M.R.O. 1—20,000—16-10-22.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

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Dated 7-10-1865 ~~19~~ .

24/25

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 7th October 1865.

No. 37. Read the following letter from E. C. BAYLEY, Esq., Secretary to the Government of India, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Simla, 9th August 1865, No. 846.

Home Department.
Judicial.

I am directed to forward the accompanying copy of a letter from the Government of Bengal, No. 3844, dated the 13th June, and of its enclosures, and, with reference to its 11th paragraph, to inquire whether the system of trial by Jury has been adopted in any part of the territory under the Government of Madras.

2. The Governor General in Council further desires an expression of opinion on the proposals made by the Government of Bengal in paragraphs 8 to 10 of the Secretary's letter.

From the Honorable A. EDEN, Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department,—No. 3841, dated the 13th June 1865.

With reference to the Memorandum from your Office, No. 2961, dated the 12th May 1863, I am directed to forward, herewith, for the purpose of being laid before His Excellency the Governor General in Council, and for communication to the Right Honorable the Secretary of State for India, a copy of the Reports noted on the margin upon the working of the system of trial by Jury in those Districts of the Lower Provinces to which it has been extended.

From Commissioner of Nuddea, No. 121, dated 16th June 1863.
From Commissioner of Dacca, No. 143, dated 16th July 1863, and enclosure.
From Commissioner of Burdwan, No. 169, dated 16th July 1863.
From Commissioner of Patna, No. 269, dated 19th August 1863, and enclosure.
From Registrar, High Court, No. 3325, dated 29th November 1864, with enclosure.

2. The Lieutenant-Governor thinks that it is clearly shewn, from the very interesting reports of the Judges of the 24-Pergunnahs and Nuddea, that, although there have been a few cases in which a failure of justice has arisen from the perversity, prejudice, or want of intelligence of the Jury—a state of things which is to be found wherever trial by Jury exists—the experiment has succeeded to an extent which was scarcely to be anticipated, and that, on the whole, the Jurymen have discharged their duties intelligently and conscientiously. That the system should not at first be perfect in its working was to be expected, for it is a system entirely novel to the class from which the Jurors are chosen, as well as to the Native public at large, and one of which they have hardly yet learned to comprehend the value. But if, as the Lieutenant-Governor confidently believes, and as these papers shew, its introduction has had the effect of creating a general interest in the administration of Criminal Justice, and if it has led the more intelligent classes to give their serious attention to the Criminal Law of India, and has impressed upon them a sense of responsibility for its due administration, it appears to His Honor that these great and important advantages have not been dearly purchased at the cost of a few wrongful acquittals. As the system of trial by Jury and the responsibility of Jurymen come to be more thoroughly appreciated—and it is clear that this is the tendency of Native opinion in the Districts in which the system has been best administered—the defect noticed will gradually receive its natural cure. It is also not altogether without advantage, especially in a country like India, where public opinion exercises comparatively little influence over the acts of individuals, that the verdict of a Jury should sometimes intervene to restrain the logical application of the strict provisions of the Criminal Law.

3. His Honor is of opinion that, in the face of the testimony to the beneficial working of the system in Nuddea borne by the Judge, Mr. Thompson, who has evidently given the subject very serious thought, there is not sufficient ground for suspending trial by Jury in that District,

as has been proposed by the High Court; and to abolish or suspend it in any District into which it has once been introduced, in respect to any particular class of offences to which it has been made applicable, would be open to very serious objection.

4. At the same time, it appears to the Lieutenant-Governor that there are sufficient grounds for not introducing the system of trial by Jury into other Districts until it has been tested for a longer period in the Districts in which it is now in force. It is a privilege which, though to a certain extent valued in the more advanced Districts into which it has been introduced, is not yet elsewhere sought for by the Natives themselves, and therefore there is no occasion for unduly pressing the measure forward. It will be better to allow trial by Jury to become a more thoroughly popular institution where it is practically known, and to extend it gradually to other Districts when it comes to be considered a real boon.

5. In the meantime it is necessary that the system should be improved, so far as it is possible for Government to do anything towards this end; and, with this view, His Honor has directed that the radius of the area of selection around Kishnaghur and Patna should be extended to twenty miles, and round the Sudder Stations of the other Jury Districts to fifteen miles.

6. His Honor has also directed the Commissioners of the Divisions on which trial by Jury is in force to instruct the Collectors to revise the Jury Lists carefully themselves, with the aid of their Assistants. His Honor attaches very great importance to this duty, and has desired Commissioners to impress on the Collectors that it must not be delegated to incompetent and irresponsible subordinates, and that they should endeavour to bring into the list a sufficient number of respectable and really intelligent men of all classes, excluding those who do not possess these qualifications. The Collectors will also be directed carefully to represent, and practically to regard the duty of a Juror as one of great responsibility and trust, and to make the Jurors feel that their co-operation in the administration of justice is sought for as a means of conferring a benefit upon their countrymen, and not merely to assist the Judges in their labors.

7. It will also be impressed on the Collector that care should be taken, as far as possible, to prevent the duty from being made a harassing one, that no Juror should be summoned too frequently, and that he should be summoned properly and regularly, and be treated with consideration and respect during his attendance at the Station. It is in the power of the Judges also to do much to cause the office of Juryman to be considered one of distinction and honor, and the High Court have been requested to impress this upon the Subordinate Courts, and to direct that a proper room be set apart for the Jurors, that seats be always provided for them, and that the Court Peons be interdicted from interfering with them, or subjecting them to any annoyance.

8. The Lieutenant-Governor is of opinion that, in order to render the Jury system applicable under all circumstances to the Districts in which it has been or may hereafter be introduced, provision should be made by Law for empanelling a Special Jury, whenever the Judge may think it necessary for the ends of justice to adopt this course. His Honor is also of opinion that the time has arrived when an attempt may be made to prevent access to the Jury during the progress of a trial. On both these suggestions the opinion of the High Court has been asked, but the Court, without expressing any opinion as to the expediency or practicability of either course, merely state that, in the opinion of the majority of the Judges, these expedients would not be sufficient to meet the exceptional state of things prevailing in the District of Nuddea.

9. It would be quite practicable, the Lieutenant-Governor thinks, when the area of selection has been extended, to have in each District a special Jury List, consisting of fifty or sixty persons, and comprising the most respectable and intelligent residents of the District within easy reach of the Court, without unduly reducing the numbers in the common Jury List. Many of those who are now exempt by law from liability to serve as Jurors or Assessors might very properly be required to serve as Special Jurors, and many who, though not legally exempt from such liability, are excused from attendance, on account of having other public duties to discharge, would not seek to be excused if their attendance were confined to the rare occasions in which a Special Jury were to be empanelled, and if admission to the Special Jury List were regarded as a social distinction.

10. With regard to the proposal of shutting up the Jury during the continuance of a trial, I am desired to say that the evil to be apprehended from the present freedom of the Jurors from any such restraint is not so much that any direct attempt will be made to tamper with them by bribes (though instances of this kind have occurred), as that their judgment is likely to be biassed by hearing out of Court all sorts of rumours and conjectures connected with the case under trial, and that forming their opinions from what they hear outside (probably from persons interested) their verdicts are not founded upon the evidence placed before them in Court. It is to be feared that most Native Jurors placed more reliance on information which they pick up in conversation as to the real story (the *asl bât*) of a case, than upon any amount of evidence taken on oath before the Court. The evil is admitted, and so is the necessity for correcting it, but the difficulty lies in finding a remedy, owing to the social customs of Hindoos and Mahomedans in regard to their food. The difficulty, however, is by no means insuperable. In the immediate vicinity of most Courts there are buildings which could be made available for the accommodation of Jurors during the night, and if a separate room be provided for Hindoo, and another for Mahomedan, Jurors, and if their servants be permitted to attend them under proper precautions, the object in view may be sufficiently attained, without subjecting the Jurors to any breach of caste observances, or to more than a minimum of personal inconvenience.

11. If His Excellency the Governor General in Council should agree in this view, the Lieutenant-Governor is prepared to submit a Bill for carrying out the suggestions contained in the three preceding paragraphs either in Bengal alone, or, if it should be thought advisable, in all parts of India where trial by Jury has been extended.

12. The High Court have recommended that the number of the Jury should be reduced from seven to five. But the Lieutenant-Governor, before altering the present practice in this respect, would wait for the result of another year's experience. The enlargement of the Jury List will remove, in a great measure, the objection to the larger number founded on the greater inconvenience to persons liable to serve; and, in regard to the concentration of responsibility, His Honor is inclined to think that it might be accompanied by a diminution of independence and a greater susceptibility to external influences. The diminution of numbers from seven to five would also perhaps be somewhat inconsistent with the legislation of this year in respect to Juries for the trial of offences before the High Court on Circuit.

From V. H. SCHALCH, Esq., Commissioner of the Nuddea Division, to the Secretary to the Government of Bengal,—No. 121, dated the 16th June 1863.

I have the honor to report, with reference to your letter, No. 3928, of the 23rd ultimo, that trial by Jury has been introduced into two of the three Districts of this Division, viz., into the 24-Pergunnahs and into Nuddea. The Magistrate of former District reports "that it will be difficult for me to furnish you with any sound opinion as to the working of the Juries, inasmuch as neither I nor the committing Officers are able to attend the Sessions. The general opinion of the public is that a great many of the selected Jurymen are not fit for the post, and that there is a tendency to acquit all offenders, both on account of sympathy with those accused, as also the speediest mode of closing of their proceedings. This is merely what I gain from hearsay."

2. Mr. Grey, the Magistrate of Nuddea, observes:—"Before recording my remarks on this subject, I would beg to repeat what I have previously stated, viz., that the Magistrate is not, in my opinion, the Officer best qualified to report on the merits or defects of this innovation. He has no means of judging of the propriety, or otherwise, of the decision given by the Jury in the Sessions Court, for the evidence on which that decision is founded does not come before him, and even if he had such means of forming a true judgment, it is probable that his mind would not be altogether free from a bias in favor of the decisions made by the committing Officers, who, in concert with himself, are responsible for the administration of criminal justice, the suppression of crime, and the preservation of the peace.

"Viewing the question solely as connected with Judicial Administration, and applying to the Jury system the practical test supplied by a comparison of the number of acquittals compared to the number of convictions in cases committed to the Sessions, I should say that the

change has not been for the better. I assume (and I think I am justified in making the assumption) that, under the former system, the tendency of the Judge was, as a general rule, towards an acquittal; and that if it be shown that the number of persons acquitted in the Sessions Court now is greater in proportion to the convictions than it was formerly, the fair inference is that more guilty persons escape punishment now than formerly.

"It is not intended, I presume, that I should discuss the advantages and disadvantages of the system of trial by Jury as a system. It is only in its adaptation to this country that I should consider it, and I would remark, in the first place, that the very fact of the system being as it were forced on the people by Government, instead of its having been won by the people themselves as a right due to them, and as a safeguard of their liberty, must very considerably affect the moral results, which might otherwise be expected to spring from the innovation. I believe that by very few indeed of our Native fellow-subjects is the system regarded as a boon, and that its abrogation to-morrow would not only cause no discontent, but would actually give satisfaction to all but a few sufficiently enlightened to appreciate the privilege.

"I would note, in the second place, the disadvantage under which the innovation labors from the complete ignorance which exists on the part of European Government Officials as to the social characters and status of individual members of the Native middle classes. That this ignorance exists no one will deny, and that it must continue until the present barriers to social converse between the governors and the governed are removed is a fact equally patent. The effect is that the Collector, who is responsible for the preparation of the Jury list, is reduced to a reliance on his official subordinates, or on such casual information as he may be able to obtain, for his knowledge of the fitness, or otherwise, of the persons named as Jurors. As a partial remedy for this evil, I would propose that for the preparation of Jury lists, a Committee should be appointed to consist of the Collector and such other persons, official and non-official, Native and European, as might be recommended by the Collector and Commissioner, and approved of by Government. Each Member of the Committee should be required to furnish a list of the persons qualified to act as Jurors, and from those lists the Jury list for the year should be compiled.

"I have only a few words to add. The system is in its infancy in this country, and any present judgment regarding it must, I think, be premature.

"As a part of the Judicial machinery, the innovation is, in my opinion, not advantageous. As a means of education and enlightenment, and for the purpose of strengthening the Native character, the introduction of the system is to be so amended. Whether the Native middle classes are as yet fit for the privilege conferred on them remains to be seen. For my own part, I consider that it is very doubtful indeed whether they have courage and conscientiousness for the duty entrusted to them.

"I annex copy of a letter from Mr. Ryland, Deputy Magistrate of Kooshteah, who, from his long experience as a Criminal Officer, and his intimate knowledge of Native character, is, in my opinion, well qualified to give an opinion on the question now raised. I concur generally in his views."

3. I extract the opinion of Mr. Ryland, referred to by the Magistrate of Nuddea.

"I will not venture to assert that the natives as a body, and unassociated with Europeans, are morally unfit to be entrusted with the absolute and irresponsible power of conviction and acquittal; but I can have no hesitation in stating, from my own opportunities of observation, that there is prevailing, more especially in the District of Nuddea, so strong a party feeling amongst all classes, that the experiment of introducing the Jury system here at present is both inexpedient and unsafe. This is rendered apparent by the endeavours invariably made by defendant's counsel in all cases (whether arising between planter and ryots, or not having the remotest concern with either party) to connect the prosecution in some way or other with Indigo, and thus work upon the well known prejudices of the one class who compose the Juries. Such, I am informed, was the course successfully adopted in the two cases above alluded to, as well as in all the other cases in which there was not the slightest connection with Indigo.

