

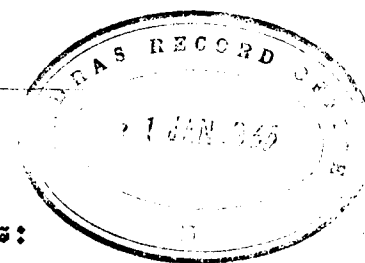
THE
CIRCULAR ORDERS
OF
THE COURT
OF
SUDR UDALUT,

From 1805 up to 31st Dec. 1846.

Platras:

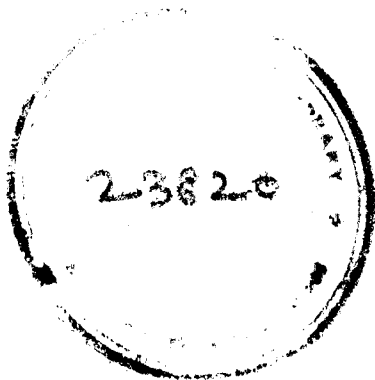
J. B. PHAROAH.

1847.



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CIRCULAR ORDERS

OF THE

COURT OF SUDR UDALUT.

29TH JANUARY, 1805.

The Court having taken into consideration the prayer of the petition, are of opinion, that, although the Regulations do not express that Company's papers shall, or may, be taken as security for the appeal costs, they do not forbid it; it therefore appearing to rest in the discretion of the Court to cause its admission or rejection.

Ordered, that the tender of the Government Paper so as to cover the appeal costs or other costs in process of the Courts be received by those Judges to whom made in security for the performance of the decree, for the costs that may be awarded on appeal, and for the fees of the pleaders, as specified in Section XII. Regulation IV. A. D. 1802.

10TH DECEMBER, 1805.

It being understood by the Sudr Court that persons who have suits pending therein, and who, on account of the remoteness of their situation or other causes, are unable personally to attend, are in the habit of sending to the said Court; some other person with a Mooktearnamah, or merely a Vakalutnamah, or by post to one of the Vakeels attached to the said Court; and as the Judges of the Sudr Udalt do not deem these Mooktearnamahs, and Vakalutnamahs, to be worthy of credit, both parties in the suit are exposed to various difficulties.—It is therefore deemed expedient that orders be sent to the Registers of the respective Zillahs directing them to attest and sign in verification, all papers of this sort, such as Mooktearnamahs, Vakalutnamahs, Ziminees, &c., which the parties may wish to transmit to the Sudr Court, in the same manner as prescribed by Clause second, Section IX. Regulation XVII. A. D. 1802.

Vide C. O. 22d
February 1815.
and C. O. No. 94.

20TH SEPTEMBER, 1806.

Letter from the Secretary to Government, dated 2d September 1806.
Judicial Department.

To the Acting Register to the Court of Sudr and Foudaree Udalt.

Sir,

Received by the Right Honorable the Governor in Council
letter of the 22d ultimo, and to ac-

Circular Orders of the

quaint you for the information of the Court, that instructions have been issued to the Accountant General and Civil Auditor, to make arrangements for remitting the fees of the Vakeels of the Sudr Court to the Presidency, through the medium of the treasuries of the Collectors.

15TH NOVEMBER, 1806.

Circular to the Collectors.

Sir,

The Sudr Udalut having represented to Government, a difficulty in obtaining payment of fees due to their pleaders, I request, in order to remove such difficulty, that you will receive all such sums as may be tendered to you by the Zillah Judge on that account, and grant bills for the same upon the Right Honorable the Governor in Council in favour of the Register for the time being of the Sudr Udalut, payable at thirty days' sight.

You will state in the body of the Bill value received of _____ on account of fees due to the pleaders of the Sudr Udalut, transmitting me a monthly register of such Bills as you may draw for the amount of which you will credit the head of "General Treasury."

Any further information relative to the particular causes on account of which the fees are received, or to whom they are payable, will be transmitted direct from the Judge to the Sudr Udalut; your duty is confined to receiving the money and granting the bill as above directed.

I am, &c.

(Signed) CECIL SMITH, A. G.
(True Copies.)

(Signed) E. C. GREENWAY,
Secy. to Government.

FORT ST. GEORGE.
Acct. Genl's Office,
9th October 1806.

20TH JANUARY, 1807.

The Court recognizing the expediency of introducing the utmost uniformity in all the several Courts, and deeming it to be essential that the usage of the Sudr Udalut, should as far as possible regulate that of the inferior Courts.

Ordered, that the Judges of the Provincial Courts, and the Zillah Udaluts be, by precept, instructed to provide chairs for the accommodation of their Law Officers in Court, taking due care in the disposition thereof, to place the seat of the Mooftee on the right hand of the bench; and that of the Pundit on the left.

24TH MAY, 1808.

"The Register lays before the Court the following letter from the Register to the Provincial Court in the Western Division, submitting by

Court of Sudr Udalut

direction of that Court, draft of a Regulation for modifying certain provisions hitherto in force, regarding the securities required from parties Appellant and Respondent."

The draft proposed by the Provincial Court is founded on the supposition, that an appeal from the decree of a lower Court cannot in any case be admitted, until the security prescribed in Clause fifth, Section XII. Regulation IV. A. D. 1802, shall have been furnished by the party appealing; and it has for its object to relieve from the supposed operation of the said Clause, under the erroneous construction thereto given, Plaintiffs non-suited and wishing to appeal; and to establish a process in cases wherein defendants appealing may be unable to give the security thereby required.

The security, in question, consists in respect of real property in a sum equal to one year's produce of the property adjudged; and in all other cases, in an amount equal to the sum of money or value of the thing decreed.

And as stated in the Clause, the security is required for the express purpose of suspending the execution of the decree appealed from—during the appeal.

In applying Clause fifth to any particular case of appeal from the decree of a Zillah Court, it is obviously essential, in the first place, to inquire how far such security is necessary for the purpose noted; for if it should be found that the decree complained of has not transferred the possession of property, and that no part thereof which required execution under the Regulations could be suspended, it must of course follow that such case was not in the contemplation of the Clause referred to.

But in the case of non-suit there is no transfer of property; and in a decree to that effect there cannot be any part, wherein executory process could issue, save in what regards the payment of fees, which under Section IX. Regulation X. A. D. 1802, may not be stayed or postponed, in consequence of an appeal. There is not any part of such decree to suspend, and in the event of an appeal therefrom, cannot be any object in demanding security for the purpose of suspending its execution.

Hence plaintiffs non-suited and appealing, are not under the existing Regulations subject to the operation of Clause fifth, aforesaid.

With regard to defendants appealing the case is different. But although the decree they appeal from does adjudge a transfer of property, and must at the demand of the plaintiff, who has made good his claim, be carried into execution, unless the security specified in Clause fifth shall have been furnished; still the refusal or omission of the party appealing to produce such security cannot possibly constitute a ground for rejecting his petition of appeal.

In all authorised cases of appeal the admission of the petition of appeal, and the suspension of process of execution on the decree appealed from, depend upon the tender of different securities. The appealing party, desirous of staying execution of the decree passed against him, during the trial of his appeal from it must at the time of preferring his appeal, or within a reasonable time to be fixed for the purpose, deliver

the particular security provided by Clause fifth. If the appellant do not give such security, and the decree shall consequently be put in force against him, *notwithstanding his appeal*, the prescribed security is to be taken from the respondent, the winning party in the lower Court, in whose favor the decree is executed, for the due performance of whatever judgment may be passed on the appeal; and without such security the decree should not be executed, but the property adjudged should be held in attachment during the appeal according to Clause ninth, which provides for cases, "wherein neither the Appellant nor Respondent may be able to give the prescribed securities for staying the execution of the decree."

Section XIV. of Regulation IV. A. D. 1802, is calculated to provide against any transfer, pending an appeal to a superior Court, of property adjudged to the plaintiff in the lower Court, which shall have been left in possession of the defendant, appealing, under the prescribed security, or of which possession shall have been granted to the plaintiff, in consequence of the defendant's failing to give such security.

The several Clauses, bearing upon this subject in Section XI. of Regulation IV. have analogous Clauses in Section X. of Regulation V. 1802, respecting appeals to the Sudr Udalut; to which the principles of the rules contained in Section XIV. of Regulation IV. are therein declared to be equally applicable.

With this impression as to the adequacy of the provisions of the existing Regulations to every purpose which the suggested modification is intended to answer, the Court are of opinion that the proposed new Regulation is wholly unnecessary.

On reference to the extract from the proceedings of the Provincial Court, accompanying the draft sent up, the Court observe that in the view taken of the question by the Second Judge, he did not concur with the First Judge in recommending the new Regulation for adoption. The Court have, however, on two former occasions been called upon to explain the application of Clause fifth, wherein it had been construed in a sense similar to that held by the First Judge, and the present recurrence leads them to apprehend the error may have obtained more generally than they had at first supposed.

With a view therefore to guard against future inconvenience to parties appellant, the Court have resolved to communicate their construction of the point, which has been discussed, for the information and guidance generally of the Provincial and Zillah Courts.

Under Section XII. Regulation IX. A. D. 1802, it is ordered that all proceedings and documents, received from the Provincial Court in the Western Division, be with extract of these proceedings transmitted to the Acting Chief Secretary to the Government, for the purpose of being laid before the Honorable the Governor in Council.

Answer from Government, 4th May 1808.

I am directed by the Honorable the Governor in Council to acknowledge the receipt of your letter of the 8th March last, and to acquaint you that the Governor in Council concurs entirely in the opinion stated by the Court, that the provisions of the existing Regulations respecting the securities to be taken from parties engaged in suits require no alteration.

30TH AUGUST, 1808.

The Register lays before the Court the following letter from the Secretary to Government in the Judicial Department, communicating the Resolution of the Honorable the Governor in Council that all indents for stationery required in the Judicial Department shall be regulated and sanctioned by the Sudr Udalut.

The Register also lays before the Court the draft of a form of indent for stationery, shewing the supply required, the quantity received and expended in the preceding year, and the quantity remaining at its close.

Ordered, that a copy of the above form* be transmitted to each of the Provincial and Zillah Courts, by precept commanding strict observance thereof, as well in regard to the description of paper, on which the form is drawn out, as in all other respects.

And the Judges in the preparation of their indents agreeably to the See Appendix A form transmitted will, in filling up the 6th column, "supply required"—keep in view the rules contained in Mr. Secretary Greenway's letter of 22d June last, and the provisions of Regulation IV. A. D. 1808, which, by prescribing the use of stamp paper for decrees of Court, exhibits, and other documents, and pointing out the mode in which such paper shall be furnished, must of consequence lessen the amount required from the Board of Trade.

20TH DECEMBER, 1808.

Ordered, that the security bond be transmitted to the Provincial Court in the Northern Division, with directions to return it to the Zillah Court there to be deposited until the decree of this Court shall have been executed.

And the Provincial Court will at the same time instruct the Judge of the Zillah of Masulipatam—and similar instructions will be by them sent to the other Judges in the Northern Division—to keep in his possession all securities for costs of suit in appeal, certifying to the appeal Court that such securities have been received from the parties, and that they are by him considered to be fully adequate to the purpose for which they are intended.

8TH AUGUST, 1809.

The Court resolve that a copy of the letter be with one set of the specimens of stamp paper transmitted to each of the Provincial and Zillah Courts under its superintendence, and that they be instructed to deposit them among their records as specimens to refer to in case any doubt may arise in regard to the paper prescribed to them.

The Court at the same time think it necessary to observe that it can only be permitted that one side of the stamp paper should be written on, and that in each division some standard should be determined on as the rule by which the number of lines and words to be admitted in proportion to the size of each species of stamp paper may be publicly known;

* Form omitted.

Vide C. O. 28th
June 1828,
and
C. O.
No. 25.

but the Court are of opinion that, owing to the different languages and manners of writing which take place in the distant parts of the Provinces of the Presidency of Fort St. George, any standard transmitted from this Court might be liable to error, they, therefore, resolve that the several Provincial Courts be instructed to communicate with the Zillah Courts in their respective divisions and to fix some standard adapted for the languages and customary manner of writing in the respective divisions.

To the Register to the Court of Sudr Udulat at Fort St. George.

SIR,

Agreeably to the requisition contained in your letter of the 16th June, I forward herewith twenty-five specimens of stamp paper.

There are ten different sizes of stamp paper in each bundle of specimens, and they are numbered from 1 to 10; the impression of the die, and the purpose for which each of the different sizes are used, are entered on the face of the specimens. For instance, size No. 1, is used for three different purposes,—1st, for Sunnuds for Cauzees and Vakeels; 2d, It is used for law papers, value 2 rupees; 3d, It is used for Rowannah papers, value 20 rupees. The impressions of the corresponding dies will be found stamped on the specimen with an explanatory note, viz., that it is either for Sunnuds or law papers or Rowannahs.

I do not know what I can add in explanation of the specimens beyond what will occur on an inspection of them and reference to Regulations cited.

20th July, 1809.

(Signed) J. H. PEILE,

Supt. Stamps.

7TH NOVEMBER, 1809.

Having observed, as well from a perusal of the foregoing letters, as from an examination of the abstract Registers of Causes decided in the Zillah Courts, that a difference of practice has prevailed in cases where the defendants have died pending the issue of the suits, the Court consider it expedient to determine, on general principles, the process to be observed in such cases.

When the Defendant dies after the pleadings have been filed, the witnesses examined, and the exhibits have been received, the case admits of no difficulty. The parties have been fully heard, and it remains with the Judge to pass a decree on the merits of the cause, in conformity with Section IX. Regulation III. A. D. 1802, when if the decision should be against the Defendant, his estate is liable to all costs of suit.

For cases, wherein the Defendant dies at any period after the institution of the suit, and before the cause has been fully investigated, there appears to be no express provision in the Regulations. There needs however little argument to show the error of dismissing the suit in such cases with costs against the plaintiff, for he must either be permitted to include the amount of such costs in a new suit against the heirs of the deceased Defendant, or be made to suffer by an event over which he could have no control. The latter mode would be obviously unjust; the former, that of permitting the costs to be included in a new suit, would increase the expense of litigation without any concomitant advantage; it

would serve no other purpose than ultimately to impose on the party cast, an additional burden, for which there seems to be no just cause.

The Court are, therefore, of opinion that in these cases a summons should be issued to the heirs of the deceased defendant, in other words, that the Plaintiff should be allowed to continue his suit. This mode of proceeding appears to be sanctioned by the principles of Section V. Regulation III. A. D. 1802, which permits a plaintiff to supply a defect in his original suit, which may have arisen from his own mistake, inadvertence, or other cause. It is moreover consonant to that rule of equity which is found to correspond with the law of India, viz. "That if any property or right in litigation, vested in a plaintiff is transmitted to another, the person to whom it is transmitted is entitled to supply the defects of the suit, if become defective, and to continue it, or, at least, to have the benefit of it, if abated. And that if any property or right, before vested in a Defendant, becomes transmitted to another, the plaintiff is entitled to render the suit perfect, if become defective, or to continue it, if abated, against the person to whom the property or right is transferred."

It will of course be observed that the foregoing rule applies only to suits wherein a right or property is litigated; it is wholly inapplicable to actions for the redress of injuries. In these cases, the suit terminates on the death of either party, and the assessment of the costs to be paid by the respective parties of their representatives, must be left to the discretion of the Judge. But on general principles the Court are of opinion that where suits may terminate, in consequence of the death of either party, without any default, the surviving party should pay only the costs which he may have incurred, and that the claim of the Vakeel of the deceased party should be enforced against his estate, under the security which he is required to give before the Vakeel can act.

30TH MARCH, 1810.

Ordered, that the Western Provincial Court be instructed that summonses and orders to Nazirs are not within the provisions for stamp paper; and that the depositions of *virá voce* evidences, taken down in Court, being exclusively for the use of the Courts, before whom such witnesses are examined, and being prepared by the Courts to remain with their own records, are not required to be written on stamp paper.

But all copies of such papers, as well as copies of any judicial papers, which may be furnished to the parties in causes, their Vakeels, or other persons, on their application, or in consequence of any regulation requiring them to take such copies, must be transcribed on stamp paper.

Vide C. O.
24th Dec. 1817.
26th June 1823.
6th May 1824.
8th June 1829.

And the Court direct that the Western Court of Appeal be further instructed, that the receipts of pleaders for their fees, and Vakalutnamahs, Moaktarnamahs, security bonds, Ikrarnamahs, and Razeenamahs, delivered to the Courts of Justice, are within the provisions of Sections X. and XI. Regulation VIII. of 1808; the payment for fees being from individuals to individuals, though made through the Courts; and the above descriptions of papers being all *legal instruments*.

10TH MAY, 1814.

The Court, advertent to the average number of causes decided in the Zillah Courts during the last year, consider it proper to adopt a rule which appears to have been established by the Sudr Dewanee Udalt at Calcutta; and they accordingly direct that whenever the number of causes decided on trial, (exclusive of non-suits upon default, and adjustments by Razeenamahs), either by the Judge, the Assistant Judge, or the Register of a Zillah Court shall fall short of ten, the reasons which may have prevented the decision of more causes shall be stated in the letter accompanying the monthly abstract Register, prescribed by Section X. Regulation XIII. of 1802.

Vide C. O.
21st Feb. 1815
21st Decr. 1822
28th June 1831
and
C. O.
No. 1.

In fixing this limitation the Court desire to have it understood that they do not consider ten to be the average number of causes which may reasonably be expected to be decided monthly by each of the officers above-mentioned. The Court, however, will have regard as well to the time occasionally occupied in the investigation of particular causes, as to other accidental circumstances which may sometimes prevent the passing of a greater number of decisions, and which indeed the Court will be always ready to admit in explanation of even a lesser number, provided such circumstances be stated for their information.

The Court further direct that the attention of the Zillah Judges be called to that part of Section X. Regulation XIII. of 1802, which prescribes that the Abstract Register for each month shall be despatched to the Sudr Udalt by the 15th of the following month.

The Court likewise direct that in the preparation of the half-yearly reports of causes depending, prescribed by Section XI. Regulation XIII. of 1802, the Zillah Judges will be careful to furnish the explanation required in the column of "Remarks," when any suits are entered in such half-yearly report, which have been inserted in any preceding half-yearly report.

4TH AUGUST, 1814.

Vide Act No.
XXIII of 1840.

By clause CXIII. of the 53d of George the Third, Cap. 155, the Courts of Sudr and Foujdaree Udalt, are empowered to execute or cause to be executed upon all persons subject to their jurisdiction, all manner of lawful process of arrest within the limits of the Town of Madras, provided such process shall be in writing, and shall have under written or endorsed thereon, or otherwise annexed thereto, a translation thereof or of the substance thereof, in the English language and character, signed, by one of the Judges of the Court.

Vide C. O. No.
77.

This specific enactment would seem to preclude the execution of process, issuing from any of the lower Courts within the jurisdiction of his Majesty's Court; and it therefore becomes necessary to modify the instructions contained in the circular letter of the 2d October, 1804.

The Court, therefore, direct that when a Judge, or Magistrate, of a Zillah Court, or a Court of Appeal and Circuit shall have occasion to issue process of arrest, either criminal or civil, against a person who shall have taken refuge within the limits of the jurisdiction of the Supreme Court of Judicature, such process shall have endorsed thereupon, or annexed

thereto, a translation thereof in English, and shall be enclosed in a letter addressed to the Register of the Court of Sudr and Foujdaree Udalt, to be delivered by the person or persons charged with the execution of the said process, whereupon an endorsement to the following effect shall be made thereon under the signature of one of the Judges of the said Court, and the process shall be delivered to the person or persons to whom it shall be addressed. Vide C.O.No.85.

Form of Endorsement.

To _____ Greeting.
These are to command you that you take the body of the within named defendant A B. in satisfaction of the annexed warrant.

Given under my hand this day of _____ in
the year of our Lord 181 _____
(Signed) C. D.
Puisne Judge of the Court of
Sudr and Foujdaree Udalt.

17TH JANUARY, 1815.

It has occurred to the Court that in making up the record of proceedings in cases of appeal, the translation of several documents might be omitted without inconvenience, while the establishments of the lower Courts would be relieved from a great deal of unnecessary labour. The Court, therefore, direct that henceforth the translation of the notice, required by Section II. Regulation II. of 1811, to be served upon the Defendant, his accredited agent, or representative—of the securities furnished by the parties respectively—of Vakalutnamahs executed to Vakeels—and of summonses to witnesses, be omitted; and that, in lieu thereof, a short memorandum shewing the date, &c. of the several processes and documents above-mentioned be inserted as follows, viz.

No. _____ Vakalutnamah of the Plaintiff
nominating _____ to be his Pleader, dated
the _____

No. _____ security bond of _____
binding himself to be security for the fees of the Pleader employed by
the Plaintiff, dated _____

No. _____ Notice to the Defendant, requiring his appearance,
&c. dated the _____

No. _____ security bond of _____
binding himself for the personal attendance of the Defendant when re-
quired, and for the performance of the decree, dated the _____

No. _____ summons to the witnesses _____
requiring their attendance on the _____ dated
the _____

The same course is to be pursued with respect to any other process or order of the Court, which may be issued pending the cause, and shall not be connected with its merits.

Circular Orders of the

The translation of the record will then be limited to the plaint, the answer, the reply, and the rejoinder, and the supplemental pleadings when admitted, the deeds and documents filed by the parties, their examinations if taken, and the examinations of the witnesses, together with the decree of the Court of original jurisdiction; and in cases which may be decided by the Provincial Court in appeal will be added the petition of appeal, the answer, reply, and rejoinder, &c. filed in that Court with the judgment on the appeal.

The originals of the processes and documents above-mentioned will continue to be sent up with the original record of proceedings in each case.

Vide C. O.
No. 31.

The Court further direct that in all cases wherein a native date may be mentioned, the corresponding English date shall be specified.

21ST FEBRUARY, 1815.

The Court having had under consideration the monthly reports received from the several Courts of Judicature, for the months composing the half year which expired on the 31st December last, observe that the number of causes decided on trial monthly by the Judges, the Assistant Judges, and the Registers of the Zillah Courts respectively has but in few instances, amounted to the number of ten; and that the reasons assigned for the deficiency are in most cases less satisfactory than the Court could desire them to be, while in other cases the instructions issued under date the 10th of May last have been altogether neglected.--The instances in which this neglect has been shewn will be the subject of particular animadversion.

Vide C. O. 31st
Dec. 1832 and
C. O. No. 4.

The Court, however, deem it expedient to recall the attention of the Courts, generally, to the Circular precept of the 10th May last, in which it was observed that the Court did not consider ten to be the average number of causes which might reasonably be expected to be decided monthly by each of the judicial officers. On a further consideration of the subject, they are satisfied that the number of decisions required is moderate, and that though the Judges and the Registers may occasionally by a pressure of business on the criminal side of the Court, be prevented from deciding more than ten causes, satisfactory reasons can very seldom be assigned for their deciding less than that number, or than sixty in the half year; and that the Assistant Judges whose duties are restricted to the trial of civil suits, cannot have any solid plea, except sickness, to urge in excuse for the number of their monthly decisions falling short of twenty, or one hundred and twenty in the half year.

In again recording their opinion that the number of decisions above described may be fairly required from the respective judicial officers, the Court deem it proper to state for general information, that they will consider it their especial duty to pay strict attention to any deficiency that may occur, and to the reasons assigned for it, in order that no doubt may remain that the powers of the judicial establishment are fairly and zealously applied to the purposes of its institution.

22D FEBRUARY, 1815.

From the above communication it appears that it has been the prac-

Court of Sudr Udalt

tice in the Zillah Court of Bellary to register Vakalutnamahs in the register books of the Zillah, and to charge upon such registry, the fee authorized for the registry of certain deeds by Section XIV. Regulation XVII. of 1802.

The Judge states the practice to have originated in consequence of the Circular orders issued from this Court, and recorded in their proceedings of the 10th December, 1805. The orders referred to have been misconstrued by the Judge, they direct that Mookhtarnamahs, Vakalutnamahs, Zaminees, and other like papers shall be attested and signed in verification by the Register in the same manner as is prescribed by Clause section IX. Regulation XVII. of 1802, and the reasons for such order are stated to be, that great negligence having prevailed in the mode of transmitting authorities to the Vakeels at the Presidency to act on behalf of persons in the country, Vakalutnamahs, &c., were produced in Court which the Judges did not deem to be worthy of credit; the consequence of which was that the parties in suits were exposed to various difficulties.

Regulation XVII. of 1802, establishes a registry, for certain particular deeds which are enumerated in Section III. of that Regulation, and no deed other than such as are there set forth can be registered under the provisions of that regulation.

The attestation required by the Court to Vakalutnamahs, &c., is to be made by the Register of the Court of Judicature, causing the party executing such Vakalutnamah (whether it be the principal or his Mookhtarkar) to sign the same in his presence, and afterwards subscribing his name and official designation, with the date on which the instrument was so executed in his presence.

The levy of fees upon the registry of Vakalutnamahs under the misconstruction above adverted to being unauthorized and illegal, it is ordered that in all cases where it is practicable the fee or fees so received be returned by the Register.

3D APRIL, 1815.

The Court of Sudr Udalt having deemed it conducive to regularity and dispatch in conducting the trials of civil causes that a general form of proceeding should be observed in the several Courts of Judicature, a form has accordingly been drafted, and being approved by the Court, it is ordered that copies be transmitted to the several Provincial Courts of Appeal for their information and guidance, together with instructions to forward transcripts thereof to the Judges of the Zillahs within their division, and to direct that they will conform thereto in their future proceedings.

FORM.

In cases where the Defendant may not appear, or may refuse to give answer, the motion of the Plaintiff's pleader to have the cause set down for trial *ex-parte*, and the order of the Court to that effect will occupy the numbers succeeding the report of the Nazir; and the Plaintiff's exhibits, list of witnesses, &c., will follow in ordinary course.

Should the matter in dispute involve the examination of accounts, the Provincial and Zillah Courts will of course recommend to the par-

ties to go to arbitration, under the provisions of Regulation XXI. A. D. 1802, and the acquiescence of the parties in such recommendation or their rejection of it with the order of Court, which may be passed in consequence, should be entered on the record, whether it be for referring the suit to arbitration or setting it down for trial by the Court.

The several Courts being vested with a discretionary authority to reject vouchers tendered to them by the parties in suits, assigning their reasons for such rejection, the Court have considered it to be proper that a general form should be observed in such cases and the following form appearing to be free from objection is enjoined for general observance.

Provincial or Zillah Udalt.

Suit No. (Name.)
(name) Defendant. of (name) Plaintiff-Versus

Exhibit on the part of (P. or D.) "Rejected" for the following reason.

(Here insert the reason or reasons) returned in Court this day of A. D.

(Signed) Judges name.

If not appealable, or if appealable, and the party does not signify his intention to appeal, the Court is to pass an order to the Nazir, to carry the same into execution, by receiving the amount from the party cast—and if not paid in () days to levy the same by the attachment, and sale of his effects by public auction, of which he is to give due notice and to keep regular accounts of sales, to be referred to by the No. of the cause in the Register if at any time necessary.

Should a petition of Appeal be admitted, on the enactment of Clause 6, Section XII. Regulation IV. 1802, being complied with and noticed in the diary, the petition is to be indorsed, and transmitted as prescribed by Clause 7, and the notice to be given to the Appellant is also to form part of the record and to be referred to in the diary.

The Court have observed that Vakeels have not unfrequently been permitted to introduce into the questions which they have proposed almost the whole of the evidence which their witnesses were expected to deliver. It is evident that a mode of examining which leaves little for the witness to add but a simple asseveration, cannot be favourable to the discovery of truth, but must, on the contrary, facilitate concealment, and afford strong temptation to the assertion of falsehoods which can only be detected by close cross-examination.

The Court trust that the Provincial and Zillah Courts will watch over and correct the practice of the Vakeels in this particular; directing them to propose their interrogatories in such general terms as shall simply elicit the information which the witnesses may possess on the points at issue; and carefully to avoid leading questions which may suggest a particular answer, or may have a direct tendency to such suggestion.

26TH DECEMBER, 1816.

Read again letter. dated the 3d instant, from the Secretary to Govern-

ment in the Judicial Department, conveying the approbation of the Governor in Council to the forms of statements submitted with extract from the Court's proceedings of the 21st ultimo.

The statements in question are intended to convey as much as possible of the information required by the Honorable Court of Directors in the 72d paragraph of their letter, dated the 29th April, 1814, and they are to be furnished half-yearly by the several Courts.

In order to facilitate the preparation of these statements by the Zillah and Provincial Courts respectively, it is necessary that in the monthly Abstract Registers of causes decided the situation in life of the parties in each suit should be described whether as Zemindars, Renters, or Ryots, &c., and the same particulars should be stated in the register of suits filed. The several Zillah Judges will therefore issue the requisite instructions for this purpose, and they will also issue such other instructions as may appear to them calculated to attain the object in view.

The columns headed "instituted and referred" are intended to contain the number and amount of suits instituted or referred during the preceding six months, and not the number and amount of suits instituted or referred, and remaining undecided at the date of the statement. The Court are not aware that any other explanation of these statements is necessary; but if doubts should arise with respect to any point connected with them, the several Courts will hasten to submit such doubts for the instructions of the Sudr Udalt.

The Court direct that a copy of the Form* A. be transmitted to each of the Zillah Courts, with instructions to despatch the requisite statement to the Court of Sudr Udalt as soon as possible after the 1st of January and 1st of July in each year, beginning with July next ensuing.

The Court also direct that a copy of the Form* B. be sent to each of the Provincial Courts with the like instructions.

4TH MARCH, 1817.

The Court have observed in the reports submitted to them several cases in which decrees have been passed by Village Moonsiffs for sums beyond the amount to which their jurisdiction is limited by Clause first, Section V. Regulation IV. of 1816, and their directions have been required as to the mode of procedure to be adopted in such cases by the Zillah Judges when complaints are brought before them of such excess of authority.

The Court deem it advisable to communicate their opinion on this subject for the guidance of the lower Courts.

No direct interference or control is provided for, to be exercised by the Zillah Judges over the Village Moonsiffs under the Regulations, except on the charges specified in Clause third, Section IV. Regulation IV. of

* Forms omitted.

Circular Orders of the

1816. But it is provided by Section XXIX. of the same Regulation, that the decrees of Village Moonsiffs shall not be carried into execution in less than thirty days after the date on which copies of the decrees may have been furnished or tendered to the parties or their Vakeels. Section XXX. prescribes that applications shall be made by the parties for the enforcement of the decrees upon which the property of the defendant shall be attached, and that notice shall be sent to the District Moonsiff who will send a Peon to sell the attached property.

Vide C. O. 1st
Dec. 1817.

Now it is evidently the duty of the District Moonsiff to satisfy himself of the legality of the decree which he is called upon to execute, by reference to the reports which the Village Moonsiffs are directed to transmit to them every month, by Section XXXVI. Regulation IV. of 1816; and a District Moonsiff enforcing an illegal decision would render himself amenable to the penalties of some one of the Clauses of Section VII. Regulation VI. of 1816, according to the culpability of his act. No evil therefore can accrue, in general, from illegal decisions passed by Village Moonsiffs, as they would remain a dead letter and could not be enforced. But in all cases where corruption or partiality has actuated the Moonsiffs they may be brought before the Judge and their decrees annulled; besides which both Village and District Moonsiffs are amenable to prosecutions by the parties aggrieved for unwarranted acts of authority.

21ST AUGUST, 1817.

Resolution of the Right Honorable the Governor in Council, under date 11th August, 1817.

"The Right Honorable the Governor in Council, having taken into consideration the necessity of providing for the efficient discharge of the duties of those Officers in the Judicial, Revenue, and Commercial, Departments, who, though not absent from their stations, may, in consequence of ill health or other cause, be absent from duty, has been pleased to resolve that the rules now in force with regard to such Officers when absent from their respective stations shall also be applicable to them when absent from duty only, and that leave for such absence from duty, either prospective or retrospective as the case may be, shall accordingly be solicited from the Governor in Council through the regular channel."

1ST DECEMBER, 1817.

In order to an effectual exercise of that superintendence and controul which may be expected to ensure a scrupulous attention on the part of the native judicatories to a discharge of their new and important duties, it will be particularly requisite that the Judges of the Zillah Courts should carefully inspect the monthly reports required to be sent up to them under the provisions of the Regulations IV., V. VI. and VII. of 1816, and issue such orders as may be suggested on an examination of the said reports.

In the performance of this duty the Judges will be careful to notice all instances in which it may appear that any of the native judicatories have tried causes of which they were not competent to take cognizance, or have, in other respects, deviated from the rules which have been enacted for their guidance. Any observations which it may be found neces-

Court of Sudr Udalt.

sary to record on the subject of the Reports, forwarded by the Village Moonsiffs and Punchayets should be communicated through the District Moonsiff, in order that the latter officer, by having his attention directed to the several instances in which these lower judicatories may have exceeded their authority, may be led to exercise with circumspection the authority vested in him by the Regulations in regard to the execution of their decrees. With this view it will be proper, as the Court remarked in their Circular instructions of the 4th March last, that before any measures are taken for carrying into execution the decree of a Village Moonsiff, the District Moonsiff should ascertain the amount decreed, by reference to the monthly report required to be transmitted under Section XXXVI. Regulation IV. of 1816; and that, prior to the execution of any decree passed either by a Village Moonsiff or Village Punchayet, he should by a like reference, be careful to satisfy himself that the suit is neither for real property nor for personal damages and that the interest has been calculated agreeably to the Regulations.

In the like manner it will be the duty of the Zillah Judges to ascertain, by an attentive examination of the reports required to be submitted to them by the Talook Moonsiffs and Punchayets, whether those respective judicatories have observed the limits prescribed by the Regulations, and in each case to issue such instructions as the circumstances shall appear to demand.

The Court expect that the Judges of the several Zillahs will exercise the trust reposed in them with a degree of vigilance and zeal commensurate with the object proposed, and that they will report, for the information of the Sudr Udalt, all such cases of departure from the regulations as shall be deemed particularly deserving of notice. The Court also expect that the Judges of the Zillah Courts will refer, for their consideration and orders, all cases of doubt and difficulty which may occur in the discharge of the duty here prescribed to them, and that they will submit, generally, such observations as may be suggested from time to time under the operation of the system.

24TH DECEMBER, 1817.

The provisions of Clause 2d, Section XV. Regulation XV. of 1816, are positive as to the language in which the originals of decrees are to be written. To the decrees so drawn out, and which are to be kept as records of Court, are to be annexed translations into one of the current languages of the country—these translations will generally be in the language of the district, in which the Courts are respectively established, and will serve for all purposes of reference, required by the parties or their Vakeels or by the Officers of the Court.

The cases, in which certified copies of decrees are required to be produced, under the operation of Regulation XV. of 1816, are few, and it is provided by Section XXX. Regulation XIII. of 1816, that parties may take copies on unstamped paper, these copies sufficing for the satisfaction of the parties themselves, though they cannot be certified, nor received as evidence in a Court of Justice.

Whenever certified copies are required to be produced for any judicial purpose, such copies must be of the Original Decree; that is of the English, and may have a certified translation annexed to them, or not at

Vide Acts. Nos.
XXXV of 1837,
and XII of 1843.
C. O. No. 89.

Vide C. O. No.
55.

the option of the party, who, by Clause 6th, Section XV. Regulation XV. of 1816, may choose in what language such translation shall be furnished to him.

23^D FEBRUARY, 1818.

Instances having lately fallen within the observation of the Court in which the Judges of the Zillah Courts have authorized the District Moonsiffs to adjourn pending the vacation of the Zillah Court, and it appearing to the Court that the adjournment so authorized may frequently be attended with much public inconvenience.

Vide C. O.
No. 72.

The Court of Sudr Udalut deem it necessary to explain, for the general information of the Judges of the Zillah Courts, that the orders which may be issued from time to time by the Court of Sudr Udalut for the adjournment of the Zillah Courts are not intended to convey any authority to the Judges of those Courts to suspend the business of the District Moonsiffs within their respective Jurisdictions, it not being considered expedient that the periodical vacations of the Zillah Courts should occasion any impediment to the performance of the general duties with which those officers are entrusted.

30TH APRIL, 1818.

Vide C. O. No.
100.

The Court direct that copies of all decrees in appeal which may have been passed by this Court subsequently to the 12th of July, 1817, be prepared and duly authenticated by the Register and transmitted to the Courts from whose judgments such appeals have respectively been preferred, as well for the information of those Courts, as to enable them, by reference thereto, duly to execute all such orders as this Court may issue, grounded upon, or having reference to such decrees.

The Court further direct that this rule be observed with respect to all decrees in appeal which may hereafter be passed in the Court of Sudr Udalut, and that a copy of this order be communicated for the information of each of the Provincial Courts of Appeal.

25TH JUNE, 1819.

Cancelled by
Circular letter
dated 11th July
1842.

See Appendix B.

Vide C. O. 8th
June 1831.

In consequence of instructions received from the Right Honorable the Governor in Council, I am directed by the Judges of the Court of Sudr and Foujdaree Udalut to desire, that you will state the number of days in the half year just expiring, during which you and your Register were absent, otherwise than when the Court to which you are appointed was closed.

You are required to transmit a similar statement at the close of each half year.

27TH SEPTEMBER, 1819.

Vide C. O. 8th
Oct. 1821.
30th Oct. 1824.
31st Jan. 1832.
24 April 1831.

I am directed by the Judges of the Sudr Udalut, to forward to you, copy of a letter from the Secretary to Government in the Judicial Department, under date 16th ultimo, and with reference to that communication, you are requested to be careful not to disburse any sums that are not strictly judicial charges.

I am also directed at the same time to transmit to you, forms* of annual statement of charges; and the Judges request, that the statement submitted by you in future, may be framed strictly in conformity to these forms.

You will observe, that all the fixed charges, such as salaries, and the pay of the Native Establishment, which have been permanently settled and sanctioned by Government, and which are not liable to fluctuate yearly, also the usual Saderwarid expenses, as those incurred in the purchase of ink, oil, paper, and other articles for the use of the Court, which are to be disbursed on the responsibility of the Judges, are required to be forwarded for audit only.—But all contingent charges, such as the batta to the servants on Circuit, the hire of additional servants employed *pro-tempore*, the expense of conveying the records, &c., with the Court of Circuit, in short, all such charges as necessarily vary from year to year, must be specifically stated in detail, and forwarded for the sanction of Government. All estimates of charges, you will also perceive, are unnecessary. In lieu of these, a column, shewing the amount of disbursement in the preceding year, is inserted in the form of statement. Every new charge, whether Saderwarid or otherwise, that it may appear necessary to incur, must form the subject of a special reference by letter.

Vide C. O. 10th
Sept. 1829 B.

You are further directed to be careful to transmit these statements, within one month after the expiration of the fusly.

From Government dated 16th August, 1819.

To the Register to the Court of Sudr Udalut.

SIR,

I am directed to acknowledge the receipt of your letter of the 29th ultimo, and to state that the Governor in Council authorizes the Judges of the several Courts to transfer to the Collectors the charge to which reference is there made, in order that they may respectively be debited to the proper departments.

I have the honor to be, &c.

(Signed) D. HILL, Sec. to Govt.

FORT ST. GEORGE,
16th August, 1819.

30TH APRIL, 1821.

I am directed by the Judges of the Court of Sudr Udalut to transmit, for your information and guidance, the annexed extract from their proceedings of the 12th March, 1816, together with a copy of the form of special commission therein prescribed.

PROCEEDINGS 12TH MARCH, 1816.

A reference having been made from this Court to the Right Honorable the Governor in Council, in order to obtain the opinion of the Company's Advocate General on certain points relative to the examination of European witnesses, by the Commissioner for the examination of witnesses at Madras; and as some time may yet elapse before an answer

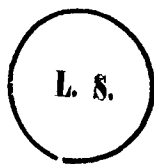
Vide Act No.
vii of 1841.

* Forms omitted.

may be received to that reference, and before a general commission may be issued authorizing the Deputy Register of the Court to examine witnesses on interrogatories sent by the Zillah and Provincial Courts, the Court order that the several letters addressed by those Courts respectively to the Commissioner for examining witnesses at Madras be returned to those Courts with extract from those proceedings; and that the Judges be directed in the mean time to address a special commission, according to the annexed form, to the Deputy Register of the Court in each case in which they may require evidence to be taken on interrogatories in cases depending in their respective Courts.

Form of the Special Commission.

Cancelled
Vide Act 7 of
1841.
Vide C. O. No.
85.



The Zillah Court of*

To A. B.

The said Zillah* Court of G. H. Judge. and by these presents do give unto you full power and authority, have appointed you, diligently to examine

upon certain interrogatories herewith transmitted, as well on the part of C. D. complainant,† as on the part of E. F. defendant,† and you are hereby accordingly authorized and required at certain days and places to be appointed by you for that purpose to cause the said to come before you, and then and there examine each† of them apart upon the said interrogatories on their† respective oaths, first taken before you, in the manner most binding on their conscience, and to take such their examinations, and reduce them into writing: and when you shall have so taken them to send the same to the said Zillah Court of closed up and under your seal, together with the said interrogatories, and the commission. Dated at this day of in the year of Our Lord One thousand Eight hundred and

Register.

27TH JULY, 1821.

Vide C. O. 11th
Oct. 1823.

The Judges of the Court of Sudr Udalt being desirous for the purpose of reference, to be furnished with the futwabs, and law opinions, that have been delivered by the Mahomedan and Hindoo Law Officers of the several Courts of Judicature, in answer to questions of law put

* or Provincial.

† As the case may be.

‡ If more than one in the same cause.

to them on the trial of civil cases, direct that you will cause to be made copies and translations in English of all such questions and answers from the commencement of the year 1802 to the end of the past year 1820, and transmit them, when completed, to the Court of Sudr Udalt: and you will, in like manner, annually furnish copies of the Law opinions delivered by your Law Officers on civil cases in each year.

8TH OCTOBER, 1821.

I am directed by the Judges of the Court of Sudr Udalt to transmit for your information and future guidance the accompanying copy of a letter dated the 13th ultimo, from the Civil Auditor, and to desire that care may be taken to submit the statements of contingent charges in future in the month of July in each year. Vide C. O. 27th Sept. 1819, and 30th Oct. 1824.

To the Register to the Court of Sudr and Foujdaree Udalt.

SIR,

Having been desired to prepare, annually, for transmission to the Honorable the Court of Directors a book of statements of contingent charges that may have been sanctioned by the Government; to enable me to do so within the period expected, I beg leave to request that the Judges of the several Courts may be desired to transmit their statements of such charges for sanction in the month of July for each year, so that they may reach this Department, after having been sanctioned, within two months at the most after the expiration of every fusly.

I have the honor to be, &c.,
(Signed) G. MOORE, *Civil Audit.*

FORT ST. GEORGE,)
Civil Audit. Office:)
13th September, 1821.)

11TH FEBRUARY, 1822.

Pursuant to the instructions of the Honorable the Governor in Council, under date the 1st instant, I am directed by the Judges of the Court of Sudr Udalt to transmit for your information, and that of all officers under your authority the accompanying extract of a General Letter from the Honorable the Court of Directors, dated the 1st March, 1820.

To the Register to the Court of Sudr Udalt.

SIR,

I am directed by the Honorable the Governor in Council to transmit, for your information and that of all officers under your authority, the accompanying extract of a General Letter from the Honorable the Court of Directors under date the 1st of March, 1820.

I have the honor to be, &c.,
(Signed) D. HILL, *Sec. to Govt.*

FORT ST. GEORGE,)
1st February, 1822.)

Extract from a General Letter from England, dated 1st March, 1820.

"We must take this opportunity of impressing upon you, the great importance which we attach to a careful selection of persons qualified by experience, as well as character and talent, to officiate as Judges in the Sudr Udalut. It is not sufficient that they should be thoroughly conversant in the Laws and Regulations, and with the technicalities and forms of judicial business. They should have served long enough in the provinces to have acquired a practical knowledge of Revenue administration also, on account of the intimate connexion that exists between the affairs of the Revenue and Judicial branches of the service, and it is only in the Revenue Department that the practical knowledge to which we allude can be duly attained."

"We are for the same reason extremely desirous, that, as far as the state of your service will admit of it, the selections of persons to fill the offices of Judges in the Provincial and Zillah Courts under your presidency, as well as of Register to the Sudr Dewanny Udalut should also be made from among those who have served a certain time in the office of Collector or Assistant and Collector; a principle which we are further desirous of seeing applied to the situation of Secretary in the Judicial and Revenue Departments, as well as to that of Chief Secretary."

"It is also, we need hardly add, highly necessary that the persons appointed to seats at your Board of Revenue shall have officiated in the office of Collector in the interior of the country a sufficient period of time to have enabled them to obtain in that office a thorough knowledge of all the detailed duties of Revenue administration, and that the Secretary of the Board should also have served in the Revenue Department in the provinces and come recommended to the situation by his practical qualifications."

(True extracts.)

(Signed) D. HILL.

Secy. to Government.

20TH MARCH, 1822.

Vide C. O. 20th
Sept. 1824.

The Judges have therefore resolved that the *quarterly* Abstracts of causes decided and the half-yearly Reports of causes depending in the Zillah Courts, which are now, under the provisions of Sections X. and XI. Regulation XIII. of 1802, transmitted directly to the Court of Sudr Udalut, shall be brought in the first instance under the inspection of the Provincial Courts, and you will accordingly direct the several Zillah Judges within your division, to transmit all future reports of these descriptions through your Court.

Vide C. O. No.
93.

On the receipt of the *quarterly* Abstract or half-yearly Report of each Zillah, you are desired to examine it with attention, and to call upon the Judge for any explanation which may be wanting under the Regulations in force or the Circular orders of the Sudr Udalut. After receiving the required explanations, which should be furnished by the Zillah Judges with as little delay as possible, you will forward them to this office with copies of the orders issued by you on the subject of them, together with the *quarterly* Abstract or half-yearly Report, accompanied by any observations which may appear requisite for the information of

the Court and of Government, as well as any suggestions of a general nature, or relative to the state of business in any particular Court, which may be deemed proper with a view to expedite the decision of any arrear of civil causes, or for any purpose connected with the more efficient administration of civil justice.

You will at the same time transmit the prescribed report of causes decided in, or depending before, your own Court, with any explanations which may be necessary, and any observations or propositions which may be suggested by the number of original suits and appeals depending before you, or by any other circumstance.

The Judges have lately had under consideration a proposition by the late Judge in the Zillah of Darapooram, for abridging the half-yearly report of causes depending. He suggests that when a suit has been inserted in one half-yearly report, the substance of it and the name of the parties should be omitted from the next and every succeeding report; and that it will be sufficient to specify the number of the suit, and the date on which it was filed, together with the causes of such suits remaining undecided. This suggestion is approved by the Judges; and they direct that the half-yearly reports of causes depending both in the Zillah Courts and in the Provincial Courts may be hereafter made out according to the form accompanying this letter.

The Judges also desire that in the *quarterly* abstracts of causes decided, and the half-yearly reports of causes depending, regular and summary suits may be entered under distinct heads.

It appears to the Judges to be extremely desirable that the preparation of periodical statements, which necessarily occupies a great deal of the time and attention of the subordinate officers of the several Court should be facilitated as much as possible, and the Judges would be glad to receive any suggestions which you may have to offer on this point.

The Judges request that you will transmit a copy of this letter for the information of the several Zillah Judges in your division.

28TH OCTOBER, 1822.

With a view to give full effect to the rules at present in force respecting the custody and management of the Treasuries of the several Courts, to correct trifling inaccuracies and to prevent the accounts from becoming complicated and confused, the Judges of the Sudr Udalut think it necessary to direct that an examination shall be made by the Judge at least once in every three months into the accounts of the Court Treasury. He will then ascertain whether there is any, and what is the amount of deficiency in the cash chest, and will call upon the Treasurer, who is answerable for the same, to make it good. If the Treasurer should dispute the correctness of the principles upon which the accounts have been adjusted, there can be no objection to his referring the matter for the decision of the superior Court.

You will be pleased to issue the necessary instructions upon this subject to the several Courts in your division.

Rules see letter to Govt. 30th Nov. 1818, circulated by Govt. 19th Feb. 1819.

Appendix C. Vide C. O. 10th Aug. 1826 and Nos. 7 and 95.

26TH JUNE, 1823.

Vide C. O. 21th
Dec. 1817.
6th May 1824.
8th June 1829.

The Judges of the Court of Sudr and Foujdaree Udalut having received references for instructions in regard to a compliance with applications from individuals for copies of orders and official documents, have directed me to communicate the following instructions on the subject, which are adopted from a Circular order of the Court of Sudr Dewanny and Nizamut Udalut in Calcutta.

All persons interested in cases depending before, or decided by, the Civil Courts are entitled to receive authenticated copies of any orders passed in such cases on furnishing the stamp paper required by Section XXII. Regulation XIII. of 1816.

The spirit of the above rule should be observed by the Criminal Courts, when application may be made by parties interested in criminal cases, for copies of orders passed in such cases, unless strong and special grounds of objection shall appear to exist against granting a copy of the order passed in any particular instance; in which case the public officers who may have passed the order is warranted in refusing compliance with the application till the receipt of orders from superior authority.

With respect to applications for copies of proceedings and documents not falling within the rule contained in the second paragraph of this letter, and for the delivery of which no express provision has been made by the Regulations in force, the Provincial Courts of Appeal and Circuit, and the Zillah Judges and Magistrates must be considered to possess a discretion, either to comply with applications for copies, on sufficient cause being stated for granting them on stamp paper, or for allowing them to be taken on any paper in pursuance of Section XXX. Regulation XIII. of 1816, or to refuse compliance when satisfactory cause may not be assigned for granting a copy, or allowing it to be taken, especially when the application may be from a person not a party, or immediately interested, in the case.

25TH AUGUST, 1823.

Applicable to
the Criminal
Courts.

The Judges of the Court of Sudr Udalut having had under consideration a representation which has been laid before the Government of the inconvenience and obstruction to the public service, occasioned by revenue servants being called away from their proper duties to give evidence before the Civil Courts, direct that the following instructions may be communicated for the information and guidance of the Zillah Judges and Collectors within your jurisdiction, which the Judges think will be found sufficient to obviate the inconvenience which has been complained of, where a proper understanding may prevail between the Judicial and Revenue Departments.

Whenever the evidence of any native revenue officer above the rank of peon may be required by a party in a suit before a Zillah Court, it will be proper that the Judge should satisfy himself, that the fact to be established by such officer's testimony is material, and that sufficient evidence thereto is not attainable without his appearance.

When these two points may be determined in the affirmative, a communication should be addressed by the Zillah Judge to the Collector,

apprizing him of the necessity existing for the attendance of the officer in question, and requesting him to state whether the public service would be impeded by his appearance on the day which the Zillah Court may propose for his examination, and if so to state at what time he could attend without material inconvenience.

An immediate answer should be given by the Collector to this communication and unless special circumstances should require the attendance of the Revenue Officer at a period other than that designated by the Collector, the summons for his attendance should issue in conformity with the Collector's suggestion.

The Judges of the Sudr Udalut direct, that a similar mode of proceeding be adopted in cases when the attendance of such Revenue Officers may be required before the District Moonsiffs, who should be enjoined to communicate the necessary information on such occasions to the Zillah Judge, through whom the summons should eventually issue.

The Judges of the Court of Sudr Udalut deem the present to be a fit opportunity of inculcating the importance of treating all public officers, as well as other persons, on their appearance before the Civil Courts with the attention and respect due to their rank and station in society, and they direct that the Village and District Moonsiffs be particularly enjoined to a due observance of this principle on all occasions.

Vide C. O. 1st
March 1827.

17TH FEBRUARY, 1824.

The Judges of the Sudr and Foujdaree Udalut, considering it to be desirable that on all occasions of reference for their opinion regarding the construction of the Regulations they should have the benefit of the sentiments of the Provincial Courts on the question, or questions, so referred, direct me to request, that you will instruct the Zillah Judges and Magistrates within your jurisdiction to make all such references in future, through the Provincial Court, which you will be pleased to forward with as little delay as possible, accompanied by your opinion on the point propounded for the determination of the Judges of the Sudr Udalut.

Vide C. O. 11th
Dec. 1824.

19TH MARCH, 1824.

The Judges of the Court of Sudr Udalut, finding that a difference of opinion prevails in respect to the construction of those provisions of the Regulations, which declare that the District and Village Moonsiffs and Punchayets shall not take cognizance of suits for "personal damages," direct me to inform you that the Sudr Court have ruled, that all suits for damages are excluded from the cognizance of the District and village Moonsiffs and Punchayets, excepting in cases referred to the former tribunals under Clause first, Section XII. Regulation VI. of 1816.

6TH MAY, 1824.

The Judges of the Court of Sudr Udalut observing that much discrepancy exists in the mode adopted by the Courts in entering the statement of the costs of suits in their decrees; and being of opinion that in many instances expenses are charged against parties to which they are not justly liable, resolve to circulate the following instructions.

Referring particularly to decrees which have been brought before them in appeal from the Northern Provincial Court, the attention of the Judges of that Court is directed to the rules laid down in Section XXVII. Regulation XIV. of 1816, prescribing, that "all sums paid," as well as those "payable on account of costs and expenses, are to be inserted in every decree." Without due attention on the part of the lower Courts to this rule, it is obvious that the necessity of constant reference will be entailed upon the Court of Sudr Udalut.

The Judges are of opinion that all expenses which it is optional with parties in civil suits to incur, and which are not required in order to the effectual prosecution or defence of a suit, do not properly form any portion of the costs adjudicable at the discretion of the Judge, but should be defrayed by the parties respectively subjecting themselves thereto. Of this description are the charges attendant upon the filing of Mooktarnamahs, upon motions for bringing suits to a hearing out of the order of the file, and upon applications for an early decision; when such motions and applications do not rest upon any valid ground; upon motions impugning the testimony of the witness of the adverse party, whenever it may appear to the Judge that the charges preferred are without foundation; upon application for copies of proceedings, not required to be taken out; upon motions presented, under Section IV. Regulation II. of 1811, in which case the costs should be borne by the Plaintiff or Defendant, accordingly as the motion may be rejected or admitted. The expenses consequent on the furnishing copies of decrees in pauper suits should also be charged to the parties for whom they are prepared.

It has come under the notice of the Judges, that the penalty levied on the admission of exhibits on unstamped paper, under Section XIII. Regulation VIII. of 1808, as revived by Section II. Regulation V. of 1817, has been inserted as an item of the costs of suits and payment adjudged discretionally. This practice is unquestionably erroneous. The penalty, it is evident, from the provisions of Section XX. of Regulation VIII. of 1808, must be considered as a fine for the use of Government, imposed with the view of enforcing the obligations of the stamp Regulations, and it cannot therefore upon any principle be included in the costs of suit, which may be awarded against either party, but must be levied from the party presenting the unstamped document, and transmitted to the Collector to be placed to the account of Government.

It is not the intention of the Judges by the foregoing instructions, to limit, in any degree, the discretion vested in the Courts of Civil Judicature, by Section XXVII. Regulation XIV. of 1816, "to charge the costs of suit," on account of the 'pleadings,' the filing of exhibits, and 'summoning witnesses' "in such" proportions as the Court may deem "equitable." The provisions of Section IX of the same Regulation, and of Section X. Regulation XV. of 1816, afford, if duly attended to, ample security against the intrusion upon the Courts of unnecessary and superfluous matter in these particulars; and the Judges desire to impress upon the several Courts the necessity of a strict observance of the provisions in question, in order to prevent any needless addition to the expenses of litigation.

It has appeared to the Judges in many respects desirable that one uniform method should be observed by the Courts of Judicature in stat-

ing the costs of suit in their decrees, and they direct therefore that the several Provincial and Zillah Courts will insert the costs of suits in the order observed in the annexed form, so far as it may be applicable to the causes respectively decided by them.

The Judges having observed in several instances a disregard of the provisions of Section XXVII. Regulation III. 1802, which require "the names of the witnesses whose depositions may have been taken, and the title of every exhibit read in the cause to be inserted in the decree, deem it expedient on this occasion to direct a strict adherence in future to the above rules.

Stamp duty on institution, under Section XIII. Regulation XIII. 1816.
 Fees of (plaintiff's or appellant's) pleader, under Section XXV. Regulation XIV. of 1816.
 Fees of defendant's or respondent's pleader, under Section XXV. Regulation XIV. of 1816.
 Value of stamp paper filed by (plaintiff) or appellant.
 Value of stamp paper filed by defendant or respondent.
 Stamp duties on (No) exhibits filed by plaintiff appellant.
 Stamp duties on (No.) exhibits filed by defendant or respondent.
 Expenses for (No.) witnesses of plaintiff or appellant.
 Expenses for (No.) witnesses of the (defendant) or respondent.
 Expenses for serving processes.
 Interest.
 And in an appeal cases.
 Costs incurred in the (Lower) Court.

6TH MAY, 1824.

The practice hitherto observed by the Court, through not recorded in any of its proceedings, has been to consider copies of decrees applied for by *third parties*, as coming within the description of those documents, which the latter part of Clause first, Section XXII. Regulation XIII. of 1816 specifies may be written on paper of the value of 8 annas; and this construction of the rule appears to have been founded upon the distinction which in the Clause above cited seems at first sight to be drawn, between "Judicial proceedings" which "individuals may require for use or reference," and "Decrees" which may be received as evidence in any Court of Judicature.

Upon mature consideration however of the clause in question, the Judges have formed the opinion that it was intended to prevent authenticated copies of the decrees, therein specified, from being obtained by any person, or for any purpose whatever, except upon paper of the value prescribed, and they resolve therefore in this respect to alter the rule of Court which has hitherto obtained.

10TH MAY, 1824.

Extract of a letter from the Secretary to Government, in the Judicial Department, dated 4th May, 1824.

"The Governor in Council further thinks it proper to require, that

every officer in the Judicial Department, who may quit his station on leave of absence, sick certificate or otherwise, shall report through the Sudr Udalut the date of his departure and that of his return."

17TH JUNE, 1824.

I am directed by the Judges of the Court of Sudr Udalut to transmit to you the accompanying extract* of a letter addressed to the Chief Secretary to the Government, dated 10th instant, and to desire that you will communicate the same to the several Zillah Judges within your jurisdiction for their respective information and future guidance.

Extract from a letter to the Chief Secretary to Government, dated 10th June, 1824.

Vide C. O. Nos.
73 and 53.

I am directed by the Judges of the Sudr Udalut to acknowledge the receipt of a letter (No. 225) from the Secretary to Government in the Judicial Department, dated 21st ultimo, referring for their consideration and report the copy of a letter from the Judge in the Zillah of Chica-cole, with copies of its enclosures; and desiring that the Judges will report how far, and under what provisions of the Regulations, Collectors and other public Officers, are compellable to produce the records of their Offices in evidence before the several Courts, and by what means it is competent to such Officers to guard against the hazard or injury to the public interests, by which on some occasions the disclosures of public records might be attended, and that they will point out the provisions of the Regulations by which public Officers may be liable to penalties for withholding evidence which the Courts may have called upon them to produce.

In respect to the power of the Civil Courts to compel the production of documentary evidence in general, the Judges direct me to observe, that compulsory process to oblige a third person to produce any writing in his possession, which may be necessary for the trial of a cause, is essential to the constitution of courts of justice: and the Judges are of opinion that the provisions of Section VII. Regulation III. of 1802, are applicable to any cases of omission or refusal to obey a summons, requiring such individual to appear and to bring with him documents in his possession required by the Court.

The general rule of law on this subject holds good, as well as with respect to papers in the custody of a public officer as to papers in the hands of a private person; and the Judges of the Sudr Udalut are of opinion that all risk of injury to the public interests from the exercise of this power by the Courts would be obviated by the observance of the mode of proceeding, which they find to have been sanctioned by the Sudr Court on a motion, made at the instance of the Board of Revenue, under date 12th December, 1820, in the Provincial Court for the Northern Division arising out of an order from that Court, requiring the Collector of Rajahmundry "to furnish an authenticated copy of an extract from the original letter of 15th September, 1810, from the Board of Revenue," to the plaintiff in a suit before the Provincial Court.

Upon this occasion the Board of Revenue questioned the right of the

Patna, 1, 2, 3, 4, and 8.

Court "to direct a public officer to furnish copy of any paper to any person, although a party in a suit before them; and proceeded to offer the following observations, and suggestions, in the correctness and propriety of which the Judges entirely concur.

"The information of witnesses is for the Court not for the suitors. It is competent to a Court of Justice to call for all the evidence requisite for the due investigation of the cases before them, but the Board apprehend that the correct mode of obtaining the production of papers in the custody of a public Officer, is to summon that Officer to bring, or send by some proper person, the documents required."

"This course," the Board observed, "would produce no public inconvenience, because if the paper required was one of no particular moment, one of the Collector's native establishment would proceed with it and produce it: but if the paper, which a party had requested the Court to call for, was such an one as ought not properly to be produced, or such an one as did not bear on the case, or on any other grounds, should not be put upon the record, the Collector would be able, either in person, or by his Assistant, or native officer, to state his objection to the Court; and the Court, by inspection of the document, if necessary, or on consideration of the Collector's objection, would determine whether the paper in question should be admitted or rejected; and improper disclosures would then be prevented."

"The Zillah Judge would appear to have erroneously considered that the authority of the Court to require the production of documents in the custody of a Collector is limited to the personal suits referred to in Regulation XXVII. of 1802: the power of the Courts to obtain the production of such documents extends, in the opinion of the Judges, to all cases wherein they may be requisite for the determination of the cause; and, as above intimated, the process in such cases must be enforced in the same manner as in the cases of witnesses summoned to attend the Courts."

(A true extract.)

(Signed) W. HUDLESTON, *Register.*

21ST AUGUST, 1824.

The Judges of the Court of Sudr Udalut having reason to believe, that the provisions of Section III. Regulation V. of 1817, as they affect persons, who have not studied at the College of Fort St. George, and to provide for whose qualifying as pleaders in the Courts of Udalut the certificate of qualification according to the form D. appended to that Regulation was framed, are not universally understood, direct me to transmit to you for your information, and that of the several Zillah Judges within your jurisdiction transcripts of Sections XVIII. and XX. title fifth of the rules of the College of Fort St. George, sanctioned by the Governor in Council, and referred to in the preamble of the Regulation V. of 1817, as pointing out distinctly the mode whereby such individuals may obtain certificates of qualification, namely, by attending at the annual examination held at the College, or by establishing their qualifications at an examination held before the Judges of the Provincial or Zillah Courts assisted by the Law Officers and the Government Vakeel.

Vide Act No.
XXVII. of 1802.

Rules of the College of Fort St. George.

TITLE FIFTH.

Section XVIII. Any Moosulman or Hindoo of pure caste who may not have studied at the College, but who may be desirous of obtaining the certificate of qualification to be admitted as a pleader in the Courts of Udalt, shall, on his application for that purpose, be examined at the annual examinations, and if found duly qualified, shall be entitled, equally with the students at the College, to receive the Certificate C, and to have his name entered in the list of candidates for the office of pleader.

Section XX. In addition to the foregoing rules it is provided that the Board of Superintendence, on receiving from any Zillah or Provincial Court, the examination of any Mahomedan or Hindoo of pure caste, desirous of obtaining the certificate of qualification to plead in the Courts of Udalt, shall, if the report be satisfactory, grant to the persons so examined, a certificate of qualification, according to the form D, annexed to Regulation V. of 1817, which shall be forwarded to him through the Court before whom he was examined. Should the report not be considered satisfactory by the Board of Superintendence, they shall be authorized either to refuse to grant the certificate, or to require such further proofs of the competency of the applicant, as may enable them to form a correct judgment of his qualifications; or at their option, to require the attendance of the party at the Presidency, to undergo a further examination at the College.

20TH SEPTEMBER, 1824.—A

The Judges direct me to take this opportunity of noticing an order issued by you, under date the 26th May, to the several Judges within your jurisdiction, prohibitory of the practice pursued in the Zillah of Malabar of requiring the personal attendance of all the Moonsiffs annually. The Judges concur with you in opinion that this practice, as a general one, is inexpedient, but they desire me to enforce the request made known in the communication from this Court of the 19th June, 1822, that "you would refer for their opinion in the first instance all instructions to the subordinate Courts not expressly provided for in the Regulations or by the orders of the Sudr Court.

20TH SEPTEMBER, 1824.—B

Vide C. O. 27th January 1825.
12th March 1825

The preceding observations on the Abstract Registers from each Zillah will explain the mode in which it is intended that the Provincial Court should examine and revise those reports, previously to transmitting them to the Sudr Udalt; and the Judges direct, that in the transmission of the *quarterly* Abstract Registers, a summary figured statement in the following form* shall be drawn out in the extract of your Court's proceedings accompanying them.

Vide Cir. Letter 30th May 1840.
Appendix D.

Referring to former returns, shewing the quantity of business which the Native Officers of Justice are capable of performing, the Court are satisfied that they can with ease decide on their merits at the lowest 20

* Form omitted.

suits in the month, exclusive of those adjusted by Razeenamah and dismissed for default. The Judges direct, that it be intimated to the Zillah Judges, that where it may hereafter appear by their *quarterly* Abstract Registers, that any one of the Sudr Ameens, or District Moonsiffs, has decided in the month upon their merits less than the above number of suits, satisfactory cause must be shewn for the deficiency. It is expected, that the Zillah Judges will constantly exercise a vigilant superintendence over the conduct of the Officers subordinate to them; and whenever they may discover that admonitions to the Sudr Ameens, and the fines authorized by Clause third, Section VII. Regulation VI. of 1816, to be imposed on District Moonsiff's fail of producing on their part an efficient discharge of the duties committed to them, it will be their duty to make a representation to the proper authorities, for the purpose of effecting their removal on the grounds of neglect or incapacity.

In order that the Sudr Ameens may be enabled to fulfil these expectations it is desirable, that the Zillah Judge should always refer to them an ample number of suits, within their cognizance, from the file of the Zillah Court: and when the reduced state of the file may not permit of such reference, suits may be called up from the files of those District Moonsiffs, whose Courts are nearest in distance to the Zillah stations, and whose files may be large, and in arrear.

The Court are prepared to admit, that instances may occur, wherein the above number of suits cannot be regularly decided in the month in some Courts, arising from various reasons, such as illness, the reduced state of the file, temporary absence on leave, or other well grounded excuse; but the Zillah Judge, in the explanatory letter accompanying the Report, should always state what credit is due to those excuses, and check by prompt reproof, or amercement, any attempt at deception.

In the event of any District Moonsiff's file being constantly in a reduced state, it would be desirable to know, whether the circumstances arises from local prejudices against the station, as being unhealthy, &c., or whether the Moonsiff's capacity or integrity are questionable; in short, whether any ascertainable cause exists susceptible of a remedy.

On examining some of the Reports from the Zillah and the District Moonsiff's Courts, the Judges have remarked, that frequently suits of more recent date have been disposed of, prior to those of a long standing on the file. This departure from the provisions of Section XX. Regulation III. of 1802, and Section XXV. Regulation VI. of 1816, requires an immediate check, and it is the duty of the Provincial Court to enforce attention to those rules by every means in their power: the Judges direct, that when instances occur of deviation from the regular order of the file, on the part of a District Moonsiff, a short abstract at the foot of his register be inserted, explaining the motives for the deviation.

The Abstract Registers that are *quarterly* transmitted exhibit several variations from each other, and in some cases do not convey that information which the Court of Sudr Udalt desire. In order that uniformity may be preserved, the accompanying forms* are transmitted to be circulated for the guidance of the Zillah Judges subordinate to your Court. These forms contain in themselves sufficient information upon the several particulars to which they refer; and the only observations that

* Forms omitted.

Vide C. O. 1st July 1825.

Vide C. O. 4th April 1825.

appear necessary to be added, refer to the use of the terms "nonsuit" and "dismissal," when employed in describing the mode in which suits may be disposed of; and the Judges desire, that in the numerical statements when reference is made to a cause, in which judgment has gone in favor of the plaintiff, the words "decreed to plaintiff" may be used; and when against him, "dismissed." The term nonsuit, it is desirable, should be omitted altogether, as being in general inapplicable; and when suits are "dismissed for default," those words may be expressed; which will distinguish them from suits dismissed after investigation under a decree.

In the 6th and 8th paras of my predecessor's letter to you, dated 20th March, 1822, the reasons that induced the Court of Sudr Udalut to direct, that the periodical reports prescribed by Regulation XIII. of 1802, should be brought, in the first instance, under the inspection of the Provincial Court, and the nature of the examination and revision, which the Judges of those Courts were expected to exercise, were distinctly explained: and without more particularly animadverting on the past, the Judges desire me to refer you to that letter, and to state, that your superintendence is required to be of a more active and careful description than it has hitherto been.

In addition to the copies of the orders you may convey to the Zillah Judges on their Abstract Registers, and of the explanations furnished by those Officers, which you are by the 8th para. of the letter, above alluded to, instructed to forward to this office, the Judges direct, that copies of the letters of the Zillah Judges accompanying their Abstract Registers be in future always forwarded with them.

In the letter of the Zillah Judges transmitting their Abstract Registers, the Judges expect that they will always offer such explanations as are obviously necessary, and direct that they invariably insert therein a figured statement in the following form.*

You will be pleased to communicate to the several Zillah Judges within your jurisdiction such parts of this letter as concern them respectively, furnishing them with copies of the forms herewith transmitted for their observance in future.

18TH OCTOBER, 1824.

Vide C. O. 2th
February 1826
and F. U. C. O.
16th Nov. 1831.
and Nos. 88 and
90, and Act XII.
of 1843.

The Judges of the Sudr Udalut, adverting to the inconveniences which have resulted in certain instances lately brought under their consideration, wherein a judicial Officer had given judgment in Court prior to the preparation of the decree, Resolve, in order to provide against the recurrence of similar evils, to circulate the following instruction. No judgment is to be declared in a Provincial or Zillah Court till the draft of the decree in the suit is ready for transcription. All such drafts must be in the handwriting and bear the signature of the Judges or Judge passing the decree. And with a view to prevent a knowledge of the intended judgment being made public before the formal declaration of it in Court, neither translations, nor copies of the decrees, are to be made until judgment has been pronounced.

* Forms omitted.

30TH OCTOBER, 1824.

Under instructions from Government the Judges direct me to explain to you, that it will be necessary in submitting your future annual statement of contingent charges, invariably to insert in the column headed "charges incurred in the preceding Fuslee," every charge incurred: Although there may be no corresponding item in the accounts of the Fuslee requiring sanction, such items of the previous Fuslee should be entered at the foot of the column. The totals of the charges of both Fuslees must be inserted, and the net increase or decrease in the actual expenditure will then be exhibited.

Vide C. O. 27th
Sept. 1819, and
8th Oct. 1821.

29TH NOVEMBER, 1824.

I am directed by the Judges of the Court of Sudr Udalut to transmit to you the annexed forms* A B C and D of Abstract Statements, which the Judges desire may always accompany your letter, when submitting the half-yearly reports. These statements are intended to bring under review the actual state of the files in all the Courts of Judicature in your division; and to exhibit a comparison of the progress made in the adjustment of claims before them. The column No. 9 in the form A, you will observe, shews the number of suits to be disposed of, the total of the columns 12 and 15 the number actually disposed of, and the balance still pending.

Should there be upon a comparison any difference between the total of these columns, and the number entered in No. 9, the Zillah Judge should be required to afford the necessary explanation.

The Judges desire that you will transmit without delay, the forms marked from Nos. 1 to 29 inclusive, to the several Zillah Courts under your jurisdiction. In these statements all suits of a similar description are to be exhibited together, first those exceeding 200 rupees in value in the statement at length, and then the suits under that amount in the numerical statement. The forms Nos. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 26, and 28 will give the former, and Nos. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, the latter. All appeal causes, whether regular or special, are to be included under the general head of "Appeals;" but suits instituted under Section XVI. Regulation V. 1822, must be comprised in the number of original causes, as they are in fact regular suits which have not been previously judicially tried and determined.

Vide C. O. 23d
April 1828.

11TH DECEMBER, 1824.

The Judges of the Sudr and Foudjaree Udalut by a Circular order, dated 17th February last, directed that the Zillah Judges and Magistrates should be instructed in future to 'make all references, upon questions regarding the construction of the Regulations, through the Provincial Court; the practice having previously obtained of making such references directly to the Judges of the Sudr and Foudjaree Udalut.

Vide C. O. 31st
August 1829.

Since the circulation of the above order, the Judges have noticed three cases, in which, upon the reference made to the Provincial Court, that

* Forms omitted.

Court have disposed of the question: and on one of the occasions here referred to, the decision, so passed by the Provincial Court, was ultimately overruled.

The Judges deem it proper, therefore, to explain that it is their intention, that all references from the subordinate Officers regarding the construction of the Regulations should be laid before them for determination, accompanied by the sentiments of the Judges of the Provincial Court, by whom no determination on the point should be recorded, or communicated to the subordinate Officer, excepting in the cases described in Section II. Regulation XXII. of 1802.

27TH JANUARY, 1825.

Vide C. O. 12th
March 1825.

The Judges of the Sudr Udalut, observing that a diversity of practice obtains in the mode of preparing the Abstract Statement which the Zillah Judges are required, by their orders of the 20th September last, to annex to the letters accompanying the *quarterly* Abstract Registers, direct me to notify to you for the information and guidance of the Zillah Judges under your jurisdiction, that under the head of causes "disposed of" by the Judge, are intended to be included all suits, referred to the subordinate Courts during the *quarter*, for which the Register is furnished; and that the column of suits, filed before the Register and Sudr Ameens, is intended to exhibit the whole number of references within the *quarter*.

All the causes instituted should be included in the number of those "filed" in the Judge's Court; and not merely the balance after deducting suits referred.

In the Abstract here referred to the number of suits called up by the Zillah Judge under the provisions of Section LIV. Regulation VI. of 1816, should be included under the head of causes "disposed of" by the District Moonsiffs.

The Judges direct, that in the statement No. 25, which accompanied the foregoing letter may be inserted another column headed, "called up by the Zillah Court under Section LIV. Regulation VI. of 1816;" that, in addition to the particulars now given in the "Abstract of Appeals and causes disposed of" by the Judge, viz., of the numbers "decreed or dismissed" and "adjusted by Razeenamah," a third entry be made of suits "referred to the subordinate Courts;" and that in the corresponding statement of suits disposed of by District Moonsiffs an entry be in like manner made of suits "called up by the Zillah Courts.

12TH MARCH, 1825.

The instructions of the Judges of the Court of Sudr Udalut in relation to the statements prepared in conformity to their orders of the 20th September last, having been in various instances misunderstood; and it appearing desirable to adopt some alterations suggested by the Provincial Court for the Centre Division in the form of the Abstract Registers, the Judges have resolved to circulate the following orders in modification of their former instructions.

Vide C. O. 16th
April 1825.

The Judges direct, that the numerical statement, entered in the letter from the Provincial Courts, shall commence with an account of the busi-

ness performed in their own Courts, and with the view of distinguishing the extent of the labours of the District and Village Judicatories, the accompanying form A,* is forwarded for the future guidance of the Provincial Courts. This form will be submitted in their letter accompanying the *quarterly* Abstract Registers.

In the form No. 2, furnished to the Zillah Courts, under date the 20th September, the copyist having omitted to insert the terms "special appeal," which it was intended should have been comprized in this statement, the Judges direct that the several Zillah Courts be instructed to rectify this error.

It has been observed that the terms used in the numerical abstracts do not sufficiently define the mode in which the suits have been disposed of: The Judges desire, therefore, that the following terms be uniformly employed in future. In cases where the claim has been wholly allowed or disallowed, the terms "in favour of the plaintiff," "in favour of defendant," are to be used, when a part only of the claim has been allowed the entry should accordingly be "partly in favour of the plaintiff." When suits are withdrawn, the same term is to be employed; when Razeenamah have been filed, such suits should be designated by the term, adjusted by Razeenamah, and when suits are dismissed for default, the entry should be made in these words.

Whenever suits may be referred by the Judge to the subordinate judicatories, or called up from them, the number of such suits need not be entered in the Abstract Registers, but are to appear in the column headed, "transferred suits" in the form B,* which accompanies this communication.

In lieu of the present explanatory abstracts inserted at the foot of the several statements from No. 1 to 29 inclusive, Nos. 1, 2, 3, in the form B are henceforth to be observed. These forms will afford the information, which the Judges of the Provincial Court for the Centre Division have considered necessary; and will distinguish the suits decided on trial from those dismissed for default. The Judges do not deem it advisable to continue this distinction, to the final "abstract of the number of causes disposed of" which at present corresponds with the form prescribed in Section XXIII. Regulation XIII. 1802. The Judges also desire that a note be appended to the foot of the Register from each Sudr Ameen and District Moonsiff, stating the number of appeals lodged within the *quarter* from the decisions of each of those Courts. It is not intended that this notice should be confined to appeals from decisions upon the causes enumerated in the Register of the *quarter*; but is to include every appeal admitted within the *quarter* whether relating to decrees passed prior to or during the same *quarter*.

With a view to facilitate the preparation of the general returns in this office, it is desirable that the Zillah Judges should invariably observe the same order of succession in entering the Registers of the several District Moonsiffs.

In conclusion, the Judges desire me to express their hope, that the

foregoing instructions, together with those circulated, under date the 27th January, may be carefully observed. The attention of the several Zillah Judges should be particularly called to the subject, when the present orders are furnished to them. The correct preparation of these returns is an object of importance, and if the requisite care is exercised, in the first instance, the necessity of much future reference will be obviated.

4TH APRIL, 1825.

Vide C. O. 20th
Sept. 1824 B.

The Judges of the Court of Sudr Udalut have found it necessary at different times, to issue instructions to the Zillah Judges, to enforce the observance of the provisions of Section XXV. Regulation VI. of 1818, which require, that all suits before the Court of a District Moonsiff, shall be heard, 'in the order in which they have been filed or numbered.'—The Judges, observing, however, that these provisions continue to be infringed, resolve to circulate the following orders.

Section XXV. Regulation VI. of 1818, clearly prescribes, that no suit shall be tried or determined by a district Moonsiff, out of the order of the file, excepting under the directions of the Zillah Court; and it is not competent to a Moonsiff of his own authority, "to bring any particular suit or suits to a hearing without attending to the regular order of the file."

The Judges direct that the several Zillah Judges do issue Circular instructions to the District Moonsiffs enjoining a strict observance of these provisions: pointing out to them their incompetency to try any cause out of the regular order of the file, without the previous sanction of the Zillah Judge. The Judges of the Sudr Udalut expect that the several Zillah Judges will notice, in future, every instance in which a Moonsiff may depart from their instructions; and repress their neglect by fine, and, if necessary, report their misconduct to the Provincial Court.

The foregoing order does not, of course, apply to suits disposed of without investigation: the terms of the enactment above cited restricting the operation of the rule, to suits brought to a hearing.

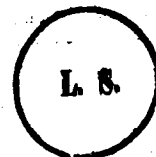
11TH APRIL, 1825.

To the Judges of the Provincial Court of Appeal, in the Northern, Southern, and Western Divisions.

The Judges of the Court of Sudr Udalut direct me to transmit for your information and guidance, the accompanying extract, from the proceedings of the Court of Sudr Udalut, dated 2nd October, 1804, which appears to have been communicated only to the Zillah Judges.

I have the honor to be &c.,
(Signed) W. HUDLESTON, Register

"The Deputy Register lays before the Court, a form of a warrant in the nature of a *capias ad satis faciendum*, drawn up by the Honorable Company's Solicitor, and approved by the Advocate General.



To (The name of the Person who is to execute the warrant) Canceled by
Act No. XXI. of 1840.
greeting. Judge of the Zillah Court of Chingleput, com-
mand you that you take (the defendant) now, or late, of (his place of
residence) and keep him safely, so that you may have his body before
me in the said Court on the day of next to satisfy
(the complainant) the sum of (the money recovered in the Zillah Court,) which the said (complainant) lately in the said Court recovered against the said (defendant) as appears by the records of the said Court.

Given under my hand and seal of Office this day of in the
year of Our Lord One thousand Eight hundred and (Signed) J. S. Judge.

30TH JUNE, 1825.

Extract of a Letter addressed to the Secretary to Government in the
Judicial Department, dated 30th May, 1825.

In the 21st paragraph of their proceedings the Provincial Court take occasion to observe, that "some oversight appears to have occurred during the preparation of Regulation III. of 1822, by its omitting all mention of Section IV., whilst Sections V., VI., and X. of Regulation VII., 1818, are specially quoted therein:" which, as they observe, "might lead to the belief that, in regular appeals not originally *formā pauperis*, in which the cause of action originally may not exceed 80 rupees, or may be a claim for damages on account of slander, assault, or personal injury, or for the recovery of pecuniary penalties incurred by any breach of the Regulations, the party against whom the decree may be given can appeal in *formā pauperis* from the judgments passed, although parties originally paupers are not admitted as plaintiffs to sue under Regulation VII. of 1818 in any such cases."

It appears to the Judges of the Court of Sudr Udalut, that, on the general principle of construing one part of the law by another, it might safely be ruled, that the provisions of Regulation III. of 1822, do not extend to the cases described in Clause first, Section IV. Regulation VII. of 1818: it may, however, be expedient to introduce a declaratory provision to this effect into any Regulation, which may be enacted in modification of that last mentioned.

In the 22d paragraph of the proceedings of the Provincial Court, it is stated that discussions have arisen regarding the true intent and meaning of the declaration in the form A, appended to Regulation VII. of

1818, it being contended, that the words "contained in the foregoing declaration," belong to the first declaration, that is, the one mentioned in Clause second, Section V., whereas those words had formerly been deemed to refer only to the truth of the annexed schedule, and not to the truth of all the allegations, contained in the preceding declaration.

The terms in which the declaration in the form A appended to Regulation VII. of 1818 is drawn, admit of the construction, which has been put upon them by the Provincial Court, namely, that they have reference to the declaration, mentioned in Clause second, Section V. of the Regulation. That construction appears, however, to the Judges of the Court of Sudr Udalut to be manifestly erroneous, there being nothing in the contents of the declaration last mentioned, to which the affidavit of the party could answer any conceivable purpose. The Judges are of opinion, that the affidavit in the form A refers exclusively to a statement to accompany the schedule of property, described in Clause fourth, Section V. of the Regulation, setting forth the situation of such property, and describing the circumstances, and the period, of any alienation of property previously in the possession of the party. Such has been the construction, acted upon by the Judges, on the qualification of a pauper appellatant in the Court of Sudr Udalut.

1ST JULY, 1825.

The Judges of the Court of Sudr Udalut seeing reason to believe that their instructions under date 20th September last, respecting the transfer of suits from the files of the District Moonsiffs for trial by the Sudr Ameens, have not been correctly interpreted by the Zillah Judges, deem it proper to transmit to you the accompanying extract* of a letter, dated 20th ultimo, to the Judges of the Provincial Court of Appeal in the Centre Division noticing an instance in which those instructions had been acted upon in a manner wholly inconsistent with their intention.

The Judges desire that you will communicate the extract in question to the Zillah Judges within your jurisdiction for their information and future guidance.

Extract of a letter addressed to the Judges of the Provincial Court in the Centre Division, dated 20th June, 1825.

The Judges of the Sudr Udalut observe that the Acting Judge in the Zillah of Cuddapah called up 411 suits from the file of the District Moonsiff of Cuddapah. This proceeding the Judges conclude to have been founded upon the instructions given in the 24th paragraph of my letter, dated 20th September last.

The acting Judge must have greatly misunderstood the intention of those instructions in transferring such an enormous number of suits at once from the file of the District Moonsiff to that of the Zillah Court. It was merely intended, that on occasions whereon it might appear that the files of the District Moonsiffs were overloaded and falling into arrear, and the state of the file of the Zillah Court might not admit of the reference of a sufficient number of suits to the Sudr Ameens, such a number, as might be requisite to give immediate employment to the latter Officers,

* Paras 6, 7, 8, 9, and 10.

should be called up from the files of the District Moonsiffs, whose Courts might be the most contiguous to the Zillah station.

The power vested in the Zillah Judges by Section LIV. Regulation VI. of 1816, is highly valuable and necessary in order to the exercise of the efficient controul over the proceedings of District Moonsiffs: but the Judges of the Sudr Udalut are of opinion, that the greatest caution and discretion ought to be observed in the exercise of it. It is obvious, that parties in suits thus called up are subjected to expenses, on which they never could have calculated, and which if they had foreseen they perhaps might have refrained altogether from litigation. From local and particular circumstances it is possible, that they may have sought the decision of a District Moonsiff, when they would not have had recourse to that of any other authority, before whom if they are reluctantly brought, they are exposed to inconveniences to which knowingly they might not have rendered themselves liable.

The Judges think therefore that a paucity of business before a Sudr Ameen is barely sufficient cause for calling up suits from the District Moonsiffs, if there is the prospect of their being decided in a reasonable time where they were originally filed, and when, this not being the case, it is advisable so to call up suits, the Judges of the Sudr Udalut direct, that they may invariably be those for the highest amount that have not been proceeded in.

You will be pleased to communicate the observations contained in the 6th, 7th, 8th, and 9th paragraphs of this letter to the Zillah Judges within your jurisdiction and be careful to notice any instance, in which a Zillah Judge may appear to have exercised the authority given by Section LIV. Regulation VI. of 1816, without due discrimination, or called up at any time a greater number of suits than appeared necessary for the relief of the file of the District Moonsiff, or the provision of immediate employment for the Sudr Ameens.

21ST OCTOBER, 1825.

The Court of Sudr Udalut have, of late, received several communications, upon matters pending before them, through the channel of the public post, which they are precluded by the Regulations from taking cognizance of, and having ground to suppose that the parties forwarding these representations are not sufficiently aware of the inutility of the measure they have adopted, they desire that a public notice may be affixed in the Provincial and Zillah Courts, declarative of the irregularity of the proceeding adverted to; and pointing out to the inhabitants, that all representations to the Court of Sudr Udalut, can only receive consideration, when made in accordance with the rules laid down in Section VI. Regulation V. of 1802.

The substance of these rules, should be inserted in the notice now directed to be published.

9TH DECEMBER, 1825.

An instance having lately come under the notice of the Judges of the Court of Sudr Udalut, from which it appears, that the provisions of Clause second, Section XV. Regulation XV. of 1816, have not been construed as making it obligatory on the Register of a Zillah Court to

Vide Act IX of 1844.

Vide C. O. 15th February 1839.

Vide Act XII of 1843.

write his decrees in English: and the Judges being clearly of opinion that such is the intention of the law, they desire to be informed, whether it has been the uniform practice in the Zillah Courts within your jurisdiction for the Registers to record their decrees in the English language.

9TH FEBRUARY, 1826.

Vide C. O. 18th
October 1824.

Instances having come under the observation of the Court of Sudr Udalut in which considerable intervals have elapsed between the date of passing a decree and that of reading it in Court and filing it of record;—I am commanded by the Judges to signify their opinion, that this distinction between passing a decree and reading it in Court and filing it of record is incompatible with the Regulations, and liable to produce mischievous effects. No decrees can be considered as passed till it is read or declared in open Court, and on the date of its being passed it is virtually filed of record.

Vide Act XII
of 1843.

With reference to the Court's Circular orders, 18th October, 1824, the Judges are of opinion that the only proper course is to declare judgment in open Court by reading a short abstract of the decree in the native language, which can be prepared in a few minutes by a competent translator, and for which purpose the draft of the decree need not be seen by him till immediately before the Court opens.

10TH AUGUST, 1826.

Extract of a letter from the Secretary to Government in the Judicial Department, dated 8th August, 1826.

Vide C. O. 28th
Oct. 1822 and
No. 7.

Appendix C.

The Governor in Council has been pleased to resolve, that when the Register of a Zillah, or Provincial, Court deposits money with a Collector, under the rules established on the 9th of February, 1819, the Collector shall give a receipt for the specific sum deposited, and be responsible for the amount; and that the practice of receiving and returning under seal deposits lodged with Collectors by judicial officers shall be confined to deposits not consisting of money.

21ST SEPTEMBER, 1826.

The Court have been led to consider the general question as to the amount of security proper to be taken from the party placed, or left, in possession of landed property under an Appeal to the King in Council.

Vide C. O. 29th
August 1831.

On occasion of the first appeal of this description being admitted in No. 18 of 1814, this Court directed in their Proceedings, 24th September, 1818, that the security to be taken from the party in possession should be fixed with reference to the general rules in this respect declared in the Regulations which make it one year's produce, if the land be Malguzary, ten years produce if Lackiraj. On one occasion since, the same amount of security has been approved by the Court; in all the other cases which have occurred, the Courts below were charged to take good and sufficient security; but the amount was not specified nor reported.

All that this Court is bound to do is to take good and sufficient se-

curity for the due performance of the decrees of the King in Council. This will be sufficiently provided for if security is taken for all net receipts from the lands—because, to whichever party the property may be finally adjudged, the revenue due to Government, which constitutes the difference between the net and annual produce under the Regulations, must have been intermediately paid and never constituted an accountable receipt to the party in possession. As long as that party gives security for all that he receives, so long will there be the means of duly performing the decrees of the King in Council, because any private transfer of the land itself during the appeal is invalid, under Section XIV. Regulation IV. of 1802, which, though applicable to appeals to the Governor General in Council, and as such rescinded and not re-enacted with respect to appeals to the King in Council, the Court have no doubt applies to the latter, and the land itself and the receipts from the land are the whole property.

The Court are not called upon to discuss the necessity of taking security in the amount of the whole annual produce in cases of appeals determinable finally in this country, and in such cases the Regulations leave no discretion. The Court are of opinion that the lowest sufficient security is all that need be taken in any case; but in appeals to the King in Council the indefinite distance of the decision is a peculiar circumstance which renders it expedient to give every possible facility to the execution of the decree, appealed from: otherwise the right of making such an appeal is convertible into an instrument of serious oppression, by keeping the winning party out of a right which has been adjudged to him by the highest tribunal in this country, and to which his title must therefore be presumed well founded. This principle was distinctly recognized in the proceedings of this Court on the first case, but at that time the Court had not had experience how great the distance of the decision really was. With the experience of 8 years, during which many such appeals have been preferred and not one decided; and with the information of late officially communicated from Bengal, the present Court consider that in modifying the rule declared by a former Court they are only doing that, which the Court that passed the rule would have done if they had foreseen what is now known respecting the real nature of these appeals.

The Court accordingly resolve, that the security to be taken, in the first instance, from a party in whose favour a decree of this Court for landed property shall be executed pending an Appeal to the King in Council, shall be for a sum equal to the difference between the annual produce thereof, as defined by Section III. Regulation III. of 1802, and the yearly revenue payable to Government; further security for an amount, to be similarly calculated, continuing to be demanded at the beginning of every successive year, so long as the Appeal to the King in Council shall be depending; and, in failure of the security demanded being given, the landed property to be placed under attachment, or in possession of the opposite party, as the case may be.

Vide C. O. 29th
August 1831.

Vide C. O. 14th
April 1834.

16TH DECEMBER, 1826.

I am directed by the Court of Sudr Udalut to desire that all records of appeals and other packets sent from your Court to the Court of Sudr

Udalut by Banghy may in future be invariably covered with wax cloth over the paper envelope, the joinings of the wax cloth to be sewed and sealed.

28TH FEBRUARY, 1827.

In the opinion of the Judges all suits against Collectors, of however small amount, should be decided by the Zillah Judges themselves: not, however, because the Judges alone are mentioned in Regulation I. of 1823; that mode of expression being evidently used merely with reference to the Judge, as distinct from any subordinate Officer of his Court, being the person who alone admits and arranges the disposal of all suits preferred in his Court: but, because it is inconsistent with propriety and with the principles and usages of the service that the acts of a superior officer should be decided on by an inferior one—as would be the case if the suits in question were referred to the Register.

1ST MARCH, 1827.

I am directed by the Court of Sudr Udalut to transmit to you the accompanying copy of a letter dated the 23d ultimo, from the Secretary to Government in the Judicial Department to be communicated to all the Judges and Assistant Judges within your Division for their information and guidance.

FORT ST. GEORGE, 23D FEBRUARY 1827.

Vide C. O. 25th
Aug. 1823 and
C. O. No. 18. Complaints having been made to Government that Zemindars and other individuals of rank and respectability are frequently required to give evidence in trivial and unimportant matters before the Courts, and are subject to great annoyance, and, in their opinion, degradation thereby; I am directed to request that the Sudr and Foudaree Udalut will take a suitable opportunity to explain to the Courts in the Provinces that it is the wish of Government that they should avoid summoning persons of this description as much as possible, and that, when their attendance in Court is indispensable, they may be treated with the consideration and attention which is due to their rank and situation in life.

I have the honor to be &c.,

(Signed) H. CHAMBER,
Sec. to Govt.

26TH MARCH, 1827.

With reference to Regulations I. and II. of 1827 just promulgated, and with the sanction of the Governor in Council I am directed by the Courts of Sudr and Foudaree Udalut to furnish you with the following instructions to be communicated for the guidance of all Zillah and Assistant Judges within your Division who are now, or hereafter shall be affected, by them.

The Ministerial establishments for the Auxiliary Courts, provided for in Section IV. Regulation I. of 1827, are to be selected by the Zillah Judges, on the formation of those Courts, first from among such of the native servants of the abolished Courts as may still be unemployed or in lower situations than they held there; next from among their own

Court servants, on the principle of promoting such as are most able and deserving: subsequent appointments and dismissals in the Auxiliary Courts to be made by the Assistant Judges at the heads of those Courts.

Assistant Judges, appointed under Regulation I. of 1827, being to exercise, under Clause first, Section V. the full power and authority of Zillah Judges, within their local jurisdictions, the Zillah Judge, on the establishment of an Auxiliary Court, is to send orders to all the District Moonsiffs whose local jurisdictions are included within that of the Auxiliary Court from the date on which the Assistant Judge shall commence the exercise of his functions to transmit to him instead of to the Zillah Judge, the reports specified in Clauses first and second, Section XII. Regulation VI. of 1818, and the fines mentioned in Section LI. of the same Regulation. Similar orders to be sent whenever any subsequent alterations by order of Government of the local limits of any Assistant Judge's jurisdiction may render them necessary. —It will also be the duty of the Assistant Judge to recommend to the Provincial Court persons to fill any vacancies in the office of District Moonsiff within their jurisdictions.

In the transfer of suits to the Assistant Judge under Clause first, Section VI. Regulation I. of 1827, the Zillah Judge will observe the following rules.

If the petition of Complaint only has been filed, he will transfer the suit in its present state.

If any further pleadings have been filed, beyond the petition of Complaint, he will retain the suit in his own Court, till the Pleadings have been completed and then transfer it.

If the pleadings and exhibits have been filed, and any of the witnesses have been summoned or examined, he will not transfer the suit, but decide it himself.

The same rules are to be observed in referring suits to the Assistant Judge, under Clause second, Section VI.

Sudr Ameens on the first establishment of the Auxiliary Courts are to be selected by the Zillah Judge from among the most deserving of the District Moonsiffs.

On the establishment of an Auxiliary Court the Zillah Judge will transmit to the Assistant Judge an authenticated copy of all Circular orders received from the Provincial Court or Sudr or Foudaree Udalut, which his records contain: also one copy of the Regulations and of any other books which may have been furnished by Government for the use of his Court and of which he has duplicates.

All the same reports and statements as are submitted by Zillah Judges and Criminal Judges to the Provincial Courts and Sudr and Foudaree Udalut to be transmitted by the Assistant Judges to those Courts direct.

All Circular orders or other instructions sent from the Sudr and Foudaree Udalut to the Provincial Court to be communicated to the inferior Courts within the division, to be communicated direct to the Auxiliary Courts; and all other communications generally to be made direct from the Provincial to the Auxiliary Court.

During the temporary absence from his station of an Assistant Judge

Circular Orders of the

from sickness or other cause, if no special arrangement shall have been made by Government, the Judge of the Zillah Court will depute his Register to take charge of the Auxiliary Court, or, in the absence of his Register, will call upon the Judge of the nearest Zillah to depute his Register for that purpose. The officer thus deputed will not be competent to exercise any judicial functions unless specially commissioned by Government, and his duty will be confined to the superintendence of the office and to the discharge of such of the functions of the Assistant Judge as are purely ministerial.

10TH APRIL, 1827.

I am directed by the Court of Sudr Udalut to transmit to you for the information and guidance of the several Zillah and Auxiliary Courts within your jurisdiction the accompanying copy of a correspondence with Government respecting the course proper to be observed by those Courts in case of application being made to them to act in execution of a decree of the Supreme Court of Judicature respecting property situate within their local jurisdictions.

No. 13.

To the Acting Secretary to Government in the Judicial Department.

SIR,—I am directed by the Judges of the Court of Sudr Udalut to transmit to you for the purpose of being laid before the Honourable the Governor in Council, the accompanying copy of a letter dated the 25th instant, with its enclosures from the Judge in the Zillah of Chingleput, requesting instructions on the subject of a requisition made to him by the late Sheriff of Madras.

It appears that two villages called Noombul and Paliampet, situated in the Zillah of Chingleput, have been sold under a Writ of execution issuing from the Supreme Court of Judicature at Madras; and the Zillah Judge is called upon to give the usual notice of such sale to the tenants, and to deliver possession to the purchaser.

The Judges apprehend that the Zillah Judge is under no legal obligation to comply with the Sheriff's requisition in this matter; but they beg leave to suggest that the question may be referred for the opinion of the Advocate General.

If the officers of Government in the Provinces are bound as such to act ministerially in the execution of this or of any other process issuing from the Supreme Court, it appears to the Judges to be extremely desirable that rules should be framed for their guidance and published in a legislative enactment.

(Signed) G. J. CASAMAJOR, *Register.*

29th January, 1827.

No. 89.

Fort Saint George, 9th March, 1827.

I am directed to acknowledge the receipt of your Register's letter of the 29th January last, No. 13, and to transmit for your information and for the guidance of the Zillah Courts, the accompanying copy of one which was in consequence addressed to the Advocate General and of

Court of Sudr Udalut.

the reply to it, respecting sales by the Sheriff of Madras of lands situated beyond the limits of the jurisdiction of the Supreme Court, and the process by which the purchasers may obtain possession thereof.

I have the honor to be, &c.

(Signed) HENRY CHAMIER,

Secretary to Government.

To the Judges of the Sudr Udalut.

To the Advocate General.

SIR,

I am directed by the Honourable the Governor in Council to transmit to you the accompanying copy of a letter from the Sudr Udalut, with its original enclosure and to request that you will state your opinion, whether in such matters as are therein noticed the Zillah Judge or any other officer of the Government beyond the limits of the jurisdiction of the Supreme Court is legally bound to comply with requisitions from the Sheriff and to act ministerially in the execution of process issuing from the Supreme Court.

As the Regulations prescribe that certain forms shall be observed in order to render sales of land, whether in execution of decrees of Court or for arrears of revenue, valid, you are requested to state whether such forms are not binding on officers of the Supreme Court as well as on the local officers of the Government when in the execution of similar duties.

I have the honor to be, &c.

(Signed) HENRY CHAMIER,

Secretary to Government.

6th February, 1827.

To the Chief Secretary to Government.

SIR,

I have the honour to acknowledge the receipt of a letter from Mr. Acting Secretary Chamier, dated the 6th ultimo, transmitting a communication from the Sudr Udalut, with its original enclosure, and requesting my opinion, "whether in such matters as are therein noticed, the Zillah Judge, or any other Officer of the Government, beyond the limits of the jurisdiction of the Supreme Court is legally bound to comply with requisitions from the Sheriff and to act ministerially in the execution of process of the Supreme Court."

I am of opinion that possible cases may arise, in which, a Sheriff may be justified, in requiring the aid of a Zillah Judge, in executing the process of the Supreme Court: but, that in the case, which has produced the present correspondence, the Sheriff had no authority to make any requisition to the Zillah Judge at Chingleput, respecting the villages which had been sold under the process of the Supreme Court, or delivering the possession thereof.

A practice has prevailed at Madras, whereby the Sheriff after selling property, seized in execution, has usually delivered possession of it to the purchaser, and this so far as regards goods and moveable property, is consonant to the practice in England; but as Houses and Lands are here, under the charter, subjected to the usual process of the

Court. The Sheriff has also, in many instances, delivered possession, to the purchasers exercising in this respect, as I consider an excess of authority; and therefore, I presume, he considered himself justified in addressing the requisition to the Judge of Chingleput.

It appears to me, that when the Sheriff has sold the right, title, and interest in *immoveable* property, of any Defendant, against whom a *fieri facias* has issued, and has executed a conveyance to the purchaser, the functions of the Sheriff have been expended; and that the purchaser must then adopt, in the Supreme Court, the same course that is prescribed in England, by an action of ejectment, this, of course, can only apply to Houses or Lands *within* the limits of Madras.

By the operation of the process executed by the Sheriff, the right, title, and interest of the defendant in the property sold and conveyed, is transferred to the Purchaser, and he commences an action of ejectment against the Tenants or other person in possession; and serves them with process, which enables them to appear and defend their possession, and, should the party, who had been defendant in the former action, think fit to defend against the purchaser, it is permitted. But on proof that such defendant *was* the proprietor of the property, at the time when it was seized in execution: and on proving the Judgment obtained against him, the process, the seizure, and the sale, and conveyance, the purchaser obtains a verdict in his favor, upon which, a Judgment is entered up, and then, but not until then a process called a "Writ of Possession" issues to the Sheriff, authorizing him to deliver possession of the property so recovered by the ejectment, to the successful party, the purchaser under the former process.

It will be *readily* perceived, that no action of ejectment can be brought in the Supreme Court, to recover lands, situated *beyond* the limits of Madras: and that therefore a purchaser of such lands, can derive no benefit from his purchase, unless he can resort to some other Jurisdiction, to obtain the possession of the property purchased.

The right of the Supreme Court to sell landed property, beyond the limits of Madras, belonging to persons subject to its Jurisdiction, has never, I believe, been *successfully* questioned; although many doubts have been entertained on the subject, here and in Calcutta: and I am not prepared to support an opinion, that such a right does *not* arise out of the Charter, giving to it a reasonable construction.

If the Supreme Court has the power to sell immoveable property, situated beyond the limits of Madras, belonging to persons, who are clearly subject to its jurisdiction, and, if the same, *be sold*, the purchaser must have a remedy in some jurisdiction, if the property sold be not delivered to his possession.

For the reasons already stated, I am of opinion that no such remedy can be found in the Supreme Court, where the immoveable property, is not within the limits of Madras, and therefore, such a purchaser, must I think, resort to the judicial authority exercised in the Zillah or District, in which the property sold is situated.

I am wholly uninformed of the practice that prevails in the Zillah Courts, respecting, enforcing the judgments of other Courts, and it is

very possible that my ignorance of the actual proceedings, might render it difficult for me to construe or understand the Regulations that apply to this subject. But I take it for granted, that a person who has recovered a judgment in one Zillah, may, with it in his hand, follow a defendant into any other Zillah, and there enforce it against person or property. If so, the proceedings which provide for such a case, will, I conceive, afford an analogy, for some competent proceedings in a Zillah Court, to enforce or carry into effect, a judgment, or execution of the Supreme Court.

If the Plaintiffs in the two actions mentioned in the letter from the Sheriff to the Judge of Chingleput, had not sued out process of execution at Madras, but had commenced proceedings in the Zillah Court of Chingleput, on the judgments obtained in the Supreme Court at Madras, I presume, that these judgments would have been received, as evidence of the debts recovered (provided, the defendants in the actions, were actually subject to the jurisdiction of the Zillah Court) and that process of execution, would then have issued from the Zillah Court against the villages and lands of the defendants, whereby, the Plaintiffs would have obtained the fruits of their judgments.

But, it might have happened, that the parties Defendants, when the judgments were obtained in the Supreme Court, were not subject *personally* to the jurisdiction of the Zillah Court of Chingleput, and in that case, I suppose, that the possession of immoveable property, within the Zillah, would not have generally subjected such persons to that jurisdiction so as to have enabled the Plaintiffs who had recovered judgments at Madras to commence proceedings at Chingleput on such judgments, and if so, the latter parties, would have been remediless against the Villages and lands unless they could have been sold by the Process of the Supreme Court, and *this*, I think, furnishes a strong argument, in support of the sale, under the process of that Court.

If I am right, in assuming that Nazar Jacob Shamier, and Joseph Nazar Shamier, the Defendants, in the two actions at Madras, were not liable to every action that might be brought against them, in the Court of Chingleput, by reason of their possessing Villages and Lands within that Zillah: and if the Supreme Court had not a legal authority to sell the Villages and Lands, it would necessarily follow that notwithstanding the judgments obtained at Madras, the parties who recovered these judgments, would be without any remedy against the Villages and Lands and that the parties Defendants, might proceed to any other part of India, and receive the rents and profits of the Villages and Lands, setting their Judgment creditors at defiance.

This would be so contrary to justice, that I am sure it never could have been a case contemplated by the Legislature, without making a provision against it; and I confess that I do not perceive any serious inconvenience, or clashing of Jurisdiction by recognizing the right of the Supreme Court to sell immoveable property, situated within the Jurisdiction of the Zillah Courts.

The purchaser according to my view of the case must proceed in the Zillah Court to recover the possession of the property sold: and must take with him the same documents that would be required to support an action of ejectment in the Supreme Court, whereby he would satisfy the Zillah Court that as Purchaser, he is entitled to the right, title, and in-

terest of the previous owner, in whose situation, the purchaser would be placed. No difficulty in respect of Jurisdiction would arise, for the tenants in possession, will be the parties Defendants and their pottahs, leases, and cows will be all protected; and the purchaser under the sale by the Sheriff, will be placed in the same situation as if he had purchased from the former owner.

With respect to the second paragraph of Mr. Chamier's letter, I think I have already submitted an answer: and I am clearly of opinion that the Judge of the Zillah Court and the other Officers of Government, are not bound to take any notice of applications from the Sheriff to deliver possession of lands sold. The purchasers at the Sheriff's sale, are the persons, who must apply in a regular manner to the Zillah Judge, and observe the same forms, as are usual in similar cases.

I have the honor to be, &c.,

(Signed) HERBERT COMPTON.

(True copies) Advocate General.

(Signed) HENRY CHAMIER,

Secretary to Government.

18TH MAY, 1827.

Vide C. O. 15th
Feb. 1830, A.

In the event of cases occurring in your Court or any of those subordinate to you in which answers are required to interrogatories addressed to persons in the Island of Ceylon; I am directed by the Court of Sudr Udalut to state for general information and guidance, that the proper course to be pursued is for the officer presiding in the Court requiring the answers to forward the interrogatories in due form to the Secretary to Government in the Judicial Department with a letter requesting that answers may be obtained and transmitted back again.

16TH AUGUST, 1827.

The question at issue is whether it is lawful for District Moonsiffs to sell land, paying revenue to Government, in satisfaction of Decrees, without the intervention of the Collector.

The Court have no doubt that it is; unless such sale involves a transfer of the propriety right established by Regulation XXV. of 1802, in which case it is not.

Vide C. O. 20th
July 1829.

Section XLVI. Regulation VI. of 1816, expressly gives to District Moonsiffs power to cause their Decrees to be executed by the sale of land, without any restriction or reference to the Collector; and Section LXI. implies that they have that power by authorizing Zillah Judges to employ them in the sale of real property in execution of Decrees of the Zillah Court, the Register and Sudr Aumeens. The wording of the latter Section as well as the provision at the end of it for remunerating the Moonsiff so employed evidently excludes the agency of the Collector: or any other person except some subordinate agent of the Moonsiff himself. The proprietary right, established by Regulation XXV. of 1802, which is therein called landed property, property in lands &c., was evidently excluded from contemplation in framing Section XLVI. Regulation VI.

of 1816. That Section is copied nearly verbatim from Section IX. Regulation III. of 1802, by which the same power is conferred on Zillah Courts; but the words "Zemindary, independent or dependent Talook or other estate" which comprise several of the terms descriptive of that particular right, are left out in Section XLVI.

When Regulation VI. of 1816 was enacted permanently settled landed property could not be subdivided into portions paying a less permanent annual revenue than 500 pagodas: and as the Jurisdiction of District Moonsiffs over land paying Government rent extended at that time only to such as paid a yearly Government rent not exceeding 200 rupees, they never could have to adjudicate upon permanently settled landed property at all. It does not seem to have been considered that District Moonsiffs might have to realize the amount of a Decree against a person possessed of permanently settled landed property and no other, by the sale of that property: If this was considered, it can only be supposed that it was left as a point, not expressly provided for, to be disposed of under Section XIII. which directs that, in all such points, District Moonsiffs "shall observe as nearly as may be practicable the rules prescribed in the Regulations for the guidance of the Zillah Courts in the trial and decision of Civil Suits." The discretion given to the Zillah Judge by Section LXI. does not supersede the rule laid down in Section IV. Regulation XXVI. of 1802, that all sales in satisfaction of decrees of lands paying revenue to Government must be made by the Collector. The discretion must be exercised subject to this rule.

The only argument, brought by the Collector of Tanjore, against the exercise of this power by the District Moonsiff is drawn from Section IV. Regulation XXVI. of 1802, which he considers to be of general application. But this is not the case: that Section and Regulation apply only to the particular right established by Regulation XXV. of 1802 and conferred by the Sunnud-i-Milkeut-Istimrar. All the revenue Regulations of 1802 were framed with reference to this particular right which, at the time when they were passed, it is well known was intended to be made universal throughout the territories of this Government. Afterwards, when that intention was suspended, certain of those Regulations were expressly declared by Regulation II. of 1806, applicable to districts where the land revenues were not permanently settled and consequently that particular right not introduced: but Regulation XXVI. was not so extended, nor has ever been since. The words Malguzary land or land paying revenue to Government have been declared by this Court to signify all lands not Lacheraj, and Malguzary and Lacheraj lands are frequently used in the Regulations as comprising between them all lands whatever. But for the purposes of Regulation XXVI. of 1802, they cannot be so applied: the thing there signified by land paying revenue to Government is evidently that the transfer of which is required to be entered in the register established by Section II.; and this is, and can be, only the particular right which was established by Regulation XXV. of 1802. For the proprietors, mentioned in Section II., are undoubtedly the persons selling and purchasing that particular right, and theirs are the only names which are provided for being entered in the register. The words land, landed estate, land paying revenue to Government, are frequently used as synonymous with this right from which they are, in truth, perfectly distinct; and this confounding of them with it can only be accounted for from the intention of rendering that particular

Vide C. O. 11th
Oct. 1827

right universal and the little knowledge possessed, when the terms were introduced, of the more near and immediate rights in the land. These lay below and beyond the view of those by whom the Regulations of 1802 were framed; but they existed nevertheless, were freely transferred under the permanent settlement, and have come forth, unaffected by it, in lands which have fallen into the hands of Government, and had their permanent settlement abolished.

Having thus disposed of the general question it only remains to observe that the proclamation and register proposed by the Collector of Tanjore would be unwarranted by the Regulations, and that it would be illegal to declare a transfer of land invalid and demand the revenue from the late occupier, because such transfer had not been registered.

11TH OCTOBER, 1827.

It appears that the Zillah Court required the Collector to sell certain Malguzary lands in satisfaction of a Decree; and subsequently, there appearing reason to doubt whether those lands belonged to the party from whom the amount of the decree was to be realized, the Court ordered the sale to be suspended; but part of the lands had been already sold, though the purchase money had not all been paid; and the Collector applied for instructions whether the sale was to be considered legal and the rest of the purchase money demanded or not? The Zillah Judge replied that if, on investigation, the property sold should be found not to belong to the party cast, the sale would not be legal. The Collector hereupon submitted the questions.

Whether a sale of landed property, regularly made according to Regulation XXVI. of 1802, could be annulled, and the purchaser ousted, in consequence of a right to the property at the time when it was sold being afterwards established on the part of some other than the person to whom it was then held to belong and on whose account it was sold?

Whether the proceeds of the sale (supposing them to be disposeable) should be paid to the person who has established his claim to the land sold; or whether he has forfeited them by not preferring his claim within the period limited in a publication fixed up as directed in Section XI. Regulation XXVI. of 1802, and containing, besides the particulars specified in that Section, a declaration that claims on the property to be sold, if not preferred within that limited period, will be held invalid.

A radical error runs through the whole of the papers submitted with this reference, viz., the assumption that Regulation XXVI. of 1802 applies to all sales in satisfaction of Decrees of lands paying revenue to Government. This is not the case: that Regulation applies exclusively to the particular proprietary right established by Regulation XXV. of 1802 and conferred by the Sunnud-i-Milkeut-Istimrar. This point is fully treated in the Court's Proceedings of date the 10th August last, which have been circulated; and the Provincial Court are referred to the observations therein contained.

Vide C. O. 16th
August 1827.

It is necessary therefore to divest the foregoing questions of all reference to Regulation XXVI. of 1802, which is not applicable to any part

of the Zillah in question. That circumstance also renders it unnecessary to notice the further question raised as to the validity of sales when the publication prescribed in Section XI. of Regulation XXVI. of 1802, has not been fixed up at the office of the Secretary to the Board Revenue.

On the former of the two questions, when thus disembarassed, the Judges think that the Provincial Court have pronounced a sound decision in the 10th para of their Register's letter to the Collector, 9th September 1825; viz., that the Court are not competent to annul the sale on a summary investigation of claims set up to the property sold; and that the only mode of recovery left open to claimants, under such circumstances, is the institution of a regular suit; and this at any period; subject of course to the limitation prescribed by Clause fourth, Section XVIII. Regulation II. of 1802. The purchaser has obtained an apparent right of possession, of which he cannot be divested without a regular proceeding at law. The suit should be against the party in possession; who, if ousted by the result of it, will also have his action for recovery of the purchase money and damages as the case may be. Against whom this action should be brought must be determined by the circumstances of the case.

Vide C. O. 23d
Feb. 1831, and
C. O. 6th Feb.
1837.

With regard to the disposal of the proceeds of the sale, submitted in the 2d question, of course they cannot be forfeited, for the double reason, that Regulation XXVI. of 1802, does not apply and that, if it did, it contains no authority to declare claims invalid if not preferred before the date of Sale. Such a declaration is illegal, and the Collector was liable to be prosecuted for damages whenever he acted on it. The proceeds of sale, if not paid over when the claim is preferred, should be held in deposit to abide the issue of the suit; when, if the claim is established, they will be available in satisfaction of any claim that the real owner may make good beyond the bare recovery of his property; and the supposed owner will still be liable for the amount of the decree in satisfaction of which the property was erroneously sold.

The question submitted in the Provincial Court's letter 4th November 1825, arises wholly out of the misapplication of Regulation XXVI. of 1802; and is therefore already answered. The Judges do not call to mind any other enactment requiring the sale of Malguzary lands to be made by Collectors but Section IV. Regulation XXVI. of 1802; and therefore (they think) the Courts are not authorized by the Regulations to call upon Collectors to sell any thing but the proprietary right established by Regulation XXV. of 1802. All land which is *not Lacheraj*, is *Malguzary*.

24TH JANUARY, 1828.

The question has been submitted to the Court of Sudr Udalt whether Clause first, Section III. Section IV. and Section VII., of Regulation II. of 1825, apply to instruments executed before the date of the promulgation of that Regulation or not.

Vide C. O. 28th
Jan. 1830, B.

The Judges think that they do.

1st, Because, as respects Clause first, Section III and Section VII. the wording plainly requires it; the limitation as to date in both applies not to the execution of the instrument but to the act of the Court receiving and adjudicating upon. There is no reference in either to the date of execution of the instrument; and this is the more conclusive

in Section VII. because in Section, VI. Regulation XXXIV. of 1802, which is modified by that Section, there is an express limitation as to the date of the execution of instruments to be affected by it: and as this Section was before the framer of Regulation II. of 1825, it would certainly have suggested the express mention of a similar limitation as to date of execution, if such had been intended.

Secondly, because all three enactments are remedial; and should be construed so as to advance the remedy; which would be left very inadequate to the evil if they were construed only to affect instruments executed *after* their promulgation.

There may seem to be some difficulty in giving retrospective application to Section IV. as respects instruments for sums between 16 and 64 rupees. That Section contains a general declaration of the legislature; not a rule of action for the Courts. It declares that instruments for sums not exceeding 64 rupees, and wills, shall not thenceforward be required to be on stamp paper: From the 1st January 1809, till the date of that enactment (15th April 1825) instruments for sums between 16 and 64 rupees, and Wills, were required to be on stamp paper: Clause first, Section III. declares that the Courts shall not admit without a penalty, all the same instruments, *except deeds of devise, i. e. wills*, as are enumerated in Section IX. Regulation XIII. of 1816, (which Regulation II. of 1825, rescinds) when not executed on the prescribed stamp; and the prescribed stamp undoubtedly means the stamp required by the law in force when the instrument was executed. It might therefore seem that the Courts cannot still admit instruments for sums of from 16 to 64 rupees executed between the 1st January 1809, and the 15th April 1825, without the penalty.

But the Judges are unanimously of opinion that these niceties must be held to be overborne by the general intention and nature of the enactment: and that all instruments for sums between 16 and 64 rupees as well as wills, are admissible in the Courts, under Regulation II. of 1825, at whatever date they were executed, subject of course to the rule of limitation, prescribed by Clause fourth, Section XVIII. Regulation II. of 1802.

An instrument executed on a higher stamp than the prescribed one is clearly admissible without penalty: one chief object of imposing the stamp duty was originally declared to be to raise a revenue; and the revenue is more than secured, it gains by the mistake, which is not likely to be made for a fraudulent motive.

15TH FEBRUARY, 1828.

The question has been submitted to the Sudr Udalut whether, under Section XIII. Regulation XIII. of 1816, costs ought, or ought not, to be included in the amount on which the value of the stamp for an appeal petition is required to be calculated.

The Judges think there can be no doubt that they ought not.—1st. Costs cannot be considered as part of “the amount or value of the property claimed” in the appeal: 2d, they are always considered as distinct from the amount adjudged; and, accordingly, they are realized (Clause ninth, Section XIV. Regulation XV. of 1816,) before the decree is executed; and in decrees in appeal which confirm the judgment of

Vide C. O. 30th
May 1829.

Vide C. O. 5th
Nov. 1829.

the lower Court and are required (Section XXXV. Regulation IV. and Section XII. Regulation V of 1802,) to adjudge interest “on all sums receivable” under the original decree, interest is not allowed on costs.

21ST FEBRUARY, 1828.

The Judges think that under Section VII. Regulation II. of 1811, the Sudr Udalut and the Provincial Courts may awfully delegate to the Court of original jurisdiction the receiving and the deciding on the sufficiency of evidence to wasting, &c., and the issue of process, if necessary, without previous reference to the higher Court. It is a matter of great importance to the parties that the decision and consequent process in such cases should not be delayed.—For the same reason the Judges think that, in an original suit, or on a reference from this Court, a Provincial Court may delegate to the proper Zillah or Auxiliary Court the same function.

28TH FEBRUARY, 1828.

It appears that a district Punchayet having been assembled under Regulation XII. of 1816, to determine a boundary dispute, the litigant parties filled a Razeenamah; and the revenue Officer, by whose order the Punchayet was formed, applied through the Government Vakeel to the Zillah Court to annul the Razeenamah and cause the Punchayet to proceed to decide the dispute.

Hereupon the Zillah Judge has submitted the following questions:

1st. Whether it is competent to him to issue any orders in the case of a Punchayet acting under Regulation XII. of 1816.

2d. Whether it is competent to the parties to file a Razeenamah.

The Judges answer both questions in the affirmative. With regard to the first; the Zillah Judge is the immediate superintending authority over the District Moonsiffs in his jurisdiction; he is the proper person to correct errors, in their proceedings, as he is, for them to apply to in cases of doubt and difficulty. The motion of the Government Vakeel in this case was simply an application to the Court to correct a supposed error in the Proceedings of a Punchayet assembled by a District Moonsiff.

With regard to the second question; the Judges see no reason why a Razeenamah should not be admitted in a cause before a Punchayet as well as in one before any tribunal. The submission to the award of a Punchayet is by consent of both parties, except in the particular case of one party refusing to refer a cause under Regulation XII. of 1816, to a District Punchayet, when the other party applies in writing for such reference; in which case the Collector has power (Clause seventh, Section V. Regulation XII. of 1816,) to compel the former party to submit to it and to be bound by its award; but in this case the Law deems the refusal unreasonable and views the refuser in the same light as if he had consented. Therefore as the cause is submitted to arbitration by consent of both parties it may be *withdrawn* by consent of the same; and the Muchilka to abide by the award (if one has been executed) becomes void of course.

25TH MARCH, 1828.

The question has been submitted to the Court of Sudr Udalut what is the period allowed for preferring regular or special Appeals from the Decrees of an Assistant Judge to the Judge of the Zillah under Section V. Regulation I. of 1827.

The Judges have no doubt that the period intended by that Section is the period of 3 months allowed for appealing from decrees of Zillah Judges to the Provincial Court. Any other supposition would be inconsistent with the spirit of the Regulation which assigns to Auxiliary Courts, "the full power and authority of Zillah Courts," thus placing them in the stead of the Zillah Court, within their respective local jurisdictions, with the single exception of the appellate jurisdiction within 1,000 rupees lying to the Zillah instead of the Provincial Court; which exception does not affect the nature of their constitution.

27TH MARCH, 1828.

The question has been submitted to the Sudr Udalut, what is the proper mode of proceeding in a case under investigation by a Punchayet, when one or more members of the Punchayet have died before the award is framed.

The Judges think that, in this case, the Punchayet must be considered as dissolved, *de facto*; and the Muchilka to abide by its award to have become null and void in law. The parties are therefore at liberty either to apply for a new Punchayet or to prefer their claims to any other competent tribunal. If they apply for a new Punchayet, the surviving members of the old one will, of course, be eligible to sit upon it, and (in favor of witnesses) the new Punchayet should be at liberty to avail itself of any depositions taken in writing before the old one, which are duly authenticated.

3D APRIL, 1828.

The question has been submitted to the Sudr Udalut, whether, on a Collector submitting his opinion to the Provincial Court under Clause first, Section IX. Regulation XII. of 1816, that one or more members of a Punchayet have been proved guilty of gross partiality, the parties affected by that opinion can claim, of right, a copy of it on stamped paper.

The Judges think that they cannot.

Vide C. O. 8th
May 1828.

The proceeding, held by the Provincial Court in consequence of the Collector's opinion being communicated to them, is not of the nature of an appeal; nor is the Collector's opinion of the nature of a decree; if it were, the parties who were affected by it would have a right to a copy of it. But there is nothing, properly speaking, at issue between the party charged with partiality, and the party charging, the Proceeding is not a suit for damages; but a process for the correction of error in the Proceedings of an inferior tribunal by a superior one. It is of course proper that the party charged with gross partiality should be heard in disproof of the charge; but this can be before the Collector only, by whom all the evidence in the case is taken and who decides finally upon it, when the partiality charged is not proved to his satisfaction: when it

is, the Proceeding by the Provincial Court is only a continuation and conclusion of that held by the Collector. If the Provincial Court should think further evidence necessary, the Judges think it would be competent to them to call for it.

23D APRIL, 1828.

The three following questions have been submitted to the Sudr Udalut on the construction of Regulation V. of 1822.

The first question is, whether it is competent to a Zillah Court to admit fresh suits for the same causes of action which have been decided in appeal under Section XVI. Regulation V. of 1822; or whether such suits are barred by Section X. Regulation II. of 1802.

It is certainly not competent to a Zillah Court to admit such suits; as they have been already heard and determined by a competent authority; and their admission is barred by Section X. Regulation II. of 1802. Of course a decision by the Collector under Section XI. Regulation V. of 1822, does not bar an original regular suit to try the proprietary right to lands or crops, that decision going only to determine the temporary right of occupancy or possession.

The second question is, whether the "Appeal by regular suit," allowed by Section XVI. Regulation V. of 1822, admits of further appeal.

The proceeding contemplated by Section XVI. Regulation V. of 1822, is itself an appeal; and therefore only a special appeal lies from it, subject to the restrictions on such appeals. As the proceeding to be held by the Zillah Judge under Section XVI. Regulation V. of 1822, is an Appeal, he is competent to call for the Collector's proceedings in the case; he is also competent to take any fresh evidence that he thinks proper.

Vide C. O. 8th
May 1828.

The third question is, whether it an appeal under Section XVI. Regulation V. of 1822, against a decision by a Collector under Section XI. of that Regulation, the Zillah Court is competent to stay execution of that part of the Collector's decision which regards costs and damages.

The Judges think that the restriction laid upon the Collector by Clause second, Section II. not to levy costs or damages till after the 30 days allowed for appeal, must be held to apply to the costs and damages awardable under Section XI.: there is an obvious reason for placing that restriction immediately after the powers granted by Clause first, Section II.; and the omission to make it applicable to decisions under Section XI. is no doubt an oversight; no reason can be assigned for a distinction between that and the other cases.

Vide C. O. 56
and 61

28TH APRIL, 1828.

To the four Provincial Courts.

GENTLEMEN,

I am directed by the Court of Sudr Udalut to transmit for your own information and guidance and that of all the Zillah and Auxiliary Courts Subordinate to you the accompanying copy of a Circular letter from the Secretary to Government to all Collectors.

" CIRCULAR.

To Principal Collectors, and Collector.

SIR,

The Right-Honorable the Governor in Council having been pleased, to resolve, under date the 6th November last, that until further orders vacancies in the situation of Town Cauzy in the Provinces, shall be filled up by the Provincial Courts on the recommendation of the Zillah or Assistant Judges; I am directed to desire that the established allowances of the office may be paid from the date of appointment, which will, in each case, be notified to you by the Zillah or Assistant Judge, to such persons as may have been nominated to the situation in your district by the Provincial Court subsequently to the 6th November, 1826.

I am,

Sir,

Your most obedient Servant;

(Signed) HENRY CHAMIER

(A true Copy) Sec. to Govt.

(Signed) HENRY CHAMIER.

Sec. to Govt."

Fort St. George, }
25th April, 1826 }

8TH MAY, 1828.

Vide C. O. 3d April 1828 A case having come before the Sudr Udalut in which the Proceedings and opinion of a Collector submitted to one of the Provincial Courts under Clause first, Section IX. Regulation XII. of 1816, was entered by that Court on its file as a regular appeal; the Court think it proper to notify that that practice is erroneous: the Proceedings and opinion in question have none of the attributes of an appeal; the same matter is not at issue in them as in the original suit before the Panchayet; and the Provincial Court cannot enter upon the merits of the original suit. The Proceedings in the Provincial Court is a miscellaneous proceeding and should not be entered on their file at all

22D MAY, 1828.

The Court of Sudr Udalut direct that the Register prescribed by Section III. Regulation VI. of 1828, shall be kept in the following form.*

The Register prescribed by Section IV. Regulation VI. of 1828, is to be kept in the following form.*

These Registers should be written in large and distinct characters on a sheet of Europe paper of the largest size—on one page in the Native language—on the opposite page in the Persian; and the different entries made consecutively, till the sheet is filled on one side; only one side is to be written upon.

* Forms omitted.

When the latest date entered in the fourth column has expired, the sheet should be taken down from the place in the Court-house, where it was fixed up and has remained; and preserved as a record of the Court. Thus it will probably be seldom necessary that more than 2 or at the most 3 sheets should remain fixed up at the same time.

The attention of the several European Courts is called to the importance of dispatch in preparing the translations of decrees into the Native languages; without this, the effect of Regulation VI. of 1828, might be virtually to extend the periods limited for preparing appeals and to delay the execution of decrees; both of which are, in themselves, contrary to the interests of justice.

16TH JUNE, 1828.

With reference to Regulation IV. of 1828, the Courts of Sudr and Foujdaree Udalut, under the Sanction of the Governor in Council, direct that the rate of compensation to be fixed for translations of Judicial proceedings shall hereafter in no case exceed one rupee for every three hundred words of the original; but shall be fixed, within that maximum, at such rate as local circumstances, or the occasion, may appear to render proper.

Vide C. O.
No. 55.

28TH JUNE, 1828.—A

Great inconvenience having arisen for want of a general rule in regard to the preparations of pleadings, motions, and petitions, presented to the Court by parties in person or by Vakeels, the following rules are made to be in force from this day, with reference to Clause first, Section XXIII. Regulation XIII. of 1816.

Vide C. O. 8th
Aug. 1809.

1st. Each sheet of pleadings, motions, miscellaneous petitions, &c. shall contain not more than 30 lines.

Vide C. O.
No. 25.

2d. Any pleading, motion, or petition prepared contrary to the above rule will be rejected for informality.

3d. All papers filed in Court shall, immediately after the breaking up of the Court, be delivered to the Seristadar for examination of stamps, and he shall, if he find them correct, certify the correctness on the same day.

4th. In copies of decrees written in English, or in one of the Native languages, each paper shall contain 25 lines in large letters and in the most legible manner.

5th. When the decree is translated and certified, the party requiring an attested copy thereof shall deliver, at once, to the Seristadar the same number of stamp rolls as that on which the office copy is written; and if the number supplied be found insufficient, the Court will supply the deficiency and charge the party with the value of the additional sheets used; the day on which the copy is ready for delivery shall be certified on the back of it; and shall be considered as the day on which it has been delivered, whether the party, either in person or by Vakeel, attends and receives it or not.

Vide Act No.
35 of 1837, and
C. O. No. 55.

28TH JUNE, 1828.—B

Referring to some of the Diary proceedings accompanying the records transmitted by the Northern Provincial Court in appeals from their decisions preferred to this Court, the Judges find that a practice prevails there, of referring to their Seristadar, for examination of the correctness of stamps, every pleading, motion, and petition, and that these papers are not returned to Court for some days. The Judges also find that exhibits produced by Parties or Vakeels in suits are referred to the same Officer to examine and report, whether or not they are in accordance with points to be proved. The Judges conceive these Practices highly objectionable: the first of them tending to occasion delay in the progress of the business, and the second investing the Seristadar with a power wholly unwarranted by the Regulations. It is the duty of the Judges trying the case, to examine the exhibits and satisfy themselves whether, or not, they are in accordance with the points and whether or not they are material to the issue of the case.

The Court of Sudr Udalut, therefore, direct that the Provincial Court for the Northern Division be desired to amend the first practice, by delivering over to their Seristadar all the papers immediately after their being presented in Court, and by requiring him to certify, *on the same day*, the correctness or otherwise of the stamps, that, if they are certified to be correct, they may be filed on the record; otherwise, returned to the party presenting the same: in either case however the Provincial Court should satisfy themselves that the stamp is, or is not, correct.

The Provincial Court should discontinue altogether the second practice viz., referring exhibits to the Seristadar for examination.

30TH JULY, 1828.

The questions have been submitted to the Sudr and Foudjaree Udalut in what manner Precepts with proceedings, or orders, of a Superior Court ought to be sent and returned to; and whether a return should be made to Precepts which simply send orders for the information and guidance of a lower Court.

The Court of Sudr and Foudjaree Udalut direct that, in all cases, the Precept be written on the first side of a separate sheet of paper; and that the proceedings, or order, written on another distinct sheet, be enclosed in the former. The return to be copied on the same sheet as the Precept, which is to be sent back, with the return, to the Court which issued it; the Proceedings, or order, to remain as a record with the lower Court.

When the words of a Precept require a return to be made, a return ought, of course, to be always made: but where the words of the Precept do not require a return, it is not necessary to make one. It is *always* taken for granted that the orders of a superior to a subordinate authority are forthwith obeyed.

18TH OCTOBER, 1828.

I am directed by the Court of Sudr Udalut to convey to you their desire that you call upon the Zillah Judges of your division

to submit copies and translations of the legal opinions furnished by their Law Officers during the current and following years, through your Court, and not direct as heretofore. As the papers are generally very short, it will be easy for you to transmit them together with the civil Futwahs or Vyavasthas of your own Law Officers, so as to reach this Office by the 1st of February in each year. The questions and answers are always to be copied on Foolschap paper, 30 lines in a page, the answer underneath the question, and the translation must not be on the same paper with the writing in the original language.

3D NOVEMBER, 1828.

I am directed by the Court of Sudr and Foudjaree Udalut to transmit to you the accompanying copy of an extract from a Minute of Consultation, dated 3d ultimo, which has been communicated to this Office, in order that your Indents for the specified description of Cloths, and those of the Judicial authorities under you, may be addressed, in the form prescribed, to the Secretary to the Clothing Board.

Extract from the Minutes of Consultation, dated 3d October, 1828.

"Read the following letter from the Clothing Board.

25th September, 1828.

As it appears by the foregoing letter, that Cloth adapted for Peon's Belts and Office Tables can be supplied from the Clothing and Retail Stores at 100 per Cent. below the cost of Cloth lately purchased for those purposes by the Superintendent of Stationery: It is resolved, that all indents for Cloth required for the use of Public officers shall, hereafter, be made by heads of Departments on the Secretary to the Clothing Board; and that the following form be observed; and that indents shall continue to be countersigned as heretofore."

Resolved, that the Accountant General be instructed to issue the necessary orders as to the manner in which the supplies to departments should be brought to account.

Resolved, that the Clothing Board be placed in communication with the Superintendent of Stationery for the purpose of ascertaining the quantity of Cloth annually required for the above purposes and that they be authorized to make a proportionate increase in their indents on the Honourable the Court of Directors."

8TH JANUARY, 1829.—A

Read petition presented by Ponnepaukum Balakistna Moodeliar, of the Zillah of Chingleput.

With the above petition is delivered an authentic extract from the proceedings of the Centre Provincial Court, under date 19th September 1828, the 2d para of which is as follows. "The Provincial Court, having attentively considered the provisions in Clause second, Section XII. and

Vide C. O. 30th
May 1829.

* Form omitted.

at the close of Section XXII. Regulation XIII. 1816, are of opinion, that the Zillah Judge has rightly construed the Regulations—Copies of judicial proceedings, accounts, statements, reports, or other documents, *which individuals require for use or reference* may be authenticated on stamp paper of eight annas value; but copies of bonds or other documents specified in Section XI. of the said law^{*} if “*prepared as legal vouchers,*” or, “to be filed, or otherwise received in any Court of Judicature, can be authenticated only on stamps or Cadjans, of the rate prescribed by that Section,” for the “originals of such deeds.”

The Court of Sudr Udalt concur in this interpretation of the Regulation above quoted and resolve to circulate copy of para 3 of these proceedings (for the information and guidance of the lower Courts) to each of the other Provincial Courts. It will be proper at the same time to explain that when an original document is no longer required, it may be returned to the party who filed it, a copy if requisite being retained, as provided in Clause third, Section XXII. Regulation XIII. 1816; and that when copies of the documents specified in Section XI. of the said law are prepared as legal vouchers to be filed in evidence, and cannot be written out on stamp paper of the same value as the original, it will be sufficient that the total value of the stamps used for the purpose shall equal the amount of the prescribed stamp.

8TH JANUARY, 1829.—B

With reference to the new Regulation which has been passed, as mentioned in my letter of this date in the Foujdaree Department, I am directed by the Judges of the Sudr Udalt to desire that the several Courts may for the present be instructed to suspend the preparation of the usual abstract registers of civil suits disposed of in the *present month*, until further orders. It is the intention that these statements should for the future be forwarded only quarterly, and not monthly as hitherto, and new forms will be circulated for your guidance and that of the other civil tribunals under you to take effect from 1829.

For the past year 1828, the forms hitherto in use are to be observed.

Vide C. O. 28th
Dec. 1829 and
No. 93.

You will call upon the several Judges under you to furnish up to the 31st December, 1828, a statement in the enclosed form No. 6,* and to continue to forward a similar one on the 30th June, and 31st December, of each successive year, the whole to be transmitted by you to this office for the information of the Honorable the Court of Directors.

19TH JANUARY, 1829.

With reference to my letter, under date the 8th instant, I am directed by the Judges of the Sudr Udalt to forward to you the enclosed new forms* for the statements connected with Civil suits which you will circulate for the information and guidance of the several subordinate Courts in your division, from the commencement of the present year 1829.

The forms A, for the half yearly reports of causes depending should be

* Forms omitted.

immediately furnished by the lower Courts, for the last half year, terminating with the 1st instant, and for each subsequent half year.

The forms B, for Abstract Registers of Civil suits disposed of, are to be furnished by the lower Courts quarterly, instead of monthly, or for the periods terminating on the 31st March, 30th June, 30th September, and 31st December in every year, commencing with the 31st March next.

You will endeavour to forward these statements as hitherto to this Court, within the month following the period for which they are prepared, and with the usual remarks and explanations.

It is clearly to be understood that, in the abstract of suits “dismissed” are to be included all suits not decreed on their merits, or settled by Razeenamah, whether withdrawn by the plaintiff or dismissed for default or other cause without inquiry into their merits either before, or after, the pleadings are filed. If the plaintiff is non-suited after an investigation of the merits of the cause, the suit will of course, be included as one decided on its merits; and when a plaintiff withdraws the suit, it is not to be inferred that he has come to any adjustment with the defendant, unless they jointly file a Razeenamah. Vide C. O. 10th
Sept. 1829.

Vide C. O. 31st
August 1829.

22D JANUARY, 1829.

With reference to the powers vested in Zillah Judges, by Section XI. Regulation VIII. 1816, to refer to the Sudr Ameen appeals from the decisions of District Moonsiffs, I am directed by the Judges of the Court of Sudr Udalt to observe that, in all practicable cases, it seems highly desirable that the appeals from the native Judicatures should be decided by the European authorities; and that the reference of such suits to the Sudr Ameens should be avoided, except where the state of business renders it necessary; and that, in no case should it be resorted to, if the integrity or impartiality of the Moonsiff seems involved in the appeal.

Without in any respect affecting the power of referring such cases to the Sudr Ameens, which the Regulations vest in the Zillah Judges, you will be pleased to communicate the above for their guidance, in duly exercising the same.

4TH FEBRUARY, 1829.

The Assistant Judge of the Auxiliary Court of Canara has brought to the notice of the Judges of the Sudr Udalt an error in the Persian translations of Section II. Regulation XXI. 1802, which may seriously affect its construction by the Mahomedan Sudr Ameens or others, consulting that version of the code, and which therefore requires correction. The negative particle is erroneously inserted; and in lieu of the Persian rendering the original English “the cause of action shall exceed two hundred Arcot Rupees,” the translation runs “shall not exceed, &c.”

The Judges desire that this error be pointed out to the Mahomedan Sudr Ameens, and that all the Persian translations of the Regulations in the possession of your Court, or of those subordinate to you, may be corrected, by striking out the negative particle in question.

18TH FEBRUARY, 1829.

With reference to Regulation IX. 1828, recently promulgated, I am directed by the Judges of the Sudr and Foujdaree Udalut to state that, notwithstanding the rescission of the Sections of the undermentioned Regulations, their provisions are to continue in force as rules of office, until altered by further orders from this Court; and to desire that orders to this effect be circulated to the Village and District Moonsiffs and Sudr Ameens within your division.

1816 Regulation IV. Sections XXXVI. XXXVII. and XXXVIII.

"	"	V.	"	XIX.
"	"	VI.	"	XLI.
"	"	VII.	"	XXI.
"	"	VIII.	"	XII.

5TH MARCH, 1829.

Vide C. O. Nos. 26—30 and 54. In consequence of a reference from the Western Provincial Court, the Judges of the Sudr Udalut have been induced to reconsider the instructions conveyed in a letter to that Court dated 15th July, 1828, on the subject of the remuneration to be allowed to an Acting District Moonsiff.

It appearing that were this remuneration confined to the established fees on all suits decided or adjusted by him, the person actually performing the duties of the office might in some cases receive little or nothing from this source, the expences of the Moonsiff's establishment being first defrayed out of the fees; The Court resolve to direct, by a Circular order that whenever a person may be appointed to act as a District Moonsiff, during the absence of the Moonsiff from his station on leave or otherwise, the person so acting shall receive in addition to the established fees on suits decided or adjusted by him, one-half of the fixed salary attached to the situation.

11TH MAY, 1829.

Vide C. O. No. 40. Read letter from the Provincial Court for the Northern Division, forwarding one from the Zillah Judge of Chicacole, in which that officer submits, for the orders of this Court, the question "whether the Courts, in enforcing their decrees, should cause to be levied the amount of interest that may become due, until the final execution of the decree."

The practice of the Courts in this respect has been various. Nor has that of the Sudr Udalut been uniform. Under date the 8th May, 1810, and the 3d June, 1824, they decided that the interest accruing from the date of a decree until its execution should form the subject of a new suit; whilst on the 23d November, 1826, and the 11th and 28th December, 1828, they granted the same, by an order of Court.

Vide C. O. 224 Oct. and 16th Nov. 1829. A decree can only specify the amount of interest due up to its date; but a suit does not terminate with the decree; it is not brought to a conclusion until the decree has been executed. If interest has been adjudged to the date of the decree, there can be no doubt that it is due to the date of execution; and the only question seems to be, whether it should be recovered by an order of Court in continuation of the original suit, or by a new suit altogether.

Though a new suit might be more regular, it is of great importance to prevent all unnecessary litigation, and the improper delays which the unsuccessful party often throws in the way of the execution of decrees; and as the merits of the case are already fully before the Court, the Judges see no advantage to be derived from exposing the successful party to the delay, and the unsuccessful party to the expence, of further litigation by a new suit, swelling the files of the Courts, and occupying the time of the Judges with matter which can be at once as justly disposed of, by those who pass the decree, in a summary manner by order of Court.

It is, accordingly, ordered that when interest is adjudged in the decree up to its date, the Courts, by an order of Court, do enforce payment of the same from that date, up to the date of its execution unless delay in the execution of the decree be attributable to the Court itself, or the unsuccessful party prove, to the satisfaction of the Court, that unnecessary delay has taken place on the part of the successful party in moving for execution of the decree.

The consideration of this subject has brought before the Judges another question of practice in the Courts, respecting which also it is desirable that a uniform rule should be laid down, viz, whether when interest is adjudged in a decree in an original suit it may be adjudged only up to the date of the plaint, or up to that of the decree also.

In appeal No. 7 of 1817, this Court, on the 5th November, 1818, ruled that interest could be adjudged up to the former date only, because including interest up to the latter subjected "the defendant in the original suit to the payment of an institution fee on the appeal, above the amount for which he is justly liable."

But if interest up to the date of the suit forms a component part of the demand in the original plaint, there is no cause why interest up to the date of the decree should not equally form a component part of the demand in appeal. It is interest which is demanded; and the sole reason for entering a specific sum under that head in the plaint is that the institution fee may be ascertained, and consequently the Court which has cognizance of the suit determined. It is not that this specific sum only is required, the further interest which may accrue from the necessary delay in the Courts in bringing the suit to a termination was not due at the time of the plaint, but may be due at that of the decree; and, if so, should in equity be adjudged, and will form a substantial component part of the appeal,—upon which the institution fee in appeal, now consolidated with the stamps, ought to be calculated.

Besides, Section XXXV. Regulation IV. 1802, and Section XII. Regulation V. 1802, declare that in the confirmation of the decrees of the lower Courts, the Courts of Appeal shall adjudge interest only from the date of the decrees of the lower Courts, thereby evidently recognizing the principle of the Higher Courts adjudging interest up to the date of their own decrees, and implying that the lower Courts may adjudge it, not up to the date of the plaint only, but to that of their decrees also.

Ordered, accordingly, that, when interest is adjudged by the Courts, in their decrees, it be invariably granted up to date of the decree, and not of the plaint only, unless reasons for a contrary proceeding are stated in the body of the decree.

Resolved, that extract from these proceedings be by precept circulated to the four Provincial Courts of Appeal, and by them to their subordinate Courts, for the guidance of both the European and Native judicial tribunals as to the date up to which interest may be adjudged on the principal demand, and the enforcement thereof, up to the time of execution.

30TH MAY, 1829.

Read letter dated the 24th ultimo, from the Zillah Judge of Chicacole, submitted through the Northern Provincial Court, proposing certain questions, as to the granting of copies of documents by District Moonsiffs, with reference to this Court's circular orders of the 8th January last.

The Zillah Judge requests instructions on three points, viz :—

1st—Whether a District Moonsiff is to be considered as a person authorized, under Clause second, Section XII. Regulation XIII. of 1816, to grant copies of bonds or other documents as legal vouchers.

The Court of Sudr Udalt are of opinion that he is not, and that under the provisions of Clause first, Section XLI. Regulation VI. of 1816, by which the Zillah Court is declared to be the depository for "all the original papers and documents" in every case decided by a District Moonsiff, the Judge, Assistant Judge, or Register, is the only Officer competent to furnish copies of such documents when required as legal vouchers.

2d—The Zillah Judge wishes to know whether a District Moonsiff is empowered to grant authenticated copies of papers which individuals may require for use or reference, or for the purpose of being substituted in the record for the originals; and if so, whether such copies are to be furnished on unstamped paper.

Under Section XXX. Regulation XIII. of 1816, individuals are at liberty to make for their private use copies of judicial or other documents "on any paper which they may prefer," but with reference to the opinion expressed above on the first question, the Court of Sudr Udalt do not think that a District Moonsiff should be permitted to substitute any copies whatever for the originals in the record of a suit. It is only the Zillah Judge or Assistant Judge who can authorize the same after the record has been received.

The 3d point submitted by the Zillah Judge, is, whether if a copy of a bond under 64 rupees, or of any document executed prior to the stamp Regulation, be required as a legal voucher, such copy is to be prepared on unstamped paper and admissible as an exhibit under Section XXXV. Regulation VI. of 1816.

The Zillah Judge would seem to have proposed this question without sufficiently considering the express words of the Section quoted by him, in the first Clause of which District Moonsiffs are only prohibited from filing as an exhibit any document "of a description which is or may be required, to be written on stamp paper or stamp cadjan," unless it shall have been duly executed on one or the other material. The same point however was lately brought under the consideration of this Court as a general question, by the Zillah Judge of Canara, and the Court on that occasion ruled that neither co-

Vide G. O. 24th
January 1828.

pies of Deeds or Instruments for sums under 64 rupees, nor of documents executed on stamps of 2 annas previously to the promulgation of Regulation II. of 1825, need now be made on stamp paper for the purpose of being authenticated as legal vouchers.

It appearing to be desirable that the opinion of this Court, on the several points above noticed, should be circulated for general information and guidance; ordered that extract of these proceedings be transmitted to the four Provincial Courts of Appeal, to be by them communicated to the several Zillah and Assistant Judges within their respective jurisdictions.

8TH JUNE, 1829.

I am directed by the Judges of the Court of Sudr Udalt to transmit to you for the purpose of being circulated for the information and guidance of the several Zillah and Assistant Judges within your Division, copy of a letter from the Secretary to Government in the Judicial Department dated 22nd ultimo, enclosing copy of a letter from the Military Board dated the 24th February last, respecting public buildings together with an extract from the resolution of Government on the subject.

To the Judges of the Sudr Udalt,

GENTLEMEN,

I am directed by the Right Honorable the Governor in Council, to transmit, for your information and guidance, the annexed copy of a letter from the Military Board, dated the 24th February last, respecting buildings for the public use, with extract from the resolution of Government on the subject in the Military Department.

I have the honor to be, &c.,
(Signed) JOHN ORR,
Actg. Sec. to Govt.
FORT ST. GEORGE : }
22d May, 1829. }

To the Right Honorable Stephen Rumbold Lushington, Governor in
Council, &c. &c. &c.

SIR,

We have the honor to bring to the notice of Government that we are required to forward for the information of the Honorable the Court of Directors, a statement annually of the public buildings, Civil as well as Military and also of those hired for public purposes, at the Presidency. For the latter the amount of rent paid is to be shewn, but as several of the buildings are hired for Civil, as well as Medical purposes, without any communication with our Board, there is a difficulty experienced in making out the statement correctly, as we are not, in such cases, informed of the conditions of the lease, nor of the amount of the rent paid.

To provide a remedy for future occasions, we take the liberty to propose that when private buildings may be required for public use, we be put in communication with the Department for which it is wanted, and, the conditions being settled, that such agreement as may receive the sanction of Government be lodged in our office, and that the monthly bills for the rent, be passed under the signature of our Secretary.

The adoption of such rules would enable us to prepare the statement, alluded to in the first part of this letter, correctly, as well as to afford prompt information to Government, when occasion might require; and several other inconveniences, which are now experienced in regard to the hiring of houses, would be avoided. We would further beg to propose that a statement of all hired buildings, Civil as well as Military, with the exception of those in the Revenue Department, at out Stations, should be forwarded to our office half yearly, for the purpose of being recorded, and referred to when necessary.

FORT ST. GEORGE ;)
24th February, 1829. }

(Signed)

{ W. G. PEARSE.
W. GARRARD.
J. HANSON.
B. R. HITCHINS.

Military Department.

Extract from the Minutes of the Right Honorable the Governor in Council, date the 20th March, 1829.

"Resolved in conformity with the recommendation conveyed in the foregoing letter that the half yearly returns be made to the Military Board of all hired buildings in the public, Judicial, Commercial, and Military Departments, and that whenever the Government shall deem it necessary to depart from the general practice of hiring or purchasing houses for purposes connected with the above mentioned departments otherwise than through the medium of the Military Board, the particulars of the agreements shall be invariably communicated to that Board.

It is further resolved that all Bills for the hire of houses rented for public purposes at the Presidency, provided they do not belong to the Revenue Department, shall be passed for payment on the Countersignature of the Secretary to the Military Board.

(True copy and extract.)
(Signed) JOHN ORR,
Act. Sec. to Govt.

23d JUNE, 1829.

Read letter dated the 5th instant, from the Judge in the Zillah of Canara referring to this Court's proceedings of the 11th ultimo, on the subject of allowing interest in Decrees.

The Zillah Judge submits the question "whether interest exceeding the principal ought not to be allowed when the excess arises from the delay of Court proceedings, or failure to render immediate payment of the amount adjudged."

The Court of Sudr Udalut observe, on referring to the Reports of cases determined in the Court of Sudr Dewany Udalut in Bengal that this question was decided by them so far back as the year 1808, in a suit in which that Court ruled that the restriction contained in the Regulations against a judgment for interest exceeding the principal, when

the legal interest "shall have accumulated so as to exceed the principal," "is not applicable to a case in which the accumulation is subsequent to the institution of the suit, and not ascribable, in any degree, to procrastination on the part of the creditor."

The Court of Sudr Udalut, concurring in the justness of this construction of Regulation XXXIV. 1802, resolve to circulate the same to the four Provincial Courts of Appeal for the information and guidance of their own and of the Courts subordinate to them respectively.

16TH JULY, 1829.

The Court of Sudr Udalut have ruled that a decree in Appeal cannot be altered to the prejudice of an Appellant.

An Appellant may benefit by an Appeal, but his situation cannot be rendered worse, that is,—the original judgment cannot be rendered more disadvantageous to him. A judgment appealed from, must be affirmed in *toto* or modified to the advantage of the Appellant, and not to his prejudice.

20TH JULY, 1829.

Ordered, that extract* from this Court's proceedings of the 12th March, 1829, from para 1 to 11 inclusive, be, by precept, forwarded to the four Provincial Courts, to be by them circulated to their several subordinate tribunals, as containing the construction to be put upon Regulations XXVII. and XXVIII. 1802, and an explanation of the persons to whom the same are respectively applicable.

"Read again special appeal petition presented by the Vakeel Sreenuwassahary.

The foregoing is an application on behalf of the Principal Collector of Malabar for the admission of a special appeal from the decree of the Provincial Court for the Western Division, in appeal No. 18 of 1825, reversing the judgment of the Zillah Court of Malabar in the original suit, No. 296 of 1825, whereby the proprietary right of the defendant, Mooriatta Kootty Atan, and that of his heirs, to the family estate, was decreed to be forfeited to Government, under the provisions of Clause second, Section XIV. Regulation XXVII. of 1802.

From the decree of the Zillah Court in this case it appears that the Sub-Collector in charge of the Revenue Cutcherry of the Northern Division of Malabar had, by direction of the Principal Collector, deputed Peons with a writing dated the 22d March 1825, requiring the defendant to pay the arrear of revenue due by him (rupees 100) or to appear before him in company of the Peons, for the purpose of being conveyed to the goal of the Zillah; that the peons, not having found the defendant, affixed the writing to the wall of his house; that the defendant, neither paid the arrear nor appeared before the Sub-Collector in obedience to the order; that the Principal Collector of Malabar, thereupon moved the Zillah Court by an application dated the 4th April, 1825, to arrest the defendant as a Revenue Defaulter, under the provisions of

* Circulated to Collectors on the 14th March 1832.

Clause first, Section XIV. Regulation XXVII. of 1802; that the Zillah Court on the 23d April, 1825, issued a publication requiring the defendant to deliver himself into its custody within four weeks, calculated from the day following the date of the publication; and that the defendant having failed to surrender himself within the time limited, the Zillah Court adjudged his proprietary right, and that of his heirs, in the estate, to be forfeited to Government.

On appeal by the defendant, Mooriatia Kootty Atan, the Provincial Court reversed the decision of the Zillah Judge. The main ground of the reversal was that the action by the Principal Collector was not sustainable under the provisions of Section XIV. Regulation XXVII. of 1802, even though that Regulation applied to Districts under Ryotwar settlement, which the Provincial Court considered extremely doubtful, with reference to the provisions of Section XXXVIII. Regulation XXVIII. of 1802. On the supposition that Regulation XXVII. of 1802, was applicable, the Provincial Court thought it incumbent on the Principal Collector to show, first, that the defendant was an actual proprietor of land under that Regulation; secondly, that an arrear was due which he, the Collector, could not recover after having exhausted all his powers and means of compelling payment; and thirdly, that the defendant was in open and avowed resistance to his authority; and upon all these points the Provincial Court considered the evidence defective or the proof altogether wanting.

A general question of the highest importance is raised in this case; and the Sudr Court have given to the consideration of it a proportionate degree of care and attention.

The question is whether the provisions of Regulation XXVII. of 1802, "prescribing the modes for the recovery of arrears of public revenue from actual proprietors of land, or farmers of land holding farms immediately from Government," are applicable to the province of Malabar and other Districts which are under, what is termed, a Ryotwar settlement: The Provincial Court think those provisions inapplicable, because on a consideration of the whole tenor of Regulation XXVII. in connexion with Regulation XXV. of 1802, there appears no analogy between the landed proprietor and principles of assessment therein referred to, and those obtaining in Malabar; and they refer to Section XXXVIII. Regulation XXVIII. of 1802, as pointing out the rules to be observed by a Collector for the recovery of arrears in Districts under a Ryotwar settlement.

By Section II. Regulation XXV. of 1802, the resolution was declared of fixing a permanent assessment on all lands liable to pay revenue to Government, and it is very possible that the rules prescribed by Regulation XXVII. enacted on the same date, for the recovery of arrears of public revenue, were intended to apply exclusively to arrears due on account of lands the assessment upon which should be permanently fixed. But if this was the original intention, it was abandoned in 1806. By Section III. Regulation II. of that year it was declared that Zillah Courts should be "established in the several provinces, the land revenue of which has not been permanently settled, in the same manner as in the Districts where the Revenue has been permanently settled" by Section IV. it was provided that "Collectors shall enter into written engagements with Zemindars, land-holders and farmers on such terms as may

be deemed reasonable by the Board of Revenue," and by Section VI. the provisions of Regulations XXVII. and XXVIII. of 1802, were expressly "extended to all Districts in which Zillah Courts may be established." The Provincial Court seem to have overlooked, or to have misunderstood the effect of this enactment, which clearly made arrears of public revenue due on lands not permanently assessed recoverable under the same rules as arrears due on lands, the assessment upon which is permanently fixed, and the only question to be determined, previously to the application of those rules, is whether a defaulter comes within the description of "a proprietor of land" contained in Clause first, Section II. Regulation XXVII. of 1802, without any reference to the principles on which his land is assessed, all that is required to subject him to those rules is that he should be a Zemindar, independent Talookdar, or the actual proprietor of the land, on account of which the arrear is due, and that the revenue assessed upon the estate should be payable by him immediately to Government, or that he should be a farmer of land holding the farm immediately from Government. On the face of the pleadings in this case it is perfectly clear that the defaulter was an actual proprietor of land paying the revenue assessed on it immediately to Government, and that therefore the arrears due by him were recoverable under the rules prescribed in Regulation XXVII. of 1802.

In respect to Section XXXVIII. Regulation XXVIII. of 1802, to which the Provincial Court refer as pointing out the rule to be observed by Collectors for recovering arrears in Districts under what is termed a Ryotwar settlement,—it is obvious to remark that the construction of the concluding part of it, which is the only part relevant to the present question, depends exclusively on what is meant by a Collector "making a khas collection on the part of Government;" and it appears to the Court that the meaning is defined by the words "where no settlement may have been made with any proprietor or farmer." Here as in Regulation XXVII. it is very possible that the "settlement," originally intended was the permanent settlement to be formed under the provisions of Regulation XXV. of 1802; and "and a khas collection on the part of Government," might perhaps mean a collection of revenue from lands not permanently assessed, in contradistinction to the collection from lands, the assessment upon which might be settled in perpetuity. But unless the "settlement" here mentioned is now construed without reference to the principles on which it is formed, it is plain that Regulation II. of 1806, would be totally inoperative and nugatory, so far as it respects the application of Regulation XXVII. of 1802, to unsettled Districts, that is, districts the land revenue of which has not been permanently settled; because Zillah Courts had been already established in all settled districts; and the measure of extending the permanent settlement to other districts, as is well known, had been abandoned; so that if the "settlement" mentioned in Section XXXVIII. Regulation XXVIII. of 1802, is construed to mean exclusively "the permanent settlement" there are no districts to which the provisions of Regulation XXVII. of 1802, could possibly apply, except those to which they were before applicable. But it appears to the Court quite clear that in extending the provisions of Regulation XXVII. of 1802, to unsettled districts it was the object of the legislature to establish one uniform process for enforcing the payment of arrears due by proprietors of land, whether the public revenue payable thereon should be permanently

settled, or whether it should be subject to annual or other temporary adjustments.

Under this construction, which appears to the Court to be the only reasonable and consistent construction that can be given to these enactments, the process to be observed by a Collector for enforcing the payment of arrears is determinable not by the nature and principles of the assessment on the land, but with reference to the persons by whom the arrears are due. If the defaulter be a Zemindar, independent Talookdar, or actual proprietor of the land on account of which the arrear is due, and the revenue is payable by him to the Collector or to his subordinate Officers immediately on account of Government, or if he be a farmer, holding his farm immediately from Government, then the arrear is recoverable under the rules prescribed in Regulation XXVII. of 1802.

But when lands are held in attachment by the Collector or other public Officer on behalf of a proprietor or farmer, or when lands are under the immediate management of the Collector or other public Officer without any settlement with a proprietor or farmer, then, the defaulters standing in the same relation to the Collector as they would stand to the actual proprietor or farmer, supposing the land in the immediate possession and management of a proprietor or farmer under engagements with the Collector, the arrears due by them are recoverable in the mode prescribed in Regulation XXVIII. of 1802. In other words, the arrears recoverable under Regulation XXVII. of 1802, are arrears of public revenue, strictly so called, payable by proprietors or farmers immediately to the Collector or other public Officer of Government, under settlements permanent or temporary; and the arrears, recoverable under Regulation XXVIII. are 1st, arrears of rent, or the private revenue of proprietors or farmers, payable immediately to them, or for their behoof to the Collector or other public Officer, or to a manager; or, 2dly, arrears of public revenue, payable to the Collector or other public Officer, but not under a settlement with a proprietor or farmer.

The general question involved in this case being thus disposed of and it being shown that the arrear due by the defendant was recoverable under the provisions of Regulation XXVII. of 1802, the next point for consideration is whether under those provisions the defaulter had incurred the forfeiture of his estate. And the Court are decidedly of opinion that he had not; because the proceedings of the Collector were *ab initio*, unwarranted, and at variance with the express provisions of the Regulation.

By Section VII. it is expressly declared that proprietors of land shall not be liable to actual imprisonment for arrears of revenue unless, 1st, where his entire estate and personal property may be sold, and the proceeds of the sale may not be sufficient to make good the sum due; and 2dly, where his entire lands and personal property may be put up to sale, and no person may offer to purchase them; and by Section XXXIV. it is provided that Collectors shall not take into custody nor require the personal attendance of any proprietor of land, with whom a settlement shall have been concluded, except in the cases specified in the Regulation in which they are authorized to issue process against

the persons of such proprietors. But in this case the first process issued by the Collector was in effect a process of arrest: it was an order requiring him to pay the amount due, or to appear before the Collector in company with the Peons, for the purpose of being conveyed to the gaol of the Zillah; whereas under the express provisions of the Regulation, before such a process could be legally issued, it was necessary, 1st, to demand payment of the arrear in the manner prescribed by Section IV.; 2dly, to attach the property of the defaulter, under Section V., to such extent as might be sufficient to make good the arrear, and, if the attachment extended to his lands, to proceed in the manner prescribed by Section X.; and 3dly, to put up the attached lands to sale with reference to the express provisions of Section VII. which, under the provisions contained in Clause fifth, Section XIII. could not be done till after the expiration of the Fuslee year. It is clear then that the process against the defaulter was illegal, and he was not bound to obey it by delivering himself into the custody of the Peons; its illegality vitiates the whole of the subsequent proceedings; and the Collector's application to the Zillah Court for the arrest of the defaulter, under Clause first, and the decree of forfeiture passed by the Zillah Judge under Clause second, Section XIV. were both unwarranted.

It is plain therefore, that the judgment of the Provincial Court in this case, although the grounds of it are not strictly correct, is still substantially consistent with the Regulation; and that a Special Appeal therefore is not admissible under the provisions of Clause first, Section IV. Regulation XV. of 1816. It would have been different, if the judgment had rested exclusively on the inapplicability of Regulation XXVII. of 1802, to the province of Malabar, because then a point of general interest and importance, not before decided by the Sudr Court would have been directly involved in it; and the admission of a Special Appeal would have been necessary for the final determination of it.

17TH AUGUST, 1829.

I am directed by the Judges of the Court of Sudr Udalut, to transmit for your information and guidance copy of a letter, dated the 18th May last, addressed by this Court to the Secretary to Government, in the Judicial Department, relative to the investiture of the surplus funds of Zemindaries under attachment by order of the Courts; as also the accompanying copy of one from the Secretary to the Board of Revenue together with the resolution of Government thereon.

vide C. O. 28th
February 1831.

The Judges desire that you will furnish the several Courts within your Jurisdiction with a copy of the resolution of Government, relative to the investiture of the surplus funds of estates held under precepts from the Provincial and Zillah Courts, for their information and guidance.

No. 66.

"To the Acting Secretary to Government in the Judicial Department."

SIR,

I am directed by the Judges of the Sudr Udalut to request that you will lay before the Right Honourable the Governor in Council the enclosed letter from the Register to the Provincial Court in the Northern

Division, respecting the investiture of the surplus funds of the Vassareddy-war estate under attachment, by order of this Court.

With reference to a case No. 6, on the Madura Calendar, enclosed in a late letter from the Second Judge on Circuit in the Southern Division, the Judges observe that the Servants of the late Mr. Peter, the Principal Collector of Madura, who also had charge of the Ramnad Zemindary under attachment by order of this Court, are accused of having embezzled several lacs of rupees in the Madras Treasury.

It appears to be the duty of this Court to adopt measures of precaution, for preventing any similar embezzlement in the treasuries of the Government affecting the surplus funds of the estate, under the attachment of Collectors, by their orders. They are accordingly of opinion that the surplus funds of the Vassareddy-war estates, should be invested in the public securities of the Company in the name of the Register of the Provincial Court for the time being; and that any such securities now standing in the name of the Collectors of Masulipatam or Guntoor, should be transferred to the name of the said Register for the time being, and lodged in the treasury of the Provincial Court.

They are further of opinion that the Collectors in charge of these lands should report to this Court the state of the surplus funds for these Zemindaries up to the close of last fuslee, the amount thereof already invested in Company's paper, and the balance, if any, not so invested.

It is likewise recommended that at the close of each fuslee, the surplus funds of these lands remaining on hand be invested as far as possible in Company's securities, in the name of the Register of the Provincial Court for the time being, and such securities lodged in the treasury of the Provincial Court, and that at the close of each fuslee, the Collectors be required to furnish to this Court a statement, showing the surplus funds, the amount thereof so invested, the further amount ready to be so invested, and the balance if any.

The Judges, under the circumstances before stated, deem it prudent as above suggested, that the surplus funds should be invested in the name of a public officer different from the Collector, whose duty, under the Regulations, it is to conduct the detailed management of the lands under the orders of the Board of Revenue.

The Judges further submit that the Board of Revenue be requested to furnish this Court, annually, with a statement of the surplus funds of these lands, as reported to them; to check the accounts furnished by the Collectors to this Court.

As the arrangements proposed can be carried into effect by the revenue authorities only under special orders from the Government, the Judges recommend that the necessary directions for this purpose be issued; and that the Collectors be instructed, by a Circular order, to consider these instructions applicable to any other lands, which may be hereafter attached by this Court's orders.

SUDR UDALUT,
REGISTER'S OFFICE,
18th May, 1829.

I have the honor to be, &c.
(Signed) A. D. CAMPBELL,
Register.

Revenue Department.

No. 302.

To the Chief Secretary to Government.

SIR,

I am directed by the Board of Revenue to acknowledge the receipt of Mr. Orr's letter under date the 16th ultimo, with copy of a letter from the Sudr Udalut, relative to the investiture of the surplus funds of Zemindaries under attachment by order of that Court, and to report that the Board have passed the necessary orders to the Collectors to give effect to the arrangements proposed by the Sudr Udalut.

The Board have directed the Collectors who are, or may be, in charge of estates under orders from the Sudr Udalut to furnish to them with their report on the management of the estates and the detailed accounts thereof, a copy of the annual statement to be furnished to the Sudr Udalut of the surplus funds derived therefrom, and they conceive that the object of the Sudr Udalut will be accomplished by that statement being compared with the detailed accounts in this Office without any fresh statement being made out here and transmitted to them.

The arrangements proposed by the Sudr Udalut having reference only to estates held by the Collectors under orders from that Court, the Board request instructions whether the same arrangements are to be observed with respect to the surplus funds of estates held under precepts from the Provincial and Zillah Courts, and whether Collectors are in future to receive charge of money to be held in deposit on account of those Courts. It appears to the Board to be expedient to establish a uniform system in this respect.

I have the honor to be, &c.,

Revenue Board Office,
FORT ST. GEORGE:
13th July 1829.

(Signed) D. ELIOTT,
Secretary.

Extract from the Minutes of Consultation. under date the 28th July, 1829.

"The Right Honourable the Governor in Council is of opinion that the object of the Sudr Udalut will be accomplished if the annual statement (shewing the surplus funds of estates in the charge of Collectors under orders from that Court, the amount thereof invested in the public securities of the Company, the further amount ready to be so invested, and the balance, (if any) which the Board of Revenue have directed the Collectors to furnish for transmission to the Court be certified by the Secretary of the Board to have been compared with the detailed accounts in their office and found to be correct, and directs that this course be observed in future.

The Right Honorable the Governor in Council also resolves that similar arrangements be observed with respect to the surplus funds of estates held under precepts from the Provincial and Zillah Courts, and that Collectors be authorized to receive charge of money to be held in deposit on account of those Courts.

(True Copy and Extract,)

(Signed) HENRY CHAMIER,
Secretary to Government."

Vide C. O. 27th
December 1830.

27TH AUGUST, 1829.

Read the following letters from the Judge in the Zillah of Canara.

In the first of these letters the Zillah Judge represents that, under Section XVIII. Regulation IV. 1802, it had been the practice of the Provincial Court in the Western Division to refer back to him, and of himself to refer back to the authorities under him several appeals "to be tried and determined *de novo*." But that he is now induced to think such trial *de novo* irregular as the Section in question merely provides for the taking fresh evidence in particular cases and the mode of taking it.

The Judges of the Sudr Udalut concur in this interpretation of the law in question, there is nothing in their former orders of the 13th September, 1824, to the Provincial Court of the Western Division which authorized the trial of suits *de novo*, under the law in question, but only "*judgment de novo*" on further evidence to be taken as therein provided.

The Judges accordingly, under Clause second, Section XXV. Regulation XIII. 1816, authorize the return to the parties against whom the same may have been awarded, of the value of any additional stamps used subsequently to such irregular reference for trials *de novo*, but not of those previously used, as proposed by the Zillah Judge.

Vide C. O. 15th
February 1830,
Vide Act No.
XVII. of 1838.

The Zillah Judge further urges the expediency of extending the provisions of Section V. Regulation XV. of 1816, to cases which have been tried *ex-parte*, especially by the District Moonsiffs, and in his second letter he represents that complaints are frequent of witnesses not having been examined on material points. The Judges are of opinion that, under the analogy of Section XVIII. Regulation IV. 1802, it is competent to a Zillah Judge, on a regular appeal, after examination of the record, to refer causes back to a District Moonsiff, with orders to take such further evidence as may be deemed necessary, and to pass a new decree in the case. This may include suits tried *ex-parte*, in which the absent parties may satisfactorily account for their default. But it will require a new enactment to extend Section V. Regulation XV. 1816, to suits dismissed for default by District Moonsiffs. The Judges will keep the subject in mind, and take a fit opportunity of bringing it to the notice of Government.

Meantime, as the subject discussed in these proceedings is matter of general interest, it is ordered that extract therefrom, with copy of this Court's orders of the 13th September 1824, be circulated for the information and guidance of the four Provincial Courts requiring them to furnish the same by precept for the guidance of the lower tribunals.

"To the Judges of the Provincial Court of Appeal in the Western Division.

GENTLEMEN,

I am directed by the Judges of the Court of Sudr Udalut to acknowledge the receipt of your letter, dated 30th April last, transmitting the Abstract Registers of causes decided in the Zillah Courts for the preceding month.

With respect "to the legality of remanding, to be tried *de novo* by

the Officers who originally disposed of them, causes which have been filed in special appeals," the Judges are of opinion that the Law which directs that after a special appeal has been admitted it shall be investigated under the same rules as are prescribed for the trial and determination of regular appeals, leaves to the appellate Court the power to refer back suits appearing to have been insufficiently investigated to the Court of original jurisdiction, with orders to take such further evidence as may be deemed necessary for the just determination of the suit, and proceed to pass judgment *de novo*, unless that Court shall see cause to confirm its former judgment, in which case it will be sufficient that the Court certify such confirmation.

• This has been the practice of the Sudr Court under the construction, put by them upon the provisions of Section XVI. Regulation V. of 1802, which correspond with those of Section XVIII. Regulation IV. of 1802, cited in the Minutes of the 2d and 3d Judges under consideration, and the reasons for that construction are those intimated by the 2d Judge in his concluding Minute as forming the grounds of the opinion entertained by him, namely, that in order to regularity and consistency of proceeding it is necessary that the essential merits of a case should in the first instance be investigated, and adjudicated upon by the lower Court before it be determined in appeal; "because otherwise it would fall to the appellate authority to decide thereon both originally and in appeal and thus limit the parties to only one judgment on the real merits of a cause."

It is true, that a power is given to Courts of Appellate jurisdiction to receive, on trial of an appeal evidence which had not been taken by the lower Court and give judgment with reference thereto, but it is obvious that in cases wherein the essential merits of a cause come to be elucidated by such additional evidence, the Appellate Court virtually exercises original jurisdiction, and does not try in appeal the issue disposed of by the Court below.

It is for this, among other reasons, that the Court refuse to admit evidence tendered by a party on the trial of an appeal which has not been adduced upon the original hearing of the suits, excepting when the party desiring to produce such evidence may prove that it was not within his knowledge or could not be adduced by him pending the trial of the original suit; and even where this ground for the admission of additional evidence may exist the proceeding lies open to the objection of altering the character of the Court's Jurisdiction, in so far as their judgment may rest on matter not brought before the Court trying the original suit.

I have the honor to be,

GENTLEMEN,

Your most obedient servant,

(Signed) W. HUDLESTON,

Register.

SUDR UDALUT,
REGISTER'S OFFICE,
13th September, 1824.

31ST AUGUST, 1829.

Read letter from the Judge in the Zillah of Combaconum requesting

copy of this Court's orders of the 4th July, 1817, on the subject of fees to be drawn by Registrars.

Vide C. O. 11th
Dec. 1824.

Previously to deciding on this reference, the Judges remark that, except when this Court directly addresses the lower tribunals, which in certain cases is still requisite, in which case a reply may be forwarded direct, it is desirable that all references both from the Zillah and Assistant Judges, as well as from the Criminal and Auxiliary Courts, and the Magistracy, should invariably be addressed to the Provincial Court. Several late instances having occurred of irregular references direct to this Court, from the lower tribunals, it is resolved, hereafter, to return all such papers as are not submitted through the prescribed channel, and to require the Provincial Court to give notice thereof by precept to the several Civil and Criminal European officers under them.

The request contained in the foregoing letter has led the Judges to re-consider their orders in question issued to the Zillah Court of Bellary, and also orders, on the same subject, issued under date the 16th March, 1820, to the Zillah Court of Rajahmundry.

