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HINDU LAW IN MADRAS IN 1714.

Nor the least interesting of the *Lettres curieuses et édifiantes* (1720) is the lengthy epistle written by the Jesuit Father Bouchet to the President Cocher, a great magistrate in France, from Pondicherry in the year 1714, for the purpose of informing him as to the mode in which justice was administered in India. This Father Bouchet stated in a letter of 1700, preserved in Bertrand's *Mission du Maduré* (Paris, 1854), Vol. IV, that he had then spent twelve years in the Madura country, and therefore, when he wrote the epistle now under notice, he must have worked continuously in the Madura Mission during a space of some twenty-six years. And, considering the life he led, travelling on foot from village to village and eating only such food as was proper for the most rigorous ascetic, it is fair to presume that he must have made himself tolerably well acquainted with the manners and customs of all classes of the people of South India. No doubt he saw most things through spectacles of his own, and where he speaks of matters that may not have come under his own personal observation, considerable allowance must be made for the possible mendacity of catechists and dependants, and the reg- less obsequiousness of ordinary native informants. *et qu'elle est sujette à de graves inconvénients, vous ne*

Nor must it be forgotten that it was a necessity of his position for the white Brahman of those days to mix and commune with Brahmans and high-caste folk rather than with Pariahs and Chucklers. And, lastly, a source of error lay open to Father Bouchet in the fact that the dominant class in his time was the Telugus, who, of course, would hold aloof from the subject Tamils, and trouble themselves but little about the institutions and habits of their inferiors. These and other circumstances must not be lost sight of in perusing Father Bouchet's description of the mode of administering justice in the countries in which he was itinerant; and whilst many of his statements must be regarded with suspicion, some doubtless must be rejected as erroneous. But, if only reasonable precautions are taken, much of the matter here presented may, I think, be accepted as substantially correct. And, looked at as a whole, the epistle may be assumed to give a fairly accurate account of a very large and complex subject; whilst to the student of history who interests himself in the state of this country prior to the establishment of the British Government, and to the lawyer who seeks to know the reasons of the so-called Hindu law, it offers a mass of most useful information.

It has recently been suggested by the *Indian Jurist* that this remarkable epistle should be carefully studied by lawyers for practical purposes, and possibly in the course of a few years some one may undertake the task of editing and annotating it. In the meantime I purpose in the present article to attempt to stimulate curiosity by giving a general view of its contents, and offering such remarks as may occur to me, in passing, upon its more important particulars. A few passages I must give entire as written.

Preliminary it should be observed that the opening part of this epistle has been referred to by Anquetil Duperron and Montesquieu as a principal authority for the

that the Indians have no civil laws, only religious precepts. The mind of the good Duperron was greatly disturbed by the publication of this proposition, and I can hardly do better than begin by citing the passage in question. It runs thus:—"Ils ont ni Code ni Digeste, ni aucun Livre où soient écrites les Loix auxquelles ils doivent se conformer pour terminer les differends qui naissent dans les familles. A la verité ils ont le *Vedam*, qu'ils regardent comme un Livre saint: Ce Livre est divisé en quatre parties, qu'on appelle Loix divines. Mais ce n'est point de là qu'ils tirent les maximes qui servent de regles à leurs jugemens. Ils ont un autre Livre qu'ils appellent *Vienachuram*: on y trouve quantité de belles sentences, et quelques regles pour les différentes Castes qui pourroient guider un Juge: on y raconte la maniere tout-à-fait ingénieuse dont quelques Anciens ont decouvert la verité qu'on tâchoit d'obscurcir par divers artifices. Mais si les Indiens admirent l'esprit et la sagacité de ces Juges, ils ne songent point à suivre leur methode. Enfin, on trouve une infinité de Sentences admirables dans les Poëtes anciens qui faisoient profession d'enseigner une sainte morale. Mais ce n'est point encore là qu'ils puisent les principes de leurs decisions.

"Toute l'équité de leurs jugemens est appuyée sur certaines coutumes inviolables parmi eux, et sur certains usages que les Peres transmettent à leurs enfans. Ils regardent ces usages comme des regles certaines et infallibles pour entretenir la paix des familles, et pour terminer les procez qui s'élevent, non seulement entre les particuliers, mais encore entre les Princes. De là qu'on a pu prévoir que sa pretention est fondée sur la coutume suivie dans les Castes, et sur l'usage du monde, c'en est assez, il n'y a plus à raisonner, c'est la regle, et l'on doit s'y conformer. Quand vous auriez des démonstrations que cette coutume est mal etablie, et qu'elle est sujette à de grands inconveniens, vous ne

gagnerez rien, la coutume l'emportera toujours sur les meilleures raisons."

Here we have an unequivocal assertion that in 1714, during the long and uneventful reign of one of the last of the *Nāyakkans* of Madura, the only law known to the people was custom (*ācāra*); and family differences were settled, even between princes, without reference to the Vedas, to "*Vicnachuram*" and the ancient poets, but in accordance with inviolable usages handed down from father to son.

The word '*Vicnachuram*' is puzzling. I thought, when I first saw it, it certainly must be a clerical error for *Vijñāneśvariya*, which is synonymous with the *Mitākārā* of *Vijñāneśvara*, and is by many supposed to be the "paramount authority" on matters of succession and inheritance over the greater part of India. Subsequently I was inclined to connect the word with *Vighneśā* (Gaṇeśa), the god appropriate to the Śūdras; but I have not been able to discover the existence of any such work. If the very extensive compilation styled the *Vijñāneśvariya* is the work referred to, the writer's words need not be taken to imply that its chapter on *dāyavibhāga*, the only chapter used by the Anglo-Indian lawyer, was familiar (or even known) to the people at large; but, on the contrary, when compared with following passages, must necessarily be taken to imply that such chapter never was used, nor was any book, as an authority in determining causes, even between disputants of the blood royal.

One of the 'inconvenient' customs that perplexed Father Bouchet was that of permitting marriages between the children of a brother and sister, whilst the children of two brothers or of two sisters were looked upon as uterine brothers and sisters. It appears not to have occurred to him in connection with this matter, though (as we shall see hereafter) he was well aware of the fact, that in the primitive stage of society reached by the Indians, children are taught to regard their

father's brothers as elder and younger fathers, and their mother's sisters as elder and younger mothers; whilst the sister of their father, 'given' in marriage to another family, is simply a stranger to them. As a fact, the marriage of a boy to the daughter of his mother's brother is supposed to be held to be obligatory by most castes in South India.

A very natural and satisfactory explanation of the absence of written laws, indeed one so good that I cannot believe any Indian ever evolved it out of his inner consciousness—Father Bouchet surely must have invented it himself—is given in the following passage: "Je leur ai quelquefois demandé pourquoi ils n'avoient pas ramassé ces coutumes dans des Livres que l'on pût consulter au besoin. Ils me répondoient que, si ces coutumes estoient écrites dans des Livres, il n'y auroit que des Sçavants qui pourroient les lire; au lieu qu'étant transmises de siècle en siècle par le canal de la tradition, tout le monde en est parfaitement instruit. Cependant, ajoutent-ils, il ne s'agit ici que des Loix générales et des coutumes universales; car, pour ce qui est des coutumes particulières, elles étoient écrites sur des lames de cuivre qu'on gardoit avec soin dans une grande tour à Canjibouram. Les Mores ayant presque entièrement ruiné cette grande et fameuse ville, on n'a pû découvrir ce qu'estoient devenues ces lames: on sçait seulement qu'elles contenoient ce qui regardoit en particulier chacune des Castes et l'ordre que les Castes différentes devoient observer entr'elles."

The idea of particular customs of castes being recorded on copper-plates kept at Conjeveram at the first blush must appear to be altogether mythic: but on consideration I am not altogether indisposed to admit the possibility of it being based partly on truth. Father Bouchet affirms that he himself was aware of a certain brass title-deed of a church having been fetched from Conjeveram, and of the fact that the Brahmans resident there still kept up the tradition of the

memory of ancient customs being preserved in that town Hiouen Tshang has shown that in his time Conjeveram was the capital of the *Drāviḍa* (Tamil) country, so that there would be nothing strange in copper-plate grants and monuments in abundance being stored in its pagodas. And instances are not wanting of decisions of disputes about matters of caste being recorded on stone or copper. For example, in the *Madura Country*, at Part III, p. 171, it is mentioned that the *Nāyakkan* himself had decided a dispute between a caste of Tamil weavers and another caste as to which was entitled to precedence in receiving betel-nut at public entertainments; and I remember that the information was gotten from an inscription on stone found under a *Gopura*. Again, at Vol. IX, p. 270, *Bengal Asiatic Researches*, will be found an inscription commemorating the settlement by Bukha Rayer of a dispute between the *Bhaktās* and the Jains.

One is reminded of Macaulay's wonderful school-boy by the following observation: "Rien n'est plus connu que ces coutumes. J'ai vu des enfans de dix ou douze ans qui les sçavoient à merveille, et quand on exigeoit d'eux quelque chose qui y fut contraire, ils répondoient aussitôt, *Ajaratoucou Virodam*, cela est contre la coutume."

Father Bouchet goes on to describe the qualifications proper for a judge, and it is somewhat amusing to find that the first of them is the knowledge, possessed by "every school-boy," of all the maxims that serve for law. Next, the judge should be opulent. Lastly, he should be over twenty and under sixty years of age. His principal duty was held to be the patient examination of witnesses. Careful judges would write down the evidence and dismiss the witnesses, and recall and re-examine and cross-examine them after an interval of two or three days. The faces of deponents would be carefully watched for signs of shame, anger, fear and the

like. Women were to be examined as witnesses only in cases of absolute necessity. And persons suffering from deformity of body were taken to be unworthy of great credit. All this savours strongly of the *dharmaśāstra*, and I make no doubt that in giving information upon these points the worthy writer only reproduced conventional ideas communicated to him by Brahmans who "knew the Vedas." He does not profess himself to have attended courts, and repeatedly to have derived satisfaction from the contemplation of careful judges, wealthy but honest, re-examining and cross-examining suspicious characters. On the contrary, he expressly states that judges were but little honest. And I am firmly persuaded that not only were no careful judges to be found in Father Bouchet's day, in fact no courts of justice, nothing even remotely resembling one, existed in the Madura country.

The writer of the epistle states that every head of the village was judge of all causes arising within the limits of his village, and heard and determined causes, assisted by three or four experienced villagers selected by him as assessors. Most suits were for debt. Litigants pleaded in person or by a friend. Great order and decorum prevailed during the trial. After hearing the parties and their witnesses, the court dismissed them and took time to consider. And, if there was but little honesty in deciding, there was but little delay or expense. It appears, however, that whilst most suits were for debt, and obligations to pay money were customarily evidenced by writings duly dated, signed and attested by at least three witnesses, obstinate debtors usually were not proceeded against in the village court. The reason why this was so is not given by Father Bouchet, but will readily occur to the mind of an Indian judge. Doubtless it was because the head of the village had no power to enforce execution of his decree, and never was more than arbitrator or conciliator as between friendly disputants. Because the

head of the village could not effectually help him, the creditor who could not prevail on his debtor to come to a settlement used himself to arrest the recalcitrant one, in the name of the Prince, and laying him under pain of being declared a rebel in case of his breaking the arrest. In such case the debtor stayed where he was till he could satisfy the claim, or until passers-by interfered in his behalf and induced the creditor to give him more time. Ordinarily the creditor would consent to wait for a few months longer; after which, if satisfaction was not obtained, he would hale the debtor before the prince, who, as a matter of course, would grant more time. Ultimately the defaulter would be sent to jail, and his oxen and furniture would be sold to pay the debt, part of which in almost all cases would be remitted. Whilst under arrest, the debtor's patient obedience was something remarkable: without the leave of his creditor he might neither eat nor drink.

There can be but little doubt, I imagine, that we have here a somewhat distorted account of a primitive mode of enforcing payment of debts, in its origin probably superstitious and magical, that must have obtained in most parts of the world before the State has thought it necessary regularly to interfere in the interests of justice between man and man. We find traces of this mode in Matthew xviii. The *Smṛiti* recognizes it. Marco Polo found it prevalent in South India, and himself saw the King arrested and coerced by a subject, who had contrived unperceived to draw the 'circle' round the royal body (see Yale's *Marco Polo*, II, 279). Doing *dharma* is but a variety of the procedure. And even now, with the Police and Small Cause Courts at hand, the lower classes of Madras believe creditors to have power themselves to arrest and detain their debtors who may attempt to start on a journey.

A debtor dissatisfied with the judgment of the head of the

village was at liberty to appeal to the *Maṇiyakāran* or intendant of a group of villages. And a further appeal lay to the "immediate officers of the Prince who judge in the last resort," that is to say, I presume, to any powerful favorite who could be induced by a sufficient bribe to move in the matter. For, in the inscriptions and historic records of Madura, I have been unable to find any the slightest trace of the existence of a *Nyāyādhipati* or judge. And the *Mission du Maduré*, whilst it gives accounts of various disputes being brought up to nobles and courtiers for settlement, nowhere speaks of the existence of an established legal tribunal. The *Maṇiyakāran* took a fee for judging, and some judges of this class took as much as 10 per centum on the amount claimed. Ordinarily the successful party paid the costs, on the principle that he was in a better position than his opponent to meet the charge.

