*p.* 227.

436. When the Collector may refuse to obey the order of a native Judge, it would be inconsistent to allow him to fine the Collector. He will report the particular circumstances of each case as it may arise to the Zillah Judge, leaving him to take such steps as appear consistent with the Regulations.—*Con. No.* 1193.—*p.* 227.

SECT. XLIV.

Trial of Suits by Principal Sudder Ameens.—General Rules.

437. The Principal Sudder Ameens will themselves investigate the suits and appeals referred to them, in open Cutcherry, and not allow their officers, servants, or dependants to interfere.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 2.—*p.* 227.

438. In the trial and decision of suits, the Principal Sudder Ameen will be guided by the Rules established for the Courts of Sudder Ameens. In points not expressly provided for by those rules, they will follow as nearly as possible, the rules laid down for the Zillah and City Courts.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 4.—*p.* 227.

Regarding the cognizance of Government suits, vide Rule 422 of this Chapter.

Regarding the number of Suits which a Principal Sudder Ameen is required to decide in the month, vide Rule 326 of this Chapter.

Vakeels.

439. The Zillah and City Judge will authorize any of the Vakeels of his Court, or of those attached to the Sudder Ameens' Court, to practice in that of the Principal Sudder Ameen.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 3.—*p.* 227.

Process.

Regarding the issue of process, Rule 427 is made applicable to the Courts of Principal Sudder Ameens.

440. The Principal Sudder Ameens will retain Nazirs on their establishments to whom the provisions in Regulation 26, 1814, Section 14, Clause 8, will apply.—*Reg.* 7, 1832, *Sect.* 5, *Cl.* 5.—*p.* 227.

The rules in the Circular Orders of 11th May, 1832, (Rule 428 of this Chapter,) regarding the manner in which the process of the Sudder Ameen is to be served, are equally applicable to the Courts of Principal Sudder Ameens.

Stamps.

441. The duties chargeable on Law papers in the Courts of Principal Sudder Ameens, will be

regulated according to the rates fixed in Schedule B. Regulation 10, 1829, that is, they will be the same as in the Zillah and City Courts.—*Reg.* 5, 1831, *Sect.* 20.—*p.* 227.

442. Although under this operation of Act 25, 1837, suits of any amount are cognizable by Principal Sudder Ameens, yet the Pleadings are still to be filed on paper of a Rupee stamp only. —*Con. No.* 1118—*p.* 228.

443. Whenever a Zillah Judge may refer to a Principal Sudder Ameen, a suit within the competency of a Moonsiff to decide, such suit will be subject to the same rules with regard to stamp fees, and appeal, as if it had been received and tried in the first instance by the Moonsiff.—*Act* 25, 1837, *Sect.* 5.—*p.* 228.

444. Whenever a Zillah Judge may refer to a Principal Sudder Ameen, a suit within the competency of a Sudder Ameen, it will be subject to the same rules regarding Stamps and appeal as if it had been decided by the Sudder Ameen.—*Act* 25, 1837, *Sect.* 7.—*p.* 228.

Notice—Notification of the points at issue.

445. In the trial of original suits and appeals, the Principal Sudder Ameen will conform strictly to the mode of procedure ordered in Regulation 26, 1814, Sect. 10, before any Exhibits are filed, or witnesses summoned, in support of the allegations of either party.—*Reg.* 5, 1831, *Sect.* 21.—*p.* 228.

446. Con. No. 859 is rescinded. In modification of Con. No. 1226, it is declared that Reg. 26, 1814, Sect. 10 and 12, are applicable to the Courts of Principal Sudder Ameens and Sudder Ameens.—*C. O. 20th Aug.* 1841.—*p.* 228.

Decrees.

447. Decrees passed by the Principal Sudder Ameens, will be executed by those Courts under the general rules prescribed for the execution of decrees passed by the Zillah and City Judges. In such cases, an appeal will lie from the orders of the Principal Sudder Ameen, in the first instance to the Zillah Court, and specially to the Sudder Dewanny.—*Reg.* 5, 1831, *Sect.* 22.—*p.* 228.

448. The Principal Sudder Ameen will prepare and tender to the parties, copies of each decree or final order, within one week from their date.—*C. O. 20th Sept.* 1839.—*p.* 228.

449. The Principal Sudder Ameen will furnish the Zillah Judge with a certificate, stating that all decrees passed by him in cases above 5000 Rupees, were prepared by him within seven days from their date.—*C. O. 20th Sept.* 1839.—*p.* 229.

450. Decrees of the Principal Sudder Ameens which are intended to remain with the record, will in future be engrossed on Europe paper.—*C. O. 21st May*, 1841.—*p.* 229.

Confinement of defendants.

451. It is the intent of Regulation 7, 1832, Section 7, that Principal Sudder Ameens, as well as Sudder Ameens and Moonsiffs, should not confine a defendant without the sanction of the Judge.—*Con. No.* 947.—*p.* 229.

452. By Act 25, 1837, however, the Principal Sudder Ameen has full power to pass any order in suits above 5000 Rupees which the Judge himself could pass. He may therefore order the imprisonment of a debtor; and on his issuing his warrant, the jailor will receive or release the prisoner.—*C. O. 18th Sept.* 1840.—*p.* 229.

Reports.

453. The Principal Sudder Ameens will furnish such Monthly and other periodical reports of business done in their Courts, as the Sudder Dewanny may direct.—*Reg.* 5, 1831, *Sect.* 23. —*p.* 229.

SECT. XLV.

Transmission of Reports and Records of decided Cases by Native Judges to the Zillah Courts.

454. The Moonsiffs will transmit to the Judge's Court on or before the 15th of each month, a report of all suits decided by them in the preceding month, together with the original papers and documents in each case, to be deposited among the records of the Court.—*Reg.* 23, 1814, *Sect.* 43, *Cl.* 1.—*p.* 229.

455. The Moonsiff will likewise transmit, on the 15th of January and July each year, a report of the causes depending before them on the 1st of those months.—*Reg.* 23, 1814, *Sect.* 43, *Cl.* 2.—*p.* 229.

456. These monthly and half yearly reports will be enclosed in a cover addressed to the Judge, sealed with the Moonsiff's seal, and made up in such a manner, that if the seals are broken, and the packet is opened in its transit, it may be discovered. The packets will be forwarded by the public dawk, or by the Moonsiff's servant, or through the nearest Darogah.—*Reg.* 23, 1814, *Sect.* 43, *Cl.* 3.—*p.* 230.

The same rule is applicable to Sudder Ameens.—*Reg.* 23, 1814, *Sect.* 73.—*p.* 230.

And also to Principal Sudder Ameens.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 4.—*p.* 230.

457. The Moonsiffs will accompany the Reports required of them, as above, with a statement of the suits instituted before them in the preceding month.—*Reg.* 5, 1831, *Sect.* 10.—*p.* 230.

458. These enactments, though virtually rescinded by Regulation 7, 1829, Section 2, are under Section 3, Clause 2, of that enactment, still in force, because they have never been especially dispensed with, or ordered to be discontinued by the Sudder Court.—*C. O. 20th Sept.* 1839.—*p.* 230.

459. That Court, in accordance with the authority vested in it by Section 3, Cl. 2, of the Regulation mentioned above, prescribes as follows:

The Moonsiffs and Sudder Ameens, will forward, along with their regular returns of business, on the tenth or at farthest the fifteenth day after the close of the month to which they relate, the report of suits decided, with the original papers and documents of each suit, including the final decree, as ordered by Regulation 23, 1814, Section 43, Clause 1. The Principal Sudder Ameens will follow the same course in suits not exceeding 5,000 Rupees.—*C. O. 20th Sept.* 1839.—*p.* 230.

460. With those records, the native Judges will also transmit, for deposit, the record of all cases of execution of decrees, and other miscellaneous cases, disposed of in the preceding month, with the exception of cases of enforcement of decrees struck off the file in that period, in which an application may have been made to sue out execution anew, prior to the date of transmission; in which event, they will send in lieu of the record, copies of the order striking the case off the file, of the petition for revival, and of the proceedings thereon.—*C. O. 20th Sept.* 1839.—*p.* 230.

461. The Judge will occasionally inspect these records, particularly those which concern the execution of decrees, struck off in default, to be satisfied that no abuse or irregularity has been practised, and to correct the same, if discovered.—*C. O. 20th Sept.* 1839.—*p.* 230.

462. Suits decided by the Principal Sudder Ameen, above 5,000 Rupees in value, are exempted from this rule. The records of such cases will remain with him for six months after the decree, to enable him to execute any orders issued by the Sudder Dewanny Adawlut on occasion of appeals being preferred, after which they will be forwarded for deposit in the Judge's Court. The usual report, submitted monthly, will include these decisions also.—*C. O. 20th Sept.* 1839.—*p.* 231.

SECT. XLVI.

Criminal Jurisdiction of the Native Judges.

463. The following rules are declared applicable to Sudder Ameens.—*Reg.* 3, 1821, *Sect.* 4.—*p.* 231.

464. The Zillah and City Magistrates may refer for trial to the Sudder Ameens, all complaints brought before them for petty offences, such as abusive language, petty assaults, calumny, and inconsiderable affrays and thefts, when unattended with aggravating circumstances.—*Reg.* 3, 1821, *Sect.* 3, *Cl.* 1.—*p.* 231.

465. The Zillah and City Magistrates may refer to the Sudder Ameens any criminal cases, which under former Regulations they were authorized to refer to their Assistants, and in the mode of making the reference, and in the subsequent stages of the proceeding, the Magistrates and Sudder Ameens will be guided by the provisions hitherto in force relative to such cases.—*Reg.* 3, 1821, *Sect.* 3, *Cl.* 2.—*p.* 231.

466. The Sudder Ameens in the decision of such criminal cases, will exercise the powers vested

in Assistants by Regulation 9, 1807, Section 20, and by the other Regulations therein referred to; that is, in cases referred to them, they will not sentence a person convicted of abusive language or calumny, or inconsiderable assault, to more than fifteen days imprisonment; and a fine of fifty Rupees, with an eventual commutation, if the fine be not paid, of fifteen days' farther confinement. A person convicted of petty theft may not be sentenced to more than thirty ratans, or a month's imprisonment. No person thus sentenced, will be confined in irons, except his misconduct during imprisonment may appear to the Magistrate to render this step necessary for his safe custody.—*Reg.* 3, 1821, *Sect.* 3, *Cl.* 3.—*p.* 231.

Corporal punishment has since been abolished.

467. All persons amenable to the Criminal Courts, who may be guilty of contempt of Court, will be liable to a fine not exceeding 200 Rupees, and if the fine be not paid, to imprisonment not exceeding two months.—*Reg.* 12, 1825, *Sect.* 5, *Cl.* 2.—*p.* 232.

468. The above rule is intended to include, wilful contempts of the Courts of the Native Law Officers and Sudder Ameens to whom petty offences may be referred for trial; but the orders past by them must be referred for the consideration and orders of the Magistrate or Joint Magistrate, with a copy of the proceeding held in the case.—*Reg.* 12, 1825, *Sect.* 5, *Cl.* 3.—*p.* 232.

469. Cases under Regulation 15, 1824, are not properly cognizable by Sudder Ameens.—*Con. No.* 415.—*p.* 232.

470. No power is thereby vested in the Sudder Ameens in cases referred to them for investigation and decision, to issue perwannahs to Thanadars, Police Darogas, or other Mofussil Police Officers. In all such cases the matter must be represented to the Judge or Magistrate, and the order should issue from the superior Court.—*Con. No.* 451.—*p.* 232.

471. As Sudder Ameens are to be guided in the criminal cases referred to them under Regulation 3, 1821, Sections 3 and 4, by the rules prescribed for Assistants to Magistrates, their processes should be issued under their own signature, but under the seal and through the officers of the Magistrate.—*Con. No.* 741.—*p.* 232.

472. If it happens that a case apparently trivial turns out to be of a serious nature, the Sudder Ameen, to whom it has been referred for trial and decision, should return it to the Magistrate, but without any opinion on its merits.—*Con. No.* 516.—*p.* 232.

473. It is illegal for a Sudder Ameen to take a deposition in his private dwelling, at a distance from the Court House. If such deposition be false, the deponent is not liable to be punished for perjury.—*Con. No.* 627.—*p.* 232.

474. The Sudder Ameens will forward to the Magistrate on the fifth day of each month, a statement shewing the manner in which the cases thus referred to them have been disposed of.—*Reg.* 3, 1821, *Sect.* 3, *Cl.* 4.—*p.* 232.

475. No appeal will be received from the order of a Sudder Ameen in cases referred to them by the Magistrate of a Criminal nature, unless preferred within the period of one month from the date of such order.—*Reg.* 3, 1821, *Sect.* 5, *Cl.* 1.—*p.* 233.

476. This period of one month will be calculated according to the rules contained in Regulation 26, 1814, Sect. 8, Cl. 10.—*Reg.* 3, 1821, *Sect.* 5, *Cl.* 2.—*p.* 233.

477. The above rules are declared applicable to Principal Sudder Ameens. To them and to the Sudder Ameens, the Magistrate may refer any criminal case for investigation, though such case may not be finally cognizable by a Sudder Ameen. No commitment, however, will be made by those officers, and they will not exceed the power of awarding punishment in criminal matters entrusted to them by the Regulations.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 6.—*p.* 233.

478. Under this Clause, however, the Magistrate is not at liberty to refer to a Principal Sudder Ameen, cases under Regulation 15, 1824, involving disputes for possession.—*Con. No.* 689.—*p.* 233.

479. All cases under the provisions of Regulation 7, 1819, are referrible to a Principal Sudder Ameen.—*Con. No.* 1265.—*p.* 233.

SECT. XLVII.

Registry of Interlocutory Orders passed in Suits.

480. The Zillah Judges, the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, are severally ordered to have each a book called the *Buhee Yaddasht*, the pages of which will be numbered, and every leaf attested by the Sheristadar, Peshkar, or other superior ministerial officer of the Court.—*C. O. 15th May*, 1835.—*p.* 233.

481. The first and last leaves of the book will be signed by the European Judge and the Native Judges, who will thereupon specify the number of pages the book contains. In it, every order, final or interlocutory, in every suit or appeal, will be briefly entered as soon as passed; and the Judge, Principal Sudder Ameen, Sudder Ameen, and Moonsiff, will affix his name to it before he leaves the Court. When it is a final order, disposing of a suit or appeal, the vakeels will attest it with their signature.—*C. O. 15th May*, 1835.—*p.* 233.

482. Orders on miscellaneous petitions need not be entered, though it would be better if they were. It is merely the order passed, not the reason for passing it, which is to be entered. When the books are filled up, they will be deposited by the judicial authorities aforesaid in the records of the district, and the Record-keeper will grant a receipt for them. The Judge may entrust the books for his own office with any officer of his establishment, or deposit them with the Record-keeper. But the books must be forthcoming whenever required; and on quitting office the Judge must make them over to his successor.—*C. O. 15th May*, 1835.—*p.* 234.

SECT. XLVIII.

Applications for Copies of Papers or Orders to the Civil Courts.

483. A copy of the order passed upon any representation made in writing to the Court, will be delivered to the person making the representation, or to his Vakeel duly authenticated. All persons interested in cases depending before or decided by the Civil Courts, are entitled to receive authenticated copies of any orders passed in such cases, on furnishing the usual stamp paper.—*C. O. 14th May*, 1818.—*p.* 234.

484. With regard to applications for copies of proceedings and documents not falling within the above rule, the Courts will use their own discretion, in allowing copies to be taken on stamp paper, or plain paper, in pursuance of Regulation 26, 1814, Clause 16, or refusing them, when satisfactory reason may not be shewn for demanding them, especially when the application is made by a person not a party, or not interested in a suit.—*C. O. 14th May*, 1818.—*p.* 234.

485. Applications for copies of papers connected with suits pending before the native Judges, will be made to the Judges in whose Courts the suit is pending; who will decide on the propriety of complying with or rejecting such applications on their own authority. The copies they grant, they will authenticate. But copies of final orders in miscellaneous cases, and of all interlocutory orders, must be furnished on application, by the Moonsiffs on plain paper, and by the Courts of the other native Judges on paper of the prescribed stamp. The Courts have not the option of refusing them.—*C. O. 15th Nov.* 1839.—*p.* 234.

486. After the records of suits decided by the Native Judges have been transmitted to the Judge's office in the prescribed manner, applications for such papers will be presented to the Judge.—*C. O. 15th Nov.* 1839.—*p.* 234.

487. The rate of remuneration for copying the papers to which parties are not entitled free of charge, will be the same as that established for paying Mohurrirs employed to copy the proceedings of cases appealed direct to the Sudder Dewanny Adawlut from Principal Sudder Ameens' Courts, viz. 4,000 words the Rupee, figures counting as words.—*C. O. 4th Sept.* 1840.—*p.* 235.

488. The principle contained in Clauses 8, 9 and 10 of this Section, are applicable not only to all copies of decrees from which a party may desire to prefer a special or summary appeal, but also to all orders passed by the Zillah and subordinate Courts, of which they are required to furnish copies to the parties.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 11.—*p.* 235.

SECT. XLIX.

Records of the Zillah and City Courts.

489. Two native Record-keepers will be appointed to keep the Civil and Criminal Records in the Zillah and City Courts, and the Sudder Dewanny.—*Reg.* 18, 1793, *Sect.* 2.—*p.* 235.

Record-keepers come under the denomination of Ministeral Officers of the Native Courts, and their removal and appointment will follow the same rules.

490. The keepers of the Records will keep a Register of all the Civil and Criminal proceedings, documents, and other records belonging to the Courts, in a book, each leaf of which will be attested by the official signature of the Register and Assistant, and on the last leaf of which they will specify the number of pages contained in the book.—*Reg.* 14, 1793, *Sect.* 4.—*p.* 235.

491. The following Registers were ordered to be commenced on the 10th Aug. 1838.

No. 1. Register of Civil Suits disposed of by the Judge, Additional Judge, Principal Sudder Ameen, and Sudder Ameen, of each Zillah for each year, and deposited in the records of the Court of the District, according to an annexed form.

No. 2. A similar Register of suits disposed of by the Moonsiffs.

No. 3. Books containing the usual list of papers comprising the record of cases disposed of by the Judge, Additional Judge, Principal Sudder Ameen, and Sudder Ameen.

No. 4. Similar books for the cases disposed of by the Moonsiffs.—*C. O. 10th Aug.* 1838.—*p.* 235.

492. The first two books will be kept by an appointed Mohurrir, under the immediate orders of the Record-keeper. All regular suits decided by the Zillah or subordinate Judges, whether on their merits or otherwise, will be entered in them; and the Record-keeper will state the nature of the final order.—*C. O. 10th Aug.* 1838.—*p.* 236.

493. The books, Nos. 3 and 4, which contain a list of the papers composing each case, will be kept in the Courts to which they belong. The lower Courts will forward to the Zillah Courts every month the original records of the cases disposed of within the month, with a list specifying the nature of the papers which compose the misl. The Judge's Amlah will compare the list with the original misl, and make an entry in the Registers Nos. 1 and 2.—*C. O. 10th Aug.* 1838.—*p.* 236.

494. In those districts in which the Registers have been allowed to fall into arrears, an abstract of the information for past years, which ought to have been entered in the neglected Registers, will be supplied by the existing establishments.—*C. O. 10th Aug.* 1838.—*p.* 236.

Form of Register Book No. 1.—*p.* 237.

495. The keepers of the Records will endorse on every paper or document they may enter, the number of the page in which it may be registered, and attest the endorsement with their official signature.—*Reg.* 18, 1793, *Sect.* 5.—*p.* 238.

496. The keepers of the Records will see that they are not injured by insects, damp or otherwise, and that they are not removed without the orders of the Courts.—*Reg.* 18, 1793, *Sect.* 6.—*p.* 238.

497. They will be liable to dismission if any records are destroyed in consequence of their omission or neglect, or are not forthcoming, and they cannot give a satisfactory account of them.—*Reg.* 18, 1793, *Sect.* 7.—*p.* 238.

498. They will be careful to attend to any rules prescribed for them by future Regulations, and to any orders they may receive from the Courts to which they are attached.—*Reg.* 18, 1793, *Sect.* 8.—*p.* 238.

499. The Zillah and City Courts will keep a Day-book, in which the daily proceedings in each case, and every order and act of the Court will be entered, and attested by the Judge's signature. The plaint, answer, reply and rejoinder of the parties, and every deposition, exhibit and paper read and filed, will be minuted and referred to in this book, by marks or numbers corresponding to marks or numbers to be endorsed on each document.—*Reg.* 18, 1793, *Sect.* 9.—*p.* 238.

500. The Sudder Board of Revenue having applied for original records for inspection, from the established Courts of justice, the Sudder Court objected, that if the request was complied with, there was risk that the records might be fraudulently altered or lost: that it would be incovenient if the records were not at hand for reference; and that if this request were granted to Government, it must in justice be granted to all parties.—*C. O. 28th Dec.* 1832.—*p.* 238.

501. The Sudder Court farther observed, that there was no necessity for deviating in favour of the Revenue authorities from the general rule of practice; that they might send their Amlas to inspect them in the Court Houses, and obtain copies of them as other parties did on unstamp paper, at a trifling expence.—*C. O. 28th Dec.* 1832.—*p.* 239.

502. In ordinary cases, therefore, the Zillah Courts are not to furnish the Resumption officers with original records, but with copies, on their authorizing the expence of transcription to be defrayed. Should an inspection of the original records at any time be necessary, the Courts will retain an attested copy, made at the expence of the revenue department, before parting with them. —*Con. No.* 1070.—*p.* 239.

503. The following plan is to be immediately adopted regarding the future arrangement of the Records of the Civil Courts.—*C. O. 18th June,* 1841.—*p.* 239.

504. The object of arranging voluminous Records is, preservation and facility of reference.—*C. O. 18th June,* 1841.—*p.* 239.

505. The system of arrangement ultimately adopted by the Judge of Allahabad, appears unobjectionable, but no fixed rules for the disposition of records can be laid down. The Judge must see that the Record-keeper keeps the papers of each jurisdiction separate, sub-dividing them according to departments and arranging them by years and months.—*C. O. 18th June,* 1841.—*p.* 239.

506. It is advisable in regard to cases pending, that the Records should remain during the day in charge of the officer of the department till disposed of, and at night be placed in the Record office for safe custody. As soon as the final Roobukaree has received the Judge's signature, the papers pertaining to cases finally disposed of, are handed over to the Record-keeper.—*C. O. 18th June,* 1841.—*p.* 239.

507. The records of the office of the Civil Judge at Cuttack are arranged according to Rule 505; and the only improvement necessary is that the racks should bear tickets of their contents; that the Moonsiff's records should be in bustahs, and that some miscellaneous cases should have a more detailed subdivision.—*C. O. 18th June,* 1841.—*p.* 239.

SECT. L.

Custody of Monies paid into the several Courts.

508. All monies paid into the Civil or Criminal Courts, either in satisfaction of decrees or otherwise, should be paid directly to the treasurer. The treasurer will submit to the Judge a monthly statement of all monies received by him, specifying the parties for whom it has been received. A comparison of this statement with the decrees and orders issued by the Judge, would enable him to ascertain the number of decrees which had been completely executed, and to enquire into the causes which have prevented the complete execution of others. All sums remaining unclaimed after a certain period, whether from monies paid into the Court in execution of decrees, or the proceeds of the sale of property of persons dying intestate, or on any other account, should be transferred to the Collector, to be at the disposal of Government; but this will not affect the claims of the parties legally interested in recovering their property. This measure was ordered by the Court of Directors, and the details were left to be arranged by the local Government.—*C. O. 14th Aug.* 1827.—*p.* 240.

509. The Principal Sudder Ameens and Sudder Ameens, who may be stationed at any other place than the sudder station of the district, will deposit in the Treasury of the Collector or Deputy Collector, all sums paid into their Courts on account of Vakeel's fees, execution of decrees,

with an extract from the register of deposits. An order from the Principal Sudder Ameen or Sudder Ameen, detailing the number and other particulars of the deposit in the register, countersigned by the Collector or Deputy Collector, will be sufficient authority to the Treasurer to pay it.—*C. O. 16th Nov.* 1833.—*p.* 240.

510. Applications for the payment of sums of money deposited in Court, must in every case be made on stamp paper as a record, unless a specific order should at any time have been passed, ordering payment of the amount.—*Con. No.* 1093.—*p.* 240.

SECT. LI.

Remittance of Costs of Suit from one district to another.

511. Whenever the Judge of a district may be desirous of remitting to another Court the amount realized by him in execution of a decree, forwarded to him by the Judge of another Court, he may pay the sum into the Collector's Treasury and apply for a bill on the Collector nearest to the Judge to whom it is to be remitted. This Collector will grant such bill, on the Judge's stating that it is specifically on account of a decree of the other Court executed by him.—*Cir. Ord. 21st May,* 1830.—*p.* 240.

SECT. LII.

Institution of Suits against the Officers of Government.

512. The following public officers are amenable to the Zillah and City Courts for any official acts done in contravention of the Regulations duly published; Collectors, Deputy Collectors, their assistants and native officers; Salt Agents, Superintendents of Salt Chowkies, their Covenanted and Uncovenanted assistants and native officers; Collectors and Deputy Collectors of Customs, their assistants and native officers; Opium Agents, Deputy Opium Agents, their assistants and native officers.—*Reg.* 3, 1793, *Sect.* 10.—*p.* 241.

513. If a native, or any person not a British subject, shall consider himself aggrieved by any act of an officer of Government done pursuant to special official order, the officer by whom the act was done is not liable to be sued for it. In such cases Government is considered the defendant.—*Reg.* 3, 1793, *Sect.* 11.—*p.* 241.

514. Complaints against the Calcutta Collector of Customs, or his public officers, or against any public officer at the Presidency, which are cognizable in the Zillah Courts, will be heard and tried in the Court of 24-Pergunnahs.—*Reg.* 7, 1806, *Sect.* 2.—*p.* 241.

515. The Opium Agents and their native officers of every description, are amenable to the City and Zillah Courts for their official acts. Any person considering himself aggrieved, will in the first instance make application to the Agent himself; and if he is not satisfied with the order passed, may either appeal to the Board, or at once go into the Civil Court with his complaint. The Courts will act in the first instance according to Regulation 2, 1814.—*Reg.* 13, 1816, *Sect.* 18.—*p.* 241.

516. During the manufacturing season, any labourer, molungee, or other person employed in the Salt manufacture, who may deem himself aggrieved by any order or act of the Agent, (not being an act of judicial authority,) must first apply to the Agent for redress, and on failing to obtain the required redress within a reasonable time, may institute a suit in the Civil Courts.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 2.—*p.* 242.

517. Such previous application will also be made to the Salt Agent, by persons deeming themselves aggrieved by the acts of an Assistant, or any inferior officer attached to the agency, and if the result be unsatisfactory, the complainant may institute a suit in the Civil Court.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 3.—*p.* 242.

518. In these two cases, the Court will not receive the suit of the complainant, unless he shall prove that he made previous application for redress to the Agent.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 4.—*p.* 242.

519. No such person, however, will leave the place of manufacture to institute such complaints, until the terms and period of his engagement be completed, without permission from the

head officer of the aurung, or the Agent, or his Assistant; but he must employ a Vakeel for that purpose, unless he can give a substitute who shall be approved of by the Agent, in which case he may be allowed to depart.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 5.—*p.* 242.

520. During the month of Sawun, Bhadoon and Assin, (not being the manufacturing season,) such persons, deeming themselves aggrieved by acts of the Salt Agent, or any of his officers, (not being judicial acts authorized by the Regulations,) may sue them in the Civil Court in person or by Vakeel without first applying for redress to the Agent, and their suits will be tried in preference to other suits. But the Civil Courts cannot take cognizance of any acts done by Salt Agents, in virtue of the judicial powers vested in them in respect to fines, confiscations and other penalties. —*Reg.* 10, 1819, *Sect.* 13, *Cl.* 7.—*p.* 243.

SECT. LIII.

Suits against Public Officers.—Rules regarding the Petition.

521. Whenever a petition of complaint is presented against a Collector of land Revenue or Customs, a Salt Agent, or Opium Agent, for official acts, to a Court of Civil Judicature competent to try the same, the Court will transmit the petition to the controlling Board.—*Reg.* 2, 1814, *Sect.* 3, *Cl.* 1.—*p.* 243.

522. To enable the Sudder Court to bring to the notice of Government any delay which may occur between the date of filing and admitting this description of suits, the Sudder Court desires, that whenever a Zillah Court may have transmitted a petition of complaint to a Superintending authority, and six weeks may have elapsed without having received a final reply from that authority, the Judge will report the case to the Sudder Court.—*C. O. 6th Aug.* 1830.—*p.* 243.

523. The same injunctions are repeated in the *C. O. 7th Dec.* 1838.—*p.* 243.

524. These petitions of complaint, when first presented, should be written on stamp paper of the same value as other plaints.—*Con. No.* 1116.—*p.* 243.

525. Under this provision it is quite competent for a minor and his guardian to institute a suit against the Collector for having disposed of the minor's estate under the authority of the Court of Wards. In such case the usual reference will be made in the first instance to the Board of Revenue. —*Con. No.* 410.—*p.* 244.

526. The Board, on the receipt of the petition, will take the subject into consideration, in order to judge whether the redress solicited should be granted directly by Government, or whether the complainant should be left to prosecute his suit in the regular course of law.—*Reg.* 2, 1814, *Sect.* 3, *Cl.* 2.—*p.* 244.

527. Should the Board, after due enquiry, be of opinion that the complainant has been actually aggrieved, and that he is entitled to redress directly from Government, they will submit the necessary report, accompanied with their opinion as to the nature and extent of the relief to be granted.—*Reg.* 2, 1814, *Sect.* 3, *Cl.* 3.—*p.* 244.

528. If the Board should be of opinion that the complaining party ought to be left to prosecute his case in the regular course of law, they will inform the Judge of this result of their deliberations; and this communication will be deemed a sufficient authority for the institution and trial of the suit. The Boards will also inform the Courts whether the suit is to be defended officially by Government, or by the officer complained against, in his individual capacity.—*Reg.* 2, 1814, *Sect.* 3, *Cl.* 4.—*p.* 244.

529. These rules are only intended to apply to the cases mentioned in Sections 2 and 3, Regulation 8, 1806, and not to cases of corruption, for which separate provisions have been established. —*Reg.* 2, 1814, *Sect.* 4.—*p.* 244.

530. When a party preferring a complaint against a public officer for acts connected with his official duties, may not be considered entitled to redress under Regulation 2, 1814, Section 3, Clause 3, and may proceed to prosecute it under the 4th Section of the Clause, the suit will be entered on the file from the date on which the petition was originally received, and it will be brought to a hearing, and determined in that order.—*Reg.* 13, 1829, *Sect.* 5.—*p.* 244.

SECT. LIV.

Suits against public Officers.—Defence of Suits; Process; Security.

531. The Salt Agents may take upon themselves to defend suits against their officers or any person employed under them; but they will in such case be responsible for the decree of Court.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 6.—*p.* 245.

532. Salt Agents, their Assistants, and head officers, are not liable to be prosecuted for the acts of their official predecessors; but if they be removed from one agency or arung to another, they will continue to carry on the suits officially instituted against them, unless the Board should order their successors to conduct them. This rule will not apply to suits in which the Agent thus removed may have been engaged by virtue of orders from the Board or from Government. All such suits will be carried on by the Agent for the time being at the public risk.—*Reg.* 10, 1819, *Sect.* 16.—*p.* 245.

533. A similar rule is also prescribed in the case of Collectors of the public revenue.—*Reg.* 14, 1793, *Sect.* 41.—*p.* 245.

534. Any process issued to a Salt Agent, or his Assistant, will be sent under a sealed cover to the Agent; who will acknowledge it and return it under a sealed cover to the Court.—*Reg.* 10, 1819, *Sect.* 15.—*p.* 245.

535. The same rule is enacted regarding Opium Agents.—*Reg.* 13, 1816, *Sect.* 22.—*p.* 245.

536. And also in reference to Collectors of Revenue.—*Reg.* 14, 1793, *Sect.* 38.—*p.* 246.

537. Security need not be demanded from a Collector for personal appearance in any such suit in which he is engaged under this Regulation. No security will be required for the payment of costs, or for the performance of orders of Court in suits carried on by the public vakeel, and at the public expence. In suits for sums demanded by the Collector, on behalf of Government, for which he is eventually responsible, he will furnish the same security for the payment of costs and damages as private individuals; but the Courts will demand no security for the performance of decrees, as Government will be answerable for the due performance of them.—*Reg.* 14, 1793, *Sect.* 36.—*p.* 246.

538. In suits of a private nature, the Collector will give the same security for the payment of costs, and performance of the decrees and orders of the Courts as other private individuals. If the Collector refuse or omit to pay within a limited time, the sum of money ordered to be levied from him, it will be levied from his security. If it cannot be obtained from his security, a report will be made to the Governor General, who will pay it from the public treasury, and deduct it from the Collector's salary. In all other cases, the Collector who refuses to obey an order of Court, may be fined. If he refuse to pay the fine, Government, if the fine is approved of, may order the amount to be stopped from his salary.—*Reg.* 14, 1793, *Sect.* 36.—*p.* 246.

539. When a Malgoozar, sent to the Civil jail for confinement on account of arrears of the public revenue, denies the justice of the demand, furnishes the required security, is released from confinement, and enters a suit against the Collector, it will be tried as a regular, not as a summary suit.—*Con. No.* 330.—*p.* 247.

540. If a Collector shall refuse to obey any order or decree of a Court of Judicature, the Court will fine him. If he refuses to pay the fine, the matter will be reported to Government, and if the fine be approved of, it will be ordered to be stopped from his allowances.—*C. O.* 16*th April*, 1818.—*p.* 247.

SECT. LV.

Suits in which Native Officers and Soldiers are parties.—Institution of Suit.

541. Such parts of the Regulations as prohibit the Courts from corresponding by letter with parties in depending suits; or forbid pleadings to be received, but from the parties and their authorized pleaders; or require that suits be brought to trial as they stand on the file; or forbid the Courts to furnish copies of decrees, or to receive mooktarnamahs except on stamp paper, are subject to the following modifications.—*Reg.* 15, 1816, *Sect.* 2.—*p.* 247.

542. When a Native Military officer or soldier may desire to institute a regular, or summary

suit in the Civil Courts, and cannot obtain furlough to conduct it in, he may execute a Mooktarnamah, appointing any one to act for him in all respects, in instituting, or in conducting, or in appealing the suit.—*Reg.* 15, 1816, *Sect.* 3, *Cl.* 1.—*p.* 247.

Form of Mooktarnamah. Appendix, No. 1.

543. Such Mooktarnamah need not be on stamp paper; but it must be executed in the presence of the Commanding Officer, who will countersign it to testify that it has been voluntarily executed. —*Reg.* 15, 1816, *Sect.* 3, *Cl.* 2.—*p.* 248.

544. The Mooktarnamah will be sent officially by the Commanding Officer to the Register under cover of a public letter, No. 2, and on its arrival, the Court will issue a notice for the attendance in person, or by vakeel, of the person nominated in the Mooktarnamah.—*Reg.* 15, 1816, *Sect.* 3, *Cl.* 3.—*p.* 248.

Form of the Public Letter, No. 2.

545. If such person refuse to attend, or decline the trust, or is subsequently prevented from discharging the duty confided to him, or die, information of it will be conveyed by the Court, to the native officer or soldier, through the Commanding Officer, by means of an extract from the proceedings.—*Reg.* 15, 1816, *Sect.* 3, *Cl.* 4.—*p.* 248.

546. If he attend the Court in person or by vakeel, and consent to undertake the duty, the Mooktarnamah will be deposited in the Court and annexed to the proceedings. The Mooktar may either conduct the pleadings in person, or appoint one of the authorized pleaders of the Court. In all other respects, the suit will be conducted in conformity with the general rules. But when the plaintiff may not be personally present at the time of its decision, an authenticated copy of the decree on unstamped paper, will be transmitted to the Commanding Officer to be communicated to the native officer or soldier.—*Reg.* 15, 1816, *Sect.* 3, *Cl.* 5.—*p.* 249.

547. No part of the preceding or of the subsequent provisions will apply to claims originating in Loans granted by a native officer, or soldier, or in commercial transactions.—*Reg.* 15, 1816, *Sect.* 3, *Cl.* 6.—*p.* 249.

548. To prevent ex-parte trials, when a suit may be instituted in a Civil Court against a native officer or soldier, the plaintiff or appellant will distinctly state this fact in his plaint or petition of appeal, and specify to the best of his knowledge the corps to which the Native officer or soldier may be attached. If he be unable to specify it, the Court will endeavour to ascertain it.—*Reg.* 15, 1816, *Sect.* 4, *Cl.* 1.—*p.* 249.

549. A notice in the usual form, with a copy of the plaint or petition on unstamp paper, enclosed in an official letter, No. 3, will then be sent to the Commanding Officer to be communicated to the native officer or soldier against whom the suit is instituted. A similar notice will be issued, if it was omitted in the first instance through ignorance of the defendant's being in the army and was subsequently discovered. When the plaintiff has wilfully omitted to state the fact that the defendant was thus connected with the army, the Court will fine him.—*Reg.* 15, 1816, *Sect.* 4, *Cl.* 2.—*p.* 249.

Official Letter, No. 3.

550. The Commanding Officer will cause the notice to be served on the party, and, if practicable, return it to the Court with his written acknowledgment, and with any Mooktarnamah, by which he may appoint any one to act on his behalf. If the notice cannot be served, the Commanding Officer will return it to the Court with information of the cause which prevented its being served. The Court will thereupon act as, on a consideration of circumstances, may appear proper. —*Reg.* 15, 1816, *Sect.* 4, *Cl.* 3.—*p.* 250.

SECT. LVI.

Suits in which Native Officers and Soldiers are parties.—Procedure and Decree.

551. When a native officer or soldier may obtain a furlough to institute or defend his suit, his Commanding Officer will give him an official letter to the Register, according to a prescribed form, but it must contain no petition and no statement of the merits or circumstances of the cause. —*Reg.* 15, 1816, *Sect.* 5, *Cl.* 1.—*p.* 250.

552. The letter will be delivered in person to the Court, and the Court, if requested by the party, will appoint a Vakeel to aid in prosecuting or defending the suit. The Court will at the same time inform the native officer or soldier of the rules regarding the duties and the established fees of pleaders, with which he must comply, if he employs one.—*Reg.* 15, 1816, *Sect.* 5, *Cl.* 2.—*p.* 250.

553. This will not be construed to prohibit a native officer or soldier from pleading his cause himself, or employing any other authorized pleader than the one selected by the Court.—*Reg.* 15, 1816, *Sect.* 6.—*p.* 250.

554. The Courts are required to bring such suits, in which a native soldier or officer who may have obtained leave of absence, is a party, to a decision without reference to the order of the file, and to pass a decree as speedily as possible, always excepting cases alluded to in Sect. 3, Cl. 6, of this Regulation.—*Reg.* 15, 1816, *Sect* 7, *Cl.* 1.—*p.* 251.

555. If the case cannot be decided within the limits of the furlough, the Court may grant the native officer, or soldier, an extension of leave sufficient to admit of a reference being made to the Commanding Officer, to ascertain whether the furlough can be prolonged. In all such cases, however, a report must be officially made without delay to the Commanding Officer of the corps. —*Reg.* 15, 1816, *Sect.* 17, *Cl.* 2.—*p.* 251.

556. When a native officer or soldier may return to his corps before a final decree is passed, he may leave the farther conduct of the suit to a Mooktar, or to one of the established pleaders of the Court. In either case, a copy of the decree will be transmitted for his information, as prescribed in Sect. 3, Cl. 5.—*Reg.* 15, 1816, *Sect.* 7, *Cl.* 3.—*p.* 251.

557. Whenever land, or other real property, belonging to a native officer or soldier, may be attached by a Civil Court to realize the amount of any judgment, fine or penalty, notice will be given to the defendant in the mode prescribed in Sect. 4, Cl. 2, of this Regulation; and the sale will be postponed till sufficient time has elapsed to allow him to discharge the amount.—*Reg.* 15, 1816, *Sect.* 8.—*p.* 251.

558. Nothing in this Regulation will be construed to affect the rules of Reg. 20, 1810, or to authorize a Commanding Officer to correspond with the Civil Courts on the merits of any judgment they may pass under the provisions of this Regulation.—*Reg.* 15, 1816, *Sect.* 10, *Cl.* 1.—*p.* 251.

559. The foregoing rules will be strictly and exclusively applicable to native officers or soldiers, who may be entertained in the regular corps, and on the actual strength of the army.—*Reg.* 15, 1816, *Sect.* 10, *Cl.* 2.—*p.* 252.

560. The native Invalid Battalions are however considered within the description above named, and are consequently entitled to the benefit of Regulation 15, 1816.—*Con. No.* 264.—*p.* 252.

561. The pay of a sepoy cannot be attached in satisfaction of a decree against him. The decree-holder may proceed against his person or property.—*Con. No.* 1175.—*p.* 252.

SECT. LVII.

Actions for Debt against persons in or connected with the Army.

For the Rules regarding the cognizance of suits against Military men, vide Chap. I, Rules 344 —348.—*p.* 252.

562. The Military Court of Requests, being a King's Court, constituted by act of Parliament, the Zillah and City Courts are not competent to determine the extent of its jurisdiction, which must be decided by the Court of Requests itself.—*Con. No.* 876.—*p.* 252.

563. Civil servants of the Company, merchants and others, who reside within the limits of cantonments, though totally unconnected with the army, are subject during their actual residence, to the jurisdicton of Military Courts of Requests and to no other, in personal actions for debt. They are exempt from the controul of the Company's Courts while so resident—*Con. No.* 876.—*p.* 252.

564. No process of arrest before judgment in a civil cause, will issue against any person connected with a garrison, cantonment, or military bazar, unless it be averred that the cause of action

that though registered, he has not for three months carried on the occupation in respect of which he is registered. The Judge, on receiving these averments, will sign the process and endorse it, as the case may be. If the defendant be within the cantonment, it will be served through the Commanding Officer; if he be found without the limits, he may be arrested by the civil officer. But if on the trial, the plaintiff's averments are not proved, he will be at once non-suited with costs.—*Reg.* 20, 1810, *Sect.* 24.—*p.* 253.

565. No person registered as attached to the bazar of a corps, and bonâ fide carrying on the business in respect of which he is registered, can be arrested on process before judgment, except the cause of action exceeds 200 Rupees. The plaint must declare that the cause of action exceeds 200 Rupees, and the Judge will so endorse it and sign the process; but if in the course of trial this be not proved, the plaintiff will be non-suited with costs. If any person is so arrested under a civil process which is not so endorsed, the Commanding Officer, if he finds on due enquiry that the person was so registered, and was bonâ fide carrying on business within the limits aforesaid, he will give a certificate to that effect. The Judge, on receiving the certificate, will place it on record and release the defendant. The plaintiff may proceed in his action, and must prove his averments, and on failing to do so, will be non-suited with costs.—*Reg.* 20, 1810, *Sect.* 25.—*p.* 253.

566. When it may be necessary to issue any process of arrest, civil or criminal, within a garrison, cantonment, Military station or bazar, (the process of the Supreme Court excepted) the officer sent to execute it, will proceed to the Commanding Officer, or in his absence, to the senior Officer, who will back it with his signature, and use every diligence to secure the arrest and delivery of the defendant. But the summons, subpœnas, or other process of mere citation without arrest, may be served by the Civil Officer in the usual way.—*Reg.* 20, 1810, *Sect.* 19.—*p.* 254.

567. The Commanding Officers of cantonments will afford every protection to the officers of the Judges, Magistrates, and Justices of the Peace in the discharge of their duties, whether any special application has been made to them for such aid or not.—*Reg.* 3, 1809, *Sect.* 3, *Cl.* 2.—*p.* 254.

568. The provisions made above regarding the arrest of persons in Military cantonments, are only applicable to those cantonments, the limits of which have been laid down and approved by the Governor General. With regard to those cantonments which have not local limits assigned them, Reg. 3, of 1809 is to be considered in full force.—*Reg.* 20, 1810, *Sect.* 20.—*p.* 254.

569. Military Courts, giving decrees against *sepoys*, and others, and not finding property not exceeding 200 Rupees upon which to execute the award within their jurisdiction, may refer the execution of it to the Zillah and City Courts, which are hereby authorized and directed to enforce the same, whenever application, duly verified, may be made to them within three months from the date of the award.—*Reg.* 5, 1828, *Sect.* 2.—*p.* 254.

SECT. LVIII.

Suits instituted against persons in the Salt Department.

570. Those who may institute suits in the Zillah Courts against any officers or manufacturers in the Salt department, will specify their being so employed. In the months Sawun, Bhadoon and Assin, the notice will be served on the defendant as if he were not employed for Government. If it be served between the beginning of Kautick and the end of Assar, the notice will be sent by the Judge to the Salt Agent, who, if security be necessary from the defendant, will cause it to be executed, or leave the party himself to find it. If there be any doubt about the validity of the security given by the party, the Agent will decide whether it be sufficient, and the officer will accept it. If the Agent do not consider it expedient to furnish security himself, or do not approve of the security furnished by the defendant, he will see that the party is conveyed to the Court.—*Reg.* 10, 1819, *Sect.* 21, *Cl.* 1.—*p.* 255.

571. Persons instituting a suit in a Zillah Court against any officer of the Salt Chowkies, will specify the nature of his employment. The notice or summons to be served will be sent to the Superintendant of the Chowkees, who will direct it to be served in the regular manner, or cause

persons to take charge of the Chowkies, and cause the defendant to be conveyed to the Court.—*Reg.* 10, 1819, *Sect.* 24.—*p.* 255.

572. The Salt Agents may empower their assistants, or a Vakeel of the Court, or any other person to execute the securities prescribed above. The Agents will furnish the Judge with a list of the persons thus empowered to execute securities. The Judges may, if necessary, order the summons to be sent to one of such authorized persons, instead of sending it to the Agent; and such person will proceed in the manner prescribed for the Agent when the summons may be sent immediately to him.—*Reg.* 10, 1819, *Sect.* 21, *Cl.* 2.—*p.* 255.

573. If a suit be preferred against any person in the Salt department, without specifying the fact, and a notice be issued against the defendant as on other defendants between the beginning of Kautick and the end of Assar, the officer who serves the notice, on being informed of the circumstance, will deliver it to the nearest person authorized to execute securities, who will proceed in the manner prescribed in Clause first of this Section. If the officer serving the notice receives such intimation only from the defendant himself, and doubts his statement; or if, not doubting his statement, he suspects that he may abscond while reference is made for security, he will convey him with the summons to the persons empowered to execute securities, and not release him till it has been executed.—*Reg.* 10, 1819, *Sect.* 1, *Cl.* 3.—*p.* 256.

574. In particular cases, when it may appear necessary for the ends of justice, the Judge and Magistrate may order the personal attendance of any officer, or manufacturer in the Salt department, whether as a party or witness during the manufacturing season, notwithstanding the clauses above, and may cause process to be executed on him as on others. But in such cases he will record his reasons for deviating from the general rules, and specify in the notice that it is to be so served in virtue of this discretionary power. The Judge will refrain from exercising this power unnecessarily.—*Reg.* 10, 1819, *Sect.* 21, *Cl.* 9.—*p.* 256.

575. Any decree against a Salt officer, or person engaged in that department will be executed, during the manufacturing season, upon his property, but not by the confinement of his person. After the manufacturing season, the Agent will be responsible for his appearance before the Court; but no property belonging to Government (not even advances) will be liable for the decree. But during Sawun, Bhadoon and Assin, and also in the manufacturing season, if the Agent certifies that their attendance is not necessary for the manufacture, their persons as well as property will be liable for the decree.—*Reg.* 10, 1819, *Sect.* 22.—*p.* 256.

576. If a decree be passed against an officer of a Salt Chowkey, and the Court order the decree to be enforced, recourse may be had to his property. If the person of an officer of a Salt Chowkey be at any time attached, notice will be given to the Agent previous to his removal, that another may be appointed to take charge of his post.—*Reg.* 10, 1819, *Sect.* 29.—*p.* 256.

577. Molungees, &c. are not liable to summary process of arrest and confinement for arrears of rent until released from their engagement with Government. Those to whom arrears may be due from them, may distrain their property, or institute a suit in Court, or apply to the Agent, who may stop the amount by instalments out of future advances. No implement of manufacture will be sold for arrears, or even distrained.—*Reg.* 10, 1819, *Sect.* 20, *Cl.* 2.—*p.* 257.

SECT. LIX.

Suits by persons in the Salt Department for Compulsion.

578. If any molungee or other person complain against the Salt Agent, and prove that he was compelled to take advances or contract for Salt, the engagement will be declared null and void. The complainant will be discharged and the advances will be returned; and equitable costs and damages will be adjudged against the Agent by the Civil Court. The Agent will also be liable to be dismissed by Government.—*Reg.* 10, 1819, *Sect.* 8.—*p.* 257.

579. A similar rule will apply in regard to Assistants and other European or Native officers of Salt Agents. The court will always report the circumstances of such compulsion to the Board.—*Reg.* 10, 1819, *Sect.* 9.—*p.* 258.

580. Covenanted and Uncovenanted Assistants and principal Officers of aurungs, are responsible for any compulsion exercised by their peons and other inferior officers, unless it be proved that the act was done without their knowledge or connivance, and that they offered to redress the injury. Such inferior officers are liable to costs and damages on conviction.—*Reg.* 10, 1819, *Sect.* 10.—*p.* 258.

581. If any molungee or byopary, after having received advances, be convicted in a Civil Court of having compelled a labourer or other person to receive advances, he will be compelled to pay the complainant a sum equal to the whole of the advances he would have been entitled to receive. A clause to this effect will be inserted in his contract.—*Reg.* 10, 1819, *Sect.* 11.—*p.* 258.

582. If a complaint be made to the Court by any molungee, labourer, or other person that he was compelled to receive advances, the Courts, except when they have full and satisfactory evidence of compulsion, will consider the receipt, as primâ facie evidence that the advances were voluntarily received. They will not however release him from his engagement, or prevent his proceeding to the place of manufacture, or bring him from thence, till satisfied that the engagement was compulsive and repugnant to this Regulation.—*Reg.* 10, 1819, *Sect.* 14.—*p.* 258.

SECT. LX.

Institution and defence of Suits by persons not amenable to the Courts.

583. Any person being a resident in a foreign territory, who may desire to institute or defend an original suit or an appeal in any of the Courts, is required to furnish security for all eventual cost of suit, by persons residing within the limits of the Company's territory. The plaintiff or appellant will furnish this security within six weeks after his plaint is filed; the defendant or respondent within six weeks after the summons is served on him. If this security be not furnished by the plaintiff, the suit will not be proceeded in. If the defendant neglect to give it, he will not be allowed to defend the suit or appeal, but it will be decided ex-parte, on the statement and proofs of his opponent. No appeal will be admitted from the party who has neglected to give the security, till he has made good the whole of the costs in the lower Court and given the necessary security to cover the costs in appeal.—*Reg.* 14, 1829, *Sect.* 2, *Cl.* 1.—*p.* 259.

584. The same rule will be applicable to any one who may institute or defend a suit or appeal, in a Zillah or City Court, if he become a resident in the foreign territory before the decree is passed, and if he fail to give the required security on the demand of the Court. The Court is required to make the demand immediately on the circumstance becoming known, whether a motion be made on the subject or not.—*Reg.* 14, 1829, *Sect.* 2, *Cl.* 2.—*p.* 259.

585. These rules are not applicable to pauper suitors.—*Reg* 14, 1829, *Sect.* 2, *Cl.* 3.—*p.* 259.

SECT. LXI.

Suits of Zemindars and other Proprietors, under Regulation 2, 1819, Sect. 30, to assess lands held rent free: or of individuals claiming to hold lands exempt from rent.

586. Proprietors or farmers of land, or dependant Talookdars, who may deem themselves entitled to the revenue of lands not exceeding One Hundred bigas, whether lying in one village or two or more villages, and that may have been alienated by any one grant made previous to the 1st of December 1790, will institute a suit for the recovery of it in the Civil Courts. Any proprietor who may subject such lands to the payment of revenue without having obtained a judicial decree, will be liable to be sued for damages by the injured party. When the estate is held khaus, the right of suing for the recovery of the revenue is vested in the party to whom the collections of the estate are payable. If the estate is held khaus by Government, the Tehsildar will sue for the revenue in the room of the proprietor under the directions of the Collector.—*Reg.* 19, 1793, *Sect.* 11.—*p.* 259.

587. A Zemindar is not forbidden to institute and maintain one and the same suit for the recovery of the revenue of land exceeding one hundred bigas, held exempt from the payment of revenue, which may have been alienated by two or more grants prior to Dec. 1st, 1790, provided that each

of the grants does not exceed one hundred bigas, and that the plaintiff has no means of ascertaining the exact quantity of land comprised in each of the grants.—*Con. No.* 346.—*p.* 260.

588. Under the spirit of Regulation 5, 1831, Section 3, Clause 3, a Moonsiff cannot legally receive a suit of a nature requiring a reference to the Collector under Regulation 2, 1819, Section 30. If a Principal Sudder Ameen has such a suit in appeal before him, he will at once recommend the annulment of the Moonsiff's decision as illegally instituted before him.—*Con. No.* 1261.—*p.* 260.

589. All suits preferred by landed proprietors in a Civil Court to assess land held free of rent, or by individuals to hold lands exempt from rent, will be referred for investigation to the Collector.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 1.—*p.* 260.

590. The Collector cannot, on the ground of the claimant being a public officer on his own establishment, decline to take up a case referred to him under the Clause above given.—*Con. No.* 320.—*p.* 260.

591. Suits in which land held exempt from assessment forms the subject of dispute, but in which the validity of the tenure is not contested, are not referable to the Collector, under Regulation 2, 1819, Sect. 30.—*Con. No.* 669.—*p.* 260.

592. In all cases in which the right of ownership is alone the point at issue, in suits instituted under Sect. 30, the case appertains solely to the Civil Courts. But if the nature of the tenure as well as the proprietary right be disputed, the case must be referred to the Collector for report.—*Con. No.* 981.—*p* 260.

593. If the Collector should return the reference as one on which he is not bound to report, the Judge should repeat his order if he entertains a different opinion. If the Collector still refuses to investigate the case, the Judge will apply to the Sudder Court.—*Con. No.* 981.—*p.* 260.

594. A suit brought by a Zemindar for the rent of lands in which the defendant claims the right of property, by virtue of a rent free grant, is not referable to the Collector under Sect. 30, but must be considered as a boundary dispute, and disposed of by the Civil Courts.—*Con. No.* 1067.—*p.* 261.

595. Such suits only are referable to the Collector under Sect. 30, in which the point at issue is the right to hold land free of rent, or to resume land held as rent free under tenures stated to be illegal or invalid. Suits for possession or for rent of lands held exempt from the payment of revenue to Government, the validity of the tenure of which is not disputed, cannot be so referred, but must be tried and determined under the general rules for the decision of regular suits.—*C. O. 30th Aug.* 1833.—*p.* 261.

596. No suit involving the question of the validity of titles to hold land exempt from the payment of revenue, can be tried and determined, as expressly required by Sect. 30, Regulation 21, 1819, without a previous reference to the Collector.—*C. O. 25th Feb.* 1831.—*p.* 261.

597. When a Zemindar sues to resume lands held on a rent free tenure, the only question for the Court to determine is the validity or otherwise of the alleged rent free tenure, and not the amount assessable thereon. The decree, if in favour of the plaintiff, will therefore merely declare the land liable to assessment.—*Con. No.* 576.—*p.* 261.

SECT. LXII.

Suits under Regulation 2, 1819, Sect. 30.—Proceedings of the Collector.

598. Persons deeming themselves entitled to the revenue of any free land, or claiming to hold lands free of assessment within the limit of the Regulation, may prefer their claim directly to the Collector. They will state in the petition the particulars of the land claimed and the grounds on which it is founded, just as if the suit had been instituted in a Court of Judicature.—*Reg.* 2, 1819, *Sect.* 30. *Cl.* 1.—*p.* 261.

599. The Collector, on receiving such a petition, or on a reference being made to him from a Court of Judicature, will serve the defendant with a written notice, containing a statement of the demand, and requiring him to attend in person or by Vakeel within one month, with all the sunnuds and documents under which he holds, or claims to hold the lands, rent free.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 2.—*p.* 261.

600. When the defendant appears and delivers up his documents, the Collector will allow the claimant to inspect them, and will require him to furnish within seven days, the grounds on which he deems the tenure of the defendant invalid; together with the documents on which his claim to the revenue is founded.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 3.—*p.* 261.

601. When the claimant has delivered in his statement and documents, the Collector will investigate the case and record his judgment in the same manner and with the same powers as in cases in which he himself proposes to assess lands for Government.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 4.—*p.* 262.

602. If the claim be against an individual singly, or jointly with Government, the Collector will serve him with a notice, containing a statement of the demand, and requiring him to appear within one month with his papers and evidence. On his appearing, he will be allowed to inspect the complainant's petition and deeds, and he will be required to give a statement of his objections within seven days. No other pleadings will be required but a plaint and answer; the Collector may however allow subsidiary pleadings. The Collector will investigate the case as soon as possible after the defendant's answer is filed, giving however eight days previous notice to the parties of the day on which he means to bring it to a hearing. But when the parties interested, or their representatives, desire an immediate hearing, they will file an Ikrarnama to that effect, and the Collector may proceed to an immediate hearing and decision without any formal notice or summon.—*Reg.* 9, 1825, *Sect.* 5, *Cl.* 11.—*p.* 262.

603. The parties will be subject to the same rules regarding the use of stamp paper, in summoning witnesses, and filing exhibits, as are prescribed for suits in the Zillah Courts.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 5.—*p.* 262.

604. In cases in which Government would not be entitled to any revenue from the land, if resumed, the petition of plaint should be written on stamp paper of the value prescribed for rent free lands, whether the claim be by an individual against a Zemindar to hold lands on a free tenure, or by a Zemindar to assess free lands.—*Con. No.* 576.—*p.* 262.

605. The provisions of Regulation 3, 1828, are not intended to apply to cases specified in the several Clauses of Regulations 1819, Section 30, except when such cases may involve the right of the state to assess all or any of the lands the subject of the action. In such cases in which Government may be a party, the Collector will investigate and decide them according to Regulation 3, 1828. All cases in which Government is not itself a party, will be decided according to Regulation 2, 1819, Section 30, and the subsequent modifications of it contained in Regulation 9, 1825, Section 5.—*Reg.* 3, 1828, *Sect.* 5.—*p.* 263.

SECT. LXIII.

Suits under Regulation 2, 1819, *Sect.* 30.—*Collector's Report, and the Court's Decision and appeal therefrom.*

606. Suits referred to the Collector under Clause 1, Sect. 30, are sent to him for report and not decision. They are not to be considered as transferred from the file of the Judge. When the Collector's report is received, the Judge will proceed to try them just as if no such reference had been made.—*Con. No.* 450.—*p.* 263.

607. When a case of this nature has been referred by the Zillah Court to the Collector, and the Collector has forwarded his report, the Judge is not competent to refer it to a Sudder Ameen.—*Con. No.* 589.—*p.* 263.

608. A Collector who has reported on such cases, however, is not prohibited from afterwards trying them if they should come before him as Zillah Judge.—*Con. No.* 779.—*p.* 263.

609. In cases in which Government is not itself a party, and in which the suit was originally instituted in a Zillah Court, the Collector, on closing his proceedings, will transmit them, with all documents to the Court which made the reference, recording his sentiments on the case. The Court, after calling for farther evidence, if necessary, will decide the case. No sunnuds, or documentary evidence not produced before the Collector, or for the non-production of which satisfac-

tory reason has not been given, will be received by the Court.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 6.—*p.* 263.

610. If it should be found that the Collector has omitted to perform any Act which he was required to do by law, and has either forwarded his report according to Clause 6, or passed a decision under Clause 7, without such defect being remedied, thereby precluding the Judge from proceeding in a general manner, the Judge will return the proceedings to the Collector to be rectified, and if he should refuse to rectify them, will bring the case before Government. The Judge however will not follow such a course, except when it may be essential to enable him to proceed legally.—*Con. No.* 1245.—*p.* 264.

611. Whenever a cause connected with Section 30, has been instituted in the Court and decided according to the above Clause (6), the parties are entitled as a matter of right to a regular appeal. If it has been tried without a reference to the Collector, the appellate Court will send it back to the Court below for re-trial, after having obtained the Collector's Report. The parties will thus be saved unnecessary expence.—*Con. No.* 427.—*p.* 264.

SECT. LXIV.

Suits under Regulatian 2, 1819, *Sect.* 30.—*Appeal from the Collector's decision when the case is preferred to him in the first instance.*

612. When the case is preferred in the first instance to the Collector, if either party is dissatisfied with his decision, he may appeal to the Zillah Court. The appeal must be made within three months from the Collector's decision, or good and sufficient reason must be given for delay.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 7.—*p.* 264.

613. The appeal under Clause 7, should be considered summary, as far as relates to the vakeel's fees; and under Regulation 19, 1817, Section 9, Clause 3, a deposit must be made of the fees. But with reference to Clause 12, of Section 30, Reg. 2, 1819, the trial and decision of such causes should be regulated by the mode of procedure laid down for regular appeals.—*Con. No.* 338.—*p.* 264.

614. Regulation 10, 1829, Section 2, repeals all preceding rules regarding the levy of stamp duties. As it contains no clause excepting Reg. 2, 1819, Sect. 30, Cl. 7, the Sudder Court is of opinion, that in regular appeals to the Civil Courts from the decisions of the Collector, as well as in second or special appeals, the petition, the pleadings, exhibits, &c. are chargeable with the full amount of duty, in the same manner as all other regular suits instituted in the established Civil Courts.—*Con. No.* 987.—*p.* 265.

615. Appeals from the decisions of Collectors under Clause 7, must be taken up and tried under the rules in force prior to the enactment of Regulation 5, 1831, Section 16, Clause 3; that is to say, process must be served on the respondent, and security tendered for eventual costs with the petition of appeal.—*Con. No.* 1076.—*p.* 265.

616. The Judge, on receiving this petition of appeal, will require the Collector to transmit to him all the proceedings held by him, and all the documents therein referred to, and proceed to investigate it as if it had been originally instituted before him and referred to the Collector.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 8.—*p.* 265.

617. The parties referred to in Clauses 7 and 8, Section 30, Regulation 2, 1819, are also entitled, as a matter of right, to a regular appeal from the decision of the Zillah Court.—*Con. No.* 455.—*p.* 265.

SECT. LXV.

Suits under Regulation 2, 1829, *Section* 30.—*Cases in which a reference is to be made to the Board of Revenue.*

618. In all cases in which Government may be the defendant, or in which the lands claimed may form part of an estate liable to a variable assessment, the Collector on closing his proceedings, will submit them for the Board's decision. In such cases, if the suit has been referred by a

Court, the Collector will postpone sending his return to the reference, till the Board's decision is known. If the claim was originally preferred to the Collector, the Courts will not interfere till the orders of the Board have been passed. The decision of the Board will be sent in a Persian roobukarry to the Collector. If the claim was preferred originally to the Collector, the claimant may, if dissatisfied with the Board's decision, appeal it to the Court competent to take cognizance of it, within three months after the Board's decision has been communicated to the parties, or brought on the Collector's record.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 9.—*p.* 265.

619. If the party does not apply to the Court within this period, and assigns no good reason for delay, the decision of the Board will stand, and will be carried into execution by the Civil Courts. —*Reg.* 2, 1819, *Sect.* 30, *Cl.* 10.—*p.* 266.

620. When the right of resuming the revenue of lands held rent free, or of recovering possession under such a tenure, of lands which may have been subject to rent, has been adjudged by the Revenue authorities, the Court will immediately execute the decree, notwithstanding its being appealed, unless the party so applying gives security for the payment of the mesne profits.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 11.—*p.* 266.

621. In such cases which may be decided by the Courts in appeal from the revenue authorities, whether the claim be preferred in the first instance to the Court or the Collector, a special appeal only will be admitted by the superior Court, except in cases of appeal to the Privy Council. Section 26 of this Regulation will be applicable to all such appeals.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 12. —*p.* 266.

622. Special appeals under Regulation 2, 1819, Section 30, Clause 12, from the decision of the Zillah Judge, will lie only to the Sudder Court.—*Reg.* 7, 1832, *Sect.* 13.—*p.* 266.

SECT. LXVI.

Suits under Regulation 2, 1829, *Section* 30.—*Cognizance of such suits by Principal Sudder Ameens*

623. Such suits, under Section 30, as are referable to the Collector, are not cognizable by Sudder Ameens or Moonsiffs.—*C. O. 30th Aug.* 1833.—*p.* 266.

624. The Zillah and City Courts may refer any original suit preferred under Regulation 2, 1819, Section 30, for trial and decision to a Principal Sudder Ameen.—*Act* 25, 1837, *Sect.* 3.— *p.* 266.

625. All suits under Regulation 2, 1819, Section 30, referred to a Principal Sudder Ameen, will be sent as heretofore to the Collector for investigation and report. The Collector, on closing his proceedings, will transmit them under Clause 6, of that Regulation to the Principal Sudder Ameen.—*C. O. 23d Feb.* 1838.—*p.* 266.

SECT. LXVII.

Suits in which Government has been made a party.

626. Government is not, and will not be held liable for any irregularity, in any order or proceeding of a Court of Judicature, whether a Revenue or other officer, may or may not be employed in giving effect to the order deemed irregular. No officer of Government will be held liable for any thing done or suffered in conformity with such order or decree of a Court. If any person sue Government or its officers for any thing done or suffered under such order, he will be non-suited with costs. This principle is applicable to all orders or proceedings passed by any public officer in virtue of the powers vested in him for the Judicial cognizance of any pleas, &c. unless otherwise specially provided.—*Reg.* 11, 1822, *Sect.* 38.—*p.* 267.

627. In suits of the nature above described, wherein the plaintiff may have made the Government by its officers a party, the prohibition in that Regulation notwithstanding, it is ordered that when the suit is brought up for a hearing agreeable to the rule contained in Section 10, Regulation 26, 1814, it must be pointed out to the plaintiff that he has rendered himself liable to be non-suited, for improperly making an officer of Government a defendant in his official capacity. If it appear to have been done inadvertently and not from a fradulent or improper motive, he will be allowed to file a sup-

plementary plaint, withdrawing his claim against the Collector, or other officer. The Judge will then proceed with the suit against the other defendants, or refer it to the subordinate Courts.—*C. O. 7th July*, 1837.—*p.* 267.

628. The principle laid down in Regulation 7, 1822, Section 34, relative to cases in which Government or its officers may have been improperly made a party, is held to be applicable to suits of the nature of those described in Regulation 7, 1822, Section 31.—*C. O. 18th Aug.* 1837.—*p.* 267.

629. In all cases in which the Collector may be made a party in his official capacity, whether against law or not, he must, on being served with the prescribed notice, either defend the suit in the usual manner, or take the consequence of allowing the suit to be decided *ex-parte*. When he may file his answer through the Government Vakeel, the Court on nonsuiting the plaintiff as required by the above law, will order the Collector to pay the Government Vakeel's fees in the first instance, and to recover it in the usual manner from the party liable for it.—*Con. No.* 1192.—*p.* 267.

SECT. LXVIII.

Tributary Mehals in Cuttack.

630. The following rules are enacted for certain Tributary Mehals in Zillah Cuttack.—*Reg.* 11, 1816, *Sect.* 1.—*p.* 268.

631. All claims regarding inheritance or succession to the estates (of which a list is given in the Regulation,) will be tried in the Court of the Superintendent of the Tributary Mehals in Cuttack.—*Reg.* 11, 1816, *Sect.* 2.—*p.* 268.

632. In deciding such cases, the Superintendent will be guided by the ancient usages of the country; such estates will never be liable to division as prescribed by the Hindoo law, but descend to the person who has the most substantial claim according to local and family usage.—*Reg.* 11, 1816, *Sect.* 3.—*p.* 268.

633. No suit will be tried by the Superintendent of which the cause of action occurred earlier than the 14th Oct. 1803.—*Reg.* 11, 1816, *Sect.* 4.—*p.* 268.

634. The Superintendent will hold his Court in the Court house; the pleaders of the Courts may conduct such suits and receive the fees prescribed in ordinary cases.—*Reg.* 11, 1816, *Sect.* 5.—*p.* 268.

635. The Hindoo law officer of the Court will be consulted whenever a reference may be necessary.—*Reg.* 11, 1816, *Sect.* 6.—*p.* 268.

636. Processes will be sealed with the Superintendent's seal, and served by his officers under the general rules. Resistance to process will be punishable by a fine to Government, subject to the confirmation of the Sudder Court.—*Reg.* 11, 1816, *Sect.* 7.—*p.* 269.

637. In the trial of suits instituted in his Court, the Superintendent will be guided by the general rules relating to Civil suits, in matters not otherwise provided for in the above rules, or when those rules may not be qualified by expediency under sanction of the Sudder Court.—*Reg.* 11, 1816, *Sect.* 8.—*p.* 269.

638. The pleadings, petitions, decrees, or other papers in such suits are not required to be on stampt paper.—*Reg.* 11, 1816, *Sect.* 9.—*p.* 269.

639. On appointing a vakeel, parties will enter a deposit of the usual fee; but upon proof of inability to pay expences, the plaintiff or defendant may be admitted to plead as a pauper.—*Reg.* 11, 1816, *Sect.* 10.—*p.* 269.

640. From the decisions and orders of the Superintendent an appeal will lie to the Sudder Court, if preferred within three months after such decision or order was passed.—*Reg.* 11, 1816, *Sect.* 11.—*p.* 269.

641. Appellants will present their petitions of appeal to the Superintendent; petitions will contain a full and correct statement of the appellant's objections to the order; if not admitted as a pauper, the appellant will file with his petition security for all eventual costs that may be ad-

judged against him, or if unable to give such security, will make oath or bring two credible witnesses to his inability.—*Reg.* 11, 1816, *Sect.* 12.—*p.* 269.

642. The Superintendent receiving the petition of appeal, will forward it, with a copy of the decision or order received, to the Sudder Court.—*Reg.* 11, 1816, *Sect.* 13.—*p.* 269.

643. The Sudder Court on admitting the appeal, will require by precept a record of all the proceedings, and call upon the respondents to answer the appeal by a certain date, in person or by vakeel.—*Reg.* 11, 1816, *Sect.* 14, *Cl.* 1.—*p.* 270.

644. The Superintendent will conform to such precept; and whenever it cannot be carried into execution by the date prescribed, will certify the same to the Sudder Court with a notice of the period within which a further return will be made.—*Reg.* 11, 1816, *Sect.* 14, *Cl.* 2.—*p.* 270.

645. Appellants and respondents are at liberty to conduct their own appeals, or to appoint vakeels, or to forward their pleadings through the Superintendent, who in such latter case will communicate to them all orders of the Sudder.—*Reg.* 11, 1816, *Sect.* 15.—*p.* 270.

646. Whenever the Sudder may deem the trial not investigated, and the evidence taken in the case insufficient, the cause may be returned for further trial and judgment, to the Superintendent or further evidence may be required to be taken and forwarded to the Court.—*Reg.* 11, 1816, *Sect.* 16.—*p.* 270.

647. 648. The rules and principles laid down for the trial and decision of suits by the Superintendent, are applicable to the trial and decision of appeals by the Sudder.—*Reg.* 11, 1816, *Sect.* 17 *and* 18.—*p.* 270.

649. Decrees involving a transfer or change in the possession of property, are never to be carried into execution until the period for appeal shall have elapsed; and if appealed, are not to be executed upon the appellant's giving security for the performance of the final judgment.—*Reg.* 11, 1816, *Sect.* 19, *Cl.* 1.—*p.* 270.

650. If the appellant fail to give such security, and the property be transferred, similar security will be required from the respondent in the event of an appeal being instituted.—*Reg.* 11, 1816, *Sect.* 19, *Cl.* 2.—*p.* 270.

651. If neither party give the security required, the property will be attached, until either one of the parties give the security, or judgment be passed in appeal.—*Reg.* 11, 1816, *Sect.* 19, *Cl.* 3.—*p.* 271.

652. No decrees (whether of the Superintendent or of the Sudder) involving a transfer of any of the estates enumerated in Section 2 of the Regulation, will be carried into execution without previous notice being made by the Sudder to Government, that all necessary precautionary measures may be adopted.—*Reg.* 11, 1816, *Sect.* 19, *Cl.* 4.—*p.* 271.

653. 654. From decisions for an amount exceeding £5000 or 43,103 Sa. Rs. appeals will lie to the King in Council; in other cases the decision of the Sudder will be final.—*Reg.* 11, 1816, *Sect.* 20, *Cl.* 1 *and* 2.—*p.* 271.

For a modification of this rule, see the last Chapter, under the Section of Appeals to the Privy Council.

SECT. LXIX.

Miscellanea.

655. In all accounts in future, in suits filed in the Courts, where the agreement was for value, and not for specific coins, the calculations will be made at 106-10-8 Company's for 100 Siccas; i. e. the intrinsic difference.—*Con. No.* 1151.—*p.* 271.

656. It is not necessary that bonds, &c. should be drawn out in Company's Rupees. They may be drawn in Siccas, and then, if for value, the calculation will be made at the above rate. If for specific coin, the payment must be in the coin covenanted.—*Con. No* 1151.—*p.* 271.

CHAPTER IV.

SUMMARY SUITS—PRINCIPLES OF LAW—ARBITRATION—REGISTRATION.

SECTION I.

Summary Suits for Arrears and Exactions of Rent.—Cognizance of them by the Collector.

1. All Regulations which authorize the Civil Judges to take cognizance of summary suits or claims regarding arrears and exactions of rent, and refer them to the Collector for investigation, are rescinded.—*Reg.* 8, 1831, *Sect.* 2.—*p.* 272.

2. The Judicial Authorities are not henceforward competent to receive any claim of the above nature, except it be preferred as a Regular suit.—*Reg.* 8, 1831, *Sect.* 3.—*p.* 272.

3. All such summary suits depending in the Zillah Court, on the promulgation of this Regulation, will be transferred to the Collectors for investigation and decision.—*Reg.* 8, 1831, *Sect.* 5.—*p.* 272.

4. Summary suits for rent instituted by holders of rent free tenures against their tenants, are to be tried by the Collectors, under Regulations 8, 1831, the Civil Courts being incompetent to receive them.—*Con. No.* 837.—*p.* 272.

5. Summary suits instituted by malgoozars against putwarries and other native agents employed by them in the management of their Estates, under Regulation 28, 1803, Section 37, are cognizable by the Collector, under Reg. 8, 1831.—*Con. No.* 946.—*p.* 272.

6. Suits for damages connected with exactions of rent, are cognizable by the Collectors under Regulation 8, 1831, in the same manner and under the same restrictions as they were formerly cognizable by the Civil Judges.—*C. O. 15th Nov.* 1833.—*p.* 272.

7. Summary claims of this nature will be preferred to the Collector, whose decision will be final, subject to a regular suit. But if the ground of appeal be the irrelevancy of the Regulation to the case, the Revenue Commissioner is authorized to receive an appeal within one month from the date of the summary decision. The Commissioner will dismiss it with costs, if the stated ground of irrelevancy be not established. If the case appear to him, on the other hand, to be one not cognizable as a summary suit by the Regulations, he will reverse the irregular judgment, and pass such order as may appear to him consonant with the Regulations.—*Reg.* 8, 1831, *Sect.* 4.—*p.* 273.

8. The Collector is competent to try all cases of resistance of his own process of attachment connected with such summary suits, except when actual breaches of the peace occur, in which case they must be tried by the Magistrate.—*Con. No.* 615.—*p.* 273.

9. In furnishing periodical reports of suits connected with this Regulation, and generally in the performance of other duties connected with its provisions, the Collectors will be guided by the instructions they may receive from the Revenue Commissioners, and the Sudder Board.—*Reg.* 8, 1831, *Sect.* 18.—*p.* 273.

10. Assistants to Collectors are not competent to exercise the powers thus vested in Collectors, except when specially empowered by the Governor General in Council. When thus authorized, they will decide suits referred to them by the Collector, subject to the revision of the Collector, and an appeal to the Commissioner.—*Reg.* 8, 1831, *Sect.* 21.—*p.* 273.

11. No complaint or application regarding arrears or exactions of rent, will be received by the Collector unless preferred within one year from the period when the cause of action arose.—*Reg.* 7, 1822, *Sect.* 20, *Cl.* 3.—*p.* 273.

12. The provisions in Reg. 7, 1799, Sect. 15, and Reg. 5, 1800, Sect. 14, for the arrest of defaulting under-tenants, and their sureties from whom arrears of rent may be due to proprietors and farmers of land, and for a summary enquiry, were intended to be applicable only to arrears of rent due in the current year, or immediately after the close of it. The summary enquiry and process thus authorized will not apply to any arrear of rent due more than a complete year before the application. But this restriction will not prevent the judicial authorities including in the adjustment of recent arrears any arrear due beyond one year if it appear equitable.—*Reg.* 2, 1805, *Sect.* 4, *Cl.* 1.—*p.* 274.

13. The summary jurisdiction to be exercised by Collectors shall be restricted to enforcing payment of the rents paid in past years, to the exclusion of all claims for increase, except on proof of bonâ fide written engagements to such increase.—*Reg.* 8, 1831, *Sect.* 10.—*p.* 274.

14. A person to whom arrears of rent may be due, may proceed against the defaulter, either by distraint of his property or attachment of his person, adopting that plan which is most convenient.—*Con. No.* 519.—*p.* 274.

15. The Collector is not at liberty to reject summary suits instituted under Reg. 7, 1799, whatever may be the amount sued for.—*Con. No.* 519.—*p.* 274.

16. Any such summary suit instituted by any landholder, who has not conformed to the Rule in Reg. 9, 1833, Sections 12, 13 and 14, will be non-suited with costs. If he oust a ryot, or distrain his property, he will be liable to damages on account of such illegal acts.—*Reg.* 9, 1833, *Sect.* 15. —*p.* 274.

SECT. II.

Summary Suits for Arrears and Exactions of Rent.—Encouragement to institute Regular Suits.

17. It is not intended to preclude persons in the first instance from instituting Regular suits for arrears of rent, either before the Moonsiffs, or the Zillah and City Courts, according to the amount at issue; and the Judges are enjoined to encourage this mode of procedure in all claims for arrears or exactions of rent which are cognizable by summary process.—*Reg.* 2, 1821, *Sect.* 4. —*p.* 274.

18. To give additional encouragement to prefer regular, instead of summary suits, in such cases of arrears or exactions of rent, the plaint in all such regular suits as would have been cognizable as summary suits, may be written on a stamp bearing one-fourth the prescribed value. But this rule will not apply to a regular suit instituted to set aside a previous summary decision, which will be subjected to the ordinary provisions for stamp duty.—*Reg.* 8, 1831, *Sect.* 8.—*p.* 274.

19. Cases connected with arrears or exactions of rent, are cognizable as summary suits, by Collectors under Reg. 8, 1831, and as regular suits by the Moonsiffs on stamp paper of a quarter of the full value.—*Con. No.* 714.—*p.* 275.

20. The above Rules (Rule 19,) are applicable both to ryots and under-tenants resisting undue demands, and to Zemindars and others claiming their just dues.—*Con. No.* 714.—*p.* 275.

21. In suits instituted under Regulation 8, 1831, Section 8, the full fees of pleaders must be deposited, the pleadings must be filed, and all the forms enjoined for regular suits, observed. The only exemption is the relinquishment on the part of Government of three-fourths of the stamp duty levied in lieu of the institution fee.—*Con. No.* 930.—*p.* 275.

22. These suits instituted under Reg. 8, 1831, are to be considered in all respects as Regular suits; consequently the pleadings and all other papers should be written on stamp or plain paper, according to the circumstances of the case, as if the suit had been instituted on full stamp.—*Con. No.* 1001.—*p.* 275.

23. On the institution of a suit for rent before a judicial officer, proof must be required that the

plaintiff has conformed to the rules laid down in Sections 14 and 15, Regulation 9, 1833. The nature of the proof will be such as the plaintiff can adduce.—*Con. No.* 884.—*p.* 275.

24. Moonsiffs are competent to receive, try, and decide claims to arrears of rent preferred as a Regular suit; and to dispose of all claims by under-tenants and others who may desire to resist the distraint of their property or arrest of their persons; or who claim damages on this account. In such cases Moonsiffs may award damages.—*Reg.* 8, 1831, *Sect.* 11.—*p.* 275.

SECT. III.

Summary Suits for Arrears and Exactions of Rent.—Process of Arrest.

25. Any zemindar, talookdar, proprietor, or farmer, to whom an arrear may be due from an under-tenant which cannot be realized by distraint, may, after demanding such arrears from the defaulter or his surety, or if he be prepared to abscond, without any express demand, cause him and his surety to be arrested in the following manner.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 1.—*p.* 276.

26. Managers of the estates of disqualified landholders, and of joint undivided estates; and Collectors and other officers holding land in attachment for any purpose, or making a khaus collection on the part of Government, and the authorized agents of such managers, collectors, or other public officers, are equally entitled to institute a summary suit for arrears; and all the provisions in these Sections will apply to them.—*Reg.* 7, 1799, *Sect.* 19.—*p.* 276.

27. The term farmer of land in the above Clause, is used in a general sense; and therefore every description of under-farmers may institute summary suits for the recovery of rents.—*Con. No.* 278.—*p.* 276.

28. The provisions of Section 15 of this Regulation, are equally applicable to persons in possession of estates under deeds of mortgage, as to regular proprietors and farmers of land, and they may institute summary suits for rent.—*Con. No.* 35.—*p.* 276.

29. The rules regarding the institution of summary suits for arrears of rent, are applicable to all claims of arrears from lands paying revenue or from rent-free lands.—*Con. No.* 313.—*p.* 276.

30. A zemindar is not, however, at liberty to institute a single summary suit against a large portion of the inhabitants of a village for arrears of rent, when such inhabitants are not otherwise connected, than as dwelling in the same village, and do not jointly cultivate any piece of land.—*Con. No.* 860.—*p.* 276.

31. The whole of the provision of Section 15, Reg. 7, 1799, are applicable equally to defaulting tenants and their malzamins. But they cannot be applied to hazirzamins, unless the defaulter for whose appearance the surety is bound, should abscond; in which case the hazirzamin, as well as the malzamin, is answerable for whatever may be due, and may be proceeded against.—*Con. No.* 41.—*p.* 277.

32. Complaints preferred by a Zemindar, or his Gomasta against his ryots for breach of attachment of crops made under the provision of Regulation 5, 1812, Section 13, are to be tried as summary suits.—*Con. No.* 503.—*p.* 277.

33. The Collector is not at liberty to refer such summary suits to Moonsiffs to be tried as regular suits.—*Con. No.* 879.—*p.* 277.

34. Such summary claims will be presented to the Collector on stamp paper of one-fourth the value which would have been required, if a regular suit had been instituted. From a dependant talookdar, farmer, or ryot, who is bonâ fide unable to pay the prescribed stamp, the Collector has the discretion to receive the complaint on paper of an eight annas stamp.—*Reg.* 8, 1831, *Sect.* 7.—*p.* 277.

35. All petitions of arrest will specify the name and residence of the defaulter and his surety, the Mehal for which the balance of rent is claimed, and the annual jumma of it; the amount demandable for the kists of the current year; the sum received from the tenant and his surety, and the balance due. It will also state whether the arrear has been demanded from the defaulter or his surety, and the result.—*Reg.* 19, 1817, *Sect.* 15, *Cl.* 2.—*p.* 277.

36. The landholder or farmer to whom the arrear may be due, will present the petition to the Collector.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 2.—*p.* 277.

37. In the sequel of the above Clause, Moonsiffs were enjoined to arrest defaulters when the petition was presented to them; but this practice was strictly forbidden at a subsequent period by *C. O.* 13*th July*, 1832.—*p.* 277.

38. The petition of arrest may be presented to the Collector, in or out of Court, or by any authorized agent. On being presented to him, he will cause a *dustuk* to be issued for the arrest of the defaulter, which will be executed if the arrear be not paid within twenty-four hours. The peon will convey the party to the Collector. If the party arrested requests a longer time, by a written application, and the plaintiff agrees to it by a written endorsement, the execution of the dustuk will be delayed. The arrest will always be withdrawn on a written declaration from the plaintiff that he is satisfied. More than two peons are not to be employed in serving such process, unless it be absolutely necessary in order to prevent the escape of the defaulter; and they will be paid the usual tulubana.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 3.—*p.* 278.

39. The notice directed to be served by Regulation 2, 1806, Section 2, is not applicable to cases of summary process, provided for by Regulation 7, 1799, Section 15.—*Con. No.* 30.—*p.* 278.

40. Claimants of such arrears have the option of presenting their petition for arrest either to the Collector of the district in which the land lies, or of that in which the defaulter resides. If presented in the district wherein the defaulter does not reside, the process will be sent to the Collector of such jurisdiction to be served. The defaulter, if apprehended, will be sent over in custody. If he cannot be found, and the process cannot be served, a return will be made accordingly; and the deposition of the peon will be taken to shew that efforts were made to arrest him.—*Reg.* 8, 1819, *Sect.* 19.—*p.* 278.

41. The summary process for the arrest and confinement of defaulting under-tenants, laid down in Regulation 7, 1799, Section 15, Clause 1—6, will not be applicable during the manufacturing season to under-tenants employed in the Salt manufacture. Arrears from them will be recovered as directed in Regulation 29, 1793, Section 19.—*Reg.* 9, 1801, *Sect.* 2.—*p.* 278.

SECT. IV.

Summary Suits for Arrears and Exactions of Rent.—Power of the Collector to reject a Summary Suit.

42. A Collector, to whom a summary suit is preferred under this Regulation, may reject it by an order written on the back of the petition, to be returned to the party, referring him to a Regular suit. This petition will be received by the Judical Authorities as a petition of plaint in like manner as if the claim had been preferred to them originally in the form of a regular suit.—*Reg.* 8, 1831, *Sect.* 9, *Cl.* 1.—*p.* 279.

43. A Revenue Commissioner however, may, on summary appeal, direct the Collector to receive such suits, as well as such instructions relative to the admission or rejection of them as appears proper.—*Reg.* 8, 1831; *Sect.* 9, *Cl.* 2.—*p.* 279.

44. The Collector is not at liberty to transfer to the Zillah Court, summary suits pending on their files. Whenever the Collector rejects a summary suit for arrears of rent, he will strictly follow the Regulations and do so by an order written on the back of the Petition, and return it to the party. The petitioner will then be enabled to present it to the Moonsiff, for a Regular suit, if cognizable by him; otherwise to the Judge, who will immediately refer it to the Principal Sudder Ameen, or Sudder Ameen.—*C. O.* 27*th Feb.* 1835.—*p.* 279.

SECT. V.

Summary Suits for Arrears and Exactions of Rent.—Summary Investigation and Decision.

45. Process of arrest having been issued, if the return of the Nazir be, that the defendant is not to be found, the plaintiff may either move the Court to issue a second summons, (after a month's postponement); or to cause proclamation to be made, without such postponement, that

fails to attend, decision will be given ex-parte on the documents and proofs of the plaintiff.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 3.—*p.* 279.

46. In the trial and decision of such summary suits, the Collector will be guided by the rules in this Regulation; and in cases not provided for, by the rules prescribed for the guidance of the Civil Courts in the trial of such suits. The Collector will also possess the same power as the Civil Courts in causing the attendance of parties and witnesses, and generally for all process it may be necessary to issue.—*Reg.* 14, 1824, *Sect.* 4.—*p.* 280.

47. When a defaulter may be brought before the Collector, he will be called on to answer the demand against him. If he deny it, or any part of it, a summary investigation will be made, and the vouchers and accounts of the parties will be examined. The landholders and farmers are allowed to employ any vakeel they may think proper in this summary enquiry before the Collector.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 4.—*p.* 280.

48. Parties in such summary suits may employ any agent, vakeel or representative they please, provided he be invested with full power. The rate of remuneration will be agreed on between vakeel and client, but no greater sum will be awarded as costs, than what may be deemed by the Collector a fair equivalent for the attendance of the agent.—*Reg.* 14, 1824, *Sect.* 6.—*p.* 280.

For the stamp paper for Mookhtarnamahs and Vakalutnamahs in Summary Suits, vide Chap. 2, Rule 439.

49. A zemindar, talookdar, farmer, or other landholder, who in a summary suit can shew by his village accounts proved to be truly and honestly kept, or by other probable evidence, that the arrear demanded by him of the defendant is due, is entitled to a decree for the amount of the arrear, though he may not have granted a pottah to the defendant, or received a kubooleyut from him.—*Con. No.* 574.—*p.* 280.

50. The existence of a kabooleyut on the part of the ryot, is not essentially required to enable the landholder to institute a summary suit against him under Regulation 7, 1799. The Courts are competent to decree such arrears as may be proved to be *bond fide* and equitably due, by an examination of the vouchers and accounts of the parties, as prescribed by Regulation 7, 1799, Section 15, Clause 4.—*Con. No.* 380.—*p.* 280.

51. No other pleadings will be required except a plaint and answer; but an amended plaint or amended answer, or any explanatory motion, will be received.—*Reg.* 14, 1824, *Sect.* 7.—*p.* 280.

52. No fees will be taken for exhibits, or witnesses, and no written motion on stamp paper will be required for filing such exhibits, or summoning such witnesses.—*Reg.* 14, 1824, *Sect.* 8. —*p.* 280.

53. The Collector may hear and determine such suits in any part of the district, but only in public Cutcherry, or in some place open to the public, and in the presence of the parties, or their vakeels, if in attendance.—*Reg.* 14, 1824, *Sect.* 9.—*p.* 280.

54. The defaulter, when he has been arrested, and denies the demand, may be admitted to give security for attendance until the case be investigated and decided.—*Reg.* 19, 1817, *Sect.* 16, *Cl.* 2. —*p.* 281.

55. If upon enquiry, it appear that the arrear (or the greater portion of it) is not due, and that the demand has been wilfully misstated, the defendant will be discharged with full costs, and equitable damages will be awarded against the plaintiff. If it be established that the demand or a considerable portion of it is due, the defendant will be kept in close custody until the arrear be paid, with all costs and interest, or until the plaintiff applies for his release. The plaintiff will pay such subsistence for the defendant as is fixed for other prisoners in the Civil Jail, viz. such allowance as the Judge may think proper, not being more than four annas, or less than one.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 5.—*p.* 281.

56. The Collector is not restricted by any provision in Regulation 7, 1793, from deputing an Ameen for the purpose of local investigation, in summary suits for rent demandable in the case. —*Con. No.* 265.—*p.* 281.

57. Whenever, from the accumulation of suits regarding arrears or exactions of rent, it ap-

pers advisable, the Collector, with the sanction of the Commissioner, may refer such claims with the view of their being adjusted and reported on, to the Tuhseeldars of their districts; who will be guided by the rules laid down for Collectors in similar references prior to the enactment of Regulation 14, 1824.—*Reg.* 8, 1831, *Sect.* 13.—*p.* 281.

SECT. VI.

Summary Suits for Arrears and Exactions of Rent.—Execution of the Collector's award.

58. Such parts of Regulation 7, 1822, Sect. 23, Cl. 3, as relate to the execution of awards in cases in which a specific sum of money shall be adjudged due, or any cost or damage be awarded, are applicable to the Collector's awards under this Regulation.—*Reg.* 8, 1831, *Sect.* 20.—*p.* 282.

59. Collectors will execute all awards made by them in which a specific sum of money, or any costs and damages are awarded, by the process in use for the recovery of arrears of public revenue.—*Reg.* 7, 1822, *Sect.* 23, *Cl.* 3.—*p.* 282.

60. All Regulations which authorize the Civil Judge to bring the talook or tenure of a defaulter to sale in execution of summary decrees for rent, and which forbid the Collector to sell land in satisfaction of summary awards, are rescinded. The power heretofore vested in the Civil Judges is transferred to the Collectors.—*Act* 8, 1835, *Sect.* 1.—*p.* 282.

61. All sales for the recovery of arrears of rent or revenue under Reg. 7, 1799, Sect. 15, Cl. 7; or Sect. 23, Cl. 6; or Sect. 25, shall be public and be conducted by the Collector or his deputy, and ten day's notice will be given of such sales by advertisement.—*Act* 8, 1835, *Sect.* 2.—*p.* 282.

62. If a Collector has attached the property of a ryot in satisfaction of a summary award of his own Court, his jurisdiction being independent of that of the Civil Judge, this latter officer can exercise no interference in the matter. If the whole estate has been placed under khaus management to realize the Government revenue, the Judge cannot interfere in the management of the estate.—*Con. No.* 1165.—*p.* 282.

63. Execution of a summary decree for arrears of rent may be taken out within twelve years from the date of the decree.—*Con. No.* 1266.—*p.* 282.

64. A Zillah Judge cannot stay the execution of a summary award passed by a Collector, pending the trial of a regular suit instituted in the Civil Court to set aside the award.—*Con. No.* 738.—*p.* 283.

65. A Civil Court may stay the sale of property about to be sold in execution of the Collectors summary award, on the motion of a third party claiming it, he having instituted a regular suit to establish his claim to it.—*Con. No.* 1181.—*p.* 283.

66. In all such summary suits, the Collectors having been empowered to execute their own awards, their orders for the confinement and release of defaulters, need not pass through the Civil Judges. The warrant of the Collector is a sufficient authority to the Civil Jailor to receive or discharge a prisoner.—*Cir. Ord. 4th Jan.* 1833.—*p.* 283.

67. A prisoner being confined by a summary award of the Collector for arrears of rent, may be released by the Collectors under Regulation 2, 1806, Section 11, on their presenting their petitions and proving their insolvency.—*Con. No.* 784.—*p.* 283.

SECT. VII.

Summary Suits for Arrears and Exactions of Rent.—Institution of a Regular Suit to contest a summary Decision.

Vide Reg. 8, 1831, Sect. 4, given as Rule 7 of this Chapter.

68. Any person dissatisfied with the summary decision of a Collector, is at liberty to prefer a regular suit in the Zillah Court, and on its institution, the proceedings held on the summary enquiry will be filed on the record of the Regular suit.—*Reg.* 14, 1824, *Sect.* 10.—*p.* 283.

69. Regular suits brought to contest the summary awards passed by Collectors, shall be of the nature of an appeal to the Court in its regular jurisdiction from a summary award. The Collec-

tor, or other officer of Government need not therefore be a party to it.—*Reg.* 7, 1822, *Sect.* 23, *Cl.* 2.—*p.* 283.

70. Persons confined for arrears under the fifth Clause (Clause 5, Section 15,) may institute a Regular suit against the person at whose instance they have been confined, and recover full costs and damages, on proof that the demand was unjust. If they discharge the arrear to obtain release from arrest, and institute a regular suit, and establish that the sum was not due from them at the time of the demand, they will obtain back what they have paid, with interest at the rate of one per cent. per mensem and with full costs and damages.—*Reg.* 7, 1799, *Sect.* 16.—*p.* 283.

71. Proprietors and farmers whose claims to rent may have been rejected on a summary enquiry by the Collector, may institute a Regular suit in the Civil Courts for them. If the arrear is found to have been due when the summary judgment was given against them, they will recover the arrears with interest, and all costs and damages paid by them both in the summary and regular suit.—*Reg.* 7, 1799, *Sect.* 17.—*p.* 284.

72. The admission of Regular suits to contest the summary awards of the Revenue authorities in such cases, is restricted to one year from the date of the delivery or tender of the Collector's decision to the party against whom the award is made.—*Reg.* 8, 1831, *Sect.* 6.—*p.* 284.

73. The period of one year, mentioned in Section 6, is to be calculated according to the principle laid down in Clauses 10 and 11, Section 8, Regulation 26, 1814.—*Con. No.* 1028.—*p.* 284.

74. So much of Clause 2, Section 31, Regulation 7, 1822, and Section 19, Regulation 8, 1831, as provides that Regular suits to set aside the summary decisions of the Collector shall not be cognizable by, or referable to any Sudder Ameen or Moonsiff, is repealed.—*Act* 25, 1837, *Sect.* 2.—*p.* 284.

75. Regular suits instituted to set aside the summary judgment of the Collector for land rent, are cognizable, according to their amount, by the Principal Sudder Ameens, Sudder Ameens and Moonsiffs.—*Act* 7, 1832, *Sect.* 10.—*p.* 284.

76. Whenever a Regular suit may be instituted in a Civil Court, with a view to set aside or alter a summary judgment passed by a Collector, the proceedings held on the summary enquiry will be called for by precept, and filed on the record of the case.—*Reg.* 7, 1822, *Sect.* 31, *Cl.* 1.—*p.* 284.

77. Petitions of appeal against summary decisions in suits for rent instituted under Regulation 8, 1831, before Collectors, must be written on paper of the full stamp.—*C. O.* 12*th Dec,* 1834.—*p.* 284.

SECT. VIII.

Summary Suits for Arrears and Exactions of Rent.—Process against defaulting under-tenants and their sureties in another jurisdiction.

78. Whenever a dependant talookdar, jotedar, kutkeenadar, or other undertenant or his surety from whom rent is due, and who may not have paid it on demand, may reside in a different jurisdiction from that in which the land is situated, the Zemindar, &c. may petition the Collector of the Zillah in which he resides, praying for the arrest of the defaulter. The Collector will issue the process of arrest as described in Regulation 7, 1799, Section 15, Clause 3.—*Reg.* 19, 1817, *Sect.* 15, *Cl.* 1.—*p.* 285.

79. This petition will state the name and residence of the defaulter, and his sureties, the mehal for which the balance is claimed, and its annual jumma; the kists of the current year which may have become payable, the amount paid, and the balance due, and whether the arrear has been demanded of the defaulter and his surety or not.—*Reg.* 19, 1817, *Sect.* 15, *Cl.* 2.—*p.* 285.

80. If the defaulter, or his surety, be found within the jurisdiction of the Collector, and being arrested, neglects to pay the arrears, and is brought before the Collector, and cannot assign sufficient cause for not being sent to the Collector of the district in which the land is situated, or give security for attending him, he will be sent over under charge of peons to the Collector, with a full statement of the case. When the party arrested may assign sufficient cause for not being sent to

the Collector, or give security for attending on him, the petition of arrest and all papers connected with it, will be sent to the Collector of the Zillah in which the land is situated.—*Reg.* 19, 1817, *Sect.* 15, *Cl.* 3.—*p.* 285.

81. When the defaulter or his surety is thus brought to, or attends, the Collector of the Zillah in which the land is situated, the Collector will proceed as directed for similar cases in the Regulations, just as if the defaulter had been arrested in his own jurisdiction.—*Reg.* 19, 1817, *Sect.* 15, *Cl.* 4.—*p.* 285.

SECT. IX.

Summary Suits for Arrears and Exactions of Rent.—Reference of Suits regarding the same cause of Action to the same Tribunal.

82. If it be brought to the notice of the Judge, that a suit cognizable under this Regulation, is pending in his Court, or in a Court under his authority, in the same matter regarding which a suit had previously been instituted before a Collector, he will direct it to be transferred to the Collector, who is authorized and required to decide both suits.—*Reg.* 8, 1831, *Sect.* 14.—*p.* 286.

83. The term "regarding the same matter" is to be considered as meaning that the cause of action in both is identical.—*Con. No.* 1001.—*p.* 286.

84. If it be brought to the notice of the Collector that a suit is pending before him in a matter on which a Regular suit has been filed in the Judge's Court, he will suspend his proceedings and forward the record to the Judge, who will make over both cases to some tribunal under him, or dispose of both cases himself.—*Reg.* 8, 1831, *Sect.* 15.—*p.* 286.

85. The rules contained in Regulation 8, 1831, Sections 14 and 15, are not held applicable to the Sudder Court. They are exclusively applicable to the Zillah and City and subordinate Courts.—*Con. No.* 1252.—*p.* 286.

86. It will be the duty of the Judge, and of the authorities under him, whenever practicable, to refer suits concerning the same cause of action, and regarding any matter cognizable under this Regulation, to one and the same tribunal. The subordinate authorities are required, when they have reason to know that another case concerning the same matter of rent is pending before another tribunal, or as a summary suit before the Collector, to suspend their proceedings and submit them to the Judge.—*Reg.* 8, 1831, *Sect.* 16.—*p.* 286.

87. In all cases of appeal, the records of all cases which can be ascertained to have been decided concerning the same cause of action, and regarding any matter cognizable under this Regulation, shall be produced and read, and the decision in appeal will be considered equally applicable to all such suits, though not appealed. In all such cases, due notice will be given to the parties concerned to attend in person or by Vakeel, and watch over their own interests.—*Reg.* 8, 1831, *Sect.* 17.—*p.* 286.

88. Summary suits thus made over by the Collector to the Civil Court in consequence of Regular suits having been previously instituted, will be numbered separately, and decided as distinct suits though both decisions may be simultaneous.—*Con. No.* 1001.—*p.* 286.

89. Suits transferred to the subordinate judicial tribunals under the provisions of Section 15, Reg. 8, 1831, must be entered and tried as Regular civil suits.—*Con. No.* 951.—*p.* 286.

SECT. X.

Summary Suits for Arrears and Exactions of Rent.—Right of landlords to attach Tenures for Arrears of Rent.

90. When an under-farmer, or other under-tenant is arrested, and does not immediately discharge the arrear, and is taken into custody, the landholder or farmer may attach his tenure, and manage it by his own agents, till all arrears and interest are paid off. But in such cases of attachment, the landholder or farmer will not exact from the inferior tenantry and cultivators more than they were bound to pay to the defaulter. If the defaulter makes good the arrear with interest

91. Doubts have arisen whether such an attachment can be made in case the dustuk has not been served on the defaulter. Moreover, it has not been provided whether a decree can be passed after a summary investigation, if the process of arrest by dustuk has not been actually served. Hence under-tenants have made it a practice to evade the process, in the hope that the proprietor would lose the benefit of his summary application, and be obliged to resort to a regular suit. To remedy these evils, the following rules have been enacted.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 1.—*p.* 287.

92. Under the existing rules, proprietors, talookdars or farmers are entitled, with or without a previous demand upon the under-tenant, to institute a summary suit, and obtain a process of arrest against the defaulter. It is now provided that when a summary suit for arrears has been instituted against a talookdar, farmer, or intermediate holder between the proprietor and cultivator, the party who has instituted the suit (whether the defaulter has been arrested or not) may send a sezawul of his own authority to attach and collect the rents of the actual cultivators immediately from themselves. This power will not be exercised unless the arrear of rent claimed in the summary suit, has been due for one whole month before the date of the attachment, and be not less in amount than the entire kist of the month.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 2.—*p.* 288.

93. A Zemindar is not competent, under the provisions of Regulation 8, 1819, Section 18, to send a sezawul of his own authority to attach and collect the rents of the actual cultivators immediately from themselves, without having previously instituted a summary suit under Regulation 7, 1799, Section 15, against the talookdar and other immediate holder.—*Con. No.* 456.—*p.* 288.

SECT. XI.

Summary Suits for Arrears and Exactions of Rent.—Right of landlords to cancel the leases of intermediate tenants, and to oust them.

94. If the arrear be not liquidated within the current year, either by payments from the defaulter or his surety, or by the attachment of his tenure, the landholder or farmer may, at the commencement of the next year, make his own arrangements for the future receipt of the rents payable by the defaulter, consistent with the rights of all other persons concerned. If the defaulter be an under-farmer on an annual lease, he cannot of course claim the renewal of it. But though his lease may not have expired, it must be considered liable to be annulled by the lessor, if he has not paid up the stipulated rent. If the defaulter be a dependant talookdar, and his tenure be saleable by the usage of the country or by the title deeds, it may be sold for arrears of rent, on application to the Civil Courts. If the defaulter be a leaseholder or other tenant, with a right of occupancy only as long as a certain rent is paid, without any right of property or transferrable possession in the land, the proprietor may oust the defaulting tenant who has thus broken the conditions of his tenure.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 7.—*p.* 288.

95. In all these cases (except when a sale of landed property is desired) proprietors and farmers may exercise the just powers belonging to them without applying to the Courts of justice. They will, however, be held responsible for all acts done by them which may exceed their just powers and infringe any of the rights, prescriptive or written, of any under-tenants. This Regulation is not meant to limit or define the rights of any description of landholders or tenants, but only to point out how defaulting tenants may be proceeded against, if they do not pay their rents; leaving them to recover their rights, if infringed, with costs and damages in the established Courts of justice.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 7.—*p.* 289.

96. In reference to Section 15, of the above Regulation, a defaulting farmer is declared by the Sudder Court liable to be ousted from his farm at the end of the year for which an arrear is due, if it be not discharged on demand. The proprietor of the land is authorized to oust his defaulting tenant, without application to the Courts, as declared by Clause 7, Section 15, Regulation 7, 1799, provided no violence be used so as to bring it within Act 4, 1840.—*Con. No.* 42.—*p.* 289.

97. This power conferred on proprietors of land to oust their farmers without previous application to the Courts, having given rise to much oppression, a reference was made to the Sudder

Court which issued the following orders and observations. "The Court cannot acquiesce in this construction of the clause in question, which they observe, merely declares that a landholder may oust his defaulting tenant without application to the Courts of justice; and leaves entirely open the question, what course is to be pursued if the tenant shall deny that he is a defaulter, and incur the responsibility of refusing to quit his tenure. That question is to be resolved independently of the clause under consideration, and the Court are clearly of opinion, that under the circumstances supposed, the landholder must have recourse to his legal remedies of distraint, summary suit, or regular action. The Court, indeed, regard the clause quoted, so far as it is applicable to such cases, to be merely declaratory of the right possessed by landholders, in common with all other claimants, to pursue their just demands by peaceable means; and to have been intended, not to confer any powers on landholders in addition to those which they previously possessed upon general principles, and by the usage of the country; but to give confidence to landholders in the lawful pursuit of their just claims, and to discourage undue opposition on the part of the tenants."—*Con. No.* 113.—*p.* 289.

98. Judgments for arrears of rent passed under Regulation 7, 1799, Section 15, Clause 5, and not satisfied within the current year, by the confinement of the defaulting tenant and his security, or by the attachment of his tenure, as ordered in Clause 6, may be enforced under the 7th Clause of that Section, on application to the Civil Court, as therein directed, at the expiration of the year for which the arrear may have been adjudged, by the sale of the defaulter's talook, or other transferrable tenure, for the rent of which such judgment may have been passed. But the Courts are not at liberty to apply to the Board of Revenue, to cause the tenure to be sold upon the mere allegation of a balance being due, without enquiry.—*Con. No.* 128.—*p.* 290.

99. When an arrear is adjudged due, the plaintiff may cancel of his own authority any lease, farm, or limited interest between him and the actual cultivator. But no summary award of arrears will warrant the sale of the defaulter's real property in such an action, except when the balance may be due on account of a Putnee Talook, or any talook declared liable to sale for arrears. If the zemindar, or plaintiff, be desirous of bringing to sale any other estate or landed property of a defaulter, he must institute a regular suit, notwithstanding the existence of the summary award in his favour.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 4.—*p.* 290.

SECT. XII.

Summary Suits for Arrears and Exactions of Rent.—Right of landlords to cancel the tenures of Resident Cultivators for arrears.

100. The provisions above contained in the 2nd and 4th Clauses of this Section (Rules 92 and 99) relate to the power of attaching and cancelling, (under the circumstances described) the leases and farms of those who hold intermediately between the proprietor and the cultivators. They do not extend to khodkhast or other resident cultivators.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 5.—*p.* 290.

101. For any arrears due from these resident cultivators, the party may proceed at any time during the year, by distraint, or arrest and summary suit. If, however, an arrear be due at the end of the year from the resident cultivator, the landholder is at liberty to institute a summary suit to establish the existence of the arrear taking out as usual process of arrest. If the defaulter shall not attend or cannot be arrested, the processes in the third clause of this Section must be resorted to. Any summary judgment previously obtained on account of rent for the year just closed, will be received as evidence of such arrear, if the plaintiff can shew that the judgment has not been executed. If an arrear be adjudged due by the Court, and it be not paid immediately, the landholder may make such new arrangement for the management of the land in future as he may judge proper.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 5.—*p.* 291.

102. Under the provisions of Clauses 4 and 5, Sect. 18, Reg. 8, 1819, the landholder must first establish by a suit, summary or regular, the existence of an arrear, before he is at liberty to cancel the lease of an under-tenant. As it regards khodhast ryots, they have also the power of immediately paying into Court any sum adjudged to be due from them, before they can be ejected.—*Con. No.* 1205.—*p.* 291.

103. The declaration contained in the fifth Clause, as above, (Rule 101,) that it is illegal to oust or disturb resident cultivators, except under certain circumstances, necessarily implies that there must be a remedy. Such remedy should be afforded by the Judge, on the summary application of the ejected ryot, by an order for his being restored to possession, till the process described in the Regulation has been observed. The authority to redress such grievances is now transferred from the Judge to the Collector, and he will act accordingly, unless the ejectment has been attended with violence so as to bring the case under the cognizance of the Magistrate.—*C. O. 15th Nov.* 1833.—*p.* 291.

104. When a suit is instituted by a resident cultivator in a Zillah Court or that of a Moonsiff to obtain a reversal of the decree passed by a Collector adjudging a balance due, and ejecting him as a defaulter, the value of the suit must be estimated at the amount of the rent in dispute; that is, at the sum sued for in the first instance.—*Con. No.* 862.—*p.* 291.

105. All differences between the landlords and their tenants or ryots, involving the question whether the landlord can legally oust a ryot from the lands which the latter considers himself legally entitled to cultivate, should come under the provisions of Regulations 49, 1793, or Regulation 8, 1819.—*Con. No.* 482.—*p.* 291.

Regulation 49, 1793, has been rescinded by Act 4, 1840, which will be found in the Appendix. The above Rule (105) refers only to the summary adjustment of such disputes, and does not bar a regular action. Act 4, 1840, should be examined in reference to these enactments.

SECT. XIII.

General Rules regarding the rights of Landholders.

106. The Civil Courts will determine the rights of every description of landholders and tenant when regularly brought before them, whether ascertainable by written engagements or the laws, or local usage. Landholders may summon their under-tenants for measurement of lands, adjustment of rent, or any other legal purpose without application to the Court. Opposition on the part of tenants will be punishable, on proof in the Civil Courts, by costs and damages. Landholders and their agents will also be held responsible for the abuse of these powers, and, on conviction, will be liable to full costs and damages, besides a fine.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 8.—*p.* 292.

SECT. XIV.

Summary Suits against Distraint.

107. If an attachment for arrears of rent issue against the property of a defaulting tenant, who has not given security for the payment of his rent, and he dispute the justness of it, and within five days after the attachment, enter into a bond before the Judge, Collector, Cazy, or Moonsiff, or the distrainer, with good security, binding himself to institute a suit in the Civil Court within fifteen days from the date of the bond, to try the demand, and if he agrees to pay whatever sum may be adjudged due from him with interest and costs; the distrainer will immediately withdraw the attachment and restore the property.—*Reg.* 5, 1812, *Sect.* 15.—*p.* 292.

108. If the defaulter do not execute the bond within the period, the distrainer will be at liberty to sell the property, unless the arrear with expences be previously discharged. If the defaulter after executing the bond, omits to institute the suit, the distrainer will demand payment from the surety; and if it be not paid, attach and sell the personal property of both surety and defaulter, or either of them, always excepting ploughs and other implements of husbandry, &c.—*Reg.* 5, 1812, *Sect.* 15.—*p.* 292.

109. If an attachment for arrears has issued against any tenant, who has given security for the payment of his rent, and the tenant dispute the demand, and the surety, within five days from the attachment, deliver an attested writing to the Judge, Collector or other officer, engaging that either he or the defaulter will institute a suit in the Civil Court in fifteen days to try the demand, and agree to pay the amount that may be adjudged with interest, costs, &c. the attachment will be immediately withdrawn.—*Reg.* 5, 1812, *Sect.* 16.—*p.* 293.

110. If the surety fail to execute such writing in the prescribed period, the property will be sold unless the arrear and expences be discharged before the day of sale. If he give the writing, but neglect to institute the suit, the distrainer will again demand payment: and if the money be not paid, will attach and sell the personal property of both defaulter and surety (always excepting ploughs, &c.) If the surety be absent, and the defaulter give the requisite security, the attachment will be withdrawn, and the rules in the foregoing Section will be applicable to the parties.—*Reg.* 5, 1812, *Sect.* 16.—*p.* 293.

111. Although the omission on the part of the tenant and his security to institute a suit, within the period named in the bond, subjects his property to re-attachment and sale, it does not deprive him or his security of the benefit of a summary suit for the recovery of damages on account of injury sustained by the illicit sale of the property.—*Con. No.* 421.—*p.* 293.

112. The power of the Moonsiffs to receive security in cases of distraint for arrears of rent, ceases with the withdrawal of their commission, under the operation of Act 1, of 1839.—*Con. No.* 1255.—*p.* 293.

113. Regulation 5, 1812, Sections 15 and 16, are modified. If the individual whose property is distrained, should contest a part only and not the whole of the demand, he may release it from distraint, on paying a part of the demand, and giving security to contest the remainder.—*Reg.* 8, 1831, *Sect.* 12.—*p.* 294.

114. The above rules are equally applicable to Tehseeldars, Sezawuls, and other revenue officers employed in making khaus collections on the part of Government.—*C. O. 28th April,* 1818. —*p.* 294.

115. Should the tenant, whose property has been distrained, be unable to give the security required, he may still institute a suit against the distrainer in the Civil Court, to try the justness of the demand, and he will be entitled to recover damages should it be proved to have been illegal.—*Reg.* 5, 1812, *Sect.* 17.—*p.* 294.

116. Suits instituted under Sections 15, 16 and 17, as above, should be received, tried and decided as summary suits, unless the plaintiff should in any instance prefer the institution of a regular suit.—*C. O. 12th Dec.* 1816.—*p.* 294.

117. A suit of the nature described in Section 17, (Rule 115,) should be instituted within one year from the date of the injury alleged to have been sustained by the illegal sale.—*Con. No.* 467.—*p.* 294.

118. The rule in Regulation 17, 1803, Section 6, is applicable to cases under Regulation 5, 1812, Section 17, viz. that in cases of illegal distraint, there should be adjudged to the injured tenant restitution of the value lost to him by the distraint, and as much again as damages.—*Con. No.* 327.—*p.* 294.

119. Individuals, other than the alleged defaulter and his surety, who may lay claim to distrained property, are not entitled to the release of such property on furnishing security, nor can their claims be investigated according to the provisions of Regulation 5, 1812, Section 15.—*Con. No.* 348.—*p.* 294.

120. Any claim to such property preferred by a third party, not being the alleged defaulter or his security, must be investigated as a regular suit under Regulation 7, 1799, Section 9.—*Con. No.* 348.—*p.* 295.

121. Suits instituted to procure the withdrawal of attachments of distraint issued by the proprietors of rent free lands, or to recover damages for undue distraint exercised by them, are cognizable by Collectors.—*Con. No.* 112.—*p.* 295.

122. Suits instituted under this Regulation will be summarily decided according to the rules contained in Regulation 7, 1799.—*Reg.* 5, 1812, *Sect.* 20.—*p.* 295.

SECT. XV.

Summary Process against Agents for Money or Papers.

123. Any landholder or farmer, having demands on any Sudder or Mofussil Amlah, or Agent

for money or accounts withheld by such Agent while in his service, or immediately after his resignation or dismission, may obtain summary process of arrest and confinement against him, in like manner as by Section 15, of this Regulation, he is authorized to proceed against defaulting under-tenants, and the Courts will afford the same aid in such cases as in the other.—*Reg.* 7, 1799, *Sect.* 20.—*p.* 295.

124. But such demands for money or accounts from Agents, by summary process, will be limited to transactions not older than a complete year.—*Reg.* 2; 1805, *Sect.* 4, *Cl.* 2.—*p.* 295.

See further on this subject Con. No. 946, Rule 5 of this Chapter.

SECT. XVI.

Summary Suits regarding Indigo.—Remedy against the ryot's disposing of the produce contrary to his engagement.

125. If any person has made advances to a ryot under a written engagement, stipulating for the cultivation of Indigo, on a defined portion of land, he will be considered as having a lien upon the indigo, and may use the process hereafter described to protect his interests and to secure the fulfilment of the contract.—*Reg.* 6, 1823, *Sect.* 2.—*p.* 296.

126. The owner of the factory for the time being must be considered as standing in the place of the former owner, by whom the advance was made, and equally entitled to adopt this process for the recovery of it.—*Con. No.* 565.—*p.* 296.

127. If any person who may have made advances on the above conditions, has just reason to believe that the person under engagements to him, is about to evade his contract by otherwise disposing of the produce, or that he has engaged to supply it to another, he may present a petition to the Judge in whose jurisdiction the land is situated, filing with it the original engagement and certifying that it was voluntarily and bonâ fide executed by the individual complained against.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 1.—*p.* 296.

128. When the petition and deed has been filed, a summons will be issued through the Nazir, requiring the defendant to appear in person or by an agent, within a specified time, which time will not exceed twenty days, and to answer the complaint.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 2.—*p.* 296.

129. The defendant should be summoned in the manner prescribed by the Regulations now in force; viz. by an itlehnamah, to be served by a single peon.—*Con. No.* 564.—*p.* 296.

130. The officer sent to serve the process, will affix a copy of the summons in the village, cutchery, or other place of public resort, and erect a bamboo on the parcel of ground referred to in the complaint. Sufficient notice will thus be given of the claim, to enable those who are desirous of contesting the plaintiff's right, or of establishing a prior right, to appear in person or by vakeel in the Court for that purpose. The failure so to attend before the summary suit is decided, will be held to bar the claim of a third party, founded on any contract for the produce of the land in question except by regular suit.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 3.—*p.* 296.

131. If the officer cannot serve the process on the defendant, he will still publish it in the manner above directed. If the defendant do not appear to answer the complaint within the time mentioned in the summons, and no other claim be preferred, the Judge, after taking evidence to establish the deed, and the plaintiff's allegations, will adjudicate the claim as if the defendant had personally appeared.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 4.—*p.* 297.

132. If the defendant or his agent attend within the appointed time, and deny the execution of the deed, evidence will be taken. If the execution be proved to have been voluntary, and no preferrable claim be established by a third party, the Court will summarily award the plaintiff's right to the crop. The same principle will be applied if the engagement be admitted, and no satisfactory reason be given why it should not be performed.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 5.—*p.* 297.

133. If it be proved that the engagement was not voluntarily executed, or if the proceeding appear litigious and oppressive, and the claim unfounded, or the plaintiff had no reasonable ground for his application, the complaint will be dismissed, and the plaintiff will be required to pay costs,

and a reasonable compensation to the defendant for the trouble and annoyance he has undergone. —*Reg.* 6, 1823, *Sect.* 3, *Cl.* 6.—*p.* 297.

134. When a lawful contract has been made between a ryot and another party, by which the ryot has bound himself to cultivate indigo and deliver plant to the other party, and that other party shall have made advances to the ryot, then if a third party, knowing that the contract has been made and the advance received, shall prevail on the ryot to break the contract, the party who made the advance may proceed against the third party as well as against the ryot, to recover from them jointly and severally damages to the extent of the injury sustained, and costs.—*Act* 10, 1836, *Sect.* 3.—*p.* 297.

135. But this will not be construed to give a right of action against any person in consequence of any act, which he may have done for the purpose of procuring payment of a debt, or performance of a lawful contract.—*Act* 10, 1836, *Sect.* 3.—*p.* 297.

136. In any suit under Regulation 6, 1823, or this Act, the Court may examine both plaintiff and defendant, if such examination be necessary; and if the award be in favour of the defendant, may award him a sum which shall be a compensation for the expence and loss of time he has incurred.—*Act* 10, 1836, *Sect.* 4.—*p.* 297.

137. If it appears that the defendant is under engagement for the same land to a third party, that party will be cited to appear in person or by vakeel. If the third party, previously to the decision of the case, produce a similar deed stipulating for the produce of the same land, the Judge, after a summary investigation, will determine whether either of the parties has a just claim to the produce; and if so, which has a prior claim, giving a preference to engagements registered under Regulation 20, 1812. A decree will then be passed adjudging the question of right between the parties.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 7.—*p.* 298.

138. No defendant who may attend under the process described in this Section will be confined in Jail or detained longer than is necessary to obtain his answer and explanations.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 8.—*p.* 298.

139. Indigo planters, not being zemindars or landholders, have no power to summon ryots, and compel their attendance.—*Con. No.* 394.—*p.* 298.

SECT. XVII.

Summary Suits regarding Indigo.—Summary investigation how and by whom to be conducted.

140. Summary investigations under this Regulation will be conducted in the manner prescribed for summary suits for arrears of rent. They will be tried by the Judge or the Collector. In cases referred to the Collector he will pass a decision on them, from which there will be no appeal if regularly made, and in a matter duly cognizable under this regulation. Any person whose claim under an engagement for the cultivation and delivery of indigo may be set aside by a summary award, or who may be dissatisfied with it, may institute a regular suit to recover the penalty stipulated in the deed of engagement, and to establish any other claim or interest he may consider himself entitled to.—*Reg.* 6, 1823, *Sect.* 6.—*p.* 298.

141. The Rules prescribed in Regulation 2, 1805, in regard to the institution of Summary suits for rent, should be applied to suits for the recovery of advances for indigo under Regulation 6, of 1823.—*Con. No.* 565.—*p.* 298.

142. Summary suits regarding indigo contracts are not primarily cognizable by the Collectors under Reg. 8, 1831, but may be referred to them by the Judge under Sect. 6, as above, and will then be tried in the manner laid down in that Section.—*C. O. 20th Nov.* 1835.—*p.* 298.

143. The Judge may refer to a Principal Sudder Ameen or Sudder Ameen, according to the amount of their jurisdictions, any suit, regular or summary, which may be instituted under the provisions of Regulation 6, 1823, or of this Act. They will enquire into and decide it under the same rules by which such suits would be enquired into and decided in a Zillah or City Court, any thing in the existing Regulations to the contrary notwithstanding.—*Act* 10, 1836, *Sect.* 5.—*p.* 299.

144. The Sudder Court is of opinion, that under the strict spirit of the existing laws, regular suits instituted in conformity to the provisions of Regulation 6, 1823, or of Act 10, 1836, in which the amount or value of the claim may not exceed 300 Rupees, and in which neither party may be a European British subject, European foreigner, or American, are cognizable by Moonsiffs in common with all other cases legally cognizable by them.—*Con. No.* 1092.—*p.* 299.

SECT. XVIII.

Summary Suits regarding Indigo.—Delivery of the Plant pending enquiry.

145. If, pending the summary enquiry, it appears that the plant is in a state fit to be cut, and may be injured if not cut, the Judge may order the delivery of the plant to either of the parties, if the said party engages to pay a specific pecuniary compensation to the other claimant, should the summary award be in his favour. The amount of this compensation will be fixed by the Judge, on a careful examination of circumstances, and the amount will be recorded on the proceedings.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 9.—*p.* 299.

146. Whenever the right to Indigo plant may be contested, and an order passed according to Clause 9, (145,) for its delivery to one of the claimants, such person will not be allowed to cut or remove the indigo, till he has given satisfactory security to make good any claim that may be ultimately established to such indigo, either from a prior right to the produce of the land, or from an arrear of rent due from that specific parcel of land, from which the plant may have been produced.—*Act* 10, 1836, *Sect.* 2.—*p.* 299.

147. The engagement executed by parties applying for possession of indigo crops under the provisions of Clause 9, can be enforced under the summary award. The summary decree should contain a provision for the payment, by the party cast, of the sum specified in his engagement. If it be not paid, it should be realized by the process prescribed for giving effect to summary judgments.—*Con. No.* 515.—*p.* 299.

SECT. XIX.

Summary Suits regarding Indigo.—Authority to prevent the removal of plant.

148. Any one in whose favour a summary award may have been passed for the produce of a defined spot of land, may place a watch over it to prevent the cutting and removal of the plant. If any attempt be made to remove it, the party will apply to the nearest Daroga for aid to prevent its removal; and the Daroga, on the decree being exhibited, will give the desired aid.—*Reg.* 6, 1823, *Sect.* 4, *Cl.* 1.—*p.* 300.

149. That the foregoing rule may not operate to the prejudice of the landholders, who are authorized to attach crops for their rents, it is provided that the planter who has obtained an award, will be held responsible conjointly with the ryut, for any arrear of rent which may have been due on that specific parcel of ground from which the indigo has been taken.—*Reg.* 6, 1823, *Sect.* 4, *Cl.* 2.—*p.* 300.

SECT. XX.

Summary Suits regarding Indigo.—Remedy against breach of contract by summary or regular suit.

150. When a ryut, after having received advances and entered into a written agreement, for the cultivation and delivery of plant, has failed to cultivate the land, or having cultivated it, has failed to complete his engagement, or has sold or transferred the plant, the planter may institute either a summary or a regular suit against him.—*Reg.* 6, 1823, *Sect.* 5, *Cl.* 1.—*p.* 300.

151. If a summary suit be instituted, and the cause be decided in favour of the plaintiff, the defendant will refund the advances with interest, and the cost of the suit.—*Reg.* 6, 1823, *Sect.* 5, *Cl.* 2.—*p.* 300.

152. But the indigo planter is not competent to cultivate the land by means of his own servants, nor has he a right to demand the assistance of the Police to compel the ryut to fulfil his contract. His only legal remedy is that prescribed by Sect. 5, Reg. 6, 1823.—*Con. No.* 385.—*p.* 300.

153. If no fraud or dishonesty be proved, and the failure of the ryut be owing to accident, the penalty adjudged against the contractor shall not exceed three times the sum advanced with interest.—*Reg.* 6, 1823, *Sect.* 5, *Cl.* 4.—*p.* 301.

154. Persons wilfully damaging indigo plant by allowing cattle to trespass on it or by other means, will be liable on conviction to such punishment by fine and imprisonment as the Magistrate is competent to inflict by Regulation 9, 1807, Section 19.—*Reg.* 5, 1830, *Sect.* 4.—*p.* 301.

SECT. XXI.

Summary Suits regarding Indigo.—Stamps.

155. No objection will be taken against any deed of contract for cultivating and delivering indigo, on account of its not bearing the proper stamp, if it be executed on paper bearing a stamp of the amount which would be required for a bond of the amount actually advanced.—*Reg.* 6, 1823, *Sect.* 7.—*p.* 301.

156. A contract entered into by a ryut to cultivate indigo for a period of five or ten years, and receive fresh advances annually, is unobjectionable on account of the stamp, provided the value of it be such as is required for a bond of a similar amount.—*Con. No.* 873.—*p.* 301.

157. No objection will be taken against any deed of engagement for cultivating indigo, on the ground that it has been entered into by more than one individual, or includes more than one transaction, provided the obligation of each individual be distinctly stated, and the stamp be of the same amount as would be required for a bond of an amount equal to that of the aggregate of all the sums advanced.—*Reg.* 6, 1823, *Sect.* 8.—*p.* 301.

SECT. XXII.

Summary Suits regarding Indigo.—Mode in which the ryut may close his contract.

158. Any one who has received advances under a written engagement, and may be desirous at the close of his contract of settling his accounts, may, if the planter refuse to settle them, present a petition to the Zillah Court, and the Judge will institute a summary enquiry in the presence of the parties, or their agents. If it be proved that the contract has expired, and that no balance is due, or if the petitioner deposit the balance in Court, the Judge may grant him a release from his engagement, and pay over the balance to the planter or his agent.—*Reg.* 5, 1830, *Sect.* 5, *Cl.* 1.—*p.* 302.

159. If the planter shall refuse the balance awarded him, the Judge will return it to the petitioner, leaving the planter to seek his remedy by a regular suit.—*Reg.* 5, 1830, *Sect.* 5, *Cl.* 2.—*p.* 302.

160. A Zillah Judge has no summary jurisdiction under Regulation 5, 1830, Section 5, Clause 1, in the case of an application by a ryut to settle his accounts with an indigo planter, before the expiration of his contract.—*Con. No.* 1130.—*p.* 302.

161. Summary suits under Section 5, Regulation 5, 1830, by persons unwilling to renew their contracts for the cultivation of indigo, who may sue for release from their engagements are cognizable by the Judge only, and are not referrible to the Revenue authority.—*C. O. 20th Nov.* 1835.—*p.* 302.

162. The ryut cannot claim a settlement of his account under this Clause, till the expiration of the period of his contract. If he asserts that the planter is indebted to him for indigo plant and refuses to pay him, he must seek redress by a regular suit.—*Con. No.* 934.—*p.* 302.

SECT. XXIII.

Summary investigation into embezzlements by Public Officers.

The enactments which relate to this Section, will be found in Chap. 2, Sect. 5.

SECT. XXIV.

Miscellaneous Cases.—Proceedings on the Report of Disqualification.

163. When a Collector has reported any proprietor to be a minor, and he deny that he is under age, he may petition the Zillah Judge, who will forward his petition to the Sudder Court, who will order the Judge by a precept to call the proprietor before him, and ascertain his age by the oaths

of three credible witnesses well acquainted with him, and also by other enquiries. The proceedings, with the opinion of the Court, will be forwarded to the Sudder Court. The decision of the Sudder will be final. A copy of it will be forwarded to the Governor General, who will order the estate to be placed under charge of the Court of Wards, or not as may appear advisable.—*Reg.* 10, 1793, *Sect.* 5, *Cl.* 2.—*p.* 303.

164. If a proprietor be disqualified on the ground of idiotism, lunacy, or other disqualifying natural defects, the Board of Revenue will order the Collector to represent the circumstance to the Zillah or City Judge, who will represent it to the Sudder Court. The Sudder Court will order the Judge to bring the party before him, and ascertain his actual state by ocular pooof, and take the evidence of three credible witnesses. The Zillah Court will certify its proceedings to the Sudder Court, who will determine finally on the subject, and forward a copy of its decision to the Governor General, who will order the Court of Wards to take charge of the estate or not, according as the Sudder Court may have adjudged the individual disqualified or the reverse.—*Reg.* 10, 1793, *Sect.* 5, *Cl.* 3.—*p.* 303.

165. Persons not born in a state of idiotism, who may be declared disqualified as idiots, will be produced annually, or oftener if necessary, before the Zillah Judge, that he may ascertain whether they be restored to sanity or not. If at any time this ground of disqualification appear to be removed, the Zillah Court will make a full report with all circumstances to the Sudder Court, who will finally determine whether the ground of disqualification is removed or not, and report to Government, who will order the Court of Wards to restore the estate to the proprietor or not, as the ground of disqualification may be adjudged to be removed, or otherwise.—*Reg.* 10, 1793, *Sect.* 5, *Cl.* 5.—*p.* 303.

166. Any person disqualified on the grounds specified in Clauses 2 or 3, who may consider the ground of disqualification removed, may petition the Zillah Court, who will forward the representation to the Sudder Court, who will order the Zillah Court to examine the case and take evidence. The Zillah Court will report the result of its enquiry to the Sudder Court, who will come to a final determination, and report the matter to the Governor General, who will order the Court of Wards to restore the estate or not, according to the decision of the Sudder.—*Reg.* 10, 1793, *Sect.* 5, *Cl.* 6.—*p.* 304.

SECT. XXV.

Miscellaneous Cases.—Appointment of Guardians to Minors.

167. When one or more proprietors of joint undivided estates die, leaving heirs who are under age, or lunatics, or idiots, without nominating a guardian, it will be the duty of the Judge, upon receiving a report of the case from the Collector, or from any person interested in the welfare of the family, stating that the next of kin is unfit to manage the estate, to make all proper enquiry, and to nominate some other person of character and respectability to act as guardian to the heir, reporting the matter to the Sudder Court.—*Reg.* 1, 1800, *Sect.* 1.—*p.* 304.

168. This enactment authorizes the appointment by the Zillah Court of a guardian to a minor landholder, provided he be a sharer in a joint estate paying revenue immediately to Government, and all the other sharers be not disqualified persons. This appointment would be subject to the control of the Sudder Court.—*Con. No.* 310.—*p.* 304.

169. The Sudder Court however ruled that there is nothing in the provisions of Regulation 1, 1800, which restricts its application to the case of *minor heirs of joint undivided estates paying revenue to Government;* and have therefore sanctioned the appointment by the Court, of guardians for minor heirs of tenures paying rent to zemindars and others, and not immediately to Government.—*Con. No.* 912.—*p.* 304.

170. If the estate of the minor be a joint undivided estate, the Zillah Court, on the application of the minor's mother, should appoint a guardian under Regulation 1, 1800, and report the nomination for the confirmation of the Sudder Court.—*Con. No.* 663.—*p.* 304.

171. All nominations of guardians are to be submitted according to a prescribed form to the

172. Any parties dissatisfied with the orders of the Zillah and City Judges, relative to the appointment of guardians, must appeal to the Sudder Court.—*Con. No.* 596.—*p.* 305.

173. When the Sudder Court has approved of a guardian, he is not to be removed, (the minor being still under age) without their sanction.—*Con. No.* 666.—*p.* 305.

174. When a female ward, a minor, placed under a guardian according to Regulation 1, 1800, and forbidden to marry by the Judge, has clandestinely contracted marriage, without the knowledge of her guardian, and then represented that she had attained the age of puberty, and that the marriage was voluntary, the marriage was held to be valid, and the bridegroom was not held to be liable to punishment in consequence of such disobedience.—*Con. No.* 637.—*p.* 306.

175. The guardian of a minor being his representative, is entitled to receive the minor's share of the proceeds of an estate, if managed by a Surburakar. The Zillah Judge has no right to interfere with him in the disposal of the minor's property.—*Con. No.* 654.—*p.* 306.

176. Guardians or Managers appointed under Regulation 1, 1800, must be left to exercise their own judgment as to the best mode of managing the estate of the minors committed to their care.—*Con. No.* 663.—*p.* 306.

177. The Zillah Judges are not at liberty to appoint officers to manage the accounts of the estate of the Wards of their Court.—*Con. No.* 682.—*p.* 306.

178. Where one or more proprietors of a joint undivided estate may be minors, or otherwise disqualified to manage their concerns, their guardians will superintend their interests, and exercise the same power in the management of the estate of their wards as could be exercised by the proprietors themselves.—*Reg.* 17, 1805, *Sect.* 5.—*p.* 306.

179. The Civil Courts are not expected to call on guardians appointed by them under Regulation 1, 1800, to deliver up their accounts for inspection. Those Courts are not at liberty to exercise any active interference in the management of the ward's property. On receiving credible information, however, against the character of the guardian, showing that he is unfit for his situation, the Court may make enquiries and take measures for his removal. For the recovery of monies or property which on investigation the guardian may appear to have embezzled, the Civil Court cannot interfere, except on the institution of a regular suit.—*Con. No.* 720.—*p.* 306.

180. A guardian of a deaf and dumb person appointed under Regulation 1, 1800, is not allowed to appeal in *formâ pauperis* on behalf of his ward by presenting his petition through an authorized vakeel.—*Con. No.* 1254.—*p.* 306.

181. A minor cannot appoint a constituted Vakeel to conduct a suit instituted in Court against his father in his life time. If the minor has no relatives whatever, the Court may by analogy select some person to act as his guardian, who will be competent to nominate a Vakeel to conduct the defence of his ward.—*Con. No* 398.—*p.* 307.

182. Guardians will be selected with regard to their capacity, character and responsibility; but the guardianship is never to be entrusted to the legal heir of the ward, or to any other person interested in outliving him.—*Reg.* 1, 1800, *Sect.* 2.—*p.* 307.

183. If none of the family will gratuitously act as guardians, and it may be necessary to make a pecuniary compensation to the guardian, the Judge will fix the amount.—*Reg.* 1, 1800, *Sect.* 3.—*p.* 307.

184. Guardians so appointed will receive a Commission under the official seal and signature of the Judge. They will give security for their appearance during the continuance of the trust, and execute the obligation given in the body of the work.—*Reg.* 1, 1800. *Sect.* 4.—*p.* 307.

185. The security Bond which may thus be given by the guardian, should be retained in the custody of the Court until the lapse of twelve years from the resignation of the trust, or from the date of the minor's attaining his majority, unless the minor, on coming of age, should himself consent to its being restored to the parties.—*Con. No.* 948.—*p.* 307.

186. Guardians so appointed will have the care of the person, maintenance and education of the ward. They will vote in the election of a manager for the joint undivided estate, and the manager will account to them for that portion of the profits arising from the joint estate which falls to their wards.—*Reg.* 1, 1800, *Sect.* 5.—*p.* 307.

187. Estates while under such management, are answerable for the payment of the public revenue assessed thereon, and are liable to be sold for arrears.—*Reg.* 1, 1800, *Sect.* 6.—*p.* 308.

188. Any person deeming himself aggrieved by any act done under the authority of this Regulation by the Judge, may complain either to the Judge, or to the Sudder Court. In the former case, the Judge will forward the petition and all the proceedings with an English translation to the Sudder Court, and the Sudder will either confirm or rescind his decision. The decision of the Sudder will be final. All proceedings and papers submitted to the Sudder under this Section will be accompanied with a translation in English.—*Reg.* 1, 1800, *Sect.* 7.—*p.* 308.

SECT. XXVI.

Miscellaneous Cases.—Appointment of Managers to disputed Estates.

189. Great inconvenience and injury having been exprienced from disputes among the proprietors of joint undivided estates, it is enacted that whenever the Revenue authorities, or persons interested in the estates may shew sufficient cause, the Zillah and City Courts may appoint a person duly qualified and under proper security to manage the estate and collect the rents. If the Revenue authorities, or person interested in the estate, be dissatisfied with the manager thus appointed, they will represent their objections to the superior Court, who will either confirm the Judge's nominee, or direct him to choose another.—*Reg.* 5, 1812, *Sect.* 26.—*p.* 308.

190. Under this rule, the Court is competent to attach the whole but not a portion of a joint undivided estate on sufficient cause being shewn; but the Court's decision as to the sufficiency of the cause is open to appeal.—*Con. No.* 717.—*p.* 308.

191. The provisions of Section 26, Regulation 5, 1812, are not applicable to dependent talooks.—*Con. No* 1283.—*p.* 308.

192. Endeavours should be made in the first instance to prevail on one of the family to perform this duty gratuitously. If a compensation be necessary, it will be fixed by the Judges on a view of all the circumstances of such cases. The manager so appointed must account to the several proprietors for their respective profits arising from the estate, after discharging the public revenue and deducting the amount of compensation which he may have been authorized to receive.—*Con No.* 115.—*p.* 309.

193. When a manager may be appointed, the Courts must be particularly careful to proportion the expence of management to the extent and produce of the estate, and not to allow of exorbitant compensation.—*Con. No.* 142.—*p.* 309.

194. The responsibility of these managers must be considered to be that of an agent acting for the benefit of his principal, and bound to a faithful discharge of the trust. "The proper security" directed to be taken from managers, is not restricted to personal bail for appearance, but extends to security for a faithful account of the manager's receipts, and should be proportionate to the extent of it.—*Con. No.* 142.—*p.* 309.

195. If the authorities, or any individual having an interest in the estate, should be dissatisfied with the conduct of the manager, they may represent the circumstances to the Zillah Judge and move for his removal. Should they be dissatisfied with the orders which the Judge may pass thereon, they may carry up the case in appeal.—*Reg.* 5, 1812, *Sect.* 27.—*p.* 309.

196. The rules in Sections 26 and 27, of the above Regulation, are thus modified.—*Reg.* 5, 1827, *Sect.* 2.—*p.* 309.

These modified rules will be found at Section 7, Chapter 3.

SECT. XXVII.

Principles of Law.—Rates of Interest in different Provinces.

197. 198. Courts of Civil Judicature will decree interest according to the following rules:

In *Bengal, Behar and Orissa,* (excluding Cuttack,) if the cause of action arose before 28th March, 1780, on sums not exceeding 100 Sicca Rupees, interest at 3 Rupees 2 Annas per mensem will be allowed, or 37 Rupees 8 Annas per annum.—*Reg.* 15, 1793, *Sect.* 2, *Cl.* 1 *and* 2.—*p.* 310.

199. On sums exceeding 100 Sicca Rupees, 2 per cent. per mensem, or 24 per cent. per annum. —*Reg.* 15, 1793, *Sect.* 2, *Cl.* 3.—*p.* 310.

200. 201. If the cause of action arose between the 28th March, 1780, and the 1st January 1793, on sums not exceeding 100 Sicca Rupees, 2 per cent. per mensem, or 24 per cent. per annum.—*Reg.* 15, 1793, *Sect.* 3. *Cl.* 1 *and* 2.—*p.* 310.

202. On sums exceeding 100 Sicca Rupees 1 per cent. per mensem, or 12 per cent. per annum. —*Reg.* 15, 1793, *Sect.* 3, *Cl.* 3.—*p.* 310.

203. If the cause of action arose on or after the 1st January 1793, no interest will be decreed at a higher rate than 12 per cent. per annum.—*Reg.* 15, 1793, *Sect.* 4.—*p.* 310.

204. 205. In the province of *Benares,* if the cause of action arose previous to the 1st January, 1807, the Courts will decree the rate of interest stiptulated in any agreement, or if no stipulation has been made, according to the law and usage of the country in conformity with the spirit of Reg. 7, 1795, Sect. 9, which declares with respect to bills of exchange, receipts, or notes of hand that the custom of the country is to be abided by, and with respect to dealings among Muhajuns and Shroffs that the established customs observed among them are to be adhered to by the Courts.—*Reg.* 17, 1806, *Sect.* 2 *and* 3.—*p.* 310.

206. If the cause of action arose on or after the 1st January, 1807, no interest will be decreed above the rate of 1 per cent. per mensem, or 12 per cent. per annum.—*Reg.* 17, 1806, *Sect.* 4.—*p.* 310.

207. 208. In the *Ceded and Conquered Provinces of Oude,* if the cause of action arose before the 10th November, 1801, on sums not exceeding 100 Sicca Rupees, interest will be allowed at the rate of 2 Rupees 8 Annas a month, or 30 per cent. per annum.—*Reg.* 34, 1803, *Sect.* 2, *Cl.* 1 *and* 2.—*p.* 310.

209. On sums exceeding 100 Sicca Rupees, 2 per cent. per mensem, or 24 per cent. per annum.—*Reg.* 34, 1803, *Sect.* 2, *Cl.* 3.—*p.* 310.

210. If the cause of action arose on or after the 10th Nov. 1801, the Courts will decree no higher sum than one per cent. per mensem.—*Reg.* 34, 1803, *Sect.* 3.—*p.* 311.

211. 212. These rules and rates are applicable to the districts in the *Doab and on the right bank of the Jumna, with Bundlekund,* supplying the following dates, viz. the 16th December, 1803, for Bundlekund, and the 30th December, 1803, for the other districts in lieu of 10th November, 1801.—*Reg.* 8, 1805, *Sect.* 23, *Cl.* 1 *and* 2.—*p.* 311.

213. 214. In the Zillah of *Cuttack,* if the cause of action arose before the 14th October, 1803, no higher or lower rate of interest will be decreed than 30 per cent. per annum, on sums not exceeding 100 Sicca Rupees, or than 2 per cent. per mensem, or 24 per cent. per annum, on sums exceeding 100 Sicca Rupees.—*Reg.* 14, 1805, *Sect.* 9, *Cl.* 1 *and* 2.—*p.* 311.

215. If the cause of action arose on or after the 14th October, 1803, no interest will be decreed at a rate above 12 per cent. per annum.—*Reg.* 14, 1805, *Sect.* 9, *Cl.* 3.—*p.* 311.

216. The Courts will not decree any interest where the bond or instrument, shall have been granted after the 14th day of Oct. 1803, and specifies a higher rate of interest than 12 per cent per annum.—*Reg.* 14, 1805, *Sect.* 9, *Cl.* 4.—*p.* 311.

SECT. XXVIII.

Principles of Law.—General Rules regarding Interest and Wassilut.

217. If in any of the cases specified Sect. 2, 3 and 4, (Rule 197—203) a lower rate of interest than any of the rates therein authorized has been stipulated between the parties, no higher rate than that stipulated will be decreed.—*Reg.* 15, 1793, *Sect.* 5.—*p.* 311.

218. The Courts will not decree compound interest arising from intermediate adjustments of accounts. But this rule will *not extend to cases in which the accounts* have been adjusted, the former bonds cancelled, and new bonds taken for the aggregate amount of principal and legal interest consolidated.—*Reg.* 15, 1793, *Sect.* 7.—*p.* 312.

219. The Courts will not decree any interest whatever, when the bond or instrument specifies

that a higher rate of interest than is authorized by this Regulation, has been given and received. —*Reg.* 15, 1793, *Sect.* 8.—*p.* 312.

220. To prevent litigious appeals, Courts in passing judgment on suits of appeal, if the former decree be confirmed, may award interest to the respondent at the rate of one per cent. per mensem, on all sums receivable on account of the decree from the date of such decree and will punish appeals that appear litigious by a fine to Government.—*Reg.* 13, 1796, *Sect.* 3.—*p.* 312.

221. A Zillah Judge is not competent however to impose a fine, under the provisions of Regulation 13, 1796, Section 3, on the appellant in a miscellaneous case; as that rule is not applicable to such cases.—*Con. No.* 1138.—*p.* 312.

222. The terms of the rule (220) are imperative on all appellate Courts, on the Zillah Courts and on the Principal Sudder Ameens, when deciding appeals from the lower Courts. They are not at liberty to decree any thing less than the full rate of interest.—*C. O. 2nd Oct.* 1835.—*p.* 312.

223. The Court will dismiss the suit with costs against the plaintiff, and decree no interest whatever if it be proved that any attempt has been made to elude these rules regarding interest by any deduction from the loan, or by any device or means whatever.—*Reg.* 15, 1793, *Sect.* 9. —*p.* 312.

224. In *Benares* the rule in the above Section, and that in Section 8 (No. 219 and 223,) do not apply to bonds or loans contracted before the 1st January 1807.—*Reg.* 17, 1806, *Sect.* 5.— *p.* 313.

225. These provisions with regard to interest, relate to loans of money only, and not to loans of grain.—*Con. No.* 487.—*p.* 313.

226. The rules contained in the preceding Sections (viz. the Sections in Regulation 15, of 1793,) will not apply to Respondentia loans, or to Policies of Insurance, the interest on which is to be regulated by the terms of the deeds, and the laws and usages which prevail in such transactions.—*Reg.* 15, 1793, *Sect.* 12.—*p.* 313.

227. In actions brought for the recovery of money lent on bond or other written document, the rate of interest is generally 12 per cent. and in such cases the specific contract between the parties should be strictly maintained.—*C. O. 7th April*, 1837.—*p.* 313.

228. But where mesne profits of landed property may be adjudged, or any other claim in which no stipulation exists, the Courts may exercise a sound and equitable discretion in awarding the rate of interest to be payable, not exceeding 12 per cent.—*C. O. 7th April*, 1837.—*p.* 313.

229. This construction will not interfere with the rules prescribed in Regulation 13, 1796, Section 3, (No. 220.)—*C. O. 7th April*, 1837.—*p.* 313.

230. 231. When a principal sum and interest thereon, claimed in an original suit, is adjudged to be due, the Court will decree principal with interest, from the date on which the loan was made, or the sum claimed became due, up to the date of the decree if the interest do not exceed the principal, when a sum equal to the principal will be allowed, (except as provided for in the Circular Order of 7th December, 1823,) with farther interest on this sum till the date of payment. —*C. O. 4th March*, 1836.—*p.* 313.

232. If the decision be confirmed in appeal, the appellate Court must, under Regulation 13, 1796, Section 3, award interest on the aggregate of the principal, interest and costs, from the date of the decree to the day of payment.—*C. O. 4th March*, 1836.—*p.* 313.

233. If the claim was dismissed by the lower, but decreed in the appellate Court, interest will be calculated on the principal sum to the date of the decision of the lower Court, and on that consolidated sum of principal, interest and costs, to the day of payment.—*C. O. 4th March*, 1836.—*p.* 313.

234. Interest on the costs of suit should be granted in all cases, whether the claim be for money, land, or any other description of property.—*Con. No.* 1095.—*p.* 314.

235. When the costs of suit are included in the decree they become part of the matter awarded by the Court passing the decree, and as such are liable with other property so adjudged to interest from the date of the Court's decision.—*Con. No.* 715.—*p.* 314.

236. A party having sued for the principal of a debt, without including interest, is presumed to have relinquished his claim to the interest accruing prior to the action; and cannot institute a suit to recover the interest after having obtained a decree for the principal, because this would amount to splitting the cause of action, which is contrary to the Regulations and to the practice of the Courts. The same principle would apply to wassilaut, or mesne profits, for any period antecedent to the institution of a suit, for the proprietory right in the land or other real property on which it may be claimed, which may not have been included in such suit.—*C. O. 11th Jan.* 1839.—*p.* 314.

237. Upon all debts or sums certain payable at a certain time, the Court may allow the current rate of interest from the time when such sums were payable, if they were payable by virtue of a written instrument at a certain time. If payable otherwise, then from the time when the demand was made of payment, in writing, stating that interest would be claimed from the date of demand to the date of payment. And interest shall be payable in all cases in which it is now payable by law.—*Act* 32, 1839.—*p.* 314.

SECT. XXIX.

Principles of Law.—Cases in which the Interest exceeds the Principal.

238. If the interest on any debt, calculated at 12 per cent. has accumulated so as to exceed the principal, the Courts are not (except in the cases mentioned in Section 12) to decree a greater sum of interest than the principal.—*Reg.* 15, 1793, *Sect.* 6.—*p.* 314.

239. The restriction contained in the Section above is not applicable when the accumulation of interest beyond the principal, is subsequent to the institution of a suit; and is not therefore ascribable to procrastination on the part of the creditor.—*Con. No.* 359.—*p.* 314.

SECT. XXX.

Principles of Law.—Provision for the payment of Interest in the decree.

240. In all cases where money liable to bear interest is payable under a decree, a clause will be inserted providing for the interest, till the decree is carried into final execution. If such provision has been omitted in a decree, the Court which had passed it may at any future period order the payment of interest which has accumulated from the date of the decree, without referring the party to a new suit for the recovery of it. The same principle is applicable to profits in cases of decrees for landed property.—*C. O. 11th Sept.* 1829.—*p.* 315.

241. Regarding *Interest* and *Wassilut* accruing subsequently to the institution of a suit, and while it is pending, when the Court has omitted to provide for it in the decree, the decree holder, instead of instituting a second suit, should apply for a review of judgment in order that this omission may be supplied. This application, if presented within the prescribed period, must be filed on the stamp paper directed for miscellaneous petitions. If presented after the prescribed period, it must be on the stamp paper of the full value ordered in Regulation 1825, Section 2, Clause 1, and agreeable to the Construction No. 490.—*C. O. 11th Jan.* 1839.—*p.* 315.

242. In cases in which money liable to bear interest is payable under a decree of Court, the Court's Circular of 11th September, 1829, (Rule 240,) ordained, that a Clause should be inserted in the decree, providing for the allowance of interest till the decree was finally executed. If such provision has been omitted in the decree, the Court which passed it, may on a summary petition from the decree holder, after due investigation, order payment for the whole period which has elapsed subsequently to the date of the decree; or for any portion of it, without referring the party to a new suit for the recovery of the interest. The same principle is applicable to profits in cases of decrees for landed property. The rules for the calculation of interest on sums decreed in original suits or appeals, will be found in the Circular Orders of 2nd October, 1835; 4th March, 1836, and 7th April, 1837, (the last issued by the Western Court.)—*C. O. 11th Jan.* 1839.—*p.* 315.

SECT. XXXI.

Principles of Law.—Simple Mortgages.

243. In cases of mortgages of real property executed before 28th March, 1780, when the mortgagee had the usufruct of the property, the usufruct will be allowed instead of interest agreeably to the former custom of the country, if it has been so stipulated. After that date, the same interest will be allowed on bonds for the mortgage of real property, as on other bonds and no more. All such mortgages are to be considered cancelled and redeemed when the principal sum, with simple interest, has been realized from the usufruct of the mortgaged property, or otherwise liquidated by the mortgager.—*Reg.* 15, 1793, *Sect.* 10.—*p.* 316.

244. When the mortgagee shall have had the usufruct of the pledged property, he will deliver in an account of the gross receipts and the expenditure, swearing (or making a solemn declaration) that the accounts are true. The mortgager will be allowed to examine the accounts; and the Court, after hearing any objections that may be offered by either party, will adjust the amount.—*Reg.* 15, 1793, *Sect.* 11.—*p.* 316.

245. Cases brought before the Civil Courts under the provisions of Sections 10 and 11, which relate only to simple, and not to conditional mortgages, will be considered as subject to all the rules prescribed for regular suits.—*Con. No.* 277.—*p.* 316.

246. There is no provision in the Regulations for a summary suit in cases brought before them under Regulation 15, 1793, Sections 10 and 11, and which relate only to simple mortgages.—*Con. No.* 830.—*p.* 816.

SECT. XXXII.

Principles of Law.—Conditional Mortgages, otherwise called Bye-bil-wuffa or Kut-cubaleh.

247. It has long been a prevalent practice to borrow money on the mortgage and conditional sale of land, under a stipulation, that if the sum borrowed be not repaid (with or without interest) by a fixed period, the sale will become absolute. This species of transfer is called *Bye-bil-wuffa* in Behar, and *kut-cubaleh* in Bengal. Instances have occurred in which persons who have lent money on these conditions, have denied the tender of payment, or have evaded receiving payment of the money, within the stipulated period, in order to render the sale absolute, and to possess themselves of landed property. In such cases, the proof of the tender falls on the borrower; if he fails to prove it legally, he risks the loss of his property. It is necessary therefore, for the security of the borrower, that he should have the means of establishing in a Court of Judicature his having tendered or his being ready to repay the money within the limited period. For the above purpose, and for the prevention of abuse, the following rules have been established:—*Reg.* 1, 1798, *Sect.* 1.—*p.* 317.

SECT. XXXIII.

Principles of Law.—Mode in which, in cases of Conditional sale, the Mortgager may redeem the property pledged.

248. In all instances of the loan of money on Bye-bil-wuffa, the mortgager who wishes to pay the debt and redeem the land within the stipulated period, may either tender and pay it to the mortgagee with due precautions, or deposit it in the Zillah Court, and the Judge will give a receipt for it. A written notice will also be given at the same time to the mortgagee, who, on due application, and on surrendering the Bill of conditional sale, will receive the amount. His acknowledgment will remain among the records of the Court. When the mortgagee has not obtained possession of the land, the deposit made by the mortgager will be the principle and interest, not exceeding 12 per cent. per annum. If the mortgagee has obtained possession of the land, the deposit will include only the principal; the interest will be settled on an adjustment of the mortgagee's receipts and disbursements. Such a deposit will preserve to the mortgager the full right of redemption; and if the land be in the possession of the mortgagee, will entitle him to demand the

immediate recovery of it, subject to an adjustment of accounts. If the mortgager deposit a less sum than above required, alleging it to be the true sum due to the mortgagee, after deducting the proceeds of the lands in his possession, the deposit will be received and notice given to the mortgagee. If the amount so deposited be admitted by the mortgagee to be the total amount due, or be established to be so on investigation, the right of redemption will be considered as preserved to the mortgager; but he cannot be entitled to the recovery of his land, till he has paid the full amount due from him.—*Reg.* 1, 1798, *Sect.* 2.—*p.* 318.

249. When the mortgagee, on a conditional mortgage, has been put in possession of the land, and an adjustment of accounts may become necessary, he will account to the mortgager for the proceeds of the estate while in his possession, on the principle laid down in Regulation 15, 1793, with regard to mortgages and interest, as far as the same may be applicable. But such parts of Section 10, of that Regulation as directs that the mortgages therein referred to, are to be considered cancelled when the principal sum and simple interest has been realized from the usufruct of the mortgaged property, are declared not to apply to these sales.—*Reg.* 1, 1798, *Sect.* 3.—*p.* 318.

250. A teep for the repayment of money lent on conditional sales, will not be considered a legal tender, unless accepted by the mortgagee; and this will be proved by his giving up the Bill of Sale, or giving a written acknowledgment that he has received back the money lent him.—*Reg.* 1, 1798, *Sect.* 4.—*p.* 318.

251. This Regulation will not alter the terms of contract, (illegal interest excepted,) settled between the parties; and the several provisions in it will be construed accordingly. Any question of right between the parties will be regularly brought before and settled in the Civil Courts.—*Reg.* 1, 1798, *Sect.* 5.—*p.* 318.

252. In addition to the provisions in Regulation 1, 1798, it is ordered, that whenever the mortgagee has obtained possession of the land, on execution of the mortgage deed, or at any time before a final foreclosure of the mortgage, the payment or tender of the principal, or of the balance due, if any part of the principal has been discharged; or when the mortgagee may not have obtained possession, the payment or tender of the principal and interest, will entitle the mortgager or owner to redeem his property before his mortgage is finally foreclosed, in the manner provided for in the next Section; that is to say, at any time within one year from the time when the mortgagee may apply to the Court to foreclose the mortgage, and to render the sale absolute. The tender must be clearly proved to have been made to the mortgagee; or the amount due must be deposited within the stipulated period in the Zillah Court. And the whole of the provisions in Regulation 1, 1798, Section 2, as applied to the stipulated period of redemption are declared to be equally applicable to the extended period of one year granted for an equitable right of redemption by this Regulation.—*Reg.* 17, 1806, *Sect.* 7.—*p.* 319.

253. If a mortgager, or his representative, desirous of redeeming the mortgaged property in the possession of the mortgagee, deposits in Court the sum due to the mortgagee, either with or without interest, (under the provisions of Regulation 1, 1798, Section 2, and Regulation 17, 1806, Section 7,) the period of the notice to be served on the mortgagee, requiring him to render up possession of the property, need not be a year, but any reasonable period according to the distance of his residence from the Sudder station.—*Con. No.* 974.—*p.* 319.

254. The mortgager is entitled to receive possession summarily on depositing the principal sum borrowed, as required in Regulation 1, 1798, Section 2, leaving the interest to be settled on an adjustment of the mortgagee's receipts and disbursements while in possession.—*Con. No.* 339.—*p.* 319.

255. If the mortgager alleges the principal of the debt to have been realized by the usufruct, and the mortgagee in possession denies the allegation, it cannot be decided summarily; it must be the subject of a regular suit.—*Con. No.* 339.—*p.* 319.

256. If however the borrower, persisting in his allegation, deposit the principal, merely to regain possession of his lands, he may of course subsequently sue the mortgagee for the restitution of the amount deposited, and recover it with costs, on his proving that it was really not due.—*Con. No.* 339.—*p.* 319.

257. In suits brought by a mortgagee to regain possession of property mortgaged, the amount of stamp should be calculated on the value of the property, due regard being had to the rules laid down in the Regulation for estimating that value, and not on the sum for which the property was mortgaged.—*Con. No.* 957.—*p.* 320.

SECT. XXXIV.

Principles of Law.—Mode in which, in cases of Conditional sale, the Mortgagee may foreclose and enter on possession of property pledged to him.

258. Whenever the mortgagee, in a conditional sale, may be desirous on the expiration of the stipulated period, of foreclosing the mortgage, and rendering the sale absolute, he shall, after demanding payment, make application for that purpose by a written petition to the Zillah Judge. The Judge, on receiving it, will cause the mortgager to be furnished as soon as possible with a copy of it, and notify to him that if he shall not redeem the property as provided for in the foregoing Section in one year, the mortgage will be foreclosed, and the conditional sale become conclusive. —*Reg.* 17, 1806, *Sect.* 8.—*p.* 320.

259. The sole intention of Regulation 17, 1806, Section 8, is to prevent the conditional sale from becoming absolute, until the mortgagee has demanded payment of the amount due upon the contract, (inclusive or exclusive of interest.) If the mortgager fail to satisfy the demand in the manner prescribed, within a year from the date of the notice, the sale will become absolute.—*C. O. 22nd July*, 1813.—*p.* 320.

260. In such cases of Conditional sales, the duty of the Zillah Judge is solely ministerial. He has only to cause the perwannah to be served on the mortgager, and to receive and pay over to the mortgagee, if desirous of receiving it, whatever the mortgager may pay in; to receive due proof of the service, and if the mortgager should refuse to accept it, to restore it to the mortgagee.—*C. O. 22nd July*, 1813.—*p.* 320.

261. But the provisions of that Regulation do not imply that the mortgager, on receiving the notice, is bound to pay the demand within the year, and that if he fail to do so, the mortgagee is to be immediately and summarily put in possession of the lands conditionally sold.—*C. O. 22nd July* 1813.—*p.* 320.

262. The Judge is not by that Regulation vested with authority to dispossess the mortgager, and give up the lands to the mortgagee.—*C. O. 22nd July*, 1813.—*p.* 320.

263. These Sections provide no summary enquiry in the cases to which they relate; if they did, it would follow that a person might be compelled to pay a large sum of money, or be ousted of his estate for several years, upon the mere demand of another, without enquiry or proof, though he should deny the validity of the engagement.—*C. O. 22nd July*, 1813.—*p.* 321.

264. If however the mortgager fail to make the payment demanded, he must do so at his peril; for if it be proved that the alleged sale was authentic and valid, and that any part of the amount was due, the sale will have become absolute, and, on a suit being brought against him, he must lose his lands.—*C. O. 22nd July*, 1813.—*p.* 321.

265. The Judge cannot, therefore, in such cases, make a summary enquiry.—*C. O. 22nd July*, 1813.—*p.* 321.

266. If the mortgagee has not obtained possession, the Judge should call on the mortgager for payment both of principal and interest, according to the mortgagee's demand.—*C. O. 22nd July*, 1813.—*p.* 321.

267. The instructions in this Circular Order do not apply to the case of a mortgager on a conditional sale, who had delivered possession to the mortgagee paying up the principal sum before the sale has become absolute. In such case the mortgager would, by Section 2, Regulation 1, 1798, be entitled to receive possession summarily without suit—*C. O. 22nd July*, 1813.—*p.* 321.

Vide also Rule 254, in the last Section.

ing held by them under Regulation 17, 1806, in cases of mortgage and conditional sales, that the sale has become absolute, on the application of the mortgagee at the expiration of the term allowed by law for redeeming the mortgage. They are also in the habit of giving opinions, in the course of the summary process, on points, the decision of which belongs to a regular suit. This practice is objectionable, particularly as the Native Judges, by whom these cases are often cognizable, are apt to consider that the Judge having declared the sale absolute, they are not at liberty to pass a judgment on that point, and therefore give possession on the ground of the Judge's summary proceeding. The Judges are therefore enjoined strictly to confine themselves simply to recording the facts which have occurred during the progress of the summary enquiry, as ordered in the Circular Order of the 22nd July, 1813.—*C. O. 17th Jan.* 1834.—*p.* 321.

269. Section 8, (Rule 258,) does not entitle a mortgagee to be put in possession, by judicial process, of the property mortgaged to him though stated to be unredeemed at the expiration of the period notified, if the mortgager contest the right of the mortgagee to obtain possession. A Judge is not authorized to put the mortgagee in possession on a summary investigation, or otherwise than by a regular suit.—*Con. No.* 80.—*p.* 321.

270. If the mortgager, on being called upon to shew cause why the mortgagee should not obtain possession, deny the right of the mortgagee to possess the lands, the question of right can only be determined as directed by Section 5, Regulation 1, 1798.—*Con. No.* 80.—*p.* 322.

271. In a suit brought by a mortgagee for the foreclosure of a mortgage, it is competent to the Court in which the suit was preferred to enquire whether the transaction was a legal one, *ab initio*, and to decide accordingly.—*Con. No.* 1140.—*p.* 322.

272. If it is proved that the notice was not duly issued to the mortgagee, the plaintiff ought to be nonsuited, leaving him to apply for the issue of the prescribed notice.—*Con. No.* 1140. —*p.* 322.

273. It is not required that a copy of the deed of mortgage be served on the mortgager a copy of the application of the mortgagee to the Judge for the issue of the prescribed notice will be sufficient.—*Con. No.* 630.—*p.* 322.

274. An action on the part of the mortgagee for possession, at the expiration of the period of the mortgage deed, cannot lie in the first instance against a mortgager disputing his claim, unless the application has been made to foreclose, as directed in Section 8 of the above Regulation (Rule 258).—*Con. No.* 105.—*p.* 322.

275. The period of one year allowed for the redemption of a mortgage or conditional sale, is to be calculated from the date of the written notification issued to the mortgager or seller, not from the day of his being served with the perwannah.—*Con. No.* 263.—*p.* 322.

276. Whenever a perwannah to a mortgager, or his legal representative, with the notification prescribed in Section 8, Regulation 17, 1806, (Rule 258,) may not be issued on the day on which it is ordered, it must bear the date on which it was actually issued, instead of that on which the perwannah was ordered, and the term of one year allowed for redeeming the mortgage should be calculated from the date so inserted.—*C. O. 9th April*, 1817.—*p.* 322.

277. The Zillah Judge will give particular attention to this rule in issuing all future notifications. All unnecessary delay in issuing such notifications must be particularly avoided.—*C. O. 9th April*, 1817.—*p.* 322.

278. A copy of the application of the mortgagee to foreclose, must positively accompany a copy of the perwannah issued to the mortgager. The mortgagee, on filing his application, should be directed immediately to deposit the tulubana of the peon through whom the perwannah is issued to the other party.—*Con. No.* 644.—*p.* 322.

279. If the mortgage in question be of the nature of a conditional sale, and the money be not repaid, the mortgagee, unless good reason be shewn, can only sue for the possession of the property pledged. He has not the election of suing to recover the money, or to be put in possession of the property, as he may deem most advantageous to himself.—*Con. No.* 898.—*p.* 322.

SECT. XXXV.

Principles of Law.—Succession to Property.

280. When a Hindoo or Mahomedan dies, leaving a will and appointing executors to carry it into effect, and the heir is not a disqualified landholder, the executors so appointed will take charge of the estate and execute their trust according to the will of the deceased, without any application to the Civil Courts. The Civil Courts are prohibited interfering unless a regular complaint is instituted against the executors. They will then take cognizance of it and act according to the Regulations, and the opinion of their law officers.—*Reg.* 5, 1799, *Sect.* 2.—*p.* 323.

281. When a Hindoo, Mahomedan, or other person, subject to the jurisdiction of the Zillah Courts dies intestate, leaving a son or other heir, entitled by the laws of the country to succeed to the whole estate, such heir, if of age and competent to take possession of the estate, need not apply to the Courts of justice for permission to take possession of it, so it be without violence. If the heir be under age, or incompetent, and not under the Court of Wards, his guardian or next of kin, who by the usage of the country is authorized to act for him, may take possession of the estate of the deceased, so it be without violence. The Civil Courts are restricted from interfering in such cases except when a regular complaint is preferred.—*Reg.* 5, 1799, *Sect.* 3.—*p* 323.

282. If there be more heirs than one to the estate of the person dying intestate, and they can agree in appointing a common manager, they are at liberty to take possession, and the Courts of justice will not interfere without a regular complaint as in the case of a single heir.—*Reg.* 5, 1799, *Sect.* 4.—*p.* 323.

283. But if the right of succession be disputed between the claimants, one or more of whom may have taken possession, the Judge, on a regular suit being preferred by the party out of possession, will take good security from the party in possession to abide by the judgment passed in the suit. If such security be not given in a reasonable time, the Judge may give possession to the other claimants who may be able to give the required security. He will declare at the same time that this possession does not affect the right of property, but is only an administration of the estate for the benefit of the heirs.—*Reg.* 5, 1799, *Sect.* 4.—*p.* 324.

284. When none of the claimants can give such security, and when there is no one authorized or willing to take charge of the landed property of a person deceased, the Judge is authorized to appoint an administrator for the management of the estate, until the suit between the claimants has been determined, or till the heir or other person entitled to receive charge of the estate appear and claim it. If the Judge be satisfied that the claim is well founded, or if it be established after full enquiry, the administrator appointed by the Court will be instructed to make over the estate with a full account of receipts and disbursements.—*Reg.* 5, 1799, *Sect.* 5.—*p.* 324.

285. In all cases of such administration of an estate by the Civil Courts, the administrator will give adequate security for the performance of his duties, and the Judge will fix a suitable remuneration to be paid him out of the proceeds of the estate.—*Reg.* 5, 1799, *Sect.* 6.—*p.* 324.

286. The Zillah Judges on hearing that any person within their respective jurisdictions has died intestate, leaving personal property, and that there is no claimant to it, will take temporary charge of it, and issue an advertisement inviting the heir, or any person entitled to receive charge of the effects, to attend for that purpose. The advertisement will be published far and wide. Should any person thereupon appear and satisfy the Judge of his title to the property or to receive charge of it as executor, or otherwise, it is to be delivered up to him on his paying the expences which have been incurred. Should no claim be preferred within a twelve month, an inventory of the property and a report of the circumstances will be transmitted to Government. —*Reg.* 5, 1799, *Sect.* 7.—*p.* 324.

Reg. 5, 1827, will be applicable in the above mentioned cases. It will be found in Chapter 3, Sect. 7.

287. Some of the Revenue officers having been in the habit, in cases of a disputed succession to the estate of deceased Zemindars, of judicially investigating the claims of the claimants, and in

some instances of directing the parties to be put in possession of such shares as appeared to be their right, the Sudder Court declares, that in thus acting, they have exceeded their powers. The duty of the Collector is laid down in the Regulations;—viz. that on hearing that any person has succeeded by inheritance to the property of a Malgoozaree estate or lakhraj tenure, he will institute enquiries to ascertain the truth of the alleged succession, and if it appears to have actually taken place, he will make the necessary entries in the proper Registers.—*Con. No.* 1008.—*p.* 325.

288. As a general rule, the Civil Courts are forbidden to interfere summarily in such cases of succession. Though particular instances may occur in which their interference would be proper, it is not the duty of the Courts to exercise previous interference, in every such case where there may be many claimants, merely on the ground that none of them had taken possession of the property.—*Con. No.* 1008.—*p.* 325.

SECT. XXXVI.

Principles of Law.—Charge of unclaimed Property and of Property belonging to deceased persons, particularly British Subjects.

289. The Zillah Judges, on hearing that any person has died within their districts, intestate, leaving personal property, if there be no claimant, will adopt measures for the temporary care of it, and issue an advertisement through various channels, requiring the heir, or person entitled to receive it, to attend for that purpose. Should any person attend and satisfy the Judge of his right to the property, or his title to receive charge of it, it will be delivered to him on his repaying the expences which have been incurred. If no claim be presented within twelve months, an inventory of it will be sent in to Government.—*Reg* 5, 1799, *Sect.* 7.—*p.* 326.

290. This enactment applies only to the property of persons dying intestate, when no heirs are forthcoming. Unclaimed property sent in by the Daroga should be disposed of by the Magistrate.—*Con. No.* 927.—*p.* 326.

291. An inventory of all personal property unclaimed after the period of twelve months from the decease of the proprietor, should be transmitted to the Governor General for his orders.—*Con. No.* 541.—*p.* 326.

292. Hoondees, or other obligations for the payment of money belonging to the estates of persons dying intestate, may be realized by the Civil Courts and kept in deposit for 12 months. The interference of the Civil Court should be limited to the simple presentation of instruments payable at a fixed period, the failure to present which would involve a risk of loss.—*Con. No.* 1286.—*p.* 326.

293. The Zillah and City Judges are authorized to pay to the Nazir a commission not exceeding one anna in the Rupee, on the proceeds of unclaimed property which may be sold with the previous sanction of Government, as a remuneration for proper care in the preservation of it, and for seeing that it is fairly sold at auction.—*C. O. 25th Feb.* 1820.—*p.* 326.

294. Considerable difference of opinion and practice prevailing as to the manner of disposing of *Lawaris* property, the Court explained the matter as follows: "Unclaimed property" must not be confounded with "the property of persons dying intestate." The former is declared by Regulation 20, 1817, Section 16, Clause 16, to be the property of Government. If such property comes into the hands of the Daroga, he will forward it to the Magistrate. The Magistrate will dispose of it under the orders of Government, without the interference of the Civil Courts.—*C. O. 15th Dec.* 1837.—*p.* 326.

295. The property of persons dying intestate, (*Lawaris,*) is provided for in Regulation 5, 1799, Section 7. If it be not claimed in a twelve month, an inventory will be forwarded by the Judge to the Governor General. Any such property, which may come into the hands of the Magistrate, he will therefore forward to the Judge.—*C. O. 15th Dec.* 1837.—*p.* 326.

296. Regulation 5, 1799, Section 7, prescribes rules for the guidance of the Judges with respect to the charge of the unclaimed assets of estates of Europeans dying intestate. In conformity

whenever a European British subject die within his jurisdiction, and no will be found, to report the circumstance to the Register of the Supreme Court, retaining the property under his charge, till Letters of Administration have been obtained, or a will is found, when it will be delivered to the person who has obtained Letters, or has proved the will.—*Reg.* 15, 1806, *Sect.* 6.—*p.* 327.

297. This enactment is not restricted to the estates of persons dying intestate; but on the contrary, on the death of *any* European British subject, within the jurisdiction of a Zillah or City, the Judge is bound to take charge of his effects, and on the will being discovered, to deliver it to the person who may obtain Probate thereof.—*Con. No.* 983.—*p.* 327.

298. When the will of the deceased is not forthcoming, or when none is in existence, though there be a claimant, near relative, or respectable friend on the spot, willing to take charge of and become responsible for the property, the law makes it obligatory on the Civil Court to interfere, and to take charge of it till some one appears who is entitled to it, when it is to be delivered to him. The terms of the enactment are imperative, and no discretion is left with the Judge to act or not to act.—*Con. No.* 983.—*p.* 327.

SECT. XXXVII.

Principles of Law.—Rules regarding the right of Inheritance.

299. If any landholder dies intestate, or without any directions regarding his property, and leave two or more heirs, who by the Mahomedan or Hindoo law are entitled to succeed to a portion of his landed property, such persons will succeed to the shares to which they are entitled.—*Reg.* 11, 1793, *Sect.* 2.—*p.* 328.

300. A proprietor of land may bequeath or transfer by will, or by a declaration in writing, or verbally, his entire estate to the eldest son, or other son, in exclusion of all other sons and heirs, or to two or more heirs, provided such bequest be not repugnant to the Regulations of the Governor General, or to the Hindoo or Mahomedan law, and provided the will be authenticated in such a manner as the laws require.—*Reg.* 11, 1793, *Sect.* 6.—*p.* 328.

301. In the Jungle Mehals and other districts, where it is the custom of the country, estates will descend to single heirs when the proprietors die intestate.—*Reg.* 10, 1800, *Sect.* 2.—*p.* 328.

302. The Zillah and City Courts will not pass a decree, concerning the succession or right of inheritance to real property, to which there is more than one claimant, who by the Hindoo or Mahohomedan law would be entitled to a share of it, without adjudging the property to all the claimants in the proportions in which they are respectively entitled.—*Reg.* 3, 1793, *Sect.* 13.—*p.* 328.

303. Suits for inheritance should include the whole claim, arising out of the same cause of action. Therefore an heir cannot bring to issue his claim to hereditary right in any one zemindaree, or talook, or estate, reserving to himself the power of subsequently suing for the portion of any other estate.—*Con. No.* 1040.—*p.* 328.

304. It is not necessary for the Zillah Judges to issue notices for the appearance of claimants, as Moonsiffs are required to do, since the rules in Reg. 5, 1831, Sect. 6, Cl. 4, are applicable only to Moonsiffs.—*Con. No.* 706.—*p.* 328.

305. In suits regarding succession, inheritance, marriage, caste, and all religious usages, the Mahomedan law with respect to Mahomedans, the Hindoo law with respect to Hindoos, are to be considered the general rule by which the Judges will form their decisions. The Mahomedan and Hindoo law officers will attend to expound it.—*Reg.* 4, 1793, *Sect.* 15.—*p.* 329.

306. The Section above (15) will be the rule of guidance in all suits regarding succession, inheritance, marriage, caste, and all religious usages and institutions, that may arise between persons professing the Hindoo and Mahomedan persuasions respectively.—*Reg.* 7, 1832, *Sect.* 8.—*p.* 329.

307. But these rules are not intended to apply, and shall not be applied, except to such persons who may be bonâ fide professors of the Hindoo or Mahomedan religion, when the law is applied to the case. They are intended to protect the rights of such persons, not to deprive others

of their right. Whenever, therefore, in any Civil suit the parties in it may be of different persuasions, the law of those religions shall not be allowed to deprive such party of any property, to which, but for such law he would be entitled. In such cases the decision will be governed by the principles of justice, equity, and good conscience. But this provision will not justify the introduction of the English or of any foreign law.—*Reg.* 7, 1832, *Sect.* 9.—*p.* 329.

308. The Court will refer any question on the Hindoo or Mahomedan law to the Pundit and Cauzy. *In such* cases, a statement of the facts on which the question of law has arisen, will be made out in writing, signed by the Judge, and delivered to those officers. A blank space will be left for their opinion. The answer will be attested by them, and the dates on which the questions were stated and the answer given, will be duly specified.—*Reg* 4, 1793, *Sect.* 16.—*p* 329.

309. The Judges will be guided by these expositions in all common cases when their accuracy is not doubted. In particular cases, when, from a variety of causes, any such doubt may arise, if the Judges consider the exposition of the law officer not sufficient, they may obtain a farther exposition from the law officers of the superior Courts through the Judges. The Courts may not refer any point of law to a person not acting in a public capacity, and to whom no responsibility attaches. But they may receive law opinions, quoting or referring to authorities, tendered by the parties in support of their claims, and refer them to their own law officer, or to the officer of a superior Court, to determine their due weight and applicability.—*Reg.* 2, 1798, *Sect.* 4.—*p.* 330.

310. The Courts will send up to the Sudder Court copies of legal questions put to the Hindoo and Mahomedan Law Officers of the several Courts, and the Futwas and Bybustas they may furnish, except in cases which have been appealed to the Sudder.—*C. O.* 11*th March*, 1813.—*p.* 330.

311. In reply to a particular reference to the Sudder Court, it was ruled that a case of succession should be decided according to the Hindoo law current in the Pergunnah in which the family reside, provided it accords with the family usage; otherwise the latter must be the rule of guidance; but the local position of a family does not necessarily determine the law by which their disputes are to be decided.—*Con. No.* 1007.—*p.* 330.

SECT. XXXVIII.

Principles of Law.—Rules for the Protection of moveable and immoveable property against wrongful possession in cases of succession.

312. Reasons for the passing of this Act.—*p.* 331.

313. When a person dies leaving property, moveable or immoveable, any person claiming a right by succession to it, may apply to the Zillah Judge for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended. —*Act* 19, 1841, *Sect.* 1.—*p.* 331.

314. Any agent, relative, or near friend, or the Court of Wards in cases within their cognizance, in the event of any minor, disqualified or absent person being entitled by succession to such property, may make the like application for relief.—*Act* 19, 1841, *Sect.* 2.—*p.* 331.

315. The Judge to whom such application shall be made, will in the first place enquire, whether there be strong reasons to believe that the party in possession or taking forcible means for seizing possession, has no lawful title, and that the applicant, or the person for whom he applies is really entitled, and is likely to be injured if left to the ordinary remedy of a regular suit, and that the application is made bonâ fide.—*Act* 19, 1841, *Sect.* 3.—*p.* 331.

316. If the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time, shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned) and shall deliver possession accordingly.—The Judge may appoint an officer to take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.—*Act* 19, 1841, *Sect.* 4.—*p.* 331.

317. If it shall further appear upon such application and examination that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession, or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; the Judge may appoint one or more Curators with the powers hereinafter mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof. In the case of land, the Judge may delegate to the Collector or to his officer the powers of a Curator; every appointment of a Curator in respect of any property will be duly published.—*Act* 19, 1841, *Sect.* 5.—*p.* 332.

318. The Judge may authorize such Curator, either to take possession of the property generally, or until security be given by the proprietor in possession; or till inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession. It is discretionary with the Judge, either to allow the party in possession to continue in such possession, on giving security, or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.—*Act* 19, 1841, *Sect.* 6.—*p.* 332.

319. The Judge shall exact from the Curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and allow him remuneration out of the property, not exceeding 5 per centum on the personal property and on the annual profits of the real property. All surplus monies realized by the Curators shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit. Though security shall be required from the Curator with all reasonable despatch, and, where practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed Curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the Curator with the powers of his office.—*Act* 19, 1841, *Sect.* 7.—*p.* 332.

320. Where the estate of the deceased person shall consist of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a Curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency the Judge may proceed, in the first instance, without such report; and he shall not be obliged to act in conformity thereto, but, if he deviates from it he shall immediately forward a statement of his reasons to the Sudder Court who, if dissatisfied with these reasons, will direct the Judge to proceed conformably to the report of the Collector.—*Act* 19, 1841, *Sect.* 8.—*p.* 332.

321. The Curator will be subject to the orders of the Zillah Judge, in the institution or defence of suits on behalf of the estate. To enable him to collect debts or rents, there must be an express authority given in his sunnud, which authority will enable him to give a full acquittance for any money received by yirtue of it.—*Act* 19, 1841, *Sect.* 9.—*p.* 333.

322. While the property is under the care of the Curator, the Judge may make what he considers an equitable allowance to parties having a primâ facie right to the property, taking security for the repayment thereof with interest, if the party should appear to have no right to it.—*Act* 19, 1841, *Sect.* 10.—*p.* 333.

323. The Curator will file accounts monthly and quarterly, and furnish a detailed account of his administration on giving up possession.—*Act* 19, 1841, *Sect.* 11.—*p.* 333.

324. The accounts of the Curator will be open to inspection; any party interested may appoint a separate person to keep a duplicate account of receipts and payments by the Curator. The Curator will be liable to a fine not exceeding a thousand Rupees for each default, if his accounts are in arrear, or erroneous, or incomplete, or not forthcoming when required by the Judge.—*Act* 19, 1841, *Sect.* 12.—*p.* 333.

325. After a Judge has appointed a Curator, no Judge of any other district can appoint one, if

the first appointment be in respect of the whole of the property. If it be in respect of a part only, another Curator may be appointed in respect of the residue. No Judge will appoint a Curator or entertain a summary suit regarding property which is the subject of a summary suit previously instituted under this Act before another Judge. If two or more Curators be appointed by different Judges, for different parts of the property, the Sudder Court may appoint one Curator for the whole property.—*Act* 19, 1841, *Sect.* 13.—*p.* 333.

326. This Act will not be put in force, unless application be made to the Judge within six months of the decease of the proprietor whose property is claimed by succession.—*Act* 19, 1841, *Sect.* 14. —*p.* 333.

327. This Act shall not be used to contravene any public act of settlement. It shall not be put in force, in opposition to any legal directions the deceased proprietor may have left regarding his property. As soon as the Judge is satisfied of the existence of such directions he will give effect to them.—*Act* 19, 1841, *Sect.* 15.—*p.* 333.

328. This Act will not be put in force to disturb the possession of the Court of Wards. If the person on whose behalf application is made be a minor or other disqualified person whose property is subject to the Court of Wards, the Judge, if he determine to appoint a Curator, will invest the Court of Wards with that office, without taking security. If upon the adjudication of the suit the minor or other disqualified person appears entitled to it, possession shall be delivered to the Court of Wards.—*Act* 19, 1841, *Sect.* 16.—*p.* 334.

329. Nothing in this Act will prevent the institution of a regular suit, either by the party whose application has been rejected or by the party who has been evicted from possession.—*Act* 19, 1841, *Sect.* 17.—*p.* 334.

330. The decision of the Judge on the summary suit, will have no other effect than that of settling the actual possession; but for this purpose it shall be final and without appeal.—*Act* 19, 1841, *Sect.* 18.—*p.* 334.

331. The Governments of the various Presidencies may appoint public Curators for any district or number of districts, and the Judge shall nominate such Curators in all cases where the choice of one is left discretionary with them.—*Act* 19, 1841, *Sect.* 19.—*p.* 334.

332. When a person dies leaving moveable or immoveable property within the local limits of the Supreme Court, if danger is apprehended of the misappropriation or waste of the property, before it can be ascertained to whom it legally belongs, the Court may enjoin the Ecclesiastical Register or one or more Curators, to collect and hold such property, subject to the orders of the Court.—*Act* 19, 1841, *Sect.* 20.—*p.* 334.

SECT. XXXIX.

Principles of Law.—Rules for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons.

333. Preamble. Reasons for this enactment.—*Act* 20, 1841, *Sect.* 1.—*p.* 334.

334. No debtor of any deceased person will be compelled in any Court of law to pay his debts to any person claiming to be entitled to the effects of a deceased person, except on the production of a Certificate or Probate, or Letters of Administration, unless the Court believes that payment of the debts is withheld from fraudulent or vexatious motives.—*Act* 20, 1841, *Sect.* 1. —*p.* 334.

335. The Zillah or District Court, in whose jurisdiction any part of the property of the deceased may be found, may grant a Certificate. The applicant will set forth his title. The Judge will give notice of the application, invite claimants, fix a day for hearing the petition, and then determine the right to the Certificate and grant the same.—*Act* 20, 1841, *Sect.* 2.—*p.* 335.

336. This Certificate will give the person who receives it, full power to claim property from all debtors of the deceased, and give full indemnity to all who pay their debts to the holder of the Certificate.—*Act* 20, 1841, *Sect.* 3.—*p.* 335.

337. The Zillah or District Judge will take the necessary security from the person to whom he grants a Certificate, for rendering an account of the debts received by him, and for indemnifying

those who may be entitled to the property received under the Certificate, whose right to recover it by a regular suit is not affected by this Act.—*Act* 20, 1841, *Sect.* 4.—*p.* 335.

338. The granting of the certificate may be suspended by an appeal to the Sudder, which Court may declare to whom the certificate is to be granted, or direct farther investigation of the title. The Sudder Court may supersede the certificate granted by the Zillah Court, and grant a fresh one, but it will not affect any payments made to the person to whom the former certificate was given, without notice that it had been superseded. It will entitle the holder to receive all monies recovered under the first certificate by the person holding it.—*Act* 20, 1841, *Sect.* 5.—*p.* 335.

339. Every certificate will give authority to the person to whom it is granted throughout the Presidency, and no certificate granted subsequently respecting the same property will be valid, except as hereafter mentioned.—*Act* 20, 1841, *Sect.* 6.—*p.* 335.

340. The person who has received a certificate may be empowered to receive interest on public securities, and also to negotiate them. But these powers must be expressly stated in the certificate. —*Act* 20, 1841, *Sect.* 7.—*p.* 335.

341. Where a certificate has been granted in cases where such certificate would be valid, but for the previous grant of a certificate, all payments made to the person holding the latter certificate in ignorance of the grant of the previous certificate, will be held good against claims under such previous certificate.—*Act* 20, 1841, *Sect.* 8.—*p.* 335.

342. No certificate made in respect of the property of deceased persons not British subjects, will be valid, if made after a Probate granted for that property, if assets of the deceased were at the time within the jurisdiction of the Court granting Probate or Letters.—*Act* 20, 1841, *Sect.* 9.—*p.* 336.

343. Where a certificate has been granted which would have been valid but for a Probate or Letters previously granted, all payments made to the holder of the certificate in ignorance of the previous grant of the Probate, shall be good against claims made under the Probate or Letters.—*Act* 20, 1841, *Sect.* 10.—*p.* 336.

344. No Probate or Letters will be valid for the recovery of debts or the security of debtors, after a certificate granted in respect of the same property for which a Probate or Letters had been granted, if assets belonging to the deceased were at the time within the jurisdiction of the Court granting the certificate.—*Act* 20, 1841, *Sect.* 11.—*p.* 336.

345. Where a Probate or Letters have been granted which would have been valid, but for the previous grant of a certificate, all payments made in ignorance of the previous grant of the certificate will be held good against claims under such previous certificate.—*Act* 20, 1841, *Sect.* 12.—*p.* 336.

346. Persons invested with the powers of a Curator under Act 19, 1841, will not exercise any of the acts which but for that Act would lawfully belong to persons obtaining certificates, to Executors or Administrators where a certificate, Probate or Letters have been actually obtained. All persons who have paid debts to a Curator will be indemnified. The Curator will be responsible for the payment of such sums to the person who has obtained a certificate, the Executor or the Administrator.—*Act* 20, 1841, *Sect.* 13.—*p.* 336.

347. All Probates and Letters granted by a Court of the Crown, in cases in which assets of the deceased were within its jurisdiction at the time of his death will have the effect of Probate and Letters of Administration granted in respect of the property of British subjects, for the purpose of the recovery of debts only, and the security of debtors paying the same, except as in this Act is provided.—*Act* 20, 1841, *Sect.* 14.—*p.* 336.

348. Nothing in this Act is held to extend to the property of a British subject.—*Act* 20, 1841, *Sect.* 15.—*p.* 336.

SECT. XL.

Principles of Law.—Hidden Treasure.

349. Preamble to Regulation 5, 1817.—*p.* 337.

350. Whenever hidden treasure may be found buried in the earth, or concealed in any territory belonging to this Presidency, and after due notification the owner thereof cannot be discovered,

it will belong to the person who has discovered it; if it do not exceed in amount or value, one lakh of Rupees, and if the finders have conformed to the rules of this Regulation—*Reg.* 5, 1817, *Sect.* 2.—*p.* 337.

351. Whenever any person shall find hidden treasure of gold and silver coin, bullion, or of precious stones, he shall give immediate notice thereof to the Judge of the jurisdiction, and deposit the treasure in the Court with an exact inventory thereof.—*Reg.* 5, 1817, *Sect.* 3.—*p.* 337.

352. After comparing the treasure with the inventory, and giving a receipt for it, the Judge will issue a public notification in the languages of the country, affixing it in his own cutcherry, and in that of the Collector, requiring all persons having any claim to the treasure to attend in person or by vakeel, and prove his title to it, within six months from the date of the notice.—*Reg.* 5, 1817, *Sect.* 4.—*p.* 337.

353. On the issue of the notice prescribed above, Collectors under the authority of the Board of Revenue may advance any claim of right which Government may appear to possess. If any persons lay claim to the treasure within the time specified, a summary enquiry will be instituted by the Judge, and should the claim be proved, judgment will be given for the claimant, awarding all expences, as well as reasonable compensation to the finder.—*Reg.* 5, 1817, *Sect.* 5.—*p.* 337.

354. If such treasure be not claimed either by Government or by any individual within the time limited, or if the claim be not well founded, it will be surrendered to the person who found and deposited it in Court, if it do not exceed in value one lakh of Sicca Rupees, subject only to the expence incurred by the process here prescribed.—*Reg.* 5, 1817, *Sect.* 6.—*p.* 337.

355. If the amount of treasure found at the same time and place exceed one lakh of Sicca Rupees, judgment will be given in favour of the discoverer, should no claim be preferred, and should he have conformed with the above rules, to the value of one lakh of Sicca Rupees, the excess will be declared at the disposal of Government.—*Reg.* 5, 1817, *Sect.* 7.—*p.* 338.

356. Finders of hidden treasure not conforming to the above rules within one month after the discovery of it, will forfeit all title and right to the treasure, or to any reimbursement of expences, or compensation allowed by the above provisions; the treasure will be awarded to any claimant proving his right by a summary suit, or to Government on the application of the Government vakeel.—*Reg.* 5, 1817, *Sect.* 8.—*p.* 338.

357. Such summary decisions will be open to summary appeals.—*Reg.* 5, 1817, *Sect.* 9.—*p.* 338.

358. The decisions of two Judges of the Provincial Court in appeals will be final, unless the Sudder Court should on the face of the decree, or the inspection of documents, see reason to admit a second appeal.—*Reg.* 5, 1817, *Sect.* 10.—*p.* 338.

SECT. XLI.

Arbitration.—Reference of Cases to Arbitration by the Courts.

359. In suits brought before any Courts concerning *disputed accounts, partnerships, debts, contracts or bargains,* in which the cause of action exceeds 200 Rupees, the Courts are empowered to recommend the parties to submit the case to arbitration.—*Reg.* 16, 1793, *Sect.* 2.—*p.* 338.

360. In suits for money and personal property not exceeding 200 Rupees, the Courts, with the consent of the parties, are empowered to refer the matter to one arbitrator. The parties, or their Vakeels, will choose some common friend or indifferent person, as arbitrator. If the parties cannot agree in the nomination, or if the person chosen refuses to act, and the parties cannot agree in choosing another, the Court, with their consent, will appoint the proprietor of the estate in which the cause of action arose, or the farmer of it, or the Cauzy, or some other creditable person, not interested in the matter in dispute. But if the parties cannot agree among themselves in nominating an arbitrator, and if the person nominated refuses the trust, and the parties do not concur in the nomination of the Court, the cause will be tried as a regular suit. If the parties agree in the nomination of an arbitrator who will accept the trust, or in the person appointed by the Court, the case will be submitted to him. But the parties have still the option of choosing two or more ar-

bitrators in the same manner as the parties in the causes specified in Section 2.—*Reg.* 16, 1793, *Sect.* 3.—*p.* 339.

361. By this Section a Judge is empowered to refer to a single arbitrator any suit for money or personal property not exceeding 200 Rupees. Suits above that amount cannot be referred by the Judge to a single arbitrator. This restriction applies to all suits regular and summary; but it does not refer to suits referred to private arbitration by individuals under Regulation 6, 1813, Section 3.—*Con. No.* 936.—*p.* 339.

362. The Judges of the Courts will afford every encouragement to persons of credit and character to become arbitrators, but will use no coercion. They will not permit any of their public officers or private servants to be arbitrators in any case. They will endeavour to prevail on the parties to submit the case to one arbitrator, but without compulsion. In every case, (except when the Court may refer a case to one arbitrator) the parties will choose the arbitrators, who will decide the matter without fee or reward.—*Reg.* 16, 1793, *Sect.* 4.—*p.* 339.

363. Sudder Ameens and Law Officers are not held to be "public officers" of the Judge's Court; and they are not prohibited from acting as arbitrators.—*C. O. 9th Nov.* 1832.—*p.* 340.

364. Vakeels may be employed as arbitrators.—*Reg.* 27, 1814, *Sect.* 19.—*p.* 340.

365. Canongoes may be appointed arbitrators; but they may decline the office when proposed to them by individuals. The Courts will avoid nominating them if possible; but when the nomination is unavoidable, an immediate communication will be made to the Collector.—*Con. No.* 286.—*p.* 340.

366. Before a suit is submitted to arbitration, the parties will execute arbitration bonds, binding themselves to abide by the award, and agreeing to make it a decree of Court. The Court will fix a reasonable time for delivering the award which time will be specified in the bonds. If it be referred to two or more arbitrators, and they do not complete the award by the limited time, the parties have the option of nominating jointly one person as umpire; if the number of arbitrators be an odd number, they may mutually agree that the award of the majority shall stand, or permit the arbitrators to nominate an umpire. The name of the umpire, and the time by which he is to deliver his award, if the arbitrators do not give it within the specified time, will be noted in the bonds. If an umpire has been appointed, and the arbitrators do not agree in their award within the specified time, their authority will cease from that time and the umpire is to give his award.—*Reg.* 16, 1793, *Sect.* 5.—*p.* 340.

367. Where the preliminary engagements above mentioned have not been specified in the bond, and the arbitrators are not unanimous in their decision, their proceedings must be considered void, and the case must be tried *de novo*.—*Con. No.* 395.—*p.* 340.

368. When the cause has been thus referred, and the bonds executed, the Court will transmit to the arbitrators the bill of complaint, and refer the matters in dispute to their decision by a writing. The arbitrators will investigate the suit by hearing the pleadings and examining the witnesses and documents. The same processes will be issued to the parties and the witnesses and the same oaths administered, as if the case was pending in the Court. If the arbitrator report any order he may pass, with the reason for making it, and the Judge consent to it by signing the order, persons not obeying that process, or refusing to give evidence or to sign their depositions, or persons guilty of any contempt, will be punished as if the default had been committed before the Court. If the arbitration be held at a distance from the Court, the Judge may give commissions to the arbitrators to administer oaths.—*Reg.* 16, 1793, *Sect.* 6.—*p.* 341.

369. When the arbitrators or umpires have not been able to complete the award by the limited time, for want of the necessary evidence or information, or for good or sufficient reason, the Court may enlarge the time. In the first mentioned case, the Courts will fix a period by which the umpire (if one has been appointed) will deliver his final award, if the arbitrators do not complete their award in the specified time.—*Reg* 16, 1793, *Sect.* 7.—*p.* 341.

370. When a final award has been made, either by the arbitrators or umpire, it will be submitted to the Court under the seal and signature of the person or persons by whom it was made, with all

the proceedings, depositions and exhibits. The Court will pass a decree conformably to the award, which will be executed like other decrees.—*Reg.* 16, 1793, *Sect.* 8.—*p.* 341.

371. The award of an arbitrator will not be set aside, unless it be proved on the oaths of two credible witnesses that the arbitrators have been guilty of gross corruption or partiality.—*Reg.* 16, 1793, *Sect.* 9.—*p.* 341.

SECT. XLII.

Arbitration regarding land.—Private Arbitration.

372. Parties in suits depending in the Civil Courts regarding *property in land or limited tenures therein, or rights dependant on it,* may refer them to arbitration, and will be encouraged so to do.—*Reg.* 6, 1813, *Sect.* 2, *Cl.* 1.—*p.* 342.

373. The Rules contained in Regulation 16, 1793, regarding the reference of suits to arbitration, will be applicable to such suits.—*Reg.* 6, 1813, *Sect.* 2, *Cl.* 2.—*p.* 342.

374. All suits for whatever amount respecting property in land or limited tenures therein, may be referred to arbitration. Persons between whom disputes of the character above stated exist, whether a suit be depending or not in the Courts, may refer them to private arbitration without reference to the Courts, and the awards made will be supported and enforced by the Courts under the following rules and limitations.—*Reg.* 6, 1813, *Sect.* 3, *Cl.* 1.—*p.* 342.

375. When such a dispute has been referred to arbitration, and the award has been duly made, and either party refuse to abide by it, the other party may, within six months, apply summarily to the Court. The Court, if satisfied that it was duly made by arbitrators or umpires freely chosen, and that it is liable to no impeachment, will cause it to be summarily executed, as a decree of Court calling on the arbitrators to attend and assist in the execution of it if necessary. If the application for the enforcement of a private award be not made within six months, it shall be peremptorily rejected and the parties referred to a regular suit.—*Reg.* 6, 1813, *Sect.* 3, *Cl.* 2.—*p.* 342.

376. If private awards are tendered by parties in regular suits, and such award appear to have been performed, and possession of the contested property held under them, the Court will allow them the same validity as if they had been made by the authority of the Court. If they have not been performed at all, or performed only in part, the Courts will not admit them, unless they be established on clear proof, and shall be easy of execution, and the delay in the performance of them be duly accounted for.—*Reg.* 6, 1813, *Sect.* 3, *Cl.* 3.—*p.* 342.

377. Applications to the Zillah Courts for the execution of private awards under the second Clause of the Section, are to be received and enforced under the rules applicable to summary process, as directed in that clause.—*C. O. 24th Feb.* 1816.—*p.* 342.

378. This summary process is subsidiary to a regular suit. But as it is evidently intended that the private awards therein mentioned, when summarily confirmed and enforced by a Zillah Court, should have the same validity as if made under the authority of a Court of judicature, on the trial of a regular sult or appeal instituted by the party against whom the award may have been given, they should not be set aside but on the proof of corruption or partiality in the arbitrators.—*C. O. 24th Feb.* 1816.—*p.* 343.

379. In Regulation 6, 1813, Sections 2 and 3, no mention is made of arbitration bonds. The mere circumstances that no bond was executed cannot bar the summary jurisdiction of the Civil Courts in cases referred to arbitration. If the reference to arbitration is not denied, the Court should summarily enforce the award, subject to all the rules of that Regulation.—*Con. No.* 1153.—*p.* 343.

380. But when the agreement to abide by the award of arbitration is disputed, the dispute cannot be summarily decided; it must be referred to a regular suit.—*Con. No.* 1153.—*p.* 343.

381. Under this Regulation all suits respecting property in land, or limited tenures in them, of whatever amount, may be referred to arbitration.—*Con. No.* 253.—*p.* 343.

Vide also Con. No. 395, given as Rule 367, of this Chapter.

383. After the promulgation of this Regulation, no decree relative to the matters above enumerated, will be amended or reversed on the ground that it was founded on an award of arbitration not authorized by the Regulations, unless it be otherwise open to impeachment.—*Reg.* 6, 1813, *Sect.* 4.—*p.* 343.

384. In matters at issue between parties regarding the possession of lands, the Magistrate has no power to receive arbitration bonds, and to enforce the awards of arbitration. His power extends only to cases in which he apprehends disturbance; and after he has interfered, his power is limited to awarding that the actual possessor retain possession of the disputed property. But, after the case has come under the Magistrate's cognizance, the parties may refer their claims to arbitration. On their certifying this to the Magistrate, and satisfying him that there will be no further ground to apprehend a breach of the peace, he may stay all farther proceedings. The parties will then be at liberty to proceed to arbitration as directed in Reg. 6, 1813, Sect. 3, and the Civil Courts on a due application, will enforce the award.—*Con. No.* 571.—*p.* 343.

385. When a reference to arbitration may have been agreed to by the parties to a Civil suit, the only difference that the Regulation makes in cases under 200 Rupees, and cases above 200 Rupees is, that while in the former, the Judge may, in certain circumstances, with the consent of the parties, appoint as arbitrator any of the individuals mentioned in Section 3, (No. 284); in the latter, the parties themselves will nominate the arbitrator. The Judge cannot interfere in any way directly or indirectly in the nomination.—*C. O. 12th Oct.* 1838.—*p.* 344.

CHAPTER V.

APPEALS.

SECT. I.

Summary Appeals from the Decrees of Moonsiffs; Sudder Ameens and Principal Sudder Ameens.

1. A Summary Appeal can be admitted only when the suit has been dismissed, or rejected on the ground of delay, informality or other default, without an investigation of its merits.—*Con. No.* 805.—*p.* 345.

2. The City or Zillah Courts may receive a Summary Appeal from the orders or Decrees of a *Moonsiff*, subordinate to them, when the Moonsiff may have refused to receive any suit cognizable by him or may have dismissed it on the ground of delay, informality, or other default, without an investigation of the merits of the case.—*Act* 22, 1838, *Sect.* 1.—*p.* 345.

3. The provisions contained in Regulation 26, 1814, Section 3, Clause 5, and the following Clauses, in Regulation 12, 1833, Sect. 2, and in Regulation 9, 1831, Sect. 7, will apply to these summary appeals.—*Act* 22, 1838, *Sect.* 2.—*p.* 345.

4. It is competent for a Zillah Court, to receive a summary appeal from the orders or decrees of a *Sudder Ameen*, in cases in which he may have dismissed the case on the ground of delay, informality, or other default, and without an investigation of its merits.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 4.—*p.* 345.

5. The provisions of Regulation 26, 1814, Sections 2 and 3, with any subsequent modifications, regarding summary appeals, will be applicable to original suits and appeals tried by *Principal Sudder Ameens*; [that is, the Zillah Judge may admit a summary appeal from the decision of the Principal Sudder Ameen, in suits under 5000 Rupees.]—*Reg.* 5, 1831, *Sect.* 19, *Cl.* ... —*p.* 345.

6. If a plaintiff be non-suited on the ground that the value of the thing claimed has been understated by him, a summary appeal may be had from such non-suit, if the plaintiff can shew that the value of the property was not understated by him, and that the order passed by the Sudder Ameen and Principal Sudder Ameen was erroneous.—*Con. No.* 872.—*p.* 345.

7. If there has been no decision on the merits of the case, and merely a dismissal on default, the omission of the word *non-suit* cannot bar the claim of the plaintiff to a summary appeal.—*Con. No.* 870.—*p.* 346.

8. In all cases of Summary Appeals, they must be referred within the same limited period, prescribed for regular appeals, and subject to the following provisions.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 5.—*p.* 346.

For the period prescribed for the admission of Regular appeals from the Moonsiffs, Sudder Ameens, and Principal Sudder Ameens, vide Sect. 4 of this Chapter.

9. When a party may be desirous of preferring such an appeal, he will appear in person or by vakeel before the Court, and present a petition written on the perscribed stamp, and accompanied by an attested copy of the order or decree appealed from.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 6.—*p.* 346.

10. The appellant will not be required to furnish the deposit for vakeel's fees, or any security, except what may be eventually necessary for staying the execution of the decree from which the appeal may be preferred.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 7.—*p.* 346.

11. No notice will be necessary on such summary appeal to the Respondent, and his attendance will not be required, unless the Court should deem it necessary. No pleadings or proceedings will be holden, except what may be necessary to determine whether the suit was or was not rejected or dismissed on sufficient grounds, by the lower Court and in conformity with the Regulations.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 8.—*p.* 346.

12. If on these summary proceedings, it appear that the suit was rejected in the first instance, or after being admitted, was dismissed on insufficient grounds, without an investigation of its merits, *or in opposition to the Regulations*, the Zillah Court may direct the lower Court to receive the original suit, or to revive it, if it shall have been received and dismissed, and to try and determine it on its merits according to the Regulations.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 9.—*p.* 346.

13. The words "or in opposition to the Regulations," in the above clause, apply to cases which have been so dismissed for default, on grounds not warranted by the Regulations, or to the omission, prior to the dismission or rejection of the suit, of any of the forms prescribed by the Regulations for calling on the party to attend and shew cause why his suit should not be dismissed.—*Con. No.* 805.—*p.* 346.

14. If on the contrary, the summary appeal appears to be groundless and litigious, the Courts will reject the petition, and fine the appellant; but the fine will not exceed the stamp duty which would have been payable on the institution of the case by the appellant as a regular suit or appeal. All orders imposing a fine passed by the Sudder Court or Zillah Courts, will be final and conclusive.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 10.—*p.* 347.

15. The rejection of a summary appeal, is not a bar to the admission of a regular appeal, if the latter be otherwise admissible under the regulations in force.—*Con. No.* 723.—*p.* 347.

16. On the dismissal of a suit for default under Regulation 26, 1814, Sect. 12, Clause 3, the plaintiff is at liberty to institute a new suit for the same claim as if the case had not been heard.—*Con. No.* 870.—*p.* 347.

17. If a suit be dismissed by a Moonsiff without an investigation of its merits, and either party appeals, the Court trying the appeal, will either determine the case on its merits, or remand it to the Moonsiff, or send it to some other competent authority for investigation.—*Reg.* 23, 1814, *Sect.* 27, *Cl.* 2.—*p.* 347.

18. On the admission of an appeal preferred for a dismissal on default by a Moonsiff, the Judge cannot confirm the dismissal with reference to the reasons assigned for neglect in the original trial, and must either decide the case on its merits, or direct the Moonsiff to do so, reversing the

dismissal on default. The same rule applies to appeals by defendants, on the ground that an *ex-parte* decision was given against them, when they were prevented by circumstances from attending the Court.—*Con. No.* 870.—*p.* 347.

19. Under Acts 7 and 22, of 1838, the provisions of Reg. 23, 1814, Sect. 27, Cl. 2, and the printed Construction thereon of the 21st February, 1834, must be considered as virtually superseded.—*Con. No.* 1228.—*p.* 347.

20. The Sudder Court is of opinion, that as under Acts 7 and 22, 1838, both in cases in which a summary appeal may lie on the part of the plaintiff, and on a regular appeal being preferred by either party, the Judge may remand every description of case for further investigation and decision or retrial, whenever this appears necessary, the provisions of Reg. 23, 1814, Sect. 27, Cl. 2, and the Construction of the 8th April, 1834, must be considered as superseded.—*C. O. 23rd Aug.* 1839.—*p.* 347.

21. In cases in which a summary appeal is admissible, such appeal may be admitted, though the appellant may have erroneously applied for a special appeal, on paper of the prescribed stamp. The stamp will be returned to him with the exception of Two Rupees, the value of the stamp for a summary appeal.—*Con. No.* 613.—*p.* 347.

For the Vakeels and Stamps in Summary Appeals from the native Judges, vide Chapter 2, Rules 282, 283, 284, 285 and 286.

SECT. II.

Summary Appeals from Principal Sudder Ameens in cases above 5000 *Rupees in value, and from Zillah Courts.*

22. All summary appeals from the decisions of Principal Sudder Ameens, of the nature contemplated by Regulation 26, 1814, Section 3, in suits above 5000 Rupees, will be made by the parties direct to the Sudder Court.—*C. O. 23rd Feb.* 1838.—*p.* 348.

23. The Sudder Dewanny Adawlut may receive a summary appeal from the orders and decrees of the Zillah Courts when they have refused to admit an original suit or appeal regularly cognizable by them, or having admitted it, may have dismissed it without investigating its merits, for delay, informality, or other default.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 3.—*p.* 348.

24. Summary appeals from the decision of Principal Sudder Ameens passed under Sections 4 and 5, Reg. 2, 1806, in cases exceeding 5000 Rupees, will lie direct to the Sudder.—*Con. No.* 1148.—*p.* 348.

25. Appeals from the decisions of Principal Sudder Ameens in miscellaneous or summary proceedings, transferred under Section 8, Act 25, 1837, to them in cases above the value of 5000 Rupees equally with those under that sum, will lie in the first instance to the Zillah or City Judge, and specially to the Sudder Court.—*Con. No.* 1148.—*p.* 348.

SECT. III.

Regular Appeals to the Zillah Court from the decisions of Moonsiffs, Sudder Ameens, and Principal Sudder Ameens in suits under 5000 *Rupees.*

26. A Zillah Judge is not competent to set aside a decision of a subordinate tribunal, in the absence of an appeal, notwithstanding such decision may appear to him irregular or illegal. He should direct the parties interested therein to appeal therefrom, though the prescribed period for such appeals should have elapsed.—*Con. No.* 1048.—*p.* 348.

27. In estimating the value of property, in cases of appeal, costs of suit are not to be added to the original amount of action.—*Con. No.* 1190.—*p.* 348.

28. Any person dissatisfied with the decision of a Moonsiff, may appeal from it to the Zillah Court. The petition of appeal must be presented within thirty days after the date on which the decree was furnished or tendered to the party. A discretionary power is vested in the Judge of admitting appeals from decisions of Moonsiffs, after the prescribed period, if satisfactory reason be given for the delay.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 1.—*p.* 349.

29. The petition of appeal from the Moonsiff will be presented to the Zillah Judge. The Moonsiff is forbidden to receive appeals from his own decisions.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 2. —*p.* 349.

30. The petition of appeal from the Moonsiff will be presented by the appellant in person, or by one of the authorized vakeels; if the appeal be admitted, and the appellant and respondent do not plead in person, the vakeels will be allowed the same fees as in other suits before the Judges. —*Reg.* 23, 1814, *Sect.* 46, *Cl.* 3.—*p.* 349.

31. The decisions of the Moonsiff are not to be set aside for want of form, or for irregularity, but on their merits only.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 4.—*p.* 349.

The Rules above in Section 46, Cl. 1, 2, 3 and 4, are made applicable to appeals from the Sudder Ameens by Section 73, of the same Regulation.

32. In suits originally decided by the Principal Sudder Ameens under 5000 Rupees, an appeal will lie to the Zillah or City Judge.—*Reg.* 5, 1831, *Sect.* 28, *Cl.* 2.—*p.* 349.

33. When a Zillah Judge shall refer for trial to a Sudder Ameen or Principal Sudder Ameen, a suit within the competency of a Moonsiff, it will be subject to the same rules regarding Stamp duties and Appeal as if it had been tried by the Moonsiff in the first instance.—*Act* 25, 1837, *Sect.* 5.—*p.* 349.

34. When a suit cognizable by a Moonsiff, is referred to a Principal Sudder Ameen, the appeal will lie to the City and Zillah Judge, and will be tried by him only, and his decision will be final, any thing in the Regulations to the contrary notwithstanding.—*Act* 25, 1837, *Sect.* 6.—*p.* 349.

[This enactment is proposed to be rescinded by an Act of which the amended draft is to be considered in the Legislative Council after the 20th of March, 1842.]

35. When a suit within the competency of a Sudder Ameen, is referred to a Principal Sudder Ameen by the Zillah Judge, it will be subject to the same rules regarding Stamp fees and Appeals as if it had been referred to and tried by the Sudder Ameen in the first instance.—*Act* 25, 1837, *Sect.* 7.—*p.* 349.

36. Any person appealing from the decision of a Sudder Ameen, or a Zillah or City Judge is allowed to present his petition to the Judge of the Zillah or City Court in which the decision was passed, without an authenticated copy of the decree appealed from. Such petition need not contain the specific grounds of appeal; but may simply state that the party being dissatisfied with the judgment is desirous of appealing from it. The petition must be written on the prescribed stamp, and be accompanied with security for eventual costs in appeal.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 2. —*p.* 350.

37. Agreeably to the provisions of Regulation 26, 1814, Section 8, Clause 2, petitions of appeal presented to the Zillah Judge against the decision of the Principal Sudder Ameen, Sudder Ameen and Moonsiff, in original suits, do not require to be accompanied by a copy of the decree appealed against.—*Con. No.* 1159.—*p.* 350.

38. The specific objections to the judgment, and the detailed reasons for appealing, may be stated either in the original petition of appeal or may be filed in a separate pleading. In the latter case, the pleading must be written on paper of the value required for other pleadings.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 5.—*p.* 350.

39. The value of stamp to be used for such separate pleading, containing the specific objection to a judgment appealed from, is laid down in Regulation 10, 1829, Schedule B, No. 9.—*Con. No.* 556.—*p.* 350.

40. The deposit for pleader's fees need not be made, except when a pleader is appointed to conduct the appeal. When a pleader is appointed, the deposit will be delivered to the Court by which the appeal is to be tried.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 4.—*p.* 350.

41. When, under the option allowed by the Regulations, a petition of appeal is presented to the Court by which the appeal is to be tried, it must be accompanied by an authenticated copy of the decree.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 7.—*p.* 350.

42. The cognizance of any original appeal in any Zillah Court may, for particular reasons, to be

duly recorded, be transferred by the Sudder Court to any other Zillah Court subordinate to it.—*Act* 3, 1837, *Sect.* 1.—*p.* 350.

43. Whenever either of the Sudder Courts may thus direct the transfer of the cognizance of any suit the reason for such transfer will be recorded on its proceedings.—*Act* 3, 1837, *Sect.* 2.—*p.* 351.

44. In the cases of appeals from the decisions of Sudder Ameens and Moonsiffs, the pleadings will be written on stamp paper of one Rupee value.—*Reg.* 7, 1832, *Sect.* 3.—*p.* 351.

45. Appeals to the Judge from the decisions of Principal Sudder Ameens not being among the exceptions contained in Regulation 7, 1832, Section 3, the pleadings in all such cases should be written on paper of the value of Four Rupees.—*Con. No.* 834.—*p.* 351.

46. Regulation 3, 1817, Section 2, is rescinded, and no exemption of stamp duties will be held applicable to any original suits or *appeals*, of whatever amount instituted in the Zillah Courts, whether they be tried by the Zillah Judges or referred to a subordinate Court.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 3.—*p.* 351.

47. Any person dissatisfied with the decision of a Moonsiff, Sudder Ameen, or Principal Sudder Ameen passed in any original suit, may appeal as a matter of right to a Zillah or City Court. The petition of appeal will be examined by the Sheristadar, and if it be written on paper of the prescribed stamp, and has been presented within the prescribed period, it will be filed and registered on the books of the Court. If any deviation from the existing rules are observed, they will be brought to the special notice of the Judge, who will pass such an order as may appear proper. —*C. O. 6th Feb.* 1835.—*p.* 351.

48. The only exceptions to the rules given above (No. 47) are cases in which any deviation may be observable from the established practice of the nature above stated, and these must be brought, as ordered; to the notice of the Judge.—*C. O. 28th Sept.* 1838.—*p.* 351.

49. When therefore the petition of appeal is found in all respects regular, the Sheristadar will immediately certify this on the back of it, under his signature. An order should at the same time be passed directing the original record, or misl, of the case to be placed with the petition, that the Judge when hearing the latter, may, under Regulation 9, 1831, Section 2, Clause 2, (extended to the City and Zillah Judges by Act 7, 1838,) refer to any part of the proceedings, to satisfy himself of the correctness or otherwise of the judgment appealed against. There can be no reason why the examination of the papers by the Sheristadar, and the order for placing the misl with it, should not be made on the same day as that on which the petition of appeal is presented, or, at farthest, on the next Court day.—*C. O. 28th Sept.* 1838.—*p.* 351.

50. The Zillah Judge will then admit the appeal, provided the petition and the security shall have been presented in the mode and within the time prescribed.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 3. —*p.* 352.

51. For the admission of a regular appeal, nothing farther is requisite than to ascertain that the prescribed period of appeal has not expired, and that the petition is written on paper of the prescribed stamp. After the appeal has been filed and is brought on for hearing, either after process has been served upon the Respondent, or under Regulation 5, 1831, Section 16, Clause 3, if it appears that the party appealing has had due notice served on him, and that the cause was originally decided agreeably to the rules of practice, and the Regulations of Government; that the reasons of default assigned by the appellant are frivolous, and that he has wilfully neglected to attend the lower Court, the appeal ought to be dismissed. The mere fact that a case has been tried ex-parte, is not a sufficient ground either for sending it back for re-trial, or proceeding to investigate the pleas of the Appellant to the original suit.—*C. O. 12th March*, 1841.—*p.* 352.

52. In all decrees passed by a Judge in appeal, the date on which the suit was referred to the subordinate Court for investigation and trial is to be inserted. The uncovenanted Judges will insert the same information in their original decisions.—*C. O. 14th Aug.* 1840.—*p.* 352.

53. If a decree has been given for half the amount sued for, and the appellate Court, on the appeal of the defendant, is of opinion that the whole should have been decreed, the decree of the lower Court cannot be amended in favour of the original plaintiff, unless he has appeared and urged his objections to it.—*Con. No.* 868.—*p.* 352.

54. 55. Where the interests of several defendants are involved in a decree, and only one of them appeals from it, the appellate Court ought generally to confine itself to the decision of the objections to the decree made by the parties who appeal; but where obviously necessary for the ends of justice, the jurisdiction of the appellate Court may extend to all the interests affected by the decree.—*Con. No.* 997.—*p.* 352.

56. In appeals from the decision of Moonsiffs and Sudder Ameens, the decision of the Judge will be final.—*Reg.* 5, 1831, *Sect.* 28, *Cl.* 1.—*p.* 352.

57. The decision of the Zillah Judge in appeals from the Moonsiffs and Sudder Ameens having been declared final, the Sudder Court cannot interfere on the receipt of petitions of appeal against the decision of the Zillah Judge passed in appeal from their decrees.—*Con. No.* 688.—*p.* 353.

SECT. IV.

Periods allowed for Appeals from Uncovenanted to Zillah Judges.

58. In cases in which an appeal is authorized from a Principal Sudder Ameen to a Zillah or City Judge, it must be preferred within thirty days from the date of the order or decision of the Principal Sudder Ameen, calculated according to Regulation 26, 1814, Section 8, Clause 10, unless the appellant can prove that he was prevented by uncontrolable circumstances from presenting it earlier.—*Act* 25, 1837, *Sect.* 9.—*p.* 353.

59. The period for preferring an appeal from the decision of a Sudder Ameen or Moonsiff, will be thirty days. The periods of appeal in all these cases will be calculated according to Regulation 26, 1814, Section 8, Clause 10.—*Reg.* 7, 1832, *Sect.* 2, *Cl.* 3.—*p.* 353.

60. A discretionary power however is vested in the Judges of admitting appeals from the decisions of Moonsiffs, after the prescribed period, if the delay is satisfactorily accounted for.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 1.—*p.* 353.

61. Although Regulation 23, 1814, Section 45, Clause 6, has not been formally repealed, (which empowered a Judge to admit an appeal from the decision of a Moonsiff, though the period for appeal had elapsed, if the decree appeared to have been irregularly obtained) yet in the opinion of the Sudder Court, no appeal is admissable from them, notwithstanding irregularity or error, after the lapse of the prescribed period, unless sufficient cause be shewn for the delay.—*Con. No.* 979.—*p.* 353.

62. The periods allowed for appeal from the decisions of the various Courts to the superior appellate Courts, will be calculated from the date on which a copy of the decree appealed from may have been delivered or tendered in open Court. If neither the party nor his vakeel be present to receive the decree, it will be calculated from the date on which the cause of the non-delivery may be noted on the copy prepared for delivery, under the official signature of the Court.—*Reg.* 2, 1805, *Sect.* 8.—*p.* 354.

63. The period limited for the admission of appeals will be calculated from the day on which the decision may have been passed, excluding from such calculation, the interval which has elapsed between the date on which the stamp paper may have been furnished, and that on which the copy of the decision was delivered or tendered to the party. The Courts will be able to ascertain this interval, from the endorsements on the copy of the decree.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 10.—*p.* 354.

64. This limitation will be adhered to, notwithstanding the intervention of Hindoo or Mahomedan holidays, or the established vacations. When such periods of appeal may expire, during the holiday or vacation, no default will attach to the appellant, provided his petition of appeal be presented immediately on the re-opening of the Court.—*Reg.* 7, 1832, *Sect.* 2, *Cl.* 4.—*p.* 354.

65. In calculating the periods limited for admitting regular appeals, the interval which elapses between a party furnishing the prescribed stamp, and the copy of the decree being delivered or tendered to him, should be deducted. This rule is applicable to all appeals, summary, regular and special.—*Con. No.* 413.—*p.* 354.

66. A party having applied for a Review of judgment in a case open to appeal, but in which no appeal may have been preferred, is not entitled of right to the deduction of the time during

which his application for a review was pending before the lower Court, in calculating the period allowed him for preferring a regular appeal from the original decision; but the appellate Court may take this plea into consideration, and admit it or not, as under all the circumstances it may appear right and proper, in like manner with any other cause assigned for delay.—*Con. No.* 1127.—*p.* 354.

SECT. V.

Power of the Zillah Court to confirm the decisions of the Lower Courts, or to remand them for re-consideration, without summoning the respondent.

67. When an appeal is preferred to a Zillah or City Court from the decision of a Moonsiff, Sudder Ameen, or Principal Sudder Ameen, it will not be necessary in the first instance to serve any process on the Respondent. If after perusing the record of the original suit, and the petition of appeal, in the presence of the Appellant and his Vakeel, the Judge sees no reason to alter the decision appealed from, he may confirm it. The order for confirmation will be communicated through the Court from whose judgment an appeal was made to the respondent, that he may take measures for the execution of the decree.—*Reg.* 5, 1831, *Sect.* 16, *Cl.* 3.—*p.* 355.

68. The "Record" referred to, in Regulation 5, 1831, Section 16, Clause 3, does not refer to the Roobukaree of decision alone, but to the whole of the proceedings, or *misl*. The Judge is not required to read through every paper in each case, but merely such parts of the *misl* as may be necessary to satisfy him that the judgment appealed from is correct.—*C. O. 19th Aug.* 1836.—*p.* 355.

69. 70. If a Zillah Judge is of opinion that no ground has been shewn to impugn the justness of the decree, he may confirm it without reference to the order of his file, without requiring the attendance of the opposite party, or without revising the whole of the proceedings. If, on the other hand, a Zillah Judge is of opinion that the decision or order ought to be reversed, on any of the various grounds stated in this clause, he may issue an injunction pointing out the irregularity or other defect of the proceedings, decision, or order appealed from, and direct the Court in which it was passed to revise it, and proceed according to justice and to the Regulations.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 2. *Extended to Zillah Judges by Act 4*, 1838.—*p.* 355.

71. The Judge, as soon as practicable, (as provided in Reg. 9, 1831, Sect. 2, Cl. 2,) without reference to the order of the file, should in the presence of the appellant or his vakeel, revise the petition of appeal, and such parts of the record, as he may deem necessary, and if on a full consideration of it, the decision appealed from appears to be just, confirm it, and communicate the order of confirmation through the Court from whose judgment the appeal was made, to the opposite party, that he may adopt measures for executing the decree.—*C. O. 28th Sept.* 1838.—*p.* 355.

72. The Judge is strictly forbidden, on the filing of a petition of appeal, to issue a notice to the appellant, requiring him at the expiration of three days, to be in attendance in person or by vakeel on the day on which his petition may be taken up under penalty of its being dismissed or struck off the file.—*C. O. 23d Aug.* 1839.—*p.* 356.

73. Appeals preferred under the provisions of Regulation 5, 1831, Section 16, as already ordered, are to be considered as Regular Appeals and admitted at once, though the respondent be not summoned in the first instance to attend. The rules laid down in the Cir. Ord. 5th November, 1812, have consequently strict application to such cases, and must be duly observed, whenever the appellant is not in attendance, at the time when the petition of appeal is brought to a hearing.—*C. O. 23rd Aug.* 1839.—*p.* 356.

[Those Orders of Nov. 5, 1812, are superseded while this work is passing through the press by Act 29, 1841.]

74. In such cases, the order of the Judge will not merely state that the appeal of the appellant has been rejected or dismissed, but that the decree of the lower Court has been confirmed. No formal decree is necessary. The Judge will record a brief order of confirmation of the decision appealed from, which will contain an abstract of the grounds urged by the appellant against the decree, in order that if the case be afterwards specially appealed, the Court may at once discover

whether the appellant has advanced new pleas, not previously adduced, or only those which have been overruled. Such order will be regarded in the same light, and have the same force as a regular decree; and hence copies of it must be taken, if required, on paper of the same stamp as that required for copies of the decrees of the Judge's Court.—*C. O. 28th Sept.* 1838.—*p.* 356.

75. The only alteration made by Regulation 5, 1831, in the judicial system is, that the Judge is allowed to confirm the decision of the lower Court, without calling on the respondent to attend. Consequently, the same mode of practice will be followed as heretofore; only that as no costs can be incurred by the respondent before he is summoned to answer the appeal, security for costs need not be demanded of the appellant before the respondent is called to answer. A previous *perusal* of the petition of appeal and the decree, is not necessary to the admission of the appeal. Nothing farther is necessary but to see that the prescribed period of appeal has not elapsed, and that the petition is on the prescribed stamp. Hence it is erroneous to consider such petitions of appeal as miscellaneous petitions, till the Judge, after the perusal of the papers, has determined that they shall be admitted.—*C. O. 24th Aug.* 1832.—*p.* 356.

76. An appellant should not be allowed to bring forward additional proof in support of his claim, before the petition of appeal and decree have been read over by the Judge.—*Con. No.* 790.—*p.* 356.

77. All first appeals must be admitted as matter of right, if they be preferred within the time prescribed by the Regulations. The confirmation of the decision of the lower Court, prior to a perusal of the original proceedings, is to be considered not as a rejection, but a final dismissal of the appeal, on consideration of its merits.—*Con. No.* 742.—*p.* 357.

78. Appellants cannot be compelled to file copies of decrees and reasons of appeal with their petition of appeal.—*Con. No.* 863.—*p.* 357.

79. Appeal cases, disposed of under Regulation 5, 1831, Sect. 16, Clause 3, should be viewed as Regular Appeals decided on their merits after a perusal of the record, and should be entered as such in the monthly statements.—*Con. No.* 878.—*p.* 357.

SECT. VI.

Rules regarding Stamps, Vakeel's fees, and Costs in Appeal cases decided without summoning the Respondent.

80. The following rules of practice are agreed to by the Sudder Court with reference to the provisions of Reg. 9, 1831, Sect. 2.—*Con. No.* 675.—*p.* 357.

81. If the decision of the lower Court be confirmed without the attendance of the opposite party, the appellant will not receive back any proportion of the value of the stamp paper on which his petition of appeal was written. The appellant's vakeel is entitled to the whole of the fee deposited by the appellant.—*Con. No.* 675.—*p.* 357.

82. If the attendance of the opposite party shall be required, and he shall nevertheless file an answer to the petition of appeal through a vakeel, the fee of the vakeel shall be paid by the opposite party himself.—*Con. No.* 675.—*p.* 357.

83. If an injunction be issued for the revision of the decision, the stamp duty paid by the appellant on his petition of appeal, should be returned to him; and the fees of the vakeel of the appellant and respondent (if attending,) should be limited to one fourth the established fee.—*Con. No.* 675.—*p.* 357.

84. Vakeels are entitled to the full remuneration awarded them by the Regulations, in cases regularly decided as above, on their merits.—*Con. No.* 878.—*p.* 357.

85. No portion of the Stamp duty should be returned in such cases.—*Con. No.* 878.—*p.* 357.

86. The Court, on confirming the decision of the lower Court, cannot order the appellant to pay the respondent's costs, or the respondent's vakeel to receive from the Treasury the amount of his fees in deposit. As no costs need be incurred by the respondent till he is summoned to answer, no security for costs need be demanded of the appellant.—*C. O. 28th Sept.* 1838.—*p.* 358.

87. The respondent is not however forbidden to attend in person or by vakeel, in cases of the above description; if he does so, however, it is at his own cost; the appellant can be charged with

none of his expences. But at the foot of the Judge's order, the costs incurred by the appellant should be specified, so that if the Judge's order is reversed or modified in a special appeal, provision may be made for the payment of the same.—*C. O. 28th Sept.* 1838.—*p.* 358.

88. Where the appellant may have filed a copy of the decree of the lower Court, it must be returned to him, if the appeal is rejected. In cases open to a special appeal, the appellant may file the same copy of the decree, with his petition, together with a copy of the appellate Court's order rejecting his appeal.—*C. O. 28th Sept.* 1838.—*p.* 358.

89. No final decision of the Court can be passed against a respondent, until he has been summoned in the usual manner.—*Con. No.* 944.—*p.* 358.

For the interest to be awarded, when confirming the decree of a lower Court, vide Chap. 4, Rule 220.

SECT. VII.

Reference of Appeals from the decisions of Moonsiffs and Sudder Ameens to Principal Sudder Ameens.

90. Whenever, from the heaviness of his file, a Zillah or City Judge is unable to dispose of all the appeals pending before him, with reasonable despatch, he will solicit permission of the Sudder Dewanny Adawlut to refer a specified number of appeals from the decisions of Moonsiffs and Sudder Ameens to the Principal Sudder Ameens; and the Sudder Court may comply with the requisition, and the rules prescribed in the preceding clause (Clause 1,) shall be applicable to such appeals.—*Reg.* 5, 1831, *Sect.* 16, *Cl.* 2.—*p.* 358.

The "*rules prescribed in the preceding clause*" are those contained in Reg. 24, 1814, Sect. 7, Cl. 4, and Reg. 24, 1814, Sect. 9, Cl. 4.

91. [Regulation 24, 1814, Section 7, Clause 4, ordains that in the trial of such appealed suits the Sudder Ameens shall be guided by Regulation 23, 1814, Section 75, and that their decisions shall be final, unless the Zillah Judge see cause to admit a second or special appeal—Regulation 23, 1814, Section 75, directs that the Sudder Ameens shall keep a separate Register of the suits thus referred to them in appeal, and not confound them with those referred to them for trial in the first instance; and that the Sudder Ameens shall try such appeals in conformity with the rules prescribed for the trial of appeals by the Zillah Judges.]

92. [Regulation 24, 1814, Section 9, Clause 4, ordains that the Register shall try suits referred to him in appeal by the Zillah Judge, and that his decision shall be final, unless the Zillah Judge should see sufficient reason for admitting a second or special appeal.]

93. The Zillah and City Judges are expected to revise, as far as practicable, all appeals from the decisions of Moonsiffs and Sudder Ameens, or to retain a certain portion of them on their own file, as a check over their proceedings. But when from the accumulation of business, they cannot revise them with sufficient dispatch, they will from time to time obtain the permission of the Sudder Court to refer a specified number of them to the Principal Sudder Ameen for trial.—*Ibid.*—*p.* 359.

94. Previously to applying for permission to refer appeals to the Principal Sudder Ameen, the Judge will submit a statement of the suits pending on his own file, and on those of the Principal Sudder Ameen, according to the form given in the body of the work.—*C. O. 7th Dec.* 1838.—*p.* 359.

95. Previous to the transfer of these cases to the Principal Sudder Ameen, it is not indispensable that the Zillah and City Judge should peruse the record of the original suit, or in any way revise the proceedings. The judgment of the Principal Sudder Ameen will of course be open to a special appeal under Regulation 26, 1814, Section 2, and other provisions applicable to the admission of special appeals.—*C. O. 6th Feb.* 1835, *Sect.* 3.—*p.* 359.

96. In the trial and decision of appeals referred to them, the Principal Sudder Ameens will be guided by the rules established for the conduct of business in the Courts of Sudder Ameens. In points not expressly provided for by those rules, they will observe as nearly as possible the rules laid down for the Zillah and City Judges.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 4.—*p.* 360.

97. A Principal Sudder Ameen, thus employed to try an appeal from Moonsiffs, may refer the case back to the Moonsiff for further investigation. Should he be of opinion that a Moonsiff has improperly non-suited a case, he should return it to the Judge, with his opinion that the Moonsiff should be directed to re-admit it and try it on its merits.—*Con. No.* 1023.—*p.* 360.

98. The Principal Sudder Ameens, in trying appeals from the decisions of Sudder Ameens and Moonsiffs, referred to them by the Judges, have no power to remand them for re-trial, and restoration to their former number on the file.—*C. O.* 14*th June*, 1839.—*p.* 360.

99. Whenever in the trial of such appeals, the Principal Sudder Ameen is of opinion that the decision of the lower Courts should be annulled, and the suit remanded to be tried *de novo*, he will record the ground of his opinion in a proceeding, and submit it with the papers of the suit for the Judge's orders, retaining it in Statement No. 1 of his Court.—*C. O.* 14*th June*, 1839.—*p.* 360.

100. On receiving the reference, the Judge will enter under the heading No. 16, Column 3, Statement No. 2, of his Court, and after considering it maturely, either direct the Principal Sudder Ameen to remand it to the lower Court, in which it was originally tried, or to dispose of it himself.—*C. O.* 14*th June*, 1839.—*p.* 360.

101. This will not preclude the Principal Sudder Ameen from directing the lower Court to make a farther investigation with the view of his deciding the suit himself.—*C. O.* 14*th June*, 1839. —*p.* 360.

102. If the Judge sanctions its being remanded, it will be entered in the Reports in the prescribed mode.—*C. O.* 14*th June*, 1839.—*p.* 360.

103. The Principal Sudder Ameen, in hearing appeals from the decisions of Moonsiffs and Sudder Ameens, is not at liberty to act according to the provisions of Regulation 5, 1831, Section 16, Clause 3, which applies only to Zillah Judges. [That is, he cannot confirm the decision without calling on the Respondent for an answer.]—*C. O.* 17*th March*, 1837.—*p.* 360.

For the interest to be awarded when confirming the decree of a lower Court, vide Chap. 4, Rule 220.

104. In the trial of Appeals, the Principal Sudder Ameens will conform strictly to the mode of procedure laid down in Regulation 26, 1814, Section 10, before any exhibits are filed or witnesses examined.—*Reg.* 5, 1831, *Sect.* 21.—*p.* 361.

105. Principal Sudder Ameens stationed at other places than the station of the Zillah Court, may receive appeals as well as original suits, under the provisions of Regulation 2, 1821, Section 11, Clause 2.—*C. O.* 18*th Sept.* 1835.—*p.* 361.

SECT. VIII.

Regular Appeals to the Sudder Court from Zillah Courts and of Principal Sudder Ameens in cases above 5000 *Rupees.*

106. In all suits originally decided by the Zillah and City Judge, an appeal will lie to the Sudder Court.—*Reg.* 5, 1831, *Sect.* 28, *Cl.* 3.—*p.* 361.

107. The period for preferring a regular or special appeal from the Zillah Judge to the Sudder Court, will be three calendar months.—*Reg.* 7, 1832, *Sect.* 2, *Cl.* 1.—*p.* 361.

108. In suits exceeding the amount of 5000 Rupees which may be referred to the Principal Sudder Ameen, the appeal will lie direct to the Sudder Court, and will be conducted in all respects as if it were an appeal from the Zillah and City Court to the Sudder Court.—*Act* 25, 1837, *Sect.* 4.—*p.* 361.

109. In a suit laid at a sum exceeding 5000 Rupees, in which the Principal Sudder Ameen, gives a decree for a less sum than that amount, the appeal from his decision lies to the Sudder Court.—*Con. No.* 1282.—*p.* 361.

110. On the receipt of a petition of appeal to the Sudder Court from a decision passed in an original suit, the Zillah Court will proceed as directed in Reg. 6, 1793, Sect. 10, and transmit it as soon as possible, with any documents filed with it, under cover of a certificate, and accompani-

ed by a Roobukaree, containing the names of the parties, an abstract of the decree, the date of the decision, and that on which the petition was presented, and the grounds for considering it to have been filed in the prescribed time.—*C. O. 28th June*, 1833.—*p.* 362.

111. A written notice will at the same time be served upon the appellant, informing him that the petition has been transmitted to the Sudder Court, and that if he does not proceed in the appeal for six weeks, it will be dismissed, unless he can shew sufficient cause for the delay. This notice, with a certificate that it has been duly served, will also be forwarded to the Sudder Court.—*C. O. 28th June*, 1833.—*p.* 362.

112. Each petition should be accompanied with a separate proceeding and certificate.—*C. O. 28th June*, 1833.—*p.* 362.

113. Any person deeming himself aggrieved by the decision of a Zillah Court, or a Principal Sudder Ameen, (in cases above 5000 Rupees,) may appeal from it to the Sudder Court. The petition will state the annual produce of the land, the sum of money or the value of the property decreed; the name of the person in whose favour it was given; the Court in which it was passed, the time when it was made, whether the decree has been executed or not, and the special or general reasons for appealing it. It may be presented to the Court in which it was passed or to the Sudder Court. The petition must be accompanied, (if presented to the Sudder Court,) with an attested copy of the decree, or a written declaration that it was demanded and denied. The Sudder Court, on good cause being shewn, may receive the petition after the lapse of three months; its reasons for so doing will be recorded.—*Reg.* 6, 1793, *Sect.* 10.—*p.* 362.

114. When the requisite securities have been given, the Judge will endorse the date on which the petition of appeal was received and sign it, and write on the margin of the record the word "appealed." The petition will then be transmitted to the Sudder and notice will be given to the appellant that the proceedings will be certified to the Sudder Court in fifteen days, and that the appeal will be dismissed if he do not proceed in it within six weeks, or shew sufficient cause for the delay.—*Reg.* 6, 1793, *Sect.* 10.—*p.* 363.

115. In transmitting the Record as provided in cases of appeal, the Zillah and City Court, and the Principal Sudder Ameen, need only send up the original pleadings, depositions and exhibits, with a list of them, and not the applications and processes for the attendance of witnesses, and other miscellaneous papers. The Sudder Court will call for them; if necessary.—*Reg.* 9, 1831, *Sect.* 8.—*p.* 363.

116. All petitions for regular appeals from Principal Sudder Ameens, in suits exceeding 5000 Rs., will be made direct either to the Sudder Court, or to the Principal Sudder Ameen. In the latter case, if it has been made within the prescribed time, he will transmit as soon as practicable, to the Register of that Court, the petition of appeal with any documents filed with it, under cover of a certificate, bearing his official seal and signature, and a Roobukaree, stating the names of the parties, an abstract of the decree, the date of the decision, and that on which the petition of appeal was presented. Till ordered by the Court, he will not cause copies of the original papers to be made, or transmit the originals. When so ordered, he will forward them with all due precaution, depositing the record required to be made, for safe custody, in the Record office of the Judge.—*C. O. 6th Jan.* 1840.—*p.* 363.

117. Petitions of appeal from decisions passed by the Zillah and City Judge, in original suits (or by the Principal Sudder Ameen, under Act 25, 1837,) need not be accompanied, when presented to the Judge or the Principal Sudder Ameen, by a copy of the decree appealed against.—*C. O. 24th Aug.* 1838.—*p.* 363.

118. Such petitions of appeal must be presented to the Judge, or Principal Sudder Ameen, within three months from the date of the decision, without any deduction whatever; otherwise the Judge or Principal Sudder Ameen is not competent to certify that they have been duly presented.—*C. O. 24th Aug.* 1838.—*p.* 364.

119. The Zillah Judges are particularly desired not to allow the officers of their Court to de-

lay the execution of the copies of decrees. The Sheristadar will state, by an endorsement on the copy furnished, the information required by Reg. 26, 1814, Sect. 8, Cl. 9, and explain the cause of delay when the copy cannot be furnished within one month.—*C. O. 18th May*, 1832.—*p.* 364.

120. When original papers are sent, copies must be retained in order to provide against the possible loss of them in transit. Original papers should not be copied or sent, till called for by precept from the upper Court.—*Con. No.* 742.—*p.* 364.

121. 122. 123. 124. Two forms of Certificates to be submitted with petitions of appeal presented to the Court, are given in the body of the work. The Roobukarees which accompany them, must never be written on both sides.—*C. O. 24th Oct.* 1834.—*p.* 364.

125. In forwarding their certificates of appeal to the Sudder Court, the Principal Sudder Ameens will use an Oordoo form, as prescribed in the body of this work.—*C. O. 10th Sept.* 1839. —*p.* 365.

126. To enable the Sudder Court duly to exercise the powers vested in it, the several subordinate Courts are ordered in every instance to record the point or points at issue in each case, and the grounds on which their judgment or orders may be passed.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 7.—*p.* 365.

127. The proceedings which the Judge is required to draw up in conformity with Reg. 26, 1814, Sect. 10, must be invariably sent to the Sudder with the record of appealed cases, the omission of it being extremely inconvenient, especially when the appellant pleads that the Judge has omitted to receive documents tendered, or to summon witnesses named by the party.—*C. O. 5th Aug.* 1836.—*p.* 365.

128. In transmitting petitions of appeal to the Sudder Court, the Zillah Judge and the Principal Sudder Ameen will report, whether the decree appealed from has been carried into execution or not.—*C. O. 27th April*, 1796.—*p.* 365.

129. A single Judge of the Sudder may direct the execution of the judgment or order passed by an inferior Court to be stayed, until a final decision has been passed thereon.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 5.—*p.* 366.

SECT. IX.

Security of Costs in cases appealed.

As security for costs in Appeals to the Sudder Dewanny Adawlut has been abolished by Act 17, 1841, the following enactments apply only to appeals to the Zillah Judge's Court.

130. In all cases in which a Regular Appeal may be admitted, the appellant will be required, with his petition of appeal, to give good and sufficient security for the eventual costs awarded in appeal. Without such security, or proof of inability to furnish it, no appeal will be admitted. The presenting a petition of appeal without the security, within the time limited for appeal, will not preserve to the appellant, the right of appeal as it regards the limitation in question.—*Reg.* 2, 1798, *Sect.* 10.—*p.* 366.

131. The Sudder Court is of opinion, that although no appeal can be admitted before the security for the costs be filed, yet, provided sufficient reason be shewn why the security was not filed with the petition, the Courts are competent to receive the petition, and to allow the petitioner sufficient time to furnish the security.—*Con. No.* 369.—*p.* 366.

132. In appeals, the appellant's security for costs binds himself to make good the whole costs incurred by the appeal, whoever may stand in the appellant's place when it shall be decided, When therefore the death of an appellant, or respondent, or surety, happens, pending an appeal, it is not necessary to incur the delay and inconvenience of calling for fresh securities.—*C. O. 13th July*, 1832.—*p.* 366.

133. As there is no provision in the Regulations for requiring costs for security in appeals from the decisions of the Moonsiffs' Court, the Sudder Court infers that the omission was intentional and that no security need be given by appellants from Moonsiff's decisions.—*C. O. 8th Sept.* 1837. —*p.* 366.

[But according to more recent arrangements, the Appellate Court is at liberty to confirm the Appeal without calling on the respondent to attend; hence, the appellant is not required to furnish security for costs, *with his petition of appeal.* When the Appellate Court has determined to go into the case, and to summon the respondent, the appellant will be called on to furnish security for costs. The following enactment explains the new rule in this respect:]

134. As the Courts are now competent to confirm a decree without requiring the attendance of the opposite party, or to direct a revision of the case, the requisition for costs in appeal may be dispensed with in the first instance.—*C. O. 28th June*, 1833.—*p.* 367.

135. Doubts having been entertained, in cases when the appellate Court may summon the respondent, as to the time which the appellant should be allowed for furnishing security for costs, it is ruled that if the order for summoning the respondent, on the security of costs being given, be passed after the expiration of one month, calculated according to Regulation 26, 1814, Section 8, and the appellant be not prepared to file the security bond immediately, the Court hearing the appeal is at liberty to fix such time, in each case, as may be reasonable, and on the appellant's failing to furnish the security, or to give good reasons for the delay, to dismiss the cause on default.—*C. O. 12th July*, 1839.—*p.* 367.

136. The same rule is applicable to the Principal Sudder Ameen, who is required to pass the proper order without delay after the appeal has been transferred by the Zillah Judge to him, in regard to the filing of security in all cases in which the order has not been already issued from the Judge's Court.—*C. O. 12th July*, 1839.—*p.* 367.

137. Should the order be passed *within* one month, calculated from the date of the decree, and the period remaining to the completion of the month be so brief, as not to allow the appellant to furnish security prior to its expiration, the Judge may exercise his own discretion in making a farther allowance of time.—*Con. No.* 1244.—*p.* 367.

For the rules regarding Security for costs in appeal cases, by appellants or respondents residing in Foreign Settlements, vide Chap. 3, Sect. 60.

SECT. X.

Proceedings on the hearing and determination of Regular Appeals.

138. All such parts of Regulations as require that the pleadings in appealed suits be filed in the same manner and under the same rule as pleadings in original suits, are thus modified.—*Reg.* 26, 1814, *Sect.* 9, *Cl.* 1.—*p.* 367.

139. The respondent may either file his answer to the petition, and his reasons of appeal or not. If none be filed, the Court trying the appeal may order him to file an answer to the petition or to any points in it which require explanation.—*Reg.* 26, 1814, *Sect.* 9, *Cl.* 2.—*p.* 368.

140. No farther pleadings beyond the answer of the respondent will be admitted, except the duplicate of the plaint, as provided for by Section 7, Clause 1, of this Regulation, or such supplementary pleadings as the Court may permit under the provisions of Sect. 6, Clause 3, of this Regulation.—*Reg.* 26, 1814, *Sect.* 9, *Cl.* 3.—*p.* 368.

141. Regulation 26, 1814, Section 12, is not applicable to cases of appeal, but only to original suits.—*Con. No.* 1191.—*p.* 368.

142. The rules in Regulation 26, 1814, Section 10, apply to the trial of appeals, as well as original suits. The Court will therefore be careful in all cases, to record on the proceedings the precise points at issue, and the grounds on which the parties maintain their pleas.—*C. O. 2d Oct.* 1840.—*p.* 368.

143. The Appellate Court is at liberty to receive such farther evidence, as may appear necessary for the just determination of the suit, or to refer it back to the lower Court, with such special directions regarding the new evidence the Judge is to take as may appear conducive to the ends of justice.—*Reg.* 5, 1793, *Sect.* 18.—*p.* 368.

144. If an appellant in any case of appeal shall not proceed in it for six weeks, it will be dismissed, unless he can shew sufficient cause for not having proceeded in it, and the Court may

award the respondent costs of suit. In all such cases, the Court will record its reasons for permitting or refusing to allow the appellant to proceed.—*Reg.* 5, 1793, *Sect.* 21.—*p.* 369.

145. If a plaintiff or appellant in any Court shall neglect at any time to proceed in his cause for six weeks, it will be dismissed. It will not be necessary to give the plaintiff or appellant any notice previous to dismissing the suit or appeal. The suit will be dismissed as of course, after six weeks, without any proceeding on the part of the Court, or the defendant or his representative, or without assigning any reasons unless the plaintiff or appellant shall have satisfied the Court of the propriety of allowing farther time. The Court will record its reason for allowing farther time, but not for refusing it.—*Act* 29, 1841, *Sect.* 1.—*p.* 369.

146. When a suit is dismissed under the preceding Section, the Court will award costs to the defendant or respondent. But this dismissal will be no impediment to the institution of a new suit or appeal, where no other obstacle exists.—*Act* 29, 1841, *Sect.* 2.—*p.* 369.

147. In the trial and decision of appeals by the Zillah Court, or the Principal Sudder Ameen, they will proceed in the same manner as far as may be applicable, and with the like powers, and authority, and subject to the same restrictions and limitations as are prescribed for the trial and determination of original suits, and the decrees will be prepared and copies of it made, delivered and tendered to the parties in the same manner as is directed in original suits.

148. The petition of appeal, pleadings, depositions, and exhibits in the appeal Court, must be numbered, marked, dated and signed, as in the case of original suits.—*Reg.* 5, 1793, *Sect.* 29.—*p.* 369.

149. To prevent litigious appeals, the Court in passing judgment on suits of appeal, if the former decree be confirmed, may award interest to the respondent at the rate of one per cent. per mensem, on all sums receivable on account of the decree from the date of such decree, and punish all appeals that appear litigious by a fine to Government.—*Reg.* 13, 1796, *Sect.* 3.—*p.* 369.

150. If the decision of a lower Court be confirmed in appeal, the appellate Court must, under the Regulation mentioned above, award interest from the date of such decree to the day of payment, on the aggregate of the principal, interest, and costs awarded in the original decree.—*C. O. 4th March*, 1836.—*p.* 370.

151. As the law now stands, in cases coming under the provisions of Sect. 12, Reg. 3, of 1793, the party fined is liable to be committed to close custody till the amount be paid; but where the fine is imposed for a litigious appeal, in conformity with Reg. 13, 1796, Sect. 3, if not immediately forthcoming, it should be realized under the same rules, as are applicable to the execution of decrees of Court.—*Con. No.* 1096.—*p.* 370.

It is necessary however to state, that the Western Court have recently expressed a doubt whether Reg. 13, 1796, Sect. 3, can apply to Zillah Courts, more specially as it is a penal enactment.

152. In like manner, if the claim was dismissed by the lower Court, but decreed by the appellate Court, interest will be calculated on the principal sum to the date of the decision of the lower Court as before, and on that consolidated sum of principal and interest, and the costs of suit, to the day of payment.—*C. O. 4th March*, 1836.—*p.* 370.

153. When the costs of suit are included in the decree, they become part of the matter awarded by the Court passing the decree, and as such, are liable with other property so adjudged, to interest from the date of the Court's decision.—*Con. No.* 715.—*p.* 370.

154. A Zillah Court cannot fine a respondent in an appeal case for having instituted a suit in a lower Court which the appellate Court may consider vexatious.—*C. O. 25th Jan.* 1833.—*p.* 370.

SECT. XI.

Execution or Suspension of the Decrees of the Uncovenanted Judges during Appeal.

155. When an appeal is received from the decision of a Moonsiff, the Judge is empowered to suspened the execution of it, if the party appealing against it, give good and sufficient security within the time fixed by the Judge, to perform the decree of the Court.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 5.—*p.* 370.

156. 157. The use of the word "empowered," having led some of the Judges into the opinion that it was *discretionary* with them to stay or not, execution of the Moonsiff's decisions, on the tender of adequate security, the Sudder Court ruled that execution of judgment for money or other moveable property *must* be stayed, if good and sufficient security be given by the appellant for performing the decision which may be passed in appeal.—*Con. No.* 284.—*p.* 370.

The rule given above, is extended to suits decided by Sudder Ameens by Sect. 73, of the same Regulation.

158. It rests with the Zillah Judge, to whom the appeal from a Sudder Ameen is preferred, to order or stay the execution of the decree appealed from, and not with the Principal Sudder Ameen to whom the appeal is referred by the Judge.—*Con. No.* 646.—*p.* 371.

[These Rules regarding appeal, are also extended to suits *under* 5000 Rupees decided originally by Principal Sudder Ameens, and from which a regular appeal lies to the Zillah Courts.]

SECT. XII.

Execution or Suspension of Decrees of the Zillah Courts, when appealed to the Sudder Court, in cases of Landed Property.

159. Whenever a person claiming the proprietary right in lands, houses or immovable property not in his possession, obtains a decree in the lower Courts on an investigation of the merits of the case, adjudging him to be the proprietor, he shall obtain possession of the property though the decree be appealed against, on giving sufficient security for performing the decree which may be passed in appeal. If the land be malgoozaree, the security must be in a sum equal to a year's produce; if lakhraj, ten years' produce; if a house or other immovable property, its computed value.—*Reg.* 13, 1808, *Sect.* 11, *Cl.* 2.—*p.* 371.

160. If the Court to which the cause is appealed, see special case for leaving the appellant in possession during the appeal, it may order this to be done, requiring him at the same time to give the same security which is required from the respondent.—*Reg.* 13, 1808, *Sect.* 11, *Cl.* 3.—*p.* 371.

161. Cases may occur in which an appellate Court would be warranted in restoring the appellant to possession, after the respondent had been put in possession by the lower Court, in execution of its decree. All such cases however cannot be foreseen and defined.—*Con. No.* 90.—*p.* 371.

162. In all cases in which an appeal is allowed by the Regulations, the decree holder should not be put in possession without furnishing security to abide by the ultimate award, until after the period allowed for the appeal shall have elapsed. Possession may of course be awarded him on the tender of such security under Regulation 13, 1808, Sect. 11, Clause 1.—*Con. No.* 536.—*p.* 371.

163. This Construction (Rule 161,) refers merely to the power vested in the appellate tribunals of restoring an appellant to possession after it had been given to the respondent by the lower Court. But it incidentally implies that the lower Court may exercise its own discretion in delaying for a reasonable period, the execution of its own order for giving possession to the respondent in case of an appeal, till the receipt of instructions from the appellate Court; and the Sudder Court sees no reason to object to the exercise of a sound discretion in cases which appear to require such a course.—*Con. No.* 1077.—*p.* 372.

164. The security bond for staying the execution of decrees of Court, will be drawn up according to the forms given in the body of the work.—*C. O.* 17*th Feb.* 1837.—*p.* 372.

