On the 5th July, 1781, *a new set of Regulations* was published, the declared object of which was stated to be the explaining such rules, orders, and regulations, as were ambiguous, and revoking such as might be found repugnant or obsolete. It would appear, that the number of rules did not amount to one hundred, and were contained in seventy-two quarto pages. These rules were said to have been drawn up by Sir Elijah Impey, but this Code is stated by General Leith to have been in point of perspicuity much inferior to the original one of 1772. At this period also, the superintendence of criminal justice was vested in the Governor General, under whom an officer was appointed to act with the title of Remembrancer of the Criminal Courts; but the ultimate decision remained with the Naib Nazim, who held his court at Moorshedabad.

The *fifth period*, or the latter part of the year 1782, was marked by the abolition under orders from the Court of Directors of the appointment of Sir Elijah Impey, and the re-assumption of their jurisdiction over the Court of Sudder Dewanee Adawlut, by the Governor General in Council. That court was also constituted a Court of Record, and its judgments declared to be final, except in appeal to the King, in civil suits, the value of which should be five thousand pounds and upwards.

In the year 1786, or *the sixth period*, Lord Cornwallis arrived in India, and during this year instructions were sent by the Court of Directors, in the general letter addressed to the Governor General in Council, for regulating the administration of justice on principles accommodated to the subsisting manners and usages of the people. The Courts of Dewanee Adawlut were directed to be placed under the management of the Collectors of Revenue, excepting in the cities of Moorshedabad, Dacca, and Patna, where distinct courts were established, superintended by a Judge and Magistrate.

On the 27th of June, 1787, a body of judicial regulations was passed, but not materially different from those enacted in 1781.

At the end of the year 1790, or the *seventh period*, the Governor General accepted the administration of criminal justice throughout the provinces. The Nizamut Adawlut was removed from Moorshedabad to Calcutta, and vested in the Governor General in Council, assisted by the Cazee-ool-Coozat and two Mahomedan Law Officers. Courts of Circuit, superintended each by two covenanted servants, and an establishment of law officers, were appointed in each of the provinces. The regulations for the administration of criminal and civil justice were revised and amended, which brings us to *the eighth period*, or the establishment of the Code of General Regulations in 1793, where, not to trespass too far upon the limits of your columns, we will pause for the present.

I conclude with a quotation from one of the letters (to which I have already alluded, published in the *Calcutta Journal)*, under the signature of PHILOPATRIS, and it is unnecessary to add, that in the sentiments so forcibly and well expressed therein, I for one most fully coincide.

"The first and by far the most important desideratum in Indian judicial improvement, would seem to be THE COMPILATION OF A COMPLETE CODE OF CIVIL AND CRIMINAL LAW, for the mofussil jurisdiction. If any of the laws or modes of practice at present in force require amendment or alteration, this opportunity would of course be taken to improve such; *but the main thing wanted is, to have the law, whatever it may be, strictly defined, and clearly laid down:* so that judges shall not be forced to resort to the occasional and inconclusive expositions of Hindu and Mahomedan assessors in any case, or to the obscure and doubtful ancient authorities which those assessors profess to

interpret; such a book systematically digested, and arranged under obvious heads, and titled after the fashion of the Code Napoleon, would supersede not only the ancient common law (as it may be called), under the provisions of which we profess to govern our various classes of native subjects, but also the statute law or Regulations, which in this age of legislation of making and unmaking, are swelling by rapid degrees to an enormous bulk, alarming not less to the judge than the suitor, and advantageous to those alone who thrive on its size and fatten by its intricacy.'

"The compilation of such a CODE would be an operation of time and labour: but *that consideration only points out in a stronger light the necessity of setting seriously and without delay* about the good work; every day that it is deferred, will but add to the difficulty of a task which sooner or later must be accomplished, and cannot without much hazard be put off beyond a few years. *When that colonization which has at length become the anxious desire of every enlightened man who seriously reflects on the connection between England and India,* shall be legalized, as assuredly it will be, at no very distant day, *and when a mixed population shall become established in the provinces,* our various and variegated races of inhabitants will require to be regulated and governed in all the relations between component classes, individuals, and the state, *by fixed and known laws, accessible and intelligible to all, whatever their language, tribe, or religion.*

"It would greatly exceed the bounds of a newspaper letter to attempt the detail of all that should be embraced by such a compilation as that proposed. But this may be said of it with safety, that in addition to distinct chapters and heads for each branch of laws in force throughout the country, CRIMINAL, CIVIL, REVENUE, *together with such laws of England as are deemed applicable to Europeans or na-*

tives in India, a separate preliminary section should be allotted to a succinct enumeration of the several tribunals established among us, from the Supreme Court down to the lowest mofussil judicature for petty suits. The powers, functions, jurisdictions, and establishments of each should be briefly *but completely* detailed, together *with the forms of procedure: so that every man might have it in his power to know where redress is to be had in his particular case*, and be enabled, if the abomination of taxed justice, so forcibly vituperated by the ablest writers, cannot be abolished, because of its antiquity, and universality, to calculate, at least with some approach to precision, the probable cost of his journey in the high road of the law. The French Code has some useful information in this way, and Blackstone is copious in his description and definitions of the various tribunals of our own country. No Code, in fact, is complete without some such explanation.

"In compiling the Code it would naturally occur *as desirable, that several individuals should be employed together* IN COMMITTEE, each contributing that portion of the joint labour which refers to the branch of law or practice in which he is supposed to be most conversant. That numerous individuals are to be found, duly qualified for such a task, among the highly gifted persons in the Indian judicial and fiscal administrations in its various departments, no one can doubt. The men thus employed *should be relieved for the time from all other ordinary duty. It is difficult to imagine any service on which they could be so beneficially occupied as upon this great work of Legislation.* The Committee might be appropriately headed by one of the learned Judges of the Supreme Court as its President. One department of the compilation, alluded to above, would come peculiarly within his province, and he would be likely to give to the whole a salutary tinge, the impress of those grave and

reflecting habits which are induced in English Judges by *long and patient study of laws and of mankind.*"

I am, Sir,

Your obedient servant,

P. M. W.

March 6, 1832.

LETTER VII.

'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 advantage of the facts and experience which late years have accumulated. *No expense would be too great to incur for the completion of such an object.*'—*Malcolm's Political History of India,* vol. ii. p. 151.

'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. 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 measure therefore *seems to be* WISE, and would most likely also prove economical. Even if it failed, it would be beneficial. *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 honor and renown among surrounding nations!*'—*Miller on the Administration of Justice in the East Indies.*

To the Editor of the India Gazette.

SIR

The system of law and regulation, (observes Mr. Harington in the first volume of his Analysis,) which was

established in the year 1793, for the internal administration of the provinces immediately subject to the authority of the Governor General in Council, at Fort William in Bengal, owes its origin and foundation to the political wisdom, justice, and humanity of MARQUIS CORNWALLIS; whose exalted character will be alike perpetuated by his glorious achievements in arms; by a life devoted to the interests and honor of his country; and by this memorial of his able, virtuous, and beneficent administration in India.

The regulations passed in the year 1793 amount in number to fifty-one; reducible, according to the different *departments* to which they have relation, under the following general heads:

REGULATIONS OF 1793.

Subject.	*No. of Regulations.*	*Department.*
Abkaree	34. 51.	Revenue.
Affrays, prevention of	49.	Judicial, Civil.
Appeal—see *Courts* infrà	——	idem.
Arbitration, reference of suits to	16.	idem.
British subjects, prohibitions regarding	28.	General.
Courts of		
Sudder Dewanee Adawlut	6.	Judicial, Civil.
Appeal	5. 47.	
Zillahs and Cities	3. 4.	
Native Commissioners	40.	
Customs	42.	Revenue.
Duties and Taxes, resumption of	27.	idem.
Embankments	33.	idem.
Estates, division of	25.	idem.
quinquennial register of,	48.	idem.
Inheritance, Hindoo and Mahomedan law of	14.	idem.
Lands, grants of—to Invalids	43.	idem.
public sale of	45.	
Law and Ministerial officers	12. 13. 39.	Judicial, Miscells.
Leases, grants of	44.	Revenue.
Loans, Interest on	15.	Judicial, Civil.
prohibition of by Civil Servants to landholders,	38.	General.
Minority, extension of the term of	26.	Revenue.

Subjects.	*No. of Regulations.*	*Department.*
Mint	35.	Revenue.
Opium	32.	Opium.
Paupers, admitted to sue	46.	Judicial, Civil.
Pensions	24.	Revenue.
Pleaders	7.	Judicial, Civil.
Police	9. 22. 23.	Judicial, Criminal.
Revenue,		
Settlement of	1. 8.	Revenue.
Board of	2.	
Collectors of		
Arrears of	14.	
Destraint for	17.	
Claims to exemption from payment of	19. 37.	
Regulations, proposals for enactment of	20.	General.
Code of	41.	
Registry of Wills, Deeds, &c.	36.	Judicial, Miscells.
Residents, Commercial	31.	Commercial.
Records, keeping of		
Judicial	18.	*Judicial, Miscells.*
Revenue	21.	Revenue.
Salt	29. 30.	Salt.
Wards, Court of	10. 50.	Revenue.

Analysis of the above.

