Those who feared oppression and undue exaction would doubtless not decline giving information and employing these accountants; and this would necessarily compel the zumeendar to do the same, and to see that the accounts were correctly kept. The establishment of such a body of *written evidence* (witnesses that could not lie) would, in the present state of morals in India, be of incalculable utility. This would be making the native system of administration available to some good purpose.

"The tepeekchy," says the Ayeen Akburee, "shall write "down whatever agreements are made with the husband- "man, keep separate accounts of the boundaries of each "village, draw out statements of the waste and arable "lands; to which he is to subjoin the names of the mun- "sif (appraiser), the land-measurer, the thanadar, the "husbandman, the naeks, or head-men of the villages, the "articles of cultivation, villages, purgunnah and harvest." The putwaree, or village accountant, "kept the accounts "of the husbandman's receipts and payments, of the quan- "tity of land cultivated by each villager: no village was "without one. That is, the advances which the ryot re- "ceived, the rent he promised to pay, the quantity of "land he agreed to cultivate, the kists he paid, and the "balances either for or against every ryot of the village; "a memorandum of which he is to furnish in writing to "every individual to whom it concerns."

Would not all this, imperfect as it is, almost stifle litigation? Where boundaries are defined, where accounts are regular and clear, there can be no dispute: at least none that may not be speedily and readily settled, both to the satisfaction of the judge and of the parties.

But the servants of government, it must be confessed, though

though they transact the whole of the business of the state, are, almost universally speaking, but too little informed of the customs of the people and of their antient usages; so that the bare suggestion of any thing like minute detail in the affairs of government, presents first to their minds the immense extent of country, to which such minutiæ must be applied, and they look upon the attempt in the same light as if they were desired to reckon every particle of sand on the sea-shore. It appears to them a vast expanse, full of unknown, perhaps unheard-of objects; and they treat the idea as visionary.

They forget, however, that by division and judicious classification, it is scarcely possible to conceive any thing that may not be investigated and subjected to regular and systematic control; that each, of themselves, will have only to act his own proper part in the general scene; and that before we can attain any thing like true knowledge, either in the moral or physical world, we must first decompose, reduce our materials to their primitive state, to ascertain the nature of the elements we are to act upon. When this is done, we can combine them at will, and make the most advantageous uses of them.

But that what I have suggested may not be deemed impracticable, even by Englishmen, we have only to recollect, as before stated, that much more *was* done by our own countryman, whom I shall again mention, being the first to accomplish the undertaking. The able and distinguished officer I allude to was Colonel Reade, in whose school was bred the no less distinguished manager of the Ceded Districts, Colonel Sir T. Munro, both of the Madras establishment; besides several distinguished civil servants who were educated under them.

Colonel Reade was put in charge of the Baramahal, a district consisting of no less than twenty-five purgunnahs, which paid a rent to government of 7,12,530 pagodas, or about twenty-five lacs of rupees. He first ordered the actual measurement of the district, ascertained the dimensions of its purgunnahs, villages, and farms, the quality of the different soils producing various articles of cultivation; classed these, and valued the yearly crops, which he divided according to the established rates of division, by means of the puteels or mukuddums, between the government and cultivator. The superficial extent of the district was 6,259 square miles; which, deducting 1,262, the area of unproductive hills, &c., left 4,997 miles, or 3,195,000 acres of plain, consisting of twenty-five purgunnahs, of 4,865 villages, peopled by 612,871 inhabitants; of which 85,227 were shudrs, or government farmers, and 17,314 possessing charity lands or private proprietary holdings officially, or by inheritance, or by grant. They had in the district 51,198 ploughs, 564,730 head of cattle, 63,339 sheep; cultivated acres only 1,125,025, little more than one-third of the superficies, which yielded in gross produce, chiefly in rice and other grain, annually, at the average of the local markets, 19,39,054 pagodas, deducting of seyur 57,425 pagodas. There was, besides, 140,593 acres capable of cultivation, but not cultivated. The rent paid to government was rather more than one-third, *viz.* 712,530 pagodas, or about five shillings per acre.

In the Ceded Districts, under Colonel Munro, the whole was measured and assessed, "village by village, field by "field. A census of the people was taken, shewing the "different castes; statistical tables were formed, shewing "the price of labour, subsistence, &c. The price of agri-

"cultural

"cultural labour was from four to five shillings per "month; the cost of subsistence of the first class (about "one-fourth of the whole) per head forty shillings per an- "num; of the second class (about one-half of the whole), "twenty-seven shillings; of the third class, consisting of "the residue, eighteen shillings per annum, for food, "clothing, and every requisite."*

Even in Bengal we have had individuals who have collected information of some importance. Mr. Colebrooke, in his Husbandry of Bengal, mentions an actual "census, "which gave, in 2,784 *mouzas*, or villages, occupying 2,531 "square miles, 80,914 husbandmen holding leases, 22,324 "artificers paying ground rent. The size of the villages "was estimated from knowing that 21,996 of them stood "on an area of 18,023 square miles, or about nine- "elevenths of a square mile to each. Estimates of the "population were attempted from a census of inhabitants "found in a few villages; the result gives 197 as the aver- "age, *viz.* 92 males and 87 females. The whole number of "*mouzas*, or villages, in Bengal and Behar is not less than "180,000."† So 180,000 × 197 would give a population for those two provinces of 35,460,000 souls.

But Mr. Shakespear, superintendent of police in the Lower Provinces, gave in a statement to government, in the end of the year 1815, of the number of villages within the provinces of Bengal and Behar—not including Benares, but *including* 10,298 villages in Orissa (Cuttack), which Mr. Colebrooke did not, of course, reckon, because that province then belonged to the Marhattas. This statement was made on the authority of the police darogahs,

* See Minutes of Evidence, 1813. † Colebrooke.

gahs, as ascertained by them. The total is 150,748 villages in twenty-eight zillahs; giving an average of 5,383 villages to each zillah. So, taking Mr. Colebrooke's rate of population, *viz.*, 197 per village, 150,748 × 197 would give 29,697,356; from which deducting the proportion for Cuttack, 10,298 × 197 = 2,028,706, leaves for Bengal and Behar 27,668,650: exhibiting a difference between those two authorities of about eight millions in the estimate of two provinces!

Mr. Bayley, again, in his statistical sketch of Burdwan zillah, states the square miles at 2,400; the *mouzas*, or villages, at 3,496. The average number of houses in each village, seventy-five; and the average of persons in each family, at five and a half; Hindoos to Moohummudans, as five to one; males, 100 to 95⅝ females; the population at 1,444,487; number of inhabitants to a square mile, about600. Now, 75 houses + 5½ persons = 412½ total in each village, exceeding Mr. Colebrooke's average by 215½ persons per village: in fact, being eighteen persons more than double. But, in number of villages, Mr. Bayley falls far short of Mr. Colebrooke's and of Mr. Shakespear's average; though Mr. Shakespear states the number of villages in the zillah of Burdwan itself, of which Mr. Bayley speaks, to be the same number which Mr. Bayley makes it, *viz.* 3,496.

These instances, notwithstanding that their discrepancy shews inaccuracy, proves sufficiently the *practicability* of obtaining the most satisfactory information on every point required. There is no country in the world, perhaps, in which revenue and commercial transactions are more regularly and minutely recorded than in India. The poorest

poorest shopkeeper has his books; and may be seen, in every bazaar in India, bringing them up regularly every night. The Hindoo is proverbial for regularity of habit in every way. We must presume that information regarding agricultural and statistical matters is obtainable from him, these being his daily concerns and the most important matters of his life.

Even the superficial information obtained in Bengal is creditable to the individuals who obtained it: but it is obvious that it is far too superficial to be of any real use, and too uncertain to be made the foundation of any hypothesis; but still it shews that information may be obtained,

Take the district of Burdwan, for instance: there could be no difficulty in effecting an actual survey and measurement of it. The Baramahal, above-mentioned, is nearly three times its extent, being 6,259 instead of 2,400 square miles. Burdwan district is not two-thirds of the extent of the county of Perth, an actual survey of which was made by an individual (Stobie), who has published a map of the county, shewing every estate, village, and hamlet in it.