165. The surety for staying or for obtaining execution of the decree appealed against, binds himself and the property pledged in the bond, to satisfy the decree which may be passed in appeal, whoever may stand in the place of the appellant or respondent. In case of the death of either of them, or of the surety, pending the appeal, fresh securities need not therefore be called for.—*C. O.* 13*th July*, 1832.—*p.* 372.

166. If the appellant or respondent, being left in possession of lands paying revenue, during

place, the party not in possession, may be put into immediate possession, by paying the revenue due, and giving the prescribed security previously to the sale. This amount, with interest, he is at liberty to charge in any adjustment of accounts which may be directed in the final decree.—*Reg.* 13, 1808, *Sect.* 11, *Cl.* 4.—*p.* 372.

167. Though the appellant may have entered into the prescribed securities, the Court trying the appeal, if through delay in the decision that security appears insufficient, may, on the application of the respondent, require additional security, to secure the party, in whose favour judgment may have been given, from loss. In default of such additional security being given in a reasonable time, the Court may order the decree to be carried into execution. In such cases, sufficient security must be given by the respondent previously to being put in possession of the land.—*Reg.* 5, 1798, *Sect.* 3.—*p.* 372.

168. In all cases where the Regulations allow a second or special appeal, the Courts are bound to demand from the decree-holder, security to abide by the ultimate award, if he wishes to obtain possession under the decree, within the period allowed for the appeal.—*Con. No.* 1077.—*p.* 373.

SECT. XIII.

Rules regarding the Land which is the subject of litigation during the appeal.

169. When a plaintiff in a lower Court may obtain a judgment in his favour for land or other real property, and the defendant appealing from the decree, may be left in possession of it, on giving the prescribed security, any private transfer of such property by sale, gift, or otherwise, or any mortgage of it, during any stage of appeal, is null and void.—*Reg.* 5, 1798, *Sect.* 4.—*p.* 373.

170. But as Malgoozaree land, by whomsoever possessed, is held answerable for the revenue assessed on it, and may be liable to be sold, by the neglect of the party in possession to discharge the revenue, by which sale the party to whom the lands are ultimately adjudged, might be deprived of them unless he purchased them at the public sale, it is declared, that whenever land for which a judgment may have been given, but which during the appeal had been left in possession of the appellant, shall be sold for arrears due from the appellant, while the appeal is pending, or before the ultimate judgment is executed, and purchased by the respondent, the purchaser, if such property be finally adjudged to him on the appeal, may recover from the appellant, who had been left in possession, the full amount of his purchase money, with all expences and interest, in addition to whatever sum may be adjudged to him as the profit of the lands anterior to the sale.—*Reg.* 5, 1798, *Sect.* 4.—*p.* 373.

171. If the respondent has not purchased the land sold by Government to make good the arrears due from the appellant who had been left in possession, and if the ultimate decision be in his favour, he may recover from the appellant the whole of the purchase money paid for the property sold, with interest, as well as any profits of the land anterior to the sale, which may be adjudged to him. If the respondent can clearly prove that the land has been purchased directly or indirectly by the appellant at the public sale, he will be entitled to possession of it with all profits, notwithstanding the fictitious sale.—*Reg.* 5, 1798, *Sect.* 4.—*p.* 374.

172. The principles of the foregoing enactment will be equally applicable to cases in which a plaintiff in a lower Court may have been put in possession of land adjudged to him, during an appeal, and generally to all cases in which the possession of property may be transferred by the decree of a Court of justice from which an appeal may be depending in a superior Court.—*Reg.* 5, 1798, *Sect.* 5.—*p.* 374.

173. As cases may occur in which neither appellant nor respondent may be able to give the prescribed security for staying the execution of decrees, it is enacted that the property, in such cases, will be held in attachment by the Collector during the appeal, or till security be given, at the expence of the party ultimately entitled to it. The rules contained in Regulation 5, 1827, will apply in all such cases. The Collector will not attach the property until he receive a precept to that effect from the Court passing the decree. This precept will state specially the pro-

perty to be included in the attachment and will order it to be attached till another precept is issued ordering it to be released.—*Reg.* 5, 1798, *Sect.* 6.—*p.* 374.

174. The provisions in the two preceding Sections [vide the whole of Sect. 8, Chapter 3,] will be held applicable to the Sudder Court, whenever an attachment of property made by a Zillah Court may be continued during the trial of an appeal before the Sudder, in which those Courts may order an attachment of property in default of security either by appellant or respondent.—*Reg.* 2, 1806, *Sect.* 7.—*p.* 375.

SECT. XIV.

Execution or Suspension of the Decrees of Zillah Courts, for money or other moveable property, pending appeal.

175. Decrees for money or other moveable property will be stayed or enforced in cases of appeal, according to the existing rules, and the following addition thereto.—*Reg.* 13, 1808, *Sect.* 12, *Cl.* 1.—*p.* 375.

176. The security given by appellants for staying the execution of such decrees, or by respondents when such decrees are carried into execution during an appeal, should be sufficient, in addition to the amount adjudged, to cover the interest that may be expected to arise under the decree, if confirmed in appeal.—*Reg.* 13, 1808, *Sect.* 12, *Cl.* 2.—*p.* 375.

177. When personal bail, or security for money or other property may be demandable from a party in an appeal, and he tender a deposit of money, or Government paper, or other sufficient money security, it shall be accepted instead of Hazirzaminy or Malzaminy security, and kept by the treasurer, till restored, or disposed of as the Court may direct.—*Reg.* 2, 1806, *Sect.* 8.—*p.* 375.

178. The above enactment is silent regarding an assignment of the lands of the party by way of security. The admission of such an assignment is not fair to the respondent as it deprives him of part of his security. The Sudder Court deem such assignment or pledge of the lands of the appellant in lieu of money security inexpedient, and direct that it shall not be received.—*Con. No.* 1024.—*p.* 375.

179. No discretionary power is vested in the Courts with regard to the enforcement or staying execution of decrees for *money or other moveable property* in cases of appeal. In such cases the decree cannot be carried into execution during the appeal, provided the appellant give sufficient security under the provisions of Regulation 13, 1806, Section 12, Clause 2, as above, for performing the decision passed in appeal.—*Con. No.* 106.—*p.* 375.

SECT. XV.

Rules regarding the Property which is pledged as Security, pending an appeal, and the Registry of it.

180. The Judges of the several Courts in which security may be taken, as above, for performing decrees in appeals, are enjoined to see that it be good and sufficient. They will in all cases cause the Nazir or other officer, to deliver in as accurate a statement as can be obtained of such property, and a full report of the enquiry made regarding it; informing him that he will be held responsible for any wilful misstatement in his report.—*Reg.* 13, 1808, *Sect.* 13.—*p.* 376.

181. The following rules are enacted in addition to those in force, regarding the security to be required from parties for the execution of decrees, or staying the execution of judgment in civil suits during an appeal.—*Reg.* 26, 1814, *Sect.* 13, *Cl.* 1.—*p.* 376.

182. All persons who may enter into security bonds for such purpose, are prohibited from transferring or causing to be transferred by sale or gift, or mortgaging any property specified in the Schedule of property on which their security may have been accepted, till the object of the security is fully accomplished.—*Reg.* 26, 1814, *Sect.* 13, *Cl.* 2.—*p.* 376.

183. This prohibition will not affect the legality of any private transfer or mortgage of such property, in cases in which the amount of any demand on the surety which may eventually arise on the bond, shall be duly discharged by him. But no such private trans-

the execution of the security bond and the enforcement of the judgment, will bar the prior right of the Court to hold it answerable for any demand on it, which may eventually arise under the terms of the security bond, and which may not be discharged by the surety.—*Reg.* 26, 1814, *Sect.* 13, *Cl.* 3.—*p.* 376.

184. Property which has been pledged as security for the execution of decrees, cannot be sold, or otherwise disposed of, but with the lien upon it, and if the pledge is connected with a case appealed to the Privy Council, the lien of the Court remains until the appeal is decided.—*Con. No.* 659.—*p.* 376.

185. 186. In order to enable persons to ascertain whether property is thus hypothecated to the Courts, by those who have become security for the execution of decrees, and to check fraudulent transfers of the same, the following rules have been adopted.—*C. O.* 17*th Feb.* 1837. —*p.* 377.

187. Whenever land or immoveable property is pledged as security to the Court, the Nazir will satisfy himself of its sufficiency, and recapitulate the contents of the title deeds in his Kyfeeut, stating that he has inspected them, and that they are sufficient. He will use the Persian form C. —*C. O.* 17*th Feb.* 1837.—*p.* 377.

188. The Nazir will keep a Register of all property pledged as security, agreeably to the form D. and allow those who are desirous of ascertaining whether any property is pledged to the Court to inspect it.—*C. O.* 17*th Feb.* 1837.—*p.* 377.

[All these rules enacted regarding the execution or non-execution of the decrees of Zillah Courts, pending an appeal to the Sudder, are by Act 25, 1837, Section 4, declared equally applicable to suits above the value of 5000 Rupees, decided by Principal Sudder Ameens, when appealed to the Sudder Court.]

SECT. XVI.

Second or Special Appeals from the decision of the Zillah Court or the Principal Sudder Ameen.

189. A single Judge of the Sudder Court is competent of his own authority, to admit a second or special appeal if there appear grounds for it under any of the provisions of Regulation 2, 1825, Section 4, Clause 2.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 4.—*p.* 377.

190. In all orders passed by the Principal Sudder Ameens in the execution of their own decrees, an appeal will lie to the Zillah Court, and a further or special appeal to the Sudder Dewanny Adawlut.—*Reg.* 5, 1831, *Sect.* 22.—*p.* 378.

191, 192. A second or special appeal will lie to the Zillah Courts from the decisions passed by Principal Sudder Ameens in appeals from the decisions of the Moonsiffs and Sudder Ameens.—*Reg.* 5, 1831, *Sect.* 16, *Cl.* 1, 2.—*p.* 378.

193. All orders passed by the Principal Sudder Ameen under the authority of Section 8, Act 25, 1837, in any civil proceedings, whether miscellaneous or summary, and whether the value be above or under 5000 Rupees, are appealable in the first instance to the Zillah Judge; a special appeal will lie to the Sudder Court.—*C. O.* 5*th June*, 1838.—*p.* 378.

194. All the rules in Reg. 26, 1814, Sect. 2 and 3, with any modifications since enacted, and the Rule in Sect. 4, Cl. 2, in that Regulation regarding Special Appeals, are applicable to appeals tried by Principal Sudder Ameens.—*Reg.* 5, 1831, *Sect.* 19, *Cl.* 1.—*p.* 378.

195. A Zillah Judge is at liberty to reject or to admit an application for a special appeal from the decision of a Principal Sudder Ameen without any reference to the Superior Court.—*Con. No.* 336.—*p.* 378.

196. The appellate Courts will be guided in their admission of second or special appeals by the Rules contained in Reg. 26, 1814, Sect. 2; Reg. 19, 1817, Sect. 7, and Reg. 9, 1819, Sect. 3, 4 and 5.—*Reg.* 2, 1825, *Sect.* 4, *Cl.* 2.—*p.* 379.

197. No special appeal will be admitted unless on the face of the decree, or of the documents exhibited with it, (assuming all the facts as stated in the decree,) the judgment appears inconsistent with some established judicial precedent, or some Regulation, or the Hindoo and Mahomedan law in cases in which they apply, or any other law or usage which may be applicable, or

unless the judgment involve some point of general interest, or importance not before decided.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 1.—*p.* 379.

198. In addition to the grounds on which second or special appeals are admissible by the above enactment, such appeals may be admitted, when the judgment appealed from shall appear to be clearly inconsistent with another decree of the same Court, or of another Court having jurisdiction in the same suit, or in a suit founded on a similar cause of action.—*Reg.* 19, 1817, *Sect.* 7, *Cl.* 1. —*p.* 379.

199. A special appeal cannot be admitted to reverse an error in the determination of facts, when the judgment may appear to be manifestly without, or contrary to evidence, since Regulation 26, 1814, Section 2, requires that all the facts of the case must be assumed as stated in the decree.—*Con. No.* 246.—*p.* 379.

200. When exorbitant damages appear to have been given, the appellate Court must exercise its own discretion in determining whether it falls within any of the prescribed grounds for the admission of special appeals or not.—*Con. No.* 246.—*p.* 379.

201. A petition of Special Appeal, until the appeal has been admitted, is to be viewed as a miscellaneous petition, and consequently it is not necessary to issue the notice prescribed in Circular Order, 5th Nov. 1812, which refer to suits admitted and pending.—*Con. No.* 1139.—*p.* 379.

SECT. XVII.

Second or Special Appeals.—Course of Procedure.

202. A copy of the decree appealed against must always accompany the application for the admission of a special appeal.—*Con. No.* 1139.—*p.* 380.

203. When a party, on any of the grounds above stated, is dissatisfied with a judgment passed in a regular appeal, and desires that it be investigated in a second or special appeal, he will present a petition to the Court competent to admit such an appeal, within the period limited for the admission of regular appeals.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 2.—*p.* 380.

204. Such a petition will be written on paper of the prescribed stamp; it will state the specific grounds on which the appeal is solicited; it will be presented either by the appellant or his Vakeel. If by a Vakeel, he will sign it, and certify on the back of it that he has duly considered the grounds stated for admitting the special appeal, and believes them valid.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 3.—*p.* 380.

205. If the appellant shall have omitted to state distinctly the specific ground on which a special appeal is solicited, and it has proceeded from advertence, he may be allowed to supply it by a supplementary petition, drawn up on paper of the prescribed stamp.—*Con. No.* 248.—*p.* 380.

206. If on a consideration of all the circumstance of the case, the Court see reason for admitting a special appeal on any of the grounds stated above, the appellant will be required to furnish the prescribed security. When the security has been furnished, the Court will admit the appeal, and proceed to try it under the rules prescribed for the trial of regular appeals.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 4.—*p.* 380.

207. A decree having been passed against several persons adjudging them and their families to be slaves, and the property of the decree holder, and the decree having been affirmed in the Provincial Court, but a special appeal having been admitted by the Sudder Court, that Court ordered that the execution of the decree should be stayed without demanding security from the appellants. —*Con. No.* 550.—*p.* 381.

208. A Judge, after striking off the file a petition for special appeal, owing to the petitioner or appellants not having furnished security or the eventual costs of appeal, as ordered within the time allowed, cannot readmit the petition without the sanction of the Superior Court.—*Con. No.* 1171. —*p.* 381.

209. The Appellate Court, previously to admitting a special appeal, may call for any docu-

ment, forming part of the record of the case, which they may deem important, independent of the documents presented by the party applying for the appeal.—*Reg.* 9, 1819, *Sect.* 4.—*p.* 381.

210. Nothing, however, in these Sections of Regulation 9, 1819, is intended to make any alteration in the existing rules with regard to time, or the existing forms for the admission of special appeals.—*Reg.* 9, 1819, *Sect.* 6.—*p* 381.

211. The Court competent to receive a special appeal may either try the merits of the case, and pass a final judgment, or refer it back for trial to the Court which passed the original decree, or that given on the first appeal.—*Reg.* 19, 1817, *Sect.* 7, *Cl.* 2.—*p.* 381.

212. The order of the Zillah Judge refusing to admit a second appeal, as well as the judgment he may pass on a special appeal will be final, and not liable to revision by a Superior Court.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 6.—*p.* 381.

213. In a case in which a Zillah Judge had merely written an order for the rejection of a special appeal on the corner of the petition, this was held to be contrary to the regular and established practice of the Courts; and the Superior Court was considered competent to direct the Judge to rehear it.—*Con. No.* 641.—*p.* 381.

214. The Zillah Judge is directed to insert in his column of remarks, the number of special appeals in which he concurred with the Principal Sudder Ameen in confirming or modifying the original decree, and the number in which, differing in opinion with that officer, his decision was reversed, and that of the lower Court upheld or modified.—*C. O. 8th Dec.* 1837.—*p.* 382.

SECT. XVIII.

Second or Special Appeals.—Stamps and Vakeel's Fees.

215. Exhibits filed along with petitions for the admission of special appeals, are not subject to the payment of a fee on being filed.—*Con. No.* 537.—*p.* 382.

216. If the súit in a special appeal be referred back for farther investigation, without a judgment on its merits, the stamp duty paid by the appellant on his petition of appeal, will be returned to him. If the appellant or respondent have appointed a pleader, his fees will be limited to an adequate compensation for his labour not exceeding a fourth of the established fee in a regular suit.—*Reg.* 19, 1817, *Sect.* 8.—*p.* 382.

217. If the Court see no sufficient reason for admitting the special appeal, and *reject* the petition, the appellant will not be entitled to a refund of the stamp duty. But in cases of particular hardship, the Courts have a discretionary power to refund any portion, not exceeding three-fourths, of the stamp duty, to the appellant or his representative.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 5.—*p.* 382.

The Rule regarding Vakeel's fees in special appeals will be found in Reg. 9, 1831, Sect. 7, Cl. 1, 2, 3, 4, (Rules 282, 283, 284, 285, 286, Chapter 2.

SECT. XIX.

Rules to be observed in the Civil Court in cases remanded for farther investigation, or to be tried de novo.

218. When a suit is sent back for retrial, unless the order specially restricts the enquiry to any particular point or points, the whole case must be considered as re-opened.—*Con. No.* 1073.—*p.* 382.

219. When a case is remanded for further investigation, or to be tried de novo, if the vakeels originally employed be in attendance, the Judge will call on them distinctly to state whether they have received any instructions from their clients, and are prepared to go on with the case. If they reply in the affirmative, no farther notice to the parties will be necessary.—*C. O. 3d Aug.* 1838.—*p.* 383.

220. When the vakeel of the plaintiff is not in attendance, or pleads having no specific instruc-

tion from his client, or that he is not prepared to proceed in the case, the Judge will not postpone the case to enable him to refer to his own client, but will serve a notice (App. A. or B.) on the plaintiff, ordering him to proceed according to law. If within six weeks from the date of such service, the plaintiff neglect to prosecute his suit personally or by a vakeel, the Judge will proceed as ordered in Cir. Ord. 5th Nov. 1812, par. 2. [This Cir. Ord. has been superseded by Act 29, 1841,] calling on him to shew cause for not proceeding in the suit; and on his failing to do so, dismiss his suit on default.—*C. O. 3d Aug.* 1838.—*p.* 383.

221. If it be not possible to serve a notice on the plaintiff, the Judge, on receiving the Nazir's return to that effect, will issue a proclamation to be affixed in the Court room, on the door of the plaintiff's dwelling, or in the village he resides in, (according to the prescribed form) requiring him to proceed according to law; and on his failing to do so for six weeks, will proceed to dispose of the case as ordered in the Circular quoted above.—*C. O. 3d Aug.* 1838.—*p.* 383.

222. When the Vakeel originally employed by the defendant is not in attendance, or pleads the want of instructions from his client, or his want of preparedness to proceed with the suit, the Judge will not put off the case till he can make a reference to his client, but cause a notice to be served on the defendant in the usual manner (according to the prescribed form C. and D.) and observe generally the rules laid down in Regulation 2, 1806, Sections 2 and 3, which modifies Regulation 3, 1803, Section 5.—*C. O. 3d Aug.* 1838.—*p.* 384.

223. Nothing however stated above will exempt the Vakeels originally employed from conducting the suit, on its return for further enquiry or to be tried de novo, if such be the wish of their clients; and the vakeels engaged during the original investigation are not entitled to any additional fee, for the extra labour inposed on them in the farther inquiry or re-trial; the original fee being considered a full remuneration for their services, until the case has been finally disposed of; and the Courts will not award additional compensation on such account.—*C. O. 3d Aug.* 1838.—*p.* 384.

224. When the appellate Court thus remands a suit for retrial, its order will specify that the Court to which it is so referred shall pass such order as may appear to it proper and just, subject to appeal, regarding the payment of its own costs, and of those incurred by the parties in carrying it through the different Courts since the date of the original action. But for special reasons, the appellate Court may direct that the costs incurred up to the date of its decision shall be borne either by one of the parties, or by the parties respectively, and may direct such payment.—*C. O. 4th Nov.* 1836.—*p.* 385.

225. Cases remanded for farther investigation, or to be tried de novo, must receive the earliest attention of the Courts.—*C. O. 7th July*, 1837.—*p.* 385.

226. Cases remanded for farther investigation, or to be tried de novo, are to be entered according to the years of their institution, and not under those in which they were sent back. The date of the order remanding them, as well as that on which they reached the Courts, should be given in the column of remarks, with a brief report of the measures since adopted to get them ready for hearing. An explanation will also be given of the cause of delay in disposing of them.—*C. O. 7th Dec.* 1838.—*p.* 385.

227. A return agreeably to the form annexed will be submitted regularly every month.—*C. O. 19th March*, 1841.—*p.* 385.

228. The return will shew the number of suits sent back every month by the Zillah or City Judges for retrial to the Uncovenanted Judges. The headings will enable the Sudder Court to ascertain the specific grounds on which the judgments appealed against have appeared erroneous or defective.—*C. O. 19th March*, 1841.—*p.* 385.

229. This return will enable the Zillah and City Judges, as well as the Superior authorities, to form a correct opinion of the character, intelligence, or legal qualifications of the Uncovenanted Judges.—*C. O. 19th March*, 1841.—*p.* 385.

230. A similar return will be prepared of the judgments sent back by order of the Sudder Court to the Zillah and City Judges and the Principal Sudder Ameens.—*C. O. 19th March*, 1841.—*p.* 385.

SECT. XX.

Review of Judgment by the Zillah Judge.

231. Any person considering himself aggrieved by a decree passed in a regular suit or appeal by a Zillah Court, from which decree no farther appeal may have been admitted by a superior Court, and who, from the discovery of new matter or evidence, which could not be previously adduced, and for other good reason, may desire a review of the judgment passed against him may present a petition for that purpose to the Court which passed the decree. The petition must be written on the stamp as directed (in No. 7, Schedule B.) and presented within three months from the delivery or tender of the decree, the period to be calculated in the manner prescribed for regular appeals.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 2.—*p.* 386.

232. The Sudder Court has decided, that a Review of Judgment may also be granted in reference to *Summary* Suits.—*Con. No.* 216.—*p.* 386.

233. The spirit of the above clause is applicable to miscellaneous cases.—*Con. No.* 1249.—*p.* 386.

234. The order of a Zillah Judge, dismissing a suit on default or without an investigation of its merits, is open to a review under the provisions of Reg. 26, 1814, Sect. 4.—*Con. No.* 1269.—*p.* 386.

235. But the Court is at liberty to admit an application for a Review after the period above named, if the parties can shew good reason for not having preferred it before. In such cases, the Court will proceed with great caution, and distinctly record on its proceedings, its reasons for admitting it after the limited period. If the Court is of opinion that there are not sufficient grounds for a Review, it will reject the petition, and the order of rejection will be final. If the Judge should be of opinion that the review applied for is necessary to correct an error or omission, or is otherwise requisite for the ends of justice, he will report the same to the Sudder Dewanny Adawlut, with a statement of the grounds of his opinion, and a copy of the petition for review, and of the decree formerly passed in the case.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 2.—*p.* 387.

236. The Court of Sudder Dewanny Adawlut may grant the review desired, if justice seem to demand it. They will record in each instance their reasons for granting the review, and issue any instructions regarding the admission or rejection of evidence in the case, which may appear just and necessary.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 3.—*p.* 387.

237. The order of a Zillah Court rejecting the petition for review in the first instance, or of the Sudder Court, refusing to sanction a review when applied for by a lower Court, will not be construed to preclude the party from instituting a regular appeal (if the case be appealable) in a competent Court, subject to the conditions and rules prescribed by the Regulations in force for the admission of such appeals.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 4.—*p.* 387.

238. The Judge is not at liberty to review his orders, without the previous permission of the Sudder Court, in cases in which the application for review may have been presented within the three months.—*C. O. 5th Dec.* 1834.—*p.* 387.

239. Applications for a Review of Judgment should not be made, unless the Judge is satisfied that a review is necessary for the ends of justice. The grounds on which he has come to that conclusion, must be stated. If the plea be the discovery of new matter or evidence, not within the knowledge of the party, or not obtainable when the judgment was passed, the manner in which the new matter was discovered, the cause of the inability to produce it in the proper time, with the proof of the fact, should be detailed, as well as the effect the new matter would have in impeaching the propriety of the former judgment. This will shew generally the nature of the information required by the Court to enable them to judge of the necessity of complying with the recommendation.—*C. O. 27th Nov.* 1835.—*p.* 387.

240. Every *petition for a review of orders rejecting applications for a review of judgment*, is in fact a second petition on the same subject, and ought to be governed by the rules applicable to the petitions for a review in the first instance. The Sudder Court has therefore resolved, that if the pe-

tition be presented within three calendar months from the delivery or tender of the decree appealed against, it may be written on stamp paper of the value of Two Rupees. If after the lapse of the three months, on stamp paper prescribed in Regulation 10, 1829, Schedule B. Art. 8, with reference to the amount or value of the property adjudged against the party desiring the review, in like manner as if a regular appeal were preferred from such judgment as required by Reg. 2, 1825, Sect. 2, Cl. 1.—*Con. No.* 842.—*p.* 388.

241. It is the intention of these rules, that application for a Review of Judgment should be received as far as possible and disposed of by the Judge who has passed the decision (subject to the regular appeal, if the case be appealable).—*Reg.* 2, 1825, *Sect.* 3.—*p.* 388.

242. But when a Zillah Judge may have obtained leave of absence for a period exceeding six months, and it appears probable that he will remain away in excess of that period, it is competent to his successor under the terms of the above section, to receive and act on any applications for a Review of judgment, without waiting for the expiration of the six months.—*C. O. 7th June,* 1839. —*p.* 388.

243. Whenever it may be necessary to apply for authority to admit a Review of judgment under these circumstances, the particular grounds for supposing that the Judge who passed the decision, will not return till after six months must be stated, in order that the Sudder Court may be enabled to form an accurate opinion of the propriety of granting the Review or otherwise.—*C. O. 7th June,* 1839.—*p.* 388.

244. A judgment passed by an Additional Judge, during the time he officiated for the Judge of the district, is to be reviewed by the former, if still attached to the district, and not by the Judge.—*Con. No.* 1123.—*p.* 388.

245. When a special appeal from the decision of the Zillah Judge in appeal from the original decision of a Principal Sudder Ameen has been rejected by the Sudder Court, the Zillah Judge may, under Regulation 26, 1814, Section 4, apply for a Review of his own judgment. When the Sudder Court, under the power vested in them by Regulation 9, 1831, Section 4, Clause 2, has confirmed a decision of a Zillah Judge, the order is to all intents and purposes a judgment, open to review by the Sudder Court only.—*Con. No.* 1057.—*p.* 388.

SECT. XXI.

Review of Judgment by the Zillah Court.—Stamps.

246. With the view of discouraging the presentation of numerous petitions for a Review of Judgment to the serious hindrance of other business before the Civil Courts, it is ordained, that such part of Reg. 26, 1814, Sect. 4, Cl. 2, which prescribes that the petition shall be written on stamp paper of the value prescribed in Reg. 1, 1814, Sect. 18, (now) Reg. 10, 1829, Art. 7, Sch. B. will be applicable only to petitions for a Review of Judgment presented within three months after the delivery or tender of the decree. When a petition is presented after the lapse of three months, it will be written on the stamp prescribed in Reg. 10, 1829, Art. 8, Sch. B. of that Regulation, with reference to the amount of the value adjudged against the party desiring the revision; unless the party be a pauper.—*Reg.* 2, 1825, *Sect.* 2, *Cl.* 1.—*p.* 389.

247. If the petition for a Review of Judgment be rejected, the petitioner will not be entitled to receive back the stamp duty, paid for the paper on which his petition was written. But if it has been written on a stamp of the higher value, the Court, if it consider the forfeiture excessive, may order a refund of any portion of it not exceeding three-fourths.—*Reg.* 2, 1825, *Sect.* 2, *Cl.* 2.—*p.* 389.

248. When the rejected petition may have been written on the lower stamp, and the Court rejecting the petition may consider it groundless and litigious; it may in addition to the forfeiture of the small stamp duty, impose a fine not exceeding the value of the higher stamp.—*Reg.* 2, 1825, *Sect.* 2, *Cl.* 3.—*p.* 389.

249. When the petition for Review has been admitted, the Court reviewing it will pass such order regarding the stamp duty paid by the petitioner as may be just and proper, whether for his

reimbursement by the opposite party as part of the costs of suit, or for a refund, not exceeding three-fourths by Government.—*Reg.* 2, 1825, *Sect.* 2, *Cl.* 4.—*p.* 389.

250. The enhanced cost attending the presentation of a petition after three months, is in reference only to such delay, and the inconveniences which may attend it. The Court is competent to reject it on any ground, it not being requisite to admit a review unless the parties preferring it can shew reasonable ground for not having preferred it within the limited period.—*Con. No.* 490. —*p.* 390.

251. Documents filed with applications for a Review of Judgment, should be considered as exhibits, and made liable as such, to the rule contained in Regulation 10, 1829, Sch. B Art 5, in the same manner as if they had been entered on the proceedings of the original suit, or when it was before the Court in appeal, regular or special.—*Con. No.* 1058.—*p.* 390.

SECT. XXII.

Review of Judgment by Principal Sudder Ameens.

252. These provisions relative to a Review of Judgment will be held applicable to original suits and appeals tried by Principal Sudder Ameens.—*Reg.* 5, 1831, *Sect.* 19, *Cl.* 1.—*p.* 390.

253. If the Principal Sudder Ameen is of opinion, that the review ought to be admitted, he will report the case to the Zillah Court, who may grant permission under the same rules as are prescribed for similar applications to the Sudder Dewanny Adawlut.—*Reg.* 5, 1831, *Sect.* 19, *Cl.* 2.—*p.* 390.

254. The order of a Zillah Judge dissenting from a Principal Sudder Ameen, as to the propriety of a review of the latter's judgment on a reference under Regulation 5, 1831, Section 19, Clause 2, is final and not open to revision by the Sudder Court.—*Con.* 14*th May*, 1841.—*p.* 390.

255. All applications for a Review of Judgment in suits decided by the Principal Sudder Ameen, will be made direct to that officer, who will proceed according to Regulation 5, 1831, Section 19. When recommended to be admitted in suits above 5000 Rupees, the Principal Sudder Ameen will forward the application direct to the Sudder Court.—*C. O.* 23*rd Feb.* 1838.—*p.* 390.

256. In all suits above the value of 5000 Rupees referred to the Principal Sudder Ameen, any application for a Review of Judgment on his decision will be made by the Principal Sudder Ameen to the Sudder Dewanny Adawlut, and will be conducted in all respects as if it was an application from a Zillah Court.—*Act* 25, 1837, *Sect.* 4.—*p.* 390.

257. The rules and observations in the Circular Order of the 7th June, 1839, (Rules 242 and 243 of this Chapter,) are equally applicable to the Court of Principal Sudder Ameen in such cases. —*C. O.* 7*th June*, 1839.—*p.* 390.

SECT. XXIII.

Appeal on an award of Arbitration.

258. If an appeal be preferred against the decision of a subordinate Court founded on an award of arbitration, it will be dismissed with costs, unless it be proved on the oath of two credible witnesses that the arbitrators have been guilty of gross corruption and partiality.—*Reg.* 5, 1793, *Sect.* 28.—*p.* 391.

259. Appeals against decisions founded on an award of arbitration, are not to be dismissed under the above Section without having been admitted.—*Con. No.* 48.—*p.* 391.

CHAPTER VI.

EXECUTION OF DECREES.

SECT. I.

Execution of Decrees by Zillah Courts.

1. The Zillah Courts will not be required to carry into execution any decree passed after the 1st of February 1815, except in conformity with the following rules and provisions.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 4.—*p.* 392.

2. Any person desirous of obtaining the execution of a decree, will appear in person or by Vakeel, before the Court which passed the decree, and present a petition written on stamp paper as prescribed by Regulation 10, 1829, Schedule B. Article 7, praying for the execution of it.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 5.—*p.* 392.

3. The petition will state the number of the suit, the names of the parties, the date and substance of the decree, whether any appeal has been preferred or admitted, and whether any and what adjustment has taken place between the parties. It will contain a statement of the specific amount due under the decree, whether for costs of suit or otherwise, and the name of the individual against whom the decree is sought to be enforced.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 6.—*p.* 392.

4. The Court, after causing the purport of the petition to be compared with the decree in the record of the suit, will proceed to execute it according to the Regulations.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 7.—*p.* 392.

5. The Court will cause the decree to be executed, if it be for a Zemindary, independent or dependant talook, or other real property, by causing possession of it to be given to the decree holder; if it be for personal property, or for a sum of money, by causing the specific thing to be delivered, or the value of it, or the sum of money decreed, to be levied by public sale of a sufficient portion, or if necessary, of the whole of the houses, lands, and other effects, real or personal, of the defendant, or by the *confinement* of his person, or by both processes.—*Reg.* 4, 1793, *Sect.* 7.—*p.* 392.

6. But if the suit has been decided ex-parte, or more than a year has elapsed between the date of the decree and the application for its execution, or if the execution is sued against parties being the heirs or representatives of the original parties in the suit, or against one of several persons affected by the decree, or if there is reason to believe the matter in dispute has been adjusted between the parties in one way or another, the Court, instead of ordering the immediate execution of the decree, will issue a notice to the party against whom execution is prayed, calling on him to shew cause within a given time why it should not be executed. If on such notice the party shall not attend in person or by Vakeel, or not shew sufficient cause against the execution of the decree, the Court will cause the judgment to be satisfied forthwith. If the party attend in person or by vakeel and offer objections to the enforcement of the decree, the Court will issue such orders as from all circumstances may appear proper.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 8.—*p.* 393.

7. The provision in the case above is meant to be imperative in the cases referred to, and not to leave a discretion with the Court. To guard against abuses, however, it is now declared, that whenever it be proved that the party against whom the decree was passed, or in the event of his death, his legal representative is about to remove or dispose of the property from which the decree should be satisfied, the Court, as directed in Regulation 26, 1814, Section 15, Clause 8, will require se-

as provided for in similar cases, while the suit is depending, by Regulation 2, 1806, Sect. 5.—*Reg.* 7, 1825, *Sect.* 7.—*p.* 393.

8. In cases in which an itelanama in lieu of a hookoomnama has been issued to the defendant to shew cause, &c. under Regulation 26, 1814, Section 15, Clause 8, and Regulation 7, 1825, Section 7, and such defendant be not met with, it is incumbent to issue a proclamation; but the object would be best answered by including its purport in the notice, which should be accompanied by a perwannah to the Nazir, directing him, if it cannot be personally served, to affix the process to the defendant's house.—*Con. No.* 1236.—*p.* 393.

9. But the Courts are not prohibited from issuing process of execution for any fees or costs due to Government, or to Vakeels. In such cases, as well as in suits in which a party may have pleaded as a pauper, the Courts will proceed without any application from the parties to enforce judgment, so far as relates to the recovery of fees or costs due to Government, or to pleaders.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 9.—*p.* 394.

10. If the holder of a decree has made the prescribed application, and no property is forthcoming from which the decree passed in his favour can be satisfied, he would have an equitable claim to attach the property receivable by his debtor, under a judgment in favour of the latter, and to cause execution accordingly, unless good reason can be shewn by the party against whom the judgment has been passed.—*Con. No.* 293.—*p.* 394.

11. Unproved claims of B against C, may be considered as assets available in the execution of A's decrees against B, and be sold by auction; when the auction purchaser would acquire the right of demanding payment from C. and of suing him in the event of non-payment.—*Con. No.* 1248.—*p.* 394.

12. The same principle is applicable to proved claims in respect of which a decree has already passed; the auction purchaser would, in this instance, possess a right to sue out execution of the decree in the same manner as the original decree holder.—*Con. No.* 1248.—*p.* 394.

13. Pensions granted by Government are not liable to attachment in satisfaction of decrees of Court.—*Con. No.* 788.—*p.* 394.

14. When personal property is sold in execution of a decree, it is not to be delivered to the purchaser, until he has paid for it. If the person conducting the sale, deliver it before payment, he does so at his own personal risk. He will be compelled to make good the price, and he will have to recover it from the purchaser by the regular course of law.—*Con. No.* 787.—*p.* 394.

15. A Zillah Judge is not competent to attach the salary of a Military officer in execution of a decree of Court.—*Con. No.* 902.—*p.* 394.

16. The Salaries of public servants may be attached in execution of a decree. When the disbursing officer is called on to assist in the attachment, he is required to give his assistance. Should the amount of salary be insufficient to satisfy the decree, process can be issued against the person of the defendant.—*Con. No.* 827.—*p.* 394.

17. A pauper decree holder should be put in possession of the property decreed to him by a Government officer, the cost being made chargeable to the party cast.—*Con. No.* 1186.—*p.* 394.

18. All papers relative to the execution of the same decree, should be kept in one *nuthee*.—*C. O.* 28*th May*, 1824.—*p.* 395.

19. 20. The Register of applications for the execution of decrees and of proceedings thereon, should be kept in a uniform manner according to a form prescribed in the body of the work; but the Judge may introduce any additional columns or subdivisions.—*C. O.* 28*th May*, 1824.—*p.* 395.

21. The Zillah and City Judges may refer to the Principal Sudder Ameens subordinate to them, applications for the enforcement of decrees, to be executed by the Principal Sudder Ameens, under the rules applicable to such cases.—*Act* 5, 1836.—*p.* 395.

22. An order passed on the execution of a decree, in regard to interest, wassilut, or other matter in dispute, and carrying out the original intentions of the decree, cannot be considered as a new cause of action, and is not subject therefore to a regular suit.—*C. O.* 11*th June*, 1839.—

23. An order passed in execution of a decree in regard to mesne profits, interest, or other matter in dispute, must be looked on as a necessary process for carrying into effect the original intention of the Court passing the decree, in respect to a point on which it may have pronounced a formal judgment and cannot be considered as constituting a new cause of action.—*Con. No.* 1129.—*p.* 396.

SECT. II.

Sale of Land in execution of a Decree of Court, by the Revenue Authorities.

24. When a Civil Court may have occasion to sell assessed lands in satisfaction of a Decree, it will transmit a copy of the decree, and an English translation, to the Board of Revenue.—*Reg.* 45, 1793, *Sect.* 2.—*p.* 396.

25. The papers mentioned in Section 2, as above, must now be sent to the Commissioner of Revenue.—*Con. No.* 897.—*p.* 396.

26. The Board will proceed to dispose of such portion of the lands as may be necessary to satisfy the decree.—*Reg.* 45, 1793, *Sect.* 3.—*p.* 396.

27. The public jumma to be charged on the land to be sold, will be adjusted on the principle prescribed in Section 10, Regulation 1, 1793.—*Reg.* 45, 1793, *Sect.* 4.—*p.* 396.

28. The Board may order the Collector to attach the lands to be sold, either through an Ameen, or through the nearest Tehseeldar. The officer thus placed in charge of the lands will collect the rents or revenue, prevent waste by the proprietor, and furnish information for the adjustment of the jumma.—*Reg.* 45, 1793, *Sect.* 5.—*p.* 396.

29. The expences attending the attachment and sale will be charged to the proprietor, and defrayed either from the collections, or from the proceeds of the sale.—*Reg.* 45, 1793, *Sect.* 6. —*p.* 396.

30. The proprietor of the land to be sold, may appoint an agent to keep a counterpart account of the receipts and disbursements. The Ameen is to collect according to existing engagements, without alterations, and he will be liable to a prosecution for any alteration or infringement of those engagements. / Where no engagements exist, he will collect according to the Pergunnah rates. He will likewise be liable to a prosecution by the proprietor, or farmer, for embezzlement or injury done to the estate while in his charge.—*Reg.* 45, 1793, *Sect.* 7.—*p.* 397.

31. The rules given above will be equally applicable to Tehseeldars in similar circumstances.—*Reg.* 45, 1793, *Sect.* 8.—*p.* 397.

32. If a proprietor, or farmer, or his surety, resist or cause to be resisted, the Ameen thus appointed, the Collector will proceed against him as he is directed to do by Regulation 14, 1793, against proprietors and others who may resist his process. The rules in that Regulation are equally applicable to proprietors, farmers, sureties, and others who may resist the officer appointed under this Regulation to collect the rents. Any other description of person so resisting, will be subject to the same process and punishment which is ordained for sureties so resisting.—*Reg.* 45, 1793, *Sect.* 9.—*p.* 397.

33. The proprietor or farmer, on receiving a written and sealed, and duly signed order from the Collector, will attend personally, or depute an Agent to attend the Ameen or Tehseeldar, with accounts of the collections and jumma of the lands to be sold, or of the estate to which they belong, that the revenue may be duly adjusted. Any proprietor or farmer refusing so to do, will be subject to a daily fine, till he complies. The Collector will report the fine for confirmation to the Governor General. The fine will be levied by the process prescribed for the recovery of arrears of Revenue.—*Reg.* 45, 1793, *Sect.* 10.—*p.* 398.

34. The proprietor or farmer, on receiving a written requisition from the Collector, will cause the Putwarry, or any other Zemindary officer to attend the Ameen or Tehseeldar, and furnish the accounts and information necessary to adjust the jumma. On his omission or refusal, he will be subject to the same penalty as for a breach of the rules in the preceding Section.—*Reg.* 45, 1793, *Sect.* 11.—*p.* 398.

35. Previous to the sale of land, a publication is to be issued, specifying the jumma at which the lands, or the several lots of them will be disposed of, the place, date and hour of sale, and the proportion of the revenue payable for the current year which will fall to the purchaser, or, if the exact proportion cannot be ascertained, the rules by which the amount is to be adjusted. The proclamation will be fixed up one month before the sale at the Civil Court, the Collector's office, the principal town or village in the lands to be sold, and the office of the Board of Revenue. All the conditions of the sale will be fixed up in the sale room, for three days before the sale, and on the day of sale.—*Reg.* 45, 1793, *Sect.* 12.—*p.* 398.

36. The adjustment of the jumma alluded to in Section 12, is applicable only to portions of estates paying revenue to Government direct, and not shikmee or dependent talooks.—*Con. No.* 1194.—*p.* 398.

37. A deposit of five per cent. on the amount of the purchase money will be made by the purchaser at the time of the sale. If he omits to discharge the purchase money by the stipulated day, the deposit will be forfeited, and the lot resold. The first purchaser will make good all deficiencies on the second sale, and forfeit all profits which will be carried to the credit of the proprietor.—*Reg.* 45, 1793, *Sect.* 13.—*p.* 398.

38. If the first purchaser refuse or omit to make the deposit, or refuse or omit to pay within the required time, the deficiency or the expences of the re-sale, it will be levied from him by the process prescribed for enforcing decrees of the Civil Courts.- *Reg.* 45, 1793, *Sect.* 14.—*p.* 399.

39. The purchaser will not be liable for any arrears or suspensions of revenue due to Government from the lands prior to the year in which the purchase may be made, unless otherwise stipulated in the conditions. Arrears not so stipulated to be made good by the purchaser, will be recovered by a suit in the Civil Court. The defaulting proprietor may, however, transfer his right to such arrears to the new purchaser.—*Reg.* 45, 1793, *Sect.* 15.—*p.* 399.

40. The rules in the preceding Sections are to be considered applicable to rent free lands as far as applicable; but the purchaser succeeds only to the rights of the former proprietor, and the transfer will not bar any claims of Government for the recovery of public dues from him.—*Reg.* 45, 1793, *Sect.* 17.—*p.* 399.

41. In view to the nature of tenures in the Province of Benares, and the numerous subordinate titles to land that exist within the same talook or zemindary or village, and the revenue of which is often payable to more than one or more proprietors, it is to be understood that the purchaser of lands thus situated, is to be considered as having succeeded to the proprietary rights only of the party or parties on whose account the sale is declared to be made, without affecting the other proprietary titles within the tenure.—*Reg.* 20, 1795, *Sect.* 19.—*p.* 399.

42. The Collector, on completing the sale, will make the usual entries in the Registers.—*Reg.* 45, 1793, *Sect.* 18.—*p.* 399.

43. The public sale of Putnee and Durputnee Talooks, in execution of decrees of Court, must be conducted by the Collector.—*Con. No.* 349.—*p.* 400.

44. Shikmee, and other talooks, must be sold in execution of decrees by Collectors.—*Con. No.* 921.—*p.* 400.

45. As all lands which are not actually under attachment, are liable to be sequestered by the Supreme Court, it is ordered that whenever the Zillah Courts may have recourse to the sale of land for decrees of Court, and may apply to the Revenue Officers to conduct the sale, the Courts will depute a chuprassy or other officer to attach the land, and hold it in sequestration till the sale be effected or countermanded.—*C. O. 17th Feb.* 1816.—*p.* 400.

46. In such cases, the person in possession of the land need not be divested of the management of it, till the Revenue authorities may take measures for that purpose. But an order under the seal of the Zillah Court, directing the attachment, should be fixed up on some part of the property, and the officer charged with it should remain on the premises till the attachment is withdrawn or countermanded.—*C. O. 17th Feb.* 1816.—*p.* 400.

47. This deputation of a chuprassy having been productive of needless expence to the parties,

it is ordered that in directing the attachment as above of land or other real property, the Court will exercise a discretion in deputing a chuprassy to remain in charge of it, or not. In adopting or omitting this precaution, the Courts will be guided chiefly by the wish of the party at whose instance the property is attached, by its value, and by any other peculiar circumstances of the case. —*C. O. 5th Sept.* 1834.—*p.* 400.

48. When a sale of lands may be ordered in satisfaction of a decree, the Court which passed the decree, or to which the enforcement of it may be committed, is empowered, if the amount of the decree be discharged, or for other good reason, to countermand or postpone the sale by issuing a precept to the Revenue officer. The Court will state in the precept its reasons for countermanding or postponing the sale. If the sale be postponed, it may fix a date for the sale of them. The Revenue authorities will conform to the orders for countermanding or postponing the sale thus received.—*Reg.* 45, 1793, *Sect.* 16.—*p.* 400.

49. The provisions contained in Reg. 7, 1825, Sect. 3, Cl. 7, are applicable to all public sales of land by Collectors in execution of decrees of Court; and the following additional rules are prescribed in modification of those now in force.—*Reg.* 7, 1825, *Sect.* 4, *Cl.* 1.—*p.* 400.

50. When it may be necessary to have recourse to a sale of landed property in execution of a decree, and the land pointed out by the decree-holder, may be such as the Civil Court is not empowered to sell without application to the Revenue officers, the Court will transmit to the Revenue Board (Revenue Commissioner) a copy or translation of the decree with a statement of the lands which the decree-holder may point out as belonging to the person from whom the amount of the decree may be demandable.—*Reg.* 7, 1825, *Sect.* 4, *Cl.* 2.—*p.* 401.

51. The Board of Revenue, on the receipt of the statement, will proceed as directed in Regulation 45, 1793, and instruct the Collector to select for sale any part of the lands included in the statement, which it may be most convenient to sell in execution of the decree, and which may be sufficient for that purpose.—*Reg.* 7, 1825, *Sect.* 4, *Cl.* 3.—*p.* 401.

52. 53. Lands which may be temporarily attached by Government, for reasons of state, will not be liable to be sold in execution of decrees or for the realization of fines while under attachment. In such cases Government will make an equitable arrangement for the satisfaction of the decrees of the Civil Courts.—*Reg.* 3, 1818, *Sect.* 10, *Cl.* 2 *and* 3.—*p.* 401.

54. No execution of a decree will hold beyond the rights of the party against whom it may have been passed. Consequently if B. has not been a party in a suit instituted by C. against A., B. cannot be ousted from his land in execution of the decree passed in favour of C.—*Con. No.* 744.—*p.* 401.

55. The rights and interests of a jotedar may be sold in satisfaction of a decree given against him.—*Con. No.* 890.—*p.* 401.

56. In case of a sale of property in execution of a decree being reversed, and the deposit (previously forfeited to Government) ordered to be restored; the Revenue authorities are bound to comply with the Court's order for payment, appealing therefrom, if dissatisfied with it.—*Con. No.* 1110.—*p.* 401.

SECT. III.

Sale of Houses, Orchards, Gardens, or small portions of land in execution of a Decree of Court, by the Civil Authorities.

57. Such parts of Regulation 45, 1793, and 1795, and 1803, or any other Regulation regarding the sale of land in execution of Decrees of the Civil Court, as require that the sale shall be made by Revenue officers, are modified as follows:—*Reg.* 7, 1825, *Sect.* 2, *Cl.* 1.—*p.* 402.

58. The rules in Reg. 45, 1793, will not apply to the sale of Houses, Gardens, Orchards, and small portions of rent free land, in execution of a decree. The sale of these will be made as heretofore by order of the Court, or officer empowered to enforce the decree, without application to the Board of Revenue or the Revenue Authorities.—*Reg.* 7, 1825, *Sect.* 2, *Cl.* 2.—*p.* 402.

59. The Judicial authorities who are empowered to enforce a decree by sale, may cause the

sale of such House, Garden, &c. in execution of a decree in like manner as they are authorized to cause the sale of personal property liable to be sold in execution of a decree.—*Reg.* 7, 1825, *Sect.* 2, *Cl.* 3.—*p* 402.

60. The Sudder Court thus construes this enactment: Houses, Gardens, Orchards, and small portions of land, exempt from the public revenue, are to be sold in the same manner as personal property, by the Civil Court. But larger portions of land exempt from public assessment, and all land paying revenue to Government, however small, not being Orchards or Gardens, must be sold through the Revenue authorities.—*Con. No.* 933.—*p.* 402.

61. Crops grown on lands allowed to village Chowkeedars for their maintenance, cannot be exempted from liability to sale in satisfaction of decrees, against their owners.—*Con. No.* 1212.—*p.* 402.

62. The Judicial authorities may employ the Nazir in the sale of such Houses, Gardens, &c. under this Regulation.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 1.—*p.* 402.

63. The Nazirs who are thus employed in the attachment and sale of property, are not entitled to any Commission on the proceeds of such sales.—*Con. No.* 509.—*p.* 402.

64. In all cases of attachment and intended sale, whether of personal or landed property, as above described, in execution of a decree or judicial process, a proclamation with full particulars will be made in the current language of the country, at least thirty days before the day of sale, exclusive of the day of sale, and the date of the proclamation.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 2.—*p.* 402.

65. Such proclamation will be made by beat of drum, on the spot where the property is situated, and a written notification will be affixed in some conspicuous place within the village or town, in the cutcherry of the Moonsiff, of the Collector of the district, and of the Court which may have ordered the sale. When the sale is ordered by a Sudder Ameen, the notification will be affixed in his cutcherry.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 2.—*p.* 403.

66. The usual process for attachment and sale may be issued successively, or simultaneously, as the Court may think proper with reference to the case.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 3.—*p.* 403.

67. No person can be compelled, against his will, to take charge of property distrained or attached in execution of a decree. If any one should take charge of property voluntarily, he will of course become responsible for the loss or injury it may sustain, and will be liable to prosecution before the Civil Court by a regular suit for damages; but no summary proceedings can be instituted against him.—*Con. No.* 958.—*p.* 403.

68. Generally, the person at whose instance the property is distrained or attached, must be considered answerable for the safe custody of it during the period of distraint or attachment.—*Con. No.* 958.—*p.* 403.

69. The prohibition contained in Regulation 5, 1812, Section 14, against the sale of implements of agriculture, relates merely to sales for arrears of rent or revenue; such property may be sold in execution of a decree against which no such prohibition exists.—*Con. No.* 962.—*p.* 403.

70. If the purchaser of property sold by the Officers of the Court in execution of a decree refuses to pay the purchase money, and to take possession of the property, and a second sale takes place, the Judge will realize the amount bid at the first sale by the process prescribed for enforcing a decree of Court.—*Con. No.* 554.—*p.* 403.

71. When a purchaser refuses to take possession of the property purchased, within a reasonable time, after possession has been tendered him, he will be warned that he must abide the consequence; and the purchase money will be paid to the decree holder.—*Con. No.* 532.—*p.* 403.

72. A decree-holder, purchasing property brought to sale, in satisfaction of his decree, may file his receipt for the amount of his claim, in lieu of an equivalent of purchase money, provided the claims of other parties and the demands of Government for revenue are not compromised thereby. The same rules are to be observed in regard to the delivery of the property to him as would be observed in regard to any other purchaser. This applies equally to sales made by the Civil or by

73. 74. 75. 76. In executing a decree, if no purchaser be forthcoming for a house as it stands, and individuals should signify their willingness to purchase the materials, it is illegal to cause them to be detached from the building. The same rule will apply to the case of trees; they ought not to be cut down, till after they shall have been sold. No hardship can result from this rule, as the decree-holder would always have the option of purchasing it, by filing his receipt for the amount in Court.—*Con. No.* 1227.—*p.* 404.

77. 78. 79. When the decree-holder of a decree of a foreign Court, or of one passed in a non regulation province, is desirous of suing out execution in a regulation province, he may institute a suit in the Court of the Regulation province against the opposite party, founded on the judgment already passed in his favour.—*Con. No.* 1133.—*p.* 404.

80. If A on becoming security for B, designates himself proprietor of certain estates, without expressly stating that these estates are pledged for the debt, A may legally alienate this property during the continuance of his liability for the security, into which he has entered.—*Con. No.* 1017.—*p.* 405.

SECT. IV.

Sale of Property in another Jurisdiction.

81. 82. 83. It is ordered that upon ascertaining that an application for the sale of property lying in another jurisdiction should be complied with, the application will be transmitted to the Judge of the district in which the property to be brought to sale is situated. The whole of the proceedings, and the incidental investigations will be conducted by that Court in the same manner as the Court issuing the process would have done, if the property had been in its jurisdiction. This rule is applicable to all sales whether made with or without the intervention of the Revenue Authorities.—*C. O. 8th May,* 1840.—*p.* 405.

84. The Sudder Court is pleased to extend the Circular Order above to subordinate as well as to the Zillah Courts.—*C. O. 24th Sept.* 1841.—*p.* 405.

85. The subordinate Courts will be guided in acting on the Circular referred to by the principle of Construction No. 1235. The Principal Sudder Ameens and Sudder Ameens, will forward the application with a proceeding under their seal and signature to the Judge of the Zillah or City Court within whose jurisdiction the property lies; while the Moonsiffs will send it through the channel and under the signature of the Judge of their own district.—*C. O. 24th Sept.* 1841. —*p.* 405.

SECT. V.

Claims to the Land advertised for sale, in execution of Decrees, and Objections to the sale of it.

86. If any claim is preferred to the property advertised to be sold through the agency of the Judicial authorities, or any objection is offered to the proposed sale, within the period of the proclamation, it shall be enquired into by the Court, which has ordered the sale, or it may be referred to a Sudder Ameen or a Moonsiff. If it appear necessary, the time of sale may be postponed till the claim or objection has been disposed of. But if the representation of the claim appears to have been designedly and unnecessarily delayed with a fraudulent intention, to obstruct the ends of justice, the sale will not be postponed; but the claimant will be left to prosecute his claim in the Civil Court.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 6.—*p.* 406.

87. Appeals from Orders passed by the Principal Sudder Ameens, under Regulation 7, 1825, Section 3, Clause 6, in execution of their own decrees, in suits above the value of 5000 Rupees, will lie direct to the Sudder Court.—*Con. No.* 1148.—*p.* 406.

88. If a claim be preferred or an objection offered against the sale of the lands proposed to be sold by the Collector, as not belonging to the person answerable for the decree, the Collector will communicate such claim, with any information his official records may furnish, to the Court which applied for the sale, and will be guided by the instructions he may receive in answer in proceeding

89. The circumstance of an estate being recorded in the Collector's Records in the name of another person than his, against whom the execution of the decree was issued out, is not sufficient to warrant the Collector to decline bringing it to sale, unless a claim were preferred or objection offered, in which case the Collector should proceed in the manner laid down in Clauses 4 and 5, Section 4, Regulation 7, 1825.—*Con. No.* 648.—*p.* 406.

90. Claims advanced for property advertised for sale under orders of a Court, come exclusively within the cognizance of the Court ordering the sale. When such claims are preferred to the Collector, it is incumbent on him to forward them for decision to the Court.—*Con. No.* 794.—*p.* 406.

91. 92. No power is vested in a Collector to postpone the sale without an express injunction to that effect from the Court which has ordered it. Unless such injunction be received, the sale will proceed.—*C. O. 4th Sept.* 1840.—*p.* 406.

93. When such a claim or objection is communicated by the Collector to the Judge, or when such a claim is presented by a claimant to the Judge, who ordered the sale, he shall enter on a summary enquiry into the truth of the claim, and he may order the Collector to postpone the sale till the claim has been enquired into. Such postponement will not be necessary, when the claim or objection was not proposed within a reasonable time, after the publication of the intended sale, and is evidently intended to obstruct the sale. In such cases, the sale will proceed, and the claimant will be referred to a regular suit for the prosecution of the claim.—*Reg.* 7, 1825, *Sect.* 4, *Cl.* 5. —*p.* 407.

94. 95. Every petition containing objections to the sale or transfer of property in execution of decrees of Court, should constitute a separate *misl* or case, and any evidence adduced in support or refutation of it, with the decree-holder's answer, should be carefully filed with the petition, and kept distinct from all other cases involving claims to the same property. When an appeal is preferred from such orders, only the proceedings in the particular case to which the appeal relates, should be forwarded to the appellate Court, unless otherwise directed, with copies of the decree, of the decree-holder's application suing out execution, and of the Nazir's report regarding the attachment of the property and the issue of the notices. But all papers regarding the execution of the same decree should be kept in one bundle. Cases of resistance of process should also be kept separate in the same manner, the report of the resistance forming the commencement of each *misl*.—*C. O. 7th Dec.* 1838.—*p.* 407.

96. The order of a Judge or judicial officer for the sale of real property in execution of decrees, where claims may be preferred to the property advertised, *or objections raised to the sale of it within the period of the proclamation*, shall not be executed till the expiration of the period of appeal allowed by Reg. 7, 1825, Sect. 3, Cl. 5, (three months) which will be calculated from the date of the final order for sale, excluding from the calculation the interval which may have elapsed between the date on which the stamp paper was furnished, and that on which copy of the order may have been tendered or delivered to the party.—*C. O. 19th July*, 1833.—*p.* 407.

97. The expressions in the Circular Order above, " or objections made to the sale of property within the period of the proclamation," is to be understood equally to include objections made by defendants as by other individuals to the disposal of their property advertised for sale by public auction, in satisfaction of a decree of Court.—*Con. No.* 844.—*p.* 408.

98. In consequence of this order of the Sudder Court, it became a practice to present petitions of claims successively, the day previous to that fixed for sale, simply to delay it for three months, and the Sudder Court therefore explained that the intent of the Circular Order of the 19th July was not to allow a new postponement of the sale on the rejection of *every* petition objecting thereto, but merely to prohibit the order for sale being carried into execution for three months, that is, until the expiration of the period prescribed for appealing, in order to enable the parties dissatisfied with it to prefer their appeal within the period.—*Con. No.* 877.—*p.* 408.

99. In all cases of a public sale of property under Regulation 7, 1825, in satisfaction of decrees of Court, it must be clearly explained to the bidders at the sale, that nothing is guaranteed to them in the property sold beyond the rights and interest of the individual answerable for the

amount of the decree or order, in execution of which the sale is made.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 7.—*p.* 408.

100. 101. The summary investigation into the claims of a mortgager who may assert a prior mortgage on the property sold in satisfaction of a decree, is irregular and supererogatory. The defendant's right and interest in the property is alone sold, with the incumbrance of any prior mortgage. Bidders at such sales are to be distinctly apprised that nothing is guaranteed to them in the land or property sold, but such right or interest.—*C. O. 4th Sept.* 1840.—*p.* 408.

102. If prior claims are asserted before the completion of the sale, the existence of such claims is to be made known by the officer conducting it to the bidders, and recorded in the Roobukaree of sale.—*C. O. 4th Sept.*, 1840.—*p.* 408.

103. 104. 105. The following is the brief statement of the measures to be adopted in case of objections and claims, drawn up by the Sudder Court.—When claims or objections are preferred to the Zillah Judge, *before the sale*, and rejected by that officer, the sale must be postponed for three months from the date of the Judge's order. When objections are preferred to a Zillah Judge *after the sale*, and rejected, and the sale confirmed, the purchase money must be kept in deposit for three months from the date of the order of the Judge rejecting the petition and confirming the sale.—*Con. No.* 1027.—*p.* 409.

106. If, on the other hand, no claims are preferred before the sale, it may take place in thirty days after the proclamation, and if after the sale no objections are preferred within thirty days, the purchase money may be paid to the decree-holder at the end of that period.—*Con. No.* 1027.—*p.* 409.

107. Mortgaged property can be sold in execution of a decree obtained by other than the mortgagee, with a reservation of the rights and interests of the mortgagee.—*Con. No.* 856.—*p.* 409.

108. As the decree-holder is entitled to interest on his decree till the whole is liquidated, the Zillah Court is at liberty to impose the payment of the accruing interest of the debt, on any claimant whose objections may be evidently collusive and litigious or vexatious and unfounded; subject of course to an appeal to the Sudder Court.—*Con. No.* 1010.—*p.* 409.

109. The Zillah Courts are authorized in cases of execution of decrees, after holding a summary investigation into the claims of the parties concerned, to quash any lease which may evidently appear to be fraudulent, leaving the party dissatisfied to appeal summarily or to institute a regular suit.—*Con. No.* 1059.—*p.* 409.

SECT. VI.

Cancelling the sale of Lands sold in satisfaction of a Decree.

110. The Judge is competent to take every precaution to prevent the sale of property for less than its marketable value, but after the sale has been closed, and the bidder has been informed that he is the purchaser, the property is his right, and the sale cannot be cancelled, and the property resold, on the ground that the price obtained was inadequate.—*Con. No.* 829.—*p.* 409.

111. No sale shall in any case take place by a *Judicial Officer* without the proclamation for the specified period; and any material irregularity in the sale established to the satisfaction of the officer by whom it is ordered, will be sufficient to invalidate it, provided a petition written on the stamp paper, required for miscellaneous petitions, and stating circumstantially the irregularity which may have taken place, be presented to the officer by whom the sale may have been ordered, within one month after the sale.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 3.—*p.* 410.

112. When a public sale may be set aside, as invalid under the preceding Clause, and no collusion or fraud appear on the part of the purchaser, he will receive back his money, with or without interest, on delivering up the property.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 4.—*p.* 410.

113. The summary decision passed by the Zillah or City Court under this Section, will be open to a summary appeal under the general rules.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 5.—*p.* 410.

114. A doubt having arisen, whether sales of Land by *Revenue Officers* can be set aside summa-

clared, that the Court which may have ordered the sale, is competent to declare it null and void, and to order a re-sale in the mode prescribed in the Regulations, if on a summary enquiry any material deviation from the Regulations and consequent irregularity, be established. For this reason, a petition with a circumstantial statement of the irregularity, written on the prescribed stamp paper, must be presented to the Court which ordered the sale. The Court directing the sale to be set aside, may direct a return of the purchase money with or without interest, as provided in Section 3, Clause 4, of this Regulation.—*Reg.* 7, 1825, *Sect.* 5, *Cl.* 1.—*p.* 410.

115. The summary decisions thus passed, will be open to a summary appeal to the appellate authorities.—*Reg.* 7, 1825, *Sect.* 5, *Cl.* 2.—*p.* 410.

116. Summary suits (Reg. 7, 1825, Sect. 5,) to set aside irregular sales of land made by Revenue officers, in satisfaction of decrees of Court, will be received and tried in the first instance by the Court ordering the sale, subject to the prescribed appeal. If the sale have been made by order of the Judge, he may refer the case for investigation, and report to a Principal Sudder Ameen, or Sudder Ameen, reserving to himself the final decision.—*Govt. Ord. No.* 6.—*p.* 410.

SECT. VII.

Disposal of the proceeds of the sale of Lands sold in Execution of Decrees.

117. In order to protect the rights of those who may subsequently be discovered to have an interest in lands sold for decrees of Court, the proceeds of every sale will be kept in deposit till the period allowed by Regulation 7, 1825, Section 3, Clause 3, and Section 5, Clause 1,—that is, thirty days—for preferring objections to the sale, to the Judge, with a view to its annulment, has expired, and until possession shall have been given to the purchaser.—*C. O. 6th June,* 1828.—*p.* 411.

118. If the Zillah Judge pay away such money from his Treasury, [that is, before the expiration of the month allowed for hearing objections,] contrary to the Regulations of Government, or the express orders of the Sudder Court, he will be held personally responsible for it.—*C. O. 2d Jan.* 1836.—*p.* 411.

119. When the objections of a claimant, after a sale, are rejected by the Zillah Judge, he will invariably record the case in a Persian Roobukaree in the form prescribed in the body of the work. —*C. O. 2d Jan.* 1836.—*p.* 411.

120. 121. The sales in satisfaction of decrees of Court, are declared in Reg. 7, 1825, to convey only the rights and interests of the individuals answerable for the amount of the decree in execution of which the sale is made. So far as Government is concerned they are mere private transfers; and it is both unnecessary and inexpedient to deduct from the sale price any arrears of Revenue due from the Mehal, to the state. The Board therefore direct that the practice shall be discontinued. The Collectors will be careful to cause it to be distinctly understood that it is in every case of sale, a condition of the sale that the purchaser succeeds to all the liabilities of the former proprietor, and that the Government claims upon the Mehal are in no way affected by the sale.—*C. O. 15th Oct.* 1841.—*p.* 411.

122. The above instructions do not refer to the case of a purchaser who refuses to take possession of the property purchased within a reasonable period, after possession has been tendered him. In such case the purchase money should be paid to the decree-holder, the purchaser being warned, that he must abide the consequence of refusing to take possession.—*Con. No.* 532.—*p.* 411.

SECT. VIII.

Limitation of time for instituting a Suit for the Execution of a Decree.

The limitation of time, for instituting a suit for the execution of a decree, is founded upon the following enactment.

123. The Zillah Courts are prohibited hearing, trying, or determining the merits of any suit if the cause of action shall have originated twelve years before the suit has commenced on account of it, unless the complainant can shew satisfactory proof for the delay.—*Reg.* 3, 1793, *Sect.* 14.

124. A decree not enforced during a period of twelve years and upwards, might be put in execution on application for that purpose, without a fresh suit, if the party holding it, satisfactorily explain the cause of delay, and the adverse party advance no valid objection.—*Con. No.* 3.—*p.* 412.

125. A decree not executed when passed, may, on application, be executed within twelve years from the date of decision, after calling on the opposite party to shew cause why the judgment should not be enforced. If the party neglect to apply for execution of the decree within the twelve years, the application should not be admitted without his giving satisfactory reason for delay.—*Con. No.* 136.—*p.* 412.

SECT. IX.

Aid of the Collector and of other Courts in the Execution of Decrees.

126. The Judges of the several Courts are authorized to require the aid of the Collectors in the enforcement of all decrees, whenever it may appear conducive to their speedy and complete execution, whether by giving possession to the parties entitled to it, or by the adjustment of a wasselaut account or otherwise.—*Reg.* 7, 1825, *Sect.* 6.—*p.* 412.

127. The Sudder Court considers it highly expedient that the Judicial Authorities should avail themselves as far as practicable, of the assistance of the Revenue officers under the provisions of Regulation 7, 1825, Section 6, in the enforcement of decrees relative to the proprietary right or possession of land.—*C. O. 6th Jan.* 1837.—*p.* 413.

128. The Zillah Judge will forward to the Revenue Commissioner, a quarterly statement of the requisitions which have been made to the Collector to aid in the execution of decrees. This need not be submitted to the Sudder Court; but any particular case of delay, without sufficient cause assigned for it, must be brought to their notice.—*C. O. 7th Dec.* 1838.—*p.* 413.

129. Any instances of considerable delay which may occur on the part of other Zillah Courts, after they have been called on to aid in the execution of decrees, will also be reported to the Sudder Court.—*C. O. 7th Dec.* 1838.—*p.* 413.

130. Whenever the Courts of justice may decree to any one the proprietary right in a portion of an estate paying revenue, and issue a precept to a Collector requiring him to divide the estate and put the parties in possession of the shares to which they are entitled under the decree, the parties who have withheld the right, will defray all the expence of dividing and separating the estate, apportioning the revenue, and giving possession. But, for special reasons, the Court may deviate from this general rule, and direct the expence in question to be defrayed by all or any of the parties in fair proportions. Copies of all orders the Courts may pass under this Section will be transmitted to the Collector, together with the precept of the Court.—*Reg.* 19, 1814, *Sect.* 5.—*p.* 414.

131. Ameens appointed by the Collector for the division of estates, are criminally amenable for corruption, and civilly for damages. All sums exacted by them will be refunded in such suits, and the offender will be imprisoned till he make good the decree, or till the amount be realized by the sale of his property.—*Reg.* 19, 1814, *Sect.* 13, *Cl.* 2.—*p.* 414.

SECT. X.

Default of the Decree-holder.

132. Applications for the execution of decrees are considered as disposed of when the decree has been completely executed, or the case has been ordered to be struck off the file, owing to the failure of the decree-holder to take proper measures to enforce the award.—*C. O. 7th Dec.* 1838.—*p.* 414.

133. Whenever the decree-holder fails for six weeks to carry on the execution of his decree, or when the whole of the property pointed out by him has been sold, and the proceeds paid to the party entitled to receive it, or released from attachment in consequence of other claimants proving their right thereto, the suit should be struck off the file. If a fresh application be made by the de-

cree holder, the case will again be brought on the file as a new or revived case of execution and will bear the date of its readmission, and not of its original institution.—*C. O. 7th Dec.* 1838.—*p.* 414.

SECT. XL

Of the relative right of Decree-holders to share in the proceeds of the sale.

134. To fix the practice in respect of the proper authority to adjudicate conflicting claims advanced by decree-holders, to share in the proceeds of sales made in satisfaction of decrees, the Sudder Court lays down the following rule.—*C. O. 20th Nov.* 1840.—*p.* 415.

135. All claims to share in the proceeds of sales of property made in execution of decrees must be preferred in the first instance to the Court ordering the sale. Any party dissatisfied with such order, may have his remedy in an appeal to the Zillah Judge or the Sudder Court. The higher Court cannot interfere to adjudicate any matter of this nature, till the point comes regularly before it.—*C. O. 20th Nov.* 1840.—*p.* 415.

136. The mere priority of date gives no preference to a decree; but all decrees under which process of attachment has been issued, entitle the holders to share in proportion to the amount of their claim, with the exception of cases in which a bonâ fide mortgage of the deposit in favour of a particular claim may exist.—*Con. No.* 935.—*p.* 415.

137. All decrees under which process of attachment has been issued, provided they are dated previous to distribution, entitle the holders to share in proportion to their claims, (exception being allowed in cases of bonâ fide mortgages) in preference to the claimants under decrees in which no such process has been issued.—*Con. No.* 1056.—*p.* 415.

SECT. XII.

Execution of Decrees by Moonsiffs, Sudder Ameens, and Principal Sudder Ameens.

138. Decrees passed by Principal Sudder Ameens will be executed by those Courts under the general rules passed for the execution of decrees by the Zillah Courts.—*Reg. 5,* 1831, *Sect.* 22.—*p.* 415.

139. The rule above authorizing Principal Sudder Ameens to execute their own decrees, is applicable to Sudder Ameens and Moonsiffs, [and the process of their Courts, in execution of decrees must be conformable to the Regulations in force in Zillah Courts regarding such matters].—*Reg. 7,* 1832, *Sect.* 7.—*p.* 416.

140. Petitions presented to Moonsiffs under Regulation 7, 1832, Section 7, for the execution of their decrees, should be received on plain paper.—*Con. No.* 798.—*p.* 416.

141. Parties objecting to the sale or transfer of property, in execution of decrees, may petition the Moonsiff's Courts on plain paper.—*Con. No.* 1278.—*p.* 416.

142. Moonsiffs may depute any officer on their own establishment to sell the property of a debtor, in execution of a decree passed by them.—*Con. No.* 1050.—*p.* 416.

143. Moonsiffs, in common with other Judicial officers, are competent to try the fact of possession of Lakeraj land attached by them in execution of their decrees.—*Con. No.* 798.—*p.* 416.

144. Moonsiffs are not restricted from taking cognizance of claims to Lakraj lands attached in execution of their own decrees.—*Con. No.* 1054.—*p.* 416.

145. Act 1 of 1839, does not deprive Moonsiffs of the power of selling property in satisfaction of decrees passed by themselves in regular suits for recovery of arrears of rent.—*Con. No.* 1219.—*p.* 416.

146. The execution of the Decrees of Moonsiffs must be proceeded on by the Moonsiffs notwithstanding an appeal may have been lodged, unless orders should have been issued by the appellate Court for staying the execution. The mere fact of having preferred an appeal does not entitle an appellant to a suspension of execution.—*C. O. 6th Nov.* 1835.—*p.* 416.

147. The Circular Order above, 6th Nov. 1835, which has made full provision on the subject of execution of Decrees, in the absence of an order from the appellate Court to stay such execu-

tion, is equally applicable in principle to the Courts of the native Judges of every grade.—*C. O. 23rd Aug.* 1839.—*p.* 416.

148. Decrees passed in the lower Courts and confirmed in appeal by the Judge, after summoning the respondent, must be considered as decrees of the Judge's Court and be executed under the rules in force for the execution of such decrees.—*Con. No.* 861.—*p.* 416.

149. Whenever the decision of the Lower Court has been affirmed in appeal without the respondent having been summoned (under the rules of Clause 3, Section 16, Regulation 5, of 1831, and Clause 2, Section 2, Regulation 9 of 1831,) or has been dismissed on default, the application for executing the decree should be made to the Court by whom the original decree was passed, who will execute it, as if no appeal had been made. When the respondent has been summoned and the appeal decided on its merits, the decree will be executed by the appellate Court.—*C. O. 22nd Aug.* 1834.—*p.* 417.

150. In cases of the execution of Moonsiff's decrees, where the defendant resides, or the property attached is situated in the division of a different Moonsiff from the one who passed the decree, the Judge will of course refer the execution to the former.—*Con. No.* 701.—*p.* 417.

Vide also Rule 21 of this Chapter.

151. Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, are competent to receive and act on petitions for executing the decrees of their Courts, without reference from the Judge, under the restrictions laid down in Regulation 7, 1832, Section 7.—*C. O. 1st Nov.* 1833.—*p.* 417.

152. It is highly desirable that the execution of the decrees of Sudder Ameens and Moonsiffs should be left to themselves. The Judge, except for special reasons, should not interfere with the process, unless in appeal, since the orders passed by the Judge in appeal from the orders of the Lower Court are in such cases final. If the Judge, however, takes them up, an appeal will lie from his order to the Sudder Court, and its time would thus be occupied with matters of trifling moment. —*C. O. 6th Sept.* 1833.—*p.* 417.

153. A Civil Judge is not competent of his own authority, to transfer to the Principal Sudder Ameen, applications for the executions of the decrees of Moonsiffs who have been appointed under Regulation 5, 1831. All decrees passed by Moonsiffs must be enforced by them, except under such circumstances as would have precluded them by law from hearing and determining a regular suit.—*Con. No.* 1223.—*p.* 417.

154. Any orders passed in the execution of a decree, in regard to mesne profits, interest, or other matter in dispute between the parties, are not considered as constituting a new cause of action, and are not open to dispute by a regular suit.—*Con. No.* 1129.—*p.* 417.

155. All orders passed by the Principal Sudder Ameens in execution of their own decrees, in cases referred to them under the provisions of Section 1 and 4, Act 25, 1837, must follow the same law of appeal as the decrees themselves, and are appealable directly to the Sudder Dewanny Adawlut.—*C. O. 5th June,* 1838.—*p.* 418.

156. With the records of Regular Suits, the Native Judges will also transmit to the Zillah Court the records of all cases of execution of decrees disposed of in the preceding month, with exception of cases of enforcement of decrees struck off the file in that period, in which an application has been made to sue out execution anew.—*C. O. 20th Sept.* 1839.—*p.* 418.

SECT. XIII.

Custody and payment of money received by Moonsiffs in Execution of Decrees.

157. The Moonsiffs will keep an account of receipts and disbursements of money on account of execution of decrees, in a prescribed form, to be entered in a book made of the strongest paper, which book, before commencing the entries, will be sent with the pages numbered to the Judge, who will certify the number of pages in each book. When this Register of deposits is complete, the original must be sent to the Judge to be deposited in his office.—*C. O. 5th Feb.* 1833.—*p.* 418.

158. Money paid to the Moonsiff should, if possible, be paid out immediately. If the person

authorized to receive it, or his agent, be not present, it should be transmitted through the nearest Thannah to the Judge. The account should be closed at the end of each month, and an extract from the Register, with the entries of receipts and disbursements for the last month, should be sent for inspection and record in the Judge's office. He will examine them, and call for an explanation of any irregularity.—*C. O. 5th Feb.* 1833.—*p.* 418.

159. When the Moonsiff holds his Cutcherry at the same station with the Judge, or near it, no alteration of the present practice is necessary, except that the decree-holder will apply to the Moonsiff, who will apply to the Judge for the transmission of the sum to his Court, through which it must be paid to the decree holder.—*C. O. 22nd March,* 1839.—*p.* 418.

SECT. XIV.

Confinement of the person in execution of Decrees by Zillah Courts.

160. The Court will cause the decree to be executed by the *attachment of the person* or where necessary both by the sale of the property and the attachment of the person.—*Reg.* 4, 1793, *Sect.* 7.—*p.* 418.

161. A Civil prisoner cannot be confined in fetters, unless he be suffering under a criminal sentence for having broken jail: in other words, fetters cannot be imposed on a civil prisoner merely to insure his safe detention in jail.—*Con. No.* 624.—*p.* 419.

162. The Civil Courts cannot require a Magistrate to deliver up, after the expiration of the term of imprisonment, a prisoner against whom process has been taken out while yet in confinement. The process will issue on the release of the prisoner according to the established form.—*Con. No.* 1276.—*p.* 419.

163. It is not competent to a Judge to liberate a civil prisoner, solely on the ground of illness, without the consent of the party at whose instance he is confined.—*Con. No.* 1114.—*p.* 419.

164. Whenever any civil prisoner has been in confinement more than one year, the Civil Judge must give a brief explanation of the cause of detention, according to the approved form.—*C. O. 13th Sept.* 1833.—*p.* 419.

165. The Zillah Judge is vested with no legal right to be considered as the medium of communication on the part of the Magistrate with prisoners confined under civil process.—*Con. No.* 1021.—*p.* 419.

166. But the Zillah Judge is at liberty to communicate with the prisoners in question whenever he may have occasion to do so, without reference to the Magistrate.—*Con. No.* 1021.—*p.* 419.

SECT. XV.

Confinement in Execution of Decrees by Moonsiffs, Sudder Ameens, and Principal Sudder Ameens.

167. The Native Judges will not, on their own authority, issue an order for the confinement of a defendant in execution of civil process. In such cases, the officer arresting the debtor, will forward him with the subsistence money to the Civil Judge, who, if he sees fit, will direct his commitment to the Civil jail by his own officers. In all appeals from the Moonsiffs or Sudder Ameen's order, in such cases, the decision of the City or Zillah Judge will be final.—*Reg.* 7, 1832, *Sect.* 7.—*p.* 419.

168. The above proviso was intended to apply to Principal Sudder Ameens and Moonsiffs; the former are not competent to confine a defendant without the sanction of the Judge; [that is, in cases under 5000 Rupees.]—*Con. No.* 947.—*p.* 420.

169. But in cases about 5000 Rupees, a Principal Sudder Ameen has full power to pass any order that the Judge himself could pass, subject to an appeal to the Sudder. He may order the confinement of a debtor in suits above 5000 Rs. Though the Judge has no jurisdiction in the case, he will direct the Civil jailer to take charge of the defendant, or release him, on the requisition of the Principal Sudder Ameen. The Judge will merely issue the warrant, and the jailer will receive or release the prisoner.—*C. O. 18th Sept.* 1840.—*p.* 420.

170. When in the Joint Magistracy of Furreedpore, debtors are arrested in execution of decrees, under the orders of the Principal Sudder Ameens and Moonsiffs, they will forward them to the Joint Magistrate of Furreedpore to be confined in the Civil jail, reporting the circumstance to the Judge of Dacca who will confirm or cancel it.—*C. O. 21st March*, 1834.—*p.* 420.

This rule will of course apply to other Courts similarly situated.

SECT. XVI.

Subsistence money of persons confined in the Civil Jail.

171. Relative to the Subsistence Allowance to be paid to persons confined in execution of decrees, or other civil process, the Court will issue no process of arrest, unless the party applying for it has deposited in Court, independent of the charge for executing the process, a sum sufficient for the subsistence of the defendant, for thirty days, from the date of his commitment. At the end of the thirty days, another deposit for the next thirty days will be made, and so on, till the defendant's discharge.—*Reg.* 6, 1830, *Sect.* 2.—*p.* 421.

172. The amount of deposit will be fixed by the Judge when issuing the process of arrest, on a consideration of the rank and circumstances of the defendant. It is not to exceed four annas, or fall short of one anna a day. It will be subject to future revision on sufficient grounds being shewn. If special circumstances exist for increasing the rate beyond four annas, the Sudder Dewanny Adawlut, on a report from the Judge, or on other sufficient information, may increase it, but not beyond one Rupee a day.—*Reg.* 6, 1830, *Sect.* 2.—*p.* 421.

173. The allowance will be payable to the Nazir, who will give monthly receipts for it to the plaintiff. If the plaintiff neglect or refuse to pay the allowance, on or before the day it falls due, the Nazir will report the circumstance to the Judge, who will forthwith order the defendant's discharge. The defendant will not be afterwards liable to arrest and confinement on the same matter, at the instance of the same party, except it be proved that he has fraudulently concealed or transferred property which might have been available for the satisfaction of the decree or other demand for which he was confined.—*Reg.* 6, 1830, *Sect.* 3.—*p.* 421.

174. The defendant is not liable to be a second time arrested and confined on the same matter, only when he has been actually confined in jail. If he has merely been kept under charge of the Nazir's chuprassies, and released because subsistence money was not paid, he may be subsequently confined in jail on the same matter.—*Con. No.* 1090.—*p.* 421.

175. If any future alteration be necessary in the rules for subsistence allowance to debtors in confinement, the Sudder Dewanny Adawlut may direct the same, subject to the approval of the Governor General in Council, without a new Regulation.—*Reg.* 6, 1830, *Sect.* 5.—*p.* 421.

176. Regulation 6, 1830, does not preclude the issuing of a *dustuck* against a defaulter, under Reg. 7, 1799, before subsistence money for a month has been paid; but no defaulter can be committed to jail till subsistence money for thirty days has been actually paid in.—*Con. No.* 575.—*p.* 422.

177. Plaintiffs are not required to pay any subsistence money to defendants confined for disobedience of the orders of the Court.—*Reg.* 4, 1793, *Sect.* 8.—*p.* 422.

178. The amount paid for subsistence to persons confined in execution of a decree, will be repaid by them on their release, in common with other costs of suit and process, when any property is forthcoming from which the amount may be levied. When no property can be pointed out for the reimbursement of the subsistence money of prisoners, they will not be detained in prison for the repayment of this money only.—*Reg.* 2, 1806, *Sect.* 12.—*p.* 422.

179. The subsistence of prisoners confined under civil process is payable by the persons at whose instance they are confined. If the party be confined for the fees of Vakeels, and at their instance, the subsistence is payable by them; if he be confined on account of the Stamp duty, it is payable by Government. In all cases, however, an application for the confinement of the party under civil process is requisite, and that in the first instance, after the amount due has been demanded, such process should be executed on the property of the party from whom the amount is due, and the property of his securities.—*Con. No.* 21.—*p.* 422.

180. The principle of the above rules will be applicable to cases in which prisoners are confined in the jail of the Civil Courts at the instance of a Collector or other public officer, on the part of Government, whether for arrears of revenue, or for any other account sanctioned by the Regulations. The Collector or officer who may have caused the confinement of the prisoner, will be called on for the subsistence money, which the Judge, by whom the prisoner is confined, may consider it proper to fix.—*C. O. 20th April,* 1818.—*p.* 422.

181. The rules regarding the subsistence money of persons confined in the Civil jails apply to the officers of Government as well as to private persons.—*Con. No.* 647.—*p.* 422.

SECT. XVII.

Liquidation of the amount of the Decree by Instalments.

182. The Civil Courts, generally, are restricted from granting indulgence of time for satisfying a final judgment, when property belonging either to the defendant or his sureties, from which it can be satisfied, may be forthcoming; unless the plaintiff agrees to wave his right of immediate enforcement, under an engagement for gradual payment, or otherwise, or unless a short postponement of the sale of the property may appear, under peculiar circumstances, just and equitable.—*Reg.* 2, 1806, *Sect.* 10.—*p.* 423.

183. When no property may be pointed out from which the judgment can be satisfied, and the defendant, or his sureties, may be willing to engage, under suitable securities, for its liquidation by instalments, within such period as the Court may deem reasonable, it is competent to the Court which passes the final judgment, or the superior Court revising its proceedings, to accept such engagement, and cause execution of the decree in conformity therewith, so long as the conditions are fulfilled.—*Reg.* 2, 1806, *Sect.* 10.—*p.* 423.

184. In such cases, if the person delivering the engagement be in custody, he shall be discharged, and shall not be liable to farther arrest in execution of this judgment, except on his failing to perform the terms of it. No interest will be chargeable in such cases beyond what has been provided for in the engagement.—*Reg.* 2, 1806, *Sect.* 10.—*p.* 423.

185. If a party, at whose suit a debtor may have been confined in execution of a decree, consent to his discharge, on his executing an agreement to pay his debt by instalments, and the agreement be acknowledged and signed by the parties in the presence of the Judge, and the enforcement of the decree be suspended in consequence, should the debtor fail to perform his engagement, it will not be necessary for the party to institute a new suit for the recovery of his claim; it will be enforced under the general rule for the enforcement of decrees. The debtor, or his surety, may be allowed to prove any payment he may allege to have made under the kistbundy.—*Con. No.* 44.—*p.* 423.

186. If a defendant make an offer that his lands be attached, in satisfaction of a decree against him, and that the sum due be discharged generally from the collection of the rents, and if the debtor agree to this arrangement, the Courts must sanction it; and order the Collector to hold the lands in attachment, to collect the rents, and to pay them into Court.—*Con. No.* 752.—*p.* 424.

SECT. XVIII.

Relief of Insolvent Debtors.

187. For the relief of Insolvent Debtors and their sureties, who being confined *in execution of decrees* of the Civil Courts, may have no means of paying their debts, either by instalment or otherwise, the Zillah and Sudder Courts, on receiving from them a statement on oath, with a full and faithful disclosure of their property of every description, whether held in their own name, or in that of others, or jointly, will cause enquiry to be made into the truth of the statement, and the validity of any objections offered thereto by the party at whose instance they have been confined.—*Reg.* 2, 1806, *Sect.* 11.—*p.* 424.

188. If the Court is satisfied that the statement of property so delivered is true and faithful, and that the party has no other means of discharging the debt, and if the property, or such part

as the Court may deem it proper to sell, be given up for sale, the Court, on the property being surrendered, may cause it to be sold according to the Regulations, and order the release of the party, with or without hazirzaminy security.—*Reg.* 2, 1806, *Sect.* 11.—*p.* 424.

189. But as this is meant to grant relief only in cases of real inability and fair dealing, no debtor or surety thus confined under the judgment of a Civil Court will be entitled to his release, without full satisfaction of the judgment, if he be guilty of any fraudulent concealment of property, or if he has committed any fraud or misdemeanor, which may appear to the Court to disqualify him for the relief intended only for those acting with good faith, and willing to surrender all the property in their possession.—*Reg.* 2, 1806, *Sect.* 11.—*p.* 424.

190. This release will not prevent the creditor from bringing to sale by application to the Court, any property which may be subsequently possessed by the party released, or from preventing his being again confined when it may be proved that he has fraudulently concealed any property belonging to himself, or known to have been possessed by him in his own name, or in that of others at the time of the discharge. All proceedings held and orders passed, under the discretion above given by the Zillah Courts, will be open to the revision and determination of the higher Courts.—*Reg.* 2, 1806, *Sect.* 11.—*p.* 425.

191. 192. The provisions of Section 11, Regulation 2, 1805, are intended solely for the relief of insolvent debtors who may be in confinement; consequently any person who is not in confinement cannot be relieved from his difficulties under that Section. But Section 10, (182, 183, 184,) permits the Court to allow the decrée to be executed by instalment. In this case the previous confinement of the debtor is not necessary.—*Con. No.* 1196.—*p.* 425.

193. The Civil Courts have no power of granting a general release to a debtor. Government and private individuals are precisely on the same footing in regard to the realization of debts from the property of released insolvents. The private creditor after his release, may, under Section 11, Regulation 2, 1806, bring to sale any property which may be subsequently found in his possession.—*Con. No.* 1196.—*p.* 425.

194. The Sudder Court is of opinion, that under the Rules of Sect. 11, a debtor is entitled to his release, on making what the Civil Court, (subject to the control of the Court of Appeal) shall deem a fair discovery and surrender of all the property he possesses, without regard to the amount of his debt, or the time he may have been imprisoned under the decree.—*Con. No.* 308.—*p.* 425.

195. These rules are applicable to Revenue defaulters, as well as to other persons, when confined under a judgment of Court, but not to such defaulters when in confinement for arrears of revenue at the instance of a Collector, against whom no judgment has been passed.—*Con. No.* 86.—*p.* 425.

196. Neither are they applicable to insolvent *abkars* confined on the process of a Collector.—*Con. No.* 95.—*p.* 425.

197. These insolvent rules are construed by the Sudder Court to extend to all persons in confinement under decrees, regular or summary, of the Civil Courts, but not to those in confinement under any process where a decree of a Civil Court has not been given.—*Con. No.* 328.—*p.* 425.

198. But if a prisoner is in confinement in execution of a summary decree, passed by a Collector under Regulation 8, 1831, that Officer may release him, on his presenting a petition under Regulation 2, 1806, Section 11, and proving his insolveney; the powers heretofore vested in the Judge having been virtually transferred to the Collector.—*C. O. 18th Nov.* 1836.—*p.* 426

199. A pauper, who may be confined by the defendant on the dismissal of his suit with costs, when he fails to pay the amount adjudged against him by a decree, is, like any other suitor, and of course in common with all insolvent debtors, entitled to the benefit of the rules introduced by Reg. 2, 1806, Sect. 11.—*Con. No.* 110.—*p.* 426.

200. Should defendants be confined ultimately for costs of suit, they may obtain the benefit of these insolvent rules.—*Con. No.* 309.—*p.* 426.

201. When the executiom of a decree of the Sudder Court has been entrusted to a Zillah Judge, he is competent, without referring to that Court, to apply the rules of Regulation 2, 1806,

Section 11, to any defendant who may be confined in execution of a decree.—*Con. No.* 1062.—*p.* 426.

202. The wilful concealment of bond debts due to an insolvent debtor, examined on oath under the rules contained in Regulation 2, 1806, Section 11, is punishable on conviction as wilful perjury.—*Con. No.* 1086.—*p.* 426.

203. In cases of Insolvency when individuals have been imprisoned on an application from a Native Court, the Judge presiding in such Court is the proper person to determine whether the debtor ought to be released or not. The petition should, however, be presented to the European Judge, who may either take the deposition of the prisoner himself, or refer it to the officer presiding in such Native Court. If the decision should be for a release, an application should be made to the Judge for an order on the jailer to that effect. Those dissatisfied with the order may appeal.—*Con. No.* 1108.—*p.* 426.

204. According to the opinion of the Advocate General, circulated for the information and guidance of judicial officers, 25th August, 1837, it is ruled, that all Courts, and consequently those of the Mofussil, are bound by the Act for the Relief of Insolvent Debtors. In a cause before them the plaintiff must discontinue his suit, if his claim is admitted in the Schedule of the Insolvent, or disputed as to amount only. A mere decree made before the adjudication of insolvency, will not authorize the complainant to seize the property of the insolvent; but he must prove his debt like other creditors. Such is the rule in bankruptcy and possibly in insolvency in England. But execution actually executed is a different thing. The party who has executed it, is entitled to the payment of his debt out of it.—*C. O. 25th Aug.* 1837.—*p.* 426.

SECT. XIX.

Limit of confinement for decrees under Sixty-four Rupees.

205. With a view to prevent the protracted imprisonment of persons confined in execution of decrees for small sums, it is provided in addition to the insolvent rules given above, that no person shall be confined *in satisfaction of a decree* for any sum within 64 Rupees, for more than six months. At the expiration of that time, he will be released; but any property belonging to him will, at all times during his imprisonment, or subsequently, be liable to attachment and sale, for the amount of the Judgment, or for such part as remains due.—*Reg.* 23, 1814, *Sect.* 45, *Cl.* 7.—*p.* 427.

206. The provisions in the Clause given above, make no alteration in the Rules regarding Insolvent Debtors, except in fixing a maximum of time during which a debtor shall be subject to imprisonment in satisfaction of a decree under 64 Rupees.—*Con. No.* 308.—*p.* 427.

207. This rule is not applicable to persons under confinement at the requisition of the Collector.—*Con. No.* 302.—*p.* 427.

The Rule in Reg. 23, 1814, Sect. 45, Cl. 7, has never been declared applicable to decrees in summary suits.

208. It is incumbent on the Courts to release a debtor with the consent of his creditor, on the execution by the former of a kistbundee. But the execution of a kistbundee for a larger sum than 64 Rupees, including interest and costs of suit, cannot be considered as depriving the debtor of his claim to release under Regulation 23, 1814, Section 45, Clause 7, after he has been confined more than six months, on a decree for a sum within 64 Rupees.—*Con. No.* 569.—*p.* 427.

209. The limitation of imprisonment laid down in the above Clause, is applicable only to debtors confined under a decree of Court. But the Zillah Court is at liberty to use its discretion in liberating persons confined by a Civil Court in default of the payment of *fines*.—*Con. No.* 964.—*p.* 427.

210. When the amount due under a decree, does not exceed 64 Rupees, the debtor cannot be confined more than six months, but he may obtain the benefit of the insolvent rules *within* the six months.—*Con. No.* 328.—*p.* 427.

SECT. XX.

Execution of Decrees against persons connected with the manufacture of Salt.

211. If a decree shall pass against a native officer, or any person under Salt engagements, and the Court orders it to be enforced, between the beginning of Kautic and the end of Assar, recourse may be had to his property; but his person is not to be touched. The Salt Agent is responsible for his appearing before the Court at the end of the season, if required; but the salt advances, or Company's implements are not liable for the decree. But during Sawun, Bhadoon, and Assin, and also in the manufacturing season, if the Agent notifies that the individual is not required in the manufacture, his person as well as his property will be liable for decrees.—*Reg.* 10, 1819, *Sect.* 22.—*p.* 428.

212. If a decree be passed against an Officer of a Salt Chowkee, and the Court orders it to be enforced, his property may be seized; if his person be seized, he shall not be removed without notice to the party under whom he acts, that another person may be deputed to take charge of his place.—*Reg.* 10, 1819, *Sect.* 29.—*p.* 428.

SECT. XXI.

Execution of Decrees against Government.

213. The costs and damages that may be awarded against Government in suits, will be defrayed from the public Treasury.—*Reg.* 3, 1793, *Sect.* 11.—*p.* 428.

214. The general rules of process for execution of decrees (Reg. 4, 1793, Sect. 7,) cannot to their full extent be applied to the enforcement of decrees against Government.—*C. O.* 16*th April*, 1818.—*p.* 428.

215. In the event of a judgment passed against Government, the officer managing the suit will send a copy of the decree and proceedings to the Governor General, or the Board under which he acts, with any objections he may have to offer, to enable the higher authorities to determine whether an appeal from the decision shall be preferred or not.—*C. O.* 16*th April*, 1818.—*p.* 428.

216. It is also provided in Reg. 2, of 1805, Sect. 9, that in all original suits or appeals in which Government is a party, the Court passing the decree will send a copy of it as soon as possible to the Judicial Secretary.—*C. O.* 16*th April*, 1818.—*p.* 429.

217. The intention of these provisions is to enable the supreme executive authority to judge whether decrees should be appealed, or carried into execution.—*C. O.* 16*th April*, 1818.—*p.* 429.

218. It cannot be supposed that the Governor General, in a case regularly tried and finally decided by the Civil Courts, in conformity with the laws, would refuse authority to the proper executive authority to carry into full effect the decision thus passed against Government.—*C. O.* 16*th April*, 1818.—*p.* 429.

219. It can never be necessary, therefore, for the ends of justice, to attach money in any of the public treasuries by order of a Zillah Court, in execution of decrees against Government. Such a course would be derogatory to the ruling power of the country and create public embarrassment, by diverting funds from the purpose to which they were appropriated.—*C. O.* 16*th April*, 1818.—*p.* 429.

220. But the Collector, or whoever has conducted the suit on the part of Government, should be directed by precept to comply with a final decision given against Government. If the Collector refuse to obey the order or decree of a Court, he becomes liable to a fine, which if he refuse to pay, the Governor General on approving the fine, may order to be deducted from his salary.—*C. O.* 16*th April*, 1818.—*p.* 429.

221. But this rule would not be applicable in cases in which the Collector might state objections to the immediate execution of a judgment against Government, under special instructions from the Governor General. If such objections be not admitted by the Court, and no appeal be open, it is to be supposed that Government will order the decree to be carried into effect. If not, the matter will be referred to the Sudder Court, and the Sudder will refer it to Government, and

Government will pass such order as may appear proper and consistent with the general provisions of the Regulations in force, in cases where no specific rule may exist.—*C. O. 16th April*, 1818.—*p.* 429.

SECT. XXII.

Execution of the Decrees of the Supreme Court by the Zillah Courts.

222. The Civil Courts will not execute the Decrees of the Supreme Court, unless a writ directing execution, be issued by that Court.—*Con. No.* 567.—*p.* 430.

SECT. XXIII.

Execution of the Decrees of the Calcutta Court of Requests in the Mofussil.

223. When a plaintiff has obtained a judgment in the Court of Requests, if the defendant retire into the 24-Pergunnahs before it is executed, the Judge, on a written application from the plaintiff, accompanied by an authenticated copy of the decree, will proceed to execute it in the mode prescribed for executing his own decrees.—*Reg.* 16, 1812, *Sect.* 2, *Cl.* 1.—*p.* 430.

224. If the defendant allege any cause against the execution of the decree, which appears to require a reference to the Court of Requests, the Judge will give him reasonable time to make the application on his furnishing sufficient security. On the expiration of the time, if he does not produce an authenticated order from the Court of Requests staying execution, the decree will be executed forthwith.—*Reg.* 16, 1812, *Sect.* 2, *Cl.* 2.—*p.* 430.

225. No defendant who has been confined in the jail of the Court of Requests, and liberated under the Rules of the 11th February, 1805, will be confined again by the Judge of the 24-Pergunnahs in execution of the same judgment; the execution will in that case proceed against the property of the defendant.—*Reg.* 16, 1812, *Sect.* 2, *Cl.* 3.—*p.* 430.

226. In executing decrees of the Court of Requests, under this Regulation, the Judge of the 24-Pergunnahs will proceed in all respects, as he would in executing a decree of his own. The fact of both parties being Europeans, does not in any way affect his cognizance of the matter.—*Con. No.* 932.—*p.* 430.

SECT. XXIV

Execution of the Decrees of the 24-Pergunnahs by the Court of Requests in Calcutta.

227. Preamble, containing reasons for the Regulation.—*Act* 27, 1839, *Sect.* 1.—*p.* 431.

228. If the defendant, in any suit decided in the 24-Pergunnahs, shall retire before its execution into the jurisdiction of the Court of Requests, that Court, on receiving a written application from the Judge of the 24-Pergunnahs with a copy of the decree, will proceed to execute it as if it had been a decree of the Court of Requests, and on payment of the like costs. But the Court of Requests will not execute such decree, except the cause of action were such that if it had occurred in the local jurisdiction of the Court, it would have been cognizable by the same.—*Act* 27, 1839. —*p.* 431.

CHAPTER VII.

SUDDER DEWANNY ADAWLUT.

SECT. I.

Calcutta Court of Sudder Dewanny Adawlut.

1. No person whatever, by reason of place of birth, or by reason of descent, shall in any civil proceeding whatever be exempted throughout the Company's territories, from the jurisdiction of the Sudder Courts.—*Act* 11, 1836, *Sect.* 2.—*p.* 432.

2. The Court of Sudder Dewanny Adawlut will consist of as many Judges as the Governor General may consider necessary for the business of those Courts.—*Reg.* 12, 1811, *Sect.* 2, *Cl.* 2. —*p.* 432.

3. The denomination of Chief Judge of the Sudder Dewanny, and the official designation of first, second, third, fourth, and fifth Judges of that Court, shall cease.—*Reg.* 3, 1829, *Sect.* 2.—*p.* 432.

4. The Judges of the Sudder Dewanny Adawlut, before entering upon their office, will take and subscribe an oath according to the form prescribed in Section 2, Regulation 5, 1793.—*Reg.* 2, 1801, *Sect.* 4.—*p.* 432.

Form of Oath.

5. The Judges of the Sudder Dewanny Adawlut will take and subscribe the prescribed oaths before the Nizamut Adawlut, or before any person whom the Governor General may commission to administer them.—*Reg.* 3, 1829, *Sect.* 3.—*p.* 433.

6. The Calcutta Sudder Dewanny Adawlut will use a Circular Seal, with this inscription; "The Seal of the Sudder Dewanny stationed at Calcutta." The Court will be held in a large and convenient room, and will sit for business de die in diem, and is empowered to make such reasonable adjournments as appears expedient. No rule, order, proceeding, or decree, is to be made but on Court days and in open Court.—*Reg.* 6, 1793, *Sect.* 3.—*p.* 433.

7. The Sudder Dewanny is to be an open Court.—*Reg.* 2, 1801, *Sect.* 6.—*p.* 433.

8. The Judges of the Sudder Dewanny Adawlut will regulate the mode of their own proceedings, and the execution of their process, subject to the rules prescribed in the Regulations.—*Reg.* 2, 1801, *Sect.* 6.—*p.* 433.

9. The Court of Sudder Dewanny is authorized to adjourn the Court during the Dusserah or Mohurrum festivals, or otherwise, as they judge proper.—*Reg.* 3, 1798, *Sect.* 3.—*p.* 433.

10. The Court of Sudder Dewanny Adawlut will prescribe the forms, and fix the periods of transmission and mode of preparation of all reports by the Civil Courts of every grade.—*Reg.* 7, 1829, *Sect.* 3, *Cl.* 1.—*p.* 433.

11. The Courts of Sudder Dewanny Adawlut may, by an order under the signature of their Register, transfer to that Register the duty of preparing appealed causes for trial, and of executing the orders of the Courts, and of issuing the necessary process, agreeably to the Regulations.—*Act* 17, 1841, *Sect.* 1.—*p.* 433.

12. In proceedings before the Sudder Courts it will not be necessary to take any security for costs. The Courts may frame such rules of practice as may from time to time appear necessary. They will be submitted to the Governor General, and, when approved by him, will be of the same force as if inserted in this Act.—*Act* 17, 1841, *Sect.* 2.—*p.* 434.

SECT. II.

Court of Sudder Dewanny, Western Provinces.

13. 14. A Court of Sudder Dewanny and Nizamut Adawlut will be established for the Western Provinces, and ordinarily stationed at Allahabad. The Jurisdiction of the Western Court of Sudder Dewanny will extend over the Divisions and Districts numbered in Sect. 2, Reg. 1, 1829, from *One* to *Nine*.—*Reg.* 6, 1831, *Sect.* 2 *and* 3, *Cl.* 1.—*p.* 434.

15. The Governor General in Council will fix the station at which the Western Court will reside, at such place as circumstances may render most expedient.—*Reg.* 6, 1831, *Sect.* 3, *Cl.* 2.—*p.* 435.

16. The Court of Sudder Dewanny for the Western Provinces will be an open Court, and will be held as directed in Sect. 3, Reg. 6, of 1793.—*Reg.* 6, 1831, *Sect.* 7, *Cl.* 1.—*p.* 435.

17. The Western Sudder Court will possess, within the jurisdiction allotted to it, all the powers vested by the existing Regulations in the Calcutta Sudder Court, and will perform all the duties required by the Regulations to be performed by it, subject to all the modifications generally prescribed in the Regulations, and in this Regulation.—*Reg.* 6, 1831, *Sect.* 6.—*p.* 435.

18. The Western Sudder Court will consist of one or more Judges and be assisted by two Muftíes. It will have a Register, to be styled, "the Register of the Western Sudder Court," and such other officers as may be deemed necessary.—*Reg.* 6, 1831, *Sect.* 4.—*p.* 435.

19. The Register and other officers previously to entering on their duties, will take the oaths or solemn declarations, appointed for similar officers in the Calcutta Court.—*Reg.* 6, 1831, *Sect.* 5.—*p.* 435.

20. The administration of Civil justice hitherto vested in the Resident and Chief Commissioner at Delhi, is hereafter vested in the Sudder-Dewanny Adawlut at Allahabad.—*Reg.* 6, 1831, *Sect.* 8, *Cl.* 1.—*p.* 435.

21. The power and authority vested in the Calcutta Sudder Court over the province of Kemaoon is transferred to the Western Court.—*Reg.* 6, 1831, *Sect.* 9.—*p.* 435.

SECT. III.

General Powers of single Judges of the Sudder Court.

22. A single Judge may take the depositions of witnesses in open Court, instead of referring them to the Register.—*Reg.* 2, 1801, *Sect.* 6.—*p.* 436.

23. 27. A single Judge may perfect interlocutory decrees passed by himself, or by any other Judge or Judges of the Sudder Court, taking care not to reverse or alter the decision or order of any other Judge or Judges.—*Reg.* 13, 1810, *Sect.* 4, *Cl.* 2.—*Reg.* 13, 1810, *Sect.* 8, *Cl.* 1.—*p.* 436.

24. 27. A single Judge of the Sudder Court, holding a sitting, may pass any orders consistent with the Regulations regarding the admission of evidence, the examination of witnesses, and all other points connected with the trial of the suit. But any two Judges are at liberty to re-examine witnesses whose depositions have been taken by a single Judge, if necessary, and generally to pass any order that may appear proper and consistent with the Regulations, whether in addition to, or in qualification, or abrogation of any previous order of a single Judge.—*Reg.* 13, 1810, *Sect.* 4, *Cl.* 4.—*Reg.* 13, 1810, *Sect.* 8, *Cl.* 1.—*p.* 436.

25. 27. A single Judge may order any witness guilty of perjury, to be committed or held to bail for trial.—*Reg.* 13, 1810, *Sect.* 4, *Cl.* 5.—*Reg.* 13, 1810, *Sect.* 8, *Cl.* 1.—*p.* 436.

26. 27. A single Judge may receive miscellaneous petitions relative to matters depending before or decided by the Zillah Judges, as well as all other petitions which the Sudder Court are authorized to receive, and to proceed thereon according to the Regulations, under the restrictions stated in Regulation 13, 1810.—*Reg.* 13, 1810, *Sect.* 4, *Cl.* 6.—*Reg.* 13, 1810, *Sect.* 8, *Cl.* 1.—*p.* 436.

28. A single Judge may determine on the admission or rejection of all appeals, regular or spe-

cial, except when the judgment or order appealed from has been passed by himself.—*Reg.* 13, 1810, *Sect.* 8, *Cl.* 2.—*p.* 436.

29. But a single Judge cannot reverse the decision or order of two or more Judges of the Court.—*Reg.* 13, 1810, *Sect.* 8, *Cl.* 3.—*p.* 436.

30. A single Judge of the Sudder Court cannot sit in appeal on a judgment or order passed by himself.—*Reg.* 13, 1810, *Sect.* 6, *Cl.* 4.—*p.* 437.

31. Decisions passed by a single Judge in conformity with Sect. 6 of this Regulation, will have the same operation and effect, as decisions and orders passed by two or more Judges of the Court.—*Reg.* 13, 1810, *Sect.* 7.—*p.* 437.

32. A single Judge of the Sudder Court may hold a sitting of the Court on all matters within the cognizance of the Sudder Court, and pass orders and judgments in conformity with the Regulations under the provisions contained in the following clauses and sections of *Reg.* 9, 1831, *Sect.* 2, *Cl.* 1.—*p.* 437.

33. A single Judge of the Sudder Court may dispose of all cases, regular as well as miscellaneous, with the exception of those described in Reg. 9, 1831, Sect. 2, Cl. 4.—*Reg.* 7, 1832, *Sect.* 15.—*p.* 437.

34. A single Judge is competent to direct a Zillah Court to suspend the execution of an order passed in such summary suits as are appealable, and generally in all miscellaneous cases, till a decision shall have been passed in appeal.—*Con. No.* 591.—*p.* 437.

35. A single Judge may of his own authority admit a second or special appeal, if there appear grounds for it, under any of the provisions specified in Reg. 2, 1825, Sect. 4, Cl. 2.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 4.—*p.* 437.

SECT. IV.

Differences of Opinion among the Judges.

36. If a difference of opinion arises when three Judges are present in the Court, the voices of the majority will determine the matter; if when two Judges are present, the matter will be postponed till the third shall attend.—*Reg.* 2, 1801, *Sect.* 6.—*p.* 437.

37. When only one Judge may be present in the Western Court, or when two Judges are present, if any difference of opinion should occur on matters requiring the concurrent voice of two Judges, it shall be referred for the determination of one of the Judges sitting in the Calcutta Court.—*Reg.* 6, 1831, *Sect.* 7, *Cl.* 1.—*p.* 437.

38. In such cases, the Judge to whom the point is referred, may form and record his opinion on a careful perusal of the proceedings, without requiring the attendance of the parties or their vakeels.—*Reg.* 6, 1831, *Sect.* 7, *Cl.* 2.—*p.* 438.

39. When there are four Judges present in either Sudder Court, and there may be an equality of voices on a matter which requires a decision by the majority, the Court may refer the matter to a single Judge of the Western Court, and it will be sufficient for him to form and record his opinion on a careful perusal of the proceedings, without requiring the attendance of the parties or their vakeels.—*Reg.* 9, 1831, *Sect.* 9.—*p.* 438.

40. The concurring opinion of two Judges who agree in all points of the decision, is final and conclusive, though it differ from the opinion of two other Judges who do not agree with each other.—*Con. No.* 526.—*p.* 438.

SECT. V.

Appeals from the decision of the Lower Courts, tried by single Judges of the Sudder Court.

41. In the trial of appeals from any Court of inferior jurisdiction, if a single Judge of the Sudder Court is of opinion that no sufficient ground exists for impugning the justness of the decision or order, he may confirm it, without reference to the order of the file, and without requiring the attendance of the opposite party, or without a revision of the whole of the proceedings.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 2.—*p.* 438.

42. If, on the other hand, the single Judge is of opinion that the decision or order appealed against, should be altered or reversed, as being manifestly unjust, or contrary to the Regulations, or to Hindoo or Mahomedan law, or other law applicable to the case, or as having been passed without sufficient investigation of its merits, or on assumptions erroneous or irrelevant, he may issue an injunction pointing out the irregularity, illegality, or defect in the proceedings, and require the lower Court to revise the case, and proceed thereon according to justice and the Regulations.—*Reg.* 9, 1831; *Sect.* 2, *Cl.* 2.—*p.* 438.

43. A single Judge, holding a sitting under this Regulation, may call for the proceedings of the lower Court, in whole or in part, and order a report on any points which require explanation previously to passing a decision on the case or matter in appeal.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 3.—*p.* 438.

44. 45. If the decision of the lower Court should be confirmed without the attendance of the opposite party, the appellant will not receive back any portion of the value of the stamp on which his petition of appeal was written, but the appellant's Vakeel is entitled to the whole of the fee deposited by the appellant.—*Con. No.* 675.—*p.* 439.

46. If the attendance of the opposite party should not be required, and the said party shall nevertheless file an answer through a vakeel, the fee of the vakeel must be paid by the opposite party himself.—*Con. No.* 675.—*p.* 439.

47. If an injunction be issued for the revision of the decision, the Stamp duty should be returned to the appellant under Reg. 17, 1819, Sect. 8, and the vakeel's fees restricted on both sides to a fourth of the established fee.—*Con. No.* 675.—*p.* 439.

48. The powers vested in the Sudder Court by Reg. 9, 1831, Sect. 2, Cl. 2, can be exercised only in those cases in which an appeal from a lower Court is within the cognizance of the Sudder Court, and the Court cannot therefore interfere on the receipt of an appeal from the Zillah Judge passed in appeal from the decisions of Moonsiffs or Sudder Ameens.—*Con. No.* 688.—*p.* 439.

49. All first appeals are admitted as a matter of right, if preferred within the prescribed period. The confirmation of the decision of the lower Court, prior to a perusal of the proceedings, is to be considered not as rejection, but as a final dismissal of the appeal on its merits.—*Con. No.* 742.—*p.* 439.

50. The Sudder Court consider themselves fully competent to exercise the powers conferred on them by Regulation 9, 1831, Section 2, Clause 2, and Reg. 7, 1832, Sect. 15, *without calling for the proceedings*, whenever the order of the lower Court appealed against, either in a regular or summary suit, appears manifestly illegal and unjust.—*Con. No.* 839.—*p.* 439.

51. No final decision of the Sudder Court can be passed against a respondent until he has been summoned in the usual course.—*Con. No.* 944.—*p.* 439.

52. A single Judge may stay the execution of any judgment or order passed by an inferior Court in which that measure may appear to him expedient, until a final decision has been passed.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 5.—*p.* 439.

SECT. VI.

Reversal of the order or decree of a lower Court by the Sudder Court.

53. If the decree or order appealed against has been passed in a regular suit or appeal, after an investigation of the merits, and the ultimate judgment to be passed, may rest on a mere difference of opinion as to fact or evidence, or on a disputed or doubtful point of law, or construction of a Regulation, a single Judge may not alter or reverse such decree or order. In such cases the single Judge will be guided by the rules and practice heretofore in force.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 4.—*p.* 440.

54. In the trial of appeals from the decisions and appeals of the lower Courts, if a single Judge is of opinion that the decision or order should be reversed, or altered, he will not pass any final decree or order thereon, till one or more of the other Judges of the Court can sit with him upon the appeal in question.—*Reg.* 13, 1810, *Sect.* 6, *Cl.* 3.—*p.* 440.

55. In modification of the Clause above enacted, it is ordered that whenever a single Judge of the Sudder Court shall be of opinion that the decision or order of a lower Court ought to be altered or reversed, and shall record his sentiments to that effect, and another Judge, sitting on the same appeal, shall concur in the opinion thus recorded, the second Judge may pass the final order in conformity thereto, and cause it to be carried into execution, without waiting for the sitting of both Judges when it may be inconvenient. The decree or order will in such cases be signed by the Judge present at the final sitting, and the signature of the Judge who first sat, will not be necessary, but his opinion will be recited in the decree or final order.—*Reg.* 25, 1814, *Sect.* 8.—*p.* 440.

56. An order passed by a Zillah Judge in execution of a decree of his own Court in an original suit, does not come within the exception laid down in Reg. 9, 1831, Sect. 2, Cl. 4. A single Judge is therefore competent under the provisions of Reg. 7, 1832, Sect. 15, to modify or reverse that order, as may appear advisable.—*Con. No.* 804.—*p.* 440.

57. A single Judge may, in any case of difficulty or importance, when he deems it expedient or proper that the matter at issue should be decided by two or more Judges, record his opinion thereon, and refer the case to another Judge.—*Reg.* 9, 1831; *Sect.* 2, *Cl.* 6.—*p.* 440.

SECT. VII.

Reference of Original Suits or Petitions by the Sudder to the Zillah Courts.

58. The Sudder Court may receive any original suit cognizable by a Zillah or City Court and command the Judge to receive it and proceed to hear and determine it, if satisfactory proofs be given that the Judge refused or omitted to proceed in it. If the plaintiff refuse or neglect to proceed in the case for six weeks after the order of the Sudder Court may have been communicated to him through the Judge, the Judge may dismiss it, notwithstanding the order of the Sudder. In such cases the Judge, within one week after dismissing it, will certify the fact and the grounds of the dismissal to the Sudder Court.—*Reg.* 6, 1793, *Sect.* 4, *Cl.* 1.—*p.* 441.

59. The Court of Sudder Dewanny are vested with authority to receive any petition respecting suits or matters that may be depending or have been decided by the Zillah Courts, [or Principal Sudder Ameens in cases above 5000 Rupees,] and if it be proved to their satisfaction, that those Judges refused or omitted to receive it, or proceed on it, may command them under the usual formalities to receive the petition and proceed on it according to the Regulations.—*Reg.* 2, 1798, *Sect.* 7.—*p.* 441.

SECT. VIII.

Summary Appeals and Miscellaneous Petitions to the Sudder Court.

60. The Sudder Court may receive a summary appeal from the orders or decrees of the Zillah Courts, (or Principal Sudder Ameens) where the latter may have refused to admit an original suit or appeal, cognizable by them; or having received it, may have dismissed it on the ground of delay, informality, or default, without investigating its merits.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 2.—*p.* 441.

61. The summary appeal must be preferred within the same time limited for the admission of regular appeals; and the provisions previously given relative to summary appeals to the Zillah Courts will be applicable to the same class of appeals preferred to the Sudder.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 5.—*p.* 441.

Summary appeals may be received by the Sudder Court, regarding the disqualification of landholders, for which vide Chap. 4, Sect. 24.

Also Summary appeals regarding the appointment of Guardians, for which vide Chap. 4, Sect. 25.

SECT. IX.

Regular Appeals to the Sudder Court.

62. In all suits originally decided by the Zillah Court, an appeal will lie to the Sudder Court.—*Reg.* 5, 1831, *Sect.* 28, *Cl.* 3.—*p.* 442.

63. In all suits above 5000 Rupees in value referred to Principal Sudder Ameens, the appeal will lie direct to the Sudder Court, and it will be conducted in all respects according to the rules laid down for an appeal from the Zillah Judges.—*Reg.* 25, 1837, *Sect.* 4.—*p.* 442.

64. If a petition of appeal is presented to the Sudder Court against the decision of a lower Court, founded on an award of Arbitration, it will be dismissed with costs, unless it be proved on oath that the arbitrators have been guilty of corruption or partiality.—*Reg.* 6, 1793, *Sect.* 22.—*p.* 442.

65. In case of resistance or evasion of process, when a Zillah Court shall adjudge either forfeiture of lands or a fine, an appeal will lie to the Sudder Court, without reference to the amount of the annual jumma, or produce, or fine.—*Con. No.* 780.—*p.* 442.

66. An appeal will lie from the decisions of the Court of Wards to the Sudder Court, if preferred within three months. An appeal may be received after that time, if sufficient cause be shewn for not having preferred it earlier.—*Reg.* 10, 1793, *Sect.* 32, *Cl.* 2.—*p.* 442.

67. In all matters which the Sudder Court may try in appeal from the lower Courts, (except as to hearing witnesses and receiving evidence) that Court will proceed in the same manner with the like powers and authority, and under the same restrictions, exceptions and limitations, as are prescribed for the Zillah Courts.—*Reg.* 6, 1793, *Sect.* 7.—*p.* 443.

[The reader is therefore referred for the undermentioned subjects to the Chapters indicated.]

68. The contents of the petition of appeal; the steps to be taken by the Zillah Court, on receiving the petition of appeal; the documents to be transmitted with the petition by the lower to the appellate Court; the cases in which an authenticated copy of the decree is or is not be presented with the petition, will be found in *Chap.* 5, *Sect.* 10.—*p.* 443.

69. The rules for stating the grounds of appeal in the first or in a supplementry appeal in *Chap.* 5, *Rules* 38, 39.—*p.* 443.

70. The period for preferring an appeal in *Chap.* 5, *Sect.* 4.—*p.* 443.

71. The execution or suspension of the decree of the lower Court during an appeal to the Sudder, in *Chap.* 5, *Sect.* 12, 13, 14, 15.—*p.* 443.

72. The default of the appellant to proceed in his suit for six weeks, in *Chap.* 5, *Rules* 145, 146. —*p.* 443.

73. The rules regarding Vakeels in the Sudder Court are the same as those laid down for Vakeels in the Zillah Courts.—*Vide Chap.* 2, *Sect.* 14 *to* 20.—*p.* 443.

74. The Sudder Court is in the habit of allowing the appellant to file with his petition of appeal, the Mooktarnamah under which the Vakalutnamah may be executed, the security bonds for costs, and for staying or enforcing execution, and the Vakalutnamah, as well as copy of the decree appealed against—all other documents are given in with a separate petition.—*Con. No.* 961.—*p.* 443.

75. If the appellant in an appeal filed in the Sudder Court does not proceed in it for six weeks, it will be dismissed unless he can satisfactorily account for the delay. The Court may award the respondent costs. The Sudder Court will record its reasons for refusing or allowing the appellant to proceed.—*Reg.* 6, 1793, *Sect.* 19.—*p.* 443.

76. The Zillah Courts will be careful to cause the record of every case appealed from those Courts or the Principal Sudder Ameens to the Sudder, to be copied and despatched in two months from the date of receipt of a precept calling for the papers.—*C. O.* 16*th April*, 1841.—*p.* 443.

77. The following rule for expediting the disposal of appeals in the Sudder Court was at the same time transmitted by that Court to be made known to parties who had cases pending in the Court.—*C. O.* 16*th April*, 1841.—*p.* 443.

78. Considering the great delay which takes place in filing the security bonds, the reasons of appeal and the replies thereto, the Sudder Court notifies to the parties that they must proceed with greater expedition, and in strict conformity with the rules laid down in the Regulations. Applications of parties praying for the postponement of their cases, or soliciting a longer period

79. The petition of appeal, pleadings, depositions and exhibits in the Sudder Court will be numbered, marked, dated and signed by the Register, as such papers are ordered to be numbered, marked, dated and signed in the Zillah Courts.—*Reg.* 6, 1793, *Sect.* 28.—*p.* 444.

80. In cases in which no specific rules exist, the Sudder Court, will act according to justice, equity and good conscience.—*Reg.* 6, 1793, *Sect.* 31.—*p.* 444.

SECT. X.

Witnesses and Evidence in the Sudder Court.

81. When the Sudder Court may judge it proper to receive farther evidence, in cases of appeal, they are empowered either to examine the witnesses in open Court, vivâ voce, causing their depositions to be written down and signed by the deponents; or to authorize their Register to take the depositions of the witnesses and to cause them to be signed and authenticated. The Register will examine the witnesses in the presence of the parties or their vakeels, who may cross question them; their answers will be written down and authenticated. If after due notice has been given to the parties, should they not attend the examination of the witnesses before the Register, he will proceed with the examination, and the depositions will be received as good and sufficient evidence. —*Reg.* 6, 1793, *Sect.* 16.—*p.* 444.

82. When the witnesses may be women of rank, the Court may grant commissions for the examination of them, as the Zillah Courts are allowed to do.—*Reg.* 6, 1793, *Sect.* 17.—*p.* 444.

The Rules relative to the examination of absent witnesses, given at Chap. 3, Sect. 21, will also be applicable in such cases.

83. When a witness duly summoned does not attend, or refuses to be sworn, or to give evidence, or to subscribe his deposition, or is guilty of corrupt perjury, or contempt of Court, the Court is to proceed against him in the same manner as Zillah Courts are authorized to deal with witnesses or persons so offending.—*Reg.* 6, 1793, *Sect.* 18.—*p.* 445.

84. If the Judges of the Sudder, or any single Judge, in a case within his competency, sees sufficient cause, on any civil proceeding, to bring a party to trial for perjury or subornation of perjury, they will record their sentiments to that effect, and direct whether the offender shall be held to bail, or kept in custody. An authenticated copy of the order, with the original papers, will then be transmitted to the proper Zillah Judge that he may proceed in it, as stated in the preceding Clause.—*Reg.* 17, 1817, *Sect.* 14, *Cl.* 3.—*p.* 445.

SECT. XI.

Process of the Court.

85. All processes, both to parties and witnesses, and every order for the execution of a decree and every order whatever, which may issue from the Sudder Court, will be written or printed in the language which Government may direct. It will be sealed with the seal of the Court, and signed by the Register.—*Reg.* 6, 1793, *Sect.* 13.—*p.* 445.

86. All such processes, rules and orders which are to be served on any parties, witnesses or persons, (except those in attendance on the Court) will be directed to the Court, in which the cause of action arose, or the lands may be situated, or the parties reside. Every such process will limit a certain time within which it is to be served, executed, and returned to the Sudder. —*Reg.* 6, 1793, *Sect.* 13.—*p.* 445.

87. Every such process will be issued in the native languages, and enclosed in an English precept.—*C. O. 20th April*, 1801.—*p.* 445.

88. In all cases in which a process may thus be sent for execution to a Zillah Court, the Court is to execute it within the time limited, and return it to the Sudder, or give good and sufficient reason why it has not been executed or served.—*Reg.* 6, 1793, *Sect.* 14.—*p.* 446.

89. When any order is thus sent to a Zillah Court to be executed, the information sent back in return by the Zillah Court, will not be made in the English certificate or return, but it is to be comprized in extracts from the proceedings of the Court so that the whole matter which it

may be necessary to lay before the Court may be understood without reference to the English certificate or return.—*C. O. 25th June*, 1801.—*p.* 446.

90. When any process, rule, order, or decree, has been transmitted to a Zillah Court by the Sudder, the return to such process will be made either by endorsement on the process, or on a paper firmly annexed to it. If on a separate paper, there will be an endorsement on the original process, referring to such paper. A copy of the process, together with the return to it, will be deposited among the records of the Court.—*Reg.* 6, 1793, *Sect.* 14.—*p.* 446.

91. Whenever a Zillah Judge may be unable fully to execute any process or order within the time limited, he will submit with a certificate, a report of what has been done and of what remains to be done, and state the period in which it may be expected to be completed, transmitting a farther definite report, if in the period first certified, it unavoidably remain unexecuted.—*C. O. 25th July*, 1834.—*p.* 446.

92. If any delay occur in future in this respect in the Judge's office, and it be not satisfactorily reported and explained, he will be held personally responsible for the delay.—*C. O. 25th July*, 1834.—*p.* 446.

93. Whenever the Judge has occasion to send a certificate with a partial return to the precepts of the Sudder Court, he will in addition to the number of the cause in which the precept is issued, and the names of the parties, invariably insert the number of the precept Register, agreeably to an appointed form.—*C. O. 17th July*, 1835.—*p.* 446.

94. Whenever the Zillah Judge may wish to communicate to the Court some information or remarks, or in which farther instructions may be requisite, connected with their precepts not requiring returns, they will adopt the form given in the body of the work, No. 9, Certificate.—*C. O. 4th Nov.* 1836.—*p.* 446.

Form of Certificate.

95. Precepts (in cases above 5000 Rupees) from the Sudder Court will be sent direct to the Principal Sudder Ameen, and all returns, unless specially directed, will be submitted by the Principal Sudder Ameen to the Sudder, with the usual certificate.—*C. O. 23rd Feb.* 1838.—*p.* 447.

96. The certificate required to be sent with the return need not be drawn out in English when the Principal Sudder Ameens are not acquainted with that language.—*C. O. 10th Aug.* 1838.—*p.* 447.

97. The return to the Court's precept will be sent by the Principal Sudder Ameens, according to a prescribed form, in Oordoo or Bengalee.—*C. O. 10th Sept.* 1839.—*p.* 447.

98. When the Sudder Court may transmit an order to be served to a Zillah Court, and the party after diligent search cannot be found, or has shut himself up so that the process cannot be served on him, the Zillah Court will affix in some conspicuous part of the Court room, a writing with a copy of the order or process, and a notice that if the party does not appear within the time limited, and obey the exigence of it, the Sudder Court will proceed to hear and determine it ex-parte. The Court will also cause a copy of such writing to be fixed up on the dwelling of the party, or in some conspicuous place of the village where he resided. The Zillah Court will then return to the Sudder Dewanny Court the manner in which the process has been executed.—*Reg.* 6, 1793, *Sect.* 14.—*p.* 447.

99. If the Zillah Court return that the party has absconded, or cannot be found, or has shut himself up, so that the process cannot be executed on him, and that the writing has been duly fixed up; should the party not appear, the Sudder Court will proceed to try and determine the cause ex-parte, as if the party had appeared and obeyed the exigence of the process.—*Reg.* 6, 1793, *Sect.* 15.—*p.* 448.

100. The Court of Sudder Dewanny may issue its own process and execute it within the City of Calcutta, as the Court may cause it to be executed in places beyond the limits. But it must be in writing, and have written thereon or underneath, a translation thereof or the substance, in English, and must be signed by one of the Judges of the Court.—*Act* 53, *George* 3, *Chap.* 155, *Sect.* 113.—*p.* 448.

[The following consolidated Rules regarding Precepts and Returns, are published in the Circular Orders.]

(1) All precepts shall be drawn out according to the annexed forms (No. 1, 2, 3, 4, 5.)

(2) All orders directing the issue of precepts shall state whether a return is required, and within what period.

(3) The period shall be calculated from the date of the despatch of the precept from this office.

(4) Precepts and returns shall bear the dates of despatch, not the date of proceedings which accompany them, as heretofore; and the subordinate Courts will be expected to despatch their returns within the period allowed.

(5) When a Judge of the Court has signed a chitteh, directing the issue of a precept, it shall be the duty of his peshkar to prepare a copy of the roobukaree, duly attested by his signature, together with such other papers as should accompany the same, and to send them by a mohurrir to the English clerk in the precept department, within seven days from the date on which the chitteh was signed by the Judge. The roobukaree shall bear a list of the accompanying papers at the foot of it; and the peshkar shall be responsible that they are correct and complete.

(6) The English clerk will note on each proceeding the date of receipt, and after preparing the precepts, will submit them for the Register's signature; he will then enter them in the proper books, and will despatch them on the same day if possible; if not despatched till next day, or later, the date of the receipts shall be altered to correspond with that of despatch.

(7) If the officer to whom the precept may be addressed, find it impracticable to send a complete return within the prescribed period, he will transmit a proceeding with a certificate according to the annexed forms, (No. 5,) stating the reason, and the additional period which he may require to carry the Court's orders into effect.

(8) Such returns and certificates when received in this office shall, after having been endorsed and entered in the proper books, be sent by the precept clerk to the peshkar of the Judge by whom the precept was issued, who will note on each the date of receipt, and bring it forward in the usual course.

(9) If the period allowed in a precept, together with the number of days occupied by the letter *dawk*, expire before a return or explanatory proceeding and certificate be received, the Register shall send a letter calling for explanations within a specified term; should this term also expire without receiving a reply, the circumstance shall be brought to the notice of the Judge who issued the order, for such further measures as he may deem advisable.

(10) The officer by whom a return or certificate may be sent, will cause a list of the papers which accompany it to be written at the foot of the rubookaree.

(11) If the papers, &c. which should accompany a precept or return, are too heavy for the letter *dawk*, they shall be sent by *dawk banghy*, with a note stating the case and precept or return to which they belong; the precept or return itself with the proceedings of the Court being sent as usual by the letter *dawk*.

(12) The precept clerk will, at the close of each week, submit to the Register a list of unanswered precepts and letters, to which returns are due.—*C. O. 6th Feb.* 1835.—*p.* 449.

List of Precepts, Returns, and Certificates—Sudder Dewanny Adawlut.

SECT. XII.

Neglect of duty, and resistance and disobedience of the Court's orders by the Lower Courts.

101. If a Zillah Court, to whom a process has been sent for execution, shall wilfully disobey it, or neglect the Court's commands, or make false returns, the offending Judge may be suspended by the Sudder Court. If the Sudder Court thus suspends a Judge, it will notify the same within ten days to the Governor General, together with the cause of it, and certify under the seal of the Court, the proceedings, depositions, and exhibits in the cause, which may be necessary to enable the Governor General to come to a determination on the suspension, and will also transmit him on his requisition all such farther papers as he may desire.—*Reg.* 6, 1793, *Sect.* 13.—*p.* 452.

102. The Sudder Court is directed above, to report to the Governor General, all instances of wilful neglect of duty or aggravated misconduct in a covenanted servant employed in a Civil

Court, whether such misconduct has been reported to it, or become known from papers and proceedings before the Court. But, it is now ordered, that if the case appears to involve only an error of judgment or a slight default, the Court is authorized, in the former case, to notice the error for his information and guidance; and, in the latter case, to admonish him.—*Reg.* 2, 1801, *Sect.* 7.—*p.* 452.

The penalties for resisting any process, order, rule, or decree of the Sudder Court, are the same as those enacted for a similar resistance of the process of the Zillah Courts, which will be found detailed at Chapter 3, Section 12.

SECT. XIII.

Decrees of the Sudder Courts.

103. The Decrees of the Sudder Courts, will be signed by the Judge or Judges present at the passing of them, and attested by the Register, and copies so signed and attested, will be delivered to the parties.—*Reg.* 6, 1793, *Sect.* 28.—*p.* 453.

104. When in an appeal from a Zillah Court, two Judges concur successively in reversing the order of a lower Court, the decree will be signed by the Judge present at the final sitting, but the opinion of the first Judge will be recorded in the decree.—*Reg.* 25, 1814, *Sect.* 8.—*p.* 453.

105. The rules prescribed for the guidance of the Zillah Courts relative to the preparation and delivery of Decrees, and detailed in Clauses 8, 9, 10, Section 8, Regulation 26, 1814, are equally applicable to the Decrees of the Sudder Dewanny Adawlut.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 11.—*p.* 453.

106. The Decrees of the Sudder Dewanny Adawlut are to be final in all cases, (except in appeals to England.)—*Reg.* 6, 1793, *Sect.* 29.—*p.* 453.

107. The orders of the Sudder Court in all miscellaneous cases are final. The Court therefore declines to admit any appeals to the Privy Council, excepting such as are expressly provided for by Regulation 16, 1797.—*Con. No.* 1102.—*p.* 453.

108. 109. Whenever a decree of a Sudder Court has been sent to a Zillah Court to be executed, if, after due notice to the decree-holder, the case is dismissed on default in consequence of his neglect, the Judge may not of his own accord, re-admit the case, or restore it to his file. He must return to the Sudder Court the precept issued to him, certifying the execution of it as far as lay in his power, and what he has done in pursuance of the Court's orders. If the decree-holder renews his application for the enforcement of the award, he must be referred to the Sudder Court, who alone are competent to comply with his petition and direct the readmission of the suit on the file of the lower Court.—*C. O. 7th Dec.* 1838.—*p.* 454.

110. The Sudder Court, when confirming the decree of a lower Court, will adjudge interest at the rate of twelve per cent. per annum, receivable by the respondent from the date of the decree, and will punish litigious appeals with a fine.—*Reg.* 13, 1796, *Sect.* 3.—*p.* 454.

111. Where a fine as above mentioned is not forthcoming immediately, it shall be realized under the same rules which are applicable to the execution of decrees of Court.—*Con. No.* 1096.—*p.* 454.

112. The Sudder Court having taken into consideration, the unnecessary delay and trouble occasioned by the preparation of intermediate returns, orders them to be discontinued.—*C. O. 2d April,* 1841.—*p.* 454.

113. But that the Sudder Court may exercise a proper superintendence over this important department, a quarterly return will be made, according to a prescribed form of the unexecuted decrees of the Court. Full details will be given that the Court may at once see to what authority any unnecessary delay is to be attributed.—*C. O. 2d April,* 1841.—*p.* 454.

114. Quarterly returns will also be made of any decrees of the Privy Council, which may be unexecuted.—*C. O. 2d April,* 1841.—*p.* 454.

Form of the Quarterly Return.

115. The same rule given above, regarding the submission of Quarterly Returns, and dispens-

ing with intermediate returns, will be applicable to cases in which precepts are issued direct from the Sudder Court to the Principal Sudder Ameens. They will transmit the requisite information to the Zillah Judge, who will incorporate it in the English statements ordered to be sent up quarterly.—*C. O. 16th July*, 1841.—*p.* 456.

116. To facilitate the preparation of the statements in a satisfactory manner, a Register book will be kept by the Decree Jaree Mohurrir, which will contain an abstract of all orders issued, and of the result which has followed.—*C. O. 20th Aug.* 1841.—*p.* 456.

117. The Sudder Dewanny is empowered in every case in which a sum of money is decreed to be paid by a Zemindar, or other proprietor of land, to issue an order to the Zillah Court to execute it, as the Zillah Court is authorized to execute such decrees.—*Reg.* 6, 1793, *Sect.* 21.—*p.* 456.

SECT. XIV.

Review of Judgment by the Sudder Court.

118. The Sudder Court, in all cases in which a petition may be presented to them for a Review of their own judgment which may not have been appealed to the King in Council, or though appealed, the proceedings in which may not have been transmitted, are authorised to grant the desired review, if justice appear to require it. They will record on their proceedings the grounds on which it is granted in each instance, and issue such orders as may be necessary for the admission or rejection of new evidence.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 3.—*p.* 456.

119. If the Sudder Court should reject the petition, the order rejecting it will not be construed to prevent the party from instituting a regular appeal (if the case be appealable) in a competent Court subject to the Regulations in force for the admission of such appeals.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 4.—*p.* 456.

The rules regarding Stamps on Petitions for a Review of Judgment, will be found in Chap. 5, Sect. 21.

120. When the Judge or Judges who may have passed the decree, shall continue attached to the Sudder Court when the petition for review is received, and shall not be precluded for the next six months from considering it and passing an order or opinion on it, it shall not be competent for another Judge or Judges of the same Court to enter on the consideration of it, it being the intention of these rules that the decree should be reviewed by the Judge who passed it, subject to a regular course of appeal. The above rules however are not applicable to cases not open to a farther appeal, in which a single Judge may appear on the face of the decree to have exceeded his powers. In such cases, the decree being imperfect and irregular, if a majority of the Judges concur in opinion on the irregularity, they may proceed on the petition for review in the manner prescribed by Regulation 26, 1814, Section 4, and by *Reg.* 2, 1825, *Sect.* 3.—*p.* 457.

121. In a case decided by two Judges of the Sudder, both of whom continue attached to the Court, any application for a review should be laid before both. In the event of a difference of opinion between them as to the admission or rejection of the review, the matter should be referred to one or more Judges of the Court, until the question be decided by a majority of voices.—*Con. No.* 756.—*p.* 457.

122. When a case in the Sudder has been decided by a single Judge, and he rejects the petition for a Review, his decision is to all intents final; unless he shall see ground on a subsequent application to admit a review; and it is not competent to the Court, the said Judge being absent and incapable of hearing a second petition within six months, to authorize a review of the order rejecting the Review.—*Con. No.* 982.—*p.* 457.

123. Two Judges of the Sudder Court confirm the decree of a lower Court. The same two Judges admit a review; one of them leaves the Court; the other confirms the decision passed by the two. Under these circumstances, the Sudder Court held that the decision of the remaining Judge was final.—*Con. No.* 683.—*p.* 457.

SECT. XV.

Special Appeals to the Sudder Court.

124. In suits originally passed by the Principal Sudder Ameens, an appeal will lie to the Zillah Court, and a second or special appeal to the Sudder Court.—*Reg.* 5, 1831, *Sect.* 28, *Cl.* 2.—*p.* 458.

125. From the orders passed by the Principal Sudder Ameens, in the execution of their decrees, an appeal will lie to the Zillah Court, and a special appeal to the Sudder Court.—*Reg.* 5, 1831, *Sect.* 22.—*p.* 458.

126. The Sudder Court will be guided in the admission of special appeals by Reg. 26, 1814, Sect. 2; Reg. 19, 1817, Sect. 7; and Reg. 9, 1819, Sect. 3, 4, 5.—*Reg.* 2, 1825, *Sect.* 4, *Cl.* 2.—*p.* 458.

127. The same rules are applicable to special appeals in the Sudder Court which are enacted for the guidance of the Zillah Courts. These will be found in *Chap.* 5, *Sects.* 16, 17, 18.—*p.* 458.

128. In applications for special appeals, no exhibit fee is required with the documents filed, until the special appeal be admitted, when the fee is levied on such documents as are put on record in the proceedings.—*Con. No.* 961.—*p.* 458.

SECT. XVI.

Appeals from the Sudder Court to the Privy Council.

129. All the Rules, Orders and Regulations passed in the fourth year of King William the Fourth, relative to appeals from the Sudder Dewanny Adawlut to the Privy Council, were cancelled by Her Majesty in Council on the 10th April.—*Rules passed by Her Majesty in Council, 10th April,* 1838.—*p.* 458.

130. Her Majesty in Council is pleased to approve of the several Rules, Orders and Regulations, contained in the subsequent Schedule given below, and the same are directed to be observed by the Courts of Sudder Dewanny.—*Ibid.*—*p.* 459.

131. After the 31st of Dec. 1838, no appeal to the Privy Council will be allowed by the Sudder Dewanny Adawlut, unless the petition was presented within six months from the date of the judgment or order complained of, and unless the value of the matter in dispute shall amount to 10,000 Company's Rupees at least. After the above date, the limitation of 5000 Pounds sterling heretofore existing in respect of appeals shall wholly cease.—*Ibid.*—*p.* 459.

132. In all cases in which any of such Courts shall admit an appeal to the Privy Council, it shall certify on the proceedings, that the value of the matter in dispute amounts to the sum of 10,000 Company's Rupees, which certificate will be deemed conclusive of the fact.—*Ibid.*—*p.* 460.

133. But this is not to be construed to derogate from the undoubted power of Her Majesty in Council, on the petition of any person aggrieved by any judgment or order of the aforesaid Courts, to admit an appeal on other terms, and subject to such other limitations, restrictions and Regulations as Her Majesty may think fit to prescribe.—*Ibid.*—*p.* 460.

134. On the arrival of a transcript of the proceedings of appeal from the Sudder Courts, an officer of the East India Company specially appointed by the Court of Directors will give notice thereof to the Clerk of the Council, stating the names of the parties, and the date of the decree. Such notice will be registered in the Council Office.—*Ibid.*—*p.* 460.

135. These transcripts of proceedings will be kept at the India House, or such other place as the Court of Directors may choose, and the agents of the parties will be at liberty to inspect them. It will be the duty of the officer to produce the originals before the Privy Council, on due notice being given him.—*Ibid.*—*p.* 460.

136. If the petition of appeal of the appellants be not lodged in the Council office within three months from the registration of the arrival of these transcripts, or if the appellant's case is not

for non-prosecution. If the respondent do not bring in his case in one year from the time of such registration the appellant may move that it be decided ex-parte.—*Act* 6, 1838.—*p.* 460.

137. All parties desirous of appealing from the Sudder Dewanny Adawlut to the Privy Council, may present their petition of appeal to the Court, without an authenticated copy of the decree.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 6.—*p.* 460.

138. All persons desirous of appealing from the judgment of the Sudder to the Privy Council, will present their petition of appeal in person, or through an authorized Agent within six months from the date on which the judgment has been passed, provided the judgment appealed against, exclusive of the costs of suit, be of the value of 1000£. The Court will admit the appeal, and proceed on it as hereafter ordained.—*Reg.* 16, 1797, *Sect.* 2.—*p.* 461.

139. To determine what causes are thus appealable, the Pound Sterling will be computed at 10 Current Rupees, making 5000£ equal to 50,000 Current Rupees, or 43,103 Siccas. Under this computation, the value of the property in question will be determined, whether land, money, effects, or otherwise, according to the general rule for determining the value of property in a legal sense.—*Reg.* 16, 1797, *Sect.* 3.—*p.* 461.

The sum has been reduced by the Schedule given above to 10,000 Company's Rupees.

140. In such cases of appeal, the Court may either order the judgment to be carried into execution, taking security from the party in whose favour it was passed for the due performance of the final decree, or suspend the execution of it, pending the appeal, taking like security from the party left in possession. But in all cases, security is to be given by appellants to the satisfaction of the Court for the payment of all costs likely to be incurred in the appeal, and for the performance of the judgment. After receiving such security, the Court will declare the appeal admitted, and give notice to the parties, that they may take measures to prosecute the appeal and provide for the defence.—*Reg.* 16, 1797, *Sect.* 4.—*p.* 461.

141. A Sudder Putnee talook, unexceptionable in all respects as such, will be considered as sufficient security in cases appealed to the Privy Council, to the extent of the surplus proceeds thereof.—*Con. No.* 1004.—*p.* 461.

142. Persons wishing to appeal to the Privy Council *in formâ pauperis*, are required, equally with other appellants, to furnish Malzaminee security to the extent of 5000 Rupees to cover the original costs of appeal; and a farther sum of 5000 Rs. to reimburse the Court of Directors any expences to which they may be put in the event of their being called upon in conformity with the Act of Parliament to conduct the appeal.—*Con. No.* 1032.—*p.* 462.

143. The security for the payment of costs must be delivered by the appellant with his petition of appeal. The presenting the petition of appeal without the security, before the expiration of the time limited for appealing, will not preserve to the appellant his right of appeal, so far as respects the limitation.—*Reg.* 2, 1798, *Sect.* 10.—*p.* 462.

144. The Sudder Court for special reasons may leave the appellant in possession during the appeal, taking adequate security from him.—*Reg.* 13, 1808, *Sect.* 11, *Cl.* 3.—*p.* 462.

145. No stamp duty or institution fee will be payable in respect of any proceeding in any appeal, or in respect of any paper or copy of any paper necessary for any appeal from any Court of the Company to the Privy Council.—*Act* 11, 1839.—*p.* 462.

146. In all cases in which the Sudder Court may admit any appeal to the Privy Council, they will cause two exact copies to be made of all the proceedings held, and judgments given in the case, and the whole of the evidence and documents, (translated into English, if they be in the native language), and transmit them officially to the Governor General in Council to be laid before the Privy Council. The Register will also furnish the appellant or respondent on their application with copies of all the papers, on their defraying the expence incurred thereby, but not otherwise. The Register will not deliver the papers till the expence is paid, which will be carried to the credit of Government, by whom the expenditure on this account will be made in the first instance.—*Reg.* 16, 1797, *Sect.* 5.—*p.* 462.

147. If the judgment appealed from has been passed in pursuance of any local Regulation of Go-

vernment; or if such local Regulation be alluded to in the documents, a copy of it, or of that part which is material, will be annexed to the several copies of the proceedings to be made either for the parties, or for transmission to the Privy Council.—*Reg.* 16, 1797, *Sect.* 6.—*p.* 462.

148. But nothing in this Regulation is to bar the full and unqualified exercise of His Majesty's pleasure in all appeals to him from the Sudder, either in rejecting what he may consider inadmissible, or receiving what he considers admissible.—*Reg.* 16, 1797, *Sect.* 7.—*p.* 463.

149. When a decree is received from the Privy Council, it is usual to forward it to the Judge of the District in which the cause of action may have arisen, with an order generally to carry it into effect, in the same manner and under the same rules, as those prescribed for the execution of other decrees of Court, leaving any person dissatisfied with his orders to appeal therefrom in the usual form.—*Con. No.* 1066.—*p.* 463.

150. 151. In reference to a particular decision of the Privy Council, it was presumed to be the intention that the parties should be placed precisely in the situation in which they would have been, but for the decree of the Sudder Court. The decree-holder is therefore entitled to receive from the respondent without a fresh suit, the amount with interest of the mesne profits refunded by him by order of the Sudder Court, as well as for the whole period of his subsequent dispossession, and the costs of the appeal to the Sudder Dewanny; and the Court, in the execution of the decree, may award the same.—*Con. No.* 1066.—*p.* 463.

SECT. XVII.

Officers of the Sudder Court.

152. Any person not being a covenanted servant of the Company, may, when it is deemed expedient by Government, be appointed Deputy Register or Assistant Register of the two Sudder Courts. Those Courts will assign them any of the duties now performed by their Register.—*Act* 7, 1840.—*p.* 463.

153. The Deputy Register is empowered to sign Circulars and attest copies of papers given to parties on stamp paper, and to perform the duties entrusted to the first Assistant. The first Assistant is empowered to sign precepts and attest copies of papers on plain paper issued by order of the Court, or retained among its records.—*C. O. 3d April,* 1840.—*p.* 463.

154. The Sudder Courts, without reference to other authority, may appoint, remove, or accept the resignation of the European uncovenanted and native ministerial officers of their Courts, (except that of the Nazir's peons.)—*Reg.* 8, 1809, *Sect.* 3.—*p.* 464.

155. The Sudder Court may receive charges against their own officers for corruption, extortion and embezzlement, and direct the complainant to prosecute them in that Court.—*Reg.* 13, 1793, *Sect.* 9, *Cl.* 12.—*p.* 464.

156. And in like manner may receive and act on similar charges against their Law Officers.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 1.—*p.* 464.

157. The Sudder Court is forbidden to make any alteration in the distribution of the salaries of its officers, or in the number and designation of the several descriptions of native officers, which now compose, or may hereafter compose, their establishments without leave of Government.—*Reg.* 5, 1804, *Sect.* 23.—*p.* 464.

158. The Nazir of the Court of Sudder Dewanny will appoint his own Naibs, Mirdas and Peons, or similar description of public officers employed under his immediate direction and control; and fill up vacancies from time to time, subject to the approbation of the Court. He may also remove such persons on shewing sufficient cause to the Court, but not without its knowledge or sanction.—*Reg.* 5, 1804, *Sect.* 12.—*p.* 464.

159. The appointment and removal of Law Officers of the Sudder Dewanny, will be reported as heretofore for the previous sanction of the Governor General in Council, subject to the farther provisions of this Regulation.—*Reg.* 11, 1826, *Sect.* 3.—*p.* 464.

The rules regarding securities to be taken from the Treasurers and Nazirs of Zillah Courts, will be equally applicable to the same officers of the Sudder Court.

SECT. XVIII.

Translations made for the Sudder Court.

160. Translations which may be required by the Sudder Court, will be made by the Register and his Assistants. If they have not leisure for this duty, the Court will cause the translations to be made by other competent persons.—*Reg.* 2, 1801, *Sect.* 17.—*p.* 465.

161. The Sudder Dewanny Adawlut may authorize the Zillah Courts to employ duly qualified persons to make translations of papers required by it, when they cannot be made by the officers of the Court without interruption of their other duties.—*Reg.* 19, 1797, *Sect.* 4.—*p.* 465.

162. Whenever any unofficial person may be thus employed, he will be paid at the rates of One Sicca Rupee for every hundred words of the original language, and the same rate for figures, calculating five figures for a word.—*Reg.* 19, 1797, *Sect.* 5.—*p.* 465.

SECT. XIX.

Transcription and Transmission of Papers for the Court.

163. Previous to transmitting the original papers and documents in appeal cases to the Sudder Court, the lower Court will cause copies to be taken, and duly authenticated, and deposited in the Court. Where these papers are contained in a book which it would be inconvenient to send, true and authentic copies of the papers will be transmitted. Where an original paper has been mislaid and a copy of it has been entered in any book or proceedings, the copy is to be deemed the original, and a copy of it will be sent up to the Sudder Court.—*Reg.* 6, 1793, *Sect.* 11.—*p.* 466.

164. The above rules are modified. In transmitting the record of appeal cases, it will be sufficient for the lower Court to send the original pleadings, depositions and exhibits; and not the other papers. But the Court to which the appeal has been made may always call for such miscellaneous papers.—*Reg.* 9, 1831, *Sect.* 8.—*p.* 466.

165. In order to copy proceedings in cases appealed to the Sudder Court, the Zillah Judge may employ temporary Mohurries with the permission of the Sudder Court at 10 Rupees a month, when the employment of them may be necessary.—*C. O. 24th Nov.* 1837.—*p.* 466.

166. It was subsequently ordered that all such copies should in future be paid for at the rate of 4000 words per Company's Rupee, be the proceeding in Persian, Oordoo or Bengalee.—*C. O. 28th June*, 1839.—*p.* 466.

167. The Zillah Judge will specify in the bills sent for audit the proceedings which are charged for, and the number of words in each case. Each nuthee will be accompanied with a memorandum under the signature of the Sheristadar, of the number of words contained in it, and the exact sum paid for copying it.—*C. O. 28th June*, 1839.—*p.* 467.

168. These rules apply to cases called for by the Sudder Court direct from the Principal Sudder Ameens. Those Judges will apply to the Zillah Court for permission to employ extra Mohurries, when the officers on their own establishment are unable to make the requisite copies. —*C. O. 28th June*, 1839.—*p.* 467.

169. The memorandum under the signature of the Sheristadar required by the Circular Order 28th June, 1839, should be submitted in duplicate according to a subjoined form. The Bills for Mohurries will not be forwarded till after the despatch of the nuthees charged for.—*C. O. 13th Aug.* 1841.—*p.* 467.

170. Public officers when making reference to the Sudder Court will send copies, instead of original papers; when any such papers are sent, and copies of them are required for record, those copies are to be prepared before submitting them.—*C. O. 16th Nov.* 1833.—*p.* 467.

SECT. XX.

Correspondence of the Sudder Court.

171. The Sudder Dewanny Adawlut is prohibited corresponding by letter with parties in suits or in matters depending before them, or coming within their cognizance. If a party has any thing to represent to the Court, he will either appear in person, or represent it through an authorized

Vakeel. The Court will pass whatever order appears consistent with the Regulations, and will deliver a copy of it to the party under the seal of the Court and attested by the Register.—*Reg.* 6, 1793, *Sect.* 6.—*p.* 467.

SECT. XXI.

Construction of the Regulations by the Sudder Courts.

172. When a precept issued by a Provincial Court to a Zillah Court appears contrary to or not warranted by the existing Regulations, he will state it to the Provincial Court and suspend the execution of it, till the receipt of a second precept in reply to his objections. If the second precept confirms the first, the lower Court will execute it, but if the Judge be not satisfied with it, he may, while he certifies the execution of it, request that the question with all the papers may be referred to the Sudder Court. This reference will be confined to cases in which the sense of the Regulations, from a difference of constructions, may appear doubtful.—*Reg.* 10, 1796, *Sect.* 2.—*p.* 468.

173. In all instances wherein a reference to the Sudder Courts may be made under the preceding rule, the determination of those Courts, in all cases provided for by the Regulations agreeably to their construction thereof, will be final and conclusive.—*Reg.* 10, 1796, *Sect.* 3.—*p.* 468.

174. Should any doubt occur to the Sudder Court with respect to the meaning of any part of the Regulations, or should it appear to them that the Regulations do not sufficiently provide for the case, they will report it to the Governor General, that a new Regulation may be framed. —*Reg.* 10, 1796, *Sect.* 4.—*p.* 468.

175. The Regulation above cited is only intended to apply to difference of opinion relative to the proper construction of Regulations in miscellaneous matters, and not to the provisions of a decree, the remedy against which, if deemed erroneous by either party, consists in appeal or review. —*Con. No.* 479.—*p.* 468.

176. Reg. 10, 1796, Sect. 3, is modified. When a reference regarding the meaning or construction of a Regulation may be made to the Sudder Court, the Western and Calcutta Court will respectively communicate their sentiments to each other, and no construction on the point so referred, will be promulgated till it has received the sanction of both Courts.—*Govt. Res. 22d Nov.* 1831.—*p.* 468.

ADDENDA.

LIMITATION OF TIME FOR THE COGNIZANCE OF SUITS.

1. The Zillah and City and subordinate Courts are forbidden to take cognizance of a suit against any person, if the cause of action arose in the undermentioned Provinces before the undermentioned dates:

In Bengal, Behar, and Orissa, Aug. 12, 1765.—*Reg.* 3, 1793, *Sect.* 14.—*p.* 524.

2. In Benares, July 1st, 1775.—*Reg.* 7, 1795, *Sect.* 8.—*p.* 524.

3. In the Ceded Provinces, Nov. 10, 1801.—*Reg.* 2, 1803, *Sect.* 18, *Cl.* 1.—*p.* 524.

4. In Bundlekund, Dec. 16, 1803.—*Reg.* 8, 1805, *Sect.* 6, *Cl.* 2.—*p.* 524.

In Saharunpore, Allyghur and Agra, Dec. 30, 1803.—*Reg.* 8, 1805, *Sect.* 6, *Cl.* 2.—*p.* 524.

5. In Cuttack, Oct. 14, 1803.—*Reg.* 14, 1805, *Sect.* 5.—*p.* 524.

6. In Sonk, Sonsa, and Sahar, April 17, 1805.—*Reg.* 12, 1806, *Sect.* 4.—*p.* 524.

7. In Callinger, June 19, 1800.—*Reg.* 22, 1812, *Sect.* 4.—*p.* 525.

8. In the Deyra Dhoon, May 15, 1803.—*Reg.* 4, 1817, *Sect.* 3.—*p.* 525.

9. In Khundeh and Mahoba, Nov. 1, 1805.—*Reg.* 2, 1818, *Sect.* 3, *Cl.* 2.—*p.* 525.

10. In Goburdhun, Jan. 25, 1814.—*Reg.* 5, 1826, *Sect.* 3.—*p.* 525.

11. The Courts will not try the merits of any suits, of which the cause of action arose *twelve* years before the institution of the suit, unless the plaintiff can shew that he demanded the money or matter in question, and the defendant admitted the truth of the demand and promised to pay the money; or that he had instituted a suit within that period in a Court of competent jurisdiction, and shall give satisfactory reasons for not having proceeded in it, or prove that from minority or other sufficient cause he was precluded from obtaining redress.—*Reg.* 3, 1793, *Sect.* 14.—*p.* 525.

12. A Miscellaneous application to the Court cannot be considered as a "preferring of the claim" within the meaning of Reg. 3, 1793, Sect. 14, so as to save the limitation of twelve years for instituting a suit.—*Con. No.* 813.—*p.* 525.

13. Regarding the claims of Putteedars in the Province of Benares to obtain separate possession of their shares, (Regulation 22, 1795, Section 35, Clauses 2, 3 and 5,) the Sudder Court has given its opinion that the putteedars or other sharers must prefer their claims, within the period of twelve years from the date on which the proprietary right was adjudged by a decree of Court to the Zemindar, or to one or more of the coparceners, and if they fail to do so, their claims will fall under the operation of the law of limitation.—*Con. No.* 980.—*p.* 526.

14. This limitation of twelve years will not be deemed applicable to suits for the recovery of the public revenue, or any public right or claim instituted by Government.—*Reg.* 2, 1805, *Sect.* 2, *Cl.* 1.—*p.* 526.

15. All claims on the part of Government, either to assess rent free lands, or to recover arrears of the public revenue, or any other public right, (the cognizance of which is not barred by a specific rule,) shall be cognizable in the Courts, if regularly and duly preferred within the period of sixty years after the origin of the cause of action, if such cause shall not have originated prior to the period of the Company's accession to the Civil Government of these various provinces. —*Reg.* 2, 1805, *Sect.* 2, *Cl.* 2.—*p.* 526.

16. This limitation of twelve years, shall not be considered applicable to private claims of right to immoveable property, if the person in possession of such property when the claim is made shall have acquired possession thereof by violence, fraud or other unjust or dishonest means, or if such property has been so acquired by any person from whom the actual occupant, or his predecessors may have derived their title; but this violent fraudulent or unjust acquisition must be established to the satisfaction of the Court. But if the property, though acquired by violence or dishonesty, has been held under a just or honest title; (such as inheritance, purchase or fair donation, or any other fair title, believed to have conveyed a right of possession or property) during a period of 12 years antecedent to the time of prosecuting the claim, the limitation of twelve years will be fully applicable.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 1.—*p.* 526.

17. In all such cases, when the original cause of action may have arisen more than 12 years before the suit, and the claim may not be cognizable under the exceptions and provisions above cited, but may be cognizable, because the defendant acquired the property by improper means, or from the property having been so acquired by another person and not having been subsequently held by the present occupant or his predecessor, under a just and honest title for 12 years, the plaintiff shall set forth these facts distinctly in his plaint or repliçation.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 2.—*p.* 527.

18. If the alleged improper acquisition be denied by the defendant in his answer and rejoinder, the Court shall take the evidence of the plaintiff in proof of his allegation, and the evidence of the defendant as to the just and honest acquisition of the property by him or his predecessors, during more than 12 years; and if the Court shall either originally, or in appeal, determine that the suit is cognizable, the merit of the plaintiff's claim of right shall be heard, notwithstanding the lapse of more than 12 years.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 2.—*p.* 527.

19. The limitation prescribed in Regulation 2, 1805, is applicable to a claim for a share of an ancestral undivided estate, still held by a descendant of the family, in which estate the plaintiff had no manner of possession either as a sharer of a specific portion, or as receiving a main-

tenance therefrom, during a period exceeding twelve years antecedent to the institution of the suit, no good cause, (minority and the like) of course being shewn to excuse the delay.

The circumstance of a person's having been content with a maintenance out of an ancestral undivided estate, and not having received a specific portion for a period exceeding twelve years, will effectually bar his claim to a separate possession of his own share whenever he thinks fit to demand it.—*Con. No.* 942.—*p.* 527.

20. But no suit whatsoever shall be heard in any Court, if the cause of action arose *sixty* years before its institution, and no plea on the part of the plaintiff for the non-prosecution of his claim, during this period of sixty years, nor any defect of title on the part of the possessor of the property, shall be deemed sufficient ground for taking cognizance of it.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 3.—*p.* 527.

21. Moreover, if the property claimed has been acquired by an insufficient title, within the sixty years, yet if it descended by inheritance to the person in possession, when the claim may be preferred after a lapse of twelve years, and if he has obtained just and honest possession of it without collusion, and if the occupant, or any one from whom it was obtained, held quiet and undisturbed possession of it for twelve years antecedant to the claim, that claim shall not be cognizable, unless under the provisions and exceptions already in force.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 3.—*p.* 528.

22. Notwithstanding the mention of sixty years as above no claim can now be heard which had its origin beyond the date of the cession of any Province; and this without reference to the defendant's possession having been fair or unfair.—*Con. No.* 478.—*p.* 528.

23. But no length of time shall give a prescriptive right of property, or bar a suit for the recovery of it, when the occupant of the land or other property, may have acquired or held it, as mortgagee or depositary only, without a proprietary right, nor in any other case, wherein the possession of the actual occupant shall not have been under a title *bonâ fide* believed to have conveyed a right of property to the possessor.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 4.—*p.* 528.

24. The terms of Clause 4, are general and include land and other property; its provisions are therefore as applicable to suits on deposits of money, or other personal property, as to land.—*Con. No.* 965.—*p.* 528.

25. All suits, complaints and informations cognizable in the Civil Courts for the recovery of any fine or penalty receivable by Government, or by the informer, for the unlicensed manufacture or sale of intoxicating drugs, &c. &c. under any Regulation which has not fixed a specific period for the recovery of it, must be preferred within one year after the act which incurred the fine or penalty has been committed. No such suit or complaint shall be cognizable in the Civil Courts after the prescribed period, unless prosecuted on the part of Government, or good and sufficient reason be shewn for not prosecuting it earlier.—*Reg.* 2, 1805, *Sect.* 6.—*p.* 529.

26. All suits and complaints for penal damages, i. e. pecuniary penalties for a breach of the laws, exclusive of a compensation for actual loss, for the recovery of which no specific period has been fixed, must be preferred in one year after the cause of action has arisen, or as soon after as possible. No such suit will be entertained in any Civil Court, after the expiration of one year, without good and sufficient reason for not prosecuting it earlier. This restriction will be applicable to claims for the recovery or value of the plaintiff's property, or a compensation for the damage or loss of his property. In such cases the general rule of limitation of twelve years will be applicable.—*Reg.* 2, 1805, *Sect.* 7.—*p.* 529.

27. The provisions in the existing Regulations for the arrest of defaulting under-tenants and their sureties by landholders and farmers, and for a summary enquiry into the case, having been intended only to apply to arrears due in the current year, or immediately after it, such summary process and enquiry shall not be allowed in case of any arrear of rent which has been due more than a complete year before the plaintiff's application. But the Courts making such summary enquiry may include in the adjustment of recent arrears any arrear due beyond the period of a year, if it appear equitable.—*Reg.* 2, 1805, *Sect.* 4, *Cl.* 1.—*p.* 529.

28. These rules in regard to the institution of summary suits for rent should be applied to suits

for the recovery of advances for indigo instituted under Regulation 6, 1823.—*Con. No.* 565.—*p.* 529.

29. Under this rule, the summary application of the Collector to the Civil Courts against parties who have withdrawn attached property, must be limited to one year from the occurrence of the act.—*Con. No.* 316.—*p.* 530.

30. The same limitation of one year is extended to all applications for summary process by landholders and farmers against the agents employed in managing their estates, or collecting their rents under the Regulations, which authorize such processes for the arrest of agents on account of demands for money in their hands, or for accounts not rendered, or for any other matter relating to their trust.—*Reg.* 2, 1805, *Sect.* 4, *Cl.* 2.—*p.* 530.

31. The admission of Regular Suits to contest the justice of the summary awards of the Collectors, in matters connected with arrears and exactions of rent, is restricted to one year from the date of the delivery or tender of the Collector's award.—*Reg.* 8, 1831, *Sect.* 6.—*p.* 530.

32. The rules prescribed in the existing Regulations regarding the period within which suits may be admitted in the Zillah Courts are applicable to suits preferred to Moonsiffs.—*Reg.* 5, 1831, *Sect.* 5, *Cl.* 6.—*p.* 530.

REGISTRY OF DEEDS.

SECT. I.

Deeds to be Registered.

1. An office for the Registry of Deeds will be established in each Zillah and City Court, which will be committed to the Register, who, previously to entering on the execution of the office, will take the appointed oath.—*Reg.* 36, 1793, *Sect.* 2.—*p.* 531.

2. The Zillah Judge is not authorized by the Regulations to register any description of deeds, required to be registered. The office should be fixed at the Sudder station of the district.—*Con. No.* 135.—*p.* 531.

3. The Register will register the Memorials of the deeds mentioned in *Reg.* 36, 1793, *Sect.* 3.—*p.* 531.

4. Also engagements of Indigo planters (whether European or native,) with the ryots and others for the delivery of the plant.—*Reg.* 20, 1812, *Sect.* 3, *Cl.* 1.—*p.* 531.

5. Also, bonds, promissory notes, and all obligations for the payment of money.—*Reg.* 20, 1812, *Sect.* 5, *Cl.* 1.—*p.* 531.

6. Security Bonds for the eventual payment of costs of suit may be registered under Rule 5.—*Con. No.* 1270.—*p.* 531.

7. Registers are not warranted in registering any deeds not specified in the Regulation.—*Reg.* 20, 1812, *Sect.* 7.—*p.* 531.

8. The Registration of Ejaranamahs is illegal.—*Con. No,* 812.—*p.* 532.

SECT. II.

Rules for Registering.

9. Every Register will attend his office during certain specified hours, of which a written notice will be affixed in a conspicuous part of his office.—*Reg.* 36, 1793, *Sect.* 13.—*p.* 532.

10. The Registry of all deeds will be made in the Register's office of the Zillah or City in which the property lies; if it be in two or more jurisdictions, it will be registered in the office of each jurisdiction.—*Reg.* 36, 1793, *Sect.* 7.—*p.* 532.

11. The Registry of a deed in any other district than that in which the land is situated, must be considered unofficial, and not conveying to the deed the preference conferred on registered deeds by Section 6, of the Regulations cited.—*Con. No.* 1015.—*p.* 532.

12. Every species of deed, will be registered in a separate book, to be paged and attested by the Judge, who will note the number of pages in each book on the last page. No Register will be deemed authentic unless thus paged and attested.—*Reg.* 36, 1793, *Sect.* 8, *Cl.* 1.—*p.* 532.

13. Every deed will be numbered, and the date of the month and year and the time of day of registering it, will be noted in the margin of the Register book, which will be deposited among the records of the Court.—*Reg.* 36, 1793, *Sect.* 8, *Cl.* 2.—*p.* 532.

14. When a person may be desirous of having a deed as described in Sect. 3, Reg. 36, 1793, registered, he will attend the Register's office with an original deed and an authenticated copy of it. The Register, after having ascertained its validity, and compared the copy with the original, will specify on the former, the day and hour of its being presented, and cause it to be filed and entered in the Register book.—*Reg.* 20, 1812, *Sect.* 2, *Cl.* 1.—*p.* 533.

15. On completing the entry in the manner above stated, the Register will return the deed, specifying the date and the hour of the day on which it was registered, and the page in which it was entered.—*Reg.* 20, 1812, *Sect.* 2, *Cl.* 2.—*p.* 533.

16. The entry in the Register book will be made at the time of endorsing the copy; but the insertion will not be postponed beyond the day on which the endorsement may be made.—*Reg.* 20, 1812, *Sect.* 2, *Cl.* 3.—*p.* 533.

17. Copies of deeds brought for Registry under Section 2, Regulation 20, 1812, being intended merely for record, should be drawn out on plain paper.—*C. O.* 22*d April*, 1813.—*p.* 533.

18. A Hibehnamah cannot be registered after the death of the donor.—*Con. No.* 1218.—*p.* 533.

19. The person executing the deed, with one or more witnesses to its execution will attend the office, and swear to its due execution. The deed will be copied into the Register book, and attested by the Register. The parties will then put their names to the copy before two credible witnesses. The original will be returned with an endorsement specifying the date of the Register, and the page and number under which it is entered.—*Reg.* 36, 1793, *Sect.* 9, *Cl.* 2.—*p.* 533.

20. The person executing the deed or his mooktar, must attend to acknowledge the execution, and one or two witnesses present at the execution must attend to certify it on oath. When a mooktar is deputed to attend, with a mooktarnamah, the execution of the mooktarnamah, must be proved by the oaths of two witnesses. But neither the party executing the deed nor his mooktar, should be examined on oath.—*Con. No.* 226.—*p.* 533.

21. The certificate of the Register will be considered in all Courts, evidence of Registry.—*Reg.* 36, 1793, *Sect.* 10.—*p.* 534.

SECT. III.

Inspection and Copies.

22. The Register will allow all persons to inspect the books. He will grant copies of the deeds registered. These copies, if the original be lost, will be evidence of such deeds in the Courts, on proof being made by the subscribing witnesses to the original deed, that the original was duly executed.—*Reg.* 36, 1793, *Sect.* 11.—*p.* 534.

23. The Register will also grant copies of all engagements registered by him, and if the originals be destroyed, or lost, or not forthcoming, these copies will be sufficient evidence in any Court of Judicature, on proof being made by the subscribing witnesses that the original was duly executed.—*Reg.* 20, 1812, *Sect.* 2, *Cl.* 5.—*p.* 534.

24. The Register will return the original deed with a certificate specifying the date and the hour of the day on which it was registered.—*Reg.* 20, 1812, *Sect.* 3, *Cl.* 5.—*p.* 534.

SECT. IV.

Rules of Record.

25. If there be sufficient ground to suspect any one of having counterfeited or falsified any entry or certificate, he will be criminally prosecuted by the state: the Registers will act as prosecutors.—*Reg.* 36, 1793, *Sect.* 12.—*p.* 534.

26. An index will be added to the Register Books.—*Reg.* 20, 1812, *Sect.* 9.—*p.* 534.

27. Powers of attorney produced by agents, causing deeds to be registered, should be entered in a separate book.—*Con. No.* 732.—*p.* 534.

SECT. V.

Registry of Deeds.—Validity given by Registry.

28. It is optional with all parties to register or not any of the description of deeds mentioned above, executed before the 1st of January 1796. The non-registration of them will not prejudice the rights of the parties to them.—*Reg.* 36, 1793, *Sect.* 4.—*p.* 535.

29. It is optional with all persons to register or not deeds specified in Clauses 4, 5 and 6 of Section 3, whether executed before or after January 1st, 1796. The non-registration of them will not prejudice the rights of the parties to them.—*Reg.* 36, 1793, *Sect.* 5.—*p.* 535.

30. Every deed specified in Clause 2, Section 3, executed on or after 1st January, 1796, and duly registered, shall, if its authenticity be established, invalidate any other deed for the same property, executed subsequently to that date, which may not have been registered, whether the second or other deed was executed prior or subsequent to the registered deed.—*Reg.* 36, 1793, *Sect.* 6, *Cl.* 1.—*p.* 535.

31. Every deed of mortgage specified in Clause 3, Section 3, thus executed after that date, registered, and authentically proved, will be satisfied before any other mortgage of the same property, subsequently executed and not registered, whether the second mortgage was executed before or after the registered mortgage.—*Reg.* 36, 1793, *Sect.* 6, *Cl.* 2.—*p.* 535.

32. But if any person shall purchase or receive in gift or take in mortgage any real property, knowing it to have been previously sold, given or mortgaged, but not registered, and register his own deed, the second deed shall not invalidate the first, provided the authenticity of the first be fully established.—*Reg.* 36, 1793, *Sect.* 6, *Cl.* 3.—*p.* 536.

33. Indigo engagement registered (although it is optional with the parties to register them) or not will have a superior claim to any other such engagement (unregistered) for the produce of the same lands, whether the latter engagement be earlier than or subsequent to the former.—*Reg.* 20, 1812, *Sect.* 3, *Cl.* 3.—*p.* 536.

SECT. VI.

Fees.

34. The Register will receive 2 Rupees for every deed registered by him; 1 Rupee for every copy granted, and 8 Annas for every search, and he may refuse these official acts till the fees are paid. From these fees he will keep up the establishment.—*Reg.* 36, 1793, *Sect.* 14.—*p.* 536.

35. The same rule with regard to fees is applicable to the registration, &c. of Indigo engagements.—*Reg.* 20, 1812, *Sect.* 4.—*p.* 536.

SECT. VII.

Appointment of a Substitute.

36. The office for the Registry of Deeds will be at the Sudder station, and remain under charge of such Register as is attached to the Zillah or City Courts; if any thing prevent the Register from performing the duty committed to him, he may appoint a covenanted servant to act as deputy (under sanction of the Judge); such deputy will take the prescribed oath of office.—*Reg.* 4, 1824, *Sect.* 2.—*p.* 537.

37. 38. When the Register, who is already authorized to register deeds, may be appointed to officiate as Collector, he need not be re-appointed Register.—*Con. No.* 366.—*p.* 537.

39. A Register of deeds not being the Register of the Court, while officiating for the Judge, is entitled to fees on the registry of deeds executed by him.—*Con. No.* 743.—*p.* 537.

40. If a Register in charge of the office leave the station without appointing a deputy, the Judge may appoint some qualified covenanted servant to officiate.—*Reg.* 4, 1824, *Sect.* 3.—*p.* 537.

41. As also when a vacancy occurs in the situation of Register.—*Reg.* 4, 1824, *Sect.* 4.—*p.* 537.

42. If there be no qualified person at the station, the Judge may perform the duties himself.—*Reg.* 4, 1824, *Sect.* 5.—*p.* 537.

43. All registry of deeds, so performed by the Judge or other covenanted servant appointed by him, previous to the date of this regulation, are to be held valid.—*Reg.* 4, 1824, *Sect.* 6.—*p.* 537.

44. A deputy, appointed as above, will receive the fees of registry; but when the Judge shall perform the duties, the fees, (deducting the expence of the establishment,) will be credited to Government.—*Reg.* 4, 1824, *Sect.* 7.—*p.* 537.

45. Joint Magistrates and Deputy Collectors, of the second grade, standing in the position of those officers lately denominated Head Assistants, are considered to have the same right to the enjoyment of the fees for registry as the Head Assistant.—*Cir. Ord. Cal. C. 24th Feb. West. C. 9th June,* 1837.—*p.* 538.

SECT. VIII.

Supervision.

46. The Judge will countersign the endorsements on the copies filed in the office, as well as the transcripts of deeds in the registry book.—*Reg.* 20, 1812, *Sect.* 6, *Cl.* 2.—*p.* 538.

47. The Judge will report to Government any errors or irregularities in the conduct of this office by the Register.—*Reg.* 20, 1812, *Sect.* 6, *Cl.* 3.—*p.* 538.

48. Regulation 4 of 1824, Section 4 is applicable only to cases of occasional vacancy in the appointment of Register. As a general rule the senior Assistant present will be entrusted with the Registry of deeds.—*Cir. Ord. 13th Dec.* 1831.—*p.* 538.

49. The Commissioners of Circuit are directed every half year on holding the Sessions to inspect the Registry books of the Zillah and City Courts, and the transcript of the deeds filed for record, and to bring to the notice of the Sudder Court any irregularity in the mode of Registry and countersigning by the Judges, as directed in Reg 20 of 1812.—*Cir. Ord. 25th March,* 1831. *p.* 538.

50. Persons who bring deeds for Registry are not required to sign the copy made in the Registry book.—*Cir. Ord. 2nd Sept.* 1836.—*p.* 538.

51. A Zillah or City Judge may, with the consent of Government, make over to the Principal Sudder Ameen the duty of registering deeds, and he will in that case receive the fees authorized by the regulations for the performance of that duty.—*Reg.* 7, 1832, *Sect.* 4.—*p.* 538.

SECT. IX.

Establishment of a Registry Office at any Civil station.

52. The following enactments are modified: *Reg.* 36, *of* 1793, *Sect.* 2 *and* 14.—*Reg.* 28, 1795.—*Reg.* 17, 1803, *Sect.* 17.—*Reg.* 8, 1805.—*Reg.* 12, 1805, *Sect.* 32.—*Reg.* 20, 1812, *Sect.* 4, *Cl.* 2 *and* 3.—*Reg.* 4, 1824, *Sect.* 2.—*Act* 30, 1838, *Sect.* 1.—*p.* 539.

53. In addition to the offices to which these Sections relate, offices for the registration of deeds may be established at any Civil Station, and may be placed by the orders of Government under the superintendence of any officers resident at such station whom Government may nominate.—*Act* 30, 1838, *Sect.* 2.—*p.* 539.

54. The Registration of deeds under this Act will be subject to the fees prescribed in Regulation 36, of 1793, Section 14.—*Act* 30, 1838, *Sect.* 3.—*p.* 539.

55. Regulation 36, of 1793, Section 15, and Regulation 20, of 1812, Section 9, Clauses 2 and 3, are not to be held applicable to the office and persons appointed by this Act.—*Act* 30, 1838, *Sect.* 4.—*p.* 539.

56. Persons desirous of registering deeds written in any European language, at any offices of public Registry, will pay for transcribing the deed according to the established rates of Section writing in addition to the fees of Reg. 36, of 1793, Section 14.—*Act* 30, 1838, *Sect.* 5.—*p.* 539.

57. In case of the death or absence on leave of any person appointed by Government to register deeds under this Act, the Zillah Judge or other officer especially authorized, may appoint an-

PAUPERS—PLAINTIFFS AND THEIR SUITS.

1. The duty of making the enquiry as to the existence of sufficient grounds for the institution of a suit, in the case of parties applying to sue as paupers must not be delegated to a Principal Sudder Ameen. That point must be decided by the Judge himself before referring the petition to the Principal Sudder Ameen, for enquiry as to the pauperism of the plaintiff.

2. The application of parties to be admitted as paupers is not to be disposed of by the Principal Sudder Ameen. The Judge alone can determine the question of pauperism. The Principal Sudder Ameen to whom such applications are referred, will simply ascertain the alleged fact of pauperism, leaving it to the Judge to pass the final order for the admission of paupers.—*C. O.* 12*th Nov.* 1841.

CHAPTER I.

CONSTITUTION AND JURISDICTION OF THE CIVIL COURTS.

SECTION I.

Rules for the formation of the Code of Regulations.

1. It is essential to the future prosperity of the British territories in Bengal, that all Regulations which may be passed by Government affecting in any respect the rights, persons, or property of their subjects, should be formed into a regular code, and printed with translations in the country languages; that the grounds on which each Regulation may be enacted should be prefixed to it; and that the Courts of Justice should be bound to regulate their decisions by the rules and ordinances which those Regulations may contain. A code of Regulations framed upon the above principles will enable individuals to render themselves acquainted with the laws upon which the security of the many inestimable privileges and immunities granted to them by the British Government depends, and the mode of obtaining speedy redress against every infringement of them; the Courts of Justice will be able to apply the Regulations according to their true intent and import; future administrations will have the means of judging how far Regulations have been productive of the desired effect, and, when necessary, to modify or alter them as from experience may be found advisable; new Regulations will not be made, nor those which may exist be repealed, without due deliberation; and the causes of the future decline or prosperity of these provinces will always be traceable in the code to their source. The Governor General in Council has accordingly enacted as follows.—*Reg.* XLI. 1793, *Sect.* 1.

2. Every rule or order that may be passed by the Governor General in Council regarding the administration of justice; the imposition or levying of taxes, or of duties on commerce; the collection of the public revenue assessed upon the lands; the rights and tenures of the proprietors and cultivators of the soil; the provision of the Company's investment; the manufacture of salt or opium; and generally all Regulations affecting in any respect the rights, persons or property of the natives, or any individuals who may be amenable to the Provincial Courts of Judicature, shall be recorded in the Judicial Department, and there framed into a Regulation, and printed and published as hereafter directed.—*Reg.* XLI. 1793, *Sect.* 2.

3. The Regulations passed annually shall be numbered. The first Regulation enacted in each year shall be numbered One, and all subsequent Regulations according to the order in which they may be passed. The number of each Regulation, and the year in which it may be enacted is to be inserted at the top of every page as in this Regulation.—*Reg.* XLI. 1793, *Sect.* 3.

4. Every Regulation shall have a title, expressing the subject of it as concisely as possible, similar to the title prefixed to this Regulation.—*Reg.* XLI. 1793, *Sect.* 4.

5. There shall be a preamble to every Regulation stating the reasons for the enaction of it.—*Reg.* XLI. 1793, *Sect.* 5, *Cl.* 1.

6. If any Regulation shall repeal or modify a former Regulation, the reasons for such repeal or modification, are to be detailed in the preamble.—*Reg.* XLI. 1793, *Sect.* 5, *Cl.* 2.

7. Every Regulation is to be divided into Sections. Each Section shall be numbered according to the order in which it may occur. The preamble is to be considered as the first Section. The Sections, where necessary, may be divided into Clauses; in which case, each Clause is to be numbered in the same manner as the Clauses in Section 5.—*Reg.* XLI. 1793, *Sect.* 6.

8. In framing a Regulation, if there shall be occasion to refer to any Clause or Section of a Regulation, or any Regulation at large; as for example the second Clause of the fifth Section, or the fifth Section of this Regulation, or this Regulation generally; the reference in each case shall be expressed in the following manner:—Clause 2, Section 5, Regulation XLI. 1793. Section 5, Regulation XLI. 1793. Regulation XLI. 1793.—*Reg.* XLI. 1793, *Sect.* 7.

9. The subject of every Section and Clause shall be inserted opposite to it in the margin as concisely as possible.—*Reg.* XLI. 1793, *Sect.* 8.

10. Every Regulation is to be printed on paper of the same size as the paper on which this Regulation is printed.—*Reg.* XLI. 1793, *Sect.* 9.

11. At the expiration of each year, a copious Index to the Regulations passed during the course of it, shall be prepared and bound up with them.—*Reg.* XLI. 1793, *Sect.* 10.

12. The Superintendent of the Company's press is to retain in his office one hundred copies of each of the Regulations that may be passed and printed annually, and the same number of copies of the translates of them in the Persian and the Bengal language. At the close of the year, after he has been furnished with the Index ordered to be prepared in the preceding Section, he shall bind up the English printed copies of the Regulations, and the Persian and the Bengal translates, each in separate volumes. The remainder of the English copies of the Regulations, and the Persian and Bengal translates, are to be distributed as they are passed and printed in such proportions as the Governor General in Council may direct, amongst the Courts of Justice, the Boards of Revenue and Trade, the Collectors of the land Revenue and the Customs, and the Commercial Residents and Salt Agents, or other public officers, or any individuals to whom it may be thought advisable to deliver copies.—*Reg.* XLI. 1793, *Sect.* 11.

13. Ten of the English copies of the Regulations passed annually, bound up with the Index as directed in Section 11, shall be transmitted to the Honourable Court of Directors by the two first ships that may be dispatched for England after the volumes are completed. Five copies are to be sent in each of the two ships. The remainder of the one hundred copies shall be distributed in such proportions as the Governor General in Council may direct to the Courts of Justice, the Boards of Revenue and Trade, the Collectors of the Revenue, the Commercial Residents, and Salt Agents, or other public officers.—*Reg.* XLI. 1793, *Sect.* 12.

14. The Civil and Criminal Courts of Justice

ings and decisions by the Regulations which may be framed and transmitted to them as above directed, and by no other.—*Reg.* XLI. 1793, *Sect.* 13.

15. In the English drafts of Regulations, the same designations and terms are to be applied to the same descriptions of persons and things, in order that rights, property, tenures, privileges, deeds, courts, process, offices, officers, and generally all persons and things may be uniformly described by the same designations and terms throughout the judicial code.—*Reg.* XLI. 1793, *Sect.* 14.

16. Every Regulation with the marginal notes shall be translated into the Persian and Bengal languages by the Persian translator to the Government, or such other person as the Governor General in Council may expressly appoint for that purpose. The number of the Regulation and the year in which it may be passed, and the numbers of the Sections and Clauses shall be inserted in the translates in the same manner as in the English drafts of the Regulations.—*Reg.* XLI. 1793, *Sect.* 15.

17. The translator is to be particularly careful to preserve in the translates the same uniformity in the designations and terms applied to persons and things as is directed with regard to the English Code in Section 14. Whenever he shall have occasion to insert the designation or name of any person or thing that he may have reason to believe may not be intelligible to the natives in general, and which may not have been used and explained in the translates of any former Regulation, he shall in the first passage in which such word or term may occur, subjoin an explanation of it, that upon its recurring no doubt may be entertained as to its true meaning and import.—*Reg.* XLI. 1793, *Sect.* 16.

18. It shall be the duty of the translator to revise the proof sheets of the printed translates, and to correct all errors of the press.—*Reg.* XLI. 1793, *Sect.* 17.

19. The translator is to translate the Regulations into plain and easy language, and in all possible cases to reject words not in common use. As far as may be consistent with the preservation of the true meaning and spirit of the Regulations, he shall adopt the idiom of the native languages, instead of giving a close verbal translation of the English drafts, which must necessarily render the translates obscure, and often unintelligible to the natives.—*Reg.* XLI. 1793, *Sect.* 18.

20. One part of a Regulation is to be construed by another, so that the whole may stand.—*Reg.* XLI. 1793, *Sect.* 19.

21. If any Regulation shall be passed differing from a former Regulation, either wholly or partially, the new Regulation is to be considered as a virtual repeal of the old one as far as it may differ from the latter, provided that the new Regulation be couched in negative terms, or by its matter necessarily imply a negative.—*Reg.* XLI. 1793, *Sect.* 20.

22. If a Regulation that rescinds another Regulation, is itself afterwards rescinded, the original Regulation is to be considered as revived, without any formal declaration to that purpose.—*Reg.* XLI. 1793, *Sect.* 21.

SECT. II.

Rules for Proposing Regulations.

23. The Judges of the Courts of Dewanny Adawlut established in the several

Zillahs, and in the Cities of Patna, Dacca, and Moorshedabad, both in their capacity of Judges of those Courts, and as Magistrates; the Judges of the Provincial Courts of Appeal, in their capacity of Judges of those Courts, and as Judges of the Courts of Circuit; and the Judges of the Sudder Dewanny Adawlut, and the Nizamut Adawlut, are respectively empowered to propose Regulations regarding any matters coming within their cognizance, under the rules hereafter prescribed.—*Reg.* XX. 1793, *Sect.* 2.

24. If a Judge of a Zillah or City Court, or a Magistrate, shall deem it advisable to propose any Regulation, he is to draft it in the form, and agreeably to the rules prescribed in Regulation XLI. 1793, for drafting Regulations passed by the Governor General in Council, and to submit the Regulation so drafted, to the Provincial Court of Appeal, or the Court of Circuit of the division, according as the matter to which the Regulation may relate, may be of a civil or a criminal nature.—*Reg.* XX. 1793, *Sect.* 3.

25. The Regulation so drafted, is to be transmitted by the Register, or the Assistant to the Judge or Magistrate, with a copy of his order for forwarding the Regulation to the Provincial Court, or the Court of Circuit, attested with the official seal of the Court, or the Magistrate, and the signature of the Register or Assistant, under a cover addressed to the Register of the Provincial Court of Appeal, or the Court of Circuit. —*Reg.* XX. 1793, *Sect.* 4.

26. The Sudder Dewanny Adawlut, or the Nizamut Adawlut, are to submit all the proceedings and documents which they may so receive from the Provincial Court, or the Court of Circuit, to the Governor General in council, and, if they disapprove of the Regulation altogether, or approve of any one of the drafts of it, with a separate letter stating the grounds of such approval or disapproval, or, if they shall deem it advisable to adopt any one of the drafts with alterations, with a draft of the Regulation framed agreeably to their opinion, and a separate letter detailing their reasons for the alterations.—*Reg.* XX. 1793, *Sect.* 9.

27. The Provincial Courts of Appeal and the Courts of Circuit, are not to communicate to any Judge or Magistrate, the grounds on which they may approve, reject, or alter the draft of the regulation which he may propose, but the Sudder Dewanny Adawlut, or the Nizamut Adawlut, upon the draft being submitted to them by the Provincial Court, or Court of Circuit, may require information on any points immediately from the Judge or Magistrate by whom the Regulation may have been proposed, but not through the medium of the Provincial Court of Appeal or Court of Circuit, and in such cases, they are to submit their queries, and the answer of the Judge or Magistrate, with the other documents regarding the Regulation, to the Governor General in council. The Sudder Dewanny Adawlut, or the Nizamut Adawlut, may likewise require information regarding such, or any proposed Regulation, from the Provincial Court of Appeal, or Court of Circuit.—*Reg.* XX. 1793, *Sect.* 10.

28. The Sudder Dewanny Adawlut, or the Nizamut Adawlut, are to submit all the proceedings and documents which they may so receive from the Provincial Court of Appeal, or the Court of Circuit, to the Governor General in council, and, if they disapprove altogether of the Regulation so submitted to them, or approve of any of the drafts, they are to state the grounds of such approval or disapproval in a separate letter. If they shall deem it advisable to adopt the proposed Regulation with alterations, they are to submit the Regulation framed according to their opinion, with a separate letter stating their reasons for the alteration, with all the documents received from the Pro-

vincial Court of Appeal, or the Court of Circuit to the Governor General in council.—*Reg.* XX. 1793, *Sect.* 12.

29. All Regulations which the Sudder Dewanny Adawlut, or the Nizamut Adawlut, may deem it advisable to propose to the Governor General in council, are to be drafted in the prescribed form.—*Reg.* XX. 1793, *Sect.* 14.

30. The Governor General in Council will reject, or adopt, any Regulation, that may be submitted to him under this Regulation; or pass such Regulation as may appear to him proper.—*Reg.* XX. 1793, *Sect.* 15.

[The Provincial Courts of Appeal and the Courts of Circuit having been abolished, the enactments of the above Regulation which allude to their instrumentality in the proposal of Regulations have been omitted, as far as practicable. In proposing Regulations, the Judges of Zillah and City Courts, will communicate direct with the Sudder Court.—*Ed.*]

SECT. III.

Promulgation of the Regulations, and Suggestions for the Correction of Errors.

31. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 6th of September last, together with its annexed copy of correspondence, requesting to be informed whether the promulgation of a Regulation should be dated from the receipt of the English copy, or of the Persian translation of it.

In reply, I am desired to communicate to you the opinion of the Court, that you should be guided by the instructions of Government, conveyed to you in the Chief Secretary's letter, dated the 14th of August last; and that a Regulation should be considered promulgated from the date of the receipt of the English copy.—*Cir. Ord. Cal. and West. C. 7th June,* 1833.

32. Be it enacted, that the production of a Government Gazette of any Presidency, containing an Act purporting to have been passed by the Governor General in Council, shall be held in all Courts sufficient proof that such Act has been so passed.—*Act No.* X. 1835.

33. It is very desirable that all European officers exercising important civil functions within the provinces should be aware, that it is the wish and expectation of Government, that when such officers shall perceive that any thing, either in the general system of our laws, or in their practical application, is calculated injuriously to affect the public interests, and shall be satisfied, after communicating with the officer in whose immediate department the evil may exist, that the correction of it requires the interposition of Government, they should not be restrained from bringing the subject forward merely by the consideration, that the case does not fall within the scope of their immediate functions.—*Cir. Ord. 22d April,* 1825.

SECT. IV.

Constitution of the Zillah and City Courts.

Bengal, Behar and Orissa.

34. The Courts of Dewanny Adawlut, or Courts of Judicature for the trial of Civil Suits in the first instance, established in the several Zillahs in the provinces of Bengal, Behar, and Orissa, and in the cities of Patna, Dacca, and Moorshedabad, are to be denominated after the Zillah, or the City, in which they are respectively established, as follows;

The Court of Dewanny Adawlut established in the Zillah of	Nuddea, Beerbhoom, Burdwan, Midnapore, Twenty-four Purgunnahs, Jessore, Moorshedabad, Boglepore, Rajeshahee, Purneah, Dinagepore, Rungpore,	is to be denominated the Court of Dewanny Adawlut for the zillah of	Nuddea, Beerbhoom, Burdwan, Midnapore, Twenty-four Purgunnahs, Jessore, Moorshedabad, Boglepore, Rajeshahee, Purneah, Dinagepore, Rungpore.
The Court of Dewanny Adawlut established in the Zillah of	Cooch-Behar, Sylhet, Dacca Jelalpore, Momensing, Tipperah, Chittagong, Behar proper, Shahabad, Sarun, Tirhoot, Ramghur,	is to be denominated the Court of Dewanny Adawlut for the zillah of	Cooch-Behar, Sylhet, Dacca Jelalpore Momensing, Tipperah, Chittagong, Behar proper, Shahabad, Sarun, Tirhoot, Ramghur.
The Court of Dewanny Adawlut established at the city of	Moorshedabad, Dacca, Patna,	is to be denominated the Court of Dewanny Adawlut for the city of	Moorshedabad, Dacca, Patna.

—*Reg.* III. 1793, *Sect.* 2.

35. The special jurisdiction of the Zillah Courts, is to extend throughout the districts, and places, that are or may be included in the Zillahs in which they are respectively established, with this exception, that the Courts in the Zillahs of Moorshedabad, Dacca Jelalpore, and Behar proper, are not to have any jurisdiction within the limits of the special jurisdiction of the Courts for the cities of Moorshedabad, Dacca, and Patna. The special jurisdiction of the Courts of Dewanny Adawlut for the Cities of Moorshedabad, Dacca, and Patna, is to extend over those cities, and the places adjacent, which are or may be included in the limits of their respective jurisdictions.—*Reg.* III. 1793, *Sect.* 4.

36. Such parts of Regulations III. V. and IX. 1793, and of any other Regulation now in force, as constitute the Zillah of Moorshedabad a distinct and separate jurisdiction, are rescinded. The Zillah of Moorshedabad is hereby abolished; and the mehals composing it shall be annexed to the jurisdictions of the Judge and Magistrate of the City of Moorshedabad, and of the Judge and Magistrate of Zillah Beerbhoom, as the Governor General in Council may direct.—*Reg.* I. 1806, *Sect.* 2.

37. The late Dutch Factories at Calcapore and Dacca, and the lands appertaining to them, shall be annexed to the City Jurisdictions of Moorshedabad and Dacca respectively; those at Fulta and Balasore, shall be annexed to the Zillah Jurisdictions of the 24-Purgunnahs and Cuttack respectively, and the late Dutch Factory at Patna, and the Lands appertaining to it, shall be annexed to the Jurisdiction of the City of Patna.—*Reg.* XVIII. 1825, *Sect.* 2, *Cl.* 2.

38. The Districts now comprised in the Zillah of Burdwan shall be formed into two Zillahs, the northern division to be denominated the Zillah of Burdwan, and the southern division the Zillah of Hooghly. The limits of each Zillah are to be determined by the Governor General in Council. A Dewanny Adawlut superintended by one

Judge, shall be established in each Zillah, with the same powers as the other Zillah Courts of Dewanny Adawlut.....The Court so established in the northern division, shall be denominated, "The Court of Dewanny Adawlut for the Zillah of Burdwan," and the Court in the southern division, "The Court of Dewanny Adawlut for the Zillah of Hooghly."—*Reg.* XXXVI. 1795, *Sect.* 7.

39. The town and settlement of Chinsurah shall be annexed to and included in the Zillah of Hooghly.—*Reg.* XVIII. 1825, *Sect.* 2, *Cl.* 1.

40. A Court of Civil Judicature shall be re-established in the vicinity of Calcutta; to be denominated, as heretofore, the Dewanny Adawlut of the Twenty-four Purgunnahs.—*Reg.* VII. 1806, *Sect.* 2.

41. Regulation XIV. 1814, is hereby rescinded.—*Reg.* VIII. 1832, *Sect.* 2.

42. The Thannahs of Chitpore, Maniktullah, Tazeerhaut, Nowhazary, and Salkeeah, shall be united to the 24-Purgunnahs, and the whole District thus formed shall be denominated the Zillah of the 24-Purgunnahs.—*Reg.* VIII. 1832, *Sect.* 3.

43. The office of Commissioner at Backergunge is hereby abolished, and the districts at present comprised in the Zillah of Dacca Jelalpore, including the Sunderbunds, shall be formed into two Zillahs, the Northern division to be denominated the Zillah of Dacca Jelalpore, and the southern division, the Zillah of Backergunge. The boundaries of the two Zillahs shall be determined by the Governor General in Council. A Dewanny Adawlut superintended by one Judge shall be established in each Zillah, with the same powers as the other Courts of Dewanny Adawlut.—*Reg.* VII. 1797, *Sect.* 2.

44. Such parts of Regulations III. and IX. 1793, and Regulation VII. 1797, as relate to the constitution of the jurisdiction of the City of Dacca and the Zillah of Dacca Jelalpore, as separate jurisdictions, are hereby rescinded.—*Reg.* V. 1833, *Sect.* 2.

45. The places at present comprised in the jurisdiction of the City of Dacca, and the Zillah of Dacca Jelalpore, shall be formed into one district, which shall be denominated the Zillah of Dacca.—*Reg.* V. 1833, *Sect.* 3.

46. Such parts of Regulation III. 1793, and Regulation XVIII. 1805, or any other Regulations as relate to the constitution of the Zillahs of Ramghur and Jungle Mehals, are hereby rescinded, and the Courts of Dewanny Adawlut of Zillahs Ramghur and Jungle Mehals are hereby abolished.—*Reg.* XIII. 1833, *Sect.* 2.

47. It shall be competent to the Governor General, by an order in Council, to annex to any Zillah he may deem proper, that portion of the Ramghur and Jungle Mehal districts which is not by this Regulation included in the jurisdiction of the Agent to the Governor General, and to make from time to time such alterations in the limits of the district placed under the Agent, or of any of the adjacent Zillahs, as he may deem expedient.—*Reg.* XIII. 1833, *Sect.* 7.

48. A Court of Adawlut shall be established in the Zillah of Cuttack for the trial of Civil suits in the first instance.—*Reg.* XIV. 1805, *Sect.* 3.

Benares.

49. A Court of Dewanny Adawlut, or Court of Judicature for the trial of Civil suits in the first instance, shall be established in the City of Benares, and at Mirzapore, Ghazeepore, and Juanpore, and each Court shall be denominated after the City or Zillah in which it may be established, as follows:—*Reg.* VII. 1795, *Sect.* 2, *Cl.* 1.

Provinces of Oude.

50. Courts of Adawlut shall be established in the several Zillahs, hereafter specified; and shall be denominated after the Zillah, in which they are respectively established, as follows: Mooradabad, Bareilly, Etawah, Furruckabad, Cawnpore, Allahabad, Goruckpore.—*Reg.* II. 1803, *Sect.* 2.

51. From and after the date specified in the preamble to this Regulation, the tract of country forming portions of the Districts of Allahabad and Cawnpore, comprised in the following Police Thannah Divisions, viz. in the Thannahs of Currah, Hutgong, Hussooah, Futtehpore, Ghazeepore, and Kishunpore, in the District of Allahabad, and in the Thannahs of Bindkee, Khugooa, Corah Juhannabad, and Amowly, in the district of Cawnpore, shall constitute a distinct Civil and Criminal Jurisdiction, to be denominated the Zillah of Futtehpore.—*Reg.* VI. 1826, *Sect.* 2, *Cl.* 1.

The Dooab, Bundlekund, &c.

52. The provinces and territories, specified in the foregoing Section, shall be formed into five Zillahs, to be denominated as follows:

The Zillah of Allyghur.

The northern division of the Zillah of Seharunpore.

The southern division of the Zillah of Seharunpore.

The Zillah of Agra.

The Zillah of Bundlekund.—*Reg.* VIII. 1805, *Sect.* 3, *Cl.* 1.

53. The City of Delhi, and the conquered territory situated on the right bank of the River Jumna, the revenues of which are assigned to His Majesty Shah Alum, are hereby declared not to be subject to any of the Laws or Regulations of the British Government, printed and published in the manner prescribed in Regulation I. 1803.—*Reg.* VIII. 1805, *Sect.* 4.

54. Courts of Adawlut shall be established in the several Zillahs specified in Section 3, [No. 44,] for the trial of civil suits in the first instance, to be denominated after the Zillahs in which they are respectively established.—*Reg.* VIII. 1805, *Sect.* 5.

55. The Purgunnah of Goverdhun shall be annexed to the District of Agra, and the Laws and Regulations established for the internal administration of that District are hereby declared to be in force and effect, in Purgunnah Goverdhun, from and after the promulgation of this Regulation, subject, however, to the provisions contained in the following Sections.—*Reg.* V. 1826, *Sect.* 2.

56. The elakeh of Khundeh, appertaining to the Purgunnah of Mahoba, together with certain villages belonging to the Purgunnah of Choorkee, on the right bank of the Jumna, are hereby annexed to the district of Bundlekund, and the Laws and Regulations established for the internal administration of that district, are declared to be in full force and effect in the elakeh and villages in question,—subject, however, to the provisions contained in the following Sections.—*Reg.* II. 1818, *Sect.* 2.

57. The Purgunnahs of Sonk, Sonsa, and Sahar, shall be annexed to the jurisdiction of the Zillah of Agra.—*Reg.* XII. 1806, *Sect.* 2.

58. The portion of the lands constituting the jaygeer of the late killadar of Calenger, which has been ceded to the British Government, is hereby annexed to the Zillah of Bundlekund.—*Reg.* XXII. 1812, *Sect.* 3.

59. From and after the 30th of June, 1818, the Northern division of Seharunpore shall constitute a separate civil as well as criminal jurisdiction, and the Judge and Magistrate of that division shall exercise the same powers as those vested by the Regulations in the Judges and Magistrates of other Zillahs in the ceded and conquered provinces.—*Reg.* IV. 1818, *Sect.* 2, *Cl.* 1.

60. The Northern division of Seharunpore shall henceforward be denominated the Zillah of Seharunpore, and the Southern division shall be denominated the Zillah of Meerut.—*Reg.* IV. 1818, *Sect.* 2, *Cl.* 2.

61. The tract of country called Deyra Doon, heretofore forming a part of Gurhwal, shall be annexed to the district of Seharunpore, and shall be considered subject in all matters of police and criminal jurisdiction to the Magistrate of the Northern division of Seharunpore; and in all matters of a Civil nature to the jurisdiction of the Dewanny Adawlut of that district. The laws and regulations established for the internal administration of the Ceded and Conquered provinces, are hereby declared to be in full force and effect in the Deyra Doon, subject however to the provisions contained in the following Sections.—*Reg.* IV. 1817, *Sect.* 2.

62. From and after the date of this Regulation, the jurisdiction of the Courts of Civil and Criminal Judicature, and the operation of the General Regulations, shall not extend to the tract of land aforesaid, (viz. that tract of land situated near the town of Bethoor, in the district of Cawnpore, which has been granted by Government as a jaygeer during pleasure to Muharaja Bajee Row,) the limits of which have been accurately marked out and defined, and are recorded in the Office of the Magistrate of Cawnpore.—*Reg.* I. 1832, *Sect.* 2.

63. It is hereby enacted, that from the 1st day of October 1836, it shall be lawful for the Governor General in Council, by an Order in Council, to create new Zillahs in any part of the Presidency of Fort William in Bengal, and to alter the limits of existing Zillahs.—*Act No.* XXI. 1836.

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64. The Zillah and City Courts are to use a circular seal, one inch and three quarters in diameter. The seals of the Zillah Courts in the provinces of Bengal, and Orissa, and the Courts for the cities of Dacca, and Moorshedabad, are to bear an inscription to the following effect in the Persian and Bengal characters and languages. The seals of the Zillah Courts in Behar, and the Court for the city of Patna, are to have a similar inscription in the Persian language and character, and the Hindoostanee language and Nageree character. "The seal of the Dewanny Adawlut of the Zillah (or City) of ." The seal of each Court is to remain in the custody of the Judge. —*Reg.* III. 1793, *Sect.* 6.—*Benares, Reg.* VII. 1795, *Sect.* 6.—*Ced. and Conq. Prov. Reg.* II. 1803, *Sect.* 14.

65. Each Zillah and City Court is to be superintended by one Judge, who, previous to entering upon the execution of the duties of his office, is to take and subscribe the following oath before the Governor General in Council, or any person whom he may commission to administer it. "I, A. B. appointed Judge of the Dewanny Adawlut of the Zillah (or City) of ———— solemnly swear, that I will administer justice conformably to the Regulations that have been or may be passed by the Governor General in Council, to the best of my ability, knowledge, and judgement, without fear,

favour, promise, or hope of reward; that I will not receive, directly, or indirectly, any present or nuzzer, in money or effects of any kind, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the Court of which I am appointed Judge; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly, or indirectly, any present or nuzzer, in money or effects from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the Court; that I will render a true and faithful account of all sums of money that may be paid into the Court, or disbursed from it; that I will not be concerned, directly, or indirectly, in the purchase of any goods or commodities in the British dominions in Bengal for the purpose of remitting money to Europe, nor in any commercial transactions; and that I will not derive, directly, or indirectly, any emoluments or advantages from my station, excepting such as the orders of Government do or may authorize me to receive. So HELP ME GOD."—*Reg.* III. 1793, *Sect.* 3. *Benares, Reg.* VII. 1795, *Sect.* 3.—*Ced. and Conq. Prov. Reg.* II. 1803, *Sect.* 13.

66. When the number of Civil causes depending before the Judge of any Zillah or City Court may be such as to require the aid and appointment of Additional Judges for the speedy investigation and decision of such causes, the Governor General in Council, at the recommendation of the Court of Sudder Dewanny Adawlut, or otherwise, if it shall appear to him expedient, will appoint any number of additional Judges for the Zillah or City wherein it may be requisite, to be denominated "Additional Judges of such Zillah or City;" who, previously to entering upon the execution of the duties of his office, shall take and subscribe the same oath as is directed to be taken and subscribed by the Judges of the Zillah and City Courts.—*Reg.* VIII. 1833, *Sect.* 2, *Cl.* 1.

67. The additional Judges so appointed are empowered to perform any part of the duties of the Judge of the Zillah or City to which they may be appointed that the Governor General in Council may assign to them; and such additional Judges, in the performance of those duties, will exercise the same powers and be guided by the same Rules and Regulations in every respect as the Zillah or City Judge.—*Reg.* VIII. 1833, *Sect.* 2, *Cl.* 2.

68. The Zillah and City Courts, are to be held in a large and convenient room in the city or place at which they are respectively established, three days in every week, or oftener if the state of the business shall render it necessary. Whenever the Judge of a Zillah or City Court, from indisposition or other cause, shall be prevented holding a court three days in each week as above required, he is at the expiration of the week, to report the cause of the court not being so held to the Sudder Dewanny Adawlut. This report is not to be made when the Court may be shut pursuant to orders from the Sudder Dewanny Adawlut under Section 23, Regulation VI. 1793. No rule, order, proceeding, or decree, is to be made, but on Court days, and in open Court.—*Reg.* III. 1793, *Sect.* 5.—*Benares, Reg.* VII. 1795, *Sect.* 5.—*Ced. and Conq. Prov. Reg.* II. 1803, *Sect.* 14.

69. The Honorable Court have expressed a desire that the number of days on which the Zillah Judges have actually sat in Court should be included in the periodical returns, I am directed to request that you will enter in your monthly statements of civil business a memorandum, stating the number of days you have sat in the Civil Court, and the number of days you have sat in the criminal Court. You will also be pleased to note the number of days that the Court was shut on ac-

count of Sundays or holidays, or from any other cause, during the month.—*Cir. Ord. 7th Dec.* 1828.

70. I am desired by the Court of Sudder Dewanny Adawlut to forward to you, for your information and guidance, the accompanying extract (paragraph 17), from a letter to my address from the Secretary to Government in the Judicial Department, dated the 16th ultimo, and to request that you will, in conformity thereto, prohibit in the strongest manner all the Judicial Officers under your controul from resorting to the practice referred to.

The only point which requires particular notice in these paragraphs, is the practice adverted to in paragraph 23, of judicial and revenue Officers transacting public business in their private dwellings. The Governor General in Council entirely approves the intention of the Court to call the attention of the Commissioners of Circuit, and through them, that of the Magistrates, to this subject. The prohibition should also extend to the Provincial and Zillah Judges, and be impressed upon the whole of the Judicial Officers in the strongest terms.—*Cir. Ord. 3rd July*, 1829, *Par.* 17.

SECT. V.

Zillah and City Judges.—Rules regarding Leave of Absence.

71. Any Zillah or City Judge and Magistrate who may be desirous of quitting his station, on whatever account, is to apply for permission to the Governor General in Council, and, except in emergent cases of indisposition, is not to leave his station until such permission shall have been obtained and received. The letter of application is to specify the purpose for which the leave of absence is applied for; the period for which it is desired; and the name of the register, or senior assistant on the spot, to whom the charge of the offices of Judge and Magistrate will devolve, if not otherwise provided for.—*Reg.* IV. 1796, *Sect.* 2.

72. It being expedient that all leaves of absence solicited by Civil and Sessions Judges from their Stations, on private affairs, should come recommended by the Court of Sudder Dewanny Adawlut, I am directed by the Honourable the Deputy Governor of Bengal to request that such applications may, in future, be submitted to the Sudder Court, and not to Government direct.—*Govt. Ord. 9th Jan.* 1838.

73. The Governor General in Council, on receipt of the abovementioned applications, will determine in every instance, wherein he may grant leave of absence to the Judge and Magistrate to quit his station, whether to delegate the temporary execution of the duties of Judge and Magistrate, to the register or senior assistant on the spot; or to appoint any other person by a special commission thereto; or to make other provision for carrying on such part of the business of the station, civil and criminal, as cannot be postponed, according to the urgency and circumstances of the case. The result of this determination will be immediately communicated to the Judge and Magistrate, and his Register and Assistant, or any other person appointed to act for him; and notice of it is to be given at the same time to the Courts of Sudder Dewanny and Nizamut Adawlut, and the Provincial Courts of Appeal and Circuit, within whose jurisdiction the Zillah or City Court of the Judge and Magistrate, to whom leave of absence may be granted is situated.—*Reg.* IV. 1796, *Sect.* 3.

74. The Zillah or City Judges and Magistrates to whom leave of absence may be granted, are to report their actual departure from their stations, as well as their return thereto, to the Governor General in Council, the Courts of Sudder Dewanny and Niza-

mut Adawlut, and the Courts of Appeal and Circuit, within whose jurisdiction their respective Courts may be situated.—*Reg.* IV. 1796, *Sect.* 4.

75. The Governor General in Council entirely approves the suggestion of the Sudder Dewanny Adawlut, for directing the Zillah and City Judges and Magistrates in future to accompany their applications for leave of absence with a statement of the business depending before them, both in the Civil and Criminal Courts.—His Lordship in Council likewise desires, that the same rule may be extended to all similar applications from the Registers; that is, that the Judges, in forwarding such applications to Government, will accompany them with the necessary statement of the business depending before the Registers, both of a Civil and Criminal nature.—*Cir. Ord. 4th Jan.* 1811, *Par.* 2.

76. In modification of the Court's Circular of the 3rd October last, (No. 116 of this volume,) I am directed to inform you, that the Court have been pleased to dispense with the copy of the order under which you may deliver over charge of your office; but request, that you will state in your letter the authority for doing so, the date of the order under which you act, and the nature of the power vested in the relieving officer.—*Cir. Ord. Cal. C. 5th Dec.* 1834, *West. C. 7th Nov.* 1834, *and* 23*rd Jan.* 1835.

77. It having occasionally been pleaded by civil functionaries, who have recently joined their offices, in answer to calls by the Court for replies to letters and for periodical statements overdue, that, not having had time to look into their records, they were not aware that the replies or statements had not been sent; the Court have been pleased to resolve that all Judges, Commissioners, Magistrates, and Joint Magistrates, on delivering over charge of their offices, shall furnish the officer who relieves them with a list of all unanswered letters, and of all periodical reports and statements which, having become due, have not been forwarded to this Court.—*Cir. Ord. Cal. and West. C.* 25*th Sept.* 1835.

78. I am directed to desire that you will acquaint the Courts, that in order to enable the Auditor to carry into effect the resolutions of Government of the 28th April last, and of the 19th ultimo, respecting leave of absence, the Honourable the Vice-President in Council has been pleased to resolve, that any officer in the Judicial Department, who may obtain leave of absence, shall forward to the Auditor's office, certificates signed by the person to whom he may deliver over charge, and from whom he may again receive charge of his office; specifying the dates on which he may have relinquished, and on which he may have resumed charge respectively.—*Cir. Ord.* 31*st Oct.* 1809.

79. The Vice-President in Council, having taken into his consideration the best means of preventing delay on the part of persons who may be appointed to offices in the Judicial department, in arriving at their stations, is pleased to direct, that the Courts of Sudder Dewanny Adawlut and Nizamut Adawlut report to Government, whenever any such person, that is, any Provincial, Zillah or City Judge or Magistrate, or any Register, or Assistant at the different Courts of Judicature, may omit to arrive at the station, to which he may have been appointed, within a reasonable time; due allowance being made for the distance of the place from which he may have been removed, and for any delay, which may have unavoidably occurred, in delivering over charge of his late office to his successor.—*Cir. Ord.* 17*th Jan.* 1806, *Par.* 1.

80. On the receipt of such report, (which is to be accompanied with the sentiments of the Court, by whom the report may be furnished,) Government will determine whether the person who may have made any unnecessary delay in joining his station, should be considered to have forfeited his salary, under the rules passed by the Governor General in Council, on the 20th November 1797, or will pass such other orders on the subject as the case may appear to require.—*Cir. Ord.* 17*th Jan.* 1806, *Par.* 2.

81. The Vice-President in Council further resolves, that the principle of the foregoing orders be likewise considered applicable to all persons in the Judicial, Revenue, and Commercial departments

who may at any time obtain leave of absence from their stations, and that the Courts and Boards accordingly report to Government, whenever any such person shall neglect to rejoin his station within the period limited by the leave granted to him.—*Cir. Ord.* 17*th Jan.* 1806, *Par.* 4.

SECT. VI.

Zillah and City Judges.—Duties of Assistants in charge of the Judge's Office.

82. In cases wherein the charge of the offices of Judge and Magistrate of any Zillah or City may, from death, indisposition, or other casualty, devolve to the Register or Senior Assistant on the spot, without any express provision for the same having been made by the Governor General in Council, as specified in Section 3, of this Regulation, an immediate report of the circumstances of the case is to be made, by such Register or Assistant, to the Governor General in Council for his orders; and, till the receipt thereof, he is to confine himself to the discharge of the proper duties of his station as Register or Assistant; and to the exercise of such part of the powers of Judge and Magistrate as may be indispensibly necessary for the immediate execution of processes from the Provincial Courts of Appeal and Circuit; or of orders from the Sudder Dewanny and Nizamut Adawluts; for preserving the peace of the district, or for such other cases of emergency as will not admit of delay.—*Reg.* IV. 1796, *Sect.* 5.—*Ced. and Conq. Prov. Reg.* XII. 1803, *Sect.* 15.

83. Whenever the charge of the current duties of Civil and Session Judge of any Zillah or City may, from death, indisposition or other casualty, devolve to the assistant attached to the Court; or whenever the assistant to the Commissioner, Collector, or Magistrate, or any other covenanted European Officer may, by the orders of a competent authority, take charge of the current duties of the office of Judge or Session Judge, (not being vested by Government with the full power of Judge,) such assistant or other officer shall confine himself to the exercise of such part of the powers of Judge as may be indispensibly necessary for the immediate execution of processes or orders of the Sudder Dewanny and Nizamut Adawlut, for the issue of warrants under sentences of the Nizamut Adawlut, making returns to such warrants, and the transmission to the Court of the proceedings in criminal trials, and for the execution of the processes from other Zillah or City Courts, or for such other cases of emergency as will not admit of delay.—*Cir. Ord. Cal. and West. C.* 6*th Feb.* 1835, *Rule* 1.

84. The Court propose, with the concurrence of the Judges of the Western Court, to inform Mr. Repton that it was competent to him, under the concluding words of the first paragraph of the rules for defining the duties of Assistants in charge, circulated on the 6th February, 1835, to cause the execution of the decrees from which appeals had been preferred, to be stayed; taking the usual security from the party against whom the decree was given, if necessary.—*Con.* 1038, *Cal. C.* 19*th Aug. West. C.* 16*th Sept.* 1836.

85. Such Assistant or other Officer is also authorized to receive any new civil suits of whatever description, which may be instituted according to the Regulations; to refer to the subordinate courts such as may be cognizable by them, and to proceed upon suits which are exclusively cognizable by the Judge, so far as to issue notice to, or summon the defendant, and receive his answer, as well as any written documents or lists of witnesses which may be offered by the parties or their Vakeels, in pursuance of orders passed previously by the Judge; but no further, unless in any instance there shall appear to be urgent reason to take the evidence of any witness or witnesses in such suits, in which case he may take or cause to be taken the depositions of such witnesses under

86. He is likewise empowered to receive any sums which parties may be desirous of depositing in cases of mortgage, or as Vakeels' fees; and pay to Vakeels or other parties sums, for the payment of which the Judge may have already given orders. He shall also be empowered to conduct, in conformity to the Regulations, any summary inquiries which may appear to require immediate attention and process; to make the summary investigations respecting the indigence of persons desirous of suing *in formâ pauperis*, and the validity of security tendered by parties under the orders of the Judge or other competent authority; to carry into effect orders passed previously by the Judge for the sale of property attached in execution of decrees or other judicial process, or to stay the sale of such property pending the investigation of objections or claims preferred; but it shall not be competent to the assistant or other officer to hold such investigation, or to issue orders for the sale of such property, excepting when it may be of a perishable nature.—*Cir. Ord. Cal. and West. C. 6th Feb.* 1835, *Rule* 3.

87. I am directed by the Court to communicate to you their opinion, that you [an Assistant in charge] are competent to suspend the execution of an order passed by the Judge for the sale of property, if, in the exercise of a sound discretion, on a perusal of the petition objecting to the sale, you consider it right to do so; but that you cannot hold any investigation with a view to ascertain the truth or otherwise of allegations or claims contained therein.—*Con.* 998, *Cal. C. 8th Jan.* 1836, *West. C. 5th Feb.* 1836.

88. With reference to your concluding paragraph I am directed to state that, on a petition of summary appeal being presented, you are not competent to make any enquiry on the merits of the case, but should merely record the date of its presentation, and let it die over for the next coming Judge; and further, that you are not competent to pay any money in deposit unless under an order passed by the Judge before you received charge of the office, or unless the payment be directed by an express order of this Court or of any other Court in execution of whose decree it may have been deposited.—*Con.* 998, *Cal. C. 8th Jan.* 1836, *West. C. 5th Feb.* 1836.

89. The assistant or other officer in charge will cause to be prepared and forwarded any statement or reports which the Civil or Session Judge may, under the rules in force, be required to submit to the Sudder Dewanny or Nizamut Adawlut, or to Government, as the case may be.—*Cir. Ord. Cal. and West. C. 6th February,* 1835, *Rule* 4.

90. In continuation of Circular Order No. 131, dated 6th February 1835, containing rules for defining the duties of functionaries in charge of the current business of the office of Civil and Session Judge, I am directed to communicate to you the rule that follows:

It having been determined by the Court that the power should be possessed by officers in charge of current duties, of giving leave of absence for a limited term, and when urgently required, to the vakeels of the Court, and generally to the amlah of the Civil and Session Judge's establishment, such power will in future be exercised by them with limited application to occasions of temporary absence, in cases of emergency not admitting of delay.

You will be pleased to append this, as Rule 5, to the Circular quoted above, and to apprise such officers as may at any time receive charge of the current business of your office, of its purport.—*Cir. Ord. Cal. and West. C. 11th Oct.* 1839.

91. I am directed to communicate to you the opinion of the Court that an assistant in charge of the office of Civil Judge may summon parties charged with resistance of civil process, and examine the witnesses for and against the prosecution, and, if he consider the charge proved, hold the offenders to bail until the arrival of the Judge, who, under the provisions of Section 3, Regulation IX. 1799, must pass the final order.—*Con.* 1080, *Cal. C. 16th March,* 1837, *West. C. 31st March,* 1837.

SECT. VII.

Zillah and City Judges.—Reports on their Official Conduct.

92. In hearing appeals from the Zillah Courts, every Judge of the Court of Sudder Dewanny Adawlut shall note, as each case proceeds, any points that may strike him as affecting materially the character of the court below; and whenever, at the conclusion of an appeal, any Judge may be of opinion that the proceedings of such a Court have been either remarkably well, or remarkably ill conducted, it shall be his duty to make a note thereon for the consideration of the Court, collectively, at their English sitting. The Court will determine in what manner these notes may best be made available in the preparation of their annual report, for the expression of their collective opinion on the quality of the business performed by every Zillah Judge.—*Govt. Notification, 20th Dec.* 1836.

93. The Court of Sudder Dewanny Adawlut is hereby required to make a special report on the subject of any zillah, in which they may be of opinion that the state of civil business is such as to make it desirable for the sake of the public interests, that measures should be immediately taken to remedy the evil. In cases of less importance, it shall be the duty of the Court to notice in their annual report any serious defect which they may believe to exist in the administration of civil justice in any district under their jurisdiction.—*Govt. Notification, 20th Dec.* 1836.

94. In addition to the number of cases decided by each Zillah Judge, the number of miscellaneous judicial orders passed by him, and the number of days employed in sessions business, which information is now given in the annual report of the Court of Sudder Dewanny Adawlut, that report shall in future shew the number of appeals, regular and special, lodged against such desisions and miscellaneous orders, the result of all the appeals of a like nature from each Judge decided on during the course of each year, and the number of days in which each Judge sat for the transaction of civil business.—*Govt. Notification, 20th Dec.* 1836.

SECT. VIII.

Zillah and City Judges.—Enquiry into their official misconduct and into that of public functionaries.

95. And it is hereby enacted, that in the territories subject to the presidency of Fort William in Bengal, whenever either of the Courts of Sudder Dewanny and Nizamut Adawlut, either of the Sudder Boards of Revenue, or the Board of Customs, Salt and Opium, shall be of opinion that substantial grounds exist for making a regular and formal enquiry into the truth of any imputation of official misconduct affecting any officer subject to their controul respectively, and not removable without the sanction of Government, they shall submit the documents on which their opinion may be founded, together with a statement of the charges reduced to distinct articles which they may propose to be made the subject of a regular investigation, to the Governor of Bengal, or to the Lieutenant Governor of the North Western Provinces, or to any functionary exercising the authority of Government in the North Western Provinces, as the case may be, according to the authority to which they may be subject, for his consideration and orders.—*Act* XXVI. 1839, *Sect.* 2.

96. And it is hereby enacted, that any charge or information, of the description aforesaid, may be preferred direct to either of the Courts of Sudder Dewanny and Nizamut Adawlut, either of the Sudder Boards of Revenue, or the Board of Customs, Salt

and Opium, respectively, who shall examine the complainant or informant circumstantially upon oath, or upon solemn affirmation, if he be entitled to be exempted from taking an oath, and require the party accused to explain or reply to any matters they may deem to need explanation and make such further inquiries, upon oath or affirmation upon the subject as they may judge proper —*Act* XXVI. 1839, *Sect.* 3.

97. And it is hereby enacted, that any charge or information may also be made before any Judge, Magistrate, Commissioner of Revenue, or Collector, for any acts of the description before mentioned committed within their jurisdiction, respectively, who shall examine the complainant or informant circumstantially upon oath, or upon solemn affirmation if he be entitled to be exempted from taking an oath, and shall transmit the deposition so taken to the Sudder Dewanny and Nizamut Adawlut, the Sudder Board of Revenue, or the Board of Customs, Salt and Opium, according as the person accused may be subject to those authorities respectively.—*Act* XXVI. 1839, *Sect.* 4.

98. And it is hereby provided, that it shall not be lawful for the Courts of Sudder Dewanny and Nizamut Adawlut, or the said Boards, respectively, to act upon any such charge or information, unless the person preferring the same shall make oath, or solemn affirmation in case he be entitled to be exempted from taking an oath, that he believes the facts on which the charge is grounded to be true.—*Act* XXVI. 1839, *Sect.* 5.

99. And it is hereby provided, that it shall be lawful for the Courts of Sudder Dewanny and Nizamut Adawlut, and for the said Boards, respectively, to dismiss any such charge or information, where they do not see any substantial reason for entering further into the enquiry. Provided, that on every occasion when they shall dismiss any such charge or information, they shall submit the same, together with all the circumstances of the case, in like manner as is provided in Section 2 of this Act.—*Act* XXVI. 1839, *Sect.* 6.

100. And it is hereby provided, that the said Courts of Sudder Dewanny and Nizamut Adawlut, and the said Boards, respectively, may, at any stage of the enquiry into such matters as aforesaid, require the person preferring such charge or information as aforesaid to furnish such security as may be deemed reasonable that he will attend and prosecute the charge to a conclusion, and in the event of security being so required all proceedings shall be stayed until the same shall be furnished accordingly.—*Act* XXVI. 1839, *Sect.* 7.

101. And it is hereby provided, nevertheless, that if any matter of the nature aforesaid affecting such Officer as is mentioned in the second section of this Act shall appear in the course of any proceedings, whether preliminary or otherwise, which shall come before or be reported to either of the Courts of Sudder Dewanny and Nizamut Adawlut, or any of the said Boards, respectively, those authorities shall act upon such matter, or institute such enquiry upon oath or affirmation as aforesaid into the same as they shall deem proper for the purpose of such reference as aforesaid to the Governor of Bengal, or to the Lieutenant Governor of the North Western Provinces, or to the authority exercising the powers of Government in those Provinces as aforesaid, although no charge or information be preferred as aforesaid; and in such cases it shall not be necessary, before acting upon or instituting any enquiry concernihg any matter so appearing in the course of proceedings, to require any oath or affirmation in regard to the truth of such matter.—*Act* XXVI. 1839, *Sect.* 8.

Governor of the North Western Provinces, or the authority exercising the powers of Government in those Provinces as aforesaid, upon such reference as is mentioned in the second Section of this Act, shall concur with the authority by which it may be submitted, or if such Governor, or Lieutenant Governor, or authority exercising the powers of Government shall from information of the description aforesaid that may be laid before him in respect to such officers as aforesaid not directly subject to the Courts or Boards above named, deem it necessary to institute proceedings against any such officers, he shall appoint a Commissioner or Commissioners for making a regular and formal enquiry into the truth of the matters referred.—*Act* XXVI. 1839, *Sect.* 9.

103. And it is hereby enacted, that on the appointment of every such Commission, the said Governor, or Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, shall direct whether the Commission shall be placed under the control of any of the authorities aforesaid, or shall act immediately under the authority of Government, and all Commissions appointed as aforesaid shall be guided by the instructions which they may receive in this behalf from the Government to which they may be respectively subordinate.—*Act* XXVI. 1839, *Sect.* 10.

104. And it is hereby enacted, that the Commissioner or Commissioners appointed as aforesaid, before entering on the discharge of his or their duties, shall take the following oath:—

I, A. B., Commissioner for the purpose of (here state the object of the Commission) do solemnly swear that I will faithfully and impartially perform the duty committed to me without fear, favor, or bias, to the best of my ability, knowledge, and judgement. So HELP ME GOD.—*Act* XXVI. 1839, *Sect.* 11.

105. Held, that if a Commissioner appointed under Act XXVI. 1839, have not subscribed the oath, required by Section 11, of that Act, *before an officer authorised to administer the same,* his proceedings are altogether illegal and invalid.—*Con. No.* 1289, *West. C.* 28*th Nov. Cal. C.* 10*th Dec.* 1839.

106. And it is hereby enacted, that whenever a charge shall be referred for investigation to a Special Commission, the said Governor, or Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, will determine whether the conduct of the prosecution shall be left to the accuser, or be undertaken on the part of Government. In the latter case, the said Governor, or Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, will nominate such person or persons as may be deemed proper, to conduct the prosecution on behalf of Government.—*Act* XXVI. 1839, *Sect.* 12.

107. And it is hereby enacted, that it shall be the duty of Commissioners appointed under this Regulation, after receiving the plaint or charge, and the documents from which the same may have been prepared, to call upon the person accused for his reply to the accusation; to examine upon oath, or under a solemn declaration, the witnesses named by the accuser or the accused; to receive any further written documents offered in support of, or against the accusation; and to call for and take any further requisite evidence which may be indicated by the witnesses adduced or documents exhibited by either party, and may appear to be necessary for the ascertainment of facts, or the discovery of the truth or falsehood of the charges, or of any part thereof.—*Act* XXVI. 1839, *Sect.* 13.

108. And it is hereby enacted, that for the discharge of the duties specified in the preceding Section, or any other functions which may be delegated to a Commission under this Regulation, such Commission shall be vested with the same powers as are exercised by the Zillah and City Courts, except that all process to cause the attendance of witnesses, or other compulsory process, shall be served through the Zillah or City Judge in whose jurisdiction the Commission may be held, and executed by the Zillah or City Judge in whose jurisdiction the witness or other person upon whom the process is to be served may reside.—*Act* XXVI. 1839, *Sect.* 14.

109. And it is hereby enacted, that on the close of the evidence for the prosecution and defence, the accused shall be at liberty to record any observations upon the result of the enquiry which he may think necessary for the vindication of his conduct and character. The accuser, or the person appointed to conduct the prosecution on the part of Government, shall also be at liberty to record any remarks on the subject of the prosecution which he may deem requisite.—*Act* XXVI. 1839, *Sect.* 15.

110. And it is hereby enacted, that as soon after the conclusion of the proceedings as circumstances shall permit, the Commissioner or Commissioners shall, when the Commission shall be instructed to act immediately under the authority of Government, submit directly to the Government to which he or they may be subordinate, and in other cases to the controlling Court or Board, the proceedings under the Commission, accompanied by translations of papers not in the English language, together with a summary of the pleadings and evidence, and his or their opinion of the merits of the case.—*Act* XXVI. 1839, *Sect.* 16.

111. And it is hereby provided, that it shall be lawful for the said Governor, Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, or the Controlling Court or Board, upon consideration of the report of any such Commission as aforesaid, to direct the Commissioner or Commissioners to take further evidence, or to give further explanation of his or their opinion or opinions connected with the case investigated, and the Commissioner or Commissioners are authorized and required to take such further evidence, and to give such further explanation.—*Act* XXVI. 1839, *Sect.* 17.

112. And it is hereby enacted, that the Sudder Dewanny and Nizamut Adawlut, or the Board to which any report of a Commissioner or Commissioners may be submitted as aforesaid, after due consideration of the same, and after obtaining such further evidence or explanations as they may require, shall submit the whole of the proceedings and documents received by them to the Government to which they may be subordinate, together with their opinion whether any and what charges have been established against the accused.—*Act* XXVI. 1839, *Sect.* 18.

113. And it is hereby provided, that whenever a Special Commission may be appointed under the Provisions of this Act, the said Governor, or Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, will determine on a view of the nature and circumstances of the case, whether the accused officer shall be suspended from the discharge of the functions of his office; and if so, whether he shall be permitted to draw the established allowances of his office, or otherwise.—*Act* XXVI. 1839, *Sect.* 19.

114. And it is hereby provided, that the Governor, or Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, on con-

sideration of the report and proceedings submitted to him in pursuance of Sections XVI. and XVIII. of this Act, will pass such decision on the case as may appear to him most consonant to the principles of justice, and consistent with the powers possessed by Government in matters of this description and in the event of his deeming it necessary that the party accused should be brought to trial, by a public prosecution before a competent Court of law, will issue the necessary instructions for that purpose to the law Officers of Government. But whatever proceedings may be held, or whatever decision or order may be passed by Government, individuals deeming themselves aggrieved by any public officer, will be at all times at liberty to seek redress according to the ordinary forms prescribed by law.—*Act* XXVI. 1839, *Sect.* 20.

115. And it is hereby enacted, that nothing in this Act contained shall be construed to repeal the provisions respecting the dismissal and suspension of Principal and other Sudder Ameens contained in Section 26 of Regulation V. of 1831, or the provisions respecting the dismissal of Deputy Collectors contained in Section 25 of Regulation IX. of 1833. Provided always, that it shall be lawful for the Governor of Bengal, or the Lieutenant Governor of the North Western Provinces, or the authority exercising the powers of Government in these provinces, respectively, upon any such reference as is mentioned in Section 26 of Regulation V. of 1831, and Section 25 of Regulation IX. of 1833, at his discretion, to appoint a Commissioner or Commissioners for making such regular and formal inquiry touching imputations of official misconduct affecting any Principal or other Sudder Ameen or any Deputy Collector as he shall think fit, in manner as is directed by this Act, and subject to its provisions.—*Act* XXVI. 1839, *Sect.* 21.

SECT. IX.

Zillah and City Judges.—Employment of their private servants on public duties, and vice versâ.

116. The whole of the Officers of Government, employed in the Judicial Department, Civil or Criminal, are prohibited, under penalty of dismissal from office, from employing directly or indirectly, their private servants of whatever description, or any other persons, not being public Officers duly appointed or nominated in conformity with the Rules in force relative to such appointments, in the discharge of any part of their public duties, or in the execution of any public duty, in which the person so employed, may not have been duly authorized to act.—*Reg.* VIII. 1825, *Sect.* 2, *Cl.* 1.

117. The prohibition contained in the Regulation above quoted extends to all individuals not being duly constituted officers of the Court, and the latter description of persons alone can legally be employed in the transaction of any official duties. The enactment in question, however, need not, in the opinion of the Court, be construed to preclude persons other than the regularly appointed officers of the courts from taking copies of public documents, with the sanction of the Judge and Magistrate, for the use of private individuals, at the expense of those who may employ them.—*Con.* 407, 11*th Nov.* 1825.

118. Such parts of Section 12, Regulation XXV. 1803, and of Clause 1, Section 2, Regulation VIII. 1825, as have been construed to prohibit Collectors and all Judicial Officers from employing any persons not being public officers, duly appointed or nominated, in conformity with the Rules in force, relative to such appointments in the discharge of any part of their public duties, are hereby declared not to extend to the em-

ployment of individuals in the copying of papers and proceedings, or in similar functions, for the due execution of which the proper officers must be held responsible. The Rules however, contained in the Clause last mentioned, and in Regulations II. 1793, and V.1795,* prohibiting Collectors and Judicial Officers from so employing directly, or indirectly, their private servants of whatsoever description, shall remain in full force. —*Reg.* III. 1829, *Sect.* 6.

119. The whole of the Judicial Officers are in like manner, and under the same penalty prohibited from employing any of the public Officers on their Establishments, not being peons, or other inferior servants, in personal attendance upon a Judge, Magistrate, or other Officer of Government in the Judicial Department, in the performance of any part of their private business, or in the execution of any private trust relating to their personal concerns.—*Reg.* VIII. 1825, *Sect.* 2, *Cl.* 2.

120. If any of the Native Officers, now on the establishment of any Officer of Government in the Judicial Department, shall be disqualified from continuing to hold the office now held by him, under the prohibitions contained in the preceding Section, he shall be immediately removed from such office, and a successor appointed to it, according to the Rules prescribed in the existing Regulations. Any neglect of this requisition will subject the party committing it to the same penalty as that provided for in the foregoing Section.—*Reg.* VIII. 1825, *Sect.* 3.

121. In all future nominations of Native Officers by the Judges and Magistrates or other Judicial Officers, which may be submitted to the Provincial Courts of Appeal and Circuit, under the provisions of Regulation IX. 1809 or of any other Regulation in force, the Judge, Magistrate, or other Officer making such nomination is required to state explicitly, in addition to the information called for by the existing rules, that the person so nominated is not disqualified under the provisions of the present Regulation; and it will, at all times, be the duty of the Provincial Courts to see that these provisions are observed; as well as to report any wilful infringement of them to the Courts of Sudder Dewanny or Nizamut Adawlut for the information and orders of Government.—*Reg.* VIII. 1825, *Sect.* 4.

SECT. X.

Zillah and City Judges.—Prohibition of borrowing from or lending to Natives under their official influence.

122. All Covenanted Civil Servants, in whatever Department of the public service they may be employed, are henceforward prohibited under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any native officer under their authority, or under the authority of any of their subordinate functionaries, or from or to the known surety, agent, relation, connection, or dependant of any such native officer, or from or to any person of whom such native officer may be known to be or to have been the servant, agent, surety, or dependant.—*Reg.* VII. 1823, *Sect.* 2, *Cl.* 1.

123. In like manner and under the like penalty, all officers of Government being Covenanted Civil Servants, are henceforward prohibited from borrowing money from

* The Rules in these two Regulations refer only to Collectors.

or in any way incurring debt to any manager, guardian, executor, ameen, sezawul, gomashtah, farmer, motuwullee, or other person, who may in any way be officially accountable to them, or from and to the known surety, agent, relation, connection, or dependant of such person.—*Reg.* VII. 1823, *Sect.* 2, *Cl.* 2.

124. All Judges of Zillah and City Courts, all Magistrates, Joint Magistrates, Registers and Assistants to Magistrates, all Collectors, and Deputy Collectors of the land Revenue, all Assistants to such Collectors or other Officers, exercising the powers of such Collector, are prohibited under pain of dismissal from office, from borrowing money from or in any way incurring debt to any Zemindar, Talookdar, Ryot, or other person possessing real property, or residing in, or having a commercial establishment within the city, district, or division, to which their authority may extend.—*Reg.* VII. 1823, *Sect.* 3.

125. All persons are prohibited from lending money, or otherwise becoming in any way creditor to any officer of Government, being a Covenanted Civil Servant, in contravention of the above Rules:—And any person lending money, or in any way becoming creditor to any such public officer in breach of this prohibition, shall forfeit to Government a sum equal to the amount for which he shall have so illegally become creditor.—*Reg.* VII. 1823, *Sect.* 4.

126. If any Officer of Government now in debt shall at the expiration of one year, from the promulgation of this Regulation, be still indebted to any person from whom it would at such period be illegal for him to borrow under the above Rules, it shall be incumbent on such Officer to make known the circumstance to the Governor General in Council; and in the event of intimation not being so given, the same penalty shall attach to the said Officer, as if the debt had been incurred subsequently to the promulgation of this Regulation.—*Reg.* VII. 1823, *Sect.* 5.

127. In like manner, if any covenanted servant, who may be hereafter appointed to any office, shall at the time of such appointment, be indebted to any person with whom, it would be illegal for him to contract a loan, while holding such office, it shall be incumbent on such servant before entering on the duties of the office, to make known the circumstance to the Governor General in Council; and failing to do so, he shall be subject to the same penalty as if the debt had been contracted subsequently to his being appointed to the said office.—*Reg.* VII. 1823, *Sect.* 6.

128. Suits for the recovery of penalties incurred under this Regulation, shall and may be instituted under the special instructions of the Governor General in Council, and shall be conducted by the Superintendent and Remembrancer of Legal Affairs, or by such other Officer as Government may nominate for that purpose; such suits shall be instituted in the Provincial Court of the Division, within which the transaction may have taken place, or the lender may reside, or may possess real or personal property. An appeal shall lie from judgements passed in such cases, in like manner, as from other judgements passed in original suits, by the Provincial Courts, and the judgements shall be enforced under the provisions of the Regulations for the execution of other decrees of the Civil Courts.—*Reg.* VII. 1823, *Sect.* 8.

129. From and after the promulgation of this Regulation, no person, being a creditor of any Zillah or City Judge or Magistrate, of any Collector of the land revenue or customs, or of any agent for the provision of salt or opium, shall be appointed to any official situation on the establishment of the person whose creditor he may be. It

shall consequently be the duty of the Boards of Revenue and Trade, of the Board of Commissioners, and of the Courts of Appeal and Circuit, on receiving the reports prescribed by the provisions of Regulation VIII. 1809, to satisfy themselves fully that the natives, recommended to fill any vacancies on the establishment of the European Officers acting under their control respectively, are not the creditors of the latter. With this view, it will be the duty of the said Boards and Courts to make full enquiries on the subject, not only from the Officers from whom such reports may be received, but through such other channels as may be necessary to guard against any infringement or evasion of the provisions of the present Regulation.—*Reg.* XXI. 1814, *Sect.* 2.

130. The rules contained in the preceding Section for precluding the creditors of the public officers abovementioned from being employed on their public establishments, shall be considered equally applicable to the relatives and dependants of such creditors: the former as well as the latter, shall consequently be equally precluded from being employed on the establishments of any of the public officers above described.—*Reg.* XXI. 1814, *Sect.* 3.

131. Any native causing himself to be appointed to any office in opposition to the provisions of Regulation XXI. 1814, as hereinbefore extended, or in any way knowingly accepting office in contravention thereof, shall forfeit to Government a sum equal to ten times the yearly salary or allowances attached to the situation, to which he may be appointed.—*Reg.* VII. 1823, *Sect.* 7.

132. The Judges and Magistrates of the Zillah and City Courts, the Judges of the Provincial Courts of Appeal, and the Courts of Circuit, and the Registers to their respective courts, and their assistants, or other officers being covenanted servants of the Company, and the Collectors of the revenue and their assistants, are prohibited lending money, directly or indirectly, to any proprietor or farmer of land, or dependant Talookdar, or under farmer or ryot, or their sureties, and all such loans as have been made in opposition to the repeated prohibitions of Government, or which may be hereafter made, are declared not recoverable in any court of judicature.—*Reg.* XXXVIII. 1793, *Sect.* 2.

SECT. XI.

Zillah and City Judges.—Correspondence with suitors, or with other Courts.

133. The Judges of the Zillah and City Courts, are prohibited corresponding by letter with parties in suits, process, or matters, depending before them, or coming within their cognizance. If a party in a suit, or a person amenable to the jurisdiction of the Court, shall have any matter to represent to the Court, he is either to appear in the Court in person and represent the matter in writing, or make the representation in writing through an authorized vakeel. The Court is to pass whatever order upon the representation may appear to it proper, consistently with the Regulations, and to direct a copy of the order, to be delivered to the person making the representation, or to his vakeel, under the seal of the Court, and attested by the Register. —*Reg.* III. 1793, *Sect.* 19.

134. The Judges of the Zillah and City Courts, are also prohibited corresponding by letter with the Provincial Courts of Appeal [Sudder Courts] respecting any cause or matter before those Courts, or upon any matters whatever on which they may not be

specially empowered so to correspond. When a Judge shall have occasion to communicate to the Provincial Court [Sudder Court] any information that may be required from him by the Court, or which he may deem it necessary to submit to the Court, respecting any matter or cause that may be before it, he is to certify it to the Court by a writing under his official seal and signature.—*Reg.* III. 1793, *Sect.* 19.

135. I am directed by the Sudder Dewanny Adawlut to inform you, that it is the intention of the Court, in pursuance of Section 13, Regulation 6, 1793, to issue to your Court, and the Zillah and City Courts within your division, all process to parties and withesses, and all decrees and orders of the Court in causes, in the native languages, but enclosed in an English precept.—You will accordingly adopt a similar mode of communication with the Court; and when you may have any information to certify to the Court, or any return to make to the orders of the Court, will enclose in an English certificate or return, copy of or extract from your Persian proceedings, containing the information to be certified, or the particulars of what may have been done in execution of the orders of the Court, accompanied by the proceedings of the Zillah or City Courts, and any original documents requisite, without English translates, unless by the special orders of the Court.—*Cir. Ord. 20th April* 1801.

136. I am directed to add, that the miscellaneous correspondence of the Court, not immediately relating to particular causes, or affecting particular parties, will continue to be carried on in English.—*Cir. Ord. April 20th,* 1801.

137. The Sudder Dewanny Adawlut further desire, that you will transmit copies of their circular notice of the 20th April 1801, and of the present notification, to the Judges of the several Courts within your division; with instructions to observe the same mode of communication in their certificates and returns to your Court, or to the Sudder Dewanny Adawlut, as well as in any applications they may have occasion to make to any other Court, or to the Collectors, or other European officers of Government, for papers, information, or for any other purpose; in which cases, copies of, or extracts from their Persian* proceedings, containing the substance of the application, should be enclosed in a short English address, requesting compliance with the application so made; or if it be a case on which the Court is directed or empowered to issue an order and precept to any European officer of Government, the Persian* copy of such order, or an extract from the proceedings containing it (in the language of the record) should be enclosed in an English precept, under the seal of the Court, and signature of the Judge or Register, requiring performance of the order so transmitted, within the limited time, or that sufficient cause be assigned within such period why the order is not put in execution.—*Cir. Ord. Oct.* 12*th,* 1803.

138. The Courts of Sudder Dewanny Adawlut and Nizamut Adawlut being of opinion that whenever any proceedings, on miscellaneous cases, are referred to them, for their opinion, orders, or information, whether by the Zillah and City Judges and Magistrates, or by the Provincial Courts of Appeal, or Courts of Circuit, a statement of the case, and of the point, or points, referred for the opinion or orders of the Sudder Dewanny Adawlut, or Nizamut Adawlut, should be invariably submitted in the letter accompanying the proceedings so referred, I am directed to request you will instruct the several Judges and Magistrates within your division to observe this rule in future; and that your Court will likewise conform to it, when occasion may arise.—*Cir. Ord. Feb.* 27*th,* 1812.

139. As the practice of numbering letters which obtains in the offices of the Secretaries to Government, in this office, and in some of the offices in the interior, is not universally adopted; and as it has been found, where it obtains, useful in facilitating references to letters, without the necessity of recapitulating the subject of them; I am directed by the Court to request that you will, from the commeneement of the ensuing year, number all that may bed ispatched from your office, in

* Persian has since been abolished.

one continued series from the commencement to the close of the year.—*Cir. Ord. Cal. and West. C. 27th Nov.* 1835.

140. In such cases, [that is, in all cases in which Regulation V. 1831, has been introduced] the general correspondence and periodical details of establishments will be submitted directly to Government or the Sudder Dewanny Adawlut, without the intervention of the Provincial Court.—*Cir. Ord. Cal. and West. C. 2nd March,* 1832.

141. All references, which the officers in the Judicial department may have occasion to make to the Nawaub of Bengal under the provisions contained in Section 10, Regulation XVI. 1793; and generally, all other applications, which those officers may deem it necessary to make to the Nawaub, shall be transmitted to his Highness through the channel of the officer holding the appointment of Superintendant of Nizamut affairs. —*Reg.* XIX. 1805, *Sect.* 2.

SECT. XII.

Nomination to the Offices of Principal Sudder Ameen, Sudder Ameen and Moonsiff.

142. I am directed by the Right Honourable the Governor General in Council to request, that in all future nominations to the offices of Principal Sudder Ameen or Sudder Ameen, including temporary officiating appointments, you will attend to the following rules as far as you can.—*Cir. Ord. Cal. and West. C. 14th June,* 1833, *Par.* 1.

143. If the Commissioner and Judge, after consultation, agree in nominating the same individual, the Judge will prepare a statement according to the annexed form, and forward it to the Commissioner, who will fill up the head "Remarks by the Commissioner," sign the statement, and forward it to Government.—*Cir. Ord. Cal. and West. C. 14th June,* 1833, *Par.* 2.

144. If they should not agree, the Judge will still forward the statement to the Commissioner, who will state his objections under the head of "Remarks by the Commissioner," and return it to the Judge with a similar statement of the person he would recommend. If the Judge should, on re-consideration, prefer the Commissioner's nomination, the Judge will fill up the head "Remarks by the Judge" in the Commissioner's statement, sign and forward it to Government; but if the Judge should adhere to his own nomination, he will return the Commissioner's statement with his remarks to that effect, and also state his objections to the person nominated by the Commissioner. If, on receipt of this, the Commissioner should adhere to his own opinion, he will forward both statements for the orders of Government.—*Cir. Ord. Cal. and West. C. 14th June,* 1833, *Par.* 3.

145. Under the 11th head of the statement it should be noticed whether the nominee is related to, or connected with, any and what persons in office, or of rank or influence, or possessing extensive property in the district to which he may be nominated, or in any other district; also the degree of estimation in which the nominee was held in the district in which he had been employed or had resided.—*Cir. Ord. Cal. and West. C. 14th June,* 1833, *Par.* 4.

146. Under heads 12 and 13, the Commissioner and Judge respectively should distinctly state what opportunities he had of making himself acquainted with the character and qualifications of the person nominated.—*Cir. Ord. Cal. and West. C. 14th June,* 1833, *Par.* 5.

147. It is expected that the Judge and Commissioner will seek and select persons, otherwise duly qualified, who may be known and generally respected to be men of integrity and high character.—*Cir. Ord. Cal. and West. C. 14th June,* 1833, *Par.* 6.

SECT. XIII.

Appointment of Principal Sudder Ameens.

148. It shall be competent to the Governor General in Council to appoint to any Zillah or City Jurisdiction, one or more Principal Sudder Ameens, with the powers hereinafter specified.—*Reg.* V. 1831, *Sect.* 17, *Cl.* 1.

149. The office of Principal Sudder Ameen shall be open to Natives of India of any class or religious persuasion. The persons selected for the office shall be appointed by the Governor General in Council, and shall receive their Sunnuds or Commissions from Government, under the signature of the Secretary in the Judicial Department. —*Reg.* V. 1831, *Sect.* 17, *Cl.* 2.

150. It is hereby enacted, that from the 31st day of March 1836, no person whatever shall by reason of place of birth, or by reason of descent, be incapable of being a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, within the territories subject to the Presidency of Fort William in Bengal.—*Act* VIII. 1836, *Sect.* 1.

151. The Principal Sudder Ameens will receive such monthly allowances as may be fixed by the Governor General in Council.—*Reg.* V. 1831, *Sect.* 17, *Cl.* 3.

152. Every person appointed to the office of Principal Sudder Ameen shall, previously to entering upon the execution of the duties of his situation, make and subscribe before the Judge of the Zillah or City in which he may be employed, the solemn declaration required by Section 2, Regulation XVIII. 1817.—*Reg.* V. 1831, *Sect.* 17, *Cl.* 4.

153. Instead of the prescribed oath, which is required by the Regulations in force, the several native officers referred to in the above Clause, shall hereafter make and subscribe, in open court, or in the established public office, before the Judges, Boards, Collectors, Commercial Residents and Agents, or other European authorities to which they may be respectively subject, a solemn declaration to the same effect with the form of oath heretofore prescribed, except that the word "declare" shall be substituted for "swear;" and that the declarer shall not be sworn thereto.—*Reg.* XVIII. 1817, *Sect.* 2. *Cl.* 2.

154. "I, A. B. appointed to the office of Serishtadar (or other head Officer, or Moonshee, Mohurrer, or Nazir,) to the Sudder Dewanny Adawlut, or the Nizamut Adawlut (or the Provincial Court of Appeal for the division of , or the Court of Circuit for the division of , or the Dewanny Adawlut of the Zillah or City of ,) solemnly swear, that I will truly and faithfully perform the duties of the office to which I have been nominated, to the best of my knowledge and ability; that I will not receive, directly or indirectly, any present or nuzzer, in money or effects of any kind, from any party whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the Court; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive directly or indirectly, any present or nuzzer, in money or effects, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the Court; and that I will not derive, directly or indirectly, any advantages or emoluments from my office, excepting such as the orders of Government do or may authorize me to receive."—*Reg.* XIII. 1793, *Sect.* 4.

155. In pursuance of the orders of Government, under date the 2nd ultimo, I am directed by

the Court to request that you will cause seals of brass with inscriptions as below to be prepared and delivered to the Principal Sudder Ameens and Sudder Ameens of your district, charging the expense in your contingent bill.—*Cir. Ord. Cal. C. 8th March, West. C. 15th March*, 1833.

156. The provisions of Section 11, Regulation II. 1821, and of Clauses second and third, Section 2, Regulation III. 1824, are declared applicable to Principal Sudder Ameens, or Sudder Ameens who may be stationed at any other place than the fixed station of the Zillah or City Court, or with jurisdiction within the limits of any Magistracy, Joint Magistracy, Collectorship, or Deputy Collectorship.—*Reg.* VII. 1832, *Sect.* 17.

157. On any vacancy occurring in a Principal Sudder Ameenship, the Court of Sudder Dewanny Adawlut shall select and nominate to Government, the three Sudder Ameens best qualified in their judgement to fill the vacant appointment.—*Govt. Ord. 30th July*, 1836, *Par.* 4.

158. In every practicable case, the rule with regard to order of nomination, or indication of estimated equality by brackets, laid down at the close of the second article, [Rule 208 of this Chapter] be observed by the Sudder Court.—*Govt. Ord. July 30th*, 1836, *Par.* 5.

159. No person who has not served in the grade of Sudder Ameen, will be considered eligible for a Principal Sudder Ameenship.—*Govt. Ord. 30th July*, 1836. *Note.*

160. You will be further pleased to take this opportunity of apprising the Principal Sudder Ameens, that a specific report containing the names of all Principal Sudder Ameens, whose conduct and proceedings may appear to merit that distinction, will be submitted annually by this Court to the Honourable the Governor of Bengal.—*Cir. Ord. Oct. 7th*, 1836. *Lower Provinces only.*

161. No Principal Sudder Ameen or Sudder Ameen should be appointed to any district to the inhabitants of which he is largely indebted.—*Cir. Ord. Cal. and West. C. March 26th*, 1832.

SECT. XIV.

Prosecution of Principal Sudder Ameens.

