to have the English settler speaking for himself, and his revelations are startling enough; but they will be borne out and

to strike the very name of the estate off the books. The case, moreover, was five times decided in Mr. Lamb's favour by the judges of the Company itself; and only gained by them when they had succeeded, after a number of years, in packing a Bench. We would refer the curious, with regard to this case, to our supplement of the 19th July, 1857.

"A European is allowed to hold lands as long as these lands do not excite the concupiscence of any native; for, if any native should desire to possess them, they will certainly be decreed to him by the judges of the East India Company, who find none so impracticable as European owners of land. Example: Mr. G. Lamb purchased at a sale for arrear of revenue, from the East India Company, an estate said to comprise within its boundaries certain specified villages. A native, about the same time, purchased an adjoining estate. Mr. Lamb, from information gathered from the Collector's books, brought a suit for certain villages in the possession of the native, as belonging to his estate. The native brought a cross suit, claiming villages of the value of 1500 rupees a-year against Mr. Lamb; Mr. Lamb lost his suit. The suit of the native was decreed in his favour, giving him villages producing 6000 rupees a-year, instead of 1500 rupees which he had sued for. The document, on which the Sudder decreed against Mr. Lamb, was a forgery. It purported to be one of the original papers of the decennial settlement (on which the perpetual settlement was founded) of Zillah Tipperah. Mr. Lamb proved that the whole of that settlement was made in Arcot rupees, while this paper was summed up in Sicca rupees. The Sudder Dewany Adalut, the Supreme Civil Court of Bengal, decided that the word 'Sicca' meant 'current,' and might apply to any rupee. They themselves were, at the time of this decision, receiving their salaries in Sicca rupees of more than 6½ per cent. greater value than the Company's rupee, and would have repudiated with scorn the proposition of being paid in Company's rupees.

"A European is to be prevented from becoming the possessor of land at any cost whatever. Example: While the last mentioned case was passing through the courts, Mr. Lamb's opponent got deeply into debt, and his creditors put up his estate for sale. Mr. Lamb was willing to purchase peace at any price, and therefore bid a large sum for this estate, which comprised the disputed lands. Mr. Lamb purchased the estate in his wife's name, in order to avoid, as he thought, all disputes. Mrs. Lamb, on becoming purchaser, sued for possession of the estate, but was nonsuited in the superior court, the Sudder, on the ground that she, as an English or Scotch woman, could not sue in her own name, but must be joined by her husband. We have got the best authority for saying that this is not good English law; but, supposing it were, there was nothing on the record to show that Mrs. Lamb was either an English or a Scotch woman. She might have been of any other race, among many of whom, the Armenians, Mussulmanees, and Hindoos, for instance, married women may possess property apart from their husbands. The objection was not taken in any of the pleadings, and we submit that the Appellate Court had no power to take it up; but there was an Englishman or Scotchman, well known, in their private capacities, to the judges on the bench, to be such, to be prevented from possessing lands. The case was therefore non-suited. On this decision being given, Mr. Lamb brought a fresh suit, joining himself with his wife. The same objection would not serve now, but Mr. Lamb lost his case in the Appellate Court on account of an alleged irregularity in the

corroborated by every man of the class the more the matter is probed. I would particularly call attention to the striking

sale, an irregularity for which no one was responsible but the court which sold, and therefore Mr. Lamb was punished. Be it observed, that Mr. Lamb gained every one of these cases in the courts of first instance It was only when they were appealed to the Sudder, when they were taken down to Calcutta, were Civil Servicism is rampant, where the necessity of keeping the interloper from gaining a footing in the land is fully appreciated—it was only in Calcutta that he lost them. We could adduce many a case where the same gentleman who, unfortunately for himself, had a desire to become a landed proprietor, and to improve his lands by introducing the culture of various crops unknown in this part of India, had decree after decree given against him in the civil courts—many of them so absurd, that they gave rise to fresh law-suits in the vain endeavour to have them executed. We could bring instances of parallel cases, where natives only were concerned, where decrees were given in their favour, which would have made Mr. Lamb's fortune had the same law—we shall not desecrate the name of justice by applying it to any of the dicta of the Sudder—been dealt out to him. But the interloper was there. He was to be put down. If he had not been put down, he might have had the presumption to grow cotton; and, by supplying Liverpool with that material, to have made English people take as great an interest in, and become as well acquainted with the affairs of India as they are with those of America.

"However long a European may have been in possession of land, every means, even to the endangering of the salvation of the judges themselves, is to be used to oust him from possession, and to give it to a native, with which class the Civil Service believed, till lately, perhaps, they could do anything. This is an error on the part of the Civil Service. Since Reg. II. of 1819, and the Public Works Loan, the native believes that there are no depths so low to which the Company Bahadoor cannot descend, so long as they have power on their side. The Englishman confesses that the Government is 'awful dodgy,' but cannot believe that the men whom he knows well, and knows to be tolerably honest in their private transactions, could be guilty of the rascalities which have been committed under the aforesaid regulation. But we are running away from our subject, which is, that however long a European may have possessed land he must be ousted somehow or another. Example: Messrs. Lamb and Wise, two gentlemen settled in the Dacca district, learned from their attornies that an estate was to be sold by the Collector at the instance of the owner's creditors. They agreed to bid for the estate, and to purchase it together. The estate was put up for sale, and they bought it. Though many objections were raised to the manner in which the sale was made, &c. by the late proprietors, at the time of and immediately after the sale, they were all overruled by the courts. Messrs. Lamb and Wise were put in possession, and continued in possession for eleven years, eleven months, and odd days. If the twelve years had passed, their title would have been secured by prescription. But before the twelve years had expired, a suit was brought to upset the sale on the ground that the law prescribed that notice of sale should be affixed in ten places. It had been so in nine, but there was a doubt with regard to the tenth, whether the place where it was affixed was situated on certain lands or not. The case came on in the local courts, and was decided in favour of Messrs. Lamb and Wise. It was appealed to the Sudder, where it was, as a matter of course, decided against the interlopers by two judges out of three—decided, we have almost the highest legal authority in India for saying,

evidence of Mr. Theobald and Mr. Freeman before Mr. Ewart's Colonization and Settlement Committee.

against the common sense interpretation of the law. But what can be expected from judges who have absolutely no legal training, and who consider the interloper as a being who has no right to be in India.

"Such are a few—we solemnly affirm—a very few—of the instances we can give to Mr. Ewart of the tenures on which lands are allowed to be held by Europeans in India. Were we to unfold a half—one third—of what we know, we should be scorned as unjust traducers of the Civil Service of the Honourable the East India Company. Fortunately, we can prove every word we have said from the decisions of the Sudder Dewany Adalut. Lord Canning must have wondered why his proclamations were so little believed. It is long—as the evidence of every independent man will prove—since the assertions of the Government of this country have been believed by its subjects.

"If more witnesses be required, I can myself point to two. Let Mr. James Beaumont, the Manager of the Beypoor Iron Works, be asked to detail his experience of the difficulties with which an European adventurer has to contend in this country. Let Mr. Summers Hutchinson, of Dublin, who has travelled over a large portion of India, and almost all the rest of the world, be asked for his opinion as to the condition of India as compared with that of any other country he has visited."

Let us turn to the Parliamentary evidence.

Mr. Wise, before the Lords' Committee, 5th May, 1853, speaks as follows:—

Q. 5249. "Are there any legal difficulties which disincline persons to purchase land in that part of the country?

A. "There are difficulties."

Q. 5250. "Is any person, purchasing land, liable to much litigation?

A. "He is subject to constant litigation. No person can have landed property in India without more or less being forced into litigation. There are very often suits brought against you; even in the case of estates purchased at Government sales, you have suits brought."

Q. 5251. Lord Broughton: "As to the validity of the tenure of the land?

A. "Yes, as to the tenure of the land."

Q. 5252. Chairman: "In conducting those law-suits, is the owner subject to much difficulty in the way of evidence?

A. "Very much. The evidence is, generally, in India, all false, both the documentary and the oral evidence; and the judges are obliged, of course, to go with the evidence laid before them, either documentary or orally given; so that he has great difficulty to contend with."

Q. 5253. Lord Monteagle: "Do suits often arise from the boundaries being undefined?

A. "Yes; the boundaries are undefined, and the natives get up all kinds of cases. They even ante-date papers, and all kinds of frauds are got up; and, therefore, it is very difficult for Europeans safely to own property."

Q. 5254. Lord Broughton: "Are they at all affected by the Resumption Regulations?

A. "The Resumption Regulations were the greatest blight and curse that the Government of India ever inflicted upon the country."

Q. 5255. "Do you mean with reference to the land taken by indigo planters?

A. "With reference to all landed property in Bengal. It has covered the whole

Perhaps the chief obstacle to the British settler is the condition the administration of justice. What a pregnant fact is that

country with forgery and perjury, by making it necessary for every man to produce measurement papers and documents; by setting aside the laws of 1793, and compelling people to prove their right to property for 70 years back, a thing quite impossible to do. This law, put in practice immediately, sets every man to work to fabricate papers, because it was imperative upon the judge to decide in favour of the Government, unless you could prove by documents that the property had belonged to you 60 or 70 years."

Q. 5256. "Are you speaking of the district with which you are more peculiarly acquainted, or from what you have heard with respect to the Resumption Laws in other parts of India?

A. "I saw how the law affected myself and neighbourhood chiefly; but, of course, I have heard a great deal of its effects in other parts of the country."

Q. 5257. Earl of Ellenborough: "Had it not very much the effect of shaking the confidence which the people formerly possessed in the Government?

A. "Completely."

Q. 5258. Lord Wynford: "Then it is the difficulty of ascertaining the tenure, not the fear of being under this mixed law, that prevents Europeans from settling in the country?

A. "There is no law; and the issue of a suit is a matter of great uncertainty."

Q. 5259. Chairman: "Are there any other causes which tend to prevent Europeans from purchasing land?

A. "The magisterial powers are the great difficulty to Europeans: the magistrates are generally young men; they are poorly paid; and when they have become sufficiently experienced for performing satisfactorily the magisterial duties, they are made Collectors; and having reached that position, and become really useful and efficient, they are transferred to another district as Collectors."

Q. 5286. "On the exercise of that power, does the security of life and property in his district very much depend?

A. "I think so. I have seen a district in the very highest state of discipline, and everything comfortable, under a good magistrate; and I have seen the same district put into the very opposite state in the course of a few weeks by a bad magistrate coming in his place. It is immediately known to the natives; they are very quick in discerning character."

Sir Charles Trevelyan deposes as follows:—

Q. 6731. "Do you consider that the permanent settlement of British-born subjects in India, in the prosecution of industry and the investment of capital, is a thing to be desired, or the reverse?

A. "Certainly, it is to be desired. As far as it takes place, it will powerfully conduce to the happy result of consolidating our dominion in India, and especially now that the English in India are going to be placed under equal laws with the natives, and under the same courts of justice; for so long as they belonged to a separate jurisdiction, they were an element of disorder and misrule. The line which they took was to depreciate and disparage the native courts; but when they are once placed under them, they will then become an element of good, and we shall have a power of improvement introduced in this way into our judicial system, of which we have no conception at present."

well-known practice of the Calcutta merchants to make it a condition of their contracts with Mofussil traders and growers, that

Q. 6732. "Is it your opinion that the past unsettled state of the law as between the English and the natives, and, above all, the state of the law in the Mofussil, without the remedy of a code or *Lex Loci*, as was proposed, has been a considerable impediment and discouragement to the settlement of the English in India?

A. "I have no doubt that it has been a great impediment and discouragement to the settlement of the English in India, and thereby a great drawback to the improvement of India."

Q. 6733. "Then, it is your opinion that English settlers or emigrants located in India, would rather have a tendency to lead the party friendly to British connexion than to become leaders of discontent and turbulence?

A. "That is my firm belief. I believe they would accomplish two objects—that they would be on the side of English connexion, but that, at the same time, with the true spirit of Anglo-Saxons, they would be stout and open-mouthed against every local grievance."

Q. 6734. "In a statement, made by Lord Macaulay upon the former renewal of the Charter, he said that 'Next to the opening of the China trade, the change most eagerly demanded by the English people was, that the restrictions on the admission of Europeans to India should be removed.' He goes on to say, 'In this measure there are undoubtedly great advantages. The chief advantage is the improvement our native subjects may be expected to derive from free intercourse with a people far advanced beyond themselves in intellectual cultivation. I cannot deny that this great change is attended with some danger.' Now, from that passage we may conclude, that the advantages of English settlement in India are great and obvious; but what is the risk connected with English settlement?

A. "I presume that the risk which Lord Macaulay contemplated was this, that the English settlers might head a national Indian party; but India is such a great country, and the preponderance of native feeling must be so decided for an unlimited number of years to come, that Europeans will be lost in the mass; and they will have exactly the same motives to deprecate the re-establishment of a pure native Government which the Anglicised natives have; and for an indefinite time to come, they will stand by the British Government, as representing the land of their fathers, the land with which they are naturally connected, and the land from which, and through which, and by which, they hope for the improvement of India."