In the Baramahal and Ceded Districts we have seen the minutest survey and information obtained in the course of a very few years, proceeding entirely after the custom of the country; and, I may add, precisely as an officer of a Moohummudan government, following the principles and practice enjoined by his law, would have done. In proof of which I beg to refer the reader to the Moohummudan law itself, and to the instructions given by the Emperor Aurungzebe, in 1668 and 1676, to his governors and others, respecting the collection of the *Khurauj*

and the management of the accounts of the districts before noticed.

The great impediment, in all countries, to the decision of causes, is the difficulty of procuring satisfactory and clear evidence. In this country that difficulty is amazingly increased by the notorious want of credibility in oral testimony. Where prevarication is so prevalent, and there are even professional perjurors, the judge has not only to discriminate, as in other countries, what parts of evidence bear upon the question, but here, when he has done this, it will require infinitely more discrimination and infinite practical experience, to satisfy himself what part of it is true, what part is at all founded in truth but exaggerated, what is altogether false.

The necessity for written documents is therefore obviously greater in India than in our own country; and any expedient suggested with the view of multiplying them ought of all things to be encouraged.

Our India judges, both of the King's and of the Company's courts, have long invariably and loudly complained of the prevalence of perjury in their courts. To so great an extent does it exist, that they fairly declare they have no faith in oral testimony.

This want of veracity is a vice among the Asiatics which it was not left for us to discover. Although under our government its effects have been felt more severely than during that of our predecessors, because the English government admits, as equally good and equally credible witnesses, persons of all descriptions, of all castes, of all denominations, following the maxims of the English law. But

even

even in England, where the standard of morals is so much higher than it is in India, so much higher than we can expect to raise it for ages in India, the necessity of cross-examination is so great, and so much is the talent for it in a lawyer prized, that he who excels is universally celebrated for it. Our India judges, from their imperfect knowledge of the multitude of dialects, and of the customs, manners, and ideas of the natives, are peculiarly ill-qualified for cross-examination, and rarely succeed in effecting any thing by it.

If with English law we could introduce English morals, the maxims of that law, which are founded upon them, might be maintained in India. In India, with so low a standard of morals for all ranks, and where, if I may so express myself, whole classes of society are in the eyes of the people, and even in their own estimation, infamous by birth, it appears to me quite a solecism in government to make no distinction between the veracity of one individual and that of another. There is, however, in reality, an immense difference, and will continue to be till a notable change take place in the state and condition of society.

In such a state of society as exists in our Asiatic dominions, it was a good precaution, perhaps, as established by the Moohummudan law, to take care that the character and credibility of a witness should be first certified; and really it seems to be not very unreasonable, when a man's life or property are at stake upon the word of another, that the person whose word is taken shall be *known* to be credible.

At all events, whether we follow the law of our prede-

cessors and practice of India, in the mode laid down by them for ascertaining the credibility of witnesses in every case, it certainly ought to be done when practicable. No judge ought to receive the testimony of a person in an inferior or degraded class of society, when other evidence is procurable; and with such witnesses it would be highly desirable to have others to speak to their probity. No objection could be made to such scrutiny, because it is conformable to the law and usage of the country; and I should think every upright man sitting in judgment would anxiously desire to see established the character of the witnesses whose testimony was to guide his decision. Professed perjurors could not maintain themselves, as they now do, about our courts, were they liable to have their credibility called upon for certification by credible and respectable persons.

The Moohummudan law of evidence provides for the depravity of society; and although the provisions it contains are not altogether satisfactory, yet the principle being admitted might be improved upon; and I have no doubt that some of those provisions might be made available with advantage. The Moohummudan law, with deference be it spoken, is not so absurd as the English law, which admitted of compurgators to swear to the truth of the testimony *after* it was given: but it requires that the general character for credibility of the witnesses be vouched by persons themselves credible, *before* the evidence be received.

With such preventive measures as a body of registered facts, such as that above pointed to, available as evidence when required, and such precautions as I allude to, to secure the most upright oral testimony procurable, I cannot but think

think that litigation would be not only greatly diminished, but that judicial proceedings would be greatly simplified; for it is the conflict between suspicious testimony for both sides, that constitutes the chief intricacy of most causes that come before our courts.

It remains now to notice the mode of administering the law. But before I suggest any expedient for its more effectual administration, I must premise, that in what I am to say, when I speak of a judge, I do not understand an officer such as Mr. Stuart's judges, whom he states to be "destitute of all legal knowledge," but men who are really acquainted with the law they administer. It is, indeed, a perfect solecism in language to speak of any other as a judge. A personal knowledge of the law he administers is an indispensable qualification of a judge: without this, it is really idle to talk of courts at all, or of any amendment in the administration of the laws.

Holding the judges, then, to possess a competent knowledge of the law, I should think it highly desirable that the pleaders be also men who are educated lawyers, and that none should be suffered to practise in any court till their qualifications as lawyers, as well as their moral character, have been duly certified.

In India the native pleaders have little or no knowledge of the law. They are, indeed, a distinct class of society from the native judges. I believe no instance was ever known in India of a promotion from the bar to the bench.

Having, as briefly as the subject would admit, carried my remarks through the preliminary, yet essential requisites, I now come to the actual administration of justice:

"What

"What is the best mode of carrying into effect the due "administration of justice to our Asiatic subjects?" This question involves two points, *viz.* first, the most perfect; secondly, the speediest mode of its administration.

The tardiness with which the law is administered has been hitherto the subject of complaint, more than the want of a just and perfect administration: not, as I believe, that tardiness is the only or the principal ground of complaint, but because it is a defect open to the eyes of the most humble in point of intellect: the intrinsic justness, or otherwise, of a decision is only known to the individuals whom it concerns.

The stability of our government, the character of our country, however, are at stake, more upon the former (the intrinsic justness of decision) than upon the latter of these two grand desiderata in our Indian government.

It will tend to throw considerable light on this subject, to advert to the number of causes which are decided or disposed of by the different courts, European and native. It appears, from a report of the judges of the Sudder Dewannee and Nizamut Adawlut, dated the 9th March 1818, that the number of regular civil suits depending before the different European and native tribunals, on the 1st of January 1817, was as follows:

Sudder

| | | No. on the Files, Year 1816. | No. decided in 1816. |
|---|---|---|---|
| Sudder Dewannee Adawlut | | 442 | 108 |
| Provincial Courts of Appeal and Circuit | | 3,581 | 1,131 |
| Zillah and City Courts | | 12,387 | 6,618 |
| Registers' Courts | | 8,339 | 12,066 |
| Sudder Ameens | Native Courts | 29,041 | 38,922 |
| Moonsifs | Native Courts | 38,730 | 72,055 |
| Total number of causes depending in the courts of the Bengal Presidency on the 1st Jan. 1817, and decided in 1816. | | 92,520 | 130,900 |

The following statement, from the same authority, shews the number of causes disposed of by decision, adjustment, or nonsuit, for four years, ending December 1816:

| Years. | Courts. | Causes. |
|---|---|---|
| 1813. | Sudder Dewannee Adawlut | 72 |
| | Provincial Circuit Courts | 1,128 |
| | Zillah ..... do. | 8,208 |
| | Registers' ..... do. | 7,585 |
| | Sudder Ameens | 22,602 |
| | Moonsifs | 136,200 |
| | Total | 175,795 |
| 1814. | Sudder Dewannee Adawlut | 69 |
| | Provincial Circuit Courts | 1,096 |
| | Zillah ..... do. | 6,070 |
| | Registers' ..... do. | 7,833 |
| | Sudder Ameens | 22,671 |
| | Moonsifs | 127,471 |
| | Total | 165,210 |

| Years. | Courts. | Causes. |
|---|---|---|
| 1815. | Sudder Dewannee Adawlut | 85 |
| | Provincial Circuit Courts | 1,106 |
| | Zillah | 5,744 |
| | Registers' | 8,953 |
| | Sudder Ameens | 26,702 |
| | Moonsifs | 93,947 |
| | Total | 136,537 |
| 1816. | Sudder Dewannee Adawlut | 108 |
| | Provincial Circuit Courts | 1,131 |
| | Zillah | 6,618 |
| | Registers' | 12,066 |
| | Sudder Ameens | 38,922 |
| | Moonsifs | 72,055 |
| | Total | 130,900 |