"I doubt, also, if the population of these rural Districts have yet arrived at that state of independence and moral courage necessary to convict any wealthy or influential member of their community, however strong might be the evidence of his guilt; and their notions of crime may also be judged from the fact that in three instances of professional forgers last year, who were seized with their implements, the Jury acquitted,—but fortunately, under the old law, their verdict was over-ruled by the Judge.

"As Assessors, I have no doubt their natural steadiness may be of great service on trials, but I think it is yet premature to invest Natives with powers of a higher nature; and all whom I have had an opportunity of speaking to on the subject, even among natives themselves, have been of the same opinion.

4. Undoubtedly, the Judicial Officers who have to direct the proceedings of the Juries, are best able to form an opinion of the working of the system. The Executive Officers can only report the general impressions that are current as to the practical results of the system.

5. I believe that the country is not yet adapted for the introduction of trial by Jury. Even the higher classes of the people, with the exception, perhaps, of those residing in the immediate vicinity of the Metropolis, are not, by education, fit to act as Jurymen; while the peculiar tenets of their religion in many respects render a proper discharge of the duty attaching to that office, if not impossible, at least so repugnant to their most cherished feelings and prejudices, that it is seldom performed. On the other hand, when not influenced by religious motives, or by class prejudices or sympathies, the Native Juryman is generally totally ignorant of the first principles of the Law of Evidence.

6. However, the system has been introduced and must be retained; but I would vest the Judges with certain powers of rejection and selection, not of persons but of classes, so that, were there is reason to believe that a Brahmin might be, on religious grounds, acquitted solely through the religious scruples of Hindoos, or a failure of justice might be apprehended from the existence of the party-feeling, the Judge might form a mixed Jury of Mussulmans, Hindoos, and Eurasians or Europeans, so that no one religion or class should largely predominate; and if this were done, and great care taken in testing the qualifications of the persons selected to serve as Jurymen, and attention given by the presiding Officer in laying the fact of the case clearly before the Jury, I believe that the chief evils now complained of would be remedied.

From F. B. SIMPSON, Esq., Officiating Commissioner of the Dacca Division, to the Secretary to the Government of Bengal,—No. 143, dated the 16th July 1863.

In reply to your letter, No. 3927, of the 23rd of May, I have the honor to submit the Report of the Officiating Magistrate of Dacca, the only District in my Division in which trial by Jury has been introduced.

2. I wish briefly to remark that, in this District, there has been (as far as I am aware) as yet no case in which the real worth of a Jury has been tried. I would like to see how it works in cases where men of influence and wealth are arraigned. In the trials for rebellion before Mr. Pearson, held not long ago, it will be borne in mind that the Assessors invariably acquitted, and that execution issued on the verdict of the Judge alone, after reference to the High Court.

3. In Dacca, I believe, the Juries have been very little interested in the ordinary cases tried with their aid during the past, the only year of the experiment, and the verdicts have been given entirely as the Juries believed the Judge to have desired.

4. The first Jury trial, however, was held on a case committed by myself as Magistrate of Dacca to the Sessions, in which a Mahomedan woman had had the whole of her nose and about two inches of her upper lip cut off. There were no eye-witnesses, but the woman said her husband had threatened her about some jewels, and, in anger, in the night, had thus mutilated her. Her husband denied the crime and pleaded *alibi*, which was not proved.

5. I understand that the woman varied in her stories, but not in the principal facts. It was a strong presumptive case, and almost impossible that any one else, but her husband, could

have done the deed, which is a common Mussulman punishment when a husband detects his wife in adultery; but in this case the chastity of the woman was not impugned.

6. On the trial, the Judge remarked on the inattention of the Jury, and it afterwards turned out that the members, that is, the number of men sent to the Judge, half of whom were to be drawn for the Jury by lot, after having in vain endeavoured to avoid the duty, held a meeting the night before the Sessions trial, examined the Mooktears who had been present at the trial in the Magistrate's Court, who stated what the plaintiff, witnesses, and defendant had there pleaded, and on this the Jury deliberated, and the verdict was thus settled the night before the trial came on.

7. On the whole, I have no confidence in the Jury system for this part of Bengal, and believe that justice would be defeated in the more important trials, though it might work well in unimportant cases, where the parties were poor and insignificant.

From H. J. REYNOLDS, Esq., Officiating Magistrate of Dacca, to the Officiating Commissioner of Dacca Division,—No. 100, dated the 24th June 1863.

In reply to your letter, No. 508, dated the 4th instant, I have the honor to submit, for your consideration, the following remarks:—

2. The practical working of the Jury system appears to be a question falling under the cognizance rather of the Sessions Judge than of the Magistrate. As far, however, as I am able to judge, I should be inclined to think that the experiment has been somewhat prematurely tried in this country. While native gentlemen still consider it a disgrace to appear in our Courts of Justice at all, they cannot be expected to fill the post of Juror with credit to themselves, or with advantage to the ends of justice. The experiment has been attempted in Dacca under, perhaps, as favorable circumstances as could have been found any where in the Mofussil. The names on the Jury List reach the large number of 410, so that no one can be very frequently called upon to serve; yet, in my short experience, I have had several opportunities of knowing that the duty is looked upon as a burden, which all are anxious to get rid of by any means in their power. This must be the case until the people of this country learn to range themselves on the side of the law, instead of obstructing its proceedings by their apathy, even if they do not actively oppose it. Baboo Ram Coomar Bose, whom I have consulted on this subject, agrees with me that the experiment has not hitherto been successful, but considers that the fault lies in the deficiency of persons qualified for the duties of a Juror. He remarks that our Jurors have not even a superficial knowledge of the law of evidence, and of the distinction between various classes of crimes; that they are persons called away from their shops, or from their seats of pleasure or indolence; that they give their assent to what the most intelligent among them say, and usually give their verdict so as to please the presiding Judge. I cannot altogether concur in this opinion. It seems to me that the persons on the Dacca Jury List are equal in intelligence and education to the average of petty Jurymen in England, and I believe the idea that Juries are too much swayed by the summing up of the Judge will not commend itself to the experience of any one who has presided at a Sessions trial. The fault, it appears to me, lies deeper, and in another direction—the want of a Jurymen to be not so much clever as conscientious; we want men who are really anxious to further the ends of justice, and who feel interested in bringing the trial to a right result.

3. I have drawn up a Return which has a direct bearing on the practical working of the system, viz., a Comparative Statement of the result of Sessions trials in this District, under the old and new systems. I find that during the last six months of 1861 (under the old system), twenty persons were committed to the Sessions, of whom ten were convicted and ten acquitted. Under the Jury system, during the last six months of 1862, sixty-four persons were committed, and of these thirty-four were convicted and thirty acquitted. It would thus appear that the proportions to acquittals has varied very little.

4. In conclusion, I would remark that, although the introduction of the Jury system can at present be considered only as tentative, and an experiment which has not proved altogether successful, yet, in my opinion, the plan having been commenced ought to be persevered in. It

is important that our native fellow subjects should learn to take a part in the working of the institutions under which they live, and we may reasonably hope that the system of trial by Jury will eventually result, not only in a more extended knowledge of the law, but in a more earnest desire to further the ends of justice and a higher tone of public morality.

From C. F. MONTRESOR, Esq., Officiating Commissioner of the Burdwan Division, to the Secretary to the Government of Bengal,—No. 169, dated the 16th July 1863.

As directed in your letter, No. 3925, of the 23rd May last, I have the honor to submit a Report on the working of the system of trial by Jury, compiled from the remarks furnished by the several Magistrates in this Division, which I beg to extract *in extenso*.

2. In two of the Districts in this Division, *viz.*, Midnapore and Beerbhoom, the system has not been introduced, and their Magistrates have had no experience in the trial by Jury: Magistrates, generally, have no official knowledge of the steps by which the result in any trial by the Court of Sessions may have been arrived at, and I admit that I found this difficulty when Magistrate of the 24-Pergunnahs, and where I could gain no satisfactory information as to whether a prisoner procured his acquittal at the Sessions Court from the want of evidence; from contradicting testimony to that given before the Magistrate; from the summing up of the Judge; or from the Jury objecting to convict. All that I could arrive at was the accused were acquitted, and the general reason assigned by the Officer conducting the case was the determination of the Jury to release.

3. The opinions of the several Magistrates, which I here submit, are at variance with each other; but I am inclined to express my concurrence with those of Messrs. Palmer and Hogg. At the same time, I would notice that I should be prepared for a failure in justice in places and Districts where any unusual question or difference existed, such, for instance, as was illustrated a short time since in the Indigo Districts; but in other respects I am induced to believe that the system is one of good promise, but at the same time ought, as Mr. G. Young suggests, to be gradually and discreetly introduced.

HOOGHLY.—The Public in general approve of the Jury system in theory, but, as a rule, all parties regard with distaste serving on juries, partly in consequence of being called from their daily vocations for that purpose, and partly from the uncertainty of the parties who may be allocated with them as Jurors. In ordinary cases, the Jurors generally award a correct verdict on the evidence submitted to them, but much necessarily depends on the Judge's charge. In cases of homicide, justice would be better awarded if the case was tried by the Judge and Assessors. Instances have occurred in which a criminal has been acquitted by the Jury, when there has been most conclusive evidence of his guilt. Generally, where life or death depends on a verdict, Jurors, whether Mahomedans or Hindoos, are most unwilling to award a verdict, the consequence of which would result in a capital sentence. The distance within which, from the Court House, parties are bound to serve as Jurors, should be extended from ten to twelve miles.

BURDWAN.—Trial by Jury was introduced on the 1st June 1862, and since that date there have been forty-three cases committed to the Sessions. A verdict of guilty was returned by the Jury against the accused in twenty-eight cases. The people of the District are very averse to being placed on the Jury list, and it is very difficult to find a sufficient number of persons residing within ten miles qualified to act as Jurors.

HOWRAH.—I cannot, with my short experience of the working of the system, undertake to give a decided opinion upon it. At the same time I can easily conceive it possible that a Jury composed of men unaccustomed to weigh evidence might fail to see the bearing of many points upon the merits of the case and decline to assume the responsibility of convicting a prisoner, even when an experienced Judge would have no doubt of his guilt; and I am quite prepared to see many failures of justice, before Juries in this country can be depended upon to do their duty in all cases.

BANCOORAH.—Neither the system of trial by Jury nor Assessors is suitable in this country, as the Natives are hardly capable of giving a verdict solely on their own honest convictions. They are apt to be too much led by the presiding Officer, if not prejudiced and influenced in favor of one side or the other. The system simply annihilates the responsibility, which, in a country like this, ought to rest solely on the presiding Officer.

From G. F. COCKBURN, Esq., Commissioner of the Patna Division, to the Secretary to the Government of Bengal,—No. 269, dated the 19th August 1863.

I have the honor to acknowledge receipt of your letter, No. 3926, dated 23rd May last, and to submit, herewith, the enclosed letter, No. 748, dated 10th instant, from H. W. Alexander, Esquire, Magistrate of Patna, being the only district of this Division into which the system of trial by jury has been introduced.

2. Mr. Alexander's opinion is very unfavorable to a continuance of the system of trial by Jury, and the facts mentioned by him seem fully to support his views.

3. It is certain that in Patna at least the official character of every committing Magistrate must be seriously damaged, if he is to be judged by the results of the cases sent up by him for trial—this being one of the most important points relied on by his superiors in reviewing proceed-

ings at the close of the year, as may be seen from every Resolution of the old Nizamut Adawlut, or existing High Court.

4. Thus, when that careful and experienced Judge, R. Scott, Esquire, or his equally careful, though less experienced, *locum tenens*, A. W. Russell, Esq., were in Patna, and cases for the conduct of which they alone were responsible to their official superiors, to Government, and their God, were tried by them alone, the results were, in a statistical point of view, exceedingly favorable, whereas, under the system of trial by Jury, the results are wholly different, and as bad as can be.

5. Nor does the fault appear to lay with the committing Officers; for the Memorandum given by Mr. Alexander, in respect to commitments made by Mr Joint Magistrate Bignold, before and after the new system, at Patna and at Arrah, completely absolves him, and he is the Officer who has made nearly all the commitments in the years referred to.

6. Under the old system, Mr. Bignold appears, and really is so, an excellent, judicious, successful committing Magistrate, whether he be judged by results, in Patna or in Shahabad, before three good Judges, Messrs. R. Scott, A. W. Russell, and F. Tucker; but, judged by the results of cases tried by Jury in Patna, he would appear to be very inefficient indeed.

7. The results hitherto have a most depressing effect on Magistrates and Police, nor could it be otherwise, for at present the uncertainties of a case are so great that one does not know what to do. It is wrong, on the one hand, to continue to make commitments which have a chance of being deemed rash and simply ending in acquittal, and a Magistrate is not authorized by the present law to commit at all, unless tolerably sure of a conviction; while to err, on the other hand, is to encourage crime, and tends to paralyze the administration.

8. I would put the matter in this way:—If we admit that the system of trial by Jury, as at present carried on, is good, it is manifest, from the proceedings in past years, and since introduction of the new system, that the committing Officers and the Judges were, and continued to be, unfit for their posts. If this was not the case, and Government have confidence in this point, then the sooner the new system is abolished, in Patna at least, the better it will be for the administration of justice.

9. At present, the individual members of a Jury are not amenable to the voice of public opinion, as expressed among the Native community, or to comments from the Press—to the voice of their own consciences they may be—but they are also liable to other influences of fear, sympathy, &c., which must often, and especially in the numerous protracted trials, which are spun out over several days, prevent the exercise of an independent judgment.

