recovery of which, he states, the ryots had "the greatest difficulties to encounter; while, by the power of distraint, &c. there was, practically, scarcely any restraint on the avarice of the landholder, or temporary farmer."

We think it necessary here to advert to a very aggravated abuse, stated by Mr. Ernst to have arisen out of the exercise of this power, and which, from the letter of Mr. Bayley, the magistrate of Burdwan, to the register of the Nizamut Adawlut, dated the 23d January, 1811, and other communications of your judicial servants, appears to be of no rare or extraordinary occurrence. It is observed by Mr. Ernst, that "the zemindars, or farmers, hire people to charge their refractory tenants with having been concerned in robberies, and suborn evidence for the purpose of convicting them; that some instances of this happened both in Jessore and Kishenuggur; that in the latter district, in particular, respectable tenants, men of character, education, and property, were apprehended as decoits, committed for trial, and had lingered many months, several of them a whole year, in confinement, before they were tried and acquitted by the court of circuit; that they were torn from the bosom of their families, which depended upon them for support and protection: they lost their rank in society; they were confounded, within the walls of a jail, with common felons; and, during their confinement, they were dispossessed of their jotes, and all the personal property which they had left at their houses was sold, for the satisfaction of the arbitrary and unjust demands of rent."

What we have here quoted, (and much more might have been quoted from your records, equally strong and conclusive,) relates to the very feeble protection which the present provisions of the judicial code have afforded, or can, in the nature of things, afford to the ryots, against the injustice and extortions of the zemindars.

We shall next speak of the inefficacy of the system, in regard

to the settlement of disputes respecting land, boundaries of land, crops, and water-courses. Disputes of this nature have ever, and must ever be, more or less prevalent in an Indian country, and particularly so, where the state of landed tenures, both as to the division among the partners and heirs, and the rights of talookdars, mocuddims, and ryots, is, in a great measure, undefined, as appears to be still the case, as well in the provinces where the permanent settlement has been introduced, as in the other portions of territory under your government. Such disputes have much increased since the establishment of the present plan for the administration of justice; and the circumstances which attend them are as hurtful to the moral habits and feelings of the inhabitants, as they are destructive of the internal quiet of the provinces, more especially where the landed property has become the most divided, in which the disputes assume a more determined and formidable character.

On the first introduction of the judicial system, in 1793, a regulation (49) was expressly framed, for preventing affrays respecting disputed boundaries and crops.

This regulation contemplated a speedy adjudication of the complaints of the parties, by the zillah judge. It is described, in section 6, as affording "ready means of redress to all persons who may be forcibly dispossessed of lands and crops."

The case, when brought before the court in the first instance, with the view to a summary proceeding, is required to be *immediately* taken cognizance of; and the preamble to the regulation declares, that "the having recourse to violent means, either of enforcing or resisting such claims, was not only highly criminal, but unnecessary, from the parties having it, *at all times, in their power to obtain redress, by application to the courts of judicature.*"

Instead, however, of an immediate or prompt decision by the courts, on cases of this sort, the statements exhibited on

your records, show that the delay of justice practically operates as a denial of it; the consequence of which has been, that the affrays, and all their attendant evils and outrages, which the regulation was meant to prevent, have become more prevalent than ever.

We have touched on this subject in our judicial dispatch of the 30th September, 1814, paragraphs 27 to 29, and have quoted the sentiments of several of your servants, in confirmation of what we then advanced, respecting the great cause of these irregularities, namely, the want of adequate protection to the property of individuals, and the necessity under which, in such a state of things, they are placed, when it is attacked or taken from them by the hand of violence, of defending, or endeavouring to recover it, in the best manner they are able.

The documents which have accompanied your more recent dispatches, have recalled our attention to this subject.

It is observed by Mr. Bayley, the judge and magistrate of Burdwan, in his letter to the Nizamut Adawlut of the 23d January, 1811, that "the establishment of internal peace and good order, materially depended upon the speedy adjudication of the numerous pending suits, affecting the right of possession to disputed crops, boundaries, &c.;—that, if not immediately inquired into in the civil court, they generally involved affrays attended with bloodshed;—and they furnished employment to gangs of decoits and other armed depredators, and encouraged that spirit of violence, and active contempt of the laws, which it appeared absolutely necessary to subdue, before any thing like an efficient police could be established."

The same sentiments are enforced by other magistrates, who consider it impracticable to check, with any effect, the increasing disposition among the people to resort to violence,

in the settlement of disputes of the above-mentioned nature, unless they could command the means of speedy justice.

It is observed by Mr. C. Russell, the third judge of the provincial court of Benares, in his report on Juanpore, of the 24th March, 1813, that an application to the court, in a case of disputed possession of land, had been considered "almost nugatory; or as, at all events, only affording a very distant prospect of decision:"—that "the arrear of the summary suits was so heavy, as to preclude the possibility of early redress; and that this conviction must necessarily operate as an incentive to that propensity, so prevalent in the district, to appeal to the sword upon every dispute connected with zemindary tenures."

By none, however, of our servants, does this subject appear to have undergone a more particular consideration, than by Mr. Guthrie, the superintendant of police in the western provinces, and Mr. Fortescue, the judge and magistrate of Allahabad, whose communications on this subject have already been noticed by us, in paragraphs 27 to 29 of our dispatch in this department, dated 30th September, 1814.

The former of these officers states, that the tannahs annexed to Benares, Juanpore, and Mirzapore, "were become notorious for the frequency of affrays, attended with murder, and for resistance to the authority of the magistrate and of the collectors, whose orders were almost wholly disregarded;"—that, in the last six months of the year 1811, violent affrays had taken place, in which no less than about 5,700 persons were actually concerned, of whom 30 were killed on the spot, and 69 wounded;—and that these occurrences were exclusive of numerous affrays of a less serious nature.

An instance is also mentioned by Mr. Fortescue, in his report of the 20th August, 1812, in which near a thousand persons collected together, had fought for a few begahs of

land, in which battle ten were killed on the spot, and a proportionate number wounded.

The daring manner in which these breaches of the peace are committed, in open defiance of the police, may be judged of from two cases which are stated by Mr. Guthrie. In the first, intimation had been received by the darogah of Ghazepore, of the design of the zemindars of Zemanah, on the opposite side of the river, to take forcible possession of some crops. He went to the spot with a civil force; and soon afterwards a body of 400 persons appeared, armed and prepared for a contest. The darogah proclaimed aloud the penalties attached, by regulation 49 of 1793, for the offence which they were about to commit, and made the show of a determination to disperse the rioters by force; but without effect. An affray took place in his presence, in which the zemindar of Khalispore, whose crop it was the object to seize, was killed on the spot, although he had taken refuge with the officers of the police. The other was a case which happened in the neighbourhood of Ghazepore also: Mr. Sweedland, the judge and magistrate, happening to pass through a large village, which appeared to be almost wholly deserted by its inhabitants, was informed that they had gone to settle a boundary dispute with the zemindars of another village. He went to the spot where the dispute had been decided, and found the darogah there, who informed him that a violent affray had just occurred, which he had fruitlessly endeavoured to prevent, and in which it would appear that Mr. Sweedland saw fifteen persons who had been killed, and was informed that many others had been desperately maimed.

It is observed by Mr. Guthrie, with reference to the frequent prevalence of occurrences of this kind, that "the ready means of redress which the regulation (referring to regulation 49 of 1793,) professed to afford to persons who

might be forcibly dispossessed, was not found in practice. That in Juanpore, for example, there were not less than 1606 summary suits, in cases of revenue and dispossession, *many of which had been pending for years;* and that, with respect to original suits for land, if carried through the courts of appeal, he did not think that a final decree could be expected, in less than three or four years from the time it was first preferred: that, under these circumstances, it was out of the power of the executive authorities to administer the relief promised to complainants, by sections 2 and 6 of the regulation in question; and as the penalties prescribed for a breach of its rules were, he concluded, consequent on the presumption of the efficiency of its provisions to grant the ready redress promised by them, but not afforded, it was a matter of serious consideration whether it was to be expected, that a zemindar in the actual possession of disputed land, of which he and his brethren either were, or considered themselves, legal proprietors, and which they had ploughed and sowed, would, when they had in their own hands the immediate means of defending it, pay that respect to the law, as voluntarily to resign the harvest of their labours to be reaped by their enemies, and rest their claims for restitution, cost, and damages, on the decision of the Court, which might be protracted for years.

The observations of Mr. Fortescue, in his very able and valuable report, are not less just and convincing, as to the powerful inducements held out to unprincipled individuals for resorting to the same violent methods of seizing the property of their neighbours, under a dilatory and inefficient execution of the law.

