1823.
May 1st.
LUKHUN MANJHEE'S case.

ARJOON MANJHEE,
against
LUKHUN MANJHEE.

Charge—MURDER.

Case of a prisoner convicted of beating a girl on the head with a stone, which caused her death; no malice being proved or probable cause assigned, and the prisoner becoming mad shortly afterwards, the Court attributed the act to insanity.

THE prisoner was tried at the 1st sessions of 1823, for zillah Bhaugulpore, for the offence of murdering the prosecutor's daughter, Mussummaut Kurmee. It appeared, from the facts and circumstances which came out on this trial, that no person was present when the murder was perpetrated; but that immediately after committing it, the prisoner went and informed the inhabitants of the village in which the parties resided, that he had killed the deceased by beating her brains out with a stone. He was immediately seized, and delivered over to the custody of the police officers, before whom he confessed the murder, and repeated his confession before the Magistrate. It did not appear from the evidence that the prisoner was actuated by any motive. The deceased was a girl about 16 years of age, and was unmarried. She had gone to his house to fetch a *pealah*, or wooden measure, when he followed her, and almost immediately after beat her brains out with a stone.

The *futwa* of the law officer of the Court of Circuit acquitted the prisoner, on the plea of insanity; but from the evidence for the prosecution, there was no proof that the prisoner laboured under any sort of mental derangement previous to the commission of the murder. Doctor Macra, the native doctor, and the rest of the witnesses who were examined as to his behaviour whilst in confinement, all declared that the prisoner did not shew symptoms of madness until some time after his commitment for trial; but they were of opinion, that at the time of his trial he was afflicted with insanity. Conceiving the prisoner guilty of murder, the Judge of Circuit submitted the case for the decision of the superior Court.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Luckhun Manjhee, son of Mirza Manjhee, of having killed the prosecutor's daughter by blows with a stone, declared, that on account of the suspicion of his having been insane at the time, *Kissas* was barred, and *Deeut* incurred. The second Judge (C. Smith) was of opinion, the fact being proved, and the motive still undeveloped, the murder could not be accounted for but on the score of insanity at the time it was committed.

W. Leycester, (Chief Judge.) "If the prisoner be now mad, as seems agreed, he ought not to have been tried. The proceedings are quite null and void, neither sufficient for an acquittal or a conviction. I would annul the whole proceedings, and direct that till his recovery he be confined in the insane hospital, and that after his recovery he should be tried. I do not think it safe or sound doctrine to assume insanity because we can discover no motive, nor has subsequent insanity any thing to do with it. There is the strongest evidence that the man was sane when he committed the act. Whether the present may not be assumed madness, I much doubt. We had lately a

case from Bareilly, in which the surgeon deposed to insanity; and on sentence being passed on another prisoner on the case, the man, concluding he had escaped, instantaneously recovered his full intellect, and then the surgeon deposed to his sanity. This may be a case of the kind."

J. Shakespear, (third Judge.) "Our *futwa* convicts the prisoner, but declares him liable only to *Deeut*, in consequence of suspicion of insanity. The evidence clearly establishes the fact of the murder, and also that the prisoner shewed no signs of madness till subsequent to the commission of the crime. I have put a question to the law officer, under the provisions of section 4, Regulation IV. 1822. Though they seem to think, in their first *futwa*, that there are grounds for suspecting previous derangement, I do not see how the question of insanity could be fully ascertained until the prisoner had been put upon his trial; and I see no objection to that which appears to have been the usual course of procedure. I consider the prisoner to be convicted of murdering the girl when he was in a sane state of mind; and I think, under all the circumstances of the case, that he should be sentenced to perpetual imprisonment. If he is feigning madness, he will not, under this sentence, escape the punishment due to his crime; and if he is really deranged, he will be well taken care of, and prevented from committing similar acts in future."

W. Dorin, (fourth Judge.) "Of the fact that Musummmaut Kurmee died by the act of violence committed by the prisoner, there seems no doubt. No motive for the act is discoverable, and madness seems to have made its appearance unequivocally during the confinement in jail. I agree with the 2d Judge, in presuming the homicide to have been committed under the influence of madness, and of that unaccountable spirit of mischief often accompanying it. To draw any other conclusion, I think would be unsafe, under all the circumstances of the case." To this the fourth Judge added, that the order ought to prevent his going at large again; but the second Judge being of a contrary opinion, the sentence was issued in the following terms.

"The Court, concurring in the *futwa*, both as to the proof of the fact, and as to the presumption of the prisoner's having been mad at the time, do not think proper to sentence him to any imprisonment in lieu of *Deeut*; but, in consideration of the state of his mind, direct that he be detained in the insane hospital till he shall have perfectly recovered his senses, and till some one or more of his friends shall enter into an engagement, to the satisfaction of the Magistrate and Court of Circuit, to take care of him, and prevent his doing further mischief*.

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* The fourth Judge did not approve of leaving the discretion to liberate ultimately with the Court of Circuit, and thought it ought to have rested with the Nizamut Adawlut; but he signed the sentence in the above form, the case having been already before four Judges.

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May 1st. Case of PURSHUN and RADHE.

GOVERNMENT,
against
PURSHUN and RADHE.

Charge—MURDER.

Case of a Choukeedar convicted of culpable homicide, by using unnecessary severity towards a man whom he found in his master's house at night: sentence, three years imprisonment.

THE prisoners Purshun and Radhe were tried for murder at the first sessions of 1823, for zillah Sarun. From the evidence adduced in this case, the following would appear to be the real circumstances under which it occurred. On the night of the 15th of February 1823, about 12 o'clock, a person named Asalut Khan, the Khansaman of Mr. Kennedy, the Collector of the district of Sarun, having entered that part of the house of Mr. Muston, the Civil Surgeon, which is appropriated to the residence of the females, one of the women gave the alarm to the prisoners, who were employed as Chowkeedars. Upon this they entered the house, and the prisoner Radhe having seized the deceased in his arms, the prisoner Purshun inflicted upon him three blows with a heavy club. The deceased having fallen down in a state of insensibility, the prisoner Purshun dragged him by the heels out of the house into the verandah, where they kept him for a considerable time. In the mean while, the deceased, having come to himself, implored their mercy, and begged to be released. The prisoner Purshun, however, taking him by the arm, dragged him away to a godown at some distance, where he continued all night, and was found dead in the morning. Upon this, Purshun had him taken and laid at the foot of the wall of a small enclosure or compound, to the north of the female apartments above mentioned. The above facts were gathered from the depositions of Musst. Rajhun, Musst. Aswa, and other witnesses, corroborated by the confessions of the prisoners. No evidence existed, tending to indicate the motive which induced the deceased to enter the house. From his circumstances, situation in life, and character, the supposition that he entered with a felonious intent, appeared highly improbable. Neither did the quantity of *tarry* which he was stated to have drank appear sufficient to justify the idea that he entered under the influence of intoxication. The only remaining object of his entering, viz. for purposes of intrigue, appeared to receive some colour from the circumstance of the native lady having retired to bed some time before the old woman who gave the alarm entered the room, and from the facility which appeared to exist, of entering the house by opening the windows, without the necessity of leaping the wall of the northern compound. Indeed the circumstance of Purshun's conveying the corpse, and depositing it at the foot of the northern wall, afforded, in the opinion of the Judge of Circuit, strong reason to believe that the account of his entering by that way was a mere invention, fabricated by the witnesses, to bear out the plea that he entered burglariously, and consequently to insure the impunity of the prisoners.

The *futwa* of the law officers acquitted Radhe, and declared Purshun guilty of a species of culpable homicide short of murder. To that part of this *futwa* which regarded the offence of Purshun, the

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Judge stated, that he could not give his concurrence; and that, from the circumstance of Purshun's having come from a godown at some distance, on hearing the alarm, it must be supposed, that his mind possessed an ordinary degree of deliberation and collectedness. He added, that in a spacious room (part of the European house) lighted by two lamps, seeing a person weakly and unarmed, who had just been seized by the other Chowkeedar, he, deliberately, and without any apparent necessity, proceeded to inflict a number of blows with a heavy club; that had he stopped here, something might possibly have been urged in extenuation of his offence, but he dragged the insensible body through the house by the heels; and the subsequent violent conveying of the deceased to the godown, and confinement of him there, without assistance, till his death, appeared to evince that degree of deliberate malice and brutal insensibility to the sufferings of a fellow creature which went to constitute the crime of murder; that the circumstances of their recognizing the deceased, and the omission of giving information to Mr. Kennedy, who resided close by, or at the Thana, must also be taken into consideration; that from the evidence in the case, and the circumstance of his walking to the godown at a considerable distance, there appeared also reason to believe, that the life of the deceased might have been saved, had timely assistance been afforded, and were no further violence committed, which latter surmise the nature of the case and the character of the natives rendered by no means improbable; that the opinion of the surgeon, that his death was occasioned by one of the blows "acting on a brain, already excited by intoxication," unsupported as it was by the evidence of the case, or by the actual inspection of the brain, (the skull not having been dissected,) appeared wholly gratuitous, and had no weight with him; and that he therefore considered it his duty to recommend to the Court, that the prisoner Radhe should be acquitted, and the prisoner Purshun condemned to suffer death.

The *futwa* of two of the law officers, convicting the prisoner Purshun Rajpoot, son of Risal Singh, of the murder of Asalutt Khan, *khansaman*, declared him liable to suffer death by *Kissas* for the crime; and convicting the prisoner Radhe Rajpoot, of being an accomplice in the murder, declared him liable to *Acoobut*.

By the Court. C. Smith, (second Judge.) "It was an unfortunate occurrence. The poor *khansaman* seems to have been no further culpable than in having taken rather too much intoxicating liquor; but I think it preposterous, under all the circumstances of the case, to regard Purshun as a wilful murderer. I deem it culpable homicide, and would sentence him to three years imprisonment in the zillah jail. Were we to deal with him more severely, it would discourage Chowkeedars from being active in the protection of their master's houses. Radhe, Mr. Elliott ought to have released himself, by clause 2, section 2, Regulation LIII. 1803." The third Judge concurring in this opinion, the following sentence was issued.

The Court, considering Purshun Rai to have been guilty of culpable homicide, and not concurring with the *futwa* as to Radhe Rai,

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sentence Purshun Rai to be imprisoned three years with labour in the zillah jail, and direct that Radhe Rai (whose guilt they do not consider to be established) be immediately released.

"The Court observe, that Radhe having been acquitted by the Circuit *futwa*, and the Judge of Circuit concurring therein, the reference of that prisoner's case was unnecessary, and that he ought to have been released by the Judge of Circuit."

1883.

May 7th. UMERODH PANDE'S case.

GOVERNMENT, *against* UMERODH PANDE.

Charge—HIGHWAY ROBBERY.

In a case of conviction by the law officer of robbery with attempt to murder, the trial must necessarily be referred to the Nizamut Adawlut, whether the presiding Judge concur in or dissent from the *futwa*.

THE attention of the Court of Nizamut Adawlut was attracted to the case of the above-named individual, who was one of those punished at the 1st sessions of 1823, for zillah Cuttack by the Commissioner. His offence was defined to be, "attempt to commit murder with intent to rob," and for that offence he was sentenced to imprisonment for three years with hard labour; but, in consideration of his advanced age, he was exempted from corporal punishment. This sentence appearing to the Court to be wholly inadequate, they desired that the original proceedings of the Magistrate on the commitment, and a copy of the proceedings of the Commissioner's Court on the trial of the individual in question, might be submitted for their inspection and final orders. In submitting this case, the Commissioner accompanied it by the following observations. "The prisoner in this case was an infirm old man of sixty-two years of age. Corporal punishment was therefore remitted; and although he was convicted on his own confession before the Magistrate of the offence charged, there nevertheless appeared reason to doubt whether the crime intended was not rather against the person than the property of the prosecutor. It is not proved that the prisoner had about his person any knife or instrument, which he would probably have provided, had he contemplated the perpetration of murder and robbery; especially as he was evidently inferior to the prosecutor in bodily strength. Under all the circumstances of the case, more especially adverting to the advanced age of the prisoner, a sentence of imprisonment with hard labour for three years appeared adequate."

The *futwa* of two of the law officers of the Nizamut Adawlut convicting the prisoner Umerodh Pande of having, with a murderous intention, attempted to strangle the prosecutor for the purpose of possessing himself of his ornaments, declared him liable to discretionary punishment by *Acoobut* for the offence.

By the Court. C. Smith, (second Judge.) "It seems to me clearly established, that the prisoner meant both to kill Anam Doss and to rob

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him. I am of opinion, therefore, that the Commissioner's sentence should be reversed, and the prisoner sentenced to imprisonment for life."

In this opinion the third Judge (J. Shakespear) entirely agreed, and the following sentence was issued. "The Court, concurring in the *futwa*, annul the sentence passed by the Commissioner of Cuttack on the 13th of January last, and sentence the prisoner Umerodh Pande to be imprisoned for life in the zillah jail. The Court observe, that the *futwa* of the law officer of the Commissioner's Court having distinctly convicted the prisoner of an intent to murder, with a view to rob, and the Commissioner's letter of explanation shewing that he took a different view of the case, that is, did not deem it sufficiently established that he intended to murder and rob the prosecutor, he ought to have refrained from passing sentence, and referred the case to the Nizamut Adawlut, upon the ground of a difference of opinion with his law officer. Indeed the Commissioner's conception of the case, as given in the above cited letter, viz. that the crime intended by the prisoner was rather against the person of the prosecutor than his property, yet that the prisoner intended neither robbery nor murder, appears to the Court to be altogether unintelligible."

On the receipt of these orders, the Commissioner submitted an explanation to the following effect. "The Nizamut Adawlut has remarked, with reference to my letter which accompanied my proceedings on the trial. "That the Commissioner's conception of the case, as given in the letter cited, viz. that the crime intended by the prisoner was rather against the person than the property of the prosecutors, yet the prisoner intended neither robbery nor murder, appears to the Court to be altogether unintelligible." It is therefore necessary distinctly to state, that under all the circumstances of the case, I was strongly impressed with a belief, that the assault on the prosecutor was committed by the prisoner with intent to perpetrate an unnatural crime. The Nizamut Adawlut is probably aware, that a practice has long obtained in many districts of Bengal, of charging with burglary, or with intent to rob, persons found at unseasonable hours in or near their neighbour's premises, and suspected of illicit intercourse with some female of the family. The disgrace, however, of such a disclosure precludes its being made the ground of prosecution; and to save the female from disgrace, the culprit commonly confesses a crime which he never committed or contemplated, and is convicted upon that confession. In the course of rather a long experience in the business, both of the police and of the criminal courts of the country, such cases have not unfrequently come under my own notice. In the present case, the prisoner Umerodh Pande was charged with an assault, with intent to murder and rob the prosecutor: of such intent there was no proof, (except the confession of the prisoner before the police,) but strong probabilities against it; such, for instance, as his manifest inferiority of bodily strength, compared with that of the prosecutor, which rendered it entirely improbable that he should attempt to overcome the prosecutor by force, and the circumstance of his being unprovid-

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ed with any instrument for the perpetration of murder. In admitting such intention, however, he probably deemed an attempt to murder and rob, a crime the least infamous of the two. And as the prisoner thought proper to confess that crime, his conviction by the law officer, and my concurrence therein, necessarily followed. There was not, therefore, in this case, any ground for abstaining from passing sentence, and referring the proceedings to the Nizamut Adawlut, as the Court is pleased to observe would have been proper; for there existed no difference of opinion between the Judge and his law officer in regard to the full and legal conviction of the prisoner. Sentence was accordingly passed, of imprisonment for three years with hard labour, which, adverting to the age and bodily debility of the prisoner, appeared tantamount to a sentence of imprisonment for life, which the Court has now passed, or such at least as must, at the expiration of the stated term of imprisonment, send him forth, if not reformed, at least in every way a harmless member of the community, and a useless incumbrance to a jail."

The above explanation called forth from the Nizamut Adawlut the final orders following. "The Court observe, that on the former consideration of your proceedings on the trial, it was impossible for them to know that you entertained a view of the case which you had not expressed in your abstract of cases decided without reference, which was different from that stated in the *futwa* of your law officer, and which was neither contained in the charge of the prosecutor nor avowed in the confession of the prisoner. The Court further remark, that the finding of your law officer, viz. that the prisoner was guilty of squeezing the neck of the prosecutor with an intent to kill him for the sake of taking his ornaments, brought the case distinctly and directly under clause 4, section 8, Regulation XVII. 1817, and left you no other legal course to pursue, but that of referring the case to the Nizamut Adawlut, whether you concurred in opinion with your law officer or not. Among the grounds on which you consider it as entirely improbable that the prisoner should attempt to overcome the prosecutor by force, you urge his having had with him no instrument for the perpetration of murder, and his manifest inferiority of bodily strength compared with that of the prosecutor; but (not to mention that the prosecutor swore to the prisoner's having drawn forth a knife) it is obvious, that for strangulation, the mode of attempting to kill the prosecutor which is specified in both *futwas*, the hand alone is a sufficient instrument; and a conscious inferiority of strength, if it must have operated to deter the prisoner from attempting murder, must equally have operated to deter him from an assault with an intent to perpetrate an unnatural crime." In conclusion, the Court observed, that they saw no reason to depart from that view of the case, and of the Commissioner's proceedings, which had been recorded in their former sentence.

CASHEE,
against
POORYE LODE.
Charge—Rape.

1823.
May 10th.
Poorye Lode's case.

Held that the provision contained in clause 1, section 6, Regulation XVII. 1817, (which requires the law officer to declare only whether the prisoner is legally convicted) is not applicable to a case of rape attended by robbery.

The prisoner was tried on a charge of rape, at the 2d sessions of 1822, for zillah Sarun. From the confessions of the prisoner taken at the Thana and before the Magistrate, it would appear, that having seized his niece, a little girl of about seven years of age, he committed a rape upon her body, and left her in a ditch. Two witnesses, by name Hunwunt and Puttee, attracted by her screams, found her lying there bleeding, and saw the prisoner running off, when they apprehended him. The case was clearly proved, not only by the prisoner's confessions and by the cries made by the girl at the time, but also by the lacerated state of her body when seen by one Dabia, a midwife. In submitting this case, the Judge of Circuit observed, that he concurred with his law officer in finding the prisoner guilty of having committed a rape; and, under all the circumstances of the case, was of opinion that he should not be sentenced to a milder punishment than 39 *corahs*, and 14 years imprisonment with hard labour. He added, that in compliance with the orders of the Court, contained in their proceedings of the 27th February last, in the case of Jeetun and Goordial, he had directed the law officer in future, on conviction in cases of rape, "*to state to what the prisoners convicted are liable;*" and that in reply he (the law officer) had observed, that in omitting to make such statement, he had only acted in obedience to clause 1st, section 6, of Regulation XVII. 1817, which directs that law officers shall declare "*only whether the prisoner is legally convicted,*" &c. The Judge of Circuit concluded: "In this opinion, that he had acted in strict conformity to the Regulation in question, I entirely concur. He has, however, in submission to the orders of the Court, deviated from it in the present instance, and will continue to do so, unless directed to do otherwise."

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner of rape upon the body of Konree, a little girl, declared him liable to *Acoobut* for the offence.

The Court, (present C. Smith and W. Dorin,) concurring in the *futwa*, sentenced the prisoner to receive thirty stripes of the *corah*, and to be imprisoned and kept to hard labour in banishment for the term of ten years. Upon the subject of the remarks offered in the Judge of Circuit's letter, upon the observations contained in the sentence passed by this Court on the 27th of February, in the case of Jeetun and Goordial, the Court observed, that had those two prisoners been convicted by the *futwa* of the law officer of the Court of Circuit of the crime of rape and assisting in rape, only, the law officer would, in refraining from stating to what the prisoners were liable, have been justified under clause 1, section 6, Regulation XVII. 1817; but the prisoners having been convicted of rape, accompanied with *ruhzunee*, or highway robbery, the Court thought the more proper

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course would have been, to state to what consequence the Moohummudan law rendered them liable. In the present case, which was for rape alone, it was not necessary to declare the penalty. The Court desired that this observation might be communicated by the Court of Circuit to Mooftee Abbas Ally, upon his return from Circuit, not in the way of censure, which was by no means intended, but merely for his information and future guidance.

1823. May 16th. Case of Mungta and Sair.

MOWASHEE,
against
MUNGTA and SAIR.

Charge—Murder.