Departments.	*Nos. of the Regulations.*
Commercial,	31.
General,	20. 28. 38 41.
Judicial,	
Civil,	3. 4. 5. 6. 7. 15. 16. 40. 46. 47. 49.
Criminal,	9. 22. 23.
Miscellaneous,	12. 13. 18. 36. 39.
Opium,	32.
Revenue,	1. 2. 8. 10. 11. 14. 17. 19. 21. 24. 25. 26. 27. 33. 34. 35. 37. 42. 43. 44. 45. 48. 50. 51.
Salt,	29. 30.

RECAPITULATION.

Commercial,	1
General,	4
Judicial,	19
Opium,	1
Revenue,	24
Salt,	2
	51

'The object of the Code, observes General Leith, is well described in the preamble to the *Forty-first Regulation*, which ought indeed to have formed the leading one.

'It is essential to the future prosperity of the British territories in Bengal, that *all Regulations* which may be passed by Government, affecting, in any respect, the rights, persons, or property of their subjects, *should be formed into a regular* CODE, and printed with translations in the country languages; *that the grounds on which each Regulation may be enacted should be prefixed to it;* and that the Courts of Justice should be bound to regulate their decisions by the rules and ordinances which those regulations may contain. A CODE of Regulations, *framed upon the above principles*, will enable individuals to render themselves acquainted with the Laws, upon which the security of the many inestimable privileges and immunities granted to them by the British Government depends, and the mode of obtaining speedy redress against every infringement of them: the Courts of Justice will be able to apply the regulations according to their true intent and import; future administrations will have the means of judging how far regulations have been productive of the desired effect, and when necessary, to modify or alter them, as from experience may be found advisable. *New Regulations will not be made, nor those which may exist be repealed without due deliberation*, and the causes of the future prosperity or decline of these provinces *will always be traceable in the Code to their source.*'

'SECTION V. *Clause First.* There shall be a preamble to every Regulation, *stating the reasons for the enaction of it.*

'*Clause Second.* If any Regulation shall appeal or modify a former Regulation, the *reasons for such repeal or modification are to be detailed in the preamble.*

'SECTION XIII. The Civil and Criminal Courts of Justice are to be guided in their proceedings and decisions by the regulations which may be framed and transmitted to them, *and by no other.*'

Having thus stated the system, adds General Leith, we may be allowed to pause and contemplate its general aspect, and in the *Preface* to his work he justly observes—'It appeared to the writer of this inquiry, that the objections (to the system established in 1793) have chiefly arisen from *mistaking errors which have occurred in forwarding the progress of the Regulations, for original defects in the plan itself.* Contingent errors creep into every system, and from being suffered to remain, come in time to be regarded as integral parts of it. No institution can be long preserved from decay, *but by often reverting to its original principles, and marking where these have been departed from.*' It cannot be denied, but that (in the fluctuations which have taken place since the year 1793, and amidst the changes of different hands to whom the reins of the Government of India have been from time to time delegated subsequent to that period), the general principle so broadly and distinctly laid down in the preamble above recited, has been most materially deviated from.

New Regulations *have been* made, and others repealed *without due deliberation*, or they would not at this time have amounted to more than seven volumes in folio, and the officers of Government, who are entrusted with the administration of justice, would not be compelled, (in the words of Mr. Miller,) whenever a difficult case occurs, *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 jurispru-

dence knows to be a very unsafe guide in such an emergency.

That the admirable rules laid down in the first and second clause of the fifth section of Regulation XLI. above quoted, *have not been* adhered to, and that Regulations have been pouring on, (more especially from the year 1814 to 1825, inclusive,) with often no more satisfactory preambles than '*Whereas it is expedient**,' is a truth which it will not be difficult to establish in the sequel.

'*There shall be a preamble to every Regulation, stating the reasons for the enaction of it.*' This is, in the language of the admirable Bentham, 'that to each considerable mass of matter, nay, even to each single word, where the importance of it requires as much, consideration destined to serve in the character of *reasons*, stated in proof of the propriety of whatever were so proposed to be established, should all along be annexed.'

'It is only by the *criterion*, it is only by the *test thus* formed, that talent can be distinguished from imbecility, *appropriate science from ignorance, probity from improbity, philanthropy from despotism, sound sense from caprice,* aptitude,—in a word, in every shape, from inaptitude.

'*Reasons—these alone* are addresses from understanding to understanding—*ordinances* without reasons are but manifestations of will,—of the will of the mighty exacting obedience from the helpless. Absolve him from this condition—rid him of this check—not only the man, who presents a *code* to you for signature—but the man who presents your shirt to you—is competent to make laws. The man who *presents* the shirt? Yes, Sir, or the woman who *washes* it.'

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* "*Whereas it is expedient.*"—'Only upon British Legislators could such a phrase pass itself off in the character of a *reason*, or for any thing better than *a mark of dotage.*'—*Bentham on Codification.*

'Give up *this one condition*—Germany alone, on any one subject that you please, will furnish you with as many hundred Codes as you please—all of them *composed upon the most economical principles*; all of them written at the rate of so many pages an hour: all of them without any expense of thought.'

'*No reasons! No reasons to your laws!*' cries Frederick the Great, of Prussia, in a flimsy essay of his, written professedly on this very subject. Why no reason? Because (says he) if there be any such appendage to your law—the first puzzle cause of a lawyer, (le premier brouillon d'avocat,) that takes it in hand will overturn it. Yes, sure enough, if so it be, that a text of law *pointing one way*, a reason that stands next to it *points another way*, that is, if either the *law or the reason* is to a certain degree *ill constructed*—a mishap of this sort may have place. But is this a good reason against giving reason? no more than it would be against making laws. As well might be said—*no direction posts!* Why? Because, if coming to a direction post a *mauvais plaisant* should take it into his head to give a twist to the index, making it point to the wrong road, the traveller may thus be put out of his way.'

'Suppose now a Code *produced as usual, without* any such perpetual commentary of *reasons* prefaced for form sake; and to make a show of wisdom—prefaced, *as hath so repeatedly been done* by a parcel of vague and unapplied (because inapplicable) generalities, under the name of *principles*. It may be approved, and praised, and *trumpeted*. But on what grounds? If in regard to this or that particular provision or disposition of *Law*, any distinct and intelligible grounds for the approbation are produced, they will be so many *reasons*.—Why then, (may it be said to the draughtsman)—why if you yourself know what they are, why, unless you are ashamed of them, *why not come out with them in the*

first instance?—Why not spread them out at one view before the public at large, instead of whispering them, one at one time, another at another, in the ear of this or that individual pre-engaged by interest or prepossession in quality of trumpeter? But if no such grounds—that is, if no grounds at all—can be produced, where is the truth or value of any such praise?'

'On the other hand, suppose a body of law produced, supported, and elucidated from beginning to end, by a perpetual commentary of *reasons*; all deduced from the one true and only defensible principle—principle of general utility, under which they will all of them be shewn to be included.—Here, Sir, will indeed be a new æra—*the æra of rational legislation*, an example set to all nations, a new institution—and your Majesty the founder of it*.'

Considering, that a very large portion of the evil, resulting from the facility with which regulations have been multiplied ad infinitum, since 1793, is attributable to a material dereliction from the great and unerring principle laid down in Regulation XLI. of that memorable year; that in the continued enactment of new Regulations (without the assignment of *valid and adequate reasons*, 'by which to an indefinite extent the anterior stock of law has been superseded—some of the general rules *completely overturned* and superseded by rules of equal extent—or by rules of greater extent in which they are included—others cut into and superseded in part by distinctions and exceptions')—the sheet anchor of legislation has been parted from—that it is not too late to endeavour to apply a remedy to this great evil, which although it may be difficult, is nevertheless practicable,—I shall not make any apology for having dwelt at such length upon

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* Jeremy Bentham, London, to the Emperor of all the Russias, June, 1815.

the preamble and sections quoted of the Regulation in question. 'Every year,' observes General Leith, 'has produced new regulations—every regulation has led to other regulations, and changes upon changes have been multiplied, and are now multiplying without apparent end.'

Surely, it is time to attempt to give in a clear and simple form the received and extant rules of law, *under the sanction of the governing authority of the country*—a digest (to adopt the words of Mr. Miller) 'of the whole civil and criminal law as now administered, which should be at once accurate, clear, and comprehensive.'

Deferring the analysis of the remaining Regulations of 1793 to a future opportunity, I shall conclude this letter by citing the language of the great Jurist, (from whose labors I have already so largely drawn) in his address to the citizens of the American United States.

'Yes, my friends, these labours of mine—labours which of *themselves* are nothing, dreams of an obscure individual—let them but be accepted by *you*, you shall be a people of conquerors. Conquerors, and with what arms—with the sword? No: but with the pen. By what means? Violence and destruction? No: but *reason* and beneficence. *As this your dominion spreads*, not tears and curses, but smiles and blessings, will attend your conquest in its course. Where the fear of his sword ends, there ends the empire of the military conqueror. To the conquest to which *you* are here invited, no ultimate limits can be assigned, other than those which bound the habitable globe.

'To force new laws upon a reluctant and abhorring people, is, in addition to unpunishable depredation, the object and effect of vulgar conquest—to behold your laws, not only accepted but sought after by an admiring people, will be your's.