162. Principal Sudder Ameens shall be liable to a criminal prosecution for corruption, extortion, or other misdemeanor committed by them in the discharge of any part of their duty, and on conviction before the Court of Circuit, shall be subject to fine and imprisonment proportionate to the nature and circumstances of the case, but no Principal Sudder Ameen shall be liable to be prosecuted for want of form, or for error in his proceedings or judgments, nor shall any process be issued against a Principal Sudder Ameen who may be charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless the Zillah or City Judge shall be previously satisfied by sufficient evidence that there is reason to believe the charge to be well founded. —*Reg.* V. 1831, *Sect.* 26, *Cl.* 5.

SECT. XV.

Appointment of Sudder Ameens.

163. The Zillah and City Judges, in conjunction with the Commissioners of Revenue and Circuit, shall revise the present establishment of Sudder Ameens in the Zillahs and Cities to which this Regulation may be extended—and the selection and number of these officers, as well as of the Moonsiffs, shall be regulated in future in such manner as the Governor General in Council may be pleased to direct, the office being open to Natives of India of any class or religious persuasion.—*Reg.* V. 1831, *Sect.* 13.

[*The situation is now open to all; vide as above, Rule* 150 *of this Chapter.*]

164. Similar Sunnuds shall also be granted to all persons, who may be hereafter appointed to the office of Sudder Ameen.—*Reg.* XXIII. 1814, *Sect.* 65, *Cl.* 2.

[*Since the promulgation of Reg.* V. 1831, *it has been the practice for Government to give the Order of Appointment to the Sudder Ameens.*]

165. Every person, who may in future be appointed to the office of Sudder Ameen, shall previously to entering upon the execution of the duties of his situation, take and subscribe an oath according to the form prescribed in the Appendix, No. 8, before the Judge of the Zillah or City in which he may be appointed to officiate; but the Judge is empowered in all cases, in which he may deem it expedient, to exempt such Sudder Ameen from taking the oath, and in lieu thereof to cause him to subscribe a solemn declaration to the same effect.—*Reg.* XXIII. 1814, *Sect.* 66.

166. "I, A. B. appointed to the office of Sudder Ameen of the Zillah or City —— do solemnly swear, that in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgement, without partiality, favor, or affection; that I will not directly or indirectly receive, or knowingly allow any other person to receive, any money, effects, or property, on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute; I will strictly adhere to all the rules prescribed for my guidance; and I will in all respects truly and faithfully execute the trust reposed in me."—*Appendix, No.* 8, *to Reg.* XXIII. 1814.

167. The provisions of Sections 9 and 10, of this Regulation, are hereby declared to be applicable to the office of Sudder Ameens, as well as to that of Moonsiffs appointed under this Regulation; the Sudder Ameens are to hold their cutcherries at the station where the Zillah or City Court is held, in such convenient places as the Judge may direct.—*Reg.* XXIII. 1814, *Sect.* 67.

168. The provisions of Section 11, Regulation II. 1821; and of Clauses second and third, Section 2, Regulation III. 1824, are declared applicable to Principal Sudder Ameens, or Sudder Ameens who may be stationed at any other place than the fixed station of the Zillah or City Court, or with jurisdiction within the limits of any Magistracy, Joint Magistracy, Collectorship, or Deputy Collectorship.—*Reg.* VII. 1832, *Sect.* 17.

169. In pursuance of the orders of Government, under date the 22d ultimo, I am directed by the Court to request that you will cause seals of brass with inscriptions to be prepared and delivered to the Principal Sudder Ameens and Sudder Ameens of your district, charging the expense in your contingent bill.—*Cir. Ord. Cal. C. March* 8*th*, *West. C.* 15*th March*, 1833.

170. On any vacancy occurring in a Sudder Ameenship, by death, removal from office, or other cause, the Court of Sudder Dewanny Adawlut shall select from the several district lists, (after calling for any information which they may deem requisite with respect to any of the nominees, and referring to the records of their own office,) and submit for the consideration of Government, the names of the three Moonsiffs best qualified in their judgement to fill the vacant appointment.—*Govt. Ord. July* 30*th*, 1836, *Par.* 3.

171. In future no Sudder Ameen is to be appointed, except he be one of three Moonsiffs recommended for promotion by the Sudder Court, and unless he have served as a Moonsiff for at least twelve months previous to the date of recommendation.—*Govt. Not. Augt.* 4*th*, 1840, *Par.* 11.

172. Such parts of Regulation XXIII. 1814, and of Regulation II. 1821, or of

any other Regulation in force, as authorize Sudder Ameens to receive as a compensation in original suits and appeals decided by them, or adjusted before them by Razeenamah, the amount of the institution fee, or stamp duty substituted for such fee, on the suits or appeals so decided or adjusted, are rescinded, and shall have no operation after the 30th day of April, 1824.—*Reg.* XIII. 1824, *Sect.* 2, *Cl.* 1.

173. From the 1st day of May, 1824, the Sudder Ameens shall, in lieu of the fee and compensation abovementioned, receive from Government such monthly allowances as may be fixed for them respectively, by the orders of the Governor General in Council.—*Reg.* XIII. 1824, *Sect.* 2, *Cl.* 2.

174. The Mahomedan and Hindoo Law Officers of the Zillah and City Courts, shall not be deemed Sudder Ameens ex-officio, but shall be eligible to the office like other individuals.—*Reg.* V. 1831, *Sect.* 14, *Cl.* 2.

175. I am directed by the Court to forward to you an extract of a letter from the Secretary to the Government of Bengal in the judicial department, in reply to a communication from this Court recommending that the best qualified Moonsiff in the Zillah should be appointed to discharge the duties of Sudder Ameen of the district, in addition to his regular duties as Moonsiff of the Sudder or first division of the district.

The suggestion having been sanctioned by Government, you will be pleased immediately to select the best qualified Moonsiff in your district, and to submit in the prescribed form, through the Commissioner, a recommendation to Government that he be nominated Sudder Ameen of the district and Moonsiff of the sudder or first division of the Zillah.

On receiving the authority of Government to nominate an individual to this office, you will, agreeably to Section 15, Regulation V. 1831, refer to this officer in his capacity of Sudder Ameen all suits between the value of 300 and 1000 Rupees which may now be pending before any other tribunal. As Moonsiff of the Sudder division, he will of course receive and try all suits not exceeding 300 Rupees, provided the cause of action shall have arisen within the limits of his jurisdiction.

I am directed to inform you that the principal object contemplated by this arrangement is to relieve the file of the Principal Sudder Ameen of your court from all cases between the value of 300 and 1000 Rupees that are now necessarily retained thereon; and thus to enable that officer to afford you greater assistance in the disposal of the arrear of appeals pending in your district. You will therefore be careful to strike out of the file of the Principal Sudder Ameen every case under the amount of 1000 Rupees, referring them to the Moonsiff or to the Sudder Ameen, unless any special reasons should exist for a contrary arrangement.

On these instructions being duly completed, the Court request you will furnish a report on the arrangements you may have made, noting the number of cases that you have transferred to the file of the Sudder Ameen, together with any other observations that may appear to you necessary to be submitted for their information.—*Cir. Ord. April 3d*, 1835. *Lower Provinces only.*

SECT. XVI.

Sudder Ameens—Civil Actions and Criminal Prosecution against them.

176. Moonsiffs shall be liable to an action in the Civil Court for corruption in the discharge of their trust, or for extortion, or for any oppressive or unwarranted act of authority; and upon proof of the charge to the satisfaction of the Judge, he shall cause the offender to pay such damages and costs to the party injured as may appear to be equitable.—*Reg.* XXIII. 1814, *Sect.* 10, *Cl.* 1.

177. Moonsiffs shall also be liable to a criminal prosecution for corruption, extorti-

on, or other misdemeanor committed by them in the discharge of any part of their duty, and on conviction before the Court of Circuit shall be subject to fine and imprisonment proportionate to the nature and circumstances of the case; but no Moonsiff shall be liable to be prosecuted for want of form or for error in his proceedings or judgments, nor shall any process be issued against a Moonsiff, who may be charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless the Judge shall be previously satisfied by sufficient evidence, that there is reason to believe the charge to be well founded.—*Reg.* XXIII. 1814, *Sect.* 10, *Cl.* 2.

178. The provisions of Section 10, (as above) of the Regulation, are hereby declared applicable to the office of Sudder Ameens, as well as that of Moonsiffs.—*Reg.* XXIII. 1814, *Sect.* 67.

[*The several Government Orders of* 15*th Jan.* 1834, *printed in this work indented as below; have never been incorporated with any law, but may be found useful for the information of suitors and the Courts.*]

179. On the principles stated in the Letter of the Sudder Court, actions under Regulation XXIII. 1814, Section 10 and 67, against Moonsiffs, Sudder Ameens, and Principal Sudder Ameens, for corruption, extortion, or any oppressive or unwarranted act of authority, which if proved, would subject the offender to pay damages and costs to the party injured, should be preferred to and tried by the Zillah and City Judge, subject to an appeal to the Sudder Dewanny Adawlut.—*Govt. Ord.* 15*th Jan.* 1834, *No.* 7.

SECT. XVII.

Moonsiffs.—Rules regarding their Examination, Appointment and Jurisdiction.

180. In modification of the provisions contained in Sections 6 and 7, Regulation XXIII. 1814, and Section 2, Regulation II. 1821, the Judges of the Zillah and City Courts, in conjunction with the Commissioner of Revenue and Circuit, shall revise the existing establishment of Moonsiffs in the Zillahs and Cities to which this Regulation may be extended, and the selection and number of those Officers shall be regulated in such manner as the Governor General in Council may be pleased to direct, the office being open to Natives of India [*Vide Rule* 150 *of this Chapter*,] of any class or religious persuasion.—*Reg.* V. 1831, *Sect.* 3.

Rules for the Examination of Candidates for Moonsiffships, passed by the Right Honourable the Governor General in Council, under date the 4*th of Aug.* 1840.

181. That at each three Zillah stations in the North Western Provinces and four in Bengal, to be selected by the Governments of those Presidencies respectively, there be appointed a Divisional Committee of Examination, consisting ordinarily, besides such person or persons as the Government may think fit, of, 1. The Commissioner of the Division in which the station is situated. 2. The Zillah Judge. 3. The Magistrate. 4. The Principal Sudder Ameen or Principal Sudder Ameens of the Station.—*Rules for the Exam. of Candidates for Moonsiffships,* 4*th Aug.* 1840, *Par.* 1.

182. That all candidates for Moonsiffships be required to send in their applications for examination to a Zillah Judge of the Division within which they desire to be examined; at least two months before the examination to be held—but that no such applications shall be presented to the Judge who is a member of the examining Committee.—*Ibid, Par.* 2.

183. That the Zillah Judge, after making such enquiries as he may deem proper, in order to ascertain that nothing exists against the character of the applicant to render him unfit to enjoy the privilege of examination, shall certify on the face of the application, that the applicant may be examined.—*Ibid, Par.* 3.

184. That the Divisional Committee shall meet at least twice in each year, for the purpose of examining candidates certified to them for examination during the preceding six months, by Zillah Judges within their Division.—*Ibid, Par.* 4.

185. That the examination shall be conducted by the Committee in such manner as shall from time to time be prescribed to them by the Sudder Dewanny Adawlut.—*Ibid, Par.* 5.

186. That at the conclusion of the examination, the Committee shall grant to such candidates as they may deem proper, diplomas of fitness for employment as Moonsiffs, after such form as the Sudder Court may prescribe, and at the same time forward duly certified lists of such candidates to the Sudder Dewanny Adawlut.—*Ibid, Par.* 6.

187. That the possession of such diplomas shall entitle candidates on application, to be recommended by Zillah Judges, and Commissioners for vacant Moonsiffships, and to be appointed to such vacant Moonsiffships by the Sudder Dewanny Adawlut before any candidates not possessing such diplomas.—*Ibid, Par.* 7.

188. That in case any Zillah Judge shall, by reason of having received no application from a candidate with a diploma, nominate to the Sudder, to fill an existing vacancy, a candidate without a diploma, the Sudder Court shall appoint to the vacancy any one from among the lists of passed candidates, who may be willing to accept the vacant appointment; but the Sudder Court shall not delay the appointment for the purpose of making enquiry as to the willingness of any individual on the lists. On the contrary, if no application should be before them from any such person when the Judge's nomination may be taken into consideration by the Court, they shall, unless they be aware of other objections, appoint provisionally the candidate recommended by the Zillah Judge, subject to his obtaining a diploma in due course under the following rule.—*Ibid, Par.* 8.

189. That in case any person not possessing a diploma, be hereafter appointed a Moonsiff under the last rule, he be required to present himself for examination to the Divisional Committee at the first examination held after the expiration of six months, from the date of his appointment, and that if he then fail in obtaining a diploma of fitness, his appointment be deemed vacant.—*Ibid, Par.* 9.

190. That after effect has been given to these rules, if the Judge of a District have good and sufficient grounds to believe, from any proceeding or other information officially before him, that any Moonsiff under his controul not previously examined, is not sufficiently qualified to discharge in a proper manner the duties of his situation, he may, with the concurrence of the Commissioner, require such Moonsiff to present himself for examination before the Divisional Committee at their next meeting, and any Moonsiff, who being so required, may refuse to submit to examination or being examined may fail to obtain a diploma, shall forfeit his appointment, and shall not be reappointed to a Moonsiffship until he obtain a diploma of fitness.—*Ibid, Par.* 10.

Additional Rules for the Examination of Candidates for the office of Moonsiff, and the guidance of the Committees, passed by the Governor of Bengal on the 8th December, 1840.

191. The Examination to be partly vivâ voce and partly written answers to prepared questions.—*Additional Rules for the Examination of Candidates for Moonsiffships, 8th Dec.* 1840, *Par.* 1.

192. The questions will be framed by the Court of Sudder Dewanny Adawlut, from the Regulations and Rules of practice, for the guidance of the Courts of Civil Justice, and will be forwarded by them to the Examination Committees, on the receipt of the prescribed reports, informing them that examinations are about to be held.—*Ibid,* 2.

193. The questions to be answered by the candidates, without reference to books or other sources of information, in the presence of two members (one of them being the Judge, or Commissioner of the Division,) of the examining Committee. The several Members of the Committee, however, shall examine the replies, and report on the eligibility of the candidates. Candidates will be at liberty to give their replies in whatever language they please, but it will be the duty of the Committee to satisfy themselves, that every candidate who may be considered qualified in other

respects for the situation of Moonsiff, possesses also a competent knowledge of the principal vernacular languages of the country.—*Ibid*, 3.

194. After the candidates shall have delivered their written replies to the questions, the papers of a Moonsiff case, which has been decided on its merits, shall be read by a Mohurrir *seriatim*, the final decree excepted, to the several candidates, who shall then be required to record, in any language they may prefer, their opinions on the points at issue between the parties and the manner in which the suit ought to be decided, agreeably to the Regulations and the law of the parties. The opinions thus recorded, shall be examined by the whole of the Committee, to enable them to judge of the capacity and intelligence of the candidates.—*Ibid*, 4.

195. On the close of the examination the replies of the successful candidates to the written questions, shall be forwarded to the Sudder Dewanny Adawlut.—*Ibid*, 5.

196. The oral examination shall be conducted by a full meeting of the Examining Committee, who shall examine each candidate separately by questions from the Regulations relating to the constitution, extent of jurisdiction, powers, and course of procedure of the Courts of the native Judges.—*Ibid*, 6.

197. At the conclusion of the examination, the Committee shall, as directed in the 6th of the Government Rules, grant to such candidates as they may deem proper, diplomas of fitness for employment as Moonsiffs, according to the form furnished to them by the Sudder Court, and at the same time forward duly certified lists of such successful candidates to the Sudder Dewanny Adawlut.—*Ibid*, 7.

198. Diplomas shall be granted by the Mofussil Committees only to those candidates who may answer correctly the whole of the questions forwarded by the Sudder Dewanny Adawlut. Should a Mofussil Committee be of opinion, that a candidate who may not have answered all the questions, is otherwise eligible to the office of Moonsiff, on any special grounds, they shall forward the written replies of such candidate, with a statement of the grounds on which they consider him entitled to a Diploma, for the consideration of the Presidency Central Committee, who will decide whether the candidate shall receive a Diploma or otherwise. This rule does not apply to the Presidency Committee, whose powers will continue as before.—*Ibid*, 8.

199. When the members of any Committee are equally divided in opinion as to the propriety of granting or withholding a Diploma, such equality of votes shall be held to render the candidate ineligible.—*Ibid*, 9.

200. No member of any Committee shall vote regarding any candidate to whom he may be in any way related.—*Ibid*, 10.

201. Candidates who may be rejected at one sitting of a Committee, shall be entitled, at the expiration of any period which the Committee may fix upon, with reference to the degree of knowledge evinced by such candidates, when examined the first time, to appear a second time before them for examination: provided, however, that such candidates shall renew their certificates from the Zillah Judge previously to the second examination.—*Ibid*, 11.

202. The Zillah Judge, to whom application may be made for a certificate, shall, after making such enquiries as he may deem proper, to ascertain that the applicant is a person of respectable connections, good character, and suitable attainments, certify on the face of the application, that the applicant may be examined. If, however, the enquiries made on these points prove unsatisfactory, or if the applicant be unable to produce credentials to his respectability, past conduct, and general qualifications, the Judge shall decline compliance with the application.—*Ibid*, 12.

203. The certificate to be granted by the Judge shall be in the following term:—"I do hereby certify that I have satisfied myself that the bearer of this certificate, A. B., is a man fully fitted, by respectability and good character, to fill the office of Moonsiff; and, from the enquiries I have made, I have every reason to believe that he is qualified, from his past conduct, and general information, to enjoy the privilege of examination for the office of Moonsiff."

204. The certificate shall then be transmitted to the Sudder Dewanny Adawlut, who, if they be aware of no objection, shall certify as follows :—"The Sudder Dewanny Adawlut, having inspected this certificate, are aware of no objection to the examination of the candidate."

(Signed) A. B., *Registrar.*—*Ibid*, 13.

205. When a candidate appears before a Committee, if they shall be aware of objections to his examination, on the score of character, they shall refuse to proceed with his examination, and shall declare their objection in writing, on the face of the certificate, and transmit it to the Sudder Dewanny Adawlut, for such orders, or for such further enquiry, as the Sudder Dewanny Adawlut may think proper.—*Ibid*, 14.

206. I am directed by the Court to forward to you 50 Copies of the form of application and certificate to be used when persons express an intention of presenting themselves before the Committees for the examination of candidates for the office of Moonsiff, and desire to receive a certificate of their fitness to undergo examination. These forms, you will be pleased to observe are to be filled up in English, and to be sent, when duly filled up to the Court, for transmission to the respective Examination Committees.—*Cir. Ord.* 19*th April*, 1841.

The application of — *Inhabitant of*

Whereas I am desirous of becoming a Candidate for the situation of Moonsiff, I request, that after making the necessasy inquiries, you will grant me a Certificate prescribed by the Rules for the Examination of Candidates, dated the 4th August, 1840, and published in the Gazette of the 15th idem.

1	2	3	4	5	6	7	8
Name of the applicant and that of his father.	Age.	Religion and Caste.	Family residence, viz. Town or Village, Purgunnah and Zillah.	Statement of past employment in the Service of Government.	Statement of landed or other property belonging to the Nominee and where situated.	Statement of whether the applicant is a debtor or creditor of other parties, and if so, the place of residence of his debtor or creditor.	Certificate of the Judge.
							I do hereby certify, that I have satisfied myself that the bearer of this Certificate ——— is a man fully fitted by respectability and good character, to fill the office of Moonsiff, and from enquiries I have made, I have every reason to believe that he is qualified from his past conduct and general information, to enjoy the privilege of examination for the office of Moonsiff.

Zillah
The 18 } Remarks of the Sudder Court.

———*Judge.*

207. The Zillah Judges will nominate as at present, through the Commissioner of the division, to the Court of Sadder Dewanny Adawlut, all individuals proposed for the situation of Moonsiff.—*Govt. Ord.* 30*th July*, 1836, *Sect.* 1.

208. The Judge of each district will furnish annually to the Court of Sudder Dewanny Adawlut, a list containing the names of the three most zealous, capable, and trust-worthy Moonsiffs within his jurisdiction, and the names in such list will be entered, if possible, in the order of estimated merit, or the names of those whose claims to promotion are considered equal, inserted in a bracket. —*Govt. Ord.* 30*th July*, 1836, *Sect.* 2.

209. The Judges of the several Zillahs and cities shall on the receipt of this Regulation prepare and submit to the Provincial Court a new establishment of Moonsiffs, whose local jurisdictions shall be so arranged as to correspond exactly with those of the thannahs or local police jurisdictions. They shall at the same time report to the Provincial Court, the name of the town or village in each jurisdiction, which may be most centrical, or otherwise most conveniently adapted for the establishment of each Moonsiff's cutcherry.—*Reg.* XXIII. 1814, *Sect.* 6, *Cl.* 1.

210. The jurisdiction of the Moonsiffs shall have the same local denomination as that of the corresponding police jurisdiction.—*Reg.* XXIII. 1814, *Sect.* 6, *Cl.* 2.

211. The Provincial Courts [the Sudder Courts] are empowered to include two or more entire police jurisdictions within that of one Moonsiff, and to abolish any of those offices whenever local or special circumstances may in their judgment render it expedient: they are further at all times authorized to cause the cutcherry of a Moonsiff to be removed from the town or village in which it may be held to any other town or village within the limits of the same Moonsiff's jurisdiction, which may appear more convenient.—*Reg.* XXIII. 1814, *Sect.* 7.

212. The Court have already in several instances exercised the power heretofore vested in them of reducing the number of Moonsiffs. To enable them, however, to provide for such of those individuals, who may be considered deserving, in the districts in which their services may be required, they request that you will immediately submit, in the accompanying form, a descriptive list of all Moonsiffs appointed under Regulation V. 1831, who have lost their situations through no fault of their own, but in consequence of the abolition of their Moonsiffships. You will be pleased to state distinctly in the proper column your opinion of the qualifications, character, and past conduct of each of the individuals, and forward the statement through the Commissioner, that he may add his own opinion on the subject.—*Cir. Ord. Cal. and West. C.* 21*st Nov.* 1834.

213. If the civil businses within the limits of a thanna cannot conveniently be discharged by one Moonsiff, as prescribed by Section 6, Regulation XXIII. 1814, the Provincial Courts [the Sudder Courts] are hereby authorized, on the recommendation of the City or Zillah Judge, to augment, from time to time, the number of those officers as circumstances may require.—*Reg.* II. 1821, *Sect.* 2.

214. I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, and in reply to inform you that the Court do not consider you [the Zillah Judge] competent to remove a Moonsiff from one jurisdiction to another without a reference, through the Commissioner, to them.—*Con. No.* 832, *Cal. C.* 27*th Sept.* 1833, *West. C.* 18*th Oct.* 1833.

215. In pursuance of the orders of Government, I am directed by the Court to request that you will cause brass seals, one inch and half square, with the inscription in Persian and Bengalee or Nagree, according to the current language of the district, to be prepared and delivered to the Moonsiffs in your jurisdiction, and charge the expense in your contingent bill.—*Cir. Ord. Cal. C.* 8*th Jan.* 1836, *West. C.* 18*th March* 1836.

216. In modification of the Circular Order, under date in the Lower Provinces the 8th Janua-

ry, and in the Western Provinces the 18th March last, I am directed to request that in the Persian, Bengalee, or Nagree inscription on the seals which you were required by that order to prepare for the several Moonsiffs of your district, you will omit the word "thanna," and merely insert the name of the sudder station at which the Moonsiffs ordinarily reside, or by which their Moonsiffships are respectively distinguished.—*Cir. Ord. Cal. and West. C. 15th April*, 1836.

217. Such parts of Regulation XXIII. 1814, and of Regulation II. 1821, or of any other Regulations in force as authorize Moonsiffs to receive, as a compensation for their trouble in the trial of suits, the amount of the institution fee, or stamp duty substituted for such fee, are rescinded, and shall have no operation in the Zillah or City to which this Regulation may be extended from the date on which it may be directed to have effect in such Zillah or City.—*Reg.* V. 1831, *Sect.* 12, *Cl.* 1.

218. From the date on which this Regulation shall be directed to take effect in any Zillah or City, the Moonsiffs shall, in lieu of the fees and compensation above mentioned, receive from Government such monthly allowances as may be fixed by the order of the Governor General in Council.—*Reg.* V. 1831, *Sect.* 12, *Cl.* 2.

219. The Moonsiffs appointed under the new rules will of course only be entitled to their salaries from the day on which they may take charge of their respective offices.—*Cir. Ord. Cal. and West. C. 20th July*, 1832.

220. No person can legally exercise the judicial functions of Moonsiff until his appointment has been sanctioned by the Court of Sudder Dewanny Adawlut. Any decisions or orders passed in violation of this rule must be held to be null and void.—*Cir. Ord. Cal. and West. C. 6th Nov.* 1835, *Par.* 1.

221. Every person who may in future be appointed to the office of Moonsiff, will be furnished by the Judge with a sunnud drawn up according to the form No. 1 of the Appendix to this Regulation; and previously to entering upon the duties of his office, he shall take and subscribe an oath according to the form prescribed in No. 2 of the Appendix. The Judge however is empowered in all cases in which he may deem it expedient, to exempt such Moonsiff from taking the oath, and to cause him to subscribe a solemn declaration to the same effect.—*Reg.* XXIII. 1814, *Sect.* 11.

[*Since the enactment of Regulation* V. 1831, *the Moonsiffs have usually received their Sunnuds from the Sudder Court.*]

Form of Oath to be administered or solemn declaration to be signed by the Moonsiff.

222. "I, A. B. appointed to the office of Moonsiff of ———— do solemnly swear, that in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgement, without partiality, favour or affection; that I will not directly or indirectly receive, or knowingly allow any other person to receive, any money, effects or property, on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute. I will strictly adhere to all the rules prescribed for my guidance, and I will in all respects, truly and faithfully execute the trust reposed in me."—*Appendix to the Reg.* XXIII. 1814, *No.* 2.

223. Whenever a sunnud may be granted to a Moonsiff under the preceding Section, a copy of it under the official seal and signature of the Judge shall also be delivered to him, in order that it may remain permanently affixed in some conspicuous place in his cutcherry.—*Reg.* XXIII. 1814, *Sect.* 12.

[*The following Circular Order* (224) *applies exclusively to the Courts under the jurisdiction of the Western Court of Sudder Dewanny.*]

224. It having been brought to the notice of the Court that the attendance of some of the Moonsiffs at their offices is far from regular, and that in some instances it has been found that no cases have been decided by those officers for several days consecutively without any satisfactory explanation being furnished of the cause, I am desired, therefore, to request your particular attention to the subject, and to acquaint you that with a view to put a stop to so objectionable a practice the Court are pleased to direct the adoption, in every district under their control, of the accompanying form of statement showing the daily quantity of work disposed of by each of the officers in question, which will, in future, accompany their monthly returns to your office.—*Cir. Ord. West. C.* 14*th Oct.* 1837, *Par.* 1.

225. On the breaking up of their Courts the Moonsiffs will cause the number of cases, regular as well as miscellaneous, brought before, or decided by them during the day, to be entered in the prescribed statement under the proper headings, to which they will immediately affix their signature; and on the receipt of the statement in your office the Court request that you will carefully revise it, and, should the absence of any Moonsiff from his Cutcherry on any particular day not be satisfactorily accounted for, or the quantity of work disposed of appear unusually small, that you will call for explanation and pass such orders in the matter as may seem to you proper, furnishing an abstract of the same in your monthly civil reports in the column of remarks.—*Cir. Ord. West. C.* 14*th Oct.* 1837, *Par.* 2.

226. It is hereby enacted, that from the first day of May next ensuing, after the passing of this Act, all Regulations and parts of Regulations of the Bengal Code, which give to any persons or class of persons authority; by virtue of any office held by them, to sell property distrained for the recovery of arrears of rent, shall, so far as they give such authority, be repealed.—*Act* I. 1839, *Sect.* 1.

227. With reference to the Circular of the Sudder Dewanny Adawlut, No. 36, dated 3rd June, 1813, which authorizes the employment of the Native Commissioners for the sale of distrained property as Agents on the part of Zemindars, in distraining the property of defaulting tenants, I am directed to point out that under the operation of Act I. of 1839, withdrawing from the Moonsiffs the power to sell distrained property, and under the altered state of things generally caused by the present system, those officers can no longer exercise the authority contemplated by the Circular, and you are accordingly directed to prohibit the Moonsiffs under your jurisdiction from acting in the capacity of Agents under the Circular quoted, considering that part of it which confers such powers as cancelled.—*Cir. Ord.* 24*th Jan.* 1840.

SECT. XVIII.

Moonsiffs.—Civil Actions and Criminal Prosecution.

228. Moonsiffs shall be liable to an action in the Civil Court for corruption in the discharge of their trust, or for extortion, or for any oppressive or unwarranted act of authority; and upon proof of the charge to the satisfaction of the Judge, he shall cause the offender to pay such damages and costs to the party injured as may appear to be equitable.—*Reg.* XXIII. 1814, *Sect.* 10, *Cl.* 1.

229. Moonsiffs shall also be liable to a criminal prosecution for corruption, extortion, or other misdemeanor committed by them in the discharge of any part of their duty, and on conviction before the Court of Circuit shall be subject to fine and imprisonment proportionate to the nature and circumstances of the case; but no Moonsiff shall be lia-

ble to be prosecuted for want of form or for error in his proceedings or judgements, nor shall any process be issued against a Moonsiff, who may be charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless the Judge shall be previously satisfied by sufficient evidence, that there is reason to believe the charge to be well founded.—*Reg.* XXIII. 1814, *Sect.* 10, *Cl.* 2.

230. On the principles stated in the Letter of the Sudder Court, actions under Regulation XXIII. 1814, Section 10 and 67, against Moonsiffs, Sudeer Ameens and Principal Sudder Ameens, for corruption, extortion, or any oppressive or unwarranted act of authority, which if proved, would subject the offender to pay damages and costs to the party injured, should be preferred to and tried by the Zillàh and City Judge, subject to an appeal to the Sudder Dewanny Adawlut.—*Govt. Ord.* 15*th Jan.* 1834, *No.* 7.

231. I am directed to acknowledge the receipt of your letter of the 11th ultimo and its inclosures, and in reply to inform you that the Court are of opinion, with reference to Clause 2, Section 10, Regulation XXIII. 1814, that a charge of bribery, corruption or extortion against a Moonsiff is cognizable in the first instance only by the Civil Judge, who, after the requisite preliminary enquiry, will either give or refuse his assent to a criminal prosecution, which, in the former case, should be conducted by the complainant before, and be disposed of by, the Magistrate as in any other case of misdemeanour.—*Con. No.* 781, *Cal. C.* 12*th April*, 1833, *West. C.* 17*th May*, 1833.

232. The Court direct me to add, that this is not to be considered as barring the right of the Judge to direct the vakeel of Government to prefer a charge of bribery, &c. against a Moonsiff, and to conduct the criminal prosecution on the part of Government, whenever he may deem this measure expedient for the ends of justice.—*Con. No.* 781, *Cal. C.* 12*th April*, 1833, *West. C.* 17*th May*, 1833.

233. I am directed to communicate to you, in reply to your letter of the 14th November last, the opinion of the Court, that after you had enquired into the alleged misdemeanours and other criminal acts, charged against the Moonsiff, you ought, provided you saw reason to believe that the charges were well founded, (vide Section 10, Regulation XXIII. of 1814,) to have made over the case to the Magistrate, to be disposed of according to law directing the Government pleader to prosecute on the part of Government.—*Con. No.* 1069, *Cal. and West. C.* 27*th Jan.* 1837.

SECT. XIX.

Officiating Moonsiffs.

234. Whenever on the death, absence on leave, resignation, or suspension of a Moonsiff, the Judge shall be of opinion that inconvenience will be felt from the want of a person to perform the functions of Moonsiff during the interval required for the selection of a fit successor, and for the sanction of this Court to his nomination, he shall be at liberty to depute a person to take charge of the current duties of the office. The person so appointed shall confine himself to the exercise of such part of the powers of Moonsiff as may be indispensably necessary for the immediate execution of processes or orders of the Judge and superior Courts, and will not admit of delay. He shall also be authorized to receive any new civil suits of whatever description, which may be instituted according to the Regulations; to issue notice to or summon the defendant, and receive his answer, as well as any written documents or lists of witnesses which may be offered by the parties or their vakeels, in pursuance of orders passed previously by the Moonsiff; but he shall exercise no other power in such suits, unless in any instance there shall appear to be urgent reason to take the evidence of any witness or witnesses, in which case he will without delay report the circumstance to the Judge, who will, if he deem it proper, direct him to take the depositions of such witness or witnesses under the general rules prescribed for the conduct of the Moonsiffs.—*Cir. Ord. Cal. and West. C. Nov. 6th;* 1835, *Par.* 2.

235. He is likewise empowered to receive any sums which parties may be desirous of depositing on account of the execution of decrees; and to pay to parties or decree-holders any money, for the payment of which the Judge or other competent authority may have already given orders. He shall also be empowered to conduct, in conformity to the Regulations, any summary inquiries which he may be specially required to make by the Judge or other competent authority.—*Cir. Ord. Cal. and West. C. 6th Nov.* 1835, *Par.* 3.

236. The person so appointed shall be entitled to receive the moiety of the Moonsiff's salary, authorized by paragraph 7 of the rules passed by Government on the 29th January, 1833, (published in the Calcutta Gazette of the 2d February following) to be paid to a person who officates for a Moonsiff.—*Cir. Ord. Cal. and West. C. 6th Nov.* 1835, *Par.* 4.

237. *Letter from the Sudder Court to the Govt. of Bengal.*—I am directed by the Court to request that you will bring to the notice of His Honour the Deputy Governor, that under the rules cited in the margin,* an officer in charge of the current duties of a Moonsiff's Court gets half the Moonsiff's salary, and an officer acting with full powers in the absence of a Moonsiff on leave, or during his suspension gets the same, which appears to the Court a very unequal rate of payment, with respect to the labour and responsibility of the two appointments. They would accordingly suggest that while the pay of the officiating Moonsiff be left at the present amount, viz. one half the full salary, or 50 Rupees per month, the remuneration of the Officer in charge merely of the current duties should be fixed at a quarter of the salary of a Moonsiff of the lower grade or 25 Rupees per mensem, which the Court consider to be an ample allowance.

The Court do not recommend any alteration of the present practice with regard to Principal Sudder Ameens and Sudder Ameens, as the persons who officiate for them during temporary absence, are already in judicial employ as Sudder Ameens in the one case, and as Moonsiffs in the other, and are not therefore in the same predicament as those who officiate either with full or limited powers in the Courts of the Moonsiffs.

Reply of the Government of Bengal to the Sudder Court.—I am directed to acknowledge the receipt of your letter, No. 375, of the 7th instant, and in reply to request you will inform the Court that the Right Honourable the Governor of Bengal concurs with them in considering it would be expedient to reduce the remuneration allowed to persons in charge of the current duties of Moonsiff's Offices from Company's Rupees 50 to Company's Rupees 25 per mensem.—*Cir. Ord. 18th February*, 1840.

SECT. XX.

Transit of Moonsiffs.

238. The Court are pleased to fix the general rate of progress at 5 kos (or ten miles) a day, Sunday, excepted, with an allowance, in addition of one week, to afford time for the necessary arrangements being made consequent on removal, and as natives usually travel a daily distance considerably in excess to this rate, the allowance thus made is considered amply sufficient.—*Cir. Ord. 15th May*, 1840, *Par.* 2.

239. Such period of one week, with the addition of a certain time, calculated at the above rate, will thus constitute the entire interval allowed for transit, in the event of exceeding which, the functionary will be considered as absent without leave, and unentitled to any salary for the term of such excess.—*Cir. Ord. 15th May*, 1840, *Par.* 3.

240. Should an officer so transferred obtain leave for any additional period, over and above the licensed term, from the presiding authority in the district to which he may be proceeding, he will

* Orders of Government 29th January 1833, Para. 6. Court's Circular Order, No. 156, dated 6th November, 1835, Par. 4.

be subject to the usual deduction of salary for the time exceeding that allowed for transit.—*Cir. Ord. 15th May*, 1840, *Par.* 4.

SECT. XXI.

Uncovenanted Judges.—Disqualification, Suspension, Dismissal, and Fine.

241. In modification of the existing rules regarding the removal of Sudder Ameens, it is hereby enacted that it shall not be necessary, in all cases, to require full and legal proof of disqualification, but that whenever a Zillah or City Judge shall have reason to believe that any Principal or other Sudder Ameen within his jurisdiction is disqualified by neglect of duty, incapacity, notorious corruption, or other gross misconduct, he shall state the grounds of his opinion to the Commissioner of Revenue and Circuit for the Division, and provided that Officer concur with him in opinion, they shall jointly submit a report thereof for the consideration and orders of the Governor General in Council through the Secretary to Government in the Judicial Department; and it shall be competent to the Governor General in Council, should he be of opinion that sufficient grounds exist, to direct the immediate removal of such Principal or other Sudder Ameen, provided however, that no Principal or other Sudder Ameen shall be removed from office, without the sanction of the Governor General in Council.—*Reg.* V. 1831, *Sect.* 26, *Cl.* 1.

242. The above rules are hereby declared applicable to the Moonsiffs, who may be appointed under this Regulation, except that any report suggesting the removal of any officer of that class, shall be made to the Sudder Dewanny Adawlut, who shall be competent to exercise the powers declared to belong to the Governor General in Council by the preceding Clause, with respect to the Sudder Ameens and Principal Sudder Ameens.—*Reg.* V. 1831, *Sect.* 26, *Cl.* 2.

243. Provided also that it shall be competent to a Judge of a Zillah or City Court, whenever he may see urgent necessity for so doing, to suspend any Principal Sudder Ameen, Sudder Ameen, or Moonsiff, within his jurisdiction, without any previous communication with the Commissioner of the Division; and in all cases in which the Commissioner of the Division may dissent from the Judge as to the propriety of removing any of the officers above named, it shall be competent to the Judge to submit his own opinion to that effect to the Governor General in Council, or the Court of Sudder Dewanny Adawlut, as the case may be; such report, however, to be accompanied by a copy of the dissent which the Commissioner may deem it necessary to record on the occasion.—*Reg.* V. 1831, *Sect.* 26, *Cl.* 3.

244. Provided also that it shall be competent to any Commissioner of Revenue and Circuit to recommend, on grounds assigned, the removal of any Moonsiff, Sudder Ameen, or Principal Sudder Ameen; but every such recommendation shall be previously submitted through the Judge of the Zillah or City, whose assent or dissent shall accompany the recommendation to the Court of Sudder Dewanny Adawlut, or the Governor General in Council, as the case may be.—*Reg.* V. 1831, *Sect.* 26, *Cl.* 4.

245. The respective powers of Judges and Commissioners, regarding the suspension of Moonsiffs, are distinctly laid down in Clauses 3 and 4, Section 26, Regulation V. 1831: Clause 3 expressly vests the Judge with the authority to suspend on urgent necessity; Clause 4 of the same Section also defines the power of a Commissioner to extend to recommending the removal of a Moonsiff, with the proviso that the recommendation shall be submitted to the Sudder Dewanny

Adawlut through the Judge: as the Regulations do not therefore vest the Commissioner with the power to suspend, the Court are of opinion that the Commissioner in the case in question exceeded his powers, and should the Presidency Court concur, this opinion will be communicated to that officer and to the Session Judge. The Presidency Court, on the 7th November, 1834, concurred in this Construction.—*Con. No.* 908, *West. C.* 10*th Oct.* 1834.

246. It is of the greatest consequence to the attainment of the objects contemplated by the enactment of Regulation V. 1831, that the persons filling the offices of Principal Sudder Ameen, Sudder Ameen, and Moonsiff, should be removed immediately after their disqualification by neglect of duty, incapacity, corruption, or other misconduct is known, and His Lordship in Council is of opinion that such disqualification cannot be concealed from both the Judge and the Commissioner, if they adopt the ordinary means within their power of ascertaining the sense of the community of the character and conduct of every individual filling these offices.—*Cir. Ord. Cal. and West. C.* 14*th June*, 1833, *Par.* 7.

247. Whenever a Judge has occasion to suspend a Moonsiff, he will make a special report of the matter for the information of the Court within ten days, and on the conclusion of the inquiry he will report the result. If the Moonsiff remain under suspension at the end of the month, the reasons which have prevented the conclusion of the inquiry will be detailed in the civil statement of regular suits for that month, and each succeeding month, till he is finally removed or restored to office, which fact will be noticed in the statement of the month in which it may occur, besides a special report of the case being furnished to the Court of Sudder Dewanny Adawlut.—*Cir. Ord. Cal. and West. C.* 6*th Nov.* 1835, *Par.* 5.

248. With the sanction of Government, I am directed by the Court to inform you, that no Moonsiff, Sudder Ameen, or Principal Sudder Ameen, who may be suspended from office, should suffer any deduction from his salary if restored to his situation. His locum tenens during his suspension will draw the allowance received under the Rules of the 29th January, 1833, by Officers officiating for absentees; and this amount will be an extra charge upon Government.—*Cir. Ord.* 12*th Feb.* 1841, *Par.* 1.

249. If the suspended Moonsiff, Sudder Ameen, or Principal Sudder Ameen, be dismissed from office, the whole of the salary should be allowed to the person who may have actually performed the duties of the office from the date of his taking charge.—*Cir. Ord.* 12*th Feb.* 1841, *Par.* 2.

250. In other cases of misconduct and neglect of duty, which may not be of a nature to require either the suspension or dismissal of a Moonsiff [or Sudder Ameen] from his office, the Judge is authorized to impose on the Moonsiff [or Sudder Ameen] a fine not exceeding twenty rupees in amount, and the order of the Judge in such cases shall be final.—*Reg.* XXIII. 1814, *Sect.* 9, *Cl.* 3.

SECT. XXII.

Uncovenanted Judges.—Salary and Allowances.

251. Under the direction vested in Government by Clause 2, of Section 12, Regulation V. 1831, the monthly allowance to Moonsiffs appointed under Regulation V. 1831, is fixed at Sonat Rupees 100 per mensem, inclusive of establishment, and 10 Sonat Rupees per mensem for stationary.—*Govt. Ord.* 1*st Nov.* 1831.

252. The monthly salary of Sudder Ameens is fixed at Sonat Rupees 250 per mensem, and 50 Sonat Rupees per mensem for establishment and stationary.—*Govt. Ord.* 1*st Nov.* 1831.

253. Under the discretion vested in Government by Clause 3, Section 17, Regulation V. 1831, the monthly salary of Principal Sudder Ameens is fixed at Sonat Rupees 400 per mensem, and Sonat Rupees 100 per mensem for establishment and stationary.—*Govt. Ord.* 1*st Nov.* 1831.

[*The three rules given above were subsequently modified by the following rules:*]

254. In modification of the Resolution dated the 1st November 1831, which fixes the monthly personal and office establishment allowances of the subordinate judicial functionaries appointed under Regulation V. of 1831, of the Bengal Code, the Right Honourable the Governor General of India in Council is pleased to direct that the Personal allowances of one-fourth of the existing Principal Sudder Ameens, and of one-fourth of the existing Moonsiffs be raised in the proportions specified in the margin.* The individuals receiving these superior allowances respectively, to be selected by the Government according to the merits and services on the Report of the Zillah or City Judge, conformed by the Court of Sudder Dewanny Adawlut.—*Govt. Ord. 2nd October,* 1837.

255. His Lordship in Council is further pleased to augment the allowances granted to the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs on account of establishment and Stationery as specified in the margin,† and to fix the net personal salary of the Moonsiffs, not promoted to the Superior Class authorized by Article 1 of this Notification at Rs. 100 per mensem.—*Govt. Ord. 2d October,* 1837.

256. The allowances of all Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, will commence from the date on which they may take charge of their respective appointments.—*Govt. Ord. 29th January,* 1833.

SECT. XXIII.

Uncovenanted Judges.—Borrowing or lending money within their Jurisdiction.

257. The Principal Sudder Ameens, Sudder Ameens and Moonsiffs are hereby prohibited, under pain of dismissal from office, from employing or retaining on their establishments any person being their private creditor, or any relative, dependant, or surety of such Creditor, and from borrowing money from, or in any way incurring debt to any Zemindar, Taloodar, Ryot, or other person possessing real property, or residing in, or having a Commercial Establishment within the City, District or Division to which their authority may extend.—*Govt. Ord. 14th July,* 1834.

258. If any Principal Sudder Ameen or Moonsiff who may be now in debt shall, at the expiration of one year from the publication of this order, be still indebted to any person from whom it would at such period be illegal for him to borrow under the above rule, it shall be incumbent on such officer to make known the circumstance to the Zillah or City Judge, to whom he may be subordinate, for communication to the Government, if the officer be a Principal Sudder Ameen, Sudder Ameen, and to the Sudder Dewanny Adawlut, if the officer be a Moonsiff, and in the event of intimation not being so given, the same penalty shall attach to the said officer, as if the debt had been incurred subsequent to the publication of this order.—*Govt. Ord. 14th July,* 1834.

259. In like manner, if any person who may be a candidate for the office of Principal Sudder Ameen, Sudder Ameen or Moonsiff, shall, at the time of applying for such office, be indebted to any person with whom it would be illegal for him to contract a loan while holding it, it shall be in-

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		Present Allowance.	Future Allowance.
* Principal Sudder Ameens.—	Personal Allowance,	400	600
Moonsiffs.—	Ditto,	100	150
† Principal Sudder Ameens.—	For establishment, and Stationery,	100	150
Sudder Ameens.—	Ditto ditto,	50	80
Moonsiffs.—	Ditto ditto,	10 *a*	40

a N. B. This allowance of 10 Rs. per mensem was for stationery only. The salary of 100 Rs. per mensem, formerly granted to Moonsiffs, was intended to provide for their Establishment also.

cumbent on such person in preferring his application to make known the circumstance to the Judge of the City or District, for communication to Superior authority as before stated; and failing to do so, he shall, in the event of his being appointed to the said office be subject to the same penalty, as if the debt had been contracted subsequently to his appointment.—*Govt. Ord. 14th July.* 1834.

260. The Principal Sudder Ameens, Sudder Ameens and Moonsiffs, and the Mahomedan and Hindoo Law Officers of the Zillah and City Courts, and of the Sudder Dewanny Adawlut under this Presidency, are hereby prohibited, under pain of dismissal from office from being engaged in any trading speculations.—*Govt. Ord. 29th December,* 1835.

261. If any Principal Sudder Ameen, or other of the officers abovementioned, shall be now engaged in trading speculations, or any such speculations shall devolve on him by inheritance, it shall be incumbent on him, within one month, to make known the circumstance to the Zillah or City Judge, or to the Register of the Court of Sudder Dewanny Adawlut; and to terminate his connexion with such transactions at the earliest practicable period. Should he be unable to do so within one year, he shall either resign his situation or submit a report of the circumstances of the case to the Judge or Register, who will forward it to the Government or Court of Sudder Dewanny Adawlut, as the confirmation of the Officer may be vested in one or other of these authorities; with his own opinion as to the propriety of allowing the officer a further period for the purpose of bringing his transactions to a close. If any of the Officers abovementioned shall fail to conform to the above rule, the same penalty shall attach to him, as if he had engaged in trade subsequent to the publication of this order.—*Govt. Ord. 29th December,* 1835.

262. Candidates for any of the officers abovementioned shall certify in their applications that they are not engaged in any trading speculation; and in the event of their being appointed, and of its being subsequently discovered that they were so engaged at the time of making their application, they shall be liable to be dismissed from office.—*Govt. Ord. 29th December,* 1835.

SECT. XXIV.

Uncovenanted Judges.—Applications for Promotion.

263. The rules published in the Calcutta Gazette of the 30th July 1836, provide for the promotion of every Class of native Judges according to their merits and qualifications. The Court have, notwithstanding, received numerous direct applications for promotion to vacancies, accompanied with original testimonials which required to be returned to the applicants. They have deemed it proper, therefore, to issue the following instructions, which you are requested to communicate to the subordinate Judicial Officers of your district.—*Cir. Ord. 6th March,* 1840, *Par.* 1.

264. Under the rules laid down by the Government, a record is kept in this office of the past services, merits, and qualifications of the Native Judicial Officers of every class; and the authorities in charge of districts have been strictly enjoined to bring to the notice of the Court, in their Annual Civil Reports, the names of those officers who have most exerted themselves within the year, and whose decisions and general conduct have proved most satisfactory. On the occurrence of a vacancy in any class of native Judges, the claims of every officer are taken into consideration, and arrangements made accordingly.—*Cir. Ord. 6th March,* 1840, *Par.* 2.

265. Although the observance of these rules renders it unnecessary for the Native Judicial Officers to bring forward their claims individually, still it should be understood that every officer is entitled to make such representations as he may think conducive to his interests to the Superior Authorities; and it will be incumbent on you to forward any representations of this nature which those parties may desire to submit through the channel of your office, for the information and consideration of the Sudder Court.—*Cir. Ord. 6th March,* 1840, *Par.* 3.

266. The Court are further pleased to resolve that a similar indulgence should be extended to

Moonsiffs and such other functionaries as may have lost their situations on the abolition of the old system, or on the reduction of temporary offices in which they may have been employed, and who may be desirous of stating their hopes or expectations to the Court.—*Cir. Ord. 6th March*, 1840, *Par.* 4.

267. Any application however which may hereafter be forwarded by any Native Judges direct to the Court, will not be answered; and no documents which may be received with such applications will be returned, except upon the application of the party, presented in the prescribed form and manner.—*Cir. Ord. 6th March*, 1840, *Par.* 5.

268. Under instructions from the Right Honourable the Governor of Bengal, I am directed to request, that you will abstain from forwarding to Government, representations from the uncovenanted judges, or officers attached to your Court, relating to their services; it being the wish of His Lordship, that all persons desirous of bringing their claims prominently to the notice of Government, should do so themselves by the public post.—*Cir. Ord. 30th Oct.* 1840, *Par.* 1.

269. You will not, of course, consider this order as rescinding the Circular Orders No. 215, of the 29th September, 1837, [*Rules* 302—304 *of this Chapter*] and No. 909, of the 6th March, 1840. [*Rules* 263—267.]—*Cir. Ord. 30th Oct.* 1840.

SECT. XXV.

Uncovenanted Judges.—Leave of Absence and Deduction of Allowances.

270. Applications for leave of absence on private affairs will be addressed by Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, to the Judge of the District, who, if he think proper, may refuse the application. If on the other hand, he is of opinion that it should be granted, he will forward it to the Court of Sudder Dewanny Adawlut, enclosed in a letter from himself, stating the cause of the application, and the grounds of his recommendation, and accompanied by a statement shewing the amount of business pending in the Court of the applicant. In cases of emergency, the Judge may himself grant the leave immediately, reporting the circumstance to the Sudder Dewanny Adawlut.—*Govt. Ord. 29th Jan.* 1833.

271. The Sudder Dewanny Adawlut will pass orders on the application of Moonsiffs for leave of absence.—*Govt. Ord. 29th Jan.* 1833.

272. The Sudder Dewanny Adawlut will submit the applications of Principal Sudder Ameens, and Sudder Ameens, with their opinion as to whether the leave applied for, should be granted, or otherwise, for the consideration and orders of Government. The determination of Government on each application will be communicated to the Judge of the District in a separate letter, and leaves of absence granted to officers of these grades will be published in the Calcutta Gazette.—*Govt. Ord. 29th Jan.* 1833.—*Cir. Ord. 4th Sept.* 1840.

273. Any Principal Sudder Ameen, Sudder Ameen, or Moonsiff, who may absent himself from his District without leave, will forfeit the whole of his salary during the period of such unauthorized absence.—*Govt. Ord. 29th Jan.* 1833.

274. A Principal Sudder Ameen, Sudder Ameen, or Moonsiff, absent from his station on leave, shall suffer during the period of his absence a deduction of one half of his allowances.—*Govt. Ord. 29th Jan.* 1833.

275. Any officer of the above grades, however, shall not be subjected to any deduction from his salary if absent on authority duly obtained, only for the period of the Dusserah and Mohurrum vacations.—*Govt. Ord. 15th Sept.* 1834.

276. In the event however of prolongation of absence beyond the period of the vacation being occasioned by sickness, and therefore unavoidable, any absentee under such circumstances, who, either before or after his return, can satisfy the Zillah Judge by a medical certificate or otherwise,

that he is or was unable, (on account of sickness) to return within the proper time, will be exempt from deduction of salary for the period of the vacation under the preceding rule; but if unable to account for his absence, beyond the fixed period, to the satisfaction of the Zillah Judge, he will be subjected to the penalty of deduction of his whole salary for the period in excess of the vacation.* —*Cir. Ord.* 10*th April*, 1840.

277. If the absence of the Principal Sudder Ameen, Sudder Ameen, or Moonsiff, exceed one month, and the state of the file of the absentee require provision to be made for the discharge of his duty during his absence, the individual appointed to act for the absentee shall receive during the period he remains in office, half of the fixed salary of the situation, together with the whole of the allowance for establishment, stationery, &c. The remaining half of the fixed salary, is all which during such period the fixed incumbent will be entitled to.—*Govt. Ord.* 29*th Jan.* 1833.

278. Whenever an officer of a lower grade shall be appointed to officiate in the room of an officer of a higher grade, he shall draw half the fixed salary of his own appointment, together with half the fixed salary and the whole of the allowance for establishment, &c. of that in which he officiates.—*Govt. Ord.* 29*th Jan.* 1833.

279. Any person deputed to take charge of the current duties of a Moonsiff's Office shall be entitled to receive a fourth of the Moonsiff's salary or 25 Rupees per mensem.—*Cir. Ord.* 6*th March*, 1840.

280. N. B. The increased allowance to Principal Sudder Ameens and Moonsiffs authorized by the order of Government of the 2nd October 1837, on the ground of merit and services, is to be considered entirely personal, no part of which is to be allowed to persons officiating for absentees in the receipt of such increased allowances. Whenever a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, may be absent from his station on leave, the Omlah on the establishment of such officer shall not suffer any deduction from their fixed allowances.—*Govt. Ord.* 12*th March*. 1839.

SECT. XXVI.

Vacations.—The Mohurrum and Dusserah Festivals.

281. The Court of Sudder Dewanny Adawlut, having reason to believe that adjournments of Court occasionally take place on account of holidays, Hindoo and Mahomedan, the observance of which is not strictly enjoined or incumbent upon the Native Officers and Vakeels,) I am directed to transmit for your information the accompanying lists of established holidays, prepared some years since, on consultation with the law officers of the Sudder Dewanny Adawlut, to which the adjournments of that Court are in consequence restricted.—*Cir. Ord.* 6*th April*, 1816.

282. The Court are aware, that the same Hindoo festivals are not equally observed in all parts of the country; but they desire, that in regulating the adjournments of your Court, you will be guided, as far as local usages admit, by the lists now transmitted to you; and that you will be careful to reduce the aggregate number as much as practicable.—*Cir. Ord.* 6*th April*, 1816.

* The following precis of the rules is subjoined to exemplify the different cases in which absentees retain their whole salary and those in which deductions are made.

Absent on leave during the Mohurrum and Dusserah Vacations.—No deduction of salary.

Absent on leave at any other period.—Half the salary to be deducted.

Absent on leave for the Vacations and any period in excess.—Half the salary to be deducted for the period in excess.

Overstaying leave for the vacations, but producing Medical Certificate or other proof of sickness, &c.—As above.

Overstaying leave for the vacations, but unable to produce Medical Certificate, &c.—Forfeiture of salary for the period in excess.

Absent without leave.—Loss of salary for the period.

283. It appearing that the Circular Order of the Sudder Dewanny Adawlut, under date the 6th April last, accompanying a list of Hindoo and Mussulman holidays, has been understood in some instances to prohibit the adjournment of the Civil Courts for the prescribed periods of the Dusserah and Mohurrum vacation; I am directed by the Court to acquaint you, that it was not intended by their order of the above date, to make any alteration in the established adjournments of the Civil Court authorized by Section 2, Regulation III. 1798, viz. for thirty days at the Dusserah, and fifteen at the Mohurrum vacation.—*Cir. Ord. 4th Sept.* 1816, *Par.* 1.

284. The Court's previous Circular Order of the 30th November 1815, which has reference to the return of the Native Officers and pleaders at the end of the prescribed periods abovementioned, is however to be considered in force; and the Court rely on a strict observance of it.—*Cir. Ord. 4th Sept.* 1816, *Par.* 2.

285. The holidays to be observed in the Mofussil Courts were long since definitely fixed by a circular letter issued by the Court; as it appears, however, that those orders have been neglected or forgotten, the attention of the Magistrates, and other judicial officers will be called to the subject, and they will be required to be careful that no more holidays be allowed than those specified in the Court's circular letter, dated the 6th of April, 1816, which are indispensible under the obligation of religious observances.—*Cir. Ord. 26th Feb.* 1830, *Par.* 22.

286. The Provincial, Zillah and City Civil Courts, shall be annually adjourned during the Hindoo festival, called Dusserah, which occurs in the Bengal month Assin or Kartick, corresponding with the English month September or October; and also during the Mahomedan festival Mohurrum, which, depending on the lunar year, is not fixed to any particular month. The former adjournment (or Dusserah vacation,) shall commence ten days before this festival, and continue for the period of one month, of thirty days. The latter adjournment, (or Mohurrum vacation,) shall commence five days before this festival, and continue for fifteen days. Under this rule when the time of the two festivals may coincide, the vacations also will of course be blended, and no separate adjournment will be necessary; except as far as the fixed period for the one may extend beyond that of the other, as when part of the Mohurrum vacation only may fall within the period fixed for the Dusserah vacation; or, on the other hand when part of the latter only may fall within the period of the former.—*Reg.* III. 1798, *Sect.* 2.

287. The Court of Sudder Dewanny Adawlut are empowered to authorize and direct an occasional dispensation with the rule for periodical vacations of the Provincial, Zillah, and City Courts, contained in Section 2, Regulation III. 1798, and Section 13, Regulation VIII. 1805, in the instance of any particular Court, wherein, from the arrear of business, or other cause, it may appear expedient that the vacations thereby provided for, or either of them, should not take place.—*Reg.* I. 1806, *Sect.* 10.

288. The terms of Section 2, Regulation III. 1798, which directs that the Mohurrum vacation shall commence five days before this festival, having been construed to mean five days before the 1st of Mohurrum; I am directed by the Court of Sudder Dewanny Adawlut, with the sanction of the Governor General in Council, to acquaint you, for your information and guidance, that the adjourment of the Courts for that vacation is to commence on the 1st day of the month of Mohurrum, and to continue for fifteen days as prescribed by the above Regulation.—*Cir. Ord.* 31*st May*, 1803.

289. The Court do not understand the rules in question, issued under an order of the Governor General in Council, as affecting those parts of the Regulations (III. 1798, &c.) which authorize the adjournment of the Civil Courts during the Mohurrum and Dusserah vacations, for the purpose of giving to the Mahomedan and Hindoo officers of the Court the opportunity of visiting their families, as well as of observing their religious ceremonies during these periods of adjournment. The

Sudder Ameens and other officers are still, as heretofore, at liberty to visit their homes with the permission of the Judge.—*Cir. Ord. Cal. and West. C. 10th May*, 1833.

290. The Civil Courts being closed during the period of the Mohurrum and Dusserah Vacations, with the express object of allowing the Amlah and Vakeels to visit their homes, you are authorized to comply with any applications for leave of absence during those periods, which may be made to you by the Uncovenanted Judges under your control, merely reporting to the Court the names of the Officers to whom you grant leave. In those instances however, in which applications may be made for leave of absence for any time in excess of the vacations, you will, as at present, make previous reference to the Court for their orders, or for the orders of Government, in regard to Principal Sudder Ameens and Sudder Ameens under the Circular of the 4th September last.—*Cir. Ord. 26th March*, 1841, *Par.* 2.

291. Government have resolved that the Principal Sudder Ameens; Sudder Ameens, and Moonsiffs shall in future be subjected to no deductions from their salary, if absent, on authority duly obtained, only for the period of the usual Dussèrah and Mohurrum vacations; but that when their absence extends for any period beyond those vacations, they shall then be subject to the deduction prescribed by the orders of the 29th January, 1833, published in the Gazette of the 2d February of that year, for the whole period of their absence, inclusive of the vacations.—*Cir. Ord. Cal. and West. C. 26th Sept.* 1834.

292. Any absentee under such circumstances, [that is, who may have obtained leave for the prescribed time during the Dusserah and Mohurrum festivals] who, either before or after his return, can satisfy the Zillah Judge by a Medical Certificate, or otherwise, that he is or was unable on account of sickness, to return within the proper time, will in future be exempt from deduction of salary; but if unable to account for his absence, beyond the fixed period, to the satisfaction of the Judge, he will be subjected to the penalty of deduction of his whole salary, for the period in excess of the vacation, the amount of salary for the term of vacation remaining untouched.—*Cir. Ord. 27th October*, 1840.

293. In continuation of my letter of the 3rd April, No. 1018, I am directed by the Court to inform you that Moonsiffs are not liable to a deduction from their salaries when absent from their stations with the permission of the Judge on any of the established native holidays.—*Con. No. 953, Cal. C. 22nd May, West. C. 8th May*, 1835.

SECT. XXVII.

Uncovenanted Judges.—Correspondence.

294. The Court, having had under consideration the mode of address at present in use as regards official communications with the Moonsiffs, are pleased, with the sanction of his Honour the Deputy Governor of Bengal to extend to those officers the rule laid down in paragraph 2 of the Circular Order of the 30th November 1832, and to direct that, in future, all official communications with them shall be made by roobukaree, instead of by perwannah and urzee, as has hitherto been the practice.—*Cir. Ord. Cal. C. 19th Oct., West. C. 24th Aug.* 1838.

295. It having been ruled by the Courts of Sudder Dewanny Adawlut that Moonsiffs within the same jurisdiction, who may have occasion to address each other, upon business before their respective Courts, may do so by Roobukaree direct, instead of communicating through the medium of the Judge, I am directed to request that you will issue instructions to the Moonsiffs under your control, to the foregoing effect, for their future observance.—*Cir. Ord. 10th April*, 1840.

296. Sudder Ameens and Moonsiffs will forward all communications to covenanted officers as heretofore, through the European Judges, except communications to such officers as are parties to suits before them, in which case, they will be addressed direct to the officer whom they may concern.—*Cir. Ord. Cal. C. 1st Dec*, 1837, *West. C. 9th Feb.* 1838.

297. Moonsiffs will, as heretofore, forward all communications which they may have occasion to make to covenanted officers, through the district judges to whom they may be subordinate.—*Cir. Ord. Cal. and West. C. 16th Nov.* 1839, *Par.* 5.

298. Official communications in the native languages between European covenanted officers and Sudder Ameens and Principal Sudder Ameens should be made by roobukarees, as has been hitherto the practice in the case of Registers and Assistants, instead of by *perwannah* and *urzee*, the mode heretofore in force, with respect to Sudder Ameens, and to request that you will adopt this mode in future.—*Cir. Ord. Cal. C. 19th Oct., West. C. 30th Nov.* 1832.

299. Principal Sudder Ameens and Sudder Ameens will correspond direct by roobukaree with all covenanted officers of Government, except the Secretaries to Government, the Sudder Dewanny Adawlut, (with the exception of references in suits above Rupees 5,000 referred to Principal Sudder Ameens for trial under the provisions of Act XXV. of 1837,) the Sudder Board of Revenue, Residents at foreign Courts, Agents to the Governor General, and all military officers.—*Cir. Ord. Cal. and West. C. 16th Nov.* 1839, *Par.* 2.

300. As regards communications with the three first named authorities excepted by the preceding paragraph, and with military officers, the present practice is to be continued.—*Cir. Ord. Cal. and West. C. 16th Nov.* 1839, *Par.* 3.

301. Whenever a Principal or other Sudder Ameen may have occasion officially to address a Resident at a foreign Court or a Governor General's Agent regarding any matter connected with a suit before his Court, he shall transmit a simple Oordoo kyfeeut or statement of the particular matter on which he may desire a reference to be made, without the addition of any application or requisition on his own part to the Judge to whom he may be subordinate, who on the receipt of such statement, will forward it to the Resident or Agent concerned, accompanied by an English letter containing such request or application as the nature of the reference may appear to call for, to be dealt with as the authority addressed may deem discreet and fitting.—*Cir. Ord. Cal. and West. C. 16th Nov.* 1839, *Par.* 4.

302. Considerable inconvenience having been experienced in consequence of the native Judges addressing the [Sudder] Court direct, by the public dawk, on various subjects connected with their official situations, I am desired to request that you will instruct them, invariably to submit through you—any communications they may desire to lay before this Court.

303. It is to be understood that this rule is intended to afford you an opportunity of recording, whenever you may deem it necessary, your own sentiments on the references which may be made by the native Judges.

304. You will also explain to the native Judges that this rule is not to be considered as applicable to appeals preferred by them against any orders passed by the Zillah Judges. Such appeals will continue to be preferred in the usual manner on stamp paper and through a regular vakeel or agent.—*Cir. Ord. Cal. C. 29th Sept.* 1837.

305. The native Judges of every grade will correspond direct with natives of rank.—*Cir. Ord. Cal. and West. C. 16th Nov.* 1839, *Par.* 6.

306. In communicating these instructions to the Native Judges, you will of course impress upon them the propriety of observing a proper respect towards all natives of rank with whom it may be necessary to correspond on official matters, and addressing them in the form and style employed on like occasions by the European Judge of the district. In like manner, natives of rank will be required to pay proper respect to the native Judges, adopting as a general rule the forms of address laid down in the Court's Circular, No. 9, of the 6th July, 1838.—*Cir. Ord. Cal. and West. C. 16th Nov.* 1839, *Par.* 7.

SECT. XXVIII.

Uncovenanted Judges.—General Rules.

307. It is hereby enacted, that from the 31st day of March, 1836, no person whatever shall by reason of place of birth, or by reason of descent, be incapable of being a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, within the Territories subject to the Presidency of Fort William in Bengal.—*Act* VIII. 1836, *Sect.* 1.

308. And it is hereby enacted, that every British-born subject of the King, or descendant of such British-born subject, who shall be appointed a Principal Sudder Ameen, Sudder Ameen, or Moonsiff shall, in respect of all acts done by him as such Principal Sudder Ameen, Sudder Ameen or Moonsiff, be liable to the same proceeding, as well criminal as Civil, and shall be amenable to the jurisdiction of the same tribunals as if he were not of British birth descent.—*Act* VIII. 1836, *Sect.* 2.

309. With reference to the resolution passed by the Right Honourable the Governor General of India in Council, under date the 2nd October last, fixing the allowance to be drawn by the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, on account of establishment and stationery, I am directed by the Court to acquaint you that it is the intention of the Government that the whole sum should be bonâ fide appropriated to those purposes. You will inform the subordinate judicial functionaries of your district accordingly, and direct them to submit to you, without delay, a statement of the manner in which they propose to expend the allowance in question, in revising which, you will see that the sum set down for stationery is not larger than, upon a fair estimate, may appear to you necessary to cover the expence likely to be incurred in providing that article.—*Cir. Ord. Cal. and West. C. 2nd March*, 1838.

310. The Government having been pleased to approve of an alteration of the forms of address to be used in communications addressed to the Principal Sudder Ameens, I am directed by the Court to request that the following forms be observed in future by all public functionaries having occasion to correspond with the Native Judges.—*Cir. Ord. Cal. C. 6th July, West. C. 7th Sept.* 1838.

PRINCIPAL SUDDER AMEENS.

	Form of Address.	*Title.*
Christian,	Sir.	Esquire.
Mahomedan,	سموالمرتبت معالي منزلت سلمه الله تعالى	خان بهادر
Hindoo,	ايضاً	راي بهادر

SUDDER AMEENS.

	Form of Address.	*Title.*
Christian,	Sir.	Esquire.
Mahomedan,	رفعت وعوالي منزلت سلمه	خان
Hindoo,	ايضاً	راي

MOONSIFFS.

	Form of Address.	*Title.*
Christian,	Sir.	Mr.
Mahomedan,	بعافيت باشند	ديانت وامانت پناه
Hindoo,	ايضاً	ايضاً

311. Considerable inconvenience having been experienced in preparing the annual reports, from the want of detailed information regarding the general character and qualifications of the Native Judges, arising, in some instances, from the district Judges being absent from the station, and in others from their absence from the country at the period of the transmission of the annual statements, the Zillah and City Judges are required, in order to guard against this want of information, on delivering over charge of their offices, to record a minute, containing their opinion of their subordinate judicial Officers, (Principal and other Sudder Ameens, and Moonsiffs,) for the use of their successors, and eventually for the information of the Court and of Government.—*Cir. Ord. Cal. C. 7th Dec., West. C. 21st Dec.* 1838, *Par.* 9.

312. The Honourable the Governor of Bengal entirely approves their suggestion, that in future the situation of Native Judge, of whatever grade, shall not be held conjointly with that of the Mahomedan law officer of the Zillah Courts.—*Cir. Ord. Cal. and West. C. 5th Feb.* 1836.

313. The Circular Order in question, and former circulars, require that the judges and other judicial authorities shall furnish, whenever they do not decide on their merits in any month a certain number of suits as per margin,* explanations of the causes which have prevented their deciding that number. It appears to have been by some understood, that this is the *maximum* number which each officer is expected to decide. This idea is erroneous; the number fixed is the *minimum;* and it is the duty of each officer to decide as many beyond it as possible, consistent with a full investigation into their merits; explanation being required from each officer on the occurrence of any deficiency in the amount thus fixed as the *minimum.* It is the duty of the superintending authorities to see that these explanations are inserted in the monthly civil statements, and to add distinctly their opinion, in each individual case after due inquiry, as to the sufficiency or otherwise of the reasons assigned, as well as to warn and admonish the inferior authorities in cases of neglect or inattention, and to bring to the notice of the Court any instances in which their admonitions have not had the effect of inducing diligence and attention.—*Cir. Ord. Cal. and West. C. 25th Jan.* 1833.

* Principal Sudder Ameens, having on their files only original suits, ... 20 suits.
Ditto, having on their files original suits and appeals, ... 25 suits.
Sudder Ameens, ... 20 suits.
Moonsiffs, ... 25 suits.

314. Although, when there may be but a small number of regular suits pending on the file of the Courts of the Native Judges, it may be a sufficient reason, as far as those cases are concerned, for not determining the prescribed quantity, that no more admitted of decision, that very circumstance proves that the officer making the excuse must have had a more than an ordinary degree of leisure at his command to devote to the performance of the Miscellaneous duties of his office; and the Court will therefore expect, in future, that whenever the cause above-mentioned may operate to prevent the determination of the required number of regular suits, the deficiency in that respect will be fully counterbalanced by the larger number of decisions passed in miscellaneous cases; otherwise the excuse will not be admitted.—*Cir. Ord. Cal. and West. C. 6th Nov.* 1835.

315. It having been brought to the notice of the Court that some Principal Sudder Ameens, Sudder Ameens, and Moonsiffs have been in the habit of selecting undefended suits and other cases easy of decision, without reference to the number on the file or the date of institution, and deciding the same, in order to make up the number of suits prescribed by the Circular Orders, and expected by the Court to be disposed of by those Officers, I am directed to call your attention to the subject, and to request that you will ascertain whether this objectionable practice obtains in your District, and, if so, that you will strictly prohibit the same, and direct the uncovenanted Judges to bring on the causes dependnig in their respective Courts, for trial, according to the order in which they may have been filed.—*Cir. Ord. 3rd July*, 1840.

SECT. XXIX.

Persons amenable to the Courts.

316. It is hereby enacted, that from the first day of June, 1836, the 107th Clause of an Act of Parliament, passed in the 53rd year of King George the 3rd, and entitled "An Act for continuing in the East India Company for a further term the possession of the British Territories in India, together with certain exclusive privileges:—for establishing further Regulations for the Government of the said Territories, and the better administration of justice within the same, and for regulating the trade to and from the places within the limits of the said Company's Charter," shall cease to have effect within the territories of the East India Company.—*Act* XI. 1836, *Sect.* 1.

317. And it is hereby enacted, that from the said day, and within the said territories, no person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever, excepted from the jurisdiction of any of the Courts hereinafter mentioned:—that is to say—

The Courts of Sudder Dewanny Adawlut—of the Zillah and City Judges—of the Principal Sudder Ameens—and of the Sudder Ameens, in the Territories subject to the Presidency of Fort William in Bengal.—*Act* XI. 1836, *Sect.* 2.

318. Doubts having been entertained as to the legality of referring to Principal Sudder Ameens and Sudder Ameens, suits in which European British subjects, European foreigners, or Americans, are parties, which were instituted prior to the promulgation of Act XI. of 1836; I am directed to communicate to you the opinion of the Court, that as so much of the exception contained in Clause 2, Section 15, and Clause 1, Section 18, Regulation V. 1831, as excluded such suits from the cognizance of the Principal and other Sudder Ameens, has been superseded by the provisions of Act XI. 1835, the reference of these cases, whether instituted prior or subsequent to the promulgation of the Act, should be regulated by the same rules, as are applicable to other cases cognizable by those officers.—*Cir. Ord. Cal. and West. C. 26th Aug.* 1836.

319. The Act in question, in providing that no person shall by reason of place of birth or by reason of descent be exempted from the jurisdiction of certain Courts, does not take away any exemption to which any person may be entitled by virtue of his office, and consequently judicial functionaries who were not liable to civil actions in the Courts specified in the Act for damages on account of alleged injuries committed in their official capacity before the passing of the Act, will not be liable now.—*Con. No.* 1051, 10*th Oct.* 1836.

SECT. XXX.

Matters cognizable by the Civil Courts.

320. The Zillah and City Courts respectively, are empowered to take cognizance of all suits and complaints respecting the succession or right to real or personal property, land-rents, revenues, debts, accounts, contracts, partnerships, marriage, cast, claims to damages for injuries, and generally, of all suits and complaints of a civil nature in which the defendant may come within any of the descriptions of persons mentioned in Section VII. provided the landed or other real property to which the suit or complaint may relate, shall be situated, or, in all other cases, the cause of action shall have arisen, or the defendant at the time when the suit may be commenced shall reside as a fixed inhabi-

tant, within the limits of the Zillah or City over which their jurisdiction may extend. —*Reg.* III. 1793, *Sect.* 8.—*Benares, Reg.* VII. 1795, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* II. 1803, *Sect.* 5.

321. The approbation of the Collector required to be obtained to pottahs by Section 58, Regulation VIII. 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind) it shall be determined in the Dewanny Adawlut of the Zillah in which the lands may be situated, according to the rates established in the pergunnahs for lands of the same description and quality as those respecting which the dispute may arise.—*Reg.* IV. 1794, *Sect.* 6. *Benares, Reg.* LI. 1795, *Sect.* 9.—*Ced. and Conq. Prov. Reg.* XXX. 1803, *Sect.* 9.

322. The rules in the preceding Section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance under Regulation VIII. 1793, but also to the renewal of pottahs which may expire or become cancelled under Regulation XLIV. 1793.—*Reg.* IV. 1794, *Sect.* 7. *Benares, Reg.* LI. 1795, *Sect.* 10.

[*The two Rules above* 321 *and* 322 *refer, of course, only to regular suits regarding the rates of Pottahs.*]

323. In like manner, in all other instances, the Courts of Justice will determine the rights of every description of landholder and tenant, when regularly brought before them; whether the same be ascertainable by written engagements; or defined by the laws and regulations; or depend upon general or local usage, which may be proved to have existed from time immemorial.—*Reg.* VII. 1799, *Sect.* 15, *Cl.* 8.—*Benares, Reg.* V. 1800, *Sect.* 14, *Cl.* 8.—*Ced. and Conq. Prov. Reg.* XXVIII. 1803, *Sect.* 32, *Cl.* 8.

324. I am directed to inform you that the Court concur with you with regard to the case in question; in which the plaintiff A may sue B, either in Mynpooree, where the cause of action arose, or Khanpoor in which the defendant be resident at the time of instituting the suit. The failure of delivery [of the article contracted for] at Furruckabad is not a circumstance which, under the Regulation, would give jurisdiction to the Court in that district.—*Con. No.* 866, 14*th Feb.* 1834.

325. Under the provisions of Section 5, Regulation II. 1803, suits of the nature described in your letter, [viz. suits for debts contracted in Calcutta, the obligations by which the debts are represented, such as shop bills, bonds, notes of hand, or receipts, being dated and executed in Calcutta,] can only be instituted in your Court, [that is, the Zillah Court of Cawnpore] where either the cause of action has arisen or the defendant resided as a fixed inhabitant at the commencement of the suit in the Zillah under your charge. The circumstance of the defendant being only an occasional visitor, or his merely having available property in Cawnpore, will not therefore subject him to your jurisdiction.—*Con. No.* 797, *Cal. C.* 14*th June, West. C.* 5*th July,* 1833.

326. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, together with its enclosed copy of a petition of plaint instituted in your Court by Ramchunder Waugh, and requesting the Court's opinion as to whether the suit is cognizable by you, "the debt having been originally incurred in Nagpore, the bond which is the immediate ground of the present action having been executed at Allahabad, and the defendants being at the date of the institution of the suit resident at Nagpore."—In reply, I am desired to acquaint you, that under the circumstances stated, the Court do not perceive any ground on which you can assume jurisdiction. The cause of action, that is to say the debt, originated in a foreign territory, where the defendants still continue to reside. The subsequent execution of the bond within your jurisdiction is immaterial to the present question, as that instrument cannot be termed the cause of action, being

merely evidence of the debt, which is the cause of action.—The Court are therefore of opinion, that you should not take cognizance of the suit.—*Con. No.* 351, 24*th Jan.* 1823.

327. On the 4th January, 1811, the Sudder Dewanny Adawlut, in reply to a reference made by the Judge of Rajshahye, whether a suit for recovery of an excess of rent, collected by a surburakar, from a mokurruree mohaul situated in Nuddea, should be instituted and tried in Rajshahye, the defendant's place of residence, or in Zillah Nuddea; gave it as their opinion, that it should be brought forward and tried in the latter district, on the ground that the lands being situated in Nuddea, any local enquiry that might appear necessary could be made with greater facility and propriety, under the orders of the Court presiding over the jurisdiction in which the lands were included.—*Con. No.* 73, 4*th Jan.* 1811.

328. The Magistrate of Allahabad, on the complaint of A, ordered that B. should give up to him his daughter, whom A. alleged that he had married. The Benares Court of Circuit, considering that the case was not cognizable in the Foujdary Court, rescinded the Magistrate's order, leaving the complainant the option of suing to prove his marriage in the regular suit in the Civil Court. On a reference by the Magistrate, the Court of Nizamut Adawlut, on 31st March, 1814, concurring with the Court of Circuit, stated it as their opinion that all suits or complaints relative to marriage were to be heard in the Civil Courts.—*Con. No.* 148, *March* 31*st*, 1814.

329. I am directed to request, that you will obtain the Sudder Court's opinion, whether a suit for the recovery of damages in the Civil Court can be legally entertained against a party who has been already punished for abduction by the award of a criminal tribunal. *Reply of the Sudder Court.*—This Court are disposed, on a review of the case out of which the present reference arose, to consider that as the penal imposition of fine and award of imprisonment in the Criminal Court were on account of the abduction of the complainant's wife, such criminal sentence does not bar the institution of a civil suit for any pecuniary losses alleged to have been sustained by the husband in consequence of the act so punished.—*Con. No.* 1251, *Cal. C.* 1*st Nov.* 1839.

SECT. XXXI.

Suits regarding Estates which lie in different districts.

330. A question having arisen as to the legality of dividing a claim of inheritance, resting on one and the same plea, into several suits, on the ground of the property sued for, forming parts of distinct estates, or being situated in different jurisdictions, I am directed to acquaint you that it has been ruled by the Court, as consistent with the spirit and meaning of the existing Regulations, that suits founded on right of inheritance should include the entire claim arising out of the same cause of action; and that, in the event of the property being situated in two or more jurisdictions, the suit should be brought in the Court in whose jurisdiction the greater portion may be contained.—*Cir. Ord. Cal. and West. C.* 11*th Jan.* 1839, *Par.* 1.

331. The Court deem it scarcely necessary to add that the rule laid down in the first paragraph of this letter, cannot of course affect the rights of other individuals, having claims on the same property, who may not have joined in the plaint.—*Cir. Ord. Cal. and West. C.* 11*th Jan.* 1839, *Par.* 4.

332. If the property be situated within the limits of the same Zillah Court, but in the jurisdiction of different Moonsiffs, and the amount or value of the whole property do not exceed that of which those officers are competent, under the Regulations, to take cognizance, the Moonsiff, in whose Court the suit may be brought under the rule above laid down, previously to issuing any process on the petition of plaint, should apply to the Judge to whom he may be subordinate, for authority to try the same; but where the property may be situated within the limits of different Zillah Courts, he should apply to the Court of Sudder Dewanny Adawlut, through the Judge, for au-

thority to proceed with the case: and the same rule should be observed by the Judge, as regards any suits of the latter description which may be instituted in the first instance in his Court.—*Cir. Ord. Cal. and West. C. 11th Jan.* 1839, *Par.* 2.

333. When the property may be situated partly in the Lower and partly in the Western Provinces, the application of the Judge in whose Court the suit may be brought, should be made to the Court of Sudder Dewanny Adawlut to whom he may be subordinate, and who, after communicating with the other Court, will issue the necessary instructions for the trial of the case.—*Cir. Ord. Cal. and West. C. 11th Jan.* 1839, *Par.* 3.

334. In adopting the foregoing construction the Court have been influenced by the following amongst other reasons, that the opposite practice would not only constantly give rise to conflicting judgements passed by different Courts, probably at or about the same time, in regard to separate portions of an estate, included in the same cause of action, but, would, moreover, frequently have the effect of entirely altering the original jurisdiction of the Courts in respect to the cognizance of such claims, and might in many instances, operate to the serious injury of the defendant by depriving him of his right of appeal to this Court, and occasionally, indeed, to the Queen in Council.—*Cir. Ord. Cal. and West. C. 11th Jan.* 1839, *Par.* 5.

335. In a dispute regarding the boundaries of estates situated in different jurisdictions, the suit must be instituted in the Court in whose jurisdiction the plaintiff maintains that the property lies.—*S. D. R. vol.* iii. *page* 382.

SECT. XXXII.

Suits not cognizable by the Civil Courts.

336. Any Judge, European or native, is prohibited from hearing or trying a cause in which either of the parties may be his creditor.—*Cir. Ord. Cal. and West. C. 26th March,* 1832.

337. The Zillah and City Courts are prohibited entertaining any cause, which, from the production of a former decree, or the records of the Court, shall appear to have been heard and determined by any former judge, or any superintendent of a Court having competent jurisdiction. If any doubt should arise respecting the competency of the former jurisdiction, the Judges are to report the circumstances to the Sudder Dewanny Adawlut, and wait the instructions of that Court.—*Reg.* III. 1793, *Sect.* 16.—*Benares, Reg.* VII. 1795, *Sect.* 10.—*Ced. and Conq. Prov. Reg.* II. 1803, *Sect.* 10.

338. On a reference from the Calcutta Sudder Court to the Western, relative to the Construction of Regulation III. 1793, Section 16, the Western Court replied as follows:—The only point on which the Calcutta Court would appear to desire the opinion of this [the Western] Court is as to what was the proper course of proceeding to be observed by the Judge in regard to the disposal of the claim preferred by B., on discovering that a suit had already been instituted by A. in reality for the same cause of action, and which was at that time pending in appeal before him from the decision of the Sudder Ameen passed in favour of the plaintiff. On this point the [Western] Court at large observe, that as the Judge had proof before him of the institution of the prior suit by A. which was furnished by the records of his office, they are unanimously of opinion with the majority of the Judges of the Calcutta Court, that under the rules laid down in Section 16, Regulation III. of 1793, he was fully competent, on the information before him, to dismiss the suit of B. without issuing any notice to the other party to appear and answer thereto.—*Con. No.* 999, *West. C. 5th Feb.* 1836.

339. If a suit shall have been instituted in the Court of Dewanny Adawlut of any Zillah or City in which it may have been cognizable, no other Zillah or City Court is to entertain a suit for the same cause of action; and on proof being made in the Court

in which the second suit may be commenced, that a prior suit for the same cause of action has been instituted in another Zillah or City Court competent to try it, the Court in which the second suit may be brought, is to dismiss it with costs to be paid by the party so suing. And if any person shall have commenced a suit in the Dewanny Adawlut of any Zillah or City, and whilst that suit is depending, or after a decree may be passed in it, shall commence another suit in any other Zillah or City Court of Dewanny Adawlut for the same cause; or if any person shall commence a suit in any Zillah or City Court of Dewanny Adawlut, which shall appear to the Judge to be frivolous, vexatious, or groundless, he is not only to dismiss the suit, with such costs as he may deem it equitable to award against the plaintiff, but is to fine him in such amount as he may think proper, upon a consideration of the nature of the case, and the situation and circumstances in life of the offender, and commit him to close custody until he pays the fine.—*Reg.* III. 1793, *Sect.* 12.—*Benares, Reg.* VII. 1795, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* II. 1803, *Sect.* 9.

340. The Sudder Dewanny Adawlut direct that you will issue instructions to the several Zillah and City Judges, subject to your division, directing them to affix a publication in their respective Cutcherries, declaring that any person who shall hereafter institute a suit in their Courts under a fictitious name, will be liable to be nonsuited.—*Cir. Ord. 29th July,* 1809.

341. The Dewanny Adawlut of the Zillah of the twenty-four Pergunnahs, is not to receive or entertain any suit, under any pretence whatever, relating to any land, house, tenement, or hereditament, nor any dispute regarding the boundaries of lands, houses, tenements, or hereditaments, situated within the town of Calcutta, (which, for the purpose of this rule, is declared to be bounded by a line drawn by the bridge and nullah of the Baug Bazar, or Cow-Cross, the Marhatta entrenchment, and the road adjoining to it continued to the westward of the Collighaut road, the Govindpore nullah, and the river,) nor any suit whatever against a person who may be an inhabitant of Calcutta at the time the suit may be instituted, or may become a resident within the limits of the town after the suit may be commenced. The Court is commanded not to intermeddle with, or take cognizance of the suits abovementioned, which are to be considered entirely exempt from its jurisdiction. But the prohibitions contained in this Section, are not to be construed to extend to preclude the Court of Dewanny Adawlut of the Zillah of the twenty-four Pergunnahs, entertaining any suit concerning marriage or cast, in which no money or other valuable thing may be demanded or decreed, although the cause of action shall have arisen, or the defendant may reside, or shall have resided at the time the suit commenced, within the limits of the town of Calcutta.—*Reg.* III. 1793, *Sect.* 17.

342. The following minute having been referred by Mr. Master, officiating Judge, for the opinion of his colleagues, the majority of the Presidency Court held that the case therein alluded to was cognizable by the Judge of the 24-Pergunnahs. *Minute of Mr. Master, dated 6th Nov.* 1835. —"At the request of Mr. N. B. E. Baillie, I beg to refer the following point for the opinion of the Judges. Mr. Baillie contends that Section 17, Regulation III. 1793, having never been rescinded, the Dewanny Adawlut of the Zillah of the 24-Pergunnahs is strictly prohibited from entertaining any suit whatever against a person who may be an inhabitant of Calcutta at the time the suit may be instituted, or may become a resident within the limits of the town after the suit may be commenced. In the case in which this reference is requested both the plaintiff and defendant are residents of Calcutta, but the cause of action is to recover possession of land situated within the jurisdiction of the 24-Pergunnahs. In admitting and proceeding with the suit, the provisions of

Section 7, Regulation IX. 1819, were attended to by the Judge of the Zillah; and in my opinion the objection urged by Mr. Baillie is over-ruled by the provisions of that enactment. To remove the doubt however, I beg to solicit the opinion of the other Judges."—The minutes of the several Judges were referred for the opinion of the Judges of the Western Court on the 11th December, 1835. *The following is the Western Court's reply.*—"The Court are unanimously of opinion, with the majority of the Judges of the Calcutta Court, that the suit which gave rise to the present reference, was cognizable in the Court of the 24-Pergunnahs. In support of this opinion, the Court adduce the passage noted in the margin* from Harington's Analysis (volume i. page 36,) and express their entire concurrence in the construction therein given to the term "nor any suit whatever," as used in the Section of the Regulation above cited, viz. that it was intended to apply to personal actions only against the fixed inhabitants of the town of Calcutta, and not to exclude from the cognizance of the Zillah Court of the 24-Pergunnahs suits, for land or other real property situated within the limits of its jurisdiction, brought against residents of that town. That such was the intention of the legislature would appear from the fact that the real property excepted from the jurisdiction of the Court for the 24-Pergunnahs is especially defined to be lands, tenements, &c. situated within the limits of Calcutta, and that consequently suits for such property, when situated in the 24-Pergunnahs beyond the specified boundary, are within the cognizance of that Court. The Court further observe that they understand the provisions of the Section under discussion to be similar in every respect to Section 12, Regulation II. of 1803, quoted by Mr. Harington as a corresponding enactment."—*Con. No.* 991. *Cal. and West. C. 8th Jan.* 1836.

343. The Zillah and City Courts are prohibited interfering in any respect in any cause or matter of a criminal nature, declared cognizable by the Magistrates of the several Zillahs and Cities, the Courts of Circuit, or the Nizamut Adawlut, or any other Courts for the trial of cases of a criminal nature, that now exist, or which may be hereafter established, excepting for contempt and perjuries committed in open Court, as prescribed in Sections 14 and 21, Regulation IV. 1793.—*Reg.* III. 1793, *Sect.* 18.—*Benares, Reg.* VII. 1795, *Sect.* 11.—*Ced. and Conq. Prov. Reg.* II. 1803, *Sect.* 11.

344. Actions of debt and all personal actions against officers, soldiers, retainers of the description mentioned in Section 2, of this Regulation, persons registered as attached to Sudder Bazars, or bazars of corps, or menial servants of officers, shall be cognizable before a Military Court, and not elsewhere; provided the value in question does not exceed sicca rupees two hundred and the defendant was a person of the description abovementioned, when the cause of action arose; such Courts shall be composed of European officers when European officers may be parties concerned, and in all other cases, of Native officers with an European officer to superintend and record the proceedings, and shall in all practicable cases consist of five members, and in no instance of less than three members, one of whom shall preside. Such Courts shall be convened monthly by the commanding officers of corps and stations, and shall be holden on some convenient day before the issue of the pay for each month, and it shall be competent to such Courts upon finding any debt, or damage due, either to award execution generally, or to direct as they shall see fit, that the whole or any part thereof shall be stopped and paid over to the creditor out of any pay or public money which may be coming to the debtor, either in the current or any future month. Where the execution

* The Town of Calcutta, which is under the immediate jurisdiction of his Majesty's Supreme Court of Judicature, not being comprised in that of any Zillah or City Court, the above powers do not include the cognizance of any suits for land or other real property situated within the limits of Calcutta; nor *any personal actions* against the fixed inhabitants of that town, which may not be for arrears of revenue, or may be legally considered exclusively cognizable by the Supreme Court.—*Har. An. Vol.* i. *p.* 36.

is awarded generally, the debt if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the limits of the garrison, cantonment or Military bazar, under a written order of the commanding officer grounded upon the judgement of the Court; and if sufficient goods are not found within the limits, the debtor shall be arrested by like order of the commanding officer, and imprisoned in some convenient place of confinement within the limits of the garrison, cantonment or Military bazar, for the space of two months, unless the debt be sooner paid, and his goods, if found within the limits at any subsequent time, shall be liable to be seized and sold in satisfaction of the debt, under a written order of the commanding officer.—*Reg.* XX. 1810, *Sect.* 22.

345. Such parts of Regulation XX. 1810, or of any other Regulation in force, as provide for the cognizance by a Military Tribunal of actions of Debt, and all personal actions not exceeding in value or amount the sum of 200 Rupees, are hereby declared not to be applicable to cases of debt, or other personal actions in which the party sued may be a British subject attached to the army within the descriptions of persons specified in Section 57 of Statute IV. Geo. IV. Cap. LXXXI. by which amongst other things it is enacted, that in all places where the said Company's Forces now are or may be employed, or where any body of His Majesty's Forces may be serving with the Forces of the said Company, situate beyond the jurisdiction of the Court of Requests at the City of Calcutta, actions of debt, and all personal actions against such Officers, Non Commissioned Officers, or Soldiers, all persons licensed to act as Sutlers to any Corps or Detachment, or at any station or cantonment, or other persons amenable to the provisions of this Act, or resident within the limits of a Military cantonment, shall be cognizable before a Court of Requests composed of Military officers, and not elsewhere, provided the value in question shall not exceed 400 Sicca Rupees, and that the Defendant was a person of the above description when the cause of action arose.—*Reg.* XX. 1825, *Sect.* 3, *Cl.* 1.

346. Officers and Soldiers being European British subjects will still be subject to the jurisdiction of the Local Courts of Civil Justice, under the provisions of Section 107, of Statute LIII. Geo. III. Cap. CLV. except in actions of debt and personal actions not exceeding 400 Rupees in value or amount.—*Reg.* XX. 1825, *Sect.* 3. *Cl.* 3.

347. The provisions of Section XXII. Regulation XX. 1810, will still remain in force so far as they relate to actions of Debt and personal actions against Officers, Soldiers and Retainers of the description therein specified or referred to, not being European British subjects within the provisions referred to in the First Clause of this Section.—*Reg.* XX. 1825, *Sect.* 3, *Cl.* 4.

348. It appears that there are two rules in these cases; one, for European British subjects registered as attached to bazars and residing in cantonments, British soldiers, officers, &c.; and the second for European foreigners, native soldiers, natives, &c. registered and residing in cantonments: that with regard to the first, the 4th of Geo. IV. is to be our guide, and 400 Rupees the limit; with regard to the second, Section 22, of Regulation XX. of 1810, and 200 Rupees the limit; and I request to be informed, whether I am right, as I shall put a stop to filing of suits, except the parties conform to Section 24, Regulation XX. of 1810. The Sudder Court informed the Judge that he was right in his construction.—*Con. No.* 498, 2*d March*, 1829, *Par.* 3.

349. A and B have dealings within a Military cantonment, but are not residents therein. A sues B in the Military Court of requests and obtains a decree. B demurring to the jurisdiction, the award is enforced, and B sues in the Civil Court for the recovery of the sum paid under the award.

Held that a suit of the nature mentioned cannot legally be entertained by a Civil Court.—*Cir. Ord. West. C. 13th Feb.* 1841, *Cal. C. 19th March,* 1841.

350. The Sudder Court being asked, whether the Civil Court is competent to receive a suit for actual costs against a plaintiff whose complaint had been dismissed in a Criminal Court, replied "that the Civil Courts are not authorized to take cognizance of such suits, as Clause 3, Section 29, Regulation VII. 1803, authorizes the Criminal Courts to adjudge a reimbursement of costs actually incurred upon a prosecution before them by either of the parties thereto, if they shall consider such reimbursement just and equitable. But that if a Magistrate, from oversight, have omitted to order a reimbursement of costs to the party whom he may think justly entitled thereto, he is at liberty to supply the omission by a subsequent order, upon application from the party for that purpose."—*Con. No.* 367, *July* 2, 1824.

351. Held on a reference from the Judge of Sylhet that a bidder at a public sale who has been fined by a Collector, cannot institute a regular suit against that authority in the Civil Court to obtain a return of the fine, supposing it to have been levied by distress or otherwise.—*Con. No.* 1201, *Cal. C.* 15*th Feb. West. C. 8th March,* 1839.

352. The Court having reason to believe that doubts exist as to the legality or otherwise of admitting Civil actions to contest the awards of the criminal authorities under the provisions of Section 6, Regulation VII. 1819, I am directed to communicate to you their opinion, that cases decided by the Criminal authorities under the rules laid down in that Section are not open to a Civil action. —*Cir. Ord. Cal. C.* 31*st Aug. West. C.* 13*th Nov.* 1838.

SECT. XXXIII.

Suits cognizable and not cognizable by Moonsiffs.

353. Persons invested with the powers of Moonsiffs are hereby empowered to receive, try, and determine all suits of the following descriptions, provided the landed or other real property to which the suit may relate shall be situated, or provided, in all other cases, the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall reside as a fixed inhabitant, within the limits to which their respective jurisdictions may extend.—*Reg.* V. 1831, *Sect.* 5, *Cl.* 1.

354. For money or other personal property not exceeding in amount or value the sum of three hundred Rupees, provided the claim include the whole amount of the demand arising from the cause of action, and be not for damages on account of alleged personal injuries, or for personal damages of whatever nature.—*Reg.* V. 1831, *Sect.* 5, *Cl.* 2.

355. For the property or possession of land or other real property, with the exception of land held exempt from the payment of Revenue, the computed value of which shall not exceed three hundred Rupees.—*Reg.* V. 1831, *Sect.* 5, *Cl.* 3.

356. The word "property" in Clause 3, Section 5, Regulation V. 1831, means the proprietary right in, not the rent of, land exempt from the payment of revenue. Suits therefore for the rent of Lakhiraj land are cognizable by Moonsiffs, where that point alone is in question.—*Con. No.* 950, *Cal. C.* 1*st May,* 1835, *West. C.* 10*th July,* 1835.

357. Suits for the property or possession of land held exempt from the payment of revenue, are not, under the provisions of Clause 3, Section 5, Regulation V. 1831, cognizable by Moonsiffs, although the circumstance of the land being rent-free or exempt from the payment of revenue may not be disputed by the parties.—*Con. No.* 825. 6*th Sept.* 1833.

358. If a person lays claim to a piece of land, which both parties allow to be exempt from

the payment of Government revenue, and on which a house is situated, and the purchase money in the deed of sale includes the price of the land and building; such a suit, being for the possession of rent free land, cannot be tried by a Moonsiff under the provisions of Section 5 of Regulation V. 1831.—*Con. No.* 950, *Cal. C.* 1*st May*, 1835, *West. C.* 10*th July*, 1835.

359. Held, by the Sudder Court that an *undefended* suit for an instalment below 300 Rupees, on a bond for an aggregate sum above that amount is cognizable by the Moonsiff.—The same principle is applicable to an *undefended* action for an arrear of rent below 300 Rupees due on a farming engagement or lease of higher value.—*Cir. Ord. Cal. C.* 16*th July*, *West C.* 13*th Aug.* 1841.

360. The prohibitions contained in the Second Clause of Section XIII. Regulation XXIII. 1814, are hereby declared applicable to the suits abovementioned.—*Reg.* V. 1831, *Sect.* 5, *Cl.* 4.

361. The Moonsiffs are prohibited from hearing, trying or determining any suits, in which they themselves, or their relatives, or dependants, or the vakeels, or other persons employed in their cutcherries, may be parties, or in which a British subject, or an European foreigner, or an American may be a party.—*Reg.* XXIII. 1814, *Sect.* 13, *Cl.* 2.

362. And it is hereby enacted, that within the said territories no person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever connected with arrears or exactions of rent excepted from the jurisdiction of the Courts of the Moonsiffs.—*Act* III. 1839, *Sect.* 3.

363. In those Districts in which Moonsiffs may be appointed under the provisions of Regulation V. 1831, those Moonsiffs shall be competent, in addition to the authority now possessed by Moonsiffs generally, of receiving, trying, and deciding claims to arrears of rent preferred by regular suit, in like manner to dispose of all claims preferred by under tenants or others, who may be desirous of resisting the distraint of their property or the attachment of their persons; or who may prefer a claim for damages on account of such acts.—The rule contained in Section 13, Regulation XXIII. 1814, or any other Regulation, prohibiting the award of damages by Moonsiffs, shall not be considered applicable to such claims.—*Reg.* VIII. 1831, *Sect.* 11.

364. The Sudder Dewanny Adawlut have had before them your letter, [that of the Judge of the Jungle Mehals] under date the 9th instant, on a question as to the jurisdiction of a Moonsiff in a suit for an instalment, the amount of which is within his competence, but which orginates in a bond of which the amount is beyond his competence.—It appears to the Sudder Dewanny Adawlut, that the jurisdiction of the Moonsiff in the suit for the instalment depends much on the defence set up.—If the original bond be brought into question, and its validity must be determined, the Moonsiff cannot have jurisdiction.—If the defence should merely be, that the instalment sued for has been paid, and the mere question is, whether such is the fact or not, the Moonsiff might be competent to decide the case.—*Cir. Ord. Cal. and West. C.* 31*st Aug.* 1832.

365. Suits involving indemnificatory claims to an arbitrary amount of damages, in respect to marriage, on account of breach of contract, or in regard to slander on account of loss of character, are not cognizable by Moonsiffs.—Supposing, however, a claim to be preferred on account of a specific loss sustained by expenses actually incurred in prosecuting a marriage afterwards broken off, such claims should not be included in the prohibitory rule, but should be regarded in the light of any other claim to money or personal property, within the competency of a Moonsiff to decide, under Clause 2, Section 5, Regulation V. 1831.—The principle of the prohibitory rule, it should be observed, consists in the exclusion from the jurisdiction of a Moonsiff, of all suits in which, though the claim may be defined, the amount to be awarded is arbitrary and at the discretion of the tribunal trying the suit, constituting a license which it would be inexpedient to accord to a native functionary

of that grade, an objection to which a fixed and definite claim for a certain sum actually expended is not liable.—*Con. No.* 1257, 1*st Nov.* 1839.

366. The duties to be performed by Moonsiffs, in addition to the trial and decision of Civil suits, are prescribed by Sections 50, 51, 52, 53 and 55,* of the Regulation, the last of which declares that Moonsiffs shall continue to exercise the power vested in them by the Regulations in force regarding distress and sale for the recovery of arrears of rent; but is silent as to the power of receiving petitions for the arrest of defaulters and acting thereupon. The Court are therefore of opinion that under Regulation XXIII. of 1814, the Moonsiffs do not possess that power. The necessity indeed for their exercising it is in a great measure obviated, as by Section 18, Regulation VIII. of 1819, the personal arrest of the defaulter is not necessary to enable landed proprietors to take the benefit of the provisions of Regulation VII. 1799.—*Cir. Ord. Cal. and West. C.* 13*th July*, 1832.

367. The Zillah and City Judges may for any reason that may appear to them sufficient, bring up for trial before them, or their Registers, or the Sudder Ameens, any causes, that may be depending before the Moonsiffs, or may transfer such causes from one Moonsiff to another.—*Reg.* XXIII. 1814, *Sect.* 47, *Cl.* 1.

SECT. XXXIV.

Suits cognizable by Sudder Ameens.

368. The Zillah and City Judges are hereby declared competent to refer to any of the Sudder Ameens subject to their authority for trial and decision any original suits depending or instituted in their Courts for money or other personal property, or for the property or possession of land, or of other real property, the amount or value of which, calculated according to the rules specified in No. 8, of the Schedule B, referred to in Section 17, Regulation X. 1829, may not exceed one thousand Rupees. Provided however, that no suit shall be referred for trial to a Sudder Ameen in which he himself or his relatives, or dependants, or the Vakeels or Officers of his Court shall be a party, or in which an European British subject, an European Foreigner, or an American shall be a party.—*Reg.* V. 1831, *Sect.* 15, *Cl.* 2.

369. And it is hereby enacted, that from the 1st day of June, 1836, and within the territories of the East India Company, no person whatever shall by reason of descent, be in any civil proceeding whatever, excepted from the jurisdiction of the Courts of the Sudder Ameens, in the territories subject to the Presidency of Fort William in Bengal.—*Act* XI. 1836, *Sect.* 2.

370. Whenever the Zillah and City Judges shall retain, on their own files, any original suits which they are authorized by this Regulation to refer to a Sudder Ameen, or Principal Sudder Ameen, they shall record their reasons for doing so upon their proceedings.—*Reg.* V. 1831, *Sect.* 24.

371. Cases of a very trifling amount, even as low as sixteen rupees, having on several occasions come before this Court in appeal from the decision of the Judge; the Court have been led to notice the practice observable in some Zillahs of retaining on the file of the Judge original suits, which, from their amount, are referrible to the Sudder Ameens of the Courts. As this practice tends to overwhelm the Sudder Adawlut with business which should be finally disposed of in the Zillah Courts, you are hereby requested to abstain from it, should it prevail in the Zillah under your charge.—*Cir. Ord. West. C.* 2*nd Nov.* 1832.

372. You will immediately transfer from your own file to the files of the Principal Sud-

* The Moonsiffs have been since exonerated from these duties.

der Ameens and Sudder Ameens all suits in which the Government or its officers may be a party, accordingly as the suits may be cognizable by those Courts respectively. You are of course competent to retain any of these suits on your own file, provided you see sufficient grounds for so doing, but in reporting to the Court (which you are hereby required to do on the transmission of the monthly statements first sent after the receipt of these instructions) the execution of their orders, you will submit a list of the suits that you have so retained, and you will briefly explain your reasons for so doing. In like manner you will briefly explain in your monthly statement No. 1, the nature of all original suits retained on your own file, and the cause of their retention.—*Cir. Ord. Cal. and West. C. 23rd Feb.* 1838.

SECT. XXXV.

Suits cognizable by Principal Sudder Ameens.

373. The Zillah and City Judges are authorized to refer to the Principal Sudder Ameens any original suits depending or instituted in their Courts for money or other personal property, or for the property or possession of land or other real property, the amount or value of which, calculated according to the rules specified in No. 8, of the Schedule B, referred to in Section 17, Regulation X. 1829, may not exceed five thousand Rupees. Provided that no suit be referred to a Principal Sudder Ameen in which he himself, or his relatives, or dependants, or the Vakeels or Officers of his Court shall be a party, of in which an European British subject, or an European Foreigner, or an American shall be a party.—*Reg.* V. 1831, *Sect.* 18, *Cl.* 1.

374. And it is hereby enacted, that from the 1st day of June, 1836, and within the territories of the East India Company, no person whatever shall, by reason of descent, be in any civil proceeding whatever, excepted from the jurisdiction of the Courts of the Principal Sudder Ameens, in the territories subject to the Presidency of Fort William in Bengal.—*Act* XI. 1836, *Sect.* 2.

375. It is hereby enacted, that so much of Clause 1, Section 18, Regulation V. of 1831, of the Bengal Code, as provides that no suit be referred to a Principal Sudder Ameen in which the vakeels or officers of his Court shall be a party, is hereby repealed.—*Act* XXVII. 1838, *Sect.* 1.

376. And it is hereby enacted, that in cases where, by reason of the above Clause, a suit cannot be referred to a Sudder Ameen, because he himself or his relatives or dependents are a party to the suit, and where the Zillah and City Judges cannot refer such suit to be tried by any other competent authority, it shall be lawful for each of the Courts of Sudder Dewanny Adawlut within the territories subject to the presidency of Fort William in Bengal to direct, by an order authenticated by the official signature of their Register, that the cognizance of such suit shall be transferred to any other Zillah or City Court subordinate to the same Court of Sudder Dewanny Adawlut; and the Judge of such other Zillah or City Court may thereupon refer such suit in the same manner as if the same had been originally instituted in the Court of such other Zillah or City. —*Act* XXVII. 1838, *Sect.* 2.

377. It is hereby enacted, in modification of Section 18, Regulation V. 1831, of the Bengal Code, that from the first day of November, 1837, no Zillah or City Judge within the territories subject to the Presidency of the Fort William in Bengal, shall be precluded by reason of the amount of value of the property for the recovery of which a

suit is instituted, from referring that suit to any Principal Sudder Ameen.—*Act* XXV. 1837, *Sect.* 1.

378. And it is hereby enacted, that it shall be competent to either of the Courts of Sudder Dewanny Adawlut within the Territories, subject to the Presidency of Fort William in Bengal, by an order under the signature of the Register of such Court, to authorize the Judge of any Zillah or City Court, subordinate to such Court of Sudder Dewanny Adawlut, to transfer to a Principal Sudder Ameen any civil proceedings, whether miscellaneous or summary, which may be depending at the time when such order is issued or be thereafter instituted in the Court of the said Zillah or City Judge, and all proceedings so transferred shall be disposed of by the said Principal Sudder Ameen according to the Rules prescribed in the Regulations for the guidance of the Zillah and City Judges in the like cases,—provided however that an appeal from the order of the Principal Sudder Ameen in such cases shall lie in the first instance to the Zillah or City Judge, and specially to the Sudder Dewanny Adawlut.—*Act* XXV. 1837, *Sect.* 8.

379. You will immediately transfer from your own file to the files of the Principal Sudder Ameens all suits in which the amount or value of the property sued for may exceed 5000 Rupees, and all suits preferred under Section 30, Regulation II. 1819; and to the files of the Principal Sudder Ameens and Sudder Ameens all suits in which the Government or its officers may be a party, accordingly as the suits may be cognizable by those Courts respectively. You are of course competent to retain any of these suits on your own file, provided you see sufficient grounds for so doing, but in reporting to the Court (which you are hereby required to do on the transmission of the monthly statements first sent after the receipt of these instructions) the execution of their orders, you will submit a list of the suits that you have so retained, and you will briefly explain your reasons for so doing. In like manner you will briefly explain in your monthly statement No. 1, the nature of all original suits retained on your own file, and the cause of their retention.—*Cir. Ord. Cal. and West. C. 23rd Feb.* 1838, *Par.* 2.

380. No suits should be referred to the Principal Sudder Ameen in which the documentary evidence may be in the English language, unless such Principal Sudder Ameen is acquainted with the English language.—*Cir. Ord. Cal. and West. C. 23rd Feb.* 1838, *Par.* 4.

381. That part of the Circular Order No. 4, under date the 23rd February 1838, which prohibits the reference to a Principal Sudder Ameen of suits in which the documentary evidence may be in English, unless that officer possess an acquaintance with the English language, appearing to the Court to require some qualification, I am directed to communicate to you the following instructions, in modification of paragraph 4 of the Circular referred to, for the guidance of yourself and the subordinate courts concerned.—*Cir. Ord. Cal. C.* 18*th Oct. West. C.* 31*st Oct.* 1839, *Par.* 1.

382. You will not in future consider the mere circumstance of the initial petition reciting the existence of an English document in support of a claim, to constitute a necessary ground for the retention of a suit on your own file. On the contrary such suits are to be referred in the first instance, in the same manner as others, under the existing laws, to those tribunals by which they may be cognizable.—*Cir. Ord. Cal. C.* 18*th Oct. West. C.* 31*st Oct.* 1839, *Par.* 2.

383. After the reference of such a suit, when the Principal Sudder Ameen, (or Sudder Ameen with respect to suits which from their amount may be within his cognizance) shall proceed in the manner prescribed by Sections 10 and 12, Regulation XXVI. of 1814, it will be his duty, upon either party tendering an English document as evidence, to require such party to file with it an Oordoo translation,* without which accompaniment it should not be received. The Court before whom these papers are filed, shall thereupon transmit both the original and translation, in the same mode as is laid down for the transmission of exhibits, and with the same precautions to your Court, for consideration and orders.—*Cir. Ord. Cal. C.* 18*th Oct. West. C.* 31*st Oct.* 1839, *Par.* 3.

* Bengalee in the Bengal Districts, and Oorisa in Cuttack.

384. Upon inspecting the English and Oordoo documents, you will consider the propriety of allowing the subordinate Court to proceed with the suit or transferring it to your own file, with due advertence to the nature of the English writing, and of the transaction to which it may relate, exercising your discretion accordingly. Should it appear likely to involve such complicated questions, as would make a knowledge of English indispensible to a correct adjudication of the case, you may deem it advisable to adopt the latter course, and recall the suit to the file of your Court; but if the English writing should be confined to a simple account, bill, or other similar document, you will probably think fit, after satisfying yourself of the accuracy of the translation, (and in the event of discovering any error, taking proper steps towards remedying the defect,) to return the papers to the lower Court, with instructions to proceed in the usual manner.—*Cir. Ord. Cal. C.* 18*th Oct. West. C.* 31*st Oct.* 1839, *Par.* 4.

SECT. XXXVI.

Suits cognizable and not cognizable by the Zillah Judges.

385. From and after the date aforesaid, the Judge of the Zillah or City Court into which the provisions of this Regulation may be introduced, shall have primary jurisdiction in all suits, in which the value or amount of the claim may exceed five thousand Rupees, any thing in the existing Regulations to the contrary notwithstanding.—*Reg.* V. 1831, *Sect.* 27, *Cl.* 3.

By preceding enactments, the Zillah and City Judges had jurisdiction in cases below 5000 *Rupees. The enactment above given is not intended to curtail but to enlarge their jurisdiction.*

386. Suits under Regulation IV. of 1812, instituted or defended by the public officers on behalf of sovereign native princes, will be received and decided by the Zillah and City Judges.—*Govt. Ord. No.* 3, 15*th Jan.* 1834.

387. Actions against Moonsiffs, Sudder Ameens and Principal Sudder Ameens in reference to Regulation XXIII. 1814, Sections 10 and 67, for corruption, extortion or any oppressive or unwarranted act of authority, and in which suits the decree will cause the offender to pay damages and costs to the party injured, should be preferred to and tried by the Zillah and City Judges, subject to appeal to the Sudder Court.—*Govt. Ord. No.* 7, 15*th Jan.* 1834.

388. Charges under Regulation XII. 1793, Section 8, Regulation XI. 1795, Regulation XI. 1803, Section 8, Regulation III. 1827, Sections 2 and 3, of corruption or extortion against the law officers of the Zillah and City Courts, and in which cases the decree would adjudge the offender to refund the amount, or value of the money or property received or taken, with interest not exceeding 12 per cent. in cases of money taken, and full costs of suit, should be preferred to and tried by the Zillah and City Judges, subject to appeal to the Sudder Court.—*Govt. Ord. No.* 8, 15*th Jan.* 1834.

389. Suits, under Regulation XXXIX. 1793, Section 11; Regulation XLIX. 1795, Section 3, and Regulation XLVI. 1803, Section 11, against Cazees, for undue practices in the discharge of the duties prescribed to them by the Regulations, should be preferred to and tried by the Zillah and City Judges, subject to appeal to the Sudder Court.—*Govt. Ord. No.* 9, 15*th Jan.* 1834.

390. Suits, under Regulation XIV. 1793, Section 33, Regulation XXVII. 1803, Section 36, against a Collector for sums of money demanded, directly or indirectly received or taken by him, for his own use, from any proprietor or farmer of land, or any surety, or any purchaser of land; or for any acts done in his official capacity, or repugnant to the Regulations, or not

warranted thereby, and that shall not involve any claim to sums received or demanded by him on behalf of Government in conformity to the Regulations, will be tried by the Zillah and City Judges.—*Govt. Ord. No.* 17, 15*th Jan.* 1834.

SECT. XXXVII.

Suits cognizable by the Uncovenanted Judges.

391. In modification of Section 19, Regulation VIII. 1831, regular suits instituted to set aside the summary judgments of Collectors for land rent are declared cognizable, according to their amount, by the Principal Sudder Ameens, Sudder Ameens and Moonsiffs.—*Reg.* VII. 1832, *Sect.* 10.

392. Suits, under Regulation XXII. 1793, Sections 22 and 38, Regulation XVII. 1795, Section 35, Regulation XIV. 1807, Section 11, Clause 12, by the injured party for damages against a Darogah of Police, or any officer under his authority, for corruption, extortion, oppression, or any act repugnant to the Police Regulations, are to be received by the Principal Sudder Ameens, Sudder Ameens or Moonsiffs, as they may be cognizable by one or other.—*Govt. Ord. No.* 14, 15*th Jan.* 1834.

The following suits (Rules 393 to 397) will be received and decided by the Uncovenanted Judges with the exception of cases in which a European officer of Government may be concerned.

393. Suits, under Regulation X. 1793, Section 36, Regulation LII. 1803, Section 40, by a proprietor against a Collector, Guardian or Manager for acts done contrary to the Regulations or Orders of the Court of Wards, or for any breach of trust during the continuance of an estate under the Court of Wards.—*Govt. Ord. No.* 18, 15*th Jan.* 1834.

394. Suits, under Regulation XIV. 1793, Sections 6 and 24, Regulation XLV. 1793, Sections 7 and 8, Regulation XX. 1795, Sections 7 and 8, Regulation XXVI. 1803, Sections 21 and 22, Regulation XXVII. 1803, Section 30, Clause 23, by proprietors, farmers and their sureties against Ameens and Tehseeldars deputed by the Collector to take charge of their lands in cases of arrears of revenue, or execution of decrees, for embezzlement or injuries done by them to the estate or farm.—*Govt. Ord. No.* 19, 15*th Jan.* 1834.

395. Suits, under Regulation XIX. 1814, Section 13, Clause 2, against a Collector's Ameen partitioning an estate, for corruption.—*Govt. Ord. No.* 20, 15*th Jan.* 1834.

396. Suits, under Regulation VI. 1795, Section 7, Regulation XXVII. 1803, Section 7, against a Collector's peons or sowars for exactions of money or subsistence, or receipt thereof from defaulters, involving the penalty of a refund of double the amount.—*Govt. Ord. No.* 21, 15*th Jan.* 1834.

397. Suits, under Regulation II. 1800, Section 9, against the officers stationed at the Chunar, Ghazeepore and Mirzapore stone quarry, or any other persons, for exactions beyond the prescribed duty, and charges of corruption against any public officer or other person, directly or indirectly entrusted with the execution of any part of this Regulation; the penalties for extortion and corruption being the same as against ministerial Native Officers under Regulation XIII. 1793.—*Govt. Ord. No.* 22, 15*th Jan.* 1834.

398. Sudder Ameens and Moonsiffs are not prohibited from trying suits in which other Sudder Ameens and Moonsiffs, or their dependants may be concerned.—*Con. No.* 692, 18*th May*, 1832.

399. The Uncovenanted Judges are not restricted by the Regulations from trying and deciding suits regarding the right in slaves; but it is highly inexpedient that such suits should go before a native, if a reference of them to a European Judge be practicable.—*Con.* 1022, *Cal. C.* 8*th*

SECT. XXXVIII.

Suits cognizable either by the Covenanted or Uncovenanted Judges.

400. Suits, described in the four following paragraphs (401 to 404) are to be received and decided by the Court to which the officers sued may be attached, provided that if the amount be beyond the competence of such Court, it shall be forwarded to the Judge, who will refer it to any other Court competent to decide it, or he may place it on his own file; provided also, that suits against ministerial officers of the Criminal Courts (exclusive of Police officers) shall be preferred to the Judge, who will at his discretion, refer it to any subordinate Court competent to decide it, or retain it on his own file.—*Govt. Ord* 15*th Jan.* 1834.

401. Suits, under Regulation XXVII. 1814, Section 12, by the parties in a cause against their respective pleaders for any damages or injury which they may have sustained from any breach of the Regulations on the part of their pleaders, or from any fraudulent conduct or malpractices committed by them regarding the suit.—*Govt. Ord. No.* 10, 15*th Jan.* 1834.

402. Suits, under Regulation XXIII. 1814, Section 15, Clause 3, against vakeels of the Moonsiff's Courts for all breaches of trust, fraud, or acts of wilful misconduct committed by them in their capacity of vakeels.—*Govt. Ord. No.* 11, 15*th Jan.* 1834.

403. Suits, under Regulation XIII. 1793, Section 9, Regulation XII. 1795, Regulation XII. 1803, Section 12, Regulation III. 1827, Sections 2 and 3, against the ministerial officers of the Civil and Criminal Courts for acts of corruption or extortion.—*Govt. Ord. No.* 12, 15*th Jan.* 1834.

404. Suits, under Regulation V. 1831, Section 25, Clause 2, against the ministerial officers of the Sudder Ameens, Principal Sudder Ameens, for acts of extortion, corruption or misconduct. By the Government order of this day the provisions are extended to the ministerial officers of the Moonsiff's Courts.—*Govt. Ord. No.* 13, 15*th Jan.* 1834.

405. The Government orders of the 15th January 1834, provide that the following suits, not involving charges respecting the honour and integrity of the officers concerned, should be instituted in the first instance before Zillah or City Judges, who should be competent, after making the reference prescribed by Regulation II. 1814, to try the suits themselves or refer them for trial to any subordinate Court competent to decide them. But all suits which it may be necessary to defend through the Vakeel of Government shall be tried at the Sudder Station or where the Judge's Court is held.

406. Suits, under Regulation III. 1793, Section 10; Regulation VII. 1795, Section 7; Regulation II. 1803, Section 7, against Collectors, Salt Agents, Collectors of Customs, Mint and Assay Masters, and their respective assistants and native officers, for any acts done in their official capacity in opposition to the Regulations.

407. Suits, under Regulation III. 1793, Section 11; Regulation VII. 1795, Section 7, Regulation II. 1803, Section 15, against Government by individuals considering themselves aggrieved under the Regulations by an act done by any of the aforesaid officers of Government pursuant to a special order originating with the Governor General in Council, the Commissioners of Revenue, the Sudder Board of Revenue, or the Boards of Customs, Salt and Opium.

408. Suits, under Regulation XIV. 1793, Sections 12 and 29; Regulation III. 1794, Section 12; Regulation VI. 1795, Section 16; Regulation XXVII. 1803, Section 16, by proprietors, farmers, and their sureties in confinement, (or otherwise,) for alleged arrears of Revenue, against a Collector or Tehseeldar, to try the justness of the demand.

409. Suits, under Regulation XIV. 1793, Section 29; Regulation VI. 1795, Section 35, Regulation XXVII. 1803, Section 32, by a defaulter against the Collector, to shew cause why he is detained in confinement with a view to his release.

410. Suits, under Regulation XIV. 1793, Section 46; Regulation VI. 1795, Section 51; Regulation XXVII. 1803, Section 48, of proprietors, farmers, or their sureties against Government, to try the validity of their engagements, or for acts done by the Collector in conformity to special orders of the Government, or the Commissioners, or Sudder Board of Revenue.

411. Suits, under Regulation I. 1801, Section 10, Regulation XVII. 1803, Section 51, for damages against Collectors for unnecessarily causing the attendance of proprietors and others.

412. Suits, under Regulation XXIV. 1793, Section 17; Regulation XXXIV. 1795, Section 14; Regulation XXIV. 1803, Section 16, against a Collector for withholding payment of Pensions.

413. Suits, under Regulation XXVII. 1793, Section 12, against the Collector or Government for withholding the payment of compensations for sayer duties.

414. Suits, under Regulation XIX. 1810, Section 15, against local Agents for illegal acts.

415. Suits, under Regulation VIII. 1817, Section 10, Regulation VII. 1832, Section 16, to reverse sales of Putnee Talooks irregularly conducted by the Collector.

416. Suits, under Regulation VII. 1822, Section 31, Regulation IV. 1828, Section 2, instituted to reverse the summary decisions of Collectors making or revising settlements.

417. Suits, under Regulation XI. 1822, Section 20, on the part of Government against Benamee purchasers or revenue officers, illegally purchasing lands at public sales.

418. Suits, under Regulation XI. 1822, Sections 25 and 26, by proprietors against Government, the Collector, his officers and others, to annul public sales.

419. Suits, under Regulation XIV. 1793, Sections 15, 16, 19, 21, Regulation VI. 1795, Sections 22, 23, 26, 28; Regulation XXVII. 1803, Sections 22, 23, 26 and 28, against proprietors, farmers and sureties for resistance of revenue processes.

420. Suits, against a Collector and individuals for property in and possession of an estate, a portion thereof, and for the transfer of names in the Collector's Registers.

421. Suits, under Regulation II. 1793, Section 9, Regulation V. 1795, Section 9, Regulation XXIII. 1803, Section 8, for damages against the native officers of Collectors for unauthorized acts.

422. Suits, under Regulation III. 1794, Section 16; by Collectors against the heirs of deceased native officers for Government claims of money, papers and accounts.

423. Suits, under Regulation III. 1794, Sections 18, 19, 20, Regulation XXXIII. 1803, Sections 5 and 6, by a native officer or his surety against the Collector to contest the demand for money, papers or accounts.

424. Suits, under Regulation VI. 1795, Section 6, Regulation XXVII. 1803, Section 6, by a Collector against his Tehseeldars for arrears of revenue.

425. Suits, under Regulation XIII. 1816, Section 14, by the Opium Agent against defaulting opium ryots for a return of advances, with interest and fines.

426. Suits, under Regulation XIII. 1816, Section 15, to revise arbitration awards respecting the delivery of too liquid opium.

427. Suits, under Regulation XIII. 1816, Section 16, by the ryot against the Opium Agent or his officers for the confiscation of alleged and adulterated opium.

428. Suits, under Regulation XIII. 1816, Section 18, against Opium Agents and their Native Officers of all descriptions, for acts done in their official capacity.

429. Suits, under Regulation XIII. 1816, Section 98, by an Opium Agent or any officer of Government against any person, or vice versâ, on any matter relative to the cultivation, provision, transportation, sale, purchase, or possession of Opium; not provided for by the Regulations.

430. Suits under Regulation X. 1819, Section 8, by Molungees, Beoparrees, &c. for return of advances with costs and damages against a Salt Agent in cases of compulsory engagements.

431. Suits under Regulation X. 1819, Sections 9 and 10, by such individuals against covenanted or uncovenanted European assistants and native officers of a Salt Agency for the same transgression. Suits against gomashtahs for the same transgression.

432. Suits under Regulation X. 1819, Section 13, against Salt Agents, their Assistants (covenanted or uncovenanted Europeans,) and native officers, for any breach of the Salt Regulation.

433. Suits under Regulation X. 1819, Section 21, Clause 9, against Agents, their Assistants, uncovenanted European and Native officers, for improper application of the rules for serving judicial processes on persons engaged in the Salt manufacture.

434. Suits under Regulation X. 1819, Section 73, for damages for the seizure of Salt by Native officers of Government (except Salt Officers,) not authorized to make such seizures, or by such, being authorized, when the salt was covered by a pass.

435. Suits under Regulation X. 1819, Section 74, against the officers of the Salt Agents and of Superintendents of Salt Chowkies for irregular seizure not duly reported.

436. Suits under Regulation X. 1819, Sections 80 and 81, for damages against officers seizing Salt alleged to be adulterated, to reverse the Magistrate's award for confiscation.

437. Suits under Regulation X. 1819, Section 82, for damages against the officers of Government for improper seizures of Salt alleged to be adulterated.

438. Suits under Regulation X. 1819, Section 82, between Salt Agents, Superintendents of Chowkies, or any officer of Government, and any persons or any matter relative to the manufacture, provision, transportation, sale, purchase or possession of Salt, not provided for by Regulation X. of 1819.

439. Suits under Regulation XXXV. 1793, Sections 3 and 22, Regulation II. 1812, Section 20, Regulation XIV. 1818, Section 2, Regulation XLV. 1803, Sections 25 and 27, against Treasury Native Officers for refusing to receive legal tenders.

440. Suits under Regulation XXXV. 1793, Section 23, Regulation XLV. 1803, Section 28, for the fining and dismissal of such Native Officers for receiving improper coin.

441. Suits under Regulation XXXV. 1793, Section 28, Regulation XLV. 1803. Section 52, Regulation II. 1812, Section 16, for damages against Collectors, Salt Agents, Mint and Assay Masters and their respective officers for any breach of the coinage Regulations.

442. Suits under Regulation XLV. 1803, Section 50, for dismissal and damages against public officers of Government and individuals for refusing certain legal tenders mentioned in Regulation XLV. 1803, Section 50.

443. Suits under Regulation I. 1799, Section 5, for damages against Police officers, or informers of illegal seizures in reference to the Sylhet Chunam trade.

444. Suits under Regulation I. 1799, Section 5, against Government to reverse the Magistrate's order of confiscation of alleged contraband articles mentioned in Regulation I. 1799, Section 6.

445. Suits under Regulation II. 1800, Section 11, for damages against the Stone Quarry officers and others for illegal seizures.

446. Suits under Regulation II. 1800, Section 12, against the Collector to reverse his orders of confiscation.

447. Suits under Regulation I. 1824, Sections 6 and 7, by claimants against Government and the arbitrators for compensation or damages in reference to Lands required for public purposes and Salt manufacture.

448. Suits under Regulation I. 1824, Section 12, by proprietors against Government for the repossession of their lands became unfit for the purposes of the Salt manufacture.

449. Suits under Regulation VIII. 1824, Section 14, against the Commissioner of Revenue, and Supervisor of river navigation and his people for official acts under this Regulation.

SECT. XXXIX.

Transfer of Suits.

450. It is hereby enacted, that it shall be lawful for each of the Courts of Sudder Dewanny Adawlut, within the Territories subject to the Presidency of Fort William in Bengal, to direct by an order authenticated by the official signature of the Register of such Court of Sudder Dewanny Adawlut, that the cognizance of any Original Suit, or of any Appeal which may be brought before any Zillah or City Court, subordinate to such Court of Sudder Dewanny Adawlut, shall be transferred to any other Zillah or City Court, subordinate to the same Court of Sudder Dewanny Adawlut.—*Act* III. 1837, *Sect.* 1.

451. Provided always, that whenever either of the said Courts of Sudder Dewanny Adawlut shall, in the exercise of the power given by the preceding Clause, direct the transfer of the cognizance of any suit, such Court of Sudder Dewanny Adawlut, shall cause the reasons for such transfer, to be recorded on its proceedings.—*Act* III. 1837, *Sect.* 2.

452. All suits within the competency of a Moonsiff to decide under the foregoing provisions, shall ordinarily be instituted in the Moonsiff's Courts. Provided nevertheless that it shall be competent to a Zillah or City Judge to receive such suits, and to try them himself, or to refer them for trial to any other Court subordinate to his authority, whenever he may see sufficient reason for so doing.—*Reg.* V. 1831, *Sect.* 7.

453. In reply to the 2nd paragraph of the Judge's letter, the Court propose to inform him that as the object of Government in the late arrangement was, that cases not exceeding 300 Rupees in amount should be decided by officers receiving a salary of 150 Rupees a month, and near to the homes of the parties, the general practice of referring such suits to Sudder Ameens must be considered objectionable, especially as the establishment of Moonsiffs was framed so as to admit of all such cases being tried by them, and no such assistance from the Sudder Ameens ought to be required. Section 47, Regulation XXIII. 1814, however, being still in force, such cases may on special reasons, to be assigned by the Judge in each case, be referred to Sudder Ameens or Principal Sudder Ameens.—*Con. No.* 833, *West. C. 27th Sept. Cal. C.* 18*th Oct.* 1833.

454. Doubts having been entertained whether, under the provisions of Section 7, Regulation V. of 1831, a Zillah or City Judge can, of his own authority, transfer cases from the file of the Moonsiff, by whom they may be properly cognizable, to that of another officer of the same or a superior grade, the Court have determined that he is competent to make such transfer, whenever he may see good and sufficient reason for so doing. To enable the Court, however, to maintain an efficient check on the proceedings of the subordinate Courts in this respect, the Zillah and City Judges are required, whenever they may deem it proper to transfer any number of cases exceeding 15, from the file of one officer to another, immediately to report the same for the information of the Court. All such transfer should, of course, be duly entered in the column of remarks in statement No. 1, Part. 1, in the memorandum marked B.—*Cir. Ord. Cal. C. 7th Dec. West. C.* 21*st Dec.* 1838.

SECT. XL.

Jurisdiction of the Civil Courts in regard to Lands under Settlement by the Revenue authorities.

455. Any suit brought before any Court of Justice to set aside a decision made in conformity with the above rules [given below within crotchets] shall be non-suited with costs.—*Reg.* 9, 1833, *Sect.* 9.

[In addition to Section 33, Regulation 7, of 1822, it is hereby enacted, that whenever any judicial question may be depending before a Collector, or other Officer employed in making Settlements under the provisions of Regulation 7, of 1822, in which the interests of justice may, in the opinion of such Officer, require that the case be decided by arbitration, it shall be lawful for him to fix, under the instructions with which he may be furnished by the Superior Revenue Authorities, a period within which the parties must produce the award.—*Reg.* 9, 1833, *Sect.* 5.

In that case, if the parties shall refuse or neglect to produce such award within the term limited, it shall be lawful for the Collector, or other Officer, to summon a Punchayut, to be composed of three or five impartial and otherwise competent persons, of good repute, for the trial of the matter at issue.—*Reg.* 9, 1833, *Sect.* 6.

After duly considering the statements and evidence offered by the parties, or in case of the default or recusance of either, the statements and evidence produced by the party in attendance, the Punchayut shall declare their opinions, and judgment shall be recorded according to the sentence of the majority. The Superior Revenue Authorities will, from time to time, issue such rules of practice for the guidance of the Officers employed on this duty, or the Punchayuts, as they may consider necessary.—*Reg.* 9, 1833, *Sect.* 7.

No appeal shall be allowed from such decisions, which shall be immediately executed and maintained, unless the Commissioner, subject to the control of the Sudder Board of Revenue, should think proper, for any special reason, to direct that the case shall be submitted to another Punchayut for decision.]—*Reg.* 9, 1833, *Sect.* 8.

456. Any such suit instituted in a Court of Justice by a Zemindar, Farmer, or other Landholder, who has not conformed to the above rule, [described below within crotchets] shall be non-suited with costs; and should he proceed to oust a ryot or other tenant from the land occupied by him, or distrain his property, he shall be liable to damages on account of such illegal acts, to such amount as the Court awarding the restitution of such land or property may deem adequate.—*Reg.* 9, 1833, *Sect.* 15.

[It is further enacted, that the village accounts, which are required to be kept in such manner and form as has heretofore been the custom, or in such other mode as may hereafter be prescribed by the Boards of Revenue, shall be prepared in duplicate sets: one for deposit in the office of Putwarree, and one for deposit in the office of Collector of the District in which the respective estates or tenures may be situated, and wherever the office of a Canoongoe may be established, a third copy shall be prepared and deposited in that office.—*Reg.* 9, 1833, *Sect.* 12.

The several accounts required for deposit in the Purgunnah and Zillah Revenue Offices, as above stated, instead of being delivered at the expiration of every six months, as prescribed by the rule at present in force, shall be furnished in such mode and at such periods as the Boards may direct. They shall be open to the inspection of every person concerned, desirous of examining them.—*Reg.* 9, 1833, *Sect.* 13.

Any Zemindar, Farmer, or other description of Landholder, who, after the promulgation of this Regulation, may refuse or neglect to conform to the above rule, shall be deemed incompetent to oust any ryot or other tenant from the land occupied by him for non-performance of the conditions of his tenure or lease, or on any other pretext, or to distrain the property of any ryot or tenant, or sue him in any Court of Justice for an arrear of rent, or the breach of any agreement that may have been contracted by him.]—*Reg.* 9, 1833, *Sect.* 14.

457. Para. 4. The first reference formed the subject of the letter of the Western Court, No. 33, dated 4th December, 1835. The question mooted for opinion was as follows: "A suit is instituted regarding a boundary dispute between two villages, and an ameen is deputed to make local enquiries. Before the decision is given, the Collector decides the disputed boundary: can the Court interfere in this decision; or does it bar any investigation of the merits of the case?" The two Courts concurrently ruled* that under the circumstances stated, there was nothing which should operate to interrupt the progress of the suit, or prevent its taking its course.—*Con. No.* 1128.

458. Para. 5. The second reference was that of the Agra Court's letter, No. 41, dated 11th December, 1835. It arose out of a collision of jurisdiction between the Judge of Goruckpore and the settlement officer appointed under the provisions of Regulation IX. 1833, in certain parts of that district. In this instance it was held by both Courts,† that it was not competent to the settlement officer to interfere with regard to awards of Court given previously to the period of his appointment, unless by order of the Court, or with the consent of the parties.—*Con. No.* 1128.

459. Para. 6. The third case was forwarded for the opinion of this Court with the letter of the Western Court, No. 1075, dated 16th December, 1836. The reference of the Judge of Ghazeepore was to the following effect:—"A case of disputed boundary between two contiguous estates under settlement is litigating in the Moonsiff's Court, and still undecided, when the settlement officer proceeds under the authority vested in him by Sections 6 and 7, Regulation IX. 1833, to appoint a punchayut by drawing lots. In the mean time the Moonsiff gives a decree in favour of one party, and the arbitrators base their award on the said decree, acting upon which the Collector marks off his boundary, and concludes his settlement. Such being the case, is it competent to the Judge to entertain the question in appeal from the Moonsiff's decision, with the chance of course of reversing the arbitration award, or is he precluded from interference by Section 9, Regulation IX. 1833?" The Western Court proposed to reply that there was nothing in the explanation to operate to prevent the appeal taking its course.

Para. 7. In this opinion the Calcutta Court, did not originally concur. They observed that the award of the punchayut, and the decision of the Collector thereon, being subsequent to the date of the Moonsiff's decree, the award could not be affected by any order the Judge might pass on the trial of the appeal: and that the appeal being in fact a suit brought to set aside the Collector's decision must be non-suited with costs under the rule contained in Section 9, Regulation 9, 1833.

Para. 8. The Western Court in their letter, No. 1105, dated 15th September last, requested that this Court would re-consider the reference. They forwarded further correspondence on the subject of the particular case previously referred, and of other similar cases. They entered at large into the consideration of the subject: and in the 3d paragraph of their letter observed as follows:—

"The following general questions appear to arise out of the present correspondence, which it seems desirable to determine for the future guidance of the judicial and revenue officers, and with a view to define the jurisdiction to be exercised by those authorities respectively in cases of the nature of those under reference.

* Calcutta Court's letter, No. 51, dated 2d January, 1836.

† Calcutta Court's letter, No. 95, dated 8th January, 1836.

‡ Calcutta Court's letter, No. 261, dated 27th January, 1837.

460. 1. Is it competent to a revenue officer, engaged in making settlements under the provisions of Regulation IX. 1833, or any other enactment, to interfere in regard to any case pending before any Court of Civil judicature at the date of settlement, either as an original suit or in appeal?

461. 2. Is it competent to such officer to interfere, under the provisions of the abovementioned regulations, in regard to any case which may have already been judicially determined by a Court of Civil judicature, either as an original suit or in appeal?

462. 3.—Does any limitation of time exist under the regulations, in regard to the cognizance by the revenue officers of disputed private claims brought before them under the provisions of Regulation IX. 1833; or is it competent to those officers to take cognizance of all cases of that nature without reference to the date of the cause of action, which at the time of settlement may not be depending before any Court of Civil judicature, or which may not have already been judicially determined by a Court of competent jurisdiction?"

Para. 9. The Western Court were of opinion that it was not competent to the revenue officers to exercise the powers described in the first question, (460) unless the parties should themselves apply by petition for the removal of their cause to the Court of the settlement officer, with a view to its being decided under the provisions of Section 5 to 8, Regulation IX. 1833.

The Court were further of opinion that the second question (461) must also be determined in the negative, unless the interfernece took place by order of the Court, or with the consent of the parties.

In regard to the third question, (462) the Western Court ruled that no case could be tried by the revenue officers, in which the cause of action may have arisen more than one year previous to the complaint, and that only such cases could be taken up by them as regards the extent of interest of parties in possession, and the decision of which was necessary to the due allotment of the Government jumma, leaving all old and extraneous claims to the decision of the Courts: such opinion being in conformity with instructions issued by the Sudder Board of Revenue to the subordinate revenue authorities.

463. Par. 10. On a re-consideration of the whole subject the Calcutta Court concurred in the above opinions as expressed in their letter to the Western Court, No. 3444 of the 3d November last.—*Con. No.* 1128.

SECT. XLI.

The Nazim of Bengal.

464. In complaints brought before any Zillah or City Court in which it shall appear either by the application of the Nazim, or the representation of the defendant, at or before the time of giving in his or her answer, or by the petition of the complainant, that both parties are servants or relations of his Excellency, or the widows or female descendants of the former Nazims of Bengal, the parties are to be referred for justice to the Nazim, or to any person whom he may appoint to dispense it. Upon a complaint being preferred against any servant or servants of his Excellency by persons of a different description, the Court in which the complaint may be instituted, is either to refer it to his Excellency, or to hear it in the ordinary manner, according to its discretion, taking care at all times, and in all matters, to pay every proper attention to the dignity and long established rights of the Nabob. Provided however, that in all cases in which either the plaintiff or defendant shall prefer the jurisdiction of the Court to that of the Nazim, the Judge is to try and determine the suit in the same manner as if neither of the parties had been persons of the description specified in this Section.—*Reg.* XVI. 1793, *Sect.* 10.

465. It shall be competent to the Agent to the Governor General at Moorshedabad, or other Officer, however denominated, exercising for the time being the controul and superintendance of the affairs of the Nizamut on the part of the Governor General in Council to institute suits in the Courts of Civil Judicature on the part of his highness the Nazim of Bengal, and to conduct them as Plaintiff or Appellant in such manner as may appear proper.—*Reg.* XIX. 1825, *Sect.* 2.

466. In like manner, should any suit be instituted in any Court of Civil Judicature against His Highness the Nazim of Bengal, the ordinary notice shall be issued upon the Agent to the Governor General, or other officer aforesaid, who shall conduct the defence on the part of His Highness.—*Reg.* XIX. 1825, *Sect.* 3.

467. Provided always, that security shall not be required from, nor shall attachment in any case issue against His Highness, or against the Agent to the Governor General, or other officer aforesaid; but should the Court require the payment of any costs, damages, or other sums of money, or the delivery of any lands, and after order duly made and served on the Agent, any unreasonable delay should arise, it shall be competent to the Court to transmit a copy and translation of the decree or order to the Secretary to Government in the Persian Department, when the Governor General in Council will issue such orders as may be necessary for the discharge of the amount due. —*Reg.* XIX. 1825, *Sect.* 4.

468. Suits under Regulation XIX. 1825, in which the Governor General's Agent is plaintiff or defendant on the part of the Nazim of Bengal, are to be received and decided by the Zillah Judge.—*Govt. Ord. No.* 2. 15*th Jan.* 1834,

469. Suits under Regulation XVI. 1793, Section 10, in which both parties are servants or relations of the Nazim of Bengal, or the widows or female descendants of the former Nazims, or in which such persons are defendants only, must be preferred to the Judge as heretofore, provided that the Judge shall be competent to refer for decision to Principal Sudder Ameens or Sudder Ameens any suits of this nature which he may be himself authorized to decide under that Section.—*Govt. Ord.* 15*th Jan.* 1834, *No.* 1.

SECT. XLII.

The Nawaub of Furruckabad.

470. The following article, being the sixth article of a treaty concluded with the Nawaub of Furruckabad, on the 4th of June, 1802, is hereby enacted into a rule, for the guidance of the Zillah Court of Furruckabad.

"Article sixth. The authority of the Court of Adawlut shall not extend to the "person of the Nawaub; but as his connections and dependents are undefined, and "as it is the object of the British Government to introduce a fair and impartial admi- "nistration of justice, throughout the province of Furruckabad; it is agreed, that what- "ever complaint may be preferred against any of the Nawaub's dependants, shall in the "first instance be referred to the Nawaub; and in the event of the complainant not re- "ceiving speedy justice, or being dissatisfied with the Nawaub's decision, the complaint "shall be decided in the Adawlut."—*Reg.* II. 1803, *Sect.* 8.

471. It must remain with the Judge, on the showing of the plaintiff, to determine whether the delay in the decision of the case has been such as to authorize his receiving the suit on the ground that the plaintiff has not received speedy justice.—*Con. No.* 843, *West. C. 8th Nov. Cal. C. 29th Nov.* 1833, *Quest.* 1.

472. The decisions passed by the Nabob should be enforced by himself, by means of the influence which he is supposed to possess over his own dependants. The Courts are neither called on, nor authorized to aid in their execution, nor is the Nabob himself vested with any special authority with this view by the Regulations.—*Con. No.* 843, *West. C. 8th Nov. Cal. C. 29th Nov.* 1833, *Quest.* 2 and 5.

473. The Nabob has no authority to receive or act on petitions of plaint except on reference from the Judge of the Zillah Court. This is plainly required by the terms of the Regulation; all decisions which may have been passed by the Nabob without reference from the Court, are consequently null and void.—*Con. No.* 843, *West. C. 8th Nov. Cal. C. 29th Nov.* 1833, *Quest.* 3.

474. A defendant being dissatisfied with the decision of the Nabob, has no right of appeal; as he is necessarily a dependant of the Nabob, the Regulation appears to consider that in becoming his dependant, he has voluntarily subjected himself to his authority in civil matters.—*Con. No.* 843, *West. C. 8th Nov. Cal. C. 29th Nov.* 1833, *Quest.* 4.

475. On an enquiry from the Civil Court. 1. Were the provisions of the treaty concluded with Nazir Jung, the Nawaub of Furruckabad, on the 4th June, 1802, declared to extend to the successors of that chieftain? 2. If they were, how should the Courts proceed during the minority of the present Nawaub, Shoukut Jung, in cases of suits instituted against any of his dependants; —The Sudder Dewanny Adawlut, on the 26th May following, gave it as their opinion, in reply to the 1st question, that the terms of the treaty concluded with the late Nawaub Nazir Jung must be considered to extend to his successor Shoukut Jung, the present Nawaub of Furuckabad;" and in reply to the 2nd question, "that all suits properly referrible to him, (the Nawaub,) should be referred, during his minority, to his guardian or principal manager."—*Con. No.* 162, *26th May*, 1814.

476. Adverting to Section 8, Regulation II. 1803, the Judge of Furruckabad requested the favour of instructions from the Court in the following case.—A suit has been filed, Nawaub Hussen Alli Khan *versus* Chote Beghum, (plaint, 2557-5-4, rent of Jagheer) in which the defendant pleaded on the filing of the suit that she was one of the Nawaub's dependants, (Mootuwussil being the term in use here), and the case was ordered as usual to be sent to the Nawaub for decision. The plaintiff however gave in a suwal stating that the Nawaub being a minor, all buisness was transacted by his guardian Nawaub Ahmed Yar Khan, to whom the defendant in this case is related, and praying that the case may be retained in the Zillah Court.—The Court in reply stated, "The circumstance of the Nawaub being a minor will not prevent the reference of the case in the usual manner: the decision will of course be given by the guardian of the Nawaub, instead of the Nawaub himself.—*Con. No.* 785, *Calcutta Court*, 31*st May*. 1833.

477. It is hereby enacted, that from the first day of June, 1836, if the holder of a decree passed by the Nuwaub of Furruckabad under the provision of Section 8, of Regulation II. of 1803, shall be unable to obtain execution of the said decree by the Nuwaub for a period of six weeks, (which period of six weeks shall be calculated from the said 1st day of June, if the decree were passed before the first day of June, and from the time of passing the decree, if it were passed on or after the said 1st day of June,) the said holder shall be at liberty to sue out execution of the said decree in the Zillah Court of Furruckabad, and the Judge of that Court, on application made to that effect, shall execute the decree in the same manner in which a decree of the said Zillah Court is executed-—*Act* XII. 1836.

478. Suits Sunder Regulation II. 1803, Section 8, in which both parties are servants or relations of the Nabob of Furruckabad, or the widows or female descendants of the former Nawaub, or in which such persons are defendants only, must be preferred to the Judge as heretofore, provided that the Judge shall be competent to refer for decision to Principal Sudder Ameens or Sudder Ameens any suits of this nature which he may be himself authorized to decide under that Section.—*Govt. Ord. 15th Jan.* 1834, *No.* 1.

SECT. XLIII.

Special Rules regarding the Rajah of Benares.

479. On a written complaint being preferred in the manner specified in Section 5, Regulation IV, 1793, either against the Rajah of Benares, or against any of the principal Mehajuns of the City of Benares, being such as are known under the denomination of nowputty or against any of the baboos, (being persons of the raja's blood and family,) the security required from defendants in the said section, shall not be demanded of them, but the Court is merely to issue a notice to such defendants, containing a short account of the nature of the demand, and fixing a day for him or them to appear either in person, or by vakeel duly authorized to answer to the claim; and in case of his or their failing to appear as required, or to conform to all the subsequent established process in the cause, such defendant or defendants, shall forfeit the honorary privilege hereby reserved to them, and be dealt with in all respects as other unprivileged defendants. This privilege, however, is to be construed to extend only to the cases above specified, in which such persons may be defendants in the City Court, or the Zillah Courts, and to suits which may be directed to be tried in the first instance in the Provincial Court of Appeal, or the Sudder Dewanny Adawlut, pursuant to orders from the Governor General in Council, or in the Provincial Court of Appeal, in conformity to directions from the Sudder Dewanny Adawlut, and not to any cases of appeal, in which, whether the appeal be lodged in the Provincial Court of Appeal, or the Sudder Dewanny Adawlut, the said persons are to give the same securities, as other persons concerned in appeals in those Courts.—*Reg.* VIII. 1795, *Sect.* 10.

480. In the event of any complaints being preferred to the City Court, or to any Zillah Court, or to the Provincial Court of Appeal, relative to undue exactions of revenue, or any breach of agreement in respect to pottahs, or the resumption of Kishnarpun, or other description of lands exempted from the payment of revenue, in the jaghire mehauls of Budhoee, or of Kera Mungrore, in the rajah's hereditery Zemindary of Gungapore; the complaints are not be taken cognizance of in the Courts of justice, but the parties are to be desired to make application to the rajah, or to his dewan; and in case of their not obtaining justice, they are to have recourse to the Collector, who will proceed to bring such causes to a just and equitable termination, in the manner stated in the under specified article of an agreement, concluded by the Resident with rajah Mahipnarain, under date the 27th of October 1794. An option however is reserved to the persons deeming themselves injured, to prefer their applications for redress in the first instance to the Collector, who in all cases, by reference to and communication with the rajah, and his officers, is to cause substantial justice to be rendered to the parties.—*Reg.* XV. 1795, *Sect.* 3, *Cl.* 1.

481. Article third, of an agreement concluded by the resident at Benares with Rajah Mahipnarain, under date the 27th October 1794. "In case of complaints relative to revenue causes, or charity ground, &c. being prefered to the Huzoor, (i. e. the English Government,) by any parties residing within the jaghire, and ultumgah, &c. the personal or private lands of Rajah Mahipnarain Sing, the enquiry thereinto, shall be made, in like manner as such cases were amicably conducted between Mr. Duncan and the Rajah; that is, that since the gentleman holding the station of Collector, will

have more concern and connection with such matters, than the other gentlemen, the rule shall be, that with the privity and ascertainment of the said Collector, (who is to have regard to the honour, and dignity of the said Rajah,) such causes are to be settled through the channel of the said Rajah, or of the officers of the said Rajah's Cutcherry; it being at the same time understood, and provided, that as it is a duty incumbent on the Honourable Company's Government, to distribute and ensure the attainment of justice to all the inhabitants of Benares, should it so happen, that after referring such complaints to the Rajah, or to his officers in the Cutcherry, the contentment of the parties complaining and aggrieved, shall not be obtained, the Rajah shall, relative to the adjustment of such causes, listen to, and approve of, the suggestions and advice of the Collector, in like manner as hath been practised in the time of Mr. Duncan; and it is also incumbent on the said Collector, in all proper and just cases, to show the utmost attention possible to the Rajah's accommodation, and to hold in view the maintenance of his honour and dignity, such being entirely consistent with the wishes of Government; and if, (which God forbid,) any such subject should arise, as cannot be settled between the said Collector, and the Rajah aforesaid, the decision in such case, shall depend on the Governor General in Council."—*Reg.* 15, 1795, *Sect.* 3, *Cl.* 2.

482. Regulation 15, 1795, is hereby declared subject to the following modifications.—*Reg.* 7, 1828, *Sect.* 2.

483. The Superintendence of the Mehauls abovementioned shall be vested in such Officer as the Governor General in Council may, from time to time, by an order in Council, appoint.—*Reg.* 7, 1828, *Sect.* 3.

484. In order to secure for the inhabitants of these Mehauls, the administration of Civil justice on the principles in force throughout the rest of the province; a Native Commissioner shall be maintained by the Rajah in each of the Pergunnahs referred to in Regulation 15, 1795, for the purpose of taking cognizance, in the first instance, of the revenue causes hereafter specified.—*Reg.* 7, 1828, *Sect.* 16.

485. The nomination of individuals to the office of Native Commissioner will be made by the Rajah, but previous to such appointments taking effect, he shall communicate what information he may have obtained regarding the age, character, and past employment of the individuals in question to the Superintendent, who shall withhold his concurrence in cases of notorious bad character or incapacity, having regard, however, as far as possible, in the mode of doing so, to the Rajah's honour and dignity.—*Reg.* 7, 1828, *Sect.* 17.

486. No Native Commissioner appointed under this Regulation shall be removed from office without sufficient cause, and in all cases of removal, the Rajah shall act in concert with, and by the advice of, the Superintendent.—*Reg.* 7, 1828, *Sect.* 18.

487. The Native Commissioners shall be liable to a criminal prosecution for corruption, extortion, or other gross misdemeanor, and on conviction before the Court of Circuit, shall be subject to fine and imprisonment, proportionate to the nature and circumstances of the case.—*Reg.* 7, 1828, *Sect.* 19.

488. Persons invested with the powers of a Native Commissioner, under this Regulation, are authorized to receive, try, and determine, all suits preferred to them, against any inhabitant of their respective jurisdictions, relative to land of every descrip-

tion, or the rent, revenue, or produce thereof situated therein, provided the cause of action shall have arisen within the period of twelve years previously to the institution of suits.—*Reg.* 7, 1828, *Sect.* 20.

489. Held, with advertence to the terms of Section 20, Regulation 7, 1828, that there is nothing to bar the cognizance under it, by the Native Commissioners appointed according to that Regulation, of suits for the rent, revenue, or produce of Lakhiraj lands.—*Con. No.* 1224, *West. C.* 14*th June*, *Cal. C.* 12*th July*, 1839.

490. In receiving, trying and determining such cases, the Native Commissioners shall be guided by the rules contained in Regulation 23, 1814, and in points not expressly provided for in that Regulation, they shall observe as nearly as may be practicable the rules prescribed for the guidance of the Zillah and City Courts, in the trial and decision of Civil Suits.—*Reg.* 7, 1828, *Sect.* 21.

491. The Rule, which prohibits Native Judicial Officers from taking cognizance of cases, in which a British subject, or an European foreigner, or an American, may be a party, shall not be held applicable to the Native Commissioners, appointed under this Regulation.—*Reg.* 7, 1828, *Sect.* 22.

492. The decision of the Native Commissioners shall be executed by themselves, under the rules prescribed in the general Regulations for the execution of decrees, provided however that, if the case be appealed, the Commissioner shall be guided by such instructions relative thereto, as he may receive from the Superintendent.—*Reg.* 7, 1828, *Sect.* 23.

493. The proceedings of the Native Commissioners shall be subject to the revision of the Superintendent, who, in the event of an appeal being preferred to him within the period of six months from the date of any such decision, will call for the papers, and after directing such further investigation to be held, as he may Judge necessary, will confirm, modify or annul the order or decision of the Native Commissioner, as may appear proper; provided always, that it shall be competent to the Governor General in Council to supersede the order of the Superintendent, on being referred to by either party for that purpose.—*Reg.* 7, 1828, *Sect.* 24.

494. The penalties prescribed by the Regulations for resistance of process in Revenue or Judicial matters, are hereby declared applicable to all cases of the same nature, arising out of the process provided for by this enactment.—*Reg.* 7, 1828, *Sect.* 25.

495. It is hereby further declared and enacted, that, except when otherwise directed by the foregoing provisions, the Revenue and Judicial administration of the Mehauls herein referred to, shall be regulated by the principles and spirit of the existing Regulations, and where those may not be applicable, by equity and good conscience.—*Reg.* 7, 1828, *Sect.* 26.

SECT. XLIV.

Independent Chiefs.

496. *Extract from a letter from the Honourable the Court of Directors, dated the 27th May*, 1835.—*Par.* 36. With regard to the interference, whether of our tribunals, or of our political officers, in Civil cases against subjects of independent chiefs, you have adopted the sound principle,

that the complainant must be left to seek justice from the legitimate superior of the party against whom his claim is preferred, unless that party be resident or possess property within our territories. It was no less proper to interdict our officers from taking cognizance of Civil claims preferred against independent chiefs, whether by their own subjects or by others, or of cases of any description between independent chiefs and persons residing or possessing property in their dominions. Interference may sometimes be unavoidable, in consequence of general mal administration; but it seldom can be justified in individual cases, unless where the sufferer is entitled to our protection by some positive engagement. —*Cir. Ord. 4th March*, 1836.

SECT. XLV.

Suits in which Sovereign Native Princes are interested.

497. In cases, in which sovereign Native Princes, whether residing within the British territories or otherwise, shall have claims to prefer as individuals, to lands or other things, the cognizance of which is vested by the general constitution of the country in the Courts of Civil Judicature, it shall be competent to the Governor General in Council, to order a suit to be instituted, through the medium of the public officers, for the recovery of the lands or other things which may be so claimed, in the Court, which on the principles of the general Regulations is authorized to enquire into, and decide upon, the right to the disputed property.—*Reg.* 4, 1812, *Sect.* 2, *Cl.* 1.

498. In like manner, should a suit be instituted in any of the established Courts of Civil Judicature, by any Zemindar or other person for the recovery of lands or other things, in the occupancy of any Native Prince, whom it would be improper to require to defend the action himself, it shall be competent to the Governor General in Council to order such suit to be defended by the public officers.—*Reg.* 4, 1812, *Sect.* 2, *Cl.* 2.

499. Suits which may be instituted or defended under the preceding Section, shall be conducted by the Collectors of the land revenue, aided by the vakeels of Government at the City, Zillah, and Provincial Courts, and at the Sudder Dewanny Adawlut, under the directions of the Board of Revenue in the provinces of Bengal, Behar, and Orissa; and of the Board of Commissioners in the Ceded and Conquered Provinces, and in the province of Benares; which Boards will of course on all such occasions be furnished by the Governor General in Council with such information and instructions as may appear necessary to enable them duly to superintend the conduct of the prosecution or of the defence.—*Reg.* 4, 1812, *Sect.* 3.

500. In all original suits and appeals, in which Government may be a party under the provisions of the present Regulation, the Court which may pass judgment, shall, in addition to the copies of the decrees required to be delivered to the parties, transmit a summary of the decree with as little delay as possible, in the English language, to the Secretary to Government in the Judicial Department, for the information of the Governor General in Council, who on receipt of such summary will issue any orders to the Board of Revenue or Board of Commissioners, which the case may appear to require, or will cause the necessary notification to be made to the person on whose behalf the cause shall have been prosecuted or defended, of the final judgment given on the action.—*Reg.* 4, 1812, *Sect.* 4.

501. Suits under Regulation 4, 1812, instituted or defended by the officers of Government on the part of Sovereign Native Princes will be received and decided by the Covenanted Judge.—*Govt. Ord. No.* 3, 15*th Jan.* 1834.

SECT. XLVI.

Persons not connected with the Courts, convicted of bribery and extortion.

502. If a Native servant, or dependant, of any Judge of a civil or criminal Court of Judicature, not being a public officer attached to the Court, shall extort, or receive, directly or indirectly, any money or other valuable consideration, under any pretence whatever, from any party or person, on account of any suit, to be instituted, or that may be depending, or have been decided in the Court, he shall be committed as for a contempt of Court, and be punished by a fine equal to treble the sum of money extorted or received, or by imprisonment, or corporal punishment, at the discretion of the Court; and the Judge is required to discharge such servant or dependant, and never to employ him, directly or indirectly, in his public or private capacity. If the offender shall not appeal against the decree within the limited time, or if an appeal shall not lie from the decision, or, if the decision shall be confirmed in appeal, the Court by which the final decree may be passed, shall transmit a copy of it to the Governor General in Council, who, in addition to the penalties or punishments specified in the decree, will, if there shall appear to him grounds for so doing, declare the offender incapable of serving Government in any capacity.—*Reg.* 13, 1793, *Sect.* 11.

503. All suits under Regulation 13, 1793, Section 11, Regulation 12, 1803, Section 14, are to be received by the Principal Sudder Ameen, Sudder Ameen or Moonsiffs as they may be cognizable by one or other. A suit so received to be immediately forwarded to the Judge, who will use his discretion as to trying it himself, or referring it to any other Principal Sudder Ameen, Sudder Ameen or Moonsiff, by whom it may be cognizable provided that in all such cases a Special or Regular Appeal as the original case may be decided by the Judge, or by any subordinate Court, shall lie to the Sudder Dewanny Adawlut. A Native servant or dependant of any Judge of Civil or Criminal Court not being a public officer attached to the Court, extorting or receiving directly or indirectly money or other valuable consideration from parties in suits instituted, pending or decided, shall be committed for a contempt of Court, and be punished by a fine equal to treble the sum of money extorted or received, or by imprisonment at the discretion of the Court.—*Govt. Ord. No.* 15.

504. The same rule applies to the servants of Uncovenanted Judges.—*Govt. Ord. No.* 16.

SECT. XLVII.

Minors.

505. The rule contained in Section 27, Regulation 10, 1793, which limits the minority of Hindoo and Mahomedan proprietors of estates paying revenue to Government, to the expiration of the fifteenth year, is hereby rescinded, and the minority of such proprietors is declared to extend to the end of the eighteenth year.—*Reg.* 26, 1793, *Sect.* 2.

506. The rule contained in the preceding Section, is to be considered to extend to proprietors of joint undivided estates, for the management of which a Serberakar or

CHAPTER II.

MINISTERIAL AND LAW OFFICERS AND VAKEELS OF THE COURTS—PAUPERS—STAMPS.

SECTION I.

Ministerial Officers of the Zillah and City Courts.

1. Nothing in this Regulation shall be construed to establish a claim of inheritance to any public office whatever; or to prevent the abolition of any such office, by order of the Governor General in Council, whenever he may judge it unnecessary to continue the same for the public service.—*Reg.* V. 1804, *Sect.* 24.

2. The final appointment and removal of the native ministerial officers and vakeels of the Court will rest with the Judge, subject to such orders as the Government or Sudder Dewanny Adawlut may see fit to issue.—*Cir. Ord. Cal. and West. C. 2nd March,* 1832.

3. In modification of that part of the second paragraph of my circular letter of the 2nd ultimo, which requires the Zillah and City Judges under Regulation V. 1831, to report for the Court's confirmation, the appointment and removal of native ministerial officers and vakeels, I am directed by the Court to inform you, that such report is not considered necessary; and that you are competent, of your own authority, to appoint and remove such officers and vakeels; subject however to the control of the Court, or Government, when either may see occasion to interfere.—*Cir. Ord. Cal. and West. C. 13th April,* 1832.

4. Whenever the Zillah or City Judges may see cause for the removal of any of their head native officers on the ground of misconduct, incapacity, or otherwise; they shall communicate to such officer the grounds upon which they may consider him undeserving of continuance in his station; and call upon him to state what he may have to offer in his defence.—*Reg.* V. 1804, *Sect.* 6.

5. In like manner whenever the Zillah and City Judges may see cause for the removal of any of the native officers therein referred to, [that is officers whose salary and other allowance may amount to 10 Rupees per mensem or upwards,] they shall communicate to such officer the grounds upon which they may consider him undeserving of continuation in his station, and call upon him to state what he may have to offer in his defence.—*Reg.* V. 1804, *Sect.* 16.

6. The several officers of Government in the Judicial department who are already restricted by their official oaths, or by the known declarations and orders of Government, from deriving any personal advantage whatever from their fixed establishments of native officers, are further hereby positively prohibited from making any alteration whatever in the distribution of the salaries of such officers, or in the number and designation of the several descriptions of native officers, which now compose, or may hereafter compose, their authorized establishments, without the express sanction of the Governor General in Council.—*Reg.* V. 1804, *Sect.* 23.

ceived at your office, for the sale of estates on account of arrears of revenue.—*Cir. Ord. Cal. C. 10th Aug. and West. C. 7th Sept.* 1838.

514. *Extract from a Letter from the Honourable the Court of Directors, dated 16th May, No. 31 of* 1838.—"You express an opinion that it must be considered the duty of every functionary, under Government, to take charge of public property, when required to do so. We trust that this opinion has been duly promulgated, for in the case which gave rise to our observations, all the officers at the station declined the responsibility of taking charge of certain public stores."—*Cir. Ord. 23d Nov.* 1838.

515. The Court having noticed the very careless manner in which the native names of men and places are occasionally written in English, direct me to call your attention to the subject, and to request that in your letters and statements you will adhere as closely as possible to the orthography of the original.—*Cir. Ord. 18th May,* 1832.

516. Ordered that instructions be issued to the proper officers for the introduction, as far as may be practicable, of the new system of weights into all branches of the departments under the control of the Civil Courts.—*Cir. Ord. West. C. 10th April, Cal. C. 1st May,* 1835.

517. His Excellency in Council has judged it proper to direct, that natives shall not be prevented from wearing their slippers at any place or upon any occasion, where, by custom already established, it has been usual to admit them with their slippers.—To guard against any recurrence of opposition to the practice, and prevent the dissatisfaction which must ever arise from the ill-judged and impolitic prohibition of any general and long established usage, his Excellency in Council has been further pleased to direct, that his orders be circulated to the Courts of justice, for their information and guidance. The Sudder Dewanny Adawlut have accordingly directed me to communicate them to your Court, and to desire that you will extend the communication to the several Courts within your division.—*Cir. Ord. 2nd Sept.* 1802.

518. Provision is made in the new rules about to be submitted to Government by the Committee for the revision of post office affairs, &c. for the franking of all letters bonâ fide on the public service relating to the business of their offices, by Sudder Ameens, and also for the franking of all such letters by Moonsiffs and all native judicial and revenue officers, when addressed to the European or native authorities with whom they may have to correspond on the public service, but only within their respective districts or divisions.—*Cir. Ord. Cal. C. 16th Dec.* 1836, *West. C. 20th Jan.* 1837.

519. A reference having been made to the Post Master General, in consequence of some despatches, containing the proceedings of the Magistrate in cases referred to the Nizamut Adawlut, having recently been much damaged; that officer has suggested the necessity of making up all despatches of consequence, under a double cover of wax cloth, during the rainy season: and it being obviously of importance to preserve from injury all original proceedings and other papers, requiring particular security, transmitted to the Courts of Sudder Dewanny Adawlut and Nizamut Adawlut, during the season abovementioned; I am directed to request, that you will be particularly careful to observe the above precaution in future. You are further requested to instruct the several Judges and Magistrates in your division, to observe the same rule, in forwarding any original proceedings to your Court or to the Nizamut Adawlut, during the rainy season.—*Cir. Ord. 9th Sept.* 1813.

520. The Courts of Sudder Dewanny and Nizamut Adawlut, having frequently observed that the records of proceedings of cases sent by the different Courts, during the rains, have been so damaged by the wet as to be illegible and useless, and that the wax-cloth used for packing the proceedings is not always of the best quality, I am directed by the Courts to request, that you will be careful to use the best wax-cloth procurable for the packing of all papers transmitted from your office, and that you will issue similar instructions to the several Judges and Magistrates under your jurisdiction.—*Cir. Ord. 19th Sept.* 1823.

521. The Court desire that you will be careful in having all parcels you may transmit by the Dawk Banghy enveloped in two or three folds of strong country paper and plain cloth. The Court recommend plain in preference to wax cloth, as there appears to be danger that the contents of the packages may be injured by the melting of the wax from the application of the hot dammer.—*Cir. Ord.* 21*st May*, 1824.

522. The Court further direct me to call your attention to the 4th paragraph of the Post Master General's letter, and to desire that you will conform to the suggestions contained therein, wherever the parcel to be transmitted may not exceed the weight specified.—*Cir. Ord.* 21*st May*, 1824.—*Letter of the Post Master General.* I suggest that in all practicable cases, paper parcels of proceedings be made up of 25 sicca weight, and sent on different days by the regular dawk, which will give them the best chance of escape from injury, as they will have the additional security of the wallet, and besides that, of travelling much more expeditiously.—*Cir. Ord.* 21*st May*, 1824.

523. I am directed to transmit, for your information and guidance, the accompanying extract from a letter under date the 13th instant, from the officiating Post Master General, written in reply to one addressed to him by order of the Court, on the subject of certain parcels having been received in this office open at the ends. You are requested to attend to the suggestion of the officiating Post Master General in despatching parcels by the regular Mail or Banghy post in future. *Extract from the Officiating Post Master General's letter.*—To prevent recurrences of this carelessness, I imagine it will only be necessary to call the attention of the District despatching officers to the subject instructing them to sew up the ends (of Banghy parcels) before sealing, for without this precaution, or without an outer tape tying, it cannot be expected that they will be able to bear the friction of the Mail conveyance for hundreds of miles. I shall address a circular to the several Post Masters, enjoining them to be careful not to receive parcels insecurely fastened, and I hope this will serve to obtain security.—*Cir. Ord.* 28*th Feb.* 1840.

Manager is required to be appointed by the proprietors by Section 23, Regulation VIII. 1793.—*Reg.* XXVI. 1793, *Sect.* 3.

507. Minors, and other disqualified landholders having guardians, as described in Section 22, shall not be sued but under the protection and joint name of their guardians.—*Reg.* X. 1793, *Sect.* 32, *Cl.* 1.

508. The opinion of the Sudder Court generally is, that the Serberakar, or Manager, should, in all cases affecting the estate, real or personal, of the minor, or disqualified landholder, both sue and defend in the Civil Court, under the instructions which he may receive from the Court of wards; and that, as the interests of Government cannot be ordinarily supposed to be concerned in such suits, he (the Serberakar) has no more right to command the aid of the Government pleader, than any other individual suitor, or defendent.—*Con. No.* 335, *2nd Feb.* 1821.

509. In the case of a minor, whose estate is not under the Court of Wards, the executor or guardian must, during the minority, stand in the place of the minor, and be subject to all the rules of suit and defence to which the minor himself would be subject were he not a minor.—*Con. No.* 335, *2nd Feb.* 1821.

SECT. XLVIII.

Miscellaneous.

510. Under instructions from the Government, I am desired by the Court to inform you, that the Honourable the Court of Directors have prohibited the creation of unauthorized funds in the public offices, through the means of fines, or from deductions, made from the pay of Establishments; and have directed that sums thus accruing should be carried to the credit of Government. —*Cir. Ord. 6th Aug.* 1841.

511. References and applications before transmitted to the Board of Revenue will be in future made to the Local Commissioners of Revenue and Circuit appointed under Regulation I. of 1829. —*Cir. Ord. Cal. C.* 13*th March,* 1829.

512. A question has arisen, whether advertisements for the public sale of lands, and other notifications, published by the Collectors, which are required by the Regulations to be affixed in the Court-room of the Zillah or City Dewanny Adawlut, should be so affixed, without any direct application to the Judge, the Regulations not containing any express provisions upon this point; and whether proclamations which the Zillah and City Judges and Magistrates may have occasion to publish in the Collector's Cutchery, should be transmitted for that purpose to the Collector?—The Court are of opinion, that all advertisements for public sales, or other notifications, issued by the Collectors, and intended to be affixed in the Court-room of the Zillah or City Dewanny Adawlut, should bear a superscription, under the signature of the Collector, requesting the Judge to cause the same to be read and affixed in the Court-room of the Dewanny Adawlut; that it should be enclosed in a cover addressed to the Judge; and should be delivered to the Judge (or in his absence to his register,) who on receiving it, should note and attest the date of receipt, and cause it to be immediately read and affixed in the Court-room, as requested.—The Court are likewise of opinion, that a similar mode of proceeding should be observed with respect to any proclamation which the Judges and their Registers, or the Magistrates and their Assistants, may have occasion to publish in the Cutcherries of the Collectors; that the proclamation in such cases should be enclosed in a cover addressed to the Collector, with a superscription under the signature of the Judge, Magistrate, Register, or Assistant, to the same effect as that above noticed; and that the Collector (or in his absence, his Assistant,) on receiving it, should note and attest the date of receipt, and cause it immediately to be read and affixed in his Cutcherry, as requested.—*Cir. Ord. 9th April,* 1817.

513. Under instructions from the Government I am directed by the Court to request, that you will take particular care that no delay occurs in the publication of the advertisements, re-

7. You will suspend in your Cutcherry, a list of the native officers on your establishment, specifying their names, official designation, and salary.—*Cir. Ord.* 21*st June*, 1815.

8. I am directed by the Court to request, that you will forward a return drawn up, agreeably to theann exed form, of the names of the Serishtadar, Paishkar and Nazir at present attached to your Court, with as little delay as may be practicable, and to intimate to you the desire of the Court that you will hereafter report, for their information, the removal or resignation of those officers, within ten days after the same may have taken place. You will also be pleased to report to the Court the names of any individuals who may be hereafter nominated to these offices, agreeably to the same form, and within the same period after the nomination may have occurred.

Return of the Names of the Serishtadar, Paishkar, and Nazir of the district of F.

Name of the officer.	Appointment held by him.	When nominated and by whom.	Age.	Number of years in the public Service.	Schedule of landed property possessed by him.	General Remarks as to qualifications, &c.
A. B.	Serishtadar.	In 1825, by Mr. C. D.	45	23	One Talook at a Jumma of 350 Rs. in Zillah E.	
	Paishkar.					
	Nazir.					

—*Cir. Ord.* 20*th Nov.* 1840.

9. The Serishtadars, or other head native officers, moonshees, mohurrers, and nazirs, of the civil and criminal Courts, previous to entering upon the execution of the duties of their offices, are to take and subscribe the following oath in open Court, before the Judge or Judges of the Court to which they may be attached.

"I, A. B. appointed to the office of Serishtadar (or other head officer, or moonshee, moohurrer, or nazir,) to the Dewanny Adawlut of the Zillah or City of ,) solemnly swear, that I will truly and faithfully perform the duties of the office to which I have been nominated, to the best of my knowledge and ability; that I will not receive, directly or indirectly, any present or nuzzer, in money or effects of any kind, from any party whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the Court; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive directly or indirectly, any present or nuzzer, in money or effects, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the Court; and that I will not derive, directly or indirectly, any advantages or emoluments from my office, excepting such as the orders of Government do or may authorize me to receive."—*Reg.* XII. 1793, *Sect.* 4.—*Ben. Reg.* XII. 1795.—*Ced. and Conq. Prov. Reg.* XII. 1803, *Sect.* 4.

10. Instead of the prescribed oath, which is required by the Regulations in force, the several native officers referred to in the above Clause, shall hereafter make and subscribe, in open Court, or in the established public office, before the Judges, or other European authorities to which they may be respectively subject, a solemn declaration to

the same effect with the form of oath heretofore prescribed, except that the word "declare" shall be substituted for "swear;" and that the declarer shall not be sworn thereto.—*Reg.* XVIII. 1817, *Sect.* 2, *Cl.* 2.

11. The Judges, or other European officers before whom such declarations are required to be made and subscribed, shall attest the same as publicly read and subscribed before them, in pursuance of the above Clause, and shall be careful to enforce a due observance of the rule therein contained, by the native officers appointed to act under them respectively.—*Reg.* XVIII. 1817, *Sect.* 2, *Cl.* 3.

12. With the modification contained in the preceding Section, the rules in force, which require that certain Native officers attached to the Civil and Criminal Courts of Judicature, and to other public offices, shall take and subscribe an , solemnly engaging to perform the duties of the office committed to them, faithfully and uprightly, according to the Regulations, are hereby declared to extend to the Native record-keepers and tehveeldars, or Native treasurers, of the Civil and Criminal Courts, though not specifically named in Section 4, Regulation XII. 1793, and Section 9, Regulation XII. 1803; as well as to all other Native officers of Government holding any situation of trust and responsibility in the public service.—*Reg.* XVIII. 1817, *Sect.* 3.

13. It is hereby further declared, that nothing in the present Regulation shall be construed to preclude the Governor General in Council, or the Courts of Sudder Dewanny Adawlut and Nizamut Adawlut, from ordering the removal of a Native officer, upon just and sufficient ground appearing for such order. Nor is any part of this Regulation meant to prevent the exercise of the general authority vested in the Courts of Sudder Dewanny Adawlut and Nizamut Adawlut by the Regulations in force.—*Reg.* VIII. 1809, *Sect.* 13.

14. *Extract from a Despatch from the Honourable the Court of Directors, under date the* 11*th February*, 1840. "We have on former occasions expressed our strong objection to the imposition of heavy fines upon Native Servants, as involving them in pecuniary difficulty, and inducing them to resort to improper practices for the purpose of indemnification. It appears to us that the preferable course is, when an Officer refuses to do that which his official duty requires of him, to transfer at once the office to a more obedient holder."—*Cir. Ord. 7th Aug.* 1840.

15. I am directed to refer you to the provisions of Section 3, Regulation VII. 1825, wherein you will find recognized the practice alluded to by you, of employing the Nazirs in the attachment and sale of property; but the Court are of opinion, that those officers are not entitled to receive any commission on the proceeds of such sales, the rule cited by you with regard to Moonsiffs, who are not, in the discharge of their ordinary functions, ministerial officers of the Courts, not being analogous to the case in point.—*Con. No.* 509, 29*th May*, 1829.

16. 1. The Court publish the following Rule, determined on by the Courts of Sudder Dewanny and Nizamut Adawlut of the Lower and Western Provinces in concert with the sanction of Government, for devolving on the Head Clerk of the Zillah Judge's establishment certain unimportant duties hitherto performed by the Judge, with a view to the relief of the latter Officer.

2. The Judges are empowered, at their discretion, to employ their Head Clerk in the following duties.

Attesting copies of decrees and other documents granted to parties on stampt or plain paper under the Judge's orders.

Attesting copies of proceedings sent to the local authorities and to other Districts under the Judge's orders.

Registering in English the Mooktyarnamahs, and preparing them for the Judge's attestation.

3. As a needful precaution against error and abuse, it is, at the same time, ordered that the Head Clerk, when entrusted with such duties at the discretion of the Judge, is never to attach his signature to any document without its correctness having been previously attested and certified by the Head Ministerial Native Officer of the Judge's Court.—*Cir. Ord. 25th Aug.* 1841.

SECT. II.

Purchase or possession of Landed Property by the Ministerial Officers of the Zillah and City Courts.

17. The Vice-President in Council doubts, whether the considerations which led to the adoption of the rule for precluding the native officers of the revenue department from purchasing lands at the public sales, can be considered applicable to the native officers of the judicial department: his Excellency in Council is not consequently prepared to extend that restriction to the latter class of officers.—He is at the same time satisfied of the expediency of guarding, as far as possible, against the exercise of undue influence in the management of lands required by them. With this view, his Excellency in Council has been pleased to resolve, that the native officers attached to the Provincial Courts of Appeal and Circuit, and to the cutcherries of the Zillah and City Judges and Magistrates, report, on receipt of the present orders, and again on the 1st January in each year, the lands both malgoozaree and lakheraj, which may be held by them respectively, in whatever part of the country such lands may be situated; and that the Provincial, Zillah, and City Judges furnish the Collectors of the districts, in which the lands may lie, with the information so obtained from their native officers.—*Cir. Ord. 25th July*, 1811, *Par.* 3.

18. With the view of better giving effect to the present orders of Government, the Vice-President in Council desires that the Collectors subject to your authority may be directed to inform the Provincial, Zillah, and City Courts, whenever it may come to their knowledge, that any of the officers attached to their Courts hold lands, which have not been duly reported.—*Cir. Ord. 25th July*, 1811, *Par.* 4.

19. It does not appear to Government to be necessary to establish any legislative provision with respect to cases of the above nature, as the native officers of the judicial department will, of course, be liable to dismission, should they in any instance fail to furnish the information required respecting lands held by them, or commit any abuse in the management of them.—*Cir. Ord. 25th July*, 1811, *Par.* 5.

20. The foregoing orders are to be considered applicable to the law officers, as well as the ministerial officers of the Courts of judicature.—*Cir. Ord. 25th July*, 1811, *Par.* 6.

21. A question having arisen with respect to the extent of the operation of the resolutions of Government, passed on the 9th ultimo, (*as above*) regarding lands held by the native officers attached to the civil and criminal Courts; I am directed by the Courts of Sudder Dewanny and Nizamut Adawlut to acquaint you, and to desire that you will acquaint the several Judges and Magistrates within your division, that the Court consider those resolutions, as intended to include all lands held by the native officers of the civil and criminal Courts, (including the Police officers,) whether in property or in farm, or under any other tenure whatever.—I am further directed to acquaint you, that the Court deem it expedient to extend the orders in question to the vakeels employed in the several civil Courts.—*Cir. Ord. 15th Aug.* 1811.

22. In future, on the appointment of any native officer on your establishment, whether the situation to which he may be nominated be of a judicial or ministerial nature, or connected with the police department, you will require from him a schedule of any landed property of which he may at the time be possessed, and at the same time explain to him that should he subsequently make further acquisitions of the same description, it will be incumbent on him to communicate the

circumstance to you within one month from the date of the acquisition; should he fail to do so, or should it appear that he has wilfully omitted in his schedule any landed property belonging to him at the time of filing it, he will be liable to dismissal from office.—*Cir. Ord. Cal. and West. C. 27th Feb.* 1835, *Par.* 2.

23. All such schedules, which may be filed in your Court, you will immediately transmit to the office of the Collector of the district for record.—*Cir. Ord. Cal. and West. C. 27th Feb.* 1835, *Par.* 3.

24. You will also consider the above rule applicable to present incumbents, and will accordingly call on the officers now attached to your establishment to file a similar schedule, explaining to them the nature of the penalty attached to wilful concealment.—*Cir. Ord. Cal. and West. C. 27th Feb.* 1835, *Par.* 4.

25. In continuation of the Court's Circular of the 27th February, I am directed to inform you, that the schedule of property therein mentioned need not be required from any Native Officer who receives a salary of less than 20 Rupees per mensem.—*Cir. Ord. West. C. 10th April, Cal. C. 4th Sept.* 1835.

26. In continuation of the Circular Order of the 27th February last, the Court hereby direct that the schedule required by that Circular Order shall include not only land the proprietary right of which may be vested in the public officer to whom it may relate, but any land or other real property, whatever may be the nature of the tenure by which he may hold it, the description of tenure being also recorded in the schedule.

2. (*Western Provinces.*) These schedules will be registered in the office of the Collector of the Zillah in which the officer may be employed, and copies of the same sent to the Collectors in whose Zillahs the property therein included may be situated.

2. (*Lower Provinces.*) The schedule will be registered in the office to which the individual giving it in may be subordinate; and copies will be sent to the Collectors in whose districts the property specified may be situated.—*Cir. Ord. West. C. 29th May, Cal. C. 3rd July*, 1835.

SECT. III.

Civil action against Ministerial Officers of the Zillah Courts for corruption, extortion, or embezzlement.

27. The ministerial officers of the civil and criminal courts, and all native officers attached to the courts, excepting the law officers, are declared amenable to the courts to which they may be respectively attached, for acts of corruption or extortion; and the courts are empowered to receive any such charges that may be preferred against them. Previous however to receiving the charge, the courts are to require the complainant to make oath to the truth of it, (or subscribe the required declaration, if he shall come within the description of persons whom the courts are empowered to exempt from taking oaths,) and give security in whatever sum they may judge proper, to prosecute the charge without delay. Unless the complainant shall previously take the oath, or subscribe the above mentioned declaration, and give the required security, the courts are not to receive the charge.—*Reg.* XIII. 1793, *Sect.* 9, *Cl.* 1.—*Ben. Reg.* XII. 1795.—*Ced. and Conq. Prov. Reg.* XII. 1803, *Sect.* 12, *Cl.* 1.

28. The Sudder Dewanny Adawlut, is empowered to receive charges of corruption or extortion, not relating to any matter depending before them, or decided by them, that may be preferred to them against any ministerial officer of a Zillah or a City Court, and to order the Court to which the accused may be attached, by a precept un-

der their seal, and attested by their Register, to receive the charge, provided the complainant shall prove to their satisfaction, that he preferred the charge in the first instance to such Zillah or City Court, and offered to make the required oath or declaration, and give the security prescribed in Clause first, and that the Court notwithstanding omitted or refused to receive the charge; and shall moreover make the required oath or declaration, and enter into the security prescribed in the above mentioned Clause.—*Reg.* XIII. 1793, *Sect.* 9, *Cl.* 3.—*Ben. Reg.* XII. 1795.—*Ced. and Conq. Prov. Reg.* XII. 1803, *Sect.* 12, *Cl.* 3.

29. But if any person shall charge a ministerial officer of any Zillah or City Court, before the Sudder Dewanny Adawlut, with corruption or extortion in any suit or matter that may be depending before it, or which may have been decided by it, the Court may receive the charge, and refer it for trial to the Zillah or City Court to which the offender may be attached, without further enquiry, provided the complainant shall previously make the prescribed oath or declaration to the truth of the charge, and give the security required in Clause first.—*Reg.* XIII. 1793, *Sect.* 9, *Cl.* 3. *Ben. Reg.* XII. 1795.—*Ced. and Conq. Prov. Reg.* XII. 1803, *Sect.* 12, *Cl.* 3.

30. Charges of corruption or extortion that may be preferred against the ministerial officers of any civil or criminal Court of Judicature under this Section, are to be considered as civil actions, and accordingly, are to be prosecuted in the Civil Courts. Conformably to this rule, whenever any Zillah of City Court may receive any such charge against their ministerial officers, or any such charge may be referred to them by the Sudder Dewanny Adawlut, or the Provincial Court of Appeal, they are to direct the complainant to prosecute the charge in the Dewanny Adawlut.—*Reg.* XIII. 1793, *Sect.* 9, *Cl.* 7.—*Ben. Reg.* XII. 1795.—*Ced. and Conq. Prov. Reg.* XII. 1803, *Sect.* 12, *Cl.* 3.

31. Whenever any Native ministerial officer, of any Civil or Criminal Court, or any Hindoo or Mahomedan Law Officer, against whom an action may have been brought in the Civil Court, to recover money or property, extorted or corruptly taken, shall be proved to have received or taken the whole, or any part of the money or property which he may be charged with having received or taken, the Court is to adjudge him to refund the amount of the money, or value of the property, which he may be proved to have so received or taken, with interest, when it may be a case of money taken, at such rate not exceeding Twelve per cent. per annum, as to the Court may appear equitable, and to pay full costs to the plaintiff in the suit. The Court shall not, in such case, be competent to award any fine against the defendant.—*Reg.* III. 1827, *Sect.* 3.

32. In enforcing the decision, the Court is to observe the rules prescribed for enforcing other decisions of the Court. If the officer against whom such decree may be passed, shall not appeal from it within the limited time, or, if an appeal shall not lie from the decision, the Court is to transmit a copy of the decree to the Governor General in Council. If an appeal shall lie from the decision, and such officer shall prefer an appeal, and the decision shall be confirmed in appeal, the Court by which the final decision may be passed, is to transmit a copy of it to the Governor General in Council, who reserves to himself the power of declaring such officer incapable of serving Government in any capacity. The Courts may suspend a native officer against whom a charge of corruption or extortion may be preferred, until the final decision may be passed, it

they shall see cause for so doing.—*Reg.* XIII. 1793, *Sec.* 9, *Cl.* 8.—*Ben. Reg.* XII. 1795. —*Ced. and Conq. Prov. Reg.* XII. 1803, *Sect.* 12, *Cl.* 8.

33. If any person shall prefer a charge of corruption or extortion, against a ministerial officer of any Civil or Criminal Court of judicature under this section, and the charge shall not be proved, the accused is to have the option of suing the accuser for damages in any Court of Civil judicature to which he may be amenable.—*Reg.* XIII. 1793, *Sect.* 9, *Cl.* 12. *Ben. Reg.* XII. 1795.—*Ced. and Conq. Prov. Reg.* XII. 1803, *Sect.* 12, *Cl.* 12.

34. From and after the date of this Regulation, it shall not be necessary for any party, from whom money or property may have been corruptly taken or extorted, to institute a civil action for the recovery thereof; but on proof of the charge, in a criminal prosecution, for those offences, a certified copy of the conviction by a Court of Circuit, or the Nizamut Adawlut, shall be received as sufficient authority for enforcing the refund of the amount or value so taken with interest, on application to that effect being preferred by the aggrieved party, to the Civil Court, on the Stamp paper prescribed for miscellaneous petitions.—*Reg.* III. 1827, *Sect.* 5.

35. I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, requesting to be informed what mode of procedure you should adopt in receiving and trying two suits instituted for the recovery of sums said to have been taken as bribes by the serishtadar of the Collector's Office. In reply, I am directed to inform you that you should proceed in the same manner as in common actions for debt. Section 7, Regulation III. 1793, declares all natives amenable to the Civil Courts, and as no Regulation exempts the officers of Collectors from their jurisdiction, they come within the intent of the Rule.—*Con. No.* 807, *Cal. C. 2d Aug. West. C. 6th Sept.* 1833.

SECT. IV.

Criminal procecution against the Ministerial Officers of the Zillah and City Courts, for corruption, extortion or embezzlement.

36. In explanation of the provisions for a Civil action against the law officers and ministerial native officers of the Courts of Judicature, contained in Regulations XII. and XIII. 1793, (extended to Benares by Regulations XI. and XII. 1795; and re-enacted for the Upper Provinces by Regulations XI. and XII. 1803;) it is hereby declared that those provisions, the principal object of which is to enable individuals, who may be aggrieved by any of the native officers in question, to obtain redress by an action in the Civil Courts, are not meant to preclude a Criminal prosecution in cases of corruption, extortion or embezzlement, which may appear to call for exemplary punishment.—*Reg.* XVIII. 1817, *Sect.* 6, *Cl.* 1.

37. Whenever a law officer, or ministerial native officer, may not, by the result of a civil action, have been subjected to the penalties for corruption or extortion, provided for in the above Regulations, and there may appear to be sufficient grounds for a criminal prosecution against any such officer, on a charge of corruption, extortion or embezzlement, he is hereby declared liable to a criminal prosecution before the Zillah or City Magistrate, and Court of Circuit, as provided for in other cases of misdemeanor by the Regulations, and on conviction before a Court of Circuit, or the Court of Nizamut Adawlut, he shall be subject to discretionary punishment to the extent, and under the provisions, stated in Section 3, Regulation II. 1813, with respect to native officers

convicted of making use of the public money entrusted to their care.—*Reg.* XVIII. 1817, *Sect.* 6, *Cl.* 2.

38. Section 4, of the Regulation above-mentioned, directing a report of convictions and sentences to the Governor General in Council, for the purpose of enabling him to determine whether the guilty persons should be declared incapable of again serving Government, shall also be considered applicable to any convictions and sentences under the present Section.—*Reg.* XVIII. 1817, *Sect.* 6, *Cl.* 3.

The above enactment is modified by the following rule.

39. Any Law Officer or Ministerial Native Officer, charged with corruption or extortion, against whom there may appear to be sufficient grounds for a criminal prosecution, shall be liable to such prosecution, as laid down in Clause Second, Section 6, Regulation XVIII. 1817, whether the civil action provided for in Section 3, of this Regulation, shall have been brought or not, and whatever, if brought, may have been its result.—*Reg.* III. 1827, *Sect.* 4.

40. The Court are of opinion, that a magistrate is competent to pass final sentences of punishment on conviction of such offences to the extent of the powers vested in him by the regulations, when such punishment may appear to him, on a consideration of all the circumstances of the case, to be adequate to the degree of criminality of the accused. If otherwise, it would of course be necessary to commit the prisoner for trial before the Court of Circuit.—*Con. No.* 237, *16th Feb.* 1816.

41. Regulations XIII. 1793, and XII. 1803, whereby parties injured have the option, in cases of corruption and extortion, of instituting a civil action, was declared by a Circular Order of the 13th March, 1810, not to preclude a criminal prosecution, whenever there may appear to be sufficient grounds for it; the prosecution was also directed to be public, and to be conducted by the *vakeel* of Government.—*Con. No.* 58, *13th March*, 1810.

SECT. V.

Summary proceeding for recovering embezzlements of money and for compelling the delivery of papers by the Native Ministerial Officers of the Zillah and City Courts.

42. Whenever any native officer attached to a Civil or Criminal Court, may be charged with having embezzled any money or other property paid into, or deposited in, the Court to which he is attached; or received by him in his official capacity, in execution of a decree, or on account of a deposit, or on any other account whatever; or whenever the judge or judges of a Civil or Criminal Court may have reason to suspect any such embezzlement, on the part of a native officer attached to the Court, they shall immediately institute a summary enquiry to ascertain the truth of such charge or suspicions; and shall, at the same time, require the native officer accused, or suspected, to give sufficient security for his attendance during the enquiry.—In the event of such security not being given, and of its appearing necessary to keep the officer in custody, pending the enquiry, it shall be competent to the judge or judges to order the same; and to keep the party in custody of peons, or to confine him in the jail of the Dewanny Adawlut, until he shall give the required security, or his detention appear no longer necessary.—*Reg.* XVIII. 1817, *Sect.* 7, *Cl.* 2.

43. When the summary enquiry has been completed, if it be established thereby that any money or other property has been embezzled by the person accused, or suspected, in his official capacity, he shall be required to pay the same into Court, within such

time as may be limited for that purpose; and on his failure to comply with such requisition, it shall be recoverable from him, as well as from his surety, if he have given security on account of the office held by him, by the usual process of recovery, in execution of judgments of the Civil Courts.—*Reg.* XVIII. 1817, *Sect.* 7, *Cl.* 3.

44. A similar mode of proceeding shall be observed when a native officer attached to any civil or criminal court of judicature, may withhold any public accounts which it is his duty to prepare and furnish, and the summary judgement in such cases, shall not only order the immediate delivery of the accounts withheld, but shall also impose such fine to government as may appear just and proper, on consideration of all the circumstances of the case, and the situation of the party.—*Reg.* XVIII. 1817, *Sect.* 7, *Cl.* 4.

45. Any person dissatisfied with the judgement of a Zillah or City Court, given under the provisions of this Section, shall be at liberty to prefer a summary appeal thereupon under the rules applicable to such appeals, to the Provincial Court of the division; and provided sufficient security be given for performing the decree of the Provincial Court, on the appeal, the decision of the Zillah or City Court shall not be carried into execution till confirmed by the Provincial Court.—*Reg.* XVIII. 1817, *Sect.* 7, *Cl.* 5.

The appeal of course now lies to the Sudder.

46. The Court also direct me to inform you that although a summary enquiry into cases of embezzlement by ministerial native officers may be conducted by the Judge under the provisions of Section 7, Regulation XVIII. 1817, that officer is by no enactment empowered to commit for trial before the Commissioner of Circuit for the offence: this duty being left to the Magistrate, to whom the Judge should transmit his proceedings, if grounds appear to exist for subjecting the accused to a criminal trial: the Magistrate however in committing or releasing the person charged with the offence will act on his own judgement on a fair consideration of the evidence adduced.—*Con. No.* 691, *West. C.* 11*th May*, *Cal. C.* 1*st June*, 1832.

47. Whenever it may be established by the process described in Section 7, Regulation XVIII. 1817, that any Native officer attached to a Civil or Criminal Court, may have embezzled any money or other property, duly paid into or deposited in the Court to which he is attached; or regularly received by him in his official capacity, in execution of a decree, or on account of a deposit, or on any other account whatever, it shall be the duty of the European controlling authority to refund to the party or parties, whose property may have been so embezzled, the amount or value of the embezzlement, from the Public Treasury, in the first instance, without reference to the solvency or otherwise of the defaulter or his surety; the Government reserving to itself the right of adopting such meaures, for the recovery of the money so refunded, as may be deemed expedient, with reference to the nature and circumstances of each case.—*Reg.* III. 1827, *Sect.* 6.

48. On the 18th November, 1809, the Sudder Dewanny Adawlut, in reply to a reference from the Moorshedabad Provincial Court, determined that the regulations in force did not admit of a summary investigation and decision upon claims of recovery against the *nazirs* of the civil courts, in cases of alleged injuries to parties from neglect of duty or other misconduct; that the claimants in such cases must institute a regular suit, which should be tried and decided as speedily as possible; but that security might be taken from the nazir complained against to perform the judgement upon such claims.—*Con. No.* 53, 18*th Nov.* 1809.

49. The Court had before determined, (on the 2d of August, 1803,) that the *nazirs* of Civil Courts were not liable to pay the amount of sums due from persons who might escape from their custody, unless collusion on their part was proved.—*Con. No.* 53, 18*th Nov.* 1809. *Note.*

SECT. VI.

Security from Native Ministerial Officers entrusted with property.

50. The Court observe that security should be taken from treasurers, *nazirs*, and other officers, who, in the discharge of their public duty, have charge of money or property, whether public or belonging to private individuals, and that the sureties should bind themselves to make good all losses sustained by the default or fraud of the officer for whom they are bound. With regard to the amount of property to be pledged by the surety, and entered in the schedule at the foot of the bond, the Court observe that it must be regulated according to the circumstances of each case, and the amount or value of the money or property which may be likely to be left in the hands of the officer from whom the security is required; and that the surety should bind himself not to sell, or in other manner alienate the property in question until he be relieved from his responsibility.—*Cir. Ord.* 23*rd Sept.* 1831, *Par.* 2.

51. The Court desire, that in taking security in future you will follow this principle, and be particularly careful to ascertain the sufficiency of the security. They also direct, that you will cause the efficiency of the security of the officers on your establishment, who are required to furnish it, to be carefully revised during the last week in December of each year; and that you will submit a report of the result of the revision according to the accompanying form.

FORM.

REPORT *of the result of the inquiry as to the sufficiency of the security given by the Officers of the Court , made in the month of December,* 1831, *under the Circular Order of Sudder Dewanny and Nizamut Adawlut, dated the* 23*rd September,* 1831.

Name and designation of the Officer required to give Security.	Amount of Security required.	Names of the Sureties, with the date of their engagement.	Names of new security, the old sureties having been changed.	Remarks.

—*Cir. Ord.* 23*rd Sept.* 1831, *Par.* 3.

52. The officers who are required to report on the securities of their subordinates, have omitted generally to submit their report with punctuality; and very few have given any distinct opinion as to their validity or otherwise. The Court desire that they be called upon to submit the report of the revision of the securities, (required to be made by the Circular Order of the 23rd September, 1831,) on or before the 1st February, 1837, and that they insert at the foot of the form prescribed by that Circular (which, for the convenience of record, should be uniformly engrossed on a sheet of foolscap paper) the following certificate. "Certified, that I have revised the securities of the officers abovementioned and that I consider them good and sufficient."

(Signed) A. B.
"Judge or Magistrate" (as the case may be.)

—*Cir. Ord. Cal. C.* 16*th Dec.* 1836, *West. C.* 20*th Jan.* 1837.

53. The attention of the judicial officers will be called to the Circular Order of the 3rd July, 1835, and they will be informed that should they neglect to furnish this indispensable informa-

tion, and any embezzlement take place, their conduct must be reported to Government.—*Cir. Ord. Cal. C. 16th Dec. 1836, West. C. 20th Jan. 1837, Par. 5.*

54. The object of the Honourable the Court of Directors will be sufficiently attained, if the Court satisfy themselves, annually, that the officers subject to their jurisdiction have severally instituted the necessary inquiries to establish the validity of the security furnished by those of their subordinates who hold situations of pecuniary responsibility. But it should be distinctly explained to all the functionaries who are required to furnish this annual report, that when they vouch for the sufficiency of the security in each case, they thereby render themselves responsible for the safety of the public funds committed to the charge of their ministerial officers, and that they will be held accountable for any insufficiency of security which may subsequently be experienced. *Extract of a letter from the Government of Bengal to the Sudder Court.—Cir. Ord. Cal. and West. C. 3d July,* 1835.

55. The Zillah Judges and Magistrates, and the heads of offices generally, cannot be too distinctly apprized, that they must be held responsible for the conduct of their native officers. Individuals of that class may no doubt, in particular instances, commit offences which may escape detection; but general and long protracted abuse must be referred to supineness and want of vigilance on the part of their European superiors.—*Cir. Ord. 2Ad October,* 1817, *Par.* 5.

56. Kazanchies, tehsildars, and other native officers entrusted with the charge of public money, are hereby strictly prohibited from making use of such money for their own advantage, or that of any other individual.—*Reg.* II. 1813, *Sect.* 2.

57. Any person infringing the rule contained in the foregoing Section, shall be deemed to have been guilty of a misdemeanor, and shall be punished, on conviction thereof, before a Court of Circuit, at the discretion of the said Court, under the authority vested in the Courts of Circuit, by Clause seventh, Section 2, Regulation LIII. 1803, in cases liable to discretionary punishment; provided, nevertheless, that no person convicted of the offence specified in the preceding Section of this Regulation shall be sentenced by a Judge of Circuit, to the punishment of stripes, or to hard labour. If in any instance imprisonment for the term of seven years shall appear to the Judge of Circuit to be an inadequate punishment for the offence, he shall transmit the trial, with his sentiments thereupon, to the Court of Nizamut Adawlut, for the final sentence of that Court.—*Reg.* II. 1813, *Sect.* 3.

58. It shall be the duty of the Board of Revenue, the Board of Commissioners, and the Board of Trade, to submit to Government, a special report respecting all convictions and sentences, which may take place under the provisions of the present Regulation, in order that the Governor General in Council may have an opportunity of considering whether the guilty persons should not also be declared incapable of again serving Government in any public capacity.—*Reg.* II. 1813, *Sect.* 4.

59. The Court do not understand the Regulation (II. 1813,) cited by you as intending a repeal of the Mahomedan law relative to the offence of embezzlement, which, being punishable under that law, may clearly be committed for trial to the Court of Circuit.—*Con. No.* 543, *2d April,* 1830.

SECT. VII.

Establishment of Naibs, Mirdahs and Peons in Zillah and City Courts.

60. The Nazirs of the several Courts of judicature, civil and criminal, shall be allowed, as heretofore, to appoint their own naibs, and the mirdahs and peons, or

any similar descriptions of public servants employed under their immediate direction and control; and to fill up all vacancies, which, from time to time, may occur in such appointments, subject to the approbation of the Judges and Magistrates superintending the Courts to which they are attached, and to the responsibility prescribed by Section 2, Regulation XIII. 1793, and Section 2, Regulation XII. 1803, for the good behaviour of the naibs, mirdahs, peons, and others appointed by them. They may also, as hitherto, remove the persons so appointed by them, provided they can state sufficient cause to the satisfaction of the Judge and Magistrate; but not without his previous knowledge and sanction.—*Reg.* V. 1804, *Sect.* 12.

61. The Nazirs are to enter into a mochulka or penal obligation, in such sum as may be required by the Courts to which they may be respectively attached, for the good behaviour of the naibs, mirdahs, and peons, whom they may appoint.—*Reg.* XIII. 1793, *Sect.* 2.—*Ben. Reg.* XII. 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* XII. 1803, *Sect.* 2.

62. When a summons, or any process, is issued against a defendant, or a witness in a cause, or any other person who may not reside or be present at the place at which the Court may sit, and for the serving or executing of which a peon or peons may be necessary, each peon is to be paid by the party in whose behalf the summons or process may issue, four annas per day for his subsistence, excepting in districts where custom may have fixed the subsistence money of peons at a lower rate, in which case the lower rate, and no more, is to be paid.—*Reg.* IV. 1793, *Sect.* 20.—*Ben. Reg.* VIII. 1795, *Sect.* 9.—*Ced. and Conq. Prov. Reg.* III. 1803, *Sect.* 21.

The above rule is modified by Regulation 26 *of* 1814, *for which look below, Rules* 67 *and* 68.

63. The name of each peon deputed to serve the process, the amount of his subsistence money, and the number of days for which he is to receive it, is to be endorsed on the writing. No greater number of peons than two are to be deputed to serve or execute any process of the Courts, and one peon only is to be sent, excepting in cases in which the judges may think two peons necessary.—*Reg.* IV. 1793, *Sect.* 20.—*Ben. Reg.* VIII. 1795, *Sect.* 9.—*Ced. and Conq. Prov. Reg.* III. 1803, *Sect.* 21.

64. Such part of the regulations in force as authorize the payment of tulubanah (subsistence or diet money) to peons or other persons, who may not receive a fixed monthly salary from government for serving the summonses or other processes of the civil and criminal courts, are hereby declared subject to the following modifications and additions.—*Reg.* XXVI. 1814, *Sect.* 14, *Cl.* 1.

65. The judges and magistrates of the several zillahs and cities shall call upon their respective nazirs for detailed lists of the peons now employed in the execution of civil and criminal processes, who do not receive a monthly salary from government, and after ascertaining what number is requisite in addition to the chuprassies on the public establishments for the service of such processes, they shall select a sufficient number of the fittest persons to be so employed, and shall cause their names to be registered with the following particulars, viz. The names of their fathers, their age and places of abode, and a concise description of their persons.—*Reg.* XXVI. 1814, *Sect.* 14, *Cl.* 2.

66. The nazirs are hereby strictly prohibited under pain of immediate dismission, from employing any person not registered in the mode above prescribed, and not

being an officer on the public establishment, in the service of any process civil or criminal, or in the execution of any order or official act whatever, without a special authority from the judge or magistrate or other public officer competent to give such directions.—*Reg.* XXVI. 1814, *Sect.* 14, *Cl.* 3.

67. The peons who may be registered as above required shall be furnished with an uniform belt, or such other badge of office at the discretion of the judge as shall suffice to distinguish them from the chuprassies on the fixed establishments. The expence of such badge shall be defrayed out of the tulubanah of the peon receiving the same. The judges and magistrates of the several zillah and city courts are to frame a table for regulating the account of tulubanah demandable on the service of process civil and criminal, according to the rates prescribed by the regulations or established by usage. The table shall contain a statement of the several police jurisdictions, or other more convenient local divisions, the computed distance of the centrical part of such local division, from the Sudder station, and the number of days for which tulubanah is to be allowed on the serving of process within each local division, calculated on the computed distance of the centre of each local division from the Sudder station.—*Reg.* XXVI. 1814, *Sect.* 14, *Cl.* 4.

68. The table so framed shall be suspended for general information in the cutcherries of the Judge and Magistrate and of the Collector of the district, and no tulubanah shall be allowed in any instance beyond the rates, or for a greater number of days, than may be prescribed in such table without a special written order from the Judge, or Magistrate, the Register, assistant, or other public officer competent to pass the same.—*Reg.* XXVI. 1814, *Sect.* 14, *Cl.* 5.

69. The amount of tulubanah which may be demandable according to the table mentioned in the preceding Clause, shall be specified on the back of each summons or other process, and the amount shall be paid, by the person taking out the process, to the nazir previously to the execution of such process: a receipt shall be endorsed on the process in each instance by the nazir, specifying the amount, and the person from whom it was received.—*Reg.* XXVI. 1814, *Sect.* 14, *Cl.* 6.

70. When two or more processes may be served by one peon, the Judge and Magistrate, or other officer, who may order the same to be served, shall determine in what proportions the fixed rates of tulubanah shall be paid by the parties respectively, and shall sign an order to that effect on the face or back of the process.—*Reg.* XXVI. 1814, *Sect.* 14, *Cl.* 7.

71. When the process shall have been executed and returned according to the preceding rules, the nazir shall pay to the peon, who may have served the same, three fourths of the amount of the tulubanah received by him on account of such process, and the nazir shall be entitled to appropriate the remaining one fourth of the tulubanah to his own use.—*Reg.* XXVI. 1814, *Sect.* 14, *Cl.* 8.

72. The Judges and Magistrates, the Registers, and assistants, are required to take every possible precaution, and to give all practicable attention for the purpose of preventing illegal or undue exactions of diet or subsistence money under the name or pretence of tulubanah.—*Reg.* XXVI. 1814, *Sect.* 14, *Cl.* 9.

73. The Nazir may himself be permitted to exercise his discretion in advancing to the peon, on his own responsibility, such portion of the tulubanah as he might consider necessary for the

subsistence of the latter while engaged in serving the process on account of which it was paid. —*Con. No.* 1084, *Cal. and West. C.* 31*st March*, 1837.

SECT. VIII.

Ministerial Officers in the Courts of Native Judges.

74. And it is hereby enacted, that all Ministerial Officers of the courts of Moonsiffs, Sudder Ameens, and Principal Sudder Ameens shall be nominated and appointed by those courts respectively, subject to the general control of the zillah and city Judges and Court of Sudder Dewanny Adawlut, within whose jurisdiction the said courts may be situated.—*Act* 25, 1837, *Sect.* 12.

75. The Court observe, that the law does not require the confirmation of the zillah or city Judge to the appointment by the subordinate judicial functionaries of his district of the ministerial officers of their respective courts, but merely declares that the appointment of those officers shall be made subject to the general control of the zillah and city Judges and of the Court of Sudder Dewanny Adawlut; and they are, therefore, of opinion that the interference of the district judges in such cases shall be exercised only with a view to prevent the appointment of improper persons, or the dismissal, without good and sufficient cause, of individuals already appointed.—*Con. No.* 1160, *West. C.* 27*th July*, *Cal. C.* 17*th Aug.* 1838.

76. The Court, having become aware of an instance in which a Principal Sudder Ameen dismissed the amlah of the court to which he had been appointed, with a view to make room for those who were employed under him in another district, direct me to request that you will warn the Principal Sudder Ameens and other native Judges attached to your jurisdiction, of the impropriety of such a proceeding, and impress upon them that no officer employed under them is to be dismissed except on the score of misconduct or incapacity, and that they are not in any way to compel or require an officer to resign his situation so long as he discharges his duties in a correct and efficient manner.—*Cir. Ord. Cal. C.* 5*th Sept. West. C.* 5*th Oct.* 1838, *Par.* 1.

77. The general power of control over the appointment of the ministerial officers of the native Judges, vested in you by Section 12, Act XXV. 1837, must be considered to include not only the duty of seeing that no improper person is appointed, but also that of restraining the Judges from dismissing, except for some good and sufficient reason, any person once placed on their establishments. It is accordingly competent to you to receive an appeal from any individual who may consider himself improperly dismissed from office by a native judge, and to direct his restoration if you consider such a measure expedient.—*Cir. Ord. Cal. C.* 5*th Sept. West. C.* 5*th Oct.* 1838, *Par.* 2.

78. Any case of this description characterized by flagrant impropriety, which may be brought to the notice of the Court, will be visited with their severe displeasure.—*Cir. Ord. Cal. C.* 5*th Sept. West. C.* 5*th Oct.* 1838, *Par.* 3.

79. The names of the officers on the establishments of the subordinate courts should also be registered in your office, and the receipts for their salary should be sent in monthly by the officer under whom they may be employed, accompanied by his own.—*Cir. Ord. Cal. and West. C.* 2*d March*, 1838.

80. The Court of Sudder Dewanny Adawlut being of opinion, that it is inexpedient to allow the Sudder Ameens to appoint their own connections to situations on their own establishments, have determined to prohibit the practice; and accordingly desire, that previously to sanctioning the future nominations of their *amlah*, you will require from them a certificate that the nominee is not disqualified under this prohibition.—*Cir. Ord.* 31*st. Dec.* 1830.

81. The ministerial officers of the Courts of the Sudder Ameens and Principal Sudder Ameens shall be liable to the same penalties for acts of corruption, extortion, or

other misconduct, as the ministerial officers of the Zillah and City Courts are now liable under the general Regulations.—*Reg.* V. 1831, *Sect.* 25, *Cl.* 2.

82. And it is hereby enacted, that the rule contained in the second Clause of Section 25, Regulation V. 1831, be extended to the Ministerial Officers of the Moonsiff's Courts.—*Act* XXV. 1837, *Sect.* 11.

83. By Regulation V. 1831, Section 25, Clause 2, the Ministerial Officers of the Sudder Ameens and Principal Sudder Ameens are declared liable to the same penalties for acts of extortion, corruption or misconduct as the Ministerial Officers of the zillah and city Courts are now liable under the several Regulations. These provisions are extended to the Ministerial Officers of the Moonsiff's Courts. These suits are to be received and decided by the Court to which the officers sued may be attached, provided that if the amount sued for be beyond the competence of such Court, it shall be forwarded to the Judge, who will refer it to any other Court competent to decide it, or he may place it on his own file.—*Govt. Ord. No.* 13, 15*th Jan.* 1834.

84. Your letter was forwarded to the Civil Auditor, who was requested to furnish the Government with his opinion on the matter. He has suggested in reply that all amlahs should receive 3-10ths extra pay as travelling allowance. His Honour the Deputy Governor is of opinion that the most equitable plan will be to equalize the travelling allowances of all amlahs, without respect to nation or creed, and he thinks also that the rates proposed by the Civil Auditor are those which should be followed.—*Cir. Ord.* 20*th Sept.* 1839.

85. Held, that a Moonsiff imposing a fine on any of his ministerial officers, cannot proceed to levy it without previously obtaining the Judge's sanction, and, by analogy, cannot remit it without the permission of the same authority; but that, if the orders have not been recorded and signed by the Moonsiff, the fine may be remitted by him without any such reference.—*Con. No.* 85, *Cal. C.* 21*st May, West. C.* 18*th June,* 1841.

SECT. IX.

Nazirs and Peons employed by Native Judges.

86. The Principal Sudder Ameens and Sudder Ameens shall retain on their Establishments, officers denominated Nazirs, to whom the provisions of Clause 8, Section 14, Regulation XXVI. 1814, shall be applicable.—*Reg.* VII. 1832, *Sect.* 5, *Cl.* 5.

87. The Judges of the several zillahs and cities in those jurisdictions to which the provisions of Regulation V. 1831, may extend, shall call upon the Moonsiffs, Sudder Ameens, and Principal Sudder Ameens within their respective jurisdictions for detailed lists of the Peons whom they may propose to employ for the execution of Civil process, and after ascertaining what number is requisite they shall select a sufficient number of the fittest persons to be employed, and shall cause their names to be registered with the following particulars: viz. The names of their fathers, their age and places of abode, and a concise description of their persons.—*Reg.* VII. 1832, *Sect.* 5, *Cl.* 2.

88. With reference to Clause 2d, Section 5, Regulation VII. 1832, I request the favour of your obtaining for me the opinion of the Court as to whether the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs should select the peons they may propose to employ for the execution of civil processes from the registered peons, who, previous to the new arrangements, belonged to the Courts of the Judge, Sudder Ameens and Moonsiffs; or whether they are at liberty to nominate for the appointment of strangers. I beg leave to submit that if they are allowed to appoint new peons, a considerable number of old servants must necessarily be thrown out of employ.—In reply, I

am directed to inform you that under the terms of the regulation cited by you, the nomination of the muskooree peons rests with the subordinate judicial officers, and that the Judge is required to select from among the persons nominated such number of those whom he may consider the fittest for the duty as may appear requisite. The Court observe that as the native judicial officers possess the power of appointing and removing the Ministerial Officers of their Courts, there can be no objections to intrusting them with the authority to nominate the persons who will be employed in executing their processes.—*Con. No. 762, West. C. 22d Feb. Cal. C. 15th March,* 1833.

89. In cases wherein, under the provisions of this Section, process is served by an officer of the Court, and not by the party himself, the Moonsiffs, Sudder Ameens, and Principal Sudder Ameens are strictly prohibited from employing any person not registered in the mode above prescribed *(Rule* 87*)* without the special authority of the Judge.—*Reg.* VII. 1832, *Sect.* 5, *Cl.* 3.

90. The rules, mutatis mutandis, contained in Clauses Fourth, Fifth, Sixth, and Seventh, Section 14, Regulation XXVI. 1814, shall be held applicable to the Peons who may be employed under the above rule. Such duties as are therein assigned to the Nazir of the Judge's Court, shall in the Moonsiff's Courts be performed by the Moonsiffs themselves. The tulubanah levied in these cases shall only be three-fourths of what is levied in the Judge's Court, and no part of it shall be appropriated by the Moonsiffs.—*Reg.* VII. 1832, *Sect.* 5, *Cl.* 4.

91. The Sudder Ameens are to be guided, in regard to tulubanah by the rules in force for the guidance of the zillah and city Judges previously to the enactment of Regulation V. 1831, namely, Regulation XXVI. 1814, Section 14, Clause 4 to 7.—*Con. No.* 668, *13th Jan.* 1832.

92. By Clause third, Section 29, Regulation XXIII. 1814, the Moonsiffs are prohibited from demanding or receiving any fee or issuing the prescribed summons for the attendance of witnesses, and by Clause fourth, the party or his Vakeel is required to serve the summons in person. But as the strict observance of this rule may (especially in suits of the higher description such as the Moonsiffs are now competent to decide) be attended with inconvenience, it is hereby declared that whenever the party at whose suit the process may be sued out, may be desirous of having the summons carried by a Peon instead of serving it himself, or through any other person, it shall be competent to the Moonsiff to levy tulubanah for that purpose.—*Reg.* VII. 1832, *Sect.* 5, *Cl.* 1.

93. 1st. The Judge will carefully revise the lists of Peons now employed in the execution of process in the Moonsiffs' Courts, and, after ascertaining what number is requisite for the service of such processes, will select a sufficient number of the fittest persons to be so employed; and will cause each Moonsiff to register their names as follows:—Name of the Peon—Name of his Father—Number of his badge—his age—his place of abode, and a concise description of his person.—*Cir. Ord. 28th Aug.* 1840, *Par.* 1.

94. 2nd. The Moonsiffs are strictly prohibited from employing any person not registered in the mode above prescribed in the service of any process, without recording a special order on their proceedings; and a note also to that effect shall be endorsed on the back of the process.—*Ibid, Par.* 2.

95. 3rd. The Peons, who may be registered as above, shall be furnished with a belt, and badge of office duly numbered. The expense of the same to be defrayed by the Peon.—*Ibid, Par.* 3.

96. 4th. The Moonsiffs will frame a table for regulating the tulubanah demandable on the service of their processes, according to the rates established by usage in their respective Moonsiffships. This table shall contain the computed distance from the Sudder Station of the Moonsiff to

the extreme parts of his jurisdiction. The number of days for which tulubanah is to be allowed on the issuing of process within the Moonsiffship, shall be calculated with reference to the computed distance of the principal towns or villages from the Sudder station of the Moonsiff.—*Ibid, Par.* 4.

97. 5th. The table so framed shall be submitted for the inspection and orders of the Judge, and, after having been duly revised and approved of by that officer, shall be suspended for general information in the Court House of the Moonsiff; and no tulubanah shall be allowed beyond the rates, or for a greater number of days than may be prescribed in such table, without a special order from the Moonsiff, to be recorded on his proceedings.—*Ibid, Par.* 5.

98. 6th. The amount of tulubanah demandable according to the table above mentioned, shall be paid previously to the issue of process. The Moonsiff shall endorse a receipt on the process, specifying the amount and the person from whom it was received; and, after the execution and return of the process, shall pay the sum in deposit to the Muzkooree Peon.—*Ibid, Par.* 6.

99. 7th. Tulubanah so paid, shall be entered in a Register of the annexed form:

FORM *of Register of Tulubanah Deposits.*

1	2	3	4	5	6	7	8	9	10	11	12	13	14
No. of Cases.	Name of the Plaintiff.	Name of the Defendant.	Description of Process.	Number of days.	Amount of Tulubana deposited.	Date of Deposit.	By whom deposited.	Number of Peon.	Name of Peon.	Date of going into Mofussil.	Date of return from Mofussil.	Receipt of the Peon.	Remarks.

—*Ibid, Par.* 7.

100. 8th. Any peon, demanding or exacting tulubanah, or diet money, in addition to the sum deposited with the Moonsiff, and specified on the back of the process entrusted to him for execution, will be dismissed, and be further liable to such other punishment as may be warranted by the existing Regulations.—*Ibid, Par.* 8.

101. 9th. The Moonsiffs are required to take every proper precaution to prevent any illegal exactions of diet or subsistence money, in addition to the tulubanah; and they will fully understand, that no person on their establishment is entitled to any "Meeran" or share of the tulubanah, which is to be paid entirely to the Peon.—*Ibid, Par.* 9.

SECT. X.

City, Town and Pergunnah Cauzies.

102. Cauzies are stationed at the cities of Patna, Dacca, and Moorshedabad, and the principal towns and in the pergunnahs, for the purpose of preparing and attesting deeds of transfer and other law papers, celebrating marriages, and performing such religious duties or ceremonies prescribed by the Mahomedan law, as have been hitherto discharged by them under the British Government, and also for superintending the sale of distrained property, and paying charitable and other pensions and allowances, under Regulations XVII. and XXIV. 1793. The nature of the abovementioned duties renders it necessary that persons of character, and duly qualified with respect to legal knowledge, should be appointed to these offices; and to encourage them to discharge their trusts with diligence and fidelity, they should not be liable to removal, unless proved to be incapable or guilty of misconduct to the satisfaction of the Governor General

in Council. The following rules have been accordingly enacted.—*Reg.* 39, 1793, *Sect.* 1. —*Ced. and Conq. Prov. Reg.* 46, 1803, *Sect.* 1.

103. I am desired to communicate to you the opinion of the Court, that the term "other law papers" used in the preamble to Regulation XXXIX. of 1793, must be held to include Powers of Attorney, the authentication of which therefore is within the competency of a Cauzy; but at the same time the Court observe, that you are clearly at liberty to call for further evidence in any case, where there may appear reason to doubt the due execution of an instrument of that nature by the individual whose act and deed it purports to be.—*Con. No.* 436, *3rd Nov.* 1826, *Par.* 2.

104. On a question from the Judge of Zillah Behar, whether a pergunnah cauzy could attest a deed for land situated in a pergunnah of which he was not the appointed cauzy, and executed out of his proper jurisdiction, the Court of Sudder Dewanny Adawlut expressed their opinion, that the attestation of a Cauzy to a deed so executed, must be considered entirely unofficial, and of no greater weight than the attestation of other persons not given officially.—*Con. No.* 14, 29*th Nov.* 1805.

105. For all offices analagous to those which, under English Courts, are included in the ecclesiastical department, such as the celebration of marriages and the performance of religious duties or ceremonies, the acts of any Cauzy, though not specially empowered for the immediate locality, would be valid and lawful; but that the drawing up and attestation of papers and making a record of them must be performed (to be legal) by the Cauzy of the jurisdiction in which the property specified may be situated.—*Con. No.* 1042, *Cal. C.* 19*th Aug. West. C.* 9*th Sept.* 1836, *Par.* 4.

106. The Zillah Court cannot summarily interfere to put a Cauzy in possession of his pergunnahs, unless a decree expressly sanctions such a proceeding.—*Con. No.* 1042, *Ibid, Par.* 3.

107. The Cauzy ul cuzaat, or head Cauzy of Bengal, Behar, and Orissa, shall be appointed by the Governor General in Council, and shall not be removeable from his office, but for incapacity, or misconduct in the discharge of his public duty, or acts of profligacy in his private conduct, proved to the satisfaction of the Governor General in Council.—*Reg.* XXXIX. 1793, *Sect.* 2, *Cl.* 1.

Regulation XLVI. 1803, *Sect.* 2, *Clause* 1, *ordains that the head Cauzy of Bengal, Behar, Orissa, and Benares shall also be the head Cauzy of the provinces ceded by the Nawaub Vizier to the Honourable the East India Company.*

108. The head cauzy is to use a circular seal, two inches in diameter, on which shall be inscribed the designation of his office, and his name, in the Persian language, as follows:—"*The seal of the Cauzy ul cuzaat of the provinces of Bengal, Behar, and Orissa.*" *(Name of the head cauzy.)*—*Reg.* XXXIX. 1793, *Sect.* 2, *Cl.* 2.—*Ced. and Conq. Prov. Reg.* XLVI. 1803, *Sect.* 2, *Cl.* 2.

109. The office of cauzy is declared not to be hereditary.—*Reg.* XXXIX. 1793, *Sect.* 5.—*Ced. and Conq. Prov. Reg.* XLVI. 1803, *Sect.* 5.

110. When the office of cauzy in any pergunnah, city, or town shall become vacant, the Judge of the Zillah or City Court, within whose jurisdiction the place may be situated, is immediately to report the vacancy to the Governor General in Council, and recommend such person as may appear to him best qualified for the succession from his character and legal knowledge. The name of the person so recommended, is to be communicated to the head cauzy, who, if he shall deem him unqualified for the office, either from want of legal knowledge, or the badness of his private character, is to report the same in writing to the Governor General in Council, who reserves to himself the power of appointing such person to the office, or not, or of conferring it upon any other person, according as may appear to him proper. If there shall appear to the head cauzy

no objection to the appointment of the person who may be so recommended, he is to report accordingly to the Governor General in Council. The person who may be appointed to the office, shall be furnished with a sunnud of appointment under the official seal of the head cauzy, in which the date of his appointment is to be specified.—*Reg.* XXXIX. 1793, *Sect.* 4.—*Ced. and Conq. Prov. Reg.* XLVI. 1803, *Sect.* 4.

111. I am directed by the Court to request that you will in future submit all nominations of City and Pergunnah Cauzies and Moonsiffs, for the approval of the Court, in one of the accompanying forms, as the case may require.

Form for the Nomination of Cauzies, Moonsiffs, or acting Moonsiffs.

1	2	3	4	5	6	7	8	9	10	11
Vacant office.	How vacated.	Name of the person nominated, with the name of his father.	Age.	The Religion and Caste.	Family residence, with town or village Pergunnah and Zillah.	Statement of past employment, whether in the service of Govt. or individuals.	Statement of landed or other property belonging to the nominee, where situated.	Proposed residence and jurisdiction.	Statement of qualifications & knowledge of the Persian, Bengalee, or English language, &c.	Certificate that the nominee is not disqualified by any Regulation.

—*Cir. Ord. Cal. and West. C. 14th Dec.* 1832.

112. The Court of Sudder Dewanny Adawlut is empowered to confirm the appointment, removal, and resignation of the law officers of the Provincial, Zillah, and City Courts, and of the Cauzies of cities, towns, and pergunnahs, on receiving the reports prescribed by Sections 5, 6 and 9, Regulation V. 1804, with the following modification of Section 6.—*Reg.* VIII. 1809, *Sect.* 4, *Cl.* 1.

113. The cauzies stationed in the cities, towns, or pergunnahs in the three provinces, shall not be removable from their offices, excepting for incapacity or misconduct in the discharge of their public duty or acts of profligacy in their private conduct. The cauzies so stationed, are to use a circular seal, one inch and a half in diameter, on which shall be inserted the designation of their office, and their name, in the Persian language as follows: "*The Seal of the Cauzy of the city (town, pergunnah or pergunnahs) of* ." *Name of the cauzy.*—*Reg.* XXXIX. 1793, *Sect.* 3, *Cl.* 1.—*Ced and Conq. Prov. Reg.* XLVI. 1803, *Sect.* 3, *Cl.* 1.

114. The rules contained in the five preceding sections [in which are included Sections 5 and 6, given below] shall be held applicable to the law officers of the several Courts of justice; to the Cauzy ul cuzaat, and cauzies of the towns, cities and pergunnahs.—*Reg.* V. 1804, *Sect.* 10.

Whenever the head ministerial native officers of the Courts shall be desirous of resigning their offices, the above mentioned authorities are hereby required to receive and record such resignations in open court, or in their public cutcherries and to transmit the same through the channel prescribed.—*Reg.* V. 1804, *Sect.* 5.

Whenever the authorities specified in the preceding sections may see cause for

the removal of any of their head native officers on the ground of misconduct, incapacity, or otherwise; they shall communicate to such officer the grounds upon which they may consider him undeserving of continuance in his station; and call upon him to state what he may have to offer in his defence.—*Reg.* V, 1804, *Sect.* 6.

In cases however in which the head native officer of any of the authorities noticed in Section 4, may have been guilty of gross misconduct, such as to require his immediate suspension from the exercise of the functions of his station, the officer, under whose authority he may be employed, is empowered to suspend him; and, if requisite for the public business, to nominate another person, duly qualified, to act in his place, until the orders of the Governor General in Council can be obtained upon the case.—*Reg.* V. 1804, *Sec.* 6.

115. It shall likewise be the duty of the head cauzy, to report to the Governor General in Council in writing, every instance in which it may appear to him, that the cauzy of any city, town, or pergunnah, is incapable, or in which any such cauzy may have been guilty of misconduct in the discharge of his public duty, or acts of profligacy in his private conduct.—*Reg.* XXXIX. 1793, *Sect.* 6, *Cl.* 2.—*Ced. and Conq. Prov. Reg.* XLVI. 1803, *Sect.* 6, *Cl.* 2.

116. Whenever a Provincial, Zillah, or City Court, may see cause for the removal of a law officer or cauzy, on the ground of any misconduct, or neglect of duty, experienced incapacity or other disqualification, such Court shall report the circumstances of the case with its opinion on the subject to the Sudder Dewanny Adawlut, who will pass such Order on the report so made as may appear to be proper, or will call for any additional information, or direct any further enquiry, which the nature and circumstances of the case may requite.) —*Reg.* VIII. 1809, *Sect.* 4, *Cl.* 2.

117. The cauzies stationed in the several zillahs and cities are to be liable to be sued in the Dewanny Adawlut for any undue practices in the discharge of the duties prescribed to them by Regulation XVII. 1793, or any other regulation, printed and published in the manner directed in Regulation XLI. 1793.—*Reg.* XXXIX. 1793, *Sect.* 11.—*Ced. and Conq. Prov. Reg.* XLVI. 1803, *Sect.* 11.

118. No Ministerial Officer of a Court or vakeel shall in future be eligible to a cauzeeship; and no cauzy to the situation of ministerial officer or vakeel.—*Cir. Ord. Cal. and West. C. 6th Dec.* 1839, *Par.* 2.

119. The foregoing rule will not of course interfere with the instructions conveyed by the Court's Circular, No. 197, of the 13th January, 1837, by which the Zillah and City Judges were authorized to appoint the city and pergunnah cauzies as Ameens for the performance of the miscellaneous duties therein enumerated. Those duties being of an occasional nature, the performance of them cannot materially interfere with the discharge of the proper functions of the Cauzy's office. —*Cir. Ord. Cal. and West. C. 6th Dec.* 1839, *Par.* 3.

120. With reference to the provisions of Clause 1, Section 8, Regulation XXIII. of 1814; cauzies will of course be eligible to the situation of Moonsiff; but you are requested to impress upon all incumbents of cauzeeships on assuming the judicial character, that in the event of their ever becoming involved in unseemly disputes with the parties suing or sued in their Courts, in respect of fees claimed by them for the performance of marriage ceremonies, affixing seals to documents, or doing other acts in their capacity of cauzy, their removal from the office of Moonsiff will necessarily ensue.—*Cir. Ord. Cal. and West. C. 6th Dec.* 1839, *Par.* 4.

121. The rule contained in the preceding clause, is not to be construed to preclude the Governor General in Council from abolishing the office of cauzy at any place,

where from the number of cauzies stationed in the district, or other cause, the continuance of such an officer may appear to him unnecessary.—*Reg.* XXXIX. 1793, *Sect.* 3, *Cl.* 2.—*Ced. and Conq. Prov. Reg.* XLVI. 1803, *Sect.* 3, *Cl.* 2.

122. Upon the receipt of this regulation, the Judges of the Zillahs and Cities, are to transmit to the Governor General in Council, the names of the places in their respective jurisdictions in which cauzies are stationed, the names of the cauzies, and what number of cauzies they deem sufficient for their respective jurisdictions. The Judges of the Zillahs are to fix the residence of the cauzies stationed in the pergunnahs in the most centrical places, in order that distrainers of property, and persons whose property may be distrained, under Regulation XVII. 1793, may have ready access to them.—*Reg.* XXXIX. 1793, *Sect.* 9.—*Ced. and Conq. Prov. Reg.* XLVI. 1803, *Sect.* 9.

123. The head cauzy, and the cauzies stationed in the cities, pergunnahs, and towns, are to keep copies of all deeds, and law or other papers, which they may draw up, or attest, and are to affix thereto their seals and signatures. They are likewise to keep a list of all such papers, and in the event of their death, resignation, or removal, the list and papers are to be delivered complete to their successors.—*Reg.* XXXIX. 1793, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* XLVI. 1803, *Sect.* 7.

124. With a view therefore to the better attainment of the objects of the registration of deeds by the pergunnah cauzies, the Court request that you will direct those officers to enter copies of all deeds attested by them in books, to be furnished to them by you, paged throughout, and attested with your initials, and properly bound up; to forward to you monthly a list, drawn up in the annexed form, of the deeds so attested and registered; and to forward the books themselves to your office, when filled up, for the purpose of being deposited among your records for preservation as well as future reference.

FORM OF LIST.

No. of the deed in the Registry.	Page of the Registry in which the deed is entered.	Date of deed, and names of the parties and subscribing witnesses thereto.	Date of attestation and names of parties and witnesses present on the occasion.	Description of deed.

—*Cir. Ord. Cal. C.* 28*th Sept. West. C.* 23*rd Nov.* 1838.

125. The *Zillah* and City Judges shall select and appoint as many duly qualified persons as they may deem requisite to act as *ameens*, who shall perform the miscellaneous duties abovementioned; of course the Judges will be at liberty to nominate the City and Pergunnah cauzies to those duties, when their services may be available.—*Cir. Ord. Cal. C.* 13*th Jan. West C.* 10*th Feb.* 1837.

126. The rules regarding *cauzies* have not been affected by the late enactments: they may consequently be employed as heretofore, under the general regulations. With regard to their authority to distrain property, I am directed to refer you to Clause 3, Section 20, Regulation XXVIII.

1803, corresponding with Regulation 7, 1799, Sect. 6, Cl. 3.—*Cir. Ord. West. C. 26th July, Cal. C. 1st Nov.* 1833, *Par.* 9.

127. The cauzies stationed in the cities, towns, and pergunnahs, are not to exact any fees for drawing up, or attesting papers, or for the celebration of marriages, or the performance of any religious duties or ceremonies which it has been customary for them to perform, excepting such as the parties concerned may voluntarily agree to pay, as has been hitherto the practice.—*Reg.* 39, 1793, *Sect.* 8.—*Ced. and Conq. Prov. Reg.* 46, 1803, *Sect.* 8.

128. A Pergunnah Cauzy may sue to recover what he may consider himself entitled to, for fees of office; but it rests with the Court to determine the extent to which such claim should be admitted and it must be remembered that the payment of fees is entirely voluntary (see Section 8, Regulation XXXIX. 1793.)—*Con. No.* 1042, *Cal. C.* 19*th Aug. West. C.* 9*th Sept.* 1836, *Par.* 2.

129. The Judges in Bengal and Orissa are to furnish the cauzies stationed in their respective jurisdictions, with copies of the Persian and Bengal translates of all Regulations, printed and published in the manner directed in Regulation 41, 1793. The Judges in Behar are to furnish the cauzies stationed in their respective jurisdictions, with the Persian translates of all such Regulations.—*Reg.* 39, 1793, *Sect.* 10.—*Ced. and Conq. Prov. Reg.* 46, 1793, *Sect.* 10.

130. I am directed by the Court to acknowledge the receipt of your letter of the 8th ultimo, requesting to be furnished with copies of any orders regarding the legality of the appointment of deputies to assist the city and pergunnah cauzies, or determining the extent to which the assistance of deputies, if legally appointed, is available.—In reply, I am directed to transmit to you the accompanying copies of a letter from the acting Judge of zillah Shahabad, dated 10th December, 1817, requesting to be informed if the duty of cauzy can be performed by proxy; of the Court's reply, under date 2nd April, 1818, forwarding copy and translation of a futwa of the law Officers of the Court, in which it is stated that a cauzy cannot, without the express permission of the hakim or ruling power, legally appoint a deputy; and of a letter addressed to the Judge of Shahabad on the 6th April, 1824, in the 3rd paragraph of which a "deputy cauzy" is stated to be an officer not acknowledged or mentioned throughout the Regulation quoted, (Regulation 39, 1793.)—*Con. No. 707, Cal. and West. C.* 27*th July,* 1832.

131. No cauzy should be permitted to delegate any of his essential functions, such as the power of affixing the seal of office to documents, to an irresponsible agent not recognized by law, as the residence of a cauzy at a distance from his nominal jurisdiction, and his appointment of a naib to act under his sunnud by proxy, are opposed to the obvious use and purpose of the office and irreconcileable with a due discharge of its duties.—*Cir. Ord. Cal. and West C.* 6*th Dec.* 1839, *Par.* 5.

132. The foregoing rule is not intended to prohibit the vicarious agency of a deputy in the performance of such acts, (for instance the solemnization of marriages when the parties are willing,) as may be legally done by others than cauzies.—*Cir. Ord. Cal and West. C.* 6*th Dec.* 1839, *Par.* 6.

The enactments regarding the appointment of Cauzies in Benares are given separately below.

133. Cauzies are stationed in the City of Benares, and the towns of Mirzapore, Ghazeepore, and Juanpore, and in the pergunnahs in the province of Benares, for the performance of the same duties as are assigned to the cauzies in similar situations in the provinces of Bengal, Behar, and Orissa; and the prescriptions contained in that Regulation, with the exception hereafter specified, being equally applicable to the province of Benares, the following rules have been enacted.—*Reg.* 49, 1795, *Sect.* 1.

134. The head Cauzy of the provinces of Bengal, Behar, and Orissa, shall also be

head Cauzy of the province of Benares, and shall be appointed under the rules prescribed in Clause 1, Section 2, Regulation 39, 1793.—*Reg.* 49, 1795, *Sect.* 2, *Cl.* 1.

135. The following inscription is to be substituted on the seal of the head cauzy, in lieu of that prescribed in Clause second, Section 2, Regulation 39, 1793. "The seal of the Cauzy ul cuzaat of the provinces of Bengal, Behar, Orissa, and Benares." (Name of the head cauzy).—*Reg* 49, 1795, *Sect.* 2, *Cl.* 2.

136. The rules contained in the several sections of Regulation 39, 1793, from Section 3 to Section 11, regarding the cauzies stationed in the cities, towns, and pergunnahs in the provinces of Bengal, Behar, and Orissa, are hereby extended to the cauzies stationed in the city of Benares, and in the towns of Mirzapore, Ghazeepore, and Juanpore, and the several pergunnahs in the province of Benares, with this exception, that instead of Regulations 17 and 24, 1793, they are to consider the prescriptions contained in Regulation 45, 1795; and Regulation 34, 1795, as the rules for their guidance with regard to the sale of property distrained for arrears of rent or revenue, and the payment of pensions.—*Reg.* 49, 1795, *Sect.* 3.

SECT. XI.

Law Officers of the Zillah and City Courts—their appointment and removal.

137. The law offices in the several courts, are to be conferred on persons well versed in the laws, and of unblemished moral characters.—*Reg.* 12, 1793, *Sect.* 3.—*Ben. Reg.* 11, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 11, 1803, *Sect.* 3.

138. In the respective cases, the Mahomedan and Hindoo law officers of the court are to attend to expound the law.—*Reg.* 4, 1793, *Sect.* 15.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced and Conq. Prov. Reg.* 3, 1803, *Sect.* 16, *Cl* 1.

139. 1. I am directed by the Court to communicate to you the following orders, issued under instructions from the Supreme Government, and with the sanction and approval of the Right Honourable the Governor of Bengal, abolishing the present system, under which a Pundit has hitherto been attached, as Hindoo Law Officer, to the establishment of each Zillah Court.

2. The principle of the new arrangement is the appointment of Provincial Pundits, having jurisdiction, as Law Officers, over a certain number of Zillahs and being constituted, with respect to such districts, the legally authorized expounders of the Hindoo Law; the salary, when the arrangements are completed, will be fixed at 150 Rs. per mensem.

3. The Circles into which the several Districts within the jurisdiction of the Presidency Court, are to be formed, will be as follows:

Names of Circles.	*Districts comprised in each.*	*Station where the Pundit will ordinarily reside.*
1st. or Presidency Circle.	1. East Burdwan. 2. West Burdwan. 3. Hooghly. 4. Jessore. 5. Midnapore. 6. Nuddea. 7. Cuttack. 8. The 24-Pergunnahs.	The 24-Pergunnahs.

Names of Circles.	*Districts comprised in each.*	*Station where the Pundit will ordinarily reside.*
2d. or Dacca Circle.	1. Backergunge, 2. Mymensingh, 3. Tipperah, 4. Chittagong, 5. Sylhet, 6. Dacca.	Dacca.
3d. or Moorshedabad, Circle.	1. Beerbhoom, 2. Bhaugulpore, 3. Dinagepore, 4. Purneah, 5. Rajshahye, 6. Rungpore, 7. Moorshedabad.	Moorshedabad.
4th. or Behar Circle.	1. Behar, 2. Sarun, 3. Shahabad, 4. Tirhoot. 5. Patna.	Patna.

—*Cir. Ord.* 11*th Dec.* 1840.

140. The Mahomedan law officers of the Courts of Civil Judicature, previous to entering upon the execution of the duties of their offices, are to take and subscribe the following oath before the Court to which they may be respectively attached.

"I, A. B. Cauzy (or mufty) to the Sudder Dewanny Adawlut, (or the Provincial Court of Appeal for the division of , or the Dewanny Adawlut of the Zillah or City of ,) solemnly swear, that I will truly and faithfully perform the duties of cauzy (or mufty) of this Court, according to the best of my knowledge and ability; that I will not receive, directly or indirectly, any present or nuzzer, in money or effects of any kind, from any party or person whomsoever, on account of any suit, to be instituted or which may be depending, or have been decided in the Court of which I am cauzy (or mufty); and that I will not, directly or indirectly, derive any advantage or emolument from my office, excepting such as the orders of Government do, or may authorize me to receive."—*Reg.* 12, 1793, *Sect.* 5, *Cl.* 1.—*Ben. Reg.* 11, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 12, 1803, *Sect.* 5, *Cl.* 1.

141. The Pundits to the Courts of Civil judicature, previous to entering upon the execution of the duties of their offices, are to make and subscribe the following declaration before the Courts to which they may be respectively attached.

"I, A. B. Pundit to the Sudder Dewanny Adawlut, (or the Provincial Court of Appeal for the division of , or the Dewanny Adawlut of the Zillah or City of ,) solemnly declare, that I will truly and faithfully execute the office of pundit of this Court, according to the best of my knowledge and ability; that I will answer all questions that may be put to me in writing, or orally, by the said court; that I will declare or give in writing, what is in the Shaster; that I will not declare or give in writing what is not warranted by the Shaster; that if I declare any thing not warranted by the Shaster, I shall be deserving of punishment from Ishwur. I promise and swear, that I will not receive, directly or indirectly, any present or nuzzer, in money or effects of any kind, from any party or person whomsoever, on account of any suit, to be instituted, or

which may be depending, or have been decided in the court of which I am pundit, and that I will not, directly or indirectly, derive any advantage or emolument from my office, excepting such as the orders of Government do or may authorize me to receive."—*Reg.* 12, 1793, *Sect.* 7.—*Ben. Reg.* 11, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 11, 1803, *Sect.* 7.

142. Instead of the prescribed oath, which is required by the Regulations in force, the several native officers referred to in the above clause, shall hereafter make and subscribe, in open Court, or in the established public office, before the Judges, Boards, Collectors, Commercial Residents and Agents, or other European authorities to which they may be respectively subject, a solemn declaration to the same effect with the form of oath heretofore prescribed, except that the word "declare" shall be substituted for "swear;" and that the declarer shall not be sworn thereto.—*Reg.* 18, 1817, *Sect.* 2, *Cl.* 2.

143. The Judges, Boards, Collectors, or other European officers before whom such declarations are required to be made and subscribed, shall attest the same as publicly read and subscribed before them, in pursuance of the above clause, and shall be careful to enforce a due observance of the rule therein contained, by the native officers appointed to act under them respectively.—*Reg.* 18, 1817, *Sect.* 2, *Cl.* 3.

144. The Rules contained in Regulations 5, 1804; 8, 1809, and 18, 1817, or in any other Regulation now in force, relative to the nomination and appointment of the Law Officers of the several Courts of Justice, are hereby declared subject to the modifications contained in the present Regulation; Provided, however, that nothing in this Regulation shall be construed to alter or affect the power vested in the Court of Sudder Dewanny Adawlut by Section 4, Regulation 8, 1809, of confirming the removal of the Law Officers of the Provincial, Zillah and City Courts; or to alter any part of the Rules now in force respecting the removal of a Law Officer attached to any of those Courts.—*Reg.* 11, 1826, *Sect.* 2.

145. The Law Officers of the Provincial Courts of Appeal and Circuit, and of the Zillah and City Courts, shall hereafter be appointed by the Governor General in Council.—*Reg.* 11, 1826, *Sect.* 4, *Cl.* 1.

146. Whenever a Law Officer may be removed from his station, or whenever a vacancy may occur in the office of Law Officer in any of the Courts of Justice, from death, resignation or otherwise, the Judge or Judges of the Court, in which the removal or vacancy may have occurred, shall nominate for the approbation of the Governor General in Council, a person duly qualified to succeed to the station so vacated, and shall at the same time report fully the past employments, character, qualifications and age of the proposed, successor, and likewise whether he has obtained the prescribed certificate of qualifications hereafter noticed; the Governor General in Council, on consideration of such report, or after calling for any further information that may appear necessary, will either confirm the person so nominated to fill the vacated office; or will issue orders for his examination; or appoint any other person whom he may deem better qualified for the office.—*Reg.* 11, 1826, *Sect.* 4, *Cl.* 2.

147. After the promulgation of this Regulation no person shall be appointed to be a Hindoo or Mahomedan Law Officer in any of the Courts of Justice under this Presidency who shall not have obtained a Certificate of qualification (in one of the forms, A. or B. contained in the Appendix) after having undergone an examination, to be conducted in the manner hereafter noticed, by a Committee, consisting of such persons

as the Governor General in Council may, from time to time, be pleased to appoint for that purpose.—*Reg.* 11, 1826, *Sect.* 5, *Cl.* 1.

Appendix A.—Certificate of a Hindoo or Mahomedan Law Officer.

(Seal of the Committee.)

We hereby Certify, that at an Examination held at the Presidency of Fort William on the by the Committee appointed under the provisions of Regulation 11, 1826, A. B. was found and declared to be qualified, by his eminent knowledge of the Hindoo (or Mahomedan) Law, to hold the office of Hindoo (or Mahomedan) Law Officer, in any of the established Courts of Judicature.

(To be signed by the President, and not less than two Members of the Committee of Examination.)

This Certificate has been granted, to the said A. B. under the Seal of the Committee this day of in the year corresponding with the (Mahomedan or Hindoo date.)

C. D.

Secretary to the Committee.

Appendix B.—Form of Certificate of a Hindoo (or Mahomedan) Law Officer when examined at a special examination.

(Seal of the Committee.)

We hereby certify, that the Committee of Examination at the Presidency of Fort William, having duly considered the proceedings held on the Examination of A. B., conducted under the provisions of Clause 3, Section 5, Regulation 11, 1826, do consider the said A. B. to be duly qualified, by his knowledge of Hindoo (or Mahomedan) Law, to hold the Office of Hindoo (or Mahomedan) Law Officer in any of the established Courts of Judicature.

(To be signed by the President, and not less than two Members of the Committee of Examination.)

This Certificate has been granted to the said A. B. under the seal of the Committee, this day of in the year corresponding with the (Mahomedan or Hindoo date to be here inserted.)

C. D.

Secretary to the Committee.

148. Public examinations shall be held before the Committee early in each year, or at such periods as may be fixed by order of the Governor General in Council, of all persons who may offer themselves as candidates for the Office of Law Officer, the result of which shall be reported to Government, and so many of the candidates as shall be found upon examination to be eminently qualified for the office of Hindoo or Mahomedan Law Officer, shall receive from the Committee a Certificate of qualification in the form A. contained in the Appendix to this Regulation.—*Reg.* 11, 1826, *Sect.* 5, *Cl.* 2.

149. Whenever any person who may be nominated to the office of Law Officer by the Sudder Dewanny and Nizamut Adawlut, by the Provincial Court of Appeal and Circuit, or by the Zillah or City Judge, shall not have previously obtained a certificate of qualification, the Governor General in Council will issue such orders as may be deemed proper for the examination of such person; either before the Committee at the Presidency; or by means of written interrogatories to be transmitted by the Committee to the judge or judges of the Court in which the vacancy of Law Officer may have oc-

curred, in whose presence the answers to such interrogatories shall be written by the person nominated for the vacant office; or by such other mode, as under the direction of the Committee at the Presidency may be calculated to ensure a fair and impartial examination of the candidate.—*Reg.* 11, 1826, *Sect.* 5, *Cl.* 3.

150. The Committee at the Presidency shall report the result of the examination, prescribed in the foregoing clause, for the information of Government; and in the event of the Candidate being declared duly qualified for the office of Hindoo or Mahomedan Law Officer, (as the case may be) such candidate shall receive from the Committee, a Certificate of qualification according to one of the forms A. or B. with reference to the mode in which the examination of the Candidate shall have been conducted.—*Reg.* 11, 1826, *Sect.* 5, *Cl.* 4.

151. Whenever a provincial, zillah, or city Court, may see cause for the removal of a law officer or cauzy, on the ground of any misconduct, or neglect of duty, experienced incapacity or other disqualification, such court shall report the circumstances of the case with its opinion on the subject to the Sudder Dewanny Adawlut, who will pass such order on the report so made as may appear to be proper, or will call for any additional information, or direct any further enquiry, which the nature and circumstances of the case may require.—*Reg.* 8, 1809, *Sect.* 4, *Cl.* 2.

152. The Court of Sudder Dewanny Adawlut is empowered to confirm the appointment, removal, and resignation of the law officers of the provincial, zillah, and city Courts, and of the cauzies of cities, towns, and pergunnahs, on receiving the reports prescribed by Sections 5, 6 and 9, Regulation 5, 1804, with the following modification of Section 6.—*Reg.* 8, 1809, *Sect.* 4, *Cl.* 1.

153. The same rules are to be considered applicable to Law Officers, with advertence to the Circular Order, No. 8, 23d March, 1838, regarding the closing of the Criminal Courts.—*Cir. Ord.* 26*th March*, 1841.

[*The Rules regarding the purchase or possession of landed property by the ministerial officers of the Zillah and City Courts, given in Sect.* 2, *of this Chapter, page* 83, *are applicable to Law Officers.*]

SECT. XII.

Civil Action against Law Officers for corruption, extortion, or embezzlement.

154. The rules prescribed in Section 9, Regulation 13, 1793, respecting charges of corruption or extortion lodged against the native ministerial officers of the civil and criminal courts, are to be held applicable to charges of a similiar nature that may be preferred against the Hindoo or Mahomedan law officers of the several courts, with the following qualifications.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 1.—*Ced. and Conq. Prov. Reg.* 11, *Sect.* 8, *Cl.* 1.

Those provisions will be found in Section III. *of this Chapter, all the rules of which are applicable to Law Officers.*

155. No decree passed by any Zillah or City Court, or any Provincial Court of Appeal, adjudging a Hindoo or Mahomedan law officer guilty of corruption or extortion, shall be carried into execution, in the event of the law officer against whom such decree may be passed, appealing from the decree, and giving the securities required by Section 12, Regulation 5, 1793, and Section 10, Regulation 6, 1793, in cases of appeals from

decisions for sums of money passed by those courts respectively, and the execution of which they are empowered to suspend upon such securities being given.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 3.—*Ced. and Conq. Prov. Reg.* 11, 1803, *Sect.* 8, *Cl.* 3.

156. The Zillah and City Courts, are to enforce by the usual process, all decrees that they may pass adjudging their law officers guilty of corruption or extortion, which may not be appealed against within the limited time, and transmit copies of the decrees to the Governor General in Council.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 4.—*Ced. and Conq. Prov. Reg.* 11, 1803, *Sect.* 8, *Cl.* 4.

157. The Sudder Dewanny Adawlut is to transmit to the Governor General in Council, a copy of every decree which they may pass adjudging a law officer of any Civil or Criminal Court guilty of corruption or extortion, within one week after it may be given.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 6.—*Ced. and Conq. Prov. Reg.* 11, 1803, *Sect.* 8, *Cl.* 6.

158. When a Provincial Court of Appeal, or a Zillah, or a City Court, shall adjudge a charge of corruption or extortion, that may have been preferred against any law officer, not to be proved, and the prosecutor shall not appeal from the decree within the limited time, the Court is to transmit a copy of it to the Governor General in Council. The Sudder Dewanny Adawlut, within the abovementioned period, are to transmit to the Governor General in Council, copies of all decrees which they may pass, whereby any charge of corruption or extortion that may have been preferred against any law officer may be adjudged not proved.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 8.—*Ced. and Conq. Prov. Reg.* 11, 1803, *Sect.* 8, *Cl.* 8.

159. The Governor General in Council, upon the receipt of any decree adjudging a law officer of a civil or criminal Court, guilty of corruption or extortion, which may be transmitted to him under this Section, reserves to himself the power of dismissing the offender from his office, or of both dismissing him from his office, and declaring him incapable of exercising any employment under Government. The Governor General in Council, likewise reserves to himself the power of suspending any law officer against whom a charge of corruption or extortion may be preferred, until a final decision shall be passed on the charge, whenever it may appear to him expedient, either upon the representation of any of the Courts of judicature, or in consequence of any other information which may come before him.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 7.—*Ced. and Conq. Prov. Reg.* 11, 1803, *Sect.* 8, *Cl.* 8.

The whole of Reg. 12, 1793, *is extended to Benares by Reg.* 11, 1795.

The same rules are enacted regarding the Criminal prosecution of Law Officers which apply to similar charges against ministerial officers, vide Sect. 4, *of this Chapter.*

SECT. XIII.

Pensions to Public Servants.

Rules relative to the grant of superannuation pensions to subordinate officers in the Civil Department, dated 4th January, 1831.

160. 1st. Superannuation Pensions will be granted only to the Superior Classes of Public servants indicated in the annexed list. Inferior servants, Sowars, armed or organized Peons including Jamadars, and other ranks, Lascars,* Boatmen, Artificers, Labourers, and Menials, are to have no claim to such provisions.

* Native seamen in the Marine or Pilot Establishments at this Presidency are not included within the provisions of these rules.

161. 2d. With the exception of Native Judges and Law Officers, the applicant must have been employed in the public service for a period of at least twenty years.

162. 3rd. The public servant, whatever may have been the period of his service, must be incapacitated for further employment, by old age, protracted ill health, loss of sight, or other bodily or mental infirmity.

163. 4th. The character, conduct, and past services, of the public servant must be favourably certified by the Officer or Officers under whom he may have been employed, and must appear to be such as to entitle him to the favourable consideration of Government.

164. 5th. Whenever it may be judged expedient to grant a pension to a public officer whose case may come within the foregoing provisions, the amount of the pension shall be limited as follows:

165. *First.* If the period, during which the individual may have been actually employed in the public service shall be more than twenty years, but less than thirty years, the amount of the pension shall not exceed one third of the monthly salary or authorized official allowances of such individual, calculated on an average of five years previously to the date of the application for such pension.