*Average Number of Causes decided annually by the different Courts for Four Years.*

| | | |
|---|---|---|
| By European Judges: | | |
| Sudder Dewannee Adawlut | 84 | |
| Provincial Circuit Courts | 1,116 | |
| Zillah | 6,660 | |
| Registers' | 9,108 | |
| | | 16,968 |
| By Natives: | | |
| Sudder Ameens | 27,724 | |
| Moonsifs | 107,418 | |
| | | 135,142 |
| Total annual average | | 152,110 |

| | |
|---|---|
| The average of 1815 and 1816 shews the number of criminal trials referred to the Court of Sudder Dewannee and Nizamut Adawlut to be..... | 378 |
| Average civil suits disposed of annually in four years ..... | 84 |
| Total trials and civil causes decided in the Sudder Dewannee and Nizamut Adawlut yearly ..... | 462 |

But the average number of civil appeals to the Sudder Dewannee Adawlut, for sixteen years ending in 1814, was only 66 yearly, according to Mr. Stuart's statement. Of these the average number decided was $50\frac{3}{4}$ yearly. The average number of criminal trials submitted during those sixteen years was $311\frac{1}{2}$ yearly; and the average number decided was $296\frac{5}{16}$ yearly. But on 8th January 1818, "the court had the satisfaction of reporting, that at the "beginning of the present year, 1818, not a single cri-"minal trial was depending before the court."*

From these statements it appears, that four, and occasionally five judges in the Sudder Dewannee and Nizamut Adawlut, have been occupied in deciding about seventy civil causes annually, on an average of eighteen years, and in revising about from three hundred to three hundred and fifty criminal trials. I call it *revising*, for there are really no trials conducted in that court. The trials are conducted in the courts of circuit; and only the capital and long transportation cases, where conviction has been adjudged, are submitted to the revisal of the Nizamut court.

The

* Report of the Sudder Dewannee Adawlut, p. 58.

The business before this court has been stated by many, and particularly by Mr. Stuart, to be so heavy, as to render the institution of another similar one absolutely necessary to the due administration of justice.

I believe that the business of the court of Sudder Dewannee Adawlut, as it now exists, and has done for many years, to be as described by Mr. Stuart.

To facilitate the administration of justice, however, instead of multiplying such courts as the Sudder Dewannee and Nizamut Adawlut, I am of opinion that the one now in existence ought to be abolished, and the enormous expense attending it distributed in another way, to secure to the people immediate, instead of protracted justice, administered in their vicinity, instead of making them go, in fact, to a foreign country in quest of it; for to an inhabitant of Dehlee, or of the Himalayah mountains, Calcutta may well be called a foreign country.

In my humble apprehension, the principle on which our Indian courts are established, that progressive system of appeal from the lowest upwards, is erroneous. It holds out a temptation to litigate, by multiplying the chances of success; and to the wealthy litigant, with a bad cause, it furnishes the means of distressing his opponent, though he himself may be but hopeless of ultimate success.

This system of eternal appeal, this ordeal, through the different courts, consumes justice itself, and renders it a perfect *caput mortuum*, at last not worth having: engendering, however, a spirit of litigation, unknown in India till our time. Thus our most benevolent intentions have been

been attended with the very reverse of success. A long purse and a bad cause, doubtful issue, "no fixed principles of decision" (as Mr. Stuart says), and delay, chiefly occasioned by the power of going through so many courts, are the great parents of litigation. He whose cause is good will never *choose* to become a litigant. Make the decision speedily attainable, and thus take away from the wealthy litigious the power of prolonging his repast, and you diminish his pleasure so much, as to render it scarcely worth his while to desire it. To admit of appeal from one court to another, whose principles of decision are avowedly the same as those of the court appealed from, supposes not only error but incapacity in the inferior court; and, forsooth, neither error nor incapacity in the superior. It is not always so in India.

It is not by multiplying courts, but by simplifying the system, and by selecting fit persons for judges, I apprehend, that justice can be best administered to our Asiatic subjects.

To be particular. I hold the principle of revisal, in criminal convictions, not only quite unnecessary, but contrary to the best established maxims of criminal jurisprudence. To try a criminal in his absence, and in the absence also of his accusers and witnesses, on proceedings held, and on evidence taken in the absence of the judges, who never see either the accused, the accuser, or the witnesses, is no improvement, certainly, in judicial administration.

It is true, the Nizamut Adawlut cannot condemn those whom the circuit court has acquitted, because the acquittals are not referred to them. But they may still affirm a sen-

a sentence of conviction which they would not have originally passed; and they may acquit some whom they would have condemned, had the trial been held in their presence; and thus again let loose upon the people, the atrocious disturber of the peace of society.

It ought never to be forgot, especially in the dispensation of criminal law, that no human being is capable of representing to another the impression made upon himself by a third person, either in asserting his innocence if the accused, or in giving his evidence if a witness. When persons communicate with one another *viva voce*, besides the words that are uttered, the eyes and the ears have their share in the converse. The countenance, the voice, the colour, the action, the manner, have so great a share in communication between man and man, that the most accurate account that can be written of it must fall far short of the original, supposing the language uttered to be the same as that written. How little satisfactory, then, must be the proceedings and evidence transmitted to the Nizamut Adawlut through the medium of a foreign language, the Persian, which neither the accused nor witnesses used! nor was the language they did use perhaps sufficiently understood by the interpreter and recorder, or the language transmitted fully known by those to whom it was transmitted. I may also add a doubt, whether the liability to revisal may not often render the inferior judge less careful on the trial than he would be, did he know that the life of a fellow-creature rested, at the last resort, on his own judgment alone.

I hold it, therefore, to be indisputable, that the power of revisal of criminal trials by the Nizamut Adawlut may be dispensed with, with advantage to the due administration

tion of justice; and that the judges of the courts of circuit being competent persons, may be safely entrusted with the conduct of such trials, reporting to government through the judicial secretary, and if deemed proper, receiving warrants for the execution of sentences through him. The revisal of criminal trials is calculated by Mr. Stuart to take up one-third of the time of the court. Here, then, is an easy, and, in my estimation, an advantageous mode of lightening the labour of that court.

And with respect to appeals in civil causes, we have seen that the whole number brought annually does not exceed seventy or eighty. A proportion of these are doubtless to that extent (*viz.* above £5,000 sterling value), which, by act of parliament, are appealable from the sudder to the King and council; and consequently, as to them, the decree of the Sudder Dewannee Adawlut can only be considered as interlocutory. Whether the parties abide by it or not, it matters not, as to the point now before us. If the parties are satisfied with the decree, it being the decree of the highest tribunal in this country, though not the last resort, their being so satisfied would afford an argument to shew that the decree of a provincial court, were there no higher tribunal in this country, would be equally satisfactory.

Suppose the causes appealed to the Sudder Dewannee Adawlut annually to be seventy, and that thirty of these are appealable from the decision of that court to the King, the appeal to his Majesty might be made to lie, with equal advantage, I presume, from the provincial court, the judges of both being equally competent. The remaining forty causes are all which are annually decided by

the sudder *in the last resort.* To this number we shall speak.

We are not to conclude that all those forty causes are erroneously decided in the inferior courts; nor are we to presume that all those which may be reversed by the sudder are rightly decided. We shall suppose, therefore, three-fourths of the appeals to be affirmed; so that thirty of the forty causes might, so far as the advancement of justice is concerned, as well not have been appealed. The remaining ten causes may be put down as doubtful. If six are reversed rightfully, four will probably be reversed wrongfully; leaving, on the whole, a balance in favour of justice of *two causes* annually, on decisions *of the last resort.*

So much for decisions of the last resort; and if we allow the same proportion to the thirty interlocutory decrees, *viz.* two-fortieths, that will give one and a half, and the whole will amount to three and a half causes yearly; so that we can scarcely raise the maximum of advantage to the cause of justice obtained by the existence of the Sudder Dewannee and Nizamut Adawlut beyond the decision of three or four causes annually.