Regulation XVII. 1808, has been rescinded in toto. Notwithstanding, under Section XV. Regulation XIII. 1816, Registers, according to Section VII. Regulation VII. 1809; Sudr Ameens, according to Section XVI. Regulation VIII. 1816; and District Moonsiffs, under Clause third, Section III. Regulation II. 1828, are entitled to the fees established by law, upon only two description of suits viz., 1st, suits decided on the merits, 2d, suits settled by Razeenamah of the parties filed in Court.

Vide C. O. 15th
Feb. 1830.

This Court, in the first of their orders before alluded to, were inclined to treat a suit withdrawn by the plaintiff, on the ground of an agreement having been entered into by the parties, as one subject to fees being drawn by the Officer from whose file it may be removed. But on further consideration they, on the 19th January last in circulating new forms for returns of civil suits, explained that when a plaintiff withdraws a suit "it is not to be inferred that he has come to any adjustment with the defendant unless they jointly file a Razeenamah." An *ex-parte* representation is not enough to infer this, and accordingly it was therein directed that all suits withdrawn should be entered as "dismissed."

Vide Act No.
V. of 1835.

With reference to the extraordinary number of suits "withdrawn" before the District Moonsiffs, particularly in the Centre Division, the Judges desire that the four Provincial Courts, will particularly enforce these orders, and take care that no fees are drawn by the District Moonsiffs, or other authorities, on any such suits, enforcing the order that all such be entered as "dismissed." They will cause the several Zillah Judges strictly to controul the District Moonsiffs in this respect.

10TH SEPTEMBER, 1829.—A

The Judges desire that, in the numerical statement of suits decided by the District Moonsiffs, all suits not decreed on their merits or settled by Razeenamah filed by both parties, be entered by the Moonsiffs and the Courts in the statement as *dismissed*, under which head will be included all suits whether withdrawn, dismissed for default, or any other irregularity: this form of entry the lower Courts were particularly en-

joined to observe in the orders of the Sudr Udalut dated the 19th of January last, to which the Judges desire the attention of the several Zillah Judges in the Division may be specially called.

10TH SEPTEMBER, 1829.—B

Read Letter dated the 22d ultimo, from the Acting Judge in the Zillah of Madura, submitting a statement of the contingent charges of his Court for Fuslee, 1238.

The Court resolve to submit to the Right Honorable the Governor in Council the statement of the contingent charges incurred in the Zillah Court of Madura, amounting to rupees, 18,589, 11, 4, 66, exceeding that incurred in the preceding year rupees 6,343, 8, 7, 70, arising partly from the circumstance of there having been an Acting Judge during the whole of Fuslee 1238, but principally from a charge of rupees 4,013, 12, being the "additional fees granted to the District Moonsiffs" or as the Judges conclude the difference between the half anna levied under Clause second, and the full anna paid to the District Moonsiffs under Clause third, Section III. Regulation II. of 1828, and to recommend the said amount for sanction, with exception of the item of rupees 4,013, 12, above noted, which requires further explanation.

The Judges observe that this charge appears in the Madura accounts alone. It must be matter of charge in every District, and, with the view of ascertaining how far the amount of the institution fees carried to the account of Government on suits dismissed by the District Moonsiffs affords funds for the disbursement of 1 anna in the rupee, on cases decided on their merits or settled by Razeenamah before them, the Judges resolve to call upon the several Zillah and Auxiliary Courts to furnish a statement quarterly from the commencement of 1829, shewing—the number of suits filed before the District Moonsiffs,—the amount of the institution fees levied thereon at the rate of half an anna in the rupee on the amount or value in dispute—the number of suits decided on their merits or settled by Razeenamah before them—the amount of the fees paid thereon at the rate of 1 anna in the rupee—and the difference between the total amount of the institution fees levied on suits filed, and the total amount of the fees paid to the District Moonsiffs for suits decreed on their merits or settled by Razeenamah according to the annexed form.*

Vide C. O. No.
2.
Vide C. O. 29th
Oct. 1829.
Vide Act No.
V. of 1835.

The statement will be forwarded, hereafter, regularly with the quarterly returns of civil suits, and mean time will be furnished in arrear for the past quarters of the present calendar year.

It appears to the Judges that this item of expenditure ought not to be confounded with the contingent charges of the Courts, but that it ought to be specially sanctioned at the close of each *Calendar* year, and that this expenditure should be checked, by the Courts then submitting through this Court, a summary for the whole year, in the form above alluded to, and that the Zillah Judge of Madura should furnish a statement of this kind for the period to which the charge in his contingent bill extends.

Vide C. O. 27th
Sept. 1819.

* Form omitted.

22D OCTOBER, 1829.

Read letter, under date the 22d July last, from the Northern Provincial Court, with copy of a reference dated the 16th of that month from the Zillah Judge of Nellore.

The Zillah Judge desires to be informed whether the principle laid down, in this Court's proceedings of the 11th May last, may be applied to suits for land, houses, or other productive property, "i. e. whether, when land, houses, &c., yielding rent or produce of any kind are adjudged, together with rent, or profit, &c., for some past period, up to the date of the plaint, the Court may adjudge the rent, profit, &c., which may be proved to have been received, or which the party in possession is proved to be justly responsible for, up to the date of the decree, and the execution of it."

The Judges are of opinion that, if the income from such property is certain, rent, or profit, proved to have been received from it, may very properly be awarded in such cases; but that, though the property may be of a productive kind, the Courts should be careful not to assume that profit or income has accrued from it when it may be of a precarious nature, unless the actual produce therefrom is established by evidence.

29TH OCTOBER, 1829.

Read letter from the Provincial Court for the Northern Division under date the 10th October, 1829.

Ordered that, with reference to this Court's proceedings of the 10th September last, the four Provincial Courts be informed, that the 2d column of the form, therein alluded to, is to contain the number of suits filed within the quarter only, and not suits previously filed, which then remained undecided, and that an error has found its way into the heading of column 10, in which 5 and 9, should be substituted for 5 and 8.

5TH NOVEMBER, 1829.—A

Read miscellaneous petitions presented by Vakeels Sreenuwassacharry, Applacharry, and Trimul Row.

With reference to the proceedings of this Court under date the 22d October last, the Vakeels Sreenuwassacharry, Applacharry, and Trimul Row respectively delivered in the foregoing petitions on the 29th October last, shewing cause why they should not be dismissed.

The pleaders rest their defence on this ground, that a Vakeel retained by one party is precluded from being employed by the other, only in one and the same suit, but not if the number of the suits on the file is different, though the subject matter of them is substantially the same.

Such a construction of the Regulations is opposed both by the words and the spirit of the law.

The words of Section XXII. Regulation XIV. 1816, refer not to the "same suit," but to the "same cause," thereby declaring that if the "cause," of action, or matter in dispute be the same, in which the

Vakeel, has once been retained by one party, he never can be allowed to betray the confidence professionally reposed in him to another, the opponent of that party, either in the same, or in any other suit, regarding the same property, and resting on the same title. To give a different construction to the law would be as contrary to its spirit, as to its letter. There would be an end to all professional confidence, and every description of intrigue and fraud, which it was the object of the Regulation to prevent, would be encouraged by impunity.

The Judges accordingly are of opinion that the three Vakeels, in this instance, are equally guilty, and that exemplary punishment should be inflicted on them.

But the misconduct of the Vakeels Applacharry and Trimul Row is aggravated by other suspicious circumstances, which have come to the knowledge of the Court, some of which are connected with the motion No. 32, of 1828, referred to in this Court's proceedings of the 22d October last, whilst the very long period during which Sreenuwassacharry has been attached to the Court, and his general good conduct for a course of years, induces the Judges to mitigate the punishment, which his misconduct, in this instance, otherwise, would have rendered necessary.

Ordered, accordingly, that the Vakeels Trimul Row and Applacharry, be dismissed, under Clause first, Section X. Regulation XIV. 1816, and that their sunnuds of appointment be recalled and cancelled, and that notice thereof be given to the several Provincial Courts, for the information of the tribunals under them and of their clients, as provided in Clause third, Section XVIII. Regulation XIV. 1816, the said notice to contain a requisition to their respective clients to nominate new Vakeels in this Court within three months, after its publication in the Zillah Court to which they are amenable.

Ordered, further that Sreenuwassacharry be not allowed to practice further in any of the suits connected with the Vassareddy estate, and that with reference to the appeals No. 16, of 1824, and No. 4 of 1826, from the suits No. 27, of 1820, and No. 20, of 1825, on the file of the Northern Provincial Court, due notice thereof be given to Ramanadah Baboo and Atchunmah respectively, by the said Provincial Court, and that such notice contain a requisition to the said parties, to nominate new Vakeels in this Court, to represent them in the said suits, within three months after the service of such notice.

Ordered, further that all fees, to which, on the decision of the suits respecting the Vassareddy estate, the Vakeels Sreenuwassacharry, Trimul Row, and Applacharry, may eventually be entitled, be not paid to them, but be forfeited to Government.

Ordered, that extract from this Court's proceedings of the 22d October last, respecting the misconduct of the said three Vakeels, and extract from these proceedings, be furnished by precept to the four Provincial Courts, requiring them to circulate the same for the guidance of the tribunals under them, as containing this Court's construction of Regulation XIV. 1816.

"Extract from the Proceedings of the Sudr Udalut, under date the 22d October, 1829.

It becomes necessary to investigate the conduct of some of the Va-

keels employed by the parties in appeals No. 16, of 1824, No. 4, of 1826, and No. 11, of 1827; and to determine whether they have not rendered themselves liable to dismissal, or to some minor punishment.

It must be borne in mind that in all these cases the subject matter of the dispute was the same, viz., the right of succession to the estate of the late Vassareddy Vencatadry Naidoo, which is claimed by three separate parties,—Ramanadha Baboo, Atchummah, and Rungamah for her alleged adopted son.

In appeal No. 16, of 1824, Ramanadah Baboo, *v.* Jugganadha Baboo, Sreenuwacharry appeared as a Vakeel of the appellant, and presented the motion withdrawing the appeal. On behalf of the same party he presented the petition of summary appeal (No. 1, of 1826,) from the decision of the Provincial Court in original suit, No. 20 of 1825, wherein Atchummah, the senior widow, and as such claiming to be the representative, of Jugganadha Baboo was plaintiff, and Ramanadha Baboo was defendant. The summary appeal being rejected, and the regular appeal No. 4, of 1826, being instituted, Sreenuwacharry appeared as Vakeel of Atchummah in direct opposition to the interests of his former client Ramanadha Baboo. It should be observed also that in a previous case—appeal No. 8, of 1818, the Collector of Guntoor, *v.* Jugganadha Baboo—in which Ramanadha Baboo's right of succession to a moiety of the property was collaterally the subject of discussion, Sreenuwacharry had acted as Vakeel of Jugganadha Baboo; and, under instructions received from his then client, had argued strongly against the right of Ramanadha Baboo, whose cause he subsequently advocated, and has since opposed.

The measure of punishment, to which Sreenuwacharry is liable, cannot admit of the smallest doubt. The summary appeal No. 1, of 1826, and the regular appeal No. 4, of 1826, are in fact the same cause, both being appeals from the decision of the Provincial Court in original suit number 20, of 1825, and, in direct violation of Section XXII. Regulation XIV. of 1816, he has acted against the party who originally retained him. Considering the part he acted in appeal No. 8, of 1818, his acceptance of a retainer from Ramanadha Baboo in the summary appeal No. 3, 1826, is not easily reconcileable with honest principles of practice: but, putting that transaction out of consideration, it is clear that, by acting on behalf of Atchummah in appeals No. 4, of 1826, he must have betrayed the confidence previously reposed in him by Ramanadha Baboo.

In appeal No. 16, of 1824, Trimul Row was the Vakeel of the Respondent Jugganadha Baboo. He subsequently appeared for Rungamah, the second widow of Jugganadha Baboo, and, as such, did several acts connected with that appeal. Immediately afterwards he appeared as the Vakeel of Ramanadha Baboo, in which character he still continues to act, and is consequently opposed to the title of Jugganadha Baboo to succeed to the entire estate of Vassareddy Vencatadry Naidoo, which, as the Vakeel of Jugganadha Baboo, he had undertaken to support; his acceptance of a retainer from Ramanadha Baboo, after he had been employed by Jugganadha Baboo, was in direct violation of the rule prescribed in Section XXII. Regulation XIV. of 1816.

Applacharry first appeared as the Vakeel of Atchummah, when she

brought before this Court her claim to the succession in opposition to the claims of Ramanadha Baboo and Rungamah, whom she charged with having entered into a conspiracy to defraud her of her just rights. It must be remembered that in this petition Atchummah rested her title, not only on a will alleged to have been left in her favor by her husband, but on her right as the widow of Jugganadah Baboo. In appeal No. 11, of 1827, Applacharry appears as the Vakeel of Rungamah, and opposes Atchummah's claim, not only on the ground that Jugganadha Baboo left an adopted son, but on the ground that Atchummah, by her misconduct during the lifetime of her husband, has forfeited all title to succeed him. He also maintains that the will, which he produced when acting for Atchummah, is a forgery; so that as Vakeel of Rungamah he has argued against every plea which he formerly advanced in favor of Atchummah's claim to the succession. Equally with the other two Vakeels he has violated the rule prescribed in Section XXII. Regulation XIV. of 1816, and betrayed the confidence of his former client.

The object of the rule contained in Section XXII. Regulation XIV. of 1816, is sufficiently obvious: and to expatiate upon the mischievous consequences of allowing such gross violations of it to go unpunished is unnecessary.

Ordered, accordingly, that access to these proceedings from para 14, to para 20, inclusive be given to the three Vakeels of this Court.

Sreenuwacharry,
Trimul Row,
and
Applacharry,

respectively, and that they be now informed that they will be removed from their offices as pleaders in this Court, unless they shew cause, to the satisfaction of the Judges, next Court day (the 29th instant) why they should not be dismissed.

5TH NOVEMBER, 1829.—B

Read letter from the Register of the Provincial Court in the Southern Division requesting instructions as to the manner in which stamps on appeals should be calculated.

In the 2d para, are noticed the cases of two appeals decided in this Court; and it is stated, that though in both instances the defendant appealed, yet in one* “the stamp in appeal was calculated in the decree of the Sudr Udalut upon the amount decreed and not upon the amount originally claimed,” whilst in the other† “the value of the stamp for the appeal petition was calculated upon the amount originally sued for and not upon the amount decreed by the Provincial Court.”

It appears that in neither of these cases was the stamp in appeal calculated in this Court, though the statement of costs, appended to the decrees, might justify the inference that they were so, both appeals

* No. 7, of 1283.

† No. 10, of 1827.

having in the first instance been admitted in the Provincial Court. The Judges are quite satisfied that, in the last mentioned case, the value of the stamp for the appeal petition ought to have been calculated, as in the first, upon the amount decreed and not upon the amount originally claimed. And it appears by the statement of costs in the decree in that case, that the Vakeel's fee was so calculated.

Vide C. O. 15th
Feb. 1828.

It has been ruled by the Court of Sudr Dewanny Udalut in Bengal "that any interest (and of course any other mesne profit) adjudged or disallowed by the decree appealed against, should form part of the amount upon which the institution fee is to be calculated in cases of appeal; and consequently should be included in determining the right of Appeal according to the prescribed standard. But that costs of suit, which do not form part of the claim at issue between the parties, and arise from payments to Government, or to the pleaders in the cause, should not be included, either in the calculation of fees, or of the standard for appeals."

Vide C. O. 24th
Dec. 1829.

The Judges are not aware of any other decision in Bengal bearing more directly upon the question under consideration. It may be observed, however, that as in an original suit the plaint is to state "according to the nearest estimate the exact sum of money or the amount in which the plaintiff may be endamaged," upon which the institution fee is to be calculated,† so, by parity of reasoning, the value of the stamp in an appeal ought of course to be calculated, on the amount in which the appellant may consider himself endamaged by the decree he appeals against, whether adjudged or disallowed, or in other words, the amount actually at issue in the appeal.

16TH NOVEMBER, 1829.

Read letter, dated the 19th ultimo, from the Register to the Provincial Court of Appeal in the Northern Division with copy of one under date the 13th from the Zillah Judge of Nellore, submitting two questions for the consideration of this Court.

Vide C. O. 23d
Feb. 1831 and C.
O. No. 6.

The questions are stated by the Zillah Judge as follows: 1st. "When property is attached in execution of a decree in favor of a party, and is found to be mortgaged or hypothecated in a valid manner to another party, either for a specified term, or indefinitely till the amount due to the latter party be paid: if there be reason to believe that the said property is worth more than will suffice to pay the debt for which it is mortgaged or hypothecated; is it competent to a Zillah Court to have it sold and pay off with the proceeds, first the mortgage or hypothecation, and then, as far as the proceeds will go, the amount due under the decree?"

2d. "When a maintenance at a certain monthly amount is decreed to a party; and it has been necessary several times, to issue process for the amount, on the failure of the proper party to pay it, can the Court take security or attach property, or use other means before hand, to ensure the due payments being made?"

* Harrington's Analysis, page 127 note.
† Section 111, Regulation 111, of 1807.
‡ Clause third, Section XIV, Regulation X111, of 1816.

The Judges of the Sudr Udalut have no hesitation in answering both these questions in the affirmative; and as regards the first, on which the Zillah Judge expresses himself as having more doubt than with respect to the second, even though the mortgage or hypothecation may be for a specified period and that period unexpired.

7TH DECEMBER, 1829.

I am directed by the Judges of the Court of Sudr Udalut to transmit for your information copy of paras 28 and 29, of the proceedings of this Court, dated the 16th ultimo, together with an extract from the Minutes of Consultation thereon under date the 27th ultimo, respecting the provision of accommodation at the public expense for district Moonsiffs's Cutcheries, and the occasional repair thereof; and to desire that copies of the same may be furnished to the several Tribunals subordinate to you.

"Extract from the Proceedings of the Sudr Udalut, under date the 16th November, 1829."

The Judges of the Sudr Udalut are decidedly of opinion that it is of the greatest importance that the District Moonsiffs should investigate the suits cognizable by them in a public manner, and that for this purpose they should, as provided in Section XIII, Regulation VI, 1816, be furnished with a "public Cutcherry or Court room;" for the practice of deciding suits in their private residences may give rise to the most serious abuses. It appears that the District Moonsiffs are already very generally provided with accommodation, in buildings, such as Choultries, Muntapums or Pagodas, which, whether the property of the Government, or of individuals, are places of public resort, where this is not the case, it appears desirable that the several Collectors should be instructed, on the application of the Judge or Assistant Judge, to provide suitable accommodation for the Moonsiffs. It is apprehended that this may be done at trifling expense. It will often be in the power of the revenue authorities to point out Choultries or the gates of the principal Pagodas which will serve for this purpose, where such are not applicable, any similar buildings in a dilapidated state may be repaired so as to answer the purpose without erecting a new building, but where this last may be requisite, it can be formed of common materials in the native manner, without any heavy charge.

It is accordingly resolved to submit to the Right Honorable the Governor in Council the foregoing abstract of the communications received from the Provincial Courts, and to recommend that the several Collectors be directed to provide the District Moonsiffs, who are not already provided with accommodation at the public expense, with such accommodation, on the application of the Judge or Assistant Judge; and that they be also directed to comply with the occasional requisitions of these officers for keeping in repair the places appropriated for the accommodation of the District Moonsiffs."

"Extract from the Minutes of Consultation, under date the 27th November, 1829."

Read the following letter from the Register to the Court of Sudr Udalut.

(Here enter No. 476, 16th November, 1829.)

Resolved, that copies of paras 28 and 29, of the Proceedings of the Sudr Udalut be furnished to the several Collectors, with instructions to provide public accommodation for the Courts of the District Moonsiffs of their respective Collectorates in the manner therein suggested, and to comply with occasional requisitions from the Judges or Assistant Judges for the repair of the buildings so appropriated.

(True Extract)

(Signed) HENRY CHAMIER,

Secretary to Government.

24TH DECEMBER, 1829.—A

I am directed by the Judges of the Court of Sudr and Foujdaree Udalut to transmit to you the annexed extract from a despatch from the Honorable the Court of Directors in the Judicial Department, under date the 8th of April last, and, in furtherance of the wishes of the Court of Directors therein expressed, to desire that intimation be given to the Mahomedan Law Officers attached to the several Zillah Courts that a knowledge of the country languages will be considered a strong recommendation to this Court, in promoting them to the vacancies which may hereafter occur in the higher Court.

“Extract from a General Letter from England, dated 8th April, 1829.”

Our attention has been particularly drawn to the following passage of the Report made by the first Judge on the Fourth Quarterly Sessions at Chittoor for 1825, namely, “Here it becomes a justice due to the conduct and abilities of the Mahomedan Law Officer who sat with the first Judge, at the trials, unequivocally to avow, that owing to his assiduity and attention to the business before the Court, his competency to make minutes of the examinations as they occurred during the trials in Court, *without the reading of the depositions to him in the Persian* as is necessary with other Mahomedan Law Officers employed in the Courts; his facility in referring to the original proceedings, and correcting mistakes which were scarcely avoidable in the Calendars, his readiness, in delivering his Futwahs, most commonly before the Court had concluded its sittings, are all of them material and most essential advantages possessed by him, such, indeed, as contributed mainly to enable the Court of Circuit to overcome the labour and complicated duty of getting through so numerous a catalogue of cases in a period very little exceeding ten weeks, or such a time as enabled the Court to close the Sessions, with the trial of one hundred and fifty-four cases, and afterwards proceed to clear the Zillahs of Bellary and Chingleput, some short time before the half year had expired.”

This testimony of the Judge is highly creditable to the Native officer in question; but we do not extract the passage for the purpose of making that remark. Our object is to advert to the great importance, as here proved by actual experience, of the law Officers being able to understand the languages in which the Proceedings of the Courts are

conducted. We are aware that persons so qualified may not in all instances be found, but we suppose that you are not now obliged to have recourse to Bengal for Mahomedan Law Officers, and we do not understand why (especially among Natives of your Presidency) this qualification should be unattainable. In the future selection of Law Officers, a knowledge of the Country languages ought to be considered a strong recommendation. It is not only the inconvenience of the Persiah Translation which we are desirous to avoid, but we are satisfied that in a great many cases, perhaps in the majority of cases, it is essential to the due administration of justice, that the Law adviser of the Court should be master of the language in which the Proceedings of the Court are carried on.

24TH DECEMBER, 1829.—B

Read letter dated the 16th ultimo, from the Judges of the Provincial Court for the Southern Division.

The Judges desire to be informed with reference to this Court's proceedings of the 5th ultimo, respecting the manner in which stamps on Appeals should be calculated, whether under Clause third, Section V, Regulation I. of 1827, “upon a claim in an original suit for the recovery of a sum not exceeding 1000 rupees, the appeal must be to the Provincial Court whatever sum is awarded, or whether in case of a decision not exceeding the sum of 1000, an appeal must be made to the Zillah Court.”

The Court are of opinion that in any such case as that put by the Judges of the Southern Provincial Court, the sum actually at issue in the appeal, without any reference to the amount for which the original suit may have been instituted, ought to determine whether the appeal should be made to the Provincial or the Zillah Court. This appears to have been the principle on which it was ruled by the Judges of this Court under date the 12th May, 1807, “that in cases wherein part only of the original claim may be adjudged or disallowed, although the original cause of action may have exceeded 1000 rupees, yet the decree of the Zillah Court be for an amount or value not exceeding that sum; viz: either adjudging against the party desiring to appeal, money or any description of property to an amount or value not exceeding A. rupees 1000, or disallowing his claim to that amount or value only, the case is not appealable under the prescribed limitations of Section XXI. Regulation II. of 1802. It is true that this Section has since been rescinded, but the Judges are of opinion that the principle of the rule should be maintained.

24TH DECEMBER, 1829.—C

The following questions are submitted for the decision of this Court:
1st. Whether a Zillah Judge is competent, or required, to enforce the decree of a Village Moonsiff.

2dly. Whether a Village Moonsiff can delay the execution of his decree, after the expiration of three months.

3dly. Whether a person can be confined in the Zillah gaol, in satisfaction of the decree of a Village Moonsiff.

The Judges are of opinion that these queries must all be answered in the negative.

In Regulation IV. 1816, no provision is made for the enforcement of the decree of a Village Moonsiff, by any authority superior to the District Moonsiff. The process prescribed for the execution is exclusively against the property, not against the person, of the defendant; and the distinction between the process prescribed for the enforcement of the decrees of Village Moonsiffs and that laid down for the execution of the decrees of District Moonsiffs is so marked, that the Judges entertain no doubt of the intention of the legislature on this point. From the wording of Section XXIII. it seems clearly to have been intended by the framers of that law that the period for the execution of a Village Moonsiff's decree should in no case be delayed after the expiration of three months, during which time alone its operation can be suspended.

28TH DECEMBER, 1829.—A

Read letter from the Secretary to Government in the Judicial Department, on the subject of the half-yearly returns of persons confined to the 30th June last, in the Civil Department of the several gaols under this Presidency.

Vide C. O. 18th
Dec. 1830 and
No. 93.

The Judges direct that copy of the said letter be transmitted to the four Provincial Courts, for the information and guidance of the several Judges and Assistant Judges under them, and that, in their statements to the 31st instant inclusive, according to the form No. 6, circulated with this Court's orders of the 8th January last, these officers be directed to insert the names of all persons confined at the instance of Collectors under Regulation IX. 1822, as well as of all revenue defaulters, and of all other civil debtors, and also the amount for which each is held responsible in the proper columns according to the periods they may have been confined.

"Fort St. George, 27th November, 1829.

No. 568.

GENTLEMEN,

Judicial Department.

I am directed to acknowledge the receipt of your Register's letter of the 19th ultimo, No. 168, submitting a statement of the number of persons in confinement in the several Zillah gaols for arrears of Revenue, on account of embezzlement of public property, and for private debts to the 30th June, 1829. From that statement it would appear that there were no persons confined in the Zillah gaol at Combaconum on account of embezzlement of public property at the period for which that document is prepared; but from the accompanying copy* of a return made to the Board of Revenue for the month of June 1829, it appears that there were several persons at that time in confinement in the gaol in question under Regulation IX. 1822.

The Right Honourable the Governor in Council desires that in future the names and particulars of the cases of all persons confined under that

* Omitted.

Regulation may be entered in the periodical statements of parties imprisoned in the different gaols.

I have the honor to be,

GENTLEMEN,

Your most obedient Servant,

(Signed) HENRY CHAMIER

Secretary to Government."

To the Judges of the Sudr Udalut.

28TH DECEMBER, 1829.—B

I am directed by the Judges of the Sudr Udalut, to transmit to you for circulation to the several Zillah and Auxiliary Courts in your Division, the annexed copy of a letter, dated the 27th November last, from the Secretary to Government in the Judicial Department respecting the course of proceeding to be observed by the Courts in cases in which property situated in the Company's territories may belong to parties against whom decrees may have been passed by the Courts of Native States.

Vide C. O. 6th
June 1833.

Pursuant to these orders, the Judges are of opinion that, in the event of an application being made to a Zillah, or Auxiliary Court for the enforcement of a decree passed by the proper tribunal of a Native State, an authenticated copy of the decree being of course produced, nothing further will be necessary than to call upon the party against whom it may have been passed, to shew cause why it should not be executed against him; and if no sufficient cause be shewn, to proceed to execution of it, as in the case of one of its own decrees.

"Fort St. George, 27th November, 1829.

No. 557,

Judicial Department.

GENTLEMEN,

I am directed to acknowledge the receipt of your Register's letters of the 4th October 1828, No. 115, and 12th November 1829, No. 161.

On the occasion of an application from the Provincial Court in the Western Division for orders to the Resident in Travancore and Cochin to effect the sale of a banksall in the Cochin country, the property of a defendant against whom that Court had passed a decree, the Judges were informed, that "the plaintiff, in the case in question, must proceed against the property of the defendant according to the laws of the country in which it is situated;" and the Right Honourable the Governor in Council considers it proper that the same principle should be applied to the cases in which property, situated in the Company's Territories, may belong to parties against whom decrees may have been passed by the Courts of Native States.

I have the honor to be, &c.

(Signed) HENRY CHAMIER,

Secretary to Government."

To the Judges of the Sudr Udalut.

28TH JANUARY, 1830.—A

Read letter from the Provincial Court for the Northern Division, submitting copy of a reference from the Judge in the Zillah of Chitragona, as to the legality of a suitor relinquishing altogether a portion of his claim, in order to render it cognizable by a particular Court, or to reduce the institution fee payable on the suit.

The Provincial Court allude to the decrees of the Sudr Dewanny Udalt in Bengal, as reported in volume 2, page 293, and volume 3d, page 337, of their reported decisions. This Court, under date the 24th March, 1812, in modification of their previous orders of the 1st February, 1811, ruled that a suitor cannot divide his demand, and that a plaintiff must invariably sue "for payment of the entire sum which the plaintiff considers himself entitled to demand, or expects to recover from the defendant."

The Provincial Court, however, justly remark, that the subdivision of a demand, which alone is contemplated in the decrees of the Bengal Court, and in the decision of this Court above alluded to, is quite a different matter from the entire abandonment of a part of the claim, or the voluntary relinquishment of such portion, in order to bring the action before a particular Court, lower than that by which the entire claim would be cognizable, or with the view to avoid the increased stamp duty, to which the full claim would be subject; and the Zillah Judge instances "a suit for a balance of accounts, amounting to rupees 32, 10, 11, in which the odd annas and pice are given up, in order to avoid the expense of the additional two rupees, required as the value of stamp in suits exceeding thirty-two rupees."

Vide C. O. 9th
Sept. 1830.

The Judges are of opinion that the strongest objections exist against any unfair or depreciated value being placed on property sued for, and against the subdivision of a claim, with the view of its being brought in portions before a tribunal, which by law is excluded from cognizance of the whole. But after a party states the full value of the entire claim, they see no objection to his voluntarily relinquishing a certain portion thereof, and suing for the remainder only, in the Court by which that remainder is cognizable, whether with the view to bring justice near his own door, or to diminish the expense of litigation. In either case, the fact ought to be fully set forth in the pleadings; for the voluntary abandonment of the sum relinquished must be the free act of the plaintiff, and should be fully recorded, to prevent the claim for its amount being renewed at a future period.

28TH JANUARY, 1830.—B

Read letter from the Secretary to Government in the Judicial Department.

Regulation XXXIV. 1802, corresponds in most of its provisions with Regulation XV. 1793, of the Bengal code, whence it is principally taken. But it differs entirely from it, as well as from Regulation XXXIV. 1803, of the Bengal code, in Section VI., which rendered bonds bearing a higher rate than 12 per cent. per annum, irrecoverable in our Courts. The Bengal Regulations render the interest alone irrecoverable, and leave the principal unaffected.

But Section VI. Regulation XXXIV. of 1802, was entirely modified by Section VI. Regulation II. of 1825, which renders the principal, as well as interest at the legal rate, recoverable on such bonds; and this Court, on the 24th January, 1828, decided that this new enactment applies to instruments executed before its promulgation. The question now referred is, whether this applies to instruments of that description, already adjudicated and rejected under the law, which has thus been modified.

The Judges think that it does. The former original enactment placed a bar, which the latter has removed. As previously observed by them, the last enactment is "remedial and should be construed so as to advance the remedy;" and it would be quite contrary to this principle to permit those who hold such old bonds, and never before prosecuted their claims to a remedy, denied to such as had, in confidence of the justice of their claims, and perhaps in ignorance of the bar originally existing, appealed to the established tribunals for redress.

In either cases, however, as formerly observed by this Court, such claims are subject to the rule of limitation prescribed by Clause fourth, Section XVIII. Regulation II. of 1802. Vide C. O. 94th
January 1828.

28TH JANUARY, 1830.—C

Read letter from the Provincial Court of Appeal for the Southern Division, referring the question whether a special appeal, having been rejected by a competent judicial authority, can be legally admitted by his successor, who takes a different view of the case.

The Judges are of opinion that it would be highly dangerous to permit the successor of any judicial authority, to disturb orders deliberately passed by his predecessor, except where the revision of them may be obviously necessary, to correct an error or omission, or otherwise requisite for the ends of justice. With this view, it seems proper, on the principle of Section VI. Regulation XV. of 1816, that the lower Courts should abstain from disturbing their predecessor's orders, except under express permission from this Court, to be obtained as provided in the Regulation above quoted. Without such express permission, no judicial authority can disturb the decisions passed either by themselves or by those who have preceded them in the same tribunal.

15TH FEBRUARY, 1830.—A

Read letter from the Secretary to Government in the Judicial Department, dated February 5th, forwarding an Extract from the Minutes of Consultation of the same date, directing that hereafter when the evidence of persons residing in foreign European settlements, or in the territories of Native States may be required in any of the Courts of Justice under this Government, the Judges of those Courts shall be authorized to transmit written interrogatories for the examination of such persons, direct to the British representatives in such settlements or territories. Vide C. O. 18th
May 1827.

No. 79.

"Extract from the Minutes of Consultation, under date the 5th Feb. 1830.
Read the following letter from the Register to the Court of Sudr Udalut.

Vide C. O. 11th
May 1831.

(Here enter 28th January, 1830, No. 14.)

Resolved, with reference to the orders of Government under date the 2d December, 1817, that hereafter when the evidence of persons residing in foreign European settlements, or in the territories of Native States may be required in any of the Courts of Justice under this Government, the Judges of those Courts shall be authorized to transmit written interrogatories for the examination of such persons direct to the British representatives in such settlements or territories, who will take the proper measures for obtaining replies to them in such a shape as to be available in a Court of Law.

Ordered, that a copy of this resolution be furnished to the Political and Foreign Department for communication to the British representatives in foreign settlements, and Native States, and to the Court of Sudr Udalut for communication to the Courts in the provinces.

(A true extract,)

(Signed) HENRY CHAMIER,
Secretary to Government."

15TH FEBRUARY, 1830.—B

Read letter from the Provincial Court of Appeal in the Western Division.

(Here enter No. 854.)

In this communication, two letters from the Zillah Judge of Canara are submitted; one forwarding a reference from his Assistant, in which he requests instructions as to the proper proceeding respecting costs of suit, when he sends back regular appeals to the *Sudr Ameen Mooftee*, for further inquiry and decision *de novo*, by which proceeding he considers the appeal before himself quashed: the other forwarding a reference from his Register, who, after stating that "conformably to the orders of the Sudr Udalut," he had "sent back to the Sudr Ameens for fresh investigation the appeal suits on" his "file, which were originally tried *ex-parte*," adds, that "as these suits can neither be said to be decided upon their merits, nor adjusted by *Razeenamah*," he wishes for instructions whether himself, and the Sudr Ameens in like cases, are entitled to any remuneration for examining the record in the original suit in such cases.

With regard to the first of these references, the Court are of opinion that, in cases in which it is clearly shewn that the appellants have from ignorance preferred a regular, instead of a summary, appeal, it is but just and proper that the difference between the amount of stamp duty paid by them on the institution of the regular appeal, and that which they would have had to pay for preferring a summary appeal, should be refunded to them.

Such an error could not arise from any improper motive, and the Court agree in opinion with the Zillah Judge that a person is not likely to

resort to a regular appeal if he thinks a summary one will avail, and that therefore it would be hard to make an appellant suffer for his ignorance.

The Court accordingly, under the provisions of Clause second, Section XXV. Regulation XIII. of 1816, authorize the Assistant Judge to return to the appellants in suits Nos. 336 of 1824, and 29-30 and 95 of 1825, the difference of the value between the stamps used for preferring regular and summary appeals.

The discussion of these references has led the Court to consider, whether Assistant Judges, under Regulation VII. 1809, and Registers are competent to dispose of *summary* appeals. Section V. Regulation XV. 1816, contemplates the receipt of such appeals by the Zillah Judge alone; but when once received, it is competent to him to refer them for decision by the Assistant Judge, under Clause second, Section II. Regulation VII. 1809, and if they come within a certain description to his Register; under Section II. Regulation II. 1821. The Court are therefore of opinion, that when *regular* appeals are referred by the Zillah Judge to these authorities, which, it is found, ought to have been made *summarily*, they are competent to dispose of them as if they had been of the latter description.

With regard to the second reference, the Court remark that the Zillah Register seems to have arrived at a very erroneous conclusion, in considering that no suits tried *ex-parte* can be said to be decided on their merits. It is the duty of the Court, on the defendant failing to answer the complaint, to proceed to try the cause, and after examining the plaintiff's evidence in support of his claim, to give judgment on the merits of the case as established by that evidence, in the same manner as if the defendant had appeared and answered to the plaintiff; suits, therefore, upon which *ex-parte* decisions are passed, are generally decided upon the merits of the case, for they are usually either so obviously just, as to admit of no defence, or so groundless, as, on the plaintiff's own shewing, to render any defence unnecessary. In this Court's orders of the 31st August last, allusion is made to suits *withdrawn ex-parte*, not to suits tried and determined *ex-parte* on their merits and the Court are surprised that the Zillah Judge, and the Provincial Court should have overlooked the error into which the Register has fallen in this respect.

If a Register, on examining the record of a regular appeal, referred for his decision, consider the suit to have been rejected or dismissed on insufficient grounds, without due investigation of the merits, in opposition to the Regulations, he should, in the event of its not being an appeal from a District Moonsiff, treat it as a *summary*, instead of a *regular* appeal; and, obtaining authority for the remission of the difference of stamp duty, as the Assistant Judge has done, should strike the appeal off his file, and return the suit to the Officer, from whose decree the petition of appeal is presented, to be tried and determined afresh. The Register in such case will become entitled to his established share of the reduced institution fee, on a summary appeal.

The Court of Sudr Udalut, in their orders of the 27th August 1829, observed, that under the analogy of Section XVIII. Regulation IV. 1802, it would be competent to a "*Zillah Judge*," on a regular appeal, after examination of the record, to refer causes back to a *District Moonsiff*, with orders to take such further evidence as may be deemed necessary.

Vide Act No.,
XVII. of 1838.

and to pass a new decree in the case. This may include cases tried *ex parte*, in which the parties may account satisfactorily for their default." They are of opinion that, under Clause second, Section XXVI. Regulation VI. 1816, an Assistant Judge, a Register, and a Sudr Ameen may also exercise this authority.

A summary appeal *eo nomine* does not lie from the dismissal, by a District Moonsiff, of a suit without any investigation of its merits, yet, except that there is no refund of the stamp duty, the provisions of the Clause just cited amount in effect to the same thing, whenever the superior Court thinks fit to remand a suit back to the Moonsiff who dismissed it. In that case, the appeal should be struck off the file, because, if the same party should be dissatisfied with the revised decree, the grounds of his appeal must be different; and the Register and Sudr Ameen will be entitled to their proportion of the fee paid on the institution of such dismissed appeals; for no part of such fee is repayable to the appellant, as it would have been, if what is technically termed a summary appeal had been admissible from the decree of a District Moonsiff; and the Clause cited above, evidently supposes the appeal to be finally disposed of, in every case, when the suit is remanded back.

11TH MARCH, 1830.

Read letter from the Secretary to Government in the Judicial Department, dated the 23d ultimo.

With reference to Regulation VII. 1822, the Right Honorable the Governor in Council, has been pleased to direct the Court of Sudr and Foudaree Udalut to exercise a general controul over all the subordinate Courts, and the four Provincial Courts, a similar controul over the Zillah and Auxiliary Courts in their respective Divisions, in order to prevent the appointment of improper and unfit persons, and the unjust and capricious removal of those employed in the Judicial Department; the Judges of the Court of Sudr and Foudaree Udalut, accordingly, desire that the same be communicated to the four Provincial courts for their future guidance, desiring them to furnish the several Zillah and Assistant Judges in their respective Divisions with this information.

8TH APRIL, 1830.

Read again letter from the Provincial Court of Appeal in the Northern Division, forwarding a reference from the Zillah Court of Nellore, as to the Pleader's fees, in a suit dismissed, in which each of four defendants delivered in separate answers, through four distinct Vakeels.

The provisions of Section XXX. Regulation XIV. 1816, sufficiently provide for the case of more than one Vakeel being employed by the same party.

But where the parties are more than one, on either side of a suit, and employ different Vakeels, the Regulations do not provide for the case. In such instances, the Court are of opinion that each of the Vakeels employed is entitled to his full fee on the suit.

With regard to the persons who are to pay these fees the Court are

opinion, that, where the persons, on the same side of a suit, have not conflicting interests, there is no necessity for their employing more than one Vakeel; and that if the judgment go against the opposite party, he is responsible for the fees of one pleader only on the opposite side, the difference being chargeable to the clients who employ more than one Vakeel. But where the parties on the same side of a suit have each conflicting interests in it, the employment of different Vakeels is obviously necessary; and the opposite losing party stands in the same predicament, as if he had instituted separate suits against each of them, and is accordingly liable to pay the full fee due to each of the pleaders employed on the other side.

• It being desirable that uniformity of practice should be observed by the Courts in this respect, the Court direct that extract from these proceedings be by precept communicated to the four Provincial Courts, requiring them to circulate the same for the guidance of the lower tribunals, and to observe them in their own decrees.

2D SEPTEMBER, 1830.—A

Read letter dated the 13th ultimo, from the Judges of the Provincial Court of Appeal in the Western Division, enclosing copy of a letter from the Zillah Judge regarding the point, whether the acts of a Magistrate apparently not in opposition to any known Regulation are cognizable by him in the first instance, or by the Circuit Court; with remarks by the Provincial Court.

(Here enter No. 627.)

At the request of the Zillah Judge of Canara, the Provincial Court submit, for the decision of this Court, whether on the institution of a suit against a Magistrate, under Section XLIII. Regulation IX. 1816, it is the duty of the Court to decide, whether the acts complained of were justifiable or otherwise, or to refer the party in the first instance to the superior Criminal Tribunals, whom the Zillah Judge considers to be the only authority, "competent to revise and controul Magisterial proceedings."

Although it is competent to a person complaining against a Magistrate or a Collector, to address himself to the Superior Criminal Courts, or to the Board of Revenue or Government, respectively, for redress, the law wisely gives him also the right to file a civil suit in the Udalut of the Zillah, for any injury sustained by an official act of the Magistrate or Collector.

If either of these officers, when prosecuted, consider that the redress demanded should be granted, or that the suit should be defended at the public charge, Regulation 1. 1823, contains the rules on which they are to act.

But whether the rules therein laid down are acted on, or not, if the suit proceeds, it is clearly the duty of the Court to decide, whether the acts complained of were legal and justifiable, without reference to the opinions or judgment of the superior criminal, revenue, or executive authorities, whose sentiments are not to guide the Civil Judicial Tribunals bound by the legislative enactments of the Government alone as interpreted by this Court.

2D SEPTEMBER, 1830.—B

Read the following letters from the Provincial Court for the Southern Division.

(Here enter No. 540, and 542.)

In the last of these communications, the Provincial Court in the Southern Division, at the request of the Judge in the Zillah of Salem, has submitted to this Court the question, whether the Curnum of a village, the land revenue of which has been permanently fixed, under Regulation XXV. 1802, can be removed from office, except by order of a Civil Court of Judicature, on a regular suit instituted for the purpose. In the previous letter, they forwarded a communication from the Judge of Salem, detailing his reasons for a modification of such part of the Regulation above-mentioned as regards Curnums in settled districts.

With reference to the provisions contained in Section XI. Regulation XXV., and in Section V. and VII., Regulation XXIX. 1802, the Court of Sudr Udaltut concur in opinion with the Provincial Court in the Southern Division, that a Curnum of a village, of which the revenue has been settled permanently, cannot be removed except by a decree of a Civil Court, on a regular suit to be instituted for the purpose. It is true, that the first of the Sections, above referred to, alludes to the "trial and punishment" of the Curnum, and to the "sentence" of the Court of Judicature, terms, which, if they stood alone, might lead to the inference, that a criminal, and not a civil, tribunal is intended; but the enactment goes on to declare expressly, that the proceeding shall be by a "suit in the Udaltut of the Zillah," and Section VII. Regulation XXIX., in cases of incapacity, also declares, that the proof must be "before that Judge of the Zillah."

The Court of Sudr Udaltut see no reason to modify the existing law in this respect;—and in submitting to the Government, under date the 28th January last draft of a regulation, by which hereditary village or other officers in the Revenue and Police departments were placed under Collectors, and the incumbents were declared liable to removal by them, subject to the orders of the Board of Revenue or of Government, the office of Curnum in permanently settled district was expressly exempted from this rule.

9TH SEPTEMBER, 1830.—A

Read letter from the Provincial Court of Appeal in the Southern Division.

In the foregoing letter the Provincial Court submit, for the decision of this Court, the following question.

"In case the total amount of a bond exceeds the sum cognizable by a Court, can a suit be brought in that Court for the recovery of the 1st instalment of the bond, such instalment being the only one then due, and the amount thereof being adjudicable by the Court."?

Vide C. O. No. 40. In para 3 of their Circular Orders of the 28th January, 1830, para 4 of their letter to the Northern Provincial Court of the 14th December, 1824, and their letter to the Acting Judge of Vizagapatam of the 12th April, 1819, this Court recorder their opinion against "the subdivision of a claim, with the view of its being brought in portions

before a tribunal, which by law is excluded from the cognizance of the whole." They shewed the incongruity of a Court deciding on an instalment of a bond, or a portion of a debt, virtually involving the validity of the aggregate recoverable, from cognizance of which they were expressly excluded; and they laid it down as a general rule, that, though the original transactions between the parties may have exceeded in amount that cognizable by the Court, yet, if, by liquidation of a part, the remainder recoverable does not exceed that cognizable by the Court, it may be adjudicated by it: but that when the aggregate of the instalments on a bond, or of the separate portions of a debt still recoverable exceeds that to which the Court's jurisdiction is limited, "each instalment or portion of the claim can only be awarded in the superior Court; because, in the adjudication of the right to the portion claimed on such instrument, the right to the whole debt," still recoverable, "must necessarily be first determined."

For these reasons the Court are of opinion that the question submitted by the Provincial Court in the Southern Division is to be answered in the negative.

9TH SEPTEMBER, 1830.—B

I am directed by the Judges of the Court of Sudr Udaltut to transmit for your information and guidance, the accompanying copy of a letter, dated the 27th ultimo, from the Secretary to Government in the Judicial Department, and of its enclosure, being an Extract from a despatch from the Honorable the Court of Directors, dated the 10th February, 1830.

You will be pleased to instruct the several Magistrates, and Zillah and Assistant Judges within your Division, in future to write separate letters on separate subjects, and to observe, as far as circumstances will permit, the greatest brevity in their official correspondence; you will point out to them, that those communications will be considered the most valuable which compress useful matter within the shortest compass.

You will also direct those Officers in their correspondence with each other, or with yourselves, or this Court, invariably to annex to their letters a paper containing a short abstract of their contents.

The Judges also desire that in future all letters to my address be likewise accompanied by an abstract of their contents, and that you will in other respects be guided by these instructions,

"Fort St. George, 27th August, 1830.

No. 732.

Revenue Department.

GENTLEMEN,

I am directed by the Right Honorable the Governor in Council, to transmit, for your information and guidance, and for that of your subordinate functionaries, the accompanying extract from a despatch from the Court of Directors, dated 10th February 1830. The Right Honorable the Governor in Council desires, that hereafter every letter from your Court to the Government may have annexed to it a paper containing a short abstract of its contents, as directed by the Honorable Court.

I have the honor to be, &c.

(Signed) HENRY CHAMIER,
Secretary to Government."

Vide C. O. 30th Sept. 1830, and Appendix E.

Circular Orders of the

TO THE JUDGES OF THE SUDR AND FOUSDAREE UDALUT.

*" Extract from a Despatch from the Honorable the Court of Directors,
dated 10th February, 1830*

" The great length of many of your general letters and the number of subjects which they embrace, tend materially to retard our correspondence. To obviate this cause of delay, you are directed to instruct all your subordinate functionaries, in the several departments, Civil and Military, as well in their correspondence with each other, as with their respective Governments, to write separate letters, upon separate subjects, and on a paper annexed to each letter, to make a short abstract of its contents. This division of subjects may not be practicable to an equal extent in every department, and in all cases, but it is desirable that it should be acted upon as far as circumstances will permit. The practice of making abstracts, besides facilitating references, will lead, we hope, to a condensation of the correspondence, which is often most unnecessarily expanded. It should be understood throughout our service, that the letters which contain the most useful information and pertinent suggestions or instructions, within the shortest compass, are most valuable, and will be held by the superior authorities in the highest estimation.

(A true extract.)

(Signed) HENRY CHAMIER,

Secretary to Government.

30TH SEPTEMBER, 1830.

Read letter, from the Provincial Court in the Southern Division, under date the 15th instant, submitting whether it is necessary that letters of every description should have abstracts annexed to them as directed in this Court's order of the 9th instant.

The Judges of the Sudr and Fousdaree Udalt, are of opinion, that it is expedient that *all* letters addressed to them should have the abstracts annexed, but consider it more convenient that these abstracts should be written upon the backs of the letters themselves, which should be folded in the manner of the extract from these proceedings, than on a detached paper, as before directed. The Provincial Courts may issue any other orders, for the conduct of correspondence with themselves, which they may find best calculated to promote the public service.

25TH OCTOBER, 1830.

I am directed by the Judges of the Sudr and Fousdaree Udalt, to inform you that, amongst the changes in the Judicial Department, at present in contemplation, it is proposed that the Hindoo and Mussulman Law Officers, attached to the Provincial, Zillah, and Subordinate Courts, should all be employed as Sudr Ameens.

In their capacity of Sudr Ameens, it is intended that the Law Officers, both Mahomedan and Hindoo, should not only possess the power of deciding civil suits, of a value higher than those at present cognizable by Sudr Ameens; but also possess very extensive criminal jurisdiction. It is accordingly considered desirable, with the view of qualifying them for

Court of Sudr Udalt.

the duties about to be entrusted to them, that, at all such times as they may have leisure from other avocations, they should give their attendance, at the nearest European criminal tribunal, in order that they may acquire the knowledge requisite for conducting criminal proceedings, in the manner at present observed by the Criminal Courts.

Many of the Mahomedan Law Officers may be expected to be already somewhat conversant with criminal business; it will therefore be requisite to impress on the Hindoo Law Officers, in particular, the necessity for rendering themselves competent to perform criminal, as well as civil business, as they cannot expect to be entrusted with the proposed new duties, until they are fit to execute them.

18TH DECEMBER, 1830.

With reference to my letter, under date the 28th December, 1829, transmitting the form No. 6,* for the preparation of the half-yearly statement, shewing the number of persons in confinement for debt, &c., in the several gaols within your Division, I am directed by the Judges of the Court of Sudr Udalt to transmit to you, a revised form, No. 6,* according to which you will direct the several Zillah and Assistant Judges in your Division to prepare the statement for the last half of the present year.

27TH DECEMBER, 1830.—A

I am directed by the Judges of the Sudr Udalt to inform you, for communication to the Zillah Judges, that from the 1st of January next, the officers employed as Zillah Pundits, and Zillah Mooftes, are to draw severally a salary of 150 rupees per mensem; with the exceptions of Moulavee, Nazer Alle, Mooftes in the Zillah of Chingleput, and of Moulavee, Mokurum Allee, Mooftes of Chicacole, who will retain their former monthly salaries of 210 rupees each, as personal allowances, to cease on their vacating their Offices.

27TH DECEMBER, 1830.—B

I am directed by the Judges of the Sudr Udalt, to inform you, for communication to the several Zillah and Auxiliary Courts, that the Right Honorable the Governor in Council was pleased, under date the 17th instant to resolve, with reference to the orders of Government of 28th July, 1829, (regarding the accounts to be furnished to the Courts of the surplus funds of the estates, under the management of the Collectors, by order of such Courts,) that, whenever any estate, village &c., may be placed under the management of a Collector, by order, either of this Court, or by that of the Provincial, Zillah, or Auxiliary Courts, a communication of the circumstance is to be made to the Board of Revenue through this Court, and that the accounts, heretofore furnished by the Revenue Board direct to the different Courts in the Provinces, are to be distributed through the medium of this Court.

* Form omitted.

23D FEBRUARY, 1831.

Read letter, dated 6th December last, from the Provincial Court of Appeal in the Northern Division.

In the foregoing letter it is stated, that great difference of opinion and practice appears to prevail upon the two following points, on which the decision of the Court of Sadr Udalt is desired, namely;

Vide C. O. 11th Oct. 1827 and 6th Feb. 1857. 1st. "When property is attached for sale in execution of any process of Court, and claims to it are put in, on mortgage, or any other ground, is it, or is not, the proper mode of proceeding for the Court that issued the process, to make, or cause to be made, a summary inquiry by means of documents and witnesses, pass a summary decision, and release, or sell, the property accordingly?"

2d. If the proceeding above described be the proper one, is an appeal from such summary decision admissible by the proper superior Court, in the same manner as from any other interlocutory order?"

Vide C. O. No. 23. The Court of Sadr Udalt have no hesitation in determining both the questions above stated, in the affirmative. With respect to the second question, the Court are and have always been clearly of opinion, that, under the general regulations, an appeal lies to the superior Court, from all interlocutory orders of Court, excepting where such appeal may be expressly, or virtually, prohibited by an enactment of the legislature.

Vide C. O. 16th Nov. 1829 and C. O. No. 6. The Court's affirmation of the 1st question rests upon the ground stated by the Provincial Court, namely, "that the proceeding above described is the proper one; because every Court of justice is responsible for the process which it issues, and if it has any reason to suppose that property attached, under its warrant, is improperly attached, as it must be if any person has a lawful claim upon it, prior to that of the party in whose behalf it is attached, the Court is bound, before he proceeds further, to make such inquiry, as is necessary, and within its power, to determine that point, and to be guided by the result of that inquiry. The objection which has been urged to this course, namely, that Courts must not decide on rights of property by interlocutory order, is inapplicable; because such summary inquiry and decision does not preclude any party concerned from bringing an original regular suit for the same cause of action; it is made, not as between the parties concerned, but merely for the security of the Court itself against an erroneous application of its process."

The difference alleged to prevail in practice regarding the mode of proceeding in the cases here contemplated, induces the Court of Sadr Udalt to direct, that extract from these proceedings be transmitted to the four Provincial Courts of Appeal to be by them communicated to the several Zillah Courts, and the Courts subordinate to them for their information and guidance respectively.

28TH FEBRUARY, 1831.

Read letter, from the Provincial Court in the Northern Division, dated the 21st ultimo, requesting instructions as to whether a loan acknowledgment, for the sum of Calcutta Sicca Rupees, 19,000 on account of surplus collections, from the estate of Cotam (placed under attachment,

by the orders of this Court) made out in the name of the Register of the Provincial Court, by the Collector, is correct; or whether the said acknowledgment should not stand in the name of the Register of the Sadr Udalt.

Previous to the 18th May, 1829, it appears, that the surplus funds of estates under the attachment of Collectors were left in their treasuries. On the above date this Court suggested to Government, that the surplus funds of the Vassareddywar estates should be invested in the public securities of the Company in the name of the Register of the Provincial Court for the time being, and that any such securities then standing in the names of the Collectors of Masulipatam and Guntoor, should be transferred to the name of the said Register, for the time being, and lodged in the treasury of the Provincial Court, the Court at the same time applied to Government to issue the necessary directions for the purpose, and requested that the Collectors might be instructed, by a Circular order, to consider these instructions, applicable to any other lands which might be hereafter attached by this Court's orders, stating that the arrangements proposed could be carried into effect by the Revenue authorities only, under special orders from the Government.

On the 17th August, 1829, copy of the reply of Government to the above letter was circulated to the four Provincial Courts, in consequence of which, the said bonds were to be prepared in the names of the Registers of the Provincial Courts, their executors and administrators. On the 29th October, of the same year, the Court submitted to Government that those bonds, if vested in this form, might be held, to be transferable, after the death of those Officers, only on the application of the administrators to their personal estates; and they subsequently suggested, that the same should stand in the names of the Registers to the Provincial Courts for the time being, payable to that Officer, *his successors in office, or his, or their order*, and not to their "executors or administrators," and requested that this suggestion might be adopted generally, as regarded Company's Securities, at the disposal of the Courts.

On the 30th July last, the resolution of Government to have certain original bonds sent to Bengal to be cancelled and fresh bonds to be issued for them; and to recommend to the Supreme Government the general adoption of the suggestion regarding the investiture of these securities was intimated to this Court, who, on the 20th September, forwarded the said bonds to Government for the above purpose, and proposed, that, as the bonds in question belonged to the Vassareddy suit then pending in appeal before this Court, the new bonds might be made payable to the Register to the Sadr Udalt at Fort St. George, for the time being, his successors in office, or to his, or their order.

Although no reply has yet been received from the Supreme Government sanctioning the general adoption of the last suggestion of this Court, little doubt can exist of its expediency, and of their eventual sanction: and, as late as the 29th December last, this Court requested the Accountant General to instruct the Collectors of Masulipatam and Guntoor, to transmit annually by a bill, in favor of the Register of this Court, all the surplus funds of the Vassareddy estates under attachment by this Court's orders, and that they should be vested in Government Securities at this place, in direct communication with the Accountant General.

Although the above refers only to the Collectors of Guntoor and Malipatam, it appears to the Court highly desirable that the same, or a similar mode of proceeding, should be generally adhered to by the Provincial Courts, and by the several Collectors.

Ordered, therefore, that extract of these proceedings be forwarded to the Accountant General, requesting that he do issue early instructions to the several Collectors, to the effect that they transmit, whenever the surplus collections may have been made, such surplus funds of the different estates in their Districts, under attachment by this Court's orders, that they may be invested in Government Securities at this place, in direct communication with the Accountant General, and that all such securities be prepared in the name of the Register of the Court of the Sudr Udalut at Fort St. George, for the time being, his successors in office, or to his, or their order.

15TH MARCH, 1831.

Vide C. O. No. 31. Instances having lately occurred of the transmission to this office of petitions, and other papers from the Subordinate Courts in the native languages, unaccompanied by translations, as required by the standing orders of the Court of Sudr and Foudaree Udalut, I am directed by the Judges and Magistrates within your jurisdiction to this subject, and enjoin them on no account to omit to send translations of all documents in the native languages, which they may forward to this office.

7TH MAY, 1831.

Vide C. O. No. 70. Vide Act No. XXIX. of 1811. Read letter, dated the 24th October, 1828, from the Provincial Court in the Centre Division, submitting the question, "whether after suits have been dismissed for default, without an investigation of their merits, the remedy of the party aggrieved is only by appeal under Clause second, Section XXVI. Regulation VI. and Section V. Regulation XV. of 1816, or whether they have the option, besides such appeal, of instituting the suit *de novo* in the same Court in which it had been dismissed for default."

In the extract of the proceedings of the Provincial Court of the above date, the principle of the provisions, contained in Sections IX. and X. Regulation II. of 1802, is referred to, in support of the opinion of the Provincial Court, "that no suit dismissed for default in any Court, can again be received or instituted, there *de novo*, except under orders from a higher tribunal," but the Court of Sudr Udalut are not of opinion that these provisions are at all applicable to the question at issue.

It appears to the Court of Sudr Udalut, that the summary appeal from dismissals for default is intended to provide against persons being improperly taxed with costs; and that a plaintiff, whose suit is dismissed for default, without investigation of the merits, may, on the principle explained in pages 296 and 376, Blackstone's Commentaries, vol. 3d, institute the suit *de novo*.

The question being one of general interest, the Court resolve to transmit a copy of these proceedings to the four Provincial Courts of

Appeal for the information and guidance of the judicatories subordinate to them respectively.

11TH MAY, 1831,

I am directed by the Judges of the Sudr and Foudaree Udalut to transmit to you the accompanying copy of an Extract from the Minutes of Consultation, under date the 6th instant, and to desire that you will communicate the same to the Judges and Magistrates within your jurisdiction.

Vide C. O. 15th Feb. 1830.—A

Foreign Department.

"Extract from the Minutes of Consultation, under date the 6th May 1831.

Resolved, with reference to the orders of Government in the Judicial Department, dated 4th July, 1828, that the Court of Sudr and Foudaree Udalut be requested to notify to the Courts in the Provinces that Monsieur le Juge de Paix, Lieutenant de Police at Pondicherry, has received orders from the French Government, to send to them, at their requisition, native inhabitants of the French territory who may be required to give evidence in the British Courts of Justice. On such occasions the Judges and Magistrates will address themselves direct to the Officer of the French Government above indicated. In cases where any difficulty may arise after communication with the Juge de Paix, Lieutenant de Police, the Judges will refer themselves to the special Agent for Foreign Settlements.

(A true extract,)

(Signed HENRY CHAMIER, •

Acting Chief Secretary."

20TH May, 1831.

Read letter, dated the 20th ultimo, from the 1st Judge of the Provincial Court of Appeal in the Northern Division, submitting the copy of a letter, dated 9th ultimo, from the Judge in the Zillah of Chicacole, recommending "that all Sudr Ameens and Moonsiffs should be required to send, with the records of the suits before them, the original draft in their own handwriting of their decrees:" and that this rule should be observed by those, who may not be acquainted with the language of the district, of whose decrees a translation should be furnished to the parties.

Vide Act XII of 1843 and C. O. No. 89.

The Court of Sudr Udalut being of opinion, that the adoption of the rule, proposed by the Zillah Judge, will operate as a salutary check upon the proceedings of the Sudr Ameens and District Moonsiffs, direct that the four Provincial Courts of Appeal do issue the necessary instructions for its observance.

4TH JULY, 1831.

A question having been referred for the decision of the Court of Sudr Udalut respecting the disposal of suits of the description specified in Clause first, Section II. Regulation IV. of 1831, which are ready for decision, but in which decrees had not been passed at the period of the promulgation of that Regulation, I am directed to apprise you, for the information and guidance of your own Court and of those subordinate to

Circular Orders of the

you, that, according to the construction given to this enactment by the Judges of the Sudr Udalut, the provision contained in Section IV. of the Regulation bars any adjudication upon such suits, and that, on their being struck off the file, application should be made, under the provisions of Clause second, Section XXV. Regulation XIII. of 1816, for the return of the amount of stamp duty substituted for the institution fee.

26TH AUGUST, 1831.

Under the sanction of the Right Honorable the Governor in Council, the Judges of the Court of Sudr Udalut, direct that you will instruct the judicial authorities subordinate to you to extend to the parties to suits, which may be struck off the file under the provision of Regulation IV. of 1831, the benefit of the provision contained in Clause second, Section III. Regulation VI. of 1831, respecting the parties to suits, which may be struck off the file under that Regulation.

29TH AUGUST, 1831.

The Court of Sudr Udalut, having had under consideration the replies furnished by the several judicial tribunals, to the queries circulated, under date the 23d October, 1827, on the subject of security in cases of Appeal, observe that a diversity of opinion prevails in respect to what should be considered the "annual produce" of land, as defined in Section III. Regulation III. of 1802; and that in some Courts it is the practice, on appeal in suits for the recovery of houses, to require security for one year's produce thereof, instead of security for the computed value, as prescribed by Clause second, Section XI. Regulation XII. of 1809.

Vide C. O. 21st Sept. 1826 and 29th Aug. 1831. Not applicable to Appeals to the King in Council.

The Court of Sudr Udalut are clearly of opinion, that in suits for land the security should be taken on appeal for the estimated value of one year's produce of the land decreed, exclusive of the expenses of cultivation, but inclusive of the Circar's share, and they therefore direct that this mode of calculation be observed in future.

And in respect to suits for houses or other immovable property, not being land, the Court of Sudr Udalut direct that, on appeal, security be taken for the computed value of the property decreed, agreeably to the provisions of Clauses second, and third, Section XI. Regulation XII. of 1809.

9TH SEPTEMBER. 1831.

Vide C. O. 16th April 1832.

The Judges of the Court of Sudr Udalut considering it desirable that they should possess information as to the number of applications for the admission of Special Appeals pending in, the number of such petitions presented to and those disposed of by, the several judicial authorities under this Presidency, during the period comprised by the Abstract Registers of suits disposed of, &c., I am desired to request you will call upon the several Zillah and Assistant Judges within your Division to furnish quarterly, with their civil reports, a statement according to the form subjoined, to be appended to the General Abstract.

Court of Sudr Udalut.

The Judges desire that a similar statement be appended to the quarterly reports furnished by your own Court.

Abstract of Applications for Special Appeal.

Number depending on 1st July, 1831.....	6
Number presented during the last quarter.....	5

11

Disposed of during the Quarter.

Admitted.....	3
Rejected.....	6
	9

Depending on the 1st October.... 2

10TH SEPTEMBER, 1831.

I am directed by the Judges of the Sudr and Foujdaree Udalut, to transmit for your information and guidance, an Extract from a General Letter from the Honorable the Court of Directors, in the Political Department, dated the 14th January, 1829, and a copy of the resolution passed thereon, by the Right Honorable the Governor in Council, under date the 2d instant.

You will communicate these papers to the Officers subordinate to you for their respective information and future guidance.

"Extract from a General Letter, from the Honorable the Court of Directors, in the Political Department, dated 14th January, 1829.

"Part of para 67. Since the property of a person who executes a security bond, cannot be made available for the discharge of the bond, unless it be situated in our own territories, he should, in making affidavit that he possesses property sufficient for the purpose, be also required to declare that this property is within the jurisdiction of your Courts.

Extract from the Minutes of Consultation, 2d September, 1831.

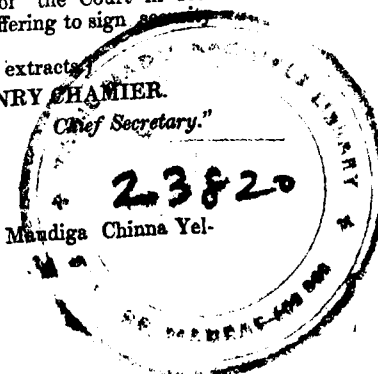
Ordered that an Extract from para 67, be sent to the Sudr Udalut and that they be desired to instruct the lower Courts of this Presidency to conform to the orders of the Court in respect to the Affidavit to be taken by individuals offering to sign bonds.

(True extracts)
(Signed) HENRY CHAMIER.

Chief Secretary.

19TH OCTOBER, 1831.

Read petition, presented on the 4th instant, by Maudiga Chinna Yellogadoo and four others.



It appears, that the petitioners were sued in the Court of the District Moonsiff of Tondimurry, by M. Nagadoo, and three others, "for the recovery of the Madigy Meerassie, of the village of Tukelapully, together with the Mauniums attached thereto, and rupees 42, profits enjoyed by them."

The District Moonsiff gave judgment in favor of the Plaintiffs for the above claim, and on appeal the decree was affirmed by the Zillah Court of Bellary.

The petitioners made an application to the Provincial Court for the admission of a Special Appeal, which was granted, under date the 26th August, 1829.

And on the 9th ultimo, the Provincial Court directed that the appeal, which was numbered 29, of 1829, should be struck off the file on the ground, that "it is not competent to them, under the provisions of Clause first, Section III. Regulation VI. of 1831, to entertain the suit."

The petitioners represent, that by the decisions of the lower Courts, they are deprived of the Meerassie, and as dismissal of the Special Appeal will otherwise have the effect of perpetuating that deprivation, they pray that the Court of Sudr Udalut will order the whole of the proceedings to be quashed *ab initio*, in order that the parties may be placed in the same situation as before the institution of the original suit.

The Court of Sudr Udalut are of opinion, that the petitioners would be entitled to the order for which they apply, if the special appeal were properly dismissable under the provisions of Clause first, Section III. Regulation VI. of 1831.

But to the Court of Sudr Udalut it appears perfectly clear, that appeals do not fall within the scope of the provisions of this Regulation.

The Clause cited by the Provincial Court in their proceedings of the 9th ultimo, directs that all "suits" respecting the offices and emoluments referred to, shall be struck off the file; and Clause first, Section IV. of the Regulation provides, that all claims of this description, "which have arisen, and have not been determined by the ordinary Courts of Judicature," shall be adjudicable by the Collector of the District.

In the case before the Court, the claim has been determined by the ordinary Courts, in so far as it has been adjudicated by the District Moonsiff and the Zillah Judge, and it is therefore not one of those declared cognizable by the Collector of the District.

The Court of Sudr Udalut consider the object of the provisions of Section III. of the Regulation to be the prevention of any further decisions by the ordinary Courts on the questions therein described; but where a suit has been determined, it must be allowed to go through the prescribed course of appeals.

For these reasons the Court resolve to overrule the order passed by the Provincial Court in this case, and direct that the Appeal No. 29, of 1829, be replaced on the file of the Provincial Court, and tried and determined on its merits.

The Court of Sudr Udalut deem it proper that their proceedings on

the above petition should be communicated through the several Provincial Courts to the Courts subordinate to them, respectively, as containing their construction of Section III. Regulation VI of 1831.

27TH OCTOBER, 1831.

A question having arisen as to the means of giving effect to the provisions of Regulation VI. of 1831, that the parties in the suits therein described which may be struck off the file of the several Courts, shall receive back the amount of all charges incurred by them respectively in the prosecution of such suits, I am directed to state, for the information of your Court, and of those subordinate to you, that the Judges of the Sudr Udalut are of opinion, that, in every case struck off the file of a Court under the above regulation, the presiding Officer of the Court should cause a statement to be prepared of the costs incurred by the parties for stamps and for batta to Peons, and also of the portion of fees allowed to the Vakeels, and should enter the amounts in the monthly indent of the Court to be paid, together with the portion of the Vakeel's fees remaining unappropriated, to the parties respectively, the presiding Officers of the Courts will of course be guided in determining the portions of fees to be allowed to the Vakeels, by the rules prescribed by Clause first, Section XXXI. Regulation XIV. of 1816.

2D NOVEMBER, 1831.

Read letter from Mr. Casamajor, Acting Judge of the Provincial Court of Appeal for the Northern Division, dated the 21st October, 1831.

The Acting Judge submits the question whether under Section II. Regulation VI. of 1828, the period between delivering stamp paper for a copy of a decree, and receiving the copy, or the copy being tendered, is to be allowed besides the limited period for appealing, or whether the limited period is absolute.

The Court of Sudr Udalut are of opinion that the period limited for appealing is absolute, Section III. Regulation VI. of 1828, is positive; and it virtually rescinds all of Clause ten, Section VIII. Regulation XV. of 1816, that is not expressly rescinded by Section II.; otherwise the provision, that the date on which the period allowed for appealing will expire shall be proclaimed in open Court on the same day, that the translation of the decree is signed and certified, could not be carried into effect, for it is impossible to fix the date, if any allowance is to be made for the time occupied in making a copy of the decree.

16TH NOVEMBER, 1831.

In para 4 the Acting Judge observes, that in the original drafts of decrees passed by several of the Judges and Registers there was nothing but the judgment; no statement of the case drawn from the pleadings; this is left to be added by the officers of the Court, and it is generally a mere copy of the principal parts of the pleadings themselves, without compression or arrangement, and he suggests that "it would be advantageous in several respects, if Judges and Registers were required to

Vide Sec. III. Act. XXXV of 1837.

Vide C. O. S. U. 18th Oct. 1824. F. U. C. O. 11th Oct. 1830, and Nos. 88 and 19.

make their own abstracts of the pleadings." It has been already ruled by this Court, upon a former reference, that the whole draft of the decree (containing a statement of the case as set forth in the pleadings, as well as the judgment) should be in the handwriting of the Judge by whom it is passed, and it is now ordered, that this rule be communicated to the four Provincial Courts for their own guidance, and for the guidance of the several Courts subordinate to them respectively.

23D NOVEMBER, 1831.

Read letter from Mr. Casamajor, Acting Judge of the Provincial Court in the Northern Division, and the enclosed copy of a letter from the Assistant Judge at Masulipatam, respecting the inconveniences attending the present mode of procuring the evidence of witnesses residing without the jurisdiction of Zillah Courts by interrogatories.

Vide Act VII of 1841.

Although Section VII. Regulation III. of 1802, which contains the rule for obtaining answers to interrogatories sent by a Zillah Court does not provide for any cross-examination of witnesses upon the answers given by them to interrogatories, it does not restrict the examining Officer from putting such further questions, as may appear to him to be necessary to elicit the truth, or to draw forth full explanation upon the points on which the answers have not been sufficiently explicit, or have been given in a prevaricating manner; and it appears to the Court of Sudr Udalut, that, unless the examining Officer does put such questions, the evidence obtained from the witnesses must generally be unsatisfactory. Considering it to be necessary to give full effect to the provisions for enabling the Courts, to obtain the evidence of witnesses residing out of their jurisdiction, that the Officers to whom interrogatories are sent should be authorized and required to cross-examine the witnesses, the Court resolve to issue orders accordingly. They resolve also to direct, agreeably to the suggestion of the Acting Judge, that when interrogatories are sent to be put to witnesses named by the parties in a cause, there be sent along with them a copy of the points given to the parties to prove. These rules are to be applicable to the Courts of the District Moonsiffs as well as the Superior Courts.

30TH NOVEMBER, 1831.

Read letter from Mr. Casamajor, Acting Judge of the Provincial Court in the Northern Division, dated the 21st instant.

The Acting Judge submits the question, whether, when a Court adjourns, pursuant to permission granted by the Sudr Udalut, the whole period of the adjournment is to be deducted in calculating the different periods granted for appealing from decrees, or orders, or doing any other act for which a fixed period has been assigned by competent authority, or whether only the time is to be allowed till the re-opening of the Court.

The Court of Sudr Udalut are of opinion, that, only the time till the re-opening of the Court ought to be allowed. When the period for appealing expires during the adjournment of a Court, it is incumbent on the party wishing to appeal to present his petition on the day on which it is re-opened; and if he fails, his appeal should not be admitted, afterwards without good and sufficient cause being shewn for the default.

The Court resolve to direct that this rule be observed, generally, with respect to appeals from decrees and orders, and all acts required to be done within a fixed period, which may expire during the adjournment of a Court.

13TH JANUARY, 1832.

I am directed to transmit for the information and guidance of your Court, and of the Courts subordinate to you the annexed extract, from a General Letter, from the Honorable the Court of Directors, under date the 14th of April last, No. 1, of 1830, with a copy of the resolution passed thereon, by the Right Honorable the Governor in Council.

(Signed) D. ELIOTT.

Acting Register.

" Extract from the Minutes of Consultation, dated 30th December, 1831.

Ordered, that copies of paras 5 and 6, be furnished to the Court of Sudr and Foudaree Udalut, the Board of Revenue and the Special Agent for Foreign Settlement.

Foreign Department.

" Extract from a General Letter from the Honorable the Court of Directors, dated 14th April, No. 1. of 1830.

We approve of your having restored to the French authorities the lands claimed by them in the vicinity of Calicut and of Masulipatam, on its being proved that those lands were in the possession of France at the breaking out of the war. We regret that you should have been unable to make any satisfactory arrangement for the acquisition by purchase or exchange of the lands at Masulipatam, in which the English had erected buildings and the possession of which by the French appears to be the source of much inconvenience. We conceive, however, that the French territory at Masulipatam being a Factory only, and not an independent possession, must, although the property of another nation, be still held to form part of the British dominions, and may at the discretion of your Government be subjected to any Regulations which may be found necessary for the security or good order of our own territory and of its inhabitants.

We approve the rule you have adopted of encouraging the adjustment of any ordinary questions which arise between the inhabitants of French, and those of English territories by private agreement among the parties. You exercised a judicious liberality when you facilitated the settlement of one dispute, by authorizing the repair of a bridge at the public charge, the expense being inconsiderable.

(True extracts.)

(Signed) HENRY CHAMIER.

Chief Secretary."

17TH JANUARY, 1832.

Two questions are submitted for consideration. The first question is, what penalty is to be levied under Regulation II. of 1825, on deeds written on paper, or other material bearing a stamp of less value than the prescribed stamp, to render them admissible in a Court of Judicature. Upon

this point it appears to the Sudr Udalut to be quite clear that the penalty to be levied is a sum equal to ten times the amount of the prescribed stamp duty.

The second question is, if for the execution of any of the instruments specified in Section XI. Regulation XIII. of 1816, it is necessary to use more than one roll of paper, of what value should be the stamp on the second and succeeding rolls. The Regulations do not provide expressly for the case; but upon the principle of the rules prescribing the use of stamps, the Court of Sudr Udalut are of opinion that provided the first roll bear a stamp of the prescribed value, the value of the stamp upon the second and succeeding rolls need not exceed the lowest rate of stamp in use.

30TH JANUARY, 1832.

I am directed by the Judges of the Sudr Udalut to transmit for your information, and guidance, the accompanying copy of a letter to the Judges of the Provincial Court of Appeal in the Centre Division, containing the opinion of the Sudr Udalut, as to the power of a single Judge of a Court of Appeal to suspend the execution of an order of a lower Court, under Clause first, Section II. Regulation VIII. of 1831.

(Signed) D. ELIOTT.

Acting Register.

"To the Judges of the Provincial Court of Appeal in the Centre Division.

GENTLEMEN,

I am directed by the Judges of the Sudr Udalut to acknowledge the receipt of the letter of Mr. Bushby, Acting Judge, dated the 20th instant, requesting the opinion of the Court of Sudr Udalut, whether any single Judge of the Provincial Court of Appeal and Circuit, under Regulation VIII. of 1831, can order the suspension of any order of the lower tribunals till the arrival of one of the absent Judges.

The provisions of Regulation VIII. of 1831, are not applicable to the Judges of the Court of Circuit.

By Clause first, Section II. Regulation VIII. of 1831, it is competent to a single Judge of a Provincial Court of Appeal, sitting by himself to exercise all the powers vested in two or more Judges by former Regulations, excepting that he cannot without the concurrence of another Judge *alter or reverse* the decision or orders of a lower Court. It follows of course that a single Judge of a Provincial Court of Appeal, under Regulation VIII. of 1831, is competent to *suspend* the execution of any order of a lower Court in any case in which it was competent to two or more Judges to do so under former Regulations, until a decision can be passed in the manner prescribed by the Regulations upon an appeal from such order.

(Signed) D. ELIOTT.

Acting Register."

8TH FEBRUARY, 1832.

It having been reported to the Sudr Udalut that in some Zillahs, the

District Moonsiffs have been obliged to furnish stamp receipts for their salaries and fees, and the Court being of opinion that this practice is not authorized by Regulation XIII. of 1816, they direct that instructions be sent to the several Zillah, Assistant, and Native Judges in your Division, prohibiting it for the future.

15TH FEBRUARY, 1832.

With reference to the Circular Letter, from this Office, dated the 21st October, 1825, relative to communications upon matters pending before the Sudr Udalut, transmitted through the channel of the public post, the Judges of the Sudr Udalut desire that you will cause the notification therein directed to be published, to be re-published for general information in the same manner.

5TH MARCH, 1832.

I am directed by the Judges of the Sudr Udalut to transmit to you the annexed extract from the proceedings of the Sudr Udalut, under date the 22d ultimo, and to desire that you will furnish a copy thereof to the several subordinate Courts in your Division for their information and guidance respectively.

Vide C. O. 20th
Feb. 1833, and
10th June 1834.

"Extract from the Proceedings of the Sudr Udalut, under date the 22d February, 1832.

Read miscellaneous petition, No. 137, of 1831, presented by the Vakeel Hanoomunt Row, on behalf of Mr. G. F. Fischer, Merchant of Salem.

The petitioner, Mr. Fischer, was plaintiff in two original suits on the file of the Zillah Court of Salem, viz., No. 353, of 1830, and 71, of 1831, in each of which the defendant was a British subject. These suits were struck off the file by order of the Zillah Court, passed under date the 29th September, 1831, on the ground of Mr. Fischer, the plaintiff, being a British subject, in pursuance of the instructions contained in the proceedings of the Sudr Udalut, dated the 12th September, 1831, founded upon the opinions of two of the Company's Law Officers at Calcutta, that a British subject cannot be impleaded by another British subject in any of the country Courts.

Mr. Fischer being dissatisfied with the orders rejecting his suits on the ground stated, presented a petition to the Zillah Court, requesting the Judge to forward his appeal therefrom to the Sudr Udalut. The Zillah Judge declined to comply with this request as irregular, and directed the party to apply to the Provincial Court, as the authority competent to receive appeals from his orders, by petition in the usual manner through a Vakeel of the Court.

It appears that Mr. Fischer did then apply to the Provincial Court, but by letter, instead of petition, and that the Court in reply directed him to present a motion to the Sudr Udalut by an authorized Vakeel of the Court. The petition now before the Sudr Udalut has been presented in pursuance of that direction. The application to this Court to overrule orders of the Zillah Court is irregular. The petitioner ought to have applied to the Provincial Court by petition in the man-

ner indicated by the Zillah Judge in his order, under date the 15th November, 1831. But the Petitioner having been misdirected by the Provincial Court, and the circumstances of the case being peculiar, the Court of Sudr Udalut have resolved to admit the petition, and proceed to pass orders upon it.

The Petitioner protests against the construction of the Law given by the Company's Law Officers in Bengal and the rule founded upon it that a British subject cannot be impleaded by another British subject in any of the country Courts. Upon this point the Court of Sudr Udalut have deemed it advisable to obtain the opinion of the Company's Advocate General at this Presidency, which entirely coincides with that expressed by the Officers lately consulted. The petitioner, secondly, protests against the application of the above rule to him, on the ground that he is a Native British subject, having been born in India, and therefore entitled to all the privileges possessed by other Natives and fixed inhabitants of the country. The Court understand the petitioner to mean by the term "Native British subject," a person born in India entitled by descent to the privileges and liable to the obligations of a British subject. Upon this point also they have consulted the Advocate General and they concur in, and resolve to adopt, his opinion that "the statutes regulating the privileges and liabilities of British subjects," comprise within this denomination "all natural subjects of the King who are of British descent, wherever they may happen to be born, as distinguished from those of Indian or Asiatic descent, wherever they may happen to be born," and that "all British subjects born in India must claim and submit to the same legal extent, and no further, as their fellow British subjects.

The Court therefore resolve to reject the petition on behalf of Mr. Fischer, praying that the orders of Zillah Court of Salem, dismissing original suit, No. 353, of 1830, and original suit, No. 71, of 1831, be overruled.

16TH APRIL, 1832.

Vide C. O. 12th March 1825, and C. O. No. 46 and 47. It being desirable, in order to enable this Court to judge more correctly of the labour performed by the subordinate authorities, to have a quarterly statement of all miscellaneous petitions received by them, disposed of, and remaining.

Ordered, that a statement of miscellaneous petitions in the form of the statement of applications for special appeals, be annexed to the Quarterly Civil Reports, furnished by the several Courts.

25TH APRIL, 1832.

Under the Regulations the selection of persons to be appointed to the office of District Moonsiff is left to the Zillah and Assistant Judges, who are naturally disposed to give a more ready attention to the claims of those who have served or whose conduct has passed under their personal observation, than to the applications of others, who, whatever may be their

claims, are not personally known to them. In consequence, the selection for this office is practically in a great measure restricted to the pleaders and ministerial officers of the Zillah Courts. It is however expedient, and has always been intended, that the pleaders and ministerial officers of the Provincial Courts and other public servants who are equally eligible, should have their claims fairly and equally considered, and that the office should be as readily open to them as to the others. The Court of Sudr Udalut deem it proper therefore to advise the Zillah Judges on occasions of vacancies, to make their selection for the office of District Moonsiff upon a general view of the claims of the persons qualified for it in both the Provincial and Zillah Courts and among the other candidates for appointment, and a fair consideration of their relative merits and abilities, giving its proper weight to length of service.

26TH MAY, 1832.

The above return has suggested to the Court of Sudr Udalut the propriety of issuing instructions to the four Provincial Courts to report to them invariably the circumstances and the cause of a single Judge holding Court under Clause first, Section II. Regulation VIII. of 1831, when two Judges may, or ought to, be at the Sudr Station.

4TH JUNE, 1832.

I am directed by the Judges of the Court of Sudr Udalut to transmit for your information and guidance, the accompanying copy of a letter addressed to the Judges of the Provincial Court of Appeal in the Northern Division, under this date.

(Signed) D. ELIOTT,

Acting Register.

To the Judges of the Provincial Court of Appeal for the Northern Division.

GENTLEMEN,

I am directed by the Judges of the Court of Sudr Udalut to acknowledge the receipt of your letter, dated the 16th April last, requesting to be informed whether they "consider that a decree in appeal cannot be executed without security before the expiration of the period allowed for special appeal; or, if an application has been made for the admission of a special appeal, before that application has been decided on."

The Judges of the Sudr Court concur with you in opinion, that the decree ought not to be executed without security in either of the cases above stated.

(Signed) D. ELIOTT,

Acting Register.

20TH JULY, 1832.

The Court of Sudr Udalut have reason to believe that the practice of the lower Courts is not uniform, in respect to applications, preferred

for the admission of a regular appeal in cases in which the applicant may have, in the first instance, moved for a review of judgment, or preferred a summary appeal.

In the cases here mentioned, it is the practice of the Sudr Court, in calculating the period limited for appealing to exclude the interval, which may have elapsed between the filing of an application for a review, or a petition of summary appeal, and the passing of the order upon such application or petition.

And the Court of Sudr Udalut deem it proper, by a Circular order, to direct that the same rule of practice be observed by the Native, Auxiliary, Zillah, and Provincial Courts.

14TH SEPTEMBER, 1832.

The Court of Sudr Udalut deem the present a fit occasion for calling the attention of the subordinate Courts to the provisions of Section X. Regulation XV. of 1816, from which they see reason to believe, that deviations are very generally prevalent.

Under the provisions of Clause third, of that Section, it is requisite that, in the trial of all original regular suits and appeals, the Court shall "consider and record the point or points, to be established respectively by the plaintiff or appellant, and by the defendant or respondent;" and it is prescribed in Clause fourth, that "no exhibit shall be filed, or witness summoned, unless expressly declared to be in proof or refutation of some point, upon which the Court may have directed that evidence should be taken."

Vide C. O. No. 62. The object of this rule as explained by Mr. Harrington, at whose suggestion it was adopted, is "to prevent the time of the Civil Courts from being unnecessarily occupied by numerous irrelevant exhibits, and to save the attendance and examination of witnesses upon points not material to the issue of depending suits," and it is only by a strict adherence to these provisions, in all cases, that the evils here adverted to, can be effectually obviated.

The provisions of Clause second, of this Section, which, by the reference before the Court, appear to have been completely misunderstood, are intended only to procure the necessary information from the parties, when the pleadings may not be drawn with sufficient clearness and precision, or, from any other reason, further explanation may be requisite.

17TH SEPTEMBER, 1832.

A reference has been made to the Court of Sudr Udalut respecting the construction of that part of Section VIII. Regulation XXV. of 1802, which refers to the registry of sales, and other transfers of land, and of the provisions on the same subject, contained in Section III. Regulation XXVI. of 1802.

The Provincial Court for the Southern Division have pointed out, that different constructions have been given to these provisions of the law, and have stated their opinion, that the object of the restrictions

regarding the transfer of Zemindaree lands in those enactments, is the security of the public revenue, that they are not intended to affect the validity of claims for the recovery of such estates or portions of Zemindaries, though the transfer, on which the claim was founded might not have been registered at the office of the Collector, and that it is against the Government, that transfers of land, being unregistered, must be held to be not valid, and not against the transferers.

The Court of Sudr Udalut entirely concur with the Provincial Court in opinion, that the want of registry does not effect the validity of a sale of land, as between the seller and purchaser, and that an unregistered transfer is invalid only as respects the Government.

At the period of the enactment of the Regulations above-mentioned the Government were legislating between themselves, and the proprietors of Zemindaries, and their view extended no further.

It has been ruled repeatedly by the Sudr Court, that it is not in the power of any Court of Judicature to interfere with the Registry of lands; that Collectors are answerable, that no new registry is made without sufficient proof of a *bonâ fide* transfer; that they alone have authority to perform the registry in the manner, and under the circumstances, set forth in the Regulations; and that a registry in other names cannot prevent a party's recovering lands, if adjudged to him by a judicial decree.

It has been judicially determined by the Sudr Court, in their decree in appeal No. 2, of 1827, that the registry of land in the name of a party is altogether insufficient to prove his right of property, and that taken at the best it only sets him up, as the ostensible proprietor; and that judgment virtually involved a decision upon the construction of the provisions under consideration, by affirming the title of a party to an estate, which stood registered in the name of another.

In consequence of the difference of opinion, stated to prevail on this subject, the Court have considered it proper to give it a full discussion. It is sufficiently obvious that registry by the Collector cannot confer a title; and the converse of the proposition, namely, that want of registry cannot take away a title to landed property follows as a necessary consequence.

It is of course wholly incompetent to the registering Officer to decide whether, or not, a transfer be conformable to the Hindoo or Mohummedan law; and any other construction of Section VIII. Regulation XXV. and Section III. Regulation XXVI. of 1802, than that declared in the 3d paragraph of these proceedings, would have the effect of stopping the jurisdiction of the established Courts in a matter, which it belongs to them exclusively to determine.

31ST DECEMBER, 1832.

Adverting to the paucity of cases decided within the quarter, by the several judicial authorities, the Court of Sudr Udalut have to observe that, in fixing the minimum of causes to be decided on their merits at 10 per mensem, the Court expected more. Finding that, so far from this being the case, many of the Zillah Judges decide less, they consi-

Vide C. O. 10th
May 1814.
21st Feb. 1815.

Circular Orders of the

der it proper to explain, through the four Provincial Courts, to the several Judges that the Court of Sudr Udalut will not in future be satisfied, without the most cogent reasons, with fewer decisions than 10 per mensem, and that any future omission to pass the requisite number of decisions, for which a satisfactory cause is not assigned, will form the subject of a representation to Government.

Vide C. O. No. 4

28TH JANUARY, 1833.

It appears to the Court that a literal observance of the provisions of Section V. Regulation III. of 1802, cannot often be possible, and as they observe from Harrington's Analysis that the Courts in Bengal use a discretion on this point, they see no reason why a similar course should not be observed in the Courts subordinate to this Presidency.

31ST JANUARY, 1833.

I am directed by the Judges of the Court of Sudr Udalut to transmit for your own information and guidance, and that of the Courts subordinate to you, the accompanying copy of a letter, and its enclosure, from the Secretary to Government in the Judicial Department, dated the 23d instant.

No. 74.

Fort St. George, 23d January, 1833.

Judicial Department,

GENTLEMEN,

Vide C. O. No. 2d April 1833. I am directed by the Right Honourable the Governor in Council, to forward to you the accompanying statement of certain charges which have been authorized on emergent occasions, or for definite periods, and to request that you will intimate to the several officers under your orders, that none of them will be passed beyond those periods without further specified sanction, and that they are required to report from time to time the expediency of maintaining any establishments that may be allowed as a temporary arrangement.

See Appendix F.

I have the honor to be,

GENTLEMEN,

Your most obedient Servant,

(Signed) T. R. WHEATLEY.

Secretary to Government.

To the Judges of the Sudr and Foujdaree Udalut.

20TH FEBRUARY, 1833.

I am directed by the Judges of the Court of Sudr Udalut, with reference to their Circular instructions, dated the 5th March last, to transmit to you the accompanying copy of a letter dated the 8th instant, from

Court of Sudr Udalut.

the Secretary to Government in the Judicial Department, together with the opinion of the Advocate General in Bengal, to which it refers relative to the power of the Civil Courts to try suits in which both parties are European British subjects, and to desire that you will issue instructions to the several subordinate Courts in your division, to adopt the opinion of Mr. Pearson as the correct interpretation of the intentions of the Legislature on the subject in question.

Vide P. U. C. O. No. 163.

(Signed) J. C. MORRIS,

Acting Register.

Fort St. George, 8th February, 1833.

No. 131.

Judicial Department.

GENTLEMEN,

With reference to your Acting Register's letter of the 7th September last, No. 128, I am directed by the Right Honorable the Governor in Council to transmit to you the accompanying copy of one, and of its enclosures, from the Deputy Secretary to Government at Fort William, dated the 15th ultimo, on the opinion of the Advocate General at that Presidency as to the power of the Civil Courts to try suits in which both parties are European British subjects; and to request that you will communicate the same to the Zillah and Provincial Courts under this Presidency, desiring them to adopt the opinion of Mr. Pearson as the correct interpretation of the intentions of the Legislature, with respect to the question under discussion.

(Signed) T. R. WHEATLEY.

Secretary to Government.

OPINION.

This is a case of considerable difficulty; but after the best attention which I can give to the subject, I feel myself obliged to dissent from the opinion expressed by Mr. Spankie and Mr. Fergusson. It is true that the preamble in Section CV. of the 53d G. 3, C. 155, would seem to limit the object of the subsequent enactments to the redress of injuries done to the natives, either such as are accompanied by force, or arise out of civil controversies. The provisions of Sections CV. and CVI. are in furtherance of this apparent object. But an enacting Clause, may go further than a Preamble. And supposing the Preamble in Section CV. applicable to Section CVII. yet the latter is, as I think, so explicit as not to enquire explanation from any other. By it, British subjects (under certain restrictions) are declared subject to the Jurisdiction of Courts in the Mofussil, "in the like manner as natives of India." It appears to me that this is expressed in terms too general to be limited by those of the Preamble in the 105th Clause. They are in themselves intelligible and plain. They also afford grounds for believing that in the provisions of Section CVII. the legislature had further views than that of redressing injuries offered to the natives of India, I think a perusal of the whole of Section CVII. will lead to this conclusion. I will only add, that I am confirmed in thinking that Section CVII. applies to cases in which both parties are British subjects, and is not confined to those in which a British subject is defendant, and a native of India the plaintiff, by the Clause which follows next in order. For it will be seen that Section CVIII. provides that a British subject (not in the service of the King or the

Vide C. O. 10th June 1834.

United Company) residing as in the former Clause, at the distance of more than ten miles from the Presidency, must procure a certificate of residence and deposit it "in the Civil Court of the District," before "he shall be allowed to have or maintain a civil action in it." In other words, he is to act in the manner prescribed before he can be the plaintiff in a suit. This clause is explanatory of the preceding, and upon a view of them, taken together, I feel little doubt that the construction I have given to them is correct. They contemplate, as I think, that a British subject may be either a plaintiff or a defendant in a cause.

- Upon the whole I am of opinion that under Section CVII. both parties to a suit may be British subjects.

If I understand aright, this is the only point on which the Court of Sudr Dewanee Udalt is desirous of my opinion.

(Signed) JOHN PEARSON,

(A true copy.)

(Signed) H. PAULIN,

Attorney to the Hon. Company.

(True Copies)

(Signed) J. F. M. REID,

Register.

25TH MARCH, 1833.

Read letter dated the 27th ultimo, from the Provincial Court of Appeal in the Western Division, submitting for the determination of the Court of Sudr Udalt, two questions from the Assistant Judge of the Zillah Court of Canara.

The questions referred are, 1st, in the trial of "original suits is it lawful for the Judge or Assistant Judge, Register, &c. to dispense with the examination of witnesses named by parties in support of points which the Court have directed to be proved, or where the Court has neglected to give such direction, in support of allegations contained in the pleadings, and relevant to the matter at issue? 2dly, If the Judge (or Assistant Judge, &c.) may do so at discretion, under what limitation is that discretion, to be exercised."

In the former of the foregoing questions, the Assistant Judge would appear to suppose a case in which the Court, have omitted to direct evidence to be called to points relevant to the issue.

Such a case cannot of course be supposed; but the Court, under the provisions of Clause fourth, Section X. Regulation XV. of 1816, must restrict the evidence to the recorded points.

The Provincial Court state their opinion to be "that it is competent to the Officer trying a suit to limit, the examination of witnesses to each point, when three or four may have deposed to his satisfaction."

The Court of Sudr Udalt observe, that in a Circular order of the Court of Sudr Dewanee Udalt at Calcutta, dated the 25th October, 1822, their opinion is stated, "that it would very materially promote the

ends of justice, if previously to rejecting evidence to any particular point as unnecessary, the Judge trying the cause would consider whether, or not, it is probable that such evidence (although not so deemed for his own satisfaction) may be deemed requisite by the Judge, before whom the cause may be brought on appeal."

It appears to the Court, that the consideration here intimated shews the expediency of examining all the witnesses, who may be produced to prove each point, inasmuch as it is not possible for the lower Court to determine, with any thing approaching to certainty, as to whether or not the Court of Appeal may deem essential, evidence, which, to the Court of original jurisdiction, may appear superfluous.

There is also the further ground for adopting this course that the rejecting of evidence tendered, by being made a ground of appeal, counteracts the object proposed of expediting the disposal of suits.

A strict attention on the part of all Courts of original jurisdiction to the provisions of Section X. Regulation XV. of 1816, must go very far to prevent introduction of unnecessary evidence into the trial of civil suits.

The Court of Sudr Udalt, being of opinion, that it is desirable that their sentiments on the present reference should be generally adopted, direct that extract of these proceedings be sent to the four Provincial Courts of Appeal by precept, commanding them to communicate the same to the Courts subordinate to them respectively for their information and future guidance.

3D MAY, 1833.

I am directed by the Judges of the Court of Sudr Udalt to inform you that Government have resolved to abolish the present system of remunerating District Moonsiffs by fees, and that these officers shall, for the future, be divided into three classes, to be established, with reference to the quantity of work to be performed by them respectively; and that the salary of the 1st class shall be fixed at 140 rupees per mensem, that of the 2d at 115 rupees, and of the 3d at 100 rupees; with an establishment at 85 rupees for the 1st, at 70 rupees for the 2d, and 60 rupees per mensem for the 3d class of Moonsiffs.

Vide Regulation II. of 1834.

The Judges direct me to transmit to you the accompanying statement,* shewing the class to which each District Moonsiff in your jurisdiction is proposed to be assigned, and desire that you will report to them in five days from the receipt of this letter whether, or not, you would recommend the removal of any Moonsiff, or Moonsiffs, from one class to another, it being clearly understood that the numbers for each class are to stand as in the statement now forwarded.

You will observe that the district Moonsiffs within the jurisdiction of the Native Judges of Chicacole, Cuddapah, and Canara are included in this reference.

6TH JUNE, 1833.

The Judges of the Sudr Udalt having had occasion to notice that some misapprehension prevails as to the course to be observed when application may be made to a Judge to enforce a decree of another Court,

Vide C. O. 10th April 1827 and 29th Dec. 1829. —B

* Omitted.

I am directed by them to inform you, that the following is the proper mode of proceeding to be pursued in cases in which application may be made to one Court to execute the decrees of another of co-ordinate jurisdiction.

The Court, on receiving a duly authenticated copy of the decree, and being moved by the proper party, to cause execution of it, should proceed to enforce it, unless the other party can show that it has been already satisfied. The decrees of one Court must be received, by another of co-ordinate jurisdiction, as evidence of a regular adjudication of the claims to which they refer; and therefore no inquiry can be gone into as to the merits of the original suit for that would subject the party to the trouble and expense of a new suit. The duty of the Court applied to would appear to be confined to the execution of the decree produced before it. Of course it is for the Court to ascertain the party against whom the decree is to be enforced.

10TH JUNE, 1833.

I am directed by the Judges of the Court of Sudr and Foudaree Udalut, under authority granted by Government, to desire that you will issue instructions exempting the Law Officers of the several Courts in your Division from the necessity of attending at the Court House to receive their pay, as directed by the orders of Government, dated the 12th April.

15TH AUGUST, 1833.

The Court of Sudr Udalut having had occasion to observe that the practice of the several Zillah Courts, in respect to the period allowed for the admission of special appeals, is not uniform, resolve to circulate the following extract from their proceedings, under date the 17th July, 1833, to the four Provincial Courts of Appeal, by precept, enjoining them to communicate the same to the several Zillah Courts in their respective Divisions, for their information and future guidance.

Extract from the Proceedings of the Sudr Udalut, under date the 17th July 1833.

"Read return, dated 27th June, from the Provincial Court of Appeal in the Northern Division to precept of the 10th June, 1833, directing the Zillah Judge of Nellore to dispose of, on its merits, an application from a person named Maramundy Croostnama Charloo, for the admission of a special appeal.

The Zillah Judge, in his return dated the 22d ultimo, states, "that ever since special or second appeals from the decisions of the Sudr Ameens and Registers in regular appeals have been allowed under Section II. Regulation II. of 1823, the time for such second appeal has been considered by" that "Court only one month, as it is provided in Clause second, Section IV. Regulation XV. of 1816, that the party desirous of a second appeal should present the petition within the limited period prescribed for the admission of regular appeals, and the limited time for admission of the regular appeals from the decisions of the Sudr

Ameens and Registers is restricted to one month only, under Section XV. Regulation VIII. of 1816, with reference to Clause third, Section VI. Regulation VII. of 1809, and Clause second, Section X. Regulation XII. of 1802."

Section II. Regulation II. of 1823, declares, that a "second or special appeal shall be admissible by the Judge of a Zillah Court from any decree passed by a Register or Sudr Ameen within his jurisdiction, subject however to the same rules and restrictions as are prescribed for the admission of special appeals by the Provincial Courts.

One of these "rules" is that the limited period of appeal is three months, and the use of the word "periods," in the plural number, in Clause second, Section IV. Regulation XV. of 1816, was, at the time when that Regulation was enacted, unmeaning, because the period for the admission of regular appeals by the Provincial Courts and the Sudr Udalut (the only Courts referred to) is one and the same, under Clause fourth, Section XII. Regulation IV., and Clause fifth, Section X. Regulation V. of 1802.

Still, upon full consideration of the question, the Court are disposed to think that the Zillah Court's construction of the provisions of the law is the correct one, and that in applying under Section II. Regulation II. of 1823, to the Zillah Court the provisions of Clause second, Section IV. Regulation XV. of 1816, the period for the admission of a special appeal should be taken to be that prescribed for the admission of a regular appeal from decrees of Registers and Sudr Ameens.

There seems to the Court to be no reason for the distinction which by the letter of the rule *might* be made, and Clause second, Section IV. Regulation XV. of 1816, clearly sanctions the construction which has been adopted.

The application to which the above return refers, having been admitted, with a view to its being disposed of on its merits, no further orders on the subject are necessary.

Ordered, that extract from these proceedings be sent to the Provincial Court in the Northern Division by precept, directing them to communicate the same for the information and future guidance of the Zillah Judge of Nellore.

4TH SEPTEMBER, 1833.

I am directed by the Judges of the Court of Sudr Udalut to transmit to you the enclosed Extract from the Minutes of Consultation, under date the 16th ultimo, and to desire that copies of the same may be circulated to the several Zillah, Assistant and Native Judges within your Division, for their information and future guidance.

Extract from the Minutes of Consultation, under date the 16th Aug. 1833.

"The Governor in Council does not understand whether the Judges of the Sudr Udalut are satisfied of the sufficiency of the excuses offered by the Judge, Mr. Strombom, to account for his not having decided any cause during the third quarter. He thinks it proper to remark, however, that whenever a public Officer labours under indisposition so severe as

to prevent him from doing his duty, it is incumbent on him to report it, in order that he may be relieved, and a fit provision made to render the Court effective. It is presumed that the indisposition of the Judge was not so great as to prevent him from holding a Court three days in each week as required by Regulation II. of 1802; but it is not sufficient to hold a Court merely *pro formâ*, if the Judge is unable to try causes."

4TH OCTOBER, 1833.

The Right Honorable the Governor in Council being of opinion that it would be attended with advantage to have a general Register, in the office of the Sudr Udalut, of all the natives employed under this Presidency in the judicial offices, and of the principal officers of all the Courts, containing a full and particular account of the services of each person, shewing distinctly all the offices in which he has been employed and the period of service in each, and such a report upon his character and qualifications as the officer under whom he is employed is able to furnish from his own observation and experience, or from the records of his office, and from any authentic and credible testimonials or certificates which the individual may be able to produce, I am directed by the Judges of the Court of Sudr Udalut to desire that you will furnish them with the requisite information in regard to your Court, to enable them to prepare a general Register of this description, and that you will, in the month of January of each succeeding year report any alterations or changes that may have occurred in your Court establishment, and which may render necessary a corresponding alteration in the General Register.

22D NOVEMBER, 1833.

Vide C. O. 21th
May 1834.

I am directed by the Judges of the Court of Sudr Udalut to transmit to you the accompanying copy of a letter addressed by them to Government, and to desire, under the orders of the Right Honorable the Governor in Council, that you will issue instructions to the several Zillah and Assistant Judges in your Division, to act in strict conformity with the opinion therein expressed, as to the course to be adopted on their assuming charge of the property of a British European subject, under the provisions of Section V. Regulation IV. of 1809.

You will be pleased to direct the Acting Judge of Chittoor to act in accordance with these instructions with respect to the estate of the late J. Blanshard, Esq.

(No. 121.)

"To the Officiating Secretary to Government in the Judicial Department.

SIR,

I am directed by the Judges of the Sudr Udalut to acknowledge the receipt of your letter of the 25th ultimo, No. 842, transmitting a letter from the Registrar of the Supreme Court, administrator to the estate of the late Mr. Blanshard, and desiring that they will state their opinion whether it is the duty of a Judge assuming charge of the property of a British European subject, who has died within his jurisdiction, under Section V. Regulation IV. of 1809, to take account of the effects, and

to furnish a full and perfect inventory to the Registrar of the Supreme Court.

It appears to the Judges that the object of the Statute, referred to in Section V. Regulation IV. of 1809, is obviously the safe custody of the estates of British subjects dying intestate beyond the limits of the Supreme Court, and they agree with Mr. Cator in thinking that, unless an inventory full and perfect be *immediately* taken by the Zillah Judge, on his assuming the temporary charge of the intestate's estate, the latter cannot possibly know when the estate is wasted or stolen.

It is true the Regulation does not specially state that the Zillah Judge shall take such an inventory, but taking the Section in connexion with Clause seventh, Section XVI. Regulation III. of 1802, to which it refers, the Judges are clearly of opinion that it was the intention of the Legislature that such course should be adopted."

2D APRIL, 1834.

To the Four Provincial Courts.

GENTLEMEN,

I am directed by the Judges of the Court of Sudr Udalut, to forward the accompanying copy of paras, 2, 3, 4, and 5, of a letter under date the 22d February, 1834, received from the Officiating Secretary to Government in the Judicial Department, conveying the orders of Government, on the statements of contingent charges incurred during Fusly, 1242, in the several Courts, in this Presidency, and to desire that particular attention be paid to the orders therein contained, and further, that the same may be communicated, to the several Subordinate Judicial authorities in your division, and to such Magistrates, as may have the superintendence of the Gaol Department, for their information and guidance respectively.

"Extract of a Letter from the Officiating Secretary to Government in the Judicial Department, dated the 22d February, 1834.

"It is to be understood that the sanction of Government, for the several charges now passed, is conditional, depending of course upon the production of the requisite accounts particulars, and vouchers to support them, when they are examined in the Office of Audit.

The Governor in Council thinks it proper that the account particulars of extra servants entertained under a sanction for and indefinite period, should be submitted with the statement of charge.

You will be pleased to repeat the orders prohibiting the employment of extra servants without previous sanction, and to remind the Officers subject to your authority, of the rules published, under date the 4th December, 1832, respecting contingent charges, with an intimation that sanction will, in future, be withheld for any servants entertained, or for any charges incurred, contrary to those orders and rules.

In order to facilitate reference, you will be pleased to direct the Offi-

Vide C. O. 27th
Sept. 1819. 31st
January 1833.
See Appendix G

cers under your controul to number consecutively the several charges in future."

14TH APRIL, 1834.

Read Extract from the Minutes of Council, under date the 1st instant, with copy of a despatch from England, on the subject of the new Act of Parliament, respecting appeals from the Decrees of this Court, to His Majesty in his Privy Council.

Ordered, that translations of Sections 22, 23, and 24, of the Act in question, into the native languages, be read, and publicly affixed in this Court, for general information. It is particularly to be observed, that if, within 2 years from the date of the admission, by this Court, of an Appeal to the King in Council, the parties thereto do not take the necessary measure to bring it to a hearing in England, it will be liable to be brought to a hearing, by the Company, at the expense of the parties.

Ordered, that a copy of the papers above-mentioned be transmitted to the four Provincial Courts with precept, requiring them to affix translations in the native languages, for their respective divisions, of the said Sections, in a conspicuous place of their Court, and to cause the same to be publicly read in Court, for general information, and directing them to serve, upon the parties to the appeals specified in the 3d para, of the despatch from England, resident in their jurisdiction, or upon their heirs, or representatives, notice that the said appeals will accordingly be brought to a hearing by the East India Company, at their expense, before His Majesty in Council.

Modified by C. O. Nos. 33 B. & 45 B. With reference to the fourth para of the said despatch, and to the Minutes of Council respecting it, the Judges would recommend that, to cover all expenses attending appeals to England, the security required from the Appellant be raised from Sicca rupees 8,200, to Sicca rupees 20,000, a sum by no means exceeding what appears may be expended in many of the very extensive, voluminous, and intricate cases in question. But before adopting this proceeding they resolve to submit it for the consideration of the Right Honourable the Governor in Council.

12TH MAY, 1834.

To the Four Provincial Courts of Appeal.

GENTLEMEN,

I am directed by the Judges of the Court of Sudr Udalut to transmit to you, for the purpose of being circulated to the several Courts in your division, the annexed copy of an order from the officiating Secretary to Government in the Judicial Department, dated 29th ultimo, together with the rules to be observed by the several Zillah Judges within your Division, when British subjects may die intestate within their jurisdiction.

I have the honor to be, &c.,

(Signed) W. DOUGLAS.

Acting Senior Deputy Register.

No. 311.

"Order of Government on Sudr Udalut, Letter No. 27, dated 11th April, 1834.

As it appears, from the above letter, that there are no objections arising out of any Act of Parliament to the adoption of the rules, proposed by the Registrar of the Supreme Court, as modified by the Sudr Udalut, the Governor in Council resolves that the Sudr Udalut be directed, with reference to their Register's letter, dated the 11th instant, to circulate the same for the information and guidance of the Officers concerned."

(Signed) D. ELIOTT,

FORT ST. GEORGE, }
29th April, 1834. }

Offg. Secretary to Government.

The special attention of the Zillah Judge is required to the provisions of Section V. Regulation IV. A. D. 1809, regarding the estates of European British born subjects, and to the following explanatory Rules on the subject.

1. Upon the death of any British born subject, not being a Military Officer or Soldier in the Service of His Majesty, or the East India Company, whether Intestate or otherwise, except in the case of an executor or executrix appointed by the deceased, and such executor, or executrix, signifying to the Zillah Judge in writing his, or her, intention to execute that Office, the effects of the deceased, are to be secured by a Public Officer of the Court under the authority of the Judge of the Zillah in which the deceased's property is situated, within four and twenty hours from the time of the death, or, if the effects are at a distance from the Zillah Court, as soon as possible after the death shall have been known to the Zillah Judge; all the plate, jewels, and other valuables, are to be brought for safe custody in the Treasury of the Court and there kept till the sale or other disposition of them by the executor or administrator.

2. The Judge is without delay to cause to be made a correct inventory of the whole of the property and effects mentioning especially, and in all cases, whether any and what amount of cash was found in the deceased's possession. The Judge is also to procure such information as to the surviving relations of the deceased, whether in India or elsewhere, as can be obtained on the spot, and the same is to be entered in a book to be kept for that purpose to be entitled "Register of Estates;" the page of every entry to be signed by the Judge, and, at the foot of every entry, the signatures of the Officers of the Court employed in taking the Inventory are in their own proper handwriting to be subscribed thereto, and such Book shall form a record, and a copy of such Inventory and of such information shall be, forthwith, forwarded to the Registrar of the Supreme Court, such copy to be attested "a true copy from the entry in the Register."

3. In the case of a Will, except as stated above, where there may be an executor, or executrix, appointed by the deceased, and such executor, or executrix, may signify to the Zillah Judge in writing his, or her, intention to execute that office the Judge shall, together with the copy of the Inventory mentioned in para 2, forward to the Registrar of the Supreme Court a copy of the Will. The Judge shall also forward to the Execu-

tors, in case they are within the Presidency of Madras, a copy of the Inventory and of the Will.

4. The Zillah Judge shall, at the request of the Registrar of the Supreme Court when appointed Administrator, appoint a proper person, or persons, to effect the disposal of the property of the deceased and shall attend as nearly as he can to the wishes of the said Administrator expressed in writing.

5. When the Zillah Judge directs a sale, in pursuance of the request of the said Administrator, such sale shall be by public auction to the highest bidder and the conditions of every such sale, unless otherwise specially directed by the said Administrator, shall be the following.

"1st. The lots to be paid for before delivery and removal by the purchasers.

2d. All goods to be at the risk of the purchasers from the time of sale, and such as remain three days beyond the first issue of pay next following the sale, to be resold by similar Public sale: the first purchaser to be held liable for any loss arising from such resale and to forfeit any advantage together with commission. Immediately after the sale the account sale together with the names of the several Purchasers shall be entered "in the Register of Estates," and a copy of such account sale shall be, forthwith, forwarded to the said Administrator attested as directed in para 2."

6. The Auctioneer shall, in no case, receive a greater per centage, or remuneration, than 5 per cent., which shall be paid by the Zillah Judge on the day on which the accounts of the estate are finally closed, if his accounts are correct, but not otherwise.

7. A Zillah Judge quitting, or being relieved from the charge of, his situation, shall render to the Judge succeeding to such charge, the account of every estate whether of an Intestate or otherwise, the accounts, and balance, of which shall not have been then already rendered, to the said Administrator and such succeeding Judge will be held responsible for the correctness of the account unless, at the time of receiving charge of the Court, he objects to the account and brings such objections to the notice of the said Administrator.

8. In case of any Zillah Judge dying, or being, by sickness, incapacitated from rendering any account, the Register, or other Officer in charge of the Court, or, in his absence, the Nazir, the Sheristadar, and Native Register of the Court having formed themselves into a Committee for that purpose (which in such case they are hereby required to do) shall take an account of all estates of British born subjects deceased, whether of Intestates or otherwise, the accounts, and balances, of which shall not have been then already rendered to the said Administrator, and (the committee so assembled) shall render the accounts taken to the Judge succeeding to the situation in case of such death or sickness.

9. Zillah Judges will be held responsible for the strict fulfilment of the several provisions of this order, and for any loss which may arise by a deviation therefrom.

The foregoing rules apply exclusively to British born subjects, the rules as to other Europeans are contained in Section XVI. Regulation III. 1802.

10TH JUNE, 1834.

Read Extract from the Minutes of Council of the 3d instant, respecting a letter from Mr. Miles.

The Judges have given their best attention to the subject submitted for their consideration; and are not aware of any objection to the construction given by the Governor in Council to the provisions of Cap. 85, 3d, and 4th. William Fourth, Section 81. They resolve therefore immediately to issue the following Circular Order, making known this construction of the law.

"By the Act of Parliament, Cap. 85, 3d, and 4th. William Fourth, Section 81, published for general information in the *Fort St. George Gazette*, under date the 16th May, 1834, it is declared to be lawful for any natural born subject of his Majesty to reside at any place having a Custom House established within the territories under the Government of the East India Company without any license whatever. And to proceed and reside in the interior of such territories as were in the possession of the Company on the 1st January 1800, or were ceded by the Nabob of the Carnatic. Any British born subject, residing at such places without a license, but having duly reported himself to the proper officer of the Customs, or other authorized public officer, is entitled to all the rights and privileges to which a British born subject was entitled by virtue of a certificate issued to him in conformity with the provision of Section 108, Cap. 155, 53d Geo. III., while that act continued in force.

Resolved, therefore, that the several judicial tribunals be instructed to consider Section 108, of the Act of the 53d of George the Third, contained in Regulation II. 1820, modified, by the Act of the 3d, and 4th of William the Fourth published in the *Gazette*, to the extent above explained; and that all British born subjects be admitted to sue in the Zillah Courts on producing a certificate of their having duly registered themselves in the Office of the Collector of Customs or other Officer authorized for this purpose."

Ordered, that extract from the foregoing proceedings be transmitted to the four Provincial Courts for the guidance of themselves and of all the Judicial and Magisterial authorities under them.

The Governor in Council will observe that this order will embrace the case of Mr. Miles referred to in the Minutes of Council, and render any specific reference to it unnecessary, which, as his case is not actually before them, the Judges are disposed to consider the more regular course.

Ordered, that extract from these proceedings be sent to the Officiating Secretary to Government in the Judicial Department for the purpose of being laid before the Right Honorable the Governor in Council.

28TH JUNE, 1834.—A

Read again Extract from the Minutes of Consultation of the 18th ul-

time, containing the observations and orders of Government, upon the review of the report submitted under date 15th January last, of the operations of the Civil Courts, during the last six months of 1832.

Vide C. O. 25th
June, 1819.

Ordered, with reference to the instructions in para 13, that the four Provincial Courts direct the Judges to state, specifically, in their letters accompanying the quarterly returns, the period during which they or their Registers may have been absent in the quarter.

"Extract from the Minutes of Consultation, under date the 16th May 1834.

13. "The Governor in Council desires that the names of the Judges, Assistant Judges, and Registers, may be inserted in future in the abstract statements entered in the body of the report, and that it may be noted in the column of remarks whether the Judge, &c., was present during the whole period embraced in the statement, or if absent temporarily, for what time; columns should be introduced into the statement in para 2, of the report to shew how many of the suits instituted before the Judge, &c., are placed on his own file and how many are referred."

28TH JUNE, 1834.—B

Read again Extract from the Minutes of Consultation of the 16th ultimo, containing the observations and orders of Government, upon the review of the report, submitted under date 15th January last, of the operations of the Civil Courts, during the last six months of 1832.

Ordered, that para 9, directing that the Native Judges be required to pass 15 decrees in each month on the merits, be forwarded to the Provincial Courts, in the Western, Centre, and Northern, Divisions, for the future guidance of the Native Judges, with an intimation that this Court will expect a full explanation of any omission to conform to these orders of Government, whenever the state of the files in their Courts shall admit of the disposal of the required number.

Extract from the Minutes of Consultation, under date the 16th May, 1834.

"It is remarked that the total number of suits decided on the merits by the three Native Judges of, Vizagapatam, Cumbum, and Sirsee, in this half year, was only 41, viz., Vizagapatam 15, Cumbum 12, and Sirsee 14. The Governor in Council is exceedingly dissatisfied with the work done by these officers, which, contrasted with that performed by the Sudr Ameens, reflects great discredit on them: considering the advantages they possess he thinks that the minimum number of suits to be decided monthly by the Native Judges should be fixed at one-half more than that established for the European Judge viz., 15, and they should be strictly called to account for falling short of that average."

1ST SEPTEMBER, 1834.

The Right Honorable the Governor in Council having desired that in the statement submitted with the half-yearly civil reports, additional columns shall be entered to shew how many of the suits instituted before the Judges may have been placed on their own files and how many may have been referred; I am directed by the Judges of the Court of Sudr Udalut to inform you, that with this view it will be necessary for you to direct each Zillah, Assistant and Native Judge to notify, in a separate memorandum, the number of suits instituted before him during the half year including as such, any suits he may have called up from the District Moonsiff's files, and to shew how many of them he may have finally retained on his own file for determination by himself. This memorandum should be transmitted to this Court with the half-yearly civil statements.

C. O.
No. 1.

8TH OCTOBER, 1834.

The Court of Sudr Udalut having had under their consideration the expediency of relieving the subordinate Courts from furnishing the "abstract register" of the causes decided by the Sudr Ameens, deem it proper to direct that in submitting, in future, the quarterly civil reports, "the Sudr Ameen's abstract" and "Particulars of appeals and original suits disposed of" by those Officers, being given as usual, the "abstract register" of causes decided by the Sudr Ameens be omitted; and, in lieu thereof, that a numerical statement, be substituted of the suits decided by them, similar to that at present entered in the "form B" of the cause disposed of by each of the District Moonsiffs.

C. O.
No. 2.

The abstract registers of causes decided by the European authorities will, of course, be forwarded as heretofore. To the headings of these however, and of the several numerical statements, the names are to be added of the Judge, Assistant Judge, Register, Native Judge, Sudr Ameen and District Moonsiff who presided in each Court respectively, during the period embraced by the statements.

11TH OCTOBER, 1834.

The Court of Sudr Udalut observing that in the half-yearly reports of causes depending in the several Courts, the practice still obtains of entering in the column of remarks the state in which each suit is, instead of an explanation of the cause of its not having been disposed of; deem it proper to direct whenever a suit may appear a second time in the above reports, that a full explanation be given of the reasons why a decree in it has not been passed.

C. O.
No. 3.
Vide C. O. 20th
March 1832.

15TH OCTOBER, 1834.

In modification of the Circular Orders of the Court of Sudr Udalut of the 10th May 1814, 21st February 1815, and 31st December 1832, requiring the decision of 10 suits per mensem by the several European judicial tribunals, the Court of Sudr Udalut deem it proper to promulgate for the information of the different Judicial Officers in the Zillah and Auxiliary Courts, including the Registers, the opinion of the Right Honorable the Governor in Council expressed in the Minutes of Consultation of the 3d October, upon the proceedings of the Court of Sudr Uda-

C. O.
No. 4.

lut of the 16th September 1834, that "the Judicial Officers of the Zillah and Auxiliary Courts need not be required absolutely to decide a number of suits every month, but that a certain number should be fixed as an average monthly standard, and that none should be excused for coming short of it on the average of six months, without very good and sufficient cause. The average for the Zillah and Auxiliary Judges and Registers may be fixed for the future at eight per mensem, as recommended by the Sudr Udalut in para. 9, and the average for the Assistant Judge at Mangalore at 15 per mensem, as recommended in para. 17."

29TH OCTOBER, 1834.

C. O.
No. 5.
Vide C. O. No.
48.

The Court of Sudr Udalut having had under consideration a reference submitted through the Northern Provincial Court under date 30th Ultimo, from the Acting Zillah Judge of Nellore, as to the admissibility of private agreements, subsequently entered into by the parties, in bar of execution of decrees; resolve to issue the following Circular Order on the subject.

From the terms of Clauses sixth and eighth, Section XIV. Regulation XV. of 1816, it appears to the Judges to be clear, that the law contemplates the admission of agreements of the nature referred to by the Acting Zillah Judge, in bar of execution of decrees. Clause sixth prescribes, that 'the petition' praying execution "shall state whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;" and Clause eighth provides, that prior to the enforcement of a decree, the Court is to make previous enquiry as to the validity of any objection offered, and "issue such order, after a due consideration of the circumstances of the case, as may appear just and proper." The same Clause specially adverts, as ground for staying execution, to private adjustment by the parties, "either by the voluntary surrender of the thing adjudged" or by partial payment of the amount decreed.

With this view of the law, the Judges cannot authorize the issue of an order like that proposed by the Acting Zillah Judge, declaring such private adjustments to be of no force; and they are of opinion, that all agreements springing out of them, must when pleaded, be admitted, and investigated, before full execution is ordered.

30TH OCTOBER, 1834.

C. O.
No. 6.

1. The Provincial Court in the Southern Division having, on the 24th Instant, submitted a reference from the Acting Assistant Judge of Tinnevely on the construction of the Circular Orders of the Sudr Udalut under date 16th November 1829, respecting mortgages; the Court of Sudr Udalut resolve to issue the following order explanatory thereof.

Vide C. O. 23d
Feb. 1831.

2. The Circular Order of 16th November 1829, refers solely to mortgages, where the property remains in the hands of the mortgager, and the mortgagee without obtaining possession of it has only a lieu upon it. In such cases it is clear, that his interests are fully secured by its sale, at any period, and the repayment to him, of the amount advanced with the stipulated interest.

3. The case submitted by Mr. Sparkes is of a different character. There, the advance on mortgage had been made on condition of the transfer of the property for a defined period, into the possession of the mortgagee, and was combined with his enjoyment of the usufruct. A sale therefore, prior to the period specified in the deed of mortgage to him, would be a breach of its conditions, and might prove a serious detriment to him, as he would have regulated his advances, upon a consideration of the benefit he would derive from the transfer of the property to his possession. The Circular Orders of 1829 do not, in the opinion of the Court, therefore apply to cases of this nature, which should be dealt with on their own merits, without reference to those Orders.

15TH DECEMBER, 1834.

I am directed by the Judges of the Sudr Udalut to transmit to you, the accompanying extract from the Minutes of Consultation of the 7th Ultimo, and to desire, that you will forward a copy of the same to the Zillah Courts in your division, with instructions to observe the system of accounts there prescribed.

C. O.
No. 7.
Vide C. O. 28th
Oct. 1829. 10th
Aug. 1826 and
No. 95.

Extract from the Minutes of Consultation, under date the 7th November, 1834.

Para. 2. "It appears to the Governor in Council that there should be a separate account of every kind of deposit in the Court treasury and if the plan recommended by the Sudr Udalut, of entering distinctly every item of receipt in each separate account on one page and writing off the repayment on the opposite page, the Judge certifying each entry of receipt or disbursement by his own signature, be adopted, such frauds as have been committed by the servants of the Madura Court will be effectually checked. The Sudr Udalut will therefore direct, that this system be established universally."

Note.—The Judges take this opportunity to direct you to point out to the Zillah Judges, that it will be their duty to require the District Moonsiffs to keep a record of all receipts and payments in their Courts, duly attested by their own signature.

19TH JANUARY, 1835.

The Judges direct that the following instructions of Government under date 9th instant, be communicated by a Circular Order to the subordinate Courts, for their information and future guidance.

C. O.
No. 8.

Extract of an Order of Government, under date the 9th January 1835, No. 67.

"Resolved, that the Collectors be authorized generally to comply with all requisitions, for the refund of monies received by them from the Courts, made under the orders of the Provincial Courts, or of the Sudr and Pundjaree Udalut."

Vide C. O. 10th
Aug. 1826.

22D JANUARY, 1835.

The Court of Sudr Udalut having recently had under consideration the question, referred to them by the Provincial Court of Appeal Centre

C. O.
No. 9.

Division, "as to the legality of the practice, which obtains in that Court and in some of the Zillah Courts in the division, of issuing warrants and selling property (if necessary) to recover costs due to parties in original suits under appeals;" resolve to furnish a copy of their order upon the subject, for general information and guidance.

S. U. Proceed-
ings 17th Sept.
1834.

"It appears to the Court of Sudr Udalut, that the proceeding in question is clearly illegal, in cases where security has been given, and that Clause ninth, Section XIV. Regulation XV. of 1816, upon which the practice is supposed to have been founded, is applicable only to cases in which the amount of the Vakeel's fees may not have been deposited. In reference to a question of a similar nature, determined on the 18th April 1832, the Court of Sudr Udalut, recorded in their proceedings of that date, their opinion, that "the execution of a decree under the existing Regulations so far as respects costs (including Pleader's fees) awarded against the party cast, should be ordered or suspended, according to the provisions of the general Regulations regarding the execution of other parts of decrees."

The Judges desire that a copy of this order may be furnished to the subordinate Courts in your division.

2D APRIL, 1835.

C. O.
No. 10.

1. The Judges of the Sudr Udalut observing, that the subordinate Courts do not always place on record, the grounds of their orders rejecting applications for the admission, of special appeals; and being of opinion that such record is necessary, both for the satisfaction of the parties presenting such applications, and to enable the Court of Sudr Udalut to exercise due control and supervision over the proceedings of those Courts; resolve to lay down the following rule for general observance.

Vide C. O. No.
20.

2. In all cases, where the Courts may, under the provisions of Section IV. Regulation XV. of 1816, either admit, or reject a petition praying the admission of a special appeal; they shall invariably record on their proceedings, the specific ground or grounds upon which their orders may be founded.

21ST APRIL, 1835.

C. O.
No. 11.

Under the orders of Government of the 10th Instant, approving of the suggestion of the Acting 2d Judge of the Provincial Court of Circuit in the Centre Division, that the Zillah Judges should provide the Courts of Circuit with stationery, and thereby obviate the necessity for the charge for its conveyance with those Courts; the Judges desire, that each Zillah Judge in your division, may be furnished with a statement of the average quantity annually consumed by the Court of Circuit at his station. And you will accordingly direct the Zillah Judges in their future annual indents, to indent for this extra quantity, and reserve it for the exclusive use of the Court of Circuit.

2D MAY, 1835.

C. O.
No. 12.

Read letter from the Secretary to Government under date the 21st ultimo, transmitting certain original papers, and requesting that in-

structions may be immediately issued to the Officiating Judge of Chicacole, to comply with the application of the Sub-Collector made under Section II. Regulation I. 1823, and to submit an explanation of his apparent want of courtesy to that Officer.

1. It appears that in suit No. 9 of 1835, of the Zillah Court of Chicacole, in which Putnaik was plaintiff, and Mr. Inglia, Sub-Collector of Ganjam, and others, defendants, the Government Vakeel appeared on behalf of the Sub-Collector, "and presented a motion drawn on stamp paper, and the written order passed in his name by the said defendant, and that it was ordered that no answer can be given to his motion, unless a regular Vakalutnamah drawn on stamp paper and the fees are deposited. The object of the motion above mentioned was to obtain, a term of two months for the purpose of preparing an answer, and a copy of the plaint in the said suit."

2. It is stated, that under the directions of the Sub-Collector another motion to the same effect was presented to the Court by the Government Vakeel; but that the same answer was obtained, the Court declining to enter into the grounds of its refusal; and the Sub-Collector observes in his letter (of the 7th April) that the Court having refused to furnish him with a copy of the plaint, he was in consequence unable to submit that, or a draft of a proposed answer.

3. The Court of Sudr Udalut are of opinion, that the order of the Officiating Judge above referred to, was not only, as observed by the Right Honorable the Governor in Council, wanting in courtesy; but that it is also erroneous.

4. In Clause second, Section II. Regulation I. of 1823, it is provided, that "if the Public Officer on receiving the summons shall consider the case to be of such a nature as that he may recommend to the Governor in Council to grant the redress sought by the petition, or request permission to defend the suit at the public expence, he shall immediately instruct the Government Vakeel to appear for him, and to move the Court to grant him such specific time to make his answer to the petition, as may be necessary to enable him to make the requisite reference and to receive orders thereon." And in Clause third, Section XXXVII. Regulation XIV. 1816, it is declared, that "the Pleaders for Government are to undertake all causes, which they may be directed to plead by order from Government, or which may be directed by any Regulation to be carried on at the public expence, upon receiving an order for that purpose either from Government, or from any Officer or Officers empowered by any Regulation to superintend and to furnish instructions for conducting such suit. The order of Government, or of such Officer or Officers is to be filed in Court as the authority of the Pleader to plead the cause, and is to form part of the record of the proceedings." Whilst Clause fifth of the same Section provides, that "the previous deposit prescribed by Section XXIII. of this Regulation, shall not be required for fees payable to the Pleaders of Government in the prosecution or defence of suits conducted at the public expence."

Vide C.O. No. 57.

5. It is accordingly clear to the Court of Sudr Udalut under these provisions, that in suits conducted at the public expence, the deposit of Vakeel's fees is not requisite; nor is it necessary, that any other Vakeel's

utnamah should be filed, than the order issued to the Government Vakeel by Government, or by an Officer duly authorized.

6. That a Government Vakeel is competent to move the Court for the purpose specified in Section II. Regulation I. of 1823, without a previous deposit of fees on the filing a regular Vakalutnamah, is further evident, inasmuch as it cannot possibly be ascertained, whether the suit is to be proceeded with, and carried on at the public expence or not, till the Government have come to a determination on the points to be referred to them, viz: either to grant the redress sought by the petition of plaintiff, or, to authorize the defence of the suit at the public cost, which can, of course, only be done by such petition being laid before them. There can be no question therefore, that it is the duty of the Zillah Judge to furnish a copy of the petition, and to grant the term solicited to give in an answer, on application from the Public Officer concerned; without either deposit of fees or a regular Vakalutnamah.

7. In order that a similar delay and inconvenience to the public service, may not hereafter arise, the Court resolve to circulate these proceedings for the guidance of all the subordinate Courts.

14TH MAY, 1835.

C. O.
No. 13.

1. The Sudr Udalut, with the view of relieving the establishments of the lower Courts, resolve to direct, that in future, but one copy of the quarterly, and half-yearly civil reports shall be prepared, in the Courts of the Zillah, Auxiliary, and Native Judges.

2. This copy is to be transmitted to the Provincial Court, and retained by them, so long as may be found necessary to enable them to issue their notices, and instructions; and it is then to be forwarded as usual to the Sudr Udalut.

10TH JUNE, 1835.

C. O.
No. 14.

1. The attention of the Judges of the Sudr and Foujdaree Udalut having been called by the Right Honorable the Governor in Council, in para. 3 of an Extract from the Minutes of Consultation, under date the 26th ultimo, to the delay which now occurs in submitting to Government, the half-yearly criminal reports rendering them comparatively useless; the Judges resolve to require the several Provincial Courts to take immediate measures, in communication with the subordinate Officers, for furnishing both the civil, and criminal statements for the first six months of 1835, to the Court of Sudr and Foujdaree Udalut by the 31st of July next.

2. The Provincial Courts will ascertain, and report without delay, whether there are any, and what may be the difficulties which impede the early preparation of these statements, and should any of moment exist, they will suggest the means best calculated, in their opinion, to remove them.

3. It is unnecessary for the Judges to point out, that they attach much importance to the orders they have now issued; as the value of these periodical statements depends in a great degree upon their being submitted to review on an early date; and the labour of their preparation

by the subordinate authorities, as well as that of their revision, is lost, if long periods are permitted to elapse before they are transmitted from the provinces.

4. The Judges expect therefore, that due means will be employed by the Provincial Courts for securing at all times the punctual transmission of the half-yearly statements, within one month from the close of the half year.

12TH AUGUST, 1835.

1. In pursuance of instructions from the Honorable Court of Directors, communicated with the orders of Government of the 24th ultimo, I am directed by the Judges of the Sudr Udalut to desire, that a statement in the annexed form* may accompany the half-yearly civil reports.

C. O.
No. 15.

2. You will instruct the several Judges in your division to furnish this statement for the first half of the present year, and a similar statement must also be furnished by the Provincial Court.

20TH AUGUST, 1835.

A reference having been made to the Court of Sudr Udalut, whether, or not, the Judges have ever modified their construction of Section VI. Regulation III. of 1802, as recorded in their proceedings under date the 14th December 1815, viz: that according to that Section, a Court cannot decide a suit simply upon the oath of one party, even though the other consent to that mode of examination.

C. O.
No. 16.

They resolve to communicate their instructions issued in reply, for general information.

"It is to be observed with reference to this question, and to the proceedings of the Court of Sudr Udalut cited, that notwithstanding the objections, which were upon that occasion offered by the Sudr Court, the Legislature has recognized the principle deprecated in those proceedings, in Clause third, Section XIV. Regulation IV. and in Section XXVII. Regulation VI. of 1816."

Under these circumstances, the Judges have no difficulty in overruling the construction of Section VI. Regulation III. of 1802, maintained by the Court in 1815; and in declaring, that no legal objection is presented by the provisions of that Section, to the decision of a claim by the oath of one of the parties, if the other party consents to that mode of decision, and the one called upon to swear, agrees to take the oath.

4TH SEPTEMBER, 1835.

The Court of Sudr Udalut observing, that the reasons assigned by the lower Courts, for the delay in the disposal of causes which have been for some time depending before them, are much too general and indefinite, to enable the controlling authorities to judge of the necessity, or propriety of such delay; they resolve to call the special attention of the

C. O.
No. 17.

Provincial Courts to the subject, and to desire, that in reviewing the half-yearly statements in future, they invariably require, a clear exhibition of the specific causes, which may have retarded the determination of suits above 6 months, on the files of the several Courts.

Under these instructions, it will be their duty, not to admit as sufficient, the explanations, now frequently given, of "under investigation," "parties or witnesses to be summoned," "pleadings," "list of witnesses or documents to be filed;" but in each case, it must be distinctly explained, why these several processes were not previously completed.

The Provincial Courts will in like manner distinctly note in their own periodical returns, the precise causes, which have postponed the decision of suits of old date before them; especially of the appeal suits, where there is so little to be done by the parties.

9TH OCTOBER, 1835.

C. O.
No. 18.

I am directed by the Court of Sudr Udalut to transmit to you the accompanying Extract from the Minutes of Consultation, under date the 25th ultimo, to be communicated to the several Zillah and Assistant Judges within your division.

Extract from the Minutes of Consultation, dated the 25th September 1835.

Vide C. O. 25th
August 1833 and
1st March 1837.

In addition to the Circular explanations ordered under date the 23d February 1827, to be made by the Sudr and Foujdaree Udalut to the Courts in the Provinces, on the subject of taking evidence where the witnesses are Natives of rank and consideration; the Right Honorable the Governor in Council requests that the attention of all Judicial Officers may be called to a discreet exertion even of their legal powers, in issuing summonses or warrants against persons of this description.

22D OCTOBER, 1835.

C. O.
No. 19.

I am directed by the Court of Sudr and Foujdaree Udalut to transmit to you copy of a letter dated the 9th Instant, addressed by the Chief Secretary of Fort St. George to the Secretary to the Government of India, and with reference to the 2d para. of that communication, to desire you will instruct the several Magistrates and Judges within your division, and thro' them all Tahsildars and District Munsiffs, as soon as they are furnished with translations of every new Regulation, to have its provisions explained to the inhabitants at their several stations by beat of tom-tom, and to cause a copy of it to be affixed in some conspicuous part of their respective Offices for general information.

6TH NOVEMBER, 1835.

C. O.
No. 20.

Vide C. O.
No. 10.

Read letter dated the 26th ultimo, from the Provincial Court of Appeal in the Southern Division, submitting copy of a letter from the Acting Judge in the Zillah of Combaconum, and soliciting "the opinion of the Judges of the Sudr Udalut, whether it is incumbent on a Provincial Court to communicate to the lower Courts, the grounds upon which they admit special appeals from the decisions of such Courts."

It is the invariable practice of the Court of Sudr Udalut, as it is shewn to have been that of the Provincial Court in the Southern Division previous to the year 1833, to furnish to the Court from whose decision the special appeal is admitted, the grounds of such admission; and as no inconvenience can arise from the practice, the Judges are of opinion that the rule formerly observed by the Provincial Court, should again be adopted in that division.

And to ensure a similarity of practice in this respect in all the Courts subject to this Presidency, the Judges of the Sudr Udalut resolve to circulate their opinion, that it is the duty of every Court admitting a special appeal, to communicate to the Court from whose decision the appeal is received, the grounds upon which such appeal has been admitted.

2D DECEMBER, 1835.

The repeated infraction of the order of Government dated the 4th December 1832, and published in the *Fort St. George Gazette*, by which the employment of extra servants, or the incurring of any contingent expenditure without previous sanction; is strictly prohibited; has recently attracted the serious attention of the Right Honorable the Governor in Council, in obedience to whose orders on the subject and in addition to the warning given in the second paragraph of the Extract from the Minutes of Consultation, under date the 9th June 1835, on the review of the statements of contingent charges for Fussy 1243, the Court of Sudr Udalut now resolve to intimate by a Circular Order to all the subordinate authorities under this Court, that "henceforward each and every Officer will be held strictly responsible for an exact observance of the orders referred to above, and that any charge incurred contrary to those orders will be forthwith retrenched by the Civil Auditor, to whom a resolution to this effect has been communicated by the Government for his information and guidance, from the next issue of salary to the Officer who may have been thus disobedient to, or unobservant of the orders of Government."

C. O.
No. 21.
Vide C. O. 3d
April 1834.

Circumstances which have recently come to light, have further led the Right Honorable the Governor in Council to suppose that Public Officers not infrequently allow the orders of Government respecting which they entertain doubts, to lie over without being acted upon.

The Court of Sudr Udalut resolve therefore, to take the present opportunity to impress on the minds of the Officers under their authority, that in all cases where an order of Government may not be sufficiently explicit, it is their bounden duty to solicit explanation for their guidance, and not to suffer the order to remain a dead letter.

8TH DECEMBER, 1835.

I am directed by the Judges of the Court of Sudr Udalut to transmit, a Circular Order No. 22, for the information and guidance of the several subordinate authorities, the annexed resolution of Government dated the 1st Instant.

C. O.
No. 22.
Vide C. O. Nos.
37, 43, and 45.
See appendix H.
and as regards
the execution of
emergent repairs
see appendix I.

"The Governor in Council resolves that it henceforward be a standing rule, that all estimates for the repair, &c. of civil buildings in the Judicial

Department in the provinces, be prepared by the executive Engineer in communication with the Civil Officer who occupies the building and considers such repairs, &c. to be necessary, instead of the practice which at present obtains, of the estimate being prepared by the latter Officer alone, from which much inconvenience and delay is stated to be experienced in the office of the Chief Engineer."

C. O.
No. 23.

6TH JANUARY, 1836.

Read letter dated the 12th Ultimo from the Provincial Court in the Northern Division, submitting for the decision of the Court of Sudr Udalut, the question, "Whether appeals to the proper superior courts from interlocutory orders of the lower courts, of the kind adverted to in the proceedings of the Sudr Udalut dated 23d February 1831, are liable to the same rules in respect to the period for their admission, as exist regarding the admission of regular appeals?"

It has been the practice of this Court to apply the same rule of limitation as exists regarding the admission of a regular appeal, to all appeals from interlocutory orders of a lower court, and considering this to be the proper practice, the Judges are of opinion that it should be generally observed in appeals of the nature contemplated in their proceedings circulated under date the 23d February 1831.

The "difference of opinion and practice" alleged "to prevail" upon the above point, induces the Court of Sudr Udalut to direct that extract from these proceedings be transmitted to the four Provincial Courts of Appeal, to be by them communicated to the several Zillah, Auxiliary and Native Courts subordinate to them, for their information and guidance respectively.

C. O.
No. 24.

4TH FEBRUARY, 1836.

Read letter dated the 20th Ultimo from the Provincial Court in the Centre Division, submitting copy of a letter from the Acting Judge in the Zillah of Chingleput, regarding the rule to be observed in numbering and deciding cross appeals.

It is the practice of the Sudr Udalut when two cross appeals by opposite parties in an original suit are admitted in one case, to treat them as distinct appeals, to number them separately, and to file the pleadings distinctly in each; and to pass one decree embracing both appeals, or a separate decree upon each, at the discretion of the Court.

It is desirable that the practice of the several Courts should in this respect, be uniform; and the Judges therefore resolve to direct, that extract from these proceedings be furnished to the four Provincial Courts of Appeal, to be by them communicated to the several Zillah, Assistant and Native Judges in their respective divisions, for their information and future guidance.

C. O.
No. 25.

15TH FEBRUARY, 1836.

1. The Court of Sudr Udalut having had under their inspection specimens of the size of the handwriting of each language current in the several divisions and considering it desirable that uniformity of

practice should prevail in acting upon the rules contained in Regulation XIII. of 1816, deem it proper to direct that any pleading, motion, or miscellaneous petition prepared contrary to the following rules, may be rejected for informality.

2. If the pleading, motion or petition be written in the Malayalam or Canarese language, no more than 30 letters on an average, compound and double letters being counted as single letters, shall be placed in one line.

3. If in the Tamil, or Telugu, language, no more than eight words, on an average, shall be written in each line.

4. It will be observed that under the Circular Order of the 28th June 1828; "each sheet of pleadings, motions, miscellaneous petitions, &c. shall contain not more than 30 lines."

19TH FEBRUARY, 1836.

On the 5th of March 1829, a Circular Order was issued by the Court of Sudr Udalut, directing that whenever a person may be appointed to act as a District Moonsiff during the absence of the Moonsiff from his station on leave or otherwise, the person so acting shall receive in addition to the fees on suits decided or adjusted by him, one-half of the fixed salary attached to the situation. The Court of Sudr Udalut on the 8th Instant received the sanction of Government for declaring the above rule applicable to Sudr Ameens when permitted to be absent from their stations.

C. O.
No. 26.

Vide C. O. Nos.
30 and 54.

With the authority of Government under the same date, the Court of Sudr Udalut also resolve to direct by a Circular Order, that whenever leave of absence exceeding one month may be granted to any subordinate Native Judicial Officer, and it may be requisite to appoint a person to act for him, the fixed Native Officer shall retain one-half of the fixed salary, and the remaining half, with the fees should any be attached to the situation, shall be paid to the person appointed to act during his absence.

5TH MARCH, 1836.

The Court of Sudr Udalut, on the occasion of a reference from the Provincial Court in the Northern Division, ruled so far back as the 28th of June 1811, that it is not competent to a Provincial Court to reject a petition of appeal to the Sudr Udalut, on the grounds that the requisite securities had not been furnished within the time limited for appealing.

C. O.
No. 27.

This rule does not appear to have been circulated for general information, and an instance having lately come under the notice of the Judges, which has led the Court to believe that the same rules of practice are not observed by all the Provincial Courts in respect to the admission and rejection of appeals to the Sudr Udalut, they resolve to explain by a Circular Order; that under the provisions of Clause seventh, Section X. Regulation V. of 1802, the Provincial Courts are not authorized to admit or to receive and forward an appeal to the Sudr

Udalut at any period or under any circumstances, except in cases of paupers, unless accompanied by competent security for costs of suit.

That the Provincial Court is not competent at any period to reject an appeal given in with such security, excepting upon the grounds of its containing improper or disrespectful language, or because of some manifest irregularity.

That when an appeal has been presented to the Provincial Court within the prescribed period accompanied by security for costs, and that security should prove insufficient or unavailable, the appeal must be rejected, and the party left to apply to the Sudr Udalut.

That in case of an appeal presented after the limited period with adequate security for costs, the Provincial Court should require the party to shew cause for the delay and submit the proceedings to the Sudr Udalut for orders.

29TH APRIL, 1836.

C. O.
No. 28.

It having been brought to the notice of the Court of Sudr Udalut, that in some Zillahs under this Presidency the practice still obtains of collecting the fee formerly authorized to be received by the District Moonsiff under the provisions of Section L. and LXL Regulation VI. of 1816, the Judges deem it proper to explain by a Circular Order, that under Act No. V. of 1835, the collection of this commission, as a remuneration for the District Moonsiffs, is no longer legal; and they accordingly desire that the practice, wherever it may exist, be forthwith discontinued.

12TH MAY, 1836.

C. O.
No. 29.

1. With reference to the provision of Section XI. Regulation VII. of 1818, the Court of Sudr Udalut deem it proper to explain by a Circular Order, the mode of proceeding proper to be observed by the Court of original jurisdiction, in order to secure the fulfilment of the final judgment in cases of appeals for personal property, wherein the person in possession, against whom the decree may have been passed, fails to deliver the security necessary to suspend its execution during the appeal, and the successful party in the original suit, from being a pauper, may be unable to obtain execution of the judgment in his favour.

Upon the admission of such an appeal, if the party interested apply for security to be taken from the person in possession of the personal property, for the performance of the decree which may be passed upon the appeal, such security should be demanded from the appellant in possession, and in default of its being given, the decree so far executed as to realize and place in deposit the amount of it, because the pauper respondent cannot obtain execution of the decree in his favour, and the interests of justice require that the fulfilment of the final judgment should be secured,—and the only means of securing it in the case of personal property, is to take security, or to realize and place in deposit the amount of the decree.

13TH MAY, 1836.

C. O.
No. 30.
Vide C. O.
No. 54.

In explanation of their orders circulated under date the 12th of February last, the Court of Sudr Udalut, with the authority of Government,

deem it proper to declare that the mode prescribed in the Circular Order No. 26, in which persons are to be remunerated when employed to officiate in a subordinate native judicial situation during the absence, on leave of the permanent incumbent, is applicable only to the cases of persons not previously in the employment of Government; and they resolve also to declare, that whenever a person already in the receipt of a salary may be appointed to officiate in another situation, he shall receive only so much of the amount stopped from the salary of the fixed Native Officer as, combined with his own pay, may amount to a sum equal to the full authorized allowances of the superior situation.

Vide C. O. No.
99.

In no case is a person appointed to act, to receive in addition to the pay of his fixed appointment more than the full amount of the deduction made from the salary of the absentee; and in cases where the aggregate allowances of the fixed situation held by a native subordinate judicial officer may exceed or be equal to those of the situation in which he is appointed to act, he is not to be considered entitled to any deputation allowance during such employment.

22D JUNE, 1836.

1. The Court of Sudr and Foudaree Udalut having observed that it is a general practice both in the translations of appeals to the Sudr Udalut, and in those of trials referred to the Foudaree Udalut, for dates and other expressions in various Native dialects, to be inserted without explanation of their meaning, resolve to direct, that the practice be discontinued as objectionable and inconvenient.

C. O.
No. 31.
Vide F. U. C. O.
No. 69.

2. As regards criminal trials, the practice of entering the Native date, without specifying the corresponding English date, was prohibited by the Circular Order of the 17th of January 1815, and in directing, in their Circular Order of the 2d November, 1824, that in the English translations of criminal records a note should be inserted of distance and measurement in feet and inches, the Court of Foudaree Udalut took occasion to call the attention of the Courts of Circuit to the order of the 17th of January 1815, and to direct that the several Judges of Circuit and Criminal Judges be careful in future to observe the rule indicated therein.

3. The Court of Sudr Udalut deem it of importance that the same course should be observed in the preparation of English translations of civil records, and they desire that no expressions in a Native dialect be inserted in the translation, without an explanation, in English, of their meaning.

8TH JULY, 1836.

The practice of furnishing individuals with copies of official documents which are not required to be granted under the Regulation or to be produced in the Courts, or filed as evidence in suits, or miscellaneous matters before them, being considered objectionable; the Court of Sudr and Foudaree Udalut direct that it be discontinued in future, and that copies of such documents be not furnished to any person without the sanction of Government.

C. O.
No. 32.
Vide C. O. 17th
June 1834 and
C. O. No. 53.

20TH JULY, 1836.

C. O.
No. 33.—A

Read letter dated the 6th Ultimo, from the Provincial Court in the Western Division, submitting copy of a letter from the Assistant Judge of Malabar, and its enclosure, and requesting the opinion of the Sudr Udalut as to the construction by the late Acting Assistant Judge, Mr. Sparkes, of Clause sixth, Section XI. Regulation VI. of 1816, whereby he precluded Moonsiffs from taking cognizance of suits regarding lands which may have been held under mortgage prior to 12 years.

Mr. Sparkes in his order addressed to the District Moonsiffs within the jurisdiction of the Auxiliary Court, states that the omission of the rule of limitation laid down in Section XVIII. Regulation II. of 1802, in Clause sixth, Section XI. Regulation VI. of 1816, respecting mortgages "and rights of otty which may have existed prior to 12 years," appears to have "been purposely made by the Legislature," and that therefore he is "of opinion that Moonsiffs cannot take cognizance of suits regarding lands which may have been held (under mortgage) prior to 12 years, as not having been provided for in Clause sixth, Section XI. Regulation VI. of 1816."

It is observable that Clause sixth, Section XI. Regulation VI. of 1816, is framed, as nearly as possible, in the same words as Clause second, Section V. Regulation IV. of 1816; the proviso does not include the claims excepted from the rule of limitation by the latter part of Clause fourth, Section XVIII. Regulation II. of 1802, and the Judges being in possession of the fact that this Court in the year 1815, were opposed to the grant of any retrospective jurisdiction to the Village and District Moonsiffs, do not see any valid ground upon which it could be ruled, in opposition to the strict letter of the law, that such claims can be received, tried and determined by the authorities in question.

The Court therefore are of opinion, that such suits are excluded by law from the cognizance of District Moonsiffs; and considering it desirable that the view taken by the Court of Sudr Udalut, in relation to this question of jurisdiction, should be acted upon generally in the Provinces, they resolve to direct that Extract from these proceedings be furnished to the four Provincial Courts, to be by them communicated to the several Zillah, Assistant and Native Judges, for their information and guidance.

12TH SEPTEMBER, 1836.

C. O.
No. 33.—B
Vide C. O. No.
45.—B

The Court of Sudr Udalut deem it proper to direct with reference to the proceedings of the Court, under date the 14th April 1834, that the deposit to be made by appellants to His Majesty in Council from decrees of this Court, for the purpose of covering the expenses which may be incurred under the provisions of Section XXII. of the Act of Parliament referred to in those proceedings, and other costs, be fixed at the amount of Rupees 15,000, and that no such Appeal be hereafter admitted by the Court under the provisions of Regulation VIII. of 1818, unless accompanied by a deposit to that amount, instead of the sum of Rupees 8,750, hitherto required from the appellants.

Ordered, that the foregoing resolution be communicated to the Valahs of this Court for the information of their respective clients, that a copy

thereof with translations in the Native languages be publicly affixed in this Court for general information, and that Extract of these proceedings be sent to the four Provincial Courts of Appeal for the purpose of being promulgated by them in the manner, directed by this Court's Order of 14th April 1834, with respect to the Sections of the said Act of Parliament therein specified.

28TH SEPTEMBER, 1836.

In order to prevent any undue exercise of the authority conferred by Section XXII. Regulation III. of 1802, and Regulation I. of 1832, the Court of Sudr Udalut deem it proper to direct, that in future no fine shall be imposed by a Provincial, Zillah, Auxiliary or Native Court under the provisions of the enactments quoted above, without a full statement of the grounds thereof being entered on the proceedings of the Court; and they desire also, that a statement from each Court, in the accompanying form, shall be submitted with the quarterly civil statements, laid before the Court of Sudr Udalut.

C. O.
No. 34.
Vide C. O.
No. 39.

No. of the case.	Names of the persons fined.	Amount of the fine and whether any and what portion of the fine has been realized.	Date of the sentence.	The grounds on which the fine was imposed.	The Sec. and Reg. under which the sentence was passed.

20TH OCTOBER, 1836.

The practice found generally to prevail in the Courts in the Provinces of making use temporarily of the funds deposited in the Court by Suitors, for the purpose of defraying the ordinary expenses of the month, being considered objectionable; the Court of Sudr Udalut, under the sanction of the Governor in Council, authorize the several Officers in charge of Courts, to draw upon the Collector for the sums they may require to meet disbursements, other than those specified in the Circular Order No. 34, issued by the Foujdaree Udalut under date the 16th March 1835; the amount so advanced in the course of the month being deducted from the amount of the monthly indent.

C. O.
No. 35.

1ST DECEMBER, 1836.

The question has recently come before the Court of Sudr Udalut of the admissibility of a party, who was not a pauper plaintiff in the original suit, to defend in appeal as a respondent in *forma pauperis*.

C. O.
No. 36.

The Court observe, that by the provisions of Sections XI. and XII. Regulation VII. of 1818, provision was made for allowing this privilege, in appeal, to pauper plaintiffs, and as it appears to the Court, that it was intended by the enactment of Regulation III. of 1822, to extend to the persons described in the preamble of that Regulation, all the bene-

fits of Regulation VII. of 1818, and allusion is made in Clause third, Section II. Regulation III. of 1822, to the admission of persons to defend in appeal, as paupers; the Sudr Udalut have determined the above question in the affirmative.

And in order that uniformity of practice, on this point, may be preserved, it is deemed proper to communicate the above decision by a Circular Order, to the four Provincial Courts of Appeal, to be by them intimated to the Court subordinate to them respectively, for general information and guidance.

3D DECEMBER, 1836.

C. O. No. 37.
Vide C. O. Nos. 22, 43, & 45.

The Court of Sudr Udalut, in modification of their Circular Order No. 22, dated the 8th December 1835, and under instructions received from Government, direct that in future all estimates for the repair, &c. of Civil buildings, in the Judicial Department in the Provinces, be sent by the Civil Officer, occupying the building, and considering such repair, &c. to be necessary, through the Civil Engineer, for submission to the Board of Revenue in the Department of Public Works.

6TH DECEMBER, 1836.—A

C. O. No. 38.

Under instructions received from Government, the Court of Sudr Udalut direct, that the several Judicial authorities in the Provinces be prohibited from imposing a fine exceeding 10 rupees upon any subordinate Public Servant on their establishment, without the special sanction of the Court of Sudr Udalut.

2. In cases, however, where the sum of 10 rupees may exceed the moiety of the individual's salary, it will not be competent to the Officer in charge of the establishment to impose a fine exceeding half a month's pay, without the special sanction of the Sudr Udalut.

6TH DECEMBER, 1836.—B

C. O. No. 39.

In extension of the Circular Order, No. 34, dated the 28th September 1836, the Court of Sudr Udalut direct that, in the statement required thereby, shall be included all fines imposed by the Civil Courts in exercise of the authority vested in them by Section XXVI. Regulation III. 1802, or Clause 3d, Section XII. Regulation XV. of 1816, or by any other provision of the Regulations, with the exception of Section IX. Regulation II. 1802.

Ordered, that extract from these proceedings be sent to the four Provincial Courts, for the purpose of being communicated to the several Judicial Officers in their Divisions, for their information and guidance.

10TH DECEMBER, 1836.

C. O. No. 40.

1. It is pointed out in the Circular Order of the Sudr Udalut, dated the 9th September 1836, that a Court in adjudicating upon the right to instalments, claimed to be due on a bond, must necessarily first determine "the right to the whole debts still recoverable," under such bond.

2. Nevertheless the practice has prevailed, up to the present time, of compelling the holder of a bond, who may have obtained a judgment for instalments, due on that instrument, to sue again for the amount of such instalments, subsequently becoming due, as may not be paid by the obliger, agreeably to the tenor of his engagement in the bond.

3. It appears to the Court of Sudr Udalut that this proceeding is open to all the objections, pointed out in the Circular Order of the 11th May 1829, in an analogous case, and is moreover improper, because it involves the second litigation of a right upon which a determination has already been passed by a Court of competent jurisdiction.

4. It is therefore deemed proper to direct by a Circular Order, that in cases of the above description the Court, by whose decree judgment may be given for instalments previously due, shall award and by an order of Court enforce the payment of remaining instalments, as they may fall due, upon application of the Plaintiff or his representative, in the mode prescribed for the enforcement of decrees by the provisions of Section XIV. Regulation XV. of 1816.

26TH DECEMBER, 1836.

An instance of the practice, on the part of a District Moonsiff, of borrowing sums of money from suitors in his Court, having come under the notice of the Sudr Udalut, they deem it proper to direct that the several District Moonsiffs be informed, that by borrowing money from suitors in their Courts, they render themselves liable to dismissal from office.

C. O. No. 41.—A
Vide C. O. No. 103.

6TH FEBRUARY, 1837.

Read again Petition presented on the 7th November 1836, by Goolam Rajah Vakeel, on behalf of Poottoory Cooshalaram Puntooloo of the Zillah of Guntoor.

C. O. No. 41.—B
Vide C. O. No. 23d
Feb. 1831.

1. Poottoory Cooshalaram Puntooloo sets forth in his petition that under a warrant issued by the Auxiliary Court at Guntoor for the recovery of costs decreed to the Collector of Guntoor (Defendant in suit No. 28 of 1829, on the file of the Northern Provincial Court, wherein Pottoor Mookoondaramiah, and Varoogunty Nursiah were Plaintiffs,) an Enam land consisting of one Coochala, belonging to the aforesaid Mookoondaramiah, was sold to him (Petitioner) in public auction, for the sum of Rupees 76;—that upon payment of the money, a receipt was executed to Petitioner on the 15th July last, and the land placed in his possession by the Nasir of the Auxiliary Court at Guntoor—That after the said Enam land was placed in his possession, and Petitioner had expended Rupees 40 in its improvement, he leased it out to a Ryot for a term of 3 years, advancing to him a sum of 50 Rupees on account of Tookoom and Tuckavy,—that upon a petition being presented to the Auxiliary Court of Guntoor by Mancheerauze Lutchmiah, a near relation of Pottoor Mookoondaramiah, alleging that the property attached had been mortgaged to him; an enquiry was made by the Auxiliary Court into the claim of mortgage set up by Mancheerauze Lutchmiah, and the claim appearing to the Assistant Judge false and collusive, it was dismissed, and the said Mancheerauze Lutchmiah fined in the sum of Rupees 100; that appealing from this order of the Auxiliary Court to the Provincial Court in the

Northern Division, Mancherauze Lutahmiah procured its annulment, and the sale of the land being cancelled accordingly, the Petitioner was compelled to receive back the purchase money and to give up the land which he had purchased, for the purpose of its being delivered over to the said Mancherauze Lutahmiah—that appealing from this order to the Provincial Court he has obtained no redress, but was by them referred to this Court, who he now prays will in consideration of the circumstances urged in his petition, reverse the order of the Provincial Court of the 6th November 1835 and 5th August 1836, and direct that Petitioner be not required to deliver up the said Enam land, purchased by him at the public auction, and further that the Court will cause payment to be made to him of the costs incurred by him on the occasion in question.

2. The Court of Sudr Udalut having attentively considered this petition, and the papers connected with it, are of opinion that the Provincial Court's order of the 6th November 1835, as explained in their order of the 5th August 1836, by which the sale made by the Auxiliary Court of Guntoor was directed, on a summary inquiry, to be cancelled, was an improper order—and further there appears to the Court to be good grounds for considering Pottoor Mookondaramiah's alleged mortgage to Mancherauze Lutahmiah fraudulent and collusive.—They resolve therefore to comply with the prayer of the petition No. 204 of 1836, and to desire that the orders of the Provincial Court of the 6th November 1835 and 5th of August 1836, issued in violation of the standing order of the 11th October 1827, may be cancelled accordingly.

3. In the Circular Order of the 11th October 1827, it is declared that the Courts are not competent to annul a sale once made by Order of Court, on a summary investigation of claims set up to the property sold.—“The Circular Order of 23d February 1831, points out that an appeal lies from summary decisions on claims to property attached for sale,” and of course the Court attaching and rejecting such claim, should always, before proceeding to sale, allow the claimants time to appeal; but after the sale has taken place, claimants to the property sold must be referred to a regular suit, as declared in the Circular Order of 11th October 1827.

4. Unless this rule be upheld much confusion must, and much injustice may, ensue; and the Court accordingly resolve peremptorily to forbid any departure from it, without the express permission of the Sudr Udalut, to be applied for when any case may arise which to a Provincial Court may appear to require a departure from the rule contained in the Circular Order.

5. The Court of Sudr Udalut therefore direct, that Extract from these proceedings be transmitted to the four Provincial Courts of Appeal to be by them communicated to the Courts subordinate to them for their information and guidance respectively.

11TH FEBRUARY, 1837.

C. O.
No. 42.

The Registers of the Provincial Courts, or other Officers doing their duty, the Killah and Assistant Judges, the Registers, the Principal Sudr Ameens, the Sudr Ameens and the District Moonsiffs are hereby severally directed to page, and to attest with his initials, each sheet of a

decree, or other judicial proceeding, required to be authenticated; and also to note in his own handwriting, on the last sheet of every decree or judicial proceeding, the number of sheets contained in each decree or judicial proceeding, and to attest the note with his official signature.

17TH FEBRUARY, 1837.

Read the following Extract from the Minutes of Consultation in the Judicial Department, dated the 9th February 1837, No. 152.

C. O.
No. 43.
Vide C. O. Nos.
15, 37 and 45.

1. In the foregoing Extract from the Minutes of Consultation, reference being first made to the sentiments of the Board of Revenue communicated in a letter from their Secretary in the Department of Public Works, to the effect that “Works to Judicial buildings should be executed under the orders of the Collectors and under the supervision of the Civil Engineers;” it is stated that the Right Honorable the Governor in Council is “of opinion that it will tend materially to remove all difficulty or inconvenience, were the Board of Revenue to state their opinion on each occasion of submitting an estimate for the repair of an old, or for the construction of a new building, either Revenue or Judicial, as to the authority under which greater facilities for the execution of the work exist and to whose superintendence it may be confided;” and “resolves to direct that this be the rule for the future.”

2. It is added that “the order of Government for the construction or repair of a Judicial building by the Civil Engineer, should such a course be considered expedient, will be a sufficient authority to the Collector of the District to make the necessary advances on the estimate, and the work will be proceeded with as in the case of Revenue buildings.”

3. On the present occasion, the Court of Sudr Udalut have been furnished with a copy of a letter addressed to Government by the Military Board, who request “that it may be defined, what Public Officers are to be at liberty to call upon Superintending Engineers to prepare plans and estimates, and whether for new buildings only, or for repairs also;” and with a copy of the Minute thereon, in which is recorded the opinion of the Right Honorable the Governor in Council, “that Officers of the Corps of Engineers, whether employed in the Military or Civil Departments, should cordially co-operate with Civil Officers, properly authorized to call on them on matters connected with their profession, and that they should readily attend to all requisitions from them for plans and estimates, either for new buildings, or repairs to old ones. On the other hand, the Civil Officers will be instructed to apply to the nearest Engineer Officer of the Division, whether such be the Superintending or Civil Engineer.”

4. The Court of Sudr Udalut resolve to direct that the foregoing instructions be circulated to the several Judicial authorities in the four Divisions, with reference to, and in modification of the Circular Orders of the 6th December 1835, No. 22, and the 3d December 1836, No. 37.

21ST FEBRUARY, 1837.

With the sanction of Government, the Court of Sudr Udalut resolve by a Circular Order to notify that in future, wherever the office of the District Moonsiff and the Talook cutcherry may be contiguous to each

C. O.
No. 44.
Cancelled by
C. O. No. 47.

other, it shall be the duty of the Moonsiff to remit daily to the Talook Treasury whatever sum, exceeding twenty rupees, he may have in his cutcherry; that when the distance between the two offices may be such as to render this proceeding inconvenient, the remittance be not made oftener than once in three days: and that when the Talook cutcherry may not be within a reasonable distance from that of the District Moonsiff, it shall be the duty of that Officer to make a report to the Judge of the Zillah, who will thereupon apply to the Collector of the District to furnish a guard for the safe custody of the public money in its transit from the one place to the other.

7TH APRIL, 1837.

C. O. No. 45.—A
See Appendix H and I.

Under instructions received from Government, and with reference to, and in modification of, their Circular Orders of the 8th December 1835 (No. 22), the 3d December 1836 (No. 37), and the 17th February 1837 (No. 43); the Court of Sudr Udalut resolve to notify that Officers hereafter proposing the repair or construction of Judicial buildings shall in the first instance submit a report on the subject to the Court of Sudr Udalut, in order that an opportunity may be afforded of ascertaining the expediency of executing the proposed work at all; and, if necessary, of communicating with the Government on the subject.

2. Should the proposed work be approved, the Judicial Officer will then receive authority from the Sudr Udalut to call upon the Engineer Officer to prepare his plans and estimates for transmission to that Court, whence they will be forwarded to the Board of Revenue for examination and check, and for eventual submission to Government.

24TH APRIL, 1837.

C. O. No. 45.—B
Vide C. O. No. 33.—B.

The Court of Sudr Udalut deem it proper to direct, with reference to the proceedings of the Court under date the 12th September 1836, that the deposit to be made by Appellants to His Majesty in Council, from decrees of this Court, for the purpose of covering the expenses which may be incurred under the provisions of Section XXII. of the Act of Parliament referred to in those proceedings, and other costs, be fixed at the amount of Rupees 10,000; and that no such appeal be hereafter admitted by the Court, under the provisions of Regulation VIII. of 1818, unless accompanied by a deposit to that amount instead of the sum of Rupees 15,000 hitherto required from the Appellants, which amount of deposit the Court of Sudr Udalut are now disposed to consider exceeds the sum necessary to indemnify the East India Company for any expences that may be incurred by them, on account of Appellants to His Majesty in Council.

Ordered, that the foregoing resolution be communicated to the Vakeels of this Court for the information of their respective clients, that a copy thereof with translations in the native languages be publicly affixed in this court for general information, and that Extract of these proceedings be sent to the four Provincial Courts of Appeal for the purpose of being promulgated by them in the manner directed by this Court's order of 14th April 1834, with respect to the Sections of the said Act of Parliament therein specified.

31ST MAY, 1837.

The Court of Sudr Udalut being of opinion that the subjoined form will represent, more accurately, than the form prescribed by the Circular Order of the 16th April, 1832, the labour performed by the subordinate authorities in respect to the disposal of Miscellaneous Petitions, deem it proper to direct that it be generally adopted for "the Quarterly Statement of Miscellaneous Petitions."

Number depending on the 1st of _____	2
Number presented during the last quarter	543
Total	545
	533

Finally disposed of during the quarter 12

Remaining at the close of the quarter to be disposed of

2D JUNE, 1837.

The practice of allowing Talook servants to have in their charge deposits or other funds from which they are allowed to make repayments without the special authority of the Collector, being deemed objectionable, the Court of Sudr Udalut resolve to cancel their order No. 44, circulated under date the 21st February 1837, which required the District Moonsiffs to remit to the Talook Treasury whatever sum exceeding 20 rupees they may have in their cutcherry.

15TH AUGUST, 1837.

The Circular Order No. 5, under date the 29th of October 1834, having been found liable to objections in its operation, the Court of Sudr Udalut have resolved to modify it so far as to declare, that from the date of the promulgation of this order no private adjustment of a degree of such adjustment shall have been previously and reciprocally declared by all the parties interested therein, and made a record of the Court with their unanimous consent.

With a view also of preventing all misunderstanding upon this subject, the several Courts are further enjoined, on delivering their decree, to make known this modification to all parties interested in its execution.

21ST NOVEMBER, 1837.

It being considered desirable that suits, involving disputes of a religious nature, should be speedily adjudicated, the Court of Sudr Udalut, under instructions received from Government, resolve to direct that the several Judicial Officers within this Presidency, be required to bring such suits to a hearing, without regard to the order in which they may be filed, and to pass a decision thereon, as speedily as may be consistent with the due administration of justice.

It is not however intended by this order, that suits of the nature referred to above, should have precedence of suits entitled to priority of decision under the Regulations.

23D MARCH, 1838.

C. O.
No. 50.

1. With the view of establishing a more efficient check and controul over the operations of the District Moonsiffs, and of affording the European Judicial Officers the means of learning the estimation in which individual Moonsiffs are held by the Native community; the Right Honorable the Governor in Council, in furtherance of the object of Section VI. Regulation II. of 1821, has been pleased to declare, that where the European Judicial Officer attached to a Zillah or Auxiliary Court, can, *without prejudice to his other duties*, make occasional visits to the Moonsiff's Stations, he shall be exempted from stoppage of allowances during his employment on such duty, provided the written permission of the Court of Sudr Udalut, for such visit, has been *previously* applied for, and obtained.

2. The leave granted to a Judicial Officer to visit the Station of a District Moonsiff, is, in no case, to *exceed* the period of 15 days; but to be limited within that period, at the discretion of the Court of Sudr Udalut.

3. The result of all enquiries made during such visits to be reported to the Court of Sudr Udalut, and the date of a Judicial Officer's departure from, and of his return to, his Station, upon leave granted to him under this order, to be reported to the Court of Sudr Udalut, for their information.

7TH APRIL, 1838.

C. O.
No. 51.

It being deemed objectionable that any person on the establishment of a Court in the Provinces, should become the purchaser of lands, or property of any kind, sold by public sale at the instance of the Court to which he is attached, or at that of any other tribunal subject to its controul; the Court of Sudr Udalut, with the sanction of the Right Hon'ble the Governor in Council, are pleased hereby to direct the several Provincial, Zillah and Assistant Judges, Principal Sudr Ameens, Sudr Ameens and Moonsiffs to affix a publication in their respective Courts, declaring that any person on their establishment, who may hereafter become a purchaser, either in his own name, or in the name of another, of land or other property situated within the jurisdiction of the Court to which he is attached, and sold under the circumstances described above, shall be dismissed from the public service.

It is not however intended by these orders to prohibit such Officers from purchasing or holding by private bargain, lands, wherever situated, not being liable, at the time of purchase, to public sale under the process of a Court.

8TH JUNE, 1838.—A.

C. O.
No. 52.

1. The Court of Sudr Udalut, pursuant to instructions received from Government, resolve to direct by a Circular Order, that whenever in any Court of Justice in the Provinces, the office of Government Pleader may become vacant; the Court, previously to nominating, for the approbation of Government, the person it proposes should be appointed to succeed to the vacant office, shall, in all instances call upon the Collector of the District, within the limits of its jurisdiction, to state whether he concurs

in the nomination, or not; and in the event of his not concurring, to explain the grounds of his objection to the appointment of the nominee.

2. Should the objections urged by the Collector fail to effect any change in the views of the Court, the said Court shall, on adopting the course indicated in Clause second, Section XXXVII. Regulation XIV. of 1816, communicate to Government the objections raised by the Collector, and the reasons which induce the Court to deem those objections invalid or untenable.

8TH JUNE, 1838.—B

Under instructions received from Government, the Court of Sudr Udalut are pleased to direct, that whenever a Judicial Officer may, under the Circular Order of the 8th July 1836, No. 32, refuse compliance with an application for copies of official documents, he do state, in the order furnished to the applicant, whether any other objection exists to copies of the papers applied for being furnished.

C. O.
No. 53.

24TH OCTOBER, 1838.

In modification of the orders circulated under date the 19th of February 1836, the Court of Sudr Udalut, under instructions received from Government, notify by a Circular Order that a Sudr Ameen or Moonsiff absent from his Station on leave, for whatever period, or whatever cause, and whether any provision be made for the discharge of the duties of the absentee or not, forfeits, during the period of his absence, one-half of his allowance.

C. O.
No. 54.
Vide C. O. Nos.
26, 30 & 98.

This rule is also to be considered applicable to the case of Principal Sudr Ameens and Law Officers attached to the Court of Sudr and Foudaree Udalut, who may obtain leave of absence from their Stations.