166. *Second.* If the period of actual service shall have been thirty years or upwards, the amount of the pension shall not exceed one half of the salary or authorized allowances of the individual calculated in the manner above stated.

167. *Third.* For Law Officers and Native Judges, the period of 15 years shall be substituted for that specified in Clause *First*, and 22 years for the terms mentioned in the *Second* Clause.

168. *Fourth.* The rates of pensions shall be fixed on a graduated scale, within the prescribed limitations, with reference to the responsibility and arduousness of the employment, the degree of merit of the individual, and the nature and length of his service.

169. 6th. A pension will hereafter be granted by Government to the family, or any member of the family of a deceased public servant, only when such servant shall have been killed in the execution of his public duty, or shall have died in consequence of wounds or accidents sustained therein.

170. 7th. Should cases arise, which are not sufficiently provided for in these rules, or in which from special circumstances, Government may be pleased to deviate from them in favour of a claimant to a pension, such pension shall be considered only as temporary and provisional, until the grant shall have received the sanction of the Honourable the Court of Directors.

171. 8th. Whenever an application may be made to Government with a view of obtaining the grant of a pension, in favor of any officer employed in the public service, the application shall contain full and specific information on the following points:

172. *First.* The name, class or caste, age and proposed place of residence of the individual, for whom the pension may be solicited, the situation in which he may be employed at the time when the application may be made, the total period during which the individual may have been employed in the public service, and the various official situations, in which he may from time to time have been so employed.

173. *Second.* The monthly amount of the salary or the official allowances of the individual in question on an average of five years previously to the date of application.

174. *Third.* The causes by which the individual may have been rendered incapable of discharging any longer the duties of his office, whether by extreme old age, protracted illness, loss of sight or other bodily or mental infirmity.

175. *Fourth.* His general character, conduct and past services in the official situations which he may have held.

176. 9th. If the officer making the application shall be unable from his personal or official knowledge to supply the whole of the specific information above required, he shall call upon the in-

dividual in whose favour the application may be made, to furnish a written statement (to be verified, by his oath or solemn declaration if required) on such of the points above noticed as may be necessary.

177. 10th. If the individual shall be rendered incapable of further service by protracted illness, loss of sight, or other bodily or mental infirmity, a medical certificate to that effect, shall be also transmitted with the application.

178. 11th. Each application for a pension under the foregoing Rules shall be made by the head of the office, under whom the individual recommended to be pensioned may be employed, in a letter addressed to Government, and accompanied by a Register on a separate sheet of paper in the form hereto annexed.

179. 12th. Lapses of pensions shall be communicated to the Civil Auditor as soon as possible after the occurrence, and it shall be the duty of the several officers in charge of Treasuries from which pensions are paid, to appoint a proper person of their establishment to report all lapses to them, and along with themselves be responsible to Government for the fulfilment of this rule.

180. 13th. No pension shall be payable in arrear for a period exceeding six months without the express sanction of Government, obtained through the Civil Auditor, unless the cause of the suspension of payment shall have been the neglect, order or act of some public officer, and beyond the control of the pensioner: when the Civil Auditor, on a reference being made to him, shall exercise his discretion in passing arrears for payment, or submit a representation of the case for the information and orders of Government as he shall consider proper.

181. 14th. It shall be the duty of the Civil Auditor to exercise a vigilant control over this class of pensions as over all others, and with that view to bring to the notice of Government all instances, in which in the granting of Superannuation Pensions, any of these rules may be departed from, unless he shall be distinctly informed that a special exception has been made in the individual instance.

182. 15th. It shall further be the duty of the Civil Auditor to lay before Government at the end of each official year, a statement exhibiting a comparison between the amount of pensions that have lapsed, and the amount of pensions granted during the year; and as a check against the fraudulent continuance of pensions beyond the actual term of the pensioner's lives, that officer shall from time to time compare the periodical decrement of life among the pensioners of each year, with the usual duration of life, and where lapses do not occur, in the proportion that might be anticipated, it shall be his business to institute such enquiries as may appear necessary to ascertain whether and in what particular instances fraud has actually been committed, and to submit to Government the result of his investigation.

183. His Excellency the most Noble the Governor General in Council has been pleased to determine as a general rule, that persons making applications for pensions under the resolutions passed by Government in this department, under date the 1st October last, shall verify the facts stated in their memorials by affidavits before a Magistrate.—*Cir. Ord. 21st April*, 1820.

184. *List of the several classes of subordinate officers in the civil Department, who under the foregoing Rules are considered to have eventual claims to Superannuation Pensions from Government.*

Registers, Head Clerks and Accountants.

Indexers, Examiners, Readers.

Librarians, Record Keepers.

Translators, Interpreters.

English and Native Writers, Moonshees, Jowab-nuvees.

English and Native Accountants, Mohurrirs, Mootussuddees, Gomastahs, Karkoons, if drawing more than 10 Rupees.

Head Treasurers.

Head Native Revenue Officers, Sheristadars, Dewans, Head Native District Revenue Officers, Tuhseeldars, Amildars, Peshkars, Ameens.

Heads of Districts, Police Darogahs.

Law Officers, Mouluvees, Cauzies, Pundits, Mooftees.

Native Judges, Sudder Ameens, Moonsiffs, Head Executive Officers of the Courts, Nazirs.

Register of an application for a Superannuation Pension from the Establishment of

FORM REFERRED TO IN RULE 11TH.

by Government under date.

	Name of the person by whom the pension is applied for with the name of his father.
	No. on the Establishment.
	Identification of applicant's person.
	Size. Feet. / Inches.
	Age of applicant at the time of application. Years. / Months. / Days.
	Religion, Cast, or Tribe.
	Where residing. Province. / Pergunnah. / Village.
	Present employment.
	Total period of service. Years. / Months.
	Date of application to Government.
	Average salary or authorized official allowances per mensem for the five years preceding the date of application.
	Salary or authorized official allowance per mensem at the time of application.
	Abstract of the grounds of application.
	Remarks by the Head of office.
	Proposed amount of Pension per mensem.
	Treasury at which the party pensioned wishes to draw his pension.
	Orders of Government.

preferred under the rules passed

SECT. XIV.

Vakeels in the Courts of the Zillah Judge, the Principal Sudder Ameen, and Sudder Ameen. —Their appointment.

185. The office of Vakeel shall, in future, be open to all Natives of India, whatever may be their religious belief or persuasion.—*Reg.* 5, 1831, *Sect.* 30.

186. In the nomination and appointment of persons to the office of vakeel, the Judges of the Sudder Dewanny Adawlut, and of the Zillah and City Courts, are required to give the preference to candidates who may have been educated in any of the Mahomedan or Hindoo Colleges established or supported by Government, provided that such candidates are in other respects duly qualified for the situation.—*Reg.* 27, 1814, *Sect.* 3, *Cl.* 3.

187. In addition to the Rules contained in Section 3, Regulation 27, 1814, for the nomination and appointment of Vakeels in the several zillah or city Courts, it is hereby enacted, that, after the promulgation of this Regulation, any Native student who may have been educated, or have received instruction at one of the public institutions under this Presidency, and who shall have received a Certificate of adequate proficiency in the Laws and Regulations, and of good character, from the superintending Committee of any of the Public Colleges supported by Government, according to the form C. in the Appendix to this Regulation, shall, on making application to any of the Courts abovementioned, be entitled to receive a Sunnud of appointment to practise as a Vakeel in the Zillah or City Court to which the application may be made, unless the number of Vakeels already attached to such Court (including those allotted to the courts of the Register and Sudder Ameens in pursuance of Section 16, Regulation 27, 1814,) shall render the immediate admission of any additional Vakeel, or Vakeels, highly inconvenient and objectionable, in which case the admission of the person so applying may be postponed by order of the Judge of the court, so long as shall appear necessary. Provided always, that every person, previously to his being admitted to practise as a Vakeel, shall take and subscribe before the said Court, the oath, or solemn declaration in lieu thereof, required by Clause 1, Section 5, Regulation 27, 1814, and shall be held liable for misconduct to be deprived of the Sunnud granted to him by the Court, and to all the penalties to which the Vakeels of the Courts of Justice are declared subject, by the Regulations which have been, or may be enacted.—*Reg.* 11, 1826, *Sect.* 6.

Appendix C.—Certificate of a Student in any of the Colleges established or supported by Government, who may be declared qualified to be admitted as a Vakeel in any of the Zillah or City Courts.

(Seal of the College.)

We hereby certify, that at an Examination of the students in the (Hindoo or Mahomedan) College at
held on the
, A. B. was found qualified, by his proficiency in the Hindoo (or Mahomedan) Law, and in the Regulations of the British Government, to discharge the duties of Pleader in any of the Zillah or City Courts.

We further certify, that the said A. B. is reported by the officers of the College to be of good character, and to have conducted himself with propriety during the time he has been attached to the College.

(To be signed by the Examiners.)

This Certificate has been granted to the said A. B. under the Seal of the College this day of in the year corresponding with (the Mahomedan or Hindoo date.)

C. D.

Secretary to the College.

188. Persons who may hereafter be appointed to the office of vakeel in the Zillah and City Courts, or the Sudder Dewanny Adawlut, shall receive a Sunnud of appointment duly authenticated by the Court, to which they may be respectively attached. This Sunnud, which is not required to be written on stampt paper shall be drawn up according to the form No. 1, in the Appendix to this Regulation.—*Reg.* 27, 1814, *Sect.* 4; *Cl.* 1.

Sunnud to be granted to Vakeels.

In conformity with the provisions of Regulation 27, 1814, You, A. B. are hereby appointed to the office of Pleader in the Sudder Dewanny Adawlut, or in the Provincial Court, for the division of , or in the Zillah or City Court of . You will not be liable to be removed from your situation so long as you may conduct yourself with propriety, and discharge your duty with zeal and integrity, under the rules contained in the Regulations which now are, or may hereafter be, in force.—*Appendix, No.* 1, *to Reg.* 27, 1814.

189. Whenever a vakeel may be dismissed from his office, or may die, or may resign his situation, his sunnud of appointment shall be recalled and cancelled by the court, to which such vakeel may have been attached.—*Reg.* 27, 1814, *Sect.* 4, *Cl.* 2.

190. Kisheneh Nund Barajyah, formerly a vakeel of the court of the Moonsiff of Talmah, who has been dismissed, will not give up his sunnud of appointment as required by Regulation 27, of 1814, Section 4, but has made a futile pretence on being applied to for the same, and gone out of the way when again sought for that purpose. *Reply of the Sudder Court.* In the case cited you should summon the vakeel to attend at your Court; and in the event of his neglecting to attend, or, attending, to deliver up his sunnud, you are competent to punish him for evasion of process, or contempt of Court.—*Con. No.* 1083, *Cal. C.* 31*st March; West. C.* 21*st April,* 1837.

191. In modification of that part of the second paragraph of my Circular letter of the 2d ultimo, which requires the Zillah and City Judges under Regulation 5, 1831, to report for the Court's confirmation, the appointment and removal of native ministerial Officers and Vakeels, I am directed by the Court to inform you, that such report is not considered necessary; and that you are competent of your own authority, to appoint and remove such officers and vakeels; subject however to the control of the Court, or Government, when either may see occasion to interfere.—*Cir. Ord. Cal. and West. C.* 13*th April,* 1832.

192. Every vakeel, previously to being allowed to practice, shall take and subscribe before the Court, to which he may be appointed, an oath, drawn up according to the form No. 2 of the Appendix to this regulation, or a solemn declaration in lieu thereof, under the provisions now in force, or any other provisions which may be hereafter enacted.—*Reg.* 27, 1814, *Sect.* 5, *Cl.* 1.

Oath to be administered to Vakeels.

I, A. B. solemnly swear, that I will truly and faithfully execute the duties of Pleader of the Sudder Dewanny Adawlut, or the Provincial Court for the division of , or the Adawlut of the Zillah or City of , to the best of my knowledge and judgment.—*Appendix, No.* 2, *to Reg.* 27, 1814.

193. The vakeels attached to one Court, are not to be allowed to plead in any other Court; but this rule is not intended to preclude the zillah and city Judges from making such an allotment and distribution of the pleaders attached to their Courts, as may from time to time appear convenient on a consideration of the civil business in their own Courts, and in those of their Registers and of the Sudder Ameens.—*Reg.* 27, 1814, *Sect.* 16.

194. The Court are of opinion, that the practice of allowing the pleaders of the *zillah* Court to conduct suits as *mokhtars* in the Commissioner's Court is objectionable, for the reasons stated by you, as well as because it is at variance with Section 16, Regulation 27, 1814, which provides, that the *vakeels* of one Court shall not be allowed to plead in any other Court; and that you are therefore competent to decline receiving *mokhtarnamehs* authorizing them to conduct suits in your [the Commissioner's] court.—*Con. No.* 602, 14*th Oct.* 1831.

195. The Judges of the several zillahs and cities will assign to the court of each Sudder Ameen, such a number of the authorized vakeels as may appear necessary. The whole of the regulations in force regarding the authorized vakeels of the zillah and city courts, shall be applicable to the authorized vakeels employed in the courts of the Sudder Ameens.—*Reg.* 23, 1814, *Sect.* 72.

196. It shall be competent to the zillah and city Judge to authorize any of the Vakeels of his Court, or of those attached to the Sudder Ameens, to practice in the Court of the Principal Sudder Ameen.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 3.

197. The Court having reason to believe that the provisions of Clause 3, Section 18, Regulation 5, 1831, and Regulation 12, 1833, have not been duly carried into effect, and that delay consequently takes place in the Courts of the Principal Sudder Ameens and Sudder Ameens, in the disposal of the causes pending before those functionaries, direct me to inform you, that petitions of plaint may be received by you, agreeably to Section 2, Regulation 4, 1793, from any authorized Agent, or from any duly empowered Vakeel attached to the Court of the Judge, the Principal Sudder Ameen, or the Sudder Ameen, and that, in order to expedite business, the Judge should encourage such petitions of plaint being filed by the Vakeels of that Court to which, under the provisions of Regulation 5, 1831, and Act 25, 1837, they will ordinarily be transferred for trial.—*Cir. Ord.* 18*th Dec.* 1840.

198. The Court are of opinion, that the Judge should also make such an allotment and distribution of the pleaders attached to the several Courts, as may appear most convenient for the transaction of public business, and that, having made such distribution, the pleaders should be permitted to plead only in those Courts to which they have been respectively nominated.—*Cir. Ord.* 18*th Dec.* 1840.

199. The Vakeels of the Principal Sudder Ameens and Sudder Ameen's Courts are in fact Vakeels of the Judge's court, permitted by the Judge under the provisions of Section 72, Regulation 23, 1814, and Clause 3, Section 18, Regulation 5, 1831, to practise in cases before the subordinate tribunals, and by the Section and Regulation first cited, the whole of the Regulations in force regarding the authorized Vakeels of the Zillah courts are applicable to the authorized Vakeels employed in the courts of the Sudder Ameens.—*Con. No.* 802, *West. C.* 5*th July*, *Cal. C.* 2*d Augt.* 1833.

The following rules enacted for Vakeels in the Courts of Sudder Dewanny Adawlut have been extended to all the Courts, with the exception of those of Moonsiffs.

200. The office of pleader in the Courts of Sudder Dewanny Adawlut shall be open to all persons of whatever nation or religion.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 2.

201. Any person desirous of practising as an authorised pleader in either of those courts, or any person who may wish to employ an agent, not being an authorised

pleader, to conduct generally all suits or other business before the court, in which such person may be concerned, shall submit his application to the court, and if a majority of the Court be in favor of the application, a license shall be granted, authorising the appointment or employment of such pleader or general agent as the case may be, and the number of pleaders previously licensed shall not be held as a reason for rejecting the application.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 3.

202. Any person who may wish to employ an agent, not being an authorised pleader, to conduct any particular suit in which such party may be concerned, shall present a petition to that effect; and the Judge, to whom the petition may be referred, shall be competent to comply with or reject the application; provided that, in the latter case, an appeal may be made to the Court collectively, to be decided by the majority.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 4.

203. Agents admitted to plead shall be competent to perform all the acts in the conduct of those particular causes entrusted to them, that an authorised pleader would be competent to perform, and shall be subject to fines and other penalties for neglect, contempt of court, or other misbehaviour, to the same extent, and in the same manner as the authorised pleaders of the courts of justice are subject by the regulations.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 7.

204. The Judges of the Presidency Court concur in the opinion of the majority of the Judges of the Western Court, that the provisions of Regulation 12, 1833, authorize the employment by parties of more than one general agent for the conduct of suits and other business. The court approve of the suggestion, that parties appointing more than one general agent be required to declare their responsibility for the acts jointly or severally done by such agents, in the discharge of their duties, and will adopt the same as a rule of practice.—*Con. No.* 1210, *West. C.* 26*th April*; *Cal. C.* 10*th May*, 1839.

205. Held by the Calcutta Court, in concurrence with the Western Court, that a pleader appointed under the provisions of Section 2, Regulation 12, 1833, can practise, *under the rules contained in that enactment*, only in the Judge's Court, but that he may be authorized under Clause 3, Section 18, Regulation 5, 1831, to practise in the Court of the Principal Sudder Ameen under the rules in force for that court.—*Con. No.* 1168, *Cal. and West. C.* 17*th Augt.* 1838.

SECT. XV.

Vakeels in those Courts.—Dismissal.

206. Pleaders, employed in the several courts of civil judicature, shall be liable to dismission from their office whenever they may be guilty of encouraging or promoting litigious suits; of wilfully delaying the suits of their clients for their own advantage; of refusing or omitting, without sufficient cause to be shewn to the court, to carry on the suits of their clients, after having accepted a vakalutnamah; of demanding or accepting from their clients any fee, or sum of money, goods, effects, or other valuable consideration beyond the fees, which they are or may be authorized to receive under the regulations; or of fraudulent practices, neglect, or other misconduct, in the discharge of their professional duty; or of gross profligacy or misbehaviour in their private conduct.—*Reg.* 27, 1814, *Sect.* 6.

207. The vakeels are required to use due precautions to ascertain the real names and the identity of persons, who may propose to employ them as pleaders; and any

authorised vakeel, who shall hereafter receive and file a vakalutnamah from any person under a fictitious name, shall be liable to be dismissed from his office, provided however, that the Judge upon full enquiry into the circumstances of the case, and the provincial Court, on consideration of the Judge's report, shall deem him to be deserving of such punishment.—*Reg.* 27, 1814, *Sect.* 8.

208. Any pleader, who under the preceding rules, may knowingly furnish an opinion of a nature evidently calculated to promote the institution of unfounded or litigious suits, or to discourage the amicable adjustment of dubious claims, shall be liable to be dismissed from his office; and if after furnishing such dishonest opinion he shall be employed as a pleader in the suit, his fees shall be liable to be forfeited by order of the Court, either to Government or to the party whom he may have wilfully misled by such opinion.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 6.

The following rule enacted for the Vakeels in the Courts of Sudder Dewanny Adawlut has been extended to all Civil Courts those of Moonsiff's excepted.

209. The Courts are hereby empowered to deprive an authorized pleader of his license, and at any stage of the proceedings to prevent an agent from conducting any cause, if such pleader or agent shall be guilty of any misconduct, which a majority of the judges may deem deserving of that punishment.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 9.

210. A pleader dismissed from his situation by a Judge cannot be permitted to practise again by such Judge's successor, without sanction having been obtained from the Sudder Dewanny Adawlut to review the order for dismissal.—*Con. No.* 1082, *West. C.* 31*st March, Cal. C.* 14*th April*, 1837.

SECT. XVI.

Vakeels in those Courts.—Minor Penalties.

211. Every Vakeel, or authorized Pleader or Mooktar, attached to any Court of Judicature, who shall present for the purpose of being filed or recorded in any Court or kutcherry, any Paper, Petition, or any Deed, Instrument, or Document, requiring to be stamped by the rules of this Regulation, on unstamped paper or on paper not bearing the proper stamp, and not duly endorsed, or on paper bearing a counterfeit stamp, unless signed and endorsed by a vender as prescribed, shall forfeit five times the amount of the stamp which ought to have been used, or five times the difference in case of the use of improper Stamps, as prescribed in Section 13, of this Regulation. The said fine shall be imposed and levied by the presiding Officer of the Court in which the said Vakeel or Mooktar may be practising, and the amount shall be remitted to the Collector with a copy of the proceedings or order imposing the fine.—*Reg.* 10, 1829, *Sect.* 18, *Cl.* 1.

212. It shall further be competent to the Collector, or other Officer, exercising similar powers, on discovery of any irregularity of the above description not noticed on the Proceedings of the Court, to move the Court by petition, to be presented to the Judge of the Zillah within whose jurisdiction such Vakeel, or other person so offending, may be practising, for infliction of the above fine when incurred in any Court within the zillah or city jurisdiction, or if the Vakeel so offending, be an Officer of the Provincial Court, or Sudder Dewanny Adawlut, then the Collector shall make application to

those Courts respectively, through the Vakeels of Government attached thereto, and the case shall be tried and adjudged by the zillah Judge or by the Judges of the superior Courts, and their decision respectively, as to whether the penalty has been incurred or not, shall be final.—*Reg.* 10, 1829, *Sect.* 18, *Cl.* 2.

213. I have the honor to request the instructions of the Court whether I am competent to remit the penalty declared in Section 18, Regulation 10, 1829, being assured that a Stamp of inadequate value filed in a case, is filed under circumstances which leave no doubt that the filing party was ignorant of the inadequacy of its value. *Reply.* I am directed to acknowledge the receipt of your letter, No. 3781, under date the 15th ultimo, with its enclosure, from the Officiating Judge of Zillah Sylhet, and in reply to state that the Court concur with the Calcutta Court in the opinion that Section 18, Regulation 10, of 1829, gives no discretion to the presiding officer, but that he is bound in all cases to levy the fine, therein prescribed, from any vakeel or authorized pleader or mooktar, who may file any paper contrary to the provisions of that enactment.—*Con. No.* 1120, *Cal. C.* 15*th Dec.* 1837, *West. C.* 12*th Jan.* 1838.

214. It has been ruled by the court of Sudder Dewanny Adawlut that the native judicial authorities are competent to proceed, of their own power, and without previous reference to you, to the realization, by the usual process, of any fines imposed by them under the rule contained in Clause 1, Section 18, Regulation 10, 1829, subject to the usual course of appeal.—*Cir. Ord. Cal. and West. C.* 7*th June*, 1839.

215. I am directed by the court of Sudder Dewanny Adawlut to request that you will exert yourself to the utmost in securing the due observance of the several provisions of the Stamp Regulations in all suits and matters brought before your Court [and the inferior courts in your district.] —*Cir. Ord.* 3*d Feb.* 1832.

216. The Zillah and City Judges are empowered without the previous sanction of the Provincial Court to suspend from his office any pleader attached to their Courts, who may be guilty of any gross act of fraud or misconduct, but in such instances it shall be the duty of the Judge to report the circumstances of the case, with as little delay as possible, for the information and orders of the Provincial Court.—*Reg.* 27, 1814, *Sect.* 11.

217. The parties in a cause are authorized to prosecute their respective pleaders in the Civil Courts of Judicature for any damages or injury, which they may have sustained from any breach of the regulations on the part of their pleaders, or from any fraudulent conduct or malpractices committed by their pleaders regarding the suit.—*Reg.* 27, 1814, *Sect.* 12, *Cl.* 1.

218. If a pleader shall fail to attend in Court on any day fixed for the transaction of Civil business, and shall omit to notify in writing to the Court his inability to attend, in consequence of indisposition or other sufficient cause, the Court is authorized to impose on such pleader, a fine, for the first offence, not exceeding the sum of fifty Sicca Rupees; and for the second offence, not exceeding one hundred Sicca Rupees. If such pleader shall be guilty of a similar offence a third time, he shall be liable to dismission from his office.—*Reg.* 27, 1814, *Sect.* 14, *Cl.* 1.

219. If any pleader shall be guilty of disrespect to the Court, in open Court, the Court is empowered to impose a fine upon him, not exceeding the sum of one hundred Rupees.—*Reg.* 27, 1814, *Sect.* 14, *Cl.* 2.

220. Whenever a Sudder Ameen may find it necessary to impose any fine on a pleader attached to his Court, he shall report the circumstances of the case to the Judge,

who will either confirm and enforce, or modify or remit the fine, as may appear to him reasonable and proper.—*Reg.* 27, 1814, *Sect.* 15, *Cl.* 1.

221. All orders imposing fines on pleaders, which may be passed by the Judges or Registers of the zillah and city Courts, in conformity with this regulation shall be final; and the amount of the fines shall be levied either by a deduction from the fees, which may become due to the offender, or by the process, which is prescribed for the execution of decrees. Provided however, that if a zillah or city Judge shall in any particular instance, see reason to believe, that a fine has been imposed by a Register on insufficient grounds, or that the amount of such fine is disproportionate to the offence, it shall be competent to the zillah or city Judge to remit or modify the fine at his discretion, and the order of the zillah or city Judge, in such cases, shall be conclusive.—*Reg.* 27, 1814, *Sect.* 15, *Cl.* 2.

222. The courts will carefully point out to the notice of the vakeels such parts of the pleadings as are evidently irregular, irrelevant, or otherwise objectionable, and shall record their censure of any vakeel, whose conduct in opposition to the preceding rules, may in any particular instance, demand such animadversion. If notwithstanding such recorded censure, a vakeel shall again be guilty of similar misconduct, he shall be liable to forfeit in each instance the amount of the fee to which he may be entitled in the suit, or to such other fine to Government not exceeding twenty rupees as the Court may deem it proper to impose.—*Reg.* 27, 1814, *Sect.* 9, *Cl.* 3.

SECT. XVII.

Vakeels in those Courts.—Their Duties.

223. The Vakeels are hereby enjoined not to file any plaint, answer, or other pleading, without previously ascertaining that such pleading has been duly prepared in conformity with the regulations; that it contains no unnecessary repetitions of former pleadings, no terms of personal abuse or reproach against the opposite party, his vakeels, witnesses, or other persons; and no groundless imputations on any court of justice or public officer; but that it contains such matter only as is apparently material and relevant to the suit. Every pleading filed by an authorised vakeel, shall be signed by him in testimony of his having considered and approved its contents.—*Reg.* 27, 1814, *Sect.* 9, *Cl.* 1.

224. In order that the expence, trouble, and inconvenience frequently experienced by filing irrelevant exhibits, and by summoning useless witnesses, may be avoided, the vakeels are hereby further required to examine the documents, which their constituents may propose to exhibit in proof of their claims, previously to their being filed in Court; and to ascertain from their constituents, previously to summoning any witnesses, the specific points which such witnesses are expected to prove by their testimony.—*Reg.* 27, 1814, *Sect.* 9, *Cl.* 2.

225. The Sudder Dewanny Adawlut and the several Provincial Courts will, at all times, exercise their discretion in removing from his office any pleader of their respective Courts, who may be guilty of any of the acts abovementioned, or who may be otherwise deemed unfit for the situation.—*Reg.* 27, 1814, *Sect.* 10, *Cl.* 1.

226. Whenever a zillah or city Judge shall be of opinion that a vakeel, attached to his Court, or to that of a Register, or any of the Sudder Ameens, is unfit for the situation, in consequence of his having been guilty of any of the acts mentioned in the pre-

ceding sections, or that he is otherwise disqualified for the office of pleader, the judge shall report the circumstances of the case, together with his own opinion upon it to the Provincial Court, who will pass such orders on the case as may appear to be proper, or will call for any additional information, or direct any further enquiry that the nature and circumstances of each case may appear to demand.—*Reg.* 27, 1814, *Sect.* 10, *Cl.* 2.

227. All petitions, applications, or motions presented or made to any of the courts on behalf of parties in a suit, on which the fees prescribed by Sections 25 and 32 may have been paid, or may be payable, are to be considered as paid for, by the fee allowed to the pleaders in the above mentioned Sections; and the pleaders are to make all such motions and do all such acts as may be requisite relative to any suit, in which they may have been entertained, not only during the trial of such suit, but after a decision shall have been passed, until the final judgement shall have been enforced.—*Reg.* 27, 1814, *Sect.* 34.

228. The Court observe that under the provisions of Section 34, Regulation 27, of 1814, the vakeels, entertained in a regular civil suit, are required, without any additional fee to make all motions and do all acts which may be requisite relative to such suit, not only during the trial of it, but after a decision shall have been passed, until the final judgement shall have been enforced; and as the case which has given rise to the present reference, cannot be considered to have been finally disposed of by the zillah court, the decision having been pronounced incomplete and the case ordered to be tried *de novo*, the Court decide that the defendant's vakeel should be required to refund the amount paid to him, leaving it to the court who may eventually decide the case, to award to him such portion of the authorised fee as may appear an adequate remuneration for the trouble which he may have taken in the matter.—*Con. No.* 1105, *West. C.* 8*th Sept. Cal. C.* 29*th Sept.* 1837.

229. I am directed to acknowledge the receipt of a letter from you under date the 18th instant, requesting to be informed whether a vakalutnamah, executed by a decree holder for the conduct of an original suit when pending in your Court, is sufficient authority for the vakeel therein appointed to superintend the execution of the decree on its being confirmed in appeal.—In reply, I am directed to communicate to you the opinion of the Court that the Section of the Regulation quoted by you, (Section 34, Regulation 27, 1814,) is conclusive on the point in question, viz. that a vakalutnamah executed on the original institution of a suit, unless cancelled by the party or otherwise set aside, must be considered operative and in full force "until the final judgement shall have been enforced."—*Con. No.* 852, *West. C.* 27*th Dec.* 1833, *Cal. C.* 17*th Jan.* 1834.

230. The courts of Civil judicature are hereby empowered to permit any of the authorized vakeels of their respective Courts to be arbitrators in depending suits, subject to the several rules and provisions in force for referring suits to arbitration.—*Reg.* 27, 1814, *Sect.* 19.

231. Pleaders are to give written receipts on unstampt paper for all accounts, writings, or documents, which may be delivered to them by their clients in the course of any suit, or process; if a pleader shall refuse to return such accounts, documents, or writings, the court upon a petition being presented to them for that purpose by the owners of the papers so withheld, shall cause them to be restored.—*Reg* 27, 1814, *Sect.* 36.

232. The petition of special appeal shall state distinctly the specific ground or grounds under Clause first of this Section, on which the special appeal is solicited, and it shall be presented either by the party in person, or by an authorized pleader of the Court. In the latter case, the petition shall be signed by the pleader, who shall certify on the back of the petition, that he has duly considered the grounds stated for ad-

mitting a special appeal under Clause first of this Section, and believes them to be well founded and sufficient.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 3.

233. The authorized pleaders of the Zillah and City Courts are hereby prohibited without obtaining the previous sanction of the Judges of those courts from officiating as agents, or mooktars in any prosecution, trial or proceeding before the Magistrates or their Assistants. This prohibition however is not intended to apply to the cases of pleaders, who may be employed on the part of Government in conducting the prosecution of persons charged with Criminal offences, or in the execution of any other duties in the criminal department, which such pleaders may be directed or authorised to perform on the part of Government under the regulations, which are now or may hereafter be in force.—*Reg.* 27, 1814, *Sect.* 17.

234. That the pleaders in the several courts as well as all other persons may have it in their power to render themselves acquainted with the regulations enacted by the British Government, there shall be kept, for public inspection, in the several courts of judicature, printed copies of all such regulations and of the translations in the native languages, bound up with the annual indexes. Until the regulations, which may be passed in each year are so bound up, the separate copies of each regulation, with the translations, which may be printed and circulated to the courts, are to be exposed as above directed. The regulations are to be deposited upon a table expressly allotted for that purpose in some part of the court room, and to lie for public inspection every day, Sunday excepted, during the ordinary hours of business, when the pleaders of the courts and all other persons are to be at liberty to refer to the regulations, or to take copies or extracts from them in the court room: on receipt of the translations of the regulations in the country languages, the several courts of civil justice shall cause the same to be publicly read in their cutcherries, and shall require the native pleaders of their respective courts to take copies of any of those translations, which relate directly or indirectly to the administration of civil justice.—*Reg.* 27, 1814, *Sect.* 40.

SECT. XVIII.

Vakeels in those Courts.—Engagements between Client and Vakeel.—Change, resignation or death of Vakeels.

235. The established pleaders of the Zillah and City Courts shall not be required to attend the trial of summary suits at a distance from the fixed station of the Judge or Register.—Such suits shall be tried in the presence of the parties, or any persons whom they may duly appoint to be present at the trial on their behalf.—*Reg.* 2, 1821, *Sect.* 10, *Cl.* 3.

236. No part of this regulation is to be construed to prohibit or to prevent any individual from appearing and pleading his own cause in person, in any of the Courts of civil judicature, without employing an authorised pleader.—*Reg.* 27, 1814, *Sect.* 38.

237. When a party in a cause may be desirous of retaining a vakeel for the prosecution or defence of any civil suit, he shall not be required to pay to such vakeel the retaining fee of four annas, heretofore prescribed, but he shall execute to him a vakalutnamah, constituting him pleader in the cause and authorising him to prosecute or defend the suit and further binding himself to abide by and to confirm all acts which such pleader

may do or undertake in his behalf in the cause, in the same manner as if such party had been personally present and consenting; the party is to attest the instrument with his seal or signature, or with his mark if he cannot write, in the presence of two credible witnesses, who are likewise to attest it in the same manner; and who are to attend the court and prove the vakalutnamah in all cases in which it may be judged requisite.—*Reg.* 27, 1814, *Sect.* 21, *Cl.* 1.

238. I am desired to observe, that the question which has given rise to this reference seems to be simply as to the legality or otherwise of the practice of permitting *mokhtars* to file *vakalutnamahs*, in suits wherein their principals are parties; and to acquaint you, that the opinion entertained by you on the subject, corresponds in every respect with the view which this Court have taken of it. The Court observe, that to execute *per alium*, [that other being duly authorised,] is to execute *per se*; and that the regulations consider these acts as one and the same; as is clear from the more explicit wording of Section 13, Regulation 27, 1814, which prescribes the performance of certain acts to be done *by the party or his authorised agent*. Although the wording of Section 8, Regulation 7, 1793, is not different from that of Section 21, Regulation 27, 1814, yet, from the time of its enactment (two and thirty years ago,) *vakalutnamahs* executed by agents duly authorized, have, by all the Courts, been regarded as equally good and valid with those executed by the parties themselves. The Court therefore are of opinion, that it would be inexpedient to put a stop to a practice which has been sanctioned by universal usage, which is attended with much convenience to parties in suits, and which the Regulations in force do not appear to prohibit.—*Con. No.* 417, 28*th April*, 1826.

239. Such vakalutnamahs are to be written on the Stampt paper prescribed in Section 18, Regulation 1, 1814, [Reg. 10, 1829,] but shall not be liable to the stampt duly on Exhibits under Section 15, of that Regulation.—*Reg.* 27, 1814, *Sect.* 21, *Cl.* 2.

240. When a Vakeel to whom a vakalutnamah may have been executed under the preceding Section, shall consent to undertake the prosecution or defence of the suit, he shall affix his signature to the back of the vakalutnamah, together with the date on which such signature may be affixed; and shall thenceforward be precluded from being employed in the same cause against the party who may have so retained him.—*Reg.* 27, 1814, *Sect.* 22.

241. Any party in a suit, who may be dissatisfied with the conduct of his pleader, shall be at liberty at any stage of the trial previously to the decision, to withdraw the power delegated to his pleader and to appoint another vakeel to plead the cause. In such cases the party is to present a petition to the Court, notifying that he has withdrawn the management of the suit from such pleader, and is to file a new vakalutnamah in the name of the pleader, whom he may appoint to carry on the suit; all acts however which may have been done by the first pleader on the part of his client, previously to his having been dismissed, are to be held valid; on the conclusion of the suit, the Court will exercise its discretion in awarding to the pleader first employed, any portion of the authorized fee to which he may appear justly entitled on a consideration of the trouble which he may have undergone, and the other circumstances of the case.—*Reg.* 27, 1814, *Sect.* 12, *Cl.* 2.

242. If a pleader should be unable to attend the Court in consequence of indisposition, or other sufficient reason, he is to notify the same in writing to the Court on unstampt paper, and the hearing of any cause, in which such pleader may be employed, is to be postponed to a future day, unless the party or his authorized agent shall commit the management of the cause to any other pleader of the Court, or unless the party

himself shall be present and willing to plead the cause in person. If the managment of the cause shall be entrusted to any other pleader of the Court, instead of filing a new vakalutnamah, it shall be sufficient for the party or his mokhtar duly authorized, to endorse on the back of the original vakalutnamah, a written declaration, that he has appointed some other vakeel of the Court to conduct the cause, either permanently or during the absence of the pleader first appointed; on passing a decision in such cases, the Court shall direct the amount of the authorized fee to be divided between the two pleaders in such proportions as may furnish an equitable remuneration for the trouble which they may have respectively undergone.—*Reg.* 27, 1814, *Sect.* 13.

243. Whenever a vakeel attached to a Zillah or City Court may die, or may be removed from his office, or may voluntarily resign his situation, the Judge of such Zillah or City shall notify the same in a publication, to be affixed in his own Cutcherry, and in the cutcherries of the Register, Sudder Ameens, and the Collector of the district. The publication shall contain a statement of the several depending cases, in which such vakeel may have been employed, and a requisition to the parties who have retained such vakeel to attend in person, or to substitute another vakeel in room of the pleader formerly appointed by them, within a reasonable period, to be fixed by the Court not being less than six weeks. In such instances, instead of filing a new vakalutnamah, it shall be sufficient for the party or his mokhtar duly authorized to endorse on the back of the original vakalutnamah a written declaration, that he has appointed some other vakeel of the Court, in lieu of the pleader, who may have died or resigned his office, or have been removed from his situation.—*Reg.* 27, 1814, *Sect.* 18, *Cl.* 1.

244. A publication issued in conformity with the preceding rules shall be held and considered to be a good and sufficient notice, and if any party shall not attend or appoint another vakeel, within the period limited in the publication, he shall be required to shew cause for the omission, and if sufficient cause be not assigned, the Court shall proceed as in case of default in conformity with the provisions in force.—*Reg.* 27, 1814, *Sect.* 18, *Cl.* 2.

245. A similar notification shall be issued on the death, resignation or removal of any pleader attached to the Provincial Courts or to the Sudder Dewanny Adawlut. If the pleader shall have been attached to a Provincial Court, the publication shall be affixed in the cutcherry of such Provinical Court, and of the Sudder Dewanny Adawlut, and in the cutcherries of the several zillah and city courts, included in the division, and the period to be allowed for parties to appear and to substitute another vakeel shall not be less than two months; if the pleader shall have been attached to the Sudder Dewanny Adawlut, the publication shall be affixed in that court, and in such of the Provincial Courts, and of the zillah and city courts, in which it may appear necessary to publish the same with reference to the depending causes in which the vakeel may have been employed, and the period to be allowed to parties to appear and substitute another vakeel, shall not be less than three months.—*Reg.* 27, 1814, *Sect.* 18, *Cl.* 3.

246. The courts are authorized to apply the principle of the preceding rules to cases, in which the decision of suits may be materially delayed by the protracted indisposition of a pleader, or by his continued inability to attend the court from any other cause which may be expected to be permanent, or of considerable duration.—*Reg.* 27, 1814, *Sect.* 18, *Cl.* 4.

247. Whenever a pleader originally entertained by a party may have commenced the pleadings and prosecution, or defence of a suit, and from any cause, not originating in the misconduct of such pleader, another pleader shall be employed in his stead; it shall be competent to the Court, in which the suit is decided or terminated, to adjudge to the pleader so employed at the commencement of the suit (or if he be dead, to his heirs or legal representatives) such part of the established fee, as may appear to be an equitable remuneration for the trouble which he may have undergone.—*Reg.* 27, 1814, *Sect.* 18 *Cl.* 5.

248. It shall be sufficient in such cases for the party employing two or more vakeels in the same suit, to file a single vakalutnamah, but the party shall be required to deposit in court, the whole amount of the fees payable to his pleaders, under the rules contained in Section 23.—*Reg.* 27, 1814, *Sect.* 30, *Cl.* 2.

SECT. XIX.

Vakeels in those Courts.—Legal Opinions.

249. The authorized vakeels of the Sudder Dewanny Adawlut, of the Provincial Courts, and of the Zillah and City Courts, are hereby empowered to receive fees for legal opinions under the provisions contained in the following clauses of this section.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 1.

250. Any person, who may be desirous of obtaining the opinion of an authorized pleader regarding the legal validity and sufficiency of any claim, right or title, which he may suppose himself to possess, and on the consequent expediency of prosecuting or defending either originally or in appeal such supposed claim, right or title in the Courts of Civil judicature, may submit a written statement of his claim under his seal, signature, or mark, to the pleader, whose opinion he may wish to obtain.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 2.

251. The pleader, to whom such statement may be submitted, after an attentive consideration of the laws, Regulations, usages, or precedents, which may be applicable to the case, and of the arguments, and proofs which may be adduced in support of the claim, shall furnish to the party under his signature, a written declaration of his opinion, and of the grounds, upon which that opinion may be formed.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 3.

252. If the pleader, who may have furnished such written opinion, shall be attached to the Court of Sudder Dewanny Adawlut, he shall be entitled to a fee of twenty-four rupees. If he shall be attached to any of the Provincial Courts, he shall be entitled to a fee of sixteen rupees. If he shall be attached to a Zillah or City Court, he shall be entitled to a fee of eight rupees.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 4.

253. Provided however, that it shall not be lawful for any pleader, who may have received a vakalutnamah in any suit instituted in a Court of civil judicature, to receive the fee above prescribed on account of any legal opinion, which he may subsequently furnish to his constituent respecting any subject or question connected with such suit.—*Reg.* 27, 1814, *Sect.* 20, *Cl.* 5.

The penalty for furnishing an opinion calculated to promote the institution of unfounded and vexatious suits is given at Rule 208.

254. The vakeels of the Sudder Ameen's and Principal Sudder Ameen's Courts are equally competent with other vukeels of the Zillah and City Courts to claim fees for furnishing legal opinions on points of law, or in particular cases, which may be referred to them by the parties interested.—*Con. No.* 802, *West. C. 5th July, Cal. C. 2d Aug.* 1833.

SECT. XX.

Vakeels in those Courts.—Their Fees.

255. In all regular suits, which may be instituted, either originally or in appeal, subsequently to the 1st of February 1815, in any of the Zillah or City Courts, the Provincial Courts, or the Sudder Dewanny Adawlut, the vakeels employed by the respective parties are to be allowed, for pleading the causes of their clients, the rates of fees calculated as follows:

256. In suits for money, effects, or for other personal property, or for land or other immovable property of any description, if the amount or value of the claim estimated according to the provisions of Section 14, Regulation 1, 1814, [*now Reg.* 10, 1829,] shall not exceed 5000 Sicca Rupees, five per cent.—*Reg.* 27, 1814, *Sect.* 25, *Cl.* 1.

257. If the amount or value shall exceed 5,000 Rupees, and shall not exceed 20,000 Sicca Rupees, on 5,000 as above, and on the remainder, two per cent.—*Reg.* 27, 1814, *Sect.* 25, *Cl.* 1.

258. If the amount or value shall exceed 20,000 Rupees, and shall not exceed 50,000 Rupees, on 20,000 as above, and on the remainder, one per cent.—*Reg.* 27, 1814, *Sect.* 25, *Cl.* 1.

259. If the amount or value shall exceed 50,000 Sicca Rupees, and shall not exceed 80,000 Sicca Rupees, on 50,000 as above, and on the remainder eight annas per cent.—*Reg.* 27, 1814, *Sect.* 25, *Cl.* 1.

260. If the amount or value shall exceed 80,000 Rupees, the fee to the vakeel shall be one thousand Rupees, and shall in no instance exceed that sum, however great may be the value or amount of the suit in which such vakeel may be employed—*Reg.* 27, 1814, *Sect.* 25, *Cl.* 1.

261. In all the preceding calculations, where the amount or value may be in fractions of Rupees, such fractions are to be rejected in calculating the fees thereupon.—*Reg.* 27, 1814, *Sect.* 25, *Cl.* 2.

The four following rules 262, 263, *and* 264, *will apply in cases in which the vakeel's fees may have been voluntarily deposited in the Court.*

262. The rules heretofore in force providing for a deduction of five per cent from the amount of the fees payable to vakeels having been rescinded by Regulation 1, 1814, it is hereby declared, that the vakeels are to receive the full amount of their fees without any deduction whatsoever; provided nevertheless, that for every sum which may be paid to a vakeel by a civil court, on account of his fees, such vakeel shall give a receipt, written on the stampt paper prescribed in Section 11, Regulation 1, 1814.—*Reg.* 27, 1814, *Sect.* 25, *Cl.* 3.

263. The rule contained in the third clause of Section 25, Regulatiou 27, 1814, that for every sum which may be paid by a civil court to a vakeel, on account of his fees,

he shall give a receipt, written on the stampt paper prescribed in Section 11, Regulation 1, 1814, is modified as follows.—*Reg.* 19, 1817, *Sect.* 10, *Cl.* 1.

264. When the aggregate amount of fees payable to a vakeel, in two or more suits, may not exceed sixteen rupees, he shall be allowed to give a consolidated receipt for the total amount, specifying the sum receivable in each suit; instead of a separate receipt for the fee payable in each suit.—*Reg.* 19, 1817, *Sect.* 10, *Cl.* 2.

265. Upon a decision being passed by the court, whether upon an investigation of the case or otherwise, the fees of the pleaders deposited in the Court, shall be paid to the persons respectively entitled to receive them, and such payment shall not be stayed or postponed, in consequence of an appeal being preferred from the decision.—*Reg.* 27, 1814, *Sect.* 29.

266. If the decree shall be given against the defendant or respondent, and the whole of the money or property, which may be demanded by the appellant or plaintiff shall be decreed to him, a sum equal to the whole of the fees of his pleader shall be adjudged to the plaintiff or appellant, in addition to the other costs which may be awarded to him, but if only a part of the money or property claimed, is decreed to the plaintiff or appellant, a sum bearing the same proportion to the money or to the value of the thing decreed, as the fee did to the demand stated in the plaint or appeal, is to be decreed and added to the costs, which may be awarded to the plaintiff or appellant.—*Reg.* 27, 1814, *Sect.* 26, *Cl.* 1.

267. If the suit of the plaintiff or appellant shall be dismissed, whether upon an investigation of the merits or otherwise, the plaintiff, or appellant, is to be charged with the fees of his own pleader and with those of the defendant or respondent.—*Reg.* 27, 1814, *Sect.* 26, *Cl.* 2.

268. Provided however, that if in any instance the payment of the pleader's fees, according to the preceding rules, should not appear to be just and equitable, the Courts of civil judicature may exercise their discretion in charging the fees of the pleaders to the parties respectively, in such proportions as may appear equitable and proper, under a consideration of all the circumstances of the case.—*Reg.* 27, 1814, *Sect.* 26, *Cl.* 3.

269. When a suit in which one of the parties may have been admitted to plead as a pauper, may be decided with costs in favor of the adverse party, and such pauper cannot make good the full amount of the costs awarded against him, the Courts are authorized to return to such adverse party, any portion of the fee, deposited by him on account of his vakeel, which may be deemed expedient, and to pay the remaining portion of the fee to the vakeel entitled to receive it; in exercising this discretion, the Courts will be careful, that the vakeel receive such a portion of the deposit as may in each instance appear to be a reasonable remuneration for the duty performed by him. The Courts shall further endeavour to realize the remainder of the fee due to such vakeel, from any property which may subsequently be found to belong to the pauper.—*Reg.* 27, 1814, *Sect.* 28.

270. If a suit shall be withdrawn or dismissed on default without a determination upon the merits of the case before all the requisite pleadings shall have been filed in Court, the respective pleaders of the plaintiff and defendants, or of the appellant and respondent, shall each be entitled to only one fourth of the established fee which they would have received, had the suit been brought to a regular decision by the Court. If a suit shall be withdrawn or dismissed on default, after all the requisite pleadings shall

have been filed in Court, the respective pleaders are to be entitled to one-half the fees which they would have received, if judgement had been given in the cause. The fees in both of the above mentioned cases are to be charged to the plaintiff or appellant withdrawing the suit, or suffering it to be dismissed on default, together with all the admitted costs incurred by the defendant or respondent.—*Reg.* 27, 1814, *Sect.* 31, *Cl.* 1.

271. The same rule shall be considered applicable to cases adjusted by razeenamah, except that the fees of the pleaders and all other costs of the suit shall be paid by the parties in such manner and proportions as may have been agreed upon and inserted in the razeenamah.—*Reg.* 27, 1814, *Sect.* 31, *Cl.* 2.

272. The Court are of opinion that to entitle the respective pleaders of the parties in cases withdrawn or dismissed on default to one half the amount of the established fee, under the provisions of Section 31, Regulation 27, of 1814, it is necessary that the whole of the requisite pleadings should have been filed, and not merely the Answer or Juwab-dawee.—*Con. No.* 1052, *West. C.* 14*th Oct. Cal. C.* 11*th Nov.* 1836.

273. I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 24th ultimo, relative to the payment of the fees of pleaders, in a case decided in favour of the plaintiff, on the acknowledgement of the defendant without investigation of the merits, as well as without a *razeenamah* being filed, so as to bring it within the provisions of Section 31, Regulation 27, 1814. The Court observe, that in such cases, the claim of the plaintiff not being disputed by the defendant, it may generally be expected, a *razeenamah* will be filed, when the second clause of Section 31, Regulation 27, 1814, would of course be applicable. But if not, and the suit be allowed to proceed to a judgement in favour of the plaintiff, the Court are of opinion, that the *vakeels* are intitled to the full amount of the established fee: subject, of course, to the provisions of Regulation 28, 1814, in suits of paupers.—*Con. No.* 209, 1*st June*, 1815.

274. The Court of Sudder Dewanny Adawlut have had before them your officiating Judge's letter, date the 24th ultimo, requesting to be informed, whether it is competent to the Courts to order the whole fees to be paid to the vakeels in cases adjusted by *razeenamah* after evidence has been taken; or whether the rule in Section 31, Regulation 27, 1814, for giving one-half the established fee in cases so settled, after the requisite pleadings shall have been filed, is applicable after evidence has been taken. In reply, I am desired to communicate to you, for the information and guidance of your officiating Judge, that in cases adjusted by *razeenamah* after evidence has been completed, the vakeels are entitled to their whole fees, in like manner as if no *razeenamah* had been admitted.—*Con. No.* 418, 5*th May*, 1826.

275. The parties in a suit are respectively permitted to entertain two or more pleaders, who shall either divide the authorized fee between them, in an equal, or in any other proportion, which may have been previously agreed upon between them and their constituent; or shall each be entitled to receive the full established fee, as may be specified in the vakalutnamah; but all stipulations to this effect shall be distinctly stated in the vakalutnamah, which shall otherwise be construed to entitle the whole of the vakeels appointed by it to an equal division of the established fee and no more.—*Reg.* 27, 1814, *Sect.* 30, *Cl.* 1.

276. It shall be sufficient in such cases for the party employing two or more vakeels in the same suit, to file a single vakalutnamah, but the party shall be required to deposit in Court, the whole amount of the fees payable to his pleaders, under the rules contained in Section 23.—*Reg.* 27, 1814, *Sect.* 30, *Cl.* 2.

277. If the party shall agree to pay to each of the vakeels employed by him the full amount of the authorized fee, the opposite party in the suit shall in no case be required to make good more than the fee of one of those pleaders, or such part of that fee

as may be adjudged against him by the court. The fees of the other pleader are to be considered as a separate expense to be defrayed exclusively by the party entertaining him, and for which he is not to be reimbursed in any case whatever.—*Reg.* 27, 1814, *Sect.* 30, *Cl.* 3.

278. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 28th February last, submitting the following questions for their opinion, with reference to the provisions contained in Section 30, Regulation 27, of 1814.

First. Whether in the event of two defendants in a civil suit choosing to employ the same vakeel under separate vakalutnamahs, and each allotting to him the full amount of fees prescribed by Section 25, of the regulation in question, such vakeel would be authorized in receiving the same?—

Secondly. Whether in the event of two separate vakeels being employed by two separate defendants, they would each be entitled to receive the full amount of fees, and, in that case, what amount of fees would be chargeable to the plaintiff, on the dismission of the suit?

In reply to your first question, I am directed to communicate to you the opinion of the Court, that where a vakeel is employed by two defendants, under separate vakaluthamahs, he is entitled to receive from each the full amount of fees prescribed by Section 25, Regulation 27, 1814; and in reply to your second question, that where two separate *vakeels* are employed by two defendants, they are each entitled to the full amount of fees, and that the whole amount of fees so due is chargeable to the plaintiff on the dismission of his suit.—*Con. No.* 500, 3*d April*, 1829.

279. When a pleader may be employed in such summary appeals, the court is authorized to award to him such fee, as may be considered to be a sufficient compensation for his labor, provided that it shall in no case exceed one fourth of the fee to which such vakeel would have been entitled if the suit had been instituted either as an original suit or as a regular appeal.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 11.

280. The rule prescribed in the eleventh clause of Section 3, Regulation 26, 1814, relative to the fee receivable by pleaders employed in the summary appeals referred to in that Section, shall be hereafter considered applicable to all summary appeals and original summary suits, authorized by the Regulations, in which a pleader or pleaders may be employed.—*Reg.* 19, 1817, *Sect.* 9, *Cl.* 2.

281. It shall not be requisite to make any deposit, in the first instance, for the fees of pleaders employed in summary original suits or appeals. But whatever amount of fees may be awarded to pleaders on the decision of the case, shall be paid into the court giving judgement for the same, by the party or parties declared responsible for the payment thereof, within such period as may be limited by the court for that purpose; under penalty for default of being compelled to make good, by the usual process of recovery, any additional sum, which the court, in consideration of the delay, may judge it proper to award to the pleaders entitled thereto in such cases.—*Reg.* 19, 1817, *Sect.* 9, *Cl.* 3.

282. In modification of the provisions contained in Clause Seventh, Section 2, and Clause Eleventh, Section 3, Regulation 26, of 1814, and Sections 24, 34, and 35, Regulation 27, of 1814, Pleaders are hereby authorized, in all applications for the admission of Special and Summary Appeals, as well as in all other cases where the Regulations do not require the fees of Vakeels to be deposited in Court, to settle with their constituents, the compensation to be made them for presenting such application or petition and performing any other act connected therewith.—*Reg.* 9, 1831, *Sect.* 7, *Cl.* 1.

283. The amount of the compensation which may be voluntarily agreed upon

shall be specified in the vakalutnamah, and shall in no case exceed one-fourth of the amount of the fee to which the Pleader would have been entitled if the matter at issue had been brought forward in a regular suit.—*Reg.* 9. 1831, *Sect.* 7, *Cl.* 2.

284. It shall be competent to the court to which the application may be perferred, to order the amount of the compensation above authorized to be reduced, should it in any instance appear to be unnecessarily large or exorbitant.—*Reg.* 9, 1831, *Sect.* 7, *Cl.* 3.

285. With a view to prevent the unnecessary occupation of the time of the public officers in such matters, it shall not be necessary in cases of the nature above specified, for the Courts of justice to issue any orders or process for the realization of the amount receivable by pleaders under the foregoing rules. Provided however, that when it may appear just and proper to award the recovery from another party of the remuneration paid to a pleader in such cases, or of any part thereof, the Court passing the order shall be competent to direct the amount to be levied from the said party in the manner prescribed for the execution of Decrees.—*Reg.* 9. 1831, *Sect.* 7, *Cl.* 4.

286. I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 15th instant, regarding the Construction of Section 7, Regulation 9, 1831. In reply, I am desired to inform you that the provisions of that Section are general, and have reference to the Zillah and City Courts as well as to the Court of Sudder Dewanny Adawlut.—*Con. No.* 711, *West. C.* 24*th Aug. Cal. C.* 21*st Sept.* 1832.

287. The pleaders in the several courts of civil justice are permitted to demand, and receive a fee of four annas for each miscellaneous petition or application which they may present, or motion which they may make, in writing to the court, provided that such petition, application, or motion, shall not relate to any suit depending before the court, wherein the person, on whose behalf they may present such petition, or application, or make such motion, may be a party.—*Reg.* 27, 1814, *Sect.* 34.

288. The fee of four annas for miscellaneous petitions and motions, prescribed in the above section, is not required to be deposited in the court, but is to be paid by the party himself to the vakeel, at such time as may be mutually agreed upon; but as cases may occur, in which the above fee of four annas may not be a sufficient compensation to the pleader or pleaders, the several courts of civil justice are authorized to award such additional fee in any instance as they may consider to be a reasonable compensation to the pleader for the duty performed by him, and to cause payment thereof to be made either by the party, who may have employed such pleader or pleaders, or as costs of suit by the opposite party, as may be deemed just and proper; provided however, that the compensation, which may be awarded in such cases, shall in no instance exceed one fourth of the established fee to which the pleader or pleaders would have been entitled on a regular suit in the case in question.—*Reg.* 27, 1814, *Sect.* 35.

289. All petitions of appeal from decisions of Monsiffs are to be presented by the appellant in person, or by one of the authorized vakeels of the Court; and if the appeal shall be admitted, and the appellant and respondent shall not plead their cause in person, their respective vakeels are to be allowed the same fees as in other suits tried before the Judge.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 3.

The above enactment is made applicable to Sudder Ameens by Section 73 *of the same Regulation.*

290. The provisions of this regulation are not intended to apply to vakeels, who

may be employed in the Courts of the Moonsiffs, under Regulation 23, 1814.—*Reg.* 27, 1814, *Sect.* 39, *Cl.* 1.

291. If the plaintiff in a regular suit, instead of perferring his plaint in person, employ a vakeel to prefer it, he must deposit the full fee, in conformity with Section 23, Regulation 27, 1814. In the event of the suit being referred to a Register or Sudder Ameen, such deposit must be kept for the pleader employed to prosecute the suit in the Court of the Sudder Ameen or Register. If such pleader be not the vakeel employed to file the plaint, the Court are of opinion, that under the provisions of Section 35 of the above Regulation, the Judge may award to the latter four annas, or such fee as he may oonsider adequate, under the limitation prescribed in the section referred to; but it appears to the Court, that in general the fee of four annas will in such cases be sufficient.—*Con. No.* 197, 1*st March*, 1815.

292. As the security required by the Regulations to be furnished to stay the execution of decrees appealed from, is exclusive of costs, payment of costs should invariably be enforced, though execution may be stayed in other respects.—*Con. No.* 110, 3*d Sept.* 1812.

The following enactments by which all preceding Regulations regarding Vakeel's fees are modified, have been extended to all Civil Courts, those of Moonsiffs excepted.

293. Parties employing authorized pleaders in the Courts of Sudder Dewanny Adawlut are hereby declared at liberty to settle with them for the remuneration to be paid to them for their professional services, the amount of which shall be specified in the *vakalutnamah*, and they shall not be required to make any deposit in Court on account thereof, unless they wish to do so for the satisfaction of their pleaders. Provided a larger amount than the fee payable under the existing regulations, shall not be chargeable in the costs of suits to a losing party on account of remuneration to his opponent's pleader.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 5.

294. Private engagements between parties and their pleaders, when contested, shall be enforced by a regular suit, and no miscellaneous application for that purpose shall be received in any Court.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 6.

295.—On a reference from the Judge of Jessore as to whether the provisions of Cl. 6, Section 2, Regulation 12, 1833, extended to pauper suits, it was held that the rule was applicable to all suits in which private engagements exist between parties and pleaders.—*Con. Cl. C.* 28*th May, West. C.* 18*th, June,* 1841.

296. When any suit may be transferred to either of the Courts of Sudder Dewanny Adawlut under the provisions of Regulation 12, 1833, the Court by whom such suit shall be decided, shall determine the amount of remuneration to be assigned to the pleaders, who may have been employed by the parties in conducting such suit before the Court from which it may be transferred, and generally how any costs previously incurred shall be borne. All sums which may have been desposited in such Court, on account of Pleaders' fees, shall be kept in deposit until the case is decided, when the amount awarded to the pleaders shall be paid to them.—*Reg.* 12, 1833, *Sect.* 2, *Cl.* 8.

297. The provisions of the 8th Clause of the preceding Section are hereby declared applicable to all Courts to which suits may be transferred for trial from other Courts.—*Reg.* 12, 1833, *Sect.* 3.

298. I am directed to acquaint you that it has been ruled by the Court, that where a party gaining a cause may have employed in the conduct of the same a special agent, under the provisions of Clause 4, Section 2, Regulation 12, of 1833, instead of a regular vakeel, such successful suitor shall not, in future, be entitled to recover from the losing party any reimbursement on ac-

count of remuneration granted by him to the special agent so employed, nor shall the Court trying the cause award anything on that account.—*Cir. Ord. Cal. and West. C. 28th June,* 1839.

SECT. XXI.

Mooktears.

299. I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, requesting to be informed, whether the prohibition against the employment of a mooktear convicted of gross misconduct is to be confined to the case in which his misconduct has been brought to light; and in reply to inform you that one proved act of gross misconduct is sufficient to warrant a general rejection of the mooktear.—*Con. No.* 809, *Cal. C. 2d Aug.* 1833, *West. C. 6th Sept.* 1833.

300. I beg to submit the following points for the orders of the superior Court: A general power of attorney written on stamped paper of four rupees, as required in Schedule A, Regulation 10 of 1829, has been presented for the purpose of being attested, with a request that it may be given back to the party after acknowledgement. The practice of this Court hitherto has been to retain such mookhtarnamahs, allowing individuals to take copies of them on the same stamped paper as prescribed for the original deed.—In reply, I am directed to inform you that you are at liberty to return the original powers of attorney described in your letter to the parties filing them, at your own discretion.—*Con. No.* 917, *West. C. 28th Nov.* 1834, *Cal. C. 2d Jan.* 1835.

301. As doubts have been entertained whether a Zillah or City Judge is competent to employ a Principal Sudder Ameen in attesting Mokhtarnamahs required to be filed in other courts, the Court direct me to inform you that such duty may be entrusted to a Principal Sudder Ameen whenever the measure may appear advisable. The Court direct me, at the same time, to call your attention to the provisions of Section 7, Regulation 20, 1812, which distinctly declare that no documents shall be registered but such as are enumerated in that enactment, or in Regulation 36, 1793, or Regulation 17, 1803. As Mokhtarnamahs are not mentioned in these Regulations, the Principal Sudder Ameen should be cautioned against registering such papers or levying any fee or gratuity for attesting them.—*Cir. Ord. West. C. 6th March, Cal. C. 3rd April,* 1835.

SECT. XXII.

Government Pleaders.

302. One or more of the authorized pleaders of the Sudder Dewanny Adawlut, of the Provincial Courts, and the Zillah and City Courts, shall be appointed for the purpose of conducting the prosecution or defence of any suits in those courts respectively, which may be directed to be carried on at the public expence, by any regulation or by a special order from the Governor General in Council, or other authority competent to pass such order. Those pleaders shall be furnished with a sunnud or written authority to that purport, in the English and Persian languages, under the signature of the Secretary to Government in the Judicial Department, and the sunnud shall be drawn up according to the form No. 5, of the Appendix to this regulation.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 1.

Sunnud to be granted to the Pleaders of Government in the English and Persian Languages.

303. In conformity with the provisions of Regulation 27, 1814, you A. B. are hereby appointed to the office of pleader on the part of Government, in the Sudder Dewanny Adawlut, or in the Provincial Court for the division of ——— or in the Zillah or

City Court of ——. You will not be liable to be removed from your office so long as you may conduct yourself with propriety, and discharge your duty with zeal, ability, and integrity, under the Regulations which are now in force, or which may hereafter be enacted.—*Appendix, No. 5, to Regulation* 27, 1814.

304. The pleaders for Government are to undertake all causes which they may be directed to plead by orders from Government, or which may be directed by any Regulation, to be carried on at the public expense, upon receiving an order for that purpose, either from Government, or from any officer or officers empowered by any regulation to superintend, and to furnish instructions for conducting such suits. The order of Government, or of such officer or officers, is to be filed in Court as the authority of the pleader to plead the cause, and is to form part of the record of the proceedings.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 3.

305. The pleaders of Government are prohibited from giving any advice to the parties opposed to Government in any civil suit or proceeding, and from being concerned directly or indirectly on their behalf, in suits which are directed to be carried on at the public expense; but in all other suits the pleaders of Government are to be at liberty to plead for either of the parties in the same manner as the other authorized pleaders of the Court.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 4.

306. The pleaders for Government are to be paid the same fees in causes directed to be pleaded at the public expense, as pleaders employed in causes between individuals, and under the same rules and restrictions; provided however, that the previous deposit, prescribed in Section 23, of this regulation, shall not be required for the fees, payable to the pleaders of Government, in the prosecution or defence of suits conducted at the public expense.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 5.

307. In pleading suits directed to be carried on at the public expense, the pleaders for Government are to be subject to all the rules prescribed for their guidance when pleading on behalf of individuals, except in matters or cases in which it may be otherwise especially directed by any regulation.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 6.

308. The Board of Revenue, the Board of Commissioners in the upper Provinces, the Board of Trade, or any other authorities, entrusted with the management of suits on the part of Government, are empowered to associate with the established vakeel of Government, any other authorized pleader, in cases in which such aid may, from the importance of the suit, or any other reason, be judged necessary or advisable. Such additional pleader shall be furnished with a vakalutnamah, duly authenticated by the officer or authority employing him, and shall be entitled to receive the same fees, and under the same rules and restrictions, as if he were employed on the part of an individual, subject however to the provision contained in Clause Fifth of this Section.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 7.

309. The authorized pleaders of the Zillah and City Courts are hereby prohibited without obtaining the previous sanction of the Judges of those Courts from officiating as agents, or mokhtars in any prosecution, trial or proceeding before the Magistrates or their Assistants. This prohibition however is not intended to apply to the cases of pleaders, who may be employed on the part of Government in conducting the prosecution of persons charged with criminal offences, or in the execution of any other duties in the criminal department, which such pleaders may be directed or authorized to perform

on the part of Government under the Regulations, which are now or may hereafter be in force.—*Reg.* 27, 1814, *Sect.* 17.

310. To prevent invalid jagheerdars from being harassed with law suits, and to enable them to defend or prosecute suits in the Courts of civil judicature, without being obliged to attend in person, or being subjected to trouble and expense, it shall be the duty of the vakeel of Government on the requisition of the Collector to plead the causes of such invalids free of cost.—*Reg.* 1, 1804, *Sect.* 14.

311. On the occasion of vacancies occurring in the Office of the Vakeels of Government in the Courts of Justice, such Courts shall not nominate any individual to succeed to the Office, but shall merely report the circumstance, for the information of Government, to the Secretary in the Judicial Department.—*Reg.* 13, 1829, *Sect.* 4, *Cl.* 2.

312. It will rest with Government to ascertain by such inquiries as they may deem necessary, which of the constituted pleaders of the Court is best fitted by his qualifications and character to succeed to the vacant office, and to appoint such individual accordingly.—*Reg*, 13, 1829, *Sect.* 4, *Cl.* 3.

SECT. XXIII.

Vakeels in Moonsiff's Courts.

313. No person shall be allowed to plead or act as a Vakeel in the Court of any Moonsiff unless he be a relative, servant, or dependant of the person, for whom he may be appointed to act; or unless he shall have received a sunnud of appointment from the Zillah or City Judge.—*Reg.* 23, 1814, *Sect.* 15, *Cl.* 1.

314. If in any instance it appear to be essentially necessary that vakeels be appointed to attend the pleading of causes before any of the Moonsiffs, the Zillah and City Judges are authorized to appoint a sufficient number of persons of good character and duly qualified, and to grant to them sunnuds drawn up according to the form No. 3, in the Appendix to this regulation. The Zillah and City Judges are enjoined not to exercise the discretion vested in them by this clause of appointing vakeels to the Moonsiff's Courts, unless they shall be satisfied of the expediency or necessity of that measure.—*Reg.* 23, 1814, *Sect.* 15, *Cl.* 2.

Form of Sunnud to be granted to persons who may be appointed to officiate as Vakeels in the cutcherries of the Moonsiffs.

"I, A. B. Judge of the Zillah or City of do hereby appoint you C. D. to act in the capacity of vakeel in the cutcherry of the Moonsiff of you will not be liable to be removed from your office, unless the Judge of the district or city of in consequence of misconduct on your part, or of there being no longer any necessity for your being employed in the capacity of vakeel, shall deem it proper to recal and cancel this sunnud"—*Appendix, No.* 3, *to Reg.* 23, 1814.

315. The vakeels so appointed shall be sworn to a faithful discharge of their duties, and shall be liable both to a civil action, and a criminal prosecution, for all breaches of trust, fraud, or acts of wilful misconduct, committed by them in their capacity of vakeels. They shall not however be removed from their offices without proof to the satisfaction of the Judge, of misconduct, or of incapacity, or of gross profligacy, or misbehaviour, or unless the Judge shall consider it inexpedient to continue the number of vakeels

appointed; in which case he is at all times authorized to recal and cancel the sunnuds granted to them.—*Reg.* 23, 1814, *Sect.* 15, *Cl.* 3.

316. A doubt having arisen as to whether an appeal does or does not lie to the Court of Sudder Dewanny Adawlut from the order of a Zillah or City Judge, dismissing a vakeel of a Moonsiff's Court; the Court are of opinion that such appeal does not lie: for the Judges were declared competent by Clause 3, Section 15, Regulation 23, 1814, to remove such vakeels (without a reference to any other authority being specifically required) while they were required by Clause 2, Section 10, Regulation 27, 1814, to submit a report for the orders of the Provincial Court, whenever they might consider a vakeel attached to their own Courts, or to those of the Registers or Sudder Ameens, worthy of dismissal from office.—*Con. No.* 846, *Cal. C. 6th Dec. West. C. 27th Dec.* 1833.

317. The vakeels who may be appointed under this Section are left to settle with their constituents the fees to be paid to them for the pleading of causes, and for all other acts that may be performed by them. The amount of the fees which may be voluntarily agreed upon, shall be specified in the vakalutnamah, which shall be written on the prescribed stamp paper, and the Moonsiff may include the same (or any part thereof which may appear reasonable) in his judgement against the party cast.—*Reg.* 23, 1814, *Sect.* 15, *Cl.* 4.

318. In modification of Clause four, Section 15, Regulation 23, 1814, the Moonsiffs are prohibited from awarding to Vakeels and Mokhtars, employed in pleading causes in their Courts, a higher rate of fee than 5 per cent. on the amount or value of the claim, and from issuing process for realizing any fee, but such as may be included in their decrees.—*Reg.* 7, 1832, *Sect.* 11.

319. Vakalutnamahs in Moonsiffs' Courts, and applications to them for the execution of decrees, may be received on unstampt paper.—*Con. No.* 950, *Cal. C.* 1*st May, West. C.* 10*th July,* 1835.

320. I am directed by the Court to inform you that the Regulations do not require the Zillah and City Judges to interfere in regard to the remuneration of their vakeels by parties in the Moonsiffs' Courts. They therefore desire that you will refrain from doing so further than to intimate that if a party choose to change his Vakeel he is bound to remunerate the individual engaged in the second instance, as well as him who was entertained originally.—*Con. No.* 990, *Cal. C.* 11*th Dec.* 1835, *West. C.* 2*d Jan.* 1836.

321. Suits against the Vakeels of Moonsiff's Courts for all breaches of trust, fraud or wilful misconduct committed by them in their professional capacity, will be received and decided by the Moonsiff, but if the suit be beyond his competence, the Judge may transfer it to another and competent Court, or retain it on his own file.—*Govt. Ord. No.* 11, 15*th Jan.* 1834.

SECT. XXIV.

Ameens.

322. No Moonsiff shall in future be called upon to perform any of the miscellaneous duties described in Sections 50 to 53, of Regulation 23, 1814, except in very special cases, to be fully recorded on the proceedings of the Court.—*Cir. Ord. Cal. C.* 13*th Jan. West. C.* 10*th Feb.* 1837, *Par.* 4, *Cl.* 1.

323. The zillah and city Judges shall select and appoint as many duly qualified persons as they may deem requisite to act as Ameens, who shall perform the miscellaneous duties abovementioned; of course the Judges will be at liberty to nominate the city and pergunnah cauzies to those duties, when their services may be available.—*Cir. Ord. Cal. C.* 13*th Jan. West. C.* 10*th Feb.* 1837,

324. The persons so appointed shall be required to furnish security for their personal appearance, and for the faithful discharge of their duty.—*Cir. Ord. Cal. C.* 13*th Jan. West. C.* 10*th Feb.* 1837, *Par.* 4, *Cl.* 3.

325. Each Ameen shall receive a regular sunnud of appointment, describing the jurisdiction within which he is to act as Ameen, and which should correspond exactly with the jurisdiction of Moonsiffs, unless special reasons exist for dividing a Moonsiff's jurisdiction, or for combining two or more jurisdictions under one Ameen.—*Cir. Ord. Cal. C.* 13*th Jan. West. C.* 10*th Feb.* 1837, *Par.* 4, *Cl.* 4.

326. The Ameens shall receive the same commission of one anna on the rupee which is allowed to Moonsiffs by the sections above cited, and they shall perform their duties under the same rules which are applicable to Moonsiffs or Ameens under the existing Regulations.—*Cir. Ord. Cal. C.* 13*th Jan. West. C.* 10*th Feb.* 1837, *Par.* 4, *Cl.* 5.

327. The Ameen shall perform the duties entrusted to him in person, and shall not be permitted to act by deputy on any account whatever.—*Cir. Ord. Cal. C.* 13*th Jan. West. C.* 10*th Feb.* 1837, *Par.* 4, *Cl.* 6.

328. Lists of the persons so appointed shall be affixed in the Courts of all the Judges, European and Native, throughout the district, and an annual list shall moreover be furnished to this Court.—*Cir. Ord. Cal. C.* 13*th Jan. West. C.* 10*th Feb.* 1837, *Par.* 4, *Cl.* 7.

329. Nothing contained in these rules shall be understood to prevent the Judges, European and Native, from deputing the officers of their own establishment, to perform any of the prescribed duties, whenever they may consider such a measure necessary.—*Cir. Ord. Cal. C.* 13*th Jan. West. C.* 10*th Feb.* 1837, *Par.* 4, *Cl.* 8.

330. You are requested to issue the necessary instructions to the native Judges on your establishment to conform to the orders of this Circular, whenever they have occasion to require the services of an Ameen for any miscellaneous duties.—*Cir. Ord. Cal. C.* 13*th Jan. West. C.* 10*th Feb.* 1837, *Par.* 5.

331. It being considered desirable that proper attention should be paid to the proceedings of the Ameens appointed under the Circular Order, No. 197, 13th January, 1837, to ascertain that they perform their duties in a satisfactory manner, and with sufficient promptitude, and that no more persons are appointed to the office than the amount of business actually requires, the Court request that you will direct the Ameens in your district to submit to you a monthly statement showing how they are employed each day, the work assigned to them from time to time, and the period within which it is disposed of. A cursory inspection of the statements will shew you what degree of attention is paid by the Ameens to their duty, and whether the number of those officers is sufficient for or inadequate to the work in the district.—*Cir. Ord.* 4*th June,* 1841.

332. It has been ruled by the Court that Ameens so appointed have the constructive power, under Clause 3, Section 2, Regulation 7, of 1825, of selling real as well as personal property in satisfaction of decrees.—*Cir. Ord.* 7*th Feb.* 1840.

The following rules (333—341) *refer to the duties originally imposed on Moonsiffs, but now transferred to Ameens.*

333. In questions which may arise in suits depending before the Judge of any Zillah or City Court relating to the adjustment of accounts in revenue or mercantile transactions, or regarding the boundaries of lands or houses, or regarding the right of way in roads or pathways, or regarding any rights in forests, commons, rivers, lakes, ponds, wells, reservoirs or water courses, or regarding the quantity or description of land and the rent to which it is liable, and generally in all questions of local rights and usages which cannot be conveniently decided without an enquiry on the spot, the Zillah or City Judge may empower any Moonsiff within his jurisdiction to make a lo-

cal investigation into the merits of the question in dispute.—*Reg.* 23, 1814, *Sect.* 50, *Cl.* 1.

334. The Zillah or City Judges shall furnish to the Moonsiffs such part of the proceedings, and such detailed instructions in each case, as may be necessary for his information and guidance, and shall enjoin the Moonsiff, either merely to take the requisite evidence in the presence of the parties or their vakeels, and to transmit the same to the Court, or likewise to transmit, with the evidence so taken, a report of his own sentiments on the point at issue founded on the result of the investigation held by him.—*Reg.* 23, 1814, *Sect.* 50, *Cl.* 2.

335. The proceedings of the Moonsiff are to be received as evidence in the case with regard to the specific matter, which he may have been directed to investigate, but if the Judge shall have reason to be dissatisfied with the proceedings of the Moonsiff, he is at liberty to make such further enquiry as may be requisite, and to pass such ultimate judgement as may appear to him to be right and proper.—*Reg.* 23, 1814, *Sect.* 50, *Cl.* 3.

336. The Zillah and City Judges are further authorized to employ the Moonsiffs in delivering over formal possession of lands, houses, or other real property in conformity with decrees regular or summary.—*Reg.* 23, 1814, *Sect.* 51, *Cl.* 1.

337. Previously however to issuing any instructions to a Moonsiff for the performance of any of the duties described in this or the preceding section, the Judge shall require either the plaintiff or the defendant, according to the circumstances of the case, to pay into Court such a sum of money as may be an adequate remuneration to the Moonsiff for his trouble, provided such sum do not exceed the probable expense which would be incurred if an Ameen or a Native Officer of the Court were employed in the execution of the same duty.—*Reg.* 23, 1814, *Sect.* 51, *Cl.* 2.

338. The Moonsiff shall be entitled to receive such sum as may have been paid into Court under the preceding clause, except under circumstances, in which he may appear to have performed the duty entrusted to him in a negligent, unjust, or improper manner; in such cases the said sum of money shall be returned to the party who deposited it in Court.—*Reg.* 23, 1814, *Sect.* 51, *Cl.* 3.

339. The Moonsiffs may be employed at the discretion of the Zillah and City Judges in the attachment and sale of personal property for the purpose of realizing the amount of fines, or of decrees regular or summary, and shall be entitled to receive a commission of one anna in each rupee on the proceeds of such sales.—*Reg.* 23, 1814, *Sect.* 52.

340. The Zillah and City Judges are further empowered to employ the Moonsiffs in ascertaining and reporting upon the sufficiency of securities, and the indigence of persons suing in formâ pauperis.—*Reg.* 23, 1814, *Sect.* 53.

341. The provisions of the preceding sections are not intended to preclude the Zillah and City Courts from deputing an Ameen for local enquiries, or from employing the authorized officers of the Court in the execution of the various duties above detailed, whenever they may deem it expedient to do so in conformity with the existing regulations; and the Zillah and City Judges will be careful, that the time of the Moonsiffs be not so much occupied in the miscellaneous duties above described, as to interfere materially with the early trial and decision of the regular suits depending before them. —*Reg.* 23, 1814, *Sect.* 54.

342. The Moonsiff or other competent officer, called upon to sell property attached for rent, is entitled to be reimbursed the expenses actually and necessarily incurred by him, though no sale should take place; and that in the event of such expenses not being paid, he is authorized to realize them by the sale of such part of the attached property as may be necessary for the purpose.—*Con. No.* 714, *Cal. C.* 31*st Aug. West. C.* 5*th Oct.* 1832.

343. The power of employing Moonsiffs or Ameens in any of the above mentioned duties has been extended, as regards the execution of decrees, by the provisions of Section 22, Regulation 5, of 1831, and Section 7, Regulation 7, of 1832, to the Native Judges, who are authorized to execute their own decrees under the same rules as are applicable to the Zillah and City Judges.—*Cir. Ord. Cal. C.* 13*th Jan. West. C.* 10*th Feb.* 1837, *Par.* 3.

344. I am directed to inform you that no fees can be levied for the remuneration of the Ameen appointed under the Circular Order of the 13th January last, No. 217, in cases in which he may be employed in investigating the sufficiency of securities tendered to the Court of Sudder Dewanny Adawlut or other Zillahs, and the circumstances of parties wishing to sue in formâ pauperis. Should you therefore consider it objectionable to employ, on these duties, persons who do not receive any fees, you are at liberty, as heretofore, to confide this duty to your nazir or to the Moonsiffs.—*Con. No.* 1078, *Cal. C.* 10*th March, West. C.* 31*st March,* 1837, *Par.* 1.

345. In regard to enquiries directed by the Judges of other districts, the Court direct me to observe that whether any fees can be levied or not, must depend upon the nature of the enquiry. —*Con. No.* 1078, *Cal. C.* 10*th March, West. C.* 31*st March,* 1837, *Par.* 2.

346. Held, on a reference from the Judge of Futtehpore, that as the Ameens appointed under the Circular Order of 13th January (Western Provinces, 10th February) 1837, are ministerial officers of the Zillah Courts, it is competent to a Zillah Judge to pass an order for the dismissal of an Ameen, of his own authority, subject to the usual appeal allowed by law.—*Con. No.* 1271, *West. C.* 16*th Jan. Cal. C.* 2*d Feb.* 1840.

347. The Moonsiffs are competent, in the same manner as other Judicial officers, to depute an Ameen for the purpose of making local investigations, when such a measure may appear necessary, and, in this department of their duty, should be guided by the regulations on the same head applicable to zillah courts. The same rule applies in cases of resistance or evasion of process, subject to the restriction contained in Section 7, Regulation 7, 1832.—*Cir. Ord. West. C.* 26*th July, Cal. C.* 1*st Nov.* 1833, *Par.* 10.

348. In cases of disputed property regarding lands, houses, or their limits or boundaries, in which the court may deem a local investigation proper, the court is to appoint an ameen, who is to be sworn to make a true and faithful report to the court of the several matters which he may be directed to investigate, and not to take or receive, directly or indirectly, from either party, any gratuity, reward, or consideration, besides the sum which may be allowed to him by the Court. The Ameen is to be ordered to make his report in writing, subscribed with his name, and to deliver it into court on a certain day, which is to be specified in his commission. The report is to be received by the Court, as evidence in the cause with regard to the matters which the Ameen may be commissioned to investigate, and no other. The Court may order such sum to be paid to the Ameen as may be thought reasonable for his trouble, and the amount is to be added to the costs, and paid by the person against whom the decree may be passed. But the Court is to be careful that expences are not unnecessarily incurred by the Ameen by delay or other means.—*Reg.* 4, 1793, *Sect.* 17.

349. I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting to be informed whether you are at liberty to depute vakeels of your Court to make

Regulation which prohibits the practice, but they consider the measure as of doubtful expediency in general.—*Con. No.* 901, *West. C.* 26*th Sept. Cal. C.* 24*th Oct.* 1834.

SECT. XXV.

Paupers.—Plaintiffs and their suits.

350. It is hereby enacted, in addition to the rules already in force for instituting suits in formâ pauperis, that no person shall be hereafter entitled to institute any suit in formâ pauperis, in any Civil Court of Judicature within the territories subject to the presidency of Fort William in Bengal, unless the Court in which his petition may be presented shall, before granting such petition, be satisfied by the examination of the petitioner, or of his or her agents or witnesses, (which examination shall be taken on oath, or solemn affirmation in cases where a solemn affirmation may be received instead of an oath,) that there is probable cause for instituting the suit.—*Act* 9, 1839, *Sect.* 1.

351. Held, on a reference from the Judge of Seharunpore, that the Zillah Judges cannot delegate to another authority the duty of making the enquiry contemplated by Section 1, Act 9, of 1839, in the case of parties applying to sue in formâ pauperis.—*Con. No.* 1285, *West. C.* 7*th Aug. Cal. C.* 7*th Sept.* 1840.

352. The Judge of Zillah Goruckpore having enquired whether the provisions of the Act in question, are to be considered applicable to petitions to sue in formâ pauperis presented under Regulation 28, of 1814, but which remained undisposed of at the date of the promulgation of the recent enactment; The Court informed him that they consider his view to be correct, and that petitions to sue as paupers, remaining undisposed of at the date of Act 9, of the present year coming into force, must of course be considered subject to the rules provided by that law.—*Con. No.* 1229, *West. C.* 5*th July, Cal. C.* 2*nd Aug.* 1839.

353. The same Judge also enquired whether the application of a party to institute a suit in formâ pauperis having been rejected by the Judge, under the discretionary power vested in him by the first section of the Act, in consequence of there not appearing to him to be probable cause for instituting the suit, the Judge is competent to receive one, of his own authority, to admit a second application from the same party relating to the same matter, either urging fresh grounds for the institution of his suit, or supplying any omission or correcting any thing which may have led to the rejection of his first application; or whether such second application must be looked upon by the Judge as an application for a review of his first order, and treated accordingly.—To this the Sudder Court replied, that in their judgement, he is not competent to admit, of his own authority, a second application after the rejection of the first, but must treat it as a petition for a review of his orders, and proceed accordingly.—*Con. No.* 1229, *West. C.* 5*th July, Cal. C.* 2*d Aug.* 1839.

354. No person shall be hereafter entitled to institute or defend any suit in formâ pauperis in any Civil Court of judicature, unless the amount or value of the thing claimed shall exceed the sum of sixty-four rupees; under this rule the Moonsiffs are hereby strictly prohibited from receiving or trying any suits which persons may wish to prefer to them in formâ pauperis.—*Reg.* 28, 1814, *Sect.* 3.

355. No person shall be hereafter permitted to institute a suit as a pauper in any Civil Court of judicature, if the claim shall be for damages on account of loss of cast, slander, abusive language, assaults, or personal injuries of any description; or if the claim shall be for the possession or recovery of deeds or papers, or for fines, forfeitures or pecuniary penalties on account of any breach of the Regulations.—*Reg.* 28, 1814,

356. I am directed to inform you, that suits brought by khoodkast ryots for damages sustained in consequence of ejectments, and claims for damages arising from being deprived of water for the purpose of irrigation, cannot be considered as coming within the prohibition contained in Clause 2, Section 5, Regulation 5, 1831, which applies only to suits for damages of a personal nature, and not to those for damage done to property; such suits are therefore cognizable by Moonsiffs. With regard however to the first description of suits, I am directed to refer you to the Circular Order of the 15th November, 1833, which declares such claims cognizable by the Collector under Regulation 8, 1831. In like manner the provisions of Section 4, Regulation 28, 1814, [with respect to claims of the above nature when instituted by paupers] do not apply to suits of the nature described by you, the prohibition contained in them extending only to suits for personal damages.—*Con. No.* 919, *West. C. 5th Dec. Cal. C. 26th Dec.* 1834.

357. In the opinion of the Court, a person adjudged to be the slave of another is entitled to appeal against the decision in formâ pauperis.—*Con. No.* 1009, *Cal. C. 20th May, West. C. 10th June,* 1836.

358. Whenever a party may be desirous of instituting an original suit as a pauper in any Zillah or City Court, or in a Provincial Court, he shall appear in person before such Court, and shall present a petition written on the stampt paper prescribed for miscellaneous petitions in Section 18, Regulation 1, 1814, [*now*, Reg. 10, 1829;] provided however, that if the party be a female of a rank and description which according to the prejudices of the country would render it improper to require her personal attendance in a Court of justice, such petition may be presented by a mokhtar or agent duly authorized for that purpose.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 1.

359. It is hereby enacted, that the proviso contained in Clause 1, Section 5, Regulation 28, 1814, of the Bengal Code in regard to females of rank, shall be applicable, at the discretion of the Courts of Sudder Dewanny Adawlut of the Presidency of Fort William in Bengal respectively, to any party desirous of appealing in formâ pauperis to either of those Courts.—*Act* 19, 1840.

360. The petition shall contain a general statement of the nature and grounds of the demand, of the value of the thing claimed, according to the provisions of Section 14, Regulation 1, 1814, [*now*, Regulation 10, 1829,] of the name of the person or persons intended to be sued, and a schedule of the whole real or personal property, belonging to the petitioner, with the estimated value of such property.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 2.

361. The Court in which such petition may be presented, or an authorized officer of the Court, shall then proceed to take the examination of the petitioner, or if the petitioner be a female of the description mentioned in Clause first of this Section, the examination of her agent, with regard to the points above noticed, and shall question him particularly with respect to any real or personal property, which the petitioner may have recently sold, mortgaged, transferred, or otherwise disposed of; such examination shall be taken on oath, unless the Court should in any particular instance, judge it proper to admit a solemn declaration in lieu thereof, under the provisions now in force, or any other provisions which may be hereafter enacted.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 3.

362. The Judges and Registers who are empowered by Section 5, of the Regulation abovementioned, to employ an authorized Officer of the Court in taking the examinations of parties and witnesses for the purposes therein specified, may however employ the Sudder Ameens attached to their respective Courts, in taking such examinations and generally in making the inquiries provided for by that Regulation. But no final order for the admission of a pauper shall be passed by a Sudder Ameen, nor shall

the commitment of pauper plaintiffs to close custody, in pursuance of Section 11, Regulation 28, 1814, be carried into execution by a Sudder Ameen, without the sanction of the Judge or Register, to whom it may belong to enforce the decision of the Ameen in such cases.—*Reg.* 13, 1824, *Sect.* 4, *Cl.* 4.

An Ameen may also be thus employed, No. 340.

363. In taking the examination of the petitioner or agent in such cases, it shall be the duty of the Court to admonish him, that any wilful misrepresentation or falsehood, or the fraudulent concealment of any material fact regarding the property in the petitioner's possession, or the recent transfer of such property will subject him to be tried for perjury, and on conviction, to the punishment which is now or may be hereafter prescribed for that crime by the regulations. The petitioner or agent shall subscribe his examination, which shall then be authenticated by the Court in the usual manner. —*Reg.* 28, 1814, *Sect.* 5, *Cl.* 4.

364. If upon such examination it should appear to the Court that the petitioner is possessed of property sufficient to defray the expenses of the suit, or that he has recently sold, mortgaged, or otherwise transferred any property with the view of being admitted to sue as a pauper, the Court will at once refuse to admit his suit in that form, and will refer him to the general rules in force.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 5.

365. If there shall appear any grounds for suspecting that the petitioner is possessed of property, or has recently transferred any property beyond that which he may have acknowledged or stated in his petition and examination, the Court may issue a notice to the adverse party, signifying, that if such party shall appear within a reasonable period, to be fixed by the Court, he shall be permitted to shew cause why the plaintiff should not be allowed to sue as a pauper; the Court may also summon witnesses or institute a local inquiry in the neighbourhood of the petitioner's residence, with the view of ascertaining whether the petitioner has recently transferred, or is possessed of any property beyond that stated in his examination.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 6.

366. In reply to the following query by the Judge of City Patna, "Whether a plaintiff who has not instituted his suit as a pauper, may afterwards, in the course of it, be admitted to proceed as a pauper, on proof of his poverty?" the Court of Sudder Dewanny Adawlut, on the 31st August, 1814, acquainted him, "that as in the case supposed, the plaintiff must have already paid the institution fee, as well as given security for vakeel's fees, and costs of suit, the Court are of opinion, that he cannot be allowed to prosecute the suit in formâ pauperis; but that in the event of an appeal from the decision on the original suit, there would be no objection to his being admitted as a pauper on the appeal, on producing satisfactory proof of his poverty."*—*Con. No.* 186, 31*st Aug.* 1814.

367. If from the result of such enquiry, or at any subsequent period, it should be satisfactorily established that the petitioner or the agent of a female petitioner has been guilty of wilful perjury in his examination, the Court will not only refuse the prayer of the petitioner (or nonsuit the plaintiff if the cause be depending,) but will cause the person appearing to have been guilty of perjury to be committed to the Court of Circuit to take his trial for such offence.—*Reg.* 28, 1814, *Sect.* 5, *Cl.* 7.

368. A plaintiff originally admitted to sue as a pauper under Section 5, Regulation 28, of 1814, who may subsequently, while the suit is pending, become possessed of property of sufficient

* The Regulations first quoted in the margin have been rescinded by Section 2, Regulation 28, 1814, but the construction is equally applicable to the provisions of the latter Regulation.

amount to nullify his plea of poverty, may in the opinion of the Court, be called upon to pay up the original stamp duty in lieu of the institution fees, &c. under the penalty, in the event of his neglecting to do so, of being nonsuited.—*Con. No.* 904, *Cal. C.* 3*d Oct. West. C.* 7*th Nov.* 1834.

369. If none of the objections stated in Clauses Fifth and Seventh, of the preceding Section, should exist, and the petitioner should not appear to be possessed of sufficient property to enable him to defray the probable expenses of the suit, the Court is empowered to admit him to sue as a pauper on his finding two good and sufficient sureties, both of whom shall be householders, for his appearance whenever his attendance may be required by the Court.—*Reg.* 28, 1814, *Sect.* 6, *Cl.* 1.

370. Under the existing laws, the Judge is not authorized to demand sureties for the appearance of the agent of a pauper female plaintiff, and such agent cannot be committed to the jail on the suit preferred through his agency appearing unfounded, vaxatious, or wilfully exaggerated.—*Con. No.* 777, *Cal. C.* 6*th April, West. C.* 3*d May*, 1833.

371, When the required sureties shall have been furnished, if the pauper shall be unable to prevail on any of the vakeels of the Court to undertake his suit, and he shall be unable to plead the cause in person, the Court may require any of the authorized pleaders of the Court to undertake and plead the suit, and no deposit shall be required from the plaintiff for the fees of such pleader.—*Reg.* 28, 1814, *Sect.* 7, *Cl.* 1.

372. The Courts are to state on the record of the trial, their reasons for every exercise of the power vested in them by this Section; and the order of the Court in such cases shall be a sufficient warrant to the vakeel to plead in the suit without filing the usual vakalutnamah.—*Reg.* 28, 1814, *Sect.* 7, *Cl.* 2.

373. The stamp duty which has been substituted for the institution fee by Regulation 1, 1814, [*now*, Regulation 10, 1829,] shall not be required from plaintiffs who may be admitted to sue as paupers under this Regulation. The plaint, reply, or other pleadings on the part of the plaintiff, as well as applications on his part for receiving exhibits and summoning witnesses, may be written on unstampt paper. The notice to the defendant, the summons for witnesses and other processes on the part of the plaintiff shall be served through the chuprassies on the establishment of the Courts without any expense to the plaintiff; and the copy of the decree as well as copies of orders or proceedings which he may be required to take, shall be furnished to a pauper plaintiff on unstampt paper.—*Reg.* 28, 1814, *Sect.* 8.

374. *Letter from the Judge of Bundlekund.* The practice of this Court has heretofore been to admit the records of hajirzaminee, in pauper cases, on country unstamped paper, but these records not being specified in Section 8, Regulation 28, 1814, as exempted from stamp duties it appears to me to be irregular, and I have to request the favour of a communication of the orders of the Sudder Dewanny Adawlut on the subject.—*Reply of the Sudder Court.* There being no exemption in favor of security bonds of the description of those referred to by Mr. Fraser, the Court inform him that the practice which obtains in his district of admitting such instruments on plain paper is opposed to the Regulations, and should be discontinued accordingly.—*Con. No.* 1063, *West. and Cal. C.* 23*rd Dec.* 1836.

375. I am now directed to communicate to you the opinion of the Court collectively that in all cases when a pleader may be appointed by a party, when a pauper, the vakalutnamah must be drawn out on stamp paper; vakalutnamahs not being included in Section 8, Regulation 28, 1814, which specifies the stamp duties from which paupers are exempted. In the cases specially provided for by the second clause of Section 7, of the Regulation in question, viz. where the pleader may have been appointed by the Court, no vakalutnamah is of course necessary. But the

Court do not consider this Clause applicable to any case in which a vakeel is appointed by a party.—*Con. No.* 261, 26*th Dec.* 1816.

376. And it is hereby enacted, that in all suits instituted in formâ pauperis, the pleadings, on the part of the defendant as well as all papers filed on his part on which a stamp is required by Schedule B. of Regulation 10, of 1829, of the Bengal Code, may be written on unstamped paper, and copies of orders or proceedings which the defendant may be required to take shall be furnished to him on unstamped paper; and the defendant shall not be required to deposit Vakeel's fees; provided always that on the conclusion of the suit the Court shall calculate the whole of the costs which would have been incurred by the defendant on account of stamp duties, if the suit had not been instituted in formâ pauperis, and shall charge the same to the party cast, or to the parties respectively, in such proportions as may be deemed reasonable.—*Act* 9, 1839, *Sect.* 2.

377. I beg to be favoured with the Court's opinion whether, on the petition of plaint being filed by a pauper plaintiff, the defendants might not be permitted to demur summarily on the ground of the illegality of the claim, or exaggerated valuation of the property claimed, before being called upon to deposit the whole amount of pleader's fees or incur the expences of a regular suit.—*The Court replied*; With reference to Section 5, Regulation 4, 1793, which prohibits the admission of any pleadings whatever, but those therein specified, the objections of the defendant to the plaintiff's statement of the cause of action cannot be heard summarily; but should, by analogy to the cases contemplated in Section 5, Regulation 13, 1808, be offered *in answer to the plaint* in the first instance.—*Con. No.* 821, *Cal. C.* 30*th Aug. West. C.* 20*th Sept.* 1833.

378. Decided by the Government, in concurrence with the opinion of the Calcutta Court, that the provisions of Act 9, 1839, have equal reference to the respondent in an appeal, as to the defendant in an original suit.—*Con No* 1250, *Cal. C.* 13*th. Sept.* 1839.

379. It has been ruled by the Court that a pauper plaintiff dissatisfied with any interlocutory order, passed while his suit is pending, and desirous of appealing therefrom to a Court of higher jurisdiction, is entitled to the privilege of obtaining a copy of such order or proceeding against which he intends to appeal on plain paper.—*Cir. Ord. Cal. and West. C.* 1*st. Nov.* 1839, *Par.* 2.

380. The rule contained in paragraph 2, is to be understood as restricting the immunity from stamp duty to the order or proceeding from which the appeal is preferred, and is not to include copies of documents and other papers which paupers appealing may be desirous of filing therewith, in support of the objections taken by them to such proceedings or orders, which must be written on stampt paper and not on plain paper as allowed by some Courts.—It is hardly necessary to point out that this restriction can never operate with hardship on the pauper preferring the appeal, the power resting with the appellate tribunal of calling for such papers as it may deem requisite to elucidate any point not satisfactorily explained by the copy of the order appealed from.—*Cir. Ord. Cal. and West. C.* 1*st Nov.* 1839.

381. On the conclusion of the suit, the Court shall calculate the whole of the costs which would have been incurred by the plaintiff on account of the several stamp duties prescribed by Regulation 1, 1814, [*now*, Regulation 10, 1829,] and other legal expenses, had he not been permitted to sue as a pauper, and shall charge the same in the decree to the party cast, or to the parties respectively, in such proportions as may be deemed equitable.—*Reg.* 28, 1814, *Sect.* 9.

382. If the pauper plaintiff shall gain his suit, the Court will cause the defendant to make good the amount of the fees due to the pleader, who may have been employed on account of the plaintiff, or such part of them as the Court may decree.—*Reg.* 28, 1814, *Sect.* 10, *Cl.* 1.

ed with costs, is liable to confinement at the instance of the defendant, and on the deposit of the prescribed subsistence money, if he fail to pay the amount adjudged against him by a decree, in like manner with any other suitors, and of course, in common with all insolvent debtors, equally entitled to the benefit of the rules introduced by Section 11, Regulation 2, 1806.—*Con. No.* 110, *3rd Sept.* 1812.

384. If the claim of the plaintiff be dismissed with costs, the Court is authorized and required to levy from the defendant such part only of the established fee for his own pleader as may appear to be an adequate compensation, leaving the remainder to be recovered from any property that may subsequently be found to belong to the plaintiff.—*Reg.* 28, 1814, *Sect.* 10, *Cl.* 2.

385. I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, and in reply to inform you that the vakeel of the pauper plaintiff, whose claim was dismissed, is not entitled to receive any portion of the fee deposited by the defendant on account of her Vakeel.—*Con. No.* 740, *7th Dec.* 1832.

386. If the plaintiff shall not establish his claim, and the Court shall deem the suit to be unfounded, vexatious, or wilfully exaggerated, and the plaintiff shall not pay the amount of his own fees, and the fees and costs which may be awarded against him in favour of the opposite party, the Court is authorized to commit him to close custody in the civil jail, without labour, for a period not exceeding six months.—*Reg.* 28, 1814, *Sect.* 11, *Cl.* 1.

387. The Judge of the Jungle Mehals having required information whether persons suing as paupers, whose suits, preferred under Regulation 46, 1793, might prove on trial groundless and vexatious, were liable to be committed to close custody *in the jail of the Dewanny or Foujdaree Court* under Section 3 of that Regulation, was told on the 19th January, 1810, that the description of persons referred to in Section 3, should be confined in the Dewanny jail.—*Con. No.* 57, *9th Jan.* 1810.

388. On a reference from the Moorshedabad Court of Appeal, to ascertain by whom the subsistence of pauper plaintiffs or appellants, confined under the Regulations for litigiousness in their plaints or appeals, is payable, the Court of Sudder Dewanny Adawlut determined, that as plaintiffs and appellants, in such cases, are not confined at the instance of the defendant or respondent, any requisite subsistence for them, during their imprisonment, should be paid by Government.—*Con. No.* 9, *13th Sept.* 1805.

389. Such order of confinement shall be carried into immediate execution, and shall not be suspended in consequence of the plaintiff's being desirous of appealing from the judgement; provided however, that the plaintiff shall at any time be entitled to his discharge from such confinement on his paying into Court the full amount of the costs and expences awarded against him in the decree.—*Reg.* 28, 1814, *Sect* 11, *Cl.* 2.

390. If the pauper plaintiff shall abscond, and his sureties shall not produce him before the Court, and the order for his imprisonment cannot therefore be carried into effect, the said sureties shall be called upon to make good the full amount of the costs adjudged against the plaintiff. In the event of their refusing or failing to make good the costs, the Court is authorized to commit them to close custody, without labour, in the civil jail for a period not exceeding six months, subject to the provision contained in Clause 2 of this Section.—*Reg.* 28, 1814, *Sect.* 11, *Cl.* 3.

391. The Judge of Zillah Etawah, referring to Clause 3, Section 11 of Regulation 28 of 1814, requested to be informed whether, in the event of a pauper and his sureties both absconding, the property of the latter can be sold in satisfaction of the costs

are liable only to the penalty of imprisonment for six months prescribed by Clause 3, Section 11, Regulation 28, 1814, in the event of the principals not appearing, and that the amount of costs due from the principal cannot be levied on the goods of the surety.—*Con. No.* 922, *West. C.* 19*th Dec.* 1834, *Cal. C.* 26*th Jan.* 1835.

392. The confinement of a pauper plaintiff, or of his sureties, under this Section, shall not preclude the Court from realizing the costs and expences adjudged against a pauper plaintiff, but in all cases in which such plaintiff may fail to make good the costs and expences to which he may be declared liable in the decree, whether those costs may be due to the defendant or to Government, the Court shall endeavour to realize the amount by the sale of any property which may belong to the plaintiff either at the time of the decree or subsequently thereto.—*Reg.* 28, 1814, *Sect.* 11, *Cl.* 4.

393. In reply to your letter of the 10th instant, requesting the instructions of the Court of Sudder Dewanny Adawlut relative to the order in which the several claims against a pauper plaintiff, whose suit has been dismissed, should be satisfied, I am directed by the Court to inform you that, after payment of the vakeel's fees, you should exercise your discretion in satisfying any other claims in such manner as may appear to you equitable, leaving any persons deeming themselves aggrieved by your order to their ordinary course of appeal.—*Con. No.* 621, 21*st Jan.* 1831.

394. Held, on a reference from the Judge of Chittagong, that in a pauper suit, after the payment of vakeel's fees, as prescribed by Construction 621, the dues of Government in respect to stamp expences have the next claim, since there is no reason why the pauper plaintiff who has gained his cause, should have any advantage in this particular over other suitors who have to pay beforehand; but, after the payment of the Government stamp dues, the principle of the abovementioned Construction, that the order of satisfying claims is determinable by the circumstances of the case, is applicable to any other costs which may be incurred by Government as well as to claims of other parties.—*Con. No.* 1258, *Cal. C.* 1*st Nov. West. C.* 6*th Dec.* 1839.

395. Doubts having arisen whether the Courts of Civil and Criminal judicature, the Board of Revenue, the Board of Commissioner, the Collectors and other public officers, are authorized to receive from persons professing themselves to be paupers, any miscellaneous petitions, or applications, which are required to be written on stampt paper, or any other paper, than the prescribed stampt paper; it is hereby declared, that such petitions or applications shall not be received by any of the said authorities except on paper bearing the prescribed stamp. Provided however, that the Courts of Criminal judicature shall be at liberty to receive petitions on unstampt paper from prisoners, who may be confined under examination or sentence in any of the Criminal jails.—*Reg.* 28, 1814, *Sect.* 19.

396. When a plaintiff may have been admitted by the Judge or Register of a Zillah or City Court, to institute his suit, in formâ pauperis under the rules for paupers contained in Regulation 28, 1814, and the suit may in other respects be referrible to a Sudder Ameen, it shall be competent to the Judge to refer the same for trial and decision by one of the Sudder Ameens attached to the Zillah or City Court or stationed with the Register in any other part of his jurisdiction; and the suit so referred shall be proceeded upon by the Sudder Ameen as in other suits referred to him, subject to the provisions contained in Regulation 28, 1814.—*Reg.* 13, 1824, *Sect.* 4, *Cl.* 2.

397. The provisions in the Regulation above mentioned respecting pauper defendants in original suits, as well as those respecting pauper appellants and respondents in appealed cases, shall likewise be considered applicable to defendants in original suits, and to appellants and respondents in appealed cases referred for trial to Sudder Ameens:

but no person shall be admitted by a Sudder Ameen to prosecute or defend an original suit or appeal, in formâ pauperis without the written order of the Zillah or City Judge, or of the Register with whom the Ameen may be stationed, authorizing the admission of the party as a pauper under the provisions of Regulation 28, 1814.—*Reg.* 13, 1824, *Sect.* 4, *Cl.* 3.

398. Moonsiffs are further prohibited from receiving any suits, which persons may be desirous to prefer before them in formâ pauperis; but it shall be competent for the Judge to refer for trial to the Moonsiffs, within his jurisdiction, any such suits which may have been instituted before him, and would otherwise have been cognizable by them whenever he may think proper so to do.—*Reg.* 5, 1831, *Sect.* 5, *Cl.* 5.

399. No stampt duty would be leviable in pauper cases instituted in the Judge's Court and afterwards referred to Moonsiffs for decision.—*Con. No.* 945, *West. C. 24th April, Cal. C. 29th May,* 1835.

400. The Court observe that by the provisions of Clause 5, Section 5, Regulation 5, 1831, pauper cases may be referred to the Moonsiffs for decision. For the issue of process of these Courts in such cases no establishment of *chuprassees* is retained; it will therefore be advisable that such cases be, in general, referred to the Sudder Ameens at the sudder station, whose process may issue through the *chuprassees* attached to the Judges' Courts. Where it may be found necessary so refer such a case to a Moonsiff, the summons or other process will issue in the manner described in Clause 4, Section 29, Regulation 23, 1814.—*Cir. Ord. West. C. 26th July, Cal. C.* 1*st Nov.* 1833, *Par.* 11.

401. 1. I am directed to communicate to you the following rule which it has been resolved, in accordance with a suggestion of the Sudder Board of Revenue for the North Western Provinces, to adopt, with a view of protecting the interests of Government in respect to stamp duty in pauper suits before the Moonsiffs, who are empowered to try such suits when referred to them by the Judge, but have no pleaders on the part of Government attached to their establishment. 2. Whenever a pauper's suit may have been referred for trial and decision to a Moonsiff, you will be careful to instruct him invariably to forward to your Court a copy of his decree for the information of the Government Pleader in the Zillah Court, in order that the latter may take the necessary steps for asserting the rights of Government, in pursuance of directions which he will receive to that effect in the Revenue Department.—*Cir. Ord.* 12*th June,* 1840.

SECT. XXVI.

Appeals in the Pauper Suits.

402. It is hereby enacted, that the proviso contained in Clause 1, Section 5, Regulation 28, 1814, of the Bengal Code in regard to females of rank, shall be applicable, at the discretion of the Courts of Sudder Dewanny Adawlut of the Presidency of Fort William in Bengal respectively, to any party desirous of appealing in formâ pauperis to either of those Courts.—*Act.* 19, 1840.

403. If any party to an original suit may be desirous of appealing in formâ pauperis from the decision passed in such suit, he shall present a petition in the mode prescribed by Clause first, Section 5, of this Regulation, to the Court by which his appeal may be regularly cognizable under the regulations.—*Reg.* 28, 1814, *Sect.* 12, *Cl.* 1.

404. Such petition shall be accompanied by an authenticated copy of the decree, and shall contain a schedule of the whole real or personal property belonging to the petitioner, and the estimated value of such property, together with a statement of the spe-

cific grounds on which the petitioner may desire to prefer an appeal.—*Reg.* 28, 1814, *Sect.* 12, *Cl.* 2.

405. If upon a perusal of the petition and the copy of the decree, the original judgement shall not appear to the Court to be erroneous or unjust, or if the nature of the cause shall not appear to be of sufficient importance to merit a further investigation in appeal, the Court will reject the petition, and will refuse to admit the petitioner to sue in appeal as a pauper.—*Reg.* 28, 1814, *Sect.* 12, *Cl.* 3.

406. Provided however, that the petitioner shall nevertheless be entitled to institute his appeal on performing the conditions of appeal prescribed by the regulations for persons not suing as paupers.—*Reg.* 28, 1814, *Sect.* 12, *Cl.* 4.

407. A question having arisen as to whether an appeal lies to the King in Council from a summary order passed by the Court of Sudder Dewanny Adawlut, refusing on the grounds specified in Clause 3, Section 12, Regulation 28, of 1814, to admit an appeal in formâ pauperis from the decision of a Zillah Judge, in which the sum or value awarded amounted to 50,000 Rupees, the petitioner being, at the same time, left at liberty to institute his appeal on performing the conditions prescribed by the Regulations for persons not suing as paupers, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court. The Court observe that in the case cited in the margin, it was ruled by the Court of Sudder Dewanny Adawlut, that an order passed by a Provincial Court refusing to admit an appeal in formâ pauperis on the merits of the case, and without reference to the question of pauperism, was final and conclusive; and that in a note appended thereto, it is added that "the Sudder Dewanny Adawlut had on many occasions construed Clause 3, Section 12, Regulation 28, 1814, as vesting the appellate authority with discretion to pass a final order not open to special appeal." The Court are of opinion that the same principle must be held to apply to orders passed by themselves of the nature of that described in the preceding paragraph, and that consequently no appeal lies from such orders to the King in Council. —*Con. No.* 1025, *West. C.* 8*th July, Cal. C.* 4*th Aug.* 1836.

The rules regarding appeals to the Privy Council were subsequently modified by Orders in Council, which will be found under the last Chapter, in the Section which refers to such appeals.

408. A question having arisen whether, on the rejection under Clause 3, Section 12, Regulation 28, 1814, of a petition suing to appeal as pauper, the petitioner having been admitted as a pauper in the lower Court, the party so rejected, receiving back his copy of the decree of the inferior Court which he obtained on plain paper, and being desirous of instituting his appeal in the manner provided for by Clause 4, of the same Section and Regulation, may accompany his petition of appeal with the copy on plain paper above mentioned, or whether he must obtain a fresh copy of the decree on the prescribed stamp in the mode required from parties who were not paupers in the lower Court, it was held that under the circumstances stated, a pauper may accompany his petition of appeal presented under Clause 4, Section 12, Regulation 28, 1814, with a copy of the decree of the lower Court on plain paper.—*Con. No.* 1257, *West. C.* 17*th May, Cal. C.* 21*st June,* 1839.

409. The Court propose to inform the Judge of Jessore, with the concurrence of the Agra Court, that in their opinion the rules contained in Sections 12 and 13, Regulation 28, of 1814, are applicable to any pauper appellant, whether he was a pauper in the original suit or not. If however the appellant appeared originally as a pauper, he would of course be at liberty to file a copy of the decree of the lower Court on plain paper, being entitled to such copy under Section 8 of the same Regulation.—*Con. No.* 1207, *Cal. C.* 1*st April, West. C.* 26*th April,* 1839.

410. If upon the perusal of a petition presented under the preceding Section, and of the copy of the decree accompanying it, the Court shall be of opinion that there is reason to believe the judgement to be erroneous or unjust, or that the nature of the cause renders it deserving of a further investigation in appeal, the Court is empowered to ad-

mit the appeal subject to the rules and conditions prescribed in Sections 5 and 6, of this Regulation; Sections 7, 8, 9, 10 and 11, shall also be considered applicable to persons who may be admitted to appeal in formâ pauperis.—*Reg.* 28, 1814, *Sect.* 13.

411. If a decision be passed in any original suit in favour of a pauper plaintiff, and the adverse party shall appeal from such decision, the principles of the rules contained in Sections 7, 8, 9 and 10, shall without any further enquiry be considered applicable to the respondent or original pauper plaintiff in such appealed suit, provided that the execution of the original decree shall have been suspended during the appeal.—*Reg.* 28, 1814, *Sect.* 14.

412. If a decision in favor of a pauper plaintiff be reversed in appeal, the amount of the stamp duty substituted for the institution fee which may have been paid by the appellant, shall be returned to him by the Court, together with such portion of the deposit which may have been made by him on account of the fee payable to his vakeel, as may be deemed reasonable, and the amount of such stamp duty and deposit, as well as all other costs and expenses which may be awarded in the decree against the respondent, shall be recovered from any property which the respondent may, at any time, be found to possess.—*Reg.* 28, 1814, *Sect.* 15.

413. The Court are of opinion that the law is rightly stated in the 2d and 3d paragraphs of the Judge's letter, viz. That the payment of fees in pauper as well as other cases cannot be stayed on the ground that an appeal has been instituted from the first decision : and although there may be a liability to inconvenience in particular cases, the general rule appears to the Court sound and just; they see no reason therefore to advocate the proposed change in the existing practice of the Courts.—*Con. No.* 776, *West. C.* 4*th April, Cal. C.* 3*d May,* 1833.

414. If a defendant or respondent, in any suit (except in the case provided for by Section 14,) shall be desirous of being admitted to plead in formâ pauperis, he shall appear either in person, or by an authorized agent, before the Court, in which the suit may be depending, in conformity with the rules prescribed in Clause First, of Section 5, of this Regulation; and shall present a petition, containing an exact Schedule of the whole, real or personal property belonging to him, and the estimated value of such property.—*Reg.* 28, 1814, *Sect.* 16, *Cl.* 1.

415. The Court to whom such petition may be presented, shall then proceed in conformity with Clauses Third, Fourth, Fifth, Sixth, and Seventh, of Section 5, of this Regulation.—*Reg.* 28, 1814, *Sect.* 16, *Cl.* 2.

416. If after the examination and enquiries, prescribed in those Clauses, the Court shall be satisfied that the petitioner is not possessed of sufficient property to defray the probable expenses of the suit, and that he can neither plead the suit in person, nor prevail on any of the authorized pleaders of the Court to undertake the defence of the suit, the Court is empowered to grant to the petitioner the same advantages and facilities in the defence of the suit as are allowed to pauper plaintiffs and appellants, under Sections 7, 8, 9 and 10 of this Regulation, and no security except for personal appearance, shall be required from such defendant or respondent.—*Reg.* 28, 1814, *Sect.* 16, *Cl.* 3.

417. It is hereby declared, that the rules contained in this Regulation are intended to apply to regular suits and appeals only, and not to summary suits or summary appeals of any description; neither are they intended to apply to pauper suits which may have been instituted either originally, or in appeal previously to the 1st of February,

1815; such pauper suits and appeals are to be tried and determined in conformity with the rules heretofore in force.—*Reg.* 28, 1814, *Sect.* 17.

418. Regulation 28, 1814, relative to paupers, not containing any specific provision respecting Pauper Appellants or Respondents in second or special appeals, it is hereby declared that the provisions in that Regulation respecting appeals in formâ pauperis from decisions passed in original suits, shall, after the promulgation of the present Regulation, be considered applicable to any second or special appeals which may be preferred in formâ pauperis; and which may be hereafter deemed admissible under the rules specified in the preceding Section.—*Reg.* 2, 1825, *Sect.* 5.

419. Held, by the Calcutta Court, in concurrence with the Western Court, on a reference from the officiating Judge of 24-Pergunnahs, under date the 16th April last, that a Principal Sudder Ameen is not authorized to receive an answer to a plaint from a defendant in formâ pauperis, without the sanction of the Judge, it being a principle that the Judge only can determine the question of pauperism.—*Con. No.* 949, *Cal. C.* 1*st May, West. C.* 5*th June*, 1835.

420. A question having arisen in a case, now depending before the Court, as to whether an application from a pauper appellant to stay the execution of the decree given against him, pending the appeal, is admissible on plain paper, I am directed to request that you will submit the point for the consideration of the Calcutta Court.—The Court are of opinion, that as applications of the nature of that abovementioned, are not included amongst the exceptions, contained in Section 8, Regulation 28, of 1814, which distinctly specifies the description of papers on which the stamp duties are to be remitted to paupers, they must be drawn out on stampt paper of the value prescribed for petitions presented to the Courts in which they may be filed. The Court direct me to add that this principle has already been acted upon in regard to Vakalutnamahs where the pauper may himself appoint a Vakeel, as well as in respect to security bonds filed under Section 6, Regulation 28, of 1814, and it appears to them equally applicable to petitions presented to the Court for the purpose before stated. The Court propose accordingly to adopt it as a rule of future practice.—*Con. No.* 1132, *West. C.* 16*th Feb. Cal. C.* 9*th March*, 1838.

421. Similar copies, [that is, copies on plain paper] of any orders passed in the execution of a decree, which a pauper in the Court whence it may have issued, would be required by law, in the event of his appealing from such orders to the superior Court, to file with his petition of appeal, are obtainable by him on unstampt paper.—*Cir. Ord. Cal. and West. C.* 1*st Nov.* 1839.

422. Copies of the proceedings and judgements of the Sudder Dewanny Adawlut, in appeal to the King in Council, which are required to be written on stampt paper, of a prescribed value, by Section 19, Regulation 1, 1814, shall be furnished without expense to paupers, who may be parties in such appeals, and shall be written on unstampt paper of European manufacture.—*Reg.* 28, 1814, *Sect.* 18.

SECT. XXVII.

Stamps.

423. In the judgement of the Honourable the Governor of Bengal, Section 2, Regulation 10, of 1829, must be held, as ruled by the Sudder Court at Allahabad, to rescind Clause 7, Section 30, Regulation 2, of 1819, in common with all other parts of the existing Regulations relating to the imposition, levying and collecting of stamp duties.—*Con. No.* 987, *Cal. and West. C.* 17*th Nov.* 1835.

The Rules regarding Documentary Stamps, Schedule A. Regulation 10, 1829, *belonging to the department of Revenue, will be found in the Appendix to this volume.*

The following are the enactments regarding Judicial Stamps :

424. In addition to the duties chargeable on Deeds, Instruments, and Writings specified in Schedule A. there shall further be levied, raised and paid, as heretofore, in the provinces subject to the Presidency of Fort William, dūties on Law Papers, viz. Petitions of Plaint, Pleadings and the like at the rates and in the manner prescribed in Schedule B. which, with the rules and provisions therein included, shall be deemed and taken to be part of this Regulation, and no Papers shall be filed, exhibited, received or admitted in any Court of Judicature of the description stated in the Schedule to require a stamp, unless the same shall be duly stamped.—*Reg.* 10, 1829, *Sect.* 17.

425. It seems to the Vice-President in Council, that the Judicial officers, subject of course to the control of the Sudder Dewanny Adawlut, and the Revenue officers, subject to that of the Revenue Boards, will be competent to lay down as a rule of Court, or of their respective *Kutcherries*, the size and description of paper to be used for petitions, or for other documents and records of their offices, when there may be no provision on the subject in the regulations for the department. These officers would of course consult the Superintendent of Stamps, and adapt their orders to his suggestions and to the means at his disposal of providing paper of the sizes required.—*Suggestion of the Superintendant of Stamps* ; On this subject I would recommend that the Sudder Dewanny Adawlut be requested to issue circular instructions to the different Courts, desiring that the vakeels may be enjoined to use the smaller size papers, commonly known as Nos. 5 and 6, for such purposes; [that is, for trivial purposes, such as stating the name of a witness who is to be summoned, or in filing exhibits.]—*Cir. Ord. West. C. 10th Aug.* 1832.

SCHEDULE (B) *referred to in Section* 17, *of the Regulation, containing the specification of duties chargeable on Law papers.*

426. 1. *BAIL-BONDS, MOCHULKAS, RECOGNIZANCES, SECURITY BONDS,* (Hazir or Fial Zamin) whether of specified amount, or with a penalty of a specific sum of money, or of indefinite amount, when furnished and filed under special order of a Court of Justice, Civil or Criminal, or of any officer exercising judicial powers, ...	To be charged as Petitions to the Court or authority ordering the same.
When executed between individuals not by order of Court, ...	To be charged as Bonds. See Schedule A.

EXEMPTION.

Mochulkas taken on the release of prisoners from the Foujdaree or Criminal Jail.

427. It has been brought to the notice of the Court that a practice obtains in some districts, of admitting as legal evidence Security bonds written on the same sheet of paper with the principal deed, where the stamp used was only of the value required for the latter instrument. As this practice is clearly erroneous, and deeds of the kind alluded to are wholly inadmissible as evidence against sureties, the Court deem it proper to call your attention to the rule, and to request that you will make it known to the lower Courts.—*Cir. Ord. Cal. C.* 27*th Oct. West. C.* 1*st Dec.* 1837.

428. Held, that the object of the Circular Order of the 27th October, 1837, regarding security bonds written on the same sheet of paper with the principal deed, and bearing the stamp required for the latter instrument, was to explain the law on the subject for the protection of the interests of the Government, and not to declare deeds drawn up under those circumstances inadmissible, provided the proper measures were taken to have them legalized. Parties holding such documents are at liberty to apply to the revenue authorities, under Section 14, Regulation 10, 1829, to have a stamp

affixed to the deeds, so as to make them legal evidence in Courts of law.—*Con. No.* 1147, 27*th April*, 1838.

429. The Court are of opinion that under the terms of the exemption contained in Schedule B. viz. "Mochulkas and recognizances taken from prosecutors and witnesses to secure attendance at criminal trials," the mochulkas in question may be taken upon plain paper.—*Con. No.* 679, *West. C.* 7*th March*, *Cal. C.* 18*th May*, 1832.

430. I am directed by the Court of Nizamut Adawlut for the Western Provinces to acknowledge the receipt of your letter of the 2d instant, with its enclosures on the subject of security bonds taken by Police Officers under the Regulations. In reply, I am directed to inform you that the Court are of opinion, that such documents should be drawn out on unstamped paper.—*Con. No.* 710, *West. C.* 10*th Aug. Cal. C.* 14*th Sept.* 1832.

431. I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 14th instant, enquiring on what stamp paper security bonds for costs of suits, &c. entered into by order of a Civil Court should be written, under the provisions of Regulation 10 of 1829; and to inform you in reply, that such bonds should be written on the stamp prescribed in No. 7, Schedule B, Regulation 10, 1829, for petitions presented to the Courts requiring the security.—*Con. No.* 555, 28*th May*, 1830.

	Sa. Rs.	*As.*
432. 2. *COPIES*—of *DECREES* in all regular suits for an amount exceeding one hundred and fifty Rupees, calculated in the manner explained under the head "Plaint."		
When passed in the Courts of the Registers, or Zillah and City Judges, or by Sudder Ameens empowered to decide the same,	1	0
In the Provincial Courts of Appeal,	2	0
In the Sudder Dewanny Adawlut,	4	0

433. Section 2, Regulation 3, 1817,* is hereby rescinded; and the exemptions contained in the foregoing Clause shall not be held applicable to any original suits or appeals of whatever amount which may be instituted in the Zillah or City Courts, subsequently to the date fixed for the operation of this Regulation, whether those suits be tried by the Zillah or City Judges, or be referred by them for trial to the Sudder Ameens or Registers.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 3.

434. The Court having reason to believe that a practice prevails in several of the Courts of civil judicature in the Lower Provinces, of granting copies of decrees and other documents connected with suits involving an amount not exceeding 150 Rupees on unstampt paper, under the supposition that they still come within the exemptions specified in articles 2, 4, 5 and 9, Schedule B, Regulation 10, 1829, [*which exemptions have been omitted, as having been superseded*] the modifications of those rules contained in Clause 3, Section 9, Regulation 5, 1831, notwithstanding; I am directed to call your attention to the last-mentioned enactment, and to communicate to you the opinion of the Court, that under its provisions, no suits, however small the amount, which are instituted in the Zillah Courts, should be held exempt from the stamp duty, whether eventually referred to the subordinate authorities, or retained on the Judge's file.—*Cir. Ord. Cal. and West. C.* 24*th Jan.* 1834.

435. 3. *COPIES*—of *REVENUE* and *JUDICIAL PROCEEDINGS*, of *ACCOUNTS, STATEMENTS, REPORTS*, or the like, filed on Record and

* The provisions of Cl. 4, Sect. 25.; Cl. 3, Sect. 29.; Cl. 1, Sect. 38, Reg. 23, 1814, are extended to all suits, not exceeding in value 64 Rupees, instituted in Zillah and City Courts whether tried there or by Sudder Ameens.—Reg. 3,

	Sa. Rs.	*As.*
taken out for use or reference, or when left on proceedings in place of originals withdrawn, per sheet,	0	8

And each sheet shall be of a size not exceeding that fixed for copy paper, (No. 3, of the Stamp Office,) and shall be written on one side thereof only.

436. The Court are of opinion that from the rules laid down in Schedule B, Regulation 10, 1829, it appears to have been the intention of Government that both the application for the copy (of proceeding or order,) and the copy itself should be on stamped paper : the stamp paper assigned for the application being of a different value from that on which the copy is to be written. Sections 3 and 7, of the Schedule seem to point out this Construction as that which was intended by the Government; and this view of the subject is confirmed by Section 5 of the same Schedule, which requires that even exhibits shall be accompanied by a petition when filed on the proceedings of a regular suit: it is also declared in Section 3, that the copy shall be written on one side thereof only.—*Con. No.* 773, *West. C.* 29*th March, Cal. C.* 26*th April,* 1833.

437. I am directed by the Court to acknowledge the receipt of a letter from Mr. W. Dent, late Judge of the district of Behar, dated the 30th April last, and to inform you, in reply to the question therein proposed, that Government have been pleased, on a reference made to them, to determine that copies of deeds and other exhibits or papers, not being proceedings, accounts, statements, or the like, provided for by Article 3, Schedule B, Regulation 10, 1829, should, when made for record in the Courts in lieu of originals returned to the parties, be written on plain paper.—*Cir. Ord. Cal. and West. C.* 2*d Jan.* 1835.

438. 5. *EXHIBITS*,—when filed or entered on the proceedings of any regular suits, shall be accompanied by a Petition, Durkhaust, or Application, stamped according to the number, at a rate for each exhibit of—			
In the Courts of Registers and Sudder Ameens,		0	8
In the Courts of the Zillah and City Judges,		1	0
In the Provincial Courts before Commissioners of Revenue and Circuit, or in the Sudder Dewanny Adawlut,		2	0
439. 6. *MOOKHTARNAMAHS, WUKALUTNAMAHS*, and other *POWERS*, required to be filed for the conduct of suits, regular or summary, or of proceedings of any kind, pending before the Native Courts of Judicature, or before the Revenue authorities,	To be charged as prescribed for Petitions presented to those Courts and authorities.		

EXEMPTIONS.

Mookhtarnamahs, executed by native Officers and Soldiers, belonging to the regular corps, on the Military establishment of the Presidency of Fort William.

On the subject of Mookhtarnamahs, vide Section 12.

440. 7. *PETITIONS, DURKHAUSTS* or *APPLICATIONS* addressed to any of the undermentioned authorities in relation to matters pending before them in their official capacities, when not otherwise specified or provided for in the Schedule.			
If to a Register or Sudder Ameen, or to a Collector of land revenue or of Customs, or to an officer of the Salt and Opium Department exercising judicial powers, or to a Magistrate, Joint Magistrate, or to a zillah or city Adawlut, per sheet,		0	8
If to a Provincial Court of Appeal or Commissioner of Revenue and Circuit, or other authority exercising powers superior to the Zillah Adawlut,		1	0
If to the Sudder Dewanny or Nizamut Adawlut, or to the Sudder Board of Revenue, or to the Board of Customs, Salt and Opium, per sheet,		2	0

EXEMPTIONS.

All Charges and informations respecting crimes and offences, not bailable under the Regulations.

Petitions from prisoners, convicts, persons under examination, or otherwise in duress, or under restraint of the Court or its officers.

Petitions of Appeal presented to Magistrates against Chowkeedarry assessment.

Communications made to Magistrates in regard to Police matters not intended for record.

Petitions to Collectors or officers making settlements, relating to matters connected with the assessment of lands, the ascertainment of rights or to other matters affecting the settlement of the Government Revenue on lands, if presented pending the formation of such settlements.

Petitions to Boards or Commissioners of Revenue relating to the same.

441. Petitions in summary suits are to be taxed as petitions under Article 7, Schedule B.—*Con. No.* 583, *7th Jany.* 1831.

442. The Court are of opinion, that the exemptions referred to should be construed to allow prisoners confined under Civil process to petition on plain paper only in matters relating to their treatment in jail; and persons confined under criminal process, in matters relating to their treatment in jail, and the case in which they are confined.—*Cir. Ord. 28th May*, 1830.

443. 8. *PLAINT—PETITION* of—in *SUITS* and *APPEALS INSTITUTED* in any *NATIVE COURT*—For the recovery of any sum of money, or to obtain possession of any interest, matter or thing.

					Sa. Rs.	As.
If the amount or value of the property claimed, shall not exceed,				16 Rupees,	1	0
Above	16 Rs.	not exceeding		32 "	2	0
"	32 "	Ditto		64 "	4	0
"	64 "	Ditto		150 "	8	0
"	150 "	Ditto		300 "	16	0
"	300 "	Ditto		800 "	32	0
"	800 "	Ditto		1600 "	50	0
"	1600 "	Ditto		3000 "	100	0
"	3000 "	Ditto		5000 "	150	0
"	5000 "	Ditto		10000 "	250	0
"	10000 "	Ditto		15000 "	350	0
"	15000 "	Ditto		25000 "	500	0
"	25000 "	Ditto		50000 "	700	0
"	50000 "	Ditto		100000 "	1,000	0
"	100000 "				2,000	0

444. 9. *PLEADINGS—JUDICIAL*—Every *ANSWER, REPLICATION, REJOINDER,* and *SUPPLEMENTARY PLEADING,* filed in any suit, shall be written as follows:

In the Courts of the Register or Sudder Ameen, on paper of value,	0	8
In the Zillah and City Court,	1	0
In the Provincial Courts of Appeal, and in the Sudder Dewanny Adawlut,	4	0

Note.—The pleadings in the Sudder and Mofussil Special Commissions, and other extraordinary Courts, shall be regulated by the rules of practice established, or that may be established by those Courts respectively.

445. So much of the rule contained in Schedule B, Regulation 10, 1829, as pre-

scribes that the pleadings in the Courts of the Zillah or City Judges shall be written on Paper of one Rupee value is hereby modified, and the Pleadings in the Courts of those Officers, shall be written on Paper of the value of four Rupees, wherever it has been or may be resolved to introduce the provisions of Regulation 5, 1831, except in original suits for property not exceeding one thousand Rupees in value or amount, and in cases of appeal from the decisions of Sudder Ameens and Moonsiffs. In such cases, the pleadings shall continue to be written on Stamp Paper of only one Rupee value.—*Reg.* 7, 1832, *Sect.* 3.

446. The fifth Clause of Section 8, Regulation 26, 1814, which has not been rescinded by Regulation 10, 1829, or any other enactment, provides that the specific objections of a judgement appealed from, if not stated in the petition of appeal, shall be filed as a separate pleading. The value of the stamp to be used for such pleadings is laid down in No. 9, Schedule B, Regulation 10, 1829.—*Con. No.* 556, 28*th May*, 1830.

447. I am directed to inform you that the exemption from stamp duty under Regulation 3, 1817, included all cases, in whatever Courts tried, below 64 Rupees. This was extended by Section 9, Schedule B, Regulation 10, 1829, to cases not exceeding 150 Rupees; by Section 9, Regulation 5, 1831, cases tried before Moonsiffs to whatever amount are exempt from stamp. There is no subsequent enactment affecting this last rule. Clause 3, Section 9, Regulation 5, 1831, however enacts that no suits, however small the amount, which are instituted in the Zillah Court, shall be held exempt, whether eventually referred to the subordinate authorities or retained on the Judge's file. Section 3, Regulation 7, 1832, prescribes the amount of stamp in cases instituted in Zillah Courts, viz. 4 Rupees in cases above 1,000 Rupees, and 1 Rupee in original cases not above 1,000 Rupees, as well as in appeals from Sudder Ameens and Moonsiffs.—*Con. No.* 767, *West. C.* 8*th March*, *Cal. C.* 29*th March*, 1833.

448. 10. *RAZEENAMAHS, RUFANAMAHS, SOOLUHNAMAHS*, or the like, that is to say—

Any written application, whereby or according whereunto, a suit pending in a Civil Court shall be adjusted, or be capable of adjustment without argument in Court, an award of the presiding Judge, or other officer, ...	Shall bear the Stamp required for a Pleading in the Court wherein it may be filed.
If the suit be dismissed on such application before the pleadings have been completed, and the case called up, the plaintiff shall be entitled to claim from the Court a certificate, stating the amount of Stamp duty paid on the plaint, with specification of the number and endorsement of the paper filed, on presenting which to the Collector of the district, the plaintiff shall be entitled to receive back the entire amount of the said Stamp duty—provided always, there be no exception taken to the paper or endorsement thereon.	
If the pleadings have been completed, and the case has been called up for decision; or is on the list of causes ready for hearing, the plaintiff shall receive a certificate as above for half of the amount of Stamp duty paid on the plaint.	
If the adjustment by Razeenamah or Sooluhnamah be such as to require Decree to pass on which process of execution can be taken out, the plaintiff shall not be entitled to any refund of the Stamp duty so paid.	

449. I have the honor to request that you will obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the following point, viz. whether the provisions of Section 10, Regulation 13, 1810, relative to the refund of the institution fee in cases adjusted by razeenamah, are to be considered as applicable to cases of Dustburdaree, in which a plaintiff voluntarily relinquishes the prosecution of his claim.—In reply I am directed by the Court to inform you, that the refund

of the stamp duty in lieu of the institution fee can only be sanctioned in cases in which a razeenamah has been regularly filed.—*Con. No. 977, 28th Aug.* 1835.

450. I am directed to take this opportunity of pointing out to you that the object of Article 10, Schedule B, Regulation 10, of 1820, in authorizing the Courts in certain cases to refund to the plaintiff either the whole, or a portion of the stamp duty paid on the plaint, being to encourage, as much as possible, such a complete adjustment of the matter in dispute amongst the parties themselves out of Court, as shall render it unnecessary for the Court to exercise any further interference whatever in the case, and this object being obviously defeated where either party may apply to the Court either to recover the costs of suit, or to do any other act of that nature, the plaintiff is not entitled in such cases, under the article in question, to the refund of any part of the stamp duty paid by him on the plaint. The Court see reason to believe that this distinction is not sufficiently attended to.—*Cir. Ord. Cal. C. 20th July, West. C. 3d Aug.* 1838, *Par.* 5,

451. 11. *WITNESSES—PETITIONS* or *APPLICATIONS* for the summoning or examination of witnesses, according to the number of persons named, ... } To be charged as Exhibits.

And no witness shall be summoned or examined in a regular suit, unless his name is included in a Petition or Application in writing given in as above.

RULE.

Nothing herein contained shall be deemed or considered to alter or affect the rules in force, in regard to Paupers, nor to affect the remuneration to which Moonsiffs are, or may be entitled.

CHAPTER III.

TRIAL AND DECISION OF SUITS.

SECTION I.

Language to be used in the Courts.

1. It is hereby enacted, that from the First day of December 1837, it shall be lawful for the Governor General of India in Council, by an order in Council, to dispense either generally, or within such local limits as may to him seem meet, with any provision of any Regulation of the Bengal Code, which enjoins the use of the Persian language in any judicial proceeding or in any proceeding relating to the Revenue, and to prescribe the language and character to be used in such proceedings.—*Act* 29, 1837, *Sect.* 1.

2. And it is hereby enacted, that from the said day it shall be lawful for the said Governor General of India in Council, by an order in Council, to delegate all or any of the powers given to him by this Act, to any subordinate authority, under such restrictions as may to the said Governor General of India in Council seem meet.—*Act* 29, 1837, *Sect.* 2.

3. The President of the Council of India in Council having been pleased, on the 4th ultimo, in conformity with Section 2, Act 29, of 1837, to delegate to the Deputy Governor of Bengal all the powers given to the Governor General in Council by that Act, the Deputy Governor has resolved that in the districts comprised in the Bengal division of the Presidency of Fort William, the vernacular language of those districts shall be substituted for the Persian in judicial proceedings and in proceedings relating to the revenue, and that the period of twelve months from the 1st instant shall be allowed for effecting the substitution. His Honor is sensible that this great and salutary reform must be introduced with caution, involving as it does the complete subversion of an old and deeply rooted system. He therefore vests the various heads of departments with a discretionary power to introduce it into their several offices and those respectively subordinate to them, by such degrees as they may think judicious, only prescribing that it shall be completely carried into effect within the period above mentioned.—*Cir. Ord. Cal. C. 9th Feb.* 1838.

4. It being desirable that the proceedings of the Civil and Criminal Courts recorded in the vernacular, should be generally intelligible, by the adoption of a style equally removed from the colloquial and that employed by the Pundits, I am directed to request that you will pay particular attention to the subject, and refer your head Ministerial Officers, and the uncovenanted Judges under your control, to the Bengalee version of the Regulations of 1793, in regard both to the style which should be made use of by them and the terms which usually occur in legal proceedings.—*Cir. Ord. Cal. C. 2nd April,* 1841.

5. I am directed to request that all proceedings addressed to the Assistant to the Governor General's Agent stationed at Hazareebaugh or Lohardugga, may be written in the Oordoo language.—*Cir. Ord. Cal. C. 23rd Nov.* 1838.

The three following rules, No. 6, 7 and 8, apply only to the Western Provinces.

6. The Court direct that, from the 1st of July next, the use of Persian in all civil proceedings, pleadings, petitions, and writings of whatsoever description, both in your own and the subordinate Courts, be abandoned, and the Hindoostanee substituted in lieu of it—this rule not being, however, construed to prohibit parties, who may desire it, from presenting, nor the Judge from receiving, such Hindoostanee pleadings, petitions, and other writings, with the accompaniment of a Persian translation.—*Cir. Ord. West. C. 19th April*, 1839, *Par.* 2.

7. It is the wish of Government that care should be taken, especially on first introducing the measure, that the pleadings and proceedings be recorded in clear intelligible Oordoo, (or Hindee where that dialect is current,) and that the native Ministerial officers, hitherto accustomed to write a somewhat impure Persian, do not merely substitute a Hindoostanee for a Persian verb at the end of a sentence, under the mistaken idea that such a practice will be considered as fulfiling every object in view in making the change.—*Cir. Ord. West. C. 19th April*, 1839, *Par.* 4.

8. In the same manner it behoves you to be equally cautious, and to impress the necessity of the like caution on the several native Judicial officers under you, with respect to exacting from the vakeels and pleaders, and generally all parties moving the Court, first, a written Hindoostanee style and phraseology of a certain standard of correctness—such, for example, as a well-bred native, not familiar with Persian, may adopt in common discourse; and secondly, the strict use and observance of a clean and legible written character in all manuscript papers filed in the Courts, under a declared penalty of their rejection if this rule be not adhered to; requiring, also, particular attention to the latter point from the officers of the Courts. The Court are satisfied that the exercise of some care at first in the above particulars is calculated to prevent much future embarrassment, labor, and delay.—*Cir. Ord, West. C. 19th April*, 1839, *Par.* 6.

9. The Court resolve, with the sanction of His Honour the Deputy Governor, that the Oordoo language shall in future be the language of record in all proceedings and orders in the Sudder Dewanny and Nizamut Adawlut at the Presidency, and that the same shall be written in the Persian character.—*Cir. Ord. Cal. C. 5th July*, 1839, *Par.* 1.

10. The proceedings and papers in all Civil cases transmitted to this Court, which may be written either in the Persian, Oordoo, or Bengalee language, shall be unaccompanied by translations; but in criminal trials referred to the Nizamut Adawlut, with exception to trials for the crime of Thuggee, all papers which may not be drawn up in the Persian or Oordoo language, shall be accompanied by translations in the latter.—*Cir. Ord. Cal. C. 5th July*, 1839, *Par.* 2.

11. All papers in the Mug, Orissa, and other dialects, shall be accompanied by Oordoo translations.—*Cir. Ord, Cal. C. 5th July*, 1839, *Par.* 3.

12. In the districts in which either the Oordoo or the Bengalee is the current language, parties are to be allowed, in all civil and criminal Courts, to present all petitions and pleadings in any language they think most suitable to their purpose; but any documents so presented, which may not be written either in the Persian, Oordoo, or Bengalee, shall be accompanied by translations in one of these three languages. The same rule shall be applicable to Futwas and Bewustahs required from the Law officers.—*Cir. Ord. Cal. C. 5th July*, 1839, *Par.* 6.

13. The authorities in the Bengal districts shall correspond with each other in the vernacular language, and employ the Oordoo in their correspondence with the Courts of other districts. The same rule shall be observed, *mutatis mutandis*, in Cuttack and the other provinces subject to the jurisdiction of this Court.—*Cir. Ord. Cal. C. 5th July*, 1839, *Par.* 7.

14. The authorities of the districts in which the Oordoo language is current, shall be required to take measures for introducing the use of the Nagree character in writing that language; and to report on the 1st January next, the progress which has been made in that respect.—*Cir. Ord. Cal. C. 5th July*, 1839, *Par.* 5.

15. 1. The instructions contained in paragraph 5, of the Court's resolutions of the 5th July

last, regarding the use of the Nagree character in writing the Oordoo language being general, and it being material that that measure should be carried into effect without obstruction to public business, I am directed by the Court to request your particular attention to the necessity of introducing the change in the most gradual and careful manner. 2. It will be proper for you, the Court observe, before taking any decisive steps, to make enquiries on the subject, as to the mode in which the wishes of the Government to render all public proceedings intelligible to the people, may be fulfilled consistently with the disposal of the business of your Court with due regularity and expedition. It will be expedient also that you put yourself in communication with the other authorities of the district, both judicial and revenue, in order to the adoption of a uniform system in all the branches of the public service.—*Cir. Ord. Cal. C. 1st Nov.* 1839.

16. In addition to the precautions which the Circular Order alluded to, 1st November last, has directed Judges, &c. to take, before requiring the exclusive use of the Nagree character for writing the Oordoo language in proceedings before their Courts, it occurs to His Honour in Council, that it might be well to forbid the introduction of that measure by any Judicial Officer before obtaining the special sanction of Government. Judges who feel prepared to introduce this change may be required previously to report what they have done in the way of precaution laid down by this Circular Order; what are the grounds on which they are assured that the measure will not materially interfere with regularity and expedition in the disposal of business, and what measures they have taken, in communication with the other district authorities, for "the adoption of a uniform system in all the branches of the public service."—*Cir. Ord.* 13*th Jan.* 1840.

17. 1. The Calcutta Court held on a reference from the agent to the Governor General in Hazareebaugh, that a European defendant filing his pleadings and petitions in the Persian or vernacular language on the prescribed stamp may be permitted to add translations thereof in English on unstampt paper; and that all processes issued to him should be written in the ordinary language of the Court and in English. 2. They further held that it is no part of the duty of the Court to furnish the defendant with translations, but that he should procure a person duly qualified to interpret for him.—*Con. No.* 1035, *Cal. C.* 12*th Aug. West. C.* 16*th Sept.* 1836.

SECT. II.

Plaints in the Zillah Courts.

18. No complaint is to be received but from the plaintiff, nor any answer to a complaint, but from the defendant, or their respective vakeels duly empowered. Nor is any person to be permitted to do any act, or to be heard vivâ voce in any stage of a cause, excepting the plaintiff or defendant, or their vakeels or witnesses.—*Reg.* 4, 1793, *Sect.* 2.

This enactment was modified by Act 12, 1833, *which allows parties to employ Agents.*

19. The Court having reason to believe that the provisions of Clause 3, Section 18, Regulation V. 1831, and Regulation XII. 1833, have not been duly carried into effect, and that delay consequently takes place in the courts of the Principal Sudder Ameens and Sudder Ameens, in the disposal of the causes pending before those functionaries, direct me to inform you, that petitions of plaint may be received by you, agreeably to Section 2, Regulation 4, 1793, from any authorized agent, or from any duly empowered Vakeel attached to the court of the Judge, the Principal Sudder Ameen, or the Sudder Ameen, and that, in order to expedite business, the Judge should encourage such petitions of plaint being filed by the Vakeels of that Court to which, under the provisions of Regulation 5, 1831, and Act 25, 1837, they will ordinarily be transferred for trial.—*Cir. Ord.* 18*th Dec.* 1840.

20. A question having been agitated by the acting Judge of the city of Moorshedabad, through the Court of Appeal, respecting the application of this rule to the gomashtahs of banking houses, the Court, in a letter dated the 31st January, 1811, gave it as their opinion, that a managing gomashtah, under the general and known powers vested in him, might institute and defend suits, and carry on all concerns connected with the kootee of which he was the ostensible representative, without producing any authority from his principals for so doing.—*Con. No.* 75, 31*st Jan.* 1811.

21. Every complaint that may be presented to the Court of Dewanny Adawlut of any Zillah, or of either of the Cities of Patna, Dacca, or Moorshedabad, is to state precisely the matter of complaint, [*and the value of the thing sued for, as ordained in the next section.*] The complaint is also to specify the name of the person complained against, the time when the cause of action arose, and is to be signed by the complainant, or his vakeel duly authorized. The complaint is to be signed and numbered, and dated in the order in which it may be received, by the Judge of the Court, and is to be registered in a book by a native officer of the Court, whose particular duty it is to be made, to copy and register complaints.—*Reg.* 4, 1793, *Sect.* 3.

22. The Court are of opinion that there can be no objection to a Judge pointing out officially to a party in a suit the proper mode to be followed by him when he sees occasion to do so. —*Con. No.* 705, 20*th July*, 1832.

[*For the Stamp paper on which the petition of plaint is to be written, see Chapter* II. *under the Section, Stamps.*]

SECT. III.

Limitation of time for the cognizance of suits.

[The enactments on this subject, were materially modified by the draft of an Act, under the consideration of the Legislative Council, while this sheet was passing through the press. As it will probably become law, by the time the volume is published, it will be given in the Addenda.]

SECT. IV.

Valuation of Suits.

23. 1. In Suits for Lands paying Revenue to Government, if forming one entire Mehal, or a specific portion thereof, with a defined Jumma, the value shall be assumed in the Ceded and Conquered Provinces, including Cuttack, at the amount of the Annual Jumma, payable to Government on account of the Mehal or portion thereof, as aforesaid, and where the Land has been assessed in perpetuity, at three times the amount of the Annual Jumma.

24. 2. In Suits for Lakeraj Lands, i. e. Lands not paying Revenue to Government, the value shall be assumed at eighteen times the amount of Annual rent by computation.

25. 3. In Suits for Damages, Compensation for injury, loss of cast, and the like, the amount shall be computed at the rate assumed by the Plaintiff.

26. 4. In Suits for Houses, Gardens, and other things of value, real or personal, not of the descriptions before specified, as well as for any interest in Malgoozaree Land not

capable of valuation under the above rule, the amount shall be computed according to the estimated selling price.—*Reg.* 10, 1829, *Appendix, Sch. B. Art.* 8.

27. The Court are of opinion that, if the land, the right of pre-emption of which is claimed, be land paying revenue to Government either as an entire Mehal, or a specific portion thereof with a defined jumma, the cause of action must be estimated at three times the amount of the Sudder jumma, as prescribed by Article 8, Schedule B, Regulation 10, of 1829; if Lakheraj, at eighteen times the amount of the computed annual rent; and if it be land paying revenue to Government, but neither an entire Mehal nor a specific portion with a defined jumma, at the estimated selling price.—*Con. No.* 1047, *Cal. C.* 23*rd Sept. West. C.* 14*th Oct.* 1836.

28. The Government, having resumed a jagheer, situated in the district of Benares, concluded a zumeendaree settlement of it with the jagheerdar for a term of years; another party claiming the proprietary right of the estate, has brought the present suit to establish the same, and the question that arises is as to the manner in which he should value his claim; whether at the annual jumma at which the estate has been assessed, or at three times the amount, or, under the general rule contained in part 4 of the note annexed to the article in question, according to the estimated selling price.—The Court observe, that the first part of the note abovementioned, merely declares, that in suits for lands situated in the Ceded or Conquered provinces, including Cuttack, the value shall be assumed at the amount of the annual jumma, or where the land may have been assessed in perpetuity, at three times the amount of the annual jumma, but makes no provision for cases of the nature of that in point, where the land is neither situated in the Ceded or Conquered provinces, nor permanently assessed. It appears, however, to the Court to be a fair and equitable principle to observe in such cases the distinction laid down in the first part of the note above cited, the reasons of which are obvious; and they propose, to act upon it accordingly in disposing of the appeal now before them.—*Con. No.* 1143, *West. C.* 24*th March, Cal. C.* 6*th April,* 1838.

29. The Court, having reason to believe, from instances which have come to their knowledge, that in some Zillahs a practice still obtains of computing the amount of action in suits for lands paying revenue to Government, not forming an entire estate, or a specific portion thereof with a defined jumma, at the annual produce of the lands; direct me to call your attention to the 4th paragraph of the note on Article 8, of Schedule B, Regulation 10, 1829, which requires that the amount in such cases shall be computed according to the estimated selling price of the land sued for.—*Cir. Ord. Cal. and West. C.* 23*d Aug.* 1833.

30. Though the land included in an Ijareh, or in the jote of a cultivating ryot, is not transferable by sale, the interest of the party claiming the Ijareh or jote is capable of being valued; and that in the cases supposed by you, the plaintiff should be allowed to lay his suit at the amount which he may consider the value of his interest in the thing claimed; to which if the defendant make objection, the Court would decide thereon after making the summary enquiry directed by Section 4, Regulation 13, of 1808.—*Con. No.* 702, *Cal. C.* 6*th July, West. C.* 27*th July,* 1832.

31. Held, that suits instituted with a view to fix the jumma of ryots' holdings should be laid at one year's rent.—*Con. No.* 1272, *Cal. C.* 31*st Jan. West. C.* 19*th June,* 1840.

32. In suits brought by a mortgager to regain possession of property mortgaged, the amount of stamp should be calculated on the value of the property, due regard being had to the rules laid down in the Regulation for estimating that value, and not on the sum for which the property was mortgaged. This appears distinctly to be the intent of Article 8, Schedule B, Regulation 10, 1829, under which the stamp is regulated by the value of the thing claimed.—*Con. No.* 957, *West. C.* 17*th June, Cal. C.* 7*th Aug.* 1835.

33. I am directed to state, that if the cause of action be one and the same, a plaintiff may sue for two or more distinctly assessed Mowzehs or Mehals, in one and the same action, laying his plaint at the aggregate value of the whole sued for.—*Con. No.* 577. 5*th Nov.* 1830.

34. I have the honour to request the opinion of the Court of Sudder Dewanny Adawlut on the following points: Amount of action in Sicca Rupees 4,646, Company's Rupees 5,254: must the plaint be written on paper of 150 or 250 Rupees' value? 2. I take this opportunity of requesting the opinion of the Court whether, in calculating the power of Moonsiffs and the native Judges in the investigation of regular suits, the amount of action cognizable by each is to be calculated in Sicca or Company's Rupees.—I am directed by the Court to inform you that under the circumstances stated in the first query contained in your letter of the 27th December last, No. 412, the plaint must be written on a stamp value 150 Rupees, and further that the Sicca Rupee must be taken as the standard coin for estimating the powers of Moonsiffs and other native Judges in the investigation of regular suits until altered by some Act of the Government.—*Con. No.* 1068, *Cal. C.* 20*th Jan. West. C.* 3*d Feb.* 1837.

35. The Court are of opinion that a petition, putting in a claim to a share of the property sued for in consequence of a notice issued under Clause 4, Section 6, Regulation 5, 1831, should be considered as an application "in relation to matters pending" before the Court, and that, with reference to the omisson of the Moonsiffs in Article 7, Schedule B, Regulation 10, 1829, and to the provisions of Clause 2, Section 9, Regulation 5, 1831, such application in the Courts of the Moonsiffs should not be written on stamp paper.—*Con. No.* 706, *Cal. C.* 20*th July, West. C.* 17*th Augt.* 1832.

36. For the consideration and orders of your Court I submit copy of a petition presented by Ramtonoo Pal, and beg to be informed whether with reference to the Regulations noted in the margin, a Moonsiff is empowered to try so important a case as that alluded to by the petitioner. Ramtonoo states that hitherto he has never paid more than 32 rupees per annum, whereas you will observe, the Zemindar, Roy Gungadhur, claims 206 rupees 12 annas, in other words he demands (supposing the petitioner's account to be true) an increased yearly income of Rupees 175 in perpetuity, equivalent to a principal sum of Rupees 1,500 or 2,000, calculating at the rates of interest current in Bengal. My own opinion is that suits of this value should be referred for trial to the Principal Sudder Ameens.—I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, and in reply to inform you that the suit alluded to by you, being for a sum of money not exceeding 300 Rupees, is cognizable by the Moonsiff under Clause 2, Section 5, Regulation 5, 1831. The Court do not approve of the suggestion contained in the concluding part of your letter as a general rule, but observe that you are competent, in the particular case in question, to refer the suit to the Principal Sudder Ameen under Section 7, of the Regulation above quoted. —*Con. No.* 811, 2*d Aug.* 1833.

37. The provisions of Article 8, Schedule B, Regulation 10, 1829, distinctly state, that the amount of the stamp on plaints shall be regulated by the amount or value of the property claimed; the Court are therefore of opinion that, as the law stands, the sum of money for which the suit is instituted should regulate the amount of the stamp, not the whole amount under the bond, which is not claimed.—*Cir. Ord. Cal. and West. C.* 31*st Aug.* 1832.

38. As to the second point, supposing that the plaintiff means in reality to try the main question of the bond, but under pretence of suing merely for the instalment, files his plaint on a stamp equal to that instalment only, he will be liable to be non-suited in whatever Court his suit is taken up.—*Cir. Ord. Cal. and West. C.* 31*st Aug.* 1832.

39. I am directed by the Court to acknowledge the receipt of your letter of the 5th instant, regarding the calculation of stamp on petitions of plaint, &c. In reply, I am directed to inform you that the practice of your Court of excluding the fractional parts of a rupee from such calculations is irregular; any sum however small constituting an excess requiring an increase of stamp.—*Con. No.* 874, *West. C.* 14*th March, Cal. C.* 4*th April,* 1834.

40. Section 2, Regulation 10, of 1829, the Court observe, rescinds all Regulations and parts of Regulations then existing in regard to the collection of stamps, and as it contains no provision exempting Clause 7, Section 30, Regulation 2, of 1819, from its operation, the latter enactment must

be held to have been repealed by it equally with all other laws on the same subject; and it having been ruled by the two Courts, with reference to the provisions of the Regulation first cited, and in consequence of Section 8, Schedule B, Regulation 10, of 1829, making no exception in favour of petitions for special appeals in cases of the nature of those under consideration, that full stamp duty is leviable thereupon, the Court consider that, by a parity of reasoning, petitions for a regular appeal in such cases as well as the pleadings, exhibits, &c. connected therewith are also chargeable with the full amount of duty, in the same manner as all as other regular suits instituted in the established Courts of civil judicature.—*Con. No.* 987, *West. C.* 25*th Sept.* 1835.

41. The rules for estimating the value of property, real or personal, claimable by action in the civil courts, contained in Section 14, Regulation 1, of 1814, Section 23, Regulation 26, 1814, and Section 5, Regulation 19, 1817, have been either formally or virtually superseded by the provisions of the note attached to Article 8 of Schedule B, referred to in Section 17, Regulation 10, 1829, but no provision is expressly made in the fourth paragraph of the note in question, to meet the description of suits contemplated in the penultimate paragraph of Section 5, Regulation 19, 1817, above quoted, as per extract in the margin.*

The question I would ask therefore is, whether the rules latest enacted, namely, those prescribed in the said fourth paragraph of the note to Schedule B, of Regulation 10, 1829, are applicable to such cases, as well as to suits of the description particularized below, and to all other actions whatsoever, not coming within the meaning of the first three paragraphs of the note. 1. Suits of kashtkars against the proprietors of the land whether assessed or rent-free, to maintain, preserve, or obtain possession of their right of cultivation in a given quantity of land, held on a pottah by prescription or otherwise; or suit to reverse a summary decision of ejectment, passed against them in the zemindars' favor, under the provisions of Regulation 49, 1793. 2. Suits on the part of the proprietors whether malgoozars or maafeedars, to eject an under-tenant from lands held by him in ryoty tenure.

The Court propose, with the concurrence of the Calcutta Court, to inform Mr. Smith, that Section 5, Regulation 19, of 1817, as well as all other existing Regulations relating to the imposition, levying and collecting stamp duties is rescinded by Section 2, Regulation 10, of 1829; and as the latter enactment contains no express provision for computing the amount value of suits of the nature of those described in his letter, they must be considered as falling under the general rule laid down in the fourth paragraph of the note to Article 8, Schedule B, of that Regulation.—*Con. No.* 1101, *West. C.* 4*th Aug. Cal. C.* 25*th Aug.* 1837.

42. The Court observe that the Regulations make no exception in favour of such petitions [that is, petitions of complaint preferred under Regulation 2, 1814, against the officers of Government in their official capacity] and they are, therefore, of opinion that it was intended they should be written, when first presented, on stamp paper of the value in like manner with all other plaints.—*Con. No.* 1116, *Cal. and West. C.* 8*th Dec.* 1837.

SECT. V.

Cases in which suits have been undervalued.

43. Every plaint shall specify the value of the thing claimed, and if the value thereof be understated, in the proportion of Ten per cent. and the plaintiff have not

* If the suit be not for a right of property, or for a permanent tenure, but for a farm leasehold of any denomination, during a limited term; or for any interest in the land during a limited period only; the valuation of the plaintiff's claim, in pursuance of the Regulations above mentioned, is to be made according to the nearest estimate that can be formed of the actual value of the thing sued for.

before completion of the pleadings filed a second or duplicate plaint on stamped paper equal to the difference under the rule contained in Clause 1, Section 7, Regulation 26, of 1814, the defendant shall be entitled, on adducing proof of the same, to obtain a non-suit, to which effect the Courts are hereby required to pass judgement in such cases—any thing in the existing Regulations to the contrary notwithstanding.—*Reg.* 10, 1829, *Sch. B. Art.* 8.

44. If during the trial of any regular suit it shall appear that the plaint has been written on stampt paper of a less value than that, which ought to have been used under the provisions of Sections 13 and 14, Regulation 1, 1814, [*now*, Reg. 10, 1829,] and the Court shall be of opinion that the error or omission did not arise from any fraudulent motive, or from any design on the part of the plaintiff to evade the provisions of the Regulations, it shall be competent to the Court, either to permit or to direct the plaintiff, or appellant, in the suit to file a duplicate of the plaint on stampt paper of such a value, as may be sufficient to complete the full amount of the stampt duty prescribed by the Sections above mentioned.—*Reg.* 26, 1814, *Sect.* 7, *Cl.* 1.

45. In addition to the provisions of Section 4, Regulation 13, 1808, it is hereby declared, that if on the trial of any summary appeal preferred under that Section, the Provincial Court shall be of opinion, that the original suit was not from its amount regularly cognizable in the Zillah or City Court, but that the irregularity in the institution of such suit did not arise from any fradulent motive on the part of the plaintiff, it shall be competent to the Provincial Court to direct the Zillah or City Judge to refund to the plaintiff the amount of the fee or stamp duty paid by him, on instituting the suit in the Zillah or City Court, and the plaintiff shall be permitted to institute his suit de novo in the Provincial Court.—*Reg.* 26, 1814, *Sect.* 7, *Cl.* 2.

46. If the plaintiff in a Zillah or City Court shall state his cause of action, as not exceeding five thousand Sicca Rupees, and the defendant shall, in answer, deny such statement and allege the produce, amount, or value, to be such as to render the suit not cognizable by the Zillah or City Court, under this Regulation, the Judge of that Court, previously to entering upon any investigation of the merits of the cause shall make such enquiry as may appear necessary to ascertain whether the suit be, or be not receivable, in the Zillah or City Court; and shall pass an order accordingly; leaving either party, who may be dissatisfied therewith, to prefer a summary appeal therefrom, to the Provincial Court; whose decision shall be final upon the question, whether the suit be cognizable, or not, in the Zillah or City Court. But no such objection to the plaintiff's statement of the cause of action shall be received from the defendant, unless offered, in the first instance, in answer to the plaint. Nor shall any appeal from the order of the Zillah or City Judge, in such cases, be open to the Provincial Court, unless preferred within one month, after the order appealed from is passed; or unless sufficient reason be assigned, to the satisfaction of the Provincial Court, why it was not preferred within that period. —*Reg.* 13, 1808, *Sect.* 4, *Cl.* 1.

47. 1. I am directed by the Court to request that, whenever the defendant in a regular suit may plead that the plaintiff has underrated the value of the property sued for, either with a view to evade the stamp duty, or to render the suit not cognizable in appeal to the Queen in Council, you will, before the pleadings are completed, make such enquiry as you may deem proper, for the purpose of ascertaining the correctness of the allegation; and that having done so, you will pass an order *accordingly, leaving the party, who may be dissatisfied therewith, to prefer a summary appeal there-*

rom to this Court. 2. You will have the goodness to communicate this order to the Principal Sudder Ameen of your district.—*Cir. Ord. 19th June*, 1840.

48. I am directed to refer you to Article 8, Schedule B, Regulation 10, 1829, and to observe that the objections of the defendant to the plaintiff's valuation should generally be brought forward in his answer to the plaint, when the presiding Judge, after such summary enquiry as may appear necessary, may permit the plaintiff, should the value be underrated, and without apparent fraudulent intent, to file a supplementary plaint agreeably to the provisions of Section 7, Regulation 26, of 1814. This decision will be liable to alteration or reversal by the Court having appellate jurisdiction, either summarily or on a regular appeal. Cases may also arise in which, though the defendant have not objected to the plaintiff's valuation of the property in the Court of primary jurisdiction, it would be the obvious duty of the Court trying the appeal to notice and rectify the same.—*Con. No.* 1046, *West. C. 2nd Sept. Cal. C. 16th Sept.* 1836.

49. A summary appeal may be had from a non-suit passed under Article 8, Schedule B, Regulation 10, of 1829, if it can be shewn by the plaintiff that the value of the property claimed has not been understated by him, and that consequently the order passed by the Sudder Ameen or Principal Sudder Ameen was erroneous.—*Con. No.* 872, *West. C.* 21*st Feb. Cal. C.* 24*th Oct.* 1834.

The following are the latest Rules for the guidance of the Zillah and inferior Courts, regarding cases in which the petition of plaint has been written on a stamp of inferior value, or in which the defendant may object to the plaintiff's valuation of the contested property.

50. 1. In the event of its coming to the knowledge of the Court of original jurisdiction or appeal, that the plaint in any suit has not been written on paper of the proper value, the Court in which the error may be detected shall proceed under Clause 1, Section 7, Regulation 26, of 1814, either non-suiting the plaintiff, should any fraud be apparent, or permitting him to file a duplicate of the plaint, should no fraudulent intent be presumable.—*Cir. Ord.* 20*th Aug.* 1841, *Par.* 1.

51. 2. When the error of valuation in the original suit may be discovered in appeal, the appellate Court, if the more indulgent process is determined on, shall return the plaint and the decree, retaining the case on the file, to the lower tribunal, for the purpose of having a duplicate plaint filed, and the necessary alteration made in the costs; and, on the return of the document, shall then proceed to dispose of the appeal on its merits.—*Cir. Ord.* 20*th Aug.* 1841, *Par.* 2.

52. 3. In suits of the nature described in Clause 4, of the note to Article 8, Schedule B, Regulation 10, 1829, the objections of the defendant to the plaintiff's valuation of the property sued for, as well as any other objections relative to the value of the stampt paper on which the plaint is written, must be brought forward in his answer to the plaint; and no such objections can be urged as a matter of right by the defendant at a subsequent stage of the case, either in the Court of original jurisdiction or appeal; nor shall the question of inferior valuation of the property sued for, be triable by the appellate Court, except upon summary or regular appeal from the order of the inferior Court on that particular point, when the appellate tribunal shall proceed agreeably to Clause 2, Section 7, Regulation 26, 1814, should no fraudulent intention be apparent.—*Cir. Ord.* 20*th Aug.* 1841, *Par.* 3.

SECT. VI.

Zillah and City Courts.—Notice to Defendants in Civil Suits.

53. Upon the institution of a civil suit in the mode prescribed by the Regulations, in any Zillah or City Court, the general first process against the defendant, instead of the summons and requisition of security for appearance prescribed by Section 5, Regulation 4, 1793, and Section 5, Regulation 3, 1803, shall be a notice only containing a short statement of the demand, with the requisition to attend in person or by vakeel, and

to deliver an answer to the plaint, on or before a certain day, to be specified in the notice.—*Reg.* 2, 1806, *Sect.* 2, *Cl.* 1.

54. If the defendant have an accredited agent at the place where the Court is held, expressly empowered, either by a Clause in his general mokhtarnamah, or by a separate mokhtarnamah granted for that purpose, to receive on behalf of his constituent notices or other judicial processes, which may not be specially ordered to be served personally, by an officer of the Court; the notice to be issued under the preceding Clause, shall be tendered to such agent, to be communicated by him to his principal; and the agent's acknowledgment, to be endorsed upon it, shall be accepted as a sufficient service of it; if he be desirous of giving such acknowledgment in preference to the notice being served on the person of his principal by an officer of the Court.—*Reg.* 2, 1806, *Sect.* 2, *Cl.* 2.

55. Section 2, Regulation 2, 1806, recognize the admission of general Mooktars; but the Court observe that, in admitting or rejecting this description of agent, much must of course be left to the discretion of the local authority, according to the particular circumstances of each case.—*Con. No.* 512, 17*th July*, 1829.

56. If the defendant shall not have an accredited agent at the place, where the Court is held, or if he shall not have expressly authorized his agent to receive notices of the above description; or if such agent shall decline receiving the notice for communication to his constituent, and the defendant be resident within the jurisdiction of the Court; it shall be served on him through the Nazir of the Court, by a single chupprassy or peon; who shall require only the acknowledgment of the defendant to be endorsed upon it, or if he be absent from his usual place of residence, the acknowledgment of his principal agent; or of any person acting for him during his absence. If the defendant be resident within the jurisdiction of any other Zillah or City Court than that in which the suit may have been instituted; the notice shall be transmitted to the Judge of the Zillah or City, in which the defendant may reside, to be served in the manner above directed. If the defendant be neither resident within the jurisdiction of the Zillah or City Court in which the suit may be instituted or of any other Zillah or City Court; and the suit shall notwithstanding be cognizable; either in claims to landed or other immoveable property, from the property claimed being situated within the jurisdiction of the Court; or in other cases from the cause of action having arisen within its jurisdiction; the notice, if the suit be for land or other immoveable property, shall be served upon the defendant's agent or representative in charge of such property; and in other suits, the Judge shall cause notice of the claim to be conveyed to the defendant, in such manner as may appear most certain and convenient according to the circumstances of the case.—*Reg.* 2, 1806, *Sect.* 2, *Cl.* 3.

57. If a defendant to whom a notice may have been issued, as directed in the preceding Section, shall abscond or is not after diligent search to be found; or shall shut himself up in any house or building, or retire to any place, so that the notice cannot be served upon him, the Judge (or the Register in causes referred to him,) on receiving the Nazir's return to this effect shall issue a proclamation, as directed in similar cases, when a summons cannot be served upon a defendant, by Section 11, Regulation 4, 1793, and Section 13, Regulation 3, 1803. If the defendant shall not appear in person or by vakeel, by the time limited in such proclamation, or if a defendant, who may have been served with a notice, as directed in the preceding Section, shall not appear in per-

son or by vakeel, within the time specified; or if, having appeared, he shall refuse to answer the plaint, or make other default; the Court, as provided in the Sections above-mentioned, shall proceed to try the cause *ex parte*; and after examining the plaintiff's evidence in support of his claim, shall give judgment, in the same manner as if the defendant had appeared, answered, and entered into proof.—*Reg.* 2, 1806, *Sect.* 3.

58. If the defendant shall not appear at the time limited in the notice, or if a defendant who may have been served with a summons shall not appear, or, having appeared, shall refuse to give answer, or make other default, or shall admit the truth of the plaintiff's bill of complaint, the Court, on examining the allegations of the plaintiff only, and the depositions of his witnesses, is to decree and give judgment, in the same manner as if the defendant had appeared, answered, and entered into proof.—*Reg.* 4, 1793, *Sect.* 11.

59. The Court are not prepared to adopt to its full extent the principle laid down in your letter to the address of Mr. Turquand, dated the 13th ultimo, namely, that "a defendant in a regular Civil suit is entitled to file his answer to the plaint at any stage of the trial antecedent to final decision, although the enquiry may have been commenced *ex parte*." On the contrary, under a strict construction of the rule contained in Section 3, Regulation 2, 1806, the cause should be proceeded on *ex parte*, notwithstanding the defendant's subsequent appearance, if he do not appear, either in person or by vakeel, within the time limited in the proclamation prescribed by Section 11, Regulation 4, 1793. The Court however are of opinion, that consistently with the spirit of the rule above quoted, whenever a defendant appears, at any time antecedent to the decision of the suit, and assigns satisfactory reasons, to show that the default was not wilful, he should be permitted to file his answer, notwithstanding the commencement of an *ex parte* investigation; and to adduce evidence in support of it, if the merits of the case appear to require it.—*Con. No.* 375, *4th Feb.* 1825.

60. The Court concur in the opinion that a party being in attendance on a criminal Court on bail to answer to a criminal charge is not liable to arrest under civil process.—*Con. No.* 885, *23rd May*, 1834.

61. I am directed by the Court to inform you that they are of opinion that a person being in attendance on a Collector to defend a suit or claim pending before that officer is protected from arrest under civil process, in like manner as persons in attendance on a Magistrate to answer a criminal charge; and that in either case the protection will last only as long as the party is in actual attendance or coming to or returning from the Court.—*Con. No.* 893, *West. C. 4th July, Cal. C. 1st Aug.* 1834.

62. The object of this reference to ascertain whether a regular suit can be instituted, against property where there is no defendant to be sued.—The Sudder Court states in reply that as the cause of action would seem to have orginated in your jurisdiction, and property belonging to the defendant is stated to be forthcoming, the case in question appears to be cognizable, and should be proceeded on in the manner laid down in Sections 2 and 3, Regulation 2, 1806.—*Con. No.* 854, *West. C.* 10*th Jan. Cal. C.* 31*st Jan.* 1834.

SECT. VII.

Zillah and City Courts.—Security for the Defendant's appearance.

63. If a defendant, after receiving the notice prescribed in Section 2, shall attend in person or by Vakeel, and deliver his answer to the plaint, and no reason shall subsequently appear to the Court for requiring security for his appearance, during the trial of the suit; he shall be allowed to defend the cause, to its determination, without being called upon for such security. But if the Judge (or Register) shall be satisfied, by suf-

ficient proof, that there is reason to believe the defendant intends to abscond, and withdraw himself from the jurisdiction of the Court, he may either on the institution of the suit, or at any time whilst the suit is depending in the Zillah or City Court, issue process against the defendant requiring him to give security for his appearance, as prescribed on the issue of summonses, by Section 5, Regulation 4, 1793, and Section 5, Regulation 3, 1803; under penalty of being committed to close custody until such security be given, or the decree of the Court be complied with; as provided in the abovementioned sections, or until an attachment of property shall have taken place, to secure the execution of the ultimate judgment in the cause, under the provision made by the following section of this Regulation. The security bond, to be executed in such instances, shall in substance correspond with that prescribed by Section 3, Regulation 11, 1797, and Section 29, Regulation 3, 1803; and in fixing the extent of the security to be required, the Judge (or Register) is authorized to exercise the discretion vested in him by Section 2, Regulation 3, 1802; and Section 8, Regulation 14, 1803.—*Reg.* 2, 1806, *Sect.* 4.

64. Regulation 2, 1806, Section 4, invests Judges with the power to commit to close custody defendants intending to abscond, or withdraw themselves from the jurisdiction of the Court in default of furnishing security; but does not specify what course is to be pursued if the defendant shall have actually withdrawn himself from the jurisdiction of one Zillah Judge to that of another. In reply, I am directed to observe, that as the defendant was not within the limits of the district in which the suit against him was instituted, at the time the process issued under Section 4, Regulation 2, 1806, was served upon him, the rule contained in that Section does not apply; and consequently that if he has been arrested by the Court into whose jurisdiction he has removed, he must be released; leaving the Court in which the suit was instituted to decide it *ex parte*, if he fail to appear and defend it.—*Con. No.* 888, *Cal. C. 4th July, West. C. 25th July,* 1834.

65. The Section already quoted [Section 4, Regulation 2, 1806,] appears, from the wording of it ("if satisfied," "he may," &c.) to leave the demand of security entirely to the discretion of the Judge presiding in the Court in which the cause is pending, and to preclude the right of appeal from his order; and, from the circumstance of that right being specially provided for in cases falling under Section 11, of the same Regulation, it may be inferred that it was the intention of the framers of the Regulation to restrict it to the latter Section.—Held by the Calcutta Court, under date the 13th June, 1835, that the order of the late Judge, Mr. Moore, refusing to take security from the defendant in the case of Mr. Donovan, *versus* the Reverend Fre Paul Gradoly, was open to appeal to this Court.—*Con. No.* 963, *Cal. C. 26th June, West. C. 31st July,* 1835.

66. The following form of security bond, or an instrument to the following effect, is to be hereafter executed by the sureties for the appearance of defendants in the Zillah and City Courts required by Section 5, of Regulation 4, 1793.

Whereas a suit has been instituted in the Dewanny Adawlut of the Zillah (or City) of by plaintiff against defendant; and whereas I inhabitant of have voluntarily become security for the appearance of the said defendant to answer to the above suit, and perform all such orders as may be passed thereupon, until the final decree on it shall have been carried into execution; I do therefore hereby engage and bind myself, my heirs and successors, that the said defendant shall appear in person, or by vakeel, to make answer to the plaint against him in the suit aforesaid on the being the day on which his appearance has been required in the said Zillah (or City) Court; and further that the said defendant shall personally attend at the said Zillah

(or City) Court whenever the same may be required by the Judge thereof, at any time whilst the above suit is depending before the Zillah Court, or Provincial Court of Appeal, or Court of Sudder Dewanny Adawlut; or before the final decree which may be passed thereupon by the above Courts respectively, shall be fully and completely carried into execution; in default of which and in the event of my not producing the said defendant when called upon, I will be answerable for such sum as may be adjudged against him; and for the performance of whatever order or decree may be passed against him on the suit abovementioned.—*Reg.* 11, 1797, *Sect.* 3, *Cl.* 1.

67. In all cases of suits preferred in the Zillah or City Courts, whether by paupers or by others, the Judge before whom the suit may be instituted, is authorized to fix the extent of the security to be required for the appearance of the defendant in conformity to Section 5, Regulation 4, 1793, (extended to Benares by Regulation 8, 1795,) and for which a form of bond is prescribed in Section 3, Regulation 11, 1797, viz. the Judge shall exercise his discretion with respect to the responsibility of the surety or sureties to be found by the defendant for his personal attendance when required, as specified in the above Regulations; and in the first instance, whatever may be the claim of the plaintiff, shall demand from the defendant such security only as may appear necessary to secure his appearance during the trial of the suit. Provided, that if at any time in the course of the trial the security so taken from the defendant shall appear to the Judge insufficient, he is authorized and required to take such further security as he may think necessary to secure the appearance of the defendant.—*Reg.* 3, 1802, *Sect.* 2.

68. If a defendant, for whose appearance security may have been taken, shall not appear, or having appeared, shall refuse to give answer, the plaintiff is permitted to institute a suit against the sureties on their engagement, and is to be entitled to recover from them whatever he may prove to be due to him from the defendant; or he may proceed against the defendant in the same manner as defendants are directed to be proceeded against who have been served with a summons, and have not appeared, or have refused to give answer.—*Reg.* 4, 1793, *Sect.* 12.

69. In every case in which the defendant shall be a Hindoo or Mahomedan woman of a rank or quality, which, according to the customs and usages of the country, would render it improper to compel her to appear in an open Court of justice, the Judges of the Zillah and City Courts are not to issue any compulsory process against her, to compel her to appear and make answer, but are to issue a summons requiring her to appear in person or by vakeel, at a certain time to be named in the summons, in the Zillah or City Court, and answer to the complaint, and abide by the orders which the Court may think proper to pass in the cause.—*Reg.* 4, 1793, *Sect.* 13.

70. In cases in which a guardian may be a party jointly with his ward, under Clause First, Section 32, Regulation 10, 1793, in any civil suit, the securities required by the Regulations to be taken from parties in suits, shall not be demanded from the guardian.—*Reg.* 55, 1795, *Sect.* 2.

SECT. VIII.

Zillah and City Courts.—Security from Defendant for the execution of the decree—Attachment to his property.

71. In any case if the Judge (or the Register in causes referred to him) be satisfied by sufficient proof, that there is ground to apprehend the defendant means to dis-

pose of the property in his possession by any private transfer; or to cause the public sale of any disputed land, by withholding the assessment upon it; or to remove any personal property from the jurisdiction of the Court, whilst the suit against him is depending; for the purpose of avoiding the execution of an eventual judgment against him, the Judge (or Register) is authorized to call upon the defendant for malzaminy security, in such sum as may appear sufficient to make good the ultimate judgment of the court; and in the event of such security not being given (within a reasonable time to be allowed for that purpose) to cause the attachment of any land, effects, or other property belonging to, or possessed by, the defendant, to the amount or value of the cause of action in the suit depending; or the attachment of which may be deemed necessary to secure the execution of the judgment to be passed in the cause.—*Reg.* 2, 1806, *Sect.* 5, *Cl.* 1.

72. The Court entirely concur with you in opinion, that in the case in question, it was clearly the duty of the Judge of Mymensing, under Clause first, Section 5, Regulation 2, 1806, not to have proceeded to the attachment of the defendant's land till he had satisfied himself by proof that sufficient grounds, as set forth in the above mentioned clause, for requiring malzámimy security from the defendant did actually exist; and until the defendant had failed to furnish such security within a reasonable time, to be allowed for that purpose.—*Con. No.* 190, 14*th Dec.* 1814.

73. I am directed by the Court to acknowledge the receipt of your letter of the 13th instant, and in reply to the first question put by you, to refer you to Section 5, Regulation 2, 1806, which expressly authorizes the attachment of the property of the defendant to secure the execution of the ultimate judgment, where sufficient security is not given: and with reference to the 2nd question, to state that a mere entry into the compound does not authorize the officer in charge of a process to break open an outer door, in order to serve it.—*Con. No.* 745, 21*st Dec.* 1832.

74. The property of an European defendant is liable to attachment in suit legally instituted, in like manner, as the property of any other person subject to the jurisdiction of the Court, upon the Court's being satisfied, by sufficient proof, that there is reason to believe the defendant intends to abscond and withdraw himself, or remove his property, the detention of which is necessary to the satisfaction of eventual judgment.—*Con. No.* 588, 8*th April,* 1831, *Par.* 2.

75. The attachment of the property of the defendant, in the case noticed in the letter from the Judge of Chittagong, on the mere oath of the plaintiff, appears to have been premature, and the process of attachment, as exhibited in the Judge's letter, at variance with the provisions of Clause 2, Section 5, Regulation 2, 1806.—*Con. No.* 588, 8*th April,* 1831, *Par.* 3.

76. Until the proclamation of attachment has been issued in conformity with the above rule, the defendant may legally alienate his property.—*Con. No.* 588, 8*th April,* 1831, *Par.* 4.

77. As the provisions of Section 5, Regulation 2, 1806, do not restrict the power of attachment to property within the district, the Court are of opinion that the Judge may cause the defendant's property to be attached on his inability to give the requisite security, wherever the same may be situated.—*Con. No.* 665, 6*th Jan.* 1832.

78. The Circular Order of the 17th February, 1816, No. 50, which contains directions as to the method of preserving lands attached for sale in satisfaction of decree from the Sheriff of Calcutta, makes no reference to lands or property attached under Section 5, Regulation 2, 1806, though for obvious reasons the precaution in such cases is equally necessary. This Court [of Dacca] has been moved to attach certain Indigo Factories and Indigo, the property of Mr. E. K. Hume; but unless some precaution of this nature be observed, there can be no difficulty in his obtaining, by some fiction of law, a counter-attachment from the Supreme Court; and then the prosecutors may look in vain to the attached property for the execution of the decree. I request you will bring this letter to the notice of the Court without delay, and I solicit instructions to depute an officer to remain on the spot and hold the property in attachment till countermanded. Under the provisions of the Regulation I do

not feel authorized to take this step without authority of the Superior Court.—Reply. I am directed by the Sudder Court to acknowledge the receipt of your letter of the 8th September last, No. 333, and in reply to the question therein proposed, to inform you that the same course should be pursued in cases of attachment under Section 5, Regulation 2, 1806, as when the attachment is made in execution of a decree, the ulterior object in both cases being the same.—*Con. No.* 916, *Cal. C.* 21*st Nov. West. C.* 19*th Dec.* 1834.

79. The attachment in such cases shall be made by a written order of the Court, to be read and proclaimed upon the spot, and to be affixed in some conspicuous situation at the place where the property is situated; after which any private alienation of the property sequestered, whether by sale, gift, or otherwise, during the continuance of the attachment, shall be deemed illegal and void; and any unauthorized removal of the property so attached, during such period, with a view to oppose or evade the sequestration, shall be punishable, on proof, as an act of resistance to the process of the Court; according to the provisions in force concerning resistance to the process of the Civil Courts.—*Reg.* 2, 1806, *Sect.* 5, *Cl.* 2.

80. In suits for landed property of considerable value, wherein it may appear necessary, for the purposes of justice, to divest the defendant from the management of the land until the suit be decided, or malzaminy security be given, the attachment shall be made through the Collector of the district in which the land is situated; as prescribed by Section 6, Regulation 5, 1798, and by Clause Ninth of Section 12, Regulation 4, 1803, in appealed cases, wherein neither the appellant nor respondent may be able to give security for staying execution of the decree. But in other cases the attachments, which may be ordered under the present rule, shall not, without special cause, to be recorded on the proceedings of the Court, remove the defendant or his representative from the possession and management of the land, or other property attached, until a decision be passed in the cause before the Zillah or City Court; nor be understood to preclude any act of the defendant or his representative relative to such property, which may be consistent with the object of the attachment.—*Reg.* 2, 1806, *Sect.* 5, *Cl.* 2.

81. Upon the decision of the suit, the Judge (or Register) shall pass such further order relative to the property attached as may be just and conformable with the judgment given in the cause. If the decree be against the defendant, all right and interest possessed by him in the property attached (saving arrears of rent or revenue due from land, and any other bonâ fide claims which may be entitled to satisfaction in preference to the decree) shall be held answerable for the execution of the judgment, in the mode prescribed by the Regulations. But if the plaintiff's claim be dismissed, or be not in any considerable proportion established against the defendant, all expense and loss to the defendant, which may arise from the attachment of his property in consequence of such claim, shall be reimbursed to him by the plaintiff, as part of the costs of suit.—*Reg.* 2, 1806, *Sect.* 5, *Cl.* 3.

82. Whenever any property may be attached by order of a Zillah or City Court, under the provisions contained in the foregoing Section, the trial of the cause shall be proceeded on, and brought to a conclusion, as speedily as possible, without regard to the order of time, with respect to other depending causes, in which it may have been instituted. The attachment shall also be taken off on the delivery of sufficient malzaminy security, at any time previous to the decision of the cause in the Zillah or City Court. —*Reg.* 2, 1806, *Sect.* 6.

83. When personal bail or security for money or other property, may be demandable from a party in any original Civil suit, or appeal, and he shall tender a deposit of money, or of promissory notes, or other obligations of Government, or any other sufficient money security, to the amount required; such deposit shall be accepted instead of hazirzaminy or malzaminy securities; and shall be carefully kept by the treasurer of the Court; to be restored, or disposed of as the Court may direct, on the termination of the cause, or whenever the purpose, for which the deposit is made, shall have been accomplished.—*Reg.* 2, 1806, *Sect.* 8.

SECT. IX.

Zillah and City Courts.—General Rules of attachment of Land by order of the Civil Courts.

84. Whenever the Zillah and City Courts may deem it just and proper, under the provisions of the several Regulations abovementioned, to provide for the administration or management of Landed Property, the Court shall issue a Precept to the Collector of Land Revenue of the district wherein the estate may be situated, directing him to hold the estate in attachment, and to appoint a person for the due care and management of the estate under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof; provided, however, that if any person holding an interest in the estate shall be dissatisfied with the selection made by the Collector of the individual to perform the duty in question, or with the conduct of the manager at any time after his appointment, it shall be competent to such person to represent his objections to the Board of Revenue, and the Board will either confirm the manager chosen, or order the Collector to appoint another person, as on consideration of the circumstances of the case may appear reasonable and proper.—*Reg.* 5, 1827, *Sect.* 3.

85. The precept of the Zillah or City Court abovementioned shall state specifically the property to be included in the attachment, and the attachment shall not be withdrawn without a further Precept from the Court to that effect.—*Reg.* 5, 1827, *Sect.* 4.

86. The Presidency Court concur in the opinion expressed by the Western Court that the Zillah Judge was competent, under the circumstances stated, to attach the lands in question: but with reference to the intent and spirit of Regulation 5, 1827, as expressed in the preamble, that "it is expedient in all cases of attachment of landed property under orders of the Courts of justice, that the management of the estate attached should be placed under the superintendence of the Collectors of land revenue," they do not concur with them in thinking that the Judge ought himself to have made the attachment through an Ameen, but that it was incumbent upon him to issue the orders he did to the Collector; the attachment having been induced by a private adjustment between the parties, not making any difference in the course he was legally bound to pursue towards effecting it.—*Con. No.* 752, *1st Feb.* 1833.

87. As the terms used in the preamble of Regulation 5, 1827, are general, they include rent-free land as well as land paying revenue to Government, and therefore whenever it is necessary to cause such lands to be attached, it must be done by the issue of a precept to the Collector.—*Con. No.* 1039, *Cal. C.* 19*th Aug. West. C.* 16*th Sept.* 1836.

SECT. X.

Zillah and City Courts.—Process.

88. Every process, rule, order, or decree, of the Zillah and City Courts (with

the exception contained in this Section) is to be immediately served or executed, without application to any person or the interference of any individual whomsoever, according to the requisition of it, within the limits of the special jurisdiction of each Court. The summons is to be directed to the Nazir of the Court.—*Reg.* 4, 1793, *Sect.* 13.

89. Whenever the Judge or Register of a Civil Court, or a Magistrate or Joint Magistrate, or any other European Public Officer, authorized by the Regulations in force to issue process of arrest, or other Judicial process, civil or criminal, upon the person or property of individuals, amenable to their respective jurisdictions, may, for any special reason, deem it necessary to be personally present at the execution of such process; and to see that the same be duly executed, in the manner prescribed by the Regulations; it shall be competent to the public officer, who may have issued the process, to attend personally for the purpose above mentioned; and to adopt or direct any legal measures that may be necessary for the due execution thereof.—*Reg.* 1, 1825, *Sect.* 2.

90. The amount of tulubanah which may be demandable according to the table mentioned in the preceding Clause, shall be specified on the back of each summons or other process, and the amount shall be paid, by the person taking out the process, to the nazir previously to the execution of such process: a receipt shall be endorsed on the process in each instance by the nazir, specifying the amount, and the person from whom it was received.—*Reg.* 26, 1814, *Sect.* 14, *Cl.* 6.

91. All orders and process of the Court which may be directed to be served or executed on any person, are to be written or printed in the Persian and Bengal languages, in Bengal and Orissa, and in the Persian language and the Hindoostanee language and Nagree character, in Behar, and are to be sealed with the seal of the Court, and signed by the Judge.—*Reg.* 4, 1793, *Sect.* 20.

By recent enactments the Bengalee language is to be used in Bengal, and the Oordoo in the North West Provinces.

92. In cases in which the Bengal language and character are directed to be used in the province of Bengal; the Ooryah language and character shall be used in the Zillah of Cuttack, and in the abovementioned Pergunnahs.—*Reg.* 14, 1805, *Sect.* 11.

SECT. XI.

Zillah and City Courts—Execution of their process within the limits of the Supreme Court.

93. It is hereby enacted, that any Writ, Warrant, or other Process issued by any Court, Judge, or Magistrate in the territories beyond the local limits of the Supreme Courts of Calcutta, Madras and Bombay respectively, may be executed within those limits in manner following—A copy of such Writ, Warrant, or other Process authenticated as such by the attestation of the Court, Judge, or Magistrate signing or issuing the same, accompanied by a certified translation in the English language, shall be presented to any Judge of Her Majesty's Courts, who may thereupon, under his hand and signature, indorse and direct the same to be executed within the local limits of any of Her Majesty's Courts by the Sheriff, or by any Justice of the Peace according to the nature of such Writ, Warrant, or other Process.—*Act.* 23, 1840, *Sect.* 1.

94. And it is hereby provided, that upon the delivery of every such Writ, Warrant or Process so indorsed as aforesaid to any such Sheriff as aforesaid, every such Sheriff shall make a memorandum of the date of such delivery, and shall execute such Writ, Warrant or Process in like manner as if the same had originally issued from any of Her Majesty's Courts and had been delivered at the date as appearing by the memorandum; and such Sheriff shall make no distinction as to priority or otherwise between the execution of any Writ, Warrant or other Process originally issued from any of Her Majesty's Courts, and the execution of any Writ, Warrant or other Process, under this Act. But every Writ, Warrant and other Process whether original, or indorsed as aforesaid, shall, amongst each other, be subject to the same rules touching the mode and order of execution as are now established in respect of Writs, Warrants, and other Process originally issued from Her Majesty's Courts of Justice.—*Act* 23, 1840, *Sect.* 2.

95. And it is hereby enacted, that every such Sheriff shall be liable to be proceeded against in Her Majesty's Courts of Justice for all matters touching the execution of any Writ, Warrant or other Process executed under this Act, in like manner as if the same had originally issued from any of Her Majesty's Courts of Justice. And all persons and property seized or detained under any Writ, Warrant or Process executed by virtue of this Act shall be dealt with in like manner as if such persons or property had been seized or detained under the like Writ, Warrant or other Process issued from any of Her Majesty's Courts of Justice.—*Act*, 23, 1840, *Sect.* 3.

96. And it is hereby enacted, that all persons disobeying or obstructing the execution of any Writ, Warrant or other Process indorsed under this Act, shall be punishable in Her Majesty's Courts of Justice, in like manner as if the same had issued from such Courts; Provided always that, in the case of process for the attendance of witnesses, Her Majesty's Courts shall be governed by the like rules touching expences and other matters as are established in regard to Subpœnas issued from such Courts.—*Act* 23, 1840, *Sect.* 4.

97. And it is hereby enacted, in the case of persons seized or detained by virtue of any Writ, Warrant or other Process executed under the authority of this Act by any Justice of the Peace or by any Sheriff, it shall be the duty of every such Sheriff or Justice of the Peace if so required by the indorsement of the Judge, to deliver the party in custody to such authority or persons as shall be particularly specified in such indorsement, and who shall have been charged with the execution of the Writ, Warrant or other Process by the authority originally issuing the same, and for that purpose to cause the party in custody to be conveyed to any place within the Company's territories beyond the local limits of the jurisdiction of Her Majesty's Courts.—*Act* 23, 1840, *Sect.* 5.

98. And it is hereby provided, that in the case of any Writ, Warrant or other Process required to be indorsed under the authority of this Act, it shall be lawful for the Judge who shall be required to indorse the same, to remit the same for amendment to the authority issuing the same if the same shall appear to be defective in any matter of form.—*Act* 23, 1840, *Sect.* 6.

99. And it is hereby provided, that in the case of any Writ, Warrant or other Process required to be endorsed under the authority of this Act, for the seizure or detention of any person, it shall be lawful for the Judge who shall be required to endorse

specified in such indorsement) may be taken; and for this purpose to call for such documents and to make such enquiry as he shall think proper.—*Act* 23, 1840, *Sect.* 7.

100. In continuation of my letter No. 120, of the 15th January last, I am directed by the Court to furnish you with the following detailed instructions on the subject of Act XXIII. 1840:

101. 1. Every process, Civil or Criminal, will be forwarded in an envelope to the address of the Deputy Sheriff of Calcutta, either by dawk, or by the hands of a peon or other public officer as may be most convenient, with a letter drawn up agreeably to the annexed form marked A.

102. 2. Any money that it may be requisite to send to the Deputy Sheriff, will be remitted by a bill on the General Treasury from the Collector of the district.

103. 3. All subordinate Judicial Officers will submit the processes of their Courts which may require execution under Act XXIII. 1840, to their European principal, to be by him forwarded in the prescribed manner to the Deputy Sheriff.

104. 4. All processes will be drawn up agreeably to the forms marked B. and C. or agreeably to such other forms as may from time to time be circulated by the Courts of Sudder Dewanny and Nizamut Adawlut.

105. 5. The party at whose requisition any witness may be summoned, must be prepared to pay to the witness such sum for his expences as the Judges of Her Majesty's Supreme Court may consider reasonable and proper.

106. 6. The Judges and Magistrates of the Zillah Courts will be careful that their own processes are drawn up correctly, and they will also ascertain that the processes of the subordinate Courts, that may be forwarded to the Deputy Sheriff, are drawn up agreeably to these rules and to the Acts and Regulations of Government.

107. 2. You will be pleased to submit to this Court on the 1st September next, a return, shewing the number and description of processes that may have been issued from the Courts of your district under the provisions of Act XXIII. 1840, giving the total expense that may have been incurred by the parties on this account.—*Cir. Ord. 1st March*, 1841.

A.

To the Sheriff of Calcutta.

108. 1. I beg leave to enclose you (a Notice* to be served on the parties therein named) which I request you will have the goodness to present to the Judges of Her Majesty's Court agreeably to Act XXIII. 1840.

109. 2. On your intimating to me the expenses of serving this process, the amount will be forwarded to you by a Bill on the General Treasury, and a person will attend hereafter (or a person accompanies this letter) to point out the partics.

Zillah ——— *Judge or Magistrate.*

January, 184

C.

CIVIL PROCESSES.

110. No. 1. SUMMONS.

In the Court of Dewanny Adawlut for the Zillah of Hooghly.

Ramdhun, of Byedbatty, plaintiff, versus Sheik Edoo, of Cossitolah, in the Town of Calcutta, Defendant.

To Sheik Edoo, of Cossitolah, in the Town of Calcutta.

Take notice, that Ramdhun, of Byedbafty, has instituted a suit against you in this Court

* A proclamation to be affixed to the outer door of the house in which the parties reside; or, a subpœna to be served on the witnesses therein named; or, a warrant to seize and apprehend the witnesses therein named, &c. &c. "Mutatis Mutandis."

(or in the Court of the Moonsiff of Byedbatty, or in the Court of the Sudder Ameen of this district.) for the recovery of three hundred Rupees: you are therefore required agreeably to Regulation II. of 1806, to acknowledge the receipt of this notice, and further to attend in person, or by Vakeel, and to deliver an answer to the plaint on or before the 22d of April 1841.

Given under my hand and the Seal of the Court, this 5th day of April 1841.

L. S. A. B.

Judge

111. No. 2. PROCLAMATION FOR THE ATTENDANCE OF THE DEFENDANT.

In the Court of Dewanny Adawlut for the Zillah of Hooghly.

To Sheik Edoo, of Cossitolah, in the Town of Calcutta.

Whereas Ramdhun, of Byedbatty, has instituted a suit against you in this Court (or in the Court of the Moonsiff of Byedbatty, or in the Court of the Sudder Ameen of this district,) for the recovery of three hundred Rupees; and whereas a notice was duly issued, requiring you to attend and to deliver an answer to the plaint on or before the 22d day of April 1841, and whereas it appears from the return of the Nazir (or from the return of the Deputy Sheriff of Calcutta) that after diligent search, you were not to be found, and that the said notice was not served upon you according to the exigence thereof. Proclamation therefore is hereby made agreeably to Regulation II. of 1806, that if you do not appear in person or by Vakeel on or before the 15th day of May 1841, the Court will proceed to try the cause ex parte, and give judgement as if you had appeared, and answered to the plaint. Given under my hand and the seal of the Court, this 25th day of April 1841.

L. S. A. B.

Judge.

112. No. 3. SUBPŒNA.

In the Court of Dewanny Adawlut for the Zillah of Hooghly.

Ramdhun, of Byedbatty, Plaintiff, *versus* Sheik Edoo of Cossitolah, in the Town of Calcutta, Defendant.

To Baboo Ramdass, of Cossitolah, in the Town of Calcutta.

Whereas your attendance is required to give evidence on behalf of the Plaintiff (or of the Defendant) in the above cause, you are hereby required personally to appear before this Court (or before the Court of the Moonsiff of Byedbatty) on the 2d day of June 1841, for that purpose.

Given under my hand and the seal of the Court, this 27th day of May 1841.

L. S. A. B.

Judge.

113. No. 4. WARRANT FOR THE APPREHENSION OF A WITNESS.

To Mohumud Ally, Nazir of the Court of Dewanny Adawlut for the Zillah of Hooghly.

Whereas Baboo Ramdass, of Cossitolah, in the Town of Calcutta, was duly subpœnaed on the 27th day of May 1841, to give evidence on behalf of Ramdhun of Byedbatty, Plaintiff, and whereas the sum of ten Rupees was tendered to the said Baboo Ramdass for his expenses, as appears by the declaration of Sheik Mungloo Peada, who has also declared to the due service of the said subpœna, and whereas the said Baboo Ramdass has neglected and refuse to appear according to the exigence of the subpœna: you are hereby directed to apprehend the said Baboo Ramdass, and to produce him before the Judge of the said Zillah (or before the Moonsiff of Byedbatty in the said Zillah.) In this fail not. Dated this 10th day of June 1841.

L. S. A. B.

Judge.

114. No. 5. WARRANT FOR SECURITY TO BE FURNISHED BY A DEFENDANT.

To Mohumud Ally, Nazir of the Court of Dewanny Adawlut for the Zillah of Hooghly.

Whereas Moonshee Khyroollah has instituted a suit in this Court against John Smith for the recovery of twelve hundred Rupees, and whereas the said Moonshee Khyroollah has satisfied the Court by sufficient proof, that the said John Smith intends to abscond and to withdraw himself from the jurisdiction of the Court: you are therefore hereby authorized and required to demand good and sufficient security in the sum of fifteen hundred Rupees from the aforesaid John Smith for his personal appearance before this Court, and in the event of the said John Smith not giving good and sufficient security as aforesaid, you are further authorized and commanded to take the said John Smith into custody and to bring him before this Court.

Given under my hand and the seal of the Court, this 10th day of May 1841.

L. S.

A. B.
Judge.

115. No. 6. SECURITY BOND TO BE EXECUTED BY A DEFENDANT.

Whereas a suit has been instituted in the Dewanny Adawlut of the Zillah of Hooghly by Moonshee Khyroollah, Plaintiff, against John Smith, defendant, and whereas I Ram Mohun Mullick, inhabitant of Sealdah in the 24-Pergunnahs, have voluntarily become security for the appearance of the said defendant to answer to the said suit and perform all such orders as may be passed thereupon, until the final decree on it shall have been carried into execution, I do therefore hereby engage and bind myself, my heirs and executors, that the said defendant shall appear in person or by Vakeel to make answer to the plaint against him in the suit aforesaid, on or before the 20th day of May 1841; and further that the said defendant shall personally attend in the said Zillah Court whenever the same may be required by the Judge thereof at any time whilst the above suit is depending before the Zillah Court; or before the final decree which may be passed thereupon by the above Court shall be fully and completely carried into execution; in default of which, and in the event of my not producing the said defendant when called upon, I will be answerable for such sum as may be adjudged against him, and for the due performance of whatever order or decree may be passed against him on the suit abovementioned; provided the same does not exceed the sum of fifteen hundred Rupees. Dated this 25th day of June 1841.

Sealed and delivered in the
presence of
A. B. and C. D.

RAM MOHUN MULLICK.

116. No. 7. WRIT OF SEQUESTRATION.

To Mohumud Ally, Nazir of the Court of Dewanny Adawlut of Zillah Hooghly.

Whereas Sheik Syfoo has instituted a suit in this Court against Ram Sohaee Singh for the recovery of ten thousand Rupees, and whereas the said Sheik Syfoo has satisfied the Court by sufficient proof that he has just ground to apprehend that the said Ram Sohaee Singh means to dispose of his property whilst the suit against him is pending, for the purpose of avoiding the execution of an eventual judgement against the said Ram Sohaee Singh: you are therefore hereby authorized and required to demand good and sufficient security from the aforesaid Ram Sohaee Singh in the sum of twelve thousand Rupees to make good the ultimate decision of the Court, and in the event of the aforesaid Ram Sohaee Singh not giving good and sufficient security within the period of 24 hours: you are hereby further authorized and commanded to attach and sequestrate any lands, goods and effects, or other property belonging to or possessed by the said Ram Sohaee Singh to the amount of twelve thousand Rupees, and to hold the same under attachment and sequestration until a final decision be passed by this Court.

Given under my hand and the seal of the Court, this 15th day of June 1841.

L. S.

A. B.

117. No. 8. WRIT OF EXECUTION AGAINST THE PERSON.

To the Nazir of the Court of the Dewanny Adawlut for the Zillah of Hooghly.

Whereas Munsaram was directed by a decree of this Court under date the 15th day of May 1841, to pay to Edoo Sheik the sum of Rs. 500, and 50 Rs. for costs of suit amounting to Rs. 550, and whereas the said Munsaram having notice of the said decree, has omitted to liquidate the same: These are therefore to command you to apprehend the said Munsaram; and unless the said Munsaram, shall pay to you the said sum of Rs. 550 in satisfaction of the said decree, and costs, and the sum of 10 Rs. for the costs of executing this process, to produce him before this Court to be dealt according to law.

Given under my hand and the seal of the Court, this 2d day of June, 1841.

L. S. A. B.

Judge.

118. No. 9. WRIT OF EXECUTION AGAINST THE EFFECTS.

To the Nazir of the Court of Dewanny Adawlut for the Zillah of Hooghly.

Whereas Cossinauth was directed by a decree of this Court under date the 15th June, 1841, to pay to Mohumud Ally the sum of Rs. 5000, with interest at 12 per cent. per annum to the day of payment, which to this date amounts to Rs. 33 5 8, and 500 Rs. for costs of suit amounting to Co's Rs. 5,533 5 8, and whereas the said Cossinauth having had notice of this decree, has omitted to liquidate the same: These are therefore to command you, to levy the said sum of Co's. Rs. 5,533 5 8, and the sum of 100 Rs. for the costs of executing this process by distress and sale of the lands, goods and chattels, of the said Cossinauth, and you are hereby ordered and directed, to distrain the lands, goods and chattels of the said Cossinauth; and to sell and dispose of the same, within (not less than thirty days,) unless the sum of Co's. Rs. 5,633 5 8, for which such distress shall be made, together with the reasonable charges of taking and keeping such distress shall be sooner paid, and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

Given under my hand and the seal of the Court, at Hooghly, this 20th day of June, 1841.

L. S. A. B.

Judge.

SECT. XII.

Zillah and City Courts—Resistance of Process.

119. If any person not being a Zemindar, independent talookdar, or other actual proprietor of land, or a dependant talookdar, or a farmer of land holding a farm immediately of Government, shall resist, or cause to be resisted, any process, rule, order, or decree, which may at any time issue from the Court of Dewanny Adawlut established in any Zillah, or in either of the three Cities of Patna, Dacca, and Moorshedabad, on proof of the resistance being made by oath to its satisfaction, the Court is to cause the offender to be summoned to answer to the charge. If the person for whom the summons may be issued shall abscond, or shut himself up in his own, or any house, or building, or retire to any place so that he cannot be served with the summons, the Court is to proceed against him in the manner directed with regard to other persons absconding, or otherwise acting as above specified, so that they cannot be served with the process of the Court.—*Reg.* 4, 1793, *Sect.* 25.—*Ben. Reg.* 8, 1795, *Sect.* 8.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 26.

120. "On an enquiry, whether persons on whom a summons has been issued to answer a charge of resistance of process, are at liberty to answer a charge through a vakeel without appear-

ing in person;" the Court informed the Judge that, as the object of a summons, in the case referred to, is to give the summoned party an opportunity of defending himself against the charge, which is distinct from ordering his apprehension after conviction, in consequence of non-payment of any fine that may have been imposed, with a view to his imprisonment in jail, they are of opinion that a person summoned on the charge described is clearly at liberty to answer such charge through a vakeel, without being obliged to appear in person.—*Con. No.* 1216, *West. C.* 17*th May, Cal. C. 7th June,* 1839.

121. If the offender shall not appear within the prescribed period, or if he shall appear within the limited time, and after receiving his answer, and hearing the evidence which he may have to produce in his defence, it shall be proved to the satisfaction of the Court, that he is guilty of the charge, the Court is to adjudge the offender to pay such fine to Government as may appear to it proper upon a consideration of his situation and circumstances in life, and the offence of which he may be convicted.—*Reg.* 4, 1793, *Sect* 25.—*Ben. Reg.* 8, 1795, *Sect.* 8.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 26.

122. Held, that a fine imposed under the provisions of Section 25; Regulation 4, of 1793, may be levied under the same rules as are applicable to the execution of decrees of Court, that is, either by sale of the property of the individual on whom the fine is imposed, or by the imprisonment of the individual.—*Con. No.* 1214, *Cal. C. 3d May, West. C. 24th May,* 1839.

123. If the offender shall not prefer an appeal within the time prescribed for lodging appeals, the Court is to proceed to levy the amount by the same process by which it is empowered to carry its decrees for sums of money into execution.—*Reg.* 4, 1793, *Sect.* 25.—*Ben. Reg.* 8, 1795, *Sect.* 8.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 26.

124. I am further directed to add, for the information of the Judge of Patna, to whom you are requested to forward a copy of this letter, that he should himself dispose of all common cases of resistance of Civil process, under Section 25, Regulation 4, 1793; and that he should make over to the Magistrate those cases only which may have been attended with acts of violence amounting to a breach of the peace.—*Con. No.* 1033, 12*th Aug.* 1836.

125. The Court, having had before them your letter of the 25th ultimo, requesting to be informed whether, in the event of a legal arrest, by a warrant issued from the Civil Court, and a forcible rescue from the custody of its officers, the Magistrate, on proof of such rescue, is empowered to order the police forcibly to enter the house wherein the person rescued may be, and to apprehend him and forward him to the Civil Court; direct me to answer your question in the negative, and to observe that in the case supposed, the Civil Court should proceed against the offender agreeably to Section 25, Regulation 4, 1793.—*Con. No.* 765, *Cal. C.* 8*th March, West. C.* 12*th April,* 1833.

126. The Court observe, that when the Judge of one district may be called upon to aid the process of another Zillah Court, the practice is for him to back the same with his official signature, and to send one or more of the peons of his Court to aid in its execution; and they are therefore of opinion, that in ordinary cases any resistance to such process must be considered as a resistance to the process of the Court within whose jurisdiction it took place, and is cognizable as such by the Judge of that Court.—*Con. No.* 1115, *West. C.* 24*th Nov. Cal. C.* 8*th Dec,* 1837.

127. If a Zemindar, independent Talookdar, or other actual proprietor of land, or a dependant Talookdar, shall resist, or cause to be resisted, any process, rule, order, or decree, of a Zillah Court, the Court, on proof of the resistance being made by oath to its satisfaction, is to cause the offender to be summoned to answer to the charge. If the offender shall abscond, or shut himself up in his own or any house, or in any building, or retire to any place, so that he cannot be

proceed against him in the manner directed with regard to other persons absconding or acting as above specified, so that they cannot be served with the process of the Court. If the offender shall not appear within the prescribed time, or, if he shall appear, and after receiving his answer to the charge, and hearing the evidence which he may produce in his defence, it shall be proved to the satisfaction of the Court, that he is guilty of the charge, the Court is to decree that the offender shall from the date of the decree, forfeit his Zemindarry, talook, or other estate, in which the resistance may have been made; or, if the resistance shall have been made out of the limits of the estate of the offender, the Zemindarry, talook, or other landed property that he may possess within the jurisdiction of the Court, the process of which may have been resisted.—*Reg.* 4, 1793, *Sect.* 22.—*Ben. Reg.* 8, 1795, *Sect* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 23, *Cl.* 1.

128. If the cause shall not be appealed—within the time limited for preferring appeals—the Court is immediately to forward a copy of its decree and proceedings respecting the charge to the Governor General in Council.—*Reg.* 4, 1793, *Sect.* 22.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 23, *Cl.* 1.

129. If an appeal shall be received from the lower Court and the Sudder Dewanny Adawlut should confirm the decree of that Court, they are immediatly to transmit a copy of their decree and proceedings, and of the decrees and proceedings received from the lower Court to the Governor General in Council.—*Reg.* 4, 1793, *Sect.* 22.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 23, *Cl.* 1.

130. It shall be at the option of the Governor General in Council, within four weeks after the receipt of a decree adjudging the estate of any person forfeited under this Section, either to order it to be executed, or to commute the forfeiture for such fine as upon a consideration of the situation and circumstances in life of the offender, he may think adequate to the offence for which the decree may be passed. In the event of the Governor General in Council commuting the forfeiture for a fine, the Court which shall have transmitted the decree and proceedings to him, upon receiving notice of the fine that he may impose, is to levy the amount of it by the same process as is prescribed for enforcing decrees of the Court. But if the Governor General in Council shall not within four weeks after the decree shall have been received by him, either order it to be executed, or commute the forfeiture for a fine, the decree is to stand good against the offender. In such case, or in the event of the Governor General in Council ordering the decree to be executed, the Court is to issue a precept, under the seal of the Court and the signature of the Register, requiring the Collector of the revenue of the Zillah to depute an ameen with a proper establishment of officers (whose allowances are to be specified in the precept) to sequester the lands, and collect the rents and revenues. If the lands of the offender shall be deemed by the Court too inconsiderable to admit of their being charged with the expence of an ameen, they are to direct a precept to be issued to the Collector of the Zillah to order the nearest teseeldar, or any other officer who may be employed under him in the business of the collections, to take charge of the lands. The officer is to perform the duties prescribed to ameens in such cases, and under the same restrictions and penalties.—*Reg.* 4, 1793, *Sect.* 22.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 23, *Cl.* 1.

131. The Judge of Zillah Shababad was informed, that the Court do not consider Section 22, Regulation 4, 1793, to authorize or intend a sequestration of lands, till the judgment of forfeiture be confirmed.—*Con. No.* 2, 2*d May* 1799.

132. If the decree adjudging the lands of the offender forfeited, shall be confirmed or stand good under Section 22, it shall be at the option of the Governor General in Council, either to confer the rights which the offender possessed in the lands on his heirs, upon their agreeing to make good all sums whatever that may be due from him to Government on account of the lands forfeited, and to pay the fixed public revenue assessed upon them, or, if the property forfeited be a dependant talook, the revenue payable from it to the proprietor within whose estate it may be situated; or, to order the lands to be disposed of at public sale, under the rules prescribed for the sale of lands so forfeited in Regulation 45, 1793.—*Reg.* 4, 1793, *Sect.* 23.—*Ben. Reg.* 8, 1795, *Sect.* 6, *Cl.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 24.

The same rules which are given above regarding the resistance of process by a Zemindar are made applicable by Sect. 24 *of Reg.* 4, 1793, *to the case of a resisting Farmer.*

133. It shall be at the option of the Governor General in Council, within four weeks after the receipt of a decree adjudging the lease of a farmer annulled under this Section, either to order the decree to be executed, or to commute the forfeiture of the lease for such fine as upon a consideration of the situation and circumstances in life of the offender, he may think adequate to the offence for which the decree may be passed; or, if the offender shall not be desirous of being continued in his farm, to fine him as above prescribed, and compel him to retain the farm during the remainder of the lease, and to hold him and his surety responsible for the discharge of their engagements until the term of them shall expire. If a fine shall be imposed upon the offender, the Court which shall have transmitted the final decree and proceedings to the Governor General in Council, upon receiving notice of the fine, is to levy the amount of it by the same process as is prescribed for enforcing decrees of the Court. But if the Governor General in Council shall not within four weeks after the decree shall have been received by him, either order it to be executed, or commute the forfeiture of the lease for a fine, the decree is to stand good against the offender, and the Court is without delay to cause a copy of the decree to be sent to the Collector. If the lease of the offender shall be annulled, and a balance shall be due from him to government at the close of the year in which the lease may be cancelled, both he and his surety are to be held responsible for the payment of it, and the Collector of the revenue of the Zillah is empowered to proceed against them for the recovery of it in the manner prescribed in Section 20, Regulation 14, 1793, for the recovery of balances due from farmers whose leases may be declared annulled under that Regulation. The offender is permitted to prosecute in the Dewanny Adawlut of the Zillah in which the farm may be situated, the dependant Talookdars, under farmers, and ryots, in the lands included in the farm, for any arrears of rent or revenue that may be due from them to him on account of the period during which his lease remainded in force.—*Reg.* 4, 1793, *Sect.* 24.—*Ben. Reg.* 8, 1795, *Sect.* 8.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 25, *Cl.* 1, 2.

134. An appeal preferred under Section 23, Regulation 6, 1795, or the corresponding Section of Regulation 27, 1803, against a decision in the Zillah Court, decreeing the forfeiture of an estate to Government for the offence specified in Section 22, of those Regulations, is to be received as a regular appeal under the general rules applicable to regular appeals.—*Con. No.* 198, *8th March*, 1815.

135. As by Glause 3, Section 28, Regulation 5, 1831, all suits originally decided by the Judge of a Zillah, into which the provisions of Regulation 5, 1831, have been introduced, are appeal-

able to the Sudder Dewanny Adawlut; an appeal would lie from his decree adjudging forfeiture of lands or fines, in cases of resistance or evasion of process, without reference to the amount of the annual jumma, or produce, or fine; and in such cases the Judge should await the period of appeal to the Sudder Court in the same manner as by the enactments quoted by you, they were directed to await an appeal to the Provincial Court.—*Con. No.* 780, *Cal. C.* 12*th April, West. C.* 10*th May*, 1833.

136. In all cases of resistance to the process of any Zillah or City Court of Dewanny Adawlut in the provinces of Bengal, Behar, Orissa or Benares, if the Judge of the Court whose process may have been resisted, shall be of opinion that a fine to Government will be a more proper and adequate punishment for the offence than a forfeiture of the offender's estate or farm, under the provisions contained in Sections 22, 23 and 24, Regulation 4, 1793; and Sections 5, 6, 7 and 8, Regulation 8, 1795; he is authorized, instead of the decree of forfeiture directed by the above Regulations, to adjudge the offender to pay such fine to Government as may appear proper upon a consideration of his situation and circumstances in life, and the offence of which he may be convicted, as provided with regard to persons not being landholders or farmers of land by Section 25, Regulation 4, 1793; and subject to the provisions in that section for an appeal from the judgment of the Court.—*Reg.* 9, 1799, *Sect.* 3.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 23, *Cl.* 1.

137. Further, in cases wherein a decree for the forfeiture of an estate or farm may be passed and transmitted to the Governor General in Council under the Regulations abovementioned, instead of such decree being considered final and carried into execution, unless the Governor General in Council shall order its commutation to a fine within four weeks after the decree shall have been received by him, the decrees in question shall not be hereafter deemed final until confirmed by the Governor General in Council; and shall not be carried into execution until notice of his confirmation be received.—*Reg.* 9, 1799, *Sect.* 3.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 23, *Cl.* 1.

138. Held, that it is not competent to a Civil Judge, in cases of resistance of the process of his Court, to call upon the Magistrate to enforce his orders, but that he must pursue the course laid down in the Regulations.—*Con. No.* 1209, *Cal. C.* 12*th April, West. C.* 3*d May*, 1839.

139. Cases of resistance to the processes of the Zillah or City or the subordinate Courts, with a view to the forfeiture of Estates and the cancelling of farms, will be tried in the first instance by the Court whose process may have been resisted, subject to the ordinary course of appeal if competent to try the same; if not, a report should be made to the Judge, who will exercise his discretion in referring them to any other tribunal.—*Govt. Ord*, 15*th Jan.* 1834, *No.* 4.

SECT. XIII.

Neglect of the party in possession of the disputed land to discharge the public revenue.

140. When any person claiming the proprietary right in any mehal shall have instituted a suit in Court for the recovery of the same, if the party in possession of such mehal shall neglect to discharge the revenue payable on account thereof, and a sale of the mehal for the recovery of the arrears due shall have been ordered by the Board of Revenue, or other authority exercising the powers of that Board, it shall be competent to the said plaintiff to make application to the Court to be put in possession of the con-

tested mehal, on paying the arrears with interest and charges due, and giving security as hereinafter provided. The Judge on receiving such application shall cause notice thereof to be given to the defendant or to his authorized agent or vakeel, and if the defendant shall not have discharged the arrear for the recovery of which the sale may have been ordered, with the interest and charges, by noon of the Court day next preceding that fixed for the sale, he shall receive the amount tendered by the plaintiff, and shall cause him to be put in possession, subject to the rules for taking security in the case of appellants and defendants, contained in Clause 4, Section 11, Regulation 13, 1808, transmitting the amount received as aforesaid, with the necessary precept, to the Collector.—*Reg.* 11, 1822, *Sect.* 29.

SECT. XIV.

Procedure of the Zillah and City Courts.—Pleadings.

141. The Judges of the Zillah and City Courts, are to order the causes depending in their respective Courts, to be brought on for trial according to the order in which they may be filed, except in cases in which it may be otherwise directed by any Regulation, or in which the Judge may think it proper for special reasons, which he is to state at large upon the record of the trial, to bring on the cause before its turn. The Register is to enter in a book the causes for the trial of which a day may be appointed by the Judge, and on the day fixed, call on the causes for trial in the order in which they may have been entered. A paper containing a list of the causes, and the day appointed for the trial of them, is to be fixed up in some conspicuous part of the Court room seven days previous to the day of trial.—*Reg.* 4, 1793, *Sect.* 19.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 20.

142. If the defendant shall appear either in person or by vakeel, the Court is to fix a day according to its discretion for him to answer to the complaint, and, if it shall deem it reasonable so to do, may at any time allow the defendant a further period for delivering his answer.—*Reg.* 4, 1793, *Sect.* 5.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 5.

143. If the defendant shall not appear in person or by vakeel, by the time limited in such proclamation, or if a defendant, who may have been served with a notice, as directed in the preceding section, shall not appear in person or by vakeel, within the time specified; or if, having appeared, he shall refuse to answer the plaint, or make other default; the Court, as provided in the Sections abovementioned, shall proceed to try the cause *ex-parte*; and after examining the plaintiff's evidence in support of his claim, shall give judgment, in the same manner as if the defendant had appeared, answered, and entered into proof.—*Reg.* 2, 1806, *Sect.* 3.

144. Whenever a defendant appears, at any time antecedent to the decision of the suit, and assigns satisfactory reasons, to show that the default was not wilful, he should be permitted to file his answer, notwithstanding the commencement of an *ex-parte* investigation; and to adduce evidence in support of it, if the merits of the case appear to require it.—*Con. No.* 375, 4*th Feb.* 1825.

145. So much of the rule contained in Schedule B. Regulation 10, 1829, as prescribes that the pleadings in the Courts of the Zillah and City Judges shall be written on paper of one Rupee value is hereby modified, and the pleadings in the Courts of

those Officers, shall be written on paper of the value of four Rupees, wherever it has been or may be resolved to introduce the provisions of Regulation 5, 1831, except in original suits for property not exceeding one-thousand Rupees in value or amount, and in cases of appeal from the decisions of Sudder Ameens and Moonsiffs. In such cases, the pleadings shall continue to be written on stamp paper of only one Rupee value.—*Reg.* 7, 1832, *Sect.* 3.

146. All pleadings, petitions and applications, all deeds, documents and other papers, whether originals, or copies, which are required by the Regulations to be written on stampt paper, are to be written in a fair legible manner, and as they have been hitherto usually prepared, as well with regard to the size of the writing, the space between the words, and the number of lines in each page, as to all other matters regarding their engrossment.—*Reg.* 26, 1814, *Sect.* 5, *Cl.* 2.

147. Whenever a defendant in an original civil suit shall refuse, or neglect to file a rejoinder within the period prescribed for that purpose, it shall not be necessary for the Register (as hitherto required) to enter a rejoinder for him, but the Court before whom the trial may be depending, after recording such refusal or neglect, shall proceed in the trial of the suit, in the same manner as if a rejoinder containing a general denial of the claim had been regularly filed.—*Reg.* 26, 1814, *Sect.* 6, *Cl.* 2.

148. If from mistake, inadvertence, or other cause, the plaintiff shall have omitted to insert in his complaint any thing material to the suit, the Court, on the omission being represented either by the plaintiff or his vakeel, is to allow the plaintiff to prefer a supplemental complaint, in which he is to state the matter omitted. The defendant is to be allowed to deliver an answer to the supplemental complaint on a day to be fixed for that purpose; and the plaintiff and defendant are to reply and rejoin in the same manner as on the original complaint, but no other.—*Reg.* 4, 1793, *Sect.* 5.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 5.

149. In like manner, if the defendant from mistake, inadvertence, or other cause, shall have omitted to insert in his answer any thing material to his defence, the Court, upon his representing the omission either in person or by his vakeel, is to permit the defendant to deliver in a supplemental answer. The plaintiff and defendant are to reply and rejoin in the same manner as on the original answer. But no more than one supplemental complaint, or one supplemental answer is to be received by the Court.—*Reg.* 4, 1793, *Sect.* 5.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 5.

150. No supplemental complaint, or other supplemental pleadings shall be admitted in any suit, unless the Court, upon a perusal of the pleadings previously filed, and from a consideration of the circumstances alleged by the parties, shall deem it just and proper to admit such supplemental plaint, or other supplemental pleadings to be filed in the suit.—*Reg.* 26, 1814, *Sect.* 6, *Cl.* 3.

151. When the defendant has delivered in his answer to the complaint, the plaintiff is to reply to it on the next Court day, but he is not to be permitted to introduce in his reply any matter whatever which may not be contained in his complaint, but is either to acknowledge the answer of the defendant to be true, or simply and shortly deny the truth of such of the facts in the answer as he intends to dispute, or simply deny the truth of all the facts contained in it, or the competency of the answer.—*Reg.* 4, 1793, *Sect.* 5.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 5.

152. The defendant is to rejoin to the reply on the same day, but is not to be permitted to introduce in his rejoinder any matter not contained in his answer, but is simply to deny the truth of the reply of the plaintiff, or the parts of it which he means to dispute, and aver the truth or competency of his own answer; and no further pleadings whatever are to be admitted in the cause.—*Reg.* 4, 1793, *Sect.* 5.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 5.

153. In the trial of original regular suits, as well as in the trial of appeals in such suits, the prescribed pleadings shall be completed and read in open Court, before any exhibits are filed, or witnesses summoned in support of the allegations of either of the parties; unless special and sufficient reason be assigned for taking the immediate deposition of a witness without waiting until the pleadings are completed and read in open Court.—*Reg.* 26, 1814, *Sect.* 10, *Cl.* 1

SECT. XV.

Zillah and City Courts.—Default of the Plaintiff before the pleadings are complete.

154. If a plaintiff shall at any time neglect to proceed in his suit for six weeks the suit is to be dismissed, unless he can shew good and sufficient cause to the Court for not having proceeded in it; and the Court is to award to the defendant the whole or such part of the costs as he may have incurred in the suit, according as it may deem equitable. The Judge is to record upon the proceedings his reasons at large for dismissing the suit of a plaintiff, or allowing him to prosecute it, after he shall have neglected to proceed in it for six weeks.—*Reg.* 4, 1793, *Sect.* 10.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 12.

155. With respect to regular suits dismissed under Section 10, Regulation 4, 1793, the Zillah and City Courts were informed by a circular notice from the Sudder Dewanny Adawlut, under date the 22nd August, 1795, that the plaintiffs in causes dismissed under this rule have the option of reinstating them under the regulations.—*Con. No.* 266, 19*th Feb.* 1817.

156. The Court consider the intent and meaning of the said provision to be, that if an appellant shall neglect for the term of six weeks, to perform any act required from him in the regular prosecution of the appeal, his appeal is to be dismissed: but that before the judgement of dismissal be passed against him, he is to be called upon to shew cause for not having proceeded in the appeal, and that such cause, if it be established, and be good and sufficient in itself, is to be admitted to save the dismission.—*Cir. Ord.* 5*th Nov.* 1812, *Par.* 2.

157. In case an appellant who may have omitted to proceed in his appeal for six weeks, shall not be in attendance in your Court either in person or by vakeel, you will call upon him to attend and shew cause as above explained, by the process prescribed in Sections 5 and 11, Regulation 4, 1793, for summoning defendants; and upon due proof of the service of such process, will, on the failure of the appellant to attend, dismiss his appeal.—*Cir. Ord.* 5*th Nov.* 1812, *Par.* 3.

158. In the event of an appellant [or plaintiff] neglecting for a period of six weeks to do any act required, you are at liberty, if he has appointed a vakeel, to call upon him to shew cause for the neglect, and strike off the appeal in the event of satisfactory reason not being given; but that if the appellant is not in attendance, either in person or by vakeel, the notice prescribed by the Circular Order of the 5th November, 1812, must be served upon him requiring him to shew cause why his appeal should not be struck off.—*Con. No.* 938, 20*th March*, 1835.

SECT. XVI.

Zillah and City Courts.—Notification of the points to be established in the case.

159. If from the pleadings in the case the points at issue cannot be clearly ascertained, or if from any other reason further explanations may be requisite, the Courts shall on the day, on which the suit may be first brought to a hearing, make such enquiries from the parties or their pleaders as may appear necessary, with a view to ascertain the precise object of the action, and the grounds on which it is maintained, and shall record the result on their proceedings.—*Reg.* 26, 1814, *Sect.* 10, *Cl.* 2.

160. The Court shall then consider and record the point or points to be established respectively by the plaintiff or appellant, and by the defendant or respondent, and shall proceed to take the evidence which may be adduced by either party upon such points in the manner prescribed by the rules in force.—*Reg.* 26, 1814, *Sect.* 10, *Cl.* 3.

161. In like manner if proof shall be required on any other points in the course of the trial, such points shall be recorded on the proceedings, and the proper party shall be called upon for the requisite evidence, and no exhibit shall be filed, or witness summoned, unless expressly declared to be in proof, or refutation of some point, upon which the Court may have directed that evidence should be taken.—*Reg.* 26, 1814, *Sect.* 10, *Cl.* 4.

162. A strict observance of the rules abovementioned, especially of those contained in Section 10, Regulation 26, 1814, with a view to ascertain the precise object of the action; the grounds on which it is maintained; and the point or points to be established by the parties respectively, when the suit is first brought to hearing after the pleadings are completed, and before any exhibits are filed, or witnesses summoned being of great importance towards the prevention of superfluous matter, and unnecessary delay, in the trial and decision of Civil suits, the Judges and Registers of the Zillah and City Courts, as well as the Judges of the Provincial Courts, are required to give particular attention thereto, in the suits which may come before them, respectively.—*Cir. Ord. 7th Aug.* 1817, Par. 0.

163. Several instances having lately been brought to the notice of the Court of the record of appealed cases, submitted agreeably to the rule contained in Section 8, Regulation 9, 1831, being sent up without the proceeding which the Judge is required to draw up by Section 10, Regulation 26, 1814, and the omission being extremely inconvenient, particularly where the appellant pleads that the Judge has omitted to receive documents tendered, or to summon witnesses named by the party; I am directed to request that you will invariably submit that proceeding in all appealed cases that you may forward to the Court.—*Cir. Crd. Cal. and West. C. 5th Aug.* 1836.

SECT. XVII.

Zillah and City Courts.—Notice to the parties to file exhibits and name witnesses.

164. When the rejoinder has been filed, the Court, either immediately, or on a fixed day (eight days notice of which is to be given to the parties) as soon after the pleadings are closed as the business of the Court will permit, is to examine the truth of the complaint or claim by the oaths of the parties, if they mutually consent to that mode of examination, and of the witnesses who may be produced by them, if they have any witnesses to produce.—*Reg.* 4, 1793, *Sect.* 6.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 7.

165. In order that the parties in a suit or their authorized pleaders may be fully prepared to file their exhibits, and to name their witnesses, as well as to furnish any explanations of the case, which may be required, at the time when the suit may first be brought to a hearing, the several Courts are enjoined carefully to attend to those provisions in the Regulations which require that eight days previous notice be given to the parties of the day on which the Court may propose to bring the suit to a hearing. —*Reg.* 26, 1814, *Sect.* 12, *Cl.* 1.

166. For this purpose it shall be sufficient for the Court to affix, in some conspicuous place in the Court room, a notification, specifying the number of the suit, the names of the parties and of the vakeels respectively entertained in the suit, together with the date on which it may be intended that such suit be brought to a hearing before the Court, and such notice shall be held and considered to be in force until the suit can be brought to a hearing either on the day fixed or any subsequent day.—*Reg.* 26, 1814, *Sect.* 12, *Cl.* 2.

167. In reply to this question, I am desired to state, that it is clearly competent to a Court to dismiss a case on default on the first hearing, after the notice prescribed by this Court's Circular Order, dated the 5th of November; 1812; provided, (as is stated by the acting Register to have been the case in the present instance,) the defaulting party be not able to show reasonable cause for the default; and that it is not necessary in such case to issue the notice prescribed in Clause 1, Section 12, Regulation 26, 1814; that notice, as justly remarked by the acting Register, not being intended to call on the parties to file their pleadings; but that they should be prepared to file their exhibits, and name their witnesses to prove what they have set forth in their pleadings. Had the defaulting party shewed reasonable cause, and on that ground been admitted to plead, he, after pleading, of course becomes entitled to the notice of eight days, which the above-cited rule prescribes. —*Con. No.* 406, *7th Oct.* 1825, *Par.* 3.

168. The points on which the acting Register solicits the opinion of the Court, as stated in the 8th and 9th paragraphs of his letter, are as follows: In cases decided *ex-parte*, under Section 3, Regulation 2, of 1806, is it necessary that the notice prescribed by Section 12, Regulation 26, of 1814, should have been given, to render that decision legal? If a plaintiff in an original suit defaults at any stage of the proceedings previous to the completion of the pleadings, and neglect to proceed, although called upon by the notice required by the Circular Order of the Sudder Dewanny Adawlut, dated 5th November, 1812, is it necessary that the notice prescribed by Section 12, Regulation 26, of 1814, should be given previous to passing an order of dismissal.—In reply to those questions, I am desired to observe, that the notice above alluded to is not requisite in the latter of the cases stated, but is requisite in the former to the plaintiff, whom the circumstance of the case being tried *ex parte* does not exempt from the necessity of proving his suit, and who, of course therefore, is entitled to due notice before he is compelled to exhibit his proof.—*Con. No.* 406, *7th Oct.* 1825, *Par.* 5.

169. If either of the parties in a suit, which may be brought to a hearing after due notice shall have been given in the manner above prescribed, shall not be prepared to file their exhibits, or the names of their witnesses, or to furnish any explanations of the case which may be required by the Court, and shall not assign sufficient and satisfactory reason for the delay, the Courts are authorized to impose upon such parties such fine as may appear just and proper: provided that the fine shall in no instance exceed one-fourth of the fee paid on the institution of the suit, or of the amount of the stamp duty substituted for such fee. If a similar neglect shall occur a second time after due notice shall have been given of the day fixed for the case being again brought forward, the Courts are authorized either to impose a second fine under the limitation

above prescribed, or to proceed as in other cases of default.—*Reg.* 26, 1814, *Sect.* 12, *Cl.* 3.

SECT. XVIII.

Witnesses in Zillah and City Courts.

170. Petitions or Applications for the summoning or examination of witnesses, according to the number of persons named, will be charged for stamps as Exhibits, and no witness shall be summoned or examined in a regular suit, unless his name is included in a Petition or Application in writing given in as above.—*Reg.* 10, 1829, *Sch. B. Art.* 11.

171. On a reference from the Judge of Zillah Bundlekund, dated 13th May, (paragraph 2,) "whether parties may be allowed to bring their own witnesses without making any application to the Court, or whether it is intended that an application on stampt paper shall be made for every witness," whether summoned by the Court, or offered to be produced by the parties;" the Sudder Dewanny Adawlut gave it as their opinon, the 17th August 1814, "that no witness could be examined in a regular suit without a durkhaust, as prescribed by the last Stamp Regulation.—*Con. No.* 182, 17*th Aug.* 1814.

172. I am directed to observe that Section 3, Regulation 7, 1832, modifies Schedule B, Regulation 10, 1829, only so far as relates to the value of the stamp on which "pleadings" in suits in the Judge's Court shall be written, and that all "ism-nuveesees" or the names of witnesses must as heretofore be charged as "exhibits" and written on stampt paper of the value of one rupee (see Art. 5 and 11, Schedule B.)—*Con. No.* 1088, *Cal. C.* 21*st April, West. C.* 12*th May*, 1837.

173. To procure the attendance of witnesses, the Zillah and City Courts, on the requisition of the plaintiff or defendant, or their respective vakeels, are to issue a summons to the witnesses whom the parties may name (provided they be not Hindoo or Mahomedan women of a rank or quality, which, according to the manners and customs of the country, would render it improper to compel them to appear in a Court of Justice,) specifying at whose request the summons may have been issued, and requiring them to appear in the Court on a day to be named in the summons, and there to depose concerning the matter in dispute between the parties.—*Reg.* 4, 1793, *Sect.* 6.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 7.

174. The Court of Sudder Dewanny and Nizamut Adawlut, have been advised that an extract from the proceedings of Government in the territorial department under date the 9th May last, relative to persons exempted from the ferry toll, established by Regulation 19, 1816, has been transmitted to the several Courts of justice, for their information. I am further directed to acquaint you, that the several revenue authorities have been instructed by Government "to consider the principle of the orders contained in that extract to extend to witnesses summoned to attend the Courts of justice."—*Cir. Ord.* 31*st July*, 1817.

175. If a witness so summoned shall not attend, on the day appointed or attending, shall refuse to give evidence, or to subscribe his deposition as hereafter required, the Judge, in the first case, if it shall be proved to his satisfaction on oath that the witness was material to the cause, is to issue an order to the Nazir to seize and bring the witness before the Court, and is to impose on such witness not having attended, or refusing to give evidence, a fine not exceeding five hundred rupees, and to commit him to close custody, until he shall consent to give his evidence and sign his deposition.—*Reg.* 4, 1793, *Sect.* 6.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803; *Sect.* 7.

176. In answer to a reference made by the Judges of the Calcutta Court of Circuit, the Nizamut Adawlut, on the 19th of May 1814, stated it as their opinion, that this clause, which requires

proof on oath (not the prosecutor's oath exclusively) that the evidence of a witness is material to the cause, is exclusively applicable to the first case therein mentioned, viz. that of a witness duly summoned and not attending; and that in the two other cases mentioned, viz. of a witness attending and refusing to give evidence, or after having given evidence refusing to sign his deposition, no new proof is to be called for that the evidence of the witness is material.—*Con. No.* 159, 19*th May*, 1814.

177. In a regular suit, in which the witnesses named by the plaintiff had been duly summoned, but had neglected to attend under the summons and give their evidence as required, it was held by the Calcutta Court, in concurrence with the Western Court, that it was incumbent on the Judge, under the spirit of Section 6, Regulation 4, 1793, to call on the plaintiff's counsel to satisfy him by evidence on oath, that these witnesses were material to the cause; and that he ought not to have struck the case off the file, until he had explicitly called upon the party to proceed in the manner above indicated.—*Con. No.* 1126, 26*th Jan.* 1838.

178. In reply to the question involved in your reference, namely, as to the propriety or otherwise of imposing a fine on a witness, on whom a *subpœna* may not have been served, I am desired to state, that the Court see no reason to depart from the construction laid down in their letter to the Commissioner at Moorshedabad, dated the 27th of July, 1814, that the rules contained in Section 6, Regulation 4, 1793, cannot be considered applicable to the case of a person whose attendance may be required as a witness, but on whom a summons may not have been served.—*Con. No.* 465, 7*th Dec.* 1827.

179. Can a witness, who has *evaded* the summons of a Civil Court, be proceeded against by *dustuk* and fine, supposing that no doubt exists, as to the summons having been carried by the serving peada to the actual residence of the witness, and all proper means used to serve it upon him? *Reply.* A witness, upon whom a summons may not have been personally and actually served, cannot be proceeded against, either by *dustuk* or fine.—*Con. No.* 487, 12*th Sept.* 1828.

180. Are any and what further measures allowable to enforce the attendance of a witness, who, having been duly served with a summons, has neglected to attend, and evades the second process of dustuk issued against him? *Reply.*—Section 6, Regulation 4, 1793, contains the proper rule of proceeding in such case, namely, the imposition of a fine not exceeding 500 rupees.—*Con. No.* 487, 12*th Sept*, 1828.

181. It appearing from the papers transmitted by you, that Gungaram has been duly served with a summons, and has failed to attend, as promised in his written acknowledgment of the receipt of the summons, the Court remark that for such failure he is liable, under the provisions of Section 6, Regulation 4, 1793, to personal arrest, and fine not exceeding five hundred Rupees. As the witness has evaded the warrant issued for the seizure of his person, the Court are of opinion, that it will be proper to issue a proclamation requiring his attendance within a certain period; and that if he should still neglect to attend within the time limited in the proclamation, you should impose such fine upon him as you may judge proper, not exceeding the amount above stated, and proceed to levy the same by attachment and sale of his property.—*Con. No.* 172, 27*th July*, 1814.

Though the Regulations do not require the Proclamation, yet it seems to have been pointed out by the Sudder Court as the proper mode of procedure in order to give the witness every advantage before proceeding to levy the fine.

182. If a witness so summoned shall not attend on the day appointed, or attending, shall refuse to give evidence, or to subscribe his deposition as hereafter required, the Judge, in the first case, if it shall be proved to his satisfaction on oath that the witness was material to the cause, is to issue an order to the Nazir to seize and bring the witness before the Court, and is to impose on such witness not having attended, or

refusing to give evidence, a fine not exceeding five hundred rupees, and to commit him to close custody, until he shall consent to give his evidence and sign his deposition.—*Reg.* 4, 1793, *Sect.* 6.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 7.

183. In answer to a reference made by the Judges of the Calcutta Court of Circuit, the Nizamut Adawlut, on the 19th of May, 1814, stated it as their opinion, that this clause, which requires proof on oath (not the prosecutor's oath exclusively) that the evidence of a witness is material to the cause, is exclusively applicable to the first case therein mentioned, viz. that of a witness duly summoned and not attending; and that in the two other cases mentioned, viz. of a witness attending and refusing to give evidence, or after having given evidence refusing to sign his deposition, no new proof is to be called for that the evidence of the witness is material.—*Con. No.* 159, *19th May,* 1814.

184. I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 11th instant, requesting their instructions, regarding the power of the Civil Courts "to enforce the production of a muhajun's books, which are necessary in cases before them." The Court are of opinion, that in all cases wherein it may be necessary to call upon a witness to produce documents of the nature referred to, which are known, or presumed on strong and sufficient grounds, to be in his possession, if the witness refuse or neglect to produce the documents required from him, and fail to assign satisfactory cause for not producing the same, he is liable to be proceeded against in conformity with the spirit of the rules for compelling witnesses to give their testimony, contained in Section 7, Regulation 3, and Section 25, Regulation 8, 1803, viz. by imposing a fine not exceeding 500 Rupees, and detaining him in custody until he shall consent to produce the documents required.—*Con. No.* 270, *26th March,* 1817.

185. If a witness who may attend pursuant to a summons, shall have incurred any expense in consequence of his being required to appear, the Court is to award to him such sum for his charges as may appear to it reasonable, whether he be examined or not. If the sum so awarded shall not be paid immediately, or secured to the witness to the satisfaction of the Court, the party at whose requisition the witness may be summoned is not only to lose the benefit of his testimony, but the Court, after the decree in the cause shall be passed, is to confine such party until he shall discharge the sum awarded to the witness.—*Reg.* 4, 1793, *Sect.* 6.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 7.

186. Notices to officers or other persons employed in the salt manufacture to appear as witnesses, shall be served during the manufacturing season in the same manner as if they were parties in the cause, but the Judges are to be careful not to issue notices to such officers, or persons, excepting when their attendance shall be necessary; and on their appearance, to have them examined and dismissed with all practicable despatch, so that they may be absent from the business of the manufacture as short a time as possible.—*Reg.* 10, 1819, *Sect.* 21, *Cl.* 8.

187. The Judges and Magistrates are empowered in particular cases in which it may appear to them indispensably necessary for the purposes of justice, to order the personal attendance of any Native officer or person in any wise concerned or employed in the salt manufacture, whether he may be a party or a witness in the suit or prosecution, at any time during the manufacturing season, notwithstanding any thing that may be said to the contrary in those clauses, and to cause process to be executed upon him for that purpose, in the same manner as upon other individuals; but in such cases, the Judges and Magistrates are to record on their proceedings, their reasons for deviating from the provisions contained in the said clauses, which are to be considered as the ge-

neral rules for issuing and executing such notices, summonses and warrants; and in the notice, summons or warrant, they are to specify that it has been specially ordered to be so executed in virtue of the discretionary power vested in them by this clause, and they are moreover strictly enjoined to refrain from every unnecessary exercise of that power. —*Reg.* 10, 1819, *Sect.* 21, *Cl.* 9.

188. The discretionary power granted by the ninth Clause of Section 21, of this Regulation, to Judges and Magistrates in special cases of persons concerned in the provision of salt under a Salt Agent, is hereby declared to be equally vested in those authorities, in regard to persons employed in the chokey department.—*Reg.* 10, 1819, *Sect.* 28.

The penalty for not being prepared with the names of witnesses will be found at Rule 169.

SECT. XIX.

Oaths.

189. It is hereby enacted, that except as hereinafter provided, instead of any oath or declaration now authorized or required by law, every individual of the classes aforesaid, within the territories of the East India Company shall make affirmation to the following effect:—

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."—*Act* 5, 1840, *Sect.* 1.

190. And it is hereby enacted, that if any person making such affirmation as aforesaid shall wilfuly and falsely state any matter or thing which if the same had been sworn before the passing of this Act would have amounted to perjury, every such offender shall be subject in all Courts to the same punishment to which persons convicted of perjury were subject before the passing of this Act.—*Act* 5, 1840, *Sect.* 2.

191. And it is hereby enacted, that any person causing or procuring another to commit the offence defined in the second Section of this Act shall be subject in all Courts to the same punishment to which persons convicted of subornation of perjury were subject before the passing of this Act.—*Act* 5, 1840, *Sect.* 3.

192. 1. With reference to the provisions of Act 5, of 1840, I am desired to transmit to you the subjoined translations, in Bengalee and Oordoo, of the affirmation enjoined to be taken by all Hindoo and Mahomedan deponents, and to request that you will make use of them, until further instructions in regard to the carrying out of the provisions of the Act shall be forwarded to you.—*Cir. Ord. 3d April,* 1840, *Par.* 1.

193. 2. In the event of its being necessary to use the Bengalee form of Mahomedans, the term used to designate the Supreme Being by persons of that persuasion will of course be substituted for that which now appears in the translation.—*Cir. Ord. 3d April,* 1840, *Par.* 2.

194. 3. It is not required that the deponent should sign his name to any written affirmation, but he should merely read it out in Court, or the declaration should be read out to him and repeated by him before giving his deposition, and at the heading of his written deposition it should be stated that he was sworn according to the provisions of Act 5 of 1840.—*Cir. Ord. 3d April,* 1840, *Par.* 3.

195. 4. Until general publicity has been given to the Act, the provisions of Section 2, should be clearly explained to persons giving evidence in your Court.—*Cir. Ord. 3d April,* 1840, *Par.* 4.

SECT. XX.

Deposition of Witnesses in Zillah Courts.

196. It is hereby enacted, that no person shall, by reason of any conviction for any offence whatever, be incompetent to be a witness in any stage of any cause, Civil or Criminal, before any Court, in the Territories of the East India Company.—*Act* 19, 1837.

197. The deposition of every witness who may appear in Court, is to be taken vivâ voce in open Court, and (if he be a native) in the Persian, Bengal, or Hindoostanee language, and is to be reduced into writing in the Bengal, Persian or Nagree character, according as the witness may desire. The deposition is to be subscribed by the witness with his name or mark.—*Reg.* 4, 1793, *Sect.* 6.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 7.

198. The Calcutta Court, with the concurrence of the Western Court, subsequently held, on the 27th January 1837, that the deposition of an European witness must be recorded in English, and a Persian translation made by the principal assistant himself, and annexed thereto.—*Con. No.* 1035, *Cal. and West. C. 12th Aug.* 1836.

199. The Judges of the Zillah and City Courts are further authorized to employ their Registers and Assistants, or any of their principal native officers, in taking down the depositions of witnesses, whom they may not have time to examine vivâ voce themselves; provided, that such depositions be taken in open Court in the presence of the parties, or their authorized pleaders, whose attestations shall be subscribed to all depositions so taken in testimony of their having been present; and if any question or dispute shall arise in taking the deposition of a witness so examined, the Judge shall, as soon as may be practicable, enquire into the question, and shall pass such order as may appear to him to be proper.—*Reg.* 24, 1814, *Sect.* 11, *Cl.* 1.

200. The Court direct me to add, that the administration of civil justice in the Courts of the Zillah and City Judges and Registers will be essentially promoted, and much unnecessary examination of witnesses be prevented, if the depositions of witnesses be taken by the Judges and Registers themselves, as far as practicable, instead of employing the native officers to perform this duty, as authorized in cases of necessity, and under specific provisions in Section 11, Regulation 24, 1814. —*Cir. Ord. 7th Aug.* 1817, *Par.* 8.

201. The Court are aware, that the extensive functions of the Zillah and City Judges and Magistrates, will not admit of their personally examining the whole of the numerous witnesses whose depositions are required to be taken in their respective Courts; and in such cases, besides a careful observance of the provisions contained in the First Clause of Section 11, Regulation 24, 1814, the assistant or native officer, employed to examine witnesses, should be clearly informed, by a roobukary, held in pursuance of Section 10, Regulation 26, 1814, of the point or points upon which the examination is to be taken; with instructions not to allow the parties or their vakeels to question the witnesses upon other points.—But it is the evident intention of the Regulations, and is most desirable for the ends of justice, that witnesses in civil suits depending before the Zillah and City Judges or Registers, should, as far as possible, be examined *vivâ voce* by the Judge or Register, whose duty it is to conduct the trial, and decide upon the merits of the case. The grounds of necessity which may prevent the Judge or Register from personally examining the witnesses, and compel him to employ an assistant or native officer to examine them, should therefore in every instance be recorded on the proceedings which contain the order of examination.—*Cir. Ord. 7th Aug.* 1817, *Par.* 9.

202. You are desired to make it known as a general rule, that when a deposition may be tak-

en before a native officer, he is to affix his signature in token of its having been taken before him, in order that it may be seen to whom responsibility attaches in case of irregularity.—*Cir. Ord. 25th Oct.* 1822, *Par.* 4.

203. I am desired further to remark, that in the opinion of the Court, it would very materially promote the ends of justice, if previously to rejecting evidence to any particular point as unnecessary, the Judge trying the cause would consider whether or not it is probable that such evidence (although not so deemed for his own satisfaction) may be deemed requisite by the Judge before whom the cause may be brought on appeal.—*Cir. Ord. 25th Oct.* 1822, *Par.* 3.

204. In the event of any witness being a Hindoo or Mahomedan woman of a rank or quality, which, according to the customs and manners of the country, would render it improper to compel her to appear in a Court of Justice, the Zillah and City Courts of Dewanny Adawlut are authorized to commission three creditable women, who are to be sworn to execute the commission truly and faithfully, to administer either an oath, or the prescribed declaration to persons of the rank, cast or quality beforementioned, (according to the discretion of the Judge and the religion of the witnesses,) and to examine them on written interrogatories to be delivered to them by both parties or their Vakeels, if both parties shall desire to examine the witnesses.—*Reg.* 4, 1793, *Sect.* 6.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 7.

SECT. XXI.

Zillah and City Courts.—Examination of absent Witnesses.

205. It is hereby enacted, that all Regulations and parts of Regulations for taking the examination of absent witnesses in any Presidency, are hereby repealed. —*Act* 7, 1841, *Sect.* 1.

206. And it is hereby enacted, that it shall be lawful for any Court within the Territories under the Government of the East India Company, and the several Judges thereof, in every Civil proceeding depending in such Court, upon the application of any of the parties to such proceeding, to order the examination, upon interrogatories or otherwise, before any Officer of any such Court, or other person or persons named in such order, of any witnesses within the jurisdiction of the Court where the proceeding shall be depending, or to order a Commission to issue to any subordinate Court for the examination of such witnesses upon interrogatories or otherwise, or to order a Commission to issue to any other Court for the examination of witnesses at any place or places out of such jurisdiction upon interrogatories or otherwise, and by the same or any subsequent order or orders to give all such directions for taking such examinations as well within the jurisdiction of the Court wherein the proceeding shall be depending as without, as may appear reasonable and just; provided always that any Court to whom any such Commission shall be directed shall take the examination in open Court in all cases where witnesses are able to attend in Court and are not exempted from attendance by law, absolutely, or at the discretion of the Court. Provided also that such Commissions as aforesaid for the examination of witnesses out of such jurisdiction may be directed otherwise than to some Court under special circumstances which may appear to the Court issuing the Commission to render such special direction expedient. Provided also that all Commissions issued and Orders made by any Court of the East India Company, and which are required to be executed within the local limits of any of Her Majesty's Supreme Courts, shall be directed in manner here-

207. And it is hereby enacted, that when any order shall be made for the examination of witnesses within the jurisdiction of the Court wherein any such proceeding as aforesaid shall be depending by the authority of this Act, it shall be lawful for the Court or any Judge thereof in and by the first order to be made in the matter, or any subsequent order to command the attendance of any person to be named in such Order, and to direct the attendance of any such person to be at his own place of residence or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers, and the wilful disobedience to any such Order shall be deemed a contempt of Court, and punishable as in other cases of refusing or neglecting to give testimony. Provided always that every person whose attendance shall be required under this Act shall be entitled to the like payment for expenses and loss of time as upon attendance in Court in cases where such expenses are now allowed.—*Act* 7, 1841, *Sect.* 3.

208. And it is hereby enacted, that it shall be lawful for every Court or person authorized to take the examination of witnesses by any Order or Commission issued in pursuance of this Act, and they are hereby authorized and required to take all such examinations upon oath or affirmation where an affirmation is admissible or required upon a trial, and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and every person causing or procuring another person to commit the offence of perjury hereby defined shall be guilty of subornation of perjury —*Act.* 7, 1841, *Sect.* 4.

209. And it is hereby enacted, that before any Order or Commission for the examination of any witness under this Act shall be issued, the Court or Judge issuing the same shall be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination by reason of absence from the jurisdiction, sickness or other cause allowed by law. And before granting any such Commission, the Court granting the same shall make particular enquiry as to the present residence of the witness whose deposition is to be taken under such Commission, and as to the Court of the same degree as the Court granting such Commission, or of inferior degree to such Court which may be nearest to the place of residence of the witness, and the Commission shall ordinarily be directed to such Court of equal or inferior degree as may most conveniently execute the same. Provided however that if there be doubt as to which is the most convenient Court of equal or inferior jurisdiction, such Commission may be directed to the Judge having jurisdiction within the district within which the Commission is to be executed. And the Judge shall at his discretion execute the Commission in his own Court, or direct it to any subordinate Court within his district, which shall have the same effect for all the purposes of this Act as if the Commission had in the first instance been directed to such subordinate Court. And no deposition taken under this Act, except as hereinafter mentioned, shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant without collusion more than fifty coss from the place where the Court is held, or exempted by law, absolutely or at the discretion of the Court, from personal appearance in Court, or unless the Court shall at its discretion dispense with the proof of any of the above circumstances, or shall author-

ize the deposition of any witness being read in evidence notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same; and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the Court at its discretion to authorize the reading of the deposition. And all depositions taken under this Act, being duly certified, may be read, at the discretion of the Court, without proof of the signature to such certificate.—*Act* 7, 1841, *Sect.* 5.

210. And it is hereby enacted, that any Court other than one of Her Majesty's Courts, or any Judge thereof, may issue such Commissions as aforesaid, and such Orders as are indicated in the second and third Sections of this Act to be executed within the local limits of the jurisdiction of any of Her Majesty's Courts, and all such Commissions and Orders except when directed otherwise than to a Court, shall be directed to a Court of Requests having jurisdiction within such limits or any part thereof.—*Act* 7, 1841, *Sect.* 6.

