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him; and some pieces of cloth, evidently torn from shirts and jackets, were found in the house where they had put up. Their depositions being immediately taken, Mungoo admitted, that he had accompanied the gang, who wounded the gentleman and bearer; but stated, that whilst the attack was made, he sat apart at some distance. Akber described the manner in which the attack was made, and the place at which it was made minutely; but stated, that he did so from hearsay, not having been with the gang when it occurred. He admitted, however, that he had come across the Ganges with several others for the purpose of thieving. Fyzoolah and Mukarim admitted that they had become acquainted with the circumstance of the attack and wounding of the gentleman and bearer, having learnt them from those who made the attack, with whom they afterwards travelled. The remaining prisoners denied the charge, and generally stated, that they came across the Ganges for service. Kadir, on his being apprehended, stated, that a person named Dullail gave him the buckles and handkerchief found in his possession; and before the Magistrate he stated, that he found them on the road. On the prisoner's being confronted with the prosecutor, Mr. Orr declared, that although he could not swear to the prisoner Roshun, from the circumstance of his having seen him by star light only, yet he appeared in every respect like the person who wounded him. The witness Boodram bearer, who was severely wounded on the left arm, deposed much to the same effect; but Buldeo *Mussalchee*, who was carrying the *mussal*, within three or four paces of Boodram, deposed distinctly, at his several examinations, that he had a full view of the prisoner Roshun by the light of his *mussal*, and that he was the man who wounded Boodram bearer.

The law officer of the Court of Circuit declared the prisoner Mungoo convicted on his proved confession, and Sheikh Kadir on the circumstance of the buckles and handkerchief being found in his possession, soon after the robbery took place, on violent presumption of the highway robbery and wounding; as also Akber, on the minute description he had given of the attack; and Roshun on the evidence of Buldeo Mussalchee, corroborated by Akber's statement. Fyzoollah and Mukarim he also convicted of being accessaries after the fact, to highway robbery and wounding; and declared the other six prisoners entitled to their release. The Judge of Circuit perfectly agreed with his law officer in convicting the prisoners Mungoo, Sheikh Kadir, and Roshun of highway robbery and wounding. There was something, he observed, so remarkable in the appearance of Roshun, that a witness having once had a distinct view of him, could not forget him; and indeed, although Mr. Orr could not swear to his person, the *mussal* having been put out when he saw him, yet the prisoner was apprehended in consequence of the description given by that gentleman of his person. With regard to the prisoner Akber, he did not think that his deposition at the Thana went so far as to convict him of being with the gang when the highway robbery took place; but he was of opinion that he stood convicted, together with Fyzoollah and Mukarim, of being accessaries after the

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fact, to highway robbery and wounding. He concurred with his law officer in acquitting the other prisoners of the charge; but in sending a warrant to the Magistrate for their release, he in a separate proceeding, ordered their detention until they should severally give security for their good behaviour, for four years, in the penal sum of 50 rupees, or in default to remain in prison for two years. As his opinion was at variance with that of the law officer relative to the crime of which Akber stood convicted, he submitted the trial without passing sentence of punishment, in conformity with Section 22. of Regulation VII. 1803.

The *futwa* of the law officers of the Nizamut Adawlut, declared the prisoners Mungoo, Sheikh Kadir, Akber, Roshun, Fyzoollah, and Mukarim convicted of having been accomplices in highway robbery, attended with wounding, and declared them liable to discretionary punishment by *Acoobut*.

On the merits of the case, the officiating Judge, (W. Dorin,) by whom the case was first taken up, expressed himself to the following effect. "There is suspicion that many of these prisoners may have been concerned in the robbery of Mr. Orr; but I am not satisfied with the evidence against any one of them, except Kadir, who I think, on his own admissions, and the identification of the buckles and *roomals* found upon him, is convicted of the knowing receipt of property obtained by robbery. I think the evidence against Roshun insufficient. Mr. Orr cannot swear to him, though he inclines to think him the man who wounded himself, (Mr. Orr,) while the one witness (the *mussalchee)* who does swear to him, says he saw him wound the bearer. Some of them at the Thana (if the Thana examinations are worth any thing) say it was another who wounded the gentleman. One of the questions put by the Judge of Circuit, implies that there were two or three others with white beards. The Thana examinations do not seem to me much to be depended on. The Darogha and Mohurrir in fact witnessed them all. I would sentence Kadir to fourteen years imprisonment, and release the rest. I see no clear ground of detention for security, except the general ground be taken that they all came from the Oude country in search of livelihood. Those who are stated in the *futwas* to have known and concealed the fact of robbery, could not well have divulged it before, if they wished it. The Thanadar was with them almost immediately after the occurrence."

The second Judge (C. Smith) differed from the officiating Judge, and agreed with the *futwa*, that there was strong presumption against all the six prisoners of having been engaged in the highway robbery. He proposed that they should all six be sentenced to fourteen years imprisonment, with hard labour, in banishment from the Cawnpore district. The proceedings having next been laid before the chief and third Judges (W. Leycester and S. T. Goad) they differed from both their colleagues, being of opinion that Sheikh Kadir and Roshun should be sentenced to receive 39 *corahs*, and to imprisonment in transportation for life, and Mungoo and Akber 30 *corahs*, and fourteen years imprisonment; but considering Fyzoolla and Mukarim to

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be convicted of privity only to the robbery, they were of opinion that those individuals should be sentenced to seven years imprisonment *.

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* A discussion arose as to this sentence, which originated in the following minute of the 2d Judge. "In this case it appears to me, that my opinion and the officiating Judge's virtually negative the sentence of transportation for life, to which the 1st and 3d Judges think Roshun and Kadir should be sentenced, and that their sentence cannot be deemed final unless approved by the 4th Judge, who has not yet seen the papers."

The Chief Judge observed. "The officiating Judge did not agree in the conviction of Kadir of the crime laid to his charge. Three Judges did, of whom two passed the sentence in question. Is it intended to be said, that if the officiating Judge had proposed a year's imprisonment, that such opinion would have had the same effect as that now ascribed to it, or does it acquire that virtue from the mere accident of the punishment proposed by Mr. Dorin being the same as that proposed by Mr. Smith? I do not see how an opinion regarding stolen property is to affect three opinions regarding highway robbery." In the above opinion he was joined by the officiating Judge.

The 2d Judge, however, rejoined. "I am not satisfied. It has, to the best of my knowledge, been the usage of this Court, whenever two Judges come to an opinion more favourable to a prisoner than any other two Judges, whether the judgment of the two Judges first mentioned exactly correspond or have shades of difference, and whether that opinion is in the shape of a total acquittal, or a less severe punishment, or conviction of a less heinous offence, to call in, if practicable, (it is at present practicable,) a fifth voice to make the balance preponderate one way or the other. It is not a month back that the officiating Judge, in the case of the Moorshedabad Burkundaz, charged with murder, suggested the propriety of commuting the capital sentence to one of perpetual imprisonment, upon no other ground than that the 1st Judge thought the proof insufficient, and the accused entitled to release, and in the officiating Judge's suggestion I acquiesced. The sentence will of course pass as approved of by the 1st, 3d, and officiating Judges."

The officiating Judge recorded the following minute in explanation. "I think it necessary to explain, that I do not concur in the sentences passed on the prisoners in this case, and that I consider myself altogether left in a minority on that point, and that my voice goes for nothing. I merely gave an opinion in concurrence with the chief and 3d Judges, on the abstract point, whether under such and such circumstances, their voices were decisive, which I thought they were. As to the sentences passed, I of course can have no wish, but rather the contrary, that the case should not be taken up by a fifth Judge. And as this course would be satisfactory to the 2d Judge, and can do the accused no harm, I would suggest that it be done, and I dare say the chief and 3d Judges will not object. I confess it would also be satisfactory to me." And the third Judge added, that the 4th Judge was perfectly at liberty to take up the case, if he chose; that he had no sort of objection, but rather wished to satisfy the scruples of the 2d Judge. It appeared, however, that the sentence had been issued, and on the 2d Judge's expressing a desire that it should be recalled, the chief Judge recorded the following observations. "I am not for recalling the sentence, though I would not have objected to the 4th Judge taking it up. I should have done so, however, upon the principle that the measure was one to which I could have no motive of objection, not that I thought it necessary. I am not aware of the existence of the practice quoted by Mr. Smith, with regard to the Moorshedabad Burkundaz. In passing sentence, the Judges will, I suppose, always act on any thing which may weigh on their mind in favour of the prisoner; and if the Judges who passed sentence in the case in question could have discerned any ground on which the 2d Judge proposed a mitigated sentence,—if they had not, on the contrary, considered it a case that required example,—they would doubtless have been influenced by that opinion in passing sentence. To do a thing, and propose

GOVERNMENT,
against
MIHRBAN and 162 others.
Charge—Dacoity, &c.

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Dec. 12th.
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Case of a gang of 163 persons, of the *Shighalkhor* & *Budhek* cast, who issuing from their haunts in the jungles of the Oude territory, assumed the garb of a Raja and his retinue proceeding on a pilgrimage, entered the Company's territory, and attacked a boat laden with treasure, which they carried off, killing one man, and wounding ten, and having made good their re-

The prisoner Mihrban and 162 others (whose names are given below, *A*) were tried at the second sessions of 1820 for Zillah Behar, charged, No. 1 to 145 inclusive, with having committed a Dacoity on a boat at Mukra, attended with murder; and No. 146 to 163 inclusive, with being accessaries in the same; and the whole of the prisoners were besides charged with being notorious Dacoits of the cast of *Shighalkhor* and *Budheks*, and, having again left their haunts and entered the Company's provinces with an intention to commit Dacoitee, having actually fixed their plan to plunder a dispatch of private treasure in gold mohurs, &c. proceeding from Calcutta to Benares, to gain information respecting the progress of which they had sent out their scouts. The robbery charged against the prisoners occurred at the village of Mukra, on the banks of the river Ganges, in the Thana of Dareeapore in the Behar district, on the night of the 26th of February 1820, corresponding with the 27th of Fagoon 1227 F. S. when a gang of about 200 Dacoits attacked, in two parties, a boat from Calcutta laden with treasure, which had come to for the night on a sandbank, about half a mile north of the village; and plundered it of 25,000 Spanish dollars, in 25 bags, and upwards of 2600 Benares and Furruckabad rupees, belonging to the house of Byjenauth and others. One of the armed peons on board the boat was killed by a ball which was fired by the Dacoits, and ten other peons were wounded with swords and spears. It appeared from the deposition of Aluf-khan, the first witness, who was Jemadar of peons in charge of the boat, that the dollars were put on board at Calcutta, and the rupees by the Gomashta of the house of Byjenauth at Moorshedabad, and that at the time the latter were put on board, a person, who did not appear to have any concern with the house, asked several questions respecting the strength of the guard and arms, which the witness observing, desired him to go away, and the boat then proceeded towards Patna. This witness further stated, that, on

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it to be done, are so nearly the same, especially when it shackles any other one Judge who may take up the case, (if I had taken up the case, and agreed with Mr. Smith, I must have done so in absolute ignorance of the ground of mitigation,) that I take this opportunity to question the legality of one Judge proposing a mitigated punishment, without stating the grounds of mitigation, which is required by the Regulations, when one Judge mitigates punishment. In this case, the convicted were liable to the punishment they got, even if they had not wounded Mr. Orr and another. This wounding was an aggravation, and there were other circumstances of aggravation, and not the least symptom of any thing that I could see which suggested mitigation."

The third, fourth, and officiating Judges being also adverse to the measure of recalling the sentence, the proposition to that effect by the second Judge was of course over-ruled.

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treat unsuspected, were proceeding, in the following year, on a similar expedition, when they were apprehended. Being tried for the above offences, the leader was sentenced to be hanged. Of his associates, 36 convicted of being accomplices in the above robbery, sentenced to receive 39 *corahs*, and to be imprisoned in transportation for life. Four convicted of privity to, and connivance in the said robbery, and of being professed Dacoits, to receive 30 *corahs*, and to be imprisoned in banishment for 14 years, and then to find security for good behaviour. 76 convicted of going

the day the Dacoity took place, he saw two men and two women sitting on the side of the river. They had a blunderbuss with them, which attracted his notice, and he since recognized them to be Soudanee Kuhar, and the prisoner Chotay (No. 109): but he had no suspicion at the time that they were robbers. The witness appeared, however, to have been anxious to carry the boat on to near a village, but was prevented effecting his purpose by the strength of the current, and was in consequence obliged to come to, on the sandbank where the robbery occurred. No traces were obtained of the robbers until about six weeks after, when Mr. McFarlan, the joint Magistrate of Monghir, was directed by Government to proceed to the spot to endeavour to discover the perpetrators of it, and obtain such information as might lead to their apprehension. On reaching the village of Mukra, that officer obtained information, that on the night of the robbery, a person calling himself a Raja of Oude, returning from a pilgrimage, had encamped with upwards of 200 followers under some trees near to the village of Mukra; and that, before next morning, they had decamped; and about a coss south of Mukra, some boys feeding cattle had found one of the bags which had contained the dollars, with the seal of the house of Byjenauth upon it. One of the dollars had also been found, and a spear head, which were sent to the joint Magistrate by the Thanadar of Bar: and as it appeared that this Raja and his party had left the high road, and gone in this direction, in a disorderly manner, through the villages of Kujooraur and Kubeerchuck, the joint Magistrate suspected them to be the robbers. On proceeding to the village of Dareapore-bind, the joint Magistrate found that the supposed Raja and his party had encamped there the night after the Dacoity, (27th February 1820,) and from thence they had gone to Deepnuggur, where they remained two days to celebrate the *Hooly*. From this they were traced through Maleesand and Gowherpoor to Rampoor, at which latter place they stayed two or three days, and the Raja there hired bearers to carry some of his women by Daoodnuggur to Sasseram. Mr. McFarlan, being obliged to return to his station from Daoodnuggur, deputed Sham Lal Bose, the Thanadar of Monghir, an active and intelligent native officer, to endeavour to follow and trace the route of this Raja and his party, who in consequence proceeded to Sasseram, where he heard from some bearers, that a person calling himself Raja Mihrban Singh of Gour, in Oude, had arrived there about the beginning of Chyte, with a number of followers and women in *doolees* and *palkees*, and hired them as bearers to carry his women on to Azimgurh. They also stated, that the pretended Raja had directed a gardener at Sheosagur, three coss west of Sasseram, to plant some trees near a tank there, and advanced money for the purpose. The next intelligence obtained respecting the gang was from a Burkundaz, who had been sent on to Azimgurh, and who returned with several of the bearers who had been hired there by the pretended Raja. They stated, that they had accompanied him to his own country in Baraitch, in Oude; and had found that he was the leader of a gang of robbers, of the cast of *Shi-*

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ghalkoosht, and was returning with his gang after committing a Dacoity in the Company's provinces. This information was reported by Sham Lal Bose, to the acting Magistrate of Shalobad, who directed him to proceed to Juanpoor, and communicate such particulars as he might be able to collect, to Mr. Cracroft, the Magistrate of that zillah; who on the arrival of this officer immediately sent for all the bearers from Azimgurh, who had accompanied Mihrban to Oude, as well as a person named Soudanee Kuhar, who had been a servant of the pretended Raja Mihrban, and who, on being brought before the Magistrate, confessed having been with him when he committed the Mukra Dacoity. From this man's statement, as well as from other information obtained by Mr. Cracroft respecting the gang, that gentleman was induced to address the Government on the subject, and ultimately to call upon the officer in command at Secrora to assist in apprehending Mihrban and his gang. The detachment, which was in consequence sent on this duty, was accompanied by Sham Lal Bose, Soudanee Kuhar, and some of the bearers who had gone with Mihrban from Azimgurh; but owing to the thickness of the jungle, the resistance offered by the gang, and other causes, nothing was effected, and the troops returned to Secrora. They however learned that Mihrban and his gang, accompanied by several inferior chiefs, had left their haunts on a plundering expedition, and that his brother Chedee had commanded the party who resisted the detachment. They also heard that Mihrban travelled with some men dressed as sepoys in the Company's service, and gave himself out to be a Raja going on a pilgrimage, which information was communicated by Mr. Cracroft to the Magistrates in the Behar and Benares divisions. On the receipt of this notice, the acting Magistrate of Behar, (Mr. Smith,) considering it probable, that the gang (in the event of their coming eastward) would approach by the new road, as they had done on the former occasion, issued instructions to the Thanadars in the vicinity of the Soane, and particularly to those of Daoodnugur and Jahanabad, to establish a line of posts, by which they might be intercepted, in the event of their coming by bye roads. He also instructed the Thanadar of Gya to send several intelligent persons up the new road, beyond the Soane, with the view of obtaining timely notice of the approach of any persons answering to the description of the gang noticed in Mr. Cracroft's letter, and at the same time cause him to institute the most particular enquiries amongst the Gyawals, to endeavour to ascertain whether they had received any intimation from their people, called *Burbureeas*, (who are always on the look out for pilgrims,) of the approach of a Raja attended by seapoys. From this latter source information was obtained, that a Raja with persons in the dress of sepoys had been heard of near Mohoneea, on the opposite side of the river from Ghazeepoor, who was moving towards Sherghatty; and from the nature of the intelligence received respecting them, the acting Magistrate had every reason to suppose that they were the people of whom he was in search. Fearing, however, that the Raja and his gang might obtain intelligence of his measures, and disperse, should he attempt to assem-

forth to commit robbery, and of being professed Dacoits, to be imprisoned in banishment for 7 years, and then to furnish security. 15 convicted of going forth to commit robbery, to be imprisoned in banishment for 7 years. 31 (women) acquitted. The remaining prisoner, though convicted of having accompanied the robbers, was found to be insane, and ordered to the hospital.

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ble a force sufficient to apprehend them, he sent out persons to join them, and persuade them to proceed to Gya, and concerted measures with the Magistrate of Ramghur (then at Sherghatty) to apprehend them, should the former plan be unsuccessful. Mihrban and his party, however, appeared to have received some vague information from travellers that they were suspected, which alarmed them, and induced them to halt, about seven coss west of Sherghatty, where after consulting with the other chiefs, it was agreed that Mihrban, with the persons dressed as sepoys and a few of his followers, should endeavour to pass Sherghatty, whilst Munsa Sirdar, 3, with the great body of the gang, waited the result. Hearing, however, that Mihrban and his party were gone to Gya attended only by two *Chupprasses*, and that he had not been under any restraint at Sherghatty, Munsa 3, and his party were induced to cross the country towards Gya, with a view of joining their leader at that place; and encamped in the vicinity, where they were apprehended, and immediately carried before the Magistrate. Mihrban, on being brought before the Magistrate, said his name was Setaram, and that he was a zemindar from Baraitch, in the territory of the king of Oude, going on a pilgrimage with his followers. He denied having been in these provinces last year, which he still insisted upon on his trial, but the account he gave of himself was of itself very suspicious. The rest of the prisoners made nearly the same excuse, some admitting that they accompanied the *Baboo* (as they called him) as servants, whilst others denied having any concern with him, or having ever heard of him, although from the neighbouring villages. In general, however, their statements were contradictory, and did not even preserve any consistency respecting the names of themselves and their fathers, or places of residence. They had also frequently altered their appearance, both before the Magistrate and this Court, by painting their bodies, covering their faces with ashes, exchanging garments with each other, &c. The only direct evidence against Mihrban and the persons concerned with him in the Mukra Dacoity, was the disclosure made by Soudanee Kuhar, who had been admitted as an evidence in consequence of having obtained a conditional pardon from the superior Court, and the confession of the prisoner Heera, No. 32; the latter admitting that he was actually concerned in the Dacoity, and the former that he accompanied Mihrban last year as a bearer, and stayed with the women close to the village of Mukra whilst the gang attacked the boat. Their statements respecting the Dacoity, and the persons concerned in it, were so fully corroborated, not only by the strongest circumstantial evidence, but also by the deposition of Soorut Sing, formerly a Sepoy in the native infantry, who had lately been engaged by Mihrban to drill his Sepoys, and to whom, upon the recommendation of the acting Magistrate, a conditional pardon had also been granted, that there was no reason to doubt their correctness. The account given of the gang by the persons above mentioned was as follows. They stated, that Mihrban, *alias* Bulbeer, was the real name of the person calling himself Seetaram; that he was the son of Chait Roy, and ne-