"The enjoyment of the profits of the disputed lands, during the inevitably long interval of judicial decision, as well as of the vast preponderance of power to contest the suit with effect, which the point of possession is so well known to convey, is

viewed with a most jealous eye, especially when he who shall be excluded, and driven to the tedious prosecution of his claims in the courts, shall have to combat ultimately the disadvantages of the poverty of his opponent, which precludes the probability of reimbursement of the profits, and the certain intervention of a multiplicity of difficulties, in the execution of the decree. These considerations, unfavourable to a suit in the Court, contrasted with the obvious gain of immediate occupancy, operate very powerfully on the minds of those who have no conception of the common principles of justice —who, particularly in the western provinces, have been accustomed to esteem the issue of force and violence as the criterion of right and wrong—who know neither crime nor disgrace, in boldly stepping forward to obtain that which, according to their estimation, is the only species of valuable property."

"In this way does the inducement, which is generally *all clear profit*, prove too powerful; and the dispute, which at first was confined to the assertion of an equal or independent right, at length involves the whole neighbourhood, as their passions are heated, and the season of cultivation or harvest approaches, in the utmost struggles of hostility. The matter is *now brought forward in the foujdary court*, by the reciprocal complaints of both parties."

We have particularly noticed these circumstances; for, unless some very considerable enlargement of the judicial system is effected, beyond what appears hitherto to have been in your contemplation, the increasing demands for justice, that will in consequence be experienced, will of itself, at no distant day, arguing, as we do, from past experience, render it far more unequal to its professed purposes than it now is.

We have stated, in our judicial dispatch to Fort St. George, of the 29th of April, why it is impossible for us, on any

reasonable ground of judgment, to consider the suits as frivolous or vexatious, which have been abandoned in consequence of the imposition of law charges, or the disputes which parties are, by the same means, discouraged from putting into the shape of judicial investigation, and why we fully accord in the sentiment expressed by Lord Cornwallis, in his minute of the 11th of February, 1793, that the amount of arrears in the adawluts, "is not to be ascribed to the litigiousness of the people, but, with more truth, to the dilatoriness and insufficiency of the administration of justice:" and in this sentiment we are fully confirmed by the fact, that, although the expenses attendant upon legal proceedings, both in the European and native tribunals, have, since the year 1795, been considerably augmented by an extension of fees, and the introduction of stamp duties, the arrears of causes are still so heavy, as to have rendered the number of suits, actually settled by razeenamah before the native commissioners, who carry on and execute the business of justice arising among the great body of the community, nearly equal, in some years, to the number really decided upon by those authorities; and, in other years, the razeenamahs have actually exceeded the regular decrees. The suits settled in this mode before the European tribunals, notwithstanding the heavy load of business before them, are much less in proportion. This may have proceeded from the suitors in those courts being better able, than those who apply to the native commissioners, to bear the inconvenience attendant upon a long protracted decision.

These facts and considerations show, that the actual and growing inadequacy of the existing administration of civil justice, is neither to be remedied in the one case, nor prevented in the other, by any augmentation of the European part of the establishment, even if the embarrassed condition of our

finances enabled us to incur an additional expenditure on that account. Double the number of zillah judges, we are persuaded, would do little more than palliate, and that most feebly, the evil, and by no means reach the seat of the disease. This can only be accomplished, in any satisfactory degree, by extending, as far as may be necessary to meet the wants and necessities of the people, the instrumentality of the natives in conducting this branch of internal regulation.

In what mode, and to what extent, the natives can, with the most effect and advantage, be employed in the administration of civil justice, is the question which now presents itself to us; and we must declare our deliberate conviction, that no arrangement for this purpose, can proceed on a right principle, nor operate satisfactorily in the fulfilment of its aims, which has not a reference to the ancient and long established customs and institutions of the country, and which does not accommodate itself to the habits, the feelings, and the understanding of those, for whose benefit it is designed.

It is with this sentiment deeply fixed on our minds, that we conceive the fittest and most proper agency we can primarily make use of, in the distribution of civil justice, consists of those who form the more permanent and natural authorities in the interior of the provinces. The nature of these authorities, and their subserviency to the great purposes and ends of efficient government, when properly directed and controled, we have particularly explained in our judicial dispatch to Madras. That the same authorities exist within the territories under your charge, we have very clear evidence, though they may be found in a more mutilated and deformed condition than in other parts of our possessions, where the preservation and revival of them have been made an object of attention and of policy.

The officers to whom we particularly allude, are generally

described in the peninsula by the name of potails. They are also thus distinguished in the British dominions, under the Bombay government; and they appear to have been designated by the same general term in the Bengal provinces, in our more early connection with those provinces, though now passing by the appellation of mundals, moccuddims, or gomastahs. It is by these officers, in concert with the curnum, or putwarry, or village accountant, that the public concerns of the small communities to which they belonged, were regulated and administered; and by whom, with the aid of punchayets, or native juries, were settled and adjusted (as a branch of those concerns) the litigations occurring among their neighbours.

This manner of deciding disputes is of such antiquity, that the arbitrator is, throughout the whole chapter of justice, in the translation of the Gentoo Code, mentioned immediately after the magistrate. That it was in general use throughout our modern territories in the peninsula, until the establishment of the present system, which has superseded it, has been fully explained in our letter to Fort St. George. It is noticed by Dr. Buchanan, of your establishment, in his tour of Mysore and Canara, as being familiar and known to every part of India with which he was acquainted, not only in regard to the settlement of civil disputes, but also in matters of cast and religious discipline.

In our judicial dispatch to Madras, we have quoted the sentiments of Mr. Melville, when judge and magistrate of Dacca, in favour of giving encouragement to the use of punchayets, as expressed in answer to Lord Wellesley's interrogations, dated the 31st of December, 1801.

We have his further testimony, and that of others of our servants, lately received from India, in this country, as to the important and useful aid punchayets are calculated to render

in the adjudication of such disputes and questions. In the latter communication of Mr. Melville, he states, that the punchayet was an ancient and approved mode of settling disputes, which, though not acknowledged, nor even noticed, by the Bengal Regulations of 1793, might be revived with great advantage, and be substituted for a part of the present system; and that it might be so employed, as greatly to diminish the labour of the regular courts.

It is represented by Mr. Cox, that punchayets were used in the conquered districts, until the establishment of the British government. That they were assembled by the munduls of villages. That their decisions were generally satisfactory; the process summary; the parties heard *viva voce;* no vakeels employed; and the case determined at the home of the parties, without obliging them to quit their neighbourhood.

In proposing, as we do, that the adjustment of civil disputes, and other questions of right and property, should be committed to the heads of villages and punchayets, we do not, by any means, regard the principle as free from the possibility of abuse: no system that can be devised, for a purpose so extensive in its nature, can be so considered; but the question with us is, whether the ends of justice, amongst a great population, (which, after all, must be executed through the natives,) would not be more substantially obtained by that, than by any other mode?

The argument in its favour may be summed up in a very few words. It will bring home the administration of justice to the very doors of the parties; and thus relieve them, and particularly the common ryots, from that expense, and vexatious, and sometimes ruinous, loss of time, to which they are now subject, when they seek judicial redress. The mundul and punchayet will have the means of information much more

within their reach, than they can possibly be, when the investigation is not conducted by those residing on the spot. It is bottomed on the institutions and usages, which have, for many ages, been well known and familiar to the minds of our native subjects; whose peculiar characteristic, as we have more than once had occasion to remark, consists in a fixed attachment to what has been long established among them, and an aversion, equally rooted, to what partakes of novelty, or infringes on ancient custom.

FINIS.

W. J. WHYTE, PRINTER, JOHN STREET, EDGWARE ROAD.

LETTERS

ON

A JUDICIAL CODE.

LETTERS

ON

THE COMPILATION

OF

A JUDICIAL CODE.

Calcutta :

BAPTIST MISSION PRESS, CIRCULAR ROAD.

1832.

TO

SIR CHARLES EDWARD GREY, KT.

LATE CHIEF JUSTICE

OF

His Majesty's Supreme Court

OF

JUDICATURE IN BENGAL,

THESE LETTERS

ARE BY PERMISSION, AND WITH GREAT RESPECT, DEDICATED

BY

HIS MOST OBEDIENT SERVANT,

P. M. WYNCH.

THE following LETTERS, which have at different times been published in the INDIA GAZETTE, are now reprinted in their present shape, in the hope of bringing the important subject, to which they relate, more readily under the notice and consideration of those, whose duty, interest, or inclination, (in India, or in England,) may lead them to desire the compilation of a JUDICIAL CODE.

JUDICIAL CODE.

LETTER I.

To the Editor of the India Gazette.

SIR,

The 'strong necessity' which exists for the compilation of a CODE, or a careful consolidation of the English, Hindoo, and Mohammedan Laws actually in force throughout the extensive territories subordinate to this Presidency, has been frequently dwelt upon in late communications to yourself and to your contemporaries.

In a letter, which I addressed to you some time ago under the signature of "A Subscriber," I observed that a work had appeared in this country (about three years ago), which in my humble opinion had not been sufficiently appreciated either *generally*, or *particularly*, by those chiefly concerned, —namely, the Judicial Officers of Government.