211. And it is hereby enacted, that such Commissions and Orders as aforesaid may be issued for execution under this Act within the Territories of Princes and States in alliance with the East India Company, and all persons within such last-mentioned territories being in the service of the East India Company are hereby required to pay obedience thereto, and for disobedience thereof shall on being found within the jurisdiction of the Court, or Judge issuing any such Commission or Order, be punishable in like manner, as if such offence had been committed within such jurisdiction; and for giving false testimony under the same shall be punishable by any Court of Justice within the Territories of the East India Company.—*Act* 7, 1841, *Sect.* 7.

212. And it is hereby enacted, that whenever the evidence of any absent witness shall be required out of the jurisdiction of the Court in which the proceedings for which the evidence is wanted may be pending and the Commission shall be directed to any Court, such Court may punish the wilful disobedience of any such Order as aforesaid as a contempt notwithstanding it shall not itself have made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony.—*Act* 7, 1841; *Sect.* 8.

SECT. XXII.

Zillah and City Courts.—Perjury.

213. The crime of wilful perjury, subjecting the offender, on conviction, to the punishment stated in the foregoing section, is hereby declared to be, giving intentionally and deliberately, before a Court of judicature, Magistrate, or other authorized public officer, a false deposition, upon oath, or under a solemn declaration taken instead of an oath, relative to some judicial proceeding, Civil or Criminal, and upon a point material to the issue thereof.—*Reg.* 2, 1807, *Sect.* 4, *Cl.* 1.

214. Subornation of perjury punishable under the preceding section, is declared to be the crime of procuring, or causing another person to commit the offence of perjury as above described.—*Reg.* 2, 1807, *Sect.* 4, *Cl.* 2.

215. If a witness, or any person, shall be guilty of wilful and corrupt perjury in any cause or matter depending in Court, the Judge is immediately to commit the offender to close custody, to take his trial before the Court of Circuit of the division in which the offence may be committed.—*Reg.* 4, 1793, *Sect.* 14.—*Ben. Reg.* 8, 1795, *Sect.* 2.—

216. The Magistrates of the several Zillah and City Courts shall not receive any charges of perjury, which may be preferred by parties in Civil suits, either against their own witnesses, or against the witnesses of the adverse party, or of subornation of perjury against the adverse parties in such suits; and all individuals whose attendance is required in the Civil Courts either as plaintiffs, defendants, or witnesses, are hereby declared not to be liable to any prosecutions of this description, unless they shall be committed to take their trial by the Zillah or City Judge, under the authority vested in him by Section 14, Regulation 4, 1793.—*Reg.* 3, 1801, *Sect.* 2.

217. The rule abovementioned, (with this qualification that the Zillah or City Judge may commit to prison, or admit to bail, as he shall think proper, under the discretion given by Section 5, Regulation 2, 1807,) shall be considered applicable to all allegations of perjury, or subornation of perjury, against parties or witnesses in any civil suit, or any civil proceedings whatever, before the Judge or Register of a Zillah or City Court; or before a Sudder Ameen or Moonsiff, or an arbitrator or artibitrators appointed to investigate such suits; or an officer employed by a Zillah or City Civil Court, in any local or other enquiry; or in the execution of any civil process. In all such cases the proceedings, on which the charge of perjury, or subornation of perjury may be grounded, if not held before the Zillah or City Judge in the first instance, shall be referred to him by the Register, Commissioner, or other officer, before whom the proceedings may have been held, with the sentiments of the Register, Commissioner, or other officer, upon the case; and if the Judge be of opinion that there are sufficient grounds for bringing the accused party to trial before the Court of Circuit, on a charge of perjury or subornation of perjury, he shall record his opinion to that effect; and at the same time direct whether the accused shall be admitted to bail, or kept in custody. An authenticated copy of the order passed by him, with the whole of the original papers relative to the case, shall then be transferred to the Cutcherry of the Magistrate, that the order of the Judge may be carried into effect, and the case brought before the Court of Circuit, in the same manner as if the charge had been instituted and proceeded upon, in the Court of the Magistrate.—*Reg.* 17, 1817, *Sect.* 14, *Cl.* 2.

218. The Court of Nizamut Adawlut have had before them your letter, dated the 23rd instant, in the case of Government *versus* Sheikh Bukhtaur, charged with giving money to witnesses in a civil suit for the purpose of influencing their evidence. In reply, I am desired to acquaint you, that, adverting to the circumstances stated in your letter, the Court entirely concur with you in opinion, that the Zillah Judge was not authorized, under the provisions of Clause 2, Section 14, Regulation 17, 1817; to commit the above named individual for trial. The Court have therefore been pleased to annul the commitment in the case in question, and they direct that you adopt the necessary measures for the immediate release of the prisoner.—*Con. No.* 504, *25th April,* 1829.

219. Persons charged with the crime of perjury, subornation of perjury, or forgery, as defined in the preceding Section, and appearing to the civil or criminal Courts by whom they may be ordered to be brought to trial before the Courts of Circuit, to have been guilty of the charge, shall not be admitted to bail, (notwithstanding any thing declared to the contrary in any existing regulation) unless specially authorized by the Court under whose directions they are committed for trial.—*Reg.* 2, 1807, *Sect.* 5.

220. In cases of perjury in the Civil Courts, (whether before the Judge or a subordinate Court,) the commitment should, according to Clause 2, Section 14, Regulation 17, 1817, be made by the Judge; who will at the same time, determine whether the persons charged are to be admitted to bail or kept in custody; the duty of the Magistrate being confined to causing the attendance

of the parties and witnesses before the Court by whom the case is to be tried. When the civil Judge has made a commitment, he cannot try it in his capacity of Session Judge; it must be tried by the Commissioner of the division.—*Cir. Ord. Cal. and West. C., 29th May*, 1835, *Par.* 2.

221. The Court, considering the registry of deeds to be a "Civil proceeding," contemplated by Clause 2, Section 14, Regulation 17 1817, are of opinion, that in cases of *perjury* before the Register of deeds, the Judge and Register should proceed in conformity with the provisions of that Clause.—*Con. No.* 611, *25th Nov.* 1831.

222. A conviction of perjury may be passed without any confession of crime on the part of the accused.—*Con. No.* 656, *2d Sept.* 1831.

SECT. XXIII.

Zillah and City Courts.—Exhibits.

[*For the Stamp Duty on the petition for filing Exhibits, see the last Section of the last Chapter, Rule* 438.

223. In modification of Sections 15 and 16, Regulation 1, 1814, it is hereby declared, that in lieu of filing a separate durkhaust or application for the admission of each exhibit, and the attendance of each witness, it shall be sufficient to file one or more applications or lists, including any number of exhibits desired to be filed, and the names of any number of witnesses desired to be summoned; provided that such applications or lists be written on one, two, or more sheets or rolls of stampt paper, the total value of which shall correspond in amount with that of the stampt paper, which would have been requisite had the application for each exhibit, or witness, been written on separate stampt paper, under the rules contained in Sections 15 and 16, Regulation 1, 1814.—*Reg.* 26, 1814; *Sect.* 22.

224. It is hereby explained that vakalutnamahs and moktarnamahs, arbitration bonds, security bonds for appearance, as well as security bonds for the eventual payment of costs, or for the performance of a decree, or for staying or enforcing the execution of a decree, which may be executed in any original suit or appeal are not liable to the stamp duty on exhibits, prescribed by Section 15, Regulation 1, 1814.—*Reg.* 26, 1814, *Sect.* 24.

225. Every exhibit or written evidence (excepting exhibits that may be proved by such absent witnesses as are hereafter mentioned,) is to be produced in open Court at the trial, and if disputed, is to be duly proved by the examination of witnesses sworn as above directed, whose depositions are in the same manner to be reduced into writing and signed. Every exhibit is to be marked with some letter or number to identify it, and the letter or number is to be referred to in the deposition proving it. All exhibits proved by witnesses not present in Court are in the same manner to be marked and referred to in the depositions proving them, and are to be endorsed and minuted as having been read at the time they may have been read in the Court.—*Reg.* 4, 1793, *Sect.* 6. —*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 7.

226. Several instances having lately occurred of objections being taken in this Court to original documents filed as exhibits in the lower Courts, on the ground of their having been altered since the date of their execution, which, at the time they were filed, as well as on the decision of the suit by those Courts, passed without question, and without any doubts being expressed as to their authenticity; and the Court seeing reason to believe that such documents have not unfre-

quently been altered by interested persons, in order to throw suspicion upon them, and to suit their own views, either after the decision of the case by the lower Court, or subsequently to the receipt of the record in this Court; I am directed, to request that, with a view to check, as far as may be practicable, this very serious evil, you will cause the record-keeper of your Court, or any other respectable and trust-worthy officer on your establishment, to certify in the presence of the vakeels of the parties, or of the parties themselves, the actual state, at the time of filing, of all original documents exhibited as proofs in your Court, desiring him carefully to note any interpolations, erasures, or other alterations at that date apparent on the face of them; and that you will observe a similar precaution at the time of despatching the record of causes appealed to the Court, forwarding the original documents filed by the respective parties in such cases, together with the original depositions of the witnesses for the prosecution and defence, in two parcels, in a separate cover under seal, each parcel being endorsed as in the margin, and accompanied by a list of the contents and the certificates above required. By the introduction of the same rules into the Courts subordinate to you, to whom you are requested to issue the necessary instructions, the Court would hope that the evils above complained of may be in a great decree remedied, if not entirely removed.—*Cir. Ord. Cal. and West. C. 29th July*, 1836.

227. If any exhibit or written evidence is offered to a Zillah or City Court in a cause depending before it, and the Judge of the Court shall think it just and proper to reject it, he is to endorse upon it the word "rejected," together with the names of the parties in the cause, and the name of the party who produced the document, the date on which it may be rejected, and his reasons for not admitting it, (which may be written either upon the document rejected, or on a paper to be annexed to it,) and to subscribe his name to the endorsement, and return the document with his reasons so written to the person who produced it.—*Reg.* 4, 1793, *Sect.* 6.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 7.

228. The Court only think it further necessary, in this case, to point out to the Magistrate the mistake into which he appears to have fallen, in supposing that instruments which the Civil Court may deem forged are to be returned to the parties under Section 6, Regulation 4, 1793. The Court remark, that this Section refers to documents which a Court may refuse to file as not being relevant, or not produced in proper time, or for other good and sufficient cause; but cannot be understood as applying to documents filed, but proved or suspected upon trial to be forgeries; to return which to the parties producing them, would obviously often tend to defeat justice.—*Con. No.* 139, 16*th Dec.* 1813.

229. I beg leave to forward to you, for the information and orders of the Court of Sudder Dewanny Adawlut, a copy of my proceedings under this day's date in the above case in which the original exhibits, and other papers and documents and deeds are missing, but of which copies, I am led to understand, are possessed by and procurable by the parties concerned. The Court desire me to say that they are aware of no objection to calling upon the parties to supply copies of such of the missing papers as they may have by them, or be able to furnish.—*Con. No.* 869, 14*th Feb.* 1834.

SECT. XXIV.

Zillah and City Courts.—Forgery.

230. The penalties for forgery, stated in Section 3, are meant to include all fraudulent and injurious fabrications, or alterations of written deeds, or of written or printed papers, of whatever description; as well as all counterfeit seals or signatures thereto; and the illicit imitation of any public stamp, or stampt paper, established by Government.

It is further hereby declared, that persons convicted of procuring, or causing, any such forgery, will be liable to the same punishment, as those convicted of having actually committed the forgery, at the instigation of others.—*Reg.* 2, 1807, *Sect* 4, *Cl.* 3.

231. The provisions of Regulation 2, 1807, not including the offence of fraudulently issuing and publishing as true, or otherwise fraudulently giving effect or attempting to give effect, to fabricated deeds and papers, knowing the same to be false and fabricated; or the offence of using, issuing, selling or otherwise disposing of, or attempting to dispose of, counterfeit stampt paper, bearing the imitation of a public stamp, knowing the same to be counterfeit, or the offence of paying, or tendering in payment, counterfeited coin, bank notes, promissory notes, or other securities for money, knowing the same to be counterfeit, the following additional provisions are enacted for the punishment of these offences respectively.—*Reg.* 17, 1817, *Sect.* 10, *Cl.* 1.

232. If any person shall be convicted before a Court of Circuit, or the Court of Nizamut Adawlut, of any of the offences specified in the above clause, he shall be sentenced to imprisonment for such period, not exceeding seven years, as the Judge of Circuit may deem adequate to the nature and circumstances of the case: and shall also, in all instances of an aggravated nature, or of a repetition of the offence, after being once convicted and discharged, be sentenced to public exposure by tusheer. In every instance of a repetition of the offence, after a previous conviction and discharge, the Judge of Circuit may further at his discretion, sentence the offender to receive corporal punishment, not exceeding thirty stripes, with a corah or ratan. If a person twice convicted and discharged, be again found guilty of any of the offences specified in the preceding clause, and the Judge of Circuit shall be of opinion that he ought to be imprisoned for a longer period than seven years, he shall refer the trial, with his sentiments, for the sentence of the Court of Nizamut Adawlut, in pursuance of the seventh Clause of Section 2, Regulation 53, 1803.—*Reg.* 17, 1817, *Sect.* 10, *Cl.* 2.

233. "Measurement papers" must be considered as coming within the denomination of "deeds and papers," the fraudulently publishing as true, or otherwise fraudulently giving or attempting to give effect to which, knowing the same to be false and fabricated, is declared by Section 10, Regulation 17 of 1817, to subject the offender on conviction to the penalties prescribed by that Section for forgery.—*Con. No.* 1061, *Cal. C. 9th Dec. West. C.* 23*d Dec.* 1836.

234. By analogy to the case of perjury, the perferring of accusations for which offence by parties in civil suits has been prohibited by Regulation 3, 1801, it is not competent to a Magistrate to entertain a charge founded on the alleged forgery of a document which had been exhibited in a Civil Court, unless the Judge or Judges of such Civil Court shall have directed a prosecution for forgery, or expressly declared that the party aggrieved by such document is at liberty to prosecute. —*Con. No.* 454, 13*th July*, 1827.

235. Persons charged with the crime of perjury, subornation of perjury, or forgery, as defined in the preceding Section, and appearing to the Civil or Criminal Courts by whom they may be ordered to be brought to trial before the Courts of Circuit, to have been guilty of the charge, shall not be admitted to bail, (notwithstanding any thing declared to the contrary in any existing Regulation) unless specially authorized by the Court under whose directions they are committed for trial.—*Reg.* 2, 1807, *Sect.* 5.

236. I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, requesting to be informed whether, in a miscellaneous case, you can proceed against a person whom there may appear sufficient grounds to bring to trial for forgery. In reply, I am directed to refer you to the words "to any Civil proceedings whatever" in Clause 2, Section 14, Regulation 17,

1817, and to observe that they would include the miscellaneous case alluded to. I am directed to add that in the event of your making the commitment, it should be tried by the Commissioner, and not by you in your capacity of Session Judge.—*Con. No.* 838, *Cal. C.* 11*th Oct. West. C.* 15*th Nov.* 1833.

237. I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 23rd ultimo, requesting the Court's opinion, as to whether you are authorized to take cognizance of a case of forgery arising out of a civil suit tried by a Sudder Ameen. In reply, I am directed to inform you, that if the civil suit, in which the document said to be a forgery was filed, is pending before you in appeal, you are competent to commit the party, whom you may deem guilty of having forged it, (or filed it knowihg it to have been forged,) to be tried by the Court of Circuit; but that if the appeal has been decided, the alleged forgery can only be brought under your cognizance, by your obtaining the sanction of the Sudder Dewanny Adawlut to revise your judgement.—*Con. No.* 572, 27*th Aug.* 1830.

238. I am farther directed to inform you, that in the opinion of the Court, the Sudder Ameen, who tried the suit in the first instance, if he thought that the document in question was a forgery, and that the party who filed it knew it to be so, should have sent the case to the Judge, who would have been competent to proceed against the person or persons whom he might have deemed guilty, in like manner as it would be in a suit instituted and pending before himself.—*Con. No.* 572, 27*th Aug.* 1830.

239. Held on a reference from the Session Judge of Benares, that it is not competent to a civil Judge to commit for trial any party to a civil suit, or other person, on a charge of fraud; but that he should make over the case to the Magistrate, with a view to that officer's investigating the charge, and disposing of it himself, or, if committable under the Regulations, committing it at his discretion for trial at the sessions.—*Con. No.* 1225, *West. C.* 14*th June, Cal. C.* 12*th July*, 1839.

SECT. XXV.

Zillah and City Courts.—Particular Investigations.

240. The Judges of the Zillah and City Courts, are strictly enjoined not to order or allow of a report of any matters of facts relating to any cause depending before them, with a view to the passing a decree, to be made to them by any officer of the Court, or any other person, excepting in cases in which special authority for that purpose may be given to the Courts by any Regulation.—*Reg.* 4, 1793, *Sect.* 16.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 17.

241. The Civil Courts have been in the habit of calling on the treasurer of their establishment for reports regarding the trustworthiness of account books in the native language, as affecting the validity of claims which may be grounded thereon. But such a practice is opposed to Section 16, Regulation 4, of 1793, which prohibits Judges from obtaining a report of matters of fact relating to any cause depending before them, with a view to the passing of a decree, from any Officer of the Court or other person, except where special authority may have been conferred by any Regulation, or a reference may be made to the Law Officers on any point concerning Hindoo or Mahomedan Law. The Court are accordingly pleased to prohibit the practice alluded to, and to direct the observance of the following rule.—*Cir. Ord.* 4*th Feb.* 1840.

242. Whenever occasion may require the examination and scrutiny of native account books in any civil case, the European Judges should, as far as possible, call in the aid of assessors for that purpose. In instances, however, where such a course may be deemed by them inexpedient, recourse should be had to the agency of Ameens, to be appointed at the expense of the plaintiff or

defendant, as the case may be, whose duty it would be to inspect the books either at the Mahajun's house or in Court, as might seem fitting with reference to the circumstances of the case and the wishes of the parties. And the latter course should also be followed by the Native Courts, who are not authorized to employ assessors for the purpose stated.—*Cir. Ord. 4th Feb.* 1840.

243. In the trial of regular suits by the Zillah or City Judges, or in miscellaneous cases, whenever the adjustment of accounts regarding the execution of decrees, and mercantile or revenue transactions, or the investigation of disputes between landlord and tenant, or of other special matters of account, fact, or usage, may be requisite; and such adjustment or investigation, if conducted by the Judge himself, would occupy a larger portion of his time than could be conveniently devoted to it; the Judge is hereby authorized to direct any of the Sudder Ameens under his jurisdiction, to make such adjustment or investigation.—*Reg.* 23, 1814, *Sect.* 76, *Cl.* 1.

244. The Judge shall in these cases furnish to the Sudder Ameen such part of the proceedings and such detailed instructions, as may appear necessary for his information and guidance, and shall direct the parties, or their vakeels, or authorized agents to attend upon the Sudder Ameen, during the adjustment or investigation.—*Reg.* 23, 1814, *Sect.* 76, *Cl.* 2.

245. The instructions must distinctly specify, whether the Sudder Ameen is merely to transmit the proceedings, which he may hold on the enquiry, or also to report his own opinion on the point referred for his investigation.—*Reg.* 23, 1814, *Sect.* 76, *Cl.* 3.

246. The proceedings of the Sudder Ameen are to be received in evidence in the case, unless the Judge may have reason to be dissatisfied with them, in which case he will make such further enquiry, as may be requisite, and will pass such ultimate judgment or order, as may appear to him to be right and proper.—*Reg.* 23, 1814, *Sect.* 76, *Cl.* 4.

247. By the first Clause of Section 76, Regulation 23, 1814, it is provided, that "in the trial of regular suits by the Zillah or City Judges, or in miscellaneous cases, whenever the adjustment of accounts regarding the execution of decrees, and mercantile or revenue transactions, or the investigation of disputes between landlord and tenant, or of other special matters of account, fact, or usage, may be requisite; and such adjustment or investigation, if conducted by the Judge himself, would occupy a larger portion of his time than could be conveniently devoted to it, the Judge is hereby authorized to direct any of the Sudder Ameens under his jurisdiction to make such adjustment, or investigation." The Second, Third, Fourth, Fifth and Sixth Clauses of the Section abovementioned, contain further provisions relative to the cases therein stated; and the whole of these clauses shall be still in force, except the Fifth; which, in consequence of the salary to be hereafter received by Sudder Ameens from Government, is hereby rescinded; Provided however that if any necessary expense be incurred in making the inquiries or adjustments referred to, it shall be competent to the Judge on the completion of the inquiry or adjustment, to order payment of the amount of such necessary expense by one or both of the parties in the case as may appear just and proper.—*Reg.* 13, 1824, *Sect.* 5.

248. I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting the opinion of the Court regarding the applicability of Clauses 1, 2, 3, 4 and 6, Section 76, Regulation 23, 1814, to Principal Sudder Ameens.—In reply, I am directed to inform you that although the Clauses in question are not expressly declared applicable to Principal Sudder Ameens, the Court are of opinion that under the general spirit of Regulation 5, 1831, they should be consi-

dered applicable to those officers in common with other Sudder Ameens.—*Con. No.* 815, *West. C.* 23*rd Aug. Cal. C.* 1*st Nov.* 1833.

249. The native Judges are not entitled to any allowance for travelling expenses or other account in cases "in which, for their own satisfaction or at the request of the parties, they may deem it proper to visit and inspect the property in dispute, and to make enquiries in regard to it on the spot." The Court however consider that those authorities are entitled to the payment of their expenses when deputed to make local enquiries by a superior Court.—*Con. No.* 1, 172, 14*th Sept.* 1838.

250. In causes concerning Rent or Revenue, or other matters heretofore cognizable in the Courts of Maal Adawlut, between Proprietors of Land, or Farmers of Land holding their Farms immediately of Government, and their respective Dependant Talookdars, under Farmers or Ryots; or between Dependant Talookdars and their under Farmers or Ryots; or between under Farmers farming Lands of Proprietors of Land, or of Farmers of Land who farm their Lands immediately of Government, or of Dependant Talookdars, and their Dependant Talookdars, under Farmers or Ryots; or between other persons concerned in the Collection or payment of Land Rents, or Revenues, either as Principals or Sureties; the Judge is empowered to refer to the Collector for his report, any accounts the adjustment of which may be necessary towards the decision of the suit. The reference is to be made to the Collector, by a precept under the signature of the Judge and the seal of the Court, in which shall be specified, the accounts referred, and the papers which the Judge may think it necessary to send in elucidation of them, and the time by which the report is to be made. The Judge may likewise command the parties or their Vakeels, and any Witnesses they may have to produce, to appear before the Collector, that he may examine them regarding the accounts, and also empower the Collector to administer the customary oaths to the Witnesses, or to examine the parties on oath, if they shall agree to be so examined. The Collector shall submit his report on the accounts to the Court by the prescribed time, attested by his official Seal and Signature, or assign his reasons for not having been able to complete it by the period directed. The Judge, upon the receipt of the Collector's report, shall either confirm, set aside, or alter his adjustment of the accounts, or pass such decision respecting them, as may appear to him proper. But the rules in this Section are not to extend to empower the Judge to refer to the Collector any accounts relating to Suits in which he or any of his public officers, or private Servants, or Government, may be a party.—*Reg.* 8, 1794, *Sect.* 13.—*Ben. Reg.* 54, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 7, 1813, *Sect.* 2.

251. I request that you will be pleased to obtain for me the opinion of the Court whether there would be any objection to the Zillah Court issuing precepts to the Collectors, directing them to carry their orders into effect within a period fixed by the Court, or to assign reasons for the order not being completed at the period prescribed by the Court. *Reply.* I am directed by the Sudder Court to acknowledge the receipt of your letter, No. 158, under date the 23rd instant, and in reply to acquaint you that they are not aware of any objection to the measure which you have suggested, of requiring the Collector to carry into effect the orders of your Court, and to return the precept, issued, therewith, duly executed within a certain period, or to shew good and sufficient cause for the delay.—*Con. No.* 968, *West. C.* 31*st July*, *Cal. C.* 21*st Aug.* 1835.

252. The Zillah and City Courts of Dewanny Adawlut and Provincial Courts of Appeal are authorized, whenever they may have occasion to refer to any of the registers prescribed by the above regulations or by the present regulation, to require from the Collectors the production of the original register, or an attested copy of such part thereof

as may contain the required information. The Collectors, on the receipt of such requisition are immediately to transmit the original register, if it can be sent without inconvenience, under the care of one of their native officers, in whose custody it is to remain till returned: or if the original register cannot be conveniently sent, are to transmit without delay an accurate copy of such part thereof as may be required, under the attestation of their official signature.—*Reg.* 8, 1800, *Sect.* 15.

For the rules regarding the deputation of Ameens to make local investigations, vide Chapter 2 Sect. 24.

SECT. XXVI.

Zillah and City Courts.—Punishment of Frivolous and Vexatious Suits.

253. If any person shall commence a suit in any Zillah or City Court of Dewanny Adawlut, which shall appear to the Judge to be frivolous, vexatious, or groundless, he is not only to dismiss the suit, with such costs as he may deem it equitable to award against the plaintiff, but is to fine him in such amount as he may think proper, upon a consideration of the nature of the case, and the situation and circumstances in life of the offender, and commit him to close custody until he pays the fine.—*Reg.* 3, 1793, *Sect.* 12. —*Ben. Reg.* 7, 1795, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* 2, 1803, *Sect.* 9.

254. As the law now stands, in cases coming under the provisions of Section 12, Regulation 3, of 1793, the party fined is liable to be committed to close custody until the amount be paid.—*Con. No.* 1096, *Cal. and West. C. 7th July* 1837.

255. The Civil Courts are not competent to impose fines on covenanted officers of Government for official acts performed by them in the course of their duty, provided such acts be done by the express orders of superior authority.—*Cir. Ord. Cal. and West. C.* 25*th Jan.* 1833, *Par.* 1.

256. If a covenanted officer of Government institute a suit without the sanction of superior authority, and such suit be adjudged to be vexatious, the Court is competent to impose a fine upon him for so doing.—*Cir. Ord. Cal. and West. C.* 25*th Jan.* 1833, *Par.* 2.

257. A covenanted officer of Government instituting a suit with the sanction of a Board or superior authority, which, by the Regulations, he is bound to obey, is not liable to fine, although, in the judgment of the Court, the suit be vexatious.—*Cir. Ord. Cal. and West C.* 25*th Jan.* 1833, *Par.* 3.

258. A Court is not competent to impose a fine on the Board or superior authority for directing a subordinate officer to institute a suit which, in the judgment of the Court, is vexatious.—*Cir. Ord. Cal. and West. C.* 25*th Jan.* 1833, *Par.* 4.

269. An appellate Court is not competent to impose a fine on the respondent in an appeal case, for having instituted in the lower Court a suit which the appellate Court may consider to have been vexatious.—*Cir. Ord. Cal. and West, C.* 25*th Jan.* 1833, *Par,* 5.

SECT. XXVII.

Zillah and City Courts.—Assistance of Respectable Natives in the trial of Civil Suits.

260. The Governor General in Council is hereby declared competent to grant the powers specified in the following Section of this Regulation to any European Officer presiding in a Court for the administration of Civil justice, such powers to be exercised either in any particular suit, in any specified district, or generally by such Officer in any

suits that may come before him, and in any part of the country where he may be employed. Provided that it shall always be competent to the Governor General in Council to revoke and annul the grant of such powers whenever he may see sufficient cause for so doing.—*Reg.* 6, 1832, *Sect.* 2.

261. In the trial of Civil suits, original or appeal, it shall be competent to every Court, in which an European Officer thus empowered presides, to avail itself of the assistance of respectable Natives in either of the three following ways.—*Reg.* 6, 1832, *Sect.* 3, *Cl.* 1.

262. First, by referring the suit, or any point or points in the same to a Punchaet of such persons, who will carry on their enquiries apart from the Court and report to it the result. The reference to the Punchaet and its answer shall be in writing, and shall be filed in the suit.—*Reg.* 6, 1832, *Sect.* 3, *Cl.* 2.

263. Or secondly, by constituting two or more such persons assessors or members of the Court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of each Assessor shall be given separately and discussed; and if any of the Assessors, or the authority presiding in the Court, should desire it, the opinions of the Assessors shall be recorded in writing in the suit.—*Reg.* 6, 1832, *Sect.* 3, *Cl.* 3.

264. Or thirdly, by employing them more nearly as a jury. They will then attend during the trial of the suit, will suggest as it proceeds, such points of enquiry as occur to them; the Court, if no objection exists, using every endeavour to procure the required information, and after consultation will deliver in their verdict. The mode of selecting the Jurors, the number to be employed, and the manner in which their verdict shall be delivered, are left to the discretion of the Judge who presides.—*Reg.* 6, 1832, *Sect.* 3, *Cl.* 4.

265. It is clearly to be understood, that under all the modes of procedure described in the three preceding Clauses, the decision is vested exclusively in the authority presiding in the Court.—*Reg.* 6, 1832, *Sect.* 3, *Cl.* 5.

266. It will be observed that a large discretion is vested in the presiding officer. He is left to select either of the three modes indicated, or altogether to reject them; and if he select either of the modes, the particular manner in which it is to be carried into effect is left to his own determination. It need only be further remarked, that no power of compulsion is granted by the Regulation: To this point the attention of all the public functionaries should be especially called, and they should be clearly informed that by no construction of Regulation 12, 1825, which enjoins punishment for contempt of Court, or any other enactment, are they authorized to compel the attendance of persons who may be reluctant voluntarily to render their services. They are empowered to invite the services of natives as arbitrators, assessors or jurors, but by no means to compel them.—*Cir. Ord. West. C. 16th Nov.* 1832, *Cal. C. 18th Jan.* 1833, *Par.* 3.

267. The requisition of oaths from persons so employed is not considered to be necessary, and is never to be enforced. His Honour in Council is disposed to think that it will be wise to abstain from proposing them.—*Cir. Ord. West. C. 16th Nov.* 1832, *Cal. C. 18th Jan.* 1833, *Par.* 4.

268. The Court are therefore requested to intimate to the Civil Judges in all those districts into which the provisions of Regulation 5, 1831, have been introduced, that they are considered also authorized to use the discretion conferrible under Section 2, Regulation 6, 1832. This power will also attach to all their successors, whether temporary or permanent, and will be considered as naturally consequent on nomination to the appointment. The Judges of the Provincial Courts are also invested with the powers, and the Court of Sudder Dewanny Adawlut are, of course, considered

competent to use them if at any time an opportunity should present itself.—*Cir. Ord. West. C. 16th Nov.* 1832, *Cal. C.* 18*th Jan.* 1833, *Par.* 6.

SECT. XXVIII.

Zillah and City Courts.—Decrees—Copies of Decrees and Documents.

269. When the parties have been heard, and the witnesses on both sides examined, and the exhibits received and considered, the Judge is to give judgment according to justice and right, and is to order costs to be paid to the party in whose favour the decree may be made.—*Reg.* 4, 1793, *Sect.* 7.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 9.

270. In cases coming within the jurisdiction of the Zillah and City Courts for which no specific rule may exist, the Judges are to act according to justice, equity, and good conscience.—*Reg.* 3, 1793, *Sect.* 21.—*Ben. Reg.* 7, 1795, *Sect.* 11.—*Ced. and Conq. Prov. Reg.* 2, 1803, *Sect.* 17.

271. I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, requesting their opinion as to the power of Civil Courts in regard to bankruptcy, and to inform you in reply that as the Regulations do not contain any specific provisions on the subject, you should exercise the discretion vested in you by Section 21, Regulation 3, 1793, in any case that may come before you, leaving the party dissatisfied with your orders to appeal therefrom to this Court.—*Con. No.* 716, 21*st Sept.* 1832.

272. The Judges of the Zillah and City Courts are to insert in their decrees the names of the witnesses whose depositions may have been taken, the title of every exhibit read in the cause, and the amount of the annual produce of the land, or the sum of money, or the value of the property or thing decreed. The decree is to be sealed with the seal of the Court, and signed by the Judge, and dated on the day on which it may be passed.—*Reg.* 4, 1793, *Sect.* 26.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 27.

273. The Court of Sudder Dewanny Adawlut having observed in several instances, a want of due attention to that part of Section 26, of Regulation 4, 1793, which directs the Judges of Zillah and City Courts " to insert in their decrees the names of the witnesses whose depositions may have been taken; the title of every exhibit read in the cause, and the amount of the annual produce of the land, or the sum of money, or the value of the property or thing decreed;" particularly to the latter part of this rule, an observance of which is essentially necessary to enable the Court to judge whether decrees presented to them, with petitions of appeal, are appealable or otherwise; you are therefore desired to require from the Judges of the several Courts within your division, the strictest observance of the above rule in future: and if, agreeably to Section 4, of Regulation 4, 1793, any objection should have been made by the defendant to the plaintiff's statement of the cause of action as appealable to the Sudder Dewanny Adawlut, the determination passed upon such objection, or the amount declared thereby to be the real cause of action is also to be stated in the decree, for the Court's information.—*Cir. Ord.* 27*th April,* 1796.

274. On the 9th May last, Mr. Shakespear, directed the lower Court, in a case in which the separate liabilities of several defendants holding under distinct titles, were not mentioned in the decree, to amend the same, by inserting the amount due by each defendant, in order that the parties concerned might not be debarred from their individual right of appeal.—*Con. No.* 849, 20*th Dec.* 1833, *Par.* 4.

275. To enable the Court of Sudder Dewanny Adawlut duly to exercise the pow-

ers hereby vested in them, the several Courts of subordinate jurisdiction are strictly enjoined to conform to those parts of the Regulations in force which require them to record the point or points at issue between the parties and the grounds on which their judgment or orders may be issued.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 7.

276. The Courts of civil judicature are to insert in their decrees all sums paid or payable by the parties under the regulations, on account of fees or stamp duties, as well as on account of compensation for the expence of witnesses, and of subsistence money to peons employed in serving the processes of the Courts, and of all other costs and expenses of the suit. Such costs and expenses shall be ultimately charged to the parties cast, or to the parties respectively, in such proportions as the Court may deem equitable.—*Reg.* 27, 1814, *Sect.* 27.

277. The Zillah and City Courts, are prohibited decreeing the payment or satisfaction of any sum due on a tamassook or bond, which may have been entered into after the 28th March, 1780, unless the bond shall be proved to have been executed in the presence of two credible witnesses, or the payment of the sum demanded on the bond, or some other valuable consideration for it having been received, shall be proved to the satisfaction of the Court. But the restriction contained in this Section, is not to extend to any bills of exchange, receipts, or notes of hand, in the determination on which the custom of the country is to be abided by.—*Reg.* 3, 1793, *Sect.* 15.—*Ben. Reg.* 7, 1795, *Sect.* 9.

278. The Judge, or the Register, either at the time of making the decree, or on a subsequent day (of which the Court is to give notice to the parties or their vakeels) within ten days after passing the decree, is to deliver or tender in open Court to each party, or their vakeels, a true copy of the decree authenticated as above directed, with an endorsement made upon it by the Register of the date on which the copies may be delivered, and an entry of the delivery or tender, with the date on which it may be made, is to be inserted by the Register in the margin of the record opposite to the decree. If either of the parties, or their vakeels, shall not be present at the time the decree may be passed, and the prescribed copy of it may be produced in the Court to be delivered, or shall not attend on the subsequent day which may be fixed for the delivery of the copies, after previous notice of the day shall have been given to them, or shall refuse to take the copy of the decree when tendered as above directed, the copy is to be deposited amongst the records of the Court, and the cause of the non-delivery of it to the party, is to be noted upon it in writing, and in the margin of the record opposite to the decree, under the official signature of the Register.—*Reg.* 4, 1793, *Sect.* 26.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 27.

279. As regards your own Court, it will be incumbent on you, and you are hereby directed, to have every decree and final order prepared and ready for transcription within ten days after passing it.—*Cir. Ord. Cal. and West. C.* 20*th Sept.* 1839, *Par.* 8.

280. Copies of Decrees in all regular suits calculated in the manner explained under the head Plaint, when passed in the Courts of the Registers, or Zillah and City Judges, or by Sudder Ameens empowered to decide the same, will be charged *One* Rupee.—*Reg.* 10, 1829, *Sch. B. Art.* 2.

281. For the purpose of obtaining an authenticated copy of the decree in such cases, the party desiring it shall furnish to the Court by whom the decision may have been passed, one, two or more sheets or rolls of the stampt paper prescribed in Section

19, Regulation 1, 1814, (*now*, *Reg.* 10, 1829,) as may be necessary for transcribing the decree.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 8.

282. When such stampt paper shall be furnished, the Serishtadar or such other principal officer, as may be authorized by the Court to discharge that duty, shall endorse on it the date of its being furnished, the name of the party on whose account it may be presented, and the number of the suit to which it may be intended to be applicable, and shall grant to the party a corresponding receipt for the same on unstampt paper; the copy of the decree shall then be prepared and duly authenticated, and shall be delivered or tendered to the party by whom the stampt paper may have been furnished, or to his vakeel in open Court, and the date of the delivery or tender of such copy shall be also endorsed on the copy.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 9.

283. The Court having observed, that the *umlah* of the lower Courts sometimes keep the stamp paper, supplied by the parties for copies of decrees, for months, without preparing the copies required, thereby unnecessarily prolonging the period allowed for appealing; direct me to request that you will take care that the officers of your Court make no unnecessary delay in the execution of this part of their duty, and that you will cause the *Serishtadar* of your Court to state, by an endorsement on the back of the copy furnished, the information required by Clause 9, Section 8, Regulation 26, of 1814, with an explanation of the cause of delay, whenever the copy cannot be furnished within one month from the date of the stamp paper being supplied.—*Cir. Ord. Cal. and West. C.* 18*th May*, 1832, *Par.* 1.

284. You are requested to issue similar instructions to the Courts subordinate to your authority.—*Cir. Ord. Cal. and West. C.* 18*th May*, 1832, *Par.* 2.

285. The Court of Sudder Dewanny Adawlut have had before them your officiating Judge's letter, dated the 20th ultimo, with its Persian enclosure, stating that it has been the practice of your Court, in calculating the periods limited for admitting regular appeals preferred direct to the Court, not to allow the deduction of the interval, between a party furnishing the prescribed stamp paper in the Zillah Court, and the copy of the decree being tendered or delivered to him, as prescribed by Clauses 7, 8, 9, 10, Section 8, Regulation 26, 1814; and stating also his opinion, that it was decidedly intended by Clause 10, to provide for the deduction in question. In reply, I am desired to observe, that the Court entirely concur with your officiating Judge in the construction which he has adopted, and that the deduction in question should be considered applicable to all, regular as well as summary and special, appeals.—*Con. No.* 413, 3*d March*, 1826.

286. I am directed to acquaint you for the guidance of your own, and the Principal and the other Sudder Ameens' Courts, that it has been ruled by the Court that as a general practice, the whole of the stampt paper required for the copy of a decree, should be given in at once by the party applying for such copy; but that if only a portion has been given before the preparation of the decree the entire quantity required shall be made up by the time the decree is ready for transcribing, and that no allowance on the score of deduction in calculating the time for appeal is to be made for any delay which may occur, after that period, in completing the quantity of paper needed.—*Cir. Ord.* 8*th May*, 1840, *Par.* 1.

287. The decree nuvees is to certify on the back of each decree, as soon as it may be ready for transcribing the date on which it was ready, and his having notified to the party requiring the copy what quantity of additional paper may be needed for engrossing the same—procuring, at the same time, a written acknowledgment of such intimation on the back of the original decree by the party or his Vakeel. Should neither the party nor his Vakeel be in attendance, the decree nuvees is to report to the Judge, who will record the fact, after ascertaining its correctness, for future reference.—*Cir. Ord.* 8*th May*, 1840, *Par.* 2.

288. From the period of his certificate, or from the date of the Judge's order recording the

absence of the party and of any person on his behalf, until the date of filing such additional stamp, no allowance will be made in calculating the period of appeal; and if, in transcribing the copy of the decree, it should be found that a further supply of paper is required, the same principle is to be followed in that case also. The latter contingency, however, I am desired to say, ought not to occur, provided due care be exercised by and enforced from the copyist, in allotting to the transcript the same space of paper as was occupied by the original decree.—*Cir. Ord. 8th May*, 1840, *Par.* 3.

289. The Court take this opportunity of observing that, owing to the want of the requisite information on the back of copies of decrees and orders appealed from, doubts have frequently arisen as to the precise time an appellant is entitled to claim as a deduction from the period prescribed for appealing in consequence of the stamp paper given in for the copy of the decree or order remaining in the Serishta of the lower Courts, and also whether any delay which may have occurred is fairly attributable to the party petitioning for the admission of an appeal. The Court are accordingly pleased to direct that in future on the copy of every decree and order granted by you, you cause to be endorsed the particulars noted below, and that you strictly enjoin the observance of the same rule by the Principal Sudder Ameen, Sudder Ameen and Moonsiffs within your jurisdiction.

On Copies of Decrees or Judgments.

On the —— 1840, the original of this decree was signed.

On the —— 1840, A. B. Plaintiff (or Defendant, Appellant or Respondent, as the case may be) gave in so many sheets of stampt paper for a copy of the decree.

On the —— 1840, this copy was signed and sealed.

On the —— 1840, the copy was delivered to ——

On the —— 1840, copy of the decree was prepared and delivered to the pauper or other party, or, owing to his refusal to take it when tendered, deposited among the records.—*Cir. Ord. 8th May*, 1840, *Par.* 4.

290. In all original suits, or appeals, wherein Government may be one of the parties, the Court which may pass judgment, whether for or against Government, shall in addition to the copies of decrees required by the existing Regulations to be delivered to the parties; transmit a copy of the decree, as soon as the same can be prepared, to the Secretary to the Government in the Judicial Department, for the information of the Governor General in Council. Such copies of decrees are not required to be upon stampt paper; but are to be duly authenticated by the official seal and signature of the Judges, by whom the same may have been passed; and are to be accompanied with an English translation.—*Reg.* 2, 1805, *Sect.* 9.

291. In the event of Government being cast in any of the Courts, the officer entrusted with the management of the suit, is to send a copy of the decree and proceedings of the Court to the Governor General in Council, or to the Board of Revenue, or of Trade, according to the immediate authority under which he may have acted, with a letter stating any objections that he may have to offer to the decision. The Boards abovementioned, are to submit all such decrees and proceedings to the Governor General in Council, with their opinion respecting them. The Governor General in Council will order an appeal from the decisions that may be transmitted to him under this Section, to be preferred or not as may appear to him advisable. The costs and damages that may be awarded against Government in suits instituted under this Section, are to be defrayed from the public treasury.—*Reg.* 3, 1793, *Sect.* 11.

292. That the quinquennial Register of landed property paying revenue to Government directed to be prepared by Regulation 48, 1793, may be kept complete, the Zillah and City Courts are strictly enjoined to transmit to the Collector of the Zillah

and the Board of Revenue, a copy of every decree that they may pass, or which may be sent to them to be enforced by the Provincial Courts of Appeal or the Sudder Dewanny Adawlut, regarding any Zemindarry, independant talook, or other land, paying revenue immediately to Government, or in any wise concerning the possession of such land. The Judge is to transmit the copy of the decree within ten days after he may pass or receive it. The decree is to be attested with the signature of the Judge and the seal of the Court, and is to be accompanied with a short abstract of it specifying the date of the decree, the names of the pergunnah or pergunnahs, the talook or talooks, the turf or turfs, the village or villages, or the portions of each, which may be decreed, the name or names of the person or persons last in possession, the person or persons to whom the lands may be decreed, and, if the land be decreed to two or more persons, the shares awarded to each person.—*Reg.* 4, 1793, *Sect.* 9.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1808, *Sect.* 11.

293. It having been brought to the notice of the Court that the transmission to the Revenue authorities, of copies of all decrees passed by the Civil Courts regarding lands paying revenue to Government, under the provisions of Section 9, Regulation 4, of 1793, is productive of considerable inconvenience in consequence of the decrees being subsequently modified or reversed in the Courts of appellate jurisdiction, I am directed to request that in future you will furnish the Revenue authorities with copies of those decrees only which are final and of which execution shall have been taken out. You are requested to communicate these instructions to the native Judges of your district for their information and guidance.—*Cir. Ord. Cal. C. 5th Oct.* 1838.

294. The Judges of the Zillah and City Courts in the four provinces, shall furnish the Collectors of the districts in which the land may be situated, and the Board of Revenue, with a copy of every decree in suits between individuals, which they may pass, or which may be sent to them by Superior Courts to enforce, by which the right in, or possession of, any lands held exempt from the payment of public revenue, under whatever description of grant the same may be so held, may be affected, in order that the Collectors may be enabled to make the necessary entries of the alterations in such right or possession, to be inserted in the quinquennial Registers of lands held exempt from the payment of revenue, directed to be kept by Regulations 19 and 37, 1793, and 41 and 42, 1795. The copies of such decrees shall be transmitted by the Judge within twenty days after the same may be passed or received by him.—*Reg.* 58, 1795, *Sect.* 3.

295. In explanation of Clause Second, Section 5, Regulation 1, 1814, it is hereby enacted that paper of European manufacture, bearing a stamp of the value specified in Section 19, Regulation 1, 1814, (*now*, *Reg.* 10, 1829,) shall be used for all copies of decrees in regular or summary suits, which may be furnished to the parties by the Judges, assistant Judges, or Registers of the Zillah and City Courts, by the Provincial Courts, and by the Sudder Dewanny Adawlut.—*Reg.* 26, 1814, *Sect.* 16, *Cl.* 1.

296. Copies of decrees, which may be prepared by those Courts, to remain with their own records, shall be written on stampt paper of European manufacture, of the same size and description as that, which may be stampt for the copies of decrees to be delivered to the parties.—*Reg.* 26, 1814, *Sect.* 16, *Cl.* 2.

297. The Court, having recently had under their inspection some decrees of the lower Courts, the legibility of which has been destroyed, (by insects, damp, and frequent reference,) and attributing this serious inconvenience to the fact of such decrees having been engrossed upon native paper, direct me to request your attention to Clause 2, Section 16, of Regulation 26, of 1814, whereby it

is required that copies of decrees which are intended to remain with the records of Courts passing the same, shall be written on unstamped paper of European manufacture.—*Cir. Ord. Cal. C. 30th June, West. C. 4th Aug.* 1837.

298. Copies of proceedings and orders, accounts, statements, or other papers made for records of Court, or for transmission to other Courts, or public offices, may be written as heretofore on unstampt paper, except in cases in which it may be otherwise specifically provided for by the Regulations.—*Reg.* 26, 1814, *Sect.* 16, *Cl.* 3.

299. It is hereby declared, that the provisions of Regulation 1, 1814, are not intended to preclude individuals from making for their private use and at their own expence, copies of judicial or revenue papers, with the permission of the Court, Collector, or other public officer having charge thereof, on any paper which they may prefer; but if such copies be not made on stampt paper, they shall not be authenticated by the seal or signature of any Court, Collector, or other public officer, and shall not be received as evidence in any Court of justice, or in any public office whatever.—*Reg.* 26, 1814, *Sect.* 16, *Cl.* 4.

300. Copies—Copy, or Counterpart of any Deed or Instrument attested to be a true copy and furnished to a party to the same, for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby, will pay the same duty as prescribed for the original Deed by this Regulation.—*Reg.* 10, 1829, *Sch. A. Art.* 20.

SECT. XXIX.

Zillah and City Courts.—Contempts.

301. If any person shall be guilty of contempt of Court in open Court, or of undue arrogations of the authority of the Court, or of illegal exertions of judicial authority in his own cause, the Court is immediately to punish the offender by fining him in a sum not exceeding two hundred Rupees, and keeping him in custody until the fine shall be paid. The Courts are to regulate the amount of the fines which they may impose under this Section according to the situation and circumstances in life of the offenders.—*Reg.* 4, 1793, *Sect.* 21.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 22.

302. The above rule commuting the penalty of fine when not paid to imprisonment for a period not exceeding two months, shall also be considered applicable to all the Civil Courts, already authorized by the Regulations in force to punish Contempts of Court in open Court, by a fine not exceeding two hundred Rupees.—*Reg.* 12, 1825, *Sect.* 6, *Cl.* 1.

SECT. XXX.

Zillah and City Courts.—Razeenamahs.

303. Razeenamahs, Rufanamahs, Sooluhnamas, or the like, that is to say—Any written application, whereby or according whereunto, a suit pending in a Civil Court shall be adjusted, or be capable of adjustment without argument in Court, and award of the presiding Judge, or other officer, shall bear the stamp required for a Pleading in the Court wherein it may be filed.—*Reg.* 10, 1829, *Sch. B. Art.* 10.

304. If the suit be dismissed on such application before the pleadings have been completed, and the case called up, the plaintiff shall be entitled to claim from the Court a Certificate, stating the amount of stamp duty paid on the plaint, with specification of the number and endorsement of the paper filed, on presenting which to the Collector of the District, the plaintiff shall be entitled to receive back the entire amount of the said stamp Duty—Provided always, there be no exception taken to the paper or endorsement thereon.—*Reg.* 10, 1829, *Sch. B. Art.* 10.

305. If the pleadings have been completed, and the case has been called up for decision; or is on the list of causes ready for hearing, the plaintiff shall receive a Certificate as above for half of the amount of stamp Duty paid on the plaint.—*Reg.* 10, 1829, *Sch. B. Art.* 10.

306. If the adjustment by Razeenamah or Sooluhnama be such as to require decree to pass on which process of execution can be taken out, the plaintiff shall not be entitled to any refund of the stamp Duty so paid.—*Reg.* 10, 1829, *Sch. B. Art.* 10.

307. I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 17th ultimo, relative to a refund of the stamp duty, substituted for the institution fee, in cases decided in favor of the plaintiff on the acknowledgment of the defendant, without investigation of the merits. The Court observe, that, in such cases, where the plaintiff's claim is not disputed by the defendant, it may generally be expected that the suit will be adjusted by razeenamah, in which case the provisions in force for the return of the institution fee, or the stamp duty substituted for it, in suits adjusted by razeenamah would of course be applicable. But the Court are of opinion, that the existing regulations do not authorize a return of the institution fee, or of the stamp duty substituted for it, in the case stated by you, without a razeenamah.—*Con. No.* 208, 1*st June*, 1815.

308. I have the honour to request that you will obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the following point, viz. whether the provisions of Section 10, Regulation 13, 1810, relative to the refund of the institution fee in cases adjusted by razeenamah, are to be considered as applicable to cases of dustburdaree, in which a plaintiff voluntarily relinquishes the prosecution of his claim. *Reply.* I am directed by the Court to acknowledge the receipt of your letter of the 7th instant, and in reply to inform you, that the refund of the stamp duty in lieu of the institution fee can only be sanctioned in cases in which a razeenamah has been regularly filed. —*Con. No.* 977, *Cal: C.* 28*th Aug.* 1835.

309. The treasurer should be prohibited from paying money under the above circumstances (viz. the value of the stamp duty refunded on the adjustment of a suit by Razeenamah) to any vakeel or mokhtar, unless he shall be authorized to receive it by a special clause in his vakalutnamah or mokhtarnamah; and when no such authority is produced, the money should remain in deposit until the party entitled to receive it, shall apply to the Court for an order for payment, and such order be obtained.—*Cir. Ord. Cal. and West. C.* 3*d Jan.* 1834.

310. His Honour the Deupty Governor of Bengal is pleased to sanction the discontinuance of the existing practice of forwarding to the office of the Superintendent of Stamps, for examination, petitions of plaint filed in suits adjusted by Razeenamah previous to making the refund of the stamp duty levied upon those documents.—*Cir. Ord. Cal. and West. C.* 2*d Aug.* 1839.

311. Paragraph 3, of the Circular of the Sudder Dewanny Adawlut, No. 60, dated 6th December last, appearing calculated to induce the inference that the Civil Courts are not to forward to the Collector the stampt paper on which the petition of Plaint is written in cases adjusted by razeenamah, unless expressly called for by that officer, I am directed to inform you that it was not meant thereby to alter or disturb the practice of transmitting to the Collector's office the original petitions of Plaint on all occasions of a refund being ordered, which is in force under ex-

isting Circular Orders, and to request, therefore, that you will consider the final paragraph of the Circular, No. 60, above referred to, as cancelled.—*Cir. Ord. 29th May*, 1840.

SECT. XXXI.

Zillah and City Courts.—Costs.

For Costs in Regular Suits, vide Rule 276 of this Chapter.

312. The Court observe that it has not hitherto been the practice of this (the Western) Court, nor, so far as they are informed, of the Calcutta Court, to award costs in miscellaneous cases. Upon general principles of equity and justice, however, the Court can see no good reason why a party in a miscellaneous case should not be reimbursed, by the opposite party, any reasonable costs to which he may be subjected in prosecuting or defending a just claim, in the like manner as in a regular suit; and they are, therefore, of opinion, there being nothing prohibitory that they are aware of in the Regulations, that the same rules which govern the award of costs in the one case, should equally extend to the other.—*Con. No.* 1155, *West. C. 22d June, Cal. C. 13th July*, 1838.

313. Doubts appearing to be entertained as to the competency of the Civil Courts to adjudge the payment of costs in miscellaneous cases, either original or in appeal, I am directed to convey to you the opinion of the Court, for the information of yourself and the subordinate judicial officers of your district, to whom you are requested to make the necessary communication, that the same rules, which govern the award of costs in regular suits must be considered equally applicable to miscellaneous cases.—*Cir. Ord. West. C. 27th July, Cal. C. 10th Aug.* 1838.

SECT. XXXII.

General Rules regarding the control of the Zillah Judges and the Uncovenanted Judges.

314. 1. All original suits instituted before the Judge, to be at once transferred to the proper tribunals for decision.—*Cir. Ord. 15th Jan.* 1841.

315. 2. All appeals from the Uncovenanted Judges, to be heard and revised as soon as practicable after the prescribed forms can be observed.—*Ibid.*

316. 3. The Zillah Judges will obtain, under the Circular Order, No. 65, 19th October 1832, the sanction of the Court of Sudder Dewanny Adawlut to the transfer of a proportion of the appeals from the decisions of the Moonsiffs and Sudder Ameens, to the Principal Sudder Ameen for decision, agreeably to Section 16, Regulation 5, 1831. These applications to be submitted whenever the number of suits pending before the Principal Sudder Ameen may be less than 200.—*Ibid.*

317. 4. They will carefully superintend the state of the Civil business before the Uncovenanted Judges, and ascertain, that the suits are brought to an early decision, and not allowed to lie over beyond six or eight months without special reasons.—*Ibid.*

318. 5. They will transfer, agreeably to Section 8, Act 25, 1837, (for which authority is hereby granted) to the Principal Sudder Ameen, for disposal, all miscellaneous cases instituted and pending under Headings Nos. 5, 6, 7, 8, 10, 11 and 12, together with any other miscellaneous matters legally transferable under the Regulations, to that officer.—*Ibid.*

319. 6. They will check all irregular pleadings, and ascertain that the Uncovenanted Judges pay due attention to this important subject, as well as to the proper preparation of their own decrees. —*Ibid.*

320. 7. They will strictly abide by the provisions of the Regulations and the instructions of the Court, in the admission of special appeals and reviews of judgment.—*Ibid.*

321. 8. They will bring to the immediate notice of the Court, in the prescribed manner, all instances of gross neglect or incapacity on the part of the Uncovenanted Judges, and in like manner take every proper opportunity of bringing forward the claims of those officers; who, from their zeal, diligence, and attention, are deserving of promotion to a higher grade.—*Ibid.*

SECT. XXXIII.

Trial of Suits by Moonsiffs.—General Rules.

322. Moonsiffs are themselves to investigate the suits cognizable by them in a public Cutcherry, or Court room, and are not to allow their officers, servants, or dependants, or any other person to interfere therein. In receiving, trying and determining suits, they shall be guided by the rules prescribed in the following Sections, and in points not expressly provided for in this regulation, they shall observe as nearly as may be practicable the rules prescribed in the Regulations for the guidance of the Zillah and City Courts in the trial and decision of Civil suits.—*Reg.* 23, 1814, *Sect.* 14.

323. The Moonsiffs shall try all suits depending before them, in the order in which they have been filed or numbered; provided however that the Zillah or City Judge be at all times authorized either upon a report from the Moonsiff, or upon other grounds of information to direct the Moonsiff to bring any particular suit or suits to a hearing and determination without attending to the regular order of the file.—*Reg.* 23, 1814, *Sect.* 26.

324. The rules prescribed in the existing Regulations in regard to the period within which suits may be admitted in the Zillah and City Courts, as well as in regard to the mode of computing the value of the property in litigation, shall be held applicable to suits preferred to the Moonsiffs.—*Reg.* 5, 1831, *Sect.* 5, *Cl.* 6.

325. All suits within the competency of a Moonsiff, to decide under the foregoing provisions, shall ordinarily be instituted in the Moonsiff's Courts. Provided nevertheless that it shall be competent to a Zillah or City Judge to receive such suits, and to try them himself, or to refer them for trial to any other Court subordinate to his authority, whenever he may see sufficient reason for so doing.—*Reg.* 5, 1831, *Sect.* 7.

326. It having been determined that the Moonsiffs appointed under Regulation 5, 1831, shall be required to give an explanation, on their failing to decide on their merits 25 suits per mensem, and the Sudder Ameens and Principal Sudder Ameens, when they do not decide on their merits 20 suits, (except in the case of Principal Sudder Ameens having appeals pending before them, who will be required to furnish an explanation when they do not decide on their merits 25 suits per mensem,) I am directed to request that you will consider the rule laid down in the 3d Clause of Paragraph 11, of the letter from the Secretary to Government in the Judicial department, dated the 28th February, 1817, circulated for general information on the 12th March of the same year, applicable, with the above limitation, to the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs of your district.—*Cir. Ord. Cal. and West. C.* 21*st Sept.* 1832, *Par.* 1.

327. That the Sudder Ameens, in submitting the prescribed monthly reports of causes decided by them, be required to explain the reason of more causes not having been determined, whenever the monthly number of causes decided by them on trial, exclusively of non-suits on default, and adjustments by razeenamahs, may be less than 30; and that the Zillah and City Judges record on such report, whether the reasons assigned are, in their judgment, sufficient and satisfactory, or otherwise.—*Cir. Ord.* 12*th March*, 1817, *Par.* 11, *Cl.* 3.

328. You will be pleased to communicate this information to these officers, and inform them that the Court cannot in future admit as valid the common excuses of, "the unforward state of their files," "the failure of parties to attend and to file their proofs," "the non-attendance of witnesses," &c. unless the Judge shall distinctly certify that he considers the reasons assigned to be sufficient. —*Cir. Ord. Cal. and West. C.* 21*st Sept.* 1832; *Par.* 2.

329. The Court are inclined to believe that the neglect of the parties may, in some measure, be attributable to the want of method on the part of the Courts themselves in the preparation of the suits on their files. They therefore request that you will impress on the native judges in your district the necessity of paying strict attention to the rules laid down in the Regulations, particularly in Sections 5, 6, and 10, Regulation 4, 1793, Sections 19, 21, 22 and 27, Regulation 23, 1814, and Section 12, Regulation 26, of 1814, for their guidance in this branch of their duty. It is probable that when the parties see that their cases will be taken up regularly when they do attend, and that they will be liable to have them dismissed on default, or tried in their absence, on their failing to do so, a more regular system will be introduced into the practice of the Courts, which will render the administration of civil justice more speedy and efficient.—*Cir. Ord. Cal. and West. C. 21st Sept.* 1832, *Par.* 3.

330. Held on a reference from the Judge of Mymensing, that a Moonsiff has the power to call for the record of a case from any Court, (such call being made through the Judge of the district to which he is attached,) whenever any peculiar circumstances may render is necessary for him to do so but that in general if any particular paper is required, the party who wishes to file it should obtain an attested copy in the usual manner.—*Con. No.* 1259, *Cal. C. 1st Nov. West. C. 6th Dec.* 1839.

331. With reference to the 2nd paragraph of your letter of the 20th March last, and to your letter of the 2nd instant, I am directed to observe that the question for consideration appears to be, whether a ryot sued for rent in a Moonsiff's Court can remove the suit to the Collector's Court, merely by affirming that the land for which the rent is demanded is not liable to rent. The Court are of opinion that he cannot. The point at issue is, not the validity of the alleged rent free tenure, but the fact of the ryot's having paid, or not paid rent for the year previous to that for which the suit is instituted. The Moonsiff is competent to try and determine this point; and if it be proved by the village accounts duly authenticated, or other legal evidence, that the ryot did pay rent for the preceding year, to pass a decree for such amount of rent as may appear to be due, leaving the ryot to establish his right to hold the land as lakeraj by a suit instituted under Section 30, Regulation 2, 1819.—*Con. No.* 696, *Cal. C. 25th May, West. C. 6th July,* 1832.

SECT. XXXIV.

Trial of Suits by Moonsiffs.—Plaint.

332. In suits instituted before the Moonsiffs under the foregoing rules, the plaint shall be written upon stamp paper agreeably to the rates specified in the Schedule B, referred to in Section 17, Regulation 10, 1829.—*Reg.* 5, 1831, *Sect.* 8, *Cl.* 2.

333. To remove doubts which are believed to exist, I am desired by the Court to intimate to you, with the sanction of the Government, that in cases in which more than one stamp is required for engrossing petitions of plaint or appeal, or petitions presented by persons desirous of appealing as paupers under the provisions of Clause 1, Section 12, Regulation 28, 1814, it is optional to parties to file several stamps, the aggregate value of which will be equal to the amount prescribed by law, or one stamp of the full value, with as much plain paper attached thereto as may be required.—*Cir. Ord.* 28*th Aug.* 1840.

334. The plaint shall state precisely the grounds of complaint, the time when the cause of action arose, the name and residence of the person or persons complained against, the total sum of money or amount of personal property claimed, and all material circumstances, which may elucidate the transaction, and may tend to bring the matter in dispute to a distinct issue.—*Reg.* 23, 1814, *Sect.* 17.

335. It shall be the duty of the Moonsiff to restrain and discourage as much as possible the insertion in the plaint of irrelevant matter and of terms of abuse and reproach against the character of the defendants or others. The plaint shall be signed and numbered, and dated in the order in which it may be received by the Moonsiff, and the number of the suit, the names of the parties, the date on which the petition is received, the amount claimed, and the subject matter of the suit, shall be carefully entered in a book, to be kept by the Moonsiff according to the form No. 4, of the Appendix; two blank columns shall be left in the book, in the first of which shall be inserted the date of the decision and an abstract of the final order passed in each suit, shewing whether the claim be decreed in whole or in part, or nonsuited, or adjusted by razeenamah or dismissed on investigation of the merits, or otherwise disposed of, and the amount of the costs adjudged against either or both of the parties. In the second blank column shall be inserted, the date on which the copies of the decrees may be furnished or tendered to the parties. With a view to ascertain that the register books are regularly kept in the manner above prescribed, and that depending suits are brought to a hearing according to their order on the file, the Zillah and City Judges are respectively required to inspect them once at least in each year, and for this purpose shall require the several Moonsiffs to transmit them to the Court either during the period of the Dusserah or Mohurrum vacation as may be most convenient.—*Reg.* 23, 1814, *Sect.* 18.

SECT. XXXV.

Trial of Suits by Moonsiffs.—Notice—Proclamation.

336. When the complaint shall have been thus received and entered in the book according to the prescribed form, the Moonsiff shall cause to be served on the defendant a written notice under his seal and signature, containing only the number of the suit, the names of the parties, and a short statement of the demand, and requiring the defendant to attend in person or by vakeel, and to deliver an answer to the plaint on or before a certain day, which must be specified in the notice.—*Reg.* 23, 1814, *Sect.* 19, *Cl.* 1.

337. The Moonsiff shall deliver the notice to the plaintiff or to his vakeel, and the plaintiff may either himself serve the notice on the defendant, or through any other person whom he may choose to employ for that purpose. Provided however, that the name of the person intended to be employed in this duty be in all cases endorsed on the notice by the Moonsiff previously to its being delivered to the plaintiff or his vakeel for execution.—*Reg.* 23, 1814, *Sect.* 19, *Cl.* 2.

The rules regarding the service of processes from Moonsiff's Courts will be found at Chapt. 2, Sect. 9, *at the* 91*st and subsequent rules.*

338. The person through whom this notice may be served, shall require from the defendant a written acknowledgment, to be endorsed on the back of the notice, signifying that it has been duly served upon him, and he shall further cause some of the defendant's neighbours, or any mundul or putwaree or other principal inhabitant of the village, or the mohulladar of the ward, to witness the due execution of the service, and he shall at all times state in his report, the name or names of such witness or witnesses.—*Reg.* 23, 1814, *Sect.* 19, *Cl.* 3.

339. When the defendant may be a weaver or a person employed in the provision of the Company's investment under the commercial Residents, or in the provision of salt or opium in those departments, the notice above prescribed shall be enclosed within a sealed cover, addressed to the Resident or Agent, or to the Assistant, or to the gomastah, ameen, or head officer of the nearest aurung, kothee, or choukee, subordinate to them, and shall be superscribed with the official seal and signature of the Moonsiff. The Resident, or Agent, or his Assistant, or head native officer, shall cause the notice to be duly served and acknowledged by the defendant, and shall then return it to the Moonsiff.—*Reg.* 23, 1814, *Sect.* 20.

340. If a defendant who may have been served with a notice as directed in the two preceding Sections shall not appear in person or by vakeel, within the time specified, or if having appeared, he shall refuse to answer the plaint, the Moonsiff shall proceed to try the cause *ex-parte*, and after examining the plaintiff's evidence in support of his claim, shall give judgement in the same manner as if the defendant had appeared and answered to the plaint.—*Reg.* 23, 1814, *Sect.* 21, *Cl.* 1.

341. It shall however be the duty of the Moonsiff previously to trying the case *ex-parte*, to make such enquiries from the person who served the process, and from the persons who witnessed such service, as may satisfy his mind, that the notice was duly served on the defendant.—*Reg.* 23, 1814, *Sect.* 21, *Cl.* 2.

342. Instances having been brought to the notice of the Court, of *ex-parte* decrees having been passed for the rent of lands of which the decree holder was not in possession; I am directed by the Court to request you will call the attention of the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs of your district, to the rule contained in Section 21, Regulation 23, 1814, which prescribes that evidence shall be taken in proof of the plaintiff's claim in cases tried *ex-parte*, in like manner as if the defendant had appeared and answered the suit.—*Cir. Ord. Cal. and West. C. 24th Sept.* 1832.

343. In cases in which a defendant to whom a notice may have been issued in conformity with the preceding sections, may abscond or conceal himself, or cannot after diligent search be found, or shall refuse to give the required written acknowledgment, the person entrusted with the execution of the process, shall certify the same on the back of the notice, and shall require some person or persons being neighbours of the defendant, or a mundel, or a putwaree, or other principal inhabitant of the village, or a mohulladar of the ward, in which the defendant may usually reside, to certify on the back of the process, that after diligent search the defendant cannot be found, or that he has refused to give the required written acknowledgment.—*Reg.* 23, 1814, *Sect.* 22, *Cl.* 1.

344. When a return to this effect is made, the Moonsiff shall cause a proclamation written in the current language and character of the country, to be affixed in a conspicuous part of his own cutcherry, and a copy of the same on the outer door of the defendant's usual place of residence, or some other conspicuous place near it. The proclamation shall contain a copy of the original notice, and shall state that if the defendant do not appear in person, or by a vakeel, within the period of fifteen days from the date of the proclamation, the suit will be brought to a hearing and determination, without the appearance or answer of the defendant.—*Reg.* 23, 1814, *Sect.* 22, *Cl.* 2.

345. The provisions of Clause 2, Section 21, Regulation 23, 1814, which require the evidence of witnesses besides the person who served the process, have reference to the circumstance that

the process of Moonsiffs' Courts, was then served either by the plaintiff himself or any other person whom he chose to employ for that purpose; under the present system of issuing process through registered peons the same necessity does not however exist, and the evidence of the peon may be considered sufficient unless there are grounds to suspect his statement. Mr. Turnbull is of opinion that under the existing law the Moonsiff is competent to exercise his discretion; but Mr. Colvin considers the provisions of Clause 2, above cited to be imperative, and that the evidence of witnesses to the service of process of others than the peon serving it must be taken in every instance. The point is therefore referred for the decision of the Presidency Court, The Calcutta Court, on the 3rd May, 1833, concurred in the opinion expressed by Mr. Colvin.—*Con. No.* 775, *West. C.* 4*th April, Cal. C.* 3*rd May*, 1833.

346. If the defendant shall still not appear either in person or by vakeel, the Moonsiff, on the expiration of the period limited in the proclamation, shall proceed to try and determine the suit *ex-parte*, with the same precautions, and in the same manner, as is prescribed in Clause Second, Section 21, of this Regulation.—*Reg.* 23, 1814, *Sect.* 22, *Cl.* 3.

347. When a defendant in a suit pending before one Moonsiff resides in the division of another, the Court are of opinion that it would be sufficient to have the process backed by the Moonsiff in whose division the defendant resides.—*Con. No.* 701, *Cal. C.* 6*th July, West. C.* 17*th Aug. and* 26*th Oct.* 1832, *Par.* 3.

348. The process of the Moonsiffs' Courts intended to be served in another Zillah, should be issued through the channel and under the signature of the Judge.—*Con. No.* 1235, *West. C.* 19*th July, Cal. C.* 9*th Aug.* 1839, *Par.* 2.

349. In suits depending before them, the Moonsiffs are hereby strictly prohibited from requiring security (either mal or hazir Zaminee) from the defendants, or from attaching their property. But if the Moonsiff shall be satisfied by sufficient proof, that the defendant intends to abscond and to withdraw himself from the jurisdiction of the Court, or that he means to dispose of the property in his possession for the purpose of avoiding the execution of an eventual judgement against him, the Moonsiff shall report the circumstances of the case to the Judge, who will exercise his discretion in each instance, and pass such orders as may appear necessary, under the provisions contained in Sections 4 and 5, Regulation 2, 1806. The Judge may cause those orders to be executed either by the Moonsiffs, or by the proper officers of his own Court, as may appear most convenient.—*Reg.* 23, 1814, *Sect.* 23.

350. As Clause 3, Section 8, Regulation 5, 1831, declares that "the provisions contained in the existing Regulations relative to the trial and decision of suits already cognizable by Moonsiffs, are equally applicable to suits instituted before those officers under this Regulation;" and as no special enactment exists rescinding the provisions of Section 23, Regulation 23, 1824, the Sudder Court are of opinion that Moonsiffs are required to proceed as heretofore, making a reference to the Judge previous to requiring security from defendants or proceeding to attach property in default of such security in cases still pending.—*Con. No.* 772, *West. C.* 29*th March, Cal. C.* 26*th April*, 1833.

351. The provisions contained in the existing Regulations relative to the trial and decision of suits already cognizable by the Moonsiffs, are hereby declared to be equally applicable to suits which may be instituted before those officers under this Regulation. —*Reg.* 5, 1831, *Sect.* 8, *Cl.* 3.

SECT. XXXVI.

Trial of Suits before Moonsiffs.—Pleadings.

352. Vakalutnamahs filed in cases before Moonsiffs should be received on plain paper.—*Con. No.* 798, *Cal. C.* 14*th June, West. C.* 19*th July*, 1833.

353. When the defendant shall attend either in person or by vakeel, within the period limited in the notice or proclamation, or at any subsequent period, before the plaintiff's evidence or proofs shall have been received in the case, he shall be allowed to take a copy of the plaintiff's petition, and to file his answer to the complaint.—*Reg.* 23, 1814, *Sect.* 24.

354. It shall be the duty of the Moonsiffs to restrain and discourage as much as possible, the insertion in the answer of any matter evidently irrelevant to the suit, and of terms of abuse and reproach against the character of the parties or other persons.—*Reg.* 23, 1814, *Sect.* 25, *Cl.* 1.

355. If the answer of the defendant shall be a simple admission or denial of the matter contained in the plaint, no further pleading shall be necessary in suits before the Moonsiffs, but if the answer shall contain any plea or allegation, which may require a reply on the part of the plaintiff, in order to bring the matter in dispute to a distinct issue, or to which the plaintiff may be desirous of replying, such reply shall be filed on the next Court day after that on which the defendant may have given in his answer. The plaintiff shall not introduce in his reply any matter not contained in his complaint. He shall either acknowledge the answer of the defendant to be true or simply and shortly deny the truth of such of the facts in the answer, as he intends to dispute, or simply deny the truth of the facts contained in it, or the competency of the answer.—*Reg.* 23, 1814, *Sect.* 25, *Cl.* 2.

356. The defendant shall rejoin to the reply on the same day. He shall not introduce in his rejoinder any matter not contained in his answer. He shall simply deny the truth of the reply of the plaintiff, or of those parts of it which he means to dispute, or aver the truth or competency of his own answer, and no further pleadings whatever shall be admitted in suits before the Moonsiffs.—*Reg.* 23, 1814, *Sect.* 25, *Cl.* 3.

357. A sues B. for recovery of real property in the possession of B. After the institution of the suit, but before its decision, the rights and interests of B. in the property are sold in satisfaction of a decree of Court. Held that the Moonsiff is competent to receive an application from A. to make C. a party to the suit.—*Con. West, C.* 20*th Aug. Cal. C.* 17*th Sept.* 1841.

358. In all suits tried in the Courts of the Moonsiffs, the pleadings, the applications of parties for the filing of exhibits, as well as for the attendance of witnesses, and the copies of decrees, need not be written on stamp paper.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 2.

359. In suits in which the plaintiff may delay to file his reply, or the defendant to file his rejoinder, within the fixed periods; the Moonsiffs are not required to postpone the trial of the suit on that account, but may proceed in it in the same manner, as if the reply or the rejoinder had been actualy filed.—*Reg.* 23, 1814, *Sect.* 25, *Cl.* 5.

360. The Court, having had before them your monthly civil statements for December last, observe that the Moonsiff of Bhelaideha states that in certain suits on his file he cannot proceed until the expiration of six weeks. They presume this to arise from his having issued notices in these cases to the plaintiffs requiring them to appear, within the period of six weeks, to shew cause why their suits should not be thrown out on account of default. Should this be the case, the Court re-

quest that you inform the Moonsiff that it is not incumbent on him to give so long a period for the appearance of the defaulting plaintiff, and that they consider eight days or a fortnight in ordinary cases a sufficient time to allow for this purpose.—*Con. No.* 758, 15*th Feb.* 1833.

361. In cases, in which the answer shall have been filed, and the parties or either of them shall fail to appear in person or by vakeel at the time, when the suit is first called over for trial, the Moonsiff shall suspend the trial, and shall affix in some conspicuous place in his cutcherry, a notice that the suit will be again called over for trial after the expiration of a fixed period not being less than ten days. If the plaintiff shall not appear before the Moonsiff in person, or by a vakeel duly authorized within the limited time, the Moonsiff shall dismiss his claim; if the defendant shall not so appear by the prescribed time, the Moonsiff shall proceed to try the cause *ex-pârte.*—*Reg.* 23, 1814, *Sect.* 27, *Cl.* 1.

362. If the plaintiff absent himself previous to service of notice on the defendant or before the reply be filed, the suit cannot be proceeded in and must be dismissed.—*Con. No.* 870, *West. C.* 21*st Feb. Cal. C.* 27*th March,* 1834, *Par.* 4.

363. On the dismissal of a suit under Section 12, Regulation 3, 1803, Clause 1, Section 27, Regulation 23, 1814, Clause 3, Section 12, Regulation 26, 1814, the plaintiff is at liberty to institute a new suit for the same claim, as if the case had not been heard.—*Con. No.* 870, *West. C.* 21*st Feb. Cal. C.* 27*th March,* 1834, *Par.* 2.

364. If there has been no decision on the merits of a case, but merely a dismissal pronounced on default, the omission of the word nonsuit, in the proceedings of the officer who disposed of the case, cannot be considered to bar the claim of the plaintiff to the admission of a summary appeal.—*Con. No.* 870, *West. C.* 21*st Feb. Cal. C.* 27*th March,* 1834, *Par.* 3.

365. The Construction No. 859, having been under the consideration of the Courts of Sudder Dewanny Adawlut for the Lower and North Western Provinces, is hereby rescinded; and it is hereby declared, in modification of Construction No. 1226, that Sections 10 and 12, Regulation 26, 1814, are applicable to the Courts of the Principal Sudder Ameens and Sudder Ameens, but not to those of the Moonsiffs.—*Cir. Ord.* 20*th Aug.* 1841.

366. Provided however, that if the suit be dismissed without an investigation of the merits, and either of the parties shall appeal from the decision of the Moonsiff, it shall be the duty of the Court trying the appeal to determine the case on its merits, or to remand it back to the Moonsiff, by whom it was dismissed, or to any other competent authority for a further investigation.—*Reg.* 23, 1814, *Sect.* 27, *Cl.* 2.

367. The Moonsiffs are to try the suits depending before them by hearing the pleadings of the parties, by examining their documents, and by taking the depositions of their witnesses in the presence of the parties, or of their vakeels duly constituted. They may also examine the truth of the claim by the oaths of the parties, if they mutually consent to that mode of examination.—*Reg.* 23, 1814, *Sect.* 28.

368. Repeated instances having been lately brought to the notice of the Court, evincing much want of attention on the part of the uncovenanted Judges, and of the vakeels and agents attached to their Courts, to the rules prescribed for the preparation of pleadings, I am directed by the Court to request, that you will ascertain that every uncovenanted Judge in your district is furnished with translations of Section 25, Regulation 23, 1814; Clauses 2 and 4, Section 5, Regulation 26, 1814; and Section 9, Regulation 27, 1814. You will at the same time inform the uncovenanted Judges, that it is their duty to see that the vakeels and agents, attached to their Courts, draw up "the plaint," "the answer," "the reply," and "the rejoinder," as also "the reasons of appeal," and "the reply" thereto, in strict conformity to the Regulations, and the Court will hereafter hold any officer, who may be proved to be generally inattentive to this important subject, to

have been guilty of gross neglect of duty, bringing him within the provision of Section 26, Regulation 5, 1831.—*Cir. Ord. 8th Jan.* 1841.

SECT. XXXVII.

Trial of Suits by Moonsiffs.—Witnesses.

369. If the plaintiff or defendant shall be desirous of summoning any witnesses to appear before the Moonsiff, and such witnesses shall not attend at the requisition of the parties, the Moonsiff is authorized to summon as witnesses, any persons subject to his jurisdiction, excepting women whose rank may be such as to render it improper to require their appearance in public. When the evidence of such women is necessary, it is to be taken in the mode prescribed by Section 6, Regulation 4, 1793; Section 2, Regulation 8, 1795; and Section 7, Regulation 3, 1803.—*Reg.* 23, 1814, *Sect.* 29, *Cl.* 1.

370. If any Moonsiff shall require the evidence of a person not subject to his jurisdiction, and such person shall not attend at the requisition of the parties, the Moonsiff shall make application to the Zillah or City Judge, who will issue the necessary process for procuring his attendance either through the proper officers of his own Court, or through the Judge or the Moonsiff, within whose jurisdiction such person may reside.—*Reg.* 23, 1814, *Sect.* 32, *Cl.* 1.

371. If however the residence of the witness shall be at a considerable distance from the Moonsiff's Cutcherry, or if other circumstances should render it inconvenient or improper to compel the personal attendance of any witness, the Moonsiff is hereby authorized and required to transmit to the Judge any written interrogatories, which he may think necessary, or which may be suggested by the parties or their vakeels, in the suit. On the receipt of such written interrogatories, the Judge will proceed to obtain the evidence of the witness in the mode prescribed by Section 6, Regulation 4, 1793; Section 2, Regulation 8, 1795; and Section 7, Regulation 3, 1803.—*Reg.* 23, 1814, *Sect.* 32, *Cl.* 2.

For the mode of obtaining the examination of absent witnesses, vide Sect. 21, *of this Chapter.*

372. The summons shall specify the number of the suit on the file, the name of the party at whose request it may be issued, and the names and residence of the witnesses, and shall require them to appear at the cutcherry of the Moonsiff on a specific day; and there to depose concerning the matter in dispute between the parties.—*Reg.* 23, 1814, *Sect.* 29, *Cl.* 2.

373. In all suits tried in the Courts of the Moonsiffs, the pleadings, the applications of parties for the filing of exhibits, as well as for the attendance of witnesses, and the copies of decrees, need not be written on stamp paper.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 2.

374. The Moonsiff shall deliver the summons to the party applying for it, or to his authorized vakeel, and such party or vakeel may either serve the summons himself or through any other person whom he may choose to employ for that purpose; provided however that the name of the persons intended to be employed in this duty be in all cases notified to the Moonsiff, and endorsed on the summons previously to its being delivered to the party or his vakeel for execution.—*Reg.* 23, 1814, *Sect.* 29, *Cl.* 4.

375. By Clause third, Section 29, Regulation 23, 1814, the Moonsiffs are prohibited from demanding or receiving any fee or issuing the prescribed summons for the

attendance of witnesses, and by clause fourth, the party or his vakeel is required to serve the summons in person. But as the strict observance of this rule may (especially in suits of the higher description such as the Moonsiffs are now competent to decide) be attended with inconvenience, it is hereby declared that whenever the party at whose suit the process may be sued out, may be desirous of having the summons carried by a peon instead of serving it himself, or through any other person, it shall be competent to the Moonsiff to levy Tullubanah for that purpose.—*Reg.* 7, 1832, *Sect.* 5, *Cl.* 1.

The rules regarding the service of the Moonsiff's process by peons will be found at Chap. 2, *Sect.* 9, *No.* 92—101.

376. If any person upon whom a summons may have been duly served in the manner above prescribed, shall not attend on the day appointed, the Moonsiff is authorized to attach any property belonging to such person which may be found within his own jurisdiction. If after a reasonable time subsequent to such attachment, the person summoned shall still omit or refuse to attend, and it shall satisfactorily appear by the oath of the party requiring his evidence, that the testimony of such person is material to the cause, the Moonsiff shall report the circumstances of the case to the Judge, who will exercise his discretion in issuing such further process in order to compel the appearance of the witness before the Moonsiff as might be issued under the regulations if the suit were depending before the Judge.—*Reg.* 23, 1814, *Sect.* 31, *Cl.* 1.

377. If notwithstanding this further process, the attendance of the witness cannot be obtained, the Judge shall at his discretion impose on such witness a fine not exceeding in any case the value or amount of the property in dispute; such fine shall be realized under the general provisions in force for the execution of decrees.—*Reg.* 23, 1814, *Sect.* 31, *Cl.* 2.

378. In cases in which a witness duly summoned may attend before the Moonsiff, but shall refuse to give his evidence, or to subscribe his deposition, the Moonsiff shall impose such fine upon him as may appear proper. The Moonsiff is however strictly prohibited from realizing such fine by his own authority; he shall report the circumstances of the case to the Judge, who will either remit or modify, or confirm the fine imposed by the Moonsiff, and will proceed to realize it in the same manner as is prescribed in the preceding Clause.—*Reg.* 23, 1814, *Sect.* 31, *Cl.* 3.

379. The Moonsiffs are hereby strictly prohibited from confining or otherwise punishing witnesses, and they are enjoined to take the depositions of witnesses attending before them, with all due expedition, so that they may not be exposed to any vexatious delay or unnecessary detention from their respective homes and employments.—*Reg.* 23, 1814, *Sect.* 33.

380. The Moonsiffs are at all times authorized to cause the examination of a witness to be taken on a solemn declaration, or even without such solemn declaration, whenever the parties in the suit, or their respective vakeels, may voluntarily and mutually agree to such witness being so examined.—*Reg.* 23, 1814, *Sect.* 35.

381. In the examination of witnesses, the Moonsiffs are enjoined carefully to prevent the parties and their vakeels or agents from instructing or intimidating the witnesses, or from putting to them leading questions, or questions suggesting a particular answer; questions also with regard to the personal character of the parties, or on points

evidently irrelevant to the matter in dispute, are to be avoided as much as possible.—*Reg.* 23, 1814, *Sect.* 36.

382. The deposition of every witness shall commence by specifying the name, the father's name, (or, if the deponent be a married woman, the name of her husband,) the religion, cast, profession, age, and place of residence of the deponent, and shall be subscribed by the witness with his or her name or mark.—*Reg.* 23, 1814, *Sect.* 37.

For cases of Perjury or Subornation of Perjury before Moonsiffs, vide Rules 217 *of this Chapter.*

383. If any individual whose evidence is required shall be a person employed in the provision of the Company's investment under the Commercial Residents, or in the provision of salt and opium under the agents of Government, the summons shall be served in the same manner as is prescribed in Section 20, of this Regulation, respecting the issue of notice to a defendant. The Moonsiffs will be careful not to summon such persons unnecessarily, and on their attendance, shall cause them to be examined and dismissed with all practicable dispatch.—*Reg.* 23, 1814, *Sect.* 30.

SECT. XXXVIII.

Trial of Suits by Moonsiffs.—Exhibits.

384. No fees shall be levied on exhibits filed before the Moonsiffs, and exhibits shall be received in suits depending before them, without any derkhaust or written application for that purpose.—The Moonsiffs are strictly prohibited from admitting or filing as an exhibit, or from receiving in evidence, any obligation, instrument, bond, deed, or document, whether it be the original, or a copy, of a description which is or may be required to be written on stampt paper, unless it shall have been duly executed on stampt paper of the description, value, and denomination prescribed by the Regulations.—*Reg.* 23, 1814, *Sect.* 38, *Cl.* 1.

385. In cases in which a Moonsiff shall entertain doubts whether a document presented to him as an exhibit has been duly executed on paper bearing the prescribed stampt, he shall transmit such document, with a statement of the case, to the Judge for his opinion, and shall be guided by the instructions he may in consequence receive from the Judge, either in rejecting, or admitting such exhibit.—*Reg.* 23, 1814, *Sect.* 38, *Cl.* 2.

386. In all suits tried in the Courts of the Moonsiffs, the pleadings, the applications of parties for the filing of exhibits, as well as for the attendance of witnesses, and the copies of decrees, need not be written on stamp paper.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 2.

387. When an exhibit is filed in a suit before the Moonsiff, it shall be dated and signed or sealed by him, and shall be marked with some letter or number to identify it, and such letter or number shall be distinctly referred to in those parts of the depositions of the witnesses, or of the proceedings, or of the decree, as may allude to such exhibit.—*Reg.* 23, 1814, *Sect.* 38, *Cl.* 3.

388. Whenever occasion may require the examination and scrutiny of native account books in any civil case, the European Judges should, as far as possible, call in the aid of assessors for that purpose. In instances, however, where such a course may be deemed by them inexpedient, recourse should be had to the agency of Ameens, to be appointed at the expense of the plaintiff or

defendant, as the case may be, whose duty it should be to inspect the books either at the Mahajun's house or in Court, as might seem fitting with reference to the circumstances of the case and the wishes of the parties. And the latter course should also be followed by the Native Courts, who are not authorized to employ assessors for the purpose stated.—*Cir. Ord. 4th Feb.* 1840, *Par.* 3.

The rules regarding Exhibits passed in reference to Zillah Courts, and inserted as Rule 226, *of this Chapter are made applicable by Circular Order, 29th July,* 1836, *to the Courts of Moonsiffs and other Uncovenanted Judges.*

SECT. XXXIX.

Administration of the Mahomedan and Hindoo Law of Inheritance by Moonsiffs.

389. In all cases of inheritance of, or succession to, landed property, the Mahomedan Laws with respect to Mahomedans, and the Hindoo Laws with regard to Hindoos, are to regulate the decision; and the Moonsiffs, in all such cases where doubts exist, are to obtain an exposition of the Law from the Law Officers of the Zillah Court, to whom they are to transmit a written abstract of the case for this purpose: such exposition however is not to preclude a further reference to the Law Officers of the Zillah Courts, upon such points of Law as may arise upon the cause, in the event of its being tried in appeal. In causes in which the plaintiff is of a different religious persuasion from the defendant the decision is to be regulated by the law of the latter, provided that this rule is limited to cases in which the defendant is either a Mahomedan or Hindoo.—*Reg.* 5, 1831, *Sect.* 6, *Cl.* 2.

390. In cases in which the above rules cannot be applied, the Moonsiffs are to act according to justice, equity, and good conscience.—*Reg.* 5, 1831, *Sect.* 6. *Cl.* 3.

391. The rules contained in the above Clause, regarding cases of succession to real property, are intended exclusively for the guidance of Moonsiffs, such being the express tenor of the enactment.—*Con. No.* 706, *Cal. C.* 20*th July, West. C.* 17*th Aug.* 1832.

392. *For the subsequent modification of the Law of Inheritance, vide Reg.* 7, 1832, *Sect.* 9.

393. In all suits concerning the succession or right of inheritance to a Zemindaree, talook, land, house, or other real property, the Moonsiffs are to affix in some conspicuous part of their Cutcherries and to publish in the village, in or near to which the property is situated, a written notification of the claim preferred, with a requisition to all persons who may have any claim to the property sued for, to prefer the same within a limited period; and they are not to pass a decree in such suits, when there are more claimants than one, who by the Hindoo or Mahomedan Law (respect being had to the religion of the claimants) would be entitled to a portion of the property, excepting the property be by the decree adjudged to all the claimants in the proportions to which they may be respectively entitled.—*Reg.* 5, 1831, *Sect.* 6, *Cl.* 4.

394. The Court are of opinion that a petition, putting in a claim to a share of the property sued for in consequence of a notice issued under Clause 4, Section 6, Regulation 5, 1831, should be considered as an application "in relation to matters pending" before the Court, and that, with reference to the omission of the Moonsiffs in Article 7, Schedule B, Regulation 10, 1829, and to the provisions of Clause 2, Section 9, Regulation 5, 1831, such application in the Courts of the

Moonsiff should not be written on stamp paper.—*Con. No.* 706, *Cal. C.* 20*th July, West. C.* 17*th Aug.* 1832.

395. On a reference from the Judge of Jessore as to whether the provisions of Clause 6, Section 2, Regulation 12, 1833, extended to pauper suits, it was held that the rule was applicable to all suits in which private engagements exist between parties and pleaders.—*Con. Cal. C.* 28*th May, West. C.* 18*th June,* 1841.

SECT. XL.

Decrees of Moonsiffs.—Fines.

396. If a party, vakeel, or witness in any depending suit shall be guilty of disrespectful behaviour to the Moonsiff in open Court, the Moonsiff is empowered to impose such fine on the party, vakeel, or witness so offending, as may appear proper. The Moonsiff is however strictly prohibited from realizing such fine by his own authority. He shall report the circumstances of the case to the Judge, who will either remit, modify, or confirm the fine imposed by the Moonsiff; and in either of the latter cases, will proceed to levy it under the general provisions in force for the execution of decrees.—*Reg.* 23, 1814, *Sect.* 42.

397. It, [that is, the rule contained at No. 302, of this chapter] is further hereby extended to the Courts of the Sudder Ameens and Moonsiffs, with this restriction, that all fines for Contempt, which may be imposed by a Moonsiff, or by a Sudder Ameen in his Civil Court, shall, previous to the enforcement of them, be reported with a copy of the proceeding held in the case, for the information and orders of the local Judge or Register, in like manner as fines on witnesses refusing to give evidence, or to subscribe their depositions, in the Court of a Moonsiff, are required to be reported by the Rule contained in the third Clause of Section 31, Regulation 23, 1814.—*Reg.* 12, 1825, *Sect.* 6, *Cl.* 2.

398. In cases of resistance of the process of a Moonsiff, the Court are of opinion that he should report the case for the orders of the Judge, as required in the instances provided for by Sections 23, 31 and 42 of Regulation 23, 1814.—*Con. No.* 701, *Cal. C.* 6*th July, West. C.* 17*th Aug. and* 26*th Oct.* 1832, *Par.* 4.

399. On a reference from the Judge of 24-Pergunnahs, it was held that a Moonsiff is competent to ascertain the fact of resistance of a process of his Court or other contempt, and to determine the amount of fine which in his opinion ought to be levied on the offender; but that, prior to proceeding to levy such fine, he should report the case for the orders of the Judge.—*Con. No.* 1262, *West. C.* 16*th Nov.* 1839, *Cal. C.* 3*rd Jan.* 1840.

400. It has been ruled by the Court of Sudder Dewanny Adawlut that the native judicial authorities are competent to proceed, of their own power, and without previous reference to you, to the realization, by the usual process, of any fines [in reference to the breach of the stamp laws] imposed by them under the rule contained in Clause 1, Section 18, Regulation 10, 1829, subject to the usual course of appeal.—*Cir. Ord. Cal. and West. C.* 7*th June,* 1839.

SECT. XLI.

Decrees of Moonsiffs.

401. When the parties have been heard, and the exhibits received and considered, and the witnesses on both sides examined, the Moonsiff shall give judgment according to justice and right.—*Reg.* 23, 1814, *Sect.* 39.

402. The decree shall specify the names of the parties, and the names of the witnesses examined, and the titles of the exhibits read. It shall also contain an abstract statement of the material facts alleged in the pleadings of both parties, and an elucidation of the principal grounds and reasons on which the decision may be passed. It shall state specifically the sum of money, or the value or amount of personal property adjudged, and the amount of the costs or damages payable by the parties respectively.—*Reg.* 23, 1814, *Sect.* 40.

403. If any claim shall appear to the Moonsiff to be evidently litigious and vexatious, he shall adjudge suitable costs and damages against the plaintiff, and insert the same in the mode above directed in the decree.—*Reg.* 23, 1814, *Sect.* 40.

404. Section 40, Regulation 23, 1814, does not authorize the imposition of a fine for a litigious or vexatious suit. Fines are leviable only on account of Government. If damages are awarded, they belong to the party declared by the decree to be entitled to them. In such case the damages form part of the decree, and unless the party dissatisfied with it appeal, the decree will be executed, without reference to the Judge, in the same manner as other decrees of Court.—*Con. No.* 966, *Cal. C.* 17*th July, West C.* 28*th Aug.* 1835.

405. When the decision shall have been thus passed, the Moonsiff shall cause two copies of it to be prepared, and after attesting them with his seal and signature shall, within one week after the date of the decree, tender the said copies in open cutcherry, both to the plaintiff and defendant or to their vakeels respectively; he shall endorse on the back of the said copies the actual date on which they may be tendered to the parties in open cutcherry, and if either or both of the parties shall fail to attend, or shall refuse to receive the copies so tendered, he shall certify the same on the back of the copies.—*Reg.* 23, 1814, *Sect.* 41, *Cl.* 1.

406. The rule prescribed to the Judges and Registers of the Zillah and City Courts, for endorsing on the copies of decrees delivered or tendered by them, as well as inserting in their records, the date of delivering or tendering such copies, is also to be carefully observed by the native Commissioners, that the exact period of such deliveries or tenders may be at all times ascertainable; and the Judges are to communicate this rule to the native Commissioners within their respective jurisdictions, for their information and guidance.—*Reg.* 2, 1805, *Sect.* 8.

407. The Moonsiffs will, as heretofore required to do, prepare and tender to the parties copies of each decree or final order which they may pass, within one week from the date thereof, the rule being equally applicable to Sudder Ameens and Principal Sudder Ameens, in suits referred to them under Section 5, Act 25, of 1837; in all other cases, the functionaries of the two latter grades are hereby required to have every decree and final order prepared within the same period. —*Cir. Ord. Cal. and West. C.* 20*th Sept.* 1839, *Par.* 7.

408. Any Moonsiff, who may be guilty of willully misstating, or falsifying, or of causing to be misstated or falsified, the date and purport of the endorsement above directed to be written on the copies of the decrees, or of keeping back such copies of decrees from either of the parties, with the view of defeating or opposing a bar to their right of appeal shall, on proof thereof to the satisfaction of the Provincial Court, be liable to dismission from office, and to such discretionary fine to Government as may be deemed proper by that Court.—*Reg.* 23, 1814, *Sect.* 41, *Cl.* 2.

409. In all suits tried in the Courts of the Moonsiffs, the pleadings, the applications of parties for the filing of exhibits, as well as for the attendance of witnesses, and the copies of decrees, need not be written on stamp paper.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 2.

410. The Court take this opportunity of observing that, owing to the want of the requisite information on the back of copies of decrees and orders appealed from, doubts have frequently arisen as to the precise time an appellant is entitled to claim as a deduction from the period prescribed for appealing in consequence of the stampt paper given in for the copy of the decree or order remaining in the Serishta of the lower Courts, and also whether any delay which may have occurred is fairly attributable to the party petitioning for the admission of an appeal. The Court are accordingly pleased to direct that in future on the copy of every decree and order granted by you, you cause to be endorsed the particulars noted below, and that you strictly enjoin the observance of the same rule by the Principal Sudder Ameen, Sudder Ameen and Moonsiffs, within your jurisdiction.

[Where a pauper may be party, or where the decree may have been passed in a Moonsiff's Court.]

On the — 1840, the pauper or other party failed to attend, after due notice, in person or by Vakeel; and the copy was accordingly deposited among the records.—*Cir. Ord. 8th May*, 1840.

SECT. XLII.

Razeenamah in Moonsiffs' Courts.

411. The provisions of Clauses Second and Third, Section 3, Regulation 13, 1824, are declared applicable to cases ajdusted by Razeenamah in the Moonsiffs' Courts.—*Reg.* 7, 1832. *Sect.* 6, *Cl.* 2.

412. In original suits and appeals referred to Sudder Ameens, and adjusted by Razeenamah, after the 1st May 1824, if the Razeenamah be filed before the pleadings are completed and read, the full amount of the stamp duty paid on the institution of the suit or appeal, shall be returned to the party who may have paid the same; or to his legal representative; or a moiety of the stamp duty so paid shall be returned if the Razeenamah be filed after the pleadings have been completed and read.—*Reg.* 13, 1824, *Sect.* 3. *Cl.* 2.

413. The several Sudder Ameens are required to submit to the Judges and Registers, with whom they are respectively stationed, a monthly statement of the stamp duty receivable by the parties entitled thereto under the above Clause; and the Judges after ascertaining the correctness of such statements, will take the necessary measures for causing payment to the parties entitled thereto in pursuance of Section 25, Regulation 26, 1814.—*Reg.* 13, 1824, *Sect.* 3, *Cl.* 3.

414. It appearing from the returns to the circular issued by the Court, under date the 27th October last, that several of the Moonsiffs in these provinces refuse to receive Razeenamahs in cases depending before them if not written on stampt paper, I am directed to inform you that as by Article 10, Schedule B, Regulation 10, of 1829, it is provided that Razeenamahs shall bear the stamp prescribed for pleadings in the Court wherein they may be filed, and under the provisions of Clause 2, Section 9, Regulation 5, of 1831, the pleadings in the Moonsiffs' Courts are not required to be written on stampt paper, the practice above referred to, is irregular, and should be strictly prohibited wherever it may exist. You will consider this prohibition to extend equally to Razeenamahs filed in the Moonsiffs' Courts in cases of execution of decrees.—*Cir. Ord. Cal. C. 20th July, West. C. 3d Aug.* 1838.

415. With reference to my Circular letter of the 10th May last, [vide Rule below 417] I am directed by the Court to forward to you the accompanying copy of a letter from the Judge of Zillah Purneah, dated the 28th June last; and to request that in the event of there being no Tuhseeldars in your district, or, any particular pergunnahs of it, you will adopt the mode of practice detailed in

the 4th paragraph of that letter, for the repayment to plaintiffs in suits decided by razeenamah of the value of stamp to which they are entitled.—*Cir. Ord. Cal. C. 9th Aug.* 1833, *Par.* 1.

416. I beg accordingly to submit the following plan; that on the adjustment of a case by razeenamah, the plaintiff, wishing to have refunded the amount of the plaint paper, should petition the Moonsiff for the same, on plain paper of course; that the Moonsiff, endorsing on the petition the number of the suit and date of decision, should forward it to the Judge, who, on ascertaining the correctness of the application by reference to the nuthee can give the certificate prescribed in Schedule B, Regulation 10, 1829, and transmit it with the paper on which the plaint is written, (all nuthees of cases decided are sent by the Moonsiffs at the end of the month for record in the Judge's office) to the Collector; that officer having taken the necessary measures for ascertaining the genuineness of the paper, can return the plaint, with the amount to be refunded, to the Judge; the plaint would be again filed with the nuthee and the money sent to the Moonsiff, who would pay it to the party entitled to it, and having done so would forward his receipt to the Judge.—*Cir. Ord. Cal. C. 9th Aug.* 1833, *Par.* 4.

417. Any Moonsiff or Sudder Ameen above described, who may direct the re-payment of the institution fee to a party in a case adjusted by razeenamah, shall send to the Collector the stamped paper on which the petition of plaint is written, with the certificate required by Schedule B, Regulation 10, 1829. The Collector shall, on the receipt thereof, transmit the stamped paper to the stamp office for examination. On its return to his office, duly examined, the Collector shall return the same to the Moonsiff or other deciding officer, together with an order for the amount in favor of the party entitled to receive it, addressed to the tuhseeldar, whose cutcherry may be nearest to that of the Moonsiff or officer who decided the suit; *or where there are no tuhseeldars, on the treasurer of the district.* This order will be delivered by the Moonsiff or other officer to the party, with directions to apply to the tuhseeldar, or treasurer, as the case may be, for the sum due to him; and, as it will form the authority for the payment by that officer, it should be carefully retained as such in his office.—*Cir. Ord. Cal. and West. C.* 10*th May*, 1833.

418. In continuation of the Circular Order under date the 25th October, 1833, prescribing certain rules for the repayment of the amount of stamp in certain cases adjusted by razeenamah before Moonsiffs and Sudder Ameens at out-stations, I am directed to transmit for your information the annexed extract of a letter from the officiating Accountant in the revenue and judicial department, dated the 30th September last, to the Government, and to request that you will adopt the practice suggested by that officer.

The rules of practice adopted by the Sudder Dewanny Adawlut in the Western Provinces, under the orders of Government of 7th October last, and detailed in the 2nd paragraph of Mr. Register Jackson's letter of the 18th July last, are unobjectionable. I would, however, beg leave to suggest that the Moonsiffs and Sudder Ameens be instructed to deliver to the parties both the authenticated certificate and the Collector's orders for payment, with the view to the delivery of both documents by the party claiming the refund to the tuhseeldar, to enable that officer to forward them to the Collector's office for transmission to this department, as vouchers in support of the debits to be made under "stamp duties" in the Collector's treasury account.—*Cir. Ord. West. C.* 14*th Nov.* 1834.

SECT. XLIII.

Trial of Suits by Sudder Ameens.—General Rules.

419. Original suits referred to a Sudder Ameen under the preceding Clause, shall be tried and determined in conformity with the provisions of Regulation 23, 1814.—*Reg.* 5, 1831, *Sect.* 15, *Cl.* 3.

420. In points not expressly provided for by the foregoing rules, the Sudder Ameens shall observe as nearly as may be practicable the rules prescribed in the regulations for the guidance of the Zillah and City Courts in the trial and decision of original Civil suits.—*Reg.* 23, 1814, *Sect.* 74.

421. The Sudder Ameens are themselves to investigate the suits referred to them in a public cutcherry or Court room, and are not to allow their officers, servants, or dependants, or any other person to interfere therein.—*Reg.* 23, 1814, *Sect.* 71.

Regarding the number of Suits which a Sudder Ameen is required to decide in the month, vide Rule 326, of this Chapter.

422. I am directed to request you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the Judge of Zillah Ghazeepore, under date the 2nd instant, soliciting the opinion of the Court as to whether suits, in which the Government or its officers may be a party, are referrible, under the provisions of Act No. 25, of 1837, to Principal and other Sudder Ameens. *Reply.* The Court are decidedly of opinion that it was not the intention of the legislature to exclude cases of the nature of those described by Mr. Smith from the cognizance of the Principal and other Sudder Ameens, and that consequently they are referrible to those officers at the discretion of the Judge in like manner with all other cases legally within their competency to dispose of.—*Con. No.* 1112, 10*th Nov.* 1837.

423. The provisions contained in Sections 18 and 23, Clause Fourth, Section 25, in Sections 26, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 46, 47, 48 and 49, of this Regulation, are hereby declared to be equally applicable to original suits referred to Sudder Ameens as to those tried by Moonsiffs. The special rules prescribed in Sections 57, 58 and 59, shall likewise be strictly observed by the Sudder Ameens in all suits, which may be referred to them relative to the inheritance of, or succession to landed property. —*Reg.* 23, 1814, *Sect.* 73.

Plaints and Stamps.

Regulation 23, 1814, *Section* 18, *(Rule* 335 *of this Chapter) is applicable to Sudder Ameens. Reg.* 23, 1814, *Sect.* 73.

For the value of the stamp paper on which Petitions of plaints must be written, vide Chap. 2, *Rule.* 443.

424. A summary appeal may be had from a nonsuit passed under Article 8, Schedule B, Regulation 10, of 1829, if it can be shewn by the plaintiff that the value of the property claimed has not been understated by him, and that consequently the order passed by the Sudder Ameen or Principal Sudder Ameen was erroneous.—*Con. No.* 872, *West. C.* 21*st Feb. Cal. C.* 24*th Oct.* 1834, *Par.* 2.

For the Stamp duty on Petitions, Applications and Durkhasts presented to the Sudder Ameen, vide Chap. 2, *Rule* 440.

425. To remove doubts which are believed to exist, I am desired by the Court to intimate to you, with the sanction of the Government, that in cases in which more than one stamp is required for engrossing petitions of plaint or appeal, or petitions presented by persons desirous of appealing as paupers under the provisions of Clause 1, Section 12, Regulation 28, 1814, it is optional to parties to file several stamps, the aggregate value of which will be equal to the amount prescribed by law, or one Stamp of the full value, with as much plain paper attached thereto as may be required.—*Cir. Ord.* 28*th Aug.* 1840.

426. And it is hereby enacted, that whenever a Zillah or City Judge within the said Territories in the exercise of the discretion vested in him by Section 7, Regulation 5, 1831, of the Bengal Code, shall refer for trial to a Sudder Ameen, or Principal Sudder

Ameen, a suit within the competency of a Moonsiff to decide, such suit shall be subject to the same rules in regard to Stamp Duties, and to the same rules in regard to appeal as the said suit would have been subjected to had it been received and tried by the Moonsiff in the first instance.—*Act* 25, 1837, *Sect.* 5.

Notice.

427. So much of the rule, contained in Section 74, of the said Regulation (Reg. 23, 1814,) which requires that every notice, summons, attachment, or other process relative to any cause depending before a Sudder Ameen shall be issued under the official signature of the Judge or Register, is hereby rescinded, such processes, signed and sealed by the Sudder Ameen, shall issue through their own officers, and not as heretofore under the signature of the Judge through the Nazir of the Court.—*Reg.* 5, 1831, *Sect.* 15, *Cl.* 4.

428. Application having been made to the Court for information as to the manner in which the process of Sudder Ameens, in suits pending before them, is to be issued under Clause 4, Section 15, Regulation 5, 1831, I am directed to inform you, that such process is to be issued through peons, entertained in the same manner, and subject to the same rules, as those employed heretofore under the Nazir of the Court; but without the interference of that officer, which is expressly prohibited by the concluding words of the Clause quoted. The Sudder Ameens are not entitled to any profit from this source, being prohibited from receiving any emolument from their office beyond the salary allowed by Government. The peons entertained should be registered and distinguished by badges, as provided for by Section 14, Regulation 26, of 1814. See Section 5, Regulation 7, 1832. —*Cir. Ord. Cal. and West. C.* 11*th May*, 1832.

429. Held on a reference from the Judge of Dinagepore, that the processes of the Principal Sudder Ameens and Sudder Ameens, required to be enforced in another Zillah, should be issued under their seal and signature, as prescribed by Clause 4, Section 15, Regulation 5, of 1831, and with reference to Clause 3, Section 2, Regulation 2, 1806, be sent by the Sudder Ameen to the Judge of the Zillah or City Court in which they are to be executed.—*Con. No.* 1235, *West. C.* 19*th July, Cal. C.* 9*th Aug.* 1839.

430. The Construction No. 859, having been under the consideration of the Courts of Sudder Dewanny Adawlut for the Lower and North Western Provinces, is hereby rescinded; and it is hereby declared, in modification of Construction No. 1226, that Sections 10 and 12, Regulation 26, 1814, are applicable to the Courts of the Principal Sudder Ameens and Sudder Ameens, but not to those of the Moonsiffs.—*Cir. Ord.* 20*th Aug.* 1841.

Security.

Reg. 23, 1814, *Sect.* 23, (*Rule* 349 *of this Chapter,*) *is extended to Sudder Ameens by Reg.* 23, 1814, *Sect.* 73.

Pleadings.

For the value of the Stamp in pleadings before the Sudder Ameens, vide Chap. 2, *Rule* 444, 445, 446 *and* 447.

The reservation made by Reg. 25, 1837, *Sect.* 5, (*No.* 426 *of this Chapter,*) *must also be carefully attended to in reference to Pleadings.*

Vakeels.

For Vakeels in Sudder Ameen's Courts, vide Chapter 2, *Rule* 195.

Witnesses.

Reg. 23, 1814, *Sect.* 33, (*Rule* 379 *of this Chapter,*) *Sect.* 36, (*Rule* 381,) *and Sect.* 37, (*Rule* 382,) *are extended to the Courts of Sudder Ameens by Reg.* 23, 1814, *Sect.* 73.

For rules regarding Perjury in the Courts of Sudder Ameens, vide Rules 217, 218, 219, 220, *of this Chapter.*

For the Stamp fees on applications, for summoning witnesses, vide Chap. 2, *Rule* 451.

For rules regarding Tulubana, vide Chapter 2, *Rule* 91.

Notice to file Exhibits and summon Witnesses.

For rules on this subject, vide Rules 165, 166 *and* 169 *of this Chapter.*

Exhibits.

The rules contained in Reg. 23, 1814, *Sect.* 38, *Clauses* 1, 2 *and* 3, (*Rules* 384, 385 *and* 387 *of this Chapter*) *are made applicable to Sudder Ameens by Reg.* 23, 1814, *Sect.* 73.

For the stamp duty on petitions regarding the filing of Exhibits, vide Chapter 2, *Rule* 438.

Decision and Decree.

The rules contained in Reg. 23, 1814, *Sect.* 39, (*Rule* 401 *of this Chapter*) *Sect.* 40, (*Rule* 402) *and Sect.* 41, *Cl.* 1 *and* 2, (*Rules* 405 *and* 408) *are extended to the Courts of Sudder Ameens by Reg.* 23, 1814, *Sect.* 73.

For the stamp duty on copies of decrees, vide Chap. 2, *Rule* 432.

The reservation in Reg. 25, 1837, *Sect.* 5, *given at Rule* 426 *of this Chapter, is to be carefully attended to in regard to Decrees.*

431. The Moonsiffs will, as heretofore required to do, prepare and tender to the parties copies of each decree or final order which they may pass, within one week from the date thereof, the rule being equally applicable to Sudder Ameens and Principal Sudder Ameens, in suits referred to them under Section 5, Act 25, of 1837; in all other cases, the functionaries of the two latter grades, are hereby required to have every decree and final order prepared within the same period. —*Cir. Ord. Cal. and West. C.* 20*th Sept.* 1839, *Par.* 7.

Razenamah.

432. In original suits and appeals referred to Sudder Ameens, and adjusted by Razeenamah, after the 1st May 1824, if the Razeenamah be filed before the pleadings are completed and read, the full amount of the stamp duty paid on the institution of the suit or appeal, shall be returned to the party who may have paid the same; or to his legal representative; or a moiety of the stamp duty so paid shall be returned if the Razeenamah be filed after the pleadings have been completed and read.—*Reg.* 13, 1824, *Sect.* 3, *Cl.* 2.

433. The several Sudder Ameens are required to submit to the Judges and Registers, with whom they are respectively stationed, a monthly statement of the stamp duty receivable by the parties entitled thereto under the above Clause; and the Judges after ascertaining the correctness of such statements, will take the necessary measures for causing payment to the parties entitled thereto in pursuance of Section 25, Regulation 26, 1814.—*Reg.* 13, 1824, *Sect.* 3, *Cl.* 3.

Fines.

434. Nothing in this Regulation shall be construed to empower the Sudder Ameens to realize by their own authority any fines, which they may impose under the general Regulations. In such instances they shall report the circumstances of each case to the Zillah or City Judge, who will either remit, or modify or confirm, the fine imposed by the Sudder Ameen, and will proceed to realize the same under the same rules, as are prescribed for the execution of decrees.—*Reg.* 23, 1814, *Sect.* 74.

435. In reply to a letter from the additional Judge of Burdwan, dated 11th June, 1836, the Presidency Court held that under the provisions of Section 74, Regulation 23, of 1814, the Judge, when he has modified or confirmed the order of a native Judge imposing a fine, is to proceed to rea-

lize the same under the same rules as are prescribed for the execution of decrees. By Section 7, Regulation 7, of 1832, the native Judges are authorized to execute their own decrees. The Court are therefore of opinion that the Judge may refer his order in such cases to them for execution.—*Con. No.* 1020, *Cal. C.* 1*st July*, *West. C.* 22*d July*, 1836.

436. Held by the Western Court, in concurrence with the Calcutta Court, on a reference from the Judge of Furruckabad, that it would be objectionable to allow the native judicial functionaries to exercise, at their discretion, the power of imposing fines on the Collectors of their respective districts for not conforming to the orders of their Court; and that their proper course, where their orders are not carried into effect, is to report the particular circumstances of each case, as it may arise, to the Judge, leaving that officer to take such steps in the matter as he may deem proper consistently with the Regulations.—*Con. No.* 1193, 21*st Dec.* 1838.

SECT. XLIV.

Trial of Suits by Principal Sudder Ameens.—General Rules.

437. The Principal Sudder Ameens are themselves to investigate the suits referred to them in a public Cutcherry or Court room, and are not to allow their officers, servants, or dependants, or any other person to interfere therein.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 2.

438. In the trial and decision of original suits and appeals referred to them, the Principal Sudder Ameen shall be guided by the rules established for the conduct of business in the Courts of the Sudder Ameens. And in points not expressly provided for by those rules, they shall observe as nearly as may be practicable the rules prescribed in the Regulations for the guidance of the Zillah and City Courts.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 4.

Regarding the cognizance of Government suits, vide Rule 422 *of this Chapter.*

Regarding the number of Suits which a Principal Sudder Ameen is required to decide in the month, vide Rule 326 *of this Chapter.*

Vakeels.

439. It shall be competent to the Zillah and City Judge to authorize any of the Vakeels of his Court, or of those attached to the Sudder Ameens, to practice in the Court of the Principal Sudder Ameen.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 3.

Process.

Regarding the issue of process, Rule 427 *is made applicable to the Courts of Principal Sudder Ameens.*

440. The Principal Sudder Ameens and Sudder Ameens shall retain on their Establishments, Officers denominated Nazirs, to whom the provisions of Clause 8, Section 14, Regulation 26, 1814, shall be applicable.—*Reg.* 7, 1832, *Sect.* 5, *Cl.* 5.

The Rules in the Circular Orders of 11*th May*, 1832, *(Rule* 428 *of this Chapter) regarding the manner in which the process of the Sudder Ameen is to be served, are equally applicable to the Courts of Principal Sudder Ameens.*

Stamps.

441. The duties chargeable on Law papers in the Courts of the Principal Sudder Ameens shall be regulated according to the rates fixed in Schedule B referred to in Section 17, Regulation 10, 1829, for the Courts of the Zillah and City Judges.—*Reg.* 5, 1831, *Sect.* 20.

442. The Court observe that under the rule contained in Section 20, Regulation 5, of 1831, the pleadings in all cases up to 5000 Rupees in amount or value, referred for trial and decision to the Principal Sudder Ameens, are required to be written on stampt paper of one rupee value: and as Act 25 of 1837, in enlarging the powers of those officers makes no provision on the point under reference, they are of opinion that as the law now stands, the same rule must be held to apply in respect to cases made over to the Principal Sudder Ameens under Section 1, of Act 25 of 1837. —*Con. No.* 1118, *West. C. 15th Dec.* 1837, *Cal. C. 5th Jan.* 1838, *Par.* 2.

443. And it is hereby enacted, that whenever a Zillah or City Judge within the said Territories in the exercise of the discretion vested in him by Section 7, Regulation 5, 1831, of the Bengal Code, shall refer for trial to a Sudder Ameen, or Principal Sudder Ameen, a suit within the competency of a Moonsiff to decide, such suit shall be subject to the same rules in regard to Stamp Duties and to the same rules in regard to Appeal as the said suit would have been subjected to had it been received and tried by the Moonsiff in the first instance.—*Act* 25, 1837, *Sect.* 5.

444. And it is hereby enacted, that whenever a Zillah or City Judge within the said Territories shall refer for trial to a Principal Sudder Ameen a suit within the competency of a Sudder Ameen to decide, such suit shall be subject to the same rules in regard to Stamp Duties, and to the same rules in regard to Appeal, as the said suit would have been subjected to, had it been referred to and tried by the Sudder Ameen in the first instance.—*Act* 25, 1837, *Sect.* 7.

Notice.—Notification of the points at issue.

445. In the trial of original suits and appeals, the Principal Sudder Ameens are enjoined to conform strictly to the mode of procedure directed to be observed by Section 10, Reg. 26, 1814, before any exhibits are filed or witnesses summoned in support of the allegations of either of the parties.—*Reg.* 5, 1831, *Sect.* 21.

446. The Construction No. 859, having been under the consideration of the Courts of Sudder Dewanny Adawlut for the Lower and North Western Provinces, is hereby rescinded; and it is hereby declared, in modification of Construction No. 1226, that Sections 10 and 12, Regulation 26, 1814, are applicable to the Courts of the Principal Sudder Ameens and Sudder Ameens, but not to those of the Moonsiffs.—*Cir. Ord.* 20*th Aug.* 1841.

Decrees.

447. Decrees passed in the Courts of the Principal Sudder Ameens shall be executed by those Courts under the general rules prescribed for the execution of decrees passed by the Zillah and City Judges—Provided however, that in such cases an appeal from the orders of the Principal Sudder Ameens shall lie, in the first instance, to the Zillah and City Judges, and specially to the Sudder Dewanny Adawlut.—*Reg.* 5, 1831, *Sect.* 22.

448. The Moonsiffs will, as heretofore required to do, prepare and tender to the parties copies of each decree or final order which they may pass, within one week from the date thereof, the rule being equally applicable to Sudder Ameens and Principal Sudder Ameens, in suits referred to them under Section 5, Act 25 of 1837; in all other cases, the functionaries of the two latter grades are hereby required to have every decree and final order prepared within the same period.—*Cir. Ord. Cal. and West. C. 20th Sept.* 1839, *Par.* 7.

449. With each monthly return the Principal Sudder Ameen will likewise furnish you with a certificate in Oordoo,* (unless he happen to be acquainted with the English language, when it shall be written in that tongue,) to the effect that all decrees exceeding Rupees 5,000, passed by him in

* Bengalee in the Bengal Districts and Oorya in Cuttack.

the month to which the statements relate, were prepared by him within seven days from the date of such decree. The abovementioned certificate you will then attach by a thread to statement No. 1, Part 1, and submit with your periodical papers for the information of the Court.—*Cir. Ord. Cal. and West. C. 20th Sept.* 1839, *Par.* 14.

450. The printed Construction No. 1109, has ruled that the Circular Order, dated 4th August 1837, was only intended to apply to the Zillah and City Courts, and that consequently the copies of decrees of Principal Sudder Ameens, Sudder Ameens and Moonsiffs, destined to remain with the records of suits, are not required to be written on paper of Europe manufacture. The Court having reconsidered that part of the Construction cited which concerns Principal Sudder Ameens, it has been resolved to modify the same so far as to extend the rule of the circular to that class of officers, and it is therefore enjoined, that decrees of the Principal Sudder Ameens which are intended to remain with the record, be, in future engrossed on Europe paper.—*Cir. Ord.* 21*st May*, 1841.

Confinement of Defendants.

451. I am directed to inform you that in the opinon of the Court the proviso contained in Section 7, Regulation 7, 1832, was intended to apply to Principal Sudder Ameens and Moonsiffs, and that consequently the former are not competent to confine a defendant without the sanction of the Judge.—*Con. No.* 947, *West. C.* 1*st May*, *Cal. C.* 22*d May*, 1835.

452. It has been ruled by a majority of the Allahabad and Calcutta Courts, that by Act 25, 1837, the Principal Sudder Ameen has full power to pass any order connected with the case before him that the Judge himself could pass, subject to an appeal to the Sudder Dewanny Adawlut: he is therefore competent to order the imprisonment of a Defendant in suits above Rupees 5000; and it is not necessary that the Judge should have jurisdiction in the case to enable him to direct the Civil Jailor to take charge of the Defendant or to release him on the requisition of the Principal Sudder Ameen, the Judges duty, in such case, being merely to issue the Warrant, the Jailor to receive (or release,) the prisoner in the same way that he was required to give lodgment to prisoners under revenue process, before the issue of Circular Order, No. 76, of the 4th January 1833, which empowers Collectors to issue their own orders for the imprisonment and release of their own defaulting assamees.—You are requested to make known the purport of this Construction to the Principal Sudder Ameen of your district.—*Cir. Ord.* 18*th Sept.* 1840.

Reports.

453. The Principal Sudder Ameen shall furnish such monthly and other periodical reports of business done in their Courts, as the Sudder Dewanny Adawlut may be pleased to direct.—*Reg.* 5, 1831, *Sect.* 23.

SECT. XLV.

Transmission of Reports and Records of decided Cases by Native Judges to the Zillah Courts.

454. It shall be the duty of the Moonsiffs to transmit to the Judge on the fifteenth of each month, or as much sooner as may be practicable, a report of all the suits decided by them in the preceding month, drawn up according to the annexed form No. 5, of the Appendix. These reports shall be accompanied by all the original papers and documents in the case, that they may be deposited among the records of the Court.—*Reg.* 23, 1814, *Sect.* 43, *Cl.* 1.

455. The Moonsiffs shall likewise be required to transmit on the 15th of January and 15th of July of each year, or as much sooner as may be practicable, a report of the causes depending before them on the 1st of January and 1st of July, drawn out according to the annexed form No. 6, of the Appendix.—*Reg.* 23, 1814, *Sect.* 43, *Cl.* 2.

456. The required monthly and half yearly reports shall be enclosed in a cover addressed to the Judge, and sealed with the seal of the Moonsiff. The packet shall be forwarded to the Judge either by the public dawk, (the officers of which are hereby required to receive and convey such packets free of postage,) or by a servant of the Moonsiff, or the Moonsiff may deliver it to the nearest police Darogah who shall give a receipt for it, and convey it to the Judge. The Moonsiffs are directed to seal and fasten the public packets and reports which they may have occasion to transmit to the Court, in such manner as may enable the Court to detect any instance in which the packets may be opened, or the seals broken, during their transmission to the Court.—*Reg.* 23, 1814, *Sect.* 43, *Cl.* 3.

These Rules are made applicable to Sudder Ameens by Reg. 23; 1814, *Sect.* 73.

And also to Principal Sudder Ameens by Reg. 5, 1831, *Sect.* 18, *Cl.* 4.

457. The Moonsiffs shall accompany the monthly Reports required from them by Section 43, Regulation 23, 1814, with a statement of the suits instituted before them in the preceding month.—*Reg.* 5, 1831, *Sect.* 10.

458. I am desired to point out to you that the provisions of Clause 1, Section 43, Regulation 23, of 1814, which require the transmission by the Moonsiffs, (and, under Section 73 of the same law, by the Sudder Ameens, the rule applicable to whom is extended by Clause 4, Section 18, Regulation 5, of 1831, to Principal Sudder Ameens,) on or before the 15th of each month, of reports of all suits decided by them in the preceding month, to the Judge, together with the original papers and documents in each case, for deposit among the records of his Court, although the Section itself has in fact been rescinded by Section 2, Regulation 7, of 1829,—are still, under Clause 2, Section 3, of the last mentioned enactment, in force, never having been specially dispensed with or ordered to be discontinued by the Court.—*Cir. Ord. Cal. and West. C.* 20*th Sept.* 1839, *Par.* 4.

459. The Moonsiffs and Sudder Ameens will forward, along with their regular returns of business, the dispatch of which must be regulated with reference to the period within which, as declared in paragraph 4 of Circular Orders No. 28, dated 7th December last, you are yourself expected to submit your statements to this Court, viz. ten or at furthest fifteen days from the close of the month to which they relate, the same reports of suits decided, with the original papers and documents of each suit, (including of course the final decree,) as under Clause 1, Section 43, Regulation 23, of 1814, they were bound to do; and the same course will be followed by the Principal Sudder Ameen in so far as regards all suits not exceeding 5000 Rupees in amount.—*Cir. Ord. Cal. and West. C.* 20*th Sept.* 1839, *Par.* 9.

460. With the records of regular suits the Moonsiffs, Sudder Ameen, and Principal Sudder Ameen, will also transmit, for deposit, the records of all cases of execution of decrees and other miscellaneous cases that may have been disposed of in the preceding month, with exception to cases of enforcement of decrees, struck off the file in that period, in which an application may have been made, to sue out execution anew, prior to the date of transmission, in which event they will send, in lieu of the record, copies of the order striking the case off the file, of the petition for revival, and of the proceeding thereon.—*Cir. Ord. Cal. and West. C.* 20*th Sept.* 1839, *Par.* 10.

461. It is highly desirable that you should occasionally inspect the records of such cases, especially those which concern the execution of decrees that have been struck off in default, with a view of satisfying yourself that no abuse or irregularity has been practised in so proceeding, and of taking proper steps to correct the same, if detected.—*Cir. Ord. Cal. and West. C.* 20*th Sept.* 1839, *Par.* 11.

462. As regards suits decided by the Principal Sudder Ameen; which exeeed 5,000 Rupees in value, the Court except them from the above rule, and direct that the records of such cases shall be retained by that officer for a period of six months, so as to enable him to execute any orders

issued to him thereon by the Sudder Dewanny Adawlut, on occasion of appeals being preferred; after which they are to be forwarded for deposit in your office. The usual report, submitted monthly, will of course include these decisions also.—*Cir. Ord. Cal. and West. C. 20th Sept.* 1839, *Par.* 13.

SECT. XLVI.

Criminal Jurisdiction of the Native Judges.

463. The foregoing provisions (given below, Rule 464, 465 and 466,) are hereby declared to be equally applicable to any of the Sudder Ameens, who may be empowered under Section 5, Regulation 2, 1821, to try civil suits exceeding in value or amount the sum of one hundred and fifty Rupees, and likewise to all Sudder Ameens whether vested with such powers or not, who may be appointed to the stations of the Joint Magistrates, and the latter officers are hereby authorized to employ such Sudder Ameens in the manner above specified.—*Reg.* 3, 1821, *Sect.* 4.

464. The Zillah and City Magistrates are authorized to refer for trial to the Hindoo and Mahomedan Law Officers of their respective Courts, all complaints or charges brought before them for petty offences, such as abusive language, calumny, inconsiderable assaults or affrays, and all charges of petty thefts when unattended with any aggravating circumstances.—*Reg.* 3, 1821, *Sect.* 3, *Cl.* 1.

465. The Magistrates of the Zillah and City Courts shall be competent to refer to their law officers any criminal cases, which they are already authorized by former Regulations to refer to their assistants, and in the mode of making the reference, and in the subsequent stages of the proceeding, the Magistrates and the Law Officers shall be guided by the provisions hitherto in force relative to such cases.—*Reg.* 3, 1821, *Sect.* 3, *Cl.* 2.

466. The Law Officers of the Zillah and City Courts in the decision of criminal cases so referred to them, are hereby authorized to exercise the same powers as those vested in the assistants to the Magistrates, by Section 20, Regulation 9, 1807, and by the other Regulations therein referred to; that is, in cases referred to them for trial, they shall not sentence a person convicted of abusive language, or calumny, or inconsiderable assault or affray, to a more severe sentence than fifteen days imprisonment, and a fine of fifty rupees with an eventual commutation, if the fine be not paid, to further confinement for fifteen days more, making the entire term of imprisonment, if the fine be not paid, one month of thirty days. Nor shall they sentence a person convicted of petty theft to a more severe corporal punishment than thirty ratans, and imprisonment for a period of one month. Persons sentenced to imprisonment by the Law Officers shall not, during their imprisonment, be confined in irons or in fetters, except in cases in which the misconduct of such individual, during his imprisonment, shall appear to the Magistrate to render such measure necessary for his safe custody.—*Reg.* 3, 1821, *Sect.* 3, *Cl.* 3.

Corporal punishment has since been abolished.

467. All persons amenable to the authority of the established Criminal Courts who may be guilty of contempt of Court in any of such Courts; shall be liable to a fine, proportionate to the circumstances of the case, not exceeding two hundred rupees, by order of the Court, in which the offence may be committed; and if the fine be not paid the offender shall be confined in the Civil Jail of the station, for such period as may be

fixed in commutation thereof, not exceeding two months.—*Reg.* 12, 1825, *Sect.* 5, *Cl.* 2.

468. This rule is meant to include Wilful Contempts in the Courts of the Native Law Officers and Sudder Ameens to whom complaints of petty offences may be referred for trial, under the provisions of Regulation 3, 1821, but the orders passed by the Law Officers and Sudder Ameens in such cases, shall be immediately reported to the local Magistrate or Joint Magistrate, with a copy of the proceeding held in the case, for his consideration and orders.—*Reg.* 12, 1825, *Sect.* 5, *Cl.* 3.

469. The Court of Nizamut Adawlut have had before them your letter, dated the 27th ultimo, requesting to be informed, whether cases pending in the Criminal Court, under Regulation 15, 1824, may be referred for trial to a Sudder Ameen, vested with special powers, under Section 5, Regulation 2, 1821. In reply, I am desired to communicate to you the opinion of the Court, that cases of the nature specified are not properly cognizable by the officers in question.—*Con. No.* 415, 14*th April*, 1826.

470. In cases referred for investigation and decision to the Sudder Ameens by the Magistrate, under the provisions of Section 4, Regulation 3, 1821, have the Sudder Ameens authority to issue perwannahs to the thanadars, police darogahs, or other mofussil police officers? In reply, I am desired to acquaint you, that the Court entirely coincide with you in opinion, that no power is vested by the regulations in the Sudder Ameens, in any of the three mentioned cases, and that it is the duty of the Sudder Ameens, where the necessity may exist, to represent the matter to the Judge, Magistrate, or additional Register, as the case may be, and that the order should issue from the superior Court.—*Con. No.* 451; 30*th March*, 1827.

471. As Sudder Ameens are to be guided, under Sections 3 and 4, Regulation 3, 1821, in criminal cases referred to them, by the rules prescribed for the guidance of Assistants to Magistrates, the Court are of opinion that their processes in such cases should be issued under their own signatures, but under the seal and through the officers of the Magistrate.—*Con. No.* 741, *Cal. C.* 7*th Dec.* 1832, *West. C.* 11*th Jan.* 1833.

472. It may of course occasionally, (though the Court would suppose rarely,) happen, that a case, apparently trivial, may, on investigation, turn out to be of a serious nature; in which event it would be necessary for the law officer, (or Native Judges) to whom the case had been sent for trial and decision, to return it to the Magistrate, unaccompanied however by any opinion as to the merits of the case; and the Court are, upon the whole, clearly of opinion that Mr. Smith's view of the existing rules on this subject is erroneous, and that the Magistrates are authorized to refer such cases only to their law officers, as are of a trivial nature, and admit of their being finally disposed of by those officers.—*Con. No.* 516, 24*th July*, 1829.

473. I beg the favor of the Court to decide whether a deposition taken on oath in the private dwelling of a Sudder Ameen, distant nearly three miles from the Court house, is legal evidence; and if so; whether a witness can be punished for perjury, in the event of it afterwards appearing that what he stated on oath in the dwelling house of the Sudder Ameen was false. In reply to your first question, I am directed to observe that a deposition taken in the manner above stated is illegal, and cannot be received; consequently the deponent cannot be considered liable to the penalties of perjury if such deposition be false.—*Con. No.* 627, 28*th Feb.* 1831.

474. The Law Officers of the Zillah and City Courts shall forward to the Magistrates, on the fifth day of each month, a statement shewing the manner in which the cases referred to them may have been disposed of, in order that the same after having been carefully inspected by the Magistrates, with the view of noticing and eventually correcting any irregularities, may be incorporated in the periodical reports required to be submitted to the Superior Courts.—*Reg.* 3, 1821, *Sect.* 3, *Cl.* 4.

475. No appeal shall be admitted from the order of an assistant or a Sudder Ameen in cases referred to them of a Criminal nature by the Magistrate, or Joint Magistrate, unless preferred within the period of one month from the date of such order.—*Reg.* 3, 1821, *Sect.* 5, *Cl.* 1.

476. In calculating the period of one month above specified, the Courts shall be guided by the principles of the rules contained in Clause Tenth, Section 8, Regulation 26, 1814.—*Reg.* 3, 1821, *Sect.* 5, *Cl.* 2.

477. In addition to the rules contained in Section 3, Regulation 3, 1821, which are hereby declared applicable to the Principal Sudder Ameens appointed under this Regulation, it shall be competent to the Magistrate to refer to a Sudder Ameen or Principal Sudder Ameen, not being a Mahomedan Law Officer, any Criminal case for investigation, though such case may not be finally cognizable by such Sudder Ameen, provided however, that no commitment be made by those officers, and that their powers of awarding punishment in Criminal matters, under the existing Regulations, be not exceeded.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 6.

478. The Court are of opinion that under Clause 6, Section 18, Regulation 5, 1831, which is adduced by the Magistrate as his authority for making the reference, he is not empowered to adopt this course in the disposal of cases, under Regulation 15, 1824; that Section being intended to refer to cases of a strictly criminal nature.—*Con. No.* 689, *West. C.* 27*th April, Cal. C.* 18*th May,* 1832.

479. Decided by the Government, in concurrence with the Western Court, that all cases under the provisions of Regulation 7, 1819, are referrible to the Principal Sudder Ameen for investigation and report.—*Con. No.* 1265, *West. C.* 6*th Dec.* 1839, *Cal. C.* 10*th March,* 1840.

SECT. XLVII.

Registry of Interlocutory orders passed in suits.

480. The Zillah Judges, the Principal Sudder Ameens, the Sudder Ameens, and the Moonsiffs are hereby severally directed to have each a book, to be called the "Buhee Yaddasht" prepared; the pages of which are to be numbered, and every leaf attested by the signature of the serishtadar, peshkar, or other superior ministerial officer of the Court.—*Cir. Ord. Cal. and West. C.* 15*th May;* 1835, *Par.* 2.

481. The first and last leaves of this book are to be signed by the Judge, Principal Sudder Ameen, Sudder Ameen, or Moonsiff, as the case may be, who is thereon to specify the number of pages which the said book contains. Into the book thus prepared, every order, final or interlocutory, on every regular suit or appeal is to be briefly entered as soon as it is passed, and the Judge, Principal Sudder Ameen, Sudder Ameen, or Moonsiff is to sign the same before he leaves his Court. When the order is one finally disposing of a suit or appeal, the vakeel or vakeels of the party or parties are to attest the said entry by their signatures.—*Cir. Ord. Cal. and West. C.* 15*th May,* 1835, *Par.* 3.

482. It is not required that orders on Miscellaneous petitions should be thus entered, though it would be better that this should be done, if not attended with embarrassment; but the Court do not exact this of the inferior tribunals, because they are anxious to render the present order so simple, that no difficulty whatever may attend its observance, upon which they feel incumbent on them to insist. It is also to be understood that it is merely the order passed, and not the reasons for it, that are required to be entered. These latter, demanding time and deliberation, cannot, the Court are well aware, always be put down at the instant; but there can never be any thing to

prevent every officer from recording, without delay, whether a case is decided in favor of the plaintiff or defendant; whether a decision in appeal is to be confirmed, amended, or reversed; and whether decision is postponed for the appearance of witnesses, the production of documents, or any other cause. The books in question are, when completed and filled up, to be deposited by all the judicial authorities subordinate to the Zillah Judge in the record office of the district, and the Record-keeper is to grant a receipt for the same on their being so deposited. It is discretional with the Zillah Judge to intrust the books for his own office to any officer on his establishment, or to deposit them with the Record-keeper, as he may deem best; provided that the books shall be forthcoming should their production ever be required, and that on quitting his office, he shall be bound to hand them over to his successor.—*Cir. Ord. Cal. and West. C. 15th May*, 1835, *Par.* 4.

SECT. XLVIII.

Applications for Copies of Papers or Orders to the Civil Courts.

483. The Court of Sudder Dewanny Adawlut are of opinion, that under the rule prescribed for the several Civil Courts, which directs that a copy of the order passed upon any representation made in writing to the Court, "be delivered to the person making the representation, or to his vakeel, under the seal of the Court, and attested by the Register;" all persons interested in cases depending before, or decided by, the Civil Courts, are entitled to receive authenticated copies of any orders passed in such cases, on furnishing the stampt paper required by Section 19, Regulation 1, 1814, (*now*, Regulation 10, 1829.)—*Cir. Ord. 14th May*, 1818, *Par.* 2.

484. With respect to applications for copies of proceedings and documents, not falling within the rule adverted to in the second paragraph of this letter, and for the delivery of which no express provision has been made by the Regulations in force, the Courts of Sudder Dewanny and Nizamut Adawluts are of opinion, that the Provincial Courts of appeal and circuit, and the Zillah and City Judges and Magistrates, must be considered to possess a discretion, either to comply with applications for copies, on sufficient cause being stated for granting them on stampt paper, or for allowing them to be taken on any paper, in pursuance of the fourth Clause of Section 16, Regulation 26, 1814, or to refuse compliance when satisfactory cause may not be assigned for granting a copy, or allowing it to be taken, especially when the application may be from a person not a party, or immediately interested in the case.—*Cir. Ord. 14th May*, 1818, *Par.* 4.

485. Applications for copies shall be made to the native Judges in whose Courts the suits in which the papers were filed may be pending; and those officers shall decide on the propriety of complying with or rejecting such applications, on their own authority, and shall themselves authenticate the copies which they see fit to grant. The Court observe, however, that as regards final orders in miscellaneous cases, as well as all interlocutory orders, no option is possessed by those tribunals of rejecting the applications for copies which parties may desire to obtain, and to which they are entitled, from the Moonsiffs on plain paper and from the Courts of the other native Judges upon the prescribed stamp.—*Cir. Ord. Cal. C. 15th Nov.* 1839, *West. C. 16th Jan.* 1840, *Par.* 2.

486. When the records of suits decided by the native Judges have been transmitted, in the prescribed manner, to the Judge's office, applications shall be presented to and disposed of by the Judge.—*Cir. Ord. Cal. C. 15th Nov.* 1839, *West. C. 16th Jan.* 1840, *Par.* 3.

487. With a view to uniformity of practice, the Court are pleased to resolve that henceforward the authorized rate of remuneration to copyists of papers in the Persian, Oordoo, or Bengalee language, in your Court, to which parties are not entitled free of charge, shall be a Rupee for 4,000 words, correctly written in a clear and legible hand, figures counting as words; which is the same as the rate recently sanctioned by the Government for paying temporary Mohurrirs employed to copy

the proceedings of cases appealed direct to the Sudder Dewanny Adawlut from the Principal Sudder Ameens' Courts.—*Cir. Ord. 4th Sept.* 1840.

488. The principles of the rules contained in Clauses Eighth, Ninth and Tenth, of this Section, are to be considered applicable to all copies of decrees, from which a party may be desirous of preferring a special or a summary appeal; and to all copies of orders passed by the Judges and Registers of the Zillah and City Courts, by the Provincial Courts, and by the Sudder Dewanny Adawlut, which those Courts may be required to furnish to parties under the provisions of any Regulation.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 11.

SECT. XLIX.

Records of the Zillah and City Courts.

489. Two native keepers of the Records shall be appointed to keep the Dewanny Adawlut and Foujdarry Records in each Zillah, and in each of the Cities of Patna, Dacca, and Moorshedabad, and in each of the Provincial Courts of Appeal and Courts of Circuit, and in the Sudder Dewanny Adawlut, and the Nizamut Adawlut.—*Reg.* 18, 1793, *Sect.* 2.

Record keepers come under the denomination of Ministeral Officers of the Native Courts, and their removal and appointment follow the same Rules.

490. The keepers of the Records are to keep a Register, in the Persian and Bengal languages in Bengal and Orissa, and in the Persian language in Behar, of all the Dewanny and Foujdarry proceedings, documents, and other records belonging to the Courts to which they may respectively be attached, in a book, each leaf of which shall be attested by the official signature of the Register, and Assistant to the Judges and Magistrates of the Zillahs and Cities, and the Registers to the Provincial Courts of Appeal and the Courts of Circuit, and the Sudder Dewanny Adawlut and the Nizamut Adawlut, and on the last leaf of which they shall specify in their own hand writing, the number of pages contained in the Book. The existing Records are to be first registered, and the keepers of the Records are to prepare a list of them immediately upon the receipt of this Regulation.—*Reg.* 18, 1793, *Sect.* 4.

491. The Government having been pleased to authorize the entertainment of a Mohurrir in every Zillah, on a salary of 12 Rupees per month, to be employed exclusively in keeping up the Registers prescribed by Section 4, Regulation 18, 1793, I am directed by the Court to request that you will cause the following Registers to be immediately commenced upon, in the language now in use in your Court.

No. 1. Register of Civil suits disposed of by the Judge, additional Judge, Principal Sudder Ameen, and Sudder Ameen of Zillah ———— in the year 183—, and deposited in the records of the Court of that district, as per annexed form.

No. 2. A similar Register of suits disposed of by Moonsiffs.

No. 3. Books containing the usual list of papers comprising the record of cases disposed of by the Judge, Additional Judge, Principal Sudder Ameen, and Sudder Ameen, of Zillah ———— for 183—.

No. 4. Similar books for the cases disposed of by the Moonsiffs.—*Cir. Ord. Cal. C.* 10*th Aug. West. C.* 23*d Nov.* 1838, *Par.* 1.

492. 2. The first two register books will be kept up, under the immediate orders of the Record keeper, by the Mohurrir specially appointed for the purpose. In them will be entered all

regular suits disposed of by the Judge and the subordinate judicial officers, whether decided on their merits or otherwise. In entering in the proper column the final order in each case, the Record keeper must be directed to state the nature of that final order, that is, in cases dismissed or decreed for the whole claim to enter merely the word dismissed or decreed, but where the decree affects only a part of the matter or thing in dispute to record the substance of such order.—*Cir. Ord. Cal. C. 10th Aug. West. C. 23d Nov.* 1838, *Par.* 2.

493. 3. The books (Nos. 3 and 4,) which are to contain a list of the papers composing each case, are to be kept up in the Courts to which they severally belong. The lower Courts will forward to the Judge, at the end of every month, the original records of all cases disposed of within the month, for the purpose of being placed in his Record office, and will accompany each case with a list, taken from those books, specifying the nature of the papers comprising the misl. The Judge's omlah, after comparing such list with the original misl and finding the two to correspond, will immediately fill up column No. 7 of the registers Nos. 1 and 2. The labour of compiling the books in question, which will be entailed on the establishment of the lower Courts, is not more than, with the recent addition to their allowances, they may fairly be expected to undertake.—*Cir. Ord. Cal. C. 10th Aug. West. C. 23d Nov.* 1838, *Par.* 3.

494. 4. In those districts in which the registers have been allowed to fall into arrears or have been totally neglected, the Court expect the Judges will avail themselves, as far as possible, of their regular establishments to supply in an abstract form the information for past years which ought to have been entered in the neglected registers.—*Cir. Ord. Cal. C. 10th Aug. West. C. 23d Nov.* 1838.

FORM OF REGISTER BOOK No. 1.

REGISTER of Civil Suits, disposed of by the Judge, Additional Judge, Principal Sudder Ameen and Sudder Ameen of Zillah ———— in the year 183—, *and deposited among the Records of the Court of that District.*

Number of Registry.	Number and Nature of Suit.	Names of parties.	Substance of Petition of Plaint or Appeal.	Date of filing Petition of Plaint or Appeal.	Date and substance of final order, and by whom passed.	Actual number of Papers, comprising the Record of the case.	Remarks.
1, ...	321, Original Suit,	Raj Kissore Chowdry, Plaintiff, *vs.* Huree Kissen, Defendant, ...	For possession of Talookh Radanagor —Suit laid at Rs. 5,300, three times the Sudder Jumma	1st July 1835	Decree by A. B., Esquire, Judge, in favour of the Plaintiff, on the 2d January 1837	Fifty-one, as per list in page 1, Book No. 3.	The papers were forwarded to the Collector on the 10th May 1837, as requested by his Roobacarry of the 1st May 1837. Returned back from Collector on 13th August 1837. Transmitted to the Court of Sudder Dewanny Adawlut on the 1st November 1837.
...	405, Appeal, ..	Appellant, *vs.* Respondent,	To set aside the decision of Moolvee ——, Principal Sudder Ameen, dated—	7th March 1836,	Appeal dismissed and the decision of Principal Sudder Ameen confirmed by the Judge on the 3d January 1837,	Seventeen as per list in page 1, Book No. 3.	

No. 2.

The same as above for the Moonsiffs.

495. The keepers of the Records are to indorse upon the back of every paper or document which they may enter in the Register, the number of the page in which it may be registered, and the endorsement is to be attested with the official signature of both or either of them.—*Reg.* 18, 1793, *Sect.* 5.

496. It shall be the duty of the keepers of the Records to see that the Records of the Court are not destroyed by insects, damp, or otherwise, and that they are not removed without the orders of the Court.—*Reg.* 18, 1793, *Sect.* 6.

497. If any Records entered in the Register shall be destroyed in consequence of the neglect or any omission of the keepers of the Records, or if any such Records shall not be forthcoming, and they shall not be able to give a satisfactory account of them, they shall be liable to dismission from their offices.—*Reg.* 18, 1793, *Sect.* 7.

498. The keepers of the Records are to be careful to attend to any rules or orders respecting the duties of their office, that may be prescribed to them by any Regulation, printed and published in the manner directed by Regulation 41, 1793, and also to any directions that may be given to them by the Court to which they may be attached, or the Register thereof, for the better keeping, preserving or registering the Records.—*Reg.* 18, 1793, *Sect.* 8.

499. The Courts of Dewanny Adawlut established in the several Zillahs, and at the Cities of Patna, Dacca and Moorshedabad, are to keep a book in which the daily proceedings in each cause, and every order or act of the Court, are to be minuted in the Persian or Bengal language, in Bengal and Orissa, or in the Persian language, or the Hindoostanee language and Nagree character in Behar, and attested with the signature of the Judge. The plaint, answer, reply, and rejoinder of the parties, and every deposition, exhibit, and paper whatever, read and filed in each cause, is to be minuted and referred to in this book, by marks or numbers, corresponding to marks or numbers, to be endorsed on each document when it may be read in the cause.—*Reg.* 18, 1793, *Sect.* 9.

500. I am directed by the Court to acknowledge the receipt of your letter of the 3rd instant, forwarding copy of one from the Secretary to the Board of Revenue, and requesting the Court to state what objection they perceive to permitting the Board of Revenue to procure from the established Courts of justice their original records for inspection.

The Court direct me to observe that the measure appears to them open to the following objections: 1st. the permission, if granted to all parties, would be attended with much risk of the records being fraudulently altered or lost: 2ndly. it would be attended with inconvenience, from the records not being at hand, when a reference to them might be necessary: and 3rdly. if it could not be granted to all parties, it would be wrong to grant it to any, more especially to the conductors of Government suits; as it behoves the Courts of justice to guard against the possibility of affording ground for suspicion that they might be influenced by the Government in allowing an indulgence to them, which would not be allowed to their opponents.—*Cir. Ord. Cal. and West. C. 28th Dec.* 1832, *Par.* 2.

501. The Court further observe that there exists in their opinion no necessity for deviating, in favor of the revenue authorities, from the general rule of practice. They are not aware that the Superintendent of Legal Affairs ever claimed to be furnished with original records of the Civil Courts, though he may have been allowed to inspect them in the Court houses within his reach, in common with other individuals. The same thing could be done by the Board, the Commissioners of revenue, and other officers conducting public suits, through the agency of their assistants or omlah; and they could obtain through their vakeels on unstampt paper, in the same manner as the

parties in private suits and their agents do, copies of all documents or papers they may wish to refer to, at the trifling expense of having them transcribed.—*Cir. Ord. Cal. and West. C. 28th Dec. 1832, Par. 3.*

502. I am directed to communicate to you, in reply to your letter of the 26th December last, the opinion of the Court that you ought not, in ordinary cases, to furnish the officers employed in the resumption department with the original records of your Court, but that you should inform the Special Commissioner and Deputy Collector, that you will furnish them with copies of any papers that they may require, on their authorizing you to defray the expence of transcribing them. Should an inspection of the original records, or any papers filed therein, be indispensably necessary, you will then, previous to forwarding the same, retain an attested copy, the expence of making which must be defrayed by the revenue authorities.—*Con. No. 1070, Cal. C. 27th Jan. West. C. 10th Feb. 1837.*

503. I am directed to transmit to you the accompanying copy of correspondence as per margin, on the subject of arranging the records of the Civil Courts, and to request that you will take measures for giving immediate effect to the plan laid down in the extract from the letter of the Judge of Cuttack.—*Cir. Ord. 18th June, 1841.*

Extract from a letter from the Judge of Cuttack to the Court, No. 223, dated 21st December, 1839.

504. The object in arranging voluminous records both of cases decided (but to which occasional reference is required) and of cases pending, appertaining to several Courts is apparently two fold, viz. preservation and facility of reference.—*Cir. Ord. 18th June, 1841, Par. 2.*

505. The system of arrangement ultimately adopted by the Judge of Allahabad appears for the most part unobjectionable; but I am of opinion that with reference to the various forms of record rooms, and shapes of racks, in different Zillahs, no fixed rules for the disposition of records can be laid down. If functionaries will only see that the Record-keeper keeps the papers of each jurisdiction separate, subdividing them again according to departments or rather description of cases, and arranging them by years and months, (each bustah containing the produce of one month carefully docketed outside) no difficulty can occur.—*Cir. Ord. 18th June, 1841, Par. 4.*

506. In regard to cases pending, it is the practice in this office, and I think unobjectionable, that, during the day, they remain in charge of the officer of the department until disposed of, and at night, are placed in the record office for safe custody. The papers appertaining to cases finally disposed of, are handed over to the Record-keeper as soon as the final roobakaree has received the Judge's signature.—*Cir. Ord. 18th June, 1841, Par. 5.*

507. The records of this office are arranged upon the principle alluded to in the latter part of paragraph 4, and, with exception of the racks not bearing tickets of their contents and the Moonsiff's records not being in bustahs and some miscellaneous cases requiring more detailed subdivision (all of which has been directed to be done forthwith,) I am not aware of any alteration which could be suggested in this office as an improvement and at the same time absolutely requisite.—*Cir. Ord, 18th June, 1841, Par. 6.*

SECT. L.

Custody of Monies paid into the several Courts.

508. *Extract of a letter from the Honourable Court of Directors, dated the 11th April, 1826.* We are not aware of the nature of the rules which have been established for preventing the recurrence of similar abuses, but we have to suggest that all monies paid into the Civil and Criminal Courts, either in satisfaction of decrees, or otherwise, should be paid directly into the treasury of the Court; and in order to secure a strict observance of this rule, the treasurer of the Court should be required to submit to the Judge a monthly statement of all monies received by him, specifying the names of the parties on whose account the monies had been lodged. A comparison of this

statement with the Register of the decrees and orders issued by the Judge would enable him to ascertain precisely the number of decrees which had been completely executed, and to institute an inquiry into the causes which had prevented the complete execution of the others. We are also of opinion, that all sums remaining unclaimed after a certain period, whether arising from monies paid into the Court in the execution of decrees, or as the proceeds of the sale of property of persons dying intestate, or on any other account, should be transferred to the Collector of the district, in order that the same may be placed at the disposal of Government. Such transfer should not, however, be considered in the slightest degree to affect the claims of the parties legally interested to recover their property, but it should be adopted as the best mode of deposit calculated for protecting the rights and interests of individuals, by removing all strong temptations on the part of the native ministerial officers of the Courts, to embezzle or otherwise misappropriate the funds placed under their charge. Our purpose is, that all sums should be brought to account, and that they should always be forthcoming on being claimed by the right owners. But the mode by which this will be best effected is a matter of detail into which we cannot conveniently enter, and the determination of which we therefore leave to the discretion of your Government.—*Cir. Ord.* 14*th Aug.* 1827, *Par.* 83.

509. You will therefore be pleased to direct the Principal Sudder Ameens and Sudder Ameens of your district, who are or may be stationed at any other place than the Sudder Station of the district, to deposit in the treasury of the Collector or Deputy Collector of the station, all sums of money paid into their Courts on account of Vakeels' fees, execution of decrees, &c. and to keep Registers of such deposits in the Persian language, in the same form as such Registers are kept in your office, with such detailed instructions as you may think necessary. The Court are of opinion, that each deposit sent to the Collector's treasury should be accompanied by an extract from the Register of deposits, as suggested by the officiating Deputy Collector; and with regard to the payment, that an order from the Sudder Ameen, detailing the number and other particulars of the deposit in the Register, countersigned by the Collector or Deputy Collector, would be sufficient authority to the treasurer to pay it.—*Cir. Ord. West. C.* 16*th Nov. and* 28*th Dec.* 1832, *Cal. C.* 16*th Nov.* 1833.

510. The Court having again had before them your letter No. 20, under date the 3d April last, direct me to communicate to you their opinion, in reply to the question therein submitted, that applications for the payment of sums of money deposited in Court must in every case be made on stampt paper as a record, unless a specific order should, at any time, have been passed ordering payment of the amount.—*Con. No.* 1093, *Cal. and West. C.* 9*th June,* 1837.

SECT. LI.

Remittance of costs of suit from one district to another.

511. I am directed by the Accountant General to request, that whenever the Judge of your district shall desire to remit to another Court the amount realized by him in execution of a decree, forwarded to him by the Judge of another Court, and paying the same into your treasury, shall apply for a bill upon the revenue treasury nearest to the Judge, in whose favour he may require the same, you will be pleased to grant a bill for the amount, provided the remitting Judge specifically states it to be on account of a decree of the other Court executed by him, with reference to the parties of the suit, and the original number it bears on the file.—*Cir. Ord.* 21*st May,* 1830.

SECT. LII.

Institution of suit against the Officers of Government.

512. Collectors of the Revenue, and their Assistants and native officers, Commercial Residents and Agents, and their Assistants and native officers employed in the provision of the investment, Salt Agents, and their Assistants and native officers concerned in the manufacture of salt, the Collectors of the customs, and their Assistants and native officers employed in the collection of the customs, the Mint and Assay masters, and their Assistants and native officers, are declared amenable to the Zillah or City Court in the jurisdiction of which they may reside, or carry on the public business committed to their charge, for any acts done in their official capacity, in opposition to any Regulation printed and published in the manner directed in Regulation 41, 1793.—*Reg.* 3, 1793, *Sect.* 10.—*Ben. Reg.* 7, 1795, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* 2, 1803, *Sect.* 7,

513. If a native, or any other person not being a British subject, shall consider himself aggrieved under any Regulation printed and published in the manner directed in Regulation 41, 1793, by an act done by any of the officers of Government described in Section 10, pursuant to a special order originating with the Governor General in Council, or the Board of Revenue or of Trade, the officer by whom the act may be done is not to be liable to be sued for it. In such cases, Government is to be considered as the defendant.—*Reg.* 3, 1793, *Sect.* 11.

514. All complaints against the Collector of Customs at Calcutta, or his public officers, or any other public officer at the Presidency, which by the Regulations in force are cognizable in any Court of Zillah Dewanny Adawlut, shall be received, tried, and determined, as prescribed in the Regulations, by the Judge of the Dewanny Adawlut of the twenty-four Pergunnahs, constituted in pursuance of the Regulations now enacted. —*Reg.* 7, 1806, *Sect.* 8.

515. The Opium Agents and their native officers of every description, are declared amenable to the Dewanny Adawlut of the City or Zillah within the jurisdiction of which they may be stationed for all acts done by them in their official capacity: provided however that any person conceiving himself aggrieved by the act of an Opium Agent or of any ministerial officer acting under his authority, shall, in the first instance, make application for redress to the Agent himself; and in the event of his not being satisfied with the order which the Agent may pass upon such application, it shall then be competent to him either to lay his case by petition before the Board of Trade, or at once to seek redress in the Dewanny Adawlut, or the City or Zillah within the jurisdiction of which he may reside. The rules contained in Regulation 2, 1814, shall be considered applicable to all cases that may arise under the operation of this Section, and the course therein prescribed shall be observed in the admission of such cases.—*Reg.* 13, 1816, *Sect.* 18.

516. During the manufacturing season, viz. from the middle of the month of October to the middle of July, if any molunghee or labourer, or any other person, who may be employed in the salt manufacture, shall deem himself aggrieved by any act or order of the Agent himself, (not being an act or order done under the powers vested in Agents by this Regulation in cases hereafter declared to be judicially cognizable by Agents and Superintendents of Salt chokies) he shall in the first instance state his com-

plaint in person, or by vakeel, to the Agent, and in the event of the Agent refusing to afford him the required redress, or of his omitting to grant it within a reasonable time, the complainant shall be at liberty to sue him in the Dewanny Adawlut.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 2.

517. During the manufacturing season, if a molunghee, or labourer, or any other person who may be employed in the Salt manufacture, shall deem himself aggrieved by any act of the Assistant to the Agent, or any officer attached to a Salt Agency, or by any contractor, molunghee or byoparry, he shall in the first instance state his complaint in person, or by vakeel, to the Agent in order that the Agent may give such redress as it may be in his power to afford: But if the Agent shall refuse to afford to the complainant the required redress, or omit to grant it within a reasonable time; or if the case be such as that the Agent may not have it in his power to redress the injury received, the complainant shall be at liberty to sue in the Dewanny Adawlut the party from whom he may have sustained the injury, or the Agent, if the act shall have been done under his orders, and the Court shall hold the party, or the Agent, responsible accordingly.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 3.

518. In the cases specified in the two preceding clauses, the Courts are not to receive the suit of the complainant, unless he shall prove, either by oath, or in any other mode which the Court may deem satisfactory, that he made the previous application for redress to the Agent, as directed in those clauses.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 4.

519. In the several cases specified in the second and third clauses of this Section, the complainant, if the engagements which he may have entered into on account of the manufacture be not completed, shall not quit the place of manufacture, to prosecute his complaint in person, without the permission of the head officer of the aurung under which he may work, or of the Agent or his Assistant; but shall employ a vakeel for that purpose, unless he shall offer to substitute a person to perform his work in his room, and the Agent, or his Assistant, or the head officer of the aurung, shall be of opinion that the work will be equally well performed by the person so offered to be substituted—in which case, the Agent or his Assistant, or officer, shall permit the complainant to depart.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 5.

520. During the months of Sawun, Bhadoon, and Assin, molunghees, labourers, and all other persons having entered into engagements on account of the salt manufacture, or having been employed in it, who may consider themselves aggrieved by any acts done by the Agent, or his Assistant, or any of his officers, or other persons employed by him, in breach of this Regulation, or any other Regulation printed and published in the manner directed in Regulation 41, 1793, are declared to have the option of suing either in person, or by vakeel, the party from whom they may have sustained the injury, in the Dewanny Adawlut, without preferring the previous application for redress, directed in the preceding Clauses of this Section, to be made during the manufacturing season; and further, with a view to ensure the molunghees, labourers, and other persons engaged in the manufacture, or transportation of salt, speedy redress of injuries they may sustain, the Courts are required to bring the suits instituted by the said persons for injuries sustained by them from the officers aforesaid, to a termination as expeditiously as possible, by trying them in preference to other suits:—Provided, however, that nothing in the six preceding Clauses shall be construed to empower the Courts of judicature to take cognizance of acts done by Salt Agents, in virtue of the judicial powers vested in

them by this Regulation, in respect to fines, confiscations and other penalties, prescribed for cases of illicit dealings in salt.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 7.

SECT. LIII.

Suits against Public Officers.—Rules regarding the Petition.

521. Whenever a petition of complaint may be preferred against a Collector of the land revenue or customs, a Commercial Resident, Salt Agent, or Opium Agent, or other person amenable for acts connected with his official duties, shall be presented to any Court of Civil Judicature competent to receive and try such cases, the Judge or Judges of such Court shall transmit the petition so received to the Board of Revenue, Board of Commissioners, or Board of Trade, according as the person against whom the complaint may be preferred, may be subject to either of those authorities.—*Reg.* 2, 1814, *Sect.* 3, *Cl.* 1.

522. With reference to the provisions of Regulation 2, of 1814, and to enable the Court of Sudder Dewanny Adawlut to bring to the notice of Government any delay which may occur between the date of filing and admitting the description of suits to which that Regulation relates; I am directed by the Court of Sudder Dewanny Adawlut to desire, that whenever you may have transmitted a petition of complaint, preferred in your Court against a Collector of land revenue or customs, a Commercial Resident, Salt Agent, Opium Agent, or other person amenable for acts connected with his official duties, to the Board of Revenue, or other superintending Boards, as required by the 1st Clause of Section 3, of the said Regulation, and the period of six weeks shall have elapsed without your having received from the superintending Board a final reply to your communication, you will report the circumstances of the case to the Court, to enable them to bring the same to the notice of the Governor General in Council.—*Cir. Ord. 6th Aug.* 1830.

523. With regard to applications under Clause 1, Section 2, Regulation 2, of 1814, the Zillah and City Judges are required by the Circular Orders of the 6th August 1830, No. 21, whenever they may have transmitted a petition of complaint preferred in their Court against a Collector of land revenue or customs, a Commercial Resident, Salt or Opium Agent, or other person amenable, for acts connected with his official duties, to the Board of Revenue, or other superintending Boards, as required by the Clause abovementioned, and the period of six weeks shall have elapsed without their having received from the superintending Board a final reply to their communication, to report the circumstances of the case to the Court to enable them to bring the same to the notice of Government.—*Cir. Ord, Cal. C. 7th Dec. West. C. 21st Dec.* 1838.

524. The Court observe that the Regulations make no exception in favour of such petitions [that is, petitions of complaint preferred under Regulation 2, 1814, against the officers of Government in their official capacity] and they are, therefore, of opinion that it was intended they should be written, when first presented, on stamp paper of the value in like manner with all other plaints. —*Con. No.* 1116, *Cal. and West. C. 8th Dec.* 1837.

525. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th instant, requesting to be informed, whether you are competent to entertain a suit instituted by a minor and his guardian, against the Collector, for having, under the authority of the Court of Wards, disposed of the minor's estate. In reply, I am desired to acquaint you, that the Court are not aware of any regulation which debars a minor, under these circumstances, from the same rights and privileges with respect to the mode of seeking redress for an alleged grievance, as are enjoyed by the community generally; and that in the Court's opinion he is, with his guardian, fully competent to institute a suit of the nature alluded to. It will of course be the duty of the Judge,

to whom the petition of plaint is preferred, to forward the same under the first clause of Section 3, Regulation 2, 1814, for the consideration of the Board of Revenue, and to proceed to the trial of the suit under the fourth clause of the above section, in the event of its not being deemed requisite by that authority that direct redress should be afforded.—*Con. No.* 410, 16*th Dec.* 1825.

526. The Board of Revenue, Board of Commissioners, or Board of Trade, on receipt of any petition of the nature described in the preceding clause, shall immediately take the circumstances stated therein into their consideration, in order to judge whether the redress solicited should be granted directly by Government, or whether the complainant should be left to prosecute his suit in the regular course of law.—*Reg.* 2, 1814, *Sect.* 3, *Cl.* 2.

527. Should the Board of Revenue, Board of Commissioners, or Board of Trade be of opinion, after making due enquiries on the subject either by consulting their own records, or by a referenee to the local authorities, or in any other mode which may be judged advisable, that the party complaining has been actually aggrieved, and that he is entitled to redress directly from Government, they shall submit the necessary report on the subject accompanied with their opinion, as to the nature and extent of the relief which should be granted.—*Reg.* 2, 1814, *Sect.* 3, *Cl.* 3.

528. Should the Board of Revenue, Board of Commissioners, or Board of Trade be of opinion, after making due enquiries on the subject, that the party complaining should be left to prosecute the case in the regular course of law, they shall inform the Judge or Judges of the Court from whom the petition may have been received of the result of their deliberations on that point; and such communication shall be deemed sufficient authority for the formal institution and trial of the suit in question. The Boards aforesaid shall at the same time determine whether the suit should be defended by the public officers as an action against Government, or by the person affected by the complaint in his individual capacity, and shall inform the Judge or Judges by whom the case may have been referred to them of their decision on this point accordingly. —*Reg.* 2, 1814, *Sect.* 3, *Cl.* 4.

529. In order to prevent misconstruction, it is hereby declared, that the foregoing provisions are only intended to apply to cases of the description of those mentioned in Sections 2 and 3, Regulation 8, 1806, and are not to be considered applicable to charges of corruption, for the receipt and trial of which separate provisions have been established by Regulation 17, 1813.—*Reg.* 2, 1814, *Sect.* 4.

530. In cases in which a party preferring a petition of complaint against a Collector of the land revenue, or of customs, or against a Commericial Resident, or other person amenable to the Courts of Civil judicature, for acts connected with his official duties, may not be considered entitled to redress from Government, under the provisions of Clause Third, Section 3, Regulation 2, 1814; and who may consequently, under the Fourth Clause of that Section, proceed to prosecute the case in the regular course of law, such suits shall be entered on the file of the Court, from the date on which the petition was originally received, and the case shall be brought to a hearing and determination, in the order in which it would have been heard and determined, had it been originally instituted on such date.—*Reg.* 13, 1829, *Sect.* 5.

SECT. LIV.

Suits against Public Officers.—Defence of Suits; Process; Security.

531. The Agents are authorized, in cases in which they may deem it advisable so to do, to undertake the defence of any suit that may be instituted in the Dewanny Adawlut against their assistants or any of their officers, or other persons employed by them in the business of the manufacture; but in such cases the agent himself is to be considered as responsible for the decree of the Court.—*Reg.* 10, 1819, *Sect.* 13, *Cl.* 6.

532. The Agents, their covenanted and uncovenanted Assistants, and head officers of aurungs shall not be liable to prosecution for any official acts of their predecessors. But persons who may be removed from an agency, or an assistantship, or the appointment of head officer of an aurung, are to carry on, in the same manner as if they had continued in the office, all suits instituted against them in their official capacity,—unless the Board of Customs, Salt and Opium, upon a consideration of the circumstances of the cases, shall deem it advisable to order the Agent for the time being to carry on the suits. This rule however is not to extend to suits in which an Agent, or a covenanted or uncovenanted Assistant, or head officer of an aurung, who may have been removed, shall have been engaged in virtue of the orders from the Board of Customs, Salt and Opium, or the Governor General in Council. All such suits are to be carried on by the agent for the time being at the risk of Government.—*Reg.* 10, 1819, *Sect.* 16.

533. No Collector is to be liable to prosecution for any official acts of his predecessor. But persons who may be removed from the office of Collector of the revenue of a Zillah, are to carry on, in the same manner as if they had continued in the office, all suits of the nature of those described in Section 33, in which they may be engaged, and all suits preferred against them in the Zillah Courts, for sums that they may have demanded or received on behalf of Government, and for the costs and damages in which they are declared eventually answerable; as well as all suits, being appeals from decisions in suits of the last mentioned description, excepting such of those appeals as they may have preferred, or in which they may have become a party, in consequence of orders from the Board of Revenue.—*Reg.* 14, 1793, *Sect.* 41.—*Ben. Reg.* 6, 1795, *Sect.* 47, *Ced. and Conq. Prov. Reg.* 27, 1803, *Sect.* 44.

534. When any process or order shall be issued by the Courts of Civil judicature, or the Magistrates, to a Salt Agent, or his Assistant, the Judge or the Register to the Court, is to forward it under a sealed cover, addressed to the Agent, or assistant, and superscribed with his official attestation. The agent, or his assistant, is immediately to acknowledge the receipt of the order, or process, by an endorsement to that effect on the back of it, and is to return it under a sealed cover, addressed to the Judge, or Register.—*Reg.* 10, 1819, *Sect.* 15.

535. When any process shall be issued by a Court of Civil judicature or a Collector, Assistant Collector, or officer in charge of the Abkarry Mehal to an [Opium] Agent, the Judge or the Register of the Court, or the Collector, Assistant Collector or officer aforesaid, is to transmit the process under a sealed cover, addressed to the Agent in the form of a letter, and superscribed with his name and official appellation. The agent is immediately to acknowledge the receipt of the process by an endorsement to that effect on the instrument, and to return it under a sealed cover addressed to the officer from whom it may have issued.—*Reg.* 13, 1816, *Sect.* 22.

536. When any process or order, shall be issued by any of the Courts of Civil judicature, to the Collector of a Zillah, in suits instituted under this Regulation, the Register of the Court immediately serving the process or order, is to transmit it under a cover sealed in the form of a letter, and superscribed with his name and official appellation, and addressed to the Collector. The Collector is to acknowledge the receipt of the process or order, on the day on which he may receive it, by a letter addressed to the Register of the Court by which it may have been served.—*Reg.* 14, 1793, *Sect.* 38.—*Ben. Reg.* 6, 1795, *Sect.* 44.—*Ced. and Conq. Prov. Reg.* 27, 1803, *Sect.* 41.

537. Security is not to be demanded from the Collectors for their personal appearance, in any suit in which they may be engaged under this Regulation. Nor shall any security be required from them for the payment of costs, or for the performance of the decrees or orders of the Court, in suits which are directed by this Regulation to be carried on by the Vakeel of Government, and at the public expense. In suits for sums demanded or received by the Collector on behalf of Government, for the costs and damages in which, he is declared eventually responsible, the Courts are to require the same security from the Collector for the payment of the costs and damages, as would be taken in similar cases from individual suitors; but they are not to require any security from him, for the performance of their decrees respecting the sums which may constitute the subject of the suits, as Government will be answerable for the due performance of them.—*Reg.* 14, 1793, *Sect.* 36.—*Ben. Reg.* 6, 1795, *Sect.* 42.—*Ced. and Conq. Prov. Reg.* 27, 1803, *Sect.* 39.

538. In the suits described in Section 33, which may be instituted against the Collector, he is to give the same security for the payment of the costs, and the performance of the decrees and orders of the Courts, as would be required from individual suitors in similar cases. If a Collector shall refuse, or omit, to pay within the limited period, any sum of money that may be ordered to be levied from him, either on account of the suits described in Section 33, or as costs or damages in any other suits, for the expences incurred in which he is declared eventually responsible, the Court is to levy the amount from his surety by the customary process. If the Court shall not be able to obtain payment from his surety, the Judge is to report the circumstances to the Governor General in Council, who will order the amount to be paid from the public treasury, and deduct it from the allowances which may be receivable by the Collector from Government. In all other cases, if a Collector shall omit or refuse to obey any order or decree of a Court of judicature, the Court from which the process shall have issued, is to fine him according to the nature of the offence. In the event of the Collector refusing or omitting to pay the fine, the Court is to report the circumstances to the Governor General in Council, who, provided he shall approve of the fine, will order the amount to be stopped from the allowances which may be receivable by such Collector from Government.—*Reg.* 14, 1793, *Sect.* 36.—*Ben. Reg.* 6, 1795, *Sect.* 42.—*Ced. and Conq. Prov. Reg.* 27, 1803, *Sect.* 39.

539. I beg leave to request the opinion of the Court of Sudder Dewanny as to the construction to be put on the provisions of Section 16, Regulation 27, of 1803, as applicable to the following case.—A *Malgoozar* is sent to the Civil jail for confinement, on account of the non-payment of an alleged balance of revenue, due for a former, as well as the current year. Denying the justice of the demand, and furnishing the security required, he is released from confinement, and immediately enters a suit against the Collector to try the justice of the claim. Is such suit to be considered and investigated as summary or regular? It appears to me that the Regulation above quoted provides

for all such suits being considered as the former, and particularly points out a summary process and investigation as the proper mode of procedure. But as difference of opinion seems to exist on the subject, I beg leave to refer it in the decision of the Sudder Dewanny Adawlut.—In reply to your letter under date the 26th of September last, I am directed to state the Court's opinion, that in the instance you represent, the suit instituted by the alleged revenue defaulter, under Section 16, Regulation 27, 1803, can only be tried as a regular suit.—*Con. No.* 330, 17*th Nov.* 1820.

540. The Court are not aware of any objection to a continuance of the established practice, in directing, by precept, the Collector, or other public officer who may have conducted the suit on the part of Government, to comply with a final decision given against Government; and any wilful disobedience on the part of the Collector, is sufficiently provided against by the existing rule, that if a Collector shall omit or refuse to obey any order or decree of a Court of judicature, the Court, from which the process shall have issued, is to fine him according to the nature of the offence. In the event of the Collector refusing or omitting to pay the fine, the Court is to report the circumstances to the Governor General in Council, who, provided he shall approve of the fine, will order the amount to be stopped fom the allowances which may be receivable by such Collector from Government.—*Cir. Ord.* 16*th April*, 1818, *Par.* 8.

SECT. LV.

Suits in which Native Officers and Soldiers are parties.—Institution of Suit.

541. Such parts of the Regulations in force as prohibit the Courts of civil justice from corresponding by letter with parties in depending suits; or as direct that no pleadings shall be received in any civil cause except from the parties or their authorized pleaders; such parts of the Regulations in force as require generally, that depending causes shall be brought to trial according to the order in which they may stand on the file, and such parts of the Regulations in force, as prohibit the Courts from furnishing copies of decrees, or from receiving mokhtarnamahs on any other paper than the prescribed stampt paper, are hereby declared to be subject to the modifications contained in the following Sections of this Regulation.—*Reg.* 15, 1816, *Sect.* 2.

542. Whenever a native officer or soldier on the Military establishment of the presidency of Fort William may be desirous of instituting a regular or summary suit in any of the local Courts of Civil judicature, and shall not be able to obtain a furlough or leave of absence for the purpose of superintending or conducting such suit in person, he shall be at liberty to execute a mokhtarnamah or power of attorney, drawn up according to the form No. 1, in the Appendix to this Regulation, authorizing and appointing any member of his family or other person to institute and carry on the suit, and to perform all acts in the original trial of the cause, and eventually in appeal, in the same manner as if the party were himself personally present and consenting.—*Reg.* 15, 1816, *Sect.* 3, *Cl.* 1.

Appendix, No. 1.

Whereas I, A. B. inhabitant of village ——— pergunnah ——— in the district of ——— son of ——— of the cast of ——— at present (here specify his rank) of the ——— battalion of the ——— regiment stationed at ——— having occasion to institute (or defend) an action for*——— do hereby nominate and appoint C. D.† ——— to be my at-

* Here insert briefly the nature and object of the suit; and the name of the adverse party or parties.

† Here insert the name, place of residence, cast and his relationship (if any) to the native officer or soldier.

torney, (or mokhtar) and I bind myself to abide by whatever he the said attorney may do in my behalf in the prosecution* (or defence) of the said suit.

The said attorney will either prosecute (or defend) the suit in person, or will appoint one or more of the authorized vakeels of the Court to prosecute (or defend) the same under the instructions of the said attorney, as he may think proper. In the event of an appeal being preferred from the judgment passed in the suit, the said attorney is further hereby empowered to act for me on the appeal, in like manner as on the original suit.

(Signed) ———

Executed in my presence,

———

Comdg. —— Detacht. or Bat. or Regt.

543. Such mokhtarnamah shall not be required to be written on stampt paper, but shall be executed by the native officer or soldier in the presence of the Commanding Officer of the corps or detachment, to which he may belong, who shall countersign the same in testimony of its having been voluntarily executed.—*Reg.* 15, 1816, *Sect.* 3, *Cl.* 2.

544. The mokhtarnamah so executed is to be transmitted by the Commanding Officer, under cover of a public letter drawn up in the form No. 2, of the Appendix, addressed to the Register of the Court in which the suit is to be instituted, and upon the receipt of such letter, a notice shall be issued by the Court for the purpose of procuring the attendance either personally, or by a constituted vakeel of the person nominated in the mokhtarnamah.—*Reg.* 15, 1816, *Sect.* 3, *Cl.* 3.

Appendix, No. 2.

To ———

Register of the Civil Court of Zillah ———

SIR,—In conformity with the third Clause of Section 3, Regulation 15, 1816, I have the honour to transmit to you a power of attorney duly executed in my presence by A. B. son of C. D. of the cast of inhabitant of officer or sepoy (as the case may be,) of the battalion regiment.

I am, Sir, &c.

———

Comdg. Bat. Regt.

545. If such person shall refuse to attend the Court in person, or by a constituted vakeel, or shall decline to undertake the trust, or shall subsequently die, or be prevented by any other sufficient cause from discharging the duty confided to him, the Court shall cause information of the same to be communicated to the native officer or soldier, by an extract from the proceedings of the Court inclosed in an official letter to be addressed by the Register, or in his absence by the Judge, to the commanding officer of the corps.—*Reg.* 15, 1816, *Sect.* 3, *Cl.* 4.

546. If the person nominated and appointed in the mokhtarnamah shall attend the Court in person, or by a constituted vakeel, and shall consent to undertake the duty confided to him, the original mokhtarnamah shall be deposited in the Court and an-

* As the case may be.

nexed to the proceedings which may be held on the suit. The mokhtar or attorney, so appointed and attending, may at his option, either prosecute the suit, and conduct the pleadings in person, or may constitute for that purpose one or more of the authorized pleaders of the Court, under the provisions of Regulation 27, 1814. In all other respects the suit shall be instituted, tried and determined in conformity with the general rules in force for the institution and trial of other similar suits, provided however that, when the native officer or soldier, who may be the real party in the suit, shall not be himself present at the time of its decision, an authenticated copy of the decree written on unstampt paper, shall, in each instance be transmitted, through the Register of the Court, to the Commanding Officer of the corps or detachment, for the purpose of its being communicated to the native officer or soldier.—*Reg.* 15, 1816, *Sect.* 3. *Cl.* 5.

547. It is hereby explained that no part of the preceding clauses, or of the subsequent provisions of this regulation, is intended to be applicable to claims originating in loans granted by a native officer or sepoy, or in pecuniary transactions of a commercial nature.—*Reg.* 15, 1816, *Sect.* 3, *Cl.* 6.

548. For the purpose of preventing as far as may be practicable the occurrence of *ex-parte* trials in suits instituted against Native Officers or Soldiers, it is hereby further enacted, that whenever a suit may be instituted in any Civil Court against a person being a Native Officer or Soldier attached to a regular corps on the Military establishment of the Honourable Company under the presidency of Fort William, the plaintiff or appellant shall be required to state the same distinctly in his plaint or petition of appeal; and to specify to the best of his knowledge and belief, the corps to which such native officer or soldier may be attached. If the plaintiff or appellant shall be unable to specify the corps, it shall be the duty of the Court trying the suit, to endeavour to ascertain the point by such means of enquiry, as may appear practicable and expedient.—*Reg.* 15, 1816, *Sect.* 4, *Cl.* 1.

549. A notice in the usual form, together with a copy of the plaint or petition of appeal on unstampt paper, enclosed in an official letter drawn up according to the form No. 3, of the Appendix, shall be then transmitted by the Register, or in his absence, by the Judge to the Commanding Officer of the corps, for the purpose of its being communicated to the native officer or soldier against whom the suit may have been instituted: a similar notice shall be issued, when omitted in the first instance, from ignorance of the defendant's being a native officer or soldier, attached to a regular corps, if at any subsequent period during the trial of the suit, it should appear to the Court, that the defendant or respondent is a native officer or soldier as above described, and in cases in which the plaintiff or appellant shall wilfully and intentionally omit to state in his plaint or petition of appeal, that the defendant or respondent is a native officer or soldier, the Court shall impose on such plaintiff or appellant, a discretionary fine not exceeding one fourth of the amount of the institution fee, or stamp duty in each case.—*Reg.* 15, 1816, *Sect.* 4, *Cl.* 2.

Appendix, No. 3.

To ———

Commanding the ——— *Battalion* ——— *Regiment at*

Sir,—In conformity with the second clause of Section 4, Regulation 15, 1816, I have the honor to transmit to you the copy of a plaint filed in case No. ——— in this

Court, by ———————— against ———————— stated to be an officer (or sepoy) in the corps under your command, together with a notice, which I request you will cause to be served on the said ————————. You are requested to acknowledge the receipt of the notice, and to inform the Court, whether it has been duly served on the above named ———————— or the reasons which may have prevented its being served on him.

I am, Sir, &c.

Dewanny Adawlut. Judge.

550. The Commanding Officer after causing the notice to be served on the party to whom it is addressed, if practicable, shall return it to the Register or Judge, with the written acknowledgment of the party, endorsed thereupon, together with any mokhtarnamah, which the party may be desirous of executing according to the form No. 1, in the Appendix, for appointing an attorney to defend the suit in his behalf. If from any cause the notice transmitted to the Commanding Officer cannot be served upon the native officer, or soldier, to whom it is addressed, it shall be returned by the Commanding Officer to the Register or Judge from whom it may have been received, with information of the cause which has prevented the service of it. In such case the Court shall either make a further reference with the view of causing the notice to be duly communicated to the native officer or sepoy, or shall adopt such other measures for that purpose as on a consideration of the circumstances of each case may appear to be proper and consistent with the Regulations.—*Reg.* 15, 1816, *Sect.* 4, *Cl.* 3.

SECT. LVI.

Suits in which Native Officers and Soldiers are parties.—Procedure and Decree.

551. When a native officer or soldier may obtain a furlough for the purpose of instituting or defending a Civil suit in any of the local Courts of Civil judicature, he shall be at liberty to request from the commanding officer of the corps or detachment, an official letter addressed to the Register of the Court in which the suit is to be tried; such letter shall be drawn up according to the form No. 4, of the Appendix to this Regulation, but shall not give cover to any petition, nor contain any statement or explanation of the merits or circumstances of the case.—*Reg.* 15, 1816, *Sect.* 5, *Cl.* 1.

552. Such letter shall be delivered in person by the native officer or soldier to the Register, or in his absence, to the Judge of the Court, who is hereby authorized, at the request of the party, to nominate a vakeel of the Court for the purpose of furnishing to the native officer or soldier, his legal aid and advice in preparing the pleadings and in carrying on the prosecution or defence of the suit. The Register, or Judge, shall at the same time cause the native officer or soldier, to be duly apprized of the provisions contained in Regulation 27, 1814, and of any other Regulation in force, relative to the duties, and established fees of the pleaders attached to the Civil Courts, which must of course be observed whenever a native officer, or soldier, may wish to consult or employ a pleader. —*Reg.* 15, 1816, *Sect.* 5, *Cl.* 2.

553. Nothing contained in the preceding Section shall be construed to prohibit a native officer, or soldier, from pleading his cause in person, or from employing any other authorized pleader of the Court, whom he may prefer, instead of the pleader nominated for him by the Court.—*Reg.* 15, 1816, *Sect.* 6.

554. The Courts of Civil judicature are hereby authorized and required to bring to a hearing without regard to the order in which they may be filed, all suits excepting those of the nature alluded to in the sixth Clause of Section 3, of this Regulation, in which a native officer, or soldier, who may have obtained leave of absence from his corps, may be a party, and to pass a decision on such suits as speedily as may be consistent with the general rules in force, and with the due administration of justice.—*Reg.* 15, 1816, *Sect.* 7, *Cl.* 1.

555. If the cause cannot be brought to a decision previously to the expiration of the furlough granted to such native officer or soldier, the Judge or Register before whom the suit may be depending, is hereby vested with a discretionary authority to grant to such native officer, or soldier, an extension of his leave of absence for a period sufficient to admit of a reference being made to the commanding officer of the corps, with a view to ascertain whether the furlough can be prolonged for any further specific period. But whenever a Judge or Register may avail himself of the discretion above vested in him, he shall be careful to report the same immediately in an official letter to the Commanding Officer of the corps to which the native officer or sepoy may be attached.—*Reg.* 15, 1816, *Sect.* 7, *Cl.* 2.

556. In all cases in which a native officer, or soldier may return to his corps before a final decision can be passed in his suit, he shall be at liberty either to leave the further conduct of the suit to a constituted Mokhtar under a mokhtarnamah, duly executed according to the form No. 1, in the Appendix to this Regulation, or to one or more of the established pleaders of the Court empowered to act for him by a regular vakalutnamah. In either case a copy of the decree which may be passed in the suit shall be transmitted for the information of the native officer or soldier, in the manner prescribed in the fifth Clause of Section 3, of this Regulation.—*Reg.* 15, 1816, *Sect.* 7, *Cl.* 3.

557. Whenever any land or real property belonging to a native officer or soldier may be attached by a Court of justice for the purpose of realizing the amount of any judgment, fine or penalty imposed on such native officer or soldier, the Court shall cause notice of the same to be issued in the manner prescribed in the second Clause of Section 4, of this Regulation, and shall postpone the sale for such definite period as may appear reasonable, for the purpose of affording an opportunity to the native officer or soldier to discharge the amount of the judgment, fine or penalty.—*Reg.* 15, 1816, *Sect.* 8.

558. Nothing contained in this Regulation shall be construed to affect or to alter the rules and provisions of Regulation 20, 1810; or to authorize the Commanding Officer of any corps or detachment to correspond with the Civil Courts, or with the Collectors, regarding the merits of any judgment, or order, passed by them in the discharge of their official duty under the provisions of this Regulation.—*Reg.* 15, 1816, *Sect.* 10, *Cl.* 1.

559. Nothing contained in this Regulation shall be construed to modify, or to affect the existing rules for the trial of Civil suits, in which persons who may have been discharged from the service, or who may be attached to provincial battalions, or to local or irregular corps, or who may be camp followers, or non combatant retainers of the army, or who may be relations, or members of the family of a native officer, or soldier, may be parties; the foregoing provisions of this Regulation are to be considered as strictly

and exclusively applicable to native officers or soldiers who may be entertained in regular corps and on the actual strength of the army, on the establishment of the Presidency of Fort William.—*Reg.* 15, 1816, *Sect.* 10, *Cl.* 2.

560. The native invalid battalions are considered within the description above mentioned, and consequently entitled to benefit of the regulation in question.—*Con. No.* 264, 29*th Jan.* 1817.

561. With reference to your letter No. 216, of the 24th July last, I am directed by the Court to inform you that the pay of a sepoy cannot be attached in liquidation of the amount of a decree against him. The decree holder is of course at liberty to proceed against the person or property of the sepoy, as in any other case.—*Con, No.* 1175, *Cal. C.* 21*st Sept. West. C.* 31*st Aug.* 1838.

SECT. LVII.

Actions for debt against persons in or connected with the Army.

For the Rules regarding the cognizance of suits against Military men, vide Chap. 1, *Rules* 222, *C.* 220. 221. 223.

562. The military Court of Requests being a King's Court, constituted by an Act of Parliament, the Sudder Court are not competent to determine the extent of its jurisdiction, which must be decided by the military Court itself under the laws enacted for its guidance.—*Con. No.* 876, *West. C.* 26*th March, Cal. C.* 18*th April,* 1834, *Par.* 2.

563. The Court are of opinion that the civil servants of the Company, merchants, and others mentioned in paragraph 2, of your letter, (who reside within the limits of a cantonment, although totally unconnected with the army,) are under the terms of the Regulation subject during their actual residence, to the jurisdiction of a military Court of Requests, and to that of no other Court, in all cases of personal action of debt; they are consequently exempted from the authority of the Company's Courts while so resident.—*Con. No.* 876, *West. C.* 26*th March, Cal. C.* 18*th April,* 1834, *Par.* 3.

564. No process of arrest before judgment, shall issue from any Civil Court in any action against a person residing or carrying on any trade or occupation, relating to the service or supply to the troops at any house, shop, or fixed place within the precincts of a garrison, cantonment or military bazar, unless it be averred in the plaint that the cause of action exceeds sicca rupees two hundred, or that the defendant though resident or carrying on such trade or occupation within the Military limits is not registered, or that though registered he has not within the space of three months preceding, truly and bonâ fide exercised the occupation in respect of which he is registered within the limits; in all cases where such averment shall be made, the Judge issuing the process shall endorse upon it as the case may be "Cause of action above Sicca Rupees two hundred," or "defendant not registered," or "defendant not entitled to privilege of registry," and shall sign the indorsement. All process so indorsed shall if the defendant be within the limits of the garrison, cantonment or Military bazar, be delivered in the first instance to the Commanding Officer, and be executed through him as in other cases; but if the defendant be found without the limits of the garrison, cantonment or Military bazar, he may be arrested by the civil officer on process so indorsed; and in all cases of such arrests whether made within or without the limits, if at the trial, the plaintiff shall not prove according to the purport of the indorsement, either that the cause of action exceed Sicca Rupees two hundred, or that the defendant though resi-

dent or carrying on such trade or occupation as above mentioned within the Military limits was not registered, or that though registered he had not during the space of three months preceding, truly and bonâ fide exercised the trade or occupation in respect of which he is registered within the limits, he shall be non-suited with costs.—*Reg.* 20, 1810, *Sect.* 24.

565. No person registered as attached to the bazar of a corps, and bonâ fide carrying on the trade or occupation in respect of which he is registered in the place allotted or ordinarily used for the bazar of the corps, shall be liable to be arrested on process before judgment out of any Civil Court, for any cause of action not exceeding Sicca Rupees two hundred. In all cases in which persons of this description are arrested by Civil process, it shall be declared in the plaint, that the cause of action does exceed Sicca Rupees two hundred, in which case the Judge shall endorse on the process "cause of action exceeding Sicca Rupees two hundred," and shall sign the indorsement; and if the plaintiff at the trial of the cause, shall not prove a cause of action exceeding Sicca Rupees two hundred, he shall be nonsuited with costs; and in case any person registered as attached to the bazar of a corps, and bonâ fide carrying on the occupation in respect of which he is registered within the limits allotted, or ordinarily used for the Military bazar, shall be arrested under Civil process, which is not so endorsed, the commanding officer, if he shall after due enquiry, be satisfied that such person was so bonâ fide carrying on the occupation, in respect of which he is registered within the limits aforesaid, shall make out and sign a certificate in the following form:—

"I commanding officer of do hereby certify that of was registered on the day of in the year as a person attached to the bazar of the corps in the occupation of a and that he did at the time of his being arrested on the day of last, actually and bonâ fide follow that occupation as a person attached to the bazar of the corps within the space allotted or ordinarily used for the bazar."

Upon such certificate signed by the Commanding Officer being produced to the Judge who issued the process, he shall cause the same to be recorded in his Cutchery, and shall make an order for releasing the person arrested from confinement; but the plaintiff shall be at liberty if he thinks fit, to proceed in his action, and shall be bound to prove at the trial, either that the cause of action exceeds Sicca Rupees two hundred, or that the defendant was not registered as attached to the bazar of the corps, or that although registered he was not actually and bonâ fide carrying on the occupation in respect of which he was so registered at the time of the action brought, and in failure of such proof, he shall be nonsuited with costs.—*Reg.* 20, 1810, *Sect.* 25.

566. In all cases in which it may be necessary to execute any process of arrest, criminal or civil, within the limits of a garrison, cantonment, Military station, or Military bazar (the process of the Supreme Court only excepted) the officers intrusted with the execution of such process of arrest, shall in the first instance carry the same to the Commanding Officer, or if he shall happen to be absent, to the senior officer actually present in the garrison, cantonment or station; and the Commanding Officer or such senior officer upon such process being produced to him, shall back the same with his signature, and shall forthwith use his utmost endeavours to cause the person or persons named in such process to be discovered, and if within the limits of the garrison, cantonment, station or bazar, to be arrested and delivered according to the exigency of the

process to the Civil officer charged with the execution thereof, but nothing herein contained is to be construed to prevent the service by the Civil officer in the usual way, of summonses, subpœnas, or other process of mere citation without arrest.—*Reg.* 20, 1810, *Sect.* 19.

567. The Commanding Officers of stations are hereby required to afford every protection to the officers of the Judges, Magistrates, and Justices of the Peace, in the discharge of the duty entrusted to them, whether any special application shall have been made to them for such aid or support, or otherwise.—*Reg.* 3, 1809, *Sect.* 3, *Cl.* 2.

568. The provisions of this regulation respecting the trial of petty offences committed within the limits of garrisons, cantonments, Military stations or Military station bazars, and the provisions of this regulation, respecting the execution of process of arrest before judgment against registered persons attached to station bazars, are to be considered as applicable only to those garrisons, cantonments and stations, the limits whereof shall be laid down in plans approved and confirmed by the Governor General in Council, in the manner described in Section 5, of this regulation; and they shall be in force in such garrisons, cantonments and Military stations respectively, from the time that the plans so approved and confirmed shall have been deposited at the head quarters, and in the cutcherry of the Magistrate, in the manner prescribed in Section 6. With regard to those garrisons, cantonments or stations to which it may not be found practicable to assign local limits for the purposes of this regulation, special provisions will be made hereafter, according to the circumstances of each case: in the mean time the provisions of Regulation 3, of 1809, are to be considered as in full force with respect to those garrisons, cantonments and Military stations, and the station bazars attached thereto.—*Reg.* 20, 1810, *Sect.* 20.

569. Whenever an award of a Military Court, acting under the provisions of Section 22, Regulation 20, 1810, against a defendant being a Native of the description mentioned in the said Section, shall decree a sum beyond the extent of the property which such defendant may be found to possess within the reach of Military authority, but not exceeding two hundred Rupees, it shall be competent to the Judge of any Zillah or City to give effect to such award, by levying the amount, or a portion of it, from any of the defendant's property which may be pointed out within the jurisdiction of the said Zillah or City, on being furnished with a copy of the award, and a certificate from the Commanding Officer of the district, of the extent of the amount unrealized; and the Zillah or City Judge to whom such application shall be made within the period of three months, from the date of the award, is hereby authorized and directed to proceed to execute the same in the mode prescribed by the existing Regulations for the sale of property, in the execution of decrees when passed by a Zillah or City Court.—*Reg.* 5, 1828, *Sect.* 2.

SECT. LVIII.

Suits instituted against persons in the Salt Department.

570. Persons instituting suits in the Dewanny Adawlut against any of the officers of the Agents, or any individuals under engagements on account of the Salt manufacture, and employed therein, are to specify their being so engaged and employed. If the notice or summons is to be served during the months of Sawun, Bhadoon, and Assin, it

shall be served on the defendant, in the same manner, as on other defendants not employed in the Salt manufacture. If the notice or summons is to be served between the commencement of Kautic, and the end of Assar, the notice or summons with a copy of the complaint shall be enclosed in a sealed cover, addressed to the Agent, and superscribed with the official signature of the Judge or Register. It shall be at the option of the Agent to execute, or to cause one of his officers, or any other person, whom he may think proper, to execute the security required from defendants, in cases in which such security may be considered necessary, or to leave the party to find the required security; and in the latter case, and in the event of the summons being committed to an officer of the Court, if the officer shall entertain doubts of the responsibility of the surety so offered, and the Agent shall declare such surety to be responsible, the officer shall accept the security. If a requisition of security for appearance should be made, and the Agent should not deem it expedient to order any of his officers or any other person to become security, and the defendant himself should not be able to find such security, as the Agent may deem responsible, the Agent is to cause the party summoned to accompany the officer of the Court to the Court, or if the summons shall not have been committed to the charge of an officer, he shall cause him to be conveyed before the Court.—*Reg.* 10, 1819, *Sect.* 21, *Cl.* 1.

571. Persons instituting suits in the Dewanny Adawlut against any of the officers of the Salt Chokies, are to specify the nature of their employment, and the notice or summons to be served upon such officers, with copy of the complaint against them, shall be enclosed in a sealed cover to the superintendent of the Chokey to which the party may be attached, who will, without delay, cause the notice to be served in the regular manner, or send persons to take charge of the Chokey, and cause the party when summoned to accompany the officer of the Court to the Court, or if the summons shall not have been committed to the charge of an officer, he shall cause such party to be conveyed before the Court.—*Reg.* 10, 1819, *Sect.* 24.

572. The Salt Agents are to empower their respective assistants, whether covenanted servants of the Company or European uncovenanted assistants, and also an authorized vakeel of the Dewanny Adawlut, or any other person whom the Agents may think it proper to station at the place, at which the Court may be held, to execute the securities specified in the preceding Clause for persons employed in the Salt manufacture. The Agents are to be careful to keep the Judge furnished with a list of the persons so empowered, specifying also the place at which they may usually reside, and Judges are authorized in instances in which they may deem it proper, either from the distance of the place of abode of the Agent, from the place at which the person to be summoned may reside, or other circumstances, to order the summons to be enclosed to one of the persons so empowered to become security, instead of transmitting it to the agent himself under the first Clause of this Section—in which case such person shall proceed in the manner prescribed to the agent, where the summons may be sent immediately to him.—*Reg.* 10, 1819, *Sect.* 21, *Cl.* 2.

573. If a suit shall be preferred in the Dewanny Adawlut against any of the officers of the Agents, or any person under engagements on account of the Salt manufacture, and employed therein, without specifying that he is so engaged, and employed, and a notice, or a summons shall in consequence be ordered to be served on him in the same manner as on other defendants, between the commencement of Kautic and the end of As-

sar, the officer serving the notice or summons, on the circumstance of the defendant being so employed being notified to him by the Agent or any of his officers, or by the defendant himself, shall deliver such notice or summons to the nearest person empowered to execute securities, whether the Agent, or his covenanted or uncovenanted assistants, or the head officer of an aurung, who shall proceed in the manner prescribed to the Agent in Clause first of this Section. If an officer charged with a summons against any person of the above description shall receive the notification of the defendant being employed in the manufacture from the defendant only, and shall entertain doubts of his being so employed; or if he shall not entertain any such doubts, but shall apprehend that he will abscond whilst he (the officer) is repairing with the summons to the person empowered to execute the securities; he shall in such case, carry the defendant with the summons to the person so empowered, and shall not release his person until the required securities have been executed.—*Reg.* 10, 1819, *Sect.* 21, *Cl.* 3.

574. The Judges and Magistrates are empowered in particular cases in which it may appear to them indispensably necessary for the purposes of justice, to order the personal attendance of any native officer or person in any wise concerned or employed in the Salt manufacture, whether he may be a party or a witness in the suit or prosecution, at any time during the manufacturing season, notwithstanding any thing that may be said to the contrary in those clauses, and to cause process to be executed upon him for that purpose, in the same manner as upon other individuals; but in such cases, the Judges and Magistrates are to record on their proceedings, their reasons for deviating from the provisions contained in the said clauses, which are to be considered as the general rules for issuing and executing such notices, summonses and warrants; and in the notice, summons or warrant, they are to specify that it has been specially ordered to be so executed in virtue of the discretionary power vested in them by this clause, and they are moreover strictly enjoined to refrain from every unnecessary exercise of that power.—*Reg.* 10, 1819, *Sect.* 21, *Cl.* 9.

575. If a decree shall be passed against a native officer, or any person under engagements on account of the Salt manufacture, and actually employed in it, and the Court shall order the decree to be enforced at any time between the commencement of Kauttic and the end of Assar, recourse may be had to his property, but his person shall not be attached or molested during that period. At the close however of the manufacturing season, the Agent shall be responsible for his appearing before the Court, if required, but the salt, or the advances, or any implements belonging to the Company, which may be in his hands shall not be liable for the decree. But during Sawun, Bhadoon and Assin, and also in the manufacturing season, if the Salt Agent shall signify to the Judge, through an authorized vakeel of the Court, that their attendance is not required in the business of the manufacture, the persons of all such individuals so employed, shall be equally liable with their property for decrees.—*Reg.* 10, 1819, *Sect.* 22.

576. If a decree shall be passed against an officer of a Salt Chokey, and the Court shall order the decree to be enforced, recourse may be had to his property; but his person, if attached, shall not be removed without previous notice being given to the party under whose superintendence the officer acts, that another person may be immediately deputed to take charge of his place during his absence.—*Reg.* 10, 1819, *Sect.* 29.

577. From the beginning of Kautic to the end of Assar, no person under engagements, and employed in the Salt manufacture, shall be liable to be arrested for a demand

of rent, nor to be summoned to the cutcherry of any proprietor, or farmer of land, or any person holding, or entrusted with the collection of the rents, or revenue of lands, or the management thereof, under any pretence whatever. If any such proprietors, farmers, or other persons aforesaid, shall have a claim for, or relating to rent on any persons so engaged, and employed, and shall be desirous of enforcing it during the period abovementioned, they shall either distrain for the amount, under the existing regulations for levying distress for the recovery of arrears of land rent, or sue the stated defaulter for it in the Dewanny Adawlut, or state their claim in writing to the Agent, who, if he shall deem it expedient so to do, shall cause the stated defaulter to satisfy it himself, and stop the amount by kistbundy from his future advances; so that his labour on account of the manufacture may not be interrupted. If the claimant shall prefer applying in the first instance to the Agent, and he shall not afford satisfaction for the claim, the claimant must distrain, or commence a Civil prosecution as above pointed out. But the salt advances, or implements belonging to the Company in the hands of the defaulter, shall not be held liable for the claim, nor shall they under any pretence whatsoever, be distrained, seized, sold or otherwise disposed of by the claimant, or by the Court, in satisfaction of his demand.—*Reg.* 10, 1819, *Sect.* 20, *Cl.* 2.

SECT. LIX.

Suits by persons in the Salt Department for Compulsion.

578. If a Salt Agent shall compel, or use any means, or cause any of his officers or others, to compel any molunghee, byoparry, or other person to receive advances, or to contract for, or engage in the provision, manufacture, or transportation of Salt, the Judge of the Dewanny Adawlut, on proof of the charge to his satisfaction, shall adjudge the contract or engagement null and void, and direct the complainant to be discharged, and cause the advances, if any should have been made, to be returned by him, and award such costs and damages against the Agent, as may appear to him equitable. The Agent so offending shall moreover be liable to be dismissed from his office by the Governor General in Council.—*Reg.* 10, 1819, *Sect.* 8.

579. If the assistant to a Salt Agent, whether a covenanted servant of the Company or an European not in the Company's service, or any native officer attached to a Salt Agency, shall compel, or use any means, or cause any inferior officer or others to compel any molunghee, byoparry or other person to receive advances, or to contract for or engage in the provision, manufacture, or transportation of Salt, he shall on conviction before the Dewanny Adawlut, be made to pay to the complainant a sum equal to the amount of the whole of the advances which such complainant would have been entitled to receive, had he voluntarily entered into the contract, or engagement, with any further compensation to which he may appear entitled, and the complainant shall be immediately discharged, and any advances that he may have received shall be taken back from him. In the cases above specified, the party offending shall be liable to be dismissed from office by the Governor General in Council, the Board of Customs, Salt and Opium, or Salt Agent, according as the appointment or removal of such officer, may rest with the one or the other of the said authorities; and in all such cases it shall be the duty of the Court before which such charge may be proved against any Agent, assistant to

an Agent, or officers aforesaid, to report the circumstance to the aforesaid Board.—*Reg.* 10, 1819, *Sect.* 9.

580. Covenanted and uncovenanted assistants, and head officers of aurungs, shall be held responsible for any compulsion that may be used for the purposes specified in the foregoing Section by the gomashtahs, peons and other persons subject to their authority, unless it shall appear that it was had recourse to without their knowledge or connivance, and that they afforded all practicable redress immediately on being apprized of the circumstance: where persons subject to the authority of such assistant or head officer, shall be convicted of using such compulsion without his knowledge or connivance, besides dismission from office, they shall be liable to the same penalties as are prescribed in the preceding Section for cases in which the Native officers attached to a Salt Agency may be convicted of using compulsion.—*Reg.* 10, 1819, *Sect.* 10.

581. If any contractor, molunghee or byoparry, having received advances or entered into engagements for the provision of Salt, shall be convicted before the Dewanny Adawlut of compelling, directly or indirectly, any labourer, or other person, to receive advances, or to engage in the manufacture, he shall on conviction before the Dewanny Adawlut, be liable to the same penalty, with the exception of dismission from office, as is directed to be inflicted in the cases specified in Section 9, of this Regulation. And that no contractor, molunghee or byoparry, may plead ignorance of the above rule, a clause to the effect thereof shall be inserted in their contracts.—*Reg.* 10, 1819, *Sect.* 11.

582. To prevent persons who may voluntarily receive advances and give a receipt for the amount, afterwards declaring that they were compelled to receive the advances, (or in order to get released from their engagement,) the Courts, in the event of any complaint being made to them by or on behalf of a molunghee, labourer, or other person, that he was compelled to receive advances, are directed, excepting in cases in which they may have full and satisfactory evidence before them that compulsion was used, to consider the receipt as evidence primâ facie of the advances having been voluntarily received, and they shall not release the complainant from his engagements, or prevent his proceeding to the place of manufacture, should he not have proceeded there, nor bring him from thence, should he have repaired thither, until they shall have completed the trial of the complainant, and shall be satisfied that the engagement was compulsive, and repugnant to this regulation. The Agents are to apply this rule in similar complaints that may be preferred to them.—*Reg.* 10, 1819, *Sect.* 14.

SECT. LX.

Institution and defence of suits by persons not amenable to the Courts.

583. From and after the promulgation of this Regulation every person being an inhabitant of a foreign territory, who may desire to institute or defend an original suit, or to prosecute or defend an appeal in any Zillah, City, or Provincial Court, or in the Sudder Dewanny Adawlut, shall be required to furnish security for all eventual costs of suit, which may be adjudged payable by such person, and shall furnish such security by a surety or sureties residing and possessing property within the limits of the Company's territory and within the jurisdiction of the Company's Court. Such security shall be fur-

nished by a plaintiff or appellant within six weeks of the date on which his plaint or appeal is filed, and a defendant or respondent shall furnish it within six weeks of the date on which the usual summons is served on him, unless such security be so furnished, the suit of such person, if plaintiff, shall not be proceeded in, if defendant or respondent, he shall not be allowed to defend his suit or appeal, but the cause shall be decided *ex-parte* on the statements and proofs of his opponent. And no appeal shall be admitted from the party who may have failed to give the required security, until he shall first have made good the whole of the costs demandable from him in the lower Court, and given the necessary security to cover the costs in appeal.—*Reg.* 14, 1829, *Sect.* 2, *Cl.* 1.

584. The same rule shall be applicable and the same mode of proceeding shall be observed in the event of any person who may have instituted or defended any original suit, or prosecuted or defended an appeal in a Zillah, City, or Provincial Court, becoming an inhabitant of a foreign territory, before a decree is passed on such suit or appeal, and failing to give the required security within six weeks of its being demanded by the Court, and such demand the Court is hereby required to make immediately on the circumstance becoming known, even though no motion should be made to that effect.—*Reg.* 14, 1829, *Sect.* 2, *Cl.* 2.

585. It is however provided, that nothing contained in this Section, shall be considered applicable to pauper suitors coming within the provisions of Regulation 28, 1814. —*Reg.* 14, 1829, *Sect.* 2, *Cl.* 3.

SECT. LXI.

Suits of Zemindars and other Proprietors, under Regulation 2, 1819, *Sect.* 30, *to assess lands held rent free; or of individuals claiming to hold lands exempt from rent.*

586. Proprietors or farmers of land, or dependant talookdars, who may deem themselves entitled to the revenue of any land of the description of that specified in Section 6, situated in their respective estates, farms, or talooks, [viz. lands not exceeding One Hundred Bigas, whether lying in one village, or two or more villages that may have been alienated by any one grant made previous to the 1st of December, 1790] are to institute a suit for the recovery of it in the Court of Dewanny Adawlut. Any proprietor, or farmer of land, or dependant talookdar, or other person, subjecting such lands to the payment of revenue, without having previously obtained a judicial decree for that purpose, shall be liable to be sued for damages by the parties injured. Where estates or dependant talooks may be held khaus, the right of suing for the recovery of the revenue from the lands specified in Section 6, is to be considered as vested in the party to whom the collections from the estate or talook may be payable. If the estate or talook be held khaus by Government, the tehseeldar or other officer is to sue for the revenue chargeable on such lands in the room of the proprietor, but under the directions of the Collector.—*Reg.* 19, 1793, *Sect.* 11.

587. Can a Zemindar institute and maintain one and the same suit for the recovery of the revenue of land exceeding one hundred bigas, held exempt from the payment of revenue, which may have been alienated by two or more grants prior to the 1st December, 1790; provided that each of the said grants does not exceed one hundred bigas, and provided further, that the plaintiff, prior to the institution of the suit, has no means of ascertaining the exact quantity of land

comprised in each of the said grants?—I am desired in reply to acquaint you, that as the Court cannot find any provision or provisions in Regulations 3, 4, and 19, of 1793, which primâ facie can be construed as prohibitory of the institution of such a suit as supposed in your letter, they are of opinion, that it ought to be entertained, leaving its legality and the plaintiff's right to be decided upon investigation of the facts of the case.—*Con. No.* 346, *3rd Aug.* 1821.

588. The Court observe that, under the spirit of Clause 3, Section 3, Regulation 5, 1831, a Moonsiff cannot legally receive a suit of a nature requiring a reference to the Collector under Section 30, Regulation 2, 1819; and therefore a Principal Sudder Ameen, having before him a suit of that description in appeal, should send the case to the Judge under the Circular of the 14th June last, recommending the annulment of the Moonsiff's decision, and the return of the case to that officer on the ground that he ought to have rejected the suit in the first instance, as illegally instituted, and in order that he should now follow that course.—*Con. No.* 1261, *6th Dec.* 1839.

589. All suits preferred in a Court of judicature by proprietors, farmers or talookdars to the revenue of any land held free of assessment, as well as all suits so preferred by individuals claiming to hold lands exempt from revenue, shall, immediately on their institution, be referred for investigation to the Collector or other officer exercising the powers of Collector.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 1.

590. The Court are of opinion, that the Collector cannot, on the ground of the plaintiff being a public officer on his establishment, decline to take up the case referred to him under Section 30, Regulation 2, 1819; in as much as the rule there laid down, that suits for the right of holding land free of assessment shall, when instituted in the Zillah Court, be referred to the Collector for investigation, is general and peremptory; and the plaintiff might, if he chose, have preferred the claim in the first instance to the Collector, who could not then have avoided the jurisdiction.—*Con. No.* 320, *28th July*, 1820.

591. Suits in which lands held exempt from assessment form the subject of dispute, but in which the validity of the tenure is not contested, are not referrible to the Collector under the provisions of Section 30, Regulation 2, of 1819.—*Con. No.* 669, *13th January*, 1832.

592. I am directed by the Court to observe that in the cases alluded to by you, there are generally two points at issue—1st, the proprietory right, or right of ownership, and 2ndly, the nature of the tenure under which the lands are held. In all cases, in which the right of ownership is alone the point at issue, (as for instance, when the heirs of a holder of rent free lands sue their coparceners for their respective shares,) the case appertains solely to the Civil Court; on the other hand, if the nature of the tenure as well as the proprietory right is disputed, viz. if a Zumeendar claims possession of any land as attached to his estate, and the defendant pleads that he holds possession thereof as rent-free, or vice versa, the case must, in the judgment of the Court, be referred to the Collector for report.—*Con. No.* 981, *Cal. C.* 16*th Sept.* 1835, *West. C.* 11*th March*, 1836, *Par.* 1.

593. With reference to the 10th paragraph of your letter, I am directed to request, in the event of the Collector returning any reference made by you, with an opinion that the case is not one on which he is bound to report, that you will, in the event of your entertaining a different opinion, repeat the order, under the usual precept, requiring a return to be made within a given period. Should the Collector still refuse to investigate the case, you will then report the circumstances in English for the information of this Court, in order that such further measures may be adopted as may appear to be necessary and proper.—*Con. No.* 981, *Cal. C.* 16*th Sept*, 1835, *West. C.* 11*th March*, 1836, *Par.* 2.

594. On a reference from the Judge of Chittagong, the Courts of Sudder Dewanny Adawlut held that a suit brought by a zemindar for the rent of lands in which the defendant claims the right of property in virtue of a rent free grant, is not referrible to the Collector under the provisions of Section 30, Regulation 2, 1819, but must be considered in the light of a boundary dispute,

and disposed of in the ordinary mode by the Civil Court.—*Con. No.* 1067, *Cal. C.* 30*th Dec.* 1836, *West. C.* 13*th Jan.* 1837.

595. Under this Section, such suits only are referrible, in which the point at issue is the right to hold land free of rent, or to resume land held as rent free under tenures stated to be illegal or invalid. Suits for possession, or for rent, of lands held exempt from the payment of revenue to Government, the validity of the tenure of which is not disputed, cannot be so referred, but must be tried and determined under the general rules for the decision of regular suits.—*Cir. Ord. Cal. and West. C.* 30*th Aug.* 1833, *Par.* 4.

596. Several instances having occurred, in which it has been found necessary to quash the proceedings of the lower Courts in suits involving the question of the validity of titles to hold land exempt from the payment of revenue, in consequence of their having been tried and determined without a previous reference to the Collectors, as expressly required by Section 30, Regulation 2, 1819; the Court desire that you will immediately inspect the suits pending on your file, and transfer for report to the Collector all suits of the nature above stated, which have not already been referred and reported on.—*Cir. Ord.* 25*th Feb.* 1831.

597. In reply to your second query, in the case of a zemindar, suing to resume lands held on a rent free tenure, the only question for the Court to determine is the validity or otherwise of the alleged rent-free tenure, and not the amount assessable thereon. The decree, in the event of the suit being decided in favour of the plaintiff, should merely declare the land liable to assessment.—*Con. No.* 576, 1*st Oct.* 1830, *Par.* 3.

SECT. LXII.

Suits under Reg. 2, 1819, *Sect.* 30.—*Proceedings of the Collector.*

598. Provided also, that proprietors, farmers or talookdars, who may deem themselves entitled to the revenue of any land held free of assessment in their respective estates, talooks or farms, or individuals claiming as aforesaid to hold lands free of assessment shall be at liberty to prefer their claims in the first instance to the Collector. Provided further, that the party so preferring his claim directly to the Collector, shall, in his petition to the Collector state the particulars of his claim, and the grounds on which it is founded, in like manner as if the suit were instituted in a Court of judicature; and the petition shall be written on stampt paper of the value prescribed for petitions of plaint in suits instituted in those Courts.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 1.

599. On receiving a petition of the above nature from any proprietor, farmer or talookdar, claiming the revenue of any land held free of assessment in their respective estates, or on a reference being, in such case, made from a Court of judicature, the Collector shall serve on the defendant a written notice, containing a short statement of the demand, and requiring the defendant to attend in person, or by vakeel, within the period of one month, and to produce all sunnuds or other documents in virtue of which he may possess the lands, and under which they may have been, or may be claimed to be held free of assessment.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 2.

600. When the defendant shall appear and deliver up his title-deeds, the Collector after allowing the claimant to inspect and examine them, shall call upon him to deliver, within the period of seven days, a full statement of the grounds on which, with reference to the documents, he may consider the tenure of the defendant invalid, and the lands liable to assessment, with all documents on which his claim to the revenue of them may be founded.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 3.

601. When the claimant shall have delivered in the said statement and documents, the Collector shall proceed to investigate the case, and to record his final judgment on it, in the same manner and with the same powers as in cases in which he may himself propose to assess lands on account of Government.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 4.

602. If the claim made under Regulation 2, 1819, Section 30, shall be against any individual singly or jointly with Government, the Collector shall serve him with a notice containing a statement of the demand, and requiring his attendance in person or by vakeel duly authorized, within the period of one month, with any papers or evidence he may desire to produce in denial of the claim: and on the appearance of such defendant the Collector after allowing him to inspect and examine the claimant's petition of plaint and the writings therein referred to, shall call upon him to deliver within the period of seven days a statement of the objections he may desire to urge against the claim. In such cases no other pleadings shall be required from the parties than a plaint and answer, but it shall and may be lawful for Collectors to receive and record such subsidiary pleadings as may appear requisite for the elucidation of the merits of the claim. Collectors shall proceed to investigate every such case as soon as possible after the answer of the defendant shall be received; giving however as aforesaid eight days previous notice to the parties, of the day on which he may propose to bring it to a hearing. Provided, that in cases wherein the parties concerned, or their authorized representatives shall desire or consent (the same being signified in a written petition or Ikrarnamah to be filed with the proceedings) to have an immediate decision, whether the case shall originate in a claim on behalf of Government or in the suit of an individual, and whether the proceedings of the Collector shall be held under the provisions of Regulation 2, 1819, or under those of this or any other Regulation touching the matter, it shall be competent to the Collector to proceed forthwith to the investigation and decision of the case without issuing any formal summons or notice.—*Reg.* 9, 1825, *Sect.* 5, *Cl.* 11.

603. The parties shall respectively be subject to the same rules in regard to the use of stampt paper, on summoning witnesses and filing exhibits, as are prescribed for suits instituted in the Zillah or City Courts.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 5.

604. The Court, understanding your first question to have reference to cases under Regulation 2, 1819, Section 30, in which Government would not be entitled to any revenue from the land, if resumed, are of opinion, that the petition of plaint should be written on stamp paper of the value prescribed for rent free lands, whether the claim be by an individual against a *Zemeendar* to hold land on a rent free tenure, or by a *Zemeendar* to resume land held on an illegal rent free tenure.—*Con. No.* 576, 1*st Oct.* 1830, *Par.* 2.

605. It is hereby declared and enacted, that the provisions of this Regulation are not intended and shall not be construed, to extend to cases of the nature specified in the several clauses of Sections 30, Regulation 2, 1819, save and except when such cases may involve the rights of Government to subject to assessment all, or any portion, of the lands, in respect to which the action may be brought. In cases of the above description, in which the Government may be a party, whether instituted in the first instance before the Collector, or referred to him by the Court, the Collector shall proceed to investigate and decide in the mode prescribed in the preceding Section of this Regulation: the several clauses of which shall be held to apply to such suits and all other cases falling within the provision of Section 30, Regulation 2, 1819, in which the Government

is not itself a party, shall be heard and determined under the rules therein enacted, and the subsequent modifications of them declared in Section 5, Regulation 9, 1825.—*Reg.* 3, 1828, *Sect.* 5.

SECT. LXIII.

Suits under Regulation 2, 1819, *Sect.* 30.—*Collector's Report, and the Court's Decision, and appeal therefrom.*

606. Suits referred to the Collector under Clause 1, Section 30, of the Regulation above quoted, which are referred, not for decision but for report only, should not be considered as having been transferred from the file of the Judge in consequence of such reference; and therefore, on their being returned with the required report from the Collector, the Judge should proceed to try and decide them in like manner, as if no such reference had been made. From this you will perceive, that the practice of your predecessor in treating such description of cases, when returned with the report of the Collector, as actually decided, in permitting them to remain as decisions until appealed from, and then entering them under the head of miscellaneous cases, was irregular.—*Con. No.* 450, 30*th March*, 1827, *Par.* 2.

607. Clause 1, Section 30, Regulation 2, of 1819, expressly directs, that "all suits preferred in a Court of judicature by proprietors, farmers, or talookdars, to the revenue of any land held free of assessment, as well as all suits preferred by individuals claiming to hold lands exempt from revenue, shall immediately on their institution, be referred for investigation to the Collector." The Judge of Hooghly therefore should not have referred the case in question to the Sudder Ameen.—*Con. No.* 589, 8*th April*, 1831.

608. With reference to paragraph 2, of my letter to your address, dated the 30th November last, I have the honor to request the favour of being furnished with the orders of the Court regarding my competency to dispose of cases under Section 30, Regulation 2, 1819, on which I have myself reported in my former capacity of Collector. The cases of this nature are of the longest standing of any in Court, and I therefore feel desirous of having them disposed of.—I am directed to acknowledge the receipt of your letter of the 25th ultimo, and in reply to inform you that the Court are of opinion you are competent to dispose of the cases therein referred to.—*Con. No.* 779, *Cal. C.* 12*th April*, *West. C.* 10*th May*, 1833.

609. In cases in which Government may not be itself a party, and in which the suit may have been originally instituted in a Court of judicature, the Collector, on closing his proceedings, shall transmit them, with all documents therein referred to, to the Court by which the reference may have been made, recording his sentiments on the case as prescribed in Sections 20 and 21 of this Regulation, and the Court shall proceed to decide the case, after calling for such further evidence as may appear necessary. Provided, however, that no sunnuds, accounts or other documentary evidence of any kind, which may not have been produced before the Collector, and for not producing which the party may not have assigned a sufficient cause, shall be received by the Court.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 6.

610. Held on a reference from the Judge of West Burdwan involving a construction of Clauses 6 and 7, Section 30, Regulation 2, 1819, that should it be found that the Collector has omitted to perform any act which he was required to do by law, and has either forwarded his report according to Clause 6, or passed a decision under Clause 7, as the case may be, without such defect being remedied, thereby precluding the Judge who may decide, or hear in appeal, the case, from proceeding with and adjudicating it in a legal manner, the latter officer would be authorized,

and it would be his duty to return the proceedings, pointing out to the revenue officer his want of conformity to the law applicable to the case, and desiring him to rectify the error or supply the omission, and on his refusal, the Judge should bring his conduct to the notice of Government. In no case, however, except those in which such a course might be found essential to enable him to proceed legally, ought the Judge to follow it; as the terms of Clause 6, of the Section and Regulation in question sufficiently provide for such other occasions as may arise.—*Con. No.* 1245, *Cal. C.* 23*rd Aug. West. C.* 13*th Sept.* 1839.

611. *First Query.* Whether in a suit brought in the first instance in a Zillah Court, under Clause 1, Section 30, Regulation 2, 1819, and decided by that Court under Clause 6, after receiving the report of the Collector made in pursuance of the latter clause, a regular appeal is open to the Provincial Court from such decision, or whether the appeal can be admitted on special grounds only. *Second Query.* Supposing the Zillah Court to try and decide a suit instituted under the Clause and Section above cited, without making the reference therein required, does such omission invalidate the whole proceeding and decision of the Zillah Court, and render a new trial necessary *ab initio*, or what is the proper course to correct the error ?

On the first question, I am desired to communicate to you the opinion of the Court, that the parties in the suits therein referred to are entitled, as a matter of right, to a regular appeal from the decision of the Zillah Court; and on the second question, that under the circumstances therein stated, a new trial would not be necessary, but that, on such occasions, your Court should send back the case to the Court below for re-trial, after having obtained the Collector's report; this course of proceeding appearing to be a sufficient remedy for the defect, without exposing the parties to any increase of expense.—*Con. No.* 427, 28*th July*, 1826.

SECT. LXIV.

Suits under Reg. 2, 1819, *Sect.* 30.—*Appeal from the Collector's decision when the case is preferred to him in the first instance.*

612. In cases of the above description, which may have been preferred directly to the Collector, if either of the parties shall be dissatisfied with the decision passed by that officer, he shall be at liberty to appeal to the Zillah or City Court by a petition written on stampt paper of the value of one Rupee: Provided, however, that no such appeal shall be received, unless preferred within the period of three months from the date of the Collector's decision, or on good and sufficient cause being shewn for a further delay. —*Reg.* 2, 1819, *Sect.* 30, *Cl.* 7.

613. I am directed to communicate to you the opinion of the Court, that with reference to the value of the stampt paper, on which the appeals referred to in your letter are directed to be written by the clause and section of the Regulation cited, (Clause 7, Section 30, Regulation 2, 1819,) the appeals should be considered summary in as far as relates to the fees to which the pleaders employed in such suits may be entitled; but that, with reference to Clause 12 of the same section, the Court consider, that the trial and decision of such causes should be regulated by the mode of procedure observed in a regular appeal: Under the opinion above expressed, and with reference to the rule contained in Clause 3, Section 9, Regulation 19, 1817, it will of course be requisite that a deposit be made in the first instance for the fees of the pleaders employed in such appeal.—*Con. No.* 338, 18*th May*, 1821.

614. Section 2, Regulation 10, of 1829, the Court observe, rescinds all Regulations and parts of Regulations then existing in regard to the collection of stamps, and as it contains no provision exempting Clause 7, Section 30, Regulation 2, of 1819, from its operation, the latter enactment must be held to have been repealed by it equally with all other laws on the same subject; and it

having been ruled by the two Courts, with reference to the provisions of the Regulation first cited, and in consequence of Section 8, Schedule B, Regulation 10, of 1829, making no exception in favour of petitions for special appeals in cases of the nature of those under consideration, that full stamp duty is leviable thereupon, the Court consider that, by a parity of reasoning, petitions for a regular appeal in such cases as well as the pleadings, exhibits, &c. connected therewith are also chargeable with the full amount of duty, in the same manner as all other regular suits instituted in the established Courts of Civil judicature.—*Con. No.* 987, 25*th Sept.* 1835, *Par.* 3.

615. I am directed to inform you that the provisions of Clause 3, Section 16, Regulation 5, 1831, are applicable only to appeals from the decisions of Moonsiffs, Sudder Ameens and Principal Sudder Ameens: appeals from the decisions of Collectors under Clause 7, Section 30, Regulation 2, 1819, must therefore be taken up and tried under the rules in force prior to the enactment of the Clause first cited.—*Con. No.* 1076, *West. C.* 10*th Feb. Cal. C.* 24*th Feb.* 1837.

616. The Judge on receiving such Petition shall require the Collector to transmit all the proceedings held by him in the case with the documents therein referred to, and shall proceed to investigate and decide on the case in like manner as if it had been originally instituted in the Court, and referred by it to the Collector.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 8.

617. The parties referred to in the seventh and eighth Clauses of Regulation 2, 1819, Section 30, are also entitled, as a matter of right, to a regular appeal from the decision of the Zillah Court.—*Con. No.* 455, 20*th July*, 1827.

SECT. LXV.

Suits under Regulation 2, 1829, *Section* 30.—*Cases in which a reference is to be made to the Board of Revenue.*

618. In all cases in which Government may be the defendant, or in which the revenue of the lands claimed may form part of an estate liable to a variable assessment, the Collector shall, on closing his proceedings, submit them to the Board of Revenue, or other authority exercising the powers of that Board, for their decision. In such cases, if the suit shall have been referred by a Court of judicature, the Collector shall postpone the transmission of his return to the reference, until he shall receive the orders of the Board, or other authority aforesaid, and if the claim shall have been originally perferred to the Collector, the Courts of judicature shall not interfere until the decision of the Board shall have been passed: Provided, however, that in all such cases the decision of the Board shall be recorded in a Persian roobakaree, and transmitted to the Collector in that form for the information of the parties—Provided further, that in cases in which the claim may have been originally preferred to the Collector, the party, if dissatisfied with the decision of the Board, shall be at liberty to appeal to the Court by which the case may be cognizable, any time within the period of three months from the date on which the Board's decision may have been communicated to such party or to his vakeel, or in their absence, from the date on which the roobakaree containing the Board's decision may have been brought on the Collector's record of the case.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 9.

619. If the party shall not apply to the Court within the said period, and shall fail to show good and sufficient cause for the delay, the decision of the revenue authorities shall be final, and shall, on application of the party in whose favor it may have been

passed, be carried into effect by the Courts of Judicature, in the manner in which the decrees of Courts are executed.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 10.

620. Provided also, that in cases in which the right of resuming the revenue of lands held free of assessment, or of recovering possession under such a tenure of lands which may have been subjected to assessment, shall have been adjudged by the revenue authorities, the Courts shall in like manner carry the decision of the said authorities into immediate effect, notwithstanding the admission of an appeal therefrom, unless the party so applying shall give good and sufficient security for the payment of the mesne profits accruing from the lands under dispute.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 11.

621. In cases of the above description, which may be decided by the Courts of Judicature, in appeal from the decision of the revenue authorities, whether the claim be preferred in the first instance to the Court, or Collector, a special appeal only shall be admitted by the superior Court, excepting always, cases which from their amount may be appealable to the King in Council.—Provided also, that the rules contained in Section 26, of this Regulation, shall be applied to all appeals of the above nature.—*Reg.* 2, 1819, *Sect.* 30, *Cl.* 12.

622. In modification of the rules contained in Section 26, and Clause Twelfth, Section 30, Regulation 2, 1819, the special appeals from the decisions of the Zillah Judges, therein provided for, shall, from and after the introduction of Regulation 5, 1831, into any district, lie to the Court of Sudder Dewanny Adawlut.—*Reg.* 7, 1832, *Sect.* 13.

SECT. LXVI.

Suits under Regulation 2, 1829, *Section* 30.—*Cognizance of such suits by Principal Sudder Ameens.*

623. Such suits as are referrible to the Collector under Regulation 2, 1819, Section 30, are not cognizable by the Sudder Ameens or Moonsiffs.—*Cir. Ord. Cal. and West. C.* 30*th Aug.* 1833.

624. And it is hereby enacted, that it shall be competent to every Zillah or City Judge within the said Territories to refer for trial and decision, any original suit preferred under the Provisions of Clause First, Section 30, Regulation 2, 1819, of the Bengal Code, to any Principal Sudder Ameen, any thing in the existing Regulations to the contrary notwithstanding.—*Act* 25, 1837, *Sect.* 3.

625. All suits under Section 30, Regulation 2, 1819, referred to a Principal Sudder Ameen, will be sent as heretofore to the Collector of the district for investigation and report. The Collector on closing his proceedings will transmit them under Clause 6, Section 30, Regulation 2, 1819, to the Principal Sudder Ameen for decision.—*Cir. Ord. Cal. and West. C.* 23*d Feb.* 1838, *Par.* 3.

SECT. LXVII.

Suits in which Government has been made a party.

626. It is hereby declared and enacted, that Government is not, and shall not be held liable for any error, or irregularity which may have occurred, or shall occur in any order, proceeding, or decree of any Court of judicature, whether a revenue, or other officer of Government may or may not have been, or shall or shall not be employed, in giving

effect to the order, proceeding, or decree deemed to be erroneous or irregular. Nor shall any officer of Government be held liable for any thing done, or suffered in conformity with an order, proceeding or decree of a Court as aforesaid, and if any person or persons shall sue Government or any officer of Government for any thing done or suffered under an order, proceeding or decree of Court as aforesaid, such person or persons shall be nonsuited, with costs. The same principle is and shall be held applicable to all orders, proceedings, or decrees made, held, or passed by any public officer, in virtue of powers vested in him for the judicial cognizance of any pleas, suits, complaints, or informations whatsoever, unless otherwise specially provided.—*Reg.* 11, 1822, *Sect.* 38.

627. Doubts appearing to exist as to the proper course of proceeding to be observed by the Zillah and City Courts, in suits brought before them of the nature of those referred to in Section 38, Regulation 11, of 1822, wherein the plaintiff may have made the Government, by its officers, a party, the prohibition contained in that section notwithstanding; I am desired to inform you that in such cases, on the suit being first brought up for a hearing agreeably to the rule contained in Section 10, Regulation 26, of 1814, it should be pointed out to the plaintiff or his vakeel, that he had rendered himself liable to be nonsuited for improperly making the Collector, or other officer of Government, a defendant in his official capacity; and if he should plead that he had done so from inadvertence, and it should appear to the satisfaction of the Court that the act was not wilful, and had not proceeded from any fraudulent or other improper motive, he should be allowed to file a supplemental plaint withdrawing his claim against the Collector, or other Government functionary in his official character, when it would be competent to the Judge to proceed with the suit against the other defendants, and either to dispose of the case himself, or to refer it to any of the subordinate Courts by whom it might be cognizable under the general rules in force.—*Cir. Ord. Cal. C. 7th July, West. C.* 18*th Aug.* 1837.

628. In continuation of the Circular Order of the 7th ultimo, No. 206, I am directed by the Court to inform you that the principle laid down in Section 38, Regulation 11, of 1822, relative to cases in which the Government or its officers may have improperly been made a party, is held to be applicable to suits of the nature of those described in Section 31, Regulation 7, of 1822.—*Cir. Ord. Cal. C.* 18*th Aug. West. C.* 15*th Sept.* 1837.

629. The Court observe, however, that in all cases, in which the Collector may be made a party in his official capacity, whether against law or not, he must on being served with the prescribed notice, either defend the suit in the usual manner, whatever may be the nature of the plea that he may put in, either denying the jurisdiction, or otherwise, or take the consequences of allowing the cause to be tried *ex-parte;* and they are of opinion that where, in the former case, he may file his answer through the Government vakeel, the Court trying the suit, on nonsuiting the plaintiff's claim with costs, as required by the law above cited, should proceed, as in all other cases, to order the payment of the Government vakeel's fees in the first instance by the Collector on the part of Government, leaving him ultimately to recover the amount, in the usual manner, from the party declared liable for the same.—*Con. No.* 1192, *West. C.* 21*st Dec.* 1838, *Cal. C.* 18*th Jan.* 1839.

SECT. LXVIII.

Tributary Mehals in Cuttack.

630. Whereas it is necessary that provisions should be made for receiving, trying and deciding claims to the right of inheritance or succession in certain tributary estates in Zillah Cuttack, which were excepted by Section 11, Regulation 14, 1805, from the operation of the general rules for the administration of Civil justice, established in the

provinces of Bengal, Behar, and Orissa; and whereas the nature of the tenures by which those estates are held, the character of the inhabitants, and other local circumstances, render it expedient that the estates in question should not be subject to partition, but should descend entire and undivided, to the persons respectively having the most substantial claim according to local and family usage; the following rules have been enacted to be in force from the date of the promulgation of this Regulation, in Zillah Cuttack.—*Reg.* 11, 1816, *Sect.* 1.

631. All claims to the right of inheritance, or succession, to any of the undermentioned tributary estates, are to be heard, tried and determined in the first instance, by the superintendent of the Tributary Mehauls in Zillah Cuttack.

Killah — Neelgery,
Ditto — Bankey,
Ditto — Joormoo, alias Duspullah,
Ditto — Nursingpore,
Ditto — Angole,
Ditto — Talcher,
Ditto — Autgurh,
Ditto — Keonjur,
Ditto — Kindeaparah,
Ditto — Neahgurh,
Ditto — Rampore,
Ditto — Hindole,
Ditto — Teegereah,
Ditto — Burumbah,
Ditto — Dekenal,
The Territory of Mohurbunge.

—*Reg.* 11, 1816, *Sect.* 2.

632. The superintendent in deciding cases of the above nature, shall be generally guided by the established laws and usages of the respective tributary estates. Provided however, that the estates above enumerated shall in no case be considered liable to be divided according to the Hindoo law, but shall descend entire to the person having the most substantial claim according to local and family usage.—*Reg.* 11, 1816, *Sect.* 3.

633. The superintendent is prohibited from taking cognizance of any suit, the cause of action in which shall have arisen antecedent to the 14th day of October 1803, the date on which the Fort and Town of Cuttack were surrendered to the British arms. —*Reg.* 11, 1816, *Sect.* 4.

634. The established pleaders of the Zillah Court shall attend the superintendent's Court, to be held in the Court house of the Zillah Adawlut; and they shall receive the same fees as are authorized on the pleading of causes in the Zillah Courts; subject of course to the prescribed rules in the cases of paupers.—*Reg.* 11, 1816, *Sect.* 5.

635. The Hindoo Law Officer of the Zillah Court is to expound the Hindoo law, in all cases wherein it may be requisite for the due determination of causes pending before the superintendent.—*Reg.* 11, 1816, *Sect.* 6.

636. All processes issued in suits instituted under this Regulation, shall bear the official seal and signature of the superintendent; and shall be executed by the officers

on his establishment, in like manner as all similar processes issued by the Judge of the Zillah Court are executed; and any disobedience and resistance to his process shall be liable to a fine to Government to be fixed by the superintendent, subject to the confirmation of the Court of Sudder Dewanny Adawlut; or, if the offender be a landholder or Sudder farmer, and the case appear to call for it, by a confiscation of his estate or farm; commutable to a fine by the Sudder Dewanny Adawlut, or Governor General in Council.—*Reg.* 11, 1816, *Sect.* 7.

637. In the trial of all suits instituted under this Regulation, the superintendent shall be guided by the general rules prescribed for the trial of Civil causes, before the Judges of the Zillah Courts, subject to the special provisions contained in this Regulation, or in points not specially provided for, to any qualification of the general rules, which may be found expedient, and may be sanctioned by the Court of Sudder Dewanny Adawlut.—*Reg.* 11, 1816, *Sect.* 8.

638. It shall not be requisite to use stampt paper for the plaints, pleadings, decrees, or any papers relative to suits instituted under this Regulation, nor shall any durkhaust on stampt paper be required for the admission of exhibits, or the issue of summonses to witnesses, in such suits, when tried in the first instance, or in appeal.—*Reg.* 11, 1816, *Sect.* 9.

639. When the plaintiff or defendant may appoint a pleader, to prosecute or defend a suit, under this Regulation, he shall deposit in the Court a sum equal to the amount of the pleader's fee, unless from the oath, or solemn declaration of the party, or from the evidence of two credible witnesses, the superintendent shall be satisfied of the inability of the plaintiff, or defendant to make such deposit; in which case he shall be admitted as a pauper, and the stated deposit shall not be required.—*Reg.* 11, 1816, *Sect.* 10.

640. In all suits decided and orders passed by the superintendent under this Regulation, an appeal from his decisions and orders shall lie to the Court of Sudder Dewanny Adawlut, provided that the petition of appeal be preferred within three months after the decree or order appealed from, shall have been passed.—*Reg.* 11, 1816, *Sect.* 11.

641. The petition of appeal shall be presented to the superintendent, and shall contain a full and explicit statement of the appellant's objections to the decree or order from which he is desirous to appeal. The appellant if not admitted as a pauper under Section 10, shall at the same time tender good security for the payment of any costs which may be adjudged on the determination of the appeal by the Sudder Dewanny Adawlut, or if unable to give such security, shall make oath or subscribe a solemn declaration to his inability, or adduce two creditable persons to prove the same.—*Reg.* 11, 1816, *Sect.* 12.

642. On receipt of the petition of appeal, with the prescribed security or proof of inability required in failure thereof, the superintendent shall cause a copy to be made of the decree or order from which the appeal may be required, and within fifteen days shall certify and transmit the same, with the petition of appeal, to the Court of Sudder Dewanny Adawlut.—*Reg.* 11, 1816, *Sect.* 13.

643. When the Court of Sudder Dewanny Adawlut may admit the appeal, they will cause a precept to be issued under the seal of the Court, and the signature of the register addressed to the superintendent, requiring him within such period as may be limited by the precept, to furnish a complete record of all papers received, and pro-

ceedings held in the case; and also to call upon the respondent or respondents for his or their answer or to appear in person or by vakeel, within a certain time before the Sudder Dewanny Adawlut, and deliver his or their answer to that Court.—*Reg.* 11, 1816, *Sect.* 14, *Cl.* 1.

644. The superintendent on receipt of the precept shall comply with the exigency thereof, as required; or in the event of his not being able to carry the same into complete execution within the prescribed period, shall certify the same to the Court of Sudder Dewanny Adawlut, with notice of the period within which a further return will be made.—*Reg.* 11, 1816, *Sect.* 14, *Cl.* 2.

645. It shall be optional with appellants and respondents in appeals to the Sudder Dewanny Adawlut, under this Regulation, to attend in person, or by vakeel for the prosecution or defence of their appeals before that Court; or to deliver their proceedings to the superintendent of the tributary Mehals; who, in the latter case, shall forward them, as soon as received, to the Sudder Dewanny Adawlut, and communicate to the parties any orders which may be issued by that Court.—*Reg.* 11, 1816, *Sect.* 15.

646. In cases wherein it may appear to the Court of Sudder Dewanny Adawlut, that the cause in appeal has not been sufficiently investigated, and consequently that further evidence is required for the just determination of it, that Court is empowered to refer the cause back for further trial and judgment to the superintendent, or to direct that further evidence be taken and transmitted to the Court.—*Reg.* 11, 1816, *Sect.* 16.

647. The provisions contained in Section 3, by which the decisions passed by the superintendent, are to be governed, shall be considered equally applicable to the decisions of the Sudder Dewanny Adawlut in all appeals under this Regulation.—*Reg.* 11, 1816, *Sect.* 17.

648. The principles of the several provisions contained in Sections 4, 5, 6, 8, 9 and 10, of this Regulation, shall also be considered applicable to all appeals from decisions or orders of the superintendent of the tributary Mehals in Zillah Cuttack, which may come before the Court of Sudder Dewanny Adawlut.—*Reg.* 11, 1816, *Sect.* 18.

649. In cases of appeal to the Sudder Dewanny Adawlut from any decree or order of the superintendent involving a transfer of property, or any change in the actual possession of property, the decree or order appealed from, shall not be carried into execution during the appeal to that Court, provided the appellant shall give good and sufficient security for the performance of the final decision, which may be passed upon the appeal, and in no instance shall the Superintendent cause to be carried into execution any such decree or order passed by him, until the period allowed for the appeal may have elapsed.—*Reg.* 11, 1816, *Sect.* 19, *Cl.* 1.

650. In the event of the appellant's not giving security for staying the execution of the decree appealed from, and of its being consequently put into execution whilst an appeal is pending, good and sufficient security shall be taken from the respondent for the performance of the final decision which may be passed upon the appeal.—*Reg.* 11, 1816, *Sect.* 19, *Cl.* 2.

651. In case neither party shall be able to give the requisite security, the estate in dispute shall be attached by order of the Superintendent, until the security required

shall be received, or until the final determination be passed by the Sudder Dewanny Adawlut upon the case.—*Reg.* 11, 1816, *Sect.* 19, *Cl.* 3.

652. No decree or order whether of the Superintendent of the Tributary Mehals, or of the Sudder Dewanny Adawlut, involving a transfer of the property or an actual change in the possession of any of the estates enumerated in Section 2, of this Regulation, shall be carried into execution, without a previous communication being made by the Sudder Dewanny Adawlut to Government; in order that sufficient time may be afforded for the adoption of any precautionary measures which may be eventually judged requisite to support, and enforce the execution of the decree or order without hazard to the public tranquillity.—*Reg.* 11, 1816, *Sect.* 19, *Cl.* 4.

653. The judgments of the Sudder Dewanny Adawlut shall be final and conclusive in all appeals heard and determined by that Court under this Regulation, within the limitation of appeals to the King in Council, prescribed by the Statute 21, George 3, Cap. 70, Section 21, viz. five thousand Pounds or Sicca Rupees 43,103.—*Reg.* 11, 1816, *Sect.* 20, *Cl.* 1.

654. If the amount or value adjudged shall, exclusive of costs of suit exceed the sum of 5,000 Pounds or Sicca Rupees 43,103, a further appeal will be open to His Majesty in Council; and shall be received by the Sudder Dewanny Adawlut, under the provisions which have been enacted for receiving such appeals in Regulation 16, 1797.—*Reg.* 11, 1816, *Sect.* 20, *Cl.* 2.

For a modification of this rule see the last Chapter, under the Section of Appeals to the Privy Council.

SECT. LXIX.

Miscellanea.

655. *Question* 1*st*.—The Sicca Rupee being abolished, are all accounts in future, in suits filed in Court, to be settled at par, or where the agreement was in Sicca Rupees, is the calculation to be made at Company's Rupees 106-10-8 per 100 Siccas? *Answer*.—The question supposes that the agreement is for value and not for specific coins. The calculation will therefore be made at 106-10-8 Company's for 100 Siccas, i. e. the intrinsic difference.—*Con. No.* 1151, 27*th April*, 1838.

656. *Question* 2*d*.—From the 1st January in the present year, are parties to be allowed to write bonds, deeds, &c. in Sicca Rupees, and then take exchange at Company's Rupees 106-10-8, or must all agreements be drawn out in Company's Rupees? *Answer*.—It is not necessary that bonds, &c. should be drawn out in Company's Rupees; they may be drawn in Siccas, and then, if for value, they will fall under the last question. If for specific coin (as where a man may covenant to deliver so many coins of the Sicca currency, or so many dollars,) the payment must be in the coin covenanted.—*Con. No.* 1151, 27*th April*, 1838.

CHAPTER IV.

SUMMARY SUITS—PRINCIPLES OF LAW—ARBITRATION—REGISTRATION—STAMPS.

SECTION I.

Summary suits for arrears and exactions of rent.—Cognizance of them by the Collector.

1. Such parts of Regulations 7, 1799; 5, 1800; 18, 1803; 5, 1812; 7, 1813; 19, 1817; 14, 1824, or of any other Regulations in force, as authorize the Judges of the Zillah or City Courts, to take cognizance of Summary suits or claims relating to arrears or exactions of rent, and to refer the same to the Collector for investigation and decision, are hereby rescinded.—*Reg.* 8, 1831, *Sect.* 2.

2. From and after the date of the promulgation of this Regulation, it shall not be competent to the judicial authorities to receive any claims of the nature above adverted to, unless the complaint be preferred as a regular suit in the mode prescribed by Regulation 4, 1793, and the corresponding enactments.—*Reg.* 8, 1831, *Sect.* 3.

3. All Summary cases of the above nature which may be depending in the Zillah and City Courts, at the date of the promulgation of this Regulation, shall be transferred to the Collectors of the several districts for investigation and decision.—*Reg.* 8, 1831, *Sect.* 5.

4. Summary suits for rent instituted by holders of rent-free land against their tenants, should be tried by the Collectors under the provisions of Regulation 8, 1831, the Civil Courts being incompetent to receive them.—*Con. No.* 837, *West. C.* 11*th Oct. Cal. C.* 8*th Nov.* 1833.

5. With reference to the spirit of the provisions of Regulation 8, 1831, the Court are of opinion that it was the intention of the legislature to render suits of the nature described by the Collector of Banda, viz. summary suits instituted by Malgoozars, against putwaries and other native agents employed by them in the management of their estates, under Section 37, Regulation 28, of 1803, cognizable by the revenue authorities; and this course appears the more advisable mode of proceeding from the nature of the points which would come under investigation before the officer entrusted with the duty of deciding them.—*Con. No.* 946, *West. C.* 24*th April, Cal. C.* 22*d May,* 1835.

6. On the subject of suits for damages connected with exactions of rent, the Court have already been in communication with the Presidency Sudder. Former Regulations and Circular Orders have already determined that such suits were cognizable by the Judges under a summary process; and the Courts have therefore ruled, on the principle by which they have throughout been guided, that they are consequently, in the same manner and with the same restrictions, now cognizable by the Collectors under Regulation 8, 1831.—*Cir. Ord. Cal. and West. C.* 15*th Nov.* 1833, *Par.* 3.

7. Summary claims connected with arrears or exactions of rent, shall be preferred in the first instance to the several Collectors of land revenue, whose decisions in

such cases shall be final, subject to a regular suit, unless the ground of appeal be the irrelevancy of the Regulation to the case appealed, on which ground only the Commissioner of revenue for the division is authorized to receive an appeal, if preferred to him within one month of the date of the summary decision. The Commissioner of revenue after receiving the appeal, and calling for the proceedings in the case shall dismiss the same with costs, if the stated ground of irrelevancy shall not appear to be established. If on the other hand the case should appear to be of a nature not properly cognizable as a summary suit under the provisions of this Regulation, the Commissioner of revenue shall reverse the irregular judgment given by the Collector, and pass such further orders thereupon as he may think just and proper in pursuance of the Regulations in force, which may be applicable to the circumstances of the case.—*Reg.* 8, 1831, *Sect.* 4.

8. I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, and its enclosure from the Collector of your district, requesting the Court's opinion as to the competency of a Collector to take cognizance of resistance to the attachment of property distrained for arrears of rent, under Sections 19 and 20, Regulation 17, 1793, and Section 9, Regulation 7, 1799. In reply, I am directed to observe, that the Court, on the 9th August, 1806, construed the Sections above quoted as providing that investigations made under these rules should be tried as summary suits: and that, as the whole of the jurisdiction in cases of summary suits for arrears of rent, formerly vested in the Civil Courts, has been, by the provisions of Regulation 8, 1831, transferred to the Collectors of revenue, the Court are of opinion, particularly with reference to the provisions of Section 4, of that Regulation, that the Collector is competent to try all cases of resistance of his process of attachment connected with such summary suits, except when actual breaches of the peace may occur, in which event the case must be tried by the Magistrate.—*Con. No.* 615, 23*rd Dec.* 1831.

9. In furnishing Periodical Reports of suits decided and depending which may have been instituted under this Regulation, and generally in the performance of other duties connected with its provisions, the several Collectors shall be guided by the instructions which they may receive from the revenue Commissioners or the Sudder Boards of Revenue.—*Reg.* 8, 1831, *Sect.* 18.

10. In modification of Clause Three, Section 8, Regulation 4, 1821, it is hereby declared that assistants to Collectors are not competent to exercise the powers vested in Collectors by this Regulation, unless specially empowered by the Governor General in Council. When thus empowered, they shall be competent to decide suits referred to them by the Collector, subject always to such revision or control on his part as he may see fit to exercise, and subject ultimately to an appeal to the Commissioner of Revenue under the provisions of Section 4 of this Regulation.—*Reg.* 8, 1831, *Sect.* 21.

11. No complaint or application of the nature specified in the preceding Clauses, [regarding arrears or exactions of rent] shall be received by a Collector under the rules of this Regulation, unless the plaint or application shall have been preferred within the period of one year after the cause of action shall have arisen.—*Reg.* 7, 1822, *Sect.* 20, *Cl.* 3.

12. The provisions contained in Section 15, Regulation 7, 1799; Section 14, Regulation 5, 1800; and Section 32, Regulation 28, 1803; for the arrest of defaulting under-tenants, and their sureties from whom arrears of rent may be due to proprietors and farmers of land, and for a summary inquiry to be made by the Judges of the Zillah and City Courts when the parties so arrested for arrears of rent may be brought before

them, are from the terms and objects of such provisions evidently intended to be applicable only to recent arrears of rent, due in the course of the current year, or immediately after the close of it; and it is hereby declared, that the summary inquiry and process authorized by the above Regulations shall not be applied to any arrear of rent, or other demand which may have been due more than a complete year, before the delivery of the petition of arrest, and application for such summary inquiry and process, as directed by the Regulations above cited. Provided however, that this restriction shall not be considered to preclude the Judges of the Zillah and City Courts, (or their Registers, or the Collectors, to whom such inquiry may be committed by them,) from including in the adjustment of recent arrears in such cases, any arrear which may be found due beyond the period of one year, if the same shall appear equitable.—*Reg.* 2, 1805, *Sect.* 4, *Cl.* 1.

13. In modification of the existing rules regarding summary suits, it is hereby provided, that the summary jurisdiction to be exercised by Collectors shall be restricted to the object of enforcing payments of the rents paid in past years, to the entire exclusion of all claims to increase, except on proof of bonâ fide written engagements to such increase.—*Reg.* 8, 1831, *Sect.* 10.

14. Under the existing Regulations, a person to whom arrears of rent may be due is authorized to proceed against the defaulter, either by distraint of his property or attachment of his person; and he may exercise the option allowed him in such mode as he may conceive most convenient to himself.—*Con. No.* 519, 21*st Aug.* 1829, *Par.* 2.

15. You are consequently not at liberty to reject summary suits instituted under Regulation 7, 1799, whatever may be the amount sued for, and you will be pleased to proceed in due course to the adjudication of those now pending.—*Con. No.* 519, 21*st Aug.* 1829, *Par.* 3.

16. Any such suit instituted in a Court of Justice by a Zemindar, farmer, or other landholder, who has not conformed to the above rule, [Sect. 12, 13, 14, Reg. 9, 1833,] shall be nonsuited with costs; and should he proceed to oust a ryot or other tenant from the land occupied by him, or distrain his property, he shall be liable to damages on account of such illegal acts, to such amount as the Court awarding the restitution of such land or property may deem adequate.—*Reg.* 9, 1833, *Sect.* 15.

SECT. II.

Summary suits for Arrears and Exactions of Rent.—Encouragement to institute Regular Suits.

17. By Section 20, Regulation 5, 1812, it is provided, that suits instituted under that Regulation for the recovery of arrears of rent may be decided by the Zillah and City Judges on summary enquiry; it was not however intended by that provision to preclude individuals from instituting a regular suit in the first instance for the more formal investigation of the merits of the case, either before the Moonsiffs or in the Zillah and City or Provincial Courts, according to the amount at issue, and the Zillah and City Judges are hereby enjoined to encourage, as much as possible, that mode of procedure, as well in the suits above adverted to, as in all other claims for arrears of rent, which may be cognizable by summary process under the existing rules, whenever it may in their opinion lead to a more prompt and satisfactory determination of the points at issue.—*Reg.* 2, 1821, *Sect.* 4.

18. With a view to give additional encouragement to parties having claims to arrears of rent, to prefer regular suits on account of the same, it is hereby declared that the plaint in all such regular suits, if under the existing Regulations they would have been cognizable as summary suits, may be written on paper bearing a stamp of one-fourth the prescribed value. Provided, however, that this rule shall not be considered applicable to a suit instituted with a view to set aside a previous summary decision, which suit shall be subject to the ordinary provisions for the payment of stamp duty.—*Reg.* 8, 1831, *Sect.* 8.

19. I am directed to inform you, that the cases therein alluded to, if connected with arrears or exaction of rent, are cognizable as summary suits by the Collector under the provisions of Regulation 8, 1831, and (except where summarily tried by the Collector,) as regular suits by the Moonsiffs on stamp paper of a quarter the full value, if within the amount cognizable by those officers, under Sections 8 and 11 of that Regulation.—*Con. No.* 714, *Cal. C.* 31*st Aug. West. C.* 5*th Oct.* 1832, *Par.* 2.

20. In reply to your third question, the Court direct me to state that they consider the above rules [Rule 19] applicable both to ryots and under-tenants resisting undue demands, and to Zumeendars and others claiming their just dues.—*Con. No.* 714, *Cal. C.* 31*st Aug. West. C.* 5*th Oct.* 1832, *Par.* 3.

21. I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, and in reply to inform you, that in suits instituted under Section 8, Regulation 8, 1831, the full fees of the pleaders must be deposited, the pleadings must be filed, and all the forms enjoined for the conduct of regular suits must be observed. The only exemption contemplated by the Section in question is the relinquishment, on the part of Government, of three-fourths of the stamp duty levied in lieu of the institution fee, with a view of inducing parties to institute regular instead of summary suits.—*Con. No.* 930, *Cal. C.* 23*d Jan. West. C.* 27*th Feb.* 1835.