A zemindar (the deceased) required the services of his tenants (the prisoners), when they abused him, and he holding up his shoe as if to strike them, they committed an assault upon him, which occasioned his death. Held that this amounted to culpable homicide, punishable by five years imprisonment; chiefly with reference to the relative situations in life of the parties.

The trial of Mungta and Sair, charged with the murder of Sahiboo, came on at the second sessions of 1822, for zillah Seharunpore. The facts of the case, as they appeared in evidence, were as follow. On the 24th December 1822, Sahiboo, Zemindar of Futtihpore, went to the house of Mungta Kuhar, and desired him and his relations to come to his sugar-press, and remove some jars of molasses to his house. Mungta promised to do so, when at leisure; but Sahiboo required the attendance of the Kuhar immediately; and abuse following, Sahiboo took off his shoe to beat Mungta, when Mungta laid hold of him. Mungta gave him a blow with a wooden *phowree*, (which is a small semicircular piece of wood attached to a short bamboo, for raking up cow-dung.) Mungta and Sahiboo then wrestled, and fell on the ground; and the prisoner Sair (a boy about 15 years of age) kicked Sahiboo. He however got up, when a person named Hurrooa gave him a push, and he again fell down apparently in a fainting fit, but died. Mungta admitted, that he and Sahiboo wrestled together; and Sair stated, that he was not present when the quarrel occurred. Suwye, (uncle of the deceased,) who was also engaged in the quarrel, attributed the death of Sahiboo to the bruises which he received, and deposed that there were marks on the body; but Dewan Singh and Mungul Khan, who saw the body when brought to Saharunpore, deposed, that except a small scratch (occasioned by the *phowree*), there were no marks of violence visible.

The law officer of the Court of Circuit declared the prisoners convicted of beating Sahiboo, for which they were liable to *Tazeer*. The Judge observed, that he was not satisfied with the evidence against the prisoners, and that he did not consider it probable that such a scuffle could have occasioned the death of Sahiboo without some previous indisposition; and as the deceased originated the quarrel, and took off his shoe to beat the prisoners, he thought they should be acquitted, and he therefore referred the trial for the orders of the superior Court.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoners Mungta Kuhar and Sair Kuhar of squeezing the

throat of the deceased Sahiboo, and of kicking him under the navel, declared them liable to severe *Acoobut* for the offence.

1823.
Case of MUNGTA and SAIR.

By the Court. C. Smith, (second Judge.) "The prisoners owed the deceased, their Zemindar, a grudge, because he did not employ them in pressing the sugar-cane, an employment, it is stated, at which they were not expert. On his desiring them to go and take up the jars of molasses, they either gave him abuse, or spoke disrespectfully to him, on which he took off his shoe, and held it up as if he would strike them. On this they set upon him, and so maltreated him, that he died upon the spot. The provocation of a ryot giving abuse to his Zemindar, and that of the Zemindar lifting his shoe with an intent to strike, seem pretty equally balanced, and the ryots' abuse preceding the other act, the scale is turned rather in favour of the Zemindar. If ryots are thus to maltreat their Zemindars, it is obvious that the whole system of village discipline must be destroyed. I deem the prisoners guilty of culpable homicide, and would imprison them for five years with hard labour." The fourth Judge (W. Dorin) being of the same opinion, the following sentence was issued.

"The Court, concurring in the *futwa*, and deeming the prisoners guilty of culpable homicide, sentence Mungta and Sair to be imprisoned with hard labour in the jail of zillah Seharunpore for the term of five years."

GOVERNMENT, *against* LUCHMUN GEER.

1823.
May 22d.
LUCHMUN GEER'S case.

Charge—WOUNDING.

THE prisoner was tried at the first sessions 1822, for zillah Allahabad, on the charge of wounding one Leelageer.

On conviction of wounding with intent to kill, held that to award stripes would be inconsistent with the order declaring corporal punishment generally inappropriate in cases of culpable homicide.

It appeared, from the evidence of Leelageer (the wounded person), that on the 4th of Jeth, 1815, F. S. the prisoner came about dark to his house, and said that he was ill; that the witness took him into his house, and after giving him dinner, told him to sleep on a *chubootra* at a distance from him; but the prisoner replied, he would sleep near him, and accordingly did so; that about eleven o'clock at night, the prisoner attempted to cut the witness's throat with a sword, and fled with that weapon in his hand, leaving the scabbard and an *angocha* behind him; on which the witness gave the alarm, and several of the neighbours came, but too late to seize him. The witness believed that the prisoner, with whom he was previously acquainted, wounded him with the intention of robbery. The mark of one wound was evident on the witness's neck, and two others on his right hand and left arm. The witnesses Sumbool, Goordial, and Hurdial proved the voluntary confession of the prisoner at the Thana, where he attributed the act to the intoxication of opium taken as medicine.

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LUCHMUN GEER'S case.

The witnesses Ramnarain, Ramdial, and Bhoojawun, proved the scabbard to be the property of the prisoner. Adhar Gorait deposed, that a female named Jherree brought the sword to him, and that he gave it to the police. This Jherree deposed, that one Ahlad gave to her the sword which she gave to the Gorait. Ahlad deposed, that he found the sword and a *doputta* under a tree. The prisoner acknowledged the confession, but said that it was extorted by blows, and that his witnesses would prove that the sword produced was not his property, but that his sword was left at the house of a person named Bishungeer. The prisoner's witnesses proved nothing in his favour.

The law officer of the Court of Circuit gave a *futwa* of conviction, on strong suspicion, of intention to kill. The Judge of Circuit observed, that the prisoner's confession was, in his opinion, perfectly voluntary, and that he fully concurred in the *futwa*; that the prisoner had failed to prove any part of his defence, or the fact of having taken opium as a medicine; that his insisting on sleeping near Leelageer, instead of on the *chubootra*, fully proved that he premeditated the attack; and that he should therefore be sentenced to the full punishment in cases of wounding with intention to kill.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Luchmun Geer of wounding Leela Geer, with an intent to kill him, declared him liable to *Acoobut* for the crime.

By the Court. C. Smith, (second Judge.) "The case had been stronger, had the *chela* Sheodas Geer attended before the Court of Circuit, and deposed as he did in the Foujdarry. Still I think the confession of the prisoner at the Thana, corroborated as it is by the circumstances of the sword being picked up and fitting the scabbard which was left at Leelageer's *muth*, and the total absence of all apparent motive in Leelageer to charge the prisoner falsely, must be received as true; and witnesses have sworn that it was voluntary and free. I think twenty *corahs*, and imprisonment for ten years with hard labour, would be a sufficient punishment."

W. Leycester, (chief Judge.) "I agree in the period of imprisonment, but not in awarding stripes, which seems inconsistent with the spirit of our construction of the 11th of May 1824, in cases of culpable homicide." The third Judge (J. Shakespear) concurred in this opinion, and a sentence of ten years imprisonment was passed accordingly*.

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* The second Judge subsequently observed, that this was not a case of culpable homicide, but of wounding with an intent to kill; but that he had no objection to remit the stripes.

BABOO KHAN,
against
ADHEEN SINGH and two others.

Charge—MURDER.

1823.
June 7th.
Case of ADHEEN SINGH and others.

In a trial for murder, circumstantial evidence, consisting of enmity between the prisoner and the deceased, threats used by the prisoner, and concealment of and denial that he possessed any weapon, the proof was held insufficient to convict.

THE above-named prisoners being charged with the murder of one Bussawun Khan, their trial came on for that offence at the 1st sessions of 1823, for zillah Juanpore. The circumstances, as they appeared in evidence, were as follow. The daughter of the prisoner Adheen Singh, had left her father's house, and cohabited with a Moosulmaun named Dhoondha. Two relations of this man, named Baboo and Bussawun, (the deceased,) apprehensive of revenge being taken by the family of the woman, appeared to have watched for some time during one night to prevent it. After this, notice was sent of the elopement to the Thanadar, who improperly, and in violation of the Regulations, apprehended Bussawun and Baboo, and afterwards released them of his own accord. Baboo and Bussawun, still anxious to avoid the consequences of the enmity thus incurred, assembled a *Punchayut* for the purpose of making some compromise, to which the prisoners were called, but refused to agree to any thing of the sort, and one of them threatened to bear the insult in remembrance. A few days after this, Bussawun, who had left his house early in the morning, was found about sunrise by his brother Baboo, lying dead in a field, with three spear and sword wounds.

On intelligence being taken to the police office, the Darogha went to the place, and proceeded to search the house of the prisoner Adheen (the father of the other prisoners). On being questioned, he denied having any arms in his house; but upon a strict search being made, two swords and a spear were found concealed under some straw; besides a matchlock, which was not concealed. The first witness being father of the man with whom the girl eloped, his evidence was rejected. The second witness, Meer Ramzan Ali, proved the death and wounds of the deceased. The third, Kaulee Khan, knew nothing of importance. The fourth witness, Phakooah, proved Adheen's denial of having arms in his house, and the discovery of them on search: he also proved, that Sheo Bukhsh said he would have an understanding with Baboo and Bussawun, (meaning that he would be revenged for the seduction of his sister.) This witness was sent to call Sheo Bukhsh to the mosque where the *Punchayut* was held. Hurreah proved, that Bussawun took his cattle to pasture about half an hour before daybreak. In the morning, this witness heard of his death, and took the corpse home, and went to the Thana. He proved that Adheen denied having arms in his house; also their subsequent discovery. He knew of the enmity about the elopement; and that Sheo Bukhsh threatened Bussawun and Baboo before fifteen or sixteen people. The prisoners, he said, were, at sunrise, employed in their cultivation about six or seven fields from the place of the murder. Kureem Bukhsh proved Adheen's denial, and the

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discovery of the arms. The prisoner Adheen denied the murder. He stated, that he had no enmity with the deceased or the prosecutor, and that he had written an agreement to that effect at the Thana. That one Hitcha would bear witness to his being at home, and that he slept at his door that night; and that one Sheikh Chumroo would bear witness to his taking seed to the field for cultivation. The weapons, he admitted, were his; and he stated, that three months had elapsed between the elopement of his daughter and the death of Bussawun. The defendant Sheo Suhai declared, that he was all night at his own house; that in the morning, Sheikh Chumroo called him to come with seed, &c. for cultivation; that Hitcha knew that he slept at home all night, and Chumroo that he went with him to the field. Sheo Bukhsh declared, that the plaintiff had an enmity against him, because of the elopement. His witnesses were the same as Sheo Suhai's. The above-named Hitcha deposed, that he lived three coss from the village where the murder occurred; that he was at his own house that night, and did not see the prisoners the whole of that day: and Chumroo deposed, that he was at his own house that night; that in the morning, at sunrise, he took his seed, barley, and cattle to the field, when he heard Baboo's lamentations, who said that the Rajpoots had killed Bussawun, and that he did not either go to the prisoners' house, or call them.

The law officer of the Court of Circuit delivered a *futwa* of conviction of participating in murder against all the prisoners, on strong suspicion, and declared them liable to *Acoobut*. From the circumstantial evidence against the prisoner Adheen, arising from the denial of the arms, and their subsequent discovery, and against Sheo Suhai and Sheo Bukhsh, from the threats held out at the time of the *Punchayut* towards the deceased, and from the false account given by all the prisoners of themselves and of their witnesses, the Judge was of opinion that they were guilty. He also thought, that the injury they had suffered in a great manner palliated their offence, as he had no doubt that the deceased aided Dhoondha in carrying off the daughter of Adheen; and although a considerable time had elapsed since the elopement, it was, he observed, to be recollected, that the parties were inhabitants of the same village, and that the sense of disgrace was kept alive by the interference of the police and the assemblage of the *Punchayut*, and by their continually meeting each other. He therefore recommended a punishment not exceeding five years imprisonment, with labour and irons.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoners Adheen Singh, Sheo Bukhsh Singh, and Sheo Suhai Singh, Rajpoots, of the wilful murder of Bussawun Khan, declared them liable to discretionary punishment extending even to death by *Seasut* for the crime. By the second Judge, (C. Smith.) "The daughter of the first prisoner eloped with Dhoondha, not with the deceased Bussawun Khan; but even had Dhoondha Khan himself been killed, it would be highly pernicious were this Court, by passing the sentence suggested by Mr. Cracroft, to countenance an idea that assassination from revenge is not wilful murder, and ought not to be punished

as such. The obvious enmity between the deceased and the prisoners; the previous threats of the prisoners; the endeavour to conceal the sword and the spear under the straw, and the failure of proof of the defence, amount in my mind to strong presumptive evidence of the charge being well founded. I do not see any ground for making any distinction between the three prisoners; and, adverting to all the circumstances of the case, I would sentence them to perpetual imprisonment in the jail at Allipore."

J. Shakespear, (third Judge.) "I am not by any means satisfied that the evidence in this case (which is entirely circumstantial) is sufficient for the conviction of any one of the prisoners. It is attempted to prove, that previous enmity existed between the parties; that threats had been uttered by the prisoners; and that arms had been found in their house, notwithstanding their previous denial. There is sufficient reason to believe the previous enmity established. Two of the witnesses, who are Chowkeedars, depose to the threats; but Phakooa says, that only Sheo Bukhsh used threats; whereas Hurreea says, that he heard both Sheo Bukhsh and his brother Sheo Suhai use the same expressions. Neither of these witnesses, however, name the father Adheen Singh as having threatened the deceased or the prosecutor: and as the Mohurrir, in his report of the 23d December 1822, made on the spot, says nothing of the threats, and the prosecutor in his examination at the Thana does not notice them, this part of the evidence against any one of the prisoners must be considered as insufficient. The evidence in regard to the finding of the arms after denial applies only to Adheen Singh, the first prisoner, as the other two prisoners do not appear to have denied that there were arms in the house. The arms were not bloody, and both the Chowkeedars say that they had not the appearance of having been washed. The swords having been oiled, and concealed in the straw, may have occurred as a precaution against injury to the steel from the external air. Adheen Singh might have denied the existence of these weapons to avoid suspicion, or to prevent their having being taken away by the police. The failure of the evidence to the defence set up by the prisoners is not, I think, sufficiently clear to warrant any conclusion. I am of opinion that the prisoners should be acquitted and discharged." The chief Judge (W. Leycester) fully concurring in this opinion, the prisoners were acquitted accordingly.

The Court observed, for the information and guidance of the Circuit Judge, that the circumstance of the first witness Juhoor Khan being father of the person with whom Adheen Singh's daughter eloped, was no sufficient ground for rejecting his evidence, though certainly one that might reasonably affect its credibility.

1823.
June 20th.
Case of RAMDUT and BALGOBIND.

GOVERNMENT,
against
RAMDUT and BALGOBIND.

Charge—MURDER.

The pundits of the Nizamut Adawlut, having formerly declared that a woman of the brahminical tribe, was not competent to perform the rite of *Anoomurrun*, state that this doctrine is not applicable to the case of a woman who is impressed with the belief of her husband's death, but of which event no certain intelligence has been received. This distinction was overruled by the Court.

THE prisoners were tried at the 1st sessions of 1823, for zillah Juanpore, on a charge of murder, by assisting at an illegal *suttee* or suicide, by setting fire to a funeral pile on which one Guneshea had ascended, she not having at the time heard of her husband's death. The law officer of the Court of Circuit delivered a *futwa* of guilty, on full proof, against both the prisoners. In referring the case, the Judge of Circuit observed. "I consider the defendants guilty of wilfully causing the death of Guneshea; but it appears to me, that *Kissas* is barred only by the option the woman had of quitting the pile, when she felt the effect of the flames on her body; which circumstance the Moulovee does not notice. The parties acknowledged the fact of having been present at the sacrifice; and in defence stated, that the woman was sure of her husband's death, from having seen his ghost. They further alledged, that the flames arose spontaneously from the pile on which the woman had ascended. It appeared that Guneshea determined to burn over night, and that intelligence was sent to the Thana in the morning; but instead of waiting until the Darogha's arrival, Balgovind supplied wood, and caused his servants to construct the pile, and Ramdut set fire to it after she had ascended it; so that the act was completed before the Darogha could arrive. Sending news to the Thanadar was, therefore, a mere pretence; for they well knew, that waiting for his arrival would entirely frustrate their views. This wicked haste, the Judge of Circuit observed, to consummate an irregular *suttee*, was so close upon wilful murder, that if the *chitta* or funeral pile had been an inclosed one, or if the woman had been in any way confined, he should not have hesitated to recommend that the extreme sentence of the law be passed upon them; but under the circumstances of the case, he thought it would be sufficient to condemn them to seven years imprisonment, either with or without labour. He declared his opinion, that a less period should not be fixed; the crime being fully proved, independently of their confessions, and the punishment well deserved. If any notice, he added, was to be taken of irregular *suttees*, severe punishment ought to follow the perpetration of them; otherwise they would be found to increase, in proportion to the frequency of the question being agitated, and of the half measures adopted for their suppression being made subject of consideration or conversation by the natives. The Pundits of the Nizamut Adawlut, being consulted in this case, delivered the following opinion. "If a Brahmin be missing for the period of six years, and his wife, intuitively perceiving that he is dead, resolve to become a *suttee*, that woman is termed *Patibrata*, or a good and virtuous woman. The principal mark of a virtuous woman is her intention

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of self-sacrifice on the death of her husband, as manifested by her resolution to become a *suttee*. She, through the excess of her chastity, may be assured by a dream, or by any other mode, that her husband is dead; otherwise no human being would without cause wish to die on a burning pile, as there is nothing so dear to human nature as life. Although it is contrary to law that a Brahmin woman should burn without the body of her husband, yet this authority does not apply to such cases as the present. It must be admitted, that the greatest of all virtuous resolves is that of a widow, who forms the intention of self-sacrifice on the death of her lord. Harita says, the *Anoomurrun*, or dying after her husband of a Brahmin woman, is a *Nityadhurma*, or eternal virtue; and it appears in other texts, that the sacrifice constitutes a temporal virtue *(Camya dhurma)*. The death is the principal means of acquiring such virtue; and the mode of doing it, as entering into fire, and the other ceremonies, are secondary: and wherever in an eternal duty a temporal one is neglected, the fruit of the former is not lost; consequently the death of the woman by ascending the burning pile under any circumstances is legal. Although it is stated in the question, that the husband's elder and younger brothers consented to the act, this appears to be a mere assertion of the prosecutor, but not acknowledged by the defendants, who alledge that they forbade her several times; and admitting that they consented to her act, yet it does not follow that their consent operated as an order to her, provided she had no intention of becoming a *suttee*, as there is no possibility, according to the general opinion, of a suicide being committed by the direction of others. It is a general practice, that he who intends to die is always dissuaded by his friends. Here the authority of those individuals should be interposed thus far; that when a woman wants to become a *suttee*, they should first forbid her; and when they believe that she is determined to persevere in ascending her husband's pile, and their remonstrances do not meet with her attention, if they consent to the suicide, they cannot be looked upon in the light of murderers. Moreover, if it should be established that they supplied wood and fire, yet it may be contended, that when she did not attend to their dissuasions, it became incumbent on them to supply wood for her burning, with or without her husband's body, as she was then unable to procure the materials for herself. Notwithstanding that the death effected by ascending the pile in this instance, is the means of salvation in the next world, yet this sort of practice of suicide without being certified of the husband's death, is unusual, and disapproved of in this world. In performance of such act, therefore, the actors incurred a slight sin. The person who set fire to the pile will perform two *Chandrayana* penances, and the other who heaped on the wood should do one of those penances; and they are liable to punishment by the ruling authority for their assistance to the *suttee* without his permission. The punishment is, that the person who set fire will be fined with one thousand and eighty *puns* of cowrees, and the other who heaped on the wood with half of that amount."

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The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Ram Dut Brahmin of having given fire to Mussummaut Guneshea, and heaped straw upon the pile, and the prisoner Balgobind Brahmin of having prepared wood and other things with a view to Guneshea's becoming a *suttee*, declared the two prisoners liable to *Acoobut*, according to the degree of their respective offences.

