try. Such men ought to be employed first in the business of investigation and inspection, with the view of pointing out to government specific plans of improvement. It would then be the time to vote funds and to appropriate them; and government would then have the security of these men for their due application, as far as able superintendence went, strengthened by the universal feeling which every one possesses to promote the success of his own plans.

This subject, however, is altogether of so great importance, as it relates to the welfare both of India and of England, that to touch it in the casual manner in which I am permitted here to do, is in fact, I fear, rather doing it an injury. My motives cannot be misunderstood. But I earnestly hope that it will not be lost sight of, and that measures will ere long be adopted, for realizing to both countries the full value of the liberal disposition and intention of the Bengal government.

CHAP. V.

On the Judicial Administration.

I HAVE endeavoured to shew, and I trust with success, that the "constitution" of India is purely Moohummudan; and although the Hindoo code has been recognized by "the laws and regulations" of the Governor General in council, yet that the Moohummudan law is the only public written law of India. It appears to follow, therefore, that as successors to the Moohummudan monarchy of India, or rather administrators of it, the Moohummudan law is the only law which the British government is legally authorized to recognize.

The ashes of the Hindoo law have indeed been raked up by the curiosity of individual research; but they have certainly not been found worthy of the pains bestowed on their exhumation: and although the Hindoo law has found a place in the laws and regulations of the English government, in my judgment it is in no way worthy of that distinction. From Mr. Halhed downwards, we may certainly be permitted to say that no one has yet discovered any thing of value in that code: and the only value, perhaps, of the research of the Hindoo lawyers is, that of letting us know that there is really nothing valuable to be found. This has its value; and I do not mean to depretiate it. But of the law, as expounded by them, who can say any thing favourable? far less can it be admitted to supersede the constitutional law of the Indian empire, as

promulgated and administered throughout India for so many ages.

It would be, in my opinion, as profitable to search for the laws of the Angles or more early Britains, and to revive them as the law of England, as it is now to search after and to introduce the meagre fragments of the Hindoos as the law of India.

Nothing but intrinsic excellence in the Hindoo code, or its former universal and uniform administration throughout India, could justify so great an innovation as its re-adoption. The very reverse of this, however, is the fact. The Hindoo law, as a body of jurisprudence, has no intrinsic value; and instead of having been universally and uniformly administered throughout India, what there is of it is different in almost every soubah. Even the law of succession, wherein uniformity in the same state is generally found, whatever usages may in other matters be suffered to prevail; even the Hindoo law of succession is found to differ essentially in different districts. We find Mr. Colebrooke, the translator of tracts on the law of inheritance, talking of the "Bengal school" and the "Benares school" holding different laws; as if the question were one of taste or of the fine arts.

With respect to comparative merit, the superiority of the Moohummudan over the Hindoo law, so far as the latter is yet known, cannot be doubted. Some, indeed, suspect that what there is of worth in the code of the Hindoo is taken from the Moohummudan law; but this is an unnecessary conjecture, for the laws of the Jews were open to them, whence the Moohummudans borrowed still more freely, as well as from the code of the Romans; the juris-

prudence of those ancient people being the common sources of the laws of so many nations of the world.

A late writer on Indian history (Mr. Mill) enters into the question of comparative merit of the two Indian judicial systems apparently with considerable information, though not without a tinge of irascibility. After treating the Hindoo law with the utmost contempt, he adds, "from "the above delineation of these great outlines it will appear, "that a much higher strain of intelligence runs through "the whole of the Moohummudan law, than is to be "found in the puerilities, and worse than puerilities, of "the (law of the) Hindoos."* And again: "this indicates "a considerable refinement of thought, &c. far removed "from the brutality which stains the code of the Hindoo."† Farther. "There are some absurdities in the Moohum-"mudan law, in the reasons assigned for rejecting the evi-"dence of women in criminal cases; but there is nothing "in it to compare with the many absurdities of the Hin-"doo system, which make perjury, in certain cases, a "virtue."‡ "The laws of the Hindoos could not originate "in any other than one of the weakest conditions of hu-"man intellect. The Moohummudan law is defective, "indeed, as compared with any very high standard of "excellence; but compare it with the standard of any "existing system, with the Roman law for instance, or the "law of England, and you will find its inferiority not so "remarkable as those who are familiar with these systems "(the Roman and English), and led by the sound of "vulgar applause, are in the habit of believing."§

This

* Vol. I. page 639. † Ibid. page 640.
‡ Ibid. page 644. § Ibid. page 636.

This is high praise bestowed by Mr. Mill on the Moohummudan law, and ought assuredly to rescue it from ever being again put upon its trial of comparison with the "puerile code of the Hindoos."

Again, with the intention of raising in estimation the Moohummudan law to a level with the laws of the Romans and English, speaking of the necessity of strict and accurate definition, to secure rights by laws, he says, "in "affording strict and accurate definitions of the rights of "the individual, the three systems of law, the Roman, "English, and Moohummudan, are not very far from "being on a level."*

Now, Mr. Mill has fallen far short of the truth here; for if there be any point in which the Moohummudan law remarkably excels, it is in its remarkable accuracy and strictness of definition; which, however, is not so perceptible in an English translation, because of the difference of idiom, and because the English language is not so well formed for strictness of definition as the Arabic, the structure of which is more perfect and better fitted for grammatical and logical reasoning; and in this, perhaps, the chief excellence of that ancient language consists. Had Mr. Mill read the Moohummudan law in the original, this superiority would not have escaped him.

Nor would he have failed to see, that although many of its laws are defective, perhaps worse than defective, yet as a body of jurisprudence, as a system of law, it has no equal. I do not now speak of its intrinsic merit, or the excellence

* Vol. I. page 636.

excellence of its political regulations, but of the singular and systematic mode in which it has been digested, arranged, and subjected to the government of rules and principles, for the purpose of guiding its application in practice; and I am persuaded that, as a body of logical and analogical reasoning, shewing on the one hand, the real similitude of things, and on the other, the minute shades of distinction which the human mind is capable of perceiving, in cases apparently similar, yet different, it must leave certainly the English law very far behind.

My opinion of the Moohummudan law may possibly be biassed. Be that as it may, the rank it holds as the basis of the constitution, as indeed the written law of India, raises the value of that code to an extent that must be fully admitted. An exposition of the Moohummudan law is a desideratum of infinite importance; and I shall be glad to find that any thing I may be able to say here, may induce those who have the power to adopt the measures necessary for cultivating a knowledge of it, so truly indispensable both to those who legislate for, and those who administer the laws to the people of India. Were it, indeed, of no other use but as an exercise for the intellect, the study of the Moohummudan law would be intrinsically valuable. I will venture to say, that no one can study with attention a good treatise on the Moohummudan law, without having his reasoning faculties improved. He may, sometimes, indeed, smile at their philosophy; but he will, at the same time, learn of them how to think with accuracy in the search of truer wisdom.

With respect to the English law, and its fitness to be made, either a part of, or to supersede entirely the ancient law of India, it is necessary for me to say something.

In Mr. Mill's estimation the law of England has very much suffered in comparison with the Moohummudan code. But Mr. Mill is not the first that has expressed an unfavourable opinion of the English law. It has often been censured by Englishmen of the greatest wisdom and experience. What encouragement, then, have we to transplant it into India? The English have, in fact, no regular code of law. A multiplicity of statutes they have, indeed; but they are unintelligible to many, most of them altered or partially revoked, many altogether rescinded, so that an English gentleman knows not where to look for law. He is, therefore, compelled on every occasion to refer to a practitioner; and this practitioner refers not to any standard authorized by the *constitutional* legislature of England, but to a body of decisions on particular cases, which have been passed from time to time in the courts, by men, some of whom were wise, and some perhaps not so "full of wisdom," but whose said decisions have, in fact, now become the law of England.

Such law being founded upon no general principles, but piled up, as it were, upon particular cases as they arose, must ever be uncertain, because there can be no two cases, occurring at different periods, precisely similar in every point of view: and, at best, it is but a crude mode of law-making. It is a kind of *ex post facto* manufacture, which must ever have been influenced, in some degree, by the peculiar circumstances of the parties to the case on which the decision was passed, as well as by the sentiments and feelings of the times.

