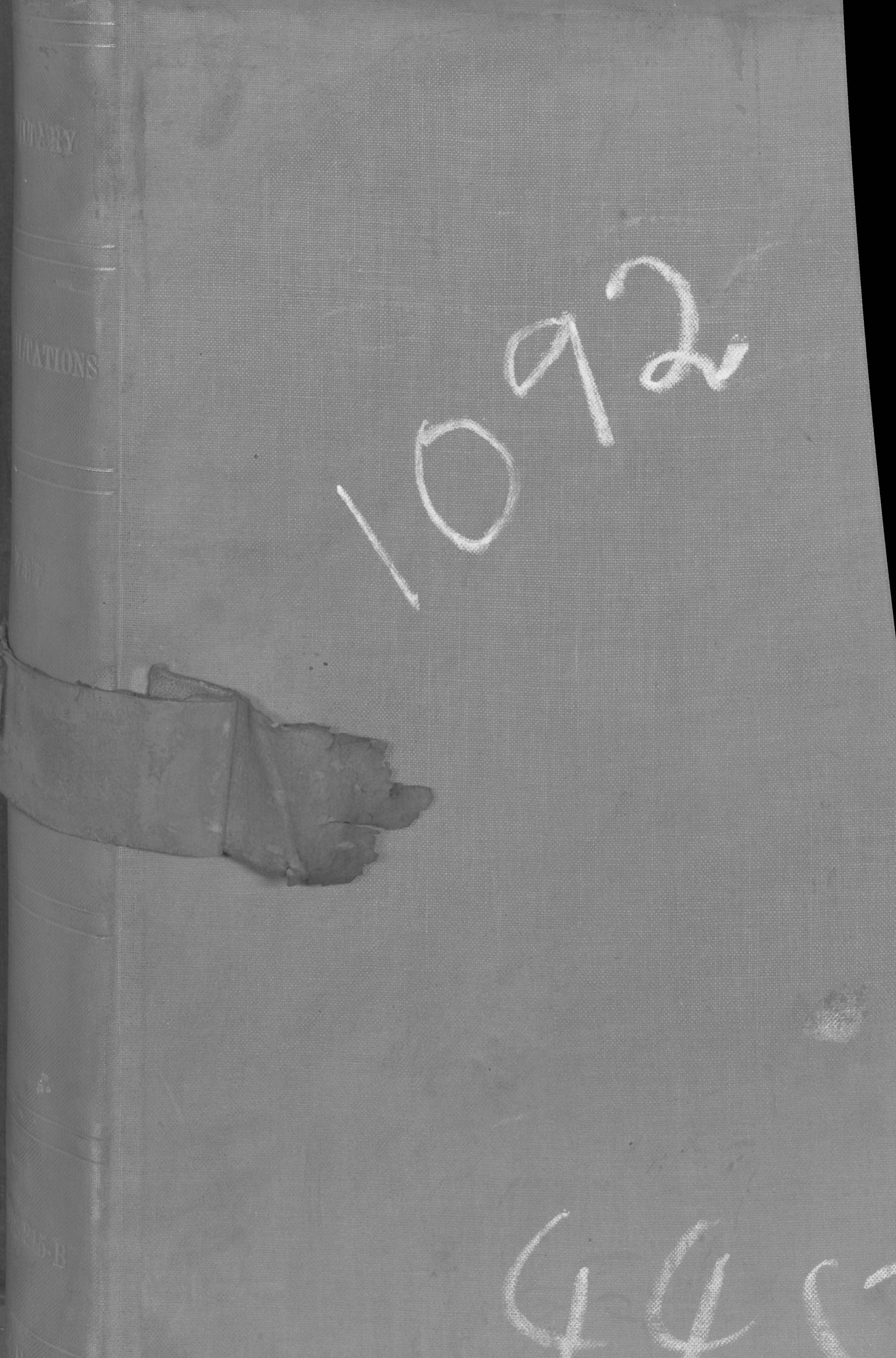


6th February 1826.

Court of Circuit in the Centre Division for
his information.

(Sent following letter N°51.)

Read letter, dated 30th Ultimo,
from the 1st Judge late presiding 4th Quarterly
Sessions 1825 Zilla Chittoor, recommending under
clause Second Section III Regulation I of 1825.
a mitigation of punishment in the case of
the prisoners convicted in N°7.

(Here enter N° 68)

The Court of Sovjarce Adalut
having attentively considered the grounds upon
which the 1st Judge recommends a mitigation of
punishment, in the case of the prisoner referred
to in his report, resolve to sanction the proposed
commutation of the prescribed penalty to three
years imprisonment with hard labor.

Ordered, that extract of these
proceedings be sent to the 1st Judge of the
Court of Circuit in the Centre Division for
his information.

(Sent following letter N°52.)

J. Jo.

At a Court of the Sovjarce Adalut

Present

Tuesday, 7th February, 1826. F. A. Grant Esq.re 1st Puisne Judge
James Cochrane Esq.re 2d Puisne Judge
George Gowan Esq.re 3d Puisne Judge

Read return dated 17th December
from the 1st Judge late presiding 4th Quarterly
Sessions 1825 Zilla Chittoor to the precept of 30th
November last, calling upon him to explain his
proceedings in certain cases in 4th Quarterly Sessi-
ons 1825 Zilla Chittoor.

(Here enter N° 1013 of 1825)

The Court of Sovjarce Adalut
required the 1st Judge in their proceedings of the
30th November last, to explain his proceedings in N°118 pointed
out to him that the cases of the prisoners in cases N°s 1 & 2
4th quarterly Sessions 1825 Zilla Chittoor upon security was
illegal since it appeared that the Jurors had
declared them convicted.

From the translations and copies
of the Futwas which the 1st Judge has trans-
mitted, the Court learn, that the Law Officer
distinctly declared the prisoners in N°s 1, 2 & 11
to have been 'convicted' upon a Futwa of Zun-
-ghalib, and liable to discretionary punish-
-ment, as laid by the charge, N°s 1 and 11
of robbery by open violence, upon the ground
of

of presumptive proof arising from credible testimony; or circumstantial evidence; whereas ~~are~~ therefore expressly provided for, in clause third section III Regulation XV of 1803, and it was the duty of the 1st Judge accordingly to have passed the sentence prescribed by the Regulations for this offence, or, if the trial was referrible, to have submitted reasons for the consideration of the Foujdaree Adawlut.

3 In explanation of his omission to conform to these plain and intelligible provisions of the Law, the 1st Judge states, that "not having conceived the 2d prisoner (one of "on whom the strong suspicion in the language "of the Futwah had fallen, was satisfactorily "proved to have been guilty of the robbery charged "against him, but that the suspicion only "stood against him he has conformed to the "letter and spirit of the latter part of the clause in question (clause 6th Section II Regulation XV 1803) which runs thus viz. that in "cases of strong suspicion though not amounting to conviction as well as upon "proof of notorious bad character the Judge "or Circuit may direct the Zilla Magistrate "to detain the prisoner in custody until he "shall give sufficient security for his future good behaviour and appearance "when required".

The

4 The Court have to remark upon this explanation, that they are reluctantly constrained to withhold their assent, to this assertion of the 1st Judge, that he was led into the illegality in question, under the above mentioned misinterpretation of clause sixth Section II Regulation XV of 1803.

5 The section itself is extremely clear, and the very passage quoted, so precise in its expressions, in respect to the limitation of power of demanding security, to those cases only, where the futwa, (which must be concurred in,) does not amount to conviction, that they cannot bring themselves to believe, that the 1st Judge was led into error; thro' a misapprehension of the spirit, or, of the letter of the law.

6 In support of this harsh declaration, the Court have to observe, that in the 9th para of their proceedings of the 17th June last, which were acknowledged by the 1st Judge in his return of the 11th July, it was distinctly pointed out to him, that when he did not concur in a futwa, the trial must be referred under Section XXII Regulation VII of 1802, this Section, the Court conceive, cannot admit of two interpretations, and as the attention of the 1st Judge was particularly called to it, but a short time before the commencement of the 4th Quarterly Sessions 1825, of which the case in question stands the first, the Court are unable to

to draw the conclusion, they would have preferred, that this officer did not act illegally, deliberately, and with premeditation; but thro' ignorance of his duty: that this cannot have been the case further appears to the Court to evident, from the proceedings of the 1st Judge in former Sessions of Gaol delivery held by him.

7 For the Court of Zoujdaree Adaulut observe, that in the 15th para of their proceedings of 17th June last, upon one of the latest Calendars submitted by the 1st Judge, they took particular notice of a sentence of 3 years imprisonment, passed on a prisoner of the same description, as that, under which he has now directed the release of prisoners upon security; and the Court then expressly stated, that the sentence should have been passed, after a second petition had been taken. It is impossible under these circumstances to suppose that the 1st Judge could act in one Sessions, upon a construction of the law in which he was supported by the Zoujdaree Adaulut, and in the next Sessions, be ignorant of the intention of the same law.

8 It is further to be remarked, that upon an attentive examination of former Calendars submitted by the 1st Judge, so far from it appearing that he does not fully understand the provisions of clause 6th

Section

F.R.

7th February 1826.

Section II Regulation XV. of 1803, it is plain, that he correctly apprehends both the letter and spirit of the rule; for instance, the sentence passed by him in case No. 3. 3d Quarterly Sessions 1824 runs thus. "The 3d prisoner Ramdoo being acquitted "is ordered to be released on finding security "for his good behaviour" and in case No. 6, the only other case in the same Calendar wherein security was directed: the 1st Judge's abstract of the sentence expressly states, that the 2d prisoner was not convicted. Also in his proceedings in Cuddapa Calendar 1st Sessions 1825, whenever the 1st Judge acted under clause sixth Section II Regulation XV of 1803, as in cases Nos. 39, 69, 137, 143, and No. 1 Supplemental Calendar, his own abstracts of the sentences shew, that in every one of them, the prisoners were not convicted; so also in the Chingleput Calendar No. 10, the abstract is so explicit, as to prohibit the supposition, that this officer misconceives the meaning of clause sixth Section II Regulation XV of 1803; and does not know the difference between a sentence of conviction on strong presumption, (or Zan-i-ghalib) and one of suspicion (or Tohmut) This is also exemplified in his proceedings in cases Nos. 5, 18 and 20 of the Bellary Calendar. Moreover in many instances in these Calendars the 1st Judge assigned penalties on a section of Zan-i-ghalib, which it is now pretended, authorizes

authorizes a release: As the following extract
from his return of the 17th July last to the Courts
precept distinctly shews. "In case № 122 the excep-
"tion (to a fictum of theft) appears on a represent-
"of the first fictum to have been similar to that of
"№ 89 viz: Gun i ghalib" and in the Calendars
punishments are recorded in both these cases.

9 Referring to the explanation, sub-
mitted with the foregoing return, by the
Acting Judge in the Zilla of Chittoor, in
defence of his proceedings, against the ani-
madversions of the 1st Judge, the Court of
Foujdaree Adaulut have to remark, that
the conduct of the 1st Judge in charging
Mr Bates with an assumed irregularity,
whilst the orders condemned bore the signa-
ture of his predecessor in office Mr Place,
which the 1st Judge must have known when
he recorded his censure, is highly discreditable,
to a superior officer, and tends to manifest,
that his object was rather to cavil at, and to
misrepresent the conduct of the inferior of-
ficers to the Court of Foujdaree Adaulut, which the
Court have noticed on other occasions, that to
correct and amend; and when as in this instance,
the proceedings arranged were done in con-
formity to orders of the Foujdaree Adaulut, which
were communicated to the Provincial Court
of Circuit in the Centre Division on the 2d
November 1820, the Court deemit deserving of

of their severest censure.

10 These instances of misconduct
if fully established, coupled with other
proceedings of this officer on record, would
necessarily deprive him of the confidence
of the Foujdaree Adaulut; as they afford evidence
in the opinion of the Court, that the 1st Judge
does not hesitate in violation of his public
duty, to pervert the Regulations to his own
views, and to record as the grounds of his
illegal acts, what he does not conscien-
ciously hold, with the view of misleading
the Court of Foujdaree Adaulut.

With this impression of the
11 conduct of this officer the Court deem it be
their duty to call upon the 1st Judge for an
explanation of his apparently contradictory
proceedings, and of the ground of his de-
mand of security under a fiction of con-
viction on strong presumption, under clause
sixth Section II Regulation XV of 1803, in
which it is explicitly stated, that security
is demandable only in cases not amounting
to conviction.

Ordered that extract of these
proceedings be sent to the 1st Judge late
presiding 4th quarterly Sessions 1825 Zilla
Chittoor by precept returnable within one
month from and after its receipt.

Ordered

Ordered also, that the 1st Judge do communicate para 9 of these proceedings to the Acting Criminal Judge in the Zilla of Chittoor.

Sent 18

(Sent following precept No 53.)

Read letter, dated 31st ultimo, from the 1st Judge of the Provincial Court of Circuit in the Centre Division, recommending under the provisions of clause second Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoners convicted in No 9 Chittoor Calendar 4th Quarterly Sessions 1825.

(Here enter No 74)

The Court of Foujdaree Adalut having attentively considered the grounds upon which the 1st Judge has recommended a commutation of the prescribed penalty to seven years imprisonment with hard labor in irons in the case of the 1st Prisoner Ummiah, and to five years imprisonment with hard labor in irons in the case of the 2d 3d and 4th Prisoners referred to in his report, resolve to sanction the sentence proposed.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division for his information.

(Sent the following letter No 54.)

Read letter, dated 1st instant, from

3/

7th February 1826.

from the 1st Judge of the Provincial Court of Circuit in the Centre Division, recommending under the provisions of clause second Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoner in No 11 Chittoor Calendar 4th Quarterly Sessions 1825.

(Here enter No 80)

The Court of Foujdaree Adalut having attentively considered the grounds upon which the 1st Judge has recommended a commutation of the prescribed penalty to three years imprisonment with hard labor in irons in the case of the Prisoner referred to in his report, resolve to sanction the sentence proposed.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division for his information.

(Sent following letter No 55.)

Read letter dated 1st Instant, from the late Additional Judge late on Circuit in the Centre Division, recommending under the provisions of Section X Regulation I of 1825, a mitigation of punishment in the case of the prisoner convicted in No 6 of the postponed Cuddapa Calendar 2d Sessions 1825.

(Here enter No 83)

The Court of Foujdaree Adalut having

having attentively considered the grounds upon which the late Additional Judge has recommended the release of the prisoner referred to in his report, against whom the only evidence appeared is his own confession, resolve to sanction the mitigation proposed and direct that he be admonished, and then set at liberty.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

/Sent following letter No. 56./

Read letter dated 1st Instant from the late Additional Judge late on Circuit in the Centre Division recommending under the provisions of Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoners convicted in No. 10 Cuddapah Supplemental Calendar 2d Sessions 1825.

/Here enter No. 84/

The Court of Sudder Adalut having attentively considered the grounds upon which the late Additional Judge has recommended a commutation of the prescribed penalty to three years imprisonment with hard labor in irons in the case of the prisoner referred to in his report, resolve to sanction the sentence proposed.

Ordered, that extract of these proceedings

proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

/Sent following letter No. 57./

Read letter, dated 1st Instant, from the late Additional Judge late on Circuit in the Centre Division recommending under the provisions of Clause second Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoners convicted in No. 6 Chingleput Calendar 2d Sessions 1825.

/Here enter No. 82/

The Court of Sudder Adalut having attentively considered the grounds upon which the late Additional Judge has recommended a commutation of the prescribed penalty in the case of the prisoner Sallai 'Chellum' to five years imprisonment with hard labor in irons and in the case of the prisoner Chellum Chettyar to three years, and the other prisoners referred to in the report, to two years imprisonment, resolve to sanction the sentence proposed.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

/Sent following letter No. 58./

Read

7th February 1826.

Read letter dated 1st Instant from the late Additional Judge late on Circuit in the Centre Division, recommending under the provisions of Section X Regulation I of 1825 a mitigation of punishment in the case of the prisoner convicted in No. 37 Cuddapa Calendar 2d Sessions 1825.

/Here enter No. 81/

The Court of Foujdaree Adalut having attentively considered the grounds upon which the late Additional Judge has recommended the release of the prisoner referred to in his report, resolve to sanction the mitigation proposed, and direct that he be admonished and then set at liberty.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

/Sent following letter No. 59./

Read letter, dated 28th Ultimo, from the 1st Judge on Circuit in the Southern Division, recommending under the provisions of clause second Section III Regulation I of 1825 a mitigation of punishment in No. 28 Madura Calendar 1st Sessions 1826.

/Here enter No. 85/

The Court of Foujdaree Adalut having attentively considered the grounds upon which the 1st Judge has recommended a commutation of the prescribed penalty, to

F. C.

7th February 1826.

five years imprisonment with hard labor in irons and twenty stripes with a rattan, in the case of the prisoner referred to in his report, resolve to sanction the sentence proposed.

Ordered, that extract of these proceedings be sent to the 1st Judge on Circuit in the Southern Division for his information.

/Sent following letter No. 60./

The numerous trials, which have been under the consideration of the Court of Foujdaree Adalut during the last twelve months, have afforded the Court striking evidence of the irregularities which generally prevail, in the examination of prisoners before the Native Officers of Police; and particularly, of the prevalence of oppressive and vexatious measures, resorted to for the purpose of obtaining confessions.

2. The Court have on a former occasion, in their proceedings of 18th June 1817, recorded their opinion, that these practices have their origin, in the ignorance of the Native Officers of Police of the value justly due to a confession, in the scale of legal evidence, which induces them to seek proof of this nature, rather than to adduce other evidence of guilt, not open to the objections which may be urged against confessions.

The

The Court are convinced, that under the influence of this erroneous notion, the native Officers of Police generally neglect the just and humane provision of the law, which requires the confessions of prisoners to be received with circumspection and tenderness, a rule applicable alike to every grade of investigation in a criminal case; & that it must be ascribed to the same cause, that the rule in clause third section XXVII Regulation XI of 1816, that no confession shall be received, unless it be free and voluntary, continues to be so much disregarded.

4. The Court have also observed in many of the trials which have come before them, the omission on the part of the Police officers, to secure the attendance of the attesting witnesses, throughout the examination of a prisoner, as enjoined in the same provision.

5. With the view of correcting these evils, the Court resolve to direct, that all Native Officers of Police, shall previously to taking down the examination of a prisoner, be required to warn him of the danger incurred by a confession, and admonish him not to wrong himself by a declaration of his guilt; and that they be directed to insert at the head of each examination in addition to the particulars

particulars now recorded, the following declaration "Examination commenced at" the hour, day, month, & year to be stated/.

"This examination of the prisoner ——— was taken down in the presence "of A. of B and of C. of D, neither of whom "are related to the prosecutor. The prisoner "having been previously warned not to give "a confession of guilt."

"Examination closed at" the hour, and day to be stated/

6. The Court are fully aware that the foregoing instructions, being at variance with the preconceived opinions of the officers entrusted with the execution of them, must necessarily fail to secure all the advantages intended; but they consider it a matter of the highest importance, that the investigations held in Criminal offences in the first instance, should proceed upon the same principles which govern the ultimate determination: and so long as the Criminal Courts are enjoined to receive the confession of a prisoner with tenderness, it is the duty of the Magistrates to require the Native Officers of Police to act upon the same principle, and to instruct them to seek for the proof of guilt or innocence, in the evidence independently of what the accused may himself declare.

The

7th February 1826.

7

The Court of Foujdaree Udalut do look therefore to the zealous cooperation of the Magistrates, in order to secure in any measure, the important object in view; and they resolve to call their attention to the circular orders of the Foujdaree Udalut of the 18th June 1817, and to direct, that the several Magistrates be required to point out to their native officers of Police, that a confession is a matter not of primary, but of subordinate consideration, and to require them to search for all the evidence forthcoming in all cases, whether a prisoner may confess, or not.

8.

The Court further direct that the Judges of the Court of Circuit and the Criminal Judges, do bring to the notice of the Magistrates, cases coming under their notice, wherein it may appear that any means whatever have been resorted to, to induce a confession: and they expect, when such instances are brought forwards, and there is ground to believe that the Tahseeldars have certified falsely, that the Magistrates will take serious notice of so flagrant a violation of public duty, which cannot henceforth be attributed to ignorance, or, misconception by the Head of Police, as to the line of conduct expected from him, in the examination of prisoners.

The

7th February 1826.

9.

The Court also consider it to be the duty of the Criminal Judges and Magistrates to point out to prisoners the danger resulting to themselves from a confession, and to warn them against such self crimination; and they further direct that in all cases of confession before them, they certify with their own hands that such confession was freely and voluntarily given, after a cautionary admonition from the Court.

Ordered that extract of these proceedings be sent to the 4 Courts of Circuit by precept directing them to communicate the same to the several Criminal Judges and Magistrates within their respective Jurisdictions and to desire that the Magistrates do make the necessary communication to the Tahseeldars, within their several Zillahs, for their information and future guidance.

Sent following precepts Nos. 61.

F. 16.

At a Court of the Foujdary Adawlut

Present

Thursday 9th February 1826 } F. A. Grant Esquire, First Puisne Judge.
James Cochrane Esquire, Second Puisne Judge.
George Govan Esquire, Third Puisne Judge.

Read letter, dated 25th Ultimo from the Provincial Court of Circuit in the Northern Division, referring the question whether the Register of the Zilla Court is to transmit to the Government the Cutcheel the Magistrates communication to the Criminal Judge. Here enter No. 71

The object of the foregoing reference is to obtain the opinion of this Court whether the mode adopted by the Magistrate of Masulipatam in notifying to the Criminal Judge the appointment of a Police Aumeen; viz. by a letter to the Government the Cutcheel in the Zilla Court enclosed under cover to the Register; is or is not the proper one.

2. The Magistrate & the Criminal Judge both defend it on the ground of usage and facility to public business; as also by reference to section XXVII Regulation XXVII of 1802: while the Register doubts its

its propriety because it differs from the practice of other Courts & because the Regulation and section above quoted applies exclusively to Collectors & only to one specific set of theirs.

3. The Court observe that Regulation XXVII of 1802 is wholly inapplicable to the question at issue; having no reference at all to Magistrates.

4. The Circular orders of this Court dated 28th July 1824 have reference to communications from Criminal Judges to Magistrates; & the object of them was to cause the discontinuance of precepts on these occasions uniformity of the mode of communication being however noticed in them as desireable, they very naturally and properly occurred to the Register with the knowledge he possessed of a different practice in other Courts.

5. There is nothing in the Regulations definitive of the mode of communication from a Magistrate to a Criminal Judge on the occasion in question. The only two places in which a particular mode of communication between those officers is prescribed in Regulation X of 1816 Sect. section XXV & clause II section XXXIV make it direct between them; & it appears to this

Court that on every occasion this is the easiest and properest way.

6. The Court observe with regret the controversial & personal style of the Magistrates' letter dated the 3d December 1825; they are also of opinion that it would have been more correct for the Register to have submitted the letter which he thought objectionable to his superior the Criminal Judge & received his orders as to the disposal of it than to have acted on his own opinion in returning it.

Ordered, that extract of these proceedings be sent to the Judges of the Provincial Courts in the Northern Division for their information.

/Sent following letter No 65./

F. C.

At a Court of the Zillah Adalut

Present,

Monday, 10th February 1826.

F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Gowan Esqre 3d Puisne Judge.

Read letter, dated 30th November last, from the 3d Judge on Circuit in the Southern Division, submitting case No 15 Salem Calendar 2d Sessions 1825.

(Here enter No 985)

The 1st 2d and 3d Puisne Judges of the Court of Zillah Adalut on a deliberate consideration of the circumstances of the case in evidence before them being of opinion that the proof against the prisoner, Vuttamala Moopan, is sufficient to convict him of the crime of murder, desire under the provisions of clause second Section II Regulation I of 1818 that their Law Officers will declare by a second Futwa to what specific punishment the prisoner would have been liable under the Mohummudan law if he had been convicted by full legal

legal evidence of the above crime.

Ordered, that extract of these proceedings be translated and delivered to the Cazee aal Cooat and Mooftes of the Pointdarre Korlut.

Read letter, dated 20th December last, from the 3d Judge late on Circuit in the Northern Division, submitting case No 28 Nellore Calendar 1st Sessions A.D. 1825.

(Here enter No 1028.)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee aal Cooat and Mooftes of the Pointdarre Korlut confirm the said futwa of the Cazee aal Cooat and Mooftas aforesaid and under the provisions of Clause second Section IV Regulation XV of 1803 adjudge the prisoners,

1st Woolawa Pauyan,
2d Pitchegoontla Vengadoo,
3d Pitchegoontla Muddegadoo,
4th Daygala Uchoolagandoo
5th Gundhum Shaegoudoo, and
6th Nublapaty Poollegadoo,

to receive 39 stripes with a rattan and to

to be imprisoned and transported to such place or places beyond Sea as the Governor in Council shall appoint there to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of their natural lives respectively. And under the provisions of Clause fifth Section IX Regulation XV of 1803 adjudge the prisoners,

2d "Munla Hupain,"
3d "Pitchegoontla Veeradoo,"
8th "Munda Coteegadoo,"
10th "Tellary Goorroovadoo,"
11th "Koonhamoody Venkadoo,"
12th "Katchala Naugadoo,"
13th "Katchala Chinna Mooftegandoo,"
14th "Koonhamoody Penpadoo,"
15th "Katchala Nallamoothadoo,"
16th "Katchala Pentadoo,"
17th "Katchala Chinna Venkadoo," and
18th Maytrala Veeradoo,"

to receive 24 stripes with a rattan and to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of fourteen years and then be released.

(Sent following letter No 66.

At a Court of the Foujdaree Adalut.

Present,

Wednesday 15th February 1826. F. A. Grant Esqre. James Cochrane Esqre. George Gowan Esqre. } Judges.

Read letter dated 17th September last from the 2d Judge take on Circuit in the Southern Division, submitting the report prescribed by Section XXXVII. Regulation VIII of 1802 upon the 1st Sessions of 1825. (Hereinafter No 800 of 1825)

In the 8th and four following paragraphs of his report, the 2d Judge takes notice of the want of classification in the jails in the Southern Division, and recommends the erection of a separate building for the confinement of prisoners under examination. The provisions of Section XXIX. Regulation X of 1816 appear to the Court to provide sufficiently for this object; and they doubt the practicability in the present state of the jails, of any further subdivision of the different classes of prisoners: the Court propose however to transmit the observations of the 2d Judge to the Criminal Judges of the several Zillas in the Southern Division, and to call their attention to the

the suggestion for the erection of a separate building for the confinement of prisoners under examination.

3. The remarks of the 2d. Judge upon the subject of perjury, contained in the 16th paragraph of his report, were taken into consideration by the Court of Poujdaree Adawlut in their proceedings under date the 16th December last, upon a reference upon the same subject from the late additional Judge on Circuit in the Centre Division. The accompanying extract from those proceedings, will put the Honorable the Governor in Council in possession of the sentiments of the Court of Poujdaree Adawlut upon this point; and they consider it unnecessary to add any thing to the observations there recorded. They deem it proper at the same time to refer to their proceedings submitted to Government under date the 30th December 1822 when the same subject was brought under consideration

From Para 18th to the end in the Proj. dt 16 Dec 1825.

4. In the 17th para the 2d Judge remarks that "under the head of cattle "stealing, sheep stealing is classed. By Clause "fourth Section III Regulation XI of 1822, and "by the construction given to it by the Courts are "bound to try all cases however trivial "even the purloining a lamb or kid of the "value of 2 or 3 annas, must be referred "to the Criminal Judge. The consequence of "this is, that an Inhabitant is either forced "to go to the Criminal Court at a considerable "distance, inconvenience and expence, or "forego complaint. In the season of cultiv-"ation particularly, the loss of time is "of more consequence, than the loss "sustained by the theft. and I am of opinion "that in nine cases out of ten, the crime "is either compromised, or suffered in "silence."

5. The Court have no reason to believe, that the evil here pointed out is at all general. The reports from the Criminal Judges in the Northern and Centre Divisions shew, that cases of sheep stealing are frequently brought under their cognizance, and the Court are disposed to think from the very general terms in which the opinion of the 2d Judge is advanced, that he had not investigated with the necessary precision, the grounds of his statement, that nine cases out of ten of sheep stealing are at present compromised, or, not brought forward in the Southern Division.

The

6.

The orders of the Toujdaree Adalut, by which cases of sheep stealing, were directed to be included under the provisions for cattle stealing, in clause fourth Section III Regulation VII of 1822, were founded upon the consideration, that this description of property was equally with oxen, horses and other animals, peculiarly exposed, and in apportioning punishment to the offence, regard was to be had, not solely to the value of the property stolen, but to the difficulty of preserving and the facility of stealing it. It appeared therefore to the Court just, that it should have the additional protection afforded by the Legislature, in the increased penalties adjudicable under Regulation VII of 1822.

7.

If it should be found as the 2d Judge represents, that the subjecting of this offence to the cognizance of the Criminal Judge, has had the effect of rendering this description of property less secure, the Court of Toujdaree Adalut will issue the requisite directions for the removal of the evil, as sheep stealing is not necessarily included in the terms of Clause fourth Section III Regulation VII of 1822.

It

F. C.

15th February 1826.

It was not within the power of the Court, to foresee the injury which the 2d Judge reports to have resulted from their interpretation of the law: as the practice of compounding offences which the Court have reason to believe is general in the districts where Zillah Courts have been abolished, and which is by no means confined to cases of sheep stealing, was not at the date of the first order of the Toujdaree Adalut upon this subject prevalent, and certainly had not been represented.

The Court propose to require the opinion of the several Provincial Courts of Circuit upon the sentiments of the 2d Judge on the subject of sheep stealing; and they will be guided in issuing their final instructions, by the information which those Courts may lay before them.

Ordered, that extract of these proceedings be sent to the Secretary to Government in the Judicial Department for the purpose of being laid before the Honorable the Governor in Council.

Sent following letter No. 69

Ordered

Ans.d Dum. N.328
ord.d 18.d.1826.

Ordered also that a extract of these proceedings be sent to the 2d Judge late on Circuit in the Southern Division by precept directing him to communicate the same to the Magistrates & Landholders of Jaffna & Batticotta & to the Superintendant of Police & Commandant of Jaffna as may be practicable in the Southern Division for their information

(Sent following precept No.70

Read return dated 15th Instant from the late additional Judge on Circuit in the Centre Division to precept dated 5th November last directing him to communicate to the Magistrate of Cuddapa pages 1.2.3.4.5 of the Courts observations in Cuddapa Calendar 2d Sessions 1825.

(Here enter No. 115)

Read letter dated 15th Instant from the late additional Judge late on Circuit in the Centre Division stating in further return to the Courts precept of the 18th November last that a second futwa has been taken & a new sentence passed in No.13 Bellary Calendar 2d Sessions 1825.

(Here enter No.116)

At a Court of the Poydaree Adalut.
Present

Thursday 4th February 1826. The Hon.ble A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Gowan Esqre 3d Puisne Judge

Read again letter dated 30th November last from the 3d Judge on Circuit in the Southern Division, - Submitting case No.15 Salem Calendar 2d Sessions 1825.

(Here enter No.985 of 1825)

Read the second futwa delivered in this case, by the Cazee ool Coozat and Mooftees of the Poydaree Adalut.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held Before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coozat and Mooftees of the Poydaree Adalut confirm the said futwas of the Cazee ool Coozat and Mooftees aforesaid, and under the provisions of Section XV Regulation VIII of 1802 adjudge the prisoner,

Vattamalee Mooppen,

to suffer death by being hanged at the usual time and place of execution.

(Sent following letter No.74)

At a Court of the Foujdaree Adalut.

Present

Friday, 3rd February 1826. — F. A. Grant Esqr. — James Cochrane Esqr. — George Gowan Esqr. — } Judges

Read letter dated 1st Instant from the late Additional Judge late on Circuit in the Centre Division, recommending under Section X Regulation I 1825, a mitigation of punishment in case No 5 Bellaee Calendar 2d Sessions 1825.

(Here enter No 87)

The Court of Foujdaree Adalut having attentively considered the grounds, upon which the Additional Judge has recommended a commutation of the prescribed penalty, in the case of the prisoner referred to in his report, to five years imprisonment with hard labour, sanction the mitigation proposed.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

(Sent following letter No 75.)

Read letter, dated 7th Instant from the late Additional Judge late on Circuit in the Centre Division recommending

under

under Section X Regulation I 1825, a mitiga-
tion of punishment in case No 1 Caddapa Supple-
mental Calendar 2d Sessions 1825.

(Here enter No 99)

1 The grounds upon which the late Additional Judge recommends a mitigation of punishment, are, first, that the offence of the prisoner is not common; and secondly, that it does not appear that he intended to commit a fraud, by the forgery of which he has been convicted.

2 It appears to the Judges, that the Regulations view the offence of forgery, not merely on the light of a common fraud, but by clapsing it with perjury, and prescribing a severe penalty, they have declared it to be a crime requiring exemplary punishment.

3 One of the grounds of the enact-
ment of Regulation VI. of 1811, is stated in the pre-
amble, to be the prevalence of the offence. Upon this point the Judges concur with the late Ad-
ditional Judge in opinion, that the crime is not prevalent; and this consideration will authorize the adjudication of the lowest punish-
prescribed by the law - but as the offence of the prisoner in the case referred to, is complete in all respects; a mitigation to the extent proposed, would amount in effect to an alteration of the law. Upon this ground therefore, as well as upon the aggravation of

of the crime in the contempt of Court exhibited by it, the Judges direct, that a sentence of four years' imprisonment with hard labor be passed upon the prisoner Buckoo Tenjanah, to take effect from the date of his conviction by the Court of Circuit.

The original document trans-
mitted with the late Additional Judge's report is herewith returned.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

(Vide following letter No 76.)

Read letter dated 2d Instant from the 1st Judge late presiding 4th Quarterly Sessions 1825 Zilla Chittoor, recommending under clause second Section III Regulation I. 1825, a mitigation of punishment in case No 14. 4th Quarterly Sessions Zilla Chittoor 1825.

(Here enter No 80.)

The Court of Foujdaree Adawlut having attentively considered the grounds upon which the 1st Judge has recommended a com-
mutation of the prescribed penalty, to four years imprisonment with hard labor in irons, in the case of the prisoners referred to in his report, sanction the sentence proposed.

Ordered

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Tuesday

3d January 1826 - At a Court of the Kingdom Udal

Present

The Honble F. A. Grant Esquire, --- 1st Puisne

James Cockburn Esquire, 2d Puisne Justice

George Gowan Esquire, 3d Puisne Justice

Read letter, stated 11th Instant, from the Judge on Circuit in the Western Division submitting cases Nos 1, and 19. Causes Calendar Sessions 1825

Minute No 862 of 1825.

Present and 3d Puisne Justice

of the Court of Judicature Udalut on a consideration of the circumstances in evidence before the being of opinion the proof against Subhanaya is sufficient to commit him of the crime of Arson, desire under the provisions of Clause 2 Section II Regulation I of 1818 that the Law Officers will state by a second time to what specific punishment the prisoner would have been liable under the Law if he had been committed for full legal evidence of the crimes.

Ordered that the proceedings be transmitted to the Sudder Foujdaree Adalat

Mr Grant and Mr Gowan

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January 1826.

last, from the Judge of the Court of Circuit in the Centre Division, submitting case No 43. Chittoor Calendar 4th Quarterly Sessions A.D. 1824.

Vide entry No 861 of 1825

& 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge Circuit the futwa of the Provincial Officer and the futwa of the Cazee ool Cooza and Mooftee of the Zillah Adalut comm the said futwa of the Cazee ool Cooza & Mooftees aforesaid & direct that the prisoners,

1st Shankiah,
2d Varoomaliah, and
3d Carlmodiah,

be set at liberty.

And under the Rubakaru declared in the futwa as to the

4th Cruata reddy,
5th Bramm,
6th Chenaagan,
7th Venkatum,
8th Banlegan,
9th Gungum,
10th Dawragan, and
11th Chengum,

to imprisoned and kept to hard labour on the public roads or other public works for and during the period of three years and then be released.

See preceding letter No 2.

8th January 1826.

1. In his letter accompanying the trial, the 2d Judge discusses at length the question generally, as to whom is the appellation 'Police officer' in clause second section I Regulation VII. 1822 applicable? and he further submits the particular point, whether a "concern of a village to the apparently employed as a village watcher" is an offence of breaking or attempting to break into a dwelling with intent to steal" be adequate to establish the jurisdiction of the "Court of Circuit."

2 The Court consider it to be unnecessary to determine the particular question, whether, in the instance of the Servant of a village, or, village Officer of any particular denomination, being concerned in the offence specified in clause first section II Regulation VII of 1822 the case should be committed. They are of opinion, that the Criminal Judge must be left to exercise his discretion in each case; that if it appears evident that the person concerned, be his denomination what it may, was bona fide exercising those police functions, which constitute him an officer vested with authority for the prevention of crime; and that a grossly breach of trust, and malversation in office, are implied in his commission of the offence designated in the clause first section II Regulation VII 1822, then, the Court are clearly of opinion, that it will be the duty of the Criminal Judge to

January 1826.

to commit the case for trial before the Court of Circuit. But if this aggravation be wanting, though the accused may bear an official title, it will not be sufficient to take the case out of the jurisdiction of the Criminal Judge.

3 The Court of Poujdaree Adalut further concur with the 2d Judge in the remarks offered in the 15th paragraph of his letter, that to constitute the aggravation of being a police officer, pointed out in clause second Section II Regulation VI 1822, the individual must not be entrusted temporarily with the duties of police, not, as the 2d Judge observes "a transient employ and in a service to which he is not always bound." but it must be his professional occupation, and be habitually exercised at the time the offence was perpetrated.

4 With reference to the observations of the 2d Judge in para 21st and to his remark in para 63, that in another number wherein the opinion of the Pundits was quoted, the rules laid down for maintaining an uniform an adequate punishment constrained him to sentence to the term of seven years imprisonment." The Court of Poujdaree Adalut have to observe, that should guilt not be brought home to the police Officers charged, or should the Court of Circuit, for any reason, deem the punishment prescribed under a future act inexpedient, the Judges presiding in any case is not constrained to pass a sentence of seven

No. 116.

30 January 1826

seven years imprisonment, but he may report the case to the Court of Poujdaree Adalut, who are empowered by Section IV Regulation I of 1825 to mitigate the sentence prescribed in Section XXI Regulation VIII 1802 "when it may be considered by the Judge of Circuit holding the trial to be too severe."

5 The Court of Poujdaree Adalut consider it to have been the duty of the 2d Judge, to have noticed pointedly to the Magistrate, the arbitrary and oppressive conduct of the Police Officer commented upon in the 26th para of his letter, and they desire that a copy of that paragraph be communicated to the Magistrate in Zilla of Chittoor, in order that he may adopt the necessary measures, for checking abuses of this nature.

Ordered, that extracts of these proceedings be sent to the 2d Judge late presiding 4th Quarterly Sessions 1824 in the Zilla of Chittoor for his information and guidance.

Sent following letter No. 3.

Read letter, dated 20th August last, from the 3d Judge late on Circuit in the Carnatic Division, submitting cases Nos 11 and 12 Bellary Calendar 2d Sessions 1824.

Vide enter No. 715

Mr Cochrane, and Mr Gowan,

The 2d and 3d Puisne Judges having maturely considered the proceedings held, before the Judge on Circuit, the futwa of the Muftee Law Officer and the futwa of the Cazee ul Cozat and Mooftees of the Poujdaree Adalut confirm the sen

said futwa of the Cazee aal Cozat and Mooftes aforesaid and under the sentence of Cahoobut declared in the futwa adjudge the prisoners,

In No 11. 1st Kenchengowda, and 1st in No 12

and

7th Neelkanta Gowdah,

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of fourteen years and then be released.

And the prisoner,

14th Ramingowdah,

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of seven years and then be released.

And the prisoners,

10th Maungan Cenkah,

11th Colachee Buswah,

and

12th Chanadiy Hunmah,

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of two years and then be released.

And the prisoner,

13th Neelamah, (female)

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of six months and then be released.

And under the provisions of Clause sixth Section II Regulation XV of 1803. direct that the prisoners,

2d Moopengowdah,

3d Baden Sunna Cheemah,

4th Unnonathee,

In No 11. 5th Chintulpullee Komaree, & 2d in No 12

8th Taliaree Sunna Hunmah,

and

In No 11. 9th Dibbadahully Bhurmah, and 4th in No 12

be released on producing good and sufficient security for their future good behaviour and appearance when required.

And acquitting the prisoner,

15th Hullalee Buswah, and

In No 11. 16th Chiekegan Peroo, & 5th in No 12

direct that they be set at liberty.

Mr Cochrane,
Mr Gowan.

The 2d and 3d Puisne Judges having maturely considered the proceedings recorded in each No 12 before the Judge on Circuit, the futwa of the Provincial Law Officer and the futwa of the Cazee aal Cozatt and Mooftees of the Sudder Adalut confirm the said futwa of the Cazee aal Cozat and Mooftees aforesaid, and so far as respects the prisoners not concerned in No 11, direct that the prisoners,

6th Ullamuttee Hunmah,

7th Tallary Cheemah, and

8th Tallary Iyagah,

be set at liberty.

Sent following letter No 14.

In the consideration of this trial, the attention of the Court of Sudder Adalut has been forcibly attracted, to certain proceedings of the Criminal Judge, which demand their notice

notice. The mode in which this officer con-
ducted the examination of the witnesses for the
prosecution, the Court consider to have been highly
improper. The question addressed to the 5th & 6th
witnesses. "What have you to say in the case of
"Buonee the prosecutrix and prisoners Kenchen-
"gowdah and the rest," and his opening question
to the 10th 11th 12th and 13th witnesses, "What
"have you come to Court for?" are reprehensible,
as tending to overawe a witness, and as
inconsistent with the spirit of patient and
deliberate attention, which should characterize
the investigation of a judicial officer.

2. The Court hope it will not
be necessary for them to notice hereafter, a
proceedure in the Criminal Court of the
nature of that now animadverted upon.

3. The Court observe, that the 17th
18th 19th 30th and 37th witnesses declared before the
Criminal Judge, that they knew nothing of this
case; but they were nevertheless bound over
to give evidence before the Court of Circuit:
The Court of Poydarre Adalut direct that the
Criminal Judge be informed, that the manifest
inattention to the correct performance of his
duties shewn in this proceeding, deserves their
censure.

4. In the 55th para of his letter
accompanying these trials, the 3d Judge offers
the following remarks: "These cases, implicating
"the heads of three distinct Villages in crime,
"cannot fail to receive a full consideration from

from the Higher Court, whose sentence is neces-
sarily likely to make a considerable impression
"on the other heads of village police in the
"Bellaree District. I am of opinion that, if any
"of the prisoners are finally convicted, the for-
feiture to Government of all Enam Lands
"which they may possess should form part
"of their sentence, and that the same should
"be placed by the Government at the dis-
posal of the Collector."

The Court of Poydarre Adalut,
5. after mature deliberation, have convicted
and finally sentenced two of the individuals
referred to, Viz Kenchengaudah 1st prisoner
under the provisions of clause second
Section IV Regulation XV of 1803, and
Neelkantagowdah, 7th Prisoner, under clause
first Section IV Regulation VI of 1822, to
14 years imprisonment with hard labour
and they approve of the suggestion of the
3d Judge, that the forfeiture of their Enam
Lands, should form part of the sentence
of the Court; but as the Regulations do
not expressly adjudge this penalty, they
are of opinion, that it is not competent
to them to enhance the punishment; but
they consider it proper to submit the case
for the orders of the Honorable the Governor
in Council.

The offence of the prisoners,
6. who were accessaries in a gang robbery,
and

appear to have been the chief instigators of the crime, is one against which the Regulations denounce the severest penalties, and the Court are impressed with the opinion, that the utmost severity of the law in force, is required, to restrain individuals from the commission of this offence. The conduct of the prisoners, involving a gross breach of trust, and flagrant violation of public duty, requires, the Court conceive, to be marked by the reprobation of Government, independently of the legal penalty, prescribed for the offence of which they have been convicted, in order that their punishment may have a salutary influence on the other heads of villages in the Zilla of Bellary.

In support of the arguments advanced for this measure by the 3d Judge, the Court would remark, that they deem the removal of these persons from office necessary to the efficient administration of justice, as there can be little doubt, but that on their restoration to power, after suffering the merited punishment of their crimes, they would use the influence their situations would secure to them, to the prejudice of all who may have been instrumental in bringing them to punishment. Their permanent disqualification for office appears therefore to be called for, to prevent the possibility of persons being deterred from appearing against

against this class of offenders.

8. The Court, are also of opinion, that the powers vested in the Heads of villages by Regulations IV and XI of 1816, and IV of 1822, are too important and delicate a trust, to be consigned to the hands of men, who, like the prisoners, have been guilty of atrocious crimes; and have given abundant proof of their unfitness for office. For these reasons the Court respectfully recommend, that the Honorable the Governor in Council, may be pleased to declare, Kenchengowdah of the village of Chekatanoy in the Talook of Hurpunhully, and Keelcantagowdah of Coolhully in the Talook of Hoovinhadagalp Zilla Bellary, for ever disqualified from holding office, and in consequence, adjudge their Service enam forfeited to Government.

Ordered, that extract of these proceedings be sent to the Secretary to Government in the Judicial Department for the purpose of being laid before the Honorable the Governor in Council.

Sent following letter No. 5

Ordered also that paras 1, 2 and 5 be sent to the Provincial Court of Circuit in the Centre Division by precept directing them to communicate the same to the Criminal Judge in the Zilla of Bellary for his information.

Sent following precept No. 5A

Ans. 2 ... 24th January No. 64
entered in Dy 2d Feby 1826

2 Sent 11

Ans. 2 ... 16th January No. 37 entered in
in the ... 25th ... 1826

Sent 11

11th July, 1826. having maturely considered the proceedings held before the Judge on Circuit the Juties of the Provincial Law Officer and the Juties of the Cazee cum Cozgat and Mooftees of the Zillah Court confirm the said Juties of the Cazee cum Cozgat and Mooftees aforesaid, and under the provisions of Section XVII Regulation VIII of 1806, adjudge the prisoner,

"Che gorroopanty Ekkeerah"

to suffer death by being hanged at the usual time and place of execution.

(Sent following letter No. 254)

Read letter, dated 28th ultimo, from the Judges of the Provincial Court of Circuit in the Northern Division, with report on the state of mind of the prisoner in No. 3 Masulipatam Calendar 2d Quarterly Sessions 1825 required by the Court's orders of 11th September 1825.

(Here enter No. 398)

Read return, from the late Additional Judge late on Circuit in the Centre Division, to precept dated 28th ultimo, directing him to communicate paras 2 and 3 of the Court's proceedings of

11th July, 1826. of that date to the Acting Criminal Judge of Cuddapah.

(Here enter No. 405)

Read return, dated 11th Instant, from the late Additional Judge late on Circuit in the Centre Division, to precept dated 3d Instant directing him to communicate para 3 of the Court's proceedings of that date to the Criminal Judge of Cuddapah.

(Here enter No. 406)

Read return, dated 4th Instant, from the Judges of the Provincial Court of Circuit in the Southern Division, to precept dated 15th ultimo informing them of the Court's opinion as to the cases of perjury cognizable under Section XXIX Regulation IX of 1816 and Section VIII Regulation II of 1822 with remarks on the proceedings of the Magistrate of Coimbatore in a case of perjury forwarded by him.

(Here enter No. 399)

Read letter, dated 5th Instant, from the 2d Judge on Circuit in the Southern Division, reporting the commencement of the Sessions at

Madura

14th July, 1826 Madura.

(Here enter No 401)

F.A.

At a Court of the Toujdaree Adalut.

Present

Tuesday 18th July 1826

F. A. Grant Esq re 1st Puisne Judge

James Cochrane Esq re 2d Puisne Judge

William Oliver Esq re 3d Puisne Judge

Read letter dated 25th May last from the 3d Judge of the Provincial Court of Circuit in the Northern Division, submitting case No 18 Masulipatam Calendar 1st Quarterly Sessions 1826.

(Here enter No 326)

The Cazee ool Cozat and Mooftee of the Toujdaree Adalut declare in the foregoing futwa that the prisoner is convicted, on strong presumption of the crime of murder laid to his charge – The Court, therefore, concurring in the opinion declared in the futwa, resolve, under the provisions of clause third section II Regulation XV of 1823 to call upon their Law Officers to declare by a second futwa to what specific punishment the prisoner would have been liable under the Mohummudan Law if he had been convicted by full legal evidence.

Ordered that extract of these proceedings be translated and delivered to the Cazee ool Cozat and Mooftee of the Toujdaree Adalut.

Read letter dated 5th Ultimo from the 3d Judge on Circuit in the Northern Division submitting

18th July 1826. Submitting case No. 57 Nellore Calendar 1st Sessions 1826.

(Here enter No. 352)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law officer and the futwa of the Cazee ool Coogat and Mooftees of the Sudder Adalut confirm the said futwa of the Cazee ool Coogat and Mooftees aforesaid and under the sentence of Hijbaias declared in the futwa adjudge the prisoner,

Dhaynoovaconda Venkatasayandoo

to suffer death by being hanged at the usual time and place of execution.

H.T. (Sent following letter No. 257.)

Read letter dated 17th Ultimo from the late Additional Judge Cuttack on Circuit in the Centre Division submitting case No. 15 Cuddapa Calendar 2d Sessions 1825.

(Here enter No. 365)

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coogat and Mooftees of the Sudder Adalut confirm the said futwa of the Cazee ool Coogat and Mooftees aforesaid and under the provisions of Clause 2d Section

20

Mr. Grant & Mr. Cochrane

18th July 1826. Section II Regulation XV of 1803 direct that the prisoners,

1st Gnala Cuddereyandoo,

2d Gopeeyandoo

3d Goodala Ramadoo

5th Mooddoola Paupadoo

6th Paulateeyandoo, alias Timmadoo and

7th Khemboscooree Chinneyandoo

be released on producing good and sufficient Security for their future good behaviour and appearance when required.

H.T. (Sent following letter No. 258)

Read letter dated 15th Instant from the late Additional Judge Cuttack on Circuit in the Centre Division to present dated 3d Instant directing him to communicate para 2d of the Courts proceedings in case No. 9 Bellary Calendar 2d Sessions 1825 to the Magistrate.

(Here enter No. 412)

F 2

At a Court of the Foujdaree Adaulut

Present

Friday
21st July 1826. F. A Grant Esqr 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
William Oliver Esqr 3d Puisne Judge

Read again letter dated 25th
May last from the 3d Judge of the Provin-
cial Court of Circuit in the Northern Divi-
sion submitting case No 18 Masulipatam
Calendar 1st Quarterly Sessions 1826.
(Vide order No 326)

Read the second portion
delivered in this case by the Cazee ool Cozat
and Mooftees of the Foujdaree Adaulut.

The 1st 2d & 3d Puisne Judges having ma-
turely considered the proceedings held before the
Judge on Circuit the portion of the Provin-
cial Law Officer and the portion of the
Cazee ool Cozat and Mooftees of the Fouj-
daree Adaulut confirm the said portion of
the Cazee ool Cozat and Mooftees aforesaid
and order the sentence of Kisseas declared
in the portion of Judge the prisoner,

Collepullee Bampooloo

to suffer death by being hanged at the
usual time and place of execution.

(Sent following letter No 260)

Sent

J A A

25th July 1820.

Read return dated 15th Instant from the 1st Judge of the Provincial Court of Circuit in the Northern Division to precept dated 3d Ultimo directing him to communicate para 3 and 4 of the Court's proceedings in case No 7 Rasulipatam Calendar 2d Quarterly Sessions 1820 to the Criminal Judge.

(Here enter No 420)

Read letter, dated 17th Instant, from the late Additional Judge late on Circuit in the Centre Division, with returned warrant for the execution of a prisoner in No 41 Cuddapa Calendar 2d Sessions 1825.

(Here enter No 417.)

F. H.

At a Court of the Foujdaree Adalut.

Present

Thursday, 27th July 1820.

F. A. Grant Esqr 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
William Oliver Esqr 3d Puisne Judge

Read letter dated 24th Ultimo from the 2d Judge on Circuit in the Western Division submitting case No 53 Malabar Calendar 1st Sessions 1820.

(Here enter No 391)

The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Cozat and Mooftees of the Foujdaree Adalut confirm the said futwa of the Cazee ool Cozat and Mooftees afore: said and under the sentence of Corroboration declared therein direct that the prisoner "Mukuven Kalarikel Packara" be released on producing good and sufficient security for his future good behaviour and appearance when required.

(Vide following letter No 261.)

F. H.

Read

27th July 1826.

Read letter dated 26th Ultimo from the 2d Judge on Circuit in the Western Division, reporting on a case of perjury, forming 826 Malabar Calendar per Sessions 1825 for Mitigation of punishment.

(Here enter No. 388)

The Court, having maturely considered the grounds upon which the 2d Judge has recommended a mitigation of punishment in the case of the prisoner Karandam Koyil Koonjajee, convicted of wilful perjury, resolve under Section V Regulation I of 1825 to call upon Mr Vaughan to specify the extent of the mitigation which he recommends in this case; as they do not see on what principle they can determine it. In reporting cases for mitigation of punishment it will be the duty of the 2d Judge always to specify the extent of mitigation which he may deem proper in each case.

Ordered that extract of this proceedings be sent to the 2d Judge on Circuit in the Western Division for his information and guidance.

(Sent following letter No. 262)

Read letter, dated 17th Instant, from the 2d Judge on Circuit in the Northern Division, reporting his arrival at Mudukpatam.

(Here enter No. 1

27th July, 1826.

Read letter, dated 15th Instant, from the 2d Judge on Circuit in the Western Division, reporting his arrival at Mangalore.

(Here enter No. 422)

Read return, dated 15th Instant, from the late Additional Judge late on Circuit in the Centre Division, to precept dated 29th Ultimo, directing him to submit the remarks in para 3 of the Court's proceedings in case No. 2 Cuddapa Supplemental Calendar 2d Sessions 1825 to the Magistrate of Cuddapa.

(Here enter No. 426.)

F. H.

At a Court of the Poydarree Adalut

Present,

Friday, 28th July, 1826

F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter, dated 5th ~~ultimo~~ instant, from the 3d Judge on Circuit in the Northern Division,- submitting case No 3 Nellore Calendar 1st Sessions 1826.-

(Hereunto No 344)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee oal Cogat and Mooftees of the Poydarree Adalut confirm the said futwa of the Cazee oal Cogat and Mooftees aforesaid and under the sentence of Corrobut declared in the futwa adjudge that the prisoners,

1st Canoormuchy Boochegandoo,
and
2d Caraty Poollich,

be released on producing good and sufficient security for their future good behaviour and appearance when required.

(Sent following letter No 266.

The

25th July 1826.

The Court of Foujdaree Adawlut, after the most attentive consideration of the evidence in this case, have found themselves unable to concur in opinion with the Judge, who presided at the trial, that the charge is proved against the prisoners.

2 There is no evidence whatever to shew that the articles Nos 1, 2, and 3 which were found near the dead body discovered in a field near the village of Lumpanah, were the property of Nursummah. Evidence to this point was of the highest importance, because the state of the body when found was such as to preclude the possibility of its being identified as that of Narsim=mah; and the fact that it was her body was thus left to be gathered from circumstances. If it had been clearly proved that the articles in question belonged to her, there would have been scarcely room to doubt that the dead body was hers, and that the prisoners had murdered her, but in the absence of such evidence it would be dangerous in the highest degree to convict the prisoners, inasmuch

25th July 1826.

as there is no proof that in point of fact Nursummah is dead. Proof of this fact, or at least evidence sufficient to raise the strongest presumption of it, independent of the confessions of the prisoners, was necessary to make those confessions conclusive against them.

3 The fact that certain articles belonging to Nursummah were found in possession of the prisoners loses much of its weight from the want of evidence to shew that she had them on her person when she set out for Masulipatam. It is possible that previously to her departure she might have deposited these articles with the prisoners in the same manner as she deposited others with the 3d witness Judda Seetaramoodoo. It is true indeed that the prisoners have not thus accounted for the articles in question being in their possession, and the fact, taken as it stands under all its circumstances, must be admitted to carry with it a most suspicious appearance, and to warrant the inference that they obtained possession by foul means.

Still

28th July 1826. Still however, after the most anxious deliberation, it has appeared to the Court that upon the whole the evidence on the record warrants to nothing more than the requisition of security, which they have accordingly directed to be taken from the prisoners previously to their discharge.

Ordered, that extract of these proceedings be sent to the 3d Judge on Circuit in the Northern Division for his information.

(Sent following letter No 267.

Read letter dated 26th Instant from the 3d Judge on Circuit in the Northern Division reporting his arrival at Nellore.

(Here enter No 435)

At a Court of the Foujdaree Adalut

Present,

Monday, 31st July, 1826. C. A. Grant Esqre 1st Puisne Judge.
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter, dated 29th ultimo, from the 1st Judge late on Circuit in the Centre Division, submitting case No 23 Bellary Calendar 1st Sessions 1825.

(Here enter No 390)

The 1st 2d and 3d Puisne Judges, on a deliberate consideration of the circumstances of this case in evidence before them disapprove the futwa of the Law Officers of the Foujdaree Adalut by which the 1st Prisoner is acquitted and concur in opinion that the proof against that prisoner is sufficient to convict him of the whole of the charge against him. They do, therefore, under Clause first Section II Regulation I of 1818 and Clauses second and fifth Section IV Regulation XV of 1803 adjudge the prisoner,

Gut Mundah Nadgador,

to receive 30 stripes with a rattan and to be imprisoned and kept to hard labor in irons on the public roads

on

At a Court of the Foujdaree Adawlut

Present,

Friday, 4th August, 1826. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter, dated 16th June last from the 1st Judge late on Circuit in the Centre Division, submitting case No 16 Bellary Calendar 1st Sessions 1825.

(Here enter No 364)

Read also letter dated 8th ultimo from the 1st Judge late on Circuit in the Centre Division, with Persian and English copy of the Tahseeldar's report in Trial No 16 Bellary Calendar 1st Sessions 1825.

(Here enter No 403)

The 1st 2d and 3d Puisne Judges on a deliberate consideration of the circumstances of this case in evidence before them disapprove the Futwa of the Law Officers of the Foujdaree Adawlut and under Clause First Section II Regulation I of 1818 direct that the prisoners,

1st Cocha Letchegadoo, and
2d Singanapally Nagadoo,

be released on producing good and sufficient

27th July 1826. or other public works for and during the period of eleven years and then be released.

And under the latitude allowed by the Futwa of Conclusion against the 2d prisoner Ranjee, the Court adjudge that the said prisoner,

2d "Ranjee,"

be set at liberty.

Sent following letter No 269.

Sent.

4th August 1826. sufficient security for their future good behaviour and appearance when required.

And under Clause second Section VI Regulation I of 1825 direct that the prisoners,

4th Cumum Ramapah,
7th Cunnaseddy,
8th Cumum Salappah,
9th Condaseoor Narsimaloo, and
10th Siddaiy Timmadoo,

be set at liberty

Sent following letter No 270.