29TH OCTOBER, 1838.

Read letter dated the 8th Instant, from the Provincial Court in the Northern Division, submitting copy of a letter from the Acting Assistant Judge at Guntoor, who, adverting to para. 5 of the General Letter from the Honorable the Court of Directors under date the 13th of December 1837, intimating their opinion that notwithstanding the enactment of Act XXXV. of 1837, litigants "should be entitled to an entire translation of the Decree on paying for it," requests to be informed at what rate per sheet such translations should be charged.

C. O.
No. 55.

(Here enter No. 1187 of 1838.)

Under Section II. of Act XXXV. of 1837, a party in a suit, decided by a Court presided over by a European Judicial Officer, can legally demand only a translation of the abstract of the Decree, as entered in the diary of the Court, or a complete copy of the Decree in English, on his furnishing the stamp paper prescribed by Section XXII. Regulation XIII. of 1816; but in accordance with the wishes of the Court of Directors, as expressed in their General Letter referred to above, the Court of Sudr Udalut resolve to instruct the several subordinate European Judicial authorities, that in cases where a party may request to be

Vide C. O. 16th
June 1898.

furnished, at his own expense, with a *translation* of the *entire* Decree, it should be furnished (on his depositing in Court the *probable cost* of the same) at the least possible charge at which it can be prepared by a hired translator; and having been completed, it should be *compared* and certified by the translator of the Court.

10TH DECEMBER, 1838.

C. O.
No. 56.
Vide C. O.
No. 61.

The question has been submitted to the Court of Sudr Udalut, whether in the case of an Appeal being preferred to a Zillah Judge under Section XVI. Regulation V. of 1822, from the decisions passed by Collectors under the provisions of Sections IV. and XI. of that enactment, such decisions of Collectors are to be stayed at the requisition of a Zillah Court, until such Appeal may have been heard and disposed of.

The Court of Sudr Udalut are of opinion that the decisions of Collectors passed under Clause 4th, Section IV. Regulation V. of 1822, cannot be stayed, (excepting as regards any costs that may be awarded,) pending the decision of an Appeal therefrom preferred to the Zillah Judge, because the power of a Collector to order the sale of property attached for arrears of rent or revenue, ascertained by him to be justly due, is in such cases positive and unrestricted.

The decision of a Collector under Section XI. Regulation V. of 1822, on the complaints of persons forcibly dispossessed of their lands or crops, cannot, in the opinion of the Sudr Udalut, be stayed, further than as respects the costs and damages awarded against the offender, because the decision of the Collector does not confer any *proprietary right*, but only determines the *temporary right of occupancy or possession*.

With respect to the "costs and damages" awarded to the offender, the Circular Order of the 23d of April 1828, explains, that the restriction laid upon the Collector by Clause 2d, Section II. of Regulation V. of 1822, not to levy costs or damages till after 30 days allowed for Appeal, must be held to apply to costs and damages awardable under Section XI. of that Regulation.

20TH MAY, 1839.

C. O.
No. 57.

Para. 10. But, as the present references would seem to show, that uniformity of practice on this point does not universally prevail, and as a general rule on the subject is desirable, the Court of Sudr Udalut resolve, by a Circular Order, to direct, that in the case of a petition of complaint being filed in a Court of Udalut against a public Officer, under the provisions of Regulation I. of 1823, whenever the time fixed by the Court under Section III. for the purposes specified in Section II. of that Regulation, shall elapse, without such public Officer either showing that the suit is authorized to be defended at the public expense, or applying by motion in the usual way for an extension of the period so granted in the first instance, the Court shall treat it in *all respects* as a *private* suit, and shall proceed to hear and determine the same, as such, in accordance with the provisions of the general Regulations.

22D MAY, 1839.

C. O.
No. 58.

1. The Court of Sudr Udalut have ruled, upon references from the Provincial Courts of Appeal for the Northern and Western Divisions,

that the circumstance of a Decree having been passed more than twelve years before execution of it is applied for, does not constitute a valid objection to its execution, and that in such cases it is proper, that the Court receiving the application, should enquire and ascertain in the manner indicated in Clause eighth, Section XIV. Regulation XV. of 1818, whether, or not, any valid objection exist to the enforcement of the Decree, and decide thereon; the decision being of course open to an appeal to a superior Court.

2. And the Court of Sudr Udalut consider it proper to direct, that this decision be promulgated through the four Provincial Courts of Appeal, for the information and guidance of the said Provincial Courts, and of the judicial tribunals subordinate to those Courts respectively.

20TH JUNE, 1839.

The Court of Sudr Udalut do hereby direct, that whenever a Judge of a Provincial Court of Appeal and Circuit shall not attend the open sittings of the Court, prescribed by Section IV. Regulation IV. of 1802, though present at the Sudr Station, the fact of his absence from such open Court shall invariably be entered in the Court's diary.

C. O.
No. 59.
Vide C. O.
No. 69.

14TH OCTOBER, 1839.

1. The attention of the Court of Sudr Udalut has been drawn to the practice observed by Courts under this Presidency of requiring a deposit of money from the sureties, whom, every person admitted to sue as a pauper, is required, by the provisions of Section VI. Regulation VII. of 1818, before he can be permitted to file any pleading, to find for his appearance; whenever his attendance may be required by the Court.

C. O.
No. 60.

2. The Court of Sudr Udalut are of opinion that the sureties mentioned in the said provision are not required, by the Form B, appended to Regulation VII. of 1818, to give a deposit of money, any more than are sureties for costs; but that, as in the case of the latter, their personal security is to be taken on the Nazir's certifying to their possessing property sufficient to answer the judgment.

3. The Court of Sudr Udalut, being of opinion that the practice which now prevails of requiring a deposit of money from the sureties for the pauper's "appearance," is not warranted by any provision of the existing Regulations, resolve, by a Circular Order, to enjoin its discontinuance; and they accordingly direct, that the preceding observations be communicated to the four Provincial Courts of Appeal for their information and guidance, and the information and guidance of the several Courts within their respective Divisions.

5TH NOVEMBER, 1839.

1. The question has been referred to the Court of Sudr Udalut, whether a Collector is liable to be made a Defendant in appeal suits against his judicial decisions, passed under Regulation V. of 1822.

C. O.
No. 61.

2. The Court of Sudr Udalut observe, that under Regulation V. of 1822, the proceeding in the Zillah Court in such cases, is, as pointed out in the Circular Order of the 23d April 1828, an appeal from the Collector's judicial decision: and that Officer cannot be called upon to defend the appeal, any more than a Zillah Judge to defend in an appeal from his Decree.

3. And the Court resolve to communicate this opinion to the four Provincial Courts for their information, and the information and guidance of the several Courts of Udalut within their respective Divisions.

15TH JANUARY, 1840.

C. O.
No. 62.

Read the following letter, dated 23d Ultimo, from the Provincial Court for the Centre Division.

Vide C. O. 14th
Sept. 1832.

1. The Provincial Court submit a copy of a letter from the Acting Judge of Cuddapah, wherein that Officer refers the question whether a District Moonsiff, in the trial of regular suits, is bound to follow the rule laid down in Clause third, Section X. Regulation XV. of 1816, namely—to consider and record the point, or points, to be established, respectively, by the Plaintiff and by the Defendant.

2. The Court of Sudr Udalut concur in opinion with the Provincial Court, that it is as legally incumbent on a Moonsiff, as on any other judicial authority, to record the points necessary to be established by the parties in a suit, and the Court deem it proper to promulgate this opinion for general information and guidance.

5TH FEBRUARY, 1840.

C. O.
No. 63.

Read return date the 27th Ultimo, from the Provincial Court of Circuit in the Centre Division, to the precept of the Foujdaree Udalut of the 14th December 1839, directing them to call upon the Zillah Court of Cuddapah for a report of the names and places of abode of all witnesses produced; during the last 3 years before the Zillah Court of Cuddapah, by Plaintiffs to prove the Defendant's intention to abscond, or remove property, from the jurisdiction of the Court, and to call upon Mr. Stzombom to submit for the consideration of the higher Court any further explanation that he may wish to offer on the subject.

1. The Court of Sudr Udalut observe that, by the report which accompanies the foregoing return, it appears to have been the practice in the Zillah Court of Cuddapah, (in cases where a Defendant's intention to "abscond or remove property from the jurisdiction of the Court" has been shown) to order that such Defendant "be confined in jail until he produces a surety" for the amount sued for.

2. This practice is considered by the Sudr Court to be clearly illegal, and as it may have obtained in other Courts, it is resolved to explain by a Circular Order, that, under the provisions of Clause first, Section IV. Regulation II. of 1811, the security, of which the extent and the form of the bond are described in Clause second of that Section) is for the appearance of the Defendant, or *Hazuraminy*, and in default of its being given, the Defendant is to be committed to close custody until it

be furnished, or the decree of the Court be complied with, or an attachment of property shall have taken place under Section V. of the Regulations; which Section authorizes the requisition of *Malzami* security in the cases for which it provides, on the non-production of which, the Court is to attach property of the Defendant to the amount, or value, of the cause of action.

3. The commitment of a Defendant for non-production of such *Malzami* security is illegal.

30TH MARCH, 1840.

Read letter dated the 28th Ultimo, from the Provincial Court in the Western Division, submitting for the consideration of the Sudr Udalut, copies of the opinions recorded by the 1st and 3d Judges on a question of jurisdiction agitated in an original suit on the file of their Court.

C. O.
No. 64.

1. The original suit in question was laid to recover Rupees 5,873 1 33, as the balance of principal and interest due on a document executed to the Plaintiff, on the 7th April 1828, by the Defendant.

2. The Defendant contends that the case is not sustainable against him, as he was not within the jurisdiction of the Court when the suit was filed, and that according to the principles laid down in the Sudr Udalut's proceedings of the 6th June 1839, it should be struck off the file.

3. The Plaintiff, it is stated, does not directly deny the challenge to the original jurisdiction, but replies that the Defendant is only occasionally absent at Travancore, and his fixed residence, and immovable property, are within the Canai talook, of North Malabar.

4. Upon the particular case described in this reference, the Court would observe, that, (as ruled in the Sudr Udalut's proceedings dated 24th January 1828,) in cases of this description, the bond is not "the cause of action," but the non-performance of the act, to which it binds the giver: the bond is only evidence.

5. If, therefore, the jurisdiction, in this instance, should depend on the place where "the cause of action" arose, it would seem to be where the Defendant was, when he broke the conditions of the deed, executed by him: but, according to the option given to the Plaintiff by Section V. Regulation II. of 1802, it appears that, in this case, the Provincial Court has jurisdiction on the ground of the Defendant's place of residence, "as a fixed inhabitant."

6. The former decisions of the Sudr Udalut quoted in para. 4 of this Court's proceedings of the 6th June 1839, addressed to the Provincial Court in the Western Division, which in several cases of contract, have declared that the suit "must" follow the "person of the Defendant," do not, however, appear to the Court of Sudr Udalut, as at present constituted, to be reconcilable with Section V. Regulation II. of 1802.

7. This restriction of the Plaintiff is, by the terms of the said decisions, extended to all suits, falling within the definition of *personal* suits.

8. Now, in Section V. Regulation II. of 1802, suits and complaints respecting "debts, accounts, contracts, partnerships, marriage, caste and claims to damages for injuries," (all of which fall within the definition of "personal" suits), are specified as cases in which the jurisdiction may depend, either on the locality of the cause of action, or on the place of the Defendant's "fixed" habitation.

9. To limit, therefore, the jurisdiction to the latter, *exclusively*, in such cases, as is done in the Sudr Udalut's proceedings of 11th April 1815, 12th June 1828, and 31st December 1829, appears to the Court, to deprive the Plaintiff of the option as to the Court, in which he may sue, in a manner irreconcilable with the provision regarding "all" cases, other than suits relating to real property, contained in Section V. Regulation II of 1802; which provision is manifestly referred to, in that part of Clause third. Section II. Regulation II. of 1811, which respects suits, not for "immoveable property," in which the Defendant may not be resident within the jurisdiction of the Court, "in which the suit may be instituted."

18TH MAY, 1840.

C. O.
No. 65.

With the sanction of Government, the Court of Sudr Udalut are pleased to direct by a Circular Order, that leave of absence for a period exceeding 3 months shall not be granted to District Moonsiffs by the Zillah and Assistant Judges and the Principal Sudr Ameens, excepting with the authority of the Provincial Court; and that leave for any period exceeding 6 months, shall require the previous sanction of the Court of Sudr Udalut.

24TH AUGUST, 1840.

C. O.
No. 66.

Read letter dated the 19th June 1840, from the Provincial Court in the Western Division, submitting copy of a letter from the Sub-Collector of Tellicherry, bringing to notice the extreme inconvenience frequently experienced from Judges, Moonsiffs, &c. omitting to enter the position, boundaries, and extent of the ground decreed in their decisions passed in suits for lands, and in order to remedy this evil, suggesting that a Circular Order be passed, requiring all Complainants to enter in their plaint, "as accurate a description as can be obtained of the land claimed, its position, boundaries, extent, and the value of its estimated annual produce," and also, that the above particulars be entered in Moonsiffs, Sudr Ameens, and the Judges' decisions, thereby extending the provisions of Clause 2d, Section IV. Regulation XII. of 1816, to suits before the Civil Courts.

1. The Court of Sudr Udalut concur in opinion with the Provincial Court, that it is desirable that in all suits for land, or landed tenures, filed in the established Courts within this Presidency, the particulars proposed by Mr. Goodwyn should be inserted in the plaint, and they are also of opinion that similar information should be contained in the decrees passed by the several Courts in such suits.

2. Accordingly they resolve to direct, by a Circular Order, that in all suits for land, the plaint to contain, in addition to the particulars required by Section III. Regulation III. of 1802, and Section XVII. Regulation VI. of 1816, as accurate a description as can be obtained of the

land claimed, its position, boundaries, extent, and the value of its estimated annual produce, as well as the nature of its tenure, (whether semi-lodary, moossat, whotrium, enam, mecrassy, jeum or any other denomination), and the same information the Court of Sudr Udalut desire be inserted in the decrees in such suits passed by the several Provincial, Zillah and Assistant Judges, Principal Sudr Ameens and subordinate Judicial Authorities in the Provinces.

2D SEPTEMBER, 1840.

Extract from the Proceedings of the Provincial Court in the Western Division, under date the 21st May 1840.

Para. 3. The Provincial Court would submit that it is desirable to add to the reports of miscellaneous petitions, a memorandum shewing the date of presentation of the oldest petition remaining undisposed of, and the number of those exceeding 2 months; in order that information should be called for when delay appears excessive.

C. O.
No. 67.
Vide C. O.
No. 46.

Extract from the Proceedings of the Sudr Udalut, under date the 2d September 1840.

Para. 20. The Court of Sudr Udalut approving of the suggestion made in the 3d para. of the proceedings of the Provincial Court of Appeal, under date the 21st May last, resolve to adopt it, and accordingly direct, (in extension of their Circular Order No. 46,) that all the Judicial Officers be required, through the Provincial Courts of Appeal, to add to the quarterly statement of miscellaneous petitions, a memorandum shewing the quarter in which all petitions which have remained undisposed of, before them, for a period exceeding six months, were presented, also of the number of those which have been pending before the Court for more than two months, in order that explanation may be called for when the delay appears excessive.

21. In the letter submitting the quarterly reports of this Division, the 1st Judge has also submitted a proposition for checking unnecessary delays in the issue of decrees, and the consequent arrest of appeals; he suggests that a memorandum (according to a form submitted) of the decrees fair copied and issued, be added to the reports, and that the Moonsiffs should be required to certify that decrees and copies have been duly prepared according to Clause 1st, Section XXXVIII. Regulation VI. of 1816.

24. Approving of the form A, submitted by the 1st Judge, and considering it to be desirable that they should possess the information which is calculated to afford, the Court direct that the several Zillah and Assistant Judges and Principal Sudr Ameens, be required thro' the four Provincial Courts, to submit quarterly with their civil reports, a statement, according to the form subjoined, to be appended to the general abstract.

Leave of absence for one month may be granted by Civil Judge

*S. L. 11 May 1840.
Report to be made to Gov.
20 April 1850*

A.
MEMORANDUM OF DECREES COPIED, DELIVERED, &c.

Copies applied for by Parties.	Copies delivered.	Of last quarter.	Preceding quarters.
		Of last quarter.	Preceding quarters.
Copies applied for not yet delivered.		Of last quarter.	Preceding quarters.
Total not copied.		Of last quarter.	Preceding quarters.
Fair copied.		Of last quarter.	Preceding quarters.
Balance to be copied.		Of last quarter.	Preceding quarters.
Decrees of preceding quarters.		Of last quarter.	Preceding quarters.
Total passed in the quarter.		Of last quarter.	Preceding quarters.
Total		Of last quarter.	Preceding quarters.

Judge's.....	
Register's.....	
Sudr Ameen Moofly.....	
Sudr Ameen Pundit.....	

"tained in Section XXV. Regulation VII. of 1809, and the former rules therein referred to."

"The Court deem it further necessary to observe, in reference to the rule contained in Section XXI. Regulation IV. of 1802, whereby the Provincial Courts are authorized to dismiss an appeal which the Appellant may not proceed in for six weeks, unless he shall shew reasonable cause for not proceeding in it: that the option which the Plaintiffs in the Zillah Courts have, in cases on nonsuit, to institute a new suit, does not extend to appeals dismissed for non-prosecution or other default; which may indeed be revived, upon sufficient cause shewn to the satisfaction of a superior Court of Appeal, but cannot, under any existing Regulation, be received by a second appeal in the same cause. The explanation, given as above to the Zillah Courts, that before the judgment of nonsuit be passed against a party neglecting for six weeks to perform any act required from him in the prosecution of the suit, he should be called upon to shew cause for not having proceeded in it—is therefore not only equally applicable to the nonsuit of Appellants, for neglect in the prosecution of their appeals, but demand the most strict observance from every Court of Appeal, to obviate the injurious consequences that must ensue, if the party should not, by wilful neglect, have justly subjected himself to the penal dismissal of his appeal with costs."

10TH NOVEMBER, 1840.

C. O.
No. 71.

The Court of Sudr and Foujdaree Udaltut have observed that certain of the Courts in entering at the head of the examination of a party or witness, the particulars specified in Clause 3d, Section XVIII. Regulation VII. of 1802, describe the profession of a witness as "Service," without specifying what that "Service" is.

Accordingly, the Court of Sudr and Foujdaree Udaltut resolve to direct the several Courts, when inserting in their records of trials, or suits, held before them, the particulars specified in the provision quoted above, to exhibit the nature of the service in which the witness or party may be employed,—whether in the public service or in the service of a private individual, and the precise station held, whether Tahsildar, Soobidar, Sepoy, Peon, or Butler, Massaljee, &c. &c.

23D NOVEMBER, 1840.

C. O.
No. 72.

Para. 26. Since it appears from the remarks contained in the 21st para. of the proceedings of the Provincial Court of Appeal, that a diversity of practice obtains in the Courts of the Southern Division in extending or not extending to the Sudr Ameens the periodical adjournments of the Zillah Court, to which they are attached: The Court of Sudr Udaltut deem it necessary to explain for the general information of the Zillah Judges in all the Divisions, that the orders which may be issued from time to time by the Court of Sudr Udaltut for the adjournment of the Zillah Courts, are intended to convey the authority to the Judges of those Courts to suspend the business of the Sudr Ameens' Courts also.

8TH DECEMBER, 1840.

C. O.
No. 73.

Read letter dated the 27th Ultimo from the Provincial Court in the Centre Division, submitting copy of a letter from the Judge in the Zillah of Cuddapah, representing that a Circular Order has been addressed to the several District Moonsiffs within the Zillah of Cuddapah by the late Acting Judge of that Court, requiring them to conform to the doctrine laid down in para. 2 of an Extract from the proceedings of the Sudr Udaltut of the 15th February 1839, to the effect "that a Hindoo is responsible for his father's debts only in case he has inherited property from his father, and that he is liable only to the extent of the value of property so inherited by him." If any such doctrine has been laid down by the Sudr Udaltut, the Zillah Judge requests that he may be furnished with a copy of such order; and tho' the mode adopted by the late Acting Judge for giving publicity to the order appears to him to have been unauthorized, yet he points out the great importance of having the law on a point of such general interest authoritatively made known to all.

1. By the Hindoo law, as expounded by the Pundits, a son is liable for his father's debts whether he has succeeded to any property or not; but in the proceedings of the Sudr Udaltut of the 27th February, 1837, the Court determined that such question of liability, where there may be no inheritance, need not necessarily be determined by the Hindoo Law, with reference to Clause 1st, Section XVI. Regulation III. of 1802.

2. Clause 1st, Section XVI. Regulation III. of 1802, requires that suits regarding inheritance shall be determined agreeably to the principles of the Hindoo law, but where there is no inheritance, the Courts are clearly not bound by the Hindoo law of inheritance; and disjoined from the consideration of inheritance, the liability for a debt becomes a question dependant on the law of contracts.

3. The Court of Sudr Udaltut observed in para. 5 of their proceedings of the 27th February 1837, that the rule of Hindoo law, as stated by the Pundits, and quoted above, is noticed at page 127; volume 1 of Macnaghten's Principles and Precedents of Hindoo Law, as a part of the Law of Contracts, which as observed at page xviii. of the preliminary remarks, "are not required by the Regulations to be interpreted conformably to the principles of the Hindoo law," and the Court of Sudr Udaltut concurring in this opinion, had no hesitation in determining, that "a rule so opposed to the obvious principles of equity, ought not to be followed," unless the Courts were "peremptorily required" to adopt it.

4. The questions of a son's liability, who has not inherited property from his father, the Court of Sudr Udaltut observed, should be disposed of according to the principle declared at page 25 of Colclough's Treatise on Obligations and Contracts.

5. The Court of Sudr Udaltut deeming it desirable that their determination on these points should be circulated for general information, resolve to direct, that Extract from these proceedings be forwarded to the four Provincial Courts, to be by them communicated to the several Zillah and Assistant Judges and Principal Sudr Ameens subordinate to their jurisdiction.

5TH JANUARY, 1841.—A

C. O.
No. 74.
Vide C. O.
No. 77.

Read letter from the Acting Judge in the Zillah of Chingleput under date the 21st Ultimo, forwarding a warrant for the apprehension of the 1st defendant in suit No. 162 of 1840, of the file of his Court.

1. The Court of Sudr and Foujdaree Udalut direct that the warrant which accompanied the letter recorded above, be returned to the Acting Judge in the Zillah of Chingleput, as under Act No. XXIII. of 1840, no writ, warrant, or other process, issued by any Court in the provinces, can now be legally executed, within the limits of Her Majesty's Supreme Court of Judicature, without direction of one of the Judges of that Court.

2. The proper course to be observed by the Mofussil authorities who may require legal process to be executed within the limits of the Supreme Court, appears to be, to attach to an authenticated copy of their process, citation, or warrant, a certified translation thereof in the English language, and to enclose it in a letter addressed to the Registrar of Her Majesty's Supreme Court of Judicature at Madras, who will procure the endorsement of one of the Judges, in view to the same being ordered to be executed, either by the Sheriff, or by a Justice of the Peace, according to the nature of such writ, warrant or other process.

3. The Mofussil Officers charged with any warrant, must of course attend with the original warrant, on Her Majesty's Judges, and will, by them, be directed to the Sheriff, or Justice of the Peace, for the purpose specified in Section V. of the said Act; but in other cases, the attendance of persons from the Mofussil does not appear necessary.

5TH JANUARY, 1841.—B

C. O.
No. 75.

Read the following letter from the Provincial Court in the Northern Division.

1. In the foregoing letter certain questions have been submitted, at the instance of the Acting Judge of Rajahmundry, as to the powers and privileges appertaining to the office of Town Cauzee.

2. The first question proposed is, "Whether the Cauzee has the power of inflicting any punishment upon parties, who, contrary to the tenets of the Khoran, themselves repeat the nemaz over, and slaughter sheep (duties which appertain to the Mollas and Naibs), as well as upon those who wash the carcasses with water drawn by Pariahs, and slaughter sheep when about to die from disease."—2ndly, Whether he possesses authority for compelling an unwilling wife to return to or receive her husband."—3rdly, "Whether he is required to ascertain the truth of documents brought to him for attestation, and in doing so, enforce the attendance of witnesses before himself."

3. With respect to the 1st question, the Court of Sudr Udalut have already ruled, in a letter addressed to the Provincial Court in the Western Division under date the 27th April 1837, that Regulation III. of 1808 does not confer upon the Town Cauzee, appointed under its provisions, the privilege of performing the duties of his office to the exclusion of all others, but if any encroachment be made upon a privilege which the Town Cauzee may consider exclusively his own, it is open to him to institute a suit for damages, but that by no other means can he legally obtain redress.

4. With respect to the 2d question, the Court of Sudr Udalut concur in opinion with the Provincial Court, that it would be incompetent to the Town Cauzee to act, under the circumstances described therein, further than by referring the parties to a civil suit.

5. And with regard to the 3d question also, the Court of Sudr Udalut concur with the Provincial Court, that a Town Cauzee possesses no authority to enforce the attendance of a witness before him; but if he see reason to doubt the authenticity of any document presented for his attestation, the Cauzee would be justified in withholding his seal and signature to such documents, until those doubts were satisfactorily cleared away.

8TH FEBRUARY, 1841.

C. O.
No. 76.

1. The question has been submitted to the Court of Sudr Udalut, whether it is competent to a Court to quash, on a miscellaneous petition, a decree passed in a regular suit, when that decree has been passed contrary to the Regulations.

2. It is not competent to any Court, upon a miscellaneous petition, to quash a decree from which a regular or summary appeal will lie; but in cases where no appeal lies, if on presentation of a miscellaneous petition, or by any other regular means, it should appear that a decree has been passed, plainly contrary to the Regulations, the case should be reported for the orders of the Sudr Udalut.

14TH JUNE, 1841.

C. O.
No. 77.

The Court of Sudr Udalut hereby cancel Circular Order No. 74, and direct that all writs, warrants, or other process, mentioned in Section I. Act XXIII. of 1840, required to be executed within the limits of the Supreme Court, be sent together with the prescribed copy and translation thereof, to the Deputy Sheriff of Madras by tappal, except when they require the seizure of any person, when they should be sent by the Peon, or other person, who is to receive charge of the party mentioned in the warrant, &c., when he has been seized; and such Peon is to remain, with the original warrant, in attendance on the Deputy Sheriff, or where the Deputy Sheriff may direct, until the party to be seized has been placed in his charge.

7TH MARCH, 1842.—A

C. O.
No. 78.

The following question has been submitted for the consideration of the Court of Sudr Udalut.

"Whether a review of judgment is allowable when the Decree has been passed by a Register or Sudr Ameen."

1. The Court of Sudr Udalut answer this question in the affirmative.

2. The provision for a review of judgment, contained in Section VI. Regulation XV. of 1816, does not expressly include Registers, Sudr Ameens and District Moonsiffs, but as the Regulations declare that Re-

gisters* and Sudr Ameens† in trying causes, are to be guided by the same rules as are prescribed for the trial of suits before the Judge, and as a similar provision has been made in respect to District Moonsiffs, by Section XIII. Regulation VI. of 1816, where no other rules have been specifically enacted for their guidance,—the Court of Sudr Udalut are of opinion that upon a sound and liberal construction of Clause 2d, Section VI. Regulation XV. of 1816, those provisions may be considered as applicable to Registers, Sudr Ameens, and District Moonsiffs.

7TH MARCH, 1842.—B

C. O.
No. 79.

The Provincial Court in the Western Division have submitted the following questions relative to the construction of Act No. XXIX. of 1841, for the consideration of the Court of Sudr Udalut.

1st Question.—“In the case of an Appeal *after dismissal*, from what date is the period of Appeal to be calculated?”

The Court of Sudr Udalut answer—From the *same date as the dismissed Appeal*, or, in other words, from the commencement of the period originally limited for an Appeal.

In the opinion of the Court of Sudr Udalut the Act XXIX. of 1841, was not intended to *add* to the period of Appeal, but to bar an extension of the period of Appeal in any case whatever.

2d Question.—“Whether the period of six weeks, referred to in Act No. XXIX. of 1841, is to date from the time when the “notice” referred to in Clause 1st, Section XXVI. Regulation VI. of 1816, is affixed?”

The Court of Sudr Udalut answer—That under Section 1, of the Act in question, an original Suit, or an Appeal, must be dismissed if either the Plaintiff, or the Appellant, neglect to proceed in the Suit or Appeal for six weeks from the date of the admission of such Suit or Appeal.

30TH APRIL, 1842.—A

C. O.
No. 80.
Vide F. U. C. O.
No. 149, and
S. U. C. O. No.
91.

The Court of Sudr and Foujdaree Udalut, under instructions received from Government, resolve to advise the several Judicial authorities, that although Clause 2d, Section XXXIX. Regulation VII. of 1832, authorizes, within the limits of a Military Station, the *direct* service on the Troops, by Civil Officers of Notices, Summonses, Subpœnas, or other process of mere citation, not involving personal arrest, yet it is desirable, in every practicable case, that such Summonses &c. should be executed through the Commanding Officer or other *Military Authority*.

30TH APRIL, 1842.—B

C. O.
No. 81.
Vide F. U. C. O.
No. 150.

The Court of Foujdaree Udalut have repeatedly ruled that the correspondence between the Criminal Judges and the Magistrates shall be carried on by the Heads of those Offices, or the persons in charge of them.

It is fit and becoming that that this rule should be generally observed with regard to *all* Departments with which the Judicial authorities may have occasion to correspond; and accordingly, it is resolved to direct, by a Circular Order, that this form be always observed, unless there be a good and sufficient reason to omit it.

* Section VIII. Regulation XII. of 1802.
† Section XIV. Regulation VIII. of 1816.

30TH MAY, 1842.

Read letter from the Provincial Court in the Western Division under date the 29th April 1842, having reference to the Circular Order No. 79, which declares, in explanation of Section I, Act XXIX. of 1841, that an Original Suit or an Appeal must be dismissed if either the Plaintiff or the Appellant neglect to proceed in the Suit or Appeal for six weeks from the date of the admission of such Suit or Appeal.

C. O.
No. 82.

1. The reference is made at the instance of the Judge in the Zillah of Canara, who submits that in the case of Suits instituted before the Courts of the District Moonsiffs a difficulty will exist in acting upon this opinion of the Sudr Udalut, because in those Courts a Suit is not called over for trial for perhaps a year after its admission—that then for the first time it is called over, or in other words the Moonsiff fixes a day for trial, that if the Plaintiff does not attend, the notice specified in Clause 1st, Section XXVI, Regulation VI. of 1816 is then given.

2. The Zillah Judge submits that as no opportunity is therefore given to the Plaintiff to proceed with his Suit within six weeks from the date of its admission, the period of six weeks referred to in the Act should be calculated from the date of the notice referred to in the Regulation quoted above.

3. In a case such as that supposed by the Zillah Judge of Canara, it would obviously be right to calculate the period prescribed by Act XXIX. of 1841, within which a party must proceed with his Suit, from the date on which the notice specified in Clause 1st, Section XXVI, Regulation VI. of 1816 may be served on him.

4. Both the Act in question and the Circular Order No. 79, supposes the Suit to proceed without interruption;—but the penalties of default can be only for real default—if the proceedings of the Suit are delayed for an interval with the consent of the Court, then of course, the default must be calculated from the failure to attend on notice duly served, and to proceed as required by the orders of the Court.

13TH NOVEMBER, 1843.

The Court of Sudr and Foujdaree Udalut are pleased to direct that uncovenanted Judges may, at their option, sign their names in the English, or in any other character, but that they shall always sign in full, instead of employing initials, and use only one character on all occasions, instead of having recourse to different characters at different times.

C. O.
No. 83.

13TH NOVEMBER, 1843.

1. The Court of Sudr Udalut having had under consideration the system of remunerating by batta in money, Peons charged with the service of processes issued from District Moonsiff's Courts, have resolved to direct, that, henceforward, its payment shall be regulated by the following rules.

2. The Peons are to be paid, besides the number of days required for going to and returning from the place where process is to be served, for two days, in addition, for service of every subpoena, process of arrest, and process of attachment, and one day, in addition, for service of every other description of processes.

C. O.
No. 84.

3. The Civil Judges will cause to be framed, with due care, (revising it themselves before adoption) a table in the vernacular language, for suspension in the Court House of each District Moonsiff, shewing the computed distance of each village, within the jurisdiction, from the Court Station, and the number of days allowed for the service of the process calculated at the rate of 5 kos or 10 miles per diem, going and returning.—This table being exposed under the signature and seal of the Civil Judge in each District Moonsiff's Court, for general information, no mistake can thereafter occur or extra demand be made.

13TH NOVEMBER, 1843.

C. O.
No. 85.

The Court of Sudr Udalut have resolved to prescribe the subjoined forms of commission for use by the Civil Court within their jurisdiction when the examination of absent witnesses is to be taken under the provisions of Act VII. of 1841.

2. Form No. 1 is intended to be addressed to ministerial Officers of the Court, or other persons who may be residing within the jurisdiction of the Court issuing the commission.

3. Form No. 2 is to be addressed to a Court of the Zillah which may be inferior in grade to the Court issuing the commission.

4. Form No. 3 is intended to be addressed to a Court of another Zillah, equal or inferior in grade to the Court issuing the commission, or (in cases of doubt as to which is the most convenient) to the Judge of such other Zillah; or (under special circumstances) to any individual residing in such other Zillah. In the event of the commission being addressed to the Judge, and that Officer, under the discretion vested in him by law, deeming it expedient to direct the commission to a Court subordinate to him, it will be sufficient for this purpose that he endorse on the original commission the following record.

To A. B. Principal Sudr Ameen, Sudr Ameen, or Moonsiff of—(as the case may be.)

You are hereby authorized and directed to conform to the requisitions of this warrant of commission, making your return direct to the Court, issuing it, Witness my hand and Seal of Office, this—day of, &c.

5. Form No. 4 is to be used when the evidence of witnesses residing in Madras may require to be taken.

6. The Act permits examinations to be taken otherwise as well as upon interrogatories, but the Court of Sudr Udalut are of opinion that in all practicable cases, interrogatories should accompany the commission.

7. The attention of the Sudr Ameens and District Moonsiffs is to be called to this Circular.

FORMS.

No. 1.

In the Court of _____ or the Zillah of _____
Ramasawmy _____ Plaintiff.

Versus.

Veerasawmy _____ Defendant.

To A. B.

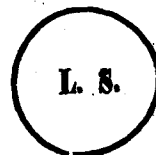
Whereas by an order dated the _____ in the above cause, it has been directed that the evidence of C. D. and E. F. residing at _____, be taken by commission under the provisions of Act VII. of 1841, and whereas in pursuance of such order, you are appointed and required to take the evidence of the said witnesses. You are hereby empowered and required to take the examinations and depositions of the said witnesses, upon oath or affirmation as provided in Section IV. of the said Act; upon the interrogatories hereunto annexed,* which duty you shall perform truly, faithfully, and without partiality to any or either of the parties in the cause, examining the witnesses in the presence of the parties or their agents (if in attendance), who shall be at liberty to question them on the points specified and returning this warrant of commission, together with* the interrogatories hereunto annexed, and the examinations of the said witnesses thereon, to this Court, on or before the _____ day of _____ next.

* Or "on the points indicated in the annexed extract from the Court's proceedings," as the case may be.

* The words in italics to be omitted if interrogatories are not sent.

Given under my hand and the seal of this Court, this _____ day of _____ 184—

G. H.



No. 2.

In the Court of _____ for the Zillah of _____
Ramasawmy _____ Plaintiff.

Versus.

Veerasawmy _____ Defendant.

To A. B. District Moonsiff.

Whereas by an order dated the _____ in the above cause, it has been directed that the evidence of C. D. and E. F. residing at _____, be taken by your Court under the provisions of Act VII. of 1841. You are hereby required to take the examinations and depositions of the said witnesses upon oath or affirmation as prescribed in Section IV. of the said Act, upon the interrogatories hereunto annexed; * which duty you shall perform truly, faithfully, and without partiality to any or either of the parties in this cause, examining the witnesses in the presence of the parties or their agents (if in attendance), who shall be at liberty to question

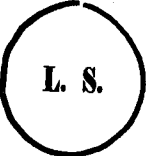
* Or "on the points indicated in the annexed extract from the Court's proceedings," as the case may be.

* The words in italics to be omitted if interrogatories are not sent.

them on the points specified, and returning this warrant of commission, together with* the *interrogatories hereunto annexed*, and the examinations of the said witnesses *thereon*, to this Court, on or before the—day of —next.

Given under my hand and the seal of this Court, this—day of—
184—

G. H.



L. S.

No. 3.
In the Court of ——— for the Zillah of ———
Ramasawmy ——— Plaintiff.

Versus.

Veerasawmy ——— Defendant.

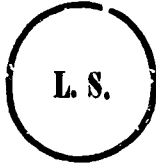
To A. B. Judge of.

Whereas by an order dated the—in the above cause, it has been directed that the evidence of C. D. and E. F. residing at—, be taken by your Court under the provisions of Act VII. of 1841. You are hereby requested to take the examinations and depositions of the said witnesses, upon oath or affirmation as provided in Section IV. of the said Act, in the presence of the parties or their agents (if in attendance), who shall be at liberty to question the witnesses on the points specified, and to return this warrant of commission, together with* the *interrogatories hereunto annexed*, and the examinations of the said witnesses *thereon* to this Court, on or before the—day of —next.

* Or, "on the points indicated in the annexed extract from the Court's proceedings" as the case may be.
* The words in italics to be omitted if interrogatories are not sent.

Given under my hand and the seal of this Court, this—day of—
184—

G. H.



L. S.

No. 4.

To A. B. Commissioner of the Court of Requests, Madras.

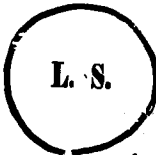
Whereas by an order dated the—in the above cause it has been directed that the evidence of C. D. and E. F. residing at—, be taken

by your Court under the provisions of Act VII. of 1841. You (or any or either of you) are hereby requested to take the examinations and depositions of the said witnesses, upon oath or affirmation as provided in Section IV. of the above Act, upon the *interrogatories hereunto annexed*,* the examinations to be held in the presence of the parties or their agents (if in attendance) who shall be at liberty to question the witnesses on the points specified, and to return this warrant of commission, together with* the *interrogatories hereunto annexed*, and the examinations of the said witnesses *thereon* to this Court, on or before the—day of —next.

* Or, "on the points indicated in the annexed extract from the Court's proceedings" as the case may be.
* The words in italics to be omitted if interrogatories are not sent.

Given under my hand and the seal of this Court, this—day of—
184—

G. H.



L. S.

13TH NOVEMBER, 1843.

The Court of Sudr Udalut have resolved to prescribe the subjoined Forms for use in cases falling under Act XIX. 1841.

FORM OF ENGAGEMENT OF CURATOR.

I, A. B., having been appointed by the Judge of the Zillah of—, under the provisions of Act XIX. of 1841, to take temporary possession of the property of the late C. D., do hereby solemnly promise and engage diligently and faithfully to discharge the trust committed to me, and to act, in every respect, according to the instructions given me, and, to the best of my judgment, for the interest of the proprietors. I also promise to obey all orders of the Judge, regarding the institution or the defence of suits, concerning or connected with the property committed to my charge. I further promise and engage to give acquittances for all sums of money collected by me, or debts or rents on account of the estate of the said C. D., and to render a true and just account for whatever may be received by me on account of the said estate, filing, at the earliest practicable period, an inventory of the property received by me, and also, monthly, in the Judge's office, accounts in abstract, and at the end of every three months, and on giving up possession of the property, accounts in detail of my administration of the said property. I further promise and engage strictly to adhere to such laws as may be passed, for the guidance of Curators, by the Governor General in Council, and to such orders as I may receive from the Judge, and to derive no personal advantage whatever, directly or indirectly, from the trust committed to me, beyond the allowance granted to me as stated in my ~~sumud~~ ^{sumud} of appointment.

C. O.
No. 86.

A. B.

FORM OF SECURITY BOND.

Whereas A. B. has been appointed by the Judge of the Zillah of _____, under the provisions of Act XIX. of 1841, to take possession of the property of C. D. deceased:—I, E. F., do hereby engage and bind myself to stand security, and to be answerable for the faithful discharge of his trust by the said A. B., agreeably to the terms of his sunnud of appointment, a copy of which has been duly delivered to me. I also bind myself, my heirs and successors, not to sell, give, or otherwise transfer or dispose of the property mentioned in the annexed schedule which I hereby pledge for the purpose of this engagement, until the conditions thereof have been completely fulfilled.

E. F.

Schedule of Property.
(To follow here.)

FORM OF SUNNUD.

Sunnud to A. B.

Whereas you, A. B., have been appointed, under the provisions of Act XIX. of 1841, to take temporary possession of the property of the late C. D., you shall diligently and faithfully discharge the trust committed to you, and act in every respect according to the instructions given you, and to the best of your judgment for the interest of the proprietors. You shall obey all orders of the Judge regarding the institution or the defence of suits, concerning, or connected with the property committed to your charge. You shall further receive payments of debts and rents due to the estate of the said C. D., until otherwise ordered, such power of collecting debts, however, to cease on the granting of a certificate under the provisions of Act XX. of 1841, or in the event of probate or letters of administration to the estate of the said C. D., being granted by Her Majesty's Supreme Court of Judicature; and you shall give acquittances for all sums of money collected by you, as debts or rents, on account of the estate of the said C. D., and you shall render a true and just account of whatever may be received by you on account of the said estate, filing, at as early a period as practicable, an inventory of the property received by you, and also, monthly, in the Judge's office, accounts in abstract, and at the end of every three months, and on giving up possession of the property, accounts in detail of your administration of the said property. You shall further adhere strictly to such laws as may be passed for the guidance of Curators, by the Governor General in Council, and to such orders as you may receive from the Judge, and you shall derive no personal advantage whatever, directly or indirectly, from the trust committed to you, beyond the allowance hereby granted to you of 5 per centum on the personal property and on the annual profits of the real property placed under your charge; and you shall exercise the power of Curator under this sunnud until the determination of the summary suit now pending respecting the right to possession of the said property, or until otherwise ordered by this Court.

Schedule of Property placed under the Curator.

(To follow here.)

13TH NOVEMBER, 1843.

The Court have resolved to direct that the annexed Forms be made use of in cases coming under the provisions of Act XX. of 1841.

C. O.
No. 87.

FORM OF ENGAGEMENT of a party to whom a Certificate is granted for collection of debts on

SUCCESSION.

Whereas a certificate has been granted to me by the Judge of the Zillah of _____ under the provisions of Act XX. of 1841, to collect the debts due to the estate of the late C. D., I promise and engage to give acquittances for all sums of money collected by me as debts on account of the estate of the late C. D. I further promise and engage to adhere strictly to such laws as have been or may be passed by the Governor General in Council for the guidance of persons holding certificates for the collection of debts due to the estates of deceased persons.

A. B.

FORM OF SECURITY BOND.

Whereas a certificate has been granted to A. B. by the Judge of the Zillah of _____, under the provisions of Act XX. of 1841, to collect the debts due to the estate of the late C. D., I hereby engage and bind myself to stand security for the said A. B. and to be answerable for any sums realized by him under the certificate granted to him, which may legally be demandable from him under the provisions of Act XX. of 1841. I further bind myself, my heirs and successors, not to sell, give, or otherwise transfer, or dispose of the property mentioned in the annexed Schedule, which I hereby pledge for the purposes of this engagement, until the conditions thereof have been completely fulfilled.

E. F.

Schedule of Property.
(To follow here.)

FORM OF CERTIFICATE.

To A. B.

Whereas, in pursuance of the orders of this Court dated the _____, in the matter of the estate of the late C. D., this certificate is granted to you agreeably to the provisions of Act XX. of 1841. You are hereby authorized and empowered to collect all debts due to the estate of the said C. D., giving acquittances for all sums received by you.

You are further empowered to receive interest on government notes and dividends, or on shares of any bank or parts thereof belonging to the said estate, and to negotiate such securities. You are also empowered to receive a share of such interest or dividends that may be due to the said estate, or to negotiate a share of such securities.

You shall further adhere strictly to such laws as have been or may be passed by the Governor General in Council for the guidance of persons holding certificates for the collection of debts due to the estates of deceased persons.

Judge.

(L. S.)

18TH NOVEMBER, 1843.

The attention of the Sudr Udalut having been drawn to the unnecessary bulk frequently attained by Decrees passed in *Appeal* suits, in consequence of the repetition in those judgments of abstracts, more or less detailed, of the pleadings filed in *Original* Actions, of descriptive accounts of documents and of arguments used in the Decrees of Courts

C. O.
No. 88.

14TH MARCH, 1845.

C. O.
No. 93.

1. The attention of the Sudr Udalut having recently been drawn to the irregular manner in which the half yearly Civil Statements are prepared and transmitted by certain Courts in the Provinces, it is resolved to circulate the following observations in view to the adoption of uniformity of system.

Long Statement
of the Zillah
Judge's Court.

2. The long Statement shewing the operations of a Zillah Court, should exhibit the operations, not only of the Zillah Court and of the Courts of Sudr Ameens and District Moonsiffs, &c. within its jurisdiction, but likewise those of the Subordinate Judge or Principal Sudr Ameen's Court, as the case may be, and consequently it should be a single Statement: the long Statement of the Subordinate or Principal Sudr Ameen's Court now received by the Sudr Udalut, may thus be dispensed with in so far as respects its transmission to this Court.

3. It will nevertheless be necessary that the long Statement of the Subordinate or Principal Sudr Ameen's Court should be drawn up by those functionaries respectively, in order that the Civil Judge may include in the long Statement of the Zillah Court, the particulars of information which the Statement of the Subordinate and Principal Sudr Ameen's Court may contain.

Civil Debtors at
Station of Zillah
Jail.

4. The Sudr Udalut also resolve to require the future transmission of only *one* half yearly Statement of Civil Debtors, which should be sent up by the Civil Judge, and which, in respect of Debtors under confinement by order either of the Revenue authorities, the Subordinate Judges or Principal Sudr Ameens, should be prepared in the Courts of the Civil Judges from information furnished to those functionaries by the Subordinate Judges where the Jail may be in charge of the Subordinate Judges; and from information procured from their own records or the Principal Sudr Ameens' Courts, where the Zillah Jail may be under charge of the Zillah Judge.

5. Wherever the Court of a Principal Sudr Ameen or Sudr Ameen may be at a distance from the Zillah station and Debtors are under restraint in other than the Zillah Jail, the necessary Statement should be forwarded to the Zillah Judge by the Officer having charge of the Jail, in view to its being submitted to the Sudr Udalut in the usual course.

Half yearly
Statements A
and C.

6. The half yearly Statements marked A and C which exhibited the number of causes disposed of by and pending before the late Provincial Courts of Appeal and the other Zillah Courts in each of the old Divisions, should, under the present system, not only exhibit in the form prescribed, the total of cases disposed of by and pending before the present Zillah Courts; but also those of the Courts over which the existing Zillah Courts have more immediate jurisdiction, viz. Courts of Sudr Ameens and District Moonsiffs.

Half yearly
Statements B
and D.

7. The half yearly Statements B and D which embraced the operations as above described, of the late Zillah Courts and the Courts formerly under their immediate jurisdiction, should, under the present system and the rule now laid down, contain only a Statement of causes disposed of by and depending before the Subordinate Judges' Courts and Courts of Principal Sudr Ameens.

8. Notwithstanding the orders issued from the Sudr Udalut in regard to the review by the Civil Judges, of the periodical Statements and Returns received by them from the subordinate judicial functionaries within their range, in the manner observed by the late Provincial Courts of Appeal, it is found that only a very few of the Civil Judges have conformed to these instructions. The Court of Sudr Udalut, in consequence, direct the attention of those Officers to the Circular Order noted marginally, the rules of which should be strictly obeyed: in default, the Statements reaching the Sudr Udalut will at once be returned to the Judge transmitting them.

C. O.
20th March 1845

9. As a general rule, the careful observance of which is particularly enjoined, the Sudr Udalut also desire that all the Civil Returns and Statements due for a half year, or any other period, be transmitted together, and not, as is the practice with the Courts on the Western Coast, at intervals and by instalments; by which arrangement it is expected that much confusion will be avoided.

15TH MARCH, 1845.

Adverting to Sudr Udalut Circular Order dated 10th December 1805, and Section VIII, Regulation XIV of 1816; and in view to an assimilation with the practice existing in Bengal, the Sudr Udalut resolve to declare, that Vakalutnamahs, whether executed by Principals or their Attorneys and Agents, and Mooktyarnamahs under the authority of which Vakalutnamahs are executed, shall not hereafter be required to be verified on Oath. The responsibility, in regard to all such documents being properly and correctly executed, resting entirely with the Vakeels, it will be optional with them to act upon Vakalutnamahs not registered in the manner which hitherto has been in force.

C. O.
No. 94.

3D JULY, 1845.

1. The Court of Sudr Udalut, having had under their deliberate consideration the propriety of imposing some effectual check on the lax system of keeping accounts which is believed to prevail in certain Courts in the Provinces, have resolved to direct that each functionary, within the jurisdiction of the Sudr Udalut, who may be in charge of a Judicial Treasury, shall within the 15th January, and 15th July, of each year, submit, for the Court's information, a Schedule of the monies under his official custody, at the close of the previous half year.

C. O.
No. 95.

2. The Judges require, that, in the above Schedule, every item shall be exhibited, whether the funds referred to are private property, or the property of Government; and with this intention in view, it is hoped that, means will now be adopted for the disbursement to the proper parties of such sums as, under circumstances, may have been allowed to remain as a deposit in the Judicial Treasuries, by which arrangement the Judges believe the half yearly Schedule will be considerably reduced in size, and farther prove itself the means of ensuring early payment of amounts, which otherwise would have been allowed to lie over for adjustment.

7TH AUGUST, 1845.

C. O.
No. 98.

Adverting to a recent Order by Government, the Court of Sudr Udalut resolve to direct, that henceforward on the occasion of submitting indents for articles rendered unserviceable by actual use, Judicial Officers shall show by means of an additional column in their indents, on what dates the articles indented for were declared to be unserviceable and under what circumstances they became useless.

5TH SEPTEMBER, 1845.

C. O.
No. 97.

1. Adverting to instructions received from the Honorable Court of Directors, it is resolved to require from Civil Judges, the submission with future half yearly Reports, of a statement in the annexed form, showing the number of suits before themselves, Subordinate Judges or Principal Sudr Ameens, Sudr Ameens and District Moonsiffs which are appealable and the number appealed, as also the mode in which they are disposed of in appeal.

	Appeal- able.	Appeal- ed.	Affirm- ed.	Modified or reversed.
Civil Judge.....				
Subordinate Judge or Princi- pal Sudr Ameen.....				
Sudr Ameen.....				
District Moonsiff.....				

2. The Sudr Udalut further require to know for the information of the Honorable Court, the average duration of a suit before each class of tribunal in the Provinces, and accordingly direct, that, on reference to the proceedings held in each Suit decreed on its merits during the half year reported on, or in any way disposed of so as to effect its removal from the File, the necessary calculation be exhibited in the accompanying form and transmitted with the usual half yearly returns.

	Years.	Months.	Days.
Civil Judge.....			
Subordinate Judge or Principal Sudr Ameen.....			
Sudr Ameen.....			
District Moonsiff.....			

14TH OCTOBER, 1845.

C. O.
No. 99.
12th September
1842.
15th September
1845.

1. The Court of Sudr Udalut notify for the information and future guidance of functionaries within their jurisdiction, that on the recommendation of the Court, the Most Noble the Governor in Council was pleased, in modification of Circular Order No. 54, to sanction on the dates noted marginally, the extension to Principal Sudr Ameens, Sudr

Ameens and District Moonsiffs, of the rule laid down in the Order of Government dated 16th November 1841, under which those Officers are authorized occasionally to absent themselves from the station of their Courts without loss of allowances, for a period not exceeding five days, provided their absence does not interfere with the convenience of parties whose suits may be on the File or under investigation, or generally with the interests of the public service.

2. The Civil Judge of the Zillah, in the exercise of the powers of control legally vested in him, will, it is expected by the Sudr Udalut, prevent Sudr Ameens and District Moonsiffs from too frequently availing themselves of the indulgence now accorded to them, and will further intimate to those Officers, that failure to report to the Civil Judge each instance in which they may leave the Court station under the present rule, will render them liable to the loss of their appointment.

17TH OCTOBER, 1845.

The Judges of the Sudr Udalut resolve to notify, that in conformity with a recommendation submitted by the Court, the Most Noble the Governor in Council has been pleased to direct, that on the occasion of District Moonsiffs or Sudr Ameens being deputed to act at a distance from the Stations where they are employed, or of their being ordered by the Court of Sudr and Foujdaree Udalut on special duty, on the exigency of the public service, they shall draw a travelling allowance at the rate of 4 annas per mile at the public charge; but on all other occasions, that the absentee, if not on sick certificate, shall defray the travelling expenses of the acting incumbent at the same rate.

C. O.
No. 99.Vide Cir. letter
dated 23d Dec.
1846. Appen. J.

17TH NOVEMBER, 1845.

Adverting to the rule laid down in para. 2 of this Court's Circular Order dated the 30th April 1818, the Sudr Udalut resolve to direct that copies of all Decrees in Appeal which may henceforward be passed by the Courts in the provinces, shall be transmitted to the Courts from whose judgments such Appeals have respectively been preferred, within fifteen days of the date on which the judgment has been declared in open Court.

C. O.
No. 100.

4TH DECEMBER, 1845.

The Court of Sudr Udalut are pleased, with the authority of Government, to direct, that the rule in Section II, Regulation XIX of 1802, prohibiting Public Officers from lending money to persons within their jurisdiction, be extended to all Uncovenanted Judicial Officers.

C. O.
No. 101.

It will of course be understood, that the foregoing prohibition does not extend to the Officers on the Ministerial Establishments of the several Civil and Criminal Courts, but to those functionaries only, who are legally empowered to exercise *Judicial* functions.

18TH DECEMBER, 1845.

C. O.
No. 102.

An application having been made to the Sudr Udalut for instructions, whether, with reference to the provisions of Acts XIX and XX of 1841, it was incumbent on a Civil Judge personally to enter into an investigation of claims to certificates, preferred under the Acts quoted; or whether, within their immediate jurisdiction, it is not competent to a Subordinate Judge or Principal Sudr Ameen to conduct such enquiries; the Court declared the opinion, that the Judge of the Zillah alone possessed the authority necessary to make the investigations contemplated by the Acts adverted to, it appearing to the Court that the Appeal which in Section V, Act XX of 1841, is declared to lie to the Sudr Court, and the fact, that the references adverted to in Sections VIII and XIII, Act XIX of 1841, are to that Tribunal, clearly justified the inference that the duty belongs to the Court next below it.

3D FEBRUARY, 1846.

C. O.
No. 103.

An instance having occurred where a Sudr Ameen has pleaded in justification of the existence of money transactions between himself and parties to suits on the File of his Court, that Sudr Udalut Circular Order, No. 41, A. dated 26th December 1836, had not, by any direct official intimation, been declared applicable to Native Judicial Officers above the rank of District Moonsiff, it is resolved now to direct that the several Sudr Ameens be informed, that by borrowing money from suitors in their Courts, they render themselves liable to dismissal from office.

28TH MARCH, 1846.

C. O.
No. 104.Revoked by
C. O.
No. 108.

1. As the judicial system in force under the provisions of Act VII of 1843, affords to the superior controlling authority no means of ascertaining by local examination, whether the provisions of Act XII of 1843 and the standing orders of the Sudr Udalut are observed by the Civil Judges within the jurisdiction of this Court, the Judges of the Sudr Udalut resolve to direct, that on the occasion of a Civil Judge forwarding the usual Half Yearly Civil Report, he shall henceforward submit with the prescribed Returns and Statements, the original Drafts of Decrees passed by himself in the six months embraced in the Report, which, after inspection, will be retransmitted to the Court to which they belong.

2. In modification of the rule contained in Foudaree Udalut Circular Order dated 11th October 1830, the Court of Sudr Udalut resolve further to direct, that the Report formerly submitted by Judges on Circuit regarding the originals of the Decrees passed by the Judges of the late Zillah and Auxiliary Courts, shall hereafter be made by the Civil Judges in their Half Yearly Civil Report, and that it shall embrace the judgments declared by the several judicatories within the jurisdiction of each Civil Judge.

18TH APRIL, 1846.

C. O.
No. 105.

The Court of Sudr Udalut resolve to circulate for the information of Officers within their jurisdiction, the opinion of the Advocate General concurred in by the Government, on a question recently raised by a Civil

Judge, as to the proper form to be observed by a Civil Officer in performing a marriage ceremony, so as to render the same legal.

"I have had more than once occasion to submit my opinion to Government that certain marriages, the solemnization of which have been conducted by persons not accredited by holy orders, are nevertheless valid in this country. This, however, is a point of law, surrounded by doubts and difficulties according to the circumstances of each individual's case, and I should hesitate in offering a *decided* opinion of the validity of such a marriage in any case, after the late judgment in the House of Lords in the case of a marriage by a Presbyterian Minister in Ireland, altho' I consider marriages in this country not to be involved in the principles of that decision."

"Under these circumstances I consider it highly inexpedient that Government should interpose its authority, directly or indirectly, for the purpose of stamping with its prospective sanction, marriages of this quality; and I therefore cannot advise that Government should suggest to its Officers any duty of performing such marriages, or any form of solemnization to be observed by them in so doing. It has been usual to read in such cases the form of marriage service set forth in the book of Common Prayer. But, neither that nor any other particular form of words is essential to such a marriage. It appears to me no great hardship, and to be recommended by every consideration, that, as Chaplains are generally accessible within a reasonable distance and within a reasonable time by Europeans of every class within the Provinces, Government and its Officers should decline their interposition to effect marriages thro' any other functionaries."

15TH MAY, 1846.

The demise of a District Moonsiff having brought to notice the omission of that Officer to draft Decrees in his own hand writing in the several Suits reported by him to have been decided on their merits, the Court of Sudr Udalut resolve to direct, that the several Civil Judges in this Presidency will require the monthly submission by the District Moonsiffs within their jurisdiction, of all Drafts of Decrees passed by them during the preceding month, in order to ascertain that they have been prepared in the manner prescribed by Law.

C. O.
No. 106.

14TH OCTOBER, 1846.

1. The attention of the Court of Sudr Udalut having been drawn to Circular Order No. 33, A, wherein the opinion is declared that suits founded on mortgages of more than twelve years' standing, are by law excluded from cognizance by District Moonsiffs, the Court, as now constituted, have carefully reconsidered the Circular Order in question and being of opinion, that the restrictions which it imposes are not clearly borne out by the Regulations quoted in their support, they resolve to cancel it.

C. O.
No. 107.

2. The Court observe that claims for houses, gardens, or other real property, are cognizable by District Moonsiffs under the provisions of Section XI, Regulation VI of 1816, which thus recognizes the competence of District Moonsiffs to adjudicate such claims, without specifying the title

18TH DECEMBER, 1845.

C. O.
No. 102.

An application having been made to the Sudr Udalut for instructions, whether, with reference to the provisions of Acts XIX and XX of 1841, it was incumbent on a Civil Judge personally to enter into an investigation of claims to certificates, preferred under the Acts quoted; or whether, within their immediate jurisdiction, it is not competent to a Subordinate Judge or Principal Sudr Ameen to conduct such enquiries; the Court declared the opinion, that the Judge of the Zillah alone possessed the authority necessary to make the investigations contemplated by the Acts adverted to, it appearing to the Court that the Appeal which in Section V, Act XX of 1841, is declared to lie to the Sudr Court, and the fact, that the references adverted to in Sections VIII and XIII, Act XIX of 1841, are to that Tribunal, clearly justified the inference that the duty belongs to the Court next below it.

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An instance having occurred where a Sudr Ameen has pleaded in justification of the existence of money transactions between himself and parties to suits on the File of his Court, that Sudr Udalut Circular Order, No. 41, A. dated 26th December 1836, had not, by any direct official intimation, been declared applicable to Native Judicial Officers above the rank of District Moonsiff, it is resolved now to direct that the several Sudr Ameens be informed, that by borrowing money from suitors in their Courts, they render themselves liable to dismissal from office.

28TH MARCH, 1846.

C. O.
No. 104.Revoked by
C. O.
No. 108.

1. As the judicial system in force under the provisions of Act VII of 1843, affords to the superior controlling authority no means of ascertaining by local examination, whether the provisions of Act XII of 1843 and the standing orders of the Sudr Udalut are observed by the Civil Judges within the jurisdiction of this Court, the Judges of the Sudr Udalut resolve to direct, that on the occasion of a Civil Judge forwarding the usual Half Yearly Civil Report, he shall henceforward submit with the prescribed Returns and Statements, the original Drafts of Decrees passed by himself in the six months embraced in the Report, which, after inspection, will be retransmitted to the Court to which they belong.

2. In modification of the rule contained in Foujdaree Udalut Circular Order dated 11th October 1830, the Court of Sudr Udalut resolve further to direct, that the Report formerly submitted by Judges on Circuit regarding the originals of the Decrees passed by the Judges of the late Zillah and Auxiliary Courts, shall hereafter be made by the Civil Judges in their Half Yearly Civil Report, and that it shall embrace the judgments declared by the several judicatories within the jurisdiction of each Civil Judge.

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"I have had more than once occasion to submit my opinion to Government that certain marriages, the solemnization of which have been conducted by persons not accredited by holy orders, are nevertheless valid in this country. This, however, is a point of law, surrounded by doubts and difficulties according to the circumstances of each individual's case, and I should hesitate in offering a *decided* opinion of the validity of such a marriage in any case, after the late judgment in the House of Lords in the case of a marriage by a Presbyterian Minister in Ireland, altho' I consider marriages in this country not to be involved in the principles of that decision."

"Under these circumstances I consider it highly inexpedient that Government should interpose its authority, directly or indirectly, for the purpose of stamping with its prospective sanction, marriages of this quality; and I therefore cannot advise that Government should suggest to its Officers any duty of performing such marriages, or any form of solemnization to be observed by them in so doing. It has been usual to read in such cases the form of marriage service set forth in the book of Common Prayer. But, neither that nor any other particular form of words is essential to such a marriage. It appears to me no great hardship, and to be recommended by every consideration, that, as Chaplains are generally accessible within a reasonable distance and within a reasonable time by Europeans of every class within the Provinces, Government and its Officers should decline their interposition to effect marriages thro' any other functionaries."

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14TH OCTOBER, 1846.

C. O.
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1. The attention of the Court of Sudr Udalut having been drawn to Circular Order No. 33, A, wherein the opinion is declared that suits founded on mortgages of more than twelve years' standing, are by law excluded from cognizance by District Moonsiffs, the Court, as now constituted, have carefully reconsidered the Circular Order in question and being of opinion, that the restrictions which it imposes are not clearly borne out by the Regulations quoted in their support, they resolve to cancel it.

2. The Court observe that claims for houses, gardens, or other real property, are cognizable by District Moonsiffs under the provisions of Section XI, Regulation VI of 1816, which thus recognizes the competence of District Moonsiffs to adjudicate such claims, without specifying the title

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2. In modification of the rule contained in Foujdaree Udalut Circular Order dated 11th October 1830, the Court of Sudr Udalut resolve further to direct, that the Report formerly submitted by Judges on Circuit regarding the originals of the Decrees passed by the Judges of the late Zillah and Auxiliary Courts, shall hereafter be made by the Civil Judges in their Half Yearly Civil Report, and that it shall embrace the judgments declared by the several judicatories within the jurisdiction of each Civil Judge.

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"I have had more than once occasion to submit my opinion to Government that certain marriages, the solemnization of which have been conducted by persons not accredited by holy orders, are nevertheless valid in this country. This, however, is a point of law, surrounded by doubts and difficulties according to the circumstances of each individual's case, and I should hesitate in offering a *decided* opinion of the validity of such a marriage in any case, after the late judgment in the House of Lords in the case of a marriage by a Presbyterian Minister in Ireland, altho' I consider marriages in this country not to be involved in the principles of that decision."

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15TH MAY, 1846.

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The demise of a District Moonsiff having brought to notice the omission of that Officer to draft Decrees in his own hand writing in the several Suits reported by him to have been decided on their merits, the Court of Sudr Udalut resolve to direct, that the several Civil Judges in this Presidency will require the monthly submission by the District Moonsiffs within their jurisdiction, of all Drafts of Decrees passed by them during the preceding month, in order to ascertain that they have been prepared in the manner prescribed by Law.

14TH OCTOBER, 1846.

C. O.
No. 107.

1. The attention of the Court of Sudr Udalut having been drawn to Circular Order No. 33, A, wherein the opinion is declared that suits founded on mortgages of more than twelve years' standing, are by law excluded from cognizance by District Moonsiffs, the Court, as now constituted, have carefully reconsidered the Circular Order in question and being of opinion, that the restrictions which it imposes are not clearly borne out by the Regulations quoted in their support, they resolve to cancel it.

2. The Court observe that claims for houses, gardens, or other real property, are cognizable by District Moonsiffs under the provisions of Section XI, Regulation VI of 1816, which thus recognizes the competence of District Moonsiffs to adjudicate such claims, without specifying the title

under which the claim is preferred; and the Court therefore think that a suit for the recovery of real property founded on a mortgage is legally as cognizable by a District Moonsiff, as if it were founded on a right of inheritance or on purchase.

3. The Court can perceive nothing in a suit founded on a mortgage, which should remove it from the jurisdiction of a District Moonsiff; and they can discover nothing in the nature of such a suit which renders it dangerous to the community to entrust it to the judgment of a Public Officer holding the high and responsible Office of District Moonsiff.

4. The fact that allusion is not made to suits on mortgage in the Section above quoted, is not, the present Court believe, to be considered to indicate that the Legislature did not contemplate the cognizance of such suits by District Moonsiffs; they rather hold the contrary opinion; and think, that the silence of the Law on the subject shews that no exception was intended.

6TH FEBRUARY, 1847.

C. O.
No. 108.

1. The Court of Sudr Udalut have resolved to revoke that part of the Circular Order No. 104, dated 28th March 1846, which requires the Civil Judges to forward with every half yearly Civil Report—the Original Drafts of the Decrees passed by them during the preceding six months.

2. Henceforth, it will be sufficient for the Civil Judges, on submitting those periodical Reports to the Sudr Udalut, to certify that the Decrees they have passed during the period under review, are all written in their own handwriting.

10TH FEBRUARY, 1847.

C. O.
No. 109.

1. Under the Circular Order of the Court of Sudr Udalut of the 4th October 1833, and the Circular Letter of the 29th May 1844, the Judicial Officers in the Provinces submit, in the month of January of each year, a statement of the services of each of the principal servants employed on their establishments.

2. These statements are found, in the majority of instances to be mere repetitions of proceeding Reports, and entail an unnecessary expenditure of time, labour and stationery in their preparation.

3. The Court of Sudr Udalut have therefore resolved to direct that the practice of submitting such statements be henceforth discontinued, and that the Courts do, in place of them, report by letter, in the month of January of each year, whether any and what alterations have occurred in their establishments during the preceding twelve months: and if any new servant have been appointed during the intervening period, to submit a statement regarding him of the nature indicated in the Circular Order above cited,

15TH FEBRUARY, 1847.

1. The Court of Sudr Udalut resolve, by a Circular Order, to direct that whenever the Courts in the Provinces shall, in execution of Decrees, contemplate the sale of Land of whatever description, they shall, immediately upon the Order of Attachment being made, direct the Government Vakeel to bring the circumstances to the notice of the Collector of the District, in order that that Officer may have an opportunity of offering any objections to the measure which the interests of Government may seem to require.

C. O.
No. 110.

2. The Courts will, on such occasions, notify to the Collector, the purpose for which the Attachment is made, and the date on which the Land will be offered for sale; and the Collector will offer his objections, if he have any, before such date: and the Courts will dispose of all such objections in conformity with the provisions of the General Regulations.

9th September 1847.

The Court of Sadar Adalat hereby notify to the Civil and Subordinate Judges, that the Most Noble the Governor in Council has been pleased to authorise Native Public Servants accompanying the Judges on their visits to the Stations of the District Moonsiffs, for the purpose indicated in the Circular Order of the Sadar Adalat, No. 50; to draw Batta equal to half the amount of their Salary for the period of their absence from the Station to which they may be attached.

Sadr
Adalat.
C. O.
No. 112.

15th December 1847.

1. The Circular Order of the Sudder Udalut of the 28th April 1828, is hereby cancelled.

Sudder
Udalut.
C. O.
No. 113.

2. The Court of Sudder Udalut resolve to notify that with reference to the provisions of Clause first, Section III, Regulation III of 1808, Clause first, Section III, Regulation III of 1822, and Act VII of 1843, the Government have determined that the nomination to vacancies in the situation of Town Cauzy in the Provinces shall be made by the Civil Judges, and that the confirmation shall rest with the Sudder Udalut, to whom all such nominations are to be submitted.

3. In each case of such nomination being confirmed by the Sudder Udalut, the Civil Judge will notify the circumstance to the Collector of the District.

105
12th February 1848.

The Court of Sudder Udalut having had reason to take into consideration the principle declared in the Circular Order of the Sudder Udalut under date the 16th July 1829, that a Decree cannot be altered in appeal to the prejudice of the Appellant, and being of opinion that the rule in question is opposed to justice and calculated to defeat the object for which Courts of Appeal are constituted, have resolved to rescind the Circular Order referred to, and to notify for the information and guidance of the several Judicial Authorities under this Presidency, that an appeal preferred by one of the parties concerned in a suit, brings the entire merits of the judgment passed by the lower Court before the Court of appellate jurisdiction which is competent to amend any error of which the Respondent in his answer may complain; a separate and formal appeal on his part being unnecessary for that purpose.

Sudder
Udalut.
C. O.
No. 114.

25th July 1849.

1. The Court of Sudder Udalt resolve, by a Circular Order, to direct the Judicial Officers in the Provinces, on every occasion of their availing themselves of the provisions of Section XXII, Regulation VII of 1809, to enter on the record of the cause, the reasons which may have induced them to have recourse to that measure.

2. The Court likewise resolve to point out that under the above cited provision, Judicial Officers are authorized to employ their Native Officers in taking down the depositions of witnesses, only in cases in which they may not have time to examine them, viva voce, themselves, and the adoption of that course may appear to them indispensably necessary for the speedy determination of such causes.

Sudder
Udalt.
C. O.
No. 115.

APPENDIX.

A

RULES FOR THE ISSUE OF STATIONERY.*

FORT ST. GEORGE, MAY 17TH, 1841,

The Military Board having been vested with authority to control the supply of Government Stationery, the following rules prepared by them, *Vide* G. O. date have been approved and passed by the Right Honorable the Governor in 30th Aug. 1808 Council, and are now published for general information.

1. Every Officer authorized to Indent for Stationery from the public stores, shall send to the Military Board a yearly Indent in duplicate according to the annexed form A, after it shall have been checked by the controlling authorities as at present directed.
2. The number of Assistants, Clerks, Section Writers, &c. by whom the Stationery is to be used, shall be separately and distinctly noted on the back of each Indent.
3. All Indents must be dispatched so as to reach the Military Board by the 15th October, excepting those from Officers authorized to Indent on payment, who will continue to draw the same after the 1st of May annually.
4. There shall be no deliveries on mere receipts, except for half yearly issues according to provisions of Article 5.
5. All Government Officers at the Presidency are to send half yearly, in January and in July, for their supplies of Stationery in part of their annual Indent, and the supplies to Officers in the Provinces will be forwarded from the Stationery Office at the periods above mentioned, and no other deliveries will be made, except on account of Articles which may not be in the Stationery Depôt at the time the half yearly Indent is supplied; and which can be applied for in the intermediate period, and drawn on a receipt specifying that such Articles are the balance due on the half yearly supply.
6. If, after the quantity sanctioned on the annual Indent has been supplied in full, an additional quantity of Stationery is absolutely required, an extra Indent should be submitted for sanction of the controlling authority with full explanation of the cause thereof.

Glasses for Ebony Inkstand,
Ebony Inkstand complete.
Wooden Do.
Pewter round Do.
Wedgewood Do.
Wooden sand Boxes
Wafers
Wafer Seals.
Ivory Folders.
Lead Flats.
Erasers.
Scissors.
Hones.
Strops.
Round ruler.
Flat Do.
Company's Seal.
Ivory Pounce Box.
Brass Compass.
Steel Do.
Japan Snuffer Trays.
Parallel Rulers.
Steel drawing Pens.
Snuffers.
Slates.

C. O. G. 22d February 1833.

7. The Articles noted in the margin will not be issued oftener than once in every five years, and Penknives every other year—These Articles being of a durable nature, shall only be indented for when actually required, but never before the period above specified, and shall then be supplied only in exchange for such as have become unserviceable or are otherwise satisfactorily accounted for. All articles reported to have been lost or broken shall be replaced at the expense of the party through whose carelessness the loss or injury may have occurred.

8. The Order published under date the 8th August 1836, directing that the use of Royal be substituted in all practicable cases for Imperial Paper in the preparation of figured statements and that Foolscap be substituted for Demy or larger size paper in correspondence, and also that Pewter Round Inkstands and Wooden Sand Boxes be indented for the use of the Writers, and Ebony Inkstands for the Heads of Departments, should be strictly attended to.

A great saving to the state if carried into effect in all offices.

9. Europe paper should not be used for covers of Letters, but brown Country or Cartridge paper exclusively employed for this and other purposes to which it may be applied without inconvenience.

10. Officers authorized to indent for Stationery on payment will continue to draw the same annually and will transmit in the first instance their Indents in duplicate to the Military Board from 1st May in each year, and after they are passed by that authority it will be forwarded to the Superintendent of Stationery, who will notify the price, &c. of the articles to the Indenting Officers, to enable them to remit the amount and obtain the supply, and no supply will ever be allowed to be drawn in arrears.

G. O. G.
22d Feb. 1833.

11. Indents prepared without attention to the foregoing Rules will be returned.

12. All Public Officers immediately on receiving a supply of Stationery are to forward receipts in duplicate for the same.

G. O. G.
22d Feb. 1833.

13. In every Office an account shall be kept of the daily issue of Paper to the copyists, &c. and they shall be required to account for the quantity so issued.

14. Officers in the Provinces who have subordinate Departments under their control, or separate Offices dependent on them, will include in their own annual Indent the quantity of Stationery which may be required for their use.

15. Correspondence on the subject of Stationery is in all cases to be addressed to the Superintendent of Stationery, who will refer any point in dispute to the Military Board for decision.

16. The articles enumerated in the following list only will be issued from the Stationery stores, others which may be required are to be indented for on the Commissariat Department, or the Arsenal, as the case may be.

17. The Depot of Stationery has been removed into the Arsenal, and placed under the immediate charge of the Principal Commissary of Ordnance, to whom the Military Board will issue such orders for his guidance as may appear from time to time necessary.

List of Articles that will be issued from the Stationery Depot.

Antiquarian
Double Elephant
Imperial
Royal
Medium
Round camel hair Pencils
24 Inches parallel Rulers
18 do parallel do
15 do parallel do
9 do parallel do

Demy
Folio Post
Foolscap
King's Arms
Quarto Post
Octavo do
Blotting
Blue Royal
Water marked paper for Bills of Exchange
Water marked paper for notes of Tanjore debts
Marble Paper
Bills of Lading
Royal Books } leather bound
Medium do }
Demy do }
Marble Books
Memorandum Books
Parchment
Vellum
Message Cards
Quills
Desk Penknives (Ivory handles)
Wafers
Black Ink Powder
Red Ink Powder
Black lead Pencils
Red lead Pencils
Indian Rubber
Pounce
Ebony Inkstand complete
Glasses for Ebony Inkstand
Red Ink Glasses
Wooden Inkstand complete
Wedgewood Inkstand
Pewter round Inkstand complete
Indian Ink Sticks

Sponges
Steel drawing Pens
China Paper
Country cartridge Paper
Country Demy do
Country Foolscap do
Paste Boards
Lead Flats
Ivory Folders
Cotton thread for Wicks
Wafer Seals
Round Rulers
Flat do
Sand Boxes
Tin Funnels
Needles
Country Sand
White Tape Rolls
White Tape Pieces
Black Sealing Wax
Red Sealing Wax
Silk thread of Colours
Ribands of Colours
Europe Thread
Wax Cloth
Long Line
Mats
Bengal Twine
Twisted Cotton
Gum
Glue
Panjum Cloth
Pin Papers
Brass Company's Seat
Glasses for Pewter round Inkstand
Japan Ink Bottles
Erasers
Scissors
Hones
Strops
Slates
Slate Pencils
Brass Compass
Steel Compass
Pounce Boxes
Snuffers
Japan Snuffer Trays
Colour Boxes

Mathematical Instrument Cases
 Hair Pencils and Sticks
 Flat camel hair Pencils in tin as-
 sorted
 Super Royal Folio Bible R, C. co-
 vered
 English Pica 8vo Testament 1st sort
 English Long Primer 12mo Testa-
 ment 2nd sort
 English Brevier 12mo Testament 3d
 sort

English Pocket Testament 4th sort
 Folio Bible, Demy size in calf, letter-
 ed and grained
 Folio Prayer, Demy size in calf,
 lettered and grained
 Quarto Books of office for the Altar.
 Demy size
 Octavo Prayer, Demy size
 Octavo Bible, Demy size, in calf
 Quarto Prayer, Demy size, in calf
 Octavo Books of office, in calf

FORM.

Indent for Stationery and Sundries required for the use of the
 for the year 1841.

Description of Articles.	Quantity on hand 1st January of last year.	Supply of last year.	Used in last year.	Quantity on hand 1st January of this year.	Supply required this year.	Explanation.	Remarks of the con- trolling authority.

B.

To

11th July 1842.

The Four Provincial Courts.

GENTLEMEN.

Vide C. O.
 dated 25th June
 1819 and 28th
 June 1834.

I am directed by the Court of Sudder Udalut to request you will intima-
 te to the several Zillah and Assistant Judges within your jurisdiction,
 that as all absence from the station of the Court must, under the orders
 of Government of the 16th November 1841, be immediately reported to
 the Court of Sudder Udalut, the similar half yearly and quarterly state-
 ments required by the Circular Order of the 25th June 1819, and the
 orders of the Sudder Udalut of the 28th June 1834, may be dispensed with.

C.

To

THE REGISTER TO THE COURT OF SUDR UDALUT.

SIR,

I am directed to acknowledge the receipt of your letter of the 30th of November with the proposed rules therewith submitted for the custody of money and securities paid into the several Courts of Justice under this Presidency. The Governor in Council considers the rules to be extremely judicious and well adapted to attain the object in view. They will accordingly be printed and circulated for the guidance of the several Courts of Justice, and the several Collectors, having their Treasuries at the Court Stations, will at the same time be instructed to receive in deposit from the Registers of the respective Courts any sums in even hundreds amounting to not less than one thousand rupees, such deposits will be delivered either in sealed bags or otherwise as the Collectors and Registers may from experience find most expedient.

I have the honor to be,

Sir,

Your most obedient Servant,

(Signed) D. HILL.

FORT ST. GEORGE. }
 9th February. 1819. }

Rules for the Custody of Monies and Securities for Money paid into or deposited in the Treasuries of the Courts of Udalut under the Presidency of Fort St. George.

1. The European Register of each Court of Udalut shall be the treasurer of the Court, and shall have the responsible custody of all monies or securities which may be paid in or deposited either in conformity with the general provisions of the Regulations, or under any special order of the Court of which he is the Register, or of a Superior Court.

2. The Register shall keep the public money and securities in an iron chest secured by two locks of different construction. The Key of one lock shall be kept by the Register, and the Key of the other lock shall be in charge of the Shroff, but the responsibility of the Shroff shall extend only to the ascertaining of the goodness of all coin received into the Court's treasury. As no coin is to be received into the Treasury of the Court until it has been duly examined by the Shroff, and none paid out but in his presence, he will be held answerable for the amount of any base money which he may have passed and allowed to be received, and if there should be reason to believe that he passed the same knowing it to be bad, it will be the duty of the Register to take the necessary steps for bringing the matter to the cognizance of the Criminal Judge in order that the Shroff may be committed for trial before the Court of Circuit.

3. It being the duty of the Sheristadar of a Court of Udalut to keep the accounts of the Court, and faithfully to enter all sums received or paid by or for the use of parties in suits before the Court, either on account of fees to Government, or to the Vakeels, or on account of security to be lodged, or in satisfaction of decrees or orders of Court, and to calculate and certify to the Court, the correct amount of all fees and costs, the responsibility of the Sheristadar shall be held to extend no farther than to the correctness of such accounts and calculations, and the

attestation of the Sheristadar to the receipts which are to be given by the Treasurer of the Court, as prescribed in Regulation XIV of 1816, shall not be considered as imposing upon the said Sheristadar any responsibility for the safe custody of such deposits, nor as exonerating the Register from such responsibility.

4. The Registers of the Zillah and Provincial Courts of Udaltut which are fixed in the same place where the Collector of the District is stationed, are permitted to deposit with the Collector, who shall give receipts for the same, any sums in even hundreds not less than _____, as well as any securities for money to be kept by the said Collector and drawn out by the Register as may be required. In all such cases books will be kept by the Registers of such Court, in which will be entered all the payments or deposits made, and all sums drawn out or securities received by the said Registers, in account with the said Collectors. Counterparts of these books will be kept by the Collectors, and the same are to be closed and balanced at the end of each fiscal year, and each year's account so closed and balanced is to be signed by the Register, and by the Collector or his assistant. It is to be clearly understood that such deposits are not to be entered by the Collectors as payments into the Company's Cash nor to be at his disposal in any way—but are to be kept distinct and to be held at the disposal only of the Register of the Court who has deposited the same and are to be paid and delivered over on the application and receipt of the said Register.

D.

Extract from the Proceedings of the Sudder Udaltut under date the 30th May 1840.

Vide C.O. dated
30th May 1840.

Para 13. But as it would seem that the instructions of the Judges of the Court of Sudder Udaltut in relation to the preparation of the Quarterly Statements have been in various instances misunderstood, and it appearing advisable to check the abuses reported by the Acting Zillah Judge which are calculated to vitiate the returns on which a judgment of the efficiency of the agency of the District Moonsiffs depends. The Court of Sudder Udaltut have resolved to direct that in the numerical Statements of suits decided, two additional columns be added, the one shewing the number of suits that have been decreed or decided on the admission of the Defendants, the other the number of decrees that have been passed on the Razeenamahs filed by the parties.

14. It will be clearly understood that no suits will be entered in the abstracts of suits "decreed on their merits" but such as shall have been decided after an examination into their merits.

Ordered that Extract from these Proceedings Paras. 13 and 14 be sent to the 4 Provincial Courts of Appeal to be by them communicated to the several Judges, Assistant Judges and Principal Sudder Ameens within their several jurisdictions for their information and guidance.

E.

The Right Honorable the Governor in Council directs, in modification of Para. 26 of the Rules for promoting regularity and despatch of business, published in the Official Gazette of the 23d November 1833, page 843, that all letters, with their enclosures, addressed to Government by Public Officers or by one Department to another, may be docketed according to the annexed Forms:—

FORT ST. GEORGE, August 9 1842. *

Form to be observed in Endorsing letters.

_____ 1842, _____ Dep.

From

Secretary to Government at Fort St. George.

To

Secretary to Government _____ Department

Dated _____

Received _____

No. of letter

Enclosures 1, 2 or 3 (as the case may be

No.

Subject.

Form to be observed in endorsing Enclosures.

1842 Department.

No. 1, 2 or 3 of the Enclosures (as the case may be)
In a letter from the Secretary to Government Fort St. George dated _____

Vide C.O. dated
9th Sept. 1830—18

No.

No.

From _____

To _____

Subject.

Published by order of the Right Honorable the Governor in Council.
(Signed)

ROBERT CLERK,

Acting Chief Secretary.

F.

FORT ST. GEORGE, July 28, 1835.*

Vide C.O. dated
31st Jan. 1833.

The Right Honorable the Governor in Council is pleased to notify that hereafter on all occasions when the period allowed for the employment of temporary establishments is not specially stated at the time of sanction, such sanction shall be considered to extend to six months only at the expiration of which period if the establishment be still required, the case must be again submitted for the orders of Government and if sanction be not renewed the establishment will be disallowed by the Audit Office.

G.

FORT ST. GEORGE, December 4, 1832†

Vide C.O. dated
2d April 1834.

The Right Honorable the Governor in Council is pleased to resolve that the practice of defraying the Contingent Charges of Public Offices out of fines, stoppages of pay, or other similar sources, be strictly prohibited; and it is hereby notified that any Public Officer, Civil or Military, at the Presidency or in the Provinces, who shall infringe this rule, will incur the severe displeasure of Government. All fines levied by Magistrates or other functionaries, Civil or Military, vested with Judicial powers, are to be paid into the Public Treasury of the District or Station at the end of each month; and all stoppages of pay or other receipts from similar sources are to be deducted from the amount of the monthly abstract of the office to which they belong. All fines, stoppages, &c. now in deposit in any Public Office, Civil or Military, are to be paid into the General Treasury at the Presidency or into the Treasury of the District or Station in the interior, as the case may be, immediately on the receipt of this order.

All Public Officers are strictly prohibited from incurring charges without the previous sanction of Government in cases which admit of an estimate being made, and are not of an emergent nature; and they will be held personally responsible for disbursements made in such cases without the requisite sanction. This order is not to be considered applicable to disbursements required to be made under any special provision of the Regulations.

Collectors are authorized at their discretion to incur charges for contingencies to the amount of 20 Rupees without a previous application for sanction—such charges are hereafter to be submitted to the Board of Revenue for audit *quarterly*, when it is to be understood they will be strictly scrutinized, and will not be passed unless they are shewn to have been necessary. It is also to be understood that charges within the limit of 20 Rupees are not to be incurred repeatedly on the same account without sanction.

* Page 479. Fort St. George Gazette for 1835.

† Page 889. Fort St. George Gazette for 1832.

In cases of emergency Collectors must of course make such disbursements as are immediately necessary for the public service, but they are required to report to the Board of Revenue the charges incurred in such cases, with a full explanation of the circumstances, for the special orders of Government within the month in which the charges are incurred.

H.

GENERAL ORDERS BY THE RIGHT HONORABLE THE GOVERNOR IN COUNCIL.

FORT ST. GEORGE, 31st July 1838.

The Right Honorable the Governor in Council is pleased to publish No. 128 of 1838. the following Regulations for the Engineer Department in the Provinces under this Presidency.

JUDICIAL BUILDINGS.

Vide C. O.
No. 45 A

1. All Officers proposing the repair or construction of Judicial Buildings, shall in the first instance, submit a report on the subject to the Court of Sudr Udalut for their information, who if necessary, will communicate with Government on the subject, and when works proposed are approved of, the Judicial Officer will receive authority, to call upon the Civil Engineer, to prepare the necessary Plans and Estimates for transmission to the Sudr Court, by whom they will be forwarded to the Department of Public Works for examination and check, and eventual submission to Government.

2. The estimates, when sanctioned, will be forwarded to the Collector, under whose orders the work will be executed, subject to the supervision of the Civil Engineer.

3. All Bills shall be forwarded for sanction, through the channel of the Civil Engineer, to the Department of Public Works.

4. The charge of Judicial Buildings shall be vested in the Judicial Officer.

5. The Dead stock account of Judicial Buildings shall be kept by Collectors.

I.

Order of Government dated 28th September 1838.

No. 974.

Vide C. O.
No. 45 A.

Para 2. His Lordship in Council approves of the suggestion of the Sudr Udalut contained in para 3 of the Register's letter of the 19th Instant, and accordingly in modification of the Regulations for the Engineer Department published at page 530 of the Official Gazette for the Current year, grants a general authority to the Covenanted Judicial Officers to cause inconsiderable and obviously emergent repairs of public property under their charge to be executed, without previously obtaining special sanction.

(Signed) H. CHAMIER,
Chief Secretary.

J.

To

23d December 1846.

The Civil Judges and Agents.

SIR,

I am desired by the Judges of the Sudder Udalut to intimate for your information, and communication to the Officers within your jurisdiction, whom it may affect, that on the 3d Instant, the Government were pleased to resolve that the orders of the 27th September 1845, No. 717, Judicial Department, authorizing a travelling allowance of 4 annas per mile to Native Judicial Officers deputed on duty, and a deduction to that extent from the salary of the Absentee—are to be considered as superseded by the new Rules regarding the absence on leave of servants "not in the Covenanted service of Government."

Dated 24th July
1846.

INDEX

TO

THE CIRCULAR ORDERS

OF THE

COURT OF SUDR UDALUT.

A	PAGE	
ABSENCE		
From duty—rule respecting— 21st August 1817.....	14	
Half-yearly report required of the absence of any Judge and Register, 25th June 1819..	16	
Judicial Officers to report through the Sudr Udalut, the date of their leaving and re- turning to their stations, 10th May 1824.....	25	
Circular Order No. 50.....	146	
—Temporary of an Assistant Judge from his station—the Zillah Register to be deputed to take charge of Auxiliary Court, 26th March 1827....	40	
Zillah Judges to specify in the letters accompanying the Quarterly Civil Reports, the period of their absence dur- ing the quarter, 28th June 1834, A.....	123	
—Of Native Judicial Officers on leave—rule respecting their salary. Circular Order Nos. 30 and 54.....	136, 147	
Leave of—to District Moonsiffs for a period exceeding 3 months, not to be granted without the sanction of Pro- vincial Courts—and leave for a period exceeding 6 months, shall require the previous sanction of Sudr Udalut. Cir- cular Order No. 65.....	152	
Principal Sudr Ameens, Sudr		
Ameens and District Moon- siffs authorized occasionally to absent themselves from their Stations for 5 days with- out loss of allowances. C. O. No. 98.....	172	
ABSTRACT		
—Is expected at the foot of the Civil Report when a District Moonsiff deviates from the order of his file, explaining the motives of the deviation, 23th September 1824, B....	29	
All letters to be accompanied by an abstract of their con- tents—9th Sept. 1830, B..	93	
—To be written upon the backs of the letters themselves, 30th September 1830.....	94	
ABSTRACT NUMERICAL		
See Reports Civil Quarterly.		
ABSTRACT REGISTER		
See Reports Civil Quarterly.		
ABSTRACT STATEMENTS		
See Statements.		
ACCOUNTS		
Suits involving examination of —parties recommended to go to Arbitration — Order of Court to be entered on record.		

3d April 1815.....	11	AMEEN PRINCIPAL SUDR
—Of Courts how to be kept—		
Circular Order No. 7.....	127	See Principal Sudr Amcen.
—of monies, under official cus-		
tody, to be submitted half-		
yearly to the S. U. by Officers		
in charge of Judicial Treasu-		
ries C. O. No. 95.....	171	
ADJOURNMENT		
Of Zillah Court does not affect		
the Courts of District Moon-		
siffs—rules respecting—23d		
February 1818.....	16	
Appeals and other acts requir-		
ed to be done within a fixed		
period, which may expire		
during—30th Nov. 1831....	104	
—Of Sudr Amcen's Court—		
during the adjournment of		
Zillah Court. Circular Or-		
der No. 72.....	156	
ADMONITION		
—To Sudr Amcens, failing in		
effect—Zillah Judge how to		
proceed, 20th Sept. 1824, B..	28	
AFFIDAVIT		
See Declaration.		
—To be made by parties to se-		
curity Bonds, 10th Sept. 1832.	101	
ALLOWANCES		
—Of Acting District Moonsiffs		
—rule respecting—5th Mar.		
1829.....	60	
Circular Order No. 26.....	135	
—Of persons acting in a Subor-		
ordinate Native Judicial Situ-		
ation during the absence on		
leave of the permanent in-		
cumbent. Circular Order No.		
26.....	ib.	
Circular Order No. 30.....	136	
Circular Order No. 54.....	147	
—for travelling to be drawn by		
Sudr Amcens and District		
Moonsiffs, when deputed to		
act at a distance from their		
Stations. C. O. No. 99.....	173	

AMEEN PRINCIPAL SUDR

See Principal Sudr Amcen.

AMEEN SUDR

—Deciding less than 20 suits in		
the month, must shew satis-		
factory cause, explanation to		
be sent with the Civil Re-		
ports, 20th September 1824, B.	29	
Admonition failing in effect—		
Zillah Judge how to proceed,		
20th September 1824, B.....	ib.	
Zillah Judge to refer suits from		
his file to,—or call up suits		
from the nearest Districts		
Moonsiffs, whose files may be		
large and in arrear, 20th Sep-		
tember 1824, B.....	ib.	
Number of Appeals from deci-		
sions of—to be shewn in the		
Quarterly Civil Reports, 12th		
March 1825.....	33	
Rules respecting the transfer		
of suits from the files of the		
District Moonsiffs, for trial		
by—1st July 1825.....	36	
The reference of Appeals from		
decisions of District Moon-		
siffs, to Sudr Amcens, should		
in all practicable cases be		
avoided, 22d, January 1829..	59	
Institutions to be issued to—		
that certain Regulations re-		
scinded under Regulation IX		
of 1828, are to remain in force		
as rules of office, 18th Feb-		
ruary 1829.....	60	
—May in certain cases, refer a		
cause back to a District		
Moonsiff with orders to take		
further evidence and pass a		
new decree, 15th Feb. 1830, B.	88	
Law Officers to be employed as		
—25th October 1830.....	94	
To send with the records of the		
suits before him, the original		
draft of the decrees, in his		
own handwriting, 20th May		
1831.....	99	
Numerical Statement of suits		
decided by—to accompany		
quarterly Civil Reports. Cir-		
cular Order No. 2.....	125	

Acting—rule respecting the sa-		
lary of—Circular Order No.		
26.....	135	
Circular Order No. 30.....	136	
—Forfeits during his absence on		
leave, one-half of his allow-		
ance. Circular Order No. 26.	135	
Circular Order No. 54.....	147	
—Court to be adjourned during		
the adjournment of Zillah		
Court. Circular Order No.		
72.....	156	
A review of judgment is allow-		
able, when decree has been		
passed by—Circular Order		
No. 78.....	159	
—May sign his name in English		
or in any other character in		
full, and to use only one cha-		
acter on all occasions. C. O.		
No. 83.....	161	
—Strictly forbidden declaring		
in open Court, judgments		
drawn up under his dictation		
by his Ministerial Subordin-		
ates, and recording their pur-		
port in the Diary previous		
to the preparation in his own		
handwriting of the required		
Decrees. C. O. No. 89.....	168	
—Required to write in his own		
handwriting, so much only		
of the Decree as consists of		
the points to be decided, the		
decision thereon, and the rea-		
sons for the decision. C. O.		
No. 90.....	168	
—Authorized occasionally to		
absent himself from his Sta-		
tion for 5 days, without loss		
of allowance. C. O. No. 98..	172	
—Authorized to draw a travell-		
ing allowance, when deputed		
to act at a distance from his		
Station. C. O. No. 99.....	173	
Regulation XIX of 1802, ex-		
tended to—C. O. No. 101..	173	
—Borrowing money from Sui-		
tors in his Court, liable to dis-		
missal from office. C. O. No.		
103.....	174	

APPEAL

See Suit Appeal.

APPEAL PETITION

See Petition.

Appealant

See Suit Appeal.

ARBITRATION

Suits involving the examination
of Accounts—parties recom-
mended to go to—Order of
Court to be entered on record,
3d April 1815..... 11

ARREARS

—Of revenue, persons in con-
finement for—form of half-
yearly statement of—18th
January 1829..... 58
28th December 1829..... 84
—Of revenue, recoverable un-
der Regulations XXVII and
XXVIII of 1802—explana-
tion regarding, 20th July 1829 65

ARREST

On the issue of process of—
against persons within the li-
mits of Supreme Court, 4th
August 1814..... 8
5th January 1841..... 158
14th June 1841..... 159

ASSESSMENT

—Of costs.
See Costs.

ASSISTANT JUDGE

See Judge Assistant.

ATTACHMENT

Rules relative to the surplus
funds of Estates, under—
17th August 1829..... 69
28th February 1831..... 96
Property placed under—in ex-
ecution of a decree, found to

be mortgaged, case in which it may be sold, 16th November 1829.	80
Of Property in execution of process of Court—mode of proceeding in respect to claims put into such property, 23d February 1831.	96
Of Property of defendants—in cases of failure of producing security. Circular Order No. 63.	150

ATTESTATION

Of Mooktearnamahs, Vakalutnamah, Ziminees, &c., 10th December 1805.	1
22d February 1815.	11

AWARD

Of Punchayet.	
See Punchayet.	

B

BANGHY

See Tappal.

BATTA

To peons in suits struck off the file under Regulation VI of 1831, 27th October 1831.	103
To peons charged with the service of processes issued from District Moonsiff's Courts-regulated C. O. No. 84.	161

BOND

Executed before promulgation of Regulation II of 1825, how affected by it, 24th January 1828.	49
District Moonsiff cannot grant copies of—as legal vouchers, 30th May 1829.	62
Bearing a higher rate of Interest than 12 per cent. per annum, how affected by Regulation II of 1825, 28th January 1830, B.	87

Of which the amount exceeds the sum cognizable by the Court—question respecting recovery of an instalment, 9th September 1830, A.	92
Circular Order, No. 40.	140
Security—Affidavit to be made by parties to—10th September 1831.	101

BRITISH SUBJECTS.

European—relative to their residence in India, and institution by them, of suits in the Zillah Courts.	
5th Mar. 1832.	107
20th February 1833.	112
10th June 1834.	123
European deceased—rules respecting the charge of their Estates.	
22d November 1833.	118
12th May 1834.	120

BUILDINGS.

Public—rules regarding—8th June 1829.	63
Public—rule regarding the preparation of estimates for their repair, &c.	
Circular Order No. 22.	133
Circular Order No. 37.	140
Circular Order No. 43.	143
Circular Order No. 45.	144

C

CAUSE

See Suit.

CAZEE

Town—vacancies in the situation of—to be filled up by the Provincial Courts on the recommendation of the Zillah or Assistant Judges, 28th Apr. 1828.	54
Town—as to the power and privileges appertaining to the office of. Circular Order No. 75.	158

CEYLON

Evidence of witnesses in—how to be obtained, 18th May 1827.	46
---	----

CHARGES

For temporary establishments—rule respecting—21st January 1833.	112
Incurred without the previous sanction of Government—rule respecting. Circular Order No. 21.	133

CHARGES CONTINGENT

See Contingent Charges.

CIRCULAR ORDER

Of 10th December 1805, explained, 22d February 1817.	11
Of 10th May 1814, attention called to—21st Feb. 1815.	10
Of 20th September 1824, B. modified, 12th March 1825.	32
Of 10th September 1829—error in statement which accompanied it rectified, 29th October 1829.	76
Of 5th October 1829—question connected with—settled, 24th December 1829.	83
B.	
Of 8th January 1829—additional entry required in form 6, 28th December 1829, A.	84
Of 5th October 1825—the notification therein directed to be republished, 15th February 1832.	107
Of 10th May 1814, 21st February 1815, and 31st December 1832—modified. Circular Order No. 4.	125
Of 16th November 1829—explained. Circular Order No. 6.	126
No. 44—cancelled. Circular Order No. 47.	145
Nos. 26 and 30—considered applicable to the case of	

Principal Sudr Ameens—and Law Officers of Sudr Udalut. Circular Order No. 54.	147
Of 16th November 1831, annulled by Sec. III Act XII of 1843, C. O. No. 90.	168
No. 80, explained, C. O. No. 91.	169
The prohibition contained in C. O. No. 41 A—extended to Sudr Ameens, C. O. No. 103.	174
No. 33 A—cancelled, C. O. No. 107.	175
Such part of C. O. No. 104, as required the Submission with Half yearly civil Reports, of the drafts of Decrees passed by Civil Judges—revoked, C. O. No. 108.	176
Of 4th October 1833, revoked C. O. No. 109.	176

CLOTH

Form of Indent for—3d November 1828.	57
--------------------------------------	----

COLLECTOR

To receive all sums tendered by Zillah Judge on account of fees of the Vakeels of Sudr Udalut, 15th November 1806.	2
Authority of a Court to require the production of documents in custody of—17th June 1824.	26
Receiving deposit of money from a Register, is to give a specific receipt for it, 10th August 1826.	38
All suits against—should be decided by the Zillah Judge himself, 28th February 1827.	40
Case in which Land paying revenue to Government can be sold by District Moonsiffs in satisfaction of Decrees without the intervention of the—16th August 1827.	46

	PAGE
—Submitting his opinion to the Provincial Court (as to a charge of partiality against one or more members of a Punchayet) parties affected by that opinion, cannot claim a copy of it on stamp paper, 3d April 1828.	52
—His decision under Section XI, Regulation V of 1822, does not bar an original regular suit, to try the proprietary right to lands or crops, 23d April 1828.	53
—His opinion and proceedings submitted to Provincial Court under Clause 1st, Section IX, Regulation XII of 1816, not considered as a suit, 8th May 1828.	54
—To provide accommodation for District Moonsiff's Courts, at the public expense, 7th December 1829.	81
When Estates are placed under the management of Collectors, by order of Provincial, Zillah, or Auxiliary Courts, communication to be made to the Revenue Board through Sudr Udalt, 27th Dec. 1830, B.	95
—Should comply with all requisitions for the refund of monies received from the Courts, under the orders of the Provincial Courts, or of Sudr Udalt. Circular Order No. 8.	127
—His decision under Clause 4th, Section IV, Regulation V of 1822, cannot be stayed, pending an appeal therefrom preferred to Zillah Judge. Circular Order No. 56.	148
—Is not liable to be made a Defendant in appeal suits against his Judicial decision, passed under Regulation V. of 1822. Circular Order No. 61.	149

COMMISSION

To Deputy Register of Sudr

	PAGE
Udalut to examine witnesses	
—form of—30 April 1821.	17
—for examination of absent witness under Act VII. of 1841—form of—C. O. No. 85.	162
COMPENSATION	
—For translations of Judicial proceedings, not to exceed 1 Rupee for every 300 words of the original, 16th June 1828.	55
CONSTRUCTION	
Of Clause 5th, Section XII. Regulation IV. of 1802, 24th May 1808.	3
—Of Section III. Regulation XVII. of 1802, 22d Feb. 1815.	11
—Of Regulations—all references respecting, to be forwarded to Sudr Udalt thro' the Provincial Courts—accompanied with their opinion, 17th February 1824.	23
Excepting in cases under Section II. Regulation XXII. 1802, 11th December 1824.	32
—Of Section V. Regulation II. 1802. Circular Order No. 64.	152
—Of Section X. Regulation II. of 1802, 23d April 1828.	53
—Of Section III. Regulation III. of 1802, 29th Aug. 1831.	100
—Of Section V. Regulation III. of 1802, 28th January 1833.	112
—Of Section VI. Regulation III. of 1802. Circular Order No. 16.	131
—Of Section VII. Regulation III. of 1802, 17th June 1824.	26
—Of Section XII. Regulation III. of 1802. Circular Order No. 70.	155
—Of Clause 1st, Section XVI. Regulation III. of 1802. Circular Order No. 73.	157
—Of Clause 5th, Section XII. Regulation IV. of 1802. 24th May 1808.	2
—Of Section XVIII. Regulation IV. of 1802, 27th August	

	PAGE		PAGE
1829.	72	tion VI. of 1816, 30th May 1829.	62
—Of Section VI. Regulation V. of 1802, 21st October 1825.	37	—Of Clause 1st, Section XII. Regulation VI. of 1816, 30th May 1829.	62
—Of Clause 7th, Section X. Regulation V. of 1802. Circular Order No. 27.	135	—Of Section XLVI. Regulation VI. of 1816, 16th Aug. 1827.	46
—Of Section XVI. Regulation V. of 1802, 27th Aug. 1829.	73	—Of Section LIV. Regulation VI. of 1816, 1st July 1825.	36
—Of Regulation XVII. of 1802, 22d February 1815.	10	—Of Section LXI. Regulation VI. of 1816, 16th Aug. 1827.	46
—Of Regulation XXV. of 1802, 16th August 1827.	46	—Of Section XI. Regulation VIII. of 1816, 22d Jan. 1829.	59
—Of Section VIII. Regulation XXV. of 1802, 17th September 1832.	110	—Of Regulation XII. of 1816, 28th February 1828.	51
—Of Section III. Regulation XXVI. of 1802, 17th September 1832.	110	—Of Clause 1st, Section IX. Regulation XII. of 1816, 8th May 1828.	54
—Of Section IV. Regulation XXVI. of 1802, 16th August 1827.	46	—Of Clause 2d, Section XII. Regulation XIII. of 1816, 8th January 1829, A.	57
—Of Section XI. Regulation XXVI. of 1802, 11th Oct. 1827.	48	30th May 1829.	62
—Of Regulation XXVII. of 1802, 20th July 1829.	65	—Of Section XIII. Regulation XIII. of 1816, 15th Feb. 1828.	50
—Of Regulation XXVIII. of 1802, 20th July 1829.	65	—Of Section XII. Regulation XIII. 1816, 6th May 1824.	25
—Of Regulation XXXIV. of 1802, 23d June 1829.	64	8th January 1829, A.	57
—Of Regulation III. of 1808. Circular Order No. 75.	158	—Of Section XXX. Regulation XIII. of 1816, 30th May 1829.	62
—Of Section V. Regulation IV. of 1809, 22d November 1833.	118	—Of Section XXII. Regulation XIV. of 1816, 5th Nov. 1829, A.	76
—Of Section XI. Regulation XII. of 1809, 29th Aug. 1831.	100	—Of Clause 2d, Section IV. Regulation XV. of 1816, 15th August 1838.	116
—Of Clause 1st, Section IV. Regulation II. of 1811. Circular Order No. 63.	150	—Of Section VI. Regulation XV. of 1816. Circular Order No. 78.	159
—Of Section VII. Regulation II. of 1811, 21st Feb. 1828.	51	—Of Section X. Regulation XV. of 1816, 14th September 1832.	110
—Of Section XXIII. Regulation IV. of 1816, 24th December 1829, C.	83	—Of Clause 3d, Section X. Regulation XV. of 1816. Circular Order No. 62.	150
—Of Clause 6th, Section XI. Regulation VI. of 1816. Circular Order No. 33, A.	138	—Of Section XIV. Regulation XV. of 1816. Circular Order No. 5.	126
—Of Clause 2d, Section XV. Regulation VI. of 1816, 9th December 1825.	37	—Of Clause 9th, Section XIV. Regulation XV. of 1816. Circular Order No. 9.	128
—Of Clause 2d, Section XXVI. Regulation VI. of 1816, 15th February 1830.	88	—Of Clause 2d, Section XV. Regulation XV. of 1816, 24th December 1817.	15
—Of Section XXXV. Regula-		9th December 1825.	37

PAGE	PAGE
—Of Clause 1st, Section IV. Regulation VII. of 1818, 30th June 1825.	35
—Of Clause 2d, Section V, Regulation VII. of 1818, 30th June 1825.	ib
—Of Clause 4th, Section V. Regulation VII. of 1818, 30th June 1825.	ib
—Of Section VI. Regulation VII. of 1818. Circular Order No. 60.	149
—Of Section XI. Regulation VII. of 1818. Circular Order No. 29.	136
—Of Regulation III. of 1822, 30th June 1825.	35
Circular Order No. 36.	139
—Of Clause 2d, Section II. Regulation V. of 1822. Circular Order No. 56.	148
—Of Section IV. Regulation V. of 1822. Circular Order No. 56.	148
—Of Section XI. Regulation V. of 1822. Circular Order No. 56.	148
—Of Section XVI. Regulation V. of 1822, 23d April 1828. Circular Order No. 56.	148
—Of Section II. Regulation I of 1823. Circular Order No. 12.	130
—Of Section II. Regulation II. of 1823, 15th August 1833.	116
—Of Regulation II. of 1825, 30th May 1829.	62
26th January 1830, <i>B</i>	86
—Of Clause 1st, Section III. Regulation II. of 1825, 24th Jan. 1828.	49
—Of Section IV. Regulation II of 1825, 24th January 1828.	ib
—Of Section VII. Regulation II. of 1825, 24th Jan. 1828.	ib
—Of Section V. Regulation I. of 1827, 25th March 1828.	52
—Of Clause 3d, Section V. Regulation I. of 1827, 24th December 1829. <i>B</i>	83
—Of Section III. Regulation VI. of 1828, 2d Nov. 1831.	103
—Of Clause 1st, Section II. Regulation IV. of 1831, 4th July 1831.	99
—Of Section III. Regulation VI. of 1831, 19th Oct. 1831.	101
—Of Regulation VIII. of 1831, 30th January 1832.	106
—Of Act No. V. 1835. Circular Order No. 28.	136
—Of Regulation XXXV. 1837. Circular Order No. 55.	147
—Of Regulation XXIII. 1840. Circular Order No. 74.	158
—Of Regulation XXIX. 1841. Circular Order No. 79.	160
Circular Order No. 82.	160
—Of Section CVII. of 53 Geo. III. C. 155, 20th Feb. 1833.	112
—Of Circular Order datd 10th December 1805, 22d Feb. 1817.	11
—Of Circular Order dated 5th October 1829. 24th December 1829, <i>B</i>	83
—Of Circular Order dated 16th November 1829.	126
Circular Order No. 6.	168
—Of Section III. Act XII. of 1843, C. O. No. 90.	168
—Of Acts XIX. and XX. of 1841. C. O. No. 102.	174
CONTINGENT CHARGES	
Form of statement of—to be forwarded within one month after the expiration of each fusly, 27th September 1819.	17
30th October 1824.	31
—To be submitted in the month of July, in each year, 8th October 1821.	19
—Statement of—items to be numbered consecutively 2d April 1834.	120
COPIES.	
—Of decrees taken by parties on unstampt paper, cannot be certified nor received as evidence in a Court of Justice, 24th December 1817.	15
—Of orders and official documents—rules respecting compliance with applications for, 26th June 1823.	22

PAGE	PAGE
—Of decrees required by third parties must be given on paper of the prescribed value, 6th May 1824.	25
—Of decrees not to be made until judgment has been pronounced, 18th October 1824.	30
—Of opinion of Collector to the Provincial Court under Clause 1st, Section IX. Regulation XII. of 1816 (as to a charge of partiality against one or more members of a Panchayet) cannot be claimed by the parties affected by it, 3d April 1828.	52
—Of papers taken by parties—construction respecting the stamps required for, 8th Jan. 1829. <i>A</i>	57
—Of bonds or other documents as legal vouchers—district Moonsiffs cannot grant, 30th May 1829.	62
—Of deeds or other instruments—in what case they may be authenticated as legal vouchers though not executed on stamp paper, 30th May 1829.	ib
—Of official documents, not required for judicial puposes, cannot be granted to parties, without the sanction of Government. Circular Order, No. 32.	137
—Of official documents—judicial officers refusing applications for. Circular Order, No. 53.	147
—Of Extracts from Proceedings of a Provincial Court furnished to parties, or issued to lower Courts, or prepared for submission to Sudr Udalut, to contain the name of the Judge or Judges who sat in open Court. Circular Order, No. 69.	155
CORRESPONDENCE	
—Of subordinate authorities with Sudr Udalut—rules re-	
garding, 31st August 1829.	73
General rules regarding—9th September 1830. <i>B</i>	93
40th September 1830.	94
Circular Order, No. 81.	160
Translations required to be sent to Sudr Udalut of all documents, forwarded in the native languages by the subordinate officers, 15th March 1831.	98
See Abstract.	
COSTS	
Company's paper tendered, to be received; as security for Appeal Costs, 29th January 1805.	1
—Of suits in appeal—security for—to be detained in Zillah Court, who will certify to appeal court the receipt and sufficiency of, 20th December 1808.	5
—Of suit—recoverable from the estate of deceased party, 7th November 1809.	6
Rules respecting the charging of—entry in decrees of, 6th May 1824.	23
—Not to be included in the amount on which the value of the stamp for an appeal petition is to be calculated, 15th February 1828.	50
Interest is not allowed on, 15th February 1828.	ib
—Of suits not to be included either in the calculation of fees, or of the standard for appeals, 5th Nov. 1829, <i>B</i>	80
Sale of property to recover—due to parties in suits under Appeal—illegal. Circular Order, No. 9.	127
COURTS AUXILIARY	
Rules respecting the establishment of the, 26th March 1827	40
—How to proceed on applications being made to act in execution of a decree of the Supreme Court respecting	

	PAGE		PAGE		PAGE		PAGE
property situated within the jurisdiction of, 10th April 1827.....	42	their opinion in the first instance, all instructions to the subordinate Courts not expressly provided for in the Regulations, 20th September 1824, <i>A</i>	28	Judge of—to suspend the execution of an order of a subordinate Court, 30th January 1832.....	106	Form of Commission to Deputy Register of—for examination of witnesses, 30th April 1821.....	17
—Placing an estate under management of a Collector, to report it to the Revenue Board, through the Sudr Udalt, 27th Dec. 1830. <i>B</i>	95	—To examine and revise Civil Reports, carefully, 20th September 1824, <i>B</i>	ib.	—To report the cause of a single Judge holding Court when two Judges ought to be at the Sudr station, 26th May 1832.....	109	Opinion of Court of Directors as to the qualifications for the appointment of Judges of—11th Feb. 1822.....	19
—Judge of—to decide on an average eight suits per mensem. Circular Order, No. 4.....	125	Rules respecting the preparation and declaration in Court of their decrees, 18th October 1824.....	30	—To submit a full explanation with half yearly Civil Reports of the cause of delay in the disposed of suits of old dates—before them and the subordinate Courts. Circular Order, No. 17.....	131	Reference to be made to—for their opinion in the first instance of all instructions by Provincial to subordinate Courts, not expressly provided for by the Regulations, 20th September 1824.....	28
COURT—CIRCUIT		Form of Numerical statement to accompany Quarterly Civil Reports from, 12th March 1825.....	33	—Are to communicate to the lower Courts the grounds upon which they admit special appeals from the decisions of such Courts. Circular Order, No. 20.....	132	Representations to—can only receive consideration when made in accordance with Section V. Regulation V. of 1802, 21st October 1825.....	37
Regulation VIII. of 1831, inapplicable to the Judges of, 30th January 1832.....	106	—To notice any instance of a Zillah Judge proceeding without due discrimination to exercise the authority vested in him by Section LIV. Regulation VI. of 1816, 1st July 1825.....	36	—Their power of rejecting or admitting petitions of appeal to Sudr Udalt. Circular Order, No. 27.....	135	15th February 1832.....	107
Stationery for—to be supplied by Zillah Judge. Circular Orders No. 11.....	127	Notice to be affixed in—declarative of the irregularity of submitting representations to the Sudr Udalt, by post, 21st October 1825.....	37	The fact of a Judge of—not attending the open sittings, to be entered in the Court's diary. Circular Order, No. 59.....	149	—To exercise general controul over all subordinate Courts as to the appointment of unfit persons, and the unjust removal of those employed in the Judicial Department, 11th March 1830.....	90
COURTS—CIVIL		15th February 1832.....	107	Copies of their proceedings—to contain the names of the Judge or Judges who sat in open Court, when the proceedings were held. Circular Order, No. 69.....	155	Rules respecting surplus funds of Estates under attachment by order of—28th Feb. 1831.....	96
All persons appearing before the—to be treated with the respect due to their rank and station in society, 25th Aug. 1823.....	23	—Should not enter on their file as a suit the opinion and proceedings of a Collector submitted under Clause 1st, Section IX. Regulation XII. of 1816, 8th May 1828.....	54			Translations required to be sent of all documents forwarded in the Native languages to—15th March 1831.....	98
1st March 1827.....	40	Rules respecting their annual transmission to Sudr Udalt—of the opinions of the law officers, 11th October 1828.....	56	COURT—SUDR UDALUT		—As to the power of a provincial Court to admit or reject petitions of appeal to Circular Order No. 27.....	135
Power of—to compel the production of documentary evidence, 17th June 1824.....	26	—To exercise general controul over all subordinate Courts as to the appointment of unfit persons, and the unjust removal of those employed in the Judicial Department, 11th March 1830.....	90	Parties to suits in—due attestation of Mooktearnamahs, Vakalatnamahs, Ziminees, &c. 10th December 1805.....	1	Process of Arrest against persons within limits of—4th August 1814.....	8
COURT—PROVINCIAL		—Placing an estate under management of a Collector, to report it to the Revenue Board through the Sudr Udalt, 27th December 1830, <i>B</i>	95	Arrangements made for remitting to the Presidency, the fees of the Vakeels of—20th Sept. 1806.....	ib.	5th January 1841.....	158
Half Yearly and Quarterly Civil Reports of subordinate Courts to be transmitted through the—how to be inspected by them—and to be forwarded with their own Reports to Sudr Udalt, 20th March 1822.....	20	As to the power of a single		15th November 1806.....	2	14th January 1841.....	159
20th September 1824, <i>B</i>	30			Copies of decrees of—to be sent to the Courts from whose judgments the appeals may have been preferred. 30th April 1818.....	16	Course to be observed by Zillah and Auxiliary Courts on applications to them to act in execution of a decree of the Supreme Court, respecting property situated within their local jurisdiction, 10th April 1827.....	42
—To forward to Sudr Udalt, all references regarding the constructions of Regulation, together with their own opinion, 17th February 1824.....	23						
Excepting in cases under Section II. Regulation XXII. of 1802, 11th December 1824.....	32						
—To refer to Sudr Udalt for							

PAGE		PAGE
	COURT ZILLAH.	
	See Judge Zillah.	
	CURATOR	
165	Under Act XIX. of 1841—forms for use on the appointment of—C. O. No. 86.	
	CURNUM	
92	Of a Village, of which the revenue has been settled permanently, cannot be removed except by a decree of a Civil Court, 2d Sept. 1830, B	
	D	
	DAMAGES	
23	District and Village Moonsiffs and Punchayets cannot take cognizance of suits for personal—except when referred to them under Clause 1st. Section XII, Regulation VI of 1816, 19th March 1824	
	DATE	
10	Whenever a Native date is mentioned the corresponding English date is to be given, 17th January 1815.	
137	Circular Order No. 31.	
	DEATH	
6	Of either party in a suit—process to be observed on, 7th Nov. 1809.	
7	Actions for redress of injuries, terminates on the death of either party in a suit, 7th Nov. 1809.	
	DEBTORS	
58	Civil—form of half yearly statements of—18th January 1829	
	28th December 1829	84
	18th December 1830	95
	Civil—form of transmission of half yearly statement of—C. O. No. 93.	170
	DECLARATION	
36	In form A. appended to Regulation VII. of 1818, refers exclusively to a statement to accompany the Schedule of property described in Clause 4th, Section V. Regulation VII. of 1818, 30th—1825.	
	DECREE	
1	Security for performance of—29th January 1805.	
14	Of Village Moonsiff not to be carried into execution in less than 30 days after the date on which copies of—may be furnished to the parties, 4th March 1817.	
15	The language in which the originals of—are to be written, 24th December 1817.	
15	Copies of—taken by parties on unstamped paper, cannot be certified, nor received as evidence in a Court of Justice, 24th December 1817.	
15	Certified copies of—for any judicial purpose must be of the original decree, translation of the same being annexed or not, at the option of the party, 24th December 1817.	
16	Of Sudr Udalut—copies to be sent to the Courts from whose judgments the appeals may have been preferred, 30th April 1818.	
23	All sums paid as well as those payable, on account of costs and expenses are to be inserted in all—6th May 1824.	
25	The names of witnesses whose depositions have been taken, and the title of every exhibit read in the cause to be inserted in—6th May 1824.	

PAGE		PAGE
25	Copies of—for third parties must be on paper of the prescribed value, 6th May 1824.	
30	No judgment to be declared in Court till the draft of the decree is ready for transcription—draft to be in the hand writing and signed by the Judge passing it—and neither translations, nor copies to be made until judgment has been pronounced, 18th October 1824.	
37	Of Registers, are to be recorded in English, 9th Dec. 1825.	
38	Cannot be considered as passed till they are read or declared in Court—and on the dates of their being passed they are virtually filed of record. 9th February 1826.	
38	Judgment to be declared in open Court by reading a short abstract of—in the native language, 9th February 1826.	
42	Of Supreme Court—how to be executed by Zillah and Auxiliary Court, on property situated within their local jurisdiction, 10th April 1827.	
46	District Moonsiff selling land in satisfaction of—16th Aug. 1827.	
54	Registers of—under Section III. and IV. Regulation VI. of 22d May 1828.	
54	Attention called to the importance of despatch in preparing translations of—22d May 1828.	
55	Copies of—how to be prepared 28th June 1828, A.	
60	Interest adjudged in—extension of it to date of execution of—11th May 1829.	
64	Judgment for interest exceeding the principal, when admissible, 23d June 1829.	
65	In appeal cannot be altered to the prejudice of appellant, 16th July 1829.	
76	Rule regarding adjudgment of certain rent or profit, in suits for productive property, up to the date of execution of—22d October 1829.	
80	Property attached in execution of found to be mortgaged, case in which it may be sold, 16th November 1829.	
83	Of Village Moonsiff—Zillah Judge not required to enforce 24th December 1829, C.	
83	Of Village Moonsiffs—cannot be delayed beyond 3 months, 24th Dec. 1829, C.	
83	Of Village Moonsiffs—persons cannot be confined in the Zillah gaol in satisfaction of—24th December 1829, C.	
85	Passed by a Court of a Native State, relative to the execution of—28th Dec. 1829, B.	
96	Property attached in execution of—mode of proceeding in respect to claims put in to such property 23d Feb. 1831.	
99	Of Sudr Ameens and District Moonsiffs—original drafts in their own hand-writing to be sent with the records of the suits, 20th May 1831.	
103	Allowance cannot be made in the period limited for appealing, for the time occupied in copying the—2d November 1831.	
103	The whole draft of—to be in the hand-writing of the Judge passing it, 16th Nov. 1831.	
109	In Appeal ought not to be executed without security, 4th June 1832.	
115	Of Courts of co-ordinate jurisdiction—how to be executed, 6th June 1833.	
128	As to the admissibility of private agreements entered into by parties, in bar of execution of Circular Order, No. 5.	
145	And No. 48.	
127	Execution of—so far as respects costs, should be ordered or suspended according to the Regulations regarding the execution of other parts of—Circular Order, No. 9.	
131	Executed—form of statement of—to accompany half yearly Civil Reports. Circular Order, No. 15.	

PAGE	PAGE
Mode to be observed in order to secure fulfilment of final judgment in cases of Appeal for personal property, when party in possession against whom decree is passed fails to give security, and the successful party from being a pauper is unable to obtain execution. Circular Order, No. 29.	136
—Each sheet of—to be paged and attested with the initials of the Judge passing it. Circular Order No. 42.	142
— <i>Translation</i> of entire—to be furnished to parties in certain cases. Circular Order No. 55.	148
Execution of—applied for, after 12 years—rule regarding. Circular Order No. 58.	148
—In suits for land, to contain certain particulars as to position, boundaries, &c. Circular Order No. 66.	152
—Copied and issued—a memorandum of—to accompany Quarterly Civil Reports. Circular Order No. 67.	153
—In which a summary Appeal will lie, cannot be quashed upon a miscellaneous Petition—but when no Appeal lies, if it should appear to have been passed contrary to the Regulations, the case should be reported for the orders of the Sudr Udalut. Circular Orders No. 76.	159
—In Appeal, to contain only an abstract of the pleadings filed, and the grounds of the decision and to be annexed to the original judgment C. O. No. 88.	167
The practice of Native Judicial Functionaries declaring Judgments drawn up under their dictation by their ministerial subordinates, and recording their purport in the Diary, previous to the preparation in their own hand-writing of the Decree, strictly forbidden. C. O. No. 89.	168
—Of Native Judicial functionaries, so much only as consists of the points to be decided the decision thereon, and the reasons for the decision are to be written by themselves. C. O. No. 90.	168
—In appeal suits to be furnished to Courts of original jurisdiction, within 15 days after having been declared in open Court. C. O. No. 100.	173
—Passed by Civil Judges—original drafts to be submitted with half yearly Civil reports. C. O. No. 104.	174
—Of subordinate Judicial authorities—report to be made by Civil Judges half yearly, on the drafts of. C. O. No. 104.	174
—Passed by District Moonsiffs—drafts to be submitted monthly to Civil Judges. C. O. No. 106.	175
Such part of C. O. No. 104 as required the submission of drafts of Decrees passed by Civil Judges revoked. C. O. No. 108.	176
Notice to be given to Revenue authorities, previous to the sale of landed property, in execution of a. C. O. No. 110.	177
DEEDS	
Other than those set forth in Regulation XVII of 1802, can not be registered under it, 22d February 1815.	10
—Executed before promulgations of Regulation II of 1825—how affected by it, 24th January 1828.	49
Original—to be returned to the party, when no longer required, 8th January 1829, A.	57
Copies of—in what case they may be authenticated as legal vouchers though not executed on stamp papers, 30th May 1829.	62
—Written on paper of less value than the prescribed stamp—the penalty to be levied on—17th January 1832.	103

PAGE	PAGE
DEFAULT	
Suits dismissed for—to be expressed as such in the Quarterly Civil Reports, 20th September 1824, B.	30
Suits dismissed for—without investigation of the merits may be instituted de-novo, 7th May 1831.	98
DEFAULTER REVENUE	
—Form of half yearly statement of—8th January 1829, B.	58
28th December 1829.	84
—Question as to his forfeiture of the proprietary right to his estate—discussed—20th July 1829.	65
DELEGATION	
—Of power to receive and decide on sufficiency of evidence as to wasting, allowable, 21st February 1828.	51
DE NOVO	
Reference of Suits back to lower authority for judgment de novo—explanation respecting, 27th August 1829.	72
Suits dismissed for default without investigation of the merits—may be instituted de novo, 7th May 1831.	96
DEPENDING SUITS	
See Reports Civil Half Yearly.	
DEPOSIT	
—Of eventual costs of Appeal 20th Dec. 1808.	5
—Of money with a Collector by a Register—the Collector is to give a specific receipt—and to be responsible for the amount, 10th August 1826.	38
The practice of receiving and returning under seal—to be confined to deposits not consisting of money, 10th August 1826.	38
—Of Vakeel's fees is not requisite, in suits conducted at the public expence. Circular Order No. 12.	128
—Not to be made use of, for defraying the ordinary expences of the month. Circular Order No. 35.	139
DISMISSAL	
—Of Servants see Servants	
EMBEZZLEMENT	
Of public property—form of half yearly statement of persons confined for, 18th January 1829.	58
28th December 1829.	84
ENDORSEMENT	
Form of—on process of arrest against persons within the limits of the Supreme Court, 4th August 1814.	9
—Of Letters.	
See Abstract.	
ESTATE	
—Under attachment—rule regarding surplus funds of—17th August 1829.	69
28th February 1831.	96
—Placed by Courts in the Provinces under the management of the Collector—notice how to be given to the Revenue Board respecting—27th December 1830, B.	95
—Under attachment by order of Sudr Udalut, rules regarding surplus funds of—28th February 1831.	96
—Of British European subjects deceased—rules respecting the charge of—22d November 1833.	118
12th May 1834.	120
ESTABLISHMENT	
Temporary—rule respecting	

the charges for, 31st January 1833.....	112
—Of Courts—report to be made annually of any alterations or changes in the—4th October 1833.....	118
C. O. No. 109.....	176

EVIDENCE

—Taken down in Court for the use of Courts not to be written on stamp paper, 30th March 1810.....	7
Leading questions to be avoided to witnesses giving their—3d April 1815.....	12
Copies of decrees taken by parties on unstamped paper, cannot be received as—in a Court of Justice, 24th December 1817.....	15
Form of Commission to Deputy Register of Sudr Udalut to take—30th April 1821.....	17
—Of Revenue Servants—Judge how to proceed when it is required, 25th August 1822.....	
Rules respecting the production of public records as—17th June 1824.....	26
Zemindars and Natives of rank should not be unnecessarily summoned to give—7th March 1827.....	40
Circular Order No. 18.....	132
—Of persons residing in Ceylon, how to be obtained, 18th May 1837.....	46
Delegation of power to receive and decide on the sufficiency of—as to wasting allowable, 21st February 1828.....	51
—Of persons residing in Foreign European settlements or in the territories of Native States—how to be obtained, 15th Dec. 1830. <i>A.</i>	87
—Of Inhabitants of the French territories, how to be obtained, 11th May 1831.....	99
—Of witnesses residing without the Courts jurisdiction, obtained by interrogatories, copy of the points to be	

proved should be sent to the examining officer, 23d Nov. 1831.....	104
—Is to be restricted, under Clause 4th, Section X, Regulation XV of 1816, to the recorded points, and all witnesses produced to prove each point should be examined, 25th March 1833.....	114

EXAMINATION

—Of accounts—Suits involving—parties recommended to go to arbitration—order to be entered on record, 3d April 1815.....	11
—Of suits—form of conducting—3d April 1815.....	12
—Of witnesses—leading questions to be avoided in 3d April 1815.....	12
Head of—to exhibit the nature of the service in which the witness or party may be employed. Circular Order No. 71.....	156
—Of absent witnesses under act VII of 1841—forms of commission for—C. O. No. 85.....	162

EXHIBITS

—Tendered by parties in suits—form of rejection of 3d April 1815.....	12
—Produced by parties or Vakeels in suits, should be examined by the Judge himself, 28th June 1828, <i>B.</i>	56

F

FEES

Company's paper tendered as security for pleaders, 29th January 1805.....	1
—Of Vakeels of Sudr Udalut—arrangements made for remitting to the Presidency, of the, 20th September 1806.....	
15th November 1806.....	

—On registry or attestation of Vakalutnamahs—irregular, 22d February 1815.....	11
Suit withdrawn—unless a Razeenamah is filed by both parties, is not subject to fees, 31st August 1829.....	73
—Of District Moonsiffs—statement of—to be sent up with Quarterly Civil Reports, 10th September 1829, <i>B.</i>	75
—Of Vakeels—where the parties are more than one on either side of a Suit and employ different Vakeels—rule respecting, 8th April 1830.....	90
—Of Vakeels—in suits struck off the file under Regulation VI. of 1831, 27th Oct. 1831.....	103
—Of District Moonsiffs—notice of the abolition of—3d May 1833.....	115
Circular Order No. 28.....	136
—Of Vakeel—in suits conducted at the public expence, the deposit of—is not requisite, Circular Order No. 12.....	128
FINE	
—Of District Moonsiff by Zillah Judge, 20th Sept. 1824, <i>B.</i>	28
4th April 1825.....	34
Statement of—to be submitted with the Quarterly Civil Reports, Circular Order No. 34.....	139
Circular Order No. 39.....	140
—Exceeding 10 Rupees, cannot be imposed upon any subordinate Public Servant without the special sanction of the Sudr Udalut, Circular Order No. 38.....	140
FOREIGN EUROPEAN SETTLEMENTS	
Evidence of persons residing in—how to be obtained, 15th February 1830, <i>A.</i>	87
11th May 1831.....	98
FORM	
—Of indent for Stationery, 30th August 1806.....	5
—Of endorsement on process of arrest against persons within the limits of the Supreme Court, 4th August 1814.....	9
—Of proceeding to be observed in conducting Civil Causes, 3d April 1815.....	11
—Of half yearly Civil Reports, 26th December 1816.....	13
—Of statement of contingent charges, 27th Sept. 1819.....	17
—Of Commission to Deputy Register of Sudr Udalut for examination of witnesses, 30th April 1821.....	17
—Of summary figured statement to accompany Civil Reports, 20th Sept. 1824, <i>B.</i>	28
—New—of quarterly Civil Reports, 20th Sept. 1824, <i>B.</i>	29
12th March 1825.....	33
19th January 1829.....	58
—Of figured statement to accompany quarterly Civil Reports, 20th Sept. 1824, <i>B.</i>	30
—Of abstract statements to accompany the letter submitting the half yearly Civil Reports, 29th November 1824.....	31
—Of Warrant in the nature of a <i>Capias ad satis-faciendum</i> , 11th April 1825.....	34
—Of Register prescribed by Sections III. and IV. Regulation VI of 1828 22d May 1828.....	54
—Of Indent for cloth, 3d November 1828.....	57
—Of statement—half yearly—of persons confined under Regulation IX. of 1822, and all Civil Debtors, 8th Jan. 1829, <i>B.</i>	58
28th December 1829.....	84
18th December 1830.....	95
—Of statement of applications for special appeals, to accompany quarterly Civil Reports, 9th September 1831.....	100
—Of statement of decrees executed to accompany half yearly Civil Reports, Circular Order No. 15.....	131

PAGE		PAGE	
—Of statement of fines to be submitted with the quarterly Civil Reports, Circular Order No. 34.....	139	land is invalid only as it respects—17th September 1832.....	110
Circular Order No. 39.....	140	When an order of—is not sufficiently explicit, an explanation should be solicited. Circular Order No. 21.....	133
—Of quarterly statement of miscellaneous Petitions, Circular Order No. 46.....	145		
—Of memorandum of decrees copied, issued, &c. to accompany quarterly Civil Reports, Circular Order No. 67.....	153	I	
—Of Commission for the examination of absent witnesses under Act VII of 1841, C. O. No. 85.....	162	INDENT	
—For use on the appointment of Curators under Act No. XIX of 1841, C. O. No. 86.....	165	For Stationery—rules respecting—30th August 1808....	5
—For use on the appointment of persons for collection of debts on succession, under Act XX of 1841, C. O. No. 87.....	166	—For cloth—form of 3d November 1828....	57
—Of nomination Roll for succession to the office of District Moonsiff, C. O. No. 92.....	169	—For Articles—to shew on what dates the Articles were declared to be unserviceable, and under what circumstances they became useless, C. O. No. 96.....	172
—Of statement shewing the No. of suits which are appealable, the No. appealed &c, to be submitted with half yearly Civil Reports, C. O. No. 97.....	172	INDISPOSITION	
—Of statement shewing the average duration of a Suit, before each Class of Tribunal in the Provinces, to be submitted with half yearly Civil Reports, C. O. No. 97.....		—Of a Judge so severe as to prevent him from doing his duty—ought to be reported, 4th September 1833.....	117
FRENCH TERRITORIES		INHERITANCE	
Evidence of the inhabitants of—how to be obtained, 11th May 1831.....	99	A Hindoo held responsible his father's debts, only to the extent of the value of property he may inherit from him. Circular Order No. 73.....	157
—At Masulipatam may be subjected to any Regulations that may found necessary, 13th January 1832.....	105	INJURIES	
G		Actions for redress of—terminates on the death of either party, 7th November 1809....	7
GOVERNMENT		INSTALMENT	
An unregistered transfer of		—Of a bond—the amount of the bond being out the cognizance of the Court—how to be dealt with, 9th September 1830, A.....	92
		Circular Order No. 40.....	140
		INTEREST	
		—Is not allowed on costs, 15th February 1828.....	50

PAGE

PAGE

J

JUDGE

—Adjudged in a decree up to its date—extension of, to date of execution, 11th May 1829 60

—To be granted up to the date of the decree and not of the plaint only, unless reasons for a contrary proceeding are stated in the body of the decree, 11th May 1829 60

Judgment for—exceeding the principle, when admissible, 23d June 1829 64

Bonds bearing a higher rate of Interest than 12 per cent per annum, how affected by Regulation II. of 1825, 28th January 1839, *B.* 87

INTERLOCUTORY ORDERS

An appeal lies to the superior Court from—exceptions to this rule, 23d February 1831. 96

The same rule of limitation as regards the admission of a regular appeal—applies to all appeals from—Circular Order No. 23 134

INTERROGATORIES

Vakeels directed to propose in general terms their—3d April 1815 12

Deputy Register of Sudr Udalut taking evidence on—30th April 1821 17

—To be put to persons in Ceylon, should be sent to the Secretary to Government in the Judicial Department, 18th May 1827 46

—For examination of persons residing in foreign European Settlements, or in the Territories of Native States—to be sent to the British Representative, 15th February 1830, *A.* 87

Evidence to be taken by—copy of the points to be proved should be sent to the examining officer with the—23d November 1831 104

—Absent from ill health, or other cause—rules respecting 21st August 1817.... 14

—To report half yearly, respecting his absence from his station, 25th June 1819. 16

—His duty as respects the charge of the Court Treasury, 28th October 1822..... 21

Rules respecting his compliance with applications for copies of orders or official documents, 26th June 1823..... 22

How to proceed in respect to Revenue servants whose evidence he requires, 25th Aug. 1823..... 22

Referring respecting construction of a Regulation, 17th February 1824..... 23

—To report through the Sudr Udalut the date of his leaving and returning to his station, 10th May 1824..... 25

Rule respecting the preparation, and declaration in Court of his decrees, 18th October 1824.. 30

—How to proceed on application being made to him to act in execution of a decree of the Supreme Court respecting property, situated within his local jurisdiction, 10th April 1827..... 42

—Should himself examine the exhibits in every case, 28th June 1828, *B.*..... 56

—Cannot disturb, without express permission from the Sudr Udalut, a decision passed by himself, or his predecessor, 28th January 1830, *C.* 87

The whole draft of decree to be in the hand writing of the—passing it, 16th Nov. 1831.. 103

—Unable from indisposition to do duty ought to report the circumstance, 4th Sept. 1833. 117

—Cannot impose a fine exceeding 10 Rupees upon any su-

bordinate public servant, without the special sanction of Sudr Udalut. Circular Order No. 38.....	140
—To furnish at the close of each half year, a Schedule of money under his official custody. C. O. No. 95.....	171

JUDGE ASSISTANT

Decision of suits by—falling short of the prescribed number—explanation to be given in letter accompanying Quarterly Civil Reports, 10th May 1814.....	8
—Trying only Civil suits expected to decide 20 per mensem, 21st February 1815....	10
Rules regarding his correspondence with the Sudr Udalut, 31st August 1829.....	73
—Under Regulation VII. of 1809—can dispose summarily of a regular appeal referred to him by the Zillah Judge, and which it is then found, ought to have been made summarily, 15th February 1830, B.....	88
—May on a regular appeal, after examination of the record, refer a cause back to a District Moonsiff, with orders to take further evidence and pass a new decree, 15th February 1830, B.....	88
—To decide on an average eight suits per mensem. Circular Order, No. 4.....	125
—At Mangalore expected to decide 15 suits per mensem. Circular Order, No. 4.....	125

JUDGE CRIMINAL

Rules respecting his compliance with applications for copies of orders or official documents, 26th June 1823.....	22
---	----

JUDGE NATIVE

See Principal Sudr Ameen.

JUDGE ZILLAH

—To detain security for costs of suit in appeal and to certify to appeal court, receipt and sufficiency, 20th December 1808.....	5
Decision of suits by—falling short of the presented number—explanation to be given in letter accompanying quarterly Civil Reports, 10th May 1814.....	8
—To furnish explanation when any suits are entered in the half yearly Civil Reports— which have been inserted in any preceding report, 10th May 1814.....	8
—Expected to decide 10 suits per mensem, 21st February 1815.....	10
31st December 1832.....	111
—Cannot exercise direct interference or control over Village Moonsiffs, except on the charges specified in Clause 3d, Section IV. Regulation IV. of 1816, 4th March 1817....	13
—To inspect carefully the monthly reports required to be sent to him under Regulations IV. V. VI. and VII. of 1816, 1st December 1817.	14
—Observations of—on the reports of Village Moonsiffs and Punchayets should be communicated through District Moonsiff, 1st December 1817.	15
—Expected to report to Sudr Udalut as cases of departure from the Regulations by Native Judicatories, 1st December 1817.....	15
—Referring, respecting construction of a Regulation, 17th February 1824.....	23
—Should not require Moonsiffs to attend annually in person at his Court, 20th September 1824, A.....	28
—To exercise a vigilant superintendence over the subordinate officers, and if fines and admonitions fail, he should	

represent the case to the higher court, 20th September 1824, B.....	29
—Referring suits to Sudr Ameens, 20th Sept. 1824, B.....	29
—To state what credit is due to excuses from subordinates for not deciding the prescribed number of suits, 20th September 1824, B.....	29
Letters of—to accompany their Quarterly Civil Reports, in which are to be explanations obviously necessary, 20th September 1824, B.....	30
—To see that District Moonsiffs do not try suits out of their order on the file, without his sanction, 4th April 1825....	34
—Transferring suits from the files of District Moonsiffs, for trial by Sudr Ameens—rules respecting, 1st July 1825....	36
Notice to be affixed in Zillah Court declarative of the irregularity of submitting representations to the Sudr Udalut by Post, 21st October 1825....	37
15th February 1832.....	107
—Should himself decide any suit against a Collector, 28th February 1827.....	40
—How to proceed on application being made to him to act in execution of a decree of the Supreme Court respecting property situated within his local jurisdiction, 10th April 1827.....	42
—May issue orders in the case of a Punchayet acting under Regulation XII of 1816, 28th February 1828.....	51
—How to proceed with regard to suits under Sections XVI. Regulation V of 1822, 23d April 1828.....	53
—May, in certain cases, refer causes back to a District Moonsiff, 27th August 1829.	72
Rules regarding his correspondence with the Sudr Udalut, 31st August 1829.....	73
—Not required to enforce decree of Village Moonsiffs.	

24th December 1829, C.....	83
—His duty as to the decision, on institution of a suit against a Magistrate, under Section XLIII, Regulation I of 1816, whether the acts complained of, were legal, 2d September 1830, A.....	91
—Placing an Estate under management of a Collector, to report it to the Revenue Board through the Sudr Udalut, 27th December 1830, B.....	95
—Should not require district Moonsiffs to furnish stamp receipts for their salaries and fees, 8th February 1832....	106
—Deciding less than 10 suits per mensem, without assigning a satisfactory cause, 31st December 1832.....	111
—To specify in the letter accompanying the Quarterly Civil Reports, the period during which they and their Registers may have been absent during the quarter, 28th June 1834, A.....	123
—Excepted on an average to decide eight suits per mensem. Circular Order No. 4.....	126
—To provide the Courts of Circuit with Stationery. Circular Order No. 11.....	128
—To draw upon Collectors for the sums they may require to defray the ordinary expences of the month. Circular Order No. 35.....	139
—Visiting the station of a Moonsiff—rule respecting. Circular Order No. 50.....	146
—To ascertain that the injunction regarding the preparation &c. of Decrees, by Native Judicial Functionaries, are conformed to C. O. No. 89.....	168
—To furnish to the S. U. at the close of each half year, a Schedule of money under his official custody. C. O. No. 95.	171
—Alone possess authority to enter into an investigation of claims to certificates under	

PAGE	PAGE
Acts XIX and XX of 1841. 174	be calculated, 29th August 1831. 100
C. O. No. 102.	Want of registry does not affect the validity of a sale of—and an unregistered transfer is invalid only as respects the Government, 17th Sept. 1832. 110
Original drafts of Decrees passed by—to be submitted with half yearly Civil Reports. C. O. No. 104. <i>ib.</i>	In suits for—certain particulars required to be inserted in the plaint and decree, Circular Order No. 66. 152
—To report half yearly on the drafts of Decrees passed by Subordinate Judicial Authorities. C. O. No. 104. <i>ib.</i>	Notice to be given to the Revenue Authorities, previous to the sale of landed property in execution of Court's Decree. C. O. No. 110. 177
Opinion of the Advocate General regarding the performance of marriage ceremony by—C. O. No. 105. 175	
—On submitting half yearly Civil Reports to certify that drafts of Decrees passed by them are in their own handwriting. C. O. No. 108. 176	
	LAW OFFICERS
L	Copies and translations of opinions of—on Civil cases, to be furnished annually to the Sudr Udalut, 27th July 1821. 18
LAND	11th October 1828. 56
—In an Appeal to the King in Council—rule regarding Security in the case, 21st September 1826. 38	Mahomedan—to be informed that a knowledge of the country languages will be considered a strong recommendation for their promotion, 24th December 1829, A. 82
—Paying revenue to Government, case in which it can be sold by District Moonsiffs in satisfaction of decrees without the intervention of the Collector, 16th August 1827. 46	—To be employed as Sudr Ameens, and instructions preparatory to their exercising Criminal jurisdiction, 25th October 1830. 94
Transfer of—cannot be declared invalid (and the revenue demanded from the late occupier) because such transfer had not been registered, 16th August 1827. 45	—Exempted from attending at the Court House to receive their pay, 10th June 1833. 116
Malguzary—signifies all lands not Lacheraj, 16th Aug. 1827. 46	—Absent on leave—to forfeit one half of his salary. Circular Order No. 54. 147
11th October 1827. 48	
Sale of—if regular, cannot be annulled and the purchaser ousted, except by regular suit, 11th October 1827. 48	M
Circular Order No. 41, B. 141	MAGISTRATE
—Sold—claimant to—his claim cannot be declared invalid, because it was not preferred before the date of sale, 11th October 1827. 48	—Referring respecting construction of regulation, 17th February 1824. 23
In suits for—security how to	Rule regarding his correspondence with the Sudr Udalut, 31st August 1829. 73

PAGE	PAGE
Regulation IX, of 1816 it is the duty of the Zillah Judge to decide whether the acts complained of were legal, 2d September 1830, A. 91	himself liable to certain penalties, 4th March 1817. 14
MAINTENANCE	—Amenable to prosecutions by parties aggrieved for unwarranted acts of authority, 4th March 1817. <i>ib.</i>
—At a certain monthly amount decreed to a party—the power of a Court to secure payment of, 16th Nov. 1829. 80	His Court not to be closed during the adjournment of the Zillah Court, 23d Feb. 1818. 16
	How to proceed when the evidence of Revenue servants is required, 25th Aug. 1823. 23
MILITARY	—To be enjoined to treat with respect, due to their rank and station in society, all persons appearing before their Courts, 25th August 1823. <i>ib.</i>
All summonses, &c. within the limits of a Military station, should be executed through the Commanding Officer, or other Military authority. Circular Order No. 80. 160	—Cannot take cognizance of suits for personal damages, except when referred to him under Clause 1st Section XII, Regulation VI of 1816, 19th March 1824. <i>ib.</i>
Processes required to be executed within the limits of a Military station, to be accompanied by a letter to the Commanding Officer &c. explaining the nature of the process. C. O. No. 91. 169	—Deciding less than 20 suits in the month, must shew satisfactory cause, explanation to be sent with the Civil Reports, 20th September 1824, B. 29
	—Zillah Judge how to proceed if fining—fails in effect, 20th September 1824, B. 29
MOOFTEE	—His file constantly in a reduced state—cause to be reported, 20th September 1824, B. <i>ib.</i>
Chair to be provided at right hand of the bench for the—20th January 1807. 2	—Deviating from the order of his file is to explain the motives in a short abstract at the foot of his register, 20th September 1824, B. <i>ib.</i>
Zillah—his salary, 27th December 1830, A. 95	Suits called up from—under Section LIV, Regulation VI of 1816—how to be entered in Quarterly Abstract Statement, 27th Jan. 1825. 32
MOOKTEARNAMAHS	Number of Appeals from decisions of—to be shown in Quarterly Civil Reports—and the Registers to be entered in the same order of succession, 12th March 1825. 33
Due attestation of—provided for, 10th December 1805. 11	Suits before—must be heard in the order in which they are filed or numbered, unless the Zillah Court in any instance direct a suit to be otherwise
22d February 1815. 171	
—Not required to be verified on oath. C. O. No. 94.	
MOONSIFFS	
—Should not annually be required to attend personally at the Zillah Court, 20th September 1824, A. 28	
MOONSIFF DISTRICT	
—Enforcing illegal decision of Village Moonsiff, renders	

PAGE	PAGE
tried—this order applies only to suits brought to a hearing, 4th April 1825.....	34
Rules respecting the transfer of suits from the files of—for trial by Sudr Ameens, 1st July 1825.....	36
His power to sell land paying revenue to Government in satisfaction of Decrees without the intervention of the Collector, 16th August 1827...	46
Reference of Appeals from—to Sudr Ameens should generally be avoided, 22d January 1829.....	59
Certain orders required to be issued to—with reference to Regulation IX of 1828, 18th February 1829.....	60
—Acting—rule respecting the salary of—5th March 1829.....	ib.
—Cannot grant copies of bonds or other documents as legal vouchers, 30th May 1829...	62
—Cannot substitute any copies whatever for the originals in the record of a suit, 30th May 1829.....	ib.
Zillah Judge may in certain cases, refer causes back to—27th August 1829.....	72
Statement of fees of—to be sent up with Quarterly Civil Reports, 10th Sep. 1829, B...	75
Respecting the provision of Cutcheries for—7th December 1829.....	81
Form of proceeding to be held when a suit is remanded back to—15th February 1830, B...	88
—To send with the records of the suits before them, the original draft of the Decrees, in their own hand-writing, 20th May 1831.....	92
—Should not be required to furnish stamp receipts for their salaries and fees, 8th February 1832.....	106
Selection of persons for the situation of—rule respecting—25th April 1832.....	108
Notice of the abolition of fees of—and substitution of fixed salary for them and their establishments—3d May 1833.	115
Circular Order No. 28.....	136
—To keep a record of all receipts and payments in their Courts duly attested by their own signature. Circular Order No. 7.....	127
—Absent on leave, forfeits one half of his salary. Circular Order No. 30.....	136
Circular Order No. 54.....	147
—Cannot take cognizance of suits regarding lands which may have been held under mortgage prior to 12 years. Circular Order No. 33, A...	138
—Borrowing money from suitors in his Court, is liable to dismissal from office. Circular Order No. 41, A.....	141
—Zillah Judge visiting the station of—rule respecting—Circular Order No. 50.....	146
—In the trial of suits are to consider and record the points to be established by both parties. Circular Order No. 62.....	150
Leave of absence to—rule respecting the granting of—Circular Order No. 65.....	152
—Prohibited employing their own relatives in any official capacity under them. Circular Order No. 68.....	155
A review of judgment is allowable when Decree has been passed by—Circular Order No. 78.....	159
—May sign his name in English or in any other character in full, and to use only one character on all occasions C. O. No. 83.....	161
The amount of batta to Peons charged with the service of process issued from the Courts of—C. O. No. 84.....	ib.
—Strictly forbidden declaring in open Court judgments drawn up under his dictation by his ministerial subordinates and recording the purport in the Diary previous to the	

PAGE	PAGE
preparation in his own hand-writing, of the required decree. C. O. No. 89.....	168
—Required to write in his own hand, so much only of the decree as consists of the points to be decided, the decision thereon and the reasons for the decision. C. O. No. 90.....	ib.
Form of nomination Roll, for succession to the office of—C. O. No. 92.....	169
—Authorized occasionally to absent himself from his station for 5 days, without loss of allowance. C. O. No. 98.....	172
—Authorized to draw a travelling allowance when deputed to act at a distance from his station. C. O. No. 99.....	173
Regulation XIX of 1802, extended to.—C. O. No. 101.....	ib.
—To submit monthly to the Civil Judge, drafts of decrees passed by him in the preceding month. C. O. No. 106.....	175
—Can take cognizance of suits founded on mortgage of more than 12 years standing. C. O. No. 107.....	ib.
MOONSIFF VILLAGE	
No direct interference or control can be exercised by Zillah Judge over—except on the charges specified in Clause 3d, Section IV. Regulation IV. of 1816, 4th March 1817.	13
Decrees of—not to be carried into execution in less than 30 days, after the date on which copies of the Decrees may be furnished to the parties, 4th March 1817.....	14
A District Moonsiff enforcing an illegal decision of—renders himself liable to the penalties of Section VII. Regulation VI. of 1816, 4th March 1817.....	ib.
—Amenable to prosecution—by parties aggrieved for unwarranted acts of authority, 4th March 1817.....	14
Observations of Zillah Judge on the reports of—should be communicated through District Moonsiff, 1st Dec. 1817.	15
—To be enjoined to treat with the respect due to their rank and station in society, all persons appearing before his Court, 25th August 1823.....	23
—Cannot take cognizance of suits for personal damages, 19th March 1824.....	ib.
Certain orders required to be issued to—with reference to Regulation IX of 1828, 18th February 1829.....	60
Zillah Judge not required to enforce the Decree of, 24th December 1829, C.....	83
Execution of his decree cannot be delayed beyond 3 months, 24th December 1829, C.....	ib.
A person cannot be confined in the Zillah gaol in satisfaction of the Decree of, 24th December 1829, C.....	ib.
MORTGAGE	
Property placed under attachment in execution of a Decree, case in which it may be sold, though found to be mortgaged, 16th November 1829.....	80
Circular Order No. 6.....	126
—Upon property attached in execution of a process of Court—the claim how to be dealt with, 23d Feb. 1831...	96
Suits founded on—of more than 12 years standing are not excluded from cognizance of District Moonsiffs, C. O. No. 107.....	175
MOTIONS	
—Presented to the Court by parties in person or by Va-keels—rule respecting preparation of 28th June 1828, A.....	55
Circular Order No. 25.....	134

N	PAGE
NATIVE STATES	
Execution in the Company's Territories—of decrees passed by the Courts of, 28th December 1829, <i>B.</i>	85
Evidence of persons residing in—how to be obtained, 15th February 1830, <i>A.</i>	87
NAZIR	
Summons and orders to—within the provisions for stamp paper, 30th March 1810	7
NOMINATION.	
—Roll for Succession to the Office of District Moonsiff—form of, C. O. No. 92	169
NONSUIT	
Term—not to be used in Quarterly Civil Reports, 20th September 1824, <i>B.</i>	30
—In cases of neglect for six weeks—rule respecting, Circular Order No. 70	155
NOTICE	
—To be affixed in the Zillah and Provincial Courts, declarative of the irregularity of submitting representations to the Sudr Udalut by post, 21st October 1825	37
O	
OATH	
A suit can be decided upon the oath of one of the parties, if the other party consents to that mode of decision, and the one called upon to swear, agrees to take the oath. Circular Order No. 16	131
Vakalutnamahs and Mooktear-	

namahs are not required to be verified on, C. O. No. 94. 171	
PAPER-STAMPT	
Specimens of—transmitted to the several Court—one side only to be written on, and a standard in each division fixed, as to the number of words and lines to be admitted, 8th August 1809.	5
Shewing what documents are required to be written on—30th March 1810	7
Parties furnishing—for copies, 26th June 1823	22
Case in which copies of deeds or instruments need not be on—to be authenticated as legal vouchers, 30th May 1829	62
PARTIALITY	
—Of one or more members of a Punchayet, 3d April 1828	52
Charge of—against a Punchayet—the opinion and proceedings of a Collector cannot be entered as a Suit by Provincial Court, 8th May 1828	54
PAUPER	
The provisions of Regulation III. of 1822, held not to extend to the cases described in Clause 1st, Section IV. Regulation VII. of 1818. 30th May 1825	35
The declaration in form A appended to Regulation VII. of 1818, refers exclusively to a statement to accompany the Schedule of property described in Clause 4th, Section V. Regulation VII. of 1818, 30th May 1825	36
A party, who was not a pauper plaintiff in the Original Suit, may be admitted to defend in Appeal in <i>formā pauperis</i> . Circular Order No. 36	139

—Suits—sureties are not required to give a deposit of money, in—Circular Order No. 60.	149
PEONS	
Their batta in suits struck off the file under Regulation VI. of 1831, 27th October 1831.	103
—Charged with the service of process issued from Courts of District Moonsiffs—their batta regulated, C. O. No. 84. 161	161
PETITION	
—Of Appeal admitted to be endorsed, 3d April 1815.	12
Costs not to be included in the amount on which the value of the stamp is to be calculated for an Appeal, 15th Feb. 1828	50
—Presented to the Court by parties in person or by Vakeels—rules respecting the preparation of, 28th June 1828, <i>A.</i>	55
Circular Order No. 25	134
Miscellaneous—statement of—to accompany Quarterly Civil Reports, 16th April 1832	108
Circular Order No. 46	145
Circular Order No. 67	153
PLEADINGS	
—Presented to the Court by parties in person or by Vakeels—rule respecting preparation of—28th June 1828, <i>A.</i>	55
Circular Order No. 25	134
The fact of a party relinquishing a portion of his claim and suing for the remainder only, should be fully set forth in the—28th January 1830, <i>A.</i>	86
PRECEPTS	
—How to be prepared—returns to—how to be made, 30th July 1828	56
PRINCIPAL SUDR AMEEN	
—Expected to pass 15 decrees on the merits per mensem, 28th June 1834, <i>B.</i>	124
—Absent on leave, forfeits during his absence, one half of his salary. Circular Order No. 30	136
Circular Order No. 54	147
—May Sign his name in English or in any other character in full, and to use only one character on all occasions, C. O. No. 83	161
—Strictly forbidden declaring in Court judgments drawn up under his dictation by his ministerial subordinates and recording their purport in the Diary, previous to the preparation in his own hand writing of the required decrees, C. O. No. 89	168
—To write in his own hand so much only of the decree as consists of the points to be decided, the decision thereon, and the reasons for the decision, C. O. No. 90	ib.
—To furnish to the S. U. at the close of each half year, a Schedule of monies under his Official custody, C. O. No. 95	171
—Authorized occasionally to absent himself from his station for 5 days, without loss of allowance C. O. No. 98	172
Regulation XIX of 1802, extended to, C. O. No. 101	173
PROCESS	
—Of arrest against persons within the limits of the Supreme Court—4th August 1814	8
5th January 1841	158
14th June 1841	159
—Within military limits see Military	

PROPERTY	PAGE
Landed—	
See Land.	
Productive—rule regarding ad- judgment of certain rent or profit up to the date of exe- cution of a decree in suit for —22d October 1829.	76
—Attached, in execution of a decree, found to be mortgag- ed—case in which it may be sold, 16th November 1829. .	80
—Attached in execution of a process of Court—mode of proceeding in respect to claims put into—23d Febru- ary 1831.	96
—Personal—mode to be observ- ed to secure the fulfilment of a final judgment in cases of Appeals for—when party in possession against whom the Decree is passed fails to give security, and the successful party from being a pauper is unable to obtain execution. Circular Order No. 29.	136
PUBLIC BUILDINGS	
See Buildings.	
PUBLIC RECORDS	
See Records.	
PUNCHAYET	
Observations of Zillah Judge on the reports of—should be communicated through Dis- trict Moonsiff, 1st December 1817.	15
—Cannot take cognizance of suits for personal damages, 19th March 1824.	23
—Acting under Regulation XII. of 1816, Zillah Judge may issue orders in the case—a Razeenamah is admissible, 28th February 1828.	51
Proceedings to be held when any member of—may die be-	

	PAGE
fore the award is framed, 27th March 1828.	52
Parties, affected by the opinion of a Collector (as to a charge of partiality) submitted to a Provincial Court under Clause 1st, Section IX. Regulation XII. of 1816, have no right to a copy of the opinion on stamp paper, 3d April 1828. .	ib.
PUNDIT	
Chair to be provided at left hand of the bench for—20th January 1807.	2
Zillah—his salary, 27th De- cember 1830, A.	95
Q	
QUARTERLY CIVIL REPORTS	
See Reports Civil Quarterly.	
R	
RAZEENAMAH	
—Is admissible in a cause be- fore a Punchayet, 28th Feb. 1828.	51
Unless a Razeenamah is jointly filed, it is not to be inferred that an adjustment has taken place, 19th Jan. 1829.	58
31st August 1829.	73
RECORDS	
Rules respecting the production of—in the Courts, 17th June 1824.	26
—Of Appeals and other pack- ets sent by Banghy—how to be secured, 18th Dec. 1826. .	39
REGISTER	
Zillah to attest Mooktearna- mahs, Vakalutnamahs, Zimi- nees, &c., Dec. 1805.	1
22d February 1815.	11
Zillah—falling short in decid- ing the prescribed number of	

	PAGE
suits—an explanation to be given in the letter accompa- nying Quarterly Civil Re- ports, 10th May 1814.	8
Zillah—expected to decide 10 suits per mensem, 21st Feb. 1815.	10
—Of Vakalutnamahs — fees irregularly charged, 22d Fe- bruary 1815.	11
—To report half yearly, respect- ing his absence from his sta- tion, 25th June 1819.	16
—Zillah—his Decrees to be recorded in English, 9th De- cember 1825.	37
—Depositing money with a Collector should obtain a specific receipt for the same, 10th August 1826.	38
—Zillah—to be deputed to take charge of the Auxiliary Court, during the temporary absence of the Assistant Judge, 26th March 1827.	40
—Prescribed by Sections III and IV, Regulation VI, of 1828, how to be kept, 22d May 1828.	54
Zillah—can dispose summarily of a regular Appeal referred to him by the Zillah Judge, and which is then found ought to have been made summarily, 15th Feb. 1830, B.	83
Zillah—may, on a regular Ap- peal, after examination of the record refer a cause back to a District Moonsiff with orders to take further evi- dence and pass a new decree, 15th February 1830, B.	ib.
General—to be kept of all na- tives and principal officers employed in the Courts, 4th October 1833.	118
Zillah—the period of his ab- sence during the quarter— to be specified in the letter accompanying the Quarterly Civil Reports, 28th June 1834, A.	123
Zillah—expected to decide 15 suits per mensem. Circular	
Order No. 4.	125
A review of Judgment is allow- able when Decree has been passed by—Circular Order No. 78.	159
REGISTRY	
—Of Vakalutnamahs and Mook- tearnamahs, 10th Dec. 1805. .	1
22d February 1815.	11
C. O. No. 94.	171
Of Landed property. See Land.	
16th August 1827.	46
17th September 1832.	110
—Of deeds, other than those enumerated in Regulation XVII. of 1802, 22d February 1815.	10
Want of—does not affect the validity of a sale of land, as between the seller and pur- chaser—and an unregistered transfer is invalid only as respects the Government, 17th September 1832.	110
REGULATION	
Reference respecting con- struction of—17th Feb. 1824 .	23
11th December 1824.	32
—XXVII. of 1802, notice of the personal suits referred to in —17th June 1824.	27
—V. of 1817, notice of the pro- visions of—as they affect persons who have not studied at the College, 21st Aug. 1824 .	ib.
Section XVI, Regulation V. of 1822, suits instituted under —how to be entered in the half-yearly Civil Reports, 29th November 1824.	31
Section II, Regulation XXI, of 1802—error pointed out in Persian translation of—and ordered to be amended, 4th February 1829.	59
Instructions regarding certain Regulations remaining in force as rules of office, though rescinded under Regulation	

IX, of 1828, 18th February 1829.....	60
Section XXI, Regulation II, of 1802, though rescinded—the principle of the rule of—should be maintained, 24th December 1829, <i>B.</i>	83
—VIII, of 1831, inapplicable to Judges of the Court of Circuit, 30th Jan. 1832.....	106
Section X, Regulation XV, of 1816, attention of the Courts called to—14th Sept. 1832..	110
Promulgation of any new-rule respecting—Circular Order No. 19.....	132
—XIX of 1802, extended to all uncovenanted Judicial Officers. C. O. No. 101.....	173

REPORT

Monthly—required to be sent by Regulations IV, V, VI, and VII, of 1816, to be carefully inspected by Zillah Judge, 1st Dec. 1817.....	14
—To be made through Sudr Udalut by every Judicial Officer, the date of leaving or returning to his Station, 10th May 1824.....	25
—Expected of the cause where District Moonsiff's file is constantly in a reduced state, 20th Sept. 1824, <i>B.</i>	28
—To be made of a District Moonsiff trying suits out of their order on his file, 4th April 1825.....	34
—Expected of the cause of a single Judge of Provincial Court holding Court, when two Judges ought to be at the Sudr Station, 28th May 1832.	109
Annual—required to be sent to the Sudr Udalut of any alterations or changes in the Establishments of the Courts, 4th October 1833.....	118
C. O. No. 109.....	176

REPORTS CIVIL HALF YEARLY

Zillah Judge to furnish explanation when any suits are en-

tered in the—which have been inserted in any preceding one—10th May 1814..	8
Situation in life of the parties in each suit—to be described in—26th Dec. 1816.....	13
Column headed “instituted and referred”—what to contain, 26th Dec. 1816.....	<i>ib.</i>
—To be submitted to the Sudr Udalut immediately after the close of each half year, 26th Dec. 1816.....	<i>ib.</i>
Form of—circulated, 26th December 1816.....	<i>ib.</i>
—To be transmitted through the Provincial Courts—how to be inspected by them—to be forwarded by them with their own Reports to Sudr Udalut—regular and summary suits to be under distinct heads, 20th March 1832.....	20
Forms of—Abstract Statements to accompany letters submitting—29th November 1824..	31
All Appeal causes to be included under the general head of “Appeals” and suits instituted under Section XVI, Regulation V, of 1822, to be entered as “Original” in statements sent up with, 29th Nov. 1824.....	<i>ib.</i>
—Of causes depending—form for—circulated, 19th January 1829.....	58
What suits are to be entered in as “Suits dismissed,” 10th September 1829, <i>A.</i>	74
To shew the names of the Judicial Officers, the period of their absence, and how many of the suits instituted before each Judge are placed on his own file, and how many are referred, 28th June 1834, <i>A.</i>	123
—To be accompanied with a memorandum, shewing the number of suits instituted before each Judge, and the number retained on his own file. Circular Order No. 1..	125
Suits appearing a second time in the—a full explanation	

PAGE

to be given—Circular Order No. 3.....	125
One copy of—to be prepared in the Courts of Zillah, Auxiliary and Native Judges and to be forwarded to the Sudr Udalut through Provincial Courts. Circular Order No. 13.....	130
—To be transmitted to Sudr Udalut within one month from the close of the half year. Circular Order No. 14.	<i>ib.</i>
—Form of Statement of Decree executed, to accompany—Circular Order No. 15.....	131
A full explanation required in—as to the cause of delay in the disposal of Suits of old date. Circular Order No. 17.	<i>ib.</i>
Instructions for the preparation and submission of. Circular Order No. 93.....	170
Form of Statement shewing the No. of Suits which are appealable, the No. appealed &c., to be submitted with—Circular Order No. 97.....	172
Form of Statement shewing the average duration of a suit before each class of Tribunal in the Provinces, to be submitted with—C. O. No. 97	<i>ib.</i>
Original drafts of Decrees passed by Civil Judges, to be submitted with—C. O. No. 104.....	174
Civil Judges report on the drafts of Judgments declared by Subordinate Judicial Authorities, to be submitted with—Circular Order No. 104.....	<i>ib.</i>

REPORTS CIVIL QUARTERLY

Letter accompanying—to contain the reasons which prevented each Judge, Assistant Judge or Register, from deciding the prescribed number of suits, 10th May 1814....	8
—To be transmitted through the Provincial Courts—how to be inspected by them—to be forewarned with their own	

reports to Sudr Udalut—regular and summary suits to be under distinct heads, 20th March 1822.....	20
20th September 1824, <i>B.</i>	30
—How to be revised by Provincial Court—summary figured statement to accompany—20th September 1824, <i>B.</i>	28
New form of—20th September 1824, <i>B.</i>	29
12th March 1825.....	33
19th January 1829.....	58
Term “Nonsuit” to be used in—if judgment is in favor of plaintiff “decreed to plaintiff” to be entered in numerical statement—if against plaintiff “dismissed” to be used—Suits to be entered as “dismissed for default” when they are so dismissed, 20th September 1824, <i>B.</i>	30
Letters of the Zillah Judges to accompany, 20th September 1824, <i>B.</i>	<i>ib.</i>
Form of figured statement to be inserted in the letter of the Zillah Judge transmitting, 20th September 1824, <i>B.</i>	<i>ib.</i>
—Abstract statement in letter accompanying—how to be framed, 27th January 1825..	32
Numerical Abstracts in—where claim has been wholly allowed or disallowed—where partly allowed—if withdrawn—if settled by Razee-namah—and if dismissed for default—how to be entered, 12th March 1825.....	33
—Suits transferred, how to be entered in—12th March 1825	<i>ib.</i>
A note to be appended to the Register of each Sudr Ameen and District Moonsiff, showing the number of Appeals lodged within the quarter from his decisions, 12th Mar. 1825.....	<i>ib.</i>
The Registers of the District Moonsiffs to be entered in the same order of succession in—12th March 1825.....	<i>ib.</i>
—To be forwarded quarterly	

instead of monthly, 8th January 1829, B.	58
19th January 1829.	ib.
What suits are to be entered as "dismissed"—in, 19th Jan. 1829.	ib.
16th September 1829, A.	74
20th October 1829.	76
Statement of District Moonsiff's fees required to be sent up with—10th Sept. 1829, B.	75
Statement of applications for special Appeals to be forwarded with—9th Sept. 1831.	100
Statements of Miscellaneous Petitions to accompany, 16th April 1832.	108
Circular Order No. 46.	145
Circular Order No. 67.	153
Zillah Judge to specify in the letter accompanying—the period during which he and his Register may be absent during the quarter, 28th June 1834, A.	123
A numerical statement of suits decided by Sudr Ameens to be forwarded with—Circular Order No. 2.	125
The names of the Judges who presided in each Court to be specified in the—Circular Order No. 2.	ib.
One copy of—to be prepared in the Courts of Zillah, Auxiliary and Principal Sudr Ameens' Courts, and forwarded to the Sudr Udalt through the Provincial Courts—Circular Order No. 13.	130
Statement of fines to be submitted with—Circular Order No. 34.	139
Circular Order No. 39.	140
Memorandum of Decrees copied, issued, &c. to accompany. Circular Order No. 67	153
REPORTS CRIMINAL HALF YEARLY.	
—To be transmitted to Foujdaree Udalt, within one month from the close of the half year. Circular Order No. 14.	130

RESPECT

—Due to the rank and situation in life of parties, summoned before a Court to give evidence, should be paid to them, 25th August 1823.	23
1st March 1827.	40

RETURNS

—To precepts—how to be made, 30th July 1828.	56
--	----

REVENUE

Land paying—case in which it can be sold by District Moonsiffs in satisfaction of Decrees, without the intervention of the Collector, 16th Aug. 1827	46
Arrears of—recoverable under Regulations XXVII. and XXVIII. of 1802—explanation regarding, 20th July 1829	65

REVENUE DEFAULTER

See Defaulter Revenue.	
------------------------	--

REVENUE SERVANTS

—Required to give evidence—Judge how to proceed in respect of, 25th Aug. 1823.	22
--	----

RIGHT

Proprietary—question respecting the forfeiture of, 20th July 1829.	65
--	----

S

SALARY

—Of Zillah Pundits and Mooftees, 27th December 1830, A.	95
District Moonsiffs should not be required to furnish stamp receipts for their—8th February 1832.	106
—Of District Moonsiffs, and their Establishments, 3d May 1833.	115

Law Officers exempted from attending at the Court House to receive their—10th June 1833.	116
—Of Native Judicial Officers, during the period of their absence on leave. Circular Order No. 26.	135
Circular Order No. 30.	136
Circular Order No. 54.	147

SALE

—Of land paying revenue to Government by District Moonsiffs in satisfaction of Decrees, without the intervention of the Collector, 16th August 1827.	46
—Of land, if regular, cannot be annulled and the purchaser, ousted, except by regular suit, 11th October 1827.	48
Circular Order No. 41, B.	141
—Of land—the claim to the property cannot be declared to be invalid because it was not preferred before the date of sale, 11th October 1827.	48
—Of property to recover costs due to parties in suits under Appeal. Circular Order No. 9.	128
—Of landed property in execution of Court's Decree—notice to be given to the Revenue Authorities previous to the—Circular Order No. 110.	176

SCHEDULE

—Of monies under official custody to be submitted half yearly to the S. U.—Circular Order No. 95.	171
---	-----

SECURITY

For appeal costs, tender of Government paper to be received as 29th January 1805.	1
—To be taken from parties to suits—provisions in Regulations respecting the 24th May 1805.	3

—For costs of suit in appeal—to be detained in Zillah Court who will certify to Appeal Court the receipt the sufficiency of, 20th December 1808.	
—To be taken from a party in whose favor a decree of the Sudr Udalt for landed property shall be executed pending an appeal to the King in Council, 21st September 1826.	
—To be taken on appeal how to be calculated, 29th Aug. 1831.	
—Bonds, affidavit to be made by parties to, 10th Sept. 1831.	
A decree in appeal ought not to be executed without—4th June 1832.	
—To be taken in appeals to the King in Council, 14th April 1834.	
Circular Order No. 33, B.	
And do do No. 45, B.	
—In pauper suits—deposit of money is not required as—Circular Order No. 60.	
Defendants failing to produce—cases in which their property may be attached. Circular Order No. 63.	
<i>— in Appeal.</i>	
SIGNATURE	
—Of uncovenanted Judicial Officers, may be in English or in any other character in full, and one character to be used on all occasions. C. O. No. 83.	