Q. 6735. Earl of Ellenborough: "Do you think it possible that the natives might assist the European colonists, who are supposed to be settled in India for the purpose of establishing what is now called responsible Government; and that, when they had so separated them from the dominion of England, they might overthrow the colonists themselves?

A. "That would be a very probable result to the Europeans, for the number of English settlers will always be comparatively a mere handful, because the country presents great physical obstacles to the settlement of Europeans from the nature of the climate; and Europeans, foreseeing that result, will be more disposed to side with the British Government and to support it."

Q. 6736. "Do you think that a separate Government established in India would pay the dividends upon the East India stock, or the pensions due to the civil and military servants?

breaches of contract shall be sued for in the Queen's Supreme Courts! When I exposed the state of the administration of

A. "It would depend upon the terms on which the separation took place. If it took place according to the course of policy which I recommend, they certainly would pay it, supposing the debt then to exist; but if it took place according to the native policy, there would be a clean sweep of everything,—men and money, and everything."

Q. 6737. Chairman: "Do you contemplate it as probable that there can be any great number of permanent English settlers in India without great physical and moral deterioration?

A. "I think there would be physical deterioration to a certain extent, but the progress of Christianity in India, both among Europeans and natives, is such, and public opinion is improving so fast, that I do not think there will be any moral deterioration; but although, according to my view, the European settlers in India would never be numerous, they would be extremely influential in proportion to their number. One stout Englishman is as good for routing out and exposing abuses in a Judge's or Collector's Court as several hundred thousand natives."

Q. 6741. Lord Monteagle of Brandon: "If there were European settlement and colonization along the line of those Upper Provinces which you have described, would not that in itself, and independently of any other advantages, give very great strength to our Indian empire upon the whole of that frontier?

A. "No doubt it would have a great tendency to confirm our dominion in India. I am strongly impressed with the idea, that India is so vast a country, and is inhabited by races differing so much in their character and degree of civilization, that its consolidation into a single nation, possessing national sympathy and coherence, such as would allow of self-government, is so difficult and so distant, that we have nothing to fear from that source."

Q. 6742. Lord Ashburton: "Can you say, from your own experience, that the presence of European settlers in a district has a tendency to render our dominion more popular?

A. "Yes. The instances of European settlers in the upper country are few; but all that I know were in favour of that idea. Colonel Skinner and his family is an instance that immediately occurs to me. They greatly tended to the confirmation of our dominion.

Q. 6743. "My question was intended to refer more particularly to indigo planters and mercantile settlers?

A. "The district of Bengal, in which indigo planters most abound, is Tirhoot. It is well known that there is not a more flourishing and prosperous district in India than Tirhoot; and if every other district rebelled, I should expect that Tirhoot would stand by us."

Q. 6744. "Should you say that the presence of those Europeans has a tendency to make our dominion more popular in the country?

A. "I should say, decidedly so, even now, under the disadvantage of their being under a separate jurisdiction. Whatever inconveniences may exist, arise from the very anomalous and objectionable state of the law as between them and the natives, which gives them a very unfair and improper advantage, and is really for their injury, because it prevents the establishment of confidence; but if that were removed, I should say that they would be altogether and entirely an element of strength and popularity."

justice in the Presidency of Madras I was accused of hasty generalization and induction from insufficient premises; but the

Evidence of Mr. Cameron:—

Q. 7460. "Do you not consider that the uncertain state of the law as affecting Europeans in India must have been a great impediment to the settlement of Europeans in the interior in times past, and even up to the time present?

A. "Yes. I think it is."

This is the evidence of Mr. Moore:—

Q. 5875. Sir T. H. Maddock: "Is there any impediment to a gentleman like yourself settling in any part of India, and carrying on cultivation or trade?

A. "I was in India as a 'covenanted free merchant.' There is no impediment now; there was during the last Charter."

Q. 5876. "There is no difficulty in carrying on any mercantile operation?

A. "The difficulty is this. Before I came home, I was speaking to one of the most intelligent merchants in Calcutta with regard to this question, and his words were these: 'We do not like to trust our capital out of the jurisdiction of the Supreme Court.'"

Q. 5877. "Does that imply that there is a want of confidence in the administration of justice in the Mofussil Courts?

A. "It is the uncertainty of the law that is complained of."

Q. 5878. "It is not from any feeling of distrust of the administration of justice on the part of the judges?

A. "I think the system is considered faulty, more than the men engaged in it. A question was put to a former witness, Mr. Halliday, whether the natives generally have the same opinion of the Queen's judges as they have of the Company's judges. I do not think they have the same opinion of the Company's judges that they have of the Crown judges, simply from the fact that they see everything in the Queen's courts publicly and openly argued, and they know that no money can prevail there; whereas they have not that opinion of the Company's courts. Within my own knowledge, large sums of money are remitted by people in the country to their agents in Calcutta, thinking that money will help them in those courts."

Q. 5987. Chairman: "Is there any portion of your former evidence which you wish to explain?

A. "I wish to reply to a question of Sir Herbert Maddock, which I had not an opportunity, on the last occasion, of replying to in full. The question asked me by the Honourable Member was (No. 5875), 'Is there any impediment to a gentleman like yourself settling in any part of India, and carrying on cultivation or trade?' My answer was, 'I was in India as a covenanted free merchant. There is no impediment now; there was then.'"

Q. 5988. "What do you wish to correct or explain in that answer?

A. "There is no impediment, at least, no open impediment to a European settling in the country, though a former witness, Mr. Leith, alluded to an antagonism between the indigo planters and the civil servants, caused, as he thought, by the latter now enjoying trade which the former possessed. But an Englishman has no redress from the servants of the Company when he settles in the interior. I will cite cases on that subject, if I may be allowed. In 1849, the district judge of Pornea gagged a European gentlemen, Mr. Cruise, in open court. I knew this gentleman's family in Ireland, and I know he obtained no redress. Nothing was done to the judge; he was

area of induction has been widening to me ever since. I have had several years more experience since I wrote, and an extensive

allowed to come home to this country, with his pension. Again, a short time since it was reported from India that an indigo planter had been imprisoned by a magistrate of the name of Woodcock. The country prisons are not fit to confine natives in, not to say Europeans; however, the latter are rarely seen within their walls."

Q. 5989. Sir G. Grey: "When did those occurrences take place?

A. "Within the last five years. The first occurrence took place, as I said before, in 1849; the other during the last year."

Q. 5990. Chairman: "Are you aware what the cause of imprisonment was?

A. "I am not aware what the cause of imprisonment was; but I am aware that the Governor-General, Lord Dalhousie, removed the magistrate from his appointment. There was another case to which I can refer—the case of Mr. Hay. There has been a most excellent pamphlet published by Mr. Prinsep, late of the Bengal Civil Service, in which he states that he wishes civil servants to be tried, not upon their covenant, but like every other European. Mr. Melville quite agrees with me in opinion, that it would give very great satisfaction if this were carried out. We do not know, when a civil servant commits any offence, that he is subjected to any trial at all; in fact, you have it in evidence from one of themselves, that 'a civil servant may be corrupt with impunity.' No European likes to settle in the interior when the laws are so uncertain, and there is so little judicial responsibility."

Q. 5991. Mr. Hume: "What would you suggest in order to remove the complaints which you say exist, and to encourage the settlement of Europeans in the country?

A. "A reform of the laws, and of the mode of administering them. When we consider the benefits already conferred upon the country by the industry, energy, and intelligence of indigo planters in creating a monopoly in the article of indigo, which has superseded that of the Dutch, any legislative improvement tending to encourage the residence of Europeans in the Mofussil may be regarded as an object of importance in a mercantile and financial point of view."

Q. 5992. "State the particulars of the reform which you would introduce?

A. "I would introduce the English law as far as it is practicable. That is what we want; we do not wish to be tried by one law, and the natives by another. No Englishman has any objection, if the law is fair, to be subject to it; but the argument used hitherto has been, that, as soon as Europeans are oppressed by the law, they will exert themselves to effect its reform."

Q. 5993. Sir G. Grey: "Do you mean that your remedy would be the introduction throughout India of the English law?

A. "I would not say altogether the English law, but a modification of it suitable to the country, and by which men can have justice."

Q. 5994. Mr. Hume: "You mean to say that an English settler in any of the districts in the interior is not tried in that manner, and does not receive that protection, which you think ought to be awarded to him?

A. "That is my decided opinion."*

Mr. Macpherson, examined as to the native petition, says as follows:—

Q. 8339. "The petitioners do not state that they have not had an opportunity of judging how far these tests have remedied the grievance, but they state, on the other

practice in the Sudder and Mofussil Courts; and I can sincerely assert that were I to abstract the published Sudder decisions from the day I wrote up to the present, the results would be precisely the same. How can it be otherwise? No change has been attempted. The same Heaven-born amateurs still occupy the bench, and the quality of their judgments cannot but be the same. Let the reader but reflect upon the consequences of such a pitch-and-toss system of decision upon mercantile operations. I am not speaking now of the bribery and corruption which prevail in every court in the land among the whole body of native officials; nor of the weary delay and length of time over

hand, that the grievance still exists, without making any reference to the tests, or any allusion to any endeavour made by the Government to remedy the state of things of which they complain?

A. "I am not at all surprised that they should speak very strongly of the hardships which they have endured from the mode in which justice has been administered in India. I am, myself, a witness as to what the natives, and what, sometimes, Europeans have suffered in the interior from the mode in which the business has been committed. I may mention a case of my own. I became a purchaser of Ranganuitty, within fourteen miles of Moorshedabad, one of the principal fillatures belonging to the Company. I purchased it at public auction, in Calcutta, in 1835. This residency had a certain amount of land attached to it, on which a certain rent of about 1,200 rupees a year was to be paid. On purchasing that property, of course I supposed that I was purchasing whatever rights the Government possessed in their commercial capacity, and that they were transferred to me as purchaser of the property. A very few months after I had paid for the property, I was informed that the Collector had resumed more than half the land, and alienated it from me. Though I had seen a great many very despotic actions done by men in power, I could scarcely believe that this could be carried out; but I issued orders to my people to resist the removal of the crops. The Collector who assessed the land happened at the same time to be the magistrate, and, in his capacity as magistrate, he put my people into prison. I had no information or notice of any description given to me till this occurred. I remonstrated with the Collector and with the Commissioner; and for five years the question was sent from one Collector to another, and from one Commissioner to another. I think there were three Collectors and three Commissioners. Just before my departure from the country, I requested an audience of Lord Auckland, the Governor-General, and I stated to him this grievance; and I also stated to his lordship that, if it required five years for a European to obtain any redress for a grievance of this nature, it must require a great deal longer for a native. The case was not brought to a close even when I left the country. By a calculation of one of the Collectors, it was supposed that my loss from being deprived of those lands must have amounted to upwards of 40,000 rupees. I proposed that if 10,000 rupees were given to me, and all further litigation and inquiry ceased, I would be willing to take that amount. Three months after I left the country, the amount was paid to my agents."

which litigation extends; nor of the numerous appeals, with their attendant expense; nor of the perjury of witnesses with which an upright suitor has to contend; though all of these are most formidable difficulties in the way of an adventurer in the Mofussil, where no man can exist without being forced into litigation, sooner or later, and to a greater or less extent. The editor of the "Dacca News," with his ninety-two suits, sinks into insignificance beside the Bengal planter who, a witness before the House of Lords' Committee, told Lord Ellenborough he had a thousand suits; and even beside the late Mr. Morrison, who farmed the Abkarie in North Arcot, and told me himself that he had had 1700 suits in the course of his business, which only extended over a few years. I am speaking solely of the quality of the decision when it is pronounced, not of the difficulties which beset the way to obtaining it; and I say that the decisions are such that no man can safely invest his money in any contract which he may be necessitated to enforce at law. I could give a host of proofs. I select two at random from my own Sudder practice within the last two months. I take them not because they present any extraordinary features, but because they are the first that suggest themselves to my memory on the spur of the moment.