Speaking of loans, which occasioned the majority of the disputes brought before the judges, Father Bouchet observes that three rates of interest were commonly charged, namely, of 12, 24 and 48 per centum. The first of these three was known as the 'virtue' rate, and the last the 'sin,' the middle being regarded as indifferent. When the 'virtue' rate was agreed to, it was usual for the creditor to remit the interest due for the first month and for that of payment.

Altercations about matters of caste were disposed of by the heads of castes. The *gurus* (priests) decided disputes arising between their disciples. Family quarrels about money and other things were arranged by family councils. And in some instances disputants referred matters to arbitration. The *gurus*, it is incidentally remarked, took much larger fees than the *Maṇiyakārans*.

So much for the administration of civil justice: that of criminal was even less satisfactory. In cases of theft and the like the accused or suspected person was subjected to an

ordeal, generally that of boiling oil, into which the bare arm was plunged. Father Bouchet states that he had seen this ordeal undergone in numerous instances without consequent bodily injury. Another mode of discovering the truth was by making the prisoner take a ring out of a narrow-necked earthen pot containing a cobra. Before the ordeal began, opportunity was given to the wrong-doer of putting back unseen what he had improperly taken. With regard to these ordeals it is to be observed that they are of the kind usually called private, as opposed to the public, which required the performance of ceremonies by Brahmans, *e.g.*, the ordeals by fire, water, weighing, &c.

The crime of murder was very inadequately punished by a fine of 100 pagodas, or even of 100 crowns, and this, too, in cases where the victim was an officer of the Government. Fortunately this crime was of rare occurrence: and the frequency of its commission apparently had not been affected by the circumstance of Queen Mangammal abolishing capital punishment, as for murder. The law permitted a husband to kill his wife and her paramour together when found *in flagrante delicto*; but not to kill one at one time and place, and the other at another.

A very remarkable practice is thus referred to: "S'il s'agit d'un meurtre, et que la Loy du Talion ait lieu dans la Caste, cette loy s'observe dans toute la rigueur." The practice is stated to have been usual only amongst the robber clans that lived between the *Marava* country and Madura, by which the writer must have meant the *Maravar* or *Kallar*. The nature of the "Loy du Talion" is not explained by the writer. But a letter in *Recueil X, Lettres cur. et éd.* written by Father Martin in 1709, describes a practice prevailing amongst the *Maravar*, of one who considered himself aggrieved, killing or maiming himself (or his wife or child) in order that his enemy might be compelled to do the same

to himself (or his). There can be no doubt that this horrible practice is connected with magic. How extensive it may be, how far modified forms of the superstition may still affect everyday life in South India, is a question of deep interest for criminal judges.

Brahmans, it appears, whatever their sins, never were put to death by violence. For grave offences their eyes were put out, or they were banished the realm. Occasionally one guilty of exceptionally bad conduct was starved to death in a cage lined with thorns.

Banishment, however, as enforced in Father Bouchet's time, was hardly a very terrible penalty to suffer. It consisted of quitting the city by one gate and forthwith re-entering it by another. In fact, this mode of punishment was purely nominal. And, indeed, looking to the language of this part of the epistle as a whole, I cannot doubt that at the beginning of the last century, in the old established thoroughly Indian kingdom of Madura, there was nothing in the shape of an organized administration of criminal justice; that in fact the King suffered ordinary criminals to go altogether harmless, and delivered over to his officers for punishment only those who had offended (or were supposed to have offended) directly against his own sovereign will and pleasure, and had aroused his royal wrath. I have already shown this in the *Madura Country* by citing several passages from letters of Jesuit missionaries. See, for example, one of Father Vico, dated Madura, 30th August 1611, which tells us that "toutes les autres terres sont les domaines d'une foule de petits princes ou seigneurs tributaires; ces derniers ont chacun dans leur domaine la pleine administration de la police et de la justice, si toutefois justice il y a." The italics are mine. The following passage from a letter of Father Martinz, dated Sattiamangalam, 1651, describes in terse and forcible language the miserable state of anarchy that ordinarily prevailed.

in the Madura kingdom, indeed in India generally; and is well worthy of the attention of those who love to praise the good old times and sneer at minor defects in the British administration of India.

"La mort du Nayaker de Sattiamangalam et la minorité de son fils nous ont fait subir les funestes conséquences du mauvais gouvernement qui existe en général dans l'Inde. L'idée d'un monarque qui regarde son peuple comme une immense famille dont il est le père n'est jamais entrée dans l'esprit ni dans le cœur des rois indiens; ils se regardent plutôt comme de grands propriétaires, et leur royaume comme une vaste ferme à exploiter. Pleins d'énergie, de sagacité, pour extorquer de leurs sujets le plus d'argent qu'il leur est possible, ils sont aveugles, négligents et faibles à l'excès dans tout ce qui regarde le bon ordre, la répression des crimes et des injustices. Tous ces soins sont abandonnés à des subalternes, aux chefs de castes et aux gouverneurs des provinces et des villages; ceux-ci sont eux-mêmes comme autant de petits despotes; habiles à se rendre indépendants ou à justifier leur arbitraire par des intrigues et des présents offerts à la cupidité de ceux qui devraient les surveiller."

After giving his general description of the administration of justice in South India, Father Bouchet goes on to detail the traditional maxims that "every school-boy" knew by heart. But seven are given. And since it is impossible to believe that any people, however rude and backward, could have determined all its disputes by reference to these seven brief maxims, we must suppose that those set out in the epistle are specimens. Again, since the form of the maxims

not native but purely European, we must suppose that they were composed by Father Bouchet himself to represent conveniently what he (rightly or wrongly) conceived to be the main jurial or ethic concepts held in solution, as it were, in the common talk of the people amongst whom he sojourned.

The 1st maxim is: "Quand il y a plusieurs enfans dans une maison, les enfans mâles sont les seuls héritiers; les filles ne peuvent rien prétendre à l'héritage." Upon this Father Bouchet observes that, when asked why this injustice was done to girls, natives would say that "the nation had agreed to this," and there was no injustice in the custom, because fathers and mothers and brothers were bound to get their girls married and transferred to families of equal position and dignity with their own. And if it were replied to this that the parents got the money given by the husband as the price of his bride, the rejoinder would be that the whole of it went to defray the expenses of the marriage and buy jewels for the bride. As to this, the remark occurs at once that of course no native ever suggested that the nation had agreed to do anything, and that the author of the epistle must have recorded not the very good words, but what he remembered of the substance of the statements, of his informants. The real reason why ordinarily the daughter of an Indian house takes no share of the joint family estate is that on marriage she is given away to and becomes part of another 'house,' and thenceforth looks to that house for protection and adequate maintenance; whilst the daughters of other houses are given to and become part of the house in which she was born, and take her place. The system is intelligible and reasonable, and need not have disturbed Father Bouchet's mind.

The general rule was subject to the following exception:—"Cependant il y a de petits Royaumes dans les Indes, où les Princesses ont de grands privileges, qui les mettent au dessus de leurs freres, parce que le droit de succeder ne vient que du costé de la mere. Si le Roi, par exemple, a une fille d'une femme qui soit de son sang, quoi qu'il ait un enfant mâle d'une autre femme de même Caste, ce sera la Princesse qui succedera et à qui appartiendra l'héritage. Elle peut se

marier à qui elle voudra, et quand son mari ne seroit pas du Sang Royal, ses enfans seront toujours Rois, parce qu'ils sont du sang Royal du costé maternel, le pere n'étant compté pour rien, et le droit, comme je l'ai déjà dit, venant uniquement du costé de la mere."

We have here an interesting account of a custom analogous to customs of the Western Coast, and it would be well to know what particular castes are referred to. The primitive idea of succession coming from the mother alone seems to have been widely prevalent in India, and its influence has not yet disappeared.

The 2nd maxim is of great practical importance:—"Ce n'est pas toujours le fils aîné des Rois et des Princes, des Palleacarrens, et des Chefs de Bourgade qui doit succéder aux Etats ou au gouvernement de son pere." The letter explains that there were two sorts of dignities in South India, (1) such as passed as of course from father to son, and (2) such as were personal to the holder, and did not necessarily descend to his successors. In the case of the demise of the King, it was the custom for the eldest prince to succeed if capable, but not otherwise. Where the eldest was incompetent, the King would himself appoint a younger son to be his successor; or if the King failed to perform this act, his relatives would come together after his death and elect a younger son. Such was the established custom, and in no instance would the superseded prince decline to submit. An instance of the eldest son being set aside in favour of a younger will be found at p. 247, Part III of the *Madura Country*, where an account is given of Raghunātha being appointed to succeed to the throne of the Ramrad country in preference to his elder brother Vaduganātha, who probably was disliked because he showed favour to the Jesuits. And the custom is not necessarily opposed to the text of Manu (IX, 323), which has been

assumed to prescribe the succession of the eldest son, for, if the eldest son always succeeded as a matter of course, there would seem to be no occasion for the dying King "duly to commit his kingdom" to him.

Poligars and heads of villages, Father Bouchet tells us, invariably preferred their younger to their elder sons, if more competent.

And then the letter goes on to give a remarkable instance of a partition of a kingdom:—

"On a vu avec admiration les deux freres Princes de Tanjaor gouverner tous deux ensemble le pays qui leur a été laissé par leur frere aîné qui n'avait pas d'enfans. Il est vrai que l'expérience leur ayant appris que cette autorité commune embarrassoit leurs sujets, ils ont partagé entre eux le Royaume de Tanjaor, mais ils ne laissent pas de demeurer ensemble dans le même Palais, et d'y vivre dans une parfaite union. Ils sont les enfans d'un frere du fameux Sivagi."

This passage should afford food for reflection to those who, following the unsupported opinions of the two Stranges and others, and rejecting the sound arguments of Jagannātha, maintain that, according to Hindu law and usage, the *Rājyam* cannot be divided, "because division would destroy it." I have examined this proposition in Chapter II of my *View of the Hindoo Law*.

The 3rd maxim is: "Quand les biens n'ont point été partagés après la mort du Pere, tout le bien que peut avoir gagné un des enfans, doit être mis à la masse commune, et être partagé également." Father Bouchet observes that this is generally followed amongst Indians, and an infinite number of disputes are settled in accordance with the principle involved in it. If, for example, a man dies leaving five sons and an estate of the value of 100 pagodas, and one of these sons by his own unaided exertions acquires 10,000 pagodas, he

must throw them into the common fund for equal partition; and should he refuse to perform his duty in this behalf, his relatives and friends will compel him to follow the custom. No exception to the rule is spoken of. And apparently Father Bouchet had never heard of successful attempts having been made to withhold from partition "acquisitions by science," gifts and the like: doubtless the subtle conceits of the Sanskrit law had not yet been imported into the countries with which he was familiar.

A curious practice is said to have been followed where partition took place in a family of brothers of whom some were supposed to be clever, some stupid. The stupid brother got a considerably larger share for himself than did the others, on the principle that he was not likely to increase his means by his own personal exertions, whereas his brothers might be supposed to be able to add to their capital.

Public opinion, as may well be imagined, was decidedly in favour of families keeping together, and in some families division was an unheard of occurrence.

"Il y a de certaines familles où l'on ne parle jamais de partage: les biens sont communs, et ils vivent dans une parfaite intelligence. Cela arrive lorsque quelqu'un de la famille est assez habile pour la faire subsister. C'est lui qui fait toute la dépense: il est comme le supérieur des autres qui n'ont d'autre soin que de travailler sous ses ordres: il marie les fils et les petits fils de ses frères, il pourvoit à leurs besoins, aux vêtements, à la nourriture, &c. Ce qu'il y a d'admirable, c'est qu'il se trouve quelquefois des femmes capables de gouverner ainsi plusieurs familles. J'en ai vu une qui est chargée de plus de quatrevingt personnes qu'elle entretenoit des choses nécessaires à la vie."

In this happy picture one may perhaps recognize the 'house' of Cicero (Offic. I, 1, 17): "*Prima societas in ipso conjugio est; proxima in liberis, deinde una domus; communia*

omnia." But the Indian is not the Patriarchal Family of Maine (*Village Communities*, 15): "a group of men and women, children and slaves, of animate and inanimate property, all connected together by subjection to the Paternal Power of the chief of the household." In Rome there was law, and consequently the "Paternal Power" was a real thing: in India, in Father Bouchet's time, law was unknown, and the only power resident in the manager of a family was what he derived from the fears and hopes of those whom he fed, clothed and supported in complete idleness. That power, I imagine, wanes daily under the influence of our courts and legal enactments, and possibly in the course of a few generations the ancient institution of the Indian "undivided family" will utterly perish. It has had its uses, doubtless has done good of a kind; but it is incompatible with what is called progress, and with the modern impatience of authority.