10. Nor should the fact be overlooked that, under the system of trial by Jury, a Judge is relieved from a considerable amount of personal labor and responsibility in the conduct of a case from first to last, for he can and does devolve it on the Jury, and so there is not the same hold on him as before.

11. I prefer the system of trial by a really able, experienced, and responsible Judge, aided by Assessors; and considering the system of trial by Jury a failure in Patna, I am of opinion that it had better be done away with for the present.

P. S.—Three printed Copies requested for use in this and Magistrate's Office.

From H. W. ALEXANDER, Esq., Magistrate of Patna, to the Commissioner of the Patna Division,—No. 748, dated the 10th August 1863.

I have the honor, herewith, to submit the Report called for in your Circular Memorandum, No. 129, dated 2nd June 1863, forwarding copies of letters, as per margin, regarding the working of the system of trial by Jury.

From Government, to Commissioner, No. 3926, dated 23rd May 1863.
From Secretary of State for India, to the Government of India, No. 28, dated 30th March 1863.
From Commissioner of Chittagong, to Government of Bengal, No. 230, dated 16th August 1862.

2. The submission of my report has been somewhat delayed, owing to my having to make a reference to the records in the Judge's office, so as to enable me to contrast the result of trials of cases committed to the Court of Sessions previous to, and subsequent to, the introduction of the Jury system.

3. The following Tabular Form gives the result of all cases committed to the Court of Sessions during the years 1860 and 1861-62, and for the year 1863 up to July:—

		Total of Commitments.	Convictions.	Acquittals.
By Judge...	1860	40	31	9
	1861	40	28	12
By Jury.....	1862	44	24	20
	1863	21	7	14

4. From the above Statement it is very clear that, since the introduction of the system of trial by Jury, *i. e.*, since the commencement of 1862, the proportion of acquittals to convictions has been very much more than it was in the years 1860 and 1861, before the system came into force. It may be alleged that, perhaps, this result is rather owing to extra vigilance on the part of the Jury in sifting evidence, and in not convicting, excepting in such cases in which the evidence is very clear, or that the committing Officers may have been less careful in the preparation of their cases sent up for trial than they were. The former of these opinions I do not myself for a moment entertain, and the latter cannot be said to be the case, when the commitments made by one Officer and tried by a Judge in one year, are contrasted with those committed by the same Officer the next year and tried by a Jury, as it can hardly be alleged that during one year an Officer may have sent up properly prepared cases, and in the next committed cases which were not substantiated by the evidence brought forward in trial, and which should therefore never have been committed.

5. The above remarks I make particularly with reference to cases committed to the Court of Sessions by Mr. Bignold, during the time he was here as Joint Magistrate, and since he has held the same appointment at Shahabad. The Statement given below will show at a glance what I mean:—

MEMORANDUM SHOWING THE RESULT OF MR. BIGNOLD'S COMMITMENTS.

Tried by a Judge in 1861 *and* 1862 *(Patna.)*

	Cases.
Convicted and referred.....	8
Acquitted.....	1
Total...	9

Tried by a Jury in 1862 *and* 1863 *(Patna.)*

	Cases.
Convictions...	9
Acquittals	11
Total...	20

Tried by a Judge in 1863 *(Shahabad.)*

	Cases.
Convictions...	7
Acquittals	0
Total...	7

Total of cases tried by a Judge.

	Cases.
Convicted and referred	15
Acquitted	1
Total...	16

Cases tried by Jury.

	Cases.
Convicted	9
Acquitted	11
Total...	20

6. From the above, then, it is very clear that of cases tried alone by a Judge, the convictions were very satisfactory; while of cases tried by a Jury, the acquittals preponderate over commitments.

7. I wrote to Mr. Bignold on this subject, and he has authorized me to make any use of the information he has supplied me with; and I therefore consider it important to refer particularly to three cases which he committed, and in which the Jury acquitted the prisoners. In one case the defendant was charged, *first*, with attempting to commit suicide; *secondly*, with falsely charging his enemies with wounding him. In this case the Jury took it upon themselves to decide a point of law, and acquitted the defendant on the ground that he had cut his own throat when in a state of intoxication, and was therefore not responsible for his own actions. This opinion is, however, in direct opposition to Section 86, Act XLV of 1860.

The next case, Mr. Bignold informs me, was supported by evidence of the clearest kind. The Judge told him that he had instructed the Jury that there was evidence enough to convict twice over, and in an official letter characterized the verdict as contrary to the evidence.

In the third case, Government *versus* Subarin, the defendant was charged with a false complaint of theft in a dwelling-house:—He had, it appears, concealed some of his own ornaments of trifling value, and some documents, in a creditor's house, and charged him with the theft of the same, and a large sum of money. In this case, Mr. Bignold informs me that the Judge told him that he had tried hard to get the Jury to convict the prisoner, but that they would not do so, because the property belonged to the defendant charged with false complaint. This reason, as Mr. Bignold very properly remarks, shows that the Jury must have either entirely failed to understand the case, or else given a dishonest verdict.

8. At the last Sessions held in July, I committed a case of culpable homicide, on the clearest evidence against the prisoners. In an official letter, the Judge informed me that "the evidence brought home the charge to the prisoners, but the Jury did not rely on it, as the witnesses were the ryots of those who were at enmity with them." This may have been a reason for closely sifting the evidence of these men; but when that evidence stood the test of cross-examination, and, as the Judge remarks, brought home the charge to the prisoners, I am at a loss to understand why the prisoners were acquitted. Whether the fact of their being wealthy Zemindars, and men of influence, was the cause, I cannot say.

In another case of culpable homicide, tried at the same Sessions, the Judge charged for a conviction, but the Jury acquitted the prisoners.

9. Looking, then, at these cases, the result is very unsatisfactory, and disheartening, of course, to the committing Officers, who, after spending much time in obtaining evidence and preparing the cases for trial, find them thrown out by the Jury on certainly not sufficient grounds. Furthermore, it must be remembered that the result of all commitments appear in the Annual Return of Criminal Courts, and, of course, when the number of acquittals preponderate over convictions, the contrast is unfavorable to the committing Officers.

10. Judging from what I myself have seen, I am not an advocate for this system of trial by Jury. I am of opinion that the Natives of this country are not, as a body, sufficiently enlightened, either morally or intellectually, to hold the important position of Jurors. I have myself, in the course of conversation with many respectable Natives of this place, ascertained that they consider that, under the present system of trial by Jury, justice is not obtained; and, as far as my opinion may have any weight, I would strongly urge that the system be discontinued.

From H. T. PRINSEP, Esq., Registrar of the High Court of Judicature at Fort William in Bengal, to the Honorable A. EDEN, Secretary to the Government of Bengal,—No. 3325, dated the 29th November 1864.

With reference to your letters noted on the margin, and in continuation of my letter, No 1027, dated 11th December last, I am directed to forward, herewith, to be laid before His Honor the Lieutenant-Governor, the accompanying Minutes, recorded by the Judges whose names they bear, on the system of trial by Jury. I am also directed to forward copies of the Reports submitted to the High Court by the Judges of the 24-Pergunnahs and Nuddea, which, as especially evincing care and close attention to the working of the system, the Lieutenant-Governor may be glad to have an opportunity of perusing.

No. 8571, dated 23rd December 1863.
" 2097, " 28th April 1864.
" 3018, " 15th May "
" 3126, " 25th " "
" 3352, " 8th June "
" 3094T " 12th September "

2. His Honor will perceive that the Court is of opinion that a certain measure of success has attended the introduction of the system, notwithstanding a few instances in which verdicts have been given palpably against the weight of the evidence, and from which failures of justice have consequently resulted; but while expressing generally their opinion that the system has not been unsuccessful, the majority of the Judges are not prepared, at the present time, to advise its extension to other Districts, or to crimes other than those specified in the Chapter of the Penal Code, to which it has been already applied, as they think that, before doing so, a still further trial should be given of its working, from the result of which a more decided and trustworthy opinion as to its success or failure may be formed, than any that could be given at the present moment.

3. With special reference to your letter, No. 3094T, dated 12th September, and to the points therein contained, on which an expression of the Court's opinion is requested, I am directed to observe that the majority of the Judges think that the empanelment of a special Jury, at the discretion of the Judge, in ordinary cases, and the prevention of access to the Jury during the trial, would not be sufficient to meet the exceptional state of things now prevailing in the District of Nuddea; and that, whilst the present antagonism of classes continues, it will be better to suspend altogether the system in that District, in order effectually to prevent miscarriages of justice similar to those which have already occurred.

4. With reference to the question contained in the 3rd paragraph of your letter, No. 3094T, as to whether the list of persons qualified to serve as Jurors or Assessors may not properly be made to include all persons residing within fourteen miles of the Court house, the majority of the Judges are of opinion that, considering the increased facilities of travelling both by land and water, the radius from within which Jurors are now drawn may be properly and advantageously extended to fifteen or twenty miles, instead of ten miles—the distance from the Court house to which it is at present restricted; and they are further of opinion that a reduction in the number of the Jury, from seven to five, would conduce not only to the convenience of the persons liable to serve as Jurymen, inasmuch as their services would be less frequently required, but also to the improvement of the system itself, by the concentration of responsibility in a smaller number.

5. In conclusion, I am to take this opportunity of expressing the Court's hope that orders may be issued to Collectors to revise, at the close of the present year, thoroughly and carefully,

the list of persons in their Districts selected to serve as Jurymen, in order that, while no one of respectability and education residing within the limits of the Circle is exempted from serving, the names of persons not possessing these qualifications may not be allowed to continue on it.

Extract from a letter from the Sessions Judge of the 24-*Pergunnahs, No.* 74, *dated the* 14*th March* 1864.

Paragraph 33.—In obedience to your Circular letter of the 10th December last, I submit the following remarks on the system of trial by Jury under the Code of Criminal Procedure. I propose to arrange them under five heads: *first*, the difficulties attendant on the application of the system; *second*, the aptitude of the body from whom the Jurors are selected; *third*, the advantages of the system; *fourth*, its disadvantages; and *fifth*, such recommendations as occur to me.

34.—*First*, as to the difficulties experienced in pursuing the system of trial by Jury:—I have found a strong natural disinclination to serve on the Jury among those persons who are on the Jury list. Such a disinclination is doubtless common to all countries, where men are required to neglect their private concerns, and to give up their time to the public service, without any positive or appreciable remuneration. Thoughtful persons may possibly balance, against individual annoyance, the consideration that they are employed in the service of their country, and to some men there may be an attraction in the importance which their voice acquires; but a large number ignore all such ideas, and feel only the vexation and discomfort of attending a Court, and listening to evidence of facts in which they take no personal interest. Those who have enjoyed a good education admit the importance of the duty, and appreciate the trust confided to them; but the large class of shop-keepers, and persons employed in similar occupations, think only of time wasted. In this District also, a large number of persons on the Jury list are Assistants in the Public offices in Calcutta, and I receive constant letters from the Heads of such offices, as well as from private individuals, complaining of the inconvenience to which they are exposed, whenever an employé is taken away for a few days. Another source of complaint, chiefly from Europeans and Eurasians, is that they have a double duty to perform, that they are liable to serve on the Grand or Petty Jury in Calcutta as well as at Alipore, and that service in one does not exempt them from the other.

35.—The Jury list is also very imperfect. The duty of compiling it falls on the Collector's Nazir, who has in truth very insufficient machinery. Practically, I believe that the present list is little more than a list of the inhabitants of Punchanogram; and it comprises, as I have frequently experienced, the names of men who are dead, or who are disqualified by age or occupation. Nevertheless, it is doubtless easier to collect a Jury here than in other Districts; and this is an evil which may be corrected. I am now endeavoring to amend it by inserting in the list the names of all men whom I can find of a liberal education, or independent means, in the neighbourhood. This will, I hope, enable me to exclude the names of many who are in no degree fitted for the duty by social position, or by intellectual acquirements.

36.—The disinclination to serve is also an evil which must be disregarded if the Jury system be preserved. But a consequence of it is delay in disposing of cases. It is due to the Jurors that I should consult their convenience as far as I can, and make the duty as little irksome as is possible. It is always desirable to complete a trial in one day. It is scarcely possible to adjourn a trial for further evidence, because, if one of the Jurors were to absent himself in the interval, the trial must be commenced *de novo*. I must not summon a Juror too frequently; I must listen to every plausible excuse for non-attendance; I must not keep a Jury for many days; but I must summon on each occasion double the requisite number, because there are sure to be some absentees, and if the legal number is not in attendance, the proceedings are stayed until others are summoned with the proper forms. All these and other considerations lead to delay; and, although they are not perhaps very material, yet they must be considered as difficulties attendant on the

Jury system, when compared with the procedure in which the Judge has to consider only his own time and his other duties.