A timber merchant in Malabar sued the proprietress of a forest for non-delivery of certain logs of wood of the value of 69,000 rupees, which he averred she had contracted to sell to him. In her answer she denied the contract. The plaintiff thereupon petitioned the court to have the timber made over to him, he finding security, on the grounds—1st. That the defendant was masking and concealing it in a neighbouring forest. 2nd. That he had entered into contracts with third parties on the faith of obtaining this wood, and he would be a loser if he could not fulfil his contracts. These damages were contingent, and might have proved the subject of a cross action if they were really sustained. The defendant denied that she was masking the property. She pointed out that by the regulations, the course is laid down for the judge to pursue in case of any complaint made pending suit—that the defendant is concealing or making away with property. The judge is to examine the witnesses of both parties on oath, and if he thinks the property is in danger he may

attach it. But the court, without holding any such inquiry, and taking the plaintiff's own word as to his sub-contracts, passed an order for the whole of the timber to be forthwith handed over to him, he furnishing security. Against this order the defendant appealed to the Sudder. I prayed, *ex parte*, for an injunction to stop the execution of the order until the appeal was heard. This was refused, on the ground that the case would soon come on, and might be disposed of altogether. Circumstances delayed it for some time. My client wrote to me that if the Sudder Court's order was not obtained soon, it would be too late, as the timber was already being made over to the plaintiff. At last the case came on; it was so simple, that the order was recorded on the mere reading the petition; no argument was necessary. The plaintiff has now put in a petition for review of judgment. What merchant would like to embark in the timber trade if he is liable to have 70,000 rupees worth of his logs handed over to any one who chooses to file a plaint against him, notwithstanding he denies, by his pleading, that any contract was ever entered into between him and the plaintiff?

A zemindar contracted with A to let him his estate for ten years. He broke his contract, and let the land to B. At the expiration of the ten years C purchased the right to sue on the contract from "the heir of A," and sued the zemindar for the breach. He laid his damages at 50,000 rupees. He called a few writers in the employ of B, who stated that B's profits on the ten years were 40,000 rupees, and this sum the judge awarded. A clear premium for champerty! A man might as well assign a right to sue for a breach of promise of marriage! The appeal is before the Sudder now. No account was taken of the labour, the capital, the time, the skill of B, employed to secure these profits; no consideration of the fact that A, his heir, and the assignee, had literally done nothing; and that in their hands the estate might have been worked at a loss. There was no proof that A had purchased seed, ploughs, bullocks, or the like in the belief that he was to have the lease. What B made by the sweat of his brow was made the measure of C's damages, who had been hard at work on his own business the whole ten years, never been a penny out of pocket, and obtained an annuity out of a breach of contract with another man! If I were to let

my chambers to the dullest practitioner of the bar, and refuse to let him enter, he might just as reasonably, in suing me for the non-fulfilment of my contract, claim all the fees I had earned from the date of the breach up to action brought!

Take the business of one day in the Sudder Court. It affords an average specimen of the occupation of that court. Two suits were brought upon an account stated. The judge had written lengthy decrees, in which he found in favour of the plaintiff. Especial reference was made to a particular letter. When this letter was read, it was found to be an express repudiation of the plaintiff's claim, and a dispute of sundry items! As the pleader sarcastically remarked, either the judge had not read the letter, or he had no notion of the meaning of an account stated!

The next case I was engaged in myself. A had obtained a piece of land under a decree. It was described by miles and bounds. This land she sold to B. The bill of sale referred to the land as that which had been awarded to A in the suit. B filed his plaint to recover possession of this land; he obtained a decree; and in execution the judge had put him in possession of my client's land, which lay *outside* the four specified boundaries. He, of course, appealed. The Sudder sent for an explanation, which amounted to this,—that the judge could do no better, and had had a deal of trouble in doing even what he had; but he pointed out that the arrangement was only temporary, and that, if he could discover hereafter the land that had been really sold, plaintiff might have possession given of that, and my client's land be restored to him! Having reversed this order, I left the court for my other business. How can property have any value; how can men venture to risk their capital, when they may at any moment be beggared by such idiotcy as the above?

Connected with this is the paucity of magistrates in the Mofussil.* There is neither a magistrate accessible, nor a road to

* Here is an extract of a letter from a Wynaad planter, which will show how little has been done, and what is really wanted by the settler:—

"'Tis a common fallacy to hope, expect, and demand much from a Government. Such hopes and expectations are always signs of shortcomings and weakness on the part of the governed. This the Government doubtless feel. But if a Government has its rights, so it has its duties, and one of them is the removal of all obstructions to the investment of capital and the free exercise of the enterprising genius of its people. Will Lord Harris in Council, will the Honourable the Board of Revenue, in solemn

reach him if he were so. Two instances have just occurred in point. A planter on the Sheveroy Hills wrote to me that he had detected some women stealing his coffee. He was forced to go down to Salem to bring his complaint; that is to say, six miles down the Ghaut, and five more to the town. When he reached the station he found the magistrate absent on jumabundy; he was told he must come again; but as his time was too valuable, and the loss was petty, he saw no use in throwing good after bad, and thus the people find that they can steal with impunity. The case is the same with respect to the recovery of advances. This custom of the country is so irradicable, that no labourers will engage themselves for work without an advance. The delay and expense of recovering advances is so great, that it is seldom attempted, and the planter is at the mercy of his coolies. Some few years ago a planter was brought down from the Sheveroy hills to the Madras sessions to be tried for the murder of a coolie, whom he had thrashed in a moment of exasperation of seeing him, while under his own advances, tending the cattle of a neighbouring planter on the adjoining plantation. I have myself a considerable coffee estate on the Sheveroys. My manager lately wrote me word that the malialies, the indigenous people

conclave assembled—will they, I ask, endeavour to do this? Will they give us security for titles to land by some legislative act within the scope of their wisdom?

"Will they give us an European magistrate, and some hope of an efficient police?

"Will they give us an act, or extend any act, by which we may hope to punish our servants and labourers absconding without notice—absconding with our money advanced to them in good faith to enable them to join our plantations?

"Will they give us roads on which ourselves and our produce can travel, and take measures that all traffic shall not be closed in the rains?

"And finally, if the old red tape binds us—if Wynaad, at present, does not look so financially flourishing as other districts—if money is required—tax us by all means—we are anxious to be taxed in money—(for God knows our patience has been taxed long enough)—tax us, but give us security for our lands.

"Tax us but give us a magistrate, and some semblance of a police, not leaving us as now at the mercy of a parcel of mangy and useless native officials. They are all corrupt, and our collectors and magistrates (European) know it. Why, I heard a gentlemen offer a certain police Ameen 50 rupees per mensem the other day, provided he would enter his employment—but no; the virtuous man was too knowing for that, and declined the offer as he thought his Ameenship more lucrative on a salary of 15 rupees per mensem. Tax us, but give us roads and bridges, so that in the rains our coolies may not be starved, nor ourselves shut out from the world for days together, like Robinson Crusoe on Coffee Islands."

of the hills, had cut down 30 acres of forest within my boundary. Force is the only means of prevention. I had to write to the Collector; he is out at this season on jumabundy in the district; and it will take at least a fortnight before any order can be served upon the aggressors. Irreparable mischief is then done: "All the Queen's horses and all the Queen's men can't put my trees up again;" and though I may punish the offenders, no damages can restore me to my former position. If a magistrate were resident on the hills, and there were a law of master and servant, one great impediment to enterprise would be removed. Many a respectable intelligent planter would be glad of a little increase to his income—say 200 rupees a month—by being made a stipendiary magistrate; but the Government is so jealous of interlopers, that any such suggestion is sure to be put on one side, on the plea of the chance of the misuse of such powers. No one can be trusted without the pale of the regular service; or if an appointment be conferred upon any independent gentleman, the jealousy of the Civilians, who dislike parting with a fraction of their exclusive power, will be arrayed against him, and be pretty sure to make the situation so disagreeable, that it will be thrown up in disgust. Even while I write a case exactly in point comes to hand. The exigencies of the hour have thrust upon the Bengal Government the necessity of availing itself of the services of the indigo planters in the Mofussil. These gentlemen have accordingly, for the first time, been appointed honorary magistrates, and it is not too much to say that they have exerted a very material influence in keeping quiet the districts under their respective charge. Mr. Chapman, the Civilian magistrate of Rajeshaye, has been treating the recently-appointed officers with incivility, and giving them every possible petty annoyance,—a poor return for their gratuitous services! At last he forwards a formal complaint against Mr. Deverell, and recommends that his "commission as an assistant-magistrate be forthwith cancelled, for having abused the trust reposed in him by Government in making his magisterial powers a means of oppressing the ryots of a zemindar with whom he has been for some time at variance." Mr. Deverell shows how utterly unfounded this statement is; and, after conclusively proving his own superiority in point of reasoning powers and regularity to his

opponent, concludes his official letter as follows:—"In conclusion, I have a few remarks to offer, which, I trust, will meet with your attentive consideration. I believe it will not be denied that it was the object of Government, in appointing honorary assistant-magistrates, to relieve the magistrates of a portion of their heavy duties, and to enable them more efficiently to preserve peace and good order in the districts under their charge; and I think it will be admitted that, as the honorary assistant-magistrates discharge their duties without receiving any stipend, the very least that they may in justice expect is civility, and the cordial co-operation and support of the magistrates. I have no hesitation in saying that the honorary assistant-magistrates in the Rajeshaye district have every reason to be dissatisfied with the conduct of Mr. Chapman towards them. For my own part, I think I have evinced great consideration towards him in not handing him up to the notice of Government, as one who, by a series of interferences and petty annoyances, is bent upon defeating the object of Government, by disgusting the honorary magistrates so as to induce them to throw up their appointments. Mr. Chapman, by the way in which he conducted himself, and the expressions he made use of on the occasion of his local investigation, gave a direct encouragement to Protab Shaik and others (No. 3) to make a complaint against me (copy annexed). This was accordingly done in a petition, the language of which was so unseemingly disrespectful towards me, that any other magistrate but Mr. Chapman would at once have rejected it, and ordered it to be reframed.

"I am sure I am not singular in the opinion that, instead of working with and assisting and supporting the honorary magistrates in his district, Mr. Chapman conspicuously throws every obstacle he can in their way, and rarely loses an opportunity of lowering them in the eye of the natives. Should you entertain any doubts as to the correctness of the above assertions, you will have them amply confirmed by a reference to my brother honorary magistrates of the districts."

The Commissioner, in forwarding the papers to the Bengal Government, remarks that Mr. Chapman has been "somewhat hasty in his conclusions," and that his "interference is irregular." He concludes:—"The system of minute interference, on the

part of the officiating magistrate, with the proceedings of the honorary assistants, of which Mr. Deverell complains, is, no doubt, calculated to cause discontent among that body, who, for having given their services to Government gratuitously, naturally look for support and co-operation from the magistrate of the district. I should be sorry to see an experiment, from which such valuable results are anticipated, defeated by any want of courtesy, or appearance of jealousy and mistrust, on the part of the local authorities; and I think the magistrates, under whom these officers are placed, should be very careful to avoid the exhibition of such feelings." Mr. Halliday, the Lieutenant-Governor, observes that, "taking, then, Mr. Deverell's denial of all interest in the land as unrefuted, and therefore quite sufficient under the circumstances, I cannot but agree with the Commissioner that Mr. Chapman's conclusions were hasty, and his interference irregular. I must add, that his recommendation for the removal of Mr. Deverell from the magistracy was altogether unwarranted." This is a pretty specimen of the thanks which those are likely to get for their pains, who, even in the most difficult and perilous times, trench upon the offices of the self-styled "aristocracy" of India.*

* The following is an extract of an official, recording his opinion of one of his subordinates (both Civilians). It shows the necessary result of putting young and untrained men, of however excellent intentions and personal character, into situations that require special, trained qualifications. It is very instructive.

"Mr. C, the officiating magistrate, is intelligent, anxious to do his duty, right-minded, and not wanting in industry; but, notwithstanding these good qualities, his administration has been, I regret to say, up to this time a complete failure. His proceedings as a judicial officer have been neither vigorous, methodical, nor legal. They have been dilatory, lax, and uncertain. The proceedings of the subordinate police have been intolerably slow, irregular, and inefficient; while the state of his own serishta is worse than anything of the kind that I have ever seen in my whole official experience. He has retained in his own hands nineteen-twentieths of the work of his department, while the officers appointed to assist him have been almost unemployed, and yet he complains of Mr. —— as having failed in giving him relief. The result has been, of course, that business has been done in a slovenly and hurried way, raising a constant necessity for the reversal of his decision, and affording much ground for animadversion on his manner of performing duty. Two cases of marked illegality in his proceedings have recently been brought to the notice of the court, and have attracted their displeasure. At the close of last year, although not blind to Mr. C's defects as a magistrate, I was in hopes that further practice, and the instruction and advice of his superior officers, would have powerful influence in forming his official character. The result has not borne out my expectations. It is with great regret

Twenty years ago, Lord Metcalfe pointed out the consequences of this inevitable cause of jealousy and antagonism, which nothing but the destruction of an exclusive service can eradicate. "Well or ill founded," he said, "they will always attach to it the idea of monopoly and exclusion. They will consider themselves comparatively discountenanced and unfavoured; and will always look with desire to the substitution of a royal government." "For the contentment of this class," he urges, "*which, for the benefit of India and the security of our Indian Empire, ought greatly to increase in numbers and importance*, the introduction of a royal government is, undoubtedly, desirable." *

The insufficiency and uncertainty of title is another terrible obstacle to the adventurer, and no doubt turns many a man and many a purse from India. Let me instance what is now before my eyes with respect to coffee planting, which bids fair to be one of the most attractive occupations of settlers in the Southern Presidency. In Malabar there are vast tracks of forest land, equal to the best situations in Ceylon. Planters from that kingdom, who have visited the Wynaad, admit the excellent adapta-

that I record so unfavourable an opinion of an officer, whom, in many respects, I think of high promise; but attributing, as I do, his failure in a great measure to the want of previous experience, I would use his example as a powerful argument against placing in such independent charge, young officers who are not fitted for them by previous training and mature official experience. Mr. C, I understand, had never been for a single day in charge of a subdivision, or even of a thannah. Men are here and there to be found, whom strength of character and natural capacity for business render independent of official training; but such instances are rare, and not less so in our Civil Service than elsewhere. The supercession of Mr. C by an officer of far higher standing has been notified in the 'Gazette,' and I have every hope that, before he is again placed by circumstances in charge of a district, he may have made such progress in methodical application to duty, and in acquaintance with the details of a magistrate's office, as to sustain his responsibilities with credit and efficiency."