The 4th maxim is: "*Les enfans adoptifs entrent également dans le partage des biens avec les enfans des peres et meres qui les ont adoptez*." Often a childless man adopted one of his relatives. The act was done in the following manner. An assembly of relatives was held in his house, and a large copper dish was brought in, in which to place the child's legs, or (if he could) make him stand up. Then the husband and wife stood up and spoke as thus: "We hereby inform you that, having no child, we wish to adopt this one. We choose him for our child in this wise, that our goods shall belong to him henceforth as if he were actually born of us. He has now nothing to hope for from his own father. In token whereof we are about to drink saffron water, if you consent." Those present consented by a movement of the head. Then the husband and wife stooped down, and poured saffron water over the legs of the child, and what was left in the vase they drank. A deed styled a "*Manchinircani chitou*" was drawn up, to evidence the act, and signed by witnesses, and the act

was complete. It is observable that in this description of the ceremony of adoption not a word is said about spiritual benefit, or deliverance from the "Hell called Put," or as to ceremonies performed by attendant Brahmans. So far as appears, the act was done solely for temporal purposes, and the consent of kinsmen was necessary because their interests were (or might be) affected by it.

If the adoptive father and mother subsequently had children born to them, the natural children would be subordinate to the adopted one, since "les loix ne mettent nulle difference entre l'enfant adopté et les veritables enfans." That is not the case under the British Government.

Another kind of adoption, that known as the "*oppari pirieradou*," was practised by parents who, having lost a child, happened to find another which in their eyes exactly resembled the lost one. In such case they would pray the child to regard them as his parents, and the prayer always was granted. It was allowable for a *Sûdra* to adopt a Brahman in this fashion, and a Brahman so adopted would pay great respect to his adoptive father, though he might not eat with him. A man who lost a brother, or a woman who lost a sister, often would adopt a person as brother or sister by '*oppari*.' This adoption was determined by the death of the adoptor, and its effects did not pass to his children.

The 5th maxim is: "Les orphelins doivent estre traittez comme les enfans de ceux à qui on les confie." It is explained that a father's brothers were considered by law to be the fathers of his children, and a mother's sisters to be her children's mothers; and hence an Indian widower always does his best to marry his deceased wife's sister, in order that his children may have a proper mother to look after them. Possibly it was this feeling that often led an Indian in Rogerius' day (see *La Porte ouverte*, Amsterdam translation, 1670) to marry two or three sisters at a time: by so doing

he might hope to free himself from all anxiety about the future of his expected children.

Where an orphan was left without either elder brother, uncle, or aunt, a family council was held and a guardian elected. To him the orphan was given over, and a list was taken of the orphan's effects, which must be restored to him upon his attaining his majority. As soon as he was able, the orphan was made to work. And, if intelligent, he would be taught to read and write and cipher.

The 6th maxim is: "Quelque crime qu'ayent commis les enfans à l'égard de leurs peres, ils ne peuvent jamais estre desheritez." Even if a son attempted the life of his father, his sin must be forgiven: he could not be disinherited. And similarly a son could not disinherit his father, who (in default of sons) was his natural heir. For no cause could the father be deprived of this indefeasible right.

With regard to this maxim I would observe that the worthy Father Bouchet would appear to have got a little out of his depth here. Where inheritance is unknown, of course disinheritance is impossible, and therefore it is not incorrect to say that an Indian father may not in any case disinherit his son. But a father may separate his son from him, and not infrequently does so, and such separation practically may amount to disinheritance. And the idea of the father being heir to his son would seem to be quite opposed to the idea above presented, of the son being obliged to throw all his earnings into the common mass.

We now come to the 7th, unfortunately the last, maxim: "Le pere est obligé de payer toutes les dettes que les enfans ont contractées; et les enfans sont pareillement obligez de payer tous les dettes de leur pere." This rule, Father Bouchet observes, is general, and serves definitively to settle disputes. However profligate the son, the father must pay his debts, and the duty of the son is reciprocal. "Quand

même on prouveroit que le pere a employé d'argent emprunté en des depenses folles et indignes d'un honneste homme, quand même le fils renonceroit à l'heritage, il sera toujours condamné à payer les dettes de son pere." The same principle was observed amongst undivided brothers, living together under the management of the eldest. The manager of such a family was obliged to discharge the debts incurred by a spendthrift member, who would nevertheless continue to share the family estate equally with the others; the reason being that the eldest brother was supposed to have become the father, and the others were used to throw themselves at his feet in return for his protection. But the rule did not apply to females.

This very remarkable and important maxim is directly opposed to the Hindu law as administered by the Madras High Court, but probably accurately represents the Indian idea of duty as between father and son. The *Thessa Waleme*, or book of the customs of the Tamils of Ceylon, tells us that in that island, where the English have not thought fit to interfere with the customs of the natives, "Although the parents do not leave anything, the sons are nevertheless bound to pay the debts contracted by their parents; and although the sons have not at the time the means of paying such debts, they nevertheless remain at all times accountable for the same; which usage is a hard measure, though according to the laws of the country." Possibly it tends to restrain profligate fathers of families, who, according to the Sanskrit proverb, are the "enemies of their sons."

J. H. NELSON.

II.

THE PREDECESSORS OF THE HIGH COURT OF MADRAS.

CHAPTER I.

A High Court of Judicature, which under various names and with several modifications has continued in existence down to the present time, was established at Madras in 1678, or we may say A.U.C. 38 or 39, the grant from the Rajah of Chandragiri of the strip of territory on which Fort St. George was built being dated 1st March 1639. Before the last mentioned date "the Governor and Company of Merchants of London trading to the East Indies" had obtained from the Crown, in addition to their Charter of incorporation dated the 31st December 1600 (13rd Elizabeth) and a Charter dated 31st May 1609 (7th James I), by which their privileges were confirmed and extended—a Charter dated 4th February 1622 (20th James I), which empowered the Company to chastise and correct all English persons residing in the East Indies and committing any misdemeanour either with martial law or otherwise, but this Charter appears not to have been of much value, for nearly thirty years afterwards we find the Company complaining in a petition presented to the Council of State on the 22nd October 1651 of having been for years without proper authority in the Presidencies in India to enforce obedience in the English subjects within their limits, and praying that powers might be given under the Great Seal of England to their Presidents and Councils in India to enforce obedience in all Englishmen resident

within their jurisdiction and to punish offenders conformably to the laws of England.¹

In 1653 Fort St. George, which had up to this time been governed by an Agent and Council who were subordinate to the President and Council of Bantam, was raised to the rank of a presidency,² and in 1657 the Company obtained a Charter from Cromwell,³ but this Charter was probably destroyed at the Restoration, and all record of it appears to have been carefully suppressed.

The next Charter, that of the 13th Charles II (3rd April 1661), provided that all plantations, forts, fortifications, factories or colonies, where the Company's factories and trade were or should be in the East Indies, should be under the power and command of the Company, who should have liberty, full power and authority to appoint and establish Governors and all other officers to govern them: and that the Governor and his Council of the several and respective places where the Company had or should have any factories or places of trade within the East Indies might have power to judge all persons belonging to the Company, or that should live under them, in all causes whether civil or criminal according to the laws of the Kingdom, and to execute judgment accordingly; and in case any crime or misdemeanour should be committed in any of the Company's factories in the East Indies where judicature could not be executed as aforesaid for want of a Governor and Council there, then it should be lawful for the chief Factor of that place and his Council to transmit the party together with the offence to such other plantation, factory or fort where there was a Governor and Council where justice might be executed, or into the Kingdom of

¹ Bruce's *Annals of the East India Company*, vol. i, p. 459.

² Bruce's *Annals*, vol. i, p. 484.

³ *Ibid.*, p. 529.

England as should be thought most convenient, there to receive such punishment as the justice of his offence should deserve.

Nothing however appears to have been done with a view of carrying these provisions into effect in Madras till March 1678, up to which time the arrangements for the administration of justice there appear from the Rules and Regulations made by the Governor (Mr. Streynsham Master) and Council on the 31st January 1678⁴ to have been as follows:—

It was the duty of the Customer, or fourth in Council, Mint Master, and Pay Master, or any two of them, to sit every Tuesday and Friday in the Choultry to do the common justice of the Town; and to take care that the scrivener of the Choultry duly registered all sentences in Portuguese, and that there should be an exact register kept of all alienations or sales of slaves, houses, gardens, boats, ships, &c.; the Company's due for the same to be received by the Customer, and the Bills or Certificates for such sales to be signed by the persons in the offices aforesaid or any two of them.

The Purser General or Pay Master had also to take charge of the concerns of deceased men, and to keep a book for registering Wills and Testaments and Inventories of deceased persons, the moneys so received to be paid into the Company's cash; and in the same book to keep a Register of births, christenings, marriages and burials of all English men and women within the Town.

The Justices of the Choultry appear also to have acted as Coroners, for we find that during the governorship of Mr. Master's predecessor, Sir William Langhorne, notice having been brought to him by Lieutenant James Bett of the death of a soldier of the garrison under a punishment inflicted on him by a Serjeant and Corporal, the Governor ordered Lieutenant

⁴ Wheeler's *Madras in the Olden Time*, vol. iii, p. 431.

Bett to go to Timothy Wilkes, one of the Justices of the Town, to desire him to send some sufficient gentlemen of the English nation to go along with him, the said Wilkes, and then to make enquiry how the death happened before the burial, which accordingly was immediately performed. The Serjeant and Corporal after a long imprisonment were sent to England for trial during the government of Mr. Streynsham Master.⁵

On the 18th March 1678, by which time the inhabitants of Madras had greatly increased, and many complaints had been made of the want of an administration of justice in cases which could not be decided by the Justices of the Choultry, the Agent and Council resolved that under the Royal Charter of 13th Charles II they had power to judge all persons living under them in all cases whether criminal or civil according to the English laws, and to execute judgment accordingly; and it was determined that the Governor and Council should sit in the Chapel in the Fort on every Wednesday and Saturday to hear and judge all causes; and that the Justices of the Choultry and Constables under them should execute all orders of the Court such as writs, summonses for jurymen, executions after judgment, and apprehensions of criminals. This High Court of Judicature was not however intended to supersede the Court of the Justices of the Choultry. All small misdemeanours, breaches of the peace, and actions for debt not exceeding 50 pagodas, were still to be decided by these Justices.⁶

By a subsequent Charter dated 9th August 1683 (35th Charles II) His Majesty granted to the Company the ordering, rule and government of all forts, factories and plantations settled by or under the Company within the parts of Asia, Africa and America beyond the Cape of Bona Esperanza to

⁵ Wheeler's Madras, vol. i, p. 106.
⁶ *Ibid.*, p. 104.

the Straights of Magellan; and also full power to make and declare peace and war with the Heathen Nations in the said Territories, and to appoint Governors and Officers who should have authority to raise Military forces and to execute and use Martial Law for the defence of the said forts, places and plantations, the sovereign right, powers and dominion over all the said forts, places and plantations, and power of making peace and war, when His Majesty should be pleased to interpose his royal authority therein, being always reserved; And for the more effectual encouragement of the said Company and the Merchants that should from thenceforth trade with the parts and places aforesaid, and to the end that more effectual remedies might be applied in the case of former or such other disorders or inconveniences as might happen, His Majesty did erect and establish a Court of Judicature to be held at such place or places, fort or forts, plantations or factories, upon the said coasts, as the Company should from time to time direct and appoint, which Court should consist of— One person learned in the civil laws, and two merchants, which said persons, and such officers of the said Court as should be thought necessary to be nominated and appointed from time to time by the Governor or Deputy Governor and Court or the major part of them; and which said person learned in the civil laws and two merchants, or the major part of them, whereof the said person learned in the civil law to be one, should have commission and power to hear and determine in all cases of forfeitures and seizures of any ship or ships, goods and merchandize, trading and coming upon any the said coasts or limits, contrary to the intent of the letters patent granted to the Company; and also all causes mercantile or maritime, bargains, buyings, sellings, bartering of wares whatsoever, and all policies and acts of assurance; all bills, bonds and promises for payment of money, or mercantile or trading contracts, all Charter parties or trading contracts for

affreighting of vessels, and wages of mariners, and all other mercantile or maritime cases whatsoever, concerning any person or persons residing, coming or being in the places aforesaid; and all cases of trespasses, injuries and wrongs done or committed upon the high sea, or in any of the regions, territories, countries or places aforesaid, concerning any person or persons residing, being or coming in the parts of Asia, Africa and America within the bounds and limits aforesaid; all which cases should be determined and adjudged by the said Court upon due examination and proof according to the rules of equity and good conscience, and according to the laws and customs of Merchants, by such methods and rules of proceedings as His Majesty should from time to time direct and appoint: And for want of such directions, and until such directions should be made, by such ways and means as by the Judges of the said Court should in their best judgment and discretions think meet and just, whether it should be by a summary way or otherwise, according to the exigency of several cases that should be brought in judgment before them: And all judgments, determinations and decrees made in the said Courts were to be put in writing, and signified to the persons that were present at the making of the same, and should contain a short state of the matter of fact as it appeared to them, and their sentence and adjudication thereupon.

A copy of this Charter was sent out to Madras by the Court of Directors with their general letter dated 14th August 1683, in which they appointed their President to supply the place of Judge Advocate till one should arrive. This, in the words of the Minutes of Consultation of the 10th July 1684, "occasioned the silencing our former Court of Judicature, and has given great dissatisfaction, to the creating many disturbances and complaints for justice, to the discredit and disgust of our Government; and though

the Honorable Company have appointed their President to supply the place of Judge Advocate till he shall arrive, yet having no directions for those proceedings, and being unacquainted with the methods thereof, it is thought and agreed to be of absolute necessity to the peace, justice, security and honor of the Government, that the old Court of Judicature be organised, and that causes be heard and decided there by jurors as formerly, by the authority of the first Charter, till the Judge Advocate shall arrive or we prohibit further proceedings therein."