Read letter, dated 24th May last, from the 3d Judge of the Provincial Court of Circuit in the Northern Division, submitting case No 19 Masulipatam Calendar 1st Quarterly Sessions 1826.

(Here enter No 327)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazeecool Coogat and Mooftees of the Foujdaree Adalut confirm the said futwa of the Cazeecool Coogat and

4th August 1826. and Mooftees aforesaid and under the sentence of Cohoobut declared in the futwa adjudge the prisoner,

Condavaytee Chedumbaram,

do receive twelve stripes with a rattan and to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of three years and then be released.

(Sent following letter No 271.

Read letter dated the 19th Ultimo, from the Provincial Court in the Western Division, forwarding copies of instructions required from the Acting Criminal Judge in the Zilla of Seringapatam and the Magistrate in the Zilla of Malabar by the Court's letter of 4th Instant.

(Here enter No 428)

At a Court of the Foujdaree Adalut.
Present.

Monday,
7th August 1826. } P. A. Grant Esqre
James Cochrane Esqre
William Oliver Esqre } Judges.

The Court of Foujdaree Adalut having had occasion to reconsider their circular orders under dates the 16th March and 4th June 1825 and the 7th February 1826. upon the subject of examinations and confessions of Prisoners before Native heads of Police; resolve to recall and cancel those dated the 16th March and 7th February leaving those of the 4th June alone in Force.-

Ordered, that the four Provincial Courts of Circuit be by precept commanded to take forthwith all necessary measures for carrying the foregoing resolution into effect.

Precept returnable in 45 days from and after its receipt.

(but for blowing precept No 2744)

Thursday
10th August 1826.

At a Court of the Cayclaree District
Present
F. A. Grant. Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read Letter, dated 22 June last from the 1st Judge taken Circuit in the Centre Division, submitting case No 7 Bellary Calendar 1st Sessions A.D. 1825.-

(Recorded No 363)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Adawlut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and under the sentence of be hooluk declared in the futwa, adjudge the prisoner,

Coorabe Timmee,

to suffer death by being hanged at

18th August 1826 at the usual time and place of execution.

Sent following letter No 275.

Read letter, dated 19th May last from the 1st Judge late on Circuit in the Centre Division, submitting case No 3 Bellary Calendar 1st Sessions 1825.-

(Here enter No 321)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Law Officer and the futwa of the Cazee ool Coozat and Mooftees of the Sudr Adawlut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the sentence of Ashoobut declared in the futwa direct that the prisoners

2d Chinnanah, and

4th Gowlee Veeroojah,

be released in consideration of the long imprisonment which they have already undergone.-

And

The 3d Prisoner Pedda Balegaudoo, being acquitted by the futwa is also ordered to be released.

Sent following letter No 276.

Read letter, dated the 27th Ultimo from the First Judge on Circuit in the Centre Division,- Reporting his arrival at Cuddapa- (Here enter No 438)

Read letter, dated the 5th Instant from the 3d Judge on Circuit in the Northern Division,- stating his intention to leave Nellore on the 8th Instant.- (Here enter No 449)

Read letter, dated 5th Instant from the 3d Judge on Circuit in the Northern Division,- With Copy of Nellore Calendar for the 2d Sessions 1826.- (Here enter No 448)

F. C.

At a Court of the Fouzdaree Adalat

Present,

Friday, 11th August, 1826. } H. A. Grant Esqre. } Judges.
James Cochrane Esqre.
William Oliver Esqre.

Read letter from the 2d Judge on Circuit in the Western Division without date and received 28th ultimo, requesting the opinion and decision of the Court regarding the provisions of Section IV Regulation II of 1822.

(Here enter No 434 of 1826.)

In this letter the Judge sub-
=mits a question whether Criminal
Judges can release at their discretion
persons detained in custody till they
shall give security under Section IV
Regulation II of 1822 in the same manner
as Magistrates can vagrants &c under
Clause third of the preceding section;
and, if they cannot, suggests that
the power be given to them.

Mr Vaughan has rightly
observed that the letter of the Regu-
=lation allows the Criminal Judge
no discretion: and the Court is of
opinion that there is no ground
for

11th August 1826. for departing from the letter. Persons confined by a Magistrate under Section III, and by a Criminal Judge under Section IV, of Regulation II of 1822 are very differently circumstanced. The former are for the most part confined on vague suspicion arising out of their mode of life; and it is not obligatory on the Magistrate either to require or accept Security as the condition of their release. But circumstances may come to light which completely dispel the suspicions against them; and their further detention in custody would then be most unjust; yet would often be unavoidable if the Judge on Circuit only could order their release. The latter are only not convicted of a specific offence and labor under a strong suspicion of guilt arising from the evidence against them; they can always obtain their release by giving the Security required; and the accusation against them having been the subject of a regular judicial enquiry before the Judge by whose order they are confined, no new circumstances

11th August 1826. can be expected to come to light to alter his suspicion of their guilt. There is therefore no injustice or hardship in their confinement till the Circuit Court arrives.

3. These considerations will probably satisfy Mr. Vaughan as to the reason of the distinction made between the Magistrate and Criminal Judge in Sections III and IV of Regulation II of 1822. They will also account to him for this Court's opinion that there is no ground to recommend any alteration in those enactments.

Mr. Vaughan will of course correct the irregular practice on this head which appears to have obtained in the Zillas of Malabar.

Ordered, that extract of these proceedings be sent to the 2d Judge on Circuit in the Western Division for his information. and also to the Judicial Secretary to Government for his information and guidance agreeably to orders of Government dated the 19th October 1824.

Sent following letter No 277.

Sent 11

Ed Mt.

F. A.

At a Court of the Zuydaree Adalat.

Present,

Thursday, 17th August, 1820. F. A. Grant Esqre. James Cochrane Esqre. William Oliver Esqre. } Judges.

Read again return of the 1st Judge of the Centre Provincial Court of Circuit, to Precept 3d June last requiring explanations of two entries in the Record of Trial No 132 of the Calendar of the 1st Sessions at Cuddapa for 1825, also of his neglect to examine witnesses named by one of the Prisoners in his defence, or to account for their absence, or to inform the Prisoner of it, and finally of his omitting to stop the execution of his own illegal sentence on 3 of the Prisoners for near two Months after this Court had pointed out the illegality of it.

(Here enter No 410.)

Read also return of the Criminal Judge of Cuddapa with copies of the warrants received by his Court from the 1st Judge respecting the prisoners in this case.

(Here enter No 358)

The Trial No 132 was for simple Burglary, which offence the Jurors declared not proved against the

17th August 1826. the 3 first Prisoners, the Judge disapproved the Fatwa and required a second, which declared those prisoners liable to Rokhut, on which the Judge sentenced them to imprisonment with hard labor in Irons for 9 months. This proceeding was contrary to Section XXII Regulation VII of 1802 - and when the Calendar came before this Court was declared illegal and the trial ordered to be referred by a Precept dated the 17th June 1825. The record was sent up accordingly - on examination of which an entry was found (without date) of a notice to the Prisoners in open Court that their trial would be referred to the Kujdaree Adawlut - and another dated the 1st April 1825 of a precept to the Criminal Judge to detain the Prisoners till the sentence of the Kujdaree Adawlut should be received: both of which are plainly inconsistent with the sentence pronounced.

2. These are the two entries of which explanation was required: the explanation given is in effect that they are purely fictitious - having been erroneously put in by the writer in order to adhere to the form prescribed, and the Criminal Judge's return confirms this account: as he states that no such

17th August 1826. such precept was ever received by his Court - and submits the warrants actually received respecting these prisoners - which tally with their sentence in the Calendar. The transmission to this Court of a Trial without sufficient inspection by the Judge, or under his orders, to detect such a glaring inaccuracy is not creditable: but the Court will receive with indulgence the confession of a mistake in a matter of this kind.

3. The Court except from this indulgence a remark incidentally made by the 1st Judge in giving this explanation, viz: that "there was no time to spare for calling the Prisoners into Court to pronounce sentence or give information of any kind." The Court deem it indispensable that whenever the final sentence is pronounced by the Circuit Judge, it should be declared in open Court and in his presence. To omit this under any circumstances is slovenly and indecent; and tends to lower the majesty of public Justice and the reverence of the Courts which administer it. The plea of want of time is quite inadmissible.

The

17th August 1826. 4. The explanation as to the Prisoners witnesses is indefinite and unsatisfactory but as the Trial has been closed and all the Prisoners acquitted and released the Court will not pursue the subject further.

5. With regard to the last point, the omission of the 1st Judge to stop the execution of his own illegal sentence he acknowledges error and expresses contrition for his share in it, but somewhat mistakes what that share really is. The order of this Court for the reference of this with many other Trials in the same Calendar reached the 1st Judge (he states) on the 29th of June - and on the 15th July he issued a precept to the Acting Criminal Judge of Adelaide calling for the necessary translations in the referred trials - but making no allusion to the suspension of the punishments. But the 1st Judge should have remembered that the Acting Criminal Judge could not on his own authority annul the warrant of the Circuit Court and that that warrant should have been recalled the instant its illegality was known: he should also have

remembered that the order should have been forwarded the very day if possible on which it was received and that no just cause could be assigned for 10 days delay to relieve many human beings from illegal and severe punishment. The responsibility of stopping the execution of the sentence lay first and chiefly on the 1st Judge, who pronounced it: but the Acting Judge is greatly to be blamed for not making an instantaneous reference upon the subject: a moments reflection would have convinced him that the Prisoners in this and all similar cases were actually suffering severe and illegal punishment; and under such a conviction, the course most natural and proper for him to pursue was immediately to suspend that punishment on his own responsibility till he could receive an answer to his reference to the 1st Judge.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division for his

1 19th August 1826. his information and guidance.
ent.

(Sent following letter No 282)

Read letter, dated the 19th June last from the Northern Provincial Court, transmitting the reports prescribed by Section XXXV Regulation X of 1816, from the several Criminal Judges in the Division for the quarter ending with March last, with their observations thereon.-

(Here enter No 376.)

1 With reference to the 3d Par. of the foregoing letter the Court is of opinion that their Circular orders of the 5th November 1823 are in effect cancelled by the subsequent ones of the 13th September 1824- The latter direct that the communication prescribed by the former from the Criminal Judge to the Magistrate shall not be made when the latter has passed over without observation the proceedings of the Police In the only other case, when the Magistrate has observed upon the Police proceedings, he will agreeable to the former part of the same Circular orders

19th August 1826. have communicated his remarks to the Criminal Judge. and the duty of noticing to the Magistrate any case in which he has admitted insuffi=cient reasons for the detention of a Prisoner by the Police is by Par 5 expressly assigned to the Provincial Court of Circuit- so that under the Circular orders 13th September 1824 there is no case in which it can be the duty of a Criminal Judge to com=municate with the Magistrate on this subject-

2 Referring to the 4th Par the Court observe that there can be no question that the entering a House in this Country by night with intent to steal though the door be closed and not fastened or be open, is Burglary and has been constantly punished as such by the Criminal Courts.

Ordered, that extract of these proceedings be sent to the Judges of the Provincial Court of Circuit in the Northern Division for

24th April 1826.

No 21 Nellore Calendar 1st Sessions 1826

(Here enter No 236)

The Court having attentively considered the grounds upon which the 3d Judge had recommended a commutation of the prescribed penalty to seven years imprisonment with hard labor, are of opinion, that a penalty of five years imprisonment with hard labor will be sufficient for the offence of the prisoner, who appears to have committed the crime simply and his case differs therefore from that of the prisoner noticed in No 12. The Court accordingly direct that the foregoing sentence be carried into execution by the 3d Judge.

Ordered, that Extract of these proceedings be sent to the 3d Judge on Circuit in the Northern Division for his information and guidance.

Sent following letter No 1145

Read letter, dated 9th Instant, from the 3d Judge on Circuit in the Northern Division, recommending under the provisions of clause second Section III Regulation I of 1825, a mitigation of punishment in

24th April 1826

in case No 1 Nellore Calendar 1st Sessions 1826.

(Here enter No 238)

The Court having attentively considered the grounds upon which the 3d Judge had recommended in this case a commutation of the prescribed penalty to two years imprisonment with hard labor, sanction the sentence proposed.

Ordered, that extract of these proceedings be sent to the 3d Judge on Circuit in the Northern Division for his information.

Sent following letter No 1146

Extract

H

F. R.

At a Court of the Tongdarce Adalut.

Present.

Thursday
27th April 1826. J. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge

Read letter dated 2d Instant from the 1st Judge late on Circuit in the Centre Division submitting case No 82 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 194)

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee vol Cozzat and Mooftee of the Tongdarce Adalut vol Cozzat and the said futwa of the Cazee vol Cozzat conform the said futwa aforesaid and under the provisions and Mooftee aforesaid and under the provisions of Section VI Regulation I of 1825 direct that the prisoners,

1st Bucka Sattayyandoo
2d Koora soogandoo
3d Ambaty Chensoogandoo &
4th Mahomed Shabas

be released with an admonition.

(Sent following letter No 150.

Read letter dated 17th February last from the 1st Judge late on Circuit in the Centre Division submitting case No 74 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 140)

27th April 1826

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Justices of the Provincial Land Officer and the Justices of the Cazee wal Cozgat and Mooftee of the Zillah Court confirm the said Justices of the Caja wal Cozgat and Mooftee aforesaid and acquitting the prisoners,

1st Gunda Rashoolee,
3d Immaum
4th Peadly Sinkoloo
5th Hoojeea Sinkaroo &
6th Immaum

direct that they be released with an admonition.

(Sent following letter No 151)

Read again petition
presented by Amparoyne Letumnat Gillad
Nellore in behalf of himself and two others
who were joint respondent with him in an
appeal to the Northern Provincial Court res-
pecting the right to the Shotrium Village of
Talapoonpandoo which was decreed against them
and a special appeal refused.

(Here enter Misc: Pet: No 8 of 1826)

In No 11 of 1822 the same three
persons presented a petition declaring their
ability to prove that the documents upon which
the decree of the Provincial Court had proceeded
were forgeries; and they were in consequence dir-

27th April 1826.

-ected to bring an action before the Magistrate
against the persons who they supposed had
forged them; in order that if the forgery should
be established and be found to affect the
grounds of the decree a review of judgment
might be obtained.

It is now stated that they did
bring the charge before the Magistrate -
that it was examined by one of his Assistants
and by him handed up to the Criminal Judge,
before whom 4 of the documents were estab-
-blished to be forged, and yet the prisoners
ordered to be released - that Petitioners ap-
-plied for and were promised but never
received a copy of the Criminal Courts orders
and the depositions - that the Court Delegate
prevented their applying again - that they
made a representation to the Judge on the
next Circuit - who fell sick and left the
station - that they themselves afterwards fell
sick - and so the business remains in statu
quo.-

They pray this Court to call for
sundry documents and do them justice.

The Court see no reason why
the course before recommended to the Petit-
-tioners should be departed from. They should
present a petition to the Judge of Nellore
praying for the papers required - and they
should

29th April 1826. should point out the Deloyets who interfered with them before; when, if they prove such presumptuous and oppressive conduct on the part of the Deloyets, the Judge will no doubt immediately dismiss them.

Ordered that an Extract of these proceedings be furnished to the Petitioner on his application.

Dckt.

At a Court of the Foujdaree Adalat.

Present,

Wednesday 3d May 1826 — C. A. Grant Esqre 1st Puisne Judge
William Oliver Esqre 2d Puisne Judge

Read letter, dated 25th March last, from the 1st Judge on Circuit in the Western Division, submitting calendar No 29 Canara Calendar 1st Sessions 1826. (Here enter No 218)

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officers and the futwa of the Cazee and Cozat and Mooftees of the Foujdaree Adalut confirm the said futwa of the Cazee and Cozat and Mooftees aforesaid and under the provisions of Section XVII Regulation VIII of 1802 adjudge the prisoner,

Coombeh,

to suffer death, by being hanged at the usual time and place of execution

Sent following Letter No 153.

Dckt.

At a Court of the Zoujdaree Adalut.

Present

Monday 5th May 1820. T.A. Grant Esqr 1st Puisne Judge

James Cochrane Esqr 2d Puisne Judge

William Oliver Esqr 3 Puisne Judge

Read letter dated 1st Instno from the 1st Judge on Circuit in the Northern Division submitting case No 1 1st Supplemental Calendar of the Zillah of Chicacole for the 2d Sessions 1825.

(Vide enter No 190)

The 1st 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the fatwa of the Provincial Law Officer and the fatwa of the Cazee ool Cozat and Mooftee of the Zoujdaree Adalut confirm the said fatwa of the Cazee ool Cozat & Mooftees aforesaid & under the provisions of Clause sixth Section II Regulation XV of 1818 direct that the prisoners viz

1st Broondaroo

2d Pittaiyee

3d Govendadoo and

4th Donbaiyadoo

be released on producing good and sufficient security for their future good behaviour and appearance when required.

(Sent following letter No 154)

The Court of Zoujdaree Adalut have not concurred with the 1st Judge, in his opinion

of the guilt of the prisoners, because they have not been able to arrive at the same conclusion with himself; that the contradictions in the evidence of the witnesses for the prosecution, are insufficient to shake their credit. On the contrary, it appears to them, that the variations are so important and material, that their testimony can not be admitted to establish more than suspicion; and the Court have therefore directed the release of the prisoners on security.

2 In recording this sentence, the Court deem it proper at the same time to point out to the 1st Judge, the defective manner in which the proceedings before the Court of Circuit were conducted. The 1st prosecutor stated, that he received a severe wound on his head from a sword, and nothing could be more plainly necessary than a confirmation of this fact; the 1st Judge however did not, it appears even resort to the obvious measure of calling upon the witness to shew the mark of the alleged wound. The same defect is observable in his examination of the 2d prosecutor, who also deposed to a wound received on his left hand.

3 The Court notice with extreme regret, the serious error into which the 1st Judge has fallen, in refusing to hear the evidence called by the prisoners in

in their defence, on the ground that it would not be admitted as standing alone. They deem it unnecessary to comment upon this opinion, which appears to have taken its rise, in a confused apprehension on the part of the 1st Judge, of the rule of the Mohummedan law of Evidence, with which the Judges of Circuit have no concern, that the testimony of a single witness is not sufficient for conviction. In future the Court direct that the 1st Judge do invariably examine all evidence addduced for the defence, whether it stands alone or not.

4 The Court also consider the proceedings of the Assistant Criminal Judge to have been faulty. This officer neglected to ascertain by a personal examination, whether the declarations of the prosecutors respecting the wounds inflicted upon them, were borne out by the appearance of their persons; and the few questions which were put to the witnesses, and the total absence of any thing like cross examination, which might elicit the truth, and lead to the discovery of further evidence, are, in the opinion of the Court inconsistent with the duty required from the committing officer

May 1826 officer of carefully sifting the evidence in cases brought before him.

The Court direct that the foregoing remarks be communicated to the Assistant Criminal Judge in the Zillah of Chicacole.

Ordered that extract of these proceedings be sent to the 1st Judge on Circuit in the Northern Division for his information and guidance.

(Sent following letter No 155.

Read Return, dated 26th Ultimo from the Provincial Court of Circuit in the Centre Division to precept dated 22d March last directing them to circulate para 2 of the Government letter of 7th February last authorizing Criminal Judges to make inconsiderable repairs of the Zillah at their discretion.

(Here enter No 273)

Read letter, dated 22d Ultimo from the 1st Judge on Circuit in the Western Division Reporting the opening of the Sessions at Calicut on the 22d Instant.

(Here enter No 265)

Read letter, dated 29th Ultimo from the 3d Judge on Circuit in the Northern Division Reporting his arrival at Masulipatam.

(Here enter No 274)

Read letter, dated 24th Ultimo from the 2d Judge on Circuit in the Carnatic Division - Reporting his arrival at Chengleput on 22d Ultimo.

(Here enter No 262)

Read letter, dated 25th Ultimo from the Secretary to Government in the Judicial Department Acknowledging the receipt of the reports of the 1st Judge Northern Division & 3d Judge Western Division on 2d Sessions 1825 with the Courts proceedings thereon

(Here enter No 266)

J. C.

8th May 1826.

Read letter dated 9th Ultimo from the Acting Judge on Circuit in the Southern Division with copy of Combercurnem Calendar for the 1st Sessions 1826.

(Here enter No 263)

Read letter dated 1st Instant from the First Judge on Circuit in the Western Division with copy of Canara Calendar 1st Sessions 1826.

(Here enter No 270)

F. C.

At a Court of the Foujdaree Adalut.

Present

Wednesday,
5th May, 1826. F. A Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read letter dated 7th March
last from the Secretary to Government
in the Judicial Department, commu-
nicating the sentiments of Government,
upon the report of the 1st Judge of the
Provincial Court of Circuit in the Centre
Division for the 1st Sessions 1826.

(Here enter No. 173)

Ordered, that a copy of the
foregoing letter be sent to the 1st Judge
of the Provincial Court of Circuit in the
Centre Division for his information.-

(Sent following letter No. 160.)

Read letter dated 2d Instant and
from the 1st Judge on Circuit in the Western Divis-
ion B copy of Seringapatam Calendar 1st Session
1826.

(Here enter No. 277)

At a Court of the Fouzdaree Adalut

Present

Thursday 11th May 1826.

T. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
William Oliver Esqr. 3d Puisne Judge

Read letter dated 24th February last from the 1st Judge late on Circuit in the Centre Division submitting case No. 76 Cuddapa Calendar 1st Sessions 1825.

(Vide entry No. 279)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Futwa of the Provincial Law Officer and the Futwa of the Fouzdaree Cazee ool Cozat and Mooftee of the Fouzdaree Adalut confirm the said Futwa of the Cazee ool Cozat and Mooftee aforesaid and under the provisions of clause sixth Section II Regulation XV of 1803 direct that the prisoners

1st Bestah Soobadoo
2d Chakala Cheegadoo
3d Cosoo Mullapah
4th Gollah Chennanah and
5th Bestah Setchegadoo

be released on producing good and sufficient security for their future good behaviour and appearance when required.

(Sent following letter No 162.)

Read letter dated 22d Octo

last from the 1st Judge late on Circuit in

11th May 1826 the Centre Division submitting case No 36 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 108 of 1825)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Cozat and Mooftees of the Foujdaree Adalut confirm the said futwa of the Cazee ool Cozat and Mooftees aforesaid and acquitting the prisoners,

1st Toracu Shemshir Khan
3d Mandega Guddum Goowaroo
6th Doodacoola Kuddy and
22d Bogum Ahtchegadoo

direct that they be set at liberty.

(Sent following letter No 163.)

Thursday 18th May 1826

At a Court of the Foujdaree Adalut,

Present,

James Cochrane Esquire, 2d Puisne Judge.
William Oliver Esquire, 3d Puisne Judge.

Read letter, dated 13th March last from the 1st Judge late on Circuit in the Centre Division, submitting case No 98 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 195)

The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Cozat and Mooftees of the Foujdaree Adalut, confirm the said futwa of the Cazee ool Cozat and Mooftees aforesaid, and acquitting the prisoners,

1st Ramoodoo,
2d Pundety Timmoogandoo,
3d Pundety Vencatah,
5th Moohmmy gandoo,
6th Chinna Nagadoo,
7th Chinna Chennoogandoo,
8th Chillumcoor Timmoogandoo,
9th Nutty Reda Naugadoo,
11th Boya Venkatuppah,
12th Mooddanoor Reda Reegandoo,
13th Moppy Gungadoo,
14th Narsimmadoo, and
15th Moppy Naguppah,

direc

Fl6"

18th May 1826.

direct that they be set at liberty.-

/sent following letter No 165./

Read letter, dated the 16th March last from the First Judge late on Circuit in the Centre Division, Submitting Case No 119 Cuddapa Calendar 1st Sessions 1825.-

/Vide enter No 206/

The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coozat and Mooftee of the Poudicherry Zillah confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid; but in consideration of the long period during which they have been in confinement, the Court direct, under the latitude given by a futwa of Bokobut that the prisoners,

1st Mala Chinna Pologadoo,
2d Yumbarapoo Chinnegadoo,
3d Yala Nukadoo,
4th Poda Pologadoo,
5th Beedoogadoo,
6th Muray Boocheegadoo,
7th Doodakoola Sunjeevoo,
8th Toty Doogadoo,
9th Mala Cunnayapegadoo,
10th Mooga Goonamadoo,
11th Shaik Emaum,
and
12th Madan,

Fl6"

18th May 1826.

be released with an admonition.-

/sent following letter No 166./

At a Court of the Toujdaree Adalut.

Present.

Monday 22d May, 1826 J. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
William Oliver Esqr. 3d Puisne Judge

Read letter dated 21st Ultimo from the 2d Judge on Circuit in the Centre Division submitting Cudapa Calendar for the 1st Sessions 1826.

(Here enter No. 207)

Also read letter from the Provincial Court of Circuit in the Centre Division dated 14th Ultimo submitting extract from the proceedings of the Provincial Court of that date.

(Here enter No. 191.)

The 2d Judge states his intention of referring No. 8 of the Calendar, under the provisions of the latter part of section VIII Regulation I of 1825, the conviction of the prisoner (a Mahommedan) resting exclusively upon the evidence of the Hindoo witnesses, who attested his confession before the Criminal Judge; and whose testimony is objected to upon the ground of their religion.

2 In No. 13 of the Calendar a case of the same nature with No. 8, the 2d Judge has passed sentence upon the 1st prisoner upon evidence of precisely the same description with that in No. 8, but the prisoner being a Hindoo, the evidence was sufficient for his conviction under

+ Vide Toujdaree Decree of 29th March 1826.

under the Mohummedan Law.

3 In order to avoid a like anomalous proceeding in future, the Court direct that the Criminal Judge do invariably cause the confessions of prisoners before him, to be attested by witnesses of the same religion with the parties confessing.

4 As similar instances have come before the Court of Zoojoane Beatah, they resolve to make the foregoing instructions Circular.

5 The Court deem it proper to call the attention of the Magistrate of Cuddapa to the remarks recorded in No. 24, that "In this and several cases of the Calendar the attesting witnesses were illiterate people, who are unable either to write or read or even to make a mark which they can after a time recognize". The Magistrate with these directions to the Heads of Police to remedy this evil, which, it is obvious must render the power given to these officers to receive confessions nugatory; and he will enjoin them to have confessions before them as often as practicable attested by witnesses removed from the class of persons pointed out in the remarks of the 2d Judge.

6. Referring to No. 6 of the Supplemental Calendar, which the 2d Judge has resolved to refer to the Court of Zoojoane Beatah, upon the ground, that "question is to be made as

"as to the effect of the former decision" though passed by an incompetent Court. The Commitment, that the prisoners in this number would appear to have been apprehended on the 5th August 1823 charged with house breaking and robbery to the extent of 710 Rupees, that on this charge the Criminal Judge passed sentence upon them, which the 2d Judge directed him to revise under date 17th April 1824; and to refer to the Provincial Court of Circuit for their instructions thereon.

7 These instructions do not appear to have been given until the 20th June 1825 when, the 2d Judge states in his proceedings under date the 13th February last, upon a petition presented by the Brother of the 3d Prisoner praying his release, that orders were issued to the Criminal Judge for the commitment of these prisoners; and the case was accordingly brought before the Court of Circuit in No. 8 Supplemental Calendar 2d Sessions 1825.

8 The late Additional Judge on Circuit however deemed the orders of the Provincial Court of Circuit of 21st June 1825, as appears from his entry in No. 8 of the Supplemental Calendar 2d Sessions 1825, not to have warranted the commitment, and declining to try the prisoners, directed the Criminal Judge to apply for further instructions from the Provincial Court of Circuit.

22d May 1826. 9

On the 3d of February last the Provincial Court of Circuit, it would seem from the return of the Criminal Judge of Cuddapa forwarded with that Courts letter of the 9th Ultimo, directed the unconditional release of the prisoners, but the Criminal Judge deferred execution of those orders, as the 2d Judge then on Circuit, under the construction put by him on the Provincial Courts order of the 20th June 1825. had viewed the case as regularly committed, and had proceeded to the trial on the 16th Febra-ary; and had finally resolved to refer the record for the consideration of the Foujdaree Adalut.

10 As the order for the release was subsequent to the order for the committal, the former order should have been regarded as cancelling the latter - and it was irregular in the Judge on Circuit to proceed to a new trial.

11 As it would appear also, that the Prisoners in this case must have been sentenced before the end of the year 1823, supposing that their sentence was the longest term of imprisonment which a Criminal Judge can inflict under the Regulations, it must have expired before this. The Court therefore, on the principle on which their orders in Para 8 of the letter to the Judges of the Centre Provincial Court 8th February last were founded, direct that the Prisoners be immediately released - and the 2d Judge on Circuit informed, that the reference of the trial is unnecessary.

2/ F.R.

22d May 1826

Ordered that an extract of these proceedings be sent to the 2d Judge on Circuit in the Centre Division by precept, directing him to communicate Para 5 to the Magistrate of Cuddapa for his information and guidance.

(Sent following precept No 167)

Ordered also, that paragraphs 6. 7. 8. 9. 10. & 11 of these proceedings be sent to the Provincial Court of Circuit in the Centre Division by precept, directing them to issue immediate orders for the release of the prisoners tried in No 6 Cuddapa Supplemental Calendar for Sessions 1825.

(Sent following precept No 168)

Ordered also, that Paras 1. 2 & 3. of these proceedings be sent to the 4 Provincial Courts of Circuit by precept, directing them to communicate the same to the several Criminal Judges within their jurisdictions for their information and future guidance

(Sent following precept No 169)

Read return, dated 8th Instant, from the Provincial Court of Circuit in the Centre Division, to precept dated 28d February last communicating the remarks of the Foujdaree Adalut upon his report of 1st Sessions 1823.-

(Here enter No 288)

Read return, dated 9th Instant from

22d May 1826. from the Judges of the Provincial Court of Circuit in the Southern Division, to precept dated 22d ultimo directing them to circulate para 2 of the Government letter of 7th February last authorizing Criminal Judges to make inconsiderable repairs of the Jail at their discretion.

(Here enter No 294)

Read letter, dated 8th Instant, from the 3d Judge of the Court of Circuit in the Northern Division, with returned warrant for execution of a prisoner in case No 13 Masulipatam Calendar 1st Quarterly Sessions 1826.

(Here enter No 296.)

Read letter, dated 16th Instant, from the Acting Judge on Circuit in the Southern Division, reporting the arrival of the Court of Circuit at Salem.

(Here enter No 305)

F. H.

At a Court of the Foujdaree Adalut

Present,

Friday 26th May 1826. F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges

Read letter, dated 18th March last, from the late Additional Judge late on Circuit in the Centre Division, submitting case No 14 Bellary Calendar 2d Sessions 1825.

(Here enter No 203)

The 1st 2d and 3d Puisne Judges, having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Adalut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and under the provisions of Clause sixth Section II Regulation XV of 1803 direct, that the prisoners

1st Murreedinngowdah,
2d Koopanee,
3d Veerapaiah and
4th Nagaragoo Lyigah,

be released, on producing good and sufficient

sufficient security for their future good behaviour and appearance when required.

And acquitting the prisoner
H. Nursee yah
direct that he be set at liberty

Sent following letter No 175

The Court of Foujdaree Adalut,

in considering the record of this trial, have been induced to give more weight, to the discrepancies observable in the evidence for the prosecution, than had been attached to them by the late Additional Judge on Circuit. They have also thrown out of their consideration, the presumption of guilt, which the late additional Judge derives from the confession of one prisoner against his supposed accomplices, as it is a settled rule, that the confession of a party, is only evidence against himself, and not against others. Upon these grounds chiefly, and in consequence of the defects, which the Court proceed to notice, they have not concurred with the 2d Judge in his conviction of the prisoners, but consider them, to be all that is warranted by the evidence

(a. de Jan: 26th this letter)

on record.

2 The Court remark, that there is only the evidence of a single witness, the 7th Neeladara, to show, that the 1st & 2d Prosecutors mentioned the names of the persons who apprehended him, before the prisoners were taken into custody. It appears to the Court of Foujdaree Adalut of the highest importance, that this point, should in all cases undergo a careful investigation; for, the credit due to the declaration of a Prosecutor at the trial, respecting his recognition of the prisoners at the time of the commission of the offence, a matter of so much moment, must in a great degree depend upon it; and the omission of the late additional Judge to clear up this point, by a cross examination of this witness, is a serious defect in his proceedings.

3 This omission, likewise deprives the confessions of the prisoners of any validity, as the Court are disposed to place little or no confidence in any confession taken by a native officer of police, from a person apprehended at such officer's own suggestion, and upon suspicions in the breast of the officer himself.

4 It is also to be regretted, that no attempt was made by the late additional Judge, to ascertain, where the handkerchief identified by the 1st & 2d witnesses, as the property of

25th May 1826

of the 1st prisoner, was found, ~~from the above information on the bench~~, indeed there is nothing in the record to corroborate the testimony of the prosecutor and their witnesses, to the fact, that they recognized the prisoners at the time of the affrait.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information and guidance.

(Sent following letter No 176)

Read letter dated 9th March last from the late Additional Judge late on Circuit in the Centre Division, submitting case No 16 Bellary Calendar 2d Sessions 1825.

(Here enter No 178)

The 1st 2d and 3d Pundit Judges, having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coogat and Mooftee of the Zillah Court, confirm the said futwa of the Cazee ool Coogat and Mooftees aforesaid; and under the provisions of clause 5th Section II Regulation XV of 1803 direct that the prisoner,

1st Nagadoo

be released, on producing good and sufficient security for his future good behaviour and appearance when required. And acquitting the prisoners,

F. C.

25th May 1826.

2d Gungaloogadoo &

3d Paupeegaudoo

direct that they be set at liberty.

(Sent following letter No 177)

The late Additional Judge on Circuit, in referring this trial, has recorded his opinion, that the 1st Prisoner is fully convicted of the charge laid against him, mainly resting this opinion, it would appear, upon the grounds of it's having been satisfactorily established by the evidence, that the weapon, with which the murder was committed, was the property of the prisoner; and to the strong corroboration thereby given to his confession before the officer of Police.

The Court however observe, that upon this point, the evidence rather goes to prove, that the dagger with which the wounds were inflicted, belonged to the 1st Prisoner's father, and it is not shewn, where this person was at the time of the murder. Moreover the Court are unable to reconcile the contradictions in the testimony of the prosecutor: from his depositions before the Police and the Criminal Judge, it would appear, that the deceased was sleeping at the time of the murder, in the yard of his the prosecutor's house; but from his evidence on the trial, he leaves the Court to suppose that he was sleeping in a separate house further, the inconsistency between the evidence of

of Nagereddee and Chinna Appagaudoo, in relation to the delivery by the 1st Prisoner of the handle of the dagger, has had great weight with the Court: the one witness declaring that the other was present at the transaction, and the other witness affirming, that he knows not, in whose house the handle of the weapon was found; nor, was he even in the village, when the discovery took place. The circumstantial evidence being thus contra: dictory, the proof derivable from the prisoner's alleged confession, is necessarily greatly weakened; and the Court upon the most mature consideration of the case, could not concur with the late Additional Judge in his view of the guilt of the 1st Prisoner: and they have in consequence ordered his release upon security.

Having taken this view of the evidence against the 1st Prisoner, the proof of criminality in respect to the 2d & 3d Prisoners, fails; and there appears no ground therefore upon which the Court could accede to the late Additional Judge's recommendation, that the prisoners should not be released unconditionally.

Ordered, that a transcript of the proceedings be sent to the late additional Judge late on Circuit in the Centre Division for his information and guidance.

(Sent following letter No 178)

Read letter dated 24th March last from the 1st Judge on Circuit in the Centre Division, submitting case No 124 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 217)

The 1st 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the fatwa of the Provincial Law Officer and the fatwa of the Cazee vol Cozat and Mooftees of the Sudr: Adawlut dated, confirm the said fatwa of the Cazee vol Cozat and Mooftees aforesaid, and acquitting the prisoners,

1st "Madega Goorovadoo"
2d Coommara poolegadoo
3d Madega Unkadoo
4th Madega Vencategadoo
5th Talary Mulleyadoo
6th Chakala Nagadoo
7th Talary Cadigadoo
8th Lingavoogadoo
9th Golla Ramegadoo
10th Coddoomoolaory Ramegadoo &
11th Mala Nayadoo"

direct that they be set at liberty.

(Sent following letter No 179.)

At a Court of the Foujdaree Adalut.

Present

Monday 29th May 1826. J. A Grant Esqre 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read again the following letters

From the Provincial Court in the Centre Division dated 10th February 1826.

(Here enter No 126)

From Do — Do 29th December 1825.

(Here enter No 2)

From the 1st Judge of Do Do 13th January 1826.

(Here enter No 26)

From the Provincial Court Centre Division dated 16th January 1826.

(Here enter No 30)

It appears from the foregoing papers that the 1st Judge of the Provincial Court in the Centre Division who performed the 1st Circuit for 1825, for want of time or some other reason, omitted to examine the Calendar laid before him by the Criminal Court at Cuddapa under Section VI Regulation VI of 1822 till after the conclusion of his circuit; when, on the 19th July 1825, he issued a precept to the Acting Criminal Judge of Cuddapa pronouncing the sentences in 27 cases and on

29th May 1826.

on 134 prisoners illegal and calling for explanation to be submitted to the Collective Court. The Acting Criminal Judge of Cuddapa who received this precept was Mr Lascelles - the Acting Criminal Judge who passed sentences was Mr Waters who at the date when the precept was received was Acting Judge of Chittoor - The latter gentleman, it appears, received information of this reference and applied to Mr Lascelles to have the precept & Calendar sent to him; at the same time apprizing the 1st Judge publickly that he had done so and notifying this to Mr Lascelles; Mr Lascelles complied with this application. which proceeding of his the 1st Judge denominates an "irregularity and contempt." The latter of these words is a strong term; and in the present instance ill-judged and indecent. The utmost that can be said against the proceeding is that it was not strictly regular: and this small deviation from regularity consisted in forwarding the packet applied for without knowing that the 1st Judge had acquiesced in Mr Waters's application, which was out of ordinary course.

2

By these means the Calendar did not return to the Provincial Court till the 24th September following when in obedience to a precept to that effect, it was returned by the Acting Judge of Chittoor together with

29th May 1826.

whole of the proceedings without any substantial explanation; and none has since been called for; tho' pursuant to an order issued by the 1st Judge, apparently without the knowledge of his Colleague, after he had brought the Calendar before the Collective Court, and which was therefore highly irregular and improper the proceedings have been revised by the present Criminal Judge of Cuddapa.

3

The illegality imputed to the proceedings in the Calendar is that the cases sentenced by the Criminal Judge were beyond his jurisdiction - being cases of robbery either by open violence or attended with some of the specified aggravation. On laying the Calendar before the Collective Court the 1st Judge proposed that orders should be issued to quash the proceedings and release all the prisoners excepting only such as were old offenders. This proposition was opposed by the 2d Judge and hereupon commenced the controversy which has ended in the reference before the Court, after being pursued in a series of conflicting minutes for the space of three months - at the end of which period the 1st Judge, being unable to convince or meet his colleague, insisted on the right of a casting vote under Regulation XV of 1802. The 2d Judge, who then acted for the Register, demurred to issue the orders - and this Court, on receipt of the earliest

earliest in date of the letters above entered, directed further proceedings to be suspended

4 The Court have diligently perused and considered the whole of the papers before them and it appears to them that the questions at issue are the following:-

1 Whether the Collective Court of Circuit, on a reference from the Judge on Circuit under Section XXIII Regulation X of 1816 of cases in which a Criminal Judge had exceeded his jurisdiction, have power to quash the Proceedings of the Criminal Judge and to order the release of the prisoners sentenced, either on the ground of such excess of jurisdiction or on the ground that the prisoners were not put on their defence.

2 Whether, when only two Judges are present, an order to the above effect must be issued on the casting voice of the Senior in opposition to the opinion of the Junior.

5 Under the first head the Court observe that excess of jurisdiction is not one of the grounds of reference specified in Section XXIII Regulation X of 1816; nevertheless the Court think that under a sound and liberal construction of that Section the Judge on Circuit might refer such cases or any others in which error was apparent and remediable - the spirit of the enactment being to obtain correction of error where practicable.

6 The power of the Collect

of Circuit on references under Section XXIII Regulation X of 1816 is discretionary; but its use must of course be consistent with the Regulations; so that the first question may be more precisely stated thus - Is it consistent with the Regulations to quash proceedings of a Criminal Judge and release the prisoners sentenced by him on the ground that he exceeded his jurisdiction in trying them or did not hear their defence.

7 The Court has no hesitation in deciding this question in the negative. The fact that a Judge has passed sentence in a case which he had not lawful power to try has nothing to do with the guilt or innocence of the accused: which is the only circumstance on which the Regulations make their release or punishment to depend: and the fact that prisoners have been sentenced without being heard in their defence calls for further trial not for their release. because the ex parte examination that has been taken is no trial at all under the Regulations and the accused if released would be released without trial which is contrary to the Regulations - It is consistent with the Regulations to quash the proceedings for other reason but not to release the prisoners but leave them regularly on their trial which they have not yet had. This Court however has in several cases

allow

29th May 1826

allowed a prisoner the benefit of a trial before an incompetent tribunal the sentence of which was lighter than the regular tribunal would have awarded, both as being in favor of the prisoner and saving a 2d trial which is repugnant to the humane spirit of British Indian Law: and they are disposed to maintain the precedent; but this only in cases in which the trial has been complete and regular in every other respect.- With regard to the cases in the Cuddapa Calendar the Court see but too much reason to deplore and censure the irregularity of the late Acting Criminal Judges proceedings - He has not only passed sentence in cases in which the Court of Circuit could not have passed it - and passed sentences in several cases of disproportioned severity for ought that appears on his Calendar to justify them; but the 1st Judge declares after reference to all the original proceedings on the trial and the 2d Judge confirms his declaration that "there is no document or notice" to shew that any "of the prisoners were put upon their defence, or "single witness called or any suggestion made "to them at the time to such a tendency."

8 The Judge finds it difficult to believe that an educated English Gentleman a judicial officer of Mr Waters's experience filling the office of a Judge could be guilty of such an error

29th May 1826

long imprisonment with hard labor in iron and stripes without hearing the defence of the accused - and if they could believe it they would pass upon the proceeding the heaviest censure and reprobation. It remains for Mr Waters to explain the appearance of such an anamaly in his proceedings - and the Judges desire that he may be immediately called upon to do so and his explanation transmitted without any delay for which purpose the Calendar will be returned to him. The Court will defer till his explanation is received, their directions for the final disposal of these cases.

Mr Waters must state specifically if he can, regarding every case noticed by the 1st Judge and every other case in the same Calendar in which the sentence has not yet expired, whether the prisoners defence was heard and whether he confessed and before whom and if before the Police whether he confirmed that confession before the Criminal Judge.

With respect to the 2d question

9

tion the Court are of opinion that under Section II Regulation XV of 1802 it was the regular course for the Register to have forwarded the order proposed by the 1st Judge.

As however the 2d Judge thought

10

the order improper, and the case was one of importance the Court think that he would have

29th May, 1826.

have done right to have appealed immedi:
:ately to the Longparee Idalut - And the
Judges have not failed to observe that such
an appeal was offered to him by the Senior
Judge but the offer was not accepted
by Mr Newnham.

Ordered, that extract of these
proceedings be sent to the Judges of the Provin:
:cial Court of Circuit in the Centre Division
by precept returnable in 15 days from and
after its receipt.

(Sent following precepts Nº 185)

Read letter dated 20th March
last from the Pt Judge Cuttack on Circuit in
the Centre Division submitting cases Nos 116
and 117 Cuttack Calendar Pt Sessions 1825.

(Here enter Nº 216)

Before the Court pass sentence
in this trial, they desire to have before them, the
original record of the proceedings held thereon
by the Court of Circuit - They direct therefore,
that the Provincial Court of Circuit, do, upon
the receipt of these orders, send up the original
proceedings without delay. Should the record
not be in the custody of the Provincial Court,
the Court further direct, that the Pt Judge
be called upon to forward the same
immediately to the Provincial Court of
Circuit, for the purpose of transmission to
the Longparee Idalut.

Ordered, that extract of these
proceedings be sent to the Provincial Court
of Circuit in the Centre Division by precept,
returnable in 8 days from and after its
receipt.

(Sent following precept Nº 186)

Read letter dated 23d Septr
last from the Criminal Judge in
the Zilla of Cuttack transmitting by de:
:sire of his Assistant the late Acting
Criminal Judge copies of certain pre:
:cepts from the Pt Judge late on Circuit
and of his returns thereto.

(Here enter Nº 811)

Read letter dated 22d Instant
from the Pt Judge on Circuit in the Western
Division with returned warrant for execu
:tion of a prisoner in case Nº 29 Cuttack
Calendar Pt Sessions 1826.

(Here enter Nº 315)

J. H.

29th May 1826

Mess.rs ... 1st June Nº 373
entered in the ... 8th do. 1826.
Letter Mess.rs ... 16th June Nº 361
entered in the ... 22d do. 1826
Court

Mr. ... 6th June Nº 333.
entered in Bk ... 21st do. 1826

Mess.rs ... 19th June Nº 367
entered in the ... 22d do. 1826.
Letter Mess.rs ... 21st do. Nº 370.
entered in the ... 28th do. 1826.
Court

At a Court of the Fouzdaree Udalut.

Present,

Thursday, 1st June, 1826. J. A. Grant Esqre. } Judges.
James Cochrane Esqre.
William Oliver Esqre.

Read again petition presented by Indracoory Pera Reddy and Cabree Condapah of the Zillah of Nellore.

(Here enter F. U. Misc. Pet. No. 10 of 1826)

It appears that these Petitioners suffered highway robbery, and suspecting one of their servants to be privy to it had him brought before an Assistant of Police, before whom he confessed his own concern in the crime and inculpated two persons Daiee Reddy and Mungee Reddy, brothers and Mocaddams, as the Principals. These were accordingly summoned, and Mungee Reddy appeared and was discharged. Daiee Reddy absconded. Four persons were sent up to the Magistrate who again ordered Daiee Reddy to be apprehended, but without effect. The four persons were committed for trial before

before the Court of Circuit, and tried. and a portion of the property stolen, which had been delivered up, was paid by the Court to the Petitioner. The Petitioner prayed the Circuit Court to order the apprehension of Dasee Reddy - the Circuit Court directed them to prefer a charge against Mungee Reddy and Dasee Reddy before the Magistrate: they accordingly petitioned him - but he refused to receive their petition, thro' the influence, Petitioner's state, of Mungeereddy with his public Servants. Petitioner therefore apply to this Court for redress against Dasee Reddy from whom they seek to recover the stolen property.

In all this the Court see nothing that requires or admits their interference, and nothing but what might have been and probably was perfectly regular, under actual circumstances. This Court cannot lend itself to suspect irregularity in the proceedings of subordinate authorities on mere loose indefinite accounts like the foregoing - and least of all to believe corruption in a Magistrate's

public Servants, or their undue influence over their head, on mere accusation without proof.

Ordered, that extract of these proceedings be furnished to the petitioners on their application.

Read again petition presented by Ponnayee of the Zilla of Combaconum

(Here enter C.C. Misc. Pet. No 110 of 1826.)

The Petitioner merely prays the Court to remit one of its own sentences and pardon the prisoner who is now suffering it. The Court have no power to do this and order the Petitioner to be informed so.

C.M. Rs 20

At a Court of the Foujdaree Adaulut.

Present.

Saturday 3d June 1826. J. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
William Oliver Esqr. 3d Puisne Judge

Read letter dated 1st March last from the late Additional Judge late on Circuit in the Centre Division, submitting case No. 32 Cuddapa Calendar 2d Sessions 1825.

(Here enter No. 151)

The 1st 2d and 3d Puisne Judges, having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law officer, and the futwa of the Cazee ool Cozat and Mooftee of the Foujdaree Adaulut, confirm the said futwa of the Cazee ool Cozat and Mooftee aforesaid; and under the provisions of Section IV Regulation XV of 1803, adjudge the prisoners,

1st "Moyana Kalos Roosaligaud" and
2d "Moyana Kalos Chinnadoo"

to receive thirty stripes with a rattan, and to be imprisoned and kept to hard labor in irons on the public roads or other public works, for and during the period of fourteen years and then be released. And acquitting the

3d June 1826. the prisoner,

3d; Pagada Gungadoo

direct, that he be set at liberty.

(Sent following letter №190)

The Court have acquitted the 3d prisoner in this case, because it has appeared to them, that the direct evidence against him, wants that support which it has received in the case of the 1st and 2d prisoners. These prisoners distinctly acknowledged before the Acting Criminal Judge, their possession of the stolen property: whilst the 3d Prisoner denied all knowledge of it; and there is nothing therefore, either, to corroborate his alleged confession before the Rajah of Pungannoor, or, the prosecutors testimony respecting his recognition of him as one of the persons concerned in the robbery: indeed it is observing remark, that the prosecutor speaks throughout rather to his knowledge of the 1st prisoner, who was clearly the individual who apprehended him personally: and In the absence of any corroboration from circumstantial evidence, the Court do not consider the prosecutor's testimony of any weight against the 3d prisoner; and his alleged confession is obviously of no validity. they have in consequence directed that he should be set at liberty.*

Ordered that extract of these proceedings be sent to the late Additional

* The Court observe, that the witness named by the prisoner did not attend; it is not shewn in the record that his absence was not just to the prisoner.

3d June 1826. Judge late on Circuit in the Centre Division for his information.

(Sent following letter №191.)

Read letter dated 5th April

Mr Cochrane & Mr Oliver

last from the 1st Judge late on Circuit in the Centre Division submitting case №150 Cuddapa Calendar 1st Sessions 1825.

(Here enter №234)

The 2d and 3d Puisne Judges having maturely considered the Proceedings held before the Judge on Circuit the Gentoo & the Gentoo of the Provincial Law Officer and the Gentoo of the Cazee ool Cozat and Mooftee of the Zillah Adalut confirm the said Gentoo & Gentoo of the Cazee ool Cozat and Mooftee aforesaid and acquitting the prisoners,

1st "Pedda Tummadoo"

2d Coppoola Cumbadoo &

3d Chakala Obadoo

direct that they be set at liberty.

(Sent following letter №192)

Read letter dated 29th March

Mr Cochrane & Mr Oliver

last from the 1st Judge late on Circuit in the Centre Division submitting case №132 Cuddapa Calendar 1st Sessions 1825.

(Here enter №220)

The 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Gentoo of the Provincial Law

3d June 1826. the prisoner,

3d; Pagada Gungadoo

direct, that he be set at liberty.

(Sent following letter №190)

The Court have acquitted the 3d prisoner in this case, because it has appeared to them, that the direct evidence against him, wants that support which it has received in the case of the 1st and 2d prisoners. These prisoners distinctly acknowledged before the Acting Criminal Judge, their possession of the stolen property; whilst the 3d Prisoner denied all Knowledge of it; and there is nothing therefore, either, to corroborate his alleged confession before the Rajah of Pungranoor, or, the prosecutors' testimony respecting his recognition of him as one of the persons concerned in the robbery: indeed it is observing of remark, that the prosecutor speaks throughout rather to his Knowledge of the 1st prisoner, who was clearly the individual who assaulted him personally: In the absence of any corroboration from circumstantial evidence, the Court do not consider the prosecutor's testimony of any weight against the 2d prisoner; and his alleged confession is obviously of no validity. they have in consequence directed that he should be set at liberty.*

Ordered that extract of these proceedings be sent to the late Additional Judge

* The Court observe, that the witness named by this prisoner did not attend; it is not shewn in the record that his absence was notified to the prisoner.

3d June 1826. Judge late on Circuit in the Centre Division for his information.

(Sent following letter №191.)

Read letter dated 5th April

Mr. Cochrane & Mr. Oliver

last from the 1st Judge late on Circuit in the Centre Division submitting case №150 Cuddapa Calendar 1st Session 1825.

(Here enter №234)

The 2d and 3d Puisne Judges having maturely considered the Proceedings held before the Judge on Circuit the Jurors of the Provincial Law Officer and the Jurors of the Zillah the Cazee of Cogat and Mooftees of the Zillah Adalut confirm the said Jurors of the Cazee of Cogat and Mooftees aforesaid and acquitting the prisoners,

1st "Pedda Tummadoo"

2d Coppoola Cumbadoo

3d Chakala Obadoo

direct that they be set at liberty.

(Sent following letter №192)

Read letter dated 29th March

Mr. Cochrane & Mr. Oliver

last from the 1st Judge late on Circuit in the Centre Division submitting case №132 Cuddapa Calendar 1st Session 1825.

(Here enter №236)

The 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Jurors of the Provincial Law

8d June 1826. Law officer and the fuluva of the Cazee ool Cooyat and Mooftees of the Tonjaure Zillah confirm the said fuluva of the Cazee ool Cooyat and Mooftees aforesaid and acquitting the prisoners,

1st Gollah Siddoogadoo.

2d Mooneapah alias Pedda Appadoo.

3d Jarekala Chinna Timmadoo

direct that they be set at liberty.

N.B. Sent following letter № 193.

In disposing of this trial, the Court of Tonjaure Zillah deem it incumbent upon them to animadvert, on the gross carelessness and negligence, which characterize the proceedings of the Court of Circuit, in this, and several trials of the 1st Sessions of 1825 which have been lately forwarded by the 1st Judge. In consideration of the expediency of bringing the Sessions to a close, in time to admit of the delivery of the other Jails in the Centre Division, could justify the precipitancy, with which these trials appear to have been hurried thro' by the Court of Circuit; and the Court cannot but fear, that the interests of justice, both, as respects the accused, and the public,

8d June 1826. public, have been in too many instances lost sight of during the 1st Sessions 1825 at Cuddapah.

2. In the report of the trial № 132 of the Calendar, immediately before them, the Court have remarked some inconsistencies which call for a distinct and specific explanation from the 1st Judge: for in the form they at present appear, they lead the Court to infer, that the record is not, what it is certified by that officer to be "a complete and exact counterpart of the original record of all proceedings held by the Court of Circuit."

3. In page 21, the following proceeding of the Court of Circuit is recorded. Communication to the prisoners. "You Pedda Timmadoo for having been "tried for the crime of Highway robbery "your trial will be referred to the Tonjaure "Zillah and you will be detained in "Custody until their orders be received." The date of this proceeding is not given, but as the trial closed on the 22d February it is to be inferred that this communication was made on that date.

At

3d June 1826. 4

At page 22, the Court find the transcript of a precept to the Criminal Judge, "directing him to detain the prisoners in custody until he shall receive the commands of the Faujdaree Adalut," which is certified to have been issued, on "the first day of April "1825; but this entry is wholly inconsis-"tent, with the statement given in para "13 of the 1st Judge's letter, accompanying "the trial, that this case had been deter-"mined upon at the date of the trial "and the three prisoners were ordered "to be put on the public roads for nine "months," and further, "that they appear "to have undergone the punishment of "the law under the punishment ordered "by the Court of Circuit for a period of "six months and twenty three days before "they were remanded to prison". The record is also at variance with the Calendar submitted by the 1st Judge on the 4th of June; and it appears from the return of the Criminal Judge under date the 27th September, which accompanies the trial, that the first

3d June 1826. first intimation, that officer received of the reference of the case of the prisoner in No 132, to the Faujdaree Adalut, was contained in the 1st Judge's precept of the 19th of September, nearly six months after the date of the precept of the Court of Circuit which appears in the record. The Court desire therefore to know, whether the proceeding recorded in page 21 was ever held by the 1st Judge on Circuit? and, whether the document in page 22 is, as it proposes to be, the copy of a precept issued to the Criminal Judge on the first day of April 1825?

5. In the 10th paragraph of his letter, the 1st Judge states, that "the prisoner had called two witnesses for character who were not present at the trial in order to be examined". On reference to the acting Criminal Judge's proceedings however, it appears, that the 2d prisoner alone (Mooneah alias Peddy Appadoo) named witnesses, and three witnesses, were not, as stated by the 1st Judge, "for character," but "to prove," that "he did not commit the robbery". The 1st Judge has not accounted for the absence of three witnesses on the trial,

3d June 1826. nor is it shewn in any part of the proceedings that their absence was notified to the prisoner before he was put on his trial. It is unnecessary for the Court of Sudder Adalut to remark on the character of this proceeding, which as it now appears to the Court, was in effect a denial of justice; the means of defence being thereby withheld from the prisoner. The Court direct that the 1st Judge will explain his proceedings in this respect.

6 From the return of the Criminal Judge of Cuddapah of the 27th September, which is appended to this case, the Court learn, that the 1st Judge did not recal the warrant, which he had issued for putting the prisoners in No. 132 of the Calendar to hard labor, till the 19th of that month; and it thus appears, that he allowed the illegal sentence passed by him, to operate for a period of nearly two months, after having been distinctly apprized in para. 21 of the Court's proceedings of the 17th June last of its illegality. The Court desire

3d June 1826. that an explanation may be afforded to them of this neglect.

7. With reference to the Copy of the precept of the Court of Circuit of the 1st April, in page 22 of the record, so wholly irreconcilable with the return of the Criminal Judge of the 27th September last, the Court resolve to call upon that officer, to state, whether he ever received a warrant of the 1st Judge dated the 1st day of April 1825 directing him to retain certain of the prisoners in No. 132 of the Cuddapah Calendar 1st Sessions 1825 in custody till the receipt of the commands of the Sudder Adalut, and in that case to forward a copy of the same.

Ordered, that extract of these proceedings from paras 1 to 6 be sent to the 1st Judge late on Circuit in the Cuttack Division by precept returnable in three weeks from and after its receipt.

Ans.d 15th July No. 416 entered in the 17th Augt 1826.

(Sent following precept No. 1941)

Ordered also that para 7 of these proceedings be sent to the Criminal Judge in the Zilla of Cuddapa by precept returnable in eight days from and after its receipt.

Ans.d 15th July No. 358 entered in the 17th Augt 1826.

(Sent following precept No. 1951)

Read letter, dated 11th Instt. from

3d June 1826

from the 1st Judge of the Provincial Court of Circuit in the Northern Division, - Submitting Masulipatam Calendar 2d Quarterly Sessions 1826.

(Here enter No 304.)

1 In No 5 of the Calendar, the only evidence for the prosecution examined by the Court of Circuit, was the prosecutor and the two witnesses to the confession of the prisoner before the Police - This evidence does not appear to have been corroborated in any part.

2 The Court of Foujdaree Adalut consider the 1st Judge to have erred, in proceeding to the trial of this case with no further evidence before him, than what the Calendar pointed out; it was his duty to have returned the case to the Criminal Judge, with instructions to call for additional evidence, or, to have called up the prisoner and discharged him.

