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1384

No. 5. Read the following letter from G. A. BALLARD, Esq., Special Commissioner, North Canara; to T. PYCROFT, Esq., Chief Secretary to Government, Fort St. George, dated Jugglebett, 20th September 1858, No. 75.

SIR,

I have the honor to enclose copies and translates in cases Nos. 36 and 37 of this Court's file; relating to one and the same individual.

2. He is proved to have brought men to the rebel camp; and to have acted as one of the leaders in a roving gang afterwards. I have thought it necessary to sentence him to death. The orders of Government are requested.

3. I feel bound to remark that I have passed sentence in this case, on the principles that have guided me in the disposal of all the cases that have come before this Court, in connection with the late troubles; which principles, I respectfully submit, I see no cause to improve or alter, but if banishment* is really a due and sufficient punishment in the case of the chiefs and instigators of these disturbances, ten times more guilty than their ignorant followers, then this, and almost every one of the sentences passed in this Court, has been unduly and unnecessarily severe.

* Vide Special Commissioner to Chief Secretary, 20th September 1858, No 76.

No. 36 of 1858.

Rebellion and Robbery.

Prosecutor. Government — *Versus* — *Prisoner.* Panchély Govinda Desai,

Witnesses.

1 Pattoopai.
2 Sookutapai.
3 Narainpai.
4 Luksmungavecar.
5 Gongoshetty.
6 Vettoledghetty.
7 Ramachundrashetty.
8 Mukoonad.
9 Santoo.

Prisoner's witness.

1 Kristapah, Chowkydar of Diggi.

Charge.—The prisoner is charged with having on the 16th March 1858, in the talook of Soopah, and district of Canara, been guilty of rebellion and robbery, in being armed, and acting as one of the principal leaders of an armed gang of about 35 persons then in rebellion against Government, who violently entered the houses of the 1st, 2nd and 3rd witnesses in the village of Bolé Chapoél, in the talook and district aforesaid; and who seized the persons of the said witnesses, and extorted the sum of Rupees 155, from the 1st witness.

The prisoner is further charged with having on the same day, in the talook and district aforesaid, under the circumstances mentioned in the first count, taken or caused to be taken, about 20 seers of rice, and a copper vessel, from the house of the 4th witness in the village of Nagery; and the sum of Rupees 20 from the 5th witness, in the village of Johedy; and the sum of 1 Rupee from the 6th witness, in the village of Nagode; and the sum of ½ a Rupee from the 7th witness, in the same village. The prisoner is further charged with having on the 17th March 1858, in the talook and district aforesaid, when armed, and at the head of about 20 rebels, demanded and levied Rupees 3, as Sayer from the 8th witness; and with having, under similar circumstances, forcibly entered the house of the 9th witness, in the village of Kangode, and taken from him the sum of Rupee 1.

Remarks.—The prisoner denies the charges. The circumstances of the robbery, mentioned in the 1st count, have been deposed to, on several occasions; and now the evidence of the 1st, 2nd and 3rd witnesses, is distinct as to prisoner's having been a leader therein; and to his having taken a principal part in giving, in conjunction with another leader, a pass produced before the Court, and purporting to bear prisoner's mark, to secure them from further spoliation by any rebel gangs that might come across them afterwards.

The 4th, 5th, 6th and 7th witnesses depose to prisoner's, and the gang with him, having taken or caused to be taken some rice and a copper vessel; Rupees 20, Rupee 1, and Annas 8,

from them respectively on the same date ; their statements are unsupported but taken in connection with the other evidence, I see no reason to doubt them.

The 8th witness deposes to prisoner's having stopped him and levied Annas 3, as Sayer collection on some paddy which he (witness) was taking on 3 bullocks to Goa, on the 17th March, and the 9th, to prisoner's having demanded Rupees 20, but at last taken from him Rupee 1, on the same day. These statements also are unsupported.

The prisoner although he denies the charges, states that having been previously seized by the rebels (when carrying a note from the Goomasta of Diggi,) he was sent in charge of a party who went to the 1st, 2nd and 3rd witnesses' houses; took them, and got from them a sum of money ; and who made the 4th witness give them food ; but denies that he had any active share in the transactions He denies having had any thing to do with giving the pass, though he says 1st witness asked him to give one ; and allows that one was given by others. He states the object in taking him was to get a sum of money from him ; but that, as he could not pay any, he was taken back to Baba Sawanth's camp. He says the statements of witnesses 5th to 9th inclusive, are totally false, that they speak through enmity. His allegations generally are quite unsupported ; but he states that the Chowkydar and a Tukhdar of Diggi know that he was seized and bound at Diggi.

The Chowkydar alluded to was examined. He states that he did see prisoner on the 13th March, sitting under a tree at Diggi, where the goods passing are weighed generally by the custom officers ; and that several bundwalas were at an arrack-shop, some 40 yards off; but that prisoner did not appear guarded in any way ; and that he (witness) knows nothing of his seizure by the bund. The Tukhdar has not been examined, as his evidence could not affect the case.

On a review of the whole evidence, I am clearly of opinion that prisoner is guilty of having been a leader in the robbery mentioned in the first charge, and of having been an active leader of the gang undoubtedly engaged in it, and other unlawful and rebellious acts, and that the strongest suspicion attaches to him with regard to the other counts.

A second charge is brought against prisoner in case No. 38 of this Court's file, and sentence will be passed on a review of the evidence in both cases.

(Signed) G. A. BALLARD,
Special Commissioner.

(True Copy.)

(Signed) G. A. BALLARD,
Special Commissioner.

1st Witness, (No. 36.)

Statement made by Puttoo Pai, &c., before G. A. Ballard, Esq., Special Commissioner, North Canara, on the 6th September 1858, at Jugglepett, &c.

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at the prisoner present before the Court. His name is Panchely Govind Desai, I knew him before. This prisoner is that very Govind Desai, whom I mentioned in my former deposition as having come to my house as the leader of a rebel gang, to loot my house, and who took Rupees 155; giving a receipt for the same. On Sousar Paduva feast, the 16th March 1858, at about 7 A. M., he, prisoner, came with about 30 men, armed rebels, to the houses of myself, Madu Pai Sookuta Pai, and Narain Pai, which are close to one another, and surrounded these houses. Then I came out of my house to see who had come, this prisoner then said to his men to seize and tie and beat me, and to bring the men of the other three houses, and also to bring all the property, ready money, &c., from all these houses. But no property was found in other houses, only Rupees 155 which I had kept in my house were brought out by those rebels who also then seized and brought the other 3 men. This prisoner Govind Desai said that Rupees 500 should be paid ; when we entreated that we are poor people, and have not so much money.

Still we were not let go, but were taken under guard with them as far as Nugary, where we fell at the feet of this prisoner, and another man of the gang named Baboo Row, and entreated very much. Then Baboo Row said in the temple at Nugary that we appear to be poor people and should therefore be let go, according to our request, the said sum of Rupees 155 being taken. It was in a bag and was in the possession of the gang. This prisoner then counted the said money, he and Baboo Row then said that 5 Rupees are for the Sepoy expenses, and the remaining Rupees 150 for the Sircar. This prisoner said that there are other gangs and asked us what we would give if those would come ; when we entreated that we are poor people, and that some measures may be adopted so that the other gangs may not come. Then Baboo Row said that a chit or note should be given, when prisoner told Buchapana Bhikupa to write the chit ; which was written accordingly in the name of these two, viz., the prisoner and Baboo Row, and was signed by both of them with dagger marks. The chit was then given to us, and we were told by both of them that if we shewed the chit we will no more be troubled by any others, after this we four were let go. This prisoner was then armed with a gun.

You have stated that they said that Rupees 5 were for the Sepoy expenses and Rupees 150 for Sircar. Which Sircar did they mention?

This prisoner and Baboo Row saying that they were Hunnamunth Sawanth's Sirdars, forced us at first to pay money to Hunnamunth Sawanth's Sircar. Therefore I think that they meant Hunnamunth Sawanth's Sircar.

Question by the prisoner.

Is there enmity between you and the prisoner?

There is no enmity whatever. I have stated what had happened. As there was no enmity between us, I was let go on reception of the money only, or else I would have been killed during such a disturbance.

I heard what was read, it is correct.

(Signed) PUTTOO PAI.

Note.—The chit was identified before Mr. Robinson by this witness as the one given by Govind Desai and Baboo Row.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

2nd Witness (No. 36.)

Statement of Sookuta Pai, made before G. A. Ballard, Esq., Special Commissioner, North Canara on the 6th September 1858, at Jugglebett, Soopa Talook, Canara District.

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shewn.

I looked at the prisoner, I know him. His name is Govinda Desai. This prisoner armed with a gun, came to the houses of myself, Puttoo Pai, Mada Pai, and Narain Pai, with about 30 or 35 rebels, at about 7 A. M., on Sousar Padva feast (16th March 1858.) This prisoner was standing before Puttoo Pai's house. His men entered our houses, and took me by force where Puttoo Pai was, and the other 2 were also seized and brought there. Then this prisoner told that Rupees 500 should be taken from us, or we should be tied and beat. His men then pulled us, and those who had entered the house came with a bag containing Rupees, saying, that no property was found out, except that bag containing Rupees, and found in the house of Puttoo Pai. Then we were taken to Nuggary under guard. Here we entreated very much, when one Baboo Row of the gang informed Govind Desai, that we may be let go on receiving the sum of Rupees 155, that was in the bag. Then this Govind Desai said that it will be done so, and taking that bag from one of the gang who had it, counted the money, out of which he said that Rupees 5 were for expenses, and the remaining Rupees 150 for his master Hunnamunth Sawunth. He also asked what we would do, if other gangs from Hunnamunth Sawunth would come, when Puttoo Pai said

that they (prisoner and others) should adopt some measure to prevent it. Then Baboo Row said to this Govind Desai that a chit or note should be given, when Govind Desai caused it to be written by Buchepen Bhikkapa, and was signed by both, (the prisoner and Baboo Row) with a dagger mark, and giving it to us, we were let go. This prisoner had come as the leader in that gang to loot, and the gang acted according to what he said. I have stated all these particulars in my former statement, and this prisoner is that very Govind Desai who I had mentioned in it as having come as the leader to loot. I know this prisoner since before. I heard what was read. It is correct.

(Signed) SOOKUTA PAI.

Note.—The chit was identified before Mr. Robinson, by this witness, as the one given by Govind Desai and Baboo Row.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

3rd Witness, (No. 36.)