At Bombay a Court of Admiralty was at once established under the presidency of Dr. John St. John, who was appointed Judge of the Court by a Commission from the King dated the 6th February, and from the Company dated 7th April 1684. This gentleman however soon became involved in disputes with the Governor, Sir John Child, who limited his jurisdiction to maritime cases, and appointed Mr. Vaux to be Judge in Civil Actions.⁸

In 1686 the Company obtained another Charter from the Crown, bearing date the 12th day of April in the second year of the reign of James II. It differs chiefly from the Charter of 35th Charles II in authorizing the Company to appoint Admirals and other Sea Officers, and to coin any species of money usually coined in India; and in adding to the cases over which the Court was to have jurisdiction, cases of reprisals of ships or goods for any hurt or damage done to the Company by any person or persons whatsoever.

This time no delay took place in sending out a Judge to Madras. The fourth paragraph of the Court of Directors' despatch dated 7th January 1687 is as follows:—

"We send by this ship, the 'Williamson,' Sir John Biggs to be our Judge Advocate, in whose fidelity and zeal for our ser-

⁷ Wheeler's Madras, vol. i, p. 137.

⁸ Bruce's Annals, vol. ii, pp. 479, 565.

vice, and for the increase of our revenue in that great city of Madras, we have much confidence; and therefore for his greater honour we appoint him to be of our Council, notwithstanding he is not named in our last commission, and to take place next after our second of the Council for the time being; desiring you to give him such a publique reception as be fit to his quality and the trust we have reposed in him."

In the same year the Company determined to assume the rank of an Indian power, and as such to negotiate and act for the interests of England. Bombay was declared a Regency and the same plan was followed at Fort St. George. The King's Union Flag was ordered to be always used at the Fort, the fortifications were to be extended and strengthened, and the garrison increased; and, that the internal administration of the town might correspond with its new character of a Regency, it was erected into a Corporation by a Charter under the Company's larger seal, bearing date the 30th day of December 1687 (3rd James II). The question had been agitated in the Privy Council whether such Charter should proceed from the King, under the Great Seal of England, or from the Company, under its Broad Seal, from being vested with a right to exercise a delegated sovereignty in India, and the conclusion arrived at is thus described in the Court's letter to President Yale of the 12th December 1687:—

"The Governor and Deputy were commanded last night, being Sunday, to attend His Majestie at the Cabinet Council, when our intended Charter for incorporating Fort St. George into a body politique, consisting of Mayor, Aldermen and Burgesses, was largely debated before His Majestie;—One of the Council (being a lawyer)* seemed to be of opinion that it was

* Probably Sir Thomas Powis, who about this time succeeded Sir Robert Sawyer as Attorney-General, Sir William Williams being appointed Solicitor-General in succession to Powis. Macaulay's *History of England*, vol. iii, p. 77.

best the Charter should pass immediately by the King under the Great Seal of England:—His Majestie asked the Governor his opinion, who replied that what His Majesty thought best the Company would always think so, but, if His Majestie expected the Governor's private opinion, he had ever been of opinion that no person in India should be employed by immediate commission from His Majestie, because, if they were, they would be prejudicial to our service by their arrogance and prejudicial to themselves, because the wind of extraordinary honour in their heads would probably make them so haughty and overbearing that we should be forced to remove them; and he instanced particularly Sir John Wyborne and Dr. John St. John:—In conclusion His Majestie, did so apprehend it as to think it best that the Charter should go under our own seale, because the Corporation must be always in some measure subject to the control of our President and Council; and so at length it was agreed and the Charter is now engrossing."¹⁰

The lawyer was probably thinking of Sutton's case¹¹ relating to the foundation of the Charter-house in London, where it was, perhaps rather too broadly, laid down that the King by virtue of his prerogative is the only person that can erect either an ecclesiastical or lay Corporation. Sutton's case itself established an exception to the rule, and there are many instances in which Charters of incorporation, and even Charters of municipal incorporation, have been granted by subjects having *jura regalia*. Corporations have also, at various early periods of our history, exercised the right of constituting other Corporations.¹²

Be that as it may however, the Charter of 30th December 1687 can hardly be considered an attempt to encroach upon

¹⁰ Bruce's *Annals*, vol. ii, pp. 585, 588, 590.

¹¹ 10 Coke's *Reports*, 33b. See also Bacon's *Abridgment*, Corporation, B; and Comyn's *Digest*, Franchise, F. 5, where it is said that the King by Charter to the East India Company may enable them to constitute such persons who shall be incorporated.

¹² Grant's *Law of Corporations*, p. 11.

the Royal Prerogative. Not only had His Majesty sanctioned its going under the Company's seal as above mentioned, but the power to administer assertory oaths to witnesses and other lawful oaths is stated to be granted "with the consent and approbation of our Sovereign Lord the King testified by his most Excellent Majesty prefixing his Royal sign manual to this Charter."

This Charter, which is not in any of the printed collections,¹³ commences by reciting that under the Charter of 13th Charles II the Company had power to make reasonable laws, constitutions, orders and ordinances for the good government of the said Company and their Officers; that the ordering rule and government of all their forts, factories and plantations was vested in them by the Charter of 35th Charles II; and that by the Charter 2nd James II all their former privileges were confirmed, with license to exercise Martial Law; and then goes on as follows:—

"Now We, the said Governor and Company having found by experience, and the practice of other European nations in India, that the making and establishing of Corporations in cities and towns that are grown exceeding populous tends more to the well governing of such populous places, and to the increase of trade, than the constant use of the law martial in trivial concerns; We have therefore by and with the approbation of our Sovereign Lord the King that now is, declared in his Majesty's Cabinet Council the 11th day of this instant December, and for the speedier determination of small controversies of little moment frequently happening among the unarmed inhabitants, thought it convenient to make, ordain and constitute our town of Fort St. George, commonly called the Christian town and City of Madrassapatam, upon the coast of Choromandel in the East Indies, and all the territories thereunto belonging, not exceeding

¹³ The Madras Government ordered it to be printed in April 1878, but I believe the order has not yet been acted upon.

the distance of ten miles from Fort St. George, to be a Corporation under us, by the name and title of the Mayor, Aldermen and Burgesses of the town of Fort St. George and City of Madrassapatam: And therefore we the said Governor and Company do by these presents ordain, constitute and appoint that the inhabitants of Fort St. George and Madrassapatam aforesaid, or so many of them as shall be hereby nominated, or that shall hereafter be thereunto elected or admitted in manner and form hereinafter prescribed, shall be one Body Corporate and politick, in deed and in name, by the name of the Mayor, Aldermen and Burgesses of the Town of Fort St. George and City of Madrassapatam, really and fully for ever."

The Corporation was to have perpetual succession and a Common Seal, and to be capable of holding and disposing of lands, tenements and hereditaments. One of the inhabitants was to be elected and appointed Mayor, and there were to be twelve Aldermen, and sixty or more, not exceeding one hundred and twenty, Burgesses. Mr. Higginson, then Second of the Council and afterwards Governor of Fort St. George, was appointed the first and modern Mayor of the Corporation, and to take upon him and continue in the said Office for one whole year from the 29th September 1688, if he should so long live, and so until a new Mayor should be chosen by the Aldermen and Burgesses. Three other members of Council, one French Merchant, two Portugal Merchants, three Hebrew Merchants and three Gentue Merchants, were appointed the twelve first and modern Aldermen; and John Nicks, John Stables, and twenty-eight others, described only as Merchants, but who appear from their names to have all been Englishmen, were appointed Burgesses. One of the Aldermen was to be elected Mayor on the 29th September in every year; and it was directed that the Corporation should consist of a mixture of the most discreet, best and honestest of all sorts of people residing within the limits of the Corporation, and that the Court of

Aldermen especially should be made up of the heads and chiefs of all the respective casts.

"And further for us and our successors We grant, ordain, constitute and appoint that the Mayor and Aldermen so elected, nominated and sworn as aforesaid shall be then and for ever hereafter a Court of Record within our Town of Fort St. George and City of Madrassapatam and the precincts thereof aforesaid. And that the Mayor of the said Corporation for the time being shall be always one of the Justices of the Peace within the precincts of the said Corporation and without the Walls of our said Fort commonly called Fort St. George. And that three of the first named or the eldest three Aldermen that shall hereafter be, shall always likewise be, by virtue of this our Grant and Charter Justices of the Peace, and as Justices of the Peace according to equity and good conscience and to such laws and constitutions as have been or shall hereafter be made by our General and Council, or in our General's absence by our President and Council of Fort St. George, have and exercise the jurisdiction and authority of Justices of the Peace within the bounds, limits and precincts of the said Corporation but without the Walls of Fort St. George aforesaid."

The Corporation was authorized to levy taxes for the building of a convenient Town House, a Guild Hall, a public Gaol, and a School House for teaching of the Gentues or Natives' children to speak, read and write the English tongue, and to understand Arithmetic and Merchants' Accompts; and for the payment of the salaries of the necessary Officers and School-master.

The Mayor and Aldermen as a Court of Record were to have power and authority to try and adjudge all causes whatever, criminal and civil, between party and party, whoever they might be, that should be brought before them in a summary way according to equity and good conscience and according to such laws, orders and constitutions as the Company had already made or should thereafter make and

constitute for the good government of the inhabitants of Fort St. George and Madras. Their judgment was to be final in all causes civil wherein the value of the damages adjudged for the defendant to pay should not exceed three pagodas, but in case of a larger amount an appeal was given to the Supreme Court of Judicature, commonly called the Court of Admiralty, whose judgment was to be final in all such cases. In criminal cases upon which sentence should be awarded for the taking away the life or limb of any offender, the offender or prisoner so sentenced might appeal to the Supreme Court, whose sentence in such case should be final, and Execution accordingly awarded and done within three days, except the General and Council, or General of India, or President and Council of Fort St. George, for the time being, should by reprieve order execution to be respited, or pardon the offender.

"And our further mind and will is, and we do hereby grant and ordain, that the said Mayor and Aldermen may elect and nominate from time to time one discreet person, skilful in the laws and constitutions made by us or hereafter to be made by us for the good government of our Town of Fort St. George and City of Madrassapatam and all the inhabitants thereof, to be Recorder of the said Corporation, who is always to be an Englishman born and our Covenant Servant at the time and during all the time of his being Recorder of the said Corporation, and is to have place and session next after the Mayor for the time being, and to be assistant to the Mayor in trying, judging and sentencing all causes of any considerable value or intricacy, when he can be present from other more weighty affairs."

* * * * * "And we do hereby concede and appoint, that Sir John Biggs, Knight, Judge of our Supreme Court of Judicature aforesaid, shall be the first and modern Recorder of the Corporation aforesaid, and shall and hath hereby power to do and execute all things that belong to the duty of Recorder.

"And we do further give and grant that the said Mayor and Aldermen at their discretion, or the major part of them, may

choose and elect one able and discreet person to be their Town Clerk and Clerk of the Peace, who is always to be an Englishman born, but well skilled in the languages of East India, and is to be assistant to the Mayor and Aldermen in all such businesses and employments as they shall require of him, and is to keep all records of the said Court that shall be committed to him by the said Mayor and Aldermen, and to keep a Register of all proceedings, judgments and sentences passed by the said Court, and to have and receive for his pains and care in that business such salary and such moderate fees (and no others) as the Court of Aldermen shall appoint: And we do hereby declare that the person so elected for that important employment shall be always esteemed a Notary Public, and is hereby qualified to do any act or thing or make any Testimonials that are proper and do appertain to the duty of a Notary Public, unto, which acts and Testimonials the Mayor of the said Corporation for the time being may affix the Public Seal of the said Corporation, for which the said Mayor or whoever he shall appoint may receive and demand the Duty of six fanams for every time the Public Seal of the Corporation shall be affixed to any Testimonial."

On Thursday, the 13th September 1688, "the President and Council met at the Fort Hall to advise about the establishing of the Corporation, where were present all, the Mayor, Recorder, Aldermen and Burgesses in town; when it was agreed to meet in their gowns and ornaments at the Town Hall on the 29th instant, the Aldermen in scarlet serge gowns, and the Burgesses in white China silk, to consult about the choosing whom they shall think fit to make up the number of Aldermen appointed by the Charter: and on Saturday, the 29th September, according to this day's appointment the President, Mayor, Recorder, Aldermen, Burgesses and chief of the inhabitants met at the Fort Hall, before whom the Right Honorable Company's Charter was publicly read by the Secretary. After which the President administered oaths to the Mayor and Recorder for the due performance of their places; and then the Mayor and

Recorder did the like to the Aldermen and Burgesses in their several manner and forms. A while after they went to dinner, and about three in the evening the whole Corporation marched in their several robes with the Maces before the Mayor to the Town Hall.¹⁴

"On Monday the 29th October, it having been found that the Mayor, Mr. Nathaniel Higginson, could not attend the Court so often as might be requisite, in consequence of so much of his time being taken up by his having the care and charge of the general Books of Accompts and the Mint upon him, it was 'agreed and ordered that the Mayor's Court be held once a fortnight, and that any two of the three English Aldermen Justices, or what other Aldermen are willing to go to the Choultry as formerly twice a week, to hear, punish and determine all small offences and complaints to the amount of two pagodas fine or award; all greater to be deferred to the Mayor's Court to be examined and determined there.'"¹⁵

The following extracts from the Minutes of Consultation show the mode of procedure under the new Charter:—

"Wednesday, 18th December 1689.—There being a black fellow and slave named Fransico, alias Chow, condemned to death in the Mayor's Court for theft, who appealing to the President and Council, and there appearing no evidence against him at trial, more than his own confession under punishment before his trial, at which time he pleaded not guilty; notwithstanding which the Jury brought him in Guilty only upon his former confession; which being a hard case, and this offence too common amongst our slaves, and usually punished with a corporal punishment and banishment; it is therefore agreed and ordered that the said Chow be pardoned the sentence of death; and that he be stigmatized on the shoulder with the Honorable Company's mark with a hot iron, and banished to the west coast

¹⁴ Wheeler's Madras, vol. i, p. 205.

