

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1234	Press
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Dated	9-9-1918	

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Fort St. George, Judicial Consultation, 14th September 1858.

No. 12. Read the following letter from R. B. CHAPMAN, Esq., Under Secretary to the Government of India; to the Secretary to the Government of Fort St. George, dated the 28th July 1858, No. 1191.

Home Department, Judicial.

SIR,

I am directed to transmit for information and guidance, the accompanying copy of a Resolution this day recorded by the Honorable the President in Council, and of the documents therein referred to, regarding the proposed introduction in the several non-regulation provinces of India, of the system of trying petty criminal cases *viva voce*.

Extract from the Proceedings of the Hon'ble the President of the Council of India in Council, in the Home Department (Judicial), under date the 29th July 1858, No. 1964.

Read the 11th paragraph of a Despatch No. 12 of 1858, dated the 21st April, from the Hon'ble the Court of Directors, regarding the system of trying petty criminal cases *viva voce* obtaining in some of the districts of Assam.

Read also a letter from the Registrar of the Nizamut Adawlut, to the Junior Secretary to the Government of Bengal, No. 406, dated the 18th May 1857, and its enclosures, affording information relative to the mode of procedure adopted in trying such cases.

Bengal Judicial Proceedings,
4th June 1857, Nos. 173
and 174.

RESOLUTION.—The system adopted and practised in trying petty criminal cases *viva voce* in some of the districts of Assam having been attended with complete success, the Hon'ble the Court of Directors desire its extension in that Province, and also its adoption in "all other non-regulation Provinces, where a similar practice does not already exist." The President in Council entirely concurs in the expediency of this course. In appealed cases the decision, sentence, or final order and the presiding Officer's notes, will of course be forwarded to the presiding appellate Authority, whose business it will be to admonish the lower Court, should the notes be incomplete, illegible, or otherwise open to objection.

His Honor in Council accordingly directs that measures be at once taken for the introduction of this system throughout all the non-regulation Provinces under the Government of India.

His Honor in Council observes that the practice has already been introduced throughout the Province of Assam, under the orders of the Sudder Court, and he authorizes the Lieutenant Governor of Bengal, if he deems it expedient, to extend it to all the other non-regulation districts of the Lower Provinces. His Honor in Council also directs that the opinion of the Governments of the North-Western Provinces, Fort St. George, and Bombay, be asked as to how far the system above referred to, can be introduced in the several non-regulation Provinces under those Governments.

Ordered that a copy of this Resolution, and of the documents quoted at the head of it, be communicated to the Foreign Department, whence the necessary orders will be issued to the chief Officers of the several non-regulation Provinces under the control of that Department.

Ordered also, that a copy of this Resolution, and of the documents above referred to, be forwarded to the Governments of Bengal, the North-Western Provinces, Fort St. George, and Bombay, for the purpose therein indicated.

(Signed) CECIL BEADON,
Secretary to the Govt. of India.

Fort St. George, Judicial Consultation, 14th September 1858.

Extract from a Despatch from the Hon'ble the Court of Directors, No. 12 of 1858, dated the 21st April.

(19) Submit an answer to Judicial Despatch, No. 34 of 1856, a Report on the system of trying petty criminal cases viva-voce in Assam.

Para. 11.—This Report, showing the complete success of the system, is highly satisfactory. We desire that you will instruct the Lieutenant Governor to consider the expediency of extending it both in Assam, and to all other non-Regulation Provinces where a similar practice does not already exist.

From A. W. RUSSELL, Esq., Register of the Nizamut Adawlut; to C. T. BUCKLAND, Esq., Junior Secretary to the Government of Bengal, dated the 18th May 1857, No. 406.

SIR,

I am directed by the Court, with reference to your letter No. 2636, dated the 8th October last, to forward to you, for the purpose of being laid before His Honor the Lieutenant Governor, the accompanying extract paragraphs 1 to 11 from a report from the Deputy Commissioner of Assam, relative to the mode of procedure adopted in trying petty criminal cases *viva voce*.

2. The Court direct me to add, that they have already expressed their cordial approval of the system introduced in Assam in their Resolution on the Criminal Statements of that province for the year 1853.

Extract paragraphs 1 to 11 of a Letter No. 160, dated the 19th December 1856, from the Deputy Commissioner of Assam.

Para. 1.—I have the honor to acknowledge the receipt of your letter No. 951 of the 14th Ultimo, giving cover to an Extract from a Despatch from the Court of Directors, addressed to the Government of India, in the Judicial Department, No. 34 of 1856, dated 16th July, having reference to the system of trying petty criminal cases *viva voce*, and directing me to prepare a full report on the mode of trial pursued.