22. It has been ruled that suits instituted under Section 8, Regulation 8, 1831, are to be considered in all respects as regular Civil suits; consequently the pleadings and all other papers should be written on stampt or plain paper, according to the circumstances of the case, in the same manner as if the suit had been instituted on full stamp.—*Con. No.* 1001, *Cal. C.* 12*th Feb. West. C.* 4*th March*, 1836.

23. Held that on the institution of a suit for rent before a judicial officer, proof must be required that the plaintiff has conformed to the rules laid down in Sections 14 and 15, Regulation 9, 1833: the nature of the proof will of course be such as the plaintiff is able to adduce.—*Con. No.* 884, *West. C.* 16*th May, Cal. C.* 13*th June*, 1834.

24. In those districts in which Moonsiffs may be appointed under the provisions of Regulation 5, 1831, those Moonsiffs shall be competent, in addition to the authority now possessed by Moonsiffs generally, of receiving, trying, and deciding claims to arrears of rent preferred by regular suit, in like manner to dispose of all claims preferred by under-tenants or others, who may be desirous of resisting the distraint of their property or the attachment of their persons; or who may prefer a claim for damages on account of such acts.—The rule contained in Section 13, Regulation 23, 1814, or any other Regulation, prohibiting the award of damages by Moonsiffs, shall not be considered applicable to such claims.—*Reg.* 8, 1831, *Sect.* 11.

SECT. III.

Summary suits for Arrears and Exactions of Rent.—Process of Arrest.

25. Any Zemindar, talookdar, or proprietor or farmer of land, to whom an arrear of rent may be due from a dependent talookdar, kutkinadar, jotedar, or other under-tenant of whatever denomination, which cannot be realized by distraining the personal property of such under-tenant, and his surety (if he shall have given security) is at liberty, after demanding such arrear from the defaulter, and from his surety if forthcoming, or without any express demand if he have reason to believe that the defaulter or his surety is prepared to abscond, to cause the immediate arrest of such defaulter and his surety in the manner following.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 1.

26. The rules in the whole of the preceding Sections for the recovery of arrears of rent due to proprietors and farmers of land, are to be considered equally applicable to the managers of the estates of disqualified landholders, and of joint undivided estates; as well as to Collectors or other public officers holding lands in attachment for the purpose of adjusting the public assessment on them, or for any other purpose; or making a khas collection on the part of Government, where no settlement has been made with any proprietor or farmer: and the authorized agents of such managers, collectors, or other public officers, provided they be so commissioned and instructed, are to exercise the same authority as is vested in the agents of proprietors and farmers of land by Section 2, of this Regulation.—*Reg.* 7, 1799, *Sect.* 19.

27. It appears to the Court, that the term "farmer of land" in the fourth Clause of Section 15, Reg. 7, 1799, is used in a general sense, and includes the description of under-farmers described in your letter, [that is duryardars or under-farmers of every description].—*Con. No.* 278, *9th July*, 1817.

28. In reply to a reference from the acting Judge, Zillah Juanpore, the Court determined on the 26th March, 1808, that the provisions of Section 14, Regulation 5, 1800, [corresponding with Regulation 7, 1799, Sect. 15,] are equally applicable to persons in possession of estates under deeds of mortgage, as to regular proprietors and farmers of land.—*Con. No.* 35, *26th March*, 1808.

29. The terms of Regulation 7, 1799, as well as Regulations 17, 1793, and 35, 1795, therein referred to, being general, must be considered applicable to all claims for arrears of rent, whether due from lands paying revenue, or from lands held exempt from the public revenue, as has been declared by this Court in former instances.—*Con. No.* 313, *5th May*, 1820, *Par.* 5.

30. I am directed to inform you that the practice described in the latter part of your 2d paragraph, of allowing a single suit to be instituted against a large portion of the inhabitants of a village for arrears of rent, when such inhabitants are not otherwise connected than as dwelling in the same village, and do not jointly cultivate any piece of land, is irregular and objectionable; nor does it appear to the Court as sufficient reason that the original summary suit was admitted in that shape. The limit laid down in the first part of the same paragraph, with regard to including several ryots in one suit, [that is, only those who conjointly cultivated any parcel of land and were conjointly answerable for the rent,] is in the Court's opinion judicious, and should be invariably observed.—*Con. No.* 860, *West. C. 7th Feb. Cal. C. 28th Feb.* 1834.

31. The Court are of opinion, that the whole of the provisions of Section 15, Regulation 7, 1799, are equally applicable to defaulting tenants and their malzamin; but they cannot be applied to the hazirżamins, unless the defaulters for whose appearance they are responsible abscond, in which

case, the hazirzamin, as well as the malzamin, is answerable for what may be due from the defaulter, and may be proceeded against accordingly.—*Con. No.* 41, 13*th Sept.* 1808.

32. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting their opinion on the following point: Is a Zillah Judge authorized to take up and investigate, in a summary manner, a complaint preferred by a zemindar or his gomashtah against the ryots for breach of attachment of crops, made under the provisions of Section 13, Regulation 5, 1812.—In reply I am desired to refer you to the provisions contained in Section 15, Regulation 7, 1799, and to acquaint you, that the Court determined on the 9th of August, 1806, that all suits instituted under the Section in question shall be tried in a summary manner.—*Con. No.* 503, 24*th April,* 1829.

33. I am directed by the Court to acknowledge the receipt of your letter of the 1st instant, and in reply to inform you, that they entirely concur with you in opinion that the Collector exceeded his competency under Section 9, Regulation 8, 1831, in referring summary suits to Moonsiffs to be tried as regular.—*Con. No.* 879, *Cal. C.* 11*th April, West. C.* 2*d May,* 1834.

34. Summary claims of the nature above adverted to, which may be preferred to a Collector conformably with Section 4, of this Regulation, shall be written on paper, bearing a stamp of one-fourth the value which would have been required, had the claim been instituted in any Civil Court as a regular suit.—Provided, however, that the Collector shall have a discretion to receive a complaint on paper, bearing a stamp of Eight Annas, from any dependant Talookdar, Farmer, or Ryot, if the complainant is bonâ fide unable to pay the price of the prescribed stamp, or if the Collector should, for other reasons, consider the indulgence proper.—*Reg.* 8, 1831, *Sect.* 7.

35. The petition of arrest, to be presented under the above Clause, as well as any petitions for the arrest of defaulting under-tenants or their sureties, which may be hereafter presented under the Regulations abovementioned, shall specify, besides the name and residence of the defaulter and surety, and the Mehal for which the balance of rent is claimed, the annual jumma of such Mehal; the amount demandable for the kists of the current year which may have become payable, the amount received from the tenant or his surety, and the balance actually due for the payment of which the arrest is desired. The petition shall also state whether the arrear claimed has been demanded from the defaulter or his surety, and the result.—*Reg.* 19, 1817, *Sect.* 15, *Cl.* 2.

36. The proprietor or farmer to whom the arrear may be due or his authorized agent, is at liberty to present a petition to the Judge of the Zillah Dewanny Adawlut [*now* to the Collector].—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 2.

37. The Court request that you will prohibit the Moonsiffs of your district, from receiving and acting upon petitions for the arrest of defaulters, presented by Zumeendars under the provisions of Clause 2, Section 15, Regulation 7, 1799.—*Cir. Ord. Cal. and West. C.* 13*th July,* 1832.

38. If the petition of arrest, stated in the preceding clause, be presented in the first instance to the Zillah Judge (and to save time, it is allowed to be presented either in or out of Court, and by any authorized agent, whether one of the established vakeels of the Court or otherwise) the Judge, if the defaulter or surety be within his jurisdiction, is immediately to issue a dustuck for the arrest of such party and to bring him before the Court, unless he pay the arrear demanded, and if such payment be not made on the service of the dustuck, or within twenty-four hours afterwards (which time is to be allowed to the party arrested to adjust the demand) the officer charged with the dustuck is to complete the execution thereof by conveying the party to the Zillah Court.

Provided however, that if the party arrested shall by a written application, request a longer period than twenty-four hours to adjust the demand against him, and the party causing the arrest shall, by a written superscription or endorsement on such application, acquiesce therein, the officers charged with the dustuck shall delay the execution accordingly; and whenever the party at whose instance the dustuck may have been issued shall, by a written derkhaust, declare himself satisfied, and desire the arrest to be withdrawn, it shall be immediately withdrawn accordingly, the officers charged with the dustuck, (who are never to exceed two in number, unless in any particular cause a greater number be considered necessary to prevent escape,) being at the same time paid the tullubanah due to them according to the rate established by Section 3, of Regulation 14, 1793, viz. two annas per diem, or any lower rate that may have been the customary allowance to persons deputed with revenue processes.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 3.

39. On a reference to the Sudder Dewanny, the Register of the Dewanny Adawlut, Zillah Purnea, was informed on the 18th July, 1807, that the Court were of opinion, that the notice directed by Section 2, Regulation 2, 1806, is not applicable to cases of summary process provided for by Section 15, Regulation 7, 1799.—*Con. No.* 30, 18*th July*, 1807.

40. In addition to the Rules contained in Section 15, Regulation 19, 1817, it is hereby provided that any Zemindar, Talookdar, farmer, or other person entitled to receive rent, who may desire to take out summary process against the person of a defaulter, shall be at liberty to make application for the purpose either to the Judge of the district within which the land may be situated, or of the district wherein the defaulter may be at the time resident, at his option. In the event of his applying to the Judge of the district, within which the defaulter may not be resident, the process shall be transmitted by dawk to the Judge of the district where he may reside, in order to be there served in the usual form. The defaulter, if apprehended, shall be sent over in custody; or if he should not be found, so that the process cannot be served, a return shall be made accordingly, and the deposition of the peon employed shall further be taken, to be sent along with the return for the satisfaction of the Judge issuing the process, as to the efforts made to apprehend the defaulter.—*Reg.* 8, 1819, *Sect.* 19.

41. The summary process authorized by Clauses First, Second, Third, Fourth, Fifth and Sixth, of Section 15, Regulation 7, 1799, for the arrest and confinement of defaulting under-tenants of land and their sureties, shall not be applied to under-tenants employed in the manufacture of salt during the manufacturing season, as described in Section 18, Regulation 29, 1793, viz. from the commencement of the month of Kartick, to the end of the month of Assar. The rent payable by persons so employed can seldom be so considerable as not to be recoverable by distraining their crops and other personal property as authorized by Regulations 17, 1793; 35, 1795; and 7, 1799; provided the distress be levied in due time; but if in any instance an arrear of rent should be due from a person employed in the manufacture of salt which cannot be realized by distraining his crops and other personal property (and that of his surety if he shall have given security,) the proprietor, or farmer of land, to whom such arrear may be due, or his authorized representative, is to proceed for the recovery of it in the mode directed by Section 19, Regulation 29, 1793, which is still to be considered in full force, as well as Sections 20 and 21, of the same Regulation, notwithstanding any part of Regulation 7, 1799, or any other Regulation passed antecedent to this date.—*Reg.* 9, 1801, *Sect.* 2.

SECT. IV.

Summary suits for Arrears and Exactions of Rent.—Power of the Collector to reject a Summary Suit.

42. It is further hereby declared competent to a Collector to whom a summary suit may be preferred under the provisions of this Regulation, to reject the same by a Persian order to be written on the back of the petition, to be returned to the party, referring him to a regular suit; and the said petition shall be received by the Judicial Authorities as a petition of plaint in like manner as if the claim had been originally preferred to them in the form of a regular suit.—*Reg.* 8, 1831, *Sect.* 9, *Cl.* 1.

43. Provided, however, that it shall be competent to a Commissioner of Revenue on Summary appeal to direct the Collector to receive and decide such suits, as well as to give such general instructions relative to the admission or rejection of suits referring to the matters in question, as local or other circumstances may in his judgment render necessary.—*Reg.* 8, 1831, *Sect.* 9, *Cl.* 2.

44. The Court have observed that some Collectors have transferred to the Zillah Courts a large number of summary suits for arrears of rent pending on their files, and that the Zillah and City Judges have received those suits contrary to the evident intent of Clause 1, Section 9, Regulation 8, 1831. They beg to recommend that the Collectors be enjoined strictly to follow the rule laid down in that clause; which prescribes that when they reject a summary suit they shall do so by a Persian order written on the back of the petition, and return the petition to the party, referring him to a regular suit, when he will be able at once to present the petition to the Moonsiff, in the event of its being cognizable by that officer; otherwise to the Judge, who will immediately refer it to the Principal Sudder Ameen or Sudder Ameen by whom it may be cognizable. The Governor of Bengal sanctioned the recommendation.—*Cir. Ord. Cal. and West. C. 27th Feb*, 1835.

SECT. V.

Summary suits for Arrears and Exactions of Rent.—Summary Investigation and Decision.

45. After process of arrest may have been taken out in the usual form, if the return of the nazir be, that after diligent search the party cannot be found, it shall be optional with the plaintiff to move the Court by his vakeel or authorized agent to solicit a postponement of the case for a month, in order to cause another process to be served at any time in the course of it, that may afford the chance of securing the person of the defaulter, and then to have a notice issued and the case brought to judgment; or to cause proclamation to be made without such postponement, that after fifteen days from the date of notice, the Court will proceed to a summary investigation of the balance, and in case of the non-attendance of the defendant, will pass judgment summarily upon the documents and proofs that may be exhibited by the plaintiff ex-parte.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 3.

46. In the trial and decision of such suits, the Collector shall be guided by the rules contained in this Regulation, and upon points to which these may not be applicable by the rules prescribed for the guidance of the Civil Courts in the trial and decision of summary suits of the same description. The Collector shall also possess the same powers as are vested in the Civil Courts for causing the attendance of parties

and witnesses, and generally for all process which it may be necessary to issue in such suits, except the execution of decrees, respecting which the following rule is to be observed.—*Reg.* 14, 1824, *Sect.* 4.

47. When a defaulter or his surety may be brought to the Zillah Court under either of the two preceding clauses, [Rules 36 and 38 of this Chapter] the Judge shall call upon him to answer the demand against him, and if he deny it, or any part of it, shall enter upon a summary enquiry into the merits of it, by examining the vouchers and accounts of the parties. The landholders and farmers are allowed to employ any vakeel they may think proper to appoint, provided he be duly empowered by them, to attend such enquiries, before the Collectors, as well as the summary enquiry directed in this regulation before the Judge.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 4.

48. It shall be competent to the parties in all suits, the cognizance of which is hereby vested in the Collectors of Revenue, to employ any agent, vakeel or representative, whom they may think proper to appoint, to act and plead in their behalf, provided such agent, vakeel or representative, be duly empowered by the parties. The rate of remuneration to such agent or vakeel shall be left to be adjusted between himself and his constituent; but no greater sum shall be awarded on this account for costs payable by the party against whom the judgment may be passed than what may be deemed by the Collector a fair equivalent for the attendance of such agent.—*Reg.* 14, 1824, *Sect.* 6.

For the stamp paper for Mookhtarnamahs and Vakalutnamahs in Summary suits, vide Chap. II. Rule 439.

49. The Court further observe, that a Zemindar, talookdar, farmer, or other landholder, who, in a summary suit, can shew by his village accounts, (proved to be kept in a regular form and to be true accounts,) or by any other probably true evidence, that the arrear demanded by him is due by the defendant, he is entitled, under the existing law, to a decree for the amount of the arrear, although he may not have granted a pottah to the defendant, or have received a kabooleat from him.—*Con. No.* 574, 17*th Sept.* 1830, *Par.* 3.

50. The Court do not hold the existence of a *kabooleat,* or written engagement on the part of the ryot, to be essentially required to enable the landholder to institute a summary suit against him under Regulation 7, of 1799; but that, on the contrary, the Courts are competent to decree such arrears as may be proved to be *bond fide* and equitably due by an examination of the vouchers and accounts of the parties, as prescribed by Clause 4, Section 15, Regulation 7, 1799.—*Con. No.* 380, 15*th April,* 1825, *Par.* 3.

51. No other pleadings shall be required from the parties in such suits than a plaint and answer, provided that if the parties should, at any time, wish to file an amended plaint, or an amended answer, or any explanatory motion, such subsidiary pleadings shall be received.—*Reg.* 14, 1824, *Sect.* 7.

52. No fees shall be taken on exhibits, tendered in the cause, or for the witnesses required by the parties, nor shall it be necessary for the parties to present a written motion on stampt paper for the filing of such exhibits, or for the summoning of such witnesses.—*Reg.* 14, 1824, *Sect.* 8.

53. It shall be competent to the Collectors to hear and determine such suits in whatever part of the district they may occasionally be, or reside, provided that every hearing and decision be in public Cutcherry, or in some other place open to the public, and in the presence of the parties, or of their constituted agents or vakeels, if in attendance.—*Reg.* 14, 1824, *Sect.* 9.

54. Whenever a dependānt talookdar, or kutkinadar or other under-tenant of land, or his surety may be arrested, on the demand of an arrear of rent, under the summary process authorized by the Regulations specified in the preceding Section, and may deny that the arrear demanded or any part of it is owing; and such under-tenant, or surety, shall tender sufficient security for his personal attendance during the prescribed summary enquiry; it shall be competent to the Judge to receive such security, and to admit the tenant or surety to bail, until the enquiry directed to be made in such cases, by examining the accounts and vouchers of the parties, or by referring the case for adjustment to the Collector of the district, shall be completed, and a decision passed thereupon.—*Reg.* 19, 1817, *Sect.* 16, *Cl.* 2.

55. The Judge after receiving the Collector's report, if the case be referred to him for adjustment, or after completing his own enquiry, if it be not so referred, is to discharge the defendant, with full costs and damages, if it appear that no arrear is due from him; or that the arrear demanded has been wilfully mis-stated by the plaintiff and a considerable proportion of the demand is not justly due to him. But if it appear that the arrear demanded, or a considerable proportion thereof be justly due from the defendant, he is to be kept in close custody, until he pay the amount, with all costs, and interest on the arrear at the rate of one per cent. per mensem; or until plaintiff make application to the Court for his release. The plaintiff is to pay to such defendants, whilst in confinement, the same allowance for their subsistence as is fixed for other prisoners in the jail of the Dewanny Adawlut by Section 8, of Regulation 4, 1793, viz. such allowance as the Judge may think proper on consideration of the rank and situation of the prisoner, not exceeding four annas, nor less than one anna per diem, and the payment is to be made in the same manner, and under the same provisions as prescribed in the above Section.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 5.

56. With regard to the general question referred in the second paragraph of your letter, viz. "whether in a suit instituted under the provisions of Regulation 7, 1799, the Judge is warranted in deputing an Ameen, for the purpose of local investigation;" the Court are of opinion, that although such deputation should not be ordered in summary suits without necessity, the Zillah Judge is not restricted by any provision in Regulation 7, 1799, from directing a local enquiry, when it may appear to him indispensably requisite for the purpose of ascertaining the rent demandable in the case. —*Con. No.* 265, 19*th Feb.* 1817, *Par.* 2.

57. Whenever, from the great accumulation of suits connected with claims to arrears or exactions of Rent, or from any other cause, it shall seem advisable, the several Collectors are hereby authorized, with the previous sanction of the Commissioner of the division, to refer to the Tuhseeldars within their respective Districts, any such claims with a view to their being adjusted and reported upon, and the several Tuhseeldars shall be guided in the performance of this duty by the rules which were declared applicable to the proceedings of Collectors in similar references, prior to the enactment of Regulation 14, 1824.—*Reg.* 8, 1831, *Sect.* 13.

[*Wherever in the above enactments the Judge is alluded to in reference to the trial of these suits, the reader is requested to substitute the word Collector.*]

SECT. VI.

Summary suits for Arrears and Exactions of Rent.—Execution of the Collector's award.

58. Such part of Clause three, Section 23, Regulation 7, 1822, as relates to the execution of awards in cases where a specific sum of money shall be adjudged to be due, or any cost or damage be awarded, is declared equally applicable to the awards which may be made by Collectors under this Regulation.—*Reg.* 8, 1831, *Sect.* 20.

59. Collectors of the land revenue are hereby empowered to execute all awards made by them under the rules of this Regulation, in cases wherein a specific sum of money shall be adjudged to be due, or any costs or damages be awarded; the Collector decreeing the same shall proceed to levy the amount for the party in whose favor it may be adjudged by the process in use for the recovery of arrears of the Government revenue.—*Reg.* 7, 1822, *Sect.* 23, *Cl.* 3.

60. Be it enacted, that such parts of Clause 7, Section 15, Regulation 7, 1799, of the Bengal Code, and other Regulations in force, as vest the Judge of Dewanny Adawlut with the power of bringing to sale, in execution of summary decrees for rent, the talook or other tenure of the defaulter, and so much of Clause 3, Section 23, Regulation 7, of 1822, of the same Code, as prohibits the Collectors from selling land in satisfaction of summary awards for arrears of rent which may have accrued thereon, be rescinded, and that the power heretofore vested in the Judges of the Dewanny Adawlut of selling land in satisfaction of summary decrees for rent, be transferred to the Collectors of land Revenue.—*Act* 8, 1835, *Sect.* 1.

61. And be it enacted, that all sales for the recovery of arrears of rent or revenue, held under Clause 7, Section 15, or Clause 6, Section 23, or Section 25, Regulation 7, of 1799, shall be public, and be conducted by the Collector, his deputy or duly authorized assistant, and that ten days' notice shall be given of such sales, by advertisement, to be stuck up at the Cutcherry of the Zillah Court or local Adawlut, and that of the Collector.—*Act* 8, 1835, *Sect.* 2.

62. I am directed to observe that if the Collector has attached the property of the ryot alluded to in your letter No. 92, dated 26th May last, in satisfaction of a summary award of his own Court, his jurisdiction in summary suits being quite independent of that of the Judge, and himself, in such cases, in no way subordinate to the authority of that officer, they do not see on what ground the Judge could exercise any interference in the matter; while if the whole estate should have been placed under attachment, or kham management, with a view to the realization of the Government revenue, whether for former years, or the present, and the collections be made direct by the Collector, or his officers, it does not appear to the Court how the Judge could interfere either with the general management of the estate, or with the appropriation to the payment of the Government demand of the rent arising from it.—*Con. No.* 1165, *West. C. 20th July, Cal. C. 17th Aug.* 1838.

63. Held on a reference from the Judge of Hooghly, that, under the existing law, execution of a summary decree for arrears of rent may be taken out within twelve years from the date of such decree.—*Con. No.* 1266, *Cal. C. 9th Aug. West. C. 6th Sept.* 1839.

64. In reply to your letter of the 9th instant, I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to inform you that in the opinion of the Court, a Judge is not competent to stay the execution of a summary award passed by a Collector, pending the trial of a regular suit instituted in the Civil Court, to set aside that award. No provision in the Regulations in force appears to the Court to invest the Judge with this power, and the whole object of the sum-

mary process would be evidently defeated, as observed by Mr. Lindsay, if the execution of the award were liable to be stayed until the final adjustment of a regular suit.—*Con. No.* 738, *West. C. 16th Nov. Cal. C. 7th Dec.* 1832.

65. I am desired to communicate to you the opinion of the Court that in cases of the contemplated sale of property in execution of a summary award given by the Collector it is competent to the Civil Court, on the motion of a third party claiming the property ordered to be sold, to stay the sale pending the result of a regular suit instituted by such party to establish his claim.—*Con. No.* 1181, *Cal. and West. C. 26th Oct.* 1838.

66. The Court are of opinion, that as Collectors are empowered by Section 20, Regulation 8, 1831, to execute their own awards, their orders for the confinement and release of defaulters need not pass through the Civil Judges; and that the warrant of the Collector is a sufficient authority to the Civil jailor to receive or discharge a prisoner.—*Cir. Ord. Cal. and West. C. 4th Jan.* 1833.

67. The Court are of opinion that if the prisoner be in confinement in execution of a summary decree, passed by a Collector under Regulation 8, 1831, that officer is competent to release him on his presenting a petition under Section 11, Regulation 2, 1806, and proving his insolvency; the powers heretofore vested in the Judge in such cases having been virtually transferred to the Collector by the provisions of the Regulation first quoted.—*Con. No.* 784, *Cal. C.* 19*th April, West. C.* 17*th May,* 1833.

SECT. VII.

Summary suits for Arrears and Exactions of Rent.—Institution of a Regular suit to contest a summary decision.

Vide Reg. 8, 1831, *Sect.* 4, *given as rule* 7, *of this Chapter.*

68. Any person who may be dissatisfied with the summary judgment of a Collector passed under this Regulation, and may be desirous of a more full and formal investigation of the merits of the case, shall be at liberty to prefer a regular suit in the local Zillah or City Court, and on the institution of such suit the proceedings held on the summary inquiry shall be filed on the record of the regular suit.—*Reg.* 14, 1824, *Sect.* 10.

69. Provided also, that the regular suits which may be brought to contest decisions passed by Collectors, under the powers vested in them by Sections 11, 12, 14, 15, 16, 17, 18, 19 and 20, shall be of the nature of an appeal to the Court in its regular jurisdiction from a summary award. It shall not therefore be necessary for the Collector or other officer of Government to be a party in the action—*Reg.* 7, 1822, *Sect.* 23, *Cl.* 2.

70. Persons confined under the Fifth Clause of the preceding Section [Clause 5, Section 15,] and desirous of bringing the demand upon them to a regular judicial investigation and decision in the Dewanny Adawlut, are at liberty to institute a suit against a landholder or farmer, at whose instance they may have been confined, for this purpose; and should the amount denied by them be found upon trial not to have been due, they shall receive a judgment for full costs and damages against the party by whom it may have been claimed. They shall also be entitled to a similar judgment, with interest at the rate of one per cent. per mensem, upon the amount paid by them, and found not to have been justly due from them, if they shall discharge the demand upon them with a view to obtain their release from arrest, or from subsequent confinement, under the preceding Section, and shall afterwards, on a suit in the Dewanny Adawlut for recovery of the amount so paid, establish that it was not due from them at the time of the demand. —*Reg.* 7, 1799, *Sect.* 16.

71. Proprietors and farmers of land, whose claims to arrears of rent may be rejected by the Zillah Judge, [*now, the Collector*] on the summary enquiry directed in Section 15, of this Regulation, are also at liberty to institute a regular suit in the Dewanny Adawlut for the recovery thereof; and if, on trial, the amount claimed by them shall be found to have been due when the summary judgment was given against them in the first instance, they shall be entitled to receive back any sums paid by them for costs or damages under such judgment, and to a decree from the Zillah Court for the arrears of rent due to them, with interest at the rate of one per cent. per mensem, and full costs incurred by them as well on the summary enquiry, as on the regular suit.—*Reg.* 7, 1799, *Sect.* 17.

72. The existing Regulations not providing any limited period beyond which the investigation of a regular suit to contest the justice of a summary award, in matters connected with arrears or exactions of rent, shall be admitted, it is hereby declared, that the admission of regular suits to contest the summary awards of the Revenue Authorities in such matters, shall be restricted to the period of one year from the date of the delivery, or of the tender to the party against whom the award is made, of the Collector's decision.—*Reg.* 8, 1831, *Sect.* 6.

73. The Courts are of opinion, that the period of one year, to which the admission of regular suits to set aside the awards of the revenue authorities is restricted by Section 6, Regulation 8, 1831, should be calculated according to the principle laid down in Clauses 10 and 11, Section 8, Regulation 26, 1814.—*Con. No.* 1028, *Cal. C.* 29*th July, West. C.* 19*th Aug.* 1836.

74. And it is hereby enacted, that so much of Clause Second, Section 31, Regulation 7, 1822, and Section 19, Regulation 8, 1831, of the Bengal Code, as provides that suits of the description therein referred to, shall not be cognizable by, or referrible to any Sudder Ameen or Moonsiff, be repealed.—*Act* 25, 1837, *Sect.* 2.

75. In modification of Section 19, Regulation 8, 1831, regular suits instituted to set aside the summary judgments of Collectors for land rent are declared cognizable, according to their amount, by the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs.—*Reg.* 7, 1832, *Sect.* 10.

76. Whenever a regular suit may be instituted in a Civil Court, with a view to set aside or alter a summary judgment passed by a Collector, the proceedings held on the summary inquiry shall be called for by precept from the Court, and filed on the record of the case.—*Reg.* 7, 1822, *Sect.* 31, *Cl.* 1.

77. As doubts have been entertained with regard to the amount of stamp leviable in appeals from decisions passed in cases originally instituted on stamp paper of one fourth the usual value, under the provisions of Section 8, Regulation 8, 1831; I am directed by the Court to state for your information, that in such appeals the full amount of stamp is to be levied, the provisions of the Section above-mentioned extending only to the original suit.—*Cir. Ord. Cal. and West. C.* 12*th Dec.* 1834.

SECT. VIII.

Summary suits for Arrears and Exactions of Rent.—Process against defaulting under-tenants and their sureties in another jurisdiction.

78. It is therefore hereby provided, that whenever a dependant talookdar, kutkinadar, jotedar, or other under-tenant, or the surety of any such under-tenant, from

whom an arrear of rent may be due, and who may have failed to discharge the same on demand, may reside, or be in a Zillah or City, different from that wherein the land, for which the arrear of rent is due, may be situated, it shall be competent to the Zemindar, or other proprietor or farmer of the land, to whom the arrear of rent may be owing, or his authorized agent, to present a petition specifying the particulars stated in the following clause, and praying for the arrest of the defaulter, or his surety, to the Judge of the Zillah or City in which the defaulter or his surety may reside, or be; and the Judge receiving the same shall immediately issue the process of arrest, directed in the third Clause of Section 15, Regulation 7, 1799; and the corresponding Clause of Section 14, Regulation 5, 1800, and Section 32, Regulation 28, 1803.—*Reg.* 19, 1817, *Sect.* 15, *Cl.* 1.

79. The petition of arrest, to be presented under the above clause, as well as any petitions for the arrest of defaulting under-tenants or their sureties, which may be hereafter presented under the Regulations above mentioned, shall specify, besides the name and residence of the defaulter and surety, and the Mehal for which the balance of rent is claimed, the annual jumma of such mehal; the amount demandable for the kists of the current year which may have become payable, the amount received from the tenant or his surety, and the balance actually due for the payment of which the arrest is desired. The petition shall also state whether the arrear claimed has been demanded from the defaulter or his surety, and the result.—*Reg.* 19, 1817, *Sect.* 15, *Cl.* 2.

80. If the defaulter, or surety, against whom process of arrest may be issued under the first clause of this Section, be found within the jurisdiction of the Judge by whom the same shall have been issued; and after being arrested, he shall not pay the arrear demanded, or satisfy the party causing his arrest; and shall, in consequence be brought to the local Civil Court, in pursuance of the rule contained-in the Regulations before noticed; the Judge shall call upon him, to shew cause why he should not be sent to the Judge of the Zillah or City, in which the land, for which the arrear is claimed (or the greater part of it, if in two jurisdictions) may be situated; and if sufficient cause be not assigned, or substantial security given for attending the Judge of the jurisdiction in which the land is situated, within a limited period, the party arrested shall be sent in custody of mohussil peons (at the charge of the party claiming the arrear) to the Judge of the Zillah or City, in which the land may be situated. A statement of the case with the original petition of arrest, and all other papers connected with it, shall at the same time be transmitted for the information of the Judge, to whom the party in arrest may be sent in such cases. The petition of arrest, and all papers connected with it, shall likewise be sent to the Judge of the Zillah or City in which the land may be situated, whenever the party arrested may assign sufficient cause for not being sent as directed; or may give security for his attendance, which shall be accepted whenever substantial security may be offered.—*Reg.* 19, 1817, *Sect.* 15, *Cl.* 3.

81. When a defaulting tenant, or his surety, may be brought to the Court of the Zillah or City in which the land is situated, or may attend under security for his appearance, in pursuance of the foregoing Clause, the Judge shall proceed, as directed in similar cases, by the Regulations in force, when the defaulter or surety may have been arrested within his own jurisdiction.—*Reg.* 19, 1817, *Sect.* 5, *Cl.* 4.

SECT. IX.

Summary suits for Arrears and Exaction of Rent.—Reference of suits regarding the same cause of action to the same Tribunal.

82. Inconvenience having been experienced from the circumstance of two or more claims regarding the same matter having been preferred to different tribunals, it is hereby provided that if it should be brought to the notice of the Judge, that a suit regarding any matter cognizable under this Regulation is pending in his or in any of the Courts subject to his control in a matter regarding which a suit had been previously instituted before the Collector, the Judge shall direct such suit to be transferred to the Collector, who in such case is authorized and required to decide both suits.—*Reg.* 8, 1831, *Sect.* 14.

83. The term in Section 14, "regarding the same matter," is to be considered as meaning that the cause of action in both suits is identical. The applicability of the rule can only be made by the Judge or other officer acquainted with the details of each case.—*Con. No.* 1001, *Cal. C.* 12*th Feb. West. C.* 4*th March*, 1836.

84. In like manner, if it be brought to the notice of the Collector, that a suit is pending before him in a matter regarding which a regular suit has been previously filed in the Judge's Court, he shall suspend his proceedings and forward the record of the case to the Judge, who will make over both cases to some tribunal subject to his authority, or dispose of the cases himself.—*Reg.* 8, 1831, *Sect.* 15.

85. Held on a reference from the Judge of Jessore, that the Courts of Sudder Dewanny Adawlut are not included in the rule contained in Sections 14 and 15, of Regulation 8, 1831, which refer exclusively to the Zillah and City Courts and to the Courts subordinate to them.—*Con. No.* 1252, *Cal. C.* 27*th Sept. West. C.* 31*st Oct.* 1839.

86. It shall further be the duty of the Judge and of all the Judicial Authorities subject to his control, in all practicable cases, to refer suits concerning the same cause of action and regarding any matter cognizable under this Regulation to be decided by one and the same tribunal, and the subordinate Judicial Authorities are required to suspend their proceedings and to submit them to the Judge, whenever they may have reason to know that another case concerning the same matter, relating to arrears or exactions of rent, is pending before another Court, or as a summary suit before the Collectors.—*Reg.* 8, 1831, *Sect.* 16.

87. Provided moreover, that in all cases of appeal, the records of cases which can be ascertained to have been decided, concerning the same cause of action and regarding any matter cognizable under this Regulation, shall be produced and read, and that the decision in appeal shall be considered to be equally applicable to all such suits, though not appealed. Provided however, that in all such cases due notice shall be given to the parties concerned, to attend either in person or by Vakeel to prosecute or defend their several interests.—*Reg.* 8, 1831, *Sect.* 17.

88. I am directed to state that cases made over by the Collector under Regulation 8, 1831, must be numbered separately, and each decided as a distinct suit, though both decisions may be simultaneous.—*Con. No.* 1001, *Cal. C.* 12*th Feb. West. C.* 4*th March*, 1836, *Par.* 2.

89. I am directed to inform you that suits transferred to the subordinate judicial tribunals under the provisions of Section 15, Regulation 8, 1831, must be entered and tried as regular Civil suits.—*Con. No.* 951, *West. C.* 8*th May, Cal. C.* 22*nd May*, 1835.

SECT. X.

Summary Suits for Arrears and Exactions of Rent.—Right of landholders to attach tenures for arrears of rent.

90. When an under-farmer, jotedar, or other under-tenant, arrested as above described, shall not immediately discharge the arrear demanded from him, and shall in consequence be taken in custody to the Judge of the Dewanny Adawlut, the proprietor or farmer of land, to whom such arrear may be owing, is at liberty to attach the farm, jote, or other tenure of such defaulter, and to manage the same by his own Agents, or in such manner as he may think proper, until the rent due to him, with the further rent that may become due after the attachment, and interest upon the whole arrear at the rate of one per cent. per mensem, shall have been liquidated from the produce. But in such cases of attachment, the proprietor or farmer making the same shall not exact more from the cultivators of the soil, and other descriptions of inferior tenantry, whose rents for the current year may have been payable to the defaulter, than the defaulter himself would have been entitled to receive from them if the attachment had not taken place, (cases of collusion and illegality under the Regulations excepted;) and in the event of the defaulter making good the arrear due from him, with interest at the rate of one per cent. per mensem, at any time within the current year, the attachment shall be immediately withdrawn, and a full and fair account rendered to him of all receipts and disbursements during the continuance of it.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 6.

91. Doubts have been entertained with respect to the intent and meaning of such part of Section 15, Regulation 7, 1799, as regards the power of attaching the lands of a defaulter, particularly whether the attachment can be made in case the dustuck be not served on the person of the under-tenant from whom the arrear of rent is claimed: moreover it has not been provided in any part of the rules above quoted, nor in any subsequent Regulation, whether or not a decree can be passed after summary investigation of an arrear claimed, in case the process by dustuk, shall not have been served on the defaulter. In consequence of these doubts and omissions, under-tenants falling in arrear have been encouraged to make it a practice to evade the process by dustuck, in the confidence that if successful in concealing themselves for a time, the person to whom the rent is due will lose the benefit of his summary application, and be referred to a regular suit, as the only means of recovering his dues, or of obtaining such a judicial award as will enable him to proceed against the property of the debtor. In order to remedy the evils arising from the practice above described, the following rules have been enacted, in explanation and modification of the rules of Section 15, Regulation 7, 1799.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 1.

92. Under the existing rules, proprietors, talookdars or farmers, are entitled, with or without making a previous demand upon the under-tenant, to institute a summary suit for any arrear which may be claimed to be due, and to obtain the issue of a process of arrest against the defaulter. It is hereby further provided, that when a summary suit for arrears alleged to be due, may have been instituted against a talookdar or against a farmer, or against the holder of any other intermediate tenure between the Zemindar and the actual cultivators, it shall be competent to the party who may have instituted such suit (whether the alleged defaulter shall have been arrested or not,) to send a seza-

wul of his own authority to attach and collect the rents of the actual cultivators immediately from themselves: provided however, that such power of attachment shall not be exercised, unless the arrear of rent claimed in the summary suit, shall have been actually due for one entire month before the date of attachment, and shall not be less in amount than the entire kist of the month, on account of which the arrear may be claimed.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 2.

93. I am desired to communicate to you the opinion of the Court, that a Zemindar is not competent, under the provisions of Section 18, Regulation 8, 1819, to send a *sezawul* of his own authority to attach and collect the rents of the actual cultivators immediately from themselves, without having previously instituted a summary suit under Section 15, Regulation 7, 1799, against the talookdar or other intermediate holder between himself and the actual cultivators.—*Con. No.* 456, 17*th Aug.* 1827, *Par.* 2.

SECT. XI.

Summary suits for Arrears and Exactions of Rent.—Right of landholders to cancel the leases of intermediate tenants, and to oust them.

94. If the arrear be not liquidated within the current Bengal, Fussily, or Willaity year (according as the place may be situated in the province of Bengal, Behar, or Orissa), either by the payments of the defaulter or his surety, or by the attachment of his tenure, the Zemindar or other proprietor of the land, or the farmer in whose farm the defaulter's tenure may be included, (if such farmer's lease extend beyond the current year) is at liberty, at the commencement of the ensuing year, to make such provision for the future receipt of the rents payable to him from the land tenanted by the defaulter, as he may judge proper and may be consistent with the rights of all other persons concerned. If the defaulter be an under-farmer for the past year only, or whose lease may have expired with the past year, he can, of course, have no claim to any further lease; and although his lease may not have expired, if he shall have neglected to fulfil the conditions of it by the payment of his stipulated rent, it must be considered liable to be annulled, or otherwise, at the option of the lessor. If the defaulter be a dependant talookdar or the holder of any other tenure which, by the title deeds or established usage of the country, is transferrable by sale or otherwise, it may be brought to sale, by application to the Dewanny Adawlut, in satisfaction of the arrear of rent; and the purchaser will become the tenant for the new year: or if the defaulter be a leaseholder or other tenant, having a right of occupancy only so long as a certain rent, or a rent determinable on certain principles according to local rates and usages, be paid; without any right of property or transferrable possession; the proprietor of whom such tenure is held, or the farmer or other person to whom such proprietor may have leased or committed his rights, must be understood to have the right of ousting the defaulting tenant from the tenure he has forfeited by a breach of the conditions of it.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 7.

95. In such cases (viz. in the several cases enumerated in this clause, under the stated exception when a sale of landed property may be desired,) proprietors and farmers of land are at liberty to exercise the just powers appertaining to them, without any previous application to the Courts of justice; but they will be held responsible for all

acts done by them, or by their agents, which may exceed their just powers, infringe the rights of under-tenants of whatever description, whether founded on pŏttahs or other written deeds and engagements; or on long prescription and established local usage. This Regulation is not meant to define or limit the actual rights of any description of landholders or tenants; which can be properly ascertained and determined by judicial investigation only; but merely to point out in what manner defaulting tenants may be proceeded against in the event of their not paying the rents justly due from them; leaving them to recover their rights if infringed, with full costs and damages, in the established Courts of justice, under the provisions already stated in this Regulation for bringing such causes to a determination with the least possible delay.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 7.

96. In reply to a reference to the Sudder Dewanny Adawlut, the Judge of Zillah Purnea was informed on the 17th September, 1808, that under the provisions of Section 15, Regulation 7, 1799, as well as upon general principles of justice, a defaulting farmer is liable to be ousted from his farm at the end of the year for which an arrear of rent may be due from him, if he shall not discharge the same on demand, and that the Court were further of opinion, that the proprietor of the land is authorized to oust his defaulting tenant, without application to the Courts of justice, as declared by Clause seventh, Section 15, Regulation 7, 1799, provided no violence be used, so as to bring the case within the provisions of Regulation 49, 1793, [*now* Act. 4, 1840.]—*Con. No.* 42, 17*th Sept.* 1808.

97. The Court remark, that the orders of the late Judge, Mr. Cornish, on the case, appear to have proceeded upon a construction of the seventh Clause of Section 15, Regulation 7, 1799, according to which, if a landholder, alleging his tenant to be in arrear, think fit to take upon himself to attach his tenure, the tenant is bound to give up his possession; and should the tenant deny that he is in arrear, and refuse to quit, the Courts of justice are obliged, upon application from the landholder, to cause the tenant to be removed, and the tenure given up to the landholder, without any previous investigation into the justice of the landholder's claim. The Court cannot acquiesce in this construction of the clause in question, which, they observe, merely declares that a landholder may oust his defaulting tenant without application to the Courts of justice; and leaves entirely open the question, what course is to be pursued if the tenant shall deny that he is a defaulter, and incur the responsibility of refusing to quit his tenure. That question is to be resolved independently of the Clause under consideration, and the Court are clearly of opinion, that under the circumstances supposed, the landholder must have recourse to his legal remedies of distraint, summary suit, or regular action. The Court, indeed, regard the clause quoted, so far as it is applicable to such cases, to be merely declaratory of the right possessed by landholders, in common with all other claimants, to pursue their just demands by peaceable means; and to have been intended, not to confer any powers on landholders in addition to those which they previously possessed upon general principles, and by the usage of the country; but to give confidence to landholders in the lawful pursuit of their just claims, and to discourage undue opposition on the part of the tenants: by satisfying the former, that they would be in no danger of being treated as wrong doers, in consequence of the just and peaceable exercise of their powers; and making the latter sensible, that in resisting rightful claims, until prosecuted in the Courts of justice, they would render themselves liable to costs and damages.—*Con. No.* 113, 12*th Nov.* 1812, *Par.* 2.

98. I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 22d ultimo, with its enclosures, and to acquaint you that judgments for arrears of rent, passed under the Fifth Clause of Section 15, Regulation 7, 1799, and not satisfied within the current Bengal, Fussily, or Willaity year, by the confinement of the defaulting tenant and his security, under that Section, or by the attachment of the defaulter's tenure, as authorized by

the Sixth Clause of the above Section, may, under the Seventh Clause of same Section, be enforced on application to the Dewanny Adawlut, as therein directed, at the expiration of the Bengal, Fussily, or Willaity year for which the arrear may have been adjudged, by the sale of the defendant's talook or other transferable tenure of the defaulter, for the rent of which such judgment may have been passed. But that you were not warranted in applying to the Board of Revenue, to cause the sale of the tenure upon the mere allegation of a balance being due, without any enquiry.—*Con. No.* 128, 8*th July*, 1813.

99. When an arrear may be adjudged to be due in the manner above provided, the zemindar or other plaintiff in the suit shall be at liberty to cancel of his own authority any lease, farm or other limited interest intermediate between himself and the actual cultivator, on account of which the rent may have been claimed; but no summary award for arrears shall be considered to warrant the subjecting real property belonging to the defendant, in such an action, to sale in execution, except in cases in which the balance may be due on account of a talook of the description noticed in Section 3, of this Regulation, or of any other talook which may have been declared by the Regulations to be liable to sale for arrears; such talook will of course be liable to be sold for the arrears which may have accrued upon it, in the mode prescribed; but if the Zemindar or other plaintiff should be desirous of having any other estate, or house, or landed property of a defaulter, brought to sale in satisfaction of his claim of rent, it will be necessary for him to institute a regular suit for the purpose, notwithstanding the existence of the summary award in his favour.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 4.

SECT. XII.

Summary suits for Arrears and Exactions of Rent.—Right of landholders to cancel the tenures of Resident Cultivators for arrears.

100. The provisions contained in the second and fourth Clauses of this Section, [Rules 92 and 99] so far as they relate to the power of attaching and cancelling (under the circumstances therein described) the leases, farms or other limited interests of persons holding intermediately between the proprietor and the actual cultivator, are hereby declared not to extend to khoodkasht ryots or other resident cultivators of the soil.—*Reg.* 8, 1819, *Sect.* 18, *Cl.* 5.

101. For any arrears which may be alleged to be due from those classes of persons, the party claiming them may proceed at any time during the year by distraint or by process of arrest and summary suit, under the existing rules; proprietors, talookdars or farmers, however, to whom an arrear of rent may be due at the end of the year from any khoodkasht ryot or other resident cultivators of the soil, are at liberty to institute a summary suit to establish the existence of such an arrear, taking out process of arrest in the usual form. If the defendant shall not attend or cannot be arrested, the forms of process and proceeding prescribed in the third clause of this Section, shall be considered to be applicable to the case, and any summary judgment previously obtained on account of rent of the year just closed, shall be received as evidence of such arrear, upon the plaintiff's shewing that the judgment in question has remained unexecuted. If an arrear shall be adjudged by the Court to be due, and the amount shall not be immediately paid into Court, the plaintiff shall be authorized by the Court to make such new ar-

rangement as he may judge proper for the future management of the lands in question. —*Reg.* 8, 1819, *Sect.* 18, *Cl.* 5.

102. The Sudder Court remark that under the provisions of Clauses 4 and 5, Section 18, Regulation 8, of 1819, the landholder must first establish by a suit, either summary or regular, the existence of an arrear before he is at liberty to cancel the lease of an under-tenant, while as regards khoodkasht ryots, they have also the power of immediately paying into Court any sum adjudged to be due from them before they can be ejected.—*Con. No.* 1205, *West. C.* 15*th March, Cal. C.* 12*th April*, 1839, *Par.* 2.

103. With reference to the principal question which has given rise to the present correspondence, viz. the power of redressing complaints of unjust ejectment; the Court observe that the following construction was adopted by the Court of Sudder Dewanny Adawlut at the Presidency, and circulated for the guidance of the several judicial authorities on the 28th August 1829. "The declaration contained in the fifth Clause of Section 18, Regulation 8, 1819, (that it is illegal to oust or disturb resident cultivators *unless* certain stated circumstances,) necessarily implies a remedy in case of a contravention of this rule, and in the spirit of the enactment cited, such remedy should be afforded by the Judge on the summary application of the ejected *ryot*, by an order for his being restored to possession, and his retaining it until the process prescribed by the regulation shall have been observed." The jurisdiction formerly exercised by the Judge with regard to the suits in question having, by Regulation 8, 1831, been transferred to the Collector, the Court are of opinion that the authority to redress complaints of illegal ejectment which the above Circular Orders declared to be vested in the Judge must be now considered to rest with the revenue functionary; provided the ejectment be not attended with violence, so as to bring the case within the cognizance of the Magistrate.—*Cir. Ord. Cal. and West. C.* 15*th Nov.* 1833.

104. I am directed to inform you that in suits of the nature described in the 2d paragraph of your communication, viz. suits instituted in a Zillah Court or that of a Moonsiff by a resident cultivator, to obtain a reversal of a summary decision passed by a Collector adjudging a balance against him and ejecting him as a defaulter, the value of the suit should be estimated at the amount of rent in dispute; or, in other terms, at the sum sued for in the first instance.—*Con. No.* 862, *West. C.* 7*th Feb. Cal. C.* 28*th Feb.* 1834.

105. The Court are of opinion, that all differences between landholders and their tenants or ryots, involving the question, whether the landholder can legally oust the tenant or ryots from the lands which the latter considers himself entitled to occupy, should come under the provisions of Regulation 49, 1793, or Regulation 8, 1819.—*Con. No.* 482, 9*th May*, 1828.

Regulation 49, 1793, *has been rescinded by Act* 4, 1840, *which will be found in the Appendix. The above Rule* (105) *refers only to the summary adjustment of such disputes, and does not bar a regular action, Act* 4, 1840, *should be examined in reference to these enactments.*

SECT. XIII.

General rules regarding the rights of Landholders.

106. In like manner, in all other instances, the Courts of justice will determine the rights of every description of landholder and tenant, when regularly brought before them; whether the same be ascertainable by written engagements; or defined by the laws and regulations; or depend upon general or local usage, which may be proved to have existed from time immemorial; but it is hereby declared that no part of the existing regulations was meant to deprive the zemindars and other landholders of the power of summoning, and if necessary, compelling the attendance of their tenants for the adjustment

of their rent; or for any other just purpose, or of measuring any land within their respective estates which may be liable to measurement under the conditions upon which such land may have been leased or held. For the just exercise of such rights and powers the landholders are not required to make any previous application to the Courts of justice; and any person opposing them therein will, on proof in the Dewanny Adawlut, be liable to full damages and all costs; besides being subject, for any breach of the peace, to prosecution and punishment in the criminal Courts. But the landholders, their agents and representatives, will be held answerable for any abuse, or unjust exercise of the powers hereby declared to be vested in them, and on proof thereof by the party aggrieved, in the Dewanny Adawlut, will be liable to full costs and damages; besides a fine to Government if the case shall appear to deserve it.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 8.

SECT. XIV.

Summary suits against Distraint.

107. If an attachment for arrears shall have been issued against the property of any tenant of any description, whether denominated under-farmer, ryot, or dependent talookdar, who may not have given security for the payment of his rent or revenue, and such tenant shall dispute the justness of the demand, and shall within five days, reckoning from the day following the attachment, or if the property attached, consist of crops, or other ungathered products of the earth, within five days, calculating from the day following the date on which such crops or products may be stored, enter into a bond before the Judge or Collector of the Zillah, the Cauzy of the Pergunnah, the Commissioner, or other person vested with power to sell distrained property, or before the distrainer himself, with good security, binding himself to institute a suit in the Dewanny Adawlut of the Zillah within fifteen days from the date of such bond, for the trial of the demand, and to pay whatever sum may be adjudged to be due from him, with interest upon it at the rate of twelve per cent. per annum, to be calculated from the date on which the arrear that may be awarded became payable to the date of the decree, with all costs of suit, the distrainer shall immediately withdraw the attachment, and restore the property to the defaulter.—*Reg.* 5, 1812, *Sect.* 15.

108. If the stated defaulter shall fail to execute the bond within the period prescribed, the distrainer shall be at liberty to keep the property under attachment, and to cause it to be sold in the manner hereafter directed, unless the arrear, with the expences of the attachment, shall be discharged previously to the day of sale. If the defaulter shall execute the bond, but omit to institute the suit in the Dewanny Adawlut, within the time prescribed, the distrainer shall demand payment of the arrear from the surety; and in the event of his not discharging the amount immediately, the distrainer shall be at liberty to issue an attachment against the personal property both of the surety and the defaulter, or the personal property of either of them excepting always the articles specified in Section 14, of this Regulation, and to cause it to be sold, unless the arrear and the expences of the attachment shall be discharged previously to the day of sale.—*Reg.* 5, 1812, *Sect.* 15.

109. If an attachment for arrears shall have been issued against any tenant, who may have given security for the payment of his rent or revenue, and such tenant shall

dispute the justness of the demand, and the surety within five days, reckoning from the day following the day of the attachment, or if the property attached shall consist of crops or other ungathered products of the earth, within five days, calculating from the day following the date on which such crops or products may be stored, shall deliver a writing, attested by two witnesses, to the Judge of the Dewanny Adawlut, the Collector of the district, the cauzy of the pergunnah, the Commissioner or other person vested with power to sell distrained property, or to the distrainer himself, engaging that either he or the stated defaulter will institute a suit in the Dewanny Adawlut within fifteen days from the date of such writing, to try the demand, and to pay the amount that may be adjudged against them, with interest upon it at the rate of twelve per cent. per annum, to be calculated from the date on which the arrear that may be awarded, became payable, to the date of the decree, with all costs of suit, the distrainer shall immediately withdraw the attachment.—*Reg.* 5, 1812, *Sect.* 16.

110. If the surety shall fail to execute such writing within the prescribed period, the distrainer shall continue the property under attachment, and cause it to be sold in the manner hereafter directed, unless the arrear and the expenses attending the attachment shall be discharged previously to the day of sale. If the surety shall execute the writing, but fail to have the suit instituted either in his own name, or that of the defaulter, within the abovementioned period of fifteen days, the distrainer shall demand payment of the arrears from the surety and in the event of his omitting to discharge the amount immediately, the distrainer shall be at liberty to issue an attachment against the personal property both of the surety and the defaulter, or the personal property of either of them, excepting always the articles specified in Section 14, of this Regulation, and to cause it to be sold in the manner hereafter directed; unless the arrears and the expense attending the attachment shall be discharged before the day of sale. If the surety of the stated defaulter shall refuse or omit to enter into the writing required, or if he shall happen to be at a distance, so as to render it impossible for him to execute such writing within the prescribed time, and such defaulter in either of these cases shall give the security required from the defaulters, specified in Section 15, of this Regulation, the distrainer shall withdraw the attachment; and the rules contained in the foregoing Section, shall in every respect be considered applicable to the parties concerned.—*Reg.* 5, 1812, *Sect.* 16.

111. I am desired to communicate to you the opinion of the Court, that although the omission on the part of the tenant and his surety to institute a suit, within the period named in the bond, subjects his property to re-attachment and sale, according to the ordinary process, yet it does not deprive him or his surety of the benefit of a summary suit, for the recovery of damages on account of injury sustained by the illicit sale of the property.—*Con. No.* 421, *2nd June*, 1826, *Par.* 2.

112. Held on a reference from the Judge of Tirhoot, that as the power to receive security, in cases of distraint for arrears of rent, was conferred on Moonsiffs under Section 16, Regulation 5, 1812, in virtue of their office as Commissioners for the sale of distrained property, that power necessarily ceases with the withdrawal of the commission under the operation of Act 1, of 1839.—*Con. No.* 1255, *Cal. C. 18th Oct. West. C. 22nd Nov.* 1839,

113. In modification of the rules contained in Sections 15 and 16, Regulation 5, 1812, which prescribe that the individual whose property is distrained should give security for instituting a suit to contest the demand, it is hereby provided that if a part only, and not the whole of the demand be contested, it shall be competent to the indi-

vidual whose property is distrained, to release it from distraint, on paying a part of the demand and giving security to contest the remainder.—*Reg.* 8, 1831, *Sect.* 12.

114. A reference having been made to the Court of Sudder Dewanny Adawlut, with a view to ascertain whether the provisions of Sections 15 and 16, Regulation 5, 1812, are applicable to tehseeldars, sezawuls, and other revenue officers employed in making Khaus collections on the part of Government, and exercising the powers vested in them by Section 36, Regulation 28, 1803; I am directed to communicate for your information the following opinion delivered by the Court on the subject.—The Court, on due consideration of the Sections above cited, are of opinion, that whenever the public officers referred to in Section 36, Regulation 28, 1803, may be desirous of exercising the authority vested in them by that Section, for recovering arrears of rent by a distress and sale of property, under the rules prescribed for empowering landholders and farmers of land to recover arrears of rent from their under-tenants, the whole of the rules in force, including the modifications of former rules enacted in Regulation 5, 1812, must be considered equally applicable to the officers of Government, as to individual landholders, or farmers of lands and their agents.—*Cir. Ord. 28th April,* 1818.

115. Should any ryot, farmer, or dependent talookdar, whose property may have been distrained, be unable to give security to the amount of the demand, together with interest upon it, at the rate of one rupee per mensem, with costs of suit and expenses of attachment, he will of course be at liberty to institute a suit against the distrainer in the Dewanny Adawlut, to try the demand, and for the recovery of damages on account of any injury which he may have sustained by the illicit sale of his property.—*Reg.* 5, 1812, *Sect.* 17.

116. I am directed to inform you, that in pursuance of Section 20, Regulation 5, 1812, (which expressly directs, that suits instituted under that Regulation shall be decided on a summary enquiry,) all suits instituted in the Zillah or City Court under the Sections above noticed, (Sect. 15, 16 and 17, Reg. 5, 1812,) should, in the judgment of the Court of Sudder Dewanny Adawlut, be received, tried, and decided as summary suits, unless the plaintiff should in any instance prefer the institution of a regular suit, which is, of course, open to him under the general regulations in force.—*Cir. Qrd.* 12*th Dec.* 1816.

117. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 17th instant, requesting their opinion as to the period in which it is incumbent on a ryot's farmer, or dependent talookdar; to institute a suit under the provisions of Section 17, Regulation 5, 1812. In reply, I am desired to communicate to you the opinion of the Court, that a suit of the nature in question should be instituted within one year from the date of the injury alleged to have been sustained by the illegal sale, conformably to the rules contained in Section 20, of the above cited Regulation, and Clause 1, Section 4, Regulation 2, 1805.—*Con. No.* 467, 25*th Jan.* 1828.

118. The Court having had before them your letter of the 3d ultimo, I am directed to state in reply, that the rule of Section 6, Regulation 17, 1803, which provides, that in cases of illegal distraint, there should be adjudged to the injured tenant restitution of the value lost to him by the distraint, and as much again as damages, is considered by the Court to be equally intended by Section 17, Regulation 5, 1812; which latter rule provides, that the tenant may have his remedy by a summary suit, which was before confined to a regular one. The quantum of the remedy allowed him is not considered to be altered.—*Con. No.* 327, 1*st Sept.* 1820.

119. In the opinion of the Sudder Court, individuals other than the alleged defaulter or his surety, who may lay claim to distrained property, are not entitled to the release of such property on furnishing security, nor can their claims to it be investigated, according to the provisions of Section 15, Regulation 5, 1812.—*Con. No.* 348, 19*th April,* 1822, *Par.* 2.

120. In the event of an alleged defaulter's property being sold from his inability to furnish

security, he may have a summary action; but that any claim to such property preferred by a third person, not being the alleged defaulter or his surety, must be investigated in a regular suit, under Section 9, Regulation 7, 1799.—*Con. No.* 348, 19*th April*, 1822, *Par.* 3.

121. The Judge of Zillah Agra was informed, on the 23d October, 1812, that the Court were of opinion, that suits instituted, either to procure attachments of distraint issued by proprietors of rent-free lands to be withdrawn, or to recover damages for undue distraint exercised by them, are referrible to [*now*, cognizable by] the Collectors under this Section, as well as similar suits respecting land paying revenue to Government.—*Con. No.* 112, 23*d Oct.* 1812.

122. Suits which may be instituted under the present Regulation, shall be decided on a summary enquiry, under the provisions contained in Regulation 7, 1799.—*Reg.* 5, 1812, *Sect.* 20.

SECT. XV.

Summary Process against Agents for money or papers.

123. The provisions in Section 15, as far as they can be applied, are likewise declared to extend to the Sudder and Mufussil Amlah, or Native Agents of every description, employed by the landholders and farmers in the management of their estates or farms, or collection of their rents. Any landholder or farmer having demands upon such Agents whilst in his service, or immediately after their resignation or dismission from his service, whether for money in their hands, or for accounts which they may refuse to render, or for any matter relating to the discharge of their respective trusts whilst in his employ, may proceed against them for their arrest and confinement in like manner as by Section 15, of this Regulation, he is authorized to proceed against defaulting under-tenants; and the Zillah and City Courts and native Commissioners are to take the same measures for the aid of the landholders and farmers in such cases, as they are directed to take for the recovery of arrears from defaulting tenants.—*Reg.* 7, 1799, *Sect.* 20.

124. The rule of limitation prescribed by the above clause is also hereby extended to applications for summary process by landholders and farmers, against their agents employed in the management of their estates and farms, or in the collection of their rents, under the provisions made by Section 20, Regulation 7, 1799, Section 19, Regulation 5, 1800, and Section 37, Regulation 28, 1803, which authorize such process for the arrest and imprisonment of the agents of landholders and farmers, whilst in their service, or immediately after the resignation or dismission of agents of the above description, on account of demands for money in their hands, or for accounts which they may refuse to render, or for any matter relating to the discharge of their respective trusts.—*Reg.* 2, 1805, *Sect.* 4, *Cl.* 2.

See further on this subject Con. 946, *Rule* 5 *of this Chapter.*

SECT. XVI.

Summary suits regarding Indigo.—Remedy against the ryots disposing of the produce contrary to his engagement.

125. If any person shall have given advances to a ryot or other cultivator of the soil under a written engagement, stipulating for the cultivation of Indigo plant on a portion of land of certain defined limits, and for the delivery of the produce to himself, or

at a specified factory or place, such person shall be considered to have a lien or interest in the Indigo plant produced on such land, and shall be entitled to avail himself of the process hereinafter provided, for the protection of his interests, and for the due execution of the conditions of the contract.—*Reg.* 6, 1823, *Sect.* 2.

126. The owner of the factory, for the time being should be considered as standing in the place of the former owner, by whom the advance was made, and equally entitled to adopt any of the processes for the recovery thereof which the regulation referred to allows.—*Con. No.* 565, *9th July*, 1830, *Quest.* 2.

127. If any person who may have made advances on conditions of the nature above described, shall have just reason to believe that an individual, under engagement with him, is evading or is about to evade the execution of his contract, by making away with, and disposing of the produce otherwise than as stipulated, or that he has engaged secretly or openly to supply the same to another, it shall be competent to such person to present a petition of complaint to the Zillah or City Judge, or to a Register exercising the powers of Joint Magistrate, within whose local jurisdiction the land stipulated to be cultivated with the Indigo plant may be situated, filing with the same the original deed of engagement, by which the produce may be assigned and engaged to be delivered to himself or at his factory, and certifying in his petition, that such deed was voluntarily and bonâ fide executed by the individual complained against.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 1.

128. On such petition and original deed of engagement being filed, a summons, or tulub chittee, shall be immediately issued through the Nazir in the usual form, requiring the individual named in the petition to attend and answer to the complaint, either in person or by an authorized agent, within such specified period as may, in each instance, appear reasonable, and which period shall in no case exceed twenty days. —*Reg.* 6, 1823, *Sect.* 3, *Cl.* 2.

129. The Regulation in question being silent on the subject, the defendants should be summoned in the manner prescribed by the Regulations at present in force, viz. by an itilehnameh, to be served by a single peon; and that the order to cultivate can only be enforced by the menace of increased punishment on any further default.—*Con. No.* 564, *9th July*, 1830, *Par.* 2.

130. The officer entrusted with the execution of the process shall also be instructed to affix a copy of the summons in the village cutcherry, or other place of public resort, and to erect a bamboo on the specific parcel of ground on account of which the claim may have been preferred, and which it shall be the duty of the plaintiff or his agent to point out. By these means, sufficient public notice of the claim will be given, to enable persons desirous of contesting the plaintiff's right, or of establishing a prior right to the produce of the land, to appear either in person or by an authorized agent before the Court for that purpose, and the failure so to attend before the summary decision be passed, will be held to bar the claim of any third party founded on any contract for the produce of the land in question, unless it be established by a regular suit.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 3.

131. If the officer serving the process shall not be able to execute it on the person of the defendant, he shall nevertheless publish the claim in the manner above directed; and if the defendant shall not appear to answer to the complaint within the period specified in the summons, and no other claim be preferred in bar of that of the plaintiff, the Judge or other officer shall, after taking evidence to establish the deed and other allegations of the plaintiff, proceed to the adjudication of the claim, in the

same manner as if the defendant had personally appeared.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 4.

132. If the defendant or his authorized agent should attend within the period specified, and should deny the execution of the deed of engagement filed by the complainant, proof of the same shall be taken, and if its voluntary execution be established to the satisfaction of the Court, or other tribunal trying the case, and no preferable claim be established by a third party, a summary award shall be made, adjudging to the plaintiff the right of receiving the crop according to the terms of the agreement. The same principle shall be applied if the engagement be admitted, and no satisfactory reason be shewn why the defendant should not be held to the performance of his contract.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 5.

133. If it be proved that the engagement was not duly and voluntarily executed by the defendant, or if it should appear that the proceeding is otherwise litigious and oppressive, and the claim unfounded, or that the plaintiff had no sufficient cause to warrant his application to the Court, the complaint shall be dismissed, and the plaintiff shall be made liable to the payment of costs, and such reasonable sum in addition, as may seem to the Judge, or other officer trying the case, a proper compensation to the defendant for any trouble and annoyance to which he may have been subjected.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 6.

134. And it is hereby enacted, that when a lawful contract shall have been made between a ryot and another party, by which contract the ryot shall have bound himself to cultivate Indigo plant for the other party, or to deliver Indigo plant to the other party, and when the other party shall have advanced money to the ryot for the purpose of enabling the ryot to fulfil such contract, then if any other person, knowing that such contract exists, and that such advance has been made, shall prevail upon the ryot to break such contract, the party who made the advance shall be entitled to proceed by Civil action against the person who shall have so prevailed on the ryot, as well as against the ryot, and to recover from him or them, jointly or severally, damages to the extent of the injury sustained, together with costs of suit.—*Act* 10, 1836, *Sect.* 3.

135. Provided, always, that nothing in this Section contained shall be construed to give a right of action against any person in consequence of any act which that person may have done for the purpose of procuring payment of a debt, or performance of a lawful contract.—*Act* 10, 1836, *Sect.* 3.

136. And it is hereby enacted, that the Court trying any suit instituted under the provisions of Regulation 6, 1823, of the Bengal Code, or under the provisions of this Act, shall be authorized to examine both the plaintiff and the defendant whenever the Court shall deem such examination necessary to the ends of justice; and if the award be in favour of the defendant, to assign to the defendant a sum which may be a compensation to him for the expense and loss of time occasioned by the proceeding.—*Act* 10, 1836, *Sect.* 4.

137. If it should appear in the course of the enquiry, that the defendant is under engagement for the same land to a third party, notice shall immediately be issued for that party to appear and plead, either in person or by Vakeel, and if such person or any third party shall, previously to the decision of the case, come forward and produce a similar deed of engagement, stipulating for the produce of the same portion of land, the Judge, or other officer trying the case shall, after such summary investigation as may be

necessary, determine whether either of the parties have any just claim to the produce of the land, and if so, which of them may have the prior and better claim; a preference will of course be given to engagements duly registered under the provisions of Regulation 20, 1812. The result of such investigation shall be recorded, and a decree passed, adjudging the question of right between the parties.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 7.

138. No defendant, who may attend under the process described in this Section, shall be confined in Jail, or be in any manner detained longer than may suffice to take his answer to the claim, and to obtain from him such further explanations as the nature of the answer may suggest.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 8.

139. Indigo planters, not being Zemindars or landholders, have no power to summon ryots and compel their attendance.—*Con. No.* 394, 17*th June*, 1825.

SECT. XVII.

Summary suits regarding Indigo.—Summary investigation how and by whom to be conducted.

140. Summary investigations, under this Regulation, shall be conducted according to the form and in the manner prescribed for the conduct of summary suits for arrears of rent: They shall either be tried by the Judge, or be referred to the Collector of the district, or to the Register. In cases referred to the Collector, that Officer (as well as the Register,) shall pass a decision on them, instead of sending them back to the Judge with a report, and there shall be no appeal from any summary decision passed by those officers respectively, if regularly made, and in a matter duly cognizable under this Regulation: It shall nevertheless be competent to any person whose claim under a deed of engagement for the cultivation and delivery of Indigo plant may have been set aside by a summary award, or who may be otherwise dissatisfied with the decision passed on a summary investigation under the foregoing provisions; to institute a regular suit for the recovery of the penalty stipulated in the deed of engagement, or for the establishment of any other claim or interest to which he may deem himself entitled.—*Reg.* 6, 1823, *Sect.* 6.

141. The rules prescribed in Regulation 2, 1805, in regard to the institution of summary suits for rent, should be applied to suits for the recovery of advances for indigo, instituted under Regulation 6, 1823.—*Con. No.* 565, *9th July*, 1830, *Question* 1.

142. Summary suits to enforce the execution of written engagements for the cultivation and delivery of indigo, instituted under the provisions of Section 6, Regulation 6, 1823, not coming within the description of cases to which the provisions of Regulation 8, of 1831, were intended to apply, are not primarily cognizable by the Collectors under the latter enactment, but may still be referred to them for trial and decision at the discretion of the Judge, under the Section of the Regulation first cited, and when so transferred, are to be disposed of in the manner laid down in that Section.—*Cir. Ord. Cal. and West. C.* 20*th Nov.* 1835, *Par.* 2.

143. And it is hereby enacted, that it shall be competent to a Zillah or City Judge, to refer to a Principal Sudder Ameen or Sudder Ameen, according to the amount of their respective jurisdictions, any suit, whether regular or summary, which may be instituted under the provisions of Regulation 6, 1823, or under the provisions of this Act, to be enquired into and decided by the said Principal Sudder Ameen, or Sudder Ameen, in the same manner, and under the same rules, as such suit may be en-

quired into and decided by a Zillah or City Judge, any thing in the existing Regulations to the contrary notwithstanding.—*Act* 10, 1836, *Sect.* 5.

144. With regard to the general question involved in the paragraph under consideration, the Court direct me to state that it might be inferred from the terms of Section 5, Act 10, of 1836, that the Moonsiffs had no jurisdiction in regular suits of the nature of those therein described, though otherwise in all respects within their cognizance; the Court observe, however, that Regulation 5, of 1831, contains no exception in respect to such cases, nor are they aware of any other rule on the subject; and they are, therefore, of opinion that, under the strict spirit of the existing laws, regular suits instituted in conformity to the provisions of Regulation 6, of 1823, or of the Act above cited, in which the amount or value of the claim may not exceed 300 rupees, and in which neither party may be an European British subject, European foreigner, or an American, are cognizable by the Moonsiffs in like manner with all other cases legally within the competency of those officers to dispose of.—*Con. No.* 1092, *West. C. 2nd June, Cal. C. 23rd June,* 1837.

SECT. XVIII.

Summary suits regarding Indigo.—Delivery of the Plant pending enquiry.

145. If pending the summary enquiry in the manner above directed it shall appear, that the plant on the ground is in a state fit to be cut, and will be injured or destroyed if not cut, it shall in such case be competent to the Judge or other officer trying the case, to pass an order for the delivery of the plant to either of the parties, provided that the said party consents and engages to pay to the other claimant (if the summary award should be ultimately in favor of the latter) as specific pecuniary compensation; the amount of such compensation shall be fixed by the Judge, or other person trying the case, in communication with the parties, and shall be regulated with reference to the estimated produce of the ground, and to the probable value of such produce when manfactured, and the amount when so fixed, shall be carefully recorded on the proceedings.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 9.

146. And it is hereby enacted, that whenever the right to Indigo plant may be contested, and an order shall be passed, under the provisions of Clause Ninth, Section 3, Regulation 6, 1823, of the Bengal Code, for the delivery of Indigo plant to one of the parties claiming the same, such party shall not be allowed to cut or remove the Indigo plant until he shall have given sufficient security to the satisfaction of the Court trying the case, to make good any claim that shall be ultimately established to such Indigo plant whether arising from a prior right to the produce of the land, or from an arrear of rent due on account of the specific parcel of land from which the plant may have been produced.—*Act* 10, 1836, *Sect.* 2.

147. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th instant, requesting the Court's construction of Regulation 6, 1823, as to whether the engagement executed by parties applying for possession of Indigo crops, under the provisions of Clause 9, Section 3, of the above enactment, can be enforced under the summary award. In reply, I am desired to answer your question in the affirmative, and to acquaint you, that the summary decree should contain a provision for the payment, by the party cast, of the sum specified in his engagement. In the event of the amount not being paid, it should be realized by the process prescribed for giving effect to summary judgments.—*Con. No.* 515, 24*th July,* 1829.

SECT. XIX.

Summary suits regarding Indigo.—Authority to prevent the removal of plant.

148. Any person in whose favour a summary award shall have been passed for the produce of any defined spot of land, shall be entitled to place a watch over the same, and to prevent the cutting and removal of the plant in any manner contrary to the stipulations of his agreement, and in the event of any attempt being made to cut or remove the plant, it shall be competent to the person holding the decree to apply to the nearest Police Daroggah, and to claim from him the assistance of the Police in preventing such removal; it shall moreover be the duty of the Police officers, and of all other officers, on such a decree being exhibited, to aid the person in whose favour it may have been passed to the utmost of their power.—*Reg.* 6, 1823, *Sect.* 4, *Cl.* 1.

149. In order that the foregoing rule may not operate to the prejudice of the landholders, who, by the existing Regulations, are authorized to attach the crops for the realization of rents justly due to them, it is hereby provided, that whenever any manufacturer who may have obtained an award under the foregoing rules, may cause the plant to be cut and taken away, he shall be held responsible, conjointly with the ryot, for any arrear of rent which may have been due on account of the specific parcel of ground from which the Indigo plant may have been taken.—*Reg.* 6, 1823, *Sect.* 4, *Cl.* 2.

SECT. XX.

Summary suits regarding Indigo.—Remedy against breach of contract by summary or regular suit.

150. In cases in which a ryot who may have received advances and entered into written agreements for the cultivation and delivery of Indigo plant in the manner indicated in this Regulation, shall have failed to cultivate the ground specified, or having cultivated it, shall have failed or refused to complete his engagement, or shall have sold, made away with, or transferred the produce to another person, the party with whom such agreement was first made, shall be at liberty to institute, at his option, either a summary or a regular suit.—*Reg.* 6, 1823, *Sect.* 5, *Cl.* 1.

151. If the summary process be adopted, and the cause be decided in favour of the plaintiff, the defendant shall be subjected to the payment of the amount of the advances actually received by him, with interest on the same, and the costs of the summary process.—*Reg.* 6, 1823, *Sect.* 5, *Cl.* 2.

152. I am desired to communicate to you the opinion of the Court, that an Indigo planter, under the circumstances above stated, is not competent to cultivate the land by means of his own servants, nor has he a right to demand the assistance of the police for the purpose of compelling the ryots to fulfil his contract. His only legal remedy in such case is that prescribed by Section 5, Regulation 6, 1823, to the provisions of which I am desired to refer you.—*Con. No.* 385, *29th April*, 1825.

153. If no fraud or dishonest dealing be established, and the failure of a ryot or other contractor to execute the stipulations of his engagement by the delivery of Indigo plant in the manner stipulated, be owing to accident or to any cause not implying fraud or dishonesty, the penalty to be adjudged against a contractor shall not exceed three

times the sum advanced, as the consideration for executing the deed, including interest.—*Reg.* 6, 1823, *Sect.* 5, *Cl.* 4.

154. Persons wilfully damaging or causing to be damaged, Indigo plant, by allowing cattle to trespass thereon, or by any other means, shall, on the complaint of the ryot to whom the crop may belong, or of the manufacturer by whom advances may have been made for the cultivation and delivery of the said plant, be liable, on proof of the offence, to such punishment by fine and imprisonment as the Magistrate is competent to inflict under Section 19, Regulation 9, 1807, due regard being had to the nature of the case, and the circumstances in life of the offender.—*Reg.* 5, 1830, *Sect.* 4.

SECT. XXI.

Summary suits regarding Indigo.—Stamps.

155. No objection shall be taken against any deed of contract for the cultivation and delivery of Indigo plant on account of its not bearing the proper stamp, provided that the same be executed on paper bearing a stamp of such an amount, as would be required under the rules of Section 11, Regulation 1, 1814, for a bond of the amount actually advanced or acknowledged to be advanced as the consideration for entering into the agreement.—*Reg.* 6, 1823, *Sect.* 7.

156. I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting to be informed whether a contract entered into by a ryot to cultivate Indigo for a period of five or ten years, and by which he is required to settle his accounts annually, and receive fresh advances, is valid, if executed on stamped paper required for the amount of the first year's advances; and whether the ryot can be obliged by it under Regulation 5, 1830, to settle his accounts at the end of the year, or on failing to do so, be compelled, under Section 3, to give the number of bigahs mentioned for the entire period named in the contract. In reply, I am directed to inform you that, provided it be proved that the engagement to cultivate indigo was voluntarily executed by the ryot, the criminal Court must enforce the provisions of Section 3, Regulation 5, 1830; and that, under Section 7, Regulation 6, 1823, no objection can be made to the engagement on account of the stamp, provided the value of it be such as is required for a bond of a similar amount. I am further directed to observe that Regulation 5, 1830, is silent as to compelling a ryot to settle his accounts at the end of the year.—*Con. No.* 873, 28*th Feb.* 1834.

157. No objection shall be taken to the validity of any deed of engagement for the cultivation and delivery of Indigo plant, on the ground of its having been entered into by more than one individual, or of its including more than one transaction; provided that the obligation of each individual be distinctly specified, and the amount of the stamp be such as would have been required for a bond of an amount equal to that of the aggregate of all the sums acknowledged to have been advanced.—*Reg.* 6, 1823, *Sect.* 8.

SECT. XXII.

Summary suits regarding Indigo.—Mode in which the ryot may close his contract.

158. Any person who, having received advances under a written agreement for the cultivation of Indigo, shall be desirous on the expiration of the period of his contract to settle his account, shall be at liberty, in the event of the proprietor of the factory or the person acting in his behalf refusing to settle the same, to present a petition to

the Zillah Court, and the Judge, after a summary enquiry in the presence of the parties or their authorized agents into the merits of the case, shall, on proof of the expiration of the contract, and of there being no balance due from the petitioner, or if the petitioner shall deposit in Court the amount of any balance that may be adjudged to be due from him, grant the said petitioner a release from his engagement, and shall pay over the amount of any balance that may be deposited by him to the proprietor, or to the person acting in his behalf.—*Reg.* 5, 1830, *Sect.* 5, *Cl.* 1.

159. If the proprietor or person aforesaid shall refuse to receive the balance awarded to him by the summary process above provided, the Judge shall return the amount to the petitioner, leaving the defendant to seek his remedy by a regular suit.—*Reg.* 5, 1830, *Sect.* 5, *Cl.* 2.

160. Held by the Calcutta Court, in concurrence with the Western Court, that a Zillah Judge has no summary jurisdiction under the provisions of Clause 1, Section 5, Regulation 5, 1830, in the case of an application by a ryot to settle his accounts with an Indigo factory, before the expiration of his contract. A summary decision of the Judge of Rajshahye in a case of this nature, was quashed by the Court on a summary appeal.—*Con. No.* 1130, *9th Feb.* 1838.

161. Summary suits instituted under the provisions of Section 5, Regulation 5, 1830, by persons who may be unwilling to renew their contracts for the cultivation of Indigo, and who may sue in consequence to obtain a release from their engagements, are cognizable by the Judge only, and are not referrible to the Revenue authorities, under either of the enactments cited in the preceding paragraph;—*Cir. Ord. Cal. and West. C.* 20*th Nov.* 1835, *Par.* 3.

162. In reply to your letter of the 7th instant, I am directed by the Court to communicate to you their opinion that a ryot cannot claim a settlement of his account under Section 5, Regulation 5, 1830, till "the expiration of the period of his contract," and that if the ryot asserts that the planter is indebted to him for Indigo plant, and refuses to pay him what he demands, the ryot must seek redress by a regular suit.—*Con. No.* 934, *Cal. C.* 20*th Feb. West. C.* 13*th March*, 1835.

SECT. XXIII.

Summary Investigation into Embezzlements by Public Officers.

[The enactments which relate to this Section will be found at Chap. II. Sect. 5.]

SECT. XXIV.

Miscellaneous Cases.—Proceedings on the Report of Disqualification.

163. If a Collector shall report any proprietor to be a minor, and the proprietor, or any person on his behalf, shall deny that he is under age, such proprietor or person, shall be at liberty to represent the circumstances to the Court of Dewanny Adawlut of the Zillah wherein the estate may be situated, the Judge of which shall forward the representation to the Sudder Dewanny Adawlut, which Court shall issue a precept, under the seal of the Court, and attested by the Register, to the Judge of the Zillah, or to the Provincial Court of Appeal of the division, to call the proprietor before the Court, and ascertain his age by the evidence on oath of not less than three credible persons well acquainted with him, and also by such other enquiries as may appear to the Court calculated to ascertain the truth, and certify its proceedings, including any representations or

evidence that the proprietor, or any person on his behalf, may have to adduce, with its opinion on the case, to the Sudder Dewanny Adawlut, which Court shall determine whether such proprietor be a minor or not. The decision of the Sudder Dewanny Adawlut shall be final, and the Court shall certify a copy of its decision to the Governor General in Council, who will order the estate to be put under the charge of the Court of Wards or not, according as the proprietor may be adjudged by the Sudder Dewanny Adawlut to be a minor, or otherwise.—*Reg.* 10, 1793, *Sect.* 5, *Cl.* 2.—*Ben. Reg.* 6, 1822, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 52, 1803, *Sect.* 9, *Cl.* 2.

164. If a proprietor of land shall be deemed disqualified on the ground of lunacy, idiotism, or other disqualifying natural defect or infirmity, the Board of Revenue are to order the Collector to represent the circumstances through the vakeel of Government, to the Court of Dewanny Adawlut of the Zillah, the Judge of which shall transmit a copy of the representation to the Sudder Dewanny Adawlut. This Court shall issue a precept to the Court of Appeal of the division, or to the Judge of the Zillah within the jurisdiction of which the proprietor may reside, to bring him before the Court, to ascertain his actual state by ocular proof; and the Court shall further take the declaration upon oath of no less than three credible persons acquainted with the party, setting forth their opinion of his condition, with the grounds of it. The Court is to transmit all its proceedings, with its opinion on the case, to the Sudder Dewanny Adawlut, which Court shall determine finally whether the stated ground of disqualification be well founded or not, and certify a copy of its decision to the Governor General in Council, who will order the Court of Wards to take the estate of the proprietor under their care or not, according as the proprietor may be adjudged by the Sudder Dewanny Adawlut to be disqualified, or otherwise.—*Reg.* 10, 1793, *Sect.* 5, *Cl.* 3.—*Ben. Reg.* 6, 1822, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 52, 1803, *Sect.* 9. *Cl.* 3.

165. Persons not born in a state of idiotism, but who may have been declared by the Sudder Dewanny Adawlut disqualified as lunatics, are to be produced annually before the Judge of the Dewanny Adawlut in the jurisdiction of which they may reside, or oftener if he shall think fit, in order to ascertain whether they be restored to sanity or otherwise; and if in any instance the ground of disqualification shall appear to the Judge to be completely removed, he shall immediately report the same, with a full relation of the circumstances of the case, to the Sudder Dewanny Adawlut, which Court shall finally determine whether the ground of disqualification be removed or not. The Court is to communicate its decision to the Governor General in Council, who will order the Court of Wards to deliver over charge of the estate to the proprietor or not, according as the ground of his disqualification may be adjudged by the Court removed, or otherwise.—*Reg.* 10, 1793, *Sect.* 5, *Cl.* 5.—*Ben. Reg.* 6, 1822, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 52, 1803, *Sect.* 9, *Cl.* 3.

166. Any person who may have been adjudged disqualified, on any of the grounds specified in Clause Second, Third, or Fourth, and who may deem the ground of his disqualification removed, shall be at liberty to represent the circumstances to the Judge of the Dewanny Adawlut of the Zillah, who shall forward the representation to the Sudder Dewanny Adawlut. This Court shall issue a precept to the Judge of the Zillah Court, or to the Provincial Court of Appeal of the division, to enquire into the case, and to receive such evidence as the disqualified proprietor may have to offer in support of his representation. The Court is to report the result of its enquiry, with its opinion thereon,

to the Sudder Dewanny Adawlut, which Court shall determine finally whether the ground of disqualification be or be not removed, and report its decision to the Governor General in Council, who will order the Court of Wards to restore the proprietor to the management of his lands or not, according as the ground of disqualification may be adjudged by the Sudder Dewanny Adawlut to be removed, or otherwise.—*Reg.* 10, 1793, *Sect.* 5, *Cl.* 6.—*Ben. Reg.* 6, 1822, *Sect.* 2.—*Ced. and Con. Prov. Reg.* 52, 1803, *Sect.* 9, *Cl.* 3.

SECT. XXV.

Miscellaneous Cases.—Appointment of Guardians to Minors.

167. In all cases of joint undivided estates when one or more of the proprietors shall die leaving heirs who are under age, lunatics, or idiots, and without nominating by will a guardian or guardians to the heirs, it shall be the duty of the Judge within whose jurisdiction such estate may be situated (or the principal part of it, in the event of its being situated in two or more jurisdictions) on the receipt of a report from the Collector, or from any other person or persons interested in the welfare of the family of the deceased, stating the grounds on which he or they may consider the next of kin as unfit to be entrusted with the care of the person, or management of the estate of the heir, to investigate the nature of the objections to the nearest of kin, and if satisfied himself that they are well founded, the Judge shall nominate some other person of character and respectability to act as guardian of the heir, reporting the circumstance in every instance to the Court of Sudder Dewanny Adawlut.—*Reg.* 1, 1800, *Sect.* 1.—*Ben. Reg.* 6, 1822, *Sect.* 2.—*Ced and Conq. Prov. Reg.* 8, 1805, *Sect.* 29, *Cl.* 8.

168. With regard to the second point, namely, appointing a guardian to the minor; if he be considered the adopted son of the widow's husband, you must be guided by the provisions of Regulation 1, 1800, which authorize the appointment, by the Civil Court, of a guardian to a minor landholder, provided he be a sharer in a joint estate paying revenue immediately to Government, and all the other sharers be not disqualified persons. Your appointment of a guardian in such case would be subject to the controul of this Court, in the mode provided for by Section 7, of the above quoted regulation.—*Con. No.* 310, 1*st Jan.* 1820, *Par.* 5.

169. I am directed by the Court to acknowledge the receipt of your letter of the 25th August last, and its enclosures, and in reply to inform you that the Court, being of opinion that there is nothing in the provisions of Regulation 1, 1800, which restricts its application to the case of minor heirs of joint undivided estates paying revenue immediately to Government, sanction the appointment of the following guardians [to minors, whose estate pay revenue to Zemindars and others, and not immediately to Government.]—*Con. No.* 912, 24*th Oct.* 1834.

170. I am directed to inform you that if the estate of the minor is a joint undivided estate, you should, on the application of the minor's mother, appoint a guardian under the provisions of Regulation 1, 1800, and report your nomination for the confirmation of the Court.—*Con. No.* 663, 16*th Dec.* 1831, *Par.* 2.

171. I am directed by the Court to request that you will in future submit all nominations of Guardians appointed under Regulation 1, 1800, for the approval of the Court, in one of the accompanying forms, as the case may require.

Form for Nomination of a Guardian under Regulation 1, 1800.

1.				5	6
Name of the deceased Proprietor with date of his death.	Names of the minors, with their ages and relationship to the deceased.	Name of the Estate with Perguunah and Zillah, and to what share the minors are entitled.	Name of the Guardian.	Statement of his relationship to the minors, or his connection with the family as a servant or friend.	Whether he undertakes the trust gratuitously, or on a stipend; and if on a stipend the amount of it, and its proportion to the produce of the estate.

—*Cir. Ord. Cal. and West. C. 4th Dec.* 1832.

172. I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 16th ultimo and its inclosures, requesting the Court's construction of Regulation 1, 1800, as relates to the power of the Provincial Courts of Appeal to receive appeals from orders passed under that regulation by the Zillah and City Courts; and in reply to acquaint you, that the Court are of opinion, that the Provincial Courts of Appeal have no jurisdiction in the cases provided for by the regulation in question; but that the parties dissatisfied with the orders of the Zillah and City Judges must appeal to this Court.—*Con. No.* 596, *24th June*, 1831.

173. The Court observe that the appointment of the guardian having been confirmed by them, you should not have removed him, Moomtazoodeen being still in his non-age, without their sanction. They do not consider the reasons assigned by you sufficient to warrant his removal, for though the possession of the estate, for the protection of which he was appointed, is in the hands of the opposite party, the claim of the minor thereto remains to be decided, and the continuance of the guardian may be necessary to bring forward, and prosecute a suit to recover possession in the Civil Court in a regular manner. The Court therefore annul that part of your order, and direct that the guardian be restored to his office.—*Con. No.* 666, *6th Jan.* 1832.

174. It appears from the proceeding of the Judge of Zillah Mymensingh dated 19th February, 1831, that while the marriage ceremony of Mosst. Noor-oon-nissa Khatoon, daughter of Mosummut Chand Bebee deceased, with Moulvee Tumeezooddeen was suspended in consequence of a difference of opinion between the Judges of the Court of Appeal and the Zillah Judge; an order having been issued by the Judge forbidding the marriage of the said Noor-oon-nissa with any person whatever until an order should be issued to that effect; Moulvie Abdool Ulee, son of Moulvie Burkutoolah khan, without giving information to the said gentleman or obtaining his permission, and without any intimation to Gholam Abool Lys Chowdree, the half brother of the said Noor-oon-nissa who is also her guardian, married her. It is also understood from a petition of the said Noor-oon-nissa that she has arrived at the age of puberty and that she with her own free will and consent married Moulvee Abdool Ulee aforesaid. Under these circumstances, and as the said Noor-oon-nissa acknowledges that she has attained to the age of puberty and that this marriage has taken place agreeably to her own free will and consent, and as the Judge's order was passed under the supposition of her being a minor, her marriage with Abdool Ulee, although it may have taken place without informa-

tion given to the Judge and guardian, or obtaining their permission, is valid and binding according to law, and Abdool Ulee aforesaid cannot in consequence of this marriage and such disobedience of orders be considered criminal or liable to punishment.—*Con. No.* 637, *27th May*, 1831.

175. The guardian of a minor being his representative is entitled to receive the minor's share of the proceeds of an estate, if managed by a surberakar; and the Zillah Judge has no authority to interfere with him in the disposition of the minor's property.—*Con. No.* 654, *19th Aug.* 1831.

176. Guardians or managers appointed under Regulation 1, 1800, must be left to exercise their own judgment as to the best mode of managing the estates of the minors committed to their care.—*Con. No.* 663, *16th Dec.* 1831.

177. I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your return of the 18th February to the Court's precept of 19th January last, and its enclosures, on the subject of the appointment of certain officers to manage the accounts of the estate of certain wards of your Court. The Court observing that the Regulations in force do not authorize the entertainment of the establishment in question, and being of opinion that it is unnecessary, deem it proper to annul your order of the 11th June last.—*Con. No.* 682, *16th March*, 1832.

178. In cases in which one or more of the proprietors of a joint undivided estate may be minors, or may be otherwise disqualified for the management of their own concerns in consequence of natural defects or infirmities; the guardians of such persons, whether nominated by the will of their parents, or by the Zillah Judges under Regulation 1, 1800, shall superintend the interests of such disqualified persons, and shall exercise the same powers in the management of the estate of their wards as could be exercised by the proprietors themselves, were they qualified for the direction of their own affairs.—*Reg.* 17, 1805, *Sect.* 5.

179. In reply to your reference I am directed to state that the Civil Courts are not expected to call on guardians appointed by them under Regulation 8, 1805, [Reg. 1, of 1800,] to deliver up their accounts for their inspection; nor are those Courts competent to exercise any active interference in the management of the property belonging to the ward. On the receipt however of credible information against the character of the guardian, showing him to the Court's satisfaction to be unfit for the situation, the Court is competent to make enquiry into the matter and to take measures for his removal. For the recovery of any monies or property, which on investigation the guardian may appear to have embezzled, the Civil Court is not empowered to interfere excepting on the institution of a regular suit.—*Con. No.* 720, *West. C.* 21*st Sept. Cal. C.* 28*th Dec.* 1832.

180. On an application to the Sudder Dewanny Adawlut, made on the part of a guardian of a deaf and dumb person, appointed under Regulation 1, 1800, to be allowed to appeal *in formâ pauperis* on behalf of his ward by presenting his petition through an authorized agent, it was held that a petition to be allowed to appeal *in formâ pauperis* cannot be received, through an agent, from any person not being a female of the rank and description stated in Clause 1, Section 5, Regulation 28, 1814.—*Con. No.* 1254, *Cal. Cl.* 4*th Oct. West. C.* 8*th Nov.* 1839.

181. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting to be informed, whether a minor can execute a power of attorney to a constituted vakeel of the Court to defend a suit instituted against the minor's father in his life time, or whether the suit must remain for investigation until the minority of the boy expires. By Section 1; Regulation 1, of 1800, it is provided that whenever any objections to conferring the trust on the next of kin may exist, the Judge shall nominate some other person of character and respectability to act as guardian of the minor. But in the case out of which your reference originated, it appears, that the minor has no relation whatever: under which circumstances, the Court are of opinion, that the provisions of the rule above quoted might, by analogy, be extended to his case, and that you should select some competent person to act as his guardian. You will be pleased

therefore to make a selection of some individual accordingly, attending to the rules laid down in Regulation 1, of 1800; and the person so appointed by you will be competent to nominate a vakeel to conduct the defence of his ward.—*Con. No.* 398, *5th Aug.* 1825.

182. In the selection of guardians to be appointed under this Regulation, the Judge is to attend particularly to their capacity, character and responsibility, but the guardianship is in no instance to be entrusted to the legal heir of the ward or other person interested in outliving him.—*Reg.* 1, 1800, *Sect.* 2.—*Ben. Reg.* 6, 1822, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 8, 1805, *Sect.* 29, *Cl.* 9.

183. It is expected that some friends of the family of the deceased will gratuitously discharge the trust of guardian, but if on any occasion it may become necessary to make a pecuniary compensation to the person appointed to act as guardian, the amount of such compensation is to be fixed by the Judge on a due consideration of the circumstances of the case.—*Reg.* 1, 1800, *Sect.* 3.—*Ben. Ibid.*—*Ced. and Conq. Prov. Ibid, Cl.* 10.

184. The guardians appointed under this Regulation, are to be furnished with a commission under the official seal and signature of the Judge, but previously to the delivery of it, they are to give security for their appearance during the continuance of their trust, and to execute the following obligation:—"I, A. B. having voluntarily taken upon myself the guardianship of C. proprietor of a ——— anna share of the estate of D. do hereby solemnly promise and engage to execute the trust committed to me zealously and faithfully to the best of my judgment, and according to the Regulations which have been or may be prescribed for the guidance of guardians by the Governor General in Council; I will derive no advantage myself directly or indirectly from any monies belonging to my ward, which may come into my hands in the execution of my trust, beyond the compensation granted me for my superintendence, nor will I knowingly suffer any other person to derive therefrom any such undue advantage. I also promise and engage to render a true and just account of whatsoever may be received by me on account of my ward abovementioned, when required to do so by any competent authority, and in the event of its being proved that I have been guilty of any embezzlement, or of any breach of trust injurious to his (or her) property, I hereby bind myself, my heirs and successors, to make good treble the amount of the embezzlement or injury so proved against me."—*Reg.* 1, 1800, *Sect.* 4.—*Ben. Ibid.*—*Ced. and Conq. Prov. Ibid, Cl.* 11.

185. I am directed by the Court to acknowledge the receipt of your letter of the 22nd ultimo No. 133, and in reply to inform you that the bond in the case therein alluded to, should be retained in the custody of the Court until the lapse of twelve years from the resignation of the trust, or from the date of the minor's attaining his majority, unless the minor on coming of age should consent to its being restored to the parties concerned.—*Con. No.* 948, *1st May*, 1835.

186. Guardians appointed under this Regulation are to have the care of the person, maintenance, and, if a minor, the education of the ward. They are also to vote in the election of a manager for the joint undivided estate as prescribed in Sections 23 and 24, Regulation 8, 1793; and the manager is to account to them for such portion of the profits arising from the estate, as their wards may be entitled to receive, on a fair distribution thereof amongst all the joint proprietors.—*Reg.* 1, 1800, *Sect.* 5.—*Ben. Reg.* 6, 1822, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 8, 1805, *Sect.* 29, *Cl.* 12.

187. Estates under charge of a manager elected as stated in the foregoing section,

shall be held answerable for the payment of the Revenue assessed thereon, and nothing contained in this Regulation shall be considered as exempting the lands from sale, for the realization of any balances which may at any time become due to Government.—*Reg.* 1, 1800, *Sect.* 6.—*Ben. Ibid.*—*Ced. and Conq. Prov. Ibid, Cl.* 13.

188. If any person shall think himself aggrieved by any act done by any of the Zillah Judges in the exercise of the authority vested in them by this Regulation, he is at liberty to state his complaint by petition, either to the Judge in person, or to the Court of Sudder Dewanny Adawlut, and whenever any such complaint shall be made, the Judge is to certify a copy of the petition and of all his proceedings in the case to which it relates, to that Court, who are authorized to confirm or rescind his decision as to them shall appear just and proper, and their judgment in all such cases is hereby declared to be final. All proceedings and papers which may be submitted to the Sudder Dewanny Adawlut under this Section, are to be accompanied by true and faithful translations into the English language.—*Reg.* 1, 1800, *Sect.* 7.—*Ben. Ibid.*—*Ced. and Conq. Prov. Ibid, Cl.* 14.

SECT. XXVI.

Miscellaneous Cases.—Appointment of Managers to disputed Estates.

189. In convenience to the public and injury to private rights having been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, it is hereby enacted, that whenever sufficient cause shall be shewn by the revenue authorities, or by any of the individuals holding an interest in such estates for the interposition of the Courts of judicature, it shall be competent to the Zillah and City Judges to appoint a person, duly qualified and under proper security to manage the estate, that is to collect the rents, and discharge the public revenue, and provide for the cultivation and future improvement of the estate: Provided, however, that if the revenue authorities or any of the individuals holding an interest in the estate shall be dissatisfied with the selection made by the Zillah or City Judge, of the individual to perform the duty in question, it shall be competent for them to represent their objections to the Provincial Court of Appeal, which Court will confirm the manager chosen, or order the Judge to select and appoint another person, according as on consideration of the circumstances of the case may appear to them reasonable and proper.—*Reg.* 5, 1812, *Sect.* 26.

190. I am directed by the Court to inform you that you are competent, under the provisions of Section 26, Regulation 5, 1812, to attach the whole (but not a portion of a joint undivided estate) on sufficient cause being shewn; but that your decision as to the sufficiency of the cause is open to appeal.—*Con. No.* 717, 21*st Sept.* 1832.

191. Held on a reference from the Judge of Mymensingh, that the provisions of Section 26, Regulation 5, 1812, are not applicable to dependent talooks.—*Con. No.* 1283, *Cal. C. 7th Augt. West. C. 4th Sept.* 1840.

192. The Judge of Zillah Juanpore was informed, on the 3rd December, 1812, in answer to a reference transmitted through him from the Assistant Judge, that the Court were of opinion, that in cases requiring the appointment of a manager of a joint and undivided estate, under the provisions of Section 26, Regulation 5, 1812, endeavour should, in the first instance, be made to prevail on one of the family, or some friend of the sharers, to undertake that duty gratuitously; but that in

the event of its being necessary to make a pecuniary compensation to the person appointed to act as manager, the amount of such compensation must be fixed, on consideration of the circumstances of each case, by the Judge making such appointment: and that the manager so appointed must account to the several proprietors for their respective profits arising from the estate, after discharging the public revenue, (to be paid to the Collector in the same manner as the payment was before made by the proprietors,) and deducting the amount of the compensation which he may have been authorized to receive.—*Con. No.* 115, *3rd Dec.* 1812.

193. The Court entirely concur with the Board of Commissioners, in the expediency of establishing a rule for proportioning, as far as practicable, the expense of management to the extent and produce of the estate, when a manager may be appointed under Section 26, Regulation 5, 1812; and beg leave to suggest, that the Board of Commissioners and Board of Revenue be consulted on the tenor and limitations of the rule which may appear proper to enact for this purpose—*Con. No.* 142, *3rd Feb.* 1814, *Par.* 4.

194. With regard to the responsibility of managers of estates appointed under Section 26, Regulation 5, 1812, the Court are of opinion, that as it is not particularly defined in that Regulation, it must be considered that of an Agent, acting for the benefit of his principal, and bound to a faithful discharge of the trust committed to him. The Court are further of opinion, that "proper security," directed to be taken from managers appointed under the Section above mentioned, is not restricted to personal bail for appearance, but extends to security for a faithful account of the manager's receipts; and should be proportionate to "the extent thereof," as declared in Regulation 5, 1799, Section 6, and Regulation 3, 1803, Section 16, Clause 6, with respect to administrators appointed by the Civil Courts in the cases therein provided for.—*Con. No.* 142, *3d Feb.* 1814, *Par.* 5.

195. In like manner should the authorities aforesaid or any individual holding an interest in the estate be at any subsequent time dissatisfied with the conduct of the manager, it shall be competent for them or him to represent the circumstances of the case to the Zillah or City Judge, and to move the Court for the removal of the said manager: and should those authorities or persons be dissatisfied with the orders which may be passed on the subject by the Zillah or City Judge, it shall be competent for them to bring the case before the Provincial Court of Appeal, which Court will determine on the propriety of removing the manager or otherwise, as may appear to them to be right and proper.—*Reg.* 5, 1812, *Sect.* 27.

196. The Rules contained in Sections 5 and 6, Reg. 5, 1799, and Clauses Five and Six, Section 16, Regulation 3, 1803, and Sections 26 and 27, Regulation 5, 1812, and Clause Third, Section 5, Regulation 6, 1813, regarding the administration and management of Estates under orders of the Zillah and City Courts, are hereby declared subject to the following modifications.—*Reg.* 5, 1827, *Sect.* 2.

These modified rules will be found at Section 7, Chap. 3.

SECT. XXVII.

Principles of Law.—Rates of Interest in different Provinces.

[Bengal, Behar and Orissa.]

197. If the cause of action shall have arisen before the twenty-eighth day of March, one thousand seven hundred and eighty, the Courts of Civil judicature, are not to decree higher or lower rates of interest, than the following:—*Reg.* 15, 1793, *Sect.* 2, *Cl.* 1.

198. On sums not exceeding one hundred sicca rupees; three rupees, and two annas, per cent. per mensem, or thirty-seven rupees, and eight annas, per cent. per annum —*Reg.* 15, 1793, *Sect.* 2, *Cl.* 2.

199. On sums exceeding one hundred sicca rupees; two per cent. per mensem, or twenty-four per cent. per annum.—*Reg.* 15, 1793, *Sect.* 2, *Cl.* 3.

200. If the cause of action shall have arisen, at any period between the twenty-eighth day of March, one thousand seven hundred and eighty, and the first day of January, one thousand seven hundred and ninety-three, no higher or lower rates of interest than the following are to be decreed:—*Reg.* 15, 1793, *Sect.* 3, *Cl.* 1.

201. On sums not exceeding one hundred sicca rupees; two per cent. per mensem, or twenty-four per cent. per annum.—*Reg.* 15, 1793, *Sect.* 3, *Cl.* 2.

202. On sums exceeding one hundred sicca rupees; one per cent. per mensem, or twelve per cent. per annum.—*Reg.* 15, 1793; *Sect.* 3, *Cl.* 3.

203. If the cause of action shall have arisen, on or after the first day of January, one thousand seven hundred and ninety-three, the Courts are not to decree any interest on any sum whatever, above the rate of twelve per cent. per annum.—*Reg.* 15, 1793, *Sect.* 4.

[Benares.]

204. The provisions contained in the several Sections of Regulation 15, 1793, are hereby declared to extend to the province of Benares, from the commencement of the ensuing year 1807, A. C. corresponding with the 19th Poos of the Bengal year 1213, and 7th Poos of the Fussily year 1214; subject to the following modifications.—*Reg.* 17, 1806, *Sect.* 2.

205. Instead of the limitations of interest specified in Sections 2 and 3, Regulation 15, 1793, if the cause of action shall have arisen before the period stated in the preceding Section, the Courts of Civil judicature are to decree whatever rate of interest may have been voluntarily stipulated; or, if interest be payable in any case wherein a specific rate may not have been stipulated, according to the law and usage of the province; in conformity with the spirit of Section 9, Regulation 7, 1795; which directs, with respects to bills of exchange, receipts, or notes of hand, that the custom of the country is to be abided by, and with respect to dealings and money transactions amongst muhajuns and shroffs, that the established customs observed, and enforced, amongst them, are to be adhered to by the Courts in their inquiries and decisions.—*Reg.* 17, 1806. *Sect.* 3.

206. If the cause of action shall arise after the period specified in Section 2 of this Regulation, the Courts are not to decree any interest above the rate of one per cent. per mensem; or twelve per cent. per annum.—*Reg.* 17, 1806, *Sect.* 4.

[The Ceded and Conquered Provinces of Oude.]

207. If the cause of action shall have arisen before the tenth day of November, one thousand eight hundred and one, the Courts of Civil Judicature are not to decree higher or lower rates of interest, than the following.—*Reg.* 34, 1803, *Sect.* 2, *Cl.* 1.

208. On sums not exceeding one hundred sicca rupees, two rupees, and eight annas, per cent. per mensem; or thirty per cent. per annum.—*Reg.* 34, 1803, *Sect.* 2. *Cl.* 2.

209. On sums exceeding one hundred sicca rupees, two per cent. per mensem; or twenty-four per cent. per annum.—*Reg.* 34, 1803, *Sect.* 2, *Cl.* 3.

210. If the cause of action shall have arisen, on, or subsequent to the tenth day of November, one thousand eight hundred and one, the Courts are not to decree interest on any sum whatever, above the rate of twelve per cent. per annum.—*Reg.* 34, 1803, *Sect.* 3.

[The Doab, and on the right bank of the Jumna with Bundlekund.]

211. Regulations 33 and 34, 1803, are hereby extended to the Zillahs specified in Section 3; with the following modification of the Regulation last mentioned.—*Reg.* 8, 1805, *Sect.* 23, *Cl.* 1.

212. The 30th of December 1803, shall be the date to be adopted in the Zillahs of Allyghur, Agra, and the northern and southern division of the Zillah of Saharunpore; and the 16th December 1803, shall be the date to be adopted in the Zillah of Bundlekund; in lieu of the date specified in Sections 2, 3 and 9, Regulation 34, 1803. The 1st of January 1805, shall be adopted in the whole of the above Zillahs, in lieu of the date specified in Sections 7 and 8, of the said Regulation.—*Reg.* 8, 1805, *Sect.* 23, *Cl.* 2.

[Cuttack.]

213. The following rules shall be observed in the Zillah of Cuttack, including the pergunnahs of Puttaspore, Kummardichour, and Bograe, respecting the payment of interest on money.—*Reg.* 14, 1805, *Sect.* 9, *Cl.* 1.

214. If the cause of action shall have arisen before the 14th of October, 1803, the Courts of Civil judicature are not to decree a higher or lower rate of interest than the following, unless a lower rate of interest shall have been stipulated to be paid by the parties in the suit.

On sums not exceeding one hundred sicca rupees, two rupees and eight annas per mensem, or thirty per cent. per annum.

On sums exceeding one hundred sicca rupees, two per cent. per mensem.—*Reg.* 14, 1805, *Sect.* 9, *Cl.* 2.

215. If the cause of action shall have arisen on, or subsequently to, the 14th of October 1803, the Courts are not to decree interest on any sum whatever above the rate of twelve per cent. per annum.—*Reg.* 14, 1805, *Sect.* 9, *Cl.* 3.

216. The Courts are not to decree any interest whatever, in any case, where the bond or instrument given for the security and evidence of the debt, shall have been granted on, or subsequently to, the 14th day of October 1803, and shall specify a higher rate of interest than is authorized in Clause third of this Section.—*Reg.* 14, 1805, *Sect.* 9, *Cl.* 4.

SECT. XXVIII.

Principles of Law.—General Rules regarding Interest and Wassilut.

217. If in any of the cases specified in Sections 2, 3 and 4, a lower rate of interest than any of the rates therein authorized to be awarded, shall have been stipulated between the parties, no higher rate of interest than the rate so stipulated, is to be decreed.—*Reg.* 15, 1793, *Sect.* 5.—*Ben. Reg.* 17, 1806, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 24, 1803, *Sect.* 4.

218. The Courts are not to decree any compound interest, arising from intermediate adjustments of accounts. This rule however, is not to extend to cases in which

accounts between the parties shall have been adjusted, and the former bonds or agreements cancelled, and new bonds or agreements taken, for the aggregate amount of the principal, and the legal interest remaining due upon the adjustment, consolidated into principal.—*Reg.* 15, 1793, *Sect.* 7.—*Ben. Ibid.*—*Ced. and Conq. Prov. Ibid, Sect.* 6.

219. The Courts are not to decree any interest whatever, in any case, where the bond or instrument given for the security and evidence of the debt, shall have been granted on or subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, and shall specify a higher rate of interest, than is authorized by this regulation, to have been given and received subsequent to that date.—*Reg.* 15, 1793, *Sect.* 8.—*Ben. Ibid.*—*Ced. and Conq. Prov. Ibid, Sect.* 7.

220. To prevent an abuse of the above rule, and the encouragement of litigious appeals, the Provincial Courts of Appeal in all cases wherein they may confirm the decree of a Zillah or City Court, and the Sudder Dewanny Adawlut, in all cases wherein it may confirm the decree of a Provincial Court, are to adjudge interest at the rate of one per cent. per mensem on all sums, receivable by the respondent under the decree passed in his favour, from the date of such decree, and are authorized to punish appeals which may appear to them litigious, by a fine to Government, proportionate to the condition of the party, and the circumstances of the case.—*Reg.* 13, 1796, *Sect.* 3.

221. On a reference from the Judge of Chittagong, it was held by the Calcutta Court, in concurrence with the Western Court, that it is not competent to a Zillah Judge to impose a fine under the provisions of Section 3, Regulation 13, 1796, on the appellant in a miscellaneous case, the rule therein laid down not being applicable to such appeals.—*Con. No.* 1138, 16*th March*, 1838.

222. The Court having reason to believe that some of the Zillah and City Judges are in the habit, on confirming the decree of a Lower Court in cases of appeal, of awarding interest on the sum decreed at a less rate than one per cent. per mensem, apparently under the impression that the matter is left altogether to their discretion; I am directed to call your attention to the provisions of Section 35, Regulation 4, of 1803, [Section 3, Regulation 13, 1796,] by which the Provincial Courts of Appeal were required to adjudge the full rate of interest in cases of the above nature; and with reference to the object of that enactment, viz. the prevention of litigious appeals, and to the situation in which the Zillah and City Judges are now placed by the abolition of the Provincial Courts, to communicate to you the opinion of the Court, that the principle of the rule, the terms of which are imperative, must be considered equally applicable to the decisions of the former officers, and you are accordingly requested to adopt this construction in future.—*Cir. Ord. Cal. and West. C.* 2*nd Oct.* 1835.

223. Nor to decree any interest whatsoever in favor of the planitiff, in any case, where the cause of action shall have arisen on or subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, where a greater interest than is authorized by this regulation, shall have been received, or stipulated to be received, if it be proved that any attempt has been made to elude the rules prescribed in it, by any deduction from the loan, or by any device or means whatever, nor to give any other judgment, but for the dismission of the suit, with costs to be paid by the plaintiff.—*Reg.* 15, 1793, *Sect.* 9.—*Ben. Reg.* 17, 1806, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 24, 1803, *Sect.* 8.

[Benares.]

224. The forfeiture of interest for stipulation of a higher rate, than what is autho-

rized, enacted by Section 8, Regulation 15, 1793; and the forfeiture of principal and interest, in cases of attempts to elude the prescribed rules, by deductions from the principal, or other devices, provided against by Section 9, Regulation 15, 1793, shall not be considered applicable to any loans actually and bonâ fide contracted, or to any bonds or other instruments voluntarily given for the evidence and security of such loans, previously to the period stated in Section 2, of this Regulation.—*Reg.* 17, 1806, *Sect.* 5.

225. I am desired to communicate to you the opinion of the Court, that the provisions of the Regulation above cited, [viz. Regulation 34, 1803, or in Bengal, Regulation 15, 1793,] are applicable to loans of money only.—*Con. No.* 487, 12*th Sept.* 1828, *Par.* 2.

226. The rules contained in the preceding Sections, [viz. the Sections of Regulation 15, 1793,] are not be considered to extend to respondentia loans, or policies of insurance, the interest on which is to be regulated by the terms of the deeds, and the laws and usages which prevail respecting such transactions.—*Reg.* 15, 1793, *Sect.* 12.—*Ben. Reg.* 17, 1806, *Sect.* 5.—*Ced. and Conq. Prov. Reg.* 34, 1803, *Sect.* 11.

227. In actions brought for the recovery of money lent on bond, or other written documents, the rate of interest stipulated between the parties is generally 12 per cent. per annum, and in such cases, the specific contract between the parties should be strictly maintained.—*Cir. Ord. Cal. C. 7th April, West. C. 5th May,* 1837, *Par.* 2.

228. In cases, however, wherein mesne profits of landed property may be adjudged, or any other claim adjudicated, in which no specific stipulation may exist, the Court are of opinion that the several Courts of law are authorized to exercise a sound and equitable discretion in awarding the rate of interest to be paid, not of course exceeding 12 per cent. per annum.—*Cir. Ord. Cal. C. 7th April, West. C. 5th May,* 1837, *Par.* 3.

229. The Court have directed me to add, that the [above] construction is not to be considered as interfering with the rules prescribed by Section 3, Regulation 13, 1796, and Section 35, Regulation 4, 1803, which require the appellate Courts to award interest on the amount decreed by the Courts of primary jurisdiction at the rate of 12 per cent. per annum.—*Cir. Ord. Cal. C. 7th April, West. C. 5th May,* 1837, *Par.* 5.

230. The [Sudder] Court, having observed that the practice of the Courts is not uniform in regard to the calculation of interest on sums of money decreed in original suits, and in appeals from such decision, have resolved that the following rules be promulgated for the information of the Zillah and City Judges, and their subordinate Courts, in continuation of that of the 2d October, 1835, (No. 155 of this volume.)—*Cir. Ord. 4th March,* 1836, *Par.* 1.

231. When a principal sum and interest thereon claimed in an original suit shall be adjudged to be due, the Court shall decree the principal with interest from the date on which the loan was made, or the sum claimed became due, up to the date of the decree; (provided the interest do not exceed the principal, when a sum equal to the principal shall be allowed, except in the case provided for by the Circular Order of the 19th December, 1823,) with further interest on this sum until the date of payment.—*Cir. Ord. 4th March,* 1836, *Par.* 2.

232. If the decision shall be confirmed in appeal, the appellate Court must, under Section 3, Regulation 13, 1796, award interest from the date of such decree to the day of payment on the aggregate of the principal, interest, and costs awarded by the original decree.—*Cir. Ord. 4th March,* 1836, *Par.* 3.

233. In like manner, if the claim was dismissed by the lower, but decreed by the appellate Court, interest shall be calculated on the principal sum to the date of the decision of the lower Court as before, and on that consolidated sum of principal and interest, and the costs to the day of payment.—*Cir. Ord. 4th March,* 1836, *Par.* 4.

234. The Court having had under their consideration the Circular Order No. 171, of the

4th March, 1836, are of opinion that interest on the cost of suits should be granted in all cases, whether the claim be for money, land, or any other description of property.—*Con. No.* 1095, *Cal. C.* 30*th June*, *West. C.* 21*st July*, 1837.

235. The Court are of opinion that when the costs of suit are included in the decree, they become part of the matter awarded by the Court passing the decree, and as such are liable with other property so adjudged, to interest from the date of the Court's decision.—*Con. No.* 715, *West. C.* 7*th Sept. Cal. C.* 5*th Oct.* 1832.

236. Upon similar principles it has been ruled by the Court that a party having sued for the principal of a debt without including interest, must be presumed to have relinquished his claim to the interest accruing prior to the action, and cannot institute a second suit to recover such interest after obtaining a decree for the principal, as this would amount to a splitting of the cause of action, which is contrary both to the Regulations and the established practice of the Courts. The same principle would of course apply to "Wasilaut" or mesne profits, for any period antecedent to the institution of a suit for the proprietary right in the land or other real property on which it may be claimed, which may not have been included in such suit.—*Cir. Ord. Cal. and West. C.* 11*th Jan.* 1839, *Par.* 6.

237. It is, therefore, hereby enacted, that upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered, may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, than from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law.—*Act* 32, 1839.

SECT. XXIX.

Principles of Law.—Cases in which the Interest exceeds the Principal.

238. If the interest on any debt, calculating according to the rates allowed by this regulation, shall have accumulated so as to exceed the principal, the Courts are not in any case whatever, (excepting the cases specified in Section 12,) to decree a greater sum for interest, than the amount of such principal.—*Reg.* 15, 1793, *Sect.* 6.—*Ben. Reg.* 17, 1806, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 24, 1803, *Sect.* 5.

239. The Court at large have resolved to adhere to the Construction contained in the decision [of the 13th July 1808,] namely, that the restriction contained in the section above quoted, against a judgment for interest exceeding the amount of the principal, when the legal interest shall have accumulated so as to exceed the principal, is not applicable when the accumulation is subsequent to the institution of a suit; and therefore not ascribable to procrastination on the part of the creditor.—*Con. No.* 359, *Dec.* 19, 1823.

SECT. XXX.

Principles of Law.—Provision for the payment of Interest in the Decree.

240. The Court are of opinion, that in all cases where money liable to bear interest is payable under the decree of a court, a clause should be inserted in the decree, providing for the allowance of interest until the decree is carried into final execution; and that, in the event of such provision being omitted in a decree, the Court by which the same may have been passed, is competent

to order at any future period the payment of the interest on the amount decreed which may have accumulated subsequently to the date of the decree, without referring the party to a new suit for the recovery of such interest, and that the same principle is applicable to profits in cases of decrees for landed property.—*Cir. Ord. 11th Sept.* 1829, *Par.* 2.

241. With regard to interest or "Wasilaut" accruing subsequently to the institution of a suit, and while it may be pending, the Court observe, that the practice has hitherto been, when the Court deciding the case may have omitted to provide in its decree for payment of the same, to allow the decree-holder to institute a second suit to remedy the defect in the former decision. Deeming such practice, however, open to objections, the Court are of opinion that it should be discontinued; and as the Court deciding the case is obviously the proper authority to determine whether the party in whose favour the decree may pass, is entitled to interest, or "Wasilaut," for the time the suit may have been pending, where it may omit to make provision on this point in its decree, the decree-holder, instead of instituting a second suit for the amount, should apply for a review of judgment, in order that the omission may be supplied. His application, if presented within the period allowed by law for such applications, should be received on stampt paper of the value prescribed for miscellaneous petitions in the Court in which it may be filed; but if given in after the expiration of that period, it must then be on stampt paper of the full value agreeably to Clause 1, Section 2, Regulation 2, of 1825, and the Construction contained in the letter to the address of the late Court of Appeal at Moorshedabad, under date the 15th December 1828, No. 490, of the Construction Book. The Court direct me to add that as the practice now in force, as above explained, is sanctioned by precedents, the present rule can of course only have prospective effect.—*Cir. Ord. Cal. and West. C. 11th Jan.* 1839, *Par.* 7.

242. With respect to cases, in which money liable to bear interest is payable under a decree of Court, it has been laid down in the Court's Circular letter of the 11th September, 1829, that a clause should be inserted in the decree providing for the allowance of interest until the decree is carried into final execution; that in the event of such provision being omitted in the decree, the Court by which the same may have been passed, is competent, on the summary application of the decree-holder, after due investigation, and hearing any pleas urged by the opposite party, to order payment of interest on the amount decreed, either for the whole period that may have elapsed subsequently to the date of the decree, or for such part of it as under the circumstances of the case may appear just and equitable, without referring the party to a new suit for the recovery of such interest; and that the same principle is applicable to profits in cases of decrees for landed property. The rules for the calculation of interest on sums decreed in original suits and appeals, will be found contained in the Circular Orders of the 2d October, 1835, 4th March, 1836, and 7th April, 1837. —*Cir. Ord. Cal. and West. C. 11th Jan.* 1839, *Par.* 8.

SECT. XXXI.

Principles of Law.—Simple Mortgages.

243. In cases of mortgages of real property, executed prior to the twenty-eighth day of March, one thousand seven hundred and eighty, in which the mortgagee may have had the usufruct of the mortgaged property, whether he shall have held it in his own possession or not, the usufruct is to be allowed to the mortgagee, in lieu of interest, agreeably to the former custom of the country, (provided it shall have been so stipulated between the parties,) until the above mentioned date, subsequent to which, the same insterest is to be allowed on such mortgage bonds, and also on all bonds for the mortgage of real property, which have been entered into on or since that date, or that may be hereafter executed, as is allowed on other bonds, which have been or may

be granted on, or posterior to, such date, and no more; and all such mortgages, are to be considered as virtually and in effect cancelled and redeemed, whenever the principal sum with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, or otherwise liquidated by the mortgager.—*Reg.* 15, 1793, *Sect.* 10.—*Ben. Reg.* 17, 1806, *Sect.* 5.—*Ced. and Conq. Prov. Reg.* 34, 1803, *Sect.* 9.

244. For the adjustment of the accounts, in the cases of mortgages specified in Section 10, where the mortgagee shall have had the usufruct of the mortgaged property, the mortgagee is to be required to deliver in the accounts of his gross receipts from the property mortgaged, and also of his expenditures, for the management or preservation of it. The mortgagee is to swear, or (if he be of the description of persons whom the Courts are empowered to exempt from taking oaths,) to subscribe a solemn declaration, that the accounts which he may deliver in, are true and authentic. The mortgager is to be permitted to examine the accounts, and after hearing any objections he may have to offer, or any evidence that either party may have to adduce, respecting them, the Court is to adjust the account.—*Reg.* 15, 1793, *Sect.* 11.—*Ben. Reg.* 17, 1806, *Sect.* 5. —*Ced. and Conq. Prov. Reg.* 34, 1803, *Sect.* 10.

245. I beg leave to solicit the opinion of the Sudder Dewanny Adawlut on the following points. Are cases, which may be brought before the Civil Courts, under the provisions of Sections 9 and 10, Regulation 34, of 1803, [corresponding with Section 10 and 11, Regulation 15,1793,] to be disposed of by a summary inquiry and decision; or are they to be considered as subject to all the rules prescribed for regular suits?—I am directed by the Court of Sudder Dewanny Adawlut, in answer to the question therein stated, (respecting cases of mortgage within the provisions of Sections 9 and 10, Regulation 34, 1803,) to acquaint you, that the Court are not aware of any provision in the Regulations for a summary suit in the cases therein referred to.—*Con. No.* 277, *9th July*, 1817.

246. On reference however to the printed book of Constructions, the Court find that on the 9th July, 1817, the Presidency Court held that "there was no provision in the Regulations for a summary suit, in cases brought before the Civil Courts under Sections 9 and 10, Regulation 34, 1803, which relate only to simple mortgage." The Court are disposed to concur in the interpretation of the law, and will cause it to be adopted as a rule of practice in the Western Provinces.—*Con. No.* 830, *West. C. 20th Sept. Cal. C.* 18*th Oct.* 1833.

SECT. XXXII.

Principles of Law.—Conditional Mortgages, otherwise called Bye-bil-wuffa or Kut-cubaleh.

247. It has long been a prevalent practice in the province of Behar to borrow money on the mortgage and conditional sale of landed property, under a stipulation that if the sum borrowed be not repaid (with or without interest) by a fixed period, the sale shall become absolute. This species of transfer has in the above province been usually denominated *Bye-bil-wuffa;* and the same transaction is common in Bengal under an instrument termed *kut-cubaleh.* It doubtless exists also, under deeds of the above or similar denominations, in Orissa and Benares; and since the promulgation of the rules respecting interest contained in Regulation 15, 1793, it has become more prevalent; particularly in the province of Behar, wherein instances have occurred in which

persons lending money on Bye-bil-wuffa, in order to render the sale absolute, and thereby possess themselves of the landed property of the borrower have denied the tender, or evaded receiving payment of the money due to them within the period limited for the discharge of it. In such cases the proof of the tender falls on the borrower; and if he fail in the proof of it for want of legal evidence, he is liable to lose his estate. It is necessary therefore for the security of the borrower in such transactions that he should have the means of establishing before a Court of judicature his having tendered, or being ready to pay, within the stipulated period, the amount due from him to the lender; who, if he mean to act fairly will also derive a benefit from a clear rule being laid down whereby it may be readily ascertained whether the borrower was willing to redeem his property by the payment of the money lent upon it, within the period agreed upon between the parties; or whether from his having omitted to perform the conditions of such redemption the sale is become absolute; and the property included therein finally transferred to the lender. For the above purpose, and for the prevention of other abuses in the transactions referred to, the Governor General in Council has passed the following rules, to be considered in force in the provinces of Bengal, Behar, Orissa, and Benares, from the date of the receipt of this Regulation by the several Courts respectively —*Reg.* 1, 1798, *Sect.* 1.

SECT. XXXIII.

Principles of Law.—Mode in which, in cases of Conditional sale, the Mortgager may redeem the property pledged.

248. In all instances of the loan of money on Bye-bil-wuffa, or on the conditional sale of landed property, as explained in the preamble to this Regulation, however denominated, the borrower, who may be desirous to redeem his land by the payment of the money lent upon it, with any interest due thereon within the stipulated period, is at liberty, on or before the date stipulated, either to tender and pay to the lender the amount due to him; taking such precautions as he may think necessary to establish such tender and payment, if evaded or denied, or, without any tender to the lender, to deposit the amount due to him on or before the stipulated date, in the Dewanny Adawlut of the City or Zillah in which the land may be situated, and the Judge receiving the same shall furnish the party with a written receipt for the amount, specifying on what date and for what purpose such deposit may have been made. He shall also, at the same time, cause a written notice of such deposit to be delivered to the lender, and on the application of the latter and his surrender of the conditional bill of sale, or shewing satisfactory cause why it cannot be surrendered, shall pay him the amount deposited, and take his acknowledgment, to remain among the records of the Court. That there may be no doubt to what amount the deposit in question is to be made, it is required to be as follows. When the lender has not obtained possession of the lands, the deposit is to be the principal sum lent, with the stipulated interest thereon, not exceeding the legal rate of twelve per cent. per annum; or, if interest be payable, and no rate has been stipulated, with interest at the established rate of twelve per cent; but if the lender has held possession of the land, the principal sum borrowed only need be deposited, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements during the period he has been in possession. In either case, a deposit made as above required, shall be consider-

ed to preserve to the borrower his full right of redemption, and if the land be in the possession of the lender shall entitle him to demand the immediate recovery thereof, subject to the adjustment of accounts specified in the following Section. Provided however, that if the borrower in any case shall deposit a less sum, than above required, alleging that the sum so deposited is the total amount due to the lender, for principal and interest, after deducting the proceeds of the lands in his possession, or otherwise, such deposit shall be received, and notice given to the lender as above directed, and if the amount so deposited be admitted by the lender, or be established, on investigation, to be the total amount due to him, the right of redemption shall be considered to have been fully preserved to the borrower, who will not however, in such cases, be entitled to the recovery of his lands until it be admitted, or established that he has paid the full amount due from him.—*Reg.* 1, 1798, *Sect.* 2.

249. In all instances wherein the lender on a Bye-bil-Wuffa, or similar conditional sale, may have been put in possession of the land, and an adjustment of accounts may consequently become necessary between him and the borrower, the lender is to account to the borrower for the proceeds of the estate whilst in his possession, on the principles prescribed with regard to mortgages and interest in Regulation 15, 1793, as far as the same may be applicable to the nature of the case. But such part of Section 10, of the above Regulation, as directs that the mortgages therein referred to, are to be considered as cancelled and redeemed whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, or otherwise liquidated by the mortgagee, being inapplicable to the conditional sales referred to in this regulation, it is hereby declared not to apply thereto.—*Reg.* 1, 1798, *Sect.* 3.

250. A teep for the repayment of money lent on the conditional sales referred to in this regulation, shall not be considered a legal tender, unless accepted as such by the lender, the proof of which acceptance shall be the lender's giving up the bill of sale, or giving a written acknowledgment that he has received back the money lent by him.—*Reg.* 1, 1798, *Sect.* 4.

251. Nothing in this regulation being intended to alter the terms of contract settled between the parties in the transactions to which it refers, (illegal interest excepted) the several provisions in it are to be construed accordingly; and any question of right between the parties is to be regularly brought before and determined by the Courts of Civil justice.—*Reg.* 1, 1798, *Sect.* 5.

252. In addition to the provisions made in the provinces of Bengal, Behar, Orissa, and Benares, by Regulation 1, 1798, and in the Ceded and Conquered provinces by Regulation 34, 1803, [corresponding with Reg. 15, 1793] for the redemption of mortgages and conditional sales of land, under deeds of bye-bil-wuffa, kut-cubaleh, or any similar designation; it is hereby provided, that when the mortgagee may have obtained possession of the land, on execution of the mortgage deed, or at any time before a final foreclosure of the mortgage, the payment, or established tender of the sum lent under any such deed of mortgage and conditional sale, or of the balance due, if any part of the principal amount shall have been discharged, or when the mortgagee may not have been put in possession of the mortgaged property, the payment, or established tender of the principal sum lent, with any interest due thereupon, shall entitle the mortgager and owner of such property, or his legal representative, to the redemption of his property, before the mort-

gage is finally foreclosed in the manner provided for by the following Section, that is to say, at any time within one year (Bengal, Fussily, or Willaity, according to the era current, where the mortgage may take place,) from and after the application of the mortgagee to the Zillah or City Court of Dewanny Adawlut, for foreclosing the mortgage, and rendering the sale conclusive, in conformity with Section 8, of this Regulation; provided that such payment or tender be clearly proved to have been made to the lender and mortgagee, or his legal representative; or that the amount due be deposited, within the time above specified, in the Dewanny Adawlut of the Zillah or City in which the mortgaged property may be situated, as allowed, for the security of the borrower and mortgager, in such cases, by Section 2, Regulation 1, 1798, and Section 12, Regulation 34, 1803; the whole of the provisions contained in which Sections, as applied therein to the stipulated period of redemption, are declared to be equally applicable to the extended period of one year, granted for an equitable right of redemption by this Regulation.—*Reg.* 17, 1806, *Sect.* 7.

253. The Calcutta Court held on a reference from the Judge of Cuttack that if a mortgager or his representative, desirous of redeeming the mortgaged property in the possession of the mortgagee, deposits the sum due to the mortgagee either with or without interest (as the case may be) in Court, under the provisions of Section 2, Regulation 1, of 1798, and Section 7, Regulation 17, 1806, the period of the notice to be served on the mortgagee, requiring him to render up possession of the property, need not be a year, but any reasonable period according to the distance of his residence from the Sudder Station.—*Con. No.* 974, *7th Aug.* 1835.

254. I am directed to acquaint you, that the Court, with reference to the last paragraph of the Circular Orders of the 22nd July, 1813, consider it to have been determined, that the borrower is entitled to receive possession summarily on depositing the principal sum borrowed, as required by Section 2, Regulation I, 1798, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements, during the period he has been in possesion.—*Con. No.* 339, *25th May*, 1821, *Par.* 2.

255. The case, therefore, put in your letter, of the borrower alleging the principal of the debt to have been realized from the usufruct, which allegation the lender in possession denies, must be the subject of a regular suit, and cannot be decided summarily.—*Con. No.* 339, *25th May*, 1821, *Par.* 3.

256. If however the borrower, persisting in his allegation, deposit the principal sum, merely for the purpose of regaining possession of his lands, he may, of course, subsequently sue the mortgagee for the restitution of the amount deposited, and recover it with costs upon his proving that it really was not due.—*Con. No.* 339, *25th May*, 1821, *Par.* 4.

257. The case noted in the margin is a suit which was instituted before the Principal Sudder Ameen for the redemption of a dwelling house mortgaged to the defendant for 498 rupees, and valued by the plaintiffs at 1050 rupees, but which, subsequently to the completion of the pleadings, on proof of the stated value or selling price of the aforesaid dwelling house being upwards of 5000 rupees, was returned by the Principal Sudder Ameen as beyond his competency to adjudge. I request the opinion of the Court as to whether in a suit for redemption of mortgage, the institution fee should be computed upon the amount advanced by the mortgager, or the full value of the property mortgaged, there being in the present instance, a difference of 4,500 rupees between the two, and this description of suit not coming exactly under any of the heads of directions for the valuation of claims, specified in Schedule B, Clause 3, Regulation 10, of 1829.

In reply, I am directed to inform you that in suits brought by a mortgager to regain possession of property mortgaged, the amount of stamp should be calculated on the value of the property, due regard being had to the rules laid down in the Regulation for estimating that value,

and not on the sum for which the property was mortgaged. This appears distinctly to be the intent of Article 8, Schedule B, Regulation 10, 1829, under which the stamp is regulated by the value of the thing claimed.—*Con. No.* 957, *West. C.* 17*th June, Cal. C.* 7*th Aug.* 1835.

SECT. XXXIV.

Principles of Law.—Mode in which, in cases of conditional sale, the mortgagee may foreclose and enter on possession of property pledged to him.

258. Whenever the receiver or holder of a deed of mortgage, and conditional sale, such as is described in the preamble and preceding sections of this regulation, may be desirous of foreclosing the mortgage, and rendering the sale conclusive, on the expiration of the stipulated period, or at any time subsequent before the sum lent is repaid, he shall (after demanding payment from the borrower, or his representative,) apply, for that purpose, by a written petition to be presented by himself, or by one of the authorized vakeels of the Court, to the Judge of the Zillah or City in which the mortgaged land, or other property, may be situated. The Judge on receiving such written application, shall cause the mortgager, or his legal representative, to be furnished, as soon as possible, with a copy of it, and shall at the same time, notify to him, by a perwannah under his seal and official signature, that if he shall not redeem the property mortgaged, in the manner provided for by the foregoing section, within one year from the date of the notification, the mortgage will be finally foreclosed, and the conditional sale will become conclusive.—*Reg.* 17, 1806, *Sect.* 8.

259. The Court remark that the sole intention of Section 8, Regulation 17, 1806, is to prevent the conditional sales called bye-bil-wuffa or kut-cubaleh, from becoming absolute, until the seller shall have received from the Dewanny Adawlut a notice, that the purchaser has demanded payment of the amount due to him upon the contract (inclusive or exclusive of interest, according to circumstances,) and that if the seller shall fail to satisfy the demand in the manner prescribed in the preceding Section of the same Regulation, within the year from the date of the notice, the sale will become absolute.—*Cir. Ord.* 22*d July*, 1813, *Par.* 1.

260. The duty of the Zillah and City Judges under this Section is (as far as the purchaser is concerned) purely ministerial, leaving them nothing to do but to cause the prescribed purwannah to be served on the seller; and to receive and pay over to the purchaser, if desirous of receiving the same, whatever amount may be paid in by the seller; to receive due proof of the service, or if the purchaser should refuse to accept the same, to restore it to the seller.—*Cir. Ord.* 22*d July*, 1813, *Par.* 2.

261. The provincial Court appear to have viewed the Sections quoted above, as implying that the seller on receiving the notice prescribed, is bound within the period of a year to pay the amount demanded, and as providing, that if the seller fail to make such payment, the purchaser is immediately to be summarily put in possession of the lands conditionally sold.—*Cir. Ord.* 22*d July*, 1813, *Par.* 3.

262. The Court are of opinion, that nothing contained in the Sections above quoted warrants such construction; and that the said sections do not in particular vest the Judge with authority to dispossess the seller, and give up the lands to the purchaser.—*Cir. Ord.* 22*d July*, 1813, *Par.* 4.

263. That the said sections, as justly noticed by the Provincial Court, provide no summary enquiry in the cases to which they relate: that upon the construction adopted by that Court, it would therefore follow that a person might be compelled to pay a large sum of money, or be ousted of his estate, for several years, upon the mere demand of another, without the least enquiry or

proof, though he should deny the authenticity or validity of the alleged engagement.—*Cir. Ord.* 22*d July*, 1813, *Par.* 5.

264. That if however the seller fail to make the payment demanded, he must do so at his peril; since, should it prove that the alleged sale was authentic and valid, and that any part of the amount demanded was due, the sale will have become absolute, and he must, on a suit being brought against him, lose his lands.—*Cir. Ord.* 22*d July*, 1813, *Par.* 6.

265. According to the Construction stated above of the Sections in question, it follows that the summary enquiry made by the Judge in the present case was superfluous.—*Cir. Ord.* 22*d July*, 1813, *Par.* 7.

266. The Court further entirely acquiesce in the observation of the Provincial Court, that the purchaser not having obtained possession, the Judge of Zillah Nuddea should have called upon the seller for payment, both of principal and interest, according to the demand of the purchaser.—The Court are of opinion that the Provincial Court was clearly competent to rectify this error of the Judge, by directing him to issue a further notice to the seller, calling upon him, within a reasonable period, to be inserted in the notice, to pay in interest as well as principal.—*Cir. Ord.* 22*d July*, 1813, *Par.* 8.

267. Though not immediately connected with the question before them, the Court, to guard against the preceding instructions being misinterpreted, deem it necessary to add, that they do not apply to the case of a borrower on a bye-bil-wuffa, who had delivered over possession to the lender, paying up the principal sum advanced before the sale has become absolute. The Court are of opinion, that the borrower in such case, would, by Section 2, Regulation 1, 1798, be entitled to receive possession summarily without suit.—*Cir. Ord.* 22*nd July*, 1813, *Par.* 9.

Vide also Rule 233, *of the last Section.*

268. The Court having reason to believe that a practice very generally prevails in these provinces of the Zillah and City Judges declaring, in the summary proceeding held by them under the provisions of Regulation 17, 1806, in cases of mortgage and conditional sale, commonly called Bye-bil-wuffa, that the sale has become absolute, solely on the application of the conditional purchaser at the expiration of the period allowed by law for the redemption of the mortgage; and that they are moreover in the habit of giving judicial opinions, not only upon the fact of the foreclosure of the mortgage or conditional sale, but also upon other points which frequently arise in the course of the summary process, the decision of which entirely belongs to a regular suit; and deeming such practice liable to serious objections, particularly as, on the institution of a regular suit for possession of the mortgaged property, the native judicial officers, by whom such cases are frequently cognizable, are apt to consider, that the sale having already been declared absolute by the Judge, they are not competent to question and pass their own judgment upon that point, and therefore give possession merely on the ground of the summary proceeding held by the Judge; I am therefore directed to request, that in future proceedings of this nature, you will directly confine yourself to recording simply the facts which have occurred during the progress of the summary process, such as the application of the conditional purchaser, the issue and service of the prescribed notice; any petitions which may have been prescribed by either party, and generally the other particulars adverted to in the second paragraph of the circular instructions of the 22d July, 1813.—*Cir. Ord. Cal. and West. C.* 17*th Jan.* 1834.

269. The provisions of Section 8, Regulation 17, 1806, do not entitle a mortgagee to be put in possession, by judicial process, of the property mortgaged to him, although stated to be unredeemed at the expiration of the period notified, if the mortgager contest the right of the mortgagee to obtain possession; and a Judge is not authorized in such case to put the mortgagee in possession on a summary investigation, or otherwise than by a regular suit.—*Con. No.* 80, 14*th March*, 1811.

270. The Judge was farther informed, that if the mortgager, on being called upon to show

cause why the mortgagee should not obtain possession, denied the right of the mortgagee to possess the lands; the question of right could only be determined as directed by Section 5, Regulation 1, 1798.—*Con. No.* 80, 14*th March*, 1811.

271. In a suit brought by a mortgagee for the foreclosure of a mortgage, it is competent to the Court in which the suit was preferred to enquire whether the transaction was an illegal one *ab initio*, and to decide accordingly.—*Con. No.* 1140, *West. C.* 2*d March*, *Cal. C.* 23*d March*, 1838, *Par.* 1.

272. If it was proved that the notice was not duly issued to the mortgagee, the plaintiff ought to be nonsuited, leaving him to apply for the issue of the prescribed notice.—*Idem*, *Par.* 2.

273. It is not required by the Regulations that a copy of the deed of mortgage should be served on the mortgagee, but only a copy of the application of the mortgagee to the Judge of the Civil Court for the issue of the prescribed notice.—*Con. No.* 630, 11*th March*, 1831.

274. An action on the part of the mortgagee for possession, at the expiraton of the period of the deed of mortgage, cannot lie in the first instance against the mortgager disputing his claim under the deed, without application being made to foreclose, as directed by Section 8, of the Regulation quoted.—*Con. No.* 105, 25*th June*, 1812.

275. The period of one year, allowed for the redemption of mortgages or conditional sales by Section 8, Regulation 18, 1806, must be calculated from the *date* of the written notification, as expressly mentioned in that Section, as well as in the Persian translation thereof.—*Con. No.* 263, 23*d Jan.* 1817.

276. It having since come to the knowledge of the Court that the written notification to the mortgager, or his representative, directed in that Section, instead of being immediately issued, as evidently intended by the express terms of the Regulation, is sometimes delayed for a month, and upwards, whereby the mortgagee's application for a foreclosure is not made known to the mortgager so early as it ought to be; whilst at the same time the year allowed for redemption must necessarily be calculated, as prescribed, from the date of the notification, the Court are of opinion, that whenever a purwannah to a mortgager, or his legal representative, containing the notification prescribed in Section 8, Regulation 17, 1806, may not be issued on the date of its being ordered, it should bear the date on which it may be actually issued, instead of that on which the purwannah may be ordered; and that the term of one year allowed for redeeming the mortgage should be calculated from the date so inserted.—*Cir. Ord. 9th April*, 1817, *Par.* 2.

277. You are accordingly desired to observe this rule in issuing any future notifications of the nature referred to; at the same time giving particular attention to prevent any unnecessary delay in issuing such notifications which, in justice to mortgagees, as well as in conformity with the intention of Sections 7 and 8, Regulation 17, 1806, should be issued as soon as possible after the receipt of the mortgagee's application for a foreclosure.—*Cir. Ord. 9th April*, 1817, *Par.* 3.

278. The Court deem it sufficient to observe that the provisions of Section 8, Regulation 17, 1806, expressly require that a copy of the application of the mortgagee to foreclose should accompany the purwannah issued to the mortgager; and that, in their opinion, the mortgagee, on filing his application should be directed immediately to deposit the tulubana of the peon through whom the purwannah is issued to the other party, that the order for issuing the same be passed without delay.—*Con. No.* 644, 24*th June*, 1831.

279. I am directed by the Court to communicate to you, in reply to the question contained in the 5th paragraph of yours of the 23rd June last, their opinion and that of the Western Court of Sudder Dewanny Adawlut, that if the mortgage in question be of the nature of a conditional sale, and the money be not repaid, the lender, unless good and sufficient cause be shewn, can only sue for possession of the property pledged, and has not the election of suing to recover the money or to be put in possession of the property, as he may deem most advantageous to his own interest.—*Con No.* 898, 5*th Sept.* 1834.

SECT. XXXV.

Principles of Law.—Succession to property.

280. In all cases of a Hindoo, Moosulman, or other person subject to the jurisdiction of the Zillah and City Courts, having at his death, left a will, and appointed an executor or executors, to carry the same into effect, and in which the heir to the deceased may not be a disqualified landholder, subject to the superintendence of the Court of Wards under Regulation 10, 1793, or any other Regulation, relative to the jurisdiction of the Court of Wards, the executors so appointed are to take charge of the estate of the deceased, and proceed in the execution of their trust, according to the will of the deceased, and the laws and usages of the country, without any application to the Judge of the Dewanny Adawlut or any other officer of Government, for his sanction; and the Courts of justice are prohibited to interfere in such cases, except on a regular complaint against the executors for a breach of trust, or otherwise, when they are to take cognizance of such complaint, in common with all others of a civil nature, under the general rule contained in Section 8, of Regulation 3, 1793; and proceed thereupon according to the regulations; taking the opinion of their law officers upon any legal exception to the executors; as well as upon the provision to be made for the administration of the estate in the event of the appointed executor being set aside; and generally upon all points of law that may occur; with respect to which the Judge is to be guided by the law of the parties as expounded by his law officers; subject to any modifications enacted by the Governor General in Council in the form prescribed by Regulation 41, 1793.—*Reg.* 5, 1799, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 16, *Cl.* 2.

281. In case of a Hindoo, Moosulman, or other person subject to the jurisdiction of the Zillah or City Courts, dying intestate; but leaving a son or other heir, who by the laws of the country may be entitled to succeed to the whole estate of the deceased, such heir, if of age and competent to take the possession and management of the estate, or if under age, or incompetent, and not under the superintendence of the Court of Wards, his guardian, or nearest of kin, who by special appointment or by the law and usage of the country may be authorized to act for him, is not required to apply to the Courts of justice for permission to take possession of the estate of the deceased as far as the same can be done without violence, and the Courts of justice are restricted from interference in such cases, except a regular complaint be preferred, when they are to proceed thereupon according to the general regulations.—*Reg.* 5, 1799, *Sect.* 3.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 16, *Cl.* 3.

282. If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager; they are at liberty to take possession; and the Courts of justice are restricted from interference, without a regular complaint, as in the case of a single heir.—*Reg.* 5, 1799, *Sect.* 4.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 16, *Cl.* 4.

283. But if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the Judge on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession for his or their compliance with the judgment that may be passed in the suit; or, in default of such security being given with-

in a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants who may be able to give such security; declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties; but to be considered merely as an administration to the estate for the benefit of the heirs, who may, on investigation, be found entitled to succeed thereto.—*Reg.* 5, 1799, *Sect.* 4.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 16, *Cl.* 4.

284. In the event of none of the claimants to the estate of a person dying intestate being able to give the security required by the preceding Section, and in all cases wherein there may be no person authorized and willing to take charge of the landed estate of a person deceased, the Judge within whose jurisdiction such estate may be situated, (or in which the deceased may have resided, or the principal part of the estate may lie, in the event of its being situated within two or more jurisdictions) is authorized to appoint an administrator for the due care and management of such estate, until, in the former case, the suit depending between the several claimants shall have been determined; or, in the latter case, until the legal heir to the estate, or other person entitled to receive charge thereof as executor, administrator, or otherwise, shall attend and claim the same; when if the Judge be satisfied that the claim is well founded; or if the same be established after any enquiry that may appear necessary, the administrator appointed by the Court shall deliver over the estate to him with a full and just account of all receipts and disbursements during the period of his administration.—*Reg.* 5, 1799, *Sect.* 5.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 16, *Cl.* 5.

285. In all instances of an administrator being appointed under this Regulation, he is previous to entering upon the execution of his office, to give good security for the faithful discharge of his trust in a sum proportionate to the extent thereof; and the Judge appointing him is authorized to fix for him (subject to the approbation of the Court of Sudder Dewanny Adawlut, to whom a report is to be made in such instances) an adequate personal allowance to be paid out of the proceeds of the estate; and to be a per centage thereupon after deducting the expenses of management.—*Reg.* 5, 1799, *Sect.* 6.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 16, *Cl.* 6.

286. The Judges of the Zillah or City Courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property; and that there is no claimant to such property, are to adopt such measures as may be necessary for the temporary care of the property, and to issue an advertisement in the current languages of the country, requiring the heir of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose; such advertisement to be published on the spot where the property was found; at the Dewanny Adawlut cutcherry of the Zillah or City, and, if ascertainable, at the dwelling place of the deceased; or if the deceased were an European, in the Calcutta Gazette; after which should any person attend and satisfy the Judge of his title to the property, or to receive charge thereof as executor, administrator, or otherwise, the same is to be delivered up to him; on repayment of any necessary expense incurred in the care of it. Should no claim be preferred within the twelve months next ensuing, an inventory of the property and report of the circumstances of the case, is to be transmitted to the Governor General in Council for his orders.—*Reg.* 5, 1799, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 16, *Cl.* 7.

Reg. 5, 1827, *will be applicable in the above mentioned cases. It will be found in Chapter* 3, *Sect.* 7.

287. Many of the revenue officers in these provinces have been in the habit of exercising judicial authority in cases of disputed succession to the estate of a deceased Zumeendar, entering into a judicial investigation of the claims of the several claimants, and, in some instances, directing the parties to be put in possession of such shares as appeared to be their right; it would appear therefore that the Collectors have gone beyond the line of their duty, more especially in awarding possession. The Court observe that the rules for the guidance of the Revenue authorities in such cases are clearly laid down in Section 41, Regulation 42 of 1803, [corresponding with Regulation 8, 1800, Section 21] which requires that, on the receipt of a notice of any person having succeeded by inheritance to the property of a malgoozaree estate of lakhiraj tenure, the Collector shall institute such inquiry as shall appear necessary to ascertain the truth of the alleged succession, and if the same may appear to have taken place he is to cause the necessary entries to be made in the proper registers; and the Court are of opinion that if the Collectors were enjoined strictly to conform to those rules, the inconvenience stated to have arisen, and of the existence of which the Court had no previous knowledge, would no doubt immediately cease.—*Con. No.* 1008, *West. C.* 19*th May, Cal. C.* 17*th June,* 1836, *Par.* 4.

288. With regard to the nature and extent of the jurisdiction to be exercised by the Civil Courts in cases of the nature of those under discussion, the Court direct me to observe that the general rule prescribed for their guidance is prohibitory of any summary interference; and although cases may arise which might justify an exception and require the interference of the Civil authority, such for instance as the one described in the 21st paragraph of your letter, the Court can by no means concur in the general position assumed in the 23rd paragraph, that it is the duty of the Courts to exercise previous interference in *every* case where there may be several claimants merely on the ground that none of them had taken possession. But so much must depend upon the circumstances of each case that, in the existing state of the law, it appears to the Court that it would be inexpedient and open to objections to lay down, in the form of circular instructions, any further rules for the guidance of the judicial officers, who must regulate their proceedings according to the peculiar circumstances of each case, as it may arise or be brought forward either on the motion of the Collector or by the parties interested, as provided for by Section 26, Regulation 5, of 1812.—*Con. No.* 1008, *West. C.* 19*th May, Cal. C.* 17*th June,* 1836, *Par.* 5.

SECT. XXXVI.

Principles of Law.—Charge of unclaimed property and of property belonging to deceased persons, particularly British Subjects.

289. The Judges of the Zillah or City Courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property; and that there is no claimant to such property, are to adopt such measures as may be necessary for the temporary care of the property, and to issue an advertisement in the current languages of the country, requiring the heir of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose; such advertisement to be published on the spot where the property was found; at the Dewanny Adawlut cutcherry of the Zillah or City, and, if ascertainable, at the dwelling place of the deceased; or if the deceased were an European, in the Calcutta Gazette; after which should any person attend and satisfy the Judge of his title to the property, or to receive charge thereof as executor, administrator, or otherwise, the same is to be delivered up to him; on repayment of any necessary expense incurred in the care of it. Should no claim be preferred within the twelve months next ensuing, an inventory of the property

and report of the circumstances of the case, is to be transmitted to the Governor General in Council for his orders.—*Reg.* 5, 1799, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 16, *Cl.* 7.

290. The Court concur with you in the opinion that the provisions of Clause 7, Section 16, Regulation 3, 1803, [corresponding with Reg. 5, 1799, Sect. 7,] apply only to the property of persons dying intestate when no heirs are forthcoming; it appears to the Court more advisable that property sent in by the police should, agreeably to the general practice, be disposed of by the Magistrate than that the time of the Judge should be unnecessarily taken up in performing such duty.—*Con. No.* 927, *West. C.* 16*th Jan. Cal. C.* 6*th Feb.* 1835.

291. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 6th instant, requesting the Court's instructions as to the mode necessary to be adopted respecting the disposal of sundry bonds, tumussooks, &c. deposited in your Court, belonging to persons dying intestate.—In reply, I am desired to refer you to the rule contained in Section 7, Regulation 5, 1799, by which you will perceive, that an inventory of all personal property, unclaimed after the period of twelve months from the decease of the proprietor, should be transmitted to the Governor General in Council for his orders; and to direct that, with regard to the description of property specified in your letter, you adopt the same course of proceeding.—*Con. No.* 541, 19*th March*, 1830.

292. Held on a reference from the Judge of Rungpore that Hoondees or other obligations for the payment of money, appertaining to the estates of parties dying intestate, may be realized by the Civil Court on falling due, and the amount kept in deposit until the expiration of the period of 12 months specified in Section 7, Regulation 5, 1799. But the interference of the Civil Court should be limited to the simple presentation of instruments payable at a fixed period, the failure to present which would involve a risk of loss, and to the realization of monies indisputably due thereon, and not extend any further, or include the assertion and prosecution of denied or disputed claims.—*Con. No.* 1286, *Cal. C.* 14*th Aug. West. C.* 4*th Sept.* 1840.

293. The Governor General in Council authorizes the Zillah and City Judges to grant a commission not exceeding one anna in the rupee, on the proceeds of unclaimed property which may be sold with the previous sanction of Government. The commission in question is to be paid to the Nazir as a remuneration for proper care in the preservation of the property, and for seeing that it is fairly and properly sold at auction, subject to the condition, that the duty shall, in each case, have been performed to the Judge's satisfaction.—*Cir. Ord.* 25*th Feb.* 1820.

294. The Court observe that the difficulty appears to arise from the Magistrate's confounding "unclaimed property" with "the property of persons dying intestate" (lawaris). With regard to the former, I am directed to refer you to Clause 16, Section 16, Regulation 20, of 1817, which expressly declares that it shall be considered the property of Government; and that whatever property of that description may come into the hands of the Darogahs of Police, shall be forwarded to the Magistrate of the district. As respects such property therefore, the disposal of it clearly rests with the Magistrate, subject of course to the control of the Commissioner and Government, without any interference on the part of the Civil Court.—*Cir. Ord. West. C.* 1*st Dec. Cal. C.* 15*th Dec.* 1837, *Par.* 2.

295. With regard to the custody and disposal, on the other hand, of the property of persons dying intestate (lawaris), the Court direct me to observe, that Section 7, Regulation 5, of 1799, Bengal Code, contains a specific provision, and declares, that should no claim be preferred to it for the space of twelve months, an inventory of the property, together with a report of the circumstances of the case, shall be submitted, by the Judge, to the Governor General in Council, for his orders; whenever, therefore, any property of that description may come into the hands of a Magistrate, he should forward it immediately to the Judge of the district, to be dealt with in the manner directed in the Section of the Regulation above quoted.—*Cir. Ord. West. C.* 1*st Dec. Cal. C.* 15*th Dec.* 1837, *Par.* 3.

296. Section 7, Regulation 5, 1799, prescribes rules for the guidance of the Zillah and City Judges, with respect to the charge of the unclaimed assets of estates of Europeans dying intestate. It being however enacted, in Statute 39, George 3d, Chapter 79, Section 21, that whenever any British subject shall die intestate, and neither a creditor, nor the next of kin shall apply for letters of administration, the Register of the Supreme Court shall administer to the estate of the deceased; it shall be the duty of the Zillah and City Judges, whenever any British European subject shall die within the limits of their jurisdictions, and no will shall be found among the effects of the deceased, to report the circumstance without delay to the Register of the Supreme Court of Judicature, retaining the property under their charge, until letters of administration shall have been obtained by that officer, or by some other person from the Supreme Court of judicature, when the property is to be delivered over to the person obtaining such letters; or, in the event of a will being subsequently discovered, to the person, who may obtain probate of the will.—*Reg.* 15, 1806, *Sect.* 6.

297. Question 1st.—Is the interference of the Civil Judge, by Section 16, Regulation 3, 1803, and Section 6, Regulation 15, 1806, strictly limited to cases of persons dying intestate or not?—In reply to your first question I am directed to inform you that the interference of the Civil Court with respect to the estates of deceased British subjects, is not restricted by the Sections of the Regulations above quoted to the cases of persons dying intestate, but on the contrary Section 6, Regulation 15, of 1806, expressly requires, that on the demise of a British European subject within the limits of the jurisdiction of a Zillah or City Court, the Judge shall take charge of the effects of the deceased, and on a will being discovered, shall deliver them over to the person who may obtain probate thereof.—*Con. No.* 983, *West. C.* 16*th Oct. Cal. C.* 13*th Nov.* 1835.

298. Question 2d.—Though the will of the deceased be not forthcoming, or no will may exist, ought the Civil Judge to interfere if there be "a claimant," a near relation, or respectable friend on the spot, willing to take charge of and to be responsible for the property?—In answer to your second question I am directed to observe that in either of the cases which you have supposed, where the will of the deceased is not forthcoming, or where none may be in existence, notwithstanding that there may be a claimant, near relation, or respectable friend on the spot, willing to take charge of and to be responsible for the property, the Regulation before cited renders it obligatory on the Civil Court to interfere, as in the case described in the preceding paragraph, and to retain charge of the estate until the Registrar of the Supreme Court of Judicature, to whom the circumstance is immediately to be reported, or some other person, shall have obtained letters of administration from that Court, when the property is to be delivered over to the person to whom such letters may have been granted. The terms of the enactment being imperative and express as to the jurisdiction to be exercised by the Zillah Courts in such cases, the Court observe that no discretion whatever is left to the Judge in the matter.—*Con. No.* 983, *West. C,* 16*th Oct. Cal. C.* 13*th Nov.* 1835.

SECT. XXXVII.

Principles of Law.—Rules regarding the right of Inheritance.

299. After the first of July 1794, corresponding with the 20th Assar 1201, Bengal era; the 17th Assar 1201, Fussily; 20th Assar 1201, Willaity; 17th Assar 1851, Sumbut; and the second Zehigh 1208, Higeree; if any Zemindar, independent talookdar, or other actual proprietor of land, shall die without a will, or without having declared by a writing, or verbally, to whom and in what manner his or her landed property is to devolve after

his or her demise, and shall leave two or more heirs, who, by the Mahomedan or Hindoo law, (according as the parties may be of the former or latter persuasion,) may be respectively entitled to succeed to a portion of the landed property of the deceased, such persons shall succeed to the shares to which they may be so entitled.—*Reg.* 11, 1793, *Sect.* 2.—*Ben. Reg.* 44, 1795, *Sect.* 2.

300. Nor to prohibit any actual proprietor of land bequeathing, or transferring, by will, or by a declaration in writing, or verbally, either prior or subsequent to the 1st July, 1794, his or her landed estate entire to his or her eldest son, or next heir, or other son or heir, in exclusion of all other sons or heirs, or to any person or persons, or to two or more of his or her heirs, in exclusion of all other persons or heirs, in the proportions, and to be held in the manner, which such proprietor may think proper, provided that the bequest or transfer, be not repugnant to any Regulations that have been or may be passed by the Governor General in Council, nor contrary to the Hindoo or Mahomedan law; and that the bequest, or transfer, whether made by a will, or other writing, or verbally, be authenticated by, or made before, such witnesses, and in such manner, as those laws and regulations respectively do, or may require.—*Reg.* 11, 1793, *Sect.* 6.—*Ben. Reg.* 44, 1795, *Sect.* 6.

301. Regulation 11, 1793, shall not be considered to supersede or affect any established usage, which may have obtained in the Jungle Mehals of Midnapore and other districts, by which the succession to landed estates, the proprietor of which may die intestate, has hitherto been considered to devolve to a single heir to the exclusion of the other heirs of the deceased. In the mehals in question the local custom of the country shall be continued in full force as heretofore, and the Courts of justice be guided by it in the decision of all claims which may come before them to the inheritance of landed property situated in those mehals.—*Reg.* 10, 1800, *Sect.* 2.

302. The Zillah and City Courts, are not to pass a decree in any suit concerning the succession or right of inheritance to a Zemindary, talook, land, house, or other real property, to which there are more claimants than one, who by the Hindoo or Mahomedan law (respect being had to the religion of the claimants) would be entitled to a portion of the property, excepting the property be by the decree adjudged to all the claimants in the proportions to which they may be respectively entitled.—*Reg.* 3, 1793, *Sect.* 13.

303. Can an heir bring to issue his claim to hereditary right in any one Zemindaree or talook or landed estate, reserving to himself the power of subsequently suing for the portion of any other estate, and in pursuit of claims of inheritance are heirs bound to bring forward their whole claim for both the real and personal effects, or may they sue in the first instance for either one or the other?—I am directed by the Court to communicate to you their opinions that suits founded on the right of inheritance should include the whole claim arising out of the same cause of action. —*Con. No.* 1040, *Cal. and West. C. 5th Aug.* 1836.

304. The rules contained in the above Clause, [Reg. 5, 1831, Sect. 6, Cl. 4] regarding cases of succession to real property, are intended exclusively for the guidance of Moonsiffs, such being the express tenor of the enactment; the course to be pursued in such cases by Zillah and City Courts remaining precisely as it stood previous to the enactment of Regulation 5, 1831.—*Con. No.* 706, *Cal. C. 20th July, West. C.* 17*th Aug.* 1832.

305. In suits regarding succession, inheritance, marriage, and caste, and all religious usages, and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered as the general rules

by which the Judges are to form their decisions. In the respective cases, the Mahomedan and Hindoo law officers of the Court are to attend to expound the law.—*Reg.* 4, 1793, *Sect.* 15.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 16, *Cl.* 1.

306. Such part of Clause two, Section 3, Regulation 8, 1795, enacted for the Province of Benares, which declares that "in causes in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter, excepting where Europeans or other persons not being either Mahomedans or Hindoos shall be defendants, in which case the law of the plaintiff is to be made the rule of decision in all plaints or actions of a Civil nature," is hereby rescinded, and the rule contained in Section 15, Regulation 4, 1793, and the corresponding enactment contained in Clause one, Section 16, Regulation 3, 1803, shall be the rule of guidance in all suits regarding succession, inheritance, marriage and caste, and all religious usages and institutions that may arise between persons professing the Hindoo and Mahomedan persuasions respectively.—*Reg.* 7, 1832, *Sect.* 8.

307. It is hereby declared, however, that the above rules are intended, and shall be held to apply to such persons only as shall be bonâ fide professors of those religions at the time of the application of the law to the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Whenever, therefore, in any Civil suit, the parties to such suit may be of different persuasions, when one party shall be of the Hindoo, and the other of the Mahomedan persuasion, or where one or more of the parties to the suit shall not be either of the Mahomedan or Hindoo persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases, the decision shall be governed by the principles of justice, equity and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English, or any Foreign law, or the application to such cases of any rules not sanctioned by those principles.—*Reg.* 7, 1832, *Sect.* 9.

308. This rule however [viz. the Rule in Section 15, given above Rule 305,] is not to be construed to prevent a Judge referring any question arising on the Mahomedan or Hindoo law, to the Cauzy or Pundit of the Court, respect being had to the law in which each is conversant. When a reference of this nature is deemed necessary, a statement of the facts on which the question of law may arise, is to be made out in writing, and signed by the Judge of the Court, and delivered to the Cauzy or Pundit for his opinion upon it. A blank is to be left for the answer of the law officer on the same paper on which the question is stated, or on a paper firmly annexed to it. The answer is to be attested with the signature of the law officer, and the dates on which the questions may be stated to him, and the answer may be given, are to be specified.—*Reg.* 4, 1793, *Sect.* 16.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 17.

309. By Section 15, of Regulation 4, 1793, and Section 3, Regulation 8, 1795, the Judges of the Zillah and City Courts are directed to decide (in certain suits therein referred to) according to the Mahomedan or Hindoo laws; and the Mahomedan and Hindoo law officers of the Court are required to attend to expound these laws, by which it was evidently intended that the law officers attached to the several City Courts, should expound the law in the cases referred to in the above Sections; and that the Judges should

be guided by such exposition in all common cases wherein they might have no reason to doubt the accuracy of it: but, in particular cases, wherein they might entertain such doubt, either from the objections of the parties, founded on other law opinions exhibited by them; or from a reference to the known books of Mahomedan or Hindoo law; or, from whatever cause, if the Judge or Judges trying the suit should consider the exposition given by their immediate law officer insufficient; it was not meant to preclude them from obtaining a further exposition from the law officers of the Superior Courts by a reference of the case to them through the Judges of these Courts, as has been the occasional practice in some of the Courts; and is now declared to be at the discretion of all the Zillah, City, and Provincial Courts, whenever they may deem such reference necessary for the purposes of justice. It is at the same time to be observed that the above Courts are not authorized to refer any point of law to individuals not acting in a public capacity; and to whom consequently no responsibility attaches; although there is no objection to any of the Courts receiving law opinions, quoting or referring to authorities, tendered to them by the parties during the trial of the suit in support of their claims, and if the Courts shall deem it proper so to do, referring them to their own law officers, or those of the Superior Courts, to enable them to determine on their due weight and application to the case.—*Reg.* 2, 1798, *Sect.* 4.

310. The Court of Sudder Dewanny Adawlut being desirous, for the purpose of occasional reference, of being furnished with the futwahs and byuvusthas that have been delivered by the Mahomedan and Hindoo law officers of the several Courts of judicature, in answer to questions on points of law put to them on the trial of Civil cases, direct me to request that you will cause copies of all such questions and answers, except in cases which have been appealed to the Sudder Dewanny Adawlut, to be prepared from the records of your Court, from the commencement of the year 1803, to the end of the past year, 1812, and transmit them, when completed, to this Court: and you will in like manner, annually, furnish copies of the law opinions delivered by your law officers on Civil cases in each year.—*Ctr. Ord.* 11*th March*, 1813.

311. I am directed to inform you that the case adverted to in your letter of the 23rd March last should be decided according to the Hindoo law current in the pergunnah in which the family reside, provided it accords with the family usage; otherwise the latter must form the rule of guidance. I am also directed to refer you to the cases noted in the margin,* as shewing that the local position of a family does not necessarily determine the law by which their disputes ought to be decided.—*Con. No.* 1007, *Cal. C.* 22*d April*, *West. C.* 13*th May*, 1836.

SECT. XXXVIII.

Principles of Law.—Rules for the protection of moveable and immoveable property against wrongful possession of cases of succession.

312. Whereas much inconvenience has been experienced, where persons have died possessed of moveable and immoveable property, and the same has been taken upon pretended claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute

* Rajchunder Narain Chowdry, Appellant, *versus* Gocol Chunder Gop, Respondent. Gungadutt Jha, Appellant, *versus* Shree Narain Rai and another, Respondents.

their rights, affording strong temptations for the employment of force or fraud in order to obtain possession. And whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit. And whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession will be too tardy a remedy for obviating them all especially as regards moveable property. And whereas it may be expedient, prior to the determination of the summary suit, to appoint a Curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case. And whereas it will be very inconvenient to interfere with successions to estates by the appointment of Curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on the behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit.—*Act* 19, 1841, *Sect.* 1.

313. It is hereby enacted, that whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the District where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.—*Act* 19, 1841, *Sect.* 1.

314. And it is hereby enacted, that it shall be lawful for any agent, relative, or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified, or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.—*Act* 19, 1841, *Sect.* 2.

315. And it is hereby enacted, that the Judge to whom such application shall be made shall, in the first place enquire by the solemn declaration of the complainant, and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made bonâ fide.—*Act* 19, 1841, *Sect.* 3.

316. And it is hereby enacted, that in case the Judge shall be satisfied of the existence of such strong ground of belief but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned) and shall deliver possession accordingly—provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.—*Act* 19, 1841, *Sect.* 4.

317. And it is hereby enacted, that in case it shall further appear upon such application and examination as aforesaid that danger is to be apprehended of the misappro-

priation or waste of the property before the summary suit can be determined and that the delay in obtaining security from the party in possession, or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more Curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof. Provided always that, in the case of land, the Judge may delegate to the Collector or to his officer the powers of a Curator, and also that every appointment of a Curator in respect of any property be duly published.—*Act* 19, 1841, *Sect.* 5.

318. And it is hereby enacted, that the Judge shall have power to authorize such Curator, either to take possession of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession. Provided always, that it shall be entirely discretionary with the Judge, whether he shall allow the party in possession to continue in such possession, on giving security, or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.—*Act* 19, 1841, *Sect.* 6.

319. And it is hereby enacted, that the Judge shall exact from the Curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorize him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding 5 per centum on the personal property and on the annual profits of the real property. All surplus monies realized by the Curator shall be paid into Court, and invested in public Securities for the benefit of the persons entitled thereto upon adjudication of the summary suit. Provided always, that although security shall be required from the Curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed Curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the Curator with the powers of his office.—*Act* 19, 1841, *Sect.* 7.

320. And it is hereby enacted, that, where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a Curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto, but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sudder Dewanny Adawlut, and the Court of Sudder Dewanny Adawlut, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.—*Act* 19, 1841, *Sect.* 8.

321. And it is hereby enacted, that the Curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and that all suits may be instituted or defended in the name of the Curator on behalf of the estate. Provided that an express authority shall be requisite in the sunnud of the Curator's appointment for

the collection of debts or rents; but such express authority shall enable the Curator to give a full acquittance for any sums of money received by virtue thereof.—*Act* 19, 1841, *Sect.* 9.

322. And it is hereby enacted, that pending the custody of the property by the Curator, it shall be lawful for the Judge to make such allowances to parties having a primâ facie right thereto as upon a summary investigation of the rights and circumstances of the parties interested, he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.—*Act* 19, 1841, *Sect.* 10.

323. And it is hereby enacted, that the Curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and upon giving up the possession of the property file a detailed account of his administration to the satisfaction of the Judge.—*Act* 19, 1841, *Sect.* 11.

324. And it is hereby enacted, that the accounts of any such Curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such Curator. And if it be found that the accounts of any such Curator are in arrear, or if they shall be erroneous or incomplete, or if the Curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand Rupees for every such default.—*Act* 19, 1841, *Sect.* 12.

325. And it is hereby enacted, that after the Judge of any district shall have appointed any Curator, such appointment shall preclude the Judge of any other district within the same Presidency from appointing any other Curator, provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment within the same Presidency of another Curator in respect of the residue or any portion thereof; provided always that no Judge shall appoint a Curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge—and provided further, that if two or more Curators be appointed by different Judges for several parts of an estate, it shall be lawful for the Sudder Dewanny Adawlut to make such order as it shall think fit for the appointment of one Curator of the whole property.—*Act* 19, 1841, *Sect.* 13.

326. And it is hereby provided, that this Act shall not be put in force, unless the aforesaid application to the Judge be made within six months of the decease of the proprietor, whose property is claimed by right in succession.—*Act* 19, 1841, *Sect.* 14.

327. And it is hereby enacted, that this Act shall not be put in force to contravene any public act of Settlement. Neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions, but, in every such case, so soon as the Judge having jurisdiction over the property of a deceased person, shall be satisfied of the existence of such directions, he shall give effect thereto.—*Act* 19, 1841, *Sect.* 15.

328. And it is hereby provided, that this Act shall not be put in force, for the

purpose of disturbing the possession of the Court of Wards of any Presidency; and in case a minor, or other disqualified person whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge if he determines to cite the party in possession and also to appoint a Curator, shall invest the Court of Wards with the Curatorship of the estate pending the suit without taking such security as aforesaid, and in case the minor or other disqualified person shall, upon the adjudication of the summary suits appear to be entitled to the property, possession shall be delivered to the Court of Wards.—*Act* 19, 1841, *Sect.* 16.

329. And it is hereby provided, that nothing in this Act contained shall be any impediment to the bringing of a regular suit either by the party whose application may have been rejected, before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.—*Act* 19, 1841, *Sect.* 17.

330. And it is hereby enacted, that the decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but that for this purpose it shall be final, not subject to any appeal or order for review. —*Act* 19, 1841, *Sect.* 18.

331. And it is hereby enacted, that it shall be lawful for the Governments of the respective Presidencies to appoint public Curators for any district or number of districts. And the Judge having jurisdiction shall nominate such public Curator or Curators in all cases where the choice of a Curator is left discretionary with him under the preceding provisions of this Act.—*Act* 19, 1841, *Sect.* 19.

332. And it is hereby enacted, that whenever a person dies leaving moveable or immoveable property within the local limits of the jurisdiction of any of Her Majesty's Supreme Courts, and such Court shall be satisfied that danger is to be apprehended of the misappropriation and waste of the property before it can be ascertained who may be legally entitled to the succession to such property, it shall be lawful for the said Court to authorize and enjoin the Ecclesiastical Registrar, or one or more Curators to collect such effects and hold or deposit or invest the same in such manner and place and upon such security and subject to such orders and directions as the Court may deem expedient.—*Act* 19, 1841, *Sect.* 20.

SECT. XXXIX.

Principles of Law.—Rules for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons.

333. Whereas it is expedient to provide greater security for persons paying to the Representatives of deceased Hindoos, Mahomedans, and others not usually designated as British subjects, debts which are payable in respect of the estates of such deceased persons, and to facilitate the collection of such debts by removing all doubts as to the legal title to demand and receive the same.—*Act* 20, 1841, *Sect.* 1.

334. It is hereby enacted, that no debtor of any deceased person shall be compelled in any Court of Law to pay his debt to any person claiming to be entitled to the effects of any deceased person, or any part thereof, except on the production of a certificate to be obtained in manner hereinafter mentioned, or of a Probate or Letters of Administration, unless the Court shall be of opinion that payment of the date is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled.—*Act* 20, 1841, *Sect.* 1.

335. And it is hereby enacted, that the Zillah or District Court within the jurisdiction of which any part of the property of the deceased may be found shall have authority to grant a certificate under this Act. The applicant in his petition shall set forth his title. The Judge shall issue notice of application, inviting claimants, and fixing a day for hearing the petition, and upon the appointed day, or as soon after as may be convenient shall determine the right to the certificate, and grant the same accordingly. —*Act* 20, 1841, *Sect.* 2.

336. And it is hereby enacted, that the certificate of the District or Zillah Judge shall be conclusive of the representative title against all debtors to the deceased, and shall afford full indemnity to all debtors paying their debts to the person in whose favour the certificate has been granted.—*Act* 20, 1841, *Sect.* 3.

337. And it is hereby enacted, that the District or Zillah Judge may take such security as he shall think necessary from any person to whom he shall grant a certificate for rendering an account of debts received by him, and for indemnity of persons who may be entitled to the whole or any part of the monies received by virtue of such certificate, whose right to recover the same by regular suit against the holder of the certificate is not affected by this Act.—*Act* 20, 1841, *Sect.* 4.

338. And it is hereby enacted, that the granting of such certificate may be suspended by an appeal to the Court of Sudder Dewanny Adawlut, which Court may declare the party to whom the certificate shall be granted, or may direct such further proceedings for the investigation of the title as it shall think fit. The Court may also upon petition, after a certificate shall have been granted by the District or Zillah Judge, grant a fresh certificate in supersession of the certificate granted by the District or Zillah Judge, and such fresh certificate shall not affect any payments made to the person to whom any former certificate may have been granted without notice that the same has been superseded, but shall entitle the person named therein to receive all monies that may have been recovered under the first certificate from the person to whom the same may have been granted.—*Act* 20, 1841, *Sect.* 5.

339. And it is hereby enacted, that every certificate shall give authority to the person to whom the same is granted throughout the Presidency within which the same is granted, and no certificate subsequently granted in respect of the same property shall be valid or effectual, except as hereinafter mentioned.—*Act* 20, 1841, *Sect.* 6.

340. And it is hereby enacted, that a person certified as aforesaid, may be empowered to receive interest on Government Notes and Dividends, or on Shares of any Bank or parts thereof, and to negotiate such Securities. He may be also empowered to receive a share of such interest or dividends or to negotiate a share of such Securities. But these powers shall only arise by express words in the certificate.—*Act* 20, 1841, *Sect.* 7.

341. And it is hereby enacted, that where a certificate shall have been granted in cases in which such certificate would be valid, but for the previous grant of a certificate, all payments made to the person, holding the later certificate in ignorance of the grant of the previous certificate shall be held good against claims under such previous certificate.—*Act* 20, 1841, *Sect.* 8.

342. And it is hereby enacted, with regard to the property of deceased Hindoos, Mahometans and other persons not usually designated by the term British Subjects, that no certificate in respect of any such property shall be valid, if made after a Probate

or Letters of Administration granted in respect of the same, provided assets belonging to the deceased were at the time of his death within the local jurisdiction of the Court granting the Probate or Letters of Administration.—*Act* 20, 1841, *Sect.* 9.

343. And it is hereby provided, that where a certificate shall have been granted in cases in which such certificate would be valid, but for a Probate or Letters of Administration previously granted, all payments made to the person holding the certificate in ignorance of the previous granting of the Probate or Letters of Administration, shall be held good against claims under the Probate or Letters of Administration so previously granted.—*Act* 20, 1841, *Sect.* 10.

344. And it is hereby enacted, that no Probate or Letters of Administration shall be valid for the purpose of the recovery of debts, or for the security of debtors, after a certificate granted in respect of this same property for which such Probate or Letters of Administration shall have been granted, provided assets belonging to the deceased were at the time of his death within the jurisdiction of the Court granting such certificate.—*Act* 20, 1841, *Seet.* 11.

345. And it is hereby provided, that where Probate or Letters of Administration may have been granted, in cases in which such Probate or Letters of Administration would be valid, but for the previous grant of a certificate, all payments made in ignorance of the previous grant of the certificate shall be held good against claims under such previous certificate.—*Act* 20, 1841, *Sect.* 12.

346. And whereas under Act 19, of 1841, Curators may be invested with certain powers which are conferred on persons obtaining certificates under this Act, and which belong to Executors and Administrators, it is hereby enacted that Curators appointed under the said Act shall not exercise any powers which, but for that Act, would lawfully belong to such persons obtaining certificates, Executors or Administrators, where a Certificate, Probate or Letters of Administration has been actually obtained; but all persons who may have paid debts or rents to a Curator authorized by a Judge to receive the same shall be indemnified, and the Curator shall be responsible for the payment of the same to the person who has obtained a certificate, the Executor, or Administrator, as the case may be.—*Act* 20, 1841, *Sect.* 13.

347. And it is hereby declared and enacted, that all Probates and Letters of Administration granted by any of Her Majesty's Courts in cases in which any assets belonging to deceased persons were, at the time of their deaths, within the local jurisdiction of the Court granting the Probate or Letters of Administration, shall have the effect of Probate and Letters of Administration granted in respect of the property of British subjects but for the purpose of the recovery of debts only, and the security of debtors paying the same; except so far as is in this Act provided.—*Act* 20, 1841, *Sect.* 14.

348. And it is hereby provided that nothing in this Act contained shall be held to extend to the property of any person usually designated as a British Subject.—*Act* 20, 1841, *Sect.* 15.

SECT. XL.

Principles of Law.—Hidden Treasure.

349. Whereas the provisions of the Mahommedan and Hindoo Laws respecting the discovery of hidden treasure differ materially; and whereas it is deemed expedient

that an uniform principle should be established for the guidance of persons by whom hidden treasure may be discovered, the following provisions are enacted, to be in force as soon as promulgated throughout the provinces immediately subordinate to the Presidency of Fort William.—*Preamble to Reg.* 5, 1817.

350. Whenever any hidden treasure, consisting of gold or silver coin, or bullion, or of precious stones, or other valuable property, may be found buried in the earth, or otherwise concealed within any part of the territory subject to this Presidency; and after due notification, the owner thereof may not be discoverable; such hidden treasure shall become the property of the person or persons who may have found the same, provided it shall not exceed in amount or value, the sum of one lack of Sicca Rupees; and provided the finder or finders shall have conformed to the rules prescribed in this Regulation.—*Reg.* 5, 1817, *Sect.* 2.

351. Whenever any person may find hidden treasure, of the description stated in the foregoing Section, he shall give immediate notice thereof to the Judge of the Zillah or City in which the treasure may have been found; and shall at the same time deposit the treasure in the Zillah or City Court, with an exact inventory thereof.—*Reg.* 5, 1817, *Sect.* 3.

352. The Zillah or City Judge receiving a deposit as above directed, shall return a receipt for the treasure deposited, after causing the same to be carefully compared with the inventory; and shall issue a public notification in the current languages of the country, to be published and affixed in his own Cutcherry, and in the Cutcherry of the Collector of the district, requiring all persons who may have any claim of right to the treasure in deposit, to attend in person, or by vakeel, and prove their title thereto, within six months from the date of the notice.—*Reg.* 5, 1817, *Sect.* 4.

353. It shall be the duty of the Collectors of land Revenue acting under the instructions of the Board of Commissioners, or the Commissioner in Behar and Benares, or the Board of Revenue, to bring forward and to support, in conformity with the foregoing provision, any claim of right which Government may appear to possess to such treasure. In the event of any claim of right being preferred either on the part of individuals or of Government, pursuant to the prescribed notification, the Judge shall institute a summary inquiry into the claim preferred; and if the title of Government or other person so claiming the treasure in deposit, or any part thereof, be clearly established, he shall adjudge the same accordingly; subject to reimbursement of all expense incurred by the finder of the treasure, as well as to such compensation for the discovery of it as may, in each case, appear just and reasonable.—*Reg.* 5, 1817, *Sect.* 5.

354. If no claim of right be preferred either by Government or by an individual within the period limited by the notification directed in Section 4, of this Regulation, or if the claim or claims so preferred, shall not on a summary inquiry appear to be well founded; and the amount or value of the hidden treasure found at the same time, or in the same place, shall not exceed one lack of Sicca Rupees; the Zillah or City Judge shall adjudge the same to the person or persons who may have discovered the treasure, and deposited it in the Zillah or City Court, as required by Section 2; subject only to the actual expense which may have been incurred in adopting the measures prescribed by this Regulation.—*Reg.* 5, 1817, *Sect.* 6.

355. If the amount or value of any hidden treasure found at the same time, or in

the same place, shall exceed one lack of Sicca Rupees, and no claim of right thereto be established, judgment shall be given, according to the preceding Section, in favour of the person or persons who may have discovered and deposited the treasure, to the amount of one lack of Sicca Rupees; and the excess above that sum shall be declared at the disposal of Government.—*Reg.* 5, 1817, *Sect.* 7.

356. If any person discovering hidden treasure of the description specified in Section 2, of this Regulation, shall not, within one month after finding the same, give notice to the Judge of the Zillah or City Court, in conformity with Section 4, and make the deposit thereby required, he shall be considered to have forfeited all right and title to the treasure; as well as all claim to a reimbursement of expense, compensation or reward, under the provisions of this Regulation; and the treasure so clandestinely withheld from public investigation, shall, on a summary suit by any subsequent claimant of right, and proof of a just title thereto, be adjudged to the legal owner with interest and costs; or if no private claim be established, shall on the application of the Vakeel of Government, under instructions from the Board of Revenue, or the Board of Commissioners in the western provinces, or the Commissioner in Behar and Benares, be liable to confiscation to Government.—*Reg.* 5, 1817, *Sect.* 8.

357. The summary decisions of the Judges of the Zillah or City Courts, which may be passed under this Regulation, shall be open to a summary appeal to the provincial Courts, under the general rules in force relative to summary appeals.—*Reg.* 5, 1817, *Sect.* 9.

358. The decisions of two or more Judges of the provincial Courts, on such appeals, shall be final; unless the Court of Sudder Dewanny Adawlut should, on the face of the decree, or on inspection of any documents exhibited with it, see just and sufficient ground for admitting a second summary appeal to that Court, in which case only such further appeal may be admitted, and proceeded upon under the general rules in force for summary appeals.—*Reg.* 5, 1817, *Sect.* 10.

SECT. LXI.

Arbitration.—Reference of cases to Arbitration by the Courts.

359. In suits that may be brought before any of the Courts of Civil judicature concerning disputed accounts, partnerships, debts, doubtful or contested bargains, or non-performance of contracts, in which the cause of action shall exceed Two hundred Sicca Rupees, the Courts are to recommend the parties to submit the decision of the matters in dispute to arbitration.—*Reg.* 16, 1793, *Sect.* 2.—*Ben. Reg.* 15, 1795, *Sect.* 2. —*Ced. and Conq. Prov. Reg.* 21, 1803, *Sect.* 2.

360. In all suits for money or personal property, the amount or value of which shall not exceed the sum of Two hundred Sicca Rupees, the Courts are empowered, with the consent of the parties, to refer the suit to the decision of one arbitrator. The parties or their vakeels, upon agreeing to the reference, shall on or before the next Court day, mutually choose some one common friend or indifferent person who may be willing to undertake the arbitration. If the parties shall not agree with respect to the person to be appointed arbitrator, or, if the person nominated by them shall refuse

to accept the arbitration, and the parties or their vakeels cannot agree in the appointment of another person willing to undertake the arbitration, the Court, with the consent of the parties, is to appoint as arbitrator in the cause, the proprietor of the estate in which the cause of action shall have arisen, or the farmer, if the estate be held in farm of Government, or the Cauzy of the pergunnah, or the tehseeldar, or any other creditable person, provided that the person so to be nominated by the Court, be not in any respect interested in the matter in dispute. But if the parties cannot agree in the nomination of an arbitrator, or, if the person whom they may nominate, shall refuse to accept the trust, and the parties cannot agree upon the appointment of any other person willing to undertake the arbitration, or shall not consent to the appointment of an arbitrator by the Court, the cause is not to be referred to arbitration, but is to be tried by the Court, or the Register, if the cause be depending in a Zillah or a City Court, and the Judge shall think it proper to refer it to him for decision. In the event of the parties, or their vakeels, agreeing in the nomination of an arbitrator willing to accept the arbitration, or to an arbitrator being appointed by the Court, the person so chosen or appointed, shall be the arbitrator in the cause, The parties however in suits of the nature of those described in this Section, are to have the option of choosing two or more arbitrators to decide their cause in the same manner as the parties in the causes specified in Section 2.—*Reg.* 16, 1793, *Sect.* 3.—*Ben. Reg.* 15, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 21, 1803, *Sect.* 3.

361. Under the provisions of Section 3, Regulation 16, 1793, a Judge is empowered to refer to a single arbitrator any suit for money or personal property, the amount or value of which may not exceed 200 Rupees; suits exceeding that amount cannot be referred by the Judge to a single arbitrator. A doubt has arisen whether this restriction applies to summary suits for arrears of rent or merely to regular suits. The Court are of opinion that under the terms of the Regulation, which are general, the restriction must be construed to apply to suits of all descriptions. The Court observe that the above restriction is not intended to apply to suits referred to private arbitration by individuals under Section 3, Regulation 6, 1813.—*Con. No.* 936, *West. C. 6th March, Cal. C. 27th March*, 1835.

362. The Judges of the Courts are enjoined to afford every encouragement in their power to persons of character and credit to become arbitrators; but they are not to employ any coercive means for that purpose, nor to permit any of their public officers, or private servants, or any of the authorized vakeels, to be arbitrators in a cause. In all cases, the Courts are directed to endeavour, but without using any compulsion, to prevail upon parties to submit their cause to the arbitration of one person to be mutually agreed upon by them. In every case (with the exception of the cases specified in Section 3, which the Courts are empowered to refer to one arbitrator with the consent of the parties) the parties are to choose the arbitrators, who are to decide the matter in dispute without fee or reward.—*Reg.* 16, 1793, *Sect.* 4.—*Ben. Reg.* 15, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 21, 1803, *Sect.* 4.

363. With reference to Section 4, Regulation 16, 1793, (Ceded and Conquered Provinces, Section 4, Regulation 21, 1803,) can a Sudder Ameen or a law officer of a Zillah or City Court legally become an arbitrator in a cause before the Judge: or in a cause pending before a superior Court, in appeal from a decision of the Zillah or City to which he may be attached? The Presidency Court are of opinion, that a Sudder Ameen or law officer is not a public officer of the Judge's Court, coming within the prohibition contained in the Section above referred to: that rule applying

to ministerial officers, which a Sudder Ameen or law officer cannot be considered to be.—*Cir. Ord. Cal. and West. C. 9th Nov.* 1832.

364. The Courts of Civil Judicature are hereby empowered to permit any of the authorized vakeels of their respective Courts to be arbitrators in depending suits, subject to the several rules and provisions in force for referring suits to arbitration.—*Reg.* 27, 1814, *Sect.* 19.

365. The Court desire, that in cases where the nomination of an arbitrator may rest with the Civil Court, the Acting Register will avoid, as far as practicable, the appointment of canoongoes; and, at all events, whenever the selection of them may be unavoidable, an immediate communication of the appointment should be made to the Collector, to enable him to provide for the discharge of the duties on which the canoongoe may be engaged, and thereby obviate the inconveniences which are stated to have resulted from the employment of these officers without such communication.—*Con. No.* 286, *4th Feb.* 1818, *Par.* 7.

366. Whenever a suit shall be submitted to arbitration, the Court in which it may have been instituted, previous to the arbitrator or arbitrators entering upon the arbitration, is to cause the parties to execute arbitration bonds, binding themselves to abide by the award, and agreeing that it be made a decree of the Court. The Court is to fix such time as it may think reasonable, upon a consideration of the nature and circumstances of the case, for the delivery of the award, and the period so fixed is to be specified in the bonds. If the cause shall be referred to two or more arbitrators, the following provisions are to be made for completing the award in the event of the arbitrators not delivering it by the limited time, either from disagreement or other cause. If the decision of the suit shall be referred to two or more arbitrators, whether an odd or an even number, the parties are to have the option of nominating jointly one person as umpire, or, if the number of arbitrators appointed shall be three or more, being an odd number, to agree that the award given by the majority shall be final, or, to permit the arbitrators to nominate an umpire. The name of the umpire, and the time by which he is to make his award, in the event of the arbitrators not delivering it by the limited period, is to be specified in the bonds, which are to be executed before the arbitrators enter upon the enquiry. In the event of an umpire being appointed, and the arbitrators not agreeing in award by the limited period, their authority is to cease from such period, and the umpire is to give his award.—*Reg.* 16, 1793, *Sect.* 5.—*Ben. Reg.* 15, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 21, 1803, *Sect.* 5.

367. I am desired to acquaint you, that whenever a suit shall be submitted to arbitration, the Court in which it may have been instituted is required, previous to the arbitrator or arbitrators entering upon the arbitration, to cause the parties to agree to some one of the provisions detailed in Section 5, Regulation 16, 1793, for completing the award, in the event of the arbitrators' not delivering it by the limited time, either from disagreement or other cause; and that, where these preliminary engagements may not have been specified in the bond and the arbitrators may not be unanimous in their decision, their proceedings must of course be considered void and of no effect, and the case must be tried de novo; but I am desired to observe, that no difficulty can occur where the precautionary measures prescribed by the Regulation, as to the conditions of the bond, have been duly executed.—*Con. No,* 395, *24th June,* 1825, *Par.* 2.

368. When a cause shall be referred to arbitration, and the bonds specified in the preceding Section shall have been executed, the Court is to transmit to the arbitrator or arbitrators a copy of the bill of complaint, and by a short writing under the seal of the

Court, refer to him or them the matters in dispute between the parties. In the trial of the suit, the arbitrators are to investigate the matters in dispute, by hearing the pleadings of the parties, and examining their respective witnesses and documents. The Court is to issue the same process to the parties, and to the witnesses, whom the arbitrator or arbitrators, or the parties, may desire to have examined, to appear before the arbitrator or arbitrators, and to administer such oaths to the parties and witnesses as the Court is authorized to administer, in causes tried before it; and persons not attending in consequence of such process, or making any default, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the arbitrator or arbitrators during the investigation of the suit, are to be subject to the like disadvantages, penalties and punishments, by order made by the arbitrator or arbitrators, as they would incur for the same offences in suits tried before the Court, provided that the arbitrator or arbitrators shall report the order with the reason for making it to the Court, and obtain its consent thereto, which is to be signified by the Judge or Judges signing the order. In cases in which an arbitration may be held at a considerable distance from the Court, the Court may grant commissions to the arbitrators to administer the proper oaths to witnesses whom they may be desirous of examining upon oath.—*Reg.* 16, 1793, *Sect.* 6. —*Ben. Reg.* 15, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 21, 1803, *Sect.* 6.

369. In cases where arbitrators, or umpires, shall not have been able to complete the award by the limited time from want of the necessary evidence or information, or other good and sufficient cause, the Courts are empowered to allow a further time for the delivery of the award. In the first mentioned case, the Courts are to fix a period by which the umpire (if an umpire shall have been appointed) for the delivery of his final award, in the event of the arbitrators not completing their award by the expiration of such further time.—*Reg.* 16, 1793, *Sect.* 7.—*Ben. Reg.* 15, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 21, 1803, *Sect.* 7.

370. When a final award in a cause shall be made either by the arbitrators, or the umpire, it is to be submitted to the Court under the seal and signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the cause. The Court is to pass a decree conformably to the award, and the decree is to be carried into execution in the same manner as other decrees of the Court.—*Reg.* 16, 1793, *Sect.* 8.—*Ben. Reg.* 15, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 21, 1803, *Sect.* 8.

371. The award of an arbitrator or arbitrators is not to be set aside, except it be fully proved to the satisfaction of the Court by the oaths of two credible witnesses, that the arbitrator or arbitrators has or have been guilty of gross corruption or partiality in the cause in which the award may be made.—*Reg.* 16, 1793, *Sect.* 9.—*Ben. Reg.* 15, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 21, 1803, *Sect.* 9.

SECT. XLII.

Arbitration regarding land.—Private Arbitration.

372. Parties in suits depending in the Civil Courts of judicature respecting the property in land, or limited tenures therein, or rights dependent thereon, shall be at liberty to refer their suits to arbitration and shall by all due means be encouraged by the

Courts to resort to that mode of adjusting their differences.—*Reg.* 6, 1813, *Sect.* 2, *Cl.* 1.

373. The rules contained in Regulation 16, 1793, and Regulation 21, 1803, respecting the reference of suits to arbitration, the appointment of arbitrators and umpires, the investigation of suits referred to arbitration, the time and mode of making the award, and the setting aside or confirming the same, are declared applicable to suits referred to arbitration by the Courts of judicature under this Regulation.—*Reg.* 6, 1813, *Sect.* 2, *Cl.* 2.

374. Persons between whom disputes may exist respecting the property of land or limited tenures therein, or rights dependent thereon, whether the same be or be not depending in the Courts of judicature, are at liberty without any application to the Courts, to refer the same to private arbitration; and the awards made by the arbitrators and umpires appointed in such case by the parties, shall be supported and enforced by the Courts, under the following rules and limitations.—*Reg.* 6, 1813, *Sect.* 3, *Cl.* 1.

375. Whenever a dispute respecting the matters above enumerated shall have been referred to private arbitration, and an award shall have been duly made, if either party shall refuse to perform the award, it shall be competent to the other party within the period of six months from the date of the award, to apply summarily to the Dewanny Adawlut; and upon such application, if the Court, after calling upon the opposite party for his answer, be satisfied that the award was duly made by arbitrators or umpires appointed by the free will and consent of the parties, and such award shall be liable to no impeachment, which would have warrranted the setting it aside, if it had been made under the authority of the Court, shall cause the same to be summarily executed as a decree of Court, calling upon the arbitrators and umpires, if necessary, to attend and give their assistance in the execution of their said award; provided always, that if such application for the enforcement of a private award shall not be made within the period above prescribed, the Court shall not admit any plea whatever for the delay; but shall reject such application and refer the party preferring it to a regular suit.—*Reg.* 6, 1813, *Sect.* 3, *Cl.* 2.

376. Whenever private awards shall be tendered by the parties in regular suits, the Courts, if such awards shall appear to have been performed, and the possession of the contested property to have been held under them, shall allow equal validity to the same, as if they had been made under the authority of the Courts. But if the awards tendered shall not have been performed at all, or shall have been performed only in part, the Courts shall not admit the same, unless they be established by clear and satisfactory proof, shall be distinct and intelligible so as to admit of easy execution, and the delay which may have occurred in the performance of them, shall also be duly accounted for.—*Reg.* 6, 1813, *Sect.* 3, *Cl.* 3.

377. The Court had on a former reference to them, determined that applications made to the Zillah or City Courts for the execution of private awards under the second clause of Section 3, Regulation 6, 1813, are to be received and enforced under the rules applicable to summary process as directed in that Clause.—*Cir. Ord.* 24*th Feb.* 1816, *Par.* 2.

378. They are further of opinion, that such summary process is subsidiary to a regular suit, either in the Zillah or City Court, or in the Provincial Court, according to the value of the disputed property, calculated according to Section 14, Regulation 1, 1814, and Section 23, Regulation 26, 1814, [*now* Reg. 10. 1829.] But as it is evidently intended by the provisions of Section 3, Regu-

lation 6, 1813, that the private awards therein mentioned, when summarily confirmed and enforced by a Zillah or City Court, should have the same validity as if made under the authority of a Court of judicature, pursuant to the rules noticed in the preceding Section, (viz. those contained in Regulation 16, 1793; the Court are of opinion, that on trial of a regular suit or appeal, instituted by the party against whom the award may have been given, it should "not be set aside, except it be fully proved to the satisfaction of the Court, by the oaths of two credible witnesses, that the arbitrators have been guilty of gross corruption or partiality," as expressly provided in Section 9, Regulation 16, 1793.—*Cir. Ord. 24th Feb.* 1816, *Par.* 3.

379. I am directed to state, that as no mention is made of arbitration bonds in Sections 2 and 3, Regulation 6, 1813, the Court are of opinion, that the mere circumstance of such bonds not having been executed, cannot of itself be held to bar the summary jurisdiction of the Civil Courts in cases referred to private arbitration under the provisions of those Sections; but that if the reference of the case to arbitration be not denied, the Court should proceed summarily to enforce the award, subject of course to all the rules and limitations laid down in the enactment in question.—*Con. No.* 1153, *Cal. and West. C.* 11*th May*, 1838, *Par.* 1.

380. When, however, the agreement to abide by the award of arbitrators may be disputed, the Court consider that it would be dangerous to allow this point to be determined in a summary form; and they are of opinion, therefore, that in such cases the parties should be referred to a regular suit.—*Con. No.* 1153, *Cal. and West. C.* 11*th May*, 1838, *Par.* 2.

381. The provisions of this Regulation, [viz. Regulation 16, 1793,] being extended generally to suits respecting property in land or limited tenures therein, by Regulation 6, 1813, the Court are of opinion, that under Section 2, of the latter Regulation, all suits of this description may be referred to arbitration for whatever amount.—*Con. No.* 253, 7*th Aug.* 1816.

Vide also Con. No. 395, *give as Rule* 367, *of this Chapter.*

382. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, requesting the Court's opinion on a point connected with Regulation 6, 1813; the defendant in a Civil process for the summary execution of an award of arbitration under the provisions of Section 3, of the above mentioned Regulation, having put in a plea, that the provisions of the Section and Regulation above quoted exclusively provide for awards respecting lands and rights dependent on them, and that an award for debts, disputed accounts, and partnership, &c. is not cognizable under that Regulation.—In reply, I am desired to communicate to you the opinion of the Court, that Regulation 6, 1813, as appears from its preamble, relates exclusively to contests and suits respecting lands, and is inapplicable to other matters.—*Con. No.* 472, 22*d Feb.* 1828.

383. There being reason to believe that decrees have been passed by many of the Civil Courts of Judicature, founded both upon awards made under the authority of the Court, and also private awards respecting the property in land and limited tenures therein and rights dependent thereon, it is hereby declared that after the promulgation of this Regulation, no decree relating to the matters above enumerated, shall be amended or reversed upon the ground of the same being founded on an award of arbitration not authorized by the Regulations, at the time the award was made unless such award be in itself open to just cause of impeachment.—*Reg.* 6, 1813, *Sect.* 4.

384. I am directed by the Court of Nizamut Adawlut, to acknowledge the receipt of your letter of the 3d ultimo, requesting the Court's opinion on certain points regarding the power of a Magistrate, under Regulation 15, 1824, to accept arbitration bonds, and confirm and execute awards for the final decision of all matters at issue between the parties.—*Con. No.* 571, 6*th Aug.* 1830, *Par.* 1.

In reply, I am directed to inform you, that the Court are of opinion, that a Magistrate has no power to receive such arbitration bonds, or interfere to the enforcement of the awards of arbitra-

tors. The interference of a Magistrate, under Regulation 15, 1824, is restricted to cases wherein he has reasonable ground to apprehend disturbances; and after he has interfered, his power extends no further than, after due inquiry, to award that the actual possessor retain possession of the disputed property.—*Con. No.* 571, *6th Aug.* 1830, *Par.* 2.

If at any time after a case of dispute has been brought into the Magistrate's Court under the regulation above quoted, the parties should wish to refer their respective claims to the decision of the arbitrators, they are at liberty to do so; and upon their representing to the Magistrate that they have agreed to an adjustment of their dispute in that manner, and satisfying him that there is no further ground to apprehend a breach of the peace, the Court are of opinion, that the Magistrate should stay all further proceedings in the case. The parties would then be at liberty to refer their dispute to private arbitration, under Section 3, Regulation 6, 1813, and the award, whatever it might be, should be enforced by the Civil Court, in the manner prescribed in the second Clause of the same Section and Regulation, upon application being made to it by either party within the time prescribed.—*Con. No.* 571, *6th Aug.* 1830, *Par.* 3.

385. There appearing reason to believe that some of the Civil Courts consider themselves precluded by the terms of Sections 3 and 4, Regulation 21, of 1803, [Vide Rule 360 and 362 of this Chapter] from referring suits of the nature of those described in Section 2, of that enactment to the arbitration of a single arbitrator, when the amount or value of the claim may exceed the sum of 200 rupees; I am directed to communicate to you the opinion of the Court that such was not the intention of those sections, the Civil Courts being strictly enjoined in the latter section to endeavor in all cases to prevail upon parties to submit their cause to the arbitration of one person to be mutually agreed upon by them. The Court observe that where a reference to arbitration may be agreed to by the parties to a Civil suit, the only difference that the regulation in question makes between cases in which the amount or value of the claim may not exceed 200 rupees, and those in which it may be above that sum, is that while in the former the Judge may, under certain circumstances, with the consent of the parties, appoint as arbitrator any of the individuals mentioned in Section 3; in the latter the parties are themselves to nominate the arbitrator, it not being competent to the Judge to interfere in any way whatever, either directly or indirectly, as respects such nomination. You are requested to act upon this construction in future, and to communicate it for the information and guidance of the subordinate judicial functionaries of your district.—*Cir. Ord. Cal. and West C.* 12*th Oct.* 1838.

CHAPTER V.

APPEALS.

SECTION I.

Summary Appeals from the Decrees of Moonsiffs, Sudder Ameens, and Principal Sudder Ameens.

1. The Court are of opinion that a summary appeal can be admitted only when a suit has been dismissed or rejected on the ground of delay, informality or other default, without an investigation of its merits.—*Con. No.* 805, *Cal. C.* 19*th July*, *West. C.* 6*th Sept.* 1833.

2. It is hereby enacted, that from the first day of October 1838, it shall be competent to the Zillah and City Judges, in the territories subject to the presidency of Fort William in Bengal, to receive a summary appeal from the orders or decrees of the Moonsiffs subordinate to them, in cases in which such Moonsiffs may have refused to admit any suit regularly cognizable by them, or may have dismissed, on the ground of delay, informality, or other default, without an investigation of the merits of the case, any such suit which they may have admitted, or any suit regularly referred to them.—*Act* 22, 1838, *Sect.* 1.

3. And it is hereby enacted, that the provisions contained in the 5th and 6th following Clauses of Section 3, Regulation 26, of 1814, and Section 2, Regulation 12, of 1833, and Section 7, Regulation 9, of 1831, of the Bengal Code, shall apply to the summary appeals preferred under the authority of this Act.—*Act* 22, 1838, *Sect.* 2.

4. On the same principle it shall be competent to the Zillah or City Judges to receive a summary appeal from the orders or decrees of a Register, or Sudder Ameen, in cases, in which the Register or Sudder Ameen may have dismissed on the ground of some default, and without an investigation of the merits of the case, any original suit or appeal regularly referred to them.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 4.

5. The provisions contained in Sections 2 and 3, Regulation 26, 1814, with any modifications of them which may have been since enacted, regarding the admission and hearing of special and summary appeals, as well as the rule contained in Clause Second, Section 4, of the aforesaid Regulation, relative to the review of judgments, shall be held applicable to original suits and appeals tried by Principal Sudder Ameens.—*Reg.* 5, 1831, *Sect.* 19, *Cl.* 1.

6. A summary appeal may be had from a nonsuit passed under Article 8, Schedule B, Regulation 10, of 1829, if it can be shewn by the plaintiff that the value of the property claimed has not been understated by him, and that consequently the order passed by the Sudder Ameen or Principal Sudder Ameen was erroneous.—*Con. No.* 872, *West. C.* 21*st Feb. Cal. C.* 24*th Oct.* 1834.

7. If there has been no decision on the merits of a case, but merely a dismissal pronounced on default, the omission of the word nonsuit, in the proceedings of the officer who disposed of the

case, cannot be considered to bar the claim of the plaintiff to the admission of a summary appeal. —*Con. No.* 870, *West. C.* 21*st Feb. Cal. C.* 27*th March,* 1834.

8. In all the preceding cases, the summary appeal shall be preferred within the same limited period as is prescribed for the admission of regular appeals, and subject to the provisions contained in the following Clauses.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 5.

For the period prescribed for the admission of Regular Appeals from the Moonsiffs, Sudder Ameens and Principal Sudder Ameens, vide Section 4, of this Chapter.

9. Whenever a party may be desirous of preferring a summary appeal in the cases abovementioned, he shall appear either in person, or by a vakeel duly authorized, before the Court, which, under the preceding rules, may be competent to receive such appeal; and shall present a petition, written on the stamp paper, prescribed by Section 18, Regulation 1, 1814, [*now* Reg. 10, 1829,] and accompanied by an attested copy of the order or decree passed in the case.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 6.

10. The party presenting such petition, shall not be liable to the payment of the stamp duty, substituted for the institution fee, by Section 13, Regulation 1, 1814; nor shall he be required to furnish the deposit for the fee of his vakeel, or any security; except such as may be eventually necessary under the Regulations in force, for staying the execution of the decree, from which the appeal may be preferred.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 7.

11. It shall not be requisite to give any notice to the respondent, or to require his attendance on such summary appeal being preferred, unless in any particular instance the Court may deem it proper to adopt that measure; nor shall any pleadings or proceedings be holden on such summary appeal, excepting such as may suffice to determine whether the suit was or was not rejected or dismissed by the lower Court on sufficient grounds, and in conformity with the Regulations.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 8.

12. If upon such summary proceedings, it shall appear to the Court, that the suit was rejected in the first instance, or after being admitted, was dismissed without an investigation of the merits, upon insufficient grounds; or in opposition to the Regulations, it shall be competent to the Sudder Dewanny Adawlut, to the Provincial Courts, and to the Zillah or City Judges respectively, to direct the lower Court or officer, from whose order or decree the petition of appeal may have been presented, to receive the original suit or appeal, or to revive it, if it shall have been received and dismissed, and to try and determine such cause on its merits, according to the Regulations.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 9.

13. The words "*or in opposition to the Regulations*" used in Clause 9, Section 3, Regulation 26, 1814, apply to cases which may have been so dismissed or rejected on grounds not warranted by the Regulations, or to the omission, prior to the dismission or rejection of the suit, of any of the forms prescribed by the Regulations for calling on the party to attend and shew cause why his suit should not be dismissed, &c.—*Con. No.* 805, *Cal. C.* 19*th July, West. C.* 6*th Sept,* 1833.

14. If on the contrary such summary appeal shall be found to be groundless and litigious, the Sudder Dewanny Adawlut, the Provincial Courts, and the Zillah or City Judges, are respectively authorized and required to reject the petition for a summary appeal, and to impose such fine on the litigious appellant, as may appear to be in each instance proportionable to the condition of the party, and to the circumstances of the case; provided that such fine shall in no case exceed the amount of the stamp duty, which would have been payable by the appellant on the institution of such case, as a

regular suit or appeal. All orders, imposing fines, or rejecting petitions of summary appeal, which may be passed under the preceding Clause, by the Sudder Dewanny Adawlut, the provincial Courts, or by the Zillah or City Judges, shall be final and conclusive.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 10.

15. The rejection of a summary appeal is not a bar to the admission of a regular appeal, provided the latter be otherwise admissable under the Regulations in force.—*Con. No.* 723, 19*th Oct.* 1832.

16. On the dismissal of a suit under Section 12, Regulation 3, 1803, Clause 1, Section 27, Regulation 23, 1814, Clause 3, Section 12, Regulation 26, 1814, the plaintiff is at liberty to institute a new suit for the same claim, as if the case had not been heard.—*Con. No.* 870, *West. C.* 21*st Feb. Cal. C.* 27*th March*, 1834.

17. Provided however, that if the suit be dismissed without an investigation of the merits, and either of the parties shall appeal from the decision of the Moonsiff, it shall be the duty of the Court trying the appeal to determine the case on its merits, or to remand it back to the Moonsiff, by whom it was dismissed, or to any other competent authority for a further investigation.—*Reg.* 23, 1814, *Sect.* 27, *Cl.* 2.

18. On the admission of an appeal preferred for a dismissal on default by a Moonsiff, the Judge cannot confirm the dismissal with reference to reasons assigned for neglect in the original trial, but must either decide the case on its merits or direct the Moonsiff to do so, reversing the dismissal on default. The same rule applies to appeals by defendants on the ground that an *ex-parte* decision was given against them, when they were prevented by circumstances from attending the Court.—*Con. No.* 870, *West. C.* 21*st Feb. Cal. C.* 27*th March*, 1834, *Par.* 7.

19. Held on a reference from the officiating Judge of Goruckpore, that under Acts 7 and 22, of 1838, the provisions of Clause 2, Section 27, Regulation 23, of 1814, and the printed Construction thereon of the 21st February 1834, must be considered as virtually superseded.—*Con. No.* 1228, *West. C.* 28*th June, Cal. C.* 2*d Aug.* 1839.

20. The Court, having again had before them your letter No. 110, dated 11th June last, relative to their constructive application of Clause 2, Section 27, Regulation 23, of 1814, now direct me to communicate to you the following reply. The Court are of opinion that, as, under existing laws, (Act 22, of 1838, Act 7, of ditto,) both in cases in which a summary appeal may lie on the part of the plaintiff, and on a regular appeal being preferred by either party, the Judge has now authority to remand every description of case for further investigation and decision or retrial, whenever such a measure may be deemed necessary for the ends of justice, the provisions of Clause 2, Section 27, Regulation 23, of 1814, and the construction thereon, contained in the Court's letter dated 18th April, 1834, No. 55, in reply to certain queries of the Judge of Futtehpore, must be considered as virtually superseded.—*Cir. Ord. Cal. and West. C.* 23*d Aug.* 1839.

21. On a consideration of the provisions of Section 3, Regulation 26, 1814, and Sections 7 and 8, Regulation 19, 1817, the Court are of opinion, that in cases in which a summary appeal is admissable, under the Section first mentioned, such appeal may be admitted, although the appellant may erroneously, or from other cause, have applied for the admission of a special appeal on stamp paper of the prescribed value; and that, in such cases, the stamp duty paid by the appellant on his petition shall, with the exception of two rupees, the value of the proper stamp for a petition of summary appeal, be returned to him.—*Con. No.* 613, 25*th Nov.* 1831.

[For the vakeels and stamps in summary appeals from the native Judges, vide Chapter 2, Rules 282, 283, 284, 285, and 286.]

SECT. II.

Summary Appeals from Principal Sudder Ameens in cases above 5000 *Rupees in value, and from Zillah Courts.*

22. All summary appeals from the decisions of Principal Sudder Ameens, of the nature contemplated by Section 3, Regulation 26, 1814, in suits above the value of 5000 Rupees, shall be made direct by the parties to this [the Sudder] Court.—*Cir. Ord. Cal and West. C. 23rd Feb.* 1838, *Par.* 5.

23. In like manner it shall be competent to a Provincial Court [*now* the Sudder Dewanny Adawlut] to receive a summary appeal from the orders or decrees of the Zillah or City Courts, in cases, in which the latter may have refused to admit an original suit or appeal, regularly cognizable by them; or having admitted such suit or appeal, may have dismissed it, without an investigation of the merits on the ground of delay, informality, or other default.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 3.

24. Upon the same principle, the Court are of opinion, that summary appeals of the nature of those described in the 3rd paragraph of Mr. Mainwaring's letter [that is, summary appeals from the decisions of Principal Sudder Ameens passed under Sections 4 and 5, Regulation 2, 1806, in cases exceeding 5000 Rs.] must follow the like course.—*Con. No.* 1148, *West. C.* 27*th April, Cal. C.* 11*th May*, 1838, *Par.* 3.

25. With regard to the question submitted in the 2nd paragraph of Mr. Mainwaring's letter the Court observe, that the terms of the proviso contained in Section 8, the Act [Act 25, 1837,] under consideration, are general, and must, they are of opinion, be held to include cases referred to the Principal Sudder Ameens under that Section in which the amount or value of the matter at issue may exceed 5,000 Rupees, equally with those under that sum, and that, consequently, the appeal in such cases from the order of the Principal Sudder Ameen should lie in the first instance to the Zillah or City Judge, and specially to the Sudder Dewanny Adawlut.—*Con. No.* 1148, *West. C.* 27*th April, Cal. C.* 11*th May*, 1838, *Par.* 4.

SECT. III.

Regular Appeals to the Zillah Court from the decisions of Moonsiffs, Sudder Ameens, and of Principal Sudder Ameens in suits under 5000 *Rupees.*

26. I beg to be informed whether it is within the competency of a Judge to set aside a decision passed by any of the inferior judicial authorities in a regular suit, when any irregularity or illegality in their proceedings may be brought to his notice by either party, or may transpire incidentally in the course of executing the decree, or in any other miscellaneous proceedings held subsequently thereto.—I am directed to inform you that you are not competent summarily to cancel the decisions of inferior tribunals on the ground of illegality or irregularity, but that you should direct the parties interested to appeal therefrom even although the prescribed period for such appeals should have elapsed.—*Con. No.* 1048, *Cal. C.* 30*th Sept. West. C.* 21*st Oct.* 1836.

27. Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the Judge of Sylhet, that the practice of estimating the value of the property claimed, in appeal, by adding the costs of suit to the original amount, is improper.—*Con. No.* 1190, 14*th Dec.* 1838.

28. Any person dissatisfied with the decision of a Moonsiff, shall be at liberty to appeal from it to the Judge, provided the petition of appeal be presented within thirty days after the date on which copies of the decrees may have been furnished or tendered

to the parties or to their vakeels, in confirmity with Section 41, of this Regulation; a discretionary power however is vested in the Judge of admitting appeals from decisions of the Moonsiffs, although the petitions may not be presented within the prescribed period if the appellant shall shew satisfactory cause for not having before presented the petition.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 1.

29. All petitions of appeal from decisions of the Moonsiffs are to be presented to the Judge of the Zillah or City, in which the Moonsiffs may officiate, and the Moonsiffs are prohibited from receiving any petitions of appeal from their own decisions.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 2.

30. All petitions of appeal from decisions of Moonsiffs are to be presented by the appellant in person, or by one of the authorized vakeels of the Court; and if the appeal shall be admitted, and the appellant and respondent shall not plead their cause in person, their respective vakeels are to be allowed the same fees as in other suits tried before the Judge.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 3.

31. Decisions of the Moonsiffs are not to be set aside for want of form or for irregularity in their proceedings, but on the merits only.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 4.

The Rules above in Section 46, *Cl.* 1, 2, 3, 4, *are made applicable to appeals from the Sudder Amcens by Section* 73, *of the same Regulation.*

32. In all suits originally decided by the Principal Sudder Ameens, an appeal shall lie to the Zillah or City Judge, and a further or special appeal, under the provisions of the Regulations applicable to such cases, to the Sudder Dewanny Adawlut.—*Reg.* 5, 1831, *Sect.* 28, *Cl.* 2.

33. And it is hereby enacted, that whenever a Zillah or City Judge within the said Territories in the exercise of the discretion vested in him by Section 7, Regulation 5, 1831, of the Bengal Code, shall refer for trial to a Sudder Ameen, or Principal Sudder Ameen, a suit within the competency of a Moonsiff to decide, such suit shall be subject to the same rules in regard to Stamp Duties, and to the same rules in regard to appeal as the said suit would have been subjected to had it been received and tried by the Moonsiff in the first instance.—*Act* 25, 1837, *Sect.* 5.

34. Provided always, that when any such suit shall have been decided by a Principal Sudder Ameen, the appeal from such decision shall lie to the Zillah or City Judge, and shall be tried by him only, and that the decision of the Zillah or City Judge on such appeal, shall be final, any thing in the existing Regulations to the contrary notwithstanding.—*Act* 25, 1837, *Sect.* 6.

This enactment is proposed to be rescinded by an Act of which the amended draft is to be considered in the Legislative Council after the 20*th of March,* 1842.

35. And it is hereby enacted, that whenever a Zillah or City Judge within the said Territories shall refer for trial to a Principal Sudder Ameen a suit within the competency of a Sudder Ameen to decide, such suit shall be subject to the same rules in regard to stamp duties, and to the same rules in regard to appeal, as the said suit would have been subjected to, had it been referred to and tried by the Sudder Ameen in the first instance.—*Act* 25, 1837, *Sect.* 7.

36. Any party who may be desirous of appealing from a judgment passed against him subsequently to the 1st February, 1815, by a Sudder Ameen, a Register, or a Judge of any Zillah or City Court, from which a regular appeal may be admissible under the Regulations, shall be at liberty to present his petition of appeal without an

authenticated copy of the decree, to the Judge of the Zillah or City, in which the decision may have been passed. Such petition of appeal shall not be required to contain the specific grounds, or reasons of the appeal, but may state shortly that the party being dissatisfied with the judgment, is desirous of appealing from it. The petition must be written on stamp paper according to the rates and provisions contained in Sections 13 and 14, Regulation 1, 1814, [*now* Reg. 10, 1829,] and must be accompanied by the prescribed security for the eventual costs in appeal.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 2.

37. Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the Judge of Tirhoot, that agreeably to the provisions of Clause 2, Section 8, Regulation 26, 1814, petitions of appeal presented to the Zillah Judge against the decision of the Principal Sudder Ameen, Sudder Ameen, and Moonsiff, in original suits, do not require to be accompanied by a copy of the decree appealed from.—*Con. No.* 1159, 20*th July*, 1838.

38. The specific objections to the judgment and detailed grounds and reasons for preferring the appeal may be stated at the option of the party in the original petition of appeal, or may be subsequently filed in the Court trying the appeal as a separate pleading; in the latter case such pleading is to be written on the stampt paper, and according to the rates prescribed for other pleadings in Section 17, Regulation 1, 1814, [*now* Reg. 10, 1829.]—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 5.

39. The fifth Clause of Section 8, Regulation 26, 1814, which has not been rescinded by Regulation 10, 1829, or any other enactment, provides that the specific objections of a judgment appealed from, if not stated in the petition of appeal, shall be filed as a separate pleading. The value of the stamp to be used for such pleadings is laid down in No. 9, Schedule B, Regulation 10, 1829.—*Con. No.* 556, 28*th May*, 1830, *Par.* 2.

40. The deposit for the pleaders' fees prescribed by Section 23, Regulation 27, 1814, in lieu of the security formerly demanded for such fees, is not required to be furnished with the petition of appeal, but in cases in which a pleader shall be appointed to conduct the appeal, the deposit shall be delivered to the Court by which the appeal is to be tried, [that is, of course, supposing the party wishes to make the deposit, which is optional with him.]—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 4.

41. Under the preceding rules, parties in suits decided in the first instance in a Zillah or City Court, a Provincial Court, or the Sudder Dewanny Adawlut, will be enabled to prefer an appeal from such decision without the necessity of filing an authenticated copy of the decree; but if any party in a suit which may be regularly appealable to a Provincial Court, or to the Sudder Dewanny Adawlut, may be desirous, under the option allowed by the Regulations of presenting his petition of appeal in the Court by which the appeal is to be tried, rather than in the Court by which the decision may have been passed in the first instance, it shall be requisite for such party to file with his petition of appeal an authenticated copy of the decree.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 7.

42. It is hereby enacted, that it shall be lawful for each of the Courts of Sudder Dewanny Adawlut, within the Territories subject to the Presidency of Fort William in Bengal, to direct by an order authenticated by the official signature of the Register of such Court of Sudder Dewanny Adawlut, that the cognizance of any original suit, or of any appeal which may be brought before any Zillah or City Court, subordinate to such Court of Sudder Dewanny Adawlut, shall be transferred to any other Zillah or City Court, subordinate to the same Court of Sudder Dewanny Adawlut.—*Act* 3, 1837, *Sect.* 1.

43. Provided always, that whenever either of the said Courts of Sudder Dewanny Adawlut shall, in the exercise of the power given by the preceding Clause, direct the transfer of the cognizance of any suit, such Court of Sudder Dewanny Adawlut, shall cause the reasons for such transfer, to be recorded on its proceedings.—*Act* 3, 1837, *Sect.* 2.

44. The pleadings in the Courts of those officers, shall be written on paper of the value of four Rupees, wherever it has been or may be resolved to introduce the provisions of Regulation 5, 1831, except in original suits for property not exceeding one thousand Rupees in value or amount, and in cases of appeal from the decisions of Sudder Ameens and Moonsiffs. In such cases, the pleadings shall continue to be written on stamp paper of only one-Rupee value.—*Reg.* 7, 1832, *Sect.* 3.

45. I am directed to inform you that the Court are of opinion that appeals to the Judge from the decisions of Registers and Principal Sudder Ameens not being among the exceptions contained in Section 3, Regulation 7, 1832, the pleadings in *all* such cases should be written on stampt paper of the value of four rupees.—*Gon. No.* 834, *Cal. C.* 4*th Oct. West. C.* 8*th Nov.* 1833, *Par.* 2.

46. Section 2, Regulation 3, 1817, is hereby rescinded; and the exemptions contained in the foregoing Clause [viz. Clause 2, Section 9, of this Regulation] shall not be held applicable to any original suits or appeals of whatever amount which may be instituted in the Zillah or City Courts, subsequently to the date fixed for the operation of this Regulation, whether those suits be tried by the Zillah or City Judges, or be referred by them for trial to the Sudder Ameens or Registers.—*Reg.* 5, 1831, *Sect.* 9, *Cl.* 3.

47. Any person dissatisfied with the decision of a Moonsiff, Sudder Ameen or Principal Sudder Ameen, passed in an original suit, being at liberty under the rules at present in force to appeal from such decision as a matter of right to the Zillah or City Judge; all such petitions of appeal shall be immediately examined by the Serishtadar, or other head native officer of the Judge's Court, and, provided the petition of appeal be written on stamp paper of the proper value, and presented to the Court within the period prescribed by the Regulations, it shall be filed and numbered in the regular register books of the Court. All cases in which any deviation from the existing rules may be observable will be brought to the special notice of the Judge, who will pass such orders thereon as may appear proper.—*Cir. Ord. Cal. and West. C.* 6*th Feb.* 1835, *Par.* 1.

48. The Court observe, that the only exceptions to this rule are cases, in which any deviation may be observable from the established practice of the nature above stated, and which are required by the same paragraph to be brought to the special notice of the Judge, who is to pass such orders thereon as he may think proper.—*Cir. Ord. Cal. and West. C.* 28*th Sept.* 1838, *Par.* 3.

49. Where, therefore, the petition of appeal may be in all respects regular and proper, the Sheristadar, or other head native officer, should immediately certify to that effect, under his signature, on the back of it, and an order should at the same time be passed, directing the original record of the case, or misl, to be placed with the petition of appeal, to enable the Judge when hearing the latter under the rule laid down in Clause 2, Section 2, Regulation 9, of 1831, which has been extended to the Courts of the Zillah and City Judges by Act 7, of 1838, to refer to any part of the proceedings that he may consider necessary with a view to satisfy himself of the correctness or otherwise of the judgment appealed from. The Court observe that in such cases there can be no reason why, under ordinary circumstances, the examination of the papers by the Sheristadar should not be made, and the order, directing the original misl or record to be placed therewith, passed, on the same day as that on which the petition of appeal may be presented, or, at the farthest, on the next Court day.—*Cir. Ord. Cal. and West. C.* 28*th Sept.* 1838, *Par.* 4.

50. The Zillah or City Judge, after referring to the decree in the original record of the suit, shall then admit the appeal, provided that the petition of appeal and the security required shall have been duly presented in the mode above prescribed, within the periods limited for the admission of such appeals under the existing regulations.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 3.

51. For the admission of a regular Appeal, they observe that nothing further is requisite than for you to ascertain, that the prescribed period of Appeal has not expired, and that the petition of Appeal is written on paper of the prescribed Stamp, (vide Circular Order, No. 60, 24th August, 1832.) But after the Appeal has been filed, and is brought on for hearing, either after process having been served on the Respondent, or under the rules of Clause 3, Section 16, Regulation 5, 1831, should it appear to you that the party appealing has had due notice served upon him by the Court of original jurisdiction, and that the Judge presiding in that Court, has decided the suit agreeably to the rules of practice and to the regulations of Government; and further that the reasons of default assigned by the Appellant, are frivolous or groundless; or that he has wilfully neglected to attend in the lower Court; in such case, the Court are clearly of opinion, that the appeal should be dismissed. You will hence perceive that the mere fact of a case having been tried exparte, is not a sufficient ground for either sending it back for retrial, or for proceeding to investigate the pleas of the Appellant to the original suit, provided it has been legally decided by the Court of first instance.—*Cir. Ord.* 12*th March*, 1841, *Par.* 2.

52. I am directed by the Court to request that you will invariably insert, in all decrees passed by you in appeal, the date in which the suit was referred to the Subordinate Court for investigation and trial. You will further be pleased to require the uncovenanted Judges, to insert the same information in their original decisions in such suits.—*Cir. Ord.* 14*th Aug.* 1840.

53. A decree being given for half the amount sued for, and the appellate Court, on the appeal of the defendant, being of opinion that the whole should have been decreed, held that the decree of the lower Court cannot be amended in favor of the plaintiff, unless he has urged objections to it. —*Con. No.* 868, *Cal. C.* 14*th Feb. West. C.* 16*th May,* 1834.

54. A decree is passed in a Zillah Court against several individuals; one of them appeals to the Sudder Court; the rest do not appeal: in deciding this appeal case, is the Sudder Court competent to take up the case as regards the whole of the persons against whom the Zillah decree was passed, should it see reason to do so, or must its proceedings be confined to that part of the decree which affects the rights and interests of the individual appealing? The Court rather incline to the latter opinion, but are desirous of learning the existing practice of the Calcutta Court before adopting it. The rule in such cases would of course be equally applicable to all other appeals, such as those tried by the Judge or Principal Sudder Ameen.—*Con. No.* 997, *Cal. C.* 2*nd Jan. West. C.* 22*nd Jan.* 1836.

55. The Calcutta Court are of opinion that the appellate Courts ought generally to confine themselves to the decision of the objections to the decree made by the parties who appeal; but that, where obviously requisite for the ends of justice, the jurisdiction of the appellate Court may extend to all the interests affected by the decree.—*Con. No.* 997, *Cal. C.* 2*nd Jan. West. C.* 22*nd Jan.* 1836..

56. In appeals from the decisions of the Moonsiffs or Sudder Ameens, the decisions of the Zillah or City Judge shall be final, any thing in the existing Regulations to the contrary notwithstanding.—*Reg.* 5, 1831, *Sect.* 28, *Cl.* 1.

57. Resolved, that the powers vested in the Court of Sudder Dewanny Adawlut by Clause 2, Section 2, Regulation 9, 1831, on the receipt of a petition of appeal from the decision of an inferior Court can be exercised in those cases only in which an appeal is within the cognizance of the Court under the general regulations, and that consequently the Court cannot interfere on the receipt

of petitions of appeal against the decision of a Zillah or City Judge passed by the latter in appeal from the decision of Sudder Ameens and Moonsiffs: the decision of the Zillah or City Judge being in such cases declared final by Section 28, Regulation 5, 1831.—*Con. No.* 688, *West. C.* 27*th April, Cal. C.* 18*th May,* 1832.

SECT. IV.

Periods allowed for Appeals from Uncovenanted to Zillah Judges.

58. And it is hereby enacted, that Clause second, Section 2, Regulation 7, 1832, be repealed, and that in all cases in which an Appeal from the orders or decision of a Principal Sudder Ameen to a Zillah or City Judge is authorized by Law such Appeal shall not be received, unless the same be preferred within the period of thirty days from the date of the order or decision of the said Principal Sudder Ameen to be calculated according to the rules prescribed in Clause ten, Section 8, Reg. 26, 1814, or unless it shall be proved, that the appellant was prevented by circumstances beyond his control from presenting his appeal within the abovementioned period.—*Act* 25, 1837, *Sect.* 9.

59. The period for preferring an appeal from the decisions of a Sudder Ameen or Moonsiff, shall be limited as heretofore to thirty days, the respective periods in this instance as in the case of the appeals specified in the two preceding Clauses, being calculated according to the rule laid down in Clause tenth, Section 8, Regulation 26, 1814.—*Reg.* 7, 1832, *Sect.* 2, *Cl.* 3.

60. A discretionary power however is vested in the Judge of admitting appeals from decisions of the Moonsiffs, although the petitions may not be presented within the prescribed period if the appellant shall shew satisfactory cause for not having before presented the petition.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 1.

61. The Court observe that the provisions of Clause 6, Section 45, Regulation 23, of 1814, were considered necessary to check irregularities, in the decisions of the Moonsiffs of the old system, but are inapplicable to those appointed under Regulation 5, 1831, who are considered to be persons of superior respectability and qualifications, and have on that ground been vested with higher powers. Their decisions have been placed by the general rules contained in Section 22, of that Regulation and Section 7, Regulation 7, 1832, on the same footing as those of other Courts, consequently in the opinion of the Court no appeal is admissible from them, notwithstanding any irregularity or error, after the lapse of the prescribed period, unless good and sufficient cause be shewn for the delay which may have occurred in excess of that period.—*Con. No.* 979, *Cal. C.* 11*th Sept. West. C.* 2*nd Oct.* 1835, *Par.* 3.

62. It is hereby provided that the period of three months, which is limited by the existing regulations for appeals from the decisions of the Zillah and City Courts to the Provincial Courts of Appeal, and from the decisions of the latter Courts to the Court of Sudder Dewanny Adawlut, as well as the period of one month limited for appeals from the decisions of the Registers and native Commissioners to the Judges of the Zillah and City Courts, and the period of six months limited for receiving appeals from the judgments of the Courts of Sudder Dewanny Adawlut to his Majesty in Council, shall be calculated respectively, from the date on which a copy of the decree appealed from may have been delivered, or tendered in open Court, to the appellant or his vakeel, as directed by the regulations abovementioned; or, in the event of neither the party or his vakeel being present to receive a copy of the decree, when ready to be delivered to him,

the calculation shall be from the date on which the cause of the non-delivery of the decree may be noted upon the copy prepared for delivery, under the official signature of the Judge, Register, or native Commissioner as provided for by the regulations in such cases. —*Reg.* 2, 1805, *Sect.* 8.

63. The respective periods limited by the Regulations for the admission of appeals in such cases, shall be calculated from the date on which the decision may have been passed; excluding from the calculation of such periods, the interval, which may have elapsed in each instance between the date on which the requisite stampt paper may have been furnished by the party to the Court, and that on which the copy of the decree may have been rendered or delivered to the party in open Court in the mode prescribed by the Regulations. The Courts will in all cases be enabled to ascertain such interval by the endorsements on the copy of the decree required to be made under Clause ninth of this Section.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 10.

64. It is hereby declared that the foregoing limitations shall be strictly adhered to, notwithstanding the intervention of Hindoo or Moosulman holidays, or the established vacations, within the prescribed periods for preferring appeals. When such periods however may expire during an adjournment of the Court, on account of any holiday or vacation, no default shall attach to the appellant, provided his petition of appeal be presented immediately on the re-opening of the Court.—*Reg.* 7, 1832, *Sect.* 2, *Cl.* 4.

65. The Court of Sudder Dewanny Adawlut have had before them your officiating Judge's letter, dated the 20th ultimo, with its Persian enclosure, stating that it has been the practice of your Court, in calculating the periods limited for admitting regular appeals preferred direct to the Court, not to allow the deduction of the interval, between a party furnishing the prescribed stamp paper in the Zillah Court, and the copy of the decree being tendered or delivered to him, as prescribed by Clauses 7, 8, 9, 10, Section 8, Regulation 26, 1814; and stating also his opinion, that it was decidedly intended by Clause 10, to provide for the deduction in question. In reply, I am desired to observe, that the Court entirely concur with your officiating Judge in the construction which he has adopted, and that the deduction in question should be considered applicable to all, regular as well as summary and special appeals.—*Con. No.* 413, 3*rd March*, 1826.

66. Held by the majority of the Western Court, in concurrence with the majority of the Calcutta Court, that a party having applied for review of judgment, under the provisions of Clause 2, Section 4, Regulation 26, 1814, in a case open to appeal, but in which no appeal may have been preferred, and such application having been rejected, is not entitled of right to the deduction of the time, during which his application for a review was pending before the lower Court, in calculating the period allowed him under the Regulations for preferring a regular appeal from the original decision; but that where such party may plead as the reason of his not having presented his petition of appeal within the period prescribed by law, that the case was pending before the lower Court or on an application for a review of judgment, it will be the duty of the appellate Court to take such plea into consideration, and to admit it or not, according as, under all the circumstances of the case, it might appear just and proper, in like manner with any other cause assigned for delay.—*Con. No.* 1127, 2*d Feb.* 1838.

SECT. V.

Power of the Zillah Court to confirm the decisions of the Lower Courts, or to remand them for reconsideration, without summoning the Respondent.

67. Whenever an appeal shall be preferred to a Zillah or City Judge from the

decision of any Moonsiff, Sudder Ameen, or Principal Sudder Ameen, it shall not be necessary to serve any process on the respondent in the first instance, and if, after the perusal of the record of the original suit and the petition of appeal in the presence of the appellant or his vakeel, the Judge shall see no reason to alter the decision appealed from, it shall be competent to him to confirm the same, and to communicate the order for confirmation through the Court from whose judgment the appeal was made to the respondent, with a view to enable such respondent to take immediate measures for the execution of the decree.—*Reg.* 5, 1831, *Sect.* 16, *Cl.* 3.

68. Doubts appearing to be entertained as to the sense in which the word "record" in Clause 3, Section 16, Regulation 5, of 1831, is to be understood; I am directed to inform you that it has been ruled by the Courts of Sudder Dewanny Adawlut that the term in question does not refer to the roobukaree of decision alone, but to the whole of the proceedings or misl. The enactment, however, was not intended to require the Judge to read through every paper in each case, but merely such part of the misl or record of the original suit as may be necessary to satisfy him of the correctness of the judgment appealed from.—*Cir. Ord. Cal. and West. C.* 19*th Aug.* 1836.

69. In the trial of appeals, or on the hearing of any petition of appeal from the decision or orders of any Court of inferior jurisdiction, if a single Judge of the Sudder Dewanny Adawlut shall be of opinion that no sufficient ground has been shewn to impugn the correctness or justness of such decision or order, it shall be competent to such single Judge, without reference to the order of the file, to confirm the same without requiring the attendance of the opposite party, and with or without a revision of the whole proceedings, as the nature of the case may appear to require. On the other hand, if a single Judge shall be of opinion, that the decision or order appealed against ought to be altered or reversed, as being manifestly unjust, or at variance with some Regulation in force, or in opposition to the Hindoo or Mahomedan Law, or other Law applicable to the case, or as having been passed without sufficient investigation of the merits, or as grounded on an assumption obviously erroneous or irrelevant with reference to the points at issue, it shall likewise be competent to a single Judge to issue an injunction pointing out the irregularity, illegality, or other defect apparent in the proceedings, decision, or order appealed against, and requiring that the Court by which the same may have been held or passed shall revise the case, and proceed thereon, in such manner as may appear conformable to justice and to the Regulations.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 2.

70. It is hereby enacted, that it shall be lawful for a Judge of any Zillah or City Court, within the territories subject to the presidency of Fort William in Bengal, to exercise the powers vested in a single Judge of the Sudder Dewanny Adawlut, by Clause 2, Section 2, Regulation 9, of 1831, of the Bengal Code.—*Act* 7, 1838.

71. The Judge, as soon as practicable, and as provided in Clause 2, Section 2, Regulation 9, of 1831, without reference to the order of the file, should then proceed in the presence of the appellant, or his vakeel, to revise the petition of appeal and such parts of the record as he may deem necessary; and if, upon a full consideration thereof, he should see no reason to impugn the correctness or justness of the decision appealed from, he should confirm the same, and forthwith communicate the order for confirmation, as directed in Clause 3, Section 16, Regulation 5, of 1831, through the Court, from whose judgment the appeal was made, to the opposite party, with a view to enable such party to take immediate measures for the execution of the decree.—*Cir. Ord. Cal. and West. C.* 28*th Sept.* 1838, *Par.* 5.

72. An instance having been brought to the Court's notice in which it appears to be the practice, on the filing of a petition of appeal, for the Judge to issue a notice to the appellant requiring him, after the expiration of three days, to continue in attendance, and be present either in person or by vakeel on the day on which his petition may be taken up, under penalty of the case being dismissed or struck off the file, I am directed to request your particular attention to existing instructions, indicative of the proper course to be followed by the Judge in taking up petitions of appeal under Clause 3, Section 16, Regulation 5, of 1831, and Act 7, of 1838, when the petitioner may not be in attendance in person or by vakeel.—*Cir. Ord. Cal. and West. C. 23rd Aug.* 1839, *Par.* 1.

73. The Court observe that the Circular Order, No. 60, of the 24th August 1832, having already ruled that appeals preferred under the provisions of Section 16, Regulation 5, of 1831, must be considered as regular appeals, and be at once admitted on the file, even though the respondent may not be summoned in the first instance, the rules laid down in the Circular, No. 33, dated 5th November 1812, have consequently strict application to all such cases, and should be duly observed on all occasions of the appellant not being in attendance at the time of his petition of appeal being brought to a hearing.—*Cir. Ord. Cal. and West. C. 23d Aug.* 1839, *Par.* 2.

74. In such cases, the Court observe, the order of the Judge, instead of merely stating the appeal of the appellant to have been rejected or dismissed, should go on to declare the decree of the lower Court to have been confirmed. The Court do not however, consider it necessary for the Judge to draw out a formal decree, by which term they mean a decree containing a recapitulation of the proceedings of the Court of original jurisdiction. It will be sufficient for him to record a brief order in confirmation of the decision appealed from, in which he should confine himself to a succinct abstract of the grounds urged by the appellant against the decision of the lower Court, in order that, in cases open to a special appeal, the Court, to which such appeal may be preferred, may see at once whether the appellant has brought forward any new pleas, not adduced before the Judge, or merely those which have already been over-ruled by that officer in the regular appeal. As such order must, however, be looked upon in the same light, and carry with it the same force as a regular decree, copies of it, when applied for by either of the parties, should be required to be taken on stampt paper of the same size and value as prescribed for copies of decrees of the Judge's Court.—*Cir. Ord. Cal. and West. C. 28th Sept.* 1838, *Par.* 6.

75. You ask whether petitions of appeal from the decisions of Sudder Ameens and Moonsiffs are to be considered as miscellaneous petitions, until the Judge, after the perusal of the decree and other papers, shall determine that it shall be admitted, and a notice be served on the respondent, and shall direct that the appeal be brought on the file. On this point I am directed to observe, that the rule contained in Clause 3, Section 16, Regulation 5, 1831, alters the rules before in force no further than to allow the Judge to confirm the decision of the lower Court, without calling on the respondent to attend: consequently, the same mode of practice is to be followed as heretofore, except, that as no costs can be incurred by the respondent until he be summoned to answer to the petition of appeal, security for costs need not be demanded from the appellant before the respondent is called upon to answer. A previous perusal of the petition of appeal and decree is not necessary to the admission of the appeal; nothing further being required than to see that the prescribed period of appeal has not expired, and that the petition of appeal is written on paper bearing the prescribed stamp. The practice therefore adopted by you in the disposal of such petitions is erroneous.—*Cir. Ord. Cal. and West. C. 24th Aug.* 1832.

76. I am directed to inform you that an appellant should not be allowed to bring forward additional proof in support of his claim, before the petition of appeal and decree have been read over by the Judge.—*Con. No.* 790, *West. C. 10th May, Cal. C. 7th June,* 1833.

77. All first appeals must be admitted as a matter of right, provided they be preferred with-

Court, prior to a perusal of the original proceedings, is to be considered, not as a rejection, but a final dismissal of the appeal on consideration of its merits.—*Con. No.* 742, *Cal. and West. C.* 14*th Dec.* 1832.

78. The Court direct me to observe that it requires a positive enactment to alter the rules prescribed for the admission of appeals, which allow the petitions to be filed without the mojibaat or reasons for appealing; so that they are not competent to authorize you to proceed in the manner suggested in your second paragraph.—That is, to compel appellants to file copies of decrees and reasons of appeal with their petitions of appeal.—*Con. No.* 863, *Cal. and West. C.* 14*th Feb.* 1834, *Par.* 2.

79. I am directed by the Court to acknowledge the receipt of your letter of the 2d instant, requesting the opinion of the Court regarding cases of appeal decided under the provisions of Clause 3, Section 16, Regulation 5, 1831.—In reply to your first question, I am directed to inform you that appeal cases so disposed of should be viewed as regular appeals, decided on their merits after a perusal of the record, as required by the Regulation, and should be entered as such in the monthly statements.—*Con. No.* 878, *West. C.* 11*th April, Cal. C.* 2*d May*, 1834.

SECT. VI.

Rules regarding Stamps, Vakeel's Fees, and Costs in Appeal Cases decided without summoning the Respondent.

80. With reference to the provisions of Section 2, Regulation 9, 1831, the following rules of practice are agreed to by the Court.—*Con. No.* 675, *Cal. and West. C.* 17*th Feb.* 1832, *Par.* 1.

81. The Court are of opinion that if the decision of the lower court be confirmed without the attendance of the opposite party, the appellant is not entitled to receive back any proportion of the value of the stamp paper on which his petition of appeal is written; and that the appellant's vakeel is entitled to the whole of the fee deposited by the appellant.—*Con. No.* 675, *Cal. and West. C.* 17*th Feb.* 1832, *Par.* 3.

82. If the attendance of the opposite party shall be required, and the said party shall, nevertheless, file an answer to the petition of appeal through a vakeel of the Court, the fee of the said vakeel shall be payable by the opposite party himself.—*Con. No.* 675, *Cal. and West. C.* 17*th Feb.* 1832, *Par.* 4.

83. If an injunction be issued for a revision of the decision, the Court are of opinion, that in conformity to the rule prescribed in Section 8, Regulation 19, 1817, the stamp duty paid by the appellant on his petition of appeal should be returned to him, and the fees of the vakeel of the appellant and respondent (if attending) limited to a sum not exceeding one-fourth of the established fee.—*Con. No.* 675, *Cal. and West. C.* 17*th Feb.* 1832, *Par.* 5.

84. The vakeels are entitled to the full remuneration awarded them by the Regulations in cases regularly decided on their merits under the provisions of Regulation 5, 1831, Section 16, Cl. 3.—*Con. No.* 878, *West. C.* 11*th April, Cal. C.* 2*d May*, 1834, *Par.* 3.

85. No portion of the stamp duty should be returned in such cases.—*Con. No.* 878, *West. C.* 11*th April, Cal. C.* 2*d May*, 1834, *Par.* 4.

86. The Court having had instances before them in which the Zillah Judges, on confirming in appeal the decision of the lower Court without summoning the respondent, have ordered the appellant to pay the respondent's costs, and respondent's vakeel to receive from the treasury the amount of his fees in deposit, direct me to take this opportunity of observing, that such order is irregular. On this point I am desired to call your attention to the Court's Circular letter of the 24th August, 1832, No. 60, which expressly declares that as no costs need be incurred by the res-

pondent until he be summoned to answer the petition of appeal, it is not necessary to demand security for costs from the appellant before the respondent is called upon to answer.—*Cir. Ord. Cal. and West. C. 28th Sept.* 1838, *Par.* 8.

87. It is not, of course, intended by the foregoing remark to prohibit the attendance of the respondent either in person, or by vakeel, during the perusal of the petition of appeal in cases of the above description, but merely to point out that when he may attend of his own accord he must do so at his own cost, defraying himself any expenses he may incur either in providing himself with a vakeel or otherwise, and which cannot be charged to the appellant, and any mention, therefore, in regard to the payment of costs is unnecessary; though it would be proper to specify, at the foot of the Judge's order, the cost incurred by the appellant in the appeal, and which necessarily fall on him in the first instance, so that in the event of the decision of the Judge's Court being reversed or modified on a special appeal, provision may be made for the payment of the same.—*Cir. Ord. Cal. and. West. C. 28th Sept.* 1838, *Par.* 9.

88. I am further directed to observe that in cases of the above nature where the appellant may have filed a copy of the decree of the lower Court with his petition for a regular appeal, the same should be returned to him on the rejection of his appeal; and the Court have resolved that, in cases open to a special appeal, the appellant shall be allowed to file such copy with his application for the admission of a special appeal, accompanied by a copy of the appellate Court's order rejecting his appeal, and affirming the decision of the lower Court.—*Cir. Ord. Cal. and West. C. 28th Sept.* 1838, *Par.* 7.

89. No final decision of the Court can be passed against a respondent until he has been summoned in the usual course.—*Con. No.* 944, *West. C.* 10*th April, Cal. C.* 1*st May*, 1835.

For the interest to be awarded, when confirming the decree of a lower Court, vide Chap. 4, *Rule* 22.

SECT. VII.

Reference of Appeals from the decisions of Moonsiffs and Sudder Ameens to Principal Sudder Ameens.

90. In modification of this provision, however, it is hereby enacted, that it shall not be competent to a Zillah or City Judge to refer any appeal for trial to a Sudder Ameen, even though he may have been specially empowered under the rule above cited, but whenever it may appear to any such Zillah or City Judge that his file is so heavy as to make it impracticable for him to dispose of all the appeals which may be pending with reasonable dispatch, he shall make a special report of the case to the Sudder Dewanny Adawlut, soliciting permission of that authority to refer such specified number of appeals from the decisions of Moonsiffs or Sudder Ameens, as he may deem necessary for trial, to the Principal Sudder Ameen attached to his Court, to be appointed under the rules prescribed in Section 17 of this Regulation, in which case it shall be competent to the Court of Sudder Dewanny Adawlut to comply with the application for the transfer, and the rules prescribed in the preceding Clause [Clause 1,] shall be held applicable to such appeals.—*Reg.* 5, 1831, *Sect.* 16, *Cl.* 2.

The Rules thus referred to are those in Reg. 24, 1814, *Sect.* 7, *Cl.* 4, *and Sect.* 9, *Cl.* 4.

91. [Regulation 24, 1814, Section 7, Clause 4, ordains that in the trial of such appealed suits, the Sudder Ameens shall be guided by Regulation 23, 1814, Section 75, and that their decisions shall be final, unless the Zillah Judge see cause to admit a second or special appeal—Regulation 23, 1814, Section 75, directs that the Sudder Ameens shall keep a separate Register of

the suits thus referred to them in appeal, and not confound them with those referred to them for trial in the first instance; and that the Sudder Ameens shall try such appeals in conformity with the rules prescribed for the trial of appeals by the Zillah Judges.]

92. [Regulation 24, 1814, Section 9, Clause 4, ordains that the Register shall try suits referred to him in appeal by the Zillah Judge, and that his decision shall be final, unless the Zillah Judge should see sufficient reason for admitting a second or special appeal.]

93. The Zillah and City Judges are expected, as far as may be practicable and consistent with their other duties, to revise all appeals from the decisions of the Sudder Ameens and Moonsiffs, or to retain a certain portion of the decisions passed by each officer on their own files, with a view to maintain a proper check over their proceedings. Whenever however the accumulation of the petitions of appeal from the decisions of Moonsiffs and Sudder Ameens, or the general arrears of business depending in any Zillah and City Court, may render it impracticable for the Judge of that Court to revise these appeals with sufficient promptitude and despatch, the Judge will from time to time obtain the sanction of the Court of Sudder Dewanny Adawlut, agreeably to Clause 2, Section 16, Regulation 5, 1831, and in the form prescribed by Circular Order of 19th October 1832, to refer, as may appear necessary and proper, a specified number of these cases to the Principal Sudder Ameen attached to his Court for trial.—*Cir. Ord. Cal. and West. C. 6th Feb.* 1835, *Par.* 2.

94. In submitting such applications the Judge will accompany the same with a statement in the following form, and when he may have retained any original suits on his own file, he will state his reasons for so doing, instead of making them over, according to their amount or value, to the subordinate judicial functionaries of his district.

Before the Judge.

Number.

Original Suits, ...
Appeals from the decisions of Collectors and Principal Sudder Ameens, ...
Appeals from the decisions of the Sudder Ameen, ...
Appeals from the decisions of Moonsiffs, ...
Miscellaneous cases, ...

Total, ..

Before (name) Principal Sudder Ameen.

[*If there be more than one, the state of the file of each must be given separately.*]

Original suits exceeding in value 1,000 rupees, ...
Original suits not exceeding 1,000 rupees (with a brief statement of the reasons of their not being referred to the lower Courts,) .....
Appeals from the decisions of the Sudder Ameen, ...
Appeals from the decisions of Moonsiffs, ...
Miscellaneous cases, ...

Total, ..

—*Cir. Ord. Cal. C. 7th Dec. West. C.* 21*st Dec.* 1838.

95. It is not considered by the Court indispensible that the Zillah or City Judge should, in every case, peruse the record of the original suit and the petition of appeal, or in any way revise the proceedings previous to the transfer of these cases to the Principal Sudder Ameen, whose judgments will be of course open to a special appeal to the Judge, provided there shall appear sufficient reason for such a proceeding, under the rules of Section 2, Regulation 26, 1814, and other provisions applicable to the admission of special appeals.—*Cir. Ord. Cal. and West. C. 6th Feb.* 1835, *Par.* 3.

96. In the trial and decision of original suits and appeals referred to them, the Principal Sudder Ameen shall be guided by the rules established for the conduct of business in the Courts of the Sudder Ameens. And in points not expressly provided for by those rules, they shall observe as nearly as may be practicable the rules prescribed in the Regulations for the guidance of the Zillah and City Courts.—*Reg.* 5, 1831, *Sect.* 18, *Cl.* 4.

97. The Court are of opinion that a Principal Sudder Ameen, authorized to try appeals from the decisions of Moonsiffs, may refer a case to a Moonsiff for further investigation. Should he be of opinion that a Moonsiff has improperly nonsuited a case, he should return it to the Judge with his opinion that the Moonsiff should be directed to readmit it and try it on its merits.—*Con. No.* 1023, *Cal. C. 8th July, West. C. 5th Aug.* 1836.

98. It having been ruled by the Court that Principal Sudder Ameens, in trying appeals from the decisions of Sudder Ameens and Moonsiffs, referred to them by the Judge with the sanction of the Court of Sudder Dewanny Adawlut, have no authority to remand the cases back to the Courts by which they were originally determined, for re-trial and restoration to their former number on the file, I am directed to convey to you, for your information, and for communication to the Principal Sudder Ameens subordinate to you, the following directions.—*Cir. Ord. Cal. and West. C.* 14*th June*, 1839, *Par.* 1.

99. Whenever, in the trial of appeals of the nature above described, a Principal Sudder Ameen may be of opinion that the decision of the lower Court should be annulled, and the suit remanded, with a view to its being replaced on the original file and tried *de novo*, he shall record the ground of his opinion in a proceeding, and submit it with the papers of the suit for your orders, retaining it in statement No. 1 of his Court.—*Cir. Ord. Cal. and West. C.* 14*th June*, 1839, *Par.* 2.

100. On the receipt of such applications, you will enter the reference under heading No. 16, Column 3, Statement No. 2 of your Court, and after a consideration of the grounds set forth in the proceedings of the Principal Sudder Ameen, you will return the case to that officer with directions either to remand it to the Court by which it was originally decided, or to dispose of it himself. —*Cir. Ord. Cal. and West. C.* 14*th June*, 1839, *Par.* 3.

101. This rule is not to be considered to preclude the Principal Sudder Ameen from directing the lower Court to make any further investigation which he may consider requisite, with a view to his deciding the suit himself.—*Cir. Ord. Cal. and West. C.* 14*th June*, 1839, *Par.* 4.

102. In the event of your sanctioning the remand, the case should be entered in Column 9, Statement No. 1, of the Principal Sudder Ameen, and also in Column 4, Statement No. 1, of the Court of first instance, as prescribed in the remarks on Column 4, Statement No. 1, on the subject of "Cases remanded for re-trial" contained in the rules accompanying the Circular Orders of the 21st December last.—*Cir. Ord. Cal. and West. C.* 14*th June*, 1839, *Par.* 5.

103. It having been brought to the notice of the Court, that some of the Principal Sudder Ameens, in disposing of appeals from the decisions of Sudder Ameens and Moonsiffs, referred to them for trial under the provisions of Clause 2, Section 16, Regulation 5, 1831, have been in the habit of exercising, at their discretion, the powers vested in the Judge by Clause 3, of that Section; I am directed to inform you that it has been ruled by the two Courts of Sudder Dewanny Adawlut, that Clause 3, of the Section cited is not applicable to appeals referred for trial to the Principal Sudder Ameens under the preceding Clause, and to request that you will prohibit the practice, if it obtains in the district under your control.—*Cir. Ord. West. C.* 17*th March, Cal. C.* 21*st April*, 1837.

For the interest to be awarded when confirming the decree of a lower Court, vide Chap. 4, *Rule* 222.