Here, then, for the sake of affording the people of India another chance of a more just decision of three or four suits annually, a court is maintained, to which, in principle, I have stated the above objections, and at an expense to the state of £50,000 or £60,000 sterling annually.

But supposing that a few of the seventy causes appealed annually

annually to the sudder were erroneously decided, in the lower courts, it may be fairly questioned whether prompt justice, easily obtained in all the other causes, would not be far more than an equivalent to the people.

I am, however, of opinion, that the chances are much in favour of the local courts for justness of decision. Local knowledge, recency of the transaction, matter of decision, oral and *viva voce* testimony, the appearance of the parties and witnesses, the selection of the individuals who are to give evidence, selected for their respectability of character; these, and many other most essential circumstances, in fact, cast the balance much in favour of the local courts.

What is called the "miscellaneous business" of the present Sudder Dewannee Adawlut is the third and last branch of the duty of that court. Mr. Stuart calculates that this business occupies a third of the time of the court. It is composed chiefly of a species of general superintendence of judicial matters and police, answers to references from the subordinate courts. But as much of this business must, after all, be referred by that court to the decision of government, through the judicial secretary, that officer might as well receive it from the referring-court direct; and thus, as I doubt not he would be perfectly competent to relieve the sudder of all the anomalous correspondence here alluded to.

Taking all these circumstances into full consideration, therefore, it appears to me by no means impossible that the present Sudder Dewannee and Nizamut Adawlut, might be, with great advantage, totally abolished.

Secondly, I would also suggest, that no criminal trials be referred by the provincial courts, except to the Governor-General in council, and then only in cases of convictions; the judges stating when they may see grounds for mitigation of punishment or pardon.

Thirdly, That in civil causes, no appeals be received from the provincial courts, where the subject-matter of litigation does not amount to Sicca Rupees 100,000; and that those appeals shall be made to the Governor-General in council, and not, as at present, to the King in council. That no references of any cause from the native courts, shall be made to his Majesty and council; a tribunal which neither can itself be supposed to know any thing of the law by which its decision ought to be guided, nor can it have the means of deriving a knowledge thereof from others, as it always has in appeals, in cases of English law; whereas the local government of the country, having several of its members servants of the Company in India, may be supposed to be acquainted with the laws of India: at all events, have every opportunity of consulting those who are known to possess that knowledge.

Fourthly, In the event of the abolition of the Sudder Dewannee Adawlut, the judicial secretary to government should possess, as an indispensable qualification, an intimate knowledge of the law of India; and, if found necessary, that an officer be added to the establishment of government, as an Indian law adviser, who shall be known also to possess the above qualification.

The provincial courts come next under consideration. These courts are in number six, and consist of four judges each. Before them, all criminal trials are brought. Their jurisdiction

jurisdiction extends to all civil suits, and their decision is final in causes not exceeding Sicca Rupees 5,000. In criminal matters they may acquit indefinitely; but all convictions involving life or perpetual imprisonment, or transportation, must be referred to the Nizamut branch of the Sudder Adawlut.

Under the Bengal presidency, there are six provincial courts, four of which are for the Lower Provinces below Benares, and the other two for the Upper Provinces, including Benares, *viz.* Calcutta, Dacca, Moorshedabad, Patna, Benares, Barelly.

The average annual number of civil suits decided by those six courts, for four years, ending with 1816, was, as above, 1,116, averaging about 178 causes in every court annually.

But this average does by no means exhibit the proportion of business before any given court.

The following table will tend to shew this; and it will be observed to exhibit, in a striking degree, the spirit of litigation that prevails in the Lower Provinces.

On the first January 1815, the number of appeals depending before the Sudder Dewannee Adawlut, from the several provincial courts, was respectively as follows, shewing also the number received within the last six months of 1814, from each:

| COURTS. | Appeals depending. | Appeals received between 1st July 1814, and 1st Jan. 1815. |
|---|---|---|
| Upper Provinces: | | |
| From Barelly ..... | 22 | 4 |
| .....Benares ..... | 52 | 13 |
| Carried forward ... | 74 | 17 |

| COURTS. | Appeals depending. | | Appeals received between 1st July 1814, and 1st Jan. 1815. | |
|---|---|---|---|---|
| Brought forward ... | | 74 | | 17 |
| Lower Provinces: | | | | |
| From Patna ..... | 130 | | 23 | |
| ..... Moorshedabad ..... | 45 | | 7 | |
| ..... Dacca ..... | 77 | | 15 | |
| ..... Calcutta ..... | 85 | | 14 | |
| | | 337 | | 59 |
| Grand Total ..... | | 411 | | 76 |

Average in each, 68½ *

Thus it appears, that whilst the revenue (and probably the population) of the Upper, to that of the Lower Provinces, is, as in the above-mentioned report, stated as 2,63,67,368 to 2,88,19,069 rupees (now three lacs of rupees), the proportion of appeals shews that government is burdened with litigation in the Lower Provinces, more than in their newly-acquired possessions, in the proportion of 337 to 74, or nearly as five to one.

*Table, shewing the Number of Regular Suits depending before the whole of the Courts, both of European and Native Judges, under the Bengal Presidency, on 1st Jan.* 1817, *in the Lower and Upper Provinces respectively.*†

| COURTS. | Upper Provinces. | Lower Provinces. | Total of each Court. |
|---|---|---|---|
| European Judges: | | | |
| Provincial ..... | 603 | 2,978 | 3,581 |
| Zillah and City Judges | 2,668 | 9,699 | 12,367 |
| Registers ..... | 1,294 | 7,045 | 8,339 |
| | 4,565 | 19,722 | 24,287 |
| Native Judges: | | | |
| Sudder Ameens ... | 4,114 | 24,927 | 29,041 |
| Moonsifs ..... | 3,700 | 35,030 | 38,730 |
| Total ..... | 12,379 | 79,679 | 92,058 |

* Mr. Stuart, p. 44. † Printed Accounts laid before Parliament, 1812.

Exclusive of 442 appeals depending in the Sudder Dewannee Adawlut; exhibiting a proportion of litigation in the Lower, compared with the Upper Provinces, of upwards of *six* in the former to *one* in the latter; a fact which, I fear, does not exhibit a very flattering proof of the progressive improvement of our judical system.

The grand stock whence this odious spirit of litigation sends forth its ramifications is situated in his Majesty's good city of Calcutta; and I have no doubt that the parent tree is sufficiently healthy to extend itself in good time over the whole of our Indian dominions.

The habit of litigating (for it has now become a habit) among the natives in, and in the vicinity of Calcutta, is prevalent beyond all belief.

The following statement will shew this; whilst it will afford some consolation to those who, contemplating the enormous number of ninety-two thousand suits depending in the courts of the provinces, may be inclined to despair of ever attaining any thing like a regular administration of justice for India, by shewing how easily a very long file may be got over.

In the Court of Requests of Calcutta, consisting of three commissioners, a court having jurisdiction (only within the limits of the town of Calcutta) in debts and demands to the amount of 250 rupees only, the number of causes instituted in one month, the month of January 1819, was 3,672. So 3,672 × 12 = 44,064 annually, equal to about half the whole litigation of the Bengal presidency.

| | |
|---|---|
| Of these ..... | 3,672 causes, there |
| were compromised or adjusted, before decision..... | 2,416, or two-thirds. |
| Remained for adjudication ... | 1,256, or one-third. |

| | Causes. |
|---|---|
| Brought forward..... | 1,256 |
| Decrees, defendants having absconded. ... | 111 |
| Non-suits, plaintiffs not appearing..... | 155 |
| Judgments for plaintiffs on confession..... | 97 |
| Deduct on proceedings held, but without litigation..... | 363 |
| Total litigated ..... | 893 |

These were disposed of as follows:

| | |
|---|---|
| Exparte judgments for plaintiffs..... | 167 |
| Judgments for ditto, on issue joined*..... | 449 |
| Judgments for defendants..... | 252 |
| Total decided..... | 868 |
| Remain undecided for cause shewn (1st August 1819) ..... ..... | 25 |

*Note.*—By proclamation, in November 1819, the jurisdiction of the Court of Requests has been extended to 400 rupees.