By the Court. C. Smith, (second Judge.) "The *suttee* being by the answer of our pundits declared legal, even though the woman did not burn herself upon the funeral pile of her husband, I do not see how the charge against the prisoners of having been concerned in a *suttee* contrary to the *shaster* can be supported. The rules promulgated by the Nizamut Adawlut in the beginning of 1815, certainly declared such a *suttee* to be illegal in the wife of a Brahmin, as Guneshea in this case was; but those rules may not have contemplated—they certainly do not mention—the case of a missing husband with regard to whom the wife is firmly persuaded that he is dead, without knowing where he died, and where his corpse may be. In those instructions, and in the preceding ones issued in April 1813, I find no penalty prescribed for assisting in a legal *suttee* without having given information to the police. I am of opinion, therefore, that the prisoners should be released without punishment. The essence of the charge being, that the prisoners acted illegally, according to their own law, no sentence of punishment can consistently be issued without confirming that part of the charge, and how do this in the teeth of the present *vyuvustha?* I do not think the former orders contemplated the case of a woman burning whose husband was not positively known to be dead; at least I can find nothing in them direct to such a case." W. Dorin, (fourth Judge.) "The fact that these two men assisted in the *suttee* of Guneshea, their absent brother's wife, is clear. He appears to have been a Brahmin, and absent six years; and the wife suddenly says she has dreamed he is dead, and means to burn. There is no intelligence of his death; and, for what we know, he may be now alive. The defendants, in their share of the transaction, seem to have acted under the decided influence of superstition, and from no discoverable motive of private malice. If it was an illegal *suttee*, (as it probably was,) it would, I think, be wrong and impolitic to let them off; though I see no reason why we should bear hard on them. It is in vain to think that sentences of this Court are to put a stop to *suttee*. That must be done, if done at all, by an absolute prohibition from the Government. The *vyuvustha* circulated as a guide throughout the country on the 4th January 1815, (marked No. 5,) declared expressly, that a Brahmin woman could not burn without the body of her husband, though other castes might. The pundits now say the contrary in a *vyuvustha*, containing a strange mixture of nonsense and contradiction. I incline to follow the first *vyuvustha*, and would adjudge two years imprisonment to each." W. B. Martin, (fifth Judge.) "Although I am clearly of opinion that the *suttee* was illegal, and that the considerations stated in the *vyuvustha* recently delivered by the Pundits, are quite insufficient to furnish any justification of the

act of which the prisoners have been convicted, yet, under all the circumstances of the case, and with reference to the probable influence of superstitious notions on their minds, I have no objection to concur in the moderate punishment proposed by the 4th Judge." A sentence of two years imprisonment on each of the prisoners was issued accordingly.

1823. Case of RAMDUT and BALGOBIND.

GOVERNMENT, *against* RUJUB ALI and PITUMBER.

1823. July 4th. Case of RUJUB ALI and PITUMBER.

Charge—EMBEZZLEMENT.

The prisoners convicted of converting to their own use the sum of 2500 rupees, belonging to Government: sentenced, the one to two, and the other to one year's imprisonment.

THE prisoner Rujub Ali was *Gomashta* in the factory of the Commercial Residency of Rungpore, and the prisoner Pitumber was a writer on the same establishment. They were tried at the 2d sessions of 1822, for zillah Rungpore, on the charge of converting to their own use the sum of 2500 rupees belonging to Government. This case was submitted, in consequence of the Judge of Circuit not concurring in opinion with his law officer, who in his *futwa* acquitted the prisoners, the Judge conceiving the charge alleged against them clearly established by most unequivocal evidence.

On the 12th of December 1818, Mr. Barnett, who was then the Commercial Resident at Rungpore, issued an order, directing 2500 rupees to be sent to Bhugbut Ghose, the *Gomashta* at the subordinate silk factory called Bote Maree, to be appropriated in the purchase of *cocoons*. On the same day the money was despatched under the charge of a guard, and received at the factory. The following day the *Gomashta* sent the 2500 rupees back to Rujub Ali by a person named Jowla, and some *coolies*. This money appeared to have been given to Rujub Ali, in consequence of a letter written in Bengallee by Pitumber to Bhugbut Ghose, in which he states: "I return you the receipt you left with me. The remittance is despatched to you under the charge of a guard; but return the 2500 rupees by some Burkundazes of the factory, and be particularly careful that the cash arrives by Monday evening." The letter was very cautiously worded: it bore no date, and the expressions made use of were sufficient to excite a great deal of suspicion that the transaction was by no means fair and honest. With respect to the receipt alluded to in the Bengallee letter, the death of Bhugbut Ghose precluded the possibility of ascertaining its real nature, and why it was given and left with Pitumber. This was a point which could not be cleared up, but which did not in the slightest degree change the impression in the Judge's mind, of the guilt of the prisoners. Rujub Ali asserted, that Bhugbut Ghose borrowed from him 1500 rupees, which he lent him on account of Mr. Barnett, and he received back his money. Pitumber acknowledged having written the letter to Bhugbut Ghose, and

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stated, that he lent him 500 rupees, of which sum he borrowed 300 from the treasurer attached to the Commercial Residency. The treasurer, in his deposition, disclaimed any knowledge of the business, and of the loan of 300 rupees to Pitumber.

It appeared, that Bhugbut Ghose gave in a petition to the Board of Trade, setting forth, that Rujub Ali and Pitumber had converted to their own use the sum of 2500 rupees of Government's money, a copy of which was transmitted to Mr. Smith, the late Resident, with a view to his enquiring into the truth or otherwise of the circumstances therein stated. What enquiries were made by Mr. Smith into the abuses said to have existed, or whether he made any at all, did not appear; but on the 12th of July 1821, each of the prisoners presented to Mr. Smith a petition, by way of reply to Bhugbut Ghose's charges; stating, that Bhugbut Ghose was indebted to Mr. Barnett a considerable sum of money on account of tobacco; but there was no mention of the loan of 2500 rupees from Rujub Ali, or the 500 rupees from Pitumber. In the petition of Bhugbut, they were clearly and distinctly accused of taking 2500 rupees of Government's money, and on this point both prisoners were perfectly silent; and it was not until the investigation into the transaction by Mr. Nisbet, and the examination of several persons, (who stated that the remittance of 2500 rupees was dispatched from the sudder factory, and received at the factory of Bote Maree, and from thence sent to Rujub Ali, and received by him,) that they adduced the story of the loan. There was another circumstance of a suspicious nature worthy of being noticed, which was, that during the time Mr. Nisbet was making the investigation into the business, Rujub Ali deputed a person named Gooroodoss Mittur to negotiate with the servant of Bhugbut Ghose for the purchase of his papers, with whom Bhugbut Ghose had left them: and after several communications between the agent of Rujub Ali, who offered 700 rupees for them, and the servant of Bhugbut Ghose, which lasted for three days, the affair terminated by the latter saying he had been robbed of the box which contained them.

"Admitting," the Judge of Circuit observed, "that Bhugbut Ghose borrowed from Rujub Ali 2500 rupees, and from Pitumber 500 rupees, the money dispatched from the sudder factory clearly belonged to Government, and this money was sent to and received by Rujub Ali. Pitumber filed a receipt, when examined by the Magistrate, for 3000 rupees, and attempted to prove that this was the receipt alluded to in his letter; but how it came into his possession, when it was the property of Bhugbut Ghose, who would most probably have destroyed it, he could give no satisfactory explanation. The fact was, that Mr. Barnett carried on a private trade while he was Resident at Rungpore, and this receipt might have been for money advanced on account of tobacco, which took place on the 25th December 1818, whereas the remittance made to the factory at Bote Maree was on the part of Government, to purchase *cocoons*, as was clearly proved by evidence; and the *chulan* accompanied it, dated 12th December 1818, the receipt for which bore the same date, and was returned to the office of the Commercial Resident. He thought,

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therefore, that Rujub Ali was deserving of exemplary punishment, and that Pitumber, who acted under his orders throughout, was also deserving of punishment, as, though certainly less culpable, there being no proof of his participation in the money plundered from Government, he would hardly have taken such an active part in the affair, unless he had derived some pecuniary advantage.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoners Rujub Ali and Pitumber of employing the public money in their own concerns, declared them liable to *Tadeeb* for the offence; and the Court of Nizamut Adawlut (present C. Smith and W. B. Martin) sentenced the first prisoner to two, and the second to one year's imprisonment, as they were of opinion, that, though the case, from the death of Bhugbut Ghose, and absence of papers, was involved in some obscurity, yet that the fact of Rujub Ali's having received on a private account the sum of 2500 rupees of the public money, and of Pitumber's having been active in procuring him that remittance, appeared to be sufficiently established.

1823.
July 16th.
SURNAM TEWARRY'S case.

GOVERNMENT, *against* SURNAM TEWARRY.

Charge—MURDER.

The burning of a Brahminee woman on a funeral pile different from that of her husband, having been declared illegal; her father-in-law, who assisted at the *suttee*, sentenced, under all the circumstances of the case, to one year's imprisonment.

THE trial of the prisoner came on at the 1st sessions of 1823, for zillah Goruckpore. This was a case of irregular *suttee*, in which the woman, Dilkoowaree, being of the Brahminical tribe, was burned, immediately on receiving intelligence of her husband's death, indeed on the same day that he died, but without his body, his obsequies having been performed where he died. She was about sixteen years of age, and was taken from her own father's village, where she lived, to that of the prisoner Surnam Tewarry, who was father of the deceased husband. He prepared the funeral pile; and after she had ascended it, he placed wood all around her. The Darogha, a Hindoo, was present, and instead of interfering to prevent, gave him permission to burn the woman; and he then set fire to the pile. It appeared that her husband died at a village about two koss from the place where the *suttee* occurred. There were only two witnesses, Shunker Tewarry and Roochye Tewarry, brought forward, who concurred in the above facts. The defendant urged in his defence that he endeavoured to dissuade the woman from burning; but there could be no doubt that he fired the pile wilfully, with the intention of causing her death.

The law officer of the Court of Circuit gave a *futwa*, barring *Kissas* and *Deeut*, but declared the prisoner liable to punishment by *Seasut*. In referring the case, the Judge of Circuit observed, that the *suttee* was quite irregular; that the case should not go unpunished; but that the permission of the Thanadar to go on with the ceremony, and the

1823. absence of malice prepense, removed the worst features of the crime. He added, that imprisonment, for not less than four years, with or without labour, might be an appropriate punishment.

SURNAM TEWARRY'S case.

The *futwa* of the law officers of the Nizamut Adawlut was similar in effect to that of the Court below.

By the Court. C. Smith, (second Judge.) "I do not see that the prisoner has violated the usage of the country, which our *vyuvustha* declares to be paramount to the letter of the law. To attend to the *futwa* in these cases any further than as it finds the fact, is perfectly absurd. The charge is, that the prisoner acted contrary to the *shaster*. If then the law of the Mooftees is inapplicable, if what has been done is consonant to usage, and if usage is superior to the naked doctrine of the Hindoo law, as that law itself acknowledges, how has the prisoner offended, and by what code would you punish him? To punish men with imprisonment for two years, or five, or any other term, for having violated a circular order not yet reduced into a printed Regulation, (see the preamble to Regulation XLI. 1793,) appears to me positively illegal; and I question, whether prior to this month of June, such a punishment was ever awarded by the Nizamut Adawlut. It is quite obvious, that a circular order can have no validity at all, but as it confirms and enforces the existing law. If it contradicts the law as it is, or promulgates any new law, it is in itself fundamentally illegal, and cannot therefore be binding upon the community. I am for acquitting the prisoner."

J. Shakespear, (third Judge.) "I concur in the acquittal, as no violence appears to have been used towards the woman, and the prisoner was probably not aware that he was violating any law. I differ, however, from the 2d Judge in regard to the wording of the sentence, and doubt whether we ought, on the *vyuvustha* of our Pundits, to recognize the usage as paramount to the letter of the law. The *vyuvustha* too is, I apprehend, at variance with the *vyuvustha* before circulated on this subject."

W. Dorin, (4th Judge.) "I do not agree with the 2d or 3d Judges. I think the question whether the *suttee* was an illegal one or not, (a Brahminee woman burning without the body of her husband,) is to be judged of by the *vyuvusthas* obtained by this Court some years back, and circulated for general guidance, as containing the ascertained law on the subject. We are not, I think, to be taking new *vyuvusthas* now, on the points then considered as the law, after due enquiry. One of those *vyuvusthas* declared a *suttee*, under the circumstances of that in question, to be illegal. I therefore think the defendant in this case liable to punishment, for having assisted at an illegal *suttee*. I would not bear hard on him, though I think it would not be politic or proper to let him off entirely. It is to be observed in his favour, that the police Darogha, who, according to the promulgated orders, should have stopped this *suttee*, was present, and did no such thing, nor told the defendant it was against the promulgated rules. The Magistrate has called on him to answer for it. Still I hold it to be the law, and the defendant's ignorance of the law no plea."

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W. Leycester, (chief Judge.) "I agree with our fourth Judge in thinking the act of the prisoner a proper object of punishment. In doing so, we are not acting under any circular order; and in not punishing, we should be acting directly contrary to section 16, Regulation XXVIII. of 1803. I would suggest a moderate punishment: and as there are two Judges for acquitting, and two for convicting, the case must go before a fifth Judge."

W. B. Martin, (fifth Judge.) "It appears to me, that by the criminal law of the country, the fact of assisting at an illegal *suttee* is punishable at the discretion of the ruling power. Under what circumstances a *suttee* shall or shall not be considered as illegal, is a question for the solution of which recourse must be had to the authorities on Hindoo law. The law officers of the Nizamut Adawlut have accordingly described the nature of those circumstances, and have distinguished the predicament which constitutes a legal *suttee* from those which deprive it of that character, and render it unwarranted by the written law. The Nizamut Adawlut have circulated the opinions so delivered by the law officers for the guidance of the local authorities; and I think that we are bound to adhere to them in all cases of this nature which may be referred to us for adjudication. Upon these principles, I am of opinion, that the prisoner Surnam Tewarry is a proper object of punishment; but as there are circumstances of extenuation in his case, I would suggest the limitation of it to imprisonment without labour for the period of one year."

The fourth Judge concurring, a sentence to this effect was issued accordingly.

1823.
July 31st.
Case of KOOTTUB and MUNSAUD.

RUMZANEE,
against
KOOTTUB and MUNSAUD.

Charge—ATTEMPT TO POISON.

One prisoner was convicted of having prepared the poison of *dhuttoora* for the purpose of administering it to his rival, with a murderous intent: sentence, 10 years

THE prisoners Koottub and Munsaud were charged with compassing the death of Rumzanee, by preparing poison, and endeavouring to cause it to be administered to him, and were tried for that offence at the 1st sessions of 1823, for zillah Goruckpore. The prisoner Koottub was found guilty by the *futwa* of the law officer of the Court of Circuit, of compassing the death of Rumzanee, by preparing poison, and endeavouring to cause the same to be administered to him; and the prisoner Munsaud of being an accessary, and privy to the crime. The cause of enmity appeared to have been, that Rumzanee was about to be married to Koottub's sister-in-law. Koottub's wife had lately died, and he was anxious to be married to her sister himself. He accordingly prepared the poison, and endeavoured to persuade the witness Mussummaut Chunduneea to admi-

1823.

Case of KOOTTUB and MUNSAUD. Imprisonment.

nister it to Rumzanee, by the offer of four rupees. She, however, instead of doing so, gave information at the Thana, in consequence of which the parties were apprehended, and confessed their guilt at the Thana and before the Magistrate, though Koottub disclaimed an intention of killing, and denied that *dhuttoora* was calculated to produce death. The confessions before the Magistrate were proved before the Court of Circuit, and the evidence of Musst. Chunduneea clearly established the fact. The Judge of Circuit concurred in the *futwa* of his law officer, and recommended that Koottub should be imprisoned for life, and Munsaud for seven years. The Judge added, that the poison being a vegetable *(dhuttoora)*, did not admit of being proved by tests, except by a most delicate chemical process, which, perhaps, no one in India was capable of conducting; but that the peculiar vegetable alkali, which that plant contained, and which was the poisonous part of it, had been lately separated in Europe.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Koottub of preparing sweetmeats mixed with *dhuttoora*, and with having sent them for the purpose of being administered to Rumzanee with a view to produce a temporary derangement of his intellects, declared him liable to *Tazeer* for the offence; and acquitting Munsaud of the charge, declared him entitled to his release.

By the Court. C. Smith, (second Judge.) "The sweetmeats are not produced, nor is it established what was in them. The prisoner Koottub says it was *dhuttoora*, but that *dhuttoora* is not mortal; and that his intent was not to kill his rival Rumzanee, but to produce a temporary derangement of his faculties, so as to prevent his marriage with his (the prisoner's) sister-in-law, to whom the prisoner (his wife being dead) was desirous of being united in marriage. I would not sentence him to more than two years imprisonment. Munsaud's privity to the materials in the four sweetmeats which were to be given to Rumzanee not being sufficiently established, I agree with the law officers in thinking he should be released."

By the chief Judge, (W. Leycester). "I think the proposed sentence of Koottub too lenient, and that there is sufficient evidence to convict Munsaud. There is a clear conspiracy established to poison Rumzanee, detected, as often happens, by one of the conspirators (Chunduneea) giving information. The only plea in favour of Munsaud is, that he denies all knowledge of the sweetmeats containing poison. Chunduneea, however, swears she received them through Munsaud; that she knew that they were poisoned: and the confession of Koottub states, that having put poison into four, he had lodged them and ten others unpoisoned with Munsaud; and telling all this to Chunduneeea, he sends her to Munsaud to get the said articles, with a view to their being administered. Chunduneea also swears, that she received the four poisoned sweetmeats from Munsaud, distinct from the others. This appears sufficient to justify, and compel to a conviction on strong presumption. I would convict both the prisoners of having conspired together to administer poison to Rumzanee

1823. Case of KOOTTUB and MUNSAUD.

with a murderous intent, and sentence them each to ten years imprisonment."

By the third Judge, (J. Shakespear.) "I do not think the evidence against Munsaud is sufficient. I concur, therefore, with the second Judge in directing his acquittal and discharge. With respect to Koottub, I concur in his conviction; but am of opinion, with the senior Judge, that a sentence of two years would be too lenient, and that he ought to be sentenced to ten years imprisonment."

W. B. Martin, (fifth Judge.) "I do not think that the evidence against Munsaud is sufficiently strong to justify his conviction. Koottub acquits him of all knowledge of the mode in which the sweetmeats were prepared; and there is only the evidence of Chunduneea to prove that Munsaud was privy to their having been compounded of poisonous ingredients. Her testimony is indeed verified by the correspondence between Koottub's confession and the information which she lodged against him at the Thana. Being however unsupported, in its relation to Munsaud, by any other admitted fact than that of her having received the sweetmeats from his hands, it does not appear to me to be conclusive of this prisoner's guilt. I am, therefore, for acquitting Munsaud, and, in concurrence with the opinions of the chief and third Judges, for sentencing Koottub to imprisonment for ten years."

In conformity, therefore, with the concurrent opinion of Messrs. Shakespear and Martin, the prisoner Koottub was sentenced to ten years imprisonment; but Munsaud, the other prisoner, was acquitted and discharged.

1823. Aug. 11th. SHEO SUHAI'S case.

GOVERNMENT,
against
SHEO SUHAI.
Charge—MURDER.

THIS trial came on at the 1st sessions of 1823, for zillah Goruckpore. The prisoner in this case was charged with wilful murder, in having burned alive Mussummaut Jhooneah, 12 years of age, on the 24th February 1823, on a funeral pile, without the corpse of her husband, who had died a year and a half before that time. Oudanee, witness for the prosecution, deposed, that one day in the month of Phagoon, he saw Jhooneah ascend the *chitta*, and Sheo Suhai, the prisoner, with the assistance of two others, shut it up on every side with wood, after which he fired it; that she was twelve years old, and niece of the witness; that the deceased was burned with part of the wearing apparel, and the horoscope of her husband, who had died a year and a half before she was burned. Gobind deposed, that in Phagoon, (he did not remember the date,) a short time after sunrise, Oudanee and others prepared a *chitta*, or funeral pile, which Jhooneah ascended. Sheo Suhai shut up the *chitta* on one

The prisoner convicted of assisting at an illegal *suttee*. Sentenced, under the circumstances of the case, to 3 years imprisonment.

1823.