37.—*Secondly*, as to the aptitude for the functions of a Jury of those persons from whom Jurors are selected:—This aptitude must be moral and intellectual, and I regret to say, from my experience of the past year, that the Jurors, as a body, are deficient in both respects. It is not, of course, to be expected that a number of persons taken promiscuously from various classes of diverse religious persuasions and diverse occupations, whose habits and vocations afford no judicial practice, should bring into play the same careful attention to the facts elicited in the examination of witnesses, and the same careful discernment of the value of such evidence as the Judge who has made a study, more or less, of the science of judicature, and whose daily business is in the practice of it. That is a general objection to the whole Jury system; and it is the duty of the Judge to supply to the Jury the skill and intelligence in which they are necessarily deficient. But I think that we have to contend here with a moral inaptitude, which in some cases refuses to recognize offences, and in others estimates actions by an immoral standard. A Juror who goes beyond his legitimate province, who is not content to take the law as it stands, but gives his verdict rather in accordance with his opinion of what the law should be, shows a moral inaptitude; and I have found such cases of not unfrequent occurrence. In my charge to the Jury I have studiously avoided suggesting the verdict; I have done my best to place before them the evidence of both sides; and I have pointed out to them the tests by which they might estimate the evidence, and the circumstances which seemed to support or to nullify the statements of the witnesses. But I have always avoided disclosing, as far as it was possible, my own opinion of the merits of the case, and therefore, I think, that I have fairly tried their aptitude. Now it often happens that the prosecution depends mainly in the evidence of a single witness; and I have taken pains to impress upon the Jury that such evidence is full legal proof, if it be corroborated by other circumstantial evidence, and if there is nothing which directly militates against its credibility. But I have rarely found a Jury convicting on such evidence, although the nature of the case, as rape for example, precluded the presence of other witnesses, and although all the circumstantial evidence directly corroborated the story of the one witness. So also in cases of homicide, where the prisoner should have been held answerable for the result of his act, the Jury declines to convict if they believe that there was no intention to kill. In the case of offences in which the law necessarily allows a wide latitude of punishment, it is a common habit of the Vakeels, who defend the prisoners, to point out to the Jury the maximum punishment to which a verdict of guilty will expose their client, and to exhort them to avoid the responsibity of condemning him to a punishment so much greater than the offence deserves, and the Jury listens to the suggestion and acquits the prisoner on a ground with which they have properly no concern.

See trials of Nobin Chunder Lashkar, for culpable homicide, in May 1863.
Hariss Sirdar, for rape, in July 1863.
Azumuddeen and others, for causing hurt, in September 1863.
Mohendronath Mitter, for an unnatural offence, in January 1864.
Chunder Ketu Ghose, for culpable homicide, in the same month.
See trial of Chunder Siker Laku, for culpable homicide, in June 1863.
Manji Dhanuk, for culpable homicide, in January 1864.

38. These examples will explain what I intend to convey by the term moral inaptitude. There are worse cases, of a want of moral strength, of positive corruption, and I cannot say that there have been no examples of it during the past year. But it is necessarily mere conjecture, and therefore I do not particularize such cases. It is, however, difficult to avoid such a conclusion, when you find the Jury acquitting in the face of clear and positive evidence of guilt, and especially when some person of influence is connected with the case, or when the trial has been adjourned till the next day, and the Jurors have spent the night in their own homes, exposed to the influence of intimidation or interest, or an appeal to mercy, or more direct corruption.

39. There is also an intellectual inaptitude. There are Jurors who sit in stolid indifference to all the evidence, making no endeavor to form a judgment on what is before them, and taking no interest in the trial. Such men must always be found among persons whose selection does not depend on their intellectual attainments; but I do not allude to such unhappy persons,—

See trials of Dwarik Mochi and others, for murder, in May 1863.
Gobind Chunder Banerjee, for forgery, in July 1863.
Dwarkanath Dutt, for forgery, in January 1864.

I refer rather to the very general want of the power of appreciating the force of a chain of presumptive evidence. The Jury rarely convicts here, without direct evidence of the act charged, or without such positive proof as to preclude the possibility of a doubt—I do not mean a reasonable doubt. Where two women were alone together at a tank in the open field, and one of them ran screaming to the village, with the blood flowing from a severe wound on the back of the neck, and the other ran away, it appeared to me unreasonable to acquit the latter of a charge of wounding, because it was within the bounds of probability that the other might have wounded herself. This want of intellectual power would be of less consequence if the Jurors would submit their own judgments to the more tried experience of the Judge. It is said that Juries are predisposed, by the force of usage and public opinion, to have regard to all that is said by the Judge; but Bengallee Juries are hard to teach. They prefer their own conclusions, and reject the recognized tests of credibility; and they introduce into their considerations matters which are not properly before them as proved in evidence, or which amount only, legally speaking, to a baseless assumption. As an example of this, I will refer to a case of homicide, which I tried, in which the Chowkeydar of the village and three others were charged with removing the dead body, in order that evidence of the homicide might disappear. The proof depended on the evidence of three eye-witnesses, and was exactly the same in regard to all four prisoners; but the Jury convicted the Chowkeydar alone, and their reason for this extraordinary conclusion was that, being the Chowkeydar, he must have been aware of the homicide, or perhaps that he ought to have been aware of it. I may add that the evidence appeared to me deserving of every credit, and that the Chowkeydar was justly punished although the ground of his conviction was insufficient.

Trial of Tustee Mussulmani, in January 1864.

See trial of Mohendronath Mitter, for an unnatural offence, in January 1864.

Trial of Kazim Chowkeydar and others, in January 1864.

40.—As a further illustration of what I have said, I may refer to a trial for dacoity, in which I directed the Jury to acquit the prisoners, because the facts proved by the material witnesses did not constitute the offence of dacoity as legally defined. One of the Jurors withstood the direction, on the ground that the offence must, in his opinion, be dacoity, as the acts charged were done during the night, and I had some difficulty in making him understand that his province as a Juror was to decide on the facts and not to interpret the law.

41.—Cases of this kind force one to the belief that the Jury system, however well adapted to more barbarous times, or however useful as a check upon the Judge, and a shield for the people, in the case of political offences, or of offences politically considered, is not suited to the state of society in this country as it now is. It appears to me that the justification for its use will not be found in the inaptitude of the Judges, arising either from ignorance, partiality, or other bent of mind or accident of official position, nor in the aptitude of the body of the people to exercise the functions of Jurors.

42.—And this brings me to consider the advantages and disadvantages of the system. As regards the advantages, I observe that I do not require to consider in this Report the expediency of using the Jury as a check upon the Judge, because the offences in regard to which such a check is popularly considered to be advisable are not tried with the aid of a Jury, and from my present experience I could not recommend the extension of the system. The only advantages, therefore, of which I am cognizant are, *first*, the satisfaction of the community, and, *secondly*, the saving of appeals.

43.—As to the first, I am assured by those who have the means of knowing the facts, that the large body of respectable Native gentlemen fully appreciate the trust which the system confides to them, and desire its continuance; that many consider it "a duty which they owe to their country," and that they are not averse to the personal inconvenience which it entails on them.

44.—And as to the second, I think that it is expedient to avoid the necessity of an appeal. I am fully persuaded of the necessity of an appeal when the conviction depends on the discernment of the Judge alone, but I am as fully convinced of the enormous difficulty with which an Appellate Court has to contend, when the decision must be founded on recorded evidence, and not on evidence taken *viva voce* in the presence of the Judges. I believe that it is impossible so to record evidence as to convey its full value, and therefore, I believe that evidence can never be fully appreciated from a bare record. During the past year, there has been but one appeal to the High Court on the facts from the judgment of this Court, but it afforded a pregnant instance of the difficulty to which I have adverted, for the judgment was reversed, and the prisoner acquitted, because the Judges who tried the case could not believe the evidence, whereas I am quite sure that they would have given entire credit to it, if it had been taken in their own presence.

45.—As to the disadvantages of the system, I have already alluded to some, in speaking of the want of aptitude of the Jurors. Where this inaptitude leads to frequent acquittals in a particular class of offences, the effect must be obviously detrimental. Take the case of forgery;—there is a large number of persons in the classes from which Jurors are selected, who do not regard forgery as a moral offence, and who would not scruple to use a forged document as a legitimate weapon, or a fair stroke of policy. When such persons are required to sit in judgment on a charge of forgery, they would probably shrink from condemning to severe punishment the prisoner, whom they regard not as morally guilty, but as practically unsuccessful; and in a similar manner the inaptitude of Jurors must frequently lead to misdecisions, and every misdecision has a tendency to encourage offenders. It is said that the error into which one Jury falls will probably not be repeated by another Jury composed of other members, but the principle of error is the same, and the considerations which have led the one set of men to acquit erroneously will lead another set into the same misdecision. It is to be observed that there is not a similar danger of erroneous conviction. The inclination of a Bengallee Jury is always to acquit; and to obtain a conviction, there must be evidence which excludes doubt. But an erroneous conviction causes no injury to the community, for the facts of the case are not generally known; the guilt of the prisoner is assumed, and the example has the same weight as if the punishment had, in point of fact, been well deserved. The injury is felt by the one man only, and that may be speedily alleviated. If the Judge should be of opinion that the verdict was manifestly against the evidence, he would doubtless recommend a pardon, and there is little chance of error when the Judge concurs with the verdict of guilty. But in the case of an erroneous acquittal, the law has provided no remedy, however manifest the error, or however obvious the corruption. The prisoner leaves the dock on the instant, free to commit fresh crimes, and other persons tempted to perpetrate similar offences calculate their chances with increased hardihood.

46.—Another disadvantage is to be found in the diminution of the Judge's responsibility. When the conviction or acquittal of the prisoner depends not on himself but on the Jury, there must be a natural tendency to bestow less care in eliciting facts, and in weighing evidence. Possibly this would not often occur. Possibly it may be a positive advantage in the case of some Judges (and I have seen examples), whose consciences were so tender of a possible error that they could scarcely permit their natural intelligence to convict. But Judges so constituted are happily rare; and I apprehend that it is inexpedient, on account of such fortuitous benefit, to weaken in any degree the feeling of responsibility which should be paramount with a conscientious Judge.

47.—Lastly, I come to such recommendations as appear to me expedient. It seems to me, as I have said, that the present complexion of the public mind is not fitted to the Jury system. But I would not, on that consideration, recommend its abolition after so short a trial. There is much to counterbalance the evil in the special advantages which I have named. The satisfaction of the community must not be lightly disregarded, and there is another advantage consequent on the system, which, though remote, is certainly appreciable. It acts as a school of justice. It developes the intellectual faculties of the Jurors, creates an interest in the administration of criminal justice among a continually increasing number which would not otherwise exist, and furnishes improving subjects of conversation in the social circle. This is not mere theory. It is

a repetition of remarks which have been made to me by a Native gentleman, and whatever tends to promote self-education, and consequent self-respect, is obviously beneficial. If it should be found, on further experience, that there is no improvement—that Jurors do not exercise the privilege honestly, but take advantage of it to foster crime—I should still hesitate to recommend a total abolition of the system. I would rather retain the institution, but so reduce the power of the Jury, that the Jurors should become mere Assessors. Looking at the institution as a school of justice, there is an obvious advantage in the system of Assessors by which men are required to explain the grounds in which they have formed their conclusions. The verdict of a Jury is no less an authoritative verdict, because the Jurors are unable to state the premises of it, or because, in point of fact, it is directly opposed to a conscientious judgment.

48.—In the meanwhile, I would endeavour to improve the system, and the administration of it. With this view I am now striving to amend the Jury list, as I have said above, and I propose also to have on every trial a mixed Jury of Europeans and Eurasians with Natives. Hitherto it has been the practice to summon the former only, when the prisoner was of similar blood; but I trust that the admixture will lead to discussion in the Jury-room, and to more reasonable verdicts. It hardly beseems the Judge to discuss with a Jury the propriety of a verdict which they have delivered, but among themselves there should be the most free discussion; and the presence of persons among them, who are probably better able to understand the reasoning of the charge, and the true value of the evidence, would tend to make such discussions useful, and would lead to a more sound, as well as more pure, administration of justice.

49.—I would also propose, for the consideration of the High Court, one alteration in the law. As the law now stands, the verdict of a sufficient majority of the Jury is conclusive as to the guilt or innocence of the prisoner. But I think that, when the Jury is not unanimous for the acquittal of the prisoner, the Judge should be permitted to pass sentence, in conformity with the verdict of the minority, if he be of opinion that the prisoner is clearly guilty on the evidence. In such case it would be necessary to give the prisoners the right of appeal on the facts, or perhaps to make the sentence inoperative, pending confirmation of it by the High Court. The Judge would not take the responsibility of acting on this provision, unless he had strong grounds for his assurance of the prisoner's guilt on the evidence; but he would be able to correct manifest mistakes, and to defeat obvious corruption.

50.—It has also been suggested to me that the Judge should have the power of locking up the Jury for the night, when a trial is necessarily adjourned, where the prisoner is a person of some wealth or prominence, or is connected with such persons; the trial is frequently prolonged beyond the limits of one day, and I have observed that the conviction of the prisoner is rare in cases in which the Jurors have returned to their homes in the course of the trial. I am of opinion, therefore, that the exercise of such a power might, in some few cases, be expedient; but, at the same time, I cannot recommend the proposal for adoption, because there would be so many difficulties in carrying it out. The want of any proper accommodation, and of the means of providing food for men of various habits and various religious persuasions, renders the plan, I think, impracticable.

51.—I am not aware of the reasons which led the Government to determine that a Jury in this District should be comprised of seven members, but looking to the difficulty of compiling a Jury list so full that each Juror should be required to serve only once during twelve months, I am of opinion that a Jury composed of five members would serve all purposes. Sessions are held in this District every alternate month, and, on an average, each Session occupies three weeks. If a Jury is kept for a whole week—a long period to keep a man away from his private affairs—and if allowing a sufficient margin for deaths, absence, &c., we calculate ten men to each Jury, the list must contain 180 names. But in fact the Jurors complain very much if they are detained for more than three days, and in that case we require a list of not less than 300. It is scarcely possible to obtain so large a number of qualified persons in this District, and in any other District it would be, I apprehend, impracticable to get so large a number of persons capable, in the smallest degree, of exercising the true functions of a Juror.