2. The Honorable the Court of Directors have rightly apprehended that, in such cases there is no record of the evidence, beyond the notes of the trying Officer, taken down in his own language, in the form of a brief narrative, showing the substance of what has been deposed to,

*Copy of a letter No. 349, dated 12th August 1853, circulated to all Magistrates in the Province of Assam.

Observing that the Officiating Principal Sudder Ameen and Officiating Sudder Ameen in your district do not keep up case books of the criminal trials, held before them, I have to request the favor of your directing them to keep up these books in future.

2. "In such cases as the proceedings have heretofore been recorded in the form of a separate Nuthce, the record should be made at once in the book, and when the investigations have been held *viva voce*, the number of the case, names of the parties, the crime, as well as the name of every witness adduced, either for the prosecution or defence should be recorded, a very concise and sufficient history of the case, as put forward by the prosecutor, should be noted the defendant's plea and the substance and hearing of the evidence of witnesses, or where the evidence of a witness is nearly corroborant of the foregoing, it will not be necessary to do more than note points of difference, together with the substance of the defence, so that the whole shall form a concise yet clear, abstract of the *viva voce* proceedings as will enable you to deal with the case in appeal.

3. "Where witnesses had been named but not examined, the reasons of their non-examination should be noted.

4. "The same course should be followed in your own and Assistant's case books, where no Bengallee record of the case has been kept."

Extract of a letter No. 626, dated 6th April 1854, from the Court of Sudder Dewany Adalat, to the Deputy Commissioner of Assam.

Para. 1.—"The Court having had before them your letter No. 24, dated 18th February, direct me to inform you that they fully approve of the instructions conveyed by you to the Magistrate of Gowalpara, in your letter No. 349, dated 12th August 1853, and they request that you will send a copy of that letter to all the authorities subordinate to you, for their guidance in preparing their case books of the criminal trials held before them."

whilst the case book kept in the manner directed in my Circular, quoted in the margin*, forms a complete record of the trial, since so far modified as to meet the requirements of the Sudder Court's Circular Order No. 4, of the 9th February 1855, (in illustration I have appended copies of the record of three trials A, B, C, taken from the case books of as many Magistrates). Besides which a translation of the Magistrate's decision in the vernacular of the country is affixed to the prosecutor's original petition, for the satisfaction of the parties and the use of the native office.

3. The mode of procedure in all cases is for the person aggrieved to put in a petition stating his case, he is then examined on oath as to its truth, or the Court may require the attendance of the prosecutor's witnesses, and examine them *ex-parte*, with a view to elucidate the truth of the complaint before summoning the accused, and the Court, on being satisfied that it is a proper subject for enquiry, issues a summons to bring up the parties as soon as the prosecutor has lodged the expenses, or, when he is too poor

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to do so, it may be served through the Police without charge. Parties are also allowed to bring up their own witnesses without the intervention of a summon if they wish to do so, and on their arrival, the trial is proceeded with as soon as possible.

4. The history of the origin and present full development of the system is as follows: On my appointment to the charge of the Civil and Criminal Departments of the Assam Commissioner-ship, I found some of the most valuable rules in a most excellent and useful little Code, drawn up by Mr. Thomas Campbell Robertson, late Commissioner of Assam, and sanctioned by the Supreme Government, as the law of the province, had fallen into disuse in most of the Districts, and that the mode of conducting and recording petty criminal trials, as practised in the Regulation Provinces, had been generally adopted; I therefore addressed a Circular (of which the following is a copy) to the Magistrates in charge of Districts, requiring them to adopt the *viva voce* system in such trials, viz* :—

* Circular No. 182 of 18th May 1852, to all Magistrates in charge of Districts.

"In some of the proceedings which have lately come before me in the course of appeal, sight appears to have been lost of the provisions contained in the Assam Criminal Rules, and which I request the favor of your co-operation in bringing into general use.

"The object of Section II, Clause Sixth,* was no doubt intended to expedite proceedings in petty cases, and to render the intervention of the native Ministerial Officers unnecessary

* Clause Sixth "In all petty criminal cases (viz. misdemeanors, thefts to the amount of fifty Rupees, and offences for which Magistrates in the Regulation Provinces are competent to pass sentence or imprisonment not exceeding six months) evidence may be taken *viva voce*, if the substance merely be recorded, either in English or Bengallee, as the Commissioner may direct.

"in taking down the evidence; whereas some such cases contain a voluminous record of written evidence, which must have occupied much time in transcribing; I have therefore

"with the concurrence of the Commissioner to request, that the rule quoted be acted on as far as possible, and that the intervention of Mohurirs in recording the evidence in such be discontinued.