* Mr. Allen, a retired Bengal Civilian, in his pamphlet, entitled "A Few Words anent the Red Pamphlet," writes (p. 29):—"With regard to the suggested future encouragement of the settlement of independent Europeans, it may be asked, When has the Saxon in India wanted or required Government patronage? All he requires there, or elsewhere, is a clear field and no favour,—and that he has had." Let this chapter be his reply. Aristotle, in his "Rhetoric," advises the controversialist never to put his argument in the form of a question, unless he is certain that it is unanswerable. A wise caution.

tion of those jungles for coffee planting.* Labour is much cheaper and more easily procurable there than in Ceylon†; for Ceylon is supplied with Indian Coolie labour, by annual emigration. Something analogous to that of the Irish reapers and hay-makers into England. With the railway running through Paulghaut to the western coast, there will be a near, cheap, and easily attainable port of shipment. As it is, the coffee cultivation is on the increase; but many are deterred by the great uncertainty which exists with respect to titles and licenses; and in this respect, the simplicity and certainty of the system in Ceylon, whereby a man can buy land out and out, far more than counter-balances the advantages offered in India, in respect to soil, situation, and labour. It is thus that the

* The following shows the coffee cultivation in the Wynaad, which is one of the most favorable localities for English enterprise, if duly fostered:—

Dindremul	350 acres.	Bithery	50 acres.
Bon Espoir	300 „	Amelia de Lopez	100 „
Wynaad	90 „	Pookoot	150 „
Mary	150 „	Lecadie	350 „
Belview	100 „	Munda Mulla	80 „
Rasselas	150 „	Mowbray	100 „
Teruhulley	100 „	Walthamstow	150 „
Baugh Gherry	150 „	Perende Meetheel	140 „
Poondroong	50 „	Hope	150 „
Bawelly Road	100 „	Chemberah	170 „
Providence	70 „	Adelaide	200 „
Adda ba Coon	40 „	Calputty	106 „
Pew Estate	50 „	Caroline	200 „
Bleak House	23 „	Haredal	200 „
Farnborough	80 „	Suffolk	214 „
Pilla Cardoo	100 „	Sandy Hills	113 „
Terriout	220 „	Peria Chola, Yellamally, Berhuhully	acreage not known
Charlotte	250 „		
"Sleepy Hollow"	40 „		
Culli	250 „	Eddekel	80 „
Annette	100 „		

To the above list must be added a large and increasing native cultivation, the amount of which I am not prepared to state.

† Since this was written, I have seen the letter of a Wynaad planter before referred to, which requires that I should modify this statement:—"Labour would be cheaper in the Wynaad, if roads and other facilities existed; wages would not then range higher than on the coast.

"Planters Association of Western India" addressed the coffee-planters on the Sheveroy Hills, on September, 1857. "In a district but little known, without roads, without bridges, and without law, (for the distance of the courts and the difficulty of travel made the law a practical nullity,) some fifty European planters have been located, where, by years of toil, and a large outlay of money, they have proved the pioneers of civilization, gradually transforming uninhabitable jungles into well cultivated plantations; in many instances making roads, and opening up the resources of a country, of whose agricultural value the Government heretofore seem to have been careless or uninformed.

"It has always been most difficult to procure legal titles to land, or to discover the legal owner; in some cases land has been paid for partially twice over, and capitalists have left the country in disgust, owing to the difficulties entailed by the want of a Government survey, and a court for the registration of title deeds.

"These are some of the evils under which the European settlers have laboured, and it was believed that the formation of a society, combining the great majority of those interested in coffee-planting, through whom our earnest and careful representation might be made to Government of those obstructions to the investment of capital such a state of things was likely to entail, could have none other than the most beneficial effect."

The planters in Western India have mostly purchased the unreclaimed forests from the native rajahs; the Collector is now considering the propriety of saddling their lands with an assessment of 3 rupees per acre, which would effectually drive away fresh comers, even if it did not ruin the old. On the Sheveroy Hills the land is all held from Government. The assessment is fixed at 1 rupee per acre, which nobody objects to pay; but there the grievance is the shortness of the term on which unreclaimed lands are leased. The term is only for 21 years, at the expiration of which the Government resumes to itself the right of re-assessing the land. Some of the older leases were granted in perpetuity, and thus all are not placed upon an even footing. It takes five years to bring a coffee estate into profitable bearing. The outlay required is very large, and the speculator must, of course, be out of his money for some time before he gets any return. The Govern-

ment gives the land rent-free, it is true, for the first five years; but jungle has to be cleared, and such a quantity of work to be done, and money sunk, during this time, that but for this encouragement no one would take up lands. People in India, looking about for something to do in a healthy locality, unable from the pension rules or other circumstances to quit India, turn their attention to these hills; but it is superfluous to argue that no capitalist in England would be tempted to embark his means in a property, of which only some nine or ten years' lease may have to run, so long as he has the uncertainty of the Government intentions hanging over his head, as to the future rate of assessment on the renewal of the term. On the Neilgherries, the demand for land by European settlers is at present very great. The Board of Revenue lately liberally proposed that the grants of lands purchased at public auction, after the rate of annual assessment was fixed, should be in perpetuity; but the Madras Government declined to sanction this, as they observed that the Court of Directors had lately fixed 30 years as the term for cultivation in the plains, and they saw no reason why any distinction should be made in respect to cultivation on the hills.*

* The Board of Revenue, in revising the rules for occupation of land in the Neilgherries, writes thus:—

"With regard to Rule VIII, the Board doubt the expediency of either limiting the term of years for which the land is to be held, or of declaring it subject to a revision of its assessment; and they think it would be an improvement if the present rates were considered permanent, and the land given on a permanent puttah,—the Puttadar or his heirs not being liable to ejectment, except on failure of payment of assessment. It might perhaps be desirable, in the first instance, to consider, in communication with the Collector, whether the rates now in force would be suitable for permanency, and to adapt them to acre, instead of cawny, measurement."

The Government, less liberal, decides as follows:—

"Rule VIII prescribes the period for which leases for lands, taken up for different purposes, are to run, and enacts that the land shall be liable to re-assessment on the expiration of those periods. The Board question the expediency of both these requirements; they recommend that the present assessment be declared permanent, if the Collector considers it to have been correctly fixed, and that the land be given on a permanent puttah. In respect to this suggestion, it is to be observed that under the instructions communicated by the Honourable Court of Directors, for a general survey and re-assessment of the lands of this Presidency, the new assessment is to be declared unalterable for a term of thirty years, after which it would be subject to re-adjustment. Under these orders, the Government see no reason for exempting land on the hills from a rule which is to apply to land on the plains."—*Records of Government.*

Even this, it will be observed, offers better terms, by ten years, than the Sheveroy Hill planters enjoy. In the new rules for taking up waste lands in Assam, the lands are to be granted for long terms of 99 years, at easy rates,* while in the draft rules which I have seen, for the occupation of jungle lands in Pegu, there is a further declaration that the estates shall be hereditary," but a Machiavelian ingenuity appears to have been exercised, I will not say with a view to render everything insecure, fluctuating, and uncertain, but which must produce such an effect. This want of uniformity proceeds from the Government not proceeding upon a clear settled perception of what its own interests, inextricably wrapped up as it appears to me in the interests of its subjects, evidently require. The old jealousy of European settlers still lingers about the traditions of the Council-chamber, and the results are such as I have described.

This appears to be all the more inexcusable in the Madras Presidency at any rate, and also in all newly-acquired territories, because the principles of the ryotwarry, as they have at length come to be recognized, are based upon the indefeasible right of proprietors of the tenant in the soil.

There are sundry matters connected with the security of title which I have considered under the ryotwarry topic. Suffice it here to state, that all measures which conduce to that effect, and tend to prevent litigation, remove so many stumbling-blocks from the path of the European adventurer. A statute of frauds; a statute of limitations; compulsory registration of title deeds, and

* "We learn that the Board of Revenue have framed a set of new rules, regarding grants of waste lands in Assam, under which no grant will be made for less than one-hundred acres; and forest and grass lands will be granted on like terms. One-fourth of each grant is to be exempt in perpetuity, for the site of houses, roads, &c.; the other three-fourths to be rent-free for fifteen years, after which to be assessed for ten years, at three annas per annum for each acre; and from the twenty-sixth year, for seventy-three years, at six annas per acre,—the whole term being fixed for ninety-nine years. One-fifth of the land granted must be brought under cultivation by the expiration of the tenth year from the date of the grant, in failure whereof the grant will be liable to resumption. These new rules are very similar to those framed by the Revenue Board, for grants in the Sunderbuns; and when approved by Government, will probably be extended to Arracan and the Tenasserim Provinces."—"*Englishman*," June 2, 1854.

And see the terms of grants for Gotruckpore, the Dryrah Doir, and Kurraor, issued in 1858.—*Mills'* "*India in* 1858," p. 114.

mortgages; revision of the stamp laws, so as to confine the use of stamp paper to the purposes for which it is bought; the issue of such revenue receipts as may afford evidence of occupancy; a revision of the existing law of perjury, and the like, are all obvious improvements which the legislature should provide at once; and I am happy to think that these measures, together with the introduction of County Courts, are being now advocated by one of the ablest of our Madras judicial officers.

There is another subject which must not be overlooked. I have already spoken of the antagonistic feeling which exists almost everywhere between the Civilian and the planter. There may be fault on both sides; hauteur may be shown by an exclusive service on the one hand, jealousy of that service may be lurking on the other. There is a pre-disposition on both parts to spy out faults, and make or seek opportunities for raising objections. Crimination leads to recrimination; opposition to dislike. When these disputes come up before the Government, I am bound to say that there is almost invariably a disposition to support the service. It must be so. The Council is mainly composed of the same order. There is a natural policy to support authority; a natural dislike to lower a member of the ruling class. It is but seldom that a reference ends like that of Mr. Deverell's; and the difficulty of obtaining any redress against a member of the civil service, be his offence or short-coming what it may, is proverbial. I could give an infinity of instances. Mr. Brereton, for such gross misconduct as would have caused the dismissal of the most influential functionary, where there was a free Government, positively obtained leave to spend a time in England on the usual allowance; he has since returned, and has no doubt obtained lucrative employment. Mr. Shubrick's conduct, with respect to his subordinate convicted of torture, called forth no public reproof. Mr. E. B. Thomas, whose magisterial vagaries were so notorious last year, remains where he was, and as he was; though he has since then been again before the Government, in a dispute between himself and the commandant of the Neilgherries, who, unable to obtain any redress, has now taken his complaint home to lay it before higher authorities. The commandant of the Malabar Police has found that any outsider who opposes a civil servant, goes to the wall. For an offence which the Sudder Court

brought to the notice of the Government, a judge was for the moment suspended; but his friends were powerful about the Council-Chamber, and the next Gazette saw him nominated to a better appointment. He was positively kicked up stairs. The catalogue might be swelled indefinitely.

Let us now peruse what the "Red Pamphlet" says on this subject:—

"Attached by education, training, and hereditary policy to the principle—'India for the Civil Service,' they had steadily discouraged the settlement in the land of that other element, which, in a crisis like that which, in spite of themselves, they felt approaching, might have found a countervailing barrier to Mahommedan or Hindoo rebellion. Had independent Europeans been encouraged to invest their capital in the land of India; had not the terrors of subjection to a Hindoo or Mahommedan magistracy been held over their heads, to prevent such a catastrophe (to the Civil Service); had they been allowed the smallest exercise of political power, or had the way to that power been open to them, an independent body of landholders would have arisen, who would have formed the connecting link between the Government and the natives, and also have been able, from their numbers and organization, to have checked any outbreak on the part of the people of the country. But it was very evident that such a measure could not have been accomplished, without invading the exclusiveness of the Civil Service. Hence it has always been (with the brilliant exception of Lord Metcalfe, who had thoroughly at heart the interests of India,) systematically opposed by the members of that body. Their policy has ever been to shut out independent Europeans from the country. To carry out this end, they have encouraged the trade in opium, whilst they have neglected purposely the cultivation of cotton; they restricted, as much as possible, public enterprises which necessitated settling in the land; and although this policy has resulted in a wide-spread rebellion, it will never be lost sight of so long as the rule exists that a man, were he to possess the highest administrative abilities, would be debarred from their exercise, because he did not in the first instance come out to India as a member of the Civil Service."