The work alluded to is "Miller on the Administration of Justice in the East Indies," from which, on this important topic, (viz. the necessity for the compilation of a CODE,) I beg to quote the following apposite extracts:

"When we reflect upon that superiority in the art of government which we are now admitted to possess over most of the civilized nations of Europe, and which will be confessed to be still more decided over that of the native princes of Hindoostan, it is almost impossible to believe but that the servants of the Company must be qualified to suggest various changes in its Civil and Criminal Law, which would materially advance the private happiness and public prosperity of the Natives, without offering violence either to their prejudices or religion.

"That which I am chiefly solicitous to establish, is the expediency of collecting and simplifying those laws, whatever they may be, which are now in force, and to which the people are compelled to yield obedience. *No where do such urgent motives exist for presenting the laws in a clear and compact form as in India, and no where do fewer difficulties obstruct the attainment of so desirable an object.* The private rights and interests, which could obstruct it, are not so numerous in India as they are in England, nor do they require to be purchased at so exorbitant a rate. This motive to the undertaking is of no small magnitude. There is another still more encouraging. The dispensation of justice would then be less *laborious to the judges, and access to it more easy to the people.* Without dwelling in this place on the inadequate qualifications of the judges, there can be no doubt that, planted as they are in a strange country, hearing nothing but strange languages, and obliged to apply the laws to persons and things to which they are equally strangers, they have a right to expect, where unavoidable embarrassment is so great, that *every facility should be afforded of ascertaining what the law is which they are bound to administer.* Instead of receiving this assistance, they are obliged, whenever a difficult case occurs, either to *wander backwards and forwards through the voluminous and often contradictory regulations of the Company;* to resort to the opinions of the native lawyers, which are so frequently suspicious or ambiguous; or else to rely upon their own unassisted judgment; which every one practically acquainted with jurisprudence knows to be a very unsafe guide in such an emergency. A digest of the whole Civil and Criminal Law as now administered, which should be at *once accurate, clear, and comprehensive,* could not fail therefore to prove one of the greatest favours which the Company could confer upon its Indian Judges. The benefits which would be derived

from it by the people would be even more conspicuous. The European judge would then be able to ascertain and apply the law by the exercise of his own understanding and industry.

" It is a conviction, that *a careful consolidation of the Hindoo, Mahommedan, and English laws*, would *secure most of the benefits here pointed out, and remove many of the evils complained of in the present system*, which has caused it to be here pointed out as a *task deserving of a serious and urgent consideration.* I have only ventured to add my voice to that of many highly respectable Judicial, Military, and Political Servants of the Company, who have on various occasions concurred in such a recommendation. If ever the India Company can be expected to possess adequate skill and experience for such a work, *it does so now :* and if *the execution of it ever can be useful, it is at the present moment.* The love of procrastination, which is natural to all mankind, the press of routine business, and that jealousy of interference which is so visible in every department of the Company's Government, both at home and abroad, retard or repress its best and greatest undertakings. Like the owner of an old, inconvenient, crazy mansion, the India Company throws away more pains and expense in keeping it in a state of insufficient repair than would have been sufficient to raise an entirely new and commodious edifice from the foundation. *No price which could be paid for a complete and accurate digest of the law could be regarded as excessive. It would put a stop to that perpetual, partial, petty legislation which is going on at the present time in every one of the three Presidencies,*—would stop two-thirds of that voluminous and vexatious correspondence which is carried on between the Directors at home and their officers abroad, and would encourage and qualify the Company to extend the same thorough revision to other parts of their administration.

" The mere compilation and publication of the various systems of law which prevail in British India *would neither make these systems more numerous, nor the discrepancies between them* more *striking than they now are.* The existence of these varieties and discrepancies is, in fact, a strong reason why such varieties and discrepancies should be announced with all possible clearness to the Judges by whom the laws in various parts of the country are administered. Several excellent treatises on Indian law have been published in English, but the doctrines they contain are only of partial application. Many of the rules contained in the digest of Tercapanchanana, translated by Mr. Colebrooke, are inconsistent with the law and practice of Southern India. The two treatises on Inheritance, and Partition, translated by the same gentleman, and that on Adoption, translated by his nephew, Mr. Sutherland, are also said to be extremely useful; but the universal and received rules of law should be given to the world *in a clear and simple form, under the sanction of the governing authority of the country. The measure in itself, therefore, seems to be wise, and would most likely also prove economical.* It would probably cost less at the outset than is usually assumed, and the charges first incurred would be amply counterbalanced by a saving of litigation afterwards. There would be no need of native jurists as counsellors; the number of suits would ultimately be diminished; and each suit would become less tedious and expensive. These chances are all in favor of the measure. Even if it failed, it would be beneficial. If it were made known to the natives that the object was not to subvert their laws, but to ascertain, collect, and promulgate them, no *degree of ignorance and prejudice could prevent them from feeling grateful for such a token of the solicitude of their rulers for their tranquillity and comfort.* If it succeeded, as with prudence and perseverance it might justly be expected to do,

it would fix the Company more firmly than they have ever yet been in the confidence and affection of their own subjects, and tend more effectually than any of its proudest acts to spread its honour and renown among surrounding nations."

In another work (to which frequent reference is made by Mr. Miller), well deserving of attentive perusal—viz. the 'History of the Rise and Progress of the Judicial or Adawlut system, as established for the administration of justice under the Presidency of Bengal,' the following just and forcible observations will be found:—

"Of the matter contained in the several volumes of the Regulations, not one-tenth part is perhaps efficient; the rest consisting of regulations which have been rescinded, of repetition of rules, and of explanatory matter. The naked enacting law, if stript of its superfluities, would be contained in a very narrow space.

"Justinian, in his second preface to the Digest, has observed, that it is much better that some things, however fit, should be omitted, than that men should be oppressed with a number of unnecessary enactments.

"The Regulations for the Judicial Establishment are objected to as numerous. They extend, in their present shape, to seven volumes. In reality, however, the existing and operative rules, if separated from those which have been repeated, and stript of redundant and explanatory matter, would not exceed the bulk of one single volume.

"The object of the present inquiry is to show that the complaints against the judicial establishment are less applicable to the system itself, as originally established by Marquis Cornwallis, than to departures from that system.

"Originally, the regulations, as passed in 1793, consisted of about seven hundred and forty folio pages; they now exceed seven folio volumes.

"Originally, the law was clear and defined. *At present the laws are numerous, and difficult to be understood.*

"These alterations are the very causes of the three great evils complained of: expence to the suitor; delay in obtaintaining justice; and increased litigation.

"But, it will be said, difficulties were experienced in carrying the system of Lord Cornwallis into effect. This is true: but to what were these difficulties ascribable? To the complication of the machinery. The proper remedy, therefore, was to have simplified the forms, and enlarged the power of the judges, by vesting them with a liberal discretion. The principle has been reversed: the forms have been multiplied, and the discretion abridged. The administration of justice is more difficult at present than on the first institution of the courts.

"These circumstances were too obvious to escape notice at the period of instituting the Adawlut system at Madras, in the year 1801. The person to whose care the formation of it was given, in his first report expressed himself as follows: —"The Bengal Regulations, exhibit the theory of the "system; but to judge of its effects we must look to its "practice. It is a fact of general notoriety, that the files of "many of the courts of Dewannee Adawlut in Bengal are, "at this moment, loaded with causes which it would require "years to determine. This is alone sufficient to evince a "defect in the system, and that its principles are not calcu-"lated for practice. May not this be owing to the numerous "*forms* with which the whole is loaded?" "The set forms of justice," says an eminent writer, "are necessary to liberty; but the number of them might be so great, as to be contrary to the end of the very laws that established them."

The compilation of a CODE would in my opinion occupy more time than is assigned to the performance of the work

by your correspondent 'A Native of Bengal*,' and I consider that this very desirable and highly important object would be best attained by the appointment of a COMMITTEE, to consist of the Judges of the Sudder Dewanny and Nizamut Adawlut, the Members of the Sudder Board of Revenue, and of other individuals in and out of the Civil Service, whom it is unnecessary in this place to specify by name, but who are possessed of qualifications eminently fitted for the task. To this Committee, whose functions would be purely deliberative, might be attached a Register or Secretary, (the mere designation is of little importance,) whose sole and special duty it should be to undertake, in conformity with the conferences, suggestions, and deliberations of the Committee, the operative part of the work; the result of his labors to be submitted periodically to the Committee for their revision, amendment, alteration, and final adoption.

On the subject of the appointment of a Committee, the following observation occurs in an able paper on Codification, in No. XII. of the *Foreign Quarterly Review*.

"Lord Tenterden on Shipping, Sir E. Sugden on Powers, Mr. Fearne on Contingent Remainders and Executory Devises, and many other text writers, have respectively exhausted their subjects." If then a single individual 'stealing some leisure hours from a multiplicity of business, can by his own unassisted exertions carry the digest of one branch of law so near to perfection, how much more would a Committee of able men mutually assisting and advising each other, and enabled to devote their time and energies to the work, be capable of producing a Code nearly free from omissions. With a sufficient time for search into the multifarious sources of law, and a circulation of the Code amongst all classes of

* "In six or at most 12 months the Civil and Criminal Laws contained in the Regulations might be revised, compressed, consolidated, and amended."—*India Gazette, Nov.* 28.

the community before its promulgation*, we deny that there will be a danger of any important omissions. In this we are confirmed by experience in one of the few cases where experience can be appealed to.'