¹⁵ *Ibid.*, p. 206.

(of Sumatra) as the Right Honorable Company's slave, where he may do them service and be more exemplary than by his death.¹⁶

"Tuesday, 20th December 1692.—John Dolben, Esq., Judge Advocate, acquaints that information hath been given in before him against Mrs. Katherine Nicks of several notorious frauds by her committed in Connimere whilst her husband was chief there; particularly that during the late investment she caused the Right Honorable Company's Godowns to be broke open, and forcibly took from thence great quantities of cloth of the first sort, which she applied to Mr. Elihu Yale's private use, who was then President, notwithstanding the Merchants declared that the said cloth was brought in upon the Company's account, and positively refused to consent that it should be otherwise applied."

"That upon this he (the Judge Advocate) wrote her a letter requiring her, being a woman notoriously known to be a separate merchant from her husband, to put in bail to answer the damages the Honorable Company had sustained by her illegal proceedings, which she not complying with, he issued out a warrant to arrest her, but she refusing to obey was returned in contempt. He therefore prays the assistance of the Military power to secure her in her house, being under suspicion that she designs privately to fly from justice."

"Ordered that the Captain of the Guard do send a file of musqueteers with a Corporal to the house of Mrs. Katherine Nicks, who are to obey such orders as the Judge Advocate shall think fit to give."

"Saturday, 14th January 1693.—The Commissary-General (Sir John Goldsborough) finding the mud points and walls about the Black Town cost several thousand pagodas, and that Governor Yale had made them at the Right Honorable Company's charge, against their positive orders, and the most of the Council's express exceptions, did desire Judge Dolben to make demand of President Yale for three thousand four hundred and

¹⁶ Wheeler's Madras, vol. i, p. 219.

¹⁷ *Ibid.*, p. 260.

eighty-three pagodas, with interest, being the cost of them, and of a physic garden. Judge Dolben returns answer that he hath demanded the same and that President Yale saith he hath not done anything of that nature but what was either ordered by the Right Honorable Company or agreed to by the Council, or of absolute necessity, and desires to be heard about it before any further demands be made.¹⁸

"Wednesday, 25th January 1693.—Judge Dolben reports from the Admiralty Court that in a trial this day between the Right Honorable Company and the late President Yale and others, for wrongs and damages done them, that the said late President has objected against the manner of giving the Gentoo Oath by the usual ceremony of fetching water and flowers from the Pagoda into Court, affirming that there was a late order of Consultation by which the ceremony of taking Gentoo Oaths was for the future established to be done before the Pagoda. Upon which report we have made inquiry of Choultry Justices and Members of Council, who all declared the way of swearing the Gentoos hath been in the Court before the Jury, by causing water and flowers to be brought from the Pagoda; the flowers are put upon their Heads and they drink some of the water before or in the Court, and both are given and done by the Brahmin of the Pagoda, and in the presence of the eternal God, who they believe in a more particular manner to be in all Courts of Justice, are required to speak the truth."

"We likewise sent for a dozen or fourteen of the ancient Brahmin Priests, the most eminent in the place, and asked them of the same matter, who all unanimously gave it as their opinion and knowledge that this is the way of their own Gentoo Government, swearing Witresses in the Carnatic Country when evidence was not believed without an oath; but that the Governor did never send or force any of them to be sworn at the Pagoda, but did cause water and flowers to be brought from thence and swear them in Court."

¹⁸ Wheeler's Madras, vol. i, p. 267.

"We therefore order the continuance of this way of swearing."¹⁹

It is substantially the same as the way of swearing which was in use in the Supreme Court and on the Original Side of the High Court till the administration of Oaths to Hindoos and Mahomedans was abolished by Act X of 1873. Leaves of the Tulsi (*Ocimum sanctum*) and water were given by a Brahmin priest in Court to the Witness or Jurymen, who swallowed them after the oath had been administered to him by the Interpreter.

Such of the Hindoos as objected to take any oath at all appear from the following entry in the Minutes of Consultation to have been leniently dealt with:—

"Monday, 14th July 1735. —Teruwaddee, a Guzerat, attending represents to the Board that he had been summoned to answer on oath before the Mayor's Court as a Witness in a cause there depending, and on refusal to take an oath had been fined by the Court, though he represented to them that it was contrary to the custom of the Guzerats ever to take an oath; and prayed to be relieved therefore by this Board.

"Whereupon the Board, remembering that in the year 1731 all the principal Guzerats were summoned on a Jury and submitted to a fine for non-appearance on account of this very thing; and that though the fine was for that time levied, yet the Sheriff, and all who have since succeeded in that Office, were cautioned never to return any more of that caste, that so neither they should be forced to an action against their laws on the one side, nor the authority of the Courts of Justice lessened by their not being punished for their disobedience on the other, it was agreed to have been long since settled that the Guzerats ought not to be compelled to take an oath since it was contrary to the known rules of their caste; and the Honorable Company having directed us to remit such fines laid by the Mayor's Court as

¹⁹ Wheeler's Madras, vol. i, p. 269.

seem to carry with them more than ordinary severity; It is agreed that the fine on Terwaddee be remitted."²⁰

At a much later period an application was made in a suit in the Mayor's Court to examine a particular witness at the Pagoda, which being refused there was an appeal made first to the Governor in Council, and then to England, which was dismissed by the King in Council (22nd April 1796) for want of prosecution with £50 costs.²¹

In Calcutta the Court invariably insisted on all Hindoo witnesses, with the exception of those who were Pundits, being sworn on the water of the Ganges, though the Grand Jury frequently represented, and the Judges invariably admitted, the obstacles which this practice created to the administration of justice, and hardships it occasioned to conscientious individuals. Respectable witnesses were deterred from entering the Court, and those who came were not unfrequently committed because they would not act as their consciences forbade them, and the anomaly was more than once seen of a Judge committing a witness, while he gave him credit for the conduct by which the punishment was incurred. Yet no attempt was made to remedy the evil until a Madras Judge, Sir Charles Grey, was appointed Chief Justice of Bengal in 1825. Almost his first act was to exercise the power which it is obvious the Charter intended to confer; and it was directed that the witness should be sworn in whatever manner was most binding on, and not in that which most outraged his conscience, and if he objected to the Ganges water the Pundit administered the oath in some other form.²²

²⁰ Wheeler's Madras, vol. iiii, p. 143.

²¹ Singana Chitty v. Puddananabadoo Chitty; Strange's Notes of Cases at Madras, vol. i, p. 67.

²² Preface to Mr. Languetville Clark's Rules and Orders of the Supreme Court of Bengal.

In the suit against Mr. Yale, Judge Dolben decided that the Company's claims were barred by the Statute of Limitations, and he was moreover, it is said, found guilty of receiving bribes for favouring causes. Accordingly on the 14th September 1694 it was resolved "that he be dismissed from the Right Honorable Company's service till their Honors' pleasure be further known; and that in the meantime due respect be given to a person of his quality and abilities, in consideration of which it is a trouble for us to part with him."²³

The President and Council appear to have reversed Judge Dolben's decree, and ordered Mr. Yale to pay the amount claimed, for in February 1696 we find him complaining to the Court of Directors that the Commissary, new President, and their accomplices had seized and sold his ships, goods and estate to the value of thirty thousand pounds or thereabouts, being almost five times as much as they had given Judgment for against him in their own arbitrary court and illegal way of proceeding.²⁴

Ten years afterwards the necessity for a law of limitations was recognized as appears from the following order made by the President and Council on the 7th May 1706 :—

"There often arising in this place great disputes and demands upon accounts and bonds of ten, twenty and thirty years standing, so that it is next to impossible to decide the same; and it being generally amongst the natives, most of which stick at no manner of villainy, for swearing, lying, forging or any other vile action to gain their end; to prevent which it is ordered that from the first of January next ensuing no bond, bill, or account shall be sueable for in any of the Courts of Justice, or the Choultry of this city, that are of a longer standing than seven years; provided that it can be proved that within the space of the aforesaid

²³ Wheeler's Madras, vol. i, p. 298.

²⁴ *Ibid.*

seven years both parties have been resident in the place six months at one and the same time, and no demand has been made of the debt in the Mayor's Court and an action commenced for the same."²⁵

A short time previously it appears to have been ordered that all Wills should be proved in the Mayor's Court, in consequence, it is said, of the Roman Catholic inhabitants having been accustomed to prove their Wills before the Capuchin Friars, and complaints having reached the Governor and Council that advantage was taken of this circumstance to convey a large portion of the effects of deceased Roman Catholics to the Patriarch of Antioch at Pondicherry.²⁶

The following extracts illustrate the method of proceeding in criminal cases :—

"Monday, 3rd August 1696.—The Choultry Justices having produced examinations taken by them concerning the murder of a child in the Black Town, and the robbing of a godown within the walls; it is ordered that the Judge Advocate do cause a session to be held on Tuesday the 11th instant for the trial of the criminals and that the examinations be delivered to the Attorney General in order to their prosecution.

"Thursday, 13th August.—The Judge reports from the Special Court of Admiralty held on the 11th and 12th instant for the trial of several criminals, that on the 11th the Grand Jury found both the bills, viz., Chinandree and Nulla Tombee accused of breaking into a Godown and stealing a considerable quantity of Quicksilver; and Hosana and Pochera for the murdering of a child in Black Town :—The Court adjourned their trial till yester-

²⁵ Wheeler's Madras, vol. i, p. 43.

²⁶ *Ibid.*, p. 42.

²⁷ The Court of Directors in their letter to Madras of the 22nd January 1692 directed that for the better regulation of the Company's interest an Attorney-General was to be appointed for Fort St. George (Bruce's Annals, vol. iii, p. 112); but the office must have been in existence before that time, as the following passage occurs in a despatch dated the 8th June 1687, "for which our Attorney-General upon information made to him shall sue and impound the Goods so landed."

day the 12th. Chinandree pleaded guilty to his indictment and Nulla Tombee pleaded not guilty. The Court proceeded in their trial and the Petit Jury withdrew and returned and gave their verdict, viz., Nulla Tombee guilty of petty larceny, and Hosana and Pochera not guilty of the murder. The sentence was accordingly that Nulla Tombee should on Friday next have one of his ears cut off, and be whipped and turned out of the Town. Chinandree to be executed next Wednesday at the usual place of execution between the hours of eleven and twelve in the forenoon, being the 19th instant, and Hosana and Pochera to be discharged.

"It is upon the question resolved in Council that Chinandree be reprieved from the execution of sentence of death and that he be sent to Anjengo (in Travancore) to work there in irons. In the meantime to remain in the custody of the Marshall; and that the Choultry Justices see that the sentence of the Court be executed upon Nulla Tombee." ²⁸

CHAPTER II.

The trials mentioned at the end of the last chapter took place during the Governorship of Mr. Nathaniel Higginson. He was succeeded in 1698 by Mr. Thomas Pitt, who was appointed "President of the Company's Settlements on the coast of Coromandel, Orixia, in the Ginjee and Mahratta countries, and the coast of Sumatra;" and also to be Commander-in-Chief at Fort St. George and Fort St. David, with particular instructions to direct his attention to the administration of justice, by rehearing the cases on which complaints had been made, and to frame a table of fees to prevent extortions from the inhabitants appealing to the law Courts. ²⁹

What his judicial powers were, or how conferred, I have not been able to ascertain; but after his arrival the Governor and Council appear to have superseded the Court of Admiralty

²⁸ Wheeler's Madras, vol. i, p. 303.