Statement made by Narain Pai, before G. A. Ballard. Esq., Special Commissioner, North Canara, on the 6th September 1858, at Jugglepett, &c.

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at the prisoner now present before the Court. His name is Panchely Govind Desai. In my former statement, I mentioned that one Govind Desai had come with a gang of rebels as a leader thereof to loot the houses of Puttoo Pai and others, from whom a certain sum was exacted and then were let go; and this prisoner is that very Govind Desai therein alluded to. On the day of Sousar Padava feast, this prisoner came, taking with him about 30 rebels, at about 7 A. M., caused us 4 persons, viz., myself, Puttoo Pai, Madu Pai, and Sookuta Pai, to be seized; and said that we should pay Rupees 500; and also told his men to beat us if that sum is not paid, who then pulled us, demanding the money. Those who had entered all the houses brought a bag containing Rupees, saying that it was found in Puttoo Pai's house, that there was no property. Puttoo Pai then said not to beat, but to let him go, taking Rupees 155, that were in the bag. Then we were taken to Nugary, under guard, saying that this sum was not sufficient. On our way, this prisoner was saying that we will be beat if Rupees 500 are not paid. When we were taken to the temple, we fell on his (prisoner's) legs when he counted the Rupees 155 in the bag and said that out of it Rupees 5 were for expenses, and the remaining Rupees 150, are to be sent to Hunanmunth Sawanth's Sircar; and he also said that as other people of Hunnamunth Sawanth may come and give trouble, he would give a chit or note; and causing a chit to be written through Buchupuna Bhikupa, after he and Baboo Row had signed it, it was given to Puttoo Pai by Govind Desai, and then we were let go. This prisoner came as the leader of the gang and committed the aforesaid crime. I was acquainted with this prisoner before.

I heard what was read, it is correct.

(Signed) NARAIN PAI.

Note.—The chit was identified before Mr. Robinson by this witness as the one given by Govind Desai and Baboo Row.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

4th Witness (No. 36.)

Statement made by Luksmangavcar, &c., before G. A. Ballard, Esq., Special Commissioner, North Canara, on the 6th September 1858, at Jugglebett.

The witness was put on solemn affirmation under Act V of 1840.

Prisoner Govind Desai was shown.

I looked at the prisoner present before the Court. His name is Panchely Govind Desai. On the Yugady feast, at about 10 A. M., this prisoner came near my house with about 30 rebels, I was in the fields close by the house, from whence a few of that gang brought me to this prisoner, who was sitting at my house. He (prisoner) demanded Rupees 100 from me, and said that dinner was to be made ready first; when I said that I had nothing. This prisoner sent inside my house some of his men, who brought out about 20 seers of rice that was in the house. They forced me to bring a pot for cooking, and some chillies and salt. They kept guard on all 4 sides. When a few had taken their food, and the others were eating, some of the guards came and spoke to this Govind Desai, then immediately all of them fled. In that gang this prisoner Govind Desai was the leader thereof, and he was armed with a gun. I know him before. On that day there was no other person in the house except myself, the others of my house and of the neighbouring houses, had gone to some other places from fear of the Bund.

Why did you not state before the particulars about the prisoner's having come to your house?

As prisoner had not been apprehended by the Sircar people, I was afraid that I may be beat if I would give this information.

I remained silent. He now being apprehended, I thought that I should not keep in secret the crimes committed by this prisoner, I came and informed what I had known, Prisoner put no question. I heard what was read, it is correct.

(Signed) LUKSMANAGAVCAR.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

5th Witness (No. 36.)

Statement made by Gongo Shetty, &c., before G. A. Ballard, Esq., Special Commissioner, North Canara, on the 6th September 1858, at Jugglebett, &c.

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at the prisoner before the Court. He is Panchely Govind Desai. I knew him before. On the day of Sansar Paduva feast, at about 5 P. M., some rebels came to me when I was standing in the field looking after my cattle, and brought me by force near my house. There were no other men of the village, all of them having left the village from fear of the Bund; and I only, being old man, had remained there. Near the house there was this prisoner, Govind Desai, with some other armed men, about 25 in number. This prisoner said that he has brought men from Hunnamunth Sawanth, and that I should therefore pay Rupees 100. I said that I had nothing, when this prisoner sent the men of his gang, telling them to search and find out what was in the house. They accordingly searched the house, and bringing to the prisoner a bag containing Rupees 20, kept by me to pay for Sircar dues, informed him of the same. They took the bag, and went away, leaving me there; warning at the same time that they would again come and kill me if I would inform to Sircar what took place, consequently, I had fled to Goa territory; but now hearing that this prisoner was apprehended by the Sircar, I thought that I will have no fear if I would state what the prisoner committed; and came and informed to the Tahsildar

what had happened. This prisoner had warned me as above mentioned, that I would be killed if I would give information about these occurrences. This is all I have to state.

Prisoner put no question. I heard what was read, it is correct.

Mark of GONGO SHETTY.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

6th Witness (No. 36.)

Statement made by Vittoba Shetty, &c., before G. A. Ballard, Esq., Special Commissioner, North Canara, on the 6th September 1858, at Jugglepett, &c.

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at the prisoner before the Court. His name is Panchely Govind Desai. On the day of Sansar Paduva feast, I had gone to Shamujodey, where I have some fields ; on my return from thence, I met this prisoner, accompanied with about 25 others, and armed with guns, at Nasheehulla, in the evening when it was getting dark. I do not know from whence they had come there. This prisoner then asked me whence I came, and what I had ; when I said that I had nothing. This prisoner, who was standing foremost, took off my turband, and took therefrom the one Rupee I had tied to the end of it ; and returned me the turband. I thought then that they have set out to make Bund, and fled immediately after I was let go. I was coming alone, I had no others with me then. Thinking that such a trifling matter need not then be brought to the notice of the Sircar, I remained silent. But now having come to understand that this prisoner has been apprehended, I came and informed what had happened. I know this prisoner since 5 years. This is all I have to state.

Question by the prisoner.

Do you owe any sum to the prisoner ? I owe him certain sum for which he has a document given by me.

I heard what was read, it is correct.

(Signed) VITTOBA SHETTY.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

7th Witness (No. 36.)

Statement made by Ramachendra Shetty, &c., before G. A. Ballard, Esq., Special Commissioner, North Canara, on the 6th September 1858, at Jugglebett, &c.

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at the prisoner before the Court. I knew him before, his name is Panchely Govind Desai. On the day of Sousar Paduva feast, I had gone to Soosurdey to settle the price of some paddy purchased for the Goa Roman Catholics, who had put up there. Having settled this, I was returning home from thence, taking Annas 8 for my trouble ; when on my way, I saw this prisoner, and about 25 others, at a plain between Panchely and Nagody, on their way from Nasheehulla. This prisoner then asked me where I had gone to, and I replied that I had gone to the Roman Catholics for the sale of paddy, when the prisoner again asked me what amount I had from the sale of paddy, and I said that I have nothing. This prisoner then pulled the dhotti cloth I had on, and took the 8 Annas tied to the end of it, and returned me the cloth. I asked him why he took the sum, when he said " many have given large sums, what is it if you

give ½ a Rupee." Thinking that these men are making Bund, I went away quietly from fear ; as I was alone at that time. Being afraid of this prisoner, I did not inform these circumstances to any. I did not know that I ought to inform it to Sircar. But now as the people in the village were talking that this prisoner has been apprehended, and that any injury he might have made to the people should be brought to the notice of the Sircar, I have stated these circumstances. I am acquainted with the prisoner since 10 years. The prisoner had a gun at the time when I saw him as above mentioned.

Question by the prisoner.

Is there a balance of Rupees 14 due to prisoner out of the Rupees 20 he had lent you ? I have paid him all that was due. I owe him nothing.

I heard what was read, it is correct.

Mark of RAMACHENDRA SHETTY.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

8th Witness (No. 36.)

Statement made by Mukoonda, &c., before G. A. Ballard, Esq., Special Commissioner, North Canara, on the 7th September 1858, at Jugglebett, &c.,

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at the prisoner before the Court. I knew him before, his name is Panchely Govind Desai. On the next day after the feast called Sonsar Paduva, I was going with 3 bullocks loaded with paddy for sale in the Goa territory, or Concan, to the place were some other bullock traders had put up, with the intention of accompanying them. On my way I met this prisoner and 20 others, who were with him, in the fields near Nashee Mulla, at about ½ an hour before sun-set, when I was going alone. They were all coming from the direction of Nagodey, and this prisoner was the foremost of the gang, and armed with gun, and the rest of the gang had also arms. On the prisoner's asking me, I informed him that I was taking paddy below the Ghauts, when he demanded 4 Annas as sayer. I asked him why I should pay him sayer while the Cutta is far off. This prisoner said " where is Cutta, I collect the dues, therefore sayer should be paid to me" and told the men of his gang to tie and beat me if the sayer is not paid. As I had heard before that this prisoner has set out to make Bund on account of Hanumunth Sawanth, I then thought it not proper to dispute with him ; and gave Annas 3 that were in my bag in the hands of this prisoner. As I was then let go, I went forward. This is all I have to state.

Why did you not state these particulars before ? I did not understand before that I should state these particulars. But now having come to understnnd that this prisoner is apprehended, I came and stated what the prisoner had done.

Question by the prisoner.

Is there enmity between you and the prisoner ? No.

I heard what was read, it is correct.

Mark of MUKOONDA.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

9th Witness (No. 36.)

Statement made by Santoo &c., &c., before G. A. Ballard, Esq., Special Commissioner, North Canara, on the 7th September 1858, at Jugglebett, &c.

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at the prisoner present before the Court. His name is Govind Desai of Panchely. I was acquainted with him before. On the day of the Sousar Padva feast, I was sitting by the fire-side in my house at about evening, when I suddenly heard the noise of men out-side the house. Then this prisoner Govind Desai Gunobava, and Nojikar Vittolea, came to the place where I was sitting, and this prisoner asked me to give 20 Rupees for his suvary expenses. I said that I have no money and that I am poor. This prisoner threatening me that I should be beat if the money be not paid, raised me up by the hands, and the others also came to beat me. I had a bag for betel leaves by me, which this prisoner took and searched in it, and took out one Rupee that was in it; after this they went out leaving me there. When I looked out, I saw about 20 men out-side the house. At that time there was no one in the house except myself. My son had gone to Vayegunney fields, and his wife to her father's house. There is no other house close to mine. My son returned home the next day to whom I informed all these circumstances, owing to infirmity I could not walk, and therefore remained quiet, although I lost one Rupee. As the prisoner was apprehended and the people in the village were speaking that what the prisoner has done should be informed to the Sircar, I came and stated all the particulars. When I saw the prisoner as above stated he was armed with a gun.