'To those conquests of which slaughter is the instrument, and plunder the fruit, the most brutal among barbarians have shewn themselves not incompetent. By the best instructed minds alone can any such conquest be attained, as that to which *you* are here invited.'

I am,

Sir,

Your obedient servant,

P. M. W.

March 9, 1832.

LETTER VIII.

But the chief advantage, which the people of England reaped, and still continue to reap, from the reign of this great prince, was the *correction*, extension, *amendment*, and establishment of the laws, which EDWARD maintained in great vigour, and left much improved to posterity; *for the acts of a wise legislator commonly remain, while the acquisitions of a conqueror often perish with him.* This merit has justly gained to EDWARD the appellation of the ENGLISH JUSTINIAN. EDWARD settled the jurisdiction of the several courts—first established the office of Justice of the Peace—abstained from the practice too common before him of interrupting justice by *mandates from the Privy Council*—repressed robberies and disorders; encouraged trade, by giving merchants an easy method of recovering their debts; and, *in short, introduced a new face of things by the vigour and wisdom of his administration.*'—Hume's History of England, Reign of Edward I.

To the Editor of the India Gazette.

SIR,

'The leading principle,' observes General Leith, 'of MARQUIS CORNWALLIS's government, appears to have been that of forming in every branch of the India Establishment, a *system*. By this term may be implied a body of rules formed in reference to experience, and *general principles*

prescribed in written forms, superintended by separate departments of office, *and calculated to advance the happiness of the people, whilst they add to the interest of the governing power. It is an arrangement of this sort* which distinguishes a *regular* from a *despotic* Government: it has accordingly been the object of every wise ruler to establish a regular subordination of offices—to *form a body of fixed Laws* for the guidance of these, and to endeavour to give permanency and stability to his institutions. LORD CORNWALLIS left no branch of the political, financial, mercantile, judicial, or military department, unaltered. He endeavoured to improve each, and each department is considerably indebted to the *energy* and prudence of his excellent understanding.'

In my last letter I dwelt at some length upon the great and important principle, which the illustrious statesman, above named, by the enactment of Regulation XLI. 1793, prescribed to the governing power of this country in its legislative capacity, in declaring that there *should be a preamble to every regulation passed, detailing the reasons for enacting it*—and accordingly, acting rigidly up to that rule himself, we find that, of the fifty remaining Regulations (comprized in the CODE of 1793) having reference to, and involving a consideration and acknowledgment of sound general principles founded on the immutable basis of TRUTH, and on an accurate observation and knowledge of human nature, and the springs of action which move it, there is not a single regulation unsupported by its requisite accompaniment of *adequate reasons*.

It is, Sir, men of *this* stamp, 'whose memories flourish greenest in the admiration of posterity, and by a most just law, that they so live in the estimation of mankind.'

'To comprise all in one word,' says the venerable Bentham, '*reason, and that alone,* is the proper anchor for a

law, for *every thing that goes by the name of law*. At the time of passing his law, let the legislator deliver in the character of *reasons* the considerations by which he was led to the passing of it.'

'*This* is what may be termed *justification*; the practice of annexing to *each* law the considerations by which in the character of *reasons* the legislator was induced to adopt it; a practice *which, if rigidly pursued, must at no distant interval* put an exclusion *on all bad laws*.

'To the framing of laws so constituted, that being good in themselves, an accompaniment of good and sufficient reasons should also be given for them, there would be requisite, in the legislator, a probity not to be diverted by the action of sinister interest, and *intelligence adequate to an enlarged comprehension and close application of the principle of general utility: in other words, the principle of the greatest happiness of the greatest number*. But to draw up laws without reasons, and laws for which good reasons are not in the nature of the case to be found, requires no more than the *union of will and power*.

'The man who should produce a body of good laws, with an accompaniment of good reasons, would feel an honest pride, at the prospect of holding thus in bondage, a succession of willing generations: his triumph would be to leave them the power, but to deprive them of the will to escape. But to the champions of abuse, by whom, amongst other devices, the conceit of immutable laws *is played off against* REFORM, (in whatever shape it presents itself.) every use of reason is as odious as the light of the sun to moles and burglars.'

To proceed with the analysis of the Regulations of 1793, commencing with those which are referible to the *Department* JUDICIAL, subordinate division, *Civil*, may be classed (in numerical order) as follows:

Number of Regulation	*Subject.*
III.	for extending and defining the Jurisdiction of the Courts of Dewanny Adawlut for the trial of civil suits in the first instance, established in the several zillahs and cities.
IV.	—receiving, trying, and deciding suits or complaints cognizable in the first instance in the Civil Courts, established as above.
V.	— establishing Courts of Appeal for hearing appeals from decisions passed in the Zillah and City Courts, defining their powers and duties, and prescribing rules for receiving and deciding on appeals.
VI.	— extending and defining the powers and duties of the Court of Sudder Dewanny Adawlut, prescribing rules for receiving and deciding on appeals from the divisions of the Provincial Courts of Appeal.
VII.	— the appointments of vakeels or native pleaders in the Courts of Civil Judicature, as above.
XV.	— fixing the Rates of Interest on past and future Loans.
XVI.	— referring Suits to Arbitration.
XL.	— granting commissions to natives to hear and decide Civil Suits— prescribing Rules for the trial of Suits and inforcing the Decisions.
XLVI.	— admitting Paupers to sue in the Civil Courts.

Number of		*Subject.*
Regulation	XLIX.	for preventing affrays respecting disputed boundaries.

Under the Department Judicial, subordinate division, *Criminal*, may be classed:

Regulation	IX.	for re-enacting with alterations and modifications the Regulations passed on the 3rd December, 1790, for the apprehension and trial of persons charged with crimes and misdemeanors.
———	XXII.	— re-enacting with alterations and amendments the Regulations passed on the 7th December, 1792, for the establishment of an efficient police throughout the country.
———	XXIII.	— raising an annual fund for defraying the expence of the Police Establishments entertained under Regulation XXII. 1793.

Under the Department Judicial, subordinate division, *Miscellaneous*, may be classed:

Regulation	XII.	for the appointment of the Hindoo and Mahomedan Law Officers of the Civil and Criminal Courts of Judicature.
———	XVIII.	— preserving complete the Records of the Civil and Criminal Courts of Judicature.
———	XX.	— empowering the Zillah and City Courts, Provincial Courts of Appeal, and Sudder Dewanny and Nizamut Adawluts to propose Regulations regarding matters within their cognizance.

Number of	*Subject.*
Regulation XXXVI.	for establishing a Registry for Wills and Deeds for the transfer or mortgage of real property.
——— XXXIX.	—the appointment of the Cazee-ool-Coozat, or Head Cazee of Bengal, and District Cazees.
——— XLVII.	providing for differences of opinion between the Judges of the Provincial Courts of Appeal and Courts of Circuit, and prescribing Rules regarding other matters connected with their official situations.

By Regulation I. 1793, Department Revenue, subordinate division *Land*, the property in the soil was declared to be vested in the zemindars, or landholders, and the revenue payable to Government from each estate, fixed for ever.

The preamble to Regulation II. 1793, Department Revenue, subordinate division *General*, recites, that the commerce, and consequently the wealth of the country, must increase in proportion to the extension of its agriculture.—That to effect improvement in agriculture, (necessarily followed by the increase of every article of produce,) is accordingly one of the primary objects to which the attention of the British Administration has been directed in its arrangements for the internal government of the Bengal Provinces.—That as being the two fundamental measures essential to the attainment of it, the property in the soil was declared to be vested in the land-holders, and the revenue payable by them to Government unalterably fixed, thereby rendering it the *interest of the proprietors to improve their estates*, and affording them the means of raising the funds necessary for the purpose.—That further measures were however essential to the attainment of the important object

above stated.—That all questions between Government and the land-holders respecting the assessment and collection of the public revenues, and disputed claims between the latter and their ryots, had been hitherto cognizable in the Courts of Mal Adawlut, or Revenue Courts, in which the Collectors of Revenue presided as Judges, from whose decisions appeals lay to the Board of Revenue, and thence to the Government in the Department of Revenue.—That the proprietors could never consider the privileges conferred upon them as secure, whilst the revenue officers were vested with these judicial powers.—That other security must therefore be given to landed property, and to the rights attached to it, before the desired improvements in agriculture could be expected to be effected.—That Government must divest itself of the power of *infringing in its executive capacity* the rights and privileges, which *as exercising the legislative authority*, it had conferred on the land-holders.—That the separation of the revenue and judicial duties was essential.—That all financial claims of the people must be subjected to the cognizance of the Courts of Judicature, to whom the Collectors of Revenue should be themselves amenable.—That no power would then exist in the country by which the rights vested in the land-holders could be infringed, or the value of landed property affected.—*That land would in consequence become the most desirable of all property*, and the industry of the people directed to those improvements in agriculture, as essential to their own welfare as to the prosperity of the state. Accordingly, the 2nd Section of this Regulation declared the abolition of the Courts of Mal Adawlut, or Revenue Courts, and transferred to the Courts of Dewanny Adawlut, the trial of the suits which were cognizable in those courts, as well as all judicial power whatsoever, heretofore vested in the Collectors of Revenue, or in the Board of Revenue, collectively or individually.

The remaining sections of this regulation prescribe the duties of the Collectors of Revenue and their head native officers, and the powers and duties of the Board of Revenue itself.