This mode of legislation is completely reversing the order of things. The duty of a judge is to explain and to administer, not to make laws.

The

The English criminal law is by a Moohummudan lawyer esteemed barbarous in the extreme. It certainly has ever been found inadequate to the purpose for which it was designed. It has failed to check crime; and only by the permission of Providence has it succeeded in peopling the wilds of America and New Holland. Its severity has become latterly the means of rendering it in many cases a dead letter. The feelings of the people are inimical to it; and the officers of the Crown have often failed, notwithstanding the clearest evidence, to get the constitutional tribunals to convict under it.

A Moohummudan lawyer would naturally ask, upon what principle is it that the life of a human being should be taken away for stealing the value of a few pieces of silver, when the most notorious adulterer and seducer, the destroyer, perhaps, not of the life, but certainly of the honour, peace, and happiness, not only of the individual more immediately injured, but of whole families, is suffered to pass unpunished by the law: nay, to live openly in the sin of adultery, in the face of all mankind?

He would also ask, on what principle is the severity of the law of forgery founded? Why is a man to suffer death for making an imitation of one thing which has no *real* value (a scrawl or engraving on a bit of worthless paper), when he may imitate every thing else of value which the same person possesses? He may imitate even his best invention, and utter it with the intention of defrauding the inventor. If the inventor has obtained a protection for his invention, the imitator is at most liable only to fine. If no protection has been obtained, the imitator has acted legally, though he has defrauded the other perhaps of thousands: but if he thus

imitate and sell, that is issue his note, for twenty shillings, he is hanged.

The Moohummudan lawyer will think farther. He will refer to his own law, and there he will find that it is the duty of every owner of property to adopt proper and effectual means of a physical nature, sufficient (generally speaking) to secure his property. If he have not done this, its abstraction from him, though a misdemeanor is not theft, under the statute. Analogy would therefore immediately suggest to a Moslem, that if an individual, or body of individuals, shall choose to create a property on a bit of worthless paper, and that that property shall be found from experience not to be under that degree of protection which is required by law over all other property, but to be constantly exposed as the easiest prey, as notes are, by being so easily forged, he would immediately conclude that such property is not sufficiently guarded by its owner, and consequently is without the protection of the law.

Forgery, in its effects with reference to him whose name is forged, is a wicked attempt to ruin his credit. This is done every day in fifty different ways, and the law awards damages only. With reference again to the person to whom the forged paper is tendered, it is an attempt to defraud him of his property wilfully, by giving him in lieu of it that which has no value. I say wilfully, because the act of giving him the true note of a bankrupt would be an equal fraud and injury, *quoad* the person imposed upon. A nefarious act certainly, but, essentially, not in any uncommon degree atrocious.

These are the elements of this great crime. It is prosecuted

secuted by the party whose credit is attacked, not by him who is defrauded of his property; and instead of damages, his due, he procures the death of the defendant.

Nor could a Moslem lawyer admit (and all India will agree with him), that the having more wives than one is a crime meriting capital punishment: nor that it is felony to go about on a high road, or to hunt deer with a black face (9th Geo. I. c. 22). Nor would he think it a felony, without benefit of clergy, for a soldier or mariner wandering about the realm without a testimonial, or pass, from a justice of the peace; but yet it is so by 39th Eliz. c. 17. Nor that it is criminal to ride or go about with arms; nor would he think it a felony to solemnize a marriage in any other place than a church, except by licence from the archbishop of Canterbury (26th Geo. II. c. 33). Nor that he was liable to suffer death for having carnal connexion with a female under ten years of age, whether with or without her consent.

A Moohummudan lawyer, were he to sit down and compare his own law with ours, would no doubt pay us home, by developing all our legal deformities, as we have with very great pains done the foibles of his law. Nor would he estimate, perhaps so highly as we do, its excellencies. Even its two great and pre-eminent towers, the *habeas corpus* and the *trial by jury*, might not extract any uncommon eulogium. He would approve of the former, because, by his own law, every judge is not only empowered to inquire into the state of prisons, and into the case of all prisoners, but he is strictly enjoined, above all things, to visit the jails, and to inquire personally of *every individual* the grounds of his confinement and nature of his case, and to give him relief according to law. A most merciful law it is too, com-

pared with the English. I say he would approve of the Habeas Corpus (if it did not indeed give his wives the power of relieving themselves from the incarceration of his zunanah); but he would tell us, that but for this statute, of which we boast so much, we should be no better than slaves, who might, at the nod of our master, be imprisoned to remain during his pleasure; and that, after all, it was no great matter to boast of that we were not slaves.

Of the trial by jury, so fondly cherished by us, that of late years it is doubtful whether it may not possibly have induced many a patriot to commit crime for the sake of enjoying the pleasure of a trial, he might think differently from us. Its advantages, though highly extolled, have often been questioned even in England. In other countries it has not been so highly valued. It was introduced into the French criminal code by Bonaparte; and if we credit the Edinburgh Review, it required the introducer to apologize to the people for its introduction, though the whole criminal code, and the mode of procedure of the jury, are, in the estimation of those writers, far superior to our own. Men of the lower orders in France are not allowed to sit on juries.

By "the code d'instruction criminelle" of Bonaparte, juries can only be formed from seven classes of persons, all of the age of thirty and upwards.

1st. Members of electorate colleges.

2d. From the three hundred domiciliated persons who pay the highest amount of taxes.

3d. Functionaries of the administrative order, nominated by the emperor.

4th

4th. From doctors or licentiates of the four faculties, members of the Institute or of learned societies recognized by government.

5th. Notaries.

6th. Bankers and merchants taking out a licence, of one of the two highest classes.

7th. From among the agents (query deputies) of the administrative authories, who have a salary of four thousand francs.

On special application or recommendation of the minister of justice, individuals, though not of the above orders, "eminently qualified," may be put on the list of jurymen.*

From sixty summoned, thirty-six are *chosen*, and from thirty-six, the twelve are balloted who are to sit; and the accuser and accused, equally, each may challenge peremptorily. No questions asked; but twelve of these thirty-six *must* be taken. They are to decide: have you a clear conviction that the accused is guilty of the matter charged in the indictment? The Reviewers say of a jury: "Is a "jury in its best state, the best possible instrument of judi- "cature? We have often frankly acknowledged that our "estimate of its utility is very far from raising it so "high as a very great proportion of our countrymen "hold it." Vol. xvii. p. 110.

The Mooftee, also, might perhaps find some difficulty in comprehending the advantages of jury-trial, as it is carried into effect in practice. If he were sure that he had not offended against the law, he would prefer being tried

* Edin. Rev.

tried by judges who knew the law that must acquit him, and could of their own knowledge tell that he had not transgressed it. He would prefer this to the horrid uncertainty of depending upon the chance verdict of ignorant men, biassed perhaps by the eloquence of a pleader, more eager to shew his powers of oratory than to elicit the truth, and treating (as the honorable compeers in the box are now accustomed with us in England to treat, occasionally) the opinions of the judges with "*proper* contempt."

The Mooftee would be surprized to be told that the jury are "to judge of the law as well as of the fact;" and would naturally ask, how can a man judge of the law who does not know the law? And if juries are to judge of the whole issue, not knowing the law, where is the use of your laws? Call your trial by jury, arbitration; or, he might add, if you choose, a *punchayet* (as our Indian peasantry call their village-courts; and from which your trial by jury is perhaps descended, from times when there was no, or very little, written law among you): but it is absurd to talk of being tried by the laws of one's country, and after all to have for your judges men who know nothing of those laws, and will not be instructed unless they please.

"These," would the Mooftee say, "are some of the "objections I would submit; but still," he would add, probably, "if you will assure me that you have never had "innocent individuals condemned, or guilty culprits ac- "quitted, by the influence of vulgar error or of popular "clamour, I shall not urge the point farther, but admit "that I have been out theoried. You must not, however, "commend this law for leaning to the side of *mercy*, till "you have first shewn that the acquittal of a criminal *is*

"*mercy*

" *mercy*. Remember that every instance of such *mercy* is " an allurement to the commission of crime. It gives " the vicious the hope of one more chance of escape, and " perhaps casts the trembling balance, which before indi- " cated to him to refrain. God forgive me a sinner," the learned Moohummudan would say, " and the sins of " all mankind, for I cannot think this *mercy;* but rather " that mercy in a law consists in the certainty of its pro- " curing the punishment of the guilty, and the certainty " of its ensuring the acquittal of the innocent.