It is this policy which has for a century kept India without

roads; though the pressure from without, since the discussions on the Charter Act of 1852-3, and the exposure of the Madras Public-works Commission, have produced an activity in this respect, of which the Company would fain even claim all the credit for themselves. It is surely superfluous to argue how this difficulty of communication operates upon enterprise, but the following examples will be better than all precept.

In the Madras "Athenæum" of March 18, 1858, is a letter from a Wynaad planter, who says that the prospects of coffee planting in that district are not nearly so good in 1858 as they were in 1850. "Labour is not to be had, for the best of reasons; there are no roads to bring in provisions for workmen, and at present prices of grain the coolies cannot make sufficient out of their pay to make it worth their while to come from Mysore and the coast, where labour is now in demand." "On many of the estates in the Wynaad, as much as one-quarter of the crop has been wasted from want of hands to pick it, and at the present moment, the greater part of Mr. Ouchterlony's crop is lying in his stores for want of transport." The extent of that gentleman's operations will be understood from the fact that his last year's crop realized £18,000; the encouragement which he has received from the Government may be seen from the following extract from one of his letters to me, with which I shall conclude this topic:—"What a spectacle it is of a country for enterprise! I have been about twelve years at this cultivation, and the so-called high road to the coast is still barely passable even for bullocks. The nearest court to me is one hundred and fifty miles off, and the nearest police station some fifty."

CHAPTER X

Topics 17th—18th.

XVII. Do our Law Courts require reform?—XVIII. Is the Police to be reorganized?

The two great evils in our present administration of justice, arise from the incompetency of the judges, and the corruption of all below them. Coupled together, these two causes have made our Civil and Criminal courts the pest and bane of the country. The amount of perjury which prevails throughout the land is not so much the consequence of the natural character of the people, as the result of that feebleness on the bench which cannot contend against the cunning of false witnesses, whereby the natives see that acts of perjury, subornation of perjury, forgery, and the like, are the surest means of gaining causes; that they may be practised with success on the one hand, and impunity on the other; and therefore most liberally had recourse to. As to the character of native evidence, it must be admitted, I fear, that it is altogether untrustworthy.* Any number of witnesses to any fact, however incredible, may be procured in the Bazaar for a few annas. I will just give a few instances which immediately occur to my mind. Mr. Arbuthnot,† in his "Select Cases," gives a cause in which a forged bond was met by a forged receipt. This is a very common form of defence; one, it is superfluous to state, attempted in many cases. The Torture Report lets us into the secret of much false testimony in criminal cases; for if false charges are got up by the police, false evidence must necessarily be suborned to support them. An instructive illustration is furnished by Mr. Lushington.‡ "I was going to men-

* See, however, Sir George Clerk's Parliamentary Report, Q. 2278.

† Late Registrar to the Sudder Adawlut.

‡ Mr. Lushington. House of Lords' Report. 21st April. 1853. Q. 4485.

tion," he says, "an instance of the impossibility of trusting evidence in India. It was the case of a wealthy zemindar, who was accused of murder, and who had absconded; at last, (I do not exactly know how,) I believe he was persuaded to give himself up; he was tried before me; there were about 100 witnesses; the facts of the case amongst the people were notorious beforehand, and had reached my ears. The jury was composed of native gentlemen of very great respectability, the very best that could be procured; I obtained their attendance almost as a personal favour. The prisoner was a man of great wealth and respectability, and I did not wish him to be dissatisfied with the decision which might be arrived at. I think there were about fifty witnesses on either side, and they swore to facts which immediately contradicted each other. At the end of the trial, I availed myself of the latitude allowed by the law, and cleared the court for the purpose of asking the jury what their opinion was upon the subject; they said that every word that had been uttered on either the one side or the other was utterly false. Several of those gentlemen are in Futtepore at this moment; I believe the Principal Sudder Ameen was one of them; the law officer was another; there was not the slightest hesitation among them; there was not an iota of difference of opinion. Having delivered themselves of this opinion, one of them, the Principal Sudder Ameen, observed 'The fact is, we all know the truth.' I reminded him that we must decide upon the evidence; but he continued, 'Everybody knows the fact; neither did this man kill the deceased, nor was he a hundred miles off, as he is stated to have been; but he was in the village at the time, hiding himself in a house for fear his enemies should accuse him.' Whether that was the truth or not, I do not know; but such is the evidence upon which you have to decide upon life and property in India, in which fifty witnesses on each side deliberately deposed to falsehoods, speaks volumes." Dr. Duff's evidence will be remembered. In Madras, the character of native evidence is the point in which our Mofussil judges and their supporters constantly ride off, when brought to book for their anomalous decisions. "Cases," says Mr. Baynes, "frequently occur in which the judge might best decide by tossing

up!" * To my mind, the very difficulty of dealing with native evidence makes the employment of trained labour only the more imperative. At least, it strikes me that a man well versed in the theory and practice of the law of evidence, skilled in cross-examination, and with that knowledge of human nature which practice in Courts of Law furnishes, would, *a priori*, be more likely to detect falsehood and elucidate truth, than a young gentleman left to his own devices to investigate a case, without any landmark, any experience, any knowledge of the fundamental principles of evidence. It is the want of a thorough grounding in the law of evidence, simplified as it has been of late years, and freed from the minute technicalities observed in English Courts, which I think leads to the majority of errors in decisions by the Company's judges. Many a man is convicted, many a man acquitted; many a right declared, and heavy damages awarded, many a right ignored, because the judge has been influenced by the reception of a mass of hearsay and irrelevant matter which should have been excluded from the notes. So strongly did I feel this, that when I was appointed Professor of the Law, I commenced my lectures with the law of evidence, and I am at this moment busily employed in preparing a text-book on the subject, which, I trust, may supply at least one great want in this country.† Let me give a few instances of what evidence is in this country. I do not say that it is of a better quality in the Supreme Courts than the Company's; but in the former, it certainly does not impose on the judges to the same extent. It is seldom, indeed, that a trained judicial mind cannot fix upon some circumstantial evidence, some matter in the conduct

* "Mr. Norton can know little of the practice and procedure in the Mofussil Courts, if he thinks it a matter of discredit to a judge to be frequently unable to appreciate testimony. I would undertake to put Ramasaumy and Veerasawmy before a full Bench at Westminster, and I strongly suspect that when the learned twelve retired to consider, they would feel that the most impartial mode of appreciating the testimony, would be by connecting the veracity of Veerasawmy with the circumstance of a half-crown driven upwards by the thumb of the Chief-Justice, exhibiting Her Majesty's effigy on reaching the ground, and that of Ramasaumy with the contingency of the fallen coin displaying her armorial bearings."—*Bayne's Plea for the Madras Judges.*

† This book, which will prove highly valuable to the native pleaders and others, has since been published at Madras.—Ed.

of the party and the like, which will serve as a finger-post to the truth, let the direct evidence be as perjured as it will. Now for the cases. A gentleman, who holds a large zemindarry, told me that he had to fight a suit against the zemindar. The lease had to be proved. It was only attested by native witnesses. They came to him, and told him that the zemindar had offered them five thousand rupees to deny their signatures. It was a large sum, would provide for their children, &c.; but they were honest though poor, and would prefer to tell the truth if the defendant would give them only fifteen hundred rupees; and my informant actually had to pay the money to make his own witnesses speak the truth. This may seem a strange story; but the gentleman I speak of knew the natives and the courts well; and he acted as he was certain was best for his own interest. On another occasion, a gentleman had to bring certain parties to a criminal trial. The case was clear; the witnesses straightforward and explicit. But the court vakeel came to the prosecutor, and deliberately advised him to put aside the actual witnesses, and to bring forward another set in whom the vakeel had more confidence, because they were accustomed to the courts. Some railway engineers were about to be tried for having caused the death of a coolie by flogging. One of them received the following piquant letter:—

"*6th October*, 1857.

"To , Assistant Engineer.

"The humble petition of

"Humbly sheweth,—

"In consequence of your present case, condition, and trial, my father is really very sorry and depressed in spirit, and as he is an elderly man, and thoroughly knows the laws and customs of this country and collectorate, he begs most humbly to propose that should you wish to bring the case forward again, and bring your witnesses who have said prior to the affirmative to the negative, or if to the negative to the affirmative of your deposition, and have another chance of your trial. Regarding the above, my father desired me to go to you a few days ago. As he requested I came to Seeroomungum to you; persons waiting at your house would not permit me to wait on you, consequently I returned back. Should you think me right and

deem it proper, and further wish me to come over regarding the matter, I shall do so with pleasure; should you desire this, I would wish you to get your witnesses present on that day, and I shall speak to them personally."

That this enormous mass of false swearing is the result of our judicial system, is shown by the testimony already adduced, as to the superiority of the people of Oude in respect to truthfulness over the natives in our own districts, separated only by the river; and by the naive admission of Mr. Campbell in his "India as it may be," "that the longer the people of a newly acquired territory remain under our rule and system of administration of justice, the more given to perjury do they become." A strong Bench will, of course to a considerable extent, repress this crime. When men see that mere hard swearing will not carry the day, they will soon cease to rely upon it to the same extent as at present; and a thorough determination to bring every flagrant case to punishment, will inspire a wholesome fear throughout the land; yet the final eradication of this vice of lying must be effected by education, not by any legislation; and it is to the two other causes of the unsatisfactory condition of the administration of justice that I now seek to confine attention.

The exposure which I made in 1852, of the quality of decisions in our Company's courts, satisfied the public mind at the time as to the unfitness of the Mofussil judges, as a body, to preside over the distribution of Justice.* It was this conviction which, probably, determined the ministry to create a court which should exercise a really strong supervision over all the subordinate courts in each Presidency. Hence, the project of amalgamation, by which it was sought to throw the skilled labour of Her Ma-

* The "Times," on the appearance of this brochure in England, said in a leading article, dated March 16, 1853, "While the destinies of 120,000,000 fellow creatures still hang in the balance, everything is important that can assist the British Legislature to decide the momentous question; we hail, therefore, with pleasure a most seasonable contribution from India itself, and that, not a got-up petition from mere natives, not the result of any 'ignorant impatience of taxation,' but an account of the Administration of Justice in Southern India. Mr. John Bruce Norton, Barrister-at-Law, discloses a state of things which England cannot allow to continue with any regard to her character and true interests, not to speak of the unfortunate, but considerable, fraction of the human race cast on her cruel mercies and precarious justice."—Ed.

jesty's Supreme Courts into the Courts of Sudder Adawlut. Hence, the desire to provide, at once, simple codes of Civil and Criminal Procedure, which should sweep away the accumulated heaps of rubbish to be found in the regulations and constructions of the various courts. From that day, however, to this, nothing has been done. The codes have been prepared in England; they contain some few most objectionable features, which makes me rejoice that they are not passed; but the Commissioners, who gave their gratuitous services, were much disgusted at finding their labours handed over to the Indian Legislative Council for further deliberation; and now the whole plan seems indefinitely shelved. The rebellion has shown the soundness of the fears expressed by the Calcutta petitioners of a change in the law which should submit their persons and property to *native* judges; while the reported decisio s published since my pamphlet on the administration of justice n Southern India, show that no improvement has been effected i the quality of the European Bench. Not that the judges of Madras are a whit more deficient than their judicial brethren in the other Presidencies. The "Friend of India" has, from time to time, dissected the Calcutta Sudder Reports as they were published, with much the same result as that which I arrived at with respect to Madras. I do not know how the matter stands at Bombay; but it will be a marvellous circumstance if the judges there are better than in other quarters of India. Like causes produce like effects, and the want of all forensic practice, the absence of any teaching in the principles of evidence and jurisprudence, the neglect of all special training, cannot but produce similar results without reference to locality. Not a single effort has been made by the East India Company to improve the quality of their European judges. No registerships have been restored, because they would cost money: no demarcation has been made between the revenue and judicial lines of service. A revenue collector may be now as then pitchforked at any moment on to the Bench, especially if he has incurred the displeasure of the Board of Revenue; and no provision has been made for the teaching or training of the young men who have lately entered the civil service. It was a consideration of these facts which made me, in the "Rebellion in India,"

question, though very cautiously, whether it might not be expedient to make a thorough reform at once, by placing educated professional men on the chief judgment seats in the Mofussil. My reviewer in the London "Athenæum" mistook the latter part of that volume, and thought it was not well considered. He says my panacea is the introduction of English law. I am not aware that I have anywhere said so; certainly nothing could be farther from my thoughts. I have, it is true, with great diffidence suggested that it may be a question whether it be not expedient to commit the judicial functions to trained professional hands. But I am no thick-and-thin advocate of the barrister class. So far back as 1852, in writing on the administration of justice in Southern India, I expressly stated that I did not advocate the introduction of English barristers to the Mofussil Bench. I then pointed out that the Civilians possessed many advantages, and that what was really required was, to give such of them as might be set aside for the judicial office a special training. It is only because nothing has been done from that time to this with a view to fit the Civilians for the Bench, that I have ventured to hint at the propriety of placing barristers on the Bench. My further experience of Mofussil courts teaches me that nothing can be more hopeless than their present condition. The absolute necessity which I think has now arisen of making the European amenable to the same tribunals in the provinces as the native, arising from the increased number of the classes whom the railways, the electric telegraph, and other measures of advancement have thrown into the interior, and the justice of their apprehensions of being compelled to submit to the Company's tribunals such as they are now, induce me to urge on any change which may remove those objections, and strengthen the administration of justice generally. At the same time I am well aware of the disadvantages attending such a proposition. The ignorance of the people and their language would be a fearful bar to the success of barrister judges in the interior. The success of the class in the Anglicized Supreme Courts of the Residencies, affords but little argument or criterion of similar success in the Mofussil. The risk of introducing technicalities would require guarding against; and I can

scarcely conceive a greater evil than that to the people of India. So much for English lawyers.*