SERVANTS

Revenue—required to give evidence—Judge how to proceed in respect of, 25th Aug. 1823.	
Sudr and Provincial Courts to exercise a general control over Subordinate Courts, as to the appointment of unfit persons and the unjust removal of those employed in the Judicial Department, 11th March 1830.	90

	PAGE
Public—a fine exceeding 10 Rupees cannot be imposed upon—without the special sanction of the Sudr Udalut. Circular Order No. 38.	140
Public—attached to the Courts, becoming purchasers of lands sold by public sale, at the instance of the Court to which he is attached, is liable to dismissal. Circular Order No. 51.	146
STAMP	
Construction of Regulation II of 1825, relative to—24th January 1828.	49
Value of—for an appeal petition—cost not to be included in calculating—15th February 1828.	50
—On papers filed in Court—correctness thereof should be ascertained on the day of their receipt, 28th June 1828, A.	55
Construction respecting the stamp to be used by parties taking copies of proceedings, 8th January 1829.	57
Cases in which copies of deeds or other instruments need not be on stamp paper to be authenticated as legal vouchers, 30th May 1829.	62
Value of—in appeals, how to be calculated, 5th November 1829, B.	79
Return to Appellants, preferring through ignorance a regular instead of a summary appeal, the difference of the value of stamps used on the occasion, 15th February 1830, B.	88
—In suits struck off the file under Regulation VI of 1831, 27th October 1831.	103
What penalty is to be levied on deeds written on paper of less value than the prescribed—17th January 1832.	105
Value of—on instruments executed on more than one roll of paper, 17th January 1832.	ib.

STATEMENT

	PAGE
—Of contingent charges—form of—29th September 1819.	16
Figured—to accompany Quarterly Civil Reports—form of 20th Sept. 1824, B.	30
Abstract—to accompany letters submitting half-yearly Civil Reports—form of, 29th November 1824.	31
Abstract—in letter accompanying Quarterly Civil Reports—how to be framed, 27th January 1825.	32
Quarterly—to accompany form of, 1st Civil Reports—form of, 1st March 1825.	32
—Half yearly—of persons confined under Regulation IX. of 1822, and all Civil debtors, 8th January 1829, B.	58
28th December 1829, B.	64
18th December 1830.	95
C. O. No. 93.	170
—Of District Moonsiff's fees required to be sent up with Quarterly Civil Reports, 16th September 1829, B.	75
—Of applications for special appeals, to accompany Quarterly Civil Reports, 9th September 1831.	101
—Of Miscellaneous Petitions to accompany Quarterly Civil Reports, 16th April 1832.	108
Circular Order Nos. 46 & 67. 145.	153
—Numerical of Suits decided by Sudr Ameens to accompany Quarterly Civil Reports. Circular Order No. 2.	125
—Of decrees executed to accompany half-yearly Civil Reports. Circular Order No. 15.	131
—Of fines, to be submitted with the Quarterly Civil Reports. Circular Order No. 34.	139
Circular Order No. 39.	140

STATEMENT CIVIL HALF YEARLY.

See Reports Civil half-yearly.

STATIONERY

	PAGE
Relative to the indents for—30th August 1805.	5
—For Court of Circuit, to be supplied by Zillah Judges. Circular Order No. 11.	128

SUITS

	PAGE
Provisions in Regulations respecting the security to be taken from parties engaged in—24th May 1808.	3
Process to be observed on death of either party in—7th Nov. 1809.	6
Decision of—falling short of the prescribed number—explanation to be given in letter accompanying Quarterly Civil Reports, 10th May 1814.	8
Zillah Judges and Registers expected to decide 10 suits a month—and Assistant Judges whose duties are restricted to trial of Civil Suits expected to decide 20. 21st February 1815.	10
31st December 1832.	111
Form of proceeding to be observed in conducting Civil—3d April 1815.	11
All persons interested in—are entitled on furnishing the stamp paper, to receive copies of orders passed, 26th June 1823.	22
—For personal damages excluded from the cognizance of District and Village Moonsiffs and Panchayets, 19th March 1824.	23
Rules respecting production of public records required as evidence in—17th June 1824.	26
—Personal—referred to in Regulation XXVII. of 1802—authority of a Court to require the production of documents in custody of a Collector is not limited to—17th June 1824.	27
Native Judicatories—deciding less than 20—in the month,	

	PAGE
must shew satisfactory cause, explanation to accompany Civil Reports, 20th September 1824, B.	29
Zillah Judge referring—from his file to Sudr Ameens, and from the nearest District Moonsiffs, whose files may be large and in arrear, 20th September 1824, B.	ib.
—Not to be decided out of their order on the file, 20th September 1824, B.	ib.
—Instituted under Section XVI. Regulation V. of 1822, to be entered as "Original" in half-yearly Civil Statements, 29th November 1824.	31
—To be entered in Quarterly Abstract Statement—to include all instituted—though some may have been referred, 27th January 1825.	32
Called up under Section LIV. Regulation VI. of 1816, where to be entered in the Quarterly Civil Statements. 27th January 1825.	ib.
—"Called up by Zillah Courts" entry of—to be made in the statement of suits disposed of by District Moonsiffs, 27th January 1825.	ib.
—Transferred—how to be entered in Quarterly Civil Reports, 12th March 1825.	33
—Before District Moonsiffs must be heard in the order in which they are filed or numbered, unless the Zillah Court in any instance direct a suit to be otherwise tried, 4th Apr. 1825.	34
—Against Collectors should be decided by the Zillah Judges themselves, 28th Feb. 1827.	40
—Opinion and proceedings of Collector submitted to Provincial Court, under Clause 1st, Section IX, Regulation XII of 1816—not considered as suit, 8th May 1828.	54
—"Dismissed"—includes all suits not decreed on their merits or settled by Razeena-	

	PAGE		PAGE
mah, 19th January 1829...	58	may be instituted <i>de-novo</i> , 7th May 1831.....	98
If plaintiff is non-suited after investigation of the merits of the case—the suit is to be included as decided on its merits, 19th January 1829...	<i>ib.</i>	—Of the description specified in Clause 1st, Section II, Re- gulation IV of 1831, in which though ready for in- vestigation, no decree had been passed on the promul- gation of that Regulation— how to be dealt with, 7th July 1831.....	99
Unless a Razeenamah is jointly filed, it is not to be inferred that an adjustment has taken place, 19th January 1829...	58	26th August 1831.....	100
31st August 1829.....	73	—Under Regulation VI of 1831, 19th October 1831.....	101
What suits are to be entered in statements as “dismissed,” 10th September 1829, <i>A</i>	74	27th October 1831.....	103
29th October 1829.....	76	—In which both parties are Eu- ropean British subjects—as to the power of Civil Courts to take cognizance of—20th February 1833.....	112
—For productive property— rule regarding the adjudg- ment, up to the date of exe- cution of decree, of certain rent or profit, 22d Oct. 1829.	<i>ib.</i>	10th June 1834.....	123
Regarding the employment, by one party, of a Vakeel re- tained by the other party, 5th November 1829, <i>A</i>	<i>ib.</i>	Under Clause 4th, Section X. Regulation XV. of 1816, the evidence must be restricted to the recorded point—all witnesses produced to prove each point should be examin- ed, 25th March 1833.....	114
A party may by <i>relinquishing</i> a portion of his claims, sue for the remainder in the Court by which that remain- der is cognizable, 28th Jan. 1830, <i>A</i>	86	Zillah and Assistant Judges and Registers expected to de- cide eight suits per mensem. Circular Order No. 4.....	125
—Tried <i>ex parte</i> —may be de- cided on the merits, 15th February 1830, <i>B</i>	88	Assistant Judge at Mangalore expected to decide 15 suits per mensem. Circular Or- der No. 4.....	<i>ib.</i>
Where the parties are more than one on either side—and employ different Vakeels— rule respecting the fees of the Vakeels, 8th April 1830.	90	In—conducted at the public expence, the deposit of Va- keel's fees is not requisite, nor is it necessary that any other Vakalutnamah should be filed, than the order issued to Government Vakeel by a duly authorised Officer. Cir- cular Order No. 12.....	128
—Against a Magistrate under Section XLIII, Regulation IX of 1816—Zillah Judge's duty in respect of—2d Sep- tember 1830, <i>A</i>	91	—Can be decided by the oath of one of the parties, if the other party consents to that mode of decision, and the one call- ed upon to swear, agrees to take the oath. Circular Or- der No. 16.....	131
If the total amount exceeds the sum cognizable by a Court —a suit cannot be brought in that Court for recovery of the first instalment of the bond, being the only one then due and the amount ad- judicable by the Court, 9th September 1830, <i>A</i>	92	—Of old date—explanation of the cause of delay in their disposal to be given in the	
Circular Order No. 40.....	140		
—Dismissed for default without investigation of the merits			

	PAGE		PAGE
half-yearly Civil Reports. Circular Order No. 17.....	<i>ib.</i>	security for costs in—to be received, 29th Jan. 1805....	1
—Regarding lands which may have been held under mort- gage prior to 12 years. Dis- trict Moonsiffs cannot take cognizance of—Circular Or- der No. 33, <i>A</i>	138	Security for costs of—to be de- termined in Zillah Court, who will certify to Appeal Court, receipt and sufficiency, 20th December 1808.....	
—Involving disputes of a reli- gious nature, to be disposed of as speedily as may be con- sistent with justice—such suits however, should not have precedence of suits en- titled to priority of decision <i>under the Regulations</i> . Cir- cular Order No. 49.....	145	Record of—what documents to be composed of, 17th Janu- ary 1815.....	9
—Filed in a Court, against a public officer under Regula- tion I of 1823, rule respecting. Circular Order No. 57.....	148	Petition of—to be endorsed— and notice to Appellant to form part of record—3d April 1815.....	12
—Pauper—deposit of money is not required from sureties in, Circular Order No. 60.....	149	Copy of Decree of Sudr Udalt to be furnished to the Court from which the Appeal was preferred, 30th April 1818....	16
—District Moonsiffs in the trial of—are to consider and re- cord the points to be establish- ed, respectively, by the plain- tiff and defendant. Circular Order No. 62.....	150	All Appeal causes to be includ- ed in the general head of— in the Abstract Statement ac- companying half-yearly Civil Reports, 29th Nov. 1814....	31
Case in which Courts can at- tach property of defendant. Circular Order 63.....	<i>ib.</i>	To the King in Council—rule regarding the security to be taken from party in whose favour the decree of the Sudr Udalut for landed property shall be executed, pending the Appeal, 21st Sept. 1826.	38
—Against persons not resident within the jurisdiction of the Court in which it may be in- stituted. Circular Order No. 64.....	151	Records of—sent by Banghy, how to be secured, 18th De- cember 1826.....	39
In all suits for land—certain particulars required to be inserted in the plaint and de- cree. Circular Order No. 66.	152	Three months is the period al- lowed for preferring Appeals under Section V. Regulation I of 1827, 25th March 1828.	52
—Dismissed for default—rule respecting. Circular Order No. 70.....	153	The proceeding contemplated by Section XVI. Regulation V. of 1822, is itself an appeal, and a Special Appeal only lies from it, 23d April 1828.	53
Circular Order No. 79.....	160	—From Native Judicatories should, in all practicable cas- es be decided by the Europe- an Authorities, 22d January 1829.....	59
Circular Order No. 82.....	161	A decree in—cannot be altered to the prejudice of an Ap- pellant, 16th July 1829.....	
—Founded on mortgage of more than 12 years' standing, is not excluded from the cognizance of District Moon- siffs, C. O. No. 107.....	175	—Referred back for trial and determination <i>de-novo</i> —the reference is merely for fur- ther evidence to be taken, and for judgment <i>de-novo</i> , 27th	

SUIT APPEAL

Government paper tendered as

	PAGE		PAGE
August 1829.....	72	20th July 1832.....	109
Value of Stamp in an Appeal, how to be calculated, 5th November 1829, <i>B</i>	79	—To the King in Council, notice affecting the parties failing to take measures to bring it to a hearing, 14th April 1834.....	120
Case in which the sum actually at issue—without reference to the amount sought by the original suit, is to determine whether the Appeal is to be made to the Zillah or Provincial Court, 24th December 1829, <i>B</i>	83	—To the King in Council—amount of security required to be taken in cases of, 14th April 1834.....	120
Appellant preferring, from ignorance, a regular instead of a summary Appeal, opinion, as to returning the difference between the stamps used on the occasion, 15th February 1830, <i>B</i>	88	Circular Order No. 33, <i>B</i>	138
Regular—referred to an Assistant Judge or Register if then found that it ought to have been made summarily, may be disposed of as a summary Appeal, 15th February 1830, <i>B</i>	ib.	And do. do. No. 45, <i>B</i>	144
Regular—may in certain cases be referred back to a District Moonsiff by an Assistant Judge, Register of Sudr Ameen, 15th Feb. 1830, <i>B</i>	ib.	—Of old date—explanation of the cause of delay in their disposal to be given in the half-yearly Civil Reports. Circular Order No. 17.....	131
—Lies to the Superior Court from all interlocutory orders of Court, except where such Appeal is expressly prohibited by the Regulations, 23d Feb. 1831.....	96	Regular—the same rule of limitation as regards the admission of—applies to all Appeals from interlocutory orders. Circular Order No. 23.....	134
Security to be taken in—how to be calculated, 29th August 1831.....	100	Cross—how to be numbered and decided. Circular Order No. 24.....	ib.
—Allowance cannot be made in the period limited for appealing, for the time occupied in making a copy of the decree, 2d November 1831.....	103	—To Sudr Udalut—rule respecting the admission or rejection by Provincial Court, of petitions of. Circular Order No. 27.....	135
Period limited for—expiring during the adjournment of a Court—rule respecting, 30th November 1831.....	104	—For personal property—course to be observed in order to secure the fulfilment of final judgment in case of. Circular Order No. 29.....	136
Regular—in cases in which the applicant may have in the first instance moved for a review of judgment, or preferred a summary Appeal—rule respecting the admission of,		A party was not a pauper in the original suit, may be admitted to defend as pauper, in. Circular Order No. 36.....	139
		Decisions of Collectors passed under Clause 4th, Section IV. Regulation V. of 1822, cannot be stayed, pending the decision of—preferred to the Zillah Judge. Circular Order No. 56.....	148
		A Collector is not liable to be made a defendant in—against his judicial decisions passed under Regulation V of 1822. Circular Order No. 61.....	149
		Decrees in—to be furnished to Court of original jurisdiction within 15 days after having	

	PAGE		PAGE
been declared in Court. Circular Order No. 100.....	173	T	
SUIT APPEAL SPECIAL		TAPPAL	
Omission of—in statement No. 2, under Circular Order 20th September 1824—rectified, 12th March 1825.....	32	Representations to Sudr Udalut irregular if sent by—21st October 1825.....	37
Statement of applications for—to accompany quarterly Civil Reports, 9th September 1831.....	100	15th February 1832.....	107
Rule relative to the period allowed for the admission of—15th August 1833.....	116	Records of Appeals and other packets sent by Banghy, how to be secured, 18th December 1826.....	39
Courts admitting or rejecting applications for admissions of—are to record the grounds upon which their orders are founded. Circular Order No. 10.....	128	TRANSFER	
Every Court admitting—are to communicate to the Court from whose decision the Appeal is received, the grounds upon which it has been admitted. Circular Order No. 20.....	132	Of landed property. See Land.	
SUMMONS		TRANSLATION	
—And orders to Nazirs not within the provisions for stamp paper, 30th March 1810.....	7	—Into one of the current languages of the country to be annexed to the original decree, 24th December 1817.....	15
—To produce documents required in a suit—notice of the power of a Court to issue—17th June 1824.....	26	—Of decrees not to be made until judgment has been pronounced, 18th October 1824.....	30
—For appearance of Zemindars and Natives of rank should not be issued unless absolutely necessary, 1st March 1827.....	40	—Of decrees—attention called to the importance of dispatch in preparing the—22d May 1828.....	54
Circular Order No. 18.....	132	—Of judicial proceedings—compensation for—not to exceed 1 Rupee for every 300 words of the original, 16th June 1828.....	55
SUPREME COURT		—Of Law Officer's opinions at the annual transmission, should be on a separate paper from the original, 11th Oct. 1828.....	56
See Court Supreme.		Persian—of Section II. Regulation XXI. of 1802—error directed to be amended in—4th February 1829.....	59
SURPLUS FUNDS		—Required of all documents sent to Sudr Udalut by subordinate Courts in the Native languages, 15th March 1831.....	98
—Of estates under attachment—rules respecting, 17th August 1829.....	69	—Of Civil Records to contain no expressions in the Native dialect, without an explanation, in English, of their meaning. Circular Order	
28th February 1831.....	96		

	PAGE		PAGE
No. 31.....	137	Relative to the qualifications, as pleaders, of persons who have not studied in the College, 21st August 1824.....	27
—Of entire decree to be furnished to parties in certain cases. Circular Order No. 55	148	Regarding the employment of a—by one party in a suit, after having been retained by the opposite party, 5th November 1829, <i>A.</i>	76
TREASURY		Rule respecting the fees of—when parties are more than one on either side of a suit—and employ different Vakeels, 8th April 1830.	90
Rules respecting the custody and management of—28th October 1822.	21	His fees in suits struck off the file under Regulation VI of 1831, 27th Oct. 1831.	103
Circular Order No. 7.	127	Deposit of fees for—is not requisite in suits conducted at the public expence. Circular Order No. 12.	128
V		—Government—rule respecting the nomination of—for the approbation of Government. Circular Order No. 52.	146
VAKALUTNAHAH		VOUCHERS	
Due. attestation of—provided for—10th December 1805.	1	—Tendered by parties in suits form of rejection of—3d April 1815.	12
Attestation of—how to be made, 22d February 1815.	11	Copies of documents required as legal—what stamps to be used for—8th Jan. 1829, <i>A.</i>	57
Registry of—fees irregularly charged on—22d Feb. 1815.	ib.	District Moonsiffs cannot grant copies of bonds or other documents as legal, 30th May 1829.	62
The filing of any other—than the order issued to Government Vakeel, by a duly authorized Officer, in a suit conducted at the public expence, is not necessary, Circular Order No. 12.	128	W	
—Not required to be verified on oath. Circular Order No. 94.	171	WARRANT	
VAKEEL		—Of <i>capias ad satisfaciendum</i> —form of—11th April 1815.	34
Security for fees of—tender of Government paper to be received, 29th January 1805.	1	—Against Natives of rank and consideration—attention of Judicial Officers called to a discreet exertion of their legal powers in issuing—Circular Order No. 18.	132
—Of Sudr Udalt—arrangements made for remitting the fees to the Presidency, 20th September 1806.	ib.	—Required to be executed within the limits of the Supreme Court, rule to be ob-	
15th November 1806.	2		
—Of deceased party to a suit—his claim to be enforced against the Estate, 7th Nov. 1809.	7		
—To propose their interrogatories in general terms, 3d April 1815.	12		
Notice of the practice of introducing into questions proposed by—almost the whole evidence the witness is expected to deliver, 3d April 1815.	12		

	PAGE
served respecting—Circular Order No. 74.	158
Circular Order No. 77.	159
WASTING	
Delegation allowable of the power to receive and decide on the sufficiency of evidence as to—21st February 1828.	51
WILLS	
—Executed prior to Regulation II of 1825, how affected by it, 24th January 1828.	69
WITNESSES	
See Evidence.	
Absent—Forms of Commission for their examination under Act VII of 1841 C. O. 85.	142

	PAGE
ZAMINEE	
Due attestation of—provided for—10th December 1805.	1
22d February 1815.	11
ZEMINDARIES	
—Under attachment—rules regarding the surplus funds of 17th August 1829.	69
28th February 1841.	96
ZEMINDARS	
—And Natives of Rank should not be summoned unnecessarily—and should be treated with due consideration, 1st March 1827.	40
Circular Order No. 18.	132

According to the Hindoos the age of Majesty is Sixteen years complete.

Memor. Chap. VIII. 27

Vide Mr. J. Thayer's Hindolaw
Vol. 1. P. 72

Duration of Minority under Grants
of wounds is declared to be 18. Reber
IV Regulation V 1804.

Sudo Madalit.
 3^o The Judges of the Provincial Court in the
 Northern Division.
 Gentlemen.
 Now 1^o I am directed by the Judges
 of the Court of Sudo Madalit to acknowledge the
 receipt of Mr. Nasamajoi's letter of the 17th
 Instant, requesting instructions whether the
 rules relating to appeal or second appeals are
 applicable to appeals from interlocutory orders,
 and stating the cases which form the occasion.

of the reference.

2 Referring to the rules laid
in the 2nd Part of their proceedings
date the 23rd February, 1851 the Board
Foujdaree Udalt are of opinion that the
appeals to the Provincial Court in the
cases in question are admissible, not
being expressly or virtually prohibited
by any enactment of the Legislature.
It appears to them to be clear that the
reference to relating to second or special
appeals were intended to be applied,
are applicable only to Decrees. It is
however for the Provincial Court
exercise a discretion in admitting such
appeals from interlocutory orders.

Indt. Udalt, I have the honor to
Register Office, Gentlemen
23rd February 1851 Yours Most Obedient Servant
Signed / P. Elliot
Acting Registrar

THE
CIRCULAR ORDER
OF
THE COURT
OF
FOUJDAREE UDALUT,

From 1805 up to 31st Dec. 1846.

Madras:

J. B. PHAROAH.

1847.

of the reference.
 2 Refer
 in the 2nd Part
 date the 23rd of
 Foulad
 appeals,
 cases in
 being
 by
 App.

CIRCULAR ORDERS

OF THE

COURT OF FOUJDAREE UDALUT.

2^D FEBRUARY, 1805.

THE Court direct that it be a standing order that all convicts sentenced to be transported shall, at the end of every Session in each Zillah, be sent to Chingleput—to the intent that execution, on the said sentence, may be done, as opportunity offers for carrying it into effect.

The Court, further, direct that the *Criminal Judge*, in the Zillah of Chingleput, be instructed to have in readiness the convicts in that gaol under sentence of transportation, for the first opportunity of sending them to Prison of Wales's Island.

27TH MAY, 1806.

The Court, advertng to the frequent instances, that have been noticed on trials referred by the Courts of Circuit, of forcible means having been employed to extort confessions from suspected persons, and deeming it necessary to provide against the recurrence of a practice so highly reprehensible—Resolved, that the following Proclamation be, for this purpose, transmitted to all the Magistrates and Acting-Magistrates.

PROCLAMATION.

WHEREAS, from the Proceedings on trials referred by the Courts of Circuit to the final decision of the Foujdaree Udalut, it has been observed, by that Court, that confessions have frequently been extorted by persons apprehending criminals. And, whereas, there is reason to think that these highly reprehensible acts are not confined to the partial number of trials referrible, under the Regulations, to the Foujdaree Udalut; and whereas, the Court have deemed it expedient to prevent the recurrence of a practice so decidedly calculated, as well, to defeat the ends of justice, as to disgrace the established system of judicial procedure,—Wherefore you are, hereby, required carefully to instruct your immediate servants, and all others employed by you, and, generally, all persons within the limits of your jurisdiction, to abstain from all acts of violence towards persons apprehended by them, or committed to their custody, on charge of a criminal nature.

14th JULY, 1809.

See C. O. 51.

Read letter, from the late Acting Judge on Circuit, Centre Division, returning the sentences in two cases, and requesting instructions as to the propriety of his ordering them to be carried into execution, on account of his having been removed from the judicial situation which he lately held.

Read, likewise, letter, from the late third Judge on Circuit, Southern Division, returning final sentence in No. 12 of the Zillah of Daroopooraun, and reporting that he has delayed, until the receipt of instructions, to issue a warrant for the execution of Nulunmaul, in consequence of his having, previously to the receipt of the final sentence, received official notification of his appointment to a seat in the Board of Trade.

The Court, after due consideration of the subject, are of opinion, that it would be improper to change the rule hitherto laid down for cases of a like nature,—the Court consider it proper that the warrants should be signed by the person who presided as the Judge at the trial, and who is, consequently, acquainted with all the circumstances of the case. The express words of the Regulations appear to render the signature of the Judge who presided necessary whenever it can be acquired, and the Court are of opinion that the change of situation does not absolve a person from the execution of these duties which, from the rules of his former office, he is, individually, bounden to complete.

Modified by C. O. No. 51.

In pursuance of the opinion herein expressed by the Court, the warrants will, in future, be always signed by the person presiding as the Judge in the case, though he no longer retain the situation, whenever his signature can be obtained: but in case either of the death or departure of the Judge from the country, or his signature on the warrant being rendered by any other means unattainable, the sentences will be transmitted to the Court of Circuit, in order that the necessary warrants be issued by them.

30th AUGUST, 1809.

For the purpose of establishing, in cases of the return of convicts from transportation, that they have received due notice of the penalty to which they are liable under Clause II. Section IX. Regulation XV. A. D. 1803, the Court consider it advisable that the *Criminal Judge* be required, in reading the sentence of transportation, to inform the convict, in open Court, of the penalty attached to his return, and to certify, by endorsement on the Warrant, that such communication has been made.

31st JANUARY, 1814.

See C. O. 31st Jan. 1820 and 1st Aug. 1821.

The review which the Court have taken of the foregoing trials, and the defects which they have, on sundry occasions, observed in the proceedings of the lower Courts, as well in cases of perjury, as of other crimes, have suggested the expediency of circulating some general observations with the view of rendering the records of trials in these cases more perfect and satisfactory.

It is obvious that, in all prosecutions before the Courts of Criminal Jurisdiction, it is essential that the offence be correctly laid; that the time when, and the place where, the offence was committed, should be ascertained, as nearly as possible; and that in cases of a heinous nature,—such as murder, or wounding in the attempt to commit robbery,—the instrument, by which the murder may have been perpetrated or the wounds inflicted, should be correctly described, where it may be possible to obtain the information.

But it is scarcely to be expected that an uneducated native should, of himself, state facts and circumstances with the precision here required; and it is, therefore, the duty of the *Criminal Judge* to ascertain, if possible, the points above mentioned by examination of the witnesses, in order that the guilt of persons justly accused may be most fully established, and that those, who may be the unfortunate objects of mistaken, or malevolent, prosecution, may have the fairest chance of defending themselves against an unjust charge.

The result of all the examinations taken by the *Criminal Court* in each case, should be compressed into a brief statement, of the nature of an indictment, to be delivered with their proceedings to the Judge of Circuit or of Quarterly Gaol Delivery. This statement will at once shew the specific crime charged against the prisoner, and should be adopted as the arraignment when he shall be brought to the bar.

The cursory perusal of the *Criminal Judge's* proceedings cannot be supposed to enable the Judge of Circuit, or of Quarterly Gaol Delivery, to frame an arraignment with sufficient precision; nor, indeed, is it proper that he, who, by virtue of his office, is counsel for the prisoner, so far at least as to take care that he do not heedlessly expose himself to the penalties of the law, should, at the same time, take up the opposite office of the public accuser.

Much of the irregularity observable in the trials, submitted to the Foujdaree Udulut, is to be referred to the want of a statement, drawn up in the manner above described, shewing the specific crime charged against the prisoner. As these remarks, however, are intended to be generally circulated, it is incumbent upon the Court to acknowledge that the trials received from the Judges of Circuit, in the Western Division, have been marked by a precise wording of the charge against the prisoner, and by a clear and distinct arrangement of the proceedings.

The foregoing observations, intended, principally, for the guidance of the *Criminal Judges* in preparing their proceedings, cannot be considered applicable, without qualification, to cases of perjury, because the duty of commitment does not, in such cases, rest exclusively with them.—The Court, before which the perjury may be uttered, is the proper authority to commit, or to direct the commitment of, the offender for trial; but it is not the less necessary to render the primary proceedings as perfect as possible.

It certainly is desirable that prosecutions for perjury should not be instituted in cases wherein there may be reason to doubt that the offence has been wilful and complete. The frequency with which the natives of India are charged with perjury, and the generally unsuccessful termination of the prosecutions for this crime, shew, in the strongest light, the expe-

agency of using the most studious caution in selecting cases for prosecution. The escape of any notorious offender must be supposed to encourage the commission of the crime : while, to subject to ignominious punishment any individual who may have incurred the penalties of the law, from inadvertence in a point on which the opinions of Europeans and natives may be at variance, rather than by a wilful and corrupt violation of truth, must be a matter of deep regret. The punishment of other offences, not capital, admits of reform ; the culprit expiates his offence, and returns to society ; but the man who has, once, been branded as a liar must ever hide his face. Such, at least, is the obvious intention of the law, and it should be carried into effect in the same spirit.

Perjury is declared to be, " giving intentionally and deliberately, before a Court of Judicature, Magistrate, or other authorized public Officer, a false deposition, upon oath, or under a solemn declaration taken instead of an oath, relative to some judicial proceeding, civil, or criminal, and upon a point material to the issue thereof."

The definition of the crime being thus precise, the charge against the person, supposed to be guilty of it, ought to be framed with corresponding precision. It ought to contain, the words spoken by the accused person, in which the perjury is supposed to be committed, the place where, and the time when they were uttered. It ought also to describe the judicial proceeding, to the issue of which the alleged perjury may be material.—The foregoing particulars, together with the falsehood of the words on which the perjury is charged, must be all proved on the trial. Failure of proof on any one of the points specified in the definition of perjury contained in Section IV. Regulation VI. of 1811, must be fatal to the prosecution ; because the crime is defined to consist, not in one or more of these particulars, but in all and every one taken together.

No person, should be made the object of a prosecution for perjury, who has not been cautioned against committing himself on his oath, and has, subsequently, persisted in maintaining falsehood for truth. The frequency of prosecutions for perjury, without this precaution, must make the courts of judicature a terror to the honest witness, by exhibiting instances of men, of respectability and character, being hurried to gaol, or compelled to give bail for their appearance to take their trial, on an ignominious charge, without having had an opportunity of explaining what might, perhaps, be only a slight inadvertence or misapprehension. The want of this precaution must, on the other hand, give confidence to the liar, by facilitating his escape from punishment, since it is essential to conviction that the perjury should be deliberate and intentional ; and this must be difficult of proof where the witness has not been warned of his danger. Even in cases where a witness has, on two occasions, given glaringly contradictory and irreconcilable testimony, on oath, regarding one and the same transaction, he should be warned of the difference between his statements, and be allowed to offer any explanation, with a view to reconcile them, before he is committed to take his trial for perjury. It is, indeed, by the most patient preliminary proceedings alone, that a beneficial operation can be given to the legislative enactments against this crime ; and a resort to them in any case, wherein it may be possible to give an honest interpretation to the deposition of a witness, must be productive of injurious consequences.

22b JULY, 1814.

Before any prisoners are sent, from a Zillah Station, to the Depôt, they shall be examined by the Surgeon of the Zillah, who shall certify to the *Criminal Judge* that they are in a fit state of health to proceed on the journey.—If the Surgeon should consider it necessary that any of the prisoners should be allowed meat on the journey, or should find that any of them are in want of necessary clothing to protect them from the effects of weather, and he shall state such opinion in his certificate, the *Criminal Judge* shall be authorized, thereupon, to issue an order for the supply of such necessary extra food or clothing.

A paper shall be drawn out and signed by the *Criminal Judge* of the Zillah, from which any prisoners may be sent, as above, containing a list of the prisoners and the allowance of food which each is to have on the road, and fixing the distance, per diem, beyond which they shall not proceed. If the distance from the station, whence the convicts are sent to Chingleput, be such as to render it proper to break the journey by rests, the *Criminal Judge* shall fix certain stations where the party may halt. In determining these points, the *Criminal Judge* is to bear in mind the bodily health and strength of the prisoners and the length of their imprisonment, which may have, itself, induced considerable debility. To these directions the *Criminal Judge* will add such other orders as may appear to him necessary or expedient.

The above paper, as well as a copy of the Surgeon's certificate, given in charge of a trust-worthy Peon, or Dolyet, who shall accompany the prisoners, from the station of their departure, until their arrival at Chingleput, and who shall be held answerable for the due performance of the orders therein contained.

Whenever the party shall arrive at any Zillah station, the peon charged with the *Criminal Judge's* orders, shall report his arrival to the *Criminal Judge* at such station, and shall produce to him the paper of orders and the Surgeon's certificate. The Surgeon, at the said station, shall examine the prisoners, and, if he find them in a fit state to proceed on their journey, he shall certify the same on the back of the original certificate. If he should be of opinion that, from fatigue, debility, or other cause, the prisoners, although able to continue their journey, should be allowed longer rests, or to go shorter stages, than those originally fixed by the *Criminal Judge* of the Zillah from which they were first brought, he is to state this opinion to the *Criminal Judge*, who will make such alterations as may be necessary in the orders, and deliver them again to the Peon in charge, who is to obey such last orders, and proceed accordingly to the next station, where he is to make the like report. If the Surgeon, at any Zillah station, should be of opinion that any one or more prisoners, ought not, on account of debility or ill-health, to continue his journey for a longer time than the party may be permitted to halt, he is to certify the same to the *Criminal Judge*, of his Zillah, who will, thereupon, give an order for the detention of the said sick prisoner, a copy of which order shall be delivered to the Peon in charge, who, upon receipt thereof, shall be authorized to give up the said prisoner and to prosecute his journey without him. The prisoner, so detained, shall be forwarded to Chingleput, when sufficiently recovered, by the *Criminal Judge*, in whose charge he has been left.

Upon the arrival of the party at the *Dépôt* at Chingleput, the Peon in charge shall deliver his orders, and the Surgeon's certificates to the *Criminal Judge*, who shall forward the same for the inspection of the Foujdaree Udalt together with a report of the general state of health and condition in which the prisoners have been delivered into his charge.

ANSWER FROM GOVERNMENT—1ST JULY, 1814.

THE Governor in Council desires that, with the view of giving complete effect to the foregoing rules, convicts may be carried to the *Sudr Chingleput* where the *Dépôt* is, and inspected by the *Criminal Judge* and Surgeon.

The Governor in Council takes this opportunity of expressing his desire that circular orders may be despatched to the *Criminal Judge*, prohibiting the practice of linking prisoners together when confined in gaol; and, if it shall be absolutely necessary to secure prisoners in that manner when they are marched from one station to another, you will direct that it be done with moveable hand cuffs, and not with irons which are riveted.

The Court, accordingly, direct that the rules which were submitted for the sanction of the Honorable the Governor in Council in their proceedings of the 16th ultimo, as well as the additional orders of Government concerning the linking together of prisoners be, immediately, circulated to the *Sudr Chingleput* Courts, with orders that they strictly conform to them.

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for

17TH JANUARY, 1815.

Vide C. O. 19th Jan. 1825, 115, 121, 123, also 5th May 1815 and 27th Dec. 1815 and 50th July 1817.

It has occurred to the Court that, in making up the record of trials referred for the final sentence of the Foujdaree Udalt, the translation of several of the documents specified in Section XIV. Regulation VI. of 1802, may be omitted without inconvenience. The Court, therefore, direct that the translation, both Persian and English, of the plaintiff's oath, to the truth of the charge; of the prosecutor's recognizance to appear and prosecute the charge; of the warrant prescribed for the apprehension of the offender, and of the recognizances of the prosecutor's witnesses, be henceforth, not furnished; and that, in lieu thereof, a short memorandum, shewing the date of the several documents above mentioned be inserted, as follows, viz., No. ——— Copy of the Plaintiff's oath to the truth of the charge dated the ———

(N. B.—This number must still, in cases of robbery and theft, contain the inventory of the money or property stolen or plundered, with the amount or computed value of it.)

No. ——— the Prosecutor's recognizance to appear and prosecute the charge, dated the ———

No. ——— Copy of the warrant for the apprehension of the offender, dated the ———

(N. B.—In cases wherein the charge shall have been preferred, in the first instance, to any of the Darogahs of the Police, &c., this number must contain a translation of his proceedings, &c.)

No.—The recognizances of the prosecutor's witnesses, dated the ——— See C. O. 21st May 1817 and 3d Oct. 1817.

The same course is to be pursued with respect to any other process, or order, of the Magistrate, which shall not be connected with the merits of the case.

The translation of the record of the trial, both in Persian and English, will then be limited to the complaint, or charge, of the prosecutor; the name or names of the person, or persons, apprehended; the examination of the person or persons, apprehended; the further examination of the prosecutor when taken, a list of the witnesses summoned by desire of the prosecutor, &c.; the deposition, of the witnesses, and the names of the witnesses, who may have been summoned at the requisition of the prisoner, together with the proceedings before the Court of Circuit, the *Futwah* of the Provincial Law Officer, and the order of the Court of Circuit thereupon.

The Court, further, direct that, in all cases wherein a native date may be mentioned, the corresponding English date shall be specified. Vide C. O. 2d Nov. 1821. Vide C. O. No. 69.

It is the practice of several of the Courts of Circuit to insert in the records of trials the questions put to parties and witnesses, with the view of ascertaining the particulars specified in Clause III. Section XVIII. Regulation VII. of 1802; but, as these particulars have no connexion with the merits of the case, the insertion of the questions relative thereto is unnecessary, while it contributes to swell the record. The Court, therefore, direct, that the particulars above referred to, be hereafter specified at the head of the examination of the party, or witness, in the manner which has been practised by the Court of Circuit in the Western Division, as follows, viz. :—

"First witness A. B. son of C. D. of the ——— religion, ——— caste, by Vide C. O. No. 127. profession a ———, aged ——— years, inhabitant of ———, &c. &c., is sworn according to the custom of his caste, and the admonition prescribed by Clause V., Section XVIII. Regulation VII. of 1802, being read to him, the following examination takes place."

1ST MAY, 1815.

It would appear from this trial, and from others of a similar nature, which have been referred to this Court, that the provisions of Section XXXV. of Regulation VII. A. D. 1802, are not enforced. See also C. O. 29th May 1816.

The Court, therefore, deem it necessary to call the attention of the Courts of Circuit to the provisions of the Section above mentioned, and to direct that in all cases in which a sentence of transportation may be passed and confirmed by this Court, the Court of Circuit, by which such sentence may be communicated to the *Criminal Judge* of the Zillah, in whose charge the convict may be, do, in transmitting such sentence, direct that the inscription, prescribed by the Section above quoted, be made on the forehead of the convict.

8TH MAY, 1815.

The prisoner, in the foregoing trial, stood charged with having forged the Sirkar's stamp, and of having affixed it to a piece of cloth, with the view of defrauding the Sirkar of the duty payable thereon.

The Judge on Circuit was of opinion, that, according to the present interpretation of Regulation VI. of 1811, the prisoner was liable to the full penalty prescribed by Clause I., Section III., of the said Regulation, but considering the sentence to be too severe, the Judge was accordingly induced, under the authority vested in the Court of Circuit by the Clause above quoted, to refer the trial for the final sentence of the Foujdaree Udalut.

The Judge on Circuit, in the 4th paragraph of his letter, remarks, that, in the foregoing, as well as in all similar cases that have been brought before him, the imitation of the Sirkar's stamp, has been confined to a rough mark made with charcoal, in size alone resembling the custom stamp, without the slightest attempt to forge the characters upon the seal, and accordingly suggests, whether the offence might not with more propriety be considered as a simple fraud, proceeding from ignorance and extreme poverty, in order to evade the payment of Sirkar duty, rather than a positive forgery.

The Judge of Circuit further requests that, should the Court agree with him in his construction of this Regulation, they will be pleased to favour him with their sentiments on the following point, viz. Whether the Court of Circuit is competent to punish the offence as a fraud, without reference to the Foujdaree Udalut for mitigation of punishment?

Almost in every instance, in which cases of this nature, have been brought before the Foujdaree Udalut, the ground of the reference was the severity of the punishment of forgery, prescribed by the regulations, and the nature of the punishment inflicted in all those occasions, shews that the Foujdaree Udalut have concurred in opinion with the Judge on Circuit. The present reference takes a larger scope. It supposes that the regulation, which has been enacted to prevent forgery, cannot be intended to include frauds attempted on the customs by means of a mark, resembling the public chop of Government in nothing but its dimensions, and too coarse in execution to mislead any one. On this subject no opinion has yet been passed by the Court; but the trials, which have been referred by the several Judges on Circuit, have been disposed of in the ordinary course under the Futwahs given by the Law Officers. The references being indeed for mitigation of punishment, the object of them appeared most readily answered by passing out once limited sentences on the offenders; but the general reference now made, calls for a more particular consideration of the subject—on the general principle, that all penal laws should be construed favorably towards the offending person, it may be doubted whether the words, “and the illicit imitation of any public stamp or stamp paper, established by Government” be intended to include the mark affixed to cloth at the Custom-house.

It must be observed that, throughout the regulation, no mention is made of cloth, but that the Clause alluded to declares that the penalties for forgery “are meant to include all fraudulent and injurious fabrica-

tions, or alterations of written deeds, or of written or printed papers, of whatever description; as well as all counterfeit seals of signatures thereto;” and it concludes the sentence with “the illicit imitation of any public stamp or stamp paper established by Government.”—It is therefore to be inferred, that the public stamp, or stamp paper, established by Government, must also be connected with written deeds, or written or printed papers, of whatever description, and that the penalties for forgery were not meant to include frauds on the customs, other than such as might be committed by means of forging a pass, or some paper commonly issued from the Custom-house.

The imitation of the Custom-house mark being punishable under the Mohummudan Law, as a forbidden Act, no difficulty was felt in inflicting punishments adequate to the offences committed in all the cases brought before the Court; but from the very extent of those punishments it is evident that Court did not consider the penalties for forgery as applying to the acts brought before them. In each of the instances alluded to, a resort to the power vested in Magistrates, by the XXI. Section of Regulation I. of 1812, would have provided an adequate punishment for the offence, and would, probably, have been attended with better effect than the measure of putting the offenders upon their trial, for an offence of a more heinous nature, when the punishment that has followed has been altogether inadequate to the nature of the offence imputed to them.

8TH MAY, 1815.

The Court are of opinion, that the copy of the sentence transmitted with the foregoing precept, is not sufficiently regular, they accordingly annex the form of a sentence, as applicable to the present case, and they direct that it be adopted in all similar cases.

“You Pooloogandoo, and you Bheemunna, have both been tried and convicted of the crime of highway robbery; and the sentence of this Court is, that you, and each of you, be imprisoned and transported to Prince of Wales's Island, and that you be further there imprisoned, and kept to hard labour in irons on the public roads, or other public works, for, and during the period of your natural lives respectively.

“You Gungunna have been acquitted by the Futwah of the Law Officer; but there appears to this Court strong grounds for suspecting that you are guilty of the crimes charged against you: and you will therefore be remanded to prison until orders shall be received from the Court of Foujdaree Udalut regarding you.”

The Court are of opinion that in all cases referrible by the Judge of Circuit for the final decision of the Foujdaree Udalut, more especially in those cases where a recommendation for mercy or a mitigation of punishment may be submitted by the Judge presiding at the trial, the prisoner, or prisoners, should be duly apprized of such reference, as also of the recommendation to mercy or mitigation of punishment that may be submitted to the consideration of the Superior Court.

And the Court accordingly direct, that this practice be observed in the several Courts of Circuit, and that the Judges do accordingly certify, at the foot of each, sentence that such communication has been duly made.

It does not appear from the proceedings in the foregoing case, by what authority, or on what grounds, the prisoners are detained; no copy of the warrant issued for their remandment to gaol, and their detention in custody, being thereunto annexed. The Court accordingly direct, that a warrant, in the subjoined form,—with such alterations as may be necessary to make it applicable to the several cases, shall be issued in each trial to the *Criminal Judge*: and that copy thereof be duly certified and annexed to every record referred for the final sentence of the Foujdaree Udalt.

To the *Criminal Judge* in the Zillah of Cuddapah. “The prisoner, 1st Pooloogandoo, and 2nd Bheemunna, having been severally tried and convicted before this Court of the crime of highway robbery, have been sentenced to be imprisoned and transported for life; you will therefore detain the said Pooloogandoo, and the said Bheemunna, in confinement in irons, and cause them daily (Sunday excepted) to be kept to hard labour on the public works, until you shall receive the commands of the Court of Foujdaree Udalt regarding them.

5TH JUNE, 1845.

The third Judge, in his letter referring trial No. 55, states that nine of the prisoners, in the said trial were acquitted by the Futwah of the Provincial Law Officer, but under an impression that their being turned loose upon society, without giving security for their future good behaviour, would endanger the public tranquillity, he has directed the Magistrate not to set them at liberty until they shall have given the security required by Clause VI., Section II. Regulation XV., A. D. 1803.

The third Judge then remarks, that, in proceeding in this manner, with respect to the prisoners, he has acted solely with a view to the public good, and that in his opinion their being persons of vicious habits and bad character is sufficiently established by the depositions of two witnesses Fugr-ood-deen and Unmah, both before the Magistrate, and in the course of the trial.

At the same time, however, the third Judge states, that a doubt arises in his mind as to the strict legality of the measure, because the Futwah of the Mahomedan Law Officer has declared them acquitted without reservation, and that it would appear on due consideration of the Clause and Section above quoted, that some degree of suspicion must be attached to the prisoner by the sentence of the Law Officer to authorize a demand for the security therein-mentioned previous to releasing the prisoner.

The third Judge, accordingly, submits the consideration of this point to the Foujdaree Udalt, and requests to be favored with an extract of their proceedings thereon, for his information and guidance in future cases, wherein, as in the present, prisoners may be fully acquitted by the Futwah, yet may appear to the Judge presiding, to be persons of infamous character, by the depositions of witnesses either before the Magistrate or in the course of the trial, though the same, as in the present instance of Fugr-ood-deen and Unmah, be declared inadmissible, solely on the grounds of their depositions being considered as mere confessions.

The third Judge further observes that, in the event of his having assumed a latitude of interpretation respecting the security required from the prisoners, in the present case, previous to their enlargement, which the spirit of the law will not admit of, it will be necessary to issue immediate orders for their discharge, as their further detention will be unjust.

The first part of the Section quoted by the third Judge prescribed that no part of Regulation XV., shall be considered to authorize the infliction of any punishment whatever, upon suspicion only, (termed by the Mahomedan Lawyers, Whum Shuck, or Shooobu-i-Zaeefu,) when the evidence against the prisoner is *undeserving of credit*, or the presumption of his guilt (arising from credible testimony of circumstantial evidence) is weak, and does not amount to the degree of strong presumption held sufficient for conviction, recognized as such in the Mahomedan Law under the denomination of Ghalibooz-zun. Ukbur-oo-rac and Shooobu-e-Quvee, or Shudeed.

The Section then runs as follows. “When the Judge, before whom a prisoner may be tried, shall not consider him convicted on such presumptive proof, or on the evidence of credible witnesses or on his own confession, he shall not sentence the prisoner to suffer any punishment, whatever may be the Futwah of the Law Officer;—but in cases of strong suspicion, though not amounting to conviction, *as well as upon proof of notorious bad character*, the Judge of Circuit may direct the *Criminal Judge* to detain the prisoner in custody until he shall give security for his future good behaviour and appearance when required.

The Court are of opinion that the foregoing Section authorizes the Judges of Circuit to require security in cases where notorious bad character may be *proved* to their satisfaction, whatever may be the Futwah of the Law Officer.

27TH DECEMBER, 1815.

The trials referred for the final decision of the Foujdaree Udalt, during the present year, being nearly brought to a close, the Court, with the view of rendering the referrible trials in future more complete, by rectifying some errors and omissions, as well as of obviating the necessity of a further reference, so frequently required by the Law Officers of the Foujdaree Udalt, from the defective state of the records, deem it necessary to make a few observations for the information and guidance of the Magistrates and Courts.

The first irregularity which requires to be noticed is that of connecting the examinations of prisoners, sent in by Police Officers, with the confessions said to have been made by them in the Talook, which should be kept as separate and distinct as possible from each other.

Such confessions have in many instances been received too readily, and have been deemed calculated to obviate the necessity of circumstantial evidence. But with few exceptions, these confessions, said to have been made voluntarily before officers of Police, and attested by their peons, have been found unsupported by collateral evidence of any description, and from the very questionable shape in which they have been brought forward, have been declared by the Mohummudan Law Officers insufficient for the conviction of the prisoners.

C O.'s 18th June
1817, 29th April
1822, 7th Sept.
1820, 24th Jan.
1822.

Where an offender voluntarily makes any confession of the crime of which he is accused, before any officer of the Police, his declaration should be committed to writing in the presence of at least two credible witnesses, and who shall have been present during the whole period of the prisoner's examination, and not merely when the signature of the prisoner is affixed to the paper, as too frequently has been the case. The declaration should then be read over to the prisoner, and he should be required to state, whether such is his free and voluntary statement; and if he reply in the affirmative, his signature or mark should be affixed to the paper, and then attested by the witnesses. When brought before the Criminal Court, the prisoner's examination should be taken down on a paper separate from that containing his declaration made before the Police Officers, with which they have, too commonly, been blended. The examination being completed by the Criminal Judge, the declaration forwarded by the Police Officer should be read over to him, and he should be required to state whether it was freely and voluntarily made on his part; and in case of his pleading, that he was either compelled, by the violence offered to his person, to assent to the truth of the paper drawn up by the direction of the Police Officer, or that he was inveigled to make such an admission on his part by the promise of pardon, held out to him on condition of his signing the paper, the Criminal Judge should require him to support this plea by evidence. With this requisition he may however be unable to comply, from the peculiar circumstances in which he is placed, surrounded by officers of Police, whom the prisoner, from not being previously acquainted with them, cannot name, and who, in cases, where any improper measures might be adopted, would not readily come forward in evidence against their immediate superiors.

See C. O. 18th
June 1817.

Considerations like these render it necessary that confessions, said to have been freely and voluntarily made before officers of Police, should be viewed with caution and hesitation, and that they should be supported by much circumstantial evidence, ere they be admitted to the conviction of the prisoner. The Magistrates are, accordingly, directed to issue particular orders on this subject to the head native officers of Police, and to require them to impose no further restraint on the prisoners brought before them than is sufficient to secure their persons, and, when questioning them respecting the charges adduced against them, with the view of ascertaining its truth or falsehood, to leave them as much as possible unfettered both in mind and body.

The English and Persian records are, moreover, frequently defective in another respect, at the foot of the examination, both of prisoners and of witnesses, merely the copy of the name of the Criminal Judge, and Judge of Circuit in certification of the correctness of the translation is inserted, whereas it should also be certified that the said examinations were taken before the Criminal Judge, on oath, or otherwise (as must always be the case with prisoners who are not required to swear to the truth of their statements) the names of the attesting witnesses, and the date on which the examinations were taken, should also be carefully entered in the copies of the original proceedings. From the records being certified by the Judge on Circuit as true copies and translations, the Court must, unavoidably, conclude that where the necessary signatures, &c., are wanting in the attested records of referrible cases, they are also wanting in the original proceedings; and consequently be compelled to withhold from them that credit to which, they may, in reality, be entitled.

In cases of murder, especial care should be taken to have the corpse of the person, said to have been murdered, identified by at least two witnesses who were personally acquainted with the deceased during his lifetime, and to have it examined by one or two native Surgeons of respectability, where no European Medical Officer is at hand. In cases of theft and robbery, the prosecutor should be required to prove the identity of his property, by at least two witnesses.

There is another error of great magnitude, which has occasionally obtained both in the examinations taken before the Criminal Judge and the Judges of the Courts of Circuit, and which requires to be remedied; and that is the practice of reading over to witnesses, prior to their examination, the whole of the charge brought against the prisoners; thereby putting them in possession of a knowledge of the whole circumstances of the case, instead of stating, in as few words as possible, the nature of the charge, and requiring them to state, what they know respecting it.

In cases where the Criminal Judge commits a prisoner to take his trial before the Court of Circuit, on the prosecution of the Sirkar, the Government Vakeel shall be furnished by the Criminal Judge with a Vakalatnama, authorizing and directing him to attend and to conduct the prosecution on the behalf of Government, on the arrival of the Court of Circuit.

This measure has, frequently, been omitted, so that in many cases, either the Judge on Circuit, who is to try the prisoner, must be considered the prosecutor, or there is none at all. It has also happened, occasionally, that where the Government Vakeel has been furnished with a Vakalatnama by the Criminal Judge, on his appearing before the Court of Circuit, he has been inadvertently put on his oath. The impropriety of such a proceeding is obvious, as he cannot be called to swear to the truth of a statement which he delivers on the authority and by the direction of another. The Court have, in their former proceedings, directed, that where more than one prisoner is brought forward, the arraignment be only once entered on the record; it being sufficient for the Judge on Circuit to certify that the same has been duly read over to each prisoner individually.

The arraignments are oftentimes defective in material points, namely, the time when, and the place where, the act charged against the prisoner has been committed. Vide C. O. 10th April 1833.

The English records of referrible cases are not unfrequently, yet very unnecessarily, attested by the seal and signature of the Law Officer assisting at the trial; the Court accordingly direct that this practice be in future omitted.

The Court regret to observe, that the several forms, transmitted in their Circular Orders of the 8th May last, have not been attended to with that degree of precision and punctuality which might have been expected. The Court accordingly direct, that the attention of the Judges of the Courts of Circuit be called to the Circular Orders of the foregoing date, as also those of 17th January last; particularly of those Judges who may have been appointed to the Courts of Circuit, subsequent to the issuing of the orders alluded to.

The Court do, further, direct, that the order of the Court of Circuit, for the reference of any referrible case, as well as the grounds of such re-

ference, be entered on the record after the translation of the Futwah of the Mahomedan Law Officers.

The Court have also to notice that several cases of petty theft, &c., which were cognizable by the *Criminal Judge*, have been, unnecessarily and improperly, brought before the Courts of Circuit, and, in some instances, referred for the final decision of the Sudr Foujdaree Udalut. Should any cases of this description be in future included in the Calendars laid before the Courts of Circuit, the Judges are hereby directed to refer the same for the trial and decision of the *Criminal Court*.

The letters of the Judges on Circuit, accompanying referrible cases, too frequently contain nothing more than the mention of the reference, instead of conveying their opinion on the merits of the cases referred, as required by Section XXVI. Regulation VII. A. D. 1802.

Vide C. O. No. 108, 27th Dec. 1815, and C. O. No. 21th Dec. 1821, 4th March 1822, and 14th March 1831. This omission is to be the more regretted, because the Judges presiding at the trials are greatly assisted in forming their opinions thereon, by the behaviour of the prisoners, and the manner in which the witnesses deliver their testimony; whereby the latter not unfrequently betray either their ignorance, and the falsehood of their statements, or evince that they are speaking of facts more from the information and perhaps instruction received from others than from their own personal observation. In these, as well as in many other respects, the Judges, under whose immediate eye the whole trial is conducted, have many advantages, and the Court in passing their final sentence must, always, in a great degree be guided by the opinion of the Judge presiding at the trial, (more especially if in favor of the accused,) whenever the Regulations, and the Futwahs of the Mahomedan Law Officers of the Sudr Foujdaree Udalut will admit of it.

29th MAY, 1816.

Read letter, dated 17th Instant, from the *Criminal Judge* of the Zillah of Cuddapah, wishing to be informed, whether, with reference to Section XXXV. Regulation VII. of 1802, prisoners sentenced to be transported to Prince of Wales's Island are liable to Godena, and whether, as in the case of Gungadoo, a certificate purporting a knowledge of the penalty consequent on a return from transportation shall be taken in future from persons under such sentence.

The *Criminal Judge* states in the foregoing letter, that some scruples have been entertained whether the enactment, contained in Section XXXV. Regulation VII. of 1802, be strictly applicable to convicts transported for life to Prince of Wales's Island, "because it is believed that the convicts on that Island are not kept continually confined to a gaol; but, at times, are employed on various services about that small territory."

The Court have not any information before them regarding the confinement of convicts transported to Prince of Wales's Island; but they do not consider the question to be of material importance, as they are of opinion, that the spirit of the foregoing enactment cannot be destroyed by any variation which circumstances may occasion in the mode of their confinement, the object of the enactment is "to facilitate the re-apprehension of convicts sentenced to confinement for life, who may make their escape from gaol," or, as the Section may be fairly interpreted, from any place where the aforesaid convicts may be confined, in pursuance of the sentence

of the law; and it is obvious to remark, that the consideration the *Section* suggested the expediency of the provision contained in the *Section*, which is quoted, must apply, in every respect, to convicts transported beyond the limits; in fact, the *Section* to which the *Criminal Judge* refers, after reciting the grounds of its enactment, goes on to declare that "all convicts of this description (i. e., who are sentenced to confinement for life) are to have the following particulars inscribed on their foreheads," &c.

The Court accordingly repeat their Circular Instructions of the 1st May, 1815, and again direct that in all cases, in which a sentence of transportation may be passed or confirmed by this Court, the Court of Circuit, by which such sentence may be communicated to the *Criminal Judge* of the Zillah, in whose charge the convict may be, do, in transmitting such sentence, direct that the inscription prescribed by Sec. XXXV. Regulation VII. A. D. 1802, be made on the forehead of the convict.

12TH APRIL, 1817.

The prisoners mentioned in the foregoing letter were tried before the Court of Circuit at Bellary, during the first Sessions of 1815; and, as it appeared, on a consideration of the case before the Foujdaree Udalut, that the prisoners in question were not British subjects, and that the offences charged against them had been committed within the territories of his Highness the Nizam, the Court issued orders, on the 19th April, 1815, for the delivery of the persons to the charge of the Officers of the Nizam, and the case was submitted on the same date for the consideration of the Right Honorable the Governor in Council.

Adverting to the irregularity of the proceedings held in this case, the Governor in Council has been pleased to communicate a request, through the Resident at Hyderabad, that, "as far as the British Government are concerned the prisoners may be released with the serious warning which the nature of the case apparently requires."

On the 14th of August last, the Court submitted to Government the case of five persons, tried on charges of Phanseegaree, before the Court of Circuit at Salem, during the 1st Sessions of 1816, who were subjects of the Mysore Government, and who were accused of having committed the several offences laid to their charge within the territories of the Rajah of Mysore. The resolution of Government for the release of these prisoners was communicated to the Foujdaree Udalut, on the 31st of the same month, and orders to that effect were issued by the Court to the Second Judge of Circuit, in the Southern Division, on the 6th of September following, with directions for adopting such measures of precaution as a knowledge of the character and former practices of these persons might suggest, as best calculated to prevent the repetition of an offence so injurious to the peace and happiness of the community.

In both these cases persons were put upon their trial who were not amenable to any of the established Courts of Criminal Judicature within the British provinces, and in both cases Government have considered it to be agreeable to the ordinary principles of British justice that the several prisoners tried and committed before the Courts of Circuit should be released from confinement. The Court accordingly resolve to bring these cases to the particular notice of the several Courts of Criminal

Jence, bre, and to direct that, whenever charges may be preferred for crimes or Makhemeanors, they be careful to ascertain whether the crimes or misdemeanors so charged have been committed within or without the limits of the British provinces.—In the latter case, it will not be competent to any of the Criminal Courts to take cognizance of such charges, except where they may be preferred against a native subject of the British Government.

(Vide Regulation II. of 1829, and XII. of 1832.

21st MAY, 1817.

Sec C. O. 3d Oct. 1817.

The attention of the Court has been lately attracted by a case, wherein it appeared that a witness, who had been bound over to attend and give evidence before the Court of Circuit, had failed to attend when the case came on for trial. The circumstance was passed over without any observation on the record of the proceedings, and it has appeared, on subsequent inquiry, that no process was issued against the surety of the witness.

It is desirable that a general rule should be established for the guidance of the Courts of Circuit on similar occasions, and the Court do, accordingly, direct that, whenever a prosecutor or witness may fail to attend before the Court of Circuit, according to the terms of the recognizance which is required to be taken under Clause third, Section IX. Regulation X. of 1816, and good and sufficient reasons be not assigned for such non-attendance, the Judge presiding at the trial do declare the amount of the recognizance forfeited to Government, according to Clause fourth of the same Section, and do immediately issue instructions to the Criminal Judge, requiring him to call upon the surety for the payment of the penalty of the recognizance, and, in the event of a refusal or omission on the part of the surety to comply with such a requisition, to commit him to close custody until such penalty shall be paid.

18th JUNE, 1817.

Vide C. O. No. 30.

C. O. 27th Dec. 1815.

C. O. 7th Sept. 1820.

C. O. 29th April 1822.

In many of the cases which have been referred, from time to time, for the final sentence of the Foujdaree Udalt, it has appeared that the prisoners have been committed for trial *solely* on the ground of confessions alleged to have been taken before the Native Officers of Police. Such confessions, being unsupported by any collateral evidence, have been found to be undeserving of credit, and the prisoners have, in all such cases, been ordered to be released.

It seems the duty of the Court to prevent the continuance of a practice which is calculated to obstruct the due administration of criminal justice, and to destroy that security of person which is so essential to the happiness of the community, and they, accordingly, resolve to record certain observations on the subject for the future guidance of the several subordinate authorities.

C. O. 24th Jan. 1822.

An erroneous idea would appear to prevail among the Native Officers of Police, that a confession is the strongest proof of guilt, and to this is to be attributed the custom which is known to prevail of obtaining confessions by false hopes and promises, or extorting them by the impression of fear. In many instances there has been reason to believe that con-

fessions have been fabricated, and the practice of obtaining by the flattery of hope, of extorting by threats or ill treatment, and of fabricating confessions, would seem to have increased till it has become general and systematic.

Bare, uncorroborated confessions, previous to trial, are always to be admitted with tenderness and circumspection, and when consideration is had to the undue means so generally used by the Police Officers, in order to obtain confessions, it must be obvious that they are entitled to little credit as evidence, unless strongly corroborated by other circumstances, or subsequently confirmed before the Criminal Court.—It is evident that all such confessions are liable to strong objections even when there is no positive proof of their having been obtained by improper means, since it is not improbable that the Officers of Police frequently intimidate or ill treat the accused, till they agree to confess, after which their examination is taken, and to the attesting witnesses it seems to be voluntary.

The attention of the several judicial authorities, should be particularly given to the means of suppressing an evil so serious in its magnitude, and so alarming in its consequences.—The Court do not indulge the expectation that a practice so widely diffused and so deeply rooted in the habits of the natives can be wholly and effectually eradicated; but they are of opinion, that, by endeavouring to impress upon the minds of the Police Officers that the confession of an accused person is a matter not of primary, but of subordinate consideration, one important step will be taken towards the attainment of this desirable object.—The very arrangement of the several clauses of Section XXVII. Regulation XI. of 1816, is confirmatory of this observation, and the Court accordingly direct, that the Magistrates of the several Zillahs do, with reference to the above remark, direct the attention of the Tahsildars within their respective jurisdictions to the provisions of the aforesaid Section. See also C. O. 24th Jan. 1822.

30th JULY, 1817.

Under the latitude allowed by Section XXI. Regulation X. of 1816, it has been found that the records of trials which have been submitted for the final sentence of the Foujdaree Udalt, have in very few instances been accompanied by the proceedings of the Magistrate, or of any Police Officer, under the Magistrate's authority, and hence it has arisen that in many cases the Court of Foujdaree Udalt have been imperfectly informed as to the grounds on which the prisoner or prisoners may have been apprehended.

In the absence, either in whole or in part, of such information, it is obvious that the Courts of Circuit and of Foujdaree Udalt must have a very limited view of the merits of a case, and it is therefore essentially important, in order to the effectual administration of criminal justice, that the proceedings of the Magistrate or of the Police Officer, as the case may be, should invariably form part of the record of the proceedings required to be delivered to the Judges of the Court of Circuit, under Section XX. Regulation X. of 1816.

The Court do accordingly resolve to circulate these remarks for the general information of the several Courts of Criminal Judicature and to

direct that the Calendar required to be delivered by the Criminal Judge to the Court of Circuit, be in all cases accompanied by copies of the proceedings of the Magistrate, or of the Police Officer, according as the prisoner or prisoners may have been sent to the Criminal Judge by the Magistrate, or by any Police Officer, acting under his authority.

3D OCTOBER, 1817.

It being desirable to obviate as far as practicable, the ill consequences that might be expected to result from the enlargement of convicts on the expiration of their term of imprisonment, without the knowledge of the Magistrate and Police Officers of the jurisdiction, in which they may have been apprehended and brought to trial, or in which they may have resided prior to their apprehension, the Court resolve to issue the following Circular instructions.

Whenever, in the case of a person who may have been sentenced by a Court of Circuit or by the Foujdaree Udalt, to be confined for a certain specified period in the same Zillah, in which he was committed for trial, the term of such imprisonment shall expire, the Criminal Judge of the Zillah shall carry into effect the warrant for his discharge, giving due information of the same to the Magistrate of the Zillah, as also in cases where the prisoner may formerly have resided in another jurisdiction to the Magistrate of such jurisdiction.—Nothing in this order is intended to prevent a Criminal Judge from demanding bail where it shall be so specified in the sentence of the Court of Circuit, but it is to be clearly understood that no persons sentenced to temporary imprisonment by a Court of Circuit or by the Foujdaree Udalt shall be finally released from gaol without due notice of the same being communicated to the Magistrate of the Zillah.

Vide C. O. Nos.
67 and 92.

Whenever a convict sentenced by a Court of Circuit, or by the Foujdaree Udalt, to temporary imprisonment, shall be in confinement at the approach of the period fixed for his discharge, in a jurisdiction different from that in which he was committed for trial, he shall be sent back with the warrant containing his sentence, or an authenticated copy of the same, if it include other convicts who are not sent at the same time, to the Criminal Judge of the jurisdiction, in which he was committed for trial who will carry into effect the warrant for his discharge, taking bail or not, as therein directed, and giving due information of his enlargement to the Magistrate of the Zillah; as also, in cases where the prisoner may formerly have resided in another jurisdiction, to the Magistrate of such jurisdiction.

Modified by C.
O. No. 92.

The Criminal Judge having charge of convicts to be discharged in another jurisdiction, under the above rule, is to send them to the Criminal Judge by whom they are to be discharged so as to reach him before the expiration of their respective sentences.

The Criminal Judge sending convicts from one station to another, under these instructions, is to furnish them with a sufficient allowance for their subsistence on the way, at the prescribed rate of diet money, for the calculated period of the journey. But the allowance for one month's maintenance, not exceeding five Rupees, to which convicts released after an imprisonment of six months or upwards, and appearing to be in want

of such assistance, are entitled, under Section XXXII. Regulation X. of 1816, is to be paid to them by the Criminal Judge who finally carries in to effect the warrant of their discharge.

It is expected that the Magistrates and Police Officers of Zillahs, in which discharged convicts were apprehended and brought to trial, or in which they formerly resided, being duly advised of their release, will take the requisite precautions to watch the conduct of the persons discharged, especially of such whose general character and former habits of life may appear to render them particularly dangerous to the community.

3D OCTOBER, 1817.

It appearing to be the opinion of certain of the Judicial authorities, that the Court of Foujdaree Udalt intended, by the circular instructions of the 21st May last, to render it imperative upon a Criminal Judge to demand security in all cases from prosecutors and witnesses for their appearance at the sessions of gaol delivery, and it being desirable that all doubt on the point in question should be removed without delay, the Court desire it may be distinctly understood, that nothing in the above orders was intended to limit, in any degree the discretion vested in the Criminal Judge, by the Regulations, with regard to taking only personal recognizance from the parties, or otherwise, for the purpose abovementioned.

Whenever a Criminal Judge shall deem it expedient in consideration of the importance of any particular case, or for other, good, and sufficient reason, to demand security from a prosecutor or witnesses, for their appearance before a Court of Circuit, the Judge on Circuit will proceed, in the event of the non-attendance of any such person, in conformity with the Court's Circular orders of the 21st May last, and in all other cases where mere personal recognizance shall have been taken, and the amount of such personal recognizance shall be declared forfeited to Government, the process will be issued against the property of the recognissee.

5TH DECEMBER, 1817.

In making return to the Court's precept, the Criminal Judge in the Zillah of South Malabar has affixed an oval seal, bearing the following inscription in the English character,—“The Criminal Judge of the Zillah of South Malabar.”

The seal so affixed by the Criminal Judge, not being authorized by the Regulations, the Court consider it necessary to notice the irregularity, and to state, generally, for the information of the several Criminal Judges, that the seal prescribed by Section XIV. Regulation II. of 1802, is to be used for all official acts done by the Judges of the several Zillah Courts, whether on the civil or criminal side of such Courts, and that no paper bearing a seal other than that prescribed by the section aforesaid can be considered as the regular official act of a Zillah Criminal Court.

29TH JANUARY, 1818.

Several of the letters and returns to precepts which have been received from time to time from the Magistrates of the Zillahs having been subscrib-

ed by those Officers, in the joint character of "Collector and Magistrate," and in some instances with the designation of "Collector only."

The Court consider it necessary to notice the irregularity, and to state, generally, for the information of the Magistrates that official acts done by them in the exercise of their functions as Magistrate, are entirely unconnected with acts performed in the discharge of their fiscal duties, and, consequently, that all official papers which they may have to attest in their former capacity can be regularly attested only by the signature of "Magistrate," denoting that such acts are performed by them in the exercise of their judicial authority.

2D MARCH, 1818.

Cancelled by
C. O. No. 166.

In the sentiments of the second Judge of the Court of Circuit, regarding the expediency of possessing some criterion by which the Courts of Circuit may be enabled to judge of the crimes most prevalent in the several Zillahs within their respective Divisions, and of the progress made towards the suppression of offences, the Court of Foujdaree Udaltut, entirely concur, and they, accordingly, direct that the several Zillah Magistrates be required to lay before the Judge of Circuit, at each gaol delivery, a statement of crimes committed within their respective jurisdictions, prepared according to the form prescribed in Section XXX. Regulation IX. of 1816.

See Reg. IX. of
1828.

23TH JULY, 1818.

The Judges of the Court of Foujdaree Udaltut consider it to be desirable that the quarterly reports of persons apprehended, prescribed in Section XXXV. Regulation X. of 1816, should exhibit as well, the date of the arrival of the prisoner or prisoners at the Zillah station, as the date of apprehension.

The Judges desire, therefore, that you will enjoin the several Criminal Judges of the Zillahs within your Division to specify this additional particular in the column appropriated in the report for the date of apprehension.

26TH AUGUST, 1818.

Several instances of persons punished by the Assistant Magistrate of Bellary, are enumerated by the second Judge, wherein the offence was theft to the extent of a hundred pagodas, or burglary, or cattle stealing, none of which can be held to come within the description of "petty thefts," contemplated in Section XXXIII. Regulation IX. of 1816. This practice is contrasted by the second Judge with that which has been found to prevail within the Zillah of Chittoor, wherein several cases are stated to have been forwarded by the Assistant Magistrate to the Criminal Judge, in which the amount of property stolen did not exceed a few fanams, and on the contradictory practices herein noticed the second Judge founds an opinion that some more defined exposition of the rule is requisite for the guidance of the lower Courts, as also "that the Magistrates should be directed to be careful that all complaints in cases of theft state the value of the property stolen, and invariably to insert the same in the petty Calendar."

The exercise, on the part of the Assistant Magistrate, in the Zillah of Bellary, of the extraordinary powers mentioned by the second Judge, can only be attributed to an utter disregard of the provisions enacted for his guidance, which plainly declare that the judicial powers of the Magistrate, in such matters, are limited to "petty thefts,"—on the further express condition that such "petty thefts should not have been attended with any aggravating circumstances, or committed by persons of notorious bad character."—As the calendars referred to by the second Judge do not come before the Foujdaree Udaltut, the Court have not the means of knowing whether similar mistakes have been committed by the Magistrates or their Assistants in other Zillahs; but, as it is the duty of the Foujdaree Udaltut to watch with care over the administration of Criminal Justice in all its branches, they consider it proper to issue circular instructions, to the several Courts of Circuit, desiring them to impress upon the Magistrates of the Zillahs within their respective jurisdictions, that the complaints for theft which they are authorized to hear and determine, without reference to any authority, are complaints preferred for theft to an *inconsiderable* amount, which may not have been attended with any circumstances of aggravation, or may not have been committed by persons of bad character.—The Court of Foujdaree Udaltut, also, approve the suggestion of the second Judge, with regard to the specification in all cases of the amount of property charged, or proved, to have been stolen, and they direct that the rule be observed accordingly.

* Vide C. O. 30th
January 1821—
para 4, Minutes
of Consultation
dated 2d Janu-
ary 1821.

26TH AUGUST, 1818.

It is stated by the second Judge that, under Section V. Regulation IX. of 1816, "the Collectors consider themselves authorized to make over the whole of their Magisterial duties to their Assistants, and to depute them to hold their office in any part of the District they think proper," and the second Judge records the grounds on which he considers such absolute delegation of power to be unauthorized by the Regulations.

C. O. 20th Aug.
1821, 20th Oct.
1823, 30th Jan.
1824, 7th June
1831.

The view which the second Judge has taken of the intent and import of the law in this respect appears to be perfectly correct. Assistants to the Zillah Magistrates are declared by Section VI. Regulation IX. of 1816, to be "authorized to exercise the judicial power vested in the Magistrates as far as may be necessary to enable them to perform the duties committed to them respectively by the Magistrates, with whom they are stationed;" words which are employed in Clause First, Section V. Regulation X. of 1816, to express, *mutatis mutandis*, the powers to be exercised by an Assistant Criminal Judge, who, from the nature of his duties, is permanently stationed with the Criminal Judge.—The inference to be derived from comparison of the above enactments, derives considerable support from the provisions of Section XII. Regulation XI. of 1816, which expressly restrict the exercise of authority by an Assistant Magistrate, who may be deputed to any large and populous town, to the limits of such town; and, as the second Judge properly observes, the intention of the Legislature is placed in a still clearer light by the provisions of Section XV. Regulation XII. of 1802, which have only undergone modification, in as far as they have been made partially applicable to Criminal Judges and their Assistants.

It becomes imperative, therefore, on the Court of Foujdaree Udaltut to rectify the error into which the Magistrates appear to have fallen, in

regard to the delegation of authority to their assistants, and, as it is possible that the Magistrates of the Zillahs in the other Divisions may have adopted, in some instances, the same erroneous notions which appear to have prevailed so generally in the Centre Division, the Court of Foujdaree Udaltut deem it expedient to enjoin the four Courts of Circuit particularly to explain to the Magistrates of the Zillahs within their several jurisdictions, that Section VI. Regulation IX. of 1816, contemplates the exercise, by the Assistant Magistrates, of such duties as may be committed to them by the Magistrates "with whom they are stationed;" that the Authority delegated to Assistants, when stationed in any subordinate town, is to be exercised only within the limits of such town, and that no part of the Regulations can be construed to authorize a Magistrate to delegate to his Assistant a general power to exercise, without limitation or control, the whole of the duties of his office.

3d DECEMBER, 1818.

It is the practice of many of the District Police Officers to record, at length, the several questions put to the parties and witnesses in cases which may be brought before them.—Of the questions so recorded, it very frequently happens that some are not productive of any material information, and it is obvious that, in all cases, the insertion of the interrogatories, in detail, must contribute, unnecessarily, to swell the bulk of the proceedings.

It will be the duty, therefore, of the Magistrates in the several Zillahs, to explain to the District Police Officers within their respective jurisdictions that, in examining prosecutors and witnesses, under the provisions of Section XXVII. Regulation XI. of 1816, it is not necessary to take down, in detail, the several questions, which may be put in the course of each separate examination, but that it will be sufficient to reduce the substance of any material information which may be obtained from each deponent into the form of a statement, to be signed by the deponent, and attested by the signature of the Police Officer. The name of the person examined, and the several particulars of his parentage, religion, caste, profession, age, and place of residence should be written at the head of each examination.

The foregoing remarks may be considered to be applicable to the examination of prisoners, except that, in cases wherein a prisoner may make a free and voluntarily confession, the Police Officer, by whom the inquiry may be conducted, should be careful to reduce the declaration to writing in the words of the accused.

In many of the trials which have been referred, from time to time, for the final sentence of the Foujdaree Udaltut, it has appeared in evidence, before the Court of Circuit that the witnesses to the declarations of prisoners before a District Police Officer were not present during the examination of such prisoners; and that, in some instances, persons have attested the declaration of a prisoner, without being made acquainted either with the substance of the declaration, or with the circumstances under which it may have been taken.

The Court of Foujdaree Udaltut deem it necessary, therefore, to desire that the Magistrates in the several Zillahs, will particularly explain

C. O. 29th April
1822.

to the District Police Officers under their authority, that, whenever they may receive a confession from a prisoner, it is indispenably requisite that the confession should be taken, according to the words of the Regulations, "in the presence" of the individuals who are to attest the examination.

28th DECEMBER, 1818.

The proceedings of the Acting Magistrate are lengthened unnecessarily in this case, by the insertion of the questions put to the witnesses, for the purpose of ascertaining the several particulars of their names, parentage, religion, caste, profession, age, and place of residence; and the same practice has been observed in other records of trials referred to the Foujdaree Udaltut.—The Court deem it proper to desire, therefore, that the four Courts of Circuit will enjoin the Magistrates within their several divisions to specify the particulars above referred to, at the head of the examination of the party or witness, in the manner pointed out in the Court's Circular Orders, dated the 17th January, 1815.

12th APRIL, 1819.

In the concluding paragraph of his letter, the third Judge suggests, that "in cases wherein prisoners fully confess their guilt before the Criminal Judges, or wherein their confessions before the Criminal Judges do not materially differ from those made by them before the Tahsildars, the witnesses to their Talook confessions should not be required to attend the Courts of Circuit."

The Court of Foujdaree Udaltut have no difficulty in giving their unqualified assent to this suggestion, and resolve to issue circular instructions, to the above effect, to the several Provincial Courts of Circuit, to be communicated to the Criminal Judges within their respective jurisdictions.

15th APRIL, 1819.

In the trials lately referred to the Court of Foujdaree Udaltut, instances have occurred of the examination of persons under age, as witnesses before the Courts of Circuit, who have not been put upon oath: some cases have, also, been brought before the Court, in which the evidence of infants, as well as of other persons, against the admission of whose testimony exception may have been taken by the Mahomedan Law Officer, assisting at the trial, has been rejected altogether.

Vide C. O. 12th
July 1825. B.

With respect to both or the cases last mentioned, it is to be presumed, that the rejection by the Courts of Circuit of the evidence of such persons has arisen from a consideration of the light in which their testimony is viewed by the Mahomedan law, the Court of Foujdaree Udaltut deem it proper, therefore, to direct the attention of the Judges of those Courts, to the provisions of Section II. Regulation I. of 1818, under the operation of which enactment it is competent to the Court of Foujdaree Udaltut to convict and sentence to punishment in cases of acquittal under the Mahomedan law.

With reference to the powers vested in the Foujdaree Udaltut by the legislative enactment above cited, it is obvious that no evidence, which

is admissible under the Law of England, is to be rejected in criminal cases.

Want of discretion is held to be a good exception against a witness, and an infant is in no case to be admitted as evidence without oath: but immaturity of age is not of itself to be considered to derogate from the competency of a witness.

The Court of Foujdaree Udalt, direct, therefore, that whenever a person of tender age may be brought before the Court of Circuit as a witness, the Judge presiding at the trial do satisfy himself, by personal examination, whether or not the party be sensible of the nature and obligation of an oath, and of the consequences of perjury, by the result of which examination he will be guided in the admission or rejection of the evidence of the witness.

6th SEPTEMBER, 1817.

As it appears to the Court of Foujdaree Udalt, that a misconception prevails with respect to the discretion vested in the Courts of Circuit, by Clause sixth, Section II. Regulation XV. of 1803, and that the information, contained in the abstract of the Futwah, and of the sentence of the Court, as generally recorded by the Judges of the Courts of Circuit, is insufficient, they deem it proper to circulate these observations, and to direct that, in submitting future calendars for the information of the Foujdaree Udalt, the Judges of the several Courts of Circuit do, in all cases, enter in abstract, not only the sentence declared in the Futwah, but also the grounds, whether of confession, or of the evidence of credible witnesses, or of presumptive proof, or of suspicion, on which such sentence is founded. And in case of an order for the requisition of security the Court of Foujdaree Udalt direct, that the grounds of such requisition be always distinctly specified.

21st OCTOBER, 1819.

Together with copy of the Rajahmundry Calendar, for the 2d Sessions of 1819, the 2d Judge has transmitted copy of a precept issued by him to the Criminal Judge, in the Zillah of Rajahmundry, directing the discontinuance of the practice of causing the examinations of persons accused, and of the witnesses, in cases under investigation before the Criminal Judge, to be taken by a Native Officer of the Court, and afterwards read over before the Criminal Judge.

In the letter of the 2d Judge, submitting the Calendar and the precept in question, he observes, that he has "reason to believe this practice to obtain in other Zillahs;" and the record of a case, lately under trial, before the Court of Foujdaree Udalt, exhibited an instance of the same mode of proceeding in the Magistrate's Court.

Section XXIV. Regulation IX. of 1816, and Section IX. Regulation X. of 1816, in which the course to be pursued by the Magistrates and Criminal Judges, respectively, in the investigation of cases brought before them, is prescribed—declare, in the same words, that the Magistrate or Criminal Judge, as the case may be, shall, "upon a prisoner being

brought before him," examine the prisoner, and also "such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner, and commit their respective depositions to writing."

The delegation of the duty, here enjoined on the Magistrates and Criminal Judges, to any Native Officer is wholly irregular and unauthorized, and has a manifest tendency to obstruct the administration of public justice.

9th DECEMBER, 1819.—A.

The Court of Foujdaree Udalt, having remarked that, in the trials referred, to them no methodical arrangement is observed in the insertion of the proceedings of the Magistrate or Police Officer, which are sometimes interspersed between the examinations of different individuals before the Criminal Judge, and, occasionally, subjoined to the Criminal Judge's proceedings, deem it proper to direct that the several Judges of Circuit do, in the preparation of the records of all trials referable to the Court of Foujdaree Udalt, insert the proceedings of the subordinate authorities, in the natural order; viz. first, the proceedings of the Magistrate or Police Officer, as the case may be, and, secondly, the proceedings of the Criminal Judge recorded in the order prescribed in Section XX. Regulation X. of 1816.

9th DECEMBER, 1819.—B.

It appears to the Court of Foujdaree Udalt, that the mode which has, hitherto, obtained of transmitting the precepts of the Court to the subordinate judicial authorities with annexed extracts of their proceedings, is objectionable, inasmuch as unnecessary labour is, thereby, imposed on the several Courts in taking copies of such extracts, which of course are not of equal authenticity with the original extracts certified by the Register of the Court; and the records of the Court of Foujdaree Udalt are burdened with numerous copies of the proceedings of the Court, returned with the precepts, which are not available to any useful purpose when lodged among the records of the Court of Foujdaree Udalt, and would, with propriety, form part of the Records of the Courts to which the orders may from time to time be transmitted.

Under the foregoing considerations the Court of Foujdaree Udalt resolve, that, from and after the 1st of January next ensuing, the precepts of the Court shall be written on a sheet of paper, detached from the extracts of the Court's proceedings, transmitted with them, and that the several Courts be directed to make returns by endorsement on such precepts, and to deposit the Extracts of the proceedings of the Foujdaree Udalt among the records of their respective Courts.

9th DECEMBER, 1819.—C.

The Court of Foujdaree Udalt, considering it to be of particular importance, that they should be furnished with every information regarding the effect of the present system for administering the Criminal laws, deem it proper to direct, that the Judges of the several Provincial Courts of Circuit do in future, on the completion of each Quarterly Sessions of

See C. O. 4th April 1821.

gaol delivery at the Sudr station, submit a report to the Foujdaree Udalut of the nature described in Section XXXVII. Regulation VII. of 1802.

31st JANUARY, 1820.

See also 1st Aug.
1821. C. O.

The Court deem the present to be a fit occasion for calling the attention of the several Courts of Circuit and Criminal Judges to a defect very generally observable in the trials, for perjury, which have been referred to the Foujdaree Udalut.

The statement, in the nature of an indictment, directed by the order of the Court, under date 31st January, 1814, to be prepared by the committing Officer, and adopted by the Judge of the Court of Circuit, as the arraignment, is rarely found to contain an averment of the several particulars, the establishment of which is essential to a conviction of the crime of Perjury under the definition of that offence, contained in Section IV. Regulation VI. of 1811.

The endeavours of the Court to introduce correctness in this most important particular, in trials for perjury, having hitherto failed of success, they resolve to circulate the following instructions, and direct that they be in all instances conformed to, as far as the nature of the case will admit.

The indictment should first state that A. B., being a party or a witness in a certain civil suit, or Criminal trial, (as the case may be,) and being called upon to depose to certain matters of fact, material to the issue of the said suit, or trial, did, on such a day, and before such a Court, having been sworn to depose truly in the said matter, depose, on oath, in words to the following effect. (Here recite the words on which the perjury is assigned.) Whereas, in truth and in fact, (Here recite the fact in opposition to the averment of the accused.)—That it was material to the issue of the said suit, or trial, to shew that, &c., and that the said witness well knew at the time of the said swearing that his deposition so given was false, and that he, the said A. B. did therefore commit wilful and corrupt perjury.

In regard to
Irons see C. O.
8th Oct. 1821.

On the establishment of these particulars, by evidence, must depend the issue of a trial for perjury; and it is scarcely necessary to observe, that the testimony with respect to the fact, opposed to the deposition of the accused, must, in order to his conviction, be full and undeniable.

7TH FEBRUARY, 1820.

The first question, submitted for the decision of the Court of Foujdaree Udalut in the above reference, is whether, under the authority vested in a Zillah Magistrate, by Regulation IX. of 1816, to commit offenders in certain specified cases to prison, it is competent to that Officer to direct that the party be kept to hard labour during the period of such imprisonment.

On the general view of practical expediency, it appears to the Court of Foujdaree Udalut to be unquestionable, that labour should, at the discretion of the committing Officer, accompany imprisonment, when intended as a punishment: and, in the opinion of the Court, it is clearly inferrible

from the provisions of the Regulations enacted on the first establishment of the system for the administering criminal justice, that such was the intention of the legislature.

By Section XXI. Regulation VII. of 1802, the punishment to be inflicted in cases, when a prisoner may be adjudged to suffer amputation by the Futwah of the Mahomedan Law Officers, is specially declared to be imprisonment with hard labour, for the periods therein specified.

By Clause second, Section XV., and Clause second, Section XXXIX. of the above Regulation, imprisonment, at the discretion of the Court, is prescribed in commutation of the penalty of deyt:—and no mention is made of hard labour in addition to the imprisonment.

The offences incurring the penalty of a deyt, under the Mahomedan law, include homicide, and the most atrocious acts of personal violence; and amputation of one limb is the stated punishment for a simple theft to an inconsiderable amount.

It would, therefore, be irreconcilable with every principle of reason and justice, were imprisonment with hard labour to be adjudged only in the cases referred to in that provision of the Regulation above cited, in which it is specially prescribed.

The words of Clause third, Section VIII. and Clause first, Section IX. Regulation XV. of 1803, are corroborative of the opinion, entertained by the Court of Foujdaree Udalut, that imprisonment always implies labour, at the discretion of the Court passing the sentence.

In the former clause it is declared, that in all cases of convicts sentenced to imprisonment for a limited period, the Court by whom the sentence is passed, if it deem the same proper, on consideration of the prisoner's offence, may adjudge him to be banished during the period of his sentence from the District in which his place of abode is situated; and to be kept to hard labour on the public roads, or other public works, in any other district, to which he may be removed by order of the Foujdaree Court.

In the latter clause provision is made for the punishment of "convicts sentenced to imprisonment, who, during the period of their sentences may escape from gaol, or other places of confinement, or from the roads, or any other place where they may be employed."

In the two clauses here cited, reference is made to sentences of imprisonment, generally; and, it is clear, that labour is in both instances contemplated as an adjunct of personal confinement.

The Court of Foujdaree Udalut are, therefore, of opinion, that it is consistent with the spirit of the Code to construe the provisions of Regulations IX. and X. of 1816, which vest in Criminal Judges and Magistrates authority to pass sentence of imprisonment, as conveying to those Officers a discretion to adjudge hard labour in addition to such imprisonment.

Vide C. O. 28th
June 1831

In dismissing this subject, the Court of Foujdaree Udalut deem it proper to observe, that, although cases may occur, in which, considering the rank or circumstances of the person convicted, imprisonment may be deemed a sufficient punishment, the adjudication to confinement in the

C. O. 28th June
1831

Zillah gaol, without the imposition of labour, would, if generally adopted, tend rather to the encouragement than to the suppression of offences.

The present reference involves the further question of the competency of a Criminal Judge to prevent the Gaoler from carrying into execution a warrant addressed to him by a Magistrate, under the provisions of Clause first, Section XXXIV. Regulation IX. of 1816.

By the second Clause of this Section, it is prescribed that a paper shall accompany the Magistrate's warrant to the Gaoler, for the information of the Criminal Judge, and the Court of Foujdaree Udalt, are of opinion, that the latter Officer, although he may unquestionably communicate to the Magistrate such observations as he may deem necessary on the subject of the warrant, is not permitted to exercise any discretion as to the disposal of the prisoner, but that wherever it may appear to him that a sentence passed by a Magistrate is not authorized by the Regulations, it will be his duty to make a reference on the subject to the Provincial Court of Circuit.

10TH FEBRUARY, 1820.

The Judges of the Court of Foujdaree Udalt have observed that the several Criminal Judges in preparing the report, prescribed by Section XXXV. Regulation X. of 1816, subject themselves to much additional labour, from misconceiving the particulars requisite to be specified in the Form, Number 6, of the Appendix to the above Regulation.

As the report (No. 5 of the Appendix) of persons apprehended in the preceding quarter, includes the names of such of those persons as may have been released, it is obviously not intended that the succeeding report should contain a repetition of the same names, and the same information respecting them; it is plainly meant to specify the names only of such other prisoners as may have been released on the expiration of the periods of imprisonment, to which they may have been sentenced.

The Judges of the Court of Foujdaree Udalt desire, therefore, that you will notify to the several Criminal Judges within the Centre division, that the report in Form No. 6, above referred to is to contain only the names of prisoners released, who are not included in the report immediately preceding.

6TH APRIL, 1820.

In the foregoing letter, the Criminal Judge states, his opinion, that under the provisions of Section III. Regulation III. of 1819, it is competent to a Criminal Judge to entertain, in the first instance, charges against native Officers of Police "for extortion, oppression, or other abuse of authority."

The above inference is deduced by the Criminal Judge from the wording of Clause first, Section III. Regulation III. of 1819, in which it is declared, that, for the acts abovementioned, Native Officers of Police shall be liable to be "prosecuted in a Court of Criminal Judicature," whereas under Clause first, Section XLIV. Regulation XI. of 1816; such prosecution could only be instituted "before the Magistrate."

The construction given to Regulation III. of 1819, by the Criminal Judge is erroneous; the only alteration in the law, produced by the

repeal of Sections XLIV. and XLV. Regulation XI. of 1816, and the enactment of the provisions, contained in Section III. Regulation III. of 1819, being the extension of the measure of punishment, in cases in which the penalties, prescribed in Section XLIV. Regulation XI. of 1816, might be inadequate to the aggravated nature of the offence.

Under the provisions of Regulation III. of 1819, actions for damages may be brought, in the first instance, in a Zillah Court, against Native Officers of Police for extortion, oppression, or other abuse of authority.—But if the injured party should avail himself of the option of instituting a Criminal prosecution, the charge must in the first instance "be preferred before a Magistrate," and can only come before a Criminal Judge, when the measure of punishment, specified in clause second, of the Section of the Regulation above cited, shall appear to the Magistrate to be insufficient, in which event the Criminal Judge is empowered to dispose of the case, under the provisions of Section VII. Regulation X. of 1816; or commit the party for trial before the Court of Circuit, should he appear to be deserving of severer punishment than the Criminal Judge is authorized to inflict.

4TH SEPTEMBER, 1820.

For convenience of reference and greater perspicuity, the Judges desire that the paragraphs of all letters and reports to the Sudr and Foujdaree Udalt may be numbered in future.

In the transmission of Monthly Abstract Registers and other Reports, required to be laid before the Court of Sudr Udalt, as also in the transmission of all Reports to the Court of Foujdaree Udalt, the Judges desire that the practice of forwarding blank statements, drawn out in the form prescribed by the Regulations may be discontinued, and in lieu thereof, that a letter be addressed to the Register of the Sudr or Foujdaree Udalt, as the case may be, containing the information, which is now conveyed by such blank statements.

With reference to the Circular orders, under date 9th December, 1819, prescribing an alteration in the mode of making returns to the precepts of the Court, the Judges of the Sudr and Foujdaree Udalt desire, that returns may not in future be made by a simple endorsement, to the effect "that the precept has been executed;"—but that the substance of the order, contained in the extract of the Court's proceedings, accompanying the precept, be recited in the return, and a report subjoined, as to how far execution may have been done.

As the information conveyed by the report No. 10 of the appendix to Regulation X. of 1816, which is required to be transmitted to the Register of the Foujdaree Udalt by Section XXXVI. of that Regulation; is contained in the Calendars of prisoners, tried by the Courts of Circuit, the Judges of the Foujdaree Udalt direct, that the said Report be henceforth discontinued as unnecessary.

7TH SEPTEMBER, 1820.

The 19th and four succeeding paragraphs of the Report are occupied in a discussion of the propriety of the provision, contained in Clause

See C. O. 1st
Nov. 1823.

second, Section V. Regulation XI. of 1816, which declares that "Heads of Villages shall not receive from any person, whom they may apprehend, any confession, either verbally or in writing, except in the trivial cases referred to in the preceding clause of that Section."

In paragraph 20th, the first Judge observes as follows:—"Eye witnesses to the commission of offences of any magnitude are scarcely ever obtained, confession in some place or other is the ground of almost all the convictions, and, in proportion as it is illegalized, the Courts of Criminal justice labour in vain and become useless."

The large proportion of convictions, founded solely upon confessions, to which the first Judge adverts, in the above paragraph, appears to the Court of Foujdaree Udalut to be attributable to the neglect of the District Police Officers to obtain all procurable evidence, material to cases brought before them, as required by Clause second, Section XXVII. Regulation XI. of 1816, and to the marked preference, given by those Officers, to confessions over every other species of proof.

C. O.'s 24th Jan. 1822, 29th April 1822. The experience of the Court of Foujdaree Udalut of the undue practices resorted to by Police Officers, for the purpose of obtaining confessions, stands directly opposed to the opinion, expressed by the 1st Judge in the 22d paragraph of the report, "that force of any kind, and even menace, for such a purpose, have, of late years, in the Company's territories, been scarcely ever heard of."

In their Circular instructions of the 18th June 1817, recited in the extract of the proceedings of the Foujdaree Udalut, submitted to Government, under date 25th November last, the Court inculcated the necessity of attention on the part of the several judicial authorities to the means of suppressing the practices, known to prevail, of "obtaining by the flattery of hope, of extorting by threats or ill treatment, and of fabricating confessions,"—the Court never considered it necessary to explain, that confessions, obtained by such means, could not be received as evidence against a prisoner, nor did they suppose, that any judicial Officer could require to be informed that, to the validity of declarations from accused persons, tending to their own crimination, it is essential that such declarations be "free and voluntary."

It is with feelings of astonishment and concern that the Court have perused the concluding passage in the 22d paragraph of the Report, wherein the 1st Judge distinctly advocates the propriety of convicting persons on confessions, if full and circumstantial, by whatever means short of compulsion obtained.

The Court will not inquire where the 1st Judge would propose to draw the line, or to what extent the application of threats or blows, to which the 1st Judge incidentally adverts, as ordinary concomitants of the examination of a "suspected offender," might in his opinion be carried without their becoming compulsory. In the opinion of the Court of Foujdaree Udalut, an acknowledgment of guilt, unless spontaneously delivered, cannot be admitted against an accused person, without a flagrant violation of the first principles of justice, and from past experience of the abuse of the power of receiving confessions by the heads of Police, the Court are persuaded of the wisdom of the restriction, imposed in this respect, on the inferior and numerous class of Police

Officers, by Clause second, Section V. Regulation XI. of 1816, which the 1st Judge proposes to abolish.

On the expression of the 1st Judge, in the 20th paragraph, above quoted, that in proportion as confession is "illegalized, the Courts of Criminal Justice labour in vain and become useless,"—the Court deem it sufficient to observe that in their view of the subject, the personal security of the innocent is a result of the pure administration of Criminal Justice, at least as important as the punishment of offenders, and that the proposition of "legalizing" confessions, as explained by the 1st Judge, in the 22d paragraph of the report, would tend, if adopted, to destroy security of person, and render our Criminal Courts an object of terror, instead of confidence, to the guiltless, without ensuring the certain condemnation of the guilty.

The alteration which the 1st Judge suggests in the 24th paragraph of the report, in the wording of Section X. Regulation X. of 1816, is considered by the Court of Foujdaree Udalut to be objectionable, as every criminal trial is eventually referrible from the Court of Circuit to the higher Court, who might not concur in the propriety of the rejection of evidence, deemed to be superfluous by the inferior tribunal.

The Court of Foujdaree Udalut are compelled to remark, in this place, that the 1st Judge appears insensible to the obligation of exercising "circumspection and tenderness," in the admission of confessions from persons accused; with regard, particularly to confessions, alleged to have been given before the Native Officers of Police, the Court are of opinion, that their too easy admission will always operate as a temptation to impose false confessions on the Courts, and that, to the discouragement of this atrocious practice, it is necessary, that all the additional evidence, which a case may admit of, should be uniformly required, and carefully taken, both by the Criminal Judges and the Courts of Circuit.

26TH OCTOBER, 1820.

In case No. 1, of the above calendar, 26 persons were charged "with C. O. 23d Nov. 1820. proceeding in a gang to the houses of the prosecutors, about midnight, on 21st January, 1820, forcing the doors, beating Enamurty Moormulliah, the father of the 1st prosecutor, of which ill-treatment he died, and plundering the property of the prosecutors valued at 1000 Rupees."

In the remarks on this case it is stated, "that the law Officer gave his Futwah of Ookooobut, convicting the whole of the prisoners, with the exception of the 25th, of the robbery, but not of the murder, the latter not being proved," and the 1st Judge proceeded to sentence the prisoners to certain specified terms of imprisonment; "as it was not ascertained, that the hurts received by the father of the 1st prosecutor were the actual cause of his death."

The above being clearly a case coming within the description of offences, for which the penalty of imprisonment and transportation for life is specially prescribed by Clause second, Section IV. Regulation XV. of 1803,—the sentences passed on the prisoners by the 1st Judge are illegal.

Clause second, Section II. of the above Regulation declares, that, "if the crime for which the prisoner is declared liable to discretionary punish-

ment (by the Futwah of the Mahomedan Law Officer) shall have been specially provided for by any subsisting Regulation, denouncing the penalty to be adjudged on proof of the commission of such crime: and the Judge before whom the trial may be held shall consider the crime to have been established against the prisoner; he shall sentence the prisoner to suffer the punishment for such crime prescribed by the Regulations;—or if the case be referrible, under the Regulations, for the sentence of the Foujdaree Udalut, shall transmit the trial, with his opinion thereupon, to that Court."

Clause first, Section III. of the Regulation, above cited, declares, "that any person or persons, who shall in the day or in the night go forth with any offensive weapon or in a gang with or without any offensive weapon, with the criminal intent of committing robbery, and shall by force or intimidation rob or attempt to rob any person or persons,—in any place whatever; or shall attack by open violence, and rob, or attempt to rob, any dwelling-house, or other house or building, &c., shall be deemed guilty of the crime of robbery by open violence, and on due conviction thereof, —shall be adjudged to suffer such of the penalties declared in the next Section, as may be applicable to the case, viz., according as the robbery may be with, or without, homicide, wounding, maiming, or other personal injuries; or with or without other circumstances of aggravation."

Clauses first, second, third, and fourth of Section IV. of the Regulation, prescribe the judgments to be passed on all persons convicted of the crimes specified therein:—and in Clause fifth, it is declared, that, "if, from any extenuating circumstances, which may appear on the trial before the Courts of Circuit, or the Court of Foujdaree Udalut, the stated punishment shall in any particular instance appear too severe,—it shall be competent to the Court of Foujdaree Udalut, or to the Court of Circuit, if the trial be not referrible under the Regulations to the Foujdaree Udalut, to mitigate the sentence in such cases as may be deemed just and expedient."

Clause first, Section VI. of the Regulation above cited declares, that the Courts of Circuit shall transmit to the Court of Foujdaree Udalut all trials in which the prisoner or prisoners may be convicted, and liable to sentences of perpetual imprisonment or death."

Clause second of the Section last cited prescribes the course to be pursued by the Judge of Circuit in trials referrible to the Foujdaree Udalut,—and in Clause third are laid down the rules to be observed by the Judges of Circuit in referring to the Foujdaree Udalut the trial of any prisoners, whom they may consider proper objects of an extension, mitigation, or remission of punishment, under the provisions to that effect, contained in Regulation XV. of 1803.

The Court of Foujdaree Udalut attribute the error committed by the 1st Judge in the case above noticed to a misconstruction of the provision in Clause fifth, Section IV. Regulation XV. of 1803, whereby the power of mitigating the prescribed sentence is in certain cases vested in the Courts of Circuit.

Whenever a prisoner, or prisoners, may be convicted of an offence, for which the penalties of perpetual imprisonment or death are prescribed in the above Regulation,—the trial must be referred for the decision of the

Foujdaree Udalut; and in such cases it is competent only to that Court to mitigate the prescribed punishment.

The discretionary powers of mitigating the prescribed penalty, which is vested in the Courts of Circuit, by the clause last cited, extends only to the offences, for which a less punishment than perpetual imprisonment is prescribed in Regulation XV. of 1803.

Vide Regulation I. of 1825.

23D NOVEMBER, 1820.

Read letter dated 13th Instant from the 2d Judge on Circuit, in the Western Division, requesting information relative to the intention of the Court's orders, under date 26th ultimo, respecting the reference of cases under Regulation XV. of 1803.

It appearing, from the foregoing letter, that the orders above cited are considered to prescribe the reference to the Court of Foujdaree Udalut of all cases of gang robbery, accompanied by personal injury, however trifling.

The Court deem it necessary to explain, that their instructions on this point are intended to be strictly limited to the cases described in Clause second, Section IV. Regulation XV. of 1803, in which "trifling" personal injury is not contemplated; as appears clearly from the definition therein given, namely, personal injury, torture, or cruelty not occasioning homicide.

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27TH NOVEMBER, 1820.

As the 3d of the provisions proposed by the 3d Judge appeared to imply, that, under the existing law, personal injuries done to a slave by his master are not punishable,—the Court of Foujdaree Udalut have thought it proper to ascertain from their Law Officers, whether the illtreatment of a slave, by his master, be duly punishable by the Mahomedan Law.

The following is a translation of the answer of the Law Officers of the Foujdaree Udalut, to the reference made to them on this head:—"Under the Mahomedan Law, a master is competent to inflict correction (tazeer) upon his own slave.—If, therefore, the master should, in a lawful manner, correct his slave for committing an act by which tazeer is incurred, he is not liable to punishment; but if a master should chastise his slave, without his having been guilty of any offence incurring tazeer, or in the event of the slave having committed such an offence, if the master should not correct him in a lawful manner, but treat him with violence and cruelty, the master would be liable to tazeer."

The Court, under the foregoing exposition of the law, consider, that the existing Regulations sufficiently provide for the punishment of owners of slaves, who may treat them with cruelty, and with a view to discourage and prevent as much as possible, the practices alluded to by the third Judge, the Court direct, that the several Magistrates be desired to make public the foregoing provision of the Mahomedan Law, by a circular notification to the Police Officers under their jurisdiction, respectively, and that

Circular Orders of the

they be enjoined to apprehend all persons charged with cruelty towards their own slaves, in like manner, as they are directed to apprehend persons, charged with other crimes of a heinous nature ; and it will be the duty of the Criminal Judges, in such cases, whenever the acts established in evidence may appear to demand greater punishment than they are competent to inflict, to commit the offenders for trial before the Court of Circuit.

4TH APRIL, 1821.

C. O 30th Jan.
1834.

The Judges of the Foujdaree Udalt desire, that the reports transmitted on the half-yearly and quarterly Sessions of gaol delivery, may in future comprise abstracts of the Calendars laid before the Courts of Circuit by the Magistrates, under the provisions of Section XL. Regulation IX. of 1816, and by the Criminal Judges, under the provisions of Section XXIII. Regulation X. of 1816, together with a Calendar, in the annexed form, of trials held before the Court of Circuit.

To the last mentioned Calendar, the Judges desire, that you will invariably subjoin detailed notices of any cases, exhibiting striking traits of national character, or the effects of national opinions and usages.

The Judges further desire, that in addition to the particulars specified in Section XXXVII. Regulation VII. of 1802, your reports may describe the state of the Police in each Zillah, as far as it may fall under your observation.

Fr to the Judges of Circuit, reports comprising information on the sev. heads here referred to, have been hitherto regularly furnished; but the Judges have nevertheless considered it proper, for the sake of uniformity, to make these instructions general.

[illegible]

3D MAY, 1821.

The Judges of the Foujdaree Udalt, observing that the provisions of the Mahomedan Law, with respect to the proof required for conviction, on a charge of perjury, appear to be misunderstood by several of the Mahomedan Law Officers, attached to the Provincial and Zillah Courts, direct me to transmit to you the accompanying copy and translation of the remarks of the Cazeer-ool Coozat and Mooftees of the Foujdaree Udalt, on a Futwah, delivered by the Mooftees of the Zillah Court of Canara, in case No 1, of the Supplemental Calendar, first Sessions A. D. 1820, in which that Officer had declared that confession was indispensable to proof of this charge.

From the accompanying exposition of the law, you will perceive, that proof of the fact, opposed to the testimony of a witness, is sufficient to establish false swearing under the Mahomedan, as under the English law.

The Judges desire, that you will cause a copy of the original Persian paper to be delivered to the Mahomedan Law Officers of your Court, and transmit copies of the original and translation to the several Criminal Judges within the Centre Division, in order that they may furnish the Mooftes of their respective Courts with the same, for their information and guidance, on all occasions, when they may be called upon to officiate at trials before the Court of Circuit.

Remarks of the Cazee-ool Coozat and Mooftees of the Foujdaree Udalt.

Moulavee Fusah-ood-deen Mooftee of the Zillah Court of Canara, has, in the Futwah delivered by him in this case committed the following error—viz., In the said Futwah, the Mooftee declares, that confession is indispensable to the establishment of a charge of perjury : whereas it is declared in the following passage, cited from the Shurah-i-Wakaya, that perjury may be proved without confession : “ Perjury may be sometimes ascertained without a confession, as for instance, where two persons have deposed to the fact of the decease or the murder of Zeyd, and he afterwards appears alive ; and there are a great variety of cases of this description.”

It is also declared in the following passage in the Moheet-i-Surukhsee that there are three modes, in which perjury may be proved ; first, by the absolute certainty arising from a person's appearing alive, to whose murder evidence may have been given ; secondly, by the testimony credible (just) witnesses ; thirdly, by the retraction of evidence, i. e., confession. "The falsehood of a witness cannot be established excepting by the absolute certainty, arising from a person's appearing alive, whose murder had been deposed to, or by that which is a substitute for such absolute certainty with respect to a matter of fact, namely, the testimony of credible witnesses ; or the witnesses retraction of his evidence.

17TH JULY, 1821.

The foregoing communications have forcibly attracted the attention of the Court of Foujdaree Udaltut to the extreme inconvenience imposed upon parties and witnesses, as well as the eventual injury to prisoners,

which must result from the closing of a Sessions before the completion of the gaol delivery at the expiration of the period assigned to each circuit, by Section XI. Regulation VII. of 1802.

The Court are aware, that the proceeding adopted in the present instance, by the first Judge, has the sanction of a Circular Order of the Foujdaree Udalt, dated, 17th July, 1804, which directed that in cases when the gaol delivery for the several Zillahs might not be completed, the Judge about to go on Circuit should furnish himself from the returning Judge with a Register of the Zillahs not visited; and should "commence his Circuit in the Zillah wherein the returning Judge ceased, such Zillah not being completely delivered within the limited time."

The foregoing order having been virtually rescinded by Section IX. Regulations XIII. of 1808, which declared that the gaol deliveries of the several Zillahs, should in future "be made according to the fixed order of succession," therein laid down, the Court of Foujdaree Udalt have, on particular occasions, directed that Sessions of gaol delivery should be holden after the expiration of the period of the Circuit, such a measure being necessary to secure to prisoners committed for trial the benefit of two gaol deliveries in the year.

This measure is, however manifestly objectionable, as interfering with the business of the Court of Appeal; and the Court of Foujdaree Udalt deem it proper, therefore, with a view to provide against irregularity in the period of holding the half-yearly gaol deliveries, to direct that the several Courts of Circuit do report, one month before the date prescribed by the Regulations for the commencement of each Circuit, or, if this should not be practicable from unforeseen circumstances, as early as possible, whenever the Judge, whose proper duty it may be, is prevented from proceeding on the Circuit at the appointed period. And that every Judge, on Circuit do, in future, report to this Court, in sufficient time to provide for the contingency, whenever, from the number of trials or other cause, it may appear probable that the business of any Circuit will not be completed before the period fixed for the commencement of the ensuing Circuit; stating, particularly, in such cases, the cause of delay for the information of Government, and for what gaol deliveries it may appear requisite to make special provisions.

Vide C.O. No. 8.

25th JULY, 1821.

The Court of Foujdaree Udalt observe, that different forms of warrants for the execution of convicts sentenced to suffer capital punishment, are used by the different Courts of Circuit; that some of the said forms are wholly at variance with that circulated by the Court of Foujdaree Udalt for general adoption, under date 26th August, 1803, and others in partial modification thereof; and that certain of the Judges of Circuit are in the habit of issuing these warrants under a private Seal, instead of the Seal of the Court of Circuit.

C. O. 10th Aug. 1821.

The Court having on mature consideration, thought it expedient and requisite, with reference to the provisions of Section XIII. Regulation VIII. of 1802, to modify the form of a warrant, circulated under date 26th August, 1803, so far as a date is therein fixed for the execution of criminals sentenced to capital punishment,—direct that a revised form of warrant be prepared and circulated to the several Provincial Courts

of Circuit, by precept enjoining them to conform in all cases thereto, as closely as the wording of the sentences of the Foujdaree Udalt will admit, and to transmit copy of the same to the several Judges on Circuit, to be, in like manner, adopted by them.

SESSIONS OF

SEAL OF THE
COURT OF
CIRCUIT.

No. ON THE CALENDAR.

To
The Criminal Judge in the Zillah of

Whereas at a General Gaol Delivery for the Zillah of
holden at _____ day of _____
A. D. _____ A B charged with _____ having been tried by
the Court of Circuit, has been convicted, and finally sentenced by the
Court of Foujdaree Udalt to suffer death.

It is hereby ordered that execution of the said sentence be made and done by causing the said A B to be hanged by the neck until he be dead, at the usual time and place of execution, so soon as conveniently can be after the receipt of this warrant, and that you do return this warrant to me with an endorsement, attested by your official seal, and signature, certifying the manner in which the sentence has been executed, as prescribed by Section XIII. Regulation VIII. A. D. 1802.

Given under my hand and the Seal of the Court this
day of _____ in the year of our Lord one thousand eight hundred and _____

C. D.
Judge.

1st AUGUST, 1821.

It appears, from the foregoing papers, that a reference was made by the Criminal Judge, in the Zillah of North Malabar, to the Provincial Court of Circuit, regarding "the mode to be pursued in cases where Magistrates may have occasion to bring to trial, parties or others who may be supposed to have committed perjury."

On the above reference the Court recorded the opinion, that it was the duty of the authority before which the supposed perjury or subornation of perjury might have been committed, "whether a Court of Judicature, Magistrate, or other public Officer, to prepare the statement specifying the particular facts upon which the crime is charged against the prisoner, which should be the result of the examinations taken before that authority, and to found thereupon the charge of perjury or subornation of perjury, (as the case may be,) which is to accompany the original proceedings, wherein the crime is supposed to have been committed; when the case and the parties are to be forwarded to the Criminal Judge of the Zillah, with whom it then rests to prepare the case, in the manner pre-

scribed in all commitments of persons to take their trial before the Court of Circuit, at the suit of Government, viz., by the appointment of the Sirkar Vakeel, to conduct the prosecution, and by the examination of the prisoners and witnesses, who are to prove the several particulars required for a conviction of the crime of perjury.

The Court of Circuit further recorded their opinion, founded on the 7th paragraph of the Order of the Foujdaree Udalt, under date 31st January, 1814, and the 11th and 12th paragraphs of their Order, dated 31st January, 1820, that a Criminal Judge is not competent to exercise any discretion, as to the commitment of "a prisoner sent up by a Magistrate to take his trial before a Court of Circuit for the crime of perjury, committed under his (Magistrate's) official cognizance.

A question was, subsequently, put to the Court of Circuit by the Criminal Judge, arising out of the above instructions, as to whether Assistant Criminal Judges were, or were not bound, by the same rule as the Magistrates, with regard to the reference of the proceedings, in all cases of perjury, to the Criminal Judge:—in answer to which, the officiating Judge gave his opinion, that an Assistant Criminal Judge is not competent to bring persons to trial for perjury, independently of his superior the Criminal Judge.

The latter question having been, again, referred for the determination of a full Court, a minute was recorded by the second Judge of his opinion, that "the Assistant Criminal Judge in respect to perjury commitments, is exactly in the same situation as Magistrates," in answer to which the third Judge declared his doubt, as "to how far it is incumbent on a Criminal Judge to commit every person for trial before a Court of Circuit his Assistant may consider guilty of that crime."

The dissent of the second Judge to this opinion of the third Judge is founded on the invidiousness of the distinction, which would thereby be made between cases of perjury before an Assistant Criminal Judge and a Magistrate, or an Assistant Magistrate, the authority of the Assistant Criminal Judge in matters referred to his cognizance, being in the opinion of the second Judge "as independent as that of the Magistrate and Assistant Magistrate."

The Court of Foujdaree Udalt are aware, that the orders issued to the Court of Circuit, under date 31st January, 1820, admit of the construction, which is put upon them in the extract of the proceedings of the Provincial Court, under date 20th December last, with respect to the discretionary power of a Criminal Judge in disposing of persons sent up by a Magistrate on a charge of perjury.

But on a deliberate consideration of the subject it appears to the Court, that the Criminal Judge, as the only committing Officer recognized in the Regulations, should act with respect to all charges of perjury brought before him by an inferior authority, on the same principles, as in cases of a different description; and should release or commit the prisoner, according as he may be of opinion, that the charge is or is not supported by the evidence before him.

In all such cases, the proceedings, on which the charge of perjury, or subornation of perjury is founded, should be sent to the Criminal

Judge by the Officer, before whom they may have been held, with his sentiments upon the case, together with the prisoner and witnesses; and if the Criminal Judge should be of opinion, that there are grounds for putting the accused party on his trial, under the provisions of Regulation VI. of 1811, he should prepare the indictment, in the mode prescribed by the Court's orders of 31st January, 1820, and appoint the Vakeel of Government to conduct the prosecution.

The foregoing observations have anticipated the determination of the further question, involved in the present reference, as to the authority of an Assistant Criminal Judge to direct the commitment of persons supposed to have committed perjury before him; or against whom he may consider that a charge of perjury is established,—but the Court of Foujdaree Udalt deem it proper to observe, generally, that the authority of an Assistant Criminal Judge is by Clause first, Section V. Regulation X. C. O. 12th Dec. 1823. of 1816, limited to the express delegation of the Criminal Judge, who, on the reference of all charges of a criminal nature to his Assistant, is competent to direct, whether the proceedings held upon the examination are to be submitted for the decision of the Criminal Judge, or whether the determination upon the charge is to be passed by the Assistant.

2D AUGUST, 1821.

A case having been brought to the notice of the Court of Foujdaree Udalt, in which the punishment of stripes with a rattan has been attended with fatal consequences, the Court deem it necessary to issue the following instructions for the guidance of the Criminal Judges on all occasions of corporal punishment. See Reg. VIII. of 1828.

All prisoners sentenced by the Court of Foujdaree Udalt, or by the Courts of Circuit, to be punished with stripes, shall be brought before the Criminal Judge immediately previous to the infliction of the corporal punishment, that he may, by personal observation and a reference to the Surgeon of the station, satisfy himself that the prisoner does not labour under any bodily infirmity, and that his general state of health at the time is such as to render him capable of sustaining the punishment without the probability of its endangering his life. Vide C. O. 16th Oct. 1826. C. O. 21st Oct. 1830. and C. O. P. U. No. 75.

The whipper is to be positively enjoined on all occasions of administering the punishment of stripes, to strike the prisoner on the upper part of the back only; with every possible attention to prevent the blows falling on any other part of the body.

All prisoners sentenced by a Criminal Judge to corporal punishment are to be examined by the Surgeon of the station, or, in the event of his absence, by the Native Doctor previously to their being punished, and the punishment is to be postponed of any prisoner, whom the Surgeon, or Native Doctor, may consider in too infirm a state to receive it.

The Native Doctors attached to the gaols of the several stations, are to be present on all occasions when prisoners are punished with stripes; and the punishment is to be stopped at any stage of it, if the Native Doctor shall be of opinion that the infliction of the remaining stripes will endanger the prisoner's life, in which case the remainder of the punishment is to be postponed, until the Surgeon of the station shall consider the prisoner to be capable of sustaining it.

10TH AUGUST, 1821.

Read letter, dated 2nd instant, from the Provincial Court of Circuit in the Western Division; requesting, with reference to the Circular Orders of the Court, under date 25th ultimo, instructions as to the seal which should be used in warrants for execution.

The Court of Foujdaree Udalut having taken into consideration the foregoing reference, are of opinion, that the seal prescribed for the Court of Appeal ought not to be used indiscriminately by those Courts, and by the Courts of Circuit. The Court observe that for many years past a seal has been used by the Court of Circuit in the Centre Division of the dimensions prescribed in Section V. Regulation IV. of 1802, and bearing the following inscription in the Persian and language of the Province,—“The seal of the Court of Circuit for the Centre Division.” And they deem it proper to direct, that a similar seal be adopted by the Courts of Circuit for the Western, Southern, and Northern Divisions.

Two seals of the above description should be procured for each Court, one for the use of the Court, collectively, and one for the Judge on Circuit; and the Court of Foujdaree Udalut direct, that after the said seal shall have been prepared, no other be used as the official seal of the Collective Courts, or the Judges of Circuit.

20TH AUGUST, 1821.

The Judges of the Court of Foujdaree Udalut, observing that certain of the Zillah Magistrates construe the provisions contained in Regulation IX. of 1818, as sanctioning the entire delegation of the Police functions to the Assistant Magistrate, direct me to desire that you will inform the several Magistrates within your jurisdiction, that in answer to a late reference to Government, the Honorable the Governor in Council has declared that proceeding to be “directly at variance with the object of uniting the offices of Collector and Magistrate in the same person.”

6TH SEPTEMBER, 1821.—A

It is stated by the 3d Judge, in his letter accompanying the trial, that the prisoner is “an old offender,” but the Court do not find any entry to that effect in the proceedings of the Criminal Judge. The Court of Foujdaree Udalut, deeming it to be of importance that they should always be put in possession of the nature of the offence or offences, which may have been committed on any former occasion by prisoners under trial before them, direct that the several Criminal Judges be instructed, whenever a prisoner committed by them for trial shall appear to have been convicted at any former sessions, to record on their proceeding, and in the Calendar, the nature of the offence, the date of the Sessions of the former trial or trials, and the sentence or sentences, which may have been passed on the prisoner.

6TH SEPTEMBER, 1821.—B

It having come to the knowledge of the Court of Foujdaree Udalut, that the instructions, which are, from time to time, issued to individual Judges on Circuit are not always communicated to the Court of Circuit,

collectively, in consequence of which, it frequently happens, that proceedings which have been prohibited to one Judge, as irregular or improper, are found to be adopted by other Judges of the same Court of Circuit; the Court of Foujdaree Udalut deem it proper to direct, that the several Judges of Circuit, do, in future, always furnish to the Register, for the information of the Judges of the Provincial Court of Circuit, all orders and instructions which may be addressed to them individually by the Court of Foujdaree Udalut.

27TH SEPTEMBER, 1821.

The attention of the Judges of the Court of Foujdaree Udalut has lately been attracted to the insufficiency of the information conveyed by the Quarterly Reports furnished by the Criminal Judges under the provisions of Section XXXV. Regulation X. of 1816, with respect to the cases on which no final order may have passed at the date of the transmission of the Report.

The names of prisoners, stated to be “under examination” in one Report, do not appear in that which succeeds it, the form requiring the insertion of the names of those persons only whose apprehension or arrival at the Zillah station may have taken place within the period embraced by the Report.

With a view to remedy the defect here referred to, the Judges of the Court of Foujdaree Udalut desire, that the several Criminal Judges subject to your jurisdiction, may be instructed to transmit, together with the quarterly Reports prescribed by Section XXXV. Regulation X. of 1816, a separate report, in a similar form, exhibiting the mode in which the cases of all persons, apprehended in the previous quarter, and with respect to whom no final order was then passed may have been disposed of.

8TH OCTOBER, 1821.

The points involved in the foregoing reference appear to be, first, the propriety of placing in irons all persons committed for trial before a Court of Circuit,—secondly, the feasibility of carrying into effect a sentence of imprisonment and hard labour, without irons; and thirdly, the power of a Court of Circuit to order the admission of bail in a case of arson.

On the first point, the Court of Foujdaree Udalut are of opinion, that the practice of confining in fetters persons ordered to be tried by the Courts of Circuit, who may be charged with offences not of a heinous nature, or who may be committed to prison from inability to find sufficient bail, is improper, as being unnecessary to secure their appearance at the time of trial, (the only object of personal custody in such cases,) and it being the evident intention of the Regulations that no prisoner, before he is brought to trial, should suffer more corporal restraint or personal ignominy than are unavoidable for his safe custody. It appears *Vide C. O. 27th* to the Court, that no person should be confined in fetters before trial, June 1831. who may be charged with a bailable offence, and committed to prison from inability to find bail; which in bailable cases should always be demanded previously to commitment.

On the second point, it appears to the Judges, that the Criminal Judge has raised an imaginary difficulty.—It is unquestionably competent to a Court of Circuit to sentence a prisoner to labour without irons,—and for such persons, it appears that employment may be found within the gaol.

On the last point, the Court of Foujdaree Udalt are surprised, that any difference of opinion should prevail, it being manifestly competent to a Court of Circuit, under the provisions of Section XI. Regulation X. of 1816, to direct the admission of bail in cases of every description, wherein, “on report from the Criminal Judge, or other satisfactory information before them,” it may appear “just and proper” to do so.

8th OCTOBER, 1821.

I am directed by the Judges of the Court of Foujdaree Udalt, to transmit to you the accompanying copy of certain rules, which have been framed for the management of the public gaols.

The Judges desire, that, in circulating these rules to the several Criminal Judges under your jurisdiction for their future guidance, those Officers may be instructed to point out for the information of the Foujdaree Udalt any provisions therein contained, the observance of which, from particular circumstances, may appear to them likely to be attended with inconvenience.

Rules for the Management of the Public Gaols.

1. The Criminal Judges are required, (by the Regulations,) to visit their gaols at least once a month; but it appears advisable, and is accordingly directed, that such visits should be weekly.

2. The Surgeons, when present at the Zillah stations, besides their daily attendance at the hospital, shall also inspect the gaols once a week, and make a report to the Criminal Judge on each visit, on the general health of the prisoners, the quality of the food supplied to them, the state of the gaols with regard to the cleanliness, and, generally, any circumstances relative to the care and condition of the prisoners which may come to their knowledge.

3. The visits of the Criminal Judge shall be made without previous notice to the Officers of the gaol, and not at any fixed period of time.

4. The Criminal Judge shall prescribe a set of written rules for the internal economy of his gaol, relating to the articles which may be admitted into the gaol for the prisoners, the hours when those articles may be admitted, and the persons who may be permitted to converse with the prisoners: and the gaoler shall be held responsible for the due observance of such rules, or for the immediate report of any breach of them to the Criminal Judge.

5. The general charge of the prisoners, with the internal management of the gaol, as far as relates to cleanliness, to the distribution of the prisoners in the wards, to putting on fetters, (and the sort of fetters) and to the prevention of disorderly behaviour, shall be vested in the gaoler.

6. All orders for receiving prisoners into the gaol, and for their final discharge, shall be signed by the Criminal Judge or his Assistant, and addressed to the gaoler.

7. The prisoners, on their being lodged in the wards in the evening, and on their being taken out in the morning, shall be counted over by the gaoler.

8. At the time of locking up the prisoners, the working tools used by them, shall be carefully collected and counted, and then deposited during the night in a place of safety without the gaol; sufficient search also shall be made to prevent the concealment of any weapon or implements about the persons of the prisoners, or in the gaol, whereby the prisoners might injure one another, or be enabled to effect their escape.

9. Prisoners are not to be allowed to leave the gaol for the purpose of taking food, when there is accommodation in the interior of the gaol for cooking, without the sanction of the Criminal Judge.

10. The allowance for the daily support of each person in confinement, whether in money or otherwise, is to be inserted in the gaol regulations. Vide C. O. 25th January 1830, & C. O. 24 June 1831.

11. Each convict is to be supplied with one cumby, or country blanket, on his admission into the gaol, and this allowance is to be repeated annually during the term of his imprisonment.

12. Each convict is to be allowed a bamboo mat to sleep upon.

13. The sleeping apartments are to be cleared of every thing in them once a day, except in rainy weather, and the doors and windows of these apartments are to remain open all day to admit fresh air.

14. The gaoler is to be provided with a blank book, in which are to be inserted under proper columns the names of the prisoners, their caste, the date of their committal to the gaol, the period of their imprisonment, whether confined in irons or not, the nature of their employment, and the number of hours they are employed in each day.—A blank column is to be kept in this book, headed with the word “Remarks,” under which the death, discharge, or removal of the prisoners is to be inserted, if either takes place.

15. The baskets of those prisoners who are employed on the roads or public works, are to be of the size used by tank diggers, and neither the gaoler, nor any one under his authority, is to permit the use of different baskets, unless under written authority from the Criminal Judge.

16. The gaoler every morning and evening, at the opening and shutting up of the gaol, shall visit personally every part of the gaol, and carefully inspect the windows, walls, doors, and gratings, in order to discover any attempt to cut the iron bars, or to undermine the walls of the gaol.

17. The fetters generally used shall be of a light and uniform construction, and no fetters exceeding the usual size, and weight, shall be put upon a prisoner, without the special sanction of the Criminal Judge.

18. The gaoler shall not, without a special order from the Criminal Judge, take off the irons of any prisoner, except in case of sudden emergency not admitting of the delay of a reference to the Criminal Judge, or when prisoners may be confined in the Hospital in too weak a state to bear the weight of their irons; and such cases, when they occur, shall be immediately reported to the Criminal Judge.

19. Whenever the Surgeon, or Native Doctor, may judge it necessary to take off a prisoner's fetters, in consequence of sores, or illness; information shall be given to the gaoler: when the fetters are to be taken off in the presence of that Officer.—The gaoler shall also report the circumstances of the case to the Criminal Judge.

20. The process of Godena as directed by Section XXXV. Regulation VII. of 1802, shall be performed on all prisoners sentenced to transportation for life, immediately on the Criminal Judge's receiving the warrants of the Court of Circuit, unless the Criminal Judge should see cause in any instance to postpone the operation.

21. Different apartments in the gaol shall be appropriated, as far as may be practicable, to the particular descriptions of prisoners, who are required to be kept separate, under the provisions of Section XXIX. Regulation X. of 1816. The different classes of prisoners shall, on no account, be permitted any intercourse; and the Criminal Judges are required to be particularly careful, that persons in confinement for examination be never imprisoned in the same ward with prisoners under sentences of punishment.

22. After the prisoners shall be locked up for the night, the keys of the wards shall be lodged with the gaoler.

23. No prisoner shall be released on any occasion during the night, and all prisoners, ordered to be discharged, shall be brought before the Criminal Judge, and receive their discharge in the presence of the Criminal Judge or his Assistant.

24. In the absence of the gaoler, the Criminal Judge may authorize his nail to perform the duties of that Officer, but without the authority of the Criminal Judge, the gaoler shall not delegate his personal duties to his nail, or to any other person.

25. No prisoner shall be allowed to possess, or have access to, any private dwelling in the vicinity of the gaol; nor shall the families of any of the prisoners be permitted to erect dwellings nearer to the gaol, than the Criminal Judge may judge proper.

26. No prisoner shall be allowed to keep a shop in the gaol or its vicinity.

27. The wives, and other female connections of the prisoners, shall not be permitted to enter the gaol.

28. Intoxicating liquors and drugs are expressly prohibited from being admitted into the gaol; and the Officers of the gaol shall be careful to enforce a strict observance of this prohibition.

29. The prisoners shall not be permitted to give any money, or to give, sell, or exchange, any property whatever, to, or with, any person attached to the gaol, or any public Officer of whatever denomination.

30. The cumblies or other clothes annually allowed to the prisoners, shall be served out at stated periods, and an account rendered of the old ones; care also shall be taken that the prisoners do not sell or dispose of them in any way.

31. The bags, &c., of the prisoners shall be examined once a week, both in the gaols and when on the roads, in the presence of the gaoler, and should any files or other instruments for effecting their escape be found in them, they shall be taken away, and the circumstance reported to the Criminal Judge.

32. Whenever any money may be found on the person of a convict, and the Criminal Judge shall be of opinion, that it is more than sufficient for the ordinary and proper maintenance of the convict (in addition to his daily diet allowance) with reference to his circumstances and situation in life; and there may be reason to apprehend that such money may be appropriated to corrupt purposes, the Criminal Judge may take away as much of the money as he may judge proper, keeping it in deposit, and granting the convict a receipt for the same. The convict shall be allowed the option of taking out the money in such portions, as the Criminal Judge may judge proper, of giving it to his relations, or of leaving it in the Foujdaree Court, till the period of his discharge.

33. No officer shall maltreat the prisoners on any pretence whatever. ^{131.} *See C. O. No. 131.* If any of the prisoners shall make a riot and disturbance, or attempt to resist any of the guards, they shall immediately be put in chains and hand-cuffs, and the circumstances of the case shall be reported to the Criminal Judge.

34. All orders and regulations relating to the interior economy of the gaol, the duties of the gaoler, and his officers, shall be translated into the native languages, and copies made of the same, and hung up on a board, in a conspicuous part of the gaol, for general information.

35. The Sepoys and Peons in charge of the prisoners, either on work or elsewhere, are to be enjoined to prevent, as much as possible, any person holding communication with the prisoners, and always to report to the gaoler when any improper or suspicious communication may appear to have taken place, that the party may undergo a strict examination before his being shut up, on re-admission into the gaol, for the night.

36. All the prisoners liable to hard labour, shall be brought out of the gaol by sun-rise, a reasonable time shall be allowed, either at that hour, or at noon, as the Criminal Judges may deem most convenient, for the prisoners to take their meal. The rest of the day shall be occupied by the prisoners in the performance of the prescribed labour: But they shall uniformly be conducted back to the gaol, soon enough to allow of their taking their evening meal, and of being mustered, searched, and properly secured, before it is dark.

37. The prisoners shall not be permitted to have any intercourse with their female connections, or to receive any articles from them without the knowledge of the Criminal Judge.

38. On the return of the convicts to the gaol, their fetters shall be examined, and their number counted.

Vile C. O. No.
131.

39. Any convict who shall be found to have loosened his irons, shall be fettered with hand-cuffs and neck chains.

40. All prisoners detained under examination, shall be confined in a distinct apartment, or apartments, of the regular gaol.

41. On the apprehension of prisoners at the Sudr station, as well as on the arrival of prisoners sent in by the Magistrates or heads of Police, they shall be delivered over to the gaoler, with an order under the signature of the Criminal Judge, or his Assistant, specifying their names, in what apartment of the gaol, or with what description of prisoners, they are to be confined and whether they are to be secured with ropes or fetters.

42. The gaoler shall carry the terms of the order into execution, and shall take every possible precaution for preventing the prisoners, under examination, from associating and conversing with the convicts in the gaol.

43. Whenever the attendance of any prisoners in the gaol may be required before the Criminal Judge, the Nazir shall send a list of their names, under his signature, to the gaoler, and the gaoler shall deliver the prisoners mentioned in the list to the charge of the officer sent for them, with a sufficient guard for their security.

44. The walls of the gaols shall be scraped and white washed once in every quarter.

45. The linen of the prisoners shall be regularly washed at stated periods.

46. It shall be the particular duty of the gaoler and the officers attached to the gaol, under such rules and orders as may be prescribed by the Criminal Judge, to prevent the water in the wells from being polluted.

47. In the weekly inspection of the gaol, made by the Surgeon of the station, he shall be careful to see that all prisoners who are actually sick, and require medical attendance, are removed immediately to the Hospital.

48. The Native Doctor shall reside in the vicinity of the gaol.

49. A sufficient number of cots, of the common construction, shall be provided for the accommodation of the sick confined in the Hospital.

50. The rules prescribed by Section XXIX. Regulation X. of 1816, for the separation of different descriptions of prisoners, are to be observed as much as possible, when they are at work on public roads, or other public works.

51. All prisoners detained in custody for security only, more especially such as may not be confined as notorious robbers, or on suspicion of robbery, to be kept as far as possible distinct from prisoners convicted of specific offences.

52. Prisoners, generally, of the description above referred to, are to be confined without fetters, except when the Criminal Judge may judge the use of them requisite to prevent the escape of particular prisoners, and in such case the Criminal Judge shall issue a written order, for that purpose to the gaoler.

53. It appearing to be expedient for the health and cleanliness of convicts subject to hard labour, as well as for the convenience of the guards, who have charge of them, that when circumstances may admit of it, they should be exempted from labour, during one day in each week, the Criminal Judges are required to observe, as a general rule, what is now the established practice in many districts, that, except on urgent occasions, when the labour of convicts engaged in the execution of any particular work cannot be dispensed with, they shall not be employed on Sundays; and at all events a part of every Sunday shall invariably be allowed to them, and to their guards, for the purpose of cleanliness. The Criminal Judges shall at the same time, be careful that this indulgence is not abused by any misbehaviour, and shall adopt such measures as may appear best calculated to secure the due attainment of the object intended by it.

54. Convicts shall never be employed out of gaol under the custody of a single peon, but shall be employed, as far as possible, collectively, under the guard of as many peons as can be spared for that purpose.

26TH NOVEMBER, 1821.

Whenever it may appear to a Judge on Circuit, that any persons brought before him for trial have been committed on insufficient grounds, it will be proper, that the Judge should call the trial, and, having declared that there were not sufficient grounds for proceeding to trial, should order the discharge of the parties.

It will be proper, however, that the Judges of Circuit, in all cases of this nature, should report the grounds of their not proceeding to trial for the information of the Court of Foujdaree Udalt.

30TH NOVEMBER, 1821.

With reference to the observation of the second Judge, that he knows not by what authority the Native Officer above referred to, conducted the duties of Head of Police, the Court of Foujdaree Udalt deem it proper to direct, as being absolutely necessary to enable the Courts of Circuit and Foujdaree Udalt to determine as to the legality of proceedings held, and particularly as to the validity of confessions taken by the Native Officers of Police in cases before those Courts, that the several Zillah Magistrates do, in future, furnish to the Courts of Circuit, upon their arrival at the places of residence of the Criminal Judges, a return, specifying the names and dates of appointments of all subordinate officers, who may have been selected by them under the provisions of Section III. Regulation IV. of 1821, to perform in different parts of each talook, the Police duties assigned to Tahsildars and other Head officers of Police, by Sections XXVII. XXVIII. XXIX. XXXI. XXXII. XXXVI. and XXXVII. of Regulation XI. of 1816.

In furtherance of the object of the above orders, it will be the duty of the several Judges of Circuit to report to the Foujdaree Udalt, in all cases referred by them, whether the proceedings of the Police Officer were held by a person duly authorized under the provisions of the Regulations.

24th DECEMBER, 1821.

Vide C. O. 27th Dec. 1815. Many of the trials, which have lately been referred for the final sentence of the Court of Foujdaree Udaltut, have been unaccompanied by a distinct opinion from the Judge of Circuit upon the guilt or innocence of the prisoners, and on more than one occasion, it has appeared, that the Judge referring the trial has not come to a determinate conclusion on the merits of the case.

The Court of Foujdaree Udaltut deem it, therefore, proper to direct the attention of the Judges of the four Provincial Courts of Circuit to the provisions contained in Regulations VII. of 1802, and XV. of 1803, on this subject; and to remark that it is the manifest duty of a Judge of Circuit, holding a trial, to make up his mind as to the result of the evidence adduced before him, which in several instances recently under the observation of the Court, would probably have obviated a reference, and that when a trial may be referred, under the provisions of the general Regulations, it is of the first importance that a distinct opinion on the merits of the case, together with the grounds for that opinion, should be laid before the Court of Foujdaree Udaltut.

24th JANUARY, 1822.

The records of the proceedings, in this case, and in others, which have been referred for the final judgment of the Foujdaree Udaltut, by the Acting Judge on Circuit, holding the 2d Sessions of gaol delivery for 1821, at Bellary, fully establish the prevalence of a practice among the Head Officers of Police in that Zillah, of entering in their reports, furnished to the Criminal Judge under the provisions of Clause fourth, Section XXVII. Regulation XI. of 1816, false dates of the prisoner's apprehension.

It appears moreover, in the present case, by the report of Soobarow, Tahsildar of the talook of Anuntapoor, that, from 21st January, 1821, the date of the examination of the first three prisoners, they were detained by him until 13th February, awaiting the appearance of the remaining prisoner.

From several trials referred to the Foujdaree Udaltut, as well as from the quarterly reports received from the Criminal Judge, it appears that delays of weeks, and even months, between the alleged date of the apprehension of prisoners, and their arrival at the Zillah station, are of common occurrence.

C. O. 29th April 1822, 28th Oct. 1823. The falsification of dates, indeed, puts it out of the power of the Court to ascertain to what precise extent the provision contained in Clause fourth, Section XXVII. Regulation XI. of 1816, which declares that the detention of a prisoner shall in all possible cases be limited to forty-eight (48) hours, is ordinarily violated by the Police Officers in the Zillah of Bellary. The Court of Foujdaree Udaltut have, however, on former occasions, directed the Magistrate to point out to those Officers the inadequacy of the cause assigned by Soobarow, the Tahsildar, in this case, for detaining the prisoners already in custody; and while they deem it necessary on the present occasion to direct, that the Magistrate do warn the several District Police Officers under his authority of exem-

plary punishment on any future occasion, wherein it may be found that their reports have exhibited false dates of the apprehension of prisoners, the Court desire that the Magistrate will strenuously enjoin the observance of the above provision of the Regulations enacted for their guidance, apprizing them, that the reasons ordinarily assigned for the detention of persons in custody, such as the time occupied in search for stolen property, the illness of witnesses, or the non-apprehension of other suspected persons, will not be admitted as valid grounds for its infringement, but that on such occasions the prisoners should be forwarded with the evidence obtained, and the deficiencies supplied as soon as possible.

5. In his letter accompanying this trial, the late Acting Judge remarks, generally, upon the inertness and indifference of the Police Officers in the Zillah of Bellary, as to the discovery of evidence, and their confining their proceedings to the adoption of "various measures" to obtain confessions from persons accused.

6. To the atrocious nature of the measures resorted to by native officers of Police for this purpose, the records of the Court of Foujdaree Udaltut bear abundant testimony; and it is obvious that such proceedings might be greatly checked by attention, on the part of the Magistrates, to enforce the rules, which prohibits the detention of prisoners beyond forty-eight hours after their apprehension. See also C. O. 29th April 1822. C. O. 22d Dec. 1823.

7. Another important check to such practices consists in the uniform requisition of all the evidence which a case may admit of. The Court of Foujdaree Udaltut in their circular instructions to the several Magistrates, under date 18th June, 1817, directed them to impress upon the minds of the Police Officers the primary importance of an adherence to the provisions enacted for their guidance in this respect; but experience has shewn that those injunctions have produced very little effect.

8. The present case exhibits a remarkable instance of inattention on the part of the Police to the general duty of searching for evidence, as well as to positive provisions of the Regulations. C. O. 29th April 1822.

9. No search whatever appears to have been made by the Police for the stolen property; and the Tahsildar assigns, as a reason for their not having been even a search of the prisoners' houses, after their apprehension on the charge of the prosecutrix, that "neither the villagers, the Taluaries, nor the prosecutrix wished it."

10. The Magistrate in his letter to the Criminal Judge, dated 6th November last, after stating that the case did not appear from the report made to him to be "of any unusual description," observes, that, in cases sent direct to the Criminal Judge from the talooks, he (the Magistrate) has no knowledge of the facts, except from the Criminal Judge's receipt for the prisoners.

11. Section XXV. Regulation XI. of 1816, declares, that Tahsildars shall report to the Magistrate all acts which they may do, and all information which they may receive connected with their Police duties."

12. The manifest object of this provision is, to secure the Magistrates immediate and correct acquaintance with all matters appertaining to the administration of Police in the districts under his charge. A bare report of the occurrence of a robbery, or other offence, omitting all mention of

"the facts of the case," or the proceedings held, is obviously very far from answering to the description given in the Section of the Regulation above cited of the Report, to be required from the Heads of the Police Districts.

C. O. 29th April
1822.

13. The late Acting Judge, in his letter accompanying the trial, notices the benefit, which he has known to result from requiring the Officers of Police to transmit to the Magistrate's immediate notice, whenever any considerable property may have been lost, sending also by the earliest tappal a list of the property, which was immediately introduced into a proclamation, and fixed up at the principal Stations of the Zillah, within a short period after the robbery.

14. The late Acting Judge describes these measures as tending to increase the difficulty of disposing of stolen goods, and promoting the general security of property, by manifesting the interest taken by the Officers of Government in the welfare of its native subjects, and their readiness to use their best exertions for recovering their property from the hands of plunderers; and the Court of Foujdaree Udalt, concurring entirely as to their utility and expediency, direct that the Magistrate do issue the necessary instructions for their adoption.

15. The Court of Foujdaree Udalt have observed, with great concern, the proof which has been afforded by the issue of several trials held at the late Sessions at Bellary of the commission of the most atrocious crimes, either immediately by, or with the ascertained cognizance of, the village watchers.

16. To the suppression of an evil so alarming in its manifest operation upon the administration of Police, as well as subversive of the course of justice, the attention of the Magistrate should be earnestly directed; but without the strictest supervision of the proceedings of the higher Officers of Police, and the uniform punishment of remissness or irregularity on their part, no amelioration in the conduct of these subordinate agents can reasonably be looked for.

17. The case now before the Court presents an instance of village watchers having been detached from their proper Police functions by order of a Tahsildar.

18. The Court trust, that an example has been made by the Magistrate of this Officer, who would appear to have been, not only, grossly negligent and irregular in his own proceedings, but to have exercised his authority in causing the Officers subordinate to him to violate the Regulations promulgated for their common guidance.

4TH MARCH, 1822.

Vide C. O. 8th
March 1822.

In an extract of the proceedings of the Court of Circuit, entered in the records of this case, the late Acting Judge notices, the great importance of recording in the preliminary proceedings, held on cases forwarded to the Criminal Judge, the original complaint preferred to the Police Officer, as well as the summons or warrant issued thereupon for the apprehension of the offenders.

It is obvious to remark, that the credit, to which the subsequent testimony delivered by the prosecutor and witnesses may be entitled, must, in many cases, depend materially upon the statement originally made

by the complainant, which, under the provisions of Section XXV. Regulation IX. and Section XXVII. Regulation XI. of 1816, should form a part of the proceedings, forwarded by the Magistrate or Police Officer to the Criminal Judge, and should be included in the proceedings laid before the Court of Circuit, and in the records of trials referred to the Court of Foujdaree Udalt.

The Court deem it proper, also, to direct, that a copy of the warrant which may have been issued by the Magistrate or Officer of Police for the apprehension of the accused, be, in like manner, entered in the records of proceedings laid before the Court of Circuit, and of trials referred for the final sentence of the superior Court.

The Magistrates should be careful themselves, and should also enjoin the Police Officers under their authority, to require the complainants, in cases of robbery, and other heinous offences, to particularize the articles stolen, and the number of persons concerned, and to take down the names of such, as may be alleged to be personally known to the complainants.

The Courts of Circuit and Foujdaree Udalt will be frequently enabled, by reference to a record of this description, to judge how far the testimony delivered on the trial is founded on the deponent's original knowledge of the facts deposed to by him, or how far it may be biased by a presumption, of the guilt of a prisoner, arising from a knowledge of circumstances acquired at a later period.

The Court of Foujdaree Udalt deem it, also, to be proper that copies of any proclamations issued by the Magistrate for the apprehension of the accused should be included in the records of all cases referred.

The letters accompanying several of the trials, which have recently been under the consideration of the Court of Foujdaree Udalt, have not contained a distinct opinion from the Judge of Circuit with respect to the guilt of each particular prisoner, and the degree of punishment, which, in the judgment of that Officer, should be inflicted upon him.

The Court of Foujdaree Udalt deem it to be of great importance, that they should in all cases receive, as in certain special cases is prescribed by Clause third, Section VI. Regulation XV. of 1803, the distinct sentiments of the Judges of Circuit as to the guilt and punishment of each prisoner, together with a statement at large of the grounds of their judgment, whether for or against the prisoner, with such of the facts and circumstances in evidence upon the trial, as may be necessary to explain the case of the prisoner.

As these observations are intended to be circulated to the several Courts of Circuit, the Court of Foujdaree Udalt consider it proper to state, that the letters transmitted by the Judges of the Court of Circuit, in the Western Division, are remarkable for a perspicuous exposition of the evidence, and always convey a distinct opinion on the merits of each particular case.

8TH MARCH, 1822.

With reference to the circular instructions of the Court of Foujdaree Udalt, under date 4th instant, respecting particulars required to be inserted in the letters, which accompany trials referred for the final sentence of the Court, I am directed by the Judges to transmit the annexed

C. O.'s 16th May
1822 and C. O.'s
Nos. 39 and 125.

Vide C. O. No.
108.

copy of a letter from a Judge of Circuit, which is drawn up in the manner considered by the Judges of the Foujdaree Udalt, to be most agreeable to the intention of the Regulations, on this subject.

Vide C. O. No. 195.

The Judges desire that your letters on the reference of trials may, as far as the circumstances of each case will admit, exhibit the same arrangement of the subject, and contain the same particulars as the letter annexed, giving a clear abstract of the evidence, and a distinct opinion as to the guilt and punishment of each prisoner.

(Form omitted.)

29TH APRIL, 1822.

The Court of Foujdaree Udalt, having taken into consideration the representations, which have been made by different Magistrates of the difficulty and occasional impracticability of carrying into effect their circular orders, dated 6th September last, respecting the attestation of confessions delivered before the Native Officers of Police, direct, in modification of those orders, that the several Police Officers empowered to receive confessions, be instructed in cases, wherein the presence and attention of persons wholly unconnected with the Police may not be procurable, to cause any free and voluntary confessions that may be delivered by prisoners, to be attested in the mode prescribed in Clause third, Section XXVII. Regulation XI. of 1816, by two or more persons, not being Police Peons, but in any other capacity belonging to the Police Establishment, as described in Section III. of that Regulation.

Vide C. O. No. 91.

See C. O. 21th Jan. 1822.

At the same time, the Court, advertg to the instances which have lately been brought to their notice of the undue practices resorted to by Officers of Police for the purpose of obtaining confessions from accused persons, direct that the several Magistrates do pointedly call the attention of the Police Officers under their authority, to the provisions of Section XXX. Regulation XI. of 1816, and use every exertion in their power to check practices so atrocious, and to bring the offenders to punishment.

C. O. 30th Jan. 1833.

And as the Court have observed many instances of neglect on the part of the Heads of Police to hold the local inquest in cases of murder, which is prescribed in Section XIII. Regulation XI. of 1816, to search for the stolen property, in cases of robbery, and, generally, to obtain all the evidence procurable in cases referred to the Criminal Judge, they desire that on all such occasions, which should immediately be brought by the Criminal Judge to the notice of the Magistrate, the neglect of the Police Officer may be visited with such penalty as may be calculated to prevent its recurrence.

C. O. 22d Dec. 1823 28th Oct. 1823, 30th Jan. 1821.

The Court of Foujdaree Udalt have had occasion frequently to remark on the illegal detention of prisoners by the Officers of Police, and instances have, of late, been brought to their notice, of their postponement of the prisoner's examination for several days after his apprehension.

The attention of the Criminal Judges and Magistrates should be particularly directed to the correction of irregularities so pernicious, and every instance of detention, beyond the period allowed by the Regulations, which may not be satisfactorily accounted for, should be punished.

It has appeared on many trials, referred to the Foujdaree Udalt, C. O. 17th Sept. 1820. that the witnesses to alleged confessions of prisoners before the Officers of Police were not present during the time of their being reduced to writing at the dictation of the prisoner, but were called in afterwards, and merely attested the prisoner's subscription of the declaration.—The Court of Foujdaree Udalt desire that every instance of inattention to the provisions of Clause third, Section XXVII. Regulation XI. of 1816, in this respect, may be brought by the Criminal Judges, and Courts of Circuit, to the notice of the Magistrate, in order that measures may be taken to enforce the observance of so important a part of the Regulation enacted for the guidance of the Officers of Police.

But with all these precautions, the principal security against the fabrication or extortion of confessions will consist in the careful investigation by the Magistrates, Criminal Judges, and Courts of Circuit, of the cases coming under their cognizance. The too easy admission of confessions will always operate as a temptation to impose false confessions on the Courts, while; if they are received with circumspection, and all the additional evidence which the case may admit of uniformly required, and carefully taken, the fear of detection must prove a powerful discouragement to the practice.

With reference to the circular orders of the Foujdaree Udalt, dated 6th September last, respecting the attestation of confession delivered before the Criminal Judges and Magistrates, the Court deem it proper to notify to those Officers that the objection of the Mahomedan Law is confined to the testimony of peons of Police, strictly so called, who are directly employed in the seizure of offenders, and does not extend to other peons attached to the office of the Magistrate or to the Zillah Criminal Court. It will be proper, on any occasion, when the attestation of a peon may be taken to these confessions, that his capacity of service should be precisely specified at the head of his examination before the Court of Circuit.

16TH MAY, 1822.

The Court of Foujdaree Udalt, have remarked, that, in cases of robbery, the evidence is frequently defective with respect to the particular articles of property found upon individual prisoners, deem it proper to direct, that all articles of stolen property, which may be produced in a case before the Court of the Magistrate or Criminal Judge, be numbered; that the witnesses by whom the property may have been discovered, be invariably examined, as to the particular articles found on each individual prisoner; and that, throughout the examinations before, the Magistrate, the Criminal Judge, and the Court of Circuit, the number of every article referred to be specified.

Vide C. O. No. 39. and No. 125.

Extended to Native Officers of Police by C. O. No. 125.

With the view of enabling the Court of Foujdaree Udalt to determine in all cases the degree of credit due to the testimony of prosecutors or witnesses, as to their recognition of prisoners, the Court direct, that whenever the deponent may identify a prisoner or prisoners on the trial, he be questioned as to whether, at what place, and at what period, he was acquainted with the person of the prisoner previously to the occurrence of the offence with which he may stand charged.

The Court of Foujdaree Udalt take the occasion of circulating the present instructions to direct, in modification of the circular order issued

to the several Magistrates, under date 14th November last, that the Calendars required by Section XL. Regulation IX. of 1816, be completed up to the latest practicable date, with reference to the time fixed for the arrival of the Judges of the Courts of Circuit in the written publication, prescribed by Section XVII. Regulation X. of 1816.

28th MAY, 1822.

Vide C. O. 22d
July 1822.

The Futwah of the Provincial Law Officer in this case declared that the first prisoner was liable to Ookoobut, the penalty of Hud being barred by the defect of "certain conditions" requisite for the establishment of a charge of robbery.

The Law Officers of the Court of Foujdaree Udalut have by their Futwah adjudged the said prisoner to suffer amputation of the right hand.

The present case, as well as others referred for the final decision of the Court of Foujdaree Udalut, have attracted their attention to the omission on the part of the Courts of Circuit to enforce the observance of the provisions contained in Section II. Regulation XV. of 1803, respecting Futwahs awarding discretionary punishment.

The Court of Foujdaree Udalut are aware, that the practice, which at present obtains, of admitting such Futwahs, unaccompanied by a statement of the grounds which bar the adjudication of the specific penalty, has occasionally received the sanction of their own proceedings; but, as this practice appears to be inconsistent with the intention of the provisions, above referred to, and, with respect to the lower Courts, tends to defeat one of the declared objects of the Regulation, namely, the maintenance of "the uniform and adequate punishment of offenders," the Court deem it incumbent upon them to call the particular attention of the Courts of Circuit, to the provisions of the Law on this subject, and to direct that they be implicitly attended to in future.

Clause first, Section II. Regulation XV. of 1803, declares, that in "all trials before the Courts of Circuit, wherein the Mahomedan Law Officers of those Courts may consider the prisoner liable to discretionary punishment; their Futwah shall declare the same, generally, with a statement of the grounds on which the prisoner is adjudged subject to discretionary punishment.

By the second Clause, it is provided, that if the crime shall in such cases "have been specially provided for by any subsisting Regulation, denouncing the penalty to be adjudged on proof of the commission of such crime," and the Judge shall consider the crime to have been established against the prisoner, he shall sentence him to suffer the punishment prescribed by the Regulations, or if the case be referrible under the Regulations for the sentence of the Foujdaree Udalut, shall transmit the trial, with his opinion thereupon, to that Court.

Clause third declares that a second Futwah of Hud or Kissaas shall be required in cases, where the crime shall not have been provided for by any Regulation, but be specifically provided for by the Mahomedan Law, and sentence of discretionary punishment may be awarded on the ground of the prisoners, being convicted on strong presumptive proof, not on full legal evidence.

By Clause fourth, it is provided, that such second Futwah shall also be taken in cases of conviction either on full legal evidence, or on strong presumptive proof, where sentence for the specific penalty may be barred by some special exception or scrupulous distinction, not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice.

For the due enforcement of the provisions contained in Clauses third and fourth, it is obviously requisite, that the provisions of Clause first, requiring the statement of the grounds of all Futwahs of discretionary punishment, in cases specifically provided for by the Mahomedan Law, or, in other words, the grounds existing in bar of a sentence for the specific penalty, should be uniformly observed.

With reference to the provisions of Clauses first and fifth of the above Section, it is to be observed, that when the offence may have been specially provided for by any Regulation, no second Futwah is to be taken; but the Judge, provided he concur in the conviction of the prisoner, is required to pass sentence for the prescribed punishment.

The Court of Foujdaree Udalut desire that, in cases of theft or robbery, where a Futwah of discretionary punishment may be declared, a translation of the grounds assigned for such Futwah may be given in the Calendars, submitted by the Court of Circuit.

22d JULY, 1822.

In cases, Nos. 1, 3, 4, and 8 of the Calendar, it is stated, that the several prisoners were convicted upon free and voluntary confessions, previously delivered, and were declared liable to discretionary punishment, sentence of Hud being barred, "owing to the prisoners' denying their guilt before the Court of Circuit." C. O. 28th
May 1822.

The special exception, by which sentence for the specific penalty is here declared to be barred, being manifestly of the nature described in Clause fourth, Section II. Regulation XV. of 1803, the Law Officer should have been required to deliver a second Futwah in each of the above cases, and sentence should have been passed accordingly.

In case No. 6, it is stated, that against the first prisoner a Futwah was given of Zun-i-ghalib-i-doozdee, and he was sentenced under Ookoobut to 3 years' imprisonment.

Under the provisions of Clause third, Section II. Regulation XV. of 1803, it was requisite, that a second Futwah should have been demanded on the case of this prisoner.

The Court of Foujdaree Udalut deem it necessary, therefore, to direct that the 2d Judge do call upon the Mahomedan Law Officer to declare to what specific punishment the prisoners in cases, Nos. 1, 3, 4, and 8 would have been liable, had they not before the Court of Circuit retracted their former confessions, and to what specific penalty the 1st prisoner, in case No. 6, would have been liable, had he been convicted by full legal evidence.

The 2d Judge, in revising the sentences passed by him in the several cases above-mentioned, will be guided by the rule laid down in clause fifth, Section II. Regulation XV. of 1803, should the Law Officer in his

second Futwah in either of the cases in question declare the specific penalty to be remitted or mitigated by "the provisions of the Mahomedan Law, in consideration of circumstances, which alter and diminish the criminality of the offence;" and, should it appear by the second Futwah, that no other bar exists to a sentence of Hud, than those declared in the original Futwabs, the 2d Judge will pass new sentences, in conformity with the provisions of Section XXI. Regulation VII. of 1802.

The cases here noticed evince to the Court of Foujdaree Udaltut the expediency of directing the several Courts of Circuit to instruct their Law Officers in delivering their Futwabs under the provisions of Clause first, Section II. Regulation XV. of 1803, invariably to specify *all* the grounds on which a "prisoner is declared liable to discretionary punishment," it being within the knowledge of the Court that the Mahomedan Law Officers deem it sufficient to assign one only of several grounds, which may exist in the same case in bar of a Futwah of Hud, and the several provisions contained in Section II. Regulation XV. of 1803, requiring that a different course shall be pursued according to the nature of the provisions of the Law which bar the specific penalty.

12TH AUGUST, 1822.

I am directed by the Judges of the Court of Foujdaree Udaltut to transmit to you the accompanying extract of the proceedings of the Court of Foujdaree Udaltut, under date 27th* May last, together with a copy of a letter from the Secretary to Government in the Judicial Department, in reply thereto.

* See Appendix B.

The Judges desire, that, in communicating the foregoing papers to the several Criminal Judges and Magistrates within your jurisdiction, you will advise the latter Officers of the importance of enforcing a regular course of proceeding in the cases of offenders made over to the Civil power by the Military authorities; and that you will intimate to both of those Officers the opinion of the Judges, that all communications regarding Criminal cases between the established Courts and the Commanding Officers of Military Stations, should take place through the office of the Magistrate.

Vide C. O. No. 72 and 149.

15TH AUGUST, 1822.

With reference to the observations of the 2d Judge, in the second paragraph of the report, regarding the distribution of the subordinate Officers, specially appointed by the Magistrate in the Zillah of Combaconum, under the provisions of Section III. Regulation IV. of 1821, the Court of Foujdaree Udaltut deem it necessary only to observe, that the general provisions of the enactments of 1816, vest the Magistrates with a discretionary authority as to the distribution of the servants belonging to their establishments, which is not affected by the latter enactment.

In the 4th paragraph of the report, the second Judge suggests the addition of a column to the report prescribed by Section XXX. Regulation IX. of 1816, exhibiting the number of cases in which the persons apprehended may have been concerned.

The Court of Foujdaree Udaltut, being of opinion that this addition to the form of report prescribed in No. 9 of the Appendix to Regulation IX. of 1816, will be useful, deem it proper to direct that it be generally adopted.

14TH OCTOBER, 1822.

Read again letter, dated 14th ultimo, from the 3d Judge on Circuit in the Centre Division, submitting copy of the Cuddapah Calendar, 2d Sessions, A. D. 1822.

The mode, in which certain cases in the above Calendar have been disposed of calls for observation from the Court of Foujdaree Udaltut.

In case No. 6, wherein seven prisoners were charged with breaking into and robbing the prosecutor's house, it is stated, that the Futwah convicted the 1st and 2d prisoners of "sharing in stolen property, knowing it to be stolen, because they confessed before the Police they accompanied Abbegadoo and Gangadoo, and sitting down or waiting in the road got certain articles of the stolen property from Abbegadoo, &c., and "because they confirmed this before the Criminal Judge, and on their defence before the Court of Circuit acknowledged the receipt of some clothes, they were declared liable to Ookoobut."

The 1st prisoner, a Taliar, was sentenced to 5 years' imprisonment with thirty stripes, and the second to three years' imprisonment.

From the admission of the above two prisoners that they accompanied the robbers, and waiting in the road received from them, the stolen property, the Court of Foujdaree Udaltut, are of opinion, that they must be regarded as accomplices in the robbery, and not merely as convicted of knowingly receiving stolen property.

The mode of their co-operation with the gang not being such as to subject them to the specific penalty of Hud, their case fell under the provisions of Clause seventh, Section II. Regulation XV. of 1803. What extenuating circumstances may have marked the case of the 2d prisoner the Court are uninformed; but adverting to the aggravated guilt of the 1st prisoner, a village watcher, the Foujdaree Udaltut cannot but question the expediency of mitigating in his case the punishment adjudicable under the provisions of the Clause last cited.

In case No. 7, the prisoner was charged with arson, and declared by the Futwah convicted on strong presumption (Zun-i-ghalib) of the crime laid to his charge.

The 3d Judge directed the release of the prisoner, because he "could not place faith in the confession, &c."

The Court of Foujdaree Udaltut deem it necessary, in reference to this case, to point the 3d Judge's attention to the provisions of Section XXII. Regulation VII. of 1802, which require the reference for their sentence of all cases, wherein the Judge may disapprove of the Futwah.

In cases Nos. 19 and 20 of the Calendar and Nos. 1 and 2 of the supplemental Calendar, the value of the property stolen is omitted to be specified.

In case No. 21, the prisoners on a charge of theft were declared liable to discretionary punishment, "amputation being barred, because the second did not confess he took the property out of custody, and because the first (who got in by the window) declared he found, and not that he stole, the articles; and, because the property was recovered before a complaint made to a Judge." On a second Futwah it was declared that

"that amputation would be barred, though the 1st prisoner had used the word stole, and the goods had been in custody in respect to the second prisoner, by their delivering up the property immediately after the village police put them in confinement."

From the remarks on this case it would seem that the 2d Judge in demanding the 2d Futwah adverted to two only of the three special grounds of exception, taken by the Mohammedan Law Officer in bar of Hud. As, however, the second Futwah of discretionary punishment rests upon an exception, "not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice," the Court of Foujdaree Udalut, with reference to the provisions of Clause fourth, Section II. Regulation XV. of 1803, direct that the 2d Judge do take a further Futwah from the Law Officer as to what specific punishment would have been adjudicable, had the prisoners not delivered up the stolen property on their apprehension, and do revise the sentence accordingly.

In case No. 29, a second Futwah was taken, which confirmed the original Futwah of Ookoobut.

The Court of Foujdaree Udalut conclude, that the grounds still existing in bar to a judgment for the specific penalty were stated in the 2d Futwah they should also have been entered in the Calendar.

To the sentence passed on the 5th prisoner in case No. 36, the same remark applies as has been above recorded on that of the 1st prisoner in case No. 6. The 2d prisoner in this case, named Mahanundee is stated to have been sentenced to be imprisoned, without irons, with sedentary occupation, he being lame. It is requisite, that the term of imprisonment adjudged against this person should be reported for the information of the Foujdaree Udalut.

Adverting to the notices of certain referrible trials in the foregoing Calendar, the Court of Foujdaree Udalut deem it proper to direct that the several Judges of Circuit do on all trials to be referred enter the usual abstract of the Futwah, and state the precise ground of the references.

18TH OCTOBER, 1822.

I am directed by the Judges of the Foujdaree Udalut, to transmit to you for communication to the several Criminal Judges and Magistrates within your jurisdiction, the annexed copy of a letter from the Secretary to Government in the Judicial Department, dated 15th instant; in answer to a letter from the Judges of the Foujdaree Udalut, representing, with reference to the Circular Orders of the Court, dated 16th June, 1814, the inconvenience frequently found to attend the detachment of a part of the Zillah gaol-guard for the escort of convicts on their route to Chingleput.

"I am directed to acknowledge the receipt of your letter of the 7th instant, and to state that, agreeably to the recommendation it contains, the Honorable the Governor in Council authorizes the several Criminal Judges, when necessary, to apply to the Magistrates of their respective districts for a guard of Police peons to escort convicts passing on to the Depot at Chingleput."

15th October, 1822.

28TH OCTOBER, 1822.

In Para. 12th, the first Judge states, that he has reason to believe it not uncommon, when a case is sent up to a Criminal Judge, for that Officer, on his examination of it, to place one of the witnesses (who may have accompanied the prisoner charged with a crime) at the bar, and to make the prisoner originally charged, a witness. See C. O. 141.

As the Regulations vest the Criminal Judge with the cognizance of such charges only, "as may be brought before him by a Magistrate, or some Police Officer under his authority," the institution of proceedings against a party, sent to the Criminal Judge as a witness, who may appear to be implicated in the charge under investigation is not competent to this Officer.

Where the Head of Police may happen to send in as witnesses persons so circumstanced, the Criminal Judge should make a communication to the Magistrate in order that the irregularity of the Police Officer may be duly noticed, and refer the case of the individual to the Magistrate, in order that, if there should be proof, forthcoming of his guilt, a charge may be regularly instituted against him.

Para. 17th, of the report contains a suggestion that "a general advertisement be authorized to be published in every village, requiring all persons robbed, in whatever manner, to deliver a list of property stolen from them, to the nearest Police Officer signed or marked by the person robbed, and if possible with the value annexed, calling upon all persons to stop individuals so offering goods, &c. for sale or deposit, and instantly to give information to the nearest Police Officer, of which the Heads of Villages would afford immediate opportunity, and the Tahsildars of the station, should be authorized and required, not only to publish the same in the most general manner in the Cusbah village where he may reside, and in the village of the person robbed, but should circulate it in the other villages under his orders, transmitting a copy to the Tahsildars near him for the same purpose, and also to the Magistrate for publication in the town where he may be.

The measures here suggested are considered by the Court of Foujdaree Udalut to be judicious, and being competent to the Magistrates, have probably been generally adopted by them. The Court deem it proper, however, to direct that the foregoing extract of the report be circulated to the several Magistrates, in view to the adoption of the precautionary measures therein recommended, where they may not already be practised.

8TH NOVEMBER, 1822.

The Court of Foujdaree Udalut entirely concur with the 3d Judge in the importance which he attaches to the publication and proclamation of all legislative enactments affecting the rights, persons, or property of individuals, and are of opinion, that, although the special provisions on this subject, containing in Sections XV. and XVI. Regulation III. of 1810, are no longer in force, it is highly expedient and necessary, that the measures therein directed, or similar means, should be resorted to for the purpose of giving due publicity to the enactments of the legislature.

But the Court do not concur with the 3d Judge in restricting the meaning of the term "promulgation," when used to determine the date from which the provisions of the Law are to take effect, to the distribution of the translations of the Regulations in the native languages.

The Court find, that, whenever this expression has been used in the Code, it has been taken to designate the date of the issue and circulation of the Regulation in print, under the authority of the Government, and they see no reason to doubt that this construction is that intended by the legislature.

It is to be observed, that the provisions of Regulation I. of 1802, to which the 3d Judge adverts, in illustration of his arguments, did not require any general proclamation or exhibition of the laws in the native languages, but only that translation should be furnished to public Officers, and to those individuals, to whom it might be thought necessary to deliver copies.

As illustrative of the construction given to the expression in question by the Court of Foujdaree Udalut, it may be remarked that the provisions of Regulation I. of 1818, cited in Clause first, Section VII. of that Regulation, were put in operation six months after its publication in print, and those referred to in the second Clause were immediately acted upon.

The Court of Foujdaree Udalut, entertaining this view of the intent and meaning of the words used in Sections II. and III. Regulation I. of 1822, have sentenced the prisoners to suffer the penalty therein prescribed and they deem it proper to direct that their sentiments in respect to the necessity of giving the greatest possible publicity to the Regulations of Government be communicated to the several Criminal Judges and Magistrates, through the Courts of Circuit, for their information and guidance respectively.

19TH NOVEMBER, 1822.

The only part of the foregoing papers, which appears to the Court to call for observation from them, is an opinion declared in a letter from the Secretary to Government, in the Judicial Department, dated 23d April last, that the provisions of Regulation II. of 1822, give authority to Magistrates to replace in custody persons, whose unconditional release has been directed by the Court of Circuit.

The Court of Foujdaree Udalut, under date 20th June last, intimated to the Government their opinion, "that the detention by the Magistrate or Criminal Judge of a prisoner, ordered by the Court of Circuit to be released without security would be irregular," and at variance with the principle of the "provisions contained in Clause second, Section III. and Clause third, Section IV. Regulation II. of 1822."

The letter from the Secretary to Government, in the Judicial Department, above cited, bears a date two months antecedent to this communication from the Foujdaree Udalut to the Government, who are considered by the Court to have assented to the construction given by them to the Regulation.

The Court deem it proper, that their construction of the provisions contained in Sections III. and IV. Regulation II. of 1822, should be communicated for the information and future guidance of the several Criminal Judges and Magistrates.

26TH NOVEMBER, 1822.

Read letter, dated 13th instant, from the Criminal Judge in the Zillah of Masulipatam, submitting for the consideration and orders of the Court, copy of a correspondence with the Magistrate regarding the construction of Clause fourth, Section IV. Regulation VI. of 1822.

The point involved in the foregoing reference is, whether or not the provisions of the Clause above cited require, that every charge of knowingly receiving or buying stolen property, should be brought before the Criminal Judge.

The Court of Foujdaree Udalut are of opinion, that where the purchaser or receiver may appear to be implicated only as an accessory in a petty theft, punishable by the Magistrate, under the provisions of Section XXXIII. Regulation IX. of 1816, and not a notorious or common receiver of stolen goods, the case is still cognizable by the Magistrate, according to the general spirit of the Regulations, and that the provisions of Section IV. Regulation VI. of 1822, in no way affect the jurisdiction of Magistrates, under the provisions of Regulation IX. of 1816, but apply exclusively to the cases of persons brought before the Criminal Judge, under the rules prescribed in Regulations IX. and XI. of 1816.

The Court of Foujdaree Udalut consider that the Criminal Judge was perfectly regular in submitting the above correspondence to the Judges of the Court of Circuit, and that it is desirable that all references from the judicial authorities in the Zillahs, in cases of difference of opinion on the meaning and construction of the Regulations, as well as the orders of the Court of Foujdaree Udalut thereon, should pass through the Court of Circuit of the Division.

6TH JANUARY, 1823.

The Judges of the Foujdaree Udalut desire, that you will instruct the several Criminal Judges within your jurisdiction in cases of convicts sentenced by the Court of Circuit, under Clause third, Section VIII. Regulation XV. of 1803, to banishment, to transmit to the Court of Foujdaree Udalut, copies of the warrants, of the Court of Circuit, for their orders as to the prisoner's disposal.

23D JANUARY, 1823.

The Court of Foujdaree Udalut, deem it proper, on the present occasion, to direct, that the Judges of Circuit in the Northern, Centre, and Southern Divisions, be required to instruct those Criminal Judges, whose jurisdiction in consequence of late arrangements may extend over more than one Collectorate, invariably to specify in the Calendars, laid before the Court of Circuit, from the jurisdiction of what Magistrate each prisoner was brought before him.

20TH FEBRUARY, 1823.—A

The Court of Foujdaree Udalut observe, that several cases of Burglary, on the foregoing Calendar, were struck off, by order of the second Judge, as being cognizable by the Criminal Judge, under the provisions of Regulation VI. of 1822.

Cancelled by
C. O. No. 160.

Vide pars : 4

C. O. No.
137.

Clause second, Section III. of the Regulation here cited, after specifying certain circumstances of aggravation, on proof whereof the parties are required to be committed for trial before the Court of Circuit, declares that the like proceeding shall be adopted by the Criminal Judge, if the prisoners, "from any peculiar circumstances of the case may appear to him deserving of a severer punishment," than he is by the following Clauses authorized to inflict.

Under the general controuling power over the proceedings of the Criminal Judges, which is vested in the Judges of Circuit, the Court of Foujdaree Udalt, hold it to be unquestionably competent to them to overrule the order of a Criminal Judge for the commitment of a prisoner to be tried by the superior Court, grounded on his opinion that his own powers are inadequate to the due punishment of the offender; but the Court deem it proper to direct, that, whenever this authority may be exercised by the Court of Circuit, the grounds for returning the case to be disposed of by the Criminal Judge be entered at large on the Calendar for their information.

20TH FEBRUARY, 1823.—B

C. O. 8th Oct. 1821. The immediate infliction of the corporal punishment adjudged against prisoners sentenced to transportation, is the duty of the Criminal Judge, to whom the warrant is addressed; and when the inscription prescribed by Section XXXV. Regulation VII. of 1802, may not have been made, agreeably to paragraph 20, of the Gaol Regulations, in consequence of their not being at the station any person able to make it, it should be made at Chingleput on the convicts arrival.

20TH FEBRUARY, 1823.—C

C. O. 24th Jan. 1822. The Judges of the Foujdaree Udalt, observing in the reports furnished by the Criminal Judges, under the provisions of Section XXXVII. Regulation X. of 1816, that a date is assigned to the charges against the prisoners, subsequent to the date of their apprehension, desire that you will instruct those Officers, in all cases where this anomaly may appear in the report of the Police Officer, to apply to the Magistrate, in order that the date of the original charge or information preferred against the accused, which must in all cases precede the issue of process for their apprehension, may be ascertained and recorded.

The Judges desire also, that you will apprise the several Magistrates within your jurisdiction of the great importance, which they attach to accuracy in this part of the reports of Police Officers, who appear frequently to substitute the date of the examination of the parties, after the apprehension of the accused, for that of the original information which led to the issue of process against them.

14TH MARCH, 1823.

I am directed by the Judges of the Foujdaree Udalt to desire, that the annexed copy of a letter to the Judges of the Provincial Court of Circuit in the Northern Division, may be furnished to the Criminal Judges and Magistrates within your jurisdiction for their information and guidance respectively.