" The punishment of every crime, by every law, is a " greater evil to the individual who commits the crime, " than the advantage that could arise to him from its " commission. Every person who is sane will balance " consequences, and choose that which is least irksome: " therefore he will choose to refrain from crime, rather " than incur the certainty of punishment. Consequently, " as an absolute certainty of punishment, which you may " call cruelty if you please, would put an end to all " crime, and an absolute certainty of acquittal would " promote every species of transgression, your mercy " would be cruelty, and my cruelty *mercy*.

" Upon the whole," the learned Moslem would add, " permit me to say, that although our law, having been " framed for a state of society now no more, is doubtless " defective, it is nevertheless not inferior to yours; and " farther (which is of greater importance), that it con- " tains principles which will admit of its improvement " and extension, so as to become applicable to the change " of the times; and which principles, if judiciously ap- " plied, might, without destroying or even injuring its " original fabric, be made the basis of a code that should

" hold

" hold a high place even in your own estimation: a far " more perfect code than those who know it not can be- " lieve. If you desire to legislate for this empire forget " not this! Do not despise the wisdom of our God and " yours; of our prophet, of our holy men, of our fore- " fathers, which has been the guide of our actions here " and is the source of our hopes hereafter, the standard by " which our ideas, our morals, and those of our fellow- " subjects (though religious foes) have for ages of ages been " formed: the very bond which unites society. If you " take away this, we shall no longer know in what rela- " tion we stand to one another. A father will not know " the propinquity of his child, nor the child that of his " father; a husband that of his wife, a wife that of her " husband: a law which age has rendered venerable, " both to the believer and the unbeliever. As you are " humane, you will preserve and reverence it, for its own " sake and ours; as you are wise, you will preserve and " improve it for your own."

You cannot change the law of any country for that of any other, even for a better, without offering great violence to the people. To the people of India above all others. The following authentic anecdote will illustrate this and the subject I am adverting to. That it may suffer as little as possible by translation, it shall be told as near as can be in the manner in which a venerable and grave personage might be supposed to narrate it.

" We all, men of my age, I mean," said the venerable Aabd-ool Waez, " remember when the English law was " administered to us by the English judges of the King's " Supreme Court (pronounced by my friend Shubreem " Koorut): but God forgive us poor ignorant people,

" our

" our fathers not knowing the intention of those great " judges, had never taught us to read English nor to " understand that law. When a man came to us to " deliver an order to appear before the Supreme Court " of Calcutta many knew not how to act. The distance " was great, and they had no means of defraying the " expense of so long a journey. In the midst of this " dilemma they were perhaps seized and dragged many " hundred miles to the great court of Calcutta, where " they were told, perhaps, that they were to be sent to " prison for contempt by an order of court (which he " called the *Lord Justey Saheb ka hookm*).

" Other respectable men again were carried to Cal- " cutta, the distance of five hundred miles, on the affida- " vit (pronounced by my friend *abidabi*) of some mis- " creant, perhaps, the truth of which had not been " inquired into; and there, removed from all his friends, " in the land of strangers, ordered either to find bail or " to go to prison, to the everlasting disgrace of his family. " The alternative of bail was nugatory; for removed " from all who knew him, who would be his bail? He " was, therefore, obliged to go to prison till the ses- " sions: perhaps for six months. He knew not whether " he was to be made innocent or guilty; for he was pro- " bably not a rich man, to be able to employ attorneys " and lawyers to tell his tale to the Lord Justey Saheb, for " he could not himself, as he did not understand his lan- " guage; and although there were doubtless gentlemen " in attendance to explain, yet every one knows how " much the spirit of discourse vanishes in passing through " the mouth of an interpreter: the mental communion, " indeed, which exists between the speaker and hearer,

" in

" in earnest and direct communication, being altogether " lost, and cannot be interpreted.

" You will scarcely believe me," continued the old man, " for you was not born till more favourable times, " when I relate to you the following story of the great " judge's court, and of the English law of Calcutta: In " the year 1192 of our era, Meer Moohummud Jaafur " died at Patna, leaving considerable property but no " children. His heirs, by the Moohummudan law (which " was then administered by a kauzee and two mooftees " under the Provincial Court of Patna), were his widow, " who took her share, and his nephew, who took the residue. " The distribution was made, by order of the Company's " Court, according to our own law; but the widow, insti- " gated by base persons, produced a forged will and " claimed upon it. The forgery was detected. She then " absconded, carrying away with her the title-deeds be- " longing to the estate, and the female slaves, and went " to live among a gang of fakeers in the neighbourhood, " refusing to give up the title-deeds and slaves. The " nephew complained to the Provincial Court that she " had disgraced the family, by thus absconding, and " prayed that she might be ordered to return, and also " to give up the slaves and deeds belonging to the estate. " His prayer was granted; and the kauzee issued his " order to call upon the widow to conform. She declined " to do so, and watchmen were ordered to watch her: a " species of constraint which the Moohummudan law and " customs of the country authorize. She still refused, " and at the end of six weeks the guard was withdrawn.

" The widow, instigated as before mentioned, brought " an action against the nephew and the kauzee and moof-

" tees

" tees in the Supreme Court of Calcutta, on the ground " of their proceedings, and she laid the damages at six " lakhs of rupees. The nephew pleaded that he was not " amenable to the King's court; but the judges said that " he was. How I know not, as he had never been nearer " Calcutta than Monghyr (three hundred miles), in his " life. They said, however, that he was a zumeendar, " and that every zumeendar is a servant of the Company; " which is very true. Indeed, we are all slaves of the " Company, and so they may have been right. But to " be servants of the Company without receiving any " wages, merely to be dragged to Calcutta jail, was what " we did not before know; and we were all so greatly " alarmed at this, that many of the most respectable " zumeendars and talookdars in Bahar petitioned the " most excellent Governor Hastings (whom we all knew " did not wish for such service from us his willing slaves) " to protect them from this great court; or if this pro- " tection could not be granted, entreating him to take " their zumeendaries back, and to suffer them to depart " in peace to another country.

" The kauzee and mooftees pleaded that they acted " under the orders and authority of a competent court, " and that a judge and his law officers thus acting, could " not be responsible in damages to those who might com- " plain of his decrees. The great Lord Justey Saheb, " however, would not hear of this, but declared them " liable in damages; and after entering minutely into the " case, and holding voluminous proceedings, they sen- " tenced those helpless becharrahs to pay three lakhs of " rupees in damages, and nine thousand two hundred and " eight rupees expenses.

" The

" The defendants, especially the kauzee and the moof-
" tee, had never seen so much money in their lives (for
" with us the law is not the road to riches), and were
" utterly unable to pay. They were therefore seized
" and dragged to Calcutta; but the kauzee, who was an
" old man, who had been chief kauzee of the province
" for many years, was unable to endure so much vexa-
" tion and dishonour, and he expired by the way. The
" rest were carried to Calcutta and lodged in the com-
" mon jail, where they remained till they were released
" by the interference of the King and Parliament of Eng-
" land (whom God preserve) in 1781; who ordered a
" large sum of money to be given them to soothe
" them for their disgrace and sufferings, and to be
" not only re-instated in their offices, but to be raised to
" the office of Moohummudan counsellors to the court of
" Patna.