"Magistrates, Joint Magistrates, and Assistants recording the substance of the proof adduced in their English case books, from which the final Rubookaree* can be drawn up, and attached to the original plaint, as the native record of the case.† Sudder Ameens to follow the same course in the vernacular.

† Since revised, see concluding part of para. 2nd of this letter.

"Magistrates and Joint Magistrates are requested, as far as possible, to refer all petty cases to their Subordinate Courts, so that the original appeal may be within the Zillah,* and that their more valuable time may be otherwise applied.

† See para. 3rd, examining witnesses *ex-parte*.

"Although the rules adverted to in Clause Seventh,† Section II, admits of evidence being taken in order to ascertain the truth of the charge, before summoning the Defendant, it appears also necessary for the legality of the proceedings, that the evidence be again examined in his presence unless he should decline."

5. The above Circular was submitted for the approval of your Court with my letter No. 116, of the 14th September 1852, in which I find the following paras. bearing on the subject:

Para. 14th.—"I would recommend that the rule for *viva voce* investigations be made absolute, as I am satisfied it will not only generally tend to improve and expedite decisions, but remove that frequent source of complaint, that the Omlah distort the evidence in taking it down. It will make young Officers to trust to themselves and their own note book for a memorandum of which has been deposed, instead of a native record, and it will, I think, give general satisfaction to all, but those who are entrusted in obstructing or delaying justice."

Para. 15th.—"In respect to cases sent up through the Agency of the Police, the same says 'tem would be pursued in all cases of petty thefts, with still greater advantage, as the witnesses being all in attendance at the same time, the *viva voce* examination, would not occupy a fourth

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"of the time it now does to take down the evidence, so long as many of the Thannahs are at a great distance from the Sudder station, with interrupted communications from swamps and jungles, it is not to be excepted that Police cases will be decided with the same expedition as in Bengal, but I hope improvement may still be made in these as far as they depend on the Magisterial Court."

Mr Beckett, Joint Magistrate of Mungledye, in his letter (copy) appended, and who is a most painstaking Officer says, the cases are decided much quicker under the new than the old system; also see table in para. 8th, with which this estimate agrees in regard to petty trials.

6. The following is an Extract of your Court's Resolution No. 1413 of the 5th October 1852, para. 3rd:—"They entirely approve of the Circular issued by you on the 18th May last, and request that the degree to which it has been carried out in the several Districts may be especially noticed by you, in the annual report for the current year." Para. 6th:—"With advertence to paragraphs 14th and 15th of your letter, the Court observe that your Circular of the 18th May, should be carefully enforced as above directed."

7. The system is now in full operation, and has entirely answered expectations. Justice being greatly expedited, the influence of the Native Officers about the Court checked, the swarms of petty attorneys, who made a livelihood by fomenting litigation, have nearly lost their occupation, false and frivolous complaints have decreased, whilst to the people, who have wrongs to complain of, the change has proved most beneficial and acceptable.

The following Table will show the average time occupied in the disposal of cases in 1851, the year prior to the enforcement of the *vivâ voce* system, contrasted with the average time for the past year:—

Years.	Cases in which the Agency of the Police was employed.				Cases in which the Agency of the Police was not employed.	
	No. of Cases.	Average time occupied in the Mofussil.	Average time occupied before the Magistrate.	General average.	No. of Cases.	Average time.
1851	957	4½	17½	21½	2,380	17
1855	1,225	3	9½	12½	2,244	4½

9. The proportion of convictions to acquittals in the above years, in cases coming under the first 41 headings of the annual statement, and comprehending nearly all crimes of a heinous character, and where the Agency of the Police was employed, was the same in both years, or 1½ convictions to 1 acquittal; whilst in the cases under heading 42, comprehending nearly all the petty offences, added to those under 43, the average for the year 1851 was very nearly 2 to every acquittal, and in 1855, 3½ convictions to every acquittal.

10. I beg to add that, with reference to a further correspondence noted in the margin*, that the system was found to work so well, that it has been extended to the trial of cases of a more heinous character; the only difference being that the evidence is taken down more in detail, this practice is now in full operation in the Gowalpara and Luckunpore Districts, and more or less so in most of the other Districts, and I would be glad to see it also made absolute in the cases where the trial is not held with the assistance of a Jury, when of course the evidence must be recorded in the language of the Jury. A specimen of a case so recorded, and marked D, is also appended.

*Deputy Commissioner to the Register Nizamut Adawlut, No. 29, dated 3rd March 1854.

Court's Resolution No. 434 dated 5th May 1854, vide appended E, F.

11. I see no reason why the system should not be applied with equal advantage to Civil and Revenue suits, at least up to a certain amount.

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APPENDIX A.