To the Judges of the Provincial Court of Circuit in the Northern Division.

I am directed by the Judges of the Court of Foujdaree Udalt to acknowledge the receipt of your letter, dated 8th ultimo, submitting a proposition from the Criminal Judge, arising out of the difficulty experienced by persons detained under the provisions of Section IV. Regulation II. of 1822, on a requisition of security, that, "in all cases wherein the Criminal Judge may demand security from persons suspected, but not convicted of any crime, the accused, if unable to give it on the spot, shall be allowed to name his bailers, after which a security bond shall be drawn up, having the name of the party, the crime he stands accused of, the amount of security required by the Criminal Judge, and the period for which it is to be held good, inserted therein. The Criminal Judge shall then forward this paper to the Magistrate, with a written request, "to cause the competency of the security to be ascertained by, and the bond, if the bailers are willing to undertake the responsibility to be executed before, the Head Police Officer of the District, and witnessed by the Head Inhabitant and Curnum of the village, wherein they (the bailers) reside, and to return it to the Criminal Judge, "who will thereupon order the release of the individual on behalf of whom it has been taken."

The Judges of the Foujdaree Udalt consider the foregoing proposition of the Criminal Judge to be free from objection, and calculated to remedy the inconvenience which he has pointed out; and they direct that a copy of this letter be furnished to the several Criminal Judges and Magistrates, within your jurisdiction, for their respective information and guidance.

10TH APRIL, 1823.

The Judges of the Court of Foujdaree Udalt, being of opinion, that it is of importance that the Magistrates should receive official information of the mode in which all cases forwarded by them, or by the Police Officers under their authority, to the Criminal Judges may be disposed of, desire that you will instruct the several Criminal Judges within your jurisdiction to furnish to the Magistrates a monthly report of such cases in the subjoined form.

1.	2.	3.	4.
No. of the Case.	Prisoner's Name or Names.	Crime charged against the prisoner or prisoners.	Mode in which the prisoners were disposed of, and when discharged, the grounds thereof.

The fourth column in the report is to show what persons may have been released, or committed for trial, and what sentence passed on those punished by the Criminal Judge.

Vide C. O. 16th Dec. 1831.
Vide C. O. Nos. 72, 161 and 170.

17TH APRIL, 1823.

The Court of Foujdaree Udalut observe, that certain of the Criminal Judges, in preparing the Calendar of persons committed for trial before the Court of Circuit, omit altogether to enter in the column headed, "Abstract of the examination, grounds and date of commitment for trial," any abstract of the examinations taken on the case, while certain of those Officers, on the other hand, record in this column of the Calendar, the whole of the contents of each witness' examination at length, omitting merely to specify the questions put to him.

The Court of Foujdaree Udalut deem it proper, therefore, to direct, that the attention of the several Criminal Judges be called to this subject, in order that the omission of the important information intended to be conveyed by this column of the Calendar may not recur, and that an "Abstract" of the evidence may be substituted for the full report which is now frequently given.

It will be the duty of the Judges of the Courts of Circuit to enforce attention to these instructions on the part of the Criminal Judge.

21ST MAY, 1823.

Vide C. O. 24th
Nov. 1823.

I am directed by the Judges of the Foujdaree Udalut to transmit to you the accompanying copy of a letter from the Secretary to Government in the Judicial Department, dated 6th instant, and to desire that you will communicate the same to the several Magistrates within your jurisdiction, together with a copy of this letter, for their information and guidance respectively.

You will also furnish the several Criminal Judges within your jurisdiction with a copy of the last paragraph of this letter.

The observations of the Honorable the Governor in Council, in the foregoing letter, are addressed to two points; first, the diversity inferrible from the half yearly reports of crimes and punishments, "in the administration of the same laws by different Magistrates;" and, secondly, a supposed want of uniformity "in the preparation of the Register of crimes and prisoners."

It is obvious to remark, that if the statements furnished by the different Magistrates are not all framed upon the same principles, no inference as to the discrepancy of practice can be drawn from a comparison between them.

The half yearly statement is, as has been repeatedly explained by the Judges, to exhibit the total number of persons apprehended within the period which it embraces, as well the number of offences ascertained to have been committed.

There may be many cases so trivial as not to appear deserving of any record, but it is not possible in any other way to maintain uniformity in the mode of framing the statement.

To the observations of the Governor in Council, in the concluding part of the foregoing letter, the serious attention of the Magistrates should be directed. From the very large proportion of the persons apprehended by the Officers of Police, who are shewn by these statements

to be discharged by the Magistrates, the Judges of the Foujdaree Udalut, cannot but infer, that adequate attention is not paid to those humane provisions of the Regulations, enacted for the guidance of the Magistrates and of the Officers under their authority, with a view of preventing the apprehension of individuals upon insufficient grounds.

It will be the duty of the Magistrates to take every opportunity of inculcating upon their Police Officers the importance of attending to this branch of their duty; and to notice every occasion in which persons may be brought before them, without proper inquiry, as to the degree of credit due to the accusations against them.

In order to give greater effect to the object of these instructions, namely, the prevention of the groundless apprehension of innocent persons, the Judges of the Foujdaree Udalut direct, that the several Criminal Judges be instructed to communicate to the Magistrates the circumstances of all cases, wherein prisoners may be sent to them by the Heads of District Police, without any evidence of their guilt, or adequate inquiry by those Officers, in order to ascertain, whether credit was due to the charges preferred against them.

To the Register to the Court to Foujdaree Udalut.

SIR,

"I am directed to acknowledge the receipt of your letter of the 21st ultimo (13), with a statement, exhibiting the operations of the several Criminal tribunals, from the 1st of July to the 31st of December last. The principal circumstance which has struck the Honorable the Governor in Council, in examining that document, is the vast disparity in the numbers of the prisoners apprehended in different districts. In Bellary, for instance, the number apprehended in the period under review was only 451, while in Madura, it was 9397. There is an entire want of uniformity in this respect through the whole statement, which it is impossible to attribute to any corresponding variety in the prevalence of crimes in the different districts. In the degree in which it occurs, it must arise either from a great diversity in the administration of the same laws by different Magistrates, or from the statement with regard to the different districts not being framed upon the same principles, so that crimes and prisoners, which are entered in the statement for one district, are excluded from it for another. The Governor in Council is desirous that the subject should receive the consideration of the Judges of the Foujdaree Udalut, with the view of establishing an uniformity of practice, both in the administration of the law, and in the preparation of the Register of crimes and prisoners. I am at the same time directed to observe that the Magistrates and their Officers should be cautioned against making a merit of swelling their files, and should accustom themselves to regard it as an injury to the country when a large proportion of its population is, on trivial grounds, charged with offences, and withdrawn from useful employment, as well as an injury to the individual themselves, when such things happen without sufficient cause. What is most creditable to a Magistrate is that security and good order should be preserved with but little exertion or display of official authority, or encroachment upon personal liberty."

19TH JUNE, 1823.

In case No. 1 of the Calendar, the prisoners stood charged with stealing from a dwelling-house property to the value of 412 rupees. The futwah declared the prisoner convicted of Saraka, and liable to Tazeer, "Hud being barred in consequence of the prisoner's being allowed to frequent the house of the prosecutor."

The 3d Judge assigns, as a ground for not taking a second futwah in the case, that Clause fifth, Section II. Regulation VI. of 1822, is not mentioned in Clause second, Section III. of that Regulation, under which the prisoner was committed for trial; and sentence of twenty stripes and five years' imprisonment, is stated to have been passed under the discretion allowed by Clause fourth, Section II. of the Regulation.

Clause fifth, Section II. Regulation VI. of 1822, declares, that nothing in the preceding Clause shall be construed "to authorize an enhancement of the penalties declared by the Regulations in force for burglary or theft, when not accompanied with wounding or other corporal injury, nor with an attempt to commit murder by strangling or other means, as described in Clause third of this Section."

The rule contained in Section XIX. Regulation I. of 1802, that "one part of a Regulation is to be construed by another, so that the whole may stand," manifestly requires, that the passage in Clause second, Section III. Regulation VI. of 1822, which declares that the Criminal Judge shall commit for trial before the Court of Circuit any prisoners, who from certain circumstances therein specified, "may appear to him deserving of a severer punishment than the Criminal Judge" is "authorized to inflict under the following Clauses of this Section," should be regarded as parenthetical; because, with any other reading, the concluding words of Clause second, Section III. would declare the persons described in that passage, to be liable to an enhancement of punishment, expressly prohibited by Clause fifth, Section II. of the Regulation.

21ST JULY, 1823.

The Judges of the Foujdaree Udalt, observing that on some occasions copies of the warrants issued for the release of prisoners, tried in cases referred to the Court, are omitted to be entered in the English Record, and that it more frequently happens, that the translations of those warrants are not appended to the Persian versions of referred trials, desire that you will be careful on every occasion, wherein any of the prisoners in a referrible trial may be acquitted and released, to cause copy and translation of the warrant, issued for that purpose to the Criminal Judges, to be entered at the conclusion of the English and Persian translations of the proceedings.

26TH JULY, 1823.

See also C. O. 28th Oct. 1823. 18th Nov. 1823. The observations of the 3d Judge, and the record of proceedings on this case, have forcibly attracted the attention of the Court of Foujdaree Udalt to the great importance of requiring the several Officers of Police to make on all occasions an immediate record of complaints preferred before them, wherein should be entered the date of the charge, the particular circumstances of the offence, the time when, and place where,

it is alleged to have been committed,—the names of the accused or suspected persons, when designated, and the number of persons stated to have been concerned. This record should always accompany the proceedings transmitted to the Magistrate or Criminal Judge, in addition to such depositions as may be taken by the Police Officer, subsequently to the apprehension of the accused. Vide C. O. 28th Oct. 1823.

The Court of Foujdaree Udalt direct, that the several Magistrates be instructed to require the various Officers of Police empowered to hold preliminary inquiries in criminal cases invariably on receiving a complaint, to frame a record of this description, attested by their signatures, and containing the above particulars.

4TH AUGUST, 1823.

The Judges of the Foujdaree Udalt, deeming it to be expedient, that the mode in which the instructions issued by them from time to time to the several Magistrates, through the Courts of Circuit, are carried into effect, should be duly certified to the Court of Foujdaree Udalt, direct, that all instructions, whether founded upon the proceedings held on criminal trials, or otherwise, which may issue under the orders of the Foujdaree Udalt, to the Magistrates, be in future furnished to those Officers by precept of the Court of Circuit, in the prescribed form, requiring return thereto within a limited time; and that certified copies of the said precepts and returns be transmitted to this office, together with the return to the precept from the Court of Foujdaree Udalt to the Court of Circuit.

13TH AUGUST, 1823.

The Judges of the Foujdaree Udalt desire, that you will instruct the Criminal Judges within your jurisdiction in all cases of theft, punished by them under the provisions of Clause fourth, Section III. Regulation VI. of 1822, with imprisonment exceeding six months, invariably to specify in the report, submitted, agreeably to Section XXXV. Regulation X. of 1816, the particular circumstances of aggravation, which may have brought the case within those provisions.

12TH SEPTEMBER, 1823.

Extract of a Letter to the Medical Board, dated 29th August, 1823.

"The Governor in Council has been pleased to resolve, that, in future, persons sent to the Presidency under the imputation of insanity, shall, in the first instance, be delivered over to the Superintendent of Police, instead of the Town Major." See C. O. 1st June 1823.

28TH OCTOBER, 1823.

Paragraphs 52 and 53 have reference to a case of Arson, wherein the preliminary proceedings, conducted by an Officer specially vested with Police authority, under the provisions of Section III. Regulation IV. of 1821, were extremely defective and irregular. The third Judge takes occasion, in this part of the report, to advert to the importance of attention to the provisioning of prisoners, while in custody of the Officers

of Police; and observes, that the only one of 46 Police Ameens entertained in the Zillah of Cuddapah, who had conducted the preliminary proceedings, in a case laid before the Court of Circuit, shewed himself to be incompetent to the duty.

The Court of Foujdaree Udaltut concur entirely with the third Judge in his humane solicitude to cause full effect to be given to those provisions of the law which respect the subsistence of persons in custody. It is manifest, as was observed by the third Judge, in his reference to the case alluded to, in this part of the report, that the inadequate supply of food may be made the means of extorting confession, and cases have been brought before the Court, in which there was too much reason to believe that such had been the fact. The Court would willingly hope, that the instances of such flagrant abuse of power on the part of Native Officers are very rare, but they deem it proper to call the attention of the Magistrates generally to the importance of taking the most effectual measures for ascertaining that prisoners, who, by the periodical reports laid before the Court of Foujdaree Udaltut, are shown to be universally detained in the custody of those Officers for weeks, and even for months, previously to their transmission to the Criminal Judge, are adequately supplied with food; and, in order to this, it is manifestly necessary that the falsification of dates of apprehension should by the most vigorous means be suppressed; since, when the term of a prisoner's detention is incorrectly reported, correct returns of the allowance of his subsistence must be out of the question.

In paragraph 159, the 3d Judge adverts to a point connected with the construction of Regulation IV. of 1821, and Regulation VI. 1822, which is resumed in a subsequent part of the report, and forms the subject of certain communications with the Magistrate of Bellary, given in the appendix. The question specifically propounded in this paragraph is, whether, or not a Tahsildar, Magistrate, or Criminal Judge, whose powers of punishment are limited to certain descriptions of offences, can legally adjudge the same individual to suffer the prescribed penalty "twice or thrice," on the proof of two or three charges respectively cognizable by them.

The Court of Foujdaree Udaltut have, on a former occasion, in reference to the case of an individual sentenced by the Assistant Magistrate in the Zillah of Chingleput on different charges of petty theft, to receive for each offence the full penalty adjudicable, under the provisions of Section XXXIII. Regulation IX. of 1816, ruled that the proceeding adverted to by the 3d Judge is contrary to law. The Court are clearly of opinion, that it is incompetent to a Tahsildar, Magistrate, or Criminal Judge, to sentence, at any time, the same individual to a severer punishment than that specifically described in those provisions of the law, which define their powers respectively. The letter, as well as the spirit of the Regulations, clearly requires, that a party deserving of severer punishment than that specifically declared to be adjudicable by the lower shall be remitted to the higher tribunal; and, as was explained by the Foujdaree Udaltut, on the occasion above-mentioned, an individual appearing to have committed several thefts, would not himself, nor would the degree of his criminality, come within the definitions given both of the offenders punishable, and the offences cognizable, by a Tahsildar, or a Magistrate.

As the Court propose to circulate these observations for general information, they resolve to take this opportunity of noticing one or two serious irregularities, which they have lately remarked in the proceedings of the Magistrates.

In the paragraph of the third Judge's report, now under consideration, C. O. 30th Jan. 1824. it is observed, that large cases of burglary have been tried by the Magistrates, and upon testimony given without oath, and a case has very recently come under the observation of the Court of Foujdaree Udaltut, wherein an Assistant Magistrate took upon himself to dispose of a charge of gang robbery by open violence, an offence for which the punishment of 39 stripes, and imprisonment for life is prescribed by the Regulations, without recording the examinations, and cited Section VII. Regulation IV. of 1821, as giving authority for the proceeding.

Intimately connected with this subject is a question recently determined by the Foujdaree Udaltut, on a special reference from the third Judge, C. O. 30th Jan. 1824. by desire of the Magistrate of Bellary; namely, whether or not it is competent to a Head of District Police, under the provisions of Section IV. Regulation IV. of 1821, to take cognizance of thefts, when the value of the property stolen may exceed five rupees, and whether under the provisions of Clause second of the Section, the Magistrate is authorized to pass sentence in cases of theft, exceeding that amount, upon a report from the Head of Police.

The Court of Foujdaree Udaltut, deem it proper on this occasion to give circulation to their decision on the construction of Section IV. Regulation IV. of 1821; which, in their opinion, does not authorize a Tahsildar to determine a case of theft of property, exceeding five Rupees in value, or a Magistrate to pass sentence in such a case, without holding a personal investigation.

Upon the illegality of applying the provisions of Sections VII. and IX. Regulation IV. of 1821, to offences other than those described in Sections XXXII. and XXXIII. Regulation IX. of 1816, it cannot be necessary for the Court of Foujdaree Udaltut to dilate; and they trust, that the notice here taken of the instances of such practices, which have come before them, will effectually prevent their recurrence.

In paragraphs, from 161 to 178 inclusive, are detailed instances of irregularity, supineness, and postponement of Police to the revenue duty, on the part of the Native Officers of Police, which merit serious consideration.

In respect to one point especially noticed, namely, the omission of the Head of Police to take down immediately in writing the charge of the complainant, circular orders have been issued to the several Magistrates by the Foujdaree Udaltut. The importance of such a record has been abundantly shewn, and the Court are of opinion, that, in view to the enforcement of their orders on this subject, it is desirable that the Tahsildars, and other officers vested with the power to hold preliminary investigation, in heinous cases, should be required to forward to the Magistrates a transcript of all such charges, on the day on which they may be preferred; retaining the original to accompany the record of their proceeding. This arrangement appears moreover to be requisite, for the prevention of a practice, which has been found to obtain of substituting for the original charge one framed, so as to tally with evidence afterwards obtained. Vide C. O. 26th July 1823.

C. O. 25th Feb.
1824.

In paragraph 249 of the report, the third Judge notices the case of two persons committed by the Magistrate of Cuddapah, as vagrants, without any personal examination held by him, but merely on the ground of a report from the Head of Police.

The Court of Foujdaree Udalt are of opinion, that this practice is very objectionable, and not sanctioned by the provisions of Clause first, Section III. Regulation II. of 1822, which authorize the apprehension of persons of this description by the Heads of Police.

The Court being of opinion that no person should be lodged in gaol by order of the Magistrate issued under the provisions of the clause above cited without a personal examination and inquiry of that Officer, direct that their sentiments on this head be communicated to the several Magistrates for their information and guidance.

28TH OCTOBER, 1823.

In paragraph 54, the 3d Judge, referring to a case of perjury, noticed by the Court of Foujdaree Udalt in their proceedings on a former occasion, intimates an opinion that it would be wrong, in law, for a Criminal Judge to take cognizance of a perjury, on the ground of his not having in his ordinary jurisdiction the right of taking charges and issuing process; and the Court collect from this passage, that the 3d Judge considers the provisions of Section VIII. Regulation X. of 1816, to require, that where a witness may commit perjury, in his examination before a Criminal Judge, the proceedings against him must originate in the department of the Magistrate.

Vide C. O. 14th
Feb. 1824.

The point of Law here agitated was brought under the consideration of the Court of Foujdaree Udalt by a reference from the Provincial Court of Circuit in the Western Division, under date 14th January, 1820, and as the orders of the Court of Foujdaree Udalt on that reference in their proceedings of 31st January 1820, embrace all the hearings of the question, the Court deem it proper to take this opportunity of circulating an extract thereof for general information.

The reference from the Provincial Court of Circuit arose out of a case in which the acting Criminal Judge in the Zillah of South Malabar, being of opinion that the prosecutor and two of the witnesses in a case before him were guilty of wilful perjury in their depositions, sent the said prosecutor and witnesses, together with copies of the depositions in question, to the Magistrate of Malabar.

To construction given by the Court of Foujdaree Udalt to the general provisions of the Regulations on the subject is contained in the following observations recorded on the above case.

"With respect to the proper mode of proceeding in a case of perjury before a Criminal Judge, the Magistrate, the Assistant Criminal Judge, and the Provincial Court, have fallen into the same error, from not duly considering the peculiar nature of this offence; and have thus been led to apply the provisions of Section VIII. Regulation X. of 1816, to a case which is, in its own nature, as well as by other provisions of the code, specially excluded from their operation."

The Section in question declares, that "the Criminal Judge of the Zillah shall not receive or take cognizance of any Criminal charge or information, except such as may be brought before him by a Magistrate or some Police Officer."

"It is obvious to remark, that a provision determining the mode in which a criminal charge, or information, is to be brought before a Criminal Judge cannot, by any just analogy, be made to apply to an offence, which from its peculiar nature is at the moment of its commission under his official cognizance.

"From Section V. Regulation VI. of 1811, it is clearly to be inferred, that all Courts, Civil or Criminal, are competent and bound to commit persons, whom they may consider to have been guilty of perjury before themselves.

"The reasons for the rule appear to be, because the *prima facie* case, which must necessarily be made out before a party is committed or held to bail, is already before a competent tribunal, because it is at the instance of a judicial tribunal, and not on the accusation of an interested individual, that the trial is to take place, and because it is essential to the pure and effectual administration of justice, that every Court should protect and vindicate its own dignity, and perjury is the highest species of contempt."

"A modification of the penal enactment, with regard to perjury, has been made by Section XXXV. Regulation IX. of 1816, the provisions of which are strictly limited to the petty cases, specified in Sections XXXII. and XXXIII. of that Regulation, and authority is thereby vested in Magistrates to punish the party instituting a false complaint, in all cases which those Officers are competent to hear and determine."

"The vindication of the dignity of his own Court in this respect is thus immediately vested in the Magistrate, in conformity with the principle above referred to, it being considered that false swearing in charges of so petty a description did not demand the severest penalties of the law."

18TH NOVEMBER, 1823.

The sixth paragraph of the Acting Judge's letter contains a judicious suggestion, regarding the form in which confessions should be attested, and the Court of Foujdaree Udalt direct, that it be adopted by the Criminal Judges, Magistrates, and Officers of District Police, viz.

"Before A. B. Head of Police, Magistrate, or Criminal Judge, declared by the prisoner C. D.; taken down in writing by E. F.; and signed or marked by the prisoner in our presence on the—18—"

(Signed)

G. H.

J. K.

"

The Court of Foujdaree Udalt, have on several occasions endeavoured to induce regularity of proceeding on the part of the Native Officers of Police, in respect to the immediate recording of criminal charges, and the transmission of the original charges in all cases to the Criminal Court; but the Court regret to observe, that their orders on this subject have hitherto produced little or no effect, and that the practice of postponing the record of complaints, until after the apprehension of the accused, and frequently until after their confession, continues generally prevalent.

The Court of Foujdaree Udalt, must remark that the failure of their repeated instructions, on this and on other points, to produce any amelioration in the conduct of the Native Officers of Police, warrants the

inference, that due attention is not paid by the Magistrates for the enforcement of the orders of the Court.

C. O. 25th July
1823, 28th Oct
1823.

The Court of Foujdaree Udalut, deem it proper, on the present occasion, in partial reiteration of a late order on this subject, to direct, that the several Magistrates do instruct the Tahsildars, either to receive from the complainants in writing, or cause to be immediately reduced to writing, and signed by the complainants, all charges of robbery, murder, &c.; obtaining and recording, at the same time, any essential information, which the parties may possess, and may not have included in the complaint, respecting their ability to identify the accused, their grounds of suspicion against any particular individuals, the time when, and place where, the act charged was committed, the nature and value of the property stolen, in cases of theft or robbery, and, in cases of murder, the wounds inflicted, the weapons used or supposed to have been used, and the motives of the murderer. These instructions should be communicated by the Tahsildars to the heads of village Police and Curmums for their guidance, and copies of the charges, and the examinations here described, should be immediately forwarded to the Magistrate, in order that, where the Criminal Judge may see reason to question the authenticity of the document, transmitted to him by the Police Officer, on sending up the prisoners, as the original complaint, a reference to the Magistrate's copy may show whether or not a different charge has been interpolated into the record.

The precept, issued on this occasion by the acting Judge to the Magistrate was dated 14th August, and required that return should be made in five days; and the Court of Foujdaree Udalut observe, that after being repeatedly called upon for a return, the Magistrate made return on the 23d September.

On this occasion the Court of Foujdaree Udalut, deem it proper to notify to the Magistrates generally, that, whenever a precept from the Court of Circuit or Foujdaree Udalut may fix a limited period for the return, it is incumbent upon them to make such return within the term specified, either certifying that the exigency of the precept has been complied with, or shewing good and sufficient reason for the omission to carry it into effect, and stating what has been done in pursuance thereof.

The Court deem it proper also to direct that the Criminal Judges and Magistrates do, in their returns to precepts from the Courts of Circuit and Foujdaree Udalut, recite the substance of the orders contained in the extracts of proceedings accompanying the precepts, as required in returns from the Courts of Circuit by the orders of the Court of Foujdaree Udalut, dated 4th September, 1820.

24th NOVEMBER, 1823.

I am directed by the Judges of the Court of Foujdaree Udalut to transmit to you, with reference to the circular orders of the Court, under date 21st May last, the accompanying copies* of a letter, dated 16th ultimo, addressed to the Secretary to Government in the Judicial Department, and of the Statement therein referred to, and of a letter, dated 7th instant, received from Government in reply.

* Omitted.

In compliance with the sentiments of the Honorable the Governor in Council conveyed in the letter last mentioned, the Judges of the Court of Foujdaree Udalut direct, that the several Criminal Judges and Magistrates within your jurisdiction, to whom you will immediately furnish copies of the letter, be instructed to submit through the Provincial Court of Circuit the quarterly returns, prescribed by Section XXXV. Regulation X. of 1816, and the half-yearly statement of crimes committed, and punishments inflicted, required by the orders of the Foujdaree Udalut.

Revoked by C.
O. No. 40.

Your serious attention should be directed to the correction of the evil particularly pointed out in the above letter from the Government; and in order thereto the Judges desire that you will obtain, when necessary, and lay before them a full explanation of the causes for any remarkable disparity, which may appear between the numbers of persons apprehended in different Zillahs, and between the number in each Zillah apprehended, and the number convicted.

Referring particularly to the quarterly reports from the Criminal Judges, it will be proper that you should, in examining them, notice any irregularities which they may exhibit and call for, and transmit, with the reports, any explanations from the Criminal Judge, or the Magistrate, which appear to be required.

The Judges of the Foujdaree Udalut desire, that you will instruct the Criminal Judges and Magistrates to send up the reports as soon as possible after the expiration of the periods, the operation of which they respectively embrace; and it is hoped that the circuitous mode of transmission prescribed by these orders will not protract the arrival of the returns at this office in any instance more than one month beyond the period now prescribed for their direct transmission to the Court of Foujdaree Udalut.

Revoked by C.
O. No. 40.

12th DECEMBER, 1823.

The Court of Foujdaree Udalut, deem it proper to intimate, by a circular order, to the several Criminal Judges, that in the opinion of the Court it is competent to them to delegate to their Assistants the extended powers, given by Regulation VI. of 1822.

The Court at the same time deem it proper to remark, that this authority should be exercised with caution, and that care should be taken by the Criminal Judges not to refer to an unexperienced Assistant for decision, cases of a heinous nature.

Referring to another point incidentally brought forward the Court of Foujdaree Udalut deem it proper to observe, that the Criminal Judge is considered by them to possess full controul over the proceedings of his Assistant; and to be competent in all cases to direct whether the proceedings held by the Assistant shall be submitted for his decision, or whether the determination upon the charges is to be passed by the Assistant.

Vide C. O. 9th
June 1824 and
15th Nov. 1824,
C. O. 1st Aug.
1821.

22d DECEMBER, 1823.

The endeavours of the Court of Foujdaree Udalut, have long been fruitlessly directed to the enforcement of the provision, contained in Section XXVII. Regulation XI. of 1816, which requires, that prisoners

C. O. 24th Jan. 1822, 29th April 1822, 28th Oct. 1822.
 shall be forwarded by the Heads of District Police to the Criminal Judge "within forty-eight hours if possible." The practice, which the Court regret to find still universally prevalent, of detaining persons in custody for weeks and even months, before their transmission to the Criminal Court, offers opportunity, which might not otherwise be found, of resorting to abuses of authority and the Court of Foujdaree Udalt do not see any probability of an amelioration of the conduct of the Police Officers, in these respects, unless the exertions of the Magistrates are more strenuously directed to the enforcement of the provisions of the law, and abuses of authority, when discovered, are invariably visited with adequate punishment.

The Court of Foujdaree Udalt deem it proper to take this opportunity of directing, by a circular order, that the Heads of District Police be instructed in forwarding prisoners to the Criminal Judge, to specify the date of their leaving the talook, such dates to be entered in the quarterly reports furnished by the Criminal Judges, under provision of Section XXXV. Regulation X. of 1816, in addition to the dates of apprehension and of arrival at the Zillah station.

30TH JANUARY, 1824.

I am directed by the Judges of the Court of Foujdaree Udalt, to transmit for your information and guidance, an extract from the Minutes of Consultation, dated 2d instant, and to desire that you will communicate to the Magistrates within your jurisdiction such parts thereof, as concern those Officers, for their respective information and guidance.

You will perceive, that the Honorable the Governor in Council considers, "that the report of a Circuit Judge should not comprise a summary of trials, or a transcript of orders," this remark has arisen out of a practice, introduced by certain Judges of Circuit, of noticing at length all or the greater part of the cases tried at the Sessions, and entering in the body of the report copies of orders to the Criminal Judges and Magistrates respecting proceedings of the Police, and matters of a like nature.

Vide C. O. 7th Jan. 1822.
 You will not consider the observations contained in the accompanying Minutes of Consultation, as superseding the circular order of the Foujdaree Udalt, dated 4th April, 1821, which directed that the Circuit reports should contain "detailed notices of any cases exhibiting striking traits of national character, or the effects of national opinions and usages; nor will you hold yourselves to be in any way precluded from submitting in an appendix to the report transcripts of orders connected with observations, which you may deem proper to offer in the report on the topics enumerated in Section XXXVII. Regulation VII. of 1802.

Extract from the Minutes of Consultation, dated 2d January 1824.

"Read the following letter from the Register to the Foujdaree Udalt.

Here enter 28th October, 1823.

The Governor in Council has derived much satisfaction from the earnestness and assiduity with which Mr. Newnham has applied himself to the important duties of a Judge on Circuit, and from the many valuable and judicious suggestions offered in his report and the proceedings of the Foujdaree Udalt thereupon.

The Governor in Council has, frequently, had occasion to observe that the reports, submitted by Circuit Judges, in pursuance of Section XXXVII. Regulation VII. of 1802, are carried far beyond any objects of public utility, which that provision of the Regulations is calculated to answer. The Section in question certainly affords an opportunity, as it is proper that it should do, for a Circuit Judge to take a general view of the "system for administering the Criminal laws, and to propose any amendments which it may seem to require, but it is obvious that, in order to do good, the opportunity must be used with discrimination and forbearance. If all the speculations and suggestions of a body of ingenious men on a subject of such extent and variety were to be recorded at short intervals, the very mass of writing in which they were contained would of itself render them unavailable for any practical purpose. It is impossible besides, that a multitude of suggestions thus constantly brought forward could receive due consideration, or be properly connected with those parts of the system to which they related; and there is no complicated system, when examined in different lights and with a view to different ends, of which many parts are not liable to well-founded, though perhaps but partial, objection: On these grounds, the Governor in Council, without in any degree desiring that Circuit Judges should be debarred from the privilege of discussing the principles of the system of Criminal law, or particular provisions which it either embraces or is thought to require, is nevertheless strongly of opinion that it is not a sufficient reason for offering observations of that nature that they are abstractedly just and reasonable, unless important consequences seem to be involved in them, or unless evils have actually been experienced which they are designed to remedy.

It may be unnecessary to add to these remarks, that the report of the Circuit Judge should not comprise a summary of trials, or a transcript of orders, but should be divested of all superfluous matter, and drawn up in as condensed a form as may be compatible with perspicuity and with a distinct statement of any information which that document may exclusively furnish.

The Governor in Council has been very much struck with the glaring improprieties committed by the Heads of District Police, under the sanction of the Magistrate, in taking cognizance of thefts and other offences far exceeding their jurisdiction, and by Assistant Magistrates, in the same manner and under the same sanction; but trusts that they will be prevented for the future by the censure which the Foujdaree Udalt have passed upon them. The limited power of investigation and punishment granted in cases of theft to Heads of District Police, and the power granted to Magistrates and their Assistants to pass orders upon cases reported by the Heads of District Police, without personal investigation, and to dispense, in petty offences, with the necessity of evidence on oath or of a record of the trial, were obviously of a nature not to be stretched beyond the strict meaning of the words in which those powers are conferred. According to this mode of construction, the Heads of District Police, can take no cognizance of any theft of more than 5 rupees, for punishment, either by their own authority, or by that of the Magistrate; and the Magistrate and his Assistant cannot dispense with a record of the examinations, or with testimony on oath, except in the case of "petty offences and petty thefts," and cannot pass sentence of punishment in any case referred by Heads of District Police, except thefts not exceeding five rupees. In any instance in which the prescribed

Vide C. O. 7th Jan. 1822.

C. O. 28th Oct. 1823.

limits have been purposely transgressed, (and the Governor in Council observes with concern that such instances have occurred), the transgressor has committed an act of unlawful violence, which the judicial character with which he is clothed serves only to aggravate. Since the limits have now been distinctly defined, it may be expected that they will no longer be unintentionally exceeded, where they have hitherto been misunderstood.

The objection to the power of dispensing with sworn testimony derives its chief weight from the unauthorized latitude assumed in the exercise of that power. If restricted, as the Regulation requires, to "complaints for petty offences" and "complaints for petty thefts," the former being "such as abusive language, calumny, inconsiderable assaults or affrays," and the latter not having "been attended with any aggravating circumstances," the Governor in Council considers it very fit and free from any serious objection* that the Magistrates should continue to have this discretion vested in them.

The Governor in Council concurs with the Foujdaree Udalut in the opinion that some restriction is necessary, with regard to the powers to be committed to Assistant Magistrates, whose youth, inexperience, and untried qualifications, may often render it proper not to entrust them with the full authority of their office. The Governor in Council has accordingly resolved that no Assistant Collector and Magistrate, who has not been employed at least for a twelvemonth in the provinces, nor any who is not in charge of the Revenue management of at least one talook, shall exercise the power of inflicting any punishment, by stripes, fine, or imprisonment, unless the sentence has previously been sanctioned by the Magistrate. It is moreover incumbent upon Magistrates at all times to exercise a sound discretion in delegating to their assistants the whole or any part of their duty, under the provisions of Regulation IX. of 1818.

The authority so to delegate their duty does not by any means absolve them from the responsibility of satisfying themselves that it is delegated into none but fit hands. It is proper, therefore, that the delegation should not be made, or having been made, that it should be recalled, whenever they have not reason to believe that the duty will be discharged with judgment, temper, and discretion. Above all, it is of essential importance that the Magistrate should not in practice divest himself of the duties of that office, whatever portion of them he may see fit to delegate to his Assistants, and should not, by such means, bring about the worst species of separation betwixt his police and revenue functions, but that he should actually exercise, as well as hold, the joint office of Collector and Magistrate.

The Governor in Council does not deem it necessary to remark particularly upon each of the heads of instruction contained in the proceedings of the Foujdaree Udalut, but generally concurs in them, and feels assured that it will tend greatly to improve the administration of the criminal law, if they are duly studied and observed by the several Magistrates and their Assistants. With the same view, I am directed to desire that so much of the present proceedings of the Governor in Council as the Foujdaree Udalut may think advisable may also be circulated for the information and guidance of the officers in the Judicial Department.

25TH FEBRUARY, 1824.

The foregoing proceedings are accompanied by copy of a return, dated 29th December last, from the Magistrate in the Zillah of Bellary, wherein that Officer requests a reference to the Court of Foujdaree Udalut in respect to the necessity existing for the Magistrate's personal investigation of the cases of all persons, supposed to come within the description given in Clause first, Section III. Regulation II. of 1822, previously to their commitment to gaol; and for the taking depositions in such cases upon oath.

Vide C. O. 7th
July 1831.

See C. O. 28th
Oct. 1823.

The Court of Foujdaree Udalut are decidedly of opinion, that a Magistrate cannot regularly commit any individual to gaol, under the provisions of the section above cited; without a personal examination of the case; and that, when testimony may be given regarding the mode of life, the means, or the general character of the individuals therein described, such testimony should always be delivered on oath. The Court do not consider that the provisions of the law, which in particular cases authorize the admission of evidence without oath, and the omission of a record of the evidence taken, are applicable to cases coming within the provisions of Section III. Regulation II. 1822.

The Acting Judge recommends in his letter, that two Calendars should be laid before the Court of Circuit by the Magistrates, one shewing the persons committed by those Officers to gaol under the authority vested in them by the above Section, who may previously to the arrival of the Judge of Circuit at the Zillah station have been released, under the provisions of Clause third, of the Section; and the other exhibiting the cases, in which prisoners so committed may remain still in confinement; the fourth column, containing "a very clear but concise abstract of the Prisoner's examination and of the whole of the evidence in the case."

The Court of Foujdaree Udalut, direct Calendars in the following form be submitted by the Magistrates to the Court of Circuit at each Sessions.

Calendar of Persons committed by the Magistrate in the Zillah of ——— under the provisions of Clause first, Section III. Regulation II. of 1822, and still in confinement.

1	2	3	4	5
No.	Name.	Date of apprehension.	Abstract of examination, grounds and date of commitment, and by whom committed.	Remarks.
				This column should contain the Magistrate's opinion of the case and a statement of the amount of security required.

The Calendar of persons, apprehended under the same provisions, and released by order of the Magistrate, should be in the foregoing form, and the 5th column should exhibit the date and grounds of the prisoner's release.

Vide C. O. 223
May 1828.

The Court of Foujdaree Udaltut concur with the Acting Judge in thinking that, when a prisoner may be committed to the Zillah gaol under the provisions here cited, the warrant of the Magistrate should specify the amount of security required; that where a prisoner may furnish such security to the Criminal Judge, he should be released, provided the Magistrate consider the bail to be sufficient; that the Criminal Judge should convey to the Magistrate any representation from such prisoners, regarding evidence which they may desire to have taken on their behalf, after their commitment; and that when the prisoner may allege that he is an inhabitant of a distant Zillah, the Magistrate of such Zillah should be requested to ascertain the truth or falsehood of such allegation, and the prisoner be sent to the Magistrate of the Zillah, to which he may belong, for the purpose of obtaining the required security, in default of his furnishing which he should be committed to the gaol of such Zillah, and the papers relating to his case be lodged there.

1st MARCH, 1824.

In the 16th paragraph of his letter, the 3d Judge adverts to the very extraordinary irregularities in the proceedings of the Police, in regard to the discovery and subsequent investigation of this important case. It appears by the returns of the Magistrate and his Assistant, which are submitted in the Appendix, that the Tahsildar of Trivatoor, whose duty it was to have entered into a minute examination of every matter connected with the robbery and murder, neglected to make any personal exertion whatever; and when he was informed by the Tahsildar of Chaitputt, that some of the prisoners were in custody, instead of proceeding himself to take charge of them, he sent a Magistrate's Gomastah, Vencatarow, who took the deposition of "Ramun," one of the prisoners. It appears, moreover, that this person so "sent by a verbal order of the Tahsildar," was not legally competent to take depositions, not having been selected by the Magistrate for that purpose, under the provisions of Section III. Regulation IV. of 1821. This conduct was the more inexcusable, because there were two subordinate officers nominated by the Magistrate, to perform when necessary, in different parts of the talook, the Police duties assigned to Tahsildars.

The Judges of the Foujdaree Udaltut have had occasion to remark, that, owing to the imperfect manner in which the provisions of the Regulation above quoted are generally carried into effect, the object intended by their enactment is seldom attained.

The preamble of the aforesaid Regulation declares it expedient that preliminary powers of investigation should be delegated to competent subordinate officers in different parts of each talook; it frequently appears, however, that, instead of being so dispersed, all the persons selected by the Magistrates, under Section III. Regulation IV. of 1821, to perform Police duties, are congregated at the station where the head Police Officer resides, and thus the appointment of them answers no other purpose than to relieve the Head of Police from the performance of any duty, he may think proper to delegate to his inferiors; and does not at all tend to the prevention of offences, or the speedy investigation of them, which the prescribed distribution of Police authority throughout the talooks is intended to produce.

The 3d Judge proceeds to notice the erroneous entries of the

dates of the apprehension of the prisoners in the report of the Police Officer. The attention of the Magistrate having been called to this point, he accounted for the error by attributing it to a misconception of the orders on this subject, the Police Officers having recorded the dates when the parties were brought before them for inquiry, instead of the dates when they were taken into custody.

The Court are deeply concerned to find, after their repeated instructions upon this subject, that a misconception so gross should be found on the part of any officer, considered capable of discharging the duties of a Head of Police; and that a practice, which they have so constantly interdicted, should still exist in any degree whatever. False certificates of the date of apprehension are calculated in many respects to perplex and mislead the Judge, and to affect the issue of the trial; most particularly in reference to the time when the confession or other deposition of the prisoner may be given. The Court cannot believe that false reports under this head can ever be made but with design and evil intentions, for an observance of one part of the Regulations is calculated to prevent a misconception of another part, and if the rule prescribed in Section XXXVIII. Regulation IX. of 1816, which directs subsistence money to be paid to prisoners, were adhered to, it is impossible that the date when such payment commenced should be mistaken. The Court resolve to direct the Magistrates once more to issue to their subordinate Police Officers strict injunctions upon this head, and to visit with immediate punishment cases of departure from the rules laid down respecting it.

5th MARCH, 1824.

In the letter, accompanying the trial, the Acting Judge recommends that, in all cases in which, from the nature of the case, a measured ground plan of the premises would be calculated to give the Court of Circuit or Foujdaree Udaltut a more clear idea of the manner in which the crime was committed, the Criminal Judges do take measures, in concert, when necessary, with the Magistrates, to obtain such plan to be laid with the case before the Court of Circuit.

The Court of Foujdaree Udaltut, considering the foregoing suggestion to be judicious and worthy of adoption, direct that it be acted upon by the several Criminal Judges in future.

25th MARCH, 1824.

It is in evidence in this case, that one Singalat Nauregandoo, who was apprehended at the same time with the prisoners, died while in the custody of the Police: and that the body was interred by order of a Police Gomastah.

The prisoners allege, that great violence was used towards them by the Police Officers, and that the aforesaid deceased died in consequence of their ill treatment.

No inquest having been held upon the body, the Court have not the means of deciding as to the credit due to the account given of the cause of the death of the deceased; and they deem it proper, on this occasion, to direct that the several Magistrates do instruct the Tahsildars, and through them the heads of villages, in all cases where the death of a per-

C. O. 21th Jan.
1822, 20th Feb.
1823, 28th Oct.
1823, 1st March
1824.

son in custody may occur, to hold an inquest on the body, in the mode prescribed by Section XIII. Regulation XI. of 1816: the record of which should in all cases be transmitted to the Magistrates; and where the Police proceedings may come before the Criminal Judge, should be furnished to that Officer, to be included in the proceedings submitted by him to the Court of Circuit.

27TH MARCH, 1824.

The Judges of the Court of Foujdaree Udalut desire that the Magistrates within your jurisdiction may be directed to instruct the Heads of Police, to insert in the report prescribed by Clause fourth, Section XXVII. Regulation XI. of 1816, an additional column shewing the day and hour of each prisoner's arrival before them, and of his being despatched to the Criminal Court; and to furnish an explanation of the cause of any considerable lapse of time between the apprehension of a prisoner, and his appearance before the Tahsildar.

29TH APRIL, 1824.

In the letter accompanying the trial, the Acting Judge observes, that "that part of Section XVIII. Regulation VIII. A. D. 1802, modified by Section VIII. Regulation XV. 1803, which required the Magistrate under the former system of Police to issue a Proclamation at every gaol delivery, and to cause it to be read, and affixed to their Cutcherries, as well as to the Cutcherries of their Police Officers, notifying that all persons who may be sentenced to be confined for life for murder, decoiting, robbery, plundering, or burning houses or property, or any other crime of a heinous nature, will be liable to transportation to some place beyond sea, by order of the Court of Foujdaree Udalut;" has, in practice, in the Centre Division become quite obsolete; and in consideration of "the little opportunity which the poor illiterate men, who are generally concerned in robberies," by open violence, have of becoming acquainted with the law, the Acting Judge recommends that such public notifications of the penal consequences of those crimes should be continued to be made by the Criminal Judges, through the Magistrates, "after the receipt of the whole of the sentences of the Court of Foujdaree Udalut after each gaol delivery."

The Court of Foujdaree Udalut entirely concur with the Acting Judge in the above suggestion, and they deem it proper to direct, by a circular order, that the practice enjoined by Section XVIII. Regulation VIII. of 1802, as modified by Section VIII. Regulation XV. of 1803, be resumed in every Zillah, wherein it may have fallen into disuse.

30TH APRIL, 1824.

In the present and several other cases which have recently come before the Court of Foujdaree Udalut, the prisoners, when examined by the Police Officer, were questioned respecting their having, on former occasions, been concerned in offences totally unconnected with the charge under investigation. This practice the Court consider to be irregular and improper; and they direct that the several Magistrates be instructed to prohibit it by strict injunctions to the officers of Police under their authority.

It is also the practice of many of the native officers of Police to head the depositions of persons before themselves, as having been delivered before the Criminal Judge, or the Magistrate; and the Court direct that those officers be instructed to discontinue this irregularity.

And, when the examinations may not be held by a Tahsildar, the Court of Foujdaree Udalut desire, that the Police Officer do, invariably, subscribe himself, as specially appointed under Section III. Regulation IV. of 1821; and that, when the name of such officer may not be included in the list required by the standing orders of the Foujdaree Udalut to be furnished by the Magistrate to the Judge on Circuit, a communication may be made to the Magistrate, and in all referred trials a notification be made of the result for the information of the Court of Foujdaree Udalut.

13TH MAY, 1824.

When a Magistrate may recommend the tender of a conditional pardon to "a supposed accessory" to a crime, who may not be in custody, it will, of course, be requisite that he should satisfy the Court of Foujdaree Udalut, that the individual is strictly speaking an accessory, and not a principal, that his information is likely to lead to the apprehension or conviction of the principal offender or offenders, and that the ordinary means have been found ineffectual for the discovery and apprehension of the principals.

It is manifest, that the provisions of Section XX. Regulation VIII. of 1802, should be resorted to with great caution, in order to prevent the escape of the principals in atrocious crimes, who, if inadvertently admitted to a conditional pardon, could not, without great rigour, be excluded from the benefit annexed to the performance of the conditions; and that when, in consequence of the evidence possessed by the Magistrate, there may not exist this danger, the power should nevertheless be sparingly, as well as circumspectly exercised; the frequent pardon of acknowledged accomplices in murder, gang robbery, and other heinous crimes being obviously objectionable and repugnant to the ends of justice.

9TH JUNE, 1824.

Read letter, dated the 7th ultimo, from the Criminal Judge, in the Zillah of Chittore, requesting, in reference to the proceedings of this Court, under date the 12th of December, 1823, to be informed whether a Criminal Judge is vested with power to reverse or alter sentences passed by his Assistant. Vide C. O. 15th Nov. 1821.

In the proceedings referred to, in the above letter, it was declared competent for a Criminal Judge, in all cases to direct whether the proceedings held by the Assistant should be submitted for his decision, or whether the determination upon the charge should be passed by the Assistant, but it was not intended to be established that where the power of passing decisions had been fully delegated that such decisions were liable to reversal.

If an appeal to the Criminal Judge from the decisions of his Assistants were permitted, it is to be supposed that almost every judgment of the latter would be complained of to his superior, which, by involving a

second investigation, would tend much to the multiplication of business, and render the utility of an Assistant, as referee in the first instance, almost entirely nominal. Where there is a want of confidence on the part of a Criminal Judge in his Assistant it would be better to refer to him only such cases as he might be considered capable of trying, or to withhold from him altogether the power of passing decisions, than that such decisions should be constantly overruled, which must tend to shake the confidence of the people in the administration of justice, and to diminish in their estimation the respectability and authority of a regularly constituted Officer of Government.

It is hoped that few instances exist where it is necessary to restrict, as above adverted to, the functions of the Assistant Criminal Judges, who, the Judges of the Fowdarree Udalut trust, and believe, would generally have the discretion in cases of doubt and unforeseen difficulty to apply for advice and instruction to their immediate superiors.

28TH JUNE, 1824.

A difference in the mode of drawing out the reports prescribed in No. 5, of the Appendix to Regulation X. of 1816, constantly occurring in the different Zillahs, I am directed by the Judges of the Foujdaree Udalt to transmit to you a form which you will desire the Criminal Judges of your Division invariably to observe in framing the said Report.

The Report directed to be furnished by the Circular orders of this Court, under date the 27th of September, 1821, is to be in a precisely similar form, and is to be headed "Report of persons apprehended in the Zillah of ——" and delivered to the Criminal Judge, and regarding whom no final order had been passed at the date of the last Quarterly Report."

[illegible]

Circular Orders of the

23TH JULY, 1824.

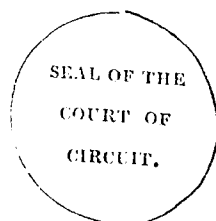
The Judges of the Court of Foujdaree Udalt observe, that a want of uniformity subsists in respect to the mode of address by the several Criminal Judges to the Magistrates, some using the form of a simple letter; while it is the practice of others to transmit to the Magistrates extracts of their proceedings.

The former mode of address being considered to be the most proper, as best calculated to promote that "full and free communication" between the departments which it is the intention of the legislature to maintain, the Judges of the Foujdaree Udalt desire, that you will instruct the several Criminal Judges within your jurisdiction to adhere thereto in future.

18TH AUGUST, 1824.

The Court of Foujdaree Udalt deeming it expedient, in view to regularity and uniformity of practice, to prescribe a revised form of warrant for the execution of sentences of imprisonment and transportation for life beyond sea, direct that the same be prepared and circulated to the several Provincial Courts of Circuit, to be, by them, communicated to the several Judges now on Circuit; and that they be enjoined to conform, in all cases, thereto, as closely as the wording of the sentences of the Foujdaree Udalt will admit.

Sessions of



No. on the Calendar.

To the Criminal Judge in the Zillah of

Whereas at a general gaol delivery for the Zillah of holden at on the day of A. D. A. B. charged with having been tried by the Court of Circuit has been convicted and finally sentenced by the Court of Foujdaree Udalt to receive 39 stripes with a rattan, and to be imprisoned and transported to such place or places beyond sea, as the Governor in Council shall appoint, there to be imprisoned and kept to hard labour in irons on the public roads, or other public works, for and during the period of his natural life;

It is hereby ordered that, in execution of the said sentence, and in conformity with the provisions of Section XXXV. Regulation VII. of 1802, you do cause the said A. B. to be corporally punished with 39 stripes of a rattan, and the particulars specified in the said Section to be inscribed upon his forehead by the process termed Godna, that you do warn the said A. B. of the penalty which, under the provisions of Clause second, Section IX. Regulation XV. of 1803, he will incur by returning without permission from the place to which he may be

Vide C. O. 7th
March 1825.

Court of Foujdaree Udalt.

transported, and cause the said A. B. to be lodged in the gaol of the Zillah of Chingleput, there to remain until the orders of the Governor in Council may be given for his transportation beyond sea, agreeably to the terms of the sentence so passed upon him; and that you do return this warrant to me with an endorsement, attested by your official seal and signature, certifying the manner in which the same has been executed, as prescribed by Section XIII. Regulation VIII. of 1802.

Given under my hand and the seal of the Court, this day of in the year of Our Lord One thousand eight hundred and

C. D.

Judge.

23^D AUGUST, 1824.

The absence of any provision, in the Regulations, authorizing the vide C. O. No. 35. Criminal Judges to pay batta to prosecutors and witnesses in attendance before them, having been brought to the notice of the Government, sanction for such payment has been announced to the Court of Foujdaree Udalt in the annexed extract of a letter from the Secretary to Government, in the Judicial Department, which the Judges of the Foujdaree Udalt desire, that you will communicate to the several Criminal Judges within your jurisdiction for their respective information and guidance.

Extract of a letter from the Secretary to Government in the Judicial Department, dated the 17th August, 1824.

The Governor in Council authorizes the Criminal Judges, in cases of necessity, to pay batta, at the usual rate, to prosecutors and witnesses, during the whole period of their absence from their houses, in attendance upon the Criminal Courts.

4TH SEPTEMBER, 1824.

The observations recorded by the Judges of the Court of Foujdaree Udalt in the annexed extracts, from a letter addressed to the Judges of the Provincial Court of Circuit, in the Southern Division, dated 2d instant, appearing to them to apply generally to the proceedings of the Magistrates and Officers of Police, I am directed to desire that you will communicate them for the information and guidance of the Magistrates within your jurisdiction, from whom you will be pleased to obtain the information called for in the 14th paragraph.

Extract from a letter addressed to the Judges of the Provincial Court of Circuit in the Southern Division, dated the 2d September, 1824.

The Judges of the Court of Foujdaree Udalt have had under consideration the statements of crimes and punishments, furnished by the Magistrates within your jurisdiction, for the half year, ending on 30th June last.

The Magistrate of Trichinopoly, in answer to your letter of the 14th ultimo, desiring him to furnish an explanation of the cause to which the great disproportion between the number of persons apprehended and the number convicted and forwarded to the Criminal Judge is to be as-

cribed, states, in his letter, dated 17th ultimo, that "it originates entirely from the frivolous litigious and groundless complaints that are brought forward, and which supported by oath, as they are, the Police are obliged to take notice of."

Upon the foregoing explanation of the Magistrate, the Judges of the Foujdaree Udalt have, first, to observe, that no part of the Regulations gives to the Native Officers of Police authority to take depositions upon oath; and they direct that instructions may be given for the discontinuance of the practice.

The Judges at the same time see reason to believe, that sufficient attention is not paid in this, as well as in the other Zillahs, by the Magistrates and the Heads of Police, to those humane provisions of the Regulations, which have been enacted with a view to prevent the unnecessary privation of personal liberty.

In respect to the most heinous offences, it is prescribed, by Clause first, Section XXVII. Regulation XI. of 1816, that upon complaint being made, the Tahsildar "shall make such enquiries as may be necessary to ascertain whether any credit be due to the accusation; and it is only where "it shall appear to be worthy of credit," that he is required to "make every exertion to apprehend the person or persons who may be accused, or to whom suspicion may attach of having committed the offence."

In cases of bailable offence or misdemeanor, provision is made by Section XXXI. Regulation XI. of 1816, for the requisition of security "for the appearance of the party accused, together with the accuser and witnesses, on a stated day before the Magistrate," to whom the Tahsildar is required immediately to report the case and transmit the depositions which he may have taken.

To the cases last mentioned, the Judges of the Foujdaree Udalt consider, that the principle of the rule contained in Section XIV. Regulation IX. of 1816, should be applied: and that if on perusal of the depositions, forwarded by the Tahsildar, it appear to the Magistrate that the accusation is groundless, he should direct the complaint to be dismissed, and the bail discharged.

The Judges, however, as above intimated, are by no means satisfied that the provisions of the Law, which have been here cited, are generally observed; that, in cases not bailable, sufficient pains are taken to ascertain whether the accusation be entitled to credit before process is issued by the Heads of Police for the apprehension of the persons accused, or that persons are not frequently apprehended in bailable cases, in opposition to the intention of the rules, prescribed in that behalf.

But the letter from the Magistrate of Trichinopoly, now under consideration, contains matter, which calls for additional remark.

It is stated by this Officer, that "in 64 cases out of the 134, included in the statement, the complaint was dismissed for want of proof, and in almost every instance the prosecutor was fined for his malicious and vexatious proceedings."

The statement exhibits 135 as the total number of crimes committed of every description; in its present form, it does not shew the number

of those cases disposed of by the Magistrates and Police Officers, respectively, a defect which will be remedied by a circular order; but whatever may have been the number of cases personally investigated by the Magistrate of Trichinopoly, it is clear, that all those which are specifically referred to in the above quotation from his letter must have been among that number, inasmuch as the Regulations do not vest the Native Officers of Police with authority to fine a prosecutor for preferring a false or groundless charge.

This power is given to the Magistrates by Section XXXV. Regulation IX. of 1816; but the number of instances in which recourse has been had by the Magistrates of Trichinopoly to the exercise of the power so vested in him, in the last half year, induces the presumption that the provisions of Section XIV. Regulation IX. of 1816, cannot have been applied by that Officer to every case, in which there existed cause to distrust "the truth of the complaint," and the immediate arrest of the party appeared unnecessary.

To those provisions the Judges desire that you will point the attention of the Magistrates, generally, and more especially of the Magistrate of Trichinopoly: they desire also that you will take the same opportunity of ascertaining from those Officers, whether the rule, prescribed in Clause second, Section XV. Regulation IX. of 1816, for permitting persons accused of bailable crimes, or misdemeanors, to appear by Vakeel before the Magistrate, to answer the charge, is conformed to.

The Judges entirely approve of the suggestion offered in the concluding paragraph of your letter, that the Criminal Judges in the Zillahs, embracing two Collectorate, be required to enter, "in their quarterly reports, the name of the Collectorate, from which each case has been forwarded, and that the Abstract also shall distinguish the number from each district respectively."—You will be pleased to issue the necessary instructions for this purpose to the Officers to whom they apply.

Vide C. O. 29th
Nov. 1827.

13TH SEPTEMBER, 1824.

It will be the duty of the Magistrates to instruct the several Heads of District Police under their authority, upon forwarding the parties and witnesses, in every case, to the Criminal Judge, to transmit immediately to the Magistrate a copy of the report furnished to the Criminal Judge, under the provisions of Clause fourth, Section XXVII. Regulation XI. of 1816.

On receiving the copy of the report of the Head of Police, if it shall appear that the prisoner or prisoners have been subjected to a detention in custody longer than forty-eight hours, for which no satisfactory reason may be assigned; the Magistrate will notice the irregularity in such manner as the circumstances of the case may appear to him to require, furnishing the Criminal Judge with a memorandum, showing what he may have done on the occasion.

The Judges of the Provincial Court of Circuit upon examination of the reports furnished by the Criminal Judges, under the provisions of Section XXXV. Regulation X. of 1816, will be careful to notice to the Magistrate any case, wherein it may appear that that Officer has admitted as sufficient any reason for a prisoner's detention, which has been denounced by the Court of Foujdaree Udalt as inadmissible.

Circular Orders of the

27th SEPTEMBER, 1824.

Certain of the prisoners in this case, in the confessions delivered by them before the Assistant Criminal Judge, specified articles of the plundered property which fell to their share, respectively, and were delivered up by them after their apprehension; and the witnesses Sashidoo, and Appich identified certain of those articles as the property of the prosecutor; but the instructions contained in the circular orders of the Court of Foujdaree Udulut, dated 16th May, 1822, in respect to numbering the articles of stolen property, produced before the Criminal Court, have not been observed; and the omission to specify the number of each article referred to, throughout the examinations, before the Assistant Criminal Judge, and the Court of Circuit, has followed as a necessary consequence of this departure from the orders of the Court.

The Court of Foujdaree Udulut, advertent to similar omissions, which have occurred in other cases referred to them, deem it proper to take the present opportunity of notifying, by a circular order, that they consider it to be the duty of the Judge of Circuit invariably to call the attention of the Criminal Judges to any departure observable in their proceedings from the standing orders of the Court of Foujdaree Udulut.

The Court direct, that the list of property, which in cases of theft or robbery may be alleged by the prosecutor to have been stolen or plundered from him be in future drawn up in the following form:

Articles stolen or plundered.	Value.	No. of Articles recovered.	Value of recovered Articles.	On which prisoner found.	Remarks.
Watch.....	R. A. P. 200 0 0				
Seal.....	52 8 0	1	52 8 0	2nd Prisoner Moottoo	
Buckles.....	11 4 6				
Coat.....	53 0 0	2	53 0 0	4th Pr. Ramen.	
Pearl Neck-lace.....	250 0 0	3	60 0 0	5th Pr. Vencatasamy.	Ten pearls of the Neck-lace recovered.
Total.	566 12 6	3	165 8 0		

Court of Foujdaree Udulut.

The list of the prosecutor's witnesses No. 6, is in future to be drawn out in the mode designated by the following form according as it may be applicable to each particular case.

NAMES.	What points called to prove.
1 Vencatachellum.....	To the prisoner's confession, before the Police Officer, Magistrate, or Criminal Judge.
2 Ramadoo.....	
3 Sawmy Naick	
4 Tirmulgadoo.....	To discovery of stolen property in the houses, or on the person of the prisoners.
5 Coopacherry.....	
6 Ramabatten	To the identification of property, recovered, as belonging to the Prosecutor.
7 Sheva Mooneyen	To the deceased having come by his death from the wound on his person.
8 Ramasawmy.....	To recognition of the corpse, as being that of the murdered, Gungoo.
9 Vencatasamy.....	

N. B. The 4th and 6th witnesses are reported to be dead—and the others are all present and in attendance.

In the list No. 8 of the prisoner's witnesses the points, which they may be respectively called to prove, are to be specified, when more than two witnesses are summoned by desire of the same prisoner.

The Court of Foujdaree Udulut direct also that in cases referred the *Vide Circulars* pages of the English Translation of the record be all numbered, as well 30th Sept. 1810 and 5th Feby. 1811. Appendix C. as the questions put in the examinations held before the Criminal Judge, 1811. Appendix C. and the Court of Circuit, respectively.

27th SEPTEMBER, 1824.

Two cases having recently been brought to the notice of the Court of Foujdaree Udulut wherein the circular orders of the Court dated 7th February, 1820, were construed to authorize the imposition of labour in commutation of fines adjudged by the Magistrate under the provisions of Sections XXXII. and XXXV. Regulation IX. of 1816, the Court direct that it be notified to the several Magistrates and Criminal Judges that nothing contained in the circular orders above cited is intended to sanction the imposition of labour in cases of inconsiderable breach of the peace or other slight misdemeanor, of which description are offences punishable by a Magistrate under the provisions of Sections XXXII. of the Regulation; and that as the penalty adjudicable under Section XXXV. is required to fall within "the limitations and restrictions prescribed for the punishment of the offences specified in Section XXXII," a sentence to labour is considered to be unauthorized in the cases provided for in that Section also.

*Vide C. O. 27th June 1831.
31st Aug. 1833.
16th Sept. 1833.
28th June 1831.*

30th SEPTEMBER, 1824.

The Judges of the Court of Foujdaree Udulut, during a discussion which has recently taken place in respect to the authority of a Tahsildar "under the provisions of Section XXVII. Regulation XI. of 1816, to

Circular Orders of the

dismiss any case after the prisoner has been once apprehended and evidence taken," have found reason for reconsidering the opinion, recorded in the negative, which was communicated to you in my letter, dated 27th March, and repeated in the proceedings of the Court of Foudaree Udalut dated 5th ultimo, upon the 2d Judge's late Circuit report.

The alteration in the opinion of the Judges, has been produced by a more particular consideration of Section XXVIII of the Regulation above cited, which declares, that, "if a prisoner should, in his declaration made before a Tahsildar, criminate another person, the Tahsildar shall secure such person, and, provided the accusation be corroborated by any persons who may appear or be brought by summons before the Tahsildar, he shall forward such accused persons to the Criminal Judge."

In the cases referred to in the last mentioned Section the preliminary inquiry, which, under Clause first of the preceding Section, is prescribed before the apprehension of the accused, is not enjoined; and in so far the cases contemplated in Sections XXVII. and XXVIII. respectively, are differently circumstanced.

It is nevertheless plain, that a rule prohibiting, without any qualification, the discharge by a Tahsildar of a person apprehended by him, could not be applied to the latter Section; and the Judges are consequently induced, with reference to the general rule of construction, that one part of a regulation must be construed by another so that the whole may stand, to be of opinion, that it was the intention of the Legislature to allow to this Officer a discretion in this respect, after proceedings held under Section XXVII. as well as under Section XXVIII. Regulation XI. of 1816.

In communicating to the Criminal Judges and Magistrates within your Jurisdiction, the opinion which is herein declared, of the competency of a Tahsildar, after proceedings held under the provisions of Clause second, Section XXVII. Regulation XI. of 1816, to discharge the accused from custody, if it shall appear that there is no proof of his guilt, the Judges of the Court of Foudaree Udalut desire, that you will instruct the Magistrates to give positive directions to their Tahsildars to report fully upon every occasion of exercising this discretion, the grounds of their proceeding; and the Judges desire that public notification may be given that all, complainants, who may be dissatisfied with the Tahsildar's order for the discharge of an accused party, are to represent the grounds of their dissatisfaction to the Magistrate, by which means the Judges hope, that abuses of this authority may be avoided.

14TH OCTOBER, 1824.

The Court of Sudr and Foudaree Udalut, deeming it proper that the several Magistrates should be furnished with their orders of 4th August, 1814, regarding the issue of process of arrest, to be executed within the limits of the Supreme Court.

Ordered, that extracts of the proceedings of the Sudr Udalut, dated 4th August, 1814, be transmitted to the Provincial Courts of Circuit, by precept, commanding them to communicate the same to

Cancelled by
Act No. XXIII.
of 1840.

Court of Foudaree Udalut.

the several Magistrates, within their respective jurisdictions, for their information and future guidance.

Extract from the proceedings of the Sudr Udalut, under date the 4th August, 1814.

By Clause CXIII. of the 53d of George the Third, Cap. 155, the Courts of Sudr and Foudaree Udalut are empowered to execute or cause to be executed upon all persons subject to their jurisdiction, all manner of lawful process of arrest within the limits of the Town of Madras, provided such process shall be in writing, and shall have under-written or endorsed thereon, or otherwise annexed thereto, a translation thereof, or the substance thereof, in the English language, and character, signed by one of the Judges of the Court.

This specific enactment would seem to preclude the execution of process, issuing from any of the lower Courts, within the jurisdiction of His Majesty's Court; and it therefore becomes necessary to modify the instructions contained in the circular letter of the 2d October, 1804.

The Court therefore direct, that when a Judge or Magistrate of a Zillah Court, or a Court of Appeal or Circuit, shall have occasion to issue process of arrest, either criminal or civil, against a person who shall have taken refuge within the limits of the jurisdiction of the Supreme Court of Judicature, such process shall have endorsed thereupon, or annexed thereto, a translation thereof in English; and shall be enclosed in a letter addressed to the Register of the Sudr and Foudaree Udalut, to be delivered by the person or persons charged with the execution of such process; whereupon an endorsement to the following effect, shall be made thereupon, under the signature of one of the Judges of the said Court, and the process shall be delivered to the person or persons to whom it shall be addressed.

Form of Endorsement.

To _____ Greeting.

These are to command you that you take the body of the within named Defendant A. B. in satisfaction of the annexed warrant.

Given under my hand this _____ day of _____ in the year of Our Lord 181

(Signed) C. D.

Puisne Judge of the Court of Sudr and Foudaree Udalut.

28TH OCTOBER, 1824.

The question, involved in the foregoing reference, is twofold; first, whether a warrant can be legal, if not made out according to the

form prescribed in Clause Second, Section XII. Regulation IX. of 1816.—Secondly, whether it be necessary, that a warrant issued by a Magistrate, should in all cases be served by peons on his own establishment.

Upon the first point, the Court of Foudjaree Udalt, deem it sufficient to observe, that in the cases described in the latter part of Section XIII. Regulation IX. of 1816, where a Magistrate is authorized to issue process “to apprehend a person suspected of having committed a heinous crime, or for whose apprehension sufficient cause may appear upon the report of a Police Officer, or upon any other credible information,”—the precise form of words given in No. 3, of the Appendix to Regulation IX. of 1816, cannot of course be retained.

And with regard to the second point, the Court of Foudjaree Udalt are of opinion, that as a warrant ought always to contain the name of the person charged with the execution of it, the proper course to be adopted by a Magistrate, in order to procure the apprehension of a person resident in a different Zillah, is to apprise the Magistrate of that Zillah by letter of the grounds existing for the apprehension of the individual, which with reference to the provision above cited from Section XIII. Regulation IX. of 1816, would be sufficient to authorize the latter Officer to issue a warrant for his apprehension.

29TH OCTOBER, 1824.

It is proved in this case by abundant evidence, that the deceased Pungal met his death from the atrocious cruelties, exercised on his person by Perambraoora Eesha Menon, the 3d prisoner, late Peishcar of the Kartinaad talook, for the purpose of extorting a confession.

The Court of Foudjaree Udalt have adjudged the 10th prisoner, a kolkar, who bound the deceased, and so took part in the execution of the Peishcar's orders, to receive 39 stripes and to be imprisoned and kept to hard labour in irons for seven years; and they direct that proclamation of this sentence be made by the Magistrate throughout the Province of Malabar, as a warning to peons of Police against carrying into execution illegal orders of the superior Police Officers, for the maltreatment of prisoners, or for the performance of any acts contrary to law.

The Court direct, that it be notified in the proclamation, that but for the death of the late Peishcar, the principal offender in this case, he would have been unquestionably adjudged to suffer capital punishment by the Court of Foudjaree Udalt for this barbarous murder.

The Court of Foudjaree Udalt observe with deep regret, that practices of this atrocious description, not only involving in themselves the most aggravated criminality, but calculated utterly to subvert the administration of criminal justice, continue to prevail among the Native Officers of the Police. The proceedings on the trials referred from the several divisions too clearly show that these practices are not limited to particular districts; but in a greater, or less degree, are universally prevalent.

The Court deem it proper on the present occasion to circulate these observations for the information of the Magistrates, generally,

upon whom it is incumbent to use every exertion to check, and if possible put a stop to, all acts of oppression on the part of the officers under their authority towards persons apprehended on criminal charges.

Examples have not been wanting of the infliction of severe punishment on Police Officers, convicted of treating prisoners with violence for the purpose of extorting confessions. Vide C. O. No. 66.

As declared in the foregoing observations, the Court of Foudjaree Udalt would unquestionably have condemned the Peishcar to suffer death, had he lived to make that satisfaction to the laws, which he so atrociously outraged: it occurs on this occasion to the Court, that a proclamation of the result of a trial, which issued in the capital punishment of an Officer, vested with the powers of a Head of District Police, for maltreating a prisoner in order to extort a confession, may be productive of advantage, generally; and they accordingly direct, that the several Magistrates do notify by a proclamation, to be carefully published in all parts of the districts under their charge, in such manner, and at such times as may give to the proclamation the greatest notoriety, that on the 11th December, 1820, Hussen Khan, Police Ameen of Attoor, in the Zillah of Salem, was convicted by the Court of Foudjaree Udalt of having beaten and caused to be bound by the hands and feet, and in that condition cruelly maltreated, Moottan, a prisoner apprehended by him, on a charge of theft, in consequence of which ill-treatment the said Moottan died; and that the aforesaid Hussen Khan was adjudged to suffer capital punishment, which sentence was duly carried into execution.

Ordered, that extract of these proceedings be sent to the 2d Judge, late on Circuit in the Western Division, by precept, enjoining him to issue the necessary instructions to the Magistrate of Malabar forwarding to this Court the return of that Officer, shewing that he has conformed thereto.

Ordered, also that extract of these proceedings be sent to the four Provincial Courts of Circuit, by precept, enjoining them to communicate the same to the several Magistrates under their authority, with instructions to publish, by proclamation, in the mode therein directed, the case of Hussen Khan, late Police Ameen of Attoor, in the Zillah of Salem, as a warning to all Officers of Police, declaring at the same time, that Police Peons, and other inferior Officers of Police, will in no wise be exempt from punishment in such cases on the ground of their acting under the orders of their superiors. The Provincial Courts will forward to this Court the returns of the Magistrates, shewing that these orders have been duly conformed to.

2D NOVEMBER, 1824.

The Court of Foudjaree Udalt deeming it to be of importance, in order to a clear understanding of evidence in criminal trials, touching the distance between places and measurement generally, that in the English translations of criminal records a note should always be inserted of such distance or measurement, in feet and inches, direct that this practice be observed in future. Vide C. O. No. 69.

The Court, observing that their standing orders, prescribing the insertion of the English date, on all occasions when reference is made to a Jan. 1815.

native date, are not always observed, take the present opportunity of calling the attention of the Courts of Circuit to those orders; and direct that the several Judges of Circuit and Criminal Judges be careful in future, whenever a native date is mentioned in examinations before them to enter a note of the corresponding English date.

15TH NOVEMBER, 1824.

The Court of Foujdaree Udalt recognize, with the 3d Judge, the expediency of the Criminal Judge's correcting any sentence, passed by his Assistant, awarding a punishment contrary to law; and they do not consider, that his interference in these cases would be contrary to the provisions of the regulations, or to the intention of the observations, recorded in the proceedings of the Court, under date 9th June last; which have immediate reference to the decision upon the question of the guilt or innocence of the accused, and are not considered to require, that when stripes or fine may be illegally adjudged by an Assistant Criminal Judge, the party can obtain redress only by application to the Court of Circuit: in these cases the general controlling power of the Criminal Judge over the proceedings of his Assistant can be applied with advantage, and as far as the Court see without any material objection.

26TH NOVEMBER, 1824.

In the letter accompanying the trial, the third Judge observes, "that the defence of the prisoners before the Court of Circuit is in Dekhunnee, or Hindoostanee" that "the confessions of the Criminal Court are in the Telooگون;" and that the prisoners profess to speak only the Hindoostanee; and dwell on Gentoos having written the declarations.

Section XXVII. Regulation IX. and Section XVI. Regulation X. of 1816, prescribe, that all examinations and depositions taken before the Magistrates, and the Criminal Judges respectively, shall be "taken and written in the language, in which the deponents may desire to have the same recorded."

The same rule ought to be observed by the Heads of District Police in taking down depositions, generally; but more especially confessions, delivered before them by prisoners.

The Court of Foujdaree Udalt remark, that the rule prescribed in Section XVI. Regulation X. of 1816, on this subject, is always observed by the Criminal Judge in the Zillah of Canara, whose examination of parties and witnesses invariably commences with a question, as to the language in which the deponent may wish his deposition to be taken down. The Court are not, however, satisfied that the rule is regularly observed by the Criminal Judges, and Magistrates generally, and they deemed, it therefore, proper, on the present occasion, to direct, that the attention of the several Criminal Judges be particularly called to this subject, and that the Magistrates be directed to instruct the Heads of District Police under their authority, to attend to the rule abovementioned, in their examinations of parties and witnesses, as far as may be in their power, recording in any instance wherein there may be no person at hand capable of writing the language selected by the deponent, that such was the case; and certifying in all such cases, that the translation of the deposition has been carefully explained to the said deponent, previously to his fixing his mark or signature thereto.

19TH JANUARY, 1825.

The Judges of the Court of Foujdaree Udalt having resolved to modify their standing orders, which require that in trials referred for their final judgment, English and Persian translations of all proceedings held before the Magistrate, or the Officers of Police, shall form a part of the record, direct me to apprise you, that it will henceforth be discretionary with the Judge of Circuit to omit in forwarding trials to the Foujdaree Udalt all such papers, received from Police Officers and Magistrates, as he may consider to be unnecessary to the conviction, or the defence of the prisoners; stating on the face of the record the titles, or nature, of the papers, the translation of which he has considered to be unnecessary.

7TH MARCH, 1825.

In the forgoing letter, the third Judge states that it is the practice of some of the Criminal Courts immediately to return warrants, issued to them for the execution of sentences, "stating that the sentence has been duly recorded, and will be carried into execution; whilst others make no immediate acknowledgment of the receipt of the warrant, waiting apparently for the expiration of the sentence, in order that they may, in their return specify the manner, in which the sentence has been executed, as provided in Section XIII. Regulation VIII. of 1802."

The Judge states his opinion, that when the execution of the sentence "cannot be effected for a distant period, such as imprisonment for a term of years, or where it depends not on the party addressed, as in cases of transportation," the proper method would be "for the Court to which it is addressed, to make an immediate acknowledgment of the receipt of it, leaving the original warrant to accompany the prisoner, as the authority for his detention, until the sentence has actually been finally executed, in the case of transportation by the Judge at Chingleput, in cases of imprisonment by the Judge of the District in which the sentence is to be carried into effect; a final return to be then made by the Officer, who has finally executed the warrant to the Judge of Circuit, issuing the sentence, or in the event of his removal from Office, to the Register of the Circuit Court, specifying the manner, in which the sentence has been executed."

The Court of Foujdaree Udalt are of opinion, that all warrants should be returned to the Court, by which they are issued, after the complete execution of the sentence, with an endorsement, certifying the manner in which the sentence has been carried into execution.

In the case of a sentence, both for corporal punishment and imprisonment, the execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but as the warrant in this case will not have been completely executed until the prisoner has undergone the period of imprisonment adjudged against him, the Criminal Judge should retain the warrant until the expiration of the term of imprisonment, or return it duly endorsed, should the prisoner die during the course of the term: when several prisoners may be included in one sentence an endorsement of the decease of such as may die before its full execution should be made on the warrant, as in the case of corporal punishment:—in the event of the prisoners being removed to another Zillah, the warrant should be transmitted to the

Vide C. O. 28th June 1825, and C. O. Nos. 115, 121 and 123.

Criminal Judge or the Magistrate, to whose custody he may be consigned, whose duty it will be to return it, duly endorsed, to the Court of Circuit on the expiration of the sentence, or the death of the prisoner.

In cases of transportation beyond sea, the Court of Foujdaree Udalut, do not see any ground for departing from the form of warrant, prescribed by their circular orders of 18th August last: it is obvious to remark, that in these cases full execution of the sentence cannot be certified by the Officer, to whom the warrant is addressed, or by the Criminal Judge in the Zillah of Chingleput, and on this point the Court consider it sufficient, that it should be certified to the Court of Circuit, that the convicts have been forwarded to the depôt at Chingleput, in view to the execution of the sentence.

In conclusion, the Court of Foujdaree Udalut, deem it proper to direct, that the Criminal Judge on the arrival of every warrant, which from its tenor does not admit of immediate execution do acknowledge its receipt; and that when the Judge of Circuit, issuing the warrant, may have ceased to be a member of the Court, on its execution being completed, the warrant be returned to the Judges of the Provincial Court of Circuit.

31st MARCH, 1825.

In the 9th paragraph of the report the 3d Judge notices with approbation the practice, established in the gaol at Bellary, of strictly searching the prisoners, and their cells, twice daily, on the opening the cells in the morning, and in the evening when they are locked up. He states, that "of the grain and copper coin, daily issued to each, all that remains unconsumed is then taken from them, and added to the old stock, before a new issue is made; and thus a considerable saving accrues to Government, whilst the supply to the prisoners is restricted to their actual daily consumption. This rule the 3d Judge considers worthy of strict general enforcement." He observes "that he found at Cuddapah some of the prisoners collecting their copper coin to pay a curnum, in order to adduce evidence in their favor to the purport dictated by themselves:" and mentions "that in one case part of the stolen property" was "actually conveyed to a prisoner there after he was confined in gaol."

The Court of Foujdaree Udalut are fully impressed with the importance of guarding against abuses, such as are here represented to have occurred in the gaol of Cuddapah, for the prevention of which the practice, observed at Bellary, appears calculated to be essentially useful. The Court have no reason to suppose, that the laxity which appears to have prevailed at Cuddapah, in this respect is by any means general; but they deem it proper to call the attention of the several Criminal Judges to the subject, in order that the necessary precautions may be adopted, wherever they may hitherto have been neglected.

16th MARCH, 1825.

The provisions of Section IV. Regulation II. of 1822, vest the Criminal Judge with authority to detain on a requisition of security prisoners, who may appear to him to lie under strong suspicion of any act of criminality: and as the provisions of this Section have no reference to the Mahomedan Law it becomes necessary, in order to avoid the

Vide C. O. 5th June 1815.

anomaly of giving to a subordinate Officer a power not possessed by his superior, that the order of the Court of Foujdaree Udalut of the 6th September 1819, should be taken to be modified by the subsequent enactment of the Legislature, so far as to leave it open to a Judge of Circuit to require security from all prisoners, who may appear to them to lie under strong suspicion of guilt, whether such be the declaration of the Fatwah or otherwise.

24th MARCH, 1825.

The Court of Foujdaree Udalut regret to observe, that the provisions of the Law, regarding the immediate inquest to be held in cases of murder, are very generally neglected: and they deem the present to be a fit opportunity for directing, that the attention of the officers of District, and Village, Police be particularly called to this subject by the Magistrates, whose duty it is to use every exertion for enforcing the observance of rules, so essential to the due investigation of cases of this most heinous crime.

In the 72d paragraph of the report the 3d Judge notices in terms of strong reprehension the "mode in which prisoners are occasionally secured on apprehension, or rather during examination, which is generally effected by tying with cloths, ropes, or other thing, that presents;" and in the 75th paragraph he suggests, that the Police Officers "be prohibited under the penalty of instant dismissal from office, and disqualification for future employ from tying the arms of prisoners behind them, or otherwise, with cloths, ropes, or other description of binding." The 3d Judge observes that "the necessity of such practice on the score of precaution can seldom exist and be always obviated, by the use of an iron ring with a joint on one side and a screw or rivet on the other, to which a rope might be fastened, which would effectually prevent escape:" and he suggests that the "Magistrates be instructed to supply their Police Officers with a sufficient number of these rings for ordinary use, which might be made up in the Zillah gaols by the prisoners, accustomed to this description of labour, and thus save every other expense, but that required for the purchase of the raw material."

The Court of Foujdaree Udalut consider it proper to call the attention of the Magistrates to the practice, noticed by the 3d Judge in this part of his report; in order that measures may be taken for preventing the infliction of pain, and injury, on prisoners with the view, or under the pretext, of ensuring their safe custody. The use of rings of the description, recommended by the 3d Judge, or of wooden hand-cuffs should be substituted for ligatures, which from inattention, or carelessness, may be so tightened, as to occasion torture, and permanent injury; and the Officers of District Police should be strictly enjoined to subject prisoners under examination to no greater restraint, than may be absolutely necessary as a measure of precaution.

Vide C. O. No. 113 and 162.

9th APRIL, 1825.

The Court of Foujdaree Udalut deem it proper, on the occasion of the promulgation of Regulation I. of 1825, to call the particular attention

ing such evidence, to ascertain by personal examination, whether the child has any notion of the obligation of an oath, should it appear from such examination, that the child is not sensible of the nature of an oath; but that this ignorance is attributable to defect of education, and not of capacity, it will be the duty of the Judge to postpone the examination of the case for a short interval, and direct the parents, or some other competent person, to instruct the child in the nature and obligation of an oath and of the consequences of Perjury;—and if upon an examination subsequent to such instruction, it shall be manifest that the child does then understand the nature of an oath; the oath should be administered and the evidence recorded accordingly.

The Judges desire that you will communicate these instructions to the several Criminal Judges within your Division, forwarding to them at the same time a copy of the Circular order of the Court of the 15th April, 1819.

9TH AUGUST, 1825.

In the foregoing letter, the Honorable the Governor in Council has expressed his opinion, that the mistaken notion, of the unlawfulness of a resistance to the attacks of robbers, which might end in their death, is very prevalent in the provinces; and operates to a serious extent, in deterring the inhabitants, from a steady and courageous defence of their property; and the Court of Foujdaree Udaltut are desired to take measures, "for diffusing as widely as possible, a correct knowledge of the lawful rights of the people in this respect."

It appears to the Court, that the measure best calculated to effect the proposed object, would be the circulation to the several Magistrates, of a copy of the above communication from Government, with instructions, to make known to the people generally, that the Government will be prepared to take into consideration, the cases of those families, whose members may lose their lives, in a manly resistance to unlawful aggressions upon their persons or property.

The Court also consider it desirable, that the attention of the Judges of the Provincial Courts of Circuit, should be directed to the correction of the prevalent evil, pointed out in the communication from Government; and they direct therefore, that the several Judges on Circuit do in future, bring to the notice of the Court of Foujdaree Udaltut, every instance coming under their cognizance, wherein it would seem advisable to recommend the grant of rewards, on the grounds upon which they have been conferred, in case No. 6, Masulipatan Calendar, 4th quarterly Sessions, A. D. 1824.

The Court are of opinion, that a few such grants judiciously bestowed in each province, would tend more than any other measure which the Court could devise to diffuse amongst the inhabitants at an early period, a correct knowledge of their rights. The spirit of resistance once excited, it would soon become unnecessary to promote it by any direct encouragement from Government and as it would effectually check attempt at robbery by open violence, the necessity for the continuance of such rewards would gradually lessen.

(No. 47.)

To the Secretary to Government in the Judicial Department.

In the record of a case (No. 6, Zillah Masulipatan, 4th quarterly Sessions, 1824) which has lately come under the consideration of the Court of Foujdaree Udaltut, satisfactory testimony is afforded of the courageous resistance of the family of the prosecutor, to an attack made upon them by a numerous gang of armed robbers. In the conflict both the son, and brother-in-law of the prosecutor, were killed, having previously slain one, and wounded several of the robbers, and the identification of the dead body of the robber chiefly led to the apprehension and ultimate conviction of part of the gang. The Judges have observed in the evidence of the parties injured an attempt to throw off the imputation of having caused the death of the robber, resorted to apparently under the mistaken notion that some injurious consequences might result from an acknowledgment of that fact before the Court of Circuit. With this view the prosecutor, in contradiction to the declaration of the prisoners and the depositions of the other witnesses, has, after stating, that "one of the gang robbers, who came to his house was wounded on that night and lying dead before his gate," added "but I do not know whether it was in consequence of the robbers having fought among themselves."

With the view of removing this injurious prejudice, and to promote a spirit of resistance to attempts at gang robbery, an offence of frequent occurrence in the Northern Circars, the Judges are induced to recommend, that the highest rate of reward, specified in Section XXIII. Regulation IX. 1816, may be conferred on the families of the two persons, whose lives were lost in a manly resistance to the robbers; and they respectfully request the sanction of the Honorable the Governor in Council for this measure.

(No. 280.)

To the Register to the Court of Foujdaree Udaltut.

I am directed to acknowledge the receipt of your letter dated the 19th instant, No. 47, and to state that the Hon'ble the Governor in Council is pleased to authorize the grant of rewards of five hundred Rupees each (in all 1,000 Rupees) to the respective families of the two persons who lately lost their lives in resisting a gang of robbers in the Zillah of Masulipatan, as a mark of approbation of their manly conduct, and an encouragement to others to follow so laudable an example.

There is too much reason to believe that the mistaken notion adverted to in your letter is very prevalent in the provinces, and operates to a serious extent in deterring the inhabitants from the steady and courageous defence of their property. The Governor in Council relies on the Foujdaree Udaltut, that they will give their best attention to the means of removing this evil, and diffusing as widely as possible a correct knowledge of the lawful rights of the people in this respect.

17TH SEPTEMBER, 1825.

In their proceedings of the 6th instant, the Court of Foujdaree Udaltut directed that, in the event of the 1st Judge's continuing of opinion,

23820.

that a less punishment than 4 years' imprisonment should be adjudged, the trial should be referred to the Court of Foudjaree Udalut.

This order was founded on the provisions of Clause third, Section X. Regulation I. of 1825; which is couched in the following terms. "It shall be competent to the Court of Foudjaree Udalut on receiving such report from the Judge of Circuit to sanction a mitigation of the prescribed penalty, if it appear to them proper; but should they not see sufficient grounds for the proposed mitigation of punishment, they shall direct a reference of the trial for their final judgment."

This Clause the Court construed to require, that if the precise degree of mitigation, recommended by the Judge of Circuit, should not in the opinion of the Foudjaree Udalut be proper, the trial must necessarily be referred.

In adopting this construction of the clause cited, the Court of Foudjaree Udalut were influenced by observing the different mode of expression used in Clause third, Section III. of the Regulation, the operation of which was exclusively prospective; while to Section X. was given a retrospective operation.

It was considered by the Foudjaree Udalut, that the difference between the provisions of Clause third, Section X. Regulation I. of 1825, arose from the care of the Legislature, that accused, or convicted, persons should not be placed by an enactment, operating retrospectively, in a worse situation than they were in, previously to its promulgation, and such the Court of Foudjaree Udalut still hold to have been the intention of the Legislature.

But on mature deliberation it appears to the Court that this view of the intent and meaning of Clause third, Section X. Regulation I. of 1825, does not, as they at first thought, require that in all cases where the report of the Judge of Circuit may satisfy them, that the specific punishment, prescribed in Clause third, Section IV. Regulation XV. of 1803, ought to be mitigated, the trial must be referred, if the Foudjaree Udalut do not concur in the precise degree of mitigation, which the Judge of Circuit may recommend.

In the present case taking the 1st Judge's own account of all the circumstances, on which he founds the recommendation that sentence of imprisonment for one year should be passed on the prisoners, the Court of Foudjaree Udalut are clearly, and most decidedly, of opinion that less than 4 years' imprisonment cannot be awarded to them without a glaring compromise of the ends of public justice.

It is plain, that if the Court considered the offence of the prisoners to require punishment to the full extent of the provisions of Clause third, Section IV. Regulation XV. of 1803, the trial must, in order to the adjudication of that specific penalty, be referred for their consideration, and final judgment.

The Court, however, after fully considering all the bearings of the question have come to the conclusion, that the words of Clause third, Section X. Regulation I. 1825, do not bind them to a confirmation of

the mitigated sentence proposed; and that their concurrence in the recommendation of a mitigation is alone requisite to authorize their dispensing with the reference of the trial.

9TH JANUARY, 1826.

With reference to the circular instructions of the Court of Foudjaree Udalut of the 9th August last, directing the Judges of the Provincial Courts of Circuit, to submit to the notice of the Foudjaree Udalut, all instances of a manly resistance to attacks of gangs of robbers, wherein it would seem advisable to recommend the grant of rewards to the persons concerned. The Judges of the Foudjaree Udalut direct me to transmit the accompanying copy of a communication from the Secretary to Government dated the 2d ultimo; and to desire, that the several Judges on Circuit, do, in future, when submitting recommendations of the nature above-mentioned, point out at the same time, the manner in which the liberality of Government can be most eligibly extended to the sufferers.

No. 461.

To the Register to the Court of Foudjaree Udalut.

I am directed by the Honorable the Governor in Council to acknowledge the receipt of your letter of the 26th ultimo, No. 68, relative to a case in which two inhabitants of the district of Cuddapah have lost their lives and a third has been severely wounded in a conflict with a gang of robbers.

The Governor in Council entirely approves of the offer of rewards which the Foudjaree Udalut have authorized for the apprehension of the robbers. He also concurs with that Court in considering it fit that the liberality of Government should be extended to the individual who was wounded, and to the surviving relatives of the two persons who were killed. It is therefore requested that the Foudjaree Udalut will give directions to the Magistrate to inquire into the circumstances of the parties and to report the result, stating at the same time his opinion as to the mode in which it is advisable to afford them the bounty of Government, and as to the amount of the grants which should be made, whether in the form of pensions or of donations. In submitting his report the Foudjaree Udalut will accompany it with any observations which they may see occasion for.

The Governor in Council further desires that the same course may be followed in future on similar occasions.

I am directed to add that on the present occasion the Magistrate is authorized to advance any small sums of money which he may consider necessary for the immediate relief of the parties who are regarded as fit objects for the liberality of Government.

15TH JUNE, 1826.

It has been suggested to the Court of Foudjaree Udalut, that it will be useful to furnish the Criminal Judges with copies of the Futwahs of

the Law Officers of the Courts of Circuit, in all cases of sentences passed by that Court without reference to the Foujdaree Udalt; the Judges, approving of the suggestion, accordingly direct that this practice may be observed in future, and the final sentences of the Courts of Circuit be prepared in the form observed by the Foujdaree Udalt, with the exception, that the Persian copy of the Futwah, need not be entered in the warrant.

4TH JULY, 1826.

Vide C. O. 5th August 1829.
The Judges of the Foujdaree Udalt, having remarked on their review of the reports submitted under section XXXV Regulation X. of 1816, that the offence for which punishment is inflicted by the Criminal Judges, often differs from that entered in the column containing the Abstract of the charge, or crime, in No 5 of the reports referred to, they direct, that the several Criminal Judges do, in future, when the crime for which a party may be punished by them, differs from that with which he is originally charged, enter a note of the circumstance, in the column exhibiting the punishment.

16TH OCTOBER, 1826.

It having been reported to the Court of Foujdaree Udalt that, in cases in which Judges on Circuit have sentenced to stripes, considerable delay as sometimes occurred in the infliction of the stripes after the receipt of the Warrants; I am directed by the Judges to state, for the information and guidance of Criminal Judges, that it is the intention of the Law that all penal sentences should be carried into execution at the first convenient season after the receipt of the Warrants for them: and, with respect to stripes in particular, that the only admissible cause of delay in inflicting them, is the inability of the convict to bear them without endangering his life; which contingency is provided for by the first and third articles of the Circular Orders of this Court, dated the 2d August 1821, which are to be always carefully attended to.

(Vide order 21st October, 1830.)

23d OCTOBER, 1826,

The Governor in Council has been pleased to signify his approbation of the following mode of obtaining the attendance of witnesses required in Criminal cases, when they reside within the territories of foreign States or foreign European settlements.

The usual summons is to be sent, by the Criminal Judge to the British Resident at the Native Court or the special Commissioner for foreign settlements, as the case may be, with a letter requesting that he will obtain the necessary countersignature to give it effect within the foreign territory or settlement where the person summoned resides—and having caused it to be duly served according to the practice of the foreign territory or settlement return it with an endorsement to that effect to the Judge who sent it.

23d NOVEMBER, 1826.

With reference to the provisions of Regulation III. A. D. 1826, passed by the Honorable the Governor in Council on the 17th ultimo, I am directed by the Judges of the Foujdaree Udalt to forward a form of Indictment for Perjury to be used in all cases of prosecution under that Regulation; and to desire that you will furnish the Criminal Judges of your Division with copies of the same for their information and future guidance. *Vide C. O. 6th February 1832.*

The prisoner A. B., appearing as prosecutor (or witness) in case No. — before the Magistrate of — (or Criminal Judge of —) wherein C. D., was charged with (here enter the substance of the charge;) and being, on the — day of — 18 duly sworn (or having made a solemn declaration instead of an oath) before the said Magistrate (or Criminal Judge) to depose truly to all matters of fact within his knowledge touching the said case did wilfully and deliberately depose in words to the following effect (here enter the words contradicted by his subsequent deposition;) and afterwards on the — day of — 182, being duly sworn (or having made a solemn declaration instead of an oath) before the Criminal Judge (or Court of Circuit) in like manner to depose truly to all matters of fact within his knowledge touching the said charge against C. D., did wilfully and deliberately depose in words to the following effect, viz, (here enter the words in contradiction of the former deposition.) *Vide Circular 22d March 1832, Appendix D*

The said two depositions being in direct and positive contradiction, one of the other, as to the matter (or matters) of fact so wilfully and deliberately deposed to on the two dates above specified, and one of the said depositions being therefore false and corrupt; and the said matter (or matters) of fact thus deposed to being material to the issue of the charge then pending against the said C. D., the said A. B., was guilty of wilful and corrupt perjury in one or the other of the said depositions.

2d JUNE, 1827.

It having come to the knowledge of the Court of Foujdaree Udalt that Judges, and Acting Judges, of the Courts of Circuit have, in some instances, omitted to deposit among the Records of the Provincial Court, after their return from Circuit, all the Precepts, letters and other papers received by them from this Court, during their absence; I am directed to call your attention, individually and collectively, to the necessity of all such papers received by any Judge, or acting Judge, while on Circuit, being punctually deposited in the records of the Provincial Court on his return, in conformity to the circular order dated the 6th September, 1821.

28TH JUNE, 1827.

Extract from the Proceedings of the Foujdaree Udalt, dated the 24th of August, 1826.

In all cases committed for trial before him, the Circuit Judge before C. O. No. 52, commencing the trial, should satisfy himself by considering the proceedings before the Criminal Judge and other inferior tribunals, whether there is reasonable ground to believe that the trial can be brought to a close on the testimony of the witnesses present; if there is not, the trial

ought not to be commenced, because the knowledge, by the prisoner of much of the evidence against him, long before his defence is heard and sentence passed, will furnish inducement and opportunity to corrupt and suborn witnesses.

Cases however may occur (though the Court think but seldom after a due consideration of the Proceedings before held) in which the testimony of an absent witness, thought immaterial, may prove in the course of the trial to be indispensable. In such cases the trial ought to be postponed; but the depositions already taken, and of all the present witnesses, should be left with the record for the use of the Judge who will complete the trial; in order that the witnesses who have already attended in obedience to their summons may be spared the inconvenience of attending again—and the time of the Court be saved. Postponed trials should always be heard first; in order that if the further attendance of witnesses whose depositions were before taken is required, it may be obtained before the Judge quits the station; and thus all danger of further postponement obviated.

19TH JULY, 1827.

Read letter dated the 2d ultimo, from the Southern Provincial Court representing the cases of 5 persons detained in confinement in the Zillah gaol of Salem after the expiration of the term of imprisonment to which they were sentenced, in default of having given security for future good behaviour.

These persons were sentenced to imprisonment with hard labour for ten years and then to be released on finding security for their good behaviour and appearance when required.

This sentence is illegal—The Regulations nowhere warrant the demand of security from a prisoner convicted of a specific offence.

1ST AUGUST, 1827.

The Court of Foujdaree Udalt has reason to believe that at certain stations it is the practise to allow Convicts, sentenced to hard labour in irons on the public roads or other public works, to work on the private grounds of the European Civil Officers of Government at the station.

This practise is contrary to the Regulations; and the Judges are of opinion that it is liable to produce mischievous effects. In the minds of the Convicts it must associate their state of pain and degradation in the most unfavorable manner with their European Superiors and the latter are in danger of having those feelings which the spectacle naturally occasions and which it is highly desirable to maintain in public Officers so intimately concerned with the moral state of the people, impaired and deadened by a constant familiarity with it.

The Judges therefore desire that you will issue strict injunctions to all Officers in charge of gaols within your jurisdiction on no account to allow of the employment of Convicts, condemned to labour in irons, on any other than strictly public works.

The attention of all Judges on Circuit is hereby called to this subject:

and they are especially required to satisfy themselves at every station that this order is duly attended to, and not to allow it to be evaded.

10TH NOVEMBER, 1827.

The Court of Foujdaree Udalt direct, that whenever a Criminal or Joint Criminal Judge, shall have occasion to apply to a Magistrate, for a guard of Police Peons, to escort convicts to another station, agreeably to the Orders of Government, under date the 15th October, 1822, circulated under date the 18th of the same month; the Criminal or Joint Criminal Judge, shall furnish the Magistrate with such information as he may possess, relative to the general character of the convicts, in order that, if there should be among them any of a desperate character, the Magistrate may take the requisite precautions against their escape.

The Magistrate is in every instance to determine the mode of conveyance, and the strength of the guard; from the moment the convicts are made over to the guard furnished by him, he, and not the Criminal Judge, is to be responsible for their safe custody; all orders to the guard, and advances of money for the subsistence of the convicts, are to be issued by him; the guard will make their report to him; and he will communicate the due delivery of the convicts, or any occurrences concerning them, to the Criminal Judge.

Vide C. O. No. 138.

Vide Circular 19th July 1843 Appendix E.

29TH NOVEMBER, 1827.

The Court of Foujdaree Udalt direct that the following rules be invariably observed by the Zillah Judges in framing the Quarterly Report No. V. in the Appendix to Regulation X. of 1816.

The cases should be numbered consecutively in column first, without reference to the prisoners.

The prisoners in each case, in which there are more than one, should be numbered consecutively, the first prisoner in each such case being numbered 1: The numbering not to be carried on from case to case.

The distinctive initial letters C. J. or A. C. J. should invariably appear under the number of each case in the first column, denoting by which authority each case has been adjudicated; the specification, as to the particular magistracy (where the Jurisdiction of a Zillah Judge extends over two Collectorates) directed in this Court's Orders, under date the 4th September, 1824, may also appear in this column.

All reports are to be written on demy paper, ruled, and written cross ways agreeably, to the form herewith transmitted.

The number of the case, as well as that of each prisoner in each case originally assigned in the quarterly Reports in which they first appear, should on no account be afterwards altered, when it is requisite that the case should appear in any subsequent report.

The dates of all sentences, whether of acquittal, punishment, or committal, to be entered at the close of the sentence itself.

Any inattention to these rules must be rigidly noticed by you: and it is the desire of the Judges that, in any case where a non-adherence to them may be observable, the report itself be returned by you to the proper authority for amendment.

Report of Persons apprehended in the Zillah of Chingleput, and delivered to the Criminal Judge in the Month of — 18

No. of Case.	Numbers and Names of Prisoners	Abstract of the crime or charge.	Date of			Punished and in what manner, and date of punishment.	Released, or if allowed a fine and date of release, &c.	Committed, and the date of commitment.	Before what Court of Circuit to be tried.	Not examined.	Explanation of delay and remarks, &c.
Chingleput. 123. C. J.	1 Curpen		Apprehension.	Leaving the Talook.	Arrival.						
	2 Soobbum										
	3 Timmatoo										
South Arcot. 124. A. C. J.	1 Veeron										
	2 Coolum										

7TH DECEMBER, 1827.

With reference to the Circular Letter of this Court, dated 29th ultimo, I am directed by the Judges to communicate the following further instructions for the guidance of the several Criminal Courts within your jurisdiction in preparing the several reports prescribed by Regulation X. of 1816.

The Judges of the Foujdaree Udalt desire that the Column "No." in each of the reports 6, 7, 8 and 9 transmitted by the Criminal Judges, under Section XXXV. Regulation X. of 1816, shall exhibit, not as at present, the number of a case, according to the order in which it stands in those reports, but the number which is assigned to it in quarterly report No. 5, prescribed by the Section above quoted.

The same rule is to be observed in numbering the cases in report No. 11, prescribed by Section XXXVI. and report No. 12, prescribed by Section XXXVII. of the above said Regulation X. of 1816, and in the Supplemental Report required by the Circular Orders of the Foujdaree Udalt, dated 27th September 1821.

Further in the Reports, Nos. 6, 7, 9, and 11, the column "No" shall also exhibit underneath the number above prescribed, the number of each case on the Calendar for that Sessions in which the trial of it by the Court of Circuit took place.—When the trial of any case has been postponed from one Sessions to another, the number of the latter only is to be entered.

The following will shew in what manner the column "No." in the forms Nos. 6, 7, 8, 9, 11 and 12 contained in the appendix to Regulation X. of 1816, are to be filled up in conformity with the above rules.

Reports Nos. 6, 7, 9, and 11.

No.	Name.	
51. First Quarter 1828.	Appoo.	
3. Second Sessions 1828.		

Reports Nos. 8 and 12 and Supplemental Report.

No.	Name.	
1. Second Quarter 1828.	1 Mootoo. 2 Rungen. 3 Kistnah.	

28TH JANUARY, 1828.

The Court of Foujdaree Udalut direct, that, whenever a prisoner is charged before a Criminal Judge with an offence for which the Regulations do not prescribe that any specific penalty shall be inflicted, or the prisoner committed for trial before the Court of Circuit, the Criminal Judge shall require the Mahomedan Law Officer of his Court to state, in writing, whether the offence is punishable under the Mahomedan Law or not; and if punishable, how. If the Law Officer shall declare that the offence is not punishable by the Mahomedan Law, the Criminal Judge shall immediately release the prisoner; if the Law Officer shall declare that the offence is punishable under the Mahomedan Law, the Criminal Judge shall proceed to examine the witnesses against the prisoner; if he shall see reason to believe that the prisoner is guilty, and shall consider the punishment, which he is empowered to inflict, by Section VII. Regulation X. of 1816, as adequate to the offence, he shall proceed to hear the prisoner's defence, examine his witnesses, and determine the case himself; if he shall consider the punishment, which he is empowered to inflict, inadequate, he shall commit the prisoner for trial before the Court of Circuit.

Joint Criminal Judges are to proceed in the same manner, except that they are to put their questions to the Law Officer in the mode prescribed in Clause first, Section VIII. Regulation I. of 1827.

Criminal and Joint Criminal Judges will invariably insert in the Report No. 5 of the Appendix to Regulation X. of 1816, and in the Supplemental Report (required by this Court's orders of the 27th September, 1821,) in the column "Punished," or "Released," or "Committed," as the case may be, the answer of the Law Officer, in the following manner. "Three month's imprisonment, or "Released," or "Committed," the Mahomedan Law Officer having declared that (copy the answer).

Criminal or Joint Criminal Judges will be always at liberty to bring to the notice of the Foujdaree Udalut, through the Provincial Court of Circuit, any particular offence, which the Mahomedan Law Officer may declare not to be punishable under the Mahomedan Law, and which shall to them appear sufficiently injurious to the community to require being exposed to punishment.

28TH JANUARY, 1828.

The Court of Foujdaree Udalut, have ruled that the entering, by night, with intent to steal, into a dwelling house, tent, or other place of habitation, whether the door thereof be closed and not fastened, or be open,* is sufficient to constitute the offence of breaking into such place of habitation with intent to steal.

The Court in consequence direct that the Criminal Judges and Joint Criminal Judges be careful to specify, in their abstracts of charges of theft from any place of habitation, whether the offence was committed in the day time or by night.

* Vide also Order 28th August, 1828.

3D APRIL, 1828.

The Court of Foujdaree Udalut hereby rescind their circular orders of the 27th January, 1820, and 3d May, 1821; and direct that whenever an offer of pardon may be authorized, under Section XX. Regulation VIII. of 1802, it shall be made in one or other of the following forms, according as the party to whom it is made has or has not, confessed himself an accessory.

If he has not confessed—in the following form.

"You" (call the supposed accessory by his name) "are hereby informed, that an option is given you of being admitted as a witness on the part of Government touching" (here name the crime and place and date thereof) "to which you are supposed to have been accessory.—And, that you may not be deterred from discovering all that you know respecting the said crime, and the persons concerned therein, by the fear of bringing punishment upon yourself; I do hereby, in the name of the Court of Foujdaree Udalut,* promise that you shall receive a full pardon, to be confirmed to you under the seal of the Court of Foujdaree Udalut, and the signature of their Register, for any criminal act or acts, connected with the said crime, of which you may confess yourself to be guilty, or which may appear against you by your depositions; on condition that you shall confess and discover fully and truly, every circumstance within your knowledge relative to the commission of the said crime and the persons concerned therein: Provided always, that if it shall be proved to the satisfaction of the Judge, by whom the charge for the said crime, shall be tried, that you were a principal in the said crime and not merely an accessory, as supposed; or that you have concealed, or misrepresented, any material fact, within your knowledge, touching the said crime, in that case, you shall not be entitled to the pardon promised, but shall be put upon your trial, according to law for your part in the said crime; but your own confessions and depositions made in consequence of this present promise of pardon, shall not be received in evidence against you; nor shall you suffer any punishment, unless you shall be proved guilty by other evidence."

Vide C. O. 8th
Dec. 1822.

If the party to whom the promise is made has voluntarily confessed himself an accessory before the public officer, by whom the pardon is offered, or confirmed a former confession to that effect, the offer is to be made in the following form.

"You (call the party by his name) have confessed yourself an accessory to (here name the crime, and place and date thereof), and thereby justly subjected yourself to the punishment prescribed by law for the said crime. With the view, however, of discovering the principals in that crime: I do hereby, by authority received from the Court of Foujdaree Udalut promise that you shall receive a full pardon, to be confirmed to you under the seal of the Court of Foujdaree Udalut, and the signature of their Register, for any criminal act or acts, connected with the said crime, of which you have confessed or may confess yourself to be guilty, or which may appear against you by your depositions, on condition that you shall confess and discover, fully and truly, every circumstance within your knowledge, relative to the commission of the said crime and the persons concerned therein: Provided always, that if it shall be proved, to the satis-

* Vide Section XII, Regulation XIII. A. D. 1832.

faction of the Judge by whom the charge for the said crime shall be tried, that you were a principal in the said crime and not merely an accessory, or that you have concealed, or misrepresented, any material fact, within your knowledge, touching the said crime, in that case, you shall not be entitled to the pardon promised, but shall be put upon your trial according to law for your part in the said crime; and in such case your confession already made, before this present offer of pardon, shall be good evidence against you, but nothing deposed by you in consequence of this present promise of pardon shall be received in evidence against you, nor shall you suffer any punishment in consequence thereof."

The informant shall then, if he accepts the offer, give his evidence on oath; and shall be dealt with in exact conformity to the declaration above directed to be made to him.

14TH APRIL, 1828.

The Court of Foujdaree Udalut having observed that, in a recent trial before a Court of Circuit of a prisoner charged with attempting to administer poison, a written statement by a medical officer was accepted by the Court, in evidence of the poisonous quality of the matter administered, and this proceeding being unfair to the prisoner at the bar, inasmuch as it deprived him of his right to cross-examine the witness to this important part of the charge against him, it is hereby ordered, that whenever the testimony of a medical man is required on the trial of a prisoner, it shall only be received when given orally, on oath, before the Court, in the presence of the prisoner.

22D MAY, 1828.

The question has been submitted to the Foujdaree Udalut whether in a Magistrate's warrant of commitment, under Clause first, Section III. Regulation II. of 1822, or Clause first, Section VI. Regulation VI. of 1827, all the particulars mentioned in Section VII. of the latter Regulation should be specified; viz. the amount of security, the number of sureties, the period for which the sureties are to be responsible, and the period for which the prisoner is to be detained in custody, in default of finding sureties and giving security.

The Judges think that all these particulars ought to be specified in the warrant. The last of them is absolutely necessary in order that the prisoner may be released at the proper time: the others will be of use in the event of the prisoner, after his commitment, tendering security or securities, as such tender will, probably be generally made to the Criminal Judge, and not direct to the Magistrate; and the knowledge of these particulars by the Criminal Judge may save useless reference by him to the Magistrate, when the tender is inadequate to the demand.

The Judges further think, that the Magistrate's warrant of Commitment, in these cases, ought to be as near as possible in the form No. 10, of the Appendix to Regulation IX. of 1816, and should be accompanied with the paper prescribed in Clause second, Section XXXIV. of that Regulation. Clause first, Section III. Regulation II. of 1822, in speaking of the Magistrate issuing his warrant, evidently refers to a known and established judicial instrument; and the only established form for a Magistrate's warrant of committal to the Zillah Gaol is that above referred to.

19TH JUNE, 1828.

When the record of a trial is called for by the Court of Foujdaree Udalut, it frequently appears that the occasion for their interference has arisen solely for the want of clearness and perspicuity in the Calendars. The Court, therefore, direct, 1st. That all Calendars be accompanied with copies of the original Futwahs in all cases not referrible. 2d. That the Judges of Circuit state succinctly and clearly their opinion of the case, whether they concur entirely in the Futwah, or concur with the Law Officer, as to the guilt or innocence of the prisoner, but on different grounds, and what those grounds are. 3d. That when evidence before the Court of Circuit is in contradiction to, or at variance with, the evidence previously given, the points of difference be stated.

Vide C. O. No. 148.

23D JUNE, 1828.

The Court of Foujdaree Udalut are of opinion that it is competent to, and incumbent on, Criminal Judges to take cognizance of all offences committed by prisoners in the gaols, under their respective charge, which are cognizable by them under any Regulation when brought before them by a Magistrate or any officer of Police. The restriction in Section VIII. Regulation X. of 1816, cannot be intended to apply to charges and information against persons already in the custody, and under the peculiar jurisdiction of the Criminal Judge, which must, necessarily, come under the cognizance of the Criminal Judge, and do not need to be brought before him by any other authority.

28TH JUNE, 1828.

The Court of Foujdaree Udalut, on inspection of the Reports of the Criminal Judges submitted to them quarterly, find grounds for supposing that it is generally deemed imperative on a Criminal Judge to order stripes in addition to imprisonment for theft under Section VII. Regulation X. of 1816. They, therefore, think proper to circulate their construction of that enactment. In their opinion it is left to the discretion of the Criminal Judge to punish by imprisonment alone, or by stripes alone, or by both, for the offence of theft, provided that the period of imprisonment do not exceed 6 months and that the number of stripes do not exceed 30, of the rattan. A similar discretion is given him by Clause fourth, Section III. Regulation VI. of 1822, in certain heavier cases of theft, by Clause sixth, Section II. of the same Regulation in certain cases of house-breaking with intent to steal, by Clause fourth, Section IV. of the same Regulation in certain cases of receiving stolen goods, and by Clause second, Section V. of the same Regulation in certain cases of escape. A similar discretion is vested in the Criminal Judge by Section VII. Regulation X. of 1816, in cases other than theft, wherein he may punish by imprisonment, or by fine, or by both, under the limitations prescribed in that Section.

Vide Reg. VIII. of 1828.

28TH AUGUST, 1828.

The Court of Foujdaree Udalut, having had occasion to reconsider the Circular Order, dated the 28th January last, are of opinion that September 1828.

Vide C. O. 25th February 1824
31st Oct. 1828.
30th April 1829.
5th August 1831.

an entry by night with intent to steal into a dwelling house, tent, or other place of habitation, or into a warehouse, or other place used for the custody of property, when such entry is made by a door left open, is not sufficient to constitute the offence of breaking within the provisions of Section II. Regulation VI. of 1822; and they accordingly rescind so much of that order as went to declare such entry to be a breaking.

29TH SEPTEMBER, 1828.

It appearing that the wording of the Circular Orders of the 28th January and 28th August last, imply a distinction between entries by night and entries by day into a dwelling house or other place of habitation, or into a warehouse or other place used for the custody of property, with intent to steal, the Court of Foujdaree Udalt consider it necessary to explain that every act, which constitutes a breaking by night, must in law be deemed a breaking, if committed by day.

It being desirable, however, that means should exist of ascertaining the comparative prevalence of entries by night and entries by day with intent to steal, the Criminal Judges and Joint Criminal Judges will still continue to specify in their abstracts of charges whether the offence of breaking was committed in the day time or by night.

23D OCTOBER, 1828.

The question has been submitted to the Foujdaree Udalt whether, when Complainants in Criminal cases employ Agents to present their complaints, as authorized by Section XIII. Regulation IX. of 1816, such Agents should be furnished with regular Vakalutnamahs, and those Vakalutnamahs on stamped paper.

The Judges have no doubt that such Agents ought to be furnished with regular Vakalutnamahs; but they think that such Vakalutnamahs are not required to be on stamped paper.

Section XIII. Regulation IX. of 1816, requires that when there is sufficient reason for the Prosecutor not attending in person, his written plaint shall be presented by "an authorized Agent;" and there is no other mode of authorizing a representative of any kind recognized by the Regulations, but by a Vakalutnamah or Mooktarnamah.

Section XX. Regulation XIII. of 1816, requires all Vakalutnamahs to be on stamped paper, when presented before the Courts or Officers therein enumerated; but Magistrates are not enumerated.

The Judges, therefore, direct, that no written complaints be received by Magistrates, or Native Heads of Police, from persons not being themselves the Prosecutors, unless they produce regular Vakalutnamahs executed by the Prosecutors and verified by witnesses; and these Vakalutnamahs should always be sent up with the record to the Criminal Court.

31ST OCTOBER, 1828.

Several instances having come under the notice of the Foujdaree Udalt of prisoners being required to give security for their appearance

or good behaviour for a much longer period than that for which they might be detained in gaol in default of that security, the Court deem it proper to declare that such a requisition is not authorized by any Regulation.

Vide C. O. 30th April 1829.

It is clearly the intent of Regulation VI. of 1827, that the term for which security, whether by personal recognizances or by the responsibility of sureties, is to be given, and the term for which a prisoner may be detained in confinement in default of giving security, should be the same.

22D DECEMBER, 1828.

Read letter No. 35, of 1828, under date the 7th January last, from the Register of the Provincial Court for the Western Division.

In the foregoing letter, it has been submitted to the Foujdaree Udalt, whether it is proper that a Criminal Judge should, on application by the Magistrate, under Section II. Regulation III. of 1817, furnish him with the proceedings of the Criminal Court, for the purpose of acquiring information respecting supposed offenders not yet brought to justice, or other police purposes; and whether it is competent to the Magistrate to require security from persons released by the Criminal Judge, on a specific charge.

On the 19th November 1822, this Court observed, that they on the 20th June preceding had intimated to the Government their opinion "that the detention by the Magistrate or Criminal Judge of a prisoner, ordered by the Court of Circuit to be released without security would be irregular, and at variance with the principle of the provisions contained in Clause second, Section III. and Clause third, Section IV. Regulation II. of 1822."

There is nothing in the enactments contained in Regulation VI. 1827, to induce the Judges to alter this opinion, or to prevent the application of it, by analogy to the detention by the Magistracy of prisoners released on a specific charge without security by the Criminal Court—provided it be clearly understood that, on the former, as well as on the present occasion, the Judges allude to cases in which prisoners are detained by the lower tribunal, on the same charge and evidence under which they have been released by the higher tribunal.

Where on the other hand, the Magistracy receives distinct charges against the released prisoner, or possesses information against his general character, not before the Court which released him, they are at liberty on this separate evidence, to re-apprehend him, and to proceed respecting him as the Regulations provide.

With regard to the Criminal Court occasionally sending their proceedings to the Magistracy, the Judges would be sorry to discourage such a practice where, in the spirit of Regulation III. 1817, it may be found free from inconvenience; but they think that every purpose for which these proceedings can be required by the Magistracy will be accomplished by the Criminal Court briefly communicating to the latter, the extent to which the proceedings before them may implicate others not sent in to

them as prisoners, particularizing the witnesses to the facts against such persons, giving an abstract of their evidence, and describing the sources whence farther information appears to be procurable by the Magistracy.

31ST DECEMBER, 1828.—A.

Read letter from the Provincial Court of Cirenit for the Southern Division, submitting a correspondence between the Magistrate of Tinnevely and the Joint Criminal Judge of Madura, respecting the latter having returned to the former Officer, a Criminal case, without investigation; on the ground that it was one of which the Magistracy were competent finally to dispose.

The Foujdaree Udalut concur in the opinion with the Judges of the Provincial Court that the Joint Criminal Judge was not justified in adopting this proceeding. It was his duty to inquire into the circumstances of the charge; and should it have appeared, at the close of the enquiry, that the prisoners were liable to an inferior degree of punishment, the Joint Criminal Judge should have passed sentence accordingly. But, the re-transmission of cases by a Criminal Court to the Magistracy or the Police is no where permitted by the Regulations; and must tend in every instance to the obstruction of Criminal justice, and the inconvenience and injury of individuals. At the same time the Magistracy ought to guard against over-loading the Criminal Court with cases punishable by themselves or the Police under them—and instances of such should invariably be brought by the Criminal Court to the notice of the Magistrate.

31ST DECEMBER, 1828.—B.

With reference to Regulation VIII. of 1828, which has just been published, I am directed by the Judges of the Foujdaree Udalut to transmit, for your information, the enclosed correspondence with Government, and to desire that copies thereof may be circulated by you, without delay, for the information and guidance of the Criminal Courts, and the Magistrates, respectively in your Division.

Extract of a letter to the Secretary to Government, in the Judicial Department, under date 19th June, 1828.

The Judges think that the most convenient mode of keeping up the supply of Cats-of-nine-tails will be to furnish every public Officer who has authority to use them with two in the first instance; and to direct that one only of the two shall be kept in use till it requires repair; when it shall be sent, by Heads of Police to the Magistrate, and by Magistrates, Criminal and Joint Criminal Judges to such Depot as shall be directed by Government to have the necessary repairs executed and be returned as soon as they are completed.

Extract from a letter from the Judicial Secretary to Government, under date 20th June, 1828.

The Statement of the number of European and Native Officers in the Provinces who are vested under the Regulations with the power to inflict stripes, which accompanied the foregoing letter, is observed to be framed on an incorrect principle inasmuch as it does not exhibit the proper

complement of European Officers in each District, but merely the number actually employed at the present time; in the event therefore of vacancies being filled up hereafter, the number of Cats-of-nine-tails provided according to the statement in question will be insufficient—The necessary additions having been inserted in red ink it appears that the total number of Officers to be supplied with Cats-of-nine-tails is 369. Separate supplies for 2d Assistants to Magistrates are not deemed necessary, when requisite, those Officers can be furnished with Cats-of-nine-tails from those supplied for the use of the Magistrate and the Head Assistant.

Resolved, that each of the Officers empowered by the Regulations to order the infliction of stripes be furnished, in the first instance, by the Secretary to Government in the Judicial Department, with three Cats-of-nine-tails prepared at the Arsenal of Fort St. George: and that the Military Board be directed to comply with the requisitions of Magistrates, Criminal and Joint Criminal Judges for the execution of such repairs as the instruments may hereafter require, and for the supply of as many new ones as may be found necessary. The Foujdaree Udalut will be desired to issue the circular instructions proposed in the 2d Para. of the foregoing letter, as soon as the usual number of printed copies of Regulation VIII. 1828, shall be furnished to them from this Department.

8TH JANUARY, 1829.

I am directed by the Judges of the Foujdaree Udalut to enclose, for your information and guidance, copies of the correspondence noted in the margin and to desire that you will circulate the same to the several Criminal Courts, and Magistrates, in your Division.

In reference to the new law therein alluded to, which has been passed, and will be speedily promulgated, you will call upon the several Criminal Courts to transmit, for the present, and each subsequent month, a statement similar to that prescribed by Section XXXV. Regulation X. of 1816, and you will forward the same to me monthly, instead of quarterly, as hitherto, explaining in your proceedings, to accompany the same, any orders issued by you as before directed.

With respect to the half-yearly Criminal statements, to be forwarded by your own Court, and by the Criminal Courts, and Magistrates respectively, I am directed to enclose for your and their guidance the forms No. 1 and 2 to be filled up by the Magistracy, the form No. 3 by the Criminal Court and form No. 4 by yourselves.* It is intended that these forms should embrace the periods from the 1st of January to the 30th June, and from 1st July to the 31st December, in each year. They are now circulated for the information of the several subordinate tribunals, but before the period for their transmission on the 30th June next arrives, printed forms, to be filled up, will be sent to you. For the last half year of 1828, the forms hitherto in use are to be observed.

No. 89.

To the Secretary to Government in the Judicial Department.

The Judges of the Foujdaree Udalut, direct me to acknowledge the

* Forms omitted.

receipt of your letter, under date the 2d September last; and in conformity with the orders of the Right Honorable the Governor in Council, to submit the enclosed draft of "a Regulation, for rescinding such parts of the existing Regulations, as prescribe forms for periodical Reports, Calendars, Registers, or other statements, to be submitted by Civil or Criminal Courts, and require the same to be forwarded at periods specified."

The proposed enactment rescinds such part of the existing Regulations, both in the Civil and Criminal Departments, as prescribes forms for the statements, to be submitted by the several judicial tribunals, or requires them to be forwarded at particular periods, and leaves it to this Court, subject to the orders of the Government, to determine the same as circumstances, from time to time, may require.

In the event of the adoption of the proposed enactment, this Court solicit the sanction of Government, for requiring the statements alluded to in Section XXXV. Regulation X. 1816, to be submitted monthly, as recommended in the 5th para. of my predecessor's letter, under date the 27th August last.

I am also directed to submit, for the sanction of Government, the enclosed five new forms, for the half-yearly criminal returns, which the Judges have drawn out, in order to furnish all the information desired by the Honorable the Court of Directors in their dispatch of the 21st March, 1827.—It will be perceived that "*Petty Offences*," have been more clearly separated from "*Crimes and Misdemeanours*;" and that, besides a separate view of the proceedings of the village Police, the District Police, the Magistracy, the Criminal, Circuit, and Foujdaree Courts respectively,—charges, wilfully false and malicious have in all instances been distinguished from others; all offences ascertained to have been committed have been arranged under distinct heads; and the punishments inflicted by each tribunal have been classed, so as to distinguish them clearly. In the two first statements, including the Police and Magistracy, columns have been newly added to exhibit the offences, of the committers of which no one has been discovered. Considerable pains have been taken to render these new returns complete; and it is hoped that they will meet the wishes of the Government.

In conclusion, I am directed to submit, for the sanction of Government, the enclosed form of a half-yearly statement in the Civil Department, shewing the number of prisoners confined for debt, which, in conformity with the orders of the Honorable the Court of Directors, in para. 71 of their dispatch above-mentioned, it is proposed hereafter to require the Zillah Judges regularly to transmit.

No. 633.

Judicial Department.

To the Judges of the Foujdaree Udulut.

I am directed by the Right Honorable the Governor in Council to acknowledge the receipt of your Register's letter of the 10th instant, No. 89.

The draft of a Regulation which accompanied it having, with some slight alterations, been approved and adopted; the proposed Regulation has been passed, and will be promulgated in the usual manner.

Agreeably to your recommendation, the Right Honorable the Governor in Council, sanctions the measure of requiring from the Criminal Judges the monthly, instead of quarterly, transmission of statements similar to those prescribed by Section XXXV. Regulation X. of 1816.

The Right Honorable the Governor in Council also approves and sanctions the five new forms which accompanied your Register's letter for the half-yearly criminal returns, as well as the form of a half-yearly statement to be furnished by the Zillah Judges, shewing the number of prisoners confined for debt.

23^D FEBRUARY, 1829.

With reference to my letter, under date 8th January last, I am directed by the Judges of the Court of Foujdaree Udulut to transmit to you, for circulation to the several Magistrates in your Division, the enclosed printed forms for the half-yearly criminal statements, to be filled up by them, and to communicate to you, for their information, the following remarks thereon, in consequence of a letter addressed to the Provincial Court, in the Centre Division, by the Magistrate of Cuddapah, and forwarded by them on the 13th instant.

The "false complaint of offences specified in _____," which forms the 8th item in the first statement, has reference to Section XXXV. Regulation IX. 1816; and the blank is to be filled up by quoting either Section XXXII. or XXXIII. or both these Sections of that law.

In the statement, No. 2, the column 3, will contain all the cases specified in column 21; because if the person who committed a crime is not "discovered" or ascertained, he cannot be "apprehended;" but it will also contain, in addition, those who have been discovered, but have as yet eluded seizure by the Police.

Theft is distinguished from robbery by its being a *secret* taking away, whilst the other is *open*, by violence or dread.—Any robbery, by more than one individual, is gang-robbery and is to be classed as such.—It is hardly necessary for the Judges to add, that this explanation for the guidance of the Magistracy in filling up the enclosed statements does not affect, in any respect, the definition of the crime technically known to the Judges of Circuit, by the name of "robbery by open violence," as explained in Section III. Regulation XV. 1803.

By the term *misdemeanour*, the English law distinguishes all indictable offences which do not amount to felony, from felony itself, but in the enclosed statements, the words "*crimes and misdemeanours*," are used as including offences, both of a higher and a less atrocious description punishable by the Criminal and Superior Courts, as contradistinguished from the "*petty offences*," punishable by the Magistracy, or the Police under them, specified in No. 1.

25TH FEBRUARY, 1829.

Read letter from the Register to the Provincial Court of Circuit for

the Centre Division, forwarding a correspondence with the Magistrate and Acting Joint Criminal Judge in Cuddapah, whence it appears that two travellers preferred a complaint that they had been robbed by the same persons whilst travelling together on the road; but that the Amildar, in forwarding the accused to the Criminal Court, divided the case into two, sending each of the complainants as prosecutor in the one and witness in the other, apparently under orders issued by the Magistracy in 1825, with the view that the absence of witnesses might not facilitate the escape of offenders.

The Provincial Court, upon this, refer two points: first, whether such a case should have formed one or two distinct charges; secondly, the degree of credence to be given to the evidence of prosecutors, in the absence of all other testimony.

If two or more crimes of the same description, are charged against the same prisoners, as having occurred during the same time, and at the same place, though upon different individuals, the case is clearly one, and should be sent in as a single charge, under separate counts.—But if the time and place of the alleged crimes be different, though the prisoners are the same, each case must be kept distinct and forwarded separately. The Judges concur in opinion with the Provincial Court, that the case under reference was of the former description.

With respect to prosecutors, the Judges believe it to be very generally supposed that prosecutors are not competent witnesses. Now, in criminal prosecutions, unless the injured or suffering party were admitted as a witness, few, and in some cases, none beside might have a knowledge of the fact, and crimes might pass unpunished. It has therefore long been a principle of English law that, even where the prosecutor may be entitled to a reward, on the conviction of the prisoner, his competency as a witness is unquestionable, and recent enactments extend this rule, by abolishing the exception formerly made against the evidence of the party whose bond is forged, to prove that fact, in cases of forgery. The Judges are of opinion that the same principle of the law of evidence extends to this country; and that in all criminal cases the prosecutor is to be considered a witness perfectly competent.

As to the credence due to the evidence of prosecutors, each case must be considered by itself. Experience induces the Judges to believe that, in this country, it would be unsafe, generally, to found on it alone, uncorroborated by circumstantial evidence of some kind or other, the conviction of the accused. At the same time it seems sufficient for committal, and inquiry after such further evidence; and where more than one prosecutor, perfectly unconnected with each other, whom there may be no reason to suspect of pre-concerted evidence, give clear and consistent testimony—the Judges will not take upon themselves to say that peculiar cases may not occur to justify conviction thereon—but when even a single prosecutor, of good character, is corroborated by the immediate pursuit—accusation and arrest of the party—more especially by part of the stolen property being traced to the accused ample circumstantial evidence may be elicited to his conviction, notwithstanding the prosecutor may be the sole eye witness of the crime.

*Explicated
in F. C.
Pro. C. M. 1851.*

Vide C. O. 27th
July 1832.

10th MARCH, 1829.

Read letter from the Provincial Court of Circuit for the Western Division, referring for the decision of this Court, at the request of the Joint Magistrate of Malabar, "whether or not Native Officers of Police, employed within the limits of Military Cantonments, under the Provisions of Regulation VI. 1821, are amenable to the provisions of Regulation III. 1819."

Section III. Regulation XI. 1816, abolished the former Civil Police, and established a new description of Civil Police, as therein enumerated, placed under the Civil Magistrate.

But Regulation VI. 1821, transferred the Police in Military Cantonments, in certain cases, to the Officers commanding; and although Section III. contemplated their apprehending and discovering Criminals "by means of the troops under their command," Section VII. placed this Police, subject to the orders of the Officer Commanding, under the immediate superintendence of the Commissariat Officer, under whom the Judges perceived, in the course of their preparation of the new Military Bazar Regulation, lately submitted to the Government, that the General Orders to the Army have placed an established of Cutwalls and other inferior Native Police.

When the misconduct of a portion of this Police was brought before the Government by this Court in 1822, the Honorable the Governor in Council observed, "it is no part of the duty of those by whom such prisoners may be apprehended within the limits of Military Cantonments to receive their confessions; and any cruelty or ill usage towards them, either in taking confessions, or for any other purpose, must be punishable as the same offences would be punishable if committed by other persons."

Regulation III. 1819, after rescinding the enactments in Regulation XI. 1816, for the punishment of the Civil Police, then the only Police in existence, goes on to declare in Section III. that "all Native Officers of Police shall be liable to be sued in a Zillah Court, or to be prosecuted in a Court of Criminal Judicature" for extortion oppression, or any abuse of authority.

It is evidently to this general enactment, including the "Native Officers of Police" of every description, that the Government alluded in the foregoing orders; and the Judges of the Foujdaree Udalut are satisfied that the provisions of that law apply to the Native Police under the Commissariat in Cantonments, as much as to that under the Magistrate elsewhere.

Had any doubt existed on this point, the Judges would have proposed a declaratory enactment to this effect, in the new Regulation which they lately forwarded to the Government, for the information before them, shews that the Police in question, from want of due control, is peculiarly liable to fall into error and abuse.

18th APRIL, 1829.

To the Judges of the Foujdaree Udalut.

"I am directed by the Right Honorable the Governor in Council, to transmit for your information and guidance, the annexed extract from a letter to the Military Board."

Extract from a letter to the Military Board, dated the 17th March, 1829.

"As it would be contrary to Section V. of Regulation VIII. of 1828, to permit the lashes of cats-of-nine-tails to be either made up or repaired in the Provinces, as proposed, it will be necessary that they continue to be prepared and issued from the Military Stores as at present, and the Magistrates will be directed to transmit from time to time to the Arsenal at Fort St. George, the handles of all the Cats of which the lashes may be worn out."

21ST APRIL, 1829.

Vide C. O. 23d
Jan. 1832.

The object which the Right Honorable the Governor in Council, had in view in directing the statements of the Criminal Judges to be forwarded monthly, from the commencement of the present year, instead of quarterly as before, will be entirely frustrated, unless the several Provincial Courts enforce the due and early transmission of these documents, and submit them regularly to this Court within the month after they are due.

It is, therefore, with great regret the Judges have found that the Western Court alone has forwarded these documents for the months of January and February last, and that, in the month of April, they are still due from the other three Provincial Courts for these two months.

I am accordingly directed to bring this omission to your notice, and to desire that it be remedied and that effectual measures be adopted to ensure the prompt transmission of these returns.

29TH APRIL, 1829.

Extract from the Minutes of Consultation, dated the 21st April, 1829.

"Read the following letter from the Acting Senior Deputy Register to the Foudaree Udalut.

The Right Honorable the Governor in Council concurs in the opinion expressed by the Judges of the Foudaree Udalut in the 2d para. of the foregoing letter, and resolves that the rule therein mentioned, that the rate of Batta to be allowed to any Native servant of a Provincial Court on Circuit should never exceed half his salary, be adopted, as regards the Provincial Courts in the Southern and Western Divisions.

The Right Honorable the Governor in Council, however, is not disposed to extend it to the other Provincial Courts in the Centre and Northern Divisions for the reasons urged by the Judges of those Courts."

30TH APRIL, 1829.

Vide C. O. 25th
Feb. 1824.
22d May 1828.
20th July 1829.

The Judges of the Court of Foudaree Udalut having observed, in several cases that prisoners have been required by the Judges on Circuit, the Criminal Courts, and the Magistrates, to give security for their appearance or good behaviour for a much longer period than that for which they are required to be detained in gaol in default of finding such security, and *vice versa* that prisoners have been required to give security for

their good behaviour or appearance for a much shorter period than that for which, in default of finding such security, they are required to be detained in gaol, have directed me to bring to your notice their Circular Orders under date the 31st of October 1828, which declare that the intent of Regulation VI. of 1827, is clearly, "that the term for which security, whether by personal recognizances or by the responsibility of sureties, is to be given, and the term for which a prisoner may be detained in confinement in default of giving security, should be the same."

14TH MAY, 1829.

1. The Court of Foudaree Udalut having reason to believe it to be a prevalent opinion that a Judge on Circuit, or presiding at a Quarterly Sessions, has no authority, under the Regulations, to take cognizance of any proceedings of a Magistrate in cases not included in the Calendars laid before those Courts respectively, resolve to circulate for general information and guidance the following abstract of their proceedings under date 4th April 1822, upon certain references from the then Second Judge of the Provincial Court of Circuit in the Western Division.

2. It is only necessary to premise, as the occasion of the said references, that upon a Petition to the Judge on Circuit complaining of certain proceedings on the part of a Magistrate (in a case *not* entered in his Calendars) those proceedings having been called for, the Magistrate made a return that the case coming under the Provisions of Section VII. Regulation IV. of 1821, his proceedings were not recorded. The question then arose whether under those circumstances the Judge on Circuit was empowered to interfere.

3. The Court of Foudaree Udalut ruled that as the Magistrate in the case in question was not required by the Regulations in force to make his examinations matter of record, the order of the 2d Judge calling for copies of the proceedings held by the Magistrate in the case was not regular; "but that it was competent to the 2d Judge to refer the Petition to the Magistrate, calling upon him to report whether or not the facts therein alleged were correctly stated."

4. The Authority given to the Court of Circuit to receive petitions, and the obligations imposed on that Court by Clause Third, Section XL. Regulation IX. of 1816, to make a report to the Foudaree Udalut "whenever it shall appear to them that the Magistrates have been guilty of neglect or misconduct in the discharge of their duty," appeared to the Court of Foudaree Udalut to require that the Magistrates should furnish such explanation, when the Judge of Circuit might see fit to call for it.

5. The Court went on to remark, that "had the Magistrate on the present occasion been able to certify that he had proceeded in the manner and decided under the authority vested in him by the Regulations, the provision which relieves him from taking written evidence in cases whereon he is competent to decide, would have precluded a revision of his orders."

6. The Court having also on the same occasion been called upon by the Government for their report upon the proceedings of both officers, in

consequence of the Magistrate having questioned the legality of the orders which had been issued by the 2d Judge, deemed it necessary to state distinctly their opinion "as to the power of a Judge of Circuit to pass orders on petitions, complaining of the proceedings of a Magistrate, on cases determinable by him," and they proceeded accordingly to observe, that in their opinion this power "is confined in the first instance to a reference for explanation, when sufficient ground may appear for requiring it, and that when the Petitioner may allege acts unauthorized by "or in violation of the express enactments of the Law, which, as in the present case, may be acknowledged by the Magistrate, it is the duty of the Judge on Circuit to refer the case to the Court of Foujdaree Udalt, "and to suspend the operation of any penal sentence unwarranted by law, pending such reference."

21st MAY, 1829.—A

The Court have repeatedly brought to the notice of the Magistrates the illegality of the Police Officer's proceedings in referring to the Magistracy respecting cases cognizable by the Criminal Court, thereby occasioning very considerable and unnecessary delay in the transmission of prisoners to the Criminal Courts. By Clause fourth, Section XXVII. Regulation XI. of 1816, the Tahsildar is directed to act upon his own responsibility in sending cases to the Criminal Court, without reference to any other authority. The Tahsildar should understand that, after he has taken evidence sufficient to satisfy himself of the prisoner's guilt, notwithstanding other prisoners remain to be apprehended, or other witnesses to be examined, the prisoner of whose guilt he is satisfied, and the witnesses already examined, should be sent off at once, to the Criminal Court, with a report, stating that the others will be afterwards forwarded.

The Judges desire that this be once again brought to the notice of the several Magistrates, and trust that these remarks may have the effect of inducing Tahsildars to attend more strictly to their duty, but should the result prove otherwise, they desire the Magistrates will compel them to do so, and prevent them from making unnecessary references to the Magistracy.

21st MAY, 1829.—B

Vide C.O.S.Nos.
38, 43 and 48.

Read letter from the Provincial Court of Circuit for the Western Division, submitting a correspondence with the Criminal Judge in Malabar.

In these papers the Criminal Judge in Malabar requests a reference to this Court, on the question, whether in Criminal cases cognizable and punishable by the Criminal Court itself, it is imperative on the Criminal Judge to grant to the accused "the privilege of a defence and witnesses."

The doubts which the Criminal Judge entertained on this head seem to have had their origin, in the legislature, specially providing for this, in cases where specific crimes have newly been made cognizable by the Criminal Court, but omitting to provide for it in Section IX. Regulation X. 1816, granting them general jurisdiction originally.

The reason for this omission seems to have been, that the Section in question not only alluded to cases finally adjudicable by the Criminal Court, but to those also which it may be their duty to commit for trial before a higher tribunal, where alone it is necessary, in that event, to enter into the prisoner's defence.

The universal practice of all the Courts from their first institution, the most obvious principles of justice, the general analogy of the code, and the fundamental rules of British law grant a "defence and witnesses" to a prisoner, not as matter of privilege, but of right; and so essential do the Judges consider this to the due administration of justice, and that humane consideration for the accused which ought to distinguish every British tribunal, that any neglect of so indispensable a duty would necessarily call for the severest notice.

The Judges on the 28th January 1828, expressly stated that this must be the course of proceeding, in all cases of crime punishable under the Mahomedan law. - They now desire further to explain that in cases punishable under the Regulations, the same course of proceeding should be observed, whether specially directed in the Regulations or not.

27th MAY, 1829.

Read letter, dated the 22d ultimo, from the Provincial Court of Circuit in the Northern Division, with a copy of a reference, under date the 10th, from the Criminal Judge of Nellore.

The Criminal Judge doubts the propriety of sentencing afresh, or demanding security from, a person already convicted and undergoing his sentence, for a second crime committed before that sentence was passed.

The question appears to have been very fully considered, and determined, by the Judges of this Court so far back as the 8th February, 1811, as will be seen by the following extract from their proceedings under that date.

"The Court direct that the Court of Circuit be instructed that a prisoner, who has been tried and convicted of robbery, and received a judgment of the specific penalty, cannot be tried on another charge, subsequently brought against him, for an offence, in all respects the same, committed antecedently to his trial and conviction. But if the robbery subsequently charged against him were attended with homicide or other act of aggravation, incurring a greater punishment than that which he may have been sentenced to suffer; or if the charge be for murder; or if for robbery only, and the case already tried not having been fully proved, the Futwah may have declared the prisoner liable to discretionary punishment only, the measure of which, in consideration of circumstances altering the nature and diminishing the criminality of the offence, may have been fixed by the Court below the specific penalty, in either of these cases such prisoner must be brought to trial on the further charge; and if the further charge be proved, the punishment pronounced against him on the former trial will be lost in that which necessarily follows conviction of the greater offence."

The present Judges concur entirely in the propriety of these orders. When an offence is newly discovered, which had been committed before sentence had been passed for that of which a prisoner is convicted, if the new offence be minor or equivalent to that of which the prisoner has been convicted, the punishment for it merges in the sentence the prisoner is already undergoing; but if the new crime be of a more grave description than that of which the prisoner has been convicted, its superior enormity requires a new trial; and the sentence passed on it, if more

severe, will no doubt take into consideration the minor sentence, the prisoner is already undergoing for the lower offence.

1st JUNE, 1829.

The Judges of the Foudaree Udalt having observed, in various recent reference made by the Judges on Circuit, that their several orders of the 29th October, 1807, 21st February, 1822, 20th June, 1822, 12th September, 1823, and 27th April, 1825, respecting insane prisoners, have left the course of proceeding to be adopted in such cases doubtful and obscure, have resolved to explain the same by the following order, in which the substance of those formerly issued is compressed.

It will continue to be the duty of the Magistracy to send to the Criminal Judge, or Joint Criminal Judge, all insane persons, from whose insanity they may have reason to apprehend fatal effects, unless their friends shall enter into engagements to take such care of them as to prevent the possibility of their doing any mischief.—Where there may be no European Medical Officer attached to a Joint Criminal Court, the Joint Criminal Judge shall forward such persons to the Criminal Judge.

Such persons shall be confined in the hospital, attached to the gaol, under care of the European Medical Officer. On his report, the Criminal Judge, or Joint Criminal Judge, may restore them to the charge of their friends, without applying for special permission from the higher Courts; but in cases considered by the Medical Officer to come under the description of confirmed lunacy; where the liberation of the party would be dangerous to the community, such persons are to be forwarded by the Criminal Judge, or Joint Criminal Judge, under proper custody, to the Superintendent of Police at Madras, in order that they may be lodged in the Lunatic Hospital. In all such cases, the lunatics are to be accompanied by the certificate of the European Medical Officer on their case.

4. A report is to be made by the Criminal Judge, or Joint Criminal Judge, to the Judge on Circuit, of all such persons confined in the Hospital of the gaol for a period exceeding six months; and it shall be competent to that Officer to issue such orders respecting them, as he may deem necessary, reporting, in a special manner, for the orders of the Foudaree Udalt, the cases of all such persons as may have been confined for 12 months, or upwards, and not deemed fit subjects for the Lunatic Hospital at Madras.

5. Persons charged with having committed any criminal act in a state of insanity, such as, supposing them sane, would render them on conviction liable to punishment, shall be brought, in the usual manner, before the officer who has cognizance of the crime of which they are accused. In all such cases brought before the Criminal Court, the European Medical Officer attached to the gaol shall have such prisoners placed under his immediate charge, in the gaol Hospital: and in cases cognizable by the Court of Circuit, the Criminal Court shall take evidence, not only as to the act charged against the prisoner, but as to the state of his mind when the same was committed.

6. When such persons are brought before the Officer who has cognizance of the crime with which they are charged, he shall investigate the

state of their mind when brought to the bar; and if they be then in an undoubted state of sanity, he shall place them on their trial; when the state of their mind at the time of the act charged against them will form a natural object of inquiry, together with all the circumstances that attended the commission of the crime with which they stand charged. If the mental derangement of the prisoner at the time of the crime charged against him is established, he will of course be acquitted, and the same recorded in the usual manner.

7. When it may appear to the officer who has cognizance of the crime with which such persons stand charged, that they are in a state of insanity when brought to the bar, he shall not proceed to the trial; but shall enter into an investigation, with a view of ascertaining, whether their insanity is absolute, and whether the crime charged was committed by them under such absolute deprivation of reason. If both of these points are established in the affirmative, though want of reason excuses from guilt, and consequently from punishment, yet, with a view to the public safety, he shall direct the prisoner to be detained in confinement, subject to the orders of the Foudaree Udalt, to whom he shall report all the circumstances of the case, with the opinion of the European Medical officer attached to the gaol Hospital, as to whether the prisoner is a fit object for confinement in the Lunatic Hospital at Madras. If, on the other hand, it appears that the prisoner's insanity is only partial, or that he has lucid intervals, he shall be remanded to custody, until he is in a fit state to be placed on his trial—provided that, after such remandment, no such person shall be continued in confinement for a period exceeding 12 months, without a special report of all the circumstances of his case being made to the Court of Foudaree Udalt, by the Officer in whose custody he may be, at the expiration of that period.

Modified by C.
O. No. 133.

8th JUNE, 1829.

The Judges desire that you will instruct the several Criminal and Assistant Criminal Judges within your Division, immediately to report the deaths of prisoners, whose trials are under reference to Madras, to the Circuit Judge who tried them, who will instantly communicate the same to this Court.

13th JULY, 1829.

Read letter from the 2d Judge of the Provincial Court in the Western Division, stating his objections against the construction given by this Court to Section V. Regulation VI. 1822. Vide C. O. No. 29.

It appeared on a former reference from the 2d Judge of Circuit, that he doubted the power of a Criminal Judge to sentence a prisoner to the punishment provided in Section V. Regulation VI. 1822, for escape, in addition to 2 years' imprisonment and 30 stripes, which, in ordinary cases, is the limit of his authority.—But this Court ruled that the offence of escape is distinct from all others, because it must be in addition to a former offence, or at least to an accusation of one; and that the Criminal Court had clearly the power to order the punishment provided in the said Section, on a conviction of escape, in addition to any other punishment which a prisoner may be undergoing for a distinct offence,

or to the imprisonment to which he may have been sentenced for default of security.

Under the further arguments, urged by the 2d Judge, the Court of Foujdaree Udalut see no reason to alter the construction of the law. It clearly applies both to convicts under sentence, and to prisoners not convicted, held to security, as well as to persons apprehended and detained in custody on a criminal charge previously to trial, on whom a minor punishment is to be inflicted. It accordingly includes all criminal prisoners convicted, or not, escaping either from gaol, or from the custody of their guards; and the Judges think that it also applies to accused persons, under charge of the police, who may escape from their guards before they are delivered to the Criminal Court, or to the Magistracy.

Vide C. O. No. 150.

By Section XXIII. Regulation VIII. 1802, all guards in charge of convicts who escape are liable, for wilful neglect to dismissal, and for connivance or further criminality to trial before the Court of Circuit.—By Clause first, Section VII. Regulation I. 1810, which continues unrescinded, "this provision is extended to guards having had charge of prisoners who may escape from their custody, whether before, or after, conviction."

Connivance on such occasions can be proved only by circumstantial evidence. If it be proved that the guards have been bribed, or tampered with; that the escape occurred in the open day, without their resistance, or that the usual precautions for securing the prisoner were purposely omitted, connivance may be clearly inferrible, and the guards punishable accordingly.

20TH JULY, 1829.—A

I am directed by the Judges of the Court of Foujdaree Udalut, to transmit to you the enclosed extract from the Minutes of Consultation, under date the 10th instant, and to desire that copies of the same may be circulated to the Criminal and Joint Criminal Judges and Magistrates, in your Division, for their information and future guidance. It will no longer be necessary to forward either indents for cats-of-nine-tails, or the cats themselves to this Court. They should be transmitted to the Military Board direct.

Vide Ext. Min. Cons. 20th Apr. 1830. Appendix F.

"Extract from the Minutes of Consultation, under date 10th July 1829.

Inconvenience and delay having been experienced under the operation of the orders, under date the 17th March last, whereby indents, for the supply of cats-of-nine-tails are required to be forwarded to the Military Board through the Court of Foujdaree Udalut; resolved that the Criminal Judges and Magistrates be authorized to transmit their indents for the supply of new cats, and to return old ones for repair to the Military Board direct; and that the Military Board be desired to comply with requisitions so forwarded."

20TH JULY, 1829.—B

Adverting to para 7 of Mr. Woodcock's report, the Judges observe that, on visiting the gaols, the Judge on Circuit should call separately before him the prisoners held to security and confined for default in giving it; and that on any of them verbally stating their desire to petition,

the Criminal Judge should be instructed to furnish a proper person to draw out their statement in writing, without which the present law prevents the Circuit Judge from interfering. Ordered that the same be communicated for the information and guidance of the 4 Provincial Courts.

In reference to para 13 of Mr. Woodcock's Report, the Judges remark that, according to the present law, it is not necessary that charges dismissed by the Native Police should appear on the Calendars of the Magistracy. But if a complaint is preferred to the European Magistracy, against the subordinate Native Police, for the improper dismissal of a criminal charge, the same should invariably appear on the Calendars of the Magistracy, who in no case can omit recording every charge against their native agency.

As the reports from 5 to 9 inclusive, in the Appendix to Regulation X. 1816, are now transmitted monthly to the Courts of Circuit, collectively, who issue orders thereon before forwarding them to this Court, the Judges concur in opinion with Mr. Woodcock, that the Calendars to be forwarded to the Judge on Circuit, under Section XXIII. Regulation X. 1816, and Section VI. Regulation VI. 1822, need no longer be prepared in English, but merely in the native language of the district, reserving to the Judge on Circuit the power of calling for a translation of any part of the same.

20TH JULY, 1829.—C

Read letter from the 1st Judge on Circuit in the Western Division, submitting, whether under the provisions of Regulation II. 1822, as modified by Regulation VI. 1827, the Criminal Court, in cases not punishable by it, but by the Higher Courts exclusively, is competent, on failure of full proof of a specific offence, to hold the prisoner to security on the ground of strong suspicion of his guilt, or whether such security is demandable only by the higher Court, which has cognizance of the crime charged. Vide C. O. Nos. 13 and 31.

Clause first, Section IV. Regulation II. 1822, provides that "in all cases brought before a Criminal Judge," he can exercise the power in question; and the Judges think that he is competent to exercise it in cases of every description, whether the original charge involves a crime punishable by himself, or only by the higher Tribunals.—It would be no less contrary to the Regulations, than distressing to the suspected, were such persons refused the option of release on security, and incarcerated until the arrival of the Judge on Circuit.

But a prisoner should never be committed for trial, unless there are reasonable grounds to believe that the evidence forthcoming will be found sufficient for his conviction. A committal on insufficient evidence has the most mischievous public consequences. A criminal put thus on his trial is, necessarily, acquitted, and though the clearest evidence may afterwards be found against him, he cannot be tried again. When the evidence is not sufficient for conviction, but enough to raise strong suspicion only of the guilt of the accused, the proper course for the committing officer to pursue is to hold him to security, and to take the necessary steps for procuring additional evidence, which, if it is procurable at all, will generally be found, within the year. If it is not

Not affected by C. O. No. 159.

Vide C. O. 16th Nov. 1831. 15th Feb. 1839.

found within that time, it may afterwards be procurable, and then the accused may be again taken up.

When the Police Officers send up a case, with defective evidence, the Criminal Judges should never omit to stimulate them, through the Magistracy, to farther exertions. It is apprehended that from want of direct communication with the Native Police, or from the apparent hopelessness of the attempt, this is too frequently omitted; but the Police Officers should be made to feel by experience, that they save themselves no trouble by a negligent investigation of any case in the first instance; and the Criminal and Circuit Courts must take blame to themselves for many improper acquittals, if they do not imitate Mr. Newnham's excellent example, of deferring the trial, until every possible evidence is forthcoming.

Mr. Newnham, however, appears to confound the "strong suspicion," which authorizes the requisition of security with the "strong presumptive proof;" (Zunni-i-ghalib,) which authorizes a conviction of the crime charged, though not the infliction of the prescribed penalty, under the Mahomedan Law. But if there is evidence to raise "strong presumption," the prisoner ought undoubtedly to be committed for trial. The evidence which raises "strong suspicion" only, is much inferior to that which warrants "strong presumption." A conviction on strong presumption has often been erroneously understood to amount to nothing more than suspicion, strong indeed, but still mere suspicion; whereas, in fact, it is a full legal conviction of the offence; but the infliction of the prescribed punishment is barred, because the conviction is not grounded on the positive testimony of two competent eye-witnesses of ascertained or apparent credit, which the Moosulman Law peremptorily requires to warrant a sentence of *Hudd* or *Kissas*.

The "strong suspicion," warranting the requisition of security, must arise from a consideration of the facts disclosed according to English principles of appreciating evidence, and not according to the view which a Moosulman lawyer would take of it. Security should not be required on slight grounds; but if a sound discretion is exercised in this respect, the Judges do not think that, injustice can follow to the accused, although he has not an opportunity, in such case of examining witnesses on his behalf: for all prisoners confined, in default of giving security, can, by petition, bring their cases under the consideration of the Judge on Circuit; and if under Clause third, Section IV. Regulation II. 1822, as modified by Clause second, Section VIII. Regulation VI. 1827, he is of opinion that the prisoner ought to be released, or brought to trial, for the specific offence, instead of being held to security, the Judges are of opinion that the Circuit Judge is competent to "pass such order as may appear just and proper," according to the construction given to these laws, in the 17th para of their proceedings of the 23d October, 1827.

5TH AUGUST, 1829.

The Judges of the Foujdaree Udalut direct, that where the actual crime proved may be of a character different from that recorded in the abstract of the charge, the same be invariably noted, for the information of the higher Courts, in all returns, calendars and statements.

27TH AUGUST, 1829.

With regard to the reference contained in the last para of the letter from the Criminal Judge of Combaconum, under date the 18th ultimo, viz. "Whether it is necessary for a Criminal Judge to examine all cases that are sent up and to pass sentence, whether the parties will prosecute or not, and if the Prosecutors can be compelled to prosecute, or whether in such cases the Government Vakeel should be empowered to prosecute in the room of those declining:"—The Judges desire the several Provincial Courts will instruct the Criminal tribunals in their respective Divisions that it is illegal to admit any compromise in cases of a heinous nature, in which description are included all cases forwarded to a Criminal Court. If the complainant declines to prosecute, the Government Vakeel should be directed to conduct the prosecution.

29TH OCTOBER, 1829.

The Judges are of opinion that it is desirable the several Provincial Courts should observe one uniform system in revising the monthly returns received by them from the several Criminal tribunals in their respective Divisions. For this purpose, it is resolved to direct them, by precept, to take into consideration, at one and the same time, all the returns made to them, for each month respectively, by the different Criminal tribunals; and to record their observations thereon, not in the shape of a letter, but in the form of an extract from their proceedings, prefixing thereto general abstracts of the whole, in the forms given below.

By this proceeding, the Provincial Court will be able to compare at one view, the labours performed by one, with that executed by another tribunal.—They will specially call for explanations when the cases before the Criminal Courts do not appear to be decided with sufficient promptitude: and before recording their observations on the cases before each Court, which may call for remark, they will submit such general remarks as the statements in question may suggest. They will then record under the head of each Court such observations as the particular cases may call for, and submitting an extract of their whole proceedings, with the usual statements to this Court, they will forward to the subordinate tribunals the remarks applicable to each respectively.—The system here laid down is that already, in a great degree, followed by the Court in the Centre Division, but the Judges have considered it desirable to establish it universally and have modified the forms which the Judges there adopted, as follows.

5TH NOVEMBER, 1829.

I am directed by the Judges of the Foujdaree Udalut to transmit for your information and guidance the accompanying extract from the Minutes of Consultation, under date the 27th ultimo.

"Extract from the Minutes of Consultation, under date the 27th October, 1829.

"Resolved, that the foregoing letter, with the Statements which accompanied it, be brought to the notice of the Honorable the Court of Directors.

"Adverting to the facts stated in the 4th and 5th paragraphs of the foregoing communication, the Right Honorable the Governor in Council is of opinion that the attention of the Judges on Circuit should be drawn to the circumstance of so great a number of the persons apprehended and sent for trial to the Criminal Courts being there acquitted and released, in order that they may, by minutely examining a few of the cases in each Criminal Court, ascertain whether the acquittals are in fact to be ascribed to the insufficiency of the evidence forwarded by the Magistrates and Police Officers, or to sufficient weight not being allowed to the evidence by the Criminal Courts."

16TH NOVEMBER, 1829.—A

Resolved, to direct that the monthly criminal reports be submitted as soon as the whole for each month may be received by the Provincial Courts, and that such explanations as the Judges of these Courts may consider necessary to call for from the subordinate tribunals, be submitted to this Court so soon afterwards as they may be received.

16TH NOVEMBER, 1829.—B

I am directed by the Judges of the Court of Foujdaree Udalt, to transmit for your information and guidance, an extract from the proceedings of this Court, dated the 20th July, (and of the Minutes of Consultation thereon, under date the 27th October last,) and to desire, that you will call on the several Magistrates to furnish, through you, to this Court, on the 31st of December of each year, the detailed report on the Police therein referred to from themselves and their subordinates.

The Judges desire that the reports for the present year, be submitted by the Magistracy on the 31st of December next, along with the half-yearly returns up to that period.

Extract from the Proceedings of the Foujdaree Udalt, under date 20th July, 1829.

Para. 22.

"The Calendars submitted to the Judges on Circuit, and the cases tried by them, afford those Officers an opportunity of drawing inferences, and making suggestions, on the state of crime detected by the Police, which are occasionally valuable and important. But they possess no information on the most important branch of crime, which altogether escapes detection. It is to the Magistracy, whose superintending situation, local knowledge, and more slow and less extensive movement through each district gives them superior opportunities for collecting correct information, and affording the people free access to prefer complaint, that the Government must look for knowledge on this the most important department of all Police. It appears to the Judges that in submitting on the 31st December of each Calendar year the second half yearly statement of crimes committed, the several Magistrates might, with great public advantage, accompany it by a full report from themselves and their subordinates, on the state of the Police in their respective districts, having especial reference to those crimes, the perpetrators of which have altogether escaped detection. These reports being for-

warded to the Provincial Courts, would come before the Foujdaree Udalt, with such remarks as the experience and controul of the higher Courts, would no doubt enable them to add to the information of the executive Officers—and the whole might then be submitted to the Government in a concentrated form—This suggestion is accordingly recommended to the consideration of the Right Honorable the Governor in Council."

Extract from the Minutes of Consultation, under date the 27th October, 1829.

"The Right Honorable the Governor in Council, is not aware of any objection to the Magistrates being required, as suggested in the 22d paragraph of the proceedings of the Foujdaree Udalt, under date the 20th July, 1829, to submit with the second half-yearly statement of crimes committed, a full report from themselves and their subordinates on the state of the Police in their respective districts, having special reference to those crimes, the perpetrators of which have altogether escaped detection."

24TH DECEMBER, 1829.

The Judges direct that the four Provincial Courts do cause the Magistracy and Criminal Courts in forwarding their half-yearly statements, for the future to add up each column, and carefully to compare the columns which ought to correspond, so that no similar errors may be found therein. They should also be instructed to enter into these statements as few new heads as may be consistent with a proper classification of the crimes which have actually occurred. Thus, under a new general head of "Affrays" may be classed many offences separately entered in the present returns, such as "taking forcible possession," &c., under the existing head of "Sodomy," all crimes against nature may be entered, without any distinguishing detail; and, under "breaches of the revenue laws," and coin "offences relating to," several of the existing new entries may be classed.

25TH JANUARY, 1830.—A

I am directed to desire that in all future Circuits the gaol delivery of the prisoners committed by the Joint Criminal Courts be held at the stations where the Joint Criminal Courts are fixed, unless the Judge proceeding on Circuit, shall, from the paucity of cases or other valid cause, see reason to recommend their trial at the principal station of the Zillah, in which event he will make an early reference to this Court explaining, in detail, the grounds of such recommendation.

25TH JANUARY, 1830.—B

For the purpose of checking the abuses noticed in their proceedings See C. O. 27th of the 8th March, 1825, it appears to the Court to be desirable that the allowance to all prisoners in the Criminal gaols should be issued in the form of grain exclusively instead of money. It is also of importance to the discipline of the gaols that no luxuries, such as betel, tobacco, and opium, should be issued to the prisoners except on the requisition of the Medical Officer. See C. O. 25th January 1832. See C. O. 5th June 1832.

25TH JANUARY, 1830.—C

The Court concur generally in the observations contained in the 12th paragraph of Mr. Money's report. The proceedings of the Criminal Judges ought to be as public as possible, and held in a place to which all persons feeling an interest in them can have access. The Court resolve to call the attention of the several Criminal Judges to this point, and to desire that they hold all their proceedings in open Court, and that they certify all depositions of prosecutors and witnesses as having been taken on oath before them in open Court. The examinations of prisoners must be similarly certified, omitting the words "on oath."

8TH FEBRUARY, 1830.

Although the Regulations do not require the European Magistracy to give an explanation of every delay exceeding 48 hours in the transmission of prisoners, as they require the Native Heads of Police, yet it is obvious that any unusual detention of the accused, even by the Magistracy, must operate in favor of the prisoners, unless its necessity appears on the face of the proceedings, or is explained by those with whom it originated. It is not from any want of confidence in the Magistracy that this is required, but for the ends of justice, and every Magistrate should be anxious to afford it, to prevent the accused from misrepresenting his proceedings, or placing in a false light the delay which may have occurred. If the cause of delay is not obvious on the face of the proceedings, a short note in the paper forwarding the case to the Criminal Court might lead the tribunal which tries the case to a correct view of the subject, whilst the silence of the Magistracy might render them open to erroneous representations by the accused.

Vide C. O. 1st
April 1830.

On this account, the Judges consider it proper to direct that, in all cases of delay exceeding five days, the Magistracy explain its cause in forwarding the case to the Criminal Court, by a note to be appended to the paper sent with the prisoner.

4TH MARCH, 1830.

The question submitted, at the instance of the Assistant Judge, for the decision of this Court is, whether, in criminal cases, where the prosecution is by a third party, against a husband or wife, either of them is a competent witness against the other.

The Court have duly considered all the cases in Bengal, bearing on this subject, contained in pages 7, 145, and 182 of volume I, and in page 149, volume II, of the reported trials at that Presidency.

It does not appear to the Court that the question before them can be decided according to the technicalities of either the Mahomedan, or English Law. The various socialities existing in every country, may require a modification of the general principle which discredit the testimony of such as are directly interested in the issue; but as noticed by the Assistant Judge, the interest between husband and wife amongst Natives of India, is very different from that existing in European countries, or even in those where the Mahomedan faith is very prevalent, especially where, as in Malabar, there exists a plurality of "husbands among some classes, and of wives among others."

The Court are inclined to think that in the existing state of society in India, the safest general rule will be not altogether to exclude the testimony of either, whether for or against the other, but to let the objection go to the credit, rather than to the competency of such evidence. Where other sufficient evidence exists, it would be, obviously, very objectionable to make use of the testimony of parties thus situated.

11TH MARCH, 1830.

Extract from a letter from Government, dated 2d March, 1830.

"The Right Honorable the Governor in Council is pleased to direct that it shall be established, as a general rule, that Criminal Judges in supplying the Magistracy, or the Military, or other authorities, with convicts, shall send those whose sentences are shortest, keeping up the supply by new convicts as their sentences expire."

22D MARCH, 1830.—A

Ordered that the statement of crimes and punishments, already furnished to each of the Magistrates, be translated into the current language of the District, and furnished to each of the heads of the District Police, as directed by Government, with instructions to expose it in his Cutcherry for public information. Ordered, that the four Provincial Courts be by precept required to enforce this measure.

Ordered that copies of paras 7 and 8 (of the *Minutes of Consultation of the 5th March, 1830*) be forwarded to the four Provincial Courts, with directions to circulate the same for the information and future guidance of the Magistracy in their respective divisions.

Extract from the Minutes of Consultation, 5th March, 1830.

Referring to para 12th, of the Court's proceedings, the Right Honorable the Governor in Council remarks that the subject of the outward forms of respect to be observed towards the Courts of Circuit, has been frequently under the consideration of Government.

The Right Honorable the Governor in Council is fully sensible of the expediency of keeping up every proper demonstration of respect towards public Functionaries charged with the administration of justice, and of upholding in the eyes of the people, the dignity of an office in the upright and efficient exercise of which the security of life and property is deeply involved; and, although he is unwilling to impose on the Collectors and Magistrates any obligation to comply with mere forms, which might interfere in any way with the discharge of the important duties confided to them, he is of opinion that the Magistrates may with propriety be required to cause the head Native servant of the Magisterial department with the Gomastahs and others attached to him, to wait on the Judge of Circuit, on his arrival at the Sudder station, and resolves that the Foujdaree Udalt be requested to issue the necessary instructions to this effect.

22D MARCH, 1830.—B

The quarterly Sessions will continue to be held, has hitherto, by the Judges in rotation, as already established, but the Sessions are to be permanent throughout the quarter; supplemental Calendars being furnished as cases are committed, and the trials are to follow the committals as speedily as possible, so as to prevent the unnecessary detention of witnesses and prosecutors.

1st APRIL, 1830.

In explanation of the Circular orders of this Court, dated 8th of February last, directing "that in all cases of delay exceeding five days, the Magistracy explain its cause in forwarding the case to the Criminal Court, by a note to be appended to the paper sent with the prisoner." The Judges desire that the Provincial Courts of Circuit will intimate to the Criminal and Joint Criminal Judges in their respective jurisdictions that in the event of a Magistrate omitting to furnish the required information, or in the event of the information when furnished not being deemed satisfactory, the Criminal Judge is not authorized to call for any explanation from the Magistrate, that power being alone vested in the Provincial Court of Circuit.

6TH APRIL, 1830.

The first Judge in this communication requests to know the light in which this Court "consider the stealing of grain by a number of persons from an open field, when there are no circumstances of considerable aggravation." He remarks that this offence is committed generally for the sake of food, and in numbers, rather with the view of carrying off the grain, than of support in case of resistance; though, on an alarm being given, sticks are frequently used to beat the watchers.

In such cases, the material point to be decided is, whether the crime was committed secretly, when it would be merely common theft, or openly, by force or intimidation, so as to bring it within the definition of robbery by open violence, contained in Clause first, Section III. Regulation XV. 1816. The Court, on this point, remark, that numbers alone, if they proceed openly to attack, may intimidate and overawe, even when unarmed; and that a stick taken by the secret thief may, when detected, be so used, as to change the offence into robbery by open violence, especially if such an attack is made by many, on the few watchers stationed to guard grain, an article particularly liable to depredation; and the more so as long as it remains exposed on the threshing floor.

Whilst open attack, opposed to secret theft, will certainly bring this offence within robbery by open violence, the Court admit that circumstances may frequently justify a recommendation for a mitigation of punishment, where hunger alone has been the adducement to crime, and the violence used has, though open, been attended by no material personal injury. But Judges of Circuit should bear in mind, particularly in seasons of scarcity, when this offence is the most frequent, that the evils of a general scarcity of food are liable to be greatly aggravated by such offences, usually terminating in a wanton waste of the means of sustenance, the regular distribution of which is checked, and often entirely prevented by them; and ought therefore to discriminate carefully between the two description of cases abovementioned.

8TH APRIL, 1830.

Regulation II. 1827, which confers upon subordinate Collectors the new designation of "Joint Magistrate," whilst it grants to them, in Clauses first and second, Section V., the powers of Magistrate in the portion of the district under their charge, or generally throughout the district, or specially any part of it, as may be delegated by the Principal Magistrate, expressly declares in Clause third, that the powers thus to be exercised by them in either case shall not supersede or exclude the authority of the Magistrate over the entire province, but shall be "subordinate thereto," so far as occasion may require.

The Foujdaree Udalt are of opinion that, under this express enactment, it is perfectly competent to a Magistrate to interfere in any stage of a proceeding, before his subordinate that he may deem proper, to stop his proceedings, call up the case before himself; or, if the subordinate has proceeded to judgment, to suspend its execution, and finally to modify or annul it as he may consider requisite. To give a contrary construction to the law, merely because it vests the subordinate with full powers of the Magistracy, where the Principal does not interfere, or because the term Joint Magistrate is used, would be at variance with the rest of the Regulation, which is to vest full powers in the Joint Magistrate, always subordinate to the Principal, as occasion may render his interference necessary.

30TH APRIL, 1830.

Read letter from the Secretary to Government in the Judicial Department, forwarding the opinion of the present Advocate General, that the slave trade act of the 51st Geo. the 3d. Cap. 123; does not extend to the "removal of a person from one part of India to another, in order that such person should be there dealt with as a slave."

Ordered that copies of this Court's letter to Government of the 27th February last, and of the foregoing reply, be circulated to the four Provincial Courts, for the guidance of the several criminal tribunals, until further orders; and in modification of the circular orders of this Court of the 23d September, 1825.*—The instructions in question should be circulated to the Magistrates, as well as to the Criminal Courts and the first Judge of Circuit in the Western Division will now cause the prisoners, whom he admitted to bail, to be brought to trial at the next Sessions.

Under Mr. Norton's construction of the act, the removal of a free person, from one part of India to another, to be dealt with there as a slave, without reference to any traffic by sea, is an offence not cognizable by the Supreme Court, but by the established criminal tribunals in the interior. Persons accused of such a crime should accordingly be committed for trial before the Court of Circuit.

3D MAY, 1830.

In order that capital punishments may make a stronger impression on

* Correspondence and order omitted.

the public mind, it is desirable that they should be solemnly and publicly announced; and to form a correct judgment of the result of such examples, it is desirable that a record should be made of the impression, not only on the spectators, but on the convict himself, of these necessary acts of justice.—The Court of Foudjaree Udalut accordingly direct that, as soon as can be, after the receipt of death warrants, the final sentence be communicated to the convict, in open Court; and that in making returns to death warrants, besides stating as at present, the estimated number of spectators attending the execution, and the apparent impression made upon them by it, the Criminal and Joint Criminal Judges do specify the date and hour when the final sentence was communicated to the convict, and certify that the same took place in open Court and that, in these returns, they do further specify, in a particular manner, the effect on the convict of such communication, and his conduct thenceforward until his execution; reporting whether he expresses contrition for the offence for which he suffers, denies his guilt, or makes any confession of it, and his behaviour on the scaffold, and conversation there.

Vide C. O. No. 20th Sept. 1830.

See Pro. F. U. 20th June 1810. ruling that this C. O. does not authorize the practice of questioning a prisoner as to his guilt before his execution.

20TH MAY, 1830.

With reference to the Circular Order of the 30th ultimo, relative to the Tribunal by which the offence of removing a free person from one part of India to another, to be dealt with as a slave, is cognizable, I am directed by the Judges of the Foudjaree Udalut to transmit to you the accompanying copy of a letter from the Secretary to Government in the Judicial Department at Fort William, enclosing a copy of the Resolutions of the Supreme Government on the subject, dated on the 9th September, 1817, by which it will be observed that the construction put by them, on the provisions of the Statute of the 51st Geo. 8d, Cap. 23, confined its application to the traffic in Slaves by sea.

Vide C. O. Nos. 111. and 132.

Vide Appendix G.

17TH JUNE, 1830.

With reference to these results, the Judges resolve to direct the four Provincial Courts to instruct the Magistrates in whose districts the acquittals have been most numerous, to caution their district Police Officers against summoning parties before them, under Section XXXIII. Regulation XI. 1816, unless they see reason to consider the complaint preferred to be well grounded;—and to desire the Provincial Courts in future, to compare the number of acquittals by the District Police in one Zillah, with those in another, in order to trace the causes of the different results in this respect observable.—It is observed that in Masulipatam, and possibly elsewhere, the Magistrate erroneously considers it imperative on his Police Officers to summon all accused of such petty offences, whether he sees reason to believe the complaint or not.

The Provincial Courts, generally, will direct the Magistrates, for the future, to enter under column A in statement No. 1, the total amount of fines remitted to them by the District Police during the six months

under review; they should also take precautions, to prevent such fines where numerous, from being converted into a source of personal emolument by the native Police Officers.

12TH JULY, 1830.—A

Mr. Vaughan mentions that any woman of the Nair caste, though generally permitted to go abroad unveiled, entirely loses her caste by appearing publicly in any Court of Justice, where a European presides and adds the lamentable fact that respectable females of this description have been compelled to appear before our Courts, "which inevitably, outcasts them; and, to as great a certainty, as if the female had been detected in holding improper intercourse with a man of inferior caste"—he mentions instances of our civil tribunals interfering to reinstate them as regards public ceremonies—but that they have never succeeded in restoring them to the highly prized privileges of society, or to the endearing intercourse of private life.

On the 5th October 1821, the Government remarked that "with regard to the appearance of females in Courts of Justice, the Governor in Council does not look upon it as a point to be determined by the texts of law-writers but by the judgment and feelings of society as evinced in the usages of any particular part of the country. To disturb such usages and do violence to the feelings on which they are founded would be unjustifiable, whatever the opinions of text writers on the abstract question may be; and it can seldom, if ever, happen that any amelioration of the customs of a country can atone for an outrage on public feeling and moral principle."