²⁹ Bruce's Annals, vol. iii, pp. 228, 230.

as a Court of Appeal; and in 1726 we find Governor Macrae engaged upon a long list of appeals from the Mayor's Court, some of which were sent home to be adjudicated on by the Directors, and even to be tried in Westminster Hall. ³⁰

Mr. Pitt was the last Governor of Madras appointed by the "Governor and Company of Merchants of London trading into the East Indies." Before the end of the reign of Charles II attacks had begun to be made on their monopoly of the Indian trade, and the Revolution of 1688 stimulated the Interlopers, as the Company's commercial rivals were called, to increased activity. In 1693 an accidental failure by the Company to make the first quarterly payment of a tax imposed on their General Joint Stock by the Statute 4 & 5 W. and M., c. 15, ss. 10, 12, gave rise to the question whether all their Charters had not thereby become void. This was got over by the Company's obtaining two Charters dated the 7th October 1693 (5th W. and M.) and the 11th November in the same year, by which all persons who were members of the Company on the 24th March then last were established and confirmed as a Body Corporate and Politic under the same name, with all powers, privileges and advantages which were held or enjoyed by the said Governor and Company, or late Governor and Company of Merchants of London trading into the East Indies, on or before the said 24th day of March then last; and a number of provisions were made for the management of the Company's business in England, subsequently modified to some extent by Charters dated 28th September 1694 (6th W. and M.) and 13th April 1698 (10th W. III). The Interlopers however appear to have been the stronger party in Parliament, which now began to exercise an authority unknown in former reigns, and on the 11th January 1694 the House of Commons passed a Resolu-

³⁰ Wheeler's Madras, vol. ii, p. 399.

tion that it was the right of all Englishmen to trade to the East Indies or any part of the world unless forbidden by Act of Parliament.

In accordance with this Resolution an Act of Parliament, 9th and 10th W. III, c. 44, was passed in 1698 "for raising a sum not exceeding two millions upon a fund for payment of annuities after the rate of eight pounds per cent. per annum; and for settling a trade to the East Indies," by which it was amongst other things enacted that it should be lawful for His Majesty to incorporate all persons subscribing towards the said sum as a body politic and corporate by the name of "The General Society entitled to the advantages given by an Act of Parliament for advancing a sum not exceeding two millions for the service of the Crown of England;" that all the subscribers should and might for ever thereafter freely traffic and use the trade of merchandize into and from the East Indies; that it should be lawful for His Majesty to incorporate all such of the subscribers as should be desirous to join together so as they might be able to manage their trade as a Company, and by a joint stock; and that such persons or corporations as were thereby empowered to trade to the East Indies, should have the sole trade and traffic thereto: Provided always that nothing in the Act should extend to hinder or restrain the Governor and Company of Merchants of London trading into the East Indies to continue to trade within the limits aforesaid until the 29th September 1701.

The General Society was established in pursuance of this Act by a Charter dated the 3rd September 1698, which empowered the subscribers to trade on the terms of what was then known as a regulated Company, each subscriber being allowed to trade to the East Indies on his own account, while the Company in its collective capacity was to trade with the Asiatic Potentates, or exact reparation from them,

and was entrusted with powers for the administration of justice and for the government of forts and factories.³¹

The greater part however of the subscribers desired to trade upon a joint stock, and another Charter, dated on the 5th of the same month, formed this portion of the subscribers, exclusive of the small remainder, into a Joint Stock Company by the name of "The English Company trading to the East Indies." By this last mentioned Charter the sole trade to the East Indies was granted to the English Company "together with such other persons and corporations only as by the said Act of Parliament or Our Royal Charter or Charters, in pursuance thereof, may lawfully trade or traffic to the said East Indies," and similar powers to those conferred upon the old or London Company for the government of their forts and factories, the appointment of Governors and other officers, the raising of Military forces, and the establishment of Courts of Judicature, to consent if one person learned in the civil laws and two merchants, were granted to the English Company, who were further required to maintain a Minister and Schoolmaster in the Island of St. Helena, when it should come into their possession, and also a Minister and Schoolmaster in every garrison and superior factory which the Company should have in the East Indies, and to provide a decent and convenient place for Divine Service in every such garrison and factory, and to take a Chaplain on board every ship of 500 tons or upwards; such Ministers to be approved of by the Archbishop of Canterbury or the Bishop of London, and to be obliged to learn within one year after their arrival in India the Portuguese language, and to apply themselves to learn the native language of the country where they should reside, the better to enable them

³¹ Mill's British India, Book I, Chapter 5; Macaulay's History of England, Chapter 23.

to instruct the Gentpos that should be the servants or slaves of the Company, or of their Agents, in the Protestant religion.

But the old Company was not dead yet. They determined not only to avail themselves of the privileges which they still enjoyed, but to trade (after Michaelmas, 1701) under the privilege of private adventure allowed by the Charter of the General Society, in whose stock they had with this object invested the sum of £315,000. They also succeeded in obtaining on the 11th April 1700 an Act of Parliament (11th and 12th W. III, c. 4) "for continuing the Governors and Company of Merchants of London trading to the East Indies a corporation until the redemption of the two millions advanced by the English Company." The Governor and Committee with about one hundred proprietors of the Company accompanied by the Lord Mayor, Sheriffs, and ten of the Aldermen of London, had, agreeably to the custom of the time in the case of bills of a private nature, obtained an audience of the King at Kensington to request that His Majesty would be graciously pleased to give the Act his royal assent; and on that occasion the King was pleased to assure them of his favor and protection, and recommended a union of the two Companies to their serious consideration, as it was his opinion that it would be most for the interest for the India trade.³²

Overtures for a coalition had already been made by the English Company, and were now renewed, with the result that an Agreement was at last come to, and on the 22nd July 1702 three deeds were executed for carrying it into effect. The first was a preliminary deed executed by the managers for both Companies, whereby it was arranged that the equipments of the two Companies for the next season

³² Bruce's Annals, vol. iii, p. 293.

should remain under the management of their respective Directors. The second was an Indenture Tripartite made between Queen Anne of the first part, the London Company of the second part, and the English Company of the third part, and it was thereby agreed that the London Company should purchase as much of the stock of the English Company at par as would vest in each an equal proportion of the £2,000,000 raised under the Statute 9 & 10, W. III, c. 44; that in future the trade to India should be carried on for seven years on the two United Stocks in the name of the English Company, but the London Company to have an equal management of the trade; that the London Company should in two months after the expiration of the seven years surrender their Charters into the hands of the Queen, who engaged to accept such surrender; and that thenceforward the Charter of the English Company should be considered that of both and the two Companies should take the name in future of "The United Company of Merchants of England trading to the East Indies." The provisions as to the maintenance of Protestant Ministers, Schoolmasters and Chaplains, contained in the English Company's Charter, were repeated in this Deed, with the addition that the Ministers should have precedence next after the fifth person that should be of the Council in any of the Superior Factories. The third Deed was an Indenture Quinquartite made between the two Companies and three sets of trustees, by which the Islands of Bombay and Santa Helena, and also all the forts, factories, settlements, estates and things thereafter mentioned lying and being between the Cape of Good Hope and the Straits of Magellan and the London Company's house in Leadenhall Street and Warehouse in Great St. Helens, were transferred to the English Company.

In 1707 Her Majesty's Government were driven to the expedient of calling for aid from every corporation in order

to carry on the War of the Spanish Succession, and among others the two East India Companies were applied to by the Lord High Treasurer, the Earl of Godolphin, for a loan to the public of £1,200,000. This seems to have had the effect of somewhat expediting the complete amalgamation of the two Companies. An Act (6th Anne, c. 17) was passed, by which they were empowered to raise the amount required, which was to be taken as an addition to the Capital Stock of the English Company; provision was made for the latter's acquiring so much of the stock of the General Society as still remained in the hands of persons who had not become members of the English Company, and which now amounted to no more than £7,200; all matters in difference between the two Companies, and the settling the terms of and perfecting the proposed union, were referred to the judgment, award and final determination of Lord Godolphin; and it was enacted that after the making of such award and the surrender of the Charters of the London Company in pursuance of the Indenture Tripartite, then the persons who at the time of such surrender should in pursuance of the same Indenture be the managers for the united trade should be the Directors of the English Company (which should then be called the United Company of Merchants of England trading to the East Indies) until such time as new Directors should be chosen for the same in pursuance of the Charter of 5th September 1698.

Lord Godolphin's award was made on the 29th September 1708, and in pursuance thereof the following deeds were executed and Charters granted. The foreign debts due to the London Company were assigned to the Queen by an Indenture dated 27th October 1708, and transferred to the English Company by Letters Patent dated the 12nd April 1709; the home debts were assigned to Her Majesty by an Indenture dated 21st March 1709, and granted by Letters Patent dated the 15th August 1710 to Sir Jonathan Andrews and others

as Trustees for the Members of the London Company; and the London Company's Charters and right to be a body politic or corporate were surrendered by a Deed Poll dated the 22nd March 1709, which surrender was accepted by Letters Patent dated the 7th day of May 1709.

These important changes could scarcely have been passed over without notice, but they appear to have had little if any effect upon the Mayor's Court at Madras, which is shown by the following extracts from the Minutes of Consultation to have been capable of acting upon occasion with great promptitude :—

“Monday, 9th June 1718.—The President reports that some Guzerat Merchants had been with him this morning to advise him that one Trivadee, a Surat Merchant, inhabitant of this place, was found this morning with his servant hanged in his own house, and that it was supposed they had hanged themselves. That on this information he had ordered the Secretary, in the presence of the Company's Merchants and the Guzerat Merchants, to take an account of the deceased's effects and secure them for his relations.

“Wednesday, 11th June.—The President acquaints the Board that yesterday morning he had discovered that Trivadee and his servant, who were supposed to have hanged themselves, were murdered by robbers, who had carried off a very large booty in money; that he had immediately given out orders for a strict search after the murderers, and that just now three persons were brought before him charged with that murder; that the case being extraordinary he had summoned them together to hear the examination of the prisoners and such witnesses as should appear against them.

“The prisoners and witnesses with a considerable number of the principal inhabitants, Europeans and Natives, were called in, and the money and jewels which had been taken by the prisoners from Trivadee were produced, having been taken in possession of the several prisoners to the amount of five or six thousand pagodas.

"On a full examination it appeared to the whole Board that there was sufficient reason to put the prisoners upon trial for their lives for murder and robbery, and it was accordingly agreed that they should be tried in the Mayor's Court according to the Charter, and that an order be given the Mayor in the following manner:

"On a full examination of Cadogee, Perseram, and Kisanados, who stand charged with the murder of Trivadee and his servant on the night between eighth and ninth instant, and several other witnesses concerning that murder; we do find full and sufficient cause to put the said Cadogee, Perseram, and Kisanados on trial for their lives, and in order thereto we do hereby authorize you, the Worshipful John Legg Esq., Mayor, to summon a Court tomorrow being the 12th instant, for the trial of the said prisoners and to acquit them, or on their conviction of murder and robbery to condemn them to suffer death in such manner as shall seem to you most proper to deter others from committing the like crimes.

"Friday, 13th June.—This morning about 9 o'clock Cadogee, Perseram, and Kisanados were executed upon the Island."³³

In the case of European prisoners the proceedings seem to have been somewhat different. Two soldiers, named Robert Grott and Richard Righty, were accused of the murder of a Native, and the whole of the enquiry appears to have taken place before the President and Council, who after examining witnesses, and interrogating the prisoners, debated upon the affair for some time, the prisoners being all dismissed the room, and then unanimously pronounced them guilty of the murder. "But the Honorable Company having not yet procured a power to bring to an execution, it was agreed they should be continued in prison and whipped very severely every week, as a punishment for the disorders they committed as soldiers." This was on Monday the 1st August 1720.³⁴

³³ Wheeler's Madras, vol. ii, p. 240.

³⁴ *Ibid.*, p. 332.

It is perhaps with reference to this case that Captain Alexander Hamilton, who was in Madras in 1720, tells us in his "New Account of the East Indies," published in 1727, that they have no Martial Law there, so they cannot inflict the pains of death any other ways than by whipping or starving; only for piracy they can hang.

The power of hanging for piracy appears to have been conferred by a Commission from King George I, which is mentioned in the two following extracts from the Minutes of Consultation:—

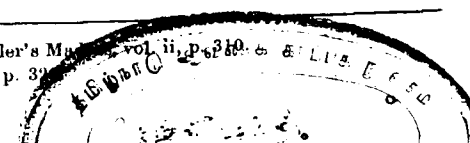
"Monday, 17th August 1719.—The President acquaints the Board that on Tuesday the 11th instant he, with the rest of the Commissioners, for trying of Pirates, did bring Roger Bullmore, one of those that ran away with the 'George' Brigantine to his trial by virtue of King George's Commission; and that, having found him guilty of piracy, felony and robbery, they had passed sentence of death upon him and that he was ordered to be executed on Wednesday next."³⁵

"Wednesday, 18th October 1721.—Mr. Walsh brought the Key of the Cash chest and opened it, upon which there was found in money one Fanam, and some Firmanns and Husbulhookums; being 29 from the Mogul; and the Commission for trying the pirates; also a paper with blue seals said to be a purse belonging to Dalton deceased in Pegu. These were all the things found in the chest except some empty pagoda bags. Mr. Walsh being asked if he brought any message from Mr. Hastings (the late Governor who had left the Cash chest in this empty state) answered he had none."³⁶

It is due to the memory of Mr. Hastings, who was then very ill, and died at Madras on the 15th December 1721, to add that it appears to have been only the sudden manner in which he was required to vacate the office of Governor that caused the deficiency. On the next day he paid in ten

³⁵ Wheeler's Madras, vol. ii, p. 310.