SHEO SUHAI'S case.

side, after it had been previously closed on the other three sides. When she began to curse the prisoner, he threw fire upon the *chitta* from a distance. There were no *urhur* sticks in the *chitta*. Considerable delay was made for the arrival of the Darogha; but as he did not arrive, she was burned. Witness went to see the *show (tumasha)*. The place is three miles from the Thana. The girl was about twelve years old, and her husband had been dead a year and a half. The prisoner, before the Court of Circuit, acknowledged his confession before the Magistrate, but said he was not in his senses at the time he made it. The witnesses to it, however, Gopal Loll and Hurnam Singh, proved on oath, that he was in complete possession of his faculties. This confession before the Magistrate recited, that Jhoonea was the wife of his younger brother; that she resided at her father's house, between two and three miles from the village where he himself lived. He heard she was going to burn, and went to the place. At that time Jhoonea had left the house, and gone to the north side of the village, where the wood was piled, and asked him, the prisoner, for fire. Prisoner said he would not give fire till the police officer came. She again urged her demand. Prisoner begged her not to burn, and said he would maintain her; on which she began to curse him, and said, "Why do you injure my future state?" He then put fire in her hand; she lighted the straw, and was burned. She was twelve years old. Prisoner endeavoured to prevent her from burning, but gave fire, because she began to curse him. He did not lay hold of her, because he belonged to another village. He did all he could to prevent her, but she would not mind him. His defence before the Court of Circuit was very different. He said he had gone to the house of the girl's father with a coloured petticoat (as a present), and to bring her away. Oudanee, her uncle, said he would not let her go, as it was an unfortunate year. Ten days after this, Oudanee sent for him: he went there, and found drums beating; and, to the north of the village, there was a pile prepared, and mats put up round Oudanee's house to keep Jhoonea from coming out. He went there, and sat down to prevent her from coming out till the Darogha should come, and shortly after he saw her out of the house. On enquiring how she got out, he was told by Oudanee, that he had taken her out of a window. Prisoner then went to the *chitta*, and tried to dissuade her from burning; but she persisted, and he begged her to wait till the Darogha came. When he went near her, she forbade him to approach. He denied giving fire, and said, Oudanee threw fire on the *chitta*. Koorkoot, a witness on the part of the defence, stated, that he saw the *suttee*; went there a short time after sunrise; saw the *chitta* ready. Jhoonea ascended the pile, and demanded fire, which the prisoner gave from a distance into her hand, and with which she lighted the *chitta*. He gave her fire on the north side. He saw this from about two *biswas* distance, and there were not above three or four persons present. Jham, also a witness for the defence, went to Mehodeh, at about one *puhur* of the day; did not know why the prisoner went there. Jhoonea ascended the *chitta*, and began to curse the prisoner, on which he put fire into her hand, with which she lighted the pile, and was burned.

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SHEO SUHAI'S case.

Prisoner gave fire on the east side, but witness did not see on what side Jhoonea lighted the pile.

In referring the case, the Judge of Circuit observed, that the *suttee* was altogether irregular, for two reasons; first, the girl being not more than ten years and a half old at the time of her husband's death, the marriage could not have been consummated; and, secondly, because she was not burned with the corpse. That, by the Hindoo customs, the only person who could apply fire to the pile was the prisoner, being the nearest relation of her deceased husband then present: therefore his pretence of endeavouring to dissuade her was perfectly futile. Had he refused fire, there could have been no *suttee:* and for the same reason, it was perfectly ridiculous to urge, that he could not prevent it from occurring before the Darogha's arrival. He also observed, that the girl was confined within the *chitta*, so that she might not escape when she felt the flames. That this was a very aggravated case of irregular *suttee;* and that, were the perpetrator of the murder to be put to death in a similar manner, he would only meet his desert.

The *futwa* of the law officer of the Court of Circuit declared the prisoner guilty of wilful murder, but *Kissas* barred, in consequence of the permission of the woman to fire the pile. In the opinion of the Judge of Circuit, he was clearly guilty of wilful murder; but as he did not believe that the woman's consent continued after she felt the flames, and as egress from the *chitta* was then prevented by the previous act of the prisoner, and as it was perfectly clear that the *suttee*, being irregular, would have been prevented by the arrival of the police officers, and was on that account hurried on, he trusted that the Court would not award a less punishment than fourteen years imprisonment with hard labour and irons. The Pundit of the Nizamut Adawlut being consulted in this case, declared, that any woman above ten years old might become a *suttee;* and that it was allowable to any woman, not being of the Brahminical tribe, to burn on a different pile from that of her husband; that the deceased woman, in this instance, was justified in performing the sacrifice, on hearing of the death of her husband, a year and a half subsequent to that occurrence.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Sheo Suhai Koormee of a misdemeanor, in burning his brother's wife at her request, declared *Deeut* and *Kissas* to be barred by the consent of the deceased to the act, and the prisoner to be liable to discretionary punishment by *Acoobut*.

By the Court. C. Smith, (second Judge.) "I think the whole of this commitment and trial at once absurd and unjust. It appears to me to be a perfectly regular *suttee*, and the prisoner to be altogether blameless. I am of opinion that the prisoner should be acquitted."

J. Shakespear, (third Judge.) "I do not concur in the opinion expressed by our 2d Judge. The age specified in the Circular Orders, which are founded on the *vyuvusthas* of our Pundits, is 16 years. This

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girl was only 12 at the time of the *suttee*, and her husband had been dead one year and a half. I do not believe the Pundits know much about the signs of puberty, or that any child of 10 years old could show such signs. I think the prisoner guilty, and that he should be punished by some period of imprisonment not exceeding seven years."

W. Dorin, (fourth Judge.) "There seems to have been another ground of illegality in this *suttee* besides the widow having been under 16 years, viz. that she burned without the body of her husband, who had been dead a year and a half, (apparently in consequence of some sudden impulse or freak,) and not on receiving intelligence of his death while absent, (vide *vyuvustha* circulated 25th June 1817.) There seems strong presumption that his death was known at the time it happened. The promulgated orders have stated sixteen as the age below which the law does not allow a widow to burn. The confession was irregularly taken in the Foujdaree, which should be remarked. The mode adopted is in express opposition to the Circular Orders of the 12th December 1809. The confession purports to be before the assistant, but the witnesses on the trial declare it was taken before the Serishtadar in the Serishta. This practice is highly objectionable. I agree to pass sentence in this case, for assisting at an illegal *suttee*, but without putting it on the ground of non-age, at least not specifically so. Three years imprisonment seems to me enough."

The fifth Judge (W. B. Martin) observed, that the widow having been under sixteen years of age, and the *suttee* having been, therefore, according to the existing rules, irregular, he saw no reason for declining to specify that circumstance distinctly, as the ground of adjudging the prisoner to imprisonment for the term of three years. But the third Judge concurring in opinion with the fourth, sentence was issued accordingly.

1823. Aug. 11th. GUNGA DOOBE'S case.

GOVERNMENT, *against* GUNGA DOOBE.

Charge—MURDER.

Prisoner convicted of assisting at the *Suttee* of his brother's wife, she being under the prescribed age,

THIS trial came on at the 1st sessions of 1823, for zillah Goruckpore. The crime alleged against the prisoner was that of having burned alive Mussummaut Kubootree, a girl twelve years of age, the widow of Purbhoo Doobe. The first witness, Dusseen, deposed that he saw the whole affair; that in the month of Kooar, on the festival of *Anunt*, he saw her burned with the corpse of her husband, who was adult; that the prisoner in vain endeavoured to dissuade Kubootree from burning; but that he ultimately fired the pile, which

1823.

GUNGA DOOBE'S case.

was square, and that wood was piled round her after she had ascended it by the prisoner. Doonee Doobe, the grandfather of Purbhoo Doobe, deceased, deposed that he did not remember when the deceased was married, nor how old she was; and that when his grandson died, she was burned with him: he added, that he did not remember deposing that she was twelve years old at the Thana, but that he knew she had slept with her husband; that Gunga Doobe fired the pile, and that ten or twelve persons were present.

and having sacrificed herself, not when she heard of her husband's death, but one year and a half afterwards. Sentence, three years imprisonment.

Dhoom Singh, Rambuksh, and Hyder Ally proved the prisoner's confession. They stated, that it was not taken before the Magistrate or his assistant, but in the office. It was, however, confirmed again before the Magistrate or his assistant, on the 29th May, the officers of the Court who took the confession being in attendance. Ameer-oollah, the *Serishtadar*, proved the confession, which was taken before him by Luchmun Pershaud in the office. Luchmun Pershaud proved that he took the confession. The confession of the prisoner was to the effect, that Kubootree was twelve years old, and the wife of his younger brother; that he tried to dissuade her from burning in vain; that she was burned while the *Gorait* went to the Thana; and that he fired the pile, because she began to curse him for his refusal.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner of burning alive Kubootree, a girl twelve years old, but declared *Kissas* barred on the ground of the deceased's permission of the act of firing the pile. The Judge of Circuit concurred in opinion as to the prisoner's being guilty of wilful murder, but differed as to the circumstance which the law officer brought forward to bar *Kissas*. He observed: "The permission to light the pile can only bar *Kissas*, in as much as it infers the consent and willingness of the party killed to be put to death; but it is not to be imagined, that after the fire had reached the woman, she was still consenting to such a horridly painful death. Moreover, it appears in evidence, that wood was heaped round her after she had ascended the pile; and this would prevent her from leaving it, when she felt the fire, which we are compelled to believe she would have done, if she could. Moreover, the circumstance of hurrying over the ceremony before the arrival of the Darogha, who might have delayed or prevented it, argues a predetermination to burn the woman, which fully contradicts all the alleged dissuasions of the prisoner." On these grounds, he recommended that the sentence should amount to at least seven years imprisonment with labour.

The *futwa* of the law officers of the Nizamut Adawlut declared the prisoner Gunga Doobe convicted of a misdemeanor, in having assisted at the *suttee* of his brother's wife, and liable to discretionary punishment by *Acoobut*. The second Judge of the Nizamut Adawlut put a question to the Pundits of the Court, as to the legality or otherwise of the sacrifice, supposing the girl to have been not more than twelve years old; to which they answered, that the sacrifice was perfectly legal, the signs of puberty generally appearing about the tenth

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GUNGA DOBEE'S, case.

year. On the receipt of this opinion, the second Judge observed: "I think in this case, as I thought in that of Sheo Suhai, that the commitment and trial are at once absurd and unjust; and I am of opinion, that the prisoner should be released without punishment."

J. Shakespear, (third Judge.) "I am of opinion, that the prisoner in this case is deserving of punishment for burning a girl of 12 years of age. The circumstances under which the *suttee* was performed are less reprehensible than those which are proved in the separate case of Sheo Suhai. I think, therefore, that any sentence not exceeding three years imprisonment will be proper."

W. Dorin, (4th Judge.) "The ground of imputed criminality in this case was, that the widow was only 12 years of age, at whose *suttee* the defendant assisted. But it is remarkable, that the fact of her age being 12, is not at all satisfactorily proved in evidence: all the evidence to it on the trial is an indirect allusion in the Foujdaree confession, by no means a plain admission of the age. One witness (Doonee) on the trial, says he does not know what her age was, and does not recollect having stated it at 12 before the Darogha. The Darogha, in his report, mentions this witness to have stated it at 12, (if his report be now as he sent it in;) but it will be observed, that the word has been subjected to erasure or alteration, and looks doubtful. Therefore, before I could assume her age to have been only 12, I should require further proof to that fact; especially as this is the only ground of imputing a crime to the defendant. Sixteen has been assumed by the Court, in the instructions to police Daroghas, under date the 5th December 1812, (see page 78, Nizamut Circular Orders,) as the age below which *suttee* is illegal. But I do not find that any *vyuvustha* has expressly stated this age. The *vyuvustha* (vide page 88) states *under the age of puberty*, and this the Court have construed to be 16. According to the digest, 16 does seem the age assigned as the term of Hindoo civil minority; but if maturity of body be intended, it may be doubted whether, in this country, women are not mature before that age. I do not find that the prohibitions have been proclaimed, and therefore I look on them only so far binding as they may be considered good Hindoo law; and I would take to be good law every thing the Court then considered as such, under the sanction of a *vyuvustha*, notwithstanding any thing the Pundits may now say to the contrary. As to the age of 16, I have no doubt as to the policy and propriety of continuing to prevent *suttees* of females below that age, where the police can do it; but the question now is, whether assisting at such a *suttee* is to be punished as a crime in Hindoo law. I will agree either to acquit in this case, (which will get rid of the difficulty,) or to send for further evidence, if a majority of the Court deem it desirable. It was Mr. Colebrooke, I understand, who inserted 16 in the Circular Orders. There is an opinion by the Pundit of the Supreme Court, apparently agreeing with that now given by our Pundits. In the regulation proposed by Mr. Harington, he assumed 16 as the age. See the draft of it on our records." By the fifth Judge, (W. B. Martin.) "The illegality of the *suttee*, and conse-

1823.
GUNGA DOOBE'S, case.

quently the commission of the offence charged against the prisoner, depend on the doubtful fact of the precise age of the deceased widow. With regard to this fact, further evidence ought, I think, to be required: but if the result of that evidence should prove it not to have exceeded the age specified in the charge, I should be inclined to concur in the sentence proposed by the 3d Judge; because, independently of the limitation of the age of 16 in the Circular Orders of the Nizamut Adawlut, it appears to me to be unreasonable to suppose, that a female at the tender age of 12 years can be capable of the discernment, and of exercising that full maturity of judgment, which the nature of the ceremony, no less than the present construction of the law, apparently requires as the condition necessary to justify the immolation."

The age of the deceased woman having subsequently been ascertained not to have exceeded twelve years, the following sentence was passed, (present J. Shakespear and W. Dorin.) "The Court concur in the conviction; and, deeming the prisoner guilty of having assisted at an illegal *suttee*, the widow (who was very young) having burned without the body of her husband, who was known to have been dead one year and a half, and not on receiving intelligence of his death while absent; under all the circumstances, the Court sentence the prisoner to be imprisoned, with labour, for three years, from this date. The Court observe, that the Foujdaree confession of the prisoner, purporting to have been taken before Mr. Currie, the assistant to the Magistrate, is declared by witnesses on the trial to have been taken before one of the native officers; which, supposing it true, is highly objectionable, and contrary to the Circular Orders of the Nizamut Adawlut bearing date the 12th December 1809. The Magistrate of Goruckpore will submit an explanation on this point from his assistant, with any remarks he may himself have to offer on the subject."

MUSST. PANEE,
against
URJOON BISWAL and others.

1823.
Sept. 17th.
Case of URJOON BISWAL and others.

Charge—MURDER.

It is not competent to a Magistrate to commit individuals to take their trial for whom he had

THE prisoners Sooruth Biswal, Urjoon Biswal, and Ugnee Mullick, were charged with murder, and tried for that offence at the 2d sessions of 1823, for zillah Cuttack. At the recommendation of the Magistrate, and in consideration of the proceedings held in this case, the Nizamut Adawlut authorized a conditional offer of pardon to two persons in this case, named Madh Mullick and Kunhai Biswal. These persons having, however, before the Magistrate, in their second examination, denied any knowledge of the circumstances of the mur-

1823.

Case of URJOON BISWAL and others.

obtained a conditional pardon from the Nizamut Adawlut, without reference to that Court; and being so committed, the Judge of Circuit is competent to renew the offer of pardon.

der, they were committed for trial with the other prisoners; but on the conditional offer of pardon being explained to them by the Commissioner upon their trial, they expressed their readiness to disclose upon oath the facts within their knowledge relative to the murder, on the condition of receiving a full pardon; and their evidence was accordingly taken.

The *futwa* of the law officer of the Commissioner's Court convicted the prisoner Sooruth Biswal on violent presumption of the crime of wilful murder, and also convicted the prisoners Urjoon Biswal and Ugnee Mullick on the same grounds, of aiding and abetting in the perpetration of the murder; and declared the whole of the prisoners liable to *Seasut*. In referring the case, the Commissioner observed, that as the prisoners Urjoon Biswal and Ugnee Mullick were the dependants of Sooruth Biswal, and acted by his order, justice would perhaps be satisfied in this case by a sentence of imprisonment in transportation for life, of those convicts; but that the prisoner Sooruth Biswal should be sentenced to suffer death. He added, that the persons named Madh Mullick and Kunhai Biswal, having fulfilled the conditions of the pardon, the certificate prescribed by section 5, Regulation XIV. 1810, should be forwarded for, and delivered to them by the Magistrate.

By the Court of Nizamut Adawlut. C. Smith, (second Judge.) "The evidence of Madh Mullick and Kunhai Biswal being so important in the case, it seems requisite in the first stage to determine whether the Commissioner was competent, under the order of the 19th of March last, without further reference to this Court, to take the evidence of these two persons as witnesses, though they seem clearly to have declined the proffered pardon when offered to them by the Magistrate, and on that account to have been committed to take their trial before the Court of Circuit. I think he was not, and that their depositions, as they are now circumstanced, cannot be received as legal." W. Leycester, (chief Judge.) "On the subject of the competency of the Commissioner to take the evidence of Madh and Kunhai, I am of opinion, that he was competent. The only error which has occurred was on the part of the Magistrate in committing them, which he was not competent to do without the order of the Nizamut Adawlut. I agree in the convicting *futwa*, and would pass sentence of death against Sooruth, and of perpetual imprisonment at Allipore against Urjoon and Ugnee." The third Judge (J. Shakespear) fully concurring in the above opinion, sentence was issued accordingly.

1823.
Sept. 27th.
EKADUSSEE KANDE'S case.

GOVERNMENT,
against
EKADUSSEE KANDE.

Charge—MURDER.

A confession made voluntarily before a police officer, not held to be invalidated by the fact of a former confession made to a person not being a police officer under promise of release, nor by the non-observance of the rule contained in clause 3, section 19, Regulation XX. 1817.

THE prisoner was charged with the wilful murder of a boy named Hurria, and robbing him of his ornaments. His trial came on at the Cuttack sessions, on the 30th of June 1823. The Commissioner concurred in the *futwa* of the law officer, which convicted the prisoner of the crime charged, on violent presumption, and declared him liable to exemplary punishment by *Seasut*: but it appearing that the prisoner (who on his trial pleaded not guilty) was induced by promises of release to confess the murder, and discover the ornaments taken from the body of the deceased; and that his confession was not taken by the Darogha at the police Thana, but by the Thana Jemadar, and at the village where the prisoner was apprehended; and it likewise appearing, that on his arrival at the Thana, notwithstanding the Darogha was present, no further examination of the prisoner took place; nor was any question there put to him, respecting his confession before the Jemadar; that moreover no reason was stated, as required by clause 3, section 11, Regulation XX. 1817, for the confession of the prisoner having been taken in the Moofussil, and not at the Thana; and the prisoner's guilt having thus been established by means prohibited by clause 3, section 5, Regulation IV. 1810, and clauses 2 and 3, section 19, Regulation XX. 1817; the Commissioner was of opinion, that the prisoner should not be sentenced to suffer death, but recommended that he should be sentenced to imprisonment in transportation for life. It should be observed, he added, that the person who by promises of release induced the prisoner to confess the murder, was not an officer of police, but the head man of the village of which the deceased and the prisoner were inhabitants, and that no police officer was present when such illegal means were employed to discover the property.

The *futwa* of two of the law officers of the Nizamut Adawlut convicting the prisoner Ekadussee Kande of the wilful murder of the boy Hurria for the sake of his ornaments, declared him liable to suffer death by *Kissas* for the crime.

By the Court, C. Smith, (second Judge). "It is clear, that the prisoner has committed a foul and cruel murder. Whatever may have led to the confession drawn from him by Gobind Doss, it does not appear that any thing improper took place before the Jemadar of Gope to induce the prisoner to confess. To that confession, therefore, the Regulations cited by the Commissioner do not apply. Under the information afforded to the Jemadar by Gobind Doss, I think he was perfectly right to record the prisoner's answer without delay. I am of opinion, that the prisoner should be adjudged to

1823. EKADUSSEE KANDE'S case.

suffer death." W. Leycester, (chief Judge). "I would not in this case go beyond the perpetual imprisonment recommended by the Commissioner. I even think going that length somewhat questionable. Had it not been for the property found, I would have acquitted, disbelieving his confession, as not being free and voluntary. The finding the said articles might merely suggest privity as an accessary. I would not object to limit the imprisonment to 14 years." J. Shakespear, (third Judge.) "I consider the guilt of the prisoner to be fully established by the evidence; and being of opinion, that the irregularity noticed by the Commissioner does not in any respect vitiate that evidence, or afford any reasonable ground for mitigation, I concur with the 2d Judge in a sentence of death." The prisoner was executed accordingly.

1823. Nov. 24th. SHEIKH MEERUN'S case.

MUSSUMMAUT BUMAN, *against* SHEIKH MEERUN.

Charge—RAPE.

A prisoner having been acquitted by a Judge of Circuit, on very unsatisfactory grounds, of the charge of rape, the Court, on revision, did not touch the acquittal, but recorded their disapprobation of the sentence.