The Judges entirely concur with these sentiments, which they direct to be circulated to the four Provincial Courts for the guidance of the tribunals under them. In Malabar, they desire that the succedaneum suggested by Mr. Vaughan, to obviate the evil above noticed may be adopted. It is to adjourn the Court to some unobjectionable place, viz., to the house of a respectable Nair, the porch of a pagoda, or choultry within the precincts of some sacred ground, &c., when, although the Court of justice is presided at by a European, all prejudices and objections vanish.

Mr. Shakespeare the third Judge in the Western Division, in his report on the third quarterly Sessions for 1829, recommends that the Criminal Courts should affix in a conspicuous part of the Court house, a list of all persons confined in default of Security to which they may have been held, specifying their names, place of abode, amount of Security demanded, and term of imprisonment awarded in default thereof: such list to be renewed at the expiration of each gaol delivery. The Judges approve of this suggestion and direct that orders be issued to the four Provincial Courts to give effect to the same.

12TH JULY, 1830.—B

The Court direct that the four Provincial Courts of Circuit be by precept required to issue orders to the several officers under them in

27th OCTOBER, 1830.—A

The Court of Foujdaree Udaltut on the 25th January last, issued circular orders on the subject of the subsistence of prisoners in the different gaols and only wait for a reply from the Provincial Court in the Centre Division to prepare further general instructions more in detail on the subject of the diet and clothing of the prisoners. It will be sufficient at present to report their positive orders, for the strictest enforcement, throughout the country, of the prohibition against the use of betel, tobacco, opium, or other luxuries within the Criminal gaols, except on the requisition of the Medical Officer. This order must not be observed more at one gaol than at another; but is to be rigidly enforced at all. Indeed recent orders from Government state that "the prevalence of crime throughout the country may, in a great degree, be ascribed to the circumstance of the punishment being disarmed of its terrors; by the comforts of the accommodation, and the abundance of food and clothing which the inmates of the gaols enjoy."

Vide C. O. 5th
June 1832.

27th OCTOBER, 1830.—B

It is resolved to direct the four Provincial Courts, by precept, to require the several Criminal Courts, under them, invariably to cause each prisoner to be brought before it, so soon as he arrives or within 12 hours afterwards, when any complaint he may make of mal-treatment by the Police, should be recorded. This will enable the Criminal Court instantly to obtain information, and to communicate to the Magistracy any complaint of mal-treatment made against the Police.

The Judges direct that the four Provincial Courts be, by precept, prohibited, from releasing, without trial, any prisoner committed for Perjury, by another Judge of Circuit, without first obtaining the sanction of this Court on a special report to be made of the case.

8th DECEMBER, 1830.

I am directed by the Judges of the Foujdaree Udaltut to acquaint you, that their notice having been drawn to the fact, that Zillah Surgeons, in some instances, have been unable to comply with the requisitions of Criminal Judges to cause to be analyzed the properties of certain poisonous drugs, produced before them in cases of poisoning, in consequence of their not being in possession of the necessary tests, the Right Honorable the Governor in Council was pleased, under date the 23d ultimo, to issue instructions to the Medical Board, directing them to cause to be analyzed poisonous drugs forwarded by the Judicial Officers in the Provinces to them for that purpose.

Vide Extract
from Minutes
of Consultation
dated the 10th
Feb. 1831.

Circulated by
the Foujdaree
Udaltut under
date the 23rd
Feb. 1831.
Appendix H.

You will therefore communicate this information to the several Criminal Judges; and desire that, in cases of suspected poisoning, specimens of the drugs supposing to contain poison be forwarded by them direct to the Medical Board, who, after analysis, will make known to them the properties of the drugs transmitted.

10th DECEMBER, 1830.

I am directed by the Judges of the Foujdaree Udaltut to enclose the copies of the accompanying correspondence* with Government, relative to two instances of Missionaries being permitted to visit Prisoners condemned to death, with a view to their conversion to Christianity, and to request that you will communicate the same for the guidance of the several Officers in charge of gaols in your Division.

Extract from a letter to Mr. G. J. Waters, Judge and Criminal Judge, of the Zillah of Chingleput, dated 20th January, 1829.

"The Right Honorable the Governor in Council has however instructed me to prohibit you, under pain of being visited with the severest displeasure of the Government, from interfering in any way with the Religion of the Natives and to enjoin you to take especial care, on all future occasions of public punishment that you do not so conduct yourself as to convey to those who are attendant upon such awful ceremony, the impression that you are more intent upon the conversion of the Criminal to Christianity than upon the due execution of the Law."

19th JANUARY, 1831.

The attention of the Court of Foujdaree Udaltut has been drawn to the great expense attending the support of the numerous convicts in the several gaols, and to the importance of devising some arrangement, at each gaol, for employing them in such a manner, as, in a great degree, to contribute to their own support, and to reimburse the public by their labour, for the enormous sums hitherto expended on this account. It is accordingly, resolved earnestly to call the special attention of the Officers in charge of the different criminal gaols to this subject, through the four Provincial Courts.

The Foujdaree Udaltut do not propose to lay down any detailed rules, for the employment of the convicts. The localities of one station require arrangements different from those well suited to others. Any general rules might therefore hamper the local authorities; they consider it sufficient to state the object in view, and to explain a few of the general principles to be observed in attaining it, leaving it to the Officers on the spot to adopt and carry into execution the plan best suited to local circumstances, according to the exercise of the sound discretion on their part, subject to the controul of the Provincial Courts, whose more mature experience may suggest to them material improvements.

It is not intended to withdraw the prisoners sentenced to labour in irons for seven years and upwards, from the public exposure which their sentence implies, and which, for the sake of example, may operate beneficially to deter others from similar crimes. But, where they have not been made over to the Military authorities, and the improvement or

* Correspondence omitted.

repair of the high roads in the vicinity of the station, does not give employment to all of them, it is desirable that such as are in good health should be employed on works giving a profitable return. Of this description are the manufacture and sale of bricks universally, or where stone is generally used for building, the breaking it into pieces, fitted for that purpose, the cutting of firewood, the digging of wells, and works of a similar description. If necessary, a few persons may at first be entertained to teach the prisoners these duties. This description of convicts ought to be employed in labour severe in its nature, such as may cause the more depraved classes to dread confinement in our gaols, and not to look upon them as places of relief and repose, from the exertions common to the poorer classes of the community. It is feared that a mistaken humanity has, in some gaols, lightened the burdens of this description of convicts, so as to operate in some places as an encouragement to crime; and the Officers in charge of gaols ought, accordingly, to be cautioned against too great indulgence in this respect.

Such of the abovementioned description of prisoners as may be weak in body—and all prisoners sentenced to imprisonment and labour under seven years, as well as those held to security, the Court are of opinion may be most advantageously employed, within the walls of the gaol, in the manufacture of paper for the use of the Judicial and Revenue Departments, weaving cloth, or cumbles, for the use of the prisoners themselves, or for sale; sawing wood, forging nails, and other iron implements of labour, or making gunny bags, baskets and even mats for sale. This last kind of work, is best fitted for females. The Criminal Judge, of Nellore in the Northern Division, of Cuddapah in the Centre Division, and of Madura in the Southern Division, can transfer prisoners temporarily to other Zillahs, to give instructions in the manufacture of paper.

Where no means exist for obtaining a profitable return for the labour of the convicts, they may be transferred to other gaols at stations, where their labour would produce profitable returns, or they may be usefully employed in the repair of tanks, or the circumvallation of Villages.

Vide C. O. 30th
Dec. 1833.

To each individual convict a defined task should be assigned. If one completes his task before another, more ought not to be required, but the task to each should be such as to occupy him sufficiently, particularly as regards those prisoners who are sentenced to labour for 7 years and upwards.

The object being to obtain the highest possible returns from the labour of the prisoners, consistent with the foregoing principles, the exertions of the Officers in charge of gaols must be directed to this end, and they will communicate to the four Provincial Courts, with their monthly returns, the following information.

Vide Circular letter 8th December 1835, Appendix I.

1	No. of persons in gaol.	300.
2	No. of Convicts.	200.
3	No. held to Security.	50.
4	Total of 2 and 3.	250.
5	No. in No. 4 sentenced to 7 years' labour and upwards.	100.
6	Remainder liable to labour.	150.
7	No. worked outside the Gaol.	70.
8	No. worked inside the gaol.	180.
9	Expense for the persons in gaol during the month of	Rs. 1,020 + 3.
10	Deduct money realized by the labour of the convicts	Rs. 500.
11	Net surplus in black, or deficiency in red Ink.	Rs. 520 + 3.
12	Specification of the manner in which the prisoners were employed during the month of	Repairing roads... 5 Making bricks... 60 Cutting wood outside... 5 Weaving... 70 Making Paper... 70 Sick... 30 Inside... 180 Total corresponding with No. 4... 250

Modified by the Order of the 29th August, 1831.

Circular Orders of the

14TH FEBRUARY, 1831.

Vide C. O. No. 21. In their Proceedings of the 8th December last, the Court ruled, that the "sentences of imprisonment on convicts are held to take effect from the dates of the sentences."

4TH MARCH, 1831.

Extract of an Order of Government, on a letter from the Register to the Foudaree Udalut, dated 27th August, 1830.

"The Right Honorable the Governor in Council, will not object to sanction the grant, on quitting gaol, to prisoners who may have distinguished themselves by their industry, of a sum of money out of the proceeds of their labour proportioned to the comparatively superior quantity of labour performed by them; and authorizes the Criminal Judges to bring cases of this description to the notice of Government."

15TH MARCH, 1831.

Instances having lately occurred of the transmission to this Office of petitions, and other papers from the subordinate Courts in the native languages, unaccompanied by translations, as required by the standing orders of the Court of Sudr and Foudaree Udalut, I am directed by the Judges to desire, that you will call the particular attention of the Judges and Magistrates within your jurisdiction to this subject, and enjoin them on no account to omit to send translations of all documents in the native languages, which they may forward to this office.

28TH MARCH, 1831.

The Court of Foudaree Udalut deem it proper to direct by a circular order, that whenever a prisoner, confined on a Magistrate's requisition of security, be released by order of the Judge of Circuit, a notification of such order of release be made to the Magistrate.

11TH APRIL, 1831.

In compliance with the orders of the Right Honorable the Governor in Council, conveyed in the 4th para of the Minutes of Consultation above alluded to, the Judges of the Court of Foudaree Udalut desire, that the four Provincial Courts of Circuit will direct the several Magistrates in their respective divisions "to require heads of villages to take cognizance on the spot of every case within the limits assigned to their power by the Regulations, and to prohibit the Tahsildars from entertaining any complaint cognizable by a head of a village, except during his stay at the village, in his tours of duty."

18TH APRIL, 1831.

The Court of Foudaree Udalut resolve, with reference to the cases, described in the 30th para of the report, to direct the four Provincial

Courts of Circuit, by a circular order to enjoin the peons of the gaol guard, in cases of attempt at escape on the part of the prisoners, to abstain from all unnecessary violence towards them, and never to make use of their swords, unless it should be necessary for their defence from the attack of the prisoners upon them.

4TH MAY, 1831.

In para 34, the late Acting Judge points out the propriety of invariably exacting from sureties the penalty of their bond, where the persons for whom they become security may perpetrate offences, during the period for which they have made themselves responsible.

The Court of Foudaree Udalut, having reason to believe, that attention is not generally paid to the obvious intent and object of the law on this point, deem it proper to direct the four Provincial Courts of Circuit by a circular order to instruct the Criminal Judges invariably to enforce the penalty of the security bond in cases of this description.

16TH MAY, 1831.

In many of the trials which have been lately referred to the Court of Foudaree Udalut, the ages of the deponents whether prosecutors, witnesses, or prisoners, have been entered as "unknown."

The Court of Foudaree Udalut deem it, therefore, proper to direct that when the deponent may not be able to specify his age, or may evidently give a false statement regarding it, the apparent age be invariably inserted.

25TH MAY, 1831.

The attention of the Court of Foudaree Udalut, having been called to a defect in the column of the Calendar of persons committed for trial before the Court of Circuit, headed "Abstract of the examinations, grounds and date of commitment," no abstract being therein given of the examination of the prosecutors.

The Court being of opinion that the insertion of such abstract in the column, will place more fully before them, the grounds of commitment for trial before the Court of Circuit, deem it proper to direct the four Provincial Courts of Circuit, by a circular order, to instruct the Officers presiding in the several subordinate Criminal Courts to make this additional entry in column 6, of the Calendar.

30TH MAY, 1831.

In the Zillah of Vizagapatam, out of 6718 persons, supposed to have been concerned in 210 cases, there are 6260 persons who have not been apprehended. The Court of Foudaree Udalut deem it incumbent on them to call the serious attention of the different Magistrates, to the

great increase in the number of cases for the more heinous offences during the half year under review, and also the very large proportion of persons, who have escaped apprehension. The Court cannot but look upon such a result as totally incompatible with the due, and proper exercise of vigilance and activity on the part of the Police. The large increase in the numbers concerned in the cases of gang robbery, indicate that they were of a more open and daring nature, and the great proportion of those who have escaped detention can have no other effect than that of encouraging them to the commission of similar crimes. Under a well ordered system of executive Police, and a proper vigilance and activity of the village and district Police Officers and Magistrates, the Court can see no reason for so very large a proportion of offenders escaping detection, and this remark is more especially applicable to cases of gang robbery.

2ND JUNE, 1831.

The several Criminal and Joint Criminal Judges in charge of jails were directed to observe the following system of supply.

Northern Division.

Vide C. O. 25th
Jan. 1832.

One seer of Rice to be allowed to each prisoner, no money to be paid to prisoners for the purchase of Firewood, Curry Stuff, Oil, Salt, and other necessities, but those articles to be supplied under the orders of the Officer in charge of the jail, at a fixed rate of 30 Cash per diem for each prisoner.

Western Division.

60 Rupees weight of Rice to be allowed daily to each prisoner in the Western Division, a third more to be given at * Mangalore to Convicts employed in cutting stones or doing other hard work. For the purchase of Firewood, Curry Stuff, Oil, Salt, and other necessities, no money is to be issued but those articles are to be supplied to the prisoners at the rate of 7 reas for each prisoner in confinement at Mangalore, and 6 reas to each prisoner in confinement in the other jails in the Western Division.

Centre Division.

Half a Madras measure of Rice to be allowed daily to each prisoner; no money to be paid to prisoners for the purchase of Firewood, Curry Stuff, Oil, Salt, and other necessities, but those articles to be supplied under the orders of the Officer in charge of the jail, at a fixed rate of 4 Pice per diem for each prisoner.

Southern Division.

Excepting at Coimbatore, where 100 Rupees weight of cholam, per diem, is considered to be ample, the allowance to each prisoner in the Southern Division to be fixed at 80 Rupees weight of Rice daily, no extra quantity being issued on Sundays; no money to be paid to prisoners for the purchase of Firewood, Curry Stuff, Oil, Salt, and other necessities, but those articles to be supplied under the orders of the Officer in charge of the jail, at a fixed rate of 4 pice per diem for each prisoner.

16TH JUNE, 1831.

"Read return dated the 30th ultimo, from the 2d Judge of the Provin-

* A modification of this system of supply sanctioned by the Foudjaree Udalut in their proceedings of the 20th January 1841.

cial Court of Circuit in the Southern Division, to precept dated 13th April last, ordering communication to Peons employed in the gaol guard at the different stations, of the Court's instructions respecting the use of their swords against prisoners attempting to escape.

The 2d Judge has transmitted with the above return, the copy of a return, dated the 21st Ultimo, from the Acting Magistrate of Trichinopoly, in which that officer states his opinion, that the effect of the above instructions, will be successful attempts to escape on the part of the prisoners, simply from "their agreeing with each other to make off in different directions," and persisting in their object without offering violence to the peons.

The intention of the Court of Foudjaree Udalut in their circular orders of the 18th April last, was to put a stop to acts of cruelty on occasions of this nature, which had been most forcibly brought under their consideration: it was not however meant to prohibit the use of the sword in cases of absolute necessity.

18TH JUNE, 1831.

The Court of Foudjaree Udalut direct, that a copy of the extract from the following Minutes of Consultation be sent to the four Provincial Courts of Circuit, to be by them communicated to the several Criminal Judges and Magistrates in charge of gaols, for their information and guidance respectively.

Extract from the Minutes of Consultation, dated 17th June, 1831.

"Resolved, that in Tinnevely and other districts, where, in some parts, the Circar share of the produce is received in kind, the Collectors be authorized to provide the supplies of grain required by the Judges for the subsistence of the prisoners in the gaols. The Judge will furnish to the Collector at the time of harvest, a statement of the quantity which he estimates will be required for the year's supply, which quantity will be reserved by the Collector, in disposing of the Circar share of the produce, and immediately made over to the Judge at the Jumma bundy price, the duty of the Collector being confined to the provision of the supply. The Foudjaree Udalut and the Board of Revenue will be pleased to issue the necessary subsidiary orders for giving effect to the foregoing resolution."

27TH JUNE, 1831.

The Judges of the Foudjaree Udalut having reason to believe, that the practice in respect to the confinement of prisoners in irons, is not uniform in the several gaols, and being of opinion, that, except in cases of absolute necessity, no prisoner should be subjected to the degradation of wearing chains, unless convicted of a heinous offence, resolve to circulate the following rules for general adoption.

Criminal Judges, Joint Criminal Judges, and Native Criminal Judges shall not confine in irons, previous to conviction, any person who may be charged with a bailable offence.

Vide C. O. No. 34.

Vide C. O. 7th
Feb. 1820.

Vide C. O. 8th
Oct. 1821.
Rule 40 and 52.

Persons committed for trial before the Courts of Circuit shall not be confined in irons, unless from peculiar circumstances, to be recorded in the diary, the use of irons may be considered necessary for their safe custody.

The Criminal Judges, Joint Criminal Judges, the Magistrates and Native Criminal Judges shall not sentence a prisoner convicted of a misdemeanor to be confined in irons, nor shall irons be used in such cases, except in the event of special necessity, arising out of bad conduct of the prisoner during his imprisonment, or unless the insecurity of the gaol, or other place of confinement, may render such restraint indispensable for his security, in which case the grounds for such a proceeding must be recorded.

Vide C. O. 28th
June 1831.

7TH JULY, 1831.—A

The Court of Foudjaree Udalut resolve to direct the four Provincial Courts of Circuit to point out to the subordinate judicial tribunals, that the adjournment of the Civil Court forms no ground for any relaxation in the performance of their duties in the Criminal Department.

7TH JULY, 1831.—B

The Court deem it proper on this occasion to direct the four Provincial Courts of Circuit to prohibit the Magistrates from demanding security from any, excepting the persons described in Clause first, Section III. Regulation II. of 1822, and Clause first, Section V. Regulation VI. of 1827.

Vide C. O. 25th
Feb. 1824.

25TH JULY, 1831.

Read return, dated the 13th instant, from the Provincial Court of Circuit in the Western Division to precept, dated the 7th instant, ordering them to inform the Native Criminal Judge of Canara, "that prisoners detained on requisition of security should not be subjected to labour on the public roads, but should be made to work in or about the gaol."

With reference to the observation in the foregoing return, that "the provision for the employment of prisoners detained for security is not so viewed by the Criminal and Joint Criminal Judges of the division, generally, but as extending to employment on the public roads, provided they be not worked with convicts," the Court of Foudjaree Udalut deem it proper to direct, by a circular order, that this practice be discontinued and that prisoners detained on a requisition of security be put to labour only in, or about, the gaol, and in the modes pointed out in their circular orders of the 19th January last.

Vide C. O. 25th
Feb. 1824.

19th July 1827.
31st Oct. 1826.
30th April 1829.
7th July 1831.
19th Oct. 1831.
7th June 1831.

5TH AUGUST, 1831.

Read letter, dated the 23d ultimo, from the Acting Judge on Circuit in the Northern Division, reporting that the Magistrates of Vizagapatnam and Ganjam "consider themselves authorized, under Clause first, Section III. Regulation II. of 1822, to commit persons of the descrip-

tions therein mentioned to gaol for indefinite periods, without demanding security from them at all, and of course without observing any of the provisions of Regulation VI. of 1827."

The Court of Foudjaree Udalut are decidedly of opinion, that, in the enactment of Regulation VI. of 1827, it was intended by the legislature, that no vagrant, or person of any description, liable only to suspicion, should be detained in confinement for an indefinite period, and that such is the effect of the modification of Clause first, Section III. Regulation II. of 1822, by Clause first, Section VIII. Regulation VI. of 1827.

It appearing, however, that a different construction has been given to the provisions of the law on the subject, the Court direct, that the four Provincial Courts of Circuit do instruct the Magistrates within their respective jurisdiction, whenever they may send a person to the Criminal Court under the provisions of Section III. Regulation II. of 1822, and Section VIII. Regulation VI. of 1827, to provide in their order for the release of the prisoner at the end of a definite period, not exceeding twelve months, excepting in the cases, described in Clause third, Section VIII. Regulation VI. of 1827.

20TH AUGUST, 1831.

The Court of Foudjaree Udalut, having observed that trials, in which the sentence of the Court of Circuit may have been suspended, when called up by them, have not generally been entered in the reports of trials under reference to the Foudjaree Udalut, deem it proper to direct you to instruct the subordinate Criminal authorities that such trials be in future inserted in the said reports.

29TH AUGUST, 1831.

The Court of Foudjaree Udalut have had under consideration the returns, received from the Criminal Courts in the Western, Centre, and Southern Divisions, for the months of April, May, and June last, from which it appears, that their circular orders under date the 19th January last, have not produced, generally, the results which might have been anticipated.

It appears that, in the gaols in the Western Division, nothing whatever was realized by the sale of the produce of the labour of the prisoners, during the above period: the number, however, in confinement in the gaols of Honore, and Tellicherry, who were liable to labour, was so small that no productive result could have been fairly expected.

In the Centre Division a trifling sum was realized in the Cuddapah gaol only, during the months of April, and May, and in June some return was obtained in all the gaols, excepting those of Chittoor, and Cumbum, from the latter of which, however, nothing was to be expected, with reference to the small number of prisoners confined there.

In the Southern Division during the months of April and May, some return was obtained in the gaols of Salem and Trichinopoly only.

In June a trifling sum was realized at Salem, and a considerable amount from the labour of the prisoners at Trichinopoly.

No return was to be expected from the labour of the few persons confined in the gaol at Tinnevely.

The Court of Foudjaree Udalut deem it proper to direct the Provincial Courts of Circuit for the Western, Centre, and Southern Divisions, to call upon the Criminal, and Joint Criminal Judges, subordinate to them, respectively, with the exception of the Joint Criminal Judges of Canara, Malabar, and Madura, to report what measures they have taken to carry into effect the instructions contained in the circular orders of the Court of Foudjaree Udalut, dated the 19th January last, in which the necessity of employing the prisoners in works yielding the highest possible return was strongly urged.

The Court of Foudjaree Udalut resolve on the present occasion to modify and amend the form of return circulated with their orders above-mentioned. The 9th column exhibits the amount of expenditure for the food only of the prisoners, and not of that incurred for their clothing; and the 10th does not exhibit the value of the produce of their labour, but merely the amount, realized by that portion of it, which may be sold; so that the value of the cloths, caubbies, and other articles manufactured by the prisoners, and consumed in the gaols, and of the bricks and other materials, which may be furnished for Government buildings, are not, as they clearly ought to be, taken into account.

The following particulars are, therefore, to be inserted in columns 9 and 10 of the statement to be furnished monthly by the Officers in charge of gaols: viz., column 9, "expense incurred for the food and clothing of the prisoners during the month." Column 10, "estimated value of all articles, produced by the labour of the prisoners during the month, after deducting the price of the raw materials."

The estimate, referred to in column 10, must be formed from the average local valuation of the articles at each station.

17TH OCTOBER, 1831.

In compliance with the orders of the Right Honorable the Governor in Council, the Court of Foudjaree Udalut resolve to direct, the Provincial Courts of Circuit in the Centre, Northern, and Western Divisions, to instruct the Native Criminal Judges within their respective jurisdictions, in future, to forward to the Criminal Judge of the Zillah, to which they may be attached, their indents for supplies of cats-of-nine-tails in order that they may be forwarded by that Officer to the Secretary to the Military Board.

19TH OCTOBER, 1831.

Upon review of the statements, shewing the manner in which the prisoners in the several gaols within the Centre Division were employed during the month of August last, the Court of Foudjaree Udalut have been struck with the large number of persons confined in the gaol at Chingleput under requisition of security, upon whom no kind of labour has

been imposed by the Criminal Judge, on the ground that the warrants, issued for their detention in default of finding the requisite security, did not specify that they should be employed during their confinement.

This practice appears also to prevail in the gaol at Chittoor, and the Court of Foudjaree Udalut having reason to believe that the Judicial authorities generally entertain the opinion that persons held to security cannot be employed during their confinement in the gaol, unless the sentence specially directs the imposition of labour, resolve to instruct the several Criminal and Joint Criminal Judges by a circular order, that it is imperative on a Criminal Judge, under Clause first, Section XIII. Regulation VI. of 1827, to subject all persons confined on a requisition of security, whether for good behaviour, under Sections VIII. IX. and X. of that Regulation, or for appearance, under Clause first, Section III. Regulation II. of 1822, to compulsory labour; the kind and degree being alone left to the discretion of that Officer, and that this was the intention of the legislature is clearly inferrible from the preamble to the Regulation, and from the wording of the marginal note to Section thirteen.

The Court of Foudjaree Udalut however exclude from the operation of this order the cases of persons held to security, wherein, from the situation in life of the party, or other causes, the Judge on Circuit may consider the adjudication of labour improper, and the warrant, issued to the Criminal Judge for their detention in default, may contain a specification to that effect.

16TH NOVEMBER, 1831.

In para 4 the Acting Judge observes, that, in the original drafts of decrees passed by several of the Judges and Registers there was nothing but the judgment; no statement of the case drawn from the pleadings; this is left to be added by the Officers of the Court, and it is generally a mere copy of the principal parts of the pleadings themselves, without compression or arrangement, and he suggests that "it would be advantageous in several respects, if Judges and Registers were required to make their own abstracts of the pleadings." It has been already ruled by this Court, upon a former reference, that the whole draft of the Decree (containing a statement of the case as set forth in the pleadings, as well as the judgment) should be in the hand writing of the Judge by whom it is passed, and it is now ordered, that this rule be communicated to the four Provincial Courts for their own guidance, and for the guidance of the several Courts subordinate to them respectively.

The Court of Foudjaree Udalut approve of the suggestion of the Acting Judge, that the Criminal Courts be required to record specifically their reasons for disposing of each case, instead of making a general remark, that the prisoner was "released for want of proof," or that "the charge was not proved," and the like. Such general remarks are obviously insufficient to enable the Court of Circuit to judge of the grounds upon which the case was disposed of, as intended by Section XXIII. Regulation X. of 1816. Some of the Criminal Judges are now in the habit of making a concise but distinct note of the grounds of their order or sentence upon each case, and great advantage is found in it. If it is done, as it ought to be, immediately after the trial, when all the facts and bearings of the case are fresh in the Judge's mind, it will, as the Acting Judge observes, be no inconvenient demand upon his time. The

vide C. O. S.
U. 18th October
1824, and C. O.
11th October
1830.

Court therefore resolve to direct, that this practice be observed generally in future by the Criminal Courts. The Court also desire that, in every case, where punishment is awarded, the provision of the law under which sentence is passed may always be specified.

The Acting Judge in para 14, correctly states, that it is the duty of the Criminal Judges in cases referrible to the Court of Circuit "to examine the case for the prosecution, with the same care and minuteness as if the prisoner were to be sentenced by himself, and if after such an examination he is clearly of opinion that the evidence for the prosecution will not convict the prisoner, he ought not to commit him," as there appears to be some laxity in this respect on the part of the Criminal Courts, the Court of Foudjaree Udalut resolve to call their attention to their circular orders on the subject, dated the 20th July, 1829, in which the necessity of adhering to this rule was so forcibly pointed out, and to require strict obedience thereto.

Vide C. O. 15th
February 1832.

In para 23, the Acting Judge suggests, that "on petitions being presented to a Circuit Judge, in an unrecorded case (meaning thereby a case not entered in the Calendar, and in which the depositions are not required to be taken down in writing), the Circuit Judge should be empowered to require the production of any written reports or orders or other papers whatsoever, on the Magistrate's records relating to the case."—A Circuit Judge being authorized to call for full explanation from the Magistrate in such cases, it appears to the Court of Foudjaree Udalut that he may require the production of any written reports or orders or other papers, there may be on the Magistrate's records relating thereto, and containing information on the points regarding which explanation is desired.

Vide C. O. 14th
May 1829, and
Regn. VIII. of
1832.

8TH DECEMBER, 1831.

The Court of Foudjaree Udalut, considering it desirable that whenever the name of a prisoner is entered in the report, required to be submitted under the provisions of Section XXXV. Regulation X. of 1816, in more than one case, it should in the second and other cases be inserted in red ink, desire that the several Criminal and Joint Criminal Judges in your division, be directed to adopt this mode of entry in all future reports submitted by them.

10TH DECEMBER, 1831.

The Court of Foudjaree Udalut, concur in opinion with the Provincial Court of Circuit, that the Criminal Judges are not required by the orders of this Court of the 10th of April, 1823, to furnish the Magistrates monthly with a report of the description required by Mr. Whish; but the Judges considering it very desirable that the Magistrates generally, should be made acquainted with the sentences passed by the Courts of Circuit and the Foudjaree Udalut, resolve to adopt the suggestion contained in the 2d paragraph of the letter from the Provincial Court of Circuit, and direct, accordingly, that the several Criminal, Joint Criminal and Native Criminal Judges in the provinces, be directed to transmit to the Magistrate monthly, an additional report in which the sentences of the Court of Circuit and the Foudjaree Udalut received in each month are to be specified.

7TH JANUARY, 1832.—A.

The Court of Foudjaree Udalut deeming it proper that the Judges proceeding on Circuit, should report for their information the day ap-

pointed, and notified by a proclamation, for opening the Sessions at each station, direct that it be observed, as a standing rule, that when the usual proclamation is transmitted for publication to the Criminal Judge, a report shall be made to them, at the same time, of the day therein appointed.

7TH JANUARY, 1832.—B.

The attention of the Judges of Circuit, is directed to the instructions of Government, under date 2d January, 1824, prescribing the mode in which their reports ought to be made; "they should be as brief as is consistent with accuracy, and should treat of no subjects except those which strictly appertain to judicial inquiry. The accumulation of a mass extraneous matter is of no practical use, and can serve no other end than that of obstructing the progress of public business." Vide C. O. 30th
January 1824.

17TH JANUARY, 1832.

With reference to the suggestion of the third Judge, contained in the latter part of the same para, that "Criminal Judges should insert in the margin of their monthly reports, the name of the Talook from which each case is received," in order that the Judge on Circuit may "be able more readily to find what parts of a district more particularly require his notice." The Court of Foudjaree Udalut propose to issue a circular order to the several Criminal and Joint Criminal Judges in the Provinces, directing them invariably to specify, in the monthly criminal reports and in the Calendars, laid before the Court of Circuit, the talook from which each prisoner was brought before them.

18TH JANUARY, 1832.—A.

The Court of Foudjaree Udalut deeming it expedient that the Magistrates be informed of the grounds on which prisoners sent to the Criminal Courts by the Magistracy and Police are released by those Courts, they resolve to direct that this information be furnished in the 4th column of the statement, prescribed by the circular order, dated 10th April, 1823. For this purpose it is ordered that, to the heading of the column, the following words be added, "and in cases in which prisoners were discharged, the grounds of their discharge." The grounds must be stated distinctly.

18TH JANUARY, 1832.—B.

Section XXXVII. Regulation X. of 1816, which required the Criminal Courts to transmit to the Foudjaree Udalut, in the month of January of each year, a report of the criminal cases depending on the 31st of the preceding month of December, having been rescinded, and the report appearing to the Foudjaree Udalut to be unnecessary, they have resolved to dispense with it.

23D JANUARY, 1832.—A.

It has hitherto been the practice of this Court to require the several Criminal Judges, to make a special report direct to the Foudjaree Uda- Cancelled by C.
O. No. 42.

but whenever a prisoner may escape from the gaols under their respective charge, the Judges, however, considering it desirable that this information should be furnished through the Provincial Courts of Circuit, resolve to direct the several Criminal, Joint Criminal, and Native Criminal Judges, and the Magistrates in charge of gaols, to observe this course of proceeding for the future.

23^d JANUARY, 1832.—B.

The orders of the 21st of April, 1829, do not appear to have produced the desired effect in the Northern and Centre Divisions.

The Criminal Reports for the months of October and November have not yet been received from the Northern Provincial Court. That for November is still due from the Centre Provincial Court.

There can be no satisfactory reason why these returns should not be submitted within the prescribed period and the order of the 21st October 1830, directing that corporal punishment shall not be inflicted in certain cases until two months after the date of the sentences passed by the Criminal Courts is of no avail in consequence of the delay which takes place in the transmission of the Returns.

Vide C. O. No. 40. The Court therefore take the present opportunity of calling the attention of the Courts of Circuit to those orders and, further, to direct that whenever a Criminal, Joint Criminal, or Native Criminal Judge shall not dispatch his Criminal reports on or before the 15th of the month succeeding that for which the Reports is furnished he shall invariably state the circumstances which have occasioned the delay; and that, in like manner, whenever the Provincial Court of Circuit shall not forward the reports on, or before, the last day of the month succeeding that for which the reports are furnished, they shall shew cause for the delay.

25th JANUARY, 1832.

Vide C. O. 2d
June 1831.

The 2d Judge states his opinion that the quantity of rice (80 rupees weight) allowed to the prisoners generally is more than most of them require for their support; and he suggests that, while the present allowance is fixed as the maximum, the officers in charge of gaols should be authorized to reduce it at their discretion. The Court approving of this suggestion, resolve to direct the several Courts of Circuit to instruct the officers subordinate to them in charge of gaols, that the diet allowance fixed by their orders is to be considered as the maximum for convicts in full health and strength, employed in hard labour, but that it is competent to them to modify it at their discretion, according to the condition and circumstances of individuals, so as to adapt it to their actual wants, not allowing to any more than is necessary for his subsistence.

6th FEBRUARY, 1832.

The Court of Foujdaree Udalut considering it desirable that in cases of perjury, a copy of the indictment adopted as the arraignment under the circular orders, dated the 31st January, 1820, and 23^d of November, 1826, should be entered in the column designed to

shew the abstract of the charge, resolve to direct the four Provincial Courts of Circuit to require the several Criminal, Joint Criminal, and Native Criminal Judges in their respective divisions to observe this proceeding in the preparations of all future Calendars submitted by them.

15th FEBRUARY, 1832.

The question submitted for the determination of the Foujdaree Udalut is whether in the preliminary proceedings in cases referable to the Court of Circuit, a Criminal Judge may exercise his discretion as to permitting the prisoner or accused party to cross-examine the witnesses for the prosecution.

The Foujdaree Udalut have formerly ruled that in cases not punishable by himself, a Criminal Judge ought not to permit any cross interrogatories on the part of the accuser or the accused. But on reconsideration of the subject, with reference particularly to their circular orders, dated the 20th July 1829, and the 16th November 1831, the object of which is to guard against the committal of accused parties on insufficient evidence, for which end a Criminal Judge is required to examine the case for the prosecution, with the same care and minuteness as if the prisoner were to be sentenced by himself, they are of opinion that it is necessary for this purpose that, in cases in which the parties accused are liable to be committed for trial before the Court of Circuit, the officer conducting the preliminary inquiry should have authority at his discretion to permit them to cross-examine the witnesses for the prosecution.

24th FEBRUARY, 1832.

The Court of Foujdaree Udalut, having observed in the record of a trial for aiding and abetting a Sutte lately submitted to them, that the Chowkey Goomastah to whom information of the intended Sutte was sent, did not until he had visited the widow, with his Police force, consisting of a single Peon, communicate the same to the Head of Police, deem it proper to direct that the several Magistrates be instructed through the Provincial Courts of Circuit, to warn all heads of villages and subordinate Police servants, that they are required, on pain of fine or dismissal, to make known immediately to the head of Police, whenever they may be informed that a Sutte is intended; and the Court further direct that the provisions of Clause second, Section IV. Regulation I. of 1830, be generally proclaimed throughout the villages.

27th FEBRUARY, 1832.

I am directed by the Judges of the Court of Foujdaree Udalut to acknowledge the receipt of the 2d Judge's letter of the 10th instant, submitting copy of a correspondence with the Joint Criminal Judge of Malabar, regarding an application, which he recommended to be made by the Court of Circuit to the Foujdaree Udalut, for the admission of 2 prisoners in a case of theft to give evidence, under a conditional pardon, in order to the conviction of the other prisoners.

Upon the question whether a reference of this nature, ought to be made to the Foujdaree Udalut through the Provincial Court, or direct, by

Vide C. O. 261
Dec. 1832.

the Officer whose duty it will be to commit the prisoners, if the case is one proper to be sent, for trial before the Court of Circuit, the Court of Foudaree Udalut are of opinion, that the reference ought to be made direct by the Committing Officer, and not through the Provincial Court, one of the Judges of which will have eventually to try their case. The order of the 31st August, 1829, referred to by the Joint Criminal Judge, is therefore to be considered inapplicable to references of this nature.

5TH MARCH, 1832.

Vide C. O. 16th
Nov. 1832.

In several trials for murder which have lately been referred to the Foudaree Udalut, declarations, alleged to have been given by persons mortally wounded, when in a state which must have induced apprehension of approaching death, have been entered on the Record of proceedings, and have been alluded to by presiding Judges in support of their opinion of the guilt of the prisoner, while it has been omitted to take evidence on the trial in proof of their execution.

It has been heretofore recorded on the proceedings of the Foudaree Udalut, that, to render such declarations available as evidence, they must be proved on the trial, and the Judges consider it necessary to circulate similar instructions for the information and future guidance of the four Provincial Courts of Circuit.

7TH MARCH, 1832.

Referring to the Reports submitted by the Acting Criminal Judge of Chicacole, the Court remark that the whole of the cases committed by the Criminal Judge for trial, before the Court of Circuit, have been entered in detail in the report No. 8, this practice the Judges perceive is observed by the Criminal Judges in some of the other Zillahs also. They consider it unnecessary that the particulars of the cases committed in the previous months should be repeated in each return, and they resolve to direct, as a general rule, that the report No. 8 be prepared so as to shew in detail merely the commitments within the month for which it is prepared; the number of cases and prisoners committed in the previous months, being included in an abstract to be appended to the report in the following form.

Committed in the previous months.		Committed in the present month.		Total.	
Cases.	Persons.	Cases.	Persons.	Cases.	Persons.

14TH MARCH, 1832.

The Court of Foudaree Udalut observe, that the second witness for the prosecution, in reply to the second question of the presiding Judge, stated that she "saw from about 6 fathoms distance, the prisoner draw the knife from his girdle and inflict a wound on witness' father's left side, below his navel." It would appear from page 24 of the record, that this witness, in her examination before the Police Officer, deposed that she did not see the prisoner in the act of stabbing. This is a strong instance of an important deposition not being recorded, and the Court of Foudaree Udalut, direct that in all cases where, as in the present trial, reference is made, in the proceedings of any of the subordinate tribunals, to previous contradictions in the evidence of the witnesses, copies of both depositions shall be invariably submitted.

Vide C. O.
No. 5b.

With reference to the memorandum of the third Judge, shewing that he did not consider it necessary to examine the third and sixth witnesses for the prosecution in this case, and to the memorandum of the third Judge in page 38 of the record of the trial, No. 3, Malabar additional Calendar, first Session 1832, to the effect that, after the examination of the three first witnesses for the prosecution, he thought it "unnecessary to examine the other witnesses for the prosecution," the Court of Foudaree Udalut deem it proper to express their opinion, that the practice of dispensing with the evidence of witnesses in cases of life and death is highly objectionable.

23D MARCH, 1832.

In case No. 4, the prisoner was charged with forgery, but was not put upon his trial, the presiding Judge being of opinion that, according to the statement of the case in the charge, the crime of forgery was not complete, because the utterance or publication of the instruments stated to have been fabricated was not alleged; and considering that the evidence to prove the fact of fabrication was not sufficient. Besides these grounds, the Judge states, that he deemed it inexpedient to try the case in a Criminal Court because "it would be establishing the validity, or otherwise, of deeds involving civil property."

On the ground of the insufficiency of the evidence to prove the acts charged against the prisoner, the Court of Foudaree Udalut think that he was properly released without trial.

But considering the acting first Judge to be in error as to the grounds upon which his decision was founded, they deem it proper to record the following observations for his information and guidance.*

By the English law, a publication or uttering of the forged instrument is not necessary to complete the crime of forgery. The very making, with a fraudulent intention and without lawful authority, of any instrument which at common law, or by statute, is the subject of forgery, is of itself a sufficient completion of the offence before publication; and though the publication of the instrument be the medium by which the intent is usually made manifest, yet it may be proved as plainly by other evidence.

* Vide Com. Digest. vol. iv. page 407.

The main ground for not making an uttering necessary, is that the injury, which a false deed affecting a right of property is calculated to occasion, is not the less from the want of its being made public: on the contrary, by suppressing it until the supposed witnesses, &c., are dead, the means of detection are much diminished.

The Court are of opinion that the rule is strictly applicable to the provisions of Regulation VI. of 1811, respecting forgery.

It is manifest from Mr. Garrow's own remarks on the case, that there is abundant evidence of the fraudulent intent, supposing the deeds in question to have been forged.

With respect to the considerations as to the expediency of trying the case by which Mr. Garrow states himself to have been influenced, the Court have to observe, in the first place, that with such considerations a Court of Circuit has nothing to do, and secondly, that it is a mistake to suppose that an acquittal on a trial of forgery would give validity to the alleged forged instrument.

28TH MARCH, 1832.

Vide C. O. 19th
Nov. 1832.

Several instances having occurred lately of the escape of convicts being reported, without any explanation of the means by which their escape was effected, the Court of Foujdaree Udalt, desire, that instructions be issued to the Officers in charge of gaols, directing that whenever the escape of a convict is reported, all the circumstances of the case as well as the measures adopted for his re-apprehension be stated at the same time.

11TH APRIL, 1832.

The Court of Foujdaree Udalt resolve to direct the Provincial Court to instruct the several Criminal, Joint Criminal, and Native Criminal Judges in the division, that when a case remains undisposed of at the close of a supplemental report, a full explanation of the delay must be given in the column headed, "not examined."

23D APRIL, 1832.

In these cases, the Acting Judge has by demanding a second Futwah misapplied the provisions of Clause fourth, Section II. Regulation XV. of 1803, which are applicable only to offences not specifically provided for by any Regulation. When a specific penalty is provided by the Regulations the sentence should be passed upon the Futwah of Ookoobut as prescribed by Clause second, Section II. Regulation XV. of 1803.

The Court of Foujdaree Udalt, having remarked that in other instances the same mistake has occurred, resolve to recall the attention of the four Provincial Courts of Circuit to their Circular order of the 28th May, 1822, explanatory of the provisions of Section II. Regulation XV. of 1803.

Ordered that paras 2 and 3 of these Proceedings be sent to the four Provincial Courts of Circuit for their information and future guidance.

30TH APRIL, 1832.

Extract from the Proceedings of the Foujdaree Udalt, dated 25th March, 1823.

It is evident that the returns, from some of the districts, exhibit only the number of persons punished by the Village Police for petty offences, and not those dismissed without punishment. As it is the desire of Government that the operations of the Village Police should be brought to view completely, orders will be issued requiring the Magistrates, generally, to take care that the number of persons dismissed without punishment, as well as the number of persons punished, by the Village Police, be entered in the printed statements under the proper heads.

3D MAY, 1832.

Mr. Bannerman states that he received complaints from persons confined at the gaols at Guntoor and Rajahmundry on requisition of security, that cloths are not furnished to them as to the convicts. There is no reason why prisoners of this description should not be supplied with prison clothing as well as others, and the Court resolve to issue a circular order, explaining that the rule regarding clothing is applicable to them.

12TH MAY, 1832.

The Court of Foujdaree Udalt having observed that in the monthly reports from some of the Criminal Courts, in cases of perjury, instead of an abstract of the charge in the proper column, the same particulars are inserted as are required by their circular orders to be entered in the indictment, I am directed to explain that this was not intended, and that it will be sufficient to enter those particulars in the Calendars submitted to the Judges on Circuit, as directed in the late circular order, giving an abstract merely, as in other cases, in the monthly reports.

15TH MAY, 1832.

The Court of Foujdaree Udalt have observed, in the examination of Calendars received of late from the Judges of Circuit, that cases, falling within the scope of the provisions of Clause second, Section IV. Regulation XV. of 1803, have been disposed of, by those Officers, and sentence of 14 years' imprisonment passed upon the parties convicted.

In explanation of this proceeding, it was stated by one Judge, that he had overlooked the fact, that in the Clause above-mentioned it is not made a condition, as in Clause third, Section II. Regulation VI. of 1822, that the personal injury inflicted be such, as to endanger life.

In the Regulation last mentioned particular care has been taken by the legislature to draw a line of distinction between the crimes, for the punishment of which its penal provisions are enacted, and the crime of "robbery by open violence, as defined in Clause first, Section III. Regulation XV. of 1803:" and the circumstances of aggravation specified in Clause third, Section II. Regulation VI. of 1822, are altogether of a more deep atrocity than those, which when accompanying the crime of robbery

by open violence require a sentence of transportation for life, under Clause second, Section IV. Regulation XV. of 1803 : and which may be more correctly compared with the acts of aggravation specified in Clause fourth, Section II. Regulation VI. of 1822 : the intention of the legislature appearing to be that the same acts, which, in the perpetration of house-breaking and theft, without robbery by open violence, are punishable with 14 years' imprisonment, should, when committed in the perpetration of the latter offence be punishable with transportation for life.

With the view to prevent the recurrence of the irregularity described in the first paragraph of this order, the Court of Foujdaree Udalut deem it proper to direct the particular attention of the Judges of the Courts of Circuit to the provisions of Clause second, Section IV. Regulation XV. of 1803, under which it is not competent to a Court of Circuit to dispose of a case of robbery by open violence, in which "any person may have been wounded, maimed, burnt, or subjected to other personal injury, torture, or cruelty, not occasioning homicide," or where "a dwelling house or houses may have been set on fire, or any other Criminal aggravating act committed in the prosecution of a robbery or intent to rob."

In all such cases the prescribed penalty being transportation for life, the trial must be referred to the consideration and final judgment of the Court of Foujdaree Udalut.

It is explained in the circular order of the Foujdaree Udalut, dated 23d November, 1820, that personal injury, *properly* described as "trifling," is not intended in Clause second, Section IV. Regulation XV. of 1803 : but that the Court may judge of the correctness of the proceedings of the Court of Circuit in such cases, they direct, that the precise extent of injury, proved on the trial to have been inflicted, be specified in the column of remarks.

16TH MAY, 1832.—A

The importance of exactness in recording the depositions of witnesses in the words used by the deponents as a means of facilitating conviction in cases of perjury, appearing to the Judges of the Court of Foujdaree Udalut to be urgent, I am directed by them to call your earnest attention to it and to request you to impress upon the subordinate Courts, the necessity of observing in all cases the greatest accuracy in this part of their proceedings.

16TH MAY, 1832.—B

Vide C. O. No.
104.

It being intended to publish the rewards for the re-apprehension of convicts who have escaped from gaol in the *Fort St. George Gazette* it is necessary that whenever a recommendation is made for the offer of reward on such an occasion, it should be accompanied with a descriptive roll of the convict who has escaped.

Ordered accordingly, that the Provincial Courts be directed to instruct the Criminal Judges, Joint Criminal Judges, Native Criminal Judges and Magistrates in charge of gaols in their respective divisions, whenever

the escape of a convict is reported, to furnish a descriptive roll of the convict, in the form prescribed by the circular order, dated 21st October, 1830, omitting the last column.

When it is determined to offer a reward, the publication in the *Fort St. George Gazette* will be a sufficient warrant to all Officers concerned to do what is necessary on the occasion, and no other notification will be requisite.

18TH MAY, 1832.

By the existing orders the Criminal Judges are required only to insert *Vide C. O. No. 23.* in the report No. 5, a statement of the cause assigned by the Police Officer for the detention of prisoners only in cases where the detention extends to 14 days or more, but the Court of Foujdaree Udalut, on *Vide C. O. No. 62.* re-consideration of those orders, which have not lately been attended to in practice, think it proper to modify them by directing that the cause assigned for delay not exceeding 5 days, when the excuse shall appear satisfactory to the Criminal Court, or shall have been, when unsatisfactory, noticed as such by the Magistrate, need not to be inserted in the reports, but that in all cases where the detention exceeds 5 days, and in cases where the excuse is not satisfactory and has been unnoticed by the Magistrate, the reasons assigned for the delay must be entered in the reports, and the Courts of Circuit will take such notice of them as may appear requisite.

1ST JUNE, 1832.

Several of the Judges lately on Circuit, having represented that the privilege allowed to prisoners of calling witnesses to attend on their behalf at their trial before the Court of Circuit, is greatly abused, it appears to be necessary to call the attention of the Criminal Judges to the provisions of Section II. Regulation II. of 1822, and to require that they be strictly observed. The Court of Foujdaree Udalut therefore direct, that instructions to the above effect be issued to the several Criminal Courts by the Courts of Circuit, and that the Judges on Circuit do notice in their reports any instances in which an undue latitude in this respect is allowed to prisoners. *Vide C. O. 7th August and 4th Oct. 1833, and C. O. Nos. 61 and 78.*

5TH JUNE, 1832.

The Medical Board report that the Medical officers in charge of several gaols have stated their opinion that the recent interdiction of tobacco, opium, and betel has been injurious to the health of many of the prisoners, and they express their concurrence in that opinion. It has already been observed that the existing rules authorize these articles to be allowed in particular cases on the requisition of the Medical Officer. As the interdiction of these articles may perhaps have been enforced too strictly, the Court of Foujdaree Udalut think it proper to direct the Courts of Circuit to call the attention of the several officers in charge of gaols to the spirit of the order contained in para 1 of their proceedings, under date the 27th October, 1830, and to advise them that the prohibition of tobacco, &c., is never to be enforced against the opinion of

the Medical officer, but on the contrary, that he should be invited to point out the cases in which he thinks such indulgences requisite to the preservation of health.

25TH JUNE, 1832.

Letter from the Chief Secretary to Government, dated 22d June, 1832.

I am directed to acknowledge the receipt of your Acting Register's letter, of the 18th instant, No 46; and to state that, agreeably to your recommendation, the Right Honorable the Governor in Council is pleased to authorize the several Criminal and Native Criminal Judges to appoint a Vakeel of their Courts to act as Government Vakeel to conduct prosecutions delayed in consequence of the absence of the Government Vakeel.

13TH JULY, 1832.

I am directed by the Judges of the Foujdaree Udalut to desire that you will inform the Criminal Judges and Joint Criminal Judges of your Division, that they have resolved to dispense for the future with the transmission of the report in form No. 11 of the Appendix to Regulation X. of 1816.

27TH JULY, 1832.

The Court of Foujdaree Udalut see reason to believe, that, notwithstanding their Circular Orders of the 25th February, 1829, it is the practice of certain of the Judges of Circuit to confirm Futwahs, rejecting as inadmissible the testimony of prosecutors, in cases when the testimony is distinctly criminatory of the accused.

Since the circulation of the orders above-mentioned, Regulation VI. of 1829, has been enacted; and it is the express object of the provisions of Clause first, Section II. of that Regulation that such testimony by prosecutors should receive the weight to which, on the principles of the English law of evidence, it is entitled.

The Court of Foujdaree Udalut deem it proper therefore, with reference to Clause first, Section II. Regulation VI. of 1829, and Section VIII. Regulation I. of 1825, to direct that the Judges of Circuit do require a second Futwah, in all cases, in which material evidence given by prosecutors may be rejected in the original Futwah, solely upon the general ground of the inadmissibility of a complainant's testimony, and to dispose of the case under such second Futwah, delivered on the assumption that the prosecutor's evidence was admissible under the Mahomedan law.

6TH AUGUST, 1832.

Vide C. O. 21st
Jan. 1833.

The Court of Foujdaree Udalut have recently had occasion to observe cases in Calendars submitted by the Court of Circuit, wherein two or more persons have been tried jointly for the crime of perjury.

This proceeding is considered to be irregular and highly objectionable, and the Court direct that it be on no account repeated.

Even supposing that several persons had sworn falsely in the same matter and in the same words, the forms prescribed for a trial for perjury require that each individual should, be separately tried: but the Court do not believe that such a case, as is here supposed, has ever occurred, and it is manifest that when the words on which the perjury may be assigned, in the case of different individuals, are not the same, their joint trial must be attended with confusion and a regular and proper investigation be impracticable.

The Provincial Courts of Circuit will instruct the several subordinate Criminal Courts invariably to make each charge of perjury, a separate number of the Calendar for each individual accused of this crime: and the judges now on Circuit will make the necessary correction of the indictment in any case or cases, wherein more than one person may stand including in a charge of perjury.

20TH AUGUST, 1832.

To obviate mistakes respecting the course to be pursued in future, the Court deem it proper to direct, by a circular order, that no person to whom the offer of a conditional pardon has been made shall be committed to take his trial, on the ground of failure to perform the conditions of such pardon, excepting by order of the Judge of Circuit, who may have tried the case.

27TH AUGUST, 1832.

A reference having been made to the Judges of the Foujdaree Udalut, *Vide C. O. No. 23.* as to the manner, in which a Judge on Circuit is to proceed in respect to a sentence by a Criminal Judge, which may be unauthorized by Regulation, or the opinion of the Mahomedan Law Officer, or which is contrary to reason, when there are no marks of insufficient investigation, I am directed by the Judges to inform you, that the Foujdaree Udalut have ruled, that under a sound and liberal construction of Section XXIII. Regulation X. of 1816, the Judge on Circuit may refer cases, in which a Criminal Judge may have exceeded his jurisdiction, "or any others in which error may be apparent and remediable, the spirit of the enactment being to obtain correction of error, when practicable."

30TH AUGUST, 1832.

By the circular order of the Foujdaree Udalut, dated the 27th of October, 1830, authority was given to the Provincial Courts of Circuit, to collect all the prisoners in each division, not sent to one of the principal depôts, into such gaol or gaols, as they might consider best calculated to further particular objects in contemplation.

In modification of these instructions, the Judges now desire that whenever the Provincial Court may consider it expedient, with a view to their more profitable employment or other objects, to congregate prisoners in any particular gaol, they will apply for their sanction on each occasion, before carrying the proposed transfer into effect.

26TH SEPTEMBER, 1832.

Vide C. O. No.
168.

The Court of Foujdaree Udalut having observed that mistakes are occasionally made in the designation given at the head of the column, containing the abstract of the charges of the crimes of prisoners committed to take their trial before the Courts of Circuit, I am directed by them to desire that you will instruct the Criminal Judges, Joint Criminal Judges and Native Criminal Judges of your division, for the future, to omit the general description of the crime, and merely to insert in the proper column of their respective Calendars, the facts with which the prisoners are charged.

19TH NOVEMBER, 1832.—A

I am directed by the Judges of the Foujdaree Udalut to transmit to you the accompanying extract from a General Letter from the Honorable the Court of Directors, dated the 1st February, 1832, and to desire that you will issue the necessary instructions on the subject, therein referred to, to the subordinate authorities in your division.

Extract from a General Letter from England, in the Judicial Department, dated 1st February, 1832.

In reference to cases of this sort, involving Judicial proceedings, we desire you to prohibit private correspondence or, indeed, any correspondence by letter, on the part of the Judge or Magistrate, with one of two parties, between whom it is his duty to do impartial justice.

19TH NOVEMBER, 1832.—B

Vide C. O. 25th
March 1842.

I am directed by the Judges of the Foujdaree Udalut, under orders from the Honorable the Court of Directors, to desire that, in all future cases, in which prisoners may break out of, or escape from gaol, the Criminal Judge, or other officer in charge thereof, may be required to submit, with his own report of the circumstances of the case, the depositions on oath of all persons, who may have been witnesses to the affair, and that the Circuit Judge, who may next visit the station, will inquire into the subject on the spot, and submit in his circuit report, his opinion of the conduct of the parties entrusted with the care of the prisoners.

20TH NOVEMBER, 1832.

The attention of the Court of Foujdaree Udalut has, on a late occasion, been particularly attracted by a trial, in which, upon the prisoner's pleading guilty before the Court of Circuit on his arraignment, the proceedings were closed, and the evidence of the witnesses for the prosecution was dispensed with.

It is true, that this proceeding is sanctioned by the letter of Clause first, Section XV. Regulation VII. of 1802, though not, in the opinion of the Court by its spirit, it being essential, in order to the one exercise of that circumspection enjoined in receiving a plea of guilty that the evidence to the facts of the case should be taken, notwithstanding such confession.

The Court of Foujdaree Udalut observe that this construction has been given by the Court of Nizamut Udalut at Calcutta, in a circular order of the 27th January, 1818, to the corresponding provision in the Bengal code, and that the Courts of Circuit were by that order instructed on Criminal trials to take "from the prisoner a plain answer of guilty, or not guilty, and then proceed to the examination of the witnesses, who are summoned in support of the facts charged against the prisoners," no distinction being made in respect to taking the evidence for the prosecution, whether the prisoner plead guilty, or not guilty.

And the Court of Foujdaree Udalut, being of opinion, that this is the only correct and safe mode of proceeding in such cases, direct that it be observed in future by the Courts of Circuit in all cases where a prisoner may plead guilty upon his arraignment.

26TH NOVEMBER, 1832.

On consideration of the record of a case of murder recently submitted to them, in which the deceased, in a dying declaration, averred that the accused stabbed him, the Court of Foujdaree Udalut remarked that the trial had been conducted with little attention to a most important fact, namely, the conviction on the mind of the deceased that he was on the brink of dissolution, and that the presiding Judge had not asked a single question on this point, although a conversation which took place regarding it had been previously related.

It being necessary, in order to the admission of a dying declaration in evidence, that it should be satisfactorily proved, that the deceased, at the time of making the declaration was conscious of his danger, and had given up all hope of recovery,—the Court of Foujdaree Udalut deem it proper, on this occasion, to point the attention of the several Judges of Circuit and Criminal Judges to the importance of duly investigating this fact whenever such declaration may be in evidence in a case of homicide.

26TH DECEMBER, 1832.

With reference to the provisions of Section XII. Regulation XIII. 1832, the Court of Foujdaree Udalut direct that, whenever an offer of pardon may be authorized under the provisions of that Section, the forms prescribed in their circular orders of the 3d April, 1828, shall be modified by omitting the words "in the name of the Governor in Council, and by authority received from him," and substituting in lieu thereof the words, "by authority received from the Court of Foujdaree Udalut."

27TH DECEMBER, 1832.

In Coimbatore there was likewise a decrease, but the Magistrate of that District has failed to furnish the report on the state of the Police called for by the orders of Government. The Court desire that, on all future occasions, the several Magistrates may be peremptorily ordered, either to submit the report in question, with the half-yearly statements, or to shew good and sufficient cause for their failure in so doing.

Vide C. O. 9th
Aug. 1825, and
7th June 1834.

The Provincial Court, in the 6th para of their Proceedings state, that "it is an advantage of the Office of Magistrate being joined to that of Collector, that the European officer in his periodical visits to every part of the District can ascertain how far the people are aware of the prospect of reward for assisting their neighbours in repelling attacks on their lives and property and detecting offenders, and of the immunity from criminal prosecution, in the event of their committing homicide in the vigorous execution of such acts, and the necessity for such examination and communication ought, the Judges think, to be impressed upon the Magistrates and all their subordinates European and Native."

The Court fully concur in the justice of these remarks, and propose to issue circular orders to the several divisions founded thereon.

14TH JANUARY, 1833.

I am directed by the Judges of the Foujdaree Udalt to transmit to you the accompanying copy of a letter from the Secretary to Government in the Judicial Department, and to desire that you will communicate the same to the several subordinate Courts and Magistrates in your division, with a view to the sentiments of Government therein contained being promulgated among the Natives as widely as possible.

"I am directed to acknowledge the receipt of your Acting Register's Letter of the 31st ultimo, No. 106; forwarding a report from the Acting Assistant Judge at Coimbatore, requesting that in consequence of the present high price of grain he may be permitted to purchase a certain quantity, and distribute the same to the inferior servants of the Court; and to acquaint you that any interference on the part of Government of the nature proposed by Mr. Popham is highly objectionable.

The Right Honorable the Governor in Council requests, that you will take every suitable opportunity of explaining to the Judicial officers, with the desire that they will inculcate the same upon the native servants, that in a time of scarcity, high prices must obviously constitute the best security against the calamities of famine. When there is a deficiency of the necessities of life in any country, the only method of counteracting the evils resulting from it, is to diminish, as much as possible, their consumption. This is effected by high prices better than any other measure, for as every poor man is compelled to contract his wants to the smallest quantity of food that can support him, it is plain that a larger number of families are thus enabled to subsist upon a diminished supply: whereas the interference of Government in such emergencies either by fixing a maximum of price, or by throwing a quantity of grain into places which would not receive it in the ordinary course of mercantile speculation, disturbs the natural current, by which, where trade is free, the demand of any commodity is sure to meet, as far as circumstances will allow, with a corresponding supply, and as a tendency (which it is to be feared has too often been realized amongst the Native states) to convert a season of scarcity into one of absolute famine.

The Right Honorable the Governor in Council considers it highly desirable that the Natives in the Provinces should be made acquainted

with the sentiments of Government on this important subject, and be apprized of the calamitous results which would inevitably follow any other line of policy."

21ST JANUARY, 1833.—A.

The serious attention of the Court of Foujdaree Udalt has recently been drawn to the highly reprehensible practice, resorted to by a Judge of Circuit of holding more than one trial at the same time. Vide C. O. 6th
Aug. 1832.

The Court are persuaded, that this practice, so wholly unauthorized by the Regulations, cannot have frequently occurred; but as an instance of it has come to the knowledge of the Court, they deem it incumbent upon them expressly to prohibit the practice in future.

21ST JANUARY, 1833.—B.

The late Acting Judge, in para 16, in allusion to the rescission of Clause second, Section VII. Regulation IV. of 1821, which relieved the Magistrates from taking written evidence in petty complaints, whilst the law has regards Heads of Police in this respect, remains unaltered, states that "a case was brought to his notice, in which a Police Aumeen, vested with the authority of a Head of Police, inflicted the full measure of stripes, it was competent to him to adjudge, without giving the accused an opportunity of naming witnesses to be examined on his behalf, or even taking any defence from him, and also that another case has come within his cognizance, in which a Head of Police adjudged and inflicted the same number of stripes upon a person charged with a petty theft without affording him an opportunity of naming witnesses to be examined on his behalf."

The Court observe that although Section X. Regulation IV. of 1821, relieves Heads of District Police from the necessity of recording depositions in cases in which it is competent to them to pass decision, yet it is obligatory on them, as well as on all other judicial functionaries to hear all the evidence that can be adduced, as well for the accused as the accuser, before proceeding to pass sentence.

For fear the irregularity represented by Mr. Paske may prevail more generally than is anticipated, the Court resolved to issue Circular instructions to the foregoing effect to the four Provincial Courts of Circuit, directing them to communicate the same to the several Magistrates for the information and guidance of the Heads of Police in their respective Districts.

30TH JANUARY, 1833.

The serious attention of the Court of Foujdaree Udalt has been attracted by the almost universal neglect of the important provisions contained in Sections XIII. and XXXVI. Regulation XI. of 1816, on the part of the Officers to whom by those Sections, and by Section III. Regulation IV. of 1821, the duty of conducting inquests on the bodies of all persons supposed to have been murdered is assigned.

The endeavours of the Court to enforce the observance of the provisions of the law on this subject have hitherto failed to produce any effect, and they deem it, therefore, incumbent upon them to call the particular attention of the Courts of Circuit to this matter and to direct that the several Magistrates be required to state what measures appear to them, best calculated to effect the due performance of the duty assigned to the Heads of Villages by Section XIII. Regulation XI. of 1816.

With respect to the Heads of District Police and the Officers specially appointed, under the provisions of Section III. Regulation IV. of 1821, the Court of Foujdaree Udalt direct that they be distinctly warned that future negligence on their part of the duty, prescribed by them, of holding inquests when practicable, will be visited with dismissal from office, under the provisions of Section III. Regulation XIII. of 1832.

11TH FEBRUARY, 1833.

Instances having recently occurred, in which persons charged with uttering base coin, escaped conviction from want of sufficient proof of the identity of the coin, the Judges of the Court of Foujdaree Udalt desire, that the four Provincial Courts of Circuit will issue instructions to the several Magistrates in their respective divisions, to call the particular attention of the Police acting under their orders to the great importance of securing proof of the identity of the piece or pieces tendered, on the trial before the Court of Circuit, by sealing up or marking it or them, in the presence of respectable persons, who may be able to prove the fact, of its being the same as was produced before the Police.

13TH FEBRUARY, 1833.

See C. O. No. 93. I am directed by the Judges of the Court of Foujdaree Udalt to transmit to you the accompanying extract from a report of the 2d Judge of the Court of Circuit in the Western Division, and to request that you will furnish them with your sentiments in regard to the practical operation of the plan, therein proposed, for rendering the attendance of witnesses in the Court of Circuit less burdensome to themselves and to Government.

Extract of a letter from the Second Judge of the Court of Circuit in the Western Division, dated 31st December, 1832.

I trust that I shall be pardoned for urging the reconsideration of this subject, as I have long held it to be a primary object to prevent, as much as possible, the unnecessary attendance or detention of witnesses, and I consequently seek every opportunity to effect it.

With this view I always request each Criminal Judge to call in the witnesses required to appear before the Court of Circuit at different times, instead of causing all to be in attendance on the first day of the Sessions, as the usual practice is.

As this plan may perhaps be considered worthy of adoption, inasmuch as it causes a considerable saving to Government of batta, as

well as promotes the convenience of the people, I beg leave to explain that one or two cases only according to the probable length of the trial are appointed for each day. Those from the most distant places are required to attend first, then those next farthest; so that if any accident prevents their coming on the day fixed, those in cases at or near the Court station can be called on short notice, and the Court is not without occupation. The attendance is thus rendered as light as possible; Sundays, Fridays, and other Mahomedan as well as Hindoo holy days, being excluded from the list of days on which attendance is required. By such arrangement persons are encouraged to be punctual, knowing that they will be quickly examined and relieved from attendance, instead of being detained for two months or more, as would be, and often has been, the case when the Calendar is heavy, if attendance of all on the first day of the Sessions is required. If by any chance there should be no witnesses in attendance on a particular day, the Circuit Judge would not be without occupation either in preparing referrible trials or examining Calendars of persons punished and released by the lower tribunals, &c.

In the 18th para, the 2d Judge suggests that the Judges of the Court of Circuit should be empowered to suspend execution of sentences, and call for the proceedings of the lower Courts, in cases which may appear to require it, on perusal of the monthly returns. Mr. Vaughan points out instances in which notwithstanding the order of the Foujdaree Udalt of the 21st October, 1830, undeserved punishment might be inflicted before the arrival of the orders of this Court on the cases.

The Court having given the subject their best attention are of opinion that it would be advisable to invest the Court of Circuit with the power for which the 2d Judge contends, to a limited extent.

They in consequence resolve to issue circular instructions to the Courts of Circuit authorizing them to suspend sentences of corporal punishment passed by the lower Courts, whenever such sentence may appear irregular, pending a reference on the subject to this Court which should be made without delay.

16TH FEBRUARY, 1833.

Extract of a letter from the Secretary to Government in the Judicial Department, dated the 8th February, 1833.

"The Right Honorable the Governor in Council attaches the greatest importance to the condition of the public roads at every station. If the prisoners are too few in number to the adequate repair of them, no part of those confined ought to be employed in other and less necessary works."

22D FEBRUARY, AND 18TH MARCH, 1833.

Extracts of letters from the Secretary to Government in the Judicial Department, dated 12th February, 1833.

"The Right Honorable the Governor in Council hopes that the several Magistrates will not relax in their endeavours to stimulate the Heads

of Village Police to an energetic discharge of their duties, and that they will not be discouraged by observing an occasional indifference and apathy; at first this is to be expected—their functions have been too long suspended not to make the revival of them a task of persevering and constant effort on the part of the superintending authorities.”

“It is extremely satisfactory to Government that the operations of the Village Police have been greatly augmented in several Districts.

You will have the goodness to communicate to the several Magistrates of Canara, Combaconum (Tanjore) Coimbatore, Cuddapah, Rajahmundry, and Tinnevely, the great advantages which must inevitably result from the powers of the Heads of Villages as established by law being brought into active exercise, and the approbation with which the advance in those Districts, towards carrying into effect the intentions of the legislature, is viewed by the Right Honorable the Governor in Council, and he trusts that you will continue to press upon the attention of other Magistrates the importance of using their best exertions to accomplish the same desirable end.”

Vide C. O. 9th
Aug. 1825.
10th February
1831, and 9th
April 1831.

“The Government highly approve and applaud your resolution to issue Circular orders, and you will have the goodness to desire that they may be made as public as possible, exhorting the people to resist attacks on their lives and property; to assist their neighbours in such emergencies, and to detect offenders; and assuring them of immunity from Criminal prosecution in the event of their committing homicide in the vigorous execution of a duty which every man owes to the community of which he is a member.”

30TH MARCH, 1833.

Extract of a letter from the Secretary to Government in the Judicial Department, dated the 22d March, 1833.

“The Right Honorable the Governor in Council is concerned to remark that there has been a decrease in the operations of the Village Police, as compared with the preceding half year, but it is satisfactory to observe an increase of them in the four districts of Nellore, Salem, Malabar, and Vizagapatam. The falling off has been most prominent in Cuddapah, Ganjam, Rajahmundry, and Tinnevely. The advance or decline of the valuable system of Village Police, must depend for many years to come upon the encouragement it receives from the local European Officers. It was formerly allowed to fall into disuse from not having been sufficiently appreciated, and it will go again to decay unless every Magistrate in the country affords to it his countenance and cordial co-operation.

10TH APRIL, 1833.—A.

The Court of Foujdaree Udalt have frequently had occasion to observe the laxity with which the charges in the Calendars are worded, notwithstanding their standing orders, requiring that the indictment should be drawn up by the Criminal Judge himself in strict accordance with the evidence to be adduced on the trial.

The Court in consequence think it proper to direct that extract from these proceedings, together with extract from that part of the second Judge's letter to which they refer, be sent to the four Provincial Courts of Circuit by precept, requiring them to call the particular attention of the several Criminal Judges in their respective divisions, to the necessity of framing the charges in cases submitted to the Court of Circuit, with greater care and circumspection in future.

Extract of a letter from the 2d Judge late on Circuit in the Southern Division, dated 15th March, 1833.

I am of opinion that Criminal Judges should be enjoined to greater care than is usually observed in drawing out the charges of the cases which are entered in the Calendars submitted to the Judges on Circuit.

These charges are generally framed in the most exaggerated terms, far exceeding what the evidence taken before the Criminal Court in the cases would shew that they ought to be. They are, it is to be concluded, drawn up by a writer in the office, who takes the violent statements of the prosecutors as his guides.

It is not to be expected that the Criminal Judge should write all these charges himself, but it would be giving him but little trouble if, after having gone through the examination of the case, he should be required to trim the charge of its superfluities, and to reduce it to what he might then consider to be a fair statement of the crime that the prisoners had committed, &c., which there was a probability of substantiating by the evidence to be submitted.

In exemplification of my meaning, I would name case No. 1 of the Calendar submitted to me at Coimbatore, in which 10 prisoners were charged with having gone with a gang of about 30 moplas, armed with muskets and other weapons, &c., attacked and plundered the prosecutor's house, whereas there was not one tittle of evidence given before the Acting Joint Criminal Judge that a single mopla had been with the gang, or that any thing like a musket had been carried by any of the robbers. The indictment was evidently framed upon the exaggerated statement of the prosecutor, without reference, in the slightest, degree to the evidence which had been taken before the Joint Criminal Court in support of it.

10TH APRIL, 1833.—B.

The Court approve highly of the suggestions contained in these paras, and in consequence resolve to transmit copies thereof to the four Provincial Courts of Circuit by precept, directing them to issue the necessary instructions to the several Criminal Judges in their respective divisions for carrying into effect the arrangement proposed by Mr. Dickinson.

Extract of a letter from the 2d Judge late on Circuit in the Southern Division, dated 15th March, 1833.

It is very desirable, in every case in which wounds and hurts may have been sustained, that as soon as the parties who have received them

shall come before the Criminal Court, a correct record should be made of the nature and degree of the injury which they may then appear to have sustained. I would suggest that the Criminal Judge should be required to make this memorandum in his own hand-writing, and that it should be in the form of a certificate bearing his signature, that he had personally examined the wounds and hurts and that it contained a correct description of what he thought of the wounds. In a case in which severe injury had been sustained, I would further suggest that the Medical Officer in charge of the Court should be required to examine the wounded person and to furnish a certificate in his own hand-writing and bearing his signature, descriptive of the extent to which he found the party on examination to have been injured.

Such certificate, if annexed to the record, would very materially assist a Judge on Circuit in deciding as to the disposal of cases of this description, at present not unfrequently a matter of difficulty. If the statements of the prosecutor and of his witnesses were to be credited, the recovery of the injured person would often appear to have been almost miraculous, whereas if the person injured were desired to point out the marks of the wounds and injuries he had received, he might not be able to show any marks of them at all, or at the utmost such only as to a European's notions would amount to but contemptible scratches. It is very desirable that the Judge on Circuit should be assisted in discriminating between statements that are exaggerated, and those which are essentially true, but where the marks of the injuries may have become much effaced by the time which may have elapsed since the injuries were sustained and the trial.

26TH APRIL, 1833.

The Court of Foudaree Udalut observe that of late there appears to be a frequent neglect of the standing Circular orders of the Court, under date 22d July, 1814, in forwarding convicts, sentenced to transportation, from one district to another, without the documents therein required, and desire that the general attention of the Criminal Judges in the several divisions be called to the orders referred to.

29TH APRIL, 1833.

The serious attention of the Court of Foudaree Udalut has been attracted by the almost universal practice adopted by the Heads of District Police of entering in their reports, transmitted to the Criminal Judge under the provisions of Clause fourth, Section XXVII. Regulation XI. of 1816, the date of examinations, taken from prosecutors after the apprehension of the prisoners, as the "date of charge," whereas it is the manifest intention of the Regulation, that this date should be that of the original information by the complainant.

The Court of Foudaree Udalut observe also, that the Officers of the Police, empowered to receive complaints of crimes, appear not to take such complaints down in writing at the time of their being preferred, as ought always to be done, and they direct that this be invariably done in future.

In estimating the credit due to the evidence of prosecutors, it is of the greatest importance that a record should be kept of their statements, in the first instance, to the Officers of Police; and the Court of Foudaree Udalut direct that this part of the proceedings of the Police Officer be in future always included among the papers transmitted with trials, referred to them by the Courts of Circuit.

8TH MAY, 1833.

According to the law of England, "the deposition of a witness taken upon oath in the presence of a prisoner, who has been brought before the Magistrate on a charge of felony, may be given in evidence on the trial of an indictment for the same felony, if it be proved on oath to the satisfaction of the Court, that the informant is dead, or prevented by sickness from attending, or that he is kept away by the means and contrivance of the prisoner, provided also, that the deposition, offered in evidence is proved to be the same, as was sworn before the Justice, without any alteration." C.O. Nos. 3 and 30.
Vide C. O. 11th April 1820.

It appearing to the Court of Foudaree Udalut, that the provisions of Section II. Regulation XIII. of 1832, remove any objection, which might previously have existed to the adoption of the above rule, with reference to depositions before the Criminal Judge, under the circumstances described, and the Court being further of opinion that its introduction is not opposed by any provision of the Regulations in force.

Ordered that extract of these proceedings be sent to the several Judges on Circuit, and to the four Provincial Courts of Circuit by precept, enjoining them to observe the rule above recited, in reference to depositions taken by the Criminal, Joint Criminal, or Native Criminal Judge, in cases where a witness' attendance before the Court of Circuit, may be prevented by the causes there stated.

13TH MAY, 1833.

Read return, dated the 20th April from the Provincial Court of Circuit in the Northern Division, to precept, dated the 10th April.

From the foregoing returns, it appears that the system which obtains in the Southern and Western Divisions of dispatching the records of referrible cases from the stations at which the trials have taken place, is rendered impracticable in the Northern Division from the circumstance of no translations being made of the proceedings of the Criminal Courts except in referrible cases, and from their never being commenced until the trials are completed.

The system prevailing in the Southern and Western Divisions having been found to answer remarkably well, and to contribute greatly to the early despatch of the trials to the Presidency, the Court consider it highly advisable that it should be adopted in the Northern and Centre Divisions. They in consequence direct that the Provincial Courts in those Divisions will issue instructions to the several Criminal Judges and Joint Criminal Judges within their respective jurisdictions, to prepare translations of all cases committed by them, which are to be submitted to the Court of Circuit with the Calendars.

12TH JULY, 1833.

The serious attention of the Court of Foujdaree Udaltut has been attracted by the general prevalence of attempts to establish a defence of alibi, supported by perjury, and they deem it proper to direct, by a Circular order, the attention of the Judges of the four Provincial Courts of Circuit to this subject, and desire that in all such cases the witnesses appearing to have so sworn falsely be committed to take their trial for perjury, if there shall be evidence attainable to establish the charge against them.

31st JULY, 1833.—A.

Vide C. O. No. 25.

For the purpose of checking the great delay practised by the Heads of District Police in the disposal of cases brought before them as exhibited in the several Criminal Returns submitted to this Office, and specially brought to the notice of the Foujdaree Udaltut by the 2d Judge of the Provincial Court of Circuit in the Western Division in the 11th para of his Report, on the completion of the 1st Quarterly Sessions of the present year—the Judges of the Foujdaree Udaltut, with the sanction of the Right Honorable the Governor in Council, desire that the several Magistrates within your division, be directed to require the Heads of the District Police to transmit to them monthly statements of all complaints received, showing how and when they were disposed of; and that these statements be submitted by the Magistrate to the Court of Circuit for inspection, together with the Calendars which he is required to furnish, according to Clause first, Section XL. Regulation IX. of 1816.

31st JULY, 1833.—B.

In respect to the question of the competency of a Judge on Circuit to receive and pass orders upon petitions, complaining of a Magistrate's proceedings, previously to such Judge's arrival within the limits of the Magistrate's jurisdiction,—the Court of Foujdaree Udaltut entirely concur with the 1st Judge, that he does possess that power, and is competent to exercise a similar power at any period of his Circuit. As observed by Mr. Garrow, "if it were otherwise there could be little or no protection for the people" from irregular or improper proceedings of a Magistrate, as they "are not subject to the revision of the Provincial Court of Circuit.

7TH AUGUST, 1833.

Extract from the Proceedings of the Foujdaree Udaltut, under date the 12th June, 1833.

Read letter, dated the 15th April last, from the 1st Judge late on Circuit in the Western Division, submitting the Circuit Report required by Section XXXVII. Regulation VII. of 1802, for the 2d Sessions of 1832.

The 1st Judge in this para animadverted strongly on the hardship entailed on Prisoners in general, and more especially on those tried for their life, by the authority granted to a Criminal Judge if he see proper,

to summon only two witnesses "to each point," for (he remarks) it may so happen that one by death or otherwise, may not be forthcoming or the recollection of one of the two, may not serve him to corroborate the statement of the other, and he suggests, in consequence, even should a new enactment be necessary, that the number should be increased.

The Court of Foujdaree Udaltut, in their Proceedings of the 30th June, 1830, fully expressed their sentiments on this subject, in reference to certain observations from the 1st Judge late on Circuit in the Centre Division, and they now consider it proper to subjoin those remarks for the information of the 1st Judge, who will, should he deem it necessary, communicate the same for the guidance of the several subordinate judicial authorities in the Western Division.

"The discretion given to Criminal Judges by Regulation II. of 1822, to limit the number of witnesses for the defence was rendered necessary by the manner in which, either from ignorance or design, persons committed for trial had abused the privilege of summoning witnesses on their behalf, and the most general defence of an alibi can be as easily proved by two as by twenty witnesses. The Criminal Judge previously had no option. He was bound to cause the attendance before the Court of Circuit of every person named by the prisoner, without knowing, and without having the means of knowing, whether their evidence was, or could be, material to the prisoner. The discretion thus given to the Criminal Judges was not, and could not be, meant to deprive the prisoners of any just means of defence; and if a prisoner were to name ten witnesses to a fact clearly material to his defence, the Criminal Judge would improperly exercise the discretion vested in him, were he to reduce the number summoned to two or three; for, although the ten might not be necessary to prove the fact, the evidence of the two or three might from various causes be insufficient to establish it. Independently of the general rule, that the best and fullest evidence should be obtained in fact in every case, there would be here a complete failure of justice."

Vide C. O. No. 61.

Vide C. O. 4th October 1833.

10TH AUGUST, 1833.

Read letter, dated the 20th ultimo, from the 1st Judge on Circuit in the Southern Division, submitting for the determination of the Court of Foujdaree Udaltut the following question, namely, "in a matter wherein before a Criminal Judge there may be sufficient evidence to implicate another person not apprehended, is it competent for the Criminal Judge or a Judge on Circuit to require the Magistrate to issue his warrant to apprehend and send up the individual so implicated for trial before either jurisdiction?"

The Court of Foujdaree Udaltut have no difficulty in deciding the foregoing question in the affirmative, with this qualification only, that the application of the Criminal Judge in such a case should be in the form of a request, while that of the Court of Circuit should be an authoritative requisition: in either case, a non-compliance on the part of the Magistrate should form the subject of a reference to the Court of Foujdaree Udaltut.

21st AUGUST, 1833.

A case has lately come under the consideration of the Court of Foudaree Udalt, in which the Judge of Circuit proceeded to the trial of a prisoner, committed by himself in the capacity of Criminal Judge.

The Court of Foudaree Udalt deem it proper, on this occasion, to direct by a circular order, that whenever the Calendar of prisoners to be tried by a Judge of Circuit may contain a case, or cases, committed by himself, as Criminal Judge,—he do call before him in open Court the prisoner or prisoners and ascertain from them by personal inquiry whether, or not, all or any of them are willing to be tried by him; and in the event of any prisoner's declining so to be tried, the Judge on Circuit will postpone his trial until the next Sessions of gaol delivery.

31st AUGUST, 1833.—A.

Read letters, dated respectively the 23d February, 11th, and 23d March, and 29th July, from the Provincial Courts of Circuit in the Southern, Western, Centre, and Northern Divisions, in reply to the Circular letter of the Court, dated the 13th February, calling for their sentiments as to the expediency of adopting the arrangement described in the 9th, 10th, and 11th paras of the Circuit report of the second Judge of Circuit in the Western Division, dated the 31st December, 1832.

Upon the fullest consideration of the sentiments expressed in the foregoing letters, the Court are of opinion that inconvenience would in all probability result from directing the universal observance of the practice described by Mr. Vaughan.

So much must be left to the discretion of the Criminal Judge, and so various are the circumstances, which might occasion difficulty in carrying into effect a new rule of this sort at one place, which might with comparative facility, be observed at another,—that the Court think it would be inexpedient to lay down Mr. Vaughan's proposed instructions for universal observance.

They desire however in communicating these sentiments to the Provincial Courts of Circuit to impress on them, that, although it is not deemed expedient to lay down specific rules on the subject, it is nevertheless incumbent on them to use their utmost endeavours to prevent the needless attendance of prosecutors and witnesses in criminal trials.

31st AUGUST, 1833.—B.

Read letter, dated the 31st ultimo, from the Provincial Court of Circuit in the Southern Division, submitting the reports required by Section XXXV. Regulation X. of 1816, from the several Criminal and Joint Criminal Judges in the Division for the month of June last, together with an extract from their proceedings thereon.

With reference to the 21st para of the proceedings of the Provincial Court of Circuit, wherein they observe "that the Section" (XI. of Regulation XIII. of 1832) "under which the Prisoner" in case No. 155, of the Supplemental Report "was sentenced does not specify, labour and irons," the Judges of the Court of Foudaree Udalt would remark, that though in neither this provision, nor in Section VII. Regulation X. of 1816, "labour and irons" are specified, yet the Court of Foudaree Udalt have ruled so far back as the 3d of June 1819, that a sentence of imprisonment "must be wholly nugatory, unless accompanied with hard labour and irons during the term of imprisonment," and that a sentence of imprisonment, "without labour" must, when considered with reference to its general operation eventually, tend rather to the encouragement than the suppression of offences.

The Court at the same time observed that cases might occur, in which, considering the rank or circumstances of the person convicted, imprisonment may be held to be a sufficient punishment.

The Court of Foudaree Udalt having reason to believe that in other Divisions also sentences of imprisonment are not considered generally to imply labour; they resolve to circulate the above* to the four Provincial Courts of Circuit to be by them communicated to the several Criminal, Joint Criminal and Native Criminal Judges in their respective Divisions for their information and future guidance.

16th SEPTEMBER, 1833.

I am directed by the Judges of the Court of Foudaree Udalt, to transmit to you the accompanying extract† from the report of the late Acting Judge on Circuit in the Centre Division, together with an extract‡ from the proceedings of this Court, under date the 11th of July last, and, in circulating copies of the same for the information and future guidance of the several Officers in charge of gaols within your jurisdiction, I am directed to desire you will instruct those Officers to supply grain in the husk to all persons in confinement within their gaol who may not be liable to labour.

This grain the parties must be required to beat out for themselves, but the Judges of the Foudaree Udalt would exclude from the operation of this order the case of all persons, for whom, from their caste, age, strength or other circumstances, such employment may be considered improper.

Extract from the Report of the late Acting Judge on Circuit in the Centre Division, under date the 10th May, 1833.

In my letter of the 7th instant, I have adverted to certain alterations tending to improve the security of the Bellary gaol and the classification of the prisoners.

The state of the prisoners committed for trial in this gaol claims attention, while all the other classes have remained in their usual health,

* Paras 2d, 3d, and 4th.

† Para 12.

‡ Para 18.

of these alone in the space of four months 17 persons have died out of a total of 137. The disease called Beriberi, has carried off 9 out of the 17; and it is remarkable that it has shown itself only among the committed persons. It appears that these prisoners are not required to perform any labour whatever, and yet have the same diet allowance as the working convicts. I found it to be the opinion of the Medical Officer, and of an experienced dresser of the gaol, that these circumstances were the exciting causes of the disease, I have intimated to the Acting Criminal Judge that he should use the discretion entrusted to him in diminishing the allowance of this class. It might be useful to direct that all prisoners fed at the public expense, whose state of health and rank of life may not forbid, and who are not otherwise profitably employed in labour, should be supplied with grain in the husk, and required to beat it out for themselves. The occupation and exercise could not but be beneficial to them.

Extract from the Proceedings of the Foujdaree Udulut, under date the 11th July, 1833.

The suggestions offered by Mr. Nelson, that persons not employed in the gaol, "should be supplied with grain in the husk, and required to beat it out for themselves," the Judges consider unobjectionable, and they propose issuing orders to this effect to the several Officers in charge of gaols.

4TH OCTOBER, 1833.

Vide C. O. 1st
June 1832.

In this para the third Judge animadvert on certain practices prevalent in some of the Criminal Courts which appear to him liable to objection. He states that "in one Court in the summoning of witnesses for the defence, in cases committed for trial before the Circuit Courts, if a prisoner on being committed should name only one witness, that witness is not summoned and even his name is sometimes not recorded, it being considered that two witnesses are indispensable."

The Court have to observe that nothing can be more improper, or unjust, than to deprive a prisoner of the benefit of any testimony that can be adduced in his behalf, and they desire that wherever the practice above described may have prevailed, instant orders may be issued for its abolition.

For fear the irregularity represented by Mr. Anderson may prevail more generally than is anticipated, the Court resolve to circulate the foregoing observations to the four Provincial Courts of Circuit with instructions to communicate the same to the several subordinate Courts in their respective Divisions.

4TH DECEMBER, 1833.

No. 913.

Extracts from the Minutes of Consultation, 22d November 1833.

Read the following letter from the Register to the Court of Foujdaree Udulut.

The Right Honorable the Governor in Council has reason to believe,

that the Judges of the Provincial Courts in Bengal, when proceeding on Circuit, are not accompanied by Military guards, and that the Troops which have been hitherto detailed for that duty, under this Presidency, have been generally employed for the protection of baggage and official records.

That Escorts were originally granted for the protection of property rather than for purposes of state, may be inferred from Guards of Honor not being allowed to a Circuit Judge, when at his Huzoor station, and from the impracticability of the sepoy keeping pace with a Judge when travelling.

A consideration of these circumstances, of the injury to discipline, from sepoy being detached for six months at a time from their Regiments, and of the expense incurred on account of their batta, has led the Government to direct, that Military guards shall not in future be furnished to Judges when proceeding on Circuit; and arrangements will be made in the Judicial Department, for their being supplied with proper Escorts of Peons, from the Districts through which they pass on duty.

Extract from the Minutes of Consultation in the Judicial Department, under date the 29th November, 1833.

Ordered that a copy of the above Extract be transmitted to the Court of Foujdaree Udulut who will communicate the resolution of Government to the Courts of Circuit. By the Circular orders addressed to the Judges and Magistrates and to the Collectors under date the 22d January, 1803, it is directed that a respectable Escort of Peons from the Police and Revenue Establishments shall attend the Judge on Circuit in his progress through each District and it does not appear to be necessary to issue further instructions on the subject.

30TH DECEMBER, 1833.—A.

The Court of Foujdaree Udulut having, upon the examination of the statements exhibiting the manner in which the prisoners are employed in the several gaols under this Presidency, perceived a vast disproportion in the sums realized by the labours of the convicts in the different Zillahs in the same articles of manufacture upon which the same number of even in the same articles of manufacture upon which the same number of prisoners have been employed, resolve to direct that in future a memorandum be appended to each statement in which is to be exhibited according to the following form, the quantity of Paper, Cumblies, Cloths, &c., that may be manufactured during the period for which the statement is prepared; as also the description and value of the raw materials purchased during the same period.

And the Court take this opportunity of calling the attention of the several Criminal, Joint Criminal, and Native Criminal, Judges and Magistrates, in charge of gaols, to the 6th para of their proceedings, circulated under date the 19th of January, 1831, which directs that "to each individual convict a defined task should be assigned," and the Court of Foujdaree Udulut desire that the completion of this task may be, in every instance, strictly enforced.

Modified by C.
O. No 53.

Vide Circular
Letter 6th Dec-
ember 1835.

MEMORANDUM.

Estimated value of all articles produced by the labour of the Prisoners, during the month of October, 1833.

	R.	A.	P.
500 Quires of Country Paper at 12 quires per Rupee	41	10	3
4 Pieces of coarse cloth at 1½ Rupee per piece	7	0	0
1½ Sairs of Tape at 5 Annas per sair	0	7	6
10 Cumblies at 4 As. per cumby	2	8	0
	51	10	2

DEDUCT.

The price of raw materials purchased.

Paid for gunnies purchased for making Paper	3	14	3
Paid for sundry articles purchased for do.	4	5	4
Paid for cotton thread and sundry articles purchased for weaving Cloths	4	14	7
Paid for cotton thread purchased for weaving Tape	0	3	6
Paid for wool and sundry articles purchased for weaving Cumblies	1	12	0
	15	1	8
Net profit Rupees	36	8	6

30TH DECEMBER, 1833.—B.

Extract from the Minutes of Consultation, under date the 24th December, 1833.

Read the following letter from the Magistrate of Nellore.

Vide C. O. No. 149.

The native Heads of District Police being empowered by the Regulations to issue warrants and summonses without reference to the Magistrate, the Right Honorable the Governor in Council sees no reason why, in the case of Native Officers and Soldiers, the warrants and summonses issued by them should be accompanied by a notification from the Magistrate to the Commanding Officer, and as this practice must necessarily cause delay and inconvenience, he is of opinion that it ought to be discontinued. Whenever the head of District Police issues a summons for the appearance, or a warrant for the apprehension, of a Native Officer or Soldier, it should be accompanied by a notification from himself to the Commanding Officer. The Magistrates will be instructed to issue orders to this effect to the heads of the District Police under their authority respectively, and his Excellency the Commander-in-Chief will be requested to explain the same to the Army by a General Order referring to that bearing date the 7th August, 1813.

6TH JANUARY, 1834.

Read letter dated the 19th November last, from the third Judge of the Provincial Court of Circuit in the Northern Division transmitting

for the orders of the Court, copy of a letter from the Acting Criminal Judge of Rajahmundry, requesting instructions in regard to the mode of disposing of a case forwarded to him by a head of District Police, under Regulation IX. of 1832.

As far as the Court are aware this is the first instance of a question being raised as to the course to be pursued by a Criminal Judge on the trial of a person sent up by a Police Officer, under Regulation IX. of 1832, for having preferred a wilfully false and malicious charge, and they in consequence consider it necessary to give the subject their most attentive consideration.

The use of the word conviction, in Section II. of the Regulation, would seem to imply a full and regular trial, but the Court cannot conceive that this was the intention of the legislature. Under Section XXXV. Regulation IX. of 1816, a Magistrate, when it shall appear to him, that any of the complaints specified in Section XXXII. and XXXIII. are litigious, vexatious or groundless, is authorized to punish the complainant by fine or imprisonment under certain limitations and restrictions. It seems to have been considered that a similar power could not safely be entrusted to a native Police Officer; and it was therefore provided that the power of punishment, in these cases, should be vested in the Criminal Judge; but it appears to the Court there is no obvious reason why the infliction of punishment in one case should be preceded by more strict formalities than in the other. It seems to them, therefore, that nothing more was intended than that the Criminal Judge should, on a view of the evidence produced, in support of the charge preferred by the prisoner, before the Police Officer, form his opinion of its falsehood and maliciousness or otherwise, acting in this respect as a Magistrate would do, in the exercise of the powers vested in him by Section XXXV. Regulation IX. of 1816. If, upon a view of the proceedings before the Police Officer, the Criminal Judge should consider that there are strong grounds to believe the accusation preferred by the prisoner to be wilfully false and malicious, he will call upon the prisoner for his defence, and the prisoner will of course be at liberty to show, if he can, by evidence, that he had a probable cause for the accusation which he preferred to the Police Officer; and, if he succeeds in shewing that, he must of course be acquitted. If, on the other hand, the Criminal Judge, on a view of the evidence before the Police Officer, should be of opinion that there are no sufficient grounds for believing the charge preferred by the prisoner to be wilfully false and malicious, the charge against the prisoner must be at once dismissed.

It appears from the papers transmitted by the third Judge of the Provincial Court of Circuit in the Northern Division, that the Acting Criminal Judge of Rajahmundry, has before him the proceedings of the Police Officer on the charge preferred by the prisoner; but he thinks that a re-examination of the case by himself is a necessary preliminary to his forming a judgment upon the charge preferred against the prisoner, and he has called upon the Magistrate to send up the case for that purpose. This the Magistrate has very properly declined. It is impossible to suppose that the legislature could intend that the person originally accused should at all events be subjected to the inconveniences of a re-examination on charges which are on *prima facie* evidence presumed, and often must turn out, to be wilfully false and malicious. That would be to

aggravate the evil which it was the intention of the Regulation to suppress.

As it appears to the Court not improbable that similar misconception may prevail in other Criminal Courts, they resolve to transmit copy of these proceedings to the four Provincial Courts of Circuit with instructions to communicate the same to the subordinate authorities in their respective Divisions.

30TH JANUARY, 1834.

Vide C. O. 21st
Feb. 1834.

The Provincial Court in the Northern Division have submitted to the Judges of the Foujdaree Udalt the refusal of the Acting Joint Criminal Judge of Guntur to admit prisoners into his gaol upon a Sunday. They have themselves added that they "consider there can be no necessity for this, excepting perhaps on some special occasions," and that it cannot "be expected that the Criminal Judge is so far to engage in public business, on a Sunday, as to open the Calendars in cases sent up for trial, for the purpose of causing the prisoners to be placed in gaol."

Nothing is more calculated to shake the confidence hitherto reposed by the people in that impartial justice, which sustains our rule, than a deviation from the most perfect religious toleration, which is the great characteristic of our Government; and it is the duty of every public officer, especially of those who preside over a department, to restrain any injudicious innovation, which can even remotely have the appearance to impose upon the people, our own religious observances. The Judges of the Courts, whether European, Mussulman, or Hindoo, whilst enjoying the protection of the state, in the entire freedom of their private religious opinions, respectively, ought never to allow them to tincture their public acts, or to influence the duty due by them to the State.

The spirit of the code of laws, which these Judges are solemnly sworn to administer, as well as the repeated orders of the Government and of this Court, go to enforce the speediest possible transfer of all prisoners, from the Police and the Magistracy, to the Criminal Courts. In lieu of acting upon the rules laid down for their guidance, the public officers in question have allowed their public acts, to be regulated by private religious opinions, which they have as little right to intrude upon the people, as upon their superiors. The want of experience of the Joint Criminal Judge may excuse such conduct. But the Judges of the Foujdaree Udalt deem it their duty to express their surprise that it should have received any support from the Provincial Court.

In declaring it to be the imperative duty of every Criminal Court, to receive, as well on Sunday, as on any other day of the week, all prisoners sent into gaol, whether by the Magistracy or the Police, and to open all public papers when delivered to them, the Judges of the Foujdaree Udalt confine themselves, to what is absolutely necessary for the good of the public service; for pardons in capital cases, and other emer-

gent communications might otherwise prove useless. But they take the present opportunity to communicate the foregoing observations to all the officers in the judicial department, to correct any bad effects from the injudicious proceedings before noticed, and that each may be aware of the principles which the head of their department is prepared strictly to enforce in this respect.

12TH FEBRUARY, 1834.

Read letter, dated the 20th December last, from the officiating Secretary to Government in the judicial department, desiring that the Court will state their opinion, "whether the power vested in the Civil Courts as intimated in Section V. Regulation VI. of 1811, to order persons charged before them with the crime of forgery to be brought to trial before the Court of Circuit has been expressly or virtually repealed, by any subsequent regulation;" and if they should be of opinion that it has been repealed, that they will point out what provisions of the regulations directly, or constructively, abrogate the power formerly vested in the Civil Courts, in cases of forgery coming under their judicial view.

In several late references from the Provincial Court in the Southern Division, this Court, under date 29th June, 25th September, and 16th and 31st October, 1833 ruled that, with reference to the restrictive provisions of Section VIII. Regulation X. of 1816, the Criminal Court "possesses no original jurisdiction in cases of forgery" which "must be sent in the first instance to the Magistrate."

In consequence of the reference now made to them by the Government the Judges have been led to review the whole of the enactments bearing upon this subject, and to refer to the orders passed by this Court on the 28th October, 1823, in which is incorporated the substance of a previous order of the 31st January 1820, connected with the construction of the Regulation referred to by Government, for whose information, they proceed to record the result.

Section XI. Regulation II. of 1802, specially reserves to the Zillah Courts, the cognizance of contempt and perjuries committed in open Court, as prescribed in Sections VIII. and XXII. of the following Regulation III. of 1802, the latter part of which explains that this extends to all undue arrogation of the authority of the Court, and all illegal exertion, of judicial authority, by parties in their own cause.

These enactments are followed by the provisions contained in Section V. Regulation VI. 1811, in which, as pointed out by the Government, a broad distinction is drawn between perjury, subornation of it, and forgery, falling of themselves under the judicial cognizance of the Civil or Criminal Courts in the course of their proceedings, which the superior tribunals, at that time known by the designation of "Courts," may order to be brought to trial, and the same crimes, cognizable without any such order, in which the original "charges" may be preferred at the instance of interested individuals.

But from this, and the following section of the same law, which remain unaltered, it is evident that these enactments of 1811, contemplated that even in the former cases, the order of the superior tribunals should be addressed to the "Magistrate" who at that time possessed exclusive authority to commit for trial before the Court of Circuit.

So long as the offices of Judge and Magistrate were united in the same person there existed no difficulty in executing this law. But in 1816, when they were disunited, an oversight was evidently committed, in not transferring to the Criminal Judge, who then became the exclusive committing Officer, the power of committal, which Sections V. and VI. Regulation VI. 1811, still contemplate as vested in the "Magistrate."

But that this was a mere oversight is evident, for the principle established by the substantive enactments of 1811 pervades the rest of the code.—Perjury, subornation of it, or forgery, which have already come under judicial cognizance, were, by it, declared at once liable to be ordered for committal before the Court of Circuit; whilst the same charges, preferred by individuals, without such judicial sanction, were left open to inquiry by the Magistrate as theretofore.

Experience however having shown that even these latter cases ought to have the previous sanction of the proper tribunal, immediately cognizant of them, Section XXIX. Regulation IX. of 1816, expressly excluded the new Magistrates, from the cognizance of such perjury or subornation of it in *Civil* suits, as might be preferred at the instance of individuals which, under Section VIII. Regulation III. 1802, it retained for committal by the Zillah Judge exclusively; and Section VIII. Regulation II. 1822, subsequently extended this exclusion to all charges for perjury, or subornation of it, in the Criminal Courts.

It is true that the Criminal Judges by Section VIII. Regulation X. of 1816, were likewise excluded from the cognizance of any criminal charge or information except such as might be brought before them by the Magistracy or the Police, with the single exception of crimes by European British subjects, to which, were added, as above explained, charges for perjury or subornation of it in Civil or Criminal matters, before the superior Courts preferred at the instance of individuals; but this does not affect the crimes, specified in Section V. Regulation VI. 1811, when, in lieu of being advanced on the "charge" or information of individuals, necessarily requiring judicial sanction, they have already come under judicial cognizance and are liable to trial at the public instance by mere order of Court.

This Court in their proceedings of the 16th April, 1829, without taking so extended a view of this subject, explained to the Government, that they considered the restriction contained in Section XXIX. Regulation IX. 1816, regarding perjury and subornation of it, to be limited to these crimes before the Superior Courts and as regarded these Crimes before the *subordinate* Civil tribunals, the Revenue, and the Magisterial authorities, they recommended an enactment in modification of Section VIII. Regulation X. of 1816, which now stands in the code as Section III. Regulation VIII. 1829.

The Legislature having thus in 1816, 1822, and 1829, successively modified the previous laws, respecting perjury and subornation of it, alone, whilst it was altogether silent as to forgery, this Court issued their orders of 1833, quoted at the commencement of these proceedings without advertent to the order of the 23d October, 1823. The Judges, on mature consideration, are now of opinion.

That the restriction imposed by Section VIII. Regulation X. 1816, does not refer to the special cases of perjury, subornation of perjury, or

forgery, which, falling under the judicial view of the Zillah, Criminal, Provincial, Circuit, Sudr, or Foujdaree Courts, may, by these superior tribunals be ordered, under the previous enactment contained in section V. Regulation VI. 1811, to be brought to trial before the Court of Circuit, because these special public cases were originally distinguished from private prosecutions, for the same crimes, included under the description of a "charge or information," mentioned in the subsequent law; and this construction of the two Regulations is necessary, in order that the substantive provisions of each may stand; because the *prima facie* cases which must necessarily be made out before a party is committed or held to bail, is already before a competent tribunal; because it is at the instance of a judicial tribunal, and not on the accusation of an interested individual, that the committal is to take place; and because it is essential to the pure and effectual administration of justice, that every Court should protect and vindicate itself from such offences, by promptly bringing under judicial inquiry such as are committed within their own view.

That such cases are also to be committed for trial by the respective existing Criminal Courts, substituted for the "Magistrate" of 1811, because the said Regulation of 1811, imperatively requires such cases to be committed for trial before the Court of Circuit on the mere order of the proper Court, and as the present Magistrates can make no such committal, it follows that, to maintain that law, it is essential such duty should be performed by the proper tribunal exercising this power, whatever may be its present denomination.

19TH FEBRUARY, 1834.

Read return, dated the 24th ultimo, made by the Provincial Court of Circuit in the Northern Division to precept of this Court, dated the 26th of November last, conveying the observations and orders of the Court of Foujdaree Udalt on the several reports for the month of May last.

With reference to the 3d para of the above return, the Court of Foujdaree Udalt would observe that a charge of homicide once forwarded to the Criminal Courts, the Judge possesses no authority to dismiss the case, but must, upon being satisfied that such homicide was committed, either commit or hold to bail the prisoners to take their trial before the Court of Circuit, and on reference to the provisions of Clause second, Section XV. Regulation VII. of 1802, and Clause fourth, Section IV. Regulation I. of 1818, it will be seen, as observed in their proceedings of the 15th of August last, that a special mode of proceeding is prescribed to the Courts of Circuit, in cases of accidental homicide.

The proclamation lately circulated by order of Government to the several Magistrates in the provinces, assuring the people of immunity from criminal prosecution in the event of their committing homicide in resisting attacks on their lives or property, should be acted upon by the several Magistrates, by abstaining from forwarding to the Criminal Court cases of this nature.

But as the lives even of those who openly break the law ought not to fall a sacrifice to any but a legal sentence, except in actual defence of life or property, unless where martial law has been established, the Judges of the Foujdaree Udalt, to guard against all unjustifiable or unavoidable

Clause first Section III. Regulation VIII of 1829.

Vide C. O. 9th August 1825.
27th Dec. 1832.
18th Mar. 1833.
9th April 1834.
7th June 1834.

homicide, are, upon further consideration, of opinion, that the judicial inquiry necessary to establish the exemption from trial of persons committing justifiable homicide, under the proclamation in question, can safely be trusted only to the Magistrates and their *European* subordinates, and accordingly resolve to modify their orders circulated under date the 18th of March, 1833, to this effect.

21st FEBRUARY, 1834.

I am directed by the Judges of the Court of Foudaree Udulut to inform you, that it was their intention, that their circular instructions, under date the 30th ultimo, relative to the admission of prisoners into gaol upon a Sunday, should be communicated to the several Magistrates, as well as to the subordinate Courts in your respective divisions, and to desire if such course has not been already adopted, that the necessary communications may be made accordingly.

I am further instructed to inform you that whenever directions are issued to communicate the orders of this Court to the *subordinate authorities* in your respective divisions, it is intended that such order shall include the Magistrates of the several Zillahs.

10th MARCH, 1834.

Read letter from the Secretary to Government, under date the 4th instant.

In conformity with the orders of the Right Honorable the Governor in Council, this Court proceed to define and declare by a conclusive determination the powers and functions to be legally exercised by "Ameens of Police."

The misunderstanding on this subject has originated in some of the Magistrates and subordinate Courts, in the interior, not having duly distinguished the "Ameens of Police" mentioned in Sections III. and XI. Regulation XI. 1816, and Section II. Regulation IV. 1821, from the very distinct class of inferior Officers of Police, mentioned in Section III. Regulation IV. 1821, which last class it is now directed that they do invariably hereafter denominate "*Sub Officers of District Police*," to prevent the inconvenience which has arisen from confounding these separate public authorities.

There does not appear to be any misunderstanding as to the powers possessed by the Tahsildars or "Heads of District Police," nor as to those to be exercised by the "Heads of Village Police" respectively.

The "Police Ameens," according to Section XI. Regulation XI. 1816, are intended to be appointed only "in large towns, where it may be found that the Police duties, cannot be conducted by the head inhabitant," and the Court are of opinion that their salaries should be fixed, with reference to the size and population of their jurisdiction which is not now confined, as originally, to the local limits of the towns where they may be stationed but, at the discretion of each Magistrate, may under clause first Section II. Regulation IV. 1821, be extended beyond it "to any distance" he may deem fit.

With regard to the individual under whose *immediate* authority the Ameens of Police are to act Section XI. Regulation XI. 1816, expressly reserves it to the Magistrate, to place them, as regards their police functions, "either immediately under his own orders or under the Tahsildar of the District." This clear provision of the law is not negatived by Clause second, Section II. Regulation IV. 1821, which merely declares that they in common with all other Police Officers shall "perform all such *revenue* duties as may be assigned to them by the Collectors or Tahsildars" of their several districts, to whose *revenue* authorities they are therefore declared to be subject. This ought to have been more explicitly stated in the latter law. It is evidently implied, and it is only by this construction that the two enactments can stand, in their respective substantive provisions.

In respect to the powers with which the Ameens of Police may be vested, Section XI. Regulation XI. 1816, further declares expressly that it rests at the discretion of the Magistrate to grant to each of them, either the Police powers vested in heads of villages, or those vested in Tahsildars," by Regulation XI. 1816. They are to have either the one or the other as the Magistrate deems fit.

In either case, the Police Ameens are empowered to punish, without reference to any one, of their own authority, all "abusive language," and "inconsiderable assaults or affrays," and this is one of the great distinctions between them and the "sub-officers of District Police" hereafter mentioned. The extent of punishment they are empowered to inflict in such cases will depend, under Sections X. and XXXIII. Regulation XI. 1816, respectively, upon whether the Magistrate may grant to them the powers of "Tahsildar," or only that of the "Head of a Village," under that law. But they cannot punish petty thefts at all, for the heads both of villages and District Police acquired that new power only under Regulation IV. 1821, and the Ameens of Police can exercise only the particular limited powers originally vested in either of these two authorities by Regulation XI. 1816, alone, not the more extended powers since granted to them, by subsequent enactments.

In other higher offences, if the Magistrate confine the Ameens of Police to the powers of the head of a village, their authority is defined from Section V. to XIII. Regulation XI. 1816, and they must, in that case, like the heads of villages, act entirely in subservience to the Head of District Police, or Tahsildar. But if, on the contrary, the Magistrate grant to the Police Ameens the more extended power vested in a Tahsildar by that law, the Police Ameens, within his own local jurisdiction, then becomes vested with all the powers specified from Section XXV. to XXXVII. Regulation XI. of 1816, and as the Magistrate may, (and to prevent inconvenience in such instances invariably ought to) authorize him to exercise these superior Police functions under his own immediate authority, he can enable Police Ameens vested with these extended powers, without the intervention of Tahsildar, or any other authority, to send up direct to the Magistracy, or the Criminal Court, respectively, all cases, except those before mentioned as punishable by himself, or the smallest description of petty theft, punishable exclusively by the heads of villages, or the Tahsildar, under Regulation IV. 1821. It is this power of sending up cases direct to the higher tribunals, without going through the channel of the Head of District Police, which forms the second distinction between the Police Ameens; and the "Sub-Officers of District Police," as the Court now proceed to explain.

The "Sub-Officers of District Police," are not only distinguished from the Police Ameens by inability to inflict punishment of any kind whatever (Clause third, Section III. Regulation IV. 1821,) and by a positive prohibition, against sending up cases direct to the higher tribunals (Clause second, Section III. Regulation VI. 1821,) but are also not required to be stationed in towns. Section III. Regulation IV. 1821, in Clause first, requires that the Magistrates should select competent Officers, out of their district establishments to perform, "*in different parts of each Talook,*" the duties assigned to Tahsildars, by Sections XXVII. to XXIX. XXXI. XXXII. XXXVI. and XXXVII. of Regulation XI. 1816.

Abusive language and trifling assaults, as before explained, are punishable, in towns where there are Ameens of Police, by them, and elsewhere, these offences, and petty theft of the lowest description, are punishable only by the Heads of Villages, or Heads of District Police, under Section IV. and VI. Regulation IV. 1821. But to relieve the Head of District Police from all unnecessary details, in *all other offences of a higher nature*, punishable by the Magistracy, Criminal Courts, or superior tribunals, it is the object of this enactment to establish all over the country, at the chief station in every cluster of villages, forming the respective subdivisions of Talooks, and of course at the principal station of the Talook itself, some decent Officer, of a class greatly inferior to the Police Ameen resident in Towns alone, such as may, on the spot, make due search for stolen property, hold inquests, issue warrants, take all depositions of witnesses, and confessions or examinations of prisoners, and, in short, perform the whole of the Tahsildar's Police functions, in offences of this higher kind, with the single exception that he is to forward the whole of every case, with the prisoners and witnesses, to the Head of District Police alone, under Clause second, Section III. Regulation IV. 1821.

The object of this last enactment is to maintain the unity of Police control, throughout each Talook, in the hands of its head alone; except where, in towns and their vicinity, it may be placed by the Magistrate, in the hands of Police Ameens, acting immediately under himself, as already stated; with that single exception, it is the exclusive duty of the Head of District Police, to forward to the Criminal Court, and Magistracy, respectively, such of the cases received from his "sub-officers of district police" as are complete, to amend, by further evidence, such as are defective, and to withhold cases forwarded to him on insufficient grounds.

Where this system is properly organized, and the "sub-officers of district police" perform their duty properly, the Head of District Police, finding all the necessary depositions taken, has, in ordinary cases nothing to do but to prepare the prescribed report to the Criminal Court or the usual Urzee to the Magistrate. He is not himself to take any depositions anew, unless the investigation by his subordinate has been defective or imperfect. In that case, he may take supplemental depositions from the persons sent in by his subordinate; forwarding to the higher tribunal all the depositions received from his subordinate, with any supplemental examinations taken by himself. But if any further testimony, which has not been sent in by his subordinate, is forthcoming, he ought, without detaining the case, to forward any new witnesses for examination direct to the tribunal to which it may have been transmitted, in order that they may examine these new witnesses themselves, without previous testimony in the Talook, which, in such cases, this Court deem unnecessary.

14TH MARCH, 1834.

Read letter, dated the 13th December, 1833, from the 1st Judge late on Circuit in the Southern Division, transmitting copy of the Record of Trial in the English and Persian languages of case No. 10, on the Combaconum Calendar, second Sessions, 1833.

In the above letter, no distinct opinion, as to the precise sentence to be passed upon the several prisoners, is given by the first Judge late on Circuit in the Southern Division, who, in this respect, has again neglected the duty incumbent upon him, and acted contrary to the standing order of this Court of the 24th December, 1821.

The Court observe that there is no duty more imperative upon a Circuit Judge, when he convicts several of the great crime, of murder, and recommends one alone for the irrecoverable sentence of death, than to aid the superior and more distant tribunal, by a specific selection of the individual to be condemned, and a statement of his reasons for that selection. To leave this painful task to the superior Court alone is not only to evade a duty of the first importance, but evinces an indifference at to the individual life to be sacrificed, reflecting deeply upon the public officer who shrinks from what is no less due to the prisoners personally than to the public.

The attention of the Court of Foujdaree Udalt having been directed to repeated instances of neglect of this important part of the duty of a Circuit Judge, they resolve to issue Circular orders, to the four Provincial Courts of Circuit, enjoining the strictest attention to their standing orders above alluded to.

And warning them that every letter hereafter received with a trial, in which a clear and distinct opinion is not given by the presiding Judge, as to the conviction or acquittal, and if convicted, as to the punishment of each prisoner, and the grounds for both, will, for the future, be returned forthwith for amendment in those essential points.

20TH MARCH, 1834.—A.

Read letter, dated the 17th ultimo, from the Provincial Court of Circuit in the southern division, submitting copy of a letter from the Magistrate of Salem, containing the explanation called for by the Provincial Court of Circuit, relative to case No. 401, of the Salem Criminal Report, for the month of August last.

The prisoner, in case No. 401, of the Salem Criminal Report for the month of August last, having complained of the ill-treatment he had received from the village Police "before he was sent up to the Criminal Court," the Provincial Court of Circuit directed the Criminal Judge to forward the whole of the proceedings held in that case to the Magistrate, who was at the same time required to inquire into and report upon the circumstances of the complaint brought forward by the prisoner.

From the explanation now submitted through the Provincial Court of Circuit, it appears that the Magistrate of Salem called upon the Tahsildar of Trichingode, to institute an inquiry, and to furnish the explanation required by the Provincial Court, thus devolving upon the superior native Police Officer of the same Talook, the duty of investigating a

charge preferred against a lower member of the very authority complained against.

It is obvious to remark that when complaints are made against the Native Police, the Magistrate himself or one of his *European* subordinate officers should personally conduct the examination, a course of proceeding which the Magistrate of Salem was moreover specially instructed to observe on the present occasion.

The Court of Foudaree Udalut therefore resolve to require the Provincial Court of Circuit in the southern division, to direct the Magistrate of Salem, to institute a full and strict inquiry into the conduct of the Trichingode village Police, and after examination of any witnesses that may be named by the prisoner, to report the result of the investigation through their Court for the information of the Judges of the Foudaree Udalut.

Ordered, that extract of these proceedings be forwarded to the Provincial Court of Circuit in the southern division, for their information and guidance by precept, returnable in ten days from and after its receipt, with directions to circulate the same to all the Magistrates in their division, with positive orders, the infraction of which must be reported, in each case, through this Court to Government, that every complaint against the Native Police be invariably fully investigated by the *European* Magistracy.

Ordered also, that extract from these proceedings be forwarded to the three other Provincial Courts to be circulated by them to the Magistrates under them.

20TH MARCH, 1834.—B.

Vide C. O. No. 24. The Court of Foudaree Udalut, from certain Calendars lately under review, fined that their circular orders of the 6th of December, 1830, directing the issue of a conditional warrant, until the receipt of their orders, upon cases proposed for a mitigation of punishment have been misconstrued, into authorizing the Judges of Circuit, in lieu of passing the full sentence prescribed by law, to pass merely the mitigated sentence proposed by themselves, they consider it therefore proper to explain, that the sole object of their order of the 6th of December, 1830, was to prevent the obviously objectionable practice of detaining the prisoners after conviction in a state of idleness in the gaol, pending a reference to the Court of Foudaree Udalut, for their sanction of a mitigated punishment.

Vide C. O. No. 6. The practice of pronouncing a mitigated sentence upon prisoners whom the Court of Foudaree Udalut may not see sufficient reason to exempt from the full degree of the prescribed punishment is considered improper; and in discontinuing the practice the Judge of Circuit will, in future, when purposing to recommend a mitigation of punishment, merely intimate to the prisoner the penalty to which by law he has rendered himself liable, instructing the Criminal Judge at the same time to detain the prisoner in gaol with hard labour in irons until the final orders of the Foudaree Udalut shall be made known to him.

31st MARCH, 1834.

Read letter, dated 21st instant, from the officiating Secretary to Government in the Judicial Department, authorizing the destruction of

the English and Persian Translates of Records in Criminal Trials anterior to the year 1830, but declining to authorize the destruction of the original records in native languages held previously to the year 1820.

The Governor in Council having on the recommendation of the Judges of the Court of Foudaree Udalut, authorized under date the 21st instant, the destruction of the English and Persian Translates of Criminal Trials, anterior to the year 1830, in the Courts of Circuit and Criminal Courts, the Court of Foudaree Udalut resolve, accordingly, to issue Circular orders to the four Provincial Courts of Circuit, calling upon them to carry the instructions of Government, on the subject into effect, without delay, and also to communicate the same to the several Criminal and Joint Criminal Courts subordinate to them, for their information and guidance. But the original record in the Native language of every trial is to be carefully preserved. As also are all the Persian and English Translates of cases subsequent to the close of the year 1830.

The Court desire that the translations now directed to be destroyed, may be burnt in the presence of an *European* Officer of the respective Courts.

9TH APRIL, 1834.

Read Extract from the Minutes of Council under date the 18th ultimo.

The Circular orders of this Court, under date the 19th February last, proceeded upon the ground that all cases of justifiable homicide, committed, under the instructions of Government of the 12th February, 1833, directed by the Circular Orders of this Court of the 18th March following to be proclaimed with every possible publicity in the provinces, would be disposed of by the *European* Magistracy, in like manner as similar cases were under Section XI. Regulation XIII. 1809, before that law was rescinded.

For this reason, they did not contemplate any such cases irregularly reaching the Criminal Court. They concluded that all homicides coming before this higher tribunal, would consist of murders, culpable homicide, or homicide by misadventure classed as "accidental," and their orders in question, stating that the Criminal Courts possessed no authority to dismiss even the lowest description of such cases, were expressly founded on the provisions contained in Clause second, Section XV. Regulation VII. 1802, and Clause fourth, Section IV. Regulation I. 1818, therein quoted.

In the event of cases of justifiable homicide being improperly forwarded to the Criminal Courts, the Foudaree Udalut are of opinion that these tribunals ought upon proof that the act was justifiable, to release the accused in the same manner, as in other cases, where the act charged forms no crime in law, and consequently is excluded by it, from their cognizance. This Court, did not contemplate the trial of any case of justifiable homicide by the Courts of Circuit.

Ordered, that the distinction thus drawn between justifiable homicide, which is no crime, and upon which it is the proper duty of the *European* Magistracy alone to pronounce an opinion, holding the party guilty.

Vide C. O. 9th Aug. 1825.

Vide C. O. No. 2.

less, and accidental homicide, or homicide by misadventure, which is cognizable by the Circuit Court alone, be more prominently brought to the notice of the respective tribunals, by extract from these proceedings to be circulated to the four Provincial Courts by precept, requiring them to communicate the same to the several Courts and Magistrates under them for their information and guidance.

14th APRIL, 1834.

No. 137.

Judicial Department.

"Extract from the Minutes of Consultation, under date the 22d Feb. 1834.

The Governor in Council is of opinion that alterations of gaols and hospitals, proposed by a single Judge of Circuit, without the expressed concurrence of his colleagues, should invariably be referred for the opinion of the collective Court, unless the alteration is one of obvious necessity."

20th MAY, 1834.

Referring to an attempt recently made by certain prisoners confined in the gaol at Cuddalore, to escape, in repelling which, several lives were lost, and of which a report was not prepared by the officer in charge of the gaol, till four days after the occurrence of the event, I am directed by the Judges of the Court of Foujdaree Udalut, to transmit for your information and guidance, the accompanying copy of para. 2, of an extract from the Minutes of Consultation, under date the 6th May, 1834, and to desire that the same may be communicated to the several subordinate officers in charge of gaols in your division, and that they be enjoined to pay strict attention to the order of Government in question.

No. 330.

Judicial Department.

"Extract from the Minutes of Consultation, under date the 6th May, 1834.

Read the following letter from the acting senior Deputy Register of the Court of Foujdaree Udalut.

The Governor in Council desires that it be made a standing rule for the future, that, whenever such an event occurs, the officer in charge of the gaol shall transmit direct to the Secretary to Government in the Judicial Department a copy of his report to the Provincial Court."

26th MAY, 1834.

I am directed by the Judges of the Court of Foujdaree Udalut, to transmit for your information, the accompanying copies of correspondence between this Court and the Government, regarding an application forwarded by the Magistrate of the Northern division of Arcot, from the Zemindar of Cavetnuggur, for permission to appoint persons to relieve him from the details of police business in his Zemindary.

You will be pleased to furnish copies of the above to the several Magistrates of your division, and call their attention to the remarks contained in para 2 of the accompanying order of Government upon the letters of this Court, recommending compliance with the request of the Zemindar of Cavetnuggur.

Extract from the Minutes of Consultation, under date the 16th May, 1834.

Read the following letter.

(Here enter Foujdaree Udalut's letter, No. 67, dated 7th May, 1834.)

No. 356.

According to the recommendation of the Foujdaree Udalut, the Governor in Council authorizes the Magistrate of North Arcot, to appoint sub-officers of police, with the powers defined in Section III. Regulation IV. of 1821, to be employed under the Zemindar of Cavetnuggur, to relieve him from the details of police business, in his Zemindary. Of course such appointments will only be made on the application of the Zemindar. The Governor in Council will further be prepared to authorize the appointment of a police Ameen in the Zemindary, if desired by the Zemindar, for his greater relief from the pressure of details, to act under his authority as head of police, with the superior powers described in Section XL. Regulation XI. of 1816.

The Governor in Council approves of the suggestion of the Foujdaree Udalut in para 5, and will be prepared to authorize a similar arrangement whenever it may be recommended by the Magistrate in Zemindaries, in which the chief police authority is vested in the Zemindar, under Section XXXIX. Regulation XI. of 1816.

7th JUNE, 1834.—A.

Read letter dated 25th April last, from the officiating Secretary to Government in the Judicial Department, conveying the sentiments of Government on the proceedings of the Foujdaree Udalut of 27th December, 1833, on the Circuit report of the acting third Judge late on Circuit in the Centre Division for the 1st Sessions, 1833.

Ordered that para 2 be circulated to the four Provincial Courts of Circuit for the information and guidance of the several Magistrates.

Extract from the Minutes of Consultation, under date the 25th April, 1834.

The Governor in Council thinks it proper that the Magistrates should be cautioned generally against delegating to their junior Assistants, the power of deciding in cases of importance, until they have acquired competent experience. During the first year of his employment, an Assistant, generally speaking, should be confined to the performance of business of detail, hearing petitions and complaints, taking examinations, &c., under the immediate direction and superintendence of the Magistrate, or any of the Subordinate European Officers, who may be vested with a separate charge, and should not be permitted to pass orders of his own authority.

Vide C. O. 39th Jan. 1821.

7TH JUNE, 1834.—B.

Read letter dated the 25th April last, from the officiating Secretary to Government in the Judicial Department, conveying the sentiments of Government on the proceedings of the Foujdaree Udalut of 27th December, 1833, on the Circuit report of the acting third Judge, late on Circuit in the centre division for the 1st Sessions, 1833.

Ordered that para 6, together with para 16, of this Court's proceedings be furnished to the four Provincial Courts of Circuit, for the information and guidance of the several subordinate judicial officers.

Extract from the Minutes of Consultation, under date the 25th April, 1834.

"As it appears from the observations of the Circuit Judge that the practice varies in different Courts, it appears advisable that the rule laid down by the Foujdaree Udalut in this para should be circulated for general information."

Extract from the Proceedings of the Foujdaree Udalut, under date the 27th December, 1833.

Vide C. O. 5th
August 1831.

"In reference to the question proposed in this para, the Court have no hesitation in stating that the period during which a prisoner may have been detained in confinement, under a requisition of security, should, on such security being forthcoming, be deducted from the time, for which bail was demanded, in the sentence of the Court of Circuit."

7TH JUNE, 1834.—C.

Read letter dated the 25th April last, from the officiating Secretary to Government in the Judicial Department, conveying the sentiments of Government on the proceedings of the Foujdaree Udalut of 27th December, 1833, on the Circuit report of the acting third Judge, late on Circuit in the centre division for the 1st Sessions, 1833.

Ordered that para 9 of the above Minutes of Consultation be circulated to the four Courts of Circuit for the information and guidance of the several officers in charge of the gaols.

Extract from the Minutes of Consultation, under date the 25th April, 1834.

"The Governor in Council approves of the suggestion that the country paper required by the Courts of Circuit, be supplied on demand from the gaols where the manufacture is established, but it does not appear to him that the contingent charges will be really reduced by this measure. The Officer in charge of every gaol should price the articles manufactured in it, and when they are supplied to public offices, or for public purposes, the cost should be debited against the officer at whose requisition they are supplied, in the same manner as if the articles had been sold. This applies equally to articles used in the Zillah and Criminal Court and gaol, as to those supplied to other departments."

7TH JUNE, 1834.—D.

Read letter dated the 25th April last, from the officiating Secretary to Government in the Judicial Department, conveying the sentiments of Government on the proceedings of the Foujdaree Udalut of the 27th December, 1833, on the Circuit report of the acting third Judge, late on Circuit in the Centre Division, for the 1st Sessions, 1833.

Ordered that para 12 of the Minutes of Consultation, together with part of para 4 of this Court's proceedings, and para 52 of the acting third Judge's report be sent to the four Provincial Courts of Circuit, to be circulated for the information and guidance of the subordinate judicial authorities.

Extracts from the Minutes of Consultation, under date the 25th April, 1834.

"The Governor in Council approves of the suggestions and observations in the 52d para of the Circuit Judge's report."

Extracts from the Proceedings of the Foujdaree Udalut, under date the 27th December, 1833.

"The Court see no objection to this arrangement, nor to the further proposition of the acting third Judge, that the grant of rewards in such cases, should be proclaimed in the Talook, in which the party may reside. The Court consider it requisite, however, to point out to the acting third Judge, in reference to the orders issued by him to the Magistrate of the Southern division of Arcot, that the sanction of Government is not necessary, if the sums granted are within the amount specified in Section XXIII. Regulation IX. of 1816."

Vide C. O. No.
89 and 104.

Extract from the Report of the Acting Third Judge, late on Circuit in the Centre Division.

"During the investigation it was elicited that the Magistrate of the Southern division of Arcot, had in two of the Circuit trials rewarded some individuals for boldly resisting the robbers, who attacked their houses, in which affrays, two or three of them were slain, when any remuneration has been given for a courageous defence, or for any meritorious service in the apprehension of culprits, by the Magistrate or the Criminal Judge, under Section X. Regulation XIII. 1832, I am of opinion that the persons' names and the amount paid should be entered in the Calendar, that the Court of Circuit may judge whether those who have thus aided justice, have been rewarded commensurately with their exertions, and that the same should be proclaimed by the Magistrate in each Talook, to let the inhabitants see that when any emergent help has been afforded, it has not passed unretributed, at the same time, expectations for pecuniary recompense on all occasions, should not be too generously encouraged, by its being tendered to those who have only performed a duty, they owe to the public, and whose assistance, "except when pro-

Vide C. O. 27th
Dec. 1832.

hibited by rules of caste," (vide Section VI. and VII. Regulation XI. A. D. 1816,) they can be *compelled* to render, although there is no penalty, which there should be, for their declining to afford it."

7TH JUNE, 1834.—E.

Extract from the Minutes of Consultation, under date the 25th April, 1834.

"The subject of the paras 76 to 82—88 and 89 does not fall properly within the scope of a Circuit report. The Governor in Council however concurs with the Foudaree Udalt in approving the suggestion of Mr. Boileau, that periodical reports should be made of the removals of servants on the several Judicial Establishments. They will accordingly direct that statements of all servants suspended or dismissed from Office in the subordinate Courts shall be submitted to the Provincial Courts, and that similar statements shall be submitted to the Sudr and Foudaree Udalt by the Provincial Courts of servants, dismissed or suspended on their establishments respectively. It will probably be sufficient that the returns be made quarterly instead of monthly as proposed. The reasons of suspension or dismissal should be distinctly stated, and it should be noted how long the person dismissed or suspended may have been employed in his last office, and generally in public service. In the case of a dismissal a description should be given of the services and qualifications of the person employed instead of the one dismissed."

10TH JUNE, 1834.

The Judges have reconsidered the opinion contained in their Circular order of the 10th of March last, in respect to the intent and meaning of Clause second, Section II. Regulation IV. A. D. 1821, and finding that the Clause in question will bear the construction given to it by the Government, in their Minutes of Consultation under date the 25th March 1834, they resolve to modify their order of that date, so far as to declare that, under Clause second, Section II. Regulation IV. of 1821, Ameen's of Police, are subject to the general control of the Tahsildars of their respective Districts as Head Police Officers, not only in Revenue but in Police matters; at the same time, the Judges consider it necessary to declare that the proceedings of Ameen's of Police in cases to be forwarded to the higher tribunals are not to be submitted through the Heads of Police, but should be sent up direct.

Extract from the Minutes of Consultation, under date the 25th March, 1834.

"The Governor in Council is of opinion that the salary of an Ameen of Police, with a jurisdiction extending beyond the limits of the town to which he is appointed, should not be less than 35 rupees per mensem :

where his jurisdiction is limited to the town, unless it is a very large and populous one, a salary of 30 rupees may be sufficient.

The Governor in Council is not prepared to authorize the appointment of the Talook Peshcarrs generally to be Ameen's of Police, as is recommended by some of the Magistrates, but he thinks that where a Talook is extensive and does not lie compactly, such a measure will be expedient. When a Magistrate is of opinion that it is advisable that the Peshcar of a Talook should be vested with the powers of a Police Ameen in particular division, he will recommend it through the Board of Revenue, stating his reasons and defining the jurisdiction which he proposes to assign to him, mentioning also the town at which he proposes that the Ameen shall be stationed, and the population thereof, when such an arrangement is sanctioned, it will be the duty of the Magistrate to report it, for the information of the Criminal Judge and the Court of Circuit."

20TH JUNE, 1834.

Read again letter from the late officiating Judge on Circuit in the Northern Division, dated 12th ultimo, with copies of the Nellore Calendar, 1st Sessions, 1834.

In the 5th para of his letter, the late officiating Judge strongly urges, on the ground of his experience at the 1st Sessions of 1834, at Nellore, the general adoption of the plan, for securing the attendance of prosecutors and witnesses before the Court of Circuit, suggested by Mr. Vaughan, which has been already under the consideration of the several Courts of Circuit. The Judges expressed in their proceedings of the 31st of August 1833. Vide C. O. 31st August 1833. last, their opinion, that it would be inexpedient to bind the Courts generally, to the observance of any fixed and defined rule. They are at the same time so fully sensible of the serious evils, which follow a lengthened detention of prosecutors and witnesses upon the Courts of Circuit, that they deem it proper to circulate the 5th para of Mr. Casamajor's letter, with a recommendation to the several Judges on Circuit, to adopt henceforth Mr. Vaughan's plan, whenever they may consider it practicable. Each officer will of course issue such orders to the Criminal Judges, as his experience and knowledge of the practice, and circumstances of the several Courts in his division will suggest to him, combining, as far as practicable, the great object of lightening to the people the burthen of attendance upon the Court, with ample care that the business of the Sessions is not delayed or impeded, and the Circuit brought to a conclusion within the six months. Vide C. O. Nos. 93 and 131.

Extract of a letter from Mr. Casamajor, officiating Judge on Circuit in the Northern Division, dated 12th May, 1834.

I beg to send a copy of a precept for opening the Sessions. It is not quite in the form which I actually adopted, but in the form very nearly

to which subsequent modifications suggested by experience reduced it—The contrast was quite surprising between the last and present Sessions, as regards the attendance and detention of parties; instead of being daily mobbed by a crowd of people complaining of detention, and loss, and inconvenience thereby, and kept at an enormous expense of batta to Government, there have been seldom more than from 15 to 25 in attendance, and these, with a few exceptions, released the 2d or 3d day at furthest after their arrival. It has been quite delightful to see the sort of surprised pleasure with which these people received their dismissal sometimes on the very day of their arrival: oftener on the day after, or third day; when they had laid their account to a detention of 2 or 3 weeks. I venture very strongly to recommend the general adoption of the plan (which was proposed by Mr. Vaughan or Mr. Dickinson last year) as removing one of the great evils attendant upon the present Circuit system. I have tried it with the most complete success.

25TH JUNE, 1834.

To the four Provincial Courts.

I am directed by the Judges of the Court of Foudjaree Udalut to transmit to you the accompanying Copy of an Extract from the Minutes of Consultation, under date the 10th instant, and with reference to the orders therein contained, to desire that you will furnish the several Magistrates and other authorities in your Division who may have prisoners under their charge, with a copy of the *gual* rules, instructing them at the same time rigidly to observe the regulations regarding the dieting of prisoners prescribed to the Criminal Judges in the same Districts.

Extract from the Minutes of Consultation, dated the 10th June, 1834.

Vide C. O. 2a
June 1831.

The Governor in Council further resolves that the Foudjaree Udalut be requested to issue instructions to the Magistrates who may have prisoners under their charge, to observe the same rules regarding the dieting of prisoners as have been prescribed to the Criminal Judges in the same districts.

28TH JUNE, 1834.

It having been recently brought to the notice of this Court, that their Circular orders of 31st August, 1833, regarding labour invariably accompanying imprisonment, are deemed at variance with those of the 27th June, 1831, and the latter also with those of the 14th October, 1833, respecting the use of fetters, the Judges resolve to explain that their instructions of the 31st of August, 1833, were not intended to supersede the orders respecting fetters, contained in their previous instructions of the 27th June, 1831, which are to be acted on, in all cases, in preference to those of the 14th October, 1833.

Vide C. O. 28th
Sept. 1834.

1ST JULY, 1834.

I am directed to acquaint you, for the information of the Judges of the Provincial Court and of the subordinate authorities, that the Court of Sudr and Foudjaree Udalut have resolved to number their Circular Orders from this date. C. O. No. 1.

3D JULY, 1834.

1. The Judges of the Court of Foudjaree Udalut having taken into consideration in their communication to Government of this date, the expediency of some additional rules, for the guidance of the subordinate authorities in cases of homicide by misadventure, resolve to issue the following Circular Order. C. O. No. 2.

2. In all cases of accidental homicide not coming within those defined in Clause first, Section IV. Regulation I. 1818, which may in any way, come under the cognizance of the Native Officers of Police, it will be their duty to make the necessary investigation, and forward the party accused, with the witnesses, to the nearest European authority; whether the Magistracy, or, the Criminal Court. It will then rest with the Criminal Judge, and the Magistracy respectively, to investigate the case; and to determine, whether the homicide was purely by misadventure, devoid of all criminality, or, whether there was that want of due caution, or, other circumstance existing, which would render it culpable or of the description referred to in Clause first, Section IV. Regulation I. 1818. If the Magistracy shall be of opinion, that the homicide was clearly unintentional, and that no blame attaches to the party accused, they will forthwith order his release, recording at length the grounds of the order. In all other cases, they will remit the party for trial before the superior tribunal.

3. The Criminal Courts will proceed in like manner and either release or commit persons forwarded to them on charges of homicide, whether by the Police, or, the Magistrate, as they may deem the act culpable or otherwise.

4. The Court also direct that the Magistrates do instruct all Native Officers of Police, that parties before them on charges of homicide by misadventure in the prosecution of a lawful act are not to be dealt with as prisoners; but are to be sent up to the Criminal Court, or the Magistracy, in the same mode as witnesses.

5. The Magistrates will also observe the same rule in forwarding cases to the Criminal Court, unless they shall see cause in special instances to take greater precaution for the appearance of the accused.

6. The Criminal Judge will in like manner take due care that the party is not placed in jail nor subjected to any unnecessary restraint.

7. The Court of Foudjaree Udalut deem it right also to point out to the Criminal Courts, the expediency of calling upon the accused for moderate bail, "in all cases of illegal homicide not involving the crime of murder," which they may commit for trial before the Court of Circuit.

4TH JULY, 1834.

C. O. No. 3.

1. The Court of Foujdaree Udaltut having recently observed, that their Circular Orders of the 8th May 1833, have been frequently misunderstood, resolve to point out to the subordinate Courts that those orders are confined exclusively to three cases, viz. where the deponent before the Criminal Court is dead, where he is prevented from appearing by severe illness, and where he is kept away through the contrivance of the prisoners. In all other cases, the evidence to be available against the prisoner, must be delivered in open court in person.

2. The Court resolve also to explain that the orders of the 8th May 1833, apply like to prosecutors and witnesses in a criminal charge.

5TH JULY, 1834.

C. O. No. 4.

1. With reference to the instructions of the Honorable Court of Directors in para 39 of their despatch under date the 12th October 1831, and para 33 of their despatch under date the 20th March 1833, which will be communicated to the four Provincial Courts of Circuit, the Judges of the Foujdaree Udaltut desire that each Judge of Circuit, who has trials referred, or called up, within each half year do, on the 30th June and 31st December respectively, forward to this Court a statement in the following form :

1	2	3	4	5
Number on the Calendar of each trial referred or called up.	Trial when commenced	When closed	When despatched	Number of days delay between col. 3 & 4.
3 2d Sess. 1833	1st Jan. 1834	2d Jan. 1834	15th Jan. 1834	12
7 " "	15th " "	17th " "	1st Feby. "	14
12 " "	1st Feby. "	5th March "	6th May "	61

Shortest delay 12 days
Longest " 61 "
Average " 29 "

With reference to para 53d of the dispatch from the Honorable Court of the 12th October 1831, which will be hereafter circulated, the Provincial Courts will instruct the Magistrates that the periodical reports from the Native Officers under them, therein called for, should be confined to Reports from the respective Heads of District Police; noticing the number of crimes of which the perpetrators had not been discovered in their several Talooks, accompanied by explanations of their want of success in detecting the offenders and any suggestions they may have to offer for the improvement of the Police. Translations of these documents to be forwarded annually to the Provincial Courts with the report of the Magistrate, and the whole to be then submitted to this Court.

9TH JULY, 1834.

Para 6. The Court consider worthy of general adoption the suggestion of the 3d Judge in para 19, that the Heads of Police should be directed to prepare with each extensive and important case, including

several prisoners, a table, for which however the Court consider the annexed form, better adapted to the purpose, than that proposed by the 3d Judge. They accordingly resolve to issue instructions to the four Provincial Courts of Circuit to direct the Magistrates to cause a statement in this form to be forwarded by the Police to the Criminal Court in each important case including more than one prisoner.

C. O. No. 5.

Form of Statement to be forwarded by the Police to the Criminal Court in important cases where there are two or more Prisoners.

Prisoners' Names.	Confessed or not.	Identified by	Articles in the houses or upon the persons of the prisoners, found in the presence of	Evidence of other witnesses bearing upon each prisoner.	Original cause of their arrest.
A	Not	1st Witness	No. 1 Knife 3d Witness	1st, 2d & 6th Witnesses	Crimination by 2d prisoner.
B	Confessed	Prosecutor & 2d Witness	No. 2 Cloth 6th Witness	4th, 3d, & 7th Witnesses	Identified by Prosecutor.
C	Confessed	1st Witness	Nothing	Prosecutor & 1st Witness	Do. by 1st Witness.
D	Not	Not	No. 3 Brass Plate 5th Witness	4th and 7th Witnesses	No. 3 found on him.

18TH JULY, 1834.

1. Upon the suggestion of the Acting 2d Judge late on Circuit in the Northern Division, the Court of Foujdaree Udaltut have determined; that in all cases, where a Judge of Circuit is of opinion, that a mitigation of the penalty prescribed by law is required, he shall submit the report and statement directed in Clause second, Section III. Regulation I. of 1825, in the column of remarks in the calendars; and that no distinct letter, or separate report, is to be hereafter furnished. In their letter forwarding the calendar the Circuit Judges will give a list of the cases in which mitigation is recommended, in the following form :

C. O. No. 6.

" For mitigation.

" Vide No. 2, 7, 20, 36 & 42."

2. In reviewing the calendar, the Court of Foujdaree Udaltut will pass their orders on the cases recommended for mitigation.

18TH JULY, 1831.

The Court of Foujdaree Udaltut approving of the suggestion of the Acting 2d Judge late on Circuit in the Northern Division, contained in the 4th para of his report dated the 30th ultimo, that " Police Officers who examine persons should be required in every instance in which the

C. O. No. 7.

Vide Circular
letter 25th Nov.
1845.

Circular Orders of the

"prisoners do not confess, to ask each prisoner where he was at the time when the crime he is accused of was committed, and for such period before and after it, as, according to the distance and other attendant circumstances would establish the impossibility of his having been present"—resolve to issue circular instructions to this effect.

Cancelled Vide
Pro. F. U 28th
Feb. 1837.

2. They accordingly direct, that the Police Officers be required invariably to put to each prisoner, who may deny the charge before them, the question; where were you on the day and hour (specifying the time entered in the charge) on which the crime with which you are charged was committed?

3. The Court also direct that previous to the commitment of a person for trial before the Court of Circuit, the Criminal Court do explain to the accused the points of defence, or in extenuation, which it may appear desirable for him to establish.

21st JULY, 1834.

C. O. No. 8.
Vide C. O. 17th
July 1831.

The Judges of the Foujdaree Udalut are desirous of receiving, with the usual report of the opening of a sessions, a statement of the number of cases in the calendar, and the number of prisoners for trial. They accordingly direct that this information be always entered, in the letter now sent by the Judge on Circuit on his arrival at a station.

Vide C. O. No.
29.

Should there be a prospect of a supplemental calendar to any extent, he will notice the circumstance at the same time. The Provincial Court of Circuit will communicate these orders to the Judges now on circuit.

31st JULY, 1834.

C. O. No. 9.

I am directed by the Judges of the Foujdaree Udalut to forward to you for your own guidance, and that of the Officers subordinate to you, the accompanying copy of an extract from the Minutes of Consultation of the 25th Instant, transmitting the opinion of the Advocate General on the extent of the Admiralty Jurisdiction of His Majesty's Supreme Court at Madras.

No. 571.

Extract from the Minutes of Consultation, under date the 25th July, 1834.

Read the following Letter from the 'Acting Hon'ble Company's Solicitor.

"I believe some difference of opinion exists with regard to whether the Admiralty Jurisdiction extends to any part of navigable rivers or creeks of the sea in India; but my own opinion decidedly is, that such Jurisdiction does not extend to such places; and that the right criterion of the Admiralty Jurisdiction is, the high water mark of the sea shore, and the line drawn between the two seamost points of land at the mouth of rivers and creeks.

In cases of offences committed at sea, I am of opinion that as the law now stands, the nearest Justice of the Peace should be resorted to, on disembarkation, and that he, or whatever Justice of Peace be referred to, must examine into the case in the same way as he would into any offence

Court of Foujdaree Udalut.

committed on land by a person subject exclusively to the Jurisdiction of the Supreme Court, and commit the offender (or bail him) to take trial there, at the next sessions, and bind over the witnesses to attend and give evidence at such sessions.

(Signed) GEO. NORTON,
Advocate General."

14th AUGUST, 1834.

I am directed by the Judges of the Foujdaree Udalut to forward to you the accompanying Circular Order for your information and to be communicated to the several Criminal Courts for their guidance.

In several trials which have lately come before the Foujdaree Udalut, there has been inextricable confusion, in consequence of the numbering of the prisoners having been changed before each tribunal, without any thing to shew the number which was originally applied to each prisoner. To obviate this confusion, the Court of Foujdaree Udalut resolve to direct that in all calendars, as well as in trials referred, where the number attached to each prisoner before the Police Officer, or Magistrate, does not correspond with that entered in the calendar, the original number be affixed to the prisoners' names in red ink. When the numbering before the Police Officers, Criminal Court, and that entered in the calendar, all disagree, the number given before the Criminal Court should be placed above the name thus:

3
1 Mootoo 2
5
2 Sawmy 4
6
3 Abdool 5

16th AUGUST, 1834.

I am directed by the Judges of the Foujdaree Udalut to transmit to you the accompanying Circular Order and to desire that it may be communicated to the Criminal Courts in your division.

Ordered that a statement in the following form, exhibiting the number, and the amount of the pay of the extra Jail Peons employed to guard the convicts at work under the orders of this Court, dated the 26th August 1833, be invariably submitted by the Criminal Courts with their monthly reports.

Statement of Extra Peons employed at the Jail of _____ in the month of _____ A. D. _____				Rs. A. P.	
20	Extra Peons at 5 Rupees each per mensem,			100	0 0
from the 1st to 30th				16	10 8
5	do. do. from 11th to 30th.....			5	0 0
3	do. do. from 21st to 30th.....			7	0 0
1	Duffadar at 7 rupees per month from 1st to 30th.....				
Total Rs.				128	10 8

Circular Orders of the

A corresponding statement for each month of the year to be entered in the annual statement of contingent charges, with a column shewing the number of *convicts* on the last day of each month.

21ST AUGUST, 1834.

C. O. No. 12. The Court of Foujdaree Udalut having reconsidered their Circular Order of the 14th of March last, and being of opinion that cases may arise in which the prohibition to dismiss public servants, "except in cases of fraud or dishonesty," may be detrimental to the public service, resolve to cancel it, and it is hereby revoked accordingly.

2D SEPTEMBER, 1834.

C. O. No. 13. 1. The attention of the Foujdaree Udalut having been directed by Government, to the importance of giving full effect to the provisions of Clause second, Section VIII. Regulation VI. 1827, the Judges desire, that the Courts of Circuit be careful strictly to observe those provisions of the law.

2. They deem it proper also, to call the attention of the subordinate authorities generally, to their Circular Order of the 20th July 1829, and to enforce on all Officers empowered to demand security, the necessity of exercising a sound discretion in its requisition; that it be not demanded on slight grounds, nor in any case excessive in its amount.

3. The Criminal Courts should be further careful not to require it, in cases where it may appear, that evidence is forthcoming sufficient to bring home conviction of guilt, were the necessary exertions made. In such cases, it will be their duty to endeavour to obtain the additional evidence, and if it is not eventually to be had, the period during which a prisoner has been in jail awaiting the completion of his trial, should be considered, in fixing the term during which security is finally required.

12TH SEPTEMBER, 1834.

C. O. No. 1. In consequence of a communication from Government on the subject, the Court of Foujdaree Udalut deem it proper to notify, through the Provincial Courts of Circuit, to the several Officers in charge of jails, that they consider it highly expedient that in seasons of generally "prevalent disease," prisoners recently convicted; prisoners of a delicate frame or unhealthy appearance, and others who, from their station in life may not have been previously accustomed to labour, "should be employed, only on the lighter kinds of labour and for a shorter period than is usual and advantageous, in ordinary circumstances.

The Court of Foujdaree Udalut take this opportunity, in concurrence with the desire of the Right Honorable the Governor in Council at the suggestion of the Medical Board, to direct that it be made a general rule that all prisoners, under sentence, or detained on requisition of security, or committed for trial before the Court of Circuit, should, unless they decidedly object to it, be vaccinated; where however, the small pox may break out in a jail, the Medical Officer, without reference to the

Vide C. O. No. 17.

Court of Foujdaree Udalut.

wishes of the prisoners, will be justified in adopting the most effective measures to check so infectious a disease.

15TH SEPTEMBER, 1834.

The Right Honorable the Governor in Council having expressed his opinion that it should be made a "rule that whenever a search is made in any house there should be a list taken down and attested by two unexceptionable persons on the spot, of the articles of property found in each house, the attesting witnesses should be present at the search and be able to speak of their own knowledge, to the correctness of the list," the Court of Foujdaree Udalut deem it proper to direct the four Provincial Courts of Circuit to instruct the several Magistrates, with whom it will rest to bring this rule into operation, to issue such instructions to their Police Officers as may seem to them best adapted to secure the object in view, taking immediate notice of any infraction of the rule, in order that it may be rendered as efficacious as it is important.

23D SEPTEMBER, 1834.

The attention of the Court of Foujdaree Udalut, has been recently attracted by the numerous escapes effected by prisoners from several of the jails under this Presidency; whilst, at the same time, though ample evidence existed, that they could not have absconded, except through the culpable neglect, or the connivance of the guards under whose custody they were, the Officers in charge have found it often difficult, and sometimes impossible to discover to what particular person or persons, the blame on that account was to be attached.

With the view of remedying this defect, the Court resolve to issue Circular Orders to the four Provincial Courts of Circuit, requiring them to direct the several subordinate authorities in charge of jails in their respective divisions, to cause to be kept by the jailor a muster roll or register, of the Duffadars and Peons, appointed for duty every night, with the names of the persons fixed for each watch: and further to instruct the Duffadar of the guard, on every relief of a sentinel, to accompany the relieving Peon to his post.

With a register of this description, it will be easy to ascertain at any time what Peons were or ought to have been on duty at any particular period: who will thus be made immediately responsible for the safe custody of the prisoners committed to their charge.

25TH SEPTEMBER, 1834.

In accordance with the orders of Government under date the 19th Instant, the Court of Foujdaree Udalut modify their Circular Order No. 14 of 1834, and direct that all convicts, and prisoners detained on requisition of security, be vaccinated without reference to the wishes of these individuals—But this rule is not to extend to prisoners of any other description.

Circular Orders of the

15TH OCTOBER, 1834.

C. O. No. 18.

The Court of Foujdaree Udalut, with the sanction of the Right Honorable the Governor in Council, deem it proper to notify with reference to their orders of 25th June 1834, on the subject of the revision of the jail establishments, for the information and guidance of the judicial authorities in charge of jails, that it is not necessary that the proportion of Peons to the number of convicts employed in labour outside the jail should be regulated *daily*, which would necessarily be an inconvenient proceeding, but from time to time as to the Officer in charge may seem requisite, with a view of preserving as close a conformity as possible with the orders of Government upon the subject.

In the event of danger being apprehended or circumstances occurring which may, in the opinion of the Officer in charge, render necessary the adoption of extraordinary measures, he will be justified in using his own discretion in entertaining extra Peons, but must immediately report *what* steps he has taken, to meet the emergency, for the information of the Foujdaree Udalut.

14TH NOVEMBER, 1834.

C. O. No. 19.

Notwithstanding their orders, circulated through the four Provincial Courts of Circuit at different periods, directing that the statement of prisoners' labour furnished with the monthly report, shall exhibit the total number of sick in jail: the Foujdaree Udalut observe, that the greater number of the returns at present shew, only the number of sick amongst the convicts and security prisoners. The Court accordingly direct, that the Criminal Judges do in future invariably insert the total number in hospital, at the date of the report, of all classes of prisoners in jail.

24TH NOVEMBER, 1834.

C. O. No. 20.

The Acting 3d Judge on Circuit in the Centre Division, having brought under the notice of the Foujdaree Udalut, cases in which the powers of punishment vested in the Criminal Judges by Section II. Regulation I. of 1824, have been exercised, and no report made.—

The Judges deem it proper to direct, that in each instance, in which these provisions may in future be acted upon by the Criminal Courts, a note of the circumstance shall be entered at the foot of the case, in their monthly reports, explanatory of the amount and cause of the fine imposed.

26TH NOVEMBER, 1834.

C. O. No. 21.

1. The Judges of the Foujdaree Udalut approving of the suggestion of the 1st Judge on Circuit Western Division, resolve to issue the following Circular Orders proposed by him in the 34th para. of his report, under date 24th ultimo; and they accordingly direct.

"That on security being demanded from prisoners sentenced under the orders of the Court of Circuit or Foujdaree Udalut to be confined in irons in default of producing security, they shall first be asked for a

Court of Foujdaree Udalut.

list of their sureties, and in the event of their furnishing the same, no prisoners shall be put into irons, until the competency or otherwise of the sureties tendered be ascertained."

2. The Criminal Judges will understand, that this order is not to supersede the general authority vested in them, of placing prisoners in irons of known desperate character, in case of necessity, nor does it require, if the first securities named by the prisoner decline to become his sureties, or are not forthcoming, that the Criminal Judge should wait till the competency of a second set is ascertained, before irons are placed on a prisoner. In such cases, the Criminal Judges will exercise their own discretion. The only object of this order, is to allow a prisoner in ordinary circumstances, ample time to find security, before he is subject to any restraint beyond that of simple confinement.

28TH NOVEMBER, 1834.

C. O. No. 22.

1. I am directed by the Judges of the Foujdaree Udalut, to acknowledge the receipt of your letter of the 11th instant, submitting copy of a correspondence between the Acting Criminal Judge and Magistrate of Nellore, respecting the detention of prisoners by the Police beyond 48 hours, and the reference of cases by them to the Magistrate.

2. The Judges observe, that the Provincial Court of Circuit have communicated to the Magistrate of Nellore, the orders of the Foujdaree Udalut of the 18th May 1832, which specially recognize the propriety of a detention in the talook for five days, or, for a further term, if sufficient cause exist. The Regulations do not, neither has the Foujdaree Udalut at any time prescribed, that cases shall not under any circumstances be detained by the Police beyond 48 hours; and they consider the order of the Magistrate, if it goes to this length, to be at variance with the law, and they direct that it be recalled. All that is required by the law, or, by the Foujdaree Udalut, is, that prisoners shall not be unnecessarily, and therefore improperly detained in the talook, and that the Officers of Police shall be constrained to give that due attention to their Police duties, which is essentially necessary for the well being of society, and called for as an act of justice towards persons accused.

3. The Acting Criminal Judge has clearly pointed out, the evils which must ensue, if cases are forwarded to the Criminal Court but half investigated, and the Court need not dwell upon them. The omission to make ample enquiry on the spot, and to obtain at the time, the forthcoming proof of the commission of an offence, is, there can be no doubt, an evil of the greatest magnitude, and one, hardly ever admitting of remedy by ulterior proceedings. At the same time, the instances which are constantly brought under the notice of the Judges, of the protracted detention of prisoners by the Police, renders it incumbent on the Magistrate, and the controlling authorities, to exercise a vigilant superintendence in this respect; and at all times to require full and satisfactory explanation of every instance of unusual and unauthorized detention. If the grounds assigned by the Officer of Police are satisfactory, no blame can be attached to him, he may often deserve commendation for the exercise of a sound discretion, and for his exertions to obtain the requisite evidence; and it is the duty of a Magistrate to see, that

his Police Officers understand, that the call made upon them for a full statement of the grounds, upon which they have detained prisoners beyond the period allowed, is not a condemnation of their proceedings, nor will any censure follow, unless they have done so without sufficient cause.

4. These remarks are equally applicable to the case of references to the Magistrate. The Court of Foujdaree Udalut have at no time ruled, that such references are to be uniformly prohibited, as the Magistrate would seem to have inferred. On the contrary they consider them in many instances, to be necessary and highly desirable. In cases for example, where the Police Officer may entertain doubts, whether a complaint before him, is not matter for civil action rather than of criminal prosecution, it is obviously his duty to seek the instructions of his superior, and to detain the parties accused till he receives them. But in cases of offences clearly and explicitly declared by law, to be cognizable by the Criminal Courts and the Courts of Circuit, of which class are all heinous offences, the reference of them to the Magistrate is highly censurable. It evinces, either, that the Head of Police is ignorant of the most obvious rules enacted for his guidance, or, that he wilfully disregards them, and there can be no question, that both the Officer making them, and the Magistrate who permits such references, need to be reminded of their duty, and that a perseverance in such conduct will necessarily call for the reprehension of the superior court,

6. The Judges desire that their observations may be communicated to the Magistrate of Nellore, with instructions to recal any order passed by him, which prohibits references to himself. In the place of any positive orders of this nature, as complained of by the Acting Criminal Judge, it will be the duty of the Magistrate carefully to watch over the proceedings of his Police, taking the requisite notice of every case of neglect of duty on their part, in failing duly to forward prisoners to the Criminal Court; and requiring from them that strict and careful investigation of cases the instant they come before them, which may secure all evidence forthcoming and allow of the prisoners being forwarded at an early date, with the necessary proof.

25 DECEMBER, 1834.

C. O. No. 23.

The Judges of the Foujdaree Udalut having recently had under consideration the question, referred to them by the late Officiating Judge on Circuit in the Northern Division, "whether it is competent to a Judge on Circuit to order prisoners released by the Criminal Court on a charge of a committable offence, to be apprehended and brought to trial before himself, or, at the next ensuing sessions," deem the question one of general importance; and resolve therefore to issue the following Circular Order on the subject.

The Foujdaree Udalut have upon several occasions ruled, that "under a sound and liberal construction of Section XXIII. Regulation X. of 1816, the Judge on Circuit may refer to the collective Court, cases in which a Criminal Judge may have exceeded his jurisdiction, or, any others in which error may be apparent and remediable, the spirit of the enactment being to obtain correction of error when practicable." An

Vide C. O. 27th
August 1832.

order for the committal of a prisoner, who has been released by a Criminal Judge on a charge cognizable by a Court of Circuit, is a case of this nature, as the order is required to correct the error into which the Criminal Judge has fallen. But the Regulations nowhere authorize a single Judge to correct such error, and it must, in the opinion of the Judges, be the act of the collective Court of Circuit, under the powers vested in them by Section XXIV. Regulation X. of 1816.

It is competent to a single Judge on Circuit to direct the immediate apprehension of persons whom he considers to have been improperly released, with the view of submitting their case to the collective Court of Circuit; but they cannot be brought to trial, except by the orders of that Court.

8TH DECEMBER, 1834.

In exception to the rule laid down in the Circular Order of the 14th February 1831, the Court resolve that in cases where a mitigation of punishment in favor of the prisoner may be recommended, that the sentence shall be computed, and held to take effect from the date of the original warrant of conviction—when, under the orders of the 6th December 1830 and 20th March 1834, the operation of the sentence actually commenced. The final warrant should therefore contain an order directing the sentence to take effect from such date.

10TH DECEMBER, 1834.

The Court of Foujdaree Udalut with the view of securing uniformity in the statements required from all Magistrates by their Circular Order of the 31st July 1833, resolve to transmit to the Provincial Courts of Circuit, for adoption by the several Magistrates in their respective divisions, the subjoined "Form" submitted by the Magistrate of the Southern Division of Arcot, which exhibits in a clear and satisfactory manner, the information which it was the object of the Circular Order in question to obtain.

STATEMENT of all Complaints, received, investigated and disposed of by the Tahsildar of ——— Talook, from the 1st January to 30th June 183——.

Names of the Prisoners.	Crime.	Date of offence committed.	Date of complaint.	Date of apprehension.	Date of attendance of the Party.	Made in which the Prisoners were disposed of	Date of disposal
1 Royapun	Jany 1834. Stealing a woman's cloth value Rupee 1 Feby. 1834.	1833 Dec. 28	1833 Dec. 29	1833 Dec. 29	1834 Jan. 1	The Defendant was imprisoned for 5 days.	1834 Jan. 1

17TH DECEMBER, 1834.

In conformity with the suggestion of the Honorable Court of Direc- C. O. No 26.

tors, conveyed in their dispatch under date the 20th March 1833, the Court of Foujdaree Udaltut direct that in future whenever a person is acquitted before the Magistrate of the charge on which he has been apprehended, the opinion of that Officer be distinctly entered in the proceedings, stating whether the acquittal arises from want of proof, or from the accusation being unjust and his arrest uncalled for and that in either case, a copy of the Magistrate's order be given to him upon application.

3D JANUARY, 1835.

C. O. No. 27.

I am directed by the Judges of the Foujdaree Udaltut to transmit, for the guidance of the several Officers in charge of jails in your division, the annexed order of Government of the 23d December 1834.

Vide C. O. No.

34.

"The Governor in Council desires that it be made a general rule, that the sums earned by the labour of prisoners be carried to the credit of Government in the Collector's treasury monthly."

2D FEBRUARY, 1835.

C. O. No. 23.

Under the orders of Government of the 13th ultimo, I am directed by the Judges of the Foujdaree Udaltut to desire, that the Judges of the Criminal and Auxiliary Courts in your division, may be strictly prohibited from making any extra allowance whatever, to prisoners in their charge under sentence of execution.

4TH FEBRUARY, 1835.

C. O. No. 29.

The Judges of the Foujdaree Udaltut having observed, that a difference exists in practice, in the disposal of cases of escape brought before the Criminal Courts under Clauses second and third, Section V. Regulation VI. of 1822, resolve, with reference to their Circular Order of the 13th July 1829, to direct that all such cases in future be invariably disposed of by the Criminal Judge, and in no instance, committed for trial before the Court of Circuit.

9TH FEBRUARY, 1835.

C. O. No. 30.

The Judges of the Foujdaree Udaltut having upon several recent occasions had the question submitted to them, Whether the bare confession of a prisoner before the Head of Police, is sufficient to warrant his transmission to the Criminal Court?—resolve to issue the following Circular Order on the subject.

Vide C. O. 18th June 1817.

An uncorroborated confession before the Police has been constantly declared by the Foujdaree Udaltut to be of no weight, not even sufficient to warrant an order for the requisition of security; and it might at first seem, therefore, that the transmission of a prisoner to the Criminal Court on his confession alone, was useless, and virtually prohibited. But it must be borne in mind, that although a Police Officer may not be able, or may neglect, to discover corroborative evidence, a full examination of the prosecutor, with the matter in the confession, may furnish to the Criminal Judge, a clue to further evidence which may lead to conviction, or establish such strong suspicion, as to justify the requisition of security.

On these grounds, therefore, the Judges are of opinion that whenever a prisoner confesses the commission of an offence, which is proved by the testimony of the prosecutor, or other evidence to have been committed, he should be sent up to the Criminal Court. But that in cases, where there is nothing to show that the crime was committed, except the prisoner's statement of the fact in his confession, he ought not to be forwarded.

20TH FEBRUARY, 1835.

1. The Court of Foujdaree Udaltut having had under their consideration, the provisions of the law affecting guards from whom prisoners may escape, resolve to circulate their construction of them.

C. O. No. 31.

2. Under the provisions of Section XXIII. Regulation VIII. of 1802, and Clause first, Section VII. Regulation I. of 1810, all guards under the Magistrate's authority are declared liable to dismissal for wilful neglect, by which a prisoner may make his escape; and should any connivance or further criminality appear, they are to be committed for trial before the Court of Circuit. The Criminal Judge being now the only committing Officer, it is of course his duty to commit in such cases.

3. By Clause first, Section XI. Regulation XIII. A. D. 1832, it is declared, that the Criminal Judge, Joint Criminal Judge, and Native Criminal Judge shall have primary cognizance of cases of "gross and culpable neglect" on the part of *Peons* in charge of prisoners, whereby they may be enabled to effect their escape, and they are punishable by imprisonment not exceeding six months.

4. The power here given is not restricted to any particular class of *Peons*, but is general, extending to all persons coming under that denomination, and the Judges are accordingly of opinion, that for such offence, Police and other *Peons* under the Magistrate, are liable to punishment under the Clause in question.

23D FEBRUARY, 1835.

The Court of Foujdaree Udaltut have had under their consideration, the several returns from the subordinate Courts, reporting the practice hitherto observed in the disposal of the bodies of criminals executed.

C. O. No. 32.

It appears, that it has been usual to bury the body at the foot of the gallows; but that exceptions have been made to this rule in some districts. The Judges are of opinion, that it is expedient that one uniform practice should be followed; and they accordingly resolve to direct by a Circular Order, that in all cases where it is not otherwise especially directed in the warrant, the bodies of all persons executed be invariably buried at the foot, or in the immediate vicinity, of the gallows.

13TH MARCH, 1835.

1. The Judges of the Foujdaree Udaltut having observed that their Circular Order of the 25th June last, which directs one *Peon* to be entertained for every 4 convicts "employed at work outside the jail," has not been generally attended to, resolve to point out to the subordinate Officers in charge of jails, that under that order, the guard of extra *Peons*

C. O. No. 33.

Circular Orders of the

must be invariably regulated by the number of prisoners actually worked outside the jail; and that no extra Peon is to be entertained for prisoners of any class put to labour, within the walls of the jail. For their supervision, and safe custody, the fixed jail guard is considered by the Judges to be sufficient.

2. The 7th column of the statement furnished monthly under the orders of the Foujdaree Udaltut of the 19th January 1831, exhibits the number of convicts and other prisoners "worked outside the jail," and the number of extra Peons employed under the orders of the 25th of June last, should correspond with the number entered in that column, at the calculation of 1 Peon to 4 prisoners; where this is not the case, the Court will expect a full explanation of the difference.

16TH MARCH, 1835.

C. O. No. 34.

In pursuance of the instructions of Government under dates the 6th and 10th Instant, and with reference to their Circular Order No. 27 of the 3d January last, the Judges of the Foujdaree Udaltut circulate the following orders for the guidance of the several Officers in charge of jails.

1. Officers in charge of jails are authorized to draw upon the Collectors for the sums they may require, to enable them to purchase the necessary supplies for the subsistence of the prisoners, and the raw material for the manufactures carried on in their jails. They are to keep an account of all receipts from, and payments into the treasury of the Collectors, to be closed, and settled monthly.

2. Those Officers in whose districts there is a probability of a rise in the price of grain, are further directed, to take immediate measures, for providing at the present wholesale prices, a sufficient quantity of grain for the average annual consumption of the prisoners. They are accordingly authorized to draw on the Collectors for the requisite funds for this purpose, and where there may not be the means of storing the grain within the walls of the jail, they may submit for sanction a bill for the rent of buildings for the purpose.

3. In making their arrangements for the purchase of their annual supply of grain, the Criminal Judges will understand, that they are specially enjoined by the orders of Government, not to call upon the Collectors to interfere, either by issuing takeeds to the Revenue Officers, or procuring it through the agency of Revenue Peons. The contracts are to be made by the Criminal Judge, without the interposition of the Officers of Government, and immediately with such persons, whether Merchants or Farmers, as are likely to furnish it on the most advantageous terms. It is also desirable, if possible, that the grain should be received and stored at intervals, instead of all at one period.

4. The several Criminal Judges and Officers in charge of jails will further understand, that it will be their duty under these orders, to lay in an annual supply at the close of the harvest, or at such period in each year, when grain is usually cheapest.

5. In the districts where the public revenue is received in kind, the Officers in charge of the jails will carefully attend to the Circular Order of the 18th June 1831, and upon the receipt of these instructions, they

Court of Foujdaree Udaltut.

will furnish a memorandum to the Collector of the quantity of grain required for the annual consumption of their jails.

6. The several Criminal Judges and Officers in charge of jails will also report, within six weeks from this date, what they may have done under these orders; and furnish at the same time a statement of the probable amount of saving to Government annually, by the purchase at the wholesale price, at the most favorable season, as now directed.

25TH MARCH, 1835.

1. The expenditure under the head of batta to prosecutors and witnesses before the Criminal Courts, as exhibited in the statements of contingent charges for Fusly 1243, varies so much in different Zillahs, without any sufficient cause, that it is quite clear there is no general rule for the distribution of batta observed. C. O. No. 35.

2. With the view of reducing in some degree the amount of expense thus incurred, and of establishing a check, by which the distribution of batta may be better regulated, and controlled, the Court of Foujdaree Udaltut resolve to issue the following instructions to the four Provincial Courts of Circuit, to be by them communicated to the several subordinate judicial authorities in their respective divisions, for their information and future guidance.

3. The provisions of Section XXXIII. Regulation X. of 1816, which respect the grant of batta, to those prosecutors and witnesses before the Courts of Circuit, "who may appear to be *actually in need of such assistance*," and the order of Government, circulated under date the 23d of August 1824, which authorizes the payment of batta to prosecutors and witnesses before the Criminal Courts in *cases of necessity*, are hereafter to be strictly observed.

The batta which, under the enactment and orders above quoted, prosecutors and witnesses may be entitled to receive, shall invariably be paid to them in open Court, and in the presence of the European Officer; and the amount disbursed monthly in cases before the Criminal Courts, shall be entered in an abstract to accompany the criminal reports.

5. When the amount of batta disbursed in one month, may exceed that disbursed in preceding months, to a degree for which the mere increase in the number of cases brought before the Court may alone not sufficiently account, a further and full explanation shall be submitted in a note at the foot of the abstract.

6. At the close of each sessions, the Officer in charge of the Criminal Court shall prepare and submit to the Foujdaree Udaltut through the Judge on Circuit, a statement according to the annexed form, in which shall be exhibited the number of persons who may in each case before the Court of Circuit, have received batta, the amount issued in each case, and the number of days during which that indulgence may have been extended to the same parties.

Vide C. O. No. 131, and Circular letter 22d Jan. 1844.

FORM.

1st SESSIONS of 1835.			
Zillah of ———.			
Case.	Number of persons receiving batta.	Number of days during which they received.	Total amount paid to them in this case.
No. 3	5	3	Rs. A. P. 1 14 0

4TH APRIL, 1835.

C. O. No. 36.

1. With reference to the Circular Orders of the Court of Foujdaree Udalt, dated respectively the 8th May 1833, (and the 7th April 1834,) regarding the admission, under certain circumstances, of depositions before the Criminal Judge on trials before the Courts of Circuit, the Court of Foujdaree Udalt deem it proper to call the attention of the Courts of Circuit to that part of Section VIII. Regulation I. of 1825, which enjoins the reference of the trial to this Court, whenever the conviction of the prisoner may depend "exclusively or principally" upon evidence objected to by the Muhomedan Law Officer.

2. This rule is, with regard to certain "personal" objections to deponents, modified by the provisions of Clause first, Section II. Regulation VI. of 1829; but it still holds good in regard to the other grounds of exception to evidence, referred to in Section VIII. Regulation I. of 1825, among which are obviously exceptions, taken to the description of evidence, directed by the Circular Order of 8th May 1833 to be admitted.

3. The Court of Foujdaree Udalt deem it, on this occasion, necessary to call the particular attention of the Courts of Circuit to that part of the Circular Order last mentioned, which indicates, as a condition of the admissibility of the depositions in question,—that it must "be proved on oath to the satisfaction of the Court, that the informant is dead, or prevented by sickness from attending, or that he is kept away by the means and contrivance of the prisoner." And the Courts of Circuit are hereby enjoined to use especial caution, in admitting alleged "sickness" as an excuse for the absence of a witness in these cases.

6TH APRIL, 1835.

C. O. No. 37.

Several mistakes having lately occurred, in consequence of the Judges of the Court of Foujdaree Udalt not being aware, when passing sentence in a referred trial, that the same prisoners are concerned in other cases, they resolve to issue the following Circular Order, for the guidance of the several Judges of Circuit.

2. Whenever a prisoner in a referred trial may be concerned in other cases, whether under reference to the Foujdaree Udalt, or disposed of by the Court of Circuit, the Judge presiding shall invariably report the

circumstance in his letter accompanying the trial; and in the cases disposed of by himself, state the crime of which the prisoner stands convicted, and the conditional sentence passed.

7TH APRIL, 1835.

The attention of the Court of Foujdaree Udalt having been directed to the circumstance, that the Criminal Courts not infrequently pass orders for the requisition of security from persons accused, without entering fully into the defence, or calling upon them to name witnesses on their behalf; they resolve to issue the following Circular Order, for the guidance of the subordinate Courts.