3. The proceedings of the Criminal Judge, in committing this case for trial, upon the testimony alone of the prosecutor, who, it would appear, from the abstract of his evidence was not able to depose to any facts tending to

3d June 1826

to prove, that the prisoner was concerned in the robbery, and of the witnesses to an alleged confession before the Police, also call for the notice of the Foujdaree Adalut. In their circular proceedings of the 18th June 1819 and 29th April 1823, the Court pointed out to the Subordinate Courts, the little value to be attached to confessions before the Police, when unsupported by collateral evidence, and the circumspection with which they ought to be received; they desire that the attention of the Criminal Judge in the Zilla of Masulipatam may be called to these orders, and that he be informed, that the Court consider it to be incumbent upon him to examine, not only the complainant, but also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged."

4. In No 6, a charge of rape, the Criminal Judge states, that the "Prosecutrix was not interrogated on oath by reason of her tender age." The Court of Foujdaree Adalut under date 12th July last, directed the Criminal Judges, not to receive the evidence of youthful witnesses, who, upon examination,

3d June 1826.

examination, did not appear sensible of the nature and obligation of an oath; and they desire that an explanation may be afforded of the Criminal Judge's proceeding in this case.

5 The 1st Judge has declared his intention of referring No 7, a charge of uttering counterfeit coin, upon the ground, "that it is doubtful what measure of punishment can be awarded against the prisoners under the future." Before the 1st Judge carries his intention into effect, the Court desire that the 1st Judge's opinion of the extent of the guilt of the prisoners, and a copy of the Letters delivered in this case, may be forwarded to them, which may possibly enable them to issue the necessary instructions to the Court of Circuit, should this case be by law disposable by that Court, and not by the Court of Faujdaree Adalut.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Northern Division by precept returnable in one Month from and after its receipt.

(Sent following Precept No 196.)

Nos 1 to 15th July No 425. entered in Sir No 21st July 1826.

Nos 4 by further return 15th July 1826 No 423 entered in Sir No 21st Augt 1826.

Sent.

F. H.

At a Court of the Faujdaree Adalut.

Present,

Monday, 5th June, 1826. F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter, dated the 24th ultimo, from the Acting Criminal Judge in the Zilla of Salem, forwarding, for the orders of the Faujdaree Adalut, copy of a warrant by the acting Judge on Circuit for the banishment of two convicts.

(Here enter No 316)

The Court of Faujdaree Adalut direct that the prisoners,

Pownaul Chitty, and

Armoogum Chitty

be removed to the Jail in the Zilla of Chittoor there to be imprisoned agreeably to the tenor of their respective sentences.

Ordered, that extract of these proceedings be sent to the acting Criminal Judge in the Zilla of Salem, and to the Criminal Judge of Chittoor for the information and guidance of those Officers respectively.

(Sent following letters No 197.)

F 11

At a Court of the Fouzdaree Adaulut.

Present

Thursday
8th June, 1826. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read return dated 28th April
last from the 1st Judge late on Circuit in the
Northern Division to precept dated 23d Febru-
ary last calling for the record in Sessions Chi-
cacole Calendar 2d Sessions 1825.
(Here enter No. 20)

The 1st 2d and 3d Judges having
attentively perused the whole record submitted
with the foregoing letter are unanimously of
opinion that the acquittal of the prisoner Chow-
dry Venkata Sawmy was perfectly proper.

Read also again Miscellaneous
Petition No. 5 of 1826 from the Prosecutor in that
trial complaining of the said acquittal.

Petition entered in proceedings of the

The Court inform the Petitioner
that there is no appeal from the sentence of a
Circuit Judge. But that the Court have, for
their own satisfaction, called for the record of the trial
and after attentively perusing it, approve entirely of the sentence

Ordered that extract of these
proceedings be furnished to the petitioner on his
application.

Read

8th June, 1826

Read again petition presented by Rayavacherry of Teeroovoloor Zilla Chingleput.
(Here enter C.R. 327 of 1826)

The foregoing is an application, from the brother of the prisoner convicted in No. 15 of the Chingleput Calendar 1st Sessions 1825, praying the Court, to call for the record of the proceedings of the Court of Circuit, and to order the discharge of the Prisoner.

The Court do not see cause for a compliance with the petitioners application.

Ordered therefore, that the prayer of the petition be rejected, and extract of these proceedings be furnished to the petitioner on his application.

Read return, dated 1st Instant, from the Judges of the Provincial Court in the Centre Division, to precept dated 29th Ultimo calling for the record in cases Nos 116 and 117 Cuddapa Calendar 1st Sessions 1825.
(Here enter No 323)

Read return, dated 1st Instant, from the Judges of the Provincial Court of Circuit in the Centre Division, to precept dated 22d Ultimo directing the release of the prisoner in No 6 Supplemental Calendar 1st Sessions 1826.
(Here enter No 322)

Read return from the 2d Judge late on Circuit in the Southern Division to

8th June 1826.

to precept dated the 15th February last directing him to circulate extract from proceedings of Tanjore Adawlut and his Circuit Report regarding provision for the confinement of prisoners under examination.—
(Here enter No 328)

Read return, dated 31st Ulto from the Provincial Court of Circuit in the Western Division, to precept dated 22d Ultimo directing the Criminal Judges to cause confessions before them to be attested by persons of the same religion with the parties confessing.—
(Here enter No 332)

Read letter, dated 2d Instant, from the Provincial Court of Circuit in the Centre Division, reporting the death of the prisoner in No 98 Cuddapa Calendar 1st Sessions 1825.
(Here enter No 329)

F. C.

At a Court of the Poujdaree Adalut.

Present,

Thursday, 15th June, 1826. — F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read petition presented by Ponnaya of the Zilla of Combaconum. (Here enter F. C. Pet. No. 12 of 1826.)

This being a mere repetition of a former petition, which has been answered, the Court refer the Petitioner to their former answer, and direct her to abstain from troubling the Court further upon this subject.

Read letter, dated 20th ultimo, from the Judge of the Provincial Court in the Southern Division, submitting a question respecting the authority of a Magistrate to proceed in a case of perjury committed before the Court of Circuit. (Here enter No. 311.)

Read again letter, dated 19th January last, from the 3d Judge late on Circuit in the Southern Division, submitting with reference to his late Circuit report, a letter from the Magistrate of Coimbatore and the orders of the Court of Circuit thereon. (Here enter No. 47.)

The circumstances which gave

15th June 1826.

gave rise to this reference are as follows.

2. In case No 8 of the Salem Calendar the Circuit Court saw strong ground to believe that certain of the Police Officers of the Magistrate of Coimbatore had extorted confessions from some of the prisoners. The Court apprized the Magistrate of this belief and its opinion that the parties suspected should be sent up for committal to the Criminal Judge. The Magistrate upon this caused his Assistant to prosecute an enquiry, the result of which was a full belief that the witnesses on whose evidence the Circuit Judge's opinion had been formed were guilty of conspiracy and perjury and he sent them to the Criminal Court for committal for the latter offence. The acting Criminal Judge was of opinion that under Section VIII Regulation II of 1822 he could not hold any proceeding in the case - and applied for instructions to the Southern Provincial Court - who expressing their concurrence in his opinion submit the general question to this Court.

3. The question in effect is whether a Magistrate, discovering in the legal exercise of his functions that a perjury has been committed before another tribunal is or is not competent to take cognizance of the offence, and to proceed against

15th June 1826.

the offending party as in the case of all other offences.

4. Section XXIX Regulation IX of 1816, the provisions of which are excluded by Section VIII Regulation II of 1822 is copied verbatim from Section VIII Regulation I of 1810, and the preamble of that Regulation must therefore be referred to for the cause and object of the restriction established by those Sections upon prosecutions for perjury and subornation of perjury. On reference to that preamble it will be seen that the mischief which the Legislature intended to suppress arose from a practice which had been found to prevail for parties to prefer unfounded charges of this nature on against their own witnesses and those of their opponents, and against their opponents themselves. and the remedy proposed was to take away altogether from parties the right of bringing forward such accusations. The Magistrates were accordingly prohibited from receiving charges of this kind from parties, and it was declared that parties and witnesses should not be liable to any prosecution of this description unless committed to take their

15th June 1826

their trial by the Zilla Judge under the authority vested in him by Section VIII Regulation III of 1802.-

5. Now if this enactment be construed to preclude a Magistrate from taking cognizance of a perjury committed before another tribunal, and brought to his knowledge in the manner stated, it will be made to extend far beyond the particular evil, which it was the sole object of the legislature to remedy, and will be productive of another evil of scarcely less magnitude, or of less pernicious consequences to the interests of justice. Impunity will be afforded to the offence in all cases where it happens not to be detected by the particular tribunal before which it is committed; and this may often happen as it is said to have happened in the case out of which the present reference has arisen.

6. There could have been no doubt or difficulty in expounding the enactment if it had gone no farther than simply to prohibit the Magistrates from receiving charges of this kind from parties; but the concluding part of the Section seems at first sight to countenance the construction put upon it by

15th June 1826

the Provincial Court, and to extend to individuals, whether parties or witnesses, absolute exemption from all prosecutions for perjury and subornation of perjury, unless the offence be detected, and the offender be immediately proceeded against by the Court before which the perjury was committed. It formed, however, no part of the legislature's intention, either express or implied, to exempt these offences from punishment under any circumstances; and an interpretation, which leads to this consequence must, if possible, be avoided.

7. It appears to the Court then that to the latter part of the Section no greater operation must be allowed than is necessary to effectuate the intention of the legislature, as it is declared in the preamble to Regulation I of 1810. What that intention was has already been stated; and the end and object of the enactment will be fully and effectually accomplished by interpreting the latter part of the Section as referring solely to prosecutions on charges preferred by parties in civil and criminal cases.

The

15th June 1826

The Court are satisfied that this is the true construction. It is fully borne out by the context; for the first part of the Section relates exclusively to charges of this kind made by the parties, and not to prosecutions originating with the Magistrates or any other authority, which in point of fact were not within the contemplation of the legislature, and cannot be supposed likely to produce any of the evils, which it was intended to suppress.

8. The Court are therefore of opinion that it is the duty of the acting Criminal Judge of Salem to proceed in the case stated to him by the Magistrate of Combatoor.

9. It is stated, however, in the proceedings of the 3d Judge of the Southern Provincial Court of Circuit, dated the 19th January last, that "the greater part of "the depositions appears to have been taken "by the acting Sahseldar Ghana pregasum "himself, one of the very persons whose "conduct was the subject of investigation."

10. It was no doubt the duty of the Magistrate, on receiving the extract from the proceedings of the Judge on Circuit, which imputed a high degree of criminality to the Police Officers under him,

15th June 1826

him, to enter into an investigation of the charge, but a more effectual method of defeating the object of the investigation could hardly be imagined than that of entrusting the conduct of it to one of the parties accused. No other result than that which has been produced in this case could reasonably be expected. The Court are satisfied that the Magistrate on reflection will see that no credit whatever is to be attached to evidence taken in the manner in which a great part of the evidence in this case appears to have been taken, although subsequently confirmed on oath before the Assistant Magistrate; and that the measure of allowing one of the parties accused to take any of the depositions which were to establish his own guilt or innocence was in the highest degree objectionable, as it afforded him the means, of which it is hardly possible to suppose that he failed to avail himself, to intimidate the witnesses, and to make the evidence tend only to his exculpation. There is but too much reason to apprehend the most mischievous consequences from this irregular measure, which though apparently the immediate act of the Assistant Magistrate has been sanctioned and

15th June 1826

and confirmed by the Magistrate's adoption of it as the ground of his proceedings against the parties whom he has sent up to the acting Criminal Judge for committal; but the Court trust that the notice here taken of it will prevent these officers from falling into the like error again.

Ordered, that extract of these proceedings be sent to the Provincial Court of Circuit for the Southern Division by precept to be by them communicated to the Magistrate of Coimbatoor and the Acting Criminal Judge of Salem for their information and guidance respectively.

Sent

Sent following precepts No 209.

Read letter, dated 12th April last, from the 3d Judge presiding, submitting a copy of the Nellore Calendar for Sessions 1826.—

Here enter No 248

1. In Nos 22 and 23 of the Calendar, the Court of Tanjore Adalut remark, that the only evidence examined, or, bound over by the Criminal Judge, on his commitment of the prisoners, were the witnesses to his confessions before the Police, and the persons who apprehended him.

2. From the Abstract of the examination

F. K.

15th June 1826

examination, it does not appear, that the property alleged to have been stolen, was found in the prisoner's possession, neither is there evidence to shew, that it had ever been removed from the possession of the owners: it is difficult under these circumstances to understand, how the Criminal Judge could arrive at the conclusion that a theft had been committed.—

3. In their circular proceedings of 18th June 1817 and 29th April 1823 the Court of Tanjore Adalut pointed out to the Subordinate Courts, the little value to be attached to bare uncorroborated confessions before Native Officers of Police, and the circumspection with which they should be received; and they deem it proper upon the present occasion to inform the Criminal Judge, that they are of opinion, that a case should not be committed for trial before the Court of Circuit, on the ground alone, of a confession made before the Police, as the necessary result of such a proceeding, where further evidence is not called for by the Judge on Circuit, must be the discharge of the accused. The Court trust, that the Criminal Judge will in future see the propriety of calling for additional

15th June 1826 additional evidence, in cases of this nature, before he proceeds to commitment.

4. In No 37 of the Calendar there is no entry in the column headed 'date of examination, grounds, and date of commitment' the Court desire, that the 3d Judge will supply this omission.

5. Referring to No 49 a case of perjury, it appears, that the 3d Judge has not completed the trial, and in his letter accompanying the Calendar, he has requested the instructions of the Court, as to whether the trial should be resumed at the ensuing Sessions, or whether the prisoner is now entitled to his discharge. The Court are of opinion that the trial should proceed, and that the orders issued to the Criminal Judge to summon the witnesses whose evidence is required, were proper. But adverting to the long period, during which the prisoner in this case has been in confinement, the Court deem it just, in the event of his conviction, that this should form a matter for consideration, when sentence is passed by the Judge holding the final proceedings in the trial; and they direct,

15th June 1826 that this opinion be communicated to the Officer who may deliver the Jails in the 2d Sessions of the year.

6. The Court remark, that in 41 of the 69 cases of the Calendar, the Government Vakeel has been constituted prosecutor. The Court of Foujdaree Adawlut are fully aware, of the severe hardship to which individuals are exposed, when constrained to appear and prosecute before the Court of Circuit, but they apprehend that the interests of Justice will suffer, if these Courts are deprived generally of the evidence of prosecutors, whose testimony must frequently be of the greatest importance: the consequence of the proceeding of the Criminal Judge is observable in No 2 of the Calendar. The practice is moreover contrary to the provisions of Clause third Section IX Regulation X of 1816, and the Court direct, that the attention of the Criminal Judge be called to the subject, in order that it may be resorted to more sparingly in future.

Ordered, that extract of these proceedings be sent to the 3d Judge of the Provincial Court of Circuit in the Northern Division by precept, directing him to communicate paras 1, 2, 3, and 6 to the Criminal Judge in the Zilla of Nellore.

for

15th June 1826. for his information and guidance
(but following precepts

EK
ew. pld. EL
EK DD

F. H.

In a Court of the Foujdaree Adalut

Present

Friday, 16th June, 1826 F. A. Grant. Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

EK
EL
DD

Read letter dated the 24th February last, from the late Additional Judge late on Circuit in the Central Division, submitting case No 41 Cudapa Calendar 2d Sessions 1825.

(Here enter No 136)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Principal Law Officer, and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Adalut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the provisions of Section XVII Regulation VIII 1802 adjudge the prisoner,

1st "Juggarauz Abberauzoo alias Vencataranz",

to suffer death, by being hanged at the usual time and place of execution.

And under the provisions of Clause sixth Section II Regulation XV of 1803 direct that the prisoner,

2d "Cutchee Doloo,"

be released on producing good and sufficient security

16th June 1826

sent-

security for his future good behaviour and appearance when required -

Court following letter No 211

In disposing of this trial, the Court of Foujdaree Adalut deem it proper to point out some defects in the proceedings of the Court of Circuit, which have attracted their attention; and to which it is perhaps to be attributed, that the 2d Prisoner has escaped the penalty of the law, for the part he wants seem to have taken in this murder.

The evidence given by the witnesses Yerragoutla Rungaya and Thonda Nagaya before the Police Officer, (Pr. 41 and 53) strongly tends to establish his guilty knowledge, if not participation in the act, and the clear and direct evidence to the fact, that the instrument with which the crime was committed, was the property of this prisoner, coupled with the consideration, that he had a motive for the crime, which was not apparent in the case of the 1st prisoner, are circumstances of so much importance in themselves, that had the 2d Judge examined the witnesses above mentioned, and obtained from them, the like distinct account, which they gave in the Salaka Cutcherry, of the perturbed and extraordinary conduct of the

16th June 1826.

this person on the night of the murder, the Court taking the whole of the evidence together, would have had little hesitation in declaring him to be convicted - unless indeed he could have satisfactorily rebutted the statements of those witnesses according to the evidence before the Court of Circuit, this prisoner's voluntary appearance at the house where the murder was committed, was not attended with any circumstances leading to suspicion against him; but on the contrary, seemed to warrant an inference in favor of his innocence. The Court of Foujdaree Adalut regret this defect in the proceedings of the Judge on Circuit, and they would observe generally, that it is of much importance, that the Judge on Circuit should, previously to entering upon a trial, carefully examine in the first instance, all the evidence which may have been given in the Police Cutcherry, or, in the Criminal Court, and if evidence to any material point is wanting, to take measures for having it supplied. This may be effected with little or no labour, and the omission must often prove of serious consequence, as the final sentence of the Foujdaree Adalut

is

16th June 1826. is determined by the evidence given in the Court of Circuit.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

Sent. (Sent following letter No 212.

Read letter, dated the 29th March last, from the late Additional Judge late on Circuit in the Centre Division, submitting case No 4 Cuddapa Supplemental Calendar 2d Sessions 1825.

(Here enter No 223.)

The Pt 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ul Cozat and Mooftee of the Sudder Dewanny Adawlut, confirm the said futwa of the Cazee ul Cozat and Mooftee aforesaid, and acquitting the prisoner,

"Patterla Pully Venkatagendoo"

direct that he be set at liberty.

Sent. (Sent following letter No 213.

The 3d Judge will observe, that the Court of Sudder Dewanny have acquitted the prisoner in this case, for they do not concur with this officer

F. C.

16th June 1826. in opinion, that the evidence of the witnesses to the fact of his having acknowledged the crime upon his apprehension, unsupported as it is by any strong circumstantial evidence, can under the circumstances of this case be held sufficient for conviction.

The difference between the statements of the 1st witness Seshadra and the 2d Muddoogadoo, respecting the apprehension of the prisoner, is remarkable. The latter declaring that the prisoner was 'sitting down' near the spot where the enquiry concerning the murder was going on; and from all that appears in evidence, without giving cause by his manner for suspicion of his guilt; affording thereby a strong inferance in favor of his innocence; and the first witness affirming, that the 2d witness went in search of him and brought him to the place. The Court moreover do not consider the evidence, relative to the instrument with which the murder was committed, worthy of the least credit; and they have concurred therefore in the futwa of acquittal recorded by their Law

16th June 1826. Law Officers-

Ordered, that extract of the proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information-

Sent following letter No 214

Read return dated 3rd Instant from the Judges of the Provincial Court of Circuit in the Northern Division to precept dated 22d April last directing the Criminal Judges to cause confessions before them to be attested by persons of the same religion with the parties confessing.-

(Here enter No 334)

Read letter dated 3d Instant from the 2d Judge on Circuit in the Northern Division reporting the commencement of the Jail deliveries at Chicacole on the 3d Instant.

(Here enter No 339)

Read letter dated the 8th Instant from the 1st Judge of the Court of Circuit in the Centre Division, reporting on the 1st Quarterly Sessions of 1826 at Chittoor.-

(Here enter No 340)

Monday, 19th June, 1826.

At a Court of the Foujdaree Adalut

Present,

W. A. Grant Esqre 1st Puisne Judge

William Oliver Esqre 2d Puisne Judge.

Read letter, dated 20th March last, from the 1st Judge late on Circuit in the Centre Division, - submitting cases Nos 116 and 117 Cuddapah Calendar 1st Sessions 1826.

(Here enter No 216)

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coozat and Mooftee of the Foujdaree Adalut, confirm the said futwa of the Cazee ool Coozat and Mooftee aforesaid, so far as respects the 2d and 8th prisoners, and acquitting the said prisoners,

2d Bucha Bungadoo, and

8th Mundla Bumbadoo, directs that they

be set at liberty-

And under the provisions of Section VI Regulation I of 1825, direct that the prisoners,

1st "Mundla Nhabareegadoo,"

3d "Mundla Yerradoo,"

4th "Mundla Muddegadoo,"

5th "Mahade Timmadoo,"

6th "Gergeegaree Ranamadoo,"

7th "Maleeka Timmadoo,"

10th

19th June 1826. 10th "Poloory Tscheerah," and
11th Boyjoo Nuddegadoo,
be set at liberty.

sent. (Sent following letter No. 216.

No. 1. The 1st Judge has observed in
his letter referring this trial, "that the 2d
"and 10th prisoners were so feeble with
"sickness at the time of the trial that
"they could not make their appearance
"in Court." In the record however, the
plea of 'not guilty,' as received from both
these persons, is entered; and the Court
direct therefore, that the 1st Judge will
explain his statement, which is irre-
conciliable with the entries in the record.
If the prisoners were not present at
the trial, agreeably to the 1st Judge's
report, this officer will then state the
reasons, which induced him to go
into the evidence against them, on a
charge to which they were not called
upon to plead.

2. The Court also remark, that
the witnesses named by the prisoners,
were not in attendance at the trial:
the 1st Judge has not accounted for
their absence, nor explained, whether
he notified that circumstance to
the

19th June 1826. the prisoners, which it was his duty
to have done.

Ordered that extract of
these proceedings be sent to the 1st Judge
Sent 17th July No 15 attached late on Circuit in the Centre Division
Rec'd 25th August 1826 by precept returnable in three weeks
from and after its receipt.

(Sent following Precept No. 217.

Sent.

Copy sent to Govt
25th July 1826.

At a Court of the Toujdaree Adalut

Present

Wednesday 21st June 1826.

F. A Grant Esqre. 1st Puisne Judge
James Cochrane Esqre. 2d Puisne Judge
William Oliver Esqre. 3d Puisne Judge

Read letter dated 15th March last from the Secretary to Government in the Judicial Department conveying the sentiments of the Honorable the Governor in Council upon the report of the 2d Judge of the Provincial Court for the Southern Division and on the remarks of the Toujdaree Adalut submitted on 15th February last.

(Here enter No. 294)

In obedience to the orders conveyed in the 4th paragraph of the foregoing letter the Court have the honor to submit a copy of the Form of indictment prescribed in cases of perjury.

2 The definition of the crime of perjury contained in clause first, Section IV Regulation XI of 1811 corresponds precisely with its definition according to the Law of England; and it will be found that the main object of all the instructions issued by the Court of Toujdaree Adalut respecting the proof requisite for a conviction of the crime was to assimilate upon this point the administration of justice in this Country to the administration of it under the Law of England, so far as seemed practicable without introducing the nice and technical formalities of

of the English Courts. The form of indictment was originally framed for the purpose of embracing the several particulars, the establishment of which is essential to a conviction of the offence, as defined in the clause above mentioned; and notwithstanding occasional errors of the committing officer, in filling it up, it has still had the effect of producing generally greater regularity in the proceedings on trials for perjury.

3 But the question now under consideration refers to the nature of the proof requisite for a conviction in cases where a man has given two contradictory depositions. The Court of Sovjdaree Adalut have all along held that proof of one deposition was not sufficient evidence of the falsehood of the other; and therefore as the perjury must be specifically assigned on one, sufficient evidence for a conviction. Of course there never could be a doubt in the mind of the Court that a man who had wilfully and deliberately given two contradictory depositions had been guilty of perjury in one or the other: but to every person who reflects upon the subject it must seem a strange proceeding to assume the truth of one deposition without any ground for such assumption: and on such naked assumption to declare that the falsehood of the opposite deposition is proved, whereas for

for all that appears to the contrary the perjury may have been committed in the statement which is thus assumed to be true.

From the letter of the Advocate General, dated the 6th March last, it would appear, however, that the opinion hitherto held by the Court on this point is erroneous, and certain late proceedings in the Court of Kings Bench are referred to, from which rules applicable to the case in question are deduced in direct opposition to the principles which the Court of Sovjdaree Adalut have laid down for the guidance of the Lower Courts.

5 The Court have read the report of the proceedings in the case of The King v. Harris referred to by the Advocate General; but they cannot agree with him in thinking that the rules which he has stated are fairly deducible from them, so far at least as relates to the particular point under consideration. The proceedings certainly shew very clearly that in the case of two contradictory Statements the perjury according to the established practice of the English Courts must be specifically assigned on one of them; but they do not shew it to be a rule of law or of practise that to support such an indictment no evidence

need

need be given except simply the proof of the contradictory oaths of the Defendant on the two occasions. The indictment in the case of the King v. Harris set forth the two contradictory oaths of the defendant without charging that either was false or corrupt; and left the conclusion of perjury to be drawn from the manifest contradiction between the two oaths. The defendant was found guilty upon four of the seven Counts of which the information consisted, & the case coming before the Court of King's Bench on a motion in arrest of judgment, the Lord Chief Justice in delivering the Judgment of the Court after stating the case, said "The question therefore "is whether perjury can be legally charged and "assigned by shewing such contradictory depositions, with an averment that each of them was "made knowingly and deliberately, but without "averring or shewing in which of the two depositions the falsehood consisted. And we are "of opinion that it cannot"

6 For the better understanding of the subject, and of the grounds upon which the opinion of the Court of King's Bench rested upon the point in question is formed, it is necessary to quote the remainder of his Lordship's speech, as it is reported at Page 937 of the 5th Volume of Barnewall and Alderson's Reports.

"The

7 "The first objection that occurs
"on the perusal of this information is the novelty
"of its form. One or two instances of a similar
"form were mentioned at the bar, which however
"only shew that some respectable draftsmen
"may of late have thought the experiment
"worth trying; no one has ever received a judicial
"decision; and as instances of contradictory
"swearing have occurred at all times, and as
"this form of proceeding affords the greatest
"facility of proof to a prosecutor, the want of
"precedents of this kind cannot be accounted
"for but by supposing that an indictment in
"this form has not been generally considered
"to be good."

8 "The next and most material
"objection is the injury to which a Defendant
"may be exposed. For we think it impossible
"to say consistently with any known rule of
"law that a person acquitted or convicted on
"an indictment in this form could plead such
"acquittal or conviction as a bar to an
"indictment charging perjury in the usual
"way on either of the depositions. The answer
"to such a plea would be "you never have
"been tried on the charge now preferred
"against you", and such an answer would
"undoubtedly be true in fact, and we think
"good in law. So that a Defendant might be
twice put in peril of the punishment of perjury and
twice

"twice convicted and punished on the same
"subject-matter, if an indictment like the present
"could be sustained."

"It is not necessary to say whether
"an indictment charging contradictory depositions
"together with other charges and averments not
"found in the present information would be good
"as an indictment for a misdemeanor. The
"difficulty of shewing on which of two occasions
"a party swore falsely may perhaps enable a
"person to escape punishment, whose conduct
"like that of the present defendant may plainly
"appear to be in the highest degree reprehensible.
"But we think it better that such a person
"should escape than that an indictment should
"be held good, which is liable to the material
"objection of putting a person twice in peril
"of the pains of perjury on the same subject matter;
"and we know of no election to adopt this or
"that mode that can be binding on the crown
"as was suggested in the argument at the
"bar in support of this information. The rule
"to arrest the judgment must therefore be
"made absolute; and the like rule in the
"case of the King v. Edwards."

The Court freely admit that in what fell from the Lord Chief Justice in this occasion there is not a direct affirmation of the opinion which they have hitherto held, but neither is that opinion directly contradicted,

and the correctness of it seems to be very strongly supported by inferences, which, as the Court think, must necessarily be deduced from the arguments in the case, coupled with the judgment upon it.

One of the arguments used by the Counsel in support of the form in which the information was drawn up was that "no "other mode could be devised of making the "charge, and if this was not sufficient the "Defendant could not be punished. It was "impossible", they afterwards added, "to say "on which of the two occasions the perjury was "committed". The Lord Chief Justice said that "the difficulty of shewing on which of "two occasions a party swore falsely may "perhaps enable a person to escape punish- "ment, whose conduct like that of the present "Defendant may plainly appear to be in the "highest degree reprehensible". Now all this "seems to be utterly irreconcileable with the rule which the Advocate General thinks may be deduced from the proceedings in the case; for if no other evidence except simply the proof of the contradictory oaths is necessary to support an indictment, charging the perjury on one of them, there was another, and as easy a mode as that adopted by the Counsel for the Crown, of making the charge against the Defendant in

in that case, and of bringing him to punish-
ment; and the difficulty, alluded to by the
Lord Chief Justice, of shewing on which of the
two occasions the party swore falsely could
have no existence, or at least could not have
the effect of enabling a person to escape pu-
nishment - It can hardly be doubted, as
the Court think that the Law officers of the
Crown in that case were driven to adopt that
particular form of indictment by their inability
to obtain evidence sufficient for a convic-
tion on an indictment in the usual form,
that is an indictment specifically charging
the perjury on one of the two depositions; and it
seems necessarily to follow that evidence,
such as that suggested by the Advocate
General, was not considered sufficient to
sustain such an indictment.

12

It is true that the Counsel
for the Defendant are reported to have said
"It may be admitted that if the indictment
"had charged the perjury to have been com-
"mitted before the House of Lords, the Con-
"tradictory evidence previously given before
"the House of Commons might have been
"sufficient alone for the jury to have con-
"victed the Defendant of perjury. But then
"they would have found distinctly on which
"occasion the Defendant had sworn falsely;

This question is, however, very different. This
is not a question upon the sufficiency of
evidence, but upon the insufficiency of the
shape and form of the accusation" Now
even if this admission had been made in
direct and positive terms, which according
to the report it was not, it could hardly be
received as sufficient of itself, without the
support of other authority, to prove what the
law actually is on this particular point; and
the Court are not aware that there is any
such authority. But looking to the terms of
the admission, it seems to amount to nothing
more than this that it might be made with-
out affecting the question then under considera-
tion.

Then in regard to the observations

13

taken from Mr. Justice Chambre's Precedent
Book the Court would remark that the doctrine
in question seems to have been propounded
here apparently for the first time. The very
terms in which it is stated shew that it was
not a point decided; for though Mr Justice
Gates is said to have convicted a man at
the Lancaster Summer Assizes in 1761 upon
this principle and Lord Mansfield C.J.
and Wilmot and Aston Js to whom
he afterwards stated the reasons of his judg-
ment are said to have concurred in his
opinion

opinion; yet it is clear that the question was never disputed at the bar; and the omission of a principle so important and of every thing approaching to it in all the books which specially treat on the law of evidence, coupled with the total want of precedents in all the books of reports, for a conviction upon this principle, seems to warrant the conclusion that whatever may be the ultimate determination upon it, it is not one that has yet received the sanction of the Courts of Law in England, unless indeed it is supposed that the ground on which the Court of Kings Bench refused a rule nisi for a new trial in the case of the King & Rhill finally settles the question: A short report of that case is inserted in a note to Page 929 of the 5th vol of Barnewall and Aldersons Reports; and this is the only authority which the Court have met with that has tended to shake in any degree their confidence in the soundness of the opinion which they have all along maintained. One of the objections taken by the counsel in that case was that "mere proof of a contradictory "statement by the Defendants on another "occasion was not sufficient without "other circumstances showing a corrupt "motive and negativing the probability of

"of any mistake." But the Court held that "the evidence was sufficient, the contradiction "being by the party himself and that the Jury "might infer the motive from the circumstan-"ces" Here is apparently a direct assertion of the principle in question. But the case is very briefly reported; and perhaps the observation was meant to be applied only to the corruptness of the motive, of which the Counsel contended there was not sufficient proof. It may be admitted that the falsehood of one statement being first proved, the corruptness of the party's motive may be inferred from the circumstance of his having given a contradictory statement, but to say that the falsehood of one particular statement is proved by the fact that the party on another occasion gave a statement in contradiction of it is to advance a proposition that seems utterly inconsistent with the principles of right reason, upon which it is the boast of the law of England that its rules of evidence are grounded. Nothing indeed can shew the fallacy of the deduction more clearly than this that either of the two contradictory statements may be selected to prove the falsehood of the other.

14 The Court beg the Honorable the Governor in Council to believe that they have entered into this discussion very reluctantly and

and that in venturing to differ in opinion with the advocate General, a Gentleman of acknowledged talents and learning, they have felt the greatest hesitation, more particularly as the subject discussed is one, upon which his opinion is entitled to the utmost deference on account of his high professional character.

15 The Court conscientiously believe that, so far as their instructions have operated, the administration of justice in this particular is substantially the same in this Country as in England. If, however, the Honorable the Governor in Council should be of opinion that it is requisite to afford greater facilities to a conviction of perjury in cases where a party has given two contradictory depositions, the Court are inclined to think that the least objectionable mode of effecting this object would be to alter the form of indictment in these particular cases. Under the existing orders of the Court the perjury must be specifically assigned on one of the two contradictory depositions as suggested in the letter of the advocate General; but the difficulty to be removed lies in the proof which at the Court must think in opposition to his opinion, is requisite to support an indictment in this form. If however an indictment something similar to that in

the case of the King. v. Harris be adopted, that is if the indictment sets forth the two contradictory oaths of the Defendant without charging that either was false or corrupt; and then concludes with an averment that the Defendant has committed wilful and corrupt perjury, nothing more would be requisite to substantiate the charge than proof of the fact that the Defendant wilfully and deliberately gave the two contradictory statements, because his perjury is the legitimate and inevitable conclusion from that fact. It is true indeed that such an indictment is objectionable on several grounds, - among others, that of its uncertainty both as to the time when, and the place where the offence charged was committed - points upon which the utmost attainable certainty is desireable in Criminal charges; but the Court know of no other mode of shaping the accusation so as to make the proof of the two contradictory statements sufficient of itself for a conviction. The most material objection to it, - namely that it's leaving the Defendant liable to another prosecution for the same subject-matter, - may be obviated by a prohibitory clause in the legislative enactment which, if the Court's suggestion be adopted, will become necessary

21st June 1826. submit them to Government, Meanwhile the Court have the honor to transmit a copy of their former order relative to the construction of clause fourth Section III Regulation VI of 1822, and of the order recently issued respecting the examination of prisoners. Copies of all orders laying down any general principle or rule for the guidance of the lower Courts shall hereafter, as they are issued, be furnished for the information of Government.

Ordered, that extract of these proceedings, Copy of the form of indictment prescribed in cases of perjury, and extract of a letter Para 12 and 13 to the Judges of the Provincial Court in the Centre Division, dated 22d September 1824 with copy of the Courts orders dated 7th Febru-ary 1826, respecting the examination of prisoners, be sent to the Secretary to Govern-ment in the Judicial Department, to be laid before the Governor in Council.

(sent following letter No. 222

31 May 1826.

W. H.

25

W25 Sent. 250 P. M.

F. H.

At a Court of the Foujdaree Udalut

Present

Thursday 22d June 1826

F. A. Grant Esquire 1st Puisne Judge.
James Cochrane Esquire 2d Puisne Judge.
William Oliver Esquire 3d Puisne Judge.

W. H.

25

Read letter dated the 24th April last from the 1st Judge late on Circuit in the Northern Division, submitting cases Nos 14 18. 19. 20. 21. 22. and 23 Chicacole Calendar 1st Sessions 1824.- (Here enter No. 267)

Mr Cochrane, and Mr Oliver,

The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Udalut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid; and under the provisions of clause sixth Section II Regulation XV of 1803 direct that the prisoners,

1st Butchalah Beemoodoo,
2d " Manoogoolah Raujee, and
3d " Sookoorah Mullah,

be released, on producing good and sufficient security for their future good behaviour and appearance when required.-

(sent following letter No. 223.)

sent-

Read

1092

336

to record those observations, with the view chiefly, of calling the attention of the subordinate officers, to the necessity of a strict enforcement of all orders, which have for their end the attainment of greater regularity in the proceedings of the active officers of Police, whose omissions and irregularities frequently prove themselves upon the notice of the Court of Sanjarce Vadut in the trials brought before them.

Ordered, that a extract of these proceedings be sent to the 3d Judge Circuit on Circuit in the Southern Division for his information.

(Sent following letter No 28)

Read return, dated 9th instant, from the 1st Judge on Circuit in the Northern Division, to precept dated 5th Ultimo, calling upon him to explain the grounds of his assent to the Sentence in No 8 Nellore Calendar 2d Sessions 1825.

(Here inter No 24)

The Court observe that the grounds of the Sentence of acquittal, besides the mistaken one of the Prisoner being competent to give evidence against Nulla paraddy Nasraidoo if

the latter should be apprehended, were that the prisoner in his declaration before the Criminal Judge, did not confess that he committed or took part in the murder, and that none of the witnesses deposed that they either saw him commit it or heard him confess it: the professed grounds on which that Sentence was confirmed are that the Prisoner's person was not identified and that it was doubtful whether his concealment of the murder was voluntary.

The prisoner having confessed his knowledge of the murder, his concealment of it merely thro' fear of the perpetrators' threats makes him an accessary after the fact: which consideration alone was cause enough for the Judge on Circuit to have disapproved the Sentence and referred the Proceedings to the Sanjarce Vadut.

The fact also of the Prisoners Identity was deserving of much more investigation than it seems to have received.

The Court are therefore constrained to observe that the grounds professed

19th January 1826.

professed for confirming the futwah are altogether insufficient to warrant its confirmation. Unwilling however to proceed to the extreme measure of representing the conduct of the Judge on Circuit to Government without first receiving every light which the details of the case can throw upon it the Court order, under Section XXV of Regulation X of 1816, that the 1st Judge late on Circuit do submit a complete Copy of the whole of the Proceedings in this case with a translation of the same.

Ordered that a extract of this proceedings be sent to the 1st Judge late on Circuit in the Northern Division by precept directing him to proceed as herein directed making return in 20 days from the date of the receipt of the precept.

(Sent following precept No 29)

F. C.

At a Court of the Foujdaree Adalut,

Present,

Wednesday 25th January 1826.

F. A. Grant Esquire 1st Puisne Judge
James Cochrane Esquire 2d Puisne Judge.
George Gowan Esquire 3d Puisne Judge.

Read letter, dated the 17th November last from the 3d Judge on Circuit in the Southern Division, submitting case No 3 Salem Calendar 2d Sessions 1825.

(Here enter No 946)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Adalut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and under the provisions of clause sixth Section II Regulation XV of 1803 direct that the prisoner,

"Chinnia Coumaren alias Ponnia Coumaren"

be released on producing good and sufficient security for his future good behaviour and appearance when required.

(Sent following letter No 34.)

Read

25th January 1826.

Read letter dated 11th Instant
from the 2d Judge on Circuit in the Centre Division
reporting the arrival of the Court of Circuit
at Cuddapa.

(Here enter No. 25)

Read letter dated 12th Instant
from the 1st Judge on Circuit in the Western
Division reporting the opening of the Sessions
at Mangalore.

(Here enter No. 26)

Read letter dated 16th Instant
from the 1st Judge of the Court of Circuit in
the Centre Division reporting the opening
of the 1st Quarterly Sessions at Chittoor.

(Here enter No. 27)

Read return dated 16th Instant
from the Provincial Court of Circuit in the
Centre Division to precept dated 3d Instant
directing them to communicate to the Criminal
Judge of Bellary the observations of the Judge
dated on No. 11 and 12 Bellary Calendar
2d Sessions 1824.

(Here enter No. 37)

Read return dated 17th Instant
from the Provincial Court of Circuit in the
Southern Division to precept dated 16th
Ultimo directing them to circulate the
remarks of the Judge dated upon a
charge of perjury in case No. 2 Chingleput
Calendar 2d Sessions 1825.

(Here enter No. 42)

25th January 1826.

Read letter dated 19th Instant
from the 3d Judge late on Circuit in the
Western Division reporting the death of
the prisoner in cases Nos. 17, 18, and 19
Canara Calendar 2d Sessions 1825.

(Here enter No. 49)

Read return dated 23d Ultimo
from the Provincial Court of Circuit in the
Centre Division to precept of the 9th Ultimo
directing them to communicate the
observations of the Court of Judicature dated
upon No. 11. Chittoor Calendar 3d Quarterly
Sessions 1825.

(Here enter No. 36)

Read letter dated 28th Ultimo
from the Provincial Court of Circuit in the
Centre Division to precept dated 16th Ultimo
directing them to circulate the remarks
of the Judicature dated upon a charge of
Perjury in case No. 2 Chingleput Calendar
2d Sessions 1825.

(Here enter No. 35)

Read letter dated 19th Instant
from the 3d Judge late on Circuit in the
Southern Division submitting with reference to his late Circuit report, a letter from
the Magistrate of Coimbatore and the
orders of the Court of Circuit thereon

(Here enter No. 47)

P. C.

At a Court of the Poydaree Holden

Present,

Thursday 26th January 1826 — F. A. Grant Esqre, James Cochrane Esqre, George Gowan Esqre } Judges

Read again petition presented by one Veeroyer of the Zilla of Combaconum.

(Vide entry P. C. Mis. Pet. No. 1 of 1826)

The petitioner who represents herself to be the wife of one Pullatomby the 5th prisoner in case No. 12 Combaconum Calendar 2d Sessions 1824 alleges that her husband has been unjustly condemned, and prays the Court to call for the proceedings of the Judge on Circuit, and on consideration of the evidence for the defence release him.

2 The only ground upon which the petitioner impeaches the correctness of the proceedings of the Court of Circuit, is the alleged perjury of the witnesses for the prosecution. If this statement be correct

correct proceedings may be instituted against them for a conspiracy when if the statement be established, the Court will then take her representation into consideration. The Court do not at present see any cause whatever for calling for the proceedings of the 3d Judge, and they direct therefore that the prayer of this petition be rejected.

Ordered, that a extract of these proceedings be furnished to the Petitioner on her application.

8th

Read letter dated 21st Instant from the late Additional Judge of Circuit in the Centre Division stating with reference to his remarks on case No 44 Second Sessions 1825 of the Zilla of Chingleput that the Magistrates proceedings rested nothing unfavorable to the prisoners.

(Here enter No 41)

At a Court of the Foujdaree Adalut

Present

Friday 27th January 1826.

F. A. Grant Esqr 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
George Govan Esqr 3d Puisne Judge

Read letter dated 27th October last from the 2d Judge of the Court of Circuit in the Centre Division submitting case No 57 Chittoor Calendar 4th quarterly Sessions 1825

(Here enter No 908)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Foujdaree Adalut Cooztt and Roobkars of the Foujdaree Adalut being of opinion that the proof against the prisoners 1st Govindoo and 2d Nonetsawmy is sufficient to convict them of the crime of robbery by open violence for which a penalty is specially denounced in Section IV Regulation XV of 1803 do under the authority vested in them by clause first Section II Regulation I of 1818 adjudge the prisoners,

1st Govindoo

to receive thirty nine stripes with a rattan and to be imprisoned and kept to hard labor in irons on the public roads or other public works

27th January 1826.

works for and during the period of fourteen years and then be released

And the prisoner

2d Rooneiawony

to receive thirty nine stripes with a rattan and to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of nine years and then be released.

And the Court having passed sentence on the prisoner,

3d Soobee

in cases Nos 22, 23, and 24 do not record any sentence in this case.

(Sent following letter No 35.)

W. H. L.

F. C.

At a Court of the Foujdaree Adalut.

Present

Monday 30th January 1826.

F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Gowan Esqre 3d Puisne Judge

Read letter dated 27th Ultimo from the 3d Judge of the Provincial Court of Circuit in the Northern Division, submitting the Report prescribed by Section XXXVII Regulation VII of 1802, on 4th quarterly Sessions of 1825 Zilla of Masulipatam.

(Here enter No 18)

In the 3d Para of the report the 3d Judge notices the decayed state of the sentry boxes appropriated to the use of the guard over the Jail, and recommends that authority should be given to the Criminal Judge to repair or if necessary renew them.

The Court are of opinion that time would be saved and the public service promoted, by Government granting a general authority to Criminal Judges to order inconsiderable and obviously necessary repairs of public property under their charge to be made, or to apply to the proper Military authority, if within reach, for their execution, in cases like the present, where it is believed that the articles requiring repair or renewal are

articles

t January 1826. articles of Military Store, or the repairs are of the kind usually executed by the Engineer department, the expence to be charged in a contingent bill or adjusted between the departments.

3 The observations of the 3d Judge upon the ruinous state of the buildings in the Fort of Masulipatam, in which the prisoners employed under the Engineer department and the guard are housed, appear to the Judges proper to be submitted to the immediate notice of Government.

Ordered that copy of the foregoing report, together with extract of these proceedings, be sent to the Secretary to Government in the Judicial Department for the purpose of being laid before the Honorable the Governor in Council.

(Sent following letter No 40)

Entered 7th Feby 1826 No 103.
Read in Bd 22d April 1826.

9 th

X 1

At a Court of the Foujdaree Adalut

Present

Wednesday 1st February 1826. F. A Grant Esqr 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
George Govan Esqr 3d Puisne Judge

Read letter dated 19th Ultimo from the Criminal Judge in the Zilla of Chingleput, with reports prescribed by Section XXXVI Regulation X of 1816 and forwarding three warrants for the banishment of certain convicts to any Zilla selected by the Foujdaree Adalut.

(Here enter No 38)

The Court of Foujdaree Adalut direct that the prisoners,

Veeran,
Veerasawmy,
Ramasawmy,
Eresen,
Chellen,
Paromah
Veerah Chitty
Vencatachellum
Sepsamy
Pallee Coodatan
Narrainen and
Coolondan

be removed to the Jail in the Zilla of Masulipatam there to be imprisoned agreeably to

1st February 1826.

to the tenor of their respective Sentences.

Ordered, that extract of these proceedings be sent to the Criminal Judge in the Zilla of Chingleput and to the Criminal Judge in the Zilla of Masulipatam for their information and guidance respectively.

(Sent following Letters No 41.

F. H.

F. H.

At a Court of the Foujdaree Adalut.

Present,

Thursday 2d February 1826 — F. St. Grant Esquire, First Puisne Judge.
James Cochrane Esquire, Second Puisne Judge.
George Gowan Esquire, Third Puisne Judge.

Read petition presented by Valli Ammal of the Zilla of Combaconum. (Here enter Misc. Pet. No. 3 of 1826)

The Petitioner's husband was one of the Prisoners who were convicted and condemned in Case No. 12 of the Combaconum Calendar 2d Sessions of 1825. She complains that he was unjustly apprehended & condemned having been supposed to be the same person with one Rammen, a name which he never bore and was believed on his trial to bear only thro' false evidence.

On reference to the Calendar it appears that the Petitioner's husband was recognised as having been present at the Robbery by 3 witnesses; and was declared to be convicted on strong presumptive proof by the Futwah of the Law Officer, concurred in by the Judge on Circuit. Petitioner herself states that, on his trial, he

2d February 1826

he endeavored, but failed to prove that his name was not Ramen.

Ordered, that she be informed that this Court sees no reason to interfere in her husbands' favor but that it is open to her to prosecute for a conspiracy the person or persons by whose false evidence he was believed to bear the name of Ramen.

Ordered also, that extract of these proceedings be furnished to the petitioner on her application.

F. N.

Read return dated 31st Ultimo from the 1st Judge late in Circuit in the Centre Division to precept of the 5th Instant directing them to communicate the observations of the Tongaree Adawlut on case No. 21 Cuddapa Calendar 4th Sessions 1825.

(Here enter No. 69)

Read return dated 20th Ultimo from the Judges of the Provincial Court of Circuit in the Northern Division to precept dated 15th December last directing them to circulate the remarks of the Tongaree Adawlut upon a charge of perjury in case No. 2 Chingleput Calendar 2d Sessions of 1825.

(Here enter No. 72)

F. N.

At a Court of the Foujdaree Adawlut

Present

Saturday 4th February 1826. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Govan Esqre 3d Puisne Judge

Read letter dated 26th November last from the 3d Judge of the Provincial Court of Circuit in the Northern Division, submitting case No. 2 Masulipatam Calendar fourth quarterly Sessions 1825.

(Here enter No. 995)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law officer and the futwa of the Cazee ool Cozat and Mooftees of the Foujdaree Adawlut confirm the said futwa of the Cazee ool Cozat and Mooftees aforesaid, and under the sentence of Corporal punishment declared in the futwa, adjudge the prisoner,

Kalapaula Nayganah

to be removed to the Jail in the Zilla of Madura there to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of fourteen years and then be released

(Sent following letter No. 46)

Read

4th February 1826.

Mr Cochrane and Mr Gowan.

Read letter, dated 25th November last, from the 2d Judge of the Court of Circuit in the Centre Division, submitting case No 49 Chittoor Calendar 4th Quarterly Sessions A D 1824.

(Hereinafter No 980 of 1825)

WL

The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coozat and Mooftee of the Foujdaree Adaulut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and acquitting the prisoner,

2d "Yerra Unicatareddy,"

direct that he be set at liberty.

(Sent following letter No 47.

Mr Grant Mr Cochrane & Mr Gowan

Read letter, dated 24th December last, from the 3d Judge of the Court of Circuit in the Northern Division, submitting Cases Nos 35 and 36 Nellore Calendar 1st Sessions 1825.

(Hereinafter No 9)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held in cases Nos 35 and 36 before the Judge on Circuit the futwas of the Provincial Law Officer and the futwas of

4th February 1826.

of the Cazee ool Coozat and Mooftees of the Foujdaree Adaulut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid in case No 35 and under the provisions of clause fifth Section IV Regulation XV of 1803 adjudge the prisoners,

1st "C. Venganah,"
2d "C Soobbiah,"
3d "C. Chennunah,"
4th "C. Rainoodoo,"
5th "I. Kotiah,"
6th "I. Bandagee,"
7th "I. Aumeen,"
8th "I. Tunnoor,"
9th "I. Chooyandoo,"
10th "I. Ireeyandoo," and
11th C. Paba Kunniah,

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of two years and then be released.

(Sent following letter No 48.

At a Court of the Fouydaree Adalut

Present

F. A. Grant Esq.re 1st Puisne Judge

Monday 6th February 1826 James Cochrane Esq.re 2d Puisne Judge

George Gowan Esq.re 3d Puisne Judge

Read letter dated 26th Ultimo from the 1st Judge late presiding 4th Quarterly Sessions 1825 Gilla Chittoo recommending under clause second section III Regulation I of 1825 a mitigation of punishment in the case of the prisoners convicted in No. 3 (Here enter No. 55)

The Court of Fouydaree Adalut having attentively considered the grounds upon which the 1st Judge recommends a mitigation of punishment in the case of the prisoners referred to in his report, resolve to sanction the proposed commutation of the prescribed penalty, to five years imprisonment with hard labor in irons.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division for his information and guidance.

(Sent following letter No 49.)

Read letter dated 27th Instant from

from the 1st Judge late presiding 4th Quarterly Sessions 1825 recommending under clause Second Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoner convicted in No 4.

(Here enter No 01)

The Court of Zoojdaree Adawlut having attentively considered the grounds, upon which the 1st Judge recommends a mitigation of punishment in the case of the prisoner referred to in his report, resolve, under the circumstances of the case as reported by the 1st Judge, to direct, that the prisoner be released from confinement on producing good and sufficient security for his future good behaviour and appearance when required for the period of twelve months.

2 The Court of Zoojdaree Adawlut observe with regret, that the 1st Judge continues to persevere in unwarranted attacks upon the conduct of the subordinate officers, notwithstanding the admonitions which have been so lately conveyed to him, in the proceedings of the Zoojdaree Adawlut of the 9th December last. The Court deem the general remark which he has recorded upon the proceedings of the late Acting Criminal Judge in the Zilla of Chittoor, that "he constantly amplifies every act brought in prosecution before him," to be altogether unjustifiable, unless supported by a distinct reference to facts. The Court can add

add nothing to their remarks of the 9th December last, in which they endeavoured to repress observations of this nature, and they now again direct, that the 1st Judge abstain from impugning the conduct of any judicial officer, unless he is prepared to support his assertions, by reference to facts which might justify his animadversions.

Ordered, that a Extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division, for his information and guidance.

Sent 17th Feby No 124
Returned 3d March 1826.

(Sent following letter No 50)

Read letter dated 28th Instant from the 1st Judge late presiding 4th Quarterly Sessions 1825 Zilla Chittoor, recommending under clause Second Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoner convicted in No 6.

(Here enter No 00)

The Court of Zoojdaree Adawlut, having attentively considered the grounds upon which the 1st Judge recommends a mitigation of punishment, in the case of the prisoner referred to in his report, resolve to sanction the commutation of the prescribed penalty to one year's imprisonment with hard labor in irons, as proposed by the 1st Judge.

Ordered, that a Extract of these proceedings be sent to the 1st Judge of the Court

6th February 1826.

Court of Circuit in the Centre Division for
his information.

(Sent following letter N°51.)

Read letter, dated 30th Ultimo,
from the 1st Judge late presiding 4th Quarterly
Sessions 1825 Zilla Chittoor, recommending under
clause Second Section III Regulation I of 1825.
a mitigation of punishment in the case of
the prisoners convicted in N°7.

(Here enter N° 68)

The Court of Sovjarce Adalut
having attentively considered the grounds upon
which the 1st Judge recommends a mitigation of
punishment, in the case of the prisoner referred
to in his report, resolve to sanction the proposed
commutation of the prescribed penalty to three
years imprisonment with hard labor.

Ordered, that extract of these
proceedings be sent to the 1st Judge of the
Court of Circuit in the Centre Division for
his information.

(Sent following letter N°52.)

J. Jo.

At a Court of the Sovjarce Adalut

Present

Tuesday, 7th February, 1826. F. A. Grant Esq.re 1st Puisne Judge
James Cochrane Esq.re 2d Puisne Judge
George Gowan Esq.re 3d Puisne Judge

Read return dated 17th December
from the 1st Judge late presiding 4th Quarterly
Sessions 1825 Zilla Chittoor to the precept of 30th
November last, calling upon him to explain his
proceedings in certain cases in 4th Quarterly Sessi-
ons 1825 Zilla Chittoor.

(Here enter N° 1013 of 1825)

The Court of Sovjarce Adalut
required the 1st Judge in their proceedings of the
30th November last, to explain his proceedings in N°118 pointed
out to him that the cases of the prisoners in cases N°s 1 & 2
4th quarterly Sessions 1825 Zilla Chittoor upon security was
illegal since it appeared that the Jurors had
declared them convicted.

From the translations and copies
of the Futwas which the 1st Judge has trans-
mitted, the Court learn, that the Law Officer
distinctly declared the prisoners in N°s 1, 2 & 11
to have been 'convicted' upon a Futwa of Zun-
-ghalib, and liable to discretionary punish-
-ment, as laid by the charge, N°s 1 and 11
of robbery by open violence, upon the ground
of

of presumptive proof arising from credible testimony; or circumstantial evidence; whereas ~~are~~ therefore expressly provided for, in clause third section III Regulation XV of 1803, and it was the duty of the 1st Judge accordingly to have passed the sentence prescribed by the Regulations for this offence, or, if the trial was referrible, to have submitted reasons for the consideration of the Foujdaree Adawlut.

3 In explanation of his omission to conform to these plain and intelligible provisions of the Law, the 1st Judge states, that "not having conceived the 2d prisoner (one of "on whom the strong suspicion in the language "of the Futwah had fallen, was satisfactorily "proved to have been guilty of the robbery charged "against him, but that the suspicion only "stood against him he has conformed to the "letter and spirit of the latter part of the clause in question (clause 6th Section II Regulation XV 1803) which runs thus viz. that in "cases of strong suspicion though not amounting to conviction as well as upon "proof of notorious bad character the Judge "or Circuit may direct the Zilla Magistrate "to detain the prisoner in custody until he "shall give sufficient security for his future good behaviour and appearance "when required".

The

4 The Court have to remark upon this explanation, that they are reluctantly constrained to withhold their assent, to this assertion of the 1st Judge, that he was led into the illegality in question, under the above mentioned misinterpretation of clause sixth Section II Regulation XV of 1803.

5 The section itself is extremely clear, and the very passage quoted, so precise in its expressions, in respect to the limitation of power of demanding security, to those cases only, where the futwa, (which must be concurred in,) does not amount to conviction, that they cannot bring themselves to believe, that the 1st Judge was led into error; thro' a misapprehension of the spirit, or, of the letter of the law.

6 In support of this harsh declaration, the Court have to observe, that in the 9th para of their proceedings of the 17th June last, which were acknowledged by the 1st Judge in his return of the 11th July, it was distinctly pointed out to him, that when he did not concur in a futwa, the trial must be referred under Section XXII Regulation VII of 1802, this Section, the Court conceive, cannot admit of two interpretations, and as the attention of the 1st Judge was particularly called to it, but a short time before the commencement of the 4th Quarterly Sessions 1825, of which the case in question stands the first, the Court are unable to

to draw the conclusion, they would have preferred, that this officer did not act illegally, deliberately, and with premeditation; but thro' ignorance of his duty: that this cannot have been the case further appears to the Court to evident, from the proceedings of the 1st Judge in former Sessions of Gaol delivery held by him.

7 For the Court of Zoujdaree Adaulut observe, that in the 15th para of their proceedings of 17th June last, upon one of the latest Calendars submitted by the 1st Judge, they took particular notice of a sentence of 3 years imprisonment, passed on a prisoner of the same description, as that, under which he has now directed the release of prisoners upon security; and the Court then expressly stated, that the sentence should have been passed, after a second petition had been taken. It is impossible under these circumstances to suppose that the 1st Judge could act in one Sessions, upon a construction of the law in which he was supported by the Zoujdaree Adaulut, and in the next Sessions, be ignorant of the intention of the same law.

8 It is further to be remarked, that upon an attentive examination of former Calendars submitted by the 1st Judge, so far from it appearing that he does not fully understand the provisions of clause 6th

Section

F.R.

7th February 1826.

Section II Regulation XV. of 1803, it is plain, that he correctly apprehends both the letter and spirit of the rule; for instance, the sentence passed by him in case No. 3. 3d Quarterly Sessions 1824 runs thus. "The 3d prisoner Ramdoo being acquitted "is ordered to be released on finding security "for his good behaviour" and in case No. 6, the only other case in the same Calendar wherein security was directed: the 1st Judge's abstract of the sentence expressly states, that the 2d prisoner was not convicted. Also in his proceedings in Cuddapa Calendar 1st Sessions 1825, whenever the 1st Judge acted under clause sixth Section II Regulation XV of 1803, as in cases Nos. 39, 69, 137, 143, and No. 1 Supplemental Calendar, his own abstracts of the sentences shew, that in every one of them, the prisoners were not convicted; so also in the Chingleput Calendar No. 10, the abstract is so explicit, as to prohibit the supposition, that this officer misconceives the meaning of clause sixth Section II Regulation XV of 1803; and does not know the difference between a sentence of conviction on strong presumption, (or Zan-i-ghalib) and one of suspicion (or Tohmut) This is also exemplified in his proceedings in cases Nos. 5, 18 and 20 of the Bellary Calendar. Moreover in many instances in these Calendars the 1st Judge assigned penalties on a section of Zan-i-ghalib, which it is now pretended, authorizes

authorizes a release: As the following extract
from his return of the 17th July last to the Courts
precept distinctly shews. "In case № 122 the excep-
"tion (to a fictum of theft) appears on a represent-
"of the first fictum to have been similar to that of
"№ 89 viz: Gun i ghalib" and in the Calendars
punishments are recorded in both these cases.