In declaring his *reasons* for the enactment of Regulation III. 1793, (Department JUDICIAL, subordinate division *Civil,*) the Marquess Cornwallis observed, that the solicitude of the British Government had been directed to protect the inhabitants of the Bengal Provinces in the free exercise of their religion, and *to afford security to their persons and property.* That the *enactment* of regulations for this important end was not of itself sufficient, without the establishment of Judicial Courts upon principles calculated to protect private rights and property.—That to ensure to the people the benefit of good laws duly administered, Government had determined to divest itself of the power of interfering in the administration of the laws and regulations in the first instance, and to lodge its judicial authority in Courts of Justices, the Judges of which should not only be solemnly bound to dispense the laws and regulations impartially, but be so circumstanced as to have no plea for not discharging *their high and important trusts with diligence and uprightness.*—That the authority of the laws and regulations so lodged in the courts should extend not only to all suits between individuals, but that *the officers of Government themselves* should be *amenable to the courts* for acts done in their official capacity in opposition to the regulations.—That the constitution of the courts should be framed upon such principles, as to enable every individual to command at all times the exercise of the judicial power of the state thus lodged in the courts, for the redress of any injury which he might have sustained in his person or property.—That a system for the administration of laws and regulations so constituted would contain an active principle, which must continually operate to the important end

of compelling men to be just in their dealings—bring into action that spirit of industry which is implanted in mankind, *and which exerts itself in proportion as individuals are certain of enjoying the fruits of it*—dispensing prosperity and happiness to the great body of the people—*and increasing the power of the state, which must be proportionate to the collective wealth, that by good government it may enable its subjects to acquire.*—That as the basis of this system, for the administration of justice, the powers specified in this regulation were lodged in the Courts of Judicature, for the trial of civil suits in the first instance, established in the several zillahs and cities enumerated in Section 2.

The remaining Sections define their jurisdiction, duties, and powers, to take cognizance of all suits of a civil nature, (not of criminal matters.)

Regulation IV. 1793, enacts the rules to be observed in receiving, trying, and deciding suits in the Zillah and City Courts, of which a detailed analysis is in this place unnecessary. Suffice it to observe, that the several provisions which it contains, and which have remained unrescinded by regulations subsequently enacted—with such other analogous rules as have been framed on the same subject at different periods, up to the present date,—would admit of classification under the subordinate heads of

Decrees,
Evidence,
Exhibits,
Procedure,
Process,
Pleadings,
Pleaders,
Suits,
Witnesses, &c. &c.

For the enactment of REGULATION V. 1793, whereby Provincial Courts of Appeal (for hearing appeals from decisions passed in the Zillah and City Courts) were established, the following *reasons* were assigned in the preamble; namely, That parties in suits instituted *in the late Courts* of Mofussil Dewanny Adawlut, who considered themselves aggrieved by decisions of those courts, had no tribunal to which they could apply for redress, but the Sudder Dewanny Adawlut or Court of Appeal established at Calcutta.—That individuals residing in the interior of the country, whose occupations prevented their repairing to Calcutta in person, were consequently often under the necessity of submitting to decisions by which they deemed themselves injured, even in suits that were appealable.—That the Court of Sudder Dewanny Adawlut being composed of the Governor General and Supreme Council, it became necessary to restrict appeals to decisions of a certain amount or value, to prevent a greater number of appeals being preferred than the general administration of the public affairs would allow of their hearing.—That the principal part of the suits instituted in the courts aforesaid not being appealable under the above limitation, the greater proportion of the suitors, claimants to landed property, traders, manufacturers, and other persons chiefly of the lower and most industrious orders of the people, had consequently no remedy against unjust or erroneous decisions.—That in suits regarding arrears of rent and revenue between proprietors and farmers of land, under-farmers, ryots, and others, obstacles equally great existed to the prosecution of the appeal, which lay in such cases to the Board of Revenue and the Governor General in Council, in addition to the further impediments occasioned by the irregularity in the process, and the defects in the constitution of the Revenue Courts.—That the jurisdiction of the *Courts of Dewanny Adawlut*, established in the several zillahs and cities, was *now* extend-

ed to civil suits of all descriptions between individuals, and, under certain restrictions, between Government and its subjects.—That it was essential to the prosperity of the country, that all persons, *specially the cultivators of the soil*, the traders and manufacturers, and the other classes of the lower and most industrious orders of the community, who might be dissatisfied with the decisions of those courts, should have an appeal to a higher Court, to which they can have ready access ; and that *this court should be so constituted*, that they might look *up to it with confidence* for redress against unjust or erroneous decisions.—Accordingly, by Section 2, four Provincial Courts were established, and three Judges appointed to each court.

The remaining sections of this regulation relate to the locality of these courts, their jurisdiction, duties, powers, procedure on the trial of appeals, pleadings, process, penalties incurred by resisting the same, limitation of period of appeal, security to be taken for the costs of appeal, exhibits, depositions, evidence, (new on appeals in certain cases,) delivery of decrees to parties, and execution thereof, (all susceptible of reduction under specific and analytically subdivided heads.)

The preamble of Regulation VI. 1793, recites, that the extension of the powers of the Zillah and City Courts of Dewanny Adawlut, established in the several zillahs and cities, by Regulation III. 1793, for the trial of civil suits in the first instance, and the establishment of four Provincial Courts of Appeal, by Regulation V. 1793, having rendered it necessary to extend the powers of the Sudder Dewanny Adawlut or Court of Appeal in the last resort in civil suits, and to modify the late regulations prescribed for its guidance, in conformity with the principles upon which the courts subordinate to it have been constituted, Rules to that effect were enacted accordingly.

By Section 2, of the Regulation in question, the Court of Sudder Dewanny Adawlut was made to consist of the Governor General and the other Members of the Supreme Council.

The remaining sections of the regulation relate to the locality of the court, its jurisdiction, powers, procedure, process, and decrees.

Not to encroach too far upon the limits of your paper, or the patience of your readers, I shall reserve the analysis of the remaining Regulations of 1793 for a future communication, and beg to conclude at present by a quotation from one of the excellent letters of PHILOPATRIS, to which I have already alluded. 'When the grand and *primary desideratum* of a COMPLETE CODE OF THE LAWS in force among all classes of inhabitants in India shall be supplied, and when it shall have been fully promulgated in every district, accompanied by an official translation in the vernacular tongue of each, so as to be accessible and intelligible to all, we shall have surmounted *by far the greatest*, if not the only formidable difficulty that impedes the course of judicial improvement. A written Code must supersede at once the employment of unenlightened, not to say knavish, expounders.—It must simplify forms generally, and *abridge written proceedings in particular*, narrowing the ample field of *Wukeel's quibbles and chicanery*, and by abolishing futwas, bewustas, and all those pernicious practices, which, by separating the functions of declaring and administering the law, *divide responsibility* and diminish the suitor's chance of substantial justice.—It will benefit these last, by imparting at least to some, and gradually diffusing among all, so much general acquaintance with the regulations and forms as may render them less helpless than they now are, in the hands of a few brethren learned in the glorious intricacies and uncertainties of the Law. As a necessary consequence, it must therefore tend to curtail the expenses of litigation, probably in no inconsiderable degree.

'These practical advantages, if there were none other of a higher order—if we reckon as nothing, the amendments which would probably follow, to the laws themselves, *in the process of collection, revision,* and *simplification*, or if nothing be considered as gained by the advancement in the political and moral scale, which would spring from this indirect bounty on individual intelligence, and the spread *of education*—these practical benefits above enumerated are of themselves *great* and *striking*, and more than sufficient to outweigh the opposing inconveniences, which may, and no doubt would be marshalled in formidable array by that portion of mankind which in all countries, whether interestedly or disinterestedly, *prefer things as they are to any change.*

'One effect of the proposed REFORM and CODIFICATION would certainly be, that of reducing within more strict and determinate limits the great and undefined powers at present exercised by so many judicial and magisterial officers all over the country, under little *practical* and efficient check, beyond their own discretion and temper; in other phrase, their consciences, which may be of more or less yielding stuff, and will vary unfortunately with the education, principles, and habits of the individual. But who will deliberately say, that any limitation or circumscription of such authority within more definite landmarks is an evil? All men love to possess power, some from bad motives; some from a feeling that they are themselves incapable of abusing it; some, in India particularly, from a confined and unphilosophical notion, that no other regimen is adapted or capable of adaptation to the country or the people. With those of *this* class, the *beau ideal* of Indian government and administration consists in the division of the British provinces into pro-consular circles, each ruled by its little paternal despot—clothed with plenary authority, civil and military, *dispensing a precarious equity without forms*, under the guidance

of some favorite theory, as to the distribution of justice, or the peculiarities of customs, tribes, and climate, and relaxing the gripe of fiscal exaction, or squeezing a fivefold tithe, according to his capricious and periodical estimate of the yearly bounties of nature and the consequent capacity of endurance. *Such* legislators and economists have not inappropriately been designated as of the sect of ***Retrograders*** or ***Retrogressors***, and to such, every step which successive enlightened administrators have made towards the introduction of government by fixed laws, and *elevating the condition of Native Indian Society*, appears fanatical and foolish. On their principles, the introduction of courts and regulations, and *the limitation of agricultural taxation by the permanent settlement*, are as so many acts of *felo de se*, on the part of rulers, absurd and culpable!

