REPORTS

OF

CASES

DETERMINED

IN THE

COURT OF NIZAMUT ADAWLUT:

WITH

TABLES OF THE NAMES OF THE CASES AND PRINCIPAL MATTERS.

BY

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REGISTER OF THAT COURT.

VOL. II.

CONTAINING SELECT CASES OF 1820—1826, INCLUSIVE.

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1827.

A

TABLE

OF

THE CASES REPORTED

IN THIS VOLUME.

CASES

IN THE

COURT OF NIZAMUT ADAWLUT.

1820.

Jan. 19th.

BUKHSHOO and LOUTEE,
against
BUKHSEE JAUT.

BUKHSHEE'S case.

Charge—HIGHWAY ROBBERY, attended with WOUNDING.

The prisoner convicted of highway robbery attended with wounding: but sentence mitigated to 14 years imprisonment in consideration of his youth, the severe wounds he received in his attempt to commit the crime, and because the act proved against him appeared to have been his first offence.

THE property involved in this case was only a turban, worth not more than six annas. The principal evidence was that of the first prosecutor, Bukhshoo, who stated, that on the 8th of March 1819, he was returning, in company with three other persons, viz. Loutee, the second prosecutor, Illahee Bukhsh, and Moohummud, from the village of Dunoura, (where he had been attending a market,) to his house situated in another village, named Choochela, both in the district of Moradabad.

On reaching, at about 7 or 8 o'clock P. M. a spot equidistant from the two villages, the party was met by the prisoner and another man armed with swords, who in a menacing tone, desired him and his companions to throw down their property. This requisition not being immediately complied with, the prisoner advanced, and wounded him on the right hand: but before he could do further mischief, he was seized and secured.

On finding himself in this predicament, he called to his accomplice, who, after robbing Loutee of his turban, came to his assistance, and made an attempt to cut down the deponent Bukhshoo, whose attention was drawn off from the custody of the prisoner by this fresh assault, and the necessity of defending himself against it. During the struggle which ensued, the prisoner effected his escape from the hands of Illahee Buksh and Moohummud; but on the deponent's succeeding in driving off the new assailant, was pursued, and again caught. This statement was corroborated by the deposition of the second prosecutor Loutee, and the testimony of Illahee Buksh and Moohummud. The prisoner pleaded not guilty, and set up in his defence, that at the time the robbery was alleged to have been committed, he was returning home from the village of Nujeebabad, where

1820.

BUKHSHEE'S case.

he had gone to seek service. This defence, however, was not confirmed by one of the witnesses whom he summoned in his behalf, and the other did not appear. The report of the Police officer showed, that the prisoner was brought wounded to the Thana, by the persons mentioned in the deposition of the first prosecutor. On a view of all these circumstances, the *futwa* of the law officer of the Bareilly Court of Circuit declared the prisoner to be convicted on violent presumption of the crime with which he stood charged, and declared him liable to discretionary punishment by *Arsoobut*. The circuit Judge, though he concurred fully in the *futwa* of his law officer, and passed in consequence the sentence prescribed by the Regulations on the prisoner, thought him, on account of his youth, (he being only seventeen years of age,) the severe wounds he had received, and because the act of which he was convicted appeared to have been his first offence, a fit object for mitigation of punishment, and recommended him as such to the Nizamut Adawlut; which court, concurring with the *futwa* of their law officers, the same in substance as that given in the Court of Circuit, but deeming the prisoner a proper object of mercy, annulled the sentence of 39 stripes with a *corah*, and imprisonment in transportation beyond sea for life, and substituted the mitigated one of imprisonment with hard labour in irons for fourteen years.

1820.

Jan. 28th.

SUDASOOKH'S case.

MUSSUMMAUT SAHIBKOONWUR,

against

SUDASOOKH.

Charge—MURDER.

The principal evidence against the prisoner, a boy of 12 or 13 years of age, being furnished by his own voluntary confession, that evidence declared by the law officers to be insufficient for his condemnation, by reason of his nonage: but

The prisoner, a boy of only 12 or 13 years of age, was brought to trial at the first sessions of 1819 for the zillah of Suharunpoor, arraigned for the murder of one of his companions, a few years younger than himself. The principal evidence against him was furnished by his own voluntary confessions at the Police Thana, and before the Magistrate. The deceased had mentioned him a short time before his death, as being the person by whom he had been wounded. But there was no other direct proof to criminate him. It appeared, however, that the deceased, shortly before he suffered the injuries from the effects of which he died, had been enticed by the prisoner, under a false pretence, from the village in which they lived: and that the prisoner had been subsequently detected in disposing of some jewels, which were known to have been at the time on the person of the deceased. The law officer of the Bareilly Court of Circuit acquitted the prisoner, not thinking the circumstantial evidence sufficiently strong, and holding any proof which might be derived from the prisoner's own confession to be invalid, by reason of his nonage. This ground, however, the Judge of Circuit did not conceive to diminish in any degree the weight of the evidence. His understanding had obviously at-

tained to a considerable maturity: and his confession was given in a clear, collected, and circumstantial manner. He saw no reason, therefore, to doubt his guilt. Nor was he of opinion that the punishment awarded to that guilt in ordinary cases, should be mitigated in this particular one, in consideration of the youth of the offender, who had acted in the prosecution of an evil design with cunning, cruelty, and circumspection; and could not consequently be supposed to have been without a felonious discretion when he perpetrated the crime. With these remarks, and in conformity with the provision of Section 2, Regulation XVII. 1817, he referred the case for the orders of the N. A. The *futwa* in that court also acquitted the prisoner, and for the same reason which was stated by the law officer of the Court of Circuit. But the Court (present Messrs. Fendall and Goad) did not concur in that *futwa*, and holding the prisoner to be fully convicted, with no other circumstance in his favour than his minority to render him a proper object of mercy, sentenced him to imprisonment and transportation for life.

1820.

this doctrine overruled by the court, and the prisoner declared to be fully convicted; and there appearing no other circumstance in his favour than his minority to render him a proper object of mercy, and it being proved that he was *doli capax* when he committed the crime, sentence awarded of imprisonment and transportation for life.

GOVERNMENT,
against
JYECHUND, GHOUS ULEE and USGHUR ULEE.

Charge—Fabrication and Fraud.

1820.

Jan. 31st. Case of Jyechund and others.

The prisoners were brought to trial at the 2d sessions of 1819, for the zillah of Furruckabad: charged with fabrications, and vending certain papers with forged seals, with intent to defraud the public. Some of these papers, which were blank, with the forged seals at the top, were found in the house of Ghous Ulee, along with some implements, resembling those used by engravers. The evidence against Jyechund consisted of that of an informer, named Gungoo, who swore to having purchased three of the fabricated instruments from this prisoner; of a person attached to the Thana at which Gungoo had given information, who saw Gungoo pay some money to the prisoner, and apprehending him on the spot, found two of the papers on his person: and of two others who were present at the time, and corroborated the above account. Against the last of the prisoners there was little or no proof. He was accordingly acquitted by the *futwa* of the law officer of the Court of Circuit: as was Jyechund also, from there being the direct evidence of only one person against him, and that one an informer, whose motives were open to much suspicion. Ghous Ulee was declared, to be convicted either of forging the papers, or of receiving them from others, knowing them to be forged, and keeping them in his house with evil design. The Judge of Circuit agreed in the acquittal of Usghur Ulee, and directed his discharge: but disagreed entirely in the acquittal of Jyechund, whose guilt he considered to be not only greater, but to be much better established than that of Ghous Ulee. The crime, indeed, he remarked, supposed to be proved against the latter person, had not been stated by the law officer with preci-

To the offence of fabrication, punishable under regulation XVII. of 1817, no writing is necessary. It is sufficient that the seal be forged, though the paper is blank.

1820.

Case of JYECHUND GHOSE and others.

sion at all, but left in an uncertainty, which might be still further increased by clogging the *futwa* with another possibility, viz. that the forged papers had been deposited in the house of the prisoner without his knowledge. The crime, he added, of which he considered this prisoner convicted, was "the being found in possession of forged papers, knowing them to be forged, with evil intent;" for he did not doubt that a paper, though blank in other respects, if attested by a false seal or signature, and prepared with an evil object, was as much a forgery as if an instrument accompanied it. "The crime, however," he observed in conclusion, "which I conceive to be proved against Ghous Ulee, is not one for which any punishment is due under the existing Regulations. It does not come under any definition in the 3d Sec. of Regulation IV. 1807," (which refers only to the fraud of actually fabricating or altering deeds, signatures, &c.) "or in the 16th Sec. of Regulation XVII. 1817," (which prescribes penalties for the knowingly giving utterance to forged instruments.) "It is, however, as it seems, a misdemeanour under the Mahomedan law; and consequently punishable: but I know not where to look for the measure of punishment. It is most like the case of strongly suspected property, regarding which the possessor cannot give a satisfactory account; under which circumstance the property would be taken from him, but he would not be liable to any penalty: or, perhaps, it more strongly resembles the cases provided for by Sec. 11. Regulation XVII. 1817, by which persons convicted of having in their possession counterfeit coin, or stampt paper, without lawful or sufficient excuse, may be sentenced to a fine, commutable to imprisonment for a period not exceeding six months. With regard to Jyechund, I consider it fully established, that he attempted to give effect to forged papers, "knowing them to be forged: a crime which comes under the provisions of Sec. X. Regulation XVII. 1817," already quoted.

With these remarks, he referred the case to the N. A. the law officers of which court declared the prisoner Ghous Ulee to be convicted on violent presumption of fabricating papers with false seals, and the prisoner Jyechund, of selling the same, knowing them to be false: and both prisoners to be liable to *Tazeer*. The Court (present Messrs. Fendall and Goad) concurred in this *futwa*, and sentenced both prisoners to seven years imprisonment. It was directed also that the Court of Circuit should give instructions to the magistrate of Furruckabad to take especial care, that the implements of forgery found in the house of Ghous Ulee, with all the forged seals and papers which had been seized there, or on the person of Jyechund, be destroyed.

1820.

Feb 5th. Case of ANUNDEE CHOUBEEN and others. Two prisoners convicted of wilful murder, sentenced to suffer death, & a third, convicted of instigating, aiding, and abetting the said murder, to imprisonment and transportation for life.

BOGWANGEER,
against
ANUNDEE CHOUBEEN, Rajpoot; JUWAHUR GOOJUR, Rajpoot; NEINSOOKH, Brahmun.

Charge—MURDER.

THE prosecutor in this case was a chela or disciple of the deceased, Rutteegeer. His charge set forth, that about midnight, some time during the month of October 1819, he was awakened by a noise within his Gooroo's hut; and supposing that thieves were stealing his bullock, got up, and went into the cow-house; but finding there that his first suspicions were incorrect, went to the room where Rutteegeer generally slept. Close by the door he observed some marks of what seemed like blood, which he afterwards ascertained it to be. On this he ran to the bed, and found Rutteegeer lying on it, dead, with his body wounded in various places, and apparently by a sword. He went into the village and to the Thana, and gave the alarm. A crowd of the villagers was collected, when the Darogha came to the spot. He stated to that officer, in reply to a question proposed by him, that he suspected the prisoner Neinsookh of participation in the murder, because he knew him to have quarrelled some time before with the deceased, about the services of a chumar named Luttees. In consequence of this statement Neinsookh was apprehended, who gave information which led to the apprehension of the other two prisoners. Rutteegeer was about 50 years of age—a hale, stout man up to the period of his death. The prosecutor had no knowledge of any quarrel having occurred between the deceased and either of the two prisoners, Anundee and Juwahur: but the former of these was in debt to the deceased. All the prisoners pleaded not guilty. From the record of the investigation held by the Darogha on the spot, it appeared that the prisoner Neinsookh then stated, that some two months before the murder, he was in his field when he overheard Anundee and Juwahur plotting the act: that he advised them not to perpetrate it; and they desired him not to mention what he had heard: that the day before the murder, Anundee told him that he was going to a distant village to purchase a bullock, and requested the loan of his sword, which he gave to him, and which Anundee returned early the following morning: and that these circumstances combined, induced him to suppose that Anundee and Juwahur committed the murder. Anundee and Juwahur said, that they were sitting together in their field, when Neinsookh came, and proposed to them to murder Rutteegeer: that they several times refused to be concerned in such an act; but at length being urged by him, and on his stating debility consequent upon extreme illness, as being the reason why he could not effect his wishes himself, they consented: that as Anundee had no sword of his own, Neinsookh gave him his for the purpose, which he reclaimed, and received after the murder was committed. Before the Magistrate the three prisoners repeated these confessions: but Neinsookh added, that after hearing of the plot, he told Rutteegeer, and advised him to be on his guard

1820.

Case of ANUNDEE CHOUDHEEN and others.

against Anundee and Juwahur; which advice, however, was disregarded by Rutteegeer. It appeared from the evidence, that Anundee, Neinsookh, and Rutteegeer were sharers in the same village: that a sum of money was due from Anundee to the deceased, which he had urgently demanded: and that no intercourse had subsisted between Neinsookh and Rutteegeer since the quarrel about the chumar Lutteea. It was stated by Neinsookh, that Anundee's enmity to the deceased was occasioned by his having a criminal connection with Anundee's mother, the sister of Neinsookh; but from the depositions of the witnesses, there seemed no reason to believe that such a connection ever existed.

Before the Court of Circuit the three prisoners at first pleaded not guilty: but in their defence Anundee and Juwahur acknowledged having been present when Neinsookh committed the murder: and Neinsookh said that his sword was bloody, when returned by Anundee, which led him to suspect that the murder was committed with that weapon. The *futwa* of the law officer declared Anundee and Juwahur convicted of *Kutl i Umd*, and liable to death by *Kissas*: but acquitted Neinsookh, on account of the only direct proof against him being contained in the statements of the other two prisoners. In the latter part of this *futwa* the fourth Judge of the Bareilly Court of Circuit, (before whom the prisoners were brought to trial at the sessions for Aliyghur,) did not concur. He stated, in the letter which accompanied his reference of the case for the orders of the Nizamut Adawlut, that the acknowledgment of Neinsookh that he was present when Anundee and Juwahur planned the murder, and his failing to communicate what he then heard to the nearest Police officer, rendered him an accessary before the fact: and the fact of his having under such circumstances lent his sword to Anundee, and having received it back whilst yet reeking with the blood of the deceased, left no doubt on his mind, that if not present at the murder, he was privy and consenting to its commission.

The law officers of the Nizamut Adawlut declared the prisoners Anundee and Juwahur liable to suffer death by *Kissas*; and the prisoner Neinsookh to be convicted on strong presumption of having contrived the murder of Rutteegeer, and instigated the prisoners Anundee and Juwahur to, and aided and abetted them in, its perpetration, and therefore to be liable to discretionary punishment by imprisonment.

The Court (present John Fendall and S. T. Goad) concurred in this *futwa*: and sentenced the prisoners Anundee and Juwahur to death, seeing no circumstances in either of their cases to render them proper objects of mercy, and the prisoner Neinsookh to imprisonment for life in transportation.

GOVERNMENT,
against
GUNGA PURSAUD, Money-Changer.

Charge—Receiving Stolen Property.

1820.
Feb. 5th.
GUNGA PURSAUD'S case.

Held that it is irregular in a Judge of Circuit to cross-question a prisoner on trial with a view to his conviction, after he has made his defence.

Towards the middle of the month of July 1819, the Nazir of the Court of the city of Dacca, in the course of an enquiry he had occasion to institute for the recovery of some stolen property, received information which led him to suspect that it was in the house of the prisoner, an inhabitant of the Muhulla of Islampoora. He applied to the Magistrate for a wurrant; and on obtaining it, and searching the house, found a number of suspicious looking articles, the discovery of which induced him to give notice to a number of persons who had been robbed of property, which remained yet untraced. Among these was one Arratoon Aghajan, an Armenian, from whom he knew some English chintz and other goods had been stolen the year before. Arratoon, on being summoned, identified as belonging to himself nine pieces of chintz, one piece of woollen, and one counterpane, found tied up with a quantity of other clothes in a bundle, in an upper room of the prisoner's house. The next day the Nazir took an inventory of the property in the presence of the prisoner, one Kishen Jye, a person in the employ of Arratoon, and four respectable inhabitants of the Muhulla.

The circumstances detailed in the above statement formed the ground of the present charge. It was established by the evidence of Arratoon, the Armenian shop-keeper, and some of his people, that a robbery had been committed on his premises in the course of February 1818, and a quantity of goods carried off, belonging partly to Arratoon himself, and partly to persons by whom he was employed as a commission agent. All of them united, without any very material discrepancies, in identifying various portions of the property in court: but they were unable to furnish any particular description of them; and seemed led solely from observing a similarity in their general appearance, their colour, and print, to depose to their identity with the property they had respectively lost. The Nazir of the Zillah Court, on his examination, stated, that his suspicions of the prisoner's criminality, which were first excited by the information which led him to search his house, were subsequently confirmed by his discovery of the mixt nature of the articles, consisting of dresses, jewels, culinary utensils, and others, which he found there deposited. When the box containing the property in court was opened, the prisoner complained that his good fortune had deserted him, and used other expressions which implied a consciousness of guilt. The credit, however, to be attached to this part of his statement rested entirely on the weight of the Nazir's personal character: for of the two chupprassies and four inhabitants of the Muhulla of Islampoora, to whom he referred as having accompanied him in his investigation, two did not support, and the others contradicted the assertion. The former did not profess to have heard the prisoner make any mention of the manner in which he acquired possession of the goods: and the latter agreed in saying, that he repre-

1820.

GUNGA PURSAUD'S case.

sented himself to have bought them—differing among themselves in this, that two of them deposed to his having stated the purchase to have been made at an auction, while the others remarked only his use of the general term purchase. It was stated by four other inhabitants of the Muhulla, that the prisoner was a man of known bad character, who had at one time been convicted of, and punished for, forgery. The visible sources from which he derived his subsistence were his trade as a shop-keeper, and the rent of a house in the city, which also belonged to him. This was the case for the prosecution.