9 Referring to the explanation, sub-
mitted with the foregoing return, by the
Acting Judge in the Zilla of Chittoor, in
defence of his proceedings, against the ani-
madversions of the 1st Judge, the Court of
Foujdaree Adaulut have to remark, that
the conduct of the 1st Judge in charging
Mr Bates with an assumed irregularity,
whilst the orders condemned bore the signa-
ture of his predecessor in office Mr Place,
which the 1st Judge must have known when
he recorded his censure, is highly discreditable,
to a superior officer, and tends to manifest,
that his object was rather to cavil at, and to
misrepresent the conduct of the inferior of-
ficers to the Court of Foujdaree Adaulut, which the
Court have noticed on other occasions, that to
correct and amend; and when as in this instance,
the proceedings arranged were done in con-
formity to orders of the Foujdaree Adaulut, which
were communicated to the Provincial Court
of Circuit in the Centre Division on the 2d
November 1820, the Court deemit deserving of

of their severest censure.

10 These instances of misconduct
if fully established, coupled with other
proceedings of this officer on record, would
necessarily deprive him of the confidence
of the Foujdaree Adaulut; as they afford evidence
in the opinion of the Court, that the 1st Judge
does not hesitate in violation of his public
duty, to pervert the Regulations to his own
views, and to record as the grounds of his
illegal acts, what he does not conscien-
ciously hold, with the view of misleading
the Court of Foujdaree Adaulut.

With this impression of the
11 conduct of this officer the Court deem it be
their duty to call upon the 1st Judge for an
explanation of his apparently contradictory
proceedings, and of the ground of his de-
mand of security under a fiction of con-
viction on strong presumption, under clause
sixth Section II Regulation XV of 1803, in
which it is explicitly stated, that security
is demandable only in cases not amounting
to conviction.

Ordered that extract of these
proceedings be sent to the 1st Judge late
presiding 4th quarterly Sessions 1825 Zilla
Chittoor by precept returnable within one
month from and after its receipt.

Ordered

Ordered also, that the 1st Judge do communicate para 9 of these proceedings to the Acting Criminal Judge in the Zilla of Chittoor.

Sent 18

(Sent following precept No 53.)

Read letter, dated 31st ultimo, from the 1st Judge of the Provincial Court of Circuit in the Centre Division, recommending under the provisions of clause second Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoners convicted in No 9 Chittoor Calendar 4th Quarterly Sessions 1825.

(Here enter No 74)

The Court of Foujdaree Adalut having attentively considered the grounds upon which the 1st Judge has recommended a commutation of the prescribed penalty to seven years imprisonment with hard labor in irons in the case of the 1st Prisoner Ummiah, and to five years imprisonment with hard labor in irons in the case of the 2d 3d and 4th Prisoners referred to in his report, resolve to sanction the sentence proposed.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division for his information.

(Sent the following letter No 54.)

Read letter, dated 1st instant, from

3/

7th February 1826.

from the 1st Judge of the Provincial Court of Circuit in the Centre Division, recommending under the provisions of clause second Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoner in No 11 Chittoor Calendar 4th Quarterly Sessions 1825.

(Here enter No 80)

The Court of Foujdaree Adalut having attentively considered the grounds upon which the 1st Judge has recommended a commutation of the prescribed penalty to three years imprisonment with hard labor in irons in the case of the Prisoner referred to in his report, resolve to sanction the sentence proposed.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division for his information.

(Sent following letter No 55.)

Read letter dated 1st Instant, from the late Additional Judge late on Circuit in the Centre Division, recommending under the provisions of Section X Regulation I of 1825, a mitigation of punishment in the case of the prisoner convicted in No 6 of the postponed Cuddapa Calendar 2d Sessions 1825.

(Here enter No 83)

The Court of Foujdaree Adalut having

having attentively considered the grounds upon which the late Additional Judge has recommended the release of the prisoner referred to in his report, against whom the only evidence appeared is his own confession, resolve to sanction the mitigation proposed and direct that he be admonished, and then set at liberty.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

/Sent following letter No. 56./

Read letter dated 1st Instant from the late Additional Judge late on Circuit in the Centre Division recommending under the provisions of Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoners convicted in No. 10 Cuddapah Supplemental Calendar 2d Sessions 1825.

/Here enter No. 84/

The Court of Sudder Adalut having attentively considered the grounds upon which the late Additional Judge has recommended a commutation of the prescribed penalty to three years imprisonment with hard labor in irons in the case of the prisoner referred to in his report, resolve to sanction the sentence proposed.

Ordered, that extract of these proceedings

proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

/Sent following letter No. 57./

Read letter, dated 1st Instant, from the late Additional Judge late on Circuit in the Centre Division recommending under the provisions of Clause second Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoners convicted in No. 6 Chingleput Calendar 2d Sessions 1825.

/Here enter No. 82/

The Court of Sudder Adalut having attentively considered the grounds upon which the late Additional Judge has recommended a commutation of the prescribed penalty in the case of the prisoner Sallai 'Chellum' to five years imprisonment with hard labor in irons and in the case of the prisoner Chellum Vettyar to three years, and the other prisoners referred to in the report, to two years imprisonment, resolve to sanction the sentence proposed.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

/Sent following letter No. 58./

Read

7th February 1826.

Read letter dated 1st Instant from the late Additional Judge late on Circuit in the Centre Division, recommending under the provisions of Section X Regulation I of 1825 a mitigation of punishment in the case of the prisoner convicted in No. 37 Cuddapa Calendar 2d Sessions 1825.

/Here enter No. 81/

The Court of Foujdaree Adalut having attentively considered the grounds upon which the late Additional Judge has recommended the release of the prisoner referred to in his report, resolve to sanction the mitigation proposed, and direct that he be admonished and then set at liberty.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

/Sent following letter No. 59./

Read letter, dated 28th Ultimo, from the 1st Judge on Circuit in the Southern Division, recommending under the provisions of clause second Section III Regulation I of 1825 a mitigation of punishment in No. 28 Madura Calendar 1st Sessions 1826.

/Here enter No. 85/

The Court of Foujdaree Adalut having attentively considered the grounds upon which the 1st Judge has recommended a commutation of the prescribed penalty, to

F. C.

7th February 1826.

five years imprisonment with hard labor in irons and twenty stripes with a rattan, in the case of the prisoner referred to in his report, resolve to sanction the sentence proposed.

Ordered, that extract of these proceedings be sent to the 1st Judge on Circuit in the Southern Division for his information.

/Sent following letter No. 60./

The numerous trials, which have been under the consideration of the Court of Foujdaree Adalut during the last twelve months, have afforded the Court striking evidence of the irregularities which generally prevail, in the examination of prisoners before the Native Officers of Police; and particularly, of the prevalence of oppressive and vexatious measures, resorted to for the purpose of obtaining confessions.

2. The Court have on a former occasion, in their proceedings of 18th June 1817, recorded their opinion, that these practices have their origin, in the ignorance of the Native Officers of Police of the value justly due to a confession, in the scale of legal evidence, which induces them to seek proof of this nature, rather than to adduce other evidence of guilt, not open to the objections which may be urged against confessions.

The

The Court are convinced, that under the influence of this erroneous notion, the native Officers of Police generally neglect the just and humane provision of the law, which requires the confessions of prisoners to be received with circumspection and tenderness, a rule applicable alike to every grade of investigation in a criminal case; & that it must be ascribed to the same cause, that the rule in clause third section XXVII Regulation XI of 1816, that no confession shall be received, unless it be free and voluntary, continues to be so much disregarded.

4. The Court have also observed in many of the trials which have come before them, the omission on the part of the Police officers, to secure the attendance of the attesting witnesses, throughout the examination of a prisoner, as enjoined in the same provision.

5. With the view of correcting these evils, the Court resolve to direct, that all Native Officers of Police, shall previously to taking down the examination of a prisoner, be required to warn him of the danger incurred by a confession, and admonish him not to wrong himself by a declaration of his guilt; and that they be directed to insert at the head of each examination in addition to the particulars

particulars now recorded, the following declaration "Examination commenced at" the hour, day, month, & year to be stated/.

"This examination of the prisoner ——— was taken down in the presence "of A. of B and of C. of D, neither of whom "are related to the prosecutor. The prisoner "having been previously warned not to give "a confession of guilt."

"Examination closed at" the hour, and day to be stated/

6. The Court are fully aware that the foregoing instructions, being at variance with the preconceived opinions of the officers entrusted with the execution of them, must necessarily fail to secure all the advantages intended; but they consider it a matter of the highest importance, that the investigations held in Criminal offences in the first instance, should proceed upon the same principles which govern the ultimate determination: and so long as the Criminal Courts are enjoined to receive the confession of a prisoner with tenderness, it is the duty of the Magistrates to require the Native Officers of Police to act upon the same principle, and to instruct them to seek for the proof of guilt or innocence, in the evidence independently of what the accused may himself declare.

The

7th February 1826.

7

The Court of Foujdaree Udalut do look therefore to the zealous cooperation of the Magistrates, in order to secure in any measure, the important object in view; and they resolve to call their attention to the circular orders of the Foujdaree Udalut of the 18th June 1817, and to direct, that the several Magistrates be required to point out to their native officers of Police, that a confession is a matter not of primary, but of subordinate consideration, and to require them to search for all the evidence forthcoming in all cases, whether a prisoner may confess, or not.

8.

The Court further direct that the Judges of the Court of Circuit and the Criminal Judges, do bring to the notice of the Magistrates, cases coming under their notice, wherein it may appear that any means whatever have been resorted to, to induce a confession: and they expect, when such instances are brought forwards, and there is ground to believe that the Tahseeldars have certified falsely, that the Magistrates will take serious notice of so flagrant a violation of public duty, which cannot henceforth be attributed to ignorance, or, misconception by the Head of Police, as to the line of conduct expected from him, in the examination of prisoners.

The

7th February 1826.

9.

The Court also consider it to be the duty of the Criminal Judges and Magistrates to point out to prisoners the danger resulting to themselves from a confession, and to warn them against such self crimination; and they further direct that in all cases of confession before them, they certify with their own hands that such confession was freely and voluntarily given, after a cautionary admonition from the Court.

Ordered that extract of these proceedings be sent to the 4 Courts of Circuit by precept directing them to communicate the same to the several Criminal Judges and Magistrates within their respective Jurisdictions and to desire that the Magistrates do make the necessary communication to the Tahseeldars, within their several Zillahs, for their information and future guidance.

Sent following precepts Nos. 61.

F. 16.

At a Court of the Foujdary Adawlut

Present

Thursday 9th February 1826 } F. A. Grant Esquire, First Puisne Judge.
James Cochrane Esquire, Second Puisne Judge.
George Govan Esquire, Third Puisne Judge.

Read letter, dated 25th Ultimo from the Provincial Court of Circuit in the Northern Division, referring the question whether the Register of the Zilla Court is to transmit to the Government the Cutcheel the Magistrates communication to the Criminal Judge. Here enter No. 71

The object of the foregoing reference is to obtain the opinion of this Court whether the mode adopted by the Magistrate of Masulipatam in notifying to the Criminal Judge the appointment of a Police Aumeen; viz. by a letter to the Government the Cutcheel in the Zilla Court enclosed under cover to the Register; is or is not the proper one.

2. The Magistrate & the Criminal Judge both defend it on the ground of usage and facility to public business; as also by reference to section XXVII Regulation XXVII of 1802: while the Register doubts its

its propriety because it differs from the practice of other Courts & because the Regulation and section above quoted applies exclusively to Collectors & only to one specific set of theirs.

3. The Court observe that Regulation XXVII of 1802 is wholly inapplicable to the question at issue; having no reference at all to Magistrates.

4. The Circular orders of this Court dated 28th July 1824 have reference to communications from Criminal Judges to Magistrates; & the object of them was to cause the discontinuance of precepts on these occasions uniformity of the mode of communication being however noticed in them as desireable, they very naturally and properly occurred to the Register with the knowledge he possessed of a different practice in other Courts.

5. There is nothing in the Regulations definitive of the mode of communication from a Magistrate to a Criminal Judge on the occasion in question. The only two places in which a particular mode of communication between those officers is prescribed in Regulation X of 1816 Sect. section XXV & clause II section XXXIV make it direct between them; & it appears to this

Court that on every occasion this is the easiest and properest way.

6. The Court observe with regret the controversial & personal style of the Magistrates' letter dated the 3d December 1825; they are also of opinion that it would have been more correct for the Register to have submitted the letter which he thought objectionable to his superior the Criminal Judge & received his orders as to the disposal of it than to have acted on his own opinion in returning it.

Ordered, that extract of these proceedings be sent to the Judges of the Provincial Courts in the Northern Division for their information.

/Sent following letter No 65./

F. C.

At a Court of the Zillah Adalut

Present,

Monday, 10th February 1826.

F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Gowan Esqre 3d Puisne Judge.

Read letter, dated 30th November last, from the 3d Judge on Circuit in the Southern Division, submitting case No 15 Salem Calendar 2d Sessions 1825.

(Here enter No 985)

The 1st 2d and 3d Puisne Judges of the Court of Zillah Adalut on a deliberate consideration of the circumstances of the case in evidence before them being of opinion that the proof against the prisoner, Vuttamala Moopan, is sufficient to convict him of the crime of murder, desire under the provisions of clause second Section II Regulation I of 1818 that their Law Officers will declare by a second Futwa to what specific punishment the prisoner would have been liable under the Mohummudan law if he had been convicted by full legal

legal evidence of the above crime.

Ordered, that extract of these proceedings be translated and delivered to the Cazee aal Cooat and Mooftes of the Pointdarre Korlut.

Read letter, dated 20th December last, from the 3d Judge late on Circuit in the Northern Division, submitting case No 28 Nellore Calendar 1st Sessions A.D. 1825.

(Here enter No 1028.)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee aal Cooat and Mooftes of the Pointdarre Korlut confirm the said futwa of the Cazee aal Cooat and Mooftas aforesaid and under the provisions of Clause second Section IV Regulation XV of 1803 adjudge the prisoners,

1st Woolawa Pauyan,
2d Pitchegoontla Vengadoo,
3d Pitchegoontla Muddegadoo,
4th Daygala Uchoolagandoo
5th Gundhum Shaegoudoo, and
6th Nublapaty Poollegadoo,

to receive 39 stripes with a rattan and to

to be imprisoned and transported to such place or places beyond Sea as the Governor in Council shall appoint there to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of their natural lives respectively. And under the provisions of Clause fifth Section IX Regulation XV of 1803 adjudge the prisoners,

2d "Munla Hupain,"
3d "Pitchegoontla Veeradoo,"
8th "Munda Coteegadoo,"
10th "Tellary Goorroovadoo,"
11th "Koonhamoody Venkadoo,"
12th "Katchala Naugadoo,"
13th "Katchala Chinna Mooftegandoo,"
14th "Koonhamoody Penpadoo,"
15th "Katchala Nallamoothadoo,"
16th "Katchala Pentadoo,"
17th "Katchala Chinna Venkadoo," and
18th Maytrala Veeradoo,"

to receive 24 stripes with a rattan and to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of fourteen years and then be released.

(Sent following letter No 66.

At a Court of the Foujdaree Adalut.

Present,

Wednesday 15th February 1826. F. A. Grant Esqre. James Cochrane Esqre. George Gowan Esqre. } Judges.

Read letter dated 17th September last from the 2d Judge take on Circuit in the Southern Division, submitting the report prescribed by Section XXXVII. Regulation VIII of 1802 upon the 1st Sessions of 1825. (Hereinafter No 800 of 1825)

In the 8th and four following paragraphs of his report, the 2d Judge takes notice of the want of classification in the jails in the Southern Division, and recommends the erection of a separate building for the confinement of prisoners under examination. The provisions of Section XXIX. Regulation X of 1816 appear to the Court to provide sufficiently for this object; and they doubt the practicability in the present state of the jails, of any further subdivision of the different classes of prisoners: the Court propose however to transmit the observations of the 2d Judge to the Criminal Judges of the several Zillas in the Southern Division, and to call their attention to the

the suggestion for the erection of a separate building for the confinement of prisoners under examination.

3. The remarks of the 2d. Judge upon the subject of perjury, contained in the 16th paragraph of his report, were taken into consideration by the Court of Poujdaree Adawlut in their proceedings under date the 16th December last, upon a reference upon the same subject from the late additional Judge on Circuit in the Centre Division. The accompanying extract from those proceedings, will put the Honorable the Governor in Council in possession of the sentiments of the Court of Poujdaree Adawlut upon this point; and they consider it unnecessary to add any thing to the observations there recorded. They deem it proper at the same time to refer to their proceedings submitted to Government under date the 30th December 1822 when the same subject was brought under consideration

From Para 18th to the end in the Proj. dt 16 Dec 1825.

4. In the 17th para the 2d Judge remarks that "under the head of cattle "stealing, sheep stealing is classed. By Clause "fourth Section III Regulation XI of 1822, and "by the construction given to it by the Courts are "bound to try all cases however trivial "even the purloining a lamb or kid of the "value of 2 or 3 annas, must be referred "to the Criminal Judge. The consequence of "this is, that an Inhabitant is either forced "to go to the Criminal Court at a considerable "distance, inconvenience and expence, or "forego complaint. In the season of cultiv-"ation particularly, the loss of time is "of more consequence, than the loss "sustained by the theft. and I am of opinion "that in nine cases out of ten, the crime "is either compromised, or suffered in "silence."

5. The Court have no reason to believe, that the evil here pointed out is at all general. The reports from the Criminal Judges in the Northern and Centre Divisions shew, that cases of sheep stealing are frequently brought under their cognizance, and the Court are disposed to think from the very general terms in which the opinion of the 2d Judge is advanced, that he had not investigated with the necessary precision, the grounds of his statement, that nine cases out of ten of sheep stealing are at present compromised, or, not brought forward in the Southern Division.

The

6.

The orders of the Toujdaree Adalut, by which cases of sheep stealing, were directed to be included under the provisions for cattle stealing, in clause fourth Section III Regulation VII of 1822, were founded upon the consideration, that this description of property was equally with oxen, horses and other animals, peculiarly exposed, and in apportioning punishment to the offence, regard was to be had, not solely to the value of the property stolen, but to the difficulty of preserving and the facility of stealing it. It appeared therefore to the Court just, that it should have the additional protection afforded by the Legislature, in the increased penalties adjudicable under Regulation VII of 1822.

7.

If it should be found as the 2d Judge represents, that the subjecting of this offence to the cognizance of the Criminal Judge, has had the effect of rendering this description of property less secure, the Court of Toujdaree Adalut will issue the requisite directions for the removal of the evil, as sheep stealing is not necessarily included in the terms of Clause fourth Section III Regulation VII of 1822.

It

F. C.

15th February 1826.

It was not within the power of the Court, to foresee the injury which the 2d Judge reports to have resulted from their interpretation of the law: as the practice of compounding offences which the Court have reason to believe is general in the districts where Zillah Courts have been abolished, and which is by no means confined to cases of sheep stealing, was not at the date of the first order of the Toujdaree Adalut upon this subject prevalent, and certainly had not been represented.

The Court propose to require the opinion of the several Provincial Courts of Circuit upon the sentiments of the 2d Judge on the subject of sheep stealing; and they will be guided in issuing their final instructions, by the information which those Courts may lay before them.

Ordered, that extract of these proceedings be sent to the Secretary to Government in the Judicial Department for the purpose of being laid before the Honorable the Governor in Council.

Sent following letter No. 69

Ordered

Ans.d Dum. N.328
ord.d 18.d.1826.

Ordered also that a extract of these proceedings be sent to the 2d Judge late on Circuit in the Southern Division by precept directing him to communicate the same to the Magistrates & Landholders of Jaffna & Batticotta & to the Superintendant of Police & Commandant of Jaffna as may be practicable in the Southern Division for their information

(Sent following precept No.70

Read return dated 15th Instant from the late additional Judge on Circuit in the Centre Division to precept dated 5th November last directing him to communicate to the Magistrate of Cuddapa pages 1.2.3.4.5 of the Courts observations in Cuddapa Calendar 2d Sessions 1825.

(Here enter No. 115)

Read letter dated 15th Instant from the late additional Judge late on Circuit in the Centre Division stating in further return to the Courts precept of the 18th November last that a second futwa has been taken & a new sentence passed in No.13 Bellary Calendar 2d Sessions 1825.

(Here enter No.116)

At a Court of the Poydaree Adalut.
Present

Thursday 4th February 1826. The Hon.ble A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Gowan Esqre 3d Puisne Judge

Read again letter dated 30th November last from the 3d Judge on Circuit in the Southern Division, - Submitting case No.15 Salem Calendar 2d Sessions 1825.

(Here enter No.985 of 1825)

Read the second futwa delivered in this case, by the Cazee ool Coozat and Mooftees of the Poydaree Adalut.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held Before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coozat and Mooftees of the Poydaree Adalut confirm the said futwas of the Cazee ool Coozat and Mooftees aforesaid, and under the provisions of Section XV Regulation VIII of 1802 adjudge the prisoner,

Vattamalee Mooppen,

to suffer death by being hanged at the usual time and place of execution.

(Sent following letter No.74)

At a Court of the Foujdaree Adalut.

Present

Friday, 3rd February 1826. — F. A. Grant Esqr. — James Cochrane Esqr. — George Gowan Esqr. — } Judges

Read letter dated 1st Instant from the late Additional Judge late on Circuit in the Centre Division, recommending under Section X Regulation I 1825, a mitigation of punishment in case No 5 Bellaee Calendar 2d Sessions 1825.

(Here enter No 87)

The Court of Foujdaree Adalut having attentively considered the grounds, upon which the Additional Judge has recommended a commutation of the prescribed penalty, in the case of the prisoner referred to in his report, to five years imprisonment with hard labour, sanction the mitigation proposed.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

(Sent following letter No 75.)

Read letter, dated 7th Instant from the late Additional Judge late on Circuit in the Centre Division recommending

under

under Section X Regulation I 1825, a mitiga-
tion of punishment in case No 1 Caddapa Supple-
mental Calendar 2d Sessions 1825.

(Here enter No 99)

1 The grounds upon which the late Additional Judge recommends a mitigation of punishment, are, first, that the offence of the prisoner is not common; and secondly, that it does not appear that he intended to commit a fraud, by the forgery of which he has been convicted.

2 It appears to the Judges, that the Regulations view the offence of forgery, not merely on the light of a common fraud, but by clapsing it with perjury, and prescribing a severe penalty, they have declared it to be a crime requiring exemplary punishment.

3 One of the grounds of the enact-
ment of Regulation VI. of 1811, is stated in the pre-
amble, to be the prevalence of the offence. Upon this point the Judges concur with the late Ad-
ditional Judge in opinion, that the crime is not prevalent; and this consideration will authorize the adjudication of the lowest punish-
prescribed by the law - but as the offence of the prisoner in the case referred to, is complete in all respects; a mitigation to the extent proposed, would amount in effect to an alteration of the law. Upon this ground therefore, as well as upon the aggravation of

of the crime in the contempt of Court exhibited by it, the Judges direct, that a sentence of four years' imprisonment with hard labor be passed upon the prisoner Buckoo Tenjanah, to take effect from the date of his conviction by the Court of Circuit.

The original document trans-
mitted with the late Additional Judge's report is herewith returned.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

(Vide following letter No 76.)

Read letter dated 2d Instant from the 1st Judge late presiding 4th Quarterly Sessions 1825 Zilla Chittoor, recommending under clause second Section III Regulation I. 1825, a mitigation of punishment in case No 14. 4th Quarterly Sessions Zilla Chittoor 1825.

(Here enter No 80.)

The Court of Foujdaree Adawlut having attentively considered the grounds upon which the 1st Judge has recommended a com-
mutation of the prescribed penalty, to four years imprisonment with hard labor in irons, in the case of the prisoners referred to in his report, sanction the sentence proposed.

Ordered

108

Tuesday

3d January 1826 - At a Court of the Kingdom Udal

Present

The Honble F. A. Grant Esquire, --- 1st Puisne

James Cockburn Esquire, 2d Puisne Justice

George Gowan Esquire, 3d Puisne Justice

Read letter, stated 11th Instant, from the Judge on Circuit in the Western Division submitting cases Nos 1, and 19. Causes Calendar Sessions 1825

Minute No 862 of 1825.

Present and 3d Puisne Justice

of the Court of Judicature Udalut on a consideration of the circumstances in evidence before the being of opinion the proof against Subhanaya is sufficient to commit him of the crime of Arson, desire under the provisions of Clause 2 Section II Regulation I of 1818 that the Law Officers will state by a second time to what specific punishment the prisoner would have been liable under the Law if he had been committed for full legal evidence of the crimes.

Ordered that the proceedings be transmitted to the Sudder Foujdaree Adalat

Mr Grant and Mr Gowan

246

6

January 1826.

last, from the Judge of the Court of Circuit in the Centre Division, submitting case No 43. Chittoor Calendar 4th Quarterly Sessions A.D. 1824.

Vide entry No 861 of 1825

& 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge Circuit the futwa of the Provincial Officer and the futwa of the Cazee ool Cooza and Mooftee of the Zillah Adalut comm the said futwa of the Cazee ool Cooza & Mooftees aforesaid & direct that the prisoners,

1st Shankiah,
2d Varoomaliah, and
3d Carlmodiah,

be set at liberty.

And under the Rubakaru declared in the futwa as to the

4th Cruata reddy,
5th Bramm,
6th Chenaagan,
7th Venkatum,
8th Banlegan,
9th Gungum,
10th Dawragan, and
11th Chengum,

to imprisoned and kept to hard labour on the public roads or other public works for and during the period of three years and then be released.

See preceding letter No 2.

8th January 1826.

1. In his letter accompanying the trial, the 2d Judge discusses at length the question generally, as to whom is the appellation 'Police officer' in clause second section I Regulation VII. 1822 applicable? and he further submits the particular point, whether a "concern of a village to the apparently employed as a village watcher" is an offence of breaking or attempting to break into a dwelling with intent to steal" be adequate to establish the jurisdiction of the "Court of Circuit."

2 The Court consider it to be unnecessary to determine the particular question, whether, in the instance of the Servant of a village, or, village Officer of any particular denomination, being concerned in the offence specified in clause first section II Regulation VII of 1822 the case should be committed. They are of opinion, that the Criminal Judge must be left to exercise his discretion in each case; that if it appears evident that the person concerned, be his denomination what it may, was bona fide exercising those police functions, which constitute him an officer vested with authority for the prevention of crime; and that a grossly breach of trust, and malversation in office, are implied in his commission of the offence designated in the clause first section II Regulation VII 1822, then, the Court are clearly of opinion, that it will be the duty of the Criminal Judge to

January 1826.

to commit the case for trial before the Court of Circuit. But if this aggravation be wanting, though the accused may bear an official title, it will not be sufficient to take the case out of the jurisdiction of the Criminal Judge.

3 The Court of Poujdaree Adalut further concur with the 2d Judge in the remarks offered in the 15th paragraph of his letter, that to constitute the aggravation of being a police officer, pointed out in clause second Section II Regulation VI 1822, the individual must not be entrusted temporarily with the duties of police, not, as the 2d Judge observes "a transient employ and in a service to which he is not always bound." but it must be his professional occupation, and be habitually exercised at the time the offence was perpetrated.

4 With reference to the observations of the 2d Judge in para 21st and to his remark in para 63, that in another number wherein the opinion of the Pundits was quoted, the rules laid down for maintaining an uniform an adequate punishment constrained him to sentence to the term of seven years imprisonment." The Court of Poujdaree Adalut have to observe, that should guilt not be brought home to the police Officers charged, or should the Court of Circuit, for any reason, deem the punishment prescribed under a future act inexpedient, the Judges presiding in any case is not constrained to pass a sentence of seven

No. 116.

30 January 1826

seven years imprisonment, but he may report the case to the Court of Poujdaree Adalut, who are empowered by Section IV Regulation I of 1825 to mitigate the sentence prescribed in Section XXI Regulation VIII 1802 "when it may be considered by the Judge of Circuit holding the trial to be too severe."

5 The Court of Poujdaree Adalut consider it to have been the duty of the 2d Judge, to have noticed pointedly to the Magistrate, the arbitrary and oppressive conduct of the Police Officer commented upon in the 26th para of his letter, and they desire that a copy of that paragraph be communicated to the Magistrate in Zilla of Chittoor, in order that he may adopt the necessary measures, for checking abuses of this nature.

Ordered, that extracts of these proceedings be sent to the 2d Judge late presiding 4th Quarterly Sessions 1824 in the Zilla of Chittoor for his information and guidance.

Sent following letter No. 3.

Read letter, dated 20th August last, from the 3d Judge late on Circuit in the Carnatic Division, submitting cases Nos 11 and 12 Bellary Calendar 2d Sessions 1824.

Vide enter No. 715

Mr Cochrane, and Mr Gowan,

The 2d and 3d Puisne Judges having maturely considered the proceedings held, before the Judge on Circuit, the futwa of the Muftee Law Officer and the futwa of the Cazee ul Cozat and Mooftees of the Poujdaree Adalut confirm the sen

said futwa of the Cazee aal Cozat and Mooftes aforesaid and under the sentence of Cahoobut declared in the futwa adjudge the prisoners,

In No 11. 1st Kenchengowda, and 1st in No 12

and

7th Neelkanta Gowdah,

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of fourteen years and then be released.

And the prisoner,

14th Ramingowdah,

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of seven years and then be released.

And the prisoners,

10th Maungan Cenkah,

11th Colachee Buswah,

and

12th Chanadiy Hunmah,

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of two years and then be released.

And the prisoner,

13th Neelamah, (female)

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of six months and then be released.

And under the provisions of Clause sixth Section II Regulation XV of 1803. direct that the prisoners,

2d Moopengowdah,

3d Baden Sunna Cheemah,

4th Unnonathee,

In No 11. 5th Chintulpullee Komaree, & 2d in No 12

8th Taliaree Sunna Hunmah,

and

In No 11. 9th Dibbadahully Bhurmah, and 4th in No 12

be released on producing good and sufficient security for their future good behaviour and appearance when required.

And acquitting the prisoner,

15th Hullalee Buswah, and

In No 11. 16th Chiekegan Peroo, & 5th in No 12

direct that they be set at liberty.

Mr Cochrane,
Mr Gowan.

The 2d and 3d Puisne Judges having maturely considered the proceedings recorded in each No 12 before the Judge on Circuit, the futwa of the Provincial Law Officer and the futwa of the Cazee aal Cozatt and Mooftees of the Sudder Adalut confirm the said futwa of the Cazee aal Cozat and Mooftees aforesaid, and so far as respects the prisoners not concerned in No 11, direct that the prisoners,

6th Ullamuttee Hunmah,

7th Tallary Cheemah, and

8th Tallary Iyagah,

be set at liberty.

Sent following letter No 14.

In the consideration of this trial, the attention of the Court of Sudder Adalut has been forcibly attracted, to certain proceedings of the Criminal Judge, which demand their notice

notice. The mode in which this officer con-
ducted the examination of the witnesses for the
prosecution, the Court consider to have been highly
improper. The question addressed to the 5th & 6th
witnesses. "What have you to say in the case of
"Buonee the prosecutrix and prisoners Kenchen-
"gowdah and the rest," and his opening question
to the 10th 11th 12th and 13th witnesses, "What
"have you come to Court for?" are reprehensible,
as tending to overawe a witness, and as
inconsistent with the spirit of patient and
deliberate attention, which should characterize
the investigation of a judicial officer.

2. The Court hope it will not
be necessary for them to notice hereafter, a
proceedure in the Criminal Court of the
nature of that now animadverted upon.

3. The Court observe, that the 17th
18th 19th 30th and 37th witnesses declared before the
Criminal Judge, that they knew nothing of this
case; but they were nevertheless bound over
to give evidence before the Court of Circuit:
The Court of Poydarre Adalut direct that the
Criminal Judge be informed, that the manifest
inattention to the correct performance of his
duties shewn in this proceeding, deserves their
censure.

4. In the 55th para of his letter
accompanying these trials, the 3d Judge offers
the following remarks: "These cases, implicating
"the heads of three distinct Villages in crime,
"cannot fail to receive a full consideration from

from the Higher Court, whose sentence is neces-
sarily likely to make a considerable impression
"on the other heads of village police in the
"Bellaree District. I am of opinion that, if any
"of the prisoners are finally convicted, the for-
feiture to Government of all Enam Lands
"which they may possess should form part
"of their sentence, and that the same should
"be placed by the Government at the dis-
posal of the Collector."

The Court of Poydarre Adalut,
5. after mature deliberation, have convicted
and finally sentenced two of the individuals
referred to, Viz Kenchengaudah 1st prisoner
under the provisions of clause second
Section IV Regulation XV of 1803, and
Neelkantagowdah, 7th Prisoner, under clause
first Section IV Regulation VI of 1822, to
14 years imprisonment with hard labour
and they approve of the suggestion of the
3d Judge, that the forfeiture of their Enam
Lands, should form part of the sentence
of the Court; but as the Regulations do
not expressly adjudge this penalty, they
are of opinion, that it is not competent
to them to enhance the punishment; but
they consider it proper to submit the case
for the orders of the Honorable the Governor
in Council.

The offence of the prisoners,
6. who were accessaries in a gang robbery,
and

appear to have been the chief instigators of the crime, is one against which the Regulations denounce the severest penalties, and the Court are impressed with the opinion, that the utmost severity of the law in force, is required, to restrain individuals from the commission of this offence. The conduct of the prisoners, involving a gross breach of trust, and flagrant violation of public duty, requires, the Court conceive, to be marked by the reprobation of Government, independently of the legal penalty, prescribed for the offence of which they have been convicted, in order that their punishment may have a salutary influence on the other heads of villages in the Zilla of Bellary.

In support of the arguments advanced for this measure by the 3d Judge, the Court would remark, that they deem the removal of these persons from office necessary to the efficient administration of justice, as there can be little doubt, but that on their restoration to power, after suffering the merited punishment of their crimes, they would use the influence their situations would secure to them, to the prejudice of all who may have been instrumental in bringing them to punishment. Their permanent disqualification for office appears therefore to be called for, to prevent the possibility of persons being deterred from appearing against

against this class of offenders.

8. The Court, are also of opinion, that the powers vested in the Heads of villages by Regulations IV and XI of 1816, and IV of 1822, are too important and delicate a trust, to be consigned to the hands of men, who, like the prisoners, have been guilty of atrocious crimes; and have given abundant proof of their unfitness for office. For these reasons the Court respectfully recommend, that the Honorable the Governor in Council, may be pleased to declare, Kenchengowdah of the village of Chekatanoy in the Talook of Hurpunhully, and Keelcantagowdah of Coolhully in the Talook of Hoovinhadagalp Zilla Bellary, for ever disqualified from holding office, and in consequence, adjudge their Service enam forfeited to Government.

Ordered, that extract of these proceedings be sent to the Secretary to Government in the Judicial Department for the purpose of being laid before the Honorable the Governor in Council.

Sent following letter No. 5

Ordered also that paras 1, 2 and 5 be sent to the Provincial Court of Circuit in the Centre Division by para 5 directing them to communicate the same to the Criminal Judge in the Zilla of Bellary for his information.

Sent following precept No. 5A

Ans. 2 24th January No. 64 entered in Dy 2d Feby 1826

2 Sent 11

Ans. 2 16th January No. 37 entered in the 25th Do 1826

Sent 11

11th July, 1826. having maturely considered the proceedings held before the Judge on Circuit the Juties of the Provincial Law Officer and the Juties of the Cazee cum Cozgat and Mooftees of the Zillah Court confirm the said Juties of the Cazee cum Cozgat and Mooftees aforesaid, and under the provisions of Section XVII Regulation VIII of 1806, adjudge the prisoner,

"Che gorroopanty Ekkeerah"

to suffer death by being hanged at the usual time and place of execution.

(Sent following letter No. 254)

Read letter, dated 28th ultimo, from the Judges of the Provincial Court of Circuit in the Northern Division, with report on the state of mind of the prisoner in No. 3 Masulipatam Calendar 2d Quarterly Sessions 1825 required by the Court's orders of 11th September 1825.

(Here enter No. 398)

Read return, from the late Additional Judge late on Circuit in the Centre Division, to precept dated 28th ultimo, directing him to communicate paras 2 and 3 of the Court's proceedings of

11th July, 1826. of that date to the Acting Criminal Judge of Cuddapah.

(Here enter No. 405)

Read return, dated 11th Instant, from the late Additional Judge late on Circuit in the Centre Division, to precept dated 3d Instant directing him to communicate para 3 of the Court's proceedings of that date to the Criminal Judge of Cuddapah.

(Here enter No. 406)

Read return, dated 4th Instant, from the Judges of the Provincial Court of Circuit in the Southern Division, to precept dated 15th ultimo informing them of the Court's opinion as to the cases of perjury cognizable under Section XXIX Regulation IX of 1816 and Section VIII Regulation II of 1822 with remarks on the proceedings of the Magistrate of Coimbatore in a case of perjury forwarded by him.

(Here enter No. 399)

Read letter, dated 5th Instant, from the 2d Judge on Circuit in the Southern Division, reporting the commencement of the Sessions at

Madura

14th July, 1826 Madura.

(Here enter No 401)

F.A.

At a Court of the Toujdaree Adalut.

Present

Tuesday 18th July 1826

F. A. Grant Esq re 1st Puisne Judge

James Cochrane Esq re 2d Puisne Judge

William Oliver Esq re 3d Puisne Judge

Read letter dated 25th May last from the 3d Judge of the Provincial Court of Circuit in the Northern Division, submitting case No 18 Masulipatam Calendar 1st Quarterly Sessions 1826.

(Here enter No 326)

The Cazee ool Cozat and Mooftee of the Toujdaree Adalut declare in the foregoing futwa that the prisoner is convicted, on strong presumption of the crime of murder laid to his charge – The Court, therefore, concurring in the opinion declared in the futwa, resolve, under the provisions of clause third section II Regulation XV of 1823 to call upon their Law Officers to declare by a second futwa to what specific punishment the prisoner would have been liable under the Mohummudan Law if he had been convicted by full legal evidence.

Ordered that extract of these proceedings be translated and delivered to the Cazee ool Cozat and Mooftee of the Toujdaree Adalut.

Read letter dated 5th Ultimo from the 3d Judge on Circuit in the Northern Division submitting

18th July 1826. Submitting case No. 57 Nellore Calendar 1st Sessions 1826.

(Here enter No. 352)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law officer and the futwa of the Cazee ool Coogat and Mooftees of the Sudder Adalut confirm the said futwa of the Cazee ool Coogat and Mooftees aforesaid and under the sentence of Hijbaias declared in the futwa adjudge the prisoner,

Dhaynoovaconda Venkatasayandoo

to suffer death by being hanged at the usual time and place of execution.

H.T. (Sent following letter No. 257.)

Read letter dated 17th Ultimo from the late Additional Judge Cuttack on Circuit in the Centre Division submitting case No. 15 Cuddapa Calendar 2d Sessions 1825.

(Here enter No. 365)

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coogat and Mooftees of the Sudder Adalut confirm the said futwa of the Cazee ool Coogat and Mooftees aforesaid and under the provisions of Clause 2d Section

20

Mr. Grant & Mr. Cochrane

18th July 1826. Section II Regulation XV of 1803 direct that the prisoners,

1st Gnala Cuddereyandoo,

2d Gopeeyandoo

3d Goodala Ramadoo

5th Mooddoola Paupadoo

6th Paulateeyandoo, alias Timmadoo and

7th Khemboscooree Chinneyandoo

be released on producing good and sufficient Security for their future good behaviour and appearance when required.

H.T. (Sent following letter No. 258)

Read letter dated 15th Instant from the late Additional Judge Cuttack on Circuit in the Centre Division to present dated 3d Instant directing him to communicate para 2d of the Courts proceedings in case No. 9 Bellary Calendar 2d Sessions 1825 to the Magistrate.

(Here enter No. 412)

F 2

At a Court of the Foujdaree Adaulut

Present

Friday
21st July 1826. F. A Grant Esqr 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
William Oliver Esqr 3d Puisne Judge

Read again letter dated 25th
May last from the 3d Judge of the Provin-
cial Court of Circuit in the Northern Divi-
sion submitting case No 18 Masulipatam
Calendar 1st Quarterly Sessions 1826.
(Vide order No 326)

Read the second portion
delivered in this case by the Cazee ool Cozat
and Mooftees of the Foujdaree Adaulut.

The 1st 2d & 3d Puisne Judges having ma-
turely considered the proceedings held before the
Judge on Circuit the portion of the Provin-
cial Law Officer and the portion of the
Cazee ool Cozat and Mooftees of the Fouj-
daree Adaulut confirm the said portion of
the Cazee ool Cozat and Mooftees aforesaid
and order the sentence of Kisseas declared
in the portion of Judge the prisoner,

Collepullee Bampooloo

to suffer death by being hanged at the
usual time and place of execution.

(Sent following letter No 260)

Sent

J A A

25th July 1820.

Read return dated 15th Instant from the 1st Judge of the Provincial Court of Circuit in the Northern Division to precept dated 3d Ultimo directing him to communicate para 3 and 4 of the Court's proceedings in case No 7 Rasulipatam Calendar 2d Quarterly Sessions 1820 to the Criminal Judge.

(Here enter No 420)

Read letter, dated 17th Instant, from the late Additional Judge late on Circuit in the Centre Division, with returned warrant for the execution of a prisoner in No 41 Cuddapa Calendar 2d Sessions 1825.

(Here enter No 417.)

F. H.

At a Court of the Foujdaree Adalut.

Present

Thursday, 27th July 1820.

F. A. Grant Esqr 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
William Oliver Esqr 3d Puisne Judge

Read letter dated 24th Ultimo from the 2d Judge on Circuit in the Western Division submitting case No 53 Malabar Calendar 1st Sessions 1820.

(Here enter No 391)

The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Cozat and Mooftees of the Foujdaree Adalut confirm the said futwa of the Cazee ool Cozat and Mooftees afore: said and under the sentence of Corroboration declared therein direct that the prisoner "Mukuven Kalarikel Packara" be released on producing good and sufficient security for his future good behaviour and appearance when required.

(Vide following letter No 261.)

F. H.

Read

27th July 1826.

Read letter dated 26th Ultimo from the 2d Judge on Circuit in the Western Division, reporting on a case of perjury, forming 826 Malabar Calendar per Sessions 1825 for Mitigation of punishment.

(Here enter No. 388)

The Court, having maturely considered the grounds upon which the 2d Judge has recommended a mitigation of punishment in the case of the prisoner Karandam Koyil Koonjajee, convicted of wilful perjury, resolve under Section V Regulation I of 1825 to call upon Mr Vaughan to specify the extent of the mitigation which he recommends in this case; as they do not see on what principle they can determine it. In reporting cases for mitigation of punishment it will be the duty of the 2d Judge always to specify the extent of mitigation which he may deem proper in each case.

Ordered that extract of this proceedings be sent to the 2d Judge on Circuit in the Western Division for his information and guidance.

(Sent following letter No. 262)

Read letter, dated 17th Instant, from the 2d Judge on Circuit in the Northern Division, reporting his arrival at Mudukpatam.

(Here enter No. 1

27th July, 1826.

Read letter, dated 15th Instant, from the 2d Judge on Circuit in the Western Division, reporting his arrival at Mangalore.

(Here enter No. 422)

Read return, dated 15th Instant, from the late Additional Judge late on Circuit in the Centre Division, to precept dated 29th Ultimo, directing him to submit the remarks in para 3 of the Court's proceedings in case No. 2 Cuddapa Supplemental Calendar 2d Sessions 1825 to the Magistrate of Cuddapa.

(Here enter No. 426.)

F. H.

At a Court of the Poydarree Adalut

Present,

Friday, 28th July, 1826

F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter, dated 5th ~~ultimo~~ instant, from the 3d Judge on Circuit in the Northern Division,- submitting case No 3 Nellore Calendar 1st Sessions 1826.-

(Hereunto No 344)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee oal Cogat and Mooftees of the Poydarree Adalut confirm the said futwa of the Cazee oal Cogat and Mooftees aforesaid and under the sentence of Corrobut declared in the futwa adjudge that the prisoners,

1st Canoormuchy Boochegandoo,
and
2d Caraty Poollich,

be released on producing good and sufficient security for their future good behaviour and appearance when required.

(Sent following letter No 266.

The

25th July 1826.

The Court of Foujdaree Adawlut, after the most attentive consideration of the evidence in this case, have found themselves unable to concur in opinion with the Judge, who presided at the trial, that the charge is proved against the prisoners.

2 There is no evidence whatever to shew that the articles Nos 1, 2, and 3 which were found near the dead body discovered in a field near the village of Lumpanah, were the property of Nursummah. Evidence to this point was of the highest importance, because the state of the body when found was such as to preclude the possibility of its being identified as that of Narsim=mah; and the fact that it was her body was thus left to be gathered from circumstances. If it had been clearly proved that the articles in question belonged to her, there would have been scarcely room to doubt that the dead body was hers, and that the prisoners had murdered her, but in the absence of such evidence it would be dangerous in the highest degree to convict the prisoners, inasmuch

25th July 1826.

as there is no proof that in point of fact Nursummah is dead. Proof of this fact, or at least evidence sufficient to raise the strongest presumption of it, independent of the confessions of the prisoners, was necessary to make those confessions conclusive against them.

3 The fact that certain articles belonging to Nursummah were found in possession of the prisoners loses much of its weight from the want of evidence to shew that she had them on her person when she set out for Masulipatam. It is possible that previously to her departure she might have deposited these articles with the prisoners in the same manner as she deposited others with the 3d witness Judda Seetaramoodoo. It is true indeed that the prisoners have not thus accounted for the articles in question being in their possession, and the fact, taken as it stands under all its circumstances, must be admitted to carry with it a most suspicious appearance, and to warrant the inference that they obtained possession by foul means.

Still

28th July 1826. Still however, after the most anxious deliberation, it has appeared to the Court that upon the whole the evidence on the record warrants to nothing more than the requisition of security, which they have accordingly directed to be taken from the prisoners previously to their discharge.

Ordered, that extract of these proceedings be sent to the 3d Judge on Circuit in the Northern Division for his information.

(Sent following letter No 267.

Read letter dated 26th Instant from the 3d Judge on Circuit in the Northern Division reporting his arrival at Nellore.

(Here enter No 435)

At a Court of the Foujdaree Adalut

Present,

Monday, 31st July, 1826. C. A. Grant Esqre 1st Puisne Judge.
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter, dated 29th ultimo, from the 1st Judge late on Circuit in the Centre Division, submitting case No 23 Bellary Calendar 1st Sessions 1825.

(Here enter No 390)

The 1st 2d and 3d Puisne Judges, on a deliberate consideration of the circumstances of this case in evidence before them disapprove the futwa of the Law Officers of the Foujdaree Adalut by which the 1st Prisoner is acquitted and concur in opinion that the proof against that prisoner is sufficient to convict him of the whole of the charge against him. They do, therefore, under Clause first Section II Regulation I of 1818 and Clauses second and fifth Section IV Regulation XV of 1803 adjudge the prisoner,

Gut Mundah Nadgador,

to receive 30 stripes with a rattan and to be imprisoned and kept to hard labor in irons on the public roads

on

At a Court of the Foujdaree Adawlut

Present,

Friday, 4th August, 1826. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter, dated 16th June last from the 1st Judge late on Circuit in the Centre Division, submitting case No 16 Bellary Calendar 1st Sessions 1825.

(Here enter No 364)

Read also letter dated 8th ultimo from the 1st Judge late on Circuit in the Centre Division, with Persian and English copy of the Tahseeldar's report in Trial No 16 Bellary Calendar 1st Sessions 1825.

(Here enter No 403)

The 1st 2d and 3d Puisne Judges on a deliberate consideration of the circumstances of this case in evidence before them disapprove the Futwa of the Law Officers of the Foujdaree Adawlut and under Clause First Section II Regulation I of 1818 direct that the prisoners,

1st Cocha Letchegadoo, and
2d Singanapally Nagadoo,

be released on producing good and sufficient

27th July 1826. or other public works for and during the period of eleven years and then be released.

And under the latitude allowed by the Futwa of Conclusion against the 2d prisoner Ranjee, the Court adjudge that the said prisoner,

2d "Ranjee,"

be set at liberty.

Sent following letter No 269.

Sent.

4th August 1826. sufficient security for their future good behaviour and appearance when required.

And under Clause second Section VI Regulation I of 1825 direct that the prisoners,

4th Cumum Ramapah,
7th Cunnaseddy,
8th Cumum Salappah,
9th Condaseoor Narsimaloo, and
10th Siddaiy Timmadoo,

be set at liberty

Sent following letter No 270.

Read letter, dated 24th May last, from the 3d Judge of the Provincial Court of Circuit in the Northern Division, submitting case No 19 Masulipatam Calendar 1st Quarterly Sessions 1826.

(Here enter No 327)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazeecool Coogat and Mooftees of the Foujdaree Adalut confirm the said futwa of the Cazeecool Coogat and

4th August 1826. and Mooftees aforesaid and under the sentence of Cohoobut declared in the futwa adjudge the prisoner,

Condavaytee Chedumbaram,

do receive twelve stripes with a rattan and to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of three years and then be released.

(Sent following letter No 271.

Read letter dated the 19th Ultimo, from the Provincial Court in the Western Division, forwarding copies of instructions required from the Acting Criminal Judge in the Zilla of Seringapatam and the Magistrate in the Zilla of Malabar by the Court's letter of 4th Instant.

(Here enter No 428)

At a Court of the Foujdaree Adalut.
Present.

Monday,
7th August 1826. } P. A. Grant Esqre
James Cochrane Esqre
William Oliver Esqre } Judges.

The Court of Foujdaree Adalut having had occasion to reconsider their circular orders under dates the 16th March and 4th June 1825 and the 7th February 1826. upon the subject of examinations and confessions of Prisoners before Native heads of Police; resolve to recall and cancel those dated the 16th March and 7th February leaving those of the 4th June alone in Force.-

Ordered, that the four Provincial Courts of Circuit be by precept commanded to take forthwith all necessary measures for carrying the foregoing resolution into effect.

Precept returnable in 45 days from and after its receipt.

(but for blowing precept No 2744)

Thursday
10th August 1826.

At a Court of the Cayclaree District
Present
F. A. Grant. Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read Letter, dated 22 June last from the 1st Judge taken Circuit in the Centre Division, submitting case No 7 Bellary Calendar 1st Sessions A.D. 1825.-

(Recorded No 363)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Adawlut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and under the sentence of be hooluk declared in the futwa, adjudge the prisoner,

Coorabe Timmee,

to suffer death by being hanged at

18th August 1826 at the usual time and place of execution.

Sent following letter No 275.

Read letter, dated 19th May last from the 1st Judge late on Circuit in the Centre Division, submitting case No 3 Bellary Calendar 1st Sessions 1825.-

(Here enter No 321)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Law Officer and the futwa of the Cazee ool Coozat and Mooftees of the Sudr Adawlut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the sentence of Ashoobut declared in the futwa direct that the prisoners

2d Chinnanah, and

4th Gowlee Veeroojah,

be released in consideration of the long imprisonment which they have already undergone.-

And

The 3d Prisoner Pedda Balegaudoo, being acquitted by the futwa is also ordered to be released.

Sent following letter No 276.

Read letter, dated the 27th Ultimo from the First Judge on Circuit in the Centre Division,- Reporting his arrival at Cuddapa- (Here enter No 438)

Read letter, dated the 5th Instant from the 3d Judge on Circuit in the Northern Division,- stating his intention to leave Nellore on the 8th Instant.- (Here enter No 449)

Read letter, dated 5th Instant from the 3d Judge on Circuit in the Northern Division,- With Copy of Nellore Calendar for the 2d Sessions 1826.- (Here enter No 448)

F. C.

At a Court of the Fouzdaree Adalat

Present,

Friday, 11th August, 1826. } H. A. Grant Esqre. } Judges.
James Cochrane Esqre.
William Oliver Esqre.

Read letter from the 2d Judge on Circuit in the Western Division without date and received 28th ultimo, requesting the opinion and decision of the Court regarding the provisions of Section IV Regulation II of 1822.

(Here enter No 434 of 1826.)

In this letter the Judge sub-
=mits a question whether Criminal
Judges can release at their discretion
persons detained in custody till they
shall give security under Section IV
Regulation II of 1822 in the same manner
as Magistrates can vagrants &c under
Clause third of the preceding section;
and, if they cannot, suggests that
the power be given to them.

Mr Vaughan has rightly
observed that the letter of the Regu-
=lation allows the Criminal Judge
no discretion: and the Court is of
opinion that there is no ground
for

11th August 1826. for departing from the letter. Persons confined by a Magistrate under Section III, and by a Criminal Judge under Section IV, of Regulation II of 1822 are very differently circumstanced. The former are for the most part confined on vague suspicion arising out of their mode of life; and it is not obligatory on the Magistrate either to require or accept Security as the condition of their release. But circumstances may come to light which completely dispel the suspicions against them; and their further detention in custody would then be most unjust; yet would often be unavoidable if the Judge on Circuit only could order their release. The latter are only not convicted of a specific offence and labor under a strong suspicion of guilt arising from the evidence against them; they can always obtain their release by giving the Security required; and the accusation against them having been the subject of a regular judicial enquiry before the Judge by whose order they are confined, no new circumstances

11th August 1826. can be expected to come to light to alter his suspicion of their guilt. There is therefore no injustice or hardship in their confinement till the Circuit Court arrives.

3. These considerations will probably satisfy Mr. Vaughan as to the reason of the distinction made between the Magistrate and Criminal Judge in Sections III and IV of Regulation II of 1822. They will also account to him for this Court's opinion that there is no ground to recommend any alteration in those enactments.

Mr. Vaughan will of course correct the irregular practice on this head which appears to have obtained in the Zillas of Malabar.

Ordered, that extract of these proceedings be sent to the 2d Judge on Circuit in the Western Division for his information. and also to the Judicial Secretary to Government for his information and guidance agreeably to orders of Government dated the 19th October 1824.

Sent following letter No 277.

Sent 11

Ed Mt.

F. A.

At a Court of the Zuydaree Adalat.

Present,

Thursday, 17th August, 1820. F. A. Grant Esqre. James Cochrane Esqre. William Oliver Esqre. } Judges.

Read again return of the 1st Judge of the Centre Provincial Court of Circuit, to Precept 3d June last requiring explanations of two entries in the Record of Trial No 132 of the Calendar of the 1st Sessions at Cuddapa for 1825, also of his neglect to examine witnesses named by one of the Prisoners in his defence, or to account for their absence, or to inform the Prisoner of it, and finally of his omitting to stop the execution of his own illegal sentence on 3 of the Prisoners for near two Months after this Court had pointed out the illegality of it.

(Here enter No 410.)

Read also return of the Criminal Judge of Cuddapa with copies of the warrants received by his Court from the 1st Judge respecting the prisoners in this case.

(Here enter No 358)

The Trial No 132 was for simple Burglary, which offence the Jurors declared not proved against the

17th August 1826. the 3 first Prisoners, the Judge disapproved the Fatwa and required a second, which declared those prisoners liable to Rokhut, on which the Judge sentenced them to imprisonment with hard labor in Irons for 9 months. This proceeding was contrary to Section XXII Regulation VII of 1802 - and when the Calendar came before this Court was declared illegal and the trial ordered to be referred by a Precept dated the 17th June 1825. The record was sent up accordingly - on examination of which an entry was found (without date) of a notice to the Prisoners in open Court that their trial would be referred to the Kujdaree Adawlut - and another dated the 1st April 1825 of a precept to the Criminal Judge to detain the Prisoners till the sentence of the Kujdaree Adawlut should be received: both of which are plainly inconsistent with the sentence pronounced.

2. These are the two entries of which explanation was required: the explanation given is in effect that they are purely fictitious - having been erroneously put in by the writer in order to adhere to the form prescribed, and the Criminal Judge's return confirms this account: as he states that no such

17th August 1826. such precept was ever received by his Court - and submits the warrants actually received respecting these prisoners - which tally with their sentence in the Calendar. The transmission to this Court of a Trial without sufficient inspection by the Judge, or under his orders, to detect such a glaring inaccuracy is not creditable: but the Court will receive with indulgence the confession of a mistake in a matter of this kind.

3. The Court except from this indulgence a remark incidentally made by the 1st Judge in giving this explanation, viz: that "there was no time to spare for calling the Prisoners into Court to pronounce sentence or give information of any kind." The Court deem it indispensable that whenever the final sentence is pronounced by the Circuit Judge, it should be declared in open Court and in his presence. To omit this under any circumstances is slovenly and indecent; and tends to lower the majesty of public Justice and the reverence of the Courts which administer it. The plea of want of time is quite inadmissible.

The

17th August 1826. 4. The explanation as to the Prisoners witnesses is indefinite and unsatisfactory but as the Trial has been closed and all the Prisoners acquitted and released the Court will not pursue the subject further.

5. With regard to the last point, the omission of the 1st Judge to stop the execution of his own illegal sentence he acknowledges error and expresses contrition for his share in it, but somewhat mistakes what that share really is. The order of this Court for the reference of this with many other Trials in the same Calendar reached the 1st Judge (he states) on the 29th of June - and on the 15th July he issued a precept to the Acting Criminal Judge of Adelaide calling for the necessary translations in the referred trials - but making no allusion to the suspension of the punishments. But the 1st Judge should have remembered that the Acting Criminal Judge could not on his own authority annul the warrant of the Circuit Court and that that warrant should have been recalled the instant its illegality was known: he should also have

remembered that the order should have been forwarded the very day if possible on which it was received and that no just cause could be assigned for 10 days delay to relieve many human beings from illegal and severe punishment. The responsibility of stopping the execution of the sentence lay first and chiefly on the 1st Judge, who pronounced it: but the Acting Judge is greatly to be blamed for not making an instantaneous reference upon the subject: a moments reflection would have convinced him that the Prisoners in this and all similar cases were actually suffering severe and illegal punishment; and under such a conviction, the course most natural and proper for him to pursue was immediately to suspend that punishment on his own responsibility till he could receive an answer to his reference to the 1st Judge.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division for his

1 19th August 1826. his information and guidance.
ent.

(Sent following letter No 282)

Read letter, dated the 19th June last from the Northern Provincial Court, transmitting the reports prescribed by Section XXXV Regulation X of 1816, from the several Criminal Judges in the Division for the quarter ending with March last, with their observations thereon.-

(Here enter No 376.)