" The Governor-General, the protector of the poor
" and the justifier of the just, did indeed order that those
" becharras (helpless persons), as they had acted under
" legal authority, and only in discharge of their duty,
" should be indemnified by government. But, at that
" time, as I have since heard, the Lord Justey Saheb
" said that the Governor himself was amenable to their
" court. Nay, I have been credibly informed, that the
" Governor and Council themselves were summoned to
" appear in the Supreme Court, in an action, to answer
" at the instance of Causseenaut Baboo; till at length,
" the wisdom of government made them set at naught
" the vain and presumptuous pretension of this court,
" and to issue a proclamation, telling all their subjects in
" the provinces to do the same, unless those who were
" really servants of the Company, or who had agreed to

" answer

" answer in that court; which relieved the whole of the " provinces from the greatest consternation. And thus " by the blessing of God, we were released from the jaws " of this monster, whose head we had only yet seen, whose " size no man could fathom, but which threatened the " inhabitants of these provinces with destruction, and the " provinces themselves with desolation."

" This," added my venerable friend, " was long before " your time, Sir, and you may not believe my word; but " no doubt your historians, who leave nothing unrecorded, " have not forgot so great an affair."

My friend here finished his discourse; and on making the necessary inquiry, I found that all he had said was quite true, and that government itself, in their letter to the Court of Directors dated 15th January 1776, thus state the conduct of the judges. " That Mr. Justice Le- " maistre declared, in his address to the late grand jury, " that a very erroneous opinion had been formed by the " Governor-General and Council, distinguishing between " the situation of the East-India Company, as Dewan, " from the common condition of a trading company. He " (the justice) made no scruple in avowing a decided " opinion, that no true distinction, in reason, in law, or " justice, can, or ought to be made, between the East- " India Company as a trading company, and the East- " India Company as Dewan (or Sovereign) of these " provinces; and that, in matters of revenue, the ma- " nagement of government was not exclusive, but subject " to the jurisdiction of the King's Court: to disobey the " orders and mandatory process of which would be " equally penal for the Company, or those acting for " them in matters of revenue, as in all other matters

" whatsoever; and that the said court held out *in terro-*
" *rem* over them the penalties of high treason, in refusing
" obedience to their court. That under pretext of
" requiring evidence, this court had demanded the pro-
" duction in court, of papers liable to contain the most
" secret acts of government. That the secretary to
" government had been served with a writ, called *sub-*
" *pœna duces tecum:* and attending the court without the
" papers, he was told that he had brought upon himself
" all the damages of the suit. That upon his represent-
" ing the impossibility of his producing the records in
" court, having been forbidden so to do by government,
" he was ordered to declare which of the members of
" Council voted for the refusal of the records, and which
" (if any) for their production. He demurred, but was
" made to answer; and every member of the Council who
" concurred in the refusal was declared liable to an action.

In forwarding this statement to government, the Court of Directors themseves most justly state: " that the penal
" law of England was utterly repugnant to those laws and
" customs by which the people of India had been hitherto
" governed; that nevertheless Mata Rajah Nuncomar
" was indicted, tried, convicted, and executed, for an of-
" fence (forgery) which is not capital by the laws of India;
" that the judges seem to lay it down as a general prin-
" ciple, in their proceedings against this Rajah, that all
" the criminal law of England is in force in India upon
" all the inhabitants."

They ask: " shall all the species of felony created by
" the black-act be introduced? Shall a man convicted for
" the first time, of bigamy (which is allowed, nay, almost
" commanded by their law), be burnt in the hand if he

" can

"can read, and hanged if he cannot? These are only "some of the consequences we hint at.—If it were legal "to try, convict, and execute Rajah Nuncomar for for- "gery, on the statute of George II. it must, as they con- "ceived, be equally legal to try, convict, and punish the "Viceroy of Bengal, and all his court, for bigamy, under "the statute of James I!"

I have, I am aware, dwelt on this topic longer perhaps than might be deemed necessary. The question of the introduction of the English law into India, however, it must be admitted, is one of great importance; it cannot, therefore, be without its use to exhibit, even in this way, what may be part of the consequences of such introduction, by shewing what distress and universal dismay it did really occasion, when, though erroneously, the zemeendars and others were supposed to be amenable to the English law.

Whether, therefore, we view the English law with reference to its intrinsic worth, or to its fitness for the people of India, forming our opinion of it from the experience the unfortunate inhabitants of these provinces had of it during the short, but eventful, period they were cruelly held amenable to it, we can only come to one rational conclusion; and that is, that its introduction into India would be equally iniquitous and impolitic: that, however suitable it may be in an enlightened country, among people who have made it, and who have been formed by it, administered by judges, certainly as upright and independent as our India judges are, but still acting under the eye of a thinking and a searching public, yet it requires no great stretch of thought to be convinced, that where none of these circumstances and correctives exist, the administration of it might be very pernicious.

Speaking of the reformation of the courts of justice of Bengal, the author of "Plans for the Government of India" says: "The hints of Lord Clive discover to us, that "however simple the principles of natural justice may "be, and however perfectly it may have been copied in "the laws of England, yet it was impracticable to intro- "duce those laws as the measure of right and wrong in "Hindoostan. The laws of that country, as well as the "courts of justice, proceed from a government perfectly "opposite in its spirit to that of England; and the appli- "cation of them had become familiar to the people "through customs not less dissimilar to ours. Time has "shewn us, that we may improve, but cannot alter the "India jurisprudence. Though the laws of Rome fur- "nished a fine system of jurisprudence to our ancestors, "they preferred their own common law to this model; "and yet the one had sprung from the refined maxims "of the Stoics, and the other from the military establish- "ments of the Goths."* And again: "The experiments "which have been made to engraft the laws and practice "of England upon the jurisdiction of India, have proved "to us that the most laudable efforts we have been able "to make have not answered the beneficial ends in- "tended."† "The conclusion is, that we must go on gra- "dually to improve the courts of justice known in that "country, till time and habit shall give them such a de- "gree of perfection as the prejudices and manners of the "people admit."‡

Yet, have I heard of judges of his Majesty's court of Calcutta who have spoken with unqualified opinion of the great advantage which the introduction of the English law

* Vol. I. page 70. † Ibid. page 404. ‡ Ibid. page 406.

law would prove to India; and I have been informed that some of them have gone the length of recommending, in writing to the government, the introduction of the English law into India. But when we consider the education of these men, we ought not to be altogether surprised at their partiality. Their intimate knowledge of the law, as well as of its practice, makes them insensible of the intricacies of its ways: or they may believe even its tortuosities partake of the beautiful, though they are doubtless horrid in appearance and destructive in experience to those to whom they are less familiar. There is, moreover, at present, a perfect anarchy of law (if I may so express myself) in India; which, to a systematic lawyer, must doubtless appear the worst of all evils.

I have heard the same doctrine broached by individuals of the Company's service. It is needless to add the forfeiture this caused them in my estimation; but, in justice to the service, I must say, that I never knew such a sentiment entertained by any one, whose knowledge of the people, or of either law, rendered his opinion valuable; and should such an opinion be ventured in England by any one, who from having been in India, or even having held a judicial situation there, may be thought qualified to judge, let me tell the reader that there have been, and still may be, judges in India, who understand but little of any law under the sun, and who have probably never taken the trouble to think on the subject. That a knowledge of the law, or of any law, is not a qualification always found in an English India judge; for that the Indian government are constrained to place men in judicial situations who have no previously acquired knowledge of the law. One of themselves (Mr. James Stuart, lately a member of the Bengal government) shall speak for them

on this point. "The courts," says he, "have no fixed "principles of jurisprudence to direct their investiga- "tions and govern their decisions; and the judges are "not only destitute of legal knowledge, but, from cir- "cumstances beyond control, cannot be selected for dis- "cretion and knowledge of business."*

Lord Clive, in his celebrated plan for the government of India, declared "that the attempt to introduce the "English laws throughout our possessions in India, "would be absurd and impracticable."†

The question then is, what law ought to be introduced? I answer, at once, the Moohummudan law; and my opinion is corroborated by many: among others, the author of the sensible work last quoted, *Plans for India*. "First," says he, "it is proposed that the Moohummudan law "shall, in general, be held the rule of conduct for all "authorized native courts."‡

The Moohummudan law is, I have said, that which ought to prevail. It is the law which has prevailed throughout India for seven or eight hundred years; the law of the government to which we succeeded; the law which, in one instance, at least, we became bound to administer, by the acceptance of the solemn grant which gave us the country from the fallen emperor, whom we now chuse to represent. I do not say, however, that the Moohummudan law should be introduced blindly, with its obvious defects. Take that law, properly understood, adopt it as far as can be done, revise it, improve it, adhering

* Minute on Judicial System of India, page 12.