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The following sentence was issued by the Nizamut Adawlut. The Court concur with their law officers in the conviction of the prisoner Mihrban Singh *alias* Seetaram, son of Chait Roy, as the head of a gang of robbers concerned in the abovementioned robbery; and seeing no circumstances in his favour to render him a proper object of mercy, sentence the said Mihrban Singh *alias* Seetaram to suffer death, by being hanged by the neck until he is dead, and order that his body be afterwards exposed upon a gibbet, at, or as near to the spot where the crimes were committed as circumstances may admit. The Court likewise concur in the conviction, as accomplices with Mihrban Singh *alias* Seetaram, of the prisoners Sheodeen (2), *alias* Sooltan, son of Munolla *alias* Choch Thaj, Kala Singh (5), *alias* Kurryoh Singh, son of Chunda, Bundhoo Singh (6), son of Busswant, Nundlal (8), son of Samunt, Ramdeen (10), *alias* Sheodeen, son of Hitcha, Rambul (12), son of Hurry Singh, Bhageeruth (13), son of Beerbul, Burryah (15), *alias* Khemanee, son of Sudola, Hurchund, son of Motee (16), Kunhya (17), son of Chunda, Budloo (20), son of Munsharam, Munsah (25), son of Nehaul, Rawur Singh (35), son of Mungree, Bhoop (38), son of Deep Chund, Lekhye (40), *alias* Baboo, son of Leela, Goray Lal (44), son of Tirkha, Bhitchook (47), son of Torul, Ramdeen (75), son of Jaun Baz, Ishree (77), *alias* Keshree, son of Bussunt, Sheodeen (78), *alias* Muroah, son of Neckched, Ramdeen (96), *alias* Gorah Lal, son of Dhunee, Buljeet (98), *alias* Bulla, son of Jodha, Nanhoo (108), son of Mihrban, Chotay Singh (109), *alias* Kunhya, son of Nyne Singh, Bacha (110), son of Lauljee, Bussawun (111), *alias* Tharoo, son of Doorjun, Mudaree (112), *alias* Modhee, son of Panhoo, and Bhitchook (113), son of Teka, in all 28 prisoners, and sentence them each to receive thirty-nine stripes of the *corah*, and to be imprisoned in transportation beyond sea with hard labour for life. The Court further convict the four prisoners Keerut (34), son of Cheeda, Ramdeen (42), son of Puhlad, Dullah (46), son of Khurrugjeet, and Duljeet (99), son of Runjeet, of having been privy to, and conniving at the commission of the abovementioned Dacoity; and being satisfied that they are professed Dacoits of dangerous character, sentence them each to receive thirty stripes of the *corah*, and to be imprisoned in banishment with hard labour for the period of fourteen years, and not to be released on the expiration of their respective sentences, unless they furnish substantial security, in two sureties of 50 rupees each, to the satisfaction of the Court of Circuit, on the report of the Magistrate, for their future good conduct for the period of five years from the date of their discharge. The Court convict the prisoners Bhoop Singh (3), *alias* Munsa, son of Punye Singh, Biram Singh (4), *alias* Bullee, son of Munsa Singh, Davee (7), *alias* Ramdeen, son of Motee, Beerbul (9), son of Bunsee, Mohun (11), son of Dulleep, Buljeet (14), son of Nowul, Mungul Singh (19), son of Bheemul Singh, Mohun Singh (21), son of Nudureea, Pirthee (22), son of Gaujoo, Rujjah (23), son of Bhowanny, Nowulgeer (24), son of Chunda, Motee (26), *alias* Bhuggutram, son of Munny, Lutchmun (27), son of Heera, Motee (28), son of Bheemul, Oree (30), son of Pun-

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dohee, Munsah (33), son of Anundee, Nunda (36), son of Jey Singh, Sookha (37), son of Bisram, Zalim (39), son of Leela, Hitcha (41), son of Reekhye, Goordial (43), *alias* Ramdeen, son of Newazee, Davee Singh (45), son of Gunga Singh, Medah (48), son of Rutna, Baul (49), son of Somye, Dhunput (50), son of Bhuttoo Singh, Muhtab Singh (51), son of Gyne Singh, Bhowanny Singh (52), son of Betchoo Singh, Mayrey (53), son of Buddul Singh, Ramdial (54), son of Sonecheriah, Bukhtour (55), son of Mahungoo, Dyaram (56), son of Beejye, Doorga (57), son of Dyaram, Murdun (58), son of Motee, Muhlal (59), son of Dhummee, Hurgobind (60), son of Gungaram, Peerbux (61), son of Emambux, Ummer Singh (62), son of Munsa, Woodye Singh (63), son of Lootawun, Boojawun (64), son of Hitcha, Motee Singh (65), son of Boolakee, Shewuk (66), son of Ramjee, Teekytee Singh (67), son of Kuderooa, Madhoo (68), son of Bodee, Teetur (69), son of Bhagouleea, Jeeun (70), son of Kodge, Koodge (71), son of Bengally, Runjeet (72), son of Damodur, Beneepershad (73), son of Baljeet, Rambul (74), son of Buljeet, Jhurryher (76), son of Puhlad, Jokhun (79), son of Pultoo, Oody (80), son of Bisram, Sheodeen (81), son of Dhunee, Nusseeb (82), son of Jeet Roy, Horil (83), son of Gunga, Durrea Singh (84), son of Munsah, Sheodeen Singh (85), son of Gunga Singh, Sawul Singh (86), son of Bheekharee Singh, Daveedee Singh (87), son of Beekharee Singh, Davee (88), *alias* Sawaram, son of Goomanee, Radhay (89), son of Juggernath, Kunhye (90), son of Sooltan, Geerdharee Singh (91), son of Kishoor Singh, Zalim (92), son of Kirpa, Tek (93), son of Gopee, Khurga (94), son of Sooltan, Nanhoo (95), son of Mahungoo, Bhowaneedeen (97), son of Byjoe, Jeeasoo (100), son of Josee, Buldeo (101), son of Josee, Teekchund (102), son of Tillukram, Gungadhur (104), son of Nanhoo, Rugha (105), son of Nanhoo, Nurkoo (106), son of Jokhla, Jeet Singh (107), *alias* Abjeet, son of Nowul, and Soojan Singh (114), son of Dhunee, in all 76 prisoners, of going forth for the purpose of committing robbery; and considering the prisoners to be professed Dacoits of dangerous character, sentence them respectively to suffer imprisonment in banishment with hard labour for the period of seven years, and to be confined on the expiration of their sentences until they give substantial security in two sureties of 50 rupees each, to be approved of by the Court of Circuit on the Magistrate's report, for their future good conduct, for a period of five years from the date of their discharge. The Court also convict the prisoners Chotay (146), son of Mayree, Ramdeen (147), son of Dookhe, Bukhtour (148), son of Ramye, Kulleean (149), son of Bukhtour, Bukhtour (150), son of Toree, Heolas (151), son of Torul, Mayree (152), son of Buldar, Koolahul (153), son of Toree, Pershadee (154), son of Chumroo, Duhpelooah (155), son of Sheobux, Leeluck (156), son of Buldee, Sudhaun (157), son of Pirtram, Oree (159), son of Mayree, Oree (161), son of Zorawur, and Deena (162), son of Poorye, in all fifteen prisoners, of going forth with a gang of robbers for the purpose of committing robbery, and sentence them each to be imprisoned in banishment with hard labour for the period of seven years. The Court concur with their law officers in the acquittal of the women

committed in this case, and accordingly direct, that the whole of them, from No. 115 in the list to No. 145, both inclusive, in all 31 prisoners, be immediately discharged. It appearing from the evidence, that the prisoner Buldee, son of Munsa, accompanied the gang of robbers, but that he is in a deranged state of mind, the Court direct that he be confined in the insane hospital at Patna. The Court remark, that the prisoner Sunker has been acquitted and discharged by the officiating Judge of Circuit, and that the prisoners Thoree (18), *alias* Bisram, Chumroo (31), Oree (103), son of Pershaud, Sookram (158), and Hoolas (160), son of Bhooal, are reported to have died in jail. The confessing prisoner Heera (32), son of Undaram, who has been admitted as king's evidence, and Soorut Singh, and Soudanee Kuhar, having conformed to the conditions of the pardon tendered to them under the orders of this Court, and having made a full disclosure of the circumstances within their knowledge, relative to the commission of the robbery, their pardons are confirmed, and written certificates under the seal of the Court are accordingly directed to be forwarded for delivery to them for their security, as far as regards the acts therein referred to. In the trial of this case, the Court of Nizamut Adawlut have remarked with satisfaction the zeal and intelligence of Mr. MacFarlan, the late joint Magistrate of Monghier, by whom the first clue was obtained in tracing the robbers; likewise the foresight and cordial co-operation of the Magistrate of Juanpore, Mr. Cracroft, and Captain Anquetil, of the 1st Battalion 22d Regiment, Native Infantry, on whose information the robbers were seized, when going forth on a second excursion; and also the activity of the police at Gya, in securing the persons of so large a gang, and the perspicuity and attention evinced by the acting Magistrate of Behar, in collecting and preparing the evidence for the commitment of the prisoners. The Court of Nizamut Adawlut have further remarked with satisfaction, the patience and trouble taken by the Judge of Circuit, Mr. Fleming, in comparing the large body of evidence recorded on this trial. Mr. MacFarlan, appearing to have been specially deputed by Government to trace the perpetrators of this robbery, ordered, that an extract from the proceedings of the Court on this trial be forwarded to the Chief Secretary to Government, together with a copy of Mr. Fleming's letter, of the 20th of March last, and its English enclosures, for the information of Government*.

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* For a statement of additional particulars relative to each individual prisoner in the above case, the witnesses by whom they were respectively recognized, &c. &c. See Appendix, marked A.

1821.
Dec. 31st.
CHOONA's case.

MUSST. PEERBUKSH and others.
against
CHOONA.

Charge.—ADMINISTERING DELETERIOUS DRUGS, and THEFT.

Where a prisoner is charged with two or more distinct offences, the record of each trial should be kept separate, and a *futwa* should be taken on each individual case; not on the whole collectively.

THE prisoner Choona was committed for trial at the second sessions of 1821, for zillah Etawa, on three separate charges, differing in time and place; but much alike as to the nature of them.

In case No. 19 of the calendar, it appeared that the prisoner Choona, going into the *serai* of Holaus Rai, in the town of Etawa, on the 17th of May 1821, reported himself as a traveller, and in the evening sent a *bhutteearin* to bring to him Musst. Peerbuksh, a prostitute, with whom he was acquainted. The *bhutteearin* accordingly brought her. After smoking, the prisoner gave her (the prostitute) some sweetmeat and curds to eat, in which he mixed up a deleterious powder, which he kept by him for such purposes. Musst. Peerbuksh shortly afterwards lost her senses, when the prisoner took the ornaments from off her person, and made his escape. Musst. Moradbuksh, who remained with the prisoner and Musst. Peerbuksh some time, also partook sparingly of the sweetmeat, and retiring to another house, fell ill. Musst. Peerbuksh was found during the night by Musst. Sya, *bhutteearin*, lying senseless, and stript of her ornaments and most of her clothes: she did not fully recover her senses till seven or eight days had elasped. On the room being examined, a cloth was found left by the prisoner, containing a powder, which being sent in to the Magistrate, was declared by Doctor Clarkson to be a preparation of *dhuttoora*, or thorn apple. The prisoner being subsequently apprehended on the 1st of July 1821, by the Thanadar of Kurhul, Musst. Sya, *bhutteearin*, recognized him as the person who had sent for Musst. Peerbuksh in the *serai* of Etawa, on the night Peerbuksh was found senseless, and stript of her ornaments. Musst. Peerbuksh and Moradbuksh also fully recognized his person. The prisoner confessed, both at the Thana and before the Magistrate, that he did mix a powder, which he received for such purpose from a woman named Raceea, in the curds and sweetmeats he gave to Musst. Peerbuksh, with the intention of stealing her ornaments, when she should be senseless in consequence of eating it; and further, that when she became so, he did take from her person her ornaments, and fled with them. In the commitment (No. 20 of the calendar) it appeared that the prisoner Choona met with three boys on the 26th of June, 1821, who had gone to a *tope* for the purpose of eating mangoes. These boys had various silver ornaments about their persons. The prisoner was at that time seated in a *Muth*; but he got up, and going and giving them a pice, requested that they would purchase for him some articles to be used in his *poojah*. Returning to the village, they did so, and then rejoined the prisoner, who gave them each some sugar to eat, mixed, by the prisoner's own proved confession, with the same deleterious powder which he gave Musst. Peerbuksh to eat. The children, on receiving this mixture, tied it

up in their clothes; but he made them untie it, and eat it before him, and then gave them each some water to drink; after which they became very confused, and could not go towards their homes. As night was setting in, the prisoner spread his own *chudder* or sheet on the ground, and told them to sleep there. Two of them laid down; but the third would only sit, and made several attempts to go home, but always returned again to the same place. When the night had somewhat advanced, Munsook, the father of one of the lads, having gone in search of his son in the neighbourhood of the *Muth*, called out, when the boy Nynesook recovering a little, ran to him; and from him Munsook heard, that the prisoner and the other two boys were in the jungle, to which he returned, and made the prisoner accompany him home, bringing the boys with them. This crime the prisoner confessed, and the two Luljeas and Nynesook (the boys who ate the mixture) corroborated the confession.

In commitment No. 21 of the calendar, it appeared that the prisoner having given some of the same powder to a relation of his, Musst. Butkeea, he stole her copper utensils, whilst she remained under its effects; from which she did not fully recover for many days. The proof in this latter case was presumptive only.

The law officer of the Court of Circuit declared the prisoner Choona convicted of having given a deleterious powder, mixed with sweetmeat and curds, to Musst. Peerbuksh to eat, knowing the effect it would have upon her, and of having stolen her ornaments from off her person whilst she lay senseless. He also convicted the same prisoner of giving some of the same kind of powder with some sugar to Luljea, Luljea second, and Nynesook, with the intention of stealing their silver ornaments, as soon as the powder should have its full effect upon them; and likewise of giving some of the same powder to Musst. Butkeea, and of having stolen two copper utensils from her whilst she was under its deleterious effects; and declared the prisoner liable to severe punishment by stripes and imprisonment, so that the ruling power should be satisfied that there was no longer fear of his again committing similar crimes. In this *futwa* the Judge of Circuit concurred; and on consideration of the nature of the crimes proved against the prisoner, and of the circumstance of his having been twice convicted by the Court of Circuit on other charges of theft, and sentenced to seven years imprisonment, from which he was released on the 1st of October 1820 only; he declared his opinion, that the prisoner was deserving of thirty *corahs* and perpetual imprisonment.

By three distinct *futwas* of the law officers of the Nizamut Adawlut, the prisoner was declared convicted of having administered a deleterious powder with sweetmeat in three different cases, first to Musst. Peerbuksh, secondly to three boys, two named Luljea, and Nynesook, and thirdly to Musst. Butkeea, with the intention of committing theft, and actually committing theft in the first and third case. The Court (present W. Leycester) fully concurred in the conviction of the prisoner in the three cases, and sentenced him to receive thirty stripes with a *corah*, and to be imprisoned with hard labour for life in the jail

1821.
CHOONA'S case.

at Allipore. With reference, however, to certain irregularities which were perceived in the mode of conducting this trial, the Court passed the following order. "The Court notice, for the observation of the Circuit Judge, that in two of the cases in question, a distinct *futwa* has not been taken as it ought to have been; under each of which the Circuit Judge's assent, if he agreed with it, ought to have been recorded, and the record of each case ought to have been kept distinct, and each of the trials should have referred to the one last tried, and that should include in its final order all the three cases.

1821.
Dec. 31st.
Case of ANWAR and others.

KISHEN MOHUN and PRANKISHEN,
against
ANWAR and eight others.

Charge—DACOITY.

A law officer having declared in his *futwa*, as a ground for the acquittal of a prisoner, that he might have concealed his knowledge of a Dacoity from fear, and that it was inexpedient to punish him lest it should deter other offenders from giving information, the Court held that he had exceeded his duty, and that he should not have referred to matters having no connexion with Moohummudan law.

THE prisoners Anwar (1), Jaun Mahomed (2), Futtih Mahomed (3), Pokah (4), Sheikh Horoy (5), Keamoodeen (6), Saduck Baker (7), Horoy Bhudder (8), and Bhagoy (9), were tried at the 1st sessions of 1821 for zillah Tipperah, on the charges of having attacked and plundered the houses of the two prosecutors, who were brothers. It appeared in evidence, that about midnight on the 15th of Cheit, a gang of robbers, armed with swords, spears, and bludgeons, attacked the house of Pran Kishen, in the village of Mustaphapore. Six of them entered the house, and having beaten Pran Kishen till he became senseless, they stript his wife and daughter of their gold and silver ornaments, and took also some copper and pewter utensils and clothes, to the value altogether of 50 or 60 rupees. The gang next proceeded to Kishen Mohun's house, who had taken the alarm, and had opened his chest, with the intention of carrying away and concealing his valuables. As, however, he saw the robbers approaching, he ran away into the jungle with his wife and two children, leaving every thing behind. He stated, that the gang consisted of twenty or twenty-one in number; that they carried lights, and that they took seventy-three rupees in cash and household utensils, ornaments of silver, &c. to the amount of above 300 rupees in the whole, and that they remained about one *ghurree* in his house. Neither of the prosecutors knew any of the Dacoits. Their dwellings were surrounded on three sides by other dwelling houses, with a plain to the south. The witnesses Sookdeb, Gungaram, and Kishnoo resided in the same village with the prosecutors, and were alarmed by the noise on the night of the robbery. They saw the Dacoits attack the houses of the two brothers. They stated, that they began to alarm and assemble the villagers; but before the people could be collected, the robbers had gone away, after remaining two *ghurrees* in the dwellings of the prosecutors. A person named Tupisram the next day gave information of the Dacoity to

1821.
Case of ANWAR and others.

the police Darogha of Turlah, and the prosecutor Kishen Mohun preferred a complaint at the Thana on the 31st March. The Darogha, attended by the witness Birahim Burkundaz, who appears to have been the chief agent in discovering the robbers, and other persons belonging to the Thana, went to the spot the following day, and assembled the neighbours in order to make enquiries respecting the robbery. The witness Beraheem stated on the trial, that towards evening, the Darogha, attended by the inhabitants of the village, went to the neighbouring bazar of Ramchunderpoor, where he was engaged till the next day in making enquiries, and desired the witness to use his exertions for the detection of the offenders. The witness, suspecting that the prisoner Sheikh Horoy, who resided in the plain lying to the southward of the prosecutor's dwelling, knew something of the matter, as the Dacoits must have passed his house, called him aside, but at first he denied all knowledge of them. He then called aside Shitab, a witness in the present trial, who lived near Horoy, and who informed him, that eight days previous to the robbery, two men on horseback came to Horoy's house, and remained there a night, and on Shitab's asking Horoy who they were, he answered that they were friends of his from Hurrypoora, and that they had come to sell their horses at the bazar of Ramchunderpoor. Horoy being again called, acknowledged that two horsemen had come to his house on the day mentioned by Shitab, and one of them was named Kelaram, who was known to the witness Beraheem as a notorious bad character. Shitab then said he had seen the same two persons come to Horoy's house a year before, and they also came to his house on foot on the Monday before the Dacoity, and spent the night with him, and further that the strangers went the next morning to the bazar of Ramchunderpoor, and he saw Horoy follow them. Horoy being closely questioned the next day, confessed that on the night of the robbery, Kelaram and the prisoner Keamoodeen came to his house, and took him to a *nullah* which is near it, where he saw about eight men armed with swords, spears, and clubs; that he asked who they were, when his friend Kelaram told him they were going to rob the prosecutors' houses, and asked in which house the chest was; that he (Horoy) answered, in Kishen Mohun's house; that they asked him to accompany them, which he refused, and they then threatened, that if he impeached them he should be put to death. Keamoodeen, who was among the villagers, was then apprehended. The following day Horoy's examination was taken in writing by the Darogha, and being confronted with the prisoner Keamoodeen, the latter confessed that he had been engaged in the robbery with Futtih Mahomed, Anwar, Pokah, Jaun Mahomed, Kelaram, Baker, and others whose names he did not know. He afterwards said, that he and Horoy went with the other robbers as far as the tank near the prosecutors' dwelling, but had returned from thence. He then went with the Darogha to his brother-in-law Basir's house, and produced some of the stolen property from the cow-house. In consequence of the information furnished by Keamoodeen, the police officers next apprehended Futtih Mahomed, Pokah,

1821.

Case of ANWAR and others.

and Jaun Mahomed at a place called Ramkishenpoor, and part of the stolen goods were found in the houses of the two former. All three confessed being concerned in the Dacoity, and were sent up to the sudder station, together with Shekh Horoy, Keamoodeen, and Basir since deceased, where they all, with the exception of Basir, made the same confessions as they had made before the Darogha. The disclosures made by the above named prisoners enabled the police officers to apprehend successively the prisoners Baker, Bhagoy, and Horoy Bhudder, in whose houses stolen property was found, as well as Anwar, Kelaram *alias* Phela, and others of the gang, who were not committed for trial. Anwar confessed being concerned in the robbery before the Darogha, and also in presence of the Magistrate. But the prisoners Baker, Bhagoy, and Horoy Bhudder, although they confessed before the Thanadar, denied the charge when examined by the Magistrate. On the trial before the Court of Circuit, all the prisoners denied the charge. The witness Shitab corroborated the evidence of Biraheem Burkundaz, and the rest of the witnesses for the prosecution deposed to the confessions of the prisoners before the Darogha and Magistrate, and the discovery of the plundered property in the houses of the five prisoners mentioned above. With respect to the defence of the prisoners, Anwar alledged that his confession was extorted, and that he was keeping watch at his own village during the night of the robbery. The latter allegation was disproved by his own witnesses. Jaun Mahomed pleaded in defence, that his confession was extorted by violence. Futtih Mahomed, Pokab, Keamoodeen, Horoy Bhudder, Bhagoy, and Baker denied having made any confessions. Their witnesses deposed to nothing material.