The raw material (if I may be allowed the expression) which exists for the concoction of a Code, may be roughly stated as follows :—

The Regulations themselves, arranged according to Mr. Molony's Plan.

Mr. Molony's Synopsis.

Mr. Dale's Index of the Regulations.

Harington's Analysis.

Messrs. Blunt's and Shakespear's Abstracts of the Regulations; Judicial and Revenue Selections ;—Digest of Hindoo Law, translated by Mr. H. Colebrooke ;—Colebrooke's Translations of the Dáya Bhága and the Mitacsharah ; —the Dáya Crămă Sangraha, translated by Mr. Wynch ;— Mr. Sutherland's Translations of the two Treatises on Adoption, viz. the Dattaka Mimansa and Dattaka Chandreka.

Sir F. Macnaghten's Hindu Law.

Mr. W. H. Macnaghten's Principles of Hindu and Mohammedan Law.

Sir W. Jones's Institutes of Menu and Translation of the Alsirajiya.

Colonel Galloway's Treatise on Mohammedan Law.

Hamilton's Hedaya.

Sir T. Strange's Elements of Hindu Law.

Reports of Cases decided by the Sudder Dewanny Adawlut.

Rammohun Roy's Treatise on the Law of Inheritance.

* ' It may be remarked that the invention of printing and paper has given to modern nations a means of attaining a completeness in their codes which the Roman jurists did not possess—viz. a power of circulating the proposed digest among the community *before it is* confirmed by the legislature.'

It is unnecessary *at present* to trespass further on the limits of your columns, the chief design of this communication being to bring the subject under the consideration of those who have the power to direct the undertaking of so highly important a work. The first step in my opinion towards an amended system of administration of justice is the formation of such a CODE. 'Every one must at once admit,' (said the present Lord Chancellor in his luminous speech on the state of the Law in 1828,) 'that if we view the whole establishments of the country—the Government by the King and the other estates of the realm,—the entire system of administration, whether Civil or Military,—the vast establishments of land and of naval force by which the estate is defended,—our foreign negotiations, intended to preserve peace with the world,—our domestic arrangements, necessary to make the Government respected by the people,—or our fiscal regulations, by which the expense of the whole is to be supported,—all shrink into nothing, when compared with the *pure, and prompt, and cheap administration of justice throughout the community* —Such (the administration of justice) is the cause of the establishment of Government —such *is the use of* Government: it is this purpose which can alone justify restraints on natural liberty—it is this only which can excuse constant interference with the rights and the property of men.'

Above all, it is most earnestly to be hoped, that (friend as he is to IMPROVEMENT) the subject will engage the attention of the present enlightened Head of the Government, under whose auspices a brighter æra has begun to dawn over this too-long-benighted land,—and to whose recollection I would take the liberty of recalling the splendid and eloquent peroration of the speech already cited. 'The course is clear before us; the race is glorious to run. You have the power of sending your name down through all times, illus-

trated by deeds of higher fame, and more useful import, than ever were done within these walls. You saw the greatest warrior of the age—conqueror of Italy—humbler of Germany—terror of the North—saw him account all his matchless victories poor, compared with the triumph you are now in a condition to win—saw him contemn the fickleness of Fortune, while in despite of her, he could pronounce his memorable boast, "I shall go down to posterity with the Code in my hand."

'It was the boast of Augustus—it formed part of the glare in which the perfidies of his earlier years were lost, that he found Rome of brick, and left it of marble. But how much nobler will be *our* Sovereign's boast, when he shall have it to say, that he found *law dear*, and left it cheap; found it a sealed book—left it a living letter: found it the patrimony of the rich—left it the inheritance of the poor; found it the two-edged sword *of craft and oppression*—left it the staff of honesty and the shield of innocence.'

I am,

Sir,

Your obedient servant,

P. M. W.

LETTER II.

To the Editor of the India Gazette.

Sir,

Referring to one part of your editorial remarks* on my communication respecting a Judicial Code, wherein it is observed, "A former correspondent spoke of its being prepared in a twelve-month; and our present correspondent

---

* 'The important subject of P. M. W.'s communication is one, to which we have before adverted, and to which we should recur with less satisfaction if we did not know that it has seriously engaged, and,

speaks, as if the works to be consulted were *only* those which directly relate to this country," I deem it proper to explain, that in indicating the CIVIL REGULATIONS hitherto enacted, and the other books which were roughly enumerated, as offering in the first instance a material or ground-work, whereon to commence the highly important and essential compilation in question, it was not by any means my intention to mark out

---

we hope, continues to engage, the attention of the Government both in India and in England. All law and government exist for the better administration of justice, the grand and only use to which they are legitimately applicable. If this end is answered, they exist for some good purpose; if not, they are a nuisance which ought to be swept away, and something substituted in their room that will accomplish the desired object.'

'For the adequate administration of justice, the first *desideratum is a clear, consistent, and intelligible digest of the Laws* to which all in their various relations and circumstances are subject. The second *desideratum* is a system of courts presided over by well-informed, faithful, pure, and laborious judges, to administer the laws in forms reasonable in their principle, and prompt and cheap in their application. The third *desideratum* is *a Local Legislative Body*, competent by the powers with which it is invested, and the legal knowledge and general information it includes, to regulate the operation of the law and of the courts, to supply defects, to prune redundancies, and to render the whole consistent, harmonious, and salutary.'

'It were to be regretted, however, if this subject were lightly taken up. A former correspondent spoke of a code being prepared in a twelve-month; and our present correspondent speaks as if the works to be consulted were only those which directly relate to this country. We trust that we have amongst us honest, intelligent, and enlightened English lawyers, whose learning, research, and experience would be invaluable auxiliaries; and when we have so recently seen the English Government speak in the highest terms of eulogy of the labours of continental, and especially of French jurists, it would be unpardonable not to have recourse to the light they can afford.'—*India Gazette, Dec. 9th.*

those, as the *only* works to be consulted in the course of the undertaking.

On the contrary, Sir, I fully concur in the opinion expressed by you, that although in the preparation of a CODE "constant reference must be made to the laws and the usages of the country, yet much aid may be derived from *English* and French jurisprudence, and especially from the principles exhibited in the CODE NAPOLEON, and developed *in the recorded conferences of the council of state on its various provisions.*" My conception is, that next in importance to the appointment of a Committee and Secretary would be the formation of a complete library of reference, to include the works of those sages, whose labors, from the days of Justinian to the time of Bentham inclusive, entitle them to rank amongst the benefactors of mankind;

> 'The few whom Genius gave to shine,
> 'Through every unborn age and undiscovered clime.'—

I consider that a close and constant reference to such works would be indispensable at every stage of the contemplated CODE, and that a recurrence to and perusal of them would go far to alleviate the otherwise dry labor of detail, which must of necessity attend the *operative part* of the compilation.

I am further of opinion with you, that 'we have amongst us, honest, intelligent, and enlightened English lawyers, whose learning, research, and experience would be invaluable auxiliaries' towards the completion of the work. I consider that both dignity and effectiveness would be given to the labors of the Committee, were one of the judges of his Majesty's Supreme Court of Judicature, and the Advocate General, invited to afford their (even occasional) advice and aid, and that liberty should be given to the COMMITTEE to avail themselves by consultation of that talent which has never been wanting, and still abounds, at the bar of Calcutta.

The object of this communication being merely to correct a misconception into which, it appears to me, you (and possibly some of your readers may) have fallen in consequence of my particular specification of works only of local application, I defer my further remarks on this most important subject to a future opportunity.

I am,

Sir,

Your obedient servant,

P. M. W.

LETTER III.

To the Editor of the India Gazette.

Sir,

That which 'has been organized by the moral ability of one,' and executed by the united application and energy of another *single individual* at the surbordinate settlement of *Bombay*, need not, it is conceived, prove a work of *insuperable* difficulty in Bengal.

Fully concurring with the Editor of the *East Indian*, that 'questions of this nature should be brought *repeatedly* forward, that the public may understand their merits and bearings; and that it is not enough to write a long article in a newspaper one day,' and then allow the subject to glide into the oblivious pool of Lethe, I make no apology for again calling your attention, and that of your readers, to this most important topic.

If it be true, as averred by the Roman satirist, 'Nemo repenté fuit turpissimus,' or 'that by slow degrees we go from crime to crime;' so, on the other hand, it must be confessed that the marked and progressive grades of improvement and reform are made 'haud passibus æquis'—and that we cannot expect without much previous discussion

(to which every *such* topic *should* and *ought* to be subjected) to 'let in the full light of conviction on eyes scarcely unsealed'—eyes from which 'the scales of darkness have hardly yet been purged away.'