Gunga Pursaud stated in his defence, that he bought the property in court in the January preceding the trial from a merchant of the name of Thomas, in the city of Dacca; paying 165 rupees for it. The bargain was made in the house of a person of the name of McGherity; but the price given in his own. On being cross-questioned, he said, that a bill for the whole was placed by him in the bundle with the goods, and he attributed its loss to carelessness or bad intention on the part of the Nazir. The persons acquainted with the circumstances attending the completion of the bargain and purchase were McGherity and a servant of his, with three others, Gunga Govind Thakoor, Ramjee, and Neelaram. He knew Thomas to live generally in Calcutta, and was acquainted with him before the period at which he bought the goods. He was not aware of any one being in Dacca, who was acquainted with him: he could only repeat his assertion, that he met him at the house of McGherity. He had not sold any of the property, because he could not get the prices he wished for it. He had been concerned in such transactions from his boyhood.

The trial was postponed for a short time, in order to obtain the evidence of some of the witnesses referred to by the prisoner and others, who might possess information regarding the truth or falsehood of the story on which he rested his exculpation. When it was resumed, the persons named by the prisoner fully confirmed his account, two of them as to being present, when one hundred and sixty-five Rupees were paid for the goods by him to an European merchant, whose name, however, they did not know: and the third, who, (with the two others,) stated himself to have been at the time a lodger in the prisoner's house, as to having seen such merchant with the prisoner on the day stated by the others, and hearing from them, that the latter had bought some chintzes, &c. from the former. None, however, of the inhabitants of the city, of whom many were examined, appeared to have any knowledge of Thomas, as a person carrying on occasional traffic in it with English goods, brought from Calcutta; or of the prisoner's carrying on any general and avowed dealings, except as a money-changer. The wife of McGherity did not know any thing about Mr. Thomas having come, about the time stated by the prisoner, to her husband's house. But she had been separated from her husband; and lived alone on a maintenance allowed by him, for many years.

The *futwa* of the law officer declared, that although the defence of the prisoner was a faulty one, inasmuch as he had not proved that the alleged vender of the goods was ever in the city of Dacca, and

although it might therefore be suspected, that he had obtained them by illegal means, still there was no sufficient evidence that the goods in court were part of the property actually stolen; for no one had sworn to their identity, excepting persons who had suffered in the robbery, and were consequently interested in the prisoner's conviction; and the reasons which they had given for their recognition deprived it of much credit: besides which, three witnesses had agreed in stating the prisoner to have bought the goods. On which several grounds, the prisoner was declared to be acquitted.

The Judge of Circuit, differing in opinion from his law officer, referred the case to the Nizamut Adawlut. "The stolen property," he stated, in the letter which accompanied his reference, "appears to me to be fully identified by the testimony of the witnesses. The whole of these cannot positively swear to the identical articles, as the nature of them does not admit of very particular distinction. If, however, the proof on the part of the prosecution is weak, (which I do not think it,) the account given by the prisoner of the manner in which he became possessed of the property is altogether improbable and incredible. He falls in with a merchant, a Feringee, named Mr. Thomas, at the house of McGherity, a poor Irishman, long resident in Dacca: he purchases the goods from this merchant, and as evidence to the transaction, calls in two or three persons who were quite strangers to him: in the presence of them, he receives a bundle from the said Thomas, containing the goods, and pays him Rs. 165; but neither the goods nor the money were shewn to these witnesses. No such person as Thomas has ever been seen or heard of in the city of Dacca. McGherity died six months ago; his wife denies any knowledge of the said Thomas: and although the prisoner's witnesses agree with him in his story about the receipt of the goods, and payment of the money, I cannot bring myself to believe a word of it." The *futwa* of the law officers of the Nizamut Adawlut, was the same in substance with that given in the court below, and acquitted the prisoner. The following is a copy of the orders of the court on the trial, (present John Fendall and S. T. Goad.) The court concurring with their law officers, and being of opinion that the evidence is not sufficient for the conviction of the prisoner, acquit him, and order his immediate release.

The court remark, that the 3d Judge on this trial has departed from the course of proceeding laid down by Regulation IX. of 1793, in having, after taking the prisoner's defence, put him through an examination, with a view of drawing from him answers which might have a tendency to convict him: and out of the answers so furnished by the prisoner, the 3d Judge sought, by the evidence of McGherity's wife, to establish facts unfavourable to the prisoner.

The court remark, that it is the duty of a Judge to shew the utmost leniency towards the prisoner; and as the course which the third Judge adopted on this occasion is adverse to that principle, the court desire that the 3d Judge will abstain from it in future, and adhere rigidly to the mode of proceeding laid down in the Regulation above quoted.

1820.

Feb. 11th. Babooa's case.

BUKHSH,
against
BABOOA.
Charge—Murder.

A trial for murder, charged to have taken place in the Lukhnow territory, quashed by the N. A.; the permission of Government not having been obtained to bring the prisoner to trial.

This prisoner was brought to trial at the 2d sessions of 1819, for Azimgurh. He was arraigned for the murder of Gheesai, the prosecutor's father, which was alledged to have been perpetrated in the following manner. The deceased had gone to the village of Rusoolpore, two coss from his home, to purchase a buffalo. In this village the prisoner resided; and from him the purchase was made, for 3 Rs. 12 ans. The deceased requested him to take the animal to his house; to which the prisoner assented, and they set off together. In a jungle about midway, (*within the limits of the Nuwab Wuzeer's territory,*) the prisoner fell upon the deceased with a *lathee*, with which he killed him.

The prisoner was convicted by the *futwa* of the law officer of the Court of Circuit of wilful murder, in which *futwa* the Judge of Circuit expressed his entire concurrence. The *futwa* of the law officers of the Nizamut Adawlut corresponded in substance with that of the court below; but the trial was quashed by the Chief and 4th Judges of the Nizamut Adawlut, who recorded the following order.

"The prisoner Babooa, son of Munsa, charged with the murder of Gheesai, has been convicted by the *futwa* of two of the law officers of the Nizamut Adawlut of wilful murder, and declared liable to suffer death by *Kissas*: but it appearing from the proceedings on the trial, that the crime was committed within the limits of the territories of the Nuwab Vizier, and it not appearing from the proceedings of the Magistrate that the previous authority of the Governor General in Council was obtained for bringing the prisoner to trial, as required by Regulation V. of 1809, without which the trial of the prisoner before the Court of Circuit was illegal, the Court judge proper to quash the proceedings on the trial, and direct that the Court of Circuit will instruct the Magistrate to report the case immediately to the Governor General in Council, as directed by Clause 2, Section II. of the above Regulation.

1820.

Feb. 16th. Case of Kunhia Singh and others.

ANUNDEE SINGH,
against
KUNHIA SINGH and 38 Others.
Charge—Dacoitee.

A warrant of release should always fol-

The prisoners in this case, (No. 19 of the calendar for the 2d sessions of 1819, zillah Ramgurh,) had all been tried, and convicted of an offence similar to that with which they were charged in No. 18 of the same calendar.

1820.

Case of KUNHIA SINGH and others.

low an acquittal, even though the prisoner may have been previously convicted on another charge.

The circumstances of the case for which they were brought to trial in the present instance, were briefly as follow:—On the night of Friday the 13th of August, 1819, a large gang of Dacoits, with lighted torches and weapons in their hands, broke into the prosecutor's house, and plundered it of property to the amount of about three hundred rupees. The prosecutor and his family made their escape by a private way; but a person named Girdharee, who remained in the house, was beaten. The prosecutor assembled a number of persons; but they were afraid to attempt the seizure of the robbers, who soon after went off with what they had got. None of the prisoners were recognized at the time.

The law officer of the Court of Circuit declared the prisoner Kunhia convicted on violent presumption of Dacoitee, and liable to discretionary punishment: that there was only slight suspicion against Ulee Singh; and that the rest of the prisoners should be acquitted. The Judge of Circuit, in referring the trial, recorded his opinion in the following terms. "I am of opinion, that there is no doubt of the guilt of Kunhia, as the ornaments which he offered to sale to Bishnee are proved to have been plundered from the prosecutor, who has produced before this court the rest of the set to which they belong, and which, on comparison, are alike. I have sentenced him accordingly. As there is strong reason to believe that the moofussil confession of Mangur was extorted, I concur in his acquittal, together with that of Gheena, Chitroo, Choolun, and Bishnee, against whom there is no proof, and have issued a warrant for their release. Alumbee Singh has been detained for the reasons stated in my letter which accompanied the case in No. 18 of the calendar. With respect to the rest of the prisoners who have been already convicted in the case to which I have just alluded, *I agree with the law officer, that there is not sufficient proof to convict them of this Dacoitee*; but I think it very probable that they were concerned in both."

The *futwa* of two of the law officers of the N. A. convicted the prisoner Kunhia, on strong circumstantial evidence, of having been an accomplice in the Dacoitee with which he was charged, and declared him liable to punishment by *Acoobut*. The court (present W. Leycester, Chief Judge) fully concurred in this finding, and confirmed the sentence passed on the said prisoner by the Judge of Circuit, namely thirty-nine stripes of the korah, and imprisonment in transportation for life. But it appearing that the Judge of Circuit, although he had distinctly recorded his concurrence in the acquitting *futwa* of his law officer, had not issued any warrant of release with respect to the other prisoners in this case, on the ground of their detention being necessary, to suffer the sentence awarded on conviction of another case, the Court of N. A. expressed their opinion, that this course of proceeding was irregular, and issued the following order. "The court observe, that all the remaining prisoners who were put on their trial with Kunhia Singh, have been already acquitted by the circuit Judge from the charge: but with regard to several, in consequence of their conviction in another case, that a warrant of acquittal has not been issued. The court deem it necessary to direct, that a

1820.

Case of KUNHIA SINGH and others.

regular warrant of acquittal be issued in this case, which cannot be understood to affect any other case, as being a measure due under the Regulations, and necessary to preserve regularity in the Magistrate's office.

1820.

Feb. 17th.

ZORA's case.

AJOODHEA PERSHAD,
against
ZORA.

Charge—MURDER.

Prisoner convicted of murdering a boy for the sake of his ornaments; but appearing to be insane at the time of his trial, he was ordered into confinement, with instructions that, on the recovery of his reason, the evidence taken against him should be explained to him, his defence taken, and the law officers called on for a second *futwa*.

THE prisoner was charged with the murder of the prosecutor's son, Buldeo, by strangling him, and afterwards throwing the body into a tank.

The prosecutor, being sworn, made the following statement. On the 8th of the preceding Mohurrum, his son, the deceased, (who was 12 years of age,) accompanied him from home, to see the processions &c. of the Mussulmans which take place at that time. They went together to the shop of one Cheda, a seller of sweetmeats; and the prisoner standing there, the deceased entered into conversation with him, during which the prosecutor proceeded onwards alone. Since that time, he never saw his son alive. When he first missed him, he made search in the neighbourhood; but not finding him, applied at the Thana for assistance. The search was renewed and extended, but without effect. The following morning he communicated to the Thanadar his suspicions against the prisoner, and his reason for them, namely, his having left him in conversation with his son the previous day. In consequence of this application, the Thanadar apprehended the prisoner. At first he denied the crime, but subsequently confessed he had murdered the boy, and thrown the body into a tank. Accordingly, guided by the prisoner, they proceeded to the tank, and discovered the body of the deceased. A gold necklace and a coral one were on the body; but two pair of silver *kurrahs* and a pair of pearl earrings were missing. The body bore no marks of violence, except about the neck, where the *doputta* of the deceased was tied sufficiently tight to cause strangulation; the prisoner confessing he had murdered the boy in that manner. The *kurrahs* were restored by the prisoner at the Thana; but he denied any knowledge of the earrings. The witnesses brought forward fully substantiated the above statement, and deposed positively to his sanity up to the time of the crime being committed. The native Doctor of the jail thought him insane; and both he and the Darogha bore testimony to the strangeness of his actions since he had been placed in confinement.

The surgeon in charge of the station of Moradabad deposed to various symptoms of derangement which manifested themselves in the prisoner's actions, such as a great love of solitude, indifference to surrounding objects, &c. It was the decided opinion of the surgeon that he was insane. It was proved that he never enquired for food,

1820.

ZORA'S case.

would eat when it was presented to him, but appeared indifferent as to quantity or quality, and that he would eat ashes among other filth from the ground. On trial, the prisoner remained totally mute. The law officers of the Court of Circuit gave a *futwa*, finding him guilty of murder: and as no evidence went to prove his insanity previous to the crime, they considered him liable to capital punishment by *Kissas*.

The Judge of Circuit, in his letter referring the case to the Nizamut Adawlut, stated that the prisoner had remained mute since his commitment, and there was a vacancy in his eye denoting idiotism; but he considered the prisoner deserving of death, as no doubt existed in his, the Judge's mind, of the prisoner's sanity when the crime was committed. The *futwa* of the law officers of the Nizamut Adawlut convicted the prisoner of murder and theft, but considered *Kissas* barred by the insanity of the prisoner, who was liable to *Deeut*, and to be confined till he recovered.

The Court of Nizamut Adawlut, (present W. Leycester and S. T. Goad,) having duly considered the proceedings held on this trial, passed the following order.

"The court observe, that it is shewn on this trial, particularly by the evidence of Mr. Assistant Surgeon Hall, that the prisoner was at the time of his trial in a state of mental derangement: the court, therefore, deem it proper to direct that Zora be sent to, and confined in the insane hospital at Bareilly; and that the proceedings held before the Judge of Circuit and the Magistrate of Moradabad be transmitted through the Court of Circuit to the Magistrate at Bareilly, with instructions, that, in the event of the prisoner's full recovery of his intellects, he explain to him the evidence that has been taken against him on this trial, and call upon him to state, if he wish, any witnesses to be summoned in his favour; and if he have any witnesses, the Magistrate will cause their attendance before the Court of Circuit at the ensuing sessions.

"The Judge of Circuit, of course, in the presence of his law officer, will again explain to the prisoner all that has passed on the above proceedings, and will then call upon him for his defence, and examine any witnesses he may have named in his favour. A second *futwa* will then be taken, and the Judge of Circuit will record his assent or dissent therefrom, and submit the proceedings, with the usual report, to this court."

1820.

Feb. 28th. Case of SUFDER KHAN and others.

It appearing from the evidence of some of the witnesses, in the course of a trial before the court of circuit, that they were concerned in the act with which the prisoner stood charged, the court directed the circuit Judge to consider the proceedings of the trial held by him, and on which his reference to the court was founded, as incomplete: and ordered a further investigation of the case at the ensuing sessions, the charge being drawn up as well against these witnesses, as against the prisoners first indicted, to whom leave was to be given to make a supplemen-

RAM PODARUTH, son of the Subaee Mull,

against

SUFDER KHAN, Mokhtar of Ranee Puhlad Koonwur, DHUNUDHOOJ SING, and ABDHOOT SING.

Charge—MURDER.

FOR the better understanding of the circumstances of this case, it appears desirable to preface the recital of them by a detail of the relative situations of the several parties concerned, previous to the decease of the individual for whose murder the prisoners stood arraigned.

Rajah Puhlwan Singh died about ten years ago, leaving a widow (Ranee Puhlad Koonwur) and two sons. The estate was, after his death, held and enjoyed by the Ranee, to whom was left the future uncontrolled disposal of it. The younger of the two sons did not long survive his father. The elder married, and, soon after, also died without issue, leaving a widow, Hunwunt Koonwur, who continued to reside with the Ranee, at a place called Roodurpoor, situated in the family zemindaree of Sutassee. For the home management of this estate, the prisoner Sufdur Khan had, for many years, been employed as Mokhtar. The other two prisoners were distantly connected with the Ranee; and had come on a visit to her, in consequence of an illness with which she had been attacked, of so serious a nature as to induce considerable anxiety relative to the disposition of her property. The deceased, (Sheosuhaee Mull,) was at this time her Mokhtar at the Gorukhpoor court and the Collector's office; and it had long been understood, that a criminal connection subsisted between him and Hunwunt Koonwur, in whose favour a will had been made by the Ranee, of which he had the keeping, and which, in consequence of the connection just mentioned, gave him every prospect of the future exclusive possession of what hitherto had been shared by many, the prisoners among the rest. A *Punchayut* was held by the latter, and several others more or less interested in what was passing; and the result was a proposition, urgently made to the Ranee, to annul the will in favour of Hunwunt Koonwur, whose attachment to the deceased was represented as disgraceful to them all, and to execute another, declaring the son of Abdhoot Singh, (a lad about 12 years old,) her successor in the Raj. They so far prevailed as to induce a recal of the document possessed by Sheosuhaee Mull, who was likewise dismissed from his appointment, though still encouraged and supported by Hunwunt Koonwur; but the final determination regarding Abdhoot's son was suspended. The Ranee would consider, she said, and decide by and by. Thus matters stood, when one night, fifteen persons were collected, by order of one Purahoo, and taken to a deserted mud fort in Roodurpoor, in the well of which they were told was a corpse, which they were to take thence and throw into the neighbouring nullah. Two of the party descended; the body was raised; and disposed of accordingly. Those who had assisted received five rupees for their trouble, with injunctions to secrecy, and then dispersed. This body was Sheosuhaee Mull's; and the people thus engaged in its removal appeared all as witnesses at the trial.

1820.

Case of SUFDER KHAN and others.

The deceased did not seem to have had any jewels or other valuables about his person when the act was perpetrated, and its commission, therefore, could not be ascribed with much probability to motives of ordinary cupidity; nor was there any proof of the existence of a serious quarrel between him and any other persons whomsoever.

On a consideration of these circumstances, the *futwa* of the law officer of the Court of Circuit, convicted the prisoners of being privy to the murder with which they stood charged.