From R. THOMPSON, Esq., Officiating Session Judge of Nuddea, to the Registrar of the High Court of Judicature at Fort William in Bengal, No. 27, dated the 27th February 1864.

I beg to submit the Report, called for in your letter, No. 1026, dated 10th December last, on the working of the system of trial by Jury in this District during the year 1863.

2. I had the honor of reporting last year to the High Court on the subject now under consideration, and expressed an opinion generally favorable to the new system, which had then been in operation only for some eight or nine months. We have now the experience of another year to guide us; and having carefully superintended and watched its work during the past twelve months, I am glad to be able to confirm the good opinion which I had ventured to express in my first Report.

3. The Jury system has been in force throughout the year 1863, and the subjoined Statement, in the form prescribed by your letter, No. 423, of the 18th April 1863, will show that there have been forty cases involving 125 persons brought to trial in the Sessions Court during that period. All these cases have been tried with the aid of a Jury, and the results are that there were convictions in twenty-two cases, comprising fifty-seven persons, and acquittals in eighteen cases, comprising sixty-eight:—

District.	Convicted.		Acquitted.		Remarks.
	Cases.	Persons.	Cases.	Persons.	
Nuddea...	22	57	18	68	

4. At first sight these results may not appear very satisfactory. Regarding the Statement as evincing an undue proportion of acquittals to convictions, it might be supposed that there is something at fault in the system or in the constitution of Juries in the District, which manifests itself in an unwillingness to convict, and creates therefore an impunity for crime. I am convinced, however, the fault is not with the Juries, but is caused by the careless, and in some instances unnecessary, commitments made by the Magisterial Officers in the District. I had the honor, in submitting my last report on the subject, to refer to this point. The Penal Code and the Procedure Code had then been in force but for a very limited period; and it was due in a great measure to the fact that the provisions of neither of these important laws had been generally understood by the many young and inexperienced officers, who held powers of commitment to the Sessions, that cases came up very imperfectly prepared, unsupported by good and satisfactory evidence, or full of irregularities of procedure in the Court of first instance. During the past year there has certainly been an improvement in all these respects; though some cases have still been committed to the Sessions Court in 1863, the circumstances of which in my opinion did not hold out any reasonable ground for conviction, while in others the lower Courts would have done better in at once disposing of them themselves.

5. It appears that when a prisoner has once been committed to the Sessions Court, the whole case must go before the Jury, and that there is nothing in the present Code of Procedure which enables the Judge to quash the commitment, even should he find, by a perusal of all that the Magistrate has to say on the subject, and by an examination of the Mofussil evidence, that there is no case whatever to go before a Jury. A commitment was made to this Court, during the past year, in which a prisoner was charged with having intentionally given false evidence by stating that, in proceeding from his home to the hât in another village, he had often seen the cow (about which the dispute existed) fastened to a stake in A's house. Evidence was produced to show that A's house was at a distance from the road, and could not possibly be seen by a person passing along it. But it never seems to have struck the committing officer that it was quite possible for the defendant to have gone off the road for a moment, and actually to have seen what he deposed to, and therefore that there was nothing false in his deposition, or that proof was requisite (which was, of course, not attempted) that the prisoner had never left the road on any occasion on which he had travelled from his house to the market in the neighbouring village.

6. Other cases of a similar nature have arisen which, I believe, a Judge under the former procedure would have at once quashed as unnecessary to try, but which by the present law a Judge is bound to submit for the opinion of the Jury.

7. It is also worthy of notice that we have no preliminary inquiry in our Zillah Courts, such as that by which a Grand Jury in criminal trials elsewhere first hear evidence on behalf of the prosecution, and inquire whether there be sufficient cause to call upon a party to answer the indictment. Any such procedure would eliminate very many of the cases, which, in its absence, are now only disposable by the Jury empanelled to try and determine the charge. These explanations are admissible, I think, to show that, in considering the results of trial by Jury as existing in this Court, there are good and valid grounds for the comparatively small number of convictions as compared with the acquittals during the same period.

8. Referring to the return of last year, the results even in this respect shows a very great improvement, and compared with the figures of preceding years (as shown in the subjoined Statement), it does not exhibit any very marked difference:—

	Acquitted.	Convicted.
1859...	9	15
1860...	12	14
1861...	18	30
1862...	41	30
1863...	18	22

9. I am the more confirmed in the opinion that the duties of the Juries in this District have been properly discharged, in that I can refer to only three cases in which the verdict of the Jury has not coincided with the opinion of the Court; and of these there is only one case (and that of very unimportant nature) in which I can confidently affirm that the verdict of the Jury was directly against the evidence adduced.

10. Of the three cases alluded to, one referred to the conviction of two persons charged with many others in a case of dacoity, and found guilty by the Jury of knowingly retaining in their possession property acquired by theft. One of the defendants had stated in his defence that the property found by the Police in his house belonged to himself, and the witnesses he had cited fully supported him in his statement. There was equally strong evidence, in the side of the prosecution, that the property belonged to the plaintiff; and, as corroborative of this fact, it was also found that in the list of the things stolen, which had been furnished by the prosecutor before the investigation commenced, mention was made of the articles found in the prisoner's possession. As a matter admitting of some doubt, I should have been disposed (had the finding rested upon myself alone) to have given the prisoner the benefit of the doubt and acquitted him. The Jury, however, found him guilty, on the grounds, partly that the defendant had been prominently named by the confessing prisoners as having been concerned in the commission of the dacoity, and partly, as they explained it, that the articles found with the accused were of that kind which were not likely to be found in the possession of a person in the position of life of the prisoner.

11. As regards the other defendant, a silver chain had been discovered in his house concealed in an earthen vessel under some rice. The article was clearly identified as belonging to the prosecutor, and the defendant admitting the finding of the chain as stated, and also that it did not belong to him, alleged in his defence that the article referred to had been brought to his house by his son-in-law. This man had been arrested by the Police, but was acquitted by the Assistant Magistrate for want of proof. It was proved that he had been living with his father-in-law, the defendant before the Court; and on these grounds I was of opinion that, in the absence of clearer proof of the guilty knowledge of the prisoner, he was entitled to an acquittal. I cannot, however, say that, in taking a different view of the case as regards both these prisoners, the Jury had not some reasonable grounds for their finding.

12. The two other cases in which I found reason to dissent from the verdict of the Jury were cases in which the defendants were acquitted. In one, the prisoner (a female) had been

charged, under Section 371 of the Penal Code, with the exposure of her child under twelve years age, with the intention of wholly abandoning it. It was proved by the witnesses examined that an infant of a few days' old, ascertained to be the daughter of the prisoner, had been found in a ditch at some distance from the house which the defendant had been recently occupying. The prisoner could not be found in the place, but was brought back late in the evening of the same day by some persons who had seen her in a neighbouring village, and took charge of her child. She stated in her defence that she had taken some intoxicating drugs to assuage her pains, and had wandered away in a state of unconsciousness, but had no intention of abandoning her child. The whole case turned upon the intention of the prisoner; and it appeared to me, taking the whole of the defendant's conduct into consideration—her having left her own home for her confinement, and come to a place where she was a perfect stranger, the distance of the place where the child was discovered from human habitations, and the strong probability that the woman would never have come back for her child, had she not been discovered by some of the villagers,—regarding all these circumstances, I was of opinion that the prisoner was guilty of the offence charged against her. The Jury took a lenient view of the case, and acquitted her. It is impossible to say where the question of guilt turned upon the motives and intentions of the accused, that the Jury were wrong in their verdict. It was clearly a case were different opinions might be conscientiously formed by different persons, and no general deduction can be made from such a verdict unfavorable to the capabilities of a Native Jury for coming to right conclusions upon the evidence submitted to them.

13. In the last instance, also an acquittal, the finding of the Jury was beyond doubt at variance with the evidence, but there are circumstances in the case which admit of explanation. The prisoner was charged with voluntarily causing grievous hurt. It was proved very clearly that, in a quarrel with the plaintiff, the defendant had struck his opponent one blow with a lattee, and fractured his collar bone. There were no aggravating features in the case, and the commitment of the defendant to the Session Court was solely necessitated by the fracture of the bone, which brought the case within the definition " of grievous hurt." The prisoner's defence was a simple denial, and no witnesses were called on his behalf. The Jury, in returning a verdict of acquittal, did so with the explanation that they thought the defendant had been already sufficiently punished by his detention during the investigation into the case, and also, as one of the Jury subsequently remarked, because they had referred to the Section under which the offence was punishable, and found that it involved so severe a punishment as seven years' imprisonment.

14. It had never struck me in charging the Jury that such a consideration could possibly have entered into their heads in arriving at a decision upon the evidence. It is probable that I should not have passed a severer sentence than a few weeks' imprisonment, and it was of course clear that the Jury had gone beyond the bounds of their proper functions in entertaining at all the probabilities of the extent of punishment which might result from a verdict of guilty. The explanation, however, confirmed me in my opinion, which I had found reason to entertain from the year's experience of the working of the system, viz., that a mistake is very liable to occur in occasional instances from the misconception which prevails amongst Jurymen of the duties and responsibilities of their office.

15. The error is that in nearly every instance they regard themselves rather as Judges of the case than as a Jury empanelled to give their verdict upon the evidence submitted to them as to the guilt or innocence of the prisoner. I suppose the theory is that in a trial for an offence alleged to have been committed, where both sides (as is generally the case) are represented by Pleaders who examine and cross-examine the witnesses, the whole case is, with the assistance of the Judge, placed before the Jury in a manner which comprises all that can be said for or against the accused person, and that upon this the Jury are required to return their verdict. But in this Court there can be no doubt that the Jury are not satisfied unless they have full opportunity of putting their own questions to witnesses sometimes at an unnecessary length, and occasionally (if permitted) on points quite irrelevant to the inquiry. It would, of

course, be a greater evil if a Jury had not the power of removing any doubts which might exist in in their minds as to the statement made by witnesses in such trials, and accordingly I have never hesitated to accord to the Jury the privilege, within certain limitations, of putting questions through the Court to the witnesses in a case. But their manner of doing this, the nature of the questions they sometimes put, and their reluctance to give up a point which has been held to have no immediate connecton with the subject matter of the inquiry, or which it is not in their province to inquire into at all, tend to show that they go beyond the requirements of their position; and that, in an occasional case like the one to which I have made allusion, they are ready to act according to their own notions of justice, though at variance with the defined rules of law, and, instead of bringing in a verdict of guilty, with a recommendation to mercy, acquit the prisoner from fear of heavy and disproportionate punishment.

16. I have said "an occasional case," and the number of cases decided to the complete satisfaction of the Court shows that it is in a rare instance that such an error has arisen. Still a Native Jury is liable, from a misapprehension of their exact duties, to fall into such a mistake, and, considering the very short experience they have had of judicial investigations, it is not surprising that such misconceptions should at times arise. With a view of obviating such mistakes in future, it might be of advantage if some short Manual of Instructions could be drawn up for the guidance of Juries, explaining to them briefly and generally the scope of their duties, and the extent of their responsibilities in criminal trials.

17. The tenor of the above remarks will point, however, to one very favorable feature as regards the conduct of Juries, and that is, that whatever liability to error there may be from their ignorance of their proper functions as Jurors, the will and desire to do right and justice are very manifestly present. I can confirm this from my actual experience of the trials which have come before me. They are attentive throughout the trial to the whole proceedings; they deliberate most carefully when they have retired to consider their verdict; and have shown, in many instances, where points of law were involved—and they had therefore to depend entirely upon the direction of the Court—their anxiety not to be led into an error, by further applications for information on points of doubt and difficulty.

18. I cannot, therefore, but express my satisfaction with the working of the system in the past year. The presence of a Jury in criminal trials has been of essential assistance to myself, and I am convinced is regarded by the Natives themselves as a safeguard against errors of judgment, and a guarantee that all the details in a case will be fully understood before any conclusion is formed. Whatever confidence a Native may have in the strict and unswerving impartiality of the European Judge, I am not so satisfied that he ever places the same reliance in his power to comprehend all the intricate details which are involved in a difficult case where only Natives are concerned; and it is just in these cases especially, where questions of caste, and questions involving family disputes, and Native social life and manners are constantly arising, that a Jury taken from the body of the community and intimately acquainted with the ordinary transactions of Native life, are in the best position for giving most material assistance to the Court.

19. I should be sorry, therefore, if upon any considerations, based upon less favorable returns from other districts, it should be thought necessary to propose the general abolition of the system of trial by Jury. I feel sure it would be a retrograde measure. Every year I hope to see an improvement of what, in its present stage, can only be regarded as an experiment; and while no institution could be better devised for leading the people to think and act more independently for themselves, to rely less upon the opinions and assistance of others, and to trust more to their own energies and exertions, we shall find that the diffusion of the knowledge of the laws, in the practical administration of which they take so responsible a part, will produce a more intelligent attachment on the part of the Natives to the Government under which they live.

20. In conclusion, I would beg to call attention once more to the very limited area from which the list of Jurors is now prepared. I entered at length in this part of the subject in my last Report, and would beg respectfully to suggest, once more, that the 10 mile limit, prescribed by Section 329 of the Criminal Procedure Code, and adopted by the Government in this district, should, at least, be somewhat enlarged. The extension even to only 16 miles would materially lighten the labors now imposed upon Jurors, by bringing within the area of selection places of importance like Santipore and Ranaghat, which are directly connected with the Sudder station by good roads. During the last six months the epidemic which has prevailed in this neighbourhood has so much reduced the number of available Jurors, that inconvenience has been caused in the conduct of cases, and an unnecessary hardship imposed upon the few who were able to give their assistance to the Court. Relief in this direction is due to those who have so often given their time gratuitously to the Public Service.