Whatever diversity of opinion may exist as to the merits of one part of Mr. Elphinstone's administration at Bombay, —I mean his conduct in regard to the Press, marked as it was with (to say the least) great inconsistency*,— there can be but one opinion of the pre-eminent general talents and qualifications of that individual, as superior for his political sagacity, as he was for his military prowess —wise in the cabinet—brave in the field—uniting the moral courage of the man with the heroic valour of the soldier— distinguished as a diplomatist—enterprizing as a traveller— elegant as a writer. Mr. Elphinstone, observed the *Edinburgh Review*†, and justly was it said, stood indisputably at the head of the Company's Civil Service in political talent and knowledge.

Accordingly, we find that what is now only beginning to be discussed on our side of India, has, under the auspices of Mr. Elphinstone, already been executed at Bombay. The great advantages derivable from the compilation of a Code did not escape the observation of that sagacious individual, and hav-

---

* In 1819, Mr. Elphinstone, following the bright example of that illustrious statesman, the late Marquis of Hastings, (who declared to those over whom he ruled that a Government, the motives of whose actions were pure, derived strength from exposure to public comment, and who invited public scrutiny as salutary to supreme authority) abolished the Censorship of the Press at Bombay. At an after period of his Government, one regrets to find the same enlightened individual following a less bright example, banishing an Editor, and enacting a Licensing and Restrictive Regulation for the same Press whose fetters he had previously removed.

† Vol. 25, p. 404, Art. Western Asia.

ing conceived the project, the execution of it was (if I have been correctly informed) entrusted to, and ably effected by the present Chief (then the Judicial) Secretary to Government, Mr. C. Norris.

The Bombay Code is comprised in *one* moderate-sized folio volume, divided into five branches, the edges of the leaves of the volume differently coloured, as is usual in the small French editions of the Code Napoleon, so that the separate portions of the work are readily and immediately referred to.

The Code consists, or did consist in 1827, of 26 Regulations, of which the first 10, including the preliminary Regulation (developing the principles of the Code) relate to the important branch of Civil Judicature.—

The next four Regulations embrace the important topic of Criminal Judicature.—The following six relate to the Revenue branch, including the Revenue management of the territories subordinate to Bombay—the Civil Jurisdiction of the Collectors—the Stamps—the Revenue management of the Presidency—the Sea and Land Customs in general—the Duties and Excise on certain specified articles.

The 22nd Regulation treats of military authority, in conjunction with the Civil Power. The remaining four Regulations relate to the Miscellaneous branch, including state prisoners, and the duties of *Cazees*.

The preamble to the 1st or preliminary Regulation recites the necessity of consolidating the Regulations into a perspicuous and convenient form, and of the same being translated by competent persons into the native languages. The 1st chapter of *this* Regulation rescinds at once all Regulations issued prior to the 1st January, 1827, and the 3rd section of chapter 2, provides for the due and apposite entry of Supplementary ones, according to prescribed forms, and the subjects of which they treat respectively, as well as for the periodical publication of an *Index* to the Code.

Each of the twenty-six Regulations is divided into chapters, each chapter bearing a distinct title, and subdivided into sections. It would be trespassing too much on the limits of your columns to enter into a *complete* analysis of the component parts of the Bombay Code. I shall therefore content myself with giving one or two specimens of its arrangement, expressing my own opinion, that the manner in which the work has been executed reflects great credit upon the industry and abilities of the gentleman to whom the task was delegated.

The fourth Regulation of the Code treats of Civil Procedure, and is divided as follows:

Number of Chapter.	*Title.*	*Commencing section*
I.	Preliminary explanation of the effect of certain terms when used in this Regulation	I.
II.	Of the mode of instituting suits	II.
III.	Of process for summoning and arresting defendants, and for sequestrating their property	V.
IV.	Of the continuation and completion of the pleadings,	XII
V.	Of withdrawing suits.....	XVII.
VI.	Of fixing the time of trial, of defaults of trial, and of the law to be followed	XIX.
VII.	Of exhibits	XXIX.
VIII.	Of Commissions for ascertaining facts depending upon local circumstances.....	XXXI.
IX.	Of Witnesses	XXXII.
X.	Of notice to be given to coheirs interested in suits which have been instituted without their participation	XLVI.
XI.	Of Contempts	XLVIII.
XII.	Of Costs	LVII.
XIII.	Of enforcing security bonds taken in suits.....	LIX.
XIV.	Of the decree and its enforcement	LX.
XV.	Of the revision of original decrees	LXXI.
XVI.	Of the admission and rejection of Appeals.....	LXXII.
XVII.	Of staying and executing decrees under Appeal ..	LXXXI.
XVIII.	Of procedure and trial in Appeal	LXXXIII.
XIX.	Of the decree in Appeal	XCIV.

Number of chapter.	*Title.*	*Commencing section*
XX.	Of the revision of decrees passed in Appeal	XCVI.
XXI.	Of applications to the Sudder Dewannee Adawlut in incidental complaints	XCVII.
XXII.	Of Special Appeals	XCIX.
XXIII.	Of Appeals to the King in Council	C.

The XIII. Regulation defines the constitution of Courts of Criminal Justice and the functions and proceedings thereof, and is thus subdivided:

Number of chapter.	*Title.*	*Commencing section*
I.	Functions of Criminal Justice, and establishment of Courts for its administration	I.
II.	Of the duties of the Criminal Judge	XII.
III.	Of the functions of the Court of Circuit, and duties of the Criminal Judge as connected therewith ..	XVI.
IV.	Of the duties of the Special Court	XXIV.
V.	Of the duties of the Court of Sudder Foujdaree Adawlut	XXVII.
VI.	Rules for procuring, taking, and recording evidence, and for the conduct of trials by Criminal Courts	XXXIV.
VII.	Of the Jail, and of the custody and treatment of prisoners	XLII.

To revert to the point from which we set out.—That which *has been* done at Bombay *may* surely be effected in Bengal, provided the same be (as it ought) an object of paramount and anxious desire on the part on those entrusted with the government of the country. If, as may be fairly expected, the new Charter shall open with permission for the free settlement of Europeans in the provinces, the necessity of such a compilation becomes still more imperative. As the Regulations stand at present, it is quite impossible, consistently with the discharge of his other immediate and active duties, for any settler in the interior to make himself acquainted with their multifarious provisions affecting his most vital and important interests, and it is notorious that in conse-

quence of their eminently defective arrangement, to say nothing of their voluminousness, it is almost as impossible for a younger Judicial Servant to master their contents. Well may the tyro Judge, suddenly transferred from the humbler duties of an assistant, without (now) the intervening experience of a Register*, exclaim (on his elevation to the judgment seat) with Sir Henry Spelman—'Emisit me mater juris nostri capessendi gratiâ: cujus cum vestibulum salutassem reperissemque *linguam peregrinam* (the Persian), *dialectum barbaram* (the Bengalee), *methodum inconcinnam* (see the Indexes, as they are called, to the Regulations, '*lucus* indeed, a non lucendo') molem non ingentem solum (see the Regulations themselves, Sir Edward Colebrooke's Digest up to 1806, &c. Mr. Harington's [miscalled] *analyses*, 3 folio volumes) 'sed perpetuis humeris sustinendam: Excidit mihi fateor animus!'—To adopt in part the language of your correspondent R. W., those who have been or are called upon to perform duties which experience may not have enabled them fully to comprehend, can best appreciate 'the great anxiety, confusion, and indecision (feelings the most painful to an upright and well-disposed mind) which must harass the functionary until he sees his way clearly before him.' Believing conscientiously that the compilation of a Code is the first step towards an improvement in the administration of justice, and that the best abilities† which the Government can com-

* That office having been abolished.

† 'But the most essential of all measures would be a complete revision of the whole of the laws and regulations, and the formation of an almost new Code. *To the accomplishment of such a task the very highest talents in the service should be directed*; and it would not so much require superiority of *legal skill* in those employed upon it, as that they should be endowed with minds unfettered by prejudice for or against any particular system, and be disposed to take the fullest

mand for the deliberative, not less than for the executive part of the undertaking, cannot be more beneficially or usefully employed, than in contributing towards this most important object. I conclude this letter, returning you my best thanks for the space you have already afforded to my communications, and for the interest *you* have taken in the matter.

In my next I propose to give a rapid outline of the *system of Legislation* which has been pursued in Bengal from 1786 up to the present time.

I am,

Sir,

Your obedient servant,

P. M. W.

LETTER IV.

To the Editor of the India Gazette.

Sir,

Referring to the observations of the *Reformer** of this day, in regard to the component Members of a Committee for the purpose of carrying the important object of a *Code* into effect, I take the liberty of stating that I consider his suggestion, recommending the appointment (as coadjutors) of intelligent and respectable Natives, to be most judicious and proper.