If of the 92,058 causes on the files of the courts beyond the metropolis, especially if of the 67,771 causes of small amount depending before the native commissioners throughout the country, the same proportion of them, *viz.* three-fourths, are so easily adjusted as the above on the files of the Court of Requests, the rolls of the courts would

* Of these 210 were founded on bonds, notes of hand, and written documents, other than open accounts.

would not be so formidable. So, also, if the judges of the Calcutta Court of Requests are able to decide, justly, so great a number of litigated causes as 868 monthly, or 10,416 annually, that is, 3,472 to each judge in the capital, or about eleven causes daily, we might look with less dismay upon the files of the courts in the provinces. The number of courts held by European judicial officers, zillah judges, registers, joint registers, and magistrates, exceed one hundred; which, if we take the whole number of causes annually depending before all our provincial courts, both European and native, at 92,000, laying aside the native judges altogether, would leave about 900 for each European judicial officer's court to decide annually, or about three per day; whereas eleven are, as above, decided by each judge of the Calcutta Court of Requests daily. But if we take the whole of the Company's European judicial servants, about one hundred and eighty, the above number of suits will give only 511 annually to each, or daily about one and three-fourths, instead of eleven, as above.

The country under the Bengal presidency may extend to about 260,000 square miles.*

| | Square Miles. |
|---|---|
| Bengal, Behar, and Benares, and Midnapore | 162,000 † |
| Bundlekund | 10,000 |
| Upper Dooab, and Agra and Dehlee | 25,000 |
| Cuttack | 10,000 |
| Allahabad, Rohilkund, Lower Dooab | 53,286 |
| Total ..... Square Miles | 260,286 |

Take

* This calculation was made before the late conquests.

† Rennell.

Take the population, per Mr. Colebrooke's estimate and census, at 203 per square mile, it would give a tota number of inhabitants of 52,830,000, exclusive of the inhabitants of cities and considerable towns, as those were excluded by Mr. Colebrooke.

Suppose then the population is, in even numbers, fifty-three millions under the Bengal presidency. There are forty-five zillah and city judges, which for 260,000 square miles gives one judge to a space of $57 \times 100$ miles, or 5,700 square miles, and to 1,177,777 of population.* But suppose there are forty-two zillah judgeships, and that six of these judgeships (exclusive of the cities) are put into one circuit, it would give seven circuits, each of an area of $150 \times 250$ square miles, 37,000 only; not four times the extent of one English county, Yorkshire, which is 10,350 square miles. So that were the local position of the courts judiciously selected, their distance from the extreme limits of their jurisdiction need not exceed from 70 to 125 miles, or from 35 to 60 coss: a distance, in India, short enough to render courts of appeal sufficiently easy of access.

There are, at present, under the presidency of Bengal, six district or provincial courts of appeal and circuit. Of these there are four in the Lower Provinces, *viz.* Calcutta, Dacca, Moorshedabad, Patna, each of which contain the following cities and zillahs; and, according to the police returns, have the following number of villages under their jurisdiction:

*Calcutta:*

* The extent of England and Wales is stated at 57,960 square miles, and the population at 10,150,615 souls, giving 175 inhabitants to the square mile.

| | No. of Villages. | |
|---|---|---|
| *Calcutta:* | | |
| Burdwan | 3,496 | |
| Hoogly | 4,934 | |
| Jungle mehals | 4,241 | |
| Midnapore | 10,675 | |
| Cuttack | 10,298 | |
| Nuddea | 4,784 | |
| Twenty-four pergunnahs | 2,907 | |
| Suburbs of Calcutta | 763 | |
| | | 42,098 |
| *Dacca:* | | |
| City of Dacca | 2,594 | |
| Dacca Jelalpore | 2,713 | |
| Mymen Sing | 8,667 | |
| Shylet | 9,800 | |
| Tipperah | 6,203 | |
| Chittagong | 1,307 | |
| Backergunge | 2,051 | |
| Jessore | 4,775 | |
| | | 38,110 |
| *Moorshedabad:* | | |
| Moorshedabad, zillah and city | 2,855 | |
| Purneah | 4,785 | |
| Dinagepore | 12,315 | |
| Rungpore | 5,788 | |
| Ragashye | 8,710 | |
| Beerboom | 5,129 | |
| | | 39,582 |
| *Patna, inclusive of Ramgurh:* | | |
| Patna, zillah and city | 1,069 | |
| Behar | 5,541 | |
| Shahabad | 4,507 | |
| Tirhoot | 7,223 | |
| Carried forward | 18,340 | 119,790 |

| | No. of Villages. | |
|---|---|---|
| Brought forward ..... | 18,340 | 119,790 |
| *Patna, &c.*—(continued) | | |
| Sarun ..... | 7,051 | |
| Bajulpore ..... | 5,567 | |
| Add for Ramgurh the average of the whole ..... | 5,383 | 36,341 |
| Total number of villages in the four Lower Provinces ..... | | 156,131 |
| Average villages under one provincial court | | 39,032¾ |

I have here added Jessore to the Dacca division, and Bagulpore to that of Patna, to make the average number of villages in each circuit more equal than they are as at present settled.

The criminal trials at the circuits of the four courts of the Lower Provinces, for five years ending with 1807, averaged annually 5,831: about 1,400 for each circuit, or 700 half-yearly; one half of which may be convictions.*

And with respect to civil suits, it is to be observed that in a population such as that of India, where so many exist upon the precarious earnings or collections of the day, and where so a small proportion of the people have any property, no estimate of the probable amount of litigation can be formed on the basis of population. Property alone is the subject of litigation. The number of persons that may become litigants must therefore depend on the amount of those who possess property, and may therefore be guessed at from what follows.

Mr.

* Fifth Report.

Mr. Colebrooke* states, that by an actual census, 80,914 husbandmen holding leases, and 22,324 artificers paying ground-rent, were found in 2,784 villages. So, if we take these two classes together in round numbers at 100,000, the number per village will be about $35\frac{3}{4}$; and the total number of villages in the above four provinces being 156,131, will give us about 5,600,000 persons in the Lower Provinces below Benares, who may be considered to possess propery, that may become the subject of litigation, or to each of the four provincial courts 1,400,000 persons who may become litigants.

That this number, however, is much too high may be shewn thus. We must suppose all leaseholders and artificers paying ground-rent to be heads of families; and if we allow even five persons to a family, it would give $5 \times 5{,}600{,}000 = 28{,}000{,}000$: a population of twenty-eight millions of these two classes of society alone, *viz.* of husbandmen and artificers paying ground-rent, leaving out even artificers who do not pay ground-rent, labourers and servants of all descriptions, merchants, shopkeepers, and all the other denominations of the people. Mr. Colebrooke's calculation we must therefore lay aside.

In the Ceded and Conquered Provinces, the number of persons holding engagements for land directly from government was, in the year 1815, forty-five thousand. Colonel Reade's census of the Baramahal gives of husbandmen, shudurs, or government farmers..... 85,227

Carried forward..... 85,227

besides

* Husbandry of Bengal.

| | |
|---|---|
| Brought forward..... | 85,227 |
| besides possessors of charity-land and private property lands ..... | 17,314 |
| Total husbandry class..... | 102,541 |
| to a population of 612,871, about one-sixth of tenantry. To which, if we add one-fourth for artizans, as above ..... | 25,635 |
| will give a total of..... | 128,176 |

There were 4,865 villages, however, so that the number for each village will be about 26⅓: which for the above number of villages in the four provinces, 156,131, will reduce the number of persons of the above description from 5,600,000 to 4,105,000 (which is still far too many), or to each of the four provincial courts, 1,026,250 persons who may become litigants. But if we deducted one-fourth from this, the number would be nearer the truth; and it would give, by the above calculation of five to each family, a population of 15,393,750 of persons of those two classes of society alone. If we take this, we shall then have about 770,000 persons who may be litigants for each of the four provincial circuit courts of the Lower Provinces.