† Plans, page 67. ‡ Ibid. page 414.

hering to it in every case where practicable; and I venture to say, we shall find that there are few points in their code, where justice and sound sense have not been advocated.

If, as I have said elsewhere, government abandon the laws which for ages prevailed, which of necessity have greatly influenced the habits of the people, and which the British legislature has in fact guaranteed to them, for laws and regulations of its own, however good and equitable as we may think, we can hardly expect the people to go along with us. We must be prepared for opposition, in the hearts at least, not only of our subjects, but of our own native law officers. And, at best, it is but a rude way of repairing a fabric, to neglect the symmetry of the antient building, or to demolish it. How much more masterly, how much more becoming so great a government, how much more beneficial, effectual, to carry with it the minds of its subjects and the strenuous efforts of its own public officers, by engrafting whatever may be approved of our own more enlarged system of justice on the antient stock of their venerated laws: a measure equally desirable and practicable; for it does not admit of doubt, that there is no point of importance to be met with in the Moohummudan code, on which sound sense and reason have not had their respectable and (by themselves) respected advocates; and if government would but thus proceed, they would unquestionably get the native learning, both of the dead and of the living, to co-operate with them in the formation of a system of jurisprudence, which should not only prove the greatest blessing they could bestow on the people, but be a lasting monument of the wisdom, and not less so of that rarest but greatest of all qualities of a

government, that of being able to rule its subjects by means of their own prejudices and affections.

It has been said by a great man, that "there is some-"thing else than the mere alternative of absolute destruc-"tion or unreformed existence," and "that a true poli-"tician always considers how he shall make the most of "existing materials. A disposition to preserve, and an "ability to improve, taken together, would be my stan-"dard of a statesman."*

All innovations introduced into the laws of India in any other way, must tend, in their very lowest degree of inconvenience, to set at variance the European judges and their native advisers; and thus obstruct, instead of advancing, the public service, create endless references, produce partial or equivocal answers from the native lawyers, and, in the end, mutual disgust.

The introduction of a code of laws, such as there alluded to, would unquestionably be the greatest blessing that could be conferred on the people of India. It is indispensable in my estimation. If we desire to elevate them one step in moral improvement, it is the fulcrum on which they must be raised.

The law must, then, be thoroughly understood by the judges; for, without this, vain will be all our efforts. The purity of its administration is no less important. At present, as Mr. Stuart says, they have no fixed law; the judges are ignorant; and he might have added, we profess to administer the Moohummudan and Hindoo codes through our native

* Burke.

native lawyers, whom we can neither trust for their knowledge or their integrity. Surely this system will not be continued.

We strive to moralize the people: but, let me ask, is it possible to conceive a more prolific source of depravity in any country, than that which is laid open by the bare chance, the bare possibility of success, in corrupting the courts of justice?

How vain is it for those good men who spend their lives and build their hopes, through immortality, on their exertions to inculcate the principles of morality into the minds of the Indians, to hope for success, when their pupils, by looking around them, see that morality itself has no real existence, that even the highest and the most sacred are yet the most demoralizing of our institutions, and that the shrine of justice herself is to be approached by the hand of corruption. We cannot expect the natives to distinguish accurately between those members of our courts who may be corrupted, and those who may not. They do not inquire, probably; and, to say the truth, it is not much worth their while to do so. The effect to them is the same, whether the English judge be pure or not, or whether he partake of the plunder of his corrupt *aamla.* The general impression is that which is most to be thought of; and that is, that in our courts there is enormous expense, enormous delay, that every thing else is uncertain, and that there is nothing more terrific to an honest native, under the sun, than our courts of law; except perhaps the Supreme Court of his Majesty in Calcutta, wherein they say suits are ended only with the means of one or other of the parties to carry them on.

If

If we would impress on the minds of the natives of India the precepts of morality, it must be exhibited to them practically, not only by ourselves, but by every one holding important or confidential situations under us. They must be shewn that we are not only willing, but able to detect, as well as to discard the wicked.

The manners of the people of India are extremely artificial. There is no openness and plainness of dealing among them: they are always, as it were, *acting*, even in their common intercourse with one another. Truth, therefore, has not that value among them, which it is allowed to possess among a people who practise a plainer and more undisguised intercourse. Thus the people of India scruple not to lay aside what they do not much esteem; and, along with it, every regard to justice and integrity. They are, therefore (generally speaking, I mean, for doubtless there are exceptions), not in their present state to be safely trusted with the exercise of power, without a very efficient control; and certainly not with power under the cloak of laws, which at present they must think mysterious to us, seeing that they never meet with any judge who possesses a competent knowledge of them.

To instruct the judicial servants of the Company in the Moohummudan law, has been an object most anxiously desired by the greatest men who have ever governed India, and by many illustrious characters in inferior stations. Their motive for this is so apparent, that it requires no illustration, to those who know that, though all profess to administer the Moohummudan law of India, there is not, nor has there ever been, so far as I know, any judge in the Company's service who has had a competent knowledge of that law. But as this is almost incredible, and

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as the fact is, I apprehend, not generally known, it is right, and I trust it will be useful, to notice it. It is but just, as well as necessary, however, at the same time to state, that there is no work in any language, except the Arabic, whence a competent knowledge of the law can be attained. The Arabic language, till lately, was unknown, and is even now known to so few, that these scarcely form an exception; and when of these few we inquire how many know the law, the answer may be given, not one! for the Moohummudan law is not to be acquired without laborious study, more than the laws of other nations.

When the great oracle of the English law said, "should "a judge, in the most subordinate jurisdiction, be defi- "cient in knowledge of the law, it would reflect infinite "contempt upon himself and disgrace upon those who "employ him," how little could he have anticipated, that half a century should not elapse, when one hundred millions of people should be governed by Britain, under laws administered by judges really deficient in legal knowledge.

Among those governors of India who have zealously endeavoured to procure to the people a pure administration of their law, I may mention the illustrious names of Clive, Verelst, Mr. Hastings, Marquess Cornwallis, Lord Teignmouth, the Marquess of Wellesley, and the Earl of Minto; and of the many individuals of inferior station, I must distinguish as pre-eminent the learned, amiable, and philanthropic Sir William Jones, whose professional knowledge and experience, himself an English judge in India, and well acquainted with the Moohummudan as well as Hindoo law, combine to render, not his opinions merely, but his extraordinary efforts, to diffuse a knowledge of the law, stronger testimony of the necessity and importance

importance of its cultivation than is generally attainable in matters of a similar kind. He had founded the Asiatic Society of Calcutta, and may therefore be called the parent of the systematic pursuit of Oriental knowledge. "But my great object," says he, "is to give our country "a complete digest of Hindoo and Mussulman law, &c. "I would write on the subject to the Minister, Chancel- "lor, the Board of Control, and the Directors, were I not "apprehensive that they who know the world, but do not "fully know me, would think I expected some advantage, "by purposing to be made the Justinian of India; where- "as I am conscious of desiring no advantage but the "pleasure of doing general good."* And again: "San- "scrit and Arabic will enable me to do this country more "essential service than the introduction of arts, by pro- "curing an accurate digest of Hindoo and Mussulman "laws, which the natives hold sacred, and by which both "justice and policy require that they should be go- "verned."†

Sir William Jones suggested a plan for completing the digest here alluded to: and in his letter to the Marquess Cornwallis, then Governor-General, on the subject, he thus expresses himself. "Perpetual references to native "lawyers must always be inconvenient and precarious; "and at best, if they be neither influenced nor ignorant, "the court will not, in truth, *hear and determine the cause*, "but merely pronounce judgment *on the report of other men*. "For these reasons, it appears indubitable that a know- "ledge of Moohummudan jurisprudence is essential to a "complete administration of justice in our Asiatic terri- "tories,"

* Sir Wm. Jones to the Governor-General, 1786.

† September, 1787.