THE prisoner Meerun was tried, at the first sessions of 1823, for zillah Tirhoot, for a rape committed on the body of a girl named Kulmee, aged about ten years. The prosecutrix, mother of the girl, deposed, that her daughter was proceeding to sell butter milk, one day in the month of Jeth (the date she did not recollect) to a neighbouring village, in company with a girl named Luchmunia, about her own age, when the prisoner attacked her, threw her down, and by force had carnal knowledge of her person. He was charged also with robbing her of her necklace. The girl Luchmunia, who was the only eye-witness to the occurrence, corroborated the assertion of the prosecutrix. Luchmunia immediately ran back to the village, and alarmed the brother of her companion, by whom and others the girl was found in a state which unequivocally demonstrated the treatment she had received. The prisoner pleaded not guilty, and he was acquitted by the *futwa* of the law officers of the Court of Circuit, which was to the following effect.

"The accusation against the prisoner, of having committed a rape on the daughter of the prosecutrix, and robbing her of her necklace, is not legally established, because the defendant denies, and there is not sufficient testimony to prove the charge. It is evident, that the depositions of Kulmee and Luchmunia are wholly inadequate as proof; and there is no circumstantial evidence corroborative of their evidence, to bring the charge of rape home to the prisoner. He is therefore entitled to his release." On this *futwa* the Judge of Circuit acquitted the prisoner; but the Court of Nizamut Adawlut,

observing in the statement of acquittals, his remarks on the case, that "the only evidence to the fact was that of the girl, upon whom the rape was said to have been committed, aged about nine years, and that of another girl about the same age, which was not considered sufficient for conviction," and not deeming this remark satisfactory, called for the proceedings in the case.

1823. SHEIK MEERUN'S case.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of committing a rape on the person of the prosecutrix's daughter, a girl ten years old, and declared him liable to *Tazeer* for the offence.

The Court of Nizamut Adawlut, (present C. Smith and J. Shakespear,) concurred in the *futwa*, but did not deem it expedient to alter the sentence passed by the second Judge of Circuit, by which the prisoner was acquitted and released. They judged it necessary, however, to record their opinion, that the evidence of the prosecutrix's daughter, and of Luchmunia, the girl who accompanied her, corroborated by that of the prosecutrix and others as to the state of the clothes and body of the ravished girl, and the other circumstances of the case, most fully and satisfactorily brought home the charge to the prisoner; and that the second Judge of Circuit would have exercised a much more sound discretion and judgment, if, instead of directing the prisoner's release, he had referred the trial to the Court of Nizamut Adawlut, on the ground of the unsatisfactoriness of the *futwa* of his law officer.

SYUD KULLEEM, *against* SHEIKH MOGUL and five others.

1823. Nov. 29th. Case of SHEIKH MOGUL and others.

Charge—MURDER.

Three prisoners, convicted of concerting and perpetrating a murder from motives of enmity, sentenced to be hanged; a fourth, for the same offence, to imprisonment with

THE prisoners Sheikh Mogul, Ruzeeah *alias* Ruzeeoollah, Musst. Cadun, Sabid, Soudagur, and Nadoo, were tried at the second sessions of 1823, for zillah Sylhet, being charged with the murder of one Syud Sulleem. The circumstances of this case were as follow.

On the afternoon of the 4th of Assar, corresponding with the 17th of June 1823, the prosecutor sent his brother Suleem for a piece of cloth to Anunderam Tanty's, at the neighbouring village of Neagaow; and Suleem not returning that night, the prosecutor went to enquire about him at the houses of their relations and connections, without success, and afterwards was proceeding towards the village to which he had sent him, when seeing the two witnesses Bildary and Doomai sitting on the opposite bank of the Khoomai river watching cattle, he learned from them that they had seen his brother the evening before going towards the village Aseepore. The prosecutor accord-

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hard labour for life; a fifth, for being privy to the same, to imprisonment for seven years; and a sixth, for being privy after the fact, to three years imprisonment.

ingly went to Aseepore to the house of the prisoner Mogul, with whom he was previously acquainted, and was told by Mogul and his wife, the prisoner Musst. Cadun, that they had not seen his brother Suleem at that village for the last month and a half. He then went to Anunderam's, and finding his brother had not been there, he returned home, and the following day renewed the search, in company with the witness Aleem, son of Dost Mahomed, when passing along the bank of the river Khoomai, below the village of Aseepore, they discovered his corpse lying on the edge of a *chur* on the other (the western) side of that river. The prosecutor left his companion Aleem, and went to call people from the neighbouring village of Aseepore; but as none of the inhabitants came forward, he went back to his own village to bring some of his acquaintances, leaving Aleem to watch the body. He returned with the witness Khedoo Fukeer, Aleem son of Jumauloodeen, Jharoo Sheikdar, and Dhun Singh, amongst whom Khedoo Fakeer and the prosecutor crossed the river; and they deposed to observing marks on the mouth and chin, by which three of the teeth were broken, and the chin bone broken, with a mark round the neck, as if of strangulation, and a black mark on the loins. The witness Aleem, son of Dost Mahomed, who first accompanied the prosecutor to search for Suleem, and had crossed over alone when they discovered the body, described the mark on the mouth and chin, and that three teeth were broken, but stated he did not examine whether there were any other marks on the body. The other witness saw the body from the eastern side of the river, about 40 cubits off, and gave statements of rather a contradictory character. There was no doubt, however, of this dead body being that of Suleem, and that there were marks of violence; although the prosecutor, possibly from the state of his feelings at the moment, did not take such precautions as he ought to have done to secure the body till the arrival of the police officers. It appeared that he and his companions engaged a stranger named Aleem, son of Heerun, who was passing, to watch the body until their return from the Thana, distant only about eight miles; and that on the return of the prosecutor with a Burkundaz in the afternoon, neither the body of Suleem, nor Aleem who had been stationed to watch it, were to be seen, and the body was never afterwards found. The Darogha arrived in the night, and on the following morning obtained intelligence which induced him to apprehend some of the inhabitants of Aseepore, and he succeeded in discovering the circumstances of the murder, and in securing the perpetrators. An intrigue had existed for some time between the deceased Suleem and the prisoner Cadun, wife of the prisoner Mogul; but there had lately arisen some disagreement between them on account of Suleem's not having brought her a piece of cloth which he had undertaken to get made for her, and also probably from an intimacy which had lately commenced between Musst. Cadun and her near neighbours, the prisoners Soudagur and Nadoo. Suleem was represented to have been addicted to women; and Musst. Cadun, having formed this new connection, might be supposed well inclined to favour the gratification

of her husband's resentment against Suleem for the dishonour he had brought upon him, whilst Soudagur and Nadoo were influenced by the desire of getting rid of a rival in the affections of Cadun. Musst. Cadun, in her answer before the Magistrate, ascribed the murder of Suleem to his having an intrigue with Musst. Abluk, wife of Soudagur, and sister of Nadoo. This was not otherwise supported, but it might be true, and might have furnished an additional motive to those two prisoners to destroy Suleem. Musst. Abluk denied the existence of such an intimacy between her and Suleem, maintaining that the latter had an intrigue with Cadun for two years. The prisoners Ruzeeoollah and Sabid, as being near neighbours and connections of Mogul's, and perhaps themselves annoyed by the propensities of Suleem, were induced to join in the conspiracy. It appeared, that on the evening of the 4th Assar, corresponding with the 17th of June, the deceased, on being sent by his brother, as above related, to Anunderam weaver's, went to the house of Mogul to visit Musst. Cadun, where, in pursuance of a preconcerted determination made by the prisoners to take his life, they gave him food, and entertained him till midnight, when they killed him, and afterwards threw his body into the river Khoomai, which runs by the village; and the body was found a short distance below that village, having been stopped by a *chur* at the corner of a reach, when floating down the stream.

There were no eye-witnesses to the murder of the deceased: but the witness Durbarry, father of the prisoner Soudagur, together with the females of his family; Abluk the wife of Nadoo, and father-in-law of the prisoner Soudagur; Butchun, the mother, and Boodun, the sister of the prisoner Nadoo, deposed to having gone out on the night of the murder, in consequence of hearing a disturbance near the prisoner Mogul's house, when they saw the five male prisoners dragging the body of Suleem to the river side, accompanied by the female prisoner Cadun. The witness Durbarry further stated, that he heard them say to each other, "Now that we have killed him, what shall be done with him?" and they agreed to throw the body into the river; and this witness and Butchun stated, that they saw the prisoners accordingly throw it into the river.

Budun, an intelligent girl 10 or 11 years of age, corroborated generally the evidence of the other members of her family, and said she heard Nadoo, on his return from the river, say that Ruzeea and Mogul had killed the deceased. Musummaut Abluk, wife of the prisoner Soudagur, saw the six prisoners dragging the body towards the river, and stated she heard Ruzeeoollah say, that, the others being unable, he had killed Suleem with a blow of his stick; and that it was Ruzeeoollah who proposed throwing him into the river. This witness spoke also of having overheard a consultation amongst the six prisoners that afternoon at Mogul's house respecting the murder, in which the men made objections, but the woman Cadun insisted upon its perpetration. It was to be observed, that the witness told the Magistrate that this meeting occurred four or five days previous to the murder: and on being questioned as to the difference in these

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statements, she alleged in explanation, that she heard them consulting about it on both occasions. There was also a witness named Mussummaut Myna, the mother of the prisoner Ruzeeoollah, who deposed to going to Durbarry's house, in consequence of hearing the barking of dogs, when she saw Soudagur and Nadoo washing their feet; and Soudagur said he had killed the *haramzada* Suleem. She admitted, that her son Ruzeeoollah went that evening to an entertainment at the prisoner Mogul's. The witness Aleem, son of Heerun, denied that he agreed to watch the corpse; but the Magistrate, considering him deserving of punishment for having left it to be carried away by the stream, punished him by a fine. There were two witnesses (Bildar and Doomai) who saw the deceased Suleem passing towards the village of Aseepore on the afternoon of the murder, and gave that information to the prosecutor, as he was proceeding in quest of his brother. The first prisoner Mogul, in his answer before the Darogha, charged the other male prisoners with killing Suleem with sticks, on the bank of the river, and throwing the body into the river. Before the Magistrate he stated, that a previous consultation had taken place, in which he was present, and it was agreed to kill Suleem. That he came to the prisoner's house, and was entertained with a fowl by his wife Cadun and the prisoner Soudagur, after which the four male prisoners killed him on the bank of the river, and he (the prisoner Mogul) went to the river side, and saw that they had killed him. Before the Court of Circuit, this prisoner denied the charge; but when called upon for his defence, he stated, that Suleem came in the afternoon, in the month of Assar, to his house; and that as he had previously repeatedly dishonored him by entering his house, he had mentioned it to his neighbours, on which Ruzeeoollah proposed killing him, and the prisoner consented, and agreed to be a party to the act. The prisoner also admitted his confession before the Magistrate, excepting the part respecting the killing a fowl, and entertainment of Suleem. The second prisoner Ruzeea *alias* Ruzeeoollah, in his answer before the Darogha, said, that the other prisoners killed the deceased, and that he gave him a blow *after he was dead*; and, both before the Darogha and the Magistrate, he admitted being present, and assisting in dragging the body, and throwing it into the river; adding before the Magistrate, that Suleem was the thief, and also had intrigues with the wives of the prisoner Mogul and Soudagur. Before the Court of Circuit he denied the charge, admitting that the stick produced was his. This was the stick which he admitted before the Magistrate to have had in his hand; and that in aiming a blow at Soudagur, he struck the foot of the dead body of Suleem. The stick was about three cubits long, from one to two fingers thick, and a light bamboo weighing only a quarter of a *seer*. He made no defence beyond the denial of the charge. The third prisoner, Mussummaut Cadun, stated before the Darogha and the Magistrate, that Suleem, after having eaten at her house, went out, and was killed by the prisoners Soudagur, Nadoo, Sabid, and Ruzeeoollah; adding before the Darogha, that they afterwards threw him into the river. She stated, that the prisoner Soudagur brought the deceased Suleem to her house that

evening, and also brought the fowl with which they entertained him; and that it was with Musst. Abluk, the wife of Soudagur, that Suleem had an intrigue, and not with herself. Before the Court of Circuit she denied the charge, and her answer before the Darogha, but admitted the answer before the Magistrate. The 4th prisoner, Sabid, denied before the Darogha. Before the Magistrate he stated, in answer, that he went that evening to the house of his neighbour Ataoollah, and returning home from thence, he saw the prisoners Soudagur, Nadoo, and Ruzeeoollah drag the dead body of Suleem to the river, and throw it in, and that Soudagur and Nadoo said they had killed him. Before the Court of Circuit he pleaded not guilty, stating that he saw Suleem lying dead at the Ghaut of Mogul's house, and that the other four male prisoners were there. He admitted his answer before the Magistrate. The 5th prisoner Soudagur denied both before the Darogha and the Magistrate, stating before the latter, that he went to the hills, when eight days remained of the month of Jeyt, and was returning, after an absence of fourteen days, when he was apprehended on the charge. He attempted before the Court of Circuit to establish this *alibi*, by calling the persons whom he accompanied to the hills, by whose evidence it appeared that they fell in with him on his way to the hills, at a place about sixteen miles distant from his house, late in the afternoon of the 6th of Assar, which was the third day after the murder of Suleem; and it appeared on the trial, that he did in fact quit his village for the hills, after the occurrence of the crime. The 6th prisoner Nadoo denied throughout, and pleaded not guilty before the Court of Circuit. In his answer before the Magistrate, he admitted being at the house of Mogul on the evening of the murder, and saw Mogul give Suleem fowl to eat; and that after remaining there about a quarter of an hour, he returned home.

The *futwa* of the law officer of the Court of Circuit convicted the whole of the prisoners of having, in concert, killed Suleem, in pursuance of a preconcerted design, and declared that they were accordingly liable to discretionary punishment. The law officer did not declare them guilty of wilful murder, nor did he specify the denomination of their crime in Moohummudan law. With reference, therefore, to the circular order of the 5th of September 1811, the Judge observed, that he had thought of calling upon him for a further *futwa* to supply this omission; but that he had refrained from doing so, upon his representing that the crime, in consequence of the instrument or mode of perpetration not being ascertained, could not be legally denominated wilful murder; but that the premeditated intent to kill being manifest, it exceeded any description of culpable homicide; and that, if a further exposition were required, he could only repeat what the first *futwa* contained. He (the Judge) was of opinion that the six prisoners were guilty of the wilful murder of Suleem, and that the murder was preconcerted and deliberately executed. He added: "The deceased was not sacrificed to a sudden act of resentment. The prisoner Mogul stated on trial, that Suleem having repeatedly dishonored him, his death had

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been agreed upon; so that whatever extenuation may be found in a sensibility to family disgrace, when leading to sudden acts of revenge, it cannot unhappily be urged in mitigation in the present case. It appears to me, moreover, to be a case of peculiar atrocity, and calling for marked severity of punishment, from the extraordinary disappearance of the dead body of the deceased, which must have been the result of the combined determination of the inhabitants of the village in which the prisoners resided, to obstruct the course of justice, who accordingly, when the prosecutor found the body of his brother bearing marks of violence, not only withheld their own assistance, but unquestionably, in my opinion, although it has not been proved, must have induced the witness Aleem to quit his post, and thus occasioned the body to be carried down by the stream. There is nothing in evidence attaching different degrees of criminality to any of the prisoners, as the statements of the members of the family of Soudagur and Nadoo, as well as of Mussummaut Myna, the mother of Ruzeeoollah, may be supposed to be biassed by their connection with the prisoners respectively; but, considering that Suleem was the victim more especially of the revengeful or malignant passions of the prisoners Mogul, Soudagur, and Nadoo, I am induced to point out those three prisoners as proper objects of capital punishment, and to propose some mitigation in favour of the prisoners Mussummaut Cadun, Ruzeeoollah, and Sabid. The Court will observe, that no attention is paid in the *futwa* to the motive suggested by the prosecutor as having led to the murder of his brother, viz. that of robbing him. In this I entirely agree with the law officer, and think that, as usual on such occasions, the prosecutor was urged to introduce the story by the double motive of screening the memory of his brother from the imputation of the intrigue, and also to aggravate the criminality of the prisoners, not only by depriving them of every appearance of justification, but by assigning a motive which at once accounted for the murder, and magnified the nature of the crime."

The *futwa* of two of the law officers of the Nizamut Adawlut convicting the prisoners Mogul, Ruzeea or Ruzeeoollah, Sabid, Soudagur, and Nadoo, of having, from enmity, concerted and perpetrated the murder of Suleem, the prosecutor's brother, and Mussummaut Cadun, wife of the prisoner Mogul, of having been privy to the concerting of the murder, and aided in dragging the corpse, and throwing it into the river; declared all the six prisoners to be liable to *Acoobut*, according to their respective degrees of guilt; and, with respect to Mogul, Ruzeea, Nadoo, and Soudagur, pronounced them liable to suffer death by *Seasut* for the crime.

By the Court. C. Smith, (second Judge.) "The murder clearly, I think, appears to have been committed in Mogul's house, where the deceased Suleem, on his way to Anunderam Paul's, had been induced to stay, by the *ziäfut* or treat given him for the express purpose of detaining and murdering him. The same party who perpetrated the murder seem to have dragged the corpse to the river, with the exception perhaps of the prisoner Sabid, who (his house being at some distance from Mogul's) may have joined after the deed was done.

The provocation is to be found in the libidinous propensities and pursuits of the deceased, who is supposed to have had an intrigue with the female prisoner Cadun, the wife of Mogul, and perhaps, with the witness Abluk, the wife of the prisoner Soudagur. Mogul, to the Thanadar of Lushcurpoor, charges the four male prisoners with the murder, denies that he himself was one of the perpetrators, and says nothing of his wife Cadun. But he acknowledges the *ziäfut*, the provocation, (which he says was an intrigue with Soudagur's wife,) and his having, on account of the share he had in the disgrace brought upon the family, refrained from informing the police of the murder. Before the Magistrate he more distinctly acknowledges, that all the five male prisoners, himself inclusive, concerted the murder of Suleem; and to the provocation of the intrigue with Soudagur's wife adds another, viz. that Suleem was a thief, and used to extort money from the villagers by menace. His answer to the police he acknowledges before the Magistrate and on his trial. His answer before the Magistrate he acknowledges also, with the exception of what relates to the *ziäfut:* but his Foujdarry examination is proved by Madhoram and Jewunram. Ruzeea's confession before the police amounts to his having killed the deceased, in conjunction with the four other male prisoners. Before the Magistrate, he says no more, than that he arrived at Mogul's after Suleem was dead, and joined the four other male prisoners in dragging the corpse to the river. On the trial he denies both these answers, but they are proved by Ramsurrun Dut and Hureeram Doss. Soudagur pleads an *alibi*, in the proof of which he fails. Nadoo's answers, which I do not find in the trial, are in the Foujdarry papers, and correspond with the Judge of Circuit's statement. That before the Magistrate is prevaricating. Sabid's answer is as stated by the Judge of Circuit, and he does not gainsay it on the trial. Cadun, the *teterrima causa* of all the mischief, before the police accuses all the male prisoners but her husband Mogul, as Mogul had accused all his fellow prisoners but Cadun. In the Foujdarry she says, that Soudagur struck the fatal blow while the other three were with him; and this, she says, she heard from Nadoo. She acknowledges the treat of the fowl; but asserts it was brought by Soudagur from his own house, and by him cooked, she declining that office on account of the ill-health of her husband. The prisoners all live in the same village, Aseepoor, Pergunna Turruf. Mogul and Cadun are man and wife. Ruzeea is married to a sister of Cadun; Soudagur to his cousin. Nadoo is Mogul's nephew, and lives in the same house with Soudagur, who is married to his sister, so that all these five have a family connection. A connection of Sabid too with the other five, is mentioned in the evidence of Durbarry; but though he lives in the same village, his house is said to be distant. The witness Myna swears that Soudagur said, "I have killed the bastard," meaning Suleem, while Nadoo was standing by. The witness Abluk swears, that she saw all the six prisoners dragging the corpse to the river, and that she heard Ruzeea say, "I killed him with one blow of my *shullauck*;" and that she heard Cadun say,

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'I have killed the slave girl's son, and thrown him out; now my calamity is gone from me.' That Soudagur and Nadoo, on returning home, said, 'We have thrown the corpse into the river.' That Soudagur said to Myna, 'Thy son Ruzeea has killed Suleem.' That Nadoo said to the witness's mother, when Ruzeea struck Suleem with the *shullauck*, 'I was frightened, and ran away among the bamboos.' The witness Durbarry, father of Nadoo, swears that he saw all the six prisoners dragging the body, and throwing it into the river; and that Nadoo on his return told him it was Suleem's body, whom they had killed. He says too, that he had seen Suleem at Mogul's-house in the evening. He states, moreover, that Nadoo and Soudagur set out *after* the murder, the former to bring rice, the latter towards the hills for bamboos. Durbarry's wife and his daughter give an evidence highly unfavourable to the prisoners. Upon the whole, I consider it to be impossible not to conclude that Mogul, Ruzeeoollah, Nadoo, and Soudagur planned and perpetrated the murder; and as I would not sentence capitally more than suggested by the Judge of Circuit, I substitute Ruzeeoollah, whose *shullauck* would appear to have inflicted the finishing blow, for Nadoo or Soudagur: it is nearly indifferent which. The fourth I would sentence to perpetual imprisonment with hard labour at Allipore; and Cadun to imprisonment for seven years, and Sabid to three, with hard labour, in the jail of zillah Sylhet."