"It is clear enough," observed the judge of Circuit, in the letter which accompanied his reference of the case to the Nizamut Adawlut, "that a riddance of the deceased must have been most acceptable to the prisoners; and, with reference to the *Punchayut* and its consequences, it is impossible to suppress a suspicion of their having been concerned in the destruction of the object that stood so directly in the way of their interests; but in this (and there is nothing further) there is not, by any means, I conceive, sufficient to *convict* them, however strong the mental presumption may be that they are guilty. *I think* they *are* so, but I do not think they have been *proved* so; and upon this opinion found my dissent from the *futwa*, which declares them liable to punishment as accessaries.

"But, be this decided as it may, there cannot be a doubt of direct participation on the part of Purahoo and his fifteen followers; and I have directed the Magistrate to detain the whole of them in custody till the orders of the Nizamut Adawlut shall be received regarding them. They should all, in my opinion, stand their trial at the ensuing sessions. The intermediate confinement at least they have already fairly earned; and if not ultimately convicted, (which they cannot well escape being, as privy to the fact,) it is, at any rate, not too much to expect a result from their commitment, which may serve to throw light on the transaction, if not to free it altogether from the obscurity which at present attaches to it.

"The Ranee's treasurer, his son, and a *Purohit*, who have acknowledged their acquaintance with, and concealment of the part performed by Purahoo, have furnished security for their attendance, should the Court deem any thing further respecting them expedient. Steps too, should be taken to insure the future attendance of the prisoners, if acquitted by the superior court of the present charge; but they are not at my disposal, standing convicted as they do by the *futwa*.

"Lest there be any demur upon the propriety of bringing Purahoo's party to trial, for what has been elicited from themselves, in the course of an examination upon oath, it may be as well to advert to the perjury which a comparison of the different depositions taken before me and before the Magistrate, will exhibit against them: and this, it should be remarked, while it deprives them of all title to lenity, does not, in any one instance, affect the point upon which their indictment has been recommended,—their confession as to the part taken by them in the removal from the well, and subsequent disposal of the body of the deceased, a confession repeated by them in both courts, and in which they have all agreed."

On this reference the Nizamut Adawlut (present Messrs. Leycester and Goad,) issued the following orders.

tary defence: and if no evidence could be found against these fresh prisoners, except that furnished by their own depositions upon oath, some of the least guilty among them were to be offered a free pardon, on the condition of their disclosing all the circumstances of the case which might have come within their knowledge.

1820.

Case of SUFDER KHAN and others.

"Prior to passing sentence on the prisoners in this trial, the court observe, that under the suggestion of the Circuit Judge, in which the court fully concur, the Purahoo and his party be brought to trial for the part they have taken in this case, (which at present seems to implicate them at least as accessaries after the fact,) it is very possible that some circumstances may be elicited which may tend to strengthen the suspicion existing against the present prisoners, or perhaps to implicate them even on stronger grounds: and it is therefore deemed desirable to consider the record transmitted by Mr. Rattray as an incomplete trial, and direct that Purahoo, and all others concerned with him in removing the body of the deceased Sheo Suhaee Mull from a well, and throwing it into a nulla, be brought to trial at the ensuing sessions, on the charge of having been concerned in the murder of Sheo Suhaee Mull, and that their trial be held as a component part of the trial of the present prisoners, who will be kept in attendance during the whole, with liberty to cross-examine any witnesses whose evidence may be taken, and to offer any thing further in their defence, if they wish it. The law officer who may be present at the trial, will also consider and declare in his *futwa* the crime, if any, which he may consider to attach to the prisoners, under the additional evidence which may be taken.

"The court, however, qualify the preceding order by directing, if proof cannot be obtained of the participation of Purahoo and the others as above described, independent of their own depositions on oath, that two or three of those persons who may be deemed the least guilty shall be selected, and offered a free pardon, on condition of their giving evidence on the trial, and disclosing all the circumstances of the case which may have come to their knowledge; and the court will be ready to confirm the offer, on receiving the recommendation of the Court of Circuit or of the Magistrate to that effect.

"Considering the very heinous nature of the case, the court sanction the offer, by proclamation, of a reward of 500 Rupees to any one who may furnish information which shall tend to the conviction of the principal or of any of the accessaries before the fact in the murder of Sheo Suhaee Mull.

"The Court further observe, that Mr. Rattray was at liberty to have committed any of the witnesses he considered fit to be put on their trial under a charge of perjury, which he is not at all precluded from doing, in consequence of this reference. The measure, however, must rest with Mr. Rattray." The case was sent back accordingly.

MUSSUMMAUT JUWAHIR,
against
KULLOOA, Cultivator.

1820.
Feb. 29th.
KULLOOA's case.

Charge—HIGHWAY ROBBERY.

The evidence of a witness on a trial varying from that which, according to the Thana report, he was there stated to have given; held that such variation is not sufficient to invalidate it.

THE prisoner stood charged before the Court of Circuit for the division of Bareilly, with having, in conjunction with two other men, robbed the prosecutrix, on one of the high-roads in the district of Moradabad.

It appeared that the defendant had been long notorious, as being one of that daring description of robbers denominated *Quzzaks*, whose depredations are usually committed in the face of day, and who, relying on their expertness in eluding the pursuit of justice, rarely take the precaution to disguise their persons, or to conceal their mode of life, and in consequence are more generally known, and more frequently recognized, than any other class of public offenders.

Though the robbery for which the prisoner was indicted occurred on the 29th of March 1814, and he was at the time recognized as one of the party concerned in its perpetration, he managed to frustrate the measures adopted by the magistrate for his apprehension, till the 8th of July 1819, when he was seized with some difficulty by three men belonging to the Police establishment.

The prosecutrix, it appeared, was travelling in a covered cart from the town of Umrooah, where she resided, for the purpose of being present at a fair, which was about to be held in the village of Casheepoor. On the second day of her journey, she was stopt at about 10 or 11 o'clock A. M. in the vicinity of a place called Puthurkhera, by three armed men, mounted on horses, who robbed her of some clothes and other articles of property, valued at sixty rupees. She was too much agitated, she stated in her deposition, to recognize any one of the robbers; but she heard her servant, who was driving the cart, address the prisoner by his name. The prisoner pleaded not guilty.

Two witnesses, Khoda Bukhsh and Dowlut Khan, servants of the prosecutrix, who attended her on her journey to Casheepoor, swore with great confidence to the person of the defendant; but there was no other direct or collateral proof of his guilt.

On the credit attached by him to the statements of these two persons, and from a suspicion of the motives which led to the prisoner's sudden disappearance from the district, the law officer of the Court of Circuit convicted the prisoner, and declared him liable to discretionary punishment by *Arcoolut*. The circuit Judge concurred in the *futwa* thus given, from a consideration of the hour at which the robbery was committed, of the prisoner's being previously known to the two deponents, who had full time to recognize his person, and of there being no ground for supposing them to have any selfish object in effecting his conviction.

The law officers of the Nizamut Adawlut declared the prisoner entitled to his release, on the ground of the witness Khoda Buksh having stated in his deposition before the Darogah, not that he *knew*, but

1820. KULLOOA'S case.

only that he *conjectured*, Kulloo a to be the person by whom his mistress was robbed; while before the Court of Circuit, he swore positively to having recognized him at the time of that robbery. They stated moreover, in their *futwa*, that the fact of Dowlut Khan's having stated himself to have seen Kulloo a once only, and that seven years before the aforesaid time, when he was yet a boy of 12 or 13 years old, went against his credibility, and that there was reason to think, that the prisoner was on his journey to and from, or residing at Lahore for two years previous, and five subsequent to the month in which the violence was committed.

The Court of Nizamut Adawlut, (present W. Leycester and S. T. Goad,) were not satisfied with this *futwa*, and were of opinion, that the guilt laid to the prisoner's charge was fully established against him by the evidence of the prosecutrix and the testimony of the witnesses Khoda Buksh and Dowlut Khan, which corresponded very accurately with their depositions on a former trial against other prisoners who were acquitted in 1815, and when they could have no probable object in making up a story to convict Kulloo a. They allowed little, if any weight to the discrepancy noticed in the *futwa* of the law officers regarding the deposition of Khoda Buksh, which, in point of fact, only arose from the Thana report, and not from his own testimony; and considering that the defence of an *alibi* for seven years at Lahore set up by the prisoner, was no further proved than by the testimony of two witnesses, who deposed that the prisoner told them seven years ago, that he was going to Lahore, and that they saw him after a lapse of seven years from that time, when he informed them that he had just returned from Lahore, the court declared him to be duly convicted, and sentenced him to imprisonment in transportation for life.

1820. March 4th. Case of FUKEERA and Others.

GOVERNMENT, *against* FUKEERA, SHUBRATEE, and NURKOO.

Charge—BURYING ALIVE MUSSUMMAT AUSTOORNEE.

Three Moosulmauns convicted of aiding in the suicide of a leprous woman, who buried herself with the corpse of her husband, (also a leper,)

At the second sessions of 1819, for zillah Gorukhpore, these prisoners were brought to trial. The case, as stated in the letter of reference by the circuit Judge, was briefly as follows.

The husband of the woman Austoornee, was nephew to the prisoner Fukeera. Both husband and wife were grievously affected with the leprosy: the fingers of both had dropt off: and in this miserable state the former died, and was carried to the grave by the latter, who threw herself into it, and, by her own desire, was buried with him by the three prisoners.

Fukeera and Nurkoo are feeble wretched looking objects, aged about 50. Shubratee is a hale Moosulmaun Fukeer, about 30, and would appear to be the spiritual guide of the village in which this abomina-

1820.
Case of FUKEERA and Others.

tion occurred. The *futwa* convicts the three of burying Austoornee alive at her own request; and I concur in the judgment. It may be proper to observe, that no benefit could possibly accrue to the survivors from the destruction of the woman: she died in the utmost poverty. The Fukeer received the sheet with which the corpse of the husband had been covered; but this was his perquisite at any rate, and needed not the second death to secure it to him.

sentenced to 6 months imprisonment.

The final order of the Nizamut Adawlut (present S. T. Goad, 4th Judge,) was as follows.

The prisoners Fukeera, Shubratee, and Nurkoo, have been convicted by the *futwa* of two of the law officers of the Nizamut Adawlut, on strong presumption of burying Austoornee, (a confirmed leper,) alive at her own request, in the same grave with her husband, and declared liable to discretionary punishment by *Tazeer*. The court, concurring in such *futwa*, sentence the prisoners to six months imprisonment from this date.

1820.
March 8th.
BOODUN KUHAR'S case.

SURBANUND,
against
BOODUN KUHAR.

Charge—MURDER.

Case of a slave convicted of administering *Dukra* to his master, in consequence of which he died: sentenced to sufferdeath.

THIS trial came on at the 2d Sessions of 1819, for Zillah Behar. The deceased Bhyrodutt was Mohurrir of the Thana of Urwul. The prisoner was his servant, who on the 6th of Assin, corresponding with the 10th of Sept. 1819, was ordered by his master to kill a kid, and dress it for his dinner. At night, after having finished his business, he sat down to eat, with the prosecutor Surbanund, a relation of his. The prisoner gave each a portion of the flesh he had dressed on separate plates. After the deceased had eaten some of it, he remarked to Surbanund that it had a bitter taste, and at last desired the prisoner to give him some of what remained in the cooking vessel, which having tasted, he said it was good. The deceased having finished eating, lay down, but soon complained of being unwell, and sent for one of the Burkundazes, on whose arrival he said that he suspected his servant had poisoned him. Vomiting medicines were administered by a native doctor, but without effect, for Bhyrodutt died in a few hours; and a cat, which had eaten some of the flesh left by the deceased, died also before the next morning. Just before Bhyrodutt's death, the prisoner confessed having mixed the poison called *Dukra* with the first plate of flesh, which he had given him, and this he confirmed before the Magistrate. It appeared that the prisoner had taken 45 rupees, which had been intrusted to his charge by the deceased, to repay which he sold himself to the deceased as a slave, and a deed to this effect was drawn up, and signed and witnessed before the Kazee of the Purgunna. It is probable that this was the reason of his administering the poison to his master.

1820.

BOODUN KUHAR'S case.

The law officer of the Court of Circuit convicted the prisoner of mixing poison with the food of the deceased, and thereby causing his death, and declared him liable to discretionary punishment by *Acoobut*; but that *Kissas* and *Deeut* were barred. The Judge of Circuit declared his opinion, that under all the circumstances of the case, it was clearly proved, that the prisoner administered the poison called *Dukra* to the deceased, with the intention of destroying him; and that, from the way in which he was taken ill immediately after eating, and the after symptoms, as well as from the cat having also died, there could be no doubt that it caused his death.

He remarked also, that the *Dukra*, which is brought from the Nepaul hills, is well known to the natives in general to be a most deadly poison, whether taken into the stomach or introduced into the circulation by a wound, and is commonly used to poison arrows for the destruction of wild beasts. The *futwa* of the law officers of the Nizamut Adawlut, also convicting the prisoner, he was sentenced by that Court, (present W. Leycester and W. E. Rees,) to suffer death.

1820.

March 9th.

DUMREE DOSADH'S case.

KOONWUR CHUND,
against
DUMREE DOSADH.

Charge—MURDER.

A boy aged fifteen convicted of murdering another boy for the sake of his ornaments, sentenced to ten years imprisonment.

THE prisoner was tried at the 2d Sessions of 1819, for Zillah Behar.

It appeared in evidence, that on the 17th of Kartick, or 20th October of the above year, Duljeet, a boy of 9 years of age, who lived with his uncle the prosecutor, had gone out in the morning to amuse himself, and was missed about noon. His uncle and several other persons went in search of him, without success; but the next day in the afternoon, the body of Duljeet was found in a field of *jawar*, a short distance south of the village, with the throat cut, and the ornaments he usually wore missing. Information was given to the Police officers, and an inquest on the body was held by the Mohurrir of the Thana.

Some days after, the prisoner Dumree, who is a boy of only fifteen years of age, was apprehended on the information of a woman named Fitree, who said she had seen the prisoner on the day the boy was missed, washing a knife and cloth; and that he had just before come out of the field in which the body was afterwards found. She did not, however, at the time suspect him, as she had not heard of the murder.

On the prisoner being taken into custody and carried to the Thana, he at first denied the charge; but on his house being searched, and the four gold earrings found, he was again questioned, when he confessed that he and a person named Paimnarain had committed the murder; that he had held the deceased while Paimnarain cut his throat, and that Paimnarain had taken the two silver kurrahs, and he had got the four earrings, which several witnesses swore belonged to the

1820.

DUMREE DOSADH'S case.

deceased. It also appeared that Duljeet was seen with the prisoner Dumree, a short time before he was missed. When Paimnarain was apprehended, he denied the charge; and as nothing was found in his house when searched, and as there was no other evidence against him except the confession of Dumree, he was discharged by the Magistrate.

The prisoner, when brought before the Magistrate, at first said that he had merely seen Paimnarain cutting Duljeet's throat, and was told by him to conceal his knowledge of it; but, on being further questioned, admitted that what he had stated before the Thanadar was correct.

The law officer of the Patna Court of Circuit found the prisoner guilty of being concerned in the murder, and assisting therein, and declared him liable to punishment by *Acoobut*. The Judge of Circuit expressed his opinion, that there was strong reason to believe that the prisoner was concerned in the murder, and that he was himself the perpetrator of it. It was, however, he observed, possible that the prisoner only saw the murder committed, and was induced by fear, and a part of the ornaments, to conceal his knowledge of it; and the judge therefore recommended, that in consequence of this, as well as of the extreme youth of the prisoner, the superior Court would consider him an object of mercy.

The *futwa* of two of the law officers of this court convicted the prisoner on strong presumption of the murder of Duljeet, and declared him liable to punishment by *Seasut*, extending to death, and the court fully agreed therein; but taking into consideration the grounds on which the officiating Judge of Circuit recommended the prisoner to mercy, sentenced him to imprisonment and hard labour for ten years.

1820.

April 6th. Case of NARAIN and others.

GOVERNMENT,
against
NARAIN and Others.

Charge—DACOITY, and RECEIVING PLUNDERED PROPERTY.

A prisoner found guilty by the *futwa* of the law officers of privity to a Dacoity on his own confession in the Mofussil and before the magistrate;

THE Prisoner Narain was tried with many others at the second Sessions of 1819, for Zillah Behar.

The Vakeel of Government, in opening the proceedings, stated, that on the preceding 31st of May, a Dacoity had been committed in the village of Kurrungunge, by a party consisting of twenty or thirty men, armed with swords, spears, and clubs, who succeeded in forcibly entering the houses of nine inhabitants of the said village, and plundered eight of them of certain articles, chiefly consisting of cloth and wearing apparel; and that some of the persons so plundered would be produced to give evidence identifying the prisoners with the ringleaders of the party of Dacoits, particularly a prisoner named Bundhoo.

1820.

Case of NARAIN and others.

but released by the Nizamut Adawlut, the persons whom he named as his accomplices having been acquitted of the charge of Dacoity.

The chief witnesses for the prosecution were the nine persons robbed. The first called stated, that being alarmed at the approach of a party of Dacoits, he evacuated his house, and saw the prisoner Bundhoo and another enter it with arms and a light. The witness shortly after returned to his house, and found these two persons plundering it, on which they proceeded to maltreat him, and took from his ears a pair of earrings. The whole property taken from him amounted in value to 26 Rupees. The witness was present, when the houses of certain suspected persons were searched. In the house of Narain they found the earrings and a piece of cloth, to which he swore positively. This witness admitted, that before the magistrate his statement had differed in many material points from what he now gave. He allowed that he had then denied knowledge of any of the robbers, and attributed this to the fear he felt lest one of the prisoners, named Bundhoo, should take serious revenge on him if he mentioned his name. Another witness, who had been robbed of certain articles, swore that the property found in the prisoner Mojee Roy's house belonged to him, and was the identical property of which he had been robbed. Six other witnesses confirmed the account of the robbery, but could not identify any of the prisoners, except one, who swore positively to seven of them. It appeared, however, that the statement of this witness before the Judge of Circuit differed so materially from that which he gave before the Magistrate, that little or no credit could be attached to it. The same observation applied to the evidence of those who swore to the property discovered in the several prisoners houses.