" tories," &c. And again: " For the Hindoo and Mus-
" sulman laws are locked up for the most part in two very
" difficult languages, the Sanscrit and Arabic, which few
" Europeans will ever learn, because neither of them leads
" to any advantage in worldly pursuits; and if we give
" judgment only from the opinions of native lawyers and
" scholars, we can never be sure that we have not been
" deceived by them. It would be absurd and unjust to
" pass an indiscriminate censure on so considerable a body
" of men; but my experience justifies me in declaring,
" that I could not, with an easy conscience, concur in a
" decision, merely on the written opinion of native law-
" yers, in any cause in which they could have the remotest
" reason for misleading the court. Nor how vigilant
" soever we might be, would it be very difficult for them
" to mislead us; for a single obscure text, explained by
" themselves, might be quoted as express authority,
" though perhaps, in the very book from which it was
" selected, it might be differently explained, or introduced
" only for the purpose of being exploded."

It was an object of the highest ambition of this benevolent judge, to put government in possession of a code of the antient laws, by which he presumed they were to govern the people of India; improving of course those laws where necessary. He undertook to superintend the compilation of, and to translate, the digests above-mentioned. His letter to the Governor-General, Marquess Cornwallis, will be read with no small interest, when it is known that so much at heart had he the laborious undertaking, that for it alone, with an infirm constitution, he suffered himself to be separated, alas, for ever! from a beloved wife, who was compelled by sickness to return to England;

England; and that, in a short time afterwards, his own life fell a sacrifice to his great design.

The translation of the Hidayah, a celebrated work on Moohummudan law from the Arabic, both into Persian and into English, were projected by Mr. Hastings and effected under his government. The foundation of the Moohummudan college at Calcutta, for the express purpose of affording the natives an opportunity of learning that law, exclusive of the often-expressed sentiments of that great man, leave us the strongest and most unequivocal proof of his desire to promote the knowledge of that law. "Mr. Hastings," said Lord Teignmouth, "with "the view of promoting a knowledge of Moohummudan "law, as essential to the due administration of justice "to the natives of India, established a college in Cal-"cutta."*

"Fully sensible," says Lord Teignmouth," of the uti-"lity of a digest of a Hindoo and Moohummudan law in "facilitating, what he was ever anxious to promote, the "due administration of justice to the native subjects of "the British empire of Hindoostan, the Marquess Corn-"wallis considered the accomplishment of the plan (the "digest above-mentioned by Sir William Jones) as cal-"culated to reflect the highest honour upon his admi-"nistration."†

Lord Teignmouth, when Governor-General, employed Lieutenant-Colonel (then Lieutenant) Baillie to translate this digest of the Moohummudan law. A translation of one

* Life of Sir William Jones. † Ibid.

one volume of it was made; and the Marquess of Wellesley (who in the interim had established a professorship of Moohummudan law in the college of Fort William, and bestowed the professorship upon the translator), when the volume was printed, which was done at the expense of government, presented Captain Baillie with a reward of 20,000 rupees.

The Earl of Minto held in no less estimation the cultivation of the Moohummudan law than the greatest of his predecessors had done; and although, with that innate and most amiable modesty so conspicuous in his character, he made no display of the patronage and encouragement he gave invariably to those who dedicated their time and acquirements to the advancement of useful literature, yet we have had no one in the high station which he filled, who cherished them with more real sincerity than this lamented nobleman.

Notwithstanding that several tracts on the Moohummudan law had been translated, a complete exposition of that code, by compilation, translation, and explanation, rendered into our vernacular tongue, was still a desideratum to the Indian government. A work of the nature here described was in the year 1809 undertaken, and patronized, in the fullest and most earnest manner, by his Lordship's government, and subsequently by the Honourable Court of Directors. The Earl of Minto bestowed one of the most valuable appointments in his gift upon the author of that work, with an assurance that on a vacancy, soon expected, he should succeed to a higher situation, which he named, and which would afford the facility requisite for superintending its publication in Calcutta. The

The expected vacancy, unfortunately, did not occur till after the arrival of the Earl of Moira, who, when the vacancy occurred, did not consider himself bound to fulfil the intentions, and enter into the views of his predecessor. The publication was of course suspended. Other endeavours were made by the author to promote the publication of the work; but obstacles were still opposed, which probably prevented the author from making any farther attempts. The value of this work was highly appreciated by many of the most distinguished of the Company's servants in Bengal; and in the language of one of the most eminent of them, "I have no hesitation in declaring my "opinion to be, that it is a work more deserving of public "encouragement and support, than any that has yet ob-"tained the patronage of government in India." Justice to a former government of India, and to the Court of Directors, who readily patronized the work, required that it should be noticed; and it is but justice to them and to the author, to state the cause which has delayed its publication, if not suppressed it for ever.

The patronage which the Bengal government had invariably shewn to those who had endeavoured to expound the Moohummudan law ceased with the government of the Earl of Minto; but no accession to the opinions of that lamented nobleman, and his illustrious predecessors, is either required, or indeed could add weight to their sentiments. We are, therefore, fortunately relieved from the necessity of wishing for farther testimony, as to the the necessity and the importance of the study of the Moohummudan law to those servants of the Company, whose duty it is to administer the law of India.

The best means of promoting and of ensuring the attainment

ment of a knowledge of that law becomes the next object of inquiry.

There are only two modes of doing this. If the Company's servants cannot be brought to learn the Arabic language, in order to study the law in the original, that law must be rendered into their own language, that they may study it in English. The experience of more than half a century has fully shewn that we cannot trust to the former; the latter alternative must therefore be adopted. An ample, clear, and faithful exposition of the Moohummudan law rendered into English, is therefore as essential to its cultivation, as a knowledge of that law is to the due administration of justice to our Asiatic subjects.

But this is not all. The Moohummudan law, though rendered into English, would not be more easily acquired than are the laws of other nations, which are written in their vernacular tongue. All those who have benefited by the advantage of public instruction must fully acknowledge its utility, not only in directing the student in the proper path of his research, but in furnishing a field for that emulation, which, when duly cherished, tends so strongly, not only to the advancement of particular talent, but to raise, throughout the whole, the general standard of acquirement. I need scarcely add, that it would be worthy of the rulers of India to revise the establishment formed by the wisdom of the Marquess of Wellesley in the college of Fort-William for instructing their servants in the Moohummudan law; that it would be worthy of the enlightened governors of eighty or one hundred millions of their fellow-creatures, to instruct their servants in the law which they are called upon to administer to them. It would be quite incredible, if we ourselves were

not an instance of it, that a civilized nation should profess to administer a law to eighty millions of people, without having one institution for teaching that law to those whom they ordain to superintend the administration of it. Government pays upwards of a million and a half to its European civil servants, and about £600,000 sterling to those in the judicial department alone. I cannot but think, that two or three thousand a-year, towards teaching them the sacred duties of their profession, might well be added to this large sum.

Government must not think that their covenanted servants are, by a little elementary knowledge of the Persian language, or peradventure, in a few instances, by reading one or two elementary works in Arabic, to be converted into Moohummudan lawyers, competent judges of the Moohummudan law. Must a man be instructed in the meanest occupation of life, and shall he step to the bench, where he has to administer a foreign law, without any previous education?

Thus it is, I am grieved to say, that our Indian judges do really answer Mr. Stuart's description of his "learned "brethren" (he himself was a judge when he wrote), "that they are ignorant of the law."

Nor do the regulations of government admit of Europeans to officiate as counsel or advocates, even before the Sudder Dewannee Adawlut, the Supreme Native Court. If the counsel were learned in the law, they would, as in Europe, take care that the law was at least unfolded to the judge; so that even ignorance on his part would be less felt; and, at all events, there would be greater security against corruption.

There does not seem to be any good reason for such exclusion: and there is now a considerable body of well-educated young men, the offspring of European gentlemen, who might, perhaps, with advantage be admitted to the privilege of practising at the bar of the sudder and provincial courts.

