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Foxglove
Proceedings
for 39 10
1827 24

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Tuesday
9th January 1827

At a Court of the Zoydarce Adalut
Present,

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

Read letter, dated 3 November last from the First Judge on Circuit in the Centre Division, submitting Case No 4 Bellary Calendar 2d Sessions 1826.

/Here enter No 682/

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 Zoydarce Adalut confirm the said futwa of the Cazee ool Cozat and Mooftees aforesaid, and order the sentence of Corporal punishment declared ~~therein~~ ~~on the first conviction with the clause to that effect in Repetition of Sept 1823~~ direct that the prisoner,

"Venkemmah,"

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

/Sent following letter No 2/

Read letter, dated 1st Ultimo from the First Judge on Circuit in the Centre Division, - submitting Case No 5 Bellary Calendar 2d Sessions 1826.

/Here enter No 683/

9th January 1827

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 Adaulut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the sentence of Tazeer declared in the futwa in conformity with clause first section III Regulation VII of 1811 adjudge the prisoner,

"Sheik Boodun"

to be publickly exposed in the mode commonly denominated Sunkeer 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 19:

Sent following letter No 3

Read letter, dated Ultimo from the First Judge on Circuit in the Centre Division- Submitting Case No 12 Cuddapah Calendar 2d Sessions 1826.-

Here enter No 720

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 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,

"Doodakoola Sukkaradeen"

to receive 20 stripes with a rattan and to be imprisoned

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Sent 19:

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 4

Read letter, dated 8th Ultimo from the First Judge late on Circuit in the Western Division- submitting Case No 9 Malabar Calendar 1st Sessions 1826.

Here enter No 721

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 Adaulut, confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and direct ~~under clause sixth Section II Regulation XI of 1803~~ that the prisoners,

1st "Koonoomel alias Payankolangara Moyan Cooty"

and

2d "Chekoongul Ally"

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

Sent 19:

Sent following letter No 5

Read letter, dated 15th November last from the Second Judge on Circuit in the Southern Division- Submitting Case No 17 Combaconum Calendar 2d Sessions 1826.- Here enter No 689

The

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The 1st 2d and 3d Prisoners 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 Sadr=dawe Udalut confirm the said futwas of the Cazee ool Coozat and Mooftees aforesaid, so far as regards the prisoners,

1st "Maroothye,"
2d "Caroolun,"
3d "Lawnthee,"
4th "Matherboothum,"
5th "Moottien,"
6th "Parian alias Nandeepiel,"
8th "Leckan," son of Leckan,
9th "Annanee,"
10th "Leckan," son of Moottaradeen,
11th "Palanyandee," son of Leckan
12th "Veeramalay,"
13th "Cauttapermaul,"
15th "Palyandee," son of Carraopen,
17th "Moottooneran,"
18th "and Coonjaun,"

and direct that they be set at liberty.-

And under the latitude of the sentence of Rokootut declared against the 7th Prisoner "Adickan," direct ~~unanimous~~ ~~distinction the Registrar 9th~~ that he be released on procuring good and sufficient security for his future good behaviour and appearance when required.-

Sent following letter No 6.

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The Court, on the fullest consideration, are of opinion that the evidence is altogether insufficient for the conviction of the prisoners in this case.-

The prosecutor says that he saw the 1st 2d 3d 4th 6th 7th 8th 10th 11th 12th 13th 15th 17th and 18th prisoners at the time of the robbery, and describes the part each bore in it. Before the Criminal Judge he had stated that he recognized only seven of the prisoners, viz the 1st 7th 4th 13th 8th 10th and 18th and that he was unable to recognize the others. On being asked which of the prisoners took his daughter into the room, he stated that he did not know, but they were three fair men; but on being reminded that before the Criminal Judge he had named the 4th and 13th prisoners, he said there were three persons. He also stated that his daughter informed him of her having been violated after she had recovered her senses on the evening of the next day, Monday, until which time she was not able to speak; but before the Criminal Judge he had said that she gave him this information after the robbers went away that night. He said also that he was present when the Articles No 2.3. and 4. were found on the 19th and 20th prisoners but in his examination before the Criminal Judge he had stated that he was not present when the prisoners were apprehended, and therefore did not know what property was found on each particular prisoner.-

The 1st witness Arasan says that he

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he saw the 1st 2d 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 15th 17th and 18th prisoners during the robbery. These prisoners he had pointed out to the Criminal Judge, but on being asked by the Criminal Judge whether he had previously known any of them he answered in the negative. Before the Court of Circuit, however, in answer to the 1st question put to him, he said that he had known some of the prisoners for 10 years. Being afterwards asked whether he had seen any of the prisoners previously to the robbery, he said that he had seen some, and knew two; and being desired to point out which of them he had seen, and which of them he knew, he said he knew the 4th 5th 12th and 15th prisoners.