The law officer of the Court of Circuit declared all the prisoners convicted, with the exception of Sheikh Horoy. Six of the gang who were apprehended, and confessed the robbery before the Darogha, were not committed for trial. Their names were Kelaram *alias* Phela Chung, Phedoo Chung, Sheebram Chung, Sunker Haree, Allah Bukhsh, and Zukee Gaien. The Judge of Circuit expressed his opinion, that these persons ought to have been committed, especially Kelaram, who appeared to be the chief of the gang. He stated, that he had some intention of directing the Magistrate to commit them, but that on further consideration he resolved to await the decision of the Nizamut Adawlut respecting them. He observed, that the two cases constituted in fact but one robbery, as the two prosecutors were brothers, residing in adjoining houses, within the same enclosure. He sentenced eight of the prisoners on the 1st charge to imprisonment for life in transportation and 39 stripes of the *corah*, subject to the approval of the Nizamut Adawlut, according to section 4, Regulation VIII. of 1808. The remaining prisoner, Sheikh Horoy, who was acquitted by the law officer's *futwa*, he ordered to be detained in jail until the final orders of the Nizamut Adawlut were received, as he conceived him to have been the *goinda* of the gang, and an accomplice in the robbery, and that he ought not to be released without security for his good behaviour.

1821.
Case of ANWAR and others.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted all the prisoners, except Sheikh Horoy, of having been accomplices in Dacoity, and declared them liable to discretionary punishment by *Acoobut*. The Court of Nizamut Adawlut (present W. Leycester) fully concurred in their conviction, and confirmed the sentence of 39 *corahs*, and imprisonment with hard labour in transportation beyond sea for life, passed upon the prisoners by the officiating Judge of Circuit. The prisoner Sheikh Horoy was convicted by the same *futwa* of having been an accessary before the fact to this Dacoity; and the Court agreeing in the *futwa* with respect to that prisoner also, sentenced him to receive 25 stripes of the *corah*, and to be imprisoned with hard labour for 7 years. With regard to this prisoner, the Court observed, that the law officer of the Court of Circuit (Ali Tukee), after stating that he had confessed holding counsel with the Dacoits, had declared him entitled to his release, apparently on the ground that substantive evidence of his guilt was not adduced, (the absence of which is not a ground of acquittal, if there be otherwise sufficient evidence to convict,) and, as it would seem, principally because it was possible that he might have concealed his knowledge of the Dacoity from fear, and that it was inexpedient to punish him, as it might prevent the police obtaining similar information in future. With regard to the question of possible fear and public inexpediency, the Court observed, that the law officer had abandoned the line of his duty, in alluding to either; and that he was bound to find a verdict without reference to matters which have no connexion with Moohummudan law. The Court desired that the Court of Circuit would communicate these observations to Ali Tukee. The Court perfectly concurring with the Judge of Circuit, that Kelaram *alias* Phela Chung, Phedoo Chung, Sheebram Chung, Sunker Haree, Allah Buksh, and Zukee Gaien, ought to have been committed on their Thana confessions, and some of them being also implicated by the confessions of the prisoners in this trial, desired that the Court of Circuit would direct the Magistrate to commit them accordingly.

SOOKHLAL, *against* KHEALEERAM.

1822.
Feb. 4th.
KHEALEERAM'S case.

Charge—MURDER.

A prisoner convicted of murder, calling himself 14 years of age, and reported by the Circuit

THE prisoner Khealeeram was charged, in the calendar, with the murder of Nunda, aged from 4 to 6 years, for the sake of his ornaments. The deceased was missing from his father's house, from 12 o'clock A. M. till the evening of the 12th of July. The houses in the vicinity being searched, when the people so employed came to the prisoner's house, with torches, he was seen to leap from out of it, and run away. They pursued him, and took him to the Thana, where he

1822. KHEALEE-RAM'S case. Judge to appear not more than sixteen, sentenced to perpetual imprisonment.

confessed that he had killed the child, and buried the body in the bed of the Chumbul Nuddee. Next day, he pointed out behind his own house, in a ruined hut, the ornaments for the feet and neck worn by the deceased. The body was found in the Chumbul by the witnesses who appeared before the Court, and who were attracted to the spot by the offensive smell. The corpse was partially covered with earth, stones, and branches of trees. It was fully proved to be that of the deceased. The prisoner had not been able to take off the ornaments from the wrists, and these were found on the body. The death had evidently been effected by blows from some heavy substance. The prisoner pleaded not guilty before the Magistrate and the Court of Circuit; but the witnesses indicated by him to prove an *alibi* were not to be found. The prisoner, on trial, stated himself to be but fourteen years of age; and the Judge of Circuit, in referring the case, stated, that he actually did not appear to have passed sixteen. The Judge of Circuit agreed with his law officer in the opinion of the prisoner's guilt, and stated, that he left the prisoner to the justice, and perhaps, on account of his youth, to a mitigated sentence, of the superior Court. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the murder charged; but stating *Kissas* to be barred in consequence of his youth, declared him liable to *Deeut*, or for the sake of example, liable to discretionary punishment by *Tazeer*. The Court of Nizamut Adawlut (present W. Leycester and S. T. Goad) concurred in the conviction of the prisoner; but observing that the Circuit Judge stated, that the prisoner did not appear to have passed his sixteenth year, and that the prisoner admitted himself to be only fourteen years of age, sentenced him to perpetual imprisonment, in the Allipore jail.

1822. Feb. 23d. MUSST. MUNJOO'S case.

GOVERNMENT, *against* MUSST. MUNJOO.

Charge—MURDER.

Case of a woman killing her own infant in a fit of passion by cutting its throat, and afterwards attempting to commit suicide: *futwa Deeut*, sentence death.

THE prisoner was tried at the second sessions of 1821, for zillah Dinagepore, charged with the murder of her own daughter, an infant only two months old.

It appeared from the evidence adduced in the case, that the prisoner was proceeding to her father's house with her child in her arms, when she was overtaken by her husband, who forced her to return home with him; and that, being disappointed at not seeing her family, she, in a fit of passion, cut her child's throat, and was in the act of committing suicide, when she was prevented by her brother-in-law, named Dola, who snatched the knife from her, and threw it down on the ground. Her husband and some of their neighbours immediately came up, and saw the child lying dead with its throat cut, and the prisoner standing near the corpse with her throat slightly

1822.
MUSST. MUNJOO'S case.

wounded. Before the Darogha she confessed the murder, and asserted, that some time past, her husband had refused to partake of the food dressed by her, which vexed her, and she was proceeding to her father's house, when her husband met her on the road, made her return home with him, and cut her throat with a knife, with which she in a fit of passion destroyed her own child. The prisoner repeated her confession before the Magistrate, and on both occasions her confessions appeared to have been voluntarily given. The law officer of the Court of Circuit, in his *futwa*, declared the prisoner convicted of the killing, and liable to suffer punishment by *Deeut*, and that had the deceased been any other than her own child, she would be liable to suffer punishment by *Kissas*; concurring with which *futwa*, the Circuit Judge transmitted the proceedings for the final order of the superior Court.

The first *futwa* of the law officers of the Nizamut Adawlut convicted the prisoner, and declared her liable to *Deeut*; and the second *futwa* stated, that if the child had not been the prisoner's daughter, she would have been liable to *Kissas*. The fourth Judge of the Nizamut Adawlut (J. Shakespear) considered the prisoner's guilt to be fully established, and was of opinion, that she should be sentenced to capital punishment. The officiating Judge (C. Elliott) concurring in this opinion, she was sentenced to be hanged accordingly.

1822.
Feb. 28th.
MUSST. KURWYA'S case.

GOVERNMENT, *against* MUSST. KURWYA.

Charge—MURDER.

Case of a woman tried for throwing herself and her two children into a river, where the latter were drowned. Her Thana confession being the chief evidence against her, and that containing an expression which might be

MUSST. Kurwya was charged with the murder of her two infant children, by drowning them, and tried for that offence at the first sessions of 1822, for zillah Cawnpore.

The case was as follows. The prisoner being seen about gunfire, on the morning of the 6th November, 1821, struggling in the river Ganges, under Nujjuf Ghur, a hue and cry was raised, that some one was drowning, on which two persons, Cheetooa and Doolbureea, threw themselves into the river, and swimming towards her, brought her on shore. The prisoner being taken to the Thana, is stated to have there confessed, that in consequence of repeated quarrels with her husband, she went down to the river, with her two children, Gunnesooa, 4 years old, and Musst. Bhoaree, aged one year and six months, and taking them in her arms, threw herself and them into it; that she did not know how she was taken out, nor what became of the children. It was not ascertained that any person saw the prisoner leap in the river, or on her way to the river. In her examination by the Magistrate, she stated, that she accidentally slipt into the river, and did not know whether or not the children followed her; and before the

1822.

MUSST. HURWYA'S case.

Court of Circuit, she alleged, that she threw herself into the river in a fit of anger, leaving her children on the shore. The bodies of the children were not found, neither did it appear that they were seen in the river. The confession of the prisoner, as taken at the Thana, was proved by four witnesses.

construed to mean that she accidentally fell into the river, the Court held that she was entitled to the benefit of the favourable interpretation. Acquitted accordingly.

The law officer of the Court of Circuit convicted the prisoner of the wilful murder of her two children, Gunnesooa and Bhoaree, by drowning; but declared *Kissas* was barred by reason of the prisoner's being the mother of the two children drowned, and that she was only subject to *Deeut*.

The Judge of Circuit concurred with his law officer in the conviction of the prisoner, on her own proved confession; but it appearing to him, from the circumstances of the case, that the prisoner's intention was more to give up her own life than to take that of others, he begged to recommend her to mercy.

The *futwa* of the law officers of the Nizamut Adawlut was similar in purport to that of the Court of Circuit. The fourth Judge of the Nizamut Adawlut (J. Shakespear) observed, that the evidence against the prisoner turned chiefly upon her confession at the Thana, which she denied before the Magistrate and before the Court of Circuit; that the witnesses to the Moofussil confession deposed, that the prisoner confessed having cast herself and children into the river intentionally; that the confession was in *Hinduee*, and in the first part she stated "*ap se gir puree*," which expression he (the fourth Judge) did not consider to imply an intention of throwing herself in; that the latter part of the confession might be construed to mean so, but that the expressions used were rather dubious; and as there was no other evidence, he was of opinion, that the authority given by the second *futwa* of the law officers (to inflict a capital sentence) should not be acted upon. Indeed, he thought the evidence insufficient for conviction. The officiating Judge (C. Elliott) observed, that, although from the tenor of the latter part of the prisoner's Thana confession, it was apparent that the writer understood her to have previously confessed that she had intended to drown herself and her children, yet the wording of her answer to the second question put by the police Darogha evidently admitted of the interpretation, that she had fallen into the river; and that, as there were no witnesses to the fact, and the proof of the intention rested solely on this confession, the Court were bound to interpret it in the way most favourable to the prisoner. He therefore concurred in the propriety of ordering that Musst. Kurwya should be immediately discharged. The prisoner was ordered to be released accordingly.

1822.
Feb. 28th.
LURRYE CHUNG'S case.

MUSST. LULTEA, *against* LURRYE CHUNG.

Charge—MURDER.

THE prisoner was charged with the murder of Needa Chung, husband of the prosecutrix, and tried for that offence, at the 1st sessions of 1822, for zillah Sylhet. About two months before the murder, a *parun*, or bamboo trap for catching fish, belonging to the deceased, was lost or stolen from a *jheel*. He searched for it every where, but in vain. Some weeks afterwards, he happened to see it in the house of a person named Paugul Chung. The deceased claimed it, and demanded where the other had found it, when Paugul Chung said, that the prisoner had put it there. On this the deceased went home, and mentioned the circumstance to the witness Ram Ghose his Talookdar, who advised him first to take possession of the *parun* in the presence of witnesses, and afterwards to take steps about the theft. The day after this, the deceased set off for Paugul Chung's house, for the *parun*, but was never seen or heard of from that hour. His wife went about searching for him; and some days afterwards, understanding from several persons that they had seen the prisoner with a *dao* in his hand on the day the deceased was missing, proceeding after him in the same direction, (which was proved on the trial,) she suspected the prisoner, and gave in a petition to the Thana, accusing him of having made away with her husband, on account of what he had heard from Paugul Chung, about the prisoner having deposited the stolen *parun* in the house of that person. The Thana Mohurrir then apprehended the prisoner, who made a confession to this effect. "That the witness Ram Ghose, Talookdar, (before noticed) had beaten the deceased, and desired him (the prisoner) to beat him also; that thereupon he (the prisoner) gave the deceased a cut in the side with his *dao*, and beat him with his fists, of which treatment the deceased died on the spot." The day after making this confession, the prisoner showed the spot where the body had been left, in a shallow nullah full of weeds, where it was found quite destroyed, and nothing but the bones remaining, so that it was impossible to recognize it. The prisoner was then forwarded to the Magistrate, before whom he made, six days afterwards, the same confession as he had done in the Moofussil. Before the Court of Circuit, he adhered to what he had before asserted respecting the Talookdar, but denied having himself been concerned in the murder. There was nothing in the case to warrant the suspicion that either of the confessions had been obtained by unfair means. It seemed to the Judge of Circuit clearly established, that the prisoner murdered the deceased to prevent his bringing forward against him the theft of the *parun*, about which the prisoner was aware the deceased had heard from Paugul Chung. The Judge of Circuit observed, moreover, that the improbable and unaccountable

The Court observed, that a wife should not be called upon to give evidence against her husband, except in a case of urgent necessity.

1822.
LURRYE CHUNG'S case.

story the prisoner had told of Ram Ghose did not appear worthy of the slightest credit; and that the prisoner's object in implicating him was either to lessen his own culpability, or in revenge for the advice that person gave the deceased to take proper steps about the recovery of the *parun*. The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted of wilful murder, and liable to *Kissas*, to which finding the Judge stated he was aware of no objection. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the murder charged, and declared him liable to discretionary punishment by *Seasut*, extending to death. The Court (present J. T. Shakespear and C. Elliott) concurred in the conviction of the prisoner, and seeing no circumstances in his favour to render him a proper object of mercy, sentenced the said Lurrye Chung to suffer death. The Court observed, that in this case Musst. Ajil, wife of the prisoner, was called to give evidence against him, though her testimony was wholly unnecessary; that the practice of summoning such a near relation of a prisoner as a witness for the prosecution, excepting in case of urgent necessity, is considered highly objectionable; and the Court therefore directed, that such practice should be discouraged by the Court of Circuit in future.

1822.
March 6th.
WUZEER'S case.

GOVERNMENT, *against* WUZEER.

Charge—RIVER DACOITY.

The prisoner convicted of a river Dacoity, unattended with aggravating circumstances, but sentenced to 39 *corahs*, and imprisonment in transportation for life, in consideration of his being a *Chowkeedar*, and his having previously stolen the boat on which the

THE prisoner was tried at the 1st sessions of 1822, for zillah Sylhet.

The circumstances of the case, as they appeared in evidence, were as follow. About the end of the month of Sawun, the witnesses Ram Mohun, Rampersaud, Bishenpersaud, and Rubidoss, set off together in a small boat, and four days afterwards reached a bazar called Beka Take, where they secured their boat for the night. Between 10 and 11 o'clock at night, their boat was attacked by Dacoits, who plundered them of all their money to the amount of 150 rupees, besides 10 *cahuns* in *couries*. The Dacoits came in two small boats, and the water being two or three feet deep, the four persons above mentioned leapt out of their boat, and laid hold of one of the boats belonging to the Dacoits, which they secured with one of the Dacoits on board it, the rest having decamped. This man they bound, and prevented his escape; and, as the others were running away, he called out these words, "Oh Wuzeer uncle, I am caught." Shortly afterwards, the Dacoits returned, and forcibly rescued their companion. Among them was the prisoner, who principally exerted himself in letting the man loose: while he was doing which, the people who had been robbed laid hold of him, and secured him; when all the rest of the Dacoits ran off, leaving one of the boats behind them.

1822.

WUZEER'S case.

Dacoity was committed.

The following morning the prisoner was taken to the Thana; and being asked what account he had to give of himself, said, that the evening before, he had gone to the bazar in a boat to buy liquor, when hearing the uproar, he returned to the river side; but missing his boat, and concluding it had been taken away by Dacoits to commit a robbery, he repaired to the spot where the noise was, and going to the party, was taken up, and supposed to be one of the Dacoits. Before the Magistrate, the prisoner varied in his account, stating, that he was in his house a short distance off, when hearing the noise, he went to the spot, and was laid hold of. On the trial he pleaded, that he was *Chowkeedar* of a village, about half a mile distant from the spot where the Dacoity was committed, and that he went to see what was the matter, and so was apprehended. It was fully proved, that the boat (on board of which some of the Dacoits were when they made the attack) which they left behind them, and which boat the prisoner at the Thana called his own, had been stolen or taken away three days before the Dacoity, from a *ghaut* six miles off, and that it belonged to a witness named Anoopram. It was also proved, that the prisoner's house was close to that *ghaut*, and that the villages where he acted as *Chowkeedar* were at least four miles distant from the spot at which the Dacoity occurred. The various accounts, therefore, given by the prisoner, all appeared improbable and false. The boat he called his own was proved to have belonged to another person, from whom, it might be presumed, the prisoner, with others, stole it for the purpose of committing Dacoity; and it was quite impossible for him to have heard the uproar, if (as he stated before the Magistrate) he was in his own house at the time, which was six miles off, or within the range of the villages where he performed the duties of *Chowkeedar*, (as he declared before the Court of Circuit,) which were not less than four miles distant. The manner of his apprehension, and the words made use of, "Wuzeer uncle," by the other Dacoit who had been first secured, combined with the different and unaccountable statements the prisoner had made, left no room, in the opinion of the Judge of Circuit, to doubt that he was one of the Dacoits who robbed the boat; and as the *futwa* of his law officer corresponded with this opinion, he passed upon the prisoner the prescribed sentence of 39 stripes of a *corah*, and imprisonment in transportation beyond sea for life. The *futwa* of two of the law officers of the Nizamut Adawlut declared the prisoner convicted on violent presumption, and liable to discretionary punishment by *Acoobut*. The Court of Nizamut Adawlut (present J. Shakespear and C. Elliott) concurred in the conviction; and although the Dacoity was not attended with any aggravating circumstances, yet, as the prisoner was a *Chowkeedar*, and there was reason to believe that he had previously stolen the boat on which he went to commit the Dacoity, the Court considered him deserving of the full punishment prescribed for the offence, and confirmed the sentence passed on him by the third Judge of the Dacca Court of Circuit.

1822.

March 13th.

GHOOREE BRAHMIN'S case.

SOOKHLAL,
against
GHOOREE BRAHMIN.

Charge—MURDER.

On a conviction of murder, the Circuit Judge recommended that transportation should form part of the sentence, but this recommendation rejected by the Nizamut Adawlut, and sentence passed of imprisonment for life in the Allipore jail.

THE prisoner was tried at the 2d sessions of 1821, for zillah Juanpore, being charged with the murder of the prosecutor's uncle. The prosecutor stated, that one night in the month of Phagoon 1228, F. S. his uncle Busah and himself went to sleep, about 10 *biswahs* distant from each other, in the village of Duttyan, Pergunnah Gheswah; that he awoke about 5 o'clock, and going to awaken his uncle, found him dead, and on taking off the cloth that was over him, discovered a wound on the right side of his head, about three inches long and one and a half deep; that suspecting the act had been committed by the prisoner, in consequence of a previous quarrel respecting the produce of some *muhwah* and mango trees, he went to the prisoner's house, and found that he and his family had absconded, which confirmed the suspicion he entertained; that at daylight he gave information of the murder to Bussunt Singh, the proprietor of the village; and that a few days after, the prisoner was apprehended in an *urhur* field in the village, by a servant of the proprietor; that he supposed the wound to have been inflicted with a *gundasa* or hatchet, and that he heard that one had been found in the prisoner's house. The prisoner confessed having committed the murder, both at the Thana and before the Magistrate, but denied it before the Court of Circuit. His confessions, however, were proved by the witnesses in whose presence they had been taken. The *futwa* of the law officer of the Court of Circuit declared the prisoner guilty of the murder on violent presumption, and the Circuit Judge submitted that he should be sentenced to transportation for life. The second Judge of the Nizamut Adawlut (C. Smith) thought that the confessions at the Thana and before the Magistrate, coupled with the circumstances of the prisoner's flight and concealment, and what the prosecutor had alleged of a previous quarrel between his deceased uncle and the prisoner, were sufficient for the prisoner's conviction; but he was of opinion, upon the whole, that the prisoner should be sentenced to imprisonment for life, and not, as suggested by the Circuit Judge, in transportation, but in the jail at Allipore. The officiating Judge (C. Elliott) concurring in this opinion, and the *futwa* of the Nizamut Adawlut having declared the prisoner convicted and liable to discretionary punishment by *Seasut*, a sentence was issued conformably to the opinion of the second Judge.