To advocate the introduction of English *law* is a totally different matter; my meaning has been entirely misrepresented. It is not English law, but English *justice*, which is my panacea for India. I believe there are few persons who go the length I do for radical reform in the English law even as it obtains at the Presidency Supreme Courts. I advocate the entire abolition of forms of actions; the fusion of law and equity; the introduction of a uniform system of pleading for all *sides* of the court, Common law, Equity, and Ecclesiastical; the abolition of the master's office; the simplification of procedure; the lowering of costs; the abolition of the two distinct orders of pleaders; the institution of Courts of Conciliation similar to those in Sweden; the extension of the Small Cause Court jurisdiction; the compelling litigants to show each other as much of their game as possible before coming to a hearing, instead of, as now, striving to conceal their respective hands to the last moment. With such views as these, it is not very likely that I should propose to introduce English law into the Mofussil. I disagree almost entirely from Sir Erskine Perry's views,† and I can scarcely conceive anything more unfair to the people at large,

* I cannot, however, pass from this subject without noticing the constant allusions in the "Saturday Review" to "venal lawyers," who would deliver India over to "Chitty on pleadings." If those gentlemen will look at Mr. Lushington's evidence before the Lords' Committee, (21st April, 1853,) they will perhaps be surprised to find that technicalities are one of the main evils complained of in the Company's system. He states as follows:—

Q. 4413. "Will you state what are the principal defects to which you allude?

A. "The principal defect, and the one which has attracted my attention more than any other, is a palpable disposition on the part of the superior courts, the Company's courts, to encourage technicalities. It is of the utmost importance in a country like India that a simple manner of transacting business and obtaining judicial decisions should be observed. Instead of that, the great aim at present, on the part of many judges, is to follow the precedents of English law whenever they can learn them, and to force them upon the natives, who are particularly averse to them. I do not know any race of men in the world who have such a natural aversion to technicalities as the natives of India have; they would rather have a tolerable decision given by an almost arbitrary judge, a person who had no judicial qualifications whatever, than the decision of a deliberate court, if they have to arrive at it through all those forms and technicalities."

† See his evidence before the Lords' Committee.

than granting that portion of the Calcutta petition prayer which seeks to make English the language of the courts. Every court should conduct its proceedings in the vernacular of the district; nor would I permit a judge, whether barrister or civilian, to sit on the Bench unless he had a good colloquial familiarity with the spoken language of the lower orders. Indeed I think it very questionable whether a pleader in the Mofussil ought to be allowed to plead in English. I have done it myself, and can see what a disadvantage it places the opponent under. On this point see Mr. Marshman before the Lords' Committee, May 3, 1853.*

Indophilus says he proposed the introduction of English, as the official language of the courts, twenty years ago; and Mr. Mead, who of course upholds the views of the Calcutta

* Q. 5190. "What is your opinion of the use of the English language as the language of the courts in India?

A. "I do not think it is possible to introduce the English language into the Mofussil courts as the language of business. The Mahomedans introduced their own language which was then the Persian, and it kept possession of the country as the official language for 600 years. When the British Government took charge of the administration, in order to avoid anything like a violent change, the old language was continued in the courts, more especially as all the officers of the court were perfectly well acquainted with it; but, gradually, the natives began to complain that the language used in the administration of justice and in the Fiscal courts was a language entirely foreign to them. A general desire arose for the employment of their own language, and about the year 1835 (that is eighteen years ago,) the Government of India restored to the natives, after six centuries of disuse, their own language in the transaction of their own business, and, at present, Bengalee is universally employed throughout the courts in Bengal, and Hindostanee in the courts in the North-West provinces: this innovation has been exceedingly popular among the natives; perhaps it is a more popular measure than any that we have ever introduced in India; and I think that any attempt to abolish the use of the Bengalee language and to introduce English into the courts, would not only be exceedingly unpopular, but that it would create a degree of disaffection which the Government would be very sorry to encounter; at the same time it would unquestionably impair the administration of justice. At present the first inquiry that a native makes when a European comes to take his seat in the court, either as a civil or sessions judge, or as a magistrate, is, 'To what extent does he understand the vernacular tongue;' for they firmly believe that in proportion to his ignorance of the popular language will be his subserviency to some influential natives in the court. There is a natural tendency on the part of the native officers in the courts to use the Hindostanee language, with which they are all familiar, and with which every judge and every magistrate is also acquainted, because it is a kind of lingua franca, and the magistrates have sometimes been under the necessity of inflicting a fine upon every man who ventured to address them in Hindostanee, that is, in a language that was unknown to the great body of the people, though familiar to the native officer and the presiding judge."

petition, advocates the same proposition, though with a singular inconsistency he writes in another page—"What the dead languages are to our own countrymen, our own tongue is to the Indian; and how few of the former are familiar with them." Could any course be more unjust than to force the people to plead in a language, their familiarity with which is thus described?

The proposition must be very materially narrowed. It cannot be applicable to the lower classes of courts, such as those of Moonsiff's and Sudder Ameen's, before which, probably, not a suitor who knows English comes once a year,—where the pleaders and the judge are alike ignorant of any but their mother tongue. Applied to the higher courts, those presided over by Europeans, it is still abundantly clear that the *witnesses*, as a general rule, must depose in their own vernacular; and therefore, I presume, if the record of their testimony is to be in English, we must introduce translators,—an additional class of court servant; a necessary evil even in the Supreme Courts, but in the Mofussil, calculated to increase the necessity of bribery. There would also be a danger of the judge becoming gradually less and less familiar with the language of the country, as there was less and less necessity for him to keep up his knowledge of the tongue. And I can scarcely describe the importance in practice of a judge being able to check all the proceedings before him, by his knowledge of the language which is spoken in his court. Although the theory is that the Mofussil judges are thoroughly conversant with the vernacular of their respective districts, this is not the fact in practice. A judge who has served in the north, where Telegu prevails, is transferred to the south where Tamil alone is spoken, and the reverse. The instances of judges being thoroughly masters of the language of their courts, are the exception rather than the rule. The high-flown poetical language taught in college is scarcely of use in ordinary life, and not intelligible to the masses. I have myself seen a Civilian magistrate, who had obtained the reward of one thousand pagodas for proficiency, unable to read the heading of the depositions taken before him, when requested so to do in the Supreme Court. The cases in which a Civilian is able to read a petition in the vernacular are rare in the extreme; the universal practice is to have them read out by a native officer of the court. As an instance, an appeal

from the Tinnivelly Zillah Court was sent to me for advocacy in the Sudder Court.* In paragraph 9, the Decree, with reference to a Tamil document, says, "As the court does not know the Tamil language, the court inquired if the vakeels were willing to refer the matter to three Tamil scholars, and to abide by the opinion of the majority." The judge had been transferred from Bellary, where the Telegu language prevails. I have seen myself, over and over again, the immense advantage of the knowledge of the vernacular on the part of a judge; and my conviction is, that so far from making English the official language of the courts, our course lies in exactly the opposite direction, requiring, namely, that judge and pleader shall be familiar with the language ordinarily in vogue in the district in which their court is situate. Perhaps it is intended to limit the use of English to the mere record and pleadings. But here, we should still have to give translations of all proceedings, &c., to the suitors or their pleaders in the native languages; and this idea which is now abroad is precisely one of those dangerous innovations which the reformer will do well to resist. About the same time that Sir Charles Trevelyan (Indophilus) was proposing the introduction of the English language into the law courts, the Honorable Mr. Shore was expressing his ideas on the same subject. His objections are, I think, unanswerable. I would refer generally to the 19th and 30th chapters of his admirable and most truthful work. This is one of those matters on which legislation can either affect nothing, or affects a grievous oppression. Our course is to lay down such conditions as shall superinduce a tendency to make English the language of the courts, and then leave events to their natural course. Thus we should insist upon a knowledge of English being a *sine quâ non* with every vakeel at his examination; and the general spread of education will carry the English language far and wide. In the Sudder Court, circumstances themselves have, without any legislation or any order of court, brought about this very change. I remember the time when all the business of the court was carried on in the vernacular. Now, practically, English is the official language of the court. A vakeel may address the

court in the vernacular if he pleases, but natives as well as Europeans do now plead orally in English; indeed, a native pleader who did not know English would have no chance of obtaining business. All the pleadings are printed in English, after the fashion obtaining in the Privy Council. All important documents, depositions, &c., are translated, and when it was found generally convenient to both parties, the practice gradually adapted itself to the altered state of circumstances. Let us not wander away into classical usages, seeking to copy the practice of the Romans, or argue from what the French would have done had they been in our places. Let us not entangle ourselves in whimsical fancies of superseding the vernacular written character, by the introduction of our English letters; but let us abide by what, to plain sense, is obviously just towards the people, whose government we have assumed. Therefore, I say, let not English be the official language of the courts.

The real line of judicial reform lies in totally different directions. Let us sweep away the confused mass of regulation, and circular order, and construction law, and procedure, which has been accumulating for half a century, by the promulgation of simple codes of procedure; let us codify the criminal and civil law, so as to define rights and crimes substantively; let us do what we can, as quickly as we can, to instruct the future occupants of the Bench in the principles of jurisprudence and the law of evidence.* Let us raise the character of our pleaders by

Lord Canning, I am aware, in his minute on the Police, expresses an opinion that the "patriarchal" system of justice is the best adapted for the condition of India. This is one of the catch-words of the civilians; it means that each man may be left to follow the dictates of his own "common sense;" that training is unnecessary for a judge; and that all forms are but so many trammels. A straw thrown up is enough to show which way the wind blows; and from the first, I regarded this passage in Lord Canning's minutes as a sign of his having fallen prostrate before the secretariat. For when it was written, Lord Canning had never been out of Calcutta; had never seen the working or entered the precincts of a Mofussil Court; he had before him the results of this "patriarchal" system in the shape of Sudder reports, Missionaries' petitions, Torture report; and yet without a moment's hesitation he pronounces an opinion of the most sweeping character, certainly not based upon the facts before him, but instilled into him by those whose interest it is to maintain the only system of administration of justice in which they could possibly find a place; one which requires no study, no knowledge, no judicial qualifications, nothing but "common sense;" and which admits of the easy transfer of one and the same individual backwards and forwards from the revenue to the judicial departments.

throwing open to honorable ambition even the highest judgment seats in the land. Without sweeping away the present civilian judges, let it be understood that the Bench is henceforth to be open to the successful practitioner whose moral character is equal to his ability. Let it not be confined, as heretofore, to an exclusive service, even though this reform goes to the very root of an exclusive service.* Let us sweep away the Mahommedan Law officer and the Hindu pundit; let us raise the respectability of the lower grades of the native Bench, by increasing the salaries of office.† Let our various Law professors publish their respective lectures at the earliest possible period, so as to place plain text-books on all subjects within the reach of the practitioner; let us make a separation, final and distinct, between the revenue and judicial lines of administration; let us compel the young civilian to attend the Law lectures and the Sessions while he remains in college;

* I see no utility in keeping up the distinction of covenanted and uncovenanted servants. The covenant is an antiquated form: it is "to obey all orders, to discharge all debts, and to treat the natives of India well!" I admit, at the same time, that all members of the Civil Service who enter by examination, are entitled to be found such employ as the old Covenanted Service offered to them. Beyond this, the distinction between covenanted and uncovenanted is an idle one, and only leads to heart-burnings and jealousy.