Minute by the Honorable Sumboonauth Pundit, on the Jury System.

The system of trial by Juries was entirely a novelty in the Mofussil; and, as particular care has not, from one cause or another, yet been taken to secure the assistance of the best of the inhabitants available, and to exclude ignorant and illiterate persons, I did not anticipate that the Reports in favor of its working would be so gratifying as I find they are.

It is to be borne in mind that the better portion of the Native community—persons who think themselves respectable by reason of birth and social position—have a strong antipathy to sit alongside of persons whom they consider as inferior to them in these respects. Any apprehensions that might have been at first entertained regarding the failure of the system, from the prejudicial effects of *religion* and *caste*, are found by experience to be without any foundation.

The case of a human sacrifice to the Goddess Kalee was an exceptional case, and related to a crime of rare occurrence. No reasonable ground is left for any apprehension that Juries may be found averse to pronounce a verdict of guilty against persons tried for crimes which would render them liable to a sentence of death.

To a certain extent, however, the prejudices of caste and religion will, at first, operate upon the minds of Native Juries, but time will cure these defects to the extent desirable for ordinary purposes of justice and fair trials.

It cannot be denied that in several cases justice has miscarried. It is, however, to be observed that ordinarily these miscarriages are in *bad acquittals*, and it is clear that some of these may be traced to the faults inherent to the system itself.

In cases of homicide, where the prisoner is charged upon different counts, Juries composed of men who have not received any legal education might reasonably be apprehended to be found incapable of exactly understanding the exact nature of many of the counts, and the definitions and nice distinctions of the several kinds of homicide mentioned in the law, and sometimes to confound one with the other. I do not, however, see that many or great mistakes have been made on this subject; and if they are made, time will cure the defect to a certain extent, but until the mass of the people are better educated, the evil will not be removed entirely. In every case it is not to be taken for granted that the Jury was wrong, because it passed a verdict opposed to the view of the Sessions Judge.

The miscarriage of justice in the two cases in Nuddea is not a sufficient ground for suspending the system in that district.

The right to object allowed to the prosecutor is not likely to prove of any sufficient use. Means should be tried to obtain a better class of Jurymen than have been ordinarily secured; and if, notwithstanding, it is found that, as a rule, local prejudice and partizanship are too strong to secure proper verdicts, Government must be compelled to suspend the system. I am not prepared to recommend any extension of the system as yet.

Let the system work for a couple of years more before it can be proper to think of extending it to all cases, or to other cases besides those to which it is at present applicable, and to other districts to which it has not yet been extended.

The 5th September 1864. (Signed) SUMBOONAUTH PUNDIT.

Minute by the Honorable W. Morgan, on the Jury System.

I think we may safely say—the little it is proposed we should say, in favor of the new system. I do not object to the prudent course of waiting longer before it is extended to new

districts, but it seems to me that no sufficient cause has been shewn for its entire suspension in Nuddea. If in that district Juries have given the Sessions Court "invaluable aid," let them continue to do so, notwithstanding a few "bad acquittals in cases in which Indigo Planters were concerned." "Bad acquittals" are not unknown elsewhere. I may venture to add that they would probably be more frequent elsewhere, if Juries were drawn from the immediate neighbourhood of the place where public feeling is excited, and were occupied three days in the trial of one case, separating at the close of each day.

I think, besides what is proposed, we should suggest to the Bengal Government to enlarge the area from which Jurors are drawn (*see* Section 329 of Criminal Procedure Code), and that the Court should exercise the powers which it possesses (Section 35) of transferring a case for trial in a district other than that in which the offence may have been committed, whenever the ends of justice will thereby be promoted. In all possible cases, criminal trials by Jury should begin and end on the same day, and I would strongly impress this on the Sessions Judge.

The 18th August 1864. (Signed) W. MORGAN.

Minute by the Honorable F. B. Kemp, on the Jury System.

I have had no practical experience of the working of the system of trial by Jury in this country. The system was not extended to Zillah Backergunge, of which District I was for many years Sessions Judge.

The Zillah Judges, on the whole, report favorably of the system, and would give it further trial.

No one will doubt the incidental advantages of trial by Jury. To the public at large the administration of criminal justice is made more popular when the community have a voice in the matter. It is a strong check upon inefficient Session Judges; it prevents official tyranny; and in all but exceptional cases guarantees fair play to the prisoner.

In the Zillah of Nuddea, although the system has worked well on the whole, the result of recent trials in that District has shown us that it is not safe to entrust the Native community with the functions of a Juror in cases in which Indigo Planters or their dependents, are concerned; fair play and honesty are wholly lost sight of, and a spirit of class antagonism is allowed full sway. I would suspend the operation of the system of trial by Jury in that District, until this spirit of antagonism passes away. The Collectors should be directed to revise the Jury list with great care. I have reason to believe that the selection is practically in the hands of the Collector's Nazir, and that parties who can pay for exemption are exempted. The duties of a Juryman being unknown to a Native, there is certainly a disinclination to serve as a Juror. If the selection were entirely in the hands of the Collector, and the Jurymen were selected with reference to their social position and education, and treated with respect and deference, the system would become more popular.

I would also extend the area within which the selection is to be made. At present, with the facility there is for travelling by rail or by water, the area is too confined; it should be extended from ten to eighteen or twenty miles. The number of Jurors might be reduced from seven to five, as suggested by the Sessions Judge of the 24-Pergunnahs.

If it be deemed advisable to retain the system in Zillah Nuddea, in consideration of the general advantages which have resulted from its introduction, I would suggest that trials in which Indigo interests are involved should be transferred to some other District, or be tried with Assessors, who are bound to give their reasons for the opinion they arrive at.

The 19th August 1864. (Signed) F. B. KEMP.

Minute by the Honorable G. Loch, on the Jury System.

As far as I can judge from the cases that have come before me, I think that Juries are apt to convict on insufficient evidence. Much, however, depends on the presiding Judge, and the manner in which he lays the case before them. From my limited means of observation, I should say that, on the whole, the Jury system has worked very fairly, and appears to have broken down only where strong class interests are in opposition. I should, however, be very sorry to see the

Jury system withdrawn from Nuddea, because of the failure of justice in two or three cases, owing to the evident antagonism of classes. If, however, this spirit continue, there will be no other means of preventing injustice, but by so doing.

Every thing should be done to render the system popular by enlarging the Jury list, and making the burden of attendance fall as lightly as possible on those who are liable to be called upon to sit on Jury.

The 10th August 1864. (Signed) G. LOCH.

Minute by the Honorable F. A. Glover, on the Jury System.

I have had, I may say, no practical experience of the working of Juries, having been only for a few days Judge of a District in which criminal trials were conducted with their aid. I do not therefore consider myself justified in opposing my opinions, which are theoretical only, to those of the great majority of officers who judge favorably of the system from having had a practical acquaintance with its working during the past two years. On the contrary, I am quite ready to admit that those opinions are far more likely to be correct than my own, and that the difficulties which appeared to me to stand in the way have turned out to be imaginary.

It only remains, therefore, for me to express an opinion on the other points referred to in the correspondence that has been submitted to the Court.

With regard to the peculiar circumstances stated to exist in the Nuddea District, I would not at once take away from it the privilege of trial by Jury, but would limit its operation to cases in which the planting interest is not concerned. I do not think that the mere fact of drawing Jurymen from a distance would have any effect whatever, as the feeling which prompts unjust findings in such cases would be equally rampant all over the Indigo Districts, and it appears (at present at all events) to be too deep-seated to allow of any exception.

It would be equally undesirable, in my judgment, to transfer this class of cases to other Districts where the peculiar feeling does not exist; it would be creating an anomalous and very troublesome precedent, and would, besides, cause such an amount of delay and inconvenience as practically to do away with trial by Jury altogether.

Until the present state of bad feeling in the Nuddea District subsides—which it probably will do when both planters and ryots arrive at a correct idea of their several liabilities—there seems to be no remedy, but a return to the old system of trial with the aid of Assessors in all Sessions cases in which either class interest is involved.

In the meantime, both in Nuddea and in all the other Districts, to which trial by Jury has been extended, a strong effort should be made to improve the feeling with which Jurymen themselves look at the subject. Trial by Jury may be popular in the abstract, but service as a Juror is undoubtedly the reverse. The reason is, I suppose (indeed all the Reports sent in allude to the difficulty) that Jurors are at present unnecessarily harassed; and that, in lieu of serving once or so in a twelve-month, they are frequently summoned thrice as often. This can only be avoided by the Collectors making a more careful census of the persons qualified to act. By "more careful" I mean one that he should make up from his own personal knowledge of his District; where this is wanting, the compilation of the Jury list is left to one of his ministerial subordinates, and a timely fee to the Nazir saves many a proper person from being ever named even as one fit to sit on a Jury.

I would lighten the Collector's duty in respect of the selection of Jurymen by enlarging the radius within which he is to look for them. Were this radius extended to twenty miles, and the number of Jurymen reduced to five, there would be a much better field for the selection of fit men, whilst the labor of serving would be individually much less heavy.

I am not sure, moreover, that the present method of selection is not too circumscribed; there are many villagers who, though they can neither write nor read, would make very shrewd and intelligent Jurors. The village punchayuts of the North-West are composed of such men, and their decisions are respected. In the Central Provinces I have often received valuable assistance from them. To make an efficient Juryman intelligence is wanted, not learning.

Something, I think, might also be done by working on the feelings. Jurymen might be got to think it an honor to serve; a little judicious management on the part of the authorities in this respect, a little fostering of the *amour propre*, would get rid of many of the objections that are now held against serving. Let Native Jurymen feel that the Judge is really anxious for their assistance, and that such assistance is not considered merely nominal, and the result will, I think, be a considerable improvement on the present state of things. Care must, of course, be taken in striking Juries that prejudices are interfered with as little as possible, and that the elements of which the Juries are composed are as homogeneous as is compatible with the due administration of justice.

I would not be in a hurry to extend the system to other districts, although, so far as importance goes, there are many on the same category as the seven in which trial by Jury is established. We have hardly had sufficient time to pronounce a decided opinion one way or the other; and there are besides other circumstances, into which I need not enter, which would have to be considered before the extension could be made general. Its success is not at present of that clear undoubted description that would warrant its introduction at once into all the districts of Bengal; it would be better to wait, I think, and watch its progress in those districts to which it has been already applied.

The 19th September 1864.

(Signed) F. A. GLOVER.

Minute by the Honorable G. Campbell, on the Jury System.

In my opinion trial by Jury in criminal cases, as an invariable rule of absolute right, is incompatible with, *first*, a despotic administration, that is, a form of Government not politically free; and *second*, a society composed of two or more classes or races not socially and politically homologated and amalgamated.

For it is of the nature of trial by Jury, that the Jury exercise a practical power of occasionally over-riding the law in a direction which they may consider equitable and expedient in the particular case of, in fact acquitting on the ground of, "served him right;" and when the laws are not made by the same popular class from which the Jury is taken, such variations between the law and popular opinion are more frequent, and the equitable power of varying the law is inconsistent with the scheme of Government.

And when unamalgamated classes are living and dealing together, trial by Jury is sometimes not trial by Peers in the only sense in which trial by Peers is proper, that is, when the Jurymen are the Peers of both parties, of the injured party and of the accused. When class questions arise between the two unamalgamated classes or races, to try a man of one class, for an offence connected with such a class question, by a Jury of his own class only, is a course which cannot be depended on to lead to a fair result. Hence it may happen that, while the laws of the Governors forbid Suttees or sacrifices to Kalee, the feeling of Jurymen may be that such acts are not criminal, and they may acquit with or without pretexts, which would not otherwise have influenced them; and when on an Indigo question, a Native is tried by a Jury of Natives, or a European by a Jury of Europeans, the impartial public may distrust the verdict, as possibly, more or less, influenced by a class bias. Such a difficulty seems to be felt not only in the Nuddea Sessions Court, but also in the Consular Courts of China and Japan.

On the other hand, I have a strong opinion, which is, I think, fully borne out by the papers now before us, that, if provision be made for exceptional cases, the use of Juries is most valuable, both to improve and popularize the administration of justice, and as a means of socially and politically raising and educating the people. The experience which we have of the system in Bengal seems undoubtedly to show that it has succeeded beyond the most sanguine expectations. Therefore, I think, that the proper remedy for the very few exceptional cases of wilful miscarriage which have occurred is to provide a special remedy for such cases, not to destroy or suspend the whole system either in all districts or in any district.

I observe that it has been proposed by some of my colleagues to suspend trial by Jury in the Nuddea district. Now, so far as one can judge by the reports, that appears to be the very

district in which the system has, generally speaking, worked most successfully. The reports and opinion of the intelligent Judge who presides over the Nuddea Court were till recently altogether in favor of the system. The proposal for suspending the system in Nuddea appears to be founded on two cases only, in one of which there may possibly have been some pretext for doubt in the minds of the Jury, while in the other there could scarcely have been any whatever;—both were class cases connected with Indigo; in both the Jury were no doubt influenced by a class feeling.