BUKSH,
against
KHOONWA and TIMLAH.

Charge—HIGHWAY ROBBERY.

1822.
March 13th.
Case of KHOONWA and TIMLAH.

Of two prisoners, one snatched a necklace from an old woman in the day time on the high road, who fell from the pull, but sustained no injury; while the other prisoner stood by. Held that this does not amount to the crime of robbery by open violence, as defined in the Regulations.

THIS case was tried at the 2d sessions of 1821, for zillah Juanpore. It appeared in evidence, that the grandmother of the prosecutor was returning to her home in Buchuckea, from Mahowl, between 12 and 1 o'clock in the day, when she was attacked by two persons, and robbed of a silver *hunslee*, valued about seven rupees. Bhoda Aheer having seen the *hunslee* in the possession of Khoonwa, he was apprehended on his information, and acknowledged at the Thana having committed the crime, and produced the *hunslee*. He also accused Timlah of being an accomplice, who was accordingly apprehended, and he also confessed. Before the Court, Khoonwa confessed having taken the *hunslee*; but stated, that he was alone when he committed the crime; and Timlah stated, that he was in company with Khoonwa at the time when he took the *hunslee*; but in his defence, he denied being an accomplice, and alleged that he had acknowledged at the Thana at the instigation of Khoonwa, and in the Court from fear. The *futwa* of the law officer of the Court of Circuit declared the prisoner Khoonwa convicted of highway robbery, and Timlah of being an accomplice. They were accordingly sentenced to the prescribed punishment, under the Regulations; but the Circuit Judge, in referring the case, suggested that the punishment should be restricted to 14 years imprisonment with labour, and 20 stripes with a *corah* each.

The *futwa* of the law officers of the Nizamut Adawlut was similar in purport to that of the Court of Circuit. On a consideration of the proceedings in this case, however, the 2d Judge of the Nizamut Adawlut (C. Smith) recorded his opinion to the following effect. "It appears to me that this reference should not have been made. It is proved, that of the two prisoners, one, in the day time, on the highway, snatched a *hunslee* from the neck of the prosecutor's grandmother, while the other stood by at a small distance. It does not seem that they were armed, and the only violence suffered was the old woman's falling down, and having a slight pain in her loins in consequence for a short time. The Judge, therefore, was competent to pass and order execution of sentence under clause 5, section 8, Regulation XVII. 1817, and he himself recommends a punishment short of the *maximum* which that clause prescribes. I propose, therefore, that the proceedings be returned, with a letter of instructions that the 2d Judge of the Benares Court of Circuit, having himself passed sentence under the Regulation above cited, and issued his warrant for its execution, report the case in the usual way, as one of prisoners punished without reference to the Nizamut Adawlut." The 4th Judge (J. Shakespear) concurring in this opinion, the proceedings were returned accordingly.

1822.
Mar. 30th.
BHOLA GHAZEE'S case.

GOVERNMENT,
against
BHOLA GHAZEE.
Charge—PERJURY.

A false deposition taken by the *Omla* of a Magistrate, not in presence of the Magistrate or of his assistant, held to be not punishable under the Regulations.

THE circumstances of this case were as follow. The prisoner, when examined by the *Omla* of the joint Magistrate of Barasut, as an evidence, on the 25th of January, 1822, in a case of affray, deposed to having witnessed it, and stated the circumstances that occurred. On the 15th February, when he was called up before the joint Magistrate, and examined, he admitted that the evidence he formerly gave was false, and that he was prevailed upon by the plaintiff in that case to give the deposition that he had formerly made. Two witnesses proved that he admitted that his first evidence was false, and on this the law officer of the Court of Circuit convicted him of perjury, and declared him liable to discretionary punishment by *Tazeer*. In submitting this case to the Court of Nizamut Adawlut, the Judge of Circuit accompanied it by the following observations. "I differ from this finding. The prisoner does not appear to be in any way connected with the plaintiff in the case of affray: he is any thing but a practised offender; in fact he appears to be more of a simpleton than any thing else. The witnesses examined by this Court were not present at either of the examinations of the prisoner in the zillah Court. They depose to his having been in a very great state of alarm when they saw him, that is, after the last examination. In such a state, I am not surprised at his making the statement upon record, and I attribute it to what the prisoner before me admits had induced it, the state of alarm he was in. I am therefore of opinion, that he should be released. Should the superior Court be of a different opinion, I beg leave to observe, that the prisoner is an old man, and not a fit subject for corporal punishment."

The prisoner was declared by the *futwa* of two of the law officers of the Nizamut Adawlut to be not convicted of the crime of perjury, and to be entitled to release. The Court of Nizamut Adawlut, (present S. T. Goad and J. Shakespear,) not being satisfied that the evidence given by the prisoner before the *Omla* of the Magistrate on the 25th of January was *false*, or of the truth of the prisoner's admissions that it was so, in his examination before the joint Magistrate on the 15th of February, concurred in the *futwa*, and directed that the prisoner should be immediately discharged. The Court observed, that the evidence given by the prisoner on the 25th January, even if proved to be false, would not amount to perjury, according to the provisions of section 4, Regulation II. of 1807, the deposition given by him not having been taken before a Court of judicature, Magistrate, or other authorized public officer. The Court further remarked, for the joint Magistrate's information and future guidance, that according to the Court's circular order of the 12th December 1809, whenever a Magistrate or his assistant may be under the necessity of employing any of the native officers in taking depositions of prosecutors or witnesses, such depositions should invariably be

1822.
BHOLA GHAZEE'S case.

taken in some part of the *cutcherry* in which the Magistrate or his assistant may be sitting, and not in a separate building, or in the absence of the Magistrate or his assistant; and that this rule did not appear to have been observed in the present instance. The Court also remarked an irregularity, in recording both the examinations of the prisoner on the same paper, contrary to the provisions of section 15, Regulation IX. of 1793, and that the three witnesses who were called in to attest them, were not present when either of those examinations were reduced to writing, but attested the translations of them both on the 15th of February, on the acknowledgment of the prisoner that he had given them.

1822.
April 12th.
KHOOSROO'S case.

GOVERNMENT,
against
KHOOSROO.

Charge—MURDER.

The prisoner, who was bedridden from rheumatism, threw a stool at his wife, in consequence of her abusing him, which killed her. Sentenced to five years imprisonment, for culpable homicide.

THE prisoner above named, was charged with the murder of his wife, and tried for that offence at the second session of 1821, for zillah Rungpore. In referring the case, the Judge of Circuit observed, that it was not a case of a very serious nature, and that no reference to the superior Court would have been necessary, but for the *futwa* given by his law officer. The facts were briefly these. The prisoner, who had been long suffering under the tortures of the rheumatism, was unable to move about. He therefore asked his wife to bring him some water to drink, which she refused to do, and at the same time made use of very gross and improper language to him. This provoked him to such a degree that he took up a *pinrah*, (a wooden stool on which the lower class of natives sit,) and threw it at her, which struck her on the head, and killed her. They appeared from the evidence to have lived together happily before this affair occurred. The *futwa* of the law officer of the Court of Circuit convicted the prisoner of murder, in consequence of the dimensions and weight of the stool; and the proceedings were therefore submitted for the final orders of the superior Court. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner Khoosroo of the species of homicide termed *Kutl i umd*, by killing his wife with the blow of a wooden stool; and declared him liable to *Deeut, Kissas* being barred from the heirs being children of the slain. By the Court, W. Dorin (officiating Judge.) "I think five years imprisonment would be a proper sentence. There does not seem to have been an intention to kill. The prisoner, in anger at abuse from his wife, threw a wooden stool at her, which hitting her on the head, killed her. It would appear that she had been ill some time, and was then unwell. The prisoner also had been crippled with rheumatism, and is described as still in a sickly state. The act, however, was rather a savage one." The second Judge (C. Smith) concurring in the above view of the case, a sentence of five years imprisonment was issued accordingly.

1822.

April 15th. Case of ATTAOOLLAH and MUSST. TUPPEE. Two prisoners convicted, the one of causing to be administered to her husband poison in the shape of a pill, the other of administering the same. Sentence imprisonment for life.

GOVERNMENT,
against
ATTAOOLLAH and MUSST. TUPPEE.

Charge—MURDER.

THE prisoners, Attaoollah and Musst. Tuppee, were charged with having administered poison to Azmutoollah, husband of the second prisoner, and having thereby caused his death. The deceased had been slightly indisposed for four or five days with occasional vomiting and fever, but not of a nature to threaten fatal consequences. It appeared, that at this period the first prisoner Attaoollah put into the hands of the second prisoner, Musst. Tuppee, a large black pill, and desired her to give it to her husband, mixed with his rice, and it would make him well. The woman accordingly put half the pill into the deceased's food at night, and gave it him to eat, without mentioning the circumstance to any one. Four or five hours after he had swallowed it, he was seized with most violent vomiting, attended with excruciating pains, which shortly terminated his existence.

In submitting this case for the consideration and orders of the Nizamut Adawlut, the Judge of Circuit accompanied it by the following observations. "There cannot, I think, be a doubt that the deceased died from poison, both from the attendant symptoms and from the circumstance of several fowls having eaten a part of what he had vomited, and almost immediately dying, which is fully proved. Both the prisoners acknowledge the share they took in the transaction. Attaoollah gives a very lame account of the manner in which he became possessed of the pill, stating, that it had been given him four or five days previously by a stranger, whom he had never seen before, and who professed to be a *Kubraj* or doctor, and told him the pill was a sure cure for vomiting; that for this reason he gave it to the woman to administer to the deceased. She states to the same effect, and disavows all intention of injuring her husband. It seems to me clearly established, that the pill was a powerful poison, and that the death was thereby occasioned: it is proved that the prisoner Attaoollah gave that poison to the woman, for the purpose of her administering it to her husband, the deceased; and that she did so in the manner pointed out, by mixing it with the rice, or usual food taken by her husband. The only points requiring consideration are, how far the prisoners were aware of the deleterious qualities of the pill, and what could have been their motives for such an atrocious act, as wilfully poisoning the deceased. The strange story told by Attaoollah of the manner in which he obtained the pill, the secrecy with which he gave it to the woman, and the advice he gave her to mix it with her husband's rice, are all circumstances against him; nor is there less cause for strongly suspecting the woman, from her following the advice given her, and mixing up half the pill in the deceased's food, without consulting her friends, or the doctor, who was in attendance on her husband in the house at the time. I cannot believe that

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Case of ATTAOOLLAH and MUSST. TUPPEE.

either of the prisoners acted with any good intention; and the presumption of their guilt is, I fear, too violent to be set aside. They are both young, and the woman is handsome. If they did poison the deceased, the only reason which can be suspected is an intrigue between them, although there is nothing in the case affording grounds for such an inference, except the manner of the deceased's death."

The *futwa* of the law officer of the Court of Circuit convicted both the prisoners of giving the poison, knowing it to be such, and thereby causing death; and declared them liable to discretionary punishment by *Acoobut*, in which finding the Judge of Circuit fully concurred. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners Attaoollah and Mussummaut Tuppee, on strong presumption, the first of having knowingly caused poison to be administered to Azmutoollah, the second of having knowingly administered poison to the said Azmutoollah (her husband), which poison caused his death. By the Court, (J. Shakespear, fourth Judge.) "The *futwa* of our law officers convicts both prisoners on strong presumption of administering poison to the deceased, knowing it to be such, which poison caused his death. The deceased appears to have been ill of a fever, and subject to fits of vomiting for several days before the poison referred to in the proceedings was administered to him: I do not therefore think that it is fully established, that his death was accelerated by the pill given to him by the prisoners. I consider it to be proved, however, that the prisoners intended to make away with the deceased, and that they gave him the pill for that purpose. On the ground that the vicious intention is established, and that the prisoners are consequently guilty of a misdemeanour, I conceive that seven years imprisonment each, under all the circumstances of the case, will be a proper sentence." S. T. Goad (3d Judge.) "I do not concur in the above view of the case, but most fully with the *futwa* of the law officers; and am of opinion, that the prisoners should be sentenced to imprisonment (the male in hard labour) for life." W. Leycester (chief Judge.) "There seems to me ample ground to presume, that Azmut died of poison administered by Mussummaut Tuppee, and received by her for the purpose from Attaoollah; and that the said poison was given by Attaoollah, and administered by Musst. Tuppee, with the intention of causing the death of Azmut. I therefore agree in the sentence proposed by our 3d Judge." W. Dorin (officiating Judge.) "This case is not without difficulty. But I think there is strong presumption, that Attaoollah knowingly caused poison to be administered to the deceased by Tuppee; that Tuppee knowingly administered it; and that it accelerated, or caused, the death of the deceased. The strong fact to fix the knowledge on the woman is, her having mixed it secretly in the food of her husband. The *futwa* of the Circuit law officer is a good exposition of the case. I am for stopping short of a capital sentence, from the impression which must arise in all such cases, that it would have been more satisfactory to have got a competent medical opinion as to the cause of death. But these we seldom or ever get, and are left to draw the best conclusion we can with-

1822. Case of ATTAOOLLAH and MUSST. TUPPEE.

out them." The Court, therefore, concurring in the conviction, sentenced each of the prisoners to be imprisoned for life; the first, Attaoollah, with hard labour, in the jail at Alipore; the second, Mussummaut Tuppee, in the jail at Tippera.

1822. April 18th. SALEEMOODEEN'S case.

MUSSUMMAUT RUSSOOL BEEBEE, *against* SALEEMOODEEN.

Charge—MURDER.

The prisoner was declared by the *futwa*, convicted of murder on strong circumstantial evidence; but, it being considered insufficient for his conviction by the Nizamut Adawlut, he was acquitted and released.

THE prisoner was charged with the murder of Mussummaut Molaem Beebee, a woman of about 25 years of age, daughter of the prosecutrix, and tried for that offence at the 1st sessions of 1822, for zillah Chittagong. The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted of wilful murder, and liable to severe discretionary punishment extending to death; and the Judge of Circuit entirely approved of this verdict, feeling fully convinced, as he stated, of the prisoner's guilt. The circumstances of the case were briefly as follow. The deceased was a common prostitute, whom the prisoner used to frequent. On the evening the murder was committed, (the 4th November,) the prisoner was stated to have been distinctly seen by the witnesses Ram Doolal and Ramchurn to enter the deceased's house. A few hours afterwards, the voice of the deceased, calling loudly for assistance, was heard to proceed from an empty house contiguous to her own; and immediately after, these persons, and another witness named Yoosuf, (as they deposed,) saw the prisoner come out of this house, and run off. They called out, but receiving no answer, they got a light, and entered the house from which the voice of the deceased had proceeded, and found her dead, with her head almost hacked off from her body. A silver *hunslee* she used to wear was missing, but her bracelets and all her other ornaments were found upon her person. Notice was sent to the Thana, and next day the Darogha repaired to the spot, and hearing the above circumstances from the people, he went on the following day, and apprehended the prisoner in his own house. On his head was perceived a small cap with stains of blood upon it. A search was made for any instrument with which the act might have been committed, but nothing was found in the house, except an old rusty *dao* or sickle, which evidently had not been used for a long time. The Darogha perceiving some rattans in the place freshly cut, asked the prisoner with what weapon he had cut them, since the old *dao* could not have been made use of. He said he had borrowed a *dao* for that purpose from his neighbour, a person named Koresh. This person was sent for, and produced a *dao*, stating that, on the evening on which the murder was committed, the prisoner had borrowed the *dao* of him, and returned it next morning with the handle much besmear-

1822.

SALEEMOODEEN'S case.

ed with mud. This *dao* was examined, and after rubbing off the mud, a number of bloody stains were perceived on the handle. When the prisoner was asked how these marks of blood came to be on the handle of the *dao* and on the cap he wore, he said that the former were the stains of *pawn* he had been eating, and in respect to the latter, he gave several different accounts. In referring the case, the Judge of Circuit observed, that although there could not, in his opinion, be a doubt of the prisoner's guilt, from the unbroken chain of circumstances which pressed against him, yet it was not in his opinion so easy to account for the reasons which induced him to commit such an atrocious act; that had he intended only to rob the deceased, which the missing *hunslee* from her person might leave reason to suppose, he might have done so in a much more guarded manner, and that his previously providing himself with the *dao* shewed his deadly intent; that the law officer was of opinion, that he committed the murder in pursuit of robbery, and this might have been his object, although all the circumstances of the case left the matter in great doubt. The 4th Judge of the Nizamut Adawlut (J. Shakespear) recorded his opinion of the merits of this case in the following terms. "The deceased appears to have been a prostitute, and is stated to have been found at night with her throat cut in a dwelling adjoining her own, and her *hunslee* carried off. This occurred on a Sunday night. On Monday the Darogha arrived at the village, and he reports to the Magistrate on the same day (6th November 1821,) that he has not been able to obtain any clue to trace the murderer. On this report an order is passed directing a purwanah to be written to the Darogha, '*ba chushmnoomaee tumam*,' 'in terms of severe reprehension,' to trace and apprehend the offenders. After the receipt of the Magistrate's purwanah, on visiting the prisoner's house, the Darogha observes some marks of blood on the prisoner's turban, and apprehends him. On searching the house, an old useless *dao* is found; and the Darogha, remarking some *bates* or rattans newly cut, questioning the prisoner how he could have cut them with this *dao*, he says he borrowed a better one from a neighbour named Koreish. This *dao* (or bill-hook) being sent for, some stains, apparently of blood, are remarked on it, and Koreish states that the prisoner had returned the *dao* to him the morning after the murder, when the blade was soiled over with mud. Two neighbours then deposed that they heard the deceased call out for assistance in the night time; that they got up, and remarked the prisoner running off from the house of the deceased by moonlight, having previously seen the prisoner enter the house of the deceased the same evening. The *futwa* of the law officers of this Court convicts the prisoner on violent presumption, and declares him liable to discretionary punishment by *Seasut* extending to death. I do not credit the evidence, and think that the prisoner should be acquitted. The prisoner appears to have been detained seven or eight days at the Thana. The Darogha in the first instance, on the 6th November, reports his inability to trace the murderer. He then receives a threatening purwanah from the Magistrate, on the receipt of which, and not before, as would appear from his report of the 13th

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November, he collects the evidence to the present prosecution. The two principal witnesses, who did not at first state their knowledge of the circumstances to which they afterwards deposed, I consider to have been influenced in the manner stated by the Mohurrir of the Thana (Imam Oollah), who deposes, that he and the Darogha said to these witnesses Doolut and Moulea, when the Magistrate's purwanah arrived, "You live close to the deceased; if you do not inform by whom the murder was committed, it will be understood that you yourselves perpetrated it," on which they declared that they saw the prisoner running off, &c. It is not probable that the prisoner would, had he been guilty, have worn on his head a turban stained with blood, after the arrival of the Darogha at the village; and the Mohurrir says, that he ascertained that the prisoner's wife had the *menses* on her at the time that the blood was remarked on the prisoner's turban, and which is stated by one of the witnesses to have been at first urged by the prisoner, as having caused the stains on his turban. There are several contradictions in the depositions of the witnesses, and I consider the evidence altogether insufficient for conviction." In this opinion the chief Judge (W. Leycester) concurred, and the prisoner was acquitted accordingly.

1822.
April 22d.
PHULDARS case.

GOVERNMENT, *against* PHULDAR.

The prisoner killed his wife, and afterwards attempted to commit suicide, under a strong feeling of shame and disgrace at loss of caste, occasioned by an imputation of incest attaching to the deceased. Sentenced, under all the circumstances of the case, to

THE prisoner Phuldar was tried at the 1st sessions of 1822, for zillah Furruckhabad, for the murder of his wife. The case, as it appeared in evidence, was as follows. A report having been circulated, that Bala, the prisoner's father, had criminal connexion with Musst. Bishunneea, his own daughter-in-law and the prisoner's wife, upon the occasion of a meeting of people of the same caste in the village where the prisoner resided, some of them objected to eat and drink in company with him and his father. This made so deep an impression of shame and grief upon the prisoner Phuldar, that at the expiration of three days from that time, he took an opportunity, just as his father had left the house, and no one but his wife was with him, of inflicting two such deep wounds with a sword upon her neck as to cause her immediate death. The prisoner confessed the crime, both at the Thana and before the Magistrate, stating that Bishunneea put the sword into his hand, and begged of him to kill her. But before the Court of Circuit, in his defence, he stated, that having found his wife in the act of adultery with a stranger, he put her to death, and then attempted to take his own life, which it appeared by the wound on his neck had nearly been effected. The prisoner could not prove the circumstance alleged in his defence, viz. that he caught his wife in the act of adultery. The law officer of the Court of Circuit declared the prisoner convicted of the wilful murder of his wife

1822.
PHULDARS case.

Mussummaut Bishunneea, and subject to death by *Kissas*. In this *futwa* the Judge of Circuit concurred; but thought it was a case in which mercy might be extended to the prisoner, considering the mingled feelings of grief and shame which had hurried him on to the act. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of having wilfully killed his wife, and declaring *Kissas* to be barred by the presumption of legality which arises, when one individual kills another by such other's desire, stated the prisoner to be liable to full *Deeut*, or to discretionary punishment by *Tazeer* on the principle of public justice. By the Court. J. Shakespear, (fourth Judge.) "The Circuit *futwa* convicts the prisoner, and declares him liable to *Kissas*. Our *futwa* also convicts the prisoner, but declares him liable only to *Deeut*, *Kissas* being barred, in consequence of a suspicion arising from the prisoner's confession that he killed his wife by her desire. I concur in the *futwa* of our law officers. I am of opinion, under all the circumstances of the case, that a sentence of seven years imprisonment will be proper." W. Dorin, (officiating Judge.) "The act seems to have been committed by the prisoner under a strong feeling of shame and disgrace, arising from an incestuous connexion (real or supposed) of his wife, for which those of his tribe had expelled his father and him from their society. He at the same time attempted to make away with himself, but recovered of the wound. I should be glad to agree to the proposed sentence, but I do not see any good ground for viewing this as an act short of murder. It seems to have been the result of a determined purpose. The woman's having urged him to put her to death (if she did so) must make no difference. I cannot agree to remit more than the capital part of the sentence. It would act as a premium on such crimes, if this man were seen again at large after seven years." The second Judge (C. Smith) concurring in the latter opinion, a sentence of imprisonment for life was passed accordingly.

imprisonment for life.