C. O. No. 38.

Inasmuch as a requisition of security is, in effect, a punishment; the several Criminal and Joint Criminal Judges are enjoined, strictly to observe in all cases where they may contemplate a requisition of security, the rules laid down for their guidance in the Circular Order of the Foujdaree Udalt of the 21st May 1829. They will accordingly, in every instance, call upon the accused, before they issue their order for the requisition of security, to state, whether he desires to have any witnesses examined on his behalf, and if he then name witnesses, and they shall appear to the Officer presiding to be to facts material to his defence, two or more are to be summoned at the discretion of the Court, and duly examined before a final order is passed.

Vide C. O. No. 43 and 48.

9TH APRIL, 1835.

The Court of Foujdaree Udalt resolve, with reference to their Circular Order of the 16th May 1822, para. 1, to direct, that in examinations before the Criminal Courts, and the Courts of Circuit, whenever an article of stolen property is referred to by the specification of its number, the nature of such article be also stated in the record: and that a list of stolen articles numbered, as labelled, or marked for identification, be appended to the proceedings of the Criminal Courts, in all cases committed for trial, to which the said Circular Order of 16th May 1822 may be applicable.

C. O. No. 39.

18TH APRIL, 1835.

The Court of Foujdaree Udalt, upon a most deliberate consideration of the operation of the system, pursued under their Circular Orders of the 24th November 1823, and 29th October 1829, whereby the monthly returns of the several criminal tribunals are subjected to revision by the Provincial Courts of Circuit, previously to their submission for the examination of the Foujdaree Udalt, have arrived at the conclusion, that this innovation upon the practice, established by the rescinded provisions of Section XXXV. Regulation X. of 1816, which required the direct transmission to the Foujdaree Udalt of the corresponding quarterly reports, has been productive of inconveniences, which cannot be regarded as adequately counterbalanced by any advantages resulting from its introduction.

C. O. No. 40. Vide Letter.

F. U. 1st February 1830, explaining that it is not intended to interfere with the powers conferred by Sect. XXIII. Reg. X. of 1816, as explained in the C. O. of the 27th Aug. 1832 and C. O. No. 93.

2. It has very frequently happened, that owing to the delay in the arrival of these reports at the Presidency, under the present system, the resolutions of the Court of Foudaree Udalut to modify, or set aside, sentences of the Criminal Courts, therein exhibited, have been wholly nugatory.

3. It is obvious to remark, that the Provincial Courts of Circuit cannot be permitted to issue orders in modification of the sentences, so reported, inasmuch as such a proceeding would be attended with the twofold inconvenience of an inevitable departure from that "uniformity of decision," the preservation of which forms one prominent ground of the institution of the Foudaree Udalut, and of the frequent transmission by the Provincial Courts of Circuit of instructions to the Courts, subordinate to them, which might not receive the concurrence of the Court of Foudaree Udalut.

4. To this Court, therefore, must ever be confined the duty of directing the requisite modifications of the sentences, reported in these monthly returns: and as already intimated, it has been found that this cannot be effectually accomplished under the present system of their circuitous transmission.

5. It is, moreover, not a trifling disadvantage, necessarily attending the existing practice in this respect, that constructions of law not infrequently are enunciated by the Provincial Courts of Circuit in their remarks addressed to the lower Courts, from which the Court of Foudaree Udalut, to whom belongs exclusively the province of expounding the provisions of the Regulations enacted for the administration of criminal justice, are compelled to dissent.

6. With reference to the foregoing considerations, the Court of Foudaree Udalut resolve to revoke the Circular Order of 29th October 1829, and so much of the Circular Order of the 24th November 1823, as relates to the transmission of the returns in question through the Provincial Courts of Circuit; and to direct that the several Criminal Courts do transmit them in future direct to this Court, so as to arrive at Madras by the fifteenth day of the month succeeding that for which the said reports are furnished.

7. The prescribed half-yearly statements will continue, as at present, to be submitted through the Provincial Courts of Circuit; and they will request the military authorities in charge of prisoners to forward the statement called for in the orders of the Foudaree Udalut of the 9th February last, to the Zillah Court, by the 5th of each month.

20TH APRIL, 1835.

C. O. No. 41.

The Court of Foudaree Udalut observing in certain trials, recently referred for their final judgment, that the form of reading in open Court the prisoner's confession before the lower tribunal, has not been observed, deem it proper to direct by a Circular Order, that in all trials before the Courts of Circuit, when the prisoner may have confessed the charge before the Criminal Judge, the Magistrate, or proper Officer of Police, the subscribing witnesses to such confession be first examined as to the con-

ents of the declaration attested by them; and that such declaration be, after such examination, read in open Court, and the subscription of the witnesses proved; and that it be invariably entered in the record of the trial, that this procedure has been observed.

27th APRIL, 1835.

1. The Judges of the Foudaree Udalut being desirous of having before them, at the earliest practicable date, the reports of the subordinate Officers upon the escape of prisoners from their jails, resolve to revoke their Circular Order of the 23d January 1832, and to direct, that those reports be transmitted in future to the Foudaree Udalut direct, and not through the Provincial Courts of Circuit. C. O. No. 42.

2. The Officers in charge of jails will submit a copy of such report, to the Judge holding the sessions, immediately subsequent to the escape reported.

4TH MAY, 1835.

Several instances having been brought to the notice of the Judges of the Foudaree Udalut, where the subordinate Officers of a Criminal Court have passed sentence of conviction on prisoners tried by them, without taking their defence, or calling upon them to designate their witnesses: they resolve to direct the attention of the several Criminal Judges, to their Circular Orders under date the 21st May 1829, and to require them, to enjoin a strict observance of them, upon the subordinate authorities in their Courts. C. O. No. 43.

Vide C. O. No. 48.

8TH MAY, 1835.

1. Cases have occurred, in which a Magistrate, against whom a suit had been instituted, transmitted to the Court of Foudaree Udalut the reference, mentioned in Clause second, Section II. Regulation I. of 1823, as the "official superior at the Presidency," contemplated in that provision. C. O. No. 44.

2. The Court of Foudaree Udalut, having represented to the Right Honorable the Governor in Council the objections, which appeared to them to lie against this course of proceeding, issue, with the sanction of Government, the present instructions for the guidance of the Magistrates in such cases.

3. The reference prescribed in the Clause above cited, is to be made to the Secretary to Government in the Judicial Department, as "the official superior at the Presidency," therein contemplated.

18TH MAY, 1835.

1. Under instructions from Government dated the 7th April, I am directed by the Judges of the Foudaree Udalut to forward to you the accompanying copy of an order from the Supreme Government, dated C. O. No. 45.

Circular Orders of the

Vide C. O.
No. 52.

11th February last, and to desire that you will direct the several Criminal Judges in your division to submit on the 30th June and 31st December in each year, the statement and sketch plans required.

2. When their are no works of the nature referred to going on under the supervision, or, in connexion with the Judge, a report to that effect must be made on the dates above mentioned.

"I am directed by His Excellency the Right Honorable the Governor General of India in Council to request that you will bring to the notice of the Right Honorable the Governor in Council at Fort St. George, the documents inserted in page 100 and 101 of the *Calcutta Gazette* of the 7th Instant, relative to the construction of roads within the Bengal and Agra Presidencies.

"His Lordship in Council requests that the Government of Fort St. George will furnish half-yearly to the Supreme Government, for publication in the *Calcutta Gazette* statements and sketch plans in every respect similar to those above adverted to, of the roads and all public works connected with roads, or otherwise of extensive public utility, within the limits of that Presidency.

"I am likewise directed to forward to you two copies of the sketch maps which were distributed with the *Calcutta Gazette* of the 7th Instant."

15TH JUNE, 1835.

C. O. No. 46.

I am directed by the Judges of the Foujdaree Udaltut to forward to you for your guidance, and that of the subordinate Officers in your division, the accompanying copy of a letter addressed under this date to the 3d Judge of the Provincial Court of Circuit in the Western Division, declaring the opinion of the Judges as to the validity of prosecutions for subornation of perjury, where the party committing the perjury may not have been brought to trial.

I am directed to acknowledge the receipt of your letter dated the 22d Ultimo, soliciting the instructions of the Judges on the question: Whether a person charged with subornation of perjury, can, or ought to be put on his trial for that offence, before there has been a conviction of the perjury which he is accused of having suborned?

2. Upon a similar reference from the Provincial Court of Circuit in the Southern Division, the Judges of the Foujdaree Udaltut, under date 26th December 1833, ruled, that the suborner might be brought to trial although there had been no previous trial and conviction for the perjury, the fact of the perjury in the first place, and then of the subornation being established on the trial of the suborner.

3. A party charged with subornation of perjury appears to the Judges to stand exactly in the same predicament as an accessory before the fact, in murder or other heinous offences, which in the law of England are

Court of Foujdaree Udaltut.

classed under the head of "felonies," and as by a late Act the 9th Geo. IV. Cap. 74, c. 7, an accessory before the fact to felony, may be indicted and convicted "whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice," the Judges can see no reason why the same course of procedure should not be pursued in our Courts in cases of subornation of perjury. The count- be pursued in our Courts in cases of subornation of perjury. The count- selling, procuring or commanding in one case, is equally susceptible of proof as in the other, and the fact of the perjury may be as well established in the one, as the actually commission of murder or other felony in the other case.

23D JUNE, 1835.

1. It has been ruled by the Court of Foujdaree Udaltut, that when a C. O. No. 47. trial is referred for the final judgment of the Foujdaree Udaltut respecting one or more of the prisoners, it is competent to the Judge of Circuit to release those only of the accused who are sentenced to be discharged unconditionally, but that he has no authority to order the release on security of other prisoners in the same case, whom he may consider liable to strong suspicion, but must await the orders of the Foujdaree Udaltut for their disposal. In practice, however, this Court have allowed a different mode of proceeding and there are numerous instances on record of Judges of Circuit issuing warrants of release on security in such cases.

2. The Judges consider it advisable to circulate a general rule for the future guidance of the Circuit Courts on similar occasions, and upon mature consideration they are of opinion, that under the provisions of Clause second, Section VI. Regulation XV. A. D. 1803, it is competent to a Judge of Circuit to direct the release on security of prisoners acquitted in a trial, though that trial may be referred to the Foujdaree Udaltut for sentence on other prisoners therein concerned; and accordingly, they direct that mode of proceeding to be observed in future.

1ST AUGUST, 1835.

1. The Court of Foujdaree Udaltut having cause to believe, from proceedings recently laid before them by the 2d Judge of the Provincial Court of Circuit Centre Division, that the defence of prisoners who may be brought before the Criminal Courts, the Magistrates, and the Officers subordinate to them, is not always taken, with due care, and consideration; resolve to issue the following instructions for general observance.

2. The Court direct, that a prisoner's defence be not recorded, till after the evidence for the prosecution has been gone through; when the presiding Officer will be careful to ascertain all that a prisoner may have to offer in his justification, or in extenuation of the charge.

3. The Criminal Courts will especially enjoin strict attention to this rule upon the Sudr Ameens, in cases referred for their determination; and the several authorities will instruct their subordinate Officers, that under the Circular Orders of the Foujdaree Udaltut of the 21st May 1829, to which their attention has been lately called (Circular Order No. 43), it is their duty, even where a confession is made, to call for and take

Circular Orders of the

evidence on behalf of the prisoner, whenever it may appear from his statement, that the witnesses named by him can depose to circumstances which might in part exculpate him, or lessen the criminality of the offence.

19TH AUGUST, 1835.

C. O. No. 49.

The Court of Foujdaree Udalut deem it proper to issue the following instructions, prescribing the form of indictment for the crime of subornation of perjury.

The indictment should state, that A. B., intending to pervert the due course of justice, did suborn C. D. to appear as a witness in a certain civil suit, or criminal trial (as the case may be), and falsely to swear and give in evidence, certain matters, material to the issue of the said suit, or trial, in substance and to the effect following (here recite the substance of the deposition of the person suborned), and that the said C. D. upon the trial of the said case, in consequence of such subornation did appear as a witness, and having been duly sworn did depose in words to the following effect (here recite the words on which the perjury is assigned)—Whereas in truth and in fact (here recite the fact in opposition to the false evidence) and that the said A. B. at the time he suborned the said C. D. falsely and corruptly to swear as aforesaid, well knew that such his evidence was false, and that it was material to the issue of the said suit or trial to show that, &c., and that the said A. B. did therefore corruptly suborn and procure the said C. D. to commit wilful and corrupt perjury.

24TH AUGUST, 1835.

C. O. No. 50.

The Right Honorable the Governor in Council having, under date the 11th Instant, been pleased to vest the Judges of the Foujdaree Udalut, with discretion to authorize small monthly disbursements for bringing up the children of convicts, in cases where there are no relatives, nor others willing to take the charge of them; and to direct, that a quarterly statement of all such payments shall be submitted for the information and special sanction of Government; I am instructed by the Judges to forward to you the annexed form of statement; and to desire, that the several Criminal Judges may be required to furnish this statement on the 31st March, the 30th June, 30th September and 31st December in each year, whenever they have been authorized to make the disbursement referred to.

Vide C. O. No. 65.

Vide Circular Letter to the 4 Pro: Courts dated 29th Nov. 1839.

Name and sentence of the convict.	Child's name and sex.	Age of the Child.	Date of first disbursement.	Charge per mensm.	Total expenditure to this date.

19TH SEPTEMBER, 1835.

The standing orders of the Foujdaree Udalut dated the 14th July 1809, require that "Warrants be always signed by the person presiding as the Judge in the case, though he no longer retain the situation, whenever his signature can be obtained."

2. This mode of proceeding, however, having in numerous instances been attended with inconvenience, and for a considerable period superseded in practice, the Court of Foujdaree Udalut now resolve to modify the order above quoted, and to direct that in future, their sentences in all referrible cases not finally disposed of previously to the removal, whether temporary or permanent, from the judicial situation of the Officer who may have tried them, be transmitted to the Provincial Court of Circuit, whose duty it will be to issue the usual warrants for carrying them into execution.

24TH SEPTEMBER, 1835.

C. O. No. 51.

1. In the majority of the calendars which have from time to time been laid before the Foujdaree Udalut, the only explanation relative to the postponement of cases is to be found in the remark that "certain of the witnesses were not forthcoming and as their evidence was most material, the trial was not entered upon."

2. It being obvious that upon a bare statement of this nature, the controlling authority is unable to determine whether proper exertions have been made to cause the attendance of the persons absent, and by consequence to check the great and growing evil of postponement, the Court of Foujdaree Udalut have resolved to direct by a Circular Order, that in future, whenever from the absence of witnesses, &c., a case may be left for trial at the ensuing sessions, the presiding Judge do record in the calendar what measures were adopted by the Criminal Court, either spontaneously or under his orders, to procure the attendance of the parties, specifying the dates of such orders as may have been issued on the subject; and further, that he do detail the circumstances which have rendered those efforts abortive.

3. The Court deem the present a favorable opportunity for calling the particular attention of Judges on Circuit to the latter part of their orders of the 24th August 1826, circulated under date the 28th June 1827, wherein it is ruled that "postponed trials should always be heard first; in order that if the further attendance of witnesses whose depositions were before taken is required, it may be obtained before the Judge quits the station; and thus all danger of further postponement obviated."

4. The Court of Foujdaree Udalut further direct that to the "abstract of evidence" in each trial, be affixed the name as well as the official designation of the committing Officer, and, with the view of facilitating reference, that in the same column which exhibits the number of the trial as it stands in the calendar, be entered in red ink, its corresponding number in the monthly Criminal reports.

25th SEPTEMBER, 1835.

C. O. No. 53.

The statement now furnished under the Circular Orders of the Foujdaree Udalt does not give an accurate view of the product of the labour of the prisoners in the different jails, but is generally confined to manufactures. The Court resolve therefore, to modify it, to the intent that in the memorandum prescribed by the Circular Order of 30th December 1833, the real value of the product of labour may be duly exhibited.

2. The heading of the "memorandum" will be altered in future to "estimated value of the product of the labour of the prisoners during the month of —," and in the 10th column of the statement, for the present heading must be substituted "estimated value of the labour of the prisoners during the month, after deducting the price of the raw material and other charges."

3. It will be the duty of all Officers in charge of prisoners to enter in the said memorandum, the different species of labour to which the services of the convicts may, during the month reported, have been applied; and where the work may be of such a nature that an estimate cannot be easily formed of it, viz, road making, repairing bridges, &c, the value of the labour of the convict for the time occupied, taken at $\frac{1}{2}$ of the value of free labour, should be inserted.

17th OCTOBER, 1835.

C. O. No. 4.

The provisions of Section VIII. Regulation I. of 1825, and Section II. Regulation VI. of 1829, empower the Judge of Circuit to overrule certain specified objections to the evidence, adduced on a criminal trial, which may be made by the Mahommedan Law Officer; and in the former Section it is provided, that the Law Officer shall on the completion of the trial declare in his futwa "the sentence to which the prisoner would have been liable, if the evidence of the witness or witnesses, objected to, had been admissible under the provisions of the Mahommedan law."

The Courts of Circuit, acting upon the provisions abovementioned, have not adopted an uniform mode of proceeding; the practice of some Judges has been to instruct the Mahommedan Law Officer to declare in his original futwa the sentence to which the prisoner would be liable, if no objections of the descriptions stated, applied to the evidence given on the trial; while with other Judges of Circuit, the practice has been to take in the first instance from the Law Officer a futwa, strictly accordant with the rules of evidence of the Mahommedan law, and thereupon proceed in the manner prescribed in Clauses third and fourth, Section II. Regulation XV. of 1803, to take a second futwa, overruling any objections of that nature made in the first futwa.

It is obviously proper, that the practice of all the Courts of Circuit should in this respect be the same; and the Court of Foujdaree Udalt being of opinion, that the latter mode of proceeding is on various grounds the most desirable and proper, and accordant with the analogy of the Regulations; resolve to direct by a Circular Order, that it be invariably observed in future by the Courts of Circuit, when applying the provisions of Section VIII. Regulation I. of 1825, and Section II. Regulation VI. of 1829.

16th NOVEMBER, 1835.

C. O. No. 55.

Para. 6. The Court of Foujdaree Udalt observe, that to the precept of the Court of Circuit requiring explanation of the absence of the prosecutor and the second witness in case No. 8 on the calendar, the Criminal Judge made return to the following effect: "that in regard to the second witness's absence, it is reported that when a summons was taken to his village he had gone to another village, and that on a summons being sent to the latter place, it was found that he had returned to his own village, whence he has ultimately been sent hither. As the two villages are not thirty miles from each other, though in different talooks, the immense delay which has caused this witness to be too late should not have occurred, and would not, if the Police, on finding that the witness was not in the first village, had immediately followed the witness to the other village, or communicated with the neighbouring Tahsildar, instead of merely reporting his absence to this Court and awaiting a circuitous order to summon the witness in the other village whence he had in the mean while departed. It seems generally that several postponements of cases might be averted, if Police Officers and even Magistrates were, in the event of parties or witnesses having gone to other jurisdictions, to communicate at once with the authorities thereof, instead of merely reporting to the Court (which may be a hundred miles in the wrong direction) that the required party or witness has gone to such other jurisdiction."

7. The Court of Foujdaree Udalt considering the suggestion contained in the concluding paragraph of the above return, to be worthy of general adoption, resolve to direct that the same be communicated to the four Provincial Courts of Circuit, who will immediately furnish transcripts of this and of the preceding paragraph to the several Magistrates in their respective divisions, with instructions to exact from their Native Police subordinates a strict adherence to the mode of proceeding recommended by the Criminal Judge and approved by the Foujdaree Udalt.

20th NOVEMBER, 1835.

C. O. No. 56.

The Court of Foujdaree Udalt considering it expedient, that the construction of Section III. Regulation XV. of 1803, ruled by the Foujdaree Udalt on the 7th of September 1829, should be circulated for general information, resolve to direct that the following paras, of a letter addressed to the Additional Judge on Circuit in the Centre Division, be furnished to the four Provincial Courts of Circuit for their information and guidance, a copy being also furnished by the Provincial Court, to the Judge now on Circuit in each division.

Para. 2. "Highway robbery by a single unarmed person does not come within the definition of "robbery by open violence" as defined in Clause first, Section III. Regulation XV. 1803, but is distinct from it. According to the Mahommedan law, it would be punishable by the amputation of two limbs, and consequently (under the commutation directed in the Regulations) 14 years' imprisonment. Though intimidation may be used by a single unarmed robber, it is only when he is armed with an "offensive weapon," or accompanied by others in "a gang," that the Clause in question applies. In cases of a single unarmed robber the Mussulman law exclusively applies."

3. "Where the prisoner is *fully* convicted by the Law Officer, and sentenced to discretionary punishment, if the Regulations have denounced the penalty to be adjudged, no second futwa is requisite. But if the conviction is incomplete, and the acquittal proceeds on the incompetency of the witnesses on any of the grounds specified in Section VIII. Regulation I. 1825, a second futwa should be taken."

4. "It is only in cases where the Regulations have not annexed a specific penalty to the offence, that in the event of conviction, and sentence by the Law Officer to discretionary punishment, it becomes necessary, in crimes to which the Mussulman law has annexed a specific punishment (*Hudd*), as it does in all cases of robbery by a single unarmed person to take a second futwa, under Clause third of fourth, Section II. Regulation XV. 1803, according as the said specific sentence of *Hudd* may be opposed by the obstacle of a conviction under (*Ghalib-oo-zun*) strong presumption, or by a (*Shoobah*) scrupulous distinction. In either case, by means of a second futwa, the British code overcomes these obstacles."

5. "Clause seventh of the said Section applies to cases of conviction and sentence to discretionary punishment, in crimes to which neither the code of Regulations, nor the Mahomedan law, have annexed any specific penalty, under which description may be classed many of the higher descriptions of fraud, or misdemeanour."

6. "The difficulty into which you have been led seems to have arisen from your not distinguishing robbery by a gang, or by a person offensively armed, to which the Regulations annex a specific penalty, from robbery by a single person unarmed offensively for which they do not provide, but to which the Mussulman law affixes the specific penalty of *Hudd*."

28TH DECEMBER, 1835.

C. O. No. 57.

The Court of Foudaree Udalut having observed in the reports furnished by the Criminal Judges under Section XXXV. Regulation X. of 1816, that the provisions of Section II. Regulation IX. of 1832, have been construed to authorize the punishment of witnesses who may have appeared in support of false charges preferred before the Native Officers of Police, they direct that it be notified to the Magistracy and the several Criminal, Joint Criminal, and Native Criminal Judges in the provinces, that Regulation IX. of 1832, has been ruled not to apply to witnesses giving false evidence, but only to "the party by whom the charge shall have been preferred;" and that inasmuch as it was found requisite to enact a law for the punishment of persons preferring false complaints before a Police Officer, it cannot be considered legal to punish persons giving false evidence (not upon oath) before the Native Police, without a special provision, rendering the act a criminal offence.

8TH JANUARY, 1836.

C. O. No. 58.

The Circular Order of the Court of Foudaree Udalut, dated the 14th March 1832, directs "that in all cases, where reference is made in the

"proceedings of any of the subordinate tribunals to previous contradictions in the evidence of the witnesses, copies of both depositions shall be invariably submitted."

In extension of the principle of the above Circular Order, the Court of Foudaree Udalut deem it proper to direct, that in referred criminal trials whenever evidence, given by a witness before the committing Officer, may vary, materially, from that, given by such witness before the Police Officer, the latter deposition be included in the record of proceedings, furnished in English and Persian to this Court.

19TH JANUARY, 1836.

The Circular Order of the Foudaree Udalut No. 4, dated the 5th of July 1834, which requires from the Heads of District Police an annual report on the state of crime in their respective talooks, but having special reference to those crimes the perpetrators of which have altogether escaped detection; appears either to have been insufficiently explained, or to have been misunderstood by the Heads of Police in several of the districts from whom those reports have been received.

The Court of Foudaree Udalut deem it proper therefore to direct by a Circular Order, that it may be explained to the several Heads of District Police, that the reports in question should not comprise a summary of cases nor a transcript of orders issued to the subordinate Officers of Police, in crimes the perpetrators of which may not have been apprehended, but should contain general yet concise observations explanatory of the want of success in detecting offenders in those districts only where the extent of the failure is calculated to excite remark; and in respect to "any suggestions they may have to offer for the improvement of the Police," it should be explained that the opportunity thus afforded them of taking a general view of the existing Police system, should be exercised with discrimination, and only in such cases where the Police Officer may see necessity for any alteration or improvement in the Police as connected with his district.

The accumulation of a mass of extraneous matter can serve no other end than that of obstructing the progress of public business; whilst the mass of writing contained in the reports for the year 1834, has of itself rendered them unavailable for any practical purpose.

29TH JANUARY, 1836.

The Court of Foudaree Udalut, having observed that parties of convicts are not infrequently detached to gather firewood, &c. in jungles at a distance of several miles from the jail, and that in several instances they have availed themselves of the facilities afforded by the situation, to escape from their guards, deem it necessary to direct by a Circular Order, that the practice in question, wherever it prevails, may henceforward be discontinued, as unauthorized and inexpedient.

C. O. No. 60.

Circular Orders of the

12TH FEBRUARY, 1836.

C. O. No. 61.

Vide C. O. No. 79.

The Court of Foujdaree Udalut, being of opinion that the observations contained in the third and fourth paragraphs of the extract from their proceedings under date the 21st October 1823, are of general importance, as indicating the rule by which in the case of accused persons naming witnesses in their defence, the criminal authorities should be guided; resolve to direct that copies of those paragraphs be furnished to the four Provincial Courts of Circuit, for the purpose of being communicated to the several Courts of Criminal Judicature within their respective divisions, for their information and guidance.

Para 3. In this and in other cases under reference from the Zillah of Chicacole, the Court of Foujdaree Udalut observe, that the Assistant Criminal Judge questioned the prisoners, as prescribed by Clause second, Section II. Regulation II. of 1822, as to the facts to be proved by the testimony of the witnesses whose attendance was desired by them, and the usual answer given is "I will prove by them that I did not commit this crime."

4. It is obvious to remark that so general an answer is altogether beside the purpose, and that the provisions of the above Clause evidently require that proof to specific facts should be required by the prisoner.

26TH FEBRUARY, 1836.

C. O. No. 62.

The Court of Foujdaree Udalut having, on various occasions, pointed out the propriety of an explanation being furnished on the transmission to the Criminal Courts of cases detained in the Talook in consequence of references to the Magistracy by the Police, and finding that the practice does not universally obtain, deem it proper now to direct that whenever a case may be detained beyond the prescribed period by the Police in consequence of their doubts as to its transmission to the Criminal Court, a communication shall accompany the case, explaining that such has been the cause of the detention and shewing why the reference has been made.

A concise but distinct note of this explanation is always to be given in the monthly criminal reports, to enable the Court of Foujdaree Udalut to form a correct judgment whether the proceedings of the lower tribunal have been correctly conducted in this particular.

27TH FEBRUARY, 1836.

C. O. No. 63.

With a view to the prevention of the re-employment in the public service, of persons discharged on proof of misconduct rendering them unworthy of future employment, the Court of Foujdaree Udalut, with the authority of Government, deem it proper to direct

Court of Foujdaree Udalut.

that on the occasion of servants in the Police and Judicial Departments being dismissed for recorded misconduct, such as may be deemed to disqualify them for employment in any situation under Government, a descriptive roll of the individual so discharged be furnished to the Government Office, by the Officer from whose establishment such servant may have been removed, in order to its publication in the Fort St. George Gazette.

Vide C. O. No. 94.

DESCRIPTIVE ROLL.

Name.	Native Country.	Caste.	Age.	Height.	Colour.	Particular mark of features or defects.	When and why dismissed.

27TH FEBRUARY, 1836.—B.

It having been brought to the notice of the Court of Foujdaree Udalut, that prisoners sentenced by the Heads of Police to imprisonment with labour under Clause first, Section V. Regulation XIII. of 1832, are, in certain districts, worked in "irons," the Court deem it proper to point out to the several Magistrates, that the proceeding is unauthorized; and that the practice must be, at once, discontinued.

8TH MARCH, 1836.

The Magistrate of Salem having had occasion to apply for sanction to disburse monthly a small sum for bringing up the child of a convict transferred to his charge, the Court of Foujdaree Udalut deem it proper to extend the Circular Order No. 50, dated the 24th of August 1835, to Magistrates and other Officers in charge of jails; and to direct that a quarterly statement of all such payments authorized by the Court of Foujdaree Udalut, be submitted for the information and special sanction of Government, whenever disbursements of the above nature may be made by the Officers herein referred to.

Name and sentence of the convict.	Child's Name and sex.	Age of the child.	Date of first disbursement.	Charge per mensem.	Total expenditure to this date.

C. O. No. 65.

29TH APRIL, 1836.

C. O. No. 66.

Several flagrant instances of oppression and cruelty on the part of Village Police Officers, in confining for many successive hours in the stocks, persons suspected of theft, with the view of extorting from them a confession of guilt, have recently attracted the serious attention of the Foujdaree Udaltut : and in a case very lately referred for the consideration and final judgment of that Court, in which the sufferings of the injured party were partly caused by such confinement, and which terminated in death, the three principal agents in the barbarous outrage have, on conviction, been sentenced to transportation for life.

Vide C. O. 29th October 1821.

The Court of Foujdaree Udaltut resolve to take the present opportunity of directing, that the Magistrates of the several districts under this Presidency, be required to issue instructions to all the Village Police Officers subject to their respective controul, strictly prohibiting the placing of any person in the stocks on any pretence whatever, excepting only on sentence in cases in which that punishment is sanctioned by the Regulations.

It would be superfluous upon the present occasion to enlarge upon the absolute necessity of putting a stop to a system of which the repugnance to every principle of humanity, no less than the illegality, must be obvious to every reflecting mind : and the Court of Foujdaree Udaltut look with confidence to the Magistrates for their cheerful co-operation and unremitting activity in checking the abuses of delegated power, and preventing their native subordinates from converting into an instrument of oppression, that power with which the law has entrusted them for the protection of their fellow subjects and the suppression of crime.

29TH APRIL, 1836.

C. O. No. 67.

The Court of Foujdaree Udaltut, having reason to believe that the practice prevails under this Presidency of providing dhoolies and bearers for the transport of sick or infirm prisoners when returned to other Zillahs to be released in pursuance of the instructions contained in the Circular Order of the 3d of October 1817 ; resolve, under the authority of Government, to direct that the practice in question, as involving an unlooked for and unnecessary expenditure of the public money, be henceforward discontinued : and that in future, whenever a convict sentenced by a Court of Circuit or by the Foujdaree Udaltut to temporary imprisonment in a jurisdiction different from that in which he was committed for trial, may, on the arrival of the period fixed for his discharge, be found incapable from indisposition or other cause, of prosecuting the journey on foot, the Criminal Judge within whose jurisdiction he may then be in confinement, shall immediately release him, furnishing him not only with the allowance for his subsistence on the way, at the prescribed rate of diet money, for the calculated period of the journey, but also with " the allowance for one month's maintenance, not exceeding five rupees, to which convicts released after an imprisonment of six months or upwards, and appearing to be in want of such assistance, are entitled under Section XXXII. Regulation X. of 1816."

Vide C. O. No. 12.

It will be the duty of the Criminal Judge so discharging a convict, to give timely notification of his enlargement to the Magistrate of the Zillah in which he was apprehended and brought to trial, or in which he formerly resided, in order that that Officer being advised of the circum-

stance, may take the requisite precautions to watch the conduct of the person discharged, in the event of his returning to his former haunts.

21st MAY, 1836.

To check an indiscreet exercise of the discretionary power vested in the Criminal Judge by Clause second, Section III. Regulation VI. of 1822, of committing for trial before the Court of Circuit, persons, accused of theft, who from any "peculiar circumstances" may be considered deserving of a severer punishment than he is authorized to inflict, the Judges of the Court of Foujdaree Udaltut desire you will instruct the Criminal, Joint Criminal, and Native Criminal Judges within your jurisdiction, in such cases of commitment invariably to explain in the monthly criminal report why the powers of punishment vested in them by Clause fourth, Section III. Regulation VI. of 1822, are deemed insufficient.

C. O. No. 68.

Vide 13th Aug. 1823.

The object in view in enacting Regulation VI. of 1822, was to relieve the Court of Circuit by raising the jurisdiction of the Criminal Judge and to obviate the inconveniences to which prosecutors and witnesses are exposed when compelled to give their attendance before the Court of Circuit on the trial of offences which from their character do not demand severe punishment ; but by an injudicious exercise of the power vested in the Criminal Judge by the "parenthetical" passage in Clause second, Section III. Regulation VI. of 1822, both objects of the enactment are frustrated, and the ends of criminal justice are thereby prevented from being promptly and effectually obtained.

* Vide C. O. 19th June 1823.

22D JUNE, 1836.

1. The Court of Sudr and Foujdaree Udaltut having observed that it is a general practice both in the translations of appeals to the Sudr Udaltut and in those of trials referred to the Foujdaree Udaltut for dates and other expressions in various Native dialects to be inserted without explanation of their meaning, resolve, to direct that the practice be discontinued as objectionable and inconvenient.

C. O. No. 69.

2. As regards criminal trials, the practice of entering the Native date, without specifying the corresponding English date, was prohibited by the Circular Order of the 17th of January 1815, and in directing in their Circular Order of the 2d November 1824, that in the English translations of criminal records a note should be inserted of distance and measurement in feet and inches, the Court of Foujdaree Udaltut took occasion to call the attention of the Courts of Circuit to the orders of the 17th of January 1815, and to direct that the several Judges of Circuit and Criminal Judges be careful in future to observe the rule indicated therein.

3. The Court of Sudr Udaltut deem it of importance that the same course should be observed in the preparation of English translations of civil records, and they desire that no expressions in a Native dialect be inserted in the translation, without an explanation, in English, of their meaning.

8TH JULY, 1836.—A.

The practice of furnishing individuals with copies of official documents which are not required to be granted under the Regulations, or to be produced in the Courts, or filed as evidence in suits, or miscellaneous

C. O. No. 70.

Circular Orders of the

matters before them, being considered objectionable; the Court of Sudr and Foujdaree Udalut direct that it be discontinued in future, and that copies of such documents be not furnished to any person without the sanction of Government.

8TH JULY, 1836.—B.

C. O. No. 71.

In order to obviate the necessity for future reference for instructions on the part of subordinate authorities, the Court of Foujdaree Udalut have resolved to direct by a Circular Order, that in all cases of theft or robbery, the mode of disposing of the property alleged to be stolen, which may be produced before the Court of Circuit, shall be a question for the determination of the Judge presiding at the trial, whose duty it will be to issue orders for the restitution of the property to such persons as may be proved to be lawfully entitled thereto, or such other instructions for its disposal as the circumstances of the case may appear to him to call for.

9TH AUGUST, 1836.

C. O. No. 72.

The Judges of the Court of Foujdaree Udalut, under instructions received from Government, resolve to direct, that in future Commanding Officers be furnished with official information of the mode, in which all cases, forwarded by them, under the provisions of Section XXXIV. Regulation VII. of 1832, to the Criminal Courts, may be disposed of; such information to be communicated by the several Criminal and Joint Criminal Judges by means of a report, to be prepared in the form subjoined to the Circular Order of the 10th of April 1823.

Vide C. O. 12th August 1822.

23D AUGUST, 1836.

C. O. No. 73.

The Court of Foujdaree Udalut, advertng to the specification of "theft" among the offences, denominated "heinous" in certain Clauses of Regulation VI. of 1822, of which a previous conviction renders necessary the commitment for trial by the Court of Circuit of prisoners charged with crimes, otherwise within the jurisdiction of the Criminal Judge; deem it proper to rule by a Circular Order that thefts, punishable under the provisions of Section VII. Regulation X. of 1816, do not fall within the scope of the said specification, such thefts having been expressly declared to be "offences not of a heinous nature" in the preamble to Regulation IV. of 1811.

23TH SEPTEMBER, 1836.—A.

C. O. No. 74.

In pursuance of instructions received from the Governor in Council, the Judges of the Court of Foujdaree Udalut direct, that all fines imposed by the Magistracy under the provisions of Section XXXV. Regulation IX. of 1816, be entered in the calendars laid before the Court of Circuit under the provisions of Section XL. Regulation IX. of 1816.

28TH SEPTEMBER, 1836.—B.

C. O. No. 75.

The Court of Foujdaree Udalut deemed it proper to direct by a Circular Order, that whenever a prisoner is sentenced by a Court of Circuit to corporal punishment, the stripes be not inflicted until the orders of the Court of Foujdaree Udalut on the calendar have been received by the Circuit Judge, in order that the higher Court may have time to consider the grounds upon which the sentence is awarded.

Court of Foujdaree Udalut.

4TH OCTOBER, 1836.

The Court of Foujdaree Udalut have observed, that on a petition being presented to a Judge on Circuit, it is not unusual for that Officer to endorse his order on the petition and return the same to the petitioning party.

This proceeding is considered objectionable: first, because, as it is not customary to take a copy of either the petition or the endorsement, in the event of a further reference being made on the same subject either to a succeeding Judge on circuit or to a higher tribunal, there is nothing on record to guide the judgment or facilitate the decision of the question at issue: and secondly, because the latter part of Clause first, Section XXII. Regulation XIII. of 1816, requires that authenticated copies of judicial proceedings which individuals may require for use or reference, shall be written on paper of the value of eight annas, though those taken for private use unauthenticated, may, under Section XXX. be granted on unstamped paper.

The Court of Foujdaree Udalut resolve therefore to direct, that, in future, whenever a petition may be presented to a Judge on Circuit, a formal and separate order be passed thereon: and that the petition be not returned to the party, but be numbered and filed among the records of the Court of Circuit.

3D NOVEMBER, 1836.

Under instructions received from Government, and with the view of obviating the necessity of making formal retrenchments from the want of sufficient information,—the Court of Foujdaree Udalut direct that the several Officers in charge of Jails throughout the Presidency of Fort St. George, be required to transmit to the Office of the Civil Auditor together with their monthly and annual statement of contingent charges, a statement according to the annexed form, specifying the number of Convicts actually worked outside the Jail.

Months in the year.	Number of Convicts worked outside the Jail.	Number of Peons and Duffadars.	Period.	Amount.			Total.			Remarks.
				Rs.	A.	P.	Rs.	A.	P.	
August	100	25 Peons 4 Duffadars	30 days	125	0	0				
"	12	3 Peons	" "	28	0	0				
"	8	2 "	15 days	7	8	0				
"			10 days	3	5	4	163	13	4	

14TH NOVEMBER, 1836.

The 3d Judge late on Circuit in the Western Division having represented that it is not generally understood by the Officers presiding in the Criminal Courts that Prisoners are allowed the privilege of naming witnesses on their behalf at any time before the arrival of the Court of

Vide C. O. No. 61 and 1st June 1832.

Circuit, the Court of Foujdaree Udalut deem it proper to call the attention of the Criminal and Joint Criminal Judges and Principal Sudr Ameens to the provisions of Section XIV. Regulation X. of 1816, and to explain that the discretion vested in the Criminal Courts by Regulation II. of 1822, of limiting the number of witnesses for the defence, is confined to the rejection of testimony which may appear irrelevant to the Prisoner's defence, and not meant to deprive a Prisoner of any just means of defence, nor to prohibit the Criminal Judge from requiring the attendance before the Court of Circuit of a material witness named by a Prisoner at any time before the Session of the Court of Circuit.

6TH DECEMBER, 1836.—A.

C. O. No. 79. Under instructions received from Government, the Court of Foujdaree Udalut direct that the several judicial authorities in the provinces be prohibited from imposing a fine exceeding 10 rupees upon any subordinate Public Servant on their establishment, without the special sanction of the Court of Foujdaree Udalut.

In cases, however, where the sum of 10 rupees may exceed the moiety of the individual's salary, it will not be competent to the Officer in charge of the establishment to impose a fine exceeding half a month's pay without the special sanction of the Foujdaree Udalut.

6TH DECEMBER, 1836.—B.

C. O. No. 80. In conformity to the orders of Government dated the 22d Ultimo, the Court of Foujdaree Udalut direct that every Officer in charge of Convicts, vested under Regulation I. of 1833, with the powers of punishment created by Regulation X. of 1832, do append to the monthly return exhibiting the manner in which the prisoners have been employed, a Statement shewing the instances in which the powers of punishment created by Regulation X. of 1832, have been exercised.

Statement shewing the instances in which the powers of punishment created by Regulation X. of 1832, have been exercised.

Name of the Convict.	Nature of the Offence.	Nature of the punishment inflicted, and the provision of Section VI. Regulation X. of 1832, under which the sentence was awarded.	Remarks.

16TH JANUARY, 1837.

Instances having occurred in which Magistrates, in cases where it has happened that conviction was not procurable from a deficiency in the evidence, have detained the accused parties in confinement from an apprehension that their liberation would be attended with danger to the public tranquillity, the Right Honorable the Governor in Council desires that this practice, which is at variance with the general regulations, be strictly prohibited in future, and that all such cases be brought to the special notice of the Government, in order that if requisite, the provisions of Regulation II. of 1819, may be put in operation.

3D FEBRUARY, 1837.

With reference to the Circular Order No. 45, dated the 18th May 1835, I am directed by the Judges of the Court of Foujdaree Udalut to transmit, for the information and guidance of the several Criminal Judges in your division, the annexed extract from the Minutes of Consultation of the 23d January 1837, stating that details of roads constructed under the Madras Presidency when the operations are of an ordinary nature, need not be reported.

(No. 70.)

Extract from the Minutes of Consultation, under date the 23d January, 1837.

Read the following letter.

No. 114.

To H. CHAMIER, Esq.

Chief Secretary to the Government of
Fort St. George.

SIR,

1. I am directed by the Right Honorable the Governor General in Council to acknowledge the receipt of your letter dated the 22d Ultimo, with its enclosures, on the subject of roads and other public works constructed under the Madras Presidency.

2. With regard to roads, the few operations reported consist of repairs, or are otherwise of an ordinary nature and not of sufficient importance to be inserted in the Gazette; such details therefore need not be communicated in future, when within the period under review, there do not appear to have been any works undertaken by individuals.

3. The original sketches, &c. which accompanied your letter, are herewith returned.

Fort William, the } (Signed) W. H. MACNAGHTEN,
26th Dec. 1836. } Secretary to the Govt. of India.

Circular Orders of the

Ordered, to be communicated for the information and guidance of the Board of Revenue and the Military Board with reference to the orders in this department, dated 7th and 14th April 1835, No. 227 and 248, and to the Judges of the Foujdaree Udalt with reference to their Register's letter of the 14th November last, No. 252.

(A true Extract.)

(Signed) H. Y. CHAMIER,
Chief Secretary.

14TH FEBRUARY, 1837.

C. O. No. 83.

It has hitherto been the practice to consider Guards in charge of Convicts temporarily transferred from a Zillah Jail to a Military Station subject to the appointment and removal of the Criminal Judge alone, on the ground that they are still paid by the Criminal Judge or borne on the establishment of the Criminal Court.

It being essentially necessary, however, that the Officer responsible for the custody and due employment of the Convicts should have full control over the Jail Guard, the Court of Foujdaree Udalt, with the sanction of the Right Honorable the Governor in Council, have resolved to declare by a Circular Order, that all Guards transferred with Convicts to stations, civil or military, shall be placed under the exclusive control of the Officers under whom the Convicts are employed, and that those Officers shall have authority on sufficient grounds to dismiss such Guards and to supply vacancies as occasion may require.

It is not, however, intended by these instructions to sanction any alteration in the existing arrangements for providing funds for the maintenance of the Convicts and the pay of the Peons.

27TH APRIL, 1837.

C. O. No. 81.

The Court of Foujdaree Udalt considering it expedient that their proceedings of the 30th December 1836, with respect to the points attesting witnesses to confessions are required to prove at the trial, should be circulated for general information, resolve to direct that the following paras addressed to the 1st Judge of the Provincial Court of Circuit in the Northern Division, be furnished to the four Provincial Courts of Circuit for their information and guidance; a copy being also furnished by the Provincial Court to the Judge now on Circuit in each division.

Vide C. O. Nos.
41 and 107.

2. "In the foregoing return the 1st Judge intimates that he adheres to the opinion, from which the dissent of this Court has been recorded, that written talook confessions cannot be considered to be proved, under the circumstance of the subscribing witnesses not having a recollection of the statements of the accused."

Court of Foujdaree Udalt.

3. "And in the report of the 1st Judge submitted on the 7th Instant, under the provisions of Section XXXVII. Regulation VII. of 1802, para 15, it is observed that in his opinion "a perfect recollection of all the material facts at least of a confession is necessary;" without which the 1st Judge states that he does not know how a party can identify a paper as the declaration given by the prisoner."

4. "Upon this last point the Court of Foujdaree Udalt observe, that the witness's signature, or mark, is that which he is required to identify, and that it is morally impossible that any attesting witness to these confessions could, at the usual interval of time between their delivery and the trial by the Court of Circuit, swear to all the material facts therein recorded, as having been declared by the prisoner."

5. "It is not for the purpose of proving that such "material facts" were admitted by the accused, that the attendance of the attesting witnesses is required at the trial; but in order to prove that the confession was taken in the manner prescribed by the Regulations, that it was fairly and voluntarily delivered, and that it was read over to and signed or marked by the declarant, in the presence of the said witnesses."

6. "The opinion, now avowed by the 1st Judge, which the Court of Foujdaree Udalt do not recollect to have met with before, appears to be inconsistent with the rule of the English law of evidence in such cases, which is that "parol evidence of the prisoner's statement before a Magistrate ought not to be received until it is clearly shewn, that the statement has not been reduced into writing;" and that "the propriety of committing the examination to writing instead of leaving it to the uncertain memory of surrounding witnesses, cannot be too strongly impressed on all who are entrusted with such judicial powers."

7. "The Regulations accordingly provide that the confessions of prisoners, taken before duly authorized Officers, shall be reduced to writing, and to take parol evidence of their contents is to substitute the inferior evidence, which rests on the "uncertain memory" of the witnesses for the evidence of the written record, a proceeding inconsistent with the fundamental principles of the law of evidence."

8. "It is also to be borne in mind, that these confessions are further authenticated by the signature of the Police Officer receiving them, and that should a case occur when the attesting witnesses might be unable to identify their own signatures or marks affixed to the confession, it is competent to the Court of Circuit to require the attendance of the Police Officer, and if thought necessary, of the writer of the confession, for the purpose of proving its identity: but where this measure may be adopted neither of those persons can properly be required to depose, without reference to the written record, that such and such "material facts" were confessed, but only that the paper before the Court is the record of the confession of the prisoner at the bar."

12TH MAY, 1837.

The Judges of the Court of Foujdaree Udalt, in conformity with C.O. No. 85.—A.

Circular Orders of the

the declared sentiments of the Government, resolve to direct that in future the Magistrate of the district and the Committing Officer be furnished by the Judge of Circuit with official information of the grounds on which sentences of acquittal may have been passed in trials held by that Court.

In the case of the Criminal Judges, Joint Criminal Judges and the Principal Sudr Ameens, the information is to be appended to the copies of the futwahs of the Law Officers of the Courts of Circuit furnished to the lower Courts under the Circular Order of the 15th of June 1826, and in the case of the Magistrates such information is to be communicated by the Criminal Court by means of a memorandum to be prepared in the form subjoined.

No. of the case.	Names of the Prisoners.	Crime charged against the Prisoners.	The grounds on which the Prisoners were acquitted of the crime charged against them.

22d MAY, 1837.

C.O.No. 83.—B. Read order of Government, No. 440 : dated the 10th of May 1837, upon the proceedings of the Foujdaree Udalut under date the 22d ultimo, held on review of the reports received from the several officers, Civil as well as Military, in charge of Jails, containing their opinion of the measures that should be adopted in view to render the guards over the Convicts more efficient, and on review of the statements shewing the number of escapes from each Jail or working party during the last five years, viz. from 1832 to 1836 inclusive.

Vide C. O. No. 93.—B.

1. In the 46th para. of the proceedings of the Foujdaree Udalut above referred to, the Court expressed their concurrence in the opinion entertained by Messrs. Nelson and Strange "that the prospect of promotion would be a powerful stimulus to exertion and good behaviour on the part of the Peons," and further considering it vain to expect any improvement in their efficiency, so long as their situations are not permanently secured to them as far as the nature of the service will admit of, the Court recorded their approval of the plan suggested by Mr. George Bird and Mr. Forsyth of "fixing annually the number of guards over the Prisoners liable to work in each jail," and suggested that the number to be retained for the year should be determined on at the commencement of the Fusly.

2. The Right Honorable the Governor in Council having desired the Foujdaree Udalut to take measures for giving effect to the suggestions contained in para. 46, of their proceedings, the Court resolved to direct the

four Provincial Courts of Circuit to require the several Criminal, Joint Criminal, and Principal Sudr Ameens and Officers in charge of Jails to fix at the commencement of the ensuing Fusly the number of the guard for the year, to be determined on with reference to the number of Convicts liable to work outside the Jail, at that time in confinement in the Jail, and calculated at the rate of 1 peon to 4 prisoners, 4 per cent in excess of the usual proportion of 1 peon to every 4 prisoners worked outside being allowed for sick and absent peons.

3. The Right Honorable the Governor in Council has been pleased to authorize in lieu of the present establishment of 1 Duffadar to every 25 Peons, 1 Duffadar and 1 Naigue for every 20 peons, the pay of the former being as at present 7 Rupees per mensem, and that of the latter 6 Rupees monthly.

4. In the case of the Jail peons employed at Bellary, Cuddapah and Chicacole, the Right Honorable the Governor in Council has been pleased to sanction an increase of their present allowances (shewn in the margin) to Rupees (5) five per mensem, his Lordship concurring in opinion with the Foujdaree Udalut that it is necessary that these Peons should be placed upon a footing with the same description of guards at other stations.

Bellary 4 14
Cuddapah 4 15 9
Chicacole 4 8 0

5. The four Provincial Courts of Circuit will be pleased to circulate the accompanying additional Jail Rules to take effect from the commencement of the ensuing Fusly, and they will require the several officers in charge of Jails to submit on the 11th of July next, detailed statements shewing the number of officers and peons entertained for the year, with a memorandum of the additional expense involved in these arrangements.

6. In respect to the arms of the Guards, the Court of Foujdaree Udalut have suggested that two of every ten Peons be armed with carbines or light muskets with bayonet, and that each Officer (Duffadar or Naig) be armed with a pistol, but previous to issuing any orders on this subject the Right Honorable the Governor in Council desires to be informed of the number and description of fire arms that will be required; the Provincial Courts of Circuit will therefore desire the several Officers in charge of Jails to prepare and submit Indents accordingly.

7. An improvement in the mode of Ironing the Convicts is under consideration, and the Provincial Courts of Circuit will be addressed on this subject at a future period.

8. Great advantages having been shewn to have been derived from the employment of European Jailors at Chingleput and Cuddalore, the Right Honorable the Governor in Council has authorized the several Officers in charge of Jails to employ Pensioned Europeans as Jailors whenever vacancies occur, if their services can be obtained at the salaries already fixed, and to employ the labour of the Convicts in erecting buildings for their accommodation whenever that labour may not be required for other and more important works.

9. The Provincial Courts of Circuit will be pleased to communicate the sanction of Government for the employment of European Jailors on the conditions specified above, and at the same time require the several Officers in charge of Jails to endeavour to prevent collusion between convicts sentenced to work on the roads and their guards by frequently

alternating the tours of duty of the Peons within and without the Jail without reference to any fixed and known roster.

10. With reference to the returns shewing the number of actual escapes from each Jail or working party during the last five years, (amounting in the aggregate to 372 persons) shewing also the number of persons who made the attempt but either did not effect their escape at all, or were re-apprehended on the same day, (210 persons including 5 who were killed) and the number of escaped persons still at large, amounting to no less than 209 persons, some of the most desperate character, the Court of Foujdaree Udalut resolve to direct that the several Criminal, Joint Criminal Judges, Principal Sudr Ameens and Officers in charge of Jails be required to furnish the Magistrate of the District with a list of the Convicts still at large, shewing the names, place of residence, description and sentence upon them respectively, upon the receipt of which list the Magistrate should again require his Police Officers to make search in the village where each convict's family resides, and to use their best endeavour to re-apprehend them.

Ordered, that Extract from these Proceedings be forwarded to the four Provincial Courts of Circuit by precept, returnable in 20 days from and after its receipt, requiring them to make the necessary communication to the several Officers whom it may concern.

RULES.

1. Convicts under sentence of the Foujdaree Udalut and Court of Circuit to be confined in the most secure cells.
2. In Jails where there are no watch towers on the walls, sentries to be posted at night outside, as well as inside the walls of the Jail.
3. At the commencement of the Fusly year the number of Guards for the custody of the Prisoners liable to work outside the Jail, shall be regulated for the whole year, at the rate of 1 Peon to 4 of such Prisoners, allowing at the rate of 4 per cent for absentees, and no alteration shall take place within the year, unless the increase or decrease of the number of Prisoners liable to work shall be extensive, and in that case only with the sanction of Government applied for through the Foujdaree Udalut.
4. There shall be one Duffadar and 1 Naig for every 20 Peons, the pay of each Duffadar being 7 Rupees and of each Naig 6 Rupees.
5. The arms and men to be inspected once each month by the Officer in charge of the Jail or by his Assistant, and by the Circuit Judge at each Sessions when he visits the Jail; The Circuit Judge on such occasions shall suggest the discharge of Guards apparently inefficient.
6. In cases of discharge for inefficiency, after a considerable period of service, the Officer in charge of the Jail shall allow a relative of the discharged Peon to be substituted, if an efficient person can be produced.
7. Convicts to be worked, as far as practicable, in large gangs, and small detachments never to be authorized, except for special purposes under the written order of the Officer in charge of the Jail.

8. The working of convicts, under sentence of 7 years' imprisonment and upwards, in small detached parties to be strictly prohibited.

9. Six Peons and 1 Naig or Duffadar, shall be the strength of the guard requisite for the custody, while at work outside the Jail, of a gang of convicts, consisting of from 19 to 24.

10. For the custody of any gang or number of Prisoners under 19, 1 Peon for every 3 convicts shall be the complement.

11. For the custody of any gang exceeding 24, the Peons employed shall be at the rate of 1 to every 4 Prisoners with one or more Officers according to the extent of the gang. In all such gangs one particular Officer shall have the command and control of the Guard and Prisoners, and shall be responsible for their conduct; and in failure to report any neglect or other misbehaviour on the part of the Guard or Prisoners to the Jailor or Criminal Judge, he shall be liable to immediate dismissal.

12. When the strength of the Guard will not allow of such relative proportion of Peons to convicts, a portion of the convicts shall be worked inside the Jail or in the work-house attached to it. C. O. No. 18.

5TH JUNE, 1837.—A.

The Court of Foujdaree Udalut, having experienced difficulty in cases of "forgery," in consequence of the absence from the record sent up to them of the original documents charged to be forged, deem it proper to direct that in every case of "forgery" submitted for their judgment, the original document, in which the forgery is charged to have been committed, be forwarded, with the record of the trial, for their inspection. C. O. No. 86.

5TH JUNE, 1837.—B.

1. The Court of Foujdaree Udalut resolve to direct that all original examinations, &c. taken in the Criminal Courts and submitted to the Court of Circuit with the Calendars at the Sessions of Jail Delivery, be returned by the Court of Circuit, when no longer required, to the Criminal Court from which they were originally received, in order that they may remain as part of the records of such Criminal Court. C. O. No. 87.

The observance of this rule will obviate the necessity of authenticated copies of such papers being prepared by the lower Courts for eventual reference, a practice imposing unnecessary labour on the establishments which it is observed exists in the Southern Division, and which the Court of Foujdaree Udalut desire may be discontinued in that, and in every other Division where it may be found to prevail.

9TH JUNE, 1837.

The Judges of the Court of Foujdaree Udalut, deeming it proper that they should be furnished with precise information regarding the actual produce of the labour of the prisoners, and the application of the funds, arising therefrom, direct that statements, in the annexed form, be submitted to them on the 31st March, the 30th June, the 30th September and the 31st December, by all Officers in charge of Jails. C. O. No. 88.

Circular Orders of the

FORM.

Amount realized by the labour of the Prisoners in the first Quarter of

By the sale of paper.....	Rupees
Do do cloth.....	do
Do do produce of garden.....	do
" " "	do

Total Rupees

Disbursed out of the said amount.

On account of gunnies for making paper....	Rupees
Sundry small articles required for do.....	do
Do do do weaving....	do
Do do do garden.....	do
Do do do "	do

Total Rupees

Balance lodged in the Treasury and carried to {
the account of Government } Rupees

13TH JUNE, 1837.

C. O. No. 89.

Instances having come to the notice of Government of the local Officers having exceeded the limit imposed by the Regulations in the grant of rewards, for the apprehension of public offenders, and also for any meritorious service rendered in their apprehension or discovery, the Court of Foujdaree Udalut, under instructions received from Government, resolve to define the extent of reward which, under different circumstances, the several authorities are empowered to offer.

Vide C. O.
No. 104.Section XXI,
Reg. IX of 1816.

2. In cases of gang robbery, murder or other heinous crime, the Magistrate of the jurisdiction in which the crime may be committed, is competent to offer a reward for the discovery and apprehension of the offender or offenders, to the extent of 100 rupees for a Surdar, and 20 rupees for each of the inferior offenders.

3. In any such case which may appear to the Magistrate to require a larger reward, he is required to report the same to the Court of Foujdaree Udalut, with his opinion of the amount of reward that should be offered.

Section XXI,
Reg. IX of 1816.

4. The Court of Foujdaree Udalut in such cases may authorize such reward as shall appear sufficient, not exceeding the sum of 500 rupees for a Surdar, and 100 rupees for each of the inferior offenders.

5. It rests with the Government exclusively, on the recommendation of the Court of Foujdaree Udalut, to sanction rewards exceeding the sums specified above, for the discovery and apprehension of offenders, in heinous crimes.

6. It is to be understood that the provisions of Section XXI. Regulation IX. of 1816, are not applicable to convicts, who may have escaped from jail, respecting whom a distinct rule is hereunder given.

Section VI, Reg.
I of 1818.

7. Specific rewards offered for the apprehension of robbers proclaimed by name, are payable on the delivery to the Magistrate of the person so proclaimed.

8. The rewards offered for the discovery and apprehension of offenders not proclaimed by name, are payable only on the conviction of the offenders before the Courts of Circuit. Section XXII.
Reg. IX of 1816.

9. The Courts of Circuit are, however, empowered to direct the payment of any part of the specific rewards authorized, although the persons apprehended may not be convicted of the crimes charged against them, if from proof of their notorious bad character, and the whole of the evidence, there appears to be ground of presumption that the information given against the prisoners was well founded; they are also competent to withhold and to prohibit the payment of the whole or any part of the specific rewards offered for the discovery and apprehension of offenders, if it should appear on the trial that any improper means have been taken by the informer with a view to the conviction of the accused, or that the latter has suffered any maltreatment from the former, or from any person under his influence. Section XXII.
Reg. IX of 1816.

10. For any meritorious service by Police Officers or others, in the discovery and apprehension of public offenders, for which no specific reward may be payable to them, the Courts of Circuit, the Criminal Judges and the Magistrates are authorized to direct the payment of such remuneration as may be considered adequate, not exceeding the sum of 100 rupees for a Surdar, and 10 rupees for an accomplice. Section XXIII.
Reg. IX of 1816.
Section X Reg.
XIII of 1832 &
C. O. No. 153.

11. If a larger reward be deemed proper, on such occasions a report of the case must be made to the Court of Foujdaree Udalut, who are authorized to direct the payment of any sum not exceeding 500 rupees. Section XXIII.
Reg. IX of 1816.

12. It rests with the Government exclusively, on the representation of the Court of Foujdaree Udalut, to grant for such services a higher reward than 500 rupees.

13. Whenever it may be deemed necessary that a reward should be offered for the re-apprehension of a convict, the Circular Order of the Foujdaree Udalut of the 16th of May 1832, must be observed. Vide C. O.
No. 104.

28TH JUNE, 1837.

The Court of Foujdaree Udalut resolve to direct, that in all cases of wounding brought before the Courts of Circuit, whenever from the evidence and the circumstances of the case, there are grounds to charge the prisoner with "intent to kill," such intent be invariably charged in the arraignment. C. O. No. 96.

15TH SEPTEMBER, 1837.

It has been represented to the Court of Foujdaree Udalut that much inconvenience has resulted from the operation of that part of their Circular Order of the 29th April 1822, which disqualifies "Police Peons" strictly so called, who are directly employed in the seizure of offenders, from attesting confessions delivered by prisoners before the Native Officers of Police. C. O. No. 91.

The Court of Foujdaree Udalut, having maturely considered this subject, are of opinion that the removal of the disqualification will tend to facilitate the administration of public justice, and lessen to private indi-

viduals those annoyances to which, under the present system, they are too frequently exposed: and at the same time will do no more than carry out, to their legitimate extent, the intentions of the Legislature as indicated in the Preamble to Regulation V. of 1819.

The Court, accordingly, resolve to direct in modification of their Circular Order above referred to, that the several Police Officers empowered to receive confessions, be instructed in all cases wherein there may be no special objection to the proceeding, to cause any free and voluntary confessions that may be delivered by prisoners, to be attested in the mode prescribed in Clause third, Section XXVII. Regulation XI. of 1816, by the Peons (or any two of them) whom it may be intended to send in charge of the parties to the Criminal Court, such Peons being, in all practicable cases, different from those who arrested the prisoners originally.

19TH SEPTEMBER, 1837.

C. O. No. 92.

The Court of Foujdaree Udalt having cause to believe that the observance of the instructions contained in their Circular Order of the 3d of October 1817, respecting the enlargement of convicts at the expiration of their term of imprisonment, is no longer expedient, and would, under the contemplated employment of the convicts in Zillahs where their services are most urgently required, in many cases be impracticable, and in all instances would be attended with much and perhaps an unnecessary expenditure of the public money; they resolve, with the sanction of Government, to modify so much of the Circular Order of the 3d October 1817, as directs the transfer of convicts from one Station to another, for the purpose of their being discharged by the Criminal Judge of the jurisdiction in which they were committed for trial; and in lieu thereof to direct, that whenever a convict sentenced to temporary imprisonment may, on the arrival of the period fixed for his discharge, be in confinement in a jurisdiction different from that in which he was committed for trial, the Officer in whose charge such convict may then be, shall carry into effect the warrant for his discharge, giving due information of his enlargement to the Magistrate of the Zillah, and also to the Magistrate of the jurisdiction in which he formerly resided; furnishing the person to be discharged, not only with the allowance for his subsistence on the way back to his village, at the prescribed rate of diet money, for the calculated period of his journey, but also with the allowance for one month's maintenance, not exceeding 5 rupees, to which convicts released after an imprisonment of 6 months or upwards, and appearing to be in want of such assistance, are entitled under Section XXXII. Regulation X. of 1816.

2D OCTOBER, 1837.

C. O. No. 93.—A

The Court of Foujdaree Udalt having had again under their consideration certain proposed measures for rendering the attendance of witnesses before the Courts of Circuit, less harassing to themselves and less burdensome to Government, resolve, with the sanction of Government, to direct that all Judges of Circuit, be required in future to adopt the plan of summoning witnesses suggested by Mr. Vaughan in his

letter of the 31st December 1832, circulated under date the 13th February 1833, and recommended by Mr. Casamajor,* whenever the same may be practicable. * Vide C. O. 13th Feb. 1833. Vide C. O. 20th June 1834.

And the Court further direct, that whenever a Judge of Circuit may not adopt Mr. Vaughan's plan, he shall submit for the consideration of the Foujdaree Udalt a statement of the circumstances which, in his opinion, rendered it impracticable or inexpedient. C. O. No. 131.

15TH NOVEMBER, 1837.

To the Four Provincial Courts of Circuit.

Gentlemen,

The Judges of the Court of Foujdaree Udalt having represented to Government, that with reference to the rules for transferring convicts to the charge of Collectors and Military Officers, the fluctuation in the number of the prisoners in the Jails would be so great as to render impracticable an adherence to the rules of the 22d May 1837. The Right Honorable the Governor in Council was pleased under date the 4th Instant to authorize a modification of the said Jail rules of the 22d May last, so far as to give to the Officers in charge of Jails that discretion which they formerly possessed, of employing extra Peons according to the increase, and discharging them according to the decrease, of the convicts placed in their custody an observance of the principle of the rules being however continued—viz. that there shall be one Duffadar and one Naig to every 20 Peons, and one Peon to every four convicts liable to labour outside the Jail, 4 Peons per cent on the Peons employed being added to meet cases of absence from sickness or other causes. C. O. No. 93.—B
See C. O. P. U. No. 11, 18 and 33.

2. In communicating to you that Government have sanctioned this modification, of the rules of the 22d May last, which you will be pleased to state immediately to the several Officers in charge of Jails on which the convicts are not under the General Superintendence and control of the Board of Revenue, I am desired by the Judges to state for the information of the same officers that Government have issued orders to the Military Board to supply them with the number and description of fire arms specified in the annexed statement for the use of the extra guards.

17TH NOVEMBER, 1837.

The Court of Foujdaree Udalt having had under their consideration the expediency of modifying their Circular Order of the 27th February 1836, No. 63, resolve, accordingly, to modify it, so far as to declare that the descriptive rolls of individuals dismissed under the circumstances therein indicated, shall, in future, be transmitted by the Officer from whose establishment the servant may have been dismissed, together with a full report of the case, to the office of the Foujdaree Udalt, by whom the same will be laid before Government for its consideration and final orders. C. O. No. 94.

25TH NOVEMBER, 1837.

- C. O. No. 95. The Court of Foujdaree Udalut direct, that in cases of murder by Thuggee committed for trial before the Court of Circuit, whenever sufficient grounds exist, there be, independent of the charge of murder, a separate count charging the prisoner or prisoners with the distinct offence described in Act No XXX. of 1836.

9TH DECEMBER, 1837.

- C. O. No. 96. 1. The rules contained in the Circular Order of the Court of Foujdaree Udalut of the 22d July 1814, respecting the transmission of prisoners under sentence of transportation from a Zillah station to the depot at Chingleput, are hereby extended to the cases of prisoners sentenced to banishment from one district to another, under the provisions of Clause third, Section VIII. Regulation XV. of 1803.

Vide C. O. No. 167.

2. The Court of Foujdaree Udalut direct that besides the "paper" and "copy of the Surgeon's certificate," referred to in the third paragraph of the Circular Order abovementioned, the Peon or Deloyet, accompanying the prisoner, be furnished with a letter to the address of the Officer in charge of the jail to which the prisoner is banished.

Vide C. O. No. 136.

3. And as doubts appear to be entertained respecting the Officer whose duty it is to depute the "Peon or Deloyet" in charge of the prisoners, the Court of Foujdaree Udalut resolve to direct, that the said Peon be in every instance furnished by the Criminal Court whence the prisoner is sent originally: the Magistrates being required to provide only the escort from one district to another.

29TH DECEMBER, 1837.

- C. O. No. 97. The Court of Foujdaree Udalut having observed that, that part of Section VII. Regulation X. of 1832, which declares that the record of every summary conviction and punishment of refractory convicts shall state the "*substance of the evidence*," has been occasionally lost sight of, and the Judge of Circuit thereby precluded from performing the duty assigned to him by the latter part of the same Section, resolve to call the attention of Officers in charge of convicts to the provision of the law above quoted; and to direct that in every such record there be entered a concise abstract of the evidence in support of the charge, as well as of any thing which the accused party may urge in his own behalf, and of any evidence he may adduce on his defence.

20TH FEBRUARY, 1838.

- C. O. No. 98. The Court of Foujdaree Udalut consider it necessary to issue Circular instructions directing that hereafter no Judge of Circuit holding Criminal Sessions at any Station, shall receive any Supplemental Calendar without the previous sanction of the Foujdaree Udalut, if, there be reason to believe that by receiving such Calendar, the Judge of Circuit will be prevented from rejoining the Sudr Station within the prescribed periods: namely, the 30th June and 31st December.

Vide C. O. No. 8.

24TH OCTOBER, 1838.

I am instructed by the Court of Foujdaree Udalut to desire that the subjoined Extract from the Minutes of Consultation under date the 16th Instant, may be circulated for the guidance of all Officers in charge of Jails on the occasion of their giving effect to any order for the transfer of Convicts destined for employment on Public works in the Provinces.

EXTRACT from the Minutes of Consultation under date the 16th October, 1838.

C. O. No. 99—A
Vide Sec. III.
of the Rules for
the management of
Convicts employed in
public works at a
distance from the
Zillah Jails
—Vide page 432
of the Official
Gazette for 1837.

Para 3. His Lordship in Council having had occasion to observe from returns laid before Government by the Board of Revenue, that it has been necessary to send back several of the Convicts sent from the different Zillah Jails to be employed on the Great Western Road from their not being fit for the performance of hard labour, and as this appears to have been occasioned in several instances, by such individuals having been subject to complaints of a chronic nature, or having been lately discharged from hospital;—He resolves to take the opportunity of directing the attention of the Medical Board and the Court of Foujdaree Udalut to this important subject, and to request that Circular Orders may be issued to all Criminal Judges and Civil Medical Officers, impressing upon them the necessity of observing the utmost care in the selection of the Convicts for employment on works of this nature, and informing them that none but able bodied individuals, in a perfect state of health, and in full possession of their natural strength and vigour, shall be included in the gangs. His Lordship in Council will hold the Officers despatching the gangs responsible for the due observance of these orders, and any deviation from them will be visited with marks of the severest displeasure.

26TH NOVEMBER, 1838.

The Circular Order of the 20th July 1829, has been virtually superseded since the monthly Criminal Reports have been sent direct to the Court of Foujdaree Udalut, and as there can be no necessity for the Calendars to be forwarded to the Judge on Circuit being prepared both in the Native, and in the English Language, the Court of Foujdaree Udalut resolve to communicate this opinion for the information and future guidance of the several Criminal and Joint Criminal Judges in the Provinces.

C. O. No. 99—B

8TH JANUARY, 1839.

Instances having come to the notice of the Court of Foujdaree Udalut of Officers in charge of Jails having, when ordered to transfer Convicts to a neighbouring District, for the purpose of their being employed on some public work, selected prisoners especially banished, during the period of their sentences, to the particular Zillah in which their Jail is situated; the Judges resolve to prohibit any such removal taking place without the special order of the Court of Foujdaree Udalut.

C. O. No. 100.
Vide C. O. No. 135.

12TH FEBRUARY, 1839.

I am directed by the Court of Foujdaree Udalut to transmit to you the accompanying copy of a Proclamation in the English language, and

C. O. No. 101.

to desire you will cause the same to be read and published in the vernacular language of the District, ~~in~~ all the public Cutcheries of the Magistrates within your jurisdiction, as well as at the several Police thanahs.

You are further desired to direct the several Magistrates within your jurisdiction to take every proper occasion, especially when the case of a child being murdered to obtain its jewels, or ornaments, may come officially before them, to impress upon the minds of the inhabitants of the District, the danger to which children are exposed by the practice of allowing them to go abroad with jewels and ornaments, unless attended by persons able to protect them, and the consequent imprudence and impropriety of their perseverance in a practice so often attended with effects as lamentable to themselves, as fatal to the lives of their children.

The Court desire, that you will cause the Proclamation, in the country languages, to be read and published at your own Court, and at the several Courts subordinate to your jurisdiction, and that you will consider the instructions to the Magistrates contained in para. 2 equally applicable to the Judges of your own and of the subordinate Courts, whenever a proper occasion may occur on a criminal trial or otherwise, for promoting the object intended.

PROCLAMATION.

It having come to the knowledge of Government through various channels of information, that frequent instances still occur in many parts of the territory subject to this Presidency of the murder of children, for the purpose of obtaining the gold and silver ornaments on their persons, and the Government being desirous of preventing, as far as possible, this atrocious and lamentable crime, without having recourse to measures of a prohibitory or penal nature, which might interfere with established usages, and occasion personal inconvenience;—It is hereby notified by the Court of Foudaree Udalut, with the sanction of Government, to all parents, guardians, and others having the charge of young children, whether of the Hindoo or Moosulman religion, that experience has shewn the great danger of robbery and murder to which children are exposed, by being allowed to go abroad from the houses of their parents, or other persons having charge of them, with gold or silver ornaments; especially when not attended by trustworthy persons capable of protecting them; and that it is therefore the obvious duty of all parents, and others entrusted with the charge of children, to guard against such danger and remove the cause of temptation, by not permitting any child under their charge to go from home with any gold or silver ornament on its person, except in company with themselves, or with other persons on whom they can depend so as to guard against the possibility of any calamitous consequence which they must be well aware has too often ensued from a neglect of such precaution.

It is hoped, that the respectable inhabitants of the country, as well from feelings of natural affection, as from a sense of moral duty, will be induced to shew a strict and ready attention to the admonition contained in this notification. All parents and others having charge of children are accordingly hereby enjoined to maintain by their example and influence, a careful observance of the precaution recommended to them in this Proclamation, which it is confidently expected will effectually check the prevalent crime adverted to, and thereby preclude the necessity of adopting any other remedy.

14TH FEBRUARY, 1839.

The difficulty and great inconvenience to individuals, of procuring the attendance of persons as witnesses before the Criminal Courts, who were present at the exhumation of the remains of the bodies of persons murdered and buried by Thugs, at places far distant from the station of the Courts before which the perpetrators of the crime may be brought to trial, having been represented to the Court of Foudaree Udalut; the Judges resolve to declare, that the fact of the actual finding of bodies, under such circumstances, may be sufficiently established in evidence, by the production of a written statement drawn up and attested by the officers of the village present at the time of the discovery of the body or bodies, if it is proved to be authentic, by the testimony of such of the party attached to the Thug department as were likewise attesting witnesses to it, or saw it written.

C. O. No. 102.
Cancelled by
C. O. No. 105.

23D FEBRUARY, 1839.

Under instructions received from Government, the Court of Foudaree Udalut direct, that in the event of private individuals being desirous of offering rewards for the apprehension of public offenders, under the circumstances specified in Section XXI. Regulation IX. of 1816, and of their making application to that effect to the Magistrate, that Officer, having received the amount in deposit, or having satisfied himself that it will be forthcoming, shall cause the offer to be proclaimed in such places within his District, or elsewhere, as he may consider expedient; and shall be authorized eventually to pay the reward, according to the conditions of the offer.

C. O. No. 103.

8TH MARCH, 1839.

1. The Right Honorable the Governor in Council having concurred with the Judges of the Foudaree Udalut in opinion, that the establishment of fixed rewards will have greater effect than any other measure that can be adopted, for facilitating the re-apprehension of Convicts and of others who have effected their escape from legal custody, not however including those under charge of the Native Police previous to transfer to the Magistrate or Courts for trial; they resolve, (under instructions from Government, dated the 23d ultimo,) to direct by a Circular Order, that the person or persons through whose means the re-apprehension of a Convict escaped from transportation or whose sentence is imprisonment for life, may be effected, shall receive Rupees fifty; that the sum payable for the re-apprehension of a Convict condemned to imprisonment exceeding seven years, shall be Rupees twenty-five; and that the reward payable for the re-apprehension of all other persons above specified escaping from legal custody, shall be Rupees ten.

C. O. No. 104.

2. The Officers in charge of Jails or under whose orders the convicts or persons above stated may be placed, will accordingly be pleased on the escape of Prisoners, immediately to promulgate, without waiting for orders from higher authority, a descriptive list of their persons, and a notification of the amount payable upon the re-apprehension of each, as above sanctioned.

25TH MAY, 1839.

C. O. No. 105.

Serious objections to the operation of the Circular Order No. 102, dated 14th February 1839, regarding the mode of proving the discovery of bodies, buried by Thugs, having been brought to the notice of the Court of Foujdaree Udalt, it is resolved, that the said Circular Order be recalled and cancelled.

27TH MAY, 1839.

C. O. No. 106.

Para. 3. The Court of Foujdaree Udalt entirely approve of the other suggestion of the Acting 2d Judge—and they resolve, in consequence, to direct by a Circular Order, that in every case, where punishment is awarded by a Magistrate, the provision of the law under which sentence is passed, be invariably specified in the Calendars laid before the Court of Circuit.

8TH JUNE, 1839.

C. O. No. 107.

1. It has been brought to the notice of the Court of Foujdaree Udalt, that the Circular Order No. 84, dated 27th April 1837, has been construed to supersede the necessity of causing confessions, put in on trials before the Court of Circuit, to be read in open Court.

2. The Court of Foujdaree Udalt deem it proper, therefore, to explain by a Circular Order, that the Circular Order No. 41, dated 20th April 1835, is not superseded by the said Circular Order No. 84; and it is also considered necessary to observe, that the subscribing witnesses to such confessions ought still to be examined, as to the contents of the declarations attested by them, so far as to be asked the general purport of such declarations, the object of such examination being, not to prove that particular facts were admitted by the accused, but, that the witness was present at the confession, regarding which point there would be reasonable cause for doubt, if the witness should be unable to state, generally, the purport of such confession.

31ST JULY, 1839.

C. O. No. 108.

Vide C. O. 27th

Dec. 1815.

24th Dec. 1821

and 14th March

1834.

The Court of Foujdaree Udalt, with a view to diminish in some measure, the labour imposed upon the Judges of Circuit, resolve to revoke such parts of their Standing Orders as require a detailed abstract of the evidence in trials referred for the Court's final judgment under the provisions of the General Regulations, and to direct that in future, a Judge of Circuit, shall, in his letter of reference accompanying such trial, confine himself to a short summary of the evidence generally, and a detail of that part only on which his opinion in respect of the guilt or innocence of the accused party, rests.

13TH AUGUST, 1839.

The Court of Foujdaree Udalt having, of late, had frequent occasion to notice the defectiveness of the charges in the monthly reports submitted by the Criminal Courts, which is usually ascribed to the ignorance or negligence of the Police Officers by whom the cases were forwarded, resolve, by a Circular Order, to point out that errors or defects in charges sent up by the Police Officer, should be corrected by the Criminal Court—when apparent from the evidence taken by the Police.

3D SEPTEMBER, 1839.

Para. 9. In obedience to the orders of Government conveyed in para. 14 of the Extracts from the Minutes of Consultation, under date the 20th August 1839, No. 691, the Court of Foujdaree Udalt direct that a copy of para. 51 of their proceedings, under date the 17th June 1839, be sent to the four Provincial Courts of Circuit, with instructions to furnish transcript of the same to the several Magistrates in their respective divisions, for the information and guidance of those officers.

Extract from the Proceedings of the Foujdaree Udalt under date the 17th June, 1839.

Read the Circuit Report prescribed by Section XXXVII. Regulation VII. of 1802, of the First Judge late on Circuit in the Northern Division, for the second half of the year 1838, dated the 30th March 1839.

51. With reference to the remark of the 1st Judge in para. 50, that "the Magistrates do not like their Police Officers being called away from their stations" to prove the confessions given by prisoners before them, the Court will observe, that it is in the power of the Magistrates to obviate this inconvenience, by issuing strict orders to the Heads of Police to be careful that such confessions are always attested by competent persons.

Extract from the Minutes of Consultation under date the 20th August, 1839.

14. It occurs to His Lordship in Council that the circulation of this para. : among the several Magistrates in the Provinces under this Presidency for their information and guidance, would effectually obviate the inconveniences adverted to in it, of Police Officers being called away from their stations.

17TH SEPTEMBER, 1839.

Doubts having been entertained as to the course of proceeding it is legally competent to a Magistrate to adopt in the case of the sale of a child by its parent in the provinces under this Presidency, and the Mahomedan Law Officers of the Foujdaree Udalt having declared that, according to the Mahomedan Law, the act is not punishable, when committed in a season of famine, and that at all other times, it is punishable by tazeer, the Court of Foujdaree Udalt resolve to promulgate that opinion for the information and future guidance of the Judicial Officers subject to their controul.

C. O. No. 111.

Vide C. O. No.

132, and C. O.

30th April 1836.

Circular Orders of the

12TH NOVEMBER, 1839.

C. O. No. 119.

The Court of Foujdaree Udalt have deemed it proper to direct, by a Circular Order, that a transcript, or, if in any native languages, a translation, of the promise made to each Thug Approver, under the instructions of the Governor General in Council, circulated through the Provincial Courts of Circuit on the 12th August 1837, be entered on the record of all trials of such Approvers for the offence provided for by the Act No. XXX. of 1836.

11TH DECEMBER, 1839.

C. O. No. 113.

Read Extract from the Minutes of Consultation, under date the 28th November 1839, No. 941, communicating the opinion of Government that "all handcuffs and fetters should be as light and easy as is consistent with security."

Ordered, that a copy of the Extract from the Minutes of Consultation now recorded, be sent to each of the four Provincial Courts of Circuit, with instructions to furnish transcripts of the same to the several Magistrates within their respective Divisions, for their information and guidance, and that of their *Native Police Officers*.

8TH JANUARY, 1840.

C. O. No. 114.

Frequent instances, having been brought under the notice of the Foujdaree Udalt, of Peons in charge of working parties of Convicts, at a distance from the Jail, being surprised by the latter, and disarmed, and of the consequent escape of the Convicts; the Court resolve to direct the four Provincial Courts of Circuit, by a Circular Order, to enjoin the Peons to keep their swords drawn in their hands, ready for use, so long as they may be employed on such duty, and not to allow the Convicts to approach so near to them, as to lay hold of their weapons.

10TH JANUARY, 1840.

C. O. No. 115.

The Court of Foujdaree Udalt, in modification of their Order of the 19th January 1825, resolve, by a Circular Order, to direct, that, in future, in every trial in which the Judge of Circuit may recommend the capital punishment of a prisoner, an English translation of the whole of the Proceedings held before the Magistrate and the Officers of the Police, be submitted with the record of the case.

29TH JANUARY, 1840.

C. O. No. 116.

The Court of Foujdaree Udalt resolve, in extension of the Rule contained in Circular Order No. 13, dated 15th September 1834, to the effect that "whenever a search is made in any house, there should be a list taken down and attested by two unexceptionable persons on the spot, of the articles of property found in each house, the attesting witnesses should be present at the search and be able to speak of their

"own knowledge, to the correctness of the list,"—to direct by a Circular Order that, on such occasions the accused shall also be present, and their presence be certified in the list; that when this is not practicable, the circumstance of their absence at the time of search, be likewise notified in the same list; that in order to prevent (what is supposed to be not infrequently the case) the persons making the search, from secreting the property of the complainant in the houses, or on the premises, of the accused, they be themselves inspected previous to commencing the search;—the fact to be certified in the list; and lastly, that the Head of the Village in which the offence is charged to have been committed, or the Head of the neighbouring Village, if the accused reside there; be likewise required to attend during the search, and to affix his signature to the list, in corroboration of the correctness of the circumstances therein certified.

13TH FEBRUARY, 1840.

An instance having been brought to the notice of the Foujdaree Udalt, of the issue of a blank warrant, by a Head of Police, for the apprehension of the persons, who might hereafter be named by certain informers, as having been concerned in a gang robbery, of which the perpetrators were not then known;—the Court deem it proper to call the attention of the Magistrates, generally, to the illegality of such a proceeding; and to direct them to point out to the several Heads of Police, within their respective Districts, that it is illegal to issue blank warrants, leaving a space for the name to be filled up after apprehension, or general warrants, directing the apprehension for a particular offence of persons to be pointed out, or named hereafter, by any specified individual.

2. A warrant for apprehension must not only specify the crime charged, but the name of the particular party, or parties, accused thereof. and the Magistrates will enjoin upon their native subordinates a strict adherence to the provisions of the Regulations on that behalf enacted.

14TH FEBRUARY, 1840.

An Act, having been passed by the Supreme Government on the 27th January 1840, Act No. I. of 1840, dispensing with a Futwah, from the Mahomedan Law Officers of the Foujdaree Udalt, in trials referred to that Court for decision, and the said Act having been promulgated in the Official Gazette of this Presidency of the 11th instant, it is resolved, that the four Provincial Courts of Circuit, and the several Judges at present on Circuit in the Provinces, be directed to discontinue the practice of transmitting Persian translations of the records of trials referred to the said Court of Foujdaree Udalt at Madras.

30TH MARCH, 1840.

The Court of Foujdaree Udalt deem it proper to direct, by a Circular Order, that prisoners, on being forwarded to the Criminal Courts on any criminal charge or information, be henceforth invariably accom-

Circular Orders of the

panied by a Memorandum showing their previous convictions (if any) by the Police, Magistracy or other authorities,—and their previous general character and conduct, (so far as it is currently known and estimated,) in order that, if necessary, the Criminal Court may call for evidence on these points.

20TH APRIL, 1840.

C. O. No. 120.

Para. 3. In order to prevent as far as possible any obstruction to criminal justice, and inconvenience or injury to individuals, the Court of Foujdaree Udalut resolve to issue the following Circular Order for the guidance of the several Judges on Circuit, and of the Criminal Courts under them.

Vide C. O. No. 115.

4. In all cases of forgery, whenever from the evidence, and the circumstances of the case, there are grounds to charge the Prisoner with also uttering the forged instrument, knowing it to be forged, with intent to defraud,—a charge for such uttering shall invariably form a second count in the arraignment, distinct from that of fraudulently fabricating the instrument; and in each count the words with intent to defraud, A. B. (here enter the name of the party intended to be injured) shall be added. If the uttering consists in having filed the document in Court, the No. of the suit, or appeal, should be specified; and if filed by a Vakeel, the Prisoner should be charged with having uttered it, by causing the Vakeel to file it with intent, &c.

20TH MAY, 1840.

C. O. No. 121.

1. The Court of Foujdaree Udalut in their Circular Order No. 115, directed that “in every trial in which the Judge of Circuit may recommend the capital punishment of a Prisoner, an English translation of the whole of the proceedings held before the Magistrate and Officers of Police be submitted with the record of the case.”

Vide C. O. No. 123.

2. The Court of Foujdaree Udalut resolve to apprise the four Provincial Courts of Circuit, that when the Judge on Circuit may consider any of the depositions and papers received from the Police or Magistracy, as unnecessary to the conviction or the defence of the Prisoners, it will be sufficient in the fair copy of the trial to give an abstract thereof; provided he transmits to the Court of Foujdaree Udalut the rough translations in detail of the depositions, thus omitted from the fair trial, in the state in which the same were prepared and furnished to him by the Criminal Court, the preparation of fair copies of such translations, being an unnecessary call on the time and attention of the Circuit establishment.

15TH AUGUST, 1840.

C. O. No. 122.

Read letter dated 18th July 1840, from the Assistant General Superintendent of Thuggee and Joint Magistrate of Vizagapatam, submitting with reference to the proceedings of the Foujdaree Udalut of the 27th June last, an explanation of his remarks relative to the result of the trial in Case 20, of the Vizagapatam Calendar for the 2d Sessions of 1839, and

Court of Foujdaree Udalut.

stating that, as the evident meaning of Act XXX. of 1836, is that only an initiated Thug can belong to a gang of Thugs, submitting his request to be informed, what would constitute initiation, according to the law, if it is not to be considered proved by accompanying the gang on expeditions.

1. To render a party amenable to punishment under Act XXX. of 1836, it is essential, in the opinion of the Foujdaree Udalut, that the person accused should be proved to have belonged to a gang of Thugs, at an age when the act can be considered voluntary on his part, and when he is capable of understanding what the object of the gang is; but this liability cannot be considered to extend to infant children, and to others who, like the prisoners in the case above referred to, were not themselves members of the gang,—had no participation in the acts committed,—and were not in any way aiding and abetting in the commission of the crime of Thuggee.

2. The Court are of opinion that “initiation,” technically so called, is not at all necessary to constitute the offence described in the Act in question.

7TH SEPTEMBER, 1840.

1. It has been submitted to the Court of Foujdaree Udalut by the Provincial Court of Circuit in the Northern Division, that the establishment on Circuit would be relieved of much labour, if the Foujdaree Udalut, in cases set down to them for reference, would dispense with the fair copies of the translations, and merely have before them the rough drafts of the translations of the proceedings in the trial.

2. The Court of Foujdaree Udalut do not deem it proper to dispense with the fair copy in red ink of the trial before the Court of Circuit itself, but as the submission of fair copies of the proceedings before the Criminal Court may be an unnecessary call on the time and attention of the Circuit establishment, the Court of Foujdaree Udalut resolve to authorize the Judges of Circuit, in trials set down for reference to the Foujdaree Udalut, to submit the translations of the depositions before the Criminal Court, in the state in which the same may have been prepared and furnished by the Criminal Court.

3. As regards the translations of the proceedings held before the Magistrate, or the Officers of Police, the instructions contained in the Circular Orders of the 19th January 1825, 10th January and 20th May 1840, will continue to be observed.

Vide Pro. of the P. U. 36th Sept. 1840.

Vide C. O. 116 and 121.

11TH SEPTEMBER, 1840.

The Court of Foujdaree Udalut resolve to direct by a Circular Order, that in all cases of assault or wounding, whenever the fracture of a limb may be the result of such violence, the fact of so serious an injury having been inflicted, be considered a circumstance requiring the commitment of the accused to be tried before the Court of Circuit.

C. O. No. 124.

Circular Orders of the

14TH SEPTEMBER, 1840.

- C. O. No. 125. The Court of Foujdaree Udalut being of opinion that it would tend to promote the ends of justice, if para 1 of the Circular Order of the Foujdaree Udalut, dated the 16th May 1822, were acted upon by the Native Police, as well as by the European Magisterial and Judicial Authorities referred to therein, resolve to extend the said Circular Order accordingly,—and to direct, that, in future, all articles of stolen property, found upon individual prisoners and produced before the Native Police, be invariably numbered by them; and that, in the examinations before the Native Officers of Police, the number of every article referred to, be specified.

Vide C. O. No. 39.

29TH OCTOBER, 1840.

- C. O. No. 126. Read letter dated the 6th Instant from the Magistrate in the Northern Division of Arcot, submitting for the consideration of the Court, at the instance of the Joint Magistrate of the District, certain questions connected with the construction of Section III. Regulation I. of 1818.

1. The 1st question proposed is—Whether the wife and adulterer are punishable criminally, where the husband has connived at their illicit intercourse.

2. The Court of Foujdaree Udalut would answer this question in the negative. The prosecutor under such circumstances would not have grounds of complaint as an injured party, and it was not intended by the Legislature that the offence should be prosecuted as an offence against the public.

3. The 2d question proposed is—Does the enactment that the charge in cases of adultery shall be “exclusively by the husband against the wife, or by “the wife against the husband,” secure the paramour of the guilty wife or husband from punishment.

4. Under the construction put by the Court of Foujdaree Udalut under dates the 24th February 1820 and 28th February 1831, on Clause 4th, Section III. Regulation I, of 1818, the injured husband is competent to prosecute the party who has violated his bed as well as his wife.

5. The object of the Clause in question was to declare that, in all cases of adultery the charge must be preferred by the injured party, it not being intended that the crime should be punished as a public offence.

6. To construe the Clause in question as implying a prohibition against the prosecution of any other individual than the offending husband or the offending wife, would in fact be exempting, in many cases, the most guilty party from punishment.

10TH NOVEMBER, 1840.

- C. O. No. 127. The Court of Sudr and Foujdaree Udalut have observed that certain of the Courts in entering at the head of the examination of a party or witness, the particulars specified in Clause 2d, Section XVIII. Regulation VII. of 1802, describe the profession of a witness as “Service,” without specifying what that “Service” is.

Accordingly the Court of Sudr and Foujdaree Udalut resolve to direct the several Courts, when inserting in their records of trials or suits held before them the particulars specified in the provision quoted above, to exhibit the nature of the service in which the witnesses or party may be employed,—whether in the public service or in the service of a private individual, and the precise station held, whether Tahsildar, Seobidar, Sepoy, Peon, Butler, Masaljee, &c.

30TH NOVEMBER, 1840.

Read letter dated the 3d instant from the Agent to the Governor of Fort St. George in the Ganjam District, requesting instructions as to the punishment to which a prisoner convicted of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by Thuggee, is liable under the law; and requesting also, similar information in respect to a prisoner charged with having given shelter and protection to certain Thuggs with a view to affording them facility for carrying on the trade of Thuggee. C. O. No. 128.

1. In the opinion of the Court of Foujdaree Udalut, Clause 2d, Section IV. Regulation VI. of 1822, applies to the offence of unlawfully and knowingly receiving or buying property stolen or plundered by Thuggee, knowing it to be such.

2. The offence of giving shelter and protection to Thuggs with a view to affording them facility for carrying on the crime of Thuggee, is an offence, declared by the Law Officers attached to the Court of Foujdaree Udalut, punishable under the Mahomedan law by tazeer; and accordingly the Agent should proceed against persons convicted of such offence under Clause 7th, Section II. Regulation XV. of 1803.

3. The Court of Foujdaree Udalut considering it desirable that this opinion should be circulated for general information, resolve to direct that extract from these proceedings be forwarded to the four Provincial Courts of Circuit, to be by them communicated to the several Criminal and Joint Criminal Judges for their information and guidance.

5TH JANUARY, 1841.

Read letter from the Acting Judge in the Zillah of Chingleput, under date the 21st ultimo, forwarding a warrant for the apprehension of the 1st Defendant in Suit No. 162, of 1840, of the file of his Court. C. O. No. 129.

1. The Court of Sudr and Foujdaree Udalut direct that the warrant which accompanied the letter recorded above be returned to the Acting Judge in the Zillah of Chingleput, as, under Act No. XXIII. of 1840, no writ, warrant, or other process, issued by any Court in the provinces, can now be legally executed, within the limits of Her Majesty's Supreme Court of Judicature, without direction of one of the Judges of that Court.

2. The proper course to be observed by the Mofussil authorities who may require legal process to be executed within the limits of the Supreme Court, appears to be, to attach to an authenticated copy of their process, citation, or warrant, a certified translation thereof in the Eng-
Vide C. O. No. 142.

lish language, and to enclose it in a letter addressed to the Registrar of Her Majesty's Supreme Court of Judicature at Madras, who will procure the endorsement of one of the Judges, in view to the same being ordered to be executed, either by the Sheriff, or by a Justice of the Peace, according to the nature of such writ, warrant, or other process.

3. The Mofussil Officers charged with any warrant, must of course attend with the *original* warrant, on Her Majesty's Judges, and will, by them, be directed to the Sheriff, or Justice of the Peace, for the purpose specified in Section V. of the said Act—but in *other* cases, the attendance of persons from the Mofussil does not appear necessary.

6TH JANUARY, 1841.

C. O. No. 130.

1. The question has been submitted to the Court of Foujdaree Udalut, whether the provisions of Clause Sixth, Section III. Regulation V. of 1831, are applicable to offences committed against the provisions of Section II. Regulation III. of 1820.

2. The Court of Foujdaree Udalut think that they are not applicable, because the penalty for offences against Section II. Regulation III. of 1820, is specific (*viz.* confiscation), and was *not* required to be sued for in the Civil Courts.

18TH JANUARY, 1841.

C. O. No. 131.

The Court of Foujdaree Udalut direct that whenever batta is paid to any prosecutors or witnesses for a period exceeding 4 days, that the Circuit Judge shall give a special reason why they were so detained, since under the plan of summoning the parties in cases, on successive dates, the Court are of opinion there need never be a detention of more than 2 or 3 days, except by default of parties attending, or some unusual cause.

See C. O. No. 35.

10TH FEBRUARY, 1841.

C. O. No. 132.

By the annexed futwa of the Law Officers of the Foujdaree Udalut, it appears that the charge in No. 63 constitutes no crime under the Mussulman law; and as the futwa is of much importance, on the subject of slavery, it is resolved to communicate it to all the Judicial and Magisterial Officers, by means of the four Provincial Courts; and to communicate it to Government, for the information of the Government of India, now, it is understood, engaged in the consideration of the subject of slavery generally.

Question.

The prisoner, who is a female dher slave of the prosecutor's, is charged with having, one month previous to the 18th November 1840, eloped from the prosecutor's, and with not having returned to work at his house.

The Court direct their Law Officers to declare, whether the prisoner has committed any offence under the Mahomedan law, and if so, how the offence is punishable?

Answer.

The prisoner above referred to, is not punishable under the Mahomedan law for her elopement, because the legislator has not propounded any punishment to the slaves of this country, in the same manner as the denounced tazeer and tadeeb to a true slave.

Question.

"With reference to your answer above recorded, the Court desire that an explanation may be given of the difference drawn by you, between a true slave and a dher slave."

Answer.

She, who may have been acquired by way of booty in a Mussulman war, is called a "true slave," who can be sold and purchased. If such slave shall go away from the house of her master without his permission, she is liable to punishment in proportion to her guilt.

As regards the slaves of this country, (whether they are of dher or parish caste, or of any other caste), the people receive them from their parents either during famine or at other times;—such slaves are not, under the Mahomedan law, fit to be sold and purchased. If they go away from the houses of their masters without their permission, they are at liberty to live wherever they please,—and they are not liable to any trial under the law in question.

23D FEBRUARY, 1841.

The Court of Foujdaree Udalut having had under consideration a case of murder, in which the prisoner, when brought to the bar, was insane, and in which also from the investigation held agreeably to the last para. of their Circular Order of the 1st June 1829, it was satisfactorily established that the crime charged was committed under a temporary deprivation of reason, direct, in modification of the latter part of that Circular Order, that where the result of the said investigation may clearly prove the offence charged to have been committed under a deprivation of reason, the prisoner be discharged by the Judge on Circuit from future trial, and dealt with by the Criminal Judge as any other lunatic person in jail under the same Circular Order.

1ST MARCH, 1841.

1. Several instances of repeated escape from jail by the same convicts having come before the Foujdaree Udalut, they, in pursuance of Section II. Regulation X. of 1832, direct the several Officers in charge of jails to adopt measures for specially securing, *at night*, all convicts who may have once broken jail, or who may otherwise have effected their escape from legal custody.

2. The number of prisoners so secured, and the method adopted for securing them, to be always specified in the monthly returns.

C. O. No. 134.

Circular Orders of the

2d MARCH, 1841.

C. O. No. 135. Instances having come to the notice of the Court of Foujdaree Udalut, of Officers in charge of jails having, when ordered to transfer convicts to a neighbouring District, for the purpose of their being employed on some public work, selected prisoners convicted of the crime of murder by Thuggee, or of the offence described in Act No. XXX. of 1836, the Judges prohibit any future removal of a Thugg convict to a detached working party, without the special order of the Court of Foujdaree Udalut.

The Court of Foujdaree Udalut also direct, that no convict of *desperate character* be transferred to a working party detached for employment at a distance from the jail.

3d MARCH, 1841.

C. O. No. 136. A reference having been made to the Foujdaree Udalut respecting the manner in which parties of convicts should be guarded while being transferred from one jail to another, the Court direct that on such occasions the gang be accompanied by their usual guard of Peons belonging to the Zillah jail, in addition to the guard of Peons which may be furnished by the Magistrate, for their safe conduct.

5th MARCH, 1841.

C. O. No. 137. 1. The Court of Foujdaree Udalut having had under their consideration the question, whether, when a prisoner committed for trial before the Court of Circuit, is also charged with several minor offences, punishable by the Criminal Court, it is proper that the minor offences also should be entered upon the circuit calendar, or whether the Criminal Court should examine and decide upon those minor charges, but not carry their sentences into execution till after the committed cases have been disposed of by the Court of Circuit;—find that the subject was fully considered by this Court under date the 16th April 1834, and resolve to notify by a Circular Order, the decision then passed upon it, viz. that an individual against whom charges may be preferred and sufficient evidence adduced of the commission of two or more offences, one of which is cognizable only by a Court of Circuit, cannot regularly be tried for one offence by the Criminal Judge, and by the Court of Circuit for the other or others, but that he should be brought to trial before the same tribunal upon the several charges preferred against him; because as a general rule, the Court are disposed to consider a prisoner who may have committed several offences at different times, to be a fit object of commitment for trial before the Court of Circuit, under the general provision contained in the latter part of Clause 2d, Section III. Regulation VI. of 1822.

2. If the prisoner is *fully convicted* before the Court of Circuit of the *graver* charge, the sentence for the *minor* offences will merge in that for the *greater*; but in cases where *adequate proof* for conviction of the *graver* offence may not be adduced against a prisoner, but he shall appear to be under *strong suspicion* of the act charged against

him, the Judge of Circuit, in awarding punishment for the *minor* offences, will take into his consideration the degree of criminality which attaches to the prisoner in the case *cognizable only by the Court of Circuit*.

3. In the event, however, of the prisoner being *fully acquitted* of the offence, cognizable only by the Court of Circuit, the minor charges, should they be attended with no circumstances of aggravation, may be referred back to the Criminal Court for adjudication.

27th APRIL, 1841.

It having been represented to the Foujdaree Udalut, that instances have occurred of Peons in charge of convicts proceeding to Chingleput under sentence of transportation, &c. complaining on their arrival at an intermediate District, of the want of subsistence money for the prisoners, while the Magistrate to whom such application was made, was unable to ascertain the truth or otherwise of their statements;—the Court direct, with reference to their Circular Order of the 10th November 1827, that in future the Magistrate of the District, whence in the first instance the party proceed, shall furnish the Peons with subsistence money sufficient to last until they reach the next Sudr station of a Magistrate, whose duty it will be to act in like manner; and the same course will be pursued by each succeeding Magistrate, until the arrival of the prisoners at their ultimate destination.

When between the point of starting and the ultimate destination there is no intervening Sudr station, the Magistrate of the District will furnish the Peons with subsistence money for the entire distance.

13th MAY, 1841.

The question has been submitted to the Court of Foujdaree Udalut, whether, by the words—"the discretion vested in the Criminal Court by Regulation VI. of 1822, was intended to go beyond the highest punishment which they were before authorised to inflict,"—used in the 5th para. of the proceedings of the Foujdaree Udalut of the 30th August 1839, it was meant,—"that in every instance the punishment for offences coming within Regulation VI. of 1822, and for housebreaking in particular, should be for upwards of 12 months' imprisonment, which is the utmost extent of the sentence authorized to be awarded by Section VII. Regulation X. of 1816, including the imprisonment for default of paying the fine should any be imposed."

The Judges are of opinion that, the intention of the Court was, that every offender sentenced by a Criminal Judge under Section II. Regulation VI. of 1822, should be sentenced (with or without lashes, not exceeding 150, at the discretion of the Court,) to a severer punishment than 6 months' imprisonment, which is the longest period of imprisonment to which offenders of a minor description could be sentenced under Section VII. Regulation X. of 1816, except in commutation of a fine.

The proceedings of the Foujdaree Udalut of the 12th October 1826, clearly shew that, in the opinion of the Foujdaree Udalut, all the offences specified in Clause fourth, Section III. Regulation VI. of 1822, were intended to be punished more severely than they could be by Section VII. Regulation X. of 1816. The same reasoning applies exactly to the offen-

C. O. No. 135.

C. O. No. 139.

Circular Orders of the

ces specified in Section II. of the same Regulation, because the premises are the same. Section III. Regulation VI. of 1827, has expressly corrected this interpretation, as regards the thefts specified in Clause 4th, Section III. but there is no similar enactment respecting breaking or attempting to break, specified in Section II. therefore they remain under that interpretation.

17TH MAY, 1841.

C. O. No. 140.

1. The question has been referred to the Court of Foujdaree Udalut, whether a false complaint preferred in the first instance before a Magistrate, but subsequently referred to a Police Officer for investigation falls properly under Regulation IX. of 1832.

2. The Court of Foujdaree Udalut are of opinion, that a person is liable to punishment under Regulation IX. of 1832, (notwithstanding the complaint having been laid in the first instance before the Magistracy), if the complainant adhered to his accusation before the Tahsildar also, and spoke at all in support of it, and provided also the prosecutor (now prisoner) may not have been sworn to the charge in the first instance before the Magistracy; but his complaint referred for investigation by the Native Police under the provisions of Section XIV. Regulation IX. of 1816.

3. But a prisoner having been apprehended and brought before the Magistrate under the provisions of Section XXIV. Regulation IX. of 1816, that Officer is bound to hold a personal investigation, and the irregular reference of such case, to be disposed of by an Officer of Police, will not render the prosecutor liable to punishment under Regulation IX. of 1832, even tho' his complaint may be proved to have been false and malicious.

18TH MAY, 1841.

C. O. No. 141.

Vide Act No. XIX of 1837.

1. The question has been submitted to the Court of Foujdaree Udalut, whether or not it is competent to a Criminal Judge to examine as a witness, a party sent up to him by the Police Officer in the capacity of a prisoner.

2. When a party sent up to the Criminal Court as a prisoner may be acquitted, as not appearing implicated in the case, the Court of Foujdaree Udalut are of opinion, that it is competent to the Criminal Judge to make use of such party as a witness, if it shall appear that he is able to give evidence against the other parties concerned in the charge then under his investigation; but it is at the same time obvious that this measure should be adopted with due caution, so as to prevent the embarrassment which must arise from inadvertently admitting the evidence of a person who may prove to be an accomplice, without obtaining a pardon requisite to deprive such accomplice of all constraint in giving his evidence. A pardon, however, is in no respect necessary where the party is clearly not implicated in the crime.

3. It is however incompetent to a Criminal Judge to proceed criminally against a party originally sent up to him as a witness, but subsequently found to be implicated in the offence; such proceeding would be

illegal with reference to the construction given by the Court of Foujdaree Udalut to Section VIII. Regulation X. of 1816, and moreover such proceeding has been prohibited by the Foujdaree Udalut in their Circular Order of the 28th October 1822.

14TH JUNE, 1841.

The Court of Foujdaree Udalut hereby cancel Circular Order No. 129, C. O. No. 142. and direct that all writs, warrants, or other process, mentioned in Section I. Act XXIII. of 1840, required to be executed within the limits of the Supreme Court, be sent, together with the prescribed copy and translation thereof, to the Sheriff of Madras by tappal, except when they require the seizure of any person, when they should be sent by the Peon, or other person, who is to receive charge of the party mentioned in the warrant, &c., when he has been seized; and such Peon is to remain, with the original warrant, in attendance on the Sheriff, or where the Sheriff may direct, until the party to be seized has been placed in his charge.

26TH JUNE, 1841.

The Court of Foujdaree Udalut direct—with reference to their Circular Order of the 22d July 1814—that henceforth a Descriptive Roll as well as List, shall be sent with every party of convicts forwarded from any Zillah to the Depôt at Chingleput, under sentence of transportation.

27TH AUGUST, 1841.

The Court of Foujdaree Udalut direct that henceforth—every officer in charge of a Jail shall have authority, without previous reference to this or to the Provincial Court of Circuit, to transfer to any other Jail, which may be indicated by the Medical Officer of the Jail, any convict whose removal on account of sickness, may be certified by the latter officer to be urgently necessary, reporting the circumstance to the Foujdaree Udalut and at the same time forwarding a copy of the Medical certificate of the case.

The original warrant for the confinement of the convict shall be sent with him, and shall be endorsed over to the officer in charge of the Jail to which he is sent; and the latter officer shall receive the convict, and deal with him in all respects the same as if originally sentenced to be imprisoned in the Jail under his charge.

28TH AUGUST, 1841.

Several references having lately been made to the Court of Foujdaree Udalut respecting cases supposed to involve the crime of forgery, and it appearing on reference to the records of this Court that the doctrines followed at different times upon this subject have not been perfectly consistent; the Court think it desirable to declare their opinion that in order to constitute the crime of Forgery as defined in Clause 3d, Section IV. Regulation VI. of 1811, the effect and object of the fabrication or alteration must be to defraud some party of money or other property, and also to injure him.—Where these requisites do not occur, the act may

be punishable under the Mahomedan Law as a misdemeanor; but it cannot be treated as a Forgery.

9TH OCTOBER, 1841.

C. O. No. 146. The Court of Foujdaree Udalut having ascertained by a reference to their Law Officers that "persons secreting Robbers against whom warrants are out,—supplying them with food and other necessaries,—and adopting other means to enable them to escape apprehension," are liable to punishment under the Mahomedan Law,—the Court of Foujdaree Udalut resolve to point out to the several Criminal Judges and Magistrates, that on such accused persons being forwarded to the Criminal Court, they can be dealt with under the general provisions of the Regulations.—Vide Section VII. Regulation X. of 1816.

6TH DECEMBER, 1841.

- C. O. No. 147.
1. The attention of the Court of Foujdaree Udalut has lately been attracted by a case wherein a prisoner charged with sorcery had been sentenced under the provisions of Section VII. Regulation X. of 1816, to six months' imprisonment with hard labor in irons.
 2. The Court observed that unless the prisoner was guilty of some overt act, tending to injure the prosecutor, the Criminal Judge had no power to take cognizance of the charge; and in that case, the charge should have alleged the act perpetrated, and not the imaginary offence of sorcery.
 3. The Foujdaree Udalut have ruled so far back as the 2d July 1817, that Section XXXIV. Regulation VII. of 1802, virtually prohibits the Criminal Courts from taking cognizance of any charge of sorcery, and that if such a charge be brought before a Criminal Judge, he should be careful to ascertain whether or not any injury has been inflicted on the supposed sufferer,—that if no injury has ensued, the charge is to be dismissed, but if there has been injury done, evidence is to be taken to the overt act charged, and if the prisoner appear liable to commitment, the indictment is to be framed for such overt act.
 4. The opinion of the Law Officers was given on the same occasion, to the effect that "a confession of sorcery does not subject a person to punishment under the Mahomedan law, unless it shall appear that injury has ensued.
 5. As it is desirable that a general rule should be established for the guidance of the Criminal Courts on similar occasions, the Court do accordingly direct, that in disposing of accusations of sorcery or witchcraft, or other similar charges, the Criminal Judges be guided by the above remarks.

22D FEBRUARY, 1842.

C. O. No. 148. In modification of their Circular Order of the 19th June 1828 the Court of Foujdaree Udalut resolve to direct, that all Calendars be accompanied with translations instead of Copies of the original Futwabs, in all cases not referrible to the Court of Foujdaree Udalut.

30TH APRIL, 1842.

The Court of Foujdaree Udalut, under instructions received from Government, resolve to advise the several Judicial Authorities, that altho' Clause 2d, Section XXXIX, Regulation VII. of 1832 authorizes, within the limits of a Military Station, the direct service on the Troops, by Civil Officers, of Notices, Summonses, Subpoenas or other process of mere citation, not involving personal arrest, yet it is desirable, in every practicable case, that such Summonses, &c. should be executed thro' the Commanding Officer, or other Military Authority. C. O. No. 149. Vide S. U. C. O. No. 80.

30TH APRIL, 1842.

The Court of Foujdaree Udalut have repeatedly ruled that the correspondence between the Criminal Judges and the Magistrates shall be carried on by the Heads of those Offices, or the persons in charge of them. C. O. No. 150.

It is fit and becoming that this rule should be generally observed with regard to all Departments with which the Judicial authorities may have occasion to correspond: and accordingly it is resolved to direct, by a Circular Order, that this form be always observed, unless there be a good and sufficient reason to omit it. Vide S. U. C. O. No. 81.

18TH JANUARY, 1843.

The Court of Foujdaree Udalut determine to circulate for the information and guidance of the Judges in the several Provincial Courts, and the Officers subordinate to them, the following answer of their Mahomedan Law Officers to the question. C. O. No. 151.

"Whether there are any legal means of punishing a female, who conceals her pregnancy, and buries her bastard child secretly, leaving it doubtful to every one but herself, whether the child had not been born alive?—"

Answer.

"Under the circumstances stated in the question, the most secret burial of the child establishes a suspicion against the female referred to, of having murdered the child lest the fact of her illicit intercourse should come to light, to her disgrace. She is therefore, liable to Tazeer in proportion to her guilt.—"

1ST SEPTEMBER, 1843.

The Court of Foujdaree Udalut having in certain instances had occasion to communicate to functionaries in the Provinces, the opinion of their Law Officers, that under the Mahomedan Law, a servant is liable to "Tazeer by imprisonment and stripes in proportion to his offence" when convicted of breach of trust and fraudulent misappropriation to his own use or purposes, of money committed by his employer to his charge, resolve to intimate to the several judicial authorities, that cases of that nature should be disposed of under the general regulations. C. O. No. 152.

22^D SEPTEMBER, 1843.

C. O. No. 153. Applications having been received by the Foujdaree Udaltut from Magistrates for authority under Sec. X. Regulation XIII of 1832, to reward by money payments, individuals who have offered effective and courageous resistance to attacks of gang robbers which has led to the repulse, although not to the actual apprehension, of the assailants, the Court resolve to notify by a Circular Order their opinion, that under a liberal construction of the provisions of the Code which regulate the disbursement of remuneration for Meritorious assistance rendered to the Police, it is competent to Magistrates on their own responsibility on occasions of the nature referred to, the necessary conditions having been fulfilled, at once to disburse without communication with the Foujdaree Udaltut such sums within the limits specified in Sec. XXIII. Reg. IX of 1816, as they may consider the parties who have so distinguished themselves to deserve.

23^D NOVEMBER, 1843.

C. O. No. 154.

Rescinded by C. O. No. 159.

3^D JANUARY, 1844.

C. O. No. 155.

Cancelled by C. O. No. 157.

10TH APRIL, 1844.

C. O. No. 156. The Court of Foujdaree Udaltut having had under consideration several cases of escape by Prisoners previous to or under examination, from the custody of Taliahs, Village Watchers and other subordinate Officers of Police; and finding that different views have been taken at different times of the liability to punishment of the persons escaping and of the guards from whom they escape, hereby declare their opinion, that all persons in legal custody of any guard of whatever description, having lawful authority to detain them, are punishable under Clause third, Section V. Regulation VI of 1822, for escaping from such custody.

Vide C. O. No. 31.

Also, that all guards of whatever description, having lawful authority to detain persons in custody and suffering persons in their custody to escape, are punishable under Section XXIII. Regulation VIII of 1802, and Clause first, Section VII. Regulation I of 1810; by dismissal, if guilty of simple neglect; by prosecution before the Session Judge, if guilty of any connivance or further criminality; the jurisdiction and punishments prescribed by Section XI, Regulation XIII of 1832, being applicable only to Peons properly so called.

24TH APRIL, 1844.

C. O. No. 157.

Objections to the operation of F. U. C. O. No. 155, having been represented to the Court of Foujdaree Udaltut it is resolved that the said Circular Order be recalled and cancelled.

13TH JUNE, 1844.

Read Letter dated the 24th Ultimo, from the Session Judge of Tellicherry, requesting to be informed whether under the Extract from the Proceedings of the Foujdaree Udaltut dated the 10th of October 1840, it was intended by the Judges, that all cases of Tobacco smuggling, however trifling, should be disposed of by the Criminal Court and not referred to the Sudr Ameen. C. O. No. 158.

1. The Judges observe that the rule laid down in this Court's Proceedings, 25th July 1835, professes to be founded chiefly on the principle declared in Section VI, Regulation VIII of 1827; and as that Section has been rescinded by Act 34 of 1837, there does not appear to be any longer any objection to cases of breach of Salt and Tobacco laws being referred to the Sudr Ameens.

2. Adverting to the many instances in which the reference of cases of the above nature to Sudr Ameens, has been prohibited, the Judges resolve that their present opinion be circulated for the information of the several Judicial Officers in the Provinces.

25TH JUNE, 1844.

1. The Court of Foujdaree Udaltut having had occasion to reconsider their Circular Order No. 154, and observing great difference of practice by different Committing Officers under Section XXIX, Act VII of 1843, resolve to rescind that Order, and substitute the following in lieu of it. C. O. No. 159.

2. The course of proceeding contemplated by that Section, the Court believe to be the following.

3. As early as possible after the Record of a criminal case arrives from an Officer of the Magistracy or Police, the Committing Officer should make himself acquainted with its contents. This proceeding will enable him to judge whether, if the informations are verified by the witnesses, the evidence will be sufficient for commitment; and, in the event of further information appearing necessary, he will be enabled to frame questions calculated to elicit it. C. O. No. 161.

4. It is not contemplated by the Act that witnesses should be examined over again by the Committing Officer as to points which they have already deposed to; but only, additional questions asked, if necessary. Nevertheless, the authority so to examine witnesses over again, before their informations are read over to them, is not taken away; and where there is reason to suspect the truth of the first informations, it may be of great use to do so; but ordinarily it is not the course intended by the Act; and to follow it is to perpetrate one of the evils of the old system which the Act was intended to correct—the repeated examination of the same witness upon the same points. It is a great object that criminal records should not be unnecessarily long; and whatever swells the record without throwing new light upon the case, ought to be avoided.

5. It is in no case competent to the Committing Officer to examine witnesses for a Prisoner, or in any way to question a Prisoner with a view to his defence: Section II. Regulation XIII of 1832, the only enactment which gave him authority to examine witnesses for a Prisoner, being expressly rescinded by Section XXVIII. Act VII of 1843.

Circular Orders of the

17TH AUGUST, 1844.

C. O. No. 160. As the information conveyed by the copy of the Warrant required to be transmitted to the Foudjaree Udaltut by Circular Order of the 6th January 1823, is now laid before the Foudjaree Udaltut at the close of each trial, in the Calendars of Prisoners tried by the Courts of Session, the Judges of the Foudjaree Udaltut resolve to cancel the Circular Order above referred to, and to direct that the transmission of the copy of Warrant be henceforth discontinued as unnecessary.

7TH SEPTEMBER, 1844.

C. O. No. 161. 1. It has recently been brought to the notice of the Foudjaree Udaltut that the Reports prescribed by their Circular Order dated 10th April 1823, frequently reach the Magistrate's Cutcherries late in the month succeeding that for which they are prepared, thus rendering partially ineffectual the measures required for adoption immediately on the disposal in the Criminal Courts of the cases which the Reports embrace.

Vide C. O. No. 170.

2. The Foudjaree Udaltut accordingly resolve to direct, in modification of the Circular Order above quoted, that a report of each case drawn out in the form therein prescribed, be transmitted to the Magistracy within twenty-four hours after the proceedings of the Criminal Courts have been brought to a close.

23D SEPTEMBER, 1844.

C. O. No. 162. 1. Under instructions from the Honorable Court of Directors, the Foudjaree Udaltut resolve to prohibit the use by Subordinate or other Police Officers, of perforated logs of wood, substituted for iron hand cuffs, which, it appears from the Court's records, have occasionally been employed to facilitate the restraint of parties under custody and of prisoners on their way to the Criminal and Magisterial authorities.

Vide C. O. 24th March 1825 and No. 113.

2. In the event of iron hand cuffs made according to the European pattern not being procurable within the jurisdiction of the several Magistrates, it will be the duty of those Officers to indent in the usual course for such number as may appear to be required.

1ST OCTOBER, 1844.

C. O. No. 163. A reference having been made to the Foudjaree Udaltut in order to ascertain the extent of the powers of Magistrates as justices of the Peace, in cases where both the complainant and accused are Europeans, Regulation II of 1820 being applicable only to cases wherein one of the parties is European, and the Officer with whom the reference originated having declared that his doubts on the subject arose on two cases lately brought before him "one where a Gentleman was the complainant and an European resident (British subject) the defendant in a case of trespass; the defendant having removed some stakes from a boundary hedge belonging to the Prosecutor with the view of cutting a road across a foot path also declared by the Prosecutor to be his property, and the other where the

"defendant is charged by the Prosecutor with having shot an English pointer his (complainant's property)" the Foudjaree Udaltut resolve to circulate the reply received from Government on the subject being submitted for the opinion of the Advocate General.

"Neither of the cases mentioned by way of example, in the letter of Opinion of the joint Magistrate and justice of the Peace, are instances of "assault Advocate Genl. the peace, or injury accompanied by force," over which offences a justice has (by 53d Geo. 3d Cap. 156 S. 105) the jurisdiction of summary conviction. The examples noticed are purely instances of Civil wrongs to be redressed by Civil Action."

"In the cases to which this statute applies he has jurisdiction only on complaint of Natives. His jurisdiction beyond the limits of Madras is altogether confined to the acts and offences committed by Europeans or committed by other subjects of the crown at sea."

"A justice of the peace, acting beyond the limits of Madras, must proceed as regards summary convictions, and generally in preservation of the peace, according to the course prescribed for justices in England, as far as it is applicable in India. It is not easy to say in what cases the exercise of a Justice's jurisdiction is applicable in this country, or otherwise—and a justice of the peace has need of much caution and forbearance in the exercise of his powers, according to the nature of the case, the distance from the presidency, &c. I have published an Epitome of the Duties of a Justice of the Peace in India (contained in a few pages, and a copy of which I take the liberty to transmit) in the hope it might prove an useful and general guide, and to that I must crave to refer for a more detailed answer to the present reference."

26TH FEBRUARY, 1845.

The Foudjaree Udaltut resolve to direct that whenever a Session Judge C. O. No. 164. may avail himself of the provisions of Section XXXII. Act. VII of 1843, to dispose, with the assistance of Assessors, of a case committed for trial by the Session Court, each Assessor at the close of Proceedings, shall be requested to declare a verdict in respect of each Prisoner, which, after being reduced to writing and read over to the Assessor, shall receive his signature in token of its correctness and be deposited with the record of the trial.

30TH APRIL, 1845.

1. Adverting to the non-applicability of Section XXXVII. Regulation VII of 1802, to the Judges of the Session Courts established under the new Judicial system by Act VII of 1843, the Court of Foudjaree Udaltut, with the sanction of Government, have resolved to direct the discontinuance of the Reports now submitted under the authority above quoted. C. O. No. 165.

2. The Court, however, are not disposed altogether to dispense with the Reports they have hitherto received; for, although proceeding from Judges at present stationary, they may nevertheless contain information of importance and proper for communication to the Foudjaree Udaltut; but, with reference to the difficulty which has been experienced in restricting the observations of the Session Judges to matter which should appear in a

Circular Orders of the

Report framed in accordance with the provisions of Section XXXV Regulation VII of 1802; and those regarding the operations of the Magistracy and Police, to Reports submitted under the instructions of Government contained in Foudaree Udalut Circular Order dated November 1829 B, they direct that, the "Session Report" now made at the close of each year, be blended with the Report submitted under Circular Order above quoted, for the last six months of the year.

3. Under this arrangement, which is adopted in the belief that modification of practice will greatly conduce to official convenience, essentially promote the despatch of business, the Criminal Reports prescribed by the Circular Order of date 16th November 1829 B, for the first six months of the year, will be forwarded to the Foudaree Udalut and subsequently by the Foudaree Udalut to Government, as usual, whilst the Report for the following half year will contain such observations and remarks for general interest, as, under existing practice, would be formed matter for two distinct reports.

30TH APRIL, 1845.

C. O. No. 166.

The submission by Magistrates of the "Statement of Crimes" required by the Circular Order dated 2d March 1818, being considered anomalous under the present system, inasmuch as the information it contained embodied in the Returns required to be laid before the present Sessions Courts with the Magistrates' half yearly Criminal Reports, the Court Foudaree Udalut resolve to cancel the Circular Order above referred to.

6TH MAY, 1845.

C. O. No. 167.

Dated 10th Nov. 1827, and Nos. 96 and 138.

1. Adverting to the Circular Orders of the Foudaree Udalut and marginally, it is resolved to direct that, on the occasion of the transfer of Convicts under the guard usually furnished by the Magistracy and Officer in charge of the Jail from which Prisoners have been despatched, it shall not be necessary that the Peons of one Zillah accompany the Prisoners throughout the whole line of their march, except in cases of absolute necessity.

2. It is believed that every object will be attained by directing relieving Peons to remain at the boundary Station until the arrival of the Convict party, or until the receipt of further orders.

9TH MAY, 1845.

C. O. No. 168.

The attention of the Foudaree Udalut having been drawn by the Acting Session Judge of Tellicherry, to an occasional want of correspondence between the criminal accounts as prepared by the Courts and by the Magistracy, owing to offences being classified by the respective authorities under different designations;—Murder and culpable homicide, and highway robbery, gang robbery, and house breaking by night, being, for instance, not unfrequently confounded the one way with the other; and a proportion having been submitted by that Officer that, in the Monthly Criminal Returns of the Courts, the designations of the crimes they embrace should be

entered as a heading to the Statement of the charge, as shewn in the annexed form, and that the Magistracy (to whom these Returns are communicated) should adopt the same designations in the periodical Statements sent in by them;—the Judges of the Foudaree Udalut, in modification of their Circular Order dated 26th September 1832, resolve to direct that henceforth the rule suggested by the Acting Session Judge be generally observed.

	GANG ROBBERY.	
	With having, in company with several others, on the night of the , came to the Prosecutor's house, armed with swords, guns and other weapons, broke open the door thereof, ill-treated the inmates, and robbed therefrom property to the value of	

19TH MAY, 1845.

Read Calendar of Case No. 10 of 1845, on the file of the Session C. O. No. 169. Court at Mangalore.

1. In the above case, the prisoner brought to trial was charged with having entered the Prosecutor's shop and stolen therefrom ready money amounting in value to Rupees 1-4-4.

2. In the futwa first delivered, the Prisoner was declared to be acquitted; but, on a second question being put, under Section VIII, Regulation I of 1825, removing the objections taken to the evidence of certain witnesses, the Law Officer declared the Prisoner convicted of the offence charged and liable to Ookooobut, the penalty of Hud being barred in consequence of the stolen property not amounting to the Nisab. On the second finding, the Prisoner was sentenced by the Session Judge to imprisonment with hard labor in irons for a period of two years and to receive corporal punishment, under the provisions of Clause seventh, Section II, Regulation XV of 1803.

3. In their review of the Calendar, the Court of Foudaree Udalut pointed out that, a second futwa ought to have been taken under Clause fourth, Section II, Regulation XV of 1803, and the Prisoner sentenced to imprisonment for seven years, unless the Judge considered the circumstances of the case to demand a mitigation of punishment, under Section IV. Regulation I of 1825.

4. Having thus declared their opinion, the Court proceeded to remark that, they were aware that the practice followed by the Session Judge of passing sentence under the provisions of Clause seventh, Section II. Regulation XV of 1803, in cases when the value of property stolen did not amount to the Nisab, had received the sanction and, even in some instances, had been enjoined by the Foudaree Udalut.

5. That it was found that, so far back as the 9th May 1823, the Court had ruled that "the theft of property to a certain amount being necessary to subject the offender to the specific penalty of Hud, the provisions of

Clause fourth, Section II. Regulation XV of 1803 cannot apply to a case wherein it is not proved that the stolen property amounted to Nisab."

6. They observed that the above rule had subsequently been confirmed in several proceedings, but that in proceedings dated 24th May 1827, and circulated only to the Courts in the Western Division, the Court had expressed their doubts of the correctness of the principle on which the rule in their Order of the 9th May 1823 was founded, which, however, having been established and not being likely to lead to any bad consequences in its practical operation, inasmuch as the amount of Nisab is so small that cases involving the rule could very seldom occur, the Court were not at that time inclined to disturb it.

7. Further experience has convinced the Court of the necessity for a modification of the rule in question, which, in the opinion of the present Court, is at direct variance with the principles laid down in the preamble to Regulation XV of 1803, wherein the value of property stolen not amounting "to 10 Dirams" or Nisab, is expressly specified as one of the scrupulous distinctions alluded to in Clause Fourth, Section II of that Regulation, as in no way affecting "the nature and criminality of the offence" and as "evidently repugnant to the principles of equal justice."

8. The rule, also, with respect to the lower Courts, appears to the Foujdaree Udalt to have a tendency to defeat one of the declared objects of Regulation XV of 1803, viz. the maintenance of the uniform and adequate punishment of offenders.

9. With this view of the subject the Court of Foujdaree Udalt resolve to set aside the rule contained in their proceedings, dated 9th May 1823, and to direct that, the provisions of Clause fourth, Section II, Regulation XV of 1803 be hereafter strictly observed.

2D JUNE, 1845.

C. O. No. 170.

In extension of the rule laid down in para. 2, Circular Order No. 161, the Foujdaree Udalt resolve to direct that, on all occasions when sentences may finally be pronounced on Prisoners received from the Magistracy or Police, or who may otherwise be brought before the established Courts, intimation of the result of the trial shall, within 24 hours of the sentence being declared to the Prisoners, be transmitted to the Magistracy by the Officer declaring it, in view to the adoption of measures in the Magisterial Department for giving the utmost possible publicity to sentences awarding punishment, at the place where the offence was committed for which the Prisoners may have been brought to trial, or at their usual place of habitation, as may appear expedient with reference to the circumstances of the case.

23D JUNE, 1845.

C. O. No. 171.

The attention of the Court of Foujdaree Udalt having been drawn to the omission in the usual monthly Criminal Reports, of the authority under which cases falling within the jurisdiction of Session Judges are committed for trial by those functionaries, it is resolved, in extension of the rule laid down in para. 2 of the Circular Order dated 16th November 1831, to require that, the provision of the law under which a commitment is ordered, may invariably be specified.

7TH JULY, 1845.

The Court of Foujdaree Udalt, having observed in several Calendars C. O. No. 172. and trials referred to them, that the futwals of the Law Officers of the Courts of Session are not sufficiently explicit, frequently declaring the prisoner convicted of the crime charged, without stating the specific crime of which he is convicted, it is resolved to direct the Session Judges, in future, to require their Law Officers to be careful, in the futwals delivered by them, to specify the particular facts, which they consider to be established against any prisoner or prisoners declared liable to punishment.

23D JULY, 1845.

The Court of Foujdaree Udalt, having lately had occasion to take into C. O. No. 173. consideration the instructions contained in the Court's Circular Order under date 7th July 1831, B, with reference to the provisions of Section LIV. Act VII of 1843, deem it proper to intimate, by a Circular Order, their opinion, that Magistrates now possess the same powers as the Criminal Judges in regard to the demand of security from parties against whom an offence may not be clearly established, and that they are justified in acting under Clause first, Section IV. Regulation II. of 1822, within the limit prescribed by Section LIV. Act VII of 1843.

7TH AUGUST, 1845.

Adverting to a communication addressed by the Sudr Udalt on the C. O. No. 174. 26th July 1845, to the Judicial Officers within their jurisdiction, regarding the operation of Act X of 1845, the Court, with reference to a recent Order of Government, resolve to circulate for the future guidance of the authorities in the Provinces, the following suggestion submitted to the Government by the Advocate General in regard to the course which should be pursued in the enforcement of the provisions of the above mentioned Act. "I take the liberty of suggesting that Circular Orders should be issued for indorsing the inability to serve the summons when a warrant issues thereupon for arrest within the jurisdiction of the Supreme Court."

11TH AUGUST, 1845.

The Foujdaree Udalt having received intimation to the following effect C. O. No. 175. "The Most Noble the Governor in Council has reason to believe, that some Heads of Police in the provinces, either from indifference or from other causes, seldom or ever forward a case to the Court for trial; and His Lordship does not perceive in the reports and statements now under consideration, that this circumstance is referred to. The total number of cases sent to the Court in each district is exhibited, but the number forwarded by each Police Officer is not shown; and to enable the controlling authorities to judge of the activity and efficiency of the Officers holding the responsible situation of Head of Police, it is desirable that these particulars should be supplied."—it is resolved to direct that the

Magistrates shall henceforward furnish with their half yearly reports to the Session Courts, a statement showing the number of cases forwarded to the Criminal Court by each Head of Police and the manner in which they were disposed of.

18TH SEPTEMBER, 1845.

- C. O. No. 176. Adverting to recent instances in the Provinces, of the murder for the sake of their ornaments, of Children who have been permitted to leave their homes alone, or unprotected;—the Foujdaree Udalut, under the impression that the arrangement may preserve the lives of many who might otherwise suffer, resolve to require the Magistracy within their jurisdiction, to adopt measures for publishing by beat of tom tom, &c. at least once in every half year, the Proclamation contained in this Court's Circular Order No. 101.

30 NOVEMBER, 1845.

- C. O. No. 177. The Court of Foujdaree Udalut deem it necessary to notify, that the rule regarding the infliction of corporal punishment which is contained in their Circular Order dated 21st October 1830, is applicable to sentences passed by the Magistracy in the exercise of the additional powers delegated to them by Section LIV. Act VII of 1843.

4TH NOVEMBER, 1845.

- C. O. No. 178. The Foujdaree Udalut resolve to direct, in extension of their Circular Order No. 164, that henceforward the rules which are therein laid down in respect of reducing to writing the verdict of each Assessor, shall be applicable in all respects to the verdicts given by individuals who may be employed as *Jurors* in trials before a Session Court.

17TH DECEMBER, 1845.

- C. O. No. 179. 1. References having been made to the Foujdaree Udalut, in regard to the degree of control and supervision which Magistrates are competent to exercise over the proceedings of Subordinate Magistrates held under the provisions of Section LIV. Act VII of 1843, the Court resolve to circulate a transcript of paras 2 and 3 of their proceedings dated 21st November 1844.

"The Foujdaree Udalut do not agree in the view of the law taken by the Session Judge, being of opinion, on reference to the provisions of Regulation II of 1827, which are explanatory of the powers of a Sub Collector in his Magisterial capacity and which *a fortiori* are applicable to those of Assistant Magistrate, that it has been the intention of the Legislature to constitute in each District one paramount Magistrate."

"They think therefore, that at the present time, a Magistrate possesses all the power of control over the proceedings of his Assistants which are enumerated in Circular Order dated 8th April 1830, but they also think that great discretion should be observed in the exercise of that power."

2. They also resolve to circulate their opinion, that it is the duty of Magistrates, previous to submitting the Monthly Report of Cases decided by their Subordinates under Section LIV. Act VII of 1843, to require the amendment of the report of sentences passed, whenever they may be considered by the Magistrate contrary to law or objectionable, as not affording the information necessary for a proper and complete understanding of the grounds on which the cases have been disposed of.

9TH APRIL, 1846.

As under existing rules, the record in Police proceedings generally exhibits only the *date* of the original charge or information preferred against an accused party, it has been represented to the Court of Foujdaree Udalut that judicial functionaries in the provinces are unable always to determine whether any unnecessary delay has taken place before the Police in their conduct of the preliminary enquiries.

The Court of Foujdaree Udalut accordingly resolve to direct that in future the several Officers of Police shall add to the records of cases transmitted to the Magistracy or to the Criminal Court, a statement of the *hour* on which the charge or information was preferred to them.

30TH APRIL, 1846.

1. Adverting to references made to the Court of Foujdaree Udalut for information whether it is competent to a Committing Officer, as was formerly the case, to call upon a Prisoner ordered for commitment, to specify the names and residence of the parties whom he may wish to cite as witnesses for his defence before the Session Court, the Foujdaree Udalut resolve by a Circular Order to notify their present opinion, that nothing contained in Act VII of 1843 can be held to prohibit a question to a committed Prisoner calculated to elicit information of the above mentioned nature, which, when followed up (as it should be) by the issue of a Summons, is calculated to expedite a decision of the case, and in such respect to further the object for which the Act was mainly passed, though it should not be permitted to bind the Prisoner to the adoption of any particular line of defence, or to preclude his naming other witnesses when on his trial, should he wish to do so, on points relevant to the defence.

2. The Court of Foujdaree Udalut also resolve to circulate their reply to a reference from a Subordinate Judge as to whether, adverting to Circular Order No. 159, a Subordinate Judge in committable cases is precluded from examining a Prisoner.

"The Judges of the Foujdaree Udalut think that neither the Regulations, nor the Circular Orders of the Court, ever intended that the Criminal Judge should be debarred that communication with a Prisoner which is essential to his obtaining justice, and making his defence before the authority who decides the case; but they observe that the committing authority has no right to take the defence of a Prisoner, although it is his duty to see that nothing takes place before the Criminal Court capable of obstructing his defence."

6th MAY, 1846.

C. O. No. 182.

1. The Court of Foujdaree Udalut, having observed that a case laid before a Session Judge was stated in the Calendar of the Subordinate Court, to have been committed to the Session Judge for trial, pursuant to orders from that functionary, called for a copy thereof, which being submitted, it was found that the Session Judge had directed the Subordinate Judge to adopt measures for the commitment of certain witnesses to stand their trial before the Session Court on charges of perjury, which would be prepared and forwarded to the Subordinate Court; and also that in view to establish those charges against the witnesses in question it was ordered, that the evidence detailed in a Memoir from the Session Judge should be taken by the Subordinate Judge.

2. With this information before them, the Court of Foujdaree Udalut issued to the Session Judge the following instructions, which they resolve to circulate for the information and guidance of the Judicial Officers within their jurisdiction.

"It is inferred that the instructions of the Session Judge were issued in conformity with a practice prevailing before the new judicial system was introduced and under which it was deemed incumbent on a Criminal Judge to commit for trial on a charge of perjury, any prisoner regarding whom the order of commitment, emanating from a superior Court, was distinct and imperative; whereas a discretion was allowed to the committing authority when the perjury had occurred before an inferior tribunal."

"The Court of Foujdaree Udalut, as now constituted, are however of opinion that the practice cannot be upheld and they recently ruled that no legal commitment had been made in a case wherein the enquiry of the Subordinate Court had been fettered by the instructions of the Session Judge, the Subordinate Judge being of opinion that he had no alternative but to conform to the requisition addressed to him by the superior functionary."

"The present Court of Foujdaree Udalut buttress the provisions of Section VI. Regulation VI of 1811, to require, that in the Subordinate Court, in cases of perjury, the same regular trial shall take place as in trials for other offences and that the powers of commitment or otherwise, which are vested in the Subordinate Judge or Principal Sub Judge, shall be wholly uncontrolled by the orders of the authority before whom the perjury shall have occurred."

6th January 1847.

1. The Court of Foujdaree Udalut have resolved to revoke their Circular Order of the 27th April 1835, No. 42, and direct that the Reports of the Subordinate Officers upon the escape of Prisoners from their Jails or Guards, be, in future submitted to the Session Judges, and not, as at present, transmitted direct to the Foujdaree Udalut.

2. The Session Judges on receiving these Reports, will issue such instructions as they may deem requisite: and will forward a copy of the Report and of their opinion or orders thereon to the Court of Foujdaree Udalut.

Foujdaree
Udalut.
C. O.
No. 183.

177
6th January 1847.

The Court of Foujdaree Udalut have resolved to revoke their Circular Orders of the 21st October 1830 and 28th September 1836, which required the Courts of Circuit (Session Courts) and the Subordinate Criminal Courts to suspend the execution of their sentences of corporal punishment until the orders of the Foujdaree Udalut on the Calendars and Monthly Criminal Reports shall have been received—and direct that in future all such sentences shall be carried into effect, in conformity with the provisions of the General Regulations, at such time as the Court by whom the sentence in each case is passed, shall think proper to determine.

*Foujdaree
Udalut.*
C. O.
No. 184.

18th January 1847.

1. The Court of Foujdaree Udalt, upon a mature and deliberate consideration of the Circular Order No. 40, dated 18th April 1835; which required the Monthly Returns of the several Criminal Tribunals to be submitted direct to the Foujdaree Udalt, are convinced that the system established by that Order is opposed to the provisions of Section XXIII, Regulation X of 1816, by which the duty of reviewing the Proceedings of the Lower Courts in Criminal cases was imposed upon the Judges of Circuit whose places are now filled under Act VII of 1843, by the Judges of Session: while at the same time its operation is found to be productive of serious inconveniences and to have a strong tendency to defeat one important object contemplated in the establishment of the Session Courts—namely—the power of speedily and almost immediately correcting whatever of error or injustice might be discerned in the Proceedings of the Inferior Criminal Tribunals.

*Foujdaree
Udalt.
C. O.
No. 185.*

2. The Court of Foujdaree Udalt have therefore resolved to revoke the Circular Order No. 40, and to promulgate the following Rules for the guidance of the Courts of Session: the Subordinate Criminal Courts and the Magistrates, in respect of the submission and examination of the Monthly Criminal Reports.

*Circular Order, No. 40,
cancelled.*

3. The Statement No. V, in the Form now submitted, will henceforth be dispensed with: and in stead thereof, the Court of Foujdaree Udalt with the sanction of Government and under the provisions of Section III, Regulation IX of 1828, direct that a Report in the annexed Form to be marked A, be furnished to the Session Judges by the Criminal Courts and the Magistrates (when acting under the provisions of Section LIV, Act VII of 1843) within their respective jurisdictions—of every case disposed of by them.

Report No. V, cancelled: and Report in a new Form of each case to be furnished to Session Judges by the Subordinate Criminal Courts and Magistrates:—

4. This Report is invariably to be furnished within forty-eight hours after the sentence in each case has been passed: and it will be the especial duty of the Judges of Session to require a full explanation of every instance in which the time now specified, has been exceeded.

Report to be furnished within 48 hours after each sentence is passed.

5. The Session Judges will immediately proceed to review these Reports with reference to the Rules in force and to the provisions of the General Regulations: and will issue such orders and record such observations thereon as they may deem proper and necessary for the guidance of the Subordinate Tribunals: but the Session Judges are required to submit to the Court of Foujdaree Udalt copies only of those cases in the Reports which may have elicited their remarks or orders, with copies also of such remarks and orders.

Session Judges to review the Reports immediately—and to pass orders—and send up to the Foujdaree Udalt copies of such cases as may have elicited remarks—and copies of their orders.

Report No. V. of Appendix to Regulation X. of 1836, revised : to be submitted at the close of each month to the Session Judges and by them to the Foujdaree Udaltut with the other Reports.

Criminal Courts to furnish all other Monthly Statements to the Session Judges who will lay them all, with their remarks, before the Foujdaree Udaltut.

No. VI Report of Casualties and of Prisoners released.

Report of Prisoners specially secured at night.

Convict labor report of the Jail.

Estimated value of the product of the labor of Prisoners.

Statement of Extra Peons
Statement of Batta paid to Prosecutors & witnesses
Statement showing the instances in which the powers of punishment created by Regulation X of 1832 have been exercised.

All the Reports &c. to be dispatched from the Session Courts to the Foujdaree Udaltut on the 15th of each month.

6. In order, however, that the Foujdaree Udaltut may have the means of exercising a general superintendence over the proceedings of the Lower Criminal Courts—the Court, with the sanction of Government, have resolved to revive the Report No. V. of the Appendix to Regulation X of 1816, in its original Form (as annexed to this Order) to be marked B, which will embrace all cases tried and the sentences passed in each by those Courts during each month : and this Report also, the Subordinate Courts will, immediately after the close of each month, lay before the Session Judges.

7. The Subordinate Criminal Courts will also furnish to the Judges of Session, all the other Monthly Statements (as noted in the margin) now forwarded direct to the Foujdaree Udaltut : and the Session Judges will, on those Statements also, pass such orders as they may deem requisite, forwarding copies of their orders to the Foujdaree Udaltut.

8. The Session Judges will be careful to dispatch the several Reports and Statements above mentioned, from their respective Courts, to this Court, on the 15th day of the month succeeding that for which they are furnished : and the Court of Foujdaree Udaltut deem it proper to intimate to the Session Judges, the Subordinate Criminal Judges and the Magistrates, that the Court will consider it their duty to insist upon and enforce a rigid adherence to the Rules laid down in this Order regarding the periods within which the different Reports are to be submitted by those Officers respectively.

FORM A.

REPORT of Persons apprehended in Zillah _____ and delivered to the _____ Judge in the month of _____.

No. of the case	Names of the Prisoners.	Abstract of the crime or charge.	Date of			Reasons for punishment, or release ; or date of commitment.	Explanation of delay and remarks, &c.
			Apprehension.	Leaving the lock.	Arrival.		

FORM B.

REPORT of Persons apprehended in the Zillah of _____ and delivered to the _____ Criminal Judge in the month of _____ 18 _____.

No.	Name.	Abstract of the crime or charge.	Date of			Punished and in what manner.	Released or if allowed a fine.	Committed and the date of commitment.
			Apprehension.	Leaving the lock.	Arrival.			
1	Pootty Unkadoo	House breaking & Theft. In having during the night of the 25th Decr. 1846 broken the lock of the door of the Prosecutor's house—entered the house, and stolen therefrom property valued at Rs. 75.	December 28th 1846	December 29th 1846	December 31st 1846	Two years Imprisonment with hard labour in Irons, under Clause sixth Section II Regulation VI of 1822		

Abstract.

Punished

Committed

Total.. ..

235
18th January 1847.

1. The Court of Foujdaree Udalut have resolved to revoke the Circular Order No. 182, dated 6th May 1846, relative to the commitment of persons for trial for Perjury, pursuant to instructions from a Session Court. *Foujdaree Udalut.*
C. O. No. 186.

2. The Courts in the Provinces will revert to the practice which obtained prior to the promulgation of that Order and will be guided by the principles indicated in the Circular Order of the 12th February 1834.

1st June 1847.

1. The Circular Order of the Foujdaree Udalut of the 11th September 1840, No. 124, directs that "in all cases of assault or wounding, whenever the fracture of a limb may be the result of such violence, the fact of so serious an injury having been inflicted, be considered a circumstance requiring the commitment of the accused to be tried before the Court of Circuit."

2 Experience shows that the subordinate Judicial Officers in the Provinces have considered themselves bound by this order to commit for trial before the (Circuit or) Session Courts, all cases whatever of assault in which a limb or joint has been fractured, without reference to the discriminating circumstances of each case—and thus the time of the superior tribunals has been occupied in the investigation of charges which might, with perfect propriety, have been disposed of by the lower Courts.

3. The Court of Foujdaree Udalut resolve, therefore, to revoke the said Order—and direct that, in future, such cases be either disposed of by the lower tribunals themselves or committed for trial before the Court of Session, upon a consideration of all the circumstances either of aggravation or extenuation which may characterize each case, and in exercise of the discretion vested in the Provincial Officers by the provisions of Section XXXII, Regulation IX, and Section VII, Regulation X of 1816.

*Foujdaree
Udalut.
C. O.
No. 187.*

6th July 1847.

1. With the view of diminishing the difficulties which are experienced by parties desirous of appealing in criminal matters to the Foujdaree Udalut, the Court direct that the Session Judges receive Petitions of Appeal from their own sentences and orders, and transmit the same immediately, to the Register of the Foujdaree Udalut.

2. The Session Judges will forward such Petitions without a separate letter. An endorsement is invariably to be made on each Petition, containing the following particulars: The date on which it was presented to the Session Judge: the date on which it is forwarded to the Foujdaree Udalut: it's number, which will be according to the order in time of it's presentation: the number of the case on the Calendar to which it refers: and the year in which the trial was held: and beneath, the signature of the Session Judge.

3. It is to be understood that parties who may prefer to present their Petitions to the Foujdaree Udalut in person or through an accredited Agent, are at liberty to do so.

4. The Session Judges will cause a translation of this order in the languages of their respective Districts to be affixed to the walls of their Court Houses, in a conspicuous place, for the information of all whom it may concern.

5. The orders which the Foujdaree Udalut may pass upon the Petitions transmitted to them pursuant to this order, will be communicated to the Session Judges for the information of the Petitioners.

Foujdaree
Udalut.
C. O.
No. 188.

Petition.
No.
Presented
Dispatched
Case No.
of 184
Signature of the Judge.

23d December 1847.

1. The attention of the Court of Foujdaree Udalt has been attracted to that construction of the existing Regulations, under which it has been held that theft committed by a servant, however trifling the value of the property stolen may be, and however devoid of circumstances of aggravation the particular act; cannot be punished by the Magistracy, but must necessarily be brought under the cognizance of the Criminal Courts.

2. The Foujdaree Udalt, as at present composed, hold this construction to be erroneous, for the following reasons.

3. The Preamble of Regulation VI of 1822 clearly shews why that Regulation for extending the powers of the Criminal Judges in certain cases was enacted. Before that law was passed, cases of theft attended with aggravating circumstances were obliged to be committed for trial before the Court of Circuit, as the Criminal Judges could only punish such offences with six months imprisonment and one hundred and fifty lashes. Regulation VI of 1822 supplied this defect, and the powers of punishment vested in the Criminal Judges were by that Regulation extended to imprisonment with hard labour for a period not exceeding two years and to corporal punishment not exceeding one hundred and fifty lashes of a cat of nine tails.

4. Clause fourth, Section III Regulation VI of 1822, declared that among other circumstances of aggravation which should render the convicted parties liable to the enhanced punishment abovementioned, one was, "if the prisoner be a servant of the person from whom the property may have been stolen, or a servant employed in the house in which the theft may have been committed"—and hence it was inferred that in the case of persons standing in that predicament, Criminal Judges had no discretion, but must needs sentence them, on conviction, to the full punishment indicated in the provision above cited: but this misconception was corrected by Section III, Regulation VI of 1827 which, "in explanation of Clause fourth, Section III, Regulation VI of 1822," declared "that nothing contained therein shall be construed to require that persons convicted before the Criminal Judge of any of the offences specified in that Clause, shall in all cases be sentenced to a severer punishment than he is empowered to inflict under Section VII, Regulation X of 1816"..... "but in all cases of conviction before the Criminal Judge of any of the offences specified in that Clause, he shall be competent to use his discretion in sentencing the offender to any punishment which he may think proper, provided that the punishment shall, in no case, exceed imprisonment with hard labour for the term of two years, and one hundred and fifty lashes of a cat of nine tails."

Foujdaree
Udalt.
C. O.
No. 189.

5. Thus—with reference to this declaratory enactment, it was no longer compulsory upon the Criminal Judges to sentence to the full extent of the punishment indicated in Regulation VI of 1822; but cases of theft, notwithstanding they were perpetrated by the particular class of persons mentioned in Clause fourth, Section III, Regulation VI of 1822, were declared to be, as they now are, punishable at the discretion of the Criminal Judge either under Regulation X of 1816 or Regulation VI of 1822.

6. By Section LIV of Act VII of 1843, Magistrates are authorized to exercise the powers vested in Criminal Judges by Section VII, Regulation X of 1816, concurrently with the Subordinate Criminal Courts; and, therefore, on a charge of theft, being brought before them, even though the accused belong to the class of persons above mentioned, if they think that the ends of justice will be met by a sentence of six months imprisonment and one hundred and fifty lashes, they can act under the above law; and it is only in cases in which they may deem that punishment insufficient, that they must commit the offender for trial before the Criminal Court.

7. The Court of Foujdaree Udalut resolve to communicate this construction of the law to the Magistrates and Criminal Courts in this Presidency for their information and guidance.

28th February 1848.

1. The attention of the Foujdaree Udalut has been attracted to the " Interpretation" of Section LIV, Act VII of 1843, published by the late Judges in the Fort St. George Gazette of the 9th December 1845, No. 1629 (p. 1075).

2. By that " Interpretation" it was declared that a Magistrate, under the additional powers vested in him by Section LIV, Act VII of 1843, could not punish charges of " Cattle-stealing" to the extent laid down in Section VII, Regulation X of 1816.

3. From this view of the Law, the Court, as at present composed, see reason to dissent.

4. Prior to the passing of Regulation VI of 1822, the Criminal Courts were empowered to, and constantly did, pass sentence under Section VII, Regulation X of 1816, in cases of Cattle-stealing for which the penalties prescribed in Section XXXIII, Regulation IX of 1816 were not deemed sufficient.

5. Clause first, Section LIV, Act VII of 1843, enacts " that the Magistrates be authorized to exercise the powers vested in Criminal Judges by Section VII, Regulation X of 1816, concurrently with the Subordinate Criminal Courts."

6. The terms of this provision are unqualified; there is nothing whatever to warrant the supposition that the Legislature intended to exclude cases of Cattle stealing from its operation; nor can any valid reason be assigned for such exclusion.

7. The Court resolve, therefore, to cancel the Interpretation above mentioned, and to declare by a Circular Order that, under Section LIV, Act VII of 1843, Magistrates are empowered in cases of Cattle-stealing for which they may deem the penalties authorized by Section XXXIII, Regulation IX of 1816, insufficient, to pass sentence to the extent authorized in other cases of Theft by Section VII, Regulation X of 1816.

Foujdaree
Udalut.
C. O.
No. 190.

APPENDIX.

A.

To

The 4 Provincial Courts of Circuit.

GENTLEMEN,

On receiving, lately, the usual report of the arrival of certain prisoners at _____, under sentence of transportation, the Judges observed that, in consequence either of a misconception, or non-observance, of the Circular Order of the 22d July 1814, a prisoner had been obliged immediately to enter the hospital.

They deem it proper, therefore, to request that you will call the attention of the several Criminal Judges, and Magistrates, to the Circular Order above alluded to. It will be the duty of the latter Officers, in supplying the escort for Convicts on such occasions, to use due means to secure these orders being fully explained to the Peons in whose charge the Convicts may be successively placed, and any infraction of the rules, therein laid down for their guidance, should not be passed over unnoticed.

The Criminal Judges will, of course, acquaint the Magistrates with any instance of such infraction that may come under their observation.

B.

Extract from the Proceedings of the Foujdaree Udalt under date the 27th May 1822.

Para. 6. In the 5th paragraph of the report, dated 30th ultimo, the 1st Judge solicits instructions regarding the manner in which the proceedings in a case of murder should be conducted in a Military Cantonment with reference to the provisions of Regulation VI of 1821; and also whether it is competent to a Criminal Judge to receive or take cognizance of any Criminal charge excepting through the channel prescribed in Section VIII. Regulation X of 1816.

7. In the 16th and five following paragraphs of the report, the 1st Judge notices the irregularity, undue arrogation of authority, and cruelty, exhibited in the proceedings of two persons styled in the Report, the "Military Cut-wals of Raneepettah," and urges "the necessity of interference on the part of the Government with a view to the establishment of more regularity in the Police duties performed in the Military Bazzars."

8. From the statement given in this part of the report and in extracts of the proceedings of the Court of Circuit, dated 25th and 29th ultimo, appended thereto, it appears that the police functions at the station of Arcot have been exercised by two persons, called 1st and 2d Cutwal, appointed by the Commanding Officer, and assisted by a part of the Magistrates establishment of peons, that these persons have exercised the authority of apprehending and examining persons suspected of offences and issuing warrants for the search of dwelling houses, not only within the immediate limits of that Cantonment, but also at Wallajah Pettah; and that in their preliminary

investigation of certain cases, tried by the Court of Quarterly Sessions, there was evidence of a resort to acts of torture for the purpose of obtaining a confession.

9. The Magistrate in his return to the precept of the 1st Judge, dated 25th ultimo, in which he was requested to state whether any arrangement had been made for the transfer of the Police authority at Ranepettah to the Officer Commanding that Cantonment, and whether he possessed any plan to shew the extent of the Military jurisdiction, represented that the transfer had taken place "conformably with the provisions of Regulation VI of 1821," that the Magistrate "considered that the Officer Commanding had received instructions from Government for assuming the Police," and lost no time in making the required transfer; that "the servants of the Magistrate formerly carrying on the Police duties at the station were apprized of the transfer of authority which had taken place, but were at the same time left at the disposal of the Commanding Officer;" "that the Cutwal had been exchanged but that the Peons continued to perform the Police duties."

10. The Magistrate added, that "no direct sanction as regards the transferred limits, as laid down in the plan, had been received from Government;" but that such might possibly be implied to have received their assent from their having directed, that certain arrack licenses granted previously to the promulgation of Regulation VI of 1821 should continue in force until the conclusion of the present fusly.

11. Clause first Section III Regulation VI of 1821, declares, that "the Police authority and maintenance of the peace within the limits of Garrisons, Cantonments and stations, (including the Military Bazzars attached thereto) plans of which shall with that view have been first sanctioned and confirmed by Government, and deposited at the Cutcherry of the Magistrate of the District in which they are respectively situated, may by express authority from the Governor in Council, be vested in the Officers Commanding at such places, who will in such case take the necessary measures, by means of the troops under their command, for preventing the commission of crimes within the limits of the said Cantonments, and Military Bazzars, and for the discovery and apprehension of persons guilty of the same."

12. With reference to the provisions of the above Section it appears to the Court of Foujdaree Udalut to be clear, that the transfer of the authority by the Magistrate to the Commanding Officer at Arcot before the sanction of Government to the plan of the limits of the Cantonment, or any express authority from the Governor in Council for the arrangement, had been communicated to him, was altogether irregular and indeed invalid; the Court not being aware, whether or not the requisite sanction may have been subsequently given, are not prepared to recommend that the Magistrate should temporarily resume the authority heretofore exercised by him within the limits of the Cantonment, but the circumstances brought to their notice on the present occasion, appear to the Court to evince the necessity of some orders from Government to establish a regular course of proceeding in cases of offences, committed within the limits of Military Cantonments or Bazzars, but not cognizable by the Military authorities under the provisions of Regulation VI of 1821.

13. By the provisions of Sections III and VII of the foregoing Regulation, it appears to the Court of Foujdaree Udalut to be intended, that

persons apprehended on charges of a heinous nature within the limits of Military Cantonments or Bazzars, where the Police functions may be vested in the Military authorities, should be delivered over to the charge of the Civil power, "in order to their being dealt with according to the Regulations."

14. In cases of the above description the Court of Foujdaree Udalut are of opinion, that the proceedings of the Military authorities should be limited to the seizure of the supposed offender, who together with such persons, as may be stated to have any knowledge of the crime alleged against him, should with all practicable expedition be brought before an officer vested with the authority of a Head of District Police.

15. With this view the Court of Foujdaree Udalut would suggest, that the Magistrates should be directed to station an Aumeen of Police, vested under the provision of Section XL. Regulation XI of 1816, and Section II. Regulation IV of 1821, with the Police powers of a Tahseeldar, at a convenient spot contiguous to the Cantonment or Bazar, who should be specially charged with the duty of holding the preliminary proceedings in such cases in the mode prescribed by the Regulations.

16. When the evidence of any persons resident within the limits of the Military station or bazar may be required by the Criminal Judge, he should apply to the Magistrate to take the necessary measures for procuring their attendance.

17. Sanction is not given by Regulation VI of 1821, for the employment of cutwals and peons of Police under the Military authorities, by Section III of the Regulation, the discovery and apprehension of criminals is required to be effected by means of the troops under the command of the officer vested with the Police authority; and Sections VII and XXI appear to contemplate only the intermediate agency of an European Military officer. The Court of Foujdaree Udalut are, therefore, of opinion that it was not competent to the Officer Commanding at Arcot to appoint, or employ Police cutwals, while the manner in which these persons appear to have acted shews an utter absence of the necessary controul over the proceedings of officers of that description.

18. The Court of Foujdaree Udalut concur in opinion with the 1st Judge, that Section VIII. Regulation X of 1816, precludes the Criminal Judges from taking cognizance of Criminal charges, referred to them directly by the Military authorities; the arrangement suggested by the Court in paragraph 15 of these proceedings would obviate any infringement of the provisions of the Regulations on this subject.

Judicial Department.

No.

To

The Register to the Court of Foujdaree Udalut.

SIR,

Para. 1st. I am directed to acknowledge the receipt of your letter of the 27th of May (15), with the Extract from the Proceedings of the Foujdaree Udalut which accompanied it.

2. The limits of the Cantonments and Military Bazzars, to which the provisions of Regulation VI of 1821 are applicable, having been fixed since the occurrence of the circumstances to which the Foujdaree Udalut have

APPENDIX.

adverted, the occasion for some of the observations offered in their proceedings has already been removed. The Governor in Council conceives that the several Magistrates will, in communication with the Commanding Officers have adopted such arrangements as may be calculated to prove convenient, for taking charge of prisoners apprehended within Military limits for offences cognizable by the Civil Courts. As the measures taken in relation to their apprehension within those limits will form no part of the legal proceedings against them, it is not necessary to frame particular rules for those measures, and any irregularity in that respect seems immaterial. It is no part of the duty of those by whom such prisoners may be apprehended within the limits of Military Cantonments to receive their confessions, and any cruelty or ill usage towards them, either in taking confessions or for any other purpose, must be punishable as the same offences would be if committed by other persons.

I have the honor to be, &c.

(Signed) D. HILL.
Secy. to Govt.

FORT ST. GEORGE, 6th August 1822.

C.

Extract from the Proceedings of the Foujdaree Udalt under date 30th September 1840.

Vide C. O. dated
27th Sept. 1824.

Read letter dated the 18th instant, from the 2d Judge on Circuit in the Northern Division stating, that as under the C. O. No. 123, the preparation of the English Record in referrible trials will not be uniform as before, he is desirous of being informed how the pages are to be numbered.

The Court of Foujdaree Udalt resolve to direct that the pages of the fair copy in red ink of the Trial before the Court of Circuit itself, be numbered and paged consecutively and separately from the rough translations of the depositions before the Criminal Court and the Magistracy or Native Officers of Police, which must also be so paged distinctly.

Ordered that Extract from these proceedings be forwarded to the 4 Provincial Courts of Circuit to be by them communicated to the Judges at present on Circuit in their respective Divisions.
To the several Session Judges.

5th Feb. 1844.

The Court of Foujdaree Udalt deem it desirable the instructions contained in their proceedings of the 30th September 1840, and circulated to the late Provincial Courts of Circuit, should be generally observed by Session Judges; accordingly I am desired to intimate to you that in all cases of trials referred to this Court it is necessary that the pages of the fair copy in red ink of the Trial before the Session Court itself, be numbered and paged consecutively and separately from the rough translations of the depositions before the Subordinate or Principal Sudr Ameen's Court and the Magistracy or Native Officers of Police, which must also, in a similar manner, be distinctly paged.

APPENDIX.

D.

Extract from the Proceedings of the Foujdaree Udalt under date the 22d March 1832.

The Court of Foujdaree Udalt having remarked that due observance has not, in all instances, been paid to the form of indictment for Perjury the use of which they have enjoined in cases of prosecution under Regulation III of 1826, deem it proper to recall the attention of the 4 Provincial Courts of Circuit to their Circular Order of the 23d November 1826 and to require them to notify to the several Criminal Judges in their respective Divisions, that the strictest adherence to the form of indictment prescribed by those orders, is expected.

Vide C.O. dated
23d Nov. 1846.

E.

To

The Officers in charge of Jails.

GENTLEMEN,

The Court of Foujdaree Udalt having reason to conclude, from facts that have come to their notice, that the Circular Order of 10th November 1827, regarding the responsibility of Guards appointed over Convicts transferred from one Zillah to another, is not observed with that uniformity they consider desirable, have directed me to call your attention to the subject, and to state that the entire responsibility is vested in the Magistrate and not in the Judge, and that, in future, on the occasion of the drafting of Prisoners from one Jail to another, the Guard be informed that the responsibility of the safe custody of the Prisoners is on the party furnished by the Magistrate, and that it is the duty of the party furnished by the Court in aid of the Magistrate's Guard, to act subordinately to, the superior of the Magistrate's party.

19th July 1843.
Vide C.O. dated
10th Nov. 1827.

F.

Extract from the Minutes of Consultation under date the 20th April 1830.

Read the following letter from the Secretary to the Military Board.

Vide C.O. dated
20th July 1829.

States the inconvenience experienced by the present mode of providing Cat o'nine tails for the Civil branch of the service; forwards copy of a letter from the Principal Commissary of Ordnance in which it is stated that the Cats are sometimes sent for repair when very little is required, suggests that the Civil Officers of Government under whose orders punishment is inflicted, may receive instructions to have the Cats particularly examined before dispatching them for repair, and recommends that they be sent for repair to the Ordnance Depot nearest to the station to which they belong.

Ordered that the following Circular letter be addressed to the several Judges and Magistrates in the Provinces.

CIRCULAR.

Considerable public inconvenience, attended with great expense, having been experienced in consequence of the frequent transmission to the Presidency of Cats of nine tails for repair, when very little is required; the Right Honorable the Governor in Council has been pleased to resolve that

APPENDIX.

the Civil Officers of Government, authorized by the Regulations to inflict stripes, shall be required to examine particularly the instruments of punishment before dispatching them for repair, and be authorized in future to forward them for that purpose to the nearest Ordnance Depot instead of the Arsenal of Fort St. George as heretofore.

(A true Extract.)

(Signed) H. CHAMIER,
Secretary to Government.

G.

No. 793.

To

H. CHAMIER, ESQ.

Secretary to the Government at
Fort St. George.

SIR,

Vide C.O. dated
20th May 1830.

I am directed by the Right Honorable the Governor General in Council to acknowledge the receipt of your letter dated the 16th Ultimo forwarding copy of a letter from the Register to the Court of Foujdaree Udalut with copies of its accompaniments, and conveying the request of the Honorable the Governor in Council that the Government may be furnished with information as to the construction put upon the act of the 51st of Geo. 3d Cap. 23d respecting the slave trade in Bengal.

2. In reply I am directed to request that you will lay before the Honorable the Governor in Council the accompanying copy of the Resolutions of this Government dated the 9th of September 1817, from which it will appear that in the judgment of the Supreme Government at that time the statute law applies only to the importation or removal of slaves by sea.

3. Nothing has since occurred to induce the Government to alter that opinion.

4. I am further directed to observe, with reference to Para. 7 of the letter from the Register of the Foujdaree Udalut, that Regulation X 1811 of the Code of this Presidency is still in force in respect to the importation of slaves by land, although the provisions of the Regulation, so far as they regard the importation of slaves by sea, have been rendered nugatory by the statute since enacted by the British Government.

I have the honor to be,

Sir,

Your obedient humble servant,

(Signed) H. SHAKESPEAR,
Secretary to Govt.

FORT WILLIAM, }
The 13th April, 1830. }

(COPY)

Judicial Dept. Resolutions, the 9th Sept. 1817.

The Vice President in Council having taken into his deliberate consideration the foregoing documents, records the following remarks and resolutions.

The measures adopted by the Supreme Government with a view to give effect to the statute of the 51st George III. Cap. 23 are detailed in the proceedings of Government of the 26th September and 19th of December 1812,

APPENDIX.

It appears to be convenient however to advert generally to those measures in this place.

With reference to the important objects and highly penal provisions of the statute in question, Government judged it proper to direct that a copy of it should be published for general information in the Calcutta Gazette and that copies of it should be officially forwarded to the different independent and Subordinate Governments in this Country. On the same principle copies of the statute were forwarded to the Magistrates stationed at the sea ports immediately dependant on this Presidency in order that in their capacity of Justices of Peace they might aid in enforcing the provisions of the statute. It was not deemed necessary to forward copies of the acts to the other Magistrates, as the Governor General in Council did not consider its provisions to be applicable to the importation or removal of slaves by land.

The Governments at Fort St. George and Bombay, of Java, of Prince of Wales Island, of the Mauritius and of Ceylon, as well as the Residents at Malacca and Fort Marlborough were informed of the measures above adverted to, and of the construction which the Supreme Government had annexed to the provisions of the statute viz. that they could only be considered applicable to the importation of slaves by sea.

A Regulation had been already passed by the Governor General in Council for preventing the importation of slaves from foreign countries, to have effect within the Territories immediately subordinate to the Presidency of Fort William and the Rules contained in that Regulation having improved fully effectual in preventing the importation of slaves by land, similar provisions were at the suggestion of the Governor General in Council subsequently enacted for the same purpose within the Territories immediately subordinate to the Governments of Fort St. George and Bombay.

The foregoing general recapitulation sufficiently explains the measures hitherto adopted by the Supreme Government with reference to the provisions of the Act of the 51st George III, C. 23.

The first question adverted to in the documents now under consideration as stated in the 1st Paragraph of the letter from the Chief Secretary to Government at Bombay relates to the application of the Acts of Parliament for the abolition of the Slave "Trade to domestic slaves and the property of Individuals in them, such slavery being known and legalized under the Laws of both the Hindus and Moosulmans according to whose Codes the Courts are bound to administer Justice."

On this point, the Vice President in Council observes, that none of the provisions of the Acts of Parliament passed for the abolition of the Slave Trade in any manner affected or profess to affect the relation between Master and Slave wherever that relation may exist by Law whatever therefore was the Law according to the Mahomedan and Hindoo Codes, for those over whom they extend on the Acts of the 51st George III, Cap. 23 continued to be the Law still, more especially on those Codes have been distinctly recognized and ordered to be observed by Parliament at the same time it is not credible that any intention existed to abrogate those Codes without reference to the established Laws and usages of this Country, and without repealing the Acts of Parliament by which the observance of them is guaranteed to the natives.

The native subjects of the British Government residing in the territories

subordinate to the several Presidencies have in fact the same authority over their slaves and the same property in them that they would have had if the Act in question had never been passed, and the several Zillah and Provincial Courts are bound to receive and determine all questions of that nature which are respectively cognizable by them under the established regulations.

The other points adverted to in the documents now under consideration relate to the conduct which should be observed on the occasion of application being made by the subjects or Governments of neighbouring states with whom we are in amity for the restoration of slaves who have taken refuge within the Company's territories. On this point it may be remarked that the construction which has been uniformly given by the Supreme Government to the Act of the 51st George III, Cap. 23, viz. that it was only intended to apply to the importation or removal of slaves by sea would not involve any alteration in the course of proceedings hitherto adopted in similar cases.

A slave by entering the Company's territories does not become free nor can he who was Lawfully a slave emancipate himself by running away from one Country where slavery is Lawful to another where it is equally Lawful.

The property in the slave still continues in the Master and the Master has the same right to have it restored to him that any native subject of our territories could have supposing that right to be established in the mode prescribed by the local laws and Regulations.

The Vice President in Council observes, that some of the terms used in the Preamble of the 51st of George III, Cap. 23 are of a very comprehensive nature, such indeed as on the first view might lead to the inference that the bringing of slaves by land into the territories of the Honorable Company, or the removal of them by land from those territories were acts included within the penalties of the statute in question, and it may be convenient therefore in this place to state generally, the grounds on which Government were led to consider the provisions of the act (so far as they apply to the territories subject to the Government of the Hon'ble the East India Company) to extend merely to the importation or removal of slaves by sea.

The evil which specifically called for the interposition of the Legislature on the occasion of passing the Act of the 47 George III, Cap. 36, was the African slave trade and the chief object of the subsequent act of the 53 Geo. III, Cap. was avowedly the adoption of measures to prevent the daring violations of the former law or in the other words to render more effectual the provisions of that law.

This however is evidently not the exclusive object of the latter act, the legislature was probably aware that a traffic was carried on in slaves by importing them by sea from the Eastern Coast of Africa, from Madagascar and from the Eastern Islands into the Islands and territories in the East Indies, subject to his Majesty or to the Honorable the East India Company, and it may reasonably be supposed that in using the comprehensive terms employed in the latter act, the Legislature meant to provide for the effectual abolition of that traffic which was in fact of a nature and tendency scarcely less objectional than the trade which had been carried on between the Western Coast of Africa and the West India Islands.

Had the provisions of the Act been intended to apply to the importation

or removal of slaves by land in the Honorable Company's territories on the Continent of India, it cannot be supposed that the Legislature would have confined the operation of the 4th Section of that Act exclusively to the West Indies, that it would have subjected to the punishment of transportation whole nations amongst whom domestic slavery had immemorially existed under the sanction of Laws recognized by Parliament, and this without any reference to those established Laws and usages, and without repealing the Acts of Parliament by which the observance of them is guaranteed to the natives; that it would in short have subjected the Hindoo and Mahomedan Inhabitants of the British territories in the East Indies to the several punishment of transportation for acts which the 4th Section of the statute render legal in the West Indies.

But if there could exist any reasonable doubt with regard to the construction of the act which this Government entertains upon a general consideration of its provisions taken in connection with each other, and with all the former acts and relations referred to in it, it would be difficult to reconcile any other constructions of the act with the letter of the 6th Clause of the act.

That Clause prescribed the course to be pursued in bringing to trial offenders against the act.

The admiralty jurisdiction vested in His Majesty's Courts of Justice at the several Presidencies in India would enable those Courts to take cognizance of all offences relating to the importation or removal of slaves by sea contrary to the act, but offences against the act which may not be cognizable by the Court of Admiralty can only be tried in England in the mode pointed out by the 6th Clause of the 51st George III. Cap. XXIII.

If therefore this act be construed to extend to the removal or importation of slaves by land in the territories subject to the East India Company, every native carrying or removing a slave from one part of those territories to another is liable to be sent to England, to be tried for felony in the mode prescribed by certain Acts of Henry 8th and William the third for the suppression of Piracy.

It is unnecessary to enlarge further on the difficulties which must arise from any such construction of the act. The powers vested by Law in the Governments of the several Presidencies in India, will enable them to frame such legislative enactments as may from time to time be found necessary with a view to the correction of any abuses which may be found to prevail in the existing system of domestic slavery or to the augmentation of the penalties already prescribed by the Regulation for preventing the importation of slaves by land from foreign Countries and the state of such slaves in the territories immediately dependant on the several Presidencies.

(Signed) W. B. BAYLEY, Secretary to Government.

The 9th September 1817.

APPENDIX.

H.

JUDICIAL DEPARTMENT.

No. 135.

Extract from the Minutes of Consultation under date the 10th February 1841.

Read the following letter from the Register of the Foujdaree Udalut.

(Here enter 30th January 1841, No. 8.)

Vide C.O. dated
8th Dec. 1830.

The Right Honorable the Governor in Council concurs with the Court of Foujdaree Udalut in considering it of the utmost importance, especially in reference to the particular case brought to his notice, that the several Medical Officers attached to Civil stations should be supplied with the most approved means of testing and proving the existence of poisons and accordingly resolves to instruct the Medical Board to adopt measures for that purpose as far as may be practicable, and to report what they may have done for the information of Government.

(A true Extract.)

(Signed) Hy. CHAMIER,
Chief Secretary.

I.

To

The Four Provincial Courts of Circuit.

GENTLEMEN,

8th Dec. 1835.
Vide C.O. dated
19th Jan. 1831.