For the Upper Provinces, including Benares, three courts of appeal and circuit would perhaps suffice; to be fixed at the following places, *viz.* Allahabad, Furrukhabad, Meerut; and the whole circuits, both of the Lower and Upper Provinces, would stand thus:

*First Circuit.*

*First Circuit.*

| | No. of Villages in each Zillah. | No. of Villages in each Circuit. |
|---|---|---|
| Calcutta: | | |
| Calcutta, twenty-four pergunnahs and suburbs | 3,670 | |
| Hoogly | 4,934 | |
| Nuddeah | 4,784 | |
| Burdwan | 3,496 | |
| Jungle mehauls | 4,241 | |
| Midnapore | 10,675 | |
| Cuttack | 10,298 | |
| | | 42,098 |

*Second Circuit.*

| | | |
|---|---|---|
| Dacca: | | |
| Dacca and Dacca Jelalpore | 5,307 | |
| Mymun Sing | 8,667 | |
| Shylet | 9,800 | |
| Tippera | 6,203 | |
| Chittagong | 1,307 | |
| Backergunge | 2,051 | |
| Jessore | 4,775 | |
| | | 38,110 |

*Third Circuit.*

| | | |
|---|---|---|
| Moorshedabad: | | |
| Moorshedabad, zillah and city | 2,855 | |
| Purneah | 4,785 | |
| Dinagepore | 12,315 | |
| Rungpore | 5,788 | |
| Ragshye | 8,710 | |
| Beerbhoom | 5,127 | |
| | | 39,582 |

*Fourth Circuit.*

| | | |
|---|---|---|
| Patna: | | |
| Patna, zillah and city | 1,069 | |
| Behar | 5,541 | |
| Carried forward | 6,610 | 119,790 |

| | No. of Villages in each Zillah. | No. of Villages in each Circuit. |
|---|---|---|
| Brought forward..... | 6,610 | 119,790 |
| Patna—*(continued.)* | | |
| Shahabad ..... | 4,507 | |
| Tirhoot ..... | 7,223 | |
| Sarun ..... | 7,051 | |
| Baglepore ..... | 5,567 | |
| Ramgurh, take at average..... | 5,383 | |
| | | 36,341 |
| *Fifth Circuit.* | | |
| Allahabad: | | |
| Allahabad ..... | 6,329½ | |
| Benares (not known, but take average of Lower Provinces)..... | 5,383 | |
| Mirzapore (not known, take average) | 5,383 | |
| Juanpore (not known, take average) | 5,383 | |
| Goruckpore ..... | 11,617 | |
| | | 34,095½ |
| *Sixth Circuit.* | | |
| Futtyghur: | | |
| Furruckabad ..... | 2,880¾ | |
| Caunpore ..... | 3,439 | |
| Banda or N. Bundlekund ..... | 2,493 | |
| Barelly (not known, but take average of Upper Provinces)..... | 4,760 | |
| Etayah ..... | 4,014 | |
| | | 17,585¾ |
| *Seventh Circuit.* | | |
| Meerut: | | |
| Agra (not known, but take average of Upper Provinces) ..... | 4,760 | |
| Allyghur ..... | 4,529½ | |
| Moradabad ..... | 9,052¾ | |
| Carried forward:..... | 18,342¼ | 207,812¼ |

North

| | No. of Villages in each Zillah. | No. of Villages in each Circuit |
|---|---|---|
| Brought forward..... | 18,342¼ | 207,812¼ |
| *Seventh Circuit—(continued).* | | |
| Meerut—*(continued)*, | | |
| North Suharanpore ..... | 1,753 | |
| South Suharanpore ..... | 1,495 | |
| Dehlee (not known, but take average of Upper Provinces)..... | 4,760 | |
| | | 26,350¼ |
| Grand total villages..... | | 234,161½ |

Thus it would seem that seven courts, having jurisdiction as above, would be fully sufficient for the dispensation of justice in the first resort, in important causes in appeal, and for holding the criminal courts of sessions and of circuit throughout the whole of the Bengal presidency. But for the better performance of the business of the circuit, to ensure the presence of three judges in court for the decision of civil causes, for the review of criminal matters, and the general superintendence of the police, five judges should be the number attached to each court of circuit, instead of four as at present: two of whom to take the circuit in opposite directions, which would give each the circuit of three zillahs, and render the business sufficiently easy to be performed without any risk of want of consideration from too great hurry to get over a tedious and heavy duty.

One thing which contributes to make the circuits in India so irksome is the extremely tedious mode of travelling. The journey from one seat of court to another, at the rate of twelve, or at most sixteen miles a day, makes what in England would be termed a very short circuit, in India a very long one.

I have already suggested that the provincial courts ought to be the courts of last resort, unless in very special and important causes; and for these, that an appeal should lie to the Governor-General in Council. These courts ought also to be vested with special power with respect to the police, in preserving the tranquillity of the country; and might be expected to bring to the notice of government all circumstances which should come to their knowledge relative to the good government of their district, in whatsoever department such circumstances might arise.

At present the provincial courts are, I fear, held in but very little estimation, either by the natives or by the judicial branch of the service generally. The reason seems plain enough: they are really vested with very little power; none at all, indeed, unless in cases of a comparatively trivial nature. The more severe punishments are beyond their jurisdiction, and the more important causes are appealable from them: *quoad these*, therefore, the courts of appeal are little better than offices for the transmission of such causes to a higher authority. The respect accorded to courts so constituted must be secondary. A dernier resort jurisdiction given them, equal to that now belonging to the Sudder Adawlut, would raise the provincial courts in the estimation of the people, and give them a degree of weight in the provinces, which would render them instruments highly valuable in the administration of the government in every department, generally; and would be attended with the most beneficial effects, in improving and facilitating the administration of justice in particular.

I would therefore suggest:

1st.

1st. That the present courts of appeal and circuit be abolished.

2dly. That the Conquered and Ceded Provinces, the province of Benares, Behar, Bengal, and Orissa, be divided into seven separate and distinct jurisdictions.

3dly. That a court, denominated a Dewannee and Nizamut Adawlut, consisting of one chief judge and four puisne judges, be established in each province.

4thly. That the jurisdiction of these courts be limited to their own province, respectively: in which they shall be supreme, both in civil and in criminal matters, except in very peculiar or important causes, when an appeal shall be admitted to the supreme government; who might, besides the opinion of their own legal advisers, call for that of any number of the ablest judges, selected from the different courts above mentioned, to assist them in the decision. But that in all personal actions, where the amount disputed is under 100,000 sicca rupees, their decision shall be final.

5thly. That causes of an important nature, or of the value of 20,000 rupees, or upwards, be instituted in these provincial courts only; and that appeals be received from the inferior courts, if of a special nature, whatever the amount in dispute may be; and in all other causes of the value of 5,000 rupees or upwards.

6thly. That these courts, in their nizamut department, hold a sessions, at regular and short intervals, for the trial of all criminal offences committed in any zillah, the court of which is situated within the distance of thirty miles. The sentence of the court at sessions to be final in capital cases of conviction; reporting for the orders and warrant of the Governor-General in Council previous to execution; and submitting for the consideration

ration of that high authority, any circumstances which might be deemed extenuatory of the offence, tending to mitigate punishment or to call forth clemency.

7thly. That the puisne judges of each court shall perform the duties of the circuit twice a year, or oftener if necessary, two going on their respective circuits.

8thly. That those courts be vested with the control of the police within their respective jurisdictions; or the chief judge of the court only, should this be deemed more expedient: the magistrates reporting to him, and through him to government.

I am persuaded that this establishment and distribution of the courts, provided they were filled with competent judges, would be fully equal to the due administration of justice in criminal matters, in appeals, and in important causes. I speak, however, of their being filled by competent judges; for it is with that condition that I would be understood in writing on the subject.

The constant chain of appeals from one court to another, combined with the deficiency in legal knowledge and of business in general, which prevail in our judicial department, and not the want of judicial officers, are the great causes of that inefficiency which appears, and which has been so often and so much lamented in the administration of justice. Innumerable difficulties must, on very trivial occasions, arise to a person who is but ill-informed of his duty; and it is thus that besides very unsatisfactory decisions, the most precious of all commodities, the time of the court, falls a sacrifice to the ignorance of the judge. Proceedings are heaped upon proceedings, delay follows delay; a desire on the part of government to remedy obvious defects, occasions establishments to be multiplied

upon

upon establishments, equally inefficient perhaps with the original; and it is thus that no advantage is gained, and no result appears but disappointment, and enormous expense to government.