† Our treatment of our European and native civil servants has always appeared to me incomprehensible. We know that before Clive's reform of the civil service, it was as venal and corrupt as it could possibly be. Paul Benfield, who claimed to have lent the Nabob of the Carnatic some £300,000, though he was a young writer, who had been but a few years in the country, may stand as a type of the class. Indeed, it could not be otherwise; for pay was merely nominal, and each man came out with a tacitly conferred letter of mark to plunder as much and quickly as he could. When matters had reached such a pitch that they were unbearable, the proper remedy was at once applied. The salary of the European was fixed at so high a rate as put him above temptation; sundry taxes were monopolised for the special purpose of making a fund for the payment of the service; and their honesty was secured. The result has been admirable. As a general body, no men can stand more loftily above suspicion of corruption than the civil service. But if such an incentive to honesty was necessary with respect to the Englishman, the gentleman, the Christian; how can the native, without any of the moral checks of conscience which had to keep the European straight, be expected to rise superior to influences and temptations which proved too strong for the Englishman? If the one fell, it was quite certain that the other must. The remedy is precisely the same in both cases. We have tried the efficacy of sufficient salary upon the covenanted Englishman—indeed, run into the opposite extreme; it remains for us to repeat the experiment with respect to the covenanted native. Raise his condition, place him above temptation, give hi chance as his civil superior; ere long his honesty will probably be as great.

let him gain a knowledge of the natives for two or three years in the revenue branch, which will make him *au fait* at the method of conducting public business and the mysteries of revenue, whatever they may be; let us re-institute the office of registrar, in which he may learn judicial duties, since he cannot practice at the bar. Let us seek, by fostering the jury system, to give the natives an insight into and an interest in the administration of justice, at the same time that we thus bring them nearer to ourselves by more frequent communication, and give them a feeling of just pride, which will tend to raise the natural character. Our Jury Act, Reg. XI. of 1832, is a dead letter. Lately, by Act, we have introduced assessors.* Let some scheme be sanctioned for the judges to admit candidates at the bar, without the necessity of their keeping terms in England, so as to give every fair equality to the native of India; and let us have a firm, trained control and supervision over every creek and corner of the judicial administration throughout the entire Presidency, by the amalgamation of the Supreme and Sudder Courts. This is one of those measures which may not be practicable for all India, since both in Calcutta and Bombay, I understand Her Majesty's judges are fully occupied; but it is an experiment which might easily be tried at Madras, where the Supreme Court has comparatively little to do, and the Small Cause Court, with proper men to work it, might well discharge all the original judicial business of Madras. That the law can be administered in a way satisfactory alike to the Englishman and the native, is established beyond all question by the estimation in which the Queen's Supreme Courts are universally held, notwithstanding they are still embarrassed by forms of procedure unsuited to the country; unsuited, in my opinion, for any country; and litigation, though not so costly in them as in the Mofussil, is still more expensive than it ought to be. The satisfaction which they have given arises solely from the feeling which they have inspired, that the time within which ordinary litigation may be concluded can be calculated on with a certainty; that they are not open to corrupt influences; that the inquiry is conducted according to rational rules of evidence, and that the decisions are based upon settled principles of law. Englishmen

* See Lushington's paper, appendix to 1st Lord's report for 1853.

have over and over again expressed their content with the existing courts. The merchant's practice, to enter into no contract which he cannot enforce in the Supreme Court, is of itself sufficient proof. The objection of Europeans to the Black Acts has never been based upon any supposed rights, or superiority, or privilege of race, but in the danger which would attend their subjection to the ignorance and corruption of the Company's courts. It is the fashion of the Company's defenders and apologists to decry the Supreme Courts in India. "The Madras Court," Lord Macaulay wrote, "has fulfilled its mission; that is to say, it had ruined and pauperized the entire body of inhabitants subject to its jurisdiction;" and it is thus that an anonymous scribe in the November number of "Blackwood" for 1857, has had the audacity to speak of those tribunals. The article is called "The Company's Raj." The passage is as follows:—"The royal prerogative was very early exerted under Parliamentary sanction in the establishment of a Supreme Court of judicature at each of the three Presidencies. We consider these courts to be decidedly the worst in the country: presided over by Queen's judges with enormous salaries, they have seldom secured even a decent amount of professional knowledge on the bench, while the bar is, of course, proportionally second-rate. Barristers of fame and promise at home, will seldom forego the career that opens in Westminster Hall and St. Stephen's. The crimson silk, silver sticks, and 'barbaric gold' of the Indian judge are the insignia of acknowledged mediocrity, not seldom of proved incapacity in English law. They always decorate ignorance of native usages, and even speech. Such courts are mere caricatures of Westminster Hall. Their absurdity was conclusively demonstrated when it was found necessary to exclude them from all jurisdiction over the members of Government and persons acting under their orders, for it is only as a check on the Company's Government, that a royal court should have a *locus standi* in the country. The indispensable denial of such powers should have taught the legislature the folly of erecting such a court; yet, like the currier in the fable, Sir Erskine Perry's main idea of Indian reform seems the unlimited importation of English lawyers."

With such an unblushing, impudent statement as this before the public, it may not be amiss to point to the character of

these courts as reported by those who live under their jurisdiction. It is superfluous to cite the petitions of the Europeans which have emanated from Calcutta. Let us see what is the tenor of *native* opinion, what their testimony is as to these courts, which "*We* consider to be decidedly the worst in the country." It is thus that the Native Bombay Association, in their Petition to Parliament on the subject of the Indian Commissioners' Report, speak of the Supreme Court:—

"There are many other recommendations in the Commissioners' Reports which, though, in themselves, of very serious importance, and open to grave objection, your Petitioners do not propose to make the subject of comment at the present time, as they consider them to be of little moment when compared with the proposed abolition or supercession of the Supreme Court, which, if sanctioned by your Honourable House, will, your Petitioners apprehend, have the effect of withdrawing the only guarantee on which they can rely for the regular, systematic, and trustworthy administration of law and justice, under the protection of which they have hitherto lived, and to which they look with grateful confidence for the security of their persons and property.

"In this court, so justly respected by all classes, which is presided over by judges selected from the experienced members of the English bar—men who have been educated, as it were, in a legal and judicial atmosphere, and have imbibed not only the legal knowledge, but the tone and habit of thought which characterize the English lawyer, and constitute his fitness for the judicial office,—it is proposed to substitute a tribunal in which the majority, and, therefore the preponderating influence, being appointed by the Governor in Council, probably will, as they certainly may, be taken from amongst the Civil Servants of the Honourable Company. Your Petitioners would not speak otherwise than most respectfully of these gentlemen, of whom many are not only distinguished by high abilities and a zealous desire to promote the welfare of the people whose affairs they administer, but who also possess habits of business and a knowledge of India, to which barristers from England could lay no claim. But, great as these advantages are, and ready as your Petitioners are to appreciate them in their proper sphere, they cannot admit that they constitute the necessary qualifications for the judicial office. Even

supposing that an improved system of training and appointment should be introduced, and the Civil Servants of the Company no longer be transferred from political and fiscal employments to the highest judicial appointments, of which so many instances have been seen, still the objections to the appointment of Civilians to the Bench of the Highest Court are not removed, hardly lessened. These gentlemen have not that one advantage, for which no other can be substituted, an education in the legal axioms and methods, in the habits of thinking and reasoning, which prevail in and about the Superior Courts of England, and of which your Petitioners see the excellence of every judge who takes his seat on the Bench of the Supreme Court, whose demeanour and decisions command respect, notwithstanding his ignorance of the habits and language of the people; while the judgments of even the most experienced and intelligent servants of the Company fail to carry the weight which should attach to the decisions of the higher Courts of Justice."

The Madras Native Association, in its sixth Petition to Parliament, states as follows:—

"Your Petitioners are able to appreciate the value of an independent Supreme Court, from having long lived under its jurisdiction, and they are not prepared even to risk the diminution of the benefits it confers. They have for years, and latterly more especially, remarked the judicious reforms that have been effected in it; whereby proceedings have been simplified, costs lightened, and litigation rendered far more speedy; and those who are compelled to have recourse to law can calculate upon obtaining a decision within the space of a few months, as well as that the quality of the judgment when delivered will ensure satisfaction; because it is arrived at upon investigations conducted according to the settled rules of evidence, based upon well understood principles of jurisprudence. Your Petitioners are desirous of seeing the principles of such an administration of justice more and more widely extended, until it embraces all their countrymen in the provinces as well as at the Presidency; and allowing that the Queen's Court, as now existing, is susceptible of further reforms, which might easily be effected, they would far rather await the correction of its defects at a future period, than run the risk of

an experiment likely to let in upon them the weak and wavering administration of justice, which has hitherto characterized, and must for a long time characterize, the judicial office in the Mofussil. They have seen the power of the Supreme Court sought to be circumscribed by act after act of the India Government, and they naturally watch with jealousy whatever they deem to have a tendency to diminish its usefulness. They are aware what little good-will the Civil Service bears towards the trained professors of the Law, who have ever been ready to oppose and to expose the assumptions of irresponsible power, and the shortcomings of uneducated labour; and your Petitioners would respectfully but firmly raise their voice to warn and protest against a course which may, and as they believe would, throw the whole power of the Bench in the highest court of the land into the hands of the East India Company and its servants; and their timidity is startled at the apprehension of beholding the proposed experiment result in depriving them of the only court in which they have confidence, in lieu of producing the benefits anticipated from it—benefits which proper measures would infallibly secure, leaving no chance of so unfortunate a consummation."

The Calcutta Petitioners describe the Company's courts as follows:—

"Your Petitioners consider it to be a fact long established, notorious and admitted by all (by all, at least, whose opinions merit attention) without reserve, that the training for office of the judges of the courts established by the East India Company is essentially defective.

"They, and the class from which they are taken (scarcely selected) are assumed by their masters, and by the advocates of the present system, to have special qualifications, viz., knowledge of the vernacular languages, and familiarity with the usages and habits and thought of the people. This, however, when applied to the whole body, or to any material portion of it, is but an assumption.

"As a rule, neither of those special (and undoubtedly valuable) qualifications exist in a competent or tolerable degree, much less to an extent to afford any apology for the absence of other most important and vital qualifications for the responsibilities of the

judicial office. Were those boasted and assumed qualities possessed in the best and highest degree, they could (your Petitioners submit,) but fit their possessors to decide, as jurymen, upon questions of fact, and certainly could not qualify them to make a right application of legal principles to those facts,—in fine, to adjudicate rightly and according to any rational system of law.

"In the system of judicature established by the East India Company, an extensive discretion has been, from the first, vested in the judges, with regard to rules of decision upon contracts and rights, somewhat analogous to that originally possessed by the English Courts of Equity; but, unlike the latter class of courts, the East India Company's courts cannot, even at this day, boast of any judicial body or system of law whatever. This is the natural and necessary consequence of the entire absence of judicial training already referred to.

"The experience and knowledge of this state of things (which your Petitioners deem it sufficient to indicate or recite, as it is notorious) has made all but the official classes here, and a large number even of those classes, most anxious to witness some step towards a radical reform of the Indian Bench; considering this to be the first great exigency in a general reform of the law and of the courts."

They thus speak of the Supreme Court:—

"Not that your Petitioners desire, or would be content to see, the large protective powers of Her Majesty's Court curtailed, whenever that Court may be a branch of or merged in the High Court.'

"Your Petitioners deeply feel (and have often, in representations to the local government and legislature, so expressed themselves) the necessity that exists—a necessity, perhaps, more obvious here than elsewhere throughout the British dominions—for some high and paramount safeguard of personal liberty, some all-powerful judicial shield and refuge from the tyranny of ignorance, of inexperience, of unwise zeal, in office.

"Still less would your Petitioners be satisfied, that the useful independence of the Royal judges be really interfered with or be substantially less than it now is."

These extracts may serve to put to shame the spreaders of the

unfounded calumnies against the Supreme Courts in India—calumnies which nothing but a complete assurance of the impunity arising from England's ignorance of India, could induce their authors so assiduously to bring forward. When we are considering the topic of amalgamation, it becomes important to ascertain the true character of Her Majesty's Supreme Courts; because it would be vain to look for reforms from their junction with the Sudder, if they are in reality the ignorant, ruinous tribunals, alleged by the defenders of the Company. Neither would it be safe to introduce the principles on which these courts have acted into the Mofussil, unless they possess the confidence, and excite the esteem of the natives.

With really strong courts at head-quarters and in the Mofussil, we might reasonably hope to check the corruption of the subordinates, with which the present Bench is quite unable to cope.