Now, it seems to me that if the whole system of trial by Jury in a great district is to be suspended indefinitely, on account of the occurrence of one or two cases of miscarriage, such suspension will from time to time occur in one district after another, and the fair working out of the system will be impossible. This remedy for such exceptional cases seems to me cumbrous and inconsistent with the system as a system, nor does it prove the means of meeting future difficulties of the same kind. I think that it is necessary to provide a permanent means of meeting such difficulties without crushing the whole system, and I venture to propose the following, viz., that, by legislative enactment, the High Court should be authorized, in any case in which it seems proper to do so, to order that the trial of a particular case shall not be by Jury, but that the case shall be tried by a special Court of three Judges, at least one of whom shall be of not less degree than Civil and Sessions Judge, and none shall be of less degree than Magistrate of a district, or Principal Sudder Ameen (provided that such Magistrate has not been concerned in preparing the case for trial); that the verdict of such Court of three Judges, if unanimous, shall be final on questions of fact, if by a majority, shall be open to appeal on questions of fact.

This rule would, of course, be inconsistent with the English idea of trial by Jury as a political safeguard. It is in order to withdraw political cases from Juries, and because in this country political cases ought to be withdrawn from Juries, that I would give this power to the High Court. The Court not being in any degree a political or an executive body, its exercise of this power would be free from the objections which might be made to the exercise of such a power in individual cases by the Government or by any executive authority. It would probably be but seldom necessary to exercise such a power, so that the consequent pressure on Judicial Officers would be but slight, and, when required, such a tribunal as I proposed could be very easily extemporised. The necessity of substituting such a tribunal would prevent the light withdrawal of cases from Juries, and also prevent, in those advanced districts in which trial by Jury has been established, a recurrence to that most unsatisfactory tribunal, a Judge with Assessors. I cannot but think that a simple remedy for all difficulties might thus be provided, and one of permanent operation. With such a safeguard I think that, after the favorable experience we have had, trial by Jury might perhaps be extended to some other districts and to some other offences. But this would depend on the supply of sufficiently qualified Judges.

With respect to the difficulties of detail in the working of the Jury system, it is clear that a wrong conviction can be righted on the representation of the Judge. The danger consists in two cases; *first*, where an ill-qualified Judge, not doing his duty fairly and temperately, and expressing clearly and lucidly both sides of the case, imposes on a subservient Jury his own opinions, and thereby obtains, as the verdict of a Jury, a conviction which is really his own, and thus shuts out appeal on the facts in the very case in which it is most required; *second*, where the Jury wrongly acquits. The first danger can be obviated by employing in Jury districts only specially qualified and reliable Judges—a course which the Court has lately urged on Government. The second is, to a certain extent, a necessary evil of the Jury system; but if provision be made for withdrawing the few special cases on which a political, religious, or class bias may be apprehended, I do think that the evil will operate to such an extent as to weigh heavily against the advantages of the system.

I concur in thinking that the number of the Jury should be reduced to five. The number to which the ancient traditions and customs of the country attach a peculiar judicial sanctity, making the Jury in fact a *punchayut*, and relieving the people from the too great burden of a public service, which, in its present shape, is new to them. I also think that the radius for de-

scribing the Jury area should be increased to, say, fifteen miles, and it is quite clear that most stringent measures are required to enforce a careful and accurate preparation of the Jury lists.

The 8th September 1864. (Signed) G. CAMPBELL.

Minute by the Honorable E. Jackson, on the Jury System.

It was always a very serious question, whether the system of trial by Jury ought to be introduced into this country. But as that has been determined in the affirmative, it only remains to give it full scope, and allow the people to derive from it all the benefits which are said to accompany that system. My impression from the Reports on its working is that the system has been as successful as could possibly be expected. Considering the great difficulties which must always accompany its introduction, and particularly those which must attach to it in a country in the condition of Bengal, the Judges do not always agree with the verdicts of the Juries; but it is by no means certain, even on the report of the Judge, that he is right and the Jury wrong. In some of the cases alluded to, it is very probable that the Juries were right as being best able to judge of the facts. It is evident, however, that, even when it works best, there are certain difficulties attendant on the system which cause a failure of justice. These have been felt in one District only, viz., Nuddea, and it is a question for immediate decision whether some measures should not be adopted to remedy these defects. One measure suggested is to deprive the District of the benefits of that system altogether. But this appears to me to be taking a retrogade step, and to be giving in on the appearance of the first difficulty. Besides, if this is the only remedy which we can propose, we shall very soon put an end to the system in every District. There is no doubt that in its introduction it is not a popular mode of conducting trials, but one extremely harassing to that of the community on which its duties fall. If a few acquittals will gain exemption from these duties, Juries will not be slow to avail themselves of that means of relief. I concur with those who think that the remedy which is given by the law itself is sufficient for the evil complained of in this District. The verdict of the Jury is influenced in certain special cases by the antagonism which exists in the District between certain classes. The remedy is to remove the trial of such cases to a neighbouring District, the 24-Pergunnahs, which is easy of access, and where no such class disputes exist, and where the Juries may be fairly expected to give impartial verdicts. The High Court has full power to order this, and any application to exercise that power ought to be complied with where sufficient grounds are shown. The application should be made by either party—prosecutor, or accused—who supposed he could not obtain an impartial trial. The application might be made to the Judge, who would forward it with his opinion for the order of the High Court. It should be made also in sufficient time.

The recommendation that the number of the Jury be reduced, and the radius of the tract from which the Jury is drawn be extended, ought to be complied with.

The 14th September 1864. (Signed) E. JACKSON.

Minute by the Honorable C. B. Trevor, on the Jury System.

I would send up to Government the Reports of the Judges, remarking that those of the Judges of the 24-Pergunnahs and Nuddea especially evince care and close attention to the working of the system of trial by Jury.

The opinion of the majority of the Judges is favorable to the general working of the system. One Judge only, that of East Burdwan, thinks trial by Jury a system attended with innumerable evils, and one which should be postponed for "at least half a century." The Judge of the 24-Pergunnahs, though not favorable to the system, yet admits that it has some advantages.

There have been some cases in which conviction and acquittal have occurred contrary, in the judgment of the presiding Judge, to the evidence on the record. When convictions of this nature happen, the remedy is easy, the case has only to be reported to the Court, who will, if necessary, address Government, with a view to the granting of a pardon to the person wrongly condemned. When, however, acquittals occur there is no remedy, and a failure of justice is the result.

It would be absurd to hold that, whenever the Judge and Jury differ as to the guilt of a prisoner, the former must be right, or to condemn a system, because Jurors may sometimes err; errors on the part of Juries occur frequently in England, where the community has no desire for the abolition of the system.

When, however, errors occur in cases in which particular classes are concerned, and when these errors lead but to one result, it is a presumption that it arises from circumstances out of doors; and the question then arises whether the system should not be altered, modified, or suspended in that part of the country in which the miscarriage of justice arises from these disturbing causes.

Two cases have been brought to the Court's notice by Government which occurred in Zillah Nuddea, and in which, in the Judge's opinion, justice has miscarried. The first is a case of culpable homicide not amounting to murder, in which the Jury released the accused parties; and the second is a case of forgery, and of giving false evidence in a Court of Justice, attended with the same result. In both these cases the prosecutors were Indigo Planters, or parties connected with them, and the accused were ryots or former servants of the Factory.

It appears to me that in both these cases there should have been a conviction. In the former case there was no doubt an attempt on the part of the Factory people to get up a false case about a coolie who was alleged to be missing, and who was traced to Raneegunge and brought back by a detective Inspector, and this fact may have led the Jury to distrust the whole of the evidence against the accused; but this conduct would seem to be unreasonable,—for granting that the spleen of the deceased Rammohun Banerjee was diseased, as it seems to have been the case from the Doctor's evidence, still, from the evidence of the prosecution, there can be no doubt that the accused persons, by their violence, accelerated the death of the deceased, and therefore they should not have been acquitted of all offence. Again, in the second case, the evidence as to the forged nature of the pottah produced by the prisoner was proved by the evidence of the person whose signature was forged, and by that of other persons, and the false evidence of the party deposing to the truth of the pottah was clearly proved by the evidence showing that the witness had been dismissed from service some days previous to the date of the alleged pottah, to the execution of which by Mr. Tripp he bore witness. The Jury disbelieved the whole of the evidence, though on what ground does not appear. Now in these cases there seems no doubt that the feeling of antagonism to the Planters, pervading all classes of Native society in Nuddea, led to the results complained of. The question then remains, what is the remedy for the state of things in Nuddea? Three remedies are suggested, viz:—

1*st*.—The institution of special Juries or the power of bringing Jurymen from other Districts than that in which the offence has occurred, and the trial takes place; 2*nd*, the abolition of trial by Jury in certain classes of offences in Nuddea; and 3*rd*, its total abolition in that District until society returns to a state in which it can be called in with safety to assist the Government in the administration of criminal justice. The first remedy suggested seems to me to be no remedy at all. The class feeling existing in Nuddea pervades all classes from the highest to the lowest. A special Juror, wealthy and of high caste, will not be a safer Juryman than the present Jurors, being open to the same prejudices and in an equal degree. As to bringing Jurors, either special or ordinary, from other districts, the scheme seems absurd; it is opposed to the principle of Jury trial as understood at the present time, and would seem in no way to get rid of the feeling complained of, for the antagonism of class is not confined to Nuddea, though from circumstances it is patent there, whilst it is latent elsewhere. The second remedy would be feasible were it possible to define and limit the class of cases in which the class feeling will occur, but this is impossible. An Indigo Planter's servant is killed, or a riot occurs, in his land, or his name is forged, and false evidence given in support of it, the cases coming under different classes, the parties accused of the crime are acquitted. To eliminate these classes of cases from those triable by Juries would be to leave hardly any to be so tried, for as yet trial by Jury has been extended only to offences falling under Chapters 8, 11, 16, 17, and 18 of the Penal Code. The third remedy seems the only one remaining; seeing the disorganized

state of society in Nuddea, it appears to me to be the only one that can be suggested with any fair chance of success. It is, of course, a subject of regret that the system once commenced should be interfered with for a moment, but circumstances are stronger than systems; and until the feelings between Planters and their dependents and the rest of the community become softened and less hostile, I would recommend that the system of trial by Jury be suspended in Zillah Nuddea.

The third case brought to the Court's notice by Government is one of murder in the 24-Perguunahs. That the finding of the Jury was an error, and that the evidence was clear and conclusive as to the guilt of the prisoner, seems to me not to admit of doubt. If, however, a Jury will not convict on the evidence of one man, even though that evidence be a dying declaration fortified by many facts most unfavorable to the prisoner, one may lament the error of a particular Jury, but the error can form no valid argument for the abolition of the system, or for a general condemnation of it.

The improvements connected with the trial by Jury recommended generally by the Judges are:—

1st.—The more careful preparation of the list of Jurors by Collectors.

2nd.—The reduction of the number of Jurors in each trial from seven to five.

3rd.—The extension of the system to all offences committed to the Sessions.

The first point of reform suggested is very necessary. It is universally admitted that the Jury lists have not been prepared by the Collectors with due care and attention. The list should, therefore, be revised at the end of the present year, and care be taken that all persons within the prescribed area, who are qualified by their education to serve as Jurors, are entered in it. At present the list is partial; and it follows that the duty of the Juror is heavy, and therefore distasteful to the people. If Government would direct the attention of Collectors to the importance which it places on the proper performance of this duty, the list would be greatly amplified and improved, and, by consequence, the system become more popular, and with the popularity of the system its improved working would be concurrent.

The second point of reform seems also to be expedient; it will make the Jury more handy and increase the chances of the panel being composed of men up to the average mark of Jurymen, and will render the duty less irksome to Jurymen, as they will not be liable to be called on to attend so frequently.

The third point on which alteration is recommended seems to me to be at present premature. The system has not yet been sufficiently long in force to warrant its general introduction; it is in fact still upon its trial; another year or two are necessary to enable the Court to recommend with confidence either its general introduction or its abolition.

I would, therefore, report to Government that, on the whole, the Court is not dissatisfied with the general working of the Jury system, but that it cannot just yet recommend its general introduction for the whole country, or its extension to all the offences tried by the Sessions Court even in the districts in which it now is partially in force; that, from the peculiar circumstances above alluded to, it recommends its present suspension in the district of Nuddea; and that it strongly advises that the Collectors be instructed by Government to revise the Jury list carefully, so as to include all who from education and character are qualified to serve as Jurors, and that the panel should in future consist of five and not seven Jurymen.

The 5th August 1864. (Signed) C. B. TREVOR.

Minute by the Honorable H. V. Bayley, on the Jury System.

I have only seen these papers for the first time four days ago.

I do not think that one or even two years is a sufficient period to enable the Court definitively to report upon the working of the Jury system in the seven districts of Bengal in which it has been tried, if by the working of the system we are to understand its success or failure.

It was an experiment of much difficulty, for it gave irresponsibility except to the Juryman's own conscience, and at the same time power equal to that of the Judge. It required also independence from the Juryman, both in respect to the views of the Judge and the peculiarities of Native social life. Little real comparison, therefore, can be properly made between this system and that of Assessors, who sat knowing they had neither responsibility nor power to convict or acquit.

Nor could such a system as this new Jury one, under surrounding circumstances, in Bengal, be capable of getting into full working order for a year. It was, in fact, just such an experiment as could *not* succeed in its true sense, but after time should have been available to raise the minds of Native Jurymen by *degrees*, after their individual experience of its duties to the higher standard of conscientiousness and independence which the system, as one of principle, contemplates. Time, combined with judicious care in the selection and treatment of the Jurymen, may, and I think will, yet make a real success of the plan, just as a few years of superior education and prolonged experience in their new posts have made our new Moonsiffs now admittedly good and independent, and conscientious and able Judges of our Courts of first instance.