1 With reference to the 3d Par. of the foregoing letter the Court is of opinion that their Circular orders of the 5th November 1823 are in effect cancelled by the subsequent ones of the 13th September 1824- The latter direct that the communication prescribed by the former from the Criminal Judge to the Magistrate shall not be made when the latter has passed over without observation the proceedings of the Police In the only other case, when the Magistrate has observed upon the Police proceedings, he will agreeable to the former part of the same Circular orders

19th August 1826. have communicated his remarks to the Criminal Judge. and the duty of noticing to the Magistrate any case in which he has admitted insuffi=cient reasons for the detention of a Prisoner by the Police is by Par 5 expressly assigned to the Provincial Court of Circuit- so that under the Circular orders 13th September 1824 there is no case in which it can be the duty of a Criminal Judge to com=municate with the Magistrate on this subject-

2 Referring to the 4th Par the Court observe that there can be no question that the entering a House in this Country by night with intent to steal though the door be closed and not fastened or be open, is Burglary and has been constantly punished as such by the Criminal Courts.

Ordered, that extract of these proceedings be sent to the Judges of the Provincial Court of Circuit in the Northern Division for

At a Court of the Foujdaree Adalut.

Present.

Monday,
21st August, 1826. } F. A. Grant Esqre
James Cochrane Esqre
William Oliver Esqre } Judges.

Read return by the 1st Judge of the Northern Provincial Court to this Court's Precept 3d June last submitting copy and translation of the Futwa in case No. of the Calendar at the 2d Quarterly Sessions at Masulipatam for 1826, with his opinion as to the Prisoner's guilt.

(Here enter No. 423.)

The Court called for this information in order to determine whether it was necessary to refer the Trial, as the 1st Judge appeared to intend on the ground of uncertainty what punishment should be adjudged under the Futwa. There were (it appears) two Futwas: but both agreed in adjudging discretionary punishment or release, on the ground of defective evidence of the crime charged, which was uttering counterfeit coin; tho' the lesser crime of having such coin in possession was proved

17th August 1826.
Cert.
Ent. Ent.

for their information and guidance.

(Sent following letter No. 283.

Read letter, dated the 5th Instant from the 2d Judge on Circuit in the Western Division, with copy of Malabar Calendar 1st Sessions 1826.

(Here enter No. 450)

F. H.

At a Court of the Fuydaree Adalut.

Present,

Thursday, 24th August, 1826. — J. A. Grant Esqre. / James Cochrane Esqre. / William Oliver Esqre. } Judges.

Read return by the 1st Judge of the Provincial Court of Circuit Central Division to this Court's Precept 28th June last requiring explanation whether in case No 81 of the Calendar of the first Sessions at Cuddapah in 1825, which, having postponed by him, became No 3 of the postponed Cases at the next Sessions, he examined all the witnesses but one, and if so why he postponed the trial.—

(Here enter No 143 of 1826.)

In the order for postponing the trial of this and sundry other cases (which forms part of the record of the trial) it is stated that in this and another case (No 54) the trial of the prisoners had been gone through so far as to wait only to close the same for one or two witnesses in each.— The records were returned to the Criminal Judge — and at the ensuing Sessions the trial of No 81 was commenced de novo and the witnesses summoned and examined a fresh—

2. The explanation is that only 3

court

24th August 1826. proved by confession before the Criminal Court.

2. Under these circumstances the Trial ought to be referred; not, however, because there is any uncertainty as to the punishment adjudicable under the Futwas that being laid down in Sections VI and VII Regulation II of 1822; but because the first Futwa was founded on an exception deemed unreasonable against the only direct witness, who was a woman; and on the non-admission of the prosecutrix as one of the witnesses required by the Mohummedan Law; which is the case provided for by Section VIII Regulation I of 1825; under which the Trial should be referred.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Northern Division for his information and guidance.

(Sent following letter No 2384/II.

Sent 24th E. M.

out of 7 witnesses were examined, and that the trial was postponed because of the non-appearance in time of one of the attesting witnesses to the declaration before the Native Head of Police.

3 If all the other witnesses were present, this reason for postponing the trial is very insufficient. The Court believe that no Judge of any experience attaches sufficient importance to confessions before Native Heads of Police to make the proof of them worth postponing a trial for; and that on the sole ground of such confessions no conviction ever takes place. In this case, however, one of the attesting witnesses was present, and his evidence would have enabled the Court of Judicature to act upon the confessions, if those confessions had been corroborated by proof of collateral facts.

4 In all cases committed for Trial before him, the Circuit Judge before commencing the trial, should satisfy himself by considering the proceedings before the Criminal Judge and other inferior tribunals, whether there is reasonable ground to believe that the trial can be brought to a close on the testimony of the witnesses present: if there is not,

Para 1485 Sent as Circular to all the 28th June 1827.

the trial ought not to be commenced; because the knowledge by the prisoner of much of the evidence against him, long before his defence is heard and sentence passed, will furnish inducement and opportunity to corrupt and suborn witnesses.

Cases however may occur

5. though the Court think but seldom after a due consideration of the proceedings before held, in which the testimony of an absent witness, thought immaterial, may prove in the course of the trial to be indispensable. In such cases the trial ought to be postponed, but the depositions already taken, and of all the present witnesses, should be left with the record for the use of the Judge who will compleat the trial; in order that the witnesses who have already attended in obedience to their summons may be spared the inconvenience of attending again — and the time of the Court be saved. — Postponed trials should always be heard first; in order that if the further attendance of witnesses whose depositions were before taken is required, it may be obtained before the Judge quits the station, and thus all danger of

24th August 1826. of further postponement to inviate.-

Ordered that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division for his information and guidance.-

(Sent following letter No 239.)

Sent 25th
E&H,

At a Court of the Poojdaree Udalut

Friday, 25th August, 1826. Present,
T. A. Grant Esqre
James Cochrane Esqre
William Oliver Esqre
} Judges.

E H
25. K

Read return by the 1st Judge of the Court of Circuit for the Centre Division to this Court's precept 19th June last requiring him 1st to reconcile the statement, in his letter referring Trials No 116 and 117 of the Cuddapah Calendar 1st Sessions 1825, that the 2d and 10th prisoners were too weak to appear in Court, with the record of the Trials in which they are entered as having pleaded like the others; and, if they were absent, 2dly to explain why he went into the evidence against them; remarking also 3dly on the absence of the Prisoners witnesses, which he had not accounted for or certified that he informed the Prisoners of.

(Here enter No 415 of 1826)

The explanation on the two first points is that the 2d and 10th Prisoners were not present at their trial; and that, not appearing to have been prominent actors in the crime charged against the gang, their fellows were permitted to answer for them. The irregularity of this is admitted and it is defended solely on the ground

7

25th August 1826.

of the wretched state of the absent prisoners, with many others, from the effects of the famine.

2. This explanation as regards the first point is in effect an acknowledgment that the record of the Trial is falsified; that prisoners are therein represented as present and answering questions put to them by the Court, who in truth were not present and therefore could not answer, and this deception is so kept up throughout the whole proceedings of the Circuit Court that, but for an incidental remark in the letter of reference, this Court could never have suspected the truth; and might have proceeded to sentence, in common with the other prisoners, one who had not been heard in his defence and was not even present at his Trial. The Court advisedly use the term "incidental" because, tho' the mention of the fact in any way was enough to strike and alarm this Court, and so might save Mr Brown from the absolute responsibility for such a consequence; yet, it is evident from the whole style of the letter of reference that the fact was not stated with any such intention and that Mr Brown had not even a perception of the importance of mentioning it.

The

The explanation on the second point is little less unsatisfactory. In cases in which there are many prisoners and one or two are unable to attend, there is no reason why those who can be brought to the bar should not be tried, and if the evidence for and against these is equally applicable to the absent ones, and in their favor, it would have been proper to acquit them tho' absent on the ground of it. This however was not the case in these trials: the Recorder of the Circuit Court Law Officer declared right out of the eleven Prisoners convicted, among whom was one of the absent ones, and the Trial was referred to this Court with that Recorder and a recommendation of the Circuit Judge grounded upon it that a mitigated punishment might be inflicted.

4. The explanation respecting the Prisoners witnesses is indefinite and quite unsatisfactory: but there is a serious error involved in it which must not pass without correction. It asserts a discretion in the Circuit Judge to examine or not witnesses named by a Prisoner and summoned by the Criminal Judge, according to his own opinion as to the probability of their saying any thing in the Prisoner's defence.

The

25th August 1826. The Circuit Judge has no such discretion. His duty as regards Prisoners witnesses is laid down by Clause first Section XV Regulation VII of 1802 and Clause third Section II Regulation II of 1822. The former enjoins him to hear any evidence which the Prisoner may have to adduce, the latter empowers him to summon witnesses named by the prisoner, but not summoned by the Criminal Judge under the discretion allowed to the latter by Clause second of the same Section, if he judges their evidence material to the prisoner's defence. Thus he has a discretion, but only to summon additional witnesses for the prisoner - not to omit examining any that are present.

5. The Court had occasion, under date the 28th December 1824 to lay before Government their comments on certain Proceedings of Mr. Brown, which called forth the following remark in the Judicial Secretary's letter dated the 17th February 1825.-

6. "Mr. Brown's proceedings having repeatedly called for admonition from the Superior Court, and this not being the first occasion on which the

F. U.
25th August 1826.

they have met with censure from the highest authority, the Governor in Council trusts that he will see the prudence, as well as the propriety of being more circumspect in his public conduct for the future."

7. A Copy of the Judicial Secretary's letter here referred to was furnished to Mr Brown, and this Court entertained a hope that the direct and strong notice taken of his misconduct by the Government itself would at least excite caution not again to expose himself to that high censure. Since Mr Brown's receipt of the letter, occasions have not been few which called upon this Court to record their strong disapprobation of his Proceedings - and that not only in his capacity as a Circuit Judge but also as a Judge of the Court of Appeal; tho' while any hope remained that explanation and enforcement of his duties by this Court would reclaim him they abstained, under the discretion vested in them by Section XXIV Regulation VIII of 1802, from the extreme measure of reporting his

25th August 1826. his misconduct again to Government.

8. But the first of the Proceedings above commented upon is in the judgement of this Court such a scandalous instance of carelessness and incompetency in the discharge of a high and solemn public function, that they can feel no doubt as to what their duty is upon the occasion.

Ordered, accordingly that a copy of the present Proceedings and of those understate the 19th June last and Mr. Brown's return to the latter together with the original Record of the Trial referred to and Mr. Brown's letter of reference be transmitted to the Judicial Secretary to Government to be laid before the Governor in Council.

(Sent following letter No. 290)

H.

2133/Sent 25

6 Mil. Ans. 1 ..... 7 Nos. No. 665
enclosures Dy. 16 " " 1826

F. R.

At a Court of the Foujdaree Adalut

Present

Saturday 26th August, 1826. F. A Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
William Oliver Esqr. 3d Puisne Judge.

Dlt
U
2D.

Read letter dated 14th Instant from the 2d Judge late on Circuit in the Northern Division, recommending a mitigation of punishment in case No. 4 Chucacole Cabundar 1st Sessions 1826.-

(Here enter No. 405)

The Court having attentively considered the grounds upon which the 2d Judge has recommended a commutation of the prescribed penalty, in the case of the prisoner referred to in his report, to seven years imprisonment and hard labor in irons, sanction the sentence proposed.-

Ordered that Extract of these proceedings be sent to the 2d Judge late on Circuit in the Northern Division for his information.-

(Sent following letter No. 290A)

Sent 25

Read letter dated 14th Instant from the 2d Judge late on Circuit in the Northern Division, recommending a mitigation of punishment in cases Nos. 2 and 3 Chucacole

20th August 1826. Chicacole Calendar 1st Sessions 1826.

(Here enter № 406.)

The Court having attentively considered the grounds upon which the 2d Judge has recommended a commutation of the punishment, in the case of the prisoner referred to in his report, to two years imprisonment and hard labor in irons in addition to the period he has already been in confinement, Sanction the sentence proposed.-

Ordered that Extract of these proceedings be sent to the 2d Judge Cuttack Circuit in the Northern Division for his information.-

Sent 26th. (Sent following letter № 2908)

Read letter dated the 8th Instant from the 1st Judge of the Provincial Court of Circuit in the Northern Division, with copy of Mahultsaram Calendar 3d Quarterly Sessions 1826.-

(Here enter № 454)

Read letter dated the 18th Instant from the 2d Judge on Circuit in the Western Division,- with copy of Canara Calendar 2d Sessions 1826.

(Here enter № 475)

J. A.

At a Court of the Zoojdara Adalut

Present

Monday 25th August 1826.

J. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read letter dated 18th Ultimo from the Secretary to Government in the Judicial Department, conveying the sentiments and orders of Government respecting the form of an indictment for Perjury, the cognizance and punishment of the offence of cattle stealing and some late orders of the Court upon the subject of confessions.-

(Here enter № 433)

In obedience to the instructions conveyed in the foregoing letter, the Court have framed the form of an indictment for perjury in cases where a person has given two contradictory depositions.-

(Here enter form A)

The Court are not aware that there will be any difficulty in adapting this form to any case of contradictory swearing that may occur.-

The Court on Mature consideration are of opinion that a new Regulation is absolutely necessary on this occasion.- It is true that

that by the adoption of this form no new offence will be created; but it will have the effect of rendering the conviction of a highly punishable offence procurable on evidence which has been repeatedly and solemnly declared by this Court to be altogether insufficient for that purpose. The first decision on this point was not lightly passed; and on every occasion that the question has come before the Court it has been very fully considered. If a decision passed under these circumstances, and confirmed as this has been, by successive Judges is not to bind the Court until it shall be superseded by an act of the Legislature, no precedents can be binding and it is needless to point out the confusion that must follow, if it be held competent for one Bench of Judges to disregard and upset the most solemn and deliberate decisions of their predecessors.

4. The Court therefore think that the proposed mode of proceeding cannot without a great breach of propriety and establishing a very mischievous precedent be introduced by an order of theirs; and they further think that the provisions

of Section II Regulation I of 1802 are opposed to its introduction by an order of the Governor in Council otherwise than in the shape of a legislative enactment. That section provides that "every rule or order that may be passed by the Governor in Council" "regarding the administration of Justice," — "and generally all Regulations affecting in any respect the persons of the natives and others amenable to the Provincial Courts" shall be framed into a Regulation and printed and published as such. The measure proposed is one which concerns in no slight degree the administration of Justice; and there is not a person, who is liable to appear either as a party or witness in the Courts empowered to take evidence on oath, that is not directly and deeply interested in its consequences.

5 The Court have therefore prepared the draft of a Regulation which they resolve to submit to the consideration of the Governor in Council.

/Here enter Draft B/

6 The Court are not aware that any observations are requisite on the matter set forth in the preamble; but it is necessary to submit some brief

28th August 1826.

brief remarks in explanation of the provisions contained in the enacting clauses.

It has appeared to the Court to be necessary to restrict in some degree the cases in which persons shall be liable to be tried for perjury under the new rules; for if this mode of trial is resorted to indiscriminately in all cases of contradictory depositions there is great reason to apprehend that punishment will often be improperly inflicted. When the variation may not amount to a direct and positive contradiction, and may fairly be attributed either to the witness's misapprehension of the nature and object of the question or questions put to him, or to an unintentional inadvertency on his part, it would be extremely unjust to subject him to the punishment of perjury. This mode of trial in the opinion of the Court should be confined exclusively to cases where the contradiction is direct and positive; and where, on a consideration of the substantial effect of both depositions, the corrupt intention of the witness is clear and indisputable. For, notwithstanding a direct contradiction on a material fact, if both depositions lead in effect to the same result, the commission or acquittal of a prisoner under trial [illegible]

28th August 1826.

there would be strong grounds to believe that the contradiction as to that particular matter of fact arose from an unintentional mistake or inadvertency on the part of the witness, or from an error on the part of the writer, rather than from the witness' wilful and deliberate falsehood. It must be borne in mind that witnesses, in Criminal cases particularly, are for the most part of the lowest condition of the people, illiterate and ignorant; and, though it is usual for their depositions to be read over to them before they sign them, yet, as this form is gone through very hastily, omissions and mistakes of the writer are very likely to be passed over without detection. Considering therefore that a Conviction in these cases will be obtained, on the presumption of falsehood arising from the contradiction between the two depositions, which contradiction, it is easy to imagine, may often originate in causes quite distinct from a corrupt motive on the part of the witness, the Court are willing to persuade themselves that the Governor in Council will not deem the provisions at the end of the first Clause objectionable. The other Clauses in the draft do not appear to require any explanation. It is not necessary, and it might be inconvenient, to insert the form of indictment in these cases in the body of the Regulation, or in an Appendix to it.

The

8. The Judges have considered with due attention and deference the reasoning contained in the 6th Para of the letter now before them; but it has produced no alteration in their opinion that, as the law now stands, every case of Cattle-stealing must be sent up before the Criminal Judge and none can be punished by him with less than imprisonment exceeding 6 months and 30 stripes. That opinion was founded, not on considerations of expediency, as appears from the 9th Para of the Judicial Secretary's letter of the 17th March last, to have been thought by Government, but upon the plain and natural sense of clauses fourth and fifth Section III Regulation VI of 1822 compared with Section VII Regulation X. and Section XXXIII Regulation IX of 1816.-

9. Section VII Regulation X of 1816 empowers Criminal Judges to punish thefts of a certain degree of heinousness to the extent of 6 months imprisonment and 30 stripes. Section III Regulation VI of 1822 after making express reference to the former limited power proceeds to extend it; and in the fourth Clause empowers Criminal Judges in certain cases of theft and in "all cases of cattle stealing" to punish to the extent of two years imprisonment with hard labor and 30 stripes. This clause contains the first mention of Cattle-stealing, as

as a distinct offence; and were nothing added beyond this Clause, the natural inference would be that the framer of the Regulation thought cattle-stealing so serious an offence that no case whatever of it was deserving of less punishment than the least which Criminal Judges could inflict under Clause fourth Section III.-

10. This inference however is confirmed by clause fifth: which prescribes that in "other cases not included in the foregoing provisions" (in which all cases of Cattle stealing are included) Criminal Judges shall punish under Section VII Regulation X of 1816, which limits them to six months imprisonment and 30 stripes. The conclusion, the Court think, is inevitable that no case whatever of Cattle-stealing was intended to receive so low a punishment as 6 months' imprisonment and 30 stripes.-

11. But if so, no case of Cattle-stealing can be brought before a Magistrate consistently with the intention of the clauses above quoted. for Magistrates are empowered to punish only to the extent of one months' imprisonment and 18 stripes.-

12. Neither can any case of Cattle-stealing be included among the petty thefts punishable by Magistrates under Section XXXIII Regulation X of 1816.-

For

At a Court of the Poydarree Adalut
Present,

Wednesday 4th January 1826. C. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Gowan Esqre 3d Puisne Judge.

Read again letter, dated 3d August last from the 1st Judge late on Circuit in the Centre Division, submitting case No 149 Cuddapa Calendar 1st Sessions of 1825.

(Here enter No 664 of 1825.)

Read also return, dated 1st Octr from the 1st Judge late on Circuit in the Centre Division, to precept dated 25th October calling for the additional evidence in case No 149 Cuddapa Calendar 1st Sessions A.D. 1825.

(Here enter No 981 of 1825)

The 1st 2d and 3d Puisne Judges of the Court of Poydaree Adalut on a deliberate consideration of the circumstances of the case in evidence before them being of opinion that the proof against the prisoner Hoodaneleg, is sufficient to convict him of the crime of murder as desired under the provisions of Clause 2d Section II Regulation I of 1818 that their Law Officers will declare by a recon
future

January 1826.

further to what specific punishment the prisoner would have been liable under the Mohummudan Law if he had been convicted by full legal evidence of the above crime.

Ordered that extract of these proceedings be translated and delivered to the Cazee ool Coozat and Mooftees of the Sudder Adalut.

Read again letter, dated 9th September last, from the 1st Judge late on Circuit in the Centre Division, submitting case No 13 Chinglaput Calendar 1st Sessions 1825.

(Here enter No 784 of 1825)

Read again also return, dated 20th November last, from the 1st Judge late on Circuit in the Centre Division, to precept dated 15th November ordering that further evidence be taken and annexed to the Record of proceedings in case No 13 Chinglaput Calendar 1st Sessions 1825.

(Here enter No 959 of 1825)

Read the second futwa delivered in this case by the Cazee ool Coozat and Mooftees of the Sudder Adalut.

"The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit

4th January 1826.

the futwa of the Provincial Law Officer and the futwas of the Cazee ool Coozat and Mooftees of the Sudder Adalut confirm the said futwas of the Cazee ool Coozat and Mooftees aforesaid and under the sentence of Hudd ordained in the futwa adjudge the prisoners,

1st "Paramhala Chetty," and

2d "Parchah Saib,"

to suffer death by being hanged at the usual time and place of execution.

(Vide following letter No 6.

Sent 10 Jany

Mr Cochrane and Mr Gowan.

Read again letter, dated 25th September last from the 3d Judge on Circuit in the Southern Division, submitting case No 8 Combaconum Calendar 2d Sessions 1825.

(Here enter No 821 of 1825.)

Read the second futwa delivered in this case by the Cazee ool Coozat and Mooftees of the Sudder Adalut.

"The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwas of the Provincial Law Officer and the futwas of the Cazee ool Coozat and Mooftees of the Sudder Adalut confirm the said futwas of the Cazee ool Coozat and Mooftees aforesaid and in commutation

4th January 1826.

commutation of the penalty of Dyat adjudge the prisoners,

1st "Sinnaun," and

2d "Toppoolaun,"

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of one year and then be released.

(Sent following letter No. 7.)

Read letter dated 31st Ultimo from the Acting Criminal Judge in the Zilla of Chittoor requesting permission to submit a return dated the 15th December to a precept of the 1st Judge in the Centre Division for the consideration of the Court of Foujdaree Adaulut.

(Here enter No. 6)

Read letter dated 31st Ultimo from the Additional Judge on Circuit in the Centre Division submitting the Chingleput Calendar with two supplemental Calendars 2d Sessions 1825.-

(Here enter No. 4)

At a Court of the Foujdaree Adaulut.

Present

Monday 9th January, 1826.

J. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
George Govan Esqr. 3d Puisne Judge

Read letter dated 14th November last from the 3d Judge of the Court of Circuit in the Northern Division submitting case No. 1 in the Nuzulpatam Calendar 4th quarterly Sessions A.D. 1825.

(Here enter No. 950)

The 1st 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ul Cozat and Mooftee of the Foujdaree Adaulut as being of opinion that the proof against the prisoner Bundla Singa does is sufficient to commit him of the crime of robbery by open violence for which a penalty is specially denounced in Section IV Regulation XV of 1803 do under the authority vested in them by clause first Section II Regulation I of 1818 adjudge the said prisoner, (Bundla Singa)

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of seven years

years and then be released.

(Sent following letter No 12.)

Read letter dated 7th November last from the 2d Judge of the Court of Circuit in the Centre Division, submitting case No 10 Chittoor supplemental Calendar 4th quarterly Sessions 1824.

(Here enter No 9 25)

The 1st 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Futwa of the Provincial Law Officer and the Futwa of the Cazee ool Coozat and Mooftee of the Tongdaree Adawlut confirm the said Futwa of the Cazee ool Coozat and Mooftee aforesaid and acquitting the prisoner Chelakooty Mogalegadoo, direct that he be set at liberty.

(Sent following letter No 13.)

Read letter dated 26th Ultimo from the 2d Judge on Circuit in the Western Division, with returned warrant for execution of a prisoner in case No 21 and 22 Malabar Calendar 2d Sessions 1825.

(Here enter No 14)

Read letter dated 30th Ultimo from the 2d Judge late on Circuit in the Western Division with Returned warrant for execution of a prisoner in case No 8 Malabar Calendar 2d Sessions

(Here enter No 8)

Read letter dated 5th Instant from the Second Judge of the Court of Circuit in the Centre Division, reporting his departure from Chittoor on Circuit.

(Here enter No 11)

Read letter dated 5th Instant from the 1st Judge on Circuit in the Southern Division, reporting the opening of the Sessions at Madura.

(Here enter No 17)

At a Court of the Tongdarce Adalut

Present

Wednesday
11th January 1826. J. A Grant Esqre 1st Puisne Judge

George Gowan Esqre 3d Puisne Judge

Read letter dated 24th September
last from the 2d Judge of the Court of Circuit
in the Centre Division submitting cases Nos 51 and
51 Chittoor Calendar 4th quarterly Sessions 1824.
(Here enter No 835).

The 1st and 3d Puisne Judges having
maturely considered the proceedings held in case No 50 by
the Judge on Circuit the futwa of the Provincial Law
officer and the futwa of the Cazee vol Cozat and
Mooftee of the Tongdarce Adalut being of
opinion that the proof against the prisoners
8th Carenagapen and 9th Chengalroya Sounden
is sufficient to convict them of the crime of robbery
by open violence for which a penalty is specially
denounced in Section IV Regulation XV of 1803
do under the authority vested in them by clause
first Section II Regulation I of 1818 adjudge
the prisoner,

8th Carenagapen

to be imprisoned and kept to hard labor in irons
on the public roads or other public works for
and during the period of two years and
then be released.

Next

And the prisoner

9th Chingulsoya Goundan

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of four (4) years and then be released.

And the Court confirming the finding so far as respects the prisoners,

1st Boodagan

2d Varoodan

3d Chinnegan

4th Coopsun

5th Ramun and

6th Ponnun

direct that they be set at liberty.

The 1st and 3d Puisne Judges having maturely considered the proceedings held in case No. 57 before the Judge on Circuit the finding of the Provincial Law officer and the finding of the Cazee of Cozgat and Mooftee of the Zillah dated 10th ultimo being of opinion that the proof against the prisoners 4th Chengan 6th Candan and 7th Aparalchingan is sufficient to convict them of the crime of robbery by open violence for which a penalty is specially denounced in Section IV Regulation XV 1803 do under the authority vested in them by Clause first Section II Regulation I. 1818 adjudge the said prisoners

4th

4th Chengan

6th Candan and

7th Aparalchingan

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of two years and then be released.

And the Court confirming the finding so far as respects the prisoners 1st 2d 3d 5th 8th 9th 10th 11th 12th 13th 15th & 16th do under the sentence of Circuit declared in the finding adjudge the prisoners

9th Chinna Boongen

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of two years and then be released.

And under the provisions of Clause sixth Section II Regulation XV of 1803 adjudge the prisoners,

15th Hary Nagapen and

16th Chengulroyen Goundan

be released on producing good and sufficient security for their future good behaviour and appearance when required.

And acquitting the prisoners,

1st Goolla Teucatapatty

2d Vardoodan

3d Chuckun

5th Boodagan

8th Jotty Chinegan

10th Ponnen

11th Coopsun

12th Ramen

13th Goorooven

direct that they be set at liberty.

(Sent following letter No. 17)

The Court of Zoujdaree Adaulut have remarked in the proceedings of the Police recorded in this trial, a gross instance of neglect to their circular orders of 18th June 1823 upon the part of the Tahseeldar of Tarooralum, Baliga row; and they direct that the conduct of this officer be brought to the notice of the Magistrate in the Zilla of Chittoor: the Court are of opinion that a fine should be imposed upon him for this disobedience of orders.

2 The numerous errors apparent in the translation of this record, which have been carefully corrected by the 2d Judge, afford evidence of the inattention, of the officer who certified, to the correct performance of his duties, greatly discreditable to him; and the Court direct that the Assistant Criminal Judge in the Zilla of Chittoor be cautioned against affixing his signature in attestation of the correctness of papers, which it is plain could not have received any correction

3 Ordered, that a Extract of these proceedings be sent to the 2d Judge of the Court of Circuit in the Centre Division by precept, directing him to communicate to the Assistant Criminal Judge and the Magistrate in the Zilla of Chittoor such parts thereof as concern those officers respectively for their information and guidance.

(Sent following precept No. 18)

Read again letter dated 11th October last from 3d Judge on Circuit in the Western Division, submitting cases Nos. 17, 18, and 19 Canara Calendar 2d Sessions 1825.

(Vide entry No. 882)

Read the second futwa delivered in this case by the Cazee ool Coozat and Mooftees of the Zoujdaree Adaulut. The 1st and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law officers and the futwas of the Cazee ool Coozat and Mooftees of the Zoujdaree Adaulut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the sentence of Tazeer declared in the futwa, adjudge the prisoner, "Upanary"

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of five years and then be released.

(Sent following letter No. 19)

Read letter dated 15th October last from the 2d Judge late on Circuit in the Centre Division submitting case No. 8 Chittoor Supplemental Calendar 4th quarterly Sessions 1825.

(Vide entry No. 881)

The 1st and 3d Puisne Judges having

At a Court of the Foujdaree Udalut

Present,

Monday, 16th January, 1826

F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Gowan Esqre 3d Puisne Judge.

Mr George James Casamajor

takes and subscribes the oath prescribed by Clause second Section III Regulation XII of 1802 and in Section VI Regulation VII of 1802.

(Here enter oath

Read letter, dated 23d November last, from the 2d Judge of the Court of Circuit in the Centre Division, submitting case No 58 Chittoor Calendar 4th Quarterly Sessions A.D. 1824.

(Here enter No 957 of 1825)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, the futwa of the Cazee ool Coozat and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Udalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and under the provisions of

7th January 1826.

having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law officer and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Udalut confirm the said futwas of the Cazee ool Coozat and Mooftees aforesaid and acquitting the prisoners,

1st Joty Chinnagungadoo,
2d Jondaty Gungadoo
3d Edega Chengadoo,
4th Joty Veeradoo
5th Goodonga Chintoo Rungadoo,
6th Joty Bolavalee,
7th Nullagungadoo
8th Maula Chinnegadoo
11th Boda Hanamuntoo
12th Joty Chenavadoo
13th Cummagungadoo
14th Dyala Ramdoo
15th Dabala Rungadoo
16th Mala Venkatagadoo
17th Joty Rungadoo and
19th Maega Venkatagadoo

direct that they be set at liberty.

(Last following letter No 20.)

of Claude Eighth Section IV Regulation XV 1803 adjudge the prisoner,

4th "Banjoo Naick,"

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of seven years and then be released.

And under the provisions of Claude sixth Section II Regulation XV of 1803 direct that the prisoners,

2d "Rajuman,"
3d "Hareyan"
4th "Coolapah Naick,"
5th "Chamondy,"
7th "Colundayppan,"
and
8th "Alumpoondian,"

be released on producing good and sufficient security for their future good behaviour and appearance when required.

Sent following letter No. 21.

The Court of Zuydaree Adalut remark an irregularity in the proceedings of the Assistant Criminal Judge in this case; which required notice. From the note recorded at the foot of the declarations taken from the prisoners under

under Section XVIII Regulation X 1816, the Court learn, that they were examined by the Assistant Criminal Judge on oath. They direct therefore that this Officer be strictly required to abstain from this procedure in future, which the Court consider to be objectionable and improper.

The attention of the 2nd or Criminal Judge should also be called to the omission in the record, of the brief Statement of the charge laid against the prisoners, prescribed by the circular orders of the Zuydaree Adalut.

Ordered, that extract of these proceedings be sent to the Second Judge of the Court of Circuit in the Centre Division by precept, commanding him to communicate the same to the Criminal Judge and Assistant Criminal Judge in the Zillah of Chittoor for their information and guidance.

Sent following precept No. 22.

Read letter, dated 11th November last, from the Third Judge on Circuit in the Western Division, submitting case No. 5 Malabar Calendar 2d Sessions 1825. (Hereunto No. 943 of 1825) Read

Mr. Grant and Mr. Gowan

Ord
Ord

15th January 1826.

Read also letter, dated 24th November last, from the 3d Judge on Circuit in the Western Division, reporting the death of the 4th prisoner in case No 5 Malabar Calendar 2d Sessions 1825.

(Here enter No 974)

The 1st and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officers and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Adaulut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and under the provisions of clause sixth Section II Regulation XV of 1803 adjudge the prisoner,

"Pallyallil Eany Coolly,"

to be released on procuring good and sufficient security for his future good behaviour and appearance when required.

(Sent following letter No 23)

Thursday 19th January 1826.

At a Court of the Foujdaree Adaulut

Present,

J. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Gowan Esqre 3d Puisne Judge

Read again letter, dated 3d August last from the 1st Judge late on Circuit in the Centre Division, submitting case No 149 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 664)

Read again return, dated 1st Ultimo, from the 1st Judge late on Circuit in the Centre Division to precept dated 26th October last calling for the additional evidence in case No 149 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 981)

Read the second futwa delivered in this case by the Cazee ool Coozat and Mooftees of the Foujdaree Adaulut.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwas of the Cazee ool Coozat and Mooftees of the Foujdaree Adaulut confirm the said futwas of the Cazee ool Coozat and Mooftees aforesaid and under the provisions of

of Section VI Regulation I of 1825 adjudge the prisoner,

"Boosaneekey,"

to be imprisoned without hard labor and irons within the walls of the Jail for and during the period of his natural life.

(Sent following letter No 25)

Mr Grant and Mr Gowan

Read letter, dated 18th October last, from the 2d Judge Eastern Circuit in the Centre Division, submitting case No 15 Chittoor Supplemental Calendar 4th Quarterly Sessions 1825.

(Here enter No 880 of 1825)

We

The 1st and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee and Cozat and Mooftees of the Zillah Court confirm the said futwa of the Cazee-ool-Coozat and Mooftees aforesaid so far as respects all the prisoners excepting the 10th and under the provisions of Clause fifth Section IV Regulation XV of 1803 adjudge the prisoners,

1st "Moula Siddoogandoo,"
2d "Mandala Gungadoo,"
4th "Solasum Siddoogandoo,"
5th "Paracoory Chennoojadoo,"
8th "Cuttary Chennoojadoo,"
7th "Dalavoy Gungadoo,"
8th "Venkattapah,"
11th "Murry Changadoo," and
13th "Chakala Changadoo,"

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of one year and then be released.

And the Court being of opinion that the proof against the 10th prisoner Pandaty Gungadoo, is sufficient to convict him of the crime of robbery by open violence for which a penalty is specially denounced in Section IV Regulation XV of 1803 do under the authority vested in them by Clause first Section II Regulation I of 1818 adjudge the said prisoner,

10th Pandaty Gungadoo,

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of one year and then be released.

And acquitting the prisoner,

14th "Panasala Ramdoo,"

direct that he be set at liberty with an admonition.

(Sent following letter No 26)

The Court consider it proper to bring to the notice of the 2d Judge that the

19th January 1826.

the confession of the 18th Prisoner was not admitted by the Law Officers of the Tongdaree Vaalut, upon the ground, that it did not appear that it had been read over to him, and acknowledged in open Court. It will be desirable that this form should always be observed in future.

Ordered, that extract of these proceedings be sent to the 2d Judge late on Circuit in the Centre Division for his information.

(Sent following letter No 27)

Read return, dated 8th Instant, from the 3d Judge late on Circuit in the Southern Division, in pursuance of the 29th Ultimo, commanding him to call the attention of the Magistrate in the Zilla of Salem, to certain omissions on the part of the Head of Police of Tangaracottah.

(Here enter No 13)

1

In the foregoing return the 3d Judge explains, that the orders of the Tongdaree Vaalut of 24th November 1824, which had not been observed by the Tahsildar of Tangaracottah had not reached the office of the Magistrate, in time to admit of the general circulation to the heads of Police,

2

J. U.
19th January 1826.

Police, at the date of the examination of the parties in case No 2 Salem Calendar 2d Sessions 1825, and he adds, that the orders of the Court relative to confessions, which have been disregarded by this Police Officer, would appear to have been those of the 18th November 1823, and that the neglect had arisen from a misapprehension which the 3d Judge also states that he has noticed and corrected. He therefore requests instructions whether he shall furnish the Magistrate with a copy of the observations of the Tongdaree Vaalut-Under this explanation of the Head of Police which the 3d Judge has now laid before the Court, it will not be necessary that the remarks recorded in their proceedings of the 29th Ultimo, should be communicated to the Magistrate in the Zilla of Salem.

2. The 3d Judge is correct in his opinion, that the remarks of the Court of Tongdaree Vaalut had immediate reference to the circular of 18th November 1823 rather than to those of 29th April 1822 upon the subject of confession, and they are glad to find that the irregularities of the Tahsildar attracted the attention of the 3d Judge. The Court consider it necessary to

17th February 1826.

Ordered, that extract of these proceedings be sent to the 1st Judge late presiding 4th Quarterly Sessions 1825 fille Chittoor for his information.

(Sent following letter No 77.)

F. R.

At a Court of the Foujdaree Adalut

Present

F. F. Grant Esqre 1st Puisne Judge

Monday, 20th February, 1826. James Cochrane Esqre 2d Puisne Judge

George Gowan Esqre 3d Puisne Judge

Read letter dated 30th November last from the second Judge late on Circuit in the Western Division submitting case No 49 Malabar Calendar 1st Sessions 1825.

(Here enter No 996)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the Justice of the Provincial Law Officer and the Justice of the Cazee ool Coo=gat and Mooftees of the Foujdaree Adalut, confirm the said Justice of the Cazee ool Cogat and Mooftees aforesaid, and direct that the prisoner,

Coorata Pangoony Nambiar

be released, on his procuring Security, himself in the Sum of 1000 one thousand Rupees, and two sureties, each in the Sum of 500 five hundred Rupees, for his future good behaviour, and appearance when required.

(Sent following letter No 78.)

At a Court of the Foujdaree Adaulut,
Present,

Thursday 23d February 1826

F. A. Grant Esquire, 1st Puisne Judge.
James Cochrane Esquire, 2d Puisne Judge.
George Gowan Esquire, 3d Puisne Judge.

Read again Petition from Mahomed Ally late a Cutcherry in the Zilla Court of Seringapatam, complaining that, after his departure from that place of which he is a fixed inhabitant where he has a house and family, information was given that certain pieces of cloth, which had before been missed, were discovered in his house; in consequence of which a warrant was issued against him, though no Prosecutor had appeared. Petitioner fears the machinations of personal enemies, if he returns; & prays this Court to issue orders to take security from him and allow him to appear by Cutcherry for trial; or that the Criminal Judge may take bail & try him.

(Here enter Mis: Pet: No 6 of 1826)

The Court observe that the Petitioner has produced no proof of what he states; & that he has stated nothing inconsistent with

23rd February 1826

The Court on reference to the Calendar
23rd February 1826 see reason to call for an English translation of the record of the Trial; and accordingly direct that the 1st Judge late on Circuit be by Dt Precept commanded to submit the same. A Persian translation is not required.

Precept returnable in 20 days from and after the date of receipt.

Ans.d 25th March 1826 N.219.
entered in No. 31 P. C.

Sent following precept No 80.

Read again petition presented by Chengama Naiken of the Zillah of Chingleput.

Here enter No. Misc: Pet: No 4 of 1826

The petitioner who represents Dt himself to be the Father of the prisoner Dt Cuncataramadoo, the 2d Prisoner No. 12 Chingleput Calendar 1st Sessions 1825, states that the evidence for the defence was not heard by the Judge on Circuit: and he prays the Court to direct that such evidence as he can now produce, to prove an alibi may be examined.

2 The petitioner offers nothing in explanation of his omission to bring the circumstances of this case before this Court at an earlier date, and they are not disposed to attach any weight to his representations; as it is not at all probable that he would have remained silent for a period of ten months, whilst the means of redress, were so near to him, had the sentence of the Judge on

23rd February 1826 with the Process prescribed by Regulation IX of 1816 with respect to persons charged with petty thefts. The Magistrate will Dt most probably have availed himself of the discretion allowed him by section XIV Dt Regulation IX of 1816. before the warrant was issued. This Court cannot presume irregularity in a Magistrate's Proceedings, & call for explanation, on such loose and unsupported statements: and without explanation or proof of irregularity it sees no ground to interfere in any manner.

2. The Petitioner is hereby admonished that if a warrant has been issued against him, and he shall fail to appear & deliver himself up within a certain fixed time, any real property which he possesses within the Jurisdiction of the Magistrate at Chingleput will be liable to be attached under clause first section XVII Regulation IX 1816.

3. A Copy of these Proceedings to be furnished to the Petitioner on his Dt application.

Read again Petition from Ridnapatroony Canaka Narsimloo Zilla Chicacole complaining that justice has not been done in the release by the Judge on Circuit of Cuncataswamy charged with murder in No. 2. of 2d Supplemental Calendar 2d Sessions of 1825 for Chicacole.

Here enter No. 5 of 1826

The

28th February 1826 on Circuit been unjust.

Ordered, therefore, that the prayer of the petitioner be rejected and extract of these proceedings be furnished to the Petitioner on his application.

Read letter, dated the 9th December last, from the 1st Judge late on Circuit in the Centre Division submitting the Report prescribed by Section XXXVII Regulation VII of 1802.

(Here enter No 999)

In the 12th paragraph of the report, the 1st Judge bears very favorable testimony, to the conduct of two of the Officers of the Criminal Court in the Zilla of Cuddapa, the Gomashtah, Bheema Row, and the Nazir, Soobarow, whose "close and unremitted "attendance daily during the sitting of the "Court of Circuit," and "the explanations they afforded on the subject of the commitments, he states to have been of the greatest pub. "lic utility in forwarding the business of the Court." The 1st Judge strongly recommends, that a donation of 100 Pagodas may be made to each of these officers, as a mark of the approbation of their Superiors.

2. The occasion upon which the officers of the Courts of Justice are

28th February 1826

called upon to make any extraordinary exertions, are necessarily limited, whilst the great importance of such services are obvious. The Court upon these grounds deem the suggestion of the 1st Judge deserving of much consideration, more particularly as the offices of emolument in the Judicial line are few, and the reward for praiseworthy services necessarily distant and uncertain. The Court beg leave therefore respectfully to recommend, that the sanction of Government may be granted for the donations proposed.

3. In the 21st 40th and 41st paragraphs, the 1st Judge offers some general observations, touching the conduct of the officers of Police, in the receiving of confessions, and brings to the notice of the Court, a remarkable instance of the little attention paid by a Head of Police, to the provisions of clause third Section XXVII Regulation XI. 1816, requiring the confessions of prisoners to be received, only when free and voluntary. In this instance it appears, that the individual whose confession was recorded, and admitted, before the Police Officer, could not

23d February 1826.

not possibly have uttered one word of the declaration attributed to him, having been taken before the Police, with his throat cut, in such a manner as to preclude articulation, and the Zilla Surgeon reports at a period of many months subsequently that he was not even then sufficiently recovered, to be able to converse without great effort and difficulty.

4 The 1st Judge remarks in the 22d para upon the facts here referred to, that "they are brought forward as "furnishing an instance amongst a multitude "to shew what little dependance is to be "placed on a confession made before "a Native Tribunal." In the correctness of this opinion the Court of Sunderee Adalut can bear testimony from their own experience, for in few of the numerous trials which come before them, in which confessions are entered in the record, do these confessions receive the support of the Judge on Circuit, but more generally there is ground to suppose, that such confessions, when taken before the Native Officers of Police, were not free and voluntary.

23d Feby 1826.

5 have lately called the attention of the Magistrates and Criminal Judges to the humane and just provision of the Criminal Code, which required the confession of a prisoner to be received with circumspection and tenderness, and have directed the Magistrates to enforce upon their subordinate Officers the due observance of the law, which requires confession to be the spontaneous act of the accused, in order to its admission as evidence.

The Court deem it however

6 proper to observe, that they do not expect the general neglect of clause third section XXII Regulation XI of 1816 which the 1st Judge so pointedly notices, to be removed by measures of this description. They are of opinion that this neglect is owing to the circumstance of the law being ill adapted to the habits and ideas of the Officers entrusted with the execution of it; for the Court believe, that few of the Native Officers of Police duly appreciate, or understand the rule, which requires a confession to be free and voluntary, and it is therefore scarcely matter of doubt,

23d Feby 1826

10

The policy of entrusting the Native Officers of Police with the power of receiving confessions without any restriction, which the Pt Judge has brought under the consideration of the Court of Foujdaree Adaulut, has often engaged the attention of the Court. The determination of this point appears to them to rest in a great degree, upon the question whether, greater evil might not ensue from wholly withdrawing the power now in their hands, than from its mal-administration. The instances brought forward in the report of the Pt Judge and his remarks generally, are considered by the Court to bear strongly upon this question, and as such deserving the notice of Government. They are inclined to think that some restriction though not to the extent recommended by the Pt Judge, might be found practicable and beneficial.

11

In para 28th the Pt Judge relates an instance of grievous oppression strongly manifesting the necessity for the exercise of a vigilant control over the officers, in whose hands the [illegible]

28th Feby 1826

authority now vests. the Court trust that a abuse of authority carried to the extent of the instance adduced, is comparatively rare, they propose calling the attention of the Magistrate to it, in order to point out to him the primary importance of a vigilant superintendence of the proceedings of his Native Officers of Police, in order to the personal security of the people within his Jurisdiction.

12

Upon the observations of the Pt Judge in para 42 upon the unnecessary formality, as it is deemed of the admonition prescribed in clause fifth Section XVIII Regulation VII 1802. the Court would remark, that this provision of the Regulations, would seem to have been framed, with reference to the prevalent habit in Native society of a disregard for truth. The legislature would appear to have deemed it not improbable, that this evil was not always a deliberate act in violation of the conscience, but that it might in some cases originate in carelessness, or want of due consideration

of

28.

23d Feby 1826

of the solemn nature of the obligation of an oath. The Court think, that this opinion is well grounded and the admonition adverted to beneficial in practice and the trifling labor therefore which is occasioned by its frequent insertion in the record, amply compensated by the advantage which it is calculated to produce.

13. The highly important subject brought under review in the 43d. para of this report, is one upon which the Court would hesitate to advance a decided opinion. They have long been of opinion that it is desirable to give, if practicable, greater facility to the access of the respectable classes to the Courts of Justice. but they are not disposed to think, that the requisition of an oath offers any serious obstacle. The rule which permits the substitution of a solemn declaration for the customary oath, may be considered to remove this objection, and the repugnance to attend the Courts, stated by the 1st Judge to be general, is, the Court apprehend, rather to be ascribed to the imparital, and as it must appear to the native mind, equalizing system of our judicial administration, which

4

J. C.

28th February 1826

places witnesses of all classes at the same bar, and makes no distinction between the testimony delivered by the man of caste, from that of his inferiors in society. Whether such a distinction should be made, the Court are not now called upon to consider; but they are decidedly of opinion, that a dispensation from the obligation of delivering their testimony on oath, would have no sensible effect in removing the obstructions, which now oppose the approach of the higher ranks of Natives to the Courts in the character of witnesses.

14. In the concluding paragraph of his report, the 1st Judge brings forward a proposition, as connected with the general objects of Police, for the establishment of Government granaries. The Court of Sudder Adawlut do not consider it within their province, nor necessary, to take the proposal of the 1st Judge into consideration, they are inclined to think, that in this as well as in the proposition for the storing of grain for the use of Jails, the 1st Judge has lost sight of the fact, that although the Government might be benefited in their capacity as purchasers for the

16

23d Feby 1826

the subsistence of the convicts, they would probably suffer more by withholding from the ryot and merchant, the market now open to them by the steady demand of the Jails.

15. The Court take this opportunity to submit the report of the 1st Judge of the Provincial Court upon the 4th Quarterly Sessions for the Zillah Chittoor 1825 under date 14th December last which does not appear to call for any remark.

(Here enters No 1005)

Ordered, that a copy of the Report and extract of these proceedings be sent to the Secretary to Government in the Judicial Department for the purpose of being laid before the Honorable the Governor in Council.

Sent following letter No 81

Ordered also, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division by precept with directions to communicate to Nellore. Bellary.

Sent following Precepts No 82.

Read

Read letter dated 16th Instant from the Secretary to Government in the Judicial Department stating that the exams of the Heads of Villages concerned in cases Nos 11 and 12 Bellary Calendar 2d Sessions 1824 are declared forfeited to Government and the prisoner Kenchen gowdah declared disqualified for holding office.

(Here enters No 121)

Read return dated 15th Instant from the 1st Judge late on Circuit in the Northern Division to precept of the 4th January last calling for the whole of the proceedings held in case No 8 Nellore Calendar 2d Sessions of 1825.

(Here enters No 128)

X

X

Pr

At a Court of the Foujdaree Adalut.

Present

Friday,
3d March, 1826. F. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
George Govan Esqr. 3d Puisne Judge

Read letter dated 27th Ultimo from the 3d Judge of the Provincial Court of Circuit in the Northern Division submitting a copy of the Masulipatam Calendar for Quarterly Sessions 1826.

(Here enter No. 108)

In No. 7 of the Calendar the Court observe, that the charge laid against the 2d prisoner, was, for having received "property in mortgage knowing it to have been stolen". The futwah it is stated convicted the prisoner; and, it is concluded, declared him liable to discretionary punishment, the necessary consequence of a futwa of Goor-i-ghalib. In this case it was the duty of the 3d Judge to have proceeded under the principle of clause Second Section II Regulation XV of 1803, as the offence of the prisoner is provided for in Section IX Regulation VI of 1822.

3 The Court desire to know, upon what ground the 3d Judge deemed it competent to him, to order the release of the prisoner upon security; and that he will also

3d March, 1826. explain, upon what principle he considered it open to him, to adjudge a penalty of seven years imprisonment to the principal in a case of theft, and pass a sentence upon the convicted receiver, which is authorized only in cases where the accused has not been convicted of any crime.

4 If the picture of conviction was not wholly approved, which is the inference the Courts are disposed to draw from the 3d Judge's proceedings in this case, it was his duty to have referred the trial.

Ordered, That extract of these proceedings be sent to the 3d Judge of the Provincial Court of Circuit in the Northern Division for his information and guidance.

Ans.d 10th June N.349 entered in No. 29th June 1826

(Sent following letter N.85.)

4th 11 Read return dated 13th Ul-
Sent timo from the Provincial Court of Circuit
23d in the Centre Division to precept dated
7th Ultimo directing them to communi-
=cate to the Criminal Judges and Ma-
=gistrates of the Courts late orders on the
subject of confessions.

(Here enter N.135)

Read letter dated 24th Ultimo from the 1st Judge of the Court of Circuit in the Centre Division forwarding the

X1

3d March 1826. report of the Assistant Criminal Judge of Chingleput upon the inquisitions produced by the execution of the Criminals in No 13 Chingleput Calendar 1st Inquisitions 1825

(Here enter N.136)

Read letter dated 23d Ultimo from the 1st Judge on Circuit in the Southern Division reporting that the Inquisitions at Madura were closed on the 23d

(Here enter N.138)

Read return dated 18th Ultimo from the Judges of the Provincial Court of Circuit in the Western Division to precept dated 7th Ultimo directing them to furnish the Criminal Judges and Magistrates with the Courts circular orders issued on the subject of confessions.

(Here enter N.142)

Read letter dated 25th Ultimo from the Criminal Judge in the Zilla of Cuddapa forwarding prescribed report upon a prisoner sentenced to transportation.

(Here enter N.147)

X1

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Fl.

At a Court of the Fujdaree Adalut,
Present,

Tuesday
7th March 1826. F. F. Grant Esquire ... 1st Puisne Judge.
James Cochrane Esquire ... 2d Puisne Judge.
George Gowan Esquire ... 3d Puisne Judge.

Read letter dated 25th Ultimo from the late Additional Judge late on Circuit in the Centre Division recommending under the provisions of Section X Regulation I of 1825 a mitigation of punishment in case No. 22 Bellary Calendar 2d Sessions 1825.

/Here enter No. 131/

The Court having attentively considered the grounds upon which the late Additional Judge has recommended a commutation of the prescribed penalty, in the case of the prisoner referred to in his report, to fours years' imprisonment with hard labor, sanction the sentence proposed.

Ordered that extract of the these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.—

/Sent following letter No. 88/

Read

7th March 1826.

Read letter, dated 27th Ultimo from the 1st Judge late on Circuit in the Northern Division, recommending under the provisions of Section IV Regulation I of 1825 a mitigation of punishment in case No. 11 Nellore Calendar 2d Sessions 1825.

/Here enter No. 152/

The Court having attentively considered the grounds upon which the 1st Judge has recommended a commutation of the prescribed penalty, to five years imprisonment with hard labor, sanction the sentence proposed.

Ordered that extract of these proceedings be sent to the 1st Judge late on Circuit in the Northern Division for his information.

/sent following letter No 89./

Read letter dated 27th Ultimo, from the 1st Judge late on Circuit in the Northern Division, stating that upon a reconsideration of cases Nos 3 and 4 Nellore Calendar 2d Sessions 1825 "he is induced to "retract his recommendation (under date the "8th November last) of a mitigation of pu- "nishment, and to submit the propriety of "the law being allowed to take its course."

/Here enter No. 153/

If the 1st Judge is of opinion, that there are no circumstances in the case of the prisoners referred to, to justify a mitigation of punishment, it is his duty to proceed to pass the sentence prescribed by law; and the Court of Sudder Adalut have no power to issue any instructions upon the subject. The Court deem it proper to observe, that the sentence of the prisoners should take effect from the date upon which the warrant for the execution of the legal penalty would have been issued had the 1st Judge held his present opinion at the Sessions.

Ordered that extract of these proceedings be sent to the 1st Judge late on Circuit in the Northern Division for his information & guidance.

/sent following letter No 90/

F. C.

At a Court of the Faujdaree Adalut

Present,

Thursday 9th March 1826

F. A. Grant Esquire 1st Puisne Judge.

James Cochrane Esquire 2d Puisne Judge.

George Gowan Esquire 3d Puisne Judge.

Read letter, dated the 27th January last from the First Judge late on Circuit in the Northern Division, submitting Case No. 10 Nellore Calendar 2d Sessions 1825.

/Here enters No. 70/

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coozat and Mooftee of the Faujdaree Adalut, confirm the said futwa of the Cazee ool Coozat and Mooftee aforesaid, and under the provisions of Clause Second Section VI Regulation I of 1825, adjudge the prisoner,

"Condapully Cencalapully"

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of his natural life.

/Sent following letter No. 93./

9th March 1825

The Court regret to observe, that the 1st Judge has neglected in forwarding the record of the trial to offer his opinion on the guilt of the prisoner, as specially directed by Section XXVII Regulation VIII of 1802. This Officer has also disregarded the orders of the Foujdaree Adalut, requiring the pages of all records to be numbered. The Court consider it incumbent upon them to call the attention of the 1st Judge to these omissions and to desire that care may be taken to prevent their occurrence.

Ordered, that extract of these proceedings be sent to the First Judge late on Circuit in the Northern Division for his information and guidance.

Sent following letter No 94.

Read letter dated 14th Ultimo from the 3d Judge late on Circuit in the Western Division, submitting a copy of Malabar Calendar 2d Sessions 1824.

Here enter No 127.

In No 55 of the Calendar the Court observe the following charge, "False complaint "for having preferred a false complaint against "the prosecutor and his younger brother setting "forth falsely that they caused the death of one "Cherman Roiden." The prisoner it appears was

9th March 1825. was committed by the Criminal Judge upon the ground of his offence, being punishable under the Mohummudan law.

The Court are not informed of the measures which the Criminal Judge adopted, in order to ascertain this essential point, they deem it proper to observe, that the authority given to the Criminal Courts under Section VII Regulation X of 1816, to take cognizance of all acts criminal in the eye of the Mohummedan law, is a power, that should be exercised with much caution; and before an officer takes upon himself to punish, or commit cases not provided for by the Regulations, it is fit, that he should take the most effectual means for ascertaining with precision the law upon the subject. In all novel cases, the Court are of opinion that a reference should be made to the Provincial Court of Circuit, to know whether the act is penal or not.

The Court record the following question and answer put to and received from their Mohummudan Law Officers.

Question.

To what punishment, is a person, who has preferred before a Magistrate a false accusation of murder, liable under the Mohummedan laws.

Answer

Under the Mohummedan law a prosecutor is not liable to any punishment. But if a person brings a prosecution knowing the same to be false, and injurious

consequences

rnines to the party complained against, such complainant, on proof of the damage resulting from the prosecution, and of his evil intention, is liable to Tazeer at the discretion of the Hakims.

From the foregoing answer it appears, that in the present instance the prosecution for false complaint was tenable, only under the proviso, that a direct and immediate injury to the accused was the consequence of such false complaint, and without proof of the damage, the act was not penal. It is not stated in the charge that the accused had suffered any injury from the act of the prisoner, and it is questionable therefore, whether the whole proceeding was not illegal.-

Under any circumstances the Court consider it to have been a matter proper for the cognizance of the Criminal Judge, and not the Court of Circuit; for although the moral quality of the offence, might be supposed to constitute an analogy between it and other attempts at homicide, yet the obstacles that oppose the successful perpetration of this species of crime are so great, that the Court of Sudder Adalut are led to think,

27
Fla
9th March 1826.

that the powers vested in the Criminal Judge under section VII Regulation X of 1816 will be found fully adequate to its' prevention; and the Criminal Judge should therefore assume the cognizance of the crime and not the Court of Circuit.-

The Court would deem fines, & commutable to imprisonment upon non payment, the appropriate penalty, if found sufficient for the suppression of the offence.

Ordered, that extract of these proceedings be sent to the 3d Judge late on Circuit in the Western Division by precept directing him to communicate the same to the Criminal Judge in the Zillah of Malabar for his information and guidance.

Ans.d 15th March No 203 sent in Pro. 31st Ult. 1826

Sent following precept & Letter

Read letter dated 4th Instant from the Third Judge late on Circuit in the Southern Division with returned warrant for execution of the prisoner in case No 15 Salem Calendar 2d Sessions 1825.

(Secretary's No 166)

Read return dated 23d Ultimo from the Judge of the Provincial Court of Circuit in the Northern Division to precept dated 7th Ultimo directing them to communicate to the Criminal Judges and Magistrates the Court's late orders respecting confessions.

(Secretary No 170)

At a Court of the Foujdaree Adalut,

Present,

Saturday 11th March 1826

F. A. Grant Esquire. 1st Puisne Judge.
James Cochrane Esquire. 2d Puisne Judge.
George Gowan Esquire. 3d Puisne Judge.

Read letter, dated the 28th January last from the First Judge on Circuit in the Southern Division, submitting case No 8 Madura Calendar 1st Sessions 1826.

Here enter No. 79/

The 1st 2d and 3d Puisne Judges of the Court of Foujdaree Adalut on a deliberate consideration of the circumstances of the case in evidence before them being of opinion that the proof against the prisoner "Veeren Chitty", is sufficient to convict him of Manslaughter desire under the provisions of Clause second Section II Regulation I of 1818 that their Law Officers will declare by a second futwa to what specific punishment the prisoner would have been liable under the Mohummedan Law if he had been convicted by full legal evidence of the above crime.-

Ordered that extract of these Proceedings be translated and delivered to

7th March 1826. to the Cazeecol Cozzat and Mooftees of the Dy Zoujdaree Adalut.—

W. W. L.

Read letter, dated the 28th Ultimo from the Third Judge of the Provincial Court of Circuit in the Northern Division, Reporting his intention to proceed to Nellore to hold the 1st Sessions.—

/Here enter No. 157/

Read letter, dated the 27th Ultimo, from the Second Judge on Circuit in the Centre Division, Reporting the closing of the Sessions at Cuddapa on the 27th Ultimo.—

/Here enter No. 156/

7 M.

At a Court of the Zoujdaree Adalut,

Present,

Monday 13th March 1826. F. A. Grant Esquire, 1st Puisne Judge.
James Cochrane Esquire, 2d Puisne Judge.
George Gowan Esquire, 3d Puisne Judge.