The prisoners, in their defence, severally denied the charge preferred against them, and brought witnesses to prove an *alibi*, as also to character. Mojee Roy produced witnesses to prove, that the cloth found in his house was his own property. The prisoner Narain, who had before the Magistrate confessed to a privity in the crime, and stated that the Dacoits before and after the robbery had assembled in his house, dividing the property there, in his defence declared that he was compelled to make this confession by the ill treatment he received from the Darogah and his followers.

The law officer of the Court of Circuit convicted Narain on his own confession of *Thangeeut*, or receiving stolen property knowingly, and declared him liable to discretionary punishment by *Tuzeer*; and acquitted the rest, on the ground of the contradictory nature of the evidence which had been given against them before the Magistrate, and before the Court of Circuit. The Judge of Circuit did not concur in the conviction of Narain, as he did not believe his confession, (he, Narain, having when first apprehended, denied all knowledge of the Dacoity,) and was inclined to think, that in the hope of release, he was afterwards induced to say what he did before the Thanadar, and was afraid to retract before the Magistrate. He concurred in the acquittal of the other prisoners.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of having been privy to a Dacoity. The Court of Nizamut Adawlut, (present W. Leycester and S. T. Goad,)

observing that the prisoner confessed his privity to a Dacoity, committed by Bundhoo and others, for which they had been tried and acquitted, did not consider his guilt legally established, and directed his immediate release.

1820.
Case of NARAIN and others.

KUNHYA LAL,
against
BALGOVIND.

1820.
May 8th.
BALGOVIND'S case.

Charge—ROBBERY, with PERSONAL OUTRAGE.

THE prisoner was tried at the Patna city Sessions for March 1820, being charged with assaulting the prosecutor with intent to murder him; and robbing him of his ornaments, valued about eight rupees.

It appeared in evidence, that as the prosecutor, aged about 13 years, was returning home from school, on Friday evening the 25th of February 1820, or 26th Phaugon 1227, F. S. he met the prisoner on the river side, who seized him by the throat, threw him down, and robbed him of his ornaments. There were no witnesses to the fact; but several persons deposed to the apprehension of the prisoner, and the state in which the prosecutor was found. The prisoner also confessed that he robbed the boy of his ornaments, but that another person, who was with him at the time, had carried them away, and he moreover offered to restore the value of them.

To constitute the crime of robbery by open violence, as defined in the Regulations, it is requisite that persons should go forth, if unarmed, in a gang.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner of forcibly taking the prosecutor's ornaments; and added, that it was probable, if people had not come to the boy's assistance, he would have been murdered.

The Circuit Judge, in submitting the reference, stated that he concurred in the *futwa*; but that as the offence appeared to him to amount to robbery by open violence, it became necessary to submit the trial for the final orders of the superior Court. At the same time, he recommended mitigation of the punishment prescribed for that offence, the prosecutor not having sustained any material injury.

On the 8th of May 1820, the following order was passed on the trial by the court of Nizamut Adawlut, (present Messrs. Leycester and Goad.)

The *futwa* of one of the law officers of the Nizamut Adawlut convicts the prisoner of robbery, attended with personal outrage; and declares him liable to discretionary punishment by *Accoobut*, in which the Court fully agree.

The Court observe, that the 3d Judge states, in his referring letter, that the offence appears to him to amount to robbery by open violence, intimating of course that he is liable to the punishment prescribed for that description of crime, and recommends mitigation of the prescribed punishment. But to constitute the crime of robbery by open violence, as defined in the Regulations, it is requisite that persons

1820.
BALGOVIND'S case.

should go forth, if unarmed, in a gang; whereas the prisoner is not charged as having been accompanied by associates, or with having been armed. The Court, therefore, consider that it was competent to the third Judge to have passed a final sentence in this case, under the 5th clause of Section 8, Regulation XVII. of 1817, and at all events, that it was necessary for him to have passed the sentence to which he considered the prisoner liable under the Regulations, which has not been done. On a consideration of all the circumstances of the case, the Court sentence the prisoner to receive 25 stripes with a Korah, and to imprisonment and hard labour for seven years.

1820.
May 18th.
MYYA and BHOOWUN PASBAN'S case.

PHOOLEIL and PEERBUKSH,
against
MYYA PASBAN and BHOOWUN PASBAN.

Charge—HIGHWAY ROBBERY.

Sentence, on conviction of highway robbery, mitigated; the prisoners not appearing to be old offenders, and being in a state of ebriety at the time.

THESE prisoners were brought to trial on the charge above specified, at the 2d Sessions of 1819 for Zillah Sarun.

It appeared that the prosecutors and two other persons went to a bazar to purchase cotton, on the 6th of Bysack, or 4th of April last. On their way home in the evening, they stopped at a shop where spirits were sold, and where five men were drinking, amongst the rest the two prisoners, who asked the prosecutor Phooleil for some pice to get drink, which, on being refused, they separated.

Soon after the prosecutors and those with them also left the shop, to proceed on their journey. When they came near a nullah, they were attacked by five men, and severely beaten. The robbers effected their escape with some of the cotton, before two persons who were in a field close by could come to the prosecutors' assistance. The prisoners were recognized by both the prosecutors, and the two persons with them, who it appears immediately mentioned their names to those who came to their assistance.

The *futwa* of the law officer of the Court of Circuit convicted the prisoners of having attacked and beaten the prosecutors on the high road, and carried off some of their cotton; and declared them liable to discretionary punishment.

In referring the case, the Judge of Circuit stated, that he saw no reason to object to the *futwa*, as he was of opinion there could be little doubt but that the prisoners attacked the prosecutors on the high road, and beat them severely. He therefore passed the prescribed sentence; but at the same time recommended that the punishment awarded against them should be mitigated, as they did not appear to be old offenders, and as from the circumstance of their having been drinking just before they committed the act, they were probably in a state of intoxication, and not exactly aware of what they had done, a circumstance which was rendered the more probable by their having

1820.
MYYA and BHOOWUR PASHAK'S case.

come of their own accord to the Thana, when they heard that a charge had been preferred against them.

After an attentive consideration of the whole of the proceedings submitted with the case, the Court of Nizamut Adawlut, (present W. Leycester,) passed the following sentence.

The *futwa* of one of the law officers of the Nizamut Adawlut convicts the prisoners of having been accomplices in a highway robbery, attended with personal outrage, and declares them liable to discretionary punishment by *Accoobut*. The Court fully concur therein; and taking into consideration the grounds on which the officiating Judge recommends a mitigated punishment in their favour, sentence them each to receive 30 stripes with a Korah, and to imprisonment with hard labour for seven years.

VAKEEL OF GOVERNMENT,
against
JEY SINGH.

1820.
April 17th.
JEY SINGH'S case.

Charge—THEFT and WOUNDING.

The evidence of a convict having been taken with a view to the conviction of a prisoner charged with participation in a Dacoity for which such convict had already been sentenced, the Court ruled that his evidence was wholly inadmissable.

The prisoner was charged with being one of a gang, who, on the night of the 5th of January 1818, entered the house of one Nundram, with the intention of stealing, but being discovered, made their escape, after wounding three persons, of whom one, named Zorawur, died of the wounds he received, fourteen days afterwards.

The Vakeel of Government stated the above circumstances, and added, that the robbers were traced by the print of their feet to Mouza Jahowur, where one Pudman was found wounded. He was there apprehended, and confessed his participation in the offence, implicating Jey Singh and Boodha. Pudman was tried, convicted, and sentenced to imprisonment in transportation for life. The prisoner Jey Singh was apprehended on the 17th of January 1820. At the Thana he confessed, that he with others, among whom was Pudman, went to Nundram's house, with the intention of stealing; that Pudman went into the house and wounded Nundram, who immediately seized him. Pudman called out to his associates to come to his assistance, on which the prisoner went in, and struck at Nundram with his sword; but the blow fell on Pudman, with whom Nundram was struggling: that the other inhabitants of the house were likewise wounded by the robbers, who then made their escape. Before the Magistrate, the prisoner admitted, that he set out with the gang, but did not enter Nundram's house, or wound any person. The witnesses substantiated the statement of the robbery and wounding, and proved that Zorawur died of his wounds fourteen days after the occurrence. The night being dark, none of the persons wounded were able to distinguish the features and persons of the assailants.

1820.

JEY SINGH'S case.

The prisoner's confessions at the Thana and before the Magistrate were proved by competent witnesses to have been quite voluntary. The principal evidence against the prisoner was that of the convict Pudman, who deposed that the prisoner was one of the gang, but that he did not go into the house, or wound any of the inhabitants. The prisoner in his defence stated, that he accompanied Pudman and the rest as far as the village in which the outrage took place, but finding that their intention was to steal, he quitted them, and returned home.

The law officer of the Court of Circuit convicted the prisoner, on his own confession at the Thana, of going armed at night into Nundram's house, together with Pudman and the others, and of making a blow at Nundram with his sword, which wounded Pudman, and of being one of a gang who, in an attempt to commit theft, wounded Zorawur in such a manner as to cause his death.

The Judge of Circuit fully concurred in this *futwa*. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of having, in company with others, entered a dwelling house by night, with intent to steal, in prosecution of which design three persons were wounded, one of whom died of his wounds some days afterwards, and declared the said prisoner liable to discretionary punishment by *Arcoobut*. The Court of Nizamut Adawlut, (present W. Leycester,) fully concurring in the *futwa* of the law officers, sentenced the prisoner to imprisonment in transportation beyond sea for life. The Court observed, that the convict Pudman, the associate of Jey Singh in the commission of the above crime, and who was on the 30th of January 1819, sentenced by the Nizamut Adawlut to imprisonment in transportation for life, was admitted by the Judge of Circuit as an evidence on oath in this case. The Court adverted to the strong grounds of objection against admitting a person so tainted, and so situated with respect to the prisoner, (by which was meant, that if they had been tried together, they might equally well have been made evidence against each other,) to become an evidence, and desired that a similar practice might not again be resorted to. With reference to the sentence passed against Pudman on the 30th January 1819, the Court desired that the Court of Circuit would call on the gentlemen who had been Magistrates or Acting Magistrates since that time, to explain why they had not carried the sentence of transportation into effect, as far as it belonged to them to do so; viz. by reporting to the Nizamut Adawlut that he was sentenced, which appeared not to have been done, and which, by the 4th clause of Section VIII. Regulation LIII. 1803, ought to have been done without delay.

1820.

June 6th. MUSSUMMAUT BURRAEE'S case.

GOVERNMENT,
against
MUSSUMMAUT BURRAEE.

Charge—MURDER.

A woman enraged at some trifling quarrel with her husband, murdered her own child, by cutting its throat with a knife, and then attempted her own life. Sentenced capitally, notwithstanding mitigation suggested by Judge of Circuit, on the ground of her being in a state of temporary frenzy.

THIS prisoner was brought to trial at the 2d Sessions of 1819, for Zillah Backergunge, on the charge of having murdered her own child.

Information having been received by the Darogha of Thana Baophaul which led him to suspect that the daughter of the prisoner had been made away with by foul means, he proceeded to the village of Chirau-kee, where she resided, and having ascertained the spot in which the child was buried, he caused the body to be disinterred for examination. It appeared that its throat had been cut: and the prisoner, shortly after her apprehension, confessed, that in consequence of her having received abuse from her husband, she in a violent fit of irritation had murdered her child, and had then attempted to put an end to her own existence. This latter assertion was corroborated by the appearance of a wound recently inflicted on the throat of the woman. She shortly afterwards pointed out the spot in which the murder was committed (a patch of jungle near her dwelling,) among the bushes of which a knife was discovered, with which instrument the prisoner confessed that she had perpetrated the deed. Her confession was in every respect free and voluntary, and duly attested. The husband of the prisoner was committed to take his trial along with her, on the charge of privity to the murder of his own child, and concealing his knowledge of the occurrence: but he was acquitted by the *futwa* of the law officer, which declared his wife guilty of the murder, and liable to suffer death. In this *futwa* the Circuit Judge concurring, released the husband of the prisoner; and in referring her case for the final sentence of the N. A. he expressed himself as follows:—"I have the honour to transmit the Magistrate's record of commitment, and Court of Circuit's, of the trial of the prisoner named in the margin, for the murder, on the 15th of October 1819, of her own daughter Mussummaut Tohfa, a child aged fifteen months, by cutting its throat with a knife, while the prisoner was suffering under a violent fit of passion, in consequence of an altercation with her husband from some trifling cause. I have only to add, that I lament the necessity of expressing my full concurrence in the law officer's conviction of the prisoner; but although insanity of mind cannot be imputed to the prisoner, as the cause at the moment of perpetrating the dreadful deed; a momentary phrenzy of the most extreme violence previously agitating the prisoner, and raising her at the time above all the restraints of reason, and the common fears and feelings of humanity, seems proved from the circumstance of her attempting her own life after injuring the child. Under these circumstances, I beg to recommend the prisoner to the mercy of the Court, as a fit object for some mitigation of the usual awful sentence." But the *futwa* of the law officers of the N. A. finding the prisoner guilty of wilful murder, and declaring her liable to

1820.

MUSSUMMAUT BURRAEE's case.

Kissas; and the Court (present W. Leycester and S. T. Goad) seeing no sufficient reason for exempting her from capital punishment; sentence of death was passed upon her, and she was executed accordingly.

1820.

June 20th. Case of SUNAOOLLAH and others.

GOVERNMENT,
against
SUNAOOLLAH, ZUMEEROODEEN, EERUN SAH, ARZANOOLLAH, and ASHRUF.

Charge—ROBBERY and MURDER.

Five boatmen convicted of murdering the person in charge of the cargo, on the confession of one individual of the crew to that effect, and on their own confessions that they had sold the cargo, and appropriated the proceeds. Sentenced to imprisonment in transportation for life. The body of the deceased not found.

THE prisoners above named were charged with the murder of a traveller, a merchant, (name unknown,) on board a boat, and embezzling the amount of the cargo, consisting of betel nuts, the property of the deceased. The case came on at the 2d Sessions of 1819, for Dacca Jelalpore, in the month of Chyte 1225 B. S. by the law officer of which court, the prisoners were convicted of breach of trust; and by the same *fatwa* a suspicion of the perpetration of murder was declared to attach to them.

The facts stated for the prosecution were that the prisoners (*Mullahs* of a boat,) the freight of which had been discharged, and a new freight of betel-nuts received on board at Gouree Hath, to take to Patna under charge of a kind of supercargo, styled a Churundar, put to death this person by strangulation, and fixing earthen pots to his legs, sunk him in the river: that they sold the freight, and appropriated the proceeds and the other contents of the boat to their own use, and then sunk the boat. This account rested upon the deposition of a person named Jurra, one of the crew, who was examined before the Magistrate, but had since died.

Jurra, in his deposition, stated, that he mentioned the murder to a witness in the case, named Roushun; but Roushun, before the Court of Circuit, denied having received any such communication from Jurra. The sale of the betel-nut was clearly established by evidence, and the prisoners admitted that they did sell and appropriate to their own use a certain portion of the merchandize; and that, after the Churundar's death, which was occasioned by the Cholera Morbus, they sunk his body in the river. As they had thus admitted a breach of trust of great magnitude, which the Judge of Circuit expressed his opinion ought to be visited with very heavy punishment, not less than transportation for a term of years, and as they admitted besides another offence of great magnitude, which ought to be most diligently repressed among the class to which the prisoners belonged, namely, the concealment of the death of a person in charge of valuable property, the Judge referred the case for the final orders of the Nizamut Adawlut, expressing a hope that the highest measure of punishment known to the laws for the offences of plundering property, and

breach of trust, might be awarded to the prisoners, especially as he considered it only possible that they might *not* have perpetrated the murder of the *Churundar*. The *futwa* of two of the law officers of the Nizamut Adawlut convicted all the above prisoners on strong presumption of having perpetrated the wilful murder of a merchant (name unknown) in charge of property on board a boat to which they were attached as boatmen, and of having embezzled the said property, and sunk the boat, and declared them liable to discretionary punishment by *Seeasut*.

1820. Case of SONAOOLLAH and others.

The Court, (present W. Leycester and S. T. Goad,) fully agreeing therein, sentenced them each to receive 39 stripes with a Korah, and to imprisonment with hard labor in transportation for life.

JUTTEE RAM, *against* JYE MUNNEE.

1820. July 20th. JYE MUNNEE'S case.

Charge—MUTILATION.

THE prisoner was charged with cutting off the *membrum virile* of the prosecutor, to which charge she pleaded not guilty. The trial was entered in the calendar in the name of Juttee Ram as prosecutor; but in consequence of his absence, and refusal to prosecute, the Vakeel of Government conducted the prosecution.

It appeared from the proceedings in the case, that in the month of March 1820, the prosecutor bought the prisoner of her brother for 20 rupees, with the intention of subsequently marrying her. The prisoner, finding that he was impotent, induced him to follow her to a neighbouring river, where she undertook to find a remedy for his disorder. On arriving there, she persuaded him to submit to having his eyes covered with a cloth, upon which she cut off his penis with a knife, and threw both the amputated member and the instrument into the river. She then went home, and told her brother Jye Ram, that her husband was seized with dysentery, and lying very ill by the side of the river. Jye Ram accordingly went, and found the prosecutor sitting with his clothes covered with blood; and on hearing of the misfortune which had befallen him, had him conveyed to his own house. On her apprehension, the prisoner confessed the crime at the Thana, and on her subsequent examination before the Magistrate, confirmed her former statement, and exactly corroborated the account of the transaction as given by the prosecutor. On her trial before the Circuit Court, she behaved with the greatest simplicity. She was ignorant of her age, and of the names of her parents, denied that she had made the previous confessions, and asserted that the prisoner had mutilated himself, but was unable to adduce any proof of her assertion; and it was satisfactorily established that no coercion or undue influence had been used to extort her former confessions. She appeared to be

The law officers of the Nizamut Adawlut acquitted the prisoner, in consequence of the *fitra* of the prosecutor, and her nonage. The Court did not concur in the *futwa*, but judged themselves incompetent to punish. The wilful act of a person supposed to be in her non-age is, in *Moohummudan* law, considered accidental.