GOVERNMENT,
against
MUSST. BOONDEA.

Charge—MURDER.

1822.
April 24th.
MUSST. BOONDEA'S case.

THE prisoner Musst. Boondea was tried for the murder of her infant child at the first session of 1822, for the northern division of Bundelkhund. The crime with which the prisoner was charged took place on or about the 12th October 1821. The prisoner having become a widow, formed a connexion with one Bhoora Chumar, and the fruit of this connexion led to the crime. The prisoner having produced a female child, smothered it by thrusting a cloth into its mouth, and buried it in a ditch near the

The prisoner was convicted of the murder of her infant bastard child. By the *futwa*, *Kissas*

1822.

MUSST. BOONDEA'S case.

was declared to be barred, and *Deeut* only to be incurred, by reason of the maternal relationship. The Court held, that this was a personal distinction inconsistent with equal justice, and provided against by section 2, Regulation VIII. 1799. Sentence, imprisonment for life.

village, where it was shortly after discovered. There were not any eye-witnesses to the act, and the facts above stated were obtained from the prisoner's confession at the Thana and before the acting Magistrate. Before the Court of Circuit the prisoner pleaded not guilty. The law officer of the Court of Circuit convicted the prisoner of the murder of her new born child, and declared her liable to punishment by *Acoobut, Kissas* being barred from the circumstance of the prisoner being the mother of the deceased.

The Judge of Circuit concurred in the conviction of the prisoner, and therefore submitted the case for the final orders of the Nizamut Adawlut.

The *futwa* of the law officer of the Nizamut Adawlut was similar in purport to that of the Court below. By the Court. J. Shakespear, (fourth Judge.) "I concur in the *futwa*, and with reference to the ignorance of the woman, and the poverty which she urges in justification, I think the usual sentence of seven years imprisonment in cases of *Deeut*, should not be exceeded in the present instance." W. Dorin, (officiating Judge.) "The prisoner seems to have destroyed her bastard child on its birth, by stuffing a cloth into its mouth, or strangling it, and then buried it in a ditch. That it was born alive is in evidence. It was born in the ditch, and rooted out by hogs. I see nothing which should justify our passing a lower sentence than perpetual imprisonment. She came originally from Scindea's territory, but seems to have been three years in the village (Banda district) when the act took place. The only plea urged in excuse is poverty. The *futwa* bars *Kissas* on a ground of personal distinction, so that under Regulation VIII. 1799, we may take it as a *futwa* of *Kissas*, and not deeming a capital sentence advisable, I would mitigate it, under Regulation XIV. of 1810, to imprisonment for life."—C. Smith, (second Judge.) "I concur with the *futwa* in the conviction of the prisoner, and with the officiating Judge in thinking that the ground on which *Kissas* is barred brings the case under section 2, Regulation VIII. 1799. I also agree to the remission of the capital punishment, and to sentence the prisoner to confinement for life in the jail of Banda."

The following sentence was accordingly issued. "The *futwa* of two of the law officers of the Nizamut Adawlut convicts the prisoner Musst. Boondea of the murder of her new born illegitimate child; and declares her liable to full *Deeut, Kissas* being barred by the maternal relationship of the prisoner to the slain. The Court observe, that this is a personal ground of distinction, inconsistent with equal justice, provided against by section 2, Regulation VIII. 1799; and sentence the prisoner Musst. Boondea to perpetual imprisonment in the jail of the northern division of Bundlekhund."

MUSST. PRITMA,
against
KOOSHA and ASHRUF.

1822.
April 24th.
Case of KOOSHA and ASHRUF.
Of two prisoners tried for murder, the first stated that the deceased was killed when in the act of theft, in company with himself and the second prisoner; the second prisoner denied this, and accused the first of having in his presence murdered the deceased. The Court, crediting the first statement, directed the discharge of the prisoners.

THE prisoners above named were charged with murder, and tried for that offence at the 1st sessions of 1821, for zillah Rungpore. The prosecutrix was the widow of the deceased Ubeera, who lived with his wife in her father's house from the time of their marriage. It appeared, that on the night the murder was supposed to have occurred, the prisoner Koosha came to the house of the deceased, and carried him away under the pretence of catching birds; and as he did not return to his home, the prosecutrix in the morning asked the prisoner where her husband was. He told her that her husband had gone to visit his father; but on enquiry and search being made for him, it appeared he had not been there. Two days after, the corpse of the deceased was seen floating in a *jheel*, about a coss from the village in which the parties resided. Koosha was apprehended by the Gomashta of the village, on the same day on which the body was found, on the information of the prosecutrix, and on the following day was delivered over to the Darogha's custody; when Koosha asserted, that he had accompanied the deceased with the intention of committing a theft to the village of Kacheehara, and that whilst they were in the act of robbing the cow-house of a person named Sheikh Kanoo, the people got up, and beat the deceased, and that he (the prisoner) made his escape by flight. This statement he denied to the Magistrate, and also to the Court of Circuit, and insinuated that an improper intercourse subsisted between Ashruf and the prosecutrix, which circumstance Ashruf had informed him of. After a lapse of three days, Ashruf was seized on suspicion, arising from his absenting himself. He was at the time greatly agitated, and made a statement, of which the following is the substance:—that Koosha took the deceased first to the *Kooreea* (or temporary hut built for the shelter of persons guarding crops) of two persons named Chubbee and Hubbee, saying they were going to catch birds, and in a short time went on to the hut of Koosha, leaving him there; and in the middle of the night Koosha returned, and compelled him to go to his hut; that on entering it, Koosha immediately seized the deceased by the neck, who was sound asleep, sat on his breast, and strangled him; he then tied a rope round his neck, which he fastened to a bamboo, and dragged the body to the *jheel*, sticking the bamboo into the bottom of the *jheel* with the body. He then washed himself, and they went together back to the hut of Chubbee and Hubbee, and slept there the rest of the night. Ashruf repeated this statement before the Magistrate and the Court of Circuit. The reason stated by Ashruf to have been given by Koosha for the murder is, that Ubeera was always teazing him to commit theft. The above statement was partly confirmed by the evidence given by Chubbee, who stated, that Koosha and the deceased staid a short time in his hut, and went away, leaving Ashruf; and that awaking in the middle of the night, he

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Case of KOOSHA and ASHRUF.

observed Ashruf had left it. Hubbee stated, that Koosha and the deceased came together to his hut, and in a short time went away, leaving Ashruf there; that in the morning, seeing only Koosha and Ashruf, he asked the former prisoner where the deceased was, who told him he had returned home. When the Darogha held his inquest, the body was in a state of putrefaction, with only small particles of flesh in some places, and could not therefore be identified; but three witnesses who saw the body the day it was found, declared that they clearly recognized the body of the deceased, and that at that time it was almost entire.

The *futwa* of the law officer of the Court of Circuit convicted the prisoners of murder on strong presumption; concurring with which, the Judge of Circuit submitted the case for the final orders of the superior Court.

The *futwa* of the law officers of the Nizamut Adawlut convicted both the prisoners on violent presumption, and declared the first prisoner liable to discretionary punishment by *Seasut* extending to death, as the principal, and the second to discretionary punishment by *Acoobut*, as accessary to the murder. By the Court. J. Shakespear, (fourth Judge.) "The proofs on the side of the prosecution are confined to the examination or confession of the second prisoner. I totally discredit the story told by this prisoner, and consider the motives stated by him to have influenced the first prisoner to commit the murder as altogether improbable I believe the statement given by the first prisoner, and imagine the real state of the case to be, that both the prisoners and the deceased went out at night together for the purpose of committing robbery, when the deceased, being seized by the villagers, was beaten in such a manner as to cause his death, and the body taken and fastened down under water in a *jheel*, either by the prisoners or by the villagers, in order to conceal the occurrence. The state of the body, with a rib broken, as affirmed in the deposition of the Gomashta Ramkomar, corresponds with this view of the case, but not with the account given by the second prisoner of the mode in which the murder was committed; and he, I think, has been induced to charge the first prisoner with the murder, with the view of exculpating himself from the charge of robbery, with which he stood implicated by the Moofussil examination of his associate previously given. I think that both prisoners should be acquitted and discharged." C. Smith, (second Judge.) "I concur with the fourth Judge in thinking that the evidence, whether direct or circumstantial, is insufficient to bring the crime home to the prisoners, and that they ought therefore to be discharged."—Prisoners released accordingly.

GOVERNMENT,
against
ISHREE TEWAREE and OMRAO SINGH.

Charge—Dacoity.

1822.
April 24th. Case of Ishree Tewaree and Omrao Singh. Two prisoners convicted by the *futwa* of Dacoity, on the direct evidence of the person robbed and his wife to recognition. But this testimony rejected by the Nizamut Adawlut, being unsupported by circumstantial evidence, and otherwise open to suspicion.

The prisoners were tried on the charge above specified, at the 2d sessions of 1821, for zillah Goruckpore. It appeared in evidence, that the house of a person named Emaum Bukhsh, in the bazar of Beleara, was attacked on the night of the 17th of Phagoon 1228, Fuslee, by seven Dacoits, when they forcibly took the ornaments from the persons of his wife and son, and tore the nose of the former, in pulling a ring from it; carried off property to the value of about thirty rupees; and on quitting the place, wounded Emaum Bukhsh. The prisoners were sworn to by the above named Emaum Buksh and his wife, as having been recognized by them at the time of the perpetration of the robbery.

The *futwa* of the law officer of the Court of Circuit declared the prisoners convicted on violent presumption of Dacoity, in which Emaum Bukhsh was wounded, and a gold ring forcibly pulled from the nose of his wife, which was torn, and his property plundered in the night. Sentence was passed on the prisoners agreeably to the Regulations; and the Circuit Judge, in referring the case, recommended its being carried into execution.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners of the crime of robbery by open violence, and wounding, and declared them liable to discretionary punishment by *Acoobut* for the offence. By the Court. C. Smith, (second Judge.) "Emaum Bukhsh and his wife having sworn positively that they recognized the two prisoners when they were committing the Dacoity, this proof alone, without any corroboration from the previous bad character of the prisoners, appearing to me wholly insufficient, I am of opinion they should be discharged." W. Dorin, (officiating Judge.) "I agree in thinking it unsafe to act on the mere swearing of Emaum Bukhsh and his wife, to recognition of the two prisoners (Chowkedars of the place) at the robbery of his house. It is true, that Emaum Bukhsh named these two as recognized in his statement made at the Thana the morning after the robbery, and has since persevered in saying he knew them. But why should not the boy their son, twelve years old, have known them also? The evidence of the wife before the Magistrate shews that there was previous ill will on the part of her and her husband against the Chowkedars of the place. The witness Ouree says on the trial, that he, with other villagers, went up to Emaum's house after the thieves were off, and that then he only said generally that the robbers were Chowkedars, naming none specifically. His evidence before the Magistrate is the same. The first account of the affair given by Emaum Bukhsh recites, that only *one* entered his house. On the other hand, there seems to have been no assistance rendered by any Chowkedars of the place, and the two defend-

1822. Case of ISHREE TEWAREE and OMRAO SINGH.

ants have set up an *alibi*, which is not well made out. On the whole, however, in a case involving such serious punishment, I am for acquitting on the direct evidence, which is not supported by circumstantial proof, and which is on some accounts open to suspicion." The prisoners were discharged accordingly.

1822. April 26th. Case of NETRA and others.

GOVERNMENT,
against
NETRA and two others.

Charge—DACOITY.

Prisoner found guilty of privity to Dacoity, on his own confession, by the *futwas*, but released by the Nizamut Adawlut, it appearing that he had been induced to confess by a promise of pardon from the *mohurrir* of the Thana, and of being appointed a *burkundaz*.

THE prisoner Netra was committed to take his trial at the second sessions of 1821, for zillah Rungpore, for the offence of Dacoity, along with two other individuals named Janna and Nubboo.

The facts, as they appeared in evidence, were as follow. A gang of Dacoits, consisting of about fifteen men, armed with bamboos, on the night of the 15th of Kartik, or 31st October 1821, entered the house of one Motee Ram, who was sleeping on his chest, from which they dragged him into the enclosure, and threw him on the ground. Two or three of them placed a bamboo across his breast, and kept him down, while the rest of them re-entered the house, broke open the chest, and plundered it of cash and property to the value of 132 rupees. The Mohurrir of the Thana, shortly after his arrival at the spot, apprehended Netra on the information given by a relation of the prosecutor named Myram, who that night slept in the house, and who informed him that he recognized Netra during the perpetration of the Dacoity by the light of a *mussal*. Netra denied being present at the Dacoity, but said he heard the particulars connected with the circumstance from Bhugwanpore, and implicated the other two, as well as several other prisoners. Nothing was found in Netra's house, and very unfair means were resorted to, and every encouragement held out to prevail upon him to confess. It appeared from the evidence, that the Mohurrir made the most solemn declarations to Netra that he would release him, and at the same time promised to make him a Thana Burkundaz. It was therefore no wonder (as observed by the Judge of Circuit) that he should have made the statement he did, implicating nine persons upon hearsay. In the Moofussil, the prisoner Janna confessed having committed the Dacoity; and near his house, concealed under a heap of ashes, were found some silver ornaments belonging to the prosecutor, which were pointed out, and delivered up by the prisoner's wife, at the desire of her husband. The prisoner Nubboo also confessed in the Moofussil, and in his house was found a *Thalee* and one earring, the property of the prosecutor.

The *futwa* of the law officer of the Court of Circuit convicted Netra of being privy to the Dacoity, and Janna and Nubboo of being actually concerned therein; concurring with which *futwa*, the

1822.
Case of NETRA and others.

Judge of Circuit sentenced each of the prisoners to receive 39 *corahs*, and to be transported and imprisoned for life; but he recommended Netra to pardon, on the ground of the illegal advantage taken to induce him to reveal what he knew of the circumstances, and of there being no other proof established against him besides his own representation.

The prisoners Janna and Nubboo were convicted by the *futwa* of two of the law officers of the Nizamut Adawlut of having been concerned in gang robbery attended with personal violence, and the prisoner Netra of being an accessary thereto before and after the fact. The Court, concurring in the said *futwa* as far as regarded the prisoners Janna and Nubboo, confirmed the sentence of 39 stripes of the *corah*, and imprisonment and transportation for life passed upon them by the Judge of Circuit. It appearing, however, that the confession of the prisoner Netra was taken by Rooderkanth Mohurrir of Thana Nowabgunge under a promise of release, and of promotion to be a Burkundaz in the service of Government, the Court did not concur in his conviction, but annulled the sentence passed upon him by the Judge of Circuit, and directed that he should be immediately released. The Court remarked, that the Judge of Circuit had already directed the removal from office of the above named Mohurrir for his objectionable conduct in this case.

GOVERNMENT,
against
NUNDA.

1822.
April 29th.
NUNDA's case.

Charge—MURDER.

Prisoner convicted of the murder of his wife by reason of her adultery. The Court, believing the alleged adultery, under all the circumstances of the case, sentenced him to imprisonment for life.

THE prisoner Nunda was charged with the murder of his wife Kimmeah, and tried for that offence at the first sessions of 1822, for the northern division of Bundelkhund. The circumstance which led the prisoner to commit the crime, was an adulterous intercourse which the deceased had carried on for some time previous with a Burkundaz named Lalkhan; consequently, on or about the 15th of August last, the prisoner killed the deceased with a *kootharee* or hatchet, by cutting her throat, while (as it would appear from the evidence) she was sleeping. There were not any eye-witnesses to the fact. The prisoner at the Thana, before the Magistrate, and also before the Court of Circuit, confessed the crime, and urged in his defence, that he was led to commit the act by the disgrace which the deceased's conduct had brought upon him. The law officer of the Court of Circuit convicted the prisoner Nunda of the wilful murder of his wife Kimmeah, and declared him liable to *Kissas*, in which conviction the Judge of Circuit expressed his concurrence, adding, that, although the criminal intercourse between the deceased and the prisoner Lalkhan had not been satisfactorily established, he

1822.
NUNDA'S case.

entertained no doubt of its existence, and that the prisoner was instigated to commit the murder by the disgrace which he conceived the conduct of the deceased had brought on him.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the wilful murder of Kimmeah, his wife, and declared him liable to capital punishment by *Kissas*. The fourth Judge of the Nizamut Adawlut (J. Shakespear) observed, that he concurred in the conviction, but wished to spare the man's life, considering the following grounds for mitigation.

The Judge of Circuit had stated, that he entertained no doubt of the adulterous intercourse of the prisoner's wife, who was a Hindoo. This intercouse was with a Moosulmaun, and that Moosulmaun a *Burkundaz* of the police. The prisoner stated that he complained to the Jemadar against the *Burkundaz*, and that nothing was done to restrain him: this was not proved, but the story was credible. The prisoner urged, that his neighbours had refused to associate with him in consequence of his wife's misconduct, and that this disgrace had instigated him to the commission of the act. In this opinion, as to the propriety of mitigation, the Chief Judge (W. Leycester) expressed his concurrence, and the following sentence was accordingly passed.

"The Court, observing that the conviction of the prisoner rests upon his confession, and that many extenuating pleas are urged therein, deem it just to allow him the benefit of the same, and consequently, considering him a proper object of mitigation in the capital part of the sentence, adjudge him to be imprisoned for life in the zillah jail."

1822.
May 6th.
KHOOMAN'S case.

GOVERNMENT,
against
KHOOMAN.

Charge—PERJURY.

The confession of a prisoner that he swore falsely is sufficient evidence for conviction of perjury, provided circumstances indicate the falsehood of the de-

THIS case was in substance as follows. On the 23d of July last, the prisoner was brought to the Magistrate's Court in a mutilated state, having one hand and foot cut off, which, in his deposition on oath, he stated had been done by order of Bijye Buhadoor, the son of Raja Chunder Huns, under the following circumstances; that having heard of the murders of the Kuchwahs committed at Koodaree, (a case about this time submitted to the Nizamut Adawlut,) he proceeded there with his brother Suddasook to enquire after some persons whom he stated to be his relations; that they were there seized by some of the Raja's people, and taken to his fort; that his brother, in attempting to make his escape, was killed, and he himself had a hand and foot cut off. This statement he maintained on further examination made on the 30th of October. The acting Ma-

1822.

KHOOMAN'S case.

position charged to be false.

gistrate adopted such measures as he thought necessary to ascertain the truth of the prisoner's statement; but it did not appear that the Raja's son, or any other persons, (for the prisoner did not mention names,) were subjected to any imprisonment in consequence of this accusation. The Raja's son (Bijye Buhadoor) was sent to the Magistrate's Court on or about the 2d of August, with other persons who were implicated in the murders of the Kuchwahs, and on the final disposal of the case by the acting Magistrate, on the 1st February, Bijye Bahadoor was discharged. On the 19th November, the prisoner confessed that his former statements were a mere fabrication; that he lost his hand and foot at Gwalior; that he was in the service of Ram Rai (one of Scindeah's chiefs), and was in this manner punished, in consequence of his having been detected in an amour with a slave girl belonging to that person: after undergoing this punishment, he was conveyed to Jalown, and there he heard of the murders of the Kuchwahs. There was, in the opinion of the Judge of Circuit, every reason to believe that the latter statement was the correct one. The motives which the prisoner assigned for his conduct were to secure attention and care in his wounded state, and a provision for himself in the helpless condition he was. It was difficult, the Judge of Circuit observed, to determine correctly what his motive might have been. Had his statement been confined to his own treatment, great appearance of truth would deservedly attach to it; but the additional accusation laid to the charge of the Raja's people, of having murdered his brother, aided the suspicion that he was made the instrument of a malicious design to injure the Raja. Admitting, however, this was the case, great allowance should (the Judge thought) be made for the lamentable state in which the prisoner then was, suffering, as he must have been doing, from the cruel punishment he had undergone but six or seven days before.