2. Are there no other houses close to yours?

Close to my house there is another house belonging to one woman. I did not see the woman there. I don't know whether she had run away. Close to that house there are 2 other houses, but there was no one in them, at that time, other houses are at a distance.

(Singed) Mark of SANTOO.

(True translate.)

(Signed) G. A. BALLARD,
Special Commissioner.

Prisoner's Witness (No. 36.)

Statement made by Kristapa, Choukidar of Diggi, before G. A. Ballard, Esq., Special Commissioner, North Canara, on the 17th September 1858, at Jugglebett, &c.

The witness was put on solemn affirmation, under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at him. He is Panchely Govind Desai, I am acquainted with him, as he was passing by the Chouky with bullocks, I did not see him when I was seized by the Bund, and when I was taken to Baba Sawunth also. When the rebels sent me under a guard with directions that I should go to Goa, I saw this prisoner Govind Desai sitting alone under a banian tree, (below which tree all the articles are generally weighed) in front of the Diggi Sayer Cutta, at about 9 A. M. of the 13th March last. At the distance of about 20 fathoms from him, there were 3 Bundwallas sitting in the arrack-shop. I do not know who they were; nor whether this prisoner was then armed or not.

Did any conversation take place between you and Govind Desai?

No, not at all. I do not know why he (prisoner) was sitting there.

Question by the prisoner.

Did you see me sitting surrounded by the rebels?

I did not see you surrounded by the rebels, and made to sit among them. When I saw you, you were sitting alone as stated above. I do not know that you were seized. I heard what was read, it is correct.

(Signed) KRISTAPA, Choukidar.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

Prisoner's Defence, (No. 36.)

The following questions were put to prisoner Govind Desai of Panchely, by G. A. Ballard, Esq. Special Commissioner, North Canara, on the 6th September 1858, at Jugglebett, &c.

(Here enter charges.)

The charges were read over to prisoner, and he is asked.

I heard the charges just now read over to me. I am not guilty of the crimes mentioned in the charges. The prisoner is again questioned on the 7th September 1858.

I heard the charges and the depositions of witnesses examined in my presence and read over to me, and understood them. On my return from Goa, where I had gone with some bullock loads of paddy for sale, I saw at Valee in Goa district, a Goomasta of Diggi Chowky, name not known. He said that the Kutta was burnt by the rebels, and the Monegar taken by them, that he escaped through the jungles. He gave me a letter saying, that it should be taken to Yesvantapa Sayer, Sheristadar at Soopah. Subsequently when I was coming with the letter, I saw some bullock traders, who informed that Bundwalas were at Diggi Kutta, consequently, I having left the road leading to the Kutta, was proceeding by the jungle roads when I saw Kurdo Velif, Baboorow, Buchepena Bhikupa and four others, with whom I am not acquainted, sitting at the junction of a cross road. They seized and took me to Diggi Kutta, when they searched my bag, and took therefrom the letter given by the Goomastah, as well as Rupees 30, the proceeds of the paddy sold and kept in that bag. The letter was then read by a Bramin, whom I am not acquainted with. They said that I was taking a tampering "Fittoory" letter, and then I was taken to Baba Sawanth, at Ghudaraly. The money was given to him, and all the circumstances were informed, after which I was tied and beaten with a rattan. Bhikupa then said that I have made arrack contract for five years for Rupees 2,148; and therefore Rupees 200 should be taken from me. On the next day, I requested that I would go home and bring money, when Baba Sawanth told Bhikupa that Rupees should be collected from myself, and the witnesses Puttoopai and others, and brought. Bhikupa then said that at Panchely there is Potail Moorary Desai, who has many guns and a large family also, and that he should therefore be brought. After this, Bhikupa Baboorow, Govind Desai, Oopaskar, Berjecar, and 2 other Bramins, and about 10 or 12 others, whose names I do not know, were all sent together with me. Kurjodai-Babmalic also requested Baba Sawanth, and came home. Having remained in Bab Mulic's house that night, they went next morning to Bole Chumpoly, I was also with them, Bhikupa then said to Pootapai, "You gave me security and came, but you did not still pay the money," and demanded it. Puttoopai said we four brothers must pay it together, when Bhikupa keeping 4 people over them as guards, set out for Nugury, taking the others with him. At Nugury while sitting at the temple, some people brought Puttoopai and Madpai with some money, which was then received by Baboorow and Bhikupa, both of whom gave a chit. Then Puttoopai asked a chit from me. I said they seized and brought me, I will not give a chit. Then they took the chit and went away, afterwards the rebels seized and brought Lutchmen Govecar, from whom they demanded Rupees 50, he said he had nothing. They said you must give food at any rate, then he gave them food, after that they again asked for Rupees. He said he had none at present, and requested that in 4 days at any rate, he would manage get them, after that about 2 hours before sun-set, we all came to Panchely. Then they seized Moorary Desai, Potail my kinsman, and asked him for Rupees, guns, and assistance in men; when he gave Rupees 25, and four men, viz., Neelba, Murtoo his nephew and Rama Desai and Yesaba Desai of other houses, and saying that he had no guns and that he is not able to come owing to sickness, fell at their feet and remained there. Subsequently they pressed me for Rupees 200, but I said I had none. They told me to collect the contract money and pay them, when I said that for that some leisure was required and that therefore I would come to Baba Sawanth and represent to him these circumstances. Having said this, I prostrated myself before them and went with them to Baba Sawanth, who being informed that I had not paid the money, kept me under guard. I escaped from thence during night, and coming home, I said to Potail Moorary Desai, Putoo and Ruddoo that I would present myself to the Circar and detail all the occurrences. But those three individuals said that the Circar people are searching after me on account of the Bramin's houses being robbed and I would therefore be hanged immediately, if I would appear before the Circar and advised me to conceal myself. Consequently, I concealed accordingly. Subsequently, Puttoo

who I heard had been taken by the Circar, came to me after his return and said that order has been issued for my apprehension. I said to him that I would go myself and appear before the Circar. He advised me not to do so, but to pay him Rupees 50, which sum I paid him accordingly. At that time there being myself and the said Puttoodesai only, it is not known to any others, afterwards when Moorary Desai returned to his village after being released he informed me that I need not conceal myself and may come and live in my house quietly. Therefore I came and lived in my house, the Circar people came and surrounded my house during night and seized me where I had slept. I had gone to the houses of the 1st, 2nd, 3rd and 4th witnesses as the rebels took me by force as mentioned above, but I did not go willingly, nor did I loot their house. I did not commit any of the crimes mentioned by the 5th, 6th, 7th, 8th and 9th witnesses, nor did I see them at the times specified by them. The evidence given by them is the consequence of enmity and false. While I was tied and kept by Baba Sawanth's gang at Gudawally, Kristapah, the Chowkydar and Mustapa the Tukdar of Diggi had been also brought there forcibly. If they both be examined, it will be proved that I had been taken by force, I have no other evidence except this. The said Chowkydar and Tukdar on their way to Concan at Goa, after being released by Baba Sawanth, have seen my being tied and kept near Diggi Chowky by the rebels.

Memo.—The chit produced before Mr. Robinson by Puttoopai as having been given by Baboo Row and Govind Desai, was shown to the prisoner.

Look at this chit was this given by you or not? — I looked at the chit now shown, this may be the chit given by Baboo Row and Bhikupa to Puttoopai. I do not know writing, when I heard it being read, it appears to have mentioned in it that it was given by Baboo Row and Govind Desai, to Puttoopai and others, that Rupees 150 have been received and that if any other gang would come on "savary" this chit is to be shewn, and it is also mentioned that it is signed with dagger marks by both, but I did neither give the said chit nor did I sign it with dagger mark. Baboo Row and Bhikupa might have given it. This is all I have to say.

If you were taken by force, why do the witnesses state that you were armed with a gun? — I do not know why the witnesses depose that I was armed with a gun, I did not do so. I had no gun at all.

Have you to say any thing further? — I have nothing else to say, if the Chowkydar and Tukdar of Diggi both of whom have seen me bound by the rebels be examined, it will be proved that I was taken by force. While I was seized by the gang, there was one Shaboodeen in it.

I heard what was read and it is correct.

Mark of GOVIND DESAI.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

No. 37 of 1858.
Rebellion.

Prosecutor. Government — *Versus* — *Prisoner.* Panchely Govinda Desai.

Witnesses.
1 Govindupa.
2 Yeshuvuntupa.
3 Bhoojung Row.
4 Gunish Prubhoo.

Charge.—The prisoner is charged with having, on the 14th March 1858, in the jungles of Gotighei, in the talook of Soopah, and district of Canara, been guilty of rebellion, in coming armed to the camp of the rebel Baba Sawanth; and bringing with him about 10 men, also armed; and presenting them to the rebel leader to aid and further rebellion; and with having shortly after, left the camp with a rebel gang to assist and continue rebellion and disorder.

Remarks.—The prisoner denies the charge. The 1st witness states that on one occasion, the prisoner came to Baba Sawanth's camp, and spoke with the chief in a confidential manner; that

two days afterwards, he (prisoner) returned again, armed, and with some 10 other armed men, whose names were written down, as enlisted, apparently in the rebel cause; and that shortly afterwards he started on an expedition. The 2nd and 3rd witnesses corroborate this statement as regards the second visit which took place on the 14th March, in all its details, and these three witnesses had previously deposed to the same effect, before Mr. Robinson. The last part of their statement is further confirmed by that of the 4th witness, who deposes to having, when being taken as a prisoner to Baba Sawanth's camp, met prisoner and a gang of rebels coming along the road, and this connects the evidence here with that in case, No. 36, where it is clearly proved that prisoner was engaged as a leader of a gang; plundering and disturbing the country on the 16th March or two days after the date of this charge. Prisoner's defence that he was seized by the Bund and acted on compulsion, is utterly untenable.

He appears to have been a most active partizan; collecting men for the purpose of rebellion and rapine, and leading them during the perpetration thereof.