Read letter, dated the 1st Ultimo from the late Additional Judge late on Circuit in the Centre Division, submitting case No. 2 Cuddapa Calendar 2d Sessions 1825.

/Here enter No. 89/

The 1st 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazeecol Cozzat and Mooftees of the Zoujdaree Adalut confirm the said futwa of the Cazeecol Cozzat and Mooftees aforesaid, and under the provisions of clause first Section IV Regulation XV of 1803 adjudge the prisoner,

1st "Mala Chennoogadoo",

to suffer death by being hanged at the usual time and place of execution.

And under the provisions of clause fifth Section IV Regulation XV of 1803, adjudge the prisoners,

2d "Mala Gelloogadoo",
3d "and Curata Gunnadoo", to

F. R.

At a Court of the Foujdaree Adalut

Present

Tuesday 14th March 1826.

T. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
George Gowan Esqr. 3d Puisne Judge

Read again letter dated 28th January last from the 1st Judge on Circuit in the Southern Division submitting case No 8 Madura Calendar 1st Sessions 1826.

(Here enter No 79)

Read second petition delivered in this case by the Cazee-ool-Cozat and Mooftee of the Foujdaree Adalut.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the fatwa of the Provincial Law Officer and the fatwas of the Cazee ool Cozat and Mooftee of the Foujdaree Adalut confirm the said fatwas of the Cazee ool Cozat and Mooftee aforesaid and in commutation of the penalty of Deeyut adjudge the prisoner,

Veeren Chitty

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of 7 years and then be released.

(Sent following letter No 97.)

to receive 39 stripes with a rattan and to be imprisoned and transported to such place or places beyond sea, as the Governor in Council shall appoint, there to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of their natural lives respectively.-

And the Court adjudge the prisoner,

4th "Chenooo Patadoo,"

to receive 30 stripes with a rattan, and direct that he be set at liberty with an admonition

(Sent following letter No 96.)

Read letter, dated the 7th Instant from the First Judge on Circuit in the Southern Division, Reporting the postponement of a case of Murder in the Madura Calendar with a view to ascertain whether the prisoner is insane or not.

(Here enter No 175)

Read letter, dated the 9th Instant from the Second Judge on Circuit in the Outer Division, Reporting the arrival of the Court of Circuit at Bellary.

(Here enter No 176)

to receive 39 stripes with a rattan and to be imprisoned and transported to such place or places beyond sea, as the Governor in Council shall appoint, there to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of their natural lives respectively.-

And the Court adjudge the prisoner,

4th "Chenoo Patadoo,"

to receive 30 stripes with a rattan, and direct that he be set at liberty, with an admonition

Sent following letter No 96.

Read letter, dated the 7th Instant from the First Judge on Circuit in the Southern Division, Reporting the postponement of a case of Murder in the Madura Calendar with a view to ascertain whether the prisoner is insane or not.-

/Here enter No 175/

Read letter, dated the 9th Instant from the Second Judge on Circuit in the Coast Division, Reporting the arrival of the Court of Circuit at Bellary.-

/Here enter No 176/

J. R.

At a Court of the Foujdaree Adalut

Present

Tuesday 14th March 1826.

T. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
George Gowan Esqr. 3d Puisne Judge

Read again letter dated 28th January last from the 1st Judge on Circuit in the Southern Division submitting case No 8 Madura Calendar 1st Sessions 1826.

(Here enter No 79)

Read second petition delivered in this case by the Cazee-ool-Cozat and Mooftee of the Foujdaree Adalut.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer and the futwas of the Cazee ool Cozat and Mooftee of the Foujdaree Adalut confirm the said futwas of the Cazee ool Cozat and Mooftee aforesaid and in commutation of the penalty of Decgut adjudge the prisoner,

Veeren Chitty

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of 7 years and then be released.

(Sent following letter No 97.)

At a Court of the Sudaree Adalut

Present,

Wednesday
15th March 1826

The Hon. J. A. Grant Esquire, 1st Puisne Judge.
James Cochrane Esquire, 2d Puisne Judge.
George Gowan Esquire, 3d Puisne Judge.

Read letter, dated the 4th
21st January last from the late Additional
Judge late on Circuit in the Centre Division
submitting Case No. 24 Bellary Calendar Sessions
Sessions 1825.-

/Here enter No. 46/

The 1st 2d and 3d Puisne Judges
having maturely considered the proceedings held
before the Judge on Circuit the futwa of the
Provincial Law Officer, and the futwa of the
Cazee ool Coozat and Mooftees of the Sudaree
Adalut confirm the said futwa of the Cazee
ool Coozat and Mooftees aforesaid and
acquitting the prisoner,
"Sendee Dassegadoo",
direct that he be set at liberty.

/Vide following letter No. 98./

Read

15th March 1826.

Read letter, dated the 24th January last from the First Judge late on Circuit in the Centre Division, - Submitting case No. 53 Cuddapah Calendar 1st Sessions 1825.-

/Here enter No. 57/

The 1st and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Adalut being of opinion that that the proof against the prisoners 1st Doodakoola Cummall 3d Boyanany Iruvimadoo, and 6th Kuttyka Cummall, is sufficient to convict them of the crime of Burglary for which a penalty is specially denounced in clause fourth Section II Regulation VI of 1822 acquge the said prisoners,

1st Doodakoola Cummall,
3d Boyanany Iruvimadoo,
and
6th Kuttyka Cummall,

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of six years and then be released.

/Sent following letter No. 99.

Read letter, dated the 20th January last from the Third Judge late on Circuit in the Western Division, - Submitting Case No. 10 Malabar Calendar 2d Sessions 1825.-

/Here enter No. 53/

The 1st 2d & 3d Puisne Judges of the Court of Foujdaree Adalut on a deliberate consideration of the circumstances of the case in evidence before them, being of opinion that the proof against the Prisoner 1st Kanishen Manittatil Chatoo, is sufficient to convict him of the crime of Manslaughter, seeing under the provisions of Clause Second Section II Regulation I of 1818 that their Law Officers will declare by a second futwa to what specific punishment the prisoner would have been liable under the Mohummudan Law if he had been convicted by full legal evidence of the above crime.-

Ordered that extract of these proceedings be translated and delivered to the Cazee ool Coozat and Mooftees of the Foujdaree Adalut.-

Read letter, dated 27th Ultimo from the 3d Judge of the Provincial Court of Circuit in the Northern Division, submitting report on the 1st Quarterly Sessions Zilla of Masulipatam 1826.

/Here enter No. 158/

Read

15th March 1826.

Read also letter dated 1st December last from the Provincial Court of Circuit in the Northern Division submitting a communication from the Criminal Judge of Masulipatam suggesting certain alterations in the Jail.

(Here enter No. 994)

The foregoing report does not contain matter calling for particular remark from the Court of Foujdaree Adalut. The 3d Judge notices the preparation of materials for the construction of some additional buildings to the Jail, and the Court take this opportunity therefore to submit a communication upon this subject from the Provincial Court of Circuit under date the 1st December last.

Ordered, that a copy of the report and extract of these proceedings be sent to the Secretary to Government in the Judicial Department for the purpose of being laid before the Honorable the Governor in Council.

(Sent following letter No. 100.)

Read letter dated the 2d Instant, from the 1st Judge Cuttack on Circuit in the Northern Division submitting certain returns of the Criminal Judge in the Zilla of Chicacole, reporting that the evidence against the prisoners in Nos. 12 and 17 Chicacole Calendar

No. 12. Sent to

2

J. K.

15th March 1826

pointed out in the sentence of the Foujdaree Adalut of the 16th May last is not attainable.

Here enter No. 165

The 1st Judge states in his letter

1

that the prisoners are still detained in the custody of the Criminal Judge, upon the charges preferred in ten other cases of the same Calendar, where the evidence is exactly the same with that submitted to the Court in the records of Nos. 12 and 17, and he requests the orders of the Court respecting these ten cases.

In referring to the Calendar

2

the Court of Foujdaree Adalut observe, that in the ten cases alluded to by the 1st Judge, the prisoners were charged with robbery by open violence committed apparently about the same time, but at different places with the acts charged in Nos. 12 and 17. The several acts of plunder committed at the same places should have formed but one item in the Calendar, as the nature of the offence was one and the same; but those committed in distinct Villages, cannot be included in either Nos. 12 or No. 17; and the records in Nos. 14, 18, 19, 20, 21, 22, and 23, must therefore be referred for the consideration of the Foujdaree Adalut.

3

The evidence in the trials Nos. 13

15th March 1826.

13, 15 and 16 having been before the Court in Nos 12 and 17. The Court deem the reference of these numbers unnecessary, and the 1st Judge will inform the Criminal Judge in the Zilla of Chicacole that these cases have been disposed of by the Foujdaree Adalut and the prisoners therein acquitted; he will however detain the prisoners till the final orders of the Court upon the cases now directed to be referred are received.

Ordered, that extract of these proceedings be sent to the 1st Judge late on Circuit in the Northern Division for his information.

(Sent following letter No 101.)

Thursday, 16th March, 1826.

Present,

H. A. Grant Esqre
James Cochrane Esqre
George Gowan Esqre
} Judges.

Read letter, dated 4th Instant, from the Criminal Judge in the Zilla of Madura, forwarding three warrants for the banishment of certain convicts to any Zilla which may be selected by the Foujdaree Adalut.

(Here enter No 174)

The Court of Foujdaree Adalut direct that the prisoners,

1st Ramadasamy,
2d Nagandy,
3d Ramadamy, and
4th Challandy,

be removed to the Jail in the Zilla of Chittoor there to be imprisoned agreeably to the tenor of their respective sentences.

Ordered, that extract of these proceedings be sent to the Criminal Judge in the Zilla of Madura and to the Criminal Judge of Chittoor for the information and guidance of those officers respectively.-

(Sent following letters No 102.

Read

16th March 1826. Read Miscellaneous Petition presented by Hadir Sahib and Arasoo Mootteen Zilla Combaconum, praying for certain documents connected with the trial of case No 2 of the Combaconum Calendar 2d Sessions of 1825 for which it seem they applied to the Southern Provincial Court while the Trial was under reference to this Court, and were refused.

(Here enter F.H. No 7 of 1826)

The Court refuse this applic-ation because the Petitioners have stated no reason for making it and because it is unusual.

Read return dated 7th Inst: from the Judges of the Provincial Court of Circuit in the Southern Division to precept dated the 7th Ultimo directing them to communicate to the Criminal Judges, and Magistrates the Courts late orders respecting Confessions.

(Here enter No 183)

At a Court of the Foujdaree Adalut

Present

Monday 20th March 1826

J. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Groom Esqre 3d Puisne Judge

Read letter dated 28th January last from the 1st Judge on Circuit in the Southern Division submitting case No 21 Madura Calendar 1st Sessions 1826.

(Here enter No 78)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Futwa of the Pro-vincial Law Officer and the Futwa of the Cazee ool Cozat and Mooftee of the Foujdaree Adalut direct under the provisions of clause Second Sec-tion VI Regulation I of 1825 that the Pris-oner Chinna Kandery be released on producing good and sufficient security for their future good behaviour and appearance when required.

(Sent following Letter No 105.)

F. H.

At a Court of the Toyidarce Adalat.

Present

Tuesday 21st March 1826. F. A. Grant Esqr 1st Puisne Judge

James Cochrane Esqr 2d Puisne Judge

George Gowan Esqr 3d Puisne Judge

Read again letter dated the 20th January last from the 3d Judge late on Circuit in the Western Division submitting case No. 10 Malabar Calendar 2d Session 1825 (One entered No. 53)

Read second putwa delivered in this case by the Cazee vol Cozat and Mooftee of the Toyidarce Adalat.

The 1st 2d and 3 Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the putwa of the Provincial Law officer and the putwas of the Cazee vol Cozat and Mooftee of the Toyidarce Adalat confirm the said putwas of the Cazee vol Cozat and Mooftees aforesaid and in commutation of the penalty of decapt adjudge the prisoner Hanishen Kanllatil Chatoo to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of three years and then be released.

(Sent following letter No 106)

Read

Read letter dated 29th December last from the 3d Judge late on Circuit in the Southern Division Submitting case No 1 Salem Calendar 2d Sessions A.D. 1825.

(Here enter No 5)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officers and the futwa of the Cazee of Cotgat and Moofties of the Zoujdaree Adalut confirm the said futwa of the Cazee of Cotgat and Moofties aforesaid so far as respects the 8th prisoner, direct that the said prisoner

8th Sootea

be set at liberty

And upon the provisions of clause second Section VI Regulation I of 1825 the Court further direct that the prisoners,

6th "Nangoa"

and

7th "Turdeemnal"

be set at liberty.—

(Sent following letter No 107.

Read letter dated 8th Instant from the 1st Judge late on Circuit in the Southern Division submitting case No 13 Madura Calendar 1st Sessions 1826.

(Here enter No 111)

The 1st 2d and 3d Puisne Judges of the Court of Zoujdaree Adalut on a deliberate consideration of the circumstances of the case in evidence before them being of opinion that the proof against the prisoner Periea Panian, is sufficient to convict him of the crime of Manslaughter under the provisions of clause second Section II Regulation I of 1818 that their Law Officers will declare by a reconputun to that Specific punishment the prisoner would have been liable under the Mohammedan Law if he had been convicted by full legal evidence of the above crime.

Ordered, that Extract of the proceedings be translated and delivered to the Cazee of Cotgat and Moofties of the Zoujdaree Adalut.

Read letter dated 2d Instant from the 1st Judge late on Circuit in the Northern Division Submitting case No 15 Jaffna Calendar 2d Sessions 1825.

(Here enter No 110)

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of—

21st March 1826.

of the Provincial Law Officer and the Jurors of the Cazee ook Coozat and Mooftees of the Foujdaree Adaulut confirm the said Jurors of the Cazee ook Coozat and Mooftees aforesaid do direct that the prisoners

1st Tailloory Bheemoodoo,

2d Colekepogoo Parado and

3d Taulloor Atchegandoo

be set at liberty.-

(Sent following letter No 108.)

Read letter, dated 1st Instant from the 1st Judge of the Provincial Court of Circuit in the Centre Division submitting Chittoor Calendar 1st Quarterly Sessions 1826.

Vide entry No 100

In reviewing the abstract of the proceedings held in case No 1 of the Calendar, wherein 9 persons are charged with the murder of 19 individuals, and robbery to the extent of 8827 Rupees. The Court remark, that the Jurors of acquittal is grounded in a great degree, upon the evidence for the defence tending to shew that the prisoners were men of respectable character - In the abstract of the Jurors it is stated, that "the evidence "in favor of the 8th prisoner goes to declare "his being a trader in salt and a Man "of Character."

21st March 1826. 2

With respect to this individual the 1st Judge remarks in the statement of the grounds of the sentence of the Court of Circuit, that the 8th and 9th prisoners appear to have been formerly punished, the Court direct, that the nature of the offence, of which these persons were formerly convicted be stated, and they desire to know, why this material fact was not brought under the notice of the Law Officers, when the evidence for the defence might have received the consideration justly due to it.

The Court further remark, that

3

the grounds of the 1st Judge's concurrence in the Jurors, are stated to be, the unsatisfactory nature of the testimony to the declarations of the prisoners before the Tahsildar, and to the absence of any direct and specific evidence, that it was the prosecutor's house which was destroyed by fire - The first reason here assigned does not the Court remark apply to the 6th Prisoner whose declaration, as deposed to by the 37th and 38th Witnesses, was given before the Assistant Magistrate, and amounts to a distinct admission of his having been an accessary to the robbery. In respect to the other grounds assigned for the unconditional release of the first seven prisoners, the want of proof that the house of the prosecutor was burnt

The

31st March 1826. The Court find, that the 2d 3d and 5th witnesses spoke distinctly to this fact before the Criminal Judge, and the 5th and 6th witnesses declared, that "they examined the premises two days after the fire," no fact therefore could admit of more certain and conclusive establishment than this.

These circumstances not appearing therefore to the Court, to account satisfactorily for the sentence passed, and the opinion of the 1st Judge upon the evidence for the defence, impugning the correctness of the finding, the Court of Foujdaree Adawlut, deem it proper to call for the record, and they accordingly direct, that the whole of the proceedings before the Court of Circuit and subordinate authorities in case No 1 be submitted to them.

Ordered, that Extract of this proceedings be sent to the 1st Judge of the Court of Circuit in the Centre Division or by precept returnable in six weeks from and after its receipt.

(Sent following precept No 109)

Read letter dated 19th Instant from the 1st Judge in Circuit in the Southern Division with copies of Records Calendar 1st Sessions A.D. 1826.

At a Court of the Foujdaree Adawlut

Present

Thursday
23d March 1826. J. H. Grant Esqr 1st Puisne Judge

James Cochrane Esqr 2d Puisne Judge

George Gowan Esqr 3d Puisne Judge

Read letter dated 29th January last from the 3d Judge of the Court of Circuit in the Northern Division submitting case No 13 Masulipatam Calendar 1st Quarterly Sessions 1826.

(Serial entry No 112)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge in Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee vol Cozat and Mooftee of the Foujdaree Adawlut confirm the said futwa of the Cazee vol Cozat and Mooftees aforesaid and under the sentence of Fisaas declared in the futwa adjudge the prisoner

1st Nuckah Pullador

to suffer death by being hanged at the usual time and place of execution.

And under the provisions of Section XV Regulation VII of 1802 the Court adjudge the prisoners,

2d Gumtay Nookadoo and

3d Condagoo Nuttygadoo

to receive thirty nine stripes with a rattan and to be imprisoned and transported to such place

2nd March 1826.

place or places beyond sea as the Governor in Council shall appoint there to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of their natural lives respectively.

Sent following letter No 113.

Friday 25th March 1826.

At a Court of the Sudder Adalut

Present

F. A. Grant Esqre 1st Puisne Judge

James Cochrane Esqre 2d Puisne Judge

George Gowan Esqre 3d Puisne Judge.

Read again letter dated 8th Ultimo from the 1st Judge late on Circuit in the Southern Division submitting case No 13 Madura Calendar 1st Sessions 1826.

(Here enters No 111)

Read the second futwa delivered in this case by the Cazee ool Cozat and Moofties of the Sudder Adalut.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwas of the Provincial Law Officer and the futwas of the Cazee ool Cozat and Moofties of the Sudder Adalut confirm the said futwas of the Cazee ool Cozat and Moofties aforesaid and in commutation of the penalty of Dyut adjudged the prisoner,

Peria Panien,

to be imprisoned and kept to hard labor in irons on the public roads

or

28th March 1826

to receive 39 Stripes with a rattan and to be removed to the jail in the Zilla of Trichinopoly there to be imprisoned and kept to hard labour in irons on the public roads or other public works for and during the period of fourteen years and then be released.

(Sent following letter No 115)

Read letter dated 22d Instant from the 2d Judge on Circuit in the Centre Division transmitting copy of Bellary Calendar for the 1st Sessions 1826.

(Here enter No 299)

At a Court of the Foujdaree Adalut

Present

Wednesday 29th March 1826

F. A. Grant Esqr 1st Puisne Judge

James Cochrane Esqr 2d Puisne Judge

George Govan Esqr 3d Puisne Judge

Read letter dated the 2d Instant from the 1st Judge late on Circuit in the Northern Division submitting case No 8 Chicacole Calendar 2d Sessions 1825.

(Here enter No 169)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officers and the futwa of the Cazee ool Cozat and Mooftee of the Foujdaree Adalut confirm the said futwa of the Cazee ool Cozat and Mooftee aforesaid and under the provisions of clause 4th Section II Regulation XV of 1803 direct that the prisoner,

1st Addalah Rajapah

be released on procuring good and sufficient security for his future good behaviour and appearance when required.

And the Court direct, that the prisoners,

2d Gonemreddy Cunnah and

3d Seemantoola Venkatadrum

be set at Liberty

(Sent following letter No 116)

29th March 1826

Read letter dated 4th Ultimo from the late Additional Judge late on Circuit in the Centre Division submitting case No. 4 Batticaloa Calendar 2d Sessions 1825.

(Here enter No. 108)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law officer and the futwa of the Cazee col Cozat and Mooftees of the Soujdaree Adawlut confirm the said futwa of the Cazee col Cozat and Mooftees aforesaid and under the provision of Section VI Regulation I of 1825 adjudge the prisoner,

1st Condadoo

to receive thirty nine stripes with a rattan and to be imprisoned and transported to such place or places beyond sea as the Governor in Council shall appoint, there to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of his natural life.

And direct that the prisoners

2d Oopane Nanegadoo, and

3d Honoogadoo,

be released on producing good and sufficient security for their future good behaviour and appearance when required.

(Sent following letter No. 117.)

29th March 1826.

Read letter dated 1st December last from the 3d Judge of the Court of Circuit in the Northern Division submitting case No. 6 Masulipatam Calendar 4th Quarterly Sessions 1825.

(Here enter No. 997 of 1825)

The 1st 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law officer and the futwa of the Cazee col Cozat and Mooftees of the Soujdaree Adawlut, being of opinion that the proof against the prisoner Dowarapoo Naugadoo is sufficient to convict him of the crime of robbery by open violence for which a penalty is specially denounced in Section IV Regulation XV of 1803 do under the authority vested in them by clause first Section II Regulation I of 1818 adjudge the said prisoner

Dowarapoo Naugadoo

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of seven years and then be released.

(Sent following letter No. 118.)

Read letter dated 8th Ultimo from the 1st Judge late on Circuit in the Centre Division submitting case No. 51 Cuddapa Calendar 1st Sessions 1825.

(Here enter No. 118)

The

from the 1st Judge late presiding 4th Quarterly Sessions 1825 recommending under clause Second Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoner convicted in No 4.

(Here enter No 01)

The Court of Zoojdaree Adawlut having attentively considered the grounds, upon which the 1st Judge recommends a mitigation of punishment in the case of the prisoner referred to in his report, resolve, under the circumstances of the case as reported by the 1st Judge, to direct, that the prisoner be released from confinement on producing good and sufficient security for his future good behaviour and appearance when required for the period of twelve months.

2 The Court of Zoojdaree Adawlut observe with regret, that the 1st Judge continues to persevere in unwarranted attacks upon the conduct of the subordinate officers, notwithstanding the admonitions which have been so lately conveyed to him, in the proceedings of the Zoojdaree Adawlut of the 9th December last. The Court deem the general remark which he has recorded upon the proceedings of the late Acting Criminal Judge in the Zilla of Chittoor, that "he constantly amplifies every act brought in prosecution before him," to be altogether unjustifiable, unless supported by a distinct reference to facts. The Court can add

add nothing to their remarks of the 9th December last, in which they endeavoured to repress observations of this nature, and they now again direct, that the 1st Judge abstain from impugning the conduct of any judicial officer, unless he is prepared to support his assertions, by reference to facts which might justify his animadversions.

Ordered, that a Extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division, for his information and guidance.

Sent 17th Feby No 124
Returned 3d March 1826.

(Sent following letter No 50)

Read letter dated 28th Instant from the 1st Judge late presiding 4th Quarterly Sessions 1825 Zilla Chittoor, recommending under clause Second Section III Regulation I of 1825 a mitigation of punishment in the case of the prisoner convicted in No 6.

(Here enter No 00)

The Court of Zoojdaree Adawlut, having attentively considered the grounds upon which the 1st Judge recommends a mitigation of punishment, in the case of the prisoner referred to in his report, resolve to sanction the commutation of the prescribed penalty to one year's imprisonment with hard labor in irons, as proposed by the 1st Judge.

Ordered, that a Extract of these proceedings be sent to the 1st Judge of the Court

F. R.

At a Court of the Foujdaree Adalut

Present

Friday
31st March 1820. F. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
George Govan Esqr. 3d Puisne Judge

Read letter dated 21st Instns from the 3d Judge of the Provincial Court of Circuit in the Northern Division, submitting case No 14 of the Zilla of Masulipatam 1st Quar: terly Sessions 1820.

(Vide order No 148)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Futwa of the Provincial Law Officer and the Futwa of the Cazee ool Cozat and Mooftee of the Foujdaree Adalut confirm the said Futwa of the Cazee ool Cozat and Mooftee aforesaid so far as respects the 1st 2d 3d 4th 5th and 7th prisoners and adjudge the prisoners.

1st Salagrama Pakeer,
2d Salagrama Busvalingum,
3d Moovanoory Soget,
4th Tanteenee Ramanah, and
5th Vellundee Paupadoo

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of fourteen years and then be

31st March 1826.

And being of opinion that the proof against the prisoner Ft. Isakala Lingadoo is sufficient to convict him of having taken part in the robbery for which a penalty is specially denounced in Section IV. Regulation XV of 1803 ds under the authority vested in them by clause first Section II Regulation I of 1818 adjudge the said prisoner,

Ft. Isakala Lingadoo

to be imprisoned and kept to hard labor in iron on the public roads or other public works for and during the period of fourteen years and then be released.

And under the provisions of clause sixth Section II Regulation XV of 1803 direct that the prisoner,

7t. Salagrama Akkalatekmee,

be released on producing good and sufficient security for his future good behaviour and appearance when required.

(Sent following letter No. 123)

Read letter dated 1st Instant from the late Additional Judge of Circuit in the Centre Division, submitting case No. 9 Cudapa Calendar 2d Sessions 1825.

(Here enter No. 103)

The 1st 2d and 3d Puisne Judges of the Court of Zoujdaree Adaulut on a deliberate consideration of the circumstances of the case in evidence before them being of opinion that

31st March 1826.

the proof against the prisoner Ananta Sun: gum is sufficient to convict him of having been an accessary to homicide in prosecution of an unlawful act desire under the provisions of clause second Section II Regulation I of 1818 that their Law officers will declare by a second futwa to what specific punishment the prisoner would have been liable under the Mohummadan Law if he had been convicted by full legal evidence of the above crime.

Ordered that extract of these proceedings be translated and delivered to the Cazy ul Cozat and Mooftee of the Zoujdaree

&c.

Read return dated 15th Instant from the 3d Judge late on Circuit in the Western Division to precept dated the 9th Instant directing him to communicate the Court's opinion that the charge of false complaint in No. 55 of the Malabar Calendar 2d Session 1825 should not have been committed.

(Here enter No. 202)

Read return dated 25th Instant from the 1st Judge late on Circuit in the Northern Division to precept dated the 23d ultimo directing him to send up the record of proceedings in case No. 2. 2d Supplemental Calendar of the Zilla of Chicacole 2d Sessions 1825.

(Here enter No. 219)

31st March 1825

Read letter dated 25th Instant from the Acting Judge on Circuit in the Southern Division reporting the arrival of the Court of Circuit at Combecoonum.

(Here enter No. 214)

Read letter dated 23d Instant from the 2d Judge on Circuit in the Centre Division reporting that the Sessions at Bellaree were closed on the 23d Instant.

(Here enter No. 215)

Fe

At a Court of the Foujdaree Adalut

Present

Saturday 1st April 1820. J. A. Grant Esqr 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
George Gowan Esqr 3d Puisne Judge

Read letter dated 20th Ultimo from the 1st Judge late on Circuit in the Northern Division, reporting an oversight in his late recommendation of a mitigation of punishment in No. 11 Nellore Calendar 2d Sessions 1825, and proposing that the orders of the Foujdaree Adalut of the 7th Ultimo authorizing the mitigation may be cancelled.

(Here enter No. 212)

Under the circumstances stated in the foregoing communication, the Court cancel their orders of the 7th Ultimo; but they desire that the 1st Judge will use greater circumspection in future references to them under Sections III and IV Regulation I of 1825.

Ordered, that extracts of these proceedings be sent to the 1st Judge late on Circuit in the Northern Division for his information and guidance.

(Sent following Letter No. 1214)

Read letter dated 4th February and received 5th Ultimo from the late Additional Judge late

1st April 1826.

late on Circuit in the Centre Division recommending a mitigation of punishment in No. 52 Chingleput Calendar 2d Sessions 1825.

(Here enter No 162)

1 The Court of Sudder Dewanny having attentively considered the grounds upon which the late Additional Judge has recommended a commutation of the prescribed penalty to three years imprisonment with hard labor in case of the prisoners referred to in his report, see no cause to sanction the sentence proposed.

2 The Court remark, that the observations of the late Additional Judge upon this case have reference, rather to the ground of the conviction of the prisoner, than to those circumstances attending the offence, which might render the adjudication of the prescribed penalties inexpedient; the Court consider such remarks to be in a great degree irrelevant. In reports of this nature the Judge of Circuit should confine himself to a statement of the circumstances which tend to diminish the criminality of the act of the prisoners, and from the ground of a mitigation of punishment; and abstain from laying before the Sudder Dewanny any opinion upon the propriety of his judgment of conviction, which is a matter, for which the Judge on Circuit is himself responsible, and one upon which the Court [illegible]

1st April 1826.

Ordered, that Extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

(Sent following letter No 125)

Read letter, dated 27th Ultimo, from the 1st Judge of the Provincial Court of Circuit in the Centre Division, explaining his reason for forwarding a copy and not the original report of the Tahseeldar in the record of No. 82 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 220.)

4th April 1826

answers existing in lieu of keeping such communication distinct
as laid by a deputation from the Court in their circular orders of 27th
September 1824 ~~in the prosecution of the cases of~~
~~the said cases~~ the late Additional Judge will
be careful to avoid in future.

In consideration of the service
rendered by the witnesses Talagondapah Timmapah
Erragoola Poleenaidoo; and the inhabitants Ma-
dana Vencataramoodoo, Chakala Polegadoo and
Chakala Nagadoo in the apprehension of the
prisoners; the Court of Foujdaree Adawlut direct
that a sum of 200 Rupees be paid to ~~each of~~
these persons, as a reward for their meritorious conduct

Ordered, that extract of these pro-
ceedings be sent to the late Additional Judge
of Circuit in the Centre Division for his information
(Sent following letter No 127)

Read letter dated 17th February
last from the 1st Judge late on Circuit in the
Northern Division Submitting case No 31 Nellore
Calendar 2d Sessions 1825.
(Here enter No 123)

The 1st 2d and 3d Puisne Judges
having maturely considered the proceedings be-
fore the Judge on Circuit the futwa of the
Provincial Law Officer and the futwa of the
Cazee ul Cozzat and Mooftee of the Foujdaree
Adawlut confirm the said futwa of the Cazee
ul Cozzat and Mooftee aforesaid and
under the provisions of Section IV Regn

4th April 1826.

lation XV of 1803 adjudge the prisoner,
4th Purlela Ramdoo
to be imprisoned and transported to such
place or places beyond sea as the Governor
in Council shall appoint there to be imprisoned
and kept to hard labor in irons on the pub-
lic roads or other public works for and
during the period of his natural life —
And the Court direct that the
prisoners,
1st Goody Peeriah
2d Palla Polo Venkiah
3d Corracooty Lingiah and
5th Mahomed Causem
be set at liberty.
(Sent following letter No 128.)

F. A.

At a Court of the Foujdaree Adalut.

Present

Thursday
6th April 1826. F. A. Grant Esqre 1st Puisne Judge

James Cochrane Esqre 2d Puisne Judge

Read letter dated 7th July last from the 3d Judge late on Circuit in the Centre Division, submitting case No. 35 Cud. Dapak Calendar 2d Sessions A.D. 1824. (Reference No. 581 of 1825).

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee col Cozat and Mooftee of the Foujdaree Adalut being of opinion that the proof against the prisoners 4. Potendla Marooga doo and 8. Sooba buttoo is sufficient to convict them of the crime of robbery by open violence for which a penalty is specially denounced in Section IV Regulation XV of 1803 do under the authority vested in them by Clause first Section II Regulation I of 1818 adjudge the said prisoners

4. Potendla Marooga doo

8. Sooba buttoo

At a Court of the Toojdaree Adalut.

Present

Monday 10th April 1820. F. A. Grant Esqre 1st Puisne Judge
George Gowan Esqre 3d Puisne Judge

Read letter dated 20th January last from the 1st Judge late on Circuit in the Centre Division submitting case No 24 Cuddapa Calendar for Sessions 1825.

(Vide entry No 45)

The 1st & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Futwa of the Provincial Law Officer and the Futwa of the Cazee ool Cozat and Mooftee of the Toojdaree Adalut being of opinion that the proof against the prisoners 1st Shaik Boosmann, 2d Choodgunjd, 3d Doobookooty Nagana and 4th Mahomed Hosan, is sufficient to convict them of the crime of robbery by open violence for which a penalty is specially denounced in Section IV Regulation XV of 1803 do under the authority vested in them by clause first Section II Regulation I of 1818 adjudge the said prisoners,

1st Shaik Boosmann
2d Choodgunjd
3d Doobookooty Nagana &
4th Mahomed Hosan

to be imprisoned and kept to hard labor in irons on the public roads or other public works for

6th April 1820. to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of two years and then be released.

And the Court confirming the Futwa so far as respects the Prisoners 1st Doodacoola Gungalloogadoo 2d Bomm Sorbadoo 3d Sutteef Saib 5th Nula potala Salapetty 6th Conda Penchellloogadoo 7th Pickala Peddiagadoo, 9th Uwa Yellloogadoo and 11th Boma Yenecalla directed under the provisions of clause sixth Section II Regulation XV of 1813 that the said prisoners,

1st Doodacoola Gungalloogadoo
2d Bomm Sorbadoo,
3d Sutteef Saib
5th Nula potala Salapetty
6th Conda Penchellloogadoo
7th Pickala Peddiagadoo
9th Uwa Yellloogadoo and
11th Boma Yenecalla

be released on producing good and sufficient security for their future good behaviour and appearance when required.

(Sent following letter No 130)

15th April 1826.

Ordered, that a copy of the fore-going reports and extract of these proceedings be sent to the Secretary to Government in the Judicial Department for the purpose of being laid before the Governor in Council.

Ans.r 25th April No 766.
entered in No 8th May 1826

Rec.d the 26th inst.

(Sent following letter No 137.)

Ex.d

F. H.

At a Court of the Foujdaree Adawlut

Present,

Thursday 20th April 1826.

J. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
George Gowan Esqre 3d Puisne Judge

Read again letter, dated 10th December last from the 3d Judge on Circuit in the Southern Division, submitting case No 12 Salem Calendar 2d Sessions 1825.

(Here enter No 1001 of 1825)

Read the second futwa delivered in this case by the Cazee and Coozat and Mooftees of the Foujdaree Adawlut.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwas of the Cazee and Coozat and Mooftees of the Foujdaree Adawlut confirm the said futwas of the Cazee and Coozat and Mooftees aforesaid and under the sentence of Ashoorlut declared in the futwa adjudge the prisoner,

2d Palany, (husband of Maural,)

to be imprisoned and kept to hard labor in

26th April 1826.

in irons on the public roads or other public works for and during the period of two years and then be released.

And acquitting the prisoners

1st Palany, and

3d Rama Caundan,

direct that they be set at liberty.

(Sent following letter No

Read letter, dated 12th Instant from the 3d Judge on Circuit in the Northern Division, Reporting his intention to leave Nellore for Masulipatam on the 14th Instant.

(Here enter No 242)

Read letter, dated the 15th Instant from the 3d Judge of the Court of Circuit in the Centre Division Reporting the opening of the 2d Quarterly Sessions at Chittoor.

(Here enter No 243)

Read letter, dated 13th Instant from the 1st Judge on Circuit in the Western Division Reporting the completion of the Jail delivery at Mangalore.

(Here enter No 247)

Read letter dated 12th Instant from the 3d Judge on Circuit in the Northern Division with copy of Nellore Calendar for Sessions 1826.

(Here enter No 248)

J 11

At a Court of the Foujdaree Adalut

Present

Saturday
29th April 1826. J. A Grant Esqr. } Judges
James Cochrane Esqr. }

Read letter dated 7th February last from the Secretary to Government in the Judicial Department communicating the observations of the Governor in Council upon the report of the 3d Judge of the Court of Circuit in the Northern Division for the 4th quarterly Sessions of 1825.

(See enter No 103)

Ordered, that a copy of the foregoing letter be sent to the 3d Judge of the Court of Circuit in the Northern Division for his information

(Sent following letter No 142)

Ordered also, that a copy of para 2 of the foregoing letter, be transmitted to the Provincial Courts of Circuit, by precept, directing them to communicate the same to the several Criminal Judges, for their information and future guidance.

(Sent following precept No 143.)

Dr. Abstr. 16th Instr. No 273 entered in the 28th Ditto 1826.
Abstr. 26th April No 273 entered in the 8th May 1826.
Abstr. 9th May No 294 entered in the 22d Ditto 1826.
Abstr. 1st May No 231 entered in the 10th Ditto 1826.

Read letter dated the 7th Instant from the 1st Judge of the Court of Circuit in the Centre Division, submitting some remarks with reference to No 1 Chittoor Calendar

1st

22d April 1826. 1st Quarterly Sessions 1826, on the general neglect by the Heads of Police, of the rules directing the holding of an ingest.
(Here enter No 246.)

At a Court of the Magistrates, Stated

Present,

Monday 24th April 1826 T. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge

Read letter, dated 3d Instant, from the 3d Judge on Circuit in the Northern Division, recommending under the provisions of clause second Section II Regulation I of 1826 a mitigation of punishment in case No 12 Milne Calendar 1st Sessions 1826.

(Here enter No 237)

The Court having attentively considered the grounds upon which the 3d Judge has recommended a commutation of the prescribed penalty, to seven years' imprisonment with hard labor, in the case of the prisoners referred to in his report, Sanction the sentence proposed.

Ordered, that Extract of these proceedings be sent to the 3d Judge on Circuit in the Northern Division for his information.

(Sent following letter No 1444.

Read letter, dated 4th Instant, from the 3d Judge on Circuit in the Northern Division, recommending under the provisions of clause second Section III Regulation I of 1825 a mitigation of punishment in case No

24th April 1826.

No 21 Nellore Calendar 1st Sessions 1826

(Here enter No 236)

The Court having attentively considered the grounds upon which the 3d Judge had recommended a commutation of the prescribed penalty to seven years imprisonment with hard labor, are of opinion, that a penalty of five years imprisonment with hard labor will be sufficient for the offence of the prisoner, who appears to have committed the crime simply and his case differs therefore from that of the prisoner noticed in No 12. The Court accordingly direct that the foregoing sentence be carried into execution by the 3d Judge.

Ordered, that Extract of these proceedings be sent to the 3d Judge on Circuit in the Northern Division for his information and guidance.

Sent following letter No 1145

Read letter, dated 9th Instant, from the 3d Judge on Circuit in the Northern Division, recommending under the provisions of clause second Section III Regulation I of 1825, a mitigation of punishment in

24th April 1826

in case No 1 Nellore Calendar 1st Sessions 1826.

(Here enter No 238)

The Court having attentively considered the grounds upon which the 3d Judge had recommended in this case a commutation of the prescribed penalty to two years imprisonment with hard labor, sanction the sentence proposed.

Ordered, that extract of these proceedings be sent to the 3d Judge on Circuit in the Northern Division for his information.

Sent following letter No 1146

Extract

H

F. R.

At a Court of the Tongdarce Adalut.

Present.

Thursday
27th April 1826. J. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge

Read letter dated 2d Instant from the 1st Judge late on Circuit in the Centre Division submitting case No 82 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 194)

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee vol Cozzat and Mooftee of the Tongdarce Adalut vol Cozzat and the said futwa of the Cazee vol Cozzat conform the said futwa aforesaid and under the provisions and Mooftee aforesaid and under the provisions of Section VI Regulation I of 1825 direct that the prisoners,

1st Bucka Sattayyandoo
2d Koora soogandoo
3d Ambaty Chensoogandoo &
4th Mahomed Shabas

be released with an admonition.

(Sent following letter No 150.

Read letter dated 17th February last from the 1st Judge late on Circuit in the Centre Division submitting case No 74 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 140)

27th April 1826

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Justices of the Provincial Land Officer and the Justices of the Cazee wal Cozgat and Mooftee of the Zillah Court confirm the said Justices of the Caja wal Cozgat and Mooftee aforesaid and acquitting the prisoners,

1st Gunda Rashoolee,
3d Immaum
4th Peadly Sinkoloo
5th Hoojeea Sinkaroo &
6th Immaum

direct that they be released with an admonition.

(Sent following letter No 151)

Read again petition
presented by Amparoyne Letumnat Gillad
Nellore in behalf of himself and two others
who were joint respondent with him in an
appeal to the Northern Provincial Court res-
pecting the right to the Shotrium Village of
Talapoonpandoo which was decreed against them
and a special appeal refused.

(Here enter Misc: Pet: No 8 of 1826)

In No 11 of 1822 the same three
persons presented a petition declaring their
ability to prove that the documents upon which
the decree of the Provincial Court had proceeded
were forgeries; and they were in consequence dir-

27th April 1826.

-ected to bring an action before the Magistrate
against the persons who they supposed had
forged them; in order that if the forgery should
be established and be found to affect the
grounds of the decree a review of judgment
might be obtained.

It is now stated that they did
bring the charge before the Magistrate -
that it was examined by one of his Assistants
and by him handed up to the Criminal Judge,
before whom 4 of the documents were estab-
-blished to be forged, and yet the prisoners
ordered to be released - that Petitioners ap-
-plied for and were promised but never
received a copy of the Criminal Courts orders
and the depositions - that the Court Delegate
prevented their applying again - that they
made a representation to the Judge on the
next Circuit - who fell sick and left the
station - that they themselves afterwards fell
sick - and so the business remains in statu
quo.-

They pray this Court to call for
sundry documents and do them justice.

The Court see no reason why
the course before recommended to the Petit-
-tioners should be departed from. They should
present a petition to the Judge of Nellore
praying for the papers required - and they
should

29th April 1826. should point out the Deloyets who interfered with them before; when, if they prove such presumptuous and oppressive conduct on the part of the Deloyets, the Judge will no doubt immediately dismiss them.

Ordered that an Extract of these proceedings be furnished to the Petitioner on his application.

Dckt.

At a Court of the Foujdaree Adalat.

Present,

Wednesday 3d May 1826 — C. A. Grant Esqre 1st Puisne Judge
William Oliver Esqre 2d Puisne Judge

Read letter, dated 25th March last, from the 1st Judge on Circuit in the Western Division, submitting calendar No 29 Canara Calendar 1st Sessions 1826. (Here enter No 218)

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officers and the futwa of the Cazee and Cozat and Mooftees of the Foujdaree Adalut confirm the said futwa of the Cazee and Cozat and Mooftees aforesaid and under the provisions of Section XVII Regulation VIII of 1802 adjudge the prisoner,

Coombeh,

to suffer death, by being hanged at the usual time and place of execution

Sent following Letter No 153.

Dckt.

At a Court of the Zoujdaree Adalut.

Present

Monday 5th May 1820. T.A. Grant Esqr 1st Puisne Judge

James Cochrane Esqr 2d Puisne Judge

William Oliver Esqr 3 Puisne Judge

Read letter dated 1st Instno from the 1st Judge on Circuit in the Northern Division submitting case No 1 1st Supplemental Calendar of the Zillah of Chicacole for the 2d Sessions 1825.

(Vide enter No 190)

The 1st 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the fatwa of the Provincial Law Officer and the fatwa of the Cazee ool Cozat and Mooftee of the Zoujdaree Adalut confirm the said fatwa of the Cazee ool Cozat & Mooftees aforesaid & under the provisions of Clause sixth Section II Regulation XV of 1818 direct that the prisoners viz

1st Broondaroo

2d Pittaiyee

3d Govendadoo and

4th Donbaiyadoo

be released on producing good and sufficient security for their future good behaviour and appearance when required.

(Sent following letter No 154)

The Court of Zoujdaree Adalut have not concurred with the 1st Judge, in his opinion

of the guilt of the prisoners, because they have not been able to arrive at the same conclusion with himself; that the contradictions in the evidence of the witnesses for the prosecution, are insufficient to shake their credit. On the contrary, it appears to them, that the variations are so important and material, that their testimony can not be admitted to establish more than suspicion; and the Court have therefore directed the release of the prisoners on security.

2 In recording this sentence, the Court deem it proper at the same time to point out to the 1st Judge, the defective manner in which the proceedings before the Court of Circuit were conducted. The 1st prosecutor stated, that he received a severe wound on his head from a sword, and nothing could be more plainly necessary than a confirmation of this fact; the 1st Judge however did not, it appears even resort to the obvious measure of calling upon the witness to shew the mark of the alleged wound. The same defect is observable in his examination of the 2d prosecutor, who also deposed to a wound received on his left hand.

3 The Court notice with extreme regret, the serious error into which the 1st Judge has fallen, in refusing to hear the evidence called by the prisoners in

in their defence, on the ground that it would not be admitted as standing alone. They deem it unnecessary to comment upon this opinion, which appears to have taken its rise, in a confused apprehension on the part of the 1st Judge, of the rule of the Mohummedan law of Evidence, with which the Judges of Circuit have no concern, that the testimony of a single witness is not sufficient for conviction. In future the Court direct that the 1st Judge do invariably examine all evidence addduced for the defence, whether it stands alone or not.

4 The Court also consider the proceedings of the Assistant Criminal Judge to have been faulty. This officer neglected to ascertain by a personal examination, whether the declarations of the prosecutors respecting the wounds inflicted upon them, were borne out by the appearance of their persons; and the few questions which were put to the witnesses, and the total absence of any thing like cross examination, which might elicit the truth, and lead to the discovery of further evidence, are, in the opinion of the Court inconsistent with the duty required from the committing officer

May 1826 officer of carefully sifting the evidence in cases brought before him.

The Court direct that the foregoing remarks be communicated to the Assistant Criminal Judge in the Zillah of Chicacole.

Ordered that extract of these proceedings be sent to the 1st Judge on Circuit in the Northern Division for his information and guidance.

(Sent following letter No 155.

Read Return, dated 26th Ultimo from the Provincial Court of Circuit in the Centre Division to precept dated 22d March last directing them to circulate para 2 of the Government letter of 7th February last authorizing Criminal Judges to make inconsiderable repairs of the Zillah at their discretion.

(Here enter No 273)

Read letter, dated 22d Ultimo from the 1st Judge on Circuit in the Western Division Reporting the opening of the Sessions at Calicut on the 22d Instant.

(Here enter No 265)

Read letter, dated 29th Ultimo from the 3d Judge on Circuit in the Northern Division Reporting his arrival at Masulipatam.

(Here enter No 274)

Read letter, dated 24th Ultimo from the 2d Judge on Circuit in the Carnatic Division - Reporting his arrival at Chengleput on 22d Ultimo.

(Here enter No 262)

Read letter, dated 25th Ultimo from the Secretary to Government in the Judicial Department Acknowledging the receipt of the reports of the 1st Judge Northern Division & 3d Judge Western Division on 2d Sessions 1825 with the Courts proceedings thereon

(Here enter No 266)

J. C.

8th May 1826.

Read letter dated 9th Ultimo from the Acting Judge on Circuit in the Southern Division with copy of Combercurnem Calendar for the 1st Sessions 1826.

(Here enter No 263)

Read letter dated 1st Instant from the First Judge on Circuit in the Western Division with copy of Canara Calendar 1st Sessions 1826.

(Here enter No 270)

F. C.

At a Court of the Foujdaree Adalut.

Present

Wednesday,
5th May, 1826. F. A Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read letter dated 7th March
last from the Secretary to Government
in the Judicial Department, commu-
nicating the sentiments of Government,
upon the report of the 1st Judge of the
Provincial Court of Circuit in the Centre
Division for the 1st Sessions 1826.

(Here enter No. 173)

Ordered, that a copy of the
foregoing letter be sent to the 1st Judge
of the Provincial Court of Circuit in the
Centre Division for his information.-

(Sent following letter No. 160.)

Read letter dated 2d Instant and
from the 1st Judge on Circuit in the Western Divis-
ion B copy of Seringapatam Calendar 1st Session
1826.

(Here enter No. 277)

At a Court of the Fouzdaree Adalut

Present

Thursday 11th May 1826.

T. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
William Oliver Esqr. 3d Puisne Judge

Read letter dated 24th February last from the 1st Judge late on Circuit in the Centre Division submitting case No. 76 Cuddapa Calendar 1st Sessions 1825.

(Vide entry No. 279)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Futwa of the Provincial Law Officer and the Futwa of the Fouzdaree Cazee ool Cozat and Mooftee of the Fouzdaree Adalut confirm the said Futwa of the Cazee ool Cozat and Mooftee aforesaid and under the provisions of clause sixth Section II Regulation XV of 1803 direct that the prisoners

1st Bestah Soobadoo
2d Chakala Cheegadoo
3d Cosoo Mullapah
4th Gollah Chennanah and
5th Bestah Setchegadoo

be released on producing good and sufficient security for their future good behaviour and appearance when required.

(Sent following letter No 162.)

Read letter dated 22d Octo

last from the 1st Judge late on Circuit in

11th May 1826 the Centre Division submitting case No 36 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 108 of 1825)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Cozat and Mooftees of the Foujdaree Adalut confirm the said futwa of the Cazee ool Cozat and Mooftees aforesaid and acquitting the prisoners,

1st Toracu Shemshir Khan
3d Mandega Guddum Goowaroo
6th Doodacoola Kuddy and
22d Bogum Ahtchegadoo

direct that they be set at liberty.

(Sent following letter No 163.)

Thursday 18th May 1826

At a Court of the Foujdaree Adalut,

Present,

James Cochrane Esquire, 2d Puisne Judge.
William Oliver Esquire, 3d Puisne Judge.

Read letter, dated 13th March last from the 1st Judge late on Circuit in the Centre Division, submitting case No 98 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 195)

The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Cozat and Mooftees of the Foujdaree Adalut, confirm the said futwa of the Cazee ool Cozat and Mooftees aforesaid, and acquitting the prisoners,

1st Ramoodoo,
2d Pundety Timmoogandoo,
3d Pundety Vencatah,
5th Moohmmy gandoo,
6th Chinna Nagadoo,
7th Chinna Chennoogandoo,
8th Chillumcoor Timmoogandoo,
9th Nutty Reda Naugadoo,
11th Boya Venkatuppah,
12th Mooddanoor Reda Reegandoo,
13th Moppy Gungadoo,
14th Narsimmadoo, and
15th Moppy Naguppah,

direc

Fl6"

18th May 1826.

direct that they be set at liberty.-

/sent following letter No 165./

Read letter, dated the 16th March last from the First Judge late on Circuit in the Centre Division, Submitting Case No 119 Cuddapa Calendar 1st Sessions 1825.-

/Vide enter No 206/

The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coozat and Mooftee of the Poudicherry Zillah confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid; but in consideration of the long period during which they have been in confinement, the Court direct, under the latitude given by a futwa of Bokobut that the prisoners,

1st Mala Chinna Pologadoo,
2d Yumbarapoo Chinnegadoo,
3d Yala Nukadoo,
4th Poda Pologadoo,
5th Beedoogadoo,
6th Muray Boocheegadoo,
7th Doodakoola Sunjeevoo,
8th Toty Doogadoo,
9th Mala Cunnayapegadoo,
10th Mooga Goonamadoo,
11th Shaik Emaum,
and
12th Madan,

Fl6"

18th May 1826.

be released with an admonition.-

/sent following letter No 166./

At a Court of the Toujdaree Adalut.

Present.

Monday 22d May, 1826 J. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
William Oliver Esqr. 3d Puisne Judge

Read letter dated 21st Ultimo from the 2d Judge on Circuit in the Centre Division submitting Cudapa Calendar for the 1st Sessions 1826.

(Here enter No. 207)

Also read letter from the Provincial Court of Circuit in the Centre Division dated 14th Ultimo submitting extract from the proceedings of the Provincial Court of that date.

(Here enter No. 191.)

The 2d Judge states his intention of referring No. 8 of the Calendar, under the provisions of the latter part of section VIII Regulation I of 1825, the conviction of the prisoner (a Mahommedan) resting exclusively upon the evidence of the Hindoo witnesses, who attested his confession before the Criminal Judge; and whose testimony is objected to upon the ground of their religion.

2 In No. 13 of the Calendar a case of the same nature with No. 8, the 2d Judge has passed sentence upon the 1st prisoner upon evidence of precisely the same description with that in No. 8, but the prisoner being a Hindoo, the evidence was sufficient for his conviction under

+ Vide Toujdaree Decree of 29th March 1826.

under the Mohummedan Law.

3 In order to avoid a like anomalous proceeding in future, the Court direct that the Criminal Judge do invariably cause the confessions of prisoners before him, to be attested by witnesses of the same religion with the parties confessing.

4 As similar instances have come before the Court of Zoojoane Beatah, they resolve to make the foregoing instructions Circular.

5 The Court deem it proper to call the attention of the Magistrate of Cuddapa to the remarks recorded in No. 24, that "In this and several cases of the Calendar the attesting witnesses were illiterate people, who are unable either to write or read or even to make a mark which they can after a time recognize". The Magistrate with these directions to the Heads of Police to remedy this evil, which, it is obvious must render the power given to these officers to receive confessions nugatory; and he will enjoin them to have confessions before them as often as practicable attested by witnesses removed from the class of persons pointed out in the remarks of the 2d Judge.

6. Referring to No. 6 of the Supplemental Calendar, which the 2d Judge has resolved to refer to the Court of Zoojoane Beatah, upon the ground, that "question is to be made as

"as to the effect of the former decision" though passed by an incompetent Court. The Commitment, that the prisoners in this number would appear to have been apprehended on the 5th August 1823 charged with house breaking and robbery to the extent of 710 Rupees, that on this charge the Criminal Judge passed sentence upon them, which the 2d Judge directed him to revise under date 17th April 1824; and to refer to the Provincial Court of Circuit for their instructions thereon.

7 These instructions do not appear to have been given until the 20th June 1825 when, the 2d Judge states in his proceedings under date the 13th February last, upon a petition presented by the Brother of the 3d Prisoner praying his release, that orders were issued to the Criminal Judge for the commitment of these prisoners; and the case was accordingly brought before the Court of Circuit in No. 8 Supplemental Calendar 2d Sessions 1825.

8 The late Additional Judge on Circuit however deemed the orders of the Provincial Court of Circuit of 21st June 1825, as appears from his entry in No. 8 of the Supplemental Calendar 2d Sessions 1825, not to have warranted the commitment, and declining to try the prisoners, directed the Criminal Judge to apply for further instructions from the Provincial Court of Circuit.

22d May 1826. 9

On the 3d of February last the Provincial Court of Circuit, it would seem from the return of the Criminal Judge of Cuddapa forwarded with that Courts letter of the 9th Ultimo, directed the unconditional release of the prisoners, but the Criminal Judge deferred execution of those orders, as the 2d Judge then on Circuit, under the construction put by him on the Provincial Courts order of the 20th June 1825. had viewed the case as regularly committed, and had proceeded to the trial on the 16th Febra-ary; and had finally resolved to refer the record for the consideration of the Foujdaree Adalut.

10 As the order for the release was subsequent to the order for the committal, the former order should have been regarded as cancelling the latter - and it was irregular in the Judge on Circuit to proceed to a new trial.

11 As it would appear also, that the Prisoners in this case must have been sentenced before the end of the year 1823, supposing that their sentence was the longest term of imprisonment which a Criminal Judge can inflict under the Regulations, it must have expired before this. The Court therefore, on the principle on which their orders in Para 8 of the letter to the Judges of the Centre Provincial Court 8th February last were founded, direct that the Prisoners be immediately released - and the 2d Judge on Circuit informed, that the reference of the trial is unnecessary.

2/ F.R.

22d May 1826

Ordered that an extract of these proceedings be sent to the 2d Judge on Circuit in the Centre Division by precept, directing him to communicate Para 5 to the Magistrate of Cuddapa for his information and guidance.

(Sent following precept No 167)

Ordered also, that paragraphs 6. 7. 8. 9. 10. & 11 of these proceedings be sent to the Provincial Court of Circuit in the Centre Division by precept, directing them to issue immediate orders for the release of the prisoners tried in No 6 Cuddapa Supplemental Calendar for Sessions 1825.

(Sent following precept No 168)

Ordered also, that Paras 1. 2 & 3. of these proceedings be sent to the 4 Provincial Courts of Circuit by precept, directing them to communicate the same to the several Criminal Judges within their jurisdictions for their information and future guidance

(Sent following precept No 169)

Read return, dated 8th Instant, from the Provincial Court of Circuit in the Centre Division, to precept dated 28d February last communicating the remarks of the Foujdaree Adalut upon his report of 1st Sessions 1823.-

(Here enter No 288)

Read return, dated 9th Instant from

22d May 1826. from the Judges of the Provincial Court of Circuit in the Southern Division, to precept dated 22d ultimo directing them to circulate para 2 of the Government letter of 7th February last authorizing Criminal Judges to make inconsiderable repairs of the Jail at their discretion.

(Here enter No 294)

Read letter, dated 8th Instant, from the 3d Judge of the Court of Circuit in the Northern Division, with returned warrant for execution of a prisoner in case No 13 Masulipatam Calendar 1st Quarterly Sessions 1826.

(Here enter No 296.)

Read letter, dated 16th Instant, from the Acting Judge on Circuit in the Southern Division, reporting the arrival of the Court of Circuit at Salem.

(Here enter No 305)

F. H.

At a Court of the Foujdaree Adalut

Present,

Friday 26th May 1826. F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges

Read letter, dated 18th March last, from the late Additional Judge late on Circuit in the Centre Division, submitting case No 14 Bellary Calendar 2d Sessions 1825.

(Here enter No 203)

The 1st 2d and 3d Puisne Judges, having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Adalut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and under the provisions of Clause sixth Section II Regulation XV of 1803 direct, that the prisoners

1st Murreedinngowdah,
2d Koopanee,
3d Veerapaiah and
4th Nagaragoo Lyigah,

be released, on producing good and sufficient

sufficient security for their future good behaviour and appearance when required.

And acquitting the prisoner
H. Nursee yah
direct that he be set at liberty

Sent following letter No 175

The Court of Foujdaree Adalut,

in considering the record of this trial, have been induced to give more weight, to the discrepancies observable in the evidence for the prosecution, than had been attached to them by the late Additional Judge on Circuit. They have also thrown out of their consideration, the presumption of guilt, which the late additional Judge derives from the confession of one prisoner against his supposed accomplices, as it is a settled rule, that the confession of a party, is only evidence against himself, and not against others. Upon these grounds chiefly, and in consequence of the defects, which the Court proceed to notice, they have not concurred with the 2d Judge in his conviction of the prisoners, but consider them, to be all that is warranted by the evidence

(a. de Jan: 26th this letter)

on record.