1820.

JYE MUNNEE'S CASE.

about 12 years old, and her brother did not think that she could be more, but was unable to specify her exact age. The evidence of her brother Jye Ram, and the circumstances of the case, left little doubt respecting the truth of the fact. However, near the close of the proceedings, Juttee Ram, the prosecutor, prayed for permission to file a *Razeenama*, and stated his entire forgiveness of the offence, his sincere wish to forego his suit, and his consequent absolute renunciation of all claims upon the prisoner.

The law officer of the Circuit Court gave the following *futwa*. "Whereas the prosecutor has filed a *Razeenama*, the prisoner is not liable to any punishment."

"*Question*. Supposing the prosecutor had not filed a *Razeenama*, but had persisted in his suit, what *futwa* would have been given?"

"*Answer*. Apparently the prisoner Jye Munnee is not more than 12 years of age, and the signs of maturity are not perceptible in her. Her Mofussil and Foujdarry confessions do not warrant the presumption that she is in her non-age; but the evidence of Jye Ram, her brother, superadded to her confessions, may be reckoned conclusive. Still the commission of the crime, as detailed in her two confessions, does give rise to a doubt, as it seems unreasonable to suppose a person of such tender years could perpetrate so cruel an action. Legally the wilful act *(Umud)* of such a person is accidental *(Khata.)* In this case the prisoner Jye Munnee is convicted of the crime of accidentally cutting off the penis of the prosecutor, and is liable to the payment of *Deeut*." The Circuit Judge recommended the prisoner for pardon in consideration of her tender age.

The law officers of the Nizamut Adawlut expressed their opinion thus. "Whereas the prisoner Jye Munnee is in her non-age: therefore her Mofussil and Foujdarry confessions, stating that she wilfully and purposely cut off the prosecutor's penis with a knife, cannot make the prisoner liable for the above crime. But from the aforesaid confessions, which have been attested by the several witnesses before the Court, and from the evidence of Jye Ram, the prisoner's brother, that he saw the prosecutor after mutilation, having gone according to the prisoner's information, and found him sitting by the bank of the river with his clothes covered with blood, violent presumption of the crime of wilfully and purposely cutting off the prosecutor's penis rests on the prisoner. If then the prosecutor had not renounced his claims on the prisoner, she would have been liable on strong suspicion to *Tazeer* by imprisonment or otherwise, at the discretion of the *Hakim*; but in the present case, from the prosecutor giving *Ibra*, she is entitled to her discharge without imprisonment."

Question. (By Mr. C. Smith.) "Notwithstanding the prosecutor's *Ibra*, has the Hakim power to inflict *Tazeer* on the prisoner, by reason of her violation of the divine law, or for the sake of public example, or any other reason?"

Answer. "A minor does not incur punishment by reason of her violation of the divine law, or for the sake of public example, which in fact amount to one and the same thing; and exclusive of divine

or human rights, there is no other cause which can legally induce *Tazeer.*"

Under these circumstances, a question arose, whether it was within the competency of the Court to award any punishment to the prisoner.

Mr. Leycester observed: "There is a palpable inconsistency in the two *futwas.* By the first, the prisoner, notwithstanding her non-age, is declared punishable, but the *Ihra* bars it; and her non-age is introduced into the second, to bar punishment at all. I am not sure but that we are conjuring up a shadow to defeat our competency to punish in this case. The clear object of Regulation XVII. 1817, is to enable us to punish, where the *futwa* does not award punishment." Mr. Goad was of the same opinion. Mr. C. Smith said: "It is clear to me, that we have no power to punish. Section IV. Regulation XVII. 1817, does not meet the case, the prisoner not having been acquitted." Mr. Leycester, adverting to clause 4, Section II. Regulation LIII. 1803, thought it might be a question, whether exemption on account of non-age at eleven years of age, as a general position, independent of any stated proof of imbecility of intellect, so as not to be conscious of the criminality of the offence, did not constitute *a special exemption or scrupulous distinction barring the penalty of conviction* in this case? Mr. Goad was inclined to be of the same opinion; but ultimately, however, the Court, (present Messrs. Leycester, Smith, and Goad,) passed the following sentence. "The Court do not find it within their competence to sentence the prisoner to punishment, and direct therefore that she be immediately released." It was also agreed and entered in the minutes, that the Court proposed to take into their consideration the propriety of proposing a new Regulation, to prevent the refusal to prosecute by the party injured being a bar to punishment in similar cases*.

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* In pursuance of this resolution, and to meet some other cases in which the Nizamut Adawlut had found themselves incompetent to pass sentence in opposition to the *futwas* of the law officers, although such *futwas* were evidently inconsistent with the general principles of justice, Mr. Leycester submitted to Government in January 26, 1821, the draft of a Regulation for increasing the discretionary powers of the court. In his minute accompanying the draft, he observed, on reference to this trial, that "the Court found itself under the necessity of releasing the prisoner, not from an idea that she was not deserving of punishment, nor in mercy, but from the want of competency to punish. The distinction taken by the law officers may be briefly stated, that the act constituted a private, not a public wrong, and that if the individual relinquished his claim, the public prosecutor had none whatever."

The 4th Regulation of 1822 was consequently promulgated, the 3d Section of which is intended particularly to provide for the recurrence of questions of this nature.

1820.
July 31st.
POORUN DOSS'S CASE.

GOVERNMENT,
against
POORUN DOSS.

Charge—MURDER.

Prisoner convicted, on his own confession solely, of having killed his nephew, who had committed adultery with his wife. Sentenced to seven years imprisonment, as, though he confessed the act was premeditated, yet the means used were only two blows, with a moderate sized stick, and the meeting with the deceased was accidental.

THE prisoner Poorun Doss was charged with the murder of his nephew Teelook Doss. The only evidence against him was his confession before the Police Darogha, which was satisfactorily proved to have been voluntarily given. In that confession he stated, that having been informed, in Cheit of the year preceding, by his wife, that the deceased had three times committed adultery with her by force, whilst living in his (the prisoner's) house, and this circumstance becoming known in the village, and a man named Muhadhun Muhtoon having sent for the prisoner, and imparted to him that he had heard what had passed, and urged him at the same time to murder Teelook Doss, he (the prisoner) said the country belonged to the English, and he could not do so; whereupon Muhtoon replied, that no person would seek after Teelook Doss. That the prisoner bore this in mind, and in Maug following, meeting the deceased at the village of Cota, the latter joined the prisoner; when arriving in a jungle, towards the evening, the prisoner struck the deceased two blows with a *Chobdust*, on the back of the neck, when the deceased fell dead, and the prisoner dragged away the body, and threw it into a cavity.

This was the whole of the case. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of culpable homicide, and declared him liable to pay the *Deeut*; conviction of murder being barred by the nature of the weapon, which was a small club or stick.

The 4th Judge of the Court of Nizamut Adawlut (S. T. Goad) expressed himself of opinion, that though the act of the prisoner was premeditated, yet as his meeting with the deceased was accidental, allowance should be made for the influence which jealousy and shame may have had upon the prisoner in impelling him to strike the deceased the two blows with a stick, which appears to have been a *churree*, or one of small dimensions; and that under the *futwa* of the law officers, imprisonment for seven years would be an adequate punishment. The officiating Judge (C. Smith,) concurring in this opinion, sentence was passed accordingly.

ADVERTISEMENT.

To those who peruse the following Reports, it cannot fail to be obvious, that much matter has been introduced unconnected with the principles laid down in the notes, and unnecessary to the elucidation of the practice proposed to be established. This is doubtless to be deprecated in some measure, as being a deviation from that perspicuous brevity which characterizes the reports of cases in crown law published in England. But a detail of the particulars developed in the criminal trials of this country cannot be regarded altogether as surplusage. According to European notions, the motives which here instigate to the commission of offences are sometimes inadequate, and not always comprehensible; and any information calculated to familiarize the Judge with the ideas and springs of action which prevail among those to whom he dispenses justice, cannot be wholly uninteresting or useless.

I have already observed, in the preface to the first volume of these Reports, that the sentences of the Nizamut Adawlut are drawn out and issued in the English language. It is a subject of regret to me, that the multifarious and incessant avocations of the Judges left them no leisure to revise their opinions. These were probably written without any reference to their future appearance in print; and I have ventured to make a few verbal alterations, where the style of remark appeared clearly intended for private reference, and obviously too colloquial for publication. This liberty has however been very sparingly exercised; a fact which may be proved by a cursory inspection of the recorded opinions. My chief object was fidelity, and I have for the most part scrupulously adhered to the letter as well as to the substance of the record.

In all cases in which the Courts of Circuit are directed not to pass sentence, the Judges are required by section 57, Regulation IX. 1793, to accompany the trial with a letter containing

their opinion on the merits of the case. This duty has, in the generality of instances, been performed with so much judgment and accuracy, as to lessen very materially the labour of the reporter. A minute examination of the Persian record of the trial I have found necessary but in few instances; and in many, the statement of the case, as furnished by the Judge of Circuit, proved to be as ample and accurate a report as I could have prepared.

JUDGES

OF THE

COURT OF NIZAMUT ADAWLUT,

PRESENT

During the period of these Reports.

In 1820.

John Fendall, Chief Judge, appointed to Council in May.
Sir J. E. Colebrooke, Bart. Chief Judge, appointed 20th May.
William Leycester, Chief Judge, appointed 8th of December.
William Edward Rees, absent from 14th July.
Samuel Thomas Goad.
Courtney Smith, officiating Judge, from 25th February, (Second Judge, 8th December.)
William Dorin, officiating Judge, from 8th December.

In 1821.

William Leycester, Chief Judge.
Courtney Smith.
Samuel Thomas Goad.
John Shakespear, appointed 27th February.
William Dorin, officiating Judge.

In 1822.

William Leycester, Chief Judge.
Courtney Smith.
Samuel Thomas Goad, (absent for two months, from 18th January.)
John Shakespear.
William Dorin, officiating Judge.
Charles Elliot, officiating Judge, from 18th January, (officiated two months.)

In 1823.

William Leycester, Chief Judge, (absent from December.)
Courtney Smith.
John Shakespear.
William Dorin, appointed 4th Judge, 30th January, (absent from 9th Oct.)
John Herbert Harington, officiating Judge, from 30th October.
William Byam Martin, appointed 27th of February.

In 1824.

John Herbert Harington, officiated as Chief Judge, from 5th of February.
Courtney Smith.
John Shakespear, (absent from October.)
William Byam Martin.
John Ahmuty, officiating Judge, from 5th February, (absent from Sept.)
Cuthbert Thornhill Sealy, officiating Judge, from 6th of December.

In 1825.

Courtney Smith, officiating Chief Judge, 28th April.
William Byam Martin.
Cuthbert Thornhill Sealy, appointed 28th July.
H. Shakespear, officiating Judge, 3d February, appointed 26th of August.
A. Ross, officiating Judge, 26th August: appointed 8th December.

In 1826.

William Leycester.
Courtney Smith.
Cuthbert Thornhill Sealy.
William Dorin.
A. Ross.

GOVERNMENT,
against
HUREESINGHA.
Charge—MURDER.

1820.
Aug. 9th.
HUREESINGHA'S case.

It being proved on the trial of a prisoner charged with murder, that he had been desired by the Police officer to fear not, but to tell the truth; held that this is not sufficient to invalidate a confession made by him, and corroborated by circumstances.

THE prisoner in this case was arraigned for murder at the first sessions of 1820 for Zillah Furruckabad. The case was briefly as follows. Mussummaut Tijea, the sister of the prisoner, had been missing some days, when a conversation held by the prisoner and his relations, during the night time, was overheard by a person named Omaida: in which the prisoner stated, that in shedding the blood of his own sister he had done well, in that he had prevented his sister's becoming a Moosulmaun. Omaida gave instant information at the Thana, upon which the Thanadar went to Mouza Rara, and sent for the prisoner, his two brothers Hurreea and Bulla, and their father Moua. The latter was not to be found; but Musst. Rummeea his wife came: from these persons the Thanadar could gain no information, further than that they had not seen Musst. Tijea for four days, and that in consequence of having been beaten she had run off. Further enquiry having been made for her by the Thanadar, he learnt from one Ramkishna and his wife, that four days had elapsed since Tijea came to their house at 12 o'clock, and prepared bread from some flour which she had brought with her, and ate it. In the evening, her brothers Hurrea and Hurreesingha came and took her away. This having been ascertained, the prisoner Hurreesingha, after much prevarication, declared that he had killed his sister, by cutting her throat, and had thrown her body into a well, and that he would shew the Thanadar where it was. Accordingly the prisoner took the Thanadar to the well in which the body was found. There was also an appearance of blood having been spilt on the ground close to the well. Before the Magistrate, the prisoner told an incoherent story of his sister having been deranged, and of her having destroyed herself, and that through fear of the Government he had thrown her body into a well, close to his house.

Before the Court of Circuit, the prisoner pleaded not guilty; but his confession at the Thana was fully substantiated by three credible witnesses. Kiamoodeen, and Poorun Mull, who accompanied the Thanadar to the well, distinctly deposed that the prisoner pointed out to the Thanadar the spot where the body was concealed.

The law officer of the Court of Circuit declared the prisoner convicted of *Kutl i umd*, or wilful murder, in which sentence the Judge concurred, thinking the prisoner deserving of death, and recording his opinion, that he was not aware of any circumstance that could be urged in mitigation of the punishment. The *futwa* of the law officers of the Nizamut Adawlut was to the same effect; but the Court, on weighing the proceedings, deemed it necessary to order further investigation; and the case was, therefore, returned with the following observations and orders.

"The Court observe, that the issue of this trial depends entirely on the statements of the prisoner. These statements are two; first, that

1820. HURREE SINGHA'S case.

Tijea cut her own throat, and that through fear he had thrown the body into the well. This is before the Magistrate; and secondly, that he cut his sister's throat. This is before the Thanadar. But it is not his first statement. He had in a previous deposition before the Thanadar denied the charge, adding that she had run away, in consequence of Shumsoodeen beating her, and again stating that his brother Hurree, in consequence of people saying that she was a reprobate woman, and not fit to be kept at home, had turned her out, and conveyed her to the village of Buster. Though these two explanations are contradictory, it is pretty clear that they, with the denial, were voluntary, which is not at all so clear of the confession obtained subsequently thereto.

It is very true, that three witnesses depose that the prisoner so confessed without menace or threatening; but they do not state, that the prisoner was not encouraged to confess under some hope or promise from the Thanadar. But the Thanadar expressly states in his petition, under date the 21st November 1819, that suspecting Huree or Hureesingha had killed their sister, he questioned them with *Tusullee* and *Dilasa*, and was going again in search of the girl, when Hureesingha confessed the murder.

It is therefore clear that the confession was not made voluntarily, though it is not at present clear what may have been the degree and the nature of the *Tusullee* and *Dilasa*.

The Court deem it necessary that this point should be cleared up, and direct that the Darogha Syud Nyamut Alee, and any others present, may be examined at the ensuing session, as to the nature and degree of the *Tusullee* and *Dilasa* under which the confession was obtained: that the witnesses thereto, viz. Mukarun Khan, Poorun Mull, and Kiamoodeen, be at the same time re-examined as to the fact of *Tusullee* and *Dilasa*, and whether they were present when he first confessed the murder, or whether it appeared to them, from the mode of questioning him, or the mode of his answer, that he had previously confessed.

The Court further desire that the Darogha Syud Nyamut Alee may also be questioned by the Judge of Circuit, as to why, in his more detailed report of the 23d of November, he dropped the circumstance of *Tusullee* and *Dilasa* recorded in his previous petition of the 21st, an omission which very obviously tended to throw a cloud upon that occurrence.

The Court also desire, that three or four of the neighbours of the deceased may be examined at the same time by the Circuit Judge, regarding the character of the deceased; whether they considered her at all a reprobate woman, and likely to abandon her cast, and turn Mahomedan, whether there was any report thereof, or any other peculiarity in her character, which might on the one hand have excited the anger of her family, or, on the other, led her to the crime of suicide."

In conformity to these instructions, further proceedings were held by the Court of Circuit, and submitted for the final orders of the Nizamut Adawlut.

1820.
HURGE SINGHA'S case.

From the tenor of the depositions of the persons who were examined in pursuance of the orders above detailed, it did not appear that Nyamut Alee, the Police Darogha of Suhawur, had recourse to any steps that could be construed into a positive encouragement to induce the prisoner to confess his guilt. On the contrary, it appeared that the confession taken before that officer was not made by the prisoner, under the impression or expectation that he would escape with impunity.

In consequence of the very small size of the hamlet in which the deceased and the defendant resided, it was not practicable to procure much evidence to the disposition, conduct, and general character of the former, and the little that was obtained was of a very unsatisfactory nature. The testimony of a person named Kashee regarding the deranged state of the deceased's mind was, in the opinion of the Judge of Circuit, who held the further proceedings, entitled to no credit, from the very imperfect and confused ideas which he appeared to have on the subject. After due consideration of the whole of the proceedings connected with the trial, the 4th Judge of the Nizamut Adawlut (S. T. Goad) recorded his opinion in the following terms.

"In this case it is proved, by the evidence of Omaida, that he heard Mussummaut Rumeea, the prisoner's mother, accuse the prisoner of having murdered her daughter, and ask him why he had done so; in reply to which accusation, the prisoner said he had killed her, which was better than that she should become a Moosulmaun. Information was given by Omaida to the Darogha, and the prisoner was consequently apprehended. At first he denied the murder, but upon being told by the Darogha not to fear, but to speak the truth, he acknowledged the murder, and offered to point out the body. He took the Darogha to a well, where the body was found with the throat cut; and there the prisoner, in the presence of several persons, repeated his confession of the murder of his sister, when his confession was reduced to writing.