---

advantage of the facts and experience, which late years have accumulated. *No expence would be too great to incur for the completion of such an object,* and it is not likely this general code could be very large, for unless we continue to impose, at all hazards, the same Rules and Regulations upon the whole of India, each division of our empire should have a subsidiary code of its own, framed with attention to the particular character and usage of its inhabitants.'—*Malcolm's Political History of India,* vol. ii. p. 151.

* An ably conducted weekly paper under native superintendence.

'Such a commission' (as is now contemplated) 'would,' observes Sir John Malcolm*, '*of course* be aided by the information and opinions of the ablest Natives from the different parts of our dominions.' I am further of opinion, that one Judge of each of the Provincial Courts of Appeal, and several of the Commissioners of Revenue and Circuit, as well as of the Judges and Magistrates of the Zillah and City Courts, throughout the territories subordinate to this Presidency, should likewise be appointed Members of the Committee; that the Secretary of the Commission, (or the individual whatever his designation) to whom the operative part of the work may be delegated, should be instructed to invite their communications on all points, Judicial and Revenue, connected with the design, and to keep them duly and regularly informed of the progress of the work. With the aid of a no less elegant than useful modern invention†, and of a few Bengalee writers, this would not be a matter of much difficulty or expense.

Briefly I would invite the industrious, the experienced, and the talented throughout the country, 'without reference to their colour or religion,' to lend the aid of their communications in furtherance of this design, and of the *accomplishment* of the task‡.

I am, Sir, your obdt. servant,

P. M. W.

---

* Pol. Hist. of India: Article Judicature, vol. ii. p. 151, note.

† Wedgwood's Improved Manifold Writer, producing a copy (if required) in triplicate.

‡ 'We can at present only refer to the second letter of P. M. W. on a Judicial Code. The information which it communicates respecting the great step that has been taken by the Bombay Government on this subject, is probably new to most of our readers, and shows how far the Bengal Government has been left behind by that Presidency in one of the first duties of a Government,—the simplification of the laws by which the rights and obligations of the community are protected and enforced.'—*India Gazette, Dec. 19th.*

LETTER V.

To the Editor of the India Gazette.

SIR,

Deferring to a future opportunity the performance of my promise to take a review of the '*System of Legislation*' which has been pursued in Bengal from the year 1789 to the present time, I invite those of your readers who may feel an interest in the all-important and comprehensive subject of Codification, to traverse with me the 'far Atlantic' for the purpose of seeing what has been accomplished in the state of LOUISIANA, by the unassisted efforts of a single individual, whose name (without meaning to hazard a pun on the occasion) deserves to be recorded on marble;—LIVINGSTON.

The work of which I propose to give an account, is entitled a 'Project of a new Penal Code for the state of Louisiana,' and opens with a short preliminary ACT relative to the criminal laws of the State. The preamble recites, 'It is of primary importance in every well regulated State, that the Code of criminal law should be founded *on one principle*, viz. the *prevention of crime*—that all offences should be clearly and explicitly defined, in language generally understood—that punishments should be proportioned to offences—that the rules of evidence should be ascertained as applicable to each offence—that the mode of procedure should be simple, and the duty of magistrates, executive officers, and individuals assisting them, should be pointed out by law; whereas the *system of criminal law by which this State is now governed*, is defective in many or all of the points above enumerated: therefore,

SEC. 1. Be it enacted, that a person learned in the law shall be appointed to prepare and present to the next General Assembly for its consideration a Code of criminal law—designating all criminal offences punishable by law;

defining the same in clear and explicit terms; designating the punishment to be inflicted on each; laying down the rules of evidence on trials; directing the whole mode of procedure, and pointing out the duties of the judicial and executive officers in the performance of their functions under it.

Then follows a certificate by the Secretary of the Senate, and clerk of the House of Representatives, that Edward Livingston, Esq. was elected and appointed by the joint *ballot* of the General Assembly of the State of Louisiana to draw and prepare a Criminal Code.

The resolutions by the Senate and House of Representatives are next appended, approving of the plan proposed by him in his report, earnestly soliciting him to prosecute his work (according to that report), providing for the printing of a certain number of copies of the same, and for a pecuniary compensation to Mr. Livingston.

The ADVERTISEMENT states that but a few copies of the work sent by the distinguished author to his private friends reached England; that it was published in America by the authority and at the expense of the General Assembly of the State of Louisiana, under the title of a 'Report' made to the General Assembly on the plan of a Penal Code for the said State; that it contains the statement *and development of principles of the highest importance,* which cannot but be read in England with interest.

The REPORT itself commences with an allusion to the communications maintained with different individuals and States, for the purpose of acquiring all possible useful information on the subject, and proceeds to state that the '*Introductory notice herewith submitted,* gives the different divisions of the Code into books, chapters, and sections; the whole subdivided into articles, numbered progressively through each book, so that citations may be made by refer-

ring to the *article* and *book* only—that *technical terms* are never used in the work where common expressions could be found to give the same idea—that ambiguous words and phrases are accompanied by *explanations*—and that whenever any *such* expressions occur in the course of the work, they are printed in a particular character, serving as a notice, that they are defined and explained—that these definitions and explanations form the FIRST BOOK.

The SECOND BOOK (observes Mr. Livingston) begins with a preamble stating the *reasons* that called for the enactment of a CODE, and sanctioning, by a solemn legislative declaration, the principles on which its several provisions are founded—that these principles once studied and adopted would serve as a standard of propriety for every other part of the Code, by the formation of which the incongruities which had pervaded the system would disappear; and he adds, 'Our Penal Legislation will no longer be a piece of fretwork exhibiting the passions of its several authors, their fears, their *caprices*, or the *carelessness and inattention* with which Legislators in all ages and in every country have at times endangered the lives, the liberties, and fortunes of the people by *inconsistent provisions*, cruel or disproportioned punishments, and a *legislation weak and wavering because guided by no principle, or by one that was continually changing, and therefore could seldom be right.*

The remainder of the SECOND BOOK, he continues, is devoted to the establishment of general dispositions applicable to the exercise of legislative power in penal jurisprudence—to prosecutions and trials—to a designation of the persons who are amenable to the provisions of this Code—to a statement of the circumstances under which acts that would otherwise be offences, may be justified or excused—to the repetition of offences—to the situation of different persons participating in the same offence, as principals, accomplices, or accessaries.

The THIRD BOOK, the most important in the work, enumerates classes, and defines all offences—offences (including both crimes and misdemeanors) are classed, in relation to the object affected by them, into public and private—(p. 25.)

I. Under the head of Public offences are ranked those which affect the sovereignty of the State in its legislative, executive, or judiciary power.

The public tranquillity, the revenue of the state, the right of suffrage, the public records, the current coin, the commerce, manufactures, and trade of the country, *the freedom of the press*, the public health, the public property, the public roads, rivers, bridges, navigable waters, and other property held by the sovereign power for the common use of the people—those which prevent or restrain the free exercise of religion, or which corrupt the morals of the people.

II. Private offences are those which affect individuals, and injure them—

In their reputation—their persons—their political privileges—their civil rights—their profession or trade—their property, or the means of acquiring or preserving it—(p. 30.)

'The penal laws of most countries,' observes Mr. Livingston, 'have an ample department allotted to *offences against Religion*, because most countries have an established religion which must be supported in its superiority by the penalties of temporal laws. *Here*, where no pre-eminence is acknowledged, but such as is acquired by persuasion and conviction of the truth, where all modes of faith, *all forms of worship* are equal in the eye of the law, and it is left to that of Omniscience to discover which is the most pleasing in its sight—*here* the task of legislation on this head is simple and easily performed. It consists in a few provisions for scrupulously preserving this equality, and for punishing every species of *disturbance to the exercise of all religious rites*, while they do not interfere with public tranquillity; these are accordingly all that will be found in the Code.'

'I wish to have it distinctly understood,' he continues, 'that the preceding division and classification of offences is introduced to *give a method to the work* which will aid the memory; render reference more easy; enable the student to comprehend the whole plan; and future legislators to apply amendments and ameliorations with greater effect. But that they are not intended in any manner *to have a constructive operation*. Each offence is to be construed by the definition which is given of it, not by the division or class in which it is placed. The mixed nature of many offences, and the impossibility of making any precise line of demarcation, even between the two great divisions, render this remark necessary.'

Mr. Livingston next passes in review the different modes of punishment applicable to criminal offences, reducing them to these:—banishment—deportation—simple imprisonment—imprisonment in chains—confiscation of property—exposure to public derision—labour on public works—mutilation, and other indelible marks of disgrace—stripes, or the infliction of other bodily pain—death. And having recited at considerable length the reasons which induced him to reject *all* the different punishments above enumerated, he proceeds to a short discussion of those which have been adopted: these are,

Pecuniary fines—degradation from office—simple imprisonment—temporary suspension of civil rights—permanent deprivation of civil rights—imprisonment with hard labour. Solitary confinement, during certain intervals of the time of imprisonment, to be determined in the sentence.

He next proceeds to the plan of the FOURTH BOOK, intended to give rules of practice in all criminal proceedings.