'Those who have resided long in India, and much in the Mofussil—those who have read the admirable work of *Mr. Mill*, or the invaluable Appendix to the Fifth Report, will recollect abundant instances in proof of the expediency of restraining by written and promulgated law the loose and almost boundless authority that is often exercised in coercion of witnesses, suitors, and those *suspected of being suspicious*.

'No candid observer will deny, that under the peculiar circumstances of our position, and of the state of religion, morals, *education*, and manners in India, *larger* powers are necessary to the due efficiency of internal administration in the provinces, than are required in more advanced stages of society and better balanced politics, such as those of Europe. But whatever the extent of these necessary powers, they should at least be defined, and known to all *as far as practicable*; and the accomplishment of this object would be one of the first fruits of a well digested CODE OF LAWS, translated into every dialect, and by the multiplying power of the Seram-

pore Mission Press, to which India is so largely indebted, made to penetrate into every corner and village of the land.'

I am,

Sir,

Your obedient servant,

March 20th, 1832. P. M. W.

LETTER IX.

'Let the Law be *reformed*, and put into that state, in which alone it is adapted to answer the ends for which it is intended. Let the Laws, whatever they may (for the security of existing rights, or the attainment of future advantages) *be determined to be*, receive what alone can bestow upon them a *fixed or real existence*; let them all be expressed in a written form of words, *words as precise and accurate as it is possible to make them, and let them be published in a book.* This is what is understood by a CODE; *without such a* CODE *there can be no good administration of justice*; in such a state of things *as that in* INDIA, there can, *without it, be no such administration of justice, as consists with any tolerable degree of human happiness, or national prosperity.*'—*Mill's History of India, Book* vi. *Chap.* 6.

'The numerous Regulations which have been enacted during the last thirty-seven years, have *now* attained to so great a bulk, and undergone so many and important alterations, that even with the most retentive memory, and a very extensive knowledge of their contents, *it is frequently found impossible to refer to the Rules on any particular subject*, without a long and laborious search, for which the various duties which the officers of Government are required to perform leave very little time or opportunity.'—*Dale's Index to the Regulations—Preface.*

'Every year has produced new Regulations: every Regulation has led to other Regulations: and changes upon changes have been multiplied, and are now multiplying without apparent end.'—*Leith on the Adawlut System.*

To the Editor of the India Gazette.

SIR,

Whether the important work, towards the commencement and production of which it is the object of these letters to

contributed, be directed to be undertaken under the authority of the Local Government—whether orders to that effect shall emanate from the superior authorities in England —or whether it shall be eventually enjoined by a Legislative provision, incorporated in such act of the LEGISLATURE, as shall provide for the future administration of the affairs of this splendid annexation, by the valour and fortune of our countrymen, to the sovereignty of Great Britain, it will, I consider, in any of these cases, not be a useless employment of time or of labour to bring, in the first instance, prominently and methodically to view, the more important regulations which have *already* been enacted (up to the present period) by successive Governments in the exercise of the local powers of legislation, delegated to them by express Act of Parliament.

To effect this object, it will not, I conceive, be necessary to enter into a minute examination of every *separate* Regulation, its merits or demerits, the *reasons* by which it may have been supported, or *otherwise*; the various modifications, rescindments of its provisions in part, or *in toto*, re-enactments, and re-rescindments. This work would of course form a portion, and a most material one, of the labours of the LEGISLATIVE COMMITTEE; at all events, it would be the imperative duty of the Secretary, or functionary howsoever designated, charged with the *operative* part of the compilation, closely and critically to analyze the whole series of regulations which may have been passed on any one topic or subject, with reference to its department, division, subordinate head, &c. and to bring the result of his examinations in a written, clear, and distinct view (the TABULAR form appears the most comprehensive *and best adapted* for the purpose) to the notice of the Committee for their consideration, discussion, and final determination, as to the fixed and real ex-

istence to be hereafter given to the Law on the subject in question.

An analysis having been already given in my last letter of the very important first six Regulations of the Code of 1793, I proceed to dispose of the more material of the remaining ones as briefly as the subjects of each will allow.

To deviate a little from the numerical order according to which the Regulations passed in 1793, relative to the administration of justice (Department JUDICIAL, *subordinate division* CIVIL) were enumerated in my last letter, it may be convenient here to notice Regulation XL. of that year, 'for granting *Commissions* to *Natives*, to hear and decide civil suits, for sums of money, or personal property of a value not exceeding fifty Sicca Rupees, and prescribing rules for the trial of the suits, and enforcing the decisions which may be passed upon them.' The *reasons* (and, as already observed, no regulation was passed by Marquess Cornwallis without *that* indispensable accompaniment, 'the image and superscription of Cæsar,') assigned in the preamble for its enactment, are, that there being one established tribunal in each zillah for the trial of causes, parties in the most trivial suits were compelled to repair in person to the sudder stations —That, to quit their employments, and proceed to a distance from their habitations, was not only productive of expence and inconvenience to parties themselves, but also to their *witnesses*—That, in addition to these evils, the numerous petty suits filed in the zillah and city courts protacted the decision of causes of more importance, and obstructed the general administration of justice—That, to relieve the courts from the trial of these petty suits—That, to afford the parties an opportunity of obtaining an adjustment of them without detriment to their private affairs, and to expedite the decision of causes of every description, rules have accordingly been enacted.

SECTION II. enacts that commissions shall be granted to Mahomedans and Hindoos in the several zillahs and cities, to try and determine suits for sums of money, or personal property, not exceeding in amount or value fifty sicca rupees.

The remaining sections of the regulation in question provide for the nomination, (specifying from what class of persons to be selected,) and appointment of these Commissioners—conduct of Trial of Suits by—rules prescribed to, in their capacities of Ameens and Arbitrators—Decisions passed by—Appeal to lie to the Judge of the zillah or city from—Monthly Reports to be transmitted by, &c. &c.

Thus by the Regulations of 1793, which have been now particularly noticed, a regular series of Courts was established. To begin with the last mentioned—The Court of the Native Commissioner, who had cognizance of petty causes not exceeding fifty rupees—The Court of the Judge, (single.) established in each zillah or city, having cognizance of all civil suits in the first instance*—The Courts of Appeal established in the four different provinces, each consisting of *three* Judges, with appellate jurisdiction from the decision of the Zillah Judges—The Native Supreme Court, or Sudder Dewanny Adawlut, established at the Presidency, to receive and determine on appeals from the Provincial Courts.

The preamble to REGULATION VII. 1793, (for the appointment of *Vakeels*, or native pleaders, in the Courts of Civil Judicature,) observes Mr. Harington in his ANALYSIS, sets forth, at length, the general disqualifications of the persons before employed occasionally or professionally as pleaders,

* By Section 6, Reg. XIII. 1793, (afterwards rescinded by Sec. 2, Reg. VIII. 1794,) the zillah and city judges were empowered to authorize the *Registers* of their respective courts to try and decide suits for money and land, amount or value not exceeding 200 rupees; the decrees so passed not to be considered valid, unless countersigned by the judge to denote his approbation of them.

who by their ignorance of the Laws and Regulations, and imperfect knowledge of judicial proceedings, as well as their being liable to collusion and intrigue with the ministerial officers of the courts, impeded and prevented, instead of aiding and promoting, the speedy and impartial administration of justice. The people in general were, it was observed, necessarily precluded by their pursuits and occupations in life from attending the Courts of Justice, or acquiring a sufficient knowledge of the Laws and Regulations to enable them to plead their own causes*. It was therefore necessary that the pleading of causes should be made a distinct profession; and with a view to induce men of education and character to undertake the office of pleader, to prevent their being deterred from pleading the causes of their clients with becoming freedom, and to ensure integrity and fidelity in the execution of their duties, that their appointments should be secured to them as long as they conform to the regulations prescribed for their guidance; also that they should be entitled to receive a fixed and liberal compensation, proportionate to the amount of value of the cause of action in the suits wherein they might be employed. It is unnecessary to detail the rules enacted for the above purposes in the regulation in question,—(viz. VII. 1793,) that regulation, and the provisions of many subsequent ones (relating to the same subject) having been rescinded by Section 2, Regulation XXVII. 1814, 'for reducing into one Regulation, with amendments and modifications, the several rules which have been passed regarding the office of Vakeel in the Courts of Civil Judicature.'

* That on every occasion of life every man should be its own lawyer, is plainly impossible. In many instances, want of talent, in any instance, want of time, may suffice to render it so. But on this point, as well as on others, the further the sense of independence can be carried, the better; no man can have a lawyer at all times at his elbow. —*Bentham on Codification.*

Regulation XV. 1793, contains the rules enacted for regulating the rates of interest upon loans past and future, —rates to be decreed by the courts—rates of interest to be allowed on mortgage bonds for real property executed prior to, on, or after the 28th March, 1780.

Regulation XVI. 1793, provides for the reference to arbitration of suits concerning disputed accounts, partnership's debts, doubtful or contested bargains, or non-performance of contracts.

Regulation XLVI. 1793, (since rescinded by Sec. 2. Reg. XXVIII. 1814,) contains rules for admitting persons of certain descriptions to sue in the Courts of Civil Judicature as *Paupers*.