"It is also proved, by the evidence of Ramkishna, that Tijea, the deceased, came to his house, and after staying there some time, went away with the prisoner, since which the witness knows not what became of the deceased. This evidence, however, does not prove that the day on which the deceased went away with her brother, was the day on which she met her death. The confession of the prisoner before the Magistrate is, that the deceased cut her own throat, and that he threw the body into a well, and concealed what he had done. If this were the truth, it is in my opinion inconceivable that the prisoner, when desired by the Darogha not to fear but to speak the truth, should have said any thing more than this, much less that he should have repeated his confession of the murder, when he pointed out the body at the well. I agree in the *futwa* of the law officers, and think, that the prisoner should be sentenced to suffer death. Mussummaut Rumeea ought to have been examined, but she could not be found."

The opinion of the 2d Judge (C. Smith) was to the following purport.

1820.
HUREE-SINGHA'S case.

I agree with the 4th Judge, as to the proof of the murder, the confession being powerfully corroborated by the circumstances, and there being no sufficient evidence in my opinion to establish that the prisoner was either terrified or inveigled into making it: still it does not appear to have been a murder of revenge or malice. The motive is expressed in the words overheard by Omaida, the first witness اگر بخانہ مسلمان می افتاد باز چہ می شد which passage receives confirmation from the deposition of Kashee, examined in the second enquiry by Mr. Perry. I think, therefore, that the sentence of death should be commuted for one of imprisonment for life in the Furruckabad jail." The prisoner was ultimately sentenced as suggested by the 2d Judge, the 4th Judge consenting to remit the capital punishment.

1820.
Aug. 14th.
RAMKUNHAI'S case.

GOVERNMENT,
against
RAMKUNHAI.

Charge—FORGERY.

To antedate and post-date deeds being a common practice among the natives, the Court did not admit this fact to be evidence of forgery.

THE prisoner was charged with forgery, and his trial came on at the 1st Sessions of 1821, for Zillah Backergunge.

The case was a simple one; but a difference of opinion between the Judge of Circuit and his law officer, occasioned its being referred to the Nizamut Adawlut. The prisoner's father got a Talookdaree Pottah of some land, from the person who had purchased a defaulter's estate at the public auction. The property having been subsequently conveyed by private sale to another individual, the latter wished to oust the possessor. The prisoner instituted a suit, and produced the title deed, supposed to be forged, for which he was committed for trial. The deed was dated 25th Assin, 1213, or 9th October 1806, and the paper on which it was written, was sold on the 27th Sawun 1214, or 10th August 1807.

The prisoner denied the forging the paper; stated that he did not know it was forged, and he produced it in evidence through perfect ignorance, as his Gomashta or agent (who, it is to be observed, was then dead) had placed it amongst his Zemindaree papers, and that he himself considered it a valid deed.

The law officer of the Court of Circuit acquitted the prisoner, on the ground, first, that it was possible the stamp vender might have written 1807 by mistake, instead of 1806; secondly, that the prisoner was not of age when the deed was written; and thirdly, that, when of age, he probably did not know that it was a forged deed, or would not have produced it in Court. In referring the case for the final judgment of the Nizamut Adawlut, the Judge of Circuit expressed his opinion of its merits in the following terms. "I do not consider the defence entitled to belief; indeed I suspect the

prisoner knew as much of the real nature of the deed as his Gomashta did; at all events, I cannot deem his plea sufficient, as he ought to have been assured of its validity before he ventured to produce any deed in Court. I cannot admit the probability of the vender having made a mistake; but if it does not appear that the prisoner forged the deed, that circumstance might be considered in mitigation of punishment. I do not suppose that the prisoner would have produced the deed in Court, had his knowledge of English shewn him how easily the forgery might be detected: the authentication of stamps in fact, and endorsement of the date of sale, are the rocks upon which these offenders are usually cast, and is the best evidence of guilt, in cases otherwise difficult of proof."

1820. RAMKUNHAI'S case.

On a consideration of the proceedings of the case, the officiating Judge of the Nizamut Adawlut, (C. Smith,) recorded his opinion to the following effect. "The prisoner is now not eighteen, and at the date of the deed said to be forged must have been four or five years of age. No forgery whatever is proved, in my opinion; that the English date corresponding to the Bengal date is many months prior to the date of the sale of the stampt paper, not necessarily making it a forgery. To antedate and post date papers is very common among the natives, without any fraudulent purpose. Both the Circuit and our *futwa* concur in acquitting the prisoner. I differ with the Judge of Circuit, and am of opinion that the prisoner should be immediately released."

The fourth Judge, (S. T. Goad,) concurring in the above opinion, the prisoner was acquitted.

BHOLANATH and Others,
against
CHAND HOLDAR and Others.

Charge—MURDER.

1820. Aug. 17th. Case of CHAND HOLDAR and others.

It is irregular not to hear witnesses named for the defence, on the ground that they have been already heard for the prosecution.

At the 1st Sessions of 1820, for Zillah Hooghly, Chand Holdar, Petumber Bunnorjea, Kumul Doss, and Goohee Moosulmaun were arraigned for the murder of Mussummaut Beehun. It appeared in evidence, that for nearly twenty years the deceased had cohabited with Chand Holdar, whom she left two years previous to her death, in consequence of his having struck her, and afterwards connected herself with Ramchand Karar, (who was the principal witness for the prosecution,) on which account her son Petumber had frequently quarrelled with her, and at one time threatened to hang himself, in consequence of the disgrace which herself and family had incurred by her connecting herself with a man of an inferior caste. On the evening previous to the murder being committed, Chand Holdar, Petumber Bunnorjea, and Bishennauth were seen by Ramchand Karar consulting together near the house of the deceased. According to his statement, Petumber came home at about ten o'clock on

1820.

Case of CHAND-HOLDAR and others.

that night, and to induce his mother to quit the room (in which herself, Ramchand Karar, and her two children, Bykunt Bunnorjea and Musst. Poddo, were sleeping,) he begged her to rise, and give him something to eat, which she said she would willingly do, if he could procure a light. He replied, that there was one in the cook-room, on which the deceased went out to him, but shortly afterwards returned, and told Ramchand Karar that several men had come into the compound. At this time, according to the statement of the said Ramchand Karar, Chand Holdar seized her, and struck her with a *Dao* on the throat and face, and dragged her body to the cook-room door. Kumul Doss lighted two torches, with which he burnt the body of the deceased, and Goobee Moosulmaun was standing in the court-yard as an aider and abettor of the transaction. The *futwa* of the law officer of the Court of Circuit declared, that the evidence was insufficient for the conviction of the prisoners, and that they were consequently entitled to their release. The Judge of Circuit, however, not concurring in the *futwa*, referred the case for the decision of the Nizamut Adawlut, observing, that there was every reason to believe that Petumber instigated Chand Holdar and the others to commit the murder, and that this suspicion was further confirmed by his having immediately made his escape, and having tried to deceive the Police officers and his neighbours by a report that a Dacoity had been committed at his house, which proved on enquiry to be utterly false. On perusing the proceedings of the trial, it appeared that the prisoner Petumber, on being questioned as to what witnesses he was desirous of summoning in his defence, replied by naming two individuals who had already been examined in support of the prosecution, and that the Judge of Circuit refused to summon them, assigning as a reason, that they had already been examined, meaning thereby probably, that the prisoner had already had an opportunity of questioning them relative to any facts he might have wished to alledge in his defence; but the Court of Nizamut Adawlut, (present W. Leycester and S. T. Goad,) noticed, for the future guidance of the Judge of Circuit, that it was no correct ground for the rejection of the witnesses of the prisoner Petumber, that they had been examined on the part of the prosecution, as it was clearly at the prisoner's option to delay putting any questions to them until his own defence had been completed, and to support which the witnesses apparently were named.

The prisoners were ultimately acquitted.

MUSSUMMAUT SOOJURMUNEE, *against* HEERARAM CHEITH.

1820. Aug. 22d. HEERARAM CHEITH'S case.

Charge—MURDER.

THE prisoner was tried at the sessions of 1820 for Zillah Ramgurh, being charged with the murder of the prosecutrix's husband.

The only evidence against the prisoner was his own confession at the Thana. He stated, that the deceased came to demand rent from him, and oppressed him so much, that at last he shot him with an arrow.

Before the Magistrate, the prisoner stated that to free himself from the demand of the deceased, he offered to give him a fowl, and was about to shoot at it with an arrow, when the deceased with a club struck his arrow, which caused it to go off, and shot the deceased, which killed him.

The *futwa* of the law officer of the Court of Circuit, stating that the confession before the Magistrate was most to be relied upon, convicted the prisoner of accidental homicide, and declared him liable to the penalties of *Deeut*. The Circuit Judge, in referring the case, stated, that he concurred in the above *futwa*, and did not consider the prisoner deserving of any punishment: that consequently he had passed no sentence, but submitted the trial for the final orders of the superior Court. The fourth Judge of the Nizamut Adawlut, (S. T. Goad), expressed his opinion to the following effect. "The prisoner Heeraram Cheith is charged with the murder of Chamod, by shooting him with an arrow. The only evidence against the prisoner is his confession before the Darogha, which is proved, and in which he admits, that he wilfully shot the deceased, who had come to his house to demand rent, because he refused to let him eat or drink until he paid the demand. In his deposition before the Magistrate, he attributes the death of the deceased to an accident. All the law officers of the Nizamut Adawlut convict the prisoner of wilful murder, and declare him liable to *Kissas*; and I agree with them, because the story told by the prisoner before the Magistrate is improbable and incredible, and his first confession before the Darogha is consistent with the fact that the arrow passed quite through the body of the deceased. The prisoner also fled, after having committed the act.

In consideration, however, of the provocation given by the deceased, I am of opinion that the prisoner should be sentenced to imprisonment for life."

The officiating Judge (C. Smith) took a different view of this case, expressing himself in these terms. "The *futwa* of the Circuit law officer is *Kutl i khuta*. The Judge of Circuit might have disposed of the case without reference, under Section III. Regulation IV. 1797, and did not refer it because he thought his power not sufficient to inflict an adequate punishment, but because, concurring in the *futwa* of accidental homicide, he thought the prisoner deserving of no punishment at all.

Prisoner confessed at the Thana, that he killed with an arrow a man who had come to him for a debt, and who would neither let him eat nor drink.

There being no other evidence, the capital punishment was remitted, in consideration of the provocation.

Doctrine of circuit law officer overruled, that prisoner having subsequently stated before the Magistrate the death to have been accidental, such statement should be received, as being most favourable to the prisoner.

1829.

HEERARAM CHEITH'S case.

"Even in a very clear case, I should be reluctant to meet such a reference with a sentence of imprisonment for life; and this case appears to me to be one of great uncertainty.

"I cannot therefore concur with the 4th Judge, and there being no evidence but two varying confessions of the prisoner (the unfavourable one of the two taken at the Thana, where confessions are always suspicious,) I deem it safe to lean to the Circuit Cauzy's maxim of crediting the *akhuffoolkoulyne*, that is, the more favourable of two contradictory statements; and think the Judge of Circuit right in his opinion, that the prisoner should be released without punishment."

The 2d Judge, Mr. Leycester, expresed his opinion as follows.

"I agree with the 4th Judge in sentencing the prisoner to perpetual imprisonment. I do not think the course of justice should be arrested, because the Circuit Judge agreed in a *futwa* manifestly contradictory to the Mookummudan law, and against the principle on which the criminal Courts are daily acting." The prisoner was accordingly sentenced to imprisonment for life.

1820.

Sept. 5th. Case of ATTABOODEEN and others.

RAMCHUNDER and KISHNANUND, *against* ATTABOODEEN and Others.

Charge—DACOITY.

In a case of four prisoners charged with Dacoity, the second Judge voting for the acquittal of three, and the conviction of one; the fourth Judge, for the conviction of all; and the officiating Judge differing from both his colleagues, voting for the acquittal of three, and the conviction of one as

A GANG of Dacoits, armed with *lathees* and swords, attacked and plundered, on the night of the 27th October, the house of the prosecutors, Ramchunder and Kishnanund, in the village of Bamun Danga, Purgunna Lushkurpore, the former of whom was robbed of property to the amount of 40 rupees, and the latter of property to the amount of 150 rupees. On the same night, another person named Kumul Sirear was also robbed by the Dacoits, of property amounting in value to 46 rupees, no part of which being recovered, he did not appear in the prosecution. The prisoners were tried at the 2d Sessions of 1819, for Zillah Rajeshahye.

A little before daybreak, and a few hours after the occurrence of the Dacoity, Koranoo, Chowkeedar at the Pakreea Kalee silk manufactory, (which place is but three miles from the village in which the Dacoity was committed,) observed four men travelling in a suspicious manner, each of whom carried a bundle; and, with the assistance of some of the inhabitants of the village, who appeared as witnesses on the trial, seized the prisoner Attaboodeen. The other three men threw down their bundles, and fled; and they were not at the time recognized. They were subsequently, however, apprehended on the information of Attaboodeen, who named them as his associates. On trial, the prisoner Attaboodeen asserted in his defence, that when he was seized, he had no bundle in his hand: that he did not know where the witnesses found the property: that it being the time of the *Mohurrum*, he and the

1820.

Case of ATTABOODEEN and others.

other three prisoners were proceeding to a village called Baga, to read the *murseea*, and had arrived near the silk manufactory, when Koranoo Chowkeedar and some other persons seized him. Durgahy, Bawool, and Moocheah set up the same kind of defence. They stated, that on the night on which the Dacoity occurred at the prosecutor's house, they stopped in their way to the village of Baga, at the house of a man named Kepoo, during the whole of that night; and after performing their devotions at that place, on their way back to their homes, they heard of Attaboodeen's apprehension. None of the prisoners were, however, able to establish any of the circumstances alledged in their defence. The property found on the prisoner Attaboodeen, and that in the bundles of his associates, who absconded, were recognized by the prosecutors, as being part of the property of which they had been plundered.

The law officer of the Court of Circuit, in his *futwa*, declared the four prisoners convicted of Dacoity on strong presumption, and liable to *Tazeer i shudeed*; concurring with which opinion, the Judge of Circuit passed the sentence prescribed for that offence by Regulation VIII. of 1808, namely, 39 stripes of a Corah, and imprisonment in transportation for life. The *futwa* of the law officers of the Nizamut Adawlut also convicted the prisoners of the same offence. The second Judge of the Court (W. Leycester) was of opinion, that Attaboodeen should be convicted, but doubted whether there was sufficient evidence to touch the other prisoners implicated by him. Though they said, in their defence, that they were in company with Attaboodeen, yet they did not acknowledge any property having been thrown down by or found upon them, the proof of which convicted Attaboodeen, nor did they acknowledge any crime whatever. He did not think their statements entitled the Court to say decidedly, that these three persons were conveying away property, which they had obtained by Dacoity, and that they, throwing it down, ran away on being attacked by the Chowkeedars; and he was of opinion, therefore, that they should be acquitted for want of evidence. The fourth Judge (S. T. Goad) differed from the 2d Judge, and concurred with the law officers in the conviction of the four prisoners, Attaboodeen, Durgahy, Bawool, and Moocheah, and declared his opinion, that the sentence passed on them by the Judge of Circuit should be confirmed.

The officiating Judge (C. Smith) expressed his opinion in the following terms.

"I concur with the 2d Judge, as to the unsatisfactory nature of the evidence against Durgahy, Moccheeah, and Bawool, and am of opinion that they should be acquitted and released. With regard to Attaboodeen, I differ both from the 2d and 4th Judge. I think there is no evidence whatever of his being actually present and a perpetrator. The single fact established is, that he was stopped 1½ coss from the village where the robbery was committed, with part of the plundered property: that under the circumstances, there is a strong presumption of his having received that property, knowing it to be plundered, I hold to be clear, and for this offence I would sentence him, (he is 50 years of age,) to seven years imprisonment, with labour,

receiver only. Sentence issued under the signature of the three Judges on the several prisoners, conformably to the majority of opinions.

1820.

Case of ATTABOODEEN and others.

and 10 strokes of the Corah." Under these circumstances, the sentence of the Nizamut Adawlut was issued in the manner following.

"The Court having duly considered the proceedings held on the trial of Attaboodeen and others, charged with Dacoity, and the *futwa* of their law officers on the said trial, pass the following sentence.

"The *futwa* of two of the law officers of the Nizamut Adawlut, convicts the prisoner Attaboodeen, on strong presumption, of Dacoity, and declares him liable to discretionary imprisonment by *Azoobut*. The second and fourth Judges of the Nizamut Adawlut concur in the conviction of Attaboodeen, and confirm the sentence of thirty-nine stripes with a Corah, and imprisonment in transportation with hard labor beyond sea for life, passed upon him by the officiating Judge of Circuit.

"The second and officiating Judges of the Nizamut Adawlut, not being satisfied with the proof adduced against the prisoners Durgahy, Bawool, and Moocheah, do not deem it proper to sentence them to suffer any punishment under the *futwa* of their law officers, and direct that they be immediately released."

1820.

Sept. 11th.

Case of RAMSOONDUR and others.

By the Mohummudan criminal law, persons who harbour adulterers are punishable by *Azoobut*.

GOOROOPERSHAUD CAWORA,
against
RAMSOONDUR and Others.

Charge—ADULTERY, SEDUCTION, and CONNIVANCE THEREAT.