It regulates, says he, the mode in which complaints and accusations are to be made—taking the evidence on the complaint and ordering the arrest—the mode of conducting the examination—the manner of confinement—the discretion of the magistrate in admitting to bail—the mode of making the

arraignment—the manner of pleading—the rules for conducting the trial—the duties of the Judge, of the advocate for the accused, and of the public prosecution in relation to it, are marked out. A chapter is dedicated to the regulation of the manner in which search warrants are to be granted and executed.

The last chapter of this book contains a system of proceeding on writs of habeas corpus.

It would be an injustice to the enlightened author of the work in question to omit his recital of the qualifications requisite to constitute a good and upright JUDGE. 'In the *theory* of our law,' he observes, 'Judges are the counsel for the accused: in *practice*, they are his most virulent prosecutors. The true principles of criminal jurisprudence require that they should be neither. A good Judge should have no wish that the guilty should escape, or that the innocent should suffer: no false pity or undue severity should bias the unshaken rectitude of his judgment. Calm in deliberation—firm in resolve—patient in investigating the truth—tenacious of it when discovered—he should join urbanity of manners to dignity of demeanor, and an integrity above suspicion to learning and talent—the protector, not the advocate of the accused—his judge, not his accuser; and while executing these functions, he is the organ by which the sacred will of the law is pronounced.'

The FIFTH BOOK, it is observed in p. 87, is devoted to 'the rules of evidence as applicable to criminal law.' 'In the execution of this part of the work, *general principles* will be first laid down, applicable to *all cases* of criminal inquiry from its incipient to its final stage: they will be such only as have received the sanction of the learned and the wise, or such as can be supported by the clearest demonstration of their utility and truth. The evidence necessary to justify commitments, indictments, and convictions, for each offence spe-

cified in the third book; as well as that which may be admitted in the defence, will be detailed under separate heads: and such an arrangement will be studied as to make this part of the work easily comprehended and remembered without difficulty.

The sixth and last division of the work contains Rules for the establishment and government of the public prisons, comprehending those intended for detention previous to trial—for simple confinement, and for correctional imprisonment at hard labour, or in solitude.

Such, observes Mr. Livingston, in p. 91, is the plan of the work, and from those parts of the Code, which were then in the state of greatest forwardness, were selected the SECOND BOOK, and the last chapter of the fourth as specimens of the *execution.*

The Appendix to the book contains DETACHED PARTS OF THE PROJECTED CODE, and consists first of the *introductory notice* alluded to, from which the following resumé or summary of the work is extracted, affording a neat and concise synopsis of the whole.

INTRODUCTORY NOTICE.

Art. I.—This Code is divided into six books, each book into chapters and sections—the whole composed of *articles* numbered throughout the book.

The FIRST BOOK contains definitions explaining the sense in which certain words and phrases are used in the course of the work, and directs the mode in which this Code shall be promulgated and taught.

The SECOND BOOK contains a preamble, and general dispositions, applicable—

1. To the exercise of legislative power in penal jurisprudence.

2. To prosecutions and trials.

3. To the persons amenable to the provisions of the Code, and to justifiable and excusable offences.

4. To the repetition of offences.

5. To participators in the offence, as principals, accomplices, and accessaries.

The THIRD BOOK defines offences, and designates their punishment.

The FOURTH BOOK establishes a system of procedure in all criminal cases.

The FIFTH BOOK contains *Rules of Evidence as applicable to trials* for each of the offences made punishable by this Code.

The SIXTH BOOK relates to the establishment of a Penitentiary, and contains rules for its government.

Next follows BOOK SECOND—PRELIMINARY CHAPTER—PREAMBLE, from which the following are extracts:

No act of legislation can be, or ought to be immutable—but laws ought never to be changed without great deliberation and a due consideration, *as well of the reasons on which they were founded*, as of the circumstances under which they were enacted.

For these reasons, the General Assembly of the State of LOUISIANA declare, that their objects in establishing the following Code are—

'To remove doubts relative to the Penal Code, to embody into one law, and to arrange into system the various prohi-

bitions proper to be retained in the Penal Code; finally, to collect *into one Code, and to express in plain language, all the Rules which it may be necessary to establish for the protection of person, property, condition, reputation, and government.*'

Chapter II. Book the Second is divided into sections, the first containing general provisions—the second general provisions relative to prosecutions and trials—the third treats of persons amenable to the provisions of this Code, and of the circumstances under which all acts that would otherwise be offences may be justified or excused. Section the fourth treats of a repetition of offences—the fifth of principals, accomplices, and accessaries. From the fourth book, chapter the tenth, 'Of the writ of Habeas Corpus,' is given. Section the first of this chapter contains the definition and form of this writ. Section the second, 'Who has authority to issue writs of Habeas Corpus, and in what case, and how they are to be applied for.' Section the third, how the writ of Habeas Corpus is served and returned. Section the fourth, the mode of enforcing a return. Section 5th, of the proceedings on the return. Section 6th, general provisions; and section the 7th, with which the work concludes, recites the penalties for the breaches of the duties enjoined by this chapter.

Such, Sir, is the analysis of the Penal Code of Louisiana. I am not in possession of the Code itself, nor do I believe it is procurable in Calcutta. It would be easy, however, to obtain it from America; and I certainly consider it an excellent model for the Penal Code which remains to be compiled for British India. In my last communication, I shewed what had been completed at Bombay by the mental energies and capabilities of *two* highly talented persons—namely,

the Honorable Mr. Elphinstone, the late Governor, and Mr. C. Norris, the Chief Secretary, at that Presidency; and I have *now* shewn what has resulted from the unassisted efforts and exertions of *one* individual, in one of the states of that great country which bids fair in less even than half a century to

> 'Get the start of the majestic world,
> And bear the palm alone'—

I am,
Sir,
Your obedient servant,

P. M. W.

LETTER VI.

'The vain titles of the victories of JUSTINIAN are crumbled into dust; but the name of the *Legislator* is inscribed on a fair and everlasting monument. Under his reign, and his care, the Civil Jurisprudence was digested in the immortal works of the CODE, the *Pandects*, and the *Institutes*; the public reason of the Romans has been silently or studiously transfused into the domestic institutions of Europe, and the laws of JUSTINIAN still command the respect or obedience of independent nations. Wise or fortunate is the prince, who connects his own reputation with the honour and interest of a perpetual order of men.'

[*Decline and Fall of the Roman Empire, Chap.* XLIV.

To the Editor of the India Gazette.

SIR,

In the first communication which I addressed to you on this most important subject, I pointed out the strong *necessity* which exists for the compilation of a CODE—the *mode* by which I considered that this very desirable object would be best attained—and the materials from which a consolidation of the Laws extant could be advantageously framed. In my second letter on the subject I stated that it was not my intention to mark the works of local application enumerated in my first letter, as the *only* ones to be consulted in the course of the undertaking, but, on the contrary, that it would be most essential to form a complete library, for purposes of reference to the works of those sages whose labours from the days of JUSTINIAN to the time of BENTHAM inclusive, entitled them to rank amongst the benefactors of mankind. In my third letter on this topic, I shewed what had been effected at Bombay by the mental energies and capabilities of *two* highly talented individuals, namely, the Honorable Mr. Elphinstone, late Governor, and Mr. C. Norris, late Judicial, now Chief Secretary at that

Presidency. In my fourth communication, I exhibited the result of the unassisted efforts and exertions of *one* individual (Mr. Livingston) in regard to a Penal Code for the state of Louisiana. And I now proceed to the discharge of my promise, to give an outline of the system of legislation which has been pursued in the country, since the year 1765, up to the present period.

It being in the very nature of a COMPILATION (such as it is the object of these letters to recommend to the consideration of those *who have the power to direct* the undertaking of this eminently useful and important work) to avail one's self of the labours of others; (for what, in fact, is a CODE, but a judicious digest, or consolidation of previous writings and enactments ?) I shall make no apology for recurring to, and quoting from the writings of those who have preceded me on this most interesting subject. Accordingly, I find that in a work (entitled, "The History of the Rise and Progress of the Judicial or Adawlut System, as established for the Administration of Justice under the Presidency of Bengal,") by General Leith, a neat and concise history has been given of the Regulations enacted from the year 1765 to 1793, divided into eight periods, of which the following is an abridgment.