The third Judge (J. Shakespear) concurred in this view of the case, and the following sentence was issued accordingly.

"The Court, concurring in the *futwa*, as far as regards the prisoners Mogul, Ruzeea, Soudagur, and Nadoo, and Musst. Cadun, and deeming the prisoner Sabid guilty of being privy to the murder after its perpetration, and seeing no circumstance to render the prisoners Mogul, Nadoo, and Ruzeea objects of mercy, sentence the prisoners Mogul, Nadoo, and Ruzeea to suffer death. The prisoner Soudagur the Court sentence to perpetual imprisonment with hard labour for life in the jail at Allipore; the prisoner Mussummaut Cadun to imprisonment for the term of seven years from the present date, with labour suited to her sex; and the prisoner Sabid to imprisonment with labour for three years from the present date, in the jail of the district of Sylhet."

1823.
Dec. 5th.
BOCHA's case.

KUTRA,
against
BOCHA.

Charge—MURDER.

The prisoner ascended his neighbour's mangoe tree, and began to eat his fruit; and on being abused by the owner, immediately came down, and with three blows of his *kodalee*, or hoe, killed that person. At the recommendation of the Judge of Circuit, and under all the circumstances, capital punishment remitted, and sentence imprisonment for life.

AT the second sessions of 1823, for zillah Mymensing, the prisoner Bocha was brought to trial, being charged with the murder of one Needha. The facts of the case, as they appeared in evidence, were these. The deceased Needha and his brother Tajooa were at work in a sugarcane field, at about noon, on the 8th Jeyt 1230, corresponding with 20th May 1823, when the prisoner having climbed a mangoe tree near the spot, belonging to the deceased, for the purpose of eating the fruit, the deceased abused the prisoner on account of the latter eating his fruit; upon which the prisoner descended from the tree, and gave the deceased a severe wound on the back of the neck, and two on the left shoulder, with his *kodalee* (hoe), of which wounds he immediately died. Tajooa called to the witnesses Khosaul, Fukeer, and Ameer, who were at work in a neighbouring field, that his brother was killed; and, on their immediately coming to the spot, they saw the prisoner running off with a bloody *kodalee* on his shoulder, and found the deceased Needha lying with his face to the ground, with a severe wound on the back of the neck, and two on the left shoulder, the wounds bleeding, and the deceased quite dead. Shekoo, Choollooa, and Neamut also came to the spot, and saw the body in the state described. They then proceeded to the house of the prisoner, where the latter acknowledged, in the presence of the assembled villagers, that he had killed the deceased with his *kodalee*. He was lying on the ground agitated and distressed in mind, and calling on the villagers to kill him, as he had killed Needha. The bloody *kodalee* was found at his house. It appeared that Tajooa alone was present when the prisoner attacked the deceased; and he was so extremely deficient in understanding, as to be almost an idiot, (and was so described by the prosecutor and some of the witnesses;) so that the Judge of Circuit considered it useless to examine him at any length. He at first deposed, that he had not seen the prisoner inflict the wounds: afterwards he declared he had seen the attack, and that the prisoner gave the deceased a wound on the back of the neck with a *kodalee*, and two wounds on the shoulder; and that he (the witness) was at a distance, and on going near, he found his brother Needha yet alive, but that he died immediately after, and that he heard no previous quarrel or abuse between them. The prisoner was secured at his own house immediately after the murder by the villagers; and a Chowkeedar was sent for, in whose charge he was taken, with the corpse of Needha, to the Thana. By the evidence and the inquest it appeared, that there was an extensive and severe wound on the back of the neck, dividing the bone and one of the arteries, and also two wounds on the left shoulder; but the neck wound had doubtless been the occasion of the immediate death of the deceased. The

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kodalee produced, and which was found in a bloody state at the prisoner's house immediately after, was a formidable sharp weapon, the blade measuring seven and an half inches square, and the handle two cubits long, and the instrument weighing two seers. In the hand of the prisoner, who was a stout young man, accustomed to its use, it might at one blow have inflicted the wound on the neck, or even have severed the head altogether from the body. The prisoner, before the Darogha, at the Thana stated, that he had climbed a mangoe tree belonging to the deceased to eat the fruit, when Needha threw mangoes at him, and gave him abuse, on which he descended from the tree, and killed him with the *kodalee* which he had taken with him to work with in the sugarcane field, and that there was no other cause of enmity between them. Before the Magistrate, he denied having killed the deceased, saying that he and Needha had mounted the mangoe tree together to eat fruit, leaving their *kodalees* under the tree, and that, on his shaking the branches, Needha fell from the tree upon one of the *kodalees*, by which the wounds were occasioned, and he died; and, on seeing the blood, he ran away out of fear. He denied his Thana confession, alleging that he was beaten to compel him to confess in the presence of the witnesses Kalla and Meena, (the latter his own brother,) who deposed, however, on the trial, that they did not see him beaten or ill-treated at the Thana. Before the Court of Circuit the prisoner pleaded not guilty, stating, that he heard that Needha mounted a mangoe tree, and fell from it upon the *kodalee*; and he denied having made the Thana confession.

His confession in the first instance, immediately after the commission of the crime, and dictated by the state of his feelings, whilst yet in his own house, was satisfactorily established by the evidence of the villagers, who came immediately to secure him; and equal dependance was to be placed upon the Thana confession, as there appeared no ground for the supposition of any improper means having been used to procure the same. The prisoner's answer before the Magistrate refuted itself, it being impossible that such wounds could have ensued from simply falling on the *kodalee*; and had such been the case, it was not likely he would have taken up the bloody instrument, and in the face of the villagers, at work near the spot, have made his escape. The tree also was twenty or thirty cubits from the spot where the deceased was found. That his intention in attacking the deceased with such an instrument, and inflicting so dreadful a wound on his neck, as well as two other wounds, must at the moment have been to take his life, appeared hardly to admit of a doubt. The only circumstance in the trial of any difficulty was to ascertain a sufficient motive for the act. A quarrel was mentioned by the prosecutor as having occurred between Needha and the prisoner's younger brother Bunooa a short time previous, on account of the prisoner's cattle having eaten some sugarcane belonging to the prosecutor. But this was probably slight and temporary, as none of the witnesses, who were neighbours of the parties, had heard of it, nor had the Darogha been able to discover upon the spot (although Bunooa himself was examined) the existence of such a quarrel. The

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BOCHA'S case.

abuse for eating his mangoes must therefore be presumed to have led to the fatal attack.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner upon strong presumption of the wilful murder of Needha, and liable to a sentence of *Seasut* extending to death. The intention to kill, the Judge observed, being manifest from the nature of the instrument used; and the provocation, though sudden, arising from so trifling a cause, he felt much hesitation in urging even the absence of previous malice as any extenuation of the prisoner's crime; but taking that circumstance into consideration, and adverting to the possibility of the prisoner being more easily inflamed into a violent heat of passion after working in the sun for some hours during the hottest season of the year, together with the apparent horror with which he was seized after the act, when he lay on the ground in the presence of the villagers, and called upon them to put an end to him, as he had killed Needha, the Judge suggested in his favour a mitigation of the penalty of capital punishment.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner of the wilful murder of Needha, declared him liable to suffer death by *Kissas* for the crime.

By the Court. C. Smith, (second Judge.) "The fact seems sufficiently established. The cause was either lurking enmity, in consequence of some former quarrel, or the rage of the moment, excited by the language used by the deceased, on seeing that the prisoner had climbed up his mangoe tree to eat the fruit, or the two combined. In either case, I see no justification, nor even any thing that can be considered as alleviating the prisoner's act; for in the quarrel immediately preceding the homicide, the prisoner was the aggressor, it being the deceased Needha's tree which he climbed, and his fruit which he intended to eat. It would seem too that he did not take the instrument up the tree with him, but left it below; and on the verbal quarrel, descended the tree, took up the instrument, and, running furiously upon Needha, inflicted those wounds which occasioned instant death. Death inflicted by such a weapon, upon such provocation, is clearly wilful murder. I am of opinion, therefore, that the prisoner should be adjudged to suffer death."

J. Shakespear, (third Judge.) "I think we should always pay attention to a Judge of Circuit's recommendation to mercy, when the grounds for making it appear reasonable. For the consideration stated by Mr. Lawrence, I conceive that a sentence of perpetual imprisonment will be more fitting than a sentence of death."

W. B. Martin, (fifth Judge.) "I concur with the third Judge in sentencing the prisoner to perpetual imprisonment. The Judge of Circuit's recommendation of the prisoner to mercy seems to be founded on the consideration of the probability, arising from the circumstances of the case, that the assault on the deceased was the result of sudden passion, and not of deliberate malice. This conclusion is, I think, warranted by the evidence; and should, I conceive, operate to exempt the prisoner from capital punishment." The prisoner was accordingly sentenced to imprisonment for life.

1823.

Dec. 15th Case of GUNGAGOBIND BUNHOOJEA and others.

Held that the Court of Nizamut Adawlut are competent to impose fines to an indefinite amount, commutable to a limited period of imprisonment.

GOVERNMENT,
against
GUNGAGOBIND BUNHOOJEA, and three others.

Charge—ASSAULT, and RESISTANCE of PROCESS.

THE prisoners Gungagobind Bunhoojea, Kunhai Mookhurjea, Jye Sirkar, and Mooktaram Chuprassee, were charged with having violently assaulted the Moonsiff of Santipore, whilst employed in the execution of his duty; also for resisting the process of the Court, and destroying the same. Their trial came on at the first sessions of 1823, for zillah Nuddea.

The Moonsiff stationed at Santipore, agreeably to the orders of the Judge, went on the 17th of February 1823, to attach a house and other property belonging to one Lukhun Puramanik, against whom a decree had been ordered to be enforced by the Court of Appeal. Having arrived at the habitation, he was about to execute his orders, when he was opposed by Obeychurn Bunhoojea, the *Gomashta* of the Santipore Factory, who asserted that the house had been purchased by his father, and had been in his possession ever since. This resistance of the process of the Court was duly reported by the Moonsiff to the Judge, when the necessary orders were passed, and the Moonsiff was directed, on the 17th of May, to affix an advertisement on the outer door of the house. This order he was about to carry into execution, when he was severely beaten by the prisoners, and the written process of the Court torn to pieces. These facts were satisfactorily established by the evidence for the prosecution.

The three first named prisoners resided in Lukhun Puramanik's house, and Gungagobind was Obeychurn's cousin.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner Gungagobind of the assault, and likewise of destroying the process of the Court, and the other three of the assault only. In this finding the Judge perfectly concurred; but as he considered this a violent resistance of the process of the Court, he referred the case, deeming the prisoner Gungagobind deserving of a severer punishment than he was authorized to inflict.

The *futwa* of two of the law officers of the Nizamut Adawlut convicting the prisoners Gungagobind Bunhoojea, Kunhai Mookhurjea, and Jye Sirkar on presumption of having backed their servants in an assault, and the prisoner Mooktaram of having actually been engaged in the assault and quarrel, declared the three first liable to reprimand and reprehension, and then to be entitled to their release, and the prisoner Mooktaram to be liable to *Tuzeer*.

By the Court. C. Smith, (second Judge.) "I do not approve of our *futwa*, as far as regards the three first prisoners, seeing no sufficient ground to discredit the depositions of Roopchand, the assaulted Moonsiff, and the other witnesses. I think, however, that the measure of punishment suggested by the Judge of Circuit is excessive. Gungagobind I would sentence to one year's imprisonment without labour

and irons in the Dewanny jail, and to pay a fine of 1000 rupees, or be confined another year. The same imprisonment for Kunhai and Jye Sirkar, with a fine of 200 rupees; and Mooktaram to be imprisoned with hard labour for one year and six months."

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J. Shakespear, (third Judge.) "I concur in the conviction of the prisoners, and consider the measure of punishment proposed by the second Judge to be awarded, to be suitable to the nature of the offences which have been proved against them. Previously, however, to joining in the proposed sentence, I wish to have the power of our Court discussed by the Judges at the English sitting, in regard to the imposition of fines in criminal cases to any indefinite amount exceeding 200 rupees."

A majority of the Court having subsequently determined that the Court of Nizamut Adawlut are competent to pass sentence by fine to an indefinite amount, commutable for a limited period of imprisonment, the third Judge finally concurred in the sentence proposed by the 2d Judge in this case; and sentence was awarded accordingly.

MUSST. KUBLEE, *against* MOHUN and LUCHMUN.

1823. Dec. 15th. Case of MOHUN and LUCHMUN.

Charge—MURDER.

Conviction of beating a missing person: but the Court not being satisfied that the injury received by the missing person was of such a nature as to occasion death, sentence, under the circumstances of the case, one year's imprisonment.

THE trial of these prisoners came on at the Benares monthly sessions for August 1823. The prisoners were first taken up in August, 1814, at the suit of the prosecutrix, on a charge of having made away with Ramanund her husband. In the year 1820, the Magistrate of the city Court acquitted the prisoners, and they were ultimately committed by order of the Nizamut Adawlut. The circumstances of the case were briefly as follow. The prisoner Luchmun, with two other persons, seized the husband of the prosecutrix at his house, and conveyed him to their own in another village, with the view, it appeared, to recover from him a trifling sum he was indebted to them. Shortly after he had been taken to the house of the prisoners, as deposed to by four witnesses, the prisoner Mohun ill-treated and beat him, but not in such a way as to endanger life: beyond this, what befel him, or had become of him, did not appear; but from that day he had not been heard of. The prisoners admitted they had sent for him to their house, but alleged that he shortly after went away, leaving his turban and *dhotee* at their door, which they shewed to his relations who came to enquire about him soon after, and told them of his having left the house.

The law officer of the Court of Circuit pronounced in his *futwa*, that there was strong suspicion of the prisoners having murdered the husband of the prosecutrix, and declared them liable to confinement until the said Ramanund should be forthcoming, or information be obtained of his natural death. The Judge of Circuit did not question

1823.

Case of MOHUN and LUCHMUN.

the evidence of the four witnesses for the prosecution in the smallest degree; still he did not think that the inference to be drawn from it, taking all other circumstances into consideration, was at all conclusive of the prisoners' guilt, or sufficient to warrant a sentence of unlimited imprisonment. It was clear, he observed, that no previous enmity or malice existed between the prisoners and the person missing; and the account given by the prisoners, supported as it was by the evidence of Hingoo and Sumshar Singh, he thought by no means improbable.

The *futwa* of two of the law officers of the Nizamut Adawlut convicting the prisoners Mohun and Luchmun, upon strong presumption, of having beaten the prosecutrix's husband, (who was missing), from which beating it was probable that his death ensued, declared them liable to *Acoobut* for the crime.

By the Court. C. Smith, (second Judge.) "Though Luchmun forced the deceased, or missing Ramanund, from his house to that of Mohun, yet in what occurred at Mohun's house, Mohun seems to be the principal, indeed Luchmun is not named as having done any thing there; and, as the younger brother of Mohun, he appears to have acted under his orders in seizing Ramanund. It is Mohun too who compromised with the prosecutrix, a circumstance which I think of no small weight against him, and proved beyond all doubt, both by the oath of the prosecutrix and by his own acknowledgment. Luchmun, I would imprison for one year, for his violence in carrying off Ramanund; and Mohun, I would imprison till Ramanund appears, or until some certain account is obtained of his having died a natural death, or under circumstances that in no way inculpate the prisoner Mohun."

J. H. Harington, (officiating Judge.) "On consideration of the proceedings held upon the trial of Mohun and Luchmun, charged with the murder of Ramanund, I concur in so much of the *futwa* of the law officers of the Nizamut Adawlut as convicts the prisoners of having assaulted and beaten Ramanund, and declares them liable to discretionary imprisonment by *Acoobut*. But it does not appear to me that there are sufficient grounds of presumption against either of the prisoners, so as to convict them of murder, or to warrant their detention in confinement for an indefinite period, which may have the effect of imprisonment for life. The non-appearance of Ramanund during so many years is certainly a ground of suspicion that the ill-treatment which he received may have occasioned his death. But, on the other hand, it might be presumed, that if he had been put to death, or had died soon after he was maltreated by the prisoners, his body would have been found. It is also possible that he may have absconded to avoid further molestation from his obdurate creditors; and from the local enquiry of the police officer, this seems to be the general opinion of the inhabitants of the village, not one of whom has expressed any belief of his being murdered. On the whole, I am of opinion, that the two prisoners should be sentenced to imprisonment for a year, and then discharged."

W. B. Martin, (fifth Judge.) "My opinion coincides with that recorded by the 2d Judge. The several facts which appear to me to have

1823.
Case of MOHUN and LUCHMUN.

been satisfactorily established are, 1st. The blows which were inflicted on Ramanund by Mohun on the day on which the former disappeared. 2dly, Mohun having employed the agency of his brother Luchmun to drag Ramanund from his house, for the purpose of exacting payment of his debt; and 3dly, The compromise which he afterwards proposed to effect with the prosecutrix. These constitute, in my opinion, such reasonable grounds of suspicion against him, as to warrant the sentence which the second Judge has proposed to pass on Mohun. An equal share of suspicion does not seem to attach to the case of Luchmun, whom I would, therefore, sentence to no more than one year's imprisonment."

Thec hief Judge (W. Leycester) expressed his concurrence in the opinion recorded by the officiating Judge.

The third Judge (J. Shakespear) originally coincided in opinion with the second; but having subsequently withdrawn his name from the proposed sentence, there were two Judges, viz. the 2d and 5th, for sentencing Mohun to be imprisoned till the missing Ramanund should be found, or until certain intelligence should be obtained of his having died under circumstances not inculpating Mohun as the author of his death; and two, viz. the 1st and officiating Judge, for a sentence of one year's imprisonment against both the prisoners. The point was therefore decided by the voices of the 1st and officiating Judges, according to section 18, Regulation XXV. 1814, and the sentence of one year's imprisonment issued under their authority accordingly.

RADHAKISHEN, *against* PERSHAUD.

Charge—MURDER.

1823.
Dec. 31st.
PERSHAUD's case.

Prisoner convicted of culpable homicide, by inflicting a blow with a club on the head of a person with whom his master was struggling: sentenced to five years imprisonment.

This trial came on at the second sessions of 1823, for the northern division of Bundlekhund. It appeared in evidence, that on the 30th of Bysakh 1230, Fussly, the prosecutor was thrashing his grain in his *kullean*, when Deby Singh, *Peada* of Lolljee Mahajun, came to him and forbade him. He replied, by requesting that accounts might be settled, and that he would pay whatever might be due; but on the *Peada* insisting, he left off his work. At this time his brother Hurkissen came up, and a little after Mukoond, brother of Lolljee; and these two began squabbling, and struggling with each other, when they both fell to the ground. The prisoner, a dependant of Mukoond, coming up, struck the deceased Hurkissen a blow with a club on the head, which knocked him down, and from the effects of which he died the same night. The prisoner, in his confessions at the Thana and before the Magistrate, alleged, that the deceased having struck Mukoond with a club, he then gave a blow; and before the Court of

1823.

PERSHAUD'S case.

Circuit he stated, that the deceased struck him (the prisoner) a blow, when he returned it.