2 The Court remark, that there is only the evidence of a single witness, the 7th Neeladara, to show, that the 1st & 2d Prosecutors mentioned the names of the persons who apprehended him, before the prisoners were taken into custody. It appears to the Court of Foujdaree Adalut of the highest importance, that this point, should in all cases undergo a careful investigation; for, the credit due to the declaration of a Prosecutor at the trial, respecting his recognition of the prisoners at the time of the commission of the offence, a matter of so much moment, must in a great degree depend upon it; and the omission of the late additional Judge to clear up this point, by a cross examination of this witness, is a serious defect in his proceedings.

3 This omission, likewise deprives the confessions of the prisoners of any validity, as the Court are disposed to place little or no confidence in any confession taken by a native officer of police, from a person apprehended at such officer's own suggestion, and upon suspicions in the breast of the officer himself.

4 It is also to be regretted, that no attempt was made by the late additional Judge, to ascertain, where the handkerchief identified by the 1st & 2d witnesses, as the property of

25th May 1826

of the 1st prisoner, was found, ~~from the above information on the bench~~, indeed there is nothing in the record to corroborate the testimony of the prosecutor and their witnesses, to the fact, that they recognized the prisoners at the time of the affrait.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information and guidance.

(Sent following letter No 176)

Read letter dated 9th March last from the late Additional Judge late on Circuit in the Centre Division, submitting case No 16 Bellary Calendar 2d Sessions 1825.

(Here enter No 178)

The 1st 2d and 3d Pundit Judges, having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coogat and Mooftee of the Zillah Court, confirm the said futwa of the Cazee ool Coogat and Mooftees aforesaid; and under the provisions of clause 5th Section II Regulation XV of 1803 direct that the prisoner,

1st Nagadoo

be released, on producing good and sufficient security for his future good behaviour and appearance when required. And acquitting the prisoners,

F. C.

25th May 1826.

2d Gungaloogadoo &

3d Paupeegaudoo

direct that they be set at liberty.

(Sent following letter No 177)

The late Additional Judge on Circuit, in referring this trial, has recorded his opinion, that the 1st Prisoner is fully convicted of the charge laid against him, mainly resting this opinion, it would appear, upon the grounds of it's having been satisfactorily established by the evidence, that the weapon, with which the murder was committed, was the property of the prisoner; and to the strong corroboration thereby given to his confession before the officer of Police.

The Court however observe, that upon this point, the evidence rather goes to prove, that the dagger with which the wounds were inflicted, belonged to the 1st Prisoner's father, and it is not shewn, where this person was at the time of the murder. Moreover the Court are unable to reconcile the contradictions in the testimony of the prosecutor: from his depositions before the Police and the Criminal Judge, it would appear, that the deceased was sleeping at the time of the murder, in the yard of his the prosecutor's house; but from his evidence on the trial, he leaves the Court to suppose that he was sleeping in a separate house further, the inconsistency between the evidence of

of Nagereddee and Chinna Appagaudoo, in relation to the delivery by the 1st Prisoner of the handle of the dagger, has had great weight with the Court: the one witness declaring that the other was present at the transaction, and the other witness affirming, that he knows not, in whose house the handle of the weapon was found; nor, was he even in the village, when the discovery took place. The circumstantial evidence being thus contra: dictory, the proof derivable from the prisoner's alleged confession, is necessarily greatly weakened; and the Court upon the most mature consideration of the case, could not concur with the late Additional Judge in his view of the guilt of the 1st Prisoner: and they have in consequence ordered his release upon security.

Having taken this view of the evidence against the 1st Prisoner, the proof of criminality in respect to the 2d & 3d Prisoners, fails; and there appears no ground therefore upon which the Court could accede to the late Additional Judge's recommendation, that the prisoners should not be released unconditionally.

Ordered, that a transcript of the proceedings be sent to the late additional Judge late on Circuit in the Centre Division for his information and guidance.

(Sent following letter No 178)

Read letter dated 24th March last from the 1st Judge on Circuit in the Centre Division, submitting case No 124 Cuddapa Calendar 1st Sessions 1825.

(Here enter No 217)

The 1st 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the fatwa of the Provincial Law Officer and the fatwa of the Cazee vol Cozat and Mooftees of the Sudr: Adawlut dated, confirm the said fatwa of the Cazee vol Cozat and Mooftees aforesaid, and acquitting the prisoners,

1st "Madega Goorovadoo"
2d Coommara poolegadoo
3d Madega Unkadoo
4th Madega Vencategadoo
5th Talary Mulleyadoo
6th Chakala Nagadoo
7th Talary Cadigadoo
8th Lingavoogadoo
9th Golla Ramegadoo
10th Coddoomoolaory Ramegadoo &
11th Mala Nayadoo"

direct that they be set at liberty.

(Sent following letter No 179.)

At a Court of the Foujdaree Adalut.

Present

Monday 29th May 1826. J. A Grant Esqre 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read again the following letters

From the Provincial Court in the Centre Division dated 10th February 1826.

(Here enter No 126)

From Do — Do 29th December 1825.

(Here enter No 2)

From the 1st Judge of Do Do 13th January 1826.

(Here enter No 26)

From the Provincial Court Centre Division dated 16th January 1826.

(Here enter No 30)

It appears from the foregoing papers that the 1st Judge of the Provincial Court in the Centre Division who performed the 1st Circuit for 1825, for want of time or some other reason, omitted to examine the Calendar laid before him by the Criminal Court at Cuddapa under Section VI Regulation VI of 1822 till after the conclusion of his circuit; when, on the 19th July 1825, he issued a precept to the Acting Criminal Judge of Cuddapa pronouncing the sentences in 27 cases and on

29th May 1826.

on 134 prisoners illegal and calling for explanation to be submitted to the Collective Court. The Acting Criminal Judge of Cuddapa who received this precept was Mr Lascelles - the Acting Criminal Judge who passed sentences was Mr Waters who at the date when the precept was received was Acting Judge of Chittoor - The latter gentleman, it appears, received information of this reference and applied to Mr Lascelles to have the precept & Calendar sent to him; at the same time apprizing the 1st Judge publickly that he had done so and notifying this to Mr Lascelles; Mr Lascelles complied with this application. which proceeding of his the 1st Judge denominates an "irregularity and contempt." The latter of these words is a strong term; and in the present instance ill-judged and indecent. The utmost that can be said against the proceeding is that it was not strictly regular: and this small deviation from regularity consisted in forwarding the packet applied for without knowing that the 1st Judge had acquiesced in Mr Waters's application, which was out of ordinary course.

2

By these means the Calendar did not return to the Provincial Court till the 24th September following when in obedience to a precept to that effect, it was returned by the Acting Judge of Chittoor together with

29th May 1826.

whole of the proceedings without any substantial explanation; and none has since been called for; tho' pursuant to an order issued by the 1st Judge, apparently without the knowledge of his Colleague, after he had brought the Calendar before the Collective Court, and which was therefore highly irregular and improper the proceedings have been revised by the present Criminal Judge of Cuddapa.

3

The illegality imputed to the proceedings in the Calendar is that the cases sentenced by the Criminal Judge were beyond his jurisdiction - being cases of robbery either by open violence or attended with some of the specified aggravation. On laying the Calendar before the Collective Court the 1st Judge proposed that orders should be issued to quash the proceedings and release all the prisoners excepting only such as were old offenders. This proposition was opposed by the 2d Judge and hereupon commenced the controversy which has ended in the reference before the Court, after being pursued in a series of conflicting minutes for the space of three months - at the end of which period the 1st Judge, being unable to convince or meet his colleague, insisted on the right of a casting vote under Regulation XV of 1802. The 2d Judge, who then acted for the Register, demurred to issue the orders - and this Court, on receipt of the earliest

earliest in date of the letters above entered, directed further proceedings to be suspended

4 The Court have diligently perused and considered the whole of the papers before them and it appears to them that the questions at issue are the following:-

1 Whether the Collective Court of Circuit, on a reference from the Judge on Circuit under Section XXIII Regulation X of 1816 of cases in which a Criminal Judge had exceeded his jurisdiction, have power to quash the Proceedings of the Criminal Judge and to order the release of the prisoners sentenced, either on the ground of such excess of jurisdiction or on the ground that the prisoners were not put on their defence.

2 Whether, when only two Judges are present, an order to the above effect must be issued on the casting voice of the Senior in opposition to the opinion of the Junior.

5 Under the first head the Court observe that excess of jurisdiction is not one of the grounds of reference specified in Section XXIII Regulation X of 1816; nevertheless the Court think that under a sound and liberal construction of that Section the Judge on Circuit might refer such cases or any others in which error was apparent and remediable - the spirit of the enactment being to obtain correction of error where practicable.

6 The power of the Collect

of Circuit on references under Section XXIII Regulation X of 1816 is discretionary; but its use must of course be consistent with the Regulations; so that the first question may be more precisely stated thus - Is it consistent with the Regulations to quash proceedings of a Criminal Judge and release the prisoners sentenced by him on the ground that he exceeded his jurisdiction in trying them or did not hear their defence.

7 The Court has no hesitation in deciding this question in the negative. The fact that a Judge has passed sentence in a case which he had not lawful power to try has nothing to do with the guilt or innocence of the accused: which is the only circumstance on which the Regulations make their release or punishment to depend: and the fact that prisoners have been sentenced without being heard in their defence calls for further trial not for their release. because the ex parte examination that has been taken is no trial at all under the Regulations and the accused if released would be released without trial which is contrary to the Regulations - It is consistent with the Regulations to quash the proceedings for other reason but not to release the prisoners but leave them regularly on their trial which they have not yet had. This Court however has in several cases

allow

29th May 1826

allowed a prisoner the benefit of a trial before an incompetent tribunal the sentence of which was lighter than the regular tribunal would have awarded, both as being in favor of the prisoner and saving a 2d trial which is repugnant to the humane spirit of British Indian Law: and they are disposed to maintain the precedent; but this only in cases in which the trial has been complete and regular in every other respect.- With regard to the cases in the Cuddapa Calendar the Court see but too much reason to deplore and censure the irregularity of the late Acting Criminal Judges proceedings - He has not only passed sentence in cases in which the Court of Circuit could not have passed it - and passed sentences in several cases of disproportioned severity for ought that appears on his Calendar to justify them; but the 1st Judge declares after reference to all the original proceedings on the trial and the 2d Judge confirms his declaration that "there is no document or notice" to shew that any "of the prisoners were put upon their defence, or "single witness called or any suggestion made "to them at the time to such a tendency."

8 The Judge finds it difficult to believe that an educated English Gentleman a judicial officer of Mr Waters's experience filling the office of a Judge could be guilty of such an error

29th May 1826

long imprisonment with hard labor in iron and stripes without hearing the defence of the accused - and if they could believe it they would pass upon the proceeding the heaviest censure and reprobation. It remains for Mr Waters to explain the appearance of such an anamaly in his proceedings - and the Judges desire that he may be immediately called upon to do so and his explanation transmitted without any delay for which purpose the Calendar will be returned to him. The Court will defer till his explanation is received, their directions for the final disposal of these cases.

Mr Waters must state specifically if he can, regarding every case noticed by the 1st Judge and every other case in the same Calendar in which the sentence has not yet expired, whether the prisoners defence was heard and whether he confessed and before whom and if before the Police whether he confirmed that confession before the Criminal Judge.

With respect to the 2d question

9

tion the Court are of opinion that under Section II Regulation XV of 1802 it was the regular course for the Register to have forwarded the order proposed by the 1st Judge.

As however the 2d Judge thought

10

the order improper, and the case was one of importance the Court think that he would have

29th May, 1826.

have done right to have appealed immedi:
:ately to the Longparee Idalut - And the
Judges have not failed to observe that such
an appeal was offered to him by the Senior
Judge but the offer was not accepted
by Mr Newnham.

Ordered, that extract of these
proceedings be sent to the Judges of the Provin:
:cial Court of Circuit in the Centre Division
by precept returnable in 15 days from and
after its receipt.

(Sent following precepts Nº 185)

Read letter dated 20th March
last from the Pt Judge Cuttack on Circuit in
the Centre Division submitting cases Nos 116
and 117 Cuttack Calendar Pt Sessions 1825.

(Here enter Nº 216)

Before the Court pass sentence
in this trial, they desire to have before them, the
original record of the proceedings held thereon
by the Court of Circuit - They direct therefore,
that the Provincial Court of Circuit, do, upon
the receipt of these orders, send up the original
proceedings without delay. Should the record
not be in the custody of the Provincial Court,
the Court further direct, that the Pt Judge
be called upon to forward the same
immediately to the Provincial Court of
Circuit, for the purpose of transmission to
the Longparee Idalut.

Ordered, that extract of these
proceedings be sent to the Provincial Court
of Circuit in the Centre Division by precept,
returnable in 8 days from and after its
receipt.

(Sent following precept Nº 186)

Read letter dated 23d Septr
last from the Criminal Judge in
the Zilla of Cuttack transmitting by de:
:sire of his Assistant the late Acting
Criminal Judge copies of certain pre:
:cepts from the Pt Judge late on Circuit
and of his returns thereto.

(Here enter Nº 811)

Read letter dated 22d Instant
from the Pt Judge on Circuit in the Western
Division with returned warrant for execu
:tion of a prisoner in case Nº 29 Cuttack
Calendar Pt Sessions 1826.

(Here enter Nº 315)

J. H.

29th May 1826

Mess.rs ... 1st June Nº 373
entered in the ... 8th do. 1826.
Letter Mess.rs ... 16th June Nº 361
entered in the ... 22d do. 1826
Court

Mr. ... 6th June Nº 333.
entered in Bk ... 21st do. 1826

Mess.rs ... 19th June Nº 367
entered in the ... 22d do. 1826.
Letter Mess.rs ... 21st do. Nº 370.
entered in the ... 28th do. 1826.
Court

At a Court of the Fouzdaree Udalut.

Present,

Thursday, 1st June, 1826. J. A. Grant Esqre. } Judges.
James Cochrane Esqre.
William Oliver Esqre.

Read again petition presented by Indracoory Pera Reddy and Cabree Condapah of the Zillah of Nellore.

(Here enter F. U. Misc. Pet. No. 10 of 1826)

It appears that these Petitioners suffered highway robbery, and suspecting one of their servants to be privy to it had him brought before an Assistant of Police, before whom he confessed his own concern in the crime and inculpated two persons Daiee Reddy and Mungee Reddy, brothers and Mocaddams, as the Principals. These were accordingly summoned, and Mungee Reddy appeared and was discharged. Daiee Reddy absconded. Four persons were sent up to the Magistrate who again ordered Daiee Reddy to be apprehended, but without effect. The four persons were committed for trial before

before the Court of Circuit, and tried. and a portion of the property stolen, which had been delivered up, was paid by the Court to the Petitioner. The Petitioner prayed the Circuit Court to order the apprehension of Dasee Reddy - the Circuit Court directed them to prefer a charge against Mungee Reddy and Dasee Reddy before the Magistrate: they accordingly petitioned him - but he refused to receive their petition, thro' the influence, Petitioner's state, of Mungeereddy with his public Servants. Petitioner therefore apply to this Court for redress against Dasee Reddy from whom they seek to recover the stolen property.

In all this the Court see nothing that requires or admits their interference, and nothing but what might have been and probably was perfectly regular, under actual circumstances. This Court cannot lend itself to suspect irregularity in the proceedings of subordinate authorities on mere loose indefinite accounts like the foregoing - and least of all to believe corruption in a Magistrate's

public Servants, or their undue influence over their head, on mere accusation without proof.

Ordered, that extract of these proceedings be furnished to the petitioners on their application.

Read again petition presented by Ponnayee of the Zilla of Combaconum

(Here enter C.C. Misc. Pet. No 110 of 1826.)

The Petitioner merely prays the Court to remit one of its own sentences and pardon the prisoner who is now suffering it. The Court have no power to do this and order the Petitioner to be informed so.

C.M. Rs 20

F. R.

At a Court of the Foujdaree Adawlut.

Present.

Saturday 3d June 1826. J. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
William Oliver Esqr. 3d Puisne Judge

Read letter dated 1st March last from the late Additional Judge late on Circuit in the Centre Division, submitting case No. 32 Cuddapa Calendar 2d Sessions 1825.

(Here enter No. 151)

The 1st 2d and 3d Puisne Judges, having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law officer, and the futwa of the Cazee ool Cozat and Mooftee of the Foujdaree Adawlut, confirm the said futwa of the Cazee ool Cozat and Mooftee aforesaid; and under the provisions of Section IV Regulation XV of 1803, adjudge the prisoners,

1st "Moyana Kalos Roosaligaud" and
2d "Moyana Kalos Chinnadoo"

to receive thirty stripes with a rattan, and to be imprisoned and kept to hard labor in irons on the public roads or other public works, for and during the period of fourteen years and then be released. And acquitting

the

3d June 1826. the prisoner,

3d; Pagada Gungadoo

direct, that he be set at liberty.

(Sent following letter №190)

The Court have acquitted the 3d prisoner in this case, because it has appeared to them, that the direct evidence against him, wants that support which it has received in the case of the 1st and 2d prisoners. These prisoners distinctly acknowledged before the Acting Criminal Judge, their possession of the stolen property: whilst the 3d Prisoner denied all knowledge of it; and there is nothing therefore, either, to corroborate his alleged confession before the Rajah of Pungannoor, or, the prosecutors testimony respecting his recognition of him as one of the persons concerned in the robbery: indeed it is observing remark, that the prosecutor speaks throughout rather to his knowledge of the 1st prisoner, who was clearly the individual who apprehended him personally: and In the absence of any corroboration from circumstantial evidence, the Court do not consider the prosecutor's testimony of any weight against the 3d prisoner; and his alleged confession is obviously of no validity. they have in consequence directed that he should be set at liberty.*

Ordered that extract of these proceedings be sent to the late Additional

* The Court observe, that the witness named by the prisoner did not attend; it is not shewn in the record that his absence was not just to the prisoner.

3d June 1826. Judge late on Circuit in the Centre Division for his information.

(Sent following letter №191.)

Read letter dated 5th April

Mr Cochrane & Mr Oliver

last from the 1st Judge late on Circuit in the Centre Division submitting case №150 Cuddapa Calendar 1st Sessions 1825.

(Here enter №234)

The 2d and 3d Puisne Judges having maturely considered the Proceedings held before the Judge on Circuit the Gentoo & the Gentoo of the Provincial Law Officer and the Gentoo of the Cazee ool Cozat and Mooftee of the Zillah Adalut confirm the said Gentoo & Gentoo of the Cazee ool Cozat and Mooftee aforesaid and acquitting the prisoners,

1st "Pedda Tummadoo"

2d Coppoola Cumbadoo &

3d Chakala Obadoo

direct that they be set at liberty.

(Sent following letter №192)

Read letter dated 29th March

Mr Cochrane & Mr Oliver

last from the 1st Judge late on Circuit in the Centre Division submitting case №132 Cuddapa Calendar 1st Sessions 1825.

(Here enter №220)

The 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Gentoo of the Provincial Law

3d June 1826. the prisoner,

3d; Pagada Gungadoo

direct, that he be set at liberty.

(Sent following letter №190)

The Court have acquitted the 3d prisoner in this case, because it has appeared to them, that the direct evidence against him, wants that support which it has received in the case of the 1st and 2d prisoners. These prisoners distinctly acknowledged before the Acting Criminal Judge, their possession of the stolen property; whilst the 3d Prisoner denied all Knowledge of it; and there is nothing therefore, either, to corroborate his alleged confession before the Rajah of Pungranoor, or, the prosecutors' testimony respecting his recognition of him as one of the persons concerned in the robbery: indeed it is observing of remark, that the prosecutor speaks throughout rather to his Knowledge of the 1st prisoner, who was clearly the individual who assaulted him personally: In the absence of any corroboration from circumstantial evidence, the Court do not consider the prosecutor's testimony of any weight against the 2d prisoner; and his alleged confession is obviously of no validity. they have in consequence directed that he should be set at liberty.*

Ordered that extract of these proceedings be sent to the late Additional Judge

* The Court observe, that the witness named by this prisoner did not attend; it is not shewn in the record that his absence was notified to the prisoner.

3d June 1826. Judge late on Circuit in the Centre Division for his information.

(Sent following letter №191.)

Read letter dated 5th April

Mr. Cochrane & Mr. Oliver

last from the 1st Judge late on Circuit in the Centre Division submitting case №150 Cuddapa Calendar 1st Session 1825.

(Here enter №234)

The 2d and 3d Puisne Judges having maturely considered the Proceedings held before the Judge on Circuit the Jurors of the Provincial Law Officer and the Jurors of the Zillah the Cazee of Cogat and Mooftees of the Zillah Adalut confirm the said Jurors of the Cazee of Cogat and Mooftees aforesaid and acquitting the prisoners,

1st "Pedda Tummadoo"

2d Coppoola Cumbadoo

3d Chakala Obadoo

direct that they be set at liberty.

(Sent following letter №192)

Read letter dated 29th March

Mr. Cochrane & Mr. Oliver

last from the 1st Judge late on Circuit in the Centre Division submitting case №132 Cuddapa Calendar 1st Session 1825.

(Here enter №236)

The 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Jurors of the Provincial Law

8d June 1826. Law officer and the fuluva of the Cazee ool Cooyat and Mooftees of the Tonjaure Zillah confirm the said fuluva of the Cazee ool Cooyat and Mooftees aforesaid and acquitting the prisoners,

1st Gollah Siddoogadoo.

2d Mooneapah alias Pedda Appadoo.

3d Jarekala Chinna Timmadoo

direct that they be set at liberty.

N.B. Sent following letter № 193.

In disposing of this trial, the Court of Tonjaure Zillah deem it incumbent upon them to animadvert, on the gross carelessness and negligence, which characterize the proceedings of the Court of Circuit, in this, and several trials of the 1st Sessions of 1825 which have been lately forwarded by the 1st Judge. In consideration of the expediency of bringing the Sessions to a close, in time to admit of the delivery of the other Jails in the Centre Division, could justify the precipitancy, with which these trials appear to have been hurried thro' by the Court of Circuit; and the Court cannot but fear, that the interests of justice, both, as respects the accused, and the public,

8d June 1826. public, have been in too many instances lost sight of during the 1st Sessions 1825 at Cuddapah.

2. In the report of the trial № 132 of the Calendar, immediately before them, the Court have remarked some inconsistencies which call for a distinct and specific explanation from the 1st Judge: for in the form they at present appear, they lead the Court to infer, that the record is not, what it is certified by that officer to be "a complete and exact counterpart of the original record of all proceedings held by the Court of Circuit."

3. In page 21, the following proceeding of the Court of Circuit is recorded. Communication to the prisoners. "You Pedda Timmadoo for having been "tried for the crime of Highway robbery "your trial will be referred to the Tonjaure "Zillah and you will be detained in "Custody until their orders be received." The date of this proceeding is not given, but as the trial closed on the 22d February it is to be inferred that this communication was made on that date.

At

3d June 1826. 4

At page 22, the Court find the transcript of a precept to the Criminal Judge, "directing him to detain the prisoners in custody until he shall receive the commands of the Faujdaree Adalut," which is certified to have been issued, on "the first day of April "1825; but this entry is wholly inconsis-"tent, with the statement given in para "13 of the 1st Judge's letter, accompanying "the trial, that this case had been deter-"mined upon at the date of the trial "and the three prisoners were ordered "to be put on the public roads for nine "months," and further, "that they appear "to have undergone the punishment of "the law under the punishment ordered "by the Court of Circuit for a period of "six months and twenty three days before "they were remanded to prison". The record is also at variance with the Calendar submitted by the 1st Judge on the 4th of June; and it appears from the return of the Criminal Judge under date the 27th September, which accompanies the trial, that the first

3d June 1826. first intimation, that officer received of the reference of the case of the prisoner in No 132, to the Faujdaree Adalut, was contained in the 1st Judge's precept of the 19th of September, nearly six months after the date of the precept of the Court of Circuit which appears in the record. The Court desire therefore to know, whether the proceeding recorded in page 21 was ever held by the 1st Judge on Circuit? and, whether the document in page 22 is, as it proposes to be, the copy of a precept issued to the Criminal Judge on the first day of April 1825?

5. In the 10th paragraph of his letter, the 1st Judge states, that "the prisoner had called two witnesses for character who were not present at the trial in order to be examined". On reference to the acting Criminal Judge's proceedings however, it appears, that the 2d prisoner alone (Mooneah alias Peddy Appadoo) named witnesses, and three witnesses, were not, as stated by the 1st Judge, "for character," but "to prove," that "he did not commit the robbery". The 1st Judge has not accounted for the absence of three witnesses on the trial,

3d June 1826. nor is it shewn in any part of the proceedings that their absence was notified to the prisoner before he was put on his trial. It is unnecessary for the Court of Foujdaree Adalut to remark on the character of this proceeding, which as it now appears to the Court, was in effect a denial of justice; the means of defence being thereby withheld from the prisoner. The Court direct that the 1st Judge will explain his proceedings in this respect.

6 From the return of the Criminal Judge of Cuddapah of the 27th September, which is appended to this case, the Court learn, that the 1st Judge did not recal the warrant, which he had issued for putting the prisoners in No 132 of the Calendar to hard labor, till the 19th of that month; and it thus appears, that he allowed the illegal sentence passed by him, to operate for a period of nearly two months, after having been distinctly apprized in para. 21 of the Court's proceedings of the 17th June last of its illegality. The Court desire

3d June 1826. that an explanation may be afforded to them of this neglect.

7. With reference to the Copy of the precept of the Court of Circuit of the 1st April, in page 22 of the record, so wholly irreconcilable with the return of the Criminal Judge of the 27th September last, the Court resolve to call upon that officer, to state, whether he ever received a warrant of the 1st Judge dated the 1st day of April 1825 directing him to retain certain of the prisoners in No 132 of the Cuddapah Calendar 1st Sessions 1825 in custody till the receipt of the commands of the Foujdaree Adalut, and in that case to forward a copy of the same.

Ordered, that extract of these proceedings from paras 1 to 6 be sent to the 1st Judge late on Circuit in the Cuttack Division by precept returnable in three weeks from and after its receipt.

Ans.d 15th July No 416 entered in the 17th Augt 1826.

(Sent following precept No 1941)

Ordered also that para 7 of these proceedings be sent to the Criminal Judge in the Zilla of Cuddapa by precept returnable in eight days from and after its receipt.

Ans.d 15th July No 358 entered in the 17th Augt 1826.

(Sent following precept No 1942)

Read letter, dated 11th Ultimo, from

3d June 1826

from the 1st Judge of the Provincial Court of Circuit in the Northern Division, - Submitting Masulipatam Calendar 2d Quarterly Sessions 1826.

(Here enter No 304.)

1 In No 5 of the Calendar, the only evidence for the prosecution examined by the Court of Circuit, was the prosecutor and the two witnesses to the confession of the prisoner before the Police - This evidence does not appear to have been corroborated in any part.

2 The Court of Foujdaree Adalut consider the 1st Judge to have erred, in proceeding to the trial of this case with no further evidence before him, than what the Calendar pointed out; it was his duty to have returned the case to the Criminal Judge, with instructions to call for additional evidence, or, to have called up the prisoner and discharged him.

3. The proceedings of the Criminal Judge, in committing this case for trial, upon the testimony alone of the prosecutor, who, it would appear, from the abstract of his evidence was not able to depose to any facts tending to

3d June 1826

to prove, that the prisoner was concerned in the robbery, and of the witnesses to an alleged confession before the Police, also call for the notice of the Foujdaree Adalut. In their circular proceedings of the 18th June 1819 and 29th April 1823, the Court pointed out to the Subordinate Courts, the little value to be attached to confessions before the Police, when unsupported by collateral evidence, and the circumspection with which they ought to be received; they desire that the attention of the Criminal Judge in the Zilla of Masulipatam may be called to these orders, and that he be informed, that the Court consider it to be incumbent upon him to examine, not only the complainant, but also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged."

4. In No 6, a charge of rape, the Criminal Judge states, that the "Prosecutrix was not interrogated on oath by reason of her tender age." The Court of Foujdaree Adalut under date 12th July last, directed the Criminal Judges, not to receive the evidence of youthful witnesses, who, upon examination,

3d June 1826.

examination, did not appear sensible of the nature and obligation of an oath; and they desire that an explanation may be afforded of the Criminal Judge's proceeding in this case.

5 The 1st Judge has declared his intention of referring No 7, a charge of uttering counterfeit coin, upon the ground, "that it is doubtful what measure of punishment can be awarded against the prisoners under the future." Before the 1st Judge carries his intention into effect, the Court desire that the 1st Judge's opinion of the extent of the guilt of the prisoners, and a copy of the Letters delivered in this case, may be forwarded to them, which may possibly enable them to issue the necessary instructions to the Court of Circuit, should this case be by law disposable by that Court, and not by the Court of Faujdaree Adalut.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Northern Division by precept returnable in one Month from and after its receipt.

(Sent following Precept No 196.)

Nos 1 to 15th July No 425. entered in Sir No 21st July 1826.

Nos 4 by further return 15th July 1826 No 423 entered in Sir No 21st Augt 1826.

Sent.

F. H.

At a Court of the Faujdaree Adalut.

Present,

Monday, 5th June, 1826. F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter, dated the 24th ultimo, from the Acting Criminal Judge in the Zilla of Salem, forwarding, for the orders of the Faujdaree Adalut, copy of a warrant by the acting Judge on Circuit for the banishment of two convicts.

(Here enter No 316)

The Court of Faujdaree Adalut direct that the prisoners,

Pownaul Chitty, and

Armoogum Chitty

be removed to the Jail in the Zilla of Chittoor there to be imprisoned agreeably to the tenor of their respective sentences.

Ordered, that extract of these proceedings be sent to the acting Criminal Judge in the Zilla of Salem, and to the Criminal Judge of Chittoor for the information and guidance of those Officers respectively.

(Sent following letters No 197.)

F 11

At a Court of the Fouzdaree Adaulut.

Present

Thursday
8th June, 1826. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read return dated 28th April
last from the 1st Judge late on Circuit in the
Northern Division to precept dated 23d Febru-
ary last calling for the record in Sessions Chi-
cacole Calendar 2d Sessions 1825.
(Here enter No. 20)

The 1st 2d and 3d Judges having
attentively perused the whole record submitted
with the foregoing letter are unanimously of
opinion that the acquittal of the prisoner Chow-
dry Venkata Sawmy was perfectly proper.

Read also again Miscellaneous
Petition No. 5 of 1826 from the Prosecutor in that
trial complaining of the said acquittal.

Petition entered in proceedings of the

The Court inform the Petitioner
that there is no appeal from the sentence of a
Circuit Judge. But that the Court have, for
their own satisfaction, called for the record of the trial
and after attentively perusing it, approve entirely of the sentence

Ordered that extract of these
proceedings be furnished to the petitioner on his
application.

Read

8th June, 1826

Read again petition presented by Rayavacherry of Teeroovoloor Zilla Chingleput.
(Here enter C.R. 327 of 1826)

The foregoing is an application, from the brother of the prisoner convicted in No. 15 of the Chingleput Calendar 1st Sessions 1825, praying the Court, to call for the record of the proceedings of the Court of Circuit, and to order the discharge of the Prisoner.

The Court do not see cause for a compliance with the petitioners application.

Ordered therefore, that the prayer of the petition be rejected, and extract of these proceedings be furnished to the petitioner on his application.

Read return, dated 1st Instant, from the Judges of the Provincial Court in the Centre Division, to precept dated 29th Ultimo calling for the record in cases Nos 116 and 117 Cuddapa Calendar 1st Sessions 1825.
(Here enter No 323)

Read return, dated 1st Instant, from the Judges of the Provincial Court of Circuit in the Centre Division, to precept dated 22d Ultimo directing the release of the prisoner in No 6 Supplemental Calendar 1st Sessions 1826.
(Here enter No 322)

Read return from the 2d Judge late on Circuit in the Southern Division to

8th June 1826.

to precept dated the 15th February last directing him to circulate extract from proceedings of Tanjore Adawlut and his Circuit Report regarding provision for the confinement of prisoners under examination.—
(Here enter No 328)

Read return, dated 31st Ulto from the Provincial Court of Circuit in the Western Division, to precept dated 22d Ultimo directing the Criminal Judges to cause confessions before them to be attested by persons of the same religion with the parties confessing.—
(Here enter No 332)

Read letter, dated 2d Instant, from the Provincial Court of Circuit in the Centre Division, reporting the death of the prisoner in No 98 Cuddapa Calendar 1st Sessions 1825.
(Here enter No 329)

F. C.

At a Court of the Poujdaree Adalut.

Present,

Thursday, 15th June, 1826. — F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read petition presented by Ponnaya of the Zilla of Combaconum. (Here enter F. C. Pet. No. 12 of 1826.)

This being a mere repetition of a former petition, which has been answered, the Court refer the Petitioner to their former answer, and direct her to abstain from troubling the Court further upon this subject.

Read letter, dated 20th ultimo, from the Judge of the Provincial Court in the Southern Division, submitting a question respecting the authority of a Magistrate to proceed in a case of perjury committed before the Court of Circuit. (Here enter No. 311.)

Read again letter, dated 19th January last, from the 3d Judge late on Circuit in the Southern Division, submitting with reference to his late Circuit report, a letter from the Magistrate of Coimbatore and the orders of the Court of Circuit thereon. (Here enter No. 47.)

The circumstances which gave

15th June 1826.

gave rise to this reference are as follows.

2. In case No 8 of the Salem Calendar the Circuit Court saw strong ground to believe that certain of the Police Officers of the Magistrate of Coimbatore had extorted confessions from some of the prisoners. The Court apprized the Magistrate of this belief and its opinion that the parties suspected should be sent up for committal to the Criminal Judge. The Magistrate upon this caused his Assistant to prosecute an enquiry, the result of which was a full belief that the witnesses on whose evidence the Circuit Judge's opinion had been formed were guilty of conspiracy and perjury and he sent them to the Criminal Court for committal for the latter offence. The acting Criminal Judge was of opinion that under Section VIII Regulation II of 1822 he could not hold any proceeding in the case - and applied for instructions to the Southern Provincial Court - who expressing their concurrence in his opinion submit the general question to this Court.

3. The question in effect is whether a Magistrate, discovering in the legal exercise of his functions that a perjury has been committed before another tribunal is or is not competent to take cognizance of the offence, and to proceed against

15th June 1826.

the offending party as in the case of all other offences.

4. Section XXIX Regulation IX of 1816, the provisions of which are excluded by Section VIII Regulation II of 1822 is copied verbatim from Section VIII Regulation I of 1810, and the preamble of that Regulation must therefore be referred to for the cause and object of the restriction established by those Sections upon prosecutions for perjury and subornation of perjury. On reference to that preamble it will be seen that the mischief which the Legislature intended to suppress arose from a practice which had been found to prevail for parties to prefer unfounded charges of this nature on against their own witnesses and those of their opponents, and against their opponents themselves. and the remedy proposed was to take away altogether from parties the right of bringing forward such accusations. The Magistrates were accordingly prohibited from receiving charges of this kind from parties, and it was declared that parties and witnesses should not be liable to any prosecution of this description unless committed to take their

15th June 1826

their trial by the Zilla Judge under the authority vested in him by Section VIII Regulation III of 1802.-

5. Now if this enactment be construed to preclude a Magistrate from taking cognizance of a perjury committed before another tribunal, and brought to his knowledge in the manner stated, it will be made to extend far beyond the particular evil, which it was the sole object of the legislature to remedy, and will be productive of another evil of scarcely less magnitude, or of less pernicious consequences to the interests of justice. Impunity will be afforded to the offence in all cases where it happens not to be detected by the particular tribunal before which it is committed; and this may often happen as it is said to have happened in the case out of which the present reference has arisen.

6. There could have been no doubt or difficulty in expounding the enactment if it had gone no farther than simply to prohibit the Magistrates from receiving charges of this kind from parties; but the concluding part of the Section seems at first sight to countenance the construction put upon it by

15th June 1826

the Provincial Court, and to extend to individuals, whether parties or witnesses, absolute exemption from all prosecutions for perjury and subornation of perjury, unless the offence be detected, and the offender be immediately proceeded against by the Court before which the perjury was committed. It formed, however, no part of the legislature's intention, either express or implied, to exempt these offences from punishment under any circumstances; and an interpretation, which leads to this consequence must, if possible, be avoided.

7. It appears to the Court then that to the latter part of the Section no greater operation must be allowed than is necessary to effectuate the intention of the legislature, as it is declared in the preamble to Regulation I of 1810. What that intention was has already been stated; and the end and object of the enactment will be fully and effectually accomplished by interpreting the latter part of the Section as referring solely to prosecutions on charges preferred by parties in civil and criminal cases.

The

15th June 1826

The Court are satisfied that this is the true construction. It is fully borne out by the context; for the first part of the Section relates exclusively to charges of this kind made by the parties, and not to prosecutions originating with the Magistrates or any other authority, which in point of fact were not within the contemplation of the legislature, and cannot be supposed likely to produce any of the evils, which it was intended to suppress.

8. The Court are therefore of opinion that it is the duty of the acting Criminal Judge of Salem to proceed in the case stated to him by the Magistrate of Combatoor.

9. It is stated, however, in the proceedings of the 3d Judge of the Southern Provincial Court of Circuit, dated the 19th January last, that "the greater part of "the depositions appears to have been taken "by the acting Sahseldar Ghana pregasum "himself, one of the very persons whose "conduct was the subject of investigation."

10. It was no doubt the duty of the Magistrate, on receiving the extract from the proceedings of the Judge on Circuit, which imputed a high degree of criminality to the Police Officers under him,

15th June 1826

him, to enter into an investigation of the charge, but a more effectual method of defeating the object of the investigation could hardly be imagined than that of entrusting the conduct of it to one of the parties accused. No other result than that which has been produced in this case could reasonably be expected. The Court are satisfied that the Magistrate on reflection will see that no credit whatever is to be attached to evidence taken in the manner in which a great part of the evidence in this case appears to have been taken, although subsequently confirmed on oath before the Assistant Magistrate; and that the measure of allowing one of the parties accused to take any of the depositions which were to establish his own guilt or innocence was in the highest degree objectionable, as it afforded him the means, of which it is hardly possible to suppose that he failed to avail himself, to intimidate the witnesses, and to make the evidence tend only to his exculpation. There is but too much reason to apprehend the most mischievous consequences from this irregular measure, which though apparently the immediate act of the Assistant Magistrate has been sanctioned and

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and confirmed by the Magistrate's adoption of it as the ground of his proceedings against the parties whom he has sent up to the acting Criminal Judge for committal; but the Court trust that the notice here taken of it will prevent these officers from falling into the like error again.

Ordered, that extract of these proceedings be sent to the Provincial Court of Circuit for the Southern Division by precept to be by them communicated to the Magistrate of Coimbatoor and the Acting Criminal Judge of Salem for their information and guidance respectively.

Sent

Sent following precepts No 209.

Read letter, dated 12th April last, from the 3d Judge presiding, submitting a copy of the Nellore Calendar for Sessions 1826.—

Here enter No 248

1. In Nos 22 and 23 of the Calendar, the Court of Tanjore Adalut remark, that the only evidence examined, or, bound over by the Criminal Judge, on his commitment of the prisoners, were the witnesses to his confessions before the Police, and the persons who apprehended him.

2. From the Abstract of the examination

F. K.

15th June 1826

examination, it does not appear, that the property alleged to have been stolen, was found in the prisoner's possession, neither is there evidence to shew, that it had ever been removed from the possession of the owners: it is difficult under these circumstances to understand, how the Criminal Judge could arrive at the conclusion that a theft had been committed.—

3. In their circular proceedings of 18th June 1817 and 29th April 1823 the Court of Tanjore Adalut pointed out to the Subordinate Courts, the little value to be attached to bare uncorroborated confessions before Native Officers of Police, and the circumspection with which they should be received; and they deem it proper upon the present occasion to inform the Criminal Judge, that they are of opinion, that a case should not be committed for trial before the Court of Circuit, on the ground alone, of a confession made before the Police, as the necessary result of such a proceeding, where further evidence is not called for by the Judge on Circuit, must be the discharge of the accused. The Court trust, that the Criminal Judge will in future see the propriety of calling for additional

15th June 1826 additional evidence, in cases of this nature, before he proceeds to commitment.

4. In No 37 of the Calendar there is no entry in the column headed 'date of examination, grounds, and date of commitment' the Court desire, that the 3d Judge will supply this omission.

5. Referring to No 49 a case of perjury, it appears, that the 3d Judge has not completed the trial, and in his letter accompanying the Calendar, he has requested the instructions of the Court, as to whether the trial should be resumed at the ensuing Sessions, or whether the prisoner is now entitled to his discharge. The Court are of opinion that the trial should proceed, and that the orders issued to the Criminal Judge to summon the witnesses whose evidence is required, were proper. But adverting to the long period, during which the prisoner in this case has been in confinement, the Court deem it just, in the event of his conviction, that this should form a matter for consideration, when sentence is passed by the Judge holding the final proceedings in the trial; and they direct,

15th June 1826 that this opinion be communicated to the Officer who may deliver the Jails in the 2d Sessions of the year.

6. The Court remark, that in 41 of the 69 cases of the Calendar, the Government Vakeel has been constituted prosecutor. The Court of Foujdaree Adawlut are fully aware, of the severe hardship to which individuals are exposed, when constrained to appear and prosecute before the Court of Circuit, but they apprehend that the interests of Justice will suffer, if these Courts are deprived generally of the evidence of prosecutors, whose testimony must frequently be of the greatest importance: the consequence of the proceeding of the Criminal Judge is observable in No 2 of the Calendar. The practice is moreover contrary to the provisions of Clause third Section IX Regulation X of 1816, and the Court direct, that the attention of the Criminal Judge be called to the subject, in order that it may be resorted to more sparingly in future.

Ordered, that extract of these proceedings be sent to the 3d Judge of the Provincial Court of Circuit in the Northern Division by precept, directing him to communicate paras 1, 2, 3, and 6 to the Criminal Judge in the Zilla of Nellore.

for

15th June 1826. for his information and guidance
(but following precepts

EK
ew. pld. EL
EK DD

F. H.

In a Court of the Foujdaree Adalut

Present

Friday, 16th June, 1826 F. A. Grant. Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

EK
EL
DD

Read letter dated the 24th February last, from the late Additional Judge late on Circuit in the Central Division, submitting case No 41 Cudapa Calendar 2d Sessions 1825.

(Here enter No 136)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Principal Law Officer, and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Adalut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the provisions of Section XVII Regulation VIII 1802 adjudge the prisoner,

1st "Juggarauz Abberauzoo alias Vencataranz",

to suffer death, by being hanged at the usual time and place of execution.

And under the provisions of Clause sixth Section II Regulation XV of 1803 direct that the prisoner,

2d "Cutchee Doloo,"

be released on producing good and sufficient security

16th June 1826

sent-

security for his future good behaviour and appearance when required -

Court following letter No 211

In disposing of this trial, the Court of Foujdaree Adalut deem it proper to point out some defects in the proceedings of the Court of Circuit, which have attracted their attention; and to which it is perhaps to be attributed, that the 2d Prisoner has escaped the penalty of the law, for the part he wants seem to have taken in this murder.

The evidence given by the witnesses Yerragoutla Rungaya and Thonda Nagaya before the Police Officer, (Pr. 41 and 53) strongly tends to establish his guilty knowledge, if not participation in the act, and the clear and direct evidence to the fact, that the instrument with which the crime was committed, was the property of this prisoner, coupled with the consideration, that he had a motive for the crime, which was not apparent in the case of the 1st prisoner, are circumstances of so much importance in themselves, that had the 2d Judge examined the witnesses above mentioned, and obtained from them, the like distinct account, which they gave in the Salaka Cutcherry, of the perturbed and extraordinary conduct of the

16th June 1826.

this person on the night of the murder, the Court taking the whole of the evidence together, would have had little hesitation in declaring him to be convicted - unless indeed he could have satisfactorily rebutted the statements of those witnesses according to the evidence before the Court of Circuit, this prisoner's voluntary appearance at the house where the murder was committed, was not attended with any circumstances leading to suspicion against him; but on the contrary, seemed to warrant an inference in favor of his innocence. The Court of Foujdaree Adalut regret this defect in the proceedings of the Judge on Circuit, and they would observe generally, that it is of much importance, that the Judge on Circuit should, previously to entering upon a trial, carefully examine in the first instance, all the evidence which may have been given in the Police Cutcherry, or, in the Criminal Court, and if evidence to any material point is wanting, to take measures for having it supplied. This may be effected with little or no labour, and the omission must often prove of serious consequence, as the final sentence of the Foujdaree Adalut

is

16th June 1826. is determined by the evidence given in the Court of Circuit.

Ordered, that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.

Sent. (Sent following letter No 212.

Read letter, dated the 29th March last, from the late Additional Judge late on Circuit in the Centre Division, submitting case No 4 Cuddapa Supplemental Calendar 2d Sessions 1825.

(Here enter No 223.)

The Pt 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ul Cozat and Mooftee of the Sudder Dewanny Adawlut, confirm the said futwa of the Cazee ul Cozat and Mooftee aforesaid, and acquitting the prisoner,

"Patterla Pully Venkatagendoo"

direct that he be set at liberty.

Sent. (Sent following letter No 213.

The 3d Judge will observe, that the Court of Sudder Dewanny have acquitted the prisoner in this case, for they do not concur with this officer

F. C.

16th June 1826. in opinion, that the evidence of the witnesses to the fact of his having acknowledged the crime upon his apprehension, unsupported as it is by any strong circumstantial evidence, can under the circumstances of this case be held sufficient for conviction.

The difference between the statements of the 1st witness Seshadra and the 2d Muddoogadoo, respecting the apprehension of the prisoner, is remarkable. The latter declaring that the prisoner was 'sitting down' near the spot where the enquiry concerning the murder was going on; and from all that appears in evidence, without giving cause by his manner for suspicion of his guilt; affording thereby a strong inferance in favor of his innocence; and the first witness affirming, that the 2d witness went in search of him and brought him to the place. The Court moreover do not consider the evidence, relative to the instrument with which the murder was committed, worthy of the least credit; and they have concurred therefore in the futwa of acquittal recorded by their Law

16th June 1826. Law Officers-

Ordered, that extract of the proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information-

Sent following letter No 214

Read return dated 3rd Instant from the Judges of the Provincial Court of Circuit in the Northern Division to precept dated 22d April last directing the Criminal Judges to cause confessions before them to be attested by persons of the same religion with the parties confessing.-

(Here enter No 334)

Read letter dated 3d Instant from the 2d Judge on Circuit in the Northern Division reporting the commencement of the Jail deliveries at Chicacole on the 3d Instant.

(Here enter No 339)

Read letter dated the 8th Instant from the 1st Judge of the Court of Circuit in the Centre Division, reporting on the 1st Quarterly Sessions of 1826 at Chittoor.-

(Here enter No 340)

Monday, 19th June, 1826.

At a Court of the Foujdaree Adalut

Present,

W. A. Grant Esqre 1st Puisne Judge

William Oliver Esqre 2d Puisne Judge.

Read letter, dated 20th March last, from the 1st Judge late on Circuit in the Centre Division, - submitting cases Nos 116 and 117 Cuddapah Calendar 1st Sessions 1826.

(Here enter No 216)

The 1st and 2d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coozat and Mooftee of the Foujdaree Adalut, confirm the said futwa of the Cazee ool Coozat and Mooftee aforesaid, so far as respects the 2d and 8th prisoners, and acquitting the said prisoners,

2d Bucha Bungadoo, and

8th Mundla Bumbadoo, directs that they

be set at liberty-

And under the provisions of Section VI Regulation I of 1825, direct that the prisoners,

1st "Mundla Nhabareegadoo,"

3d "Mundla Yerradoo,"

4th "Mundla Muddegadoo,"

5th "Mahade Timmadoo,"

6th "Gergeegaree Ranamadoo,"

7th "Maleeka Timmadoo,"

10th

19th June 1826. 10th "Poloory Tscheerah," and
11th Boyjoo Nuddegadoo,
be set at liberty.

sent. (Sent following letter No. 216.

No. 1. The 1st Judge has observed in
his letter referring this trial, "that the 2d
"and 10th prisoners were so feeble with
"sickness at the time of the trial that
"they could not make their appearance
"in Court." In the record however, the
plea of 'not guilty,' as received from both
these persons, is entered; and the Court
direct therefore, that the 1st Judge will
explain his statement, which is irre-
conciliable with the entries in the record.
If the prisoners were not present at
the trial, agreeably to the 1st Judge's
report, this officer will then state the
reasons, which induced him to go
into the evidence against them, on a
charge to which they were not called
upon to plead.

2. The Court also remark, that
the witnesses named by the prisoners,
were not in attendance at the trial:
the 1st Judge has not accounted for
their absence, nor explained, whether
he notified that circumstance to
the

19th June 1826. the prisoners, which it was his duty
to have done.

Ordered that extract of
these proceedings be sent to the 1st Judge
Sent 17th July No 15 attached late on Circuit in the Centre Division
Rec'd 25th August 1826 by precept returnable in three weeks
from and after its receipt.

(Sent following Precept No. 217.

Sent.

Copy sent to Govt
25th July 1826.

At a Court of the Toujdaree Adalut

Present

Wednesday 21st June 1826.

F. A Grant Esqre. 1st Puisne Judge
James Cochrane Esqre. 2d Puisne Judge
William Oliver Esqre. 3d Puisne Judge

Read letter dated 15th March last from the Secretary to Government in the Judicial Department conveying the sentiments of the Honorable the Governor in Council upon the report of the 2d Judge of the Provincial Court for the Southern Division and on the remarks of the Toujdaree Adalut submitted on 15th February last.

(Here enter No. 294)

In obedience to the orders conveyed in the 4th paragraph of the foregoing letter the Court have the honor to submit a copy of the Form of indictment prescribed in cases of perjury.

2 The definition of the crime of perjury contained in clause first, Section IV Regulation XI of 1811 corresponds precisely with its definition according to the Law of England; and it will be found that the main object of all the instructions issued by the Court of Toujdaree Adalut respecting the proof requisite for a conviction of the crime was to assimilate upon this point the administration of justice in this Country to the administration of it under the Law of England, so far as seemed practicable without introducing the nice and technical formalities of

of the English Courts. The form of indictment was originally framed for the purpose of embracing the several particulars, the establishment of which is essential to a conviction of the offence, as defined in the clause above mentioned; and notwithstanding occasional errors of the committing officer, in filling it up, it has still had the effect of producing generally greater regularity in the proceedings on trials for perjury.

3 But the question now under consideration refers to the nature of the proof requisite for a conviction in cases where a man has given two contradictory depositions. The Court of Sovjdaree Adalut have all along held that proof of one deposition was not sufficient evidence of the falsehood of the other; and therefore as the perjury must be specifically assigned on one, sufficient evidence for a conviction. Of course there never could be a doubt in the mind of the Court that a man who had wilfully and deliberately given two contradictory depositions had been guilty of perjury in one or the other: but to every person who reflects upon the subject it must seem a strange proceeding to assume the truth of one deposition without any ground for such assumption: and on such naked assumption to declare that the falsehood of the opposite deposition is proved, whereas for

for all that appears to the contrary the perjury may have been committed in the statement which is thus assumed to be true.

From the letter of the Advocate General, dated the 6th March last, it would appear, however, that the opinion hitherto held by the Court on this point is erroneous, and certain late proceedings in the Court of Kings Bench are referred to, from which rules applicable to the case in question are deduced in direct opposition to the principles which the Court of Sovjdaree Adalut have laid down for the guidance of the Lower Courts.

5 The Court have read the report of the proceedings in the case of The King v. Harris referred to by the Advocate General; but they cannot agree with him in thinking that the rules which he has stated are fairly deducible from them, so far at least as relates to the particular point under consideration. The proceedings certainly shew very clearly that in the case of two contradictory Statements the perjury according to the established practice of the English Courts must be specifically assigned on one of them; but they do not shew it to be a rule of law or of practise that to support such an indictment no evidence

need

need be given except simply the proof of the contradictory oaths of the Defendant on the two occasions. The indictment in the case of the King v. Harris set forth the two contradictory oaths of the defendant without charging that either was false or corrupt; and left the conclusion of perjury to be drawn from the manifest contradiction between the two oaths. The defendant was found guilty upon four of the seven Counts of which the information consisted, & the case coming before the Court of King's Bench on a motion in arrest of judgment, the Lord Chief Justice in delivering the Judgment of the Court after stating the case, said "The question therefore "is whether perjury can be legally charged and "assigned by shewing such contradictory depositions, with an averment that each of them was "made knowingly and deliberately, but without "averring or shewing in which of the two depositions the falsehood consisted. And we are "of opinion that it cannot"

6 For the better understanding of the subject, and of the grounds upon which the opinion of the Court of King's Bench rested upon the point in question is formed, it is necessary to quote the remainder of his Lordship's speech, as it is reported at Page 937 of the 5th Volume of Barnewall and Alderson's Reports.

"The

7 "The first objection that occurs
"on the perusal of this information is the novelty
"of its form. One or two instances of a similar
"form were mentioned at the bar, which however
"only shew that some respectable draftsmen
"may of late have thought the experiment
"worth trying; no one has ever received a judicial
"decision; and as instances of contradictory
"swearing have occurred at all times, and as
"this form of proceeding affords the greatest
"facility of proof to a prosecutor, the want of
"precedents of this kind cannot be accounted
"for but by supposing that an indictment in
"this form has not been generally considered
"to be good."

8 "The next and most material
"objection is the injury to which a Defendant
"may be exposed. For we think it impossible
"to say consistently with any known rule of
"law that a person acquitted or convicted on
"an indictment in this form could plead such
"acquittal or conviction as a bar to an
"indictment charging perjury in the usual
"way on either of the depositions. The answer
"to such a plea would be "you never have
"been tried on the charge now preferred
"against you", and such an answer would
"undoubtedly be true in fact, and we think
"good in law. So that a Defendant might be
twice put in peril of the punishment of perjury and
twice

"twice convicted and punished on the same
"subject-matter, if an indictment like the present
"could be sustained."

"It is not necessary to say whether
"an indictment charging contradictory depositions
"together with other charges and averments not
"found in the present information would be good
"as an indictment for a misdemeanor. The
"difficulty of shewing on which of two occasions
"a party swore falsely may perhaps enable a
"person to escape punishment, whose conduct
"like that of the present defendant may plainly
"appear to be in the highest degree reprehensible.
"But we think it better that such a person
"should escape than that an indictment should
"be held good, which is liable to the material
"objection of putting a person twice in peril
"of the pains of perjury on the same subject matter;
"and we know of no election to adopt this or
"that mode that can be binding on the crown
"as was suggested in the argument at the
"bar in support of this information. The rule
"to arrest the judgment must therefore be
"made absolute; and the like rule in the
"case of the King v. Edwards."

The Court freely admit that in what fell from the Lord Chief Justice in this occasion there is not a direct affirmation of the opinion which they have hitherto held, but neither is that opinion directly contradicted,

and the correctness of it seems to be very strongly supported by inferences, which, as the Court think, must necessarily be deduced from the arguments in the case, coupled with the judgment upon it.

One of the arguments used by the Counsel in support of the form in which the information was drawn up was that "no "other mode could be devised of making the "charge, and if this was not sufficient the "Defendant could not be punished. It was "impossible", they afterwards added, "to say "on which of the two occasions the perjury was "committed". The Lord Chief Justice said that "the difficulty of shewing on which of "two occasions a party swore falsely may "perhaps enable a person to escape punish- "ment, whose conduct like that of the present "Defendant may plainly appear to be in the "highest degree reprehensible". Now all this "seems to be utterly irreconcileable with the rule which the Advocate General thinks may be deduced from the proceedings in the case; for if no other evidence except simply the proof of the contradictory oaths is necessary to support an indictment, charging the perjury on one of them, there was another, and as easy a mode as that adopted by the Counsel for the Crown, of making the charge against the Defendant in

in that case, and of bringing him to punish-
ment; and the difficulty, alluded to by the
Lord Chief Justice, of shewing on which of the
two occasions the party swore falsely could
have no existence, or at least could not have
the effect of enabling a person to escape pu-
nishment - It can hardly be doubted, as
the Court think that the Law officers of the
Crown in that case were driven to adopt that
particular form of indictment by their inability
to obtain evidence sufficient for a convic-
tion on an indictment in the usual form,
that is an indictment specifically charging
the perjury on one of the two depositions; and it
seems necessarily to follow that evidence,
such as that suggested by the Advocate
General, was not considered sufficient to
sustain such an indictment.

12

It is true that the Counsel
for the Defendant are reported to have said
"It may be admitted that if the indictment
"had charged the perjury to have been com-
"mitted before the House of Lords, the Con-
"tradictory evidence previously given before
"the House of Commons might have been
"sufficient alone for the jury to have con-
"victed the Defendant of perjury. But then
"they would have found distinctly on which
"occasion the Defendant had sworn falsely;

This question is, however, very different. This
is not a question upon the sufficiency of
evidence, but upon the insufficiency of the
shape and form of the accusation" Now
even if this admission had been made in
direct and positive terms, which according
to the report it was not, it could hardly be
received as sufficient of itself, without the
support of other authority, to prove what the
law actually is on this particular point; and
the Court are not aware that there is any
such authority. But looking to the terms of
the admission, it seems to amount to nothing
more than this that it might be made with-
out affecting the question then under considera-
tion.

Then in regard to the observations

13

taken from Mr. Justice Chambre's Precedent
Book the Court would remark that the doctrine
in question seems to have been propounded
here apparently for the first time. The very
terms in which it is stated shew that it was
not a point decided; for though Mr Justice
Gates is said to have convicted a man at
the Lancaster Summer Assizes in 1761 upon
this principle and Lord Mansfield C.J.
and Wilmot and Aston Js to whom
he afterwards stated the reasons of his judg-
ment are said to have concurred in his
opinion

opinion; yet it is clear that the question was never disputed at the bar; and the omission of a principle so important and of every thing approaching to it in all the books which specially treat on the law of evidence, coupled with the total want of precedents in all the books of reports, for a conviction upon this principle, seems to warrant the conclusion that whatever may be the ultimate determination upon it, it is not one that has yet received the sanction of the Courts of Law in England, unless indeed it is supposed that the ground on which the Court of Kings Bench refused a rule nisi for a new trial in the case of the King & Rhill finally settles the question: A short report of that case is inserted in a note to Page 929 of the 5th vol of Barnewall and Aldersons Reports; and this is the only authority which the Court have met with that has tended to shake in any degree their confidence in the soundness of the opinion which they have all along maintained. One of the objections taken by the counsel in that case was that "mere proof of a contradictory "statement by the Defendants on another "occasion was not sufficient without "other circumstances showing a corrupt "motive and negativing the probability of

"of any mistake." But the Court held that "the evidence was sufficient, the contradiction "being by the party himself and that the Jury "might infer the motive from the circumstan-"ces" Here is apparently a direct assertion of the principle in question. But the case is very briefly reported; and perhaps the observation was meant to be applied only to the corruptness of the motive, of which the Counsel contended there was not sufficient proof. It may be admitted that the falsehood of one statement being first proved, the corruptness of the party's motive may be inferred from the circumstance of his having given a contradictory statement, but to say that the falsehood of one particular statement is proved by the fact that the party on another occasion gave a statement in contradiction of it is to advance a proposition that seems utterly inconsistent with the principles of right reason, upon which it is the boast of the law of England that its rules of evidence are grounded. Nothing indeed can shew the fallacy of the deduction more clearly than this that either of the two contradictory statements may be selected to prove the falsehood of the other.