Sentence.—On a review of the records in this case and No. 36 of 1858, Special Commissioner's file, under the powers of the Commission issued to me under Section VII, Act XIV of 1857, and Section I, Act XI of 1857, the prisoner Panchely Govinda Desai is hereby sentenced to be hanged by the neck until he be dead, and to forfeiture of all property and effects of every description.

Special Commissioner's Court, Jugglebett, 20th September 1858.

(Signed) G. A. BALLARD,
Special Commissioner.

(True Copy.)

(Signed) G. A. BALLARD,
Special Commissioner.

1st Witness, (No. 37.)

Statement made by Govindupa of Shengergam, &c., before G. A. Ballard, Esq., Special Commissioner, North Canara, dated the 18th September 1858, at Jugglebett, in Soopah Talook, Canara district.

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at him, I was not acquainted with him; but I recognize having seen him when I was taken by the Bund.

What did this prisoner do when you saw him in the Bund. State all the particulars? — I do not remember the date, on a certain day this prisoner armed with a sword, with 2 others likewise armed with guns, came to Baba Sawanth at a place called Ghodavuly, at about 12 A. M., and sitting on the same mat with Baba Sawanth; and speaking something with him, went away. Subsequently, on another occasion this prisoner, and Bhikupa, armed with a sword, came with 10 men armed with guns, to Baba Sawanth, at about 2 P. M., and sat with him. The names of those 10 men who stood there, were told to Baba Sawanth, and one of his men wrote the said names. As I was not acquainted with those men, I do not remember their names. This prisoner's second visit to Baba Sawanth was 2 days after his first, and at that time as Bhoojung Row, and Yeshavuntupa had been seized and brought there, they have also seen the prisoner's having come there. About an hour after this prisoner started from thence with the men he had brought and 8 or 10 others. On enquiring where they were all going in a gang, our guards replied that they were going on "savary" or excursion. This is all that I know.

What was the object of their excursion? — Going to plunder any where was generally called by them "savary" or excursion.

If you were not acquainted with the prisoner, how could you understand on his first visit to the rebel gang that he was Govind Desai? — As he was on that occasion sitting with and talking to Baba Sawanth, I asked those of the rebel gang who he was, and I was told by them that he was Govind Desai.

The prisoner says that he was taken forcibly by the rebels. Was it so?

It did not appear that he was brought by force. On the 2nd occasion of their coming, the prisoner armed with a sword, and Bhikupa, were in front of the others; and the others were behind these two. He (prisoner) sat and conversed with Baba Sawanth and caused the names to be enlisted. He then appeared as their leader, and not as having been brought by force.

Prisoner put no question.

I heard what was read, it is correct.

(Signed) GOVINDUPA.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

2nd Witness (No. 37.)

Statement made by Yeshuvuntupa, &c., before G. A. Ballard, Esq., Special Commissioner, North Canara, on the 17th September 1858, at Jugglebett, in Soopah Talook, Canara district.

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at him. I recognize well this Govind Desai, as I have seen him on several occasions, he being the Arrack Contractor.

When you were taken by the Bund, did you see this prisoner in that Bund?

When I was taken by the Bund, and while encamped in a jungle called "Ghotugee," this prisoner Govind Desai, Buchupuna Bhikupa, and 10 others, armed, came there on the 14th March, at about 3 P. M. As I was sitting at a distance, I could not understand the conversation that passed between them. This prisoner mentioned the names of the men he brought to Baba Sawanth, who caused them to be enlisted through one of his gang. After this I saw the men brought by this prisoner, and some others of the gang, start together from thence with him, and heard the rest of the gang speaking among themselves that that party was going on savary (excursion) to the villages. The term savary being used among the Bund for plundering excursions, I thuoght that the said gang went out for plundering, &c. In the deposition given by me before Mr. Robinson in April last, after my escape from the rebels, I have stated all that I knew, mentioning this prisoner's name as well as his actions. This prisoner is that very Govind Desai therein alluded to. This is all that I know.

3. With what was this prisoner armed?

The prisoner was armed with a sword or a gun. As the event had occurred some time ago, I do not remember well what particular weapon this prisoner was then armed with.

4. Who were the 10 men brought by Govind Desai?

I am not acquainted with them.

5. You have stated that Govind Desai mentioned the names and that one of the gang of Baba Sawanth wrote them. What were those names then mentioned?

I was kept at a distance of 20 yards under guard from whence I heard only the mentioning of some names and saw them being written, but could not fully understand those names. Therefore I am unable to state those names.

6. What other persons were there at the time?

I saw there Bhoojung Row, and Govindupa of Shengergam, kept there under guard. I do not remember who else were there.

Prisoner put no question.

I heard what was read, it is correct.

(Signed) YESHUVUNTUPA.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

3rd Witness (No. 37.)

Statement made by Bhocjung Row &c., before G. A. Ballard, Esq., Special Commissioner, North Canara, on the 18th September 1858, at Jugglebett, &c.

The witness was put on solemn affirmation under Act V of 1840.

The prisoner Govind Desai was shown.

I looked at him. I recognize having seen him in the Bund under Baba Sawanth, when I had been taken by the rebels while I was a Choukidar at Dokurpa. His name is Govind Desai. When he had come there to Baba Sawanth, one Yeshuvunthupa, a Goomasta of the same Choukey, then a prisoner in that gang, told me there that this prisoner's name was Govind Desai, and this prisoner is that very Govind Desai. This prisoner and Bhikupa, with 10 others armed came there; and he (prisoner) mentioned their names, which were then written by one of Baba Sawanth's men, or Baba Sawanth himself, I am not sure which. After those names were written, this prisoner and Bhikupa went on "savary" with the men they had brought and several others. All these particulars I have stated in a deposition given by me before Mr. Robinson after my escape from the Bund. This is the very Govind Desai therein alluded to. This is all that I know about this.

With what was this Govind Desai armed?

I think he was armed with a gun, but I do not remember well what it was.

3. What were the names of those 10 men who had come with Govind Desai?

I know Bhikupa and I understood this prisoner's name through Yeshumantupa I did not understand the names of the other men.

4. You say that Govind Desai caused the names to be enlisted. What names did he mention?

They were written at this Govind Desai's dictation. As I heard them from a distance of about 16 yards, I could not fully understand all those names; and although I heard a few, I could not remember them as I was not acquainted with any of those individuals.

5. Mention the date and place where you saw this prisoner?

I remember that this prisoner came, as mentioned above, at a place called Ghotugy, at about 2 P. M., of the 14th March.

Question by the prisoner.

6. How do yon know that those men were brought by the prisoner?

The prisoner was the foremost of those men who were coming behind him. As this Govind Desai went and sat with Baba Sawanth, and those men stood, and their names were written at his dictation, I therefore thought that they were brought by this prisoner.

7. Did those 10 men bring Govind Desai by force or how?

It did not then appear that this prisoner was brought by those men. He came and sat with Baba Sawanth, and they were standing. Therefore I thought that those men were brought by this prisoner.

(Signed) BHOOJUNG ROW.

(True translation.

(Signed) G. A. BALLARD,
Special Commissioner.

4th Witness, (No. 37.)

Statement made by Gunesh Prubhoo, &c., before G. A. Ballard, Esq., Special Commissioner North Canara, on the 17th September 1858, at Jugglebett, &c.

The witness was put on solemn affirmation under Act. V of 1840.

The prisoner Govind Desai was shown.

I was acquainted with prisoner before. His name is Panchely Govind Desai.

When you had been taken by the Bund, did you then see this prisoner there?

Two days previous to Sousar Padava feast, on Chuturdushee, (14th March 1858,) when I was being taken by the rebels to Baba Sawanth,

on the way, at a place called Ghudavuly, I saw this prisoner coming with 25 others armed. I do not remember well whether the prisoner was armed or not. I did not ask him where he was going, nor did he ask me.

3. Of the 25 men that were with Govind Desai, whom did you recognize ?

I recognized this prisoner and Buchupuna Bhikupa as I was acquainted with them before. Being in confusion through fear, I did not recognize the others. In a former deposition given by me before Mr. Robinson, I have mentioned the names of Govind Desai and Bhikupa, as having joined the Bund, and therein recognized by me. This prisoner is the very Govind Desai therein alluded to.

4. When you met the prisoner on the way was he brought there pinioned or under any other restraint ?

He was not brought there pinioned. He was walking in the gang like the other members thereof, therefore I thought that he was walking with the Bund joining it.

Prisoner put no question.

(Signed) GUNESH PRUBHOO.

(True translation.)

(Signed) G. A. BALLARD.
Special Commissioner.

Prisoner, (No. 37.)

The following questions were put to prisoner Govind Desai of Panchely, &c., &c., by G. A. Ballard, Esq., Special Commissioner, North Canara, on the 17th September 1858, at Jugglebett, &c.

(Here enter Charge.)

The charge was read over to the prisoner.

I heard the charge now read over to me. I am not guilty of the crime therein detailed.

Mark of prisoner GOVIND DESAI.

After the witnesses were examined in the presence of the prisoner, &c., on the 18th September 1858, he is questioned and states.

I heard the charge and depositions of witnesses examined in my presence and understood them. I did not willingly go to the Bund with arms and men as stated by the witnesses, but I was forcibly taken by the rebels, the particulars of which I have stated in the defence given by me to the charge (Case No. 36) of robbery in the houses of Puttoo Pai and others brought against me. I do not know why the witnesses state that I had arms. On the night of the 2nd day after the Sousar Padava feast, at about 3 A. M., I escaped from the guard of the rebels. When I was kept under guard of the rebels, I was taken to Baba Sawanth on 2 occasions, at that time the witnesses might have seen me. On my flight, I saw some bullock traders at Calupey, where they had halted, at about ½ an hour before sun-rise, and informed them that I escaped from the guard of the rebels who had taken and kept me by force.

2. Have those bullock traders seen your being kept under guard ?

They did not see it, I went alone and informed them of it.

3. What other evidence have you to prove that you were forcibly taken ?

In my former deposition, I have stated that the Diggi Choukidar and Tukdar are aware of my having been kept by force. I have no other evidence except that.

I heard what was read, it is correct.

Mark of prisoner GOVIND DESAI.

(True translation.)

(Signed) G. A. BALLARD,
Special Commissioner.

Fort St. George, Judicial Consultation, 12*th October* 1858.

No. 6. ORDER THEREON, No. 1384; dated 6th October 1858.

Mr. Ballard submits copy of the Record of trial in the case of *Panchély Govinda Desáyee*, one of the leaders in the recent insurrection in *Canara*, who has been adjudged to suffer death.