I now come to speak of the inferior courts. The next in gradation to the provincial courts of appeal are the courts of the zillah and city judges and magistrates; the judicial and magisterial offices being at present combined in the same person.

To all of those zillah and city courts there are judicial officers, called registers, attached, who are assistants to the judges, but who also hold courts of their own for the decision of minor causes. There are also, in gradation inferior to the registers, junior civil servants, called assistants to the judges and magistrates, to whom the judge assigns a portion of the business of his court. All these are subordinate to the judge: but the number is not fixed.

There are in some zillahs a higher class than the last-mentioned, of judicial officers, that have been termed "joint magistrates," and also, "additional registers," whose jurisdiction is co-ordinate with that of the zillah judge. In fact, a judge of part of the zillah, or perhaps part of two zillahs, the limits defined: in short, as Mr. Stuart designates them, "judges on worse pay" than the regular zillah judges. These situations are filled by civil servants younger than the class of regular judges. There may thus be about four Europeans to administer the law and to superintend the police in every zillah. There are, at the moment I am writing, about one hundred and eighty civil servants employed in the judicial department, employed as functionaries, mostly invested

with judicial power, holding courts and passing decrees, and not, as in England it would be, with a part of them performing the inferior offices of the law.

The number of causes disposed of in the zillah and city courts, by decision, adjustment, or nonsuit, for four years, ending in December 1816, exhibit an annual average of decisions by the zillah European judges, &c. as follows:—

| | |
|---|---|
| By the zillah and city judges ..... | 6,660 |
| By ... do. ..... do. registers ..... | 9,108 |
| Total annually ..... | 15,768 |

which, if we reckon the *judges* at forty-five, will give for each, to decide annually, about one hundred and forty-eight causes; and reckoning about sixty registers who officiate as judges, and about fifteen additional or second registers, who are deciders of causes, in number altogether about seventy-five, we have for them each about one hundred and fifty decisions annually; or it gives (making allowance for Sundays and holidays) about two days to a judge, and as many to those inferior officers for every cause they decide; and if we take the whole number of 15,768 causes, and divide them among the above number of one hundred and eighty judicial officers, we shall have for each to decide annually about eighty-seven causes.

We can scarcely allow, then, that the judicial branch of the duty of those officers, in civil matters, is very heavy; though to what I have stated, falls to be added, in their capacity of magistrates, criminal jurisdiction in the lighter offences. The chief part, however, of the duty which the

zillah

zillah and city judges have to perform, is in their capacity of magistrates, or police officers. But as those duties are at present united, the proportion of time required for the performance of each branch has not been ascertained; and hence the combined duty being too laborious, it is doubtful whether the police or the judicial department of government has suffered most.

In my estimation, it would be wise to separate the two functions. The guardianship of the police, and the magisterial duties of a zillah, would undoubtedly be quite enough for the labour of any one individual, even of the most active and zealous of the Company's servants; and I think that one judge, however active and zealous, might also be fully employed in performing the duty of judge in a zillah; though under the proposed arrangement of the courts of circuit, it might perhaps be found that thirty, instead of forty-five zillah judges, might be sufficient for the whole of the Bengal provinces.

Many reasons might be assigned for separating the magisterial office from that of the judge. Justice requires that every judge should enter upon a cause he is to decide free from all bias. The duty of a magistrate renders him liable to prejudice. The nature of a judge's duty requires him to investigate patiently, and to decide deliberately; that of a magistrate requires him to be prompt and decisive. He must act quickly, though he should act sometimes erroneously. A judge ought to possess a complete knowledge of the law. The same degree of knowledge is not necessary in a magistrate and police officer. The habits likely to form the one, are not calculated to perfect the other; and hence it must seldom happen that

the two-fold qualities of a good judge and a good magistrate are united in the same person.

The zillah judges have original jurisdiction in causes to the amount of 10,000 rupees. Their decisions might with advantage be held *final* in mere personal actions, in demands, debts, and matters of account, involving merely a definite sum of money, or value of goods or chattels, to a very large amount: probably 4,000 or 5,000 rupees might not be too high. But, on the other hand, in cases of real actions, questions of inheritance, of landed property, and generally, in every cause involving an indefinite amount, or question of general importance, an appeal to the provincial courts ought to lie, whatever the value of the subject matter in dispute may be. Special appeals to be received in all, even of the former class of causes, should the inferior judge see reason; or should the judge of circuit, on a petition from the party desiring it, see grounds for admitting an appeal to the provincial court.

The same principle with respect to appeals from the decision of the assistant judges and registers to the judges should prevail; and, in that event, the limit, in point of extent, of their final decisions, in cases of personal actions, debts, and demands, &c., might be raised to 800 rupees: their jurisdiction to extend to 5,000 rupees. But no cause of any description exceeding 400 rupees, to be brought before them in the first instance; and those under that sum, only in matters of debt, demands, and personal actions as above: all other causes to be instituted before the judge, who will *remit* to his deputies and assistants, for investigation and adjudication, such of them as he may deem proper; exercising, in this respect, a judicious discretion

cretion as to the complicated or simple nature of the case remitted.

Three essential points would be effected by this. The nature of all suits, except simple demands of a trifling amount, could be known to the judge, his power reserved of deciding all such causes as should appear important or complex, and every assistance attained from his inferior officers, which they may appear to him capable of affording.

Thus, I apprehend, an ample provision would exist for the distribution of civil justice; or if it should be found to be still deficient, notwithstanding the full adoption of all the precautionary means, for the prevention of litigation, and for the speedy adjustment of disputes, which I have above suggested, a few natives of acknowledged respectability, and of tried character, might be employed in each district in further aid of the judge: men of family, of education, and of irreproachable reputation and habits of life. A respectable salary of 300 rupees per mensem should be allowed them; and the antient and constitutional appellation of "*kazee*" would raise them in the estimation of the people, and remind themselves of the sacred character they ought to maintain and the high duties expected of them. Two or three of these in each zillah, placed in eligible situations throughout the zillah, would be as many as would be required or ought to be employed; for I hold the present practice of employing so many natives, under the appellation of sudder ameens and moonsifs, invested with judical powers, erroneous in principle, and objectionable in a degree propoftionate to their number.

The

The extent of jurisdiction of the kazee might be limited to demands and personal actions, to the extent of 800 rupees; and their decisions to be final to the amount of 40 rupees, exclusive of costs.

The Court of Directors have wisely authorized the employment of persons, such as are here described, with liberal salaries, instead of paying their native judges, as at present, by taxes, and per centage on the causes they decide; which holds out a strong temptation to these people, not only to promote litigation, but to decide hastily, and to prevent amicable adjustment, which, by the Regulations, would deprive them of their fees.

The number of sudder ameens and moonsifs, or native petty judges, now employed, is not limited, but is very great in the district of Burdwan, which I mention here, knowing the number of thanahs in it: holding each thanah to be furnished with its little judge, there may be no less than sixteen, perhaps twenty, of these gentlemen of the bench in that zillah; assuming which number as an average, would give for the Bengal provinces about nine hundred persons invested with judicial powers, in causes under 150 rupees, in the courts of the sudder ameens, and 64 rupees in the courts of the moonsifs. But if we take the average number of villages in each thanah, as in Burdwan, at about two hundred and eighteen, and estimate the number of villages under the Bengal presidency at 400,000, or at the least at 360,000, as assumed by the court of Sudder Dewannee Adawlut, in their report of the 9th March 1818, the number of moonsifs would exceed 1,800, instead of 900. This estimate of villages, however, is known to be incorrect.

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My own experience of the natives of these provinces makes me adverse to employing them in situations of power and of trust. That feeling is particularly applicable to the inferior classes, to which, owing to the small lawful emoluments of those native judges, the selection is necessarily restricted. To multiply, then, the number of individuals who have power, is only to increase the sources of oppression to the people.