³⁶ *Ibid.*, p. 311.



thousand pagodas; on the Saturday following he deposited diamonds to the value of twenty thousand pagodas more, and a few days afterwards gave ample security for the remainder.³⁷

Captain Hamilton goes on to say, after instancing two cases in which he considered that Governor Yale and Governor Collet had improperly caused the execution of two alleged pirates, "That power of executing pirates is so strangely stretched that if any private trader is injured by the tricks of a Governor, and can find no redress, if the injured party is so bold as to talk of *Lex talionis* he is infallibly declared a pirate."

To modern ideas it may not appear so very strange that a private trader taking the law into his own hands in this fashion should be declared a pirate, but however that may be, it somewhat detracts from our confidence in Captain Hamilton as an unprejudiced witness to find that Governor Collet had formally declared him a rank pirate in consequence of his having, according to his own showing, written to the Governor complaining of the proceedings of Mr. Powney, the Governor's agent at Siam, and "let some hints fall of *Lex talionis*" if he met with Powney conveniently.

With regard to the administration of civil justice he says:—

"They have a Town Hall, and underneath it are prisons for debtors. They are or were a Corporation, and had a Mayor and Aldermen to be chosen by the free Burgesses of the town, but that scurvy way is grown obsolete, and the Governor and his Council or party fix the choice. The City had laws and ordinances for its own preservation, and a Court kept in form, the Mayor and Aldermen in their gowns, with maces on the table, a Clerk to keep a register of transactions and cases, and

³⁷ Wheeler's Madras, vol. ii, p. 351.

Attornies and Solicitors³⁸ to plead in form before the Mayor and Aldermen, but after all it is but a farce, for by experience I found that a few pagodas rightly placed could turn the scales of justice to which side the Governor pleased, without respect to equity or reputation.

"In smaller matters, where the case on both sides is but weakly supported by money, then the Court acts judiciously according to their consciences and knowledge, but often against law and reason, for the Court is but a Court of conscience, and its decisions are very irregular; and the Governor's dispensing power of nulling all that the Court transacts puzzles the most celebrated lawyers there to find rules in the statute laws."

This unfavorable opinion of the Mayor and Aldermen does not seem to have been shared by their Honorable Masters in England, for in 1726 the Court of Directors, in order to have their affairs managed with greater authority than ever hitherto, applied to get the management of the civil affairs as near as they could agreeable to the practice and method of the Mayor's Court at Fort St. George.³⁹

JOHN SHAW.

³⁸ There were no Barristers in Madras until the institution of the Supreme Court.

³⁹ Letter to Bengal, 17th February 1726; Auber's Rise and Progress of the British Power in India, vol. i, p. 29.

III.

THE MADRAS HARBOR.¹

A HARBOUR on the Eastern Coast of India has been a desideratum for a long time, and it is only now that this want is on the point of being supplied.

There is no doubt a general opinion that the formation of a harbour at Madras is a difficult undertaking, and that opinion, as a whole, is correct, though the difficulties are of a kind probably different from those which uninformed persons would have imagined.

Some of the earliest and most serious difficulties arose from the fact that though there was a general unanimity in favour of Madras being provided with a harbour, there was a very great diversity of view as to the particular way in which the harbour would be of use. The sentiment of humanity is strong in mankind, and many persons pictured to themselves a harbour as a safeguard against the harrowing scenes which from time to time occurred of ships driven on shore during cyclones, and dashed to pieces, with the loss of their crews, almost within arm's length of the spectators, who were powerless to help them. This to the unlearned landsman seems a conclusive argument; but what do the sailors, the persons most interested, say? A large proportion, perhaps the majority, of sea captains say, "Oh, in a cyclone the harbour is no place for me, with its crowd of shipping and inevitable collisions; let me get to sea and give the land a wide berth, or if that cannot be, I will take my chance of

¹ The substance of the following paper was originally delivered as a popular lecture at the Government Central Museum. It is now reproduced with some additions and alterations.

riding it out in the roads, with my two heaviest anchors and plenty of cable out." After this, what wonder if the less impressionable critic says "What's the use of a harbour in which ships can't remain in a storm?"

Another philanthropist contends that, as there is no harbour between Trincomalee and the Hooghly, an intermediate place of refuge is an absolute necessity. The sea captain replies, "If I am caught in a storm in the Bay of Bengal, I shall keep the sea and manœuvre myself out of the cyclone as soon as I can, and not court destruction by running for Madras or any other harbour." Again the critic steps in with a triumphant air, and these two points having been apparently made, the supporters of the scheme have an up-hill fight to make.

Now the fact is that this unfavourable conclusion is based on exaggeration on both sides. The philanthropist, in his ignorance of nautical matters, gives undue weight to his arguments, forgetting that they apply only to a very rare condition of things. Our nautical friend, with his characteristic spirit of independence, prefers his own safeguards to those provided for him in the harbour by the port authorities; and the critic tries to force a conclusion from a doubtful argument based on an exceptional state of things, ignoring the more ordinary course of daily events.

Now, the fact is that the harbour may be made, and I believe will soon be acknowledged to be, as safe for a ship in a storm as the open sea under sail or steam, or the roadstead with a long cable out; but the question of harbour or no harbour does not turn on that. I believe that occasionally a ship might find Madras a useful refuge, though the great majority of vessels might pass it unheeded; but the question does not turn on that. The prominence given to these points has done mischief to the cause. They served to screen

the really cogent argument, which is the uninteresting one of *pounds, shillings and pence*.

I must ask attention for a few minutes to this view of the question. Look at the position of Madras in its relation to India behind it, and the great highway of the ocean in front of it. Leaving the question of how it became so, here it is, a great emporium of trade with every facility for communications inland, by railway and canal, and within hailing distance of the ships which convey its merchandize over the sea. But between the stores on shore and the ships on the sea there is a barrier—the surf. This surf is bad enough as a cause of discomfort to passengers, but its effect on goods is even worse. Conveyance over that short mile is as costly as over forty miles of railway, or one thousand miles of sea, while goods are damaged and pilfered, and sometimes for days together communication is entirely cut off.

Now, can the horrors of this “middle passage”—horrors which in a greater or less degree of intensity exist every day and all day long, and not merely at exceptional stormy seasons—be abated? Yes, by the formation of a harbour. This will enable the landing and shipping of goods to be effected at one-third the cost, and without damage or loss by pilfering, by a larger and more convenient description of boat than the existing masula boat, and with comparatively little delay from bad weather. This saving on the cost of transporting goods between the ship and the shore will be at least equal to the interest on the cost of the harbour, while there will be thrown in gratuitously the contingent advantages of saving of damage, saving of insurance, greater comfort to passengers, less detention of ships, less wear and tear and damage to ships' sides and their tackle, freer communication between ship and shore for incidental purposes, whatever additional safety there may be in exceptional storms, and whatever advantages there may be in a harbour of refuge. It

will also facilitate the development of trade by making Madras available as a terminal port rather than, as it is now, almost exclusively a port of call for vessels bound to and from Calcutta; and for this its commanding position towards China, the Straits and Australia gives it great importance.

Thus the harbour will pay for itself, will confer various incidental advantages on the present trade and population, and will open the way to a new class of trade.

These representations, when made seven years ago, seemed oversanguine, but, so far as they have been brought to the test of experience, they have as yet been confirmed. The cost of the works seems likely to be within the amount originally estimated, while even now, before they are finished, the cost of boat hire and, notwithstanding the recent inexplicable exception of the ‘Assam,’ the discomfort of passengers materially diminished.

I have thought it necessary to dwell on the true objects of the harbour, because, without a clear notion of them, and the removal of the possibly still existing false notions, the purposes of the design would be scarcely appreciated.

Now a few words as to the general design. The natural features of the Madras shore are well known—a dreary line of sandy beach beaten by never-ceasing surf. There is deep water and good holding ground near the shore. So much for land and sea. The atmospheric conditions are less simple, and they introduce complications in the shore and sea. The year is divided into two ‘monsoons’—north-east and south-west—when the prevailing winds are from those quarters. But the winds themselves little affect our subject. These winds throw a swell on shore from the north-east in the monsoon of that name, and from the south-east during the south-west monsoon, each, it will be observed, making an oblique angle with the shore. The effect of this oblique wave

is to drive the sand upon the beach before it. Every wave as it breaks lifts up a certain quantity of sand, carries it a little way alongshore, and then as it retreats drops it again. Thus all the sand on the surf-beaten beach is in motion, northward for one portion of the year, southward for the remainder. This fact has long been known and utilized by placing stone groynes which arrest the sand in its motion, first in one direction and then in the other, and so widen the foreshore. The movement of the sand has been popularly attributed to the current, but no current could produce the effect. It is a simple wave action. There is a current alternating with the monsoons at some distance from shore, but it is a mere surface current, and does not in the least affect the sand on the shore or in the bottom of the sea.

These were shortly the local physical conditions to which I had to adapt my design for a harbour, and the result of the best consideration I could give to the subject is shown in the accompanying plan and in the works now approaching completion. The proposal was in 1873 submitted to the Government of Madras, then presided over by the late Lord Hobart. That nobleman warmly supported it, and recommended its adoption to the Government of India and the Secretary of State. There was no very great opposition to its physical features, and no alternative scheme was proposed, although some attempts were made to revive the idea of a detached breakwater parallel with the shore. The scheme, however, was strongly opposed on financial grounds. It was contended that my estimate of cost was insufficient, and that my estimates of the saving in the expenses of landing and shipping and of the tonnage of cargo were excessive. The result, however, after fifteen months of warm discussion, was that in March 1875 it was sanctioned by the Secretary of State, and immediate arrangements were made for the commencement of the works.

barriers have been made upon both systems; the sea has asserted its supremacy over other examples of both kinds. By common consent theory has been pronounced to be inapplicable in its present imperfect state.

What an engineer now looks at is whether he can make one or the other kind of structure cheaper, fulfilling the necessary conditions of stability. Generally speaking, where stone is plentiful and cheap he will adopt a slope of it for the sea to spend itself upon; where it is expensive, and his object is to use as little of it as possible, he will adopt the upright wall. In the case of Madras the latter system was adopted simply because its cost was found to be about half that of the slope. All the stone in either case would have to be brought many miles by railway at a certain cost per ton, and it was cheaper to take a few tons and convert them into materials for an upright wall, than to convey a great many more tons and throw them in their natural state into the sea.

It will be easily understood that in order to build an upright wall without mortar—and it is impossible to use mortar under water or for some distance above water,—the stone must be converted into such regular shapes that there shall be only small interstices between them. Formerly the plan was to cut the stone itself, but now for sea-work the almost universal plan is to form the rough stone into concrete blocks, which can be made of any required shape and size. When natural stone was used, it was rare to get a block of 10 tons weight fit to be squared, and 2 or 3 tons was more the average. The weight of the Madras blocks is 27 tons. All the about the same weight is adopted at several of the works; but in some cases much larger blocks have been used. Dublin blocks of 350 tons have been used and conveyed to their place in the harbour by specially devised machinery.

Now, it will be seen that, in undertaking to build an upright wall in the sea, the engineer has to determine certain points which in the case of a slope the sea may determine for him. If he throws a heap of stone into the sea it stands at first at a steep slope, but the waves soon flatten this down, drawing out the foot and cutting away the top, and if the slope so made does not effect the required purpose, he simply adds more stone till he gets what he wants.

But in the case of the upright wall, the sea gives him no help except by guiding him to that wisdom which is the result of experience. If Father Neptune does not like his first wall he simply washes it down and leaves the poor engineer to find out where the fault was which he must avoid in his next attempt. This has been done so repeatedly that the lesson has been pretty well impressed upon us in some respects. What Neptune insists upon most uncompromisingly is an ample depth of foundation. If the natural foundation is solid rock we may build upon it with materials as solid as the rock itself, and Neptune is satisfied. But on the Madras shore there is no solid rock, there is nothing but sand, and in such a case the only security consists in depth.

It is found by experience that the waves have their greatest force near the surface. At a depth below the surface, which varies with the height of the waves, there is no motion in the water. At lesser depths there is motion, sufficient ~~was at~~ the surface to roll over masses of stone of many tons that ~~might~~ sufficient at a few feet depth to disturb rubble stone ~~masses of~~ ~~for~~ masses, sufficient at a still greater depth to disturb and of the at one still greater ~~mud~~. Each material is stable however, ~~after~~ slope above these levels if the wave runs freely ~~March 1875~~ it, but if any abrupt obstacle is placed upon immediate arrangement of the wave is interfered with, and it of the works.

by tearing up the material upon
ced.

If, however, the obstacle is placed below these levels the wave has no effect, and if the obstacle be an upright wall ~~the~~ foundation is as secure as if it were entirely on dry land.

What we have to do, therefore, is to ascertain at what ~~depth~~ below water a given material is immovable under the action of the waves, and take care that that material forms no part of our structure, or of the support of it, above that level.

Now, simple as this principle seems to be, it has not been applied in practice without much battling with the waves. Notwithstanding a popular belief to the contrary, engineers will not be parties to spending their employers' money unless they clearly see an equivalent; so the costly practice of building under water by the help of divers was not resorted to till the plan of laying the foundations of the upright wall of masonry at the level of the lowest tides had been fairly tried. But Neptune would have none of this. Incensed by the invasion of his territory by a huge mass, too heavy for him to remove by direct force, he attacked the looser material at its foot, and round its end, till it was undermined, and then the wall, however well put together, fell to pieces, and the pieces were rolled about by the waves.