The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted, on his own confessions, of the wilful murder of Hurkissen, and liable to *Kissas*. The club with which the blow was inflicted was 3½ cubits long, and seven fingers in breadth, or six inches in circumference, at the thickest end. The Judge of Circuit did not concur in the finding of the law officer, convicting the prisoner of wilful murder, but admitted that the deceased died from a blow received from the prisoner. He therefore recommended, that the sentence of capital punishment should be commuted to imprisonment for life.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner of the wilful murder of the prosecutor's brother, declared him liable to suffer death by *Kissas* for the crime.

By the Court, C. Smith, (second Judge.) "Considering the situation in which his master or protector Mukoond was when the prisoner struck the deceased Hurkissen, I think ten years with labour will be enough. His motive, in part at least, must have been to defend and rescue his master."

J. Shakespear, (third Judge,) "I concur in the conviction of the prisoner, but am unwilling to sentence him to ten years imprisonment. In a common case of affray, attended with homicide, when nothing can be said in extenuation of the offence, we seldom give more than five years imprisonment. In this case, considerable allowance should be made. The man would hardly have done his duty, if he had looked on quietly, and allowed his master to be ill used; and the suddenness of the act, and the nature of the weapon, render it improbable that he contemplated the serious consequence resulting from the blow. I would not sentence the prisoner to a longer period of confinement than five, or at the furthest seven years."

J. H. Harington, (officiating Judge.) "The prisoner is convicted of unlawful homicide, and, under all the circumstances, I concur in opinion with the 3d Judge, that he should be sentenced to imprisonment, with labour, for five years." Sentence of imprisonment for that period was passed accordingly.

1824.

Jan. 7th.

MUSST. HICHNEE'S case.

MUSST. ANJOREA,
against
MUSST. HICHNEE.

Charge—KIDNAPPING.

On conviction of child stealing, the Court awarded

THE prisoner was tried at the second sessions of 1823, for zillah Mirzapore, being charged with the crime of stealing and selling the prosecutrix's daughter, a child of five years old. The facts of the case were briefly as follow. In Cheyt 1820, Fussly, after the Hoolee festival, the daughter of the prosecutrix, named Bughea, about five years old,

1824.

MUSST. HICHNEE'S case.

7 years imprisonment; the last 3 years, however, to be remitted, in case the prisoner should make such a discovery as might lead to the restoration of the missing child.

was missing; and search was made for her during three days without effect. On the fourth day the prisoner informed Ramdeen (the father) that his daughter had been sold for 16 rupees to Mussumaut Chuhaittee, in Muhulla Shewalee; that she was sold by one Munnowur and his wife Juhree, whom she (the prisoner) had accompanied; and that if he would send any one with her, she would point out the place. Ramdeen being a prisoner in the criminal jail, the prosecutrix accompanied the prisoner to Benares; and on the child being demanded from Mussumaut Chuhaittee, she said she had not got her. The prosecutrix, on her return to Mirzapore, complained against the prisoner in Court, when she was apprehended; but Munnowur and his wife were not to be found. The prisoner confessed before the Magistrate, and her confession was proved by the evidence of the witnesses to it before the Court of Circuit.

The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted of being concerned in stealing Mussumaut Bughea, daughter of the prosecutrix, and selling her, on her own confession before the Magistrate, proved in that Court by the evidence of the witnesses to it, and liable to imprisonment until the child should be produced. The Judge, in referring the case, strongly recommended that sentence should be passed in conformity with the *futwa*, as it might lead to the recovery of the child; and the penalty attached to a failure might prove a powerful check to child stealing: and he at the same time referred the Court to trial No. 2. of the reports of cases adjudged in 1815, observing, that although murder made no part of the charge in the present case, yet that the child must be considered as dead to its parents.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner of being concerned with others in carrying away and selling the daughter of the prosecutrix, aged five years, declared her liable to be imprisoned till the missing girl should be found.

By the Court. C. Smith, (second Judge.) "I concur in the conviction, but would not make the imprisonment indefinite, not seeing sufficient ground to conclude that the girl has been killed. Seven years, with labour suited to her sex, appears to me a proper sentence."

J. Shakespear, (third Judge.) "I concur in the conviction, and in a sentence of seven years imprisonment; but with reference to the opinion expressed by the Judge of Circuit, and with the view of recovering the child for the parents, I think the ends of justice will be best promoted by the sentence being worded conditionally; that is to say, a fixed period of four years imprisonment, and three years in addition, unless the prisoner discloses such information as may lead to the recovery of the child, in which case she may be exempted from the enforcement of the latter part of the sentence."

W. B. Martin, (fifth Judge). "I think that a conditional sentence is more likely to lead to the recovery of the child, than the absolute imprisonment proposed by the 2d Judge; and with this view, I

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concur in the modification suggested by the third Judge, viz. four years imprisonment, with labour suited to the prisoner's sex, and three years in addition, unless she furnish information which may lead to the recovery of the child.

1824. Jan. 8th. Case of CHEITRAM and others.

GOVERNMENT, *against* CHEITRAM and five others.

Charge—MURDER.

Six prisoners convicted of burning alive a woman from motives of revenge at being ousted by a decree of court. One (her husband) sentenced to imprisonment for life, and the rest to seven years imprisonment. The Judge of Circuit having declined to put the seventh prisoner on his defence on account of his youth, the Court ruled that this proceeding was irregular.

THE prisoners Cheitram, Ramroop, Churun, Gungabishen, Mun Opudiah, Khadoo Rai, and Sheodeen were charged, the first with burning alive his wife (Musst. Seoluggun), and the rest for aiding and abetting in the same. The prisoners were accused of having committed the above act, for the purpose of intimidating and preventing persons deputed to execute a decree of Court from performing that duty. The trial came on at the 1st sessions of 1823 for zillah Ghazeepore. The first witness (Namdar Khan) was a Burkundaz of Thana Bullia. He deposed, that he went to the place of the occurrence on the 12th of October, when his attention was called to the circumstance by two village watchmen. He saw the prisoner Cheitram, the husband of the deceased woman, and another person holding up, by means of a bamboo, the thatch of a hut; Gunga Bishen blowing the fire by waving a cloth, and the prisoners Churun, Khadoo, and Mun Opudiah bringing sugarcane leaves, and heaping them on the fire. On the witness's attempting to interfere, Gungabishen left blowing the fire, and with the prisoner Ramroop, and Hurree Choubee, (who was summoned as a witness on the part of the defence,) and two others, seized him, and prevented him. The witness then called to Goodra *Gorait* to pull away the thatch; but on going near, he was knocked down by one of the party, (not apprehended.) Birja *Gorait* also attempted to interfere, but was prevented. Hidayut Oolla, Chuprassee of the Court, was also held, and prevented from doing any thing to save the woman, who was consequently burned to death. The above-named Hidayut Oolla, a Chuprassee of the Court, confirmed every part of the last witness's evidence. He stated, that he went to give possession to Jootee Singh, the adversary of Cheitram, and on his cutting ten bamboos, Ramroop pushed him away, and said he would never allow possession to be given; and that Cheitram threatened to rip up his own belly, or jump down a well. The witness then went to a Thana, and brought the first named witness, Namdar, to help him, after which the woman was burned as above described, Jootee Singh having cut about 150 bamboos. Goodra *Gorait* deposed to the same facts; but added, that while the Burkundazes had gone to a

well to drink, the woman came out of her house, attended by Cheitram, Ramroop, and Gungabishen, Munopudia, and other persons not apprehended. Gungabishen brought fire; witness called the Burkundazes, who came. The thatch had two sides, and was brought from Cheitram's compound, and put up with bamboos, and the woman went in, at which time the Chuprassies arrived, in consequence of the witness having called them. Gungabishen and another person put fire on the thatch. Gunesh knocked down the witness with a club when he attempted to interfere, (the mark still remained, and was shewn to the Court.) Then, by order of the Chuprassies, Birja interfered, but was prevented. In short, the woman was burned alive. When Jootee Singh and some others would have interfered, they were driven away with sticks. Witness went to the police, and informed, and returned with police officers. The woman was not completely burned; she was half burned, and could be recognized. Birja deposed, that he went with a Thana Burkundaz and a Chuprassee to cut bamboos. While they went away to drink, the wife of Cheitram came with Ramroop, Cheitram, Gungabishen, Khadoo Rai, and Churun, (the prisoners,) bringing wood and fire, (the latter in Gungabishen's hand,) and a thatch, which they supported on bamboos. The woman went in, and Gungabishen scattered fire on it, which he blew with a handkerchief. At this time the Chuprassee and Burkundaz came, and told Goodra to put out the fire; but Gunesh knocked him down with a club. The witness also attempted to put out the fire, but was prevented by the prisoner. The woman was then half roasted, and dead. Intelligence was subsequently taken to the Thana. The body was *waked* for two days, after which the witness came away, and did not know what became of it.

The defence of the prisoner was, that the woman burned herself, because the decree holders were knocking down her house, and exercising other oppression. They called evidence to prove this assertion, and that they were at a distance. Hurnarain, Kishenkaunt, Jobraj, Manik, and Deendial supported them in this story; but it appeared that their account was previously made up for the occasion, as none of them could account for the *Gorait* having been knocked down for attempting to save the woman, a fact which could not be doubted, and which was, in itself, a material fact in the case; and though all of them could see the thatch burning, no one could tell how the circumstance happened.

The *futwa* of the law officer of the Court of Circuit convicted Cheitram, Ramroop, Churun, Gungabishen, Mun Opudia, and Khadoo Rai of burning Seoluggun alive, and declared them liable to death. The Judge of Circuit, in referring the case, observed, that though these people were declared liable to death for the crime they had committed, he did not feel prepared to recommend the infliction of so severe a sentence on the whole of them. He added, that Gungabishen and Cheitram seemed to have been the principals in the crime, and Cheit Ram might certainly have prevented the immolation of this woman (his wife) by a single word; that he, however, did not, and seem-

1824.

Case of CHEITRAM and others.

ed therefore to be the properest person to be selected, where all were deserving of death, to be made an example of; Regulation XXI. 1795, expressly declaring, that persons guilty of crimes of this nature are liable to the punishment due to murder. He therefore recommended, that Cheitram should be sentenced to death, and all the others to 14 years imprisonment. One person who was committed, a prisoner named Sheeodeen, being quite a child, (in his opinion, as well as that of the law officer, not above 12 years old,) was not put on his defence.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoners Cheitram, Ramroop, Churun, Gungabishen, Munopudia, and Khadoo Rai of assisting in burning Mussumaut Seoluggun, wife of the prisoner Cheitram, to death, declared them liable to suffer death by *Seasut* for the crime.

The Court, (present C. Smith and J. Shakespear,) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoner Cheitram to be imprisoned for life, and the prisoners Ramroop, Churun, Gungabishen, Munopudia, and Khadoo Rai to be imprisoned with labour for seven years. It appearing that a seventh prisoner, named Sheeoodeen, was committed to take his trial in this case, and with regard to this prisoner the officiating Judge had stated, that "being quite a child, (in the officiating Judge's opinion, as well as that of the law officer, not above 12 years old,) he was not put on his defence;" the Court observed, for the officiating Judge's information and guidance, that the prisoner above-named having been committed by the Magistrate, it was not within the officiating Judge's competence to decline putting the prisoner on his defence, and taking a *futwa* from his law officer with regard to him; and that by Regulation VI. 1818, the power of annulling a commitment, to which the officiating Judge's proceeding amounted, was expressly taken from the Court of Circuit collectively, and that *a fortiori* such annulment could not be within the power of the single Judge of Circuit who may hold the session. Under all the circumstances of the case, however, the Court did not think fit to rescind the Judge's order in the present instance; but they desired that he would be careful to refrain from so irregular a practice in future.

GOVERNMENT,
against
SOOMUT RAJPOOT.

Charge—PERJURY.

1824.
Jan. 16th.
SOOMUT RAJPOOT'S case.

Case of a father (aged 70) swearing falsely to screen his son, who was charged with an offence: sentenced, under all the circumstances, to 3 months imprisonment without labour.

THIS trial came on at the second sessions of 1823, for zillah Juanpore. The case was simply as follows. In a trial at the first sessions of 1823, wherein Nurkoo was prosecutor, *versus* Pirthee Singh, the prisoner Soomut was a witness for the defence, and declared on oath, in answer to a question put to him, that the prisoner Pirthee Singh was not his son. It was, however, immediately established that he was; and Soomut then admitted, that Pirthee was his son, when the officiating Judge of Circuit directed the acting Magistrate to commit him to take his trial before the Court of Circuit for perjury. The prisoner acknowledged his deposition before the Magistrate, and also that before the Court of Circuit, and pleaded old age in extenuation of his offence.

The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted on his own confession, and liable to discretionary punishment. The Judge concurred in the *futwa*, but considered the prisoner a subject for mercy, from his age (which appeared to be upwards of 70) and weak frame, and accordingly submitted his case to the favourable consideration of the superior Court, suggesting that punishment be remitted, and the prisoner released.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Soomut Singh of perjury, declared him liable to *Acoobut* for the offence.

By the Court. C. Smith, (second Judge.) "It appears that the prisoner, in a case of murder or homicide, in which his son was the accused, and committed to the Court of Circuit, was called as a witness on the part of his son to prove an *alibi*; and, with a view probably to disguise a circumstance that would have weakened the force of his testimony, denied that Pirthee Singh was his son, affirming him to be the son of another, Soomut Singh. That he swore falsely has been sufficiently established; but as he did it from so natural a feeling as the desire of a father to save his son, I would reduce his sentence as low as it can be reduced with propriety. Three months imprisonment without labour and irons would, I think, suffice. To release him altogether, without punishment, would be a bad precedent. He is at present at large upon bail."

The third Judge (J. Shakespear) entirely coinciding in this opinion, the Court, adverting to all the circumstances of the case, and to the advanced age of the prisoner, sentenced him to be imprisoned without labour and irons for the term of three months.

1824.
Jan. 26th.
GHOLAM RAI'S case.

GOVERNMENT,
against
GHOLAM RAI.

Charge—PERJURY.

The prisoner being charged with perjury, in falsely swearing that he had no intercourse with a certain Darogha, (suspected of levying contributions), was released; the false swearing not amounting to perjury, as defined in clause 1, section 4, Regulation II. 1807.

THE prisoner Gholam Rai was charged with perjury, and tried for that offence at the 2d sessions of 1823, for zillah Jungle Mehals. The case was in substance as follows. The prisoner was supposed to have defrayed the expenses of the Police Darogha of Bancoora, when the Darogha visited the village to enquire into the circumstances of a case of burglary. The Magistrate got intimation of this circumstance, and was making enquiry into it, when he heard that the prisoner had been sent for by the Darogha, and had had some communication with him. The prisoner, in the first instance, was examined as a witness, and swore that he had had no personal communication with the Darogha at the station of Bancoora. He was not credited, but sent immediately to jail. After being there five days, he petitioned the Magistrate to be re-examined, as he had not told the truth at his first examination. He was then examined without being sworn, and admitted, that he had met and conversed with the Darogha at Bancoora; that what he had said to the contrary was false, and that in that he had perjured himself. On this he was committed to take his trial for perjury. Before the Court of Circuit he admitted, that he had sworn falsely with regard to that point; but stated, that he was alarmed at the time; that he was not accustomed to Courts, and that in fact he did not know at the time what he was saying.

He was convicted by the *futwa* of the law officer of the Court of Circuit, on his own admission of perjury, and declared liable to discretionary punishment by *Tazeer*. As he admitted his offence, the Judge could do no otherwise than concur in the *futwa*, and under clause 3, section 9, Regulation XVII, of 1817. he passed sentence upon him; notwithstanding which he did not consider the prisoner deserving of punishment, and submitted the case for the consideration of the superior Court, with a recommendation, that the punishment should be remitted, and the prisoner released. He added: "The prisoner has not altered one word of the evidence given by him on oath, with the exception of having had a meeting and conversation with the Darogha: and although, under the Regulations, an individual is liable to be committed for trial for false swearing, it must be material to the case at issue. His having met and communed with the Darogha, or not, appears to me to be perfectly immaterial, until it be proved that that meeting induced him to withhold information material to the conviction or innocence of the Darogha, and nothing of this kind is proved. The crime of the prisoner is confined to his having refused, in the first instance, to admit that he had a meeting with the Darogha. Whether the man be ignorant or not does not alter the case, it being necessary to look to the intent of the Regulation; but, to my mind, the Regulation never had it in

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GHOLAM RAI'S case.

contemplation to punish a man for refusing information of this nature: if it had, as far as my experience goes, I must say that the Magistrate's calendars might be filled with cases of perjury."

The *futwa* of the law officer of the Nizamut Adawlut, convicting the prisoner of perjury, declared him liable to *Acoobut* for the offence; but the Court, (present C. Smith and J. Shakespear,) not being satisfied that the prisoner had been guilty of perjury, according to the intent of clause 1, section 4, Regulation II. 1807, did not think proper to sentence him to any punishment, and directed that he should be forthwith released.

1824.
Feb. 4th.
Case of NUBBOO SINGH and others.

BULBHUDDER,
against
NUBBOO SINGH, and sixteen others.

Charge—PLUNDERING.

On conviction of plundering a stranded boat, the Court were of opinion, that the offence of the prisoners did not amount to robbery by open violence, and sentenced them to three years imprisonment.

THE prisoners Nubboo Singh Rajpoot, Hunooman Churn Rajpoot, Hunooman Singh Rajpoot, Rago Singh Rajpoot, Poorun Chumar, Neerao Gwala, Musst. Rumoonea Kaharin, Ramdeehul Kuhar, Jussoo Kandoo, Pultun Singh Rajpoot, Mahadeodut Rajpoot, Mahadeobuksh Rajpoot, Ungnoo Singh Rajpoot, Shuker Singh Rajpoot, Bhyrodutt Rajpoot, Chooneelal *alias* Ramsahoy Rajpoot, and Rambhurosa Rajpoot, were charged with having plundered a boat laden with grain, &c. and were tried for that offence at the second sessions of 1823, for zillah Tirhoot. From the prosecutor's deposition it appeared, that he was *churundar* of a boat coming from Purnea laden with grain and elephant's teeth, to the value of 5000 rupees; that he reached the village of Kateegong, near Jowanpoor, on the banks of the Ganges on the night of the 5th of September 1823, where he stopped for the night; and that on the morning of the 6th, the prisoner Nubboo Singh came on board, accompanied by several persons, and asked some questions; and soon after a gang of 2 or 300 people arrived, and by his (Nubboo's) order plundered the boat, and threatened the persons on board if they resisted. The prosecutor being obliged to leave the boat, went to the nearest police Chowkee, and on the arrival of a Burkundaz, some of the grain (about 220 maunds) was collected, and placed in the house of one of the witnesses; but the prosecutor declared that the greater part was plundered, and the boat destroyed by the people of the village, although the boat was in a safe situation, and when he left it, uninjured. The prisoners all denied the charge; but some of them said, that the prosecutor's boat was stranded near Kateegong, and that he at first promised to give one fourth of what was saved, but after that refused to give more than one sixth, in consequence of which there was a dispute, and the grain was deposited in the house

Case of NUBBOO SINGH and others.

of a person named Cheta. This however, did not appear to have occurred till after the boat had been plundered by the villagers, by order of the proprietors of Jownpoor, which fact the Judge of Circuit considered fully proved by the evidence of several of the inhabitants of the village, who, it might be supposed, gave their testimony with reluctance against the proprietors. Were it satisfactorily established, he observed, that the boat was lost, the guilt of the prisoners would be considerably lessened; but he saw no reason to believe that this was the case, although he thought it probable, the boat was driven on the sand by the strength of the wind, and could not at that time be got off, which the prisoners and others took advantage of, and plundered the property on pretence of saving it from being lost, a practice which, he added, was but too common all along the Ganges.

The zillah law officer, who presided at the trial in the absence of the circuit Mooftee, convicted the three first named prisoners of being leaders, and ordering the plunder of the boat, which amounted to Dacoity; the prisoners Pultun, Muhadeo, and Ungnoo of being concerned in the Dacoity, and declared them liable to punishment by *Acoobut*; and acquitted the rest of the prisoners. The Judge concurred in the conviction of the prisoners, as far as regarded the plunder of the boat; but he was doubtful whether the crime established, although a most serious one, and the perpetrators of it deserving of very severe punishment, amounted to that of robbery by open violence. He therefore passed no sentence, but referred the case for the final orders of the superior Court. Concurring in the acquittal of the remaining prisoners, who were not fully recognized by the witnesses to have been present aiding and abetting in the plunder of the boat, he issued a warrant for their release.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners Nubboo Singh Rajpoot, Hunooman Churun Rajpoot, Hunooman Singh Rajpoot, Pultun Singh Rajpoot, Mahadeobuksh Rajpoot, and Ungnoo Singh Rajpoot, of plundering a stranded boat, declared them liable to *Acoobut* for the offence.