No. Prosecutor.	Witnesses and Document.	Prisoners.	Witnesses and Document.	Crime charged, when perpetrated and date of complaint.	Crime established or date of acquittal.	Sentence and when passed.	Decision and grounds thereof.
35 Kaluram.	Beru. Kandura. Gunda. Keharam. Badan.	Bakhshali. Tenkori. Pala and others.	Akalu. Shabra. Dena. Noor Mahomed.	Dispossession of land, on the 7th Kartic 1262, 23rd of October 1855. Complaint lodged 14th of Nov. 1855.	Offence charged.	Possession with costs decreed, Nov. 27th 1855.	Plaintiff alleges that in Zenra Mara Chur, within the following boundaries, to wit:— East Lahoram Chowdri's land, south and west jungle. North Berus and Kandarus land, he has for the last 15 or 16 years held possession of seven pooras of land, the rent of which he has regularly paid to the Zemindar of the Pergunnah. That in Bhadro and Assin last, he ploughed up some of some Pergunnah, owner of some Pergunnah, came forward and claimed it as the rent, which Bakhshali would not listen to, and forcibly turned his (plaintiff's) ploughman off the ground, and put the other defendants into possession of the same. Beru, called and sworn, alleges that on the 7th of Kartick last, he was cultivating his land, which adjoins that held by plaintiff, when the defendant Bakhshali and a party of people with him, came and turned plaintiff's ploughs and servants off his (plaintiff's) land. That on hearing of the occurrence plaintiff came and expostulated with Bakhshali on his proceeding, and offered to pay him the rent of the land if he did not molest his possession, this Bakhshali would not agree to, and put his own people into possession. Witness alleges that the plaintiff has held the land in question for the last 14 or 15 years, and gives the same boundaries as plaintiff does; says he was present during the occurrence above related, he holds his land from the Zemindar; Bakhshali, he says, never has had possession of plaintiff's land. Kandura, called and sworn, substantiated in every particular the above statement; he was, he says, cultivating his own land in the immediate vicinity of the plot in dispute, and saw the whole affair from beginning to end; witness says he holds his land from the Zemindar; Bakhshali, he says, has never had possession of plaintiff's plot. Gunda, called and sworn, gives similar evidence in all respects, as does Keharam, and Badan also called and sworn. Bakhshali, defendant, replies that the whole story is false from beginning to end, that he never went near the place in question on the 7th of Kartick, nor ousted the plaintiff from any land. He says the place in dispute belongs to him. The other defendants do not appear. Akalu, called and sworn, says that the defendant never dispossessed plaintiff, that the land in question belongs to this the Zemindar's, and not to defendant's perpals. Shabra, called and sworn, says that the land in question belongs to defendant's perpals, and has always been in his (defendant's) possession, and that moreover defendant did not, as alleged, oust plaintiff. Dena, called and sworn, gives similar evidence, as does Noor Mahomed.

The act of dispossession is fully and clearly proved by the evidence of all the plaintiff's witnesses, and it is also proved by the evidence of the defendant's own witness Akalu, that the spot in dispute is khas. In the case too of the present defendant, plaintiff, *versus* Keharam, defendant, present plaintiff, decided by Mr. Driver, on the 28th of December 1852, the Chur Gunra Mora was distinctly held to be the boundary of the perpals, and this ruling was upheld in appeal; and it will be seen by reference to the map prepared in that case, that the spot now in dispute (marked thus H in red chalk by me) is beyond the perpals boundary. I therefore decree the claim, and award possession of the land contained within the boundaries mentioned in the plaint, with costs, to plaintiff. In case this decision should be appealed against, it is ordered that the map, alluded to, be sent up to the higher Court along with the proceedings.

(Signed) W. AGNEW, Magistrate.

November 27th, 1855.

No.	Prosecutor.	Witnesses and Document.	Prisoner.	Witnesses and Document.	Crime charged when perpetrated and date of complaint.	Crime established or date of acquittal.	Sentence and when passed.	Decision and grounds thereof.
216	Bolanath on the part of Bydonath.	Salam Shaik. Surroop. Chuspatoo. Horriah. Glugara. Rajmohun.	Omakanth.	None.	Breach of trust in having absconded with money and goods entrusted to him to the amount of Co.'s Rs. 279.6. Complaint preferred on the 1st of July 1856.	Convicted of the crime charged.	Sentenced to imprisonment with labor for two years on the 20th Oct. 1856.	Plaintiff alleges on oath that he and the defendant were employed by Bydonath. he (plaintiff) as Gomashita, and defendant as Mohurir, and that they were left in charge of the shop at Bratapgunj while their Master went to his home. That on the 3rd Bysack he (plaintiff) despatched the defendant on board of Chuspatoo Marjee's boat to Gawalpara with goods, and cash to the amount of Company's Rupees 274.12 for delivery to Ruttun Chand Mora Sing. That defendant on arriving at Gawalpara sold the goods and absconded with the price of the same, and the cash he had in hand and also some articles of property, total value Rupees 279.6.