THE prisoners were tried at the Suburbs of Calcutta monthly Sessions for July 1820. The object of the Judge of Circuit in making the reference was fully detailed in the following letter. "I beg you will lay before the Court the trial of Ramsoondur, Mussummaut Goee, Jugurnath, and Nurhurree, charged in the Magistrate's calendar as follows. Ramsoondur for seducing Mussummaut Goee, knowing her to be the wife of the prosecutor. Mussummaut Goee for eloping from her husband's house, and for committing adultery with Ramsoondur. Jugurnath and Nurhurree for connivance, and sheltering Ramsoondur and Mussummaut Goee in their houses. The *futwa* of the law officer has convicted the whole of the prisoners of the respective offences laid to their charge, and declared them all liable to discretionary punishment by *Tazeer*. I object to this finding. There is no doubt whatever that Mussummaut Goee quitted her husband's house, and lived for some days in adultery with Ramsoondur, (though there is no proof of seduction, and the female prisoner states that she quitted her husband's house in a moment of anger, created by the ill-treatment she received from him,) for they both confessed as much before the officers of the Magistrate. But I object to the legality of the confessions themselves, as it appears they were made by the prisoners, and taken in the *dufter khanah* of the Magistrate's office by the native officers, and during the absence of the Magistrate. Even

1820.
Case of RAMSOONDUR and others.

the whole of the subscribing witnesses to the confessions do not appear to have been present during the whole of the time that the confessions were making. The confessions were taken on the 6th of July, and on the 8th of the month the prisoners appear to have been brought before the Magistrate, and did, no doubt, repeat their confessions, or admit that they had made them, as the Magistrate under his own hand attests that the confessions were voluntarily given before him on that day, though there is no other proof of this circumstance than the above attestation. However, as I am not aware of any Regulation authorizing the native Foujdaree officers to take confessions, I am of opinion that they are not admissible evidence, and that the Courts of Circuit cannot convict upon such evidence only. It is clear also, that Jugurnath and Nurhurree did receive the two former prisoners into their houses; but as the Regulations have not, to my knowledge, declared such conduct to be an offence, and punishable by the Circuit Courts, or indeed by any Courts, I feel myself precluded from sentencing them to punishment, even if their confessions were not liable to the same objections as those of the former two prisoners. I beg it to be distinctly understood, that this reference is not made to expose the mode of conducting business in the Magistrate's office, or to call down upon the Magistrate the censure or displeasure of the superior Court. The Magistrate of the Suburbs must have a great deal of business to transact; indeed I can fancy that he is so completely overwhelmed with the duties attached to the various offices he holds, as not to find time to take the confession of every confessing prisoner; but, if this be the case, it appears to me, that his assistants should be employed on such duties in preference to his native officers. The confidence which confessions made in the Foujdaree Courts claim, arises principally from the high characters of the individuals who preside over those Courts; and although the native officers in the present instance may have conducted their enquiries with every fairness and propriety, still the confidence given to their masters cannot be transferred to them, from press of other business, or from whatever other cause. The ground of the commitment in this case appears to me to be faulty and defective; and although I am satisfied of the guilt of the prisoners, I think they are entitled to claim the benefit of legal disabilities of this nature. I am, therefore, of opinion that they ought to be released. The decision of the superior Court in this case will determine two points of considerable importance. First, whether confessions made before native *Omlah* can injure those making them. Secondly, whether giving house room to adulterers is considered an offence, and liable to punishment. The determination of the first question will be a rule of conduct to the lower Courts. The determination of the second question, if it be decided to be an offence, and punishable by our Courts, will without doubt be promulgated in the shape of a Regulation for the information of the community at large."

The *futwa* of the law officers of the Nizamut Adawlut convicted all the prisoners but Nurhurree of the acts laid to their charge, with

1820.

Case of RAMSOONDUR and others.

the exception to that part of the accusation which related to seduction. On the merits of the case, the fourth Judge, (S. T. Goad,) recorded his opinion to the following effect. "I am of opinion that the prisoners cannot legally be convicted upon the confessions made by them before the Foujdaree *Omlah*, on the 6th of July, and repeated before the Magistrate on the 8th, and that the Magistrate should be censured for allowing his Foujdaree officers to take written confessions, and for certifying on the face of those depositions that they were given before him (the Magistrate) on the 8th, whereas in point of fact they had been previously written down by the *Omlah* on the 6th, (as the originals themselves prove,) and that the Magistrate should be strictly prohibited from allowing similar magisterial acts to be performed by his officers in future. Independent of these confessions, there is no evidence warranting the conviction of the prisoners. Musst. Goee besides appears to be an unchaste woman, and to have eloped twice before; so that the crime of seduction cannot be proved against Ramsoondur, and the commission of adultery with such a woman is hardly any thing more than an act of immorality. I therefore think the prisoner ought to be acquitted and released, as well as Nurhurree, who is acquitted by the *futwa*." But the officiating Judge (C. Smith) differed from his colleague, relative to the mode in which the confessions were taken, as will be seen from the following memorandum of his opinion. "I agree entirely as to the acquittal and release of all the prisoners. As to the confessions, the Magistrate's attestation of the 8th of July, clearly means no more than that on that date the prisoners acknowledged before him the confessions made on the 6th. The case in which this course has been pursued is of no great consequence; and the same course is, I am persuaded, followed in almost every district of the country, in cases of infinitely greater moment; nay, I am convinced that our records would shew innumerable cases of sentence of death and of transportation for life passed upon confessions taken in no other manner: *necessitas quod cogit defendit*. The press of business is such, that the Magistrates could not get on without it;—and if confessions taken at the Thana, in spite of denial before the Magistrate, are relied on, why are we to be more scrupulous as to confessions taken at the sudder station by the Magistrate's *Omlah*, and afterwards confirmed before the Magistrate, especially in cases of misdemeanor such as this? I think it, on the whole, very far from adviseable to issue any such strict prohibition as that suggested by the fourth Judge." The fourth Judge was still of opinion that the practice was irregular; but no other Judge being present in Court at the time, he deferred that part of the case for future consideration, in order that the accused might be immediately liberated. The usual sentence of acquittal was issued accordingly.

1820.
Sept. 14th.
MUSSUMMAUT NUNHYA'S case.

NEEL KAUNT,
against
MUSSUMMAUT NUNHYA.

Charge—ARSON.

The depositions of two private individuals to the confession made before apprehension, & not reduced to writing, of a girl eleven years of age, held sufficient for her conviction by the Moohummudan law; but rejected by the Nizamut Adawlut, especially with reference to the tender years of the prisoner.

THE prisoner Nunhya was at the 2d Sessions of 1820, for Zilkah Cawnpore, charged with having wilfully set fire to, and thereby destroyed the thatched roof of a hut, situated in the cantonment at that station, and belonging to Neel Kaunt, a private in the 14th Regiment Native Infantry.

The injury sustained by the said Neel Kaunt, did not form part of the original design of the defendant: but, though accidental, it was the result of a malicious act, and of course could not subtract from the criminality of the prisoner's conduct, which, in such a place, might have occasioned very extensive mischief. The Judge of Circuit represented, that he was induced to bring this case to the notice of the Nizamut Adawlut, not on account of the crime itself, but with reference to the degree and nature of the proof on which the accused had been found guilty. This evidence consisted solely and simply of the prisoner's unconstrained and voluntary confession, which was not formally taken, and duly recorded and attested in the presence of any one of the constituted authorities of Government, but made in a verbal manner to two persons, (whose veracity there could be no reason to doubt,) wholly unconnected with the judicial establishments, and antecedently to the prisoner's having been taken into custody.

The *futwa* of the law officer of the Court of Circuit, by declaring the prisoner convicted on the above proof, had pronounced it to be legal and sufficient evidence. The Circuit Judge expressed his opinion, in referring the case, that his law officer had taken a correct view of the meaning and intent of the Moohummudan law: but he added, as that interpretation was so directly at variance with *futwas* which he had seen delivered by other native lawyers on similar occasions, and as, moreover, the Regulations of Government did not enter into any specific detail on the subject, he felt desirous of obtaining, as a rule for his future guidance, the determination of the Nizamut Adawlut on a point, regarding which there appeared to exist among the law officers so great a conflict of sentiment. "The final sentence passed by the Nizamut Adawlut in this case, (present W. Leycester and S. T. Goad,) was in the following terms. "The *futwa* of two of the law officers of the Nizamut convicts the prisoner, a girl 11 years of age, of Arson, and declares her liable to discretionary punishment by *Tazeer*. The Court, observing that the prisoner's conviction rests solely on the deposition of two witnesses, who state that she made a confession of the crime before them, and further adverting to the tender years of the prisoner, are led to mistrust the truth of the confession made by her, and direct that she be immediately released."

1820.
Sept. 14th.
Case of PEERKHAN and others.

AMEER ALI,
against
PEERKHAN and Others.

Charge—MURDER and THEFT.

Prisoners convicted of theft, and of having made away with the woman to whom the property belonged, under circumstances exciting a strong suspicion that they had murdered her. Sentenced to a specific term of four years imprisonment, and further to be confined until certain tidings of the missing woman should be obtained.

The trial of the prisoner Peerkhan and his associates Ramdeen and Musst. Omda, came on at the 2d sessions of 1820 for Zillah Furruckabad. The indictment included two separate counts, namely,—

1st. Stealing a cart and bullocks, value 100 Rupees, the property of the prosecutor Ameer Ali. And,

2d. Violent suspicion of murdering Tejoo, the prosecutor's wife, and taking from her sundry jewels, and other property, value about 500 Rupees.

The prosecutor was a native of Futtehgurh; but, in following the occupation of a baker, attached to a corps of Native Infantry, had been absent from home for some years, and was residing at Benares at the time that the alleged acts, for which the prisoners stood arraigned, are supposed to have occurred. The circumstances which appeared in evidence in this case are as follow. Towards the close of the month of August 1819, the prisoners, Peerkhan and his reputed wife Omda, hired a cart and two bullocks from the prosecutor, for the purpose of proceeding to Furruckabad; and the prosecutor availed himself of this opportunity of sending his wife, Tejoo, to her parents at Futtehgurh. According to the depositions of two witnesses, named Ameerkhan and Azeemkhan, he gave her, with the property noticed above, in charge to his servant the prisoner Ramdeen. It is necessary to remark, that the party consisted of two men and three women, namely, the prisoners, the prosecutor's wife, and a third woman, besides two or three children. This remark is requisite, to shew how far the party travelled together, and where all traces of Tejoo were lost, circumstances essential to the refutation of the defence set up by the prisoners. About two months after the departure of his wife, the prosecutor happened to meet Omda in the city of Benares; and having previously heard that Tejoo had not reached Futtehgurh, he questioned her on the subject, when she told him that the bullocks were unable to proceed beyond Allahabad, and that in consequence his wife had been left at that place. On receiving this intelligence, the prosecutor immediately quitted Benares for Futtehgurh; and on arriving at Jullalabad, about 12 coss distant from the latter place, he discovered his bullocks in the possession of a man named Purshadee, who informed him that he had purchased them, through the agency of Ramdeen, from Peerkhan and Omda. This discovery led to the apprehension of Peerkhan and Ramdeen at Furruckabad, and ultimately of Omda, two months afterwards, at Benares, and then to the finding of the cart in the house of one Nobut Ali, Omda's son-in-law. On the trial, the prisoners Peerkhan and Ramdeen acknowledged having accompanied Tejoo as far as Cawnpore, and this point was also established

by the evidence of the witness Boodhoo, at whose house they put up. They also admitted the sale of the bullocks to Purshadee; but alledged that they had previously been purchased by Peerkhan, together with the cart, for the sum of 60 rupees from Mussummaut Tejoo. This sale, according to their own account, took place in a most clandestine manner, and even divested of all other circumstances of suspicion, might be considered a very improbable event: but independently of the great distrust which the mere transaction, as it is stated by the prisoners, was calculated to excite, the Judge of Circuit considered it proved beyond a doubt, by the respectable and credible evidence of an uninterested witness, (Imam Ali,) that what they had asserted was false, and that Tejoo, instead of returning, as they alleged, to Cawnpore, was in company with them at Poora, which is by ascertained distance 25 miles further advanced on the road to Futtehgurh. It was not, however, to this village only that the party were traced. A reference to the Suraee register kept at Khodagunge, clearly showed, that on the 13th of September preceding, at that place, only 13 miles from Futtehgurh, the number of the travellers had not been diminished.

The prisoner Omda, from the first, persevered in maintaining that she did not proceed beyond Allahabad, whence she returned to Benares; but this defence, besides being extremely incredible, stood refuted by the testimony of Boodhoo Khan and Imam Ali, and by the register above alluded to. The law officer of the Court of Circuit declared the prisoners convicted on violent presumption of the offences with which they were charged, and liable to imprisonment, until certain tidings of the missing woman should be obtained. The Judge, in referring the case, accompanied it by the following observations.

"That the defendants fraudulently or furtively obtained possession of the cart and bullocks belonging to the prosecutor, seems proved beyond a doubt. That they have destroyed Tejoo his wife, and possessed themselves of the remaining part of the prosecutor's property, there are strong grounds for suspecting, though it is not impossible that they may have disposed of the woman in some other way. I can hardly anticipate, under any view of the case, the entire acquittal of the prisoners; but it would be difficult at the present moment, to suggest any specific punishment, the measure of which must so greatly depend on the judgment of the Nizamut Adawlut, in respect to the actual extent of the prisoners' guilt. Should the missing woman be still alive, the conditional penalty declared in the *futwa*, may eventually elicit a disclosure that may restore her to her husband."

The Nizamut Adawlut, (present W. Leycester and S. T. Goad,) on a review of the whole of the proceedings connected with the case, passed the following sentence. "The *futwa* of two of the law officers of the Nizamut convicts the prisoners of having fraudulently appropriated the bullocks and hackery of the prosecutor, and of having sold the bullocks to another, and of having caused the prosecutor's wife, Mussummaut Tejoo, together with her jewels, to be missing, under circumstances that lead to a strong suspicion that Peer Khan and Ram-

1820.
Case of PEERKHAN and others.

deen murdered her, and that Mussummaut Omda was privy thereto, and declares them liable to long imprisonment by *Seasut*. The Court agree therein, and sentence the prisoners to four years imprisonment with hard labor, and to be further imprisoned until Tejoo the wife of Ameer Ali be forthcoming, or her death ascertained, in the course of nature, or by other means not connected with the act of the prisoners: when the case must be reported for further orders."

1820.
Sept. 22d.
GHOLAM MULLIK'S case.

GOVERNMENT, *against* GHOLAM MULLIK.

Charge—MURDER.

To slay fornicators detected in the act is allowable, according to the Moohummudan law, and a prisoner confessing he had killed his sister and her paramour under these circumstances, acquitted and released by the Nizamut Adawlut.

THIS trial came on at the first Sessions of 1820, for the Zillah of Jungle Mehauls.

It appeared from the confession of the prisoner, which was the only evidence against him, that he had been long acquainted with the connexion which existed between an individual, named Ramroop Bhugut, and his sister; that he had repeatedly attempted to dissuade her from continuing this intercourse, representing the shame and disgrace brought on his family by her conduct: that he had also frequently reproved Ramroop Bhugut, but without effect: that finding them one day, after his return from bathing, in the act of adultery, he was irritated, and first killed Ramroop Bhugut with a sword which he had with him, and afterwards his sister, whilst trying to effect her escape. The law officer of the Court of Circuit declared in his *futwa* that the prisoner was guilty of murder, he having slain his sister, while she was in the act of endeavouring to effect her escape; but that as it was a matter of notoriety, that to slay fornicators in the act of fornication is lawful, it was possible the prisoner might have thought he was doing a legal act, and that consequently he should only be subjected to *Deeut*, or the price of blood. The Judge of Circuit, on referring the case, stated, that he concurred in opinion with his law officer; but that as the persons killed were caught in the act of adultery and slain on the spot, he did not consider the prisoner deserving of a severe punishment. The law officers of the Nizamut Adawlut declared in their *futwa*, that the prisoner was entitled to his release, he having confessed, that he had slain the two deceased persons immediately on detecting them in the act of fornication, which statement involved no criminality; and the Court, (present S. T. Goad and C. Smith,) being of opinion that the confession, the only evidence against the prisoner, should be taken as it stood, directed his immediate release*.

* By a subsequent enactment, a plea similar to that used by the prisoner in this case would be of no avail for the purpose of justification. In Section 5, Regulation IV. 1822, there is the following provision. "It having been found

GOVERNMENT,
against
PIMMEE and two others.

Charge—SODOMY, and BEING ACCESSARY THERETO.

1820.
October 3d.
Case of PIMMEE and others.

Two individuals convicted of sodomy, sentenced to 30 stripes, *Tushheer*, and eight years imprisonment: an instigator of the offence sentenced to the same punishment; and the Court determined, that as *Tushheer* generally forms part of the punishment on conviction of this offence, the case should always be referred to the Nizamut Adawlut.

THE prisoners Pimmee and Khodabuksh were tried for sodomy, and Amanee for being privy, and consenting to the commission of this unnatural crime, at the 1st sessions of 1820, for Zillah Bareilly. The case was in substance as follows.

On the night of the 5th of July 1820, a burglary was committed in the house of the prisoner Amanee, and when the police officer enquired if he suspected any particular person, he answered, that his suspicion attached to Pimmee, who was at variance with him in consequence of his having refused any longer to send to the said prisoner his *chela* Khodabuksh. On the perusal of this report, the Magistrate caused the three prisoners to be apprehended, when they confessed the fact; and Khodabuksh and Amanee (an eunuch) said that it was their occupation.

The law officer of the Court of Circuit declared the prisoners convicted, and liable to *Acoobut*; but he considered Amanee deserving of less punishment than the other two, in which distinction the Judge of Circuit did not concur. In his letter of reference, he observed, that it might certainly be urged that Khodabuksh, who appeared about 17 or 18 years of age, was able to judge and act for himself; but that it should be recollected he was the *chela* of Amanee, who having brought him up, possessed a certain degree of authority over him, and at all events had taught him to consider the act as innocent. He added, however, that his object in referring the case to the superior Court, was principally to recommend that measures might be adopted for putting a stop to this unnatural crime, by declaring a specific punishment for the offence.

The sentence of the Nizamut Adawlut (present W. Leycester) was to the following effect.