I do not think we should blame Collectors for the lists not yet being perfect.

Collectors are not unfrequently changed so often that the practical knowledge of character, which the experience gained by long stay in a District alone can give, is not available to them. In order to remedy this in some degree, I would make it a rule that each Collector give his successor a memorandum of his opinion of those who have been employed as Jurymen and of others in the existing list, and as to those who he thinks should be taken off or added to it. Much, too, will depend on the tact and judgment of the Judicial Officers who have to deal with, and charge, such Juries, and it cannot perhaps always be that in each of these seven districts there is available a Judge of experience and other qualifications.

In the district of Nuddea, the system has failed owing to its peculiar state of feeling in Indigo matters and its strong Brahminical influences.

The system should temporarily be suspended there, and this, I think, will eventually prove of good effect.

I would ask Government to call on Collectors themselves to revise their Jury lists carefully, and to give their successors a confidential memorandum of their views of the men in their districts most fit to be Jurymen. I would suspend the Jury system in Nuddea, and not call for a report of the working of the system till it has been in full force for three or four years.

(Signed) H. V. BAYLEY.

The 15th August 1864.

Minute by the Honorable C. Steer, on the Jury System.

My experience coincides with Mr. Loch that Juries are more apt to convict than to acquit, and I predicted as much even before trial by Jury was introduced.

Judges and Juries are only too apt to look upon the accused as surely guilty, whether the evidence impartially received establishes his guilt or not. There being no appeal except on a point of law from the sentence of a Judge passed upon a prisoner tried before a Jury, I have often felt myself in a very painful position in having to uphold a sentence where the evidence against the accused was weak and doubtful.

As a general rule, then, Juries do not acquit where they ought to convict, but in Nuddea they have been found to do so in particular cases. To meet this exceptional state of things, it appears to me that, if special care is taken to get together a Jury of Native gentlemen, there will be little fear of a verdict dictated by class interests.

(Signed) C. STEER.

The 16th August 1864.

Minute by the Honorable W. S. Seton-Karr, on the Jury System.

I have read these papers carefully; and though I have had no experience in the actual trial of Sessions cases with the aid of Jurors, I have seen a great deal of the criminal cases so tried on the Appellate side of the Court, and have paid particular attention to the charges delivered by the several Judges to their Juries.

When trial by Jury was first introduced by law, I entertained some fears and doubts of its success from various reasons. I am happy to state that several of these doubts have not been realized, while, from my own observation, as well as from the reports of the seven or eight Zillah Judges, or Judicial Commissioners, who have had full opportunities of working the system, I am glad to be able to state that the system has, on the whole, been a success; at least it has been quite as successful as we could have expected. So far from wishing its abolition, I should rather wish for its extension to large and populous districts, other than the seven in which it is now in force in the Regulation Provinces. The advantages of the system are briefly as follows:—It gives educated members of the Native community a direct interest in the good administration of justice; it secures a more full and searching inquiry into the merits of the case than is perhaps attainable with the Assessors, who, however able the Judge may be, manifest less interest in the progress and decision of the case; it gives finality to justice, and, by limiting the abuses of the appeal system, is calculated to intimidate the criminal classes, and to check crime. I know few things more discouraging to earnest officials, anxious for the welfare and peace of the community entrusted to their charge, than to know that from every trial, however fully and carefully conducted, an appeal on the merits, to a distant Court, can be admitted on the production of a mere scrawl, purporting that the convicted person disliked his sentence. Unquestionably, the new Code of Criminal Procedure has remedied many of the glaring defects of the old system, but still, under Sessions trials with Assessors, an appeal is lawful in every case, and there are very few cases in which such an appeal is not preferred.

I regret that here I must record my deliberate dissent from the opinion recorded by my Honorable Colleague, Mr. Steer, that "Judges and Juries are only too apt to look on the accused as surely guilty, whether the evidence, impartially reviewed, establishes his guilt or not." Such a sweeping assertion is, to my thinking, most unjust, and is wholly unwarranted by any facts within my experience, while it is moreover directly refuted by the reports and statements which we have now before us, in which the proportion of acquittals is rather large, and from which it is apparent that the worst cases of failure of justice have been cases of *unrighteous acquittals* by perverse or prejudiced Jurymen. My opinion is strong that the final decision on the merits, in strengthening the hands of the executive authorities, in deterring criminals, and in adding to the security of life and property, is a public benefit which has scarcely received its full measure of appreciation.

As regards unjust convictions, if such could not be set aside on a point of law, such, for instance, as that the conviction was wholly without evidence, or if we could not order a new trial, as we have sometimes done, there would be always a resort to Government as the fountain of mercy, and any injustice committed in this way would be soon remedied. Very few, if any, cases of this sort have occurred.

With the other evil of an unrighteous acquittal, it is not so easy to deal. In regard to two cases in Nuddea, which were lately published in the *Government Gazette*, no candid or impartial person can doubt that the accused were acquitted in the teeth of evidence, and to the total miscarriage of justice. The remedy for this state of things lies, however, it appears to me, in the total abolition of trial by Jury in all cases. On this point I concur with Mr. Justice Trevor, and think that the temporary suspension of the system will be sufficient. Even English Juries, at various periods of our history, have shown themselves liable to be influenced by prejudice in political cases, and I know no reason, founded on an estimate of their moral and social character, why we should expect Bengallees at a particular crisis to be more impassive or impartial than Englishmen.

As for the selection of Juries from other districts, or from higher classes, or the suspension of trial by Jury only in cases in which Indigo Planters are concerned, I hold that such remedies would be abortive and ineffectual. All Native classes, high and low, are influenced by their social feelings on such matters, and it would be expensive and inconvenient to transfer such trials to others districts, in which, after all, the same spirit might be found to prevail; nor, again, would it be easy to say beforehand to what cases this peculiar feeling might

not extend, or into which the vexed questions of rent and Indigo might not enter. The remedy then, and the only remedy as it seems to me, is to suspend the Jury system in Nuddea until the excitement and difficulties engendered by the Indigo disputes shall have entirely terminated. I may remark that I am aware of no reason why the Jury system was at first extended to Nuddea at all; and why, when so extended, it was not also extended to the neighbouring and similar district of Jessore.

In the latter district, there was the same danger of excitement on account of Indigo cultivation. The same class of cases was likely to come before the Courts, and the power of selecting Jurymen from educated and intelligent Natives was, at least, equal in Jessore to what it was in Nuddea.

If trial by Jury, at its first institution, was well suited to Nuddea, it was, to all appearance, equally well suited to Jessore; and, if after trial, no one would now recommend its extension to Jessore, it would seem from parity of reason, and from past experience, that it should be forthwith suspended in Nuddea. Its suspension, then, will also have a good general effect, and will teach Jurymen not to acquit against all evidence and probability.

As regards its extension to all cases, whatever, in the districts where it is now in force, I am against any such extension. This would embrace such cases as adultery; and from the experience I have had of such cases, I am decidedly of opinion that an appeal on the facts and merits should still be allowed. In a case in Tipperah, lately, great injustice would have been done had an appeal on the merits not been allowed, and one case alluded to by the Judge of the 24-Perguunahs, which I find, on careful inquiry, to be a prosecution for adultery, instead of justifying the deductions of the Sessions Judge, confirms me still more in my view that the proposed extension is inexpedient.

The evidence in the case alluded to was, however specious, in reality, monstrously absurd, and it was wholly discredited by *three*, and not only by two, Judges of our Court, while it had been also wholly rejected by a very highly educated, wealthy, and intelligent Juryman at the Sessions. Many most important facts had been excluded from the decision of Mr. Beaufort, and the difficulties and absurdities that lay in the way of a conviction had been quietly smoothed over.

Had the trial been finally terminated according to Mr. Beaufort's wish, and to that of a majority of a Jury under his direction and guidance, I have no hesitation in saying that a gross piece of injustice would have been committed.

But while I would retain trial by Jury for those classes of cases to which it is at present applicable, I would extend it to other districts in which, I think, it would be a benefit. Why should not Tirhoot, for instance, and Bhaugulpore, or Gya, have their trials by Juries? And I take this oportunity of recording my wish that Judicial Officers of such experience and capacity as Mr. C. S. Belli and Mr. C. P. Hobhouse could be entrusted with the direction of Jurymen, whom they would, I have no doubt, charge as ably and impartially as Mr. Rivers Thompson charges them in Nuddea.

On the whole, I would sum up my recommendations as follows:—

1st.—Trial by Jury should be at once suspended in Nuddea.

2nd.—It should not be extended to cases other than those to which it is now applicable where it has been already introduced.

3rd.—It should be extended, as early as possible, to other important and populous Districts, where there is likely to be a good supply of Native Jurymen.

4th.—The geographical area for selection of Jurymen should be extended from ten to sixteen, or even twenty, miles.

5th.—The more careful preparation of the Bill of Jurymen by the Collector should be imperatively insisted on.

6th.—The Jurors should be reduced from seven to five in number.

I shall be glad if we can most of us concur in the above recommendations.

(Signed) W. S. SETON-KARR.

The 23rd August 1864.

No. 38. To the Honorable Sir C. H. SCOTLAND, Knight, Chief Justice of Her Majesty's High Court of Judicature, Madras; dated Fort Saint George, 7th October 1865, No. 1435.

In transmitting to you the annexed copies of a letter from the Government of India, and of its enclosures, I am directed to request that you will have the goodness to call for reports on the working of the system of trial by Jury under the Code of Criminal Procedure, in the Zillahs to which it has been extended in the Presidency, and that, in communicating the result, you will favor His Excellency the Governor in Council with any observations that the Honorable the Judges of the High Court may wish to offer on the subject, and also with their opinion as to the expediency of extending to this Presidency the proposed enactment to provide for the constitution of Special Juries, and for preventing access to Jurymen during the progress of trials.

(Signed) W. HUDLESTON,
Acting Secretary to Government.

Exd. J. H. Burns.

No. 846

FROM
E. C. BAYLEY, Esq.,
Secretary to the Government of India,

To
The Chief Secretary to the
Government of Fort St. George

Home Department.
Judicial.

Simla, the 9 August 1865.

SIR,

I AM directed to forward the accompanying copy of a letter from the Government of Bengal, No. 3844, dated the 13th June, and of its enclosures, and, with reference to its 11th para., to enquire whether the system of trial by Jury has been adopted in any part of the territory under the Government of Madras.

2. The Governor General in Council further desires an expression of opinion on the proposals made by the Government of Bengal in paras. 8 to 10 of the Secretary's letter.

I have the honor to be,
SIR,
Your most obedient Servant,

E. C. Bayley
Secretary to the Government of India.

5
Title & 4 spare Copies

17 Sept

My dear Archbishop.

Between busy and
tired ask the Bishop Coad.
for an opinion on this Survey
System generally, as how
Draft seems to contemplate?

We dont get from them
an opinion about it not-
long ago, I think, D. was
much for it, if I am not-
am taken, & much I
wished that opinion -

But now the people
at Sandwich ask what-

Archdeacon Hale's Papers
Mr. Bishop

From
Secretary to Government
Wellington - Survey Dept
No 82 6-

Date Rec'd 7 Sept 1880
Ans'd 8 Sept

Enclosing, one St. Office Ltr
Letter & Enclosures -

No 1880

Surveyor's Compliments
to the Archbishop & begs
to return the letter
which he was
entrusted with this Morn:
Survey Office
11

Their words would have direct (1) tendency to stop the judicial proceedings which have been instituted against any persons in the Presidency.. (2) That is our opinion of the proposal made by the Bengal Govt in their letter to Govt Paras 8 & 10.

These proposals are here disapproved on the ground of being unjust to the Native Community, & highly impolitic.

High Court of Judicature,

Madras, 25th Sept. 1865.

My dear Mr. Rogers,

I am sorry I have not received your letter which you have written to me some days ago I was absent from Madras from last week — the information you require regarding the Jury System I would refer you to the letter addressed by Sir [illegible] No. 3 of 62 dated 15th Jany/62 and you will be able to trace the whole correspondence also letter dated 8th Sept/64

Yours Sincerely

Geo. Burnell

Memo.

No report from the High Court on the working of the Survey system can be traced. Reference was made to the Record Keeper of the High Court. The papers indicated in his reply have already been put up. They relate to the subject of recording evidence.

desp. a/c. with 3 encl.s

23

Judicial.

No. 1435.

The Hon'ble Sir Colley Harman Scotland K.C.I.E.

Chief Justice of
H.M.'s. High Court of
Judicature
Madras.

Hon'ble Sir.

In transmitting
to you the annexed
copies of a letter from
the Govt. of India, &
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have the goodness
to call for reports
on the working of
the system of trial
by jury under the
Code

Code of Criminal Procedure, in the 2 Madras places & ~~to the extent~~ to which it has been extended in this Presidency & that, in communicating the result, you will favor H. E. the Governor in Council with any observations that the Hon'ble the Judges of the High Court may wish to offer on the subject, & also with their opinion as to the expediency of extending to this Presidency the proposed enactment to provide for the constitution of Special Juries, & for preventing

preventing access to jurymen during the progress of trials.

Fort St. George.
7. October 1886

W. Grant

Proc. of Govt.

Judicial 1865 dept.

No 1435.

To

The Honble

The Chief Justice of the

High Court of Judicature

Madras

Dated 7 October 1865

Rec'd 16 Feb 1866.

P 282 27.2.66