chase cloths and brass utensils for his master Bydonath Shah; did not hear how much money he had. Saw him sell the Chera to Moniram Shah. Heard from Surroop, called and sworn, says he knows of the defendant's having been sent up to Gawalpara with some "Chera" for sale, and with cash that he was to purchase cloths and brass utensils from Ruttun Chand Moora Sing with; that the Manjee of the boat in which defendant travelled returned to Pratapgunj, and reported that the defendant had absconded; does not know how much cash defendant had.

Chuspatoo Marjee, called and sworn, says he came up with Omakanth to Gawalpara, and that he (Omakanth) had with him cash to the amount of Rs. 179, belonging to the plaintiff, and 14 Rs. belonging to one Dhumeshur. That he also had 1½ maunds of Chera and some domestic utensils; does not know whether the latter belonged to himself or to his master; that Omakanth, had come up with instructions to sell the Chera, and with the proceeds thereof, and the cash in hand to purchase brass dishes, &c., and cloths; knows that this was what brought him to Gawalpara, because plaintiff had engaged his boat to bring his goods down to Pratapgunj. That the morning after their arrival here Omakanth sold the Chera to Moni Shah, and started the same evening down the river. That they *lagao'd* (witness's) awaking in the morning he found Omakanth had left with all his traps, and the other boat was gone also.

Horriah, called and sworn, says that he remembers in Bysack last, seeing the plaintiff give Omakanth Rupees 176, and Dhumeshur give him Rs. 84. Heard that he (Omakanth) was to take the money to Gawalpara and purchase goods with. The money was delivered in plaintiff's house at Pratapgunj.

Glugara, called and sworn, gives similar evidence. Rajmohun, called and sworn, says he was a Mulla on board a boat hired by Bholanath at Pratapgunj to go up to Gawalpara; that they were to bring up some goods, and to take some back. That Omakanth was the person sent up in charge by Bola, and that the day after their arrival at Gawalpara, he (Omakanth) sold some Chera they had brought from Pratapgunj; that the next day they left Gawalpara without Omakanth having made any purchase. That they "*lagao'd*" for the night a short way down the river, and that during the night Omakanth disappeared.

The defendant in reply states that he was sent up to Gawalpara at the time mentioned, but that the Chellan and money were entrusted to the Manjee of the boat. That on the way up he heard that his father was very ill, and that he went home to see him; denies that he ever came to Gawalpara at all.

Moniram, called and sworn, states that in Bysack last he remembers purchasing some Chera from Bydonath's Sirkar name unknown; on being asked if he could recognize the individual, he immediately pointed out the defendant.

Defendant on being asked what he has now to say, admits he did come to Gawalpara and sell the Chera to Moni, the money paid on which account he says he gave to the Manjee.

I convict the prisoner, being of opinion that his guilt is fully proved, and sentence him under Act XIII. of 1850, to two years' imprisonment with labor. (Signed) W. AGNEW, Magistrate.

APPENDIX E.

Extract from the Criminal Report for 1853, No. 29 of the 3rd March 1854, from the Deputy Commissioner of Assam, to the Register of the Court of Nizamut Adawlut.

As far as I was able to learn during my late tour, the system appeared to work exceedingly well, and to afford general satisfaction to the people; the only persons to whom it appears unpalatable are the Mooktears, and those about the Court who derive advantage from litigation. I therefore beg to recommend that it may be persevered with, and that the system be made absolute, and that the entries in the case book of the Court in the handwriting of the Magisterial Officer himself be the only record retained except the original petition, on the back of which a copy of the final order might be given. It seems desirable that uniformity should be preserved in the case books of all the Courts, and on this subject I have already had the honor to address you in my letter No. 24 of the 18th ultimo.

With advertence to the latter part of the same paragraph of your letter, the following is the extent to which the recording of evidence without the questions has been carried:—

Gawalparah ...	...	in 30 cases.
Kamroop ...	...	in 81 "
Durrung ...	...	in 65 "
Nowgong ...	...	in 25 "
Seeksagur ...	...	in 3 "
Luckunpoor...	...	in 77 "

Total, ...281 cases;

*All cases determined in my own Court are tried on the principle of viva voce examination. The only difference in serious cases being that the record in the vernacular as well as in English is more minute.