The *futwa* of two of the law officers of the Nizamut Adawlut convicts Pimmee and Khodabuksh of having been guilty of sodomy, and declares them liable to discretionary punishment by *Acoobut*. The

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that in certain cases of murder, the justificatory plea that the person murdered was the mistress or relation of the prisoner, and detected in criminal intercourse with another man, or that the murdered man was found in criminal intercourse with the prisoner's mistress or relation, or generally speaking, detected in fornication, has been upheld by the law officers in bar of capital or discretionary punishment, and has been declared to subject such prisoner to *Deeut* only, it is hereby enacted, that the law officers of the Nizamut Adawlut shall be called on to declare in such cases what the *futwa* would have been, if such plea had not existed, and the Judge or Judges sitting on the trial shall pass sentence under the general Regulations, and on consideration of all the circumstances of the case, the same as if no such plea had existed."

1820. Case of PIMMEE and others.

Court concur in the conviction, and sentence Pimmee to receive 30 stripes with a *corah*, and Khodabuksh to receive 30 stripes with a rattan, to suffer *Tushheer* on an ass, and to be imprisoned with hard labour for eight years. Amanee is also convicted by the same *futwa* of having instigated and aided in the commission of the above crime, and declared liable to discretionary punishment by *Acoobut*. The Court concurring therein, sentence him to receive 30 stripes with a *corah*, to suffer *Tushheer* on an ass, and to be imprisoned with hard labour for eight years. The Court remarked also, that public exposure by *Tushheer* having generally formed a part of the punishment for the above crime, a reference to the Nizamut Adawlut should always be made, as the Courts of Circuit are not competent in these cases to pass an order of *Tushheer*.

1820. Oct. 7th. Case of RAMNEWAUZ and others.

GOVERNMENT, *against* RAMNEWAUZ and others.

Charge—FORGERY.

The *futwa* of the law officers of the Nizamut Adawlut convicting the prisoners of a minor offence, distinct from that with which they were charged, the Court directed their release; they being still liable to be tried on the minor charge.

At the July sessions for the city of Dacca, the prisoners Ramnewauz *alias* Bhola Tewaree, Brijlal Tewaree, Ramkunhai Rai, Ramlochun Das, Ramnarain Bose, and Hurishchunder Goopt, were tried on the charges of fraudulently preparing, fraudulently causing the preparation of, and for witnessing, knowing it to have been fraudulently prepared, a deed of engagement, on some date between the 28th of Poos and 29th of Maug, 1222, B. S.

Two of the prisoners, Ramnewauz and Brijlal, held an hereditary Zumeendaree tenure of a 12 anna share of Purgunnah Ramnugur, of the remainder of which Ram Kunhai, the third prisoner, and the others were proprietors. The latter and his partners held in farm (in the name of Doolub Shah) the 12 anna share, for five years, up to the end of 1223 B. S. and it would seem had contemplated the purchase of it, which however they delayed to effect. On the 28th Poos, 1222, the two first named prisoners executed a deed of sale of this property to one Bungoochunder Buttorja, a witness in this case. To invalidate this deed, Ram Kunhai produced one dated 23d Poos, 1222. And it was for having fraudulently prepared and witnessed this document, that the present charges against the prisoners were brought. The Judge of Circuit, in referring the case for the final orders of the Nizamut Adawlut, observed, that he had no hesitation in giving it as his opinion, that the charges were fully brought home to and proved upon all the prisoners. He therefore did not concur in the *futwa* of his law officer, which acquitted Ram Kunhai, Ram Lochun, and Ram Narain, and convicted Ramnewauz and Brijlal of swindling, or procuring money under false pre-

1820. Case of RAM-NEWAUZ and others.

tences, and Hurishchunder of aiding them in the same. His opinion was founded upon the general respectability of the witnesses for the prosecution, whose credibility he saw no reason to suspect; upon the form and nature of the proceedings in the civil suits, and upon the contradiction and prevarication with which the statements of the sellers abounded. The evidence on the part of the prisoners he disbelieved, from the mode in which it was delivered, the improbabilities which it contained, and as coming from servants or persons dependants upon themselves. The *futwa* of three of the law officers of the Nizamut Adawlut acquitted all the prisoners of having executed a deed of engagement to sell the 2 anna share of Purgunna Ramnugur to Ram Kunhai Rai, and of having fraudulently antedated the same to the prejudice of Bungoo Chunder the previous purchaser of the estate; but convicted the two first named prisoners of fraud in having executed two sales of the same estate to several persons; and also convicted the last named prisoner of having been privy thereto, and declared them liable to discretionary punishment.

The Court, however, (present W. Leycester and S. T. Goad,) observing many grounds to discredit several allegations in the testimony on the part of the prosecution, did not find sufficient reason to differ from the *futwa* of their law officers; and further considering that the offence of which the prisoners were found guilty was not that for which they had been put on their trial, and that they were still liable to be tried on account thereof, directed that all the prisoners should be immediately discharged.

1820. Nov. 13th. KULWA's case.

BYJWA,
against
KULWA.

Charge—MURDER BY POISON.

AT the 2d sessions of 1820, for Zillah Bandah, the prisoner Kulwa was charged with giving sweetmeats mixed with poison to the prosecutor and his brother Hinga, in consequence of which the latter died. The facts, as they appeared in evidence, were briefly as follow.

Prisoner being charged in two cases, the first with murder by poison, and the second with poisoning unattended by fatal circumstances, the Judge of Circuit,

From the deposition of the prosecutor Byjwa it would appear, that himself and the deceased Hinga his brother set out from their homes in Zillah Allahabad, in the month of Cheyt, for the purpose of proceeding to Bandah; that on their arrival at a village named Chapa, they were joined by a stranger (the prisoner Kulwa) wearing a badge, and calling himself a *chupprassy* of the Cawnpore custom-house, who, on pretence of also going to Bandah, proposed accompanying them; that on their reaching the village of Tindwary, distant from Chapa three *coss*, the prisoner quitted them on the plea of purchasing sweetmeats, when the prosecutor and the deceased repaired to a liquor

1820.

KULWA'S case. considering him guilty of the first offence, thought it unnecessary under Regulation XV. 1814, to proceed with the trial of the second; but sentence by Nizamut Adawlut postponed in the referred case, until the other should be tried.

shop, and purchased half a seer of liquor extracted from the flower of the Mowah tree, which they drank between them; that they were again joined by the prisoner, and proceeded on their journey. At about three beegahs from the liquor-shop, the prosecutor stated that the prisoner called out to him and the deceased to stop and take some sweetmeat called *Peeran* (a kind of consecrated food;) that they each received from the prisoner a small quantity, in weight about two pice, in eating which the prisoner forbade the spitting any part of it out, as their so doing would bring ill luck to them, when the prosecutor observed that the taste of the food was at first sweet, but afterwards very disagreeable; that after proceeding a short distance, a well being in sight, the prosecutor and the deceased expressed a wish to wash their mouths, which the prisoner objected to, observing that the village of Mungose was close at hand, and that they had better wait till they arrived there; that on their reaching a tope of Mowah trees, a short distance from the village, the prosecutor and his brother the deceased fell down senseless; and that while in that state, the prisoner made off with all their effects. The situation of the prosecutor and the deceased was witnessed by Jhunooa and Sheoka, *Goraits* of Mouza Mungose, and by Myaram and Khanna, the Zemindars. The deceased, it appears, lived but a short time after he was discovered by the witnesses; and the prosecutor, who was conveyed to the house of the witness Jhunooa, did not perfectly recover his senses till the following day, when he was taken to be present at the burial of the deceased, on whom an inquest had been held by the Thanadar. The prisoner, after plundering the prosecutor and the deceased of their effects, while they were in a state of insensibility, returned, it would seem, to the village of Chapa, where he was discovered by the recognizing of the horse on which he rode, by the prosecutor, whom the Thanadar of Tindwary had deputed, accompanied by a burkundaz, for the purpose of making search for the prisoner. The immediate production of the effects of the prosecutor and the deceased by the prisoner, on his apprehension, was attested by Bhowany Singh and Rajib Ally, Burkundazes, and by Bhowany, *Gorait* of Mouza Chapa. A quantity of other property, evidently stolen, was found in the possession of the prisoner, which was then unclaimed. The prisoner, before the Magistrate, acknowledged having taken from the prosecutor and the deceased their effects while they were in a state of insensibility, but denied having been the cause of their being in that situation, and ascribed it to the liquor they had previously taken at the village of Tindwary. Before the Court of Circuit the prisoner pleaded not guilty, but acknowledged his statement before the Magistrate. In referring the trial for the orders of the Nizamut Adawlut, the Judge of Circuit accompanied it by the following remarks. "That the situation of the prosecutor and his brother, and the death of the latter, was occasioned by some deleterious drug administered to them by the prisoner can admit of no doubt. The *futwa* of the law officer, in which I concur, convicts the prisoner on strong presumptive proof of administering poison to the prosecutor Byjwa, and to the deceased Hinga, his brother, from which the

1820.
KULWA'S case.

latter met his death; and sentences the prisoner to discretionary punishment of imprisonment for life, or to suffer death. The prisoner is a total stranger to all the parties. He appears, from the proceedings in this trial, to be a man of infamous character, who has travelled about plundering by means of administering poisonous drugs to all whom he could allure into taking them. The horse on which he rode, and which led to his discovery and apprehension in the village of Chapa, is claimed by the witness Beeka, who deposes to the prisoner having hired the animal of him, and subsequently robbed him of his clothes and horse, by means of administering to him some powerful narcotic. This forms a separate case before the Magistrate's Court. In addition to the crime of which the prisoner is now convicted, he stands committed on another charge of the same nature, but unattended with fatal consequences. As the *futwa* of the law officer has in the trial now submitted rendered the prisoner liable to suffer death, I have not, under section 2, clause 3, Regulation XV. of 1814, thought it necessary to proceed to the trial of the additional charge, which could lead only to an inferior penalty."

The Court of Nizamut Adawlut, however, (present W. Leycester,) not concurring as to the propriety of the above mode of proceeding, issued the following order. The *futwa* of all the law officers of the Nizamut Adawlut convicts the prisoner of having administered poison to Hinga and his brother, in consequence of which Hinga died, and of having appropriated their effects while in a state of stupefaction from the poison, and declares him liable to *Seasut* extending to death. The Court, however, prior to passing sentence, deem it adviseable that the remaining charge of administering poison should be entered on, as (if proved) tending to establish the position laid down in the Judge of Circuit's letter, that the prisoner is in the habit of "travelling about plundering by means of administering poisonous drugs," and direct that the case in question be tried at the ensuing sessions.

DULJEET,
against
PURMSOOKH.

1820.
Dec. 21st.
PURMSOOKH'S case.

Charge—ROBBERY.

Highway robbery, attended with assault by a single un-

THIS trial came on at the 2d sessions of 1820, for Zillah Etawa. The prisoner Purmsookh was charged with having robbed by open violence the prosecutor Duljeet of the sum of 9 Rupees. The reason of this reference will best be shewn by quoting an extract from the letter of the Circuit Judge, which was to the following effect.

1820.

PURMSOOKH'S case. armed offender, does not come within the provisions of robbery by open violence, as defined in clause 1. section 3, Regulation LIII. 1803.

"Being clearly of opinion that the guilt of the prisoner has been established by the evidence exhibited against him, I do not feel prepared to offer any objections to the convicting *futwa* of the law officer; but not being quite certain that the offence of highway robbery as it is defined in clause 1, section 3, Regulation LIII. of 1803, is sufficiently made out in the present instance, I have purposely suspended passing the prescribed sentence.

"In my humble opinion, it is to be regretted that the regulation was not made more full and explicit in respect to the circumstances requisite to constitute the offence contemplated by the legislature in passing that law. The enactment, in its present form, has given rise to much difference of sentiments on the subject; and in consequence of this conflict of opinion, the records of the courts, relating to trials of robbery by open violence, will, I apprehend, be found deficient in that essential characteristic of judicial proceeding, an uniformity of judgment. In regard to the trial now submitted, I must state it to be my opinion, that, as the prosecutor was put in great bodily fear, and was also violently assaulted by the prisoner, the prisoner committed the crime of robbery by open violence: but according to the strict letter, he must be considered innocent of this offence, as it is defined in clause 1, section 3, Regulation LIII. of 1803, because (being a single offender) he was not armed with an offensive weapon, and also because it has not appeared in evidence that he went forth with the criminal intent to perpetrate robbery; a degree of proof which, I am satisfied, is not to be obtained in nine cases out of ten."

On the above reference, the following order was issued by the Court of Nizamut Adawlut (present W. Leycester). The *futwa* of two of the law officers of the Nizamut Adawlut convicts the prisoner of highway robbery, attended with a certain degree of personal violence, and declares him liable to discretionary punishment by *Acoobut*. The Court concur in the conviction, and sentence the prisoner to receive 25 stripes with a *corah*, and to imprisonment with hard labour in banishment to another zillah for 7 years. With reference to the 3d and 4th Par. of Mr. Perry's letter, the Court do not perceive how the nature of the offence defined by clause 1, section 3, Regulation LIII. of 1803, can be mistaken, when considered attentively; and more particularly so, since the enactment of the 4th and 5th clauses of section 8, Regulation XVII. of 1817, which clearly provide for robberies not coming under the above definition.

GOVERNMENT, *against* MUSST. RUMKOO.

1821. Jan. 25th. RUMKOO'S case.

Charge—MURDER.

Prisoner convicted of throwing herself and her two infant children into a well in a fit of anger, by which the younger was killed; sentenced to imprisonment for life.

THE prisoner, Musst. Rumkoo, was committed by the Magistrate of Alligurh, and brought to trial at the 2d sessions of 1820, on the charge of throwing herself into a well with her two daughters, one of whom, an infant 8 months old, was thereby killed.

The immediate and direct cause of the attempt on the part of the prisoner to destroy herself and her two children was not clearly made out by the evidence recorded on the trial; but it may be inferred that she was at the time under the influence of sudden anger, excited by a previous altercation with her husband. But, whatever may have been the feeling that incited her to the commission of the act, the tenor of the evidence left no doubt of her real intent, and the partial accomplishment of her object subjected her to the charge of having been wilfully instrumental to the destruction of her own offspring.

The *futwa* of the law officer of the Court of Circuit declared the prisoner to be convicted of murder; but, in advertence to the relation in which she stood towards the deceased infant, declared *Kissas* barred, and the price of blood to be the penalty to which she was liable. In submitting the case, the Judge of Circuit observed, that after a due consideration of all the circumstances, he gladly availed himself of this legal exception in the prisoner's favour, and expressed a hope, that, in the event of her ultimate conviction, she might not be visited with the utmost severity of the law, but, after a moderate punishment, be allowed to return to the care and support of her indigent family, who stood more in need of her domestic services and maternal protection, than public justice did, in the present instance, of a rigid example.

The *futwa* of the law officers of the Nizamut Adawlut convicted the prisoner Musst. Rumkoo of the wilful murder of her infant daughter, 8 months old, by throwing herself with two of her children into a well, which caused the death of her youngest child; and stating capital punishment to be barred, in consequence of the consanguinity of the deceased, declared her liable to *Deeut*. The Court (present W. Leycester and S. T. Goad) concurred in the conviction, and observing that the prisoner was liable to capital punishment under Section 15, Regulation VIII. of 1803, under all the circumstances appearing in the case, sentenced the prisoner to perpetual imprisonment in the jail at Allighur.

1821.
Jan. 29th.
Case of RUNJOOA and others.

MUNGOOA,
against
RUNJOOA and six others.

Charge—MURDER and WOUNDING, &c.

The prisoners convicted of murdering a woman, on suspicion of her being a witch; sentenced, the first two to perpetual imprisonment, and the other three to 14 years imprisonment: another prisoner convicted of having tried the woman, and pronounced her to be a witch, sentenced to seven years imprisonment.

THE prisoners Runjooa, Deonath, Kyloo, Lukna, Potum, Dookha, and Toorea, were charged with the murder of Mussummaut Bhoondlee, wife of the prosecutor, and severely beating him and his daughter, Mussummaut Soomeree, on an accusation of witchcraft, and of afterwards plundering the prosecutor's house; and the prisoner Toorea with having tried, and declared the prosecutor's wife and daughter to be witches. The trial came on at the 2d sessions of 1820, for Zillah Ramgurh. It appeared in evidence that some of the inhabitants of the village of Seeroo, in Chota Nagpore, amongst whom were the five first named prisoners, suspected that some of the prosecutor's family had been guilty of witchcraft, and thereby caused the death of a number of persons in the village, (but who probably died of Cholera;) and in consequence sent to the prisoner Tooreea, who they considered was able to discover them, to request he would endeavour to do so. On receiving this message, Tooreea put some oil into a leaf with a little rice, and called over the names of the suspected persons, and when the names of the prosecutor's wife and daughter were mentioned, the oil (as he declared) ran through the leaf, and he accordingly asserted that they were witches. The prosecutor had information of this only on the evening of the 27th Bhadoon, and on the morning of the 28th of that month, or 1st September, the prisoners Kyloo, Luckna, and Potum came to his house, and desired him to attend with his family at an *Akhara* near a *Pokur* tree. He went there, with his wife, who was seven months gone with child, and his daughter, who had a young child at her breast. They there met some other persons, and the prisoners Runjoo a and Deonath, with the three prisoners above mentioned, seized and bound the prosecutor's wife and daughter, and beat them with heated sticks, of the tamarind tree, so severely as to occasion the death of the prosecutor's wife on the spot, and his daughter was so much injured as not to recover her senses for some time. The prosecutor himself was also severely beaten, and his arm broken: the child at the daughter's breast was not hurt, having been probably removed when the mother was bound. Other horrid acts of cruelty were stated to have been committed on the body of the deceased, although the prosecutor did not mention them before the Court of Circuit. After this the prisoners went to the house of the prosecutor, which having plundered, they drank a quantity of spirits which they found there. On information being sent to the Thana, the prisoners were apprehended, and an inquest held on the body, from which, as well as from the depositions of several witnesses, and the admissions of the prisoners themselves at the Thana, there could be no doubt of the correctness of the facts above stated. The prisoner Dookha, who was the husband of Musst. Soomeree, and son-in-law to the prosecutor, was from home at the time, and did not appear to have been in any way concerned in the transaction; and indeed the