Regulation XLIX. 1793, (for preventing affrays respecting disputed boundaries,) authorizes a summary cognizance and process by the Civil Courts in cases of forcible dispossession from land or other property, for immediate recovery of possession, leaving the dispossessor to prefer his claim to the property in dispute by a regular suit in the Dewanny Adawlut.

In concluding, observes Mr. Harington, the recital of the provisions made by the existing Regulations for the administration of civil justice, it is impossible to withhold the acknowledgment due to the benevolence, equity, and policy, which have dictated them; with such evident attention to the interests of humanity, the rights, laws, and prejudices of the people inhabiting this portion of the British empire, and the surest as well as the most honourable means of maintaining that empire in India, by establishing it upon the solid foundations of justice, protection, and conciliation. In the simplicity of the form of action allowed in all cases, varying only as regular or summary, as well as in the general tenor of the rules prescribed for the pleading, trial, and decision of every suit cognizable

by the Civil Courts, and determinable either by specific law, or on principles of reason and equity; the intelligent regard shewn to local circumstances affecting the judicial officers, as well as the suitors, and their pleaders, is equally conspicuous. If, notwithstanding the number of Civil Courts which have been established, the means afforded for the speedy investigation and decision of inconsiderable causes by the establishment of Native Commissioners as well as in suits to a larger amount by the references authorized to the Registers of the zillah and city courts, it should still be found *that the laws are not administered with that promptness, certainty, and facility which are required to ensure their full beneficial effect, it cannot be doubted that experience will suggest further remedies to supply this radical defect, and that such measures as may be practicable, expedient, and sufficient for this purpose, will be adopted.* If any thing be wanting to secure the integrity of the Native Commissioners, who now receive no fixed salary, and to whom the fees allowed on causes decided by or adjusted before them, afford in many instances but a scanty and inadequate compensation, after providing for their necessary establishments and charges of office, it may also be confidently presumed, that so essential a requisite to the *purity*, impartiality, and consequent utility of every judicial establishment, *which has been wisely and liberally granted to the present European Courts of Judicature, will not be denied to those under native superintendence.* These observations, however, are not so much intended to apply to any known abuses of a general or important nature, in the subsisting inferior Courts of Civil Justice; or to any defects now unprovided for in the superior Courts, as to obviate the force of the only objections which have been, or can be, offered to the adequacy and efficiency of the judicatures actually esta-

blished, in accomplishing the just and humane design of their institution, and of the rules which have been framed for their guidance.'

'Were a stranger,' it is justly observed by General Leith, 'a native of some foreign land, to take up *the original Code of* 1793, he would be forcibly struck with the solicitude with which it provides for the protection of the native, the general spirit of equity which it breathes, *and the clear and dignified language in which it is conceived.* He would pronounce these to be the laws of a great nation, who, free in their own country, were worthy to rule in that of others.'

That the Code of 1793, (which 'regarded as a whole,' may be justly pronounced 'the fairest monument to British virtue,') has not been productive of the great and 'inestimable benefits' contemplated by its illustrious and benevolent author, is, in my humble opinion, attributable to causes other than original defects in the plan itself. The chief of those I conceive to be—1. That little or nothing has yet been effected for the diffusion of the blessings and light of education amongst *the bulk of the people* themselves, to redeem them from the 'state of demoralization in which the greater portion of the native population are confessedly plunged,'—to elevate them in the scale of humanity, and progressively to improve (more especially in regard to veracity) their moral character.—2. That the supply of European functionaries has been all along inadequate *in point of numbers* to meet the demand, as required (for the due administration of justice) by Lord Cornwallis's admirable system. —3. That *the degree of official aptitude* necessary for the discharge of the arduous and important duties of the Judicial Department, *has not been sufficiently maximized.* Since my arrival in India, (now nearly a quarter of a century,) I am not aware that any other degree of qualification has ever been exacted from Junior Civil Servants about to

enter the Judicial branch of the service, than a very moderate knowledge of two of the native languages, attainable with ordinary diligence in a period of six months.

That to be conversant with the language in current use in the country, and in the Courts of Judicature, should be insisted on as *one* indispensable qualification for individuals entering the judicial line, is of course most essential; but that it should de made the *only one*, appears 'a grievous fault.' 'Another consideration,' observes the able and luminous author of the History of India, Mr. Mill. 'which ought to be impressed upon the minds *of those who have it in their power to amend the legislation of India, is*, that well to perform the service of a Judge, skilfully to extract, and wisely to estimate every article of a complicated mass of evidence, not only peculiar experience, and that acuteness and dexterity which are acquired by habitual practice, are of the greatest importance, *but also an enlightened acquaintance with those general principles regarding law, and the administration of justice, which have their foundation on the general laws of human society, and which ought to run through, and form the ground-work of the laws of all nations.* In a situation where the body of law is complete and well adapted to its ends, the absolute necessity is not so great for this species of knowledge in the judge, because he has rules for his guidance in every thing. He has few rules for his guidance in India, *where every judge must in a great measure be the rule to himself.* Here, it is evident, he has the greatest possible occasion *for the guidance of those general principles which an enlightened education alone can give. The youth who is destined to the great and delicate duties of a judge in India, cannot be too carefully disciplined in that philosophy which gives the best insightinto the principles of human nature*—which most completely teaches the ends

which the administration of justice has it in view to accomplish, and the means which are best adapted to the ends. *If those on whom the legislation for India depends are in earnest for the establishment of a good administration of justice, a good education for Judges is one of the first reforms they will undertake.* This reform too will be without difficulty, because all that is wanting is a good choice of means.'

Reserving for a further communication the analysis of the Judicial Criminal, and Revenue Regulations of 1793, I shall conclude at present by citing the opinion of (one of the most efficient, upright, and able Judges that ever adorned the Indian Judicial Bench,) Mr. COURTNEY SMITH*, on the general system as established by Marquess Cornwallis.

'The *system* of LORD CORNWALLIS provided for the gradations through which a servant passed to the office of Judge and Magistrate. He was first Assistant to a Collector, then a Register and Assistant to a Magistrate—then a Collector—then a Judge and Magistrate. By this time, if he was not of that wood from which it is impossible to make Mercuries, ('ex quovis ligno non fit Mercurius,') he had become a man of large experience, mature judgment, *and of a subdued and disciplined temper.* These qualifications were every moment of service to him in the office of Judge and Magistrate, in both of which they are in truth indispensible; and in his capacity of Judge he found the knowledge he had acquired of Revenue in the Collector's Department, of the greatest assistance in the decision of civil suits, which in this country are two-thirds of them immediately or remotely connected with revenue. *This highly useful gradation* continued till the extinction of the Corn-

* Circuit Report, by the 2nd Judge of the Benares Court of Circuit, Mr. C. Smith, Dec. 15, 1815—brother to the Rev. Sydney Smith.

wallis school, that is, to the end of Sir George Barlow's government. The management of the judicial system then got into other hands, and, in my humble opinion, has been upon the decline ever since.

'None of the *systems* which have lately been proposed appear to me to be improvements upon that which exists. On the contrary, I think them calculated to carry us back to the days of ignorance, darkness, intricacy, uncertainty, corruption, and oppression. Of *one* of these plans, it is the object, to restore a system of short and cheap injustice, as *preferable* to one of protracted and expensive justice, *confessing hereby inadvertently, though most truly, that all the justice is on the side of the system which is to be abolished.*

'*I think the outline of* Lord Cornwallis's *system incomparable:* and conceiving it to be deformed and overloaded by the appointment of the fourth Judge (of Appeal), I strongly recommend that the number be again reduced to three, and that the saving be made a fund for the creation of a new Sudder Dewanny and Nizamut Adawlut, consisting of three Judges, to be stationed at Allahabad*, and to have the same powers over the Provinces of Bareilly, Benares, and Behar, which are now possessed by the Calcutta Sudder Courts over all the provinces depending on the Presidency of Fort William. I would recommend, that the original jurisdictions of the Appeal Courts be either wholly done away, or limited to causes exceeding ten thousand rupees, calculated according to the old calculation prescribed in Section 3, Regulation IV. 1793.

'By this arrangement, we should avoid in a great degree the eminent danger of clashing decisions, all of equal authority; we should escape the incalculable evils which arise from the trial of suits in the first instance, at such a distance from the place where the cause of action arose, and whence all the

* A measure since adopted—in 1831.

proof is to be supplied; and we should give life and vigour to the judicial system in the Upper Provinces, by the proximity of a court of final and supreme jurisdiction. The present Sudder is scarcely felt in these provinces; its prompt interference is impracticable; and from its vast distance and consequent ignorance of every thing local, it may be doubted whether its interference, when it does take place, is not more prejudicial than useful.

'Our system has been much injured by the scribbling of dreamers, and theorists, and drivellers,—men who if they had applied themselves to the real original business of their situations, might have prevented or remedied half the evils which they delight to paint in such gloomy colours. A severe regulation against long reports, elaborate minutes, and ingenious projects, would be of excellent effect. The true sphere of a Judge is his court, and his true language, that which is understood by the natives. With English he should have nothing to do, beyond penning a few occasional dry, short, simple letters of business, upon matters which, from usage or circumstances, cannot well be conveyed in any other tongue.'

I am,

Sir,

Your obedient servant,

March 25, 1832. P. M. W.