For these reasons, I would recommend that the respectability of the individuals, thus vested with authority, should be increased, and their numbers greatly diminished. But, should it be found practicable, adverting to the state of society in India, I would strongly recommend that native agency, in situations of responsibility, should be dispensed with entirely, unless in situations over which there is a most efficient European control. With such control, however, they are valuable servants, and may be employed with the greatest advantage to government, and with benefit to themselves, sufficient to uphold all the dignity now extant in the native character. If we desire to elevate them beyond this, we shall succeed only, in general, in affording them the means of evincing, in a more prominent manner, their total unworthiness of such advancement. I speak generally; for among so many there must be found some honourable persons; but the few of this description, I fear, will only prove the force of the rule, by appearing as exceptions from it.

I am well aware that I shall have to combat the opinions of many far abler and more experienced men than myself on this point. Many recommend the employment of the superior classes of the natives, in order to keep up the respectability of what they term the aristocracy of the country

is felt by himself only; that which affects the rich, extends its influence over hundreds who depend upon him. The decision of any one small matter of dispute, though wrong, provided it be unbiassed, cannot be attended with important consequences to the community, more than the accidental demolition of a petty hovel could affect a city; and, therefore, such disputes may, and indeed must, be left to the decision of inferior persons, and must be decided in a summary manner.

What I should desire to see established in India are able European judges; the courts open to all, ready of access, but by no means inviting to the litigant; prompt decision; not that every hamlet should have its lawyer, every village its judge. The temple of justice, though open, should be made approachable only with reverence; not on trifling occasions, nor even without some anxiety, if not difficulty: let no one linger therein.

I cannot omit expressing, under present circumstances, my humble opinion, in this place, that great advantage might be derived, by investing with judicial, as well as magisterial power, European gentlemen, not in the Company's service, resident in the interior, who are known to have an intimate knowledge of the customs of the country, of the people around them, and by whom they are respected. Many most worthy, intelligent, and highly respected gentlemen are to be found all over the country, to whom jurisdiction to a certain extent might be given in civil disputes, such as those of boundaries, of right to water, to fish, to pasture, to wood, disputed rents between the cultivators and landlords, difference between these about pergunnah rates of rent, and every matter having reference to husbandry. It often happens, that men carry

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on disputes for want of a person to whom they can appeal, which at first are trifling, but in the end become very serious. The natural respect accorded to such a man as I have described would at once point him out as the fountain of justice between them, and they would submit to his decision.

In criminal matters, to what extent it would be advisable to empower the zillah judges to sit, and to sentence on conviction, next requires our consideration.

In the trial and conviction of criminals, the duty of the magistrate and public prosecutor is, generally speaking, the most intricate and difficult to perform. These have the proof, the grounds of conviction to search for and to display before the judge. It seldom happens, in criminal matters, that a case of great intricacy in regard to decision occurs.

But supposing it were otherwise, as the law by the Regulations now stands, the selection is between an individual zillah judge and an individual circuit judge. The experience of the latter may, generally, be greater than that of the former; but, on the other hand, he is more likely to be pressed for time: and several other disadvantages attend an itinerary judge to which a fixed court is not liable.

I would, therefore, admit the jurisdiction of the zillah judge, in criminal cases, to every extent; but direct that he should postpone all trials which may involve life, or transportation, or imprisonment for life or for more than seven years, until he should be joined by the judge of circuit, who would sit along with him, and preside on capital

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and perpetual, or more than seven years' punishment trials; their unanimity to be required to convict. All trials before the zillah judge alone, involving imprisonment for one year or more, to be reviewed by the circuit judge, in presence of the prisoner, with power to call witnesses; and if he coincided with the zillah judge, sentence to be executed. If he differed from the zillah judge, the prisoner to have the benefit, and the lighter punishment to be awarded. So, if the united judges did not agree in all trials at which they both sat, the prisoner should have the benefit of their difference of opinion, and be acquitted, if they differed as to guilty or not guilty. If their difference related to extent of punishment, the lesser to be inflicted.

Thus the circuit judge would both prove a check over, and himself have the benefit of, the local information of the zillah judge; and justice would be benefited by the combined wisdom and united exertions of both, in matters of the higher importance.

I have not the means of ascertaining what proportion of the criminal business of the courts would thus be dispatched by the zillah judges, and consequently, how much most harassing and tormenting, and I may add disgusting duty, the public would escape from, of repeated and tedious attendance as prosecutors and witnesses at the courts; nor how much money, for the maintenance of accused persons and witnesses, would be saved to government. But, unquestionably, in all points of view, the relief here contemplated would be highly desirable.

The crimes and offences that would come under the sole jurisdiction of the zillah judge would be libel, defamation,

mation, adultery, fornication (including seduction), all of which are criminal offences by the Moohummudan law, theft, shoplifting, housebreaking in the day or by night, furtively, and not by force or by gangs; and, generally, all offences which are not usually accompanied with a breach of the peace, unless they be attended with dangerous violence against the *person*: excluding, however, perjury and forgery, unless these happen in cases in which decisions and sentences of the zillah judges are held to be final, as above.

The combined judgment of the circuit and zillah judges would be made available in trials for the greater crimes, as murder, homicide of all descriptions, maiming, wounding, rape, highway robbery, dakoity, burglary, larceny attended by force and terror, arson, burning or destroying of corn-fields or crops, cattle stealing, perjury and subornation of perjury; in the more important causes, forgery, fabrication or falsification of deeds or other documents, riot, rebellion, destruction of public records or registers; and, generally, all heinous and aggravated crimes and offences, involving the security or peace of society, or of the government, or of individuals.

The native judges ought not to be entrusted with criminal jurisdiction at all, unless perhaps in light affrays and abusive language, where a fine of five rupees or so might be the award.

How far the scale and degrees of punishment, as at present established in Bengal, are suited to the nature of offences and to their prevalence, I very much doubt. One thing, however, is certain, that in fixing a scale of punishment, it is of the highest importance to attend to the

feelings and ideas of the people. The *Moohummudan law* recognizes this as a principle, and does not, in cases of mere misdemeanor, award the same punishment to all ranks of society. It is impossible to feel that the pillory, some time ago awarded in the case of a noble lord guilty of a frolic, though a legal fraud, the high-minded and gallant partizan of the Spanish Independents, and in the case of the grovelling wretch pilloried and pelted for perjury or a more abominable crime, are in degree or in essence the same punishment.

I have, lastly, on this head, to notice a subject which seems to have given rise to great difference of opinion among the Company's civil servants in the revenue and judicial branches of the service, *viz.* whether it would, or would not, be desirable to give the collectors and revenue officers jurisdiction in questions connected with the revenue, rents, disputed boundaries, &c.

The judicial officers, as appears from the opinions of those who have been consulted, generally, almost universally, indeed, have shewn a disinclination to give up any part of their judicial authority; while, on the other hand, the opinions of the collectors, who have been consulted, and revenue officers, are pretty generally in favour of this additional power being conferred upon themselves. The Board of Commissioners for the Ceded Provinces, in their Report, 25th April 1817, state their opinion to be, "that "all questions between landlord and tenant will be ad- "justed more speedily, more satisfactorily, and with more "consistency, in the principles of decision, by the reve- "nue authorities. A right decision," they alledge, "in "cases of summary process for arrears of rent, &c. must "depend on an intimate knowledge of village accounts,

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" and on the minutiæ of revenue *operations*, which the " courts of judicature cannot possess." Why not possess?

The principal reason assigned by the collectors is, that they are, generally speaking, better informed on such subjects than gentlemen who have been only in the judicial line of the service.

The judges, again, say, " that a zealous collector has no " time; and if he had, that there is not that confidence " subsisting between the collector and the people; who " look upon him as a person whose situation places him " in direct opposition to them and their interests; and " moreover, that most cases of controversy, among the " people even, are more or less connected with, if they " do not arise out of, the acts of the collector himself, or " of his officers; whereas the judge is looked upon by " them, if not as their protector, at least as a disinterested " person."

With respect to the point of superior qualification possessed by the collectors, I must enter my protest against its admissibility, because it would go to the extent of proving total disqualification for the judicial office; and from having already made ample provision for the administration of justice, the reader will, I conclude, infer that I am not an advocate for employing the revenue officers as judges, in any matters whatsoever. I am, however, of opinion, that they may be employed, and with great advantage, as magistrates and justices of the peace; but of this in its proper place. I shall farther remark, that most of the writers, on both sides of the question, have taken too extensive a view of the proposition submitted by the Court