14 The Court beg the Honorable the Governor in Council to believe that they have entered into this discussion very reluctantly and

and that in venturing to differ in opinion with the advocate General, a Gentleman of acknowledged talents and learning, they have felt the greatest hesitation, more particularly as the subject discussed is one, upon which his opinion is entitled to the utmost deference on account of his high professional character.

15 The Court conscientiously believe that, so far as their instructions have operated, the administration of justice in this particular is substantially the same in this Country as in England. If, however, the Honorable the Governor in Council should be of opinion that it is requisite to afford greater facilities to a conviction of perjury in cases where a party has given two contradictory depositions, the Court are inclined to think that the least objectionable mode of effecting this object would be to alter the form of indictment in these particular cases. Under the existing orders of the Court the perjury must be specifically assigned on one of the two contradictory depositions as suggested in the letter of the advocate General; but the difficulty to be removed lies in the proof which at the Court must think in opposition to his opinion, is requisite to support an indictment in this form. If however an indictment something similar to that in

the case of the King. v. Harris be adopted, that is if the indictment sets forth the two contradictory oaths of the Defendant without charging that either was false or corrupt; and then concludes with an averment that the Defendant has committed wilful and corrupt perjury, nothing more would be requisite to substantiate the charge than proof of the fact that the Defendant wilfully and deliberately gave the two contradictory statements, because his perjury is the legitimate and inevitable conclusion from that fact. It is true indeed that such an indictment is objectionable on several grounds, - among others, that of its uncertainty both as to the time when, and the place where the offence charged was committed - points upon which the utmost attainable certainty is desireable in Criminal charges; but the Court know of no other mode of shaping the accusation so as to make the proof of the two contradictory statements sufficient of itself for a conviction. The most material objection to it, - namely that it's leaving the Defendant liable to another prosecution for the same subject-matter, - may be obviated by a prohibitory clause in the legislative enactment which, if the Court's suggestion be adopted, will become necessary

21st June 1826. submit them to Government, Meanwhile the Court have the honor to transmit a copy of their former order relative to the construction of clause fourth Section III Regulation VI of 1822, and of the order recently issued respecting the examination of prisoners. Copies of all orders laying down any general principle or rule for the guidance of the lower Courts shall hereafter, as they are issued, be furnished for the information of Government.

Ordered, that extract of these proceedings, Copy of the form of indictment prescribed in cases of perjury, and extract of a letter Para 12 and 13 to the Judges of the Provincial Court in the Centre Division, dated 22d September 1824 with copy of the Courts orders dated 7th Febru-ary 1826, respecting the examination of prisoners, be sent to the Secretary to Govern-ment in the Judicial Department, to be laid before the Governor in Council.

(sent following letter No. 222

31 May 1826.

W. H.

25

W25 Sent. 250 P. M.

F. H.

At a Court of the Foujdaree Udalut

Present

Thursday 22d June 1826

F. A. Grant Esquire 1st Puisne Judge.
James Cochrane Esquire 2d Puisne Judge.
William Oliver Esquire 3d Puisne Judge.

W. H.

25

Read letter dated the 24th April last from the 1st Judge late on Circuit in the Northern Division, submitting cases Nos 14 18. 19. 20. 21. 22. and 23 Chicacole Calendar 1st Sessions 1824.- (Here enter No. 267)

Mr Cochrane, and Mr Oliver,

The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Udalut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid; and under the provisions of clause sixth Section II Regulation XV of 1803 direct that the prisoners,

1st Butchalah Beemoodoo,
2d " Manoogoolah Raujee, and
3d " Sookoorah Mullah,

be released, on producing good and sufficient security for their future good behaviour and appearance when required.-

(sent following letter No. 223.)

sent-

Read

2nd Sept. 1826

76.

22nd June 1826.

Read letter dated 9th Ultimo from the First Judge late on Circuit in the Centre Division, submitting case No. 103 Cussa = pa Calendar 1st Sessions 1825.

//Here enter No. 302//

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer and the futwa of the Cazee cool Coozat and Mooftees of the Zoydaree Adalut confirm the said futwa of the Cazee cool Coozat and Mooftees aforesaid, and under the provisions of clause sixth section II Regulation XV 1803 direct that the prisoner Anasala Baligadoo be released, on producing good and sufficient security for his future good behaviour and appearance when required.

Sent.

Wm Grant
Wm Cochrane
&
Wm Oliver

//Sent following letter No. 224.

The Court of Zoydaree Adalut, in considering the record of this trial, have remarked several important omissions in the proceedings of the Court of Circuit, which call for notice.

In the opinion of the Court, the 1st Judge should have required the attendance of the prosecutor, unless there was sufficient cause for his absence. The evidence of the witnesses Saba Cunnatapitty, and Abdollah ought also to have been attended,

F. 11.

22nd June 1826

or, in their absence, it was especially incumbent upon the 1st Judge to have ascertained distinctly from the witnesses Syed Ally, and Narapah, whether the witnesses Cunnatapitty and Abdollah gave the information they are reported to have done, respecting the prisoner's proposal to them to rob the prosecutor, before, or after the prisoner was taken into custody; this was unquestionably a point deserving of careful investigation and this omission, with the other deficiencies noticed, have rendered the whole proceedings of the Court of Circuit very incomplete, and unsatisfactory.

Ordered that extract of these proceedings be sent to the First Judge late on Circuit in the Centre Division for his information.

//Sent following letter No. 225.

Read letter dated the 5th Ultimo from the First Judge late on Circuit in the Centre Division, submitting Case No. 10 Cussa = pa Supplemental Calendar 1st Sessions 1825.

//Here enter No. 280//

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee cool Coozat and Mooftees of the Zoydaree Adalut, confirm the said futwa of the Cazee cool Coozat and Mooftees aforesaid, and acquitting

Sent.

Wm Grant
Wm Cochrane
&
Wm Oliver

F16.

22d June 1826.

acquitting the prisoners,

1st "Bundy Uncatramoodoo,"
and
2d "Boya Pandaroo,"

direct that they be set at liberty.-

/Sent following letter No. 226./

Sent.

#

The Court here not thinking it necessary to send for the confession in question; because if they had been in the record the evidence against the prisoners would still be insufficient for their conviction.

In referring this trial, the 1st Judge has omitted to forward the record of the alleged confession of the prisoners; and the Court of Zoujdaree Udalut deem it their duty to notice this omission, as seeming of consume; and they hope it will not be necessary for them to animadvert upon like omissions in future.-

Ordered that extract of these proceedings be sent to the 1st Judge late on Circuit in the Centre Division for his information.-

/Sent following letter No. 227./

Read letter dated 6th ultimo from the 1st Judge late on Circuit in the Centre Division, submitting Case No. 71 Cuddapa C.D. Calendar 1st Sessions 1825.-

/Here enter No. 308/

Mr Grant
Mr Cochrane
and
Mr Oliver

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coozat and Mooftees of the Zoujdaree Udalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid; and under the provisions of section VI. Regulation

F16.

22d June 1826.

Regulation I of 1825 direct that the prisoners

2d "Kooty Kistnammah,"
3d "Madenany Vengunnah,"
5th "Abbarapoo Chinna Ramoodoo
8th "Condadoo," and
9th "Kooroory Ramunnah,

be set at liberty.-

/Sent following letter No. 228/

Sent.

Read letter, dated 4th ultimo, from the late Additional Judge late on Circuit in the Centre Division, submitting Case No. 9 D Cuddapa postponed Calendar 2d Sessions 1825.-

/Here enter No. 279/

Mr Cochrane
and
Mr Oliver.

The 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Coozat and Mooftees of the Zoujdaree Udalut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and under the provisions of Section VI Regulation I of 1825 direct that the prisoner,

1st "Sumbulla Gungadoo,"

be released, on producing good and sufficient security for his future good behaviour and appearance when required.-

And acquitting the prisoner

2d "Chapala Siddoogadoo,"

the Court direct, that he be set at liberty.-

/Sent following letter No. 229./

Read

22d June 1825

Read return dated 8th Instant from the Judges of the Provincial Court of Circuit in the Southern Division to precept dated 22d Ultimo directing the Criminal Judges to cause confessions before them to be attested by persons of the same religion with the parties confessing.

(Here enter No. 340)

Read return dated 16th Instant from the Provincial Court of Circuit in the Centre Division to precept dated 22d Ultimo directing the Criminal Judges to cause confessions before them to be attested by persons of the same religion with the parties confessing.

(Here enter No. 300)

Read further return dated 16th Instant from the Provincial Court of Circuit in the Centre Division to precept dated 29th Ultimo calling for the original record of proceedings of the Court of Circuit in No. 116 and 117 Cuddapa Calendar for Sessions 1825.

(Here enter No. 301)

Read letter dated 17th Instant from the Second Judge on Circuit in the Centre Division reporting the close of the Sessions at Chingleput.

(Here enter No. 359)

Read return dated 17th Instant from the Provincial Court of Circuit in the Centre Division to precept dated 29th Ultimo calling for an explanation from the Acting Criminal Judge of Cuddapa of his proceedings in certain numbers of the Calendar.

(Here enter No. 307)

At a Court of the Foujdaree Adalut.

Present

Wednesday 28th June 1826.

F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read letter dated 29th April last, from the late Additional Judge late on Circuit in the Centre Division, submitting case No. 3 of the postponed Calendar of the Zilla of Cuddapa for the 2d Sessions 1825.

(Here enter No. 275)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the futwa of the Provincial Law Officer, and the futwa of the Cazee ool Cozat and Mooftee of the Foujdaree Adalut, confirm the said futwa of the Cazee ool Cozat and Mooftee aforesaid, and acquitting the prisoners,

1st Baleja Chengadoo and
2d Mungala Vencatagadoo

direct, that they be set at liberty.

(Sent following letter No. 231.)

To the Court of Foujdaree Adalut, Sir, having given the matured attention to this case, have not been able

able to concur with the 3d Judge, in the opinion he has recorded of the guilt of the prisoners.

2 The want of positive proof of the death of the individual, with whose murder they are charged, in consequence of the non-discovery of the corpse, has weighed greatly with the Court; for they are not disposed to think this circumstance satisfactorily explained, by the supposition, that the body might have been destroyed by fish before it could rise to the top of the water, into which according to the confession it was thrown. There are also material discrepancies in the evidence for the prosecution. The prosecutor himself varies in his statement before the different tribunals: from his examination before the Police, and Criminal Judge, it would appear, that upon receiving information from one Mamoogah, he charged the prisoners with the murder of his Brother-in-law, and had them taken into custody - Before the Court of Circuit, he makes no mention of the information alleged to have been received from Mamoogah, but states, that the villagers sent the prisoners to the Talook Cutcherry, ten days after he had reported

to

 to them the absence of Vengadoo.

The Court may here remark, that

3 it was the duty of the Criminal Judge, acting, to have required the attendance of Mamoogah, whose evidence was obviously material to the elucidation of the case.

Discrepancies also occur in the

4 Statements of the witnesses for the prosecution, which appear to the Court of importance. The 1st witness Casapah, says, that the prosecutor having intimated to him his suspicions against Mungala Dekkee, and others, he sent for Dekkee, when she confessed; and that he afterwards sent for the prisoners 1st Chengadoo, and 2d Vencategandoo. But the 2d witness Moodaredy says, that the 1st and 2d prisoners were sent for in the first instance, and upon their confession, the deceased prisoner Dekkee was subsequently apprehended.

The Court also deem it deserving

5 of notice, that it does not distinctly appear from the prosecutor's statement before the Police officer, and before the Criminal Judge, that his Brother in law ever repaired a second time to the residence of the prisoners, after his first quitting it. He states, that after Vengadoo returned from Coimmatoor to Thumbatteepally, and he went to Thumbatteepally, and he thinks that from thence he proceeded again

to

25th June 1820. to Goonnasamoodrum, near which the murder is alleged to have been perpetrated. The prosecutor does not therefore in point of fact know, nor, is it established by the evidence that the supposed deceased, was at Goonnasamoodrum at the date of the alleged murder; but it is shewn that he had set out for another place. The Court also remark, that the prosecutor further deposes, that the razors were taken by his Brother in law to the prisoners residence on his first going there; and the prisoners possession may thus be accounted for.

The Court do not view the evidence relating to the discovery of the other articles of property, as sufficient to fix any guilt upon the parties accused; and upon a consideration of the great defects in the evidence on this trial, they have deemed the prisoners entitled to an acquittal.

Ordered that a Copy of these proceedings, be sent to the late Additional Judge of Circuit in the Centre Division, by precept returnable in one month from the date hereof, directing him to communicate to the 2d Judge of the Provincial Court of Circuit in the Centre Division, by precept, directing him to communicate to the acting Circuit Judge in the Zilla of Cuddapa for his information and guidance in the trial which formed No 11 of the Calendar of Criminal Sessions 1825 preceding the 7th Session before last from the 3d Judge of the Court of Circuit in the Northern Division submitting the postponement of the

(Sent following precepts & letters No. 233.)

Read letter dated 13th April

(Sent following precepts No. 232)

Read letter dated 5th July 1825 with Calendar & Proceedings in case No. 11 of Calendar of Criminal Sessions 1825 Zilla Cuddapa

Read letter dated 27th May 1826 with Calendar & Proceedings in case No. 4 of Calendar of Criminal Sessions 1826 Zilla Cuddapa

F. R.
25th June, 1820. case No. 17 Masulipatam Calendar 1st quarterly Sessions 1820.

(Here enter No. 249)

The 1st 2d and 3d Puisne Judges, having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer, and the futwa of the Cazee vol Cozat and Mooftees of the Foujdaree Adalut, confirm the said futwa of the Cazee vol Cozat and Mooftees aforesaid, and acquitting the prisoner,

Alloree Nursimharauze

direct that he be set at liberty.

(Sent following letter No. 234)

Read further return dated 21st Instant from the Provincial Court of Circuit in the Centre division to precept dated 29th Ultimo calling for an explanation from the late acting Criminal Judge of Cuddapa of his proceeding in certain number of the Calendar.

(Here enter No. 370)

Read return dated 24th Instant from the 2d Judge on Circuit in the Centre Division to precept of the 22d Ultimo directing him not to forward the proceedings in case No. 6 Supplemental Calendar 1st Sessions 1826 Zilla Cuddapa.

(Here enter No. 372)

28th June 1826.

Read return dated 16th Instant from the Judges of the Provincial Court of Circuit in the Northern Division to precept dated 22d April last, directing them to circulate para 2 of the Government letter of 7th February last authorizing Criminal Judges to make inconsiderable repairs of the Jail at their discretion.—

(Here enter No. 373)

Read letter dated 23d Instant from the Provincial Court of Circuit in the Centre Division acknowledging the receipt of the Courts letter of the 21st Instant and stating that he proposes holding the 3d quarterly Sessions at Chittoor on the 9th proximo.

(Here enter No. 374)

Read return dated 21st Instant from the 3d Judge of the Provincial Court of Circuit in the Northern Division to precept of the 15th Instant communicating the remarks of the Zoyd area Boatuh upon Nellore Calendar 1st Sessions 1826.

(Here enter No. 375)

Read letter dated 26th June last from the 2d Judge on Circuit in the Northern Division Reporting his intention to leave Chicacole on the 21st Instant.

(Here enter No. 378)

At a Court of the Foujdaree Udalut

Present.

Thursday, 29th June 1826. J. H Grant Esqr 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
William Oliver Esqr 3d Puisne Judge

Read letter dated 19th April last from the 1st Judge late on Circuit in the Centre Division submitting case No 1 Calendar Supplemental Calendar 1st Sessions 1825.

(Here enter No 204)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Cozat and Mooftee of the Zoyd-ree Boatuh confirm the said futwa of the Cazee ool Cozat and Mooftee aforesaid and acquitting the prisoners,

1st Tuckrodeen
2d Vencataramdoo
3d Nurravoola Vencatagadoo
4th Gerra Vencatagadoo
5th Chinnoojakoo
6th Cassim Gowgadoo, and
7th Mootta,doo

direct that they be set at liberty.

(Sent following letter No. 235.

Read letter dated 9th

29th June 1826

last from the late Additional Judge of Circuit in the Centre Division submitting case No. 2 Cuddapa Supplemental Calendar 2d Sessions 1825.

(Here enter No. 290).

The Pts. 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Cozat and Mooftee of the Zillah Court confirm the said futwa of the Cazee ool Cozat and Mooftee aforesaid and acquitting the prisoner

Venkatasoogadoo

direct that he be set at liberty.

(Sent following letter No. 236).

1 The Court of Zillah Court have confirmed the futwa of their Law Officers in this case, which is certainly involved in considerable mystery, because they do not view the evidence of the prosecutor, and his wife, respecting a previous attempt on the part of the prisoner to murder the deceased, as worthy of credit: it appears to the Court to have been a story got up to support the present charge. This link in the chain of the evidence failing, there is little which would point out the prisoner, as the probable murderer

29th June 1826

of Atchee, for the circumstances under which he was found in the discovery of the corpse, do not of themselves lead to any inference of his guilt.

2 The Court further do not consider the evidence, identifying the bill hook found near the corpse, as the property of the prisoner, as satisfactorily establishing that material fact; and the prisoner's own relation of the circumstances of the murder, though in many respects improbable, is nevertheless consistently maintained throughout, and in the absence of more direct and positive testimony tending to overthrow it, and than what the record furnishes, the Court deem it entitled to some weight, and in consideration of the very little evidence brought against him, they have acquitted the prisoner.

3 The neglect of the Tahseeldar to hold an inquest on the body, of not already noticed by the late Additional Judge, should now be brought to the knowledge of the Magistrate: it is the duty of culpable in this case, as the intelligence of this officer was of sufficient assistance from the spot.

Ordered that extract of these proceedings

29th June 1826. proceedings be sent to the late Addi-
tional Judge late on Circuit in the
Centre Division by precept directing
him to communicate para 3 of these
proceedings to the Magistrate in the
Zilla of Cuddapa for his information and
guidance.

Sent. (Sent following precept No. 237.)

Read letter dated 24th May last
from the 2d Judge on Circuit in the Centre
Division submitting case No. 8 Cuddapa
Calendar 1st Sessions 1826.

(Here enter No. 314)

The grounds declared by
the Law Officers of the Foujdaree Adaulut to
bar a sentence of Hud against the pri-
soner in this case, being of the nature des-
cribed in clause fourth Section II Re-
gulation XV of 1803, the Court direct, that
they may be called upon to declare by
a second futwa, to what punishment
the prisoners would have been liable
under the Mohummedan Law, if
the above exceptions in bar of Hud
had not existed.

Ordered, that extract of these
proceedings be translated and delivered to the
Cazee Mooftee and Mooftees of the Foujdaree
Adaulut.

250

F. D.
29th June 1826.

Read letter dated 16th Instant
from the 3d Judge on Circuit in the Northern
Division; submitting the explanation called
for under date 3d March last, of the Sentence
passed in No. 7 Masulipatam Calendar 1st
Quarterly Sessions 1826.

(Here enter No. 349)

In their proceedings of the 3d
March last, the Court of Foujdaree Adaulat called
upon the 3d Judge to explain the ground of
his order, for the release upon security, of
the 2d Prisoner in No. 7 of the Calendar of the 1st
Quarterly Sessions 1826, under a futwa, which,
is stated in the Abstract given in the Calendar
to have declared the 2d Prisoner 'liable to Punish-
'Shalib on strong suspicion'

In reply, the 3d Judge states,
"that he did not consider the prisoner convicted,
"although he was of opinion, that there existed
"strong suspicion against him not amounting
"to conviction, and it [illegible] him at the
"time, and does so still, [illegible] case
"it was competent to him to release [illegible] upon
"upon security."

The Court [illegible], that the
3d Judge has [illegible] embrace this opi-
nion, from not [illegible] weighed with the
necessary attention, the provisions of clause
third Section II Regulation XV of 1803, where,
in the opinion of the Court, it is expressly declared

29th June 1826 that a futwa of Zun-i Ghalib, does amount to
conviction on strong presumptive proof and
renders the prisoner liable to punishment: The
futwa of strong suspicion not amounting to
conviction, referred to in clause sixth of the enact-
-ment above cited; is a futwa of Tohmut; and
it is this futwa, and not that of Zun-i
Ghalib which authorizes the release of the pri-
-soner on security.

4 Had the 3d Judge referred to
this Courts proceedings of the 24th December
1822, addressed to the Acting Judge on Circuit
in the Northern Division 23d Septem 1822,
he would have found, that the opinion now
given has been before made known to the
Provincial Court, and it was upon this ground
that the Court deemed it necessary to call upon
the 3d Judge, for an explanation of his proceedings.

5 Under the explanation the 3d
Judge has afforded, that he did not con-
-sider the 2d prisoner convicted, which is in
fact a dispent from the opinion of the law
officer, a reference of this case would have been
proper at the date of the trial; but as the sentence
of the 3d Judge has had effect for some Months,
and it is to the advantage of the prisoner, the
Court do not deem it expedient to disturb it;
and do consider the sufficient to have pointed
out his error to the 3d Judge to prevent it

29th June 1826

Ordered, that extract of these
proceedings be sent to the 3d Judge on Cir-
-cuit in the Northern Division for his informa-
-tion and guidance.

(Sent following Letter No 238.

Read letter dated 19th Instant
from the Acting Judge on Circuit in the
Northern Division with copy of Solem
Calendar 4th Sessions AD 1826.—

(Secretary No 371)

At a Court of the Foujdaree Adaulut

Present

Monday
3d July 1826. F. A. Grant Esqr 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
William Oliver Esqr 3d Puisne Judge

Read letter dated 8th May last from the late Additional Judge late on Circuit in the Centre Division Submitting case No. 28 Cuddapa Calendar 22 Sessions 1825.

(Here enter No. 284)

The 1st 2d and 3 Puisne Judges on a deliberate consideration of the circumstances of the case in evidence before them being of opinion that the proof against the prisoner Capa Nagadoo is sufficient to convict him of Theft desire under the provisions of clause second Section II Regulation I of 1818 that their Law officers will declare by a second futwa to what specific punishment the prisoner would have been liable under the Mohammudan Law if he had been convicted by full legal evidence of the above crime.

Ordered that extract of these proceedings be translated and delivered to the Cazee ol Cozat and Mooftees of the Foujdaree Adaulut.

Read letter dated 9th May last from

3d July 1826. from the late Additional Judge late on Circuit in the Centre Division submitting case No. 29 Cuddapa Calendar 2d Sessions 1825.

(Sircular No. 291)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Futwa of the Provincial Law officer and the Futwa of the Cazee ool Coozat and Mooftee of the Longdaree Sudut and being of opinion that the evidence is insufficient for the conviction of the prisoners, do under the authority vested in them by Section VI Regulation I of 1825 direct that the prisoners,

1st Narrengadoo
2d Gungoologadoo and
3d Gungadoo

be released on procuring good and sufficient security for their future good behaviour and appearance when required.

but

(Vide following letter No. 239.)

1 In the consideration of this case, the Court of Sudder Adalut were forcibly struck with the inconsistencies which mark the evidence of the witnesses for the prosecution, respecting the grounds and circumstances of the apprehension of the prisoners. The whole of this part of the evidence is so extremely unsatisfactory,

3d July 1826. that it is not discoverable from it, when, and by whom, suspicion against the prisoners first began to be entertained; nor how long after the robbery, they were taken into custody. This appears to the Court to be a capital defect; and induces them to look upon all the subsequent proceedings with great distrust. The evidence relating to the discovery of the plundered property, is also by no means clear; the witnesses to this point contradicting themselves, and each other, as to the particular spots where the articles were found, and though it is not impossible, but that these inconsistencies admit of satisfactory explanation, yet unexplained, as they appear in the record, they throw a doubt over the whole of this portion of the evidence.

2 With these circumstances of suspicion attending the preliminary proceedings in this case, the Court do not therefore deem it right, to give much weight to the confessions of the accused before the Criminal Court; and they consider the requisition of security, to be the only sentence which the evidence before them warrants.

The

3d July 1826. 3

The Court have remarked in this, and other trials from the Cuddapa Zilla, that the Criminal Judge has named individuals as prosecutors, who have not suffered so much from the outrages of prisoners, as others, who have been put down as witnesses. In this case, the Prosecutor should have been Narrapah, the 6th witness, Cudderapah, who is irregularly made sole prosecutor, and Jekramah, the 5th witness. Cudderapah is the younger of the two brothers, and the 6th witness, it is to be observed, suffered much greater personal injury, and consequently had more ground for complaint, than the person named by the Criminal Judge as prosecutor.

Ordered, that a Extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division by precept, directing him to communicate para 3 of these proceedings to the Criminal Judge in the Zilla of Cuddapa, for his information.

(Sent following precept No 2140)

Read letter dated 13th May last from the late Additional Judge late on Circuit in the Centre Division submitting

Answered 11th July No 406 entered on the 14th Ditto 1826.

Sent

F. R.
3d July 1826.

case No 9 Bellary Calendar 2d Sessions 1825.

(Here enter No 298)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Juries of the Provincial Law Officer and the Juries of the Cazee ool Cozat and Mooftee of the Tongdaree Sudaut confirm the said Juries of the Cazee ool Cozat and Mooftees aforesaid and acquitting the prisoners.

1st Marie Lingah
2d Goriem Magalinga and
3d Talaia Beemah

direct that they be set at liberty.

(Sent following letter No 2141)

The Court of Tongdaree Sudaut

Sent.

in considering the record of this case, have been led to form an opposite opinion of the merits of the evidence, from that recorded by the late Additional Judge. It appears to the Court impossible to reconcile the fact, of the prosecutors, the parties injured, to cause search to be made for their property in the houses of the prisoners, with the evidence for the prosecution, that the accused were distinctly recognized at the time of the commission of the offence. This evidence is further improbable, as it goes to show, that the prisoners took pains to make themselves

3d July 1826.

known whilst committing the robbery; and yet it is stated, that they did not afterwards attempt to abscond, but remained quietly at their dwellings till taken into custody. The Court are unable to attach any credit to the evidence against them, and they have accordingly directed the release of the prisoners.

2 The gross negligence of the Police in this case, in abstaining from taking measures for the discovery of the stolen property, is deserving of severe reprehension, and the Court are not satisfied that it has received the notice it demanded; they direct therefore, that the late Additional Judge will bring the conduct of the acting head of Police of Kroodlegee, Venkapa, to the notice of the Magistrate, and to intimate to him the Courts expectation that it will not be passed over without more severe reproof.

Ordered that extract of these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division by precept, directing him to communicate para^{ph} 2 of these proceedings to the Magistrate in the Zilla of Bellary for his information.

Sent following precept & Letter.

Ans^{d} 15th July N^{o} 417 intimation
in the 5th Pro. 18th Oct. 1826.
Sent

3d July 1826.

Read letter dated 29th Ultimo from the first Judge of the Court of Circuit in the Centre Division reporting his intention to hold the Sessions at Cuddapa on the 27th Instant.

(Here enter No. 382)

Read letter dated 1st Instant from the 3d Judge of the Court of Circuit in the Centre Division reporting commencement of 3d quarterly Sessions 1826 Ultimo.

(Here enter No. 385)

At a Court of the Zoydaree Adalut

Present,

Friday 7th July, 1826.

F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read again letter dated 24th May last, from the 2d Judge on Circuit in the Cuttack Division, submitting case No 8 Cuddapa Calendar 1st Sessions 1826.

(Hereunto No 314)

Read the second futwa delivered in this case by the Cazee and Coazat and Mooftees of the Zoydaree Adalut.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwas of the Cazee and Coazat and Mooftees of the Zoydaree Adalut confirm the said futwas of the Cazee and Coazat and Mooftees aforesaid, and under the provisions of Section XXI Regulation VII of 1802 adjudge the prisoner,

Shaik Moortuja,

to receive 30 stripes with a rattan and to be imprisoned and kept to hard labor in irons

7th July 1826.

sions on the public roads or other public works for and during the period of seven years and then be released.

Sent following letter No 247.

Read again letter dated 8th May last, from the late Additional Judge late on Circuit in the Centre Division, submitting case No 28. Cuddapah Calendar 2d Sessions 1825.

(Here enter No 284)

Read the second futwa delivered in this case by the Cazee and Cazgat and Mooftees of the Tongdaree Adawlut.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwas of the Cazee and Cazgat and Mooftees of the Tongdaree Adawlut confirm the said futwas of the Cazee and Cazgat and Mooftees aforesaid and under the provisions of Section XXI Regulation VII of 1802 adjudge the prisoner

"Capa Negadoo,"

to receive 30 stripes with a rattan, and to be imprisoned and kept to hard labor in irons on the public roads, or other public works, for and during the period of seven years and then be released.

Sent following letter

7th July 1826.

Read letter dated 26th Ultimo from the 2d Judge on Circuit in the Western Division reporting the close of the Sessions at Calicut

(Here enter No 389)

Read letter, dated 29th Ultimo, from the 2d Judge on Circuit in the Northern Division, with copies of Chicacole Calendars for 1st Sessions 1826.

(Here enter No 386)

Read letter, dated 4th Instant, from the 2d Judge on Circuit in the Centre Division, with copies of Chingleput Calendars for the 1st Sessions 1826.

(Here enter No 394)

F. R.

At a Court of the Foujdaree Adalut

Present

Wednesday
12th July 1820. J. A. Grant Esqr 1st Puisne Judge

James Cochrane Esqr 2d Puisne Judge

William Oliver Esqr 3d Puisne Judge

Read letter dated 17th May
last from the 1st Judge late on Circuit in
the Centre Division submitting case No 2
Bellary Calendar 1st Sessions 1825.

(Here enter No 319)

The 1st 2d and 3d Puisne Judges
having maturely considered the proceedings held
before the Judge on Circuit the futwa of the
Provincial Law Officer and the futwa of the
Cazee ool Coozat and Mooftee of the Foujdaree
Adalut confirm the said futwa of the Cazee
ool Coozat and Mooftee aforesaid and
acquitting the prisoners,

1st Chidumbrum

2d Ruengumanak

direct that they be set at liberty.

(Sent following letter No 249)

Read letter dated 27th May
last from the 1st Judge late on Circuit
in the Centre Division submitting case
No 13 Bellary Calendar 1st Sessions 1825.

(Here enter No 368)

The

19th July 1820.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law officer and the futwa of the Cazee ool Coozat and Mooftee of the Tongaree Adalut confirm the said futwa of the Cazee ool Coozat and Mooftee aforesaid and under the sentence of Cokoonut declared in the futwa adjudge the prisoners,

2d Pedda Chinnapah,
3d Sinnanarrado
4th Nataculi
5th Nulla Chinnappah,
6th Nanjuppah
7th Sashappah and
8th Chenna Rasunnah

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of six months and then be released.

(Sent following letter No 250)

Read letter dated 19th Ultimo from the 1st Judge Cute on Circuit in the Centre Division submitting case No 2 Chinglepet Calendar 1st Sessions 1825.

(Here enter No 309)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa

19th July 1820.

of the Provincial Law officer and the futwa of the Cazee ool Coozat and Mooftees of the Tongaree Adalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and acquitting the prisoners,

1st "Colundapeen"
2d "Govindun" and
5th Singhy

direct that they be set at liberty.

(Sent following letter No 251.)

Read letter dated 2d Ultimo from the acting Judge on Circuit in the Southern Division, submitting case No 1 Salem Calendar 1st Sessions 1820.

(Here enter No 325)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law officer and the futwa of the Cazee ool Coozat and Mooftees of the Tongaree Adalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the sentence of Kilpa as declared in the futwa adjudge the prisoner,

"Mootten"

to suffer death, by being hanged at the usual time and place of execution.

(Sent following letter No 252.)

F. C.

At a Court of the Tonjoree Adalut.

Present

Friday 14th July 1826. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read letter dated 8th May last from the 1st Judge late on Circuit in the Centre Division submitting case No. 140 Cundapa Calendar 1st Sessions 1825.

(Here enter No. 317)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee vol Cozat and Mooftee of the Tonjoare Adalut confirm the said futwa of the Cazy vol Cozat and Mooftees aforesaid and acquitting the prisoners,

1st "Chakala Siddoogadoo," and
2d Chakala Gopalgadoo

direct that they be set at liberty.

(Sent following letter No. 253.)

Read letter dated 6th Instant from the 3d Judge on Circuit in the Northern Division submitting case No. 56 of Nellore Calendar 1st Sessions 1826.

(Here enter No. 357)

The 1st 2d and 3d Puisne Judges having

14th July, 1826. having maturely considered the proceedings held before the Judge on Circuit the Justices of the Provincial Law Officer and the Justices of the Cazee-ool-Coozat and Mooftees of the Zoujdaree Adaulut confirm the said sentence of the Cazee ool Coozat and Mooftees aforesaid, and under the provisions of Section XVII Regulation VIII of 1808, adjudge the prisoner,

"Chengoroopanty Pakeeah"

to suffer death by being hanged at the usual time and place of execution.

(Sent following letter No. 254)

Read letter, dated 28th Ultimo, from the Judges of the Provincial Court of Circuit in the Northern Division, with report on the state of mind of the prisoner in No. 3 Masulipatam Calendar 2d Quarterly Sessions 1825 required by the Court's orders of 14th September 1825.

(Here enter No. 398)

Read return, from the late Additional Judge late on Circuit in the Centre Division, to precept dated 28th Ultimo, directing him to communicate para 2 and 3 of the Court's proceedings

14th July, 1826. of that date to the Acting Criminal Judge of Cuddapah.

(Here enter No. 405)

Read return, dated 11th Instant, from the late Additional Judge late on Circuit in the Centre Division, to precept dated 3d Instant directing him to communicate para 3 of the Court's proceedings of that date to the Criminal Judge of Cuddapah.

(Here enter No. 406)

Read return, dated 11th Instant, from the Judges of the Provincial Court of Circuit in the Southern Division, to precept dated 15th Ultimo informing them of the Court's opinion as to the cases of perjury cognizable under Section XXX Regulation IX of 1816 and Section VIII Regulation II of 1822 with remarks on the proceedings of the Magistrate of Coimbatore in a case of perjury forwarded by him.

(Here enter No. 399)

Read letter, dated 5th Instant, from the 2d Judge on Circuit in the Southern Division, reporting the commencement of the Sessions at Madura

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X

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At a Court of the Foujdaree Adalut.

Present

Friday,
3d March, 1826. F. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
George Govan Esqr. 3d Puisne Judge

Read letter dated 27th Ultimo from the 3d Judge of the Provincial Court of Circuit in the Northern Division submitting a copy of the Masulipatam Calendar for Quarterly Sessions 1826.

(Here enter No. 108)

In No. 7 of the Calendar the Court observe, that the charge laid against the 2d prisoner, was, for having received "property in mortgage knowing it to have been stolen". The futwah it is stated convicted the prisoner; and, it is concluded, declared him liable to discretionary punishment, the necessary consequence of a futwa of Goor-i-ghalib. In this case it was the duty of the 3d Judge to have proceeded under the principle of clause Second Section II Regulation XV of 1803, as the offence of the prisoner is provided for in Section IX Regulation VI of 1822.

3 The Court desire to know, upon what ground the 3d Judge deemed it competent to him, to order the release of the prisoner upon security; and that he will also

7th March 1826. to the Cazeecol Cozzat and Mooftees of the Dy Zoujdaree Adalut.—

W. W. L.

Read letter, dated the 28th Ultimo from the Third Judge of the Provincial Court of Circuit in the Northern Division, Reporting his intention to proceed to Nellore to hold the 1st Sessions.—

/Here enter No. 157/

Read letter, dated the 27th Ultimo, from the Second Judge on Circuit in the Centre Division, Reporting the closing of the Sessions at Cuddapa on the 27th Ultimo.—

/Here enter No. 156/

7 M.

At a Court of the Zoujdaree Adalut,

Present,

Monday 13th March 1826. F. A. Grant Esquire, 1st Puisne Judge.
James Cochrane Esquire, 2d Puisne Judge.
George Gowan Esquire, 3d Puisne Judge.

Read letter, dated the 1st Ultimo from the late Additional Judge late on Circuit in the Centre Division, submitting case No. 2 Cuddapa Calendar 2d Sessions 1825.

/Here enter No. 89/

The 1st 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazeecol Cozzat and Mooftees of the Zoujdaree Adalut confirm the said futwa of the Cazeecol Cozzat and Mooftees aforesaid, and under the provisions of clause first Section IV Regulation XV of 1803 adjudge the prisoner,

1st "Mala Chennoogadoo",

to suffer death by being hanged at the usual time and place of execution.

And under the provisions of clause fifth Section IV Regulation XV of 1803, adjudge the prisoners,

2d "Mala Gelloogadoo",
3d "and Curata Gunnadoo", to

11th August 1826. for departing from the letter. Persons confined by a Magistrate under Section III, and by a Criminal Judge under Section IV, of Regulation II of 1822 are very differently circumstanced. The former are for the most part confined on vague suspicion arising out of their mode of life; and it is not obligatory on the Magistrate either to require or accept Security as the condition of their release. But circumstances may come to light which completely dispel the suspicions against them; and their further detention in custody would then be most unjust; yet would often be unavoidable if the Judge on Circuit only could order their release. The latter are only not convicted of a specific offence and labor under a strong suspicion of guilt arising from the evidence against them; they can always obtain their release by giving the Security required; and the accusation against them having been the subject of a regular judicial enquiry before the Judge by whose order they are confined, no new circumstances

11th August 1826. can be expected to come to light to alter his suspicion of their guilt. There is therefore no injustice or hardship in their confinement till the Circuit Court arrives.

3. These considerations will probably satisfy Mr. Vaughan as to the reason of the distinction made between the Magistrate and Criminal Judge in Sections III and IV of Regulation II of 1822. They will also account to him for this Court's opinion that there is no ground to recommend any alteration in those enactments.

Mr. Vaughan will of course correct the irregular practice on this head which appears to have obtained in the Zillas of Malabar.

Ordered, that extract of these proceedings be sent to the 2d Judge on Circuit in the Western Division for his information. and also to the Judicial Secretary to Government for his information and guidance agreeably to orders of Government dated the 19th October 1824.

Sent following letter No 277.

Sent 11

Ed Mt.

F. R.

At a Court of the Foujdaree Adalut

Present

Tuesday 14th March 1826.

T. A. Grant Esqr. 1st Puisne Judge
James Cochrane Esqr. 2d Puisne Judge
George Gowan Esqr. 3d Puisne Judge

Read again letter dated 28th January last from the 1st Judge on Circuit in the Southern Division submitting case No 8 Madura Calendar 1st Sessions 1826.

(Here enter No 79)

Read second petition delivered in this case by the Cazee-ool-Cozat and Mooftee of the Foujdaree Adalut.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit, the fatwa of the Provincial Law Officer and the fatwas of the Cazee ool Cozat and Mooftee of the Foujdaree Adalut confirm the said fatwas of the Cazee ool Cozat and Mooftee aforesaid and in commutation of the penalty of Deeyut adjudge the prisoner,

Veeren Chitty

to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of 7 years and then be released.

(Sent following letter No 97.)

to receive 39 stripes with a rattan and to be imprisoned and transported to such place or places beyond sea, as the Governor in Council shall appoint, there to be imprisoned and kept to hard labor in irons on the public roads or other public works for and during the period of their natural lives respectively.-

And the Court adjudge the prisoner,

4th "Chenooo Patadoo,"

to receive 30 stripes with a rattan, and direct that he be set at liberty with an admonition

(Sent following letter No 96.)

Read letter, dated the 7th Instant from the First Judge on Circuit in the Southern Division, Reporting the postponement of a case of Murder in the Madura Calendar with a view to ascertain whether the prisoner is insane or not.

(Here enter No 175)

Read letter, dated the 9th Instant from the Second Judge on Circuit in the Outer Division, Reporting the arrival of the Court of Circuit at Bellary.

(Here enter No 176)

3d March, 1826. explain, upon what principle he considered it open to him, to adjudge a penalty of seven years imprisonment to the principal in a case of theft, and pass a sentence upon the convicted receiver, which is authorized only in cases where the accused has not been convicted of any crime.

4 If the picture of conviction was not wholly approved, which is the inference the Courts are disposed to draw from the 3d Judge's proceedings in this case, it was his duty to have referred the trial.

Ordered, That extract of these proceedings be sent to the 3d Judge of the Provincial Court of Circuit in the Northern Division for his information and guidance.

Ans.d 10th June N.349 entered in No. 29th June 1826

(Sent following letter N.85.)

4th 11 Read return dated 13th Ul-
Sent timo from the Provincial Court of Circuit
23d in the Centre Division to precept dated
7th Ultimo directing them to communi-
=cate to the Criminal Judges and Ma-
=gistrates of the Courts late orders on the
subject of confessions.

(Here enter N.135)

Read letter dated 24th Ultimo from the 1st Judge of the Court of Circuit in the Centre Division forwarding the

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3d March 1826. report of the Assistant Criminal Judge of Chingleput upon the inquisitions produced by the execution of the Criminals in No 13 Chingleput Calendar 1st Inquisitions 1825

(Here enter N.136)

Read letter dated 23d Ultimo from the 1st Judge on Circuit in the Southern Division reporting that the Inquisitions at Madura were closed on the 23d

(Here enter N.138)

Read return dated 18th Ultimo from the Judges of the Provincial Court of Circuit in the Western Division to precept dated 7th Ultimo directing them to furnish the Criminal Judges and Magistrates with the Courts circular orders issued on the subject of confessions.

(Here enter N.142)

Read letter dated 25th Ultimo from the Criminal Judge in the Zilla of Cuddapa forwarding prescribed report upon a prisoner sentenced to transportation.

(Here enter N.147)

F. A.

At a Court of the Zuydaree Adalat.

Present,

Thursday, 17th August, 1820. F. A. Grant Esqre. James Cochrane Esqre. William Oliver Esqre. } Judges.

Read again return of the 1st Judge of the Centre Provincial Court of Circuit, to Precept 3d June last requiring explanations of two entries in the Record of Trial No 132 of the Calendar of the 1st Sessions at Cuddapa for 1825, also of his neglect to examine witnesses named by one of the Prisoners in his defence, or to account for their absence, or to inform the Prisoner of it, and finally of his omitting to stop the execution of his own illegal sentence on 3 of the Prisoners for near two Months after this Court had pointed out the illegality of it.

(Here enter No 410.)

Read also return of the Criminal Judge of Cuddapa with copies of the warrants received by his Court from the 1st Judge respecting the prisoners in this case.

(Here enter No 358)

The Trial No 132 was for simple Burglary, which offence the Jurors declared not proved against the

X1

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Fl.

At a Court of the Fujdaree Adalut,
Present,

Tuesday
7th March 1826. F. F. Grant Esquire ... 1st Puisne Judge.
James Cochrane Esquire ... 2d Puisne Judge.
George Gowan Esquire ... 3d Puisne Judge.

Read letter dated 25th Ultimo from the late Additional Judge late on Circuit in the Centre Division recommending under the provisions of Section X Regulation I of 1825 a mitigation of punishment in case No. 22 Bellary Calendar 2d Sessions 1825.

/Here enter No. 131/

The Court having attentively considered the grounds upon which the late Additional Judge has recommended a commutation of the prescribed penalty, in the case of the prisoner referred to in his report, to fours years' imprisonment with hard labor, sanction the sentence proposed.

Ordered that extract of the these proceedings be sent to the late Additional Judge late on Circuit in the Centre Division for his information.—

/Sent following letter No. 88/

Read

17th August 1826. the 3 first Prisoners, the Judge disapproved the Fatwa and required a second, which declared those prisoners liable to Rokhut, on which the Judge sentenced them to imprisonment with hard labor in Irons for 9 months. This proceeding was contrary to Section XXII Regulation VII of 1802 - and when the Calendar came before this Court was declared illegal and the trial ordered to be referred by a Precept dated the 17th June 1825. The record was sent up accordingly - on examination of which an entry was found (without date) of a notice to the Prisoners in open Court that their trial would be referred to the Kujdaree Adawlut - and another dated the 1st April 1825 of a precept to the Criminal Judge to detain the Prisoners till the sentence of the Kujdaree Adawlut should be received: both of which are plainly inconsistent with the sentence pronounced.

2. These are the two entries of which explanation was required: the explanation given is in effect that they are purely fictitious - having been erroneously put in by the writer in order to adhere to the form prescribed, and the Criminal Judge's return confirms this account: as he states that no such

17th August 1826. such precept was ever received by his Court - and submits the warrants actually received respecting these prisoners - which tally with their sentence in the Calendar. The transmission to this Court of a Trial without sufficient inspection by the Judge, or under his orders, to detect such a glaring inaccuracy is not creditable: but the Court will receive with indulgence the confession of a mistake in a matter of this kind.

3. The Court except from this indulgence a remark incidentally made by the 1st Judge in giving this explanation, viz: that "there was no time to spare for calling the Prisoners into Court to pronounce sentence or give information of any kind." The Court deem it indispensable that whenever the final sentence is pronounced by the Circuit Judge, it should be declared in open Court and in his presence. To omit this under any circumstances is slovenly and indecent; and tends to lower the majesty of public Justice and the reverence of the Courts which administer it. The plea of want of time is quite inadmissible.

The

7th March 1826.

Read letter, dated 27th Ultimo from the 1st Judge late on Circuit in the Northern Division, recommending under the provisions of Section IV Regulation I of 1825 a mitigation of punishment in case No. 11 Nellore Calendar 2d Sessions 1825.

/Here enter No. 152/

The Court having attentively considered the grounds upon which the 1st Judge has recommended a commutation of the prescribed penalty, to five years imprisonment with hard labor, sanction the sentence proposed.

Ordered that extract of these proceedings be sent to the 1st Judge late on Circuit in the Northern Division for his information.

/sent following letter No 89./

Read letter dated 27th Ultimo, from the 1st Judge late on Circuit in the Northern Division, stating that upon a reconsideration of cases Nos 3 and 4 Nellore Calendar 2d Sessions 1825 "he is induced to "retract his recommendation (under date the "8th November last) of a mitigation of pu- "nishment, and to submit the propriety of "the law being allowed to take its course."

/Here enter No. 153/

If the 1st Judge is of opinion, that there are no circumstances in the case of the prisoners referred to, to justify a mitigation of punishment, it is his duty to proceed to pass the sentence prescribed by law; and the Court of Sudder Adalut have no power to issue any instructions upon the subject. The Court deem it proper to observe, that the sentence of the prisoners should take effect from the date upon which the warrant for the execution of the legal penalty would have been issued had the 1st Judge held his present opinion at the Sessions.

Ordered that extract of these proceedings be sent to the 1st Judge late on Circuit in the Northern Division for his information & guidance.

/sent following letter No 90/

17th August 1826. 4. The explanation as to the Prisoners witnesses is indefinite and unsatisfactory but as the Trial has been closed and all the Prisoners acquitted and released the Court will not pursue the subject further.

5. With regard to the last point, the omission of the 1st Judge to stop the execution of his own illegal sentence he acknowledges error and expresses contrition for his share in it, but somewhat mistakes what that share really is. The order of this Court for the reference of this with many other Trials in the same Calendar reached the 1st Judge (he states) on the 29th of June - and on the 15th July he issued a precept to the Acting Criminal Judge of Adelaide calling for the necessary translations in the referred trials - but making no allusion to the suspension of the punishments. But the 1st Judge should have remembered that the Acting Criminal Judge could not on his own authority annul the warrant of the Circuit Court and that that warrant should have been recalled the instant its illegality was known: he should also have

remembered that the order should have been forwarded the very day if possible on which it was received and that no just cause could be assigned for 10 days delay to relieve many human beings from illegal and severe punishment. The responsibility of stopping the execution of the sentence lay first and chiefly on the 1st Judge, who pronounced it: but the Acting Judge is greatly to be blamed for not making an instantaneous reference upon the subject: a moments reflection would have convinced him that the Prisoners in this and all similar cases were actually suffering severe and illegal punishment; and under such a conviction, the course most natural and proper for him to pursue was immediately to suspend that punishment on his own responsibility till he could receive an answer to his reference to the 1st Judge.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Centre Division for his

out of 7 witnesses were examined, and that the trial was postponed because of the non-appearance in time of one of the attesting witnesses to the declaration before the Native Head of Police.

3 If all the other witnesses were present, this reason for postponing the trial is very insufficient. The Court believe that no Judge of any experience attaches sufficient importance to confessions before Native Heads of Police to make the proof of them worth postponing a trial for; and that on the sole ground of such confessions no conviction ever takes place. In this case, however, one of the attesting witnesses was present, and his evidence would have enabled the Court of Judicature to act upon the confessions, if those confessions had been corroborated by proof of collateral facts.

4 In all cases committed for Trial before him, the Circuit Judge before commencing the trial, should satisfy himself by considering the proceedings before the Criminal Judge and other inferior tribunals, whether there is reasonable ground to believe that the trial can be brought to a close on the testimony of the witnesses present: if there is not,

Para 1485 Sent as Circular to all the 28th June 1827.

the trial ought not to be commenced; because the knowledge by the prisoner of much of the evidence against him, long before his defence is heard and sentence passed, will furnish inducement and opportunity to corrupt and suborn witnesses.

Cases however may occur

5. though the Court think but seldom after a due consideration of the proceedings before held, in which the testimony of an absent witness, thought immaterial, may prove in the course of the trial to be indispensable. In such cases the trial ought to be postponed, but the depositions already taken, and of all the present witnesses, should be left with the record for the use of the Judge who will compleat the trial; in order that the witnesses who have already attended in obedience to their summons may be spared the inconvenience of attending again — and the time of the Court be saved. — Postponed trials should always be heard first; in order that if the further attendance of witnesses whose depositions were before taken is required, it may be obtained before the Judge quits the station, and thus all danger of

1 19th August 1826. his information and guidance.
ent.

(Sent following letter No 282)

Read letter, dated the 19th June last from the Northern Provincial Court, transmitting the reports prescribed by Section XXXV Regulation X of 1816, from the several Criminal Judges in the Division for the quarter ending with March last, with their observations thereon.-

(Here enter No 376.)

1 With reference to the 3d Par. of the foregoing letter the Court is of opinion that their Circular orders of the 5th November 1823 are in effect cancelled by the subsequent ones of the 13th September 1824- The latter direct that the communication prescribed by the former from the Criminal Judge to the Magistrate shall not be made when the latter has passed over without observation the proceedings of the Police In the only other case, when the Magistrate has observed upon the Police proceedings, he will agreeable to the former part of the same Circular orders

19th August 1826. have communicated his remarks to the Criminal Judge. and the duty of noticing to the Magistrate any case in which he has admitted insuffi=cient reasons for the detention of a Prisoner by the Police is by Par 5 expressly assigned to the Provincial Court of Circuit- so that under the Circular orders 13th September 1824 there is no case in which it can be the duty of a Criminal Judge to com=municate with the Magistrate on this subject-

2 Referring to the 4th Par the Court observe that there can be no question that the entering a House in this Country by night with intent to steal though the door be closed and not fastened or be open, is Burglary and has been constantly punished as such by the Criminal Courts.

Ordered, that extract of these proceedings be sent to the Judges of the Provincial Court of Circuit in the Northern Division for

9th March 1825

The Court regret to observe, that the 1st Judge has neglected in forwarding the record of the trial to offer his opinion on the guilt of the prisoner, as specially directed by Section XXVII Regulation VIII of 1802. This Officer has also disregarded the orders of the Foujdaree Adalut, requiring the pages of all records to be numbered. The Court consider it incumbent upon them to call the attention of the 1st Judge to these omissions and to desire that care may be taken to prevent their occurrence.

Ordered, that extract of these proceedings be sent to the First Judge late on Circuit in the Northern Division for his information and guidance.

Sent following letter No 94.

Read letter dated 14th Ultimo from the 3d Judge late on Circuit in the Western Division, submitting a copy of Malabar Calendar 2d Sessions 1824.

Here enter No 127.

In No 55 of the Calendar the Court observe the following charge, "False complaint "for having preferred a false complaint against "the prosecutor and his younger brother setting "forth falsely that they caused the death of one "Cherman Roiden." The prisoner it appears was

9th March 1825. was committed by the Criminal Judge upon the ground of his offence, being punishable under the Mohummudan law.

The Court are not informed of the measures which the Criminal Judge adopted, in order to ascertain this essential point, they deem it proper to observe, that the authority given to the Criminal Courts under Section VII Regulation X of 1816, to take cognizance of all acts criminal in the eye of the Mohummedan law, is a power, that should be exercised with much caution; and before an officer takes upon himself to punish, or commit cases not provided for by the Regulations, it is fit, that he should take the most effectual means for ascertaining with precision the law upon the subject. In all novel cases, the Court are of opinion that a reference should be made to the Provincial Court of Circuit, to know whether the act is penal or not.

The Court record the following question and answer put to and received from their Mohummudan Law Officers.

Question.

To what punishment, is a person, who has preferred before a Magistrate a false accusation of murder, liable under the Mohummedan laws.

Answer

Under the Mohummedan law a prosecutor is not liable to any punishment. But if a person brings a prosecution knowing the same to be false, and injurious

consequences

At a Court of the Foujdaree Adalut.

Present.

Monday,
21st August, 1826. } F. A. Grant Esqre
James Cochrane Esqre
William Oliver Esqre } Judges.

Read return by the 1st Judge of the Northern Provincial Court to this Court's Precept 3d June last submitting copy and translation of the Futwa in case No. of the Calendar at the 2d Quarterly Sessions at Masulipatam for 1826, with his opinion as to the Prisoner's guilt.

(Here enter No. 423.)

The Court called for this information in order to determine whether it was necessary to refer the Trial, as the 1st Judge appeared to intend on the ground of uncertainty what punishment should be adjudged under the Futwa. There were (it appears) two Futwas: but both agreed in adjudging discretionary punishment or release, on the ground of defective evidence of the crime charged, which was uttering counterfeit coin; tho' the lesser crime of having such coin in possession was proved

17th August 1826.
Cert.
Ent. Ent.

for their information and guidance.

(Sent following letter No. 283.

Read letter, dated the 5th Instant from the 2d Judge on Circuit in the Western Division, with copy of Malabar Calendar 1st Sessions 1826.

(Here enter No. 450)

rnines to the party complained against, such complainant, on proof of the damage resulting from the prosecution, and of his evil intention, is liable to Tazeer at the discretion of the Hakims.

From the foregoing answer it appears, that in the present instance the prosecution for false complaint was tenable, only under the proviso, that a direct and immediate injury to the accused was the consequence of such false complaint, and without proof of the damage, the act was not penal. It is not stated in the charge that the accused had suffered any injury from the act of the prisoner, and it is questionable therefore, whether the whole proceeding was not illegal.-

Under any circumstances the Court consider it to have been a matter proper for the cognizance of the Criminal Judge, and not the Court of Circuit; for although the moral quality of the offence, might be supposed to constitute an analogy between it and other attempts at homicide, yet the obstacles that oppose the successful perpetration of this species of crime are so great, that the Court of Sudder Adalut are led to think,

27
Fla
9th March 1826.

that the powers vested in the Criminal Judge under section VII Regulation X of 1816 will be found fully adequate to its' prevention; and the Criminal Judge should therefore assume the cognizance of the crime and not the Court of Circuit.-

The Court would deem fines, & commutable to imprisonment upon non payment, the appropriate penalty, if found sufficient for the suppression of the offence.

Ordered, that extract of these proceedings be sent to the 3d Judge late on Circuit in the Western Division by precept directing him to communicate the same to the Criminal Judge in the Zillah of Malabar for his information and guidance.

Ans.d 15th March No 203 sent in Pro. 31st Ult. 1826

Sent following precept & Letter

Read letter dated 4th Instant from the Third Judge late on Circuit in the Southern Division with returned warrant for execution of the prisoner in case No 15 Salem Calendar 2d Sessions 1825.

(Secretary's No 166)

Read return dated 23d Ultimo from the Judge of the Provincial Court of Circuit in the Northern Division to precept dated 7th Ultimo directing them to communicate to the Criminal Judges and Magistrates the Court's late orders respecting confessions.

(Secretary No 170)

F. H.

At a Court of the Fuydaree Adalut.

Present,

Thursday, 24th August, 1826. — J. A. Grant Esqre. / James Cochrane Esqre. / William Oliver Esqre. } Judges.

Read return by the 1st Judge of the Provincial Court of Circuit Central Division to this Court's Precept 28th June last requiring explanation whether in case No 81 of the Calendar of the first Sessions at Cuddapah in 1825, which, having postponed by him, became No 3 of the postponed Cases at the next Sessions, he examined all the witnesses but one, and if so why he postponed the trial.—

(Here enter No 143 of 1826.)

In the order for postponing the trial of this and sundry other cases (which forms part of the record of the trial) it is stated that in this and another case (No 54) the trial of the prisoners had been gone through so far as to wait only to close the same for one or two witnesses in each.— The records were returned to the Criminal Judge — and at the ensuing Sessions the trial of No 81 was commenced de novo and the witnesses summoned and examined a fresh—

2. The explanation is that only 3

court

24th August 1826. proved by confession before the Criminal Court.

2. Under these circumstances the Trial ought to be referred; not, however, because there is any uncertainty as to the punishment adjudicable under the Futwas that being laid down in Sections VI and VII Regulation II of 1822; but because the first Futwa was founded on an exception deemed unreasonable against the only direct witness, who was a woman; and on the non-admission of the prosecutrix as one of the witnesses required by the Mohummedan Law; which is the case provided for by Section VIII Regulation I of 1825; under which the Trial should be referred.

Ordered, that extract of these proceedings be sent to the 1st Judge of the Provincial Court of Circuit in the Northern Division for his information and guidance.

(Sent following letter No 2384/II.

Sent 24th E. M.

At a Court of the Foujdaree Adalut,

Present,

Saturday 11th March 1826

F. A. Grant Esquire. 1st Puisne Judge.
James Cochrane Esquire. 2d Puisne Judge.
George Gowan Esquire. 3d Puisne Judge.

Read letter, dated the 28th January last from the First Judge on Circuit in the Southern Division, submitting case No 8 Madura Calendar 1st Sessions 1826.

Here enter No. 79/

The 1st 2d and 3d Puisne Judges of the Court of Foujdaree Adalut on a deliberate consideration of the circumstances of the case in evidence before them being of opinion that the proof against the prisoner "Veeren Chitty", is sufficient to convict him of Manslaughter desire under the provisions of Clause second Section II Regulation I of 1818 that their Law Officers will declare by a second futwa to what specific punishment the prisoner would have been liable under the Mohummedan Law if he had been convicted by full legal evidence of the above crime.-

Ordered that extract of these Proceedings be translated and delivered to