LETTER X.

'I must have some talk with this learned Theban.

To the Editor of the India Gazette.

Sir,

I have much pleasure in taking up my pen to reply to the remarks contained in the letter of your correspondent Sutch

BAUT*, (no disciple, I perceive, by the orthography of his signature, of that worthy but voluminous author, Dr.

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* *To the Editor of the India Gazette.*

SIR,

I read with much attention whatever appears in your valuable paper on this subject; and with reference to P. M W.'s last letter, dated 25th ultimo, in your print of to-day, I shall offer to your consideration the following observations:

Your correspondent should be aware that the major portion of those who will read what he writes, and all those who will bestow their particular attention on this important question whenever discussed, are those who are acquainted with the regulations, who have them in their possession, and who therefore need only a very brief reference to those parts to which your correspondent desires to draw their attention. Is it not, therefore, advisable that your correspondent should increase the interest of his essays, by abridging much more than he does, his quotations from the regulations?

Perhaps you can reconcile what appears to me to be an inconsistency.

Your correspondent first insists upon the absolute necessity for Indian Judges being educated after the manner that English Judges are, and he ascribes to the absence of such preparatory education the degree of official *inaptitude* of the present Judges for the adequate discharge of the arduous and important duties of the Judicial Department. Yet, without affording any explanation, your correspondent in the sequel tells you, that Mr. Smith was "one of the most efficient, upright, and able Judges *that ever adorned the Indian Judicial Bench;*" (his great usefulness was notorious, but that he was ornamental is, I believe, for the first time asserted;) and he quotes largely from one of Mr. Smith's session reports in proof, that according to Mr. Smith's opinion, Lord Cornwallis's system provided a sufficient judicial education, and that the gradations through which a public servant passed to the office of Judge and Magistrate under that system, viz. first assistant to a Collector, then a Register and Assistant to a Magistrate, then a Collector, then a Judge and Magistrate, would make him a man of large experience, mature judgment, and of a subdued and disciplined temper.

Had Mr. Smith, whose opinion is entitled to the highest deference, thought there existed any necessity for our "*Indian Judges*" having what

Gilchrist,) in as much as his communication is a proof that there are *some* who take an interest in the very important subject which it has been the object of my letters to bring to notice.

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is considered to be an English law-education, or that such an education was required to remove "*official inaptitude*" for the adequate discharge of the arduous and important duties of the Judicial Department, he would never have withheld this opinion, much less have stated one which has no reference to it, for it was one of Mr. Smith's many official merits, that he never abstained in his official writings from the most unreserved expression of his sentiments, even though he knew it would be prejudicial to his interests.

Mr. Smith was aware that the laws of England are voluminous, abstruse, and embarrassed with technicalities to the last degree; and that they were purposely thus contrived, to make a knowledge of them only attainable after long continued professional study. No one knew better than Mr. Smith, that the regulations of the Government are no less remarkable for the pure spirit of equity which pervades them than for their clear and simple diction. He knew that it is peculiarly the character of Lord Cornwallis's Code, that it presents no difficulties to the public servants who are to administer it, nor to the natives generally (for whose benefit it has been translated into the native languages), whose interest it is to comprehend its principles and policy. It was after twenty-three years' experience that this highly-gifted Judge declared that the gradations of Lord Cornwallis's system, if observed, could not fail to form a Judge of large experience, mature judgment, and of a subdued and disciplined temper.

The opinion given by Mr. Smith as to the course of education sufficient for an "*Indian Judge*" may with great safety be considered unquestionable. I agree with him in opinion, that the outline of Lord Cornwallis's system is incomparable, and I declare, after very long practical experience and close observation, that every deviation from that system has been a failure; but all failures and experiments hitherto made will, in their consequences, appear to have been quite unimportant when contrasted with what will be the melancholy condition of this country, if ever it should happen, that English law and English lawyers constitute the only means by which the judicial government of this country is to be conducted.

I can conscientiously state that *one* motive by which I have been actuated in making the columns of your valuable paper the medium of the—I can hardly as yet call it—discussion, has been to elicit the opinions of individuals employed in the Judicial and Revenue Departments on the matter in question, more especially as to the 'modus operandi' regarding which I stated my own views in my first letter. That numerous individuals are to be found in those Departments highly qualified for the task, no one can doubt, though it is to be lamented that the *Ixionic* labour of daily official avocation leaves but little leisure for *thinking*, even where the most important improvements might be effected by the process.

To proceed with my reply—and first as to the length of the quotations from the Regulations (of 1793) themselves.

Unquestionably, I am aware that the major portion of those who will be inclined to read what has been, or may be written, and who will bestow their attention on this important question, are those who are acquainted with the regulations, who have them in their possession and for whom therefore a very brief reference would suffice. The letters, however, which I have already written, I may observe, were not intended *exclusively* for the perusal and consideration of those in the Service, or in the judicial branch of it; and 'your correspondent must be aware' that there is a very large and numerous class of persons *out of* the Service, deeply interested in the Regulations, to whom the massy volumes which contain them, *have not been*, and *are not* to this day, acces-

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Observe, Mr. Editor, I have the highest respect for the talents, and integrity, and impartiality of our English Judges, but neither the natives nor this country are sufficiently civilized for the luxury of English law, nor are they now, whatever they may have been, opulent enough to afford so costly an enjoyment.

Your obedient servant,

31*st March*, 1832. DUTCH BAUT.

sible. Nay, such was the difficulty a few years ago only, before the republication of them at the Baptist Mission Press, that I remember a complete set was not obtainable at all in the highest native tribunal of the country, and that the business of the then Officiating Judge of the Sudder Dewanee Adawlut (Mr. C. Smith) was brought to a stand for want of the same, until he obtained them by special application to the office of the Secretary of the Judicial Department. Doubtless they are now procurable at the Missionary Press, but the expence is to many a serious objection. To the individuals above alluded to, the information afforded by ample quotations from the *preambles* of Lord Cornwallis's Code, developing the soundest and wisest principles, would not be without its interest; but it is not merely on this account, that I have dealt hitherto so largely in verbal citations from the Regulations of 1793. It is, Sir, because I agree with your correspondent, that *every deviation* from Lord Cornwallis's *system has been a failure*, including, I will add, (and I believe I am far from being singular in my opinion,) that most material deviation of all—the death-blow which was given to that system by Regulation I. 1829*.

'Contingent errors creep into every system, and from 'being suffered to remain, come in time to be regarded as 'integral parts of it. No institution can be long preserved 'from decay, but by often reverting to its original principles, 'and marking where these have been departed from.' It was my intention, in proceeding with the historical sketch of the regulations enacted up to the present time, to mark the material deviations which I conceive to have been made from the principles laid down by Lord Cornwallis that rendered it (in my opinion,) important to dwell at length upon them; and it would have been, I consider, no less arrogant, than unjust

* 'A Regulation for the appointment of *Commissioners* of Revenue *and* Circuit, &c.'

to his memory, to have detailed them otherwise than in that illustrious statesman's own admirable language.

The eulogy pronounced by your correspondent on the Regulations, 'No one knew better than Mr. Smith, that the 'regulations of the Government are no less remarkable for 'the pure spirit of equity which pervades them, *than for* '*their clear and simple diction*,' is, I presume, intended to apply particularly to the Code of 1793—*if so*, I concur with him in the expression of that opinion.

To complete the analysis which I have attempted of the regulations of *that* Code, the JUDICIAL, *(Criminal,)* and the more important Revenue ones, remain to be noticed in a future letter; but hereafter, I shall gladly avail myself of the hint offered by your correspondent, and be more sparing in my quotations from the Regulations themselves.

In regard to many—*too many*, enacted in subsequent years, much *option* will indeed not be left to me. What is there to quote by way of *reason* or *reasons* for the enactments—'*Whereas it is expedient.*'—(See more especially from 1814 to 1825.)

'The Spanish fleet thou *cans't* not see,
'*Because*—it is not yet in sight.'—

Moreover, I am aware, that if (on such a subject as the present) *information be* one requisite, a second, and scarcely a less important one, is '*compression.*'—With respect to quotations from other authors, who have already written on the subject in question, viz. the necessity of a Judicial Code, I have only to observe, that I considered it more important and germane to the matter to bring under apposite branches of the subject, the opinions of such men as Mr. Mill, Mr. Miller, and others, than as yet to introduce my own. I regret, that in the only instance in which I have so done, I have been misinterpreted by your correspondent. He states, that 'I first insist upon the absolute necessity of Indian

Judges being educated after the manner that English Judges are, and that I ascribe to the absence of such preparatory education the degree of *official inaptitude of the present Judges for the adequate discharge* of the arduous and important duties of the Judicial Department.' I beg in the first place to disclaim most distinctly having intended to cast any such imputation upon the individuals in question; and in the next, to deny that any thing contained in my letter of the 25th ultimo admits, when fairly construed, of that interpretation.