I mean by this that the examination and depositions are all conducted by myself personally. In serious cases of record I am of course obliged to allow time for the Native Clerks to record the evidence in usual way. Petty cases are only delayed in this account for such record as I think it necessary to make in my case book; a native Mohurir at the same time embodies the substance of what transpires in the form, a Roobokaree which is all the record kept in the native office. I consider there can be no rational doubt as to the superiority of such a system over any in which the decision of the Court is derived from hearing proceedings read over, and I am of opinion that Magistrates and their Assistants should be prohibited from deciding cases in any other way than in the viva voce principle which appears to me to be applicable to all cases.

and Captain Dalton in his remarks, quoted in the margin*, recommends that Magistrates and their Assistants should be prohibited from deciding cases in any other way.

These sentiments are very much my own, and I would beg to recommend that the examinations in all cases should not only be conducted by the sitting magisterial authority in person, but that he should record the evidence in his vernacular; I believe such a mode of trial and record would be as expeditious as if recorded through the medium of a Mohurir, always

supposing the investigations are made in person by the Magistrate; and it is my conviction that it would be a most important step to purifying our Courts from the unlawful influences, too often used to impede justice both in and out of doors. It would be but little extra labour to the really pains-taking Magistrate, while it would compel those on whom may now devolve the preparation of cases on their Omlah, to exert themselves.

Bengallee, at present the legal medium of recording evidence, is not understood by the people generally in Upper or Central Assam, and in so recording it is necessary to transpose what is uttered into a language which the witness only partially, if he at all understands, when it is read to him, whereas by having the record in the vernacular of the Magistrate, the language uttered is at once transposed into the language best understood by the Court, whether English, Bengallee, or Assamese; and I think, in cases for circuit or appeal where the Judge has to trust to the record alone, the value of the evidence will be more shortly conveyed as set down in the vernacular of the Magistrate who held the investigation, rather than through Bengallee, when that may be neither the language of the witnesses or the Judge.

(A true Copy.)

(Signed) H. VETCH,
Deputy Commissioner of Assam.

Decision and ground thereof under Act XXXVIII of 1854.