The law officer of the Court of Circuit convicted the prisoner of perjury, from which the Judge did not dissent: and in consequence passed sentence of three years imprisonment; but submitted to the judgment of the Court of Nizamut Adawlut, whether the circumstances of the case would not admit of a further mitigation, if not altogether of a remission of the sentence.

The prisoner was convicted by the *futwa* of two of the law officers of the Nizamut Adawlut, of wilful perjury, and declared liable to discretionary punishment by *Acoobut*.

By the Court. W. Dorin, (officiating Judge.) "The perjury is proved by the admission of the defendant, the object of it being to procure reception and medical care to himself when in a wounded state, his hand and foot having been cut off for some misdeed at Gwalior, by order of a Mahratta chief. But his false story involved a charge of mutilation and of murder against Raja Bijye Buhadoor. This he afterwards retracted by the confession, and it would not appear that he acted under any feeling of enmity against that person. He was committed on the 7th of December last. His first examination was on the 23d of July preceding. He must now have had about six months imprisonment. Though I do not con-

1822.

KHOOMAN'S case.

sider the perjury to have been grounded on any particular enmity to the person charged, it was wilful, and with a view to serve the defendant's own purpose; under the strong impulse, however, of a desire to get himself taken care of. If it had served his purpose, he probably would have persisted in his charge against Bijye Buhadoor. That person does not seem to have been apprehended on the defendant's charge: he is charged, on the Magistrate's proceedings, with concern in the Kuchwa murders, and also with mutilating this defendant. I would suggest six months imprisonment, in addition to what he has already undergone." C. Smith, (2d Judge.) "I think there is no sufficient evidence to shew whether the prisoner's first statement is false, or his second; and that the prisoner, therefore, should be released, under the precedent of the case of Musst. Kutcha, trial 9th of Nizamut cases decided in 1815." W. Dorin (officiating Judge) resumed. "In consequence of doubts suggested by the 2d Judge, I have looked over this case again, and still retain the opinion above expressed. I hold the confession of the defendant that he swore falsely, to be sufficient evidence for conviction of perjury, provided circumstances indicate the falsehood of the deposition charged to be false. I think there is strong presumption, from the Magistrate's proceedings, that the deposition was false. If the mutilation had taken place at Kadari, there would probably have been some trace forthcoming of such an occurrence, which there is not. The Burkundaz Hiyat Khan, and several *baigars*, examined by the Magistrate, depose to a mutilated man having been brought from the direction of Gwalior. If the Kadari people did it, why did they stop short of his life? The circumstances leading to an opposite conclusion are, 1st, that the defendant is of the Kuchwa caste; and 2dly, that Bijye Buhadoor's people may have managed to stop his mouth. I think, however, the first inference much preponderates, and that the presumption is strong as to the falsehood of his story on oath to the Magistrate. It is certainly not cleared up, for what he suffered at Gwalior; but if it was for intrigue, it is in vain to expect that the sufferer by his misdeed, will divulge the circumstance." The 3d Judge (S. T. Goad) concurring in the opinion expressed by the officiating Judge, the sentence of three years imprisonment, passed upon the prisoner by the Judge of Circuit, was annulled, and, under all the circumstances of the case, he was sentenced to six months imprisonment.

CHANDA SINGH,
against
BHUJA.

1822.
May 15th.
BHUJA'S case.

Charge—MURDER.

To justify a man in killing his wife and her paramour, according to the Moohummudan law, it is not necessary that he should see them in the act of adultery; presumption of it arising from situation is sufficient.

THIS was a case of murder, tried at the Bareilly monthly sessions for March 1822, and submitted by the Judge who presided on the trial, for the information and orders of the Nizamut Adawlut, from the circumstance of his not having met with a similar case before, during his experience as a Judge of Circuit. The prisoner, Bhuja, was *chowkeedar* of Mouza Neolee. He had accompanied the Zemindar of the village to a neighbouring village, and returning at about eight o'clock of the night of the 8th of February, sat on the Zemindar's *chowpaul* a couple of hours longer, and then went home. Arriving at his house, he found the *tattee* of his door fastened inside: on which he called out to his wife, and seeing through the crevices of the *tattee* by moonlight, that there was a man in the same bed with her, he drew his sword, and having got into the house, he killed his wife and her paramour, without having exchanged a word with either after his entrance into the house, as also without knowing who the man was, till after he had killed him, and then fled. Although the prisoner fled through fear of the consequences of the act, it appeared that upon reflection he delivered himself up to the police officers, on the sixth day after. In this case, there were no witnesses to the fact, but the prisoner's declaration was corroborated by strong circumstantial evidence: such as the situation of the bodies of Musst. Ruzzuneea and Kunnuck, when discovered by Allaid Singh and the neighbours. The difference of cast between Kunnuck Singh, a Rajpoot, and Bhuja, a sweeper, might be deemed a sufficient bar to the former being found in the house of the latter, unless he had gone there by stealth, and with a nefarious intention.

The law officer of the Court of Circuit convicted Bhuja of the wilful homicide of his wife Musst. Ruzzuneea and Kunnuck, at the time of his discovering them in the act of adultery; but declared that *Kissas* was barred by that circumstance, and that the prisoner should be released. The Judge of Circuit concurred with the law officer in this *futwa*; but, for the reason already stated, he postponed issuing a warrant for release, until the orders of the Nizamut Adawlut might arrive.

The *futwa* of two of the law officers of the Nizamut Adawlut found the fact, that the prisoner Bhuja killed his wife Ruzzuneea, and Kunnuck, a stranger, on the prisoner's coming home to his own house, and finding them there in the commission of adultery; and declared the homicide to be justifiable. The Court concurred in the *futwa*, considering it a case of justifiable homicide, from the evidence on record; and in conformity to the *futwa*, directed that the prisoner be discharged.

1822.

May 20th. Case of LAL SINGH and KHEWANEE.

GOVERNMENT,
against
LAL SINGH and KHEWANEE.

Charge—HIGHWAY ROBBERY.

A prisoner's Thana confession (not borne out by the evidence on record) that he had two other associates in a case of highway robbery, is not sufficient evidence of a "gang," so as to bring the case within the rule of section 3, Regulation LIII. 1803.

THE prisoners above named were tried for the offence of highway robbery at the first sessions of 1822, for zillah Aligurh. The case, as it appeared from the evidence on the trial, was briefly as follows. A person named Rhade, a cloth-seller, was on his way to Raugeghaut, on the evening of the 3d of November 1821, after it had become dark, with a bundle containing eleven pieces of cloth; when being midway between Mouza Gungabauss and Badepoor, two persons came up to him, and one of them having seized him by the throat, the other, on his calling out, threw dust into his mouth, and taking his bundle from him, ran off with it. The one who had seized him by the throat, having thrown him down, sat upon his chest till the other got out of sight with the bundle, and then seizing his turban, he also ran off. Rhade, upon being set free, immediately called out; and Jeyram and another person coming up, he pointed out to them the direction in which the robbers had fled. Jeyram, Rambuksh, and the prosecutor pursued and apprehended Lal Singh, who confessed having been with others who committed the robbery, and the prosecutor's turban was also found in his possession. The prisoner Lal Singh having implicated Khewanee, the latter was apprehended five days after at Mouza Rajpoor. The prisoner Khewanee denied the charge at the Thana, before the Magistrate, and before the Court of Circuit. He admitted at the Thana, that having heard that Lal Singh and another had committed a robbery on a Bunneah, and had implicated him, he fled through fear. The witnesses Koonjul and Holassee, both of them being uncles to the prisoner Khewanee, deposed, that on Khewanee's coming to their village (Rajpoor), he told them that he had committed a highway robbery in company with Lal Singh, and intended to go to Shahpoor. These two witnesses, therefore, caused him to be apprehended. The confessions of the prisoner Lal Singh at the Thana, and before the officiating Magistrate, were satisfactorily proved.

The prosecutor swore that Lal Singh was the person who seized him by the throat, and sat on his breast; and that Khewanee was his accomplice who threw dust into his mouth, and took his bundle away from him. The witnesses Jeyram and Rambuksh deposed as to the immediate pursuit and apprehension of Lal Singh, as also to the prosecutor's pointing out his turban in the prisoner's possession at the time of his being apprehended. The law officer of the Court of Circuit convicted the prisoners of highway robbery by night, the first on his proved confessions at the Thana, as well as before the officiating Magistrate, as well as from the fact of the prosecutor's turban being found in his possession; and the second on his admission before his own relations. In this *futwa* the Judge of Circuit concurred, and accordingly sentenced both the prisoners, under the provisions of Regulation VIII. of

1822.

Case of LAL SINGH and KHEWANEE.

1808, to be confined in transportation for life, and to receive thirty-nine stripes with a *corah*.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners of having been accomplices in highway robbery, and declared them liable to discretionary punishment by *Acoobut*. The Court (present W. Leycester) fully concurred in the conviction, and observing, that the case was not charged by the prosecutor as coming under the definition laid down in section 3, Regulation LIII. of 1803, that is, of persons going forth with offensive weapons, or in a gang without them, and that there was nothing on the record to bring it under the above definition beyond the circumstance of its having been stated at the Thana by Lal Singh in his confession that there was a third person in company, which was not specifically proved by the witnesses thereto, and which was inconsistent with his statement on his first apprehension, considered the case to come more properly under the 4th clause of section 3, Regulation XVII. of 1817, and sentenced the prisoners to receive each 15 stripes of a *corah*, and to imprisonment with hard labour for five years.

GOVERNMENT,
against
KHAME and others.

Charge—MURDER.

1822.

May 23d.

Case of KHAME and others.

Case of the massacre of thirty-three individuals from motives of revenge. Three prisoners convicted of having been present, aiding and abetting at the massacre, sentenced to imprisonment for life. Capital punishment not awarded; the evi-

THE prisoners Gunnesh, Khame, Mohunjo, Heeralal, and others, were charged with the murder of thirty-three persons of the Kuchwa class of Rajpoots, and tried for that offence at the 1st sessions of 1822, for zillah Banda. It appeared in evidence, that the cause which led to this cruel massacre, with which the prisoners were charged, arose from the Kuchwahs laying claim to the Zemindaree right of Mouza Kudari, which was held in Jageer by Raja Chunder Huns*. A suit had been instituted in the civil Court, by the Kuchwas, against the Raja for possession of their rights; and it appeared that the immediate cause of the attack was the Kuchwas having cultivated some land without the Raja's permission. On the morning of the 13th of July, the Kuchwas were assembled unarmed in a *tope* or garden, having returned from going through the ceremony of ploughing on account of the *Shugoon*; that a body of 100 or 150 men came from the Raja's fort, and after an exchange of a few words, by desire of one Mohun Dobee, they opened a fire upon the Kuchwas, numbers of whom were there killed. From this they proceeded to the village, and in cool blood murdered others of the tribe whom they found in their houses, without distinction of age or sex, breaking even into the

* This man, and thirty-four of his followers, were subsequently killed, while actually resisting the authority of the Magistrate.

1822.

Case of KHAME and others.

Evidence not being sufficiently distinct of their being actively engaged in the actual perpetration of it.

roofs of the houses which they could not enter, and thus firing into them. In this wanton and cruel manner, thirty-three persons, and among them two or three infants, fell victims to the savage barbarity of the Raja's people. Mohun Dobee, with a person named Chutter Singh, (a relation of the Raja's,) appeared to have been the principal persons concerned in this massacre; but they, with a greater number of the offenders, had, up to the date of the trial, escaped apprehension or detection. The eight prisoners who were committed for trial pleaded not guilty before the Court of Circuit. In their depositions before the Magistrate, the prisoners Gunnesh and Khame admitted that they had accompanied the murdering party; and the Judge of Circuit, referring the case, observed he had no doubt of their having taken an active part in the barbarous proceeding, and he was of the same opinion with regard to the prisoner Mohunjo.

The law officer of the Court of Circuit convicted the prisoners Gunnesh, Khame, and Heera Lal, on violent presumption, and declared them liable to *Seasut*. The remaining five prisoners, namely Subsook, Kurn Singh, Bhujjun, Subbul Singh, and Mohunjo, the law officer acquitted, as the evidence of Khoomaun, Lakhun, and Ramdeen was insufficient to convict them. The Judge of Circuit concurred in the conviction of Gunesh, Khame, and Heera Lal, but not in the acquittal of Mohunjo; as Ramdeen not only corroborated the statements of the other two witnesses as to his being present, but deposed that he was actively concerned in wounding Gunna, one of the deceased persons. He did not therefore hold the law officer's objection to be good against the validity of his testimony, as it related to Mohunjo, and consequently submitted his case, with that of the three convicted prisoners, for the final orders of the Nizamut Adawlut. As he considered the evidence against the prisoners Subsook, Kurn Singh, Bhujjun, and Subbul, to be very unsatisfactory and defective, the Judge of Circuit concurred in their acquittal, and discharged them accordingly.

The *futwa* of the law officers of the Nizamut Adawlut acquitted Mohunjo, and convicted the three others, declaring them liable to capital punishment by *Seasut*. By the Court. W. Leycester, (chief Judge.) "I agree in the conviction of Gunesh and Heera Lal, and am not able to discover any ground why capital sentence should not be passed upon them. I agree in the acquittal of Mohunjo, and would release Khame also, as not duly convicted." J. Shakespear, (fourth Judge.) "I agree with the chief Judge in sentencing the prisoners Gunesh and Heera Lal to capital punishment, and in the acquittal of Mohunjo, but think that Khame ought not to escape. He admits, before the Magistrate and the Court of Circuit, that he accompanied the party of armed men sent out of the fort by the Raja, and was present when sixteen of the Kuchwas were slaughtered in the *tope* and two in the village. It is not to be credited, that he went into the village to save the Kuchwas, as he asserts. A sword plundered in the village appears to have been found in his possession; and the old man Ghasee deposes, that he was seized by Khame during the massacre, or subsequently thereto, and conveyed to the Raja, who ordered him

1822.
Case of KHAME and others.

into confinement. If the intention of this prisoner had been such as he states, he would have hastened to the Raja after the massacre in the garden, to have prevented further bloodshed by interceding for the Kuchwas, and not have accompanied the murderers into the village. As the chief Judge has stated his opinion for the acquittal of Khame, I do not propose that he should be sentenced to death, but I think that he should be imprisoned for life." C. Smith, (second Judge.) "I concur in the acquittal of Mohunjo, and doubting whether there is sufficiently distinct evidence of the other prisoners being actively engaged in the actual perpetration of the massacre to warrant a capital sentence, I am of opinion, that Gunesh, Khame, and Heera Lal should be sentenced to imprisonment for life, in the Allipore jail, for the offence of having been present, aiding and abetting at the massacre of the Kuchwa Rajpoots." Leaning to the side of mercy, the 4th Judge acquiesced in the sentence proposed by the 2d Judge, and a sentence of perpetual imprisonment in the Allipore jail was accordingly passed on the three convicted prisoners.

1822.
May 23d.
JOWAHIR, *alias* PUNCHUM'S case.

GOVERNMENT,
against
JOWAHIR, *alias* PUNCHUM.

Charge—MURDER.

THIS trial came on at the 1st sessions of 1822, for zillah Etawa. The case was as follows. On the 17th June 1817, the corpse of Musst. Nowulleea was found in the jungle of Mouza Nuggla Bund, bearing the marks of repeated wounds on the neck. The body being recognized, it was ascertained that the prisoner Jowahir with his deceased wife Nowulleea had been on a visit to Musst. Purranee, her mother-in-law, who resided at Allumgeerpoor, and that the husband and wife having taken leave of Musst. Purranee on the afternoon of the 16th, (the day before the body was found,) had proceeded together in the direction of the prisoner's village. An inquest having been held upon the corpse, strict search was made after the prisoner Jowahir at his and his father's (Culloo's) house, as well as in other places, without success. On the 6th of July 1821, a person named Chuta brought Jowahir to the Thana at Gurwur, and stated, that four years prior to that time, the prisoner had committed a murder in the Beebamow jurisdiction, and had fled; that having seen him at work drawing water near Nuggla Ummur Singh, he had told the people there that he was a murderer, and with the assistance of a Burkundaz, had apprehended him. The prisoner having been sent in to the acting Magistrate, not only denied the charge of murder, but stated that his name was Punchum, and not Jowahir; that he never was married; that he did not run away, and moreover that his father and

The prisoner was charged with having murdered his wife four years before. On being apprehended, he denied being the husband of the deceased, and assumed a feigned name. Sentenced to perpetual imprisonment, on conviction of the charge from circumstantial

1822.

JOWAHIR *alias* PUNCHUM'S case.

evidence, and proof of his identity.

mother were both dead. The prisoner was identified as Jowahir, who had married Mussummaut Nowulleea about six or seven years before, by Musst. Purranee, the mother, as well as by Punnoo the brother of the deceased; also by Chuta the informer, Chutoo the Zemindar, and Mandatta the *Bullaher* of Mouza Allumgeerpoor. Mussummaut Purranee, Chuta, and Punnoo deposed as to the prisoner's having left Allumgeerpoor in company with his wife Nowulleea the day before her corpse was found. Culloo, the prisoner's reputed father, denied having ever seen him before, but he was satisfactorily contradicted on that head.

The law officer of the Court of Circuit convicted the prisoner of the wilful murder of his wife, with an instrument of iron, on violent presumption, and declared him subject to death by *Kissas*. The Judge of Circuit, in referring the case, observed, that there was no direct evidence; but that the circumstances of the prisoner's having taken his wife from Allumgeerpoor the day before her corpse was found, and having himself fled, and when apprehended after a lapse of several years, having denied his name and connexion with Nowulleea, all which facts were satisfactorily proved, amounted, in his opinion, to violent presumption. He therefore concurred in the *futwa* of the law officer.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner upon strong presumption of the murder of his wife Nowulleea, and declared him liable to death by *Seasut* for the crime.

By the Court, C. Smith, (second Judge.) "Taking the prisoner's identity to be sufficiently established, (and I am of opinion, with the Judge of Circuit, and the law officers of both Courts, that it is so,) the circumstances, namely, the prisoner's taking away the deceased from her mother's house the day preceding her death, her being found murdered in the way between the village from which he took her and his own, his absconding for more than four years from that date, the want of all cause for his doing so but a consciousness that he had committed the murder, the general and full persuasion that he did so and had on that account absconded, and his attempt, on his being apprehended, to disguise his name and his connexion with the deceased, are such as warrant, in my judgment, a strong presumption that he is guilty of the crime imputed to him, and I think that the nature of the case and evidence calls for a sentence of perpetual imprisonment with labour in the jail of Allipore." The fourth Judge (J. Shakespear) concurring in this opinion, a sentence of perpetual imprisonment in the Allipore jail was passed accordingly.

1822.

May 23d. Case of PHUDALEE and HURBUNS.

To a conviction of forgery it is not necessary that the coins forged should be of base metal, or that the imitation should be of a coin being a legal tender of payment; provided it be current among the natives themselves.

GOVERNMENT,
against
PHUDALEE and HURBUNS.

Charge—FORGERY.

THE trial of Phudalee and Hurbuns, (which took place at the 1st sessions of 1822, for zillah Banda,) charged with forging counterfeit coin, was referred to the Nizamut Adawlut, with the view to obtain mitigation of the sentence which had been passed on them, in conformity with clause 2, section 9, Regulation XVII. 1817. It appeared on the trial, that the prisoner Phudalee gave the other prisoner a small quantity of silver and gold to be coined into money; but the latter, on a plea of having a demand against a relation of the former, detained the greater part of the silver, which induced Phudalee to prefer a complaint to the Thana, which led to the prisoner's commitment. Hurbuns coined or prepared five rupees from the silver which the other prisoner gave to him, when the hammer employed in the preparation of these having broke, he was prevented from finishing the remainder. These five rupees, together with two other rupees, which appeared to have been made of copper with a coating of silver, were delivered by Hurbuns to Phudalee. This was confirmed by the deposition of Dyal; and other circumstances deposed to by two other witnesses afforded strong presumption against the prisoner Hurbuns. The prisoner Phudalee, before the Magistrate and the Court of Circuit, acknowledged that he gave the prisoner Hurbuns pieces of silver and gold to be prepared into coin. The other prisoner pleaded not guilty.

The law officer of the Court of Circuit convicted the prisoners on violent presumption; and concurring in their conviction, the Judge of Circuit sentenced them each to seven years imprisonment, but declared his opinion, that the nature of their offence would admit of a mitigation of the sentence which, in conformity with the Regulation already quoted, he had no option but to pass. In concurring in the conviction of the prisoners by the law officer, he observed, that he did not consider that by clause 2, section 9, Regulation XVII. of 1817, alluding to "counterfeit coin in imitation of any of the gold, silver, or copper coins of the British Government in India," it is necessary that the counterfeit coin should be, as the Persian version of the Regulation makes it, "*Roopeea Culluh*," which he understood to be what the two rupees above described were. It appeared to him sufficient, he added, that the forged coin be a counterfeit or imitation, deficient in the standard weight of silver. No doubt could exist, in his opinion, as to the object of an individual in coining or imitating rupees. It could be no other, than, by reducing the standard weight of silver, to secure a profit to himself. Nor did he consider, by the term "current," it was intended that the coin should be a legal tender of payment, but simply a coin which is current among the natives themselves, or by means of which they carry on their transactions and negociations. In the present case, the coin imitated was the Sreenugger rupee, a

1822.