2. The Government see no reason to interfere with this sentence, which the Commissioner will accordingly carry out.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Judicial Department

No 1744.

From G. A. Ballard Esq^re
Special Commissioner North Canara
Dated 20^th September 1858.

For Orders.

I see no cause to interfere
with the Comm^r judgment
[illegible]
Trell

Scheme of the Lieutenant Governor of Bengal for the Constitution of the Civil and higher Criminal Courts.

The Lieutenant Governor of Bengal, in modification of Mr. Harington's scheme for the Constitution of Civil Courts, proposes that a Court of Small Causes shall be established at the Sudder Station of every District, and at every considerable Town or City in the interior where the expenses attendant upon the establishment of a Court of that description are likely to be covered by the Institution fee, or by the sale of Judicial stamps in cases falling within its jurisdiction.

He is of opinion that these Courts should generally be presided over by European Judges who might be either Members of the Covenanted Civil Service or Uncovenanted European Officers or Lawyers, though he would not exclude Natives; and he would assign such a salary to the office as would induce men of superior qualifications to offer themselves as candidates for it. He would give the Courts which he proposes to establish, the same amount of jurisdiction as is now possessed and exercised by the Courts of Small Causes at Calcutta, Madras, and Bombay, and he would not allow any appeal from their decisions, though he would permit the presiding Judges to refer any point of law to the Sudder Court upon which they might entertain doubts, or which they might be required by either of the parties to the suit to refer.

He would leave cases in which the amount or value of the claim did not exceed the sum of three hundred Rupees, and which might not be cognizable by the Court of Small Causes where such Court existed, or by the Revenue Courts under the Bill lately introduced by the Honorable Member for Bengal, to be disposed of as at present by the District Moonsiffs with a regular appeal in all cases to the Zillah Court from their decisions; and where no Court of Small Causes existed, he would make the District Moonsiff dispose of the cases cognizable by that class of Courts within the above limit and with a regular appeal from their decisions in every case, however simple in character, and however small might be the value or amount of the claim.

For the trial of original suits exceeding in value or amount the sum of three hundred Rupees but not exceeding the sum of ten thousand Rupees, as well as for the trial of appeals from the decisions of the Moonsiffs, he would constitute a Zillah Court to consist of two or more Judges whom he would designate First and Second Judge, &c. The First Judge to be a Covenanted Servant and to represent the present Zillah Judge; the other Judge; or Judges to be either Covenanted Servants, Lawyers, or Natives. The First Judge should distribute the original suits between himself and the other Judge or Judges and in cases which he might reserve for decision by himself, he should be at liberty to call in the other Judge or one of the other Judges, to assist him in disposing of the case; he should also have power to call up any case from any subordinate

Court, and to decide it himself or to make it over for decision to the other Judge or one of the other Judges of the Court. If the First Judge and only one of the other Judges sat together for the trial of an original suit, and they should not be able to agree as to the decision to be passed, the case should be referred for the decision of the Provincial Court which will be noticed presently. Appeals from the decisions of the Moonsiffs should be heard by the First and Second Judges of the Zillah Court sitting together; and in the event of their differing in opinion, if the opinion of the First Judge should be for upholding the judgment, the decision of the Lower Court should be affirmed, otherwise the case should be referred as above to the Provincial Court.

The Lieutenant Governor of Bengal would constitute Provincial Courts with jurisdiction over six or eight Districts for the trial of original suits of the value or amount of ten thousand Rupees, and of regular appeals from the decisions of the Zillah Courts. He is of opinion that these Courts should ordinarily consist of four Judges who might be either members of the Covenanted Civil Service or Lawyers. He proposes that one of the Judges should always be on Circuit, the duty being taken by the four Judges in turn. The three Judges present with the Court should sit together for the trial of original suits and appeals; though, in the event of the unavoidable absence of one of their number, the remaining two should be considered sufficient to constitute a Court; and should they not be able to agree as to the decision to be passed, the case should be referred to the Sudder Court for decision.

The Lieutenant Governor of Bengal would retain the Sudder Court which would ordinarily consist of three Judges, one of whom might be a Judge of the Supreme Court or a Barrister of a certain standing. The Sudder Court would hear special appeals on points of law or usage from the decisions of the Zillah Courts in regular appeals against the decisions of the Moonsiffs, and from the decisions of the Provincial Courts whether in original suits or in regular appeals; but a special appeal should be allowed only where the Court which passed the decision appealed against, or any of the Judges who took part in the trial of the suit, certified the case, on the application of either of the litigating parties, as a fitting one for the admission of a special appeal. The Sudder Court would also dispose of points of law referred to them by the Courts of Small Causes, as well as of cases in which two Judges of the Court below had sat together but could not agree as to the decision to be passed.

Criminal appeals from the orders of the Magistrates should be heard by the Provincial Court under the restrictions existing before Act XXXI of 1841 was passed; and when only two Judges should sit to hear such appeals, if they should not agree as to the sentence or order to be passed, the order of the Court below should not be disturbed.

Commitments to the Sessions should be disposed of by the Judge of the Provincial Court on circuit and by the First Judge of the Zillah Court sitting together, and their decision should be final on the facts in all cases in which the sentence passed was short

of death. In cases in which a capital sentence might be proposed, the proceedings should be referred for the orders of the Sudder Court. In the event of the Circuit Judge of the Provincial Court and of the First Judge of the Zillah Court not being able to agree as to the sentence to be passed, the case should be referred to a second Judge of the Provincial Court at the Sudder Station.

The Commissioner or Commissioners of the Districts included within the jurisdiction of the Provincial Court should be ex-officio-judges of that Court to assist it in disposing of commitments, and they should go on circuit and dispose of commitments to the Sessions sitting with the First Judge of the Zillah Court in the same manner and subject to the same rules as a Judge of the Provincial Court when engaged on circuit duty.

The Judge of the Provincial Court on circuit should receive appeals from the orders of the Magisterial authorities, and should have power to reject the same if he saw no reason to question the correctness of the order of the Court below. If it should appear to him that the proceedings of that Court called for revision, he should certify them to the Provincial Court; and if the appellant was in jail, he should be at liberty to order his enlargement on bail, pending the decision of the Provincial Court, whenever he saw good and sufficient cause for so doing; but this power should be very sparingly exercised.

The Sudder Court should hear appeals from sentences of the Lower Criminal Courts on points of law and practice, and they should exercise a general supervision and control over the proceedings of all the subordinate Civil and Criminal Courts as they do at present.

The 10th May 1858.

In A. & C. No. 1170 of 58.

Minute by the Legislative Councillor for the North-Western Provinces on the constitution of the Civil Courts of those Provinces, dated 27th April 1858.

In compliance with the desire expressed by the Select Committee on the Bills for simplifying the procedure in the Civil Courts of the Honorable the East India Company, I have prepared a sketch of the Courts of Civil Judicature which I would propose for the North Western Provinces of the Bengal Presidency; and I have now the honor to submit the same* for the consideration of the Committee, with the following remarks which, I hope, the Committee will find useful in determining upon the practicability of the scheme suggested by me, and upon the expediency of its adoption, with any modifications which may appear to them advisable.

For the trial and decision of original suits, there can, I think, be no doubt that we must continue to look chiefly, if not entirely, to Native or Uncovenanted Agency, while from the comparatively small number of Europeans and Eurasians now in the country, who are qualified to act as Judges in our Mofussil Courts, a very large proportion of the members of that Agency must of necessity, if for no other reason, be natives of India, either Hindoos or Mahomedans, anything that may have taken place during the last few months in the North-Western Provinces notwithstanding.

It is scarcely necessary for me to mention that, for several years past, the original jurisdiction in Civil suits in the Presidency of Bengal has been almost entirely in the hands of the Native or Uncovenanted Judges; for although the Zillah or District Judges are required, by a Circular of the Sudder Courts, from time to time to call up original suits to their own files, and to decide them themselves, in order that, by preparing and adjudicating a certain number of cases as Courts of first instance, they may make themselves practically acquainted with the working of this part of our Judicial system, the number of cases primarily disposed of by these Officers is so small that they can hardly be said to take any share, deserving of notice, in the administration of Civil Justice, so far as the actual decision of original suits is concerned.

Nor is it possible under the rules by which the Civil Courts are obliged to regulate their proceedings, particularly as regards the attendance and examination of witnesses, for the Zillah Judges, who are also Sessions Judges and Judges of Criminal appeals sometimes in two or more Districts which they are expected to visit periodically, to decide on their merits any large number of original suits. Not knowing when a commitment may be made to them in their capacity of Sessions Judges, or how long the trial of a commitment, when made, may last, they can seldom appoint a day for the attendance and examination of the witnesses in a Civil suit with any

*Will be circulated hereafter.

4958/D.
In No. 951.

certainty that they will be able to hold sittings in the Civil Court on that particular day without prejudice to the Criminal work pending before them, while their duties, both as Civil and Criminal Judges, are generally so arduous that they can scarcely afford the great length of time which the preparation, trial, and decision of an original suit ordinarily occupies, as compared with an appealed case.

As a class, our Uncovenanted Judges have, I think, discharged their duties in a highly satisfactory and creditable manner, and I see no reason to believe that they do not possess in a fair degree the confidence of the public. This remark, of course, applies chiefly to that part of the Bengal Presidency in which the whole of my official career, extending over a longer period than that during which the present system has been in operation, has been passed.

It is generally admitted that a great improvement has taken place in our Native Judges within the last ten or fifteen years, and I think we may fairly hope that this improvement will be progressive, particularly if proper care be taken in first appointments to the Mofussil Bench and in subsequent promotions to the higher grades, and if the Government fulfil the pledge, long since given, of increasing the salaries of this very deserving class of public officers, and of placing their emoluments and those of their Establishments on a footing which shall be in some measure commensurate with their position, duties, and responsibilities. That such is very far from being the case at present, especially as regards the Moonsiffs, by whom about nine-tenths of the entire Civil work of the country is performed, is so generally acknowledged that I will not occupy the time of the Committee by dwelling further on the subject.