A course of lectures delivered in English to those who could not be prevailed on to learn Arabic, accompanied by translations from different authors, on the most important points of law, would be the necessary course to be pursued, generally, in instructing the civil servants of government; together with copious explanations of the technical terms, phrases, and language of the law; and for the more accurate understanding of which a comparative elucidation of the similitude or difference between such, and the technical language and terms of our own or of the Roman law, should be given: noticing, if required, at the same time, where the government regulations affected the law, where they did so with good cause, and where unnecessarily, as in many cases he would discover to be the case.

Blackstone somewhere laments the enormous load which ignorance of the law has unnecessarily added to the Statute-Book. What would he have thought, had he seen the "Laws and Regulations" of the Indian government, and been equally capable of appreciating their application?

Encouragement, at the same time, must also be given to those few (and some there would be) who would attempt to master the original law in its primitive tongue. These

ought, by all means, to be cherished; for from these alone could be looked for the propagation of the science.

The difficulty of procuring a professor sufficiently qualified might at first be experienced; but, as it would be an object worthy of pursuit, so the qualifications would be deemed worthy of acquirement, and would soon be found.

The expense of an establishment of £3,000 or £3,500 a-year, is too trifling to be named, as worthy of the least consideration in such a case.

The next and last point to be considered is, the mode of administering the laws; or, in other words, of ensuring the administration of justice to the people, and protection to their persons and property. How, by whom, and by what courts, can justice be best administered in the British provinces in India?

The object of law, in every country, is to protect the individuals, and the community of that country, in the enjoyment of what they hold estimable. This definition is very comprehensive: it includes questions of property usually so called, of person, of civil and religious liberty, of contract, succession, the public revenue; for, to the community, that is matter of concern and of value, and is the property of the state.

This protection is afforded in two ways: first, by measures which are calculated to prevent aggression; secondly, by laws duly administered.

Under the former of these heads will fall to be considered

dered what is usually termed *police*; under the latter, the *administration of justice*. But as the administration of the law is more immediately connected with what has gone before, I shall reverse the order of discussion, and in this place offer such remarks as I have to make on the judicial system of India, considered executively, reserving for a separate chapter what I may have to submit on the subject of police.

However trite the observation, yet as it serves to collect our wandering thoughts, I must remind the reader that there is nothing perfect under the sun; that in entering upon the consideration of this, as well as of every other practical question, he must divest his mind of every ideal standard, and meet the case attended by its concomitant circumstances, and like every wise man, instead of aiming at perfection, be satisfied with endeavouring to discover what is the best of expedients; for it is only a choice of these, as has been well observed, that we are permitted to realize in human affairs.

The Company's judicial establishment of Bengal (to which I shall restrict myself) consists of one supreme native court, called the Sudder Dewannee and Nizamut Adawlut (lit. chief, civil and criminal court), of four judges; six courts of circuit, of four judges each, and one judge in every zillah or district; besides a judge in each of the four cities of Moorshedabad, Dacca, Patna, and Benares. There are, likewise, some assistant-judges; and the registers of the zillahs who hold courts: and besides all these, many native petty judges, under the names of suddur ameens and moonsifs. The former appellation signifying "chief arbitrator," and the latter "a justice," or one who distributes justice.

From the inferior courts lie appeals to the zillah judges, and from the zillah courts appeals lie to the courts of circuit, and from the courts of circuit to the Sudder Dewannee Adawlut, in all civil causes of any considerable amount, in questions of real property, and even in personal actions amounting to 5,000 rupees: and from the courts of circuit to the sudder a reference is necessary in all criminal convictions involving life or transportation. Thus, in fact, except in matters of comparatively trivial importance, it may be said that there is only one court of justice for the whole of the Bengal provinces; every cause appealed coming loaded with the rubbish of the records of two inferior chambers through which it has passed.

No wonder, then, that the judges of the Sudder Dewannee and Nizamut Adawlut complain of having too much to do, and that the administration of justice has been represented as, in fact, at a stand. The other presidencies have each its sudder; and thus it is, that eighty millions of people, like pilgrims at a scanty fountain, are left to scramble for justice.

Mr. Stuart, abovementioned, late one of the judges of the Calcutta Sudder Adawlut, in a minute which has been printed, proposed a remedy for the "oppression of busi-"ness" under which the court laboured. A very obvious remedy, to be sure, but still it was one; namely, to have *another* sudder court instituted for the Upper Provinces: and by way of improving the administration of justice, he proposes instituting also *nine* different tribunals in every district; some composed of natives as judges, others of Europeans: all, however, linked together by *threes*, in the old way of appeal, and ultimately falling into the sudder courts.

Mr.

Mr. Stuart's avowed object was to relieve the present sudder from part of the "overwhelming press of business" on their rolls; but so that he does this, he seems not to care much who else sinks under it. He divides the provinces into districts (very large ones, however); puts those districts under the entire management of *one* person, to whom he gives the title of "*resident*;" and he makes this resident not only hold several courts himself, but exercise a control over all the other nine courts in his district, and to receive appeals from them all, and the sudders to hear appeals again from him. The resident is moreover to superintend the affairs of the district revenue, justice, and police. The former residency of Benares is Mr. Stuart's model; but he is to modify it "so as to combine the principles of native administration with order, stability, and justice:" a very laudable modification, certainly.

Mr. Stuart's formidable list of tribunals consists of,

1. *Minor Maal Adawlut*, under a native darogah.
2. *Major Maal Adawlut*, under the Sudder Dewannee Adawlut and board of commission.
3. *Minor Dewannee Adawlut*, under a native judge.
4. *Major Dewannee Adawlut*, under the resident.
5. *Cazie's Court.*
6. *Punchayets.*
7. *Fouzdary Major*, under control of resident and assistants.
8. *Fouzdary Minor*, under a moulovee and pundit.
9. *Resident's Criminal Court.*

What Mr. Stuart means by the word *maal* applied to adawlut, he has not told us; nor has he said why he has changed the old designation of the Benares resident's court, which was called the "Moolkee Adawlut." There

was a "Moolkee Dewannee" and a "Moolkee Fouz-"dary Adawlut" in 1788. Mr. Stuart's *maal* is probably meant to represent the word مال māl, which signifies property; but, in technical language, *moveable* property only: and yet he gives his "maal adawlut" cognizance of ejection, boundaries, water, and premises, landed estates. The old "moolkee adawlut" was no doubt intended as a translation for "country court" or "provincial court," from *moolk*, in one sense, a country; but it is similar to one of those happy translations which a lady is said to have made when she intended to desire her coachman to take her carriage into the shade: she said, "Garee fanoos me lejaoo;" literally, "take the carriage into the lanthorn," the word *fanoos* meaning a wall-shade or lanthorn.

Nor does it appear how Mr. Stuart was "to combine the principles of native administration" by the institution of tribunals such as he specifies; none of which were ever heard of under any native administration whatsoever.

But before Mr. Stuart had written his preface another arrangement occurred to him, which he describes in his preface, and which he seems to prefer, an objection to the former being the difficulty of finding any one individual qualified to be a resident. This other plan is to empower the collectors to hold maal adawluts, with assistants, European and native, and a native judge; with cognizance to the amount of 1,600 rupees. That there shall also be six European judges formed into two courts of circuit and appeal, and to try all great causes; but the three frontier districts of Bundelkund, Laharunpore, and Gorruckpore, to be made residencies.

It

It is, however, so much easier to point out defects in the plans of others than to form better ones, that I will apologize to Mr. Stuart for the liberty I have taken with his, and observe that, after what has been written on the subject already, by such men as Lord Clive, Mr. Verelst, Mr. Hastings, Mr. Francis, Sir William Jones, Lord Teignmouth, Sir William Chambers, and many enlightened servants of government, it is not easy to find much new matter to communicate; nor is it very disreputable to fail in such company. But I may take leave to say, that to *simplify*, and not to render more complicate, is, in my estimation, the more likely way to improve the present judicial system of India.

The first object of all governments ought to be to diminish, as much as may be, the sources of contention among their people, and thus to render an appeal to the laws as seldom as possible necessary. This is to be done by a vigilant police with reference to criminal matters, and by municipal regulations and precautions in civil affairs.

In Bengal it has often been said, that a great majority of questions of civil litigation and cases of criminal prosecution arise out of disputed boundaries. Contention arises, affrays follow, which often end in the commission of atrocious crimes, as murder, arson, and destruction of property of all kinds.