Case of PHUDALEE and HURBUNS.

coinage of the Gwalior government, and very current in the district of Banda.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners Phudalee and Hurbuns, upon violent presumption of making and causing to be made rupees and gold mohurs, and declared them liable to discretionary punishment by *Acoobut* for the offence. The Court, (present C. Smith and J. Shakespear,) concurring in the *futwa*, and adverting to all the circumstances of the case, together with the officiating Judge of Circuit's recommendation of a mitigated punishment, annulled the sentence passed against the prisoners by the officiating Judge, under clause 2, section 9, Regulation XVII. 1817, and sentenced the prisoners Phudalee and Hurbuns to imprisonment for three years, with hard labour.

1822.

May 29th.

PUKHAREA's case.

GOVERNMENT, *against* PUKHAREA.

Charge—MURDER.

Prisoner convicted of wounding his wife in a fit of anger, of which wounds she died three months afterwards. *Kissas* declared to be barred by the *futwa* on a doubt as to the proximate cause of her death. But the Court having no doubt that the death was caused by the wounding, sentenced the prisoner to confinement for life.

AT the first sessions of 1822, for zillah Agra, the prisoner Pukharea was arraigned for the murder of his wife. The case was in substance as follows. Pukharea having brought Musst. Uchnoo into his house as a second wife, she absconded; and the prisoner having found her, she refused to return on account of the ill treatment she received from Musst. Munkowur, his first wife. The prisoner returning home, upbraided his first wife on that account, and words ensuing, he drew his sword, and, according to his own confession, made two blows at her, (which caused her death, at the expiration of three months,) and then fled. The Thanadar, immediately on receiving notice of the fact, proceeded to the prisoner's house, and there found Musst. Munkowur with six sword wounds upon her, all of which she stated were inflicted by her husband Pukharee. On the 22d of February 1821, the Thanadar having received information of the death of Musst. Munkowur in consequence of her wounds, immediately went to the spot, and held an inquest on the body. On the 8th of December of the same year, the prisoner having been traced to the house of Jewun Doss, a party of Burkundazes surrounded it, and on the prisoner's being demanded from Jewun Doss, he came out with his drawn sword; but, finding the Burkundazes also prepared, he turned the edge of it against his own throat, and inflicted upon himself rather a severe wound.

The prisoner confessed the crime at the Thana, before the officiating Magistrate, and before the Court of Circuit; and in the two latter confessions, he stated, that he was under the influence of intoxication when he committed the act; but in his confession at the Thana, he had not stated any thing of the kind, neither was there

1822.
PUKHAREA'S case.

any reason to suppose it. Besides the prisoner and his wife, there was a third person, named Purma, who chanced to be in the house at the time the murder occurred, and at a small distance from them; who seeing the prisoner attacking his wife Munkowur, called out to him to desist, but without effect.

The law officer of the Court of Circuit convicted the prisoner Pukharea of the wilful murder of Musst. Munkowur, his wife, on his own confession, and on the evidence of the witness Purma, and declared him subject to death by *Kissas*. In this *futwa* the Judge of Circuit concurred; neither was he aware of any circumstance which could be urged in mitigation.

The *futwa* of the law officers of the Nizamut Adawlut declared *Kissas* to be barred, in consequence of the time which elapsed between the wounding and the death of the deceased, (upwards of three months,) and also in consequence of doubt whether her death was accelerated by the wounds, seeing that the immediate cause of demise was stated to have been the production of worms in the wound in her foot: they therefore held the prisoner liable to *Deeut* or *Seasut*, at the pleasure of the ruling power. The Court of Nizamut Adawlut (present C. Smith and J. Shakespear) considered the fact of wounding to be clearly established against the prisoner, and had no doubt that the woman's death was caused thereby. With reference to the *futwa*, and all the circumstances of the case, they thought that the prisoner should be sentenced to perpetual imprisonment in the jail of zillah Agra; a sentence to which effect was issued accordingly.

1822.
June 5th.
Case of MUNGUL RAI and others.

GOVERNMENT,
against
MUNGUL RAI and three others.

Charge—ASSISTING at SUTTEE, &c.

The omission to give notice to the police of an intended *Suttee*, is not a criminal offence punishable under the Regulations.

THE prisoners Mungul Rai, Cashinath Das, Ram Soonder, and Ramchunder, were charged with burning a woman on the funeral pile of her deceased husband, without giving information to the police, and against the remonstrances of the village Chowkeedars, and were tried at the 1st sessions of 1822, for zillah Backergunge. It was proved in evidence, that the father of the first prisoner (Mungul Rai) died on the afternoon of the 1st February 1822; and that, when it was known that his widow intended to burn with him, two of the Chowkeedars of the village represented to the parties the necessity of giving previous notice to the police Darogha, which they refused and omitted doing, and the *Suttee* took place on the same evening. There appeared to have been no legal impediment to the ceremony, or other objections to it, save the omission above noticed. The prisoners pleaded their ignorance of the rules enacted respecting *suttees*, and stated, that there was not time at such a late hour to give notice

1822.
Case of MUNGUL RAI and others.

to the Thana, which was sixteen miles off, and that delaying the ceremony till next day would have been prejudicial to their caste.

The law officer of the Court of Circuit was of opinion, that the prisoners, deserved punishment by *Acoobut*, as although there might be no formal rule requiring that information should be previously given to the Thana, such was generally understood and acted up to. The Judge of Circuit, in referring the case, expressed his opinion, that the penalty, if any, ought to be very light; and stated, that as the case was of a novel kind, and involved a subject of a delicate nature, he had thought it advisable to refer it for the orders of the superior Court. A fine of rupees 25, had been imposed by the acting Magistrate upon the Darogha of the Thana, and this, the Judge of Circuit thought, ought to be remitted, as he saw no blame imputable to that officer in the case.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners of having been accomplices in the sacrifice of the mother of Mungul Rai on the funeral pile of her husband, in opposition to the orders of Government, and without giving previous notice at the Thana, and declared them liable to correction at the discretion of the ruling power. The Court, however, (present W. Leycester,) observing that no orders of the kind supposed had existence, acquitted the prisoners, and directed their immediate release. The Court observed, that the Magistrate had imposed a fine of 25 rupees on the police Darogha; but seeing no ground whatever to impute any neglect to the officer in question on this occasion, directed that the fine should be remitted, and its amount restored to him; and that the Magistrate should call on the Daroghas to require the Chowkeedars, or any of them in their division, to proceed from their village without delay, whenever they might have reasonable ground to suppose that a *suttee* was in contemplation, in order to furnish information at the Thana, instead of delaying, as in the present instance, till the day after the sacrifice had taken place.

1822.
June 10th.
GUNGABISHEN'S case.

GOVERNMENT, *against* GUNGABISHEN.

Charge—PERJURY.

A deposition wrongly taken on oath by a Magistrate, not allowed, as such, to affect the prisoner. Acquittal of perjury,

THE prisoner Gungabishen was charged with perjury, and tried for that offence at the 1st sessions of 1822, for zillah Allahabad. The prisoner was first taken up on a charge of aiding in a robbery, but being acquitted of that offence, was examined on the 19th of April, as a witness in the case. In his examination on the charge of robbery, he stated, that one Nunneh was concerned in the robbery, and that he recognized him. In his examination on oath (after being acquitted) he excluded the said Nunneh from participation in the crime, and denied having recognized him, alleging that he took his name at the

1822.

GUNGA BISHEN'S case.

instigation of his employer, to whom the money plundered belonged. On the 26th of April, as appeared by a proceeding in the case, the prisoner (whether he was a prisoner at that time, the record did not shew) came forward and acknowledged, that in his former deposition he had not stated facts as they really had taken place, but was now ready to do so. He was accordingly re-examined on oath, and stated that Nunneh was among the persons who robbed him of the money, and that he denied this point before, as Nunneh had induced him to do so.

under the circumstances.

The law officer of the Court of Circuit convicted the prisoner of perjury, and declared him liable to *Acoobut*. The Judge of Circuit stated, that he did not concur in this conviction, considering his confession, or second examination, (which was the only proof against him,) to have been made under an impression of fear. There was something objectionable too, he observed, in taking his second deposition or examination on oath, under the circumstances mentioned in the Magistrate's proceeding of the 26th of April. With this impression on his mind, he consequently submitted the trial for the final orders of the superior Court.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner Gungabishen of perjury, and declared him liable to discretionary punishment by *Acoobut*. By the Court. W. Dorin, (officiating Judge.) "I am for acquitting this prisoner of the perjury charged. It is charged to have been made in his deposition as a witness, bearing date the 19th of April. I am not satisfied that the deposition in question is false. The examination on oath of the 26th of April, which contains a contradiction of it, should not have been taken on oath, and the Magistrate should be so told; it is not at all improbable, that the prisoner may have been influenced then by fear to say what he thought he was wished to say. Properly speaking, we ought to have had the Magistrate's proceedings on the charge of robbery, as well as those on the present charge of perjury." The second Judge (C. Smith) concurring in the acquittal of the prisoner, he was ordered to be released; and the Court at the same time remarked, for the future guidance of the Magistrate of Allahabad, that it was erroneous to take on oath the prisoner's examination of the 26th of April 1822, which examination too the Magistrate had attested as a confession.

1822.
June 10th.
MEERAN SHAH'S CASE.

MUSST. ACHNOO,
against
MEERAN SHAH.

Charge—RAPE.

It is not necessary, under Regulation XVII. of 1817, to refer to the Nizamut Adawlut a trial for rape, unless the Circuit Judge and his law officer be of opinion that the offence was actually consummated.

THIS trial came on at the 1st session of 1822, for zillah Aligurh. The prisoner, a man upwards of 30 years of age, seized hold of Musst. Dewah, a child under four years of age, and carrying her into the jungle, attempted to commit a rape on her body, by which he tore and seriously injured the infant. Musst. Achnoo, the prosecutrix, having missed her daughter in the evening, it was feared that she had been carried off by a wolf; but upon search being made for her, the prisoner brought her into the village in his arms. The child having been taken to a light, it was perceived that her clothes were stained with blood; and upon the prisoner's being questioned, he admitted, that in a fit of drunkenness, he had committed a rape on the child. His own clothes also were stained with marks of blood. Being taken to the Thana on the 15th of January 1822, the prisoner confessed there, that on the preceding evening he had committed a rape on Musst. Dewah. That confession was satisfactorily proved before the Court of Circuit. The prisoner also admitted before the officiating Magistrate, that he, being drunk, took the child with him, and did not know what he had done to her; further, that the marks of blood seen on his clothes came there from having carried the infant. Before the Court he stated, that he did not know whether or not he took the child with him. The child having been examined by Badoolla, a native surgeon, at the Thana, it appeared that she had been wounded and much injured.

The law officer of the Court of Circuit convicted the prisoner on violent presumption, grounded on his proved confession at the Thana, and the circumstances of the case, of an attempt to commit a rape on Mussummaut Dewah, an infant about four years of age, by which she was wounded and seriously injured. In this conviction the Judge of Circuit concurred, and forwarded his proceedings on the trial for the information and orders of the Nizamut Adawlut.

The *futwa* of two of the law officers of the Nizamut Adawlut recited, that the prisoner Meeran Shah was convicted, on strong presumption, of a rape on the person of Musst. Dewah, a child four years of age, and declared him liable to discretionary punishment by *Acoobut*. By the Court. W. Dorin, (officiating Judge.) "I think the conviction in this case should be for the attempt to commit a rape, and not for the absolute commission, which our *futwa* finds. I would adjudge five years imprisonment with hard labour, and stripes. But why did the Circuit Judge refer the case? Neither he nor his law officer convict of rape, so that the order for referring all cases of rape, in Regulation XVII. 1817, does not become applicable; and for the attempt to commit rape, he should not have referred the case, unless he considered seven years imprisonment, and stripes, an insufficient sentence. Are we to presume that he so considered it?"

1822.
MEERAN SHAH'S case.

The second Judge (C. Smith) observed, that his deeming seven years imprisonment insufficient punishment was the only proper ground of reference by the Circuit Judge; and this, if it was the ground, should have been explicitly stated in the letter.

The Court (present C. Smith and W. Dorin) considering the prisoner convicted by the evidence, of an attempt only to commit a rape on the person of the said child, sentenced him to receive twenty-five stripes of the *corah*, and to be imprisoned with hard labour for five years. The Court observed, that the *futwa* of the law officer of the Court of Circuit declared the prisoner convicted of an attempt to commit rape, and that the Circuit Judge, in referring the case, expressed his concurrence in that *futwa*; and that the Court presumed, therefore, that the Circuit Judge referred the trial, considering the punishment authorized by clause 7, section 2, Regulation LIII. to be insufficient.

1822.
June 10th.
RUNJEET'S case.

POHUP, *against* RUNJEET.

Charge—MURDER.

THE prisoner Runjeet was tried for the murder of his brother, at the 1st sessions of 1822, for zillah Aligurh. The case was in substance as follows. On the 4th of December 1814, the corpse of Hunsraj was found hid under a heap of grain, in a field of Mouza Kanda, bearing fifteen sword and spear wounds upon it. Information being taken to the Thana of Jellaser, the Thanadar proceeded to the spot, held an inquest on the body, and apprehended various persons on suspicion. Whilst the enquiry was still going on, the Thanadar reported, on the 3d of January 1815, that he had learned from Runjeet, Bageerutta, and others, that the prisoner Runjeet had murdered his brother Hunsraj, because the latter had been intimate with his (Runjeet's) wife; and further, that after the murder Runjeet had fled to his sister's house in Mouza Kellana, zillah Agra, and had told his sister and others of the deed; and that in consequence the people of that village had insisted on his leaving them. Orders having been issued to the surrounding Thanadars, directing them to apprehend Runjeet, the prisoner was apprehended on the 10th of September 1821, in the jurisdiction of the Souk Thana, zillah Agra; and there confessed, that having had a quarrel with his brother Hunsraj about matters of cultivation, Hunsraj struck him with a club, and he wounded Hunsraj in return by a blow with his sword on the side, which killed him. The prisoner also confessed before the Magistrate of Agra to the same effect, except that he qualified the confession by stating, that his sword was in the scabbard when he struck, but cut through it. Both these confessions were proved before the Court of Circuit. Before the officiating Magistrate of Aligurh, as also before the Court of Circuit, the prisoner denied the charge.

The prisoner confessed the homicide of his brother, after having received a blow from him; and the *futwa* therefore finds that the act was done in self defence. There was no eye witness; but, from other circumstances, independant of the confession, the Court inferring wilful murder, sentenced him to imprisonment for life.

1822.

RUNJEET'S case.

The law officers of the Court of Circuit convicted the prisoner Runjeet on his proved confessions of the wilful murder of Hunsraj, his own brother, rejecting the assertion on the part of the prisoner, of having first been struck by Hunsraj with a club; and declared him liable to suffer death by *Kissas*. The Judge of Circuit concurred with the law officer in the conviction of the prisoner of wilful murder, and was of opinion, that there were no grounds for supposing that the deceased first struck the prisoner, though the cause of the murder was not ascertained; but that the corpse, from the number of wounds upon it, bore evidence of the intention to kill on the part of the person who inflicted the wounds. The Judge of Circuit further stated, that he was not aware of any circumstance which could be urged in mitigation of punishment.

The prisoner Runjeet was declared by the *futwa* of two of the law officers of the Nizamut Adawlut to be not convicted, and to be entitled to release. By the Court. W. Dorin, (officiating Judge.) "This is rather an extraordinary case. The act was committed seven years ago, and the prisoner, a *putteedar* of the Mouza where it occurred, has since been a wanderer. The first suspicion seems to have fallen on another, who was supposed to be a rival of the deceased. There is, however, no doubt (in my mind) that the prisoner killed his brother Hunsraj. His confession implies that the deceased first struck him with a stick *(chobdust)*, and then he killed the deceased with his sword. The inquest recites, that the body was much mangled, and that there were also spear wounds. Our law officers find it to be homicide in self-defence. I should have viewed it at the least as culpable homicide, and think it will have a bad effect, if the man gets off; yet is it a proper occasion to go against the *futwa?* The case has not been well tried. The evidence of the prosecutor Pohup, judging by what he had stated at the Thana, (January 2d, 1825,) and in the Foujdaree, (January 13th, 1825,) was material. His statements went to the facts of his two sons having gone out together in the afternoon of one day, of the defendant having from that time absconded, and of the body of the other having been discovered next day. These facts necessarily raise a suspicion of murder; and if the prisoner had said nothing, would have left a strong case against him. It is highly favourable to him to admit his confessions; and, as we have no evidence of enmity between the brothers, it may possibly have been a sudden quarrel, ending in bloodshed. Some witnesses have given false evidence for the prisoner, in saying he left the Mouza *mad* before the affair. What story the prisoner told to those with whom he first took refuge, does not appear." C. Smith, (second Judge.) "I think there is a strong presumption that the prisoner murdered his brother, and am of opinion that the *futwa* should be superseded, under section 4, Regulation XVII. 1817, and the prisoner be imprisoned for life in the Aligurh jail." The 3d Judge (S. T. Goad) concurring, the prisoner was sentenced accordingly.

KARDEE,
against
SHAM HAREE and fifteen others.

Charge—DACOITY.

1822.
June 10th.
Case of SHAM HAREE and others.
It is irregular in a Judge of Circuit to enter into any examination of a prisoner as to his confession, beyond his simple avowal or denial of the same.

THE prisoner Sham Haree and fifteen others, were charged with Dacoity, and tried for that offence at the first sessions of 1821, for Zillah Rungpore.

A gang of Dacoits, on the night of the 2d of May 1821, entered the prosecutor's house, seized his father, and slightly burnt him in six or seven places; desiring him to point out where he had concealed his money. They were armed with clubs, and had two lighted torches, which they left behind. The amount of the property carried away was estimated at only fourteen rupees. It appeared, that on the Darogha's arrival at the spot, he immediately endeavoured to find out the owner of one of the torches, from its being more regularly made than those generally used by Dacoits; and a person named Bulla Haree informed him that it belonged to Sham Haree, who was in consequence apprehended, and who made a voluntary confession, in which he implicated the rest of the prisoners. The whole of these prisoners also confessed, and repeated their confessions to the joint Magistrate; and Narputtoo, Sookaroo, Kumul Das, Sudoo, and Sulloo delivered up, each of them, some of the articles which had been plundered from the prosecutor. The prosecutor's father was alleged to have recovered from his wounds, but to have died nine months after the Dacoity occurred of the Cholera Morbus.

The *futwa* of the law officer of the Court of Circuit convicted all the prisoners of Dacoity, concurring with which the Judge of Circuit sentenced each of them to receive thirty-nine stripes of a *corah*, and to be imprisoned and transported for life; transmitting the proceedings, at the same time, for the final orders of the superior Court.

The prisoners Sham Haree, Narputtoo, Ban Bhasa, Bhekaree, Sookaroo, Kumul Das, Dopuhrea, Sudoo, Bhulka, Badeea, Sulloo, and Khuroo, having been convicted by the *futwa* of two of the law officers of the Nizamut Adawlut of the crime of gang robbery attended with the torture of the prosecutor's father by burning, and declared liable to discretionary punishment by *Acoobut*, and having been sentenced by the Judge of Circuit, each to receive 39 strokes of the *corah*, and to imprisonment in transportation for life, the Court of Nizamut Adawlut (present S. T. Goad and J. Shakespear) confirmed the said sentence.

The Court observed further, that the 3d Judge, after calling upon the prisoners for their defence, put the whole of them through an examination; and after recording their denial of the confession given by them before the Darogha and joint Magistrate, read the several confessions over to each prisoner, and again questioned them as to their having made such confessions or not. This mode of proceeding, the Court remarked, is at variance with the rules laid down in Regula-

1822.
Case of SHAM HAREE and others.

tion IX. of 1793, serves to lengthen the record of a trial unnecessarily, and must consume a large portion of the time of a Judge of Circuit, without conducing to any good end. The Court therefore desired that the 3d Judge would discontinue this practice in future, and adhere closely to the mode of proceeding laid down in the Regulation above quoted.

1822.
July 20th.
Case of ARATOON and others.

GOVERNMENT,
against
ARATOON and two others.

Charge—FORGERY.

A prisoner convicted of preparing an earthen mould, with a view to forgery of copper coin. Sentenced to two years imprisonment.

THE prisoner Aratoon was charged with counterfeiting the coin of the country, and the prisoners Kartick and Rajkishore with being privy to the crime, and giving currency to base coin, knowing it to be counterfeit. The case was tried at the Moorshedabad city sessions, for April 1822. It appeared in evidence, that on searching the prisoners (who were convicts) in the month of November, 1821, as was customary every week, to prevent any files, or other articles which it is improper for them to have, being taken into the jail, an earthen mould, such as might be used for counterfeiting the coin of the country, (it was however incomplete,) was found upon the prisoner Aratoon, and deposited, with other property kept in the guard room, of the Burkundazes at the jail. Early in the month of January following, a potter who was passing near the jail, accused Kartick of giving him some bad pice in payment for an earthen pot, which were afterwards changed for cowries by Rajkishore. Some counterfeit pice made of lead were produced on the trial, which were supposed to be those paid by Kartick to the potter, and received back from him in exchange for cowries by Rajkishore; but this point was not fully established. That pice or other coin had been counterfeited in the jail with the connivance of the Darogha and others, the Judge of Circuit thought highly probable, and he directed the Magistrate to make enquiries into the matter; but he did not think there was proof against the prisoners committed in the present case which could authorize conviction.