The Court, concurring in the *futwa*, and adverting to all the circumstances of the case, which did not appear to the Court to come under the class of offence defined by clause 3, section 3, Regulation LIII. 1803, sentenced the said prisoners to be imprisoned with hard labour for the term of three years. The Court observed, that the remaining eleven prisoners had been acquitted and released by the Court of Circuit.

MUSST. JOOEE, *against* BUNGSEE BAOOREE.

1824. Feb. 10th. BUNGSEE BAOOREE'S case.

Charge—RAPE.

On a charge of rape, the prisoner was acquitted; but found guilty of the minor offence of adultery, and sentenced for that offence to one year's imprisonment.

BUNGSEE Baooree was charged with committing a rape on the body of the prosecutrix, and tried for that offence at the 2d sessions of 1823, for zillah Midnapore. The prosecutrix stated, that she went into a jungle near to her own village, late one afternoon, to answer the calls of nature; that she there found the prisoner, who laid hold of her, and by force committed the crime of rape upon her. Of the two eye-witnesses, the first (Mohun) stated, that he and the other witness were passing at some distance from the jungle, when they heard voices; that he was sent to ascertain the cause of the noise; that when he approached the jungle, he saw the prisoner pulling the clothes of the prosecutrix; that she was refusing his request, and he urging it; but that, although she was a neighbour and of his own caste, he did not seize the prisoner, nor even call out to him, but returned immediately to his companion, to tell him what he had seen; that they both then ran to the spot, and found the prisoner in the very act of having carnal knowledge of the woman. The witness Bheem confirmed the story of his associate, but made it out that the woman was lying on her back, and the prisoner sitting, as he was at the time of his trial in the Court, on his hams. Both of the witnesses agreed in stating that the arms and feet of the female were at liberty; and that both parties were perfectly silent; that the prisoner, on observing them, quitted the woman, and went to them, begging them to keep the matter a secret; and that the woman walked away evidently abashed, and apparently crying, though they did not hear her voice. The prisoner at the Thana admitted that he had indulged for some time in a criminal intercourse with the prosecutrix, but denied having made use of any force. Before the Magistrate he varied his story, and wished to make it appear that the female solicited him to embrace her, but that he refused, in consequence of her being a married woman.

On the above evidence, the *futwa* of the law officer of the Court of Circuit convicted the prisoner of the crime with which he was charged, and declared him liable to discretionary punishment by *Tazeer*. The Judge of Circuit differed entirely from this finding, for the following reasons. 1st, The cry that is stated to have been heard, was that of the woman refusing the prisoner his request, but not that of a person on whom a rape was attempting to be perpetrated. 2dly, It was morally impossible to suppose Mohun should not have called out to the prisoner, when he saw a man of his caste abusing a female of his own; and, lastly, if the female were seriously objecting, she would not have been found lying down in the passive way described by the witnesses; and when the prisoner had quitted her, she would have gone to her neighbours and those of her own caste for protection, instead of returning with-

1824.
BUNGSEE BAGOREE'S case.

out uttering a syllable, and in a manner evincing shame at being caught committing a crime, rather than of being the injured party on whom a violent crime had been committed. The Judge's opinion as to the real facts of the case was in substance as follows. The witnesses, if they were to be believed at all, were going to cut wood, and they probably enough heard the offending parties conversing, and detected them; but it was necessary to save the caste of the female, and therefore the story of violence was trumped up. The woman evidently must have told her husband what had occurred; and in doing so, she must have mentioned the names of the persons whose arrival extricated her from her difficulties. One would suppose that the husband would have gone immediately to the witnesses to ascertain the circumstances of the transaction, but no such thing happened: they both deposed that they never had any communication with the husband on the subject; and the first time they were questioned upon it was by the police Darogha, and that not until five or six days after it had taken place. This story alone was, in the Judge's opinion, enough to prove that the real truth had not been told. He was inclined to give credit to the story told by the prisoner at the Thana. That the prisoner had committed adultery, there could be no doubt; but that he was guilty of the crime of rape, he did not believe; and he was therefore of opinion that the prisoner ought to be released.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of rape, committed on the prosecutrix, declared him liable to *Acoobut* for the crime.

By the Court. C. Smith, (second Judge.) "I agree with the Judge of Circuit in thinking it a case of adultery without rape. I would acquit, therefore, of the rape; but convicting of the minor crime, I would punish him by one year's imprisonment with labour. To release him would be *contra bonos mores*. The complaint to the police was made by the husband."

The third Judge (J. Shakespear) entirely concurring in this opinion, the prisoner was acquitted of the charge of rape, and sentenced, for the offence of adultery, to one year's imprisonment with labour.

1824.
Feb. 26th.
KISHEN DAS's case.

MUSST. KESHOREE,
against
KISHEN DAS.

Charge—MURDER.

The prisoner being arraigned on a charge of murder was acquitted and releas-

THE prisoner was tried on the above charge at the second sessions of 1823, for zillah Midnapore.

Shortly after the death of the husband of the deceased Rajee (the prosecutrix's fellow wife), the prisoner and his family took up their abode with her, for the purpose apparently of assisting her to cultivate her land, and to manage her affairs. He soon became master of her person, and of her property also, as he pretended to have

1824.

KISHEN DAS'S case.

purchased the little she had for 80 rupees. Latterly he appeared to have become tired of her, and they began to have disputes. Ten days previous to her death, Rajee sent for the village officers, and complained to them, that on demanding from the prisoner 14 rupees, which she had entrusted to his care on his coming to her house, he refused to restore them. She mentioned also, that she had heard him consult with his wife about taking means to destroy her, and that it was her determination to go to the Zumeendar to appeal to him for protection. The village officers proposed that one of them should attend her; but that as they had not eaten that day, they should go home to take their meal, after which one of them would return and accompany her. The witness Jadoo Ghuraee returned to perform this promise; but the prisoner having in the mean time prevailed on her to be reconciled to him, she told Jadoo that she would not go on that day, but on some other. At the expiration of ten days, although she was, as admitted by the prisoner, in the enjoyment of health, had been employed in her usual occupations during the day, had returned in the evening, taken her meal, and gone to sleep, still, by sunrise, she was not only dead, but buried, and this without the knowledge of any one of the neighbours, except Musst. Lutha, a very old and decrepid woman. These facts came out in the course of the evidence. The prisoner, on trial, named many persons, to whom he stated that he had communicated the death of Rajee. They were all summoned, and all denied his assertion; even the decrepid old woman, Lutha, above named, who was stated to have assisted him to carry the corpse to the grave, which was dug close to his own house, denied this assertion.

ed; the circumstantial evidence against him amounting to suspicion, but not to presumption of his guilt.

The Judge of Circuit, in communicating his opinion of this case, observed, that knowing that Rajee had accused him to the village officers with meditating an attempt on her life, the prisoner would on her death, especially when it happened so suddenly, have been particularly anxious to communicate the occurrence to the village watchman; and if he buried her without the intervention of the police, he would have done so in the presence of witnesses; that his conduct, being directly the reverse of this, must give rise to the strongest suspicions that the woman did not meet with her death fairly; that taking all the circumstances of the case into consideration—the prisoner's coming almost a stranger to the house of the deceased—his first getting possession of her person, then of her property—the quarrels that immediately followed the last success—her having accused him of meditating her destruction but ten days previous to her death notwithstanding her being known to be in good health, her sudden death and burial, without the knowledge of a single person excepting an old woman, who from age was decrepid and more than half blind—these were all circumstances, owing to which he (the Judge) did not consider himself justified in releasing the prisoner, by concurring with the law officer, whose *futwa* acquitted him. He therefore submitted his case for the consideration of the Court of Nizamut Adawlut. Should the superior Court, he added, concur with him, that there was violent presumption of the prisoner's

1824.
KISHEN DAS'S case.

having destroyed the deceased, his crime would admit of but one punishment.

The *futwa* of the law officer of the Nizamut Adawlut, acquitting the prisoner of the charge of having murdered Musssummaut Rajee (fellow-wife of the prosecutrix) declared him entitled to his release.

By the Court. C. Smith, (second Judge). "There may be suspicion, but none such as amounts to strong presumption: further, the body does not appear to have been disinterred for the purpose of examining its condition. There is no sufficient ground, therefore, even for saying that the deceased was murdered. The prisoner must necessarily be acquitted." The third Judge (J. Shakespear) concurring in the above opinion, the prisoner was acquitted and released.

1824.
Mar. 29th.
Case of JUDDOONATH and others.

GOVERNMENT,
against
JUDDOONATH and two others.

Charge—ASSISTING AT AN ILLEGAL SUTTEE.

On conviction of assisting at an illegal *suttee*, unaccompanied by any aggravating circumstances, the prisoners were sentenced to six months imprisonment without labour and irons.

THE prisoners Juddoonath, Parusnath, and Pershaud Chowdhree, were charged with burning a woman by *Anoomurun**, in opposition to the known Hindoo law and the Regulations of Government, and were tried for that offence at the 1st sessions of 1814, for zillah Bhaugulpore. The circumstances of the case were as follow. One Toofa, the wife of Ramlal Shookul, who died at Moorshedabad in November 1823, on receiving intelligence of his death a few days after at Bhaugulpore, was burnt on a funeral pile. From the evidence adduced on trial, it appeared that the woman insisted on performing this act, and that the prisoners endeavoured to dissuade her from it. The *suttee*, notwithstanding, took place before the police arrived at the spot. The woman was the wife of a Bramin, who, according to the *Shaster*, ought not to have burnt herself any where but on her husband's funeral pile, and was only 14 years of age. Juddoonath, her uncle, it appeared, set fire to the pile, in the presence of Parusnath, her father, and Pershaud Chowdhree, the *Gomashta* on the part of the Zemindar of the village.

The law officer of the Court of Circuit declared in his *futwa*, that the prisoners were convicted only of acting contrary to the orders of Government, in allowing the woman to be burnt. In this *futwa* the Judge of Circuit observed, that he did not agree, as it was proved that Juddoonath actually set fire to the pile, however much he might be justified in so doing by the customs and religion of the Hindoos. He therefore referred the case for the final orders of the superior Court.

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* Postcremation, in contradistinction to *Suhamurun*, or concremation.

1824.
Case of JUDDOONATH and others.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners Juddoonath Misser, Parusnath Misser, and Pershaud Chowdhree of assisting in the *suttee* of Mussummaut Toofa, declared them liable to *Acoobut* for the offence.

The Court (present C. Smith) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoners Juddoonath Misser, Parusnath Misser, and Pershaud Chowdhree to be confined without labour and irons for the term of six months.

1824.
Mar. 31st.
Case of AJAIB and SOOKHRAJ.

GOVERNMENT, *against* AJAIB and SOOKHRAJ.

Charge—PERJURY.

On conviction of swearing falsely to the identity of two persons whom the Magistrate had by way of device placed among the defendants, the Court, under the circumstances of the case, did not deem it adviseable to award any punishment.

THE prisoners were tried at the 2d sessions of 1823, for zillah Ghazeepore, charged with the offence of having wilfully perjured themselves in the manner following. In a case of assault pending before the Magistrate of the above-named district, wherein the prisoners were witnesses for the plaintiff, that officer caused some indifferent persons to be mixed with the defendants, and on the prisoners being desired to point out the persons concerned in the assault, Ajaib pointed out one of the persons introduced by the directions of the Magistrate, and Sookhraj pointed out three. The persons pointed out by the prisoners as having been engaged in the assault were of course wholly unconcerned in that case, being indifferent bystanders who had come to the *cutcherry* on their private business. The prisoners admitted the mistake they had made, but denied that it was intentional.

The *futwa* of the law officer of the Court of Circuit declared the prisoners convicted of perjury on their own depositions, and liable to discretionary punishment; and being of opinion that six months imprisonment would be sufficient, the Judge submitted the case for the consideration and orders of the superior Court.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners Ajaib Rajpoot and Sookhraj Chumar of perjury, declared them liable to *Acoobut* for the offence.

The Court (present C. Smith and J. Ahmuty, officiating Judge) concurring as to the fact of the perjury, adverting to its nature, thinking it not unlikely that it might have been unintentional, and not deeming it advisable to give their sanction to the artifice by which the witnesses were entrapped into the offence, did not judge proper to award any punishment against the prisoners, and desired that they should be forthwith discharged.

1824.
May 19th.
ALLAH BUKHSH'S case.

ALI MOOHUMMUD,
against
ALLAH BUKHSH.

Charge—MURDER.

Conviction of killing a thief with a club, no resistance having been made on his part, and no effort to seize him having been made by the prisoner: sentence, one year's imprisonment.

THE prisoner Allah Bukhsh was charged with the murder of Moteeoollah, the brother of the prosecutor, by severely beating him with a club. The trial came on at the 1st sessions of 1824, for zillah Jessore. The leading facts of the case, as detailed in the confession made by the prisoner to the Police Darogha, which was the principal evidence against him, were as follow. The plantain and sugarcane plantation of the prisoner had been repeatedly robbed at night, which determined him to keep watch, in order to detect the offender. One night, while thus employed, he saw two persons in the act of robbing his plantation. One of the two happeningto come within his reach, he struck him two blows with a cudgel, the first of which took place on his head. The man ran a short distance, and fell. His companion made a blow at the prisoner with a club, which he warded off, and called out to some of his neighbours by name. They repaired to the spot, and aided the prisoner in conveying the wounded man to the house of Kifayutoollah, the prisoner's maternal uncle; after which some of them returned with the prisoner to the scene of the occurrence, and he pointed out to them the bunches of plantains and sugarcane plants which the deceased was in the act of carrying off with him when assailed by the prisoner. The witnesses for the prosecution, Husnoo, Saleh Moohummud, and Kifayutoollah fully corroborated the prisoner's statement of the circumstances which occurred after his attack on the deceased. It was in evidence that the deceased died in about an hour after he had been conveyed to the house of Kifayutoollah; and it seemed that the blow which took place on his head, in all probability fractured his skull. The weapon, produced in Court, with which the prisoner struck the deceased, was a stout bamboo, five feet in length. In his defence before the Court of Circuit, the prisoner made nearly a similar statement to that contained in his confession to the police Darogha; and alledged, that he attacked and struck the deceased without a prior attempt to secure him, because he could not cope at once with him and his companion.

The *futwa* given on the trial convicted the prisoner of wilful murder, but declared *Kissas* to be barred by the peculiar circumstances of the case, and that the prisoner was liable to *Deeut* only. The Judge of Circuit was not prepared to coincide with the *futwa* as to the extent of the prisoner's guilt; observing, that though he might not have been justified in striking the deceased with a dangerous weapon, without some previous endeavour to apprehend him, and some offer of resistance on the part of the latter; yet it did not appear that any enmity existed between them; and it was evident that the deceased was detected by the prisoner in a felonious act, and the

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ALLAH BUKHSH'S case.

intention to kill was not fairly inferrible from the nature of the case. Under these circumstances, the Judge expressed his opinion, that the crime of the prisoner did not exceed culpable homicide of an unaggravated nature, and that a sentence of one year's imprisonment would be fully adequate to the offence.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Allah Bukhsh Moosulmaun of killing the prosecutor's brother, while the deceased was stealing the prisoner's sugarcane, declared *Kissas* to be barred, and *Deeut* incurred; and the Court, (present C. Smith,) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoner Allah Bukhsh to be confined for one year.

1824.
June 4th.
Case of JEEWUN and others.

DEWAN GHAZEE,
against
JEEWUN, and seven others.

Charge—ASSAULT and HOMICIDE.

In a case of assault attended by homicide and beating, the Judge of Circuit recommended that stripes should be inflicted; but the Nizamut Adawlut, deeming that punishment inappropriate, sentenced the prisoners to imprisonment only.

THE prisoners Jeewun Ghazee, Buksh Mahomed, Ghurreeboollah, Manah Ghazee, Arrah Ghazee, Mehendy Meah, Amjud Meah, and Haree Meah, were charged with the commission of an affray, attended with the murder of Jeewun Putwaree, brother of the prosecutor, and tried for that offence at the second sessions of 1823, for zillah Tipperah. The circumstances of this case were as follow. In the year 1229, B. S. the prosecutor, conjointly with eight other persons, took in farm *(Dur Jjarah)* the Mouza of Phend Pooshkurnee, for two years, from the *Jjarahdar* Calee Kishen, and obtained possession. The deceased Jewun Putwarree was the person appointed by the sharers to make the collections. On the 4th of Sawun 1230, corresponding with the 18th of July 1823, he was proceeding through the village, when he met with Arrah Ghazee, one of the prisoners, whom he stopt, and demanded of him some arrears of rent. Arrah Ghazee remonstrated, would neither pay the rent demanded of him, nor, as proposed by the deceased Jeewun Putwaree, proceed to the *Cutcherry* of the farmer to settle the claim, but called out aloud; when he was joined by the other prisoners, who violently assaulted the deceased, and struck him with cudgels on the head. He received four severe wounds on different parts of his body, and in consequence died in about half an hour subsequent to the assault. It was clearly proved in evidence, that the wounds were inflicted by Buksh Mahomed, Ghurreeboollah, Manah Ghazee, and Arrah Ghazee, and that Jeewun Ghazee trampled on his chest. The whole of the prisoners were present armed with sticks, and assisted in the assault. Jeewun Ghazee, in his defence, denied being concerned in the assault. He stated, that he went to the spot, where he heard some persons quarrelling, and reached it after the

1824.

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dispute had ceased. He admitted, that between himself and the prosecutor there was a dispute about the rent of the *Mouza*, within which he held some rent free land, which the prosecutor wished to deprive him of. Buksh Mahomed denied assaulting any one. He alledged, that the *Mouza* was formerly rented by him ; but had since been taken in farm by the prosecutor and his party, on which account between himself and the prosecutor an enmity existed ; that hearing a noise, he went to the spot, and saw that the people of the prosecutor had seized Arrah Ghazee. Ghurreeboollah also denied the assault. Manah Ghazee admitted that the prosecutor and eight others took the farm of the *Mouza*. He alleged, that he held some land in that village on a *jumma* of 11 rupees, on a *pottah* from the prosecutor, which he paid in full, and in excess one rupee as *Khurcha;* and that on the day of the dispute, Jeewun Putwarree and others laid hold of Arrah Ghazee for a *baigar* or coolee. Arrah Ghazee asserted, that the prosecutor and his party seized him for a *baigar*, and beat him. The remaining prisoners simply denied being concerned in the assault. The depositions of two persons were taken as evidence on the part of the prisoners, when, finding from their statement of the case that they corroborated the charge of the prosecutor, the prisoners remonstrated against further evidence being taken ; which the Court complied with. The Judge of Circuit was of opinion, that the assault was clearly proved, and that it caused the death of Jeewun Putwarree, by the wounds inflicted on his head by Buksh Mahomed, Ghurreeboollah, and Manah Ghazee, and that Jeewun Ghazee did, when the deceased had been struck to the ground, inhumanly trample on his chest. The prisoners were all related to each other ; the three first being brothers ; the two next their cousins, and the three last sons of Buksh Mahomed and Jeewun Ghazee. The four first, the Judge considered the most culpable, and in an equal degree : Arrah Ghazee in the next degree. But the three last being mere accessaries, led into the scrape by their fathers, and being mere youths, scarcely arrived at years of discretion, he thought they should not be subjected to any further punishment than what they had already experienced of nearly a twelve month's imprisonment.

The *futwa* of the law officer of the Court of Circuit declared the five first prisoners guilty of culpable homicide, and liable to discretionary punishment ; and the remaining three entitled to their release, in which the Judge concurred ; and, as the homicide was unintentional, but committed in the prosecution of an unjustifiable design, he deemed Jeewun Ghazee, Buksh Mahomed, Ghurreeboollah, and Manah Ghazee deserving of 25 stripes of the *corah* each, and 10 years imprisonment with hard labour ; Arrah Ghazee of 25 stripes of the *corah*, and 7 years imprisonment with labour. The remaining three he directed to be released.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners Jeewun Ghazee, Buksh Mahomed, Ghurreeboollah, Manah Ghazee, and Arrah Ghazee of assault attended with homicide and beating, declared them liable to *Acoobut* for the crime.