So the engineers conceded 6 feet, and employed divers to prepare the foundation at that depth. But this was not enough. The next *moderately* heavy sea, perhaps, had no effect upon the work, and delusive hopes of success were raised, but in a few months came one of greater severity, ~~so~~ ~~place~~ it became evident that Neptune claimed for his own ~~below the~~ under water.

Then 12 feet was tried, and it is debateable ~~as when the~~ very exposed situations, this is sufficient or not. ~~cause~~ ~~in~~ some cases of exposure to tremendous ~~in~~ other cases there are indications ~~of~~ ~~but~~ now a new element comes

divers at all, it is as easy for them to work in 24 feet depth as in 12; so why not make assurance doubly sure by going to a depth about which there can be no doubt? So in the case of the Madras piers, and one or two other works designed about the same time, the principle of founding in the least depth possible was abandoned, and a depth adopted which gave the most economical proportions of rubble stone and concrete block work. But though 24 feet is more than enough depth for the stability of rubble stone, it is not enough for the stability of sand; so if we had founded directly on the sand we must have gone lower still, and against this there were economical reasons which I need not name here.

Now that I have given my reasons for adopting an upright wall, founded on rubble stone at a depth of 24 feet below the surface, it may appear that, good as those reasons may be for those parts where there is a depth greater than 24 feet, they do not suggest how the problem is to be solved when the natural depth is less than 24 feet. If sand is an unsafe foundation at 24 feet, what is to be done where the sand is naturally only 12 feet under water? And if rubble stone is unsafe at 12 feet, what is to be done where there is a natural depth of only 5 feet?

In this question is involved the history of the whole difficulties of execution of the Madras Harbour Works. Where we have depth for our normal section its construction is plain sailing. It is simply the application of the required quantum of material, of machine work, of hand labour. We laugh at Neptune. He cannot touch our sandy foundations because it is far below his limit of 24 feet. He cannot touch our rubble stone, because it is far below his limit of 12 feet, and hitherto he has not been able to disturb our concrete blocks because they are too heavy for any man to bring against them.

But where the element of 24 feet depth, the limit of stability of sand,—of 12 feet depth, the limit of stability of rubble stone,—of depth enough even for a big block of concrete,—where these elements were wanting, we could not carry out our well-devised section with its different materials at their proper depths. We were driven, per force, to some other system, or rather succession of systems, as we got nearer and nearer to our ultimate requirement of a depth of upwards of 24 feet.

Thus then the work divides itself into two great divisions: that in which we can apply our system in its integrity, and that in which we cannot do so. It is, perhaps, for some reasons unfortunate that the last-named division had necessarily to be executed first, as it is the division adjoining the shore, being in fact the first 1,000 feet out of a total of about 4,000 at each pier.

This division of the work, which is based on first principles and not from our special experience on this particular work, will perhaps recall to recollection the fact that three or four years ago, when the work was in its earlier stages, its progress was by no means so rapid, or to the view of the outsider so apparently successful as it has since been. The cause is now obvious. We really had a much more complicated problem to solve. We had to force our way through and over sand where it was liable to be disturbed by the waves; we had to push out rubble stone where every wave was liable to roll it about in every direction; we had to place concrete blocks on a foundation necessarily so little below the surface that the waves could undermine them. All these difficulties became apparent to the outside critic when they were actually encountered, and we must excuse him for not at the time to recognise the fact that they were anticipated by the engineers and provided for as far as possible to do so.

I have now to show that we had a system in our proceedings. I started by explaining the principles of the two rival systems of breakwaters, the upright wall and the flat slope. The former was adopted for Madras because of its less cost, but as a certain depth of water is an essential condition of it, it was inapplicable where that depth did not exist, and we were driven necessarily to adopt the other to begin with, and then more or less gradually to make the transition to the upright wall. Now, for the flat slope, all that is wanted is plenty of rubble stone: quality is not of much importance. We simply want to get a sufficient area covered with a material less liable to be influenced by the waves than sand. We want to push this out into such a depth of water that it will bear a superstructure of concrete blocks to withstand the greater force of the waves at the surface. For this purpose a neat bank with a given width of top and slopes of a regular inclination is a simple impossibility. The sea, not the engineer, determines what the form and dimensions of the bank is to be, and the engineer has only to provide stone enough for the sea to work upon. Neptune will do the rest.

Now, to return to our narrative: this is the work which was begun with the year 1876. Laterite was pushed out as fast as it could be obtained. The water-line was soon reached, but the bank of rubble was pushed ahead into the surf. The surf attacked it and tore down the slopes—never mind—it will only widen them, which is just what we want; push ahead—let the sea do its worst, it can do no harm, at least while the south-west monsoon lasts and the waves drive it northward. All this apparently aimless battling with the waves was no doubt trying to the patience of the engineer. One day the bank was 100 feet into the surf, the waves were washing it away to the northward, and nevertheless there was a result. At last there was only a line of soft

sandy beach, there was now a promontory of much harder material, pushed out into a depth that concrete blocks could be set with due care for the foundations. The work of the year 1876 is now scarcely recognizable except in the curved line of rubble stone slope between the shore and the concrete block work of the pier. It looks rough and uninteresting enough, but it may interest you when I tell you that not one of those laterite boulders was placed where it now lies by coolies' hands, but was rolled in by the waves from a point 100 or 150 yards to seaward where the bank had been originally formed, and yet nothing could be better placed to form a barrier against the seas of the north-east monsoon. For five successive monsoons it has been battered by those seas without further injury or change than a little waste which can be easily repaired, and a little additional flattening which is an advantage.

It was while this work was going on in May 1876 that Mr. May, the first superintendent, died, and the local charge devolved for some months on Mr. Beardmore, his assistant. This was, no doubt, a disadvantage, for though Mr. Beardmore did all that was possible during the interval before the arrival of Mr. Thorowgood in August, still the work was in a state in which more than ordinary experienced watchfulness was required on the part of the superintendent, and a change of command was most undesirable.

With the north-east monsoon a change of system was introduced. The Titan Crane was brought to bear, and some concrete blocks were set in the line of the pier. They were not, however, of full size, nor were they set in any permanent position, and a more than usually heavy sea at the end of the monsoon washed them. It was not till the middle of the year that the work of block-setting was permanently begun. Titan was then got permanently

the difficulties of the surf bank, and the exaggerations of them by the outside critics, were at an end.

It was while this work was going on that a new evil seemed to threaten us. I have already explained that the tendency of the south-easterly seas prevalent in the south-west monsoons is to drive the sand along the beach to the northward. Where an obstacle is placed, this motion is stopped, and the sand accumulates to the south of the obstacle, and is cut away to the north; so now, when our surf-bank formed such an obstacle, a large area of beach was found on its southern side, while it was cut away so as almost to threaten the Royapooram Railway Station on the north. This went on till October, but then the accumulation ceased, and as the northerly seas set in it began to cut away on the south side. For the time, however, it looked rather formidable even to those who had anticipated the action; but when closely examined and reduced to figures, it was found to be well within the limits which had been reckoned as presenting no serious objection to the scheme, and for the time at least popular apprehension was allayed.

During the following three months of January, February and March, good progress was made. The concrete blocks were advanced about 300 feet into the sea. But they were not sunk—they could not be—to the depth necessary to prevent the rubble stone on which they lay from being acted on by waves, and this part of the work was of really very difficult execution. As will be evident to any one who visits the spot, the blocks for the first 200 feet at least are very irregular, and I must explain the cause of this. They were laid on the washed down remains of the surf bank, which was so little below the surface that the sea was washing over it, and it was impossible for men to work with or without the help of diving. The surf bank is so regular as it is, is due to

the energy and skill of Mr. Lowe, the chief foreman, and I am bound to say also to the activity, willingness and amphibious nature of the native workmen, and the convenience of the national costume. I doubt if it could have been done, at least in the way it was done, by English labourers.

I must dwell a little on those first 300 feet, because they illustrate, in a very interesting way, the difficulties incident to the transition from the flat slope system to the deep-water upright face system. It was built, as I have said, in the first three months of 1877. For a reason which I shall presently explain little or no advance was made in April and May, and in the latter month a cyclonic sea attacked it. The result was precisely what might have been expected from the principles I have explained as to the conditions necessary for the security of an upright face.

The blocks themselves were too heavy for the sea to move, but the rubble stone on which they lay was at too high a level for stability under the action of the waves. For the first 100 feet where the rubble slope had already been well washed by a previous sea into a very wide flat bank, which itself spent the waves, the blocks did not move, the sea had already done its worst on the rubble; but for the second 100 feet where the bank was newer and narrower, though its level was lower, and in that respect nearer the condition of stability, the rubble was disturbed, the blocks undermined, and the outer edges dropped some two feet. Beyond that again in the third 100 feet the rubble base was still lower, and within the limit of stability for that storm at least, the blocks were unmoved. There could be no better proof of the principle that security may be attained not by an ample flat slope of rubble, or by keeping rubble down below the action of the waves.

which these conditions were in fact not affected.

I may mention that the slope in front of the damaged part has since been extended and covered with a mass of large blocks below water, and though many equally heavy seas have attacked the place, no further damage has been done. The dropped blocks are obvious to any one passing along the pier.

The mode in which these "protection blocks" were placed in position may be worth record. A bank of laterite about 10 feet wide was formed against the north face of the breakwater nearly level with its top. Upon this 10 feet were built during the fine weather at the latter end of the south-west monsoon a number of blocks each about 8 feet cube and 32 tons weight. While the sea was smooth the loose laterite on which they stood was undisturbed, but with the north-east monsoon seas of November and December it was cut away from under the blocks and the latter fell just into the place where they were required to protect the foot of the breakwater blocks. Thus the destructive action of the sea was utilized against itself.

We now enter upon a new and very important chapter in the history of the north pier. It has now reached a depth of about 15 feet; there is a thin bed of rubble stone under the blocks, which are three deep; deeper water is ahead; some rubble base had been deposited ready for advancing the block work, and all looked promising for our soon reaching that depth of water which we looked upon as the limit of our transitional difficulties. But it was not to be yet. A few feet of water over sand on a surf-beaten coast is a treacherous condition of things. My colleagues and myself were not aware of this, and in writing to Mr. Thorowgood in London I accidentally mentioned that I thought some changes might be anticipated with the change of the tide. He had one from him announcing that the sea was so regular that the pier was to

the 31st March, after two or three days of rough weather, the pier was found to be buried in sand; and so it continued with but little intermission for nine tedious months.

I have already said that disturbance of some kind was not unexpected, but what form it would take we could not anticipate. I never doubted, nor I believe did my colleagues on the spot, that if we could once get over the accumulation and reach deep water, we should leave the trouble behind us; but I am bound to confess that to a casual observer who did not go deeply into the principles of the matter it was very like carrying the sand out with us, which was the result so often predicted. It was true that no intelligible ground for such a conclusion had ever been suggested; still repeated assertion, however groundless, does carry weight, and, though I had the firmest confidence in my own theory, I could not but feel that it was so far only theory, however sound; and others, those who held the purse-strings, might not weigh it so carefully as I had done. I confess that I felt at this time very anxious as to whether the authorities would maintain the same confidence which I myself felt in the ultimate success of the Madras Harbour Works.

My own reason for feeling confident that this accumulation was a result entirely distinct from that which formed the accumulation at the shore line was shortly this. The motion of the sand under the influence of the waves must be in the same direction as the movement of the waves themselves, that is, transverse to the shore until diverted by the shore itself. It is the impinging of the wave on the shore which causes the alongshore movement. This component of the movement therefore must have its maximum at the shore line. It must become less and less as we move away from the shore, till it vanishes altogether in the deep. The deep is not affected.

whatever component of alongshore movement there might be in a depth of 12 feet, there would be very much more at the shore line. As in this case there was none at the shore line, there could be none in 12 feet depth. The accumulation was therefore no part of the regular alongshore movement which caused such uneasiness the previous year. It must be something entirely distinct, and it must be primarily due to a wave motion transverse to the shore. It might be caused in some way by the abrupt projection of the pier. If so, it would not be repeated when the pier extended to deeper water. It might be an annual or an ordinary occurrence, hitherto unnoticed as not affecting navigation, probably consequent on the change of the monsoon; but if so, it was one which would continue as before outside the harbour, though it would be prevented from being repeated inside. What was wanted to ensure freedom from future inconvenience, was to carry the abrupt end of the pier into a depth of water too great for the waves to be affected by the bottom.

I make quarterly reports to the India Office. In the report on the March quarter I mentioned the appearance of the sand, and hoped it would not prove a serious obstacle; at the end of the June quarter it continued, but that quarter is always a bad one. In September I could only vary the story in words; the sand had increased and was now some 5 or 6 feet deep, but I reiterated my belief that it was only a local accumulation. I watched the history from week to week through October, November and December, and it gave little hope; but while I was preparing my report with the last December and early January letters before me on the 31st January 1878, a telegram was put into my hands announcing an advance of the month! That telegram relieved my anxieties. I was surprised to hear that it saved the Madras pier, which would not have been built unless it had been clear of it.

*The contour lines show the depths below
Mean Sea Level in October 1879*

MADRAS HARBOUR.