The law officer of the Court of Circuit declared in his *futwa*, that Aratoon was convicted of counterfeiting pice, and Kartick and Rajkishore of being parties concerned in the same, and in giving currency to them. In this *futwa* the Judge of Circuit not agreeing, forwarded the case for the final orders of the superior Court.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner Aratoon upon strong presumption of preparing an earthen mould with an intent to counterfeit coin, and declared him liable to discretionary punishment by *Acoobut*. The Court

(present C. Smith and J. Shakespear) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoner Aratoon to imprisonment for two years from the expiration of the term for which he was then confined. The *futwa* acquitted the prisoners Kartick and Rajkishore, and the Court, concurring therein, directed their immediate release.

1822.
Case of ARATOON and others.

BORA,
against
SOODUN MOONDA.

Charge—MURDER.

1822.
July 22d.
SOODUN MOONDA'S case.

THE trial of this prisoner, who was charged with murder, came on at the 1st sessions of 1822, for zillah Ramgurh. It appeared from the deposition of the prosecutor, that a sudden dispute took place between the parties, in the same village, about a ceremony customary amongst people of the Kole cast, who on such occasions assemble and dance. The party to which the prisoner belonged had all collected, and were dancing, when the prosecutor's party wished to have the ceremony postponed, on which the prisoner struck the deceased with a club on the head, which felled him to the ground. He was carried home, and died sixteen days after, and this statement was fully corroborated by several witnesses. The prisoner, in his examination at the Thana and before the Magistrate, admitted having given the deceased the blow which caused his death, but said he did so in consequence of having been first attacked and beaten by the prosecutor's party. His witnesses, however, did not state that this was the case.

Prisoner having struck the deceased a blow with a club in the passion of the moment, without previous enmity, in a quarrel about a *pooja*, the law officers convicted him of wilful murder, but the Court viewed it as a case of culpable homicide only.

The law officer of the Court of Circuit in his *futwa* declared the prisoner convicted of wilful murder, and liable to *Kissas*. The Judge of Circuit was of opinion, that there could be no doubt that the blow given by the prisoner to the deceased caused his death; but from the prosecutor's own story, he was induced to think that the prisoner, provoked at the interruption given to the dancing by the prosecutor's party, struck the deceased in the heat of passion, and that the blow was probably more severe than he intended. Under these circumstances, and as it appeared that no previous enmity existed between the deceased and the prisoner, the Judge expressed a hope, that the superior Court would consider him to have only incurred the penalty of culpable homicide, and sentence him to imprisonment for a limited period.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the species of murder termed *Kutl i Umd*, and declared him liable to *Kissas*. The Court (present C. Smith and W. Dorin) concurred in the *futwa*, so far as regarded the fact of homicide being established against the prisoner by the evidence; but as the death of the deceased was caused by a blow struck

1822.

SOODUN MOONDA'S case.

by the prisoner with a club in the passion of the moment, and without previous enmity, on a quarrel between the prosecutor's and the prisoner's party regarding a *pooja*, the Court considered the case to be one of culpable homicide only; and under all the circumstances, adjudged the prisoner Soodun Moonda to be imprisoned with labour for seven years.

1822.

July 22d.

JUGJEET SINGH'S case.

RUTTUN,
against
JUGJEET SINGH.

Charge—MURDER.

It being proved that a woman met her death in consequence of ill usage and confinement by the prisoner or under his orders, on the imputation of being a witch, the prisoner was sentenced, under all the circumstances of the case, to seven years imprisonment with labour.

THE prisoner was charged with having forcibly carried off the prosecutor's wife, on an accusation of witchcraft, and caused her death, after six days confinement, the body having been found hung on a *beir* tree. The trial came on at the 1st sessions of 1822, for zillah Ramgurh. The law officer of the Court of Circuit declared the prisoner convicted in this case on strong presumption of having caused the death of the prosecutor's wife, and having had her hung by the neck on a tree, either before or after her death, on an accusation of witchcraft, and declared him liable to discretionary punishment by *Seasut*. It appeared from the statement of the prosecutor, corroborated by the evidence of several persons, that the prisoner, who is head of a village in Chota Nagpore, had a sick child, whose illness he considered had been caused by the incantations of the prosecutor's wife; in consequence of which he had her seized, and confined in the stocks; that on the seventh day she was found dead, hung by the neck to a tree, and that some of the witnesses on the same day buried the body near a nullah by order of the prisoner.

The witnesses, the Judge of Circuit observed, seemed inclined to conceal a part of what they knew of the transaction, as it was more than probable they were themselves accessaries; but he saw no reason to doubt the truth of their statement as far as it went, and from which might be collected, that the prisoner seized the prosecutor's wife, and confined her in the stocks, on a charge of witchcraft; that she was found dead on the seventh day, hung by the neck on a tree; that the prisoner desired some of the witnesses to bury the body, which was afterwards removed; and that he neither gave information of the circumstance to the police, nor any explanation to the prosecutor of what had become of the deceased. It was possible, he added, the deceased might have died of some disease during the six days she was kept in confinement by the prisoner; but that, if this had been the case, he would have no doubt urged it in his defence: and the Judge therefore thought there was strong reason to believe, that the prisoner had the deceased hung as a witch, or caused her death by ill treatment in confinement on a charge of witchcraft, in either of which cases he must be considered a principal in the murder.

1822.
JUGJEET SINGH'S case.

The *futwa* of two of the law officers of the Nizamut Adawlut declared it established on strong presumption, that the deceased woman met her death in consequence of confinement and ill usage by the prisoner Jugjeet Singh, or under his orders, on the imputation of being a witch, and of having by witchcraft brought sickness on his (the prisoner's) daughter; and stated the prisoner to be liable to discretionary puniahment by *Acoobut* for the offence. By the Court. W. Dorin, (officiating Judge.) "The evidence in this case is scanty. I think, from that evidence, and the presumptions which the case furnishes, the best conclusion to draw is, that the deceased woman met her death by reason of ill-usage, while under confinement by the prisoner Jugjeet, on charge of being a witch, and of having by witchcraft brought sickness on his (Jugjeet's) daughter. The defence attempted to be set up, that the woman hanged herself, I do not believe, neither do I think that she died by hanging. The prisoner seems to have been head man of the Mouza where it took place. His forcing the woman from her own house to his, is deposed to by the prosecutor and the witness Hitcha, as well as his confining her several days in the stocks; and, as to the stocks, the story is further supported by the deposition of Ruhsa (now dead) before the Magistrate. No enquiry seems to have been set on foot by the prisoner on its being reported to him that the body was found hanging, and no report made to the police. I think, therefore, there is strong presumption that she died by reason of his ill-treatment on the imputation of being a witch. The ill-treatment may not have been with a design of killing her, and the hanging up the body was probably with a view of assigning another reason for her death. I would treat it is a case short of murder, but an aggravated one of culpable homicide by the prisoner." The second Judge (C. Smith) concurring with his colleague in the above view of the case, the prisoner was sentenced to be imprisoned with hard labour for seven years.

SUROOPCHUND AGURDANEE, *against* OODIT AGURDANEE.

Charge—MURDER.

1822.
July 31st.
OODIT AGURDANEE'S case.

In a case of supervenient insanity after the commission of a murder perpetrated by the prisoner while sane,

THE prisoner was tried for murder, so far back as the 5th September 1805. Mowlovee Gholam Hoosein, the law officer who presided on that occasion, stated in his *futwa*, "that from the prisoner's confession before the Magistrate, it is proved, that he murdered the son of the prosecutor when he was sane, and therefore *Kissas* cannot be barred; but as he is now deranged, and as it does not appear that he is feigning madness, it is at present necessary that he should be sent to the hospital for the sake of being cured." Mr. Wintle, the Judge of Circuit presiding at the trial, concurred with the law officer, and

1822.

ODDIT AGURDANEE'S case.

ordered that a precept should be transmitted to the Magistrate, directing him to send the prisoner to the hospital, to be there under the charge of the surgeon; and when he was perfectly recovered, to intimate the same to the Judge on circuit. The prisoner escaped from jail on the 6th of March 1811, and was reapprehended on the 6th of May in the same year. For this act Mr. Chapman, the assistant Magistrate, committed him to the Court of Circuit, and he was a second time brought before Mr. Wintle. The case was, however, expunged from the calendar for the reasons stated in that gentleman's proceeding, dated the 18th of April 1812. On the 15th of October 1817, the prisoner, together with several others, was sent to the insane hopital at the Presidency. Mr. Young, the Surgeon, having reported to the Magistrate of the suburbs that the prisoner was fully cured, he was accordingly directed, on the 29th of January 1819, to be sent back to the Magistrate of Nuddea, in whose custody he was placed on the 11th of February following; from which time, owing to some oversight on the part of the Magistrate, the circumstances relating to the prisoner's case were not brought to the notice of the Court of Circuit. In July 1821, he again tried to effect his escape from jail, by digging a hole in the wall contiguous to the place where he usually cooked his victuals. He was, however, detected, and punished by the Magistrate with ten rattans, and ordered to have heavy irons put on his legs.

In referring this case for the final orders of the Nizamut Adawlut, the Judge of Circuit observed, that as the Surgeon of the station only arrived on the 25th of the month, he had had no opportunity of ascertaining from him the real state of the prisoner's mind at that period.

The officiating Judge of the Nizamut Adawlut (W. Dorin) recorded his opinion in these terms. "At the time this man was tried in 1805, he to all appearance had lost his senses, *since* the commission of the act charged against him. I think it sufficiently made out by the evidence on the trial, that he murdered the boy Govind (son of Suroop Agurdanee) for the sake of his ornaments; that he was not mad when he committed the act, and had not been mad before. He was remanded at the trial, with an order to bring him again when well. In the interval, he appears once to have escaped, and once to have been caught in an attempt to escape. The *futwa* declares, (and I cannot call it unreasonable,) that the evidence given on the trial to the prisoner's confessions of the fact, he having been then insane, and incompetent to question the witnesses, will not avail against him. There seems no alternative, (for though the evidence would satisfy me as it is, the point of form is material,) but to have the witnesses re-examined, if they be alive. It will possibly end in the release of the man, or at all events, according to the doctrine of our law officers, intervenient insanity would prevent punishment, agreeably to the doctrine laid down in a recent case. I would not, after such an interval, sentence this man capitally; but I think it would be mischievous, if he ever were let out again. I would suggest that the Judge of Circuit be directed to re-examine the witnesses; and also to forward

the Court did not think fit to apply the rule contained in Regulation IV. 1822, the offence having been committed long prior to that enactment, but deeming the prisoner unfit to be set at liberty, directed his detention, until on its being certified that he might be released without danger, they should issue further orders regarding him.

1822.

OODIT AGURDANEE'S case.

a certificate by the Surgeon of the present state of the prisoner's mind, or rather to examine the Surgeon on the point, and also to forward the Surgeon's account of him, (if there was any written one,) when the Magistrate of the suburbs sent him back to Nuddea, recording in his *roobecarry* of the 29th, January 1819, "that the Surgeon had reported him well." Being joined in this opinion by the chief Judge (W. Leycester), instructions were issued accordingly.

The prisoner, at the ensuing sessions, having been proved to be perfectly sane, underwent his trial for the crime with which he was charged. The *futwa* of the law officer of the Court of Circuit convicted the prisoner of having committed the murder whilst in a sane state of mind, and declared him liable to *Deeut, Kissas* being barred in consequence of his subsequent insanity.

In submitting the trial for the final orders of the Nizamut Adawlut, the Judge of Circuit made the following remarks. "I entirely concur in the conviction of the prisoner, and it is not in my province to find fault with the award, as it has been given conformably to the Moosulmaun law; but at the same time I must observe, that I consider the crime which has been brought home to the prisoner deserving of death, and that his very long confinement alone entitles him to the merciful consideration of the superior Court; on which account I should consider a sentence of perpetual imprisonment as heavy a punishment as ought now to be inflicted on him. The lengthened confinement of the prisoner has, as the superior Court will observe, created no small degree of commiseration amongst his old neighbours; and that not only the new witnesses named on the trial before this Court by the prisoner, but even those who were examined 16 years ago, depose to the insanity of the prisoner previous to the date on which he is accused of committing this murder. I cannot give credit to what has now appeared in evidence on the subject of the prisoner's insanity, as the whole of the witnesses examined by Mr. Wintle declared that he was never even suspected of being insane; many of whom were of the same caste with the prisoner, and well acquainted with him: at all events, it has been proved that he was perfectly sane at the time he committed the murder, which he confessed a few hours after he had perpetrated it; and from the Magistrate's proceedings, it is evident that he shewed no symptoms of madness until after his commitment for trial before this Court. The only circumstance that pleads in favour of the prisoner is the letter from Doctor Haig. I believe Doctor Haig was a most respectable man, and would not have stated a circumstance which he did not fully credit himself; but he has left no clue by which it could be ascertained how he came by his information, (that is, the names of his informants,) nor what induced him to make the inquiry in the mode adopted by him, instead of through the Magistrate. I shall not be sorry if the superior Court discredit the former evidence given in this case, and determine that the prisoner was insane when he committed the murder."

1822.

ODDIT AGURDANEE'S case.

The final orders, in this case, of the Nizamut Adawlut (present W. Leycester and W. Dorin) were to the following effect. "The Court observe, that the act charged against the prisoner appears to have taken place in the year 1805; that the prisoner was brought to trial for it at the 2d sessions of 1805, and was remanded by the Circuit Judge, on the ground of his being then insane, without any sentence being passed; the Circuit *futwa* having found, that he committed the murder when in a state of sanity; and was insane at the time of trial; and should be taken medical charge of. The Judge of Circuit so directed accordingly; with an order, that on his recovery, intimation should be given of it to the Court of Circuit. At the second sessions of 1821, he was reported sane, and his case laid before the Judge on Circuit, and by him referred for the sentence of the Nizamut Adawlut, who directed a re-trial, on the ground that the prisoner was insane when put on trial before. The Court having now duly considered the proceedings held on the re-trial of the prisoner, and the *futwa* of their law officers thereon, pass the following orders. The *futwa* of two of the law officers of the Nizamut Adawlut declares it established, that the prisoner killed the deceased boy by strangling; but that, as there appears a doubt of his sanity before the act, and he was long insane in jail after the act, there is a doubt of his sanity at the time the act took place, and *Kissas* being barred, he is liable only to *Deeut*. The Court concur in the prisoner's conviction of the act charged, but not in the doubt of his sanity when he committed it. As under the *futwa* the prisoner is not a fit subject of punishment, and the date of Regulation IV. 1822, is long subsequent to the commission of the act, and under all the circumstances of the case, the above Regulation does not seem properly applicable, the Court, presuming that the prisoner must be an unfit person to be at large, direct that he be held in confinement until the Magistrate may be able to certify that no danger is likely to arise from his enlargement, on the receipt of which report the Court will issue further orders regarding the prisoner*.

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* Taking the *futwa* as it stands, the prisoner was, according to it, not a proper object of punishment; and it had been doubted whether under Regulation XVII. 1817, section 4, the Court were competent to go against the *futwa* in such cases, where there is not only a mere question of fact as to conviction or acquittal, but a doctrine of Moohummudan law connected with questions of insanity, also involved. This led to the enactment of Regulation IV. 1822, to obviate the effect of such *futwas* in future.

The order regarding the prisoner (on whom no penal sentence was passed) ran thus. "The Court direct that the prisoner be detained in custody until the Magistrate shall be satisfied that his sanity is permanently re-established; and that he be not then discharged, unless his friends or relations shall enter into security to take such charge of him as may prevent his doing further mischief. No order will be given for the prisoner's discharge without a previous reference to this Court."

GHUREEB DAS,
against
CHURUN DAS.

1822.
Aug. 7th.
CHURUN DAS's case.

Charge—MURDER.

On a conviction of murder, capital sentence remitted, in consideration of the prisoner's being irritated by the deceased calling him a thief.

THIS trial came on at the Bareilly monthly sessions for May, 1822. The case was as follows. The prisoner Churun Das is a Byragee, and in wandering about the country reached the *asthul* or place of worship of Balluck Das Byragee, on the 16th of April, 1822. The next day he was accused by Toolsee Das, a Byragee, who had been residing at the *asthul* for several days, of having stolen some grain, and many angry words were interchanged by those two persons in the presence of Balluck Das, who left them to go into his fields, at 12 o'clock. In the evening he heard a hue and cry, that a murder had been committed at his *asthul*; and hastening home, he found the corpse of Toolsee Das at his door, with many wounds about the head, face, and neck. The prisoner Churun Das was also there, and attempting to make his escape, was pursued by Balluck Das and several others, and being seized, the hilt of Balluck Das's sword was found in his hand; and the blade, stained with blood, was afterwards found on the ground over which he had run. It appeared, that on the prisoner's taking the sword out of Balluck Das's house, a female of the family fled to a neighbouring village, and gave the alarm. The prisoner confessed before the Thanadar, before the officiating Magistrate, and before the Court of Circuit, with very little variation, that Toolsee Das, having accused him of theft, and given him abuse, he went into the house, and bringing out Balluck Das's sword, killed Toolsee Das by inflicting several wounds about his head and neck. In his confession before the joint Magistrate, the prisoner distinctly stated, that the deceased was in the act of washing his plates, at the time that he (Churun Das) attacked him with the sword.

The law officer of the Court of Circuit convicted the prisoner Churun Das of the wilful murder of Toolsee Das, and declared him subject to death by *Kissas*. In this *futwa* the Judge of Circuit concurred. The prisoner appeared, he observed, to have a great indifference for his own life, so much so, that it might induce a suspicion of something like insanity, if it were not generally the case, with that description of people called Byragees: with the exception of this indifference, there were no grounds, in his opinion, for supposing him at all deranged. He therefore did not feel himself justified in urging any thing in extenuation of punishment.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner Churun Das of the murder of Toolsee Das, and declared him liable to capital punishment by *Kissas*. The Court (present W. Leycester) fully concurred in the conviction; and taking into consideration the circumstances of irritation, under which the act was committed, sentenced the said prisoner to perpetual imprisonment in the jail at Allipore.

1822.
Aug. 13th.
AMANUT ALLY'S case.

SHEIKH ZEA OOLLAH,
against
AMANUT ALLY.

Charge—MURDER.

Prisoner acquitted of the charge of murdering his concubine, in spite of strong suspicion against him arising from circumstantial evidence.

THE trial of the abovenamed prisoner was held at the 1st sessions of 1821, for zillah Ramgurh. The prosecutor in this case deposed, that his daughter Musst. Pearun went to live with the prisoner Sheikh Amanut, about 5 years before, by whom she had a daughter, named Coolaro, then about four years of age; that on the 8th of Phagoon, corresponding with the 14th February 1822, this child was brought, and left at his (the prosecutor's) house by Musst. Chummelea, a woman who also lived with Sheikh Amanut; but that he did not see her at the time. The child, however, afterwards told him, that her father had murdered her mother Musst. Pearun, by cutting her throat; and that Musst. Chummelea assisted him. The prosecutor on this immediately went to the house, which he found shut; but on entering, saw the body of Musst. Pearun with the head nearly severed from it, and without delay sent information to the Thanadar, who came and held an inquest, and apprehended Musst. Chummelea. Amanut Ally, it appeared, went soon after this to the Thana of his own accord, and on being taken into custody, said he suspected his brother had committed the murder. On being afterwards brought before the Magistrate, he said he was not in the house when Musst. Pearun was murdered, he having gone out at the time; but on his return, he found the dead body, and immediately went towards the Thana, distant 5 coss. He also admitted, that a pair of shoes covered with blood, found near the *charpai* on which the body was lying, were his; and further stated, that he suspected a person named Kadir Buksh had an intrigue with Musst. Pearun. His statement, however, before the Thanadar and the Magistrate differed considerably. The child of four years of age, whose evidence was not taken on oath, as she did not understand the nature of it, was the only person who admitted having been present when the murder was perpetrated. Musst. Chummelea denied all knowledge of it. The rest of the witnesses were merely evidences to the inquest and the examination of the prisoner at the Thana.

The law officer of the Court of Circuit in his *futwa* declared, that there was not evidence sufficient to convict either of the prisoners, although there was suspicion against Sheikh Amanut. The Judge of Circuit observed, that there was no direct proof against Sheikh Amanut, as the evidence of the child was inadmissible; but that the presumptive evidence against him, arising from the circumstances of his shoes having been found covered with blood close to where the body was lying, which he admitted, but could not satisfactorily account for; his having, on seeing the body, gone towards the Thana, instead of calling in the neighbours; and the very contradictory and improbable account he gave at the Thana, before the Magistrate, and