Here, then, much might be done, as I have already noticed, by obtaining minute surveys of every purgunnah and every village of the country, by keeping correct purgunnah-registers of the lands of individuals, every transfer or division thereof to be entered into such registers. The marriages, births, and deaths which occur in the families of

of every landholder and principal inhabitant of the purgunnah might be registered, and a body of record obtained, which, if it did not altogether prevent litigation, would assuredly facilitate its termination when instituted. A record of boundaries, alone, would be of the utmost importance.

All this might be done in the strictest conformity with the usages of the country; and thus, not Mr. Stuart's "*principles* of native administration" (a phrase, by the bye, which I do not understand), but the *practice* of native administration might be combined with order, stability, and justice. And could our government but only re-establish, what they at one time took pains to demolish, the ancient purgunnah canoongoe, and village putwaree records, on the basis of these a system of regular record of principal events, and even minor occurrences, might be founded (to be abridged periodically, and the abridgement kept at the principal town of the district), which should not only aid in no common degree the administration of justice between individuals, but afford such an insight into the state of society and the transactions of the people, as would guide the active and discerning magistrate of police through his most intricate investigations. A simple list of the records kept by the canoongoe (as given by Mr. Davis), and of the putwarees' accounts (as given lately by Mr. Newnham, an active and intelligent Bengal revenue officer of the present day), will shew the mass of information collected, or which might be collected, by these provincial officers.

Records of the Canoongoe.

دستور العمل *Dustoor-ool uml.* The orders of government for the guidance of its officers and the customs of former governments.

عملِ دستور *Uml-i dustoor.** Customs or orders, in opposition to, or in addition to the above, or practice of the present times.

فہرستِ دہات *Ferhest-é dehaut.* Account of the villages.

سیاہہ اَمدنی *Sehahy amdany.* A daily treasury account of payments from ryots.

اَوارجہ جمع خرچ *Awargy.* A running account of receipts, remittances, &c. made annually, or oftener.

دول تشخیص بندوبست *Doul tushkhsees bundobust.* Nett settlement rent-roll, or estimates of receipts for the year, whether paid by muzkoory talookdars, or ryots, to the zumeendar.

جمع بندي خاص *Jummabundy khas.* Special rent-roll.

جمع ساير *Jumma sayer chubootra cutwally o' chokeyaut o' guzoorè ghaut.* Sayer and town duties.

جمع محال میر بحري *Jumma mahal-e-meer behry.*†

جمع پچوترہ *Jumma patchoutra.*†

جمع محال بدرقي *Jumma mahal budderky.*†

اسمنویسي زمینداران *Ism nuveesy zumeendaran.* List of names of zumeendars.

حقیقات

* It will be seen that Mr. Davis's orthography is not very accurate.

† These are land, sea, and transit custom-house duties.

حقيقات بعضي زمين *Hukkeekaute baze zumeen.* State of rent-free lands.

جمع مقرري و استمراري *Jumma mokurrery o' istumrary.* An account of permanent or fixed payments.

واصل باقي *Wassul bakee.* Collections and balances.

حقيقات روزيندداران *Hukkeekaute rozumdaran.* State of public pensioners.

The records of the putwarees are as follow:—

1st. The *Mouzeenah* or *Rukbah bundee.*—An account of the total quantity of land belonging to the village, stating that which pays revenue, that which is rent-free, that which is appropriated, that which is cultivated, and that which is incapable of cultivation.

2d. *Nuklé puttahjaut.*—An abstract copy of agreements with every ryot, containing the number, as Nos. 1, 2, 3, and so on, the name of the ryot, the quantity of land and gross rent, in one line. In the next, the name of the field, its extent in beegahs, the rate per beegah, the total rent of each field. This is made out in June and July. Puttahs are not always executed; but this account protects the ryot from undue exactions.

3d. The *Tukmeenah* or *Kusserah.*—This is an annual inspection-statement of the quantity of land, the crops in kind, and in which harvest produced. First, the name of the ryot, extent of field, in which harvest cultivated, species of produce, name of the field and quarter (har) of the village; exhibiting at the end an abstract of the whole, under the heads of rent-free, jageer, fallow, payable

able in kind, ketwaree. This is of great consequence, as it may check all others. It contains the mauzenah in abstract at the bottom of it. This is partly made out after the Dussarah (October), for the khureef (winter) crop, and in April for the rubbeea (summer) crop; and at the end of the year (June) both accounts of inspection are united. This account exhibits the total cultivation by its different parts and kind of produce.

4th. *Mehr kuttee*, called also *Lugtewar*, also *Mehbawan*.—This is a kind of ledger, exhibiting (like No. 2) the number and name of the ryot, the number of beegahs and his total rent. Under this the harvests, as khureef and rubbeea, are entered. Under the head khureef are entered the name of the field, extent thereof, species of crop, rate per beegah, and total rent of the fields reaped in the khureef harvest: the same for such fields as are cultivated and reaped in the rubbeea harvest.

The difference, therefore, between this and the *Nukl-e puttahjaut* is, that it specifies the kind of produce and the harvest in which it is reaped; and thus it is useful to shew when the ryot can best pay, to ascertain the real value of the field, to enable the zumeendar to prohibit the repetition of searching or injurious crops.

5th. The *Tukavee account*, or account of advances.—This contains the names of the ryots who receive, the amount (and date) given, the interest at two anas per mensem, the total.

6th. The *Bhoalee*, *Buttaee*, or *Kunkoot*: that is, the account when the rent is paid in kind, *or in kind convertible into money*.—The *Bhoalee* account contains, first, the name

name of the ryot, the number of beegahs, the name of the field, the kind of grain, the total produce in maunds, the assl (original) share of the ryot, the assl share of government, the deduction taken from the ryot on account of charges. This added to the government share makes the total taken by government. Lastly, the total in money. Then, at the bottom, the total quantity of each kind of grain is taken at its own valuation, which makes up the total sum paid in money.

7th. The *Putthur*, or *Futthur*, or general *Toujhee*, or the *Jumma wassul bakee*.—This is an account containing the names of every ryot; opposite which the quantity of land, the amount of rent, the rusooms or extra dues, as d'hannee nemannee (half an ana) batta on rupees, tuccavee, former balance, total rupees, sum recovered, total balance. The names of such of those ryots as owe balances, who are dead or fled, are kept in this account till their balances are paid.

8th. The *Roz namah*, or day-book.—It is a cash account of receipts and disbursements, of whatever kind, whether of expenditure, or of payment of rent to government, balanced every day, and the balance only brought forward to the following day. This account also contains entries of produce in kind. Thus: "received from A, "five maunds of barley, at two maunds per rupee, two "rupees eight anas."

9th. The *Khutteeounee*.—This is an account of cash received from every ryot, containing a separate entry for each name and number, as "No. 20, sunkarsing;" the date of the payment, and total.

10th.

10th. *An abstract account of receipts and disbursements*; containing on one side, the total received under general heads, and on the other, the general items of disbursement, and balanced.

The canoongoes keep, as a check over the putwarees' or village accounts,—

1st. The *Mauzeenah.*

2d. The *Tuccavee account.*

3d. *Seeah*, daily or account of receipts from the malgoozars.

4th. The *Futthur*, or *Jumma wassul bakee*, shewing the demands, receipts, remissions, nankar, and balances.

From the nature of these accounts, it is obvious, I think, that, if regularly kept, little room for dispute could exist. But these officers, to be efficient, must be considered officers of government. It has been objected to this, that "when the putwaree ceases to be a servant of "the zumeendar, he will cease to be the depository of the "village accounts. Now the putwaree is often not en- "trusted with the accounts of the neechjote and chake- "ran lands; so he might remain unemployed, or only "get his information from the under proprietors."*

But there is no reason to fear these. Were those officers under the control of the collectors, and a regulation made holding the canoongoes' and putwarees' accounts as legal evidence in courts of justice, the zumeendars and cultivators, and all persons concerned, would soon find it for their interest to inspect and preserve their correctness. Those

* Minute of Governor-General, Lord Hastings, 21st Sept. 1815.