Assuming then that the Uncovenanted Judges, after a full trial, have shewn themselves quite equal to the duties required of them, I would leave the original jurisdiction in Civil suits chiefly in their hands, though I have made provision for the divisional Courts which I propose to constitute, exercising concurrent original jurisdiction with the Courts of the Principal Sudder Ameens, or, as I propose to call them, Upper District Courts, in suits of the value of ten thousand Rupees and upwards, in which suits, by whatever Court tried, an appeal will lie to the Queen in Council, provided that the matter in dispute in appeal amounts to the sum above mentioned. I would also allow the Divisional Courts to call up and decide themselves any original suit, whatever may be its value, in which there may be particular reasons for their so doing—such, for instance, as a suit between Hindoos and Mahomedans, involving a question of religion or a religious dispute. This is the utmost extent of original jurisdiction which can, in my opinion, be fairly thrown upon the Divisional Courts whose duties, according to my scheme, will be chiefly of an appellate character. I may here incidentally mention that I do not think that any appeal should be allowed to the Sudder Court, upon the facts, from decisions passed by the Divisional Courts in original suits. Considering that such decisions will proceed from two or more old and experienced Judges before whom the witnesses will be examined, and who will thus have an opportunity of observing

their demeanor (advantages which will not be enjoyed by the Sudder Court, should a regular appeal be allowed to them in original suits decided by the Divisional Courts), the decisions of the Divisional Courts upon the facts should, I think, satisfy reasonable men, and I would therefore make them final, though I would allow a special appeal from the decisions of those Courts, upon the same grounds, and subject to the same rules, as I propose to allow a special appeal from their decisions in regular appeals.

In the speech delivered by the Honorable Mr. Grant on the motion for the second reading of the Bill for simplifying the procedure of the Courts of Civil judicature of the East India Company in Bengal, I find him to have stated as follows:—"He had always felt that the great practical objection to our system was the deficiency of the Courts of original jurisdiction—their deficiency, not only where cases of small amount are tried, but also where cases of the greatest possible importance are tried. This Bill does not improve, or attempt to improve, our Courts of original jurisdiction in the least degree. It rather makes them worse. It leaves the Moonsiff's Court exactly what it is now, and it greatly enlarges the pecuniary limitation of his jurisdiction. It leaves the Court of the Principal Sudder Ameen exactly what it is now; and it leaves the Court of the Zillah Judge exactly what it is now. So far from improving the system of original jurisdiction in these two Courts, its practical effect would be to make it worse by throwing the whole original business on the inferior of the two Courts; whereas now the superior Court can try, and does try, some of the more important original suits. By throwing on the Zillah Judge alone the whole of the Zillah appeals, and thus overwhelming him with appeal business, the Bill would place it quite out of his power to try a single case in the first instance. This would make our existing system worse in that very part of it which is most defective and gives most dissatisfaction now, and which therefore it should be our chief endeavor to make as much better as we can."

The plan, however, sketched by the Honorable Member at the conclusion of the same speech for the improvement of our Civil Courts, appears to me only to provide a better agency for the trial of appeals and original suits of comparatively great importance, which bear but a very small proportion to the whole number of cases instituted, and makes no provision, so far as it has as yet been developed, for the improvement of the Courts which are considered by the Honorable Member most defective, particularly those of the lowest grade.

The Honorable Member proposes that there should be a Chief Judge of every Commissioner's Division, who should go on circuit to each District of his Division and, sitting in full Bench with the Zillah Judge and Principal Sudder Ameen, decide all original suits of great importance without any appeal on the facts; and that in the same manner the more important appeals from the lower Courts of each District should be tried by a Bench of more than one Judge, in which the Chief Judge of the Division should always preside.

But, in practice, I doubt whether this scheme would give satisfaction or be found to work well. The post of Chief Judge would require to be filled by an Officer of considerable standing and experience; in fact, looking to the position which it is proposed to assign to him, he should be above par. But the constant journeys which he would have to make at all seasons of the year (particularly when the number of Districts included in his division was large), the fatigue and exposure attendant thereupon, the expense to which he would be put in having to keep up two Establishments and in moving his furniture and equipages, the difficulty of finding suitable accommodation at the different Stations which he would have to visit (for he could not always throw himself upon the hospitality of friends, or it might be strangers, even if they were able and willing to receive him), and the constant separation from his family (supposing him, as would generally be the case, to have a family) whom he could not always take with him, would render the appointment not only a very unpopular but a very irksome one; and I fear that few men possessing the necessary qualifications of standing, experience, and ability, would be found, who would willingly accept the office, or who would heartily undertake its duties.

It may be argued that the objections which I have mentioned to the proposal of the Honorable Member of Council, are not of a character which the Government should allow to weigh in considering a large and general scheme affecting so important a department as the administration of Civil Justice in the whole of India, and that private feelings and the convenience of individuals must give way when duty and the public interests are found to be in the opposite scale. Now, in the abstract, this may be quite correct; but if the objections which I have stated have the effect of deterring the fittest men from accepting the appointment of Chief Judge of a Division, or of making them take the earliest opportunity of quitting it, then I submit that these objections partake rather of a public than a private character; and I contend that, in legislating for this country, the health, comfort, and convenience of our European functionaries whose continuance at their posts, with healthy bodies as well as sane minds, is often so important to the welfare of a District, are subjects not altogether beneath the attention of the Legislature.

But I may be told that the Commissioners of Revenue and Circuit pass several months of the year in visiting the different Districts of which their Divisions are composed, and that the appointment of Commissioner is one of the most popular in the Service. To this I reply that the Commissioners, at least in the North-Western Provinces, rarely travel in the hot weather, which they pass for the most part at the Sudder Stations of their respective divisions. After the rains have fairly broken up, and the weather has become dry and settled, they commence their Circuits which they generally bring to a close before the hot weather sets in. During this interval they are able to move about in tents, taking their families and public and private establishments with them; they can halt when and where they please, and make their marches as long or as short as they find convenient; the climate during the greater part of the time that they are

out is as fine as that of any country in the world, and their annual Circuit therefore is really a most agreeable and healthy occupation, and is usually looked forward to with much pleasure.

Another objection which I have to the scheme proposed by the Honorable Mr. Grant, is the great delay which it would very often impose on the suitors in the more important original suits and appeals in the decision of which it is intended that the Chief or itinerant Judge should take a prominent part, and which, though ripe for decision, might have to lie over for months, while that Officer was employed in clearing off arrears on the files of other districts.

The Commissionerships in the North-Western Provinces generally comprise six Zillahs or Districts. In each District, on the occasion of his periodical visit, the Chief Judge would probably find work sufficient to detain him for a couple of months. At this rate he would be able to visit each District of his Division only once a year, and for ten months of the year, the cases, whether original or in appeal, in the decision of which he was required to join, must lie over for the want of a competent tribunal to try them. This, I submit, would be a very serious evil.

I pass on to consider the Courts which I propose to constitute, together with the jurisdiction and duties which I would assign to each class.

The first or lowest grade of these is the Lower District Court, which I propose to substitute for the present Moonsiffs' and Sudder Ameens' Courts.

The abolition of the Court of the Sudder Ameen, as a distinct Court has, for some time, been only a question of time. Indeed, in many of the Districts in the North-Western Provinces, as vacancies have occurred in the office of Sudder Ameen, they have not been filled up, in consequence of the exceedingly small income of suits cognizable by that class of Judges, which it was found could easily be disposed of by the Principal Sudder Ameen. In the few Districts in which the office of Sudder Ameen has been continued, the greater part of the suits disposed of by the Officer holding the appointment, are within the competency of a Moonsiff to decide, and when such is the case, the Government are, to a great extent, paying a Sudder Ameen for doing Moonsiff's work.

The principal objection urged to the abolition of the office of Sudder Ameen is that it will stop promotion and take away one of the very few rewards to which the Moonsiffs now look, and it is suggested that the loss of this motive to exertion will have an injurious effect. This objection, assuming it to have some foundation, may be obviated by making promotion to a higher salary dependent, not upon the occurrence of death or other vacancies, but upon good and faithful service for stated periods.

I observe that the Bill before the Committee proposes to give to the Moonsiffs' Courts jurisdiction in all cases up to two thousand five hundred Rupees, but I do not hesitate to say that this jurisdiction is much too large.

The jurisdiction of the Moonsiffs' Courts in Bengal is at present limited to suits not exceeding in amount or value the sum of three hundred Rupees. Some enlargement of this sum might, no doubt, be made with safety and advantage; but from three hundred Rupees to two thousand five hundred Rupees, or more than eight times the amount, is an immense leap, and I do not think that the time has yet arrived when so large an extent of jurisdiction could safely or properly be conferred on the Courts of the Officers in question. I may here remark that, the value of suits for land paying revenue to Government being computed in the North-Western Provinces at the amount of the annual assessment only, a jurisdiction extending to suits of two thousand five hundred Rupees in value would bring within the cognizance of the Moonsiffs' Courts in those Provinces the great majority of suits relating to real property of that description.

I am aware that in Bombay the Junior Native Commissioners, which is the designation of the lowest class of Civil Courts in that Presidency, have jurisdiction to double the amount of what is proposed to be given by the present Bill. I am told, however, that suits of the value of five thousand Rupees are very rare in the Bombay Presidency.

In Madras, on the other hand, the sum of one thousand Rupees is the limit of the jurisdiction assigned to the District Moonsiffs in any case; and I think that for the present we should not go beyond that sum in our lowest grade of Courts. The sum of one thousand Rupees embraces the jurisdiction of both the Sudder Ameens' and the Moonsiffs' Courts as now constituted in Bengal. The two classes of Courts, as already mentioned, I propose to combine under the common designation of "The Lower District Court." Native designations are out of place in an English Code of Procedure, even though they should indicate the character and particular duties of the office to which they apply, which can scarcely be said to be the case as regards the designations of our three classes of Mofussil Courts, namely, Principal Sudder Ameen, Sudder Ameen, and Moonsiff; and the term Native Commissioner, which is used at Bombay, is not suitable when the incumbent is not a Native but a European.

Under the Bill as now framed, there will be no appeal from the decisions of the Lower District Courts in cases in which the value of the claim does not exceed the sum of fifty Rupees, unless the suit relate to real property, or fall under one of the other heads specified in Section I of the Chapter relating to appeals.

Whether the decisions of the Lower District Courts should be final and not open to appeal in any case, or whether, allowing a finality to the decisions of those Courts in the more simple cases, the sum fixed is not too high, are questions which can be more appropriately considered when the constitution of the Courts has been settled, and the

Chapter treating of appeals comes under discussion. For my own part, I should not object to the decisions of the Lower District Courts being made final in certain cases of small amount, provided that competent Judges be appointed to those Courts, instead of young men who have had no judicial experience or legal training, and who never perhaps saw a case tried; and provided also that a close and careful supervision be exercised over their proceedings. And here I feel disposed to recommend that no one should be raised to the Mofussil Bench, however good an examination he may have passed, until he has practised as a Pleader in the Court of a Zillah Judge for at least three years, and can obtain from the Judge in whose Court he may have been chiefly employed, a certificate that his general conduct has been respectable and that he is considered by the Judge granting the certificate, qualified to hold the office of a Lower District Court Judge.