The Judges of the Court of Foujdaree Udalut considering it desirable that they should be periodically kept informed of the Casualties and the number of sick amongst the Prisoners transferred to the charge of the Magistracy and Officers in the Military Department, I am directed to request that instructions may be issued to the Magistrates and other Officers in charge of Convicts within your Division to furnish the requisite information by means of a Note to be appended to the Monthly Statements shewing the manner in which the Prisoners may have been employed during the period for which such Statement is prepared.

INDEX

TO

THE CIRCULAR ORDERS

OF THE

COURT OF FOUJDAREE UDALUT.

	PAGE		PAGE
A		ACQUITTAL	
ABSTRACT		On a trial of forgery, does not give validity to an alleged forged instrument, 23d March 1832.....	159
Of grounds of Commitment and Examination to be entered in the proper column of the Calendar, 17th April 1823.....	64	By the Magistrate, the reasons to be recorded and a copy of his orders granted to the party, 17th December 1834..	211-12
Of Criminal Report, No. 8, how to be framed, 7th March 1832.....	158	ACQUITTALS	
ABSTRACT STATEMENT		Numerous—by the Criminal Courts—Judges on Circuit, how to proceed in respect to, 5th November 1829.....	132
See Statement.		Numerous—by District Police in half-yearly criminal statements how to be noticed by the Provincial Courts, 17th June 1830.....	138
ABUSE OF AUTHORITY		ADJOURNMENT	
Charges of—against Native Police, not cognizable in the first instance, by the Criminal Court, but only by the Magistrate, 6th April 1820.....	29	Of the Civil Court does not affect the Criminal duties, 7th July 1831.....	150
By Police in Cantonments, how punishable, 10th March 1829.....	121	ADMIRALTY	
ACCESSARY		Jurisdiction of—by Supreme Court, 31st July 1834.....	204
Magistrate recommending the tender of a conditional pardon to a supposed—to satisfy the Foujdaree Udalut regarding certain particulars, 13th May 1824.....	81	ADVERTISEMENT	
The provisions of Section XX. Regulation VIII. of 1802, regarding the offer of pardon to be resorted to with great caution and sparingly, 13th May 1824.....	81	A General—to be published in every village—requiring all persons robbed to furnish a list of the stolen property to the nearest Police Officer—for circulation throughout the District, 28th October 1822....	59
ACCOMPLICES		AGE	
Case in which receivers of stolen property were considered as—14th October 1822.....	57	Of deponents in trials, 16th May 1831.....	147
ACCUSATION		See Evidence.	
False—See Complaints			

AGENTS
In Criminal Cases—their Vakalatnamahs.
See Vakalatnamahs.

ALIBI
Supported by perjury—Witnesses to be committed, if there is evidence to sustain the charge of Perjury, 12th July 1833..... 176

AMEEN
Of Police—Government prepared to authorise in Cavetnagur the appointment of—26th May 1834..... 195
—Opinion of Government as to the Salary of—Magistrate how to proceed when he considers the Peshcar of a Talook should be vested with the powers of
—Subject to the general control of Tahsildars as Head Police Officers—are to send up cases direct, 10th June 1834... 198-9
Vide Police.
—Sudr—See Sudr Ameen.

ANALYSIS
Of poisonous Drugs.
See Drugs.

APPREHENSION
Falsification of dates of—by the Police—denounced, 24th Jan. 1822, 28th Oct. 1823, 1st March 1824..... 48, 68, 79
Report respecting.
See Report, 15th August 1822.... 56
Numerous offenders escaping—sign of deficiency of vigilance and activity on the part of the Police and Magistracy, 30th May 1831..... 147
—Of Culprits, notice of the rewards which may be given for courageous defence, or for meritorious service in—7th June 1834..... 197
See Prisoner.
—Reward.

APPROVER
Caution to be observed in resorting to the provisions of Section XX. Regulation VIII. 1802, 13th May 1824..... 81
Form of offer of pardon to, 3d April 1828..... 111

ARCOT
—Accepting offer of pardon, to give his evidence on oath, 3d April 1828..... 111
Reference respecting—to be made direct to Foudaree Udalt by the committing Officer, 27th Feb. 1832..... 157 8
See Accessary.
See Pardon.
See Thugg.

ARRAIGNMENT
For Perjury, 31st Jan. 1814 and 31st Jan. 1820..... 4, 26
See Trial.

ARREST
Process of—to be executed within the limits of the Supreme Court—Judge or Magistrate how to proceed, 14th October 1824..... 91

ARSON
In case of—The Court of Circuit competent to order the admission of Bail, 8th October 1821. 41

ASSESSOR
—After the close of each trial to give a verdict in respect of each prisoner, and to sign such verdict, C. O. No. 164..... 269

ASSISTANT MAGISTRATES
What extent of Powers may be delegated to them by Magistrates, 26th August 1818, 20th August 1821, 28th October 1823, 30th Jan. 1824, and 7th June 1834..... 21, 40, 69, 75, 195
When stationed in any subordinate Town, their authority to be exercised only within the limits of such Town, 26th August 1818..... 21

ATTESTATION
Of the Records of referrible trials, 27th December 1815... 11
—Of Papers by Magistrate, 29th January 1818..... 19

ATTESTATION OF CONFESSIONS

By whom to be made, 27th December 1815..... 11
Witnesses attesting Confessions of Prisoners before District Police, to be always "present" during the Confessions, 3d Dec. 1818, 29th April 1822, 23, 52
Attestation may be made by two or more persons not being Police Peons, but in any other capacity belonging to the Police Establishment, when the presence of persons wholly unconnected with the Police, may not be procurable, 29th April 1822..... 52
In case of attestation by a Peon, his capacity of service to be specified at the Head of the Examination before the Court of Circuit, 29th April 1822.... 53
Form of Attesting Confessions before Magistrates, Criminal Courts and Police, 18th Nov. 1823..... 71
See Witnesses.
See Peons.

AUTHORITIES

Subordinate—orders from Foudaree Udalt to be communicated to—are always to be conveyed to the Magistrates as well as the Judges, 21st February 1834..... 188

B

BAD CHARACTER

Persons of—Magistrates may not commit under Section III. Regulation II. of 1822 without personal investigation, 28th October 1823, 25th Feb. 1824..... 70, 77
Persons required by Magistrates to find security on account of—under Section III. Regulation II. of 1822—rules regarding such cases, 25th February 1824..... 70
See Vagrant.

BAIL

Court of Circuit competent to order the admission of—in case of Arson, 8th Oct. 1821.. 42

Persons committed for default of—not to be confined in Irons before Trial, 8th October 1821. 41
Bail-Bond how to be executed, when a prisoner may be unable to give on the spot the security required by the Criminal Judge, but may name Bailers, 14th March 1823... 63
Cases before Magistrate in which it may be taken—notice of the propriety of exercising his powers in. 4th Sept. 1824.. 86
See Security.
—Allowable in all cases of illegal homicide not involving the crime of murder, 3d July 1834..... 201

BANISHMENT

Copies of Warrants of the Court of Circuit for the Banishment of Convicts, to be sent by the Criminal Judge to the Foudaree Udalt for their orders, 6th January 1823..... 61
Transmission to Foudaree Udalt of Warrants for—to be discontinued, C. O. No. 160..... 268

BATTA

Criminal Courts authorized by Government to pay—to Prosecutors and Witnesses in cases of necessity, 23d Aug. 1824..... 85
—Rate of—to Native Servants on Circuit regulated, 27th April 1829..... 122
Rules regarding payment and disbursement of Batta, Circular Order, No. 35..... 215
Form of Batta statement to be submitted at the close of each Session, Circular Order, No. 35..... 246
When Batta is paid for a period exceeding four days, the Circuit Judge to give a special reason for the detention, Circular Order, No. 131..... 258
—Whenever granted for more than 4 days, special reason must be assigned by Circuit Judge, Circular Order, No. 131, 258

BLANK REPORTS

See Report.

BOND

Bail—14th March 1823..... 63

BRITISH SUBJECTS	
Native—charged with offences within or without the British Territories, 12th April 1817 ...	15
Extent of the powers of Magistrates as Justices of the Peace, in cases where both parties are European, C. O. No. 163.....	268
BURGLARY	
See House-breaking.	
C	
CALENDAR	
Delivered by Criminal Judge to Court of Circuit to contain copies of Proceedings of Magistrate or Police Officer, 30th July 1817.....	17
Petty Calendars of Magistrates to contain a statement of the amount of value of the Property stolen in cases of Petty Theft, 26th August 1818.....	21
Calendar of Court of Circuit to contain not only the Sentence declared in the Futwa of the Moohummedan Law Officer, but also the grounds of that sentence, 6th September 1819..	24
—To contain also the grounds of requisition of Security, 6th September 1819.....	24
—To contain particulars of the Offences, &c. &c., of "old Offenders," 6th Sept. 1821....	40
—Laid before Court of Circuit, by the Criminal Judge to specify from the Jurisdiction of what Magistrate, each prisoner was brought before him, 23d Jan. 1823.....	61
—To contain a statement of the grounds for sending back a committed case to the Criminal Court for its disposal, 20th February 1823.....	62
Attention called to the nature and extent of the information intended to be furnished in the Column of the Calendar headed "Abstract of Examination," 17th April 1823.....	64
Two Calendars to be laid by Magistrates before the Court of Circuit showing the disposal of Prisoners committed to Gaol under Section III. Regulation II. of 1822. Forms given, 25th February 1824....	77

PAGE	
When Prisoners punishable under Clause 3d, Section IV. are entered in the—under Clause 2d, Section IV. Regulation XV. of 1803, a full explanation demanded, 9th April 1825.	98
—Magistrates must show charges against Native Police, 20th July 1829.....	129
—Under Section XXIII. Regulation X. of 1816 and Section VI. Regulation VI. 1822 need not be prepared in English, 20th July 1829.....	129
Where crime proved differs from that charged, difference to be noted in— 5th Aug. 1829.....	130
—To contain provision of Law in support of the order or sentence in each case, 2d Sept. 1830.....	140
—To contain Abstracts of the examinations of Prosecutors, 25th May 1831.....	147
—Of Criminal Judge under Section XXIII. Regulation X. 1816 to contain the grounds of order or sentence on each case as well as the provision of the Law authorizing it—16th November 1831.....	153
Talook from which each case is brought to be entered in—17th January 1832.....	155
Indictment in cases of perjury to be entered in—6th February 1832.....	156
Precise extent of injury, proved on the trial to have been inflicted, is to be specified in—15th May 1832.....	161
A separate number required for each individual charged with perjury in—6th Aug. 1832....	164.5
In column of abstract of crimes in—the facts with which the prisoners are charged to be stated, 26th September 1832..	166
The Criminal Judge is to enter as a charge in—what he may consider a fair statement of the crime which will be probably substantiated, 10th April 1833.....	172.3
Translations of all cases committed are to be laid before the Court of Circuit with—13th May 1833.....	175
Case in—committed by the Judge before whom the Calendar is laid—how to be dealt with, 21st August 1833.....	178
—Amount of certain rewards and names of the parties—to be entered in—7th June 1834..	197

PAGE	
Whenever from the absence of Witnesses a case is left for trial at the ensuing Sessions the Judge to record in—what steps have been taken to procure attendance—Circular Order 62.....	223
—Forwarded to the Judge on Circuit need not be in the Native and English language, Circular Order 99.....	247
—To be accompanied with translations of Futwas in all cases not referrible to the Foujdaree Udalt, C. O. No. 148.....	264

CAT-OF-NINE TAILS

Officers how to be furnished with, 31st December 1828....	116
Magistrates and Judges to indent for through the Military Board direct, 20th July 1829..	128
Native Criminal Judges indent for—to be sent through the Criminal Courts, 17th October 1831.....	152
Vide Punishment Corporal.	

CANTONMENT

Military—police in—amenable to provisions of Regulation III. 1819, 10th March 1829.....	121
Summons within—how to be executed, C. O. No. 149.....	265

CASUALTIES

See Death.

CAVET-NUGGUR

Appointment authorised of Sub-Officers of Police in Zemindary of—26th May 1834.....	194
---	-----

CERTIFICATE

Of wounds or hurts.	
See Trial, 10th April 1833.....	178

CHARACTER

Dangerous, convicts of—to be watched after release, 3d October 1817.....	19
--	----

CHARGES

Date of original charge or information against accused persons to be accurately given by the Police in their Reports, 20th February 1823.....	62
Records of charges before Police Officers to be immediately made—with particulars in cas-	

es of theft, murder, &c. to be attested with the signatures of the Police Officers: or a written charge to be received from the Complainants—copies to be forwarded to the Magistrates on the same day: copies of these instructions to be furnished by the heads of district Police to the heads of village Police and Curnums, 26th July 1823, 28th October 1823, 18th November 1823.....	66.69,71
When to be divided, 25th Feb. 1829.....	120
—Against Police, must be placed in the Calendars of Magistracy, 30th July 1829.....	129
—Date of—in Police report—should be that of the original complaint, 29th April 1833....	174
—False and malicious.	
See complaints false.	
—In Calendars.	
See Calendar.	
Abstract of—in Monthly Criminal Returns of Courts,—the designation of the Crime to be entered as a heading to—C. O. No. 168.....	270
The hour at which a charge is preferred, to be recorded by Police Officers, C. O. No. 180....	275

CHILDREN

Sale of—by Parents how punishable, Circular Order 111.....	251
--	-----

CHINGLEPUT

Convicts under sentence of Transportation to be sent to—2d February 1805.....	1
Rules regarding the journey to the Depot at, 22d July 1814, 18th Oct. 1822, 10th November 1827.—Circular Orders 136 and 138.....	5,58,107,260-1
Criminal Judges may apply, when necessary to the Magistrates, for a guard of Police Peons, to escort Convicts passing on to the Depot at—18th Oct. 1822..	58
The inscription of Godena to be made on the arrival of the Convicts at—when not made previously, 20th February 1823....	62

CHOP

Custom House—imitation of, not Forgery. 8th May 1815.....	8
---	---

CIRCUIT

Judges of—Rules for the conduct	
---------------------------------	--

of a Trial by—27th December 1815.....	PAGE 11
—Record of Proceedings and Calendar delivered by Criminal Judge—to contain copies of proceedings of Magistrates or Police Officers, 30th July 1817.	18
Report to be made to the Foudaree Udalut whenever the Gaol delivery of a Circuit may not be completed within the prescribed period, 17th July 1821.	36
Judge of—on return to station to deposit all papers received during his absence, 24 June 1827.	105
Criminal cases brought before—in which the evidence is deficient ought not to be commenced, 28th June 1827.	105
See Judge Circuit.	
See Report Circuit.	
CIRCULAR ORDERS	
Duty of Judge of Circuit invariably to call the attention of the Criminal Courts, to any departure from the Circular or Standing Orders of the Foudaree Udalut, 27th September 1824.....	88
Orders of 17th January and 8th May 1815, attention called to 27th December 1815.....	13
—Of 1st May 1815 respecting the Godena repeated, 29th May 1816.....	14
—Of 21st May 1817 construction of, 3d October 1817.....	19
—Of 9th December 1819, alteration of—respecting returns to Precepts, 4th Sept. 1820.....	29
—Of 9th June 1821 explained, 15th November 1824.....	94
—Of 6th September 1819, modified, 16th March 1825.....	96
—Of 26th October and 23d November 1820, notice of their coming again into full operation, 9th April 1825.....	97
—Of 19th Jan. 1825 explained, 28th June 1825.....	99
—Of 28th Jan. 1828 partly rescinded, 28th August 1828.....	113
—Of 28th Jan and 28th August explained, 29th Sept. 1828.....	114
—Of 8th Feb. 1830 explained, 1st April 1830.....	136
—Of 3d May 1830 modified, 20th September 1830.....	140
—Of Sudr Udalut of 18th Oct. 1824 and 9th February 1826 respecting decrees; Judge on Circuit to see that they have been observed, 11th October 1830.....	140

—Of 19th Jan. 1831 modification of—29th August 1831.....	PAGE 151
—Of 10th April 1823—statement required by—altered—18th January 1832.....	165
—Of 28th May 1822 respecting Futwas of Ookoobut, attention recalled to—23d April 1832.....	160
—Of 27th October 1830 on interdiction of Tobacco, &c. in the Jail—the Spirit of the Order to be observed, 5th June 1832.....	163
—Of 27th October 1830 for collecting prisoners in particular Jails—operation stopped, unless in cases of special sanction, 30th August 1832.....	165
—Of 3d April 1828 modification of—26th December 1832.....	167
—Of 10th March 1834 modified, 10th June 1834.....	199
—Of 27th June 1831 respecting letters—to be acted on, in preference to those of the 14th October 1833, 28th June 1834.....	200
—To be numbered, 1st July 1834.....	201
—Of 8th May 1833 explained, 4th July 1834.....	202
Of 19th June 1828, cancelled, C. O. No. 148.....	264
—Of 3d January 1844, No. 155 cancelled, C. O. No. 157.....	266
—Of 23d November 1843, No. 154 cancelled, C. O. No. 159.....	267
—Of 6th January 1823, cancelled, C. O. No. 160.....	268
—Of 10th April 1823, modified, C. O. No. 161.....	269
—Of 2d March 1818, cancelled, C. O. No. 166.....	270
—Of 26th September 1832, modified, C. O. No. 168.....	270
—Of 7th September 1844, No. 161 para 2 extended, C. O. No. 170.....	272
—Of 16th November 1831 para 2 extended, C. O. No. 171.....	272
—No. 101—the proclamation contained in—to be published at least once every half year, C. O. No. 176.....	274
—Of 21st October 1830, applicable to sentences of Corporal punishment passed by Magistrate under Section LIV. Act VII. of 1843, C. O. No. 177.....	274
—of 26th February 1845 No. 164, extended to Verdicts given by Jurors, C. O. No. 178.....	274
—Of 25th June 1844, No. 159, construction of—C. O. No. 181.....	276

CONDITIONAL PARDON

Magistrate recommending the tender of a conditional pardon

to a supposed accessory, who may not be in custody—to satisfy the Foudaree Udalut on certain particulars, 13th May 1824.....	PAGE 81
The Provisions of Section XX. Regulation VIII of 1802, respecting the offer of a conditional pardon, to be resorted to with great caution, 13th May 1824.....	81
See Thugga.	
CLOTHING	
Of Prisoners under security, 3d May 1832.....	161
COIN	
In cases of uttering base—Police to be advised of the importance and mode of securing proof of its identity, 11th February 1833.....	170
COMMANDING OFFICER	
All communications between—and the Established Courts—to take place through the office of the Magistrate, 12th August 1822.....	56
Police summons to, or warrant for apprehension of, Native Officer, or Sepoy, to be sent with notification by Police to the—30th December 1833.....	182
To be furnished with official information of the mode in which all cases forwarded by them have been disposed of by the Criminal Court, Circular Order No. 72.....	232
COMMITMENT	
In cases of perjury by whom to be made, 31st January 1814.....	4
—Of a Prisoner under prosecution of the Sirkar—Vakalut-namah to be given on—27th December 1815.....	13
Police confessions alone not grounds for—18th June 1817.....	16
Prisoners under—on insufficient grounds, Circuit Judge to call the trial and discharge them, 26th November 1821.....	47
—When overruled by Circuit Court and case is returned, 20th February 1823.....	62
Magistrates warrant of—what to contain—form of—22d May 1828.....	112
Mode of proceeding to be adopted when evidence is insufficient for—20th July 1829.....	129
—Should not be made without reasonable grounds of conviction, 20th July 1829.....	129
—In case of “the removal of a “free person from one part of “India to another to be dealt “with there as a Slave,” 30th April 1830.....	137
Persons under—not to be ironed, except in certain cases and then the fact is to be recorded, 27th June 1831.....	149
Cases for—to be examined with the same care as others before the Criminal Court, 16th November 1831.....	153
—Of party failing to perform the conditions of the pardon offered—by whom to be made, 20th August 1832.....	165
In cases for—, committing Officers when allowed to examine witnesses C. O. No. 159.....	267
In cases for—, committing Officers not competent to examine witness or prisoner, for defence C. O. No. 159.....	267
The provision of the Law under which a—is ordered, to be specified in monthly Criminal Reports C. O. No. 171.....	272
The powers of—possessed by Criminal Courts in cases of perjury originating in the Session Court C. O. No. 181.....	275
COMPETENCY	
Of the Police to discharge after examination, 30th Sept. 1824.....	89
—Denied, of a Criminal Judge to call on the Magistrate to explain delays in the Talook, 1st April 1830.....	136
—Of a Circuit Judge to call on Magistrate for papers in unrecorded cases, admitted—16th November 1831.....	154
COMPLAINANT	
His original complaint to the Police Officer—to be included in the Record of Trial laid before the Court of Circuit or referred to the Foudaree Udalut, 4th November 1822.....	50
Dissatisfied with the Tahsildar's order for the discharge of an accused party, to represent the grounds of their dissatisfaction to the Magistrate, 30th September 1824.....	90

	PAGE
COMPLAINTS—FALSE	
Before a Magistrate, notice of his power to punish, 28th October 1823.....	71
—In half yearly Criminal statement, have reference to Section XXXV. Regulation IX. 1816, 23d February 1829.....	119
To Police—cases of, how to be disposed of in the Criminal Court, 6th January 1834.....	183
Witnesses in support of—not punishable, C. O. No. 57.....	226
—Reiterated to Police Officer—Magistrate to examine into, &c.—rules respecting—Circular Order 140.....	262
COMPLAINTS	
Original—made to Police Officer—to be included in the Record of a Trial laid before Court of Circuit or referred to the Foujdaree Udalt, 4th March 1822.....	50
Date of original—to be accurately given by the Police in their Reports, 20th Feb. 1823..	62
An immediate Record of every—with particulars and attested by their signatures to be made by the Police Officers, 26th July 1823.....	66
Such Record to accompany the Proceedings sent to the Magistrate or Criminal Court with Depositions, 26th July 1823.....	67
COMPROMISE	
Illegal in heinous cases, 27th August 1829.....	131
CONFESSIONS	
Proclamation against extorting, 27th May 1806, 29th October 1824, Circular Order 66...1,92,230	
Of Prisoners before the Police, 27th December 1815, 7th Sept. 1820.....	11,30
Native Police to be cautioned by Magistrates against coercion in regard to—27th Dec. 1815, 29th April 1822, 29th October 1824, 24th Jan. 1822, Circular Order 66...11,49,52,92,230	
—Unsupported by evidence and not sufficient grounds for commitment—always to be admitted with tenderness and circumspection, 18th June 1817..	17

	PAGE
—To be taken down "in the presence" of the attesting witnesses, 3d December 1818, 29th April 1822.....	23,58
—And in the words of the accused, 3d December 1818.....	23
Witnesses to Talook—not required to appear before Court of Circuit when Prisoners confess before the Criminal Judge or their confessions do not materially differ from those in the Talook, 12th Apr. 1819. ...	25
Further cautions against illegal means to obtain—7th September 1820, 24th January 1822, 29th Apr. 1822, 28th Oct. 1823, 29th Oct. 1824.....	30,49,52,69,92
—All additional evidence forthcoming in support of—to be taken, 7th Sept. 1820, 24th Jan. 1822, 29th April 1822.....	30,49,53
The Attestation of—when the presence of persons wholly unconnected with the Police, may not be procurable, may be made by two or more persons not being Police Peons, but in any other capacity belonging to the Police Establishment, 29th April 1822....	49
Extorting of—by means of an inadequate supply of food to the prisoners while in custody of the Police, 28th Oct. 1823..	68
Form of Attesting—before Magistrates, Criminal Courts and Police Officers, 18th November 1823.....	71
—Of Prisoners before heads of Police to be taken down in the language in which they may desire to have them recorded, 26th November 1824.....	94
—Before the Police, unless corroborated, not sufficient to warrant the transmission of Prisoner to the Criminal Court, 9th February 1835.....	212
In trials before a Court of Circuit the confessions previously made before a Criminal Judge, &c. are to be read in open Court, and the subscription of the Witnesses proved, &c. Circular Order No. 41.....	218
Rules for the better identifying of—Circular Order No. 84...236	
—Allowed to be attested by Police Peons, Circular Order, No. 91.....	243
CONNIVANCE	
Of guards at escapes when inflexible, 13th July 1829.....	127

	PAGE
CONSTRUCTION	
Of Sections III. and IV. Regulation II. of 1822, 19th Nov. 1822.	60
Of Clause 4th, Section IV. Regulation VI. of 1822, 26th November 1822.....	61
References regarding construction of Regulations to pass through the Collective Courts of Circuit, 26th Nov. 1822....	61
Construction (parenthetical) of Clause 2d, Section III. Regulation VI. of 1822, 19th June 1823.....	66
—Of Section IV. Regulation IV. of 1821, and other parts of that of 1821, 28th October 1823.	68
—Of Clause 2d, Section IV. Regulation XV. 1803, 15th May 1832.....	161
—Of Regulation VI. 1811, 23d March 1832.....	159
—Of Section V. Regulation VI. 1811, 12th February 1834....	195
—Of Sections XXXII. & XXXV. Regulation IX. 1816, 28th September 1824.....	89
—Of Section VII. Regulation X. 1816, 28th June 1823.....	113
—Of Section VIII. Regulation X. of 1816, 23d June 1823....	113
12th February 1834.....	185
—Of Section XXVII. Regulation XI. 1816, 30th September 1824.....	90
—Of Regulation III. 1819, 6th April 1820.....	28
10th March 1829.....	121
—Of Clause 2d, Section II. Regulation IV. 1821, 10th June 1834.....	198
—Of Section III. Regulation IV. 1821, 15th August 1822....	56
—Of Section IV. Regulation IV. 1821, 28th October 1823....	67
—Of Section X. Regulation IV. of 1821, 21st January 1833....	169
—Of Regulation VI. 1821, 10th March 1829.....	121
—Of Clause 1st, Section III. Regulation II. 1822, and Clause 1st, Section VIII. Regulation VI. 1827, 5th August 1831....	151
19th October 1831.....	153
—Clause 1st, Section IV. Regulation II. 1822, 20th July 1829.	129
—Of Clause 4th, Section III. Regulation VI. 1822, 13th Aug. 1823.....	67
—Of Clause 6th, Section II. Regulation VI. of 1822, and of Clause 4th, Section IV. Regulation VI. of 1822., and Clause	

	PAGE
2d, Section V. Regulation VI. 1822, 28th June 1823.....	113
—Of Clause 2d, Section III. Regulation VI. 1822, 19th June 1823.....	66
—Of Clause 4th, Section IV. Regulation VI. 1822, 26th Nov. 1822.....	61
—Of Clause 3d, Section X. Regulation I. of 1825, 17th Sept. 1825.....	102
—Of Regulation II. 1827, 8th April 1830.....	137
—Of Clause 1st, Section XIII. Regulation VI. 1827, 19th Oct. 1831.....	153
—Of Section V. Regulation VIII. 1828, 18th April 1829....	122
—Of Regulation IX. of 1832, 6th January 1834.....	183
—Of Section III. Regulation XV. of 1803—Circular Order 56.....	225
—Of Section VII. Regulation X. of 1816—Circular Order No. 73, 23d of 1816—Circular Order IV. Regulation VI. of 1822.—Circular Order 128.....	257
—Of Clause 6th, Section III. Regulation V. of 1831 as applicable to offences under Section II. Regulation III. of 1820—Circular Order 130.....	253
—Of Section XXXIV. Regulation VII. of 1802—Circular Order 147.....	264
—Of Section X. Regulation XIII. of 1832, C. O. No. 153.....	266
—Of Clause third, Section V. Regulation VI. of 1822, C. O. No. 156.....	266
—Of Section XI. Regulation XIII. of 1832, C. O. No. 156..	266
—Of Section XXIX. Act VII. of 1843, C. O. No. 159.....	267
—Of 53d George III. Cap. 156 Section 105, C. O. No. 163....	268
—Of Section XXXII. Act VII. of 1843, C. O. No. 164.....	269
—Of Clause fourth, Section II. Regulation XV. of 1803, C. O. No. 169.....	271
—Of Clause first, Section IV. Regulation II. of 1822, C. O. No. 173.....	273
—Of Circular Order No. 159, C. O. No. 181.....	275
—Of Section VI. Regulation VI. of 1811, C. O. No. 182.....	276

CONVERSION

Attempt to convert Criminals apprehended. 10th Dec. 1830.... 143

*Convictions previous
See F. U. 2d Octo 1850*

CONVICTS	
Under sentence of Transportation to be sent to Chingleput. 2d February 1805.....	1
Rules regarding the journey to the Depot, 22d July 1814, 18th Oct. 1822, 10th Nov. 1827	
—Circular Orders 136 and 138.....	5,58,107
What handcuffs to be used, 22d July 1814.....	6,260,261
Regarding inscription of Godena. 1st May 1815, 29th May 1816.....	7,14
—On the expiration of sentence how to be disposed of—3d Oct. 1817—Circular Orders 92 and 144.....	18,244,263
Criminal Judges, when necessary, may apply to Magistrates for a guard of Police Peons to escort Convicts to the Depot at Chingleput, 18th October 1822.....	58
Under no consideration to be worked on private grounds, &c. 1st August 1827.....	106
Under sentence of Transportation travelling. 26th April 1833.....	174
Children of—Circular Orders 50 and 65.....	222,229
Officers in charge of—to shew in the monthly statement how they have been employed or punished—Circular Order 80. 23d See Transportation.	
—Travelling.	
—Prisoners.	
CORPORAL PUNISHMENT	
Rules regarding Infliction of—previous examination by Medical Officers, &c. 2d August 1821.....	89
In the case of Prisoners sentenced to Transportation, to be immediately inflicted by the Criminal Judge to whom the warrant is addressed, 20th February 1823.....	62
See Punishment Corporal.	
CORPSE	
Of murdered person to be identified by two witnesses, 27th December 1815.....	13
And to be examined by Surgeon, 27th December 1815.....	13
CORRESPONDENCE	
Paragraphs of all—with the Foudaree Udalut to be numbered, 4th September 1820.....	29

COURT—CIRCUIT	
—Respecting the meaning and construction of the Regulations, or Orders of the Foudaree Udalut, should pass through the Provincial Court of Circuit, 26th Nov. 1822.....	61
—Between Foudaree and Magistrates, 4th August 1823.....	67
—Of Criminal Judge with Magistrate, to be by letter, 28th July 1824.....	84
—Between Criminal Court and Magistrate, respecting cases before the Court, 22d December 1828.....	115
—By a Judge or Magistrate with either of the parties, in a case before him, irregular, 19th November 1832.....	166
—To be carried on by Heads of Departments—C. O. No. 150.....	265
COURT—CIRCUIT PROVINCIAL	
—To direct the Godena to be made, 1st May 1815.....	7
—Remanding Prisoners to jail—to issue warrant, 8th May 1815.....	10
Witnesses to Talook examinations when not required to attend, 12th April 1819.....	23
To report to the Foudaree Udalut one month before the prescribed date or as early as possible whenever the Judge whose tour of duty it may be, is prevented from proceeding on Circuit at the appointed period, 17th July 1821.....	36
Competent to sentence to labour without Irons, 8th Oct. 1821.....	41
Competent to direct the admission of Bail, in cases of "Arson," 8th October 1821.....	42
Competent to send back to Criminal Court for disposal, committed cases, but to enter the grounds for returning the case, on the Calendar, 20th February 1823.....	62
—To furnish in certain cases copies of the Futwaha to the Criminal Judges—5th June 1826.....	103
Sentence of—how to be prepared, 15th June 1826.....	104
Batta to Native Servants of—limitation of—27th April 1829.....	122
Plan proposed to regulate the attendance of Witnesses at—13th February 1833.....	170
In what case the deposition of an absent Witness may, if proved, at the trial, be received by—8th May 1833.....	175

COURT—JOINT CRIMINAL	
Plan for attendance of Prosecutors and Witnesses at—on the days they may be severally required in Court, recommended for general adoption, 20th June 1834.....	199
—When authorized to admit depositions taken by a Criminal Judge alone. Circular Order 36.....	216
—To be cautious in admitting alleged sickness as an excuse for absence of Witnesses. Circular Order 36.....	216
—To return to the Criminal Court all original examinations, &c. when no longer required. Circular Order No. 87.....	241
The powers possessed by the present Criminal Courts, in respect of the Commitment of cases of Perjury originating in the Session Courts, C. O. No. 182.....	276
COURT—SUPREME	
Notice of process of arrest to be executed within the limits of the—14th October 1824.....	91
Warrant, or process for execution within the limits of—must be signed by one of the Judges, Circular Order 129.....	257
CRIMES	
Heinous—notification of the penalty of transportation attached to the commission of—to be publicly made, 29th April 1824.....	80
—Charges for—unprovided for in the Regulations. See examination. 28th January 1828.....	110
—Proved differing from the charges—note to be made of the difference. 5th Aug. 1829.....	130
—In which the perpetrators remain undiscovered. Magistrate's Annual Police report to have special reference to—16th November 1829.....	132
—Statement of—See Statement. A female concealing her pregnancy, and secretly burying her bastard Child—how punishable, C. O. No. 151.....	285
—Designation of—to be entered as a heading to the statement of the charge in the Monthly Criminal Return of Courts, C. O. No. 168.....	270
COURT—CIVIL	
Adjournment of. See Adjournment.	
COURT—CRIMINAL	
See Judge Criminal.	
—Should rectify any errors in	

COURT—JOINT CRIMINAL	
the Monthly Reports sent up by Police Officers, Circular Order 109.....	251
Rule regarding the gaol delivery of prisoners committed by—25th January 1830.....	132
COURT—FOUJDAREE UDALUT	
Judge of—how to endorse process of arrest within the limits of the Supreme Court, 14th October 1824.....	91
—Offer of conditional pardon issued by—how to be worded, 26th December 1832.....	167
Court Session. See Court Circuit.	
COURT—SUPREME	
Notice of process of arrest to be executed within the limits of the—14th October 1824.....	91
Warrant, or process for execution within the limits of—must be signed by one of the Judges, Circular Order 129.....	257
CRIMES	
Heinous—notification of the penalty of transportation attached to the commission of—to be publicly made, 29th April 1824.....	80
—Charges for—unprovided for in the Regulations. See examination. 28th January 1828.....	110
—Proved differing from the charges—note to be made of the difference. 5th Aug. 1829.....	130
—In which the perpetrators remain undiscovered. Magistrate's Annual Police report to have special reference to—16th November 1829.....	132
—Statement of—See Statement. A female concealing her pregnancy, and secretly burying her bastard Child—how punishable, C. O. No. 151.....	285
—Designation of—to be entered as a heading to the statement of the charge in the Monthly Criminal Return of Courts, C. O. No. 168.....	270
CRIMINAL COURT	
May award Labour, as well as	

Imprisonment, in passing sentence, 7th February 1820 . . .	PAGE 27
Is not competent to interfere with the execution of the warrant addressed to the jailor by the Magistrate under Section XXXIV. Regulation IX. of 1816, 7th Feb. 1820 . . .	28
When doubting the legality of the Magistrate's sentence—to make a reference to the Provincial Court of Circuit. 7th February 1820 . . .	28
Not competent, under Regulation III. of 1819—to entertain, in the first instance, a charge of abuse of authority against Native Officers of Police, 6th April 1820 . . .	29
To take all available additional evidence in support of confessions before Native Police, 7th September 1820 . . .	30
—Its competency to call for security in certain cases. 20th July 1829 . . .	129
CRIMINAL JUDGE	
See Judge Criminal.	
CRIMINAL REPORT	
See Report Criminal.	
CROSS EXAMINATION	
When allowable in cases before Criminal Court, 15th February 1832 . . .	157
D	
DATE	
Where Native date is given—the corresponding English date to be likewise given in Criminal Trials, 17th January 1815, 2d November 1824 . . .	7, 94
Date of original charge or complaint to be accurately given by the Police in their Reports. 20th February 1823 . . .	62
Falsification of dates of apprehension by Police Officers denounced, 24th Jan. 1822, 29th Oct. 1823, 1st March 1824 . . .	43, 63, 79
Dates of Prisoners leaving the Talook, to be specified by the Police, in forwarding Prisoners to Criminal Courts. 22d December 1823 . . .	74

Notice of the entry of false dates by the Police. 12th July 1825 . . .	PAGE 99
DEATH	
—Of a Judge—warrant how to be issued. 14th July 1809 . . .	2
—Of a person in custody—inquest to be held on the body. 25th March 1824 . . .	79
—Of Prisoners whose trial is under reference. 8th June 1829 . . .	127
Prisoners under sentence of—to have no extra allowance. 2d February 1835 . . .	212
DEATH WARRANT	
Form of—to be used by Court of Circuit. 25th July 1821 . . .	30
Unless otherwise recorded in—body of all executed criminals to be buried at the foot of the gallows, 23d February 1835 . . .	213
DECREES	
Duty of the Judge on Circuit respecting—11th Oct. 1830 . . .	141
Whole Draft of—to be in the handwriting of the Officer who passes, 16th Nov. 1831 . . .	153
DEFENCE	
Witnesses for the—Criminal Judge to observe. Section II. Regulation II. of 1822 respecting, 1st June 1832 . . .	163
On limitation of the numbers of witnesses for—7th August 1833 . . .	176
4th October 1833 . . .	180
See Circular Order 43 . . .	219
—Not to be recorded till all the evidence for the prosecution has been gone through. Circular Order 48 . . .	221
See Examination.	
DELAYS	
See Detention of Prisoners.	
DELEGATION	
Absolute by Magistrates to their Assistants of Magisterial duties—improper—26th August 1818 . . .	21
To a Native by Magistrate, or Criminal Judge, of the duty of examination—unauthorised, 21st October 1819 . . .	24
—By a Criminal Judge to his Assistant—extent of his competency respecting 1st Aug. 1831 . . .	30

—Of duty by the Magistrate to his Assistant—should not extend to the entire delegation of the Police functions, 20th August 1821 . . .	PAGE 40
—By Criminal Judges to their Assistants of the extended powers given by Regulation VI. 1822—Correct; but caution to be used in the—12th December 1823 . . .	73
—Of power to an Assistant Magistrate—limitation of—30th January 1824 . . .	76
7th June 1834 . . .	195
—Of the duty to examine a case of Homicide. See Homicide. 19th February 1834 . . .	187
—By a Magistrate to a Native, of the investigation of a complaint against the Native Police, incorrect—20th March 1834 . . .	191
DEPARTURE	
—Of a Judge from the Country—warrant how to be executed, 14th July 1809 . . .	2
DEPOSITIONS	
To be taken down in the language in which the deponents may desire to have them recorded, 26th November 1824 . . .	94
—To be recorded in the exact words used by the deponents, 16th May 1832 . . .	162
—Taken before the Criminal Judge how far admissible in trials before the Circuit Court, 4th April 1835 . . .	216
See Examination.	
DETENTION OF PRISONERS	
—In Talook what excuses are inadmissible for 24th January 1822 . . .	48
—Beyond the prescribed time—by the Police—to be punished, 29th April 1822 . . .	52
—Beyond 48 hours—Magistrate to notice, if reason given is unsatisfactory, and to notify to the Criminal Judge what he may have done on the occasion, 13th September 1824 . . .	87
—Beyond 5 days in cases before the Magistrate to be explained, 8th February 1830 . . .	134
—In Talook—Criminal Court incompetent to call a Magistrate	

for explanation of—1st April 1830 . . .	PAGE 136
—In Talook in cases before the Police beyond 5 days—Explanation of—when to be entered in Criminal Reports, 18th May 1832 . . .	163
DIET	
See Subsistence.	
DISCHARGE	
See Release.	
DISTANCE	
A note of Distance in feet and inches to be entered in the English Translations of Criminal Records, 2d Nov. 1824 . . .	93
DRUGS	
Poisonous—Evidence as to—14th April 1828 . . .	119
—Poisonous—specimens of—to be sent direct by the Criminal Courts to the Medical Board for analysis, 8th Dec. 1830 . . .	142
DOCUMENTS	
Official—not to be granted in certain cases without the sanction of Government, Circular Order No. 70 . . .	231
E	
ENDORSEMENT	
Returns to Precepts of the Foujdaree Udaltut to be made by Endorsements on the Precepts, 9th December 1819 . . .	25
ESCAPE	
Additional sentence for—13th July 1829 . . .	127
Connivance at—when inferrible 13th July 1829 . . .	127-8
Prisoners attempting—Fees not to use their swords, or unnecessary violence towards—18th April 1831 . . .	146-7
16th June 1831 . . .	149
Reports of—to be sent through the Provincial Court of Circuit. 23d June 1832 . . .	155-6
All circumstances, as well as measures for re-apprehension, to be stated in cases of—28th March 1832 . . .	160

	PAGE
When offer of reward for re-apprehension of a convict, who has escaped, is made—a descriptive roll is to be furnished, 16th May 1832.	162
Officer in charge of the gaol is to send with his report, of the depositions of any witnesses on oath, and the Circuit Judge who may next visit the station is to submit his opinion in the Circuit Report, 19th November 1832.	166
Attempt at—involving loss of life—copy is to be sent to Government of the report to the Provincial Court of Circuit respecting—20th May 1834.	194
Cases of—coming under Clauses 2d and 3d, Sec. V. Regulations VI. of 1822 to be invariably disposed of by Criminal Judge, 4th Feb. 1835.	212
Report of—to be made direct to the Foujdaree Udalt. Circular Order 42.	219
All Convicts who may have once escaped from gaol to be in future secured at night, Circular Order 134.	259
—From the Custody of any guard of whatever description, having lawful authority, is punishable, C. O. No. 156.	266
Guards having lawful authority to detain prisoners in Custody and allowing them to escape—how punishable, C. O. No. 156.	266
ESCORT	
Magistrate to provide—from one District to another, Circular Order 96.	246
See Guard.	
EUROPEAN SETTLEMENTS	
See Settlements.	
EVIDENCE	
Of Infants, or those of tender years—how to be taken, 15th April 1819.	23
Do. do 12th July 1825.	99-100
Of Medical men must be on Oath, 14th April 1828.	112
—Appearing to a Circuit Judge contradictory, how to be noticed in the Calendar, 19th June 1828.	113
—Of Prosecutors—in what light to be considered, 25th February 1829.	120
—Of a husband or wife—when	

	PAGE
prosecution is by the third party—how to be considered, 4th March 1830.	134
Respecting the attendance of females of Caste to give—12th July 1830.	139
Dying declarations must be proved on the trial to render them available as—5th March 1832.	158
—In Capital cases—of all the witnesses should be taken, 14th March 1832.	159
—Not to be dispensed with though the prisoner plead guilty, 20th November 1832.	166
A dying declaration to be admitted as—requires proof that the deceased was conscious of his danger, and had given up hope of recovery, 26th Nov. 1832.	167
—The cases stated in which the deposition before the lower Court can be received by the Circuit Court in the absence of the deponent, 8th May 1833.	175
—For the defence—caution to be used in limiting, 7th August 1833.	176
—For the defence: single witness is to be examined if no more are called or forthcoming, 4th October 1833.	180
—To be called in behalf of prisoner, in certain cases, although he has made a confession, Circular Order 48.	222
In abstract of—the name as well as the official designation of the committing Officer to be affixed, Circular Order No. 52.	223
Where the—given by a witness before the committing Officer may vary, materially, from that given before the Police Officer, the latter deposition to be included in the record of proceedings, Circular Order 58.	226
If from—there are grounds to charge the prisoner with “intent to kill,” such intent to be charged in the arraignment, Circular Order 90.	243
EXAMINATION	
Of Prisoners—how to be conducted, 27th December 1815.	11
Of witnesses—prior to the charge against Prisoners not to be read to them, but only the nature thereof, 27th Dec. 1815.	12
Of witnesses of tender age—	

	PAGE		PAGE
what course to be pursued, 15th April 1819.	23	to be proceeded with, 8th December 1830.	142
—Of persons accused, to be invariably conducted by the Magistrate or Criminal Judge personally, and never to be delegated to any Native Officer, 21st October 1819.	25	—Of cases before Criminal Court—cross examination when allowable, 15th February 1832.	157
Examinations of parties and witnesses and depositions to be taken down by Criminal Courts, Magistrates and Police, in the language in which the deponents may wish to have them recorded, and this Rule to be especially observed in the case of confessions by Prisoners before the Police, 26th November 1834.	94	Depositions should be recorded in the exact words used by the deponent, 16th May 1832.	162
Prisoners under—not to be subjected to greater restraint than is absolutely necessary, 24th March 1825.	97	Judge how to proceed when Prisoners abuse the privilege of calling Witnesses on their behalf, 1st June 1832.	163
—By Police—notice of the mode of conducting.		—Of a case not to be discontinued because a Prisoner pleads guilty, 30th Nov. 1832.	166
—The voluntary declarations of Prisoners made before a competent authority should always be received, 4th June 1825.	98-9	All the Evidence that can be adduced is to be heard before sentence is passed, 21st January 1833.	169
—By Police—Native dates to be placed in words and numerals at the head of every declaration recorded, 12th July 1825.	99	—Of cases involving wounds and hurts how to be conducted, 10th April 1833.	173
—Of Prisoners on charges of crimes for which the Regulations provide no penalty—how to be conducted, 28th January 1828.	110	Person not apprehended found to be implicated in the crime under—his apprehension how to be obtained, 10th August 1833.	177
—Of cases—punishable by the Police but sent up to the Criminal Court—the cases should not be returned, 31st December 1828.	116	—Of Evidence for the defence, 4th October 1833.	180
Charges against Prisoners under—25th February 1829.	120	—Of cases of false complaint to Police—how to be conducted, 6th January 1834.	183
—Of Prisoners by the Tahsildar, 21st May 1829.	124	—In a case of homicide committed in resisting Robbers—how to be held, 19th Feb. 1834.	187
—Of Cases by the Criminal Court—extends to taking the defence, 21st May 1829.	124	—Of complaints against Native Police, 20th March 1834.	191
—Of a Prisoner under sentence for a crime antecedent to that sentence, 27th May 1829.	125	—Of witnesses by committing Officers in committable cases, when allowed C. O. No. 159.	267
—Of all cases, that are sent up to the Criminal Court—if the Prosecutor declines, the Government Vakeel is to prosecute, 27th August 1829.	131	—Of Prisoners in committable cases—the intent and meaning of Act VII of 1843 and C. O. No. 159 in regard to—explained—C. O. No. 181.	275
—Of Prosecutors, Witnesses, and Prisoners by the Criminal Court—how to be conducted and certified, 25th January 1830.	134	EXECUTION	
—Of cases of Poisoning—how		Of duties—when not affected by change of situation, 14th July 1809.	2
		—Of Warrants or Sentence. See Warrant. See Sentence.	
		Prisoners not to be questioned as to their guilt—previous to—3d May 1830.	138
		EXTORTION	
		Charges of Extortion, Oppression, or other abuse of authority against Native Officers of Police, not cognizable, in the first instance by the Criminal	

Court, but by the Magistrate, 6th April 1820.	PAGE 29
EXTORTING	
Of Confessions—Proclamation against—27th May 1806, 29th October 1824. Circular Order 66.	1,92,230
Cautions to Police Officers against extorting confessions. 27th Dec. 1815, 24th Jan. 1822, 29th April 1822, 29th Oct. 1824 Circular Order 66, 11, 49, 52, 92, 230	230
—Of Confessions by the means of an inadequate supply of food to the Prisoners while in custody of the Police—de- nounced, 28th Oct. 1823. . . .	68
. F	
FALSE ACCUSATION	
See Complaints false.	
FALSE CHARGE	
See Complaints false	
FALSE COMPLAINT	
See Complaints false.	
FAMINE	
Views of Government respecting their interference in the price of grain during—14th Janu- ary 1833.	168
FETTERS	
Of Prisoners travelling. 22d July 1814.	5
Persons charged with a Bail- able offence, and committed for default of Bail—not to be confined in—before trial, 8th October 1821.	41
Court of Circuit competent to sentence to labour without— 8th October 1821.	42
—The use of ligatures to secure Prisoners objectionable—iron rings or wooden handcuffs pre- ferable. 24th March 1825. . . .	97
See Irons.	
FINES	
Labour cannot be imposed by Magistrates, in commutation of—adjudged under Sections XXXII and XXXV. Regula-	

tion IX of 1816—or in cases of inconsiderable breach of the peace or other slight misde- meanor. 28th September 1824 . . .	PAGE 89
Entry of—in half-yearly crimi- nal statement. 17th June 1830 . . .	138
—Imposed by the Magistrates under Section XXXV. Regu- lation IX. of 1816 to be enter- ed in the Calendars laid before the Court of Circuit. Circular Order No. 74.	232
—Above 10 Rupees cannot be imposed on Public Servants except with the sanction of the Foujdaree Udalt. Cir- cular Order No. 79.	234
FLOGGING	
See Punishment Corporal.	
FOREIGN EUROPEAN SET- TLEMENTS	
See Settlements.	
FOREIGN STATES	
See States.	
FORFEITURE	
Of Security. 3d October 1817. . .	18
FORGERY	
Of Custom House Mark or Stamp, 8th May 1815.	8
—Utterance unnecessary to con- stitute—23d March 1832.	159
The opinion of the Foujdaree Udalt on the question “whe- ther the power vested in the Civil Court as intimated in Section V. Regulation VI. of 1811, to commit for trial per- sons charged before them with the crime of Forgery has been repealed,” 12th February 1834. . .	185
—Committed by the Court under whose Judicial view the case may fall, 12th February 1834 . . .	186
In cases of—submitted to Fouj- daree Udalt original docu- ment to be sent, Circular Or- der 86.	241
Uttering a forged instrument to form a distinct charge, Cir- cular Order 120.	254
Definition of—Circular Order 145.	263
FORM	
Of Sentence, 8th May 1815. . . .	9
Of Warrant by Court of Circuit	

to be annexed to Record of re- ferred Trial, 8th May 1815. . . .	PAGE 9
—No. 6, of Criminal Reports, to contain only the names of Pri- soners released, not included in the Report immediately preceding, 10th February 1820. . .	28
—Of Death-Warrant to be used by Court of Circuit, 25th July 1821.	37
Addition to the—of Report pre- scribed in No. 9 of the Appen- dix to Regulation IX. of 1816, ordered, 15th August 1822. . . .	56
—Of Monthly Report to be fur- nished by the Criminal Courts to the Magistrate—showing the mode in which the cases forwarded to the Courts by the Magistrates and Police Officers had been disposed of, 10th April 1823.	63
—Of attesting confessions be- fore Criminal Courts, Magis- trates and District Police Of- ficers, 18th November 1823. . . .	71
—Of List of Stolen or Plunder- ed Property, 27th September 1824.	82
—Of Report No. V. of the Monthly Criminal Reports, 28th June 1824.	83
—Of Warrant for Execution of Sentences of Transportation for Life, 16th August 1824. . . .	84
—Of List of Prosecutor's Wit- nesses, 27th September 1824. . .	89
—Of Warrant of Apprehension issued by Magistrates, 29th October 1824.	92
—Of Magistrate's Warrant of commitment, 22d May 1828. . . .	112
—Of statement in cases called up or referred, 5th July 1834.	202
—Of Extra Jail Peons, 16th Au- gust 1834.	206
—Of statement required from the Magistrates by Circular Orders of the 31st July 1833, 10th De- cember 1834.	211
—Of Batta statement for Prose- cutors and Witnesses—to be submitted to the Foujdaree Udalt at the close of each Sessions, Circular Order No. 35.	216
—Of indictment for subornation of Perjury, Circular Order 49. . .	222
—Of statements regarding the Children of Convicts, Circular Order 50.	222
—Shewing the produce of labor of Prisoners, &c. Circular Or- der No. 88.	241
FRAUD	
Servants convicted of breach of trust, and misappropriation of money entrusted to their charge, how punishable C. O. No. 152. 265	265
FUTWAH	
Grounds on which the sentence declared in the—is founded —as well as the sentence itself —to be entered in the Calen- dar, 6th September 1819.	24
—Awarding discretionary pun- ishment or Ookoobut—to shew the grounds on which such punishment is awarded —and the grounds for bar of the specific Penalty, 28th May 1822.	54
In cases of Theft or Robbery— when a—of discretionary pun- ishment may be declared, a translation of the grounds for such Futwah to be given in the Calendars, submitted by the Court of Circuit, 28th May 1822.	55
The Mahomedan Law Officers in delivering their—to specify all the grounds on which a Pri- soner is declared liable to dis- cretionary punishment, 22d July 1822.	56
Usual abstract of—to be enter- ed on all trials referred to the Foujdaree Udalt, 14th Oc- tober 1822.	58
In cases passed by Circuit Court without reference to Foujdaree Udalt, copy of—to be sent to Criminal Judges, &c. 15th June 1826.	103-4
Copy of Original—in all cases not referrible, to be sent, 19th June 1828.	112
Judge on Circuit to state clearly in Calendar the grounds of his concurrence or otherwise in the—19th June 1828.	113
—Of Ookoobut—sentence when to be passed on—23d April 1832.	166
—Second to be required when material evidence is rejected on the general ground of the inadmissibility of the com- plainant's testimony, 27th July 1832.	164
Circuit Judge, in certain cases, to take a second—overruling any objections as evidence that might exist in the first, Cir- cular Orders 54 and 56.	224, 226
Translation of—in all cases not	

	PAGE
referred to the Foudaree Udalt, to be sent with Calendar C. O. No. 148	264
See Verdict.	
—To specify the particular facts established against prisoners declared liable to punishment, C. O. No. 172	273

G

GALLOWS

The bodies of all Criminals, unless otherwise directed in the warrant, to be buried at the foot of—23d Feb. 1835	213
--	-----

GANG ROBBERY BY OPEN VIOLENCE

Explanation of the degree of violence rendering it incumbent upon the Court of Circuit to refer the Trial to the Foudaree Udalt, 26th Oct. 1820 and 23d Nov. 1820	31,33
See Robbery.	

GAOL

Rules for the Management of Gaols, 8th October 1821	43
Offences committed in—under cognizance of Criminal Judge, 23d June 1838	113
—At Stations of Joint Criminal Courts—rule in respect to the delivery of—25th Jan. 1830 ..	133
Allowance to prisoners to be made in grain instead of money, 25th January 1830	133
Rules respecting prisoners sent to other Authorities from the Criminal Court, 11th March 1830	135
—Crowded or unhealthy—immediate report to be made, 12th July 1830	139-40
No Beetal &c. to be allowed to prisoners except on the requisition of the Medical Officer, 27th October 1830	142
Industrious Prisoners in—report when to be made respecting—4th March 1831	146
—Descriptive roll to be kept of all Prisoners received into—21st October 1830	141
—How to be supplied with grain in certain cases, 18th June 1831	149
On the use of irons in—27th June 1831	149

	PAGE
Security, Prisoners in—how to be worked, 25th July 1831	150
Prisoners not to be collected in particular Gaols under Circular Orders, 27th October 1830, without special sanction, 30th August 1832	165
Prisoners not liable to labour in See Labor, 16th September 1833 ..	179
Officers in charge of—their duty to admit on Sundays Prisoners into—30th January 1834	184
—Alteration of.	
See Judge Circuit, 14th April 1834	194
—Manufactures in—See Manufacture.	
7th June 1834	196
—Diet of Prisoners in See Subsistence	
25th June 1834	200
In time of sickness in—delicate Prisoners to be employed in only light work, 12th September 1834	206
Officer in charge of—to cause a Muster roll of Peons, nightly appointed to be kept, 23d September 1834	207
Labor of Prisoners in—always to be carried to the credit of Government, 3d January 1835 ..	212
Officers in charge of—to transmit monthly statement of contingent charges to the Civil Auditor, Circular Order 77	233
Rules for the guidance of Officers in charge of—16th March 1835, and Circular Order 85, 21d, 24d ..	240
Officers in charge of—to submit quarterly a statement shewing the produce of Prisoners labor, &c. Circular Order No. 88	241
Officers in charge of—have discretion to employ extra Peons, Circular Order 93	245
Officers in charge of—not to send delicate or weak Prisoners on distant or laborious works, Circular Order 99	247
Officers in charge of—allowed without further reference to offer certain rewards for the apprehension of convicts, Circular Order 104	249
Officers in charge of—to carefully secure at night those convicts who have once effected their escape from—Circular Order 124	259
Officers in charge of—to remove any Prisoner when the medical officer certifies that it is necessary, Circular Order 144	263

GAOL DELIVERY

When the gaol delivery of an entire Circuit cannot be completed within the prescribed time—a report to be made to the Foudaree Udalt, 17th July 1821	36
—To be held at the station where the Criminal Court is fixed, 25th January 1830	133

GAZETTE

Fort St. George—publication in—of reward for an escaped Convict—sufficient warrant for acting in the case, 16th May 1832	162
Fort St. George—publication in—of names of Police or Judicial Officers dismissed for misconduct, Circular Orders 63 and 94	228,245

GRAIN

Stealing—when theft—when robbery, 6th April 1830	136
—How to be supplied to certain gaols, 18th June 1831	149
Interference of Government considered highly objectionable during famine as to prices of—14th January 1833	168
—In husk to be supplied to Prisoners not liable to labor—with certain exceptions, 16th September 1833	180

GODENA

Circuit Judge in communicating to the Criminal Judge the sentence of Transportation—to give directions in regard to the inscription, 1st May 1815 and 29th May 1816	7,14
To be done by the Criminal Judge to whom the Warrant is addressed, 8th October 1821 ..	44
If not—on the Convicts arrival at Chingleput, 20th Feb. 1823 ..	62

GUARD

Of Police Peons to escort Convicts to Chingleput, to be furnished by the Magistrates on the application of the Criminal Judges, 18th October 1822 ..	58
Judges, &c. making application for—to Magistrate to give information respecting the convicts, &c., 10th November 1827 ..	107
—Connivance at escape of Pri-	

	PAGE
soners how punishable, 13th July 1829	128
—Military of Circuit Judge discontinued, 4th December 1833 ..	181
Muster roll of—in jail, to be made every night, 23d September 1834	207
Authority of Criminal Judge in matters concerning—20th February 1835	213
—To be placed under the control of the officers under whom the convicts are employed, Circular Order 83	236
Rules for the pay and management of—Circular Order 85 ..	239,40
In transference of Prisoners the jail, as well as Magistrate's Peons, to constitute the guard, Circular Order 156	260
—Having lawful authority to detain prisoners in custody, and allowing them to escape, how punishable C. O. No. 156	266
—Of one Zillah, not to accompany Convicts transferred throughout the march, except in cases of absolute necessity C. O. No. 167	270

H

HANDCUFFS

See Irons.

HOMICIDE

Immunity from prosecution for—notice of—27th Dec. 1833 ..	168
—Committed in resistance to robbers, Magistrates should not forward cases of—but should examine them in person, or delegate the duty to his European subordinate.	
Cases of—brought before the Criminal Courts—how to be disposed of—19th Feb. 1834 ..	187
On the disposal of cases of justifiable and accidental, 9th April 1834	193
—Accidental, in cases of—Rules for direction of the Magistrates, 3d July 1834	201

HOSPITAL

Alteration of—See Judge Circuit, 14th April 1834	194
--	-----

HOUSE BREAKING

Is not—when a door is left open, 28th August 1835	114
---	-----

*But is so, when
"a Lally is removed"
F. U. dated 21st Aug 1850*

In Criminal reports, should be shewn whether committed by night or day—definition of—29th September 1828..... 114

HUSBAND

Evidence of—against his wife. See Evidence, 4th March 1830.... 134
—Has no grounds for complaint in cases of adultery if he has connived, &c., Circular Order 126..... 256

I

IDENTIFICATION

Of Corpse in murder cases—of property in cases of theft and robbery, 27th December 1816.. 13
Of Prisoners—persons swearing to, to be particularly examined touching that point, 16th May 1822..... 53
Also in regard to—of property, 16th May 1822..... 53

IMITATION

Of Sirkar Stamp or Custom House Chop.
See Forgery.
8th May 1815..... 8

IMPLICATION

Of a person not apprehended. See Examination.
10th August 1833..... 177

IMPRISONMENT

Sentence to—by Magistrates and Criminal Judges, to include labour at discretion, 7th February 1820..... 26
See Labour.

INDICTMENT

For Perjury—how to be drawn up, 31st Jan. 1814 and 31st January 1820..... 3,26
See Perjury.
—Charges.

INDUSTRY

Of Prisoners.
See Labour.

INFANT

When appearing as a witness—what course to be pursued, 15th April 1819..... 23

INJURY

The degree of—committed in Gang Robbery which renders necessary a reference to the Foudjaree Udalut of the trial explained—26th October 1820 and 23d November 1820..... 32,33

INQUEST

To be held by Police Officers, in every case of murder, 29th April 1822, 30th Jan. 1833.. 52,170
And neglect of that duty to be visited with punishment, 29th April 1822, 30th Jan. 1833.. 52,170
—To be held by heads of Police and heads of Villages, in every case in which the death of a person in custody may occur, 25th March 1824..... 79
And to forward the record thereof to the Magistrate and in cases coming before the Criminal Court, to that Court, 25th March 1824..... 80
To be held immediately in cases of murder, 24th March 1825.. 97
Notice of the general neglect by the Police of the duty of holding, 30th January 1833.. 169

INSANITY

Persons sent to the Presidency as Insane, to be delivered over, on their arrival, to the Superintendent of Police, 12th September 1823..... 67
Rules respecting Insane persons, 1st June 1829 and Circular Order 133..... 126

INTIMIDATION

May convert a case of theft into a case of robbery, 6th April 1830..... 136

IRONS

Persons charged with a bailable offence and committed for default of bail, not to be confined in—before trial, 8th October 1821..... 41
Court of Circuit competent to sentence to Labour without,—8th October..... 42
27th June 1831..... 149
See Circular.
25th June 1834..... 200
Sentence of—opinion of the Foudjaree Udalut respecting—3d August 1833..... 179
See Fetters.

Prisoners sentenced by heads of Police cannot be worked in—Circular Order 64..... 229
—To be as light and easy as is consistent with security, Circular Order 113..... 252
See Fetters.
The substitution by Police Officers of Wooden for Iron handcuffs prohibited—C. O. No. 162, 268

J

JUDGE

How to proceed on forfeiture of recognizance, 21st May 1817.. 16
Any correspondence by letter irregular with one of the parties in cases before him, 19th November 1832..... 166
Duty required on Sunday in certain cases, 30th January 1834.. 184
—How to act in cases of accidental homicide, 3d July 1834. 201

JUDGE—CIRCUIT

Rules for the conduct of a trial by—27th December 1815..... 11
Record of proceedings and Calendar delivered by Criminal Judge to—to contain copies of proceedings of Magistrate or Police Officer, 30th July 1817.. 18
Report to be made to the Foudjaree Udalut whenever the gaol delivery of a Circuit may not be completed within the prescribed period, 17th July 1821..... 36
—To furnish Collective Court of Circuit with all orders addressed to him individually by the Foudjaree Udalut, 6th September 1821..... 41
—Competent to order the admission of bail in cases of "Arson," 8th October 1821..... 42
Competent to sentence to labour without irons, 8th Oct. 1821... 42
On finding that a case has been committed for trial before him, on insufficient grounds,—to order the discharge of the parties without trial, and report the circumstance to the Foudjaree Udalut, 26th November 1821..... 47
To report to the Foudjaree Udalut in every referred case, whether the proceedings of the Police Officer were held by a person duly authorized under the Provisions of the Regula-

tions, 30th Nov. 1821 and 30th April 1824..... 47,81
To submit with every referred trial, a distinct opinion of the merits of the case, and upon the guilt or innocence of the prisoner—and the different sentences which should be passed upon each Prisoner, 27th Dec. 1815, 24th Dec. 1821, 4th March, 8th March 1822, and 14th March 1834, Circular Order, No. 108.. 14,48,51,52,191,250
Competent to send back committed cases for disposal by the Criminal Court, but in that case, the grounds of the proceeding to be entered in the Calendar, 20th Feb. 1823... 62
To enforce attention to the orders regarding the information to be supplied by the Criminal Judges in the "Abstract" column of the Calendar, 17th April 1823..... 64
To communicate to the Magistrate whenever the name of a Sub-officer of Police appointed under Regulation IV., of 1821, may not be included in the list required by the Circular Order of 30th November 1821, and in all referred trials, a Notification to be made of the result to the Foudjaree Udalut, 30th April 1824..... 81
What papers he is to send Translations of in referred trials—and what he may omit, 17th Jan. 1815, 30th July 1817, 4th Mar. 1822, and 19th Jan. 1825, Circular Orders Nos. 115,121, 123..... 6,17,51,95,252,254,255
Authority over Magistrate's proceedings defined, 14th May 1829. 123
—How to proceed in respect to prisoners in gaol under security, 20th July 1829..... 128
—How to proceed in respect to the delivery of the gaols of the Joint Criminal Courts, 25th January 1830..... 133
—Finding ignorant witness bound over, to admonish Criminal Court, 15th July 1830..... 140
Notice of his power to call for papers, &c. from the Magistrate connected with unrecorded cases, 16th Nov. 1831.. 154
—Referring cases where no marks exist of insufficient investigation, 27th Aug. 1832..... 165
—Not to hold more than one trial at a time, 21st Jan. 1823..... 169
—Can require Magistrate to apprehend a person found to be

	PAGE
implicated in a criminal charge 10th August 1833.....	177
—Finding a case in the Calendar committed by himself as Criminal Judge how to proceed, 21st August 1833.....	178
—Is to examine even a single witness for the defence, 4th October 1833.....	180
—Should give in his letter accompanying a trial, a distinct opinion as to the conviction or acquittal, and if convicted, as to the punishment, of each prisoner and the grounds for both, 14th March 1834.....	191
—Purposing to recommend a mitigation of punishment how to proceed, 20th March 1834.....	192
—Proposing alteration of a gaol or hospital how to proceed, 14th April 1834.....	194
—Recommending mitigation of punishment how to act, 18th July 1834.....	203
—To be careful to observe the provisions of clause 2d, Sec. VIII., Regulation VI. of 1827, 2d September 1834.....	206
—Can release on security those Prisoners, in referred cases, whom he considers ought to be acquitted, Circular Order No. 47.....	221
—When to call for a second Futwah overruling the legal objections of the first, Circular Order, 54.....	224
—How to dispose of property that had been stolen, Circular Order, 71.....	232
—To furnish the Magistrate and committing officer with official information of the grounds on which sentences of acquittal have been passed in trials by that Court, Circular Order, 85.....	238

JUDGE ON CIRCUIT

To report when he expects to be unable to finish the Circuit in due time, 17th July 1821....	36
—To communicate to the Circuit Court all orders addressed to him, 6th Sept. 1821.....	40-1
—To deposit amongst the records the papers received during the Circuit, 2d June 1827.....	105
—To ascertain that Prisoners are not put to labour on private property, 1st August 1827.....	106
—His power to call for the translation of any part of the Calendar under Section XXIII. Regulation X., 1816 and Section	

	PAGE
VI. Regulation VI., 1822, 20th July 1829.....	129
—How to proceed in respect to the delivery of the gaols of the Joint Criminal Courts, 25th January 1830.....	133
—Arriving at Sudr station, head Native Servant in the Magisterial department and others to wait on, 22d March 1830.....	135
—His duty respecting Decrees passed, 11th October 1830.....	141
—To report to Foujdaree Udalut the day of opening the Sessions, 7th January 1832.....	155
—May refer cases in which the proper jurisdiction may have been exceeded or any others in which error may be apparent and remediable—there being no marks of insufficient investigation, 27th August 1832.....	165
—To inquire into the conduct of parties who had charge of Prisoners when they escaped—19th November 1832.....	166
—Can receive and pass orders at any period of his Circuit on Petitions against the Magistrate, 31st July 1833.....	176
—Discontinuation of Military Escort of—4th Dec. 1833.....	181
—Statement of Prisoners awaiting trial to be entered in the letter submitted by—on his arrival at a station, 21st July 1834.....	204
—Can order the apprehension of a Prisoner improperly released by a Criminal Court, 2d December 1834.....	210
—To hear first postponed trials, Circular Order, No. 52.....	223
—To write separate orders on and not return petitions, but file them amongst the records of the Court of Circuit, Circular Order 76.....	233
—Not to receive Supplemental Calendars without the consent of the Foujdaree Udalut if it prevents his rejoining the Sudr Station within the prescribed period, Circular Order 98.....	246
—Referring cases need merely give a brief summary of the Evidence, Circular Order 108.....	250
—Recommending Capital Punishment to submit a translation of all proceedings before the Magistrate and Police, Circular Order 115.....	252
In cases when the Prisoner is charged with several crimes and acquitted by the—of the	

major offences, he can refer the minor to the Criminal Court, Circular Order No. 187

JUDGE—CRIMINAL

To examine accused persons himself, and never to delegate that duty to a Native Officer, 21st October 1819.....	25
—May award labour—as well as imprisonment, in passing sentence, 7th February 1820, 28th September 1824.....	26, 89
—Is not competent to prevent the execution of a warrant addressed to the Jailor by the Magistrate under Section XXXIV. Regulation IX. of 1816, 7th February 1820.....	28
—When doubting the legality of Magistrate's sentence, to make a reference to the Provincial Court of Circuit, 7th February 1820.....	28
—Not competent, under Regulation III of 1819—to entertain, in the first instance, a charge of abuse of authority against Native Officers of Police, 6th April 1820.....	29
—To take all available additional evidence in support of confessions before Native Police, 7th September 1820.....	30
—Has discretionary powers in regard to release or commitment of cases of Perjury and subornation of Perjury sent up by the Magistrates, 1st Aug. 1821.....	38
—And also to cases of the same nature tried by the Assistant Criminal Judge, 1st Aug. 1821.....	38
—Possesses full controul over the proceedings of his Assistant, 1st Aug. 1821, 12th Dec. 1823.....	38, 73
—Not competent to institute proceedings against a party sent to him as a witness, who may appear to be implicated in the charge under investigation, 28th October 1822.....	59
But must in such a case, communicate with the Magistrate, 28th October 1822.....	59
Criminal Judges whose Jurisdiction extends over more than one Collectorate, to specify in the Calendars laid before the Court of Circuit from the jurisdiction of what Magistrate each Prisoner was brought before him, 23d January 1823.....	61

	PAGE
—To whom *warrant of Transportation and Corporal punishment is addressed, to inflict the Corporal punishment, 20th February 1823.....	62
—To apply to the Magistrate for information as to the date of the original charge against the accused, whenever the Report of the Police Officer may assign a date subsequent to that of their apprehension, 20th February 1823.....	62
—To furnish a monthly Report to the Magistrate showing the mode in which the cases forwarded to the Criminal Court by the Magistrates and the Police have been disposed of, 10th April 1823.....	63
—To be careful to supply the required information in the prescribed way, in the "Abstract" column of the Calendar to be laid before the Court of Circuit, 17th April 1823.....	64
—To communicate to Magistrates all cases sent up to the Criminal Court by the District Police without sufficient evidence or inquiry, 21st May 1823.....	65
—To specify in the monthly Criminal Reports—the circumstances of aggravation in all cases of theft, punished by them under Clause 4th, Sec. III. Regulation VI of 1822—with imprisonment exceeding six months, 13th Aug. 1823.....	67
—Not competent to sentence the same individual to suffer the prescribed penalty "twice or thrice" on the proof of two or three charges, 28th Oct. 1823.....	68
—Competent to commit for trial a party guilty of perjury before himself—without the intervention of the Magistrate, 28th October 1823.....	70
—Competent to delegate their Assistants the extended power given by Regulation VI of 1822, 12th December 1823.....	73
But this authority to be exercised with caution and cases of a heinous nature, not to be referred to an inexperienced Assistant, 2d Dec. 1823.....	73
—May release a Prisoner on his furnishing the security demanded by the Magistrate under Section III. Regulation II of 1822, provided the Magistrate consider the security sufficient, 25th February 1824.....	78

PAGE	PAGE
-To furnish, when necessary, a ground plan of the premises in which the crime charged may have been perpetrated, 6th March 1824.	79
When the power of passing decisions has been fully delegated to an Assistant—such decisions not liable to reversal, 9th June 1824.	81
-To correspond with the Magistrates by Letter, 28th July 1824. Authorized by Government to pay batta, in cases of necessity, at the usual rate, to prosecutors and witnesses, during the whole period of their absence from their houses, in attendance on the Criminal Courts, 23d Aug. 1824.	85
And in the Abstract Report to distinguish the number for each District respectively, 4th September 1824.	87
-Judge of Circuit invariably to call the attention of the Criminal Courts to any departure observable in their proceedings from the Standing Orders of the Foujdaree Udalt, 27th Sept. 1824.	88
-Informed that the Circular Order of the 7th Feb. 1820 was not intended to sanction the imposition of labour in cases of inconsiderable breach of the peace, or other slight misdemeanour, 28th September 1824.	89
-Attention called to the Law which prescribes that the depositions of parties shall be taken and recorded in the language the deponent may desire, 26th Nov. 1824.	94
Excepting in cases of illegal sentence, 15th Nov. 1824.	94
-To have entire cognizance over all offences committed in the Jail, 23d June 1829.	113
-Has discretion to inflict stripes—under Section VII. Regulation X of 1816, 28th June 1828.	113
How to proceed when cases are sent up to him which might have been disposed of by the Magistracy, 31st Dec. 1828.	116
-To grant the accused the privilege of a defence and witnesses, 21st May 1829.	124
-How to proceed in respect to charges against Prisoners already under sentence, 27th May 1829.	125
-How to proceed when a case comes before him with defective evidence, 20th July 1829.	129
-Cannot admit any compromise in cases of a heinous nature, 27th August 1829.	131
-To hold all his proceedings in open Court, 25th Jan. 1830.	134
-Rule for his observance in supplying Convicts to other authorities, 11th March 1830.	135
-Cannot call on Magistrate to explain delays in Talook, 1st April 1830.	136
-Passing sentence of stripes and imprisonment exceeding 3 months—stripes when to be inflicted, 21st October 1830.	141
-Each Prisoner on arrival or within 12 hours afterwards to be brought before.	142
-If he complains of Police, record or complaint to be made, 27th October 1830.	142
-How to proceed in cases of poisoning, 8th December 1830.	142
-Committable cases before, 16th November 1831.	154
-How to proceed when Prisoners abuse the privilege of calling witnesses in their behalf, 1st June 1832.	163
-To appoint a Vakeel to conduct prosecutions in absence of Government Vakeel, 25th June 1832.	164
-In cases involving wounds or hurts—is to record the degree of injury: if the wounds are severe, the Surgeon is to give the certificate respecting them—the certificate to be annexed to the trial, 10th April 1833.	173.4
-Should be cautious in exercising the discretion he possesses of limiting the number of witnesses for the defence, 7th August 1833.	176
-Finding a party implicated in the charge under examination—how to proceed, 10th August 1833.	177
-How to dispose of cases of Homicide, 19th Feb. 1834.	187
-Should not require security in cases where evidence is forthcoming, sufficient to bring home conviction of guilt, 2d September 1834.	206
-Exercising the powers vested in them by Section II. Regulation I. of 1824, to enter a note of his proceedings, 24th November 1834.	208
-To notify to the Magistrate of	

PAGE	PAGE
the Zillah in which he may have lived or been brought to trial, the release of a Prisoner, Circular Order 67.	230
-To be careful not to commit cases which he might himself punish under Section III. Regulation VI of 1822, Circular Order 68.	231
-In committing certain cases to invariably explain in the monthly Criminal Reports why the punishment vested in him by Clause 4th, Section III. Regulation VI of 1822 is deemed insufficient, Circular Order 68.	231
-Cannot impose a fine exceeding 10 Rupees upon any subordinate public servant, without the special sanction of the Foujdaree Udalt, Circular Order, No. 79.	234
-Releasing Prisoners belonging to another district how to proceed, Circular Order, No. 92.	244
-To rectify any errors in the charges sent up by Police Officers, Circular Order 109.	251
-Should commit in cases of assault when fracture of a limb was the consequence, Circular Order 124.	255
-Is informed that persons forwarded upon the charge of secreting Robbers, &c. can be dealt with under the General Regulations, Circular Order 146.	264
-When permitted to examine Witnesses in committable cases, C. O. No. 159.	267
-To furnish Magistrates with report of each case disposed of, within 24 hours after the proceedings are closed, C. O. No. 161.	268
JUDGE CRIMINAL NATIVE	
See Principal Sudr Ameen.	
JUDGE ASSISTANT CRIMINAL	
Delegation of duty to. See Delegation.	38
1st August 1821.	38
Judge—Session—See Judge Circuit.	
JURISDICTION	
Of a Criminal Judge extending over two Collectorates, his Criminal Report what to specify, 29th November 1827.	107.8
-Of Supreme Court in matters of Admiralty, 31st July 1834.	204
JURY	
See Assessor.	
JUSTICE OF PEACE	
-To be resorted to in cases of Offences committed at Sea, 31st July 1834.	204
The extent of the powers of Magistrates as—in cases where both parties are Europeans, C. O. No. 163.	268
LABOUR	
May be awarded, at discretion, by Magistrates and Criminal Judges, in addition to sentence of Imprisonment, 7th February 1820.	26
But not in commutation of Fines adjudged by the Magistrate under Sections XXXII and XXXV. Regulation IX. of 1836, or in cases of inconsiderable breach of the Peace or other slight misdemeanour, 28th September 1824.	89
-Of Prisoners to be strictly on public works and not on private, 1st August 1827.	106
-Of Prisoners—on rendering it productive—monthly statements required, 19th January 1831.	143
-Of Prisoners—Judge Criminal when to report cases of industrious, 4th March 1831.	146
-Of Prisoners under security, 25th July 1831.	150
19th October 1831.	152.3
-Of Prisoners—form of statement of—modified, 29th August 1831.	151.2
-Of Prisoners—to be devoted to the roads, if they require repair, 16th February 1835.	171
Prisoners not liable to—to be supplied with grain in the husk to be heat out by them—exceptions stated, 16th September 1833.	179
-Sentence of See Sentence.	178.9
31st August 1833.	178.9
-Of Prisoners—memo. of product of. See statement.	181
30th December 1833.	181
-Accompanying imprisonment, 28th June 1834.	200
Product of Prisoners—how to	

be entered in the statement,
Circular Order, 53..... 224

LAW OFFICER

Not to attest English record,
27th December 1815..... 13

LETTERS

—Paragraphs of—to be numbered,
4th September 1820..... 29
—Of Judge of Circuit accompanying a Referred Trial, what
particulars to contain, 27th
December 1815, 24th December
1821, 4th March, 8th
March 1822 and 14th March
1824, and Circular Order, No.
108..... 14,48,51,52,191,250
Correspondence of Criminal
Judge with Magistrate to be
by—28th July 1824..... 84
See Trial.

LUNATICS

See Insanity.

M

MAGISTRATE

Proceeding of—to form part of
the record to be delivered by
Criminal Judge to Court of
Circuit, 30th July 1817..... 17
To attest Official Papers by the
signature of "Magistrate,"
29th January 1810..... 20
To lay before the Judge of Circuit
at each gaol delivery—a
statement of crimes committed
within his jurisdiction, 2d
March 1818..... 20
—Powers of—in regard to
"Petty Thefts" explained,
26th August 1818..... 21
—Petty Calendars of—to contain
a statement of the amount
or value of property, stolen
26th August 1818..... 21
To what extent he may delegate
his powers to his Assistants,
26th August 1818, 20th Aug.
1821, 30th Jan. 1824..... 21,40,76
To explain to the District Police
Officers in what way and
to what extent, the depositions
of parties and confessions
of prisoners are to be
taken down, 3d Dec. 1818..... 22
And that confessions of Prison-

ers are to be taken "in the
presence" of the attesting witnesses,
3d December 1818 and
29th April 1822..... 23,52
And in the words of the accused,
3d December 1818..... 22
Attention of Magistrates called
to Circular Order, 17th January
1815 relative to insertion
of particulars of names, &c.
&c. of witnesses, 25th December
1818..... 23
To examine accused persons,
himself and never to delegate
that duty to a Native Officer,
21st October 1819..... 25
May sentence to labour—as well
as imprisonment, 7th February
1820..... 26
Execution of his warrant to the
jailer under Section XXXIV.
Regulation IX. of 1816 cannot
be prevented by the Criminal
Judge, 7th February 1840..... 28
His powers in regard to cases of
Perjury and Subornation of
Perjury before himself, 1st
August 1821..... 37
Cannot delegate his entire Police
Functions to an Assistant,
20th August 1821, 30th January
1824..... 40,76
To be careful himself—and to
enjoin his Police Officers, to
require the complainants in
cases of Robbery, to particularize
the articles stolen and the
number of persons concerned,
&c. &c., 4th March 1822..... 51
To caution his Police Officers
against obtaining confessions
by improper means, 27th May
1806, 27th December 1815,
24th January 1822, 29th April
1822, 25th Oct. 1823..... 1,12,49,52,68
To investigate carefully every
case, as affording the best security
against the fabrication
or extorting of confessions,
24th January 1822, 29th April
1822..... 49,52
Calendars of Magistrates to be
delivered to Court of Circuit
to be completed up to the
latest practicable date, 16th
May 1822..... 54
To be the channel of communication
between established
Courts and Military Commanding
Officers regarding Criminal
cases, 12th August 1822..... 56
Their discretionary authority in
the distribution of their public
servants, not affected by Regulation IV of 1821, 15th August 1822..... 56
Magistrates cannot replace in
custody, persons whose unconditional
release has been directed by the Court of Circuit,
19th November 1822..... 60
Magistrates advised of the importance
of accuracy in the reports of Police
Officers in respect of the dates of the
original charge or information
against the accused—and of their
apprehension, 20th Feb. 1823,
1st March 1824..... 62,79
To take measures for preventing
the apprehension of persons on
insufficient grounds, 21st May 1823..... 65
Magistrates to require their Police
Officers, immediately on receiving a
complaint, to make a record of it, with
particulars and attached with their
signatures—to be forwarded to the
Magistrate or the Criminal Judge,
26th July 1823, 28th October 1823..... 66,69
Instructions of the Foujdaree Udalt
to the Magistrates—to be furnished to
them by Precept of the Court of Circuit
—and certified copies of the Precepts
and Returns to be transmitted by the
Court of Circuit to the Foujdaree Udalt,
4th August 1823..... 67
To take vigorous measures to ascertain
that Prisoners in the custody of the
Police Officers, are adequately supplied
with food, 28th October 1823..... 68
To suppress by the most vigorous
means, the falsification by the Police
Officers of the dates of apprehension,
24th January 1822, 28th October 1823,
1st March 1824..... 48,68,79
Not competent to sentence the same
individual to suffer the prescribed
penalty "twice or thrice" on the proof
of two or three charges, 28th Oct. 1823..... 68
Not competent, under Clause 2d,
Section IV. Regulation IV of 1821—to
pass sentence in a case of Theft of
property exceeding in value 5 rupees—
upon a report from a Police Officer,
without holding a personal investigation,
28th October 1823..... 69
To require their Police Officers, in
heinous cases, to forward to them a
transcript of the charges, on the day on
which they may

be preferred, 28th Oct. 1823, 18th Nov. 1823..... 69,71
Not competent, under Clause 1st, Sec. III. Regulation II of 1822, to order any person to jail, upon the report of the Police, without a personal investigation, 28th Oct. 1823..... 70
Exhorted to take vigorous measures to check the practice of detaining Prisoners more than 48 hours in the Talook, by the District Police—and to punish every ascertained abuse of authority, 24th January 1822, 29th April 1822, 25th October 1823..... 48,52,68
To be careful not to allow their Assistants or Police Officers to dispose or take cognizance of cases beyond their Jurisdiction, 28th Oct. 1823, 30th Jan. 1824..... 69,75
Cases in which they may dispense with sworn testimony, 30th January 1824..... 75
Not to allow their Assistants to inflict any punishment unsanctioned by the Magistrate, unless they have been employed at least 12 months in the Provinces, and have Revenue charge of at least one Talook, 30th January 1824, 7th June 1824..... 76,195
To exercise a sound discretion in delegating their duties to their Assistants, 30th January 1824..... 76
And in doing so—not to divest himself of the duties of that office, but to actually exercise as well as hold the joint office of Collector and Magistrate, 30th January 1824..... 76
Cannot regularly commit to jail under Clause 1st, Section III. Regulation II of 1822—without a personal examination of the case, 28th Oct. 1823, 25th February 1824..... 70,77
To specify the amount of security in his warrant for committing a Prisoner under Section III. Regulation II of 1822, 25th February 1824..... 78
Other Rules regarding security under same Regulations, 25th February 1824..... 78
Attention called to the Provisions of Regulation IV of 1821—regarding the appointment and distribution of Sub-Officers of Police, 1st Mar. 1824..... 78
To instruct the Tahsildars, and through them, the heads of villages, in all cases in which

PAGE		PAGE
	the death of a person in custody, may occur, to hold an inquest, on the body, 25th March 1824.	80
	To instruct their Police Officers to show in the monthly Criminal Reports, the day and hour of each Prisoner's arrival before them, and of his being dispatched to the Criminal Court: and to furnish an explanation of the cause of any considerable lapse of time between the apprehension of a prisoner and his appearance before the Tahsildar, 27th March 1824.	80
	To cause a Proclamation to be read and affixed at every gaol delivery at his Cutcherry and the Cutcheries of the Police Officers, regarding Transportation for life, as a punishment in cases of Murder, Robbery and other heinous crimes, 29th April 1824.	80
	To prohibit their Police Officers from questioning accused persons respecting their having, on former occasions, been concerned in other offences not connected with the charge under investigation, and from heading the depositions of persons before themselves, as having been delivered before the Criminal Judge or the Magistrate, 30th April 1824.	80
	To furnish the Court of Circuit on its arrival at the station of the Criminal Judge with a return specifying the names and dates of appointments of all subordinate Officers of Police selected under Section III. Regulation IV of 1821, 30th Nov. 1821, 30th April 1824.	47, 81
	His correspondence with the Criminal Judge of the Zillah to be by Letter, 28th July 1824.	84
	Attention called to Section XIV. Regulation IX of 1816, 4th September 1824.	17
	Upon receiving Report from Head of Police, to notice any detention of the accused in the Talook beyond 48 hours, for which no sufficient reason is assigned, and to furnish the Criminal Judge with a Memorandum showing what he may have done on the occasion, 13th September 1824.	87
	Cannot suppose labour in commutation of fines adjudged under	

PAGE		PAGE
	Sections XXXII and XXXV. Regulation IX of 1816, or in cases of inconsiderable breach of the Peace or other slight misdemeanour, 28th Sept. 1824.	89
	To give positive directions to their Police Officers, to report fully on every occasion, the grounds on which they may discharge from custody, accused persons brought before them, 30th Sept. 1824.	90
	To give public notification that all complainants who may be dissatisfied with the Tahsildar's order for the discharge of an accused party, are to represent the grounds of their dissatisfaction to the Magistrate, 30th September 1824.	90
	How to proceed—when desiring to execute process of Arrest within the limits of the Supreme Court, 14th October 1824.	90
	How to proceed when seeking the apprehension of a person resident in a different Zillah, 28th October 1824.	92
	Attention called to the law which prescribes that all examinations and depositions be taken in the language in which the deponents may desire to have the same recorded, 26th November 1824.	94
	Answerable for Convicts, &c. so soon as they are handed over to his care, 10th Nov. 1827.	107
	Amenable to Circuit Judge in certain cases, 14th May 1829.	123
	—To caution Police against unnecessarily referring to them, 21st May 1829.	124
	—To report on the extent of crime and the state of Police, 20th July 1829.	132
	—To explain delay exceeding 5 days in cases before them, 8th February 1830.	134
	To cause District Police to expose in their Cutcheries the translated statement of crimes and punishments, 22d March 1830.	135
	—To cause certain servants to wait on Judge on Circuit when he arrives at the Sudr station, 22d March 1830.	135
	—His powers, in connexion with the powers vested in the Joint Magistrate explained, 8th Apr. 1830.	137
	—To caution the District Police against inconsiderately sum-	

PAGE		PAGE
	moning persons charged with offences, 17th June 1830.	138
	—To impress on Tahsildars their duty respecting cases cognizable by heads of Villages, 11th April 1831.	146
	—Called on to cause greater vigilance and activity in the Police, 30th May 1831.	147
	Cases specified in which alone he can demand security, 7th July 1831.	150
	—Sending Prisoners to jail under security, what provision to make for their release, 5th August 1831.	150
	Circuit Judge can call on—for papers, &c. in unrecorded cases, 16th November 1831.	153
	What instructions respecting Suttees to be issued to his Police by the—24th Feb. 1832.	152
	Any correspondence by letter irregular with either of two parties in cases before him, 19th November 1832.	166
	—Is to submit his annual Police report with the half yearly statement, or show cause of failure, 27th December 1832.	167
	—Is to ascertain how far the people are aware of prospect of reward for resistance of robbers, and of immunity from homicide thus committed, 27th December 1832.	168
	—To stimulate heads of Villages to an energetic discharge of their duties, and to exhort the people to resist attacks on their lives and property and assist their neighbours in repelling robbers, 22d February, and 18th March 1833, and 19th February 1834.	172, 187
	Countenance, and cordial co-operation, in support of the system of Village Police required from each, 30th March 1833.	172
	—To submit with the petty Calendars, to the Court of Circuit, the monthly Police statements.	
	See statement, 31st July 1833.	
	—Petitions against.	
	See Petition, 31st July 1833.	176
	—His duty as to apprehension of parties found to be implicated in a charge before the Criminal Court, 10th August 1833.	177
	—How to dispose of a case of homicide committed in resisting robbers, 19th Feb. 1834.	187
	Every complaint against the Na-	

PAGE		PAGE
	tive Police must be fully investigated by the European Magistracy, 20th March 1834.	191
	—His duty in respect to cases of justifiable homicide, 9th April 1834.	193
	—How to employ his junior Assistants, 7th June 1834.	195
	—When to proclaim certain rewards in the Talook, 7th June 1834.	197
	—How to proceed in cases of accidental homicide, 3d July 1831.	201
	—To point out to the Police Officers the rules to be observed in searching houses, 15th September 1834.	207
	Reference to—by his Police Officers, 28th November 1834.	210
	—On acquitting a person of the charge on which he has been apprehended to enter on the proceedings whether the acquittal arises from want of proof, or from the accusation being unjust, 17th Dec. 1834. 2-11-12	
	“The official superior” mentioned in Clause 2d, Sec. II. Regulation I of 1823 is the Secretary to Government, Circular Order No. 44.	219
	—To instruct his Police Officers that no persons are to be placed in the Stocks except on sentence under the Regulations, Circular Order 66.	230
	—Imposing fines under the provisions of Section XXXV. Regulation IX of 1816, to enter them in the Calendars laid before the Court of Circuit, Circular Order 74.	232
	—Prohibited from detaining accused parties when the evidence for their conviction is insufficient. Circular Order 81.	235
	—To impress upon the people the danger incurred by children being allowed to go abroad with ornaments, &c. Circular Order No. 101.	248
	—Invariably to record the provision of law under which his sentence is passed. Circular Order 106.	250
	—To supply Peons accompanying convicts with subsistence money as far as the next district, &c. &c. Circular Order 138.	261
	—To hold personal investigation in cases of false complaint, Circular Order 140.	262
	—Competent to grant rewards to	

PAGE	PAGE
individuals for courageously resisting attacks of Gang robbers, without previous communication with the Foudaree Udalt, C. O. No. 153.....	Judges relating thereto, 27th November 1820..... 33
—To be furnished with a report of each case forwarded to the Criminal Court, within 24 hours after the proceedings are closed, C. O. No. 161.....	Ill-treatment of persons in custody of the Police denounced, 29th October 1824..... 92
—As Justice of the Peace—the extent of his power in cases where both parties are Europeans, C. O. No. 163.....	See also under Confessions. See Extorting—Police—Proclamation.
—Not required to submit the statement of Crimes, prescribed by C. O. dated 2d March 1818, C. O. No. 166.....	MANUFACTURES
—In their periodical statements, to adopt the designation of Crimes entered as a heading to the abstract of the charge in the Monthly Criminal Returns of Courts, C. O. No. 168.....	Memorandum of—to be appended to statement of labor, 30th December 1833..... 181-2
—To give the utmost possible publicity to sentences passed by Courts, at the place where the offence was committed, for which the prisoners were brought to trial, C. O. No. 170.....	—In gaols—when supplied for public purposes, the cost should be debited against the Officer requiring them, 7th June 1834..... 196
—Acting under Section LIV. Act VII. of 1843, possess the same power as Criminal Judges in regard to demanding security from parties against whom an offence may not be clearly established C. O. No. 173.....	MEDICAL BOARD
—To furnish with their half yearly reports, a statement shewing the No. of cases forwarded to the Criminal Court by each head of Police, and the manner in which they were disposed of—C. O. No. 175.....	—To be applied to—for analysis of poisonous drugs, 8th Dec. 1830..... 148
—To publish at least once every half year, the proclamation contained in C. O. No. 101 C. O. No. 176.....	MEDICAL OFFICER
—The rule contained in C. O. dated 21st October 1830, applicable to sentences passed by—under Section LIV. Act VII. of 1843 C. O. No. 177.....	See Surgeon.
—The degree of control and supervision to be exercised by the—over the proceedings of the subordinates under Section LIV. Act VII. of 1843 C. O. No. 179.....	MILITARY AUTHORITIES
	Magistrates advised of the importance of enforcing a regular course of proceeding in the cases of offenders made over to the Civil Power by the—12th August 1822..... 56
	All communications regarding criminal cases between the established Courts and the Commanding Officers of Military Stations, to take place through the office of the Magistrate, 12th August 1822..... 56
	—In charge of Prisoners to forward the statement called for by Foudaree Udalt, Order of 9th February 1835, by the 5th of each month. Circular Order 40..... 218
	MILITARY BOARD
	Indents on—See punishment corporal.
	MILITARY CANTONMENTS
	See Cantonnements.
	MILITARY ESCORT
	See Guard.
	MISDEMEANOUR
	Slight—labor not to be imposed, 28th September 1824..... 89

MALTREATMENT
Of a Slave by his Master—punishable—Instructions to Police Officers and to Criminal

PAGE	PAGE
Definition of—23d Feb. 1829....	119
Prisoner convicted of—not to be ironed except in special cases, and then the fact to be recorded, 27th June 1831.....	149-50
MITIGATION	
Prisoner to be apprized of recommendation for—8th May 1815.....	9
Power of mitigation vested in a Court of Circuit by Clause 5th, Sec. IV. Regulation XV. of 1803, explained—26th October and 23d November 1820.....	32-33
The Court of Foudaree Udalt are not bound to a confirmation of the proposed—they may mitigate to the extent they judge proper dispensing with the reference of the trial, 17th Sept. 1825.....	102
—Of punishment—Judge of Circuit how to proceed when purposing to recommend—20th March 1834.....	192
—Recommended by Circuit Judge, no letter or separate report need be furnished, 18th July 1834.....	203
Where a—of Punishment in favour of the Prisoner may be recommended, the sentence shall be computed to take effect from the date of the original warrant, 8th Dec. 1834.....	211
MURDER	
In every case of—an Inquest to be held by the proper Police Officer, 29th April 1822, 30th January 1833.....	52, 169
And neglect of that duty to be punished, 29th April 1822, 30th January 1833.....	52, 169
Identification, and examination of corpse in cases of—27th December 1815.....	13
—Record of complaint to Police respecting—what to comprise, 18th November 1823.....	72
—By Thuggee a separate count to be made charging the Prisoner with the distinct offence, &c. Circular Order 95.....	246
N	
NATIVE JUDGE	
See Judge Criminal Native.	
NATIVE OFFICER	
Summons or warrant of Police to— See Police. 30th December 1833.....	182
NUMBERING	
Of articles of stolen property, 16th May 1822 and 27th September 1824.....	53, 89
Of pages of the English Translation of the Record of Referred cases, and of the questions put in the examinations before Criminal Court and Court of Circuit, 27th September 1824.....	89
—Of Prisoners in the Criminal Reports, 29th November 1827.....	107
—Of Criminal Reports 6, 7, 8, 9, 11 and 12, 7th Dec. 1827.....	109
—Of Circular Order, 1st July 1834.....	201
—Of Prisoners in their various trials, and in cases referred to the Foudaree Udalt, 14th August 1834.....	205
O	
OATH	
Vakeel not to be put on, 27th December 1815.....	13
Objection to the power of dispensing with testimony on, 30th January 1824.....	75
Evidence in cases under Section III. Regulation 11 of 1822 must be on, 25th Feb. 1824.....	77
Depositions before Police cannot be on, 4th September 1824.....	86
Evidence of children under age on, 12th July 1825.....	99
Evidence of approver to be on, 3d April 1828.....	111
OLD OFFENDERS	
The fact of a prisoner under trial, being an "old offender" to be recorded, with particulars both in the proceedings of the Criminal Judge and the Calendar, 6th September 1821.....	40
See Calendars.	
OOKOOBUT	
Futwas of Ookoobut to contain the grounds for such award—and when given in cases of Theft or Robbery—a translation of the grounds to be given	

in the Calendar submitted by the Court of Circuit, 28th May 1822.....	PAGE 54
Mahommedan Law Officers in delivering their Futwas, to specify all the grounds on which a prisoner is declared liable to discretionary punishment, 22d July 1822	56
OPPRESSION	
Charges of oppression, extortion, or other abuse of authority against Native Police, not cognizable in the first instance by the Criminal Court; but by the Magistrate, 6th April 1820	29
By Police in Cantonments how punishable, 10th March 1829..	121
ORDER	
See Circular,	
P	
PAPER	
On the supply of—to Courts of Circuit from the gaols, where it is to be manufactured, 7th June 1834.....	196
PARDON	
Magistrate recommending the tender of a conditional pardon to a supposed accessory, to satisfy the Foujdaree Udalt of certain particulars, 13th May 1824.....	81
The provisions of Section XX. Regulation VIII of 1802, respecting the offer of a conditional pardon, to be resorted to with great caution, 13th May 1824	81
Form of offer—to an approver who has not or has confessed himself an accessory, 3d April 1828.....	111
Failure to perform conditions of—case how to be disposed of, 20th August 1832	165
Offer of conditional—to be in the name of the Court of Foujdaree Udalt, 26th December 1832	167
See Approver,	
PEACE	
In considerable breach of the—	

labour not to be imposed for, 28th September 1834.	PAGE 89
Vide Justice of	

PEONS

Police—apprized by proclamation of the punishment of a Kolkar by sentence of Foujdaree Udalt for executing the illegal orders of his superiors in regard to ill treatment of a prisoner, 29th October 1824	92
And warned that they will not be exempt from punishment on the ground of their acting under the orders of their superiors, 29th October 1824.....	93
Not to use their swords or unnecessary violence towards Prisoners attempting to escape, 18th April 1831.....	146-7
16th June 1831	149
Monthly statement of extra—form of, 16th August 1834....	205
Extra—under what circumstances allowed, 15th October 1834	208
As guards liable to punishment by Criminal Courts, 20th February 1835	213
One Peon to be entertained for every 4 convicts "employed at work outside the jail," 13th March 1835	213, 14
To be under the exclusive control of the Officer under whom Prisoners may be employed, Circular Order No. 83	236
Rules for the better management and encouragement of, Circular Order, 85	240
May attest confessions, Circular Order 91	243
In guard of convicts to keep their swords drawn and ready for use, Circular Order, 114	252
Accompanying convicts to be supplied with subsistence money by the Magistrates of the several districts they may pass thro' Circular Order 138	261

PERJURY

Rules regarding trials for, 31st January 1814	2
For form of Indictment and arraignment 31st Jan. 1820....	26
Provisions of Mahommedan Law in regard to—explained, 3d May 1821	35
Or subornation of Perjury by a party before a Magistrate—the Magistrate to send up the case to the Criminal Court—	

but the Criminal Judge to determine in regard to the commitment or release, 1st Aug. 1821	PAGE 38
—Before a Criminal Court—that Court competent to commit the party for trial, without the intervention of the Magistrate, 28th October 1823.....	70
Form of Indictment for, 23d November 1826	105
Case of—committed by one Judge—how to be proceeded with by another Judge of Circuit, 27th October 1830.....	142
Indictment to be entered in Calendar in cases of, 6th Feb. 1832	156
Full indictment for—need not be entered in Criminal reports, 12th May 1832	161
More than one person cannot be tried in a case of, 6th August 1832	164-5
—In support of Alibi	
See Alibi	
12th July 1833:	
—By whom cognizable, 12th February, 1834	180
—Subornation of—by whom cognizable, 12th Feb. 1834	186
Prosecution for subornation of—can be proceeded in although the party committing the perjury may not have been brought to trial. Circular Order, No. 46	220
Form of indictment for the crime of subornation of, Circular Order, 49	222
—Originating in Session Court—the powers possessed by the present Criminal Courts, in respect of commitment of cases of—C. O. No. 182	276

PESHCARS

Of Talooks—on their being vested with powers of Ameens of Police, 10th June 1834	198
--	-----

PETITION

Complaining against Magistrate can be received and disposed of by Circuit Judge at any period of his Circuit, 31st July 1833	176
Not to be returned by Judge on Circuit but filed amongst the records of the Circuit Court. Circular Order, No. 76.....	233

POISON

Evidence as to—14th Apr. 1828. 112	
8th December 1830.....	142

POISONOUS DRUGS

See Drugs

POLICE

Proceedings of—to form part of the Record to be delivered by Criminal Judge to Court of Circuit, 30th July 1817....	17
District Police Officers—how and to what extent to take down depositions of parties and confessions of prisoners, 18th June 1817, 3d December 1818.....	17, 22
To be careful that confessions are taken in the "presence" of the attesting witnesses, 3d Dec. 1818, 29th Apr. 1822	23, 52
And in the words of the accused, 3d December 1818.....	22
Charges against Native—of extortion, oppression or other abuse of authority, not cognizable in the first instance, by the Criminal Court, but by the Magistrate, 6th April 1820..	29
A Return to be furnished by the Magistrate to the Circuit Judge specifying the names &c. of all subordinate Officers of—selected by the Magistrate under Section III. Regulation IV of 1821, 30th Nov. 1821, 30th April 1824....	47, 81
Heads of—warned against falsifying the dates of the apprehension of Prisoners—enjoined to observe the Provision of the Law which limits the detention of the Prisoner in the Talook to 48 hours—and apprized that the usual excuses for exceeding that time, such as searching for stolen property, &c. &c. will not be admitted as valid—to obtain all the evidence a case may admit of—to search for stolen property—to make a report of the "Facts" of an offence—to transmit to the Magistrate immediate notice whenever any considerable property may have been lost, with a list of the property—not to detach village watchers from their proper Police Functions, 24th January 1822, 18th June 1817, 29th April 1822, 28th Oct. 1823,	

	PAGE		PAGE		PAGE		PAGE
22d Dec. 1823, and 1st March 1824	16,48,52,68,74,79	Instructions to the Heads of Police and Curraums, 18th November 1823	72	to credit, before process is issued for apprehension, and to pay attention to the provisions of the Law relative to Bailable offences, &c., 4th September 1824	87	selected by the deponent, that fact to be recorded, 26th November 1824	94
To require complainants in cases of robbery to particularize the articles stolen and the number and names (if known,) of persons concerned, &c., 4th March 1822	51	In forwarding Prisoners to the Criminal Judge to specify the date of their leaving the Talook, 22d December 1823	74	Upon forwarding a case to the Criminal Court, to transmit immediately to the Magistrate, a copy of the report furnished, to the Criminal Judge under the provisions of Clause 4th Section XXVII. Regulation XI. of 1816, 13th Sept. 1824	87	And in such cases, to certify that the translation of the deposition was carefully explained to the deponent previously to his fixing his signature, 26th November 1824	94
Warned against using improper means to obtain confessions, 27th May 1806, 27th December 1816, 7th September 1820, 24th January 1822, 29th April 1822, 28th Oct. 1823, and 29th Oct. 1824. Circular Order, 66	1,12,30,49,52,68,92,230	To be careful not to punish in cases beyond their jurisdiction, 26th October 1823 and 30th January 1824	69-75	Competent, after proceedings held under Clause 2d, Section XXVII. Regulation XI of 1816, to discharge the accused from custody, 30th September 1824	90	Heads of—not to examine accused persons who do not make voluntary declarations, 4th June 1825	99
Heads of—to hold Inquest in cases of murder—and in every instance of neglect of that duty, to be punished, 29th April 1822	52	Regarding the appointment and distribution of Sub-Officers of, under Regulation IV of 1821, 1st March 1824	78	But upon every occasion of exercising this discretion, to report fully the grounds of their proceeding, 30th September 1824	90	Heads of—to insert the Native date in words as well as numerals before declaration is recorded, 12th July 1825	99
To make an immediate record of complaints preferred before them, showing date of charge, &c., and other particulars, and attested with their signatures, 26th July 1823, and 28th Oct. 1823	66,69	To hold an Inquest, in all cases in which the death of a person in custody may occur, and to require heads of Villages to do the same, 25th March 1824	79	Public notification to be given that all complainants, who may be dissatisfied with the Tahsildar's order for the discharge of an accused party, are to represent the grounds of their dissatisfaction to the Magistrate, 30th September 1824	90	—In cantonments, 10th Mar. 1829	121
Such record to accompany the proceedings forwarded to the Magistrate or the Criminal Court with the depositions, 26th July 1823 and 28th Oct. 1823	66	To show in the monthly Criminal Reports, the day and hour of each Prisoner's arrival before them and of his being dispatched to the Criminal Court, and to explain the cause of any considerable lapse of time between the apprehension of a Prisoner, and his appearance before the Tahsildar, 27th March 1824	80	Warned against using violence or ill-treatment towards accused persons in their custody 29th Oct. 1824, Circular Order, No. 66	92,230	Heads of—to transmit to Magistrate cases cognizable by Criminal Court, 21st May 1829	124
To see that persons in their custody are adequately supplied with provisions, 28th October 1823	68	Every Police Officer not a Tahsildar holding examinations, to subscribe himself as specially appointed under Section III. Regulation IV of 1821, 30th April 1824	81	Apprized by Proclamation—for their warning—of the case of Hussain Khan a head of Police sentenced to suffer death by the Foujdaree Udaltut for having caused the death of a Prisoner in his custody, by ill-treatment, 29th October 1824	92	There should be no delay in the transmission of the several prisoners apprehended by, 21st May 1829	124
Cannot adjudge the same individual to suffer the prescribed penalty "twice or thrice" on the proof of two or three several charges, 28th October 1823	68	The omission of such Officer's name from the list, required to be furnished by the Magistrate to the Court of Circuit to be notified to the Magistrate: and in all referred Trials, a notification of the result to be made to the Foujdaree Udaltut, 30th April 1824	81	Police Peons, informed by Proclamation of the Punishment of a Kolkar for executing the illegal orders of the superior Police Officers, 29th Oct. 1824	92	Charges against—must be entered in Magistrate's Calendars, 20th July 1829	129
Not competent, under Section IV. Regulation IV. of 1821—to determine a case of Theft of property exceeding five rupees in value, 28th October 1823	69	Not to question accused persons respecting their having, on former occasions, been concerned in offences unconnected with the charge under investigation, 30th April 1824	80	—Peons and other inferior officers warned that they will not be exempt from punishment on the ground of their acting under the orders of their superiors 29th October 1824	92	Prisoner on arrival at Criminal Court complaining of maltreatment by—complaint to be recorded, 27th October 1830	142
Postponement of—to Revenue duty—denounced, 28th October 1823	69	Not to head the depositions of persons before themselves, as having been delivered before the Criminal Judge or the Magistrate, 30th April 1824	81	—Officers' attention called to the rule respecting the language in which the examinations of parties and depositions of prisoners, should be taken down, 26th November 1824	94	Inactivity of—exemplified by numerous offenders escaping apprehension, 30th May 1831	147-8
To forward to the Magistrates a transcript of the charges in heinous cases, on the day on which they may be preferred, 28th October 1823	69	Native Officers of—not authorized by Regulations to take depositions upon oath, 4th September 1824	86	When there may be no person capable of writing the language		Report—by Magistrate—to be submitted with second half yearly statement, or cause of failure explained, 27th December 1832	167
To receive from the complainants in writing or cause to be immediately reduced to writing all charges of Robbery, Murder, &c. &c. with particulars and to forward immediately to the Magistrates copies of the charges and examinations—and furnish these in-		Nor to fine a prosecutor for preferring a false or groundless charge, 4th September 1824	87			—To hear all the evidence that can be adduced before passing sentence, 21st January 1833	169
		To take pains to ascertain whether the accusation be entitled				—Neglect of their duty to hold inquests—penalty of it to be notified to them by the Magistrates, 30th January 1833	169-70

Summons or warrant of—for

	PAGE
apprehension of Native Officer or Soldier to be accompanied by a notification by the Police to the Commanding Officer, 20th December 1833.....	182
See Magistrate.	
Detention in Talook by—	
See Detention.	
Examination by	
See Examination.	
—Report	
See Report.	
—Aumeens—Definition of the powers and functions of—10th March 1834.....	188
See Aumeens of Police.	
—Sub Officers of District—are the class mentioned in Section III. Regulation IV, 1821—and to be always so denominated—distinction between them and Police Aumeens explained, 10th March 1834.....	190
Complaints against Native—must be investigated by the European Magistracy 20th Mar. 1834.....	191
—In Zemindaries in which the Chief Police authority is in the Zemindar, 26th May 1834..	194
—Sub Officers of—with powers defined in Section III. Regulation IV, of 1821—authority for their employment in Cavet-nuggur, 26th May 1834.....	195
Tahsildar's control over Police Aumeens.	
See Aumeens of Police, 10th June 1834.....	198
—Rules for—in cases of accidental homicide, 3d July 1836.	201
Periodical reports from—what to contain, 5th July 1834.....	202
Form of statement to be forwarded by—to Criminal Court in important cases, 9th July 1834.....	202-3
Detention of Prisoners by—in the Talook, more than 48 hours, 28th November 1834.....	209
—Entertaining doubts to refer the case to the Magistrate, 28th November 1834.....	210
—To communicate direct with the necessary authorities when a witness who has been summoned is found to have left his village, Circular Order 55.	225
Witnesses before—cannot be punished for giving false evidence, Circular Order 57.....	226
Annual Report on the state of crime by—what to contain, Circular Order 59.....	227
—To explain to the Criminal Court the reasons for detention	

	PAGE
of parties above prescribed period in the Talook, Circular Order 62.....	228
—Forbidden to detain any person in the Stocks except in cases where the punishment is authorized by the Regulations, Circular Order 66.....	230
Meritorious service by—how and to what extent to be rewarded, Circular Order, No. 89.....	242
Criminal Court to rectify any errors in charges sent up by—Circular Order 109.....	251
—How to prevent being summoned in proof of confessions made before them, Circular Order 110.....	251
—Forbidden to issue a blank Warrant, Circular Order 117.....	253
—To number property found on the person of a Prisoner, Circular Order 125.....	256
—Prohibited from substituting wooden for iron hand cuffs, C. O. No. 162.....	268
—To record the hour at which a charge is preferred, C. O. No. 180.....	276

POLICE—VILLAGE

The duty of a Tahsildar respecting cases cognizable by heads of villages, 11th April 1831....	146
The persons dismissed without punishment, as well as those punished by—are to be shown in half-yearly criminal statement, 30th April 1832.....	161
Magistrates are to stimulate them to an energetic discharge of their duties, 22d February and 18th March 1833.....	171-2
Necessity represented for the local European Officers to encourage, 30th March 1833.....	172

POSTPONEMENT

Recommended to Circuit Judges in cases wherein there may be a deficiency in evidence, 28th June 1827.....	105-6
—Of a case in the Calendar requisite if a prisoner, committed by the Circuit Judge (when Criminal Judge) declines to be tried by him, 21st Aug. 1833..	178

PRECEPTS

Of the Foujdaree Udaltut how to be written.	
Returns thereto how to be made, 9th December 1819, 4th Sept. 1820, 18th November 1823..	25, 29, 72

	PAGE
Orders of the Foujdaree Udaltut to the Magistrates—to be furnished to those Officers by Precepts of Court of Circuit, and the Returns, &c. to be sent to the Foujdaree Udaltut, 4th August 1823.....	67
Returns to Precepts to be made within the time specified—certifying either the fulfilment of the orders or the reasons of the omission, 18th Nov. 1823..	72
—To be communicated to subordinate authorities.	
See Authorities.	
21st February 1834.....	188
Principal Sudr Ameen—when permitted to examine witnesses in committable cases, C. O. No. 159.....	267
PRISONERS	
Not to be detained in the Talook, by the Police, more than 48 hours, 24th January 1822.....	48
Their persons and cells to be daily examined, 8th March 1825..	96
In transmission the unnecessary infliction of pain to be avoided, 24th March 1825.....	97
—Can in all cases claim the privilege of a defence and witnesses, 21st May 1829.....	124
Deaths of—to whom to be reported when their trials are under reference to Madras, 8th June 1829.....	127
—Supplied to other authorities by Criminal Judge—rule respecting, 11th March 1830....	135
Form of prescriptive roll of—received into jail to be kept by the Criminal Courts, 21st October 1830.....	141
—How to be dealt with on arrival at Criminal Courts, 27th October 1830.....	142
—Attempt to convert—reprehended, 10th December 1830.....	143
Apparent age of—when to be entered in trials, 16th May 1831.....	147
—How to be numbered in the various trials, and in cases referred to Foujdaree Udaltut, 14th August 1834.....	205
—Of delicate frame, how to be employed, 12th Sept. 1834.....	206
—To be vaccinated, 12th and 25th September 1831.....	206-7
Statement of—labor required monthly, 14th November 1834.	208
Detention of—in the Talook above 48 hours, 28th Nov. 1834.	209
—Improperly released by a Crimi-	
minal Judge can be re-apprehended by order of a Judge on Circuit, and be brought again to trial by order of the Col- lective Court, 2d Dec. 1834.....	210
—Under sentence of death to have no extra allowance whatever, 2d February 1835.....	212
—Not to be detached in small parties for the purpose of gathering firewood, &c. Circular Order 60.....	227
Witnesses for—not to be summoned unless they can speak to specific facts. Circular Order 61.....	228
Quarterly statement regarding children of—Circular Order 65.....	229
—On being released not to be provided, if sick, with a Dhooly or other conveyance, but, after an imprisonment of six months to receive allowance for one month's maintenance. Circular Order 67....	230
—Allowed the privilege of any time before the arrival of Circuit Judge of requiring the attendance of a material witness. Circular Order 78.....	234
Officers in charge of—to append in the monthly return, a statement shewing how they have been employed or punished. Circular Order, No. 80.....	234
—After an imprisonment of 6 months to receive certain allowance to enable his return to his country. Circular Order, No. 92.....	244
Rules for transmission of—from one district to another. Circular Order 96.....	246
In a summary conviction and punishment of refractory—a concise abstract of evidence to be written. Circular Order 97.....	246
No delicate—to be employed in gangs out of their own districts, &c. Circular Order 99.	247
—Specially banished cannot be transferred to another Zillah. Circular Order 100.....	247
Reward for re-apprehension of—Circular Order 104.....	249
Character of—to invariably accompany his transmission to the Criminal Court. Circular Order 119.....	254
Property found upon—to be numbered by the Police. Circular Order 125.....	256
—Of a desperate character or	

Thuggs not to be employed in detached working parties. Circular Order 135.	260
—Charged with commission of several offences, by whom and how to be punished. Circular Order 137.	260
—How to be converted into a witness. Circular Order 141.	262
A descriptive roll to be sent with every party of—forwarded from any Zillah to Chingleput. Circular Order 143.	263
—In gaol—their allowance. See gaols—their labor. See labor.	
PROCESS	
—Of arrest—within the limits of the Supreme Court—Judge or Magistrate how to proceed, 14th October 1824.	90
PROCLAMATION	
Against extorting confessions from suspected persons, 27th May 1806, 29th October 1824. Circular Order 66.	1,92,230
—Issued by Magistrates for the apprehension of accused persons—a copy of—to be included in the Record of every referred trial, 4th March 1822.	51
At every gaol delivery—to be read and affixed to the Cutcherries of the Magistrates and of their Police Officers, notifying that all persons sentenced to imprisonment for life, for murder, robbery or other heinous crime, will be liable to be transported beyond sea, 29th April 1824.	80
—Of the case of Hussein Khan a head of Police—sentenced to suffer death by the Foudjaree Udalt for causing the death of a prisoner in his custody by ill-treatment, 29th October 1824.	92
—Of the case of a Kolkar sentenced to 7 years' imprisonment by the Foudjaree Udalt for executing the illegal orders of the superior Police Officers in regard to the ill-treatment of a person in custody, 29th October 1824.	92
—Contained in C. O. No. 101, to be published at least once every half year, C. O. No. 176.	274

PROMULGATION	
Meaning of the term in regard to the date from which the Provisions of the Law are to take effect, 8th November 1822.	60
Greatest possible publicity to be given to the Regulations of Government, 8th Nov. 1822.	60

PROSECUTION	
For Perjury. See Perjury. Sirkar— See Commitment.	

PROSECUTOR	
Failing to appear on trial—his recognizance to be forfeited, 21st May 1817 and 3d October 1817.	16,19
—Required to give his Agent a Vakalutnamah, 23d Oct. 1828.	114
—In all Criminal cases considered a competent witness, 25th February 1829.	120
—Not attending, the Government Vakeel to conduct prosecution, 27th August 1829.	131
Apparent age of—when to be entered in trials, 16th May 1831.	147
Abstracts of examination of—to be given in the Calendars, 25th May 1831.	147
—His statement to the Police is always to form part of the record of the trial, 29th April 1833.	174
It is incumbent on Judges to prevent the needless attendance at the Court of Circuit, of prosecutors 31st August 1833.	178
Place for the attendance of prosecutors at the Court of Circuit on those days only when their presence may be required in Court, 20th June 1834.	199
—Batta to See Batta. —His evidence. See Evidence. Futwah—respecting evidence of See Futwah.	

PROVISIONS	
Of Prisoners. See Subsistence.	
PUNISHMENT CORPORAL	
Rules respecting—2d August 1821.	39

PUNISHMENTS	
The duty of the Criminal Judge respecting—20th Feb. 1823.	62
The only admissible cause of delay after receipt of warrant in inflicting—16th October 1826.	101
Cuts-of nine tails to be issued from the Military stores, 18th April 1829.	122
Indent for cut-of-nine tails to be sent direct to the Military Board and not through the Foudjaree Udalt, 20th July 1829.	128
—When to be inflicted—if sentence by Criminal Court of imprisonment exceed three months, 21st October 1830.	141
Suspension of—by Circuit Court, authorised in certain cases, 13th February 1833.	171
—For Theft See Theft. 28th June 1828. —Imposed by Circuit Court not to be inflicted until orders have been received from the Foudjaree Udalt. Circular Order 75.	232
See Corporal Punishment. The rule contained in C. O. 21st October 1830, applicable to sentences passed by Magistracy under Section LIV Act VII of 1843, C. O. No. 177.	274
PUNISHMENTS	
How to be determined in cases not falling under the Regulations, 28th January 1828.	110
Held to take effect from the date of the original warrant of conviction, 8th December 1834.	211
—In cases of sale of children during times of famine &c. Circular Order 111.	251
—Inflicted under Regulation VI of 1822, should be of a severer nature than those authorised by Section VII. Regulation X of 1816. Circular Order 139.	261
Statement of— See Statement.	

QUARTERLY SESSIONS	
A Report, on the completion of each, to be made to the Foudjaree Udalt, 9th December 1819.	25
What information to contain: and by what Calendars to be accompanied, 4th April 1821.	34

QUESTIONS	
Respecting religion, caste, &c., are not to be entered in records of trials, 17th Jan. 1815. Questions put in the examinations before the Court of Circuit and Criminal Judges in the records of referred cases, to be numbered, 27th September 1824.	89
—Of Law Officers. See Futwah.	

R	
RE-APPREHENSION	
Of a Prisoner by a Magistrate after his release by the Criminal Court—when admissible, 22d December 1828.	115

RECEIVERS	
Of stolen goods in cases of Petty Theft—when not a notorious or common receiver of stolen property—punishable by the Magistrate, 26th November 1822.	61
Of stolen property—when considered as accomplices, and punishable under Clause 7th, Section II. Regulation XV. 1803, 14th October 1822.	57

RECOGNIZANCE	
Of Prosecutor or Witness failing to appear at Trial—forfeited, 21st May 1817 and 3d October 1817.	16,19
Forfeited—measures to be taken upon, 3d October 1817. See Security.	

RECORD	
Of Referred Trial—what papers to be included, 17th Jan. 1815, 30th July 1817, 4th Mar. 1822, 19th January 1825, Circular Order, Nos. 115, 121, 123, 6, 17, 51, 95, 252, 254, 255.	9,11
Other Rules regarding—8th May and 27th Dec. 1815.	9,11
In what order, the proceedings of the subordinate authorities to be inserted in the—of Referred Trial, 9th Dec. 1819.	25
Copy of warrant issued by Judge of Circuit to the Criminal Court for the acquittal and release of any Prisoner in a Referred Trial—to be entered at the close of the—21st July 1823.	66

	PAGE		PAGE
Pages of the English Translation of the—of referred cases to be numbered, also the questions put in the examination before the Criminal Court and Court of Circuit, 27th September 1824.	89	Copy of Warrant issued by the Court of Circuit to the Criminal Court for the acquittal and release of any Prisoner in a Referred Trial, to be entered at the close of the Record, 21st July 1823.	66
In English Translations of Criminal—a note to be inserted of distance between places and measurement generally, in feet and inches, 2d Nov. 1824.	93	See Trial.	
Whenever a native date is mentioned in Criminal Examinations, a note to be entered of the corresponding English date: 17th Jan. 1815, 2d Nov. 1824.	7, 93	REGULATION	
—Of Trial, to contain the verdict of the Assessors, C. O. No. 164.	269	“Proclamation” of Regulations—the meaning of the Term—with reference to the date from which the Law is to take effect 8th Nov. 1822.	60
REFERRED CASES		Greatest possible publicity to be given to the—of Government, 8th November 1822.	60
See Trial.		References regarding construction of—to pass through the Court of Circuit, 26th Nov. 1822.	61
REFERRIBLE TRIAL		—X of 1816, Section VIII. exception to—23d June 1828.	113
Prisoner to be apprized of reference and of application of mitigation if any, 8th May 1815.	9	—II. of 1822—notice of the discretion given to Criminal Judges by—7th Aug. 1823.	177
Record of—what papers to contain, 17th January 1815, 30th July 1817, 19th January 1825, Circular Orders 115, 121, 123.	6, 17, 95, 252, 254, 255	—IX of 1832 cases under—how to be disposed of, 6th January 1831.	183
Other Rules relating to—8th May and 27th December 1815, 4th March 1822.	9, 11, 51	Sections XXXIX. and XL. Regulation XI of 1816—notice of—26th May 1834.	195
In what order—the proceedings of the subordinate authorities to be inserted, 9th Dec. 1819.	25	Section XXIII. Regulation IX. of 1816—sums granted as rewards do not require the sanction of Government if within the amount specified in—7th June 1834.	197
Gang Robbery by open violence—what degree of injury, &c. the case referrible to the Foudaree Udalt, 26th Oct. 1820 and 23d Nov. 1820.	32, 33	Section X. Regulation XIII. 1832, notice of rewards given under.	
To be accompanied by a distinct opinion from the Judge of Circuit, upon the guilt or innocence of the Prisoner—and on the merits of the case, 27th December 1815, 24th December 1821, 14th Mar. 1834, and Circular Order, No. 108, 14, 48, 191.	250	See reward, 7th June 1834.	197
And on the sentences which should be passed upon the several Prisoners, 27th Dec. 1815, 24th Dec. 1821, 14th March 1834 and Circular Orders 4th and 8th Mar. 1822.	51, 52	The provisions of Clause fourth Section II. Regulation XV. of 1803 to be observed in cases where the value of property stolen does not amount to nisal, C. O. No. 169.	271
Precise ground for referring a trial, to be always stated, 14th October 1822.	58	RELEASE	
On all trials to be referred, the usual abstract of the Futwah to be entered, 14th Oct. 1822,	58	—Of Prisoners to be notified to the Magistrate, 30th October 1817.	19
		—Of Prisoners belonging to a different jurisdiction to that in which they are confined—how to be conducted, 3d October 1817.	19
		—Of convicts of dangerous characters.	
		See Magistrate.	
		Month's maintenance to Con-	

	PAGE		PAGE
victs at—by whom to be paid—3d October 1817.	19	warded by the Magistrates and Police Officers to the Criminal Judges, and disposed of by the latter, to be furnished by the Criminal Judges to the Magistrates, 10th April 1823.	63
Copy of Warrant of Court of Circuit for the release of Prisoners in a Referred Trial, to be entered at the close of the Record, 21st July 1823.	66	Quarterly, by Zillah Judge, form of—29th Nov. 1827.	107-8
—Of Prisoners under Magistrate's requisition of security 28th March 1831, 5th August 1831.	146	Instructions for under Regulation X of 1816, 7th December 1827.	109
—Of Prisoners by Criminal Court communicated to Magistrate's of—18th January 1832.	155	Half-yearly Criminal—to be submitted through the Provincial Court of Circuit, 24th November 1823.	72
See Acquittal.		See Statements.	
RELIGION		—Police—to shew the day and hour of each Prisoner's arrival, and of his dispatch to the Criminal Court with explanation of delay, 27th March 1824.	80
Innovations to be avoided, which, even remotely, have the appearance of imposing on the natives our religious observances, 30th Jan. 1834.		—Required from Tahsildar's discharging accused persons, 30th September 1824.	90
REMOVAL		—To be made of the death of Prisoners in referred cases, 8th June 1829.	175
Of Prisoner to another Zillah—warrant to accompany him, 7th March 1825.		—On the Police—to accompany the Magistrates second half-yearly Criminal statement, 16th November 1829.	132
—Of Servants—on Judicial Establishments—order for quarterly report of—7th June 1834.		—To be made when a gaol becomes crowded or unhealthy, 12th July 1830.	140
—Of Convicts.		—When to be made respecting industrious Prisoners, 4th March 1831.	146
See Travelling.		—Monthly—to be sent by Criminal Court to Magistrate, of sentences of Courts of Circuit, or Foudaree Udalt received during the month, 10th December 1831.	154
—Of Sick Convicts to another Jail authorized, without previous reference to the Foudaree Udalt, C. O. No. 144.	263	—Under Section XXXVII. Regulation X of 1816, dispensed with, 18th January 1832.	155
REPORT		—In Form II of Appendix to Regulation X of 1816, viz., of Prisoners confined under sentence—to be dispensed with—13th July 1832.	164
For each Quarterly Sessions of jail delivery to be submitted to the Foudaree Udalt, 9th December 1819: what information to contain and by what Calendars, &c. to be accompanied, 4th April 1821.	26, 34	—Of removals or suspension of servants in judicial establishments to be made quarterly, 7th June 1834.	198
—Paragraphs of—to the Foudaree Udalt to be numbered, 4th September 1820.	29	—To be made by Magistrate to the Criminal and Circuit Courts when a Peshcar of a Talook, is vested with the powers of an Ameen of Police, 10th June 1831.	108
In all reports transmitted to the Foudaree Udalt the practice of furnishing blank statements to be discontinued, 4th April 1820.	29	See Escape.	
Report No. 10 of Appendix to Regulation X of 1816 discontinued, 4th September 1820.	29	—Annual by Police, what to contain, Circular Order 59.	227
Addition to the Form of—prescribed in No. 9 of the Appendix to Regulation IX of 1816—Ordered, 15th August 1822.	56	—Of each case forwarded by the	
A monthly—of the cases for-			

	PAGE		PAGE
Magistracy and Police to the Courts, to be furnished to Magistrate, within 24 hours after proceedings are closed —		Form given, and notice how the latter is headed, 28th June 1824.....	82
C. O. No. 161.....	263	—To show as well as the abstract, the name of the Collector from which each case is sent when the Judge's jurisdiction extends beyond one Collectorate, 4th September 1824.....	83
—Half-yearly furnished by Magistrates, to contain a statement shewing the number of cases forwarded to the Criminal Court by each head of Police and the manner in which they were disposed of —	272	Provincial Court of Circuit to notice the admission by a Magistrate of insufficient reasons for detention of Prisoners by Police, 13th September 1824.....	87
C. O. No. 175.....	273	—To show when a prisoner is punished for a crime differing from the charge, 4th July 1826.....	104
REPORT CIRCUIT		Rules for framing, 29th November 1827.....	107
What information to contain, and by what Calendars to be accompanied, 4th April 1821, 30th January 1824.....	147	—The Provincial Court of Circuit to notice errors in—dates of sentences to be entered, 29th November 1827.....	107
To be in as condensed a Form as may be compatible with perspicuity, 30th Jan. 1824.....	75	—No. V. Form of, 29th November 1827.....	107
—To contain the result of examination of the decrees of the lower Courts, and the practice in regard to the promulgation of them, 11th October 1830.....	141	Further instructions for framing, 7th December 1827.....	109
—To be as brief as is consistent with accuracy, 7th Jan. 1832.....	155	—No. V. and Supplemental to show the answer of the Law Officer in certain cases, 28th January 1828.....	110
—To contain notice of undue latitude allowed to prisoners in calling witnesses in their behalf, 1st June 1832.....	163	—To show in cases of theft and house breaking, how and when, the offences were committed, 28th January 1828.....	110
—To contain opinion of Judge as to the conduct of parties from whom Prisoners have escaped, 19th November 1832.....	166	28th August 1828.....	113
See Report Sessions.		29th September 1828.....	144
REPORT CRIMINAL.		—To be sent monthly instead of quarterly, 8th January 1829.....	117
To show date of arrival at Court, 28th July 1818.....	20	—Charges when to be distinct in, 25th February 1829.....	120
Form No. 6 to contain only the names of Prisoners released—not included in the report immediately preceding, 10th February 1820.....	28	—Their transmission within the month after they are due required, 21st April 1829.....	122
To show the date of original charge or information against the Prisoner, 20th Feb. 1823.....	62	—How to be considered and reviewed by Provincial Court of Circuit, 29th October 1829.....	131
—To be submitted through the Provincial Court of Circuit, 24th November 1823.....	72	—To be submitted to the Court of Foujdaree Udalut so soon as the several reports for each month have been received, 16th November 1829.....	132
Provincial Court of Circuit are to notice irregularities in—and forward explanations connected with, 24th November 1823.....	73	Detention of cases before the Magistrate beyond five days—explanation of its cause expected, 8th Feb. 1830.....	134
—To show the dates of prisoners leaving the Talook, 22d December 1823.....	74	—Of trials under reference to the Foujdaree Udalut, to include those called up by the Foujdaree Udalut, 20th August 1831.....	151
—No. V. and Supplemental—			

	PAGE		PAGE
A Concise but distinct note of the grounds of, and authority for sentences to be entered in—16th November 1831.....	153	the Circuit Judges, 9th August 1825.....	100-1
—Entry of a Prisoner concerned in more than one case how to be written in, 8th December 1831.....	154	Persons wounded in making—fit subjects for the liberality of Government, 9th January 1826.....	163
The Talook from which each case is received is to be specified in, 17th January 1832.....	155	—Magistrates to exhort the people—to assuring them of immunity from prosecution for homicide if committed, 22d February, and 18th March 1833.....	
—When delayed beyond a certain period—cause of delay to be explained, 23d January 1832.....	156	—Case of homicide committed in—how to be disposed of, 19th February 1834.....	187
—No. 8. what to contain, 7th March 1832.....	158	RETURN	
—Supplemental—full explanation required of cases remaining undisposed of in, 11th April 1832.....	160	To precepts of the Foujdaree Udalut how to be made, 9th Dec. 1819, 4th Sept. 1820.....	25-29
—Need not contain full indictment in cases of perjury, 12th May 1832.....	161	A Return to be furnished by the Magistrate to the Judge of Circuit, specifying the names, &c. of the Native Officers of Police selected by him under Section III. Regulation IV. of 1821, 30th November 1821.....	47
Detention in Talook of Prisoners in cases before the Police—explanation of when to be entered in, 18th May 1832.....	163	From Transportation. See Transportation. See Precepts.	
—Circuit Court can suspend sentence of Corporal punishment in, 13th Feb. 1833.....	170	REWARD	
Cases of theft in. See theft.		For resistance to robbery—Judge on Circuit recommending—to point out the most eligible mode of conferring, 9th January 1826.....	103
—Not in future to be submitted through the Provincial Courts. Circular Order 40.....	217	—For apprehension of an escaped Convict—the publication in the Fort St. George Gazette sufficient warrant for acting in the case, 16th May 1832.....	162
Causes of detention in the Talook to be recorded in. Circular Order 62.....	228	—For resistance to robbery—Magistrate's duty connected with, 27th Dec. 1832.....	165
—Monthly Criminal—Officers committing certain cases to record why they considered the powers vested in them by Clause 4, Section III. Regulation VI. of 1822 insufficient. Circular Order No. 68.....	231	—For apprehension of culprits—when given by the Magistrate or Criminal Judge under Section X. Regulation XIII of 1832—the amount and names of the parties should be entered in the Calendar and proclaimed in the Talook—Sanction of Government when not required for, 7th June 1834.....	197
REPORT—SESSIONS		—To what amount, and under what circumstances, payable by Courts of Circuit, Criminal Judge and Magistrate, Circular Order, No. 89.....	242
—To be blended with Reports for the 2d half year, C. O. No. 165.....	269	—Private how to be published and bestowed. Circular Order 103.....	249
Designation of Crime to be entered as a heading to the abstract of charge in—C. O. No. 168.....	270	—Fixed for reappréhension of Convicts. Circular Order 104.....	249
The provision of the law under which commitment is ordered to be specified in—C. O. No. 171.....	272		
RESISTANCE TO ROBBERIES			
Highly commendable, 9th August 1825.....	100-1		
—Rewards for to be granted by			

For courageous resistance to attacks of gang robbers to be disbursed without previous communication with the Foujdaree Udalt, C. O. No. 153.	266
ROADS	
Convicts to be employed in repair of, 16th February 1833 ..	171
ROBBERS	
—Secreting—against whom warrants are out and how punishable, C. O. No. 146	264
ROBBERY	
Identification of property in cases of, 27th Dec. 1815.	13
See trial.	
23d November 1820.	
In case of, &c.—Magistrates and Police Officers to require complainants to particularize the articles stolen and the number and (when known) the names of persons concerned, 4th March 1822.	51
And to search for the stolen property, 24th Jan. 1822, and 29th April 1822.	49, 52
Articles of stolen property to be numbered, and described in the Record—Witnesses to be examined in regard thereto, &c. 16th May 1822, Circular Orders 39 and 125.	53, 217, 256
In cases of—when Futwas of Ookoobut may be declared—a translation of the grounds for such Futwa, to be given in the Calendar submitted by the Court of Circuit, 28th May 1822.	54
—Cases in the Calendar. See Calendar.	
Police and Villagers, how to proceed in cases of, 28th October 1822.	59
Records of complaint to Police respecting—what to comprise, 18th November 1823.	72
—When punishable by a Circuit Court—full explanation to be given in the Calendar respecting the case, 9th April 1825. ..	98
—By more than one individual, is gang robbery, 23d Feb. 1829.	119
—Of Grain, 6th April 1830.	136
—By open violence—cases noticed which become necessarily referable as—15th May 1832.	161
Abstract Statement of.	

See Statement.	
—Resistance to.	
See Resistance.	
—Reward for resisting.	
See Reward.	
—Highway, by a single unarmed person, is distinct from—by open violence. Circular Order 56	225

RULES

Regarding Trials for Perjury, 31st January 1814.	2
Regarding Transfer of Convicts under sentence of Transportation to Chingleput 22d July 1814.	5
Regarding Trials generally before the Courts of Judicature, 27th December 1815.	11
—For the preparation of Records of Referred Trials, 17th Jan. 8th May and 27th Dec. 1815, 30th July 1817, 19th Jan. 1825, Circular Orders, 115, 121, 123.	6, 9, 11, 17, 95, 252, 254, 255
Regarding Time-expired Convicts and their discharge, 3d October 1817, Circular Orders 92, 141, 18, 244	18, 244
—For the management of Gaols, 8th October 1821.	42
—Regarding the payment and distribution of batta to Prosecutors and Witnesses, 23d August 1824.	85

S**SALT**

—Laws—breaches of—may be referred to Sudr Ameens for trial, C. O. No. 158.	267
---	-----

SCARCITY

See Famine.	
-------------	--

SEA

Offences committed at, 31st July 1834.	204
---	-----

SEAL

What seal to be used by the Judges of the Zillah Courts, 5th December 1817.	19
What seal to be used by the Collective Courts of Circuit and the Judges of Circuit, 10th August 1821.	40

SEARCH

For property—not valid excuse for detaining prisoners in Talook, 24th January 1822.	48
—For stolen goods—neglect of the Police to make—to be noticed by the Magistrate, 29th April 1822.	52
—Of houses, what rules to be observed, 15th Sept. 1834, and Circular Order, No. 116.	207, 252

SECURITY

In what cases a Judge of Circuit may require from an acquitted prisoner, 5th June 1815.	10
—From Prosecutors and witnesses for appearance at trial, 21st May and 3d Oct. 1817.	16, 19
Grounds of Requisition by the Court of Circuit, to be stated in the Calendar, 6th Sept. 1819	24
On requisition of—by Criminal Judge from persons suspected but not convicted of a crime, plan for executing the bond &c. if the prisoner be unable to give the security on the spot, but name his bailers, 19th November 1822, 14th March 1823.	63
Magistrate committing to gaol, on requisition of—under Section 111. Regulation II of 1822—to specify in his warrant the amount of security, but cannot commit to gaol without personal investigation, 25th February 1824.	77
Two calendars shewing the disposal of such persons to be delivered to the Court of Circuit, 25th February 1824.	77
Other rules regarding the same, 25th February 1825.	77
Prisoners furnishing the security demanded under that Regulation—to be released by the Criminal Judge, provided the Magistrate consider the security sufficient, 25th Feb. 1824.	78
Judge of Circuit can demand—from all prisoners who may appear to be under strong suspicion, 16th March 1825.	96
—Cannot be demanded from a Prisoner convicted of a specific offence, 19th July 1827.	106
Should not be demanded for a longer period from Prisoners than that for which they might have been detained in jail in	

default of that security, 31st Oct. 1828, 30th April 1829.	114, 122
Orders for a Prisoner to be released without—by a superior—cannot be nullified by a re-apprehension of the party by a lower tribunal on the same evidence and charge, 22d December 1828.	115
Judge on Circuit on visiting the jail how to proceed with respect to Prisoners on, 20th July 1829.	129
The competency of a Criminal Court to call for—from Prisoners not otherwise punishable before it, 20th July 1829.	129
—Not to be demanded on slight grounds, 20th July 1829.	130
List of Prisoners under—what particulars to contain and where to be affixed, 12th July 1830.	139
Release, by a Circuit Judge, of prisoners held to security by order of the Magistrate is to be notified to the Magistrate, 28th March 1831.	146
Sureties to be required to pay the penalty—whenever the bond is broken by the persons for whom they are responsible, 4th May 1831.	147
Prohibition against Magistrates demanding—except in certain cases, 7th July 1831.	150
Prisoners under—how to be worked—25th July and 19th October 1831.	150
Prisoners sent by Magistrate to gaol under—what provision to be made for their release, 5th August 1831.	151
Prisoners under—general rules for clothing of prisoners applicable to, 3d May 1832.	161
Prisoner under requisition of—producing it—his confinement under the order for security is to be taken into consideration, 7th June 1834.	196
—In Calendar. See Calendar.	
The necessity of exercising a sound discretion in the requisition of, 2d September 1834.	206
Circuit Judges not to imprison with irons pending the enquiry as to the competency or otherwise of the sureties tendered, 26th November 1834.	208
Before demanding—to call upon the accused whether he desires to have any witnesses examined on his behalf. Circular Order, 38.	217

PAGE		PAGE
	Magistrates acting under Section LIV. Act VII of 1843, possess the same power as Criminal Judges in regard to the demand of— from parties against whom an offence may be clearly established, C. O. No. 173.	273
	SENTENCE	
	Form of—by Court of Circuit, 8th May 1815.	9
	—Declared in Futwa and grounds of—to be stated in the Calendar, 6th September 1819.	24
	—By Magistrates and Criminal Judges to include Labour as well as Imprisonment, 7th February 1820.	26
	But not in commutation of fines adjudged by Magistrates under Sections XXXII. and XXXV. Regulation IX of 1816, or in cases of inconsiderable breach of the Peace or other slight misdemeanour, 28th September 1824.	89
	Sentences of Assistant Criminal Judges when and to what extent subject to revision by the Criminal Judge, 1st August 1821, 12th December 1823: 9th June and 15th November 1824.	98, 73, 81, 94
	—Of Court of Circuit—how to be prepared, 15th June 1826.	103
	—When passed for a crime differing from the charge—explanation should be given in the Criminal Report, 4th July 1826.	104
	—Penal—to be carried into execution at first convenient season after the receipt of warrant for, 16th October 1826.	104
	Prisoner upon whom a sentence has been passed cannot be also held to security, 19th July 1827.	106
	Prisoners under—not to be employed on private property, 1st August 1827.	106
	—In Criminal Reports—the date to be specified, 29th November 1827.	107
	—Fresh—how to be passed in a charge against a prisoner already under sentence, 27th May 1829.	125
	—In a case of escape—is to be in addition to the punishment the prisoner may at the time, be undergoing, 13th July 1829.	127
	—Of a subordinate Magistrate—the power of the Magistrate to annul explained, 8th April 1830.	137

PAGE		PAGE
	—Final—to be communicated to Convicts in open Court, 3d May 1830.	137
	—To Corporal punishment and imprisonment exceeding three months by Criminal Courts—stripes not to be inflicted till 2 months after sentence, 21st October 1830.	141
	—Of imprisonment held to take effect from its date 14th February 1831.	146
	Grounds of—and authority for—required in each case in Calendars under Section XXIII, Regulation X of 1816, 16th November 1831.	153
	—When to be passed on a Futwa of Ookoobut, 23d April 1832.	160
	—Should not be passed until all the evidence that can be adduced is heard, 21st January 1833.	169
	—Of Corporal punishment by a subordinate Court—the Circuit Court can suspend pending reference to Foujdaree Udaltut, 13th February 1833.	171
	—Of imprisonment with labor and irons—opinion of the Foujdaree Udaltut respecting, 31st August 1833.	178
	See Irons.	
	—Of imprisonment in default of security, 7th June 1834.	196
	—Of banishment.	
	See Banishment.	
	—In Calendar.	
	See Calendar.	
	—Of Circuit Court in a referrible trial.	
	See Form.	
	—Expiration of.	
	See Release.	
	—Of labor.	
	See Labor.	
	—Mitigated.	
	See Mitigation.	
	—For theft in Criminal reports.	
	See Theft.	
	—Of transportation.	
	See Transportation.	
	Of Foujdaree Udaltut to be sent to the Collective Court of Circuit whenever the Judge of Circuit who tried the case may have immediately been removed to another situation, Circular Order, No. 51.	223
	—To be carried into execution by the Provincial Court of Circuit when the Officer who passed them is removed. Circular Order 51.	222
	When several charges are made	

PAGE		PAGE
	what—to be passed. Circular Order 137.	260
	—Of Courts—the utmost possible publicity to be given by Magistrates of, C. O. No. 170.	272
	—Of Corporal punishment passed by Magistracy under Act VII of 1843, the rule contained in C. O. dated 21st October 1830, applicable to C. O. No. 177.	274

SEPOY

Police Summons to—or warrant for apprehension of.	
See Police.	
30th December 1833.	182

SERVANTS

Police or Judicial dismissed for misconduct, results regarding. Circular Order 63.	228
—Private—convicted of breach of trust, and misappropriation of money entrusted to their charge, how punishable. C. O. No. 152.	265

SESSIONS

Quarterly—of Jail Delivery: a Report at the end of each, to be made to the Foujdaree Udaltut, 9th December 1819.	26
—Of Jail Delivery by Circuit Judges, when not completed within prescribed period—Report to be made to the Foujdaree Udaltut, 17th July 1821.	36
—Quarterly—to be permanent but held by the Judges in rotation, 22d March 1830.	
Notice to be sent to Foujdaree Udaltut of the day of opening, 7th January 1832.	155

SETTLEMENTS

Foreign European—evidence of Witnesses residing in, 23d October 1826.	104
--	-----

SHOOBAH

Prisoners having previously confessed, but denying their guilt before the Circuit Court—a second Futwa requisite, 22d July 1822.	55
---	----

SICKNESS

Of Prisoners.	
See Gaols.	

SIGNATURE

Of presiding Judge to a warrant	
---------------------------------	--

PAGE		PAGE
	when unattainable—Circuit Court to issue warrant, 14th July 1809.	

SLAVERY

In India—how affected by 51st George III. Cap. 123, 30th April and 20th May 1830.	137-8
--	-------

SLAVES

The treatment of—by their Masters punishable, 27th Nov. 1820	33
Provision of the Mahomedan Law as expounded by the Law Officers of the Foujdaree Udaltut, circulated throughout the Provinces, 27th Nov. 1820.	33

SORCERY

View of the Court of Foujdaree Udaltut on—and the penalties attached thereto. Circular Order 147.	264
--	-----

STAMP

Sirkar—imitation of.	
See Forgery.	

STATEMENT

Of crimes within the jurisdiction—to be laid before Judge of Circuit at each Jail Delivery by the Magistrate, 2d March 1818.	20
Half yearly—of crimes, &c. to be submitted by the Magistrates and Criminal Courts through the Provincial Courts, 24th November 1823.	73
Explanation to be furnished of disparity between numbers of persons apprehended in different Zillahs, and numbers apprehended and those convicted in the same Zillah, 2d November 1823.	73
—Abstract of robberies and other crimes of a heinous nature: alteration in column 6 of—should be sent direct to Foujdaree Udaltut, 11th April 1825.	98
—Half yearly—showing the number of Prisoners confined for debts, 8th January 1829.	119
—Of crimes and punishments to be translated and exposed in Cutcherries of District Police, 22d March 1830.	135
—Required by Circular Orders of 10th April 1823, altered, 18th January 1832.	155
See Criminal Judge.	

	PAGE
—Monthly—by Police to Magistrate, showing how and when they disposed of cases brought before them are to be submitted to the Court of Circuit with petty Calendar, 31st July 1833.....	176
—Monthly of labour of prisoners required, 19th Jan. 1831... 143	
Form of—modified, 29th August 1831.....	151
Memorandum of Manufactures and purchase of material to be appended to, 30th December 1833.....	181
—Of trials referred, or called up, with the form required, 5th July 1834.....	202
—Of extra Jail Peons to be submitted by Criminal Courts with their monthly reports—form of, 16th August 1834....	205
Form of—to be submitted by Magistrates in obedience to Circular Order of 31st July 1833, 10th December 1834....	211
—Half yearly—of public works to be submitted to the Governor General. Circular Order 45.....	220
—Of product of Prisoner's labor, rules regarding. Circular Order, No. 53.....	224
—Quarterly regarding the children of Convicts. Circular Order 65.....	229
—Of Crimes required by C. O. dated 2d March 1818 to be discontinued C. O. No. 166.....	270
—The designation of crimes entered as a heading to the abstract of charge in monthly criminal returns of Courts—to be adopted by Magistrates, in their periodical—C. O. No. 168.....	270
—Shewing the No. of cases forwarded to the Criminal Court by each Head of Police, and the manner in which they were disposed of—to be furnished by Magistrates, with their half yearly reports C. O. No. 175..	273

STATEMENTS—HALF YEARLY CRIMINAL

Those furnished by the Magistrates—what to contain, 21st May 1823.....	64
To be uniform, 21st May 1823..	64
To be furnished by Magistrates and Criminal Courts through the Provincial Court, 24th November 1823.....	73

	PAGE
To contain explanation of the disparity between numbers of persons apprehended in different Zillahs: and numbers apprehended and those convicted in the same Zillah, 24th November 1823.....	73
Forms of—circulated, 8th January 1829.....	117
Column 3 of No. 2, what to contain, 23d February 1829.....	119
Definition of crimes and misdemeanors in—23d February 1829.....	119
Judges on Circuit, how to proceed in respect to the numerous acquittals by the Criminal Courts as shown in, 5th November 1829.....	132
Magistrate to forward a full report on his Police with second, 16th November 1829.....	132
—How to be examined by Provincial Court—few new heads to be entered in, 24th December 1829.....	133
—Points to be noticed by Provincial Courts in revising, 17th June 1830.....	138
—Amount of fines remitted by District Police to Magistrate to be entered under column A in, 17th June 1830.....	138
Notice of the numerous cases in which the parties escape apprehension as shown in the, 30th May 1831.....	
—To show the number of persons dismissed without punishment by the Village Police as well as those punished, 30th April 1832.....	161
—Of trials referred or called up, with the form required, 5th July 1834.....	202
—Shewing the No. of cases forwarded to the Criminal Court by each Head of Police, and the manner in which they were disposed of, to be furnished by Magistrates, C. O. No. 175.	273

STATES

Foreign—evidence of the witnesses residing in—23d October 1826.....	104
---	-----

STATUTE

Clause CXIII. of 53 George III. Cap 155, notice of the issue of the process of arrest under—14th October 1824.....	90
--	----

	PAGE
STOLEN PROPERTY	
To be searched for, in cases of Robbery &c. by the Police, 24th January 1822.....	49
When any considerable property may be lost by Robbery, a list thereof to be forwarded to the Magistrate by the Police Officer, 24th January 1822 ..	50
Magistrate and Police to require complainants, in cases of Robbery, &c. to particularize the articles stolen, 4th March 1822.	51
Articles of—to be numbered, and described, and witnesses to be examined in regard thereto, 16th May 1822, 27th September, Circular Orders Nos. 39 and 125	53, 88, 217, 256
A List of—to be furnished by the parties robbed to the nearest Police Officer, for circulation throughout the District, and parties robbed required to do this, by a general advertisement, 28th October 1822.....	59
Receivers of stolen goods in cases of Petty Theft, punishable by the Magistrate when not notorious or common receivers, 26th Nov. 1822.....	61
Form of List of, 27th Sept. 1824. See Receivers.	88
See Theft.	

STRIPES

To be inflicted as soon as possible after receipt of Warrant, 16th October 1826.....	104
See Punishment Corporal.	

SUBORDINATE AUTHORITIES

See Authorities.

SUBORNATION OF PERJURY

See Perjury.

SUBSISTENCE

—Of Convicts moving—how to be provided, 3d Oct. 1817....	18
—Of Prisoners—hotel, &c. not to be allowed—except on requisition of the Medical Officer, 27th October 1830.....	142
Supply of Grain for, 18th June 1831.....	
—Their allowance of rice to be reduced at discretion of the Officer in charge, 25th January 1832.....	156

Attention to be paid to opinion of Medical Officer respecting luxuries, 5th June 1832.....	
—All authorities in charge of Prisoners to observe the same rules regarding, 25th June 1834.....	200
See Gaol.	

SUDR AMEENS

—May try cases of breaches of Salt and Tobacco laws. C. O. No. 158.....	267
---	-----

SUMMONS

By Police—to Native Officers or Sepoy.	
See Police, 30th Dec. 1833.	
—Within Military Cantonment's how to be executed—C. O. No. 149.....	265
The course to be pursued in the enforcement of—under Act X of 1845, C. O. No. 174.....	273

SUNDAY

Duties in certain cases to be performed on, 30th Jan. 1824.....	184
Orders respecting the admission of Prisoners into gaol on—communicated to the Magistrates, 21st Feb. 1834.....	188

SUPREME COURT

See Court Supreme.

SURETY

Of Prosecutor or Witness—omitting to pay penalty in case of non-appearance of, 21st May 1817.....	16
---	----

SURGEON

His superintendence of the diet of Prisoners.	
See Subsistence.	
See Evidence.	
—In cases of murder.	
See Examination.	
—On certifying the necessity of a Prisoner's removal, his advice to be followed by the Officer in charge. Circular Order 144.....	263

SUSPENSION

Of servants on Judicial Establishments—order for Quarterly Reports of, 7th June 1824.	198
---	-----

SUSPICION	PAGE	THEFT	PAGE
What degree of—authorizes a Judge of Circuit to demand security, 5th June 1815	11	In cases of—Prosecutor to prove the identity of his Property, 27th December 1815	13
—Strong, not sufficient ground for committal, 20th July 1829 . .	129	Petty cases of—Limitation of Powers of Magistracy explained, 26th August 1818 . . .	21
—Definition of, 20th July 1829 . .	130	—Petty Calendars furnished by Magistrates—to contain statements of value or amount of the property stolen, 26th August 1818	21
SUTTIE		In cases of—when a Futwa of Ookoobut may be declared—a translation of the grounds for such Futwa to be given in the Calendars submitted by the Court of Circuit, 28th May 1822	54
Heads of Police to be immediately informed by the Subordinate Police of intended, 24th February 1832	157	Futwa of strong presumptive proof—second Futwa when requisite, 22d July 1822	55
SWORDS		In cases of—punished under Clause 4, Section III, Regulation VI of 1822—with imprisonment exceeding six months—the Criminal Courts to specify in the monthly Criminal Reports—the particular circumstances of aggravation, 13th August 1823	67
T		Case of—in which the Futwa declared the Prisoner liable to Tazeer and no second Futwa was taken, 10th June 1823 . .	66
TALOOK		—Of property exceeding 5 Rupees—Tahsildar cannot pass sentence in case of—nor can the Magistrate without holding personal investigation, 28th October 1823	68
Prisoners not to be detained in—by the Police beyond 48 hours, 24th Jan. 1822	48	Case of—in Criminal reports—it should be shown whether the offence was committed by night or day, 28th Jan. 1828 . .	113
See Police.		The adjudication of stripes for—under Section VII, Regulation X, 1816, is at the discretion of the Judge, 28th June 1828 . .	119
—Defence in—		Distinction of—from robbery, 23d February 1829	136
See Detention.		—Of Grain, 6th April 1830 . . .	136
TAHSILDAR		Cases of—in Calendar.	
See Police.		—Punishable under Section VII, Regulation X of 1816, not to be held as "heinous" and falling under Regulation VI of 1822, Circular Order, No. 73 .	232
In reporting the occurrence of a robbery or other offence to the Magistrate, to state the facts of the case, 24th January 1822—and to send to Magistrate a List of the stolen property, 24th January 1822	55	TINNEVELLY	
And to search for the stolen property, and take all the procurable evidence, 24th January and 29th April 1822	50, 52	Gaol—how to be supplied with grain for subsistence of prisoners, 18th June 1831	140
—As Head of Police, and other Police Officers, in cases of murder to hold an Inquest, 29th April 1822, 30th January 1833	52, 170		
—To transmit direct cases cognisable by Criminal Court, 21st May 1829	129		
—His duty respecting cases cognisable by heads of Villages, 11th April 1831	146		
TERRITORY			
British—crimes committed out of the limits of—by others than Native British subjects—not cognizable by the Courts, 12th April 1817	15		

THUGGEE	PAGE	TOBACCO	PAGE
See Murder.		—Laws—breaches of—may be tried by Sudr Ameens, C. O. No. 158	267
—Trial.			
Transcript or translation of the promise made to Approvers in cases of—to be entered on the record of all trials in—Circular Order 118	252	TRANSLATIONS	
View of Foujdaree Udalt of Act XXX of 1836. Circular Order 122	255	Pages of English Translation of the Record of Referred cases to be numbered, 27th September 1824	89
Punishment for giving shelter to Thuggs, or, for receiving property stolen by &c. Circular Order 128	257	Discretionary with the Judge on Circuit to forward English and Persian—of proceedings before the Magistrate or Police Officers, 19th January 1825, and Circular Order 118	95, 253
Persons concerned in—not to be sent on detached working parties, Circular Order 135 . .	260	—Of trials anterior to 1830—Destruction of, authorised—31st March 1834	192
		—Of cases committed.	
		See Calendar.	
		Native dates and terms in—to be invariably explained by English ones. Circular Order 69	231
		—In Persian dispensed with in cases submitted to Foujdaree Udalt. Circular Order 118	253
		—Entire in cases recommended for capital punishment. Circular Order 121	254
		Rough drafts of—of proceeding before the Criminal Court only necessary to be submitted to the Foujdaree Udalt. Circular Order, 123	255
		—Of Futwas to accompany all Calendars C. O. No. 149	264
		TRANSPORTATION	
		Convicts under sentence of—to	

THUGGEE	PAGE	TOBACCO	PAGE
be sent to Chingleput. 2d February 1805	1		
Convicts under sentence of—to be informed by the Criminal Judge of the Penalty attached to their return, 30th August 1809	2		
Criminal Judge to certify that such communication has been made to the Convict, 30th August 1809	2		
Rules regarding their Journey to Chingleput, 22d July 1814, 18th Oct. 1822, 10th Nov. 1827, 26th June 1841, Circular Orders 136, 138 and 143	5, 55, 107, 260-1-3		
What handcuffs to be used, 22d July 1814	6		
Court of Circuit in intimating sentence of—to Criminal Judge to direct the Inscription of Godena, 1st May 1815, 29th May 1816	7, 14		
Proclamation regarding Transportation for life to be made and read at every gaol delivery at the Cutcheries of the Magistrates and of the Police Officers, 29th April 1824 . . .	80		
Form of Warrant for execution of Sentence of—for Life, 18th August 1824	84		
Convicts under—travelling—attention of Criminal Judges called to the orders requiring certain documents to be sent with, 26th April 1833	174		
		TRAVELLING	
		—Of prisoners—rules to be observed during—22d July 1814.	5
		Subsistence of prisoners whilst—3d October 1817	18
		Criminal Judge to apply to Magistrates for escort of prisoners, 18th October 1822	58
		Magistrates responsibility for prisoners, 10th Nov. 1827 . . .	107
		—Of convicts under sentence of transportation.	
		See Transportation.	
		Of prisoners—guards in charge—notto accompany them throughout the line of March, C. O. No. 167	270
		TRIAL	
		Rules for rendering the Records more perfect and for the guidance of the Criminal Judges and Courts of Circuit in holding—31st January 1814, 8th May and 27th Dec. 1815	2, 9, 11
		Record of Referrible—what	

	PAGE
papers to contain, 17th January 1815, 19th January 1825, Circular Orders, 115, 121 and 123.....	254-5
Referred—Judge is to certify that he has made the reference known to the prisoner—8th May 1815.....	8
Copy of warrant remanding prisoners to gaol to be annexed to record of—8th May 1815.....	8
How to be attested and certified, 27th December 1815.....	11
Arraignment how to be framed—to be entered only once in record of—27th December 1815.....	11
English record of—not to be attested by Law Officer.....	11
Order for reference, as well as grounds of reference, of—to be entered in record of—.....	11
Letter accompanying—to contain opinion on the merits of the case, 27th Dec. 1815.....	11
Referred—proceedings of subordinate authorities to be entered in their natural order in—9th December 1819.....	25
In which prisoners are convicted of an offence rendering them liable to perpetual imprisonment or death must be referred, 26th Oct. 1820.....	31
Not referrible where personal injury proved is trifling, 23d Nov. 1820.....	33
Referred—is to show whether the proceedings of the Police were held by an authorised Officer, 30th Nov. 1821.....	47
Referred—the presiding Judge's opinion upon with the grounds of it, always to be laid before Foujdaree Udaltut, 24th December 1821.....	48
Record of—to contain original complaint to the Police as well as the warrant or proclamation issued, 4th March 1822.....	48
Referred—letter accompanying how to be drawn up, 8th March 1822.....	50
Referrible when Circuit Judge disapproves of Futwa of a strong presumption, 14th Oct. 1822.....	57
Referred—copy and translation of the warrant for the release of Prisoners is to be entered at the end of the English and Persian record of, 21st July 1823.....	66
Ground plan of the premises where the crime was committed to be furnished in certain cases, 5th March 1824.....	79
Record of—to contain the re-	

	PAGE
cord of the inquest held in certain cases, 25th March 1824.....	80
Referred—information respecting the examining Police Officer to accompany record of, 30th April 1824.....	80
Referred—pages of English translation of record, as well as all questions in it are to be numbered, 27th, Sept. 1824.....	89
A note of the distance in feet and inches between places referred to in the case, to be inserted in the record of, 2d November 1824.....	93
What discretion vested in a Circuit Judge as to omitting proceedings out of the record of, 19th January 1825.....	95
The Police Report under Clause 4, Section XXVII, Regulation XI of 1816, should form part of the record, 28th June 1825.....	99
Circuit Judge—where to make a note of the documents he omits out of record of the, 2d June 1825.....	99
Not necessarily referrible because the Foujdaree Udaltut do not mitigate to the precise extent proposed to them, 17th September 1825.....	102
Judge on Circuit how to commence the—28th June 1827.....	105
Of a Prisoner already under sentence—when allowable, 27th May 1829.....	125
Under reference—death to be reported of any Prisoner in, 8th June 1829.....	127
Presiding Judge dispensing with Witnesses in, 15th July 1830.....	140
Apparent age of deponents when to be entered in record of, 16th May 1831.....	147
Called up—to be entered in report of trials referred, 2d August 1831.....	158
For murder—what proof of alleged dying declaration required at the—5th March and 26th Nov. 1832.....	158, 167
Copies of contradictory depositions referred to in the proceedings of subordinate tribunals to form part of record of, 14th March 1832.....	159
Prisoners abusing the privilege of calling Witnesses on their behalf—Circuit report to contain notice of the fact, and Criminal Judges are to observe Section II, Regulation II of 1822—in such cases, 1st June 1832.....	163

	PAGE
How to be closed when in original Futwa material evidence is rejected on the general grounds of the inadmissibility of the complainant's testimony, 27th July 1832.....	164
When Prisoner pleads guilty—the evidence to be taken nevertheless, 20th Nov. 1832.....	166
Not more than one trial is to be held at the same time, 21st January 1833.....	169
Certificate respecting alleged wounds or hurts should be annexed to the record of the, 10th April 1833.....	173
The Prosecutor's statement to the Police always to accompany record of, 29th April 1833.....	174
Evidence given before the lower Court by a Witness absent from the Circuit Court—when available at the, 8th May 1833.....	175
No rule regarding attendance of Prosecutors and Witnesses laid down for universal observance, but the Judges should endeavour to prevent such attendance when needless, 31st Aug. 1833, 20th June 1834.....	178, 199
The presiding Judge is to give a distinct opinion as to the conviction or acquittal, and if convicted, as to the punishment, of each Prisoner and the grounds for both, in his letter accompanying the, 14th March 1834.....	191
Destruction authorized of the translates of trials anterior to 1830, 31st March 1834.....	192
Referrible in Calendar.	
See Calendar.	
When to be called.	
See Commitment.	
Referrible—dates in—	
See Dates.	
Evidence for the defence on the—	
See Defence.	
Evidence of a Medical Officer on the—	
See Evidence.	
Postponed.	
See Postponement.	
Referrible—sentence of Circuit Court in—	
See Form.	
In cases of referred—where the Prisoner is implicated in other crimes, the circumstance to be mentioned by the Judge, Circular Order No. 37.....	216
In cases committed for—a list of stolen articles numbered, as	

	PAGE
labelled, to be appended. Circular Order 39.....	217
In referred—the Circuit Judge is empowered to release on security those amongst the Prisoners whom he considers ought to be acquitted. Circular Order, No. 47.....	221
Postponed—to be first heard. Circular Order 52.....	223
Native dates in translations of—invariably to be explained by corresponding English ones. Circular Order, No. 69.....	231
Judge presiding at—how to dispose of property which had been stolen. Circular Order 71.....	232
Before Circuit Court in cases of Thuggee a separate count charging the Prisoner with the distinct offence, &c. Circular Order 95.....	246
Where the Circuit Judge recommends capital punishment—a translation of proceedings before the Magistrate and Police to be submitted. Circular Order 115.....	259
In—for Forgery, the uttering to form a distinct charge from that of fabricating. Circular Order 120.....	254
In referred—fair copies of proceedings before the Criminal Court unnecessary. Circular Order 123.....	255
In records of—the nature of a Witness' service to be entered. Circular Order 127.....	257
Verdict of assessors to be deposited with the record of—C. O. No. 164.....	269

U

UTTERING BASE COIN

See Coin.

V

VAGRANT

Power of Magistrate to commit under Section III. Regulation II of 1822—but not without personal investigation, 28th October 1823, 25th Feb. 1824. 70, 77
See Magistrate.
See Examination.

VAKALUTNAMAHS

To be forwarded to Government

	PAGE
Vakeel by Criminal Judge in cases committed before the Court of Circuit, 27th Dec. 1815.....	13
To be given, but not on stamp paper, to Agents in Criminal cases and to be sent up with records to Criminal Court, 23d October 1823.....	114
—In cases of commitment. See Commitment.	

VAKEEL

Of Government to be furnished by Criminal Judge with a Vakalatnamah in cases committed for Trial before Court of Circuit, 27th Dec. 1815.....	13
But not to be put on his oath in such cases before Court of Circuit, 27th December 1815..	13
Notice of the rule for permitting parties to appear before the Magistrate by 4th Sept. 1824.	
—Government — being absent—prosecutions how to be conducted, 25th June 1832.....	164

VERDICT

To be given by Assessors and Jurors at the close of trial—to bear their Signature and to be deposited with the record of the trial, Circular Order No. 164.....	269
C. O. No. 17b.....	274

VILLAGES

Heads of—when to take cognizance of cases, 11th April 1831..	146
--	-----

VILLAGE POLICE

Commission of Crimes by Village Watchers or their ascertained cognizances thereof, noticed, 24th January 1822....	50
Not to be detached from their proper Police Functions by a Tahsildar, 24th Jan. 1822....	50
See Police.	

VIOLENCE

Gang Robbery by open—in cases of—what degree of Injury renders necessary the reference of the Trial to the Foudaree Udalt, 26th Oct. and 23d Nov. 1820.....	32.3
---	------

W

WARRANT

Form of—to be annexed to Record of Referred Trial, 8th May 1815.....	9
Of Magistrate to the Gaoler—under Section XXXIV. Regulation IX of 1816, not to be interfered with by the Criminal Judge excepting by a reference to the Provincial Court of Circuit, 7th Feb. 1820.	28
Copy of—issued by Magistrate or Police officer for the apprehension of the accused, to be entered in the Records of Proceedings laid before the Court of Circuit and of Trials referred to the Foudaree Udalt, 4th March 1822.....	51
Copies of—of the Court of Circuit for the banishment of Convicts, to be sent by the Criminal Judges to the Foudaree Udalt for their orders, 6th January 1823.....	61
Copy of the—issued to Criminal Court by the Judge of Circuit for the acquittal and release of any prisoner in a referrible Trial, to be entered at the close of the English Translation of the Record, 21st July 1823.....	66
Revised Form of—for the execution of Sentences of Transportation for Life, 18th Aug. 1824.....	84
A Warrant issued by the Magistrate is legal although not in the precise form prescribed in Clause 2d, Section XII. Regulation IX of 1816, 28th October 1824.....	92
Ought always to contain the name of the person charged with the execution of it:—must therefore be served by Peons on his own establishment. What he must do, when seeking the apprehension of a person resident in a different Zillah, 28th October 1824.....	92
—Ought to be returned to the Court, by which they are issued, after complete execution of Sentence with an endorsement, 7th March 1825....	95
—In cases of Transportation beyond Sea, 7th March 1825....	96
Criminal Judge if not capable of immediately executing—to	

	PAGE
acknowledge the receipt of—7th March 1825.....	96
Magistrates—of commitment what it ought to contain, 22d May 1828.....	112
—Death—what particulars to be conveyed in the returns of, 3d May 1830.....	137
20th September 1830.....	140
—For banishment. See Banishment.	
—By Circuit Court for release of any prisoners in a referred trial.	
See Trial.	
Seal of Circuit Courts. See Seal.	
Magistrate's—to a Criminal Judge. See Judge Criminal.	
—By Police to apprehend Native Officer or Sepoy. See Police.	
—Of Transportation. See Transportation.	
—For carrying sentences into execution to be issued by the Provincial Court of Circuit when the Officer who passed them may be removed from his situation. Circular Order 117.	223
—Blank forbidden to be issued. Circular Order 117.....	253
—Within the limits of the Supreme Court how to be executed. Circular Orders 129 and 142.....	257, 263
Persons secreting or aiding Robbers against whom Warrants are out are liable to punishment under the general Regulations. Circular Order 146.....	264
—Within Military cantonments—how to be executed. C. O. No. 149.....	265
—For banishment of Convicts—their transmission to Foudaree Udalt to be discontinued. C. O. No. 160.....	268
—The course to be pursued in the enforcement of Act X of 1845. C. O. No. 174.....	273

WATCHER

Village—Case in which a mitigation of punishment was considered inexpedient, because the Prisoner was, 14th October 1822.....	57
---	----

WIFE

Evidence of, against her husband. See Evidence.	
—In case of adultery, when not	

	PAGE
punishable: Circular Order 126.....	256

WITNESSES

Prior to examination of—the charge against Prisoners not to be read to them, but only the nature of it to be stated, &c. 27th December 1815.....	13
—Failing to appear on Trial—their recognizances to be forfeited, 21st May 1817, 3d October 1817.....	16, 19
—To Talook confessions—not required to appear before Court of Circuit when prisoners confess before the Criminal Judge, or their confessions do not differ materially from those in the Talook, 12th April 1819.....	23
—Being Infants or of tender age—what course to be pursued, 15th April 1819.....	23
A witness sent up by a Police Officer in a Criminal case, and found to be implicated, cannot be put to the Bar as a prisoner by the Criminal Court: but the matter must be referred to the Magistrate, 28th October 1822 and C. O. No. 141.....	59, 262
Prisoners—when more than two are called by the same prisoner—points of proof are to be specified, 27th September 1824.	88
Form of List of Prosecutor's witnesses, 27th Sept. 1824...	89
Attendance of—how to be obtained when residing in foreign territories, 23d October 1826.....	104
Female witnesses of caste—respecting their attendance to give evidence, 12th July 1830..	139
—On trials—presiding Judge dispensing with—15th July 1830.....	140
—Ignorant—Judge on Circuit how to proceed in respect to—15th July 1830.....	140
—Apparent age of—when to be entered in trials, 16th May 1831	
Plan proposed for the attendance at Circuit Court of—13th February 1833.....	170
Incumbent on Judges to prevent the needless attendance at trials of—31st August 1833...	178
Plan for their attendance at the Court of Circuit on those days only when their presence may be required in Court, 10th June 1834.....	198

7.

ZEMINDARY

Of Cavetnuggur.
See Cavetnuggur.

ZEMINDARIES

In which the Chief Police authority is in the Zemindar. Government prepared to authorise appointment of Sub Officers and Ameen of Police in—26th May 1834..... 194

ZUN-I-GHALIB

Of strong presumptive proof explained, 20th July 1829.... 129

WOMEN

Of caste—respecting their at-

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ASYLUM PRESS.

Circular Order by the Foujdaree Udaltut, Madras.
No. 191.

The Court of Foujdaree Udaltut direct that a Certificate in the accompanying Form be hereafter invariably sent with every Prisoner whose removal on account of sickness to another Jail may be certified by the Medical Officer in charge to be absolutely and urgently necessary, in addition to the warrant specified in Circular Order Foujdaree Udaltut No. 144, and the descriptive Roll prescribed by Circular Order 21st October 1820, B.

Name and Caste.	Age.	When last admitted into Hospital.	Nature of Disease.	Previous state of health and abstract of his case.	Summary of treatment, medicines prescribed and diet allowed.

(Signed) *Zillah Surgeon.*

Abstract.

Circulating a Form of Certificate to be sent with Prisoners when transferred for the Benefit of their health from one Jail to another.

G. T. BEAUCHAMP, *Register.*
Madras, Foujdaree Udalt, 30th July 1850.

To the several Criminal Authorities in the Madras
Presidency.

Circular Order by the Foujdaree Udalt, Madras.
No. 192.

In accordance with instructions received from Government, the Court of Foujdaree Udalt direct that it be notified for the information and guidance of the authorities in the Provinces that, as the Sessions Courts are alone competent to award the punishment specified in Sections 64, 65, 66 and 67 of Act VI of 1844, all persons charged with the offences against the Customs Laws defined by the said Sections, must be committed in the usual course for trial by the Session Judge.

Abstract.

Persons charged with the offences defined by Sections 64 to 67 of Act VI of 1844, to be committed for trial before the Session Judge.

G. T. BEAUCHAMP, *Register.*
Madras, Foujdaree Udalt, 17th September 1850.

To the several Criminal Authorities in the Madras
Presidency.

Circular Order by the Foujdaree Udalt, Madras.
No. 193.

The Court of Foujdaree Udalt see fit to direct that the names of the Prosecutors, as well as of the Prisoners, be henceforth entered in column 2 of Form B. prescribed by Circular Order Foujdaree Udalt, 18th January 1847, No. 185.

Abstract.

Directing a modification in the Form B. prescribed by Circular Order Foujdaree Udalt, No. 185.

G. T. BEAUCHAMP, *Register.*
Madras, Foujdaree Udalt, 30th September 1850.