No. of Cases in Magistrate's Register.	Name of Prosecutor.	Witnesses and Documents for Prosecution.	Names of Prisoners.	Witnesses and Documents for Prosecution.	Crime charged, when perpetrated, and date of Commitment.	Crime established.	Sentence of Magistrate and when passed.	Plaintiff, sworn, states that on the 12th Magh at 7 P. M., he left his cloth on the bed of Dhooah Burlze, but on looking first he could not find it; the day before yesterday, at about 4 or 5 P. M., Cacharee Keot saw it on the person of Gadullee Bewa, and gave him notice. Dhooah when took her with the cloth to the Jail, she said she had borrowed it from Fagoonee; she (Fagoonee) stated that Jatee Burzle left it with her; the piece of cloth is a dhootee, 6 1/2 haaths long, and a little more than 1 1/2 haaths broad, with a red border, and worth 14 annas. Dhooah, sworn, confirms the above statement, and says the cloth is plaintiff's; Fagoonee's husband keeps shop for selling Paun in the Bazar, that Jatee Burzle took the cloth to her (Fagoonee), and said he wanted to sell it for 4 annas, she refused to take it; he said then that he would take it on his return; he recognizes the cloth as plaintiff's, it is about 6 1/2 haaths by 1 1/2. at the time it was lost, plaintiff said, perhaps he had left it at the Ghaut, but Jatee would leave it in her house, as he was going to Tezpoor, and would take it back with him. Ramnain Patgeeree ditto ditto; but says he cannot recognize the cloth as plaintiff's. Burkundaze asserted that he (plaintiff) had brought it back with him. said she had none, but what Jatee had left in her house on his way to Tezpoor. Jatee, she said, wanted to sell it to her for 4 annas, but on her refusing to buy it and, on her going, plaintiff claimed the cloth she had on as his. Fagoonee, sworn, gives a similar story, but says Jatee did not offer the cloth taken for sale, he left it in her house to keep till his return from Tezpoor, as he was a friend of hers, her name and Jatee's wife's name being the same. The Thannah Jemadar was present at the time. Defendant, Jatee Burkundaze, says, that some person brought plaintiff some cheera to eat, and Dhooah took him, plaintiff, to the outside of his house; P. M., he received orders to go with some prisoners to Tezpoor, and in the hurry he left the cloth with Fagoonee, saying it belonged to a Mooktear, and to keep it safe till his return; he did not find out that he had plaintiff's cloth, till he had started with the prisoners, and had got opposite Fagoonee's shop. The Jemadar was 16 haaths off, he did not call to the Jemadar to take the cloth back, but threw it to Fagoonee. Luckon Sing Jemadar, sworn, says he saw Jatee throw a piece of cloth to Fagoonee, saying it was his own, and told her to keep it for him till he returned from Tezpoor. Jatee is continually going to Fagoonee's shop; he (deponent) did not ask defendant why he threw the cloth to Fagoonee, or make any enquiries about it. Newla Mohurir, sworn, states that he saw plaintiff sitting by himself, eating cheera on the road near Bolo Teckla's house one morning about 7 or 8 A. M., he knows nothing further. Luckon Sing and Fagoonee both affirm that defendant left the cloth at Fagoonee's shop, saying it was his own; if defendant wished to return the cloth he would certainly have asked the Jemadar of the Tannah to take it to plaintiff, who was in Jail for debt, for the Thannah is at the Jail door; it is evident to any one that defendant stole the cloth, and as he is a Burkundaze of the Jail, he ought to be punished more severely than another man; I therefore sentence him to six (6) months' imprisonment with labor in irons, and order the cloth to be returned to plaintiff.
16	Purnubal Dekha.	Dhooah Burlze, Jha-narain Patgeeree, Ramnain Gadullee Bewa, Fagoonee.	Jatee, Tecklah.	Luckon Sing Jemadar, Neala Mohurir.	Theft 24th January 1856, February 7th 1856.	Theft.	Sentence to six (6) months' imprisonment with labor in irons, February 7th 1856.	Plaintiff, sworn, states that on the 12th Magh at 7 P. M., he left his cloth on the bed of Dhooah Burlze, but on looking first he could not find it; the day before yesterday, at about 4 or 5 P. M., Cacharee Keot saw it on the person of Gadullee Bewa, and gave him notice. Dhooah when took her with the cloth to the Jail, she said she had borrowed it from Fagoonee; she (Fagoonee) stated that Jatee Burzle left it with her; the piece of cloth is a dhootee, 6 1/2 haaths long, and a little more than 1 1/2 haaths broad, with a red border, and worth 14 annas. Dhooah, sworn, confirms the above statement, and says the cloth is plaintiff's; Fagoonee's husband keeps shop for selling Paun in the Bazar, that Jatee Burzle took the cloth to her (Fagoonee), and said he wanted to sell it for 4 annas, she refused to take it; he said then that he would take it on his return; he recognizes the cloth as plaintiff's, it is about 6 1/2 haaths by 1 1/2. at the time it was lost, plaintiff said, perhaps he had left it at the Ghaut, but Jatee would leave it in her house, as he was going to Tezpoor, and would take it back with him. Ramnain Patgeeree ditto ditto; but says he cannot recognize the cloth as plaintiff's. Burkundaze asserted that he (plaintiff) had brought it back with him. said she had none, but what Jatee had left in her house on his way to Tezpoor. Jatee, she said, wanted to sell it to her for 4 annas, but on her refusing to buy it and, on her going, plaintiff claimed the cloth she had on as his. Fagoonee, sworn, gives a similar story, but says Jatee did not offer the cloth taken for sale, he left it in her house to keep till his return from Tezpoor, as he was a friend of hers, her name and Jatee's wife's name being the same. The Thannah Jemadar was present at the time. Defendant, Jatee Burkundaze, says, that some person brought plaintiff some cheera to eat, and Dhooah took him, plaintiff, to the outside of his house; P. M., he received orders to go with some prisoners to Tezpoor, and in the hurry he left the cloth with Fagoonee, saying it belonged to a Mooktear, and to keep it safe till his return; he did not find out that he had plaintiff's cloth, till he had started with the prisoners, and had got opposite Fagoonee's shop. The Jemadar was 16 haaths off, he did not call to the Jemadar to take the cloth back, but threw it to Fagoonee. Luckon Sing Jemadar, sworn, says he saw Jatee throw a piece of cloth to Fagoonee, saying it was his own, and told her to keep it for him till he returned from Tezpoor. Jatee is continually going to Fagoonee's shop; he (deponent) did not ask defendant why he threw the cloth to Fagoonee, or make any enquiries about it. Newla Mohurir, sworn, states that he saw plaintiff sitting by himself, eating cheera on the road near Bolo Teckla's house one morning about 7 or 8 A. M., he knows nothing further. Luckon Sing and Fagoonee both affirm that defendant left the cloth at Fagoonee's shop, saying it was his own; if defendant wished to return the cloth he would certainly have asked the Jemadar of the Tannah to take it to plaintiff, who was in Jail for debt, for the Thannah is at the Jail door; it is evident to any one that defendant stole the cloth, and as he is a Burkundaze of the Jail, he ought to be punished more severely than another man; I therefore sentence him to six (6) months' imprisonment with labor in irons, and order the cloth to be returned to plaintiff.