The next class of Courts which I would propose, is the Upper District Courts. The duties of these Courts will be very similar to those of the Principal Sudder Ameens under the present system, and like those Officers they will be competent to try all cases without any limit as to the amount or value of the claim, which may not be cognizable by the lower District Courts; but they will have no appellate jurisdiction, though I see no reason why the Officer holding the situation of Judge in the Upper District Court, when stationed at the same Station as the Divisional Court, should not be considered eligible to a seat on the bench of that Court, provided that he possesses a sufficient knowledge of the English language to enable him to read and write it fluently, and to take part in the discussions of the English or Covenanted Judges in that language. I may here remark that I think the language of the Sudder or Superior Court, and of the Divisional Courts at the three Presidencies, should be English. Where the Judge of the Upper District Court is also one of the Judges of the Divisional Court, I am of opinion that he should not be allowed to sit with the other Judges in hearing appeals against his own decisions. I am aware that this is not considered a ground of disqualification in England, or in this country under Act II of 1851; but it appears to me that, where a Judge has once sat in judgment upon a case, he ought not to have any voice in determining on an appeal, whether the judgment passed by him is correct or otherwise.

There should, I think, be one Upper District Court in every Zillah; but as the income of original suits exceeding the sum of one thousand Rupees in amount or value will rarely be sufficient fully to occupy the time of the Officer presiding in that Court, I propose that he should have a concurrent jurisdiction with the Lower District Court at the Sudder Station in suits not exceeding one thousand Rupees in amount or value.

It will not unfrequently happen that the Upper District Court will be able to dispose of the work of both Courts, and the salaries of the Judge of the Lower District Court at the Sudder Station and of his Establishment will thus be saved to Government. When the Judge of the Upper District Court is also one of the Judges of the Divisional Court, the original suits cognizable from their amounts by him might be heard by the Divisional Court, he being one of the sitting members, without any appeal upon the facts.

In addition to the Upper and Lower District Courts, I propose that the Government shall have power to establish Courts of Small Causes at the Sudder Stations and at the principal Towns of the several Districts, for the trial of suits in which no appeal is to be allowed; and to assign such jurisdiction to the Courts so established, as may appear proper: and that, where a Court of Small Causes is established, the jurisdiction of the Upper and Lower District Courts, in respect of cases arising within the local limits and falling within the cognizance of such Court, shall cease or be suspended.

In order to secure the necessary qualifications, and to enable the Government to select the men best fitted for the appointment, it will be desirable that the Small Cause Court Judges should receive a higher salary than the Judges of the Lower District Courts, which will make the office an object of ambition. The Judges of the Lower District Courts should be eligible to promotion to the Small Cause Courts, though not as of right, and, in like manner, the Judges of the Small Cause Courts should be eligible to promotion to the Upper District Courts.

One of the advantages to which I look from having a separate and distinct class of Courts for the trial of simple cases up to a certain amount, particularly at the Sudder Stations, is that the Judges presiding in those Courts will be subject to no interruptions, and having no other business to distract their attention, they will be able to devote their whole time to the cases brought before them, and to take them up and decide them as soon as they can be got ready for hearing. This is now done in the Court of Small Causes in Calcutta, and I believe that much of the popularity of that Court may be traced to the dispatch with which its proceedings are conducted.

I do not propose a different Code of Procedure for the Courts of Small Causes in the trial and decision of cases declared cognizable by those Courts, from that which is now under preparation for the Lower and Upper District Courts in cases of a similar description when tried by them. That Code is, I think, sufficiently simple, even for cases of the smallest amount; and a variety of Codes will only perplex the Judges and the people, and cause confusion.

The expense of the Courts of Small Causes which I am anxious to see established, may be urged as an objection to them. But I do not anticipate that their establishment will add much, if any thing, to the judicial charges of the country, as they will perform so large a quantity of the Civil work which the present Bill proposes to assign to the Moonsiffs' or Lower District Courts, that a much less number of Courts of the latter description will be required, particularly if what is called the Rent Bill, lately brought in by the Honorable Member for Bengal, and which proposes to transfer absolutely, from the Civil to the Revenue Courts, the original jurisdiction in all suits relating to arrears or exactions of rent, should pass into law.

I come now to the Divisional or second class of Courts proposed by me.

These Courts should, I think, be composed of the Zillah Judges of three adjoining Districts, who should ordinarily hold their Court at the principal or most centrical Station of the three Districts; though I propose that, when any special reason may exist, they may be authorized by the Executive Government to hold their Court at any other Station within their respective Divisions.

As already noticed, the duties of the Divisional Courts will be chiefly appellate, that is to say, they will hear all regular and miscellaneous appeals from the decisions of the Lower and Upper District Courts in their Division, in cases in which a regular or miscellaneous appeal may be admissible. They will also have a concurrent original jurisdiction with the Upper District Courts of their Division, in cases in which the amount or value of the claim may amount to ten thousand Rupees or upwards; and they will be at liberty to call up any case from any subordinate Court in their Division, whatever may be its amount or value, and to decide it themselves whenever any special reason may exist for their so doing. There will be no appeal from their decisions in original suits upon the facts, except to Her Majesty in Council in cases in which an appeal to England is allowed; but I would give a special appeal on points of law or usage having the force of law, from every decision of a Divisional Court, whether passed in an original suit, or in a regular or miscellaneous appeal from a decision of an Upper or Lower District Court, whenever the Judges of the Divisional Court who passed the decision, or any of them, may certify the case as a fitting one for a special appeal.

I think that it might also be advisable to give the Judges of the Lower and Upper District Courts, as well as the Judges of the Divisional Courts, the power of referring to the Sudder or Superior Court, questions of law or usage arising in cases before them on which they may entertain doubts, or which they may be requested by either party to the suit to refer; and I propose, therefore, to extend to those Courts, with the necessary modifications, the rule contained in Section LV of the Act (IX of 1850) for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay. I quote the Section in the margin for the convenience of reference. The last clause would be applicable when only two Judges of the Divisional Court sat together on the trial of an original suit or an appeal, and differed in opinion upon any point in the case. Ordinarily, I intend that three Judges of the Divisional Courts should sit together for the trial of all original suits and appeals brought before those Courts; and in order to keep up this number during the temporary absence, on duty or otherwise, of one of the Zillah Judges without any additional expense to Government, I have provided that the Judge of the Upper District Court at the same Station as the Divisional Court, when possessed of the necessary qualifications, shall be eligible to a seat on the bench of the latter Court. But even with this provision, sickness or some other cause may occasionally reduce the num-

> The Judges of the Court of Small Causes may, in their discretion, reserve any question of law or equity on which they entertain doubts, or which they shall be requested by either party to the suit to reserve for the opinion of the Judges of the Supreme Court, and shall give judgment contingent upon the opinion of the said Supreme Court on a case which they shall thereupon be entitled to state to the said Court. If only two Judges sit together, and shall differ in opinion, the question on which they differ shall be so referred.

ber of Judges present in Court to two ; but as it is not desirable that the work of the Court should be put a stop to on that account, I would declare two Judges competent to go on with the regular business when the attendance of a third Judge is not procurable. It is necessary, however, to make some provision as to what is to be done in the event of a difference of opinion arising when only two Judges are able to sit together, and I do not think that any fairer or better rule could be adopted than that contained in the concluding clause of the Section above quoted.

In addition to their Civil duties, I propose that the Divisional Courts shall also be Courts of Circuit or Sessions within their respective Divisions for the trial of commitments made by the Magistrates and their subordinates in cases in which the final order may be beyond the competency of those Officers to pass, and for the disposal of Criminal appeals from their orders when an appeal is allowed. Appeals should, I think, be heard at the Station where the Divisional Court holds its sittings by the Court at large, three or two Judges (according to the number of Judges present in Court) sitting together ; when only two Judges sit together, if one Judge should propose to reverse or modify, and the other to confirm the order or sentence appealed against, the order or sentence of the lower Court should not be disturbed. I would also allow the Divisional Court to call for the proceedings of any subordinate Court in any criminal case in which they may see cause to doubt the legality or propriety of the order or sentence, and to pass such order or sentence in the case as they may deem proper, provided that it should not be open to the Divisional Court to pass an order or sentence which the Magistrate could not have passed, and with the same provision as above when only two Judges of the Divisional Court are able to sit together and they cannot agree in opinion.

For the trial of the commitments made to the Divisional Courts in cases beyond the competency of the Magisterial Officers to dispose of, one of the Judges of the Divisional Court should proceed to the Station of the Magistrate or Joint Magistrate by whom the commitment was made, in the same manner as was done by the Courts and Commissioners of Circuit before the passing of Regulation VII of 1831. The Covenanted Judges of the Divisional Courts should take this duty in turn, and as they will have to visit only two Districts, which will generally not be distant from the Sudder Station more than a night's dawk, I can see no reason why the Judge whose turn it may be to proceed on Circuit should not visit both Districts and dispose of all commitments ready for trial during his month of duty, particularly as under the new Code of Criminal Procedure the powers of the Magistrates and their subordinates will be enlarged and commitments will be fewer in consequence. If this be done, the average time between commitment and trial under the system proposed by me will scarcely exceed what it is at present, and I cannot but think that the public service will benefit by the Sessions Judge and Magistrate not residing at the same Station, and by the Jail deliveries not being always held by the same Circuit or Sessions Judge. The sentences of the Sessions Court will undoubtedly carry more weight and give more satisfaction to the people and the Magisterial authorities than is the case at present, particularly in cases of appeal, and we shall get rid of much of that ill feeling which is now unhappily so common between the higher

and lower Criminal Courts. The commitments made by the Magistrate at the Station where the Divisional Court holds its sittings can be tried by one of the Covenanted Judges present with that Court.

The principal objection which I have heard to my proposition of uniting the Zillah Judges of three Districts in one common Court for the trial of appeals, is, that it will remove the subordinate Judges of the Districts in which, under my scheme, there will be no Zillah Judge, from that Officer's immediate control and supervision which, when properly and vigilantly exercised, ought to have, and no doubt has, a very important bearing upon the general efficiency, and, it may be, honesty of the Officers subjected thereto.