"The object of the *present inquiry*," says the author of the work in question, "is to trace the origin of the judicial system, to *illustrate its principles*, and to mark the occasional deviations which had been made from these." The battle of Buxar, in 1764, was the era of our complete ascendancy in India, from which day our dominion was placed beyond serious hazard; and the first *period* adverted to by General Leith, is the year 1765, the date of the grant of the Dewannee (or right to the collection of the Revenue, and the Administration of Civil Justice, in the provinces of Bengal, Behar, and Oorissa), to the East

India Company in perpetuity by the Emperor of Delhi. In the year 1766, Lord Clive took his seat as Dewan or Collector of the Revenue in a Durbar, held near Moorshedabad, whilst the Nabob sat in conjunction with him, as Nazim, or Criminal Magistrate. "Great allowance (it is observed by the author of several excellent letters on the Adawlut System of India, which appeared in the *Calcutta Journal*, in 1821-22, under the signature of PHILOPATRIS) is to be made for the novel position in which the English conquerors found themselves, during the first few years that elapsed after they broke down the remnant of Mogul supremacy on this side of India, and after the acquisition of the Dewanee left them, without shadow of restraint, free to exercise whatever portions of the civil as well as criminal jurisdiction they chose to assume in their own way. The phantoms of tribute, and surplus revenue dazzled them, and danced before their eyes, distracting their perception, as indeed they continue to do, even at this day, with many ancient worthies in England: though such visions, pregnant with folly, and with *injury to both countries*, are abandoned by the better race of political economists that have succeeded. Lured by this 'ignis fatuus,' the exercise of the chief criminal jurisdiction was virtually abandoned to the feeble and corrupt administration of a Nuwab, the *shadow of a shade!* Revenue was the god of the idolatry of the day: it was worshipped with exclusive devotion, in all its shapes, phases, and ramifications: whether connected with exclusive trade—monopolies of produce—transit duties—land-tax—transmission of property, and so forth. The civil and fiscal branches of *judicial administration*, under such notions, necessarily came to be jealously engrossed in point of fact by the conquerors, and the pre-existing laws of property, with the revenue system of the Moguls, remained in force, in some degree through indolence, but in a great

measure through fear of disturbing the sources from which the ample and secure streams of revenue appeared to roll their abundant tide." Such is a brief, but, at the same time, true, history of what may be denominated the first period. It is justly remarked, however, by PHILOPATRIS, that his Lordship's (Lord Clive's) forte did not lie eminently in the walk of *legislation*, or of civil government, and that he was *not* one of those rare men who are formed to shine in 'arts as in arms'—"certain that he did not profit by what seemed a golden opportunity for laying the foundations of a judicial system for the conquered and secured possessions of Great Britain, which in process of time might have naturalized among them, if not our language, at least the essential and main *principles* of our jurisprudence—so infinitely superior to the rude and imperfect Codes which were suffered to remain in force, and received the sanction of our adoption."

In the year 1770, Councils were appointed at Patna and Moorshedabad, with servants under them, to superintend the administration of justice, and the collection of the revenue. Great abuses, observes General Leith, are said to have attended this state of government: the European servants possessed but an *imperfect acquaintance* with the *language* and manners of the natives, and the authority of the Government was too feeble to enforce a strict obedience to their orders. This system, he adds, was however, a natural consequence of our sudden and singular acquisition of power in the country. The *second period* is that, when the Company assumed the entire care and management of the revenue, or to adopt the words of the author of the work quoted, 'The year 1772 is distinguished by the resolution which the Company express, *to stand forth as Dewan*, and, by the agency of their servants, to take upon themselves the entire care and management of the revenues—when the Naib Dewan and his office were abolished, and a Committee appointed in Bengal, by order of

the Court of Directors, consisting of the Governor, Mr. Hastings, and four Members of Council, to inquire into the administration of justice amongst the natives there. Their report, observes General Leith, exhibits a very full detail of the Mahomedan law courts and police establishment; and the observations which are dispersed throughout are marked with the learning of a scholar, and the strong sense by which the President of the Committee was distinguished.

By this Committee, it appears, that a plan was delivered in for the establishment in each provincial division of a civil and criminal tribunal, to be regulated by the laws and usages of the natives, under the superintendence of a European officer (styled Collector), assisted in his decisions by an establishment of law officers, from whose court an appeal lay to two superior courts fixed at the seat of Government, the Sudder Dewanee and the Nizamut Sudder Adawlut—the former superintended by the President or Governor with two Members of Council. A chief officer, appointed on the part of the Nizim, presided in the Nizamut Adawlut, and over this Court also the President and Council exercised a certain control. Mr. Hastings himself presided in it for eighteen months, but, from the multiplicity of business, resigned the situation, when the court was removed back to Moorshedabad, where it had originally sat, and placed under the charge of Mahomed Reza Khan in his capacity of Nazim. The regulations for these courts are stated to have been comprised in thirty-seven paragraphs, *the whole not amounting to sixteen quarto pages*; and the Committee describe themselves as having endeavoured to adapt them *to the manners and understandings of the people and exigencies of the country*, adhering as closely as possible to their ancient usages and institutions. Many of these rules, adds General Leith, still exist, as living laws in the body of the great modern Code

of Bengal—but the constitution itself of the courts gave way to a new order of things in 1774, having only survived a period of two years.

In that year, 1774, forming *the third period*, it would appear, that the Collector's Courts were abolished, and Provincial Councils established in the six great divisions of Calcutta, Burdwan, Dacca, Moorshedabad, Dinagepore, and Patna. These Councils consisted of five Members of the Civil Service, who superintended the joint departments of revenue, *trade*, and the administration of justice—an establishment of a Cazee, a Mooftee, and Pundit, was attached to every Council.

The constitution of these Provincial Courts, observes the author of the 'Adawlut System,' if examined, in reference to general principles, will appear defective. Their administration of justice was however not unsuited to the manners and habits of the people, and was described to be *simple in its process, speedy in the determination of causes, and productive of little expense to the parties.* Nor would it appear, (he adds,) on a reference to the examinations that were taken in the year 1780, in Parliament, as to the due administration of justice in Bengal and Behar, that any particular complaints or dissatisfaction prevailed against the system—but, on the contrary, that the most respectable and best informed men on the subject, (such as Major Reynell, Mr. Boughton Rouse, and Sir Philip Francis,) bore testimony to the integrity and intelligence with which the different functions were discharged.

The sudden recall and abolition of these courts by the Governor General, Mr. Hastings, (within less than four months after Mr. Francis's departure from India,) and after they had received the approbation of the Court of Directors, was commented upon by the Committee of the House of Commons, in the following terms:—"Your Committee con-

sider this act in many points of view, *as a very unjustifiable and dangerous innovation.*" The reason assigned by Mr. Hastings, for the change, was—*a regard to economy.*

In the early part of the year 1780, *the fourth period,* a body of regulations was passed by the Government of Bengal, amounting, according to General Leith, to forty-three in number, *(but not exceeding five folio pages,)* for the administration of justice, by which the jurisdiction of the Provincial Council was confined to all matters of revenue—a court established in each of the divisions of Calcutta, Moorshedabad, Burdwan, Dacca, Purnea, and Patna, under the charge of one Judge designated the superintendent of Dewanee Adawlut; his jurisdiction to be independent of the Provincial Council, and to include all causes of civil nature whatever, not being revenue, and his decree final in all cases for sums not exceeding one thousand rupees. The appeal lay, in cases exceeding the above amount, to the Sudder Dewanee Adawlut. But the above plan, observes General Leith, had hardly been established before the inconveniencies of the measure came to be felt in the classing of two separate jurisdictions within the same district; in noticing which, in his minute of the 29th September 1780, the Governor General expressed the following opinion. "The institution of the new Courts of Dewanee Adawlut has already given occasion to very troublesome and alarming competitions between them and the Provincial Councils, and to much waste of time at this Board. These, however, manifest the necessity of giving a more than ordinary attention to these courts in the infancy of their establishment, that they might neither prevent the purposes, nor exceed the limits of their jurisdiction, nor suffer encroachments upon it.—To effect these points would require such a laborious and almost unremitted application, that however urgent or important they may appear, I should dread to bring them before the consideration of the Board, unless I

could propose some expedient for that end that should not add to the weight of business with which it is already overcharged. That which I have to offer will, I hope, prove rather a diminution of it."

This offer, adds General Leith, consisted in the nomination of Sir Elijah Impey, the Chief Justice of His Majesty's Supreme Court, to the Superintendence of the Sudder Dewanee Adawlut—the subject of much comment and censure in Europe. On this point, however, it has been justly observed, "Mr. Hastings' scheme of making an English Lawyer Chief Judge of the Sudder was angrily rejected, on account of his declared purpose of using it to buy over the Chief Justice of the Supreme Court."

"But in itself, the plan seems to have combined many advantages—of which the most striking are, the added dignity, gravity, *and cautiousness of procedure—the infusion of general principles of jurisprudence and equity*—the counterpoise to more hasty and *ministerial* habits, acquired by the other judges, from long and inveterate custom of considering themselves more in the light of servants of Government than is consistent with the judicial character, and the tendency that would be produced to assimilation in practice and usages with the King's Court—to which may be added, the bounty and *encouragement to the diffusion of the English language, the true instrument of civilization.* Prejudice or interest only could deny the weight of these advantages, unless we are prepared to say, that we do not desire to see one language and one jurisprudence prevail *in time* over these regions, *instead of the confusion, laxity, and diversity that now exist.*

"If we do desire the gradual accomplishment of such great and good ends, *we ought not to disdain any steps* in the gradual progression; and this appears to be one that might be eminently useful."