104. In the trial of original suits and appeals, the Principal Sudder Amcens are

enjoined to conform strictly to the mode of procedure directed to be observed by Section 10, Regulation 26, 1814, before any exhibits are filed or witnesses summoned in support of the allegations of either of the parties.—*Reg.* 5, 1831, *Sect.* 21.

105. I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, and in reply to inform you that, as the provisions of Clause 2, Section 11, Regulation 2, 1821, have been extended by Section 17, Regulation 7, 1832, to Principal Sudder Ameens and Sudder Ameens stationed at other places than the station of the Zillah or City Court; and as it has been declared by the Circular Order of 6th February, 1835, not necessary for the Judge to revise all appeals prior to their being referred for trial to a Principal Sudder Ameen; the Court are not aware of any objection to your authorizing the Principal Sudder Ameen at Furreedpore to receive appeals, as well as original suits, in the manner prescribed by the Clause above cited.—*Cir. Ord. Cal. C.* 18*th Sept.* 1835, *West. C.* 22*nd Jan.* 1836.

SECT. VIII.

Regular Appeals to the Sudder Court from Zillah Courts and of Principal Sudder Ameens in cases above 5000 *Rupees.*

106. In all suits originally decided by the Zillah or City Judge, an appeal shall lie to the Sudder Dewanny Adawlut.—*Reg.* 5, 1831, *Sect.* 28, *Cl.* 3.

107. Into whatever Zillah or City the Governor General in Council, under the powers vested in him by Section 2, Regulation 5, 1831, has extended or shall see fit to extend the provisions of that Regulation, the period for preferring a regular or special appeal from the decision of the Judge of the Zillah or City to the Sudder Dewanny Adawlut shall be the same as that prescribed by Section 10, Regulation 6, 1793, for appeals from the decisions of the Provincial Courts, namely three calendar months.—*Reg.* 7, 1832, *Sect.* 2, *Cl.* 1.

108. And it is hereby enacted, that in all suits exceeding the amount or value specified in Clause First, Section 18, Regulation 5, 1831, which shall, under the authority of Section 1, of this Act, be referred to a Principal Sudder Ameen the appeal from the decision of such Principal Sudder Ameen shall be directed to the Court of Sudder Dewanny Adawlut, and shall be conducted in all respects according to the same rules as if it were an appeal from the decision of a Zillah Judge to the said Court of Sudder Dewanny Adawlut, and any application for a review of judgment on such decision shall be made by the said Principal Sudder Ameen directly to the said Court of Sudder Dewanny Adawlut, and shall be conducted in all respects as if it were an application for a review of a decision of a Zillah Judge.—*Act* 25, 1837, *Sect.* 4.

109. Held on a reference from the Judge of Mymensingh, that in a suit laid at a sum exceeding 5000 Rupees, but in which the Principal Sudder Ameen gives a decree for a sum less than that amount, the appeal from the Principal Sudder Ameen's decree lies to the Sudder Dewanny Adawlut.—*Con. No.* 1282, *Cal. C.* 7*th Aug. West. C.* 26*th Aug.* 1840.

110. On the receipt of a petition of appeal to the Sudder Dewanny Adawlut from a decision passed in an original suit, you will proceed as directed in Section 10, Regulation 6, 1793, and transmit it as soon as practicable, with any documents that may be filed with it, to this Court, under cover of a certificate, and accompanied by a *roobukaree*, stating the names of the parties, with an abstract of the decree, the date of the decision, and the date on which the petition of appeal was

presented, and the grounds for considering it to have been filed within the prescribed period.—*Cir. Ord. Cal. and West. C. 28th June*, 1833, *Par.* 2.

111. You will at the same time cause a written notice to be served upon the appellant, informing him that you have forwarded the petition to the Sudder Dewanny Adawlut, and that if he do not proceed in the appeal within six weeks after it may be filed in that Court, the appeal will be dismissed, unless he shall shew reasonable cause to the satisfiction of the Court for not having proceeded in it. This notice, with a certificate that it has been duly served, is also to be forwarded to the Court.—*Cir. Ord. Cal. and West. C. 28th June*, 1833, *Par.* 3.

112. Each petition of appeal should be forwarded with a separate proceeding and certificate.—*Cir. Ord. Cal. and West. C. 28th June*, 1833, *Par.* 4.

113. If any person shall deem himself aggrieved by the decree of a Provincial Court of Appeal that may be passed subsequent to the 1st May, 1793, for land or other real property being lakheraje (exempted from the payment of revenue to Government) the annual produce of which shall exceed one hundred Sicca Rupees; or for any Zemindary, independant talook, or other landed estate, being malguzarry (paying revenue to Government) where the produce shall exceed one thousand Sicca Rupees per annum, or for any dependant talook, the annual produce of which shall be more than one thousand Sicca Rupees; and in all other cases where the decree shall be for a sum of money, or personal property, or real property not of the descriptions before mentioned, the amount or value of which shall exceed one thousand Sicca Rupees, such persons shall be at liberty to appeal from the decision to the Dewanny Adawlut, by petition of appeal. The petition is to state (respect being had to the matter decreed) the annual produce of the land whether Lakheraje or Malguzarry, the sum of money, or the value of the property which may be decreed, the name of the person in whose favor the decree may be given, the Court in which it may have been passed, when it was made, what was decreed by it, and whether the decree has been executed; and is to assign some cause, special or general, for appealing from the decision. The petition is to be accompanied with an attested copy of the decree of the Provincial Court of Appeal, or by a written declaration signed by the party desirous to appeal, or his vakeel, that ten days after the decision was passed, he applied to the Court for a copy of the decree, and was denied it. The petition is to be presented to the Court in which the decree appealed against may have been passed, or to the Sudder Dewanny Adawlut, within three calendar months after the day on which the decree may be given. But it shall nevertheless be permitted to such person, to prefer his petition of appeal to the Sudder Dewanny Adawlut, after the expiration of the three months, and the Court are authorized to admit the appeal, provided the petitioner can show just and reasonable cause to their satisfaction for not having preferred it within the limited period. But whenever the Sudder Dewanny Adawlut may admit or reject an appeal, which may be preferred to them after the limited time, they are to enter upon their proceedings their reasons at large for so doing, and in admitting such appeals, they are to observe the caution prescribed in Clause Second, Section 9, with regard to the trial or admission of the appeals therein alluded to, after the limited period.—*Reg.* 6, 1793, *Sect.* 10.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 10, *Cl.* 8.

114. When the securities hereby required shall have been entered into, the senior Judge of the Court is immediately to endorse on the petition in his own hand writing, the day of the month and the year in which it may be presented, and sign it with his

name, and cause to be written in the margin of the record immediately opposite to the decree of the Court, the word "appealed," and the Court are to transmit the petition to the Sudder Dewanny Adawlut. The Court is at the same time to direct notice to be given to the appellant in writing, that within fifteen days, the proceedings held in the cause appealed will be certified to the Sudder Dewanny Adawlut, and that if he shall not proceed in the appeal within six weeks after it may be filed in that Court, the appeal will be dismissed, unless he shall shew reasonable cause to the satisfaction of the Court for not having proceeded in it.—*Reg.* 6, 1793, *Sect.* 10.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 10, *Cl.* 8.

115. The rules contained in Section 13, Regulation 5, and in Section 11, Regulation 6, 1793, are hereby modified. In transmitting the record in cases of appeal as therein provided, it shall be sufficient for the Zillah or City, or Provincial Courts, as the case may be, to transmit the original pleadings, depositions, and exhibits filed in the case with a list of them, and it shall not be necessary, in the first instance, to transmit the applications and processes for the attendance of witnesses, the returns of the Nazir and other miscellaneous papers and proceedings not material to the trial of the appeal. Provided however, that it shall at all times be competent to the Court to which the appeal shall have been made, to call for such miscellaneous papers, or to direct the parties to produce copies of the same, should the Court think it necessary to refer to them. —*Reg.* 9, 1831, *Sect.* 8.

116. All petitions for regular appeals from decisions of Principal Sudder Ameens, in suits above the value of 5,000 Rupees, shall be made direct to this Court, or to the Principal Sudder Ameens. In the latter case the Principal Sudder Ameen, in the event of the appeal having been preferred within the prescribed period,* shall transmit as soon as practicable, to the address of the Register of the Sudder Court, the petition of appeal with any documents filed therewith, under cover of a Certificate bearing his official seal and signature, and accompanied by a roobukaree stating the names of the parties, with an abstract of the decree, the date of decision, and the date on which the petition of appeal was presented. The Principal Sudder Ameen will abstain from causing copies of the original papers to be made, as well as from transmitting the originals, until so directed by a precept from the Sudder Court, when he will forward them with the precautions against injury from wet enjoined by the Court's orders noted in the mnrgin,† depositing the copy of the record required to be made, for safe custody, in the record office of the Judge.—*Cir. Ord. 6th Jan,* 1840.

117. The Court of Sudder Dewanny Adawlut having ruled that petitions of appeal from decisions passed by you on original suits, (or by the Principal Sudder Ameen under Act 25, of 1837,) need not be accompanied, when presented to you, by a copy of the decree appealed against, it is necessary to modify the certificate No. 1, prescribed by the Circular Order the 24th October 1834, I am accordingly directed to request that in using that form on such occasions, you will in future strike out the three heads noted in the margin‡ of the first paragraph of the certificate.—*Cir. Ord. Cal. and West. C. 24th Aug.* 1838, *Par.* 1.

118. You will be pleased to observe that, under the Construction alluded to, petitions of appeal in cases of the description in question must be presented to you (or to the Principal Sudder Ameen, as the case may require) within three months from the date of the decision, without any deduction whatever; otherwise it will not be competent to you (or to the Principal Sudder Ameen,)

* Vide Circular, No. 16, dated 24th August, 1838.

† Nos. 67 and 70, dated 19th Sept. 1823, and 21st May, 1824.

‡ "Copy of it applied for on the ——— Stampt paper furnished on the ——— Copy of the decree delivered or tendered on the ———"

to certify that they have been duly preferred.—*Cir. Ord. Cal. and West. C. 24th Aug.* 1838, *Par.* 2.

119. The Court having observed, that the umlah of the lower Courts sometimes keep the stamp paper, supplied by the parties for copies of decrees, for months, without preparing the copies required, thereby unnecessarily prolonging the period allowed for appealing; direct me to request that you will take care that the officers of your Court make no unnecessary delay in the execution of this part of their duty, and that you will cause the serishtadar of your Court to state, by an endorsement on the back of the copy furnished, the information required by Clause 9, Section 8, Regulation 26, of 1814, with an explanation of the cause of delay, whenever the copy cannot be furnished within one month from the date of the stamp paper being supplied.—*Cir. Ord. Cal and West. C. 18th May*, 1832.

120. In order to provide against the possible loss of the original proceedings in cases appealed to this Court in their transmission, the Court deem it necessary that copies be retained of all original papers so sent; but with regard to the papers which should be sent, I am directed to refer you to Section 8, Regulation 9, 1831, and to observe that the Court's Circular Order of the 18th May last, directs that the original papers shall not be copied or sent with petitions of appeal filed in the lower Court under the rule contained in Section 8, Regulation 26, 1814, until called for by a precept.—*Con. No.* 742, *14th Dec.* 1832, *Par.* 1.

121. I am directed by the Court to forward the accompanying printed forms of two certificates, to be submitted under the Circular Order of the 28th June, 1833, with petitions of appeal presented to your Court, and to request that you will be particularly careful that the roobukaree accompanying the first certificate contains all the information called for by the 2nd paragraph of the above-mentioned circular.—*Cir. Ord. Cal. C. 24th Oct. West. C. 14th Nov.* 1834, *Par.* 1.

122. I am further directed to request, that you will, with a view to prevent any mistakes or irregularities in the transmission of these papers, indent on this office for blank forms, and that you will fill up the endorsements of the certificates, when requisite, in the manner indicated on those which accompany this letter. In entering the number of enclosures, you will number each petition, roobukaree, notice, &c. separately, although it may be written on more than one sheet. Some of the Zillah Judges are in the habit of forwarding roobukarees drawn out on separate sheets of paper and written on both sides: as this practice however renders the filing of these documents extremely inconvenient, I am directed to request, that if it obtains in your Court, you will discontinue it, and in future submit in all practicable cases copies of proceedings or roobukarees on sheets of paper joined together with paste or gum, and written on one side only, attesting the junction of the sheets with your official signature.—*Cir. Ord. Cal. C. 24th Oct. West. C. 14th Nov.* 1834, *Par.* 2.

123. CERTIFICATE, No. 1.

Dewanny Adawlut, Zillah (or City) ———————————

———————————, Appellant.

versus

———————————, Respondent.

SIR, I herewith certify a petition of appeal against a decision passed by Mr. ————————, the Judge of this *Zillah*, presented to this Court in the abovementioned case, together with a ———— ———————— of the decree.

The decision was passed on the ————————.
Copy of it applied for on the ————————.
Stamp paper furnished on the ————————.
Copy of the decree delivered or tendered on the ————————.
Petition of appeal presented on the ————————.

2. I further certify, that I consider the appeal to have been made within the period prescribed by the Regulations; and that the usual notice was issued on the ———— to the appellant, for his attendance in person, or by *vakeel*, in order to prosecute his appeal within the period prescribed by the Regulations.

3. The decree has (or has not) been carried into execution.

Given under my hand and the seal of the Court,
this ——— day of ———, 183 —.

Dewanny Adawlut,
The ——— *of* ——— 183—.

A. B.
Judge.

124. CERTIFICATE, No. 2.

Dewanny Adawlut, Zillah (or City) ————————

————————, Appellant.

versus

————————, Respondent.

To the Register of the Court of Sudder Dewanny Adawlut.

Sir, With reference to my certificate, dated the —— day of ————, 183—, submitted to the Court of Sudder Dewanny Adawlut in the abovementioned case, I herewith forward the original notice, and do hereby certify, that it has been duly served on the appellant.

Given under my hand and seal of the Court,
this ——— day of ———, 183—.

Dewanny Adawlut,
The ——— *of* ——— 183—,

A. B.
Judge.

—*Cir. Ord. Cal. C.* 24*th Oct. West. C.* 14*th Nov.* 1834.

125. The Court observe that in forwarding their certificates of appeal, and in making their returns to the precepts of the Court under Act 25, 1837, the Principal Sudder Ameens are not guided by any prescribed forms, and that much want of uniformity consequently prevails. This diversity of practice being found inconvenient, the Court are pleased to direct that those officers shall be required to conform to the practice of the Zillah Courts in this matter, substituting the Oordoo for the English language.—*Cir. Ord. Cal. and West C.* 10*th Sept.* 1839, *Par.* 1.

126. To enable the Court of Sudder Dewanny Adawlut duly to exercise the powers hereby vested in them, the several Courts of subordinate jurisdiction are strictly enjoined to conform to those parts of the Regulations in force which require them to record the point or points at issue between the parties and the grounds on which their judgment or orders may be issued.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 7.

127. Several instances having lately been brought to the notice of the Court of the record of appealed cases, submitted agreeably to the rule contained in Section 8, Regulation 9, 1831, being sent up without the proceeding which the Judge is required to draw up by Section 10, Regulation 26, 1814, and the omission being extremely inconvenient, particularly where the appellant pleads that the Judge has omitted to receive documents tendered, or to summon witnesses named by the party; I am directed to request that you will invariably submit that proceeding in all appealed cases that you may forward to the Court.—*Cir. Ord. Cal. and West. C.* 5*th Aug.* 1836.

128. You are desired, in all cases of your transmitting petitions of appeal to the Sudder Dewanny Adawlut, to report at the same time, whether the decree appealed from, has ben carried into execution, or otherwise.—*Cir. Ord.* 27*th April,* 1796.

129. It shall further be competent to a single Judge to direct that the execution of any judgment or order passed by an infezior Court, in all cases in which that mea-

sure may appear to him expedient, may be stayed until a final decision has been passed thereon.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 5.

SECT. IX.

Security of Costs in cases appealed.

As security for costs in appeals to the Sudder Dewanny Adawlut has been abolished by Act 17, 1841, *the following enactments apply only to appeals to the Zillah Judge's Court.*

130. In all authorized cases of appeal, the party desirous of appealing, is, with his petition of appeal, to deliver good and sufficient security for the payment of the costs that may be awarded on the appeal, including the fees of his pleaders in case he shall intend to employ any on his appeal. Without such security, or without proof of inability to find the same, as required with respect to paupers by Regulation 46, 1793, no appeal shall be admitted; and in like manner as has been declared in Section 6, Regulation 6, 1797, with respect to the fees on appeals prescribed by that Regulation; it is hereby declared, that the presenting a petition of appeal, without the security required by this Section, before the expiration of the time limited for appealing, shall not be considered as preserving to the appellant his right of appeal, as far as respects the limitation in question.—*Reg.* 2, 1798, *Sect.* 10.

131. With regard to the question submitted by your senior Judge, "whether, under the sixth Clause of Section 12, Regulation 4, of 1803, a superior Court is bound to receive a petition of appeal from the decision of an inferior Court in any regular suit, when the petitioner, though not a pauper, omits to file along with it security for the costs of other party," the Court are of opinion that although no appeal can be admitted before the security for costs be filed; yet the superior Courts are competent, (and such is the practice of this Court,) provided good and sufficient reason be shewn why the security was not filed with the petition, to receive the petition, and to allow the petitioner sufficient time to furnish the security; which course of proceeding appears to have been adopted by your late fourth Judge in the cause of Mukundram.—*Con. No.* 369, 21*st Sept.* 1824, *Par.* 2.

132. I am directed by the Court to transmit to you for your information and guidance, the accompanying copy of a resolution this day passed by the Court on the subject of the security for costs required to be furnished by appellants, together with a copy of the form of bond, to be executed in future by all sureties in cases of appeal. The Court are of opinion, that in appeals the appellant's surety for costs binds himself to make good the whole costs which shall be incurred by the appeal, whosoever shall stand in the place of appellant when it shall be decided: consequently that it is unnecessary, when the death of an appellant, respondent, or surety happens pending an appeal, to incur the delay and inconvenience which would be occasioned by calling for fresh securities.—*Cir. Ord. Cal. and West. C.* 13*th July*, 1832.

133. There is no provision in the Regulation, as you observe, for requiring security for the payment of costs in appeal from the decision of Moonsiffs; and as the Regulation distinctly specifies that such surety shall be required from appellants in all other Courts, the Court infer that the omission was intentional, and that such security need not be given by appellants from Moonsiffs' decisions."—*Cir. Ord. Cal. C.* 8*th Sept. West. C.* 13*th Oct.* 1837.

[But according to more recent arrangements the appellate Court is at liberty to confirm the appeal without calling on the respondent to attend; hence, the appellant is not required to furnish security for costs, with his petition of appeal. When the appellate Court has determined to go in-

to the case as a Regular Appeal, and to summon the respondent, the appellant will be called on to furnish security for costs. The following enactment explains the new rules in this respect.]

134. The concluding part of Clause 2, Section 8, Regulation 26, of 1814, requires that every petition of appeal shall be accompanied by the prescribed security for eventual costs in appeal. As however the Court is now competent under Clause 2, Section 2, Regulation 9, 1831, to confirm the decision of the Zillah or City Court without requiring the attendance of the opposite party, or to direct a revision of the case, the requisition of security may be dispensed with in the first instance, until further orders from the Court.—*Cir. Ord. Cal. and West. C. 28th June*, 1833, *Par.* 5.

135. Doubts having been entertained, in respect to cases in which the appellate Court may find it necessary to summon the respondent, as to the time which the appellant should be allowed for furnishing the prescribed security for the payment of the costs of appeal, whether the term of six weeks must be granted, or whether the fixing of a term is at the discretion of the Court before which the appeal may be pending, I am directed to acquaint you that it has been ruled by the Court that, should the order for summoning the respondent on the necessary security for costs being given, be passed after the expiration of one month, as calculated according to the rule laid down in Section 8, Regulation 26, of 1814, and the appellant not be prepared to file the security bond immediately, the Court hearing the appeal is, in that event, at liberty to fix such time in each particular case as it may deem reasonable, and on the appellant failing to furnish the same, or to assign good reasons for the delay, the appeal may be dismissed on default.—*Cir. Ord. Cal. and West. C. 12th July*, 1839, *Par.* 1.

136. The same rule is to be considered applicable to the Court of the Principal Sudder Ameen, to whom you are requested to explain the purport of these orders, enjoining him, at the same time, to pass the proper order without delay, after the appeal may have been transferred to him, in regard to the filing of security, in all cases in which the order may not have been already issued from the Judge's Court.—*Cir. Ord. Cal. and West. C. 12th July*, 1839, *Par.* 2.

137. With respect to the doubt expressed in paragraph 3, of your letter, the Court desire me to say that you are correct in calculating the period of one month, alluded to in the opening paragraph of the Circular, from the date of the decree. They further observe that, although the Circular does not expressly advert to the contingency of the order being passed within the period of one month, so calculated, with reference to the course which should be then followed, it is at the same time obvious that should that contingency occur, and the period remaining to the completion of the month be so brief as not to allow the appellant to furnish security prior to its expiration, you can always exercise your discretion as to making such further allowance on that score as may appear just and reasonable, the same principle being applicable in either case of the month having elapsed or the contrary.—*Con. No.* 1244, *West. C.* 31*st Aug. Cal. C.* 4*th Oct.* 1839, *Par.* 3.

For the rules regarding security for costs in appeal cases by appellants or respondents residing in Foreign settlements, vide Chap. 3, *Sect.* 60.

SECT. X.

Proceedings on the hearing and determination of Regular Appeals.

138. Such parts of the Regulations in force as require that the pleadings in appealed suits be conducted and filed in the same manner and under the same rules as pleadings in original suits are hereby declared subject to the following modifications.—*Reg.* 26, 1814, *Sect.* 9, *Cl.* 1.

139. In all regular Civil suits which may be appealed subsequently to the 1st of February 1815, to a Zillah or City Court, to a Provincial Court, or to the Sudder Dewanny Adawlut; it shall be left to the option of the respondent either to file an answer

to the petition and reasons of appeal, or not, as he may judge proper; provided however, that if no answer shall be filed by a respondent, it shall be competent to the Court trying the appeal, in all cases, in which it may be deemed expedient, to direct the respondent to file an answer to the petition of appeal, or to any particular points in it, which may appear to require an answer or explanation.—*Reg.* 26, 1814, *Sect.* 9, *Cl.* 2.

140. No further pleadings beyond the answer of the respondent shall be admitted in any appealed suits, which may be instituted subsequently to the 1st February 1815, except the duplicate of the plaint provided for by Clause first, Section 7, of this Regulation, or such supplemental pleadings as may be authorized by the Court under the provisions of Clause third, Section 6, of this Regulation,—*Reg.* 26, 1814, *Sect.* 9, *Cl.* 3.

141. Held by the Calcutta Court, in concurrence with the Western Court, that Section 12, Regulation 26, 1814, is not applicable to cases of appeals, but only to original suits.—*Con. No.* 1191, 14*th Dec.* 1838.

142. You will not fail to observe, that the rules laid down in Section 10, Regulation 26, 1814, apply to the trial of appeals, as well as of original suits; and you will be careful therefore in all cases to record on your proceedings the precise points at issue, and the grounds on which the parties maintained their several pleas.—*Cir. Ord.* 2*nd Oct.* 1840, *Par.* 3.

143. The Provincial Courts of Appeal are empowered in cases of appeals, in which it shall appear to them that the original suit has not been sufficiently investigated in the Zillah or City Court, or for any other cause that may be deemed reasonable by the Provincial Court, either to receive such further evidence as they may think necessary for the just determination of the suit, and to give judgment upon it; or, to refer the suit back to the Zillah or City Court in which it originated, accompanied by such special directions to the Judge with regard to the new evidence he is to receive respecting it, as may be deemed by the Court most conducive to justice, and the convenience of the parties and witnesses. But in every case in which the Provincial Courts may exercise the power above vested in them by this Section, they are to enter upon the record of the trial their reasons for having exercised it. In cases in which the Court may Judge it proper to receive such further evidence themselves, they are empowered, according as they may deem most conducive to justice (respect being had to the nature of the cause, and the evidence,) either to examine the witnesses to be produced, vivâ voce, in open Court, causing the witnesses to be first sworn, and their depositions to be reduced into writing, and signed by the deponents respectively; or, to authorize their register to swear the witnesses and take their depositions, and to cause the deponents to sign them and to authenticate them with his signature. The register in such case, is to examine the witnesses in the presence of both parties or their vakeels, who are to be at liberty to put any questions to the witnesses that they may think proper, and the questions, with the answers to them, are in the same manner to be reduced into writing, signed, and authenticated. But if due notice be given to the parties or their vakeels, of the examination of any witness or witnesses before the Register, and he or they shall not attend at the time of the examination, the Register is to proceed in the examination as before directed, and the depositions are to be received as good and authentic evidence.—*Reg.* 5, 1793, *Sect.* 18.—*Ben. Reg.* 9, 1795, *Sect.* 6, *Ced. and Conq. Prov. Reg.* 4, 1803, *Sect.* 18.

144. If the appellant in an appeal filed in the Provincial Courts of Appeal shall not proceed in the appeal for six weeks, the appeal is to be dismissed, unless the appellant

shall show reasonable cause to the satisfaction of the Court for not proceeding in it; and the Court may, if they shall deem it equitable so to do, award to the respondent costs of suit. But in all such cases, the Court are to enter at large upon their proceedings the grounds upon which they may permit or refuse to allow the appellant to proceed.—*Reg.* 5, 1793, *Sect.* 21.—*Ben. Reg.* 9, 1795, *Sect.* 6.—*Ced. and Conq. Prov. Reg.* 4, 1803, *Sect.* 21.

145. It is hereby enacted, that if a plaintiff or appellant in any Court shall, at any time, neglect to proceed in his suit or appeal for six weeks, the suit or appeal shall be dismissed; and it shall not be necessary to give the plaintiff or appellant any notice previous to dismissing his suit or appeal. The suit or appeal shall be dismissed as of course after the expiration of six weeks without any proceeding on the part of the Court, or of the defendant, or otherwise, or assignment of any reasons, unless the plaintiff or appellant, or his representative in case of his death, upon special application, shall have previously satisfied the Court of the propriety of allowing further time. The Court shall record upon the proceedings the reasons at large for allowing further time in all cases in which further time may be allowed, but it shall not be necessary to specify the reasons for refusing any application for further time.—*Act* 29, 1841, *Sect.* 1.

146. And it is hereby enacted, that in all cases in which a suit or appeal is dismissed under the preceding Section the Court shall award to the defendant or respondent the costs he may have incurred in the suit or appeal. But such dismissal shall be no impediment to the institution of a new suit or appeal, where the party is not precluded by lapse of time, or period of appeal, or otherwise than by the mere circumstances of having instituted the suit or appeal dismissed and of such dismissal, and such dismissed suit or appeal shall not prevent lapse of time under the law of limitations being incurred. —*Act* 29, 1841, *Sect.* 2.

147. [In the trial and decision of appeals by the Zillah Court or the Principal Sudder Ameen, they will proceed in the same manner as far as may be applicable, and with the like powers, and authority, and subject to the same restrictions and limitations, as are prescribed for the trial and determination of original suits, and the decrees will be prepared and copies of them made, and delivered or tendered to the parties in the same manner as is directed in original suits.]

148. The petition of appeal, pleadings, depositions, and exhibits, in the Provincial Courts of Appeal, are to be numbered, marked, dated, and signed by the Register, in the same manner as the complaint, pleadings, depositions, and exhibits, are ordered to be numbered, marked, dated, and signed, by the Register in the Zillah and City Courts.—*Reg.* 5, 1793, *Sect.* 29.—*Ben. Reg.* 9, 1795, *Sect.* 6.—*Ced. and Conq. Prov. Reg.* 4, 1803, *Sect.* 29.

149. To prevent an abuse of the above rule, and the encouragement of litigious appeals, the Provincial Courts of Appeal in all cases wherein they may confirm the decree of a Zillah or City Court, and the Sudder Dewanny Adawlut, in all cases wherein it may confirm the decree of a Provincial Court, are to adjudge interest at the rate of one per cent. per mensem on all sums, receivable by the respondent under the decree passed in his favor, from the date of such decree, and are authorized to punish appeals which may appear to them litigious, by a fine to Government, proportionate to the condition of the party, and the circumstances of the case.—*Reg.* 13, 1796, *Sect.* 3.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 12.

150. If the decision shall be confirmed in appeal, the appellate Court must, under Section 3,

Regulation 13, 1796, award interest from the date of such decree to the day of payment on the aggregate of the principal, interest, and costs awarded by the original decree.—*Cir. Ord. Cal. and West. C. 4th March*, 1836, *Par.* 3.

151. As the law now stands, in cases coming under the provisions of Section 12, Regulation 3, of 1793, the party fined is liable to be committed to close custody until the amount be paid, but where the fine may be imposed for a litigious appeal in conformity to Section 3, Regulation 13, of 1796, the amount, if not immediately forthcoming, should be realized under the same rules as are applicable to the execution of decrees of Court.—*Con. No.* 1096; *Cal. and West. C. 7th July*, 1837.

It is necessary however to state that the Western Court have recently expressed a doubt whether Reg. 13, 1796, *Sect.* 3, *can apply to Zillah Courts, more specially as it is a penal enactment.*

152. In like manner, if the claim was dismissed by the lower, but decreed by the appellate Court, interest shall be calculated on the principal sum to the date of the decision of the lower Court as before, and on that consolidated sum of principal and interest, and the costs of suit to the day of payment.—*Cir. Ord. Cal. and West. C. 4th March*, 1836, *Par.* 4.

153. The Court are of opinion that when the costs of suit are included in the decree, they become part of the matter awarded by the Court passing the decree, and as such are liable with other property so adjudged, to interest from the date of the Court's decision.—*Con. No.* 715, *West. C. 7th Sept. Cal. C. 5th Oct.* 1832.

154. An appellate Court is not competent to impose a fine on the respondent in an appeal case, for having instituted in the lower Court a suit which the appellate Court may consider to have been vexatious.—*Cir. Ord. Cal. and West. C. 25th Jan.* 1833, *Par.* 5.

SECT. XI.

Execution or Suspension of the Decrees of the Uncovenanted Judges during Appeal.

155. When an appeal may be received from the decision of a Moonsiff, the Judge is empowered to suspend the execution of the decree, provided the party appealing against it, shall give good and sufficient security within a reasonable period to be fixed by the Judge to perform the decree of the Court.—*Reg.* 23, 1814, *Sect.* 46, *Cl.* 5.

156. I am now directed to transmit for your information, and for the information of the City Judge, the enclosed copy of a letter from the late Judge of Allahabad, under date the 26th June, 1812, and copy of the letter written in reply on the 10th July following, containing the determination of the Sudder Dewanny Adawlut, that execution of judgment for money or other moveable property must be stayed, if good and sufficient security be given by the appellant for performing the decision which may be passed upon the appeal.—*Con. No.* 284, 29*th Dec.* 1817, *Par.* 3.

157. The Court further direct me to observe, that the terms of the 4th and 6th Clauses of Section 45, Regulation 23, 1814, appear to imply, that if an appeal from a Moonsiff's decree be admitted, and the prescribed security for staying execution in cases of appeal be given, the enforcement of the decree should be suspended during the trial of the appeal.—*Con. No.* 284, 29*th Dec.* 1817, *Par.* 5.

The above Rule (155) *is extended to suits decided by Sudder Ameens, by Section* 73 *of the same Regulation.*

158. I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 2d instant and its enclosures; and in reply to inform you, that the Court are of opinion that the Construction of Clause 3, Section 11, of Regulation 13, 1808, suggested by the Judge of Burdwan, is correct, and that it rests with the Zillah Judge, to whom the appeal from a

and not with the Register,* to whom the appeal is referred by the Judge for trial.—*Con. No.* 646, 8*th July*, 1831.

[These Rules regarding appeal, are also extended to suits *under* 5000 Rupees decided originally by Principal Sudder Ameens, and from which a regular appeal lies to the Zillah Courts.]

SECT. XII.

Execution or Suspension of Decrees of the Zillah Courts, when appealed to the Sudder Court, in cases of Landed Property.

159. Whenever a person claiming the proprietary right in land, houses, or other immovable property, not in his possession, shall obtain a decree, upon investigation of the merits of the case (whether in a Zillah or City Court, or in a Provincial Court of Appeal, before which the suit may be tried in the first instance) adjudging him to be the proprietor of such land, houses, or other immoveable property; he shall obtain possession thereof in execution of such decree, notwithstanding an appeal therefrom, provided he shall give good and sufficient security, for performing the decree which may be passed upon the appeal, in a sum equal to one year's produce of the property adjudged, if Malguzarry land; or ten year's produce, if the land be Lakheraj; or the computed value, if it be a house, or immoveable property of any other description.—*Reg.* 13, 1808, *Sect.* 11, *Cl.* 2.

160. Provided however that if the Court, to which the appeal may be preferred in such cases, shall, in any instance, see special cause for leaving the appellant in possession during the appeal, it shall be competent to that Court to order the same; requiring, in such case, from the appellant, the same security as is above required to be given by the respondent.—*Reg.* 13, 1808, *Sect.* 11, *Cl.* 3.

161. On the first point, the Court are of opinion, that cases may arise, in which the Provincial Court of Appeal [now the Sudder Court] would be warranted in restoring the appellant to possession, after the respondent had been put in possession by the Zillah or City Court, in execution of its decree: as for instance, where an appellant had regularly preferred his appeal, and tendered proper security to the Zillah or City Court, and moved it to suspend execution of its decree until the orders of the Provincial Court could be received. Should the Zillah or City Court in such circumstances, proceed to execute its decree, and it should appear to the Provincial Court, that special ground existed for staying execution; and that Court should further judge, that no serious inconvenience would be likely to result from again changing the possession, the Court of Sudder Dewanny Adawlut are of opinion, that the Provincial Court would be warranted, under such circumstances, in restoring the appellant to possession. The Court likewise observe, that other cases might occur, in which the Provincial Court would be competent to exercise the power in question; but all of which cannot of course be foreseen and defined.—*Con. No.* 90, 12*th Sept.* 1811.

162. In all cases, in which an appeal is allowed by the Regulations, the decree-holder should not be put in possession without furnishing security to abide by the ultimate award, until after the period allowed for the appeal shall have elapsed; but that possession may, of course, be awarded on the tender of such security, under Clause 2, Section 11, Regulation 13, 1808.—*Con. No.* 536, 1*st Jan.* 1830, *Par.* 2.

* Though the office of Register has been abolished, this rule is still applicable to the Principal Sudder Ameens.

163. With regard to the first point noticed by Mr. Smith, the Court observe, that the Construction adverted to in his letter, (No. 90, of the Construction Book) [Rule 161 of this Chapter] had reference merely to the power vested in the appellate tribunals of restoring an appellant to possession after it had been given to a respondent by the lower Court; though, as noticed by Mr. Smith, it incidentally implies a discretion on the part of the lower Court to delay for a reasonable period the execution of its own order for giving possession to the respondent in case of an appeal, until the receipt of instructions from the appellate Court; and the Court do not see any thing in the clause under consideration which would preclude the exercise of a sound discretion in particular cases, which may appear to require it.—*Con. No.* 1077, *West. C.* 10*th March, Cal. C.* 25*th March,* 1837, *Par.* 2.

164. The forms of security for staying the execution of decrees of this Court shall be invariably drawn up in future agreeably to the annexed forms, marked A and B.—*Cir. Ord. Cal. and West. C.* 17*th Feb.* 1837, *Par.* 4.

165. The surety for staying, or for obtaining execution of the decree appealed against, binds himself and the property pledged by his bond to satisfy the decree which shall be passed on the appeal, whosoever, at the time of its being passed, shall stand in the place of appellant or respondent; and consequently it is unnecessary, when the death of an appellant, respondent, or surety happens pending an appeal, to incur the delay and inconvenience which would be occasioned by calling for fresh securities.—*Cir. Ord. Cal. and West. C.* 13*th July,* 1832.

166. Provided further, that whether the appellant or respondent be left in possession of lands paying revenue to Government, during an appeal, if the party in possession of such land shall neglect to pay the revenue due upon the assessment; and a public sale shall in consequence be ordered to take place; the party not in possession, by payment of the revenue due, and giving the prescribed security, previously to the sale, shall be put in immediate possession; and shall be entitled to charge the amount so paid, with interest thereupon, at the rate of one per cent. per mensem, in any adjustment of accounts which may be directed in the final decree upon the cause.—*Reg.* 13, 1808, *Sect.* 11, *Cl.* 4.

167. Notwithstanding the appellants in causes depending before the Sudder Dewanny Adawlut, and the Provincial Courts of Appeal, may have entered into the security required of them by Section 2, of Regulation 13, 1796, those Courts are authorized, in cases, wherein from delay in the decision, the security so given may appear insufficient, on the application of the respondent or respondents in all such cases, to require any additional security which they may deem necessary to secure the party who may have obtained a judgment in his favor, from any loss by the non-execution of such judgment during the appeal; and in default of such further security being given within a reasonable period, to be fixed for that purpose, the Courts are empowered to direct the judgment in question to be carried into execution, in like manner as if no security had been given by the appellant; provided that in such cases good and sufficient security, as prescribed by the Regulations, be given by the respondent, previous to his being put in possession of the property in litigation.—*Reg.* 5, 1798, *Sect.* 3.

168. With reference to the Court's further construction of the same Clause under date the 1st January 1830, paragraph 2, No. 536, of the printed Construction Book, [Rule 163 of this Chapter] taken in connection with the rule passed in the latter part of Clause 3, Section 16, Regulation 5, 1831, for enabling the respondent to take immediate measures for the execution of the decree confirmed in appeal, I wish to be informed, whether it is imperative on the Courts, in all cases where the Regulations allow a second or special appeal, to demand from the decree-holder

security to abide the ultimate award, in the event of his wishing to obtain possession under the decree within the period allowed for the appeal. A practice the reverse of this has hitherto prevailed in this district.——The Court remark that the second point referred by Mr. Smith, has already been provided for in the letter to the address of the Judge of Cawnpore, dated 1st January, 1830, No. 536, of the Construction Book, [Rule 163 of this Chap.] and they are of opinion that the rule therein laid down, which they do not consider to have been superseded by Clause 3, Section 16, Regulation 5, of 1831, or any subsequent enactment, should continue to be observed.—*Con. No.* 1077, *West. C.* 10*th March, Cal. C.* 25*th March,* 1837.

SECT. XIII.

Rules regarding the Land which is the subject of litigation during the Appeal.

169. In all instances wherein the plaintiff in a Zillah or City Court may obtain a judgment in his favor for land or other real property, and the defendant appealing therefrom to a Provincial Court, may be left in possession of the property, under the security prescribed by the regulations, any private transfer of such property by sale, gift, or otherwise, or any mortgage thereof which might be made by such appellant during the appeal to the Provincial Court, or during a further appeal to the Court of Sudder Dewanny Adawlut, would, in the event of the judgment against him being confirmed on the appeal, be of course, and is hereby declared to be, null and void.—*Reg.* 5, 1798, *Sect.* 4.—*Ced. and Conq. Prov. Reg.* 4, 1803, *Sect.* 14, *Cl.* 1.

170. But as malguzarry lands (lands assessed with the public revenue) are in all cases, by whomsoever possessed, held answerable for the public revenue assessed thereon, and as according to the general rules established for the collection of the public revenue, such lands, and also lakheraj lands, and other property appertaining to the same estate, may become liable to sale by Government, from the neglect of the party in possession to discharge the revenue due therefrom, by which sale, in cases of appeal, the party to whom the property of the lands is ultimately adjudged, might, notwithstanding be deprived of it, unless he purchased the same at the public sale; to obviate all doubt respecting the right of the party making the purchase in such cases, it is hereby declared, that whenever any land or other property, for which a judgment may have been obtained in any of the established Courts of justice, but which, during an appeal from such judgment by the party cast, may be left in the possession of the appellant, shall, while such appeal is pending, or before the ultimate judgment thereon be put in execution, be sold by Government to make good an arrear of the public revenue due from the appellant; and shall be purchased by the respondent; the party so purchasing, in the event of such property being finally adjudged to him on the appeal, shall be entitled to recover from the appellant, so left in possession, the full amount of his purchase money, and of all expenses attending the purchase so made by him, with interest thereon at the rate of twelve per cent. per annum, in addition to any other sum which may be adjudged due to him on account of the profits arising from the land, or other property in question, anterior to the sale.—*Reg.* 5, 1798, *Sect.* 4.—*Ced. and Conq. Prov. Reg.* 4, 1803, *Sect.* 14, *Cl.* 1.

171. It is further declared that in the case above supposed, if the respondent shall not have purchased the land, or other property, sold by Government to make

good an arrear of public revenue due from the appellant left in possession thereof; and if the ultimate judgment on the appeal be in favour of such respondent, he shall be entitled to recover from the appellant left in possession the amount of the purchase money paid for the property so sold, and adjudged to the respondent; with interest thereon at the rate of twelve per cent. per annum, in addition to any other sum which may be adjudged to him on account of the profits, arising from the property so sold anterior to the sale of it; unless the property in question shall have been directly or indirectly purchased by the appellant himself, or in his behalf, at the public sale; in which case, on clear proof thereof being made by the respondent to whom such property may be ultimately adjudged, he shall be entitled to the possession thereof, and to all profits arising therefrom, as may be directed by the decree in the case, notwithstanding the fictitious sale supposed.—*Reg.* 5, 1798, *Sect.* 4.—*Ced. and Conq. Prov. Reg.* 4, 1803, *Sect.* 14, *Cl.* 1.

172. The principles of the rules contained in the two preceding Sections, are to be considered equally applicable to cases in which the plaintiff in a Zillah or City Court may be put in possession of land, or other property adjudged to him, during an appeal, in consequence of the defendant's failing to give security for staying the execution of the decree as required by the Regulations; and generally to all cases in which the possession of property may be transferred by the decree of any Court of justice; from which decree an appeal may be depending in a superior Court; whether a Provincial Court of Appeal; or the Court of Sudder Dewanny Adawlut; or his Majesty in Council, in the cases for which an appeal to him is provided by Regulation 16, 1797, and the Act of Parliament therein recited.—*Reg.* 5, 1798, *Sect.* 5.—*Ced. and Conq. Prov. Reg.* 4, 1803, *Sect.* 14, *Cl.* 1.

173. As cases may occur wherein neither the appellant nor the respondent may be able to give the prescribed security for staying the execution of decrees, or for the execution thereof in favor of the plaintiff, as provided in Section 2, of Regulation 13, 1796, and Section 3, of this Regulation, it is hereby enacted, that in all such cases, the property adjudged, shall be held in attachment during the appeal, until such time as one of the parties may be able to give the required security, by the Collector of the district wherein the land may be situated, at the expense of the party who may be ultimately declared entitled thereto; and under the provisions contained in Regulation 45, 1793, relative to the attachment of lands for sale in pursuance of decrees of the Courts of justice, as far as the same are applicable. No attachment, however, is to be made by any Collector in the cases herein supposed until he receive a precept, requiring him to make the same, from the Zillah or City Court wherein the original judgment in the cause may have been passed; which precept shall state specifically the property to be included in the attachment, and shall require the Collector to continue the same till ordered to be withdrawn by a further precept from the Court, to be issued either on the prescribed security being given by one of the parties, or on the cause being finally determined.—*Reg.* 5, 1798, *Sect.* 6.—*Ced. and Conq. Prov. Reg.* 4, 1803, *Sect.* 12, *Cl.* 9.

174. The provisions contained in the two preceding Sections, [vide the whole of Sect. 8, Chap. 3,] shall be held equally applicable to the Provincial Courts of Appeal, and Sudder Dewanny Adawlut, in all cases wherein an attachment of property, made by a Zillah or City Court, may be continued during the trial of an appeal before a Provin-

judge it proper to order an attachment of property, in default of security being given, as required; either by the appellant or respondent in any depending appeal.—*Reg.* 2, 1806, *Sect.* 7.

SECT. XIV.

Execution or Suspension of the Decrees of Zillah Courts, for money or other moveable Property, pending Appeal.

175. The provisions contained in the preceding Section not being applicable to the execution of decrees for money, or other moveable property; such decrees shall be stayed, or enforced, in cases of appeal, according to the rules now established with the following addition thereto.—*Reg.* 13, 1808, *Sect.* 12, *Cl.* 1.

176. The security to be given by appellants for staying the execution of decrees appealed from, in cases of money, or other moveable property, or by respondents, when such decrees are carried into execution during an appeal, shall be sufficient, in addition to the amount or value adjudged, to cover the interest that may be expected to arise upon the amount payable under the decree, if confirmed in appeal, according to the provision for adjudging interest in such cases, made by Section 3, Regulation 13, 1796, and Section 35, Regulation 4, 1803.—*Reg.* 13, 1808, *Sect.* 12, *Cl.* 2.

177. When personal bail or security for money or other property, may be demandable from a party in any original Civil suit, or appeal, and he shall tender a deposit of money, or of promissory notes, or other obligations of Government, or any other sufficient money security, to the amount required; such deposit shall be accepted instead of Hazirzaminy or Malzaminy securities; and shall be carefully kept by the treasurer of the Court; to be restored, or disposed of as the Court may direct, on the termination of the cause, or whenever the purpose, for which the deposit is made, shall have been accomplished.—*Reg.* 2, 1806, *Sect.* 8.

178. The Court, having had under consideration the fluctuating practice which obtains with regard to allowing or disallowing appellants to assign or mortgage their own lands in lieu of security pending the appeal, observe that Section 8, Regulation 2, of 1806, which authorizes the "deposit of money or of promissory notes or other obligations of Government or any other sufficient money security," in lieu of personal bail or security for money or other property, is silent in regard to an assignment of the land of the party assured. They further observe that the admission of such assignment is not fair to the respondent, inasmuch as it deprives him of a portion of his security; for, in the event of the appellant being cast, the respondent might always in the first instance come on his lands in satisfaction thereof; by the formal assignment he obtains no additional hold on them, while he is deprived of the benefit arising from the security of the lands of a third party. Under these circumstances the Court deem the assignment or pledge of the lands of the appellant in lieu of security inexpedient, and of but doubtful legality.—*Con. No.* 1024, *Cal. C. 8th July, West. C. 12th Aug.* 1836.

179. No discretionary power is vested in the Courts, with regard to the enforcement or staying execution of decrees for money, or other moveable property, in cases of appeal; and in such cases the decree cannot be carried into execution during the appeal, provided the appellant give good and sufficient security under the provisions of Clause second, Section 12, Regulation 13, 1808, for performing the decision which may be passed upon the appeal.—*Con. No.* 106, 10*th July*, 1812.

SECT. XV.

Rules regarding the Property which is pledged as Security, pending an Appeal, and the Registry of it.

180. The Judges of the several Courts, by which security may be taken from appellants or respondents, for performing the decrees to be passed on appeals, are enjoined to be particularly careful in ascertaining that the security received is good and sufficient; and they are required, in all cases, to cause the Nazir or other officers, by whom the property of the sureties may be ascertained, to deliver in as accurate a statement as can be obtained of such property; with a full report of the enquiry made respecting it; informing him, at the same time, that he will be held responsible for any wilful misrepresentation in his statement or report.—*Reg.* 13, 1808, *Sect.* 13.

181. The following provisions are enacted in addition to the rules now in force regarding the security to be required from parties for the execution of decrees of the Civil Courts, or for staying the execution of judgments in the civil suits during an appeal in such suits.—*Reg.* 26, 1814, *Sect.* 13, *Cl.* 1.

182. All persons who may enter into security bonds for the purposes mentioned in the preceding Clause, are prohibited from transferring, or from causing to be transferred, by sale, gift, mortgage, or otherwise, any land or other immoveable property belonging to them, and specified in the schedule of property on which their security may have been accepted, until the object of their security shall have been completely fulfilled.—*Reg.* 26, 1814, *Sect.* 13, *Cl.* 2.

183. This prohibition however shall not be construed to affect the legality of any private transfer or mortgage of such property, in cases in which the amount of any demand on the surety, which may eventually arise under the terms of the security bond, shall be duly discharged by him; but it is hereby declared, that no private transfer or mortgage of such property which may be made by a surety in the interval between the execution of the security bond, and the final and complete enforcement of the judgment, shall be considered to bar the prior right of the Court to hold the whole or any part of such property answerable in the first instance for the amount of any demand upon it, which may eventually arise under the terms of the security bond, and which may not be duly discharged by the surety.—*Reg.* 26, 1814, *Sect.* 13, *Cl.* 3.

184. I am directed by the Court of Sudder Dewanny Adawlut to inform you that the factory of Serecole and its dependencies, situate in Zillah Jessore, was pledged by the late firm of Messrs. Palmer and Co. as security for the execution passed by the Court in favour of the respondent in the case of Baboo Ramchurn, Moktar of Baboo Madhub Suhai and Baboo Banee Suhai, heirs of Baboo Doarkadoss deceased, appellant, versus Joyekishen Doss, respondent, on its being appealed by Baboo Ramchurn to His Majesty in Council. The said factory being situated within the jurisdiction of the Court, cannot, under the Regulations of Government, be sold or otherwise disposed of but with the aforesaid lien on it. I am therefore directed to request that in the event of its being sold or otherwise disposed of by you, you will inform the intending purchaser or person to whom it may be intended to transfer it otherwise than by sale, that the Court have a lien on the factory until the appeal to the King in Council is determined in favour of the respondent, or, in the event of a decision being passed in favour of the appellant, until it shall have been fully satisfied by the respondent.—*Con. No.* 659, 30*th Sept.* 1831.

185. By Clause 2, Section 13, Regulation 26, of 1814, persons who may have become security for the execution of decrees of Court, or for staying the execution of judgments in Civil Courts, are prohibited from transferring, or causing to be transferred, by sale, gift, or otherwise, any land or other immoveable property belonging to them, and specified in the schedule of property on which their security may have been accepted, until the object of their security shall have been completely fulfilled. Instances have however occurred in which the Court have reason to believe that persons have, unknowingly and unwillingly, purchased such property; and, under the present mode of conducting the proceedings in such cases, individuals have no effectual means of ascertaining whether the property they propose to purchase has, or has not, been so pledged.—*Cir. Ord. Cal. and West. C.* 17*th Feb.* 1837, *Par.* 1.

186. In order therefore to enable individuals to ascertain whether property is hypothecated to the Courts, and with a view to check any fraudulent transfers of the same, the Court have considered it proper to adopt the following rules.—*Cir. Ord. Cal. and West. C.* 17*th Feb.* 1837, *Par.* 2.

187. 1st. Whenever a person shall pledge his land or immoveable property to the Court as security, the Nazir, after he has satisfied himself of the sufficiency thereof, shall recapitulate the contents of the title deeds in his kyfeut, stating that he has inspected them and that they are sufficient, agreeably to the Persian form annexed, marked C.—*Cir. Ord. Cal. and West. C.* 17*th Feb.* 1837.

188. 2d. The Nazir shall also keep a Register of all property pledged as security, agreeably to the form marked D, and shall allow persons desirous of ascertaining whether any particular property is pledged to the Court an opportunity of inspecting it.—*Cir. Ord. Cal. and West. C.* 17*th Feb.* 1837.

FORM D.

1	2	3	4	5	6	7
Name of security.	Particulars of the property pledged.	Number of case and names of parties in which security is given.	Object of the security and amount, with the date of the order requiring it.	Date of the security bond.	Date on which the security was finally settled.	Remarks.

—*Cir. Ord. Cal. and West C.* 17*th Feb.* 1837.

[All these rules enacted regarding the execution or non-execution of the decrees of Zillah Courts, pending an appeal to the Sudder, are by Act 25, 1837, Section 4, declared equally applicable to suits above the value of 5000 Rupees, decided by Principal Sudder Ameens, when appealed to the Sudder Court.]

SECT. XVI.

Second or Special Appeals from the decision of the Zillah Court or the Principal Sudder Ameen.

189. In modification of Section 5, Regulation 9, 1819, it shall be competent to a single Judge, [of the Sudder Court] of his own authority, to admit a second or special appeal, if there shall appear grounds for it, under any of the provisions specified in Clause second, Section 4, Regulation 2, 1825.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 4.

190. Decrees passed in the Courts of the Principal Sudder Ameens shall be executed by those Courts under the general rules prescribed for the execution of decrees passed by the Zillah and City Judges—Provided however, that in such cases an appeal from the orders of the Principal Sudder Ameens shall lie, in the first instance, to the Zillah and City Judges, and specially to the Sudder Dewanny Adawlut. [That is, in suits under 5000 Rs.]—*Reg.* 5, 1831, *Sect.* 22.

191. Appeals admitted from the decisions of the Moonsiffs have been hitherto referred, at the discretion of the Zillah and City Judges, to the Sudder Ameens, or Registers duly empowered to try them, under the rules contained in Clause fourth, Section 7, and Clause fourth, Section 9, Regulation 24, 1814, subject to a second or special appeal to the Zillah and City Judges as therein provided.—*Reg.* 5, 1831, *Sect.* 16, *Cl.* 1.

192. In modification of this provision, however, it is hereby enacted, that it shall not be competent to a Zillah or City Judge to refer any appeal for trial to a Sudder Ameen, even though he may have been specially empowered under the rule above cited, but whenever it may appear to any such Zillah or City Judge that his file is so heavy as to make it impracticable for him to dispose of all the appeals which may be pending with reasonable dispatch, he shall make a special report of the case to the Sudder Dewanny Adawlut, soliciting permission of that authority to refer such specified number of appeals from the decisions of Moonsiffs or Sudder Ameens, as he may deem necessary for trial, to the Principal Sudder Ameen attached to his Court, to be appointed under the rules prescribed in Section 17, of this Regulation, in which case it shall be competent to the Court of Sudder Dewanny Adawlut to comply with the application for the transfer, and the rules prescribed in the preceding Clause [Clause 1,] shall be held applicable to such appeals.—*Reg.* 5, 1831, *Sect.* 16, *Cl.* 2.

193. With respect to orders passed by the Principal Sudder Ameens, in miscellaneous cases referred to them under the authority of Section 8, of the Act in question, [Act 25, 1837, Sect. 8,] the Court are of opinion, that the proviso contained in that Section being general, must be held to include cases in which the amount or value of the matter at issue may exceed 5000 Rupees equally with those under that sum, and that, consequently, the appeal in such cases from the order of the Principal Sudder Ameen lies in the first instance to the Zillah or City Judge, and specially to the Court of Sudder Dewanny Adawlut.—*Cir. Ord. Cal. and West. C. 5th June,* 1838, *Par.* 4.

194. The provisions contained in Sections 2 and 3, Regulation 26, 1814, with any modifications of them which may have been since enacted, regarding the admission and hearing of special and summary appeals, as well as the rule contained in Clause second, Section 4, of the aforesaid Regulation, relative to the review of judgments, shall be held applicable to original suits and appeals tried by Principal Sudder Ameens.—*Reg.* 5, 1831, *Sect.* 19, *Cl.* 1.

195. I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 17th instant, and under the explanation therein contained, to acquaint you, that the Court do not consider it necessary, under Clause 1, Section 3, Regulation 9, 1819, that any report should be made to a Provincial Court of Appeal by the Judge of a Zillah or City Court, previously to his admission of a special appeal from the decision of a Register [a Principal Sudder Ameen;] and consequently that he is at liberty to reject or admit an application for such special appeal, without any reference to the Provincial Court of Appeal [the Sudder Court].—*Con. No.* 336, 23*d Feb.* 1821.

196. After the promulgation of this Regulation the Provincial Courts, and Court of Sudder Dewanny Adawlut, shall be guided, in their admission of special or second ap-

peals by the Rules contained in Section 2, Regulation 26, 1814; Section 7, Regulation 19, 1817; and Sections 3, 4, and 5, of Regulation 9, 1819.—*Reg.* 2, 1825, *Sect.* 4, *Cl.* 2.

197. In modification of the provisions contained in Section 24, Regulation 49, 1803, Section 10, Regulation 2, 1805, and Clauses second and third, Section 9, Regulation 8, 1805, it is hereby enacted, that from and after the 1st of February 1815, no special or second appeal shall be admitted by a Zillah or City Judge, by a Provincial Court, or by the Sudder Dewanny Adawlut, unless upon the face of the decree, or of documents exhibited with it (assuming all the facts of the case as stated in the decree,) the judgment shall appear to be inconsistent with some established judicial precedent, or with some regulation in force, or with the Hindoo or Mahomedan law, in cases which are required to be decided by those laws, or with any other law or usage which may be applicable to the case, or unless the judgment shall involve some point of general interest, or importance, not before decided by the superior Courts.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 1.

198. The restrictive provisions for second, or special appeals, prescribed in the first Clause of Section 2, Regulation 26, 1814, allow of such appeals being admitted, when the judgment, against which the appeal may be preferred, shall appear to be inconsistent with some established judicial precedent: but this is not understood to include the case of two opposite or inconsistent judgments passed by the same Court, or by two Courts having jurisdiction in the same suit, or in suits founded on a similar cause of action; though in such cases it is obvious, that one or both of the opposing judgments should be revised. It is therefore hereby provided, in addition to the grounds on which second or special appeals are declared admissible, in the first Clause of Section 2, Regulation 26, 1814, that such appeals may be admitted, when the judgment against which the appeal is preferred shall, from the exhibition of another decree of the same Court, or of another Court having jurisdiction in the same suit, or in a suit founded on a similar cause of action, clearly appear to be in opposition thereto, or inconsistent with such other judgment.—*Reg.* 19, 1817, *Sect.* 7, *Cl.* 1.

199. Upon the first question proposed by your fourth Judge, viz. whether a special appeal may be admitted to reverse an error in the determination of facts, when the judgment may appear to be manifestly without, or contrary to, evidence, the Court are of opinion, that a special appeal cannot be admitted on such grounds under Section 2, Regulation 26, 1814; which requires that all the facts of the case must be assumed as stated in the decree.—*Con. No.* 246, 1*st May*, 1816, *Par.* 2.

200. Upon the second point, viz. when exorbitant damages may appear to have been given, the Court can offer no opinion without more particular information of the case, and the damages awarded; such as might enable them to judge, whether the case is within any of the special grounds stated in the first Clause of Section 2, Regulation 26, 1814. The Court, therefore, can only suggest, that you should exercise your own judgment on the case, in determining whether it falls within any of the prescribed grounds for the admission of special appeals or otherwise.—*Con. No.* 246, 1*st May*, 1816, *Par.* 3.

201. On a reference from the Judge of Tirhoot, it was held by the Calcutta Court, in concurrence with the Western Court, that a petition of special appeal, until the appeal has been admitted, is to be viewed as a miscellaneous petition, and that consequently it is not necessary in such cases to issue the notice prescribed by the Circular Order No. 33, of the 5th November, 1812, which refers to suits admitted and pending. [This order of Nov. 5th, 1812, has been virtually rescinded by Act 29, 1841.]—*Con. No.* 1139, 23*d March*, 1838, *Par.* 1.

SECT. XVII.

Second or Special Appeals.—Course of Procedure.

202. Held further that a copy of the decree appealed against must always accompany the application for the admission of a special appeal.—*Con. No.* 1139, 23*d March*, 1838, *Par.* 2.

203. When a party upon any of the grounds specified in the preceding clause may be dissatisfied with a judgment passed on a regular appeal, by a competent Civil Court, and may in consequence be desirous of obtaining a further investigation of the suit by a second or special appeal, he shall, within the limited periods prescribed for the admission of regular appeals, present a petition to the Court, which under the provisions of Regulations 24 and 25, 1814, may be competent to admit a special appeal in the case. —*Reg.* 26, 1814, *Sect.* 2, *Cl.* 2.

204. Such petition shall be written upon the stampt paper prescribed in Section 13, Regulation 1, 1814, [*now*, Reg. 10, 1829,] with reference to the value or amount of the suit, calculated according to the provisions of Section 14, of that Regulation, or any provisions which may be hereafter enacted for the valuation of property sued for in the Civil Courts; the petition shall state distinctly the specific ground or grounds under Clause first of this Section, on which the special appeal is solicited, and shall be presented either by the party in person, or by an authorized pleader of the Court. In the latter case, the petition shall be signed by the pleader, who shall certify on the back of the petition, that he has duly considered the grounds stated for admitting a special appeal under Clause first of this Section, and believes them to be well founded and sufficient.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 3.

205. I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 27th ultimo, and to acquaint you, that supposing the omission therein noticed, (viz. to state *distinctly*, as required by the third Clause of Section 2, Regulation 26, 1814, the specific ground, or grounds, under the first Clause of that Section, on which a special appeal is solicited,) in the petitions for special appeals not yet disposed of, to have proceeded from inadvertence, the Court are of opinion the appellants should be allowed to supply it by a supplementary petition, drawn out on the paper prescribed in Section 17, Regulation 1, 1814.—*Con. No.* 248, 8*th May*, 1816.

206. If on a consideration of the circumstances of the case, the Court shall see reason for admitting a special appeal on any of the grounds stated in the first Clause of this Section, the appellant shall be required to furnish the prescribed security, and to deposit the amount of the fees payable to his pleader under the rules in force, within a reasonable period to be fixed by the Court; when the required security and deposit shall have been duly furnished, the Court will admit the special appeal, and proceed to investigate the suit under the same rules as are prescribed for the trial and determination of regular appeals.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 4.

207. A decree having been passed against certain persons, under which they have been declared, with their families, the slaves, and as such the property of the decree holder, was affirmed in the Provincial Court; but a special appeal was admitted by the Sudder Dewanny Adawlut, on the grounds of the appellants, (the slaves under the judgments already given,) not appearing to be so under what, by the Mahomedan law, is required to constitute slavery. The appellants did not give security to stay the execution of the decree, for which the decree holder had made application. Un-

der these circumstances, it became a question whether execution should be ordered; or if stayed, upon what terms. The Court were of opinion, that as the special appeal was admitted on the presumption, that the appellants had been wrongfully declared to be slaves, and as they would be unable to prosecute their appeal if delivered over to the custody of the decree-holder as slaves, the execution of the decree should, in this special instance, be stayed without demanding security from the appellants.—*Con. No.* 550, *7th May,* 1830.

208. May I request the favour of your obtaining for me the Court's opinion on the following point? Can a Judge, after striking out of the file a petition for special appeal in consequence of the petitioner or appellant not having, as ordered, within the time allowed, furnished security for the eventual costs of the appeal, again bring it on the file on the petitioner's showing good and sufficient reason why the security was not filed within the prescribed time?—I am directed by the Court to inform you that it is not competent to you, without the sanction of the superior Court, to re-admit a petition for special appeal which has once been struck off the file for any reason.—*Con. No.* 1171, *Cal. C. 7th Sept. West. C.* 10*th Aug.* 1838.

209. The Sudder Dewanny Adawlut and the several Provincial Courts, previously to admitting a special appeal on application to them to that effect, are hereby declared competent to call for and peruse any document forming part of the record of the cause which they may deem proper, beside the document or documents presented by the party applying for the special appeal.—*Reg.* 9, 1819, *Sect.* 4.

210. It is hereby declared that nothing contained in the foregoing Sections, is intended to make any alteration in the existing rules with regard to the limitations of time, or with regard to any of the existing forms requisite for the admission of special appeals.—*Reg.* 9, 1819, *Sect.* 6.

211. The Court, empowered to receive the special appeal in such cases, shall be competent either to try the merits of the case, and pass a final judgment thereupon; or to refer the suit back for revision, and a further judgment by the Court which shall have passed the original decision, or that given on the first appeal.—*Reg.* 19, 1817, *Sect.* 7, *Cl.* 2.

212. It is hereby declared, that the order of a Zillah or City Judge, or of a Provincial Court, refusing to admit a special or second appeal under the powers vested in them, by this Regulation, as well as the judgments which they may respectively pass on special appeals admitted by them, shall in all cases be final, and shall not be liable to any further revision by a superior Court.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 6.

213. Mr. Bird, the former Judge, rejected a petition for a special appeal from Mutra Opudia and others, who, in consequence, presented a petition to this Court. It appeared that the Judge had not held any proceedings on the occasion, and had merely written an order for the rejection of the special appeal on the corner of the petition; without even stating whether or not the petitioners or their vakeel were present. The Provincial Court therefore annulled the Judge's order and directed him to hear the petition of special appeal again, to hold regular proceedings, and to pass an order for its admission or rejection. In reply to your letter of the 27th ultimo requesting to be informed whether, under the circumstances stated, you were competent to direct the Judge of Goruckpore to re-hear a petition for a special appeal, which had in your opinion been irregularly dismissed [by Mr. Bird]; I am directed to inform you that the Court of Sudder Dewanny Adawlut are clearly of opinion that as the original order dismissing the petition was irregular, in as much as it was contrary to the regular and established practice of the Courts, you were competent to direct the Judge to rehear it; and they desire that the Judge be instructed accordingly.—*Con. No.* 641, 10*th June,* 1831.

214. The Court further direct the insertion of a note in the column of remarks in the statement in question, shewing in detail, as regards the special appeals disposed of during the year from the decisions of each of the Sudder Ameens and Moonsiffs, the number in which you concurred with the Principal Sudder Ameen in confirming, or modifying the original decree, and the number in which, differing in opinion with that officer, you reversed his decision and upheld or modified that of the lower Court. With this information before you, the Court observe, you will be able to judge of the comparative merits and qualifications of the several subordinate judicial functionaries of your district, so far as an opinion on the subject can be formed from the result of the appeals, whether regular or special, from their decisions.—*Cir. Ord. West. C. 8th Dec.* 1837, *Par.* 2.

SECT. XVIII.

Second or Special Appeals.—Stamps and Vakeel's Fees.

215. On the 8th of January, 1830, the Court of Sudder Dewanny Adawlut resolved, that exhibits filed along with petitions for the admission of special appeals, under Clause 3, Section 20, Regulation 26, 1814, are not subject to the payment of a fee on being filed.—*Con. No.* 537, *8th Jan.* 1830.

216. In the special appeals provided for by the foregoing Section, as well as in all other appeals, regular or special, under the Regulations in force, if the suit in appeal be referred back for further investigation and decision, without a judgment upon the merits of the case, the stamp duty paid by the appellant on his petition of appeal shall be returned to him; and if the appellant, or respondent, have appointed a pleader, his fee shall be limited to such sum as may be deemed an adequate compensation for his labour, not exceeding one fourth of the established fee in a regular suit.—*Reg.* 19, 1817, *Sect.* 8.

217. If the Court shall not see sufficient reason for admitting the special appeal, and shall in consequence reject the petition, the appellant shall not be entitled to receive back the amount or value of the stamp on which the petition may have been written under Clause third; the Courts are however vested with a discretionary authority in any particular instance of hardship to refund any portion not exceeding three fourths of the amount of such stamp duty to the party who may have paid the same, or to his legal representative.—*Reg.* 26, 1814, *Sect.* 2, *Cl.* 5.

[The Rule regarding Vakeel's fees in special appeals, will be found in Reg. 9, 1831, Sect. 7, Cl. 1, 2, 3, 4, Rules 282, 283, 284, 285 and 286, of Chapter 2.]

SECT. XIX.

Rules to be observed in the Civil Court in cases remanded for farther investigation, or to be tried de novo.

218. When a suit is sent back for retrial, unless the order specially restrict the enquiry to any particular point or points, the whole case must be considered as re-opened.—*Con. No.* 1073, *Cal. C.* 10*th Feb. West. C.* 24*th Feb.* 1837.

Rules to be observed by the Civil Courts for procuring the attendance of the parties in cases remanded for further investigation, or to be tried de novo.

219. On a case being remanded for further investigation, or to be tried de novo, if the vakeels

employed by the parties during the original investigation of the suit be in attendance, the Judge shall immediately on the receipt of the proceedings in his office, call upon such vakeels distinctly to state, whether they have received any instructions from their clients and are prepared to go on with the case, and if their answer be in the affirmative, no further notice to the parties shall be deemed necessary.—*Cir. Ord. West. C. 3d Aug. Cal. C. 31st Aug.* 1838. *Par.* 1.

220. Where the vakeel of the plaintiff may not be in attendance, or being in attendance, may plead either that he has not received any instructions from his client, or that he is not prepared to proceed with the case, the Judge shall not put off the case with a view to the vakeel making a reference to his client on the subject, but shall immediately cause a notice in either of the accompanying forms, marked A, or B, according as the case may be, to be served on the plaintiff in the usual mode, requiring him to proceed according to law; and if the plaintiff, after having been duly served with a notice in the manner above stated, shall neglect to prosecute his suit, either in person or by vakeel, for the period of six weeks, calculated from the date of such service, the Judge shall proceed as directed in paragraph 2, of the Circular Orders of the 5th November, 1812, declared applicable to original suits by the concluding paragraph of the same circular, by calling on the plaintiff to shew cause for his neglect, and on his failing to do so, shall dismiss his suit on default. [This Circular Order of the 5th November 1812, has been virtually repealed by Act 29, 1841].—*Cir. Ord. West. C. 3rd Aug. Cal. C. 31st Aug.* 1838, *Par.* 2.

A

Whereas the case of ——— *versus* ——— wherein you are plaintiff, which was decided by this Court under date ——— having been remanded by the Court of ——— *for further investigation*, or *to be tried de novo*, with directions that it be restored to its original number on the file of this Court, and it appearing on enquiry, that no vakeel is in attendance on this Court to represent you in the suit, take notice therefore, that in the event of your failing to adopt measures, either in person or by vakeel, for the prosecution of your suit for the period of six weeks, calculated from the date of the service of this notice, the said suit will be dismissed on default, unless you show good cause to the satisfaction of the Court for not having proceeded in it.

B.

Whereas the case of ——— *versus* ——— wherein you are plaintiff, which was decided by this Court under date ——— having been remanded by the Court of ——— *for further investigation*, or *to be tried de novo*, with directions that it be restored to its original number on the file of this Court, and it appearing on enquiry that the vakeel retained by you during the previous investigation of the suit, though in attendance, has not received any instructions from you, and that he is not prepared to go on with the case, take notice, therefore, that on the event of your failing to adopt measures for the prosecution of your suit for the period of six weeks, calculated from the date of the service of this notice, the said suit will be dismissed on default, unless you shew good cause to the satisfaction of the Court for not having proceeded in it.

221. In the event of its not being found practicable to serve a notice on the plaintiff, the Judge, immediately on the receipt of the nazir's return to that effect, shall issue a proclamation, to be stuck up in the Court room, and on the outer door of the plaintiff's dwelling house, or in some conspicuous place in the village where he resides, in either of the abovementioned forms, according as the one or the other may be applicable, requiring him to proceed according to law; and if the plaintiff shall fail to prosecute his suit, either in person or by vakeel, for the period of six weeks, calculated from the date of the publication, in the prescribed mode, of such proclamation, the Judge shall proceed to dispose of the case in the manner laid down in the Circular Order above quoted,

222. Where the vakeel, employed by the defendant during the original investigation of the case, may not be in attendance, or being in attendance may plead either that he has not received any instructions from his client, or that he is not prepared to proceed wtih the case, the Judge shall not put off the case with a view to the vakeel making a reference to his client on the subject, but shall immediately cause a notice to be served, in the usual mode, on the defendant in either of the accompanying forms marked C. and D, according as the case may be, and shall observe generally the rules laid down in Sections 2 and 3, Regulation 2, of 1806, modifying Section 5, Regulation 3, of 1803.—*Cir. Ord. West. C. 3rd Aug. Cal. C. 31st Aug.* 1838, *Par.* 4.

C.

Whereas the case of ———— *versus* ———— wherein you are defendant, which was decided by this Court under date ———— having been remanded by the Court of ———— *for further investigation*, or *to be tried de novo*, with directions that it be restored to its original number on the file of this Court, and it appearing on enquiry that no vakeel is in attendanee on this Court to represent you in the suit, take notice, therefore, that in the event of your failing to adopt measures either in person or by vakeel on or before the ———— to make answer in the said suit, the Court will proceed to try the same ex-parte, and will give judgment in the same manner as if you had appeared, answered, and entered into proof.

D.

Whereas the case of ———— *versus* ———— wherein you are defendant, which was decided by this Court under date ———— having been remanded by the Court of ———— *for further investigation*, or *to be tried de novo*, with directions that it be restored to its original number on the file of this Court, and it appearing on enquiry that the vakeel retained by you during the previous investigation of the suit, though in attendance, has not received any instructions from you, and that he is not prepared to go on with the case, take notice, therefore, that in the event of your failing to adopt measures on or before the ———— to make answer in the said suit, the Court will proceed to try the same ex-parte, and will give judgment in the same manner as if you had appeared, answered, and entered into proof.

223. Nothing in the foregoing rules shall be understood as exempting the vakeels, employed during the original investigation of a suit, from conducting the same on its return for further enquiry or to be tried anew, provided such should be the wish of the parties by whom they may have been retained, it being expressly declared by Section 34, Regulation 27, of 1814, that the vakeels are to make all motions, and do all acts that may be requisite relative to any suit in which they may have been entertained, not only during the trial of the suit, but after a decision shall have been passed, until the final judgment shall have been enforced; nor are the vakeels, engaged during the original investigation of a case entitled under the Regulations, to any additional fee for the extra labor that may be imposed upon them in the further enquiry, or retrial of the suit, the original fee being considered a full remuneration for their services until the case has been finally disposed of, and the Courts should therefore strictly abstain from awarding them any additional compensation on such account.—*Cir. Ord. West. C. 3rd Aug. Cal. C. 31st Aug.* 1838, *Par.* 5.

224. A question having arisen, in regard to cases remanded back for re-trial, as to the competency of the Court, to which they may be so referred, to adjudge the costs of the prior investigation inclusive of the costs of appeal, in addition to those incurred in the re-trial of the case, when no order may have been passed upon that point by the appellate Court; I am directed to inform you that, with a view to ensure uniformity of proceeding in this respect, and to remove any doubts which might be entertained on the subject, the Court have been pleased to resolve, as a general rule, which they will observe in their future practice, that the order of the appellate Court, remanding back a suit for re-trial, shall specify that the Court to which it may be so referred, shall pass such order as may appear to it just and proper, subject to appeal, in respect to the payment

as well of its own costs, as of those already incurred by the parties in the progress of the suit through the different Courts before which it may have been brought since the date of the original action; unless any special reasons should exist rendering it equitable, in the judgment of the appellate Court, that the costs incurred up to the date of its decision should be borne either by one of the parties, or by the parties respectively, in which case the appellate Court will direct the payment of the same accordingly.—*Cir. Ord. Cal. and West. C. 4th Nov.* 1836.

225. I am further directed to take this opportunity of noticing to you that cases of the above nature should invariably receive the earliest attention of the Courts to which they may have been remanded, and no time should be lost in giving effect to the Court's orders, either for making further inquiry or re-trying the case. The Court observe that there are still several cases of this description pending on the files of some of the Courts, which, with reference to the date on which they were returned, should long since have been disposed of; and they direct me to inform you that they will expect to receive from you, at the close of the current year, a full explanation of the causes which may have prevented the decision of any such cases, remaining undisposed of at that time, specifying the dates on which they were received back, and the measures since taken to prepare them for decision, a note should also be given in the monthly statements shewing the progress made subsequent to the date of the last report, towards the determination of any cases of the nature of those in question, which may be depending before yourself, or the Courts subordinate to you.—*Cir. Ord. Cal. and West. C. 7th July,* 1837, *Par.* 2.

226. Cases remanded for further investigation, or to be tried *de novo*, are to be entered according to the years of their original institution, and not under those, in which they were sent back. The date of the order remanding such cases, as well as that on which they reached the Court to which they may have been remanded, should be given in the column of remarks, together with a brief report of the measures adopted since their return to get them ready for hearing. An explanation is also to be given in the same column of the causes of delay in disposing of any cases which may have been pending, at the close of the month or year to which the statement may relate, for a longer period than a twelvemonth.—*Cir. Ord. Cal. C. 7th Dec. West. C.* 21*st Dec.* 1838.

227. I am directed by the Court to request, that you will submit regularly every month to this office, a return drawn out agreeably to the enclosed form, marked No. 4, commencing from the 1st proximo.—*Cir. Ord.* 19*th March,* 1841, *Par.* 1.

228. The return will show the number of suits sent back every month by the Zillah or City Judges to the Principal Sudder Ameens, Sudder Ameens and Moonsiffs for re-trial. The different headings have been made to correspond with the Provisions of Clause 2, Section 2, Regulation 9, 1831, extended to Zillah and City Judges by Act 7, of 1838; thus enabling the Court to ascertain the specific grounds on which the judgments appealed against have been considered to be erroneous and defective.—*Cir. Ord.* 19*th March,* 1841, *Par.* 2.

229. It appears to the Court, that this Return will enable the Zillah and City Judges, as well as the Superior Authorities to form a very correct opinion of the character, intelligence and legal qualifications of the several uncovenanted Judges placed under their control; and as the Returns will be carefully examined by the Court, and will be invariably referred to in the preparation of the Annual Civil Report, they rely confidently on your exertions to have the same prepared with the greatest possible care.—*Cir. Ord.* 19*th March,* 1841, *Par.* 3.

230. I am directed to inform you, that a similar Return will be prepared in this office of the judgments sent back by order of the Court to the Zillah and City Judges, and Principal Sudder Ameens for revision.—*Cir. Ord.* 19*th March,* 1841, *Par.* 4.

No. 4.

RETURN of the Judgments passed by the Principal Sudder Ameens, Sudder Ameens and Moonsiffs of the District of in the Month of 184 in which injunctions have been issued by the Judge to the Lower Courts to revise the cases agreeably to the provisions of Act VII. 1838.

1	2	3	4	5	6	7	8	9	10
Names of the Principal Sudder Ameen, Sudder Ameen or Moonsiff.	Judgment manifestly unjust.	Judgment at variance with the Regulations.	Judgment in opposition to the Hindoo Law.	Judgment in opposition to the Mahomedan Law.	Judgment in opposition to any of the Laws applicable to the Case.	Judgment passed without sufficient investigation.	Judgment grounded on assumptions irrelevant or erroneous.	Total sent back for re-trial.	Remarks.

SECT. XX.

Review of Judgment by the Zillah Judge.

231. Any persons considering themselves aggrieved by a decree passed in a regular civil suit, or appeal by a Zillah, City, or Provincial Court, from which decree no further appeal may have been admitted by a superior Court, and who, from the discovery of new matter or evidence which was not within their knowledge, or could not be adduced by them at the time when the decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against them, are at liberty to present a petition for this purpose to the Court, in which the decree in question may have been passed; such petition shall be written on stampt paper of the value prescribed in Section 18; Regulation 1, 1814, and shall be presented within the period of three calendar months, from the delivery or tender of the decree, which period shall be calculated according to the provisions of Clause eleventh, of Section 8, of this Regulation.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 2.

232. The terms of the clause referred to in the margin [viz. Reg. 26, 1814. Sect. 4, Cl. 2,] apply to "regular suits," but the Court has decided that the spirit of the Rule is also applicable to "summary suits."—*Con. No.* 216, 27*th July*, 1815.

233. Held on a reference from the Judge of Behar, that the spirit of Clause 2, Section 4, Regulation 26, 1814, is applicable to miscellaneous cases.—*Con. No.* 1249, *Cal. C.* 13*th Sept. West. C.* 4*th Oct.* 1839.

234. Held that the order of a Zillah Judge dismissing a suit on default, or without any investigation of its merits, is open to review under the provisions of Section 4, Regulation 26, 1814. —*Con. No.* 1269, *West. C.* 3*d Jan. Cal. C.* 7*th Feb.* 1840.

235. The Courts are nevertheless authorized to admit applications for a review

after the period abovementioned, provided that the parties preferring the same shall be able to shew just and reasonable cause to the satisfaction of the Court for not having preferred such application within the limited period; in such case however the Courts are enjoined to proceed with caution, and to state at large upon the proceedings, their reasons for admitting such applications after the limited period. If the Courts shall be of opinion, that there are not any sufficient grounds for a review, they shall reject the petition, and their order to that effect, shall be final; but if on the contrary, they shall be of opinion, that the review desired, is necessary to correct an evident error, or omission, or is otherwise requisite for the ends of justice, they shall report the same to the Sudder Dewanny Adawlut, transmitting at the same time, a statement of the grounds of their opinion, with a copy of the petition presented to them, and a copy of the decree passed in the case.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 2.

236. The Court of Sudder Dewanny Adawlut, in cases referred to them under the preceding clause, as well as in all cases, in which a petition may be presented to them for a revision of their own judgments, which may not have been appealed to the King in Council, (or though appealed, the proceedings in which may not have been transmitted to the King in Council,) are authorized to grant the review desired, if upon a consideration of the reasons stated, the circumstances of the case shall appear in justice to require it. The Sudder Dewanny Adawlut shall record on their proceedings the grounds upon which a review may be granted by them in each instance, and shall issue any instructions regarding the admission or rejection of new evidence in the case, which they may deem just and proper.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 3.

237. The order of a Zillah or City Court, or of a Provincial Court, or of the Sudder Dewanny Adawlut, rejecting the petition for a review in the first instance, or of the latter Court refusing to sanction a review when applied for by a lower Court, shall not be construed to preclude the party from instituting a regular appeal, (if the case be appealable) in a competent Court, subject to the conditions and rules prescribed by the regulations in force for the admission of such appeals.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 4.

238. An instance having been brought to the notice of the Court of a Judge erroneously conceiving himself authorized, under Section 4, Regulation 26, 1814, to review his orders without the previous permission of the Sudder Dewanny Awawlut, in cases in which the application for review may have been presented within the period of three months from the date of the order; I am directed to request, that if such has been the practice in your Court, you will abstain from it in future.—*Cir. Ord. Cal. and West. C. 5th Dec.* 1834.

239. This applies particularly to applications from Civil Judges for permission to review their judgments. Such applications should not be made unless the Judge has fully satisfied himself that a review is necessary for the ends of justice; and the grounds on which he has come to that conclusion should be distinctly stated in the letter. If, for instance, the plea be the discovery of new matter or evidence which was not within the knowledge of the party, or could not be adduced by him at the time when judgment was passed; the manner in which the new matter was discovered, and the cause of the inability of the party to produce the evidence in proper time, with the proof of the fact, should be clearly detailed, as well as the effect which the new matter or evidence would have in impeaching the propriety of the judgment. It is not intended by the foregoing remark to define all the grounds on which a review may be admitted, but to shew the nature of the information required by the Court, to enable them to judge of the necessity or otherwise of a compliance with the recommendation.—*Cir. Ord. Cal. and West. C. 27th Nov.* 1835, *Par.* 3.

240. Whereas it has been customary for parties petitioning for review of orders rejecting applications for a review of judgment to write their petition on stampt paper prescribed for miscellaneous petitions, viz. two Rupees' value, on the plea that three months have not elapsed since the date of the order to be reviewed; and whereas such petition, being in fact a second petition on the same subject, ought to be governed by the rules applicable to the petitions for a review in the first instance: It is resolved, that every and each such petition, provided it be presented within three calendar months from the delivery or tender of the decree appealed against, may be written on stampt paper of the value of two Rupees: but, if preferred after the expiration of that period, all such petitions must be written on stampt paper prescribed in Art. 8, Schedule B, Regulation 10, 1829, with reference to the amount or order of the property adjudged against the party desiring the review; in like manner as if a regular appeal were preferred from such judgment, as required by Clause 1st, Section 2, Regulation 2, 1825.—*Con. No.* 842, *Cal. C.* 1*st Nov. West. C.* 29*th Nov.* 1833.

241. It being [It is] the obvious intention of the Rules referred to, that application for a review of judgment made in pursuance thereof, should, as far as practicable, be received and disposed of by the Judge or Judges who may have passed the decision; subject to the regular course of appeal, if the case be appealable to a superior Court.—*Reg.* 2, 1825, *Sect.* 3.

242. It having been ruled by the Court that in cases where a Zillah or City Judge may have obtained, and availed himself of leave of absence for a period exceeding six months, and there may be a reasonable probability of his remaining absent in excess of that period, it is competent to his successor, under the terms of Section 3, Regulation 2, of 1825, to receive and act upon any application which may be presented to him for a review of such Judge's decision without waiting for the expiration of the term of six months, I am directed to communicate the same to you as a rule of practice for your future guidance and observance on occasions of the nature referred to.—*Cir. Ord. Cal. and West. C.* 7*th June*, 1839, *Par.* 1.

243. You will be careful, whenever there may be occasion to apply for authority to admit a review of judgment under the above circumstances, to state the particular grounds that exist for supposing that the Judge who passed the decision will not return until after six months shall have expired from his departure, in order that the superior Court may be enabled to form an accurate opinion as to the propriety or otherwise of granting the review prayed for.—*Cir. Ord. Cal. and West. C.* 7*th June*, 1839, *Par.* 2.

244. On a reference from the Judge of Tirhoot, it was held by the Calcutta Court, in concurrence with the Western Court, that a judgment passed by an additional Judge during the time he officiated for the Judge of the district, is to be reviewed by the former if still attached to the district, and not by the Judge.—*Con. No.* 1123, 29*th Dec.* 1837.

245. Doubts have been entertained whether in a case in which the Court has rejected an application for a special appeal from the decision of the Zillah Judge in appeal from the original decision of a Principal Sudder Ameen; or in a case in which the Court, under the power vested in them by Clause 2, Section 2, Regulation 9, 1831, have confirmed the original decision of a Zillah Judge; the last order of the Sudder Dewanny Adawlut, or the decision of the Zillah Judge, is to be considered as the judgment which is open to review under the provisions of Section 4, Regulation 26, of 1814.—The Court are of opinion that as in the first instance no appeal has been admitted from the judgment of the Zillah Judge, the Judge may, under the circumstances stated in Clause 2, Section 4, Regulation 15, 1814, apply for permission to review his decision.—When, on the other hand, the Sudder Court has confirmed a decision under the provisions of Clause 2, Section 4, Regulation 9, 1831, the order is to all intents and purposes a judgment, open to review by it (the Sudder Court) only.—*Con. No.* 1057, *Cal. C.* 11*th Nov. West. C.* 25*th Nov.* 1836, *Par.* 3.

SECT. XXI.

Review of Judgment by the Zillah Court.—Stamps.

246. Such part of the second Clause of Section 4, Regulation 26, 1814, as provides that the petition for a review of judgment, in the cases therein mentioned, shall be written on stamp paper of the value prescribed in Section 18, Regulation 1, 1814, [viz. *now*, the stamp ordained for miscellaneous petitions in Regulation 10, 1829, Art. 7, Schedule B.] shall after the promulgation of the present Regulation be considered applicable only to petitions for a review of judgment, which may be presented, as required by the Clause above noticed, within the period of three calendar months from the delivery or tender of the decree. Whenever the petition for a review of judgment may be presented after that period, it shall be written upon the stampt paper prescribed in Section 13, Regulation 1, 1814, [*now*, the stamp ordained for plaints and petitions of appeal in Regulation 10, 1829, Art. 8, Schedule B.] with reference to the amount or value of the property adjudged against the party desiring the revision; in like manner as if a regular appeal were preferred from such judgment; unless the party desiring the review be a pauper, in which case the provisions relative to pauper appellants, contained in Regulation 28, 1814, shall be held applicable.—*Reg.* 2, 1825, *Sect.* 2, *Cl.* 1.

247. If the petition for a review of judgment, presented after the promulgation of this Regulation, shall be rejected by the Court receiving the same, as not containing sufficient grounds for the review desired, the petitioner shall not be entitled to receive back the amount of the Stamp duty paid for the paper on which the petition may have been written; but in the event of its having been written on the stampt paper prescribed in Section 13, Regulation 1, 1814, [*now*, Art. 8, Sch. B. Reg. 10, 1829,] the Court, rejecting the petition, is vested with a discretionary authority (as in the case of special appeals, under the fifth Clause of Section 2, Regulation 26, 1814,) in any particular instance, wherein the forfeiture of the entire stamp duty may appear excessive on due consideration of the circumstances of the case, to order the refund of any portion thereof, not exceeding three-fourths of the total amount, from the public Treasury.—*Reg.* 2, 1825, *Sect.* 2, *Cl.* 2.

248. When the rejected petition may have been written on the stampt paper prescribed in Section 18, Regulation 1, 1814, [*now*, Art. 7; Sch. B. Reg. 10, 1829,] and shall be found by the Court rejecting it, groundless and litigious; so as to merit a fine, in addition to the small stamp duty paid in conformity with that Section, the Court is authorized and required (as in the case of litigious summary appeals, by the tenth Clause of Section 3, Regulation 26, 1814,) to impose such fine as may be proportionate to the circumstances of the case, and the condition of the party, not exceeding the amount of the stamp duty which would have been payable if the petition had been written on the stampt paper prescribed in Section 13, Regulation 1, 1814, [*now*, Art. 8, Sch. B. Reg. 10, 1829.] —*Reg.* 2, 1825, *Sect.* 2, *Cl.* 3.

249. When the petition for a review of judgment may be admitted, the Court reviewing the case, will, on deciding it, pass such order relative to the stamp duty paid by the petitioner, as may appear just and proper; whether for his reimbursement by the opposite party as part of the costs of suit; or for the refund of any portion of it, not exceeding three-fourths, by Government.—*Reg.* 2, 1825, *Sect.* 2, *Cl.* 4.

250. The enhanced cost attending the presentation of a petition after lapse of three months, is merely with reference to such delay, and the probable inconveniences that may attend it; and the Court, to whom the petition for a review may be presented, is competent to reject it on any ground; it not being requisite, according to the rule contained in Clause 2, Section 4, Regulation 26, 1814, to admit a review, unless the parties preferring applications for the same shall be able to shew just and reasonable ground to the satisfaction of the Court, for not having preferred such application within the limited period.—*Con. No.* 490, 15*th Dec.* 1828.

251. It was resolved, with the concurrence of the Calcutta Court of Sudder Dewanny Adawlut, that documents filed with applications for a review of judgment under the provisions of Section 4, Regulation 26, of 1814, should be considered as exhibits, and made liable as such, to the rule contained in Article 5, Schedule B, Regulation 10, of 1829, in the same manner as if they had been filed or entered on the proceedings of the original suit, or when it was before the Court in appeal, whether regular or special.—*Con. No.* 1058, *Cal. C.* 21*st Oct. West. C.* 18*th Nov.* 1836.

SECT. XXII.

Review of Judgment by Principal Sudder Ameens.

252. The rule contained in Clause second, Section 4, of the aforesaid Regulation, [Reg. 26, 1814,] relative to the review of judgments, shall be held applicable to originals suits and appeals tried by Principal Sudder Ameens.—*Reg.* 5, 1831, *Sect.* 19, *Cl.* 1.

253. If the Principal Sudder Ameen shall be of opinion that the review applied for ought to be admitted, he shall report the case to the Zillah or City Judge, who is authorized to grant permission under the same rules as are prescribed by the existing Regulations in cases where similar applications may be made to the Court of Sudder Dewanny Adawlut.—*Reg.* 5, 1831, *Sect.* 19, *Cl.* 2.

254. Held that the order of a Zillah Judge dissenting from a Principal Sudder Ameen as to the propriety of a review of the latter's judgment on a reference made under Clause 2, Section 19, Regulation 5, 1831, is final, and not open to revision on appeal to the Sudder Dewanny Adawlut. —*Con. Cal. C.* 14*th May, West. C.* 28*th May,* 1841.

255. All applications for reviews of judgment in suits decided by the Principal Sudder Ameen, will be made direct to that officer, who will proceed agreeably to Section 19, Regulation 5, 1831, and when recommended to be admitted in suits above the value of 5000 Rupees, the Principal Sudder Ameen will forward the application direct to this Court.—*Cir. Ord. Cal. and West. C.* 23*rd Feb.* 1838, *Par.* 7.

256. And it is hereby enacted, that in all suits exceeding the amount or value specified in Clause first, Section 18, Regulation 5, 1831, which shall, under the authority of Section 1, of this Act, be referred to a Principal Sudder Ameen the Appeal from the decision of such Principal Sudder Ameen shall be direct to the Court of Sudder Dewanny Adawlut, and shall be conducted in all respects according to the same rules as if it were an appeal from the decision of a Zillah Judge to the said Court of Sudder Dewanny Adawlut, and any application for a review of judgment on such decision shall be made by the said Principal Sudder Ameen directly to the said Court of Sudder Dewanny Adawlut, and shall be conducted in all respects as if it were an application for a review of a decision of a Zillah Judge.—*Act* 25, 1837, *Sect.* 4.

257. I am desired to add that the above rule and observations [Rules 242 and 243 of this Chapter] are equally applicable to the Court of the Principal Sudder Ameen, to whom you are requested to make known the purport of these orders.—*Cir. Ord. Cal. and West. C.* 7*th June,* 1839, *Par.* 3.

SECT. XXIII.

Appeal on an Award of Arbitration.

258. If a petition of appeal shall be preferred against the decision of any Zillah or City Court founded on an award of arbitration, it is to be dismissed with costs, unless it be fully proved to the satisfaction of the Court by the oaths of two credible witnesses, that the arbitrators have been guilty of gross corruption, or partiality, in the cause in which they have made the award.—*Reg.* 5, 1793, *Sect.* 28.—*Ben. Reg.* 8, 1795, *Sect.* 6.—*Ced. and Conq. Prov. Reg.* 4, 1803, *Sect.* 28.

259. Appeals against decisions founded upon award of arbitration not to be dismissed, under Section 28, Regulation 5, 1793, without having been admitted. See proceedings in case Daveepersaud Sein *v.* Indrajeet Sing.—*Gon. No.* 48, 18*th Sept.* 1809.

CHAPTER VI.

EXECUTION OF DECREES.

SECTION I.

Execution of Decrees by Zillah Courts.

1. The Zillah and City Courts, the Provincial Courts, and the Sudder Dewanny Adawlut shall not be required to carry into execution any decree, which may be passed in original suits, or in appeals, subsequently to the 1st of February 1815, except in conformity with the following rules and provisions.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 4.

2. Any party who may be desirous of obtaining the execution of a decree passed subsequently to the 1st of February 1815, shall appear either in person or by an authorized pleader before the Court by whom such decree may have been passed, or if the decree shall have been passed by a Sudder Ameen, before the Zillah or City Judge, and shall present a petition written on the stamp paper prescribed in Section 18, Regulation 1, 1814, [*now*, Reg. 10, 1829,] praying for the execution of the decree.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 5.

3. The petition shall state the number of the suit, the names of the parties, the date and substance of the decree, whether any appeal has been preferred or admitted from the decision, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; it shall further contain a statement of the specific amount due to the petitioner under the decree, whether on account of costs of suit, or otherwise, and the name of the individual, or individuals, against whom the enforcement of the decree is solicited.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 6.

4. The Court, after causing the purport of the petition to be compared with the decree contained in the original record of the suit, shall proceed to execute the same in conformity with the provisions which are now in force or which may be hereafter enacted.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 7.

5. The Court is then to cause the decree to be executed, if it be for a Zemindarry, independent or dependant talook, or other estate or real property, by causing possession of the property to be delivered to the person to whom it may be decreed; if it be for personal property or a sum of money, by causing the specific thing to be delivered, or the value of it, or the sum of money decreed, to be levied by public sale by auction of a sufficient portion, or, if requisite for the satisfaction of the decree, the whole of the lands, houses, and all other effects, either real or personal, belonging to the party against whom the judgment may have been given, or by the attachment of his person, or, where it may be necessary, both by the sale of his property and effects, and the attachment of his person.—*Reg.* 4, 1793, *Sect.* 7.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and*

6. Provided however, that if the suit shall have been tried ex-parte, or that an interval of more than one year shall have elapsed between the date of the decree, and the application for its execution; or that the enforcement of the decree shall be solicited against individuals being heirs or representatives of the original parties in the suit, or against one only of several individuals equally affected by the decree, or if there shall appear reason to believe that the matter in dispute has been adjusted by the parties subsequently to the decree, either by the voluntary surrender of the thing adjudged, or by the payment of the sum decreed either in whole or in part, by kistbundee or otherwise, it shall be competent to the Court, instead of proceeding to the immediate enforcement of the decree, to issue a notice to the party against whom execution may be sued out, requiring him to shew cause within a limited period to be fixed by the Court, why the decree should not be executed against him. If upon such notice the party shall not attend in person or by vakeel, or shall not shew sufficient cause to the satisfaction of the Court why the decree should not be forthwith executed, the Court will cause the judgment to be satisfied according to the rules in force. If the party shall attend in person or by vakeel, and shall offer any objection to the enforcement of the decree, the Court shall issue such order after a due consideration of the circumstances of each case, as may appear just and proper.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 8.

7. In explanation of the Eighth Clause of Section 15, Regulation 26, 1814, which provides that, in certain cases, "it shall be competent to the Court applied to, for execution of a decree, instead of proceeding to the immediate enforcement of the decree, to issue a notice to the party against whom execution may be sued out, requiring him to shew cause within a limited period to be fixed by the Court, why the decree should not be executed against him," it is hereby declared that the above provision was meant to be imperative in the cases referred to; and not to leave a discretion with the Court; at the same time, with a view to guard against abuses, it is now further provided, that, whenever it may be shewn, by satisfactory evidence, that the party against whom the decree was passed, or in the event of his decease, his legal representative who may have become answerable for the fulfilment of it, is about to remove, or dispose of, the property from which the judgment should be satisfied, the Court, proceeding, as directed in the Eighth Clause of Section 15, Regulation 26, 1814, shall be authorized to require security in such amount as may appear sufficient for making good the decree; and in the event of such security not being given, to cause an attachment of property; as provided for in similar cases, whilst a suit is depending, by Section 5, Regulation 2, 1806.—*Reg.* 7, 1825, *Sect.* 7,

8. The following reference was made by the Judge of Futtehpore: "Whether in cases in which an itelanameh in lieu of a hookemnameh has been issued for the defendant to shew cause, &c. under Regulation 26, of 1814, Section 15, Clause 8, and Regulation 7, of 1825, Section 7, and such defendant be not met with, it is then incumbent on the Court issuing the process to issue a proclamation or not?"—It was held that on the contingency contemplated by the Judge, viz. the failure to serve a notice on the party, occurring, it is incumbent to issue a proclamation, but that the object would be best answered by including its purport in the notice, which should be accompanied by a perwannah to the Nazir, instructing him, in the event of personal service being impracticable, to affix the process to the defendant's house.—*Con. No.* 1236, *West. C.* 19*th July*, *Cal. C.* 16*th Aug.* 1839.

9. The preceding rules shall not be construed to prevent the Courts from issu-

ing process of execution, for the purpose of recovering any fees or costs which may be due to Government, or any fees due to vakeels by a party in a suit, whether decided before or after the 1st of February 1815. In such cases, as well as in suits, in which a party may have been allowed to plead in formâ pauperis, the Courts shall proceed without any application from the parties to enforce execution of the judgment so far as relates to the recovery of the amount of fees, or costs, due to Government, or to pleaders in the suit.—*Reg.* 26, 1814, *Sect.* 15, *Cl.* 9.

10. Supposing the holder of a former decree to have made the prescribed application, and no other property is forthcoming from which the decree passed in his favour can be satisfied, the Court are of opinion, that he would have an equitable claim to attach the property receivable by his debtor, under the judgment in favour of the latter, and to cause execution accordingly, unless good and sufficient reason against the enforcement be shewn by the party against whom such judgment may have been passed.—*Con. No.* 293, *9th July*, 1818, *Par.* 3.

11. Held on a reference from the Judge of Cawnpore, that unproved claims of B against C, may be considered as assets available in the execution of A's decree against B, and be sold by auction; when the auction purchaser would acquire the right of demanding payment from C, or, in the event of non-payment, of suing him for the recovery of the debt.—*Con. No.* 1248, *West. C. 6th Sept.* 1839, *Cal. C. 3d Jan.* 1840.

12. Held further that the same principle is applicable to proved claims in respect to which a decree has already passed, the auction purchaser possessing in this instance a right to sue out execution of decree in the same manner as the original decree-holder.—*Con. No.* 1248, *West. C. 6th Sept.* 1839, *Cal. C. 3d Jan.* 1840.

13. The Court have ruled that pensions granted by Government are not liable to attachment in satisfaction of decrees of Court.—*Con. No.* 788, *3rd May*, 1833.

14. I am directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, requesting to be informed as to the course to be pursued in the event of a person who has purchased chattels or personal property at a sale, and been allowed to remove them, subsequently refusing to pay for or restore the same. The Court do not understand from your letter that any case of such refusal has actually occurred. They therefore deem it sufficient to state that in no instance should personal property be delivered up to the purchaser, until he has paid for it; and that if the nazir or other person entrusted with the sale, deliver the property to the purchaser and the latter refuse to make payment, it will be at his own personal risk. He will be compelled to make good the price, and will have to recover the same from the purchaser by the regular course of law.—*Con. No.* 787, *3d May*, 1833.

15. It is not competent to a Court to attach the salary of a military officer in execution of a decree of Court.—*Con. No.* 902, *West. C. 26th Sept. Cal. C. 24th Oct.* 1834.

16. I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, regarding the attachment of the salaries of public servants in execution of a decree. In reply, I am directed to state that any sum of money actually due to a public servant, on account of salary, is liable to attachment, in the same manner as other property; you are therefore at liberty to attach such money, and to call on the disbursing officer to assist you in effecting the attachment, and such disbursing officer is required to give his assistance. Should the amount of salary actually due be insufficient to satisfy the decree, process can be immediately issued against the person of the defendant.—*Con. No.* 827, *9th August*, 1833.

17. I am directed to communicate to you the opinion of the Court that a pauper decree holder should be put in possession of the property decreed to him, by a Government officer, the cost being made chargeable to the party cast.—*Con. No.* 1186, *West. C. 2d Nov. Cal. C. 16th Nov.* 1838.

18. The Court deem it proper that all papers relating to the execution of the same decree be kept in one nuthee, or bundle, with the proceedings in the cause to which the decree has reference; and they direct that you enjoin the observance in future of this practice in all the Courts subordinate to your jurisdiction.—*Cir. Ord. 28th May*, 1824, *Par.* 2.

19. They further think it desirable, that the register of applications for execution of decrees and of proceedings held thereupon should be kept in the whole of the Civil Courts under this Presidency, in a uniform manner; and for this purpose they direct me to forward to you the accompanying form of Register to be kept for each Court, and in separate books for decrees passed by the Zillah and City Judges, their Register, the Sudder Ameens, and the Moonsiff respectively.—*Cir. Ord.* 28*th May*, 1824, *Par.* 3.

20. I am desired, however, to state for your information, and that of the several Courts within your jurisdiction, that in prescribing this general form for your and their observance, for the sake of uniformity, it is not meant to preclude the Judges of any Courts from introducing into their respective Registers any further columns or subdivisions which they may on experience find calculated to promote the important object for which the register is proposed; namely, the prompt and due execution of the judgments of the Civil Courts, in all cases wherein application may be made for that purpose, in pursuance of Section 15, Regulation 26, 1814.—*Cir. Ord.* 28*th May*, 1824, *Par.* 4.

Form of Register of Applications for the Execution of Decrees passed by the Judge of the Zillah of ———.

1	2	3	4	5	6	7	8	9	10	11	12
Number and date of application.	Number and date of decree.	Names of parties.	What decreed, and to whom.	Process issued in execution, and on what dates.	Return to process, and on what dates received.	Petition of claimants to property attached, and when filed.	Orders for sale or release of property, with dates.	Sums realized, and property delivered in execution, with dates of receipts for each.	Parties confined in execution, with date of order for their being sent to jail.	Date of order for their release.	Miscellaneous orders and remarks.

NOTE.—A registry book containing a numerical register, according to this form, to be kept for each Court, and separate registers to be kept for the decrees passed by the zillah or city Judges, their Register, the Sudder Ameens, and the Moonsiffs respectively.

21. It is hereby enacted, that it shall be competent to the Zillah and City Judges within the Presidency of Fort William in Bengal, to refer to the Principal Sudder Ameens subordinate to them, applications for the enforcement of Decrees, to be executed by the said Principal Sudder Ameens, under the rules prescribed in the General Regulations, applicable to such cases.—*Act* 5, 1836,

22. An order passed on the execution of a decree in regard to interest, Wasilaut, or any other matter in dispute between the parties to the suit, and carrying out the original intentions of such decree, cannot be considered as constituting a new cause of action, and is not subject, therefore, to a regular suit.—*Cir. Ord. Cal. and West. C.* 11*th Jan.* 1839, *Par.* 9.

23. Held by the Western Court, in concurrence with the Calcutta Court, that any order passed in the execution of a decree in regard to mesne profits, interest or other matter in dispute between the parties to the suit, which may be involved in the decision, must be looked upon as a

necessary process for carrying into effect the original intentions of the Court passing the decree, in respect to a point, in which it may, in fact be said already to have pronounced a formal judgment, and cannot, therefore, be considered as constituting a new cause of action.—*Con. No.* 1129, *9th Feb.* 1838.

SECT. II.

Sale of Land in execution of a Decree of Court, by the Revenue Authorities.

24. When a Court of Civil judicature shall have occasion to have recourse to the sale of lands paying Revenue to Government, in satisfaction of a decree, the Court by which the decree is to be enforced, is to transmit a copy of the decree, without any other part of the proceedings, and a translate of it in English, to the Board of Revenue.—*Reg.* 45, 1793, *Sect.* 2.—*Ben. Reg.* 20, 1795, *Sect.* 2.—*Ced and Conq. Prov. Reg.* 26, 1803, *Sect.* 16.

25. I am directed by the Court to forward to you the accompanying copy of a letter from the Judge of Zillah Dacca, dated the 21st ultimo, No. 313, requesting to be informed, in consequence of a difference of opinion with you, whether "lands paying revenue can be sold in satisfaction of decrees, being putnee talooks and other saleable tenures as contemplated in Section 16, Regulation 7, 1832, without a report under Regulation 45, 1793, Section 2, to the Commissioner of Revenue." —The Court direct me to refer you to Construction, No. 349, of the printed Constructions, and to observe that as the public sale of putnee and durputnee tenures in execution of decrees must be conducted by the Collector, the report required by Section 2, Regulation 45, 1793, must be made to the Commissioner of Revenue.—*Con. No.* 897, *5th Sept.* 1834.

26. The Board of Revenue are to proceed with all practicable dispatch to dispose of such portion of the lands of the party against whom the decree may be given, as may be sufficient to make good the amount of it.—*Reg.* 45, 1793, *Sect.* 3.—*Ben. Reg.* 20, 1795, *Sect.* 3.—*Ced. and Conq. Prov. Reg.* 26, 1803, *Sect.* 17.

27. The public Jumma or Revenue to be charged on the portion of any estate ordered to be put up to sale, is to be adjusted agreeably to the principles prescribed in Section 10, Regulation 1, 1793.—*Reg.* 45, 1793, *Sect.* 4.—*Ben. Reg.* 20, 1795, *Sect.* 4. —*Ced. and Conq. Prov. Reg.* 26, 1803, *Sect.* 18.

28. The Board of Revenue are empowered, in cases in which it may appear to them expedient, to direct the Collector to attach the lands ordered to be sold, by deputing an Ameen to take charge of them, or by placing them under the nearest Tehseeldar or other Revenue Officer. The Officer to whom the lands may be committed is to collect the Rents and Revenues, to prevent waste being committed by the Proprietor, and to furnish any information that may be required for the adjustment of the Jumma.—*Reg.* 45, 1793, *Sect.* 5.—*Ben. Reg.* 20, 1795, *Sect.* 5.—*Ced. and Conq. Prov. Reg.* 26, 1803, *Sect.* 19.

29. The expenses attending the attachment and sale of the lands, after being approved by the Board of Revenue, are to be charged to the account of the proprietor, and are to be defrayed either from the collections made from the lands, or from the proceeds of the sale, if the collections shall be insufficient for that purpose.—*Reg.* 45, 1793, *Sect.* 6.—*Ben. Reg.* 20, 1795, *Sect.* 6.—*Ced. and Conq. Prov. Reg.* 26, 1803, *Sect.* 20.

30. The proprietor of the lands to be sold may appoint his dewan, or any other person whom he may think proper, to keep a counterpart of the accounts of the receipts and disbursements of the Ameen. The Ameen is to collect according to the engagements that may subsist between the proprietor and his dependant talookdars, under farmers and ryots, and is not to make any alterations whatever in such engagements, or exact more than the amount specified in them, whether they be conformable to Regulation 44, 1793, or not; and he shall be liable to a prosecution in the Dewanny Adawlut, for any alteration or infringement of such engagements in opposition to this Section. In cases in which no engagements may exist between the proprietor and his dependant talookdars, under farmers or ryots, the Ameen is to collect from them according to the established rates and usages of the pergunnahs. The Ameen shall likewise be subject to a prosecution by the proprietor or farmer of the estate for embezzlement, or injuries done to the estate or farm during the time that the collection of the rents and revenues of it may be entrusted to him.—*Reg.* 45, 1793, *Sect.* 7.—*Ben. Reg.* 20, 1795, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* 26, 1803, *Sect.* 21.

31. The rules in the preceding Section with regard to Ameens, are to be considered equally applicable to tehseeldars or other officers to whose charge lands ordered to be sold may be committed.—*Reg.* 45, 1793, *Sect.* 8.—*Ben. Reg.* 20, 1795, *Sect.* 8.—*Ced. and Conq. Prov. Reg.* 26, 1803, *Sect.* 22.

32. If a proprietor, or (if the lands be let in farm,) a farmer, or his surety shall resist, or cause to be resisted the Ameen or other officer whom the Collector by the authority of the Board of Revenue may direct to attach lands ordered to be sold, the Collector is to proceed against the offender in the manner in which he is directed in Regulation 14, 1793, to proceed against proprietors and farmers, or their sureties, who resist the process which he may issue under Section 5 of that Regulation, and all the rules contained in that Regulation, respecting proprietors, farmers, or sureties, who may resist or cause to be resisted the process issued by Collectors under that Section, are to be considered applicable to proprietors, farmers, or sureties, who may resist or cause to be resisted, the officer who may be ordered by the Collector to attach their lands under Section 5 of this Regulation. Any other descriptions of persons guilty of the offence specified in this Section, shall be subject to the same process and punishment as sureties so offending.—*Reg.* 45, 1793, *Sect.* 9.—*Ben. Reg.* 20, 1795, *Sect.* 9.—*Ced. and Conq. Prov. Reg.* 26, 1803, *Sect.* 23.

33. The proprietor, or (if the lands be let in farm,) the farmer of the lands ordered to be sold, upon receiving a written order for that purpose from the Collector under his official seal and signature, shall attend the Ameen or other officer in person, or order an agent duly empowered and informed, to attend him, if the Collector shall deem it sufficient to require the attendance of an agent only, with any accounts of the collections and jumma of the lands ordered to be sold, or the Estate of which they may form a part, for the purpose of adjusting the jumma at which the lands are to be disposed of. If the proprietor or farmer shall omit or refuse to attend, or to cause an agent of the description above specified, to attend by the time prescribed in the Collector's requisition, with the accounts and information required, the Board of Revenue are empowered to impose such daily fine upon him until he complies with the Collector's requisition, as they may think adequate to his situation and circumstances in life, reporting however the amount for the confirmation of the Governor General in Council. The fine is to

be levied by the same process as is prescribed for the recovery of arrears of Revenue.—*Reg.* 45, 1793, *Sect.* 10.—*Ben. Reg.* 20, 1795, *Sect.* 10.

34. The proprietor or farmer shall likewise cause the putwarries to attend the Ameen, or other officer, to assist him in making the collections, and for the purpose of furnishing him with the accounts and information necessary for adjusting the jumma as required by Section 62, Regulation 8, 1793, as well as any other of the Zemindarry officers whose assistance or attendance may be required for the above purposes, upon receiving a written requisition from the Collector to that effect, and in the event of his omission or refusal, he shall be subject to the same penalty as for the breach of the rules in the preceding Section.—*Reg.* 45, 1793, *Sect.* 11.—*Benares, Reg.* 20, 1795, *Sect.* 11.

35. Previous to any sale of land taking place, a publication is to be made in the Persian and Bengal languages, if the lands shall be situated in Bengal or Orissa, or, in the Persian language and in the Hindostanee language and Nagree character, if the lands shall lie in Behar, specifying the jumma at which the lands or the several lots of them, if they are ordered to be sold in two or more lots, are to be disposed of, and the place, date, and hour of the day, fixed for the sale, and the proportion of the Revenue payable on account of the year in which the sale of the lands may take place, for which the purchaser is to be responsible, or, if the exact proportion cannot be ascertained, the rules by which the amount of it is to be adjusted. The publication is to be fixed up in some conspicuous place in the Court room of the Dewanny Adawlut of the Zillah, the office of the Collector, the principal town or village in the lands to be sold, and the office of the Secretary to the Board of Revenue. The publication is to be fixed up at the several places above-mentioned for a term not less than one month before the sale takes place. The other conditions of sale contained in Sections 13 and 14, as well as any other stipulations that may be made, are to be fixed up in a conspicuous part of the room in which the sale may be directed to take place, on the day of sale, and during the three days preceding it.—*Reg.* 45, 1793, *Sect.* 12.—*Ben. Reg.* 20, 1795, *Sect.* 12.—*Ced. and Conq. Prov. Reg.* 26, 1803, *Sect.* 16.

36. I am directed by the Court to inform you that the rule laid down in Section 12, Regulation 45, 1793, regarding the adjustment of the jumma, is applicable only to portions of estates paying Revenue to Government directly, and not to shikmee or dependent talooks, the rent of which, payable to the Zemindar, is disputed between him and the proprietor of the under tenure. The Court therefore see nothing illegal in the order of the Commissioner to the Collector (referred to by you) for the omission of the jumma in the sale papers prepared by the latter officer.—*Con. No.* 1194, *Cal. and West. C.* 28*th Dec.* 1838.

37. A deposit of five per cent on the amount of the purchase money is to be made at the time of the sale by the purchaser of the lands. If the purchaser shall omit to discharge the purchase money within the period which may be stipulated, he is to forfeit the deposit to Government, and the lands are to be resold at such purchaser's expense. If the lands shall be disposed of at a lower price than that offered by the first purchaser, he is to make good the deficiency. If a profit shall arise on the second sale, it is to be carried to the credit of the proprietor.—*Reg.* 45, 1793, *Sect.* 13.—*Ben. Reg.* 20, 1795, *Sect.* 13.

38. If the first purchaser shall refuse or omit to make the deposit, or to pay within the required time the amount of the deficiency and the expenses arising on the re-sale,

after being served by the Collector of the Zillah in which he may be or reside, or by the Board of Revenue, if he shall be in Calcutta, with a written demand for the amount similar to that directed in Section 3, Regulation 14, 1793, to be served on proprietors and farmers of land from whom arrears of Revenue are due, the amount shall be levied from him by the same process as is prescribed for enforcing decrees of the Courts of Judicature.—*Reg.* 45, 1793, *Sect.* 14.—*Ben. Reg.* 20, 1795, *Sect.* 14.

39. The purchasers of land sold under this Regulation, are not to be held responsible for any arrears or suspensions of Revenue that may be due to Government from the lands prior to the year in which the purchase may be made, unless it shall be otherwise stipulated in the conditions of sale. Arrears or suspensions not so stipulated to be made good by the purchaser, are to be paid from the proceeds of the sale, or by the former proprietor, or recovered by the prescribed process against any other property which he may possess, or against both his property and person if necessary. Arrears of rent or revenue that may be due to the former proprietor from his dependant talookdars, under-farmers, or ryots preceding the date on which the lands may be sold, are to belong to him, and are to be recoverable by him by suit in the Dewanny Adawlut of the Zillah. The defaulting proprietor however shall be at liberty to transfer his right to such arrears to the new proprietor.—*Reg.* 45, 1793, *Sect.* 15.—*Ben. Reg.* 20, 1795, *Sect.* 15.

40. The rules in the preceding Sections are to be considered applicable to lands held exempt from the payment of revenue to Government as far as they may be applicable to the circumstances thereof, with this addition, that the purchaser of such exempted lands is to be considered as having succeeded only to the rights of the former proprietor, and that the transfer is not to bar any claims of Government for the recovery of the public dues from such lands under Regulations 19 and 37, 1793, or any other Regulation that may be hereafter enacted.—*Reg.* 45, 1793, *Sect.* 17.—*Ben. Reg.* 20, 1795, *Sect.* 16.—*Ced. and Conq. Prov. Reg.* 26, 1803, *Sect.* 24.

41. In view to the nature of tenures in the province of Benares, and to the numerous subordinate titles to land that exist within the same talooka, or zemindary, or village, or villages, the revenue assessed on which is often rendered payable under one potta, by no more than one or more of the principal proprietors, as set forth in Regulations 2 and 6, 1795, it is to be understood, that the purchaser of lands thus situated, in which there shall be more than one person possessing superior or subordinate proprietary claims, is to be considered as having purchased and succeeded to the proprietary rights only of the party or parties on whose account the sale shall be declared to be made, without otherwise affecting the other proprietary titles within the tenure.—*Reg.* 20, 1795, *Sect.* 19.

42. When the sale of the lands shall have taken place, the Collector is to cause the entries of the transfer to be made in the public Registers, as prescribed in Regulations 19, 37, or 48, 1793, according to the description of the property transferred.—*Reg.* 45, 1793, *Sect.* 18.—*Ben. Reg.* 20, 1795, *Sect.* 18.

43. The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, requesting to be informed by whom the public sales of *putnee* and *durputnee* tenures in execution of decrees are to be conducted. In reply, I am desired to communicate to you, that

in the opinion of the Court such sales should be conducted by the Collector.—*Con. No.* 349, 26*th April*, 1822.

44. I am directed by the Court to acknowledge the receipt of your letter of the 25th ultimo, No. 34, and in reply to refer you to Construction, No. 349, of the printed Construction Book, and to inform you that the Court are of opinion that the shikmy and other talooks alluded to by you should be sold in execution of decrees in the same manner as putnee Talooks.—*Con. No.* 921, *Cal. C.* 12*th Dec.* 1834, *West. C.* 23*d Jan.* 1835.

45. The Court desire, that whenever you may find it necessary to have recourse to a sale of land, in satisfaction of a decree, or other judicial process, and may in consequence apply to the Board of Revenue, (or Board of Commissioners,) to make the sale as prescribed by the Regulations, you will at the same time adopt the precaution of deputing a chuprassee, or other officer, to attach the land, and hold the same in sequestration until the sale shall take place, or be countermanded. —*Cir. Ord.* 17*th Feb.* 1816, *Par.* 4.

46. The Court direct me to add, that it will not be necessary in such cases, to divest the person who may be in possession of the land, from the management of it, until the Board of Revenue (or Board of Commissioners) may take measures for that purpose, in pursuance of the authority vested in them by the Regulation abovementioned: but that an order under the seal of the Zillah (or City) Court, directing the attachment, should after the usual proclamation, be affixed to some part of the property sequestered; and the officer charged with it should remain on the premises until the attachment is withdrawn after the sale has taken place, or is countermanded.—*Cir. Ord.* 17*th Feb.* 1816, *Par.* 5.

47. In directing the attachment of land or other real property in execution of a decree, the Civil Courts shall be competent to exercise a discretion in deputing a *chuprassee* or other officer to remain in charge of the same. In adopting or omitting this precaution, the Courts will be chiefly guided by the wish of the party at whose instance the property is attached, or his *vakeel*, to whom it will be their duty to explain the possible consequences of the omission. They will also take into consideration the value of the property, and any other peculiar circumstances of the case before them.—*Cir. Ord. Cal. and West. C.* 5*th Sept.* 1834, *Par.* 2.

48. Where the sale of the lands of any person shall have been ordered to take place in satisfaction of a decree, the Court by which the decree may have been passed, or to which the enforcing of it may be committed, is empowered in the event of the amount of the decree being discharged, or for other cause that may appear to them sufficient, to countermand or postpone the sale, by issuing a precept to that effect to the Collector, if the lands shall have been ordered to be sold by the Collector, or by an address to the Board of Revenue, if the lands shall have been directed to be sold by them, in which precept or address, the Court shall state their reasons for ordering the sale to be countermanded or postponed, and in the latter case, if it shall appear to them proper so to do, they may prescribe a date for the sale of the lands. The Board of Revenue and the Collector are to conform to the requisitions of such precepts or addresses from the Courts for countermanding or suspending the sale of lands.—*Reg.* 45, 1793, *Sect.* 16.—*Ben. Reg.* 20, 1795, *Sect.* 16.—*Ced. and Conq. Prov. Reg.* 26, 1803, *Sect.* 24.

49. The provision contained in the last Clause of the foregoing Section [viz. Reg. 7, 1825, Sect. 3, Cl. 7,] shall be considered applicable to all public sales of land made by the Collectors, or other officers of Government, in the Revenue Department, in execution of decrees of the Courts of judicial process; and the following additional Rules are prescribed respecting such sales, in modification of those now in force.—*Reg.* 7, 1825, *Sect.* 4, *Cl.* 1.

50. When it may be necessary to have recourse to a sale of landed property in execution of a decree, or other judicial process, and the property pointed out for sale, by the person desiring execution of the decree, or other process, may not be such as the Court empowered to enforce the same, is authorized to bring to sale, without application to the Revenue Officers of Government, the Court whose duty it may be to execute the decree or process, shall transmit a copy and translation of the decree, or other process, to the local Board of Revenue, as directed in Regulation 45, 1793, Reg. 20, 1795; and Reg. 26, 1803, and shall at the same time transmit a statement of the lands which the person entitled to the benefit of the decree, or other process, may point out as belonging to the person or persons, from whom the amount may be demandable.—*Reg.* 7, 1825, *Sect.* 4, *Cl.* 2.

51. The Board of Revenue on receipt of the documents above noticed, will proceed as directed in the Regulations referred to and shall furnish the Collector of the district in which the lands proposed for sale may be situated, with a copy of the statement so received; instructing him to select for the sale, any part of the lands included in the statement, which it may appear most convenient to sell in execution of the decree, or other process; and the sale of which may appear sufficient for that purpose.—*Reg.* 7, 1825, *Sect.* 4, *Cl.* 3.

52. Such lands or estates [viz. lands attached by order of the Executive authorities in cases of offences against the state] shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realization of fines or otherwise, during the period in which they may be so held under attachment.—*Reg.* 3, 1818, *Sect.* 10, *Cl.* 2.

53. In the cases mentioned in the preceding Clause, the Government will make such arrangement as may be fair and equitable for the satisfaction of the decrees of the Civil Courts.—*Reg.* 3, 1818, *Sect.* 10, *Cl.* 3.

54. I am directed to acknowledge the receipt of your letter of the 5th instant, and in reply to inform you that no execution of a decree will hold beyond the right of the party against whom it may have been passed: consequently, in the case put by you, B, not having been a party to the suit instituted by C against A, cannot be ousted from his land in execution of the decree passed in favor of C.—*Con. No.* 744, 21*st Dec.* 1832.

55. I am directed to inform you that the Court are of opinion that the right and interest of a jotedar may be sold in satisfaction of a decree.—*Con. No.* 890, *Cal. C.* 11*th July. West. C.* 5*th Sept.* 1834.

56. In case of a sale of property (sold in execution of a decree) being reversed, and the deposit (previously forfeited to Government) ordered to be restored, the revenue authorities are bound to comply with the Court's order, appealing therefrom, if dissatisfied.—*Con. No.* 1110, 20*th Oct.* 1837.

SECT. III.

Sale of Houses, Orchards, Gardens, or small portions of land in execution of a decree of Court, by the Civil Authorities.

57. Such parts of Regulations 45, 1793; Reg. 20, 1795, and Reg. 26, 1803, or of any other Regulation in force, relative to the sale of lands, in satisfaction of decrees of the Courts of Civil Judicature, as require that sales of landed property, in execution of such decrees, shall be made by the Collectors of the Public Revenue, or other Officers of Go-

vernment in the Revenue Department, are hereby explained and modified, as follows. —*Reg.* 7, 1825, *Sect.* 2, *Cl.* 1.

58. The rules contained in the Regulations abovementioned shall not be considered applicable to the sale of houses, gardens, orchards, and small portions of land held exempt from the public assessment; the sale of which, when requisite in execution of any decree, or other judicial process, shall be made, as heretofore, by order of the Court, or Officer, empowered to enforce the decree, or process, without application to the Board of Revenue, or the Collector of the District, or other Officer in the Revenue Department.—*Reg.* 7, 1825, *Sect.* 2, *Cl.* 2.

59. The Judge, Register, or other officer, empowered, under the Regulations, to enforce a Decree, or other judicial process, by a sale of property, is authorized to cause the public sale of any house, garden, orchard, or small portion of Lakheraj land, which may be liable to be sold in execution of the decree, or other process, in like manner, as he is authorized to cause the public sale of any personal property liable to be sold in execution of the same.—*Reg.* 7, 1825, *Sect.* 2, *Cl.* 3.

60. I am directed to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that the Court, having considered the wording of the preamble, and of the second Clause of Section 2, Regulation 7, 1825, in connection with that of the third Clause of Section 2, and of the first Clause of Section 3, are of opinion that houses, gardens, orchards, and small portions of land exempt from public assessment, are to be sold in the same manner as personal property by the Civil Courts; but that larger portions of land exempt from payment of revenue, and all land paying Revenue to Government, however small, not being orchards or gardens, must be sold through the revenue authorities.—*Con. No.* 933, *Cal. C.* 20*th Feb. West. C.* 20*th March*, 1835.

61. Held on a reference from the Session Judge of Beerbhoom, that crops grown on lands allotted to village chowkeedars for their maintenance cannot be exempted from liability to sale, in satisfaction of decrees issued against their owners.—*Con. No.* 1212, *West. C.* 19*th April, Cal. C.* 12*th July*, 1839.

62. The Judges and Registers of the Zillah and City Courts, who usually employ the Nazirs of those Courts, or the Sudder Ameens at the station of the Judge and Register, and the local Moonsiffs in other parts of their jurisdictions, to conduct the public sale of personal property in execution of Decrees, or other judicial process, are hereby authorized to employ the same Officers, when it may appear expedient, in the public sale of houses, gardens, orchards, or small portions of Lakheraj land, under the provisions of this Regulation.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 1.

63. I am directed to refer you to the provisions of Section 3, Regulation 7, 1825, wherein you will find recognized the practice alluded to by you, of employing the *Nazirs* in the attachment and sale of property; but the Court are of opinion, that those officers are not entitled to receive any commission on the proceeds of such sales, the rule cited by you with regard to *Moonsiffs*, who are not, in the discharge of their ordinary functions, ministerial officers of the Courts, not being analogous to the case in point.—*Con. No.* 509, 29*th May*, 1829.

64. In all cases of attachment and intended sale, whether of personal property, or of the landed property above described, in execution of any decree, or other judicial process, a proclamation of the intended sale, with particulars of the time and place of sale, of the property to be sold and of the amount due, for the recovery of which the sale is ordered, shall be made, in the current language of the country, for at least thirty days, before the appointed day of sale; exclusive of the day of sale, and the date on which the proclamation may be ordered.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 2.

65. Such proclamation shall be made, in the usual mode, by beat of drum, on the spot where the property is attached; and a written notification, to the same effect, shall also be affixed in some conspicuous place, within the village or town, in which the attachment may take place; as well as in the Cutcherry of the local Moonsiffs; and at the Cutcherries of the Collector of the District; and the Zillah Judge, or Register, who may have ordered the sale. When the sale is to be made by a Sudder Ameen, the notification shall also be affixed in the Cutcherry of such Sudder Ameen.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 2.

66. The usual processes for attachment and sale, in such cases, may either be issued successively, or simultaneously, as the Judge, Register, or other Judicial Officer, directing the sale, may, in each instance think proper, with reference to the circumstances of the case.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 3.

67. I am directed to inform you that no person can be compelled against his will to take charge of property distrained or attached in the manner described in your communication; [that is, in execution of a decree,] if however any one should take charge of the property voluntarily, he will of course become responsible for the faithful discharge of his engagement and liable to prosecution before the Civil Court by a regular suit for damages which may have arisen from his failing to do so; no summary proceedings however can be instituted against him.—*Con. No.* 958, *West. C.* 19*th June*, *Cal. C.* 17*th July*, 1835, *Par.* 2.

68. Generally the person at whose instance the property is distrained or attached must be considered answerable for the safe custody of the property during the period of distraint or attachment.—*Con. No.* 958, *West. C.* 19*th June*, *Cal. C.* 17*th July*, 1835, *Par.* 3.

69. I am directed to state that the prohibition contained in the Regulation [Reg. 5, 1812, Sect. 14,] against the sale of implements of agriculture relates merely to sales for arrears of rent or revenue; the Moonsiff therefore was competent to sell such property in execution of a decree, against which no such prohibition exists.—*Con. No.* 962, *West. C.* 26*th June*, *Cal. C.* 31*st July*, 1835.

70. I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 30th ultimo, requesting the Court's instructions as to the mode of proceeding to be adopted by a Judge, in the event of the purchaser of property sold by the officers of the Court in execution of a decree refusing to pay the purchase money and take possession of the property; and in the event of a second sale taking place, in what manner the Judge is to realize the amount bid at the first sale, should the property be disposed of for a smaller sum.—In reply, I am desired to acquaint you, that, in the case stated, you should adopt the process prescribed for enforcing a decree of Court.—*Con. No.* 554, 28*th May*, 1830.

71. I am desired to acquaint you, that those instructions did not refer to the case. If a purchaser refuses to take possession of the property purchased within a reasonable period after possession has been tendered to him; the purchase money should, in such case, be paid to the decree-holder, the purchaser being warned that he must abide by the consequences of refusing to take possession.—*Con. No.* 532, 4*th Dec.* 1829, *Par.* 2.

72. Doubts appearing to be entertained as to whether the Civil Courts are competent to allow a decree-holder, purchasing property sold at public auction in satisfaction of his decree, to file his receipt to the extent of the sum awarded him, in lieu of paying the whole amount of purchase money into Court, I am directed by the Court to acquaint you that it has been ruled that a decree-holder should be permitted, under the circumstances above stated, to give his receipt for the amount of his claim in payment of so much of the purchase money of the property sold; provided the arrangement do not interfere with the equal claims of other parties, and that, as respects the delivery of possession of the property, the same rules are observed in regard to him as would be applied to

any other purchaser, and provided also that, where the property sold may be land paying revenue to Government, the demands of Government on the estate are previously settled.—*Cir. Ord. Cal. and West. C. 18th Jan.* 1839.

73. A question having arisen as to whether, in executing a decree, if no purchaser be forthcoming for a house as it stands, and individuals should signify their willingness to purchase the materials, it is legal to detach or cause them to be detached from the building for the purpose of bringing them to separate sale; I am directed to request you will obtain the opinion of the Calcutta Court on the point.—*Con. No.* 1227, *Cal. and West. C. 2d Aug.* 1839, *Par.* 1.

74. The opinion of this Court is that such a proceeding is not warranted by law, which seems to require that the property should suffer no detriment in any way prior to sale, the auction purchaser being of course at liberty, on his own responsibility, after the purchase may have been concluded, to remove any part of the same, being at the same time answerable to any other claimants who may contest the extent of right acquired by him at sale.—*Con. No.* 1227, *Cal. and West. C. 2d Aug.* 1839, *Par.* 2.

75. The Court observe that no hardship could result from the observance of the above rule, as under the construction recently adopted by both Courts (circulated by this Court under date 18th January last) the decree-holder would always have the option of himself becoming the purchaser by filing his receipt for the amount of his claim.—*Con. No.* 1227, *Cal. and West. C. 2nd Aug.* 1839, *Par.* 3.

76. The same principle, the Court remark, would apply to the case of trees in a similar predicament, which ought not to be cut down till after they shall have been sold.—*Con. No.* 1227, *Cal. and West. C. 2d Aug.* 1839, *Par.* 4.

77. An appeal having been presented to the Court from an order passed by the Judge of Zillah Mirzapore, in regard to the attachment and sale of a house, situated within the limits of his jurisdiction, in execution of a decree passed by a Court of Civil Judicature in the Saugor and Nerbudda Territories, to which the Civil Regulations of the British Government have not been extended, a question has arisen whether it was competent to the Judge to exercise any interference in the matter, and I am directed, therefore, to request that you will submit the point for the consideration of the Calcutta Court.—*Con. No.* 1133, *Cal. and West. C. 16th Feb.* 1838, *Par.* 1.

78. The Court observe that on a reference being made to the Advocate General under date the 27th June, 1809, to ascertain whether any and what measures could be adopted in the case therein mentioned, to recover from the defendant, who had proceeded to England, the amount of a decree given against him by the Court of Sudder Dewanny Adawlut at Calcutta, the following opinion was obtained from that officer; "A foreign judgment is, generally speaking, considered as a primâ facie ground of action in our Courts, and the judgments of Courts in the colonies and dependencies are to this purpose upon the same footing in the Courts in England with foreign judgments. If however a foreign judgment should appear on the face of it to be erroneous, it will not support an action, as we only profess to give effect to those judgments, where they are conformable to justice, and the general principles of law, which is presumed till the contrary appears. The proper course for the appellants under the general rule would be to transmit an exemplification of the judgment of the Sudder Dewanny Adawlut, and of the whole proceedings in the cause under the seal of the Court, and the signatures of the Judges, with proper powers of attorney, to some person in England to institute a suit on the judgment of the Sudder Dewanny Adawlut against the respondent.—*Con. No.* 1133, *Cal. and West. C.* 16*th Feb.* 1838, *Par.* 2.

79. It appears to the Court that the same principle is equally applicable to the case which has given rise to the present reference; and they propose, to act upon it accordingly in disposing of the appeal now before them, by setting aside, as illegal, the whole of the proceedings held by the Judge of Mirzapore, and intimating to the decree-holder that he is at liberty to institute a suit in that Court against the opposite party, founded on the judgment passed in his favor by the

Civil Court in the Saugor and Nerbudda Territories.—*Con. No.* 1133, *Cal. and West. C.* 16*th Feb.* 1838, *Par.* 3.

80. I am directed to communicate to you, in reply to your letter of the 30th May last, the opinion of the Court, that supposing A on becoming security for B. (on the latter's borrowing a sum of money) to designate himself as proprietor of certain estates, without expressly stating that those estates are pledged as security for the debt, he (A) is not legally precluded from alienating the said property, during the continuance of his liability for the security into which he has entered. —*Con. No.* 1017, *Cal. C.* 24*th June*, *West. C.* 15*th July*, 1836.

SECT. IV.

Sale of Property in another Jurisdiction.

81. With reference to the Construction, No. 1,000, by which it was ruled that the Court which issues a process for the sale of property in another jurisdiction, shall dispose of the objections which may be taken to such order, I am directed to inform you that the Court have been pleased to prescribe the following rule for future observance.—*Cir. Ord.* 8*th May*, 1840, *Par.* 1.

82. Upon ascertaining that an application for the sale of property lying in another jurisdiction, should be complied with, the application shall be transferred to the Judge of the district, in which the property to be brought to sale is situated. The whole of the proceedings consequent thereon, as well as any incidental investigations, shall be conducted by that Officer, in the same manner as the Court issuing the process would have done, had the property been situated within the limits of its own jurisdiction.—*Cir. Ord.* 8*th May*, 1840, *Par.* 2.

83. This rule shall be applicable to all sales, whether made with or without the intervention of the Revenue Authorities.—*Cir. Ord.* 8*th May*, 1840, *Par.* 3.

84. The Rule laid down in the Circular Order No. 83, dated 8th May, 1840, relative to the proper authority for disposing of claims to property advertised for sale in execution of a decree, but situated in a jurisdiction other than that in which the decree was passed, not having been expressly declared applicable to the subordinate, as well as the Zillah Courts, it has been deemed proper by the Courts of Sudder Dewanny Adawlut for the Lower and Western Provinces, with a view both to uniformity of practice and convenience, to extend it to the inferior tribunals, and such extension is hereby notified accordingly.—*Cir. Ord.* 24*th Sept.* 1841, *Par.* 1.

85. The subordinate Courts will be guided, as to the mode of acting upon the Circular referred to, by the principle of construction, No. 1235, the Principal Sudder Ameens and Sudder Ameens forwarding the application, with a proceeding under their seal and signature, to the Judge of the Zillah or City Court, within whose jurisdiction the property lies, while the Moonsiffs will send it through the channel and under the signature of the Judge of their own district.—*Cir. Ord.* 24*th Sept.* 1841, *Par.* 2.

SECT. V.

Claims to the land advertised for sale, in execution of Decrees, and objections to the sale of it.

86. In the event of any claim being preferred to the property advertised for sale, under the provisions of this Section; or of any objection being offered to the proposed sale, within the period of the proclamation; such claim, or objection, shall be enquired into by the Judge, Register, or other officer, who may have ordered the sale, or may be referred for inquiry and report to a Sudder Ameen, or local Moonsiff; and if it ap-

pear necessary, the time of sale shall be postponed, till such claim or objection have been investigated; provided that the representation of it, (which, in all instances, is required to be preferred to the Judge, Register, or officer, ordering the sale, as soon as practicable after the publication of the intended sale,) shall not appear to have been designedly and unnecessarily delayed, with a view to obstruct the ends of justice. In such cases, when the fraudulent design may appear evident, the sale shall not be postponed; and the claimant shall be left to prosecute his claim, after the sale, by a regular Civil suit.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 6.

87. Appeals from orders passed by the Principal Sudder Ameens, under Clause 6, Section 3, Regulation 7, of 1825, in execution of their own decrees in suits above the value of 5000 Rupees, will lie direct to the Court of Sudder Dewanny Adawlut.—*Con. No.* 1148, *West. C.* 27*th April*, *Cal. C.* 11*th May*, 1838, *Par.* 2.

88. In the event of any claim being preferred, or objection offered, to the Collector, against the sale of the lands proposed to be sold, as not belonging to the person or persons answerable for the amount of the decree, or other process, to be enforced, and consequently not liable to be sold in execution thereof, the Collector shall communicate such claim, or objection, with any information which his official records may enable him to furnish on the subject, to the Court, which may have applied for the sale; and shall be guided by the instructions which he may receive in answer, whether to proceed with the sale, or otherwise.—*Reg.* 7, 1825, *Sect.* 4, *Cl.* 4.

89. The circumstance of an estate being recorded in the Collector's records in the name of another person than him against whom the execution of the decree was sued, is not sufficient to warrant the Collector to decline to bring to sale, unless a claim were preferred or objection offered, in which case the Collector should proceed in the manner laid down in Clauses 4 and 5, Section 4, Regulation 7, 1825.—*Con. No.* 648, 22*d July*, 1831, *Par.* 2.

90. I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, representing the inconvenience arising from the refusal of the Collector of your division to carry into effect the orders of your Court for the sale of landed property, and requesting the decision of the Court as to whether the claims advanced for property advertised for sale under orders of a Court are to be decided by the Collector, or by the Court directing the sale. In reply, I am directed to inform you that, under the provisions cited by you, such claims come exclusively within the cognizance of the Court ordering the sale, and that in the event of such claims being preferred to the Collector, it is incumbent on that officer to forward them to the Court for decision, staying his proceedings until the further orders of the Court are received.—*Con. No.* 794, *West. C.* 12*th June*, *Cal. C.* 5*th July*, 1833.

91. With reference to a question recently brought before the Court touching a construction of Clause 4, Section 4, Regulation 7, of 1825, in respect to the power of a Collector to postpone a sale under the circumstances contemplated by that Clause, I am directed to acquaint you that it has been ruled by the Court that no power is thereby vested in a Collector of postponing the sale, without an express injunction from the Court ordering the sale to that effect; and unless such injunction be received, the sale should accordingly take place on the date fixed.—*Cir. Ord.* 4*th Sept.* 1840, *Par.* 1.

92. You will be pleased to consider the concluding words of Paragraph 2, of the printed Construction, No. 794, dated 12th June, 1833, quoted in the margin* as cancelled.—*Cir. Ord.* 4*th Sept.* 1840, *Par.* 2.

93. In all cases of a claim, or objection, being communicated by a Collector to the Court, enforcing a decree or other process, under the foregoing Clause, or of a claim

* "Staying his proceedings until the further orders of the Court are received."

to lands proposed for sale in execution of judicial process, being received from the claimant, by the Judge, or other Officer, who may have required the sale, it shall be his duty to enter upon an immediate summary inquiry into the truth and foundation of such claim; and if it appear proper he shall instruct the Collector to postpone the intended sale until such inquiry shall have been completed. Provided however that such postponement shall not be necessary when the claim, or objection, may not have been preferred within a reasonable time, after the Collector's publication of the intended sale, and may appear to have been intentionally delayed, with a view to obstruct the sale. In such cases the Court may order the sale to take place; and refer the claimant to a regular suit, in prosecution of his claim.—*Reg.* 7, 1825, *Sect.* 4, *Cl.* 5.

94. Inconvenience has been found to result from the practice, which obtains in some districts, of forming into one case all objections which may be preferred by different parties to the sale or transfer of property, in execution of decrees of Court. To obviate this, it has been ordered that every petition containing objections of the above nature should constitute a separate misl, or case, and any documentary or oral evidence adduced in support or refutation thereof, together with the decree-holder's answer, should be carefully filed with such petition, and kept distinct from all other cases involving claims to the same property, each misl being endorsed as in the margin.* In like manner when an appeal may be preferred from orders passed in regard to such objections, only the proceedings in the particular case to which the appeal may relate, should be forwarded to the appellate Court, unless otherwise directed, with copies of the decree, of the decree-holder's application suing out execution of the same, and of the Nazir's report relative to the attachment of the property and the issue of the prescribed notices. It will still however, be proper that all papers relating to the execution of the same decree should be kept in one bundle with the proceedings in the case to which the decree has reference, a list being annexed thereto of the number of objections preferred in the course of its execution, with distinguishing marks corresponding with the endorsements above prescribed.—*Cir. Ord. Cal. C. 7th Dec. West. C.* 21*st Dec.* 1838.

95. Cases of resistance of process should also be kept separate in the same manner; the report of the resistance forming the commencement of each misl or case.—*Cir. Ord. Cal. C. 7th Dec. West. C.* 21*st Dec.* 1838.

96. The Court having taken into consideration the Circular Order, under date the 6th of June, 1828, directing that in case of sales of real property under Regulation 7, 1825, the proceeds be kept in deposit, until the period allowed for preferring objections to the sale shall have expired, and possession given to the purchaser; and adverting to the abolition of the controlling power of the Provincial Courts, and the increased distance to which persons dissatisfied with the Zillah and City Judges' order have now to proceed; direct that the order of a Judge, or other Judicial Officer, for the sale of real property in execution of decrees, in cases where claims may be preferred to the property advertized, or objections made to the sale of it, within the period of the proclamation, shall not be carried into effect till the expiration of the period of appeal already allowed by Clause 5, Section 3, of the Regulation above quoted, which shall be calculated from the date of the final order of sale; excluding from the calculation the interval which may have elapsed between the date on which the required stamped paper may have been furnished by the party to the Court, and that on which the copy of the order in question may have been tendered or delivered to the party requiring it.—*Cir. Ord. Cal. and West. C.* 19*th July,* 1833.

97. I am directed by the Court of Sudder Dewanny Adawlut for the Western Provinces to acknowledge the receipt of a letter from you under date the 15th instant, requesting to know whether the following expression in the circular letter of the 19th July, 1833, "or objections made

* No. 1, Ram Sing Oozurdar connected with case No. 21, execution of decree in case No. 351, Sheochurn, plaintiff, (or appellant) versus Kasinauth, defendant, (or respondent).

to the sale of property within the period of the proclamation," is to be understood as including objections made by defendants, against whom the process has been taken out, to the sale of their own property, or those only which may be urged against such sale by claimants of the property or other individuals. In reply, I am directed to acquaint you that the expression in question must be considered equally applicable to defendants as to other individuals, who may have objections to advance to the disposal of property advertised for sale by public auction in satisfaction of a decree of Court.—*Con. No.* 844, *West. C. 22nd Nov. Cal. C. 6th Dec.* 1833.

98. Since the Court's order, to delay sales of real property in satisfaction of decrees for three months from the date of any order disallowing a claim to the same, it has become a practice to cause petitions of claims to be presented the day previous to that fixed for the sale, not with a view of eventually establishing any claim, but for the sole purpose of getting the prayer disallowed, and obtaining a delay of three months, at the end of which, a new petition of claim is ready to be thrown in by another hand, so that the execution of decrees becomes delayed *ad infinitum*.—I request specific instructions on this point, *i. e.* whether petitions thus dropped in the day before that fixed for sale, without documents or any sort of support, are to be permitted to postpone the sale for three months. I request you will lay this letter before the Judges for their orders; in the meantime it is my intention to act under the Regulation above quoted.—I am directed by the Court to acknowledge the receipt of your letter of the 11th instant, No. 117, and in reply to observe that you have mistaken the intent of their Circular Order of the 19th July last, which was not to allow a new postponement of the sale on the rejection of every petition objecting thereto, but merely to prohibit the order for sale being carried into execution for three months, that is, until the expiration of the period prescribed for appealing, with a view of enabling the parties dissatisfied with it, to prefer their appeal within that period.—*Con. No.* 877, *27th March*, 1834.

99. In all cases of a public sale of property, under this Regulation, it shall be clearly explained to the bidders at the sale, that nothing is guaranteed to them in the land, or other property sold, beyond the rights and interests therein of the individuals answerable for the amount of the decree, or other process, in execution of which the sale is made.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 7.

100. An erroneous practice being believed to prevail in respect to the mode of conducting sales in satisfaction of decrees, when the property to be sold has on it the prior lien of a mortgage, I am directed to communicate, for the information and guidance of your own and the subordinate Courts, the following rule.—*Cir. Ord. 4th Sept.* 1840, *Par.* 1.

101. It has been recently ruled by the Court that the summary investigation often made into the claims of a mortgagee who may assert a prior mortgage on such property, is irregular and superogatory; the defandants' right and interest in the property being alone sold with the incumbrance of any prior mortgage, and the law providing that bidders at such sales be clearly apprised that nothing is guaranteed to them in the land or other property sold beyond such right and interest.—*Cir. Ord. 4th Sept.* 1840, *Par.* 2.

102. The Court are of opinion that on prior claims being asserted before the completion of the sale, the existence of such claims should be made known by the officer conducting the sale, to the bidders, and be recorded by him in the roobucarree of sale.—*Cir. Ord. 4th Sept.* 1840, *Par.* 3.

103. I am directed to inform you that the view taken by you in your letter of the 14th May last, No. 20, in regard to the retention of the proceeds of sales in execution of decrees, is in the opinion of the Court perfectly correct, and I am instructed to take this opportunity of briefly stating the measures which should be adopted in such cases.—*Con. No.* 1027, *West. C. 15th July, Cal. C. 29th July*, 1836, *Par.* 1.

104. When claims or objections are preferred to the Zillah Judge before the sale, and rejected by that officer, the sale must be postponed for three months from the date of the Judge's order.—*Con. No.* 1027, *West. C. 15th July, Cal. C. 29th July*, 1836, *Par.* 2.

105. When objections are preferred to a Zillah Judge after the sale, and by him similarly rejected and the sale confirmed, the purchase money must be kept in deposit for three months from the date of the order of the Judge rejecting the petition and confirming the sale.—*Con. No.* 1027, *West. C.* 15*th July, Cal. C.* 29*th July*, 1836, *Par.* 3.

106. If on the other hand no claims are preferred before the sale, it may take place in thirty days, and if, after the sale, no objections are preferred within thirty days, the purchase money may, in like manner, be paid to the decree-holder at the expiration of that period.—*Con. No.* 1027, *West. C.* 15*th July, Cal. C.* 29*th July*, 1836, *Par.* 4.

107. The Court have in several instances ruled that mortgaged property can be sold in execution of decrees obtained by other than the mortgagee, with a reservation of the rights and interests of the mortgagee.—*Con. No.* 856, 24*th Jan.* 1834, *Par.* 2.

108. There is yet another difficulty to which I must allude. The realization of the amount decreed being thus indefinitely postponed, (should my construction of the Court's order be correct,) on whom should the demand for interest accruing thereon be made? Any delay in the non-receipt of the full amount by the decree-holder is not the act of the individual against whom judgment is given, though in many cases perhaps originating in his collusion with connexions or dependents, one of whom is put forward as a claimant as often as the lands are advertised; to charge him therefore with interest would be unjust; the decree-holder, on the other hand, is entitled to interest on his decree till the whole amount is discharged.—With reference to paragraph 5 of your letter of the 18th March last, No. 16, I am directed to inform you that the Court consider it competent to you, under the circumstances stated, to impose the payment of the accruing interest of the debt on any claimant, whose objections may in your judgment be evidently collusive and litigious, or vexatious and unfounded, subject of course to an appeal to this Court.—*Con. No.* 1010, *Cal. C.* 3*d June*, *West. C.* 24*th June*, 1836.

109. I am directed by the Court to inform you that Section 4, Regulation 44, 1793, is rescinded by Regulation 18, 1812, but that under the circumstances stated by you, you are authorized in cases of execution of decrees, after holding a summary investigation into the claims of the parties concerned, to quash any lease which may be satisfactorily shewn to be fraudulent, leaving the party dissatisfied with your decision to appeal summarily to this Court, or institute a regular suit to recover possession of their alleged rights.—*Con. No.* 1059, 2*d Dec.* 1836.

SECT. VI.

Cancelling the sale of Lands sold in satisfaction of a Decree.

110. The Court are of opinion that the practice alluded to in this extract, of ordering a resale of property, on the ground that the sum realized has, for special reasons, been extremely small, is illegal: the Judge is competent to take every precaution to prevent the sale of property for less than its marketable value, but after the sale has been once closed and the bidder been given to understand that he is the purchaser for the sum offered, the property cannot on this ground be again offered for sale, having become the right of the purchaser.—*Con. No.* 829, *West. C.* 20*th Sept. Cal. C.* 18*th Oct.* 1833, *Par.* 2.

111. The usual processes for attachment and sale, in such cases, may either be issued successively, or simultaneously, as the Judge, Register, or other judicial officer, directing the sale, may, in each instance think proper, with reference to the circumstances of the case. But no sale shall, in any instance, take place without a previous proclamation, for the period specified in the preceding Clause; and any material irregularity in the sale, which may be established, on a summary inquiry, to the satisfaction

of the Judge, Register, or other officer, by whom the sale may have been ordered, shall be sufficient to invalidate the sale; provided that a petition, written on the stampt paper required for miscellaneous petitions to the Zillah and City Courts, and stating circumstantially the irregularity which may have taken place, be presented to the Judge, Register, or other officer, by whom the sale may have been ordered, within one month after the sale.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 3.

112. Whenever a public sale may be set aside, as invalid, under the preceding Clause, or on any account whatever, and no collusion, or fraud shall appear on the part of the purchaser, he shall be entitled to receive back his purchase money, on restoring any property delivered over to him, with or without interest, in such manner, as it may appear proper to direct in each instance.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 4.

113. The summary decision passed by the Zillah or City Judges, or Registers, under this Section, shall be open to a summary appeal to the Provincial [now Sudder] Courts, under the general Rules, for such appeals.—*Reg.* 7, 1825, *Sect.* 3, *Cl.* 5.

114. A doubt having been entertained whether public sales of land, made by the Revenue Officers of Government, in satisfaction of decrees or other process of the Courts of judicature, can be summarily set aside, without a regular civil suit, or proof of irregularity in publishing and conducting the sale, or otherwise; it is hereby declared that the Zillah or City Court, or other Judicial authority, who may have ordered the sale in such cases, shall be competent to declare the same null and void, and to order a resale in the mode prescribed by the Regulations, if, on summary enquiry, any material deviation therefrom, and consequent irregularity in the sale, be satisfactorily established; provided that a petition containing a circumstantial statement of such irregularity, and written on the stampt paper required for miscellaneous petitions in the Zillah and City Courts, be presented to the Court by which the sale may have been ordered, within a month after the sale. In such cases the Court directing the sale to be set aside shall further be competent to direct a return of the purchase money, with or without interest, as provided for in similar cases, by the fourth Clause, of Section 3, of this Regulation. —*Reg.* 7, 1825, *Sect.* 5, *Cl.* 1.

115. The summary decisions passed under this Section shall be open to a summary appeal to the Provincial [now Sudder] Courts, under the general Rules for such appeals.—*Reg.* 7, 1825, *Sect.* 5, *Cl.* 2.

116. Summary suits (Regulation 7, 1825, Sect. 5, to set aside irregular sales of land made by Revenue officers in satisfaction of decrees of Court, will be received and tried in the first instance by the Court ordering the sale, subject to the prescribed appeal. If the sale have been made by order of the Judge, he may refer the case for investigation, and report, to a Principal Sudder Ameen, or Sudder Ameen, reserving to himself the final decision.—*Govt. Ord. No.* 6.

SECT. VII.

Disposal of the proceeds of the sale of Lands sold in execution of Decrees.

117. The Court of Sudder Dewanny Adawlut having lately had occasion to consider the rules connected with the sale of lands, and with a view to the protection of the rights of individuals who may be subsequently discovered to have an interest in such property, deem it expedient to direct, that in every case of a sale of real property taking place under Regulation 7, 1825,

the proceeds may be kept in deposit until the period allowed by Clause third, Section 3, and Clause first, Section 5 of that Regulation, for preferring objections to the sale with a view to its immediate annulment shall have expired, and until possession shall have been given to the purchaser.—*Cir. Ord. 6th June*, 1828.

118. An instance having lately been brought to the notice of the Court, in which a Zillah Judge had inadvertently paid away the amount proceeds of the sale of real property in direct opposition to the Circular Order on this subject, dated 6th June, 1828; I am directed by the Court to call your particular attention to the instructions laid down in that letter, and to inform you that the Court must hold any Zillah Judge paying away money from his treasury, contrary to the regulations of government, or to the express orders of this Court, personally responsible for the same. —*Cir. Ord. Cal: and West. C. 2d Jan.* 1836, *Par.* 1.

119. With a view to prevent the occurrence of similar irregularities in future, I am further directed by the Court to forward you a form of proceeding, which you will be pleased invariably to record in your Persian roobucarry in all sale cases, following the words of the form as far as may be practicable in each individual case.

Form to be recorded in the Persian Roobucarry.

"For the above reasons the objections of the claimant, [or of the *oozurdar*,] are, in the judgment of the Court, without foundation, or fraudulent. It is therefore ordered, that, agreeably to Section 5, Regulation 7, 1825, the sale be confirmed, and a copy of this proceeding be sent to the Collector for his information; and it is further ordered that the *nazir* do put the purchaser into possession of the property purchased, and that a *purwannah* be sent to the treasurer to hold, agreeably to Circular Order of the 6th June, 1828, the amount proceeds of the sale in deposit for three months from the date of this *roobucarry;* at the expiration of which date the *nazir* will report whether the purchaser has been placed in possession or not, when a final order will be issued for the payment of the money."—*Cir. Ord. Cal. and West. C. 2d Jan.* 1836, *Par.* 2.

120. The Sudder Board of Revenue having had under consideration the practice which obtains in regard to the disposal of the proceeds of Sales made by orders of the Civil Courts, are of opinion that as by Regulation 7, 1825, such sales are declared to convey only "the rights and interests of the individuals answerable for the amount of the decree in execution of which the sale is made," they should be treated, so far as Government is concerned, as mere private transfers; and that it is alike unnecessary and inexpedient to deduct from the sale price any arrears of Revenue due from the Mehal, in which the rights and interests of any person or persons may be brought to sale. Such a course is obviously unfair and inequitable when the party, against whom the process is enforced, possesses only a limited share in a joint undivided Estate; and it is in all cases objectionable, as tending to confuse two very different processes, and to infringe the great principle of the hypothecation of the land itself for the Revenue assessed upon it.—*Cir. Ord.* 15*th Oct.* 1841, *Par.* 1.

121. The Board are therefore pleased to direct that the practice above alluded to be discontinued, and that the Collectors be instructed to be careful in causing it to be distinctly understood, in every case of sale held in satisfaction of a decree of Court or other similar claim, that it is a condition of the sale, (see Sect. 15, Reg. 45, 1793,) that the purchaser succeeds to all the liabilities of the former proprietor, and that the Government claims against the Mehal are in no degree affected by the sale.—*Cir. Ord.* 15*th Oct.* 1841, *Par.* 2.

122. If a purchaser refuses to take possession of the property purchased within a reasonable period after possession has been tendered to him; the purchase money should, in such case, be paid to the decree-holder, the purchaser being warned that he must abide by the consequences of refusing to take possession.—*Con. No.* 532, 4*th Dec.* 1829, *Par.* 2.

SECT. VIII.

Limitation of time for instituting a Suit for the Execution of a Decree.

[The limitation of time, for instituting a suit for the execution of a decree, is founded upon the following enactment:]

123. The Zillah and City Courts are prohibited hearing, trying, or determining, the merits of any suit whatever, against any person or persons, if the cause of action shall have arisen previous to the 12th of August 1765; or any suit whatever against any person or persons, if the cause of action shall have arisen twelve years before any suit shall have been commenced on account of it; unless the complainant can shew by clear and positive proof, that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money; or that he directly preferred his claim within that period for the matters in dispute, to a Court of competent jurisdiction to try the demand, and shall assign satisfactory reasons to the Court why he did not proceed in the suit; or shall prove that either from minority, or other good and sufficient cause, he had been precluded from obtaining redress. —*Reg.* 3, 1793, *Sect.* 14.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 4.

124. The Court of Sudder Dewanny Adawlut, in reply to a reference from the Dacca Provincial Court, determined, on the 8th of April 1802, that a decree not enforced during a period of 12 years and upwards, might be put in execution, on application for that purpose, without a fresh suit; provided the party holding it explain satisfactorily the cause of the delay, and no valid objections are offered by the adverse party.—*Con. No.* 3, *8th April,* 1802.

125. A decree not carried into execution, at the time of its being passed, may be executed on application being made for that purpose, within twelve years from the date of the decision, after calling upon the opposite party to show cause why the judgment should not be carried into effect against him; should the party, however, holding the decree, neglect to make application for enforcing the judgment in his favor within the period above specified, the Court are of opinion, that the application ought not to be admitted, without his establishing, to the satisfaction of the Court, good and sufficient cause for the delay.—*Con. No.* 136, 28*th Oct.* 1813.

SECT. IX.

Aid of the Collector and of other Courts in the Execution of Decrees.

126. By the existing Regulations the Judge of the Zillah and City Courts, are required to transmit to the Collectors of their respective jurisdictions, (as well as to the Board of Revenue) copies of all decrees which may be passed by them, or by their Registers; or which may be sent to them for enforcement by the Superior Courts; affecting the proprietary right to, or possession of, any lands paying revenue to Government, or held exempt from the payment of revenue; for the purpose of enabling them to make the requisite entries and alterations in the periodical Registers of land. The Judges of the several Civil Courts are further hereby authorized to require the aid of the local Collector, in the enforcement of all such decrees, whenever it may appear conducive to their speedy and complete execution; whether by giving possession to the parties entitled thereto; or by the adjustment of a Waśelaut account, or otherwise.—*Reg.* 7, 1825, *Sect.* 6.

127. The Court entirely concur in the opinion expressed in the letter, [letter of the Secretary of the Sudder Board,] as to the expediency of the judicial authorities availing themselves, so far as may be practicable, of the assistance of the revenue officers, under the provisions of Section 6, Regulation 7, of 1825, in the enforcement of decrees relating to the proprietary right or possession of land, as obviously calculated to conduce, in a very material degree, to their speedy and satisfactory execution, to which department of the administration of Civil justice, the Court, as you are aware, attach the utmost importance.—*Cir. Ord. West. C. 30th Sept:* 1836, *Cal. C. 6th Jan.* 1837. *Par.* 2.

128. It only remains to be added that in pursuance of the orders contained in the 6th paragraph of the letter from the Secretary to Government in the Judicial Department under date 21st July, 1834, which was circulated for general information on the 12th December of that year, a quarterly statement of unanswered requisitions made to the Collector relating to the execution of decrees, is to be forwarded in the form noted in the margin,* to the Commissioner of the division to whose authority the Collector may be subject, and in the event of any great delay subsequently taking place without any sufficient cause being assigned for it, the same is to be brought by the Judge specially to the notice of the Court.—*Cir. Ord. Cal. C. 7th Dec. West. C.* 21*st Dec.* 1838.

129. The Zillah and City Judges are also required to report any instances of great delay which may occur on the part of other Courts called upon to assist in the execution of their decrees, as well as on the part of the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, in executing decrees of their own or other Courts, when the admonition or orders of the Zillah or City Judges enjoining greater diligence and attention to this part of their duty, may prove ineffectual.—*Cir. Ord. Cal. C. 7th Dec. West. C.* 21*st Dec.* 1838.

130. Whenever the Courts of justice may pass a decree awarding to any person the proprietary right in a portion of an estate paying revenue to Govrenment (whether fractional or consisting of specific lands) and may issue a precept to the Collector requiring him to divide the estate, and (provided it be not held khass, or let in farm by Government) to put the parties in possession of the shares, to which they may be entitled under the decree, they shall make it a general rule to direct at the same time that the party or parties who may have withheld the right so decreed, shall defray the whole of the expense which may be incurred in the subsequent process of dividing, separating, and giving possession of, and apportioning the public revenue on the portion of the es-

* *Quarterly Report of Requisitions to Collector of* ——— *by the Civil Courts of* ——— *relating to execution of decrees remaining incomplete on the* ——— *of* ——— 184 .

Names of Parties.	Date of Reference.	Substance of Requisition.	Reasons assigned by Collector for non-execution.	Judge's opinion of those reasons.
A. Plaintiff versus B. Defendant.	10th January, 1833.	To put plaintiff in possession of 100 bigahs of land in Mouzah Ramnaghur, Pergunnah Rampore.		
C. Plaintiff versus D. Defendant.	10th January, 1834.	To sell Defendant's land in Mouzah Alumpore, Pergunnah Alumpore, 111 ibgahs, 10 biswas.		

tate or lands so decreed. Provided however, that if any special reasons shall appear for a deviation from this general rule, the Courts shall be at liberty to direct the expense in question to be defrayed by all, or any of the parties to the decree, in such proportions as the Court passing the decree may, from a consideration of the particular circumstances of the case, deem equitable. Copies of all orders which the Courts may pass under this Section, are invariably to be transmitted to the Collector for his guidance, together with the precept which the Court may issue to him, requiring him to divide the estate, and to put the parties in possession of the shares to which they may be entitled under the decree.—*Reg.* 19, 1814, *Sect:* 5.

131. If the Ameen shall be convicted before the Magistrate of the Zillah of receiving or allowing any other person to receive directly or indirectly any money or effects, or other property from the sharers, or from any person or persons on their behalf, in opposition to his oath, he shall be sentenced to pay a fine to Government of three times the amount of the money or value of the property so received by him, or by any other person with his permission, and to imprisonment not exceeding six months; and all prosecutions before the Magistrate under this Clause shall be for a criminal misdemeanor at the instance of the Collector of the district, through the vakeel of Government. It is however at the same time hereby further declared, that the Ameen shall be also liable to a suit for the same offence in the Dewanny Adawlut of the Zillah, and shall on conviction be compelled to restore the money or property to the party from whom it may have been received with all costs to the party prosecuting, and be imprisoned until he shall make good the decree or the amount of it shall be liquidated by the sale of his property.—*Reg.* 19, 1814, *Sect.* 13, *Cl.* 2.

SECT. X.

Default of the Decree-holder.

132. Applications for the execution of decrees are to be considered as disposed of when the decree has been completly executed, or the case ordered to be struck off the file and placed in the record office in consequence of the failure of the decree-holder to take proper measures for the enforcement of the award passed in his favor.—*Cir. Ord. Cal. C. 7th Dec. West. C.* 21*st Dec.* 1838.

133. The practice of keeping on the file cases, in which the decree-holder has neglected to proceed in the execution of his decree, or in which his endeavours to point out property liable for the satisfaction of his award have proved fruitless, is inconvenient and unnecessary. Whenever the decree-holder fails for a period of six weeks to carry on the execution of his decree, or when the whole of the property pointed out by him has been either sold and the proceeds paid to the party entitled to receive the same, or released from attachment in consequence of other claimants proving their right thereto, the case should be struck off the file. In the event of a fresh application being made by the decree-holder, the case will again be brought on the file as a new or revived case of execution, and will bear the date of its re-admission, and not of its original institution, the length of time it may remain on the file being calculated accordingly.—*Cir. Ord. Cal. C. 7th Dec. West. C.* 21*st Dec.* 1838.

SECT. XI.

Of the relative right of Decree-holders to share in the proceeds of the sale.

134. With a view to fix the practice in respect to the proper authority for adjudicating conflicting claims advanced by decree-holders, to share in the proceeds of sales made in satisfaction of decrees passed by the subordinate Courts, I am directed by the Court to communicate to you the following rule, established by judicial precedent, for the information and guidance of the covenanted and uncovenanted Judges.—*Cir. Ord. 20th Nov.* 1840.

135. All claims to a share in the proceeds of sales of property made in execution of decrees of court should, in the first instance, be peferred to, and disposed of by the Court ordering the sale, whether such decrees may have been passed by that or by any other Court, that tribunal passing an order in favour of whichever of the decree-holders it may consider to be entitled to the preference; and any party dissatisfied with such order having his remedy in an appeal to the Judge, (or Sudder Dewanny Adawlut, as the case may be) it not being competent to the higher Court to interfere, with the view of adjudicating any matter of this nature, till the point come regularly before it in appeal.—*Cir. Ord. 20th Nov.* 1840.

136. As it appears that much diversity of opinion and practice prevails with regard to the rules for distributing in liquidation of claims under various decrees of Court, sums of money which may be in deposit and are inadequate to meet the whole demand, the Court direct me to request that you will bring the subject to the notice of the Judges of the Presidency Court. The Court understand the present practice, under the sanction of the Presidency Court, to be as follows: the mere priority of date gives no preference to a decree, but that all decrees under which process of attachment has been issued, provided they are dated previous to the distribution of the deposit, entitle the holders to share in proportion to the amount of their claim; with the exception of cases in which a bonâ fide mortgage of the deposit in favor of a particular claim may exist.—In reply, I am directed to observe that the practice, as generally followed, appears to be as stated by you. —*Con. No.* 935, *Cal. and West. C.* 22*d Feb.* 1835.

137. I am directed by the Court to inform you that it has been ruled by both Courts of Sudder Dewanny Adawlut that all decrees, under which process of attachment has been issued, provided they are dated previous to distribution, entitle the holders to share in proportion to their claims, (exception being allowed in case of bonâ fide mortgages,) in preference to the claimants under decrees in which no such process has been issued.—*Con. No.* 1056, *Cal. and West. C.* 21*st Oct.* 1836.

SECT. XII.

Execution of Decrees by Moonsiffs, Sudder Ameens, and Principal Sudder Ameens.

138. Decrees passed in the Courts of the Principal Sudder Ameens shall be executed by those Courts under the general rules prescribed for the execution of decrees passed by the Zillah and City Judges. Provided however, that in such cases an appeal from the orders of the Principal Sudder Ameens shall lie, in the first instance, to the Zillah and City Judges, and specially to the Sudder Dewanny Adawlut, [that is, in suits under 5000 Rupees.]—*Reg.* 5, 1831, *Sect.* 22.

139. Section 11, Regulation 5, 1831, is hereby repealed. The rule contained in Section 22, Regulation 5, 1831, authorizing the Principal Sudder Ameens to execute their own decrees, is declared applicable to all Sudder Ameens and Moonsiffs who may

be appointed under that Regulation. Provided, however, that the rule in question as regards all the officers above named, shall not be considered to warrant their issuing any order on their own authority for the confinement of a Defendant in execution of Civil process. Where such order may be requisite, the officer by whose authority the party may have been apprehended shall forward him, together with the subsistence money lodged for his detention, to the Zillah or City Judge, who, unless he see reason to the contrary, shall direct his commitment to jail by means of his own officers. In appeals from the orders of the Moonsiff or Sudder Ameen in such cases, the decision of the Zillah or City Judge shall be final.—*Reg.* 7, 1832, *Sect.* 7.

140. The Court are of opinion that petitions presented to Moonsiffs under Section 7, Regulation 7, 1832, for the execution of their decrees, as well as Vakalutnamahs filed in cases before them, should be received on plain paper.—*Con. No.* 798, *Cal. C.* 14*th June*, *West. C.* 19*th July*, 1833.

141. Held on a reference from the Judge of Allahabad, that parties, objecting to the sale or transfer of property in execution of decrees, may petition the Moonsiffs' Courts on plain paper.—*Con. No.* 1278, *West. C.* 5*th June*, *Cal. C.* 26*th June*, 1840.

142. If you allude to decrees passed by the Moonsiffs themselves, they may depute any officer on their own establishment to sell the property of a debtor.—*Con. No.* 1050, *West. C.* 2*d Sept. Cal. C.* 30*th Sept.* 1836.

143. The Court are of opinion that Moonsiffs, in common with the other judicial officers, are competent to try the fact of possession of lakeraj land attached by them in execution of their decrees.—*Con. No.* 798, *Cal. C.* 14*th June*, *West. C.* 19*th July*, 1833.

144. On a reference from the Judge of Beerbhoom, it was held by the two Sudder Courts concurrently, that Section 5, Regulation 5, 1831, does not restrict Moonsiffs from taking cognizance of claims to lakheraj lands attached in execution of their own decrees.—*Con. No.* 1054, *Cal. C.* 14*th Oct. West. C.* 4*th Nov.* 1836.

145. Held that Act 1, of 1839, does not deprive Moonsiffs of the power of selling property in satisfaction of decrees, passed by themselves, in regular suits for recovery of arrears of rent.—*Con No.* 1219, *Cal. C.* 31*st May*, *West. C.* 21*st June*, 1839.

146. The decrees of *Moonsiffs* must be executed in the same manner as those of other Courts, viz. the execution must be proceeded on by the *Moonsiff* notwithstanding an appeal having been preferred from the decree, unless orders should have been issued by the appellate Court for staying the same. The mere fact of having preferred an appeal is not to be considered to entitle the appellant, as a matter of course, to a suspension of execution.—*Cir. Ord. Cal. and West. C.* 6*th Nov.* 1835.

147. I am instructed further to remind you that the Circular Order, No. 157, dated 6th November 1835, which is equally applicable in principle to the Courts of the native Judges of every grade, has made full provision on the subject of the execution of decrees, in the absence of an order from the appellate Court to stay such execution; and a proper observance of the rule contained in it is sufficient to prevent any undue advantage being taken by an appellant of delay in the hearing of his petition of appeal.—*Cir. Ord. Cal. and West. C.* 23*d Aug.* 1839, *Par.* 3.

148. Decrees passed in the lower Courts, and confirmed in appeal by the Judge after summoning the respondent, must be considered as decrees of the Judge's Court, and be executed under the rules in force for the execution of such decrees.—*Con. No.* 861, *West. C.* 7*th Feb. Cal. C.* 28*th Feb.* 1834, *Par.* 2.

149. Under these considerations the Court have been pleased to resolve that whenever the decision of the lower Court may be affirmed in appeal without the respondent having been summoned under the rules contained in Clause 3, Section, 16, Regulation 5, 1831, and Clause 2, Sec-

tion 2, Regulation 9, 1831, or may be dismissed on default, the application for execution shall be made to the Court by whom the original decree was passed, (to whom intimation should invariably be sent of the appeal being affirmed or dismissed,) who should execute it in the same manner, as if no appeal had been preferred. In cases in which the respondent has been summoned, and the appeal decided on the merits, the application for execution should be made, and the execution carried into effect by the appellate Court, as heretofore.—*Cir. Ord. Cal. and West. C. 22d Aug.* 1834, *Par.* 5.

150. In cases of execution of Moonsiff's decrees, in which the defendant might reside, or the property to be attached, in execution be situated, in the division of a different Moonsiff from the one who passed the decree, the Judge would, of course, refer the execution to the former.—*Con. No.* 701, *Cal. C. 6th July, West. C. 17th Aug.* 1832, *Par.* 5.

Vide also Rule 21 *of this Chapter.*

151. Adverting to the terms of Section 22, Regulation 5, 1831, viz. that "decrees passed in the Courts of Principal Sudder Ameens shall be executed by those Courts, under the general rules prescribed for the execution of decrees passed by the Zillah and City Judges;" the Court are of opinion that Principal Sudder Ameens and Sudder Ameens and Moonsiffs to whom the power is extended by Section 7, Regulation 7, 1832, are competent to receive and act upon applications for execution of decrees of their respective Courts without reference from the Judge, under the restriction laid down in Section 7, Regulation 7, 1832.—*Cir. Ord. West. C. 26th July, Cal. C. 1st Nov.* 1833, *Par.* 6.

152. The Sudder Ameens and Moonsiffs being now competent under Section 7, Regulation 7, 1832, to execute their own decrees, the Court consider it highly desirable that this duty should, as far as possible, be left entirely to them. They accordingly direct me to request that you will not, except in cases which you may think proper for special reasons to execute yourself, interfere in the execution of decrees of Sudder Ameens or Moonsiffs, unless in appeal from the orders passed therein. They observe that the orders passed by you in appeal from the orders of the lower Courts in such cases are final; but that if you take them up in the first instance, the person dissatisfied with your order must come to this Court to appeal, and the time of this Court will be unnecessarily occupied with matters of comparatively trifling moment.—*Cir. Ord. Cal. and West. C. 6th Sept.* 1833.

153. Held that as by Section 7, Regulation 7, of 1832, the rule regarding the execution, by Principal Sudder Ameens, of their own decrees, contained in Section 22, Regulation 5 of 1831, is declared applicable to all Sudder Ameens and Moonsiffs who may be appointed under the latter Regulation, and as the first named Section unqualifiedly declares that decrees passed in the Courts of Principal Sudder Ameens "shall be executed" by those Courts, without any reservation or exception, a Civil Judge is not competent to transfer, of his own authority, to the Principal Sudder Ameen, applications for the execution of Moonsiffs' decrees, (such Moonsiffs having been appointed, under the provisions of Regulation 5, 1831,) and that all decrees passed by Moonsiffs must, under the above law, be enforced by those officers, except under such circumstances as would have precluded them by law from themselves hearing and determining a regular suit.—*Con. No.* 1223, *West. C. 7th June, Cal. C.* 12*th July,* 1839.

154. Held by the Western Court, in concurrence with the Calcutta Court, that any order passed in the execution of a decree in regard to mesne profits, interest or other matter in dispute between the parties to the suit, which may be involved in the decision, must be looked upon as a necessary process for carrying into effect the original intentions of the Court passing the decree, in respect to a point, in which it may, in fact be said already to have pronounced a formal judgment, and cannot, therefore, be considered as constituting a new cause of action.—*Con. No.* 1129, *Cal. and West. C. 9th Feb.* 1838.

155. All orders passed by the Principal Sudder Ameens in execution of their own decrees,

in cases referred to them under the provisions of Sections 1 and 4, Act 25, of 1837, must, in the opinion of the Court, follow the same law of appeal as the decrees themselves, and are consequently appealable directly to the Sudder Dewanny Adawlut.—*Cir. Ord. Cal. and West. C. 5th June*, 1838, *Par.* 2.

156. With the records of regular suits the Moonsiffs, Sudder Ameen, and Principal Sudder Ameen, will also transmit, for deposit, the records of all cases of execution of decrees and other miscellaneous cases that may have been disposed of in the preceding month, with exception to cases of enforcement of decrees, struck off the file in that period, in which an application may have been made, to sue out execution anew, prior to the date of transmission in which event they will send, in lieu of the record, copies of the order striking the case off the file, of the petition for revival, and of the proceeding thereon.—*Cir. Ord. Cal. and West. C. 20th Sept.* 1839, *Par.* 10.

SECT. XIII.

Custody and payment of money received by Moonsiffs in Execution of Decrees.

157. The Moonsiffs shall keep an account of receipts and disbursements of money on account of execution of decrees in the form annexed. This account shall be entered in a book containing the best and strongest paper procurable in the vicinity, and properly bound. Before commencing their entries in any new book, the Moonsiff shall transmit the same to the Judge of his district, having numbered each page in the Persian language; the Judge will certify the number of pages in each book or Register, and return the same to the Moonsiff. Registers of deposit which have been completed should be transmitted in original to the Judge of the Zillah, who will retain them among the records of his office.—*Cir. Ord. Cal. and West. C. 5th Feb.* 1833, *Par.* 2.

158. Whatever sum of money is paid into the Moonsiff's Court should, if possible, be immediately delivered by him to the person entitled to receive it. If that person, or his authorized agent, is not present, it should be transmitted, through the officers of the nearest thannah establishment, to the Judge of the Zillah. There appears to be no necessity for a Moonsiff's retaining such sums paid into his Court for any considerable period. The account should be closed at the conclusion of each month, and an extract from the Register, including the entries and disbursements for the past month, transmitted for inspection and record in the Judge's office. The Judge should examine these extracts and note any irregularity observable, calling on the Moonsiff for explanation when it may appear necessary.—*Cir. Ord. Cal. and West. C. 5th Feb.* 1833, *Par.* 3.

159. With regard to the Moonsiffs, who hold their cutcherries at the same station as that of the Judge, or within a few miles of it, no alteration in the present practice would appear necessary, except that the decree-holder's application for the payment of the money should be made direct to the Moonsiffs, who would apply to the Judge for the transmission of the same to his Court, and thus obviate the necessity of any application on the part of the decree-holder to the Judge's Court.—*Cir. Ord. Cal. and West. C. 22d March*, 1839, *Par.* 2.

SECT. XIV.

Confinement of the person in execution of Decrees by Zillah Courts.

160. The Court is then to cause the decree to be executed,—by the attachment of his person or, where it may be necessary both by the sale of his property and effects, and the attachment of his person.—*Reg.* 4, 1793, *Sect.* 7.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 9.

161. A civil prisoner cannot be confined in fetters, unless he be suffering under a criminal sentence for having broken jail; in other words, fetters cannot be imposed on a civil prisoner merely to ensure his safe detention in jail.—*Con. No.* 624, 25*th Feb.* 1831.

162. Held on a reference from the Judge of Mymensingh, that the civil Courts cannot require the Magistrate to deliver up, after the expiration of his term of imprisonment, a prisoner against whom a process had been taken out while yet in confinement; and that the process should issue, on the release of the prisoner, according to the established form.—*Con. No.* 1276, *Cal. C.* 20*th March, West. C.* 24*th April,* 1840.

163. The only authority, however, possessed by the Civil Courts under the Regulations of releasing a prisoner, confined in execution of a decree of Court, is in cases coming under the provisions of Section 11, Regulation 2, of 1806, where the insolvency of the prisoner may be clearly established in the mode prescribed in that enactment; and the Court are therefore of opinion, that it is not competent to a Judge to liberate a civil prisoner solely on the ground stated in Mr. Morrison's letter, [that is, on the ground of illness,] unless with the consent of the party at whose instance he was confined.—*Con. No.* 1114, *Cal. and West. C.* 24*th Nov.* 1837.

164. The Court having had before them some of the statements (No. 9, required by the Circular Order of the 6th April last) of civil prisoners confined in the several jails on the 30th June last, are of opinion, that a brief explanation of the cause of detention should be given when any prisoner has been in confinement one year.—*Cir. Ord. Cal. C.* 13*th Sept.* 1833.

165. With reference to your letter of the 10th March last, on the subject of the difference of opinion existing between yourself and the officiating Magistrate of Banda, as to the extent of that officer's jurisdiction over prisoners confined in the Dewanny jail under civil process, I am directed to acquaint you that under the provisions of Regulation 3, of 1826, you [that is the Zillah Judge] are vested with no legal right to be considered as the medium of communication on the part of the Magistrate with such prisoners.—*Con. No.* 1021, *Cal. and West. C.* 8*th July,* 1836, *Par.* 1.

166. At the same time the Court direct me to observe that under Section 6, of the foregoing enactment, you are fully at liberty to communicate with the prisoners in question whenever you may have occasion to do so, without reference to the Magistrate.—*Con. No.* 1021, *Cal. and West. C.* 8*th July,* 1836, *Par.* 2.

SECT. XV.

Confinement in Execution of Decrees by Moonsiffs, Sudder Ameens, and Principal Sudder Ameens.

167. Section 11, Regulation 5, 1831, is hereby repealed. The rule contained in Section 22, Regulation 5, 1831, authorizing the Principal Sudder Ameens to execute their own decrees, is declared applicable to all Sudder Ameens and Moonsiffs who may be appointed under that Regulation. Provided, however, that the rule in question as regards all the Officers aboved named, shall not be considered to warrant their issuing any order on their own authority for the confinement of a defendant in execution of Civil process. Where such order may be requisite, the Officer by whose authority the party may have been apprehended shall forward him, together with the subsistence money lodged for his detention, to the Zillah or City Judge, who, unless he see reason to the contrary, shall direct his commitment to jail by means of his own officers. In appeals from the orders of the Moonsiff or Sudder Ameen in such cases, the decision of the Zillah or City Judge shall be final.—*Reg.* 7, 1832, *Sect.* 7.

168. I am directed to inform you that in the opinion of the Court the proviso contained in Section 7, Regulation 7, 1832, was intended to apply to Principal Sudder Ameens and Moonsiffs, and that consequently the former are not competent to confine a defendant without the sanction of the Judge.—*Con. No.* 947, *West. C.* 1*st May, Cal. C.* 22*d May*, 1835.

169. A recent instance having occurred in which on a Principal Sudder Ameen, in execution of a decree of his Court above 5000 Rupees in amount sending the defendant with a requisition for his confinement in jail under the provisions of Section 7, Regulation 7, 1832, to the Judge's Court, the latter Officer sent the defendant back with an opinion recorded that in suits exceeding 5000 Rupees he possessed no jurisdiction, I am directed to communicate to you the following rule. It has been ruled by a majority of the Allahabad and Calcutta Courts, that by Act 25, 1837, the Principal Sudder Ameen has full power to pass any order connected with the case before him that the Judge himself could pass, subject to an appeal to the Sudder Dewanny Adawlut: he is therefore competent to order the imprisonment of a defendant in suits above Rupees 5000; and it is not necessary that the Judge should have jurisdiction in the case to enable him to direct the Civil Jailor to take charge of the Defendant or to release him on the requisition of the Principal Sudder Ameen, the Judge's duty, in such case, being merely to issue the warrant, the jailor to receive (or release) the prisoner in the same way that he was required to give lodgment to prisoners under revenue process, before the issue of Circular Order, No. 76, of the 4th January, 1833, which empowers Collectors to issue their own orders for the imprisonment and release of their own defaulting assamees.—*Cir. Ord.* 18*th Sept.* 1840.

170. I am directed by the Court to request that you will lay before the Honourable the Vice President in Council the accompanying copy of a letter from the Judge of Zillah Dacca, representing the inconvenience and danger attendant on a strict observance of the rule contained in Section 7, Regulation 7, 1832, in the case of persons arrested in execution of decrees under the orders of the Principal Sudder Ameens and Moonsiffs of that part of the district which is under the Joint Magistrate of Furreedpore. The Court are of opinion that, except in cases in which the debtors might wish to be sent to Dacca, if the Principal Sudder Ameen and Moonsiffs were required, on forwarding any person to the Joint Magistrate at Furreedpore for confinement in the Civil jail, at the same time to report the circumstances to the Judge at Dacca, who would confirm or cancel the order, as might appear just and proper, the form required by the Regulation would be sufficiently observed; and they propose, should Government see no objection, to instruct the Judge of Dacca accordingly:—The Vice President in Council sees no objection to the instructions which the Court propose to issue on this subject.—*Cir. Ord. Cal. and West. C.* 21*st March*, 1834.

This rule will of course apply to other Courts similarly situated.

SECT. XVI.

Subsistence money of persons confined in the Civil jail.

171. In modification of such part of Section 8, Regulation 4, 1793, extended to Benares by Section 2, Regulation 8, 1795, and re-enacted for the Ceded Provinces by Section 10, Regulation 3, 1803, or of any other Regulation in force, relating to the subsistence allowance to be paid to persons confined in execution of Decrees or other Civil process, it is hereby declared, that no process of arrest shall hereafter issue from a Civil Court, unless the party applying for the same and entitled thereto, shall deposit in Court (independent of the charge for executing the process) a sum sufficient to provide for the subsistence of the individual against whom the process may issue, for a period of thirty days, from the date of his commitment to jail, in execution thereof. On

the expiration of thirty days after such commitment, a further deposit shall be made in advance for the next ensuing thirty days, and so on, till the defendant's discharge.—*Reg.* 6, 1830, *Sect.* 2.

172. The amount of deposit shall be fixed by the Judge at the time of issuing the process of arrest—subject to future revision on sufficient grounds shewn, and shall be regulated according to the Rules heretofore in force—that is, the allowance is not to exceed four annas, nor to be less than one anna per diem; consideration being had to the rank and situation in life of the defendant, and the circumstances of the plaintiff. Provided however, that if any special circumstances should exist for increasing the rate beyond four annas, it shall be competent to the Sudder Dewanny Adawlut, on a report from the Judge, or other sufficient information before them, to order such increase as may appear to that Court, to be just and proper; not exceeding in any instance one Rupee per diem.—*Reg.* 6, 1830, *Sect.* 2.

173. The allowance required under the foregoing Rules, is to be made payable as heretofore to the Nazir of the Court, who is to give monthly receipts for it to the Plaintiff, dated on the day on which the money may be paid. If the plaintiff shall neglect or refuse to pay the prescribed allowance on or before the day on which it may become due, the Nazir is immediately to report the same in writing, under his signature, to the Judge, who is forthwith to order the defendant's discharge, and such defendant shall not again be liable to personal arrest and confinement on the same matter, at the instance of the same party, unless it be proved to the satisfaction of the Court, that he has been guilty of dishonest conduct in the fraudulent concealment, or transfer, of any property that would otherwise have been available for the satisfaction of the decree or other demand on account of which he may have been originally confined.—*Reg.* 6, 1830, *Sect.* 3.

174. Section 3, of Regulation 6, 1830, states, "that if the plaintiff in any case shall neglect to pay the diet allowance for any defendant on or before the day on which it may become due, such defendant shall forthwith be discharged, and shall not again be liable to personal arrest and confinement in the same matter, &c. &c." Now in the case under report, it appears that Mirtunjoy was once before (in July, 1825,) arrested and brought in this very matter and kept under charge of the nazir's chapprassis for seven days, when (no diet allowance being paid) he was released; and what I wish to know is, whether, under these circumstances, the said Mirtunjoy can again be arrested and confined for the same debt, or in other words, whether *temporary confinement under charge of peadahs*, &c. is to be considered as a bar to all further *personal arrest* towards defendants in all such cases.—I am directed by the Court to inform you that under the circumstances stated, Mirtunjoy, never having before been confined in jail on account of the demand against him, is liable to be arrested and committed to jail under the decree of the late Calcutta Court of Appeal.—*Con. No.* 1090, *Cal. C.* 19*th May*, *West. C.* 2*nd June*, 1837, *Par.* 2.

175. In the event of any future alterations becoming necessary in the rules relating to the subsistence allowance of debtors confined in the Civil Jails, it shall be competent to the Court of Sudder Dewanny Adawlut to direct the same, subject to the approval of the Governor General in Council, without the necessity of a new Regulation being passed for that purpose.—*Reg.* 6, 1830, *Sect.* 5.

176. I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 10th instant, requesting the Court's opinion as to whether the terms of Section 2, Regulation 6, 1830, preclude the issue of a *dustuck* for the arrest of a defaulter, under Re-

hands. In reply, I am directed by the Court to observe, that the object of the Regulation in question being to modify the provisions of Section 8, Regulation 4, 1793, so as to prevent debtors confined in jails suffering additional hardships from the failure of their creditors to furnish them with subsistence, the terms of the Section quoted by you cannot be considered as barring the issue of a *dustuck* against a defaulter, under Regulation 7, 1799; though no defaulter can be committed to jail, until the subsistence money for thirty days has been deposited.—*Con. No.* 575, 24*th Sept.* 1830.

177. Plaintiffs are not to be required to pay any allowance to defendants who may be committed to custody for disobedience to an order of the Court.—*Reg.* 4, 1793, *Sect.* 8.—*Ben. Reg.* 8, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 3, 1803, *Sect.* 10.

178. A question having arisen, whether the amount paid for the subsistence of persons in confinement, under judgments of the Civil Courts, as prescribed by Section 8, Regulation 4, 1793, and Section 10, Regulation 3, 1803, is to be repaid by the party confined, on his release; it is hereby explained that such repayment is to be made, in common with the reimbursement of other costs of suit and process, when any property may be forthcoming from which the amount can be levied. But when no property can be pointed out for the reimbursement of the subsistence money paid to prisoners, they shall not be detained in confinement for the repayment of such money only.—*Reg.* 2, 1806, *Sect.* 12.

179. On a reference from the Patna Provincial Court, to ascertain by whom the allowance for subsistence to prisoners is payable, when parties are confined in execution of process for *vakeel's* fees, of the stamp duty on paper used for decrees, the Court of Sudder Dewanny Adawlut informed them that, in pursuance of the spirit and intention of Section 8, Regulation 4, 1793, the subsistence of prisoners confined under Civil process, is payable by the persons at whose instance they are confined. That, therefore, in the cases stated, it is payable by the *vakeels*, if the party be confined for their fees, and at their instance, or by Government, if the confinement be ordered on account of the stamp duty, or other item payable to Government. That, however, in all cases, an application for the confinement of the party under Civil process is requisite, and that in the first instance, after demand of the amount due, such process should be executed upon the property of the party from whom the amount is due, and the property of his securities.—*Con. No.* 21, 25*th June*, 1806.

180. The Court of Sudder Dewanny Adawlut, having been referred to, in more than one instance, for the purpose of ascertaining in what manner the usual allowance for the subsistence of prisoners confined in the Jails of the Civil Courts should be provided for, persons so confined at the instance of a Collector, or other public officer on the part of Government, whether for arrears of revenue, or on any other account, sanctioned by the Regulations; I am directed to acquaint you, for your information and guidance, that the Court are of opinion, the spirit and substance of Section 8, Regulation 4, 1793, (though not the exact mode of proceeding therein prescribed with respect to individual plaintiffs,) are applicable to all such cases; and that the Collector, or other public officer who may have caused the confinement of the prisoner in each instance, should be called upon for the due payment of such rate of allowance as the Judge by whom the prisoner is confined may consider it proper to fix, within the discretion vested in him by the rule above mentioned.—*Cir. Ord.* 20*th April*, 1818.

181. In reply to your letter of the 1st instant, I am directed by the Court to inform you that the provisions of Regulation 6, 1830, regarding the deposit of the subsistence money of persons confined in the Civil jails, apply to the officers of Government as well as to private individuals.—

SECT. XVII.

Liquidation of the amount of the Decree by Instalment.

182. Doubts having been entertained whether any of the established City Courts are competent to provide, in their decrees, for the payment by instalments of money adjudged by them, or to make such provision, in cases of indigence, at any period after passing their decrees; it is hereby declared, that the Civil Courts in general are restricted from granting indulgence of time, in the satisfaction of a final judgment, when property, from which such judgment can be satisfied, (whether belonging to the party against whom the judgment is given, or to his surety or sureties for the performance of such judgment) may be forthcoming; unless the party in whose favour the decree is passed, shall consent to wave his right of immediate enforcement, under an engagement for gradual payment, or otherwise; or unless a short postponement of the sale of property shall under any particular circumstances, appear just and equitable.—*Reg.* 2, 1806, *Sect.* 10.

183. But when no property may be pointed out from which the judgment can be enforced, and the party against whom it is passed, or his surety, if he have given any, may be willing to engage (under sufficient malzaminy or hazirzaminy security, as one or the other may be tendered or required) for the liquidation of the amount due, by instalments, within such period, as the Court passing the final decree or intrusted with the execution of it, shall deem reasonable and proper, it shall be competent to the Court, by which the final judgment is given, or to a Zillah or City Court enforcing the decision of a native Commissioner, and to any superior Court revising the proceedings of an inferior Court, to accept the engagement so offered, and to cause execution of the decree in conformity therewith, so long as the conditions of it shall be duly fulfilled.—*Reg.* 2, 1806, *Sect.* 10.

184. In such cases, if the person delivering the accepted engagement shall have been taken into custody, he shall be immediately discharged; and shall not be liable to further arrest in execution of the judgment to which such engagement may refer, except on failure to perform the terms of it; nor shall any interest be chargeable in such instances beyond what may be provided for in the engagement.—*Reg.* 2, 1806, *Sect.* 10.

185. In answer to a query from the Judge of Zillah Jungle Mehals, "Whether in the case of a party, at whose suit a debtor may be confined, having consented to discharge such debtor from confinement, on his executing an agreement to pay the amount of the debt by instalments, and such engagement having been acknowledged and accepted by the parties, and attested by their signatures, in presence of the Judge; on failure of the performance of the conditions of such engagement, any process can be issued by the Court for enforcing its payment; or, if it be necessary, that a new suit be instituted by the plaintiff for the recovery of any claim which may be due under such agreement:" the Court of Sudder Dewanny Adawlut determined, on the 7th December, 1808, that the spirit and intention of Section 10, Regulation 2, 1806, appear to include the above case, provided the *kistbundee* have been given in execution of a decree, and the enforcement of the decree have been suspended in consequence; but that if any payment under the *kistbundee* be alleged by the party or his surety, he should be allowed to prove the same, if not admitted by the opposite party.—*Con. No.* 44, *7th Dec.* 1808.

186. If a defendant make an offer that his lands be attached, in satisfaction of a decree against

him, and that the sum due be discharged gradually from the collection of the rents, and if the debtor agree to this arrangement, the Court is competent to (must) sanction it; and order the Collector to hold the lands in attachment, to collect the rents, and to pay them into Court.—*Con.* 1*st Feb.* 1833.

SECT. XVIII.

Relief of Insolvent Debtors.

187. For the relief of insolvent debtors and their sureties, who may be in confinement for the satisfaction of the decrees of the Civil Courts, and may have no means of discharging the amount demandable from them, by instalments or otherwise, the Judges of the Zillah and City Courts, the Provincial Courts of appeal, and the Court of Sudder Dewanny Adawlut, are further empowered, on receiving from the person, or persons confined, in such cases, a statement upon oath, containing a full and fair disclosure of all property belonging to them, whether in land, money, or effects, or of whatever description; and whether held in their own names, or in the names of any other persons, or jointly with others; to cause enquiry to be made for the purpose of ascertaining the truth of such statement, or the validity of any objections thereto, which may be offered by the party at whose instance the prisoner or prisoners, may be in confinement.—*Reg.* 2, 1806, *Sect.* 11.

188. If the result of such enquiry shall satisfy the Court, that the statement of property so delivered is true and faithful, and that the persons confined possess no other means of discharging the amount demandable from them, and the property included in the statement, or such part thereof as the Court may deem it proper to sell, in satisfaction of the judgment passed, shall be given up for sale; the Court, on receiving such surrender of property, may cause it to be sold, in the mode prescribed by the Regulations; and may order the release of the person or persons, in confinement, either with, or without, hazirzaminy security, for his or their appearance when required.—*Reg.* 2, 1806, *Sect.* 11.

189. Provided, however, that nothing in the Section, which is meant to grant relief in cases of real inability and fair dealing only, shall entitle any debtor or surety, confined under the judgment of a Civil Court, to be released, without full satisfaction of such judgment, if he shall be guilty of any fraudulent concealment of property; or shall have committed any manifest fraud or misdemeanor, which may appear to the Court to render him an improper object of the relief intended for persons acting with good faith; and willing to surrender all the property in their possession for the benefit of their creditors.—*Reg.* 2, 1806, *Sect.* 11.

190. Nor shall release from confinement, in any instance, under this Section, prevent the creditor from bringing to sale (by application to the Court) in full payment of the sum adjudged due to him, any property which may be subsequently possessed by the party released; or from causing such party to be again confined until the judgment be fully satisfied, when it may appear, by sufficient proof, that he had fraudulently concealed any property actually belonging to, and known to have been possessed by him, either in his own name, or that of others in his behalf, at the time of his discharge. Provided further, that all proceedings held and orders passed by the Judges of the Zillah and City Courts, under the discretion vested in them by this Section, shall, on re-

presentation of the parties affected thereby to the Provincial Courts of Appeal, [now the Sudder Court] be open to the revision and determination of those Courts; and in like manner, all orders passed by the Provincial Courts under this Section, shall be open to the final decision of the Sudder Dewanny Adawlut.—*Reg.* 2, 1806, *Sect.* 11.

191. The provisions of Section 11, Regulation 2, 1806, are intended, as appears from the preamble thereof, solely for the relief of insolvent debtors who may be in confinement; consequently Mr. ——— not being in confinement, cannot be relieved from his present difficulties under that Section.—*Con. No.* 1196, *Cal. and West. C. 26th August*, 1836, *Par.* 2.

192. Section 16, of this Regulation however expressly provides, that "when no property shall be pointed out from which the judgment can be enforced, and the party against whom it is passed, may be willing to engage for the liquidation of the amount due by instalments, it shall be competent to the Court to accept the engagement so offered, and to cause execution of the decree in conformity therewith, as long as the conditions of it shall be duly fulfilled." The previous confinement of the debtor is not necessary in this case; for the Section provides that "if the person delivering the accepted engagement shall have been taken into custody, he shall be immediately released."—*Con. No.* 1196, *Cal. and West. C. 26th August*, 1836, *Par.* 3.

193. In conclusion I am directed to inform you that under the existing Regulations none of the Civil Courts have the power of granting a general release to a debtor, and that the Government and private individuals are on precisely the same footing in regard to the realization of debts from the property of released insolvents; for the private creditor, under Section 11, Regulation 2, 1806, may at any time after the release of the debtor bring to sale any property which may subsequently be found in the possession of the latter.—*Con. No.* 1196, *Cal. and West. C. 26th August*, 1836, *Par.* 5.

194. In this case, [of Baboo Govind Dass *v.* Koosager,] the point submitted is, how far there is, or is not, a discretion in the Civil Courts, as to enlarging imprisoned persons under the rules contained in Section 11, Regulation 2, 1806, regarding insolvent debtors confined in execution of decrees of the Civil Courts. The Court are of opinion, that under those rules a debtor is entitled to his release on making what the Civil Court, [subject to the controul of the Court of Appeal,] shall deem a fair discovery and surrender of all the property he possesses, without regard to the amount of his debt, or the time he may have been imprisoned under the decree.—*Con. No.* 308, 19*th Nov.* 1819, *Par.* 2.

195. The Judge of the 24-Pergunnahs was informed, on the 11th April, 1811, in reply to certain queries put by him, regarding the construction of Section 11, Regulation 2, 1806, that the Court were of opinion, that Section 11, Regulation 2, 1806, was applicable only to persons in confinement, under decisions passed by the Civil Courts; and consequently that the provisions of the above section, though applicable to revenue defaulters, as well as other persons, when confined under a judgment of Court, had no reference to the case of a defaulter in confinement, for arrears of revenue, at the instance of a Collector against whom no judgment had been passed.—*Con. No.* 86, 11*th April*, 1811.

196. To *Abkars*, confined on the process of a Collector under Section 15, Regulation 6, 1800, Section 11, Regulation 2, of 1806, cannot be applicable.—*Con. No.* 95, 12*th Dec.* 1811.

197. The rules of Section 11, Regulation 2, 1806, for the relief of insolvent debtors, are construed by the Court to extend to all persons in confinement under decrees, regular or summary, of the Civil Courts, but not to those in confinement under any process where a decree of a Civil Court has not been given.—*Con. No.* 328, 1*st Sept.* 1820.

198. Doubts having been entertained as to the authority by whom the relief prescribed by Section 11, Regulation 2, of 1806, is to be afforded to insolvent debtors, confined under summary decrees for rent; I am directed to inform you that it has been ruled by the Courts of Sudder De-

wanny Adawlut and Government, that, as the whole of the powers, vested in the Judges in regard to summary suits for rent, have been transferred by Regulation 8, 1831, to the Collectors of revenue, those officers are competent to release such debtors, on their presenting petitions and proving their insolvency under the section before cited.—*Cir. Ord. Cal. C. 18th Nov.* 1836.

199. A person who has been admitted to sue as a pauper, and whose suit has been dismissed with costs, is liable to confinement at the instance of the defendant, and on the deposit of the prescribed subsistence money, if he fail to pay the amount adjudged against him by a decree, in like manner with any other suitors, and of course, in common with all insolvent debtors, equally entitled to the benefit of the rules introduced by Section 11, Regulation 2, 1806.—*Con. No.* 110, 3*d Sept.* 1812, *Par.* 4.

200. I am directed to add, that, in respect of the costs of suit, should the defendants ultimately be confined for these solely, the other parts of the sentence having been got over, the benefit of the insolvent rules may be granted.—*Con. No.* 309, 17*th Dec.* 1819, *Par.* 5.

201. I am directed to communicate to you the Court's opinion that when the execution of a decree of the Sudder Dewanny Adawlut has been entrusted to the Zillah Judge, he is competent, without referring the case to the Court, to apply the rule contained in Section 11, Regulation 2, 1806, to any defendant who may be confined in execution of the decree.—*Con. No.* 1062, *Cal. C.* 16*th Dec. West. C.* 30*th Dec.* 1836.

202. The Court are of opinion that the wilful concealment of bond debts due to an insolvent debtor, examined on oath under the rules contained in Section 11, Regulation 2, 1806, is punishable on conviction as wilful perjury under Clause 1, Section 13, Regulation 17, 1817.—*Con. No.* 1086, *Cal. C.* 14*th April, West. C.* 28*th April*, 1837, *Par.* 2.

203. I am directed by the Court to inform you that in cases of insolvency where individuals have been imprisoned on an application from a native Court, the Judge presiding in such Court is evidently the proper person to determine whether or not the debtor ought to be released. The petition should however be presented to the European Judge, who may either take the deposition of the prisoner himself, or refer it to the officer presiding in such native Court for investigation; and if the decision should be for a release, then an application should be made to the Judge for an order on the jailor to that effect, leaving any parties dissatisfied with the decision of the lower Court, the option of an appeal.—*Con. No.* 1108, *Cal. C.* 8*th Sept. West. C.* 22*d Sept.* 1837.

204. I am directed by the Court to transmit to you, for your information and guidance, the accompanying copy of the opinion given by the Advocate General, as to the manner in which decrees of the Mofussil Courts are affected by an adjudication of insolvency in the Calcutta Insolvent Court:—I conceive that all Courts, consequently those of the Mofussil, within the British Territories in the East Indies, are bound by the Act for the relief of Insolvent Debtors; and that in a cause before them the plaintiff must discontinue his suit, if his claim is admitted in the schedule of the insolvent or disputed as to amount only. This is clear from the Act 9, G. 4, C. 73, S. 41. But the application of the law must depend on the circumstances of each particular case. For example, it is not said, as I believe, whether the two cases mentioned to me are in the schedules of the insolvents or not. And supposing them to be so, I should probably come to a conclusion in the one case different from that in the other. I am not aware of any decisions which have been come to on the subject either by the Court for the relief of Insolvent Debtors in England or by that in Calcutta. But arguing from analogy to the bankrupt Laws, I should say that a mere decree made before the adjudication of insolvency will not authorize the complainant to seize the property of the insolvent, but that he must prove his debt in common with other creditors. Such undoubtedly is the rule in bankruptcy, and I presume in insolvency, in England, when a judgment has been obtained. But execution actually executed is a different thing. And I conceive the party who has executed is entitled to the payment of his debt out of it.—*Cir. Ord. Cal. C.* 25*th Aug. West. C.* 13*th Oct.* 1837.

SECT. XIX.

Limit of confinement for Decrees under Sixty-four Rupees.

205. With a view to prevent the protracted imprisonment of persons confined in execution of decrees for sums of inconsiderable amount, it is hereby provided in addition to the rule contained in Section 11, Regulation 2, 1806, that no person from and after the 1st February 1815, shall be liable to personal confinement, in satisfaction of a decree for any sum, not exceeding sixty-four Sicca Rupees, beyond a period of six months; but that at the expiration of that period, any person so confined, shall be entitled to be released; but any property which may belong to such person shall at all times, either during his imprisonment, or subsequently to his release, be liable to attachment and sale for the purpose of realizing the amount of the judgment, or such part thereof as may remain due.—*Reg.* 23, 1814, *Sect.* 45, *Cl.* 7.

206. The provisions of Clause 7, Section 45, Regulation 23, 1814, make no alteration in the above rules, [namely in the rules of Reg. 2, 1806, Sect. 11,] except in fixing a maximum of time, during which a debtor shall be subjected to imprisonment in satisfaction of a decree for a sum not exceeding 64 Rupees.—*Con. No.* 308, 19*th Nov.* 1819, *Par.* 2.

207. The rule contained in Clause 7, Section 45, Regulation 23, 1814, cannot be held applicable to the cases of individuals in confinement, at the requisition of the Collector; it being provided for by that Clause, "that no person, from and after the 1st February 1815, shall be liable to personal confinement *in satisfaction of a decree* for any sum not exceeding sixty-four Rupees, beyond a period of six months."—*Con. No.* 302, 28*th May*, 1819.

The rule in Reg. 23, 1814, *Sect.* 45, *Cl.* 7, *has never been declared applicable to decrees in summary suits.*

208. I am directed by the Court to inform you, that according to the provisions above quoted, it is incumbent on the Civil Courts to release a debtor with the consent of his creditor, on the execution, by the former, of a *kistbundee*. The Court however observe, that the execution of a *kistbundee* for a larger sum than 64 Rupees, including interest and costs of suit, cannot be considered as depriving the debtor of his claim to be released, under Clause 7, Section 45, Regulation 23, 1814, after he has been confined for the space of six months, in execution of a decree for a sum not exceeding 64 Rupees.—*Con. No.* 569, 23*d July*, 1830, *Par.* 2.

209. The Court propose to inform the Judge that the limit of imprisonment, laid down in Clause 7, Section 45, Regulation 23, 1814, is applicable only to debtors confined under a decree of Court. As however it cannot be intended that persons confined by order of the Civil Court in default of payment of fine should remain in prison for life, the Court are of opinion that in such cases the Judge is competent to use his discretion in releasing the prisoner, due regard being had to the circumstances under which the fine was imposed.—*Con. No.* 964, *West. C.* 10*th July*, *Cal. C.* 31*st July*, 1835, *Par.* 2.

210. The rules of Clause 7, Section 45, Regulation 23, 1814, make no alteration in this respect, except, that when the amount due under the decree does not exceed 64 Rupees, six months is the maximum of imprisonment in satisfaction of it. It does not follow, that the benefit of the insolvent rules may not be allowed within the six months under the Regulation of 1806.—*Con. No.* 328, 1*st Sept.* 1820.

SECT. XX.

Execution of Decrees against persons connected with the manufacture of Salt.

211. If a decree shall be passed against a native officer, or any person under engagements on account of the salt manufacture and actually employed in it, and the Court shall order the decree to be enforced at any time between the commencement of Kautic and the end of Assar, recourse may be had to his property, but his person shall not be attached or molested during that period. At the close however of the manufacturing season, the agent shall be responsible for his appearing before the Court, if required, but the salt, or the advances, or any implements belonging to the company, which may be in his hands shall not be liable for the decree. But during Sawun, Bhadoon and Assin, and also in the manufacturing season, if the salt agent shall signify to the Judge, through an authorized vakeel of the Court, that their attendance is not required in the business of the manufacture, the persons of all such individuals so employed, shall be equally liable with their property for decrees.—*Reg.* 10, 1819, *Sect.* 22.

212. If a decree shall be passed against an officer of a Salt Chouky, and the Court shall order the decree to be enforced, recourse may be had to his property; but his person, if attached, shall not be removed without previous notice being given to the party under whose superintendence the officer acts, that another person may be immediately deputed to take charge of his place during his absence.—*Reg.* 10, 1819, *Sect.* 29.

SECT. XXI.

Execution of Decrees against Government.

213. The costs and damages that may be awarded against Government in suits instituted under this Section, are to be defrayed from the public treasury.—*Reg.* 3, 1793, *Sect.* 11.

214. The Court observe, that the rules in force relative to public suits, contain no specific provision for the execution of decrees against Government; and that the general rules of process, for execution of decrees in favour of individuals amenable to the Zillah and City Courts, viz. those contained in Section 7, Regulation 4, 1793, for the Lower Provinces, and Section 9, Regulation 9, 1803, for the Upper Provinces, cannot, to their full extent, be applied to the enforcement of decrees against Government.—*Cir. Ord.* 16*th April*, 1818, *Par.* 2.

215. The Court further observe, that in the event of a judgment being passed against Government in any public suit, the officer intrusted with the management of the suit is required to send a copy of the decree and proceedings to the Governor General in Council, (or to the Board under whose immediate authority he may have acted, and who are directed to forward the same to Government,) with any objections he may have to the decision, for the express purpose of enabling the Governor General in Council to determine whether an appeal from the decision should be preferred or otherwise.—*Cir. Ord.* 16*th April*, 1818, *Par.* 3.

216. It is also provided, (in Section 9, Regulation 2, 1805,) "that in all original suits or appeals, wherein Government may be one of the parties, the Court which may pass judgment, whether for or against Government, shall, in addition to the copies of decrees required by the existing Regulations to be delivered to the parties, transmit a copy of the decree, as soon as the same

can be prepared, to the Secretary to Government in the judicial department, for the information of the Governor General in Council.—*Cir. Ord. 16th April,* 1818, *Par.* 4.

217. The manifest intention of the provisions above noticed is, to inform the Governor General in Council, of all decrees passed by the Civil Courts, in original suits or appeals, wherein Government may be one of the parties; and to enable the supreme executive authority to judge and direct, whether such decrees should be appealed to a superior Court, if open to appeal, (either regular or special,) or carried into execution, if final and conclusive; or, though appealable, if there be no sufficient ground for an appeal.—*Cir. Ord. 16th April,* 1818, *Par.* 5.

218. It cannot be supposed that the Governor General in Council, in a case regularly tried and finally decided by the Courts of judicature, in conformity with the laws and regulations in force, would refuse the sanction of his authority to the proper executive officer for carrying into full effect the decision so passed against Government.—*Cir. Ord. 16th April,* 1818, *Par.* 6.

219. The Court therefore are of opinion, that it can never be requisite, for the ends of justice, to attach money in any of the public treasuries by judicial process from a Zillah, City, or Provincial Court, in execution of decrees against Government; and that such unnecessary mode of proceeding is open to serious objection, both as derogatory to the ruling power of the country, and as liable to create public embarrassment, by the appropriation of funds intended for a different purpose.—*Cir. Ord. 16th April,* 1818, *Par.* 7.

220. The Court are not aware of any objection to a continuance of the established practice, in directing, by precept, the Collector, or other public officer who may have conducted the suit on the part of Government, to comply with a final decision given against Government; and any wilful disobedience on the part of the Collector, is sufficiently provided against by the existing rule, that if a Collector shall omit or refuse to obey any order or decree of a Court of judicature, the Court, from which the process shall have issued, is to fine him according to the nature of the offence. In the event of the Collector refusing or omitting to pay the fine, the Court is to report the circumstances to the Governor General in Council, who, provided he shall approve of the fine, will order the amount to be stopped from the allowances which may be receivable by such Collector from Government.—*Cir. Ord. 16th April,* 1818, *Par.* 8.

221. The Court are of opinion, however, that the above rule would not be applicable to a case in which the Collector might state objections to the immediate execution of a judgment against Government, under special instructions from the Governor General in Council. If such objections be not admitted by the Court receiving the same, and no appeal be open to a superior Court, it may be concluded that the Governor General in Council would order the decree to be carried into effect. If not, a report of the circumstances of the case, with a copy of the decree and other papers connected with it, should be transmitted to the Court of Sudder Dewanny Adawlut, for such order, or reference to Government, as on due consideration may appear proper, and consistent with the general provisions of the Regulation in force, in cases for which no specific rule may exist.—*Cir. Ord. 16th April,* 1818, *Par.* 9.

SECT. XXII.

Execution of the Decrees of the Supreme Court by the Zillah Courts.

222. I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 15th instant, requesting their opinion as to whether an application by Mr. E. Macnaghten, acting as receiver on the part of Kistonund Bisswas, to carry into execution a decree of the Supreme Court, accompanied by copy of the decree, is sufficient to authorize your interference; or whether a formal order of the Supreme Court, calling on you to give possession of the lands

situated within your jurisdiction, should not issue, in order to bring the matter under your cognizance. In reply, I am directed to inform you that you should not interfere with the execution of decrees of the Supreme Court, unless a writ directing execution be issued by that Court.—*Con. No.* 567, 23*d July*, 1830.

SECT. XXIII.

Execution of the Decrees of the Calcutta Court of Requests in the Mofussil.

223. If the defendant in any suit decided by the Court of Requests for the town of Calcutta, the plaintiff in which shall have obtained a judgment, shall retire before execution of the same, into the jurisdiction of the Judge of the Zillah of the 24-Pergunnahs, the Judge of the said Court, upon receiving a written application from the said plaintiff, either in person or by vakeel, setting forth the above circumstances, and accompanied by a copy of the judgment duly authenticated, is hereby authorized and directed to proceed to execute the said judgment in the mode prescribed by the existing regulations for executing his own decrees.—*Reg.* 16, 1812, *Sect.* 2, *Cl.* 1.

224. Provided always, that if the defendant in such case shall allege any cause against the execution of the judgment which shall appear to the Judge to require the determination of the Commissioners of the Court of Requests, the Judge shall upon such defendant entering into sufficient security to satisfy the judgment, if the Judge should deem this precaution necessary, allow the said defendant a reasonable period to apply to the said Commissioners; upon the expiration of which, unless the said defendant should produce an order properly authenticated from the said Commissioners, certifying that the judgment ought not to be put into execution; the Judge shall forthwith proceed to execute the judgment as prescribed in the preceding clause.—*Reg.* 16, 1812, *Sect.* 2, *Cl.* 2.

225. Provided further, that no defendant who shall have been confined in the jail of the said Commissioners, and shall have been liberated under the rules established for the guidance of the said Commissioners by the Governor General in Council on the 11th February 1805, in consequence of having received diet money for a given period, shall again be confined by the Judge of the Zillah of the 24-Pergunnahs in execution of the same judgment; but that in all such cases, execution shall proceed against the property only of the defendant.—*Reg.* 16, 1812, *Sect.* 2, *Cl.* 3.

226. I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that in executing decrees of the Court of Requests under Regulation 16, of 1812, you should proceed in all respects in the same manner as you would in executing a decree of your own Court, and to refer you to the Circular Order of the 25th January, 1833, from which you will perceive that the fact of both parties being Europeans, does not in any way affect your cognizance of the matter.—*Con. No.* 932, 6*th Feb.* 1835.

SECT. XXIV.

Execution of the Decrees of the 24-Pergunnahs by the Court of Requests in Calcutta.

227. Whereas execution of the decrees of the Courts of Justice of the Zillah of the 24-Pergunnahs is often defeated, by the parties against whom the same have been ob-

tained absconding from the limits of the said Zillah into the Town of Calcutta; and whereas by Regulation 16, of 1812, of the Bengal Code, provision is made, where the like inconvenience occurs by parties absconding from the Town of Calcutta into the said Zillah, for the Judge of the said Zillah enforcing the judgments of the Court of Requests of the Town of Calcutta.—*Act* 27, 1839, *Sect.* 1.

228. It is hereby enacted, that if the defendant in any suit decided by any Court of Justice of the Zillah of the 24-Pergunnahs, the plaintiff in which shall have obtained a decree, shall retire before execution of the same into the jurisdiction of the Court of Requests, that Court, upon receiving a written application from the Judge of Dewanny Adawlut of the Zillah of the 24-Pergunnahs, setting forth the above circumstances, and accompanied by a copy of the decree duly authenticated, is hereby authorized and directed to proceed to execute the said decree in the mode prescribed for the execution of judgments obtained in the Court of Requests, and on payment of the like costs as are demanded for the execution of such judgments in ordinary cases. Provided always that nothing in this act contained shall be held to authorize the said Court of Requests to execute any decree except the cause of action in respect of which such decree was obtained were such that if it had occurred within the local jurisdiction of the said Court, it would have been cognizable by the same.—*Act* 27, 1839.

CHAPTER VII.

SUDDER DEWANNY ADAWLUT.

SECTION I.

Calcutta Court of Sudder Dewanny Adawlut.

1. And it is hereby enacted, that from the said day, and within the said Territories, no person whatever shall, by reason of place of birth, or by reason of descent, be in any Civil proceeding whatever, excepted from the jurisdiction of any of the Courts hereinafter mentioned:—that it to say—The Courts of Sudder Dewanny Adawlut, in the Territories subject to the Presidency of Fort William in Bengal.—*Act* 11, 1836, *Sect.* 2.

2. The Courts of Sudder Dewanny Adawlut and Nizamut Adawlut, shall in future consist of a Chief Judge, and of as many Puisne Judges, as the Governor General in Council may from time to time deem necessary for the dispatch of the business of those Courts.—*Reg.* 12, 1811, *Sect.* 2, *Cl.* 2.

3. The denomination of Chief or Senior Judge in the Courts of Sudder Dewanny and Nizamut Adawlut, and in the Provincial Courts, as well as the official designation of first, second, third, fourth and fifth Judges in those Courts, respectively, shall be discontinued.—*Reg.* 3, 1829, *Sect.* 2.

4. The Chief Judge, and each of the Puisne Judges, who may be appointed to the Court of Sudder Dewanny Adawlut, previous to entering upon the execution of the duties of his office, shall take and subscribe before the Governor General in Council, the same oath, as is required to be taken and subscribed by the Judges of the Provincial Courts of Appeal, according to the form prescribed in Section 2, Regulation 5, 1793.—*Reg.* 2, 1801, *Sect.* 4.

Form of Oath.

"I, A. B. appointed Judge of the Provincial Court of Appeal for the division of

solemnly swear, that I will administer justice conformably to the regulations that have been, or may be, passed by the Governor General in Council, according to the best of my ability, knowledge, and judgment, without fear, favour, promise, or hope of reward; that I will not receive, directly or indirectly, any present, nuzzer, either in money or effects of any kind, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the Court of Appeal of which I am appointed a Judge; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly, any present or nuzzer, in money, or effects of any kind, from any party or

person whomsoever, on account of any suit, to be instituted, or which may be depending, or have been decided in the Court; that I will render a true and faithful account of all sums of money that may be paid into the Court, or disbursed from it; that I will not be concerned, directly or indirectly, in the purchase of goods or commodities in the British dominions in Bengal for the purpose of remitting money to Europe, or in any commercial transactions; and that I will not derive, directly, or indirectly, any emoluments or advantages from my station, excepting such as the Orders of Government do or may authorize me to receive. So help me God."—*Reg.* 5, 1793, *Sect.* 2.—*Ben. Reg.* 9, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 4, 1803, *Sect.* 2.

5. The Rules contained in Sections 4 and 11, Regulation 2, 1801, which require the Judges who may be appointed to the Courts of Sudder Dewanny and Nizamut Adawlut to take the prescribed Oaths of Office before the Governor General in Council, are hereby rescinded, and the said Judges, as well as all other Public Officers who are required by the Regulations in force to be sworn in before the Governor General in Council, shall, in future, take and subscribe the prescribed Oaths of Office before the Court of Nizamut Adawlut, or before any person whom the Governor General in Council may commission to administer them.—*Reg.* 3, 1829, *Sect.* 3.

6. The Court is to use a circular seal, two inches and a quarter in diameter, with an inscription to the following effect, in the Persian and Bengal characters and languages, and in the Hindoostanee language and Nagree character. "The seal of the Sudder Dewanny Adawlut." The Court is to be held in a large and convenient room at Calcutta, and to sit de die in diem as the despatch of business may require, and is empowered to make such reasonable adjournments as may be deemed expedient consistently with the business. No rule, order, proceeding, or decree, is to be made but on Court days, and in open Court.—*Reg.* 6, 1793, *Sect.* 3.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 2, 3.

7. The Court of Sudder Dewanny Adawlut is to be an open Court.—*Reg.* 2, 1801, *Sect.* 6.

8. The Judges of the Sudder Dewanny Adawlut are authorized to regulate the mode and order of their own proceedings; as well as the execution of their process; subject to the rules prescribed by the Regulations.—*Reg.* 2, 1801, *Sect.* 6.

9. The Court of Sudder Dewanny Adawlut are authorized to adjourn that Court during the periods of the two vacations abovementioned, [the Mohurrum and the Dusserah] or otherwise, as they may judge proper.—*Reg.* 3, 1798, *Sect.* 3.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 2.

10. The Courts of Sudder Dewanny and Nizamut Adawlut shall, from time to time, as circumstances require, prescribe the forms, and fix the periods of transmission, and mode of preparation of all Reports, Calendars, Registers, or other statements, to be furnished by the Civil or Criminal Courts, European or Native, or by the Judicial or Police Officers under this Presidency.—*Reg.* 7, 1829, *Sect.* 3, *Cl.* 1.

11. It is hereby enacted, that it shall be competent to either of the Courts of Sudder Dewanny and Nizamut Adawlut, within the Territories subject to the Presidency of Fort William in Bengal, by an order, under the signature of the Register of such Court, to transfer to such Register the duty of preparing appealed causes for trial, and of executing the decrees and orders of the said Courts, and to authorize him to issue the necessary process, and to proceed thereupon agreeably to the Rules prescribed by the general Regulations of Government.—*Act* 17, 1841, *Sect.* 1.

12. And it is hereby enacted, that in proceedings before the said Courts it shall not be necessary to take any security for costs; and it shall be competent for the said Courts of Sudder Dewanny and Nizamut Adawlut to frame such Rules of practice for the due exercise of the Civil and Criminal Jurisdiction vested by the Regulations in those Courts, as may from time to time be found requisite. And such rules when so framed shall be submitted to the Governor General of India in Council; and after the same shall have been approved by the said Governor General of India in Council, they shall be of the same force as if they were inserted in this Act.—*Act* 17, 1841, *Sect.* 2.

SECT. II.

Court of Sudder Dewanny, Western Provinces.

13. From and after the date of the promulgation of this Regulation, such parts of Regulations 10 and 16, 1795, of Regulations 5 and 8, 1803, and 8 of 1805, or any other Regulation in force, as extend the powers of the Sudder Dewanny and Nizamut Adawlut stationed at Calcutta to the Province of Benares and the Ceded and Conquered Provinces, are hereby rescinded.—*Reg.* 6, 1831, *Sect.* 2.

14. A Court of Sudder Dewanny and Nizamut Adawlut shall be constituted for the Western Provinces, to be ordinarily stationed at Allahabad, and to exercise jurisdiction over the whole of the districts comprized within the Divisions numbered in Section 2, Regulation 1, 1829, as No. 1 to 9, inclusive; and a Court of Nizamut Adawlut for the Province of Kumaoon, and the Saugor and Nerbudda Territories.—*Reg.* 6, 1831, *Sect.* 3; *Cl.* 1.

1st	Division to contain the districts under the Magistrates, Collectors, Joint Magistrates and Sub-Collectors of	}	Seharunpore, Mozuffernugger, Meerut, and Boolunshuhur.
2d	Ditto	Ditto of	Agra, Allyghur, and Sydabad.
3d	Ditto	Ditto of	Furruckabad, Mynpooree, Sirpoora, and Etawah.
4th	Ditto	Ditto of	Moradabad, Nugeena, and Suheswan.
5th	Ditto	Ditto of	Bareilly, Shahjehanpore, and Pillibheet.
6th	Ditto	Ditto of	Cawnpore, Belah, and N. Bundlekund.
7th	Ditto	Ditto of	Allahabad, Futtehpore, and Banda.

8th	Ditto	Ditto of	Benares, Mirzapore, and Jaunpore.
9th	Ditto	Ditto of	Goruckpore, Azimghur, and Ghazeepore.

—*Reg.* 1, 1829, *Sect.* 2.

15. It shall be competent however to the Governor General in Council to fix the station at which the Courts of Sudder Dewanny and Nizamut Adawlut for the Western Provinces shall reside, at such place within the Territories belonging to this Presidency, as may, from time to time, be deemed expedient.—*Reg.* 6, 1831, *Sect.* 3, *Cl.* 2.

16. The Courts of Sudder Dewanny and Nizamut Adawlut for the Western Provinces are to be open Courts, and to be holden as directed in Section 3, Regulation 6, and Section 66, Regulation 9, 1793, as soon as a convenient place shall have been provided for the purpose. Whenever, and so often, as only one Judge may be present with the Courts, or if any difference of opinion should arise when only two Judges may be present in either Court, in any matter requiring under the existing Regulations the concurrent voices of two Judges, the question shall be referred, as the case may be, for the determination of one of the Judges of the Court of Sudder Dewanny or Nizamut Adawlut stationed at Calcutta.—*Reg.* 6, 1831, *Sect.* 7, *Cl.* 1.

17. The Courts of Sudder Dewanny and Nizamut Adawlut for the Western Provinces constituted by this Regulation, shall possess within the Divisions, Provinces, and Territories subject to their jurisdiction, all the powers vested under the existing Regulations in the Courts of Sudder Dewanny Adawlut and Nizamut Adawlut constituted by Section 2, Regulation 6, and Section 67, Regulation 9, 1793, and shall perform all the duties required to be performed by those Courts under Regulations 6 and 9, 1793, and under all other Regulations which have been passed and published in the mode prescribed by Reg. 41, 1793, subject to all the modifications and provisions contained in such Regulations, and to the following further provisions.—*Reg.* 6, 1831, *Sect.* 6.

18. The Court of Sudder Dewanny and Nizamut Adawlut constituted by this Regulation, shall consist of one or more Judges, shall be assisted by two Muftics, and shall have a Register, to be styled Register to the Sudder Dewanny and Nizamut Adawlut for the Western Provinces, and such other officers as may be deemed necessary.—*Reg.* 6, 1831, *Sect.* 4.

19. The Judges, Registers, and other officers who may be appointed to the Courts of Sudder Dewanny and Nizamut Adawlut for the Western Provinces, previous to entering upon the execution of the duties of their respective offices, shall take and subscribe the same oath or solemn Declaration as is prescribed in the existing Regulations for individuals appointed to the like offices in the Court of Sudder Dewanny and Nizamut Adawlut situated at Calcutta.—*Reg.* 6, 1831, *Sect.* 5.

20. So much of Clause 2, Section 9, Regulation 1, 1829, as vests the Resident at Delhi with the powers of the Sudder Dewanny and Nizamut Adawlut within the Districts of the Northern Dooab, is hereby rescinded.—*Reg.* 6, 1831, *Sect.* 8, *Cl.* 1.

21. The powers and authority heretofore vested in the Nizamut Adawlut stationed at Calcutta, over the Province of Kumaoon by Regulation 10, 1817, are hereby transferred to the Nizamut Adawlut for the Western Provinces.—*Reg.* 6, 1831, *Sect.* 9.

SECT. III.

General powers of single Judges of the Sudder Court.

22. Any one or more of the Judges of the Sudder Dewanny Adawlut, may also take the depositions of witnesses in open Court; instead of causing the same to be taken by the Register, as authorized by Regulation 6, 1793.—*Reg.* 2, 1801, *Sect.* 6.

23. The sitting Judge may perfect interlocutory decrees and orders passed by himself in conformity with Section 2, of this Regulation, or by any other Judge or Judges of a Provincial Court, in pursuance of the Regulations in force. Provided that it shall not, in any case whatever, be competent to a single Judge to reverse or alter the decree, or order, of any other Judge, or Judges of a Provincial Court.—*Reg.* 13, 1810, *Sect.* 4, *Cl.* 2.

24. On the trial of an original cause instituted before a Provincial Court, as well as on the hearing of appeals to that Court, it shall be competent to a single Judge, holding a sitting of the Court under this Regulation, to pass such orders as he may deem just, and consistent with the Regulations, respecting the admission of evidence, examination of witnesses, and all other points connected with the trial of the suit before the Court, subject to the provision contained in Section 7, Regulation 1, 1807; whereby the Provincial Court at large, or any two Judges of the Court, are declared at liberty to re-examine witnesses, whose depositions may have been taken before a single Judge, if it appear requisite; to examine any other witnesses in the cause; and generally to pass any order that may appear proper and consistent with the Regulations, whether in addition to, or in qualification, or abrogation of, any previous order of a single Judge.—*Reg.* 13, 1810, *Sect.* 4, *Cl.* 4.

25. In the event of a witness, in a case brought before a single Judge under this Regulation, appearing guilty of wilful perjury, as defined in Section 4, Regulation 2, 1807, it shall be competent to the sitting Judge to order that such witness be committed, or held to bail, for trial before the Court of Circuit.—*Reg.* 13, 1810, *Sect.* 4, *Cl.* 5.

26. A single Judge, holding a sitting of the Provincial Court under this Regulation, may receive miscellaneous petitions, relative to matters depending before, or decided by any Zillah or City Court, in all cases wherein the Provincial Courts are authorized to receive such petitions; as well as all other petitions which the Provincial Courts are authorized by the Regulations to receive; and to proceed thereupon as the Provincial Courts are empowered to proceed; under the restrictions stated in this Regulation.—*Reg.* 13, 1810, *Sect.* 4, *Cl.* 6.

27. A single Judge of the Sudder Dewanny Adawlut, holding a sitting of that Court, may perform the same duties, and exercise the same powers, as a single Judge of a Provincial Court is authorized to perform and exercise, by Section 4, of this Regulation, with the following modification of Clause Third.—*Reg.* 13, 1810, *Sect.* 8, *Cl.* 1.

28. The sitting Judge may determine, on the admission or rejection, of all applications for appeals, whether regular or special, to the Court of Sudder Dewanny Adawlut, except in cases, wherein the judgment, or order appealed from may have been passed by himself.—*Reg.* 13, 1810, *Sect.* 8, *Cl.* 2.

29. Provided that it shall not, in any case, be competent to a single Judge of the Sudder Dewanny Adawlut to reverse, or alter, the decision or order, of two or more Judges of the Court.—*Reg.* 13, 1810, *Sect.* 8, *Cl.* 3.

30. No Judge of the Sudder Dewanny Adawlut shall sit upon the trial of an appeal from a judgment or order, passed by himself.—*Reg.* 13, 1810, *Sect.* 6, *Cl.* 4.

31. Decisions and orders of a single Judge of the Court of Sudder Dewanny Adawlut, passed in conformity with the foregoing Section, shall have the same operation and effect, as decisions and orders passed by two or more Judges of that Court under the Regulations in force.—*Reg.* 13, 1810, *Sect.* 7.

32. In modification of Sections 6 and 8, Regulation 13, 1810, or of any other Regulation in force, relating to separate sittings being held before, and the powers to be exercised by single Judges of the Sudder Dewanny Adawlut, it is hereby declared that it shall be competent to a single Judge of the Court to hold a sitting of Court, on all matters within the cognizance of the Sudder Dewanny Adawlut, and to pass orders or judgments in conformity to the Regulations, subject to the following Provisions.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 1.

33. In explanation of the Provisions of Section 2, Regulation 9, 1831, it is hereby declared, that a single Judge of either Court of Sudder Dewanny Adawlut is competent to dispose of all cases regular, as well as miscellaneous, with exception to those described in Clause fourth of the Section aforesaid.—*Reg.* 7, 1832, *Sect.* 15.

34. In reply to your letter of the 7th ultimo, I am directed by the Court of Sudder Dewanny Adawlut to inform you, that the Court are of opinion, that a single Judge of a Provincial Court [of the Sudder Court] is competent to direct a Zillah or City Judge to suspend the execution of an order passed in such summary suits as are appealable, and generally in all miscellaneous cases, until a decision shall have been passed on the appeal.—*Con.* No. 591, 15*th April*, 1831.

35. In modification of Section 5, Regulation 9, 1819, it shall be competent to a single Judge, [of the Sudder Court] of his own authority, to admit a second or special appeal, if there shall appear grounds for it, under any of the provisions specified in Clause second, Section 4, Regulation 2, 1825.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 4.

SECT. IV.

Differences of opinion among the Judges.

36. In the event of any difference of opinion arising when the three Judges shall be present in Court, the voices of the majority shall determine the question; but if a difference of opinion should arise when two Judges only shall be present in Court, the question then before the Court shall be postponed for adjudication, until the third Judge shall attend.—*Reg.* 2, 1801, *Sect.* 6.

37. Whenever, and so often, as only one Judge may be present with the Courts, or if any difference of opinion should arise when only two Judges may be present in either Court, in any matter requiring under the existing Regulations the concurrent voices of two Judges, the question shall be referred, as the case may be, for the determination of one of the Judges of the Court of Sudder Dewanny or Nizamut Adawlut stationed at Calcutta.—*Reg.* 6, 1831, *Sect.* 7, *Cl.* 1.

38. Provided moreover, that in such case, it shall be sufficient that the Judge to whom the point may be referred should form and record his judgment on a careful pe-

rusal and consideration of the proceedings, and without requiring the attendance of the parties or their vakeels.—*Reg.* 6, 1831, *Sect.* 7, *Cl.* 2.

39. Whenever and so often, as there may be four Judges present at the Courts of Sudder Dewanny and Nizamut Adawlut at Calcutta, and there may be an equality of voices in cases which require a decision by the majority, it shall be competent to the Court to refer the question for decision to a Judge of the Sudder Dewanny or Nizamut Adawlut (as the case may be) in the Western Provinces, and it shall be sufficient that the Judge to whom the point may be referred shall form and record his judgment on a careful perusal and consideration of the proceedings, and without requiring the attendance of the parties or their vakeels.—*Reg.* 9, 1831, *Sect.* 9.

40. The Court determined on the 25th September 1829, that the concurring opinion of two Judges, who agree in all points of the decision, is final and conclusive, though it differ from the opinions of two other Judges who do not agree with each other.—*Con. No.* 526, 25*th Sept.* 1829.

SECT. V.

Appeals from the decision of the Lower Courts, tried by single Judges of the Sudder Court.

41. In the trial of appeals, or on the hearing of any petition of appeal from the decision or orders of any Court of inferior jurisdiction, if a single Judge of the Sudder Dewanny Adawlut shall be of opinion that no sufficient ground has been shewn to impugn the correctness or justness of such decision or order, it shall be competent to such single Judge, without reference to the order of the file, to confirm the same without requiring the attendance of the opposite party, and with or without a revision of the whole proceedings, as the nature of the case may appear to require.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 2.

42. On the other hand, if a single Judge shall be of opinion, that the decision or order appealed against ought to be altered or reversed, as being manifestly unjust, or at variance with some Regulation in force, or in opposition to the Hindoo and Mahomedan Law, or other Law applicable to the case, or as having been passed without sufficient investigation of the merits, or as grounded on an assumption obviously erroneous or irrelevant with reference to the points at issue, it shall likewise be competent to a single Judge to issue an injunction pointing out the irregularity, illegality, or other defect apparent in the proceedings, decision, or order appealed against, and requiring that the Court by which the same may have been held or passed shall revise the case and proceed thereon, in such manner as may appear conformable to justice and to the Regulation.—*Reg.* 9; 1831, *Sect.* 2. *Cl.* 2.

43. A single Judge of the Sudder Dewanny holding a sitting under this Regulation, may exercise his discretion in calling for the proceedings of the Lower Courts, or such parts of them as may appear necessary, and may further order a report in English or Persian, as the occasion may render advisable, on any points requiring explanation, prior to passing a determination on the case, or matter in appeal.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 3.

44. With reference to the provisions of Section 2, Regulation 9, 1831, the following rules of practice are agreed to by the Court.—*Con. No.* 675, 17*th Feb.* 1832, *Par.* 1.

45. The Court are of opinion that if the decision of the lower Court be confirmed without the attendance of the opposite party, the appellant is not entitled to receive back any proportion of the value of the stamp paper on which his petition of appeal is written; and that the appellant's vakeel is entitled to the whole of the fee deposited by the appellant.—*Con. No.* 675, 17*th Feb.* 1832, *Par.* 3.

46. If the attendance of the opposite party shall not be required, and the said party shall, nevertheless, file an answer to the petition of appeal through a vakeel of the Court, the fee of the said vakeel shall be payable by the opposite party himself.—*Con. No.* 675, 17*th Feb.* 1832, *Par.* 4.

47. If an injunction be issued for a revision of the decision, the Court are of opinion, that in conformity to the rule prescribed in Section 8, Regulation 19, 1817, the stamp duty paid by the appellant on his petition of appeal should be returned to him, and the fees of the vakeel of the appellant and respondent (if attending) limited to a sum not exceeding one fourth of the established fee.—*Con. No.* 675, 17*th Feb.* 1832, *Par.* 5.

48. Resolved, that the powers vested in the Court of Sudder Dewanny Adawlut by Clause 2, Section 2, Regulation 9, 1831, on the receipt of a petition of appeal from the decision of an inferior Court can be exercised in those cases only in which an appeal is within the cognizance of the Court under the general Regulations, and that consequently the Court cannot interfere on the receipt of petitions of appeal against the decision of a Zillah or City Judge passed by the latter in appeal from the decision of Sudder Ameens and Moonsiffs: the decision of the Zillah or City Judge being in such cases declared final by Section 28, Regulation 5, 1831.—*Con. No.* 688, *West. C.* 27*th April, Cal. C.* 18*th May*, 1832.

49. All first appeals must be admitted as a matter of right, provided they be preferred within the period prescribed by the Regulations: so that the confirmation of the decision of the lower Court, prior to a perusal of the original proceedings, is to be considered, not as a rejection, but a final dismissal of the appeal on consideration of its merits.—*Con. No.* 742, 14*th Dec.* 1832.

50. On the first point referred in your letter of the 6th July, I am directed to acquaint you that the Court consider themselves fully competent to exercise the powers vested in them by the 2nd Clause of Section 2, Regulation 9, 1831, and Section 15, Regulation 7, 1832, without calling for the proceedings, whenever the order or decision appealed against, whether in a regular or summary suit, may appear to them manifestly unjust or illegal, or on any other of the grounds defined in the Clause first cited. In such cases a revision of the proceedings is obviously unnecessary to the determination of a fact which is clear and manifest in the face of the order or decision itself, or can be shewn to be so by documents accompanying it. And you will observe that the following Clause of the same Section provides for cases wherein the Court may see cause of doubt by giving them a discretion to call for the proceedings of the lower Court or such parts of them as may appear necessary, and by the 7th Clause of the same Section, with the view of enabling the Court duly to exercise the powers vested in them by the said Section, the several Courts of subordinate jurisdiction are strictly enjoined to conform to those parts of the Regulations in force, which require them to record the point or points at issue between the parties and the grounds on which their judgments or orders may be issued.—*Con. No.* 839, *West. C.* 11*th Dec. Cal. C.* 8*th Nov.* 1833.

51. No final decision of the Court can be passed against a respondent until he has been summoned in the usual course.—*Con. No.* 944, *West. C.* 10*th April, Cal. C.* 1*st May*, 1835.

52. It shall further be competent to a single Judge to direct that the execution of any judgment or order passed by an inferior Court, in all cases in which that measure may appear to him expedient, may be stayed until a final decision has been passed thereon.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 5.

SECT. VI.

Reversal of the order or decree of a lower Court by the Sudder Court.

53. Provided however that if the decree or order appealed against shall have been passed in a regular suit or appeal after a full investigation of the merits, and the ultimate judgment to be passed on the case may rest on a mere difference of opinion as to the facts or evidence, or on a disputed or doubtful point of law, or construction of any Regulation in force, it shall not be competent to a single judge to alter or reverse such decree or order. In such cases the single Judge will be guided by the rules and practice heretofore in force.—*Reg.* 9, 1831, *Sect* 2, *Cl.* 4.

54. In the trial of appeals from decisions or orders of any Provincial, Zillah or City Court, if a single Judge of the Sudder Dewanny Adawlut, sitting upon the appeal, shall be of opinion, that the decision, or order, appealed against, ought to be reversed, or altered, he shall not pass any decree, or final order thereupon, until one or more of the other Judges of the Court can sit with him upon the appeal in question.—*Reg.* 13, 1810, *Sect.* 6, *Cl.* 3.

55. In modification of the third Clause of Section 2, Regulation 13, 1810, requiring the sitting of two Judges to reverse or alter a decision or order appealed to a Provincial [the Sudder] Court, and of such part of any other regulation in force, as directs that decrees are to be signed by the Judges passing the same; it is hereby provided, that when a single Judge of a Provincial [the Sudder] Court, trying a case in appeal from a Zillah or City Judge, Assistant Judge, or Register, shall be of opinion, that the decision appealed from, ought to be reversed, or altered, and shall record his sentiments to that effect; and another Judge of the Provincial [the Sudder] Court, sitting afterwards upon the same appeal, shall concur in the opinion so recorded, it shall be competent to the second Judge to pass the decree, or final order, in conformity thereto, and to cause the same to be carried into execution, in the mode prescribed by the Regulations; without waiting for a sitting of both Judges, when circumstances may not conveniently admit of it. In such cases, the decree or order shall be signed by the Judge present at the final sitting; and the signature of the Judge who first sat shall not be considered requisite; but his opinion, as recorded by him, shall be recited in the decree or final order, and in the copies of it delivered to the parties.—*Reg.* 25, 1814, *Sect.* 8.

56. The Court view the order of the Zillah Judge which was reversed in this case as a proceeding in execution of a decree of his own Court in an original suit; and they are therefore of opinion that the order in question does not come within the exception laid down in Clause 4, Sect. 2, Regulation 9, 1831, as supposed by the Zillah Judge (see paragraph 6, of his letter) and that a single Judge of the Sudder Dewanny Adawlut was competent, under the provisions of Section 15, Regulation 7, 1832, to modify or reverse that order as might appear to him advisable.—*Con. No.* 804, *West. C.* 19*th July*, *Cal. C.* 16*th Aug.* 1833.

57. Provided however that nothing in the foregoing Clause, [Rule 52] shall be understood to prohibit a single Judge in any case of difficulty or importance in which he may deem it expedient and proper that the matter at issue should be decided by two or more Judges of the Court from recording his own opinion thereon and referring the case to another Judge.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 6.

SECT. VII.

Reference of Original Suits or Petitions by the Sudder to the Zillah Courts.

58. The Sudder Dewanny Adawlut is empowered to receive any original suit or complaint which may be cognizable in any Zillah or City Court, and to command the Re-gister, to receive the suit or complaint, and to proceed to hear and determine it, provid-ed proof shall be previously made to their satisfaction that the Judge refused or omitted to proceed in it. If the plaintiff shall refuse or neglect to proceed in the suit or com-plaint, for the period of six weeks after the order of the Sudder Dewanny Adawlut may be received by the Zillah or City Court, and notified to the complainant, the Judge is authorized to dismiss it, notwithstanding the order of the Sudder Dewanny Adawlut. In such cases, the Judge, within one week after the dismission of the suit or complaint, is to certify to the Sudder Dewanny Adawlut under his hand and the seal of the Court, that the suit or complaint has been dismissed, and the grounds of the dismission.—*Reg.* 6, 1793, *Sect.* 4, *Cl.* 1.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 4, *Cl.* 1.

59. The Sudder Dewanny Adawlut are vested with authority to receive any pe-titions respecting suits or matters that may be depending or have been decided, in any Zillah or City Court, and provided it shall be proved to their satisfaction, that the peti-tion was presented to the Judge of such Court, and that he refused or omitted to re-ceive it, and proceed on it, ... the Court are empowered to issue a precept under the seal of the Court, and attested by the Register, commanding the Judge to receive the petition, and to proceed respecting it according to the Regulations.—*Reg.* 2, 1798, *Sect.* 7.—*Ben. Reg.* 11, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 2.

SECT. VIII.

Summary Appeals and Miscellaneous Petitions to the Sudder Court.

60. It shall be competent to the Sudder Dewanny Adawlut to receive a summa-ry appeal from the orders or decrees of the Provincial Courts, [Zillah Courts, or Princi-pal Sudder Ameens in cases above 5000 Rupees in value] in all cases in which the latter may have refused to admit an original suit or appeal, regularly cognizable by them; or having admitted such suit, or appeal, may have dismissed it on the ground of delay, in-formality, or other default, without an investigation of the merits of the case.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 2.

61. In all the preceding cases, the summary appeal shall be preferred within the same limited period as is prescribed for the admission of regular appeals, and subject to the provisions contained in the following Clauses. [The provisions of those clauses will be found at Chap. 5, Sect. 1.]—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 5.

Summary appeals may be received by the Sudder Court, regarding the disqualification of land-holders, for which vide Chap. 4, Sect. 24.

Also Summary appeals regarding the appointment of Guardians, for which vide Chap. 4, Sect. 25.

SECT. IX.

Regular Appeals to the Sudder Court.

62. In all suits originally decided by the Zillah or City Judge, an appeal shall lie to the Sudder Dewanny Adawlut.—*Reg.* 5, 1831, *Sect.* 28, *Cl.* 3.

63. And it is hereby enacted, that in all suits exceeding the amount or value specified in Clause first, Section 18, Regulation 5, 1831, which shall, under the authority of Section 1, of this Act, be referred to a Principal Sudder Ameen the appeal from the decision of such Principal Sudder Ameen shall be direct to the Court of Sudder Dewanny Adawlut, and shall be conducted in all respects according to the same rules as if it were an appeal from the decision of a Zillah Judge to the said Court of Sudder Dewanny Adawlut, and any application for a review of judgment on such decision shall be made by the said Principal Sudder Ameen directly to the said Court of Sudder Dewanny Adawlut, and shall be conducted in all respects as if it were an application for a review of a decision of a Zillah Judge.—*Act* 25, 1837, *Sect.* 4.

64. If a petition of appeal shall be preferred against the decision of any Provincial Court of Appeal founded on an award of arbitration, it is to be dismissed with costs, unless it be fully proved to the satisfaction of the Court by the oaths of two creditable witnesses, that the arbitrators have been guilty of gross corruption or partiality in the cause in which they have made the award.—*Reg.* 6, 1793, *Sect.* 2.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 22.

65. By Clause 3, Section 28, Regulation 5, 1831, all suits originally decided by the Judge of a Zillah, into which the provisions of Regulation 5, 1831, have been introduced, are appealable to the Sudder Dewanny Adawlut; hence an appeal would lie from his decree adjudging forfeiture of lands or fines, in cases of resistance or evasion of process, without reference to the amount of the annual jumma, or produce, or fines; and in such cases the Judge should await the period of appeal to this Court in the same manner as by the enactments quoted by you, they were directed to await an appeal to the Provincial Court.—*Con. No.* 780, *Cal. C.* 12*th April, West. C.* 10*th May,* 1833.

66. The Court of Wards are to transmit copies of any judgments [for fraud] which may be given by them under this Clause, against a Collector, guardian, or manager, to the Court of Dewanny Adawlut of the Zillah, and they shall be considered as judgments of the Court, and be enforced accordingly. An appeal however shall lie from such judgments immediately to the Sudder Dewanny Adawlut, provided the petition of appeal be preferred to the Zillah Court, or to the Sudder Dewanny Adawlut, or to the Court of Wards, within three months after the date of the decision; and the Sudder Dewanny Adawlut is empowered to admit an appeal after that period, provided the petition of appeal be presented to that Court, and the appellant shall shew good cause to its satisfaction, for not having preferred the appeal within the prescribed time.—*Reg.* 10, 1793, *Sect.* 32, *Cl.* 2.—*Ben. Reg.* 6, 1822, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 52, 1803, *Sect.* 36, *Cl.* 2.

67. In matters which the Sudder Dewanny Adawlut may be empowered by any Regulation to try in the first instance, and also in appeals that may be preferred to the Court from decisions of the Provincial Courts of Appeal, (excepting as to hearing witnesses and receiving evidence,) the Court is to proceed in the same manner, and with the like powers and authority, and subject to the same restrictions, limitations, and ex-

ceptions, as are prescribed to the Zillah and City Courts.—*Reg.* 6, 1793, *Sect.* 7.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 7.

[The reader is therefore referred for the undermentioned subjects to the Chapters indicated.]

68. The contents of the petition of appeal; the steps to be taken by the Zillah Court, on receiving the petition of appeal; the documents to be transmitted with the petition by the lower to the appellate Court; the cases in which an authenticated copy of the decree is or is not to be presented with the petition will be found in *Chap.* 5, *Sect.* 10.

69. The Rules for stating the grounds of appeal in the first or in a supplementary appeal in *Chap.* 5, *Rules* 38 *and* 39.

70. The period for preferring an appeal in *Chap.* 5, *Sect.* 4.

71. The execution or suspension of the decree of the lower Court during an appeal to the Sudder in *Chap.* 5, *Sect.* 12, 13, 14, 15.

72. The default of the appellant to proceed in his suit for six weeks, in *Chap.* 5, *No.* 145, 146.

73. The Rules regarding Vakeels in the Sudder Court are the same as those laid down for Vakeels in the Zillah Courts.—*Vide Chap.* 2, *Sect.* 14 to 20.

74. It has been the practice of the Sudder Court to allow the appellant to file, with his petition of appeal, the Mokhtearnamah under which the Vakalutnamah may be executed, and the security bonds for costs or staying or enforcing execution, as well as the Vakalutnamah and copy of the decree appealed against; all other documents are given in with a separate petition on the usual stamp.—*Con. No.* 961, *7th Aug.* 1835.

75. If the appellant in an appeal filed in the Sudder Dewanny Adawlut, shall not proceed in the appeal for six weeks, the appeal is to be dismissed, unless the appellant shall show reasonable cause to the satisfaction of the Court, for not proceeding in it; and the Court may, if they shall deem it equitable so to do, award to the respondent costs of suit. But in all such cases, the Court are to enter at large upon their proceedings, the grounds upon which they may permit or refuse to allow the appellant to proceed.—*Reg.* 6, 1793, *Sect.* 19.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 19.

76. I am directed to request that you will be careful, in future, to cause the record of every case appealed to the Sudder Dewanny Adawlut, from decisions passed in your Court, or that of the Principal Sudder Ameen, to be copied and dispatched within two months from the date of receipt of a precept calling for the papers.—*Cir. Ord.* 16*th April,* 1841, *Par.* 1.

77. A resolution of the Court for expediting the disposal of Appeals in the Sudder Dewanny Adawlut, is transmitted to you by this opportunity, and you are requested to cause the same to be made known by every possible means to those who are parties in cases pending in this Court.—*Cir. Ord.* 16*th April,* 1841, *Par.* 2.

78. The Court having taken into consideration the great delay that occurs in filing the usual security bonds, the reasons of appeal, and the replies thereto, deem it proper to notify to parties and to their pleaders that they must proceed with greater expedition, and in strict conformity to the rules laid down on this subject by the Regulations of Government. Applications of parties or of their pleaders praying for the postponement of their cases, or soliciting a longer period for the preparation of their pleadings, cannot, except on very urgent and unexceptionable grounds, be complied with.—*Cir. Ord.* 16*th April,* 1841.

79. The petition of appeal, pleadings, depositions, and exhibits in the Sudder Dewanny Adawlut, are to be numbered, marked, dated, and signed by the Register, in the same manner as the complaint, pleadings, depositions, and exhibits, are ordered to be numbered, marked, dated, and signed by the Register in the Zillah and City Courts.—

Reg. 6, 1793, *Sect.* 28.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 28.

80. In cases for which no specific rules may exist, the Sudder Dewanny Adawlut is to act according to justice, equity, and good conscience.—*Reg.* 6, 1793, *Sect.* 31.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 30.

SECT. X.

Witnesses and Evidence in the Sudder Court.

81. The Sudder Dewanny Adawlut is empowered in cases of appeal, in which it shall appear to them that the original suit has not been sufficiently investigated in the Provincial Court of Appeal, [lower Court] or for any other cause that may be deemed reasonable by the Court, either to receive such further evidence as they may think necessary for the just determination of the suit, and to give judgment upon it; or, to refer the suit back to the [lower] Court in which it originated, accompanied by such special directions to the [lower] Court with regard to the new evidence they are to receive respecting it, as may be deemed by the Court most conducive to justice, and the convenience of the parties and witnesses. But in every case in which the Sudder Dewanny Adawlut may exercise the power above vested in them by this section, they are to enter upon the record of the trial their reasons for having exercised it. In cases in which the Court may judge it proper to receive such further evidence themselves, they are empowered, according as they may deem most conducive to justice (respect being had to the nature of the cause and the evidence) either to examine the witnesses to be produced, vivâ voce, in open Court, first causing the witnesses to be sworn, and their depositions to be reduced into writing, and signed by the deponents respectively; or, to authorize their Register to swear the witnesses and take their depositions, and to cause the deponents to sign them, and to authenticate them with their signatures. The Register in such case is to examine the witnesses in the presence of both parties, or their vakeels, who are to be at liberty to put any questions to the witnesses that they may think proper, and the questions, with the answers to them, are in the same manner to be reduced into writing, signed, and authenticated. But if due notice be given to the parties or their vakeels, of the examination of any witness or witnesses before the Register, and he or they shall not attend at the time of the examination, the Register is to proceed in the examination as before directed, and the depositions are to be received as good and authentic evidence.—*Reg.* 6, 1793, *Sect.* 16.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 16.

82. Where witnesses may be women of the description specified in Section 6, Regulation 4, 1793, or shall reside out of the jurisdiction of the Court, and at a distance from it exceeding fifty coss, the Court may grant such commissions as the Zillah and City Courts are authorized to grant for the examination of such witnesses upon similar occasions. And the Sudder Dewanny Adawlut may issue such commissions to creditable women, and send such letters to the [lower] Courts for the examination of witnesses, in the cases in which the Judges of the Zillah and City Courts are authorized to send such commissions and letters.—*Reg.* 6, 1793, *Sect.* 17.

The Rules relative to the examination of absent witnesses, given at Chap. 3, *Sect.* 21, *will also be applicable in such cases.*

83. If a witness duly summoned shall not attend, or attending, shall refuse to be sworn or give evidence, or to subscribe his deposition, or if such witness, or any person shall be guilty of wilful or corrupt perjury in a cause depending in the Court, or any contempt of Court in open Court, the Sudder Dewanny Adawlut are to proceed with such witness or person in the same manner as the Provincial Courts are authorized to deal with witnesses or persons in like manner offending.—*Reg.* 6, 1793; *Sect.* 18. —*Ben. Reg.* 10, 1795, *Sect.* 2 —*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 18.