I am prepared to allow that there may be some force in this objection, but I would remark that it does not apply to all the Districts which will be included in the jurisdiction of the Divisional Courts, and that the distance to which the Zillah Judges of the Districts, to which the objection may be applicable, will be removed, is not so great as to place the subordinate Judges of those Districts altogether beyond the personal influence of their Covenanted superiors who will constantly visit the Sudder Station on Circuit. The proceedings moreover of the subordinate Courts will continue to be watched, as I believe they are at present, by the other Covenanted Civil Officers at the Station, and although there are now several Stations at which there is a Principal Sudder Ameen but no Zillah Judge, I believe I may say that the Principal Sudder Ameens at those Stations are not less efficient or less honest than the Officers who hold their Courts at the same Station and perhaps in the same Court-house as the Zillah Judge.

The constitution of a lower Appellate Court which shall command the confidence and respect of the Courts whose decisions will come before it in appeal, and of the public generally, is perhaps the most difficult part of the task on which the Select Committee are now engaged in their progress through the Code of Civil Procedure prepared by Her Majesty's Commissioners. No plan that I have heard has satisfied me, and I am not so presumptuous as to imagine that the Court which I have proposed, and for which I can not claim even the merit of originality, will not be found open to many objections. But my proposition at least gets rid of the objection of the decision of a Judge, before whom the evidence is taken, being reversed by a single Judge who has not had that advantage, and of the still greater objection of the decision of an old and experienced Uncovenanted Judge being reversed by a single Covenanted Judge sitting, it may be, for the first time in his life in a Civil Court; and if proper care be taken in the selection of qualified persons for the Bench of the Divisional Courts, I cannot help thinking that they will work satisfactorily. I look forward also to Europeans being eventually declared subject to their jurisdiction for criminal offences, in which case it may be considered proper to make provision for one of the Members of the Court being an English Lawyer of a certain standing.

Over all the Courts will be the Sudder or Superior Court. The duties which I propose to assign to this Court may be gathered from the foregoing remarks. It will have

no original nor indeed any appellate jurisdiction upon the facts, even in cases of the largest amount or value, except when the Divisional Court may consist of only two Judges, and they may not be able to agree as to their decision. A special appeal will lie to the Sudder or Superior Court from all decisions passed by the Divisional Courts, whether in original suits or in regular or miscellaneous appeals, but only upon points of law or usage having the force of law, and then only when the Divisional Court or one of the Judges who took part in the decision may certify that the case is a fitting one for a special appeal. The Sudder or Superior Court will also have to decide the references which may be made to it by the subordinate Courts on points of law arising in cases before them on which they may entertain doubts, or which either of the parties to the suit may require to be referred. I presume, too, that it will not be considered proper to dispense with the present practice which requires a reference to the Sudder Court on its Criminal side in all cases of conviction in which the prisoner may be liable to a sentence of death or of transportation for life; but the whole of the duties as above, compared with the work of the Sudder Court as now constituted, will be very light, and three or four Judges would, I think, be found sufficient for their discharge with reasonable despatch. The Chief Judge of the Court might be one of the Judges of Her Majesty's Supreme Court.

I propose that the Sudder or Superior Court should strictly confine itself to the adjudication of the cases, Civil and Criminal, brought before it, and that it should have nothing to do with the supervision and control of the subordinate Courts.

This duty, in the Civil department, I would delegate to an Officer to be styled the Minister of Justice or Judicial Commissioner. As regards salary and position he should be on a footing with the Sudder Judges; he should be in no way subordinate to the Sudder Court, though of course he would communicate freely and unreservedly with the Judges of that Court, and the Government on all matters connected with his Office. All statements and returns, whether monthly, quarterly, or yearly, now submitted to the Sudder Court by the Zillah Judges for their own Courts and for the Courts subordinate to them, should be submitted to the Minister of Justice or Judicial Commissioner, and the annual reports and returns at present made by the Sudder Court to Government should be made by him. First appointments to the Mofussil Bench should be in the gift of the Minister of Justice or Judicial Commissioner, with whom should also rest the power of dismissal from the Office of Judge of a Lower District Court; and all promotions and dismissals in the higher grades should be made on his recommendation or after communication with him. He should pass from five to six months of every year, that is, from about October to April, in visiting as many of the subordinate Courts, European and Native, as possible; he should make himself acquainted with the Uncovenanted and Covenanted Judges, and sit with them in their Courts; he should converse freely with the people and with the Officers in other departments, and should hear and, as far as possible enquire on the spot into all complaints against the subordinate Judicial Officers or their establishments, and afford such redress as might be in his power, or when the remedy was beyond his power, he should bring the matter to the notice of Government for such

orders as it might deem necessary. I am of opinion that the greatest possible benefit would result from an appointment of this nature, and I shall be glad to find that my views are concurred in by the other Members of the Select Committee.

As connected with this subject, I venture to annex the following Extract from a Report submitted by me to the Government of the North-Western Provinces after making a tour of the Civil Courts under that Government very similar to what, I think, should be yearly made by the Minister of Justice or Judicial Commissioner whose appointment I am now advocating. The tour referred to was commenced on the 1st December 1854, and completed on the 2nd April following. During this interval I visited twenty six Districts and inspected the Courts of all the Zillah Judges, Principal Sudder Ameens, and Sudder Ameens, with four exceptions, as well as a large proportion of the Courts of the District Moonsiffs.

"Having now brought to a conclusion the remarks which have suggested themselves to me in connection with the special duty upon which I have lately been engaged, I will only further add that, although the results may not make any great show upon paper, I believe I may say that, upon the whole, the tour of inspection made by me during the last cold season was a useful one, and has been promotive of much benefit, and I venture to express a hope that any good effects with which it may have been attended will not be confined to the time occupied in its performance, but that they will prove of a more durable character.

"Of the great utility of such Circuits by a Judge of the Court I do not think that any doubt can be entertained, and it appears to me to be a matter of regret that they cannot be made more frequently. It is highly desirable, in my opinion, that a Sudder Judge should proceed every year on a tour of examination of the subordinate Courts, European and Native, though he should visit personally every Moonsiff's Court and be able to give more time to each Court than I was able to do. If the months of November, December, January, and February of each year were devoted to the duty, the whole of the North-Western Provinces might be visited once in three years, and several parts once in two years.

"This, of course, could not be done without the addition of a fourth Judge to the Court, at least for the months in which one of the Judges was employed on Circuit duty, as in the existing state of the law the absence of any one of the three Judges, who now compose the Court, puts a complete stop to the decision of regular and admitted special appeals, and otherwise cripples the Court, and the duties of the Court are too heavy to admit of its being left, though merely for a time, with only two Judges.

"Annual tours of inspection by the Judges of the Sudder Court, in the course of which the proceedings of the subordinate Judges would not only constantly come under revision, but a personal acquaintance be formed, at one time or another, with every Un-

covenanted Judge employed in these Provinces, would be attended with the great advantage that it would enable the Judges to ascertain from their own observation and from what they might hear from others, something of the personal character and qualifications of their subordinates, of which, at present, very little is known by the Court, and that little is chiefly derived from sources of information upon which full reliance cannot always be placed.

"I also believe that such tours would give confidence alike to the native community, and to the Uncovenanted Judges. They would show the people that the subordinate Judges, whose powers are now so extensive, and the integrity and efficiency of whose Courts are matters of personal interest to almost every native in India, are really brought within reach of the supervision of the highest Court in the country, and that their competency and mode of discharging their duties are cared for by that Court. They would infuse fresh vigour into the Native Judges and stimulate them to greater and, it may be, better directed exertions. They would encourage the well-disposed, and materially strengthen their hands. They would lead to the discovery of the inefficient, and would operate as a wholesome check upon the indolent, and upon such as were inclined to indulge in dishonest practices, and who could not but fear that occasion would be taken of the personal visit of a Sudder Judge by those who considered themselves aggrieved by their proceedings, to bring forward their complaints with a reasonable certainty that they would be heard, and (as far as might be) enquired into upon the spot, and that not only redress but retribution also would probably speedily follow; while, to all the Native Judges, they would afford an opportunity of urging to an Officer of very large powers, and who, from the high position which he holds, is looked up to with much respect, any thing that they might have to represent connected with their own position and prospects or with matters of general and public interest."

According, then, to my scheme there will be three classes of Courts for the trial of original suits, namely.—

1st. The Lower District Courts with jurisdiction in all suits in which the amount or value of the claim may not exceed one thousand Rupees;

2nd. The Upper District Courts with unlimited jurisdiction as to amount or value. (These Courts will also have concurrent jurisdiction with the lower District Courts at the Sudder Stations); and

3rd. Courts of Small Causes with jurisdiction in cases in which no appeal is allowed; and

Two classes of Courts for the trial of appeals, namely,

1st. The Divisional Courts for the trial of regular and miscellaneous appeals from the decisions of the Lower and Upper District Courts. (These Courts will also have con-

current jurisdiction with the Upper District Courts in suits in which the claim may amount to ten thousand Rupees and upwards and they will also be Courts of Circuit); and

2nd. The Sudder or Superior Court for the trial of special appeals on points of law or usage having the force of law from the decisions of the subordinate Courts, and for the determination of points of law or usage on which the lower Courts may entertain doubts or which the parties to the suit may require to be referred. There will also be a Minister of Justice or Judicial Commissioner for the supervision and control of all the Courts subordinate to the Sudder Court.

In conclusion I have to apologize to the Select Committee for the great length of these remarks, but I have thought it desirable that they should be made fully acquainted with the details of my scheme to enable them to form their own opinion as to its advantages or disadvantages; and after the subject has been discussed, for which I would beg to call an early meeting of the Committee, I will proceed, with the assistance of the Clerk of the Council, to draw up the Chapter relating to the constitution of the Courts in accordance with what may then be determined upon.

H. B. HARINGTON.

The 27th April 1858.

No. 1384

Mr Ballard submits copy of the Record of Trial in the case of Panchély Govinda Desáye one of the leaders in the recent insurrection in Canara, who has been adjudged to suffer death.

2. The Govt see no reason to interfere with this sentence, & the Comptr will accordingly comply.

D. F. C. Octb 4/58.

Fort St George
6 October 1858.

To J. A. Ballard Esqr
Sh Comr Canara