(Signed) W. O. A. BECKETT, Joint Magistrate.

7th February 1857.

No.	Plaintiff's Name.	Defendant's Witnesses.	Defendant's Name.	Defendant's Witnesses.	Case.	Crime charged, when perpetrated and date of complaint.	Crime established.	Decision and ground thereof under Act XX XVIII of 1854.
369	Kena Saikh.	Nubeebux. Bhatkoo. Horee Sing,	Jadoo.	None.	Theft, value 3 Rs., 29th November, 2nd December, value 3 Rs., received in full.	Theft.	Defendant to imprisonment for 2 months with labor, December 8th, 1856.	1st.—Sworn, states that one night during this month, some one went to his cultivation, and took away from there 10 loads of Dhan; next morning on going to his cultivation he missed the Dhan, and following the footsteps of the supposed thief, and also being led on by Dhan that had fallen on the way, he arrived at the defendant's house. On accusing him he admitted that he had taken the Dhan, and that he had been accompanied by two others, these two that his Dhan had been stolen from his cultivation about 9. A. M., that he reached and asked the defendant if he had taken the Dhan, he confessed he had been stolen, and that he had seen it at the defendant's house and asked him to come over. On arriving at defendant's house, the defendant being asked, acknowledged he had stolen the Dhan.

however denied all knowledge. Witness No. 1 for plaintiff sworn, deposes that the plaintiff told him about 9. A. M., that his Dhan had been stolen from his cultivation and asked him and the neighbours to accompany him to defendant's house, when they reached and asked the defendant if he had taken the Dhan, he confessed he had; would not say whether he had any accomplices. Witness No. 2 sworn, deposes he was in his cultivation when plaintiff called him, told him that his Dhan had been stolen, and that he had seen it at the defendant's house and asked him to come over. On arriving at defendant's house, the defendant being asked, acknowledged he had stolen the Dhan. Witness No. 3, sworn, deposes he was present when the defendant confessed he had stolen the Dhan.

DEFENDANT CONFESSES THE THEFT.

This case is clearly proved, the defendant also confesses he had stolen the property in company with two other defendants; there is no proof against the others, they are dismissed.

Defendant No. 1, I sentence to imprisonment for two months with labour. The Dhan is to be returned to plaintiff.

(Signed) J. C. MARTIN,
Acting Magistrate.

6th December 1856.

Fort St. George, Judicial Consultation, 14th September 1858.

APPENDIX F.

Extract from a Resolution of the Presidency Court of Nizamut Adawlut, No. 434 of the 5th May 1854, to the address of the Deputy Commissioner of Assam.

41 Para. "The Court are fully satisfied of the admirable results which have followed the introduction of the system of trying petty criminal cases *viva voce*, which is on the one hand beneficial to the people, and on the other satisfactory to the Officer conducting the trial. They therefore authorize the Deputy Commissioner to carry it out as far as he may possibly can."

(A true Extract.)

(Signed) H. VETCH,
Deputy Commissioner of Assam.

No. 13.

ORDER THEREON, No. 1234; dated 9th September 1858.

Ordered, that a copy of the foregoing communication be furnished to the Court of Foujdaree Udalt for report as to whether the practice of trying petty criminal cases *viva voce* may be introduced in the non-Regulation portions of the Districts of Ganjam and Vizagapatam, and if so, to what extent and under what arrangements.

The Foujdaree will be so good as to refer to the Agents in Ganjam and Vizagapatam and submit their opinion.

(Signed) T. PYCROFT,
Chief Secretary.

Judicial Department

No 1234

Extract from the Minutes of Consultation
Dated 9th September 1858.

Read the following letter
from the Under Secretary to the
Government of India

(The letter 29th July 1858 des 1195)

Ordered that a copy of the
foregoing communication be
furnished to the Court of Foujdaree
Udalt for report as to whether
the practice of trying petty cr-
-iminal cases *viva voce* may
be introduced in the non-
Regulation portions of the
districts of Ganjam and Viza-
-gapatam, and if so to
what extent & under
what arrangements
The Foujdaree
will be so good as to
refer to the Agents in

Copy to Foujdaree Udalt. Dated 11th

2540-1234

Gujarat and Pargana
-patam & subunit
Kiri Kiri

JP

12413



Of No. 1899 - Cons. 16 - ~~1858~~ 1858
 From Sub. Court
 Sent in circulation
 for 3rd time
 Sept 29th 1850.

No. 1989 Cons. 16 - ~~1858~~ 1858
 Medical 10350 Sept 29th 1850.

No. 1234
 Thackeray's. Cons.