84. If the Judges of the Provincial Courts, or of the Court of Sudder Dewanny Adawlut, or any single Judge of those Courts respectively, in cases within the competency of a single Judge, shall be of opinion that there are sufficient grounds, on any civil proceeding before them for bringing a party or witness to trial, on a charge of perjury, or subornation of perjury, they shall record their sentiments to that effect; and at the same time direct whether the party accused shall be admitted to bail, or kept in custody;—an authenticated copy of the order so passed, with the whole of the original papers relative to the case, shall then be transmitted to the proper Zillah or City Magistrate, for the purpose of being proceeded upon, as stated in the preceding clause.—*Reg.* 17, 1817, *Sect.* 14, *Cl.* 3.

SECT. XI.

Process of the Court.

85. All process, both to parties and witnesses, and every rule or order for the execution of a decree or final order, and every other order whatever, which may issue from the Sudder Dewanny Adawlut, is to be written or printed in the Persian and Bengal languages, in Bengal and Orissa; and in the Persian language, and the Hindoostanee language and Nagree character, in Behar, and sealed with the seal of the Court, and signed by the Register.—*Reg.* 6, 1793, *Sect.* 13.—*Ben. Reg.* 10, 1795, *Sect.* 4 —*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 13.

86. All such process, rules, and orders, which are to be served or executed on any parties, witnesses, or persons, (exclusive of the parties, vakeels, or persons, in actual attendance on the Court,) are to be directed to the Provincial Court of the division in which the cause of action shall originally have arisen, or in which the lands may be situated, or the parties may be or reside. Every such process, rule, and order, is to limit a certain time in which it is to be served, executed, and returned to the Sudder Dewanny Adawlut.—*Reg.* 6, 1793, *Sect.* 13.—*Ben. Reg.* 10, 1795, *Sect.* 4.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 13.

87. I am directed by the Sudder Dewanny Adawlut to inform you, that it is the intention of the Court, in pursuance of Section 13, Regulation 6, 1793, to issue to your Court, and the Zillah and City Courts within your division, all process to parties and witnesses, and all decrees and orders of the Court in causes, in the native languages, but enclosed in an English precept. You will accordingly adopt a similar mode of communication with the Court.—*Cir. Ord.* 20*th April*, 1801.

88. In all cases in which process, either to a party or witness, and all process whatever, and every rule or order, for the execution of any decree or final order, or any order relating to a cause depending in the Sudder Dewanny Adawlut, which may be directed by such Court to any Provincial Court of Appeal, the Court to which the pro-

cess may be directed, is to execute the order contained in the process, rule, or order, and return it so executed within the time limited, or return to the Sudder Dewanny Adawlut good and sufficient reason why it has not been served or executed.—*Reg.* 6, 1793, *Sect.* 14.—*Ben. Reg.* 10, 1795.—*Ced. and Conq. Prov Reg* 5, 1803, *Sect.* 14.

89. You will be careful yourselves, and instruct the several Judges within your division to be careful on their part, to insert no information certified by them to the Court in the cases in question, in English certificates or returns; but to let such information be entirely comprehended in the extracts from their proceedings, and the original documents to which the extracts may relate, so that the whole matter which it may be necessary to lay before the Court may be understood, without any reference to the English certificate or return which accompanies.—*Cir. Ord.* 25*th June*, 1801, *Par.* 2.

90. When any process, rule, decree, or order for the execution of any decree or final order, or any order whatever, shall be transmitted by the Sudder Dewanny Adawlut to a [lower] Court to be served or executed, the return to such process, rule, order, or decree, is to be made by the Court, either by endorsement on the process, rule, order, or decree, or to be written on a paper firmly annexed to it; and, if the return be made in the last mentioned manner, there is to be an endorsement on the process, rule, order, or decree, referring the Sudder Dewanny Adawlut to the return contained in such annexed paper, and the Court is to cause a copy of the process, rule, order, or decree, together with the return to it, to be deposited amongst the records of the Court.—*Reg.* 6, 1793, *Sect.* 14.—*Ben. Reg.* 10, 1795 —*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 14.

91. The Court having had occasion to notice instances of very great delay on the part of the Zillah and City Judges in making returns to precepts issued to them; direct me to call your particular attention to the subject; and to desire that whenever you may be unable to execute fully any order or process within the time limited, you will submit, with a certificate, a report of what has been done, and of what remains to be done, and of the period by which you will submit a full return, transmitting a further definite report in case the period first certified be unavoidably executed.—*Cir. Ord. Cal. and West. C.* 25*th July*, 1834, *Par.* 1.

92. The particular attention of the Court is directed to the reduction of their heavy arrear of pending suits, and to expediting the general business before them. Their utmost endeavours must however prove ineffectual, unless the Zillah and City Judges co-operate with them by paying prompt attention to their orders. They therefore direct me to state, that they must hold you personally responsible for any delay which may in future occur in your office not satisfactorily reported and explained.—*Cir. Ord. Cal. and West. C.* 25*th July*, 1834, *Par.* 2.

93. With a view to obviate the delay which occurs in registering certificates, containing partial returns to the Court's precepts, in consequence of their not bearing the numbers of the precept register, which are always to be found in the precepts themselves; I am directed to request that you will in future, in addition to the No. of the cause in which the precept is issued, and the names of the parties, invariably insert the number of the precept register agreeably to the accompanying form, whenever you may have occasion to transmit such certificate in reply to precepts issued since the 1st of April last.—*Cir. Ord. Cal. and West. C.* 17*th July*, 1835.

94. With a view to secure uniformity in respect to the form of communications to the Court, connected with their precepts not requiring returns, but in which the Zillah Judge may wish to communicate to the Court some information or remarks, or in which further instructions may be requisite; I am directed by the Court of Sudder Dewanny Adawlut and Nizamut Adawlut to transmit to you the accompanying form (No. 9,) for adoption, whenever you may find it necessary to make references to them, connected with the precepts in question.—*Cir. Ord. Cal. and West. C.* 4*th Nov.* 1836.

No. 9, *Certificate.*

To the Register of the Court of Sudder Dewanny (or Nizamut) Adawlut.

Fort William (or Allahabad.)

——— With reference to the precept of the ——— Adawlut, not requiring a ———
VERSUS. return, dated the ——— of ———, convey an extract of the Court's
——— proceedings of the ——— of ———, held before Mr. ———, in the case noted in the margin, I hereby certify the accompanying extract from my proceedings of the
of ——— *Here briefly state the object of the reference.*

——— Adawlut,
The ——— of ——— 183.

Given under my hand and the seal of the Court,
this ——— day of ———183.

A. B.
Judge, (or as the case may be.)

—*Cir. Ord. Cal. and West. C.* 4*th Nov.* 1836.

95. Precepts from this Court will be sent direct to the Principal Sudder Ameen, [in suits above 5000 Rs.] and all returns, unless specially directed otherwise, will be submitted by the Principal Sudder Ameen to this Court with the usual certificate.—*Cir. Ord. Cal. and West. C.* 23*d Feb.* 1838, *Par.* 1.

96. With reference to the rule contained in paragraph 8, of the Court's Circular Orders, No. 4, of the 23d February last, I am directed to acquaint you that the certificates which the Principal Sudder Ameens are hereby required to forward with their returns to the Court's precepts, need not be drawn out in English when those officers are not acquainted with that language; you are requested to inform the Principal Sudder Ameen of your district accordingly.—*Cir. Ord. West. C.* 20*th July, Cal. C.* 10*th Aug.* 1838.

97. The Court observe that in forwarding their certificates of appeal, and in making their returns to the precepts of the Court under Act 25, 1837, the Principal Sudder Ameens are not guided by any prescribed forms, and that much want of uniformity consequently prevails. This diversity of practice being found inconvenient, the Court are pleased to direct that those officers shall be required to conform to the practice of the Zillah Courts in this matter, substituting the Oordoo for the English language.—*Cir. Ord. Cal. and West. C.* 10*th Sept.* 1839, *Par.* 1.

98. And in all cases in which the Sudder Dewanny Adawlut may transmit any order or process to be served or executed by a [lower] Court, against a party in a cause, and the party on whom it is to be served or executed, is not, after diligent search, to be found, or shall have absconded, or shut himself up in his own or any house or building, or retired to any place so that the process cannot be served upon him, the Court to which the process may be directed is to cause to be fixed up in some conspicuous part of the room in which the Court may be held, a writing (in the Persian and Bengal languages, if it be in Bengal or Orissa, and in the Persian language, and the Hindoostanee language and Nagree character, if it be in Behar) containing a copy of the order or process, and a notice that if the party shall not obey the exigence of it within the time limited, the Sudder Dewanny Adawlut will without further notice, process, or order, proceed ex-parte to hear, try and determine the cause to which such process or order may relate; and the Court is likewise to cause a copy of such writing to be fixed up with all practicable dispatch on the outer door of the house in which the party may have commonly dwelt, or in some conspicuous place in the village in which he may have usually resided, and to return to the Sudder Dewanny Adawlut in the manner before directed how he has executed the process.—*Reg.* 6, 1793, *Sect.* 14.—*Ben. Reg.* 10, 1795.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 14.

99. If a (lower) Court to which any process, rule, or order of the Sudder Dewanny Adawlut, may be transmitted for the purpose of being served or executed on any party, shall return that the party has absconded, or shut himself up in his own or any house or building, or retired to any place so that the process could not be served upon him; or that he was not after diligent search to be found, and that they had caused the writing to be fixed up, in the places and manner directed; and the party shall not appear and obey the exigence of the process, rule, or order; the Sudder Dewanny Adawlut is to proceed ex-parte to try and determine the cause in which the process, rule, or order, shall have issued, in the same manner as if the party had appeared, and obeyed the exigence of the process.—*Reg.* 6, 1793, *Sect.* 15.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 15.

100. And whereas it is expedient that the Sudder Dewanny Adawlut, and Nizamut Adawlut, or other Provincial Courts, however denominated, exercising the highest Jurisdiction within the Provinces respectively subject to the Governments of Fort William, Fort Saint George, and Bombay, should have Power and Authority to execute Process of Arrest, either Civil or Criminal, within the Towns of Calcutta and Madras, and the Town and Island of Bombay, notwithstanding the Jurisdiction of His Majesty's Courts established at those places respectively; be it therefore enacted, That it shall and may be lawful for the said Court of Sudder Dewanny and Nizamut Adawlut, or other Provincial Courts aforesaid, to execute or cause to be executed upon all persons subject to the Jurisdiction of such Courts respectively, all manner of lawful Process of Arrest, within the respective limits of the Towns of Calcutta and Madras, and of the Town and Island of Bombay, in the same manner as the said Courts respectively may by virtue of any power now vested, or hereafter to be vested in them, lawfully execute, or cause to be executed, such Process in any place situate without the said limits; any Act, Charter, or other Matter or Thing whatsoever to the contrary notwithstanding: Provided always, that all such Process which shall be executed within the limits aforesaid, shall be in writing, and shall have underwritten or indorsed thereon, or otherwise, annexed thereto, a translation thereof, or of the substance thereof, in the English language and character, signed by one of the Judges of the Court from whence the same shall issue.—*Act* 53, *George* III. *Chap.* 155, *Sect.* 113.

Rules regarding Precepts and Returns.

1. All precepts shall be drawn out according to the annexed forms (No. 1, 2, 3, 4, 6 and 7.) —*Cir. Ord. Cal. and West. C. 6th Feb.* 1835.

2. All orders directing the issue of precepts shall state whether a return is required, and within what period.—*Ibid.*

3. The period shall be calculated from the date of the despatch of the precept from this office. —*Ibid.*

4. Precepts and returns shall bear the date of despatch, not the date of proceedings which accompany them, as heretofore; and the subordinate courts will be expected to despatch their returns within the period allowed.—*Ibid.*

5. When a Judge of the court has signed a *chitteh*, directing the issue of a precept, it shall be the duty of his peshkar to prepare a copy of the roobukaree, duly attested by his signature, together with such other papers as should accompany the same, and to send them by a mohurrir to the English clerk in the precept department, within seven days from the date on which the chitteh was signed by the Judge. The roobukaree shall bear a list of the accompanying papers at the foot of it; and the peshkar shall be responsible that they are correct and complete.—*Ibid.*

6. The English clerk will note on each proceeding the date of receipt, and after preparing the precepts, will submit them for the Register's signature; he will then enter them in the proper books, and will despatch them on the same day if possible; if not despatched till the next day, or later, the date of the receipts shall be altered to correspond with that of despatch.—*Ibid.*

7. If the officer to whom the precept may be addressed find it impracticable to send a complete return within the prescribed period, he will transmit a proceeding with a certificate according to the annexed form, (No. 5,) stating the reason, and the additional period which he may require to carry the Court's orders into effect.—*Ibid.*

8. Such returns and certificates when received in this office shall, after having been endorsed and entered in the proper books, be sent by the precept clerk to the peshkar of the Judge by whom the precept was issued, who will note on each the date of receipt, and bring it forward in the usual course.—*Ibid.*

9. If the period allowed in a precept, together with the number of days occupied by the letter *dawk*, expire before a return or explanatory proceeding and certificate be received, the register shall send a letter calling for explanation within a specified term; should this term also expire without receiving a reply, the circumstance shall be brought to the notice of the Judge who issued the order, for such further measures as he may deem advisable.—*Ibid.*

10. The officer by whom a return or certificate may be sent will cause a list of the papers which accompany it to be written at the foot of the roobukaree.—*Ibid.*

11. If the papers, &c. which should accompany a precept or return are too heavy for the letter *dawk*, they shall be sent by dawk banghy, with a note stating the case and precept or return to which they belong; the precept or return itself with the proceedings of the Court being sent as usual by the letter dawk.—*Ibid.*

12. The precept Clerk will at the close of each week, submit to the Register a list of unanswered precepts and letters, to which returns are due.

List of Precepts, Returns, and Certificates—Sudder Dewanny Adawlut.

No. 1. Precept directing the execution of a decree; with a return on the back.

No. 2. Precept issued on the admission of an appeal, directing that summons be issued to the respondent, &c. with a return.

No. 3. Precept issuing any other order of the Court, with a return.

No. 4. Precept with an order of the Court calling for no return.

No. 5. Certificate to be submitted when a full return to precept Nos. 1, 2, or 3 cannot be submitted within the prescribed period.

No. 1. *Precept.*

No. of Precept Register, ———.

SUDDER DEWANNY ADAWLUT.

No. of suit, ———.

Year in which the decree was passed, ———.

———, Appellant.

versus

———, Respondent.

To A. B., Esq.

Judge of Zillah ———.

PRESENT. ——, *Esq.* *Judge.*

Herewith you will receive the decree of the Sudder Dewanny Adawlut, passed in this cause on the —— of ———, 183—, copy of a petition from the ———, and an extract from the Court's proceedings of the —— of ———, 183—, held before Mr. ———, to the orders contained in which you are required to conform; returning this precept with the decree duly executed, or good and sufficient reason why it has not been

executed, and what you may have done in pursuance hereof, on or before the ——day of ——, 183—.

By order of the Court of Sudder Dewanny Adawlut,

Fort William,
The — of —— 183—.

C. D.
Register.

Return. (To be endorsed on the preceding.)

Dewanny Adawlut, Zillah (or City) ————————.

I, A. B., Judge of Zillah ———, do hereby certify, that the orders contained in this precept have been duly carried into execution.

Given under my hand and the seal of the Court,
this —— day of ———, 183—.

Dewanny Adawlut,
The — of ——, 183—.

A. B.
Judge.

———

No. 2, *Precept.*

No. of Precept Register, ———.

SUDDER DEWANNY ADAWLUT.

No. of appeal, ———.
Year of institution, ———.

————————, Appellant.

versus

————————, Respondent.

To. A. B. Esq.
Judge of Zillah ———.

PRESENT. ——, *Esq.* *Judge.*

The Court of Sudder Dewanny Adawlut having admitted an appeal in this cause against the decree passed by Mr. ———, the Judge of ———, on the —— of ———, 183—, you will receive herewith a notification to be served on the respondent, and an extract from the Court's proceedings of the —— of ———, 183—, held before Mr. ————————, to the orders contained in which you are required to conform; returning this precept duly executed, or good and sufficient reason why it has not been executed, and what you may have done in pursuance hereof, on or before the —— day of ———, 183—.

By order of the Court of Sudder Dewanny Adawlut,

Fort William,
The — of ——, 183—.

C. D.
Register.

Return. (To be endorsed on the preceding.)

Dewanny Adawlut, Zillah (or City) ————————.

I, A. B., Judge of *Zillah* ———, do hereby certify, that the orders contained in this precept have been duly carried into execution.

Given under my hand and the seal of the Court,
this —— day of ——— 183—.

Dewanny Adawlut,
The — of ——, 183—.

A. B.
Judge.

No. 3. *Precept.*

No. of Precept Register, ———.

SUDDER DEWANNY ADAWLUT.

No. of suit, ———.

Year, ———.

———————, Appellant, or Petitioner.

versus

———————, Respondent.

To A. B., Esq.

Judge of Zillah ———.

PRESENT. ——, *Esq.* *Judge.*

Herewith you will receive (here specify the papers sent) and an extract from the proceedings of the Court of Sudder Dewanny Adawlut of the —— of ———, 183—, held before Mr. ———, to the orders contained in which you are required to conform; returning this precept duly executed, or good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, on or before the —— day of ——, 183—.

By order of the Court of Sudder Dewanny Adawlut,

C. D.

Register.

Fort William,
The — of —— 183—.

Return 3. (To be endorsed on the preceding)

Dewanny Adawlut Zillah (or City) ———.

I, A. B., Judge of *Zillah* ———, do hereby certify, that the orders contained in this precept have been duly carried into execution.

Given under my hand and the seal of the Court, this —— day of ———, 183—.

A. B.

Judge.

Dewanny Adawlut,
The — of —— 183—.

No. 4. *Precept.*

SUDDER DEWANNY ADAWLUT.

No. of suit, ———.

Year, ———.

———————, Petitioner, or Appellant.

versus

———————, Respondent.

To A. B., Esq.

Judge of Zillah ———.

PRESENT. ——, *Esq.* *Judge.*

Herewith you will receive, for your information and guidance, an extract from the proceedings of the Court of Sudder Dewanny Adawlut of the —— of ———, 183—, held before Mr. ———, and a copy of a petition from ——— (*if other papers are sent they will be mentioned.*)

By order of the Court of Sudder Dewanny Adawlut,

C. D.

Register.

Fort William,
The — of ——, 183—.

No. 5, *Certificate.*

No. of Precept Register, ———.

DEWANNY ADAWLUT.

No. of the cause in which the precept is issued, ———.

To the Register of the Court of Sudder Dewanny Adawlut,

Fort William.

——— VERSUS. ———

With reference to the precept of the Sudder Dewanny Adawlut, dated the —— of ——, 183—, covering an extract from the Court's proceedings of the —— of ——, 183—, held before Mr. ———, in the case noted in the margin, I hereby certify the accompanying extract from my proceedings of the — of ——, 183—, containing a return to the said precept; and that I propose to submit a further (or full) return on or before the — of ——, 183—.

Given under my hand and the seal of the Court, this — of ———, 183—.

A. B.
Judge.

Dewanny Adawlut,
The — of ——, 183—.
—*Cir. Ord. Cal. and West. C. 6th Feb.* 1835.

SECT. XII.

Neglect of duty, and resistance and disobedience of the Court's Orders by the Lower Courts.

101. If any [lower] Court, to whom any process, rule, or order whatever may be directed, shall wilfully disobey, or neglect to perform the commands contained in it, or make a false return, the Judges of the Court who may commit such offence, shall be liable to be suspended from their office by the Sudder Dewanny Adawlut. If the Sudder Dewanny Adawlut shall suspend any Judge of a Provincial [lower] Court under this section, they are to notify the suspension to the Governor General in Council within ten days after it may take place, together with the cause of it; and certify under the seal of the Court, the proceedings, depositions, and exhibits, and all other matters which may be necessary to enable the Governor General in Council to pass a determination upon the suspension, and to transmit to him on his requisition, any further papers and proceedings respecting the cause which he may deem necessary for his information.—*Reg.* 6, 1793, *Sect.* 13.—*Ben Reg.* 10, 1795, *Sect.* 4.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 13.

102. The Court of Sudder Dewanny Adawlut is directed to report to the Governor General in Council, all instances of wilful neglect of duty or aggravated misconduct by a covenanted servant of the Company, employed in any of the Civil Courts, whether in a judicial or ministerial capacity; and whether such neglect or misconduct may have been reported to the Court of Sudder Dewanny Adawlut, by a Provincial, Zillah or City Court; or may otherwise appear from the proceedings and papers before the Court. But if the case should appear to the Court to involve an error of judgment only, or a slight default for which an admonition from the Court may be deemed a sufficient correction, the Court of Sudder Dewanny Adawlut, in the former case, is authorized to notice the error for the information and guidance of the party who may have committed it; or, in the latter case, to advise him of his default, and to admonish him accordingly.—*Reg.* 2, 1801, *Sect.* 7.

The penalties for resisting any process, order, rule, or decree of the Sudder Court, are the same as those enacted for the similar resistance of the process of the Zillah Courts, which will be found detailed at Chapter 3, Section 12.

SECT. XIII.

Decrees of the Sudder Court.

103. The decrees are to be signed by the Judges present in the Court when the decrees may be passed, and attested by the Register, and copies so signed and attested are to be delivered to the parties.—*Reg.* 6, 1793, *Sect.* 28.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 28.

104. In modification of the Third Clause of Section 2, Regulation 13, 1810, requiring the sitting of two Judges to reverse or alter a decision or order appealed to a Provincial [the Sudder] Court, and of such part of any other regulation in force, as directs that decrees are to be signed by the Judges passing the same; it is hereby provided, that when a single Judge of a Provincial [the Sudder Court,] trying a case in Appeal from a Zillah or City Judge, Assistant Judge, or Register, shall be of opinion, that the decision appealed from, ought to be reversed, or altered, and shall record his sentiments to that effect; and another Judge of the Provincial [the Sudder] Court, sitting afterwards upon the same Appeal, shall concur in the opinion so recorded, it shall be competent to the second Judge to pass the decree, or final order, in conformity thereto, and to cause the same to be carried into execution, in the mode prescribed by the Regulations, without waiting for a sitting of both Judges, when circumstances may not conveniently admit of it. In such cases, the decree or order shall be signed by the Judge present at the final sitting; and the signature of the Judge who first sat shall not be considered requisite; but his opinion, as recorded by him, shall be recited in the decree or final order, and in the copies of it delivered to the parties.—*Reg.* 25, 1814, *Sect.* 8.

105. The principles of the Rules contained in Clauses eighth, ninth, and tenth, of this section, are to be considered applicable to all copies of decrees, from which a party may be desirous of preferring a special or a summary appeal; and to all copies of orders passed by the Judges and Registers of the Zillah and City Courts, by the Provincial Courts, and by the Sudder Dewanny Adawlut, which those Courts may be required to furnish to parties under the provisions of any regulation.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 11.

106. The decrees of the Sudder Dewanny Adawlut are to be final in all suits whatever, [except in cases of appeals to the Privy Council.]—*Reg.* 6, 1793, *Sect.* 29.

107. The Court, having taken into consideration the papers laid before them, concur in opinion with Mr. Smyth, that the orders of this Court in all miscellaneous cases are final. Accordingly it is resolved that the Court will in future decline to admit any appeals to the King in Council, excepting such as are expressly provided for by Regulation 16, of 1797.—*Con. No.* 1102, *Cal. C.* 18*th Aug. West. C.* 15*th Sept.* 1837.

108. A case involving the execution of a decree passed by the Court of Sudder Dewanny Adawlut, having been referred in the usual course for execution to the Judge of the Zillah or City in which the cause of action arose, and having after due notice served on the decree-holder either

in person or by vakeel, been dismissed on default in consequence of the neglect of the party to proceed in the matter, within the period allowed, the Zillah or City Judge is not competent of his own authority to re-admit the case, or to restore it to the file of his Court.—*Cir. Ord. Cal. C. 7th Dec. West. C. 21st Dec.* 1838.

109. But whenever after the service of notice as above required, and which should be invariably and carefully attended to, a Zillah or City Judge may find it necessary to dismiss a case of this nature on default, his proper course of proceeding is immediately to return to the Court the precept issued to him in the matter, certifying the execution of it, as far as lay in his power, as well as what he may have done in pursuance of the Court's orders; and if the decree-holder should at any future period, renew his application for the enforcement of the award, he should be referred to the Court, by whom the decree was passed and who alone are competent under such circumstances to comply with the prayer of the petition, and to direct the re-admission of the suit on the file of the lower Court.—*Cir. Ord. Cal. C. 7th Dec. West. C. 21st Dec.* 1838.

110. To prevent an abuse of the above rule, and the encouragement of litigious appeals, the Provincial Courts of Appeal in all cases wherein they may confirm the decree of a Zillah or City Court, and the Sudder Dewanny Adawlut, in all cases wherein it may confirm the decree of a Provincial Court, are to adjudge interest at the rate of one per cent. per mensem on all sums, receivable by the respondent under the decree passed in his favor, from the date of such decree, and are authorized to punish appeals which may appear to them litigious, by a fine to Government, proportionate to the condition of the party and the circumstances of the case.—*Reg.* 13, 1796, *Sect.* 3.

111. Where the fine may be imposed for a litigious appeal in conformity to Section 3, Regulation 13, 1796, the amount, if not immediately forthcoming, should be realized under the same rules as are applicable to the execution of decrees of Court.—*Con. No.* 1096, *Cal. and West. C. 7th July*, 1837.

112. The Court having had under consideration the unnecessary delay and additional trouble that is occasioned to the Zillah Judges and their Omlah, by the preparation of intermediate or Meadee returns to precepts issued by this Court in the execution of their decrees, are pleased to direct that such returns be entirely discontinued from the 1st of May next.—*Cir. Ord. 2d April*, 1841, *Par.* 1.

113. In order to enable the Court to exercise a proper superintendence over this important department, and also to ascertain the exact progress made in the execution of their decrees, they request that you will submit a return every quarter of the unexecuted decrees of the Court of Sudder Dewanny Adawlut to this office, agreeably to the annexed form, both in English and in the Vernacular, commencing from the 1st April instant. Full details must be given in the column appropriated to remarks, that the Court may at once see to what authority any unnecessary delay in the non-execution of their decrees is attributable.—*Cir. Ord. 2d April*, 1841, *Par.* 2.

114. Should any of the decrees of the Provincial Courts or of the Privy Council be pending unexecuted in your District, you are requested to submit separate quarterly returns of these cases also.—*Cir. Ord. 2d April*, 1841, *Par.* 3.

QUARTERLY RETURN of the unexecuted Decrees of the Court of Sudder Dewanny Adawlut pending in the Zillah Court of ——— on the 1st April, 1841.

Number of Zillah Register.	Number of the Sudder suit and date of decision.	Number and date of the first precept.	Names of the Parties.	Substance of the Decrees.	Cause of non-execution.
	No. 118 of 1839. Decided 10th June 1839.	No. 61. 2nd of Feby. 1840.	Ram Mohun Ghose Appt. *versus.* Khyrollah Shah Respt. and decree-holder.	To put Respondent in possession of Bishenpore Zumeendaree with mesne profits for two years.	An Ameen is now in the mofussil ascertaining the amount of mesne profits—possession has been already given.
2	No. 230 of 1839. Decided 15th Sept. 1839.	No. 87. 5th May 1840.	Teencoury Sheik Appt. *versus.* Asman Beebee Respt. and decree-holder.	To realize the sum of 10,000 Rupees with costs.	Writ of Execution has been taken out twice; but the appellant has not yet been apprehended.

115. The Circular Order No. 1100, dated 2d April last, having omitted to make specific reference to cases of unexecuted Decrees of the Sudder Dewanny Adawlut before the Principal Sudder Ameens, in which precepts are wont to issue direct from the Court to those Officers, the Court, in continuation of the above Circular, are pleased to notify that the same rule enjoining the submission of Quarterly, and dispensing with intermediate, Returns, is applicable to the Principal Sudder Ameens, who are to transmit the requisite information to the Judge in the prescribed form, in time for its incorporation in English in the Statements ordered to be sent up quarterly by the latter.—*Cir. Ord. 16th July*, 1841.

116. The column for Explanations in the Statements of Unexecuted Decrees, called for under the Circular Order No. 1100, of the 2d April last, has not been filled up; in many instances, in such a manner as to show the successive steps taken by the authorities to give effect to the decrees of the Superior Courts. To facilitate the preparation of the Statements in a satisfactory manner, the Court are pleased to direct that a Register Book be kept in future by the Decreejaree Mohurrir of the Judge's and Principal Sudder Ameen's Courts, in which an abstract of all orders shall be entered at the time they are passed, and the results of the orders similarly recorded.—*Cir. Ord. 20th Aug.* 1841.

117. The Sudder Dewanny Adawlut is empowered in every case in which a sum of money is decreed to be paid by a Zemindar, independent talookdar, or other actual proprietor of land, to issue an order to the proper Court, to execute the decree in the same manner as the Courts are authorized to execute decrees by which a sum of money may be decreed to be paid by any of the descriptions of persons abovementioned.—*Reg.* 6, 1793, *Sect.* 21.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 21.

SECT. XIV.

Review of Judgment by the Sudder Court.

118. The Court of Sudder Dewanny Adawlut, in cases referred to them under the preceding clause, as well as in all cases, in which a petition may be presented to them for a revision of their own judgments, which may not have been appealed to the King in Council, (or though appealed, the proceedings in which may not have been transmitted to the King in Council,) are authorized to grant the review desired, if upon a consideration of the reasons stated, the circumstances of the case shall appear in justice to require it. The Sudder Dewanny Adawlut shall record on their proceedings the grounds upon which a review may be granted by them in each instance, and shall issue any instructions regarding the admission or rejection of new evidence in the case, which they may deem just and proper.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 3.

119. The order of a Zillah or City Court, or of a Provincial Court, or of the Sudder Dewanny Adawlut, rejecting the petition for a review in the first instance, or of the latter Court refusing to sanction a review when applied for by a lower Court, shall not be construed to preclude the party from instituting a regular appeal, (if the case be appealable) in a competent Court, subject to the conditions and rules prescribed by the Regulations in force for the admission of such appeals.—*Reg.* 26, 1814, *Sect.* 4, *Cl.* 4.

The rules regarding Stamps on petitions for a Review of Judgment will be found at Chap. 5, *Sect.* 21.

120. In addition to the rules contained in Section 4, of Regulation 26, 1814, relative to petitions for a review of judgment in regular original suits and appeals, decided by the Zillah, City, and Provincial Courts, or by the Court of Sudder Dewanny Adawlut, it is hereby provided that whenever the Judge or Judges, who may have passed the decree or if the decree have been passed by two or more Judges, when any of such Judges shall continue attached to the Court, at the time when the petition for a review is received, and shall not be precluded, by absence or other cause, for a period of six months after the receipt of the petition from considering and recording his order or opinion upon the same, it shall not be competent to any other Judge or Judges of the same Court, to enter upon a consideration of the merits of the petition, and record an order or opinion thereupon, it being the obvious intention of the Rules referred to, that application for a review of judgment made in pursuance thereof, should, as far as practicable, be received and disposed of by the Judge or Judges who may have passed the decision; subject to the regular course of appeal, if the case be appealable to a superior Court. Provided however, that this restriction shall not be considered applicable to cases not open to a further appeal, in which a single Judge, whether of a Provincial Court or of the Court of Sudder Dewanny Adawlut, may appear, on the face of the decree, to have exceeded the powers vested in him by the Regulations. In such cases the decree being imperfect, and irregular, it shall be competent to a majority of the Judges of the Provincial Court, or of the Court of Sudder Dewanny Adawlut, concurring in opinion as to such irregularity, to proceed upon the petition for a review, in the manner prescribed by Section 4, Regulation 26, 1814, and by the present Regulation.—*Reg.* 2, 1825, *Sect.* 3.

121. A question having arisen in a case decided by two Judges, both of whom continue attached to the Court, whether on an application for a review of judgment such application should be submitted for the opinion of both of the Judges, or whether the opinion of one for the admission or rejection of the review is final, the Court are of opinion, on due consideration and with reference to the rule laid down in the case of Musst. Ujgnasee regarding the admission of a review of judgment in the Provincial Court of Patna, that in such cases the petition of review should be laid before the Judges who passed the decrees; and that in the event of a difference of opinion between them, as to the admission or rejection of the review, the matter should be refererd to one or more Judges of the Court, until the question be determined by a majority of voices.—*Con. No.* 756, *Cal. C.* 8*th Feb. West. C.* 15*th March,* 1833.

122. It was resolved in concurrence with the Western Court that when, in a case decided by a single Judge, the deciding Judge shall have rejected an application for a review of the judgment, his rejection is to all intents and purposes final; unless he himself shall see grounds, on a subsequent application, to admit a review, and that it is not competent to the Court (the said Judge being absent and incapable of hearing a second petition within six months) to authorize a review of the order rejecting the Review.—*Con. No.* 982, *Cal. and West. C.* 16*th Oct.* 1835.

123. Two Judges of the Sudder confirm the decree of a Provincial Court. The *same* two Judges admit a review:—*One* of them leaves the Court; the *other* confirms the decision previously passed by the two. Under those circumstances the Court resolved that the second decision of the remaining Judge is final, and that a second concurring voice is not necessary to render it so. —*Con. No.* 683, 16*th March,* 1832.

SECT. XV.

Special Appeals to the Sudder Court.

124. In all suits originally decided by the Principal Sudder Ameens, an appeal shall lie to the Zillah or City Judge, and a further or special appeal, under the provisions of the Regulations applicable to such cases, to the Sudder Dewanny Adawlut.—*Reg.* 5, 1831, *Sect.* 28, *Cl.* 2.

125. Decrees passed in the Court of the Principal Sudder Ameens shall be executed by those Courts under the general rules prescribed for the execution of decrees passed by the Zillah and City Judges—Provided however, that in such cases an appeal from the orders of the Principal Sudder Ameens shall lie, in the first instance, to the Zillah and City Judges, and specially to the Sudder Dewanny Adawlut, that is in suits under 5000 Rs.—*Reg.* 5, 1831, *Sect.* 22.

126. After the promulgation of this Regulation the Provincial Courts, and Court of Sudder Dewannny Adawlut, shall be guided, in their admission of special or second appeals by the Rules contained in Section 2, Regulation 26, 1814; Section 7, Regulation 19, 1817; and Section 3, 4, and 5, of Regulation 9, 1819.—*Reg.* 2, 1825, *Sect.* 4, *Cl.* 2.

127. The same rules are applicable to special appeals in the Sudder Court which are enacted for the guidance of the Zillah Courts. These will be found in Chapter 5, Sections 20, 21, 22, 23.

128. In applications for special appeals no exhibit fee is required with the documents filed (according to a general roobakaree dated the 13th January, 1830, copy of which is annexed,) until the special appeal be admitted, when the fee is levied on such documents as are put on record in the proceedings.—*Con. No.* 961, *7th Aug.* 1835, *Par.* 3.

SECT. XVI.

Appeals from the Sudder Court to the Privy Council.

129. Whereas by an Act passed in the Fourth Year of the Reign of His late Majesty King William the Fourth, intituled "An Act for the better Administration of justice in his Majesty's Privy Council," it is amongst other things enacted, that "it shall be lawful for His Majesty in Council from time to time to make any such rules and orders as may be thought fit, for the regulating the mode, form, and time of appeal to be made from the decisions of the Courts of Sudder Dewanny Adawlut, or any other Courts of judicature, in India or elsewhere, to the Eastward of the Cape of Good Hope (from the decisions of which an appeal lies to His Majesty in Council), and in like manner from time to time to make such other Regulations for the preventing delays in the making or hearing such appeals, and as to the expences attending the said appeals, and as to the amount or value of property in respect of which any such appeal may be made." And whereas His said late Majesty did, by his Order in Council, on the 16th day of January 1836, approve certain rules and orders for Regulating the mode, form, and time of appeal from the decisions of the said Courts of Sudder Dewanny Adawlut, and also certain Regulations for the preventing delays in the making or hearing of such appeals, and as to the expences attending such appeals; and the said rules, and orders, and Regulations, were set forth in certain Schedules, A. and B., to and by the said order in Council of the 16th of January annexed and approved. And whereas His said late Ma-

jesty did, by his further order in Council made on the 10th day of August 1836, alter and amend the said Schedule B., by cancelling the rule No. 5 of the said Schedule B. so approved as aforesaid, and ordering that, in lieu of the said fifth rule thereof, a certain other rule in such last-mentioned order set forth should be substituted. And whereas the Queen's most Excellent Majesty in Council hath deemed it expedient to cancel and rescind all the said Rules, Orders, and Regulations, and to make and substitute others in lieu thereof:—*Rules passed by her Majesty in Council,* 10*th April,* 1838.

130. Her Majesty is therefore pleased, by and with the advice of Her Privy Council, to cancel and rescind all the said Rules, Orders, and Regulations in the said recited Orders in Council of the 16th day of January, 1836, and 10th day of August 1836, respectively contained, and thereby or by either of them approved, and to approve of the several Rules, Orders, and Regulations contained in the Schedule hereunder written or hereunto annexed, and to order, as it is hereby ordered, that the same be respectively observed by Her Majesty's Supreme Courts of Judicature at Fort William in Bengal, Fort St. George, and Bombay respectively, by the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, and by the said several Courts of Sudder Dewanny Adawlut, and all other Courts of Judicature in the Territories under the Government of the East India Company, and by all persons whom it shall or may concern. Whereof the Governor General and the Council of India, the Governor of Fort William in Bengal, the Governor in Council at Fort St. George, the Governor in Council at Bombay, the Governor of Agra, the Chief Justice and the Judges of Her Majesty's Supreme Court of Judicature at Fort William aforesaid, the Chief Justice and Judges of Her Majesty's Supreme Court of Judicature at Fort St. George, the Chief Justice and Judges of Her Majesty's Supreme Court of Judicature at Bombay, the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, the Judges of the several Courts of Sudder Dewanny Adawlut in the East Indies, and the Judges of all other Courts of Judicature in the territories under the Government of the East India Company, and all other persons whom it may concern are to take notice and govern themselves accordingly.—*Ibid.*

THE SCHEDULE ABOVE REFERRED TO.

131. 1. That from and after the 31st December next, no appeal to Her Majesty, her heirs and successors in Council, shall be allowed by any of Her Majesty's Supreme Courts of Judicature at Fort William in Bengal, Fort St. George, Bombay, or the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, or by any of the Courts of Sudder Dewanny Adawlut, or by any other Courts of Judicature in the Territories under the Government of the East India Company, unless the petition for that purpose be presented within six calendar months from the day of the date of the judgment, decree, or decretal order complained of, and unless the value of the matter in dispute in such appeal shall amount to the sum of ten thousand Company's Rupees at least; and that from and after the said 31st day of December next, the limitation of five thousand Pounds sterling heretofore existing in respect of appeals from the Presidency of Fort William in Bengal, shall wholly cease and determine.—*Ibid.*

132. 2. That in all such cases in which any of such Courts shall admit an appeal to Her Majesty, her heirs and successors in Council, it shall specially certify on the proceedings that the value of the matter in dispute in such appeal amounts to the sum of

ten thousand Company's Rupees or upwards, which certificate shall be deemed conclusive of the fact, and not be liable to be questioned on such appeal by any party to the suit appealed.—*Ibid.*

133. 3. Provided nevertheless, that nothing herein contained shall extend, or be construed to extend, to take away, diminish, or derogate from the undoubted power and authority of Her Majesty, her heirs and successors in Council, upon the petition at any time of any party aggrieved by any judgment, decree, or decretal order of any of the aforesaid Courts, to admit an appeal therefrom upon such other terms, and upon and subject to such other limitations, restrictions, and Regulations, as Her Majesty, her heirs and successors, shall in any such special case think fit to prescribe.—*Ibid.*

134. 4. That on the arrival of the transcripts of proceedings in an appeal to Her Majesty, her heirs and successors in Council, from any of the said Courts of Sudder Dewanny Adawlut, or any other Courts in the East Indies constituted by the East India Company, or any of their Governments from which an appeal lies to Her Majesty in Council, such Officer of the East India Company as the Court of Directors of the said Company shall from time to time appoint, shall forthwith give notice to the Clerk of the Council thereof, stating at the same time the names of the parties to the appeal, and the date of the decree appealed from, and that such notice shall be duly registered in the Council Office.—*Ibid.*

135. 5. That the said transcripts of proceedings shall be kept at the East India House, or at such other convenient place within the Cities of London or Westminster as the said Court of Directors shall from time to time appoint; the Agents respectively conducting and defending such appeals in this country, being at liberty to take all the necessary copies and extracts from the said proceedings, and to examine the same from time to time; and it shall be the duty of such Officer, by himself or his sufficient Deputy, to produce the original transcripts before the Judical Committee, upon the hearing of such appeal, upon due notice for that purpose previously given, and upon all other occasions when thereunto required by the Privy Council or the Judicial Committee.—*Ibid.*

136. 6. That in default of the petition of appeal of the appellants being lodged in the Council Office within three calendar months from the Registrations of the arrival of such transcripts, or in default of the appellant's case being carried in within one year from the time of such Registration, the Respondent shall be entitled in either case to move to dismiss the appeal for want of prosecution; and in the event of the Respondent's not bringing in his case within one year from the time of such Registration, the appellant shall be entitled to apply to have the case heard *ex-parte.*—*Act* 6, 1838.

137. In like manner any parties who may be desirous of appealing from the Judgments passed by the Provincial Courts in suits regularly appealable to the Sudder Dewanny Adawlut, or from the judgments of the Sudder Dewanny Adawlut in suits which may be regularly appealable to the King in Council, shall be at liberty to present their petition of appeal, without an authenticated copy of the decree to the Court, by which the judgment may have been passed, in conformity with the provisions contained in the preceding clauses of this Section.—*Reg.* 26, 1814, *Sect.* 8, *Cl.* 6.

138. All persons desirous of appealing from a judgment of the Court of Sudder Dewanny Adawlut to the King in Council, under the authority for this purpose contained in the 21st Section of the Statute 21, Georgii 3, Cap. 70, are required to pre-

sent their petition of appeal to the Court of Sudder Dewanny Adawlut, either themselves or through one of the authorized pleaders of that Court, duly empowered to present such petition in their behalf, within six calendar months from the date on which the judgment appealed against may have been passed; under which provision, and provided also the judgment appealed against shall, exclusive of costs of suit, be to the value of five thousand Pounds (to be calculated as hereafter mentioned) the Court of Sudder Dewanny Adawlut are to admit the appeal; and proceed upon it as directed in the following Sections of this Regulation under the several restrictions therein prescribed.—*Reg.* 16, 1797, *Sect.* 2.

139. For the purpose of determining what causes are appealable to his Majesty in Council, under the limitation of five thousand Pounds and upwards, the pound sterling shall be computed at the rate of ten current rupees, being about the medium of the usual rates of exchange; and consequently making five thousand Pounds equivalent to fifty thousand current Rupees or (excluding fractions) Sicca Rupees forty-three thousand one hundred and three. Under this computation the value of the property constituting the subject of the judgment appealed against, is to be determined according to the nature of such property, whether land, money, effects or otherwise, according to the general rules prescribed in like cases for determining the value of the same property when constituting the cause of action in the Sudder Dewanny Adawlut, and the several Civil Courts subordinate thereto.—*Reg.* 16, 1797, *Sect.* 3.

[*The sum has been reduced by the Schedule given above to* 10,000 *Company's Rupees.*]

140. In cases of appeal to his Majesty in Council, the Court of Sudder Dewanny Adawlut may either order the judgment passed by them to be carried into execution, taking sufficient security from the party in whose favour the same may be passed for the due performance of such order or decree as his Majesty, his heirs or successors, shall think fit to make on the appeal; or to suspend the execution of their judgment during the appeal, taking the like security in the latter case from the party left in possession of the property adjudged against him: but in all cases security is to be given by appellants to the satisfaction of the Sudder Dewanny Adawlut for the payment of all such costs as the said Court may think likely to be incurred by the appeal, as well as for the performance of such order or judgment as his Majesty, his heirs or successors, may think fit to give thereupon: and after receiving such security, the Court of Sudder Dewanny Adawlut are to declare the appeal admitted, and to give notice thereof to the appellant and respondent respectively; that they may take measures, the one to prosecute, the other to defend, the cause in appeal before his Majesty in Privy Council, according to the established mode of proceeding in similar cases.—*Reg.* 16, 1797, *Sect.* 4.

141. Resolved, with the concurrence of the Western Court, that a Sudder putnee talook, unexceptionable in all respects, as such, shall be considered as sufficient security in cases appealed to the King in Council, to the extent of the surplus proceeds thereof.—*Con. No.* 1004, *Cal. and West. C.* 25*th March*, 1836.

142. I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, No. 680, and in reply to inform you that the Court concur in the rule of practice proposed to be adopted by the Judges of the Western Court, viz. that persons wishing to appeal to the King in Council in formâ pauperis shall be required equally with other appellants, to furnish security (malzaminee) to the extent of five thousand Sicca Rupees, to cover the original costs of appeal; and in a further sum of five thousand Sicca Rupees to reimburse the Honourable the Court of Directors

any expenses to which they may be put in the event of their being called upon, under the provisions of Section 22, 3d and 4th, William IV. Cap. 41, to conduct the appeal on the part of the party.—*Con. No.* 1032, *Cal. and West. C.* 12*th Aug.* 1836.

143. In all authorized cases of appeal, the party desirous of appealing, is, with his petition of appeal, to deliver good and sufficient security for the payment of the costs that may be awarded on the appeal, including the fees of his pleader in case he shall intend to employ any on his appeal. Without such security, or without proof of inability to find the same, as required with respect to paupers by Regulation 46, 1793, no appeal shall be admitted; and in like manner as has been declared in Section 6, of Regulation 6, 1797, with respect to the fees on appeals prescribed by that Regulation; it is hereby declared, that the presenting a petition of appeal, without the security required by this Section, before the expiration of the time limited for appealing, shall not be considered as preserving to the appellant his right of appeal, as far as respects the limitation in question.—*Reg.* 2, 17[illegible], *Sect.* 10.

144. Provided however that if the Court, to which the appeal may be preferred in such cases, shall, in any instance, see special cause for leaving the appellant in possession during the appeal, it shall be competent to that Court to order the same; requiring, in such case, from the appellant, the same security as is above required to be given by the respondent.—*Reg.* 13, 1808, *Sect.* 11, *Cl.* 3.

145. It is hereby enacted, that from the time of the passing of this Act, no stamp duty or institution fee shall be payable in respect of any proceeding in any appeal, or in respect of any paper or copy of any paper necessary for any appeal from any Court of the East India Company to Her Majesty in Council.—*Act* 11, 1839.

146. In all cases wherein the Sudder Dewanny Adawlut may admit an appeal to the King in Council, they are to cause two exact copies to be made of all the proceedings held and judgments or orders given in the case appealed, including the whole of the evidence and documents, (tranlated into English, if the original documents be in any of the country languages,) and are to transmit the same as soon as prepared under their official seal, and the signature of their Register, to the Governor General in Council, for the purpose of being forwarded by the first secure and separate conveyances to his Majesty in Council. The Register to the Sudder Dewanny Adawlut shall also, on the application of the appellant, or respondent, furnish him or them with one or more copies of the proceedings held, and judgments or orders passed in the case appealed, provided they respectively agree to defray such expence as may be incurred thereby; but not otherwise: and the Register is not to deliver such copies when prepared without the previous payment of the expence incurred thereby, the amount of which is to be carried to the credit of Government, by whom the necessary expenditure on this account will be made in the first instance.—*Reg.* 16, 1797, *Sect.* 5.

147. In case the judgment appealed from shall have been passed in pursuance of any local Regulation or Regulations enacted by the Governor General in Council; or in case any such Regulation shall have been referred to in the judgments passed by any of the Courts wherein the cause appealed from may have been tried and decided, a copy of such Regulation or Regulations, or an extract therefrom containing all that has reference to the matter at issue, shall be annexed to the several copies of the proceedings prepared in conformity to the preceding section, whether for delivery to the parties, or for transmission to his Majesty in Council.—*Reg.* 16, 1797, *Sect.* 6.

148. Provided always that nothing in this Regulation is to be understood to bar the full and unqualified exercise of his Majesty's pleasure upon all appeals to him from the decisions of the Sudder Dewanny Adawlut; either in rejecting any he may consider inadmissible under the statute respecting such appeals; or in receiving any he may judge admissable, notwithstanding the provisions made in this regulation; which has reference to the local jurisdiction only, and particularly to that of the Sudder Dewanny Adawlut, as a necessary rule for their guidance, subject, in the whole of its provisions, to the ultimate determination of his Majesty in Council.—*Reg.* 16, 1797, *Sect.* 7.

149. I am instructed to state, that it has been usual to forward the decrees [of the Privy Council] in question to the Judges of the districts in which the cause of action may have arisen, with an order, generally to carry the same into effect, in the same manner, and under the same rules, as those prescribed for the execution of other decrees of Court, leaving any party, dissatisfied with their proceedings or orders, to appeal therefrom in the usual form.—*Con. No.* 1066, *Cal. C.* 17*th Feb.* 1837, *Par.* 2.

150. I am further directed to state that the Court entirely concur in the opinion expressed in the fifth paragraph of your letter, regarding the adjudication of costs and mesne profits.—*Con. No.* 1066, *Cal. C.* 17*th Feb.* 1837, *Par.* 3.

151. Adverting, however, to the terms of his Majesty's decision, the Court are of opinion that it must be presumed to be the intention of it that the parties should be placed in precisely the situation in which they would have been but for the decree of the Sudder Dewanny Adawlut, and that consequently the decree-holder is entitled, upon the principle laid down in the Circular Order of the 11th September, 1829, to receive from the respondent, without a fresh suit, the amount with interest of the mesne profits refunded by him by order of the Sudder Court, as well as for the whole period of his subsequent dispossession, together with the costs of the appeal to the Sudder Dewanny Adawlut, and that the Court, in the execution of the present decree, are competent to award him the same.—*Con. No.* 1066, *Cal. C.* 17*th Feb.* 1837, *Par.* 5.

SECT. XVII.

Officers of the Sudder Court.

152. It is hereby enacted, that whenever the Governor of Bengal, and the Lieutenant Governor, or other authority exercising the powers of Lieutenant Governor of the North Western Provinces, shall deem it expedient to appoint any persons not being Covenanted Servants, to the Offices of Deputy Register or Assistant Register to the Court of Sudder Dewanny and Nizamut Adawlut at Calcutta and Allahabad respectively, it shall be competent to those Courts to assign to the officers above named, any duties at present performed by their Registers.—*Act* 7, 1840.

153. With reference to the provisions of Act 7, of 1840, the Court resolve:—That the Deputy Register, Mr. Kirkpatrick, be empowered to sign Circulars, and attest copies of papers given to parties on stampt paper, and also to perform the duties entrusted by this resolution to the 1st Assistant in the event of the absence of the latter, and that Mr. Stuart, the 1st Assistant, be empowered to sign precepts and attest copies of papers on plain paper issued under orders of the Court, or retained among the records of the Court.—*Cir. Ord.* 3*d April*, 1840.

154. The Courts of Sudder Dewanny Adawlut and Nizamut Adawlut, the Provincial Courts of Appeal and Circuit, the Boards of Revenue and Trade, and the Board of Commissioners in the Western Provinces, shall hereafter exercise, without reporting their

proceedings for the sanction of Government, the power of appointing, removing, and accepting the resignation of the principal ministerial native officers acting under them respectively, as well as all other native officers on their respective establishments, excepting the law officers attached to the Courts of Sudder Dewanny Adawlut and Nizamut Adawlut; whose nomination, removal, and resignation, shall be reported as heretofore, for the previous sanction of the Governor General in Council.—*Reg.* 8, 1809, *Sect.* 3.

155. If any person shall prefer a charge of corruption or extortion, against a ministerial officer of any Civil or Criminal Court of Judicature under this Section, and the charge shall not be proved, the accused is to have the option of suing the accuser for damages in any Court of Civil Judicature to which he may be amenable.—*Reg.* 13, 1793, *Sect.* 9, *Cl.* 12.—*Ben. Reg.* 11, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 11, 1803, *Sect.* 8, *Cl.* 1.

156. The rules prescribed in Section 9, Regulation 13, 1793, respecting charges of corruption or extortion lodged against the native ministerial officers of the Civil and Criminal Courts, are to be held applicable to charges of a similar nature that may be preferred against the Hindoo or Mahomedan law officers of the several Courts, with the following qualifications.—*Reg.* 12, 1793, *Sect.* 8, *Cl.* 1.

157. The several officers of Government in the judicial, revenue, and commercial departments, and in the departments of salt, opium, and customs, who are already restricted by their official oaths, or by the known declarations and orders of Government, from deriving any personal advantage whatever from their fixed establishments of native officers, are further hereby positively prohibited from making any alteration whatever in the distribution of the salaries of such officers, or in the number and designation of the several descriptions of native officers, which now compose, or may hereafter compose, their authorized establishments, without the express sanction of the Governor General in Council.—*Reg.* 5, 1804, *Sect.* 23.

158. The nazirs of the several Courts of Judicature, civil and criminal, shall be allowed, as heretofore, to appoint their own naibs, and the mirdahs and peons, or any similar descriptions of public servants employed under their immediate direction and control; and to fill up all vacancies, which, from time to time, may occur in such appointments, subject to the approbation of the Judges and Magistrates superintending the Courts to which they are attached, and to the responsibility prescribed by Section 2, Regulation 13, 1793, and Section 2, Regulation 12, 1803, for the good behaviour of the naibs, mirdahs, peons, and others appointed by them. They may also, as hitherto, remove the persons so appointed by them, provided they can state sufficient cause to the satisfaction of the Judge and Magistrate; but not without his previous knowledge and sanction.—*Reg.* 5, 1804, *Sect.* 12.

159. The appointment and removal of the Law Officers of the Sudder Dewanny Adawlut and Nizamut Adawlut shall be reported as heretofore for the previous sanction of the Governor General in Council; subject to the further provisions contained in the present Regulation.—*Reg.* 11, 1826, *Sect.* 3.

The rules regarding securities to be taken from the Treasuries and Nazirs of Zillah Courts will be equally applicable to the same officers of the Sudder Court.

SECT. XVIII.

Translations made for the Sudder Court.

160. The office of Translator to the Courts of Sudder Dewanny Adawlut and Nizamut Adawlut, is abolished; and any translations which may be hereafter required by either Court, are to be made by the Register, and his assistants; or, if at any time their other official avocations should not admit of their making the requisite translations, the Court is empowered to cause the same to be made by any other competent person, as authorized, with respect to trials referred to the Nizamut Adawlut, by Section 3, Regulation 10, 1799.—*Reg.* 2, 1801, *Sect.* 17.

161. It is the province of the Registers and Assistants to the Provincial, Zillah, and City Courts to make all translations required from these Courts respectively, and it is expected they will at all times perform this duty, as far as may be in their power, consistently with the due discharge of their other duties. But if at any time their other public avocations will not admit of their preparing the translates of proceedings required to be transmitted to the Sudder Dewanny Adawlut, within the prescribed period, the Judges of the respective Courts are to represent the same to the Sudder Dewanny Adawlut, with information of the period required to enable their registers and assistants to make such translations without material impediment to the discharge of their other duties; and if the Sudder Dewanny Adawlut shall Judge it necessary to have the translation before them at an earlier period, they are empowered to authorize the employment of any person or persons, possessing an adequate knowledge of the original language, to make such translations, subject to the revision of the Register of the Provincial, Zillah, or City Court from which such translation may be demandable, who, in all such instances, is to countersign the translation, as compared by him, and will be held responsible for the accuracy of it.—*Reg.* 19, 1797, *Sect.* 4.

162. Whenever any persons, not in the civil service of the Honourable Company, may be employed by the Provincial, Zillah, or City Courts, under the authority given in the preceding Section, the persons so employed are to receive a compensation for the translate made by them according to the following established rates, which have been fixed as a general standard for translations of every description, viz. one Sicca Rupee for one hundred words of the original language; and the same rate for figures, calculating five figures for a word. The Judges of the Provincial, Zillah, and City Courts are to communicate the above rates to the persons who may be employed by them, before they undertake the translation; and are to pay the same on a certificate from their Registers that the translation has been duly completed, which certificate is to be endorsed by the Register on the bill, after he shall have compared the translation as directed in the foregoing section.—*Reg.* 19, 1797, *Sect.* 5.

SECT. XIX.

Transcription and Transmission of Papers for the Court.

163. The Court, within fifteen days after the receipt of the appeal, are to certify under their hands and the seal of the Court, to the Register of the Sudder Dewanny Adawlut, the record duly made up and authenticated, including the original petition of appeal, and answer of the parties, the original papers and documents received from the Zillah or City Court, the original depositions, (where any may have been taken before

the Provincial Court) exhibits, and every original paper read in the cause. Previous to transmitting the abovementioned papers to the Sudder Dewanny Adawlut, the Provincial Court are to cause true and faithful copies of all the originals, authenticated by the Sheristadar, or head native officer of the Court, to be made out and deposited in the Court in lieu of the originals. The copies are to be deemed records of the Court, and are to be received in evidence in any other Court. In cases where any original depositions, or other original proceedings or matter whatsoever, shall have been previously entered in any Provincial Court, in any book which may likewise contain either proceedings in other distinct causes, or any other matter, so that such original papers cannot be transmitted to the Sudder Dewanny Adawlut without the other proceedings or matters, the Court within the time and in the manner before directed, is to certify a true and authentic copy of such original papers, and that the original of each copy transmitted, is so entered in such book. But they are nevertheless to transmit the original petition of appeal, the original answer, or other separate pleadings of the parties, and the original exhibits which shall have been delivered in, or produced by the parties and read in the course of the cause before the Court, if they be forthcoming, in the manner before required. In cases where any original paper shall have been mislaid or lost, and a copy of it shall have been entered in any book or proceedings, the copy is to be deemed the original, and the Court is to transmit a copy of it to the Sudder Dewanny Adawlut, and in like manner to certify it, and that after due search, the original cannot be found.—*Reg.* 6, 1793, *Sect.* 11.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 11.

164. The rules contained in Section 13, Regulation 5, and in Section 11, Regulation 6, 1793, are hereby modified. In transmitting the record in cases of appeal as therein provided, it shall be sufficient for the Zillah or City, or Provincial Courts, as the case may be, to transmit the original pleadings, depositions, and exhibits filed in the case with a list of them, and it shall not be necessary, in the first instance, to transmit the applications and processes for the attendance of Witnesses, the returns of the nazir and other miscellaneous papers and proceedings not material to the trial of the appeal. Provided however, that it shall at all times be competent to the Court to which the appeal shall have been made, to call for such miscellaneous papers, or to direct the parties to produce copies of the same, should the Court think it necessary to refer to them.—*Reg.* 9, 1831, *Sect.* 8.

165. I am directed to request that in future you will submit all applications and bills for the entertainment of temporary mohurrirs to copy proceedings in cases appealed to this Court, whom it may be necessary to employ in consequence of a press of business or other cause, to this Court. After approval, the bills will be countersigned by the Register of the Court, and returned to you as authority for the Civil Auditor. The rate of pay for extra mohurrirs will not exceed 10 Rupees per mensem. You will of course be careful that applications of the nature alluded to, are made only in cases of urgent and unavoidable necessity.—*Cir. Ord. Cal. C. 24th Nov.* 1837.

166. The Court, being apprehensive that the mode of payment for temporary mohurrirs employed in copying proceedings of appealed cases, which was prescribed by the Circular Order, No. 217, of the 24th November 1837, may lead to an increase of expense as well as loss of time, are pleased to direct that in future all such copies be paid for at Section rates, viz. 4,000 words per Company's Rupee for copying, whether the proceedings be in Persian, Oordoo or Bengalee.—*Cir. Ord. Cal. C.* 28*th June*, 1839, *Par.* 1.

167. You are requested to specify in the bills which you send for audit, the proceedings which are charged for, and the number of words in each case; and each nuthee forwarded to the

Court is to be accompanied with a memorandum under the signature of your Serishtadar, of the number of words contained in it and the exact sum which has been paid for copying it.—*Cir. Ord. Cal. C.* 28*th June,* 1839, *Par.* 2.

168. The foregoing rules are to be considered applicable to cases called for by the Court direct from the Court of the Principal Sudder Ameen, to whom you are requested to communicate instructions accordingly, directing him at the same time to apply to you for permission to employ extra mohurrirs when the officers on his own establishment are unable to make the required copies.—*Cir. Ord. Cal. C.* 28*th June,* 1839, *Par.* 3.

169. I am directed by the Court to request that the Memorandum under the signature of the Sheristadar, required by the Circular Order, No. 40, 28th June, 1839, may be submitted in duplicate according to the subjoined form, one Certificate being attached to the Bill for extra Mohurrirs, and the other to the Nuthee.

You are requested not to forward the Bills until after the despatch of the Nuthees charged for. It is unnecessary to send English letters with the Bills.—*Cir. Ord.* 13*th Aug.* 1841.

170. In consequence of public officers, when making references to this Court, sending, instead of copies as heretofore, original papers which they request may be returned, much inconvenience has of late been experienced, arising from the delay which the examination of the copies prepared in this office occasions in the dispatch of the regular current business. I am therefore directed by the Court to request that, on such occasions you will send the copies, except when you may think it more proper to send originals; in which case, if you deem it necessary to preserve copies for record in your own office, you will be pleased to have them prepared before submitting the originals.—*Cir. Ord.* 16*th Nov.* 1833.

SECT. XX.

Correspondence of the Sudder Court with parties.

171. The Sudder Dewanny Adawlut is prohibited corresponding by letter, with parties in suits or process or matters depending before them, or coming within their cognizance. If a party in a suit, or any person amenable to the jurisdiction of the Court, shall have any matter to represent to the Court, he is either to appear in the Court in person, and represent the matter in writing, or to make the representation in writing through an authorized vakeel. The Court are to pass whatever order upon the representation may appear to them proper consistently with the Regulations, and to cause a copy of the order to be delivered to the person making the representation, or to his vakeel, under the seal of the Court, and attested by the Register.—*Reg.* 6, 1793, *Sect.* 6.—*Ben. Reg.* 10, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 5, 1803, *Sect.* 6.

SECT. XXI.

Construction of the Regulations by the Sudder Courts.

172. In all instances wherein a precept issued by a Provincial Court of Appeal, or a Court of Circuit, to a Zillah or City Judge or Magistrate, shall appear to such Judge or Magistrate to be contrary to, or unwarranted by the existing Regulations, he is authorized to state to the Provincial Court, or Court of Circuit, in what respects he considers their precept to be in deviation from the regulations, and suspend execution till receipt of a second precept in reply to his objections. But if the second precept of the Provincial Court, or Court of Circuit, in reply to the objections of the Zillah or City Judge or Magistrate, shall confirm their first precept in whole or in part, and shall require the Zillah or City Judge or Magistrate to execute the same without further reference, he shall

immediately comply with such requisition. In case however the second precept of the Provincial Court, or Court of Circuit, should not satisfy the Zillah or City Judge or Magistrate, that the regulations have been rightly construed by the Provincial Court, or Court of Circuit, he is at liberty at the same time that he certifies the execution of the order of the Provincial Court, or Court of Circuit, to request that they will transmit copies of their precepts to him and his returns thereto, with such other papers as may be necessary for the information of the circumstances of the case, to the Court of Sudder Dewanny Adawlut, or the Court of Nizamut Adawlut, according as the case in question may relate to the Civil or Criminal department; and the Provincial Court or Court of Circuit shall accordingly transmit such papers, as requested, without any unnecessary delay. Provided nevertheless that nothing in this regulation be understood to authorize any Zillah or City Judge or Magistrate to question the propriety of any order issued by a Provincial Court, or Court of Circuit, in cases clearly left to the discretion and judgment of the Provincial Court, or Court of Circuit, by the regulations; the reference to them, and eventually to the Courts of Sudder Dewanny and Nizamut Adawlut, meant to be authorized by this regulation, being confined to cases in which the sense of the regulations, from a difference of construction or otherwise, may appear doubtful and uncertain.—*Reg.* 10, 1796, *Sect.* 2.

173. In all instances wherein a reference to the Court of Sudder Dewanny Adawlut, or the Nizamut Adawlut, may be made under the preceding rule, the determination of those Courts, who are empowered to prescribe the forms and conduct to be observed by the Provincial, Zillah, and City Courts of Dewanny Adawlut, the Courts of Circuit, and the Zillah and City Magistrates, in all cases provided for by the Regulations agreeably to their construction thereof, is to be held final and conclusive.—*Reg.* 10, 1796, *Sect.* 3.

174. Should any doubt occur to the Sudder Dewanny, or the Nizamut Adawlut, with respect to the meaning of any part of the Regulations; or should it appear to them, on occasion of any reference from the Provincial, Zillah, or City Courts, the Courts of Circuit, or the Zillah or City Magistrates, that the Regulations do not sufficiently provide for the case submitted to their decision, they are in the former case, to report the circumstances of it to the Governor General in Council that a new Regulation may be framed in explanation of such doubt; and in the latter case, are to propose a new Regulation in the manner prescribed by Regulation 20, 1793.—*Reg.* 10, 1796, *Sect.* 4.

175. On the first point, I am directed to communicate to you the opinion of the Court, that the Regulation above cited was only intended to apply to difference of opinion relative to the proper construction of Regulations in miscellaneous matters, and not to the provisions of a decree; the remedy against which, if deemed erroneous by either of the parties interested, consists in appeal or review, to be applied for in the mode prescribed by the Regulations.—*Con. No.* 479, 18*th April*, 1828, *Par.* 3.

176. In modification of Section 3, Regulation 10, 1796, Section 3, Regulation 22, 1803, and corresponding enactments, and with a view to preserve uniformity in the interpretation of the law, it is hereby provided, that in all instances wherein a reference respecting the meaning and intent of any Regulation may be made to either Court of Sudder Dewanny Adawlut or Nizamut Adawlet under Section 2, of the above mentioned enactments, or otherwise; the Courts shall respectively communicate such reference with their sentiments thereon, each to the other; and no construction on the point so referred, shall be promulgated, until the same shall have received the sanction of both Courts.—*Govt. Resolutions*, 22*d Nov.* 1831.

APPENDIX.

RULES REGARDING POTTAHS.

SECTION I.

Rates of Pottahs.

1. The approbation of the Collector required to be obtained to pottahs by Section 58, Regulation 8, 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind) it shall be determined in the Dewanny Adawlut of the Zillah in which the lands may be situated, according to the rates established in the pergunnahs for lands of the same description and quality as those respecting which the dispute may arise.—*Reg.* 4, 1794, *Sect.* 6.

2. The rules in the preceding Section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance under Regulation 8, 1793, but also to the renewal of pottahs which may expire or become cancelled under Regulation 44, 1793. And to remove all doubt regarding the rates at which the ryots shall be entitled to have such pottahs renewed, it is declared, that no proprietor or farmer of land, or any other person, shall require ryots whose pottahs may expire or become cancelled under the last mentioned Regulation, to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates, upon making application for that purpose to the person by whom their pottahs are to be granted, in the same manner as they are entitled to demand pottahs in the first instance, by Regulation 8, 1793.—*Reg.* 4, 1794, *Sect.* 7.

The following rule (3) *applies to Benares :—*

3. The rules in the preceding Section, are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance, but also to the renewal of pottahs which may expire or become cancelled; and it is declared that no proprietor or farmer of land, nor any other person, shall require ryots, whose pottahs may expire or become cancelled, to take out new pottahs at higher rates than the established rates of the pergunnah, for lands of the same quality and description; due consideration being had, as far as may be required by the custom of the district, to the alteration of the species of culture, and the cast of the cultivator. Under this rule, khod-

casht or chupper bund ryots, will be entitled to have their pottahs renewed at the established rates, upon making application for that purpose to the person by whom the pottahs are to be granted, as are also paykasht ryots, provided the proprietor or farmer chooses to permit them to continue to cultivate the land, which they have the option to do or not as they may think proper on the expiration of all paykasht leases; whereas khodcasht ryots cannot be dispossessed as long as they continue to pay the stipulated rent.—*Reg.* 51, 1795, *Sect.* 10.

4. In cases, in which no established rates of the pergunnah, or local division of the country may be known, pottahs shall be granted, and the collections made, according to the rate payable for land of a similar description in the places adjacent; but if the leases and pottahs of the tenants of an estate generally which may consist of an entire village or other local division, be liable to be cancelled under the rules above noticed; new pottahs shall be granted, and the collections made at rates not exceeding the highest rate paid for the same land in any one year within the period of the three last years antecedent to the period at which the leases may be cancelled.—*Reg.* 5, 1812, *Sect.* 7.

5. By the former and present Regulations, persons purchasing land at the public sales, are competent under certain restrictions to annul engagements contracted between the late proprietor of the lands and his under-tenants. But it is hereby declared, that no cultivator or tenant of land shall be liable to pay an enhanced rent, though subject to enhancement under subsisting Regulations, unless written engagements for such enhanced rent have been entered into by the parties, or a formal written notice have been served on such cultivator or tenant at the season of cultivation: viz. on or before the month of Jeth, notifying the specific rent, under the landholder's right of enhancing it, to which he will be subject for the ensuing Fussily, or for the current Bengal year.—*Reg.* 5, 1812, *Sect.* 9.

6. Unless such notification be duly served, no greater rent shall be exigible by process of distress or confinement of person, nor recoverable by suit in Court, than the cultivator or tenant was bound to pay under his previous engagements: and if more be levied from him, he shall be entitled to a refund of the excess with damages, on proof of the circumstances before a Court of justice. In all practicable cases the required notification shall be served personally on the tenant: but if he shall abscond or conceal himself, so that it cannot be served personally upon him, it shall be affixed at his usual place of residence; which latter process shall in such case be deemed and taken to be a sufficient service of the notification in question.—*Reg.* 5, 1812, *Sect.* 10.

7. On first view of Section 10, Regulation 5, 1812, it might be inferred that the Zemindars or their representatives possess the power of exacting in the first instance by distraint or by a summary process, whatever amount they may have thought proper to insert in the notification required to be conveyed to their tenant, the latter having only the option of resigning his land, or continuing to hold it subject to pay the enhanced rent, until he can prove the injustice of the demand by a regular suit. Such an interpretation, however, does not seem to be easily reconcileable with that part of Section 7, Regulation 4, 1794, which, being declaratory of the rates at which the ryots were entitled to demand pottahs, and, of course, to continue in possession of their lands, cannot be considered as abrogated by Section 3, Regulation 5, 1812, and I have hitherto deemed it necessary to require zemindars and farmers prosecuting summarily for enhanced rent, or defending suits instituted against them under Section 15, Regulation 5, 1812, to show that the amount demanded in

tent of land.—The Court entirely concur in the construction of Section 10, Regulation 5, 1812, stated in the 6th paragraph of Mr. Scott's letter, dated the 28th July, 1815, and resolve, that he be informed accordingly. The Court observe, that the written notice, required by Section 9, of that Regulation, when no written engagement may have been entered into, expressly refers to tenants subject to an enhancement of rent "under subsisting Regulations," including, of course, the unrepealed provisions in Section 7, Regulation 4, 1794, relative to the renewal of pottahs at the established rates of the pergunnah.—*Con. No.* 234, 3*d Feb.* 1816.

8. I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 29th ultimo, and to observe in reply, that Regulation 5, 1812, contains no provisions for a summary suit to compel ryots to take pottahs and give cobooleats; but that landholders may proceed in conformity with Section 5, Regulation 4, 1794, and Sections 9 and 10, Regulation 5, 1812.—*Con. No.* 257, 4*th Sept.* 1816.

9. No actual proprietor of land or farmer, or persons acting under their authority, shall cancel the pottahs of the khodcasht ryots, except upon proof that they have been obtained by collusion; or that the rents paid by them within the last three years, have been reduced below the rate of the nirkbundy of the pergunnah; or that they have obtained collusive deduction; or upon a general measurement of the pergunnah for the purpose of equalizing and correcting the assessment. The rule contained in this clause is not to be considered applicable to Behar.—*Reg.* 8, 1793, *Sect.* 60, *Cl.* 2.

10. If any Zemindar or other proprietor of land, or any farmer of land, or their representatives, should exact more from the ryots on account of their poppy lands than the established rates, the agent or the ryot from whom such exactions may be made is to be at liberty to prosecute the person guilty of such exactions in the Zillah or City Dewanny Adawlut, the Judge of which shall forthwith enquire into the same, and, on proof of the exaction, shall adjudge the person guilty of the offence to restore the amount levied in excess of the established rate, with a further penalty of treble the amount.—*Reg.* 13, 1816, *Sect.* 17.

SECT. II.

Cess.

11. The impositions upon the ryots, under the denomination of abwaub, mhatoot, and other appellations, from their number and uncertainty, having become intricate to adjust, and a source of oppression to the ryots; all proprietors of land and dependant talookdars, shall revise the same, in concert with the ryots, and consolidate the whole with the assul, into one specific sum. In large zemindaries, or estates, the proprietors are to commence this simplification of the rents of their ryots, in the purgunnahs where the impositions are most numerous, and to proceed in it gradually, till completed, but so, that it be effected for the whole of their lands by the end of the Bengal year 1198, in the Bengal districts, and of the Fussily and Willaity year 1198, in the Behar and Orissa districts, these being the periods fixed for the delivery of pottahs as hereafter specified.—*Reg.* 8, 1793, *Sect.* 54.—*Ced. and Conq. Prov. Reg.* 27, 1803, *Sect.* 53, *and Reg.* 30, 1803, *Sect.* 4.

12. No actual proprietor of land, or dependant talookdar, or farmer of land, of whatever description, shall impose any new abwaub or mhatoot upon the ryots, under any pretence whatever. Every exaction of this nature shall be punished by a penalty

equal to three times the amount imposed; and if, at any future period, it be discovered, that new abwaub or mhatoot have been imposed, the person imposing the same, shall be liable to this penalty, for the entire period of such impositions.—*Reg.* 8, 1793, *Sect.* 55. —*Ced. and Conq. Prov. Reg.* 30, 1803, *Sect.* 5.

SECT. III.

Form and contents of Pottahs.

13. The rents to be paid by the ryots, by whatever rule or custom they may be regulated, shall be specifically stated in the pottah, which, in every possible case, shall contain the exact sum to be paid by them.—*Reg.* 8, 1793, *Sect.* 57, *Cl.* 1.—*Ced. and Conq. Prov. Reg.* 30, 1803, *Sect.* 7, *Cl.* 1.

14. In cases, where the rate only can be specified, such as where the rents are adjusted upon a measurement of the lands after cultivation, or on a survey of the crop; or where they are made payable in kind, the rate and terms of payment, and proportion of the crop to be delivered, with every condition, shall be clearly specified.—*Reg.* 8, 1793, *Sect.* 57, *Cl.* 2.—*Ced. and Conq. Prov. Reg.* 30, 1803, *Sect.* 7, *Cl.* 2.

15. It is expected, that in time, the proprietors of land, dependant talookdars, and farmers of land, and the ryots, will find it for their mutual advantage to enter into agreements in every instance for a specific sum, for a certain quantity of land, leaving it to the option of the latter to cultivate whatever species of produce may appear to them likely to yield the largest profit; where however it is the established custom to vary the pottah for lands according to the articles produced thereon, and while the actual proprietors of land, dependant talookdars, or farmers of land, and ryots in such places, shall prefer an adherence to this custom, the engagements entered into between them, are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease, and a stipulation, that in the event of the species of produce being changed, a new engagement shall be executed for the remaining term of the first lease, or for a longer period, if agreed on; and in the event of any new species being cultivated, a new engagement, with the like specification and clause, is to be executed accordingly.—*Reg.* 8, 1793, *Sect.* 56.—*Ced. and. Conq. Prov. Reg.* 30, 1803, *Sect.* 6.

16. Such parts of Regulation 8, 1793, and of Regulation 4, 1794, as require that the proprietors of land shall prepare forms of pottahs, and that such forms shall be revised by the Collectors, and which declare that engagements for rent contracted in any other mode than that prescribed by the Regulations in question, shall be deemed to be invalid, are likewise hereby rescinded. And the proprietors of land shall henceforward be considered competent to grant leases to their dependant talookdars, under-farmers and ryots, and to receive correspondent engagements for the payment of rent from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests. Provided, however, that nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses, whether under the denomination of abwaub, mhatoot, or any other denomination. All stipulations or reservations of that nature shall be adjudged by the Courts of judicature to be null and void:

But the Courts shall notwithstanding maintain and give effect to the definite Clauses of the engagements contracted between the parties, or in other words, enforce payment of such sums as may have been specifically agreed upon between them.—*Reg.* 5, 1812, *Sect.* 3.

17. Such of the restrictions on actual proprietors of land, and farmers who hold their farms immediately of Government, as are set forth in their respective cubooleats, and are not repealed by any Regulation printed and published in the manner directed in Regulation 41, 1793, are to be considered in full force.—*Reg.* 8, 1793, *Sect.* 67, *Cl.* 1.—*Ced. and Conq. Prov. Reg.* 30, 1803, *Sect.* 2.

18. The Zemindar or other actual proprietor of land, is to let the remaining lands of his Zemindarry or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers, shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land, or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount.—*Reg.* 8, 1793, *Sect.* 52.—*Ced. and Conq. Prov. Reg.* 30, 1803, *Sect.* 2.

19. The Court are of opinion, that the penalties prescribed in the cases of exaction by Zemindars or other actual proprietors of land, mentioned in these Sections, must be considered exclusive of the refund of the sums proved to have been illegally levied.—*Con. No.* 125, 22*nd April*, 1813.

SECT. IV.

Distribution of Pottahs.

20. A ryot, when his rent has been ascertained and settled, may demand a pottah from the actual proprietor of land, dependant talookdar, or farmer, of whom he holds his lands, or from the person acting for him; and any refusal to deliver the pottahs, upon being proved in the Court of Dewanny Adawlut of the Zillah, shall be punished by the Court, by a fine proportioned to the expense and trouble of the ryot in consequence of such refusal. Actual proprietors of land, dependant talookdars, and farmers, are also required to cause a pottah for the adjusted rent to be prepared and tendered to the ryot; either granting the same themselves, or intrusting their agents to grant the same. No farmer however, without special permission from the proprietor of the lands, or (if the lands form part of a dependant talook) the dependant talookdar, shall grant a pottah extending beyond the period of his own lease; nor shall any agent grant a pottah without authority from the proprietor, or dependant talookdar, or the manager of disqualified proprietors.—*Reg.* 8, 1793, *Sect.* 59.—*Ben. Reg.* 51, 1795, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* 30, 1803, *Sect.* 11.

21. In reply to a reference from the Judge of Zillah Nuddea, he was informed on the 16th August, 1810, "That the existing regulations did not authorize any summary process in cases of complaints by ryots, or other under-tenants, against landholders, or farmers, for refusing to grant pottahs or give receipts. And that on ryots or other tenants, (who may prefer complaints of the above nature against the landholders, or farmers,) establishing their claims to receipts or pottahs by regular suit, they would be entitled to receive them, as well as damages, from the party refusing, under the provisions of Sections 59 and 63, Regulation 8, 1793.—*Con. No.* 67, 16*th Aug.* 1810.

22. The ryots in the different parts of the country frequently omitting or refusing to take out or receive pottahs, although the persons from whom they are entitled to demand them, are ready to grant them in the form and on the terms, prescribed by the regulations, it is declared, that if a proprietor or farmer of land, or a dependant talookdar, after the approbation of the Collector to the form of the pottah or pottahs for the lands in his estate or farm shall have been obtained, as prescribed in Section 58, Regulation 8, 1793, shall fix up in the principal Cutcherry or Cutcherries of his estate or farm, a notification in writing under his seal and signature, specifying that pottahs according to the form approved, and at the established rates, will be immediately granted to all ryots who may apply for them, and stating where and when and by whom the pottahs will be delivered, the notification shall be considered as a legal tender of a pottah, and the proprietor of land, the farmer, or the dependant talookdar shall be deemed to have complied with the orders in Section 59, Regulation 8, 1793, and the persons so tendering pottahs shall be entitled to recover the rents due to them from such ryots, either by the process of distraint laid down in Regulation 17, 1793, or by suit in the Dewanny Adawlut.—*Reg.* 4, 1794, *Sect.* 5.

SECT. V.

Period of Leases.

23. Section 2, Regulation 44, 1793; Section 2, Regulation 50, 1795; and Clause second, Section 2, Regulation 47, 1803, by which the proprietors of land, paying revenue to Government, are precluded from granting leases for a period exceeding ten years, are hereby rescinded; and proprietors of lands are declared competent to grant leases for any period which they may deem most convenient to themselves and tenants, and most conducive to the improvement of their estates.—*Reg.* 5, 1812, *Sect.* 2.

24. Doubts having arisen on the Construction of Section 2, Regulation 5, 1812, it is hereby explained, that the true intent of the said section, was to declare proprietors of land competent to grant leases for any period, even to perpetuity, and at any rent, which they might deem conducive to their interests. Provided, however, that nothing contained in the former or present Regulation, shall be construed to empower persons holding a restricted interest in estates, whether for life or for other limited period, or subject to control or restriction in the use or disposal of the property, to grant leases extending beyond the term of their own interest in the property, or exceeding their power or authority over it.—*Reg.* 18, 1812, *Sect.* 2.

25. No Zemindar or other proprietor of land in the Ceded and Conquered Provinces shall grant leases or fix the rent of any land tenure for a term exceeding ten years; or if the term of his own engagement with Government be less than ten years, extending beyond such less terms.—*Reg.* 14, 1812, *Sect.* 2.

26. (*Ceded and Conquered Provinces.*) Any evasion of this prohibition by entering into separate engagements or leases to take effect successively, or by dating an engagement or lease on a day other than that on which it was actually executed, or by any other device, shall be considered as an infringement of it. And every lease or engagement fixing the rent, which has been or shall be concluded or granted in opposition to this prohibition, is declared to be null and void.—*Reg.* 14, 1812, *Sect.* 3.

27. When a division of a joint estate shall be made on the application of the proprietors, or pursuant to the decree of a Court of justice, the fixed public revenue assessed upon the whole estate, shall be apportioned on the several shares agreeably to the principles prescribed in Section 10, Regulation 1, 1793, and Section 7, Regulation 27, 1795, without regard to any engagements that may subsist between the proprietors and their dependant talookdars, (excepting the dependant talookdars described in Section 7, Regulation 44, 1793,) under-farmers, or ryots. But all leases made in conformity to Sections 2 and 3, Regulation 5, 1812, and Section 2, of this Regulation, shall remain in full force, notwithstanding the division of a joint estate among the sharers, or the sale of the whole or a portion of any estate in satisfaction of a decree of Court, or the devolving of the same by inheritance, or the private transfer thereof by sale, gift, or otherwise. —*Reg.* 18, 1812, *Sect.* 3, *Cl.* 2.

28. Nor to prohibit actual proprietors of land granting without the sanction of Government or its officers, to any person, not being a British subject or a European, a lease or pottah for ground for any term of years, or in perpetuity, for the erection of dwelling houses or buildings for carrying on manufactures, or for gardens, or other purposes, and for offices for such houses or buildings.—*Reg.* 44, 1793, *Sect.* 8.—*Ben. Reg.* 50, 1795, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* 47, 1803, *Sect.* 8.

SECT. VI.

Discharge of Rents.

29. The landholders and farmers are forbidden to demand or receive, and the ryots and other under-tenants are forbidden to pay, any part of the rents receivable by the former and payable by the latter, before the stipulated or usual period of payment, according to the kistbundy or other engagement, or established local usage; and no person hereafter making anticipated payments, against this prohibition, or producing receipts for such, whether collusive or otherwise, shall be entitled to credit for the amount from the officers of Government who may attach the lands or farm; or from the landholder or farmer making the attachment, if it be made for arrears due from an under-tenant, under the provisions contained in this Regulation.—*Reg.* 7, 1799, *Sect.* 23, *Cl.* 3.

30. The proprietors of land, dependant talookdars, and farmers of land, of every description, are to adjust the instalments of the rents receivable by them from their under-renters and ryots, according to the time of reaping and selling the produce, and they shall be liable to be sued for damages for not conforming to this rule.—*Reg.* 8, 1793, *Sect.* 64.

31. Every proprietor of land, dependant talookdar, or farmer of land, of whatever description, and their agents of every gradation, receiving rents or revenues from dependant talookdars, under-farmers, ryots, or others, are to give receipts for all sums received by them; and a receipt in full on the complete discharge of every obligation. Any person to whom a receipt may be refused, on his establishing the same in the Dewanny Adawlut of the Zillah, shall be entitled to damages from the party who received his rent or revenue, and refused the receipt, equal to double the amount paid by him.—*Reg.* 8, 1793, *Sect.* 63, *Cl.* 1.

PUTNEE TALOOKS.

SECT. I.

General Rules.

1. It is hereby declared, that any leases or engagements for the fixing of rent now in existence, that may have been granted or concluded for a term of years, or in perpetuity, by a proprietor under engagements with Government, or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the covenants or engagements interchanged, notwithstanding that the same may have been executed before the passing of Regulation 5, 1812, and while the rule of Section 2, Regulation 44, 1793, which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question:—provided however that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government, from the liability to be cancelled on sale of the said estates for arrears of the said revenue, under the rule of Section 5, Regulation 44, 1793, unless specially exempted from such liability by the rule in question, or by any other specific rule of the regulations in force.—*Reg.* 8, 1819, *Sect.* 2.

2. The tenures known by the name of Putnee Talooks as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared, that they are capable of being transferred by sale, gift or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the Courts of Judicature, in the same manner as other real property.—*Reg.* 8, 1819, *Sect.* 3, *Cl.* 1.

SECT. II.

Alienation of Putnee Talooks.

3. Putnee Talookdars are hereby declared to possess the right of letting out the lands composing their talooks in any manner they may deem most conducive to their interest, and any engagements so entered into by such talookdars with others shall be legal and binding between the parties to the same, their heirs, and assignees:—provided however, that no such engagements shall operate to the prejudice of the right of the Zemindar to hold the superior tenure, answerable for any arrear of his rent, in the state in which he granted it, and free of all incumbrance, resulting from the act of his tenant.—*Reg.* 8, 1819, *Sect.* 3, *Cl.* 2.

4. If the holder of a putnee talook shall have underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding Section to attach to putnee talooks, in so far as concerns the granter of such under-tenure. The same construction shall also hold in the case of putnee talooks of the third or fourth degree.—*Reg.* 8, 1819, *Sect.* 4.

5. The right of alienation having been declared to vest in the holder of a putnee talook, it shall not be competent to the zemindar or other superior, to refuse to register, and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee. In conformity however with established usage, the zemindar or other superior shall be entitled to exact a fee upon every such alienation, and the rate of the said fee is hereby fixed at two per cent. on the jumma or annual rent of the interest transferred, until the same shall amount to one hundred Rupees, which sum shall be the maximum of any fee to be exacted on this account. The zemindar shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the jumma or yearly rent, payable to him from the tenure transferred; the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure. The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations, but it shall not apply to the case of sale for an arrear in the rent due to the zemindar or other superior, under the rules hereinafter contained. The purchaser at such a sale shall be entitled to have his name registered, and to obtain possession without fee, though of course liable to be called on to give security under the conditions of the tenure purchased.—*Reg.* 8, 1819, *Sect.* 5.

6. It shall be competent to the zemindar or other superior to refuse the registry of any transfer, until the fee above stipulated be paid; and until substantial security to the amount specified be tendered and accepted:—provided however that if the security tendered by any purchaser or transferee, should not be approved by the zemindar, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the zemindar to accept it, and give effect to the transfer without delay. It is hereby provided that the rules of this and of the preceding Section shall not be held to apply to transfers of any fractional portion of a putnee talook, nor to any alienation other than of the entire interest, for no apportionment of the zemindar's reserved rent can be allowed to stand good, unless made under his special sanction.—*Reg.* 8, 1819, *Sect.* 6.

7. In case of a putnee tenure sold in execution of a judgment of Court, if the purchaser do not within the period of one month from the sale conform to the rules of Section 5, of this Regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the Zemindar or other superior shall be entitled of his own authority to send a suzawul to attach and hold possession of the tenure, until the forms prescribed be observed. In case also of the sale of a putnee tenure for arrears of the rent due upon it, under the rules of this Regulation, if security be required by the Zemindar and the purchaser fail to furnish the same within one month of the date of

sale, the Zemindar shall similarly be entitled to send a suzawul to attach and hold possession of the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given. Attachments made under this Section shall be regarded as trusts for the benefit and at the risk of the purchasers, consequently after deducting the rent due and the expence of attaching, any surplus that may be yielded by the collections, shall be held in deposit for such purchaser; but if the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the Zemindar or other superior making the attachment, shall be received as primâ facie evidence to warrant process for an arrear so accruing.—*Reg.* 8, 1819, *Sect* 7.

SECT. III.

Sales on account of arrears.

8. In case of an arrear occurring upon any tenure of the description alluded to in the first Clause of this Section, it shall not be liable to be cancelled for the same, under the rule contained in the seventh Clause of Section 15, Regulation 7, 1799, for leases conveying a limited interest in the land; but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale, beyond the amount of the arrear of rent due;—subject however to the provisions contained in Section 17, of this Regulation.—*Reg.* 8, 1819, *Sect.* 3, *Cl.* 3.

9. On the first day of Bysakh, that is, at the commencement of the following year from that of which the rent is due, the Zemindar shall present a petition to the Civil Court of the district, and a similar one to the Collector, containing a specification of any balances that may be due to him on account of the expired year from all or any talookdars or other holders of an interest of the nature described in the preceding Clause of this Section. The same shall then be stuck up in some conspicuous part of the cutcherry, with a notice that if the amount claimed be not paid before the first of Jyte following, the tenures of the defaulters will on that day be sold by public sale in liquidation. Should however the first of Jyte fall on a Sunday, or holiday, the next subsequent day, not a holiday, shall be selected instead: a similar notice shall be stuck up at the sudder cutcherry of the Zemindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent, to be similarly published at the cutcherry or at the principal town or village upon the land of the defaulter. The Zemindar shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mofussil shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager for the same; or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it shall appear from the tenor of the receipt or attestation in question, that the notice has been published at any time previous to the fifteenth of the month of Bysakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed. In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the cutcherry of the nearest Moonsiff, or

if there should be no Moonsiff, to the nearest thanna, and there make voluntary oath of the same having been duly published—a certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.—*Reg.* 8, 1819, *Sect.* 8, *Cl.* 2.

10. On the first day of Kartick in the middle of the year, the Zemindar shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aughun, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartick to less than one fourth, or a four anna proportion of the total demand of the Zemindar, according to the kistbundee, calculated from the commencement of the year to the last day of Kartick.—*Reg.* 8, 1819, *Sect.* 8, *Cl.* 3.

11. With regard to the other point, whether lakirajdars can have the advantage of Section 8, Regulation 8, 1819, the Court observe, that the words of that section expressly specify "Zemindars, that is, proprietors under direct engagments with Government," and that, therefore, the provisions of it must be considered restricted to the persons specified.—*Con. No.* 313, *5th May*, 1820.

12. The Sudder Dewanny Adawlut have had before them your letter of the 31st ultimo, and direct me to state in reply, that according to the spirit of Section 8, Regulation 8, 1819, as the day for the presentment of petitions on the part of Zemindars for the next half yearly sale falls in the vacation, it must be deemed commutable for the next day after the opening of the Civil Court, and the sale must not take place until a month from and after such day. It will be requisite that you should give due notice of this construction in the district under your charge.—*Con. No.* 329, *15th Sept.* 1820.

13. Can the Zemindars, entitled to obtain periodical sales of certain descriptions of tenures for arrears of revenue under the above Section and Regulation, transfer that right to their ijardars, or is the proprietor of an estate paying revenue direct to government, debarred from the advantages of Section 8, by the circumstance of having let his estate in farm. In reply, I am directed to communicate to you the opinion of the Court, that a zemindar is not entitled to transfer to an ijardar his right to obtain periodical sales of putnee tenures for arrears of revenue, under Regulation 8, 1819, the individuals specified in the Section above quoted, as entitled to apply for periodical sales, being proprietors under direct engagements with the government.—*Con. No.* 461, *7th Sept.* 1827.

14. On the question, as to whether a farmer under the Court of Wards has the right of bringing to sale dependent *talooks* under Regulation 8, 1819, the Court, on the 4th September, 1829, observed, that the Collector, (or more strictly speaking the Court of Wards,) stands in the place of the Zemindar; and that a surburakar, appointed by the Collector, has the same powers as a surburakar appointed by the Zemindar, (were he of age,) would have, and is answerable to the Collector for every thing he does in the management of the estate; and that a farmer, under a lease from the Collector, being responsible to the Collector for nothing but the rent he has agreed to pay, stands exactly in the same predicament as a farmer under a lease from a Zemindar; and that it had been held by the Court, (see Construction, dated 7th Sept. 1827,) that farmers holding of proprietors cannot exercise the privilege given to the latter by Section 8, Regulation 8, 1819. The reason which induced the Court to adopt that construction was, that the enactment cited, specifying only proprietors, could not be held to give the large powers it confers to any but proprietors.—*Con. No.* 523, *4th Sept.* 1829.

15. All sales of saleable tenures applied for under the rules of this Regulation, shall be made in public cutcherry by the Register or acting Register of the Civil Court, or in

his absence by the person in charge of the office of Judge or of Magistrate of the district, within which the lands may be situated; the land shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under tenants of the defaulter: fifteen per cent. of the purchase money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bed, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours. If the fifteen per cent. be not paid in cash or in notes of the Bank of Bengal, within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase money be not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the Sudder station of the Zillah, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, (which shall be in such case regarded as part of the proceeds of the sale,) and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.—*Reg.* 8, 1819, *Sect.* 9.

16. Such parts of Regulation 8, 1819, and Regulation 1, of 1820, as declare that the sale of Putnee Talooks and other saleable tenures, shall be conducted by the Register, or Acting Register, or in their absence by the Judge or Magistrate, and which require the Judge to perform other acts preparatory to, or connected with, the sale of such talooks or other saleable tenures, are hereby modified, and such sales shall hereafter be made, and other acts aforesaid be performed by the Collector or Deputy Collector of land revenue, or head assistant to the Collector or Deputy Collector, subject to an appeal to the Commissioner of Revenue for the division, on the ground of the irrelevancy of the Regulation, as in other cases of a summary nature provided for in Section 4, Regulation 8, 1831.—*Reg.* 7, 1832, *Sect.* 16, *Cl.* 1.

17. I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 14th instant, requesting the Court's construction of certain points connected with the sale of putnee talooks by public auction, under Section 9, Regulation 8, of 1829. The Court are of opinion, that if the auction purchaser do not pay the balance of the purchase money by noon of the eighth day from the day of sale, he forfeits by his failure the fifteen per cent. deposited by him on the day of sale, and all right to benefit by an increased price at a second sale, while he will be answerable for any deficiency; and that the forfeited percentage is to be considered as part of the proceeds available for the benefit of the defaulter. Should this last be sufficient to cover the balance claimed by the Zemindar, no further sale need take place; otherwise (if the balance be not previously paid by the defaulter) the talook must be resold on the ninth day, and any surplus of the forfeited percentage and of the proceeds of the second sale, after liquidating the Zemindar's demand, must be paid to the defaulting talookdars.—*Con. No.* 580, *24th Dec.* 1830.

18. I am directed by the Court to acknowledge the receipt of your letter of the 15th March last, and its enclosure, requesting to be informed whether a Judge or Register is competent to sell talooks under the provisions of Clause 4, Section 18, Regulation 8, 1819, in satisfaction of summary decrees for balance of rent. In reply, I am directed by the Court to observe that all talooks, in which the interest of the occupant is saleable, may be sold for an arrear of rent occurring there-

on, and that the sale should be made by the Register, or in his absence by the Judge or Magistrate (now by the Collector under Section 16, Regulation 7, 1832,) in the same manner as putnee and durputnee talooks, under the provisions of Sections 9 and 16 of Regulation 8, 1819.—*Con. No.* 695, *West. C. 4th May, Cal. C. 25th May*, 1832.

19. The following question arose out of a reference made by the Judge of Beerbhoom. The holder of a putnee tenure having defaulted, his tenure was brought to sale; the defaulter himself became the purchaser in a fictitious name, in opposition to the provisions of Section 9, Regulation 8, 1819, and ousted the durputneedar. In such case what remedy has the latter? Can he sue for recovery of possession of his tenure, or is he restricted to the remedies pointed out in Section 13, and Clause 5, Section 17, of the abovementioned Regulation?—It was decided by the Government, in concurrence with the Calcutta Court, that as the actual defaulter is prohibited from purchasing the putnee tenure, a fictitious purchase, contrary to the law, cannot confer upon him the right of cancelling the under tenures; and that consequently the holder of any such tenure, in the event of the power of cancelling having been exercised, has his remedy in an action for recovery of possession against the fictitious purchaser, laying his suit at the value at which he estimates his interest in the property.—*Con. No.* 1243, *Cal. C. 16th Aug.* 1839.

20. Under tenures held under engagements similar to those executed between the Zemindar and putneedar, having been declared not to be voidable for an arrear of the rent fixed upon them in perpetuity, it will be necessary that the person to whom the said rent may be payable, should (in case he be desirous of holding the tenure answerable in the manner provided for by stipulation in the deeds interchanged) proceed according to the rules of Section 5, Regulation 7, 1799, and the general Regulations, to have the sale effected at the end of the year, in the same manner as heretofore.—But it is hereby provided, that every such sale shall be public, and be conducted by the Register or acting Register of the Zillah Court, or in his absence, by the person in charge of the office of Judge or of Magistrate, under the rules of this Regulation, as far as the same be applicable; ten days notice shall be given of such sales, by advertisement, to be stuck up at the cutcherries of the Court and Collector. —*Reg.* 8, 1819, *Sect.* 16.

21. Should the balance claimed by a Zemindar, on account of the rent of any under tenure, remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve in the manner provided for in Sections 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged. It shall however be competent to any party desirous of contesting the right of the Zemindar to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the Zemindar for the reversal of the same, and upon establishing a sufficient plea, to obtain a decree with full costs and damages. The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the Zemindar or person at whose suit the sale may have been made.—*Reg.* 8, 1819, *Sect.* 14, *Cl.* 1.

22. In cases in which a talookdar may contest the zemindar's demand of any arrear, as specified in the notice advertised, such talookdar shall be competent to apply for a summary investigation, at any time within the period of notice: the zemindar shall then be called upon to furnish his kubooleut and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale. Such award, if so made, will of course regulate the ulterior process; but if the

case be still pending, the lot shall be called up in its turn, notwithstanding the suit; and if the zemindar or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash or in government securities, or in notes of the Bank of Bengal, by the talookdar contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale.—*Reg.* 8, 1819, *Sect.* 14, *Cl.* 2.

SECT. IV.

Power of under tenants to stay sale.

23. Whenever the tenure of a talookdar of the first degree may be advertised for sale in the manner required by the second and third Clauses of Section 8 of this Regulation, for arrears of rent due to the Zemindar, the talookdars of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into Court the amount of balance that may be declared due by the person attending on the part of the Zemindar on the day appointed for sale: in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and should the amount lodged be sufficient, the sale shall not proceed, but after making good to the Zemindar the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.—*Reg.* 8, 1819, *Sect.* 13, *Cl.* 2.

24. If the amount so lodged shall be rent due by the inferior talookdar to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.—*Reg.* 8, 1819, *Sect.* 13, *Cl.* 3.

25. If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the talook so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto. If the defaulter shall desire to recover his tenure from the hands of the person or persons, who by making the advance may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent. per annum, up to the date of possession having been given as

above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realized from the usufruct of the tenure.—*Reg.* 8, 1819, *Sect.* 13, *Cl.* 4.

SECT. V.

Rights transferred to Purchasers.

26. It is hereby declared, that any talook or saleable tenure that may be disposed of at public sale under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives, or assignees; unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said talook may have been held. No transfer by sale, gift or otherwise, no mortgage or other limited assignment shall be permitted to bar the indefeasible right of the Zemindar to hold the tenure of his creation answerable in the state in which he created it, for the rent, which is in fact his reserved property in the tenure; except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such Zemindar.—*Reg.* 8, 1819, *Sect.* 11, *Cl.* 1.

27. In like manner, on sale of a talook for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land, and to collect the rents of the ryots; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.—*Reg.* 8, 1819, *Sect.* 11, *Cl* 2.

28. Provided nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a talook or other saleable tenure intermediate between the Zemindar and actual cultivators, to eject a Khodkast ryot, or resident and hereditary cultivator, nor to cancel bonâ fide engagements made with such tenants by the late incumbent, or his representative, except it be proved in a regular suit, to be brought by such purchaser, for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.—*Reg.* 8, 1819, *Sect.* 11, *Cl.* 3.

SECT. VI.

Mode of obtaining possession of Talooks after sale.

29. So soon as the entire amount of the purchase money shall have been paid in by the purchaser, at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale, a certificate of such payment. The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the cutcherry of the zemindar, and upon furnishing security, if required, to the extent of half the jumma or annual rent, he shall receive the usual umuldustuk, or order for possession, together with the notice to the ryots and others to attend and pay their rents henceforward to him. The zemindar shall also be bound to furnish access to any papers con-

nected with the tenure purchased, that may be forthcoming in his cutcherry, and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished, or tendered, on requisition, the new purchaser shall be entitled to apply direct to the Court, and he shall receive the orders for possession, and shall be put in possession of the lands by means of the nazir, in the same manner as possession is obtained under a decree of Court: provided however that if the delay be on account of the zemindar's contesting the sufficiency of the security tendered, the rule contained in Section 6 of this Regulation, shall be observed.—*Reg.* 8, 1819, *Sect.* 15, *Cl.* 1.

30. When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Civil Court, for the aid of the public officers in obtaining possession of his just rights. A proclamation shall then issue under the seal of the Court and signature of the Judge, declaring, that the new incumbent having, by purchase at a sale for arrears of rent due to the zemindar, acquired the entire rights and privileges attaching to the tenure of the late talookdar, in the state in which it was originally derived by him from the zemindar, he alone will be recognized as entitled to make the zemindaree collections in the mofussil, and no payments made to any other individual will on any account be credited to the ryots or others in any summary suit, for rent, brought under the provisions of Section 15, Regulation 7, 1799, or in any application to stay process by distraint, under the rules of Regulation 5, 1812, or on any other occasion whatever, when the same may be pleaded.—*Reg.* 8, 1819, *Sect.* 15, *Cl.* 2.

31. Should the late incumbent, or his late under tenants, continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police officers, and of all other public officers who may be at hand, and capable of affording assistance, shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.—*Reg.* 8, 1819, *Sect.* 15, *Cl.* 3.

SALES OF LAND FOR ARREARS OF REVENUE.

1. Whereas it is deemed expedient with a view to the benefit of the Agricultural community, to regulate the number of periodical sales of Estates for arrears of Revenue; to discontinue the levy of interest and penalty upon such arrears; to provide for the sale at fixed and known periods of Mehals, the whole of the Land Revenue due from which may not have been discharged on or by appointed days; and otherwise to amend the laws for the realization of the Land Revenue;—

2. It is hereby enacted, that Section 2, Regulation 14, 1793; Section 2, Regulation 3, 1794, Regulation 11, 1822, except Sections 36 and 38, and Regulation 7,

1830, are rescinded, except in so far as they rescind other Regulations or parts of Regulations.—*Act* 12, 1841, *Sect.* 1.

3. And it is hereby enacted, that there shall be no demand of interest or penalty upon any arrear of Land Revenue which shall fall due after the date specified in Section 35 of this Act.—*Act* 12, 1841, *Sect.* 2.

4. And it is hereby enacted, that upon the promulgation of this Act the Sudder Board of Revenue at Calcutta, shall determine with regard to each permanently settled District or Zillah under their jurisdiction, the fixed dates in each year on which shall be commenced the process for realizing by sale of Mehals the arrears of Land Revenue due thereupon. And the said Board shall give notice of the dates so fixed in the Calcutta Gazette; and shall direct corresponding publication to be made, as far as regards each District, in the language of that District, in the office of the Collector, or other Officer duly authorized to hold sales under this Act, and in the Courts of the Judge, Magistrate, Principal Sudder Ameens, Sudder Ameens, and Sudder Moonsiffs; and the days so fixed shall not be changed until the same be changed by the said Board by advertisements and notifications in the manner above described; such advertisements and notifications to be issued, on every occasion after the first above provided for, at least three months before the close of the official year preceding that in which the new date or dates are to take effect. Provided always, that another notice shall also be given for a period of not less than 15 clear days previous to each fixed date of sale by advertisement to be stuck up in each of the forenamed offices and Courts, and the Collector shall be bound to furnish during this interval to all enquirers full particulars as to what estates are in balance, and the amount due on each.—*Act* 12, 1841, *Sect.* 3.

5. And it is hereby enacted, that in districts not permanently settled, and in the Province of Benares, no sale shall take place for arrears of Land Revenue or other demand of Government without the special sanction of the Sudder Board of Revenue previously obtained in each several case of sale.—*Act* 12, 1841, *Sect.* 4.

6. And it is hereby enacted, that if the whole or a portion of a kist or instalment of any month of the year, according to which the settlement and kistbundee of any Mehal have been regulated be unpaid on the first of the following month of such year, the sum so remaining unpaid shall be considered an arrear of revenue.—*Act* 12, 1841, *Sect.* 5.

7. And it is hereby enacted, that except as hereinafter excepted, all estates from which at sunset of the day preceding that fixed for a sale an arrear of revenue may be due, shall on the said fixed day, or on the day or days following as hereinafter provided, be put up to public auction by and in the presence of the Collector or other Officer authorized by Government to exercise the powers of Collector in that behalf, and shall be sold to the highest bidder; and no payment or tender of payment made subsequent to sunset of the day preceding that fixed for a sale shall bar or interfere with the sale either at or after its conclusion.—*Act* 12, 1841, *Sect.* 6.

8. And it is hereby enacted, that no claim to abatement or remission of revenue unless the same shall have been allowed by the authority of Government, nor any private demand or cause of action whatever held or supposed to be held by any defaulter against Government shall bar a sale, or render a sale under this act void or voidable; nor shall the plea that money belonging to the defaulter, and sufficient to pay the ba-

lance or part of it, was in the Collector's hands, bar a sale or render a sale under this Act void or voidable, unless such money stand in the defaulter's name alone and without dispute, and unless after application in due time made by the defaulter, the Collector shall have neglected, or refused on insufficient grounds, to transfer it to the credit of the estate.—*Act* 12, 1841, *Sect.* 7.

9. Provided always, and it is hereby enacted, that no estate shall be sold for the recovery of arrears or demands of the description mentioned below, otherwise than after a notification in the language of the District, specifying the nature and amount of the arrear or demand, shall have been affixed, for a period of not less than fifteen clear days preceding the day of sale, in the office of the Collector, or other Officer as aforesaid, by whom the sale is intended to be made, in the Court of the Judge within whose jurisdiction the land advertised lies, in the Courts of all the Principal Sudder Ameens, Sudder Ameens and Moonsiffs of the district, and at the Police Thannah of the Division in which the estate to which the notice relates, or part of it is situated, the same to be certified by the receipt of the Officer at whose office such publication may have been made; and also at the Cutcherry of the Malgoozar of the estate, or at some conspicuous place upon the estate, the same to be certified by the peon or other person employed for the purpose. And it shall be declared in the said notification that no payment or tender of payment of the arrear or demand due, which may be made after sunset of the day preceding the fixed day of sale, will bar or interfere with the sale either at or after the transaction.—*Act* 12, 1841, *Sect.* 8.

10. Arrears due from or to be recovered by the sale of estates not permanently settled.—*Ibid, Cl.* 1.

11. Arrears other than those of the current or of the preceding year.—*Ibid, Cl.* 2.

12. Arrears due on account of estates other than that to be sold.—*Ibid, Cl.* 3.

13. Arrears of estates under attachment by order of the Judicial Authorities.—*Ibid, Cl.* 4.

14. Arrears due on account of Tuccavy, Poolbundee, or other demands not being Land Revenue, but recoverable by the same process as arrears of Land Revenue.—*Ibid, Cl.* 5.

15. And it is hereby enacted, that Collectors shall, at any time before sunset of the day preceding the fixed day of sale receive as a deposit from any party not being a proprietor of the estate in arrear, the amount of the arrear of revenue due from it, to be carried to the credit of the said estate at sunset as aforesaid, unless before that time the arrear shall have been liquidated by a proprietor of the estate. And in case the party so depositing, whose money shall have been credited to the estate in the manner aforesaid, shall be a plaintiff in a suit pending before a Court of justice for the possession of the same or any part thereof, it shall be competent to the Judge of the Zillah in which such estate is situated, to order the said party to be put into temporary possession of the said estate, subject to the rules in force for taking security in the cases of appellants and defendants. And if the party depositing whose money shall have been credited as aforesaid shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said party, which would have been endangered, or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit with interest, from the proprietors of the said estate.—*Act* 12, 1841, *Sect.* 9.

16. And it is hereby enacted, that no estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and no estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation 6, 1822, shall be sold for arrears of Revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of 18 years. And no estate held under attachment by the Revenue Authorities, otherwise than by order of a Judicial Authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment by a Revenue Officer, in pursuance of an order of a Judicial Authority, shall be liable to sale for the recovery of arrears of Revenue accruing during the period of such attachment, until after the end of the year in which such arrears accrued.—*Act* 12, 1841, *Sect.* 10.

17. And it is hereby enacted, that it shall be competent to the Collector at any time before the sale of an estate shall have commenced to exempt such estate from sale; and in like manner it shall be competent to the Commissioner of Revenue at any time before the sale of an estate shall have commenced, to exempt such estate from sale, by a special order to the Collector to that effect in each case; and no sale of an estate shall be legal if held after the receipt of an order of exemption in respect to such estate. Provided, however, and it is hereby enacted, that the Collector or Commissioner shall duly record in a proceeding the reason for granting such exemption; and provided also, that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector of the order for exempting it from sale.—*Act* 12, 1841, *Sect.* 11.

18. And it is hereby enacted, that sales shall ordinarily be made by the Collector or other Officer duly authorized by Government in that behalf in the land Revenue Cutcherry at the Sudder Station of the district, provided, however, that it shall be competent to the Sudder Board to prescribe a place for holding sales other than such Cutcherry whenever they shall consider it beneficial to the parties concerned.—*Act* 12, 1841, *Sect.* 12.

19. And it is hereby enacted, that in case the Collector, or other Officer as aforesaid, shall be unable from sickness, from the occurrence of a holiday, or from any other cause to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his Cutcherry; and so on, from day to day, until he shall be able to commence upon, or to complete the sale, but with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.—*Act* 12, 1841, *Sect.* 13.

20. And it is hereby enacted, that on the day of sale fixed according to Section 3, of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the Towjee or Registers in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for

the Collector or other Officer as aforesaid to put up any estate out of its regular order by number.—*Act* 12, 1841, *Sect.* 14.

21. And it is hereby enacted, that the party who shall be declared the purchaser of an estate at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the conclusion of the sale as the Collector may think necessary, either in Cash, Bank of Bengal Notes or Post Bills, or Government Securities duly indorsed, 25 per cent. on the amount of his bid, and in default of such deposit, the estate shall, forthwith, be put up again and sold.—*Act* 12, 1841, *Sect.* 15.

22. And it is hereby enacted, that the full amount of purchase money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate bought by him took place, reckoning that day as one of the thirty: or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth: and in default of payment within the prescribed period as aforesaid, then and afterwards as often as such default shall occur, the deposit shall be forfeited to Government, the estate shall be resold, and the defaulting purchaser shall forfeit all claim to the estate, or to any part of the sum for which it may subsequently be sold, and in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and it shall be so levied and credited to the defaulting proprietor of the estate sold, and if default of payment of purchase money shall have occurred more than once, the defaulting bidders shall be held jointly and severally responsible for such difference to the extent of the amount of their respective bids. Provided always, that every such re-sale shall be made after notification and in the forms prescribed by Section 8 of this Act.—*Act* 12, 1841, *Sect.* 16.

23. And it is hereby enacted, that whenever an estate shall have been sold as aforesaid, the Collector, or other Officer as aforesaid, shall affix a proclamation in the language of the district in his Cutcherry; and as soon thereafter as may be, in the Cutcherries of the Moonsiffs and of the Darogahs of Police, within whose jurisdiction or jurisdictions any part of such estate may be situated; and also at the Cutcherry of the Malgoozar of such estate; or on some conspicuous place on such estate, forbidding the ryots and under-tenants of such estate to pay rent falling due subsequent to the date therein specified and up to the date of the subsequent notice hereinafter prescribed by Section 21 of this Act, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid within the period aforesaid.—*Act* 12, 1841, *Sect.* 17.

24. And it is hereby enacted, that it shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act if preferred to him on or before the fifteenth day from the date of sale, reckoning as in Section 16, or if preferred to the Collector for transmission to the Commissioner on or before the tenth day from the day of sale, and not otherwise: and the Commissioner shall be competent in every case of appeal so preferred, to annul any sale of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding at the same time to the purchaser a payment from the proprietor of any moderate compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed interest, at the current rate of Government Securities, on the amount of deposit or balance of purchase money dur-

ing the period of its being retained in the Collector's office, and the order of the Commissioner shall, in such cases, be final.—*Act* 12, 1841, *Sect.* 18.

25. And it is hereby enacted, that it shall be competent to the Commissioner of Revenue on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale and to represent the case to the Sudder Board of Revenue, who, if they see cause, may recommend to the local Government to annul the sale; and the local Government in any such case, may annul the sale and cause the estate to be restored to the proprietor on such conditions as may appear equitable and proper.—*Act* 12, 1841, *Sect.* 19.

26. And it is hereby enacted, that all sales of which the purchase money has been paid up as prescribed in Section 16 of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale, as the first of the said thirty days. And sales against which an appeal may have been preferred, and the appeal dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided. —*Act* 12, 1841, *Sect.* 20.

27. And it is hereby enacted, that immediately upon a sale becoming final and conclusive, the Collector or other Officer aforesaid, shall give to the purchaser a Certificate of title in the following form:

I certify that A. B. has purchased at public auction under Act 12, of 1841, Mehal C, and that his purchase has taken effect on and since the ——— day of ——— (being the date of sale.)

(Signed) D. E. *Collector.*

And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate sold being vested in the person or persons named from the date specified: and the Collector shall also notify such transfer by written proclamation in his own Cutcherry, and in those of the Moonsiff and Dárogah of the jurisdictions within which any part of the estate sold shall be situated, and also at the Cutcherry of the Malgóozar of the estate or on some conspicuous place on the estate; and shall apply the purchase money first to the liquidation of all arrears due upon the day of sale, or upon the day of the original sale, if the sale finally consummated be a resale; and secondly, to the liquidation of all outstanding demands debited to the Mehal in the public accounts of the district, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate sold, to be paid to their receipt on demand in the manner following; to wit, in shares proportioned to their recorded interest in the estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt. Provided that, if prior to payment of any surplus that may remain of the purchase money after liquidation of all Government arrears and dues to the proprietor of the estate sold, or his representative, the same be claimed by creditors in satisfaction of debts due by him to them, or by any one creditor, such surplus shall not be payable to any such claimant, nor shall it be withheld from the proprietor by attachment, except under precept, and in satisfaction of Decrees of Court for such debts. And if the balance of purchase money have in any such case been paid away in liquidation of the proprietor's just debts

by order of any Court, and a Decree shall afterwards pass for annulling the sale, the proprietor shall not be restored to possession until the amount so paid away be returned by him with interest.—*Act* 12, 1841, *Sect.* 21.

28. And it is hereby enacted, that any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.—*Act* 12, 1841, *Sect.* 22.

29. And it is hereby enacted, that the annulment of a sale by a Commissioner shall be publicly notified by the Collector or other Officer as aforesaid in the same manner as the becoming final and conclusive of sales is required to be notified by Section 21 of this Act, and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser, with interest thereon, at the highest rate of the current public securities, from the dates on which they were respectively paid in, to the date on which the refund is actually made.—*Act* 12, 1841, *Sect.* 23.

30. And it is hereby enacted, that the party certified as the proprietor of an estate by purchase at public sale for the recovery of arrears of revenue shall be answerable for all instalments of the revenue of Government which may fall due subsequently to the day of sale: provided, however, that in the case of re-sales the purchaser shall be answerable for all instalments of revenue which fell due subsequently to the day of the first sale.—*Act* 12, 1841, *Sect.* 24.

31. And it is hereby enacted, that no sale for arrears of revenue or other demands realizable in the same manner, made after the taking effect of this Act, shall be set aside by a Court of Justice except upon the ground of its having been made contrary to the provisions of this Act: And except the contravention thereto shall have been declared and specified in an appeal made to the Commissioner under Section 18 of this Act, and except the action in the Civil Court be instituted within one year, from the date of the sale becoming final and conclusive, as provided in Section 20 of this Act: And no person shall be entitled to contest the legality of a sale after having received any portion of the purchase money: Provided, however, and it is hereby enacted, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or circumstance connected with a sale under this Act, from his remedy in a personal action for damages against the individual by whose act or omission he considers himself to have been wronged.—*Act* 12, 1841, *Sect.* 25.

32 And it is hereby enacted, that in the event of a sale being reversed by a final decree of a Court of Justice, the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.—*Act* 12, 1841, *Sect.* 26.

33. And it is hereby enacted, that the purchaser of an estate sold under this Act, for the recovery of arrears due on account of the same, in the permanently settled districts of Bengal, Behar, Orissa and Benares, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled after notice given under Section 10, Regulation V. 1812, to enhance at discretion, (any thing in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said estate, and to eject all tenants thereof, with the following exceptions.—*Act* 12, 1841, *Sect.* 27.

34. Tenures which were held as Istemraree or Mocurreree at a fixed rent, more than 12 years before the permanent Settlement.—*Ibid, Cl.* 1.

35. Tenures existing at the time of the Decennial Settlement, which have not been, or may not be, proved to be liable to increase of assessment, on the grounds stated in Section 51, Regulation VIII. of 1793.—*Ibid, Cl.* 2.

36. Lands held by Khood Kasht or Kudeemee ryots having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulations in force.—*Ibid, Cl.* 3.

37. Lands held under bonâ fide leases, at fair rents, temporary or perpetual, for the erection of dwelling houses, or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases.—*Ibid, Cl.* 4.

38. Farms granted in good faith at fair rents and for specified areas by a former proprietor, for terms not exceeding twenty years, under written leases, registered within a month from their date. Provided that a written notice, specifying full particulars of the position, rent and area of the lands, the terms of the lease, and the names of the parties shall at the same time be given by the latter to the Collector in every case, and the Collector shall be at liberty to object to the same in the event of his seeing reason to believe that the security of the public revenue will be materially affected thereby. The exception declared in this Clause shall not extend to leases objected to by the Collector, by a notification to be fixed up in his office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties. Provided also, that a purchaser of an estate at a sale for arrears of revenue shall be at liberty by suit in Court to set aside all such farms, although the same be under written and duly registered leases, and although such notice may have been given as aforesaid, if the same shall not have been granted in good faith at fair rents.—*Ibid, Cl.* 5.

39. And it is hereby enacted, that the purchaser of an estate sold under this Act for the recovery of arrears due on account of the same in districts other than those mentioned in Section 27, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or credited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except bonâ fide leases of ground for the erection of dwelling houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid than was demandable by the former Malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land in consequence of abatements having been granted by the former

Malgoozars from the old established rates by special favour, or for a consideration, or the like, or in cases in which it may be proved that according to the custom of the Pergunnah, Mouzah, or other local division such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.—*Act* 12, 1841, *Sect.* 28.

40. And it is hereby enacted, that it shall be competent to the local Government, when it shall seem proper at any time before a sale for arrear shall have been actually made, to direct it to be made, subject to the leases, assignments, or other encumbrances, with which a proprietor in possession, his ancestors, or predecessors, may have burthened his assessed estate, or to such of them as shall appear proper. In all such cases, notice of the condition imposed by the local Government shall be given by the Collector at the time of calling up the lot for sale, and such further notification shall be made as the local Government may direct: provided, however, that in case the sale so restricted shall not realize an amount equal to the arrear due at the time of sale, or there shall appear ground to apprehend, that by reason of the restriction the future realization of the revenue will be endangered, it shall be competent to the local Government at any time before such restricted sale shall have become final and conclusive in the manner laid down in Section 20 of this Act, to direct the sale to be cancelled, and a new sale of the estate to be made without other restrictions than those contained in the exceptions specified in Clauses 1 to 5 of Section 27 of this Act. If after the sale has become final and conclusive, occasion should again arise to bring to sale for arrears an estate purchased with a restriction of the above description, it shall at all times be competent to the local Government to direct that the Mehal shall be sold without any other restriction than those contained in the exceptions specified in Clauses 1 to 5 of Section 27 of this Act, or with the reservation before reserved. In the former event, should the purchase money realized by the unrestricted sale exceed in a large amount the sum obtained at the restricted sale, it shall further be competent to the local Government to direct a portion, or the whole of the excess to be paid to persons whose interests having been reserved at the first, shall become void at the second sale.—*Act* 12, 1841, *Sect.* 29.

41. And it is hereby enacted, that excepting copartners of estates under Butwarrah who may have saved their shares from sale under Sections 33 and 34, Regulation 19, 1814, any recorded or unrecorded proprietor or copartner who may purchase in his own name or in the name of another the estate of which he is proprietor or copartner; or who by repurchase or otherwise, may recover possession of the said estate after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for other arrears or demands than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to ryots and under-tenants which were not possessed by the previous proprietor at the time of the sale of the said estate.—*Act* 12, 1841, *Sect.* 30.

42. And it is hereby enacted, that arrears of rent which at the date of sale may be due to the defaulter from his tenants, shall be recoverable by him after a sale by any process except distraint which might have been used by him for that purpose before the sale was made.—*Act* 12, 1841, *Sect.* 31.

43. And it is hereby enacted, that any Collector or Officer exercising the pow-

ers of Collector, in respect to sales, shall be competent to punish any contempt committed in his presence in open Cutcherry or office for the time being, by fine, to an extent not exceeding Co's. Rs. 200, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.—*Act* 12, 1841, *Sect.* 32.

44. And it is hereby enacted, that a default to make good a bid by making the deposit required by Section 15 of this Act, shall be held to be a contempt.—*Act* 12, 1841, *Sect.* 33

45. And it is hereby enacted, that the operation of this Act shall be confined to the provinces of Bengal, Behar, Orissa and Benares, now subject to the general Regulations and to the Ceded and Conquered Provinces similarly subject to the general Regulations under the Government of the presidencies of Fort William in Bengal, and nothing in this Act contained shall affect land in the town of Calcutta or the settlements of Singapore, Penang, or Malacca.—*Act* 12, 1841, *Sect.* 34.

46. And it is hereby enacted, that this Act shall have effect on and after the first day of January, 1842.—*Act* 12, 1841, *Sect.* 35.

RULES REGARDING DISTRAINT.

SECT. I.

Authority to sell Distrained Property.

1. It is hereby enacted, that from the first day of May next ensuing, after the passing of this Act, all Regulations and parts of Regulations of the Bengal Code, which give to any persons or class of persons authority, by virtue of any office held by them, to sell property distrained for the recovery of arrears of rent, shall, so far as they give such authority, be repealed.—*Act* 1, 1839, *Sect.* 1.

2. And it is hereby enacted, that from the date aforesaid, it shall be lawful for the Collector or officer duly exercising the powers of a Collector, in each District subject to the presidency of Fort William in Bengal, to appoint, by a sunnud under his signature and seal, in the terms of the Schedule appended to this Act, and conformably to such instructions as he may receive in that behalf, any person or persons to exercise the function of selling property distrained for the recovery of arrears of rent in each pergunnah or sub-division of his district, and to authorize such persons to remunerate themselves by deducting a per centage, not in any case exceeding ten per centum on the amount of the proceeds of the sale.—*Act* 1, 1839, *Sect.* 2.

3. And it is hereby enacted, that all Regulations and parts of Regulations of the Bengal Code, which give powers to, or prescribe rules for the guidance of persons appointed to conduct the sale of property distrained for the recovery of arrears of rent, or

which assign any penalty or other punishment for misfeasance in the discharge of such duty, shall be applicable to all parties appointed for the sale of such property under this Act.—*Act* 1, 1839, *Sect.* 3.

Schedule.

4. I, A. B., Collector of Zillah (or exercising the powers of a Collector), in virtue of the powers vested in me by Act No. 1 of 1839, appoint you C. D., Commissioner for the sale of property distrained for the recovery of arrears of rent, in the manner prescribed by the Regulations of Government. You are to reside at E. in pergunnah F. and are to exercise the authority vested in you by these Regulations, or by any others which may be hereafter transmitted to you for your guidance, in strict conformity thereto; and are to keep a regular and complete record of your proceedings, to be produced when called for by me, or by the Courts of justice. You are hereby authorized to remunerate yourself for your trouble, by deducting and appropriating—per centum on the amount of the proceeds of sale.

SECT. II.

Power to Distrain.

5. Zemindars, independant talookdars, and other actual proprietors of land, and farmers of land who hold their farms immediately of Government, are empowered to distrain without sending notice to any Court of justice or any public officer (excepting the after notice directed to be given in the cases of defaulters employed in the provision of the Company's investment, or the manufacture of salt as specified in Section 31) the crops and products of the earth of every description, the grain, cattle, and all other personal property whether found in the house or on the premises of the defaulter, or in the house or on the premises of any other person within or without the limits of the estate or farm of the distrainer, belonging to their under-renters and ryots, and the talookdars paying revenue through them, for arrears of rent or revenue, and to cause the said property to be sold for the discharge of such arrears. The same powers are likewise vested in dependant talookdars for the recovery of arrears of rent from their under-farmers and ryots, and also in under-farmers who farm lands from zemindars, independant talookdars, or other actual proprietors of land, or dependant talookdars, or farmers of land who hold their farms immediately of Government, to enable such under-farmers to enforce payment of arrears of rent or revenue from their ryots, under-farmers, or dependant talookdars. The several descriptions of land-holders and farmers of land above specified, are to exercise the powers hereby vested in them under the following rules and restrictions.—*Reg.* 17, 1793, *Sect.* 2.—*Ben. Reg.* 45, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 2; *Cl.* 1.

6. The acting Judge of Behar was informed, on the 21st January, 1808, that the Court were of opinion, that the rules contained in Regulation 7, 1799, as well as of Regulation 17, 1793, and 35, 1795, relating to the power of landholders to proceed against their tenants for arrears of rent, being general, must be understood to apply to all claims for arrears of rent, whether due from lands paying revenue to Government, or from lands held exempt from public revenue. —*Con. No.* 33. 21*st Jan.* 1808.

7. The Zemindars, talookdars, and other landholders and farmers of land, empowered by Section 2, of Regulation 17, 1793, to distrain the crops, cattle, and other personal property of their under-tenants for arrears of rent, are authorized to delegate to

their naibs, gomastahs, and other agents, employed in the collection of their rents, the power of distraining in their behalf in the mode prescribed by the Regulations, under the responsibility declared in Section 32, of Regulation 17, 1793, and the naibs, gomastahs, and other agents, to whom such power may be delegated by their principals, are authorized to proceed for the recovery of arrears of rent due to their constituents in the same manner as the latter are authorized to proceed, subject to their own responsibility in addition to that of their principals, for any wilful deviation from the Regulations: but it is hereby declared that neither the landholders and farmers themselves or their agents, are to be made liable to the penalties prescribed for a deviation from any part of Regulation 17, 1793, or of Regulation 35, 1795, or of any other Regulation relative to the distraining for land-rents, unless such deviation shall clearly appear to have been wilful and intentional, or to have proceeded from gross neglect and inattention to the rules prescribed for their guidance. Where no such wilful deviation or gross neglect shall appear, satisfaction to the party aggrieved for the actual damage sustained by him, from the prescribed process not having been strictly adhered to, shall alone be adjudged against the distrainer; nor shall any judgment be given for such damages if the distrainer can shew that he tendered sufficient amends to the party injured as soon as the irregularity in his proceedings was discovered, or at any time before the action for damages was brought against him, and that such tender was refused.—*Reg.* 7, 1799, *Sect.* 2.

8. If any Gomastah, agent, servant, or officer of any person vested with the power of distraint, shall attach or cause to be sold the property of any under-farmer, ryot, or dependant talookdar, or their sureties, or do any act in the attachment or sale of it contrary to this Regulation, the party aggrieved shall have his remedy against the principal of the offender for such illegal attachment, sale or act, whether the same took place or was done by the orders or with the knowledge of such principal or not. Provided that nothing contained in this section shall extend to subject a distrainer to imprisonment in the event of any person deputed by him to attach property, entering the Zenana, or apartments of women, or breaking open a dwelling house in opposition to the prohibition contained in Section 21, unless it shall be proved that such acts were done by the order or with the consent or knowledge of such distrainer.—*Reg.* 17, 1793, *Sect.* 32.

9. Upon the death of any person vested with the power of distraint by this Regulation, his heirs or successors who may be entitled to the arrears due to him, shall be at liberty to distrain the property of the defaulters, and their sureties in the cases authorized, for the recovery of the same, agreeably to this Regulation. It is to be understood likewise, that managers of the estates of disqualified landholders, and managers of undivided estates belonging to two or more proprietors, all of whom do not come within the description of disqualified landholders, are authorized to exercise the same powers for the recovery of arrears of rent or revenue, as the proprietors of the estates committed to their charge would be entitled to exercise under this Regulation, were they to be entrusted with the management of their own estates, subject however to the several rules, restrictions, and penalties therein specified.—*Reg.* 17, 1793, *Sect.* 30.—*Ben. Reg.* 45, 1795, *Sect.* 28.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 28.

10. The rules in the whole of the preceding Sections for the recovery of arrears of rent due to proprietors and farmers of land, are to be considered equally applicable to the managers of the estates of disqualified landholders, and of joint undivided

estates; as well as to Collectors or other public officers holding lands in attachment for the purpose of adjusting the public assessment on them, or for any other purpose; or making a khas collection on the part of Government, where no settlement has been made with any proprietor or farmer: and the authorized agents of such managers, Collectors, or other public officers, provided they be so commissioned and instructed, are to exercise the same authority as is vested in the agents of proprietors and farmers of land by Section 2 of this Regulation.—*Reg.* 7, 1799, *Sect.* 19.

SECT. III.

Penalties for abuses.

11. Landholders and farmers of land, are prohibited confining or inflicting corporal punishment on any under-farmer, ryot, or dependant talookdar, or their sureties, to enforce payment of arrears of rent or revenue. If any landholder or farmer shall offend against this prohibition, the person so punished or confined, shall be at liberty either to prosecute the offender for assault or imprisonment in the criminal Court, or to institute a suit against him in the Dewanny Adawlut of the Zillah, which Court shall award damages against such offender, according to the circumstances of the case, with costs of suit.—*Reg.* 17, 1793, *Sect.* 28.—*Ben. Reg.* 45, 1795, *Sect.* 26.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 26.

12. If any person vested with the power of distraint shall attach, or cause to be sold the property of any under-farmer, ryot, or dependant talookdar for arrears of rent or revenue, and it shall appear upon trial that no arrear was due, the distrainer shall be compelled to restore the property to the owner, or to make good to him the value of it, if it shall have been sold, damaged, injured or destroyed, or shall not be forthcoming, and to pay to him as damages a sum adequate to the value of such property and all costs of suit.—*Reg.* 17, 1793, *Sect.* 6.—*Ben. Reg.* 45, 1795, *Sect.* 6.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 6.

SECT. IV.

Defaulters.

13. Such part of Section 5, Regulation 17, 1793, as enacts that "under-farmers, ryots, and dependant talookdars, shall not be considered to have defaulted until the arrears have been ineffectually demanded from them, and also from their surety if they shall have given security and the surety shall be forthcoming" is hereby rescinded; and under-tenants of every description are to be considered defaulters, for any arrears of rent withheld beyond the day on which the same may have become payable according to their kistbundies, or other engagements, or where there may be no written specification of the exact term of payment, beyond the period when the rent demandable from them may be payable according to established local usage. For all such arrears which may not be paid on demand, defaulters are declared liable to immediate distress whether the amount shall have been demanded from their sureties or otherwise. In instances wherein the distrainer may proceed to levy distress from an under-tenant, who has given security, without having previously demanded the arrear from the surety, it will be incumbent on the tenant to give notice of the distress to his own surety so as to enable him to discharge the arrear before the sale of the property attached; or

the distrainer, if he think proper, may give notice to the surety and require him to make payment of the arrear. The distrainer may also, at his option, distrain in the prescribed mode either the property of the defaulter or his surety, or the property of both, so that the whole distress be not excessive in proportion to the arrear; but no distress shall be levied on the property of the surety until the arrear shall have been ineffectually demanded from the defaulter; unless the latter shall have absconded or be otherwise not forthcoming; in which case, and in the event of the surety's not discharging the amount due on demand, distress may be levied from his property for the recovery of it, in like manner as if the defaulter had been present and served with the demand in the first instance.—*Reg.* 7, 1799, *Sect.* 3.

14. Persons who tenant or underfarm lands in the name of their children, dependants, or others, or in the names of fictitious persons, and give themselves as the ostensible sureties for the performance of the agreement, but retain the actual management of the lands, and in fact are themselves the under-farmers or ryots of such lands, shall to all intents and purposes, be considered as the under-farmers or ryots of such lands, and their property shall be liable to be distrained and sold for arrears under this Regulation, in the same manner as if the engagement for the lands had stood in their own names.—*Reg.* 17, 1793, *Sect.* 27.—*Ben. Reg.* 45, 1795, *Sect.* 25.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 25.

SECT V.

Rules regarding Attachment.

15. Distrainers shall deliver to the person whom they may depute to attach the property of a defaulter, a writing under their seal and signature specifying the amount of the arrear for which the attachment may be issued, and the date on which such arrear became due. The person so deputed shall produce this writing as his authority for making the attachment, and on the day on which he may attach the property, shall deliver a copy of it to the stated defaulter, endorsing thereon a list or inventory of the property attached, and the name of the place where it may be lodged or kept, with a notice that it will be sold on the fifteenth day commencing from the day following the day on which the attachment took place; or, if the property attached shall consist of crops or other ungathered products of the earth, within fifteen days calculating from the day following the day on which such crops or products may be stored as directed in Section 13, unless the arrear and expences of the attachment shall be previously discharged, or he shall contest the demand, and procure the attachment to be withdrawn in the manner hereafter specified. If the defaulter shall be absent, a copy of the above writing with the prescribed endorsement shall be fixed up or left at his usual place of residence before the expiration of the third day calculating from the day of the attachment. If any person vested with the power of distraint shall cause any property to be attached without furnishing the agent whom they may employ for that purpose with the writing above directed, or if such agent shall be furnished with the writing prescribed, and shall omit to deliver a copy of it with the required endorsement to the defaulter; or, in the event of his absence, to leave such copy at his usual place of residence within the period limited, the distrainer shall not be entitled to recover the arrear for which the distress may have been levied, and he shall be compelled to restore the property to the defaulter, or the value of it, if it shall have

been sold, damaged, injured, or destroyed, or shall not be forthcoming, and to pay all costs of suit.—*Reg.* 17, 1793, *Sect.* 8.—*Ben. Reg.* 45, 1795, *Sect.* 8.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 8.

16. Sections 9 and 10, Regulation 17, 1793, by which distrainers are required to withdraw the attachment on distrained property, on the person from whom the arrear is demanded, denying the justness of the demand, and giving security to have it tried in the Dewanny Adawlut within a certain time, and to pay interest to the date of the decree, with costs, in the event of the demand being decreed to be just, *are hereby rescinded* together with the following Clause of Section 8, of that Regulation, viz. "*or he shall contest the demand, and procure the attachment to be withdrawn in the manner hereafter specified.*"—*Reg.* 35, 1795, *Sect.* 2.

17. The notice of fifteen days for the sale of attached property directed in Section 8, of Regulation 17, 1793, and the period of fifteen days from the time of attachment fixed for the sale of such property by Section 5, of Regulation 35, 1795, are hereby rescinded; and the notice to the defaulter, directed to accompany the inventory of the attached property to be delivered to him, shall inform him only of the arrear due and the intention of the distrainer to bring the attached property to immediate public sale for the discharge of it, unless the amount and expences of attachment be previously paid. If the defaulter on receiving this notice shall neglect to pay the amount due from him, or to give such assurance of early payment as may be satisfactory to the distrainer, or if the defaulter shall have absconded or be otherwise absent, so that the notice cannot be served on him, the distrainer is to transmit an inventory of such part of the attached property as can be brought to immediate sale, to the nearest cauzy or other public officer empowered to sell distrained property, with a written request that he will cause the same to be publicly sold for the discharge of the arrear due, the amount of which is also to be specified in the application, together with the place where the property may be in attachment; and if it be the intention of the distrainer to remove it, under the discretion vested in him by Section 12, of Regulation 17, 1793, the place to which such removal is intended. The cauzy or other authorized officer, on the receipt of such application, is to proceed as directed in Section 5, of Regulation 35, 1795, under the following further provisions, viz. instead of fixing the day of the sale on the fifteenth day after the attachment, he shall fix as early a day for the sale as may be compatible with a due observance of the other directions in the above Section for the appraisement of the property, and the publication of the intended sale of it, which is to be made by beat of drum on one market day at the least before the market day on which the sale may take place, as well as on the morning of the day of sale; and the sale is in no instance to take place before the expiration of five complete days after the attachment, exclusive of the day on which the attachment may have been made. The same principle is to be observed with respect to the sale of ungathered products after the distrainer shall have gathered and stored them, as required by Section 13, of Regulation 17, 1793, and which are not to be sold until publication shall have been made as above directed. In consequence of this alteration, which is made with a view to expedite the sale of distrained property, distrainers, when they attach the property of persons employed in the provision of the Company's investment, or in the manufacture of salt, are to give the notice directed in Section 31, of Regulation 17, 1793, as soon as possible after making the attachment; and in such cases the property is not to be sold

until sufficient time has been given to enable the Company's officers to satisfy the demand before the day of sale. The notice required by the above Section however may, at the option of the distrainer, be either given to the commercial resident, or salt agent, in whose division the defaulter may have been employed, or to the native superintendent of the factory or salt chowkey to which the defaulter may be attached.—*Reg.* 7, 1799, *Sect.* 4.

18. Whenever any Zemindar, independent talookdar, or other actual proprietor of land, or any person farming land directly from Government, shall be desirous of distraining the property of his tenant, with a view to the recovery of an arrear of rent; such Zemindar or other person shall either previously or at the time of the distress, serve the said tenant with a written demand for the amount of it, accompanied with a jumma wassilbaukee, exhibiting the grounds on which the demand is so made; and no process for the distress and sale of property on account of arrears of rent shall be deemed legal and valid, unless the rule here prescribed shall have been duly observed. In all practicable cases, the prescribed demand and jumma wassilbaukee account, shall be served personally on the tenant; but if he abscond or conceal himself, so that they cannot be served personally upon him, they shall be affixed at his usual place of residence; which latter process shall in such case be deemed and taken to be a sufficient service of the demand and account in question.—*Reg.* 5, 1812, *Sect.* 13.

19. If the defaulter shall tender the arrears demanded of him in the presence of two creditable witnesses to the person deputed to attach his property, such person shall receive the arrears, and shall not proceed to the attachment.—*Reg.* 17, 1793, *Sect.* 7.—*Ben. Reg.* 45, 1795, *Sect.* 7.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 7.

20. All attachments shall be made after sunrise and before sunset. If any person vested with the power of distraint shall seize or attempt to seize the property of any defaulter after sunset and before sunrise for the discharge of arrears of rent, or revenue, such distrainer shall not be entitled to recover the arrear; and, if the property shall have been attached, shall be compelled to restore it to the defaulter, or the value of it, if it shall have been sold, damaged, injured or destroyed, or shall not be forthcoming, with all costs of suit.—*Reg.* 17, 1793, *Sect.* 17.—*Ben. Reg.* 45, 1795, *Sect.* 15, —*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 15.

21. If any under-farmer, ryot, or dependant talookdar, shall make a fraudulent conveyance or transfer of his property to prevent the attachment of it for arrears, the Court of Dewanny Adawlut, upon proof thereof being made before it, shall cause the property to be delivered up to the distrainer, and compel the person to whom such transfer or conveyance shall have been made, to pay to the distrainer damages adequate to the value of one-half of the property, with costs of suit.—*Reg.* 17, 1793, *Sect.* 18.—*Ben. Reg.* 45, 1795, *Sect.* 16.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 16.

22. If any under-farmer, ryot, or dependant talookdar, shall resist the attachment of his property, or shall forcibly or clandestinely take it away after it shall have been attached, the Court of Dewanny Adawlut shall cause him and all persons who may be proved to have been his aiders or abettors, to be imprisoned in the jail until he shall restore the property to the distrainer, or the arrear shall have been liquidated by the distraint and sale of other property, or otherwise discharged with the expences attending the attachment, and costs of suit.—*Reg.* 17, 1793, *Sect.* 19.—*Ben. Reg.* 45, 1795, *Sect.* 17.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 17, *Cl.* 1.

23. On a reference to the Sudder Dewanny Adawlut, the Judge of Zillah Nuddea was informed on the 9th August, 1806, that the Court were of opinion, that the suits directed to be brought under Sections 19 and 20, Regulation 17, 1793, and Section 9, Regulation 7, 1799, should be considered as summary; but that the defendant should be heard in his defence, and any evidence offered by him to refute the charge of resistance to attachment should be taken.—*Con. No.* 23, *9th Aug.* 1806.

24. On the second point the Court hold, that the summary proceeding under Section 17, Regulation 28, 1803, [corresponding with Reg. 17, 1793, Sect. 19,] which clearly involves the adjudication of a penalty by the Civil Court for having withdrawn attached property, is limited in point of time, under Section 6, Regulation 2, 1805, to one year from the occurrence of the act which gives rise to the proceeding; unless Government being the party suing, (which it virtually is, in the person of the Collector), there be good cause shewn for delay, beyond that period.—*Con. No.* 316, *2d June*, 1820,

25. In addition to the penalties provided by Section 19, Regulation 17, 1793, it is hereby declared, that if any under-tenant, of whatever description, shall resist or cause to be resisted the attachment of his property for arrears of rent in the mode prescribed by the Regulations so as to prevent the attachment from taking place, or shall forcibly or clandestinely take away such property after it shall have been attached; such offender, shall, on proof before the Dewanny Adawlut, be made liable to damages to the distrainer equal to twice the amount of the property rescued from attachment, and the property so taken away may be reattached by the distrainer wheresoever it may be found. The offender and all persons concerned with him in resisting the attachment are moreover declared liable to be apprehended and prosecuted before the criminal Courts for any breach of the peace committed by them in such resistance to the attachment, and the police officers, on information of such, are immediately to repair to the spot, and take all proper measures under the Regulations as well to apprehend and send to the Magistrate any persons who may appear to have broken the peace, as to support distrainers in the due exercise of the legal powers vested in them.—*Reg.* 7, 1799, *Sect.* 9.

26. If any person, not being the owner, shall be convicted of forcibly or clandestinely taking away property that has been distrained, the Court of Dewanny Adawlut, upon proof thereof being made before it, shall cause such person or persons to be imprisoned until they restore the property, or make good the value of it to the distrainer, and pay to him as damages, a sum equal to the value of such property, and all costs of suit.—*Reg.* 17, 1793, *Sect.* 20.—*Ben. Reg.* 45, 1795, *Sect.* 18.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 18.

SECT. VI.

Search of Houses.

27. Distrainers are empowered to force open any stable, cow-house, barn, golah, granary, or other building, and to enter any dwelling-house, the outer door of which may be open (excepting the apartments in such dwelling-house which may be appropriated for the zenana or residence of women), and to break open the door of any room in such dwelling-house, for the purpose of attaching any property belonging to a defaulter which may be lodged therein. But nothing contained in this Regulation shall be construed to authorize persons vested with the power of distraint, or their servants, or agents, to enter the zenana, or apartments of women, whether the doors or passages leading thereto be open or not; nor to force open and enter any dwelling-house the

outer door of which may be locked or barred. Persons entering the apartments of women, or forcing open the outer door of any dwelling-house, shall be imprisoend for six months, the distrainer shall not recover the arrear for which the attachment may have been issued, and he shall be compelled to restore to the defaulter, any property that may have been attached, or the value of it, if it shall have been sold, damaged, injured, or destroyed, or shall not be forthcoming, and the Court shall further award against such distrainer heavy damages, with all costs of suit. And if any person shall enter a dwelling-house, or break open any stable, cow-house, barn, golah, granary, or other building, not occupied by or in the possession of the defaulter, to distrain property belonging to him, and no such property shall be found therein, the distrainer shall be liable to prosecution by the occupant or possessor for entering such house, or breaking open such stable or other building, and the Court shall award to him damages according to the circumstances of the case, with all costs of suit.—*Reg.* 17, 1793, *Sect.* 21.—*Ben. Reg.* 45, 1795, *Sect.* 19.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 19, *Cl.* 1.

28. The restrictions contained in Section 21, of Regulation 17, 1793, which prohibit distrainers from forcing open the outer door of any dwelling house, and from entering the zenana or apartments of women, having been found liable to abuse, such restrictions are hereby modified as follows. When a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling house, the outer door of which may be shut, or within any apartments appropriated to women, which by the usage of the country are considered private, he is at liberty to represent the same to the police darogah within whose jurisdiction the house may be situated, and on such representation the police darogah is to send a police officer to the spot, in the presence of whom the distrainer is authorized to force open the outer door of the dwelling house in which he may have reason to suppose the defaulter's property to have been lodged, in like manner as he is already authorized to break open the door of any room within a dwelling house except the zenana. He may also, in the presence of the police officer, after due notice given for the removal of any women within the zenana, and after furnishing means for their removal in a suitable manner, if they be women of rank, who according to the customs of the country cannot appear in public, enter the zenana apartments for the purpose of attaching any of the defaulter's property deposited therein. But such property, if found, shall be immediately removed from such apartments, after which they are to be left free to the former occupants; and nothing in this Regulation is to be understood to authorize any distrainer or his agent to force open the door of a dwelling-house, or to enter the apartments of women which by the usage of the country are considered private, in any other mode than is herein prescribed; a wilful deviation from which will subject the offender to heavy damages, besides forfeiture of the arrear of rent on account of which the distress may be levied.—*Reg.* 7, 1799, *Sect.* 10.

29. In all cases wherein persons authorized to distrain porperty for arrears of rent may apply to the police darogah of the jurisdiction to depute a police officer to be present at the time of making the attachment, with a view to prevent resistance or other breach of the peace, the police darogah shall, as far as may be in his power, immediately comply with such applications; and the police officers so deputed shall use every means in their power to prevent resistance or other breach of the peace in such cases. He shall also give due attention to the whole conduct and proceedings of the distrainer, so as to be able to give evidence thereupon if afterwards required, either before the Judge or

SECT. VII.

Property attachable and rules regarding it.

Vide Reg. 17, 1793, *Sect.* 2, *as given under Sect.* 2.

30. If any person, not being the defaulter or responsible for him, claim as his right the property distrained, and the distrainer shall notwithstanding cause the same to be sold, the claimant, on proof of his right in the Dewanny Adawlut, and in the event of the distrainer being unable to prove that he was responsible for the arrear on account of which the property may have been sold, shall recover from the distrainer the full value of such property, with all costs and damages, according to the circumstances of the case. But no claim to crops upon the ground or to any gathered product of the ground attached in the possession of the defaulter, whether founded upon a previous sale, mortgage, or otherwise, shall bar the prior claim of rent due for the ground upon which such crop or product may have been grown, it being the undoubted right of the owner of the land, or his representative, to consider the produce of it mortgaged to him, for the rent of the land in the first instance, and in default of his rent being paid as engaged for (or determinable by local rates and usage where there may be no specific engagement) to distrain and sell such part of the product as may be necessary to make good the arrear due to him.—*Reg.* 7, 1799, *Sect.* 9.

31. In reply to your first query, I am desired to state, that in the opinion of the Court, individuals other than the alleged defaulter or his surety, who may lay claim to distrained property, are not entilted to the release of such property on furnishing security, nor can their claims to it be investigated, according to the provisions of Section 15, Regulation 5, 1812.—*Con. No.* 348, 19*th April,* 1822.

32. Persons vested with the power of distraint shall not distrain or sell the lands, houses, or other real property of their under-farmers and ryots, or the talookdars paying revenue through them; nor goods or advances belonging to the Company in the hands of any weaver, manufacturer, or other persons employed in the provision of their investment; nor the loom, thread, unwrought silk, or materials of manufacture of any weaver or manufacturer; nor the tools of any tradesman or labourer standing towards them in the relation of under-farmer, ryot, or dependant talookdar. All such distraints and sales, are declared illegal and void. The defaulter shall stand acquitted of the arrear for which the distress may be levied, and the property shall be restored to him, or the distrainer shall be compelled to make good to him the value of it, if it shall be personal property, and shall have been destroyed, damaged, or injured, or shall not be forthcoming, and the distrainer shall be further obliged to pay to him damages adequate to the loss which he may prove to have sustained in consequence of such attachment or sale, with all costs of suit.—*Reg.* 17, 1793, *Sect.* 3.—*Ben. Reg.* 45, 1795, *Sect.* 3.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 3.

33. The ploughs and implements of husbandry, the cattle, actually trained to the plough, and the seed grain of under-farmers, ryots and dependant talookdars shall not be distrained for arrears, provided the defaulter shall possess, and the distrainer shall have it in his power to attach, other cattle; grain, or property sufficient for the discharge of the arrear. Distrainers are enjoined to attend strictly to this rule, and every deviation from it shall be punished by an award to the party aggrieved of damages adequate to the injury he may have sustained, with all costs of suit.—*Reg.* 17, 1793, *Sect.* 4.—*Ben. Reg.* 45, 1795, *Sect.* 4.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 4.

34. Ploughs and other implements of husbandry, bullocks, and other cattle employed in agriculture, together with the tools of artisans, shall not be subject to distress and sale on account of arrears of rent, although the tenant, from whom such arrears may be demanded, shall not possess other property sufficient to make good the arrear.—*Reg.* 5, 1812, *Sect.* 14.

35. Distrainers who shall attach the crops or any ungathered products of the earth belonging to their under-farmers, ryots, or the talookdars paying revenue through them, shall cause such crops or products to be reaped or gathered in due reason, and store the same in proper houses, barns, or granaries upon the premises; or if there shall be no such places on the premises, in any barn or proper place which can be procured as near thereto as possible within the limits of the pergunnah. The expence of reaping or gathering and storing such crops or products, shall be paid by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.—*Reg.* 17, 1793, *Sect.* 13.—*Ben. Reg.* 45, 1795, *Sect.* 11.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 11.

36. Distrainers shall not drive or convey distrained cattle or other property out of the limits of the pergunnah in which it may have been attached. The distrainer shall either leave the property upon the premises in the charge of any person he may think proper, or drive or convey it with due care to a proper place as near as possible to the premises within the limits of the pergunnah.—*Reg.* 17, 1793, *Sect.* 12.—*Ben. Reg.* 45, 1795, *Sect.* 10.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 10.

37. Distrainers shall not work the bullocks or cattle, or make use of the goods or effects distrained. They shall provide the necessary food for the cattle or live stock, the expence attending which shall be paid by the owner upon his redeeming the property, or from the proceeds of the sale, in the event of its being sold.—*Reg.* 17, 1793, *Sect.* 14.—*Ben. Reg.* 45, 1795, *Sect.* 12.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 12.

38. If property distrained shall be stolen, or lost, or be damaged, injured or destroyed by the weather or otherwise, whilst in the possession of the distrainer, owing to his not having taken the necessary precautions for the due keeping and preservation of it, he shall make good the loss or damage to the owner.—*Reg.* 17, 1793, *Sect.* 15.—*Ben. Reg.* 45, 1795, *Sect.* 13.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 13.

39. The distress levied shall not be excessive, or in other words, the property seized shall be as nearly as possible proportioned to the amount of the arrear. If any person vested with the power of distraint shall attach any property the value of which shall be disproportionate to the arrear, and it shall be proved that he could have seized other property of less value and which would have been sufficient for the liquidation of such arrear, the Court of Dewanny Adawlut shall award to the owner damages according to the circumstances of the case, with all costs of suit.—*Reg.* 17, 1793, *Sect.* 16.—*Ben. Reg.* 45, 1795, *Sect.* 14.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 14.

SECT. VIII.

Duties of the officer selling Distrained Property.

Vide above Reg. 7, 1799, *Sect.* 4.

40. After the expiration of the fifth day, and before the elapse of the eighth day, calculating from the day following the day on which the attachment of the property of

a defaulter shall have taken place, or, if the property attached shall consist of crops, or other ungathered products of the earth, after the elapse of the fifth day, and before the expiration of the eighth day, commencing from the day following the day on which such crops or products may have been stored as directed in Section 13, Regulation 17, 1793, the distrainer shall apply to the Cauzy of the Pergunnah to have the same appraised and sold.) Upon the receipt of such application, the Cauzy shall proceed as follows. He shall fix upon the outer door of his own house, and at the place at which he may determine to dispose of the property, a list of the property attached, with a notice, which shall specify, Firstly, the place at which the property is to be sold, which shall be on the spot where it may be lodged by the distrainer, or at the nearest Gunge, Bazar or Haut, or any place of public resort where the Cauzy may be of opinion it is likely to sell to the best advantage; Secondly, the day on which it is to be sold, which shall be the fifteenth day, commencing from the day following the day on which the attachment may take place, unless the property shall consist of crops or other ungathered products of the earth, in which case, the sale shall be made on the fifteenth day calculating from the day following the day on which such crops or products may be stored as directed in Section 13, Regulation 17, 1793; and Thirdly, the time of the day when the sale is to be made, which shall be during the hours of business when the greatest number of people may be supposed to assemble. The Cauzy shall nominate two creditable persons, competent by their profession, trade, or occupation, to appraise the property. The persons so appointed, shall appraise the property according to the current price which the several articles may then bear in the country, and shall deliver the particulars of the apraisement in writing, and attest the same with their signatures, and shall certify in writing at the foot of the paper, that they have appraised the property according to the best of their knowledge and judgment. The Cauzy shall affix his seal to the paper of appraisement, and cause it to be stuck up on the outer door of his own house, and at the place where the property is to be sold.—*Reg.* 35, 1795, *Sect.* 5.

For Summary suits against Distraint, vide Chapter 4, *Sect.* 14, *p.* 292—295.

41. The several descriptions of landholders and farmers of land, specified in Section 2, are empowered under the restrictions contained in this regulation, to attach and sell the property of persons employed in the provision of the Company's investment, or the manufacture of salt, for the recovery of arrears of rent or revenue, without previously stating the claim to the Company's commercial representative, or to any salt agent, or other officer employed in the salt department. But such distrainers shall within three days, calculating from the day following the day of the attachment, after they shall have attached the property of any weaver or molungee, or other person employed in the provision of the Company's investment, or the manufacture of salt, send information of such attachment in writing to the commercial resident or salt agent, or the nearest commercial factory or salt Cutcherry, that the commercial resident or salt agent may satisfy the demand previous to the time fixed for the sale of the property, or cause such steps to be taken in behalf of the defaulter as may be consistent with this regulation.—*Reg.* 17, 1793, *Sect.* 31.

42. Whenever property shall have been distrained with a view to the sale of it, for the recovery of arrears of rent, it shall be appraised previously to such sale, by persons conversant with the purchase and sale of articles of the quality and description of

those so distrained, and a certificate of the appraisement shall be furnished by the appraisers under their signatures, which shall be communicated to the tenant at least three days before the sale.—*Reg.* 5, 1812, *Sect.* 18.

43. If the defaulter shall tender payment of the arrear demanded of him in the presence of two creditable witnesses after his property shall have been attached, and prior to the day fixed for its being put up to sale, and also of the necessary expences attending the attachment, the distrainer shall receive the amount of such arrear, and expences immediately upon the same being tendered, and shall forthwith release the property. In case of any dispute arising respecting the expences of the attachment, it shall be determined by the cauzy of the pergunnah in which the distress may have been levied. The Courts of Dewanny Adawlut are upon complaint made to them to punish any distrainer who may act contrary to this Regulation by awarding against him in favour of the party injured, damages according to the circumstances of the case, with all costs of suit.—*Reg.* 17, 1793, *Sect.* 11.—*Ben. Reg.* 45, 1795, *Sect.* 9.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 9.

SECT. IX.

Rules of Sale.

44. The property shall be brought to the place of sale on the morning of the day of sale, in order that it may be examined by the persons intending to bid, unless it shall consist of grain or other products of the earth, the removal of which would be attended with considerable expence, in which case, samples only, indiscriminately taken from each article, shall be brought to the place of sale, and exposed for the purpose above-mentioned. The property shall be put up to sale in one lot, or in two or more lots, as the Cauzy may think advisable. The property shall be disposed of for the highest price that may be offered for it. If the property shall sell for more than the amount of the arrear, the overplus, after deducting the charges attending the attachment and sale of it, shall be returned to the defaulter. If the proceeds of the sale shall be insufficient for the discharge of the arrear, and the expences attending the attachment and sale, the distrainer shall be at liberty to attach other property belonging to the defaulter, and to cause it to be sold to make good the deficiency. The Cauzy is in every case to examine the distrainer's statement of the expences consequent to the attachment and sale of the property, and to reject any part of it that may appear to him unreasonable. If any person vested with the power of distraint, shall sell or dispose of property which he may have attached for arrears of rent or revenue, in any other mode than that prescribed in this Section, he shall forfeit the arrear for which the distress may be levied to the defaulter, and make good to him the value of the property sold or disposed of with all costs of suit.—*Reg.* 35, 1795, *Sect.* 5.

45. If at the time of sale, a price shall not be offered for the distrained property equal to its appraised value, the sale shall be postponed until the ensuing market day, when the property shall be actually sold, whatever price (not less than the amount bidden on the first day of sale) may be offered for it.—*Reg.* 5, 1812, *Sect.* 19.

46. As a compensation to the cauzies and other public officers empowered to

dispose of property under distraint both for their personal trouble, and for the expence they may incur in publishing and making such sales, as well as in causing the attached property to be appraised as directed by Section 5, of Regulation 35, 1795, they shall draw a commission of one anna in the rupee on the amount sales of the property sold by them; to be deducted from the proceeds, and charged to the account of the defaulter, with the other expences attending the attachment. But no such commission shall be drawn, nor any charge made to the defaulter beyond expences actually and necessarily incurred, in the event of the sale being stopped by his discharge of the arrear due from him, or otherwise. It is expected that this allowance to the officers entrusted with the sale of distrained property, will ensure the faithful discharge of the trust reposed in them; and any collusion with the defaulter, distrainer, or purchaser, or other misconduct in the execution of the duty committed to them, will render them liable to immediate dismission from their offices in the mode provided by the Regulations, besides subjecting them to the other penalties therein specified, and full damages to the party injured.—*Reg.* 7, 1799, *Sect.* 5.

47. The distrainer, the cauzy, and the appraisers, are prohibited purchasing directly or indirectly any part of the property. Any cauzy or appraiser offending against this prohibition, shall be compelled to restore the property to the defaulter, or the full value of it, in the event of its being injured, damaged, destroyed, or not forthcoming, and shall forfeit the purchase money, which shall be appropriated to the liquidation of the arrear, and pay all costs of suit; and the Court shall report the circumstances to the Sudder Dewanny Adawlut, for the information of the Governor General in Council, who, if there shall appear to him sufficient ground for so doing, shall dismiss such cauzy from his office. Distrainers acting contrary to the prohibition contained in this section shall be compelled to restore the property to the defaulter, or the full value of it, if it shall have been injured, damaged, or destroyed, or shall not be forthcoming, and shall likewise forfeit to him the arrear for which the property may have been attached, and pay all costs of suit.—*Reg.* 17, 1793, *Sect.* 24.—*Ben. Reg.* 45, 1795, *Sect.* 22.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 22.

48. Neither the defaulter, nor any person on his behalf, shall be permitted to bid for or purchase the property.—*Reg.* 17, 1793, *Sect.* 25.—*Ben. Reg.* 45, 1795, *Sect.* 23.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 23.

49. The property shall be paid for in ready money at the time of the sale, and the purchaser shall not be permitted to carry away any part of the property which shall not have been paid for. Should the purchaser fail in the payment of the whole or part of the purchase money within five days, calculating from the day following the sale, the whole of the property, or the part of it which may be unpaid for, shall be resold by the Cauzy on such day as he shall fix, for the best price that may be offered for it. The defaulting purchaser shall forfeit to the distrainer, ten per cent on the amount of the price at which he shall have purchased the property so resold, and make good to him any loss that may arise, as well as the expences that may be incurred, on the resale. If any profit shall accrue on the resale, it shall be carried to the credit of the defaulter. —*Reg.* 35, 1795, *Sect.* 7.

50. The cauzy is to be careful to prevent any unfair practices either in the appraisement or sale of property. Upon proof being made before the Court of Dewanny Adawlut of the Zillah of his conniving at any such practices, the Court shall cause him

to make good any loss or injury that the defaulter may have thereby sustained, with costs of suit; and shall immediately report the circumstances of the case to the Sudder Dewanny Adawlut for the information of the Governor General in Council, who, provided there shall appear to him sufficient reason for so doing, shall dismiss such cauzy from his office.—*Reg.* 17, 1793, *Sect.* 23.—*Ben. Reg.* 45, 1795, *Sect.* 21.—*Ced. and Conq. Prov. Reg.* 28, 1803, *Sect.* 21.

DOCUMENTARY STAMPS.

Stamp duties shall be levied, raised, and paid, as heretofore, upon the Deeds, Instruments and Writings, and according to the rates specified in the Schedule A. annexed to this Regulation, from and after the date of the promulgation thereof, and no Deed, Instrument or Writing executed in any place whatsoever on the Continent of India and relating to the payment or receipt of any sum of money, or to the sale, conveyance, assignment, or transfer of any property, real or personal, being within any province or place to which this Regulation extends, or of any interest in such property, or relating to any agreement, contract, obligation, engagement or settlement intended to have effect within any province or place as aforesaid, (such deed, instrument, or writing being of a description chargeable with stamp duty, under the rules of this or any other Regulation) shall be pleaded, given in, or admitted in evidence, or otherwise received or filed in any Court of Judicature or other public office, within the provinces subject to the presidency of Fort William, unless the paper, vellum, or other material on which such Deed, Instrument, or Writing may be written, shall be stamped with the stamp prescribed for such Deed, Instrument, or Writing in the said Schedule—and the Schedule aforesaid shall be deemed and considered to be, to all intents and purposes, part of this Regulation.—*Reg.* 10, 1829, *Sect.* 3, *Cl.* 1.

Provided however, that no exception shall be taken to any Deed, Instrument, or Writing not executed on paper or other material bearing a Stamp of the specific denomination prescribed in the Schedule hereunto annexed, if such Deed, Instrument, or Writing shall bear a Stamp or Stamps of an amount exceeding that so prescribed, or if when of a date anterior to the passing and promulgation of this Regulation, the Stamp borne by the paper or other material of the Deed, Instrument, or Writing corresponds with the rate of duty chargeable on the same, at the time when such Deed or Writing was executed.—*Reg.* 10, 1829, *Sect.* 3, *Cl.* 2.

When a different Stamp may be in use for Calcutta and for the interior, no exception shall be taken to any Deed, Document, or Writing as bearing an undue Stamp, because stamped with the Calcutta Die when intended to have effect in the interior, provided the Deed or Document and the Stamp impressed thereon be in other respects correct, and the amount of duty indicated by the Stamp correspond with that prescribed in this Regulation.—*Reg.* 10, 1829, *Sect.* 3, *Cl.* 3.

If any Deed, Instrument, Petition, Pleading or other Writing, required to be written on stamped paper and written on the prescribed stamped paper, shall be filed, exhibited, or recorded in any Court of Judicature or public Cutcherry, or before any Judge, Collector, Register or other public Officer, not bearing the signature and endorsement of a Licensed Stamp Vender, (or not procured in the manner prescribed by this Regulation and duly certified to be so when not obtained from a Licensed Vender) the person or persons filing, exhibiting, or recording the said Deed, Instrument, Petition, Pleading or Writing, or causing or procuring it to be filed, exhibited, or recorded, shall forfeit a sum equal to five times the value of the said stamped paper; and if any Deed, Instrument, Petition, Pleading or Document shall be filed, exhibited, or recorded as aforesaid, having a forged or counterfeit stamp or signature, the person filing, exhibiting, or recording

such Deed, Instrument, or Document, that is to say, the party or his agent who may have produced the same for the purpose of being filed, exhibited, or recorded, shall forfeit to Government a sum equal to twenty times the value of the stamp, which ought to have been used, unless the material on which the same may be executed, shall bear the signature and endorsement required by this Regulation, and the party shall be able to shew to the satisfaction of the Zillah Judge or Collector or other officer conducting the enquiry on the part of Government as hereinafter directed, that the material stamped with a forged stamp was purchased or obtained on the date and in the manner specified on the back, or was otherwise procured in some manner prescribed or permitted by this Regulation.—If the said signature and date shall be duly endorsed on the back of the material stamped as aforesaid, with a forged impression, and the proof adduced to the fact, and to the date of purchase, be deemed by the Judge or other officer before whom or in whose office the Deed, Instrument, or other Writing may have been filed, exhibited, or recorded, to be sufficient, that officer, if not himself the Collector, shall transmit the Document to the Collector with a communication of his judgment in the case, in order that proceedings may be instituted against the Vender; and the Collector, on payment by the party of the established duty chargeable on account of the matter of the Instrument or Deed in question, shall forward it to the Superintendent of Stamps, in order that it may be duly stamped, the amount so paid being recoverable from the Vender, or from any fine levied from him on account of the transaction.—*Reg.* 10, 1829, *Sect.* 13, *Cl.* 1.

A Civil Court is at liberty to instruct a party presenting a Deed bearing an improper stamp, to apply to the revenue authorities for the purpose of having the proper stamp affixed.—*Con. No.* 1161, 3*d Aug.* 1838, *Par.* 2.

A Deed is admissible as evidence in a Court of Justice upon which the proper stamp has been affixed under the orders of any Commissioner of Revenue, on the representation of any Collector subordinate to his authority.—*Con. No.* 1161, 3*d Aug.* 1838, *Par.* 3.

It is not the province of the Civil Courts to decide upon the powers of the revenue officers in respect to each other; but if a Deed when presented to a Court bears the proper stamp, it should be received in evidence, without a question being admitted as to the competency of the authority by whose orders such stamp was affixed.—*Con. No.* 1161, 3*d Aug.* 1838, *Par.* 4.

A special appeal having been admitted, in a case originally decided on the evidence of a Deed bearing an improper stamp, the decisions of both the lower Courts shall be set aside, and the Court of first instance directed to restore the case to its original number on the file, and to proceed to dispose of it by allowing the plaintiff an opportunity of supplying the defect in his deed. —*Con. No.* 1161, 3*d Aug.* 1838, *Par.* 5.)

In reply to your letter of the 7th ultimo, requesting the opinion of the Court of Sudder Dewanny Adawlut whether, with reference to Section 3, Regulation 10, 1829, and Schedule A. therein alluded to, account books kept by merchants and shop-keepers for money paid or received, or for goods delivered, &c. &c. and not written on Stamp paper, are to be admitted or not as evidence in a Court of justice; I am directed to inform you, that there being no Regulation which requires account books to be written on Stamp paper, the Court are of opinion, that they should be considered admissible as evidence, although written on unstampt paper.—*Con. No.* 592, 6*th May,* 1831.

I am directed by the Court to forward their reply to the question contained in your's of the 29th of the preceding month: *Question.* An account of a party is made up, and the balance struck and stated, according to established usage, at the foot of the sheet in the bye-khata or banker's book of account: a third party renders himself responsible for the eventual adjustment of such balance, by affixing his name in the capacity (to all intents and purposes) of security for the debtor's discharge of the creditor's claim. Will the guarantee as above described, of the third party, be vitiated by the fact of the said security, &c. being on unstampt paper? *Answer.* To make the security available to the claimant, the leaf in the account book on which it is written must be stamped (as it still may be under Section 14, Regulation 10, 1829.) At the same time,

in the event of that course not being adopted, it rests with the claimant, in order to derive benefit from the security, to adduce other sufficient evidence of its having been given, independently of the paper exhibiting it, which in its present state cannot be legally received in proof of the fact.—*Con. No.* 970, *West. C. 4th Sept. Cal. C. 7th Aug.* 1835.

Where in a separate leaf of a merchant's books an entry of a sum advanced to an individual has been made in the form of a bond by the debtor, bearing interest, and regularly signed and attested, the Court consider, that the leaf having no stamp, the writing must be treated as a bond on plain paper; and rejected in toto.—*Con. No.* 325, 18*th Aug.* 1820.

The Court having again had before them your letter, No. 148, under date the 21st June last, direct me to inform you, that the Circular therein adverted to, (as is manifest as well from the preamble, as from the reference made in it to the letter addressed to the late Dacca Provincial Court on the 18th August, 1820, No. 325, of the Construction Book,) was intended merely to point out that bonds, tumasooks, or other obligations for the payment of money, entered in merchants' books, could not be received, as such, in evidence in a Civil suit, unless the paper on which they were engrossed, bore the stamp prescribed for instruments of that nature in Article 7, Schedule A. Regulation 10, of 1829, and not in any way to prohibit the admission of books of account as evidence in like manner as heretofore, it being expressly laid down in the letter written to the Judge of Zillah Tipperah on the 6th May, 1831, No. 592, of the Construction Book, that there being no Regulation requiring account books to be written on stampt paper, they should be considered admissible as evidence, although written on unstampt paper, which construction it certainly was not the intention of the Circular, referred to in your letter, to supersede.—*C. O. West. C. 3rd Aug. Cal. C.* 31*st Aug.* 1838.

In answer to the second question, the Court have directed me to acquaint you, that they do not consider acknowledgments of partial liquidations of the amount of a bond due, of the nature contemplated in this question, (by instalments it would seem,) to be of the description alluded to in Section 11, Regulation 1, 1814, and therefore that it is not necessary that each separate acknowledgment of this kind should be executed on stamp paper of the value prescribed by the Section above quoted, to render it admissible in evidence of payment.—*Con. No.* 341, 1*st June,* 1821, *Par.* 3.

In reply to the third query contained in your letter, the Court desire me to communicate to you their opinion, that they do not, in the transfer by sale, &c. of a house or other real property, consider an acknowledgment by the seller of the receipt of the purchase money to the purchaser, written on the back of the original title deeds, to be sufficient. The transaction in the case in question is evidently a distinct one between the parties concerned, and as such the Court are of opinion, that a separate acknowledgment should be executed on paper bearing the prescribed stamp, before it could be received in evidence in the course of a suit on the subject to such transfer.—*Con. No.* 341, 1*st June,* 1821, *Par.* 4.

SCHEDULE (A) *referred to in Section III. of the Regulation, containing a specification of the Duties chargeable on instruments of Conveyance, Contract, Obligation, and Security for Money, and on Deeds in general.*

1.	*AGREEMENT, IKRAR,* or any Minute, or Memorandum of an *AGREEMENT* concerning any matter or thing, not otherwise charged in this Schedule, nor expressly exempted from all Stamp Duty, whether the same be only evidence of a Contract or Obligatory upon the party —if relating to matters capable of valuation, and with the value stated,	To be charged as hereunder prescribed for Bonds of the same amount.
2.	*AGREEMENT* for a Monthly or Annual Payment, ...	To be estimated at the amount of ten years payment, or of the total sum secured, if less.

3. *AGREEMENT* to perform any legal act, or for a purpose not restricted to, or specifying any amount, ... — To be executed on such Stamp as the parties may determine, but no recovery can be made on the Instrument in any Court of Justice of a larger amount than may be covered by the Stamp at the rate prescribed in the Schedule for Bonds.

EXEMPTIONS.

Memorandum of Agreement for the hire of labour.

Ditto all Agreements carried on by letter through the Public Dawk between merchants and other persons.

4. *BILLS OF EXCHANGE, DRAFTS, PROMISSORY NOTES, HOONDEES, TEEPS, BURATS,* and other Orders or Obligations for the payment of Money, payable (if payable within the Provinces subordinate to this Presidency) at sight, or on demand, or at the periods specified below (not being Deeds, Instruments, or Writings, bearing the attestation of one or more witnesses) together with all Bills of Exchange payable out of the said provinces at whatever date.

		At sight or on demand, or not exceeding three months, to be charged.		Exceeding three months after date, and not exceeding one year, to be charged.	
		Sa. Rs.	As.	Sa. Rs.	As.
If for a sum of money not exceeding	25 Rs.	0	1	0	2
Above 25 Rs. and not exceeding	50 „	0	2	0	4
„ 50 „ .. Ditto	100 „	0	4	0	8
„ 100 „ .. Ditto	200 „	0	8	0	12
„ 200 „ .. Ditto	400 „	0	12	1	0
„ 400 „ .. Ditto	800 „	1	0	1	8
„ 800 „ .. Ditto	1,600 „	1	8	2	0
„ 1,600 „ .. Ditto	3,000 „	2	0	2	8
„ 3,000 „ .. Ditto	5,000 „	2	8	4	0
„ 5,000 „ .. Ditto	10,000 „	4	0	6	0
„ 10,000 „ .. Ditto	20,000 „	6	0	8	0
„ 20,000 „ .. Ditto	30,000 „	8	0	12	0
„ 30,000 „ .. Ditto	50,000 „	12	0	16	0
„ 50,000 „ .. Ditto	1,00,000 „	16	0	20	0
„ 1,00,000 „	„	20	0	25	0

Held by a majority of both Courts, that the hoondee, having been negotiated after acceptance, cannot be admitted in Court as a legal instrument, except on stamp paper, or with a copy on paper bearing the prescribed stamp.—*Con. No.* 1279, *West. C.* 19*th June, Cal. C.* 14*th Aug.* 1840.

5. *BILLS OF EXCHANGE, PROMISSORY NOTES,* &c. intended to be re-issued, ... — Shall be charged as prescribed for Promissory Notes payable at a date exceeding three months.

6. *BILLS OF EXCHANGE, PROMISSORY NOTES,* &c. of date exceeding one year, ... — To be charged as Bonds.

Note.—The Governor General in Council reserves to himself the power of admitting any Bank or Company to compound for the Stamp Duty chargeable on the Promissory Notes issued by it. Notice of such arrangements shall be given in the Government Gazette.

EXEMPTIONS.

Bills of Exchange or Hoondees for any sum of Money if drawn bonâ fide from any place distant more than 100 *miles from the place where the same are made payable, and not negociated after acceptance, also Foreign Bills of Exchange drawn in sets.*

Provided, however, that if any Bill or Bills of Exchange drawn in any part of the Continent of India, and made payable in the Provinces, subject to this Presideney, shall be negociated therein after acceptance, or be in any way transferred after acceptance to a third party, other than the acceptor and the payee of such Bill or Bills, the exemption shall not hold in respect to any such negociated Bill or Bills, unless the same shall be taken to be stamped prior to such negociation, or unless there be affixed to each Bill a copy of the same executed on paper stamped with the Stamp to which such Bill is declared liable in this Schedule.

EXEMPTIONS CONTINUED.

Bills of Exchange drawn and Promissory Notes, &c. issued by Government officers authorized to draw Bills upon the Government Treasuries, or to issue Promissory Notes or other acknowledgments on account of Government.

All drafts or Orders for the payment of any sum of Money to the bearer on demand, drawn upon any Bank, Banker, or Agent, residing within twenty miles of the place where such Draft or Order shall be issued, such place being specified on the face of the Draft.

BILLS OF SALE.—See Conveyance and Mortgage.

7. *BONDS, TUMUSOOKS* and other Attested Obligations for the payment of money, also *PROMISSORY NOTES* and *BILLS OF EXCHANGE, TEEPS, BURATS,* and the like, of date exceeding one year.

				Sa.	Rs.	As.
If for any sum not exceeding			25 Rupees,		0	2
Above	25 Rs. and not exceeding		50 „		0	4
„	50 „	Ditto	100 „		0	8
„	100 „	Ditto	200 „		1	0
„	200 „	Ditto	300 „		2	0
„	300 „	Ditto	500 „		4	0
„	500 „	Ditto	1,000 „		6	0
„	1,000 „	Ditto	2,000 „		10	0
„	2,000 „	Ditto	3,000 „		16	0
„	3,000 „	Ditto	5,000 „		20	0
„	5,000 „	Ditto	10,000 „		32	0
„	10,000 „	Ditto	20,000 „		40	0
„	20,000 „	Ditto	50,000 „		64	0
„	50,000 „	Ditto	75,000 „		70	0
„	75,000 „	Ditto	1,00,000 „		80	0
„	1,00,000 „	Ditto	1,50,000 „		100	0
„	1,50,000 „	Ditto	2,00,000 „		120	0
„	2,00,000 „				150	0

and a further duty of 100 Rupees for every sum of one Lakh in excess of the said amount of two Lakhs of Rupees.

I have the honour to solicit the Court's construction, as to the legality of a Judge receiving a tumusook filed by a plaintiff suing for the amount, wherein money is stated to be lent to two persons unconnected with each other. Thus five rupees in the bond is stated to be lent to A. and twenty-nine rupees to B. these persons are as far as I can judge unconnected, and even unknown to each other; it is in evidence the loans are embodied in one bond to evade the stamp duty the bond comes under, (on account of its date, Regulation 1 of 1814,) which prescribes that bonds for these two sums should be written on paper of the value of two annas each. If I admit this document and decree on it, I afford means of defeating the intent of the Stamp Regulation.

—I am directed by the Court to inform you that, provided the value of the stamp be sufficient, under the Regulation in force at the time the bond was executed, to cover the total amount of thirty-four rupees, the fact of two distinct and separate debts, one of five and the other of twenty-nine rupees, due by different individuals, being engrossed thereon, would not vitiate the deed.—*Con. No.* 1037, *West. C.* 23*rd March*, *Cal. C.* 21*st April*, 1837.

8. *BONDS*, given as security for the transfer of Government Securities, or for the payment of an Annuity for a fixed period, or for the delivery or accounting for any matter or thing capable of being valued, ...	Shall be charged at the rate of the amount engaged to be paid or accounted for, or at the value of the thing to be delivered or transferred.
9. *BONDS*, for Annuities for an indefinite period, such as Life Annuities, and the like, ...	Shall be charged at the rate of ten times the yearly payment.
10. *BONDS*, when the amount of the Money to be secured, or ultimately recovered, shall be uncertain and unlimited, ...	May be executed on such Stamp as the party may please, but no recovery shall be made thereon in any Court of Justice of a larger amount than is covered by the Stamp.
11. *BONDS*, for the due execution of an Office, or Work, Mochulkas, and the like taken by individuals, and all other Bonds not otherwise charged or exempted from duty, ...	On optional Stamp as above, with like condition.
12. When the amount is limited to a certain sum, ...	The same as on a Bond for such limited sum.

EXEMPTIONS.

ARBITRATION BONDS.

BONDS, given to or by the officers of Government on account of any matter, or thing of, or belonging to the Government in its Political or Territorial capacity.

13. *SECURITY BONDS*, which may be taken by or by order of any Court, Collector, or other Judicial or Revenue authority, also Razeenamahs, Soolunamahs and Ruffanamahs, filed in any Suit pending in a Court of Justice, ...	To be charged as specified and prescribed in Schedule B for Law Papers.

In reply to the first question contained in your letter, the Court have directed me to communicate to you their opinion, that a person becoming security for the payment of a bond, and affixing his name to the deed in recognition of his responsibility, is liable to be sued as a party with the principal, the transaction being as it were a joint one; and that it is not necessary to the admissibility of an action against him, that he should have entered into a regular security bond, on separate stampt paper of the same value as that of the original obligation.—*Con. No.* 341, 1*st June*, 1821, *Par.* 2.

It has been brought to the notice of the Court that a practice obtains in some districts, of admitting as legal evidence security bonds written on the same sheet of paper with the principal deed, where the stamp used was only of the value required for the latter instruments. As this practice is clearly erroneous, and deeds of the kind alluded to are wholly inadmissible as evidence against securities, the Court deem it proper to call your attention to the rule, and to request that you will make it known to the lower Courts.—*Cir. Ord. Cal. C.* 27*th Oct. West. C.* 1*st Dec.* 1837.

I am directed to request that you will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the Judge of Zillah Mynpooree, No. 44, under date the 9th instant, relative to the Circular of the 27th October last, which originated with the Calcutta Court on the subject of security bonds.

Mr. Begbie, it will be observed, considers the Construction laid down in the Circular in question, opposed to that contained in the letter written to the Judge of the Jungle Mehals, under date the 21st June, 1821, No. 341, of the printed Construction Book.

The Court direct me, however, to remark, that the Construction adverted to by Mr. Begbie, referred to the case of a person becoming security for the payment of a sum of money, and affixing his signature to the bond in recognition of his liability equally with the principal for the amount, the transaction being as it were a joint one, in which case it was held by the Court that it was not necessary to the admissibility of an action against the surety that he should have entered into a regular security bond on separate stampt paper of the same value as that of the original obligation; whereas the present Construction has reference to a formal security bond executed on the same paper as the original instrument, which the Court have declared is not admissible under the Stamp Regulations as evidence against the surety: the two cases are, therefore, quite distinct, and the Constructions are not, as supposed by Mr. Begbie, at variance with each other.—*Con. No.* 1121, *West. C. 9th Dec. Cal. C. 29th Dec.* 1837.

14. ***CHARTER PARTIES,*** or any ***AGREEMENT*** of ***CONTRACT*** for the Charter of any ship or vessel, or any Memorandum, Letter, or other writing between the Captain, Master, or Owner of any ship or vessel, and any other person, for or relating to the freight or conveyance of any money, goods, or effects on board of such ship or vessel, ... — If the amount payable under the Deed exceeds one thousand Rupees, eight Rupees—and if less than one thousand Rupees,* according to the Scale prescribed for Bonds.

EXEMPTIONS.

Charter Parties of ships or vessels taken up by Government for the conveyance of Troops or Military Stores, or for other Political purposes.

15. ***CONTRACTS*** and ***DEEDS,*** if not otherwise charged or exempted from duty, ... — As agreements *Su. Rs. As.*

16. *COPARTNERSHIP, DEEDS of* 8 0

17. *COMPOSITION DEEDS,* or other Instruments of Composition between a debtor or debtors, and his, her, or their creditors, ... 8 0

18. *CONVEYANCES,* (*KUBALAS, BYNAMAS, HIBANAMAS*) or Deeds or Instruments of any kind or description whatsoever executed for the sale or transfer for a consideration of any lands, tenements, rents, annuities, or other property, real or personal, heritable or moveable, or of any right, title, interest or claim to, or upon any lands, houses, rents, annuities, or other property, that is to say, for or in respect of the principal or only Deed, Instrument, or Writing whereby the property sold shall be conveyed to or otherwise vested in the purchaser or purchasers, or to some other person, by his or their directions.

When the purchase or consideration-money therein expressed or denoted shall not exceed,								50 Rupees,	0	8
Above	50 Rs.	and not exceeding						100 „	1	0
„	100 „	Ditto						200 „	2	0
„	200 „	Ditto						500 „	4	0
„	500 „	Ditto						1,000 „	8	0
„	1,000 „	Ditto						2,000 „	12	0
„	2,000 „	Ditto						3,000 „	16	0
„	3,000 „	Ditto						5,000 „	20	0
„	5,000 „	Ditto						8,000 „	32	0
„	8,000 „	Ditto						12,000 „	40	0
„	12,000 „	Ditto						20,000 „	50	0
„	20,000 „	Ditto						30,000 „	64	0
„	30,000 „	Ditto						50,000 „	80	0
„	50,000 „	Ditto						1,00,000 „	100	0
„	1,00,000 „	Ditto						2,00,000 „	150	0

	Sa. Rs.	*As.*
And for every further Lakh of Rupees beyond Two Lakhs,	100	0

Note.—When, of several Deeds, Instruments, or Writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to engross the same on Paper, Parchment, Vellum, or the like stamped for the prescribed advalorem duty.

19. Provided, however, that in all cases where there are more Deeds than one, all other Deeds than the principal shall be charged with a like stamp to the principal Deed if of value not exceeding eight Rupees, (which sum shall be the maximum duty on collateral Deeds,) and all such collateral Deeds shall specify by their contents, which other is the principal Deed by which the Conveyance has been effected, cerrifying, that it is executed in the manner and on material stamped as required.

EXEMPTIONS.

All Grants, Leases, Sales, or the like, wherein Government, in its Political or Territorial Capacity, is a party.

Note.—This exemption shall not extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of Decrees of Court, in which cases the purchasers shall be required to pay the prescribed duty along with the purchase-money, and shall receive from the Officer conducting the sale, a Deed of Sale (Bye Nama,) executed on paper impressed with a corresponding Stamp.

EXEMPTIONS CONTINUED.

All transfers of Subscriptions to any of the Government Loans, or other Government Securities, also of Bank Shares.

Certain lesses of the ghaut dues have petitioned to be relieved of the expence of having their kubooliyuts and security papers drawn out on stampt paper. On referring to the stamp Regulation 10, of 1829, I find it stated in Schedule A under the title of conveyances, that "all grants, leases, sales or the like, wherein Government in its political or territorial capacity is a party," shall be exempted from the duties thereby declared generally applicable.

I conclude that the ghaut renters are to be considered as holding "leases from Government, in its territorial capacity," and that they are accordingly entitled to the exemption above noticed; but as it has been the practice hitherto to employ stampt paper in this matter, I beg to refer the point for your decision.

In reply to your letter No. 39, of the 21st August last, I am directed by the Court to inform you that the case alluded to therein comes within the meaning of the exemption in Schedule A, of Regulation 10, of 1829, and that the engagements, which the farmers of Government property are obliged to enter into, are not required to be drawn up on stampt paper.—*Con. No.* 1111, *West. C. 22nd Sept. Cal. C. 27th Oct.* 1837.

20. *COPIES—COPY*, or *COUNTERPART* of any Deed or Instrument attested to be a true copy and furnished to a party to the same, for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby, ...	The same Duty as prescribed for the Original Deed by this Regulation.	
21. Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the agreement, contract, bond, deed, or other instrument, per sheet, ...	*Sa. Rs.* 0	*As.* 8
22. *COPY* or Extract of any Deed, Instrument, Schedule, Receipt, or other matter annexed to any Agreement, Contract, Bond, Deed, or other Instrument, per sheet, ...	0	8

23. Authenticated Copies of any Records, Letters, Accounts, Statements, Reports, or other Writings furnished to individuals from any of the public offices of Government, shall be written on paper of the size and description now used for the purpose, and called Copy Paper at the Stamp Office, and of the value for each and every sheet of, ... — 0 8

For Copies of Judicial Papers to be given from the Courts of Justice, Revenue Cuctherries, &c.—See Schedule B.

EXEMPTIONS.

Copies made for the private use only of any person having the custody of the Original Instruments, or of his or her Attorney or Solicitor, and Copies of Deeds, &c. retained in Public Offices on returning the Originals.

Copies of Papers which Public Officers are directed by any General Regulation to make, require, or furnish, not being specially declared chargeable with Stamp Duty.

24. *DEEDS*, of any kind, not otherwise particularized in this Schedule, — As Agreements.

25. *EXCHANGES*—Any Deed, whereby Real Property shall be conveyed, or surrendered in exchange for other property.

If no sum of money shall be paid or agreed to be paid for equality of exchange, — 8 0

26. And if any sum of Money be paid or agreed to be paid for equality of exchange, ... — The same ad valorem Duty as for a Conveyance for such sum.

27. *ENGAGEMENTS* to cultivate, provide, or deliver Indigo plant, or to produce, manufacture, provide or deliver any other Article of Commerce, in consideration of advance made, ... — Shall be charged on the amount advanced at the rate of Bonds.

28. *LEASES.* Any Lease made in perpetuity, or for a term of years or period determinable, with one or more lives, or otherwise Contingent, in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent, ... — The same duty as for a conveyance or Sale for a sum of the amount of such consideration.

29. Any *LEASE OF LANDS, HOUSES, or other REAL PROPERTY* at a monthly or Yearly Rent, without any payment of any sum of Money by way of fine or premium.

Where the Rent calculated for a whole year shall exceed Twelve						For a period not exceeding one year.		For a period exceeding one year.	
						Sa.	*Rs.* *As.*	*Sa.*	*Rs.* *As.*
Rupees, but not exceed 24 Rupees, ...						0	4	0	8
Exceeding	24	Rupees, but not exceeding		50	Rupees,	0	8	0	12
„	50	„ ..	Ditto ..	100	„	0	12	1	0
„	100	„ ..	Ditto ..	250	„	1	0	2	0
„	250	„ ..	Ditto ..	500	„	2	0	4	0
„	500	„ ..	Ditto ..	1,000	„	4	0	8	0
„	1,000	„ ..	Ditto ..	2,000	„	8	0	12	0
„	2,000	„ ..	Ditto ..	4,000	„	12	0	16	0
„	4,000	„ ..	Ditto ..	6,000	„	16	0	20	0
„	6,000	„ ..	Ditto ..	10,000	„	20	0	32	0
„	10,000	„ ..	Ditto ..	50,000	„	32	0	64	0
Above	50,000	.. ..	.. ..	..	..	64	0	80	0

30. Any *LEASE OF LANDS, HOUSES*, or other *REAL PROPERTY* stipulating for a Yearly Rent, and granted in consideration of a fine or premium, ... — Shall be charged with a duty equal to both ad valorem duties above provided, viz. both as lease and conveyance.

31. The *COUNTERPART* of any *LEASE*, i. e. the *KUBOOLEUT*, or the like, ...

37. ***DEEDS** of **MORTGAGE*** given for the Security of Annuities for an indefinite period, such as Life Annuities and the like, ... — Shall be charged at the rate of ten times the annual payment.

38. Where the total amount secured by such Mortgage is unlimited, ... — The Deed may be executed on such Stamp as the Party may choose, but no further sum can be recovered thereon, than may be covered by the Stamp.

39. Where it may be stipulated that the amount secured by such Mortgage shall not exceed a certain sum, ... — At the rate of such limitation.

Note.—When a Bond may have been already taken for the amount secured, or where, from any other cause, the Mortgage shall act merely as a Collateral Security to some other transaction already charged with the ad valorem duty thereupon, the same being specified in the body of the Deed of Mortgage, ... — The Deed to be charged as a Collateral Deed. See Note after Conveyances.

Likewise, in case of there being more Deeds than one required to execute the Mortgage in the manner desired by the parties, the Principal Deed only shall be charged with the ad valorem duty, and all other Deeds connected with the same transaction, ... — Shall be charged as prescribed in the rule for Collateral Deeds, under Head Conveyance.

40. ***MORTGAGES, ASSIGNMENTS, ACKNOWLEDGMENTS,*** or Promissory Notes granted to the Treasurer, or other Officer of the Bank of Bengal on account of the Bank, or to any private Banker or Agent for Loans or Advances made on the Deposit of Government Securities, Bullion, Plate, Jewels, or other Goods, ... — To be charged as Promissory Notes.

41. ***PARTITIONS*** by private Agreement of Heirs and Co-Sharers, or made by Public Officers of Estates, or Property real or personal or in the nature of Separation of Brotherhood, as amongst Hindoos, when a Sharer's portion exceeds in value Rupees Eight Hundred, then on every such Sharer's copy of the Deed of Partition, ... — 8 0

When the Sharer's portion shall not exceed 800 Rupees,

Then if not exceeding 100 Rupees, ...	0	8
Exceeding 100 Rupees and not exceeding 200 Rupees, ...	1	0
200 .. .. 400	2	0
400 .. .. 600	4	0
600 .. .. 800	6	0

And if any sum or sums of Money shall be paid or agreed to be paid for equality of Partition, ... — The principal Deed stipulating for such payment shall be charged besides with the ad valorem duty, prescribed for a Conveyance or Sale for an equal sum.

42. ***POLICY OF ASSURANCE, or INSURANCE,*** or other Instrument, by whatever name the same shall be called, whereby an Insurance shall be made upon any life or lives, or upon an event depending upon any life or lives.

Where the sum insured shall not exceed	Sa. Rs. 5,000	4	0
Exceeding 5,000 not exceeding	„ 10,000	8	0
„ 10,000 .. Ditto	„ 20,000	12	0
„ 20,000 .. Ditto	„ 50,000	16	0
Above	„ 50,000	20	0

An instance has been brought to the notice of the Court of unstamped policies of insurance being received as legal evidence. Although the Court have no reason to believe that such an irregularity prevails to any extent, they consider it proper to direct your attention to the entries Nos. 42 and 43, in Schedule A, Regulation 10 of 1829, with a view to prevent any instruments of the kind being admitted as evidence except when they bear the prescribed stamp.—*C. O. 29th Sept.* 1837.

43. *POLICY OF INSURANCE* of any Ship, Vessel, Sloop, Lighter, Boat, or the like, or of any Goods or Property on board, or upon the Freight of any Ship, Vessel, Sloop, Lighter, Boat, or the like, or upon any other interest relating thereto, or upon any Voyage where the premium shall not exceed Two per cent. on the sum insured, if the whole sum insured shall not exceed One Thousand Rupees, ...	0	8
If the sum insured exceed One Thousand Rupees, then for every one Thousand Rupees, and also for any fractional part of One Thousand Rupees whereof the same shall consist, ...	0	8
Where the Premium shall exceed Two per cent. on the sum insured, if the whole sum shall not exceed One Thousand Rupees, ...	1	0
If the sum insured exceeds One Thousand Rupees, then for every One Thousand Rupees and also for any fractional part of One Thousand Rupees whereof the same shall consist, ...	1	0
PROMISSORY NOTES, ...	See Bills of Exchange.	
PROMISSORY NOTES, payable at a period exceeding One Year after date, ...	See Bonds.	
44. *PROMISSORY NOTES* for the payment of any sum by Instalments, i. e. *KISTBUNDEES*, or for the payment of several sums at different dates so that the whole of the Money to be paid shall be definite and certain, ...	The same Duty as would be chargeable on a Bond for the whole amount.	

All Receipts for Money deposited in any Bank, or in the hands of any Banker or Agent, if the same shall stipulate for the payment of interest upon the Money so deposited, or in hand, shall be deemed and taken to be Promissory Notes.

45. *RECEIPTS* or *DISCHARGES* given for any, or upon the payment of any sum of Money,

Exceeding	50	Rupees	not exceeding	100	Rupees,	0	2
,,	100	,,	Ditto	200	,,	0	4
,,	200	,,	Ditto	500	,,	0	8
,,	500	,,	Ditto	1,000	,,	0	12
,,	1,000	,,	Ditto	2,000	,,	1	0
,,	2,000	,,	Ditto	3,000	,,	1	8
,,	3,000	,,	Ditto	5,000	,,	2	0
,,	5,000	,,	Ditto	8,000	,,	2	8
			Above	8,000	,,	4	0
Also for a Receipt in full of all Demands, ...						4	0

And any Instrument, Note, Memorandum or Writing, given upon the payment of Money, whereby any Money, Debt or Demand, or the part thereof therein specified, shall be expressed or acknowledged to have been paid, settled, or otherwise satisfied, shall be deemed to be a Receipt for the amount so declared to be paid or satisfied. The Duty is to be paid by the Party giving the Receipt, and if a Stamped Receipt be refused, the Party making the payment may provide the Stamp, deducting the value thereof from the sum due.

And if any such Instrument or other Writing shall contain a general acknowledgment of the settlement of Debts, Accounts, or other Demands, without specifying the amount thereof, such Instrument or Writing shall be deemed and taken to be a Receipt in full of all Demands, and charged accordingly.

And if payment be made by Delivery of a Bill or Bills of Exchange, Draft or Drafts, Promissory Note, or the like Securities of money, the Receipt or Acknowledgment given thereupon, shall be deemed to be a Receipt within the meaning of this Schedule.

EXEMPTIONS.

Receipts for Money paid or received by any Officer of Government on account of Government, not in the Commercial Department.

Receipts or Discharges for the Rent of Land granted by any Zemindar, Talookdar, Farmer or other Malgoozar, or by any Holder or Proprietor of Land held exempt from the payment of Revenue, or by any Mofussil Talookdar, Ijaradar, Kutkenadar, or other Leaseholder, or by the Gomashta, Factor, or other Agent of such Zemindar, or other person aforesaid, to a Ryot or other actual Cultivator for the Rent of Land tilled by him.

Note.—Receipts or Discharges granted by any Zemindar, Talookdar or other Holder or Proprietor of Land, or by any Farmer, Kutkenadar, Ijaradar or other Tenant to any other Talookdar, Kutkenadar, Ijaradar, or other Lease-holder intermediate between the Ryots or actual Cultivators, and the Sudder Malgoozar or Lakherajdar, shall be written on Stamped Paper of the kind and rates above prescribed.

EXEMPTIONS CONTINUED.

Receipts and Discharges given for the Purchase Money of any Government Securities or Shares of the Bank of Bengal.

Receipts and Discharges given for Money deposited in any Bank, or with any Agent, to be accounted for on demand, provided no Interest be stipulated as payable thereon.

(If Interest be stipulated, such Receipt shall be chargeable as a Promissory Note, as above provided.)

Receipts or Discharges written upon Promissory Notes, Bills of Exchange, Drafts or Orders for the payment of Money duly Stamped.

Receipts and Discharges given to Gomashtas and others, being Servants of the Party giving the Receipts, in acknowledgment of the performance of Service, or of the said Servants having rendered Account of Trusts and Monies committed to them.

Letters by the Post acknowledging the arrival of any Promissory Notes, Bills of Exchange, or other Securities for Money.

Receipts or Discharges written upon or contained in any Mortgage Deed or other Security, or any Deed of Conveyance, Settlement, or other Instrument duly Stamped, acknowledging the Receipt of the consideration-money therein expressed, or the Receipt of any principal Money, Interest, or Annuity thereby secured.

The Court having reason to believe that receipts for sums of money not exceeding 50 Rupees, paid from the treasuries of the Civil Courts, are still occasionally taken on stamp paper, in accordance with the rule contained in Section 11, Regulation 1, 1814; direct me to observe that such receipts should, under Article 45, Schedule A, Regulation 10, 1829, be exempted from stamp duty; provided the sum paid on the receipt be the full amount in deposit, and not a fractional part only of a sum, subdivided with a view to evade payment of the stamp duty.—*C. O. 5th August,* 1836.

46. *SETTLEMENTS, MARRIAGE SETTLEMENTS, &c. viz.*

Any Deed or Instrument, whereby any sum or sums of Money or any Government Securities, or other property, real or personal, shall be settled or agreed to be settled upon, or for the benefit of any person or persons in any manner whatsoever, ... } Shall be charged with the advalorem duty chargeable for a Bond for the amount of value settled, or agreed to be settled, or in cases in which the value shall be indeterminate at the rate chosen by the parties under the rule and condition prescribed for Bonds and agreements.

DEEDS of GIFT and DOWER, whether to take effect on the instant or at a future period, determinate or indeterminate, ... } Shall be charged as Deeds of Settlement.

I am directed to inform you that deeds of Hibeh-bila-ewuz should, as directed in Article 46 of Schedule A, Regulation 10, 1829, be charged as "agreements" (Article 3, Schedule A,) with such stamp as the parties may determine.—*Con. No.* 836; *West. C.* 11*th Oct. Cal. C.* 8*th Nov.* 1833.

EXEMPTIONS.

Wills, Testaments, and the like, together with Deeds merely declaratory of Trust, pursuant to any previous Settlement, Deed, or Will.

GENERAL EXEMPTION AND RULE.

Deeds, Instruments and Writings of any kind, in which Government, or any Board, Commission, Court, or Public Officer of Government may, in a public capacity be a Party, shall not be chargeable with any Stamp Duty, save and except Deeds, Instruments, and Writings relating to matters of, or belonging to the Commercial Department, or on account of any Commercial Concern of, or belonging to the Honourable Company, which shall be written on Stamped Paper of the same value as is or may be prescribed for the like Deeds or Instruments in the case of private individuals.

Note—The foregoing Exemption shall not extend to Deeds, Instruments and Writings executed to or by the Court of Wards, Local Agents or Officers acting under their authority, such transactions being liable to a Stamp Duty like the transactions of individuals.

GENERAL RULE.

If any Deed, Instrument, or Document specified in this Schedule shall not be contained in one sheet or piece of paper or other material, it shall suffice that one sheet shall bear the Stamp, provided that the Signature or Seals of the Parties and Witnesses be thereupon.

PREVENTION OF AFFRAYS CONCERNING LAND, AND RELIEF IN CASES OF FORCIBLE DISPOSSESSION.

1. Whereas it is expedient to remove doubts which have arisen upon the interpretation of Regulation 15, of 1824, and to amend the Law for preventing Affrays concerning the possession of Land and for giving relief in cases of forcible dispossession, and to extend it to cases not hitherto provided for, and to make it applicable to persons of every class or description, whether British-born subjects or others—*Act* 4, 1840, *Sect.* 1.

2. It is hereby enacted, that Regulation 49, of 1793, Regulation 14, of 1795, Regulation 32, of 1803, Section 5, Regulation 6, of 1813, Regulation 15, of 1824, and Regulation 2, of 1829, of the Bengal Code, together with so much of any Regulations as extends any of the above Regluations or parts of Regulations to any places within the Presidency of Fort William in Bengal, be repealed.—*Act* 4, 1840, *Sect.* 1.

3. And it is hereby enacted, that whenever any Magistrate or other Officer exercising the powers of a Magistrate may be certified that a dispute likely to induce a breach of the peace exists concerning any Land, Premises, Water, Fisheries, Crops, or other produce of Land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on all parties concerned in such dispute (whether Proprietors, dependent Talookdars, Farmers, under-Farmers, Ryots or other persons) to attend his Court in person, or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. And the Magistrate or other Officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to enquire what party was in possession of the subject of dispute when the dispute arose, and after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary the Magistrate or other Officer as aforesaid shall put such party into possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent Court.—*Act* 4, 1840, *Sect.* 2.

4. And it is hereby enacted, that if the Magistrate or other Officer as aforesaid shall, in the cases mentioned in Section 2 of this Act, be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent Court, giving the Collector information of the attachment; and if the subject of dispute be Land, the provisions of Regulation 5, of 1827, regarding attachment by order of a Zillah or City Court shall apply to attachments by order of a Magistrate or other Officer as aforesaid made under this Section.—*Act* 4, 1840, *Sect.* 3.

5. And it is hereby enacted, that if any party shall complain to a Magistrate or

other Officer as aforesaid, that he has been without authority of Law forcibly dispossessed of any Land, Premises, Water, Fisheries, Crops, or other produce of Land within the jurisdiction of such Magistrate or other Officer as aforesaid, whether the same were possessed by such party as Proprietor, dependent Talookdar, Farmer, under-Farmer, Ryot or otherwise, the Magistrate or other Officer as aforesaid shall require the party or parties complained against, and any other parties concerned, to appear and make defence in person or by agent within a reasonable time; and if, after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he shall record a proceeding, ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent Court; provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession.—*Act* 4, 1840, *Sect.* 4.

6. And it is hereby enacted, that if, in cases instituted under this Act, the subject of dispute be newly formed Land, whereof it shall appear to the Magistrate or other Officer as aforesaid that no party has ever had possession, the Magistrate or other Officer as aforesaid shall award possession to the party to whom the right of possession belongs according to law or custom, and shall maintain that party in possession until the right to possession be determined by a competent Court.—*Act* 4, 1840, *Sect.* 5.

7. And it is hereby enacted, that if a dispute arises concerning the right of use of any Land or Water, the Magistrate or other Officer as aforesaid within whose jurisdiction the subject of dispute lies may enquire into the matter, and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said Magistrate or other Officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent Court adjudging him to be entitled to such exclusive possession. Provided that the Magistrate or other Officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the enquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.—*Act* 4, 1840, *Sect.* 6.

8. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall, together with all persons aiding and abetting, be liable, on conviction before a Magistrate or other Officer with the powers of a Magistrate, to be sentenced to simple imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, commutable if not paid to a period of simple imprisonment not exceeding six months, or to both imprisonment and fine as aforesaid.—*Act* 4, 1840, *Sect.* 7.

9. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner under the Regulations and Laws that are or may be in force relating to appeals from the orders of Magistrates or other Officers exercising the powers of Magistrates.—*Act* 4, 1840, *Sect.* 8.

10. And it is hereby enacted, that in cases instituted under this Act the Magistrate or other Officer as aforesaid is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award shall be executed as if it were the award of such Magistrate or other Officer as aforesaid.—*Act* 4, 1840, *Sect.* 9.

11. And it is hereby provided that nothing in this Act contained shall affect the legal exercise of any right of attachment or seizure vested by law in any parties.—*Act* 4, 1840, *Sect.* 10.

12. And it is hereby further provided, that this Act shall not extend to any place beyond the limits of the Presidency of Fort William in Bengal, or to the Settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.—*Act* 4, 1840, *Sect.* 11.

ADDENDA.

LIMITATION OF TIME FOR THE COGNIZANCE OF SUITS.

[Bengal, Behar, and Orissa.]

1. The Zillah and City Courts are prohibited hearing, trying, or determining, the merits of any suit whatever, against any person or persons, if the cause of action shall have arisen previous to the 12th of August 1765.—*Reg.* 3, 1793, *Sect.* 14.

[Benares.]

2. The City Court, and the three Zillah Courts, are prohibited hearing, trying, or determining, the merits of any suit whatever, against any person or persons, to regain the possession of lands or grounds, if the cause of action shall have arisen previous to the 1st of July 1775.—*Reg.* 7, 1795, *Sect.* 8.

[Provinces ceded by the Nawaub Vizier.]

3. The Courts of Adawlut are prohibited from hearing, trying, or determining the merits of any Civil suit whatever, if the cause of action shall have arisen at a period, being twelve years, antecedent to the date on which the petition for the institution of such suit, shall be presented to the Court. This rule is to remain in force, until the period of twelve years shall have elapsed, from the date of the cession of the Provinces, ceded by the Nawaub Vizier to the Honourable the English East India Company, viz. the 10th day of November 1801.—*Reg.* 2, 1803, *Sect.* 18, *Cl.* 1.

[Agra, Seharunpore, Allyghur, Bundlekund.]

4. In lieu of the date prescribed by Section 18, Regulation 2, 1803, the 30th of December, 1803, in the provinces constituting the zillah of Allyghur, the northern and southern divisions of the zillah of Saharunpore, and the zillah of Agra; and the 16th of December 1803, in the territory constituting the zillah of Bundlekund; (being the dates on which the said provinces and territories were respectively ceded to the Honourable the English East India Company) shall be considered the periods of limitation for taking cognizance of suits, subject to the several provisions contained in Section 18, Regulation 2, 1803, and in Sections 2 and 3, Regulation 2, 1805.—*Reg.* 8, 1805, *Sect.* 6, *Cl.* 2.

[Cuttack.]

5. The Courts of Adawlut are prohibited from hearing, trying, or determining the merits of any civil suit whatever in the Zillah of Cuttack, including the abovementioned purgunnahs, if the cause of action shall have arisen at a period, being twelve years antecedent to the 14th day of October 1803, the date on which the fort and town of Cuttack were surrendered to the British arms.—*Reg.* 14, 1805, *Sect.* 5.

[Sonk, Sonsa and Sahar.]

6. Instead of the date specified in Section 11, Regulation 9, 1804, the 17th of April 1805, being the date of the treaty concluded with the Rajah of Bhurtpore, shall be considered the period of limitation for taking cognizance of crimes and offences committed in the pergunnahs mentioned in Section 2.—*Reg.* 12, 1806, *Sect.* 4.

[Callinger.]

7. The Courts of Civil Judicature shall not be deemed competent to take cognizance of any civil suit, if the cause of action shall have arisen previously to the 19th of June 1800, being a period of twelve years antecedent to the cession, as above specified.—*Reg.* 22, 1812, *Sect.* 4.

[Deyra Dhoon.]

8. The Courts of Civil Judicature shall not be deemed competent to take cognizance of civil claims in the Deyra Dhoon, the cause of action in which may have originated previously to the 15th of May 1803, being a period of twelve years antecedent to the date of the convention, by which that tract of country was surrendered to the British Government.—*Reg.* 4, 1817, *Sect.* 3.

[Khundeh and Mahoba.]

9. The Courts of Civil Judicature shall not be deemed competent to take cognizance of civil claims in the elakeh and villages in question, the cause of action in which may have originated previously to the 1st of November 1805, being a period of twelve years antecedent to the cession of the elakeh and villages in question.—*Reg.* 2, 1818, *Sect.* 3, *Cl.* 2.

[Goberdhun.]

10. The Courts of Civil Judicature shall not be deemed competent to take cognizance of civil claims in Pergunnah Goberdhun, the cause of action in which may have originated previously to the 25th January, 1814, being a period of twelve years, antecedent to the date on which that pergunnah was resumed.—*Reg.* 5, 1826, *Sect.* 3.

11. The Zillah and City Courts are prohibited hearing, trying, or determining, the merits of any suit whatever, against any person or persons, if the cause of action shall have arisen previous to the 12th of August, 1765; or any suit whatever against any person or persons, if the cause of action shall have been commenced on account of it; unless the complainant can shew by clear and positive proof, that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money; or that he directly preferred his claim within that period for the matters in dispute, to a Court of competent jurisdiction to try the demand, and shall assign satisfactory reasons to the Court why he did not proceed in the suit; or shall prove that either from minority, or other good and sufficient cause, he had been precluded from obtaining redress.—*Reg.* 3, 1793, *Sect.* 14.

12. I am desired to communicate to you the opinion of the Court, that a miscellaneous application to a Court of justice cannot be considered as a "preferring of the claim" within the meaning of Section 14, Regulation 3, 1793.—*Con. No.* 813, *Cal. C.* 16*th Aug. West. C.* 6*th Sept.* 1833.

13. Under the provisions of Clauses 2 and 3, Section 35, Regulation 22, 1795, the possession of any one putteedar within twelve years entitles the whole of the sharers to restoration, and by Clause 5 of the same Section it is further enacted that such putteedars shall be entitled to restoration on any one putteedar regaining possession, although they have not held possession within twelve years. The doubt which has arisen is whether, after one putteedar has regained possession, there is any limit whatever in point of time with regard to the other sharers bringing forward their claim. The point may be more plainly stated thus; A obtained a decree of court in 1820 for possession as Zemindar, his putteedars B and C are in consequence entitled to possession of their shares; but must these claims be brought forward immediately or at any time before 1832,

or is there no limitation whatever? In reply, I am directed to communicate to you the opinion of the Court, that in cases of the nature of those described in the enactment above cited, the putteedars or "other sharers" alluded to therein must prefer their claims within the period of twelve years from the date on which the proprietary right was adjudged by a decree of Court to the Zemindar or one or more of their co-parceners, and that in default of so doing, their claims would fall under the operation of the general rule of limitations.—*Con. No.* 980, *West. C.* 18*th Sept. Cal. C.* 23*d Oct.* 1835.

14. The limitation of twelve years for the commencement of civil suits, under certain provisions and exceptions, which, in pursuance of former rules and practice, has been continued and prescribed by Section 14, Regulation 3, 1793; Section 8, Regulation 7, 1795; and Section 18, Regulation 2, 1803; shall not be considered applicable to any suits for the recovery of the public revenue, or for any public right or claim whatever, which may be instituted by, or in behalf of Government, with the sanction of the Governor General in Council; or by direction of any public officer or officers, who may be duly authorized to prosecute the same on the part of Government.—*Reg.* 2, 1805, *Sect.* 2, *Cl.* 1.

15. All claims on the part of Government, whether for the assessment of land held exempt from the public revenue without legal and sufficient title to such exemption, or for the recovery of arrears of the public assessment, or for any other public right whatever, (the judicial cognizance of which may not have been otherwise limited by some special rule or provision in force) shall be heard, tried, and determined in the several Courts of civil justice, to which the cognizance thereof may properly belong, under the general regulations which have been or may be hereafter enacted, if the same be regularly and duly preferred at any time within the period of sixty years from and after the origin of the cause of action: provided that such cause of action shall not have originated within the provinces of Bengal, Behar, and Orissa, before the 12th August A. C. 1765; or within the province of Benares before the 1st July A. C. 1775, or within the provinces ceded by the Nawaub Vizier before the 10th November A. C. 1801; being the periods of the Company's accession to the civil Government of the above provinces respectively.—*Reg.* 2, 1805, *Sect.* 2, *Cl.* 2.

16. The limitation of twelve years fixed by Section 14, Regulation 3, 1793, Section 8, Regulation 7, 1795, and Section 18, Regulation 2, 1803, shall also not be considered applicable to any private claims of right to lands, houses, or other permanent, immoveable property; if the person or persons in possession of such property when the claim of right thereto may be preferred in a competent Court of judicature, shall have acquired possession thereof by violence, fraud, or by any other unjust, dishonest means whatever; or if such property shall have been so acquired by any other person or persons from whom the actual occupant or occupants may have derived his or their title, and shall not have been subsequently held under a just and honest title (such as inheritance, purchase, fair donation, or any other fair title believed to have conveyed a right of possession and property) during a period of twelve years antecedent to the time of preferring a claim of right thereto in a competent Court: provided that such violent, fraudulent, unjust or dishonest acquisition be established to the satisfaction of the Court in which the claim may be preferred; or, if the suit be appealable, to the satisfaction of the proper Court of appeal.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 1.

17. In all such cases, viz. when the original cause of action may have arisen more than twelve years before the institution of the suit, and the claim may not be cogniz-

able under the exceptions and provisions contained in the regulations and sections above cited, but may be nevertheless cognizable under the provision made by the preceding clause, from the defendant's having acquired possession of the claimed property by violence, fraud, or other unjust and dishonest means; or from the property after being so acquired by any other person not having been subsequently held by the present occupant and his predecessors under a just and honest title during the prescribed period of twelve years; the plaintiff shall set forth the same distinctly, either in his petition of plaint; or in his replication.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 2.

18. The Court, after taking the answer and rejoinder of the defendant, shall if the alleged unjust and dishonest acquisition be denied by the defendant, examine any evidence that may be adduced by the plaintiff in proof of his allegation; as well as any evidence that may be brought by the defendant to prove his just and honest acquisition of the property claimed, or the just and honest possession thereof by himself and his predecessors during more than twelve years; after which the Court shall determine whether the suit in question be cognizable under the present rule and section or otherwise; and if such determination be in favour of the plaintiff; or in appealed cases, if a determination for the cognizance of the suit be passed by the Court of appeal; the merits of the plaintiff's claim of right shall be heard, tried, and determined, notwithstanding the lapse of time, in like manner as if the claim had been regularly preferred within twelve years after the origin of the cause of action.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 2.

19. Does the limitation prescribed in Regulation 2, 1805, apply to a claim for a share of an ancestral undivided estate, still held by a descendant of the family, in which estate the plaintiff had no manner of possession, either as a sharer of a specific portion, or as receiving a maintenance therefrom, during a period exceeding twelve years antecedent to the institution of the suit, no good cause (minority and the like) of course being shown to excuse the delay.

Can a person who still holds, or within twelve years has held, possession of a portion of land in an ancestral undivided estate as maintenance, claim to have the estate divided, and his specific share thereof allotted to him? or can the circumstance of his having been content with a maintenance, and not having received a specific portion for a period exceeding twelve years, bar his claim to a separate possession of his own share whenever he thinks fit to demand it.

The Court of Sudder Dewanny Adawlut for the Western Provinces, in concurrence with the opinion of the Judges of the Court in Calcutta, ruled in reply to the first question that the limitation prescribed in Regulation 2, 1805, was applicable to claims of the nature therein specified.

With reference to the second question, the Judges of the Western Court and the majority of those of the Calcutta Court, were of opinion that, according to the spirit of Clause 10, Section 35, Regulation 22, 1795, the person who had agreed to receive a maintenance, or, as the Regulation expresses it, an allowance either in money or in land, from the principal putteedar, in consideration of his right, has no claim to personal possession or management of any part of the estate. —*Con. No.* 942, *Cal. and West. C.* 3*rd April,* 1835.

20. Provided, that nothing in the preceding Clause of this Section, or in any part of the existing Regulations, shall be held to authorize the cognizance of any suit whatever in any Court of justice, if the cause of action shall have arisen sixty years before the institution of such suit: nor shall any plea on the part of the plaintiff for the non-prosecution of his claim of right during a period of sixty years after the origin of his alleged cause of action, nor any original defect of title on the part of the possessor of the property claimed after the lapse of such period; be deemed a sufficient ground for taking judicial cognizance of any suit so preferred.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 3.

21. Moreover, although the property claimed may have been acquired by an insufficient title within the period of sixty years, hereby fixed as the utmost limit for the cognizance of any claims in the established Courts of Justice, if the property so acquired shall have descended by inheritance to the person in possession when the claim thereto may be preferred after a lapse of twelve years; or if such person shall have obtained just and honest possession thereof by purchase, fair donation, or by any other title believed to be just and valid, and not appearing to be in any respect collusive for the purpose of depriving the plaintiff of his right, and either such occupant himself, or any other person in his behalf, or from whom the property may have been obtained, under any of the titles aforesaid, or the whole in succession shall have held quiet and unmolested possession, under a title believed to be just and valid, during a period of twelve years antecedent to the time of a claim thereto being preferred in a competent Court; the provisions made by Clauses First and Second, of this Section, shall not be considered applicable to any private claims to property so circumstanced, which are therefore to be deemed inadmissible as heretofore after twelve years from the origin of the cause of action, unless the same be cognizable under the exceptions and provisions already in force.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 3.

22. I am desired to communicate to you the opinion of the Court, that notwithstanding the mention of the period of 60 years in the Regulation last cited, no claim can now be heard which had its origin beyond the date of the cession, and this without any reference to the mode in which the possession may have been, or may be alleged to have been acquired; and that consequently the rule contained in Clause 3, Section 18, Regulation 2, 1803, remains in full force.—*Con. No.* 478, 18*th April*, 1828.

23. Provided further, that no length of time shall be considered to establish a prescriptive right of property, or to bar the cognizance of a suit for the recovery of property, in cases of mortgage, or deposit, wherein the occupant of the land or other property may have acquired, or held possession thereof as mortgagee or depositary only, without any proprietary right; nor in any other case whatever wherein the possession of the actual occupant, or of those from whom his occupancy may have been derived, shall not have been under a title *bonâ fide* believed to have conveyed a right of property to the possessor.—*Reg.* 2, 1805, *Sect.* 3, *Cl.* 4.

24. "Do the provisions of Clause 4, Section 3, Regulation 2, of 1805, apply equally to real and personal property or only to the former; in other words can a suit on a deposit of money or other personal property be entertained after the lapse of twelve years from the cause of action?" In reply, I am directed to inform you that as the terms of Clause 4, Section 3, Regulation 2, 1805, quoted by you are general, including "land and other property," its provisions must be considered applicable as well as to suits on deposits of money or other personal property as to land. —*Con. No.* 965, *West. C.* 7*th July*, 1835.

25. All suits, complaints, and informations, cognizable by the Civil Courts of judicature, for the recovery of any fine or penalty receivable by government, or by the informer, on account of the unlicensed manufacture or sale of intoxicating liquors or drugs; the illicit manufacture or sale of Salt or Opium, the fradulent evasion of the stamp duties prescribed by the regulations, or on account of any other fines or penalties recoverable, either by a regular suit or by summary process, in the Courts of Dewanny Adawlut, under any regulation in force which may not have fixed a specific period for the recovery thereof, shall be preferred to the proper Courts, in such manner as the regulations require, within one year after the act, for which the fine or penalty may be de-

mandable, shall have been committed; and no such suit, complaint or information (not otherwise specially provided for,) shall be admitted and proceeded upon in any Court of justice after the period prescribed; unless the same be prosecuted on the part of Government, and good and sufficient cause be assigned why it has not been brought forward to judicial cognizance within one year after the commission of the act whereupon the fine or penalty sued for is demandable.—*Reg.* 2, 1805, *Sect.* 6.

26. All suits and complaints for penal damages (viz. for pecuniary penalties on account of any act or omission, in opposition to the Laws and Regulations exclusive of a compensation for actual losses); in cases wherein such damages are allowed by the Regulations to individuals, and for the recovery of which by judicial process no specific period may have been fixed, are also required to be preferred to the proper Courts of justice, within one year, after the cause of action shall have arisen, or as soon afterwards as it may be in the power of the party aggrieved to prefer the same, and no such suit or complaint shall be received and proceeded upon in any Court of justice, after the expiration of one year from the time when the alleged cause of action may have arisen without good and sufficient cause being assigned why the same has not being judicially prosecuted at an earlier period: Provided, that this restriction be understood to be strictly applicable to claims to penal damages only (as above described) and be not considered applicable to any suits for the recovery of the property, or for the value of property, appertaining to the plaintiff; or for a compensation or indemnification on account of any damage to, or loss of property actually sustained by the plaintiff; in all which cases the general rules of limitation, are to be applied, as in other suits of individuals for the recovery of their rights in the Civil Courts.—*Reg.* 2, 1805, *Sect.* 7.

27. The provisions contained in Section 15, Regulation 7, 1799; Section 14, Regulation 5, 1800; and Section 32, Regulation 28, 1803; for the arrest of defaulting under-tenants, and their sureties from whom arrears of rent may be due to proprietors and farmers of land, and for a summary enquiry to be made by the Judges of the Zillah and City Courts when the parties so arrested for arrears of rent may be brought before them, are from the terms and objects of such provisions evidently intended to be applicable only to recent arrears of rent, due in the course of the current year, or immediately after the close of it; and it is hereby declared, that the summary inquiry and process authorized by the above regulations shall not be applied to any arrear of rent, or other demand which may have been due more than a complete year, before the delivery of the petition of arrest, and application for such summary enquiry and process, as directed by the Regulations above cited. Provided however, that this restriction shall not be considered to preclude the Judges of the Zillah and City Courts, (or their Registers, or the Collectors, to whom such enquiry may be committed by them,) from including in the adjustment of recent arrears in such cases, any arrear which may be found due beyond the period of one year, if the same shall appear equitable.—*Reg.* 2, 1805, *Sect.* 4, *Cl.* 1.

28. The rules prescribed in Regulation 2, 1805, in regard to the institution of summary suits for rent, should be applied to suits for the recovery of advances for indigo, instituted under Regulation 6, 1823.—*Con. No.* 565, *9th July*, 1830.

29. What is the limitation of time in respect to the summary proceeding at the Collector's instance, under Section 14, Regulation 27, 1803, and Section 17, Regulation 28, 1803, in the event

of the attached property being removed by force or fraud, by the defaulter, or his people. The Court hold, that the summary proceeding under Section 17, Regulation 28, 1803, which clearly involves the adjudication of a penalty by the Civil Court for having withdrawn attached property, is limited in point of time, under Section 6, Regulation 2, 1805, to one year from the occurrence of the act which gives rise to the proceeding; unless Government being the party suing, (which it virtually is, in the person of the Collector,) there be good cause shewn for delay, beyond that period.—*Con. No.* 316, *2nd June*, 1820.

30. The rule of limitation prescribed by the above clause is also hereby extended to applications for summary process by land-holders and farmers, against their agents employed in the management of their estates and farms, or in the collection of their rents, under the provisions made by Section 20, Regulation 7, 1799, Section 19, Regulation 5, 1800, and Section 37, Regulation 28, 1803; which authorize such process for the arrest and imprisonment of the agents of land-holders and farmers, whilst in their service, or immediately after the resignation or dismission of agents of the above description, on account of demands for money in their hands, or for accounts which they may refuse to render, or for any matter relating to the discharge of their respective trusts.—*Reg.* 2, 1805, *Sect.* 4, *Cl.* 2.

31. The existing Regulations not providing any limited period beyond which the investigation of a regular suit to contest the justice of a summary award, in matters connected with arrears or exactions of rent, shall be admitted, it is hereby declared, that the admission of regular suits to contest the summary awards of the revenue authorities in such matters, shall be restricted to the period of one year from the date of the delivery, or of the tender to the party against whom the award is made, of the Collector's decision.—*Reg.* 8, 1831, *Sect.* 6.

32. The rules prescribed in the existing Regulations in regard to the period within which suits may be admitted in the Zillah and City Courts, as well as in regard to the mode of computing the value of the property in litigation, shall be held applicable to suits preferred to the Moonsiffs.—*Reg.* 5, 1831, *Sect.* 5, *Cl.* 6.

REGISTRY OF DEEDS.

SECT. I.

Deeds to be registered.

1. An office for the Registry of Deeds, shall be established in each zillah, and in the cities of Patna, Dacca and Moorshedabad. The superintendence of the office shall be committed to the Register of the Court of Dewanny Adawlut, who shall take and subscribe the following Oath before the Judge of the Zillah or City, previous to his entering on the execution of the duties of the Office.

"I, A. B. solemnly swear, that I will truly and faithfully execute the office of Re-
"gister of Deeds for the Zillah or City of , and that I will neither directly nor
"indirectly derive any pecuniary or other benefit whatsoever from the said office, ex-

"cepting such as is or may be allowed to me by this Regulation, or by any Regulation "that may be hereafter passed by the Governor General in Council, and printed and "published in the manner directed in Regulation 41, 1793."

"SO HELP ME GOD."

—*Reg.* 36, 1793, *Sect.* 2.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 2.

2. I am directed by the Sudder Dewanny and Nizamut Adawlut, to acknowledge the receipt of a letter from you, dated the 3rd instant, with inclosure from the Register at your station; and in reply to communicate to you the opinion of the Court, that you are not authorized, under the regulations, to register any description of deeds required to be registered by the Register, and the Court desire that you will discontinue the practice in future.

The Court are further of opinion, that the offices established for the registry of deeds, by Section 2, Regulation 36, 1793, should be fixed at the Sudder station of the district.—*Con. No.* 135, 19*th Aug.* 1813.

3. The Register is authorized and required to register Memorials of the following Deeds:—

Deeds of Sale, or Gift, of Lands, Houses and other real Property.

Deeds of Mortgage on Land, Houses, and other real Property, as well as certificates of the discharge of such incumbrances.

Leases and limited assignments of Land, Houses, and other real Property, including generally all conveyances used for the temporary transfer of real property.

Wusseatnamahs or Wills.

Written authorities from husbands to their wives to adopt sons after their (the husband's) demise.—*Reg.* 36, 1793, *Sect.* 3.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 3.

4. The person holding the office of Register of Deeds for the conveyance of landed property, is likewise hereby authorized and required, from and after the 1st of January, 1813, corresponding with the 19th Pouse 1219, Bengal era; the 14th Pouse 1220 Fussily; the 20th Pouse 1220 Willaity; the 14th Pouse 1869 Sumbut; and the 27th Zeheza 1227 Higeree, to register engagements contracted by Indigo planters, whether Europeans or Natives, with the ryots and others for the delivery of the Indigo plant.—*Reg.* 20, 1812, *Sect.* 3, *Cl.* 1.

5. The person holding the office of register of deeds, is likewise hereby authorized and required from and after the 1st of January 1813, corresponding with the 19th Pouse 1219, Bengal era; the 14th Pouse 1220, Fussily; the 20th Pouse 1220, Willaity; the 14th Pouse 1869, Sumbut; and the 27th Zeheza 1227 Higeree, to register bonds, promissory notes, and generally all obligations for the payment of money. Provided however, that such registry shall only be made on the application, in person or by representative, of the party by whom the said bonds, promissory notes, or other obligations may have been executed.—*Reg.* 20, 1812, *Sect.* 5, *Cl.* 1.

6. Held, that security bonds for the eventual payment of costs of suit, may be registered under the provisions of Section 5, Regulation 20, 1212.—*Con. No.* 1270, *Cal. C.* 10*th Jan. West. C.* 28*th Feb.* 1840.

7. It is hereby declared, that the Registers are not warranted in registering deeds of any description, excepting those specified in Regulation 36, 1793, and Regulation 17, 1803, and in the present Regulation. The register books shall in future be uniformly made of English paper, and carefully bound.—*Reg.* 20, 1812, *Sect.* 7.

8. I am directed to observe, that as deeds of the description alluded to in your letter (namely ijaranamahs) are not specified in Regulation 36, of 1793, or Regulation 20, of 1812, the registry of them is illegal under the prohibition contained in Section 7, of the Regulation last quoted; and to request that you will communicate this opinion to the Judge of Tirhoot for the information and guidance of the Register of Deeds.—*Con. No.* 812, 16*th Aug.* 1833.

SECT. II.

Rules of Registering.

9. Every Register shall attend at his office for the dispatch of all business belonging thereto, during certain specified hours each day, between sunrise and sunset (Sundays and Holidays excepted) and after determining the particular hours of such attendance, he shall affix a written notice thereof in some conspicuous part of his office for general information.—*Reg* 36, 1793, *Sect.* 13.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 13.

10. The Registry of all Deeds shall be made in the Register office of the Zillah or City in which the property affected by them may be situated, and if the property be situated in the jurisdictions of two or more of the Courts of Dewanny Adawlut, the Deeds affecting it, shall be registered in the office of each jurisdiction.—*Reg.* 36, 1793, *Sect.* 7.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 7.

11. I am directed to communicate to you the opinion of the Court, (in which the Court of Sudder Dewanny Adawlut for the Western Provinces have concurred,) that under the strict wording of Section 7, Regulation 36, of 1793, and Section 7, Regulation 17 of 1803, and the construction No. 14, of the printed book of Constructions, dated 29th November, 1805, the registry of a deed in any other district than that in which the land is situated, must be considered as inofficial, and as not entitling the deed to the preference conferred on registered deeds by Section 6, of the Regulations cited.—*Con. No.* 1015, *Cal. C.* 17*th June, West. C.* 8*th July,* 1836.

12. Each species of Deed shall be registered in a separate book, each leaf of which shall be paged, and be attested by the Judge of the Dewanny Adawlut of the Zillah or City, who shall note in his own hand-writing on the last page of each book, the number of pages contained in each book, and attest the note with his official signature. No Register shall be deemed authentic, excepting such as shall be so paged and attested.—*Reg.* 36, 1793, *Sect.* 8, *Cl.* 1.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 8, *Cl.* 1.

13. Every Deed entered in a Register book, shall be numbered, and the date of the month and the year, as well as the time of the day when every Deed may be registered, shall be noted in the margin of the Register books, which shall be deposited amongst the Records of the Dewanny Adawlut.—*Reg.* 36, 1793, *Sect.* 8, *Cl.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 8, *Cl.* 2.

14. Whenever any person may be desirous of procuring any Deed of the description of those specified in Section 3, Regulation 36, 1793, and in the corresponding rules of Regulation 17, 1803, to be registered, he shall attend either in person, or by an authorized representative, at the office of the Register with the original Deed and an exact copy of it, attested by one at least of the parties to the instrument, and by one of the witnesses to the execution of it. The Register after having adopted the prescribed measures for ascertaining the validity of the original, and having compared with it the copy above required to be furnished, shall without loss of time specify on the back of

the latter, the date and hour of the day on which it was presented for the purpose of being registered, shall cause it to be filed according to the order of time in which it may have been received; and entered in the registered book according to the same order, certifying in the said book the day and hour on which the entry was completed and inspected by him.—*Reg.* 20, 1812, *Sect.* 2, *Cl.* 1.

15. On completion of the entry in the manner above stated, the Register shall return the original Deed to the person from whom it may have been received, with a certificate under his signature endorsed on the Deed, specifying the date and the hour of the day on which it was registered, and the page on which it is entered in the Register book.—*Reg.* 20, 1812, *Sect.* 2, *Cl.* 2.

16. The entry in the Register book, shall in all practicable cases, be made at the time of endorsing the copy required to be furnished; but the insertion of it shall on no account be postponed beyond the day on which the endorsement may be made.—*Reg.* 20, 1812, *Sect.* 2, *Cl.* 3.

17. A question having arisen, whether the copies of deeds brought for registry under the rule contained in Section 2, Regulation 20, 1812, are required to be written on stamp paper, I am directed by the Sudder Dewanny Adawlut to communicate to you the opinion of the Court, that the copies in question, being intended merely for record, should be admitted to be drawn out on plain paper.—*Cir. Ord.* 22*d April*, 1813.

18. Held, on a reference from the Judge of Mymensing, that a Hibeh-nameh, or deed of gift, could not be registered after the death of the donor, and that the Register of Deeds was quite right in refusing to register it.—*Con. No.* 1218, *West. C.* 24*th May*, *Cal. C.* 21*st June*, 1839.

19. The person or persons executing the Deed, or his or their authorized representative, with one or more of the witnesses to the execution of it, shall attend at the Register office, and prove by oath before the Register, the due execution of the Deed; upon which, the Register shall cause an exact copy of the deed to be entered in the proper Register book, and, after having caused it to be carefully compared with the original, shall attest the copy with his signature, and shall also cause the parties, or their authorized representatives in attendance, to subscribe their signatures to the copy, in the presence of two creditable witnesses, (whose names shall also be subscribed thereto) and shall then return the original, with a certificate under his signature endorsed thereon, specifying the date, and the time of the day on which such Deed shall have been so registered, with references to the book containing the Registry thereof, and the page and number under which the same shall have been entered therein.—*Reg.* 36, 1793, *Sect.* 9, *Cl.* 2.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 9, *Cl.* 2.

20. I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from the Judge, under date the 22nd July last, with its enclosures, requesting the Court's Construction of Section 9, Regulation 17, 1803, relative to the forms to be observed in the registry of deeds. The Court understand the intention of the Section to be, that the person executing the deed, or his authorized representative (mokhtar), must attend to acknowledge the execution, and that one or more witnesses to the execution of the deed must also attend to prove the execution by their testimony on oath. When the person executing the deed may depute a mokhtar with a mokhtarnamah, instead of attending himself, to acknowledge the deed, the execution of the mokhtarnamah should also be proved by the examination of two witnesses on oath. But the Court do not consider it to be required by the Regulation cited, that either the party executing the deed, or his mokhtar, should be examined on oath.—*Con. No.* 226, 3*rd Nov.* 1815.

21. The Certificate of the Register, endorsed agreeably to the forms described

in Clause 2d of the preceding Section, shall be considered in all Courts of Justice to be sufficient evidence of the Registry.—*Reg.* 36, 1793, *Sect.* 10.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 10.

SECT. III.

Inspection and Copies.

22. The Register shall on application being made to him, allow all persons to inspect the Register books, as well as grant copies of all deeds registered by him to persons whom they may concern, and such copies in the event of the originals being lost, destroyed, or not forthcoming, shall be received as sufficient evidence of such deeds in all Courts of Justice whatever, proof being made by the subscribing witnesses to the original Deed, that the original was duly executed.—*Reg.* 36, 1793, *Sect.* 11.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 11.

23. In like manner, the Register shall, on application being made to him, grant copies of all engagements registered by him to persons, whom they may concern; and such copies, in the event of the originals being lost, destroyed, or not forthcoming, shall be received as sufficient evidence of such Deeds in all Courts of Judicature whatever; proof being made by the subscribing witnesses to the original Deed, that the original was duly executed.—*Reg.* 20, 1812, *Sect.* 2, *Cl.* 5.

24. On completion of the entry in the manner above stated, the Register shall return the original deed to the person from whom it may have been received, with a certificate under his signature endorsed on the deed, specifying the date, and the hour of the day on which it was registered, and the page on which it is entered in the Register book.—*Reg.* 20, 1812, *Sect.* 3, *Cl.* 5.

SECT. IV.

Rules of Record.

25. If any person or persons shall at any time be suspected, on sufficient grounds for commitment, of counterfeiting or falsifying any entry in any of the Register books ordered to be kept, or any Certificate such as is directed to be granted, by this Regulation, he or they shall be prosecuted on the part of Government in the Criminal Court of Judicature, and the several Registers shall as agents for the prosecution, adopt every legal measure in their power for the proof of the crime, and the due execution of the Laws against the offender.—*Reg.* 36, 1793, *Sect.* 12.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 12.

26. It shall likewise be the duty of the Register to prepare, as soon after the expiration of each English year as possible, an index to the Register books.—*Reg.* 20, 1812, *Sect.* 9.

27. I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo and its enclosures, and in reply to inform you that the Court are of opinion that under Section 10, Regulation 20, 1812, powers of attorney produced by persons attending on behalf of others to procure the registry of deeds should be entered in a separate book, as directed by Section 7 of the same Regulation.—*Con. No.* 732, *Cal. C. 9th Nov. West. C. 7th Dec,* 1832.

SECT. V.

Validity given by Registry.

28. It shall be left to the option of all persons to register or not, as they may think proper, any of the descriptions of deeds specified in the preceding Section, that have been executed, or which may be executed, prior to the 1st of January 1796. The not registering such deeds, shall in no wise operate to the prejudice of the rights of the parties thereto, which shall remain the same as if this Regulation had never been enacted. —*Reg.* 36, 1793, *Sect.* 4.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 4.

29. It shall also be left to the option of all persons to register or not, as they may think proper, the several descriptions of Deeds specified in Clauses Fourth, Fifth and Sixth of Section 3, whether executed previous or subsequent to the 1st of January 1796. The not registering of the deeds specified in those three Clauses, shall in no wise operate to the prejudice of the rights of the parties thereto, which shall remain the same as if this Regulation had never been enacted.—*Reg.* 36, 1793, *Sect.* 5.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 5.

30. Every deed of sale, or gift, of the description specified in Clause 2, Section 3, that may be executed on or after the 1st January 1796, and a memorial of which shall be duly registered according to this Regulation, shall, provided its authenticity be established to the satisfaction of the Court, invalidate any other deed of sale or gift for the same property, executed subsequent to the said date which may not have been registered, and whether such second or other deed shall have been executed prior or subsequent to the registered deed.—*Reg.* 36, 1793, *Sect.* 6, *Cl.* 1.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 6, *Cl.* 1.

31. Every deed of mortgage of the description specified in Clause 3, Section 3, that may be executed on or after the 1st January 1796, and a memorial of which shall be duly registered according to this Regulation, and provided its authenticity be established to the satisfaction of the Court, shall be satisfied in preference to any other mortgage on the same property executed subsequent to the said date which may not have been registered, and whether such second or other mortgage shall have been executed prior or subsequent to the registered mortgage.—*Reg.* 36, 1793, *Sect.* 6, *Cl.* 2.-*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 6, *Cl.* 2.

32. It being the object however of the rules in the two preceding Clauses, to prevent persons being defrauded by purchasing, or receiving in gift, or taking in mortgage, real property which may have been before sold, given, or mortgaged, subsequent to the 1st January 1796, and as persons can never suffer such imposition when they are apprized of the previous transfer or mortgage of the property, it is to be understood, that if any person shall purchase, receive in gift, or take in mortgage, any real property, knowing such property to have been previously sold, given, or mortgaged, to any other person subsequent to the 1st January 1796, and that the deed of sale, gift, or mortgage, has not been registered, and shall register his own deed, in such case the deed of sale, gift, or mortgage of such subsequent purchaser, donee, or mortgagee, which may have been registered, shall not from the registry of it, invalidate, or be discharged in preference to the unregistered deed of sale, gift, or mortgage, first executed, provided the

authenticity of the latter be established to the satisfaction of the Court.—*Reg.* 36, 1793, *Sect.* 6, *Cl.* 3.—*Ben. Reg.* 28, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 6, *Cl.* 3.

33. It shall be optional with persons contracting engagements for the delivery of Indigo to register them, or not, as they may judge proper; but every engagement contracted for the delivery of Indigo after the 1st day of January, 1813, which may be duly registered according to the provisions of this regulation, shall, in case it be in other respects a legal and bonâ fide engagement, be satisfied in preference to every other contract for the delivery of Indigo, being the produce of the same ground, which may not have been registered, whether the last mentioned deed shall have been executed previously or subsequently to the registered deed.—*Reg.* 20, 1812, *Sect.* 3, *Cl.* 3.

SECT. VI.

Fees.

34. The Register shall be allowed a fee of two Rupees for every Deed registered by him, to be paid by the party causing the same to be registered, and no more; a fee of one Rupee for every copy furnished of a Deed registered by him, to be paid by the party applying for such copy, and no more; and a fee of half a Rupee for every search made on an inspection of the Register, to be paid by the party inspecting the same, and no more. The Register is authorized to refuse the official acts required from him until these fees be paid, and from such fees he shall provide the necessary native officers to make the entries and copies directed, as well as the requisite stationary.—*Reg.* 36, 1793, *Sect.* 14.—*Ben. Reg.* 28, 1795, *Sect.* 4.—*Ced. and Conq. Prov. Reg.* 17, 1803, *Sect.* 14.

35. The Register shall be allowed a fee of two rupees for every engagement registered by him, to be paid by the party causing the same to be registered, and no more; a fee of one rupee for every copy furnished of a deed registered by him, to be paid by the party applying for such copy, and no more; and a fee of half a rupee for every search made on an inspection of the register book, to be paid by the party inspecting the same, and no more. The Register is authorized to refuse the official acts required from him until these fees be paid, and from such fees he shall provide the necessary native officers to make the entries and copies directed, as well as the requisite stationary.—*Reg.* 20, 1812, *Sect.* 4.

SECT. VII.

Appointment of a Substitute.

36. The office for the registry of Deeds in the several Zillahs and Cities, which is provided for by Regulation 36, 1793, extended to Benares by Regulation 28, 1795, and to Cuttack by Section 32, of Regulation 12, 1805, and re-enacted for the Ceded Provinces in Regulation 17, 1803, extended to the Conquered Provinces and Bundelkund by Clause First, Section 17, Regulation 8, 1805, shall, in all cases be established at the station of the Zillah or City Court, and shall, as directed by the Regulations above mentioned, be superintended by the Register of the Zillah or City Court, or where there may be more Registers than one, by the Register employed at the station of the Zillah or City Court, so long as he may continue to reside at such station, and as already required by the Regulations in force, he shall personally discharge the duties

of the office committed to him, whilst present at the station, unless prevented by sickness, or otherwise; in which case, as well as in all cases of temporary absence from the station, he is permitted, as heretofore, with the approbation of the Judge of the Zillah or City Court to which he may be attached, to appoint a deputy, being a covenanted servant of the Company, and duly qualified to act for him; who after taking an oath, similar to that prescribed for the Register of Deeds, is authorized to perform the several acts which the Register is empowered to perform.—*Reg.* 4, 1824, *Sect.* 2.

37. I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 14th instant, and its enclosures, requesting to know whether Mr. W. B. Jackson, the officiating 2nd Register of your Court, is authorized to Register deeds while officiating as Collector of the district, or whether he must be re-appointed to act in that capacity, under the provisions of Regulation 4, 1824.—*Con. No.* 366, 25*th June*, 1824.

38. As Mr. Jackson has been already appointed to officiate as register of deeds, the Court do not think it necessary that you should re-appoint him to officiate in the capacity, whilst acting as Collector, under the regulation above mentioned.—*Con. No.* 366, 25*th June* 1824, *Par.* 2.

39. I am directed by the Court to acknowledge the receipt of your letter of the 1st instant and its enclosures, and in reply to communicate to you their opinion that a Register of Deeds not being the Register of the Zillah or City Court, is entitled, while officiating for the Judge during the absence of the latter, to fees on the registry of all deeds executed by him.—*Con. No.* 743, 14*th Dec.* 1832.

40. Whenever a Zillah or City Register vested with the superintendence of the Registry office, may be absent from the station where the office is established without having appointed a deputy, in pursuance of the foregoing Section, the Judge of the station is hereby authorized to appoint some duly qualified covenanted servant of the Company to act as Deputy Register of Deeds, and the Deputy so appointed, after being duly sworn, shall be authorized to perform the prescribed duties of the office.—*Reg.* 4, 1824, *Sect.* 3.

41. It shall moreover be the duty of the Zillah or City Judge to appoint a qualified person, being a covenanted servant of the Company, to officiate as Register of Deeds, whenever, from a vacancy in the office of Register, the nomination of a Deputy cannot take effect agreeably to the preceding Section.—*Reg.* 4, 1824, *Sect.* 4.

42. In the event of there being no covenanted servant at the station, to whom in the cases mentioned in the two preceding Sections, the Judge may deem it proper to confide the office of Registering Deeds, he is himself hereby authorized and required to perform the prescribed duties of the office.—*Reg.* 4, 1824, *Sect.* 5.

43. The registry of all Deeds which may have been hitherto duly executed by a Zillah or City Judge, or other covenanted servant, with his sanction, in the absence of the Register, is hereby declared to be of equal validity, as if it had been executed by the Zillah or City Register.—*Reg.* 4, 1824, *Sect.* 6.

44. The deputy or officiating Register appointed under Sections 2, 3, or 4, of this Regulation, shall receive during the time of his officiating, the fees authorized by the Regulations; but whenever the Judge may perform the duty, under Section 5, the net amount of such fees after defraying the necessary expense of the establishment, shall be carried to the credit of Government.—*Reg.* 4, 1824, *Sect.* 7.

45. I am directed to acknowledge the receipt of your letter (No. 69) with enclosures, under date the 13th instant, relating to the claim of head assistants to registry fees, and in reply to state,

that Joint Magistrates and Deputy Collectors of the 2nd grade, standing in the position of those officers lately denominated head assistants, are considered to have the same right to the enjoyment of the fees in question as the head assistants.—*Cir. Ord. Cal. C. 24th Feb. West. C. 9th June*, 1837.

SECT. VIII.

Supervision.

46. In order at the same time to establish a proper control over the conduct of the public officers entrusted with the discharge of the duty of registering deeds, it is hereby enacted, that the endorsement on the copies required to be kept of the said deeds by the provisions of this Regulation, and the transcripts thereof in the Register book, shall be both countersigned by the Judge of the Adawlut, within one month of the date of registry; unless prevented by absence; and in that case within one month after his return.—*Reg.* 20, 1812, *Sect.* 6, *Cl.* 2.

47. On affixing his name to the copies of the Deeds and to the Register books, it shall be the duty of the Judge to report to the Secretary to Government in the judicial department, for the information of the Governor General in Council, any errors or irregularities, or any deviation from the established Regulations, which he may have discovered in the conduct of the business confided to the Register of deeds, or to his native officers.—*Reg.* 20, 1812, *Sect.* 6, *Cl.* 3.

48. I am directed to acknowledge the receipt of your letter, dated the 18th ultimo, transmitting copies of two letters from the Judge of Sarun, and in reply to inform you, that the Honourable the Vice President in Council concurs with the Court, that Section 4, of Regulation 4, 1824, is only applicable to cases of occasional vacancies in the appointment, and that under existing circumstances, as a general rule, the senior assistant at the station should be entrusted with the registry of deeds.—*Cir. Ord.* 13*th Dec.* 1831.

49. The Judges of the Zillah and City Courts having been this day instructed to submit for the inspection of the Commissioners of Circuit, on their holding the half yearly sessions of jail delivery, the registry books of their Courts and the transcripts of the deeds filed for record, I am directed by the Court of Sudder Dewanny Adawlut to request that you will inspect them, when so submitted, and bring to the notice of the Court any irregularity observable in the mode of registry and countersigning by the Judges, as directed by the provisions of Regulation 20 of 1812.—*Cir. Ord.* 25*th March*, 1831.

50. The Court having reason to believe that it is still the practice, in some districts, to require persons who bring deeds for registry to sign the copy made in the registry book, as directed by Section 9, Regulation 36, 1793, and Section 9, Regulation 17, 1803; direct me to request that you will inform the register of deeds of your district that, as the provisions of the Sections above cited have been superseded by Section 2, Regulation 20, 1812, he should abstain from the practice, if it obtains in his office.—*Cir. Ord.* 2*nd Sept.* 1836.

51. In modification of the rules contained in Regulation 4, 1824, relative to the registry of Deeds, it is hereby declared that, whenever a Zillah or City Judge may deem the appointment advisable, he shall, having previously obtained the consent of the Governor General in Council to that effect, be competent to make over to the Principal Sudder Ameen at his station the duty of registering Deeds, subject to all the existing rules prescribed for that duty, and such Principal Sudder Ameen, while so officiating, shall receive the fees authorized by the Regulations for the performance of that duty.—*Reg.* 7, 1832, *Sect.* 4.

SECT: IX.

Establishment of a Registry Office at any Civil Station.

52. It is hereby enacted, that Sections 2 and 14, Reg. 36, 1793, the provisions of which were extended by Regulation 28, of 1795, Regulation 17, of 1803, Section 17, Regulation 8, of 1805, and Section 32, Regulation 12, of 1805, Section 4, and Clauses 2 and 3, Section 6, Regulation 20, 1812, and Section 2, Regulation 4, of 1824, of the Bengal Code, be modified.—*Act* 30, 1838, *Sect.* 1.

53. And it is hereby enacted, that in addition to the offices to which those Sections relate, offices for the registry of Deeds may be established at any Civil Stations, and may be placed by the orders of Government under the superintendence of any officers resident at such Stations whom Government may nominate for that purpose.—*Act* 30, 1838, *Sect.* 2.

54. And it is hereby enacted, that the Registration of Deeds at any office of Registry authorized by this Act shall be subject to the payment of the same fees as are prescribed in Section 14, Regulation 36, 1793, for Deeds registered at an office established at the station of a Zillah or City Court.—*Act* 30, 1838, *Sect.* 3.

55. And it is hereby enacted, that Section 15, Regulation 36, 1793, and Clauses 2 and 3, Section 6, Regulation 20, 1812, of the Bengal Code, shall not be held applicable to officers and persons established and appointed for the registry of Deeds under this Act.—*Act* 30, 1838, *Sect.* 4.

56. And it is hereby enacted, that persons desirous of registering Deeds written in any European language at any office of Registry in the territories subject to the presidency of Bengal, shall be required to pay for transcribing the same according to the established rates of Section Writing, in addition to the fees prescribed by Section 14, Regulation 36, 1793.—*Act* 30, 1838, *Sect.* 5.

57. And it is hereby enacted, that in case of the death or absence on leave of any person appointed by Government to register Deeds under this Act, it shall be lawful for the Zillah Judge or other officer specially authorized by Government, to appoint any person whom he may think proper to take temporary charge of the office and to register Deeds in the same manner as if such person had been appointed to the office by the Orders of Government.—*Act* 30, 1838, *Sect.* 6.

PAUPERS—PLAINTIFFS, AND THEIR SUITS.

[The following Circular Order has been published while this volume was passing through the press. It belongs to page 136; and should be read immediately after Rule 351.]

I. I am directed by the Court to request your attention to Construction, No. 1285, of the September 1840, as there is reason to believe that the duty of making the enquiry, as to the tence of sufficient grounds for the institution of a suit, in the case of parties applying to sue in nâ pauperis, is sometimes delegated to Principal Sudder Ameens, contrary to the intent of the w. You will be careful, therefore, to decide that point yourself, before referring the petition to e Principal Sudder Ameen for enquiry as to the pauperism of the plaintiff.

2. The Court have observed also some instances in which the applications of parties to be admitted as paupers have been disposed of by Principal Sudder Ameens. This practice is opposed to the rule in Clause 4, Section 4, Regulation 13, 1824, and the Construction, No. 949, of the 1st May 1835, which declare that the Judge only can determine the question of pauperism. The Principal Sudder Ameens to whom such applications may be referred, should therefore be instructed to confine themselves to the ascertainment of the alleged fact of pauperism, leaving it to the Judge, on a perusal of the report, to pass the final order for the admission of paupers.—*Cir. Ord. 12th Nov.* 1841.

GOVERNMENT OF INDIA LIBRARY

ERRATA.

Page 10, Line 43, *for* have, *read* having.
—— 35, —— 1, *after* 224, *read* 225.
—— 48, —— 46, *for* dependnig, *read* depending.
—— 49, —— 24, *for* 1835, *read* 1836.
—— 71, —— 13, after Rule 474, the following Construction is to be inserted—

The Court are of opinion that unless the defendant in his first pleading (the juwub-i-dawa) pleads his privilege as a dependant of the nabob, he cannot afterwards assert it. This rule will, the Court observe, effectually check the practice mentioned by you of delaying the administration of justice, by requesting a reference of the case when it has nearly been brought to a conclusion.—*Con. No.* 843, *West. C.* 8*th Nov. Cal. C.* 29*th Nov.* 1833, *Par.* 4.

—— 106, —— 37, *before* 11, *read* 1803.
—— 123, —— 33, *after* 264, *read* 265.
—— 265, —— 43, *for* to, *read* of.
—— 181, The Circular Orders, Rules 156 and 157, have been superseded while this volume was passing through the press. The new enactment will be found at page 369, Rules 145 and 146.
—— 185 and 186. The Rules 182 and 183, have been inadvertently inserted. They are a repetition of Rules 175 and 176.
—— 198, Line 7, *for No.* 1, 172, *read No.* 1172.
—— ,, —— 34, *for* 1813, *read* 1803.
—— 208, —— 21, *for* and, *read* over.
—— 252, —— 13, 14, *for* Rules 222, *C.* 220, 221, 223, *read* Rules 344—349.
—— 321, —— 23, *for* 233, *read* 254.
—— 338, —— 28, *for* LXI. *read* XLI.
—— 354, —— 10, *for* rendered, *read* tendered.
—— 377, —— 32, after Form D, read the following Circular Order—

Whenever estates paying revenue to Government are pledged to the Court, a notification of the same shall be made to the Collector, with a request that in the event of a sale of the same for arrears of public revenue, he will hold the surplus proceeds in deposit, notifying the same to the Court, until the Court shall report that the security is released from responsibility.—*Cir. Ord. Cal. and West. C.* 17*th Feb.* 1837, *Par.* 3.

—— 424, —— 4, *before* 1st Feb. *read* No. 752.
—— 434, —— 11, *for* 31, *read* 13.
—— 458, —— 19, *for* 20, 21, 22, 23, *read* 16, 17, 18.
—— 460, —— 36, *for* Act &, 1833, *read Ibid.*