The fact is, that corruption is running through the land like a festering sore. It is utterly impossible to give any description of the actual state of affairs. I believe that, as a general rule, not a single step is taken in any civil suit or criminal trial (where the parties are not paupers,) in which bribery or extortion is not practised. I do not mean that the European judges take bribes, but every officer about the courts is open to pecuniary influence, and every native is imbued fully with the idea that decisions are to be obtained by money. Of course it depends in some degree on the personal character of the judge, whether this corruption shall prevail to a greater or less extent in his particular court. If he is a strong-minded, independent man, who can and will rely on himself, there is far less opportunity for these iniquitous practices. But if he happen to love his ease, or to be a weak man, or to have confidence in the integrity of those about him, then corruption runs riot. In one court which I could name,

Here is an instance—

BANGALORE, APRIL 9th.—We hear that the trial of Tilliah Pillay, the Calendar writer, interpreter, &c., &c., of the Cantonment Police, has been closed; and that the judges of the Hoozoor Adalut Courts have sent up the proceedings to the Judicial Commissioner for sentence. The trial was instituted on the complaint of one C. Narrainsawmy Chetty, styling himself "Secretary of the Hindoo *Sabah* or Society."

it is well known that every decree is purchasable. This arises from the judge being more fond of his beer than his Bench, and trusting everything to his head official;—an East Indian, a civilian in this judge's own district, assured me that the common report which I had heard, both in Madras and in the district, was perfectly correct. I have, in the course of my own practice, *seen* such acts by court servants, as convinced me they were bribed, some by my own client, some by his adversary.

The charges against Tilliah Pillay were as follow:—1st—For receiving bribes, in entering cases in the civil and criminal Calendars. 2nd—For receiving bribes, and transposing the names of prisoners as prosecutors, and those of prosecutors as prisoners. 3rd—For being instrumental in keeping in the criminal jail (without conviction or sentence) for eight years, one Berkee Moonesawmy, his wife and son-in-law; and 4th—For pasting pieces of paper in the criminal Calendar on sentences passed by the sitting magistrate, and including such cases in the balance of "Cases remaining to be disposed of."

Tilliah Pillay has been found guilty of the three first charges. While the third charge on which Tilliah Pillay has been found guilty is held to implicate him personally, it reflects the greatest discredit and almost criminal negligence (not to use harsher expressions) on those above him. But it is not so much the individuals (overburdened with work impossible for any man to get through,) as the defective system in which things are done, that merit public censure.

For what can be said of a system, which has allowed gross corruption and oppression to continue for a series of years, without a check of any kind? Who can recount the wrongs that hundreds and thousands must have been made to suffer? Still with the above exposures before us, the system in force admits of Mahomed Saliah the Second Cutwall, Saib Ally the Pygusty Admeen, and others, remaining not only at large, but also in the execution of their important duties,—duties which affect the lives and liberties of thousands of subjects under British protection.—*Herald.*

* Dr. Duff (House of Lords' Report, 19th April, 1853,) says, on this subject, as follows:—

Q. 4221. Lord Broughton. "You have spoken of the corruption of the vakeels; they are but agents of the parties, they do not decide anything; how, therefore, can they be corrupt?

A. "It is not very easy to understand the matter in this country, but it is the simple fact, that scarcely a single case that goes to a court in India goes there without bribery, and without perjury, on all sides; I mean literally what these words denote. It is the case, as far as I could ever learn, everywhere in the interior. Now the vakeels of the old school, to whom I more especially referred to, have endless ways of promoting litigiousness, of perverting and corrupting those around them, and of distorting the truth by collusion and otherwise, in their various pleadings; it must be owned at the same time, that they are aided in this exceedingly by the comparative ignorance of the vernacular language on the part of the presiding judge; this source of the mal-administration of justice would be greatly rectified, by the presiding judge 'being an adept in the native language;' in Bengal, with a view to this desirable

Hyder Jung Bahadoor, examined before the Lords' Committee, 26th April, 1853, gives an instance of his own payment of a bribe, and states the native belief to be universal in the efficacy of bribes. I could give a hundred instances myself, if what I have heard may be believed. Mr. Fischer has lately informed me of a case between two zemindars, in which he was engaged professionally. The Sheristadar for some time hawked about a decree for whichever party would pay 500 rupees; neither consenting, to spite both, he procured a decree in favour of Government! A man has just filed his schedule in the Madras Insolvent Court, in which he enters deliberately the sums paid, or said to be paid, to the officers of the Sudder Court, in a case in which he was concerned as defendant. In a late case in Rajahmundry, the judge seized a prisoner's papers: in the accounts was an entry of an item of 10,000 rupees, sent down to Madras to bribe the Sudder judges! When I was, some years back, in Rajahmundry, on an important criminal trial, in which several prisoners were concerned, one of the

end, some effective measures have, within the last few years, been adopted; and the full maturing of these would be part of the prospective improvement I contemplate."

And again (Dr. Duff, House of Lords' Report, 19th April, 1853):—

Q. 4218. "You think it would not be desirable to take vakeels and at once make them judges?

A. "From all I have seen of them, I should say they are the last class who ought to be appointed judges; they are mixed up with all the endless and intolerable, and I may say indescribable, corruptions which have brought such obloquy on our courts of justice. It would never be possible for any British gentleman who has not been in India, and mixed with the people, to know anything of the real nature and extent of those corruptions, they are so endless and so complicated."

Mr. Moore's evidence (House of Commons' Report, 6th June, 1853,) is to the same effect:—

Q. 5897. "You have spoken of the natives being in the habit of remitting large sums of money to their agents, when engaged in litigation; have you ever heard what has become of those sums of money so remitted?

A. "I cannot say what has become of them; it would be a very difficult thing to say that; I can only speak to the fact of their being remitted by the natives to their agents. Another thing is, that the native law officers of the courts are very badly paid; they live in a much greater style than their salaries can possibly cover. Few or none of them have any other means than what they receive from the State."

Q. 5898. "Does the habit still continue to the present day amongst native suitors, of remitting large sums of money to their agents, thinking it will advance their cause?

A. "It does."

court officers said to me—What, Sir, is the use of going on? The Mufti is paid for his futwah. He is to have 1,500 rupees if he acquits all, 1,200 if he acquits three, &c. In a case which I have just finished at Cuddapah, the Mufti was stated to have been bribed on both sides, but highest by my client. The sum stated was 2,500 rupees. The charge was one of murder. The official of Rajahmundry assured me, with perfect good faith, that the Mufti was a very good man, for he *only* took bribes in large cases! I have myself been offered a bribe of 50,000 rupees for an opinion, while I was Government pleader. I believe every Mufti in the land, or nearly so, is corrupt. A client of mine from Cuddalore, told me his suit had already cost, before appeal to the Sudder, 20,000 rupees. I told him it was impossible. The amount in dispute was only 18,000 rupees. With a charming naiveté, he replied that it included "bribes and all." I was counsel in the Supreme Court, in a case in which an ex-reverend gentleman was convicted of having obtained 3000 rupees from two poor women, under pretence of influencing one of the Sudder judges. I could string such anecdotes together by the dozen. But this, coupled with a reminiscence of the "Dacca News" editor's testimony, must suffice. And yet people will insist upon it, that litigation is cheaper in the Mofussil than in the Supreme Courts. The legalized fees are no doubt smaller in cases of small value; but as nothing of this sort goes on, or is fancied to go on, in the Supreme Courts, I have no question at all but that the costs of an ordinary suit in the Supreme Court, are not a tenth-part of those of a suit in the Mofussil. Yet with this state of things, I may say, universally known, we go on day by day, and from year to year, without change.

The evils in the judicial system with which we have to cope are the ignorance of the European judges, the ignorance *plus* the venality of the native judges, the corruption of subordinate officials, the false testimony of the witnesses, the want of simple codes of procedure and a clearly defined substantive law. The remedies I have already pointed out. Those conditions once provided, we should go far towards purifying, simplifying, and cheapening the administration of justice. Litigation would not be the dilatory uncertain affair it is at present. Far less opportunities

would be offered for bribery and extortions, and men would be afraid to take advantage of such opportunities as remained. The character of evidence can only be raised with the character of the people, and education must be the main instrument for that task. But unquestionably there would be infinitely less perjury and forgery practised, if the courts were stronger and quicker in their work. Simple codes of procedure are already prepared; the task of providing a substantive law, though *opus heroicum*, is neither impossible, nor such as men cannot be found to undertake.

There are some other reforms which I shall barely glance at, vast as their influence would be upon the general administration of justice. I can only indicate the measures, their details I have no time to consider. In the first place, I should like to see the present Moonsiff's Courts converted into County Courts. At present, the most trumpery suit above a few rupees value, is encumbered with lengthy pleadings and a tedious procedure. The Moonsiffs, I think, may safely be trusted with summary powers. The pleadings should be oral; the Moonsiff's note of the evidence conclusive. The parties should attend upon summons with their witnesses, in common with whom they should be submitted to examination. The Stamp law, which is a grievous tax upon justice, the worst tax in the world, as Bentham has proved it, should be rescinded. The European judges should be invested with a summary power of punishing perjury, whenever they were satisfied that it had been committed before them. The present law is almost a dead letter, and seldom acted upon, in consequence of the difficulties in the way of a conviction. Indeed it is not unusual, where the grossest perjury has been committed, for the judges to treat it as "prevarication," which they have power summarily to punish.

It is the fashion just now to praise what is called the "patriarchal" system of administration. Lord Canning has officially declared his opinion, that this is the best adapted to the condition and feelings of the natives; it is one of the well-known watchwords of the civilians, and the "Friend of India," that most mischievous of journals, so far as it directs public opinion in England, has begun to cry out for the application of this system in the North-West provinces. Let it not be forgotten, that

scarcely four years have passed away since the system of administration obtaining in the North-West, was lauded to the skies by the Directors and all their satellites, as the very perfection of Government. The whole of the evidence given before the Parliamentary Committee, points to Agra as the garden of the East. Mr. Campbell and other writers plume themselves and the service on the results of their doings in that quarter, whatever may be said of civil administration in Madras or elsewhere. And yet it is confessed now, because stubborn facts will take no denial, that this so much vaunted system has actually broken down at the first touch and shock of civil discord. This reminiscence and this fact should surely warn us how we put faith in any system, simply because the civilians and a superficial dogmatic doctrinaire journalist insist upon its excellence. Taught by experience, let us take nothing more upon trust, but examine for ourselves the grounds which exist for presuming the probability of failure or success of any system, upon its own intrinsic merits or defects.

First of all, then, let us obtain a clear definite idea of what the "patriarchal" system really is. The name creates and calls up visions of some golden age, or rather it refers us to Bible history, and we see the venerable chief of a paternal despotism managing all the affairs of his tribe—fiscal, magisterial, and judicial. He is at once lawgiver, judge, and receiver of the people's dues. He is looked up to by all with veneration and affection. His decisions meet with a ready, cheerful obedience. Charming picture of simplicity in truth. But the principal features somewhat change, when the patriarch is a beardless boy taken from the junior ranks of regimental officers,—some fortunate Indian Dowb with a coronetted letter of introduction in his pocket, or budding civilian who has a vested right to employ; when the people are a newly "annexed" State, sulking and chafing with ill-concealed dislike of their new rulers; and when the youth placed over them has no fixed principles, no practical experience, nothing but his "common sense," to use a slang civilian phrase, to guide him; when newly acquired power tempts to arrogance, and ere age has mellowed down the infirmities of temper. *Silent leges inter arma*, says the great Roman orator; and the only excuse for the temporary introduction of the "patriarchal" system,

after a country has been newly conquered, is, that it is a less evil than the continuance of martial law. Immediately after conquest, the laws may be forgiven if they speak with a sound at once harsh and uncertain; for the sharp, short, peremptory decision is then useless; but as soon as circumstances permit, this make-shift should stand aside, and make way for a more scientific and deliberate system of jurisprudence. Advancing civilization will indeed compel this in its own good time; to introduce the "patriarchal" system into the rich provinces of Bengal, is one of the demands of the policy of retrogression. Nothing can be more mistaken than the assertion that the "patriarchal" system is what the people like and hold by. The same was said formerly of the punchayet or arbitration system. But Mr. Fullerton, the contemporary of Munro, and the sounder and abler man of the two, long since disposed of that fallacy. In his famous minute of the 1st of January, 1816, he shows that the punchayet was to be tolerated only because no other distribution of justice could be said to have existed. "If a man had no punchayet to settle his cause, he obtained no settlement at all." But he asks—Shall this state of confusion continue? And we may well repeat the question.

No fallacy can be more baneful than that which lurks under "simplicity." Analyzed, it will be found to mean that the judgment seat is to be guided by no rules, instructed in no principles; it may be ignorant, arbitrary, capricious, self-contradictory, positively unjust. And all these qualities are to be permitted to be rampant, because we will not set about obtaining a class of educated judges—*propter simplicitatem laïcorum;* and because we leave to each man full power to indulge his own fanciful notions of "equity and good conscience." Thus justice, as Lord Chancellor Ellesmere said, becomes the measure of each judge's foot; judges too, be it remembered, in this instance, not like the judges of England, men trained in the nurture of the law, but raw inexperienced amateurs, thrown upon their own resources, without a rule to guide or a light to illumine them. Truly saith the law maxim, "*optimus est judex qui minimum relinquit sibi;*" and I would add, that that is the best judicial system which leaves to the judge as little as possible, beyond declaring what the law is.