The Civil Servants employed in the administration of justice (who have not been promoted to the office of Commissioner under Regulation I. 1829, or to the Courts of Appeal)—the Judges in those districts where the office of Judge and Magistrate has been disunited—the Judges and Magistrates where the offices in question have not been dissociated, are, for the most part, of nearly twenty years' standing, (according to the *East India Register*,) and of fifteen, sixteen, seventeen years' actual residence in the country. After the experience *they have acquired* in the course of the discharge of their official duties, to impute to *them* individually, disqualification, or inaptitude for the performance of their important functions, would be as unfounded as unjust. Were it not invidious to *name*, it would not be difficult to mention *those* within the circle of individual acquaintance, and in districts not very remote from the Presidency, who have *proved* themselves (from their experience, talents, and published works connected with their duties) most valuable officers in the Judicial Department; and accordingly in a short letter to your address, and published in the *India Gazette*, of the 19th December last, I stated my opinion that one Judge of each of the Provincial Courts of Appeal—several of the Commissioners of Revenue and Circuit, as well as of the Judges and Magistrates of the Zillah and City Courts, ought to be appointed Members of the LEGISLATIVE COMMITTEE—that the Secretary, (or what-

ever his designation,) to the Committee, should be instructed to *invite their communications* on all points connected with the design, and to keep *them* duly and regularly informed of the progress of the works.

What I stated in my letter of the 25th ultimo was, that to exact from Junior Civil Servants about to enter the Judicial branch of the service, and to be vested on their immediate entrance, with the right of decision in grave matters affecting person and property—to exact a mere knowledge, (and that but very moderate,) of *two* oriental languages, was not in my opinion sufficiently to *maximize the standard of requisite qualification* for those about to be so employed.—To this opinion I still adhere.—Any allusion to, or insinuations against, the qualifications of individual members of the service *at present* judicially employed in the higher or subordinate stations in that department, I beg leave once for all, distinctly to disclaim.

The comprehensive and master mind of LORD WELLESLEY (*clarum et venerabile nomen*) saw and acknowledged, that 'the early interruption in Europe of the education and studies of the persons destined for the Civil Service precluded them from acquiring, previously to their arrival in India, a sufficient foundation in *the general principles of literature* and *science*, or a competent *knowledge of the laws, government, and constitution of Great Britain*,' as well as other qualifications essential to the proper discharge of the arduous and important duties of the Civil Service in India. Accordingly, *he* applied a remedy to the evil, and founded the College of Fort William. Of that institution *and the enlightened policy which dictated it*, more hereafter.

Your correspondent appears to take exception to my expression, that Mr. Courtney Smith was an ornament to, or as I stated it, adorned the Judicial Bench—his usefulness he admits.—That 'highly gifted Judge,' as is well known to many now in this country, who served in situations co-

ordinate with, and subordinate to him, (amongst the latter, I number, with pride and pleasure, myself,) brought to bear upon the discharge of his official duties not merely the whole vigour of powerful mental resources, but a classic and refined taste, and a highly cultivated understanding such as it is rare to meet with in India. He was, to my mind, on the *Indian* Judicial Bench, what Sir W. Jones was on that of the Supreme Court. I submit *still*, that if not exactly 'ornamental,' he was an ornament to, or adorned the Judicial Bench—'*utrum horum, mavis accipe.*' The passage from his Circuit Report, which I cited in my letter of the 25th ultimo, was to shew the opinion which Mr. Courtney Smith entertained of Lord Cornwallis's system, *as a whole*, from which such material deviations have been making for years past, and against which (as in duty bound to do) *he raised his warning voice in vain.* I confess, that I do not consider the gradations therein indicated do provide a *sufficient* judicial education, independent of the qualifications alluded to by Mr. Mill, and already quoted in my last letter. Mr. Smith was, and is, of a different opinion.

Select Committee of the House of Lords, 5th March, 1830. *C. Smith, Esq.* 1047.—Q. Do you not think that it would be an advantage, that the education of a Judge in the Zillah Courts should be exclusively professional?—*A.* No, I do not see how it would be an advantage, that it should be exclusively professional; his knowledge of revenue, for example, is of great use. *It was always the case in Lord Cornwallis's time*, that 'he passed through the Revenue to the higher offices in the Judicial line—he became a Collector after having been a Register; then he went on to being a Judge, and it was thought his knowledge of revenue was of great importance, to his being an efficient Judge.'

Your correspondent deprecates the introduction or extension of English Law and English Lawyers into the Mofus-

sil. It is the duty of an impartial Judge to hear both sides. —Mr. Courtney Smith in his evidence before the House of Lords' Committee states, (Answer to Question 1023,) that 'in the interior they have a great aversion to the Supreme Court.' Sir Edward East—1367. You were understood to state your belief, that the natives would rather wish *the system of law as administered in the Supreme Court* to be extended; did you mean to confine that observation to civil causes, or to extend it to criminal also? *A.* I meant BOTH. Sir Edward East—1342. *Q.* The laws in those Provincial Courts, however, were administered by British Judges? *A.* They were, and it happened to me, while I was there, *to know many of them, and very eminent, excellent men, they were,* and I should say, that the principal difficulty they had to encounter, and to which *a remedy I think ought to be applied, is that when a man started in his early days, he had all his experience and his legal principles to acquire, and after having presided in the different courts of the Company for several years,* many a gentleman of great ability and integrity *has made himself a very excellent Judge*— but when he departed, which was at a time when his judgment and experience were ripened, *he left no successor to his knowledge behind him;* and the next person that was to go through those gradations and to come into his place, *had got to acquire all the experience again,* which I look upon to be the principal defect in that constitution. *Thereby men are not educated for the great and responsible situations they are afterwards to fill*—they have no means of attending to hear the judgments and to observe the course pursued by those persons who had already acquired experience, but, that experience dies or departs with the best Judges, and their successors have got to begin '*ab ovo*' with acquiring the like.

I am, Sir,

Your obedient servant,

P. M. W.

LETTER XI.

'The Legislature has turned its attention to the defective state of *our* Code, and *the anomalies of our judicial system*: and various measures of reform are in contemplation, *which to be efficient must be maturely weighed, frequently discussed, and subjected to the test of a minute and searching criticism.*—The public mind is anxiously directed to the subject, and information is sought with avidity.' *Advertisement to the Jurist or Quarterly Journal of Jurisprudence and Legislation.*

'The same desire long after did spring in the Emperor JUSTINIAN, who chose it for a monument and honor of his Government to revise the Roman Laws, and *to reduce them from infinite volumes, and much repugnancy and uncertainty, into one competent and uniform corps of law*, of which matter himself doth speak gloriously, and yet aptly calling it *proprium et sanctissimum templum justitiæ consecratum.*'—*Epistle dedicatory Lord Bacon's to Common Law.*

'The CODE NAPOLEON will remain a monument of Bonaparte's glory, long after the fame of his victories shall have passed into oblivion. That CODE, which is now travelling from North to South, from East to West, bids fair in its progress to make the circuit of the world. This book of Laws is an instance of *simplicity*, which is the perfection of legal wisdom. It is level to the capacity of every understanding, is applicable to states as despotic as that of Austria, and as vicious as those of Naples and Sicily.'—*The Court of Chancery, by the Hon'ble W. L. Welleſley.*

'The project of Sir William Jones to obtain a Code, for the administration of Justice among the Hindus, with the authority of their own law-givers, was philanthropic and meritorious; but the mode in which it was undertaken was injudicious. His plan was to employ the Brahmins totally unaided by European intelligence; that is, to employ the lights of a people, still semi-barbarous, to compile a body of laws from the crude materials of old sayings, old poems, old practices, and old maxims, regarded as laws, *when it was in his power to have applied all the mental powers of European knowledge and civilization.*'—*Edinburgh Review*, vol. xvi. 1810, p. 157.

To the Editor of the India Gazette.

SIR,

To complete the Analysis of the Code of 1793, it remains to notice the JUDICIAL Regulations, subordinate division *Criminal*, and those in the REVENUE Department,

enacted in that year. In so doing, I have duly before my eyes the advice of your correspondent Sutch Baur, and shall on the present occasion content myself with briefly referring to the regulations in question, rather than indulging in any elaborate quotations from them. The Judicial, *Criminal* Regulations passed in the year 1793, were three in number, viz. Regulations IX. XXII. XXIII. The first (Reg. IX.) was entitled "a Regulation for re-enacting with alterations and modifications, the regulations passed by the Governor General in Council on the 3rd December, 1790, and subsequent dates, for the apprehension and trial of persons charged with crimes and misdemeanors.—The Preamble recites the different regulations which had been enacted, and measures adopted with that view since the year 1772, when Criminal Courts, denominated Foujdaree Adawluts, were established in the provinces, for the trial of persons charged with crimes and misdemeanors, and those adawluts placed under the superintendence of the Collectors of the Revenue. It then proceeds to state, That by the same regulations a separate and superior Criminal Court was established at Moorshedabad, under the denomination of the *Nizamut Adawlut*, for revising the proceedings of the Provincial Courts, in capital cases, (and over this court again the *Committee of Revenue* of Moorshedabad was vested with a control).—That upon the abolition of that committee, the Nizamut Adawlut was removed to Calcutta, and placed under the charge of a superintendent or *Daroga*, subject to the control of the President in Council. —That the above arrangements continued in force until 1775, when the entire control over the department of Criminal Justice was committed to the *Naib Nazim*.—That the Nizamut Adawlut was re-established at Moorshedabad, and by and subordinate to him (the Naib Nazim), native officers, denominated *foujdars*, appointed to superintend the Criminal Courts in the several districts.—That in 1781, the establish-