4 The 2d witness Mootia Gounden contradicted himself in the same manner on this point, and also in respect to the fact of his having seen the prosecutor's daughter on that night, and of her having informed him of the violation of her person. These contradictions were pointed out to the witness by the Judge on Circuit, but his explanations were very unsatisfactory. Between his examination before the Criminal Judge and that before the Court of Circuit there would appear to be another contradiction which was not noticed to him. Before the Criminal Judge he had stated that it was impossible for them (the other two witnesses and himself) to see from the place when they were standing the prosecutor's daughter and the prosecutor; but on the trial he seems to

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to intimate that they did see the prosecutor suspended with his head downwards.—

The evidence of the 3d witness Ponna-
5 =nickala Gounden is open to nearly the same remarks. Before the Criminal Judge, indeed, he was not asked and he did not say whether or not he had previously known or seen the prisoners. Before the Court of Circuit he said that he knew them all except the 11th 16th 19th and 20th but that he could recognize among the robbers only the 3d 4th 5th 7th 8th and 10th. Before the Criminal Judge he had stated that the place where the prosecutor and his daughter were then was not to be seen by him and the other two witnesses; but before the Court of Circuit he said that they saw some of the robbers beat the prosecutor with sticks having suspended him to a beam in a room facing south. This witness like the others contradicted himself in respect to the fact of having seen the pro-
=secutor's daughter on the night of the robbery.

6. The 5th and 6th witnesses are the wife and daughter of the prosecutor, and as the violence committed upon them formed a part of the charge against the prisoners, they should properly have been examined as the prosecutors. A wife indeed cannot be examined as a witness for her husband, although, she may be joined with him as prosecutor. The evidence of these two witnesses, however, is wholly immaterial, except so far as it relates to the ill-treatment which they received.—

7. These are the only eye-witnesses of

9th January 1827. of the robbery; and it appears to the Court that the evidence of the prosecutor and the first three witnesses is not intitled to the smallest credit so far as it relates to their pretended recognition of the prisoners as being among the robbers. Looking indeed to the gross contradictions between their evidence before the Criminal Judge and the Court of Circuit, the Court very much question whether any part of their testimony can safely be relied on.-

8 The 4th Witness Mootooveera Naicken says that he knows all the prisoners because he apprehended them. His evidence, however, as relates only to the 7th prisoner, who being apprehended by Columdavaloo Gounden gave information which led to the discovery of certain property, belonging to the prosecutor, upon the 14th 16th 19th and 20th prisoners, who have been released.-

9. The 5th witness Columdavaloo Gounden says that he went to the prosecutor's house just after the robbers had left it. He then describes the means he took for the discovery of the offenders. He wrote letters to the inhabitants of four villages, which he names, but Marooday only came. To him he related all that had passed, and Marooday went away promising to make inquiry. Two or three days afterwards Marooday sent him word that he had apprehended Adicken the 7th prisoner, whereupon the witness sent a party of Nyats and Pullers, who brought the said prisoner to him. Upon this he and the Police Peon questioned Adicken, regarding

7. F.C.
9th January 1827. regarding the robbery; he confessed and named his accomplices, and pointed out where he had deposited his share of the property. He then describes where the articles Nos. 5, 6, 7, and 8. were found; and says that on information given by the 7th prisoner they apprehended the others.

10. The evidence of Columdivaloo Pillay the 8th witness goes only to prove the fact of the robbery. The 9th and 10th witnesses were called to prove that the articles before the Court belong to the prosecutor; and the 12th and 13th witnesses proved the 7th prisoner's declaration before the Magistrate.-

11. Marooday, the person who first took the 7th prisoner into custody, and who is named in the Criminal Judge's list as the 11th witness on the part of the prosecution, was not present at the trial; and the Judge on Circuit not considering his evidence to be very material resolved that the trial should proceed. From all that can be gathered from the deposition of this witness before the Criminal Judge it appears that all the prisoners were taken into custody solely on the information given by the 7th prisoner Adicken, who is represented to have volunteered the information on being casually met by the witness near the village of Mantoor. To be credited, a story so improbable in itself certainly required some confirmation, and it is to be regretted that Vellyan Ambalagauren, who is stated to have been present on this occasion, was not summoned and examined.-

12. From the most attentive consideration of

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of the record it appears to the Court that the evidence is altogether insufficient even to raise a suspicion that the prisoners were concerned in the robbery of the prosecutors' house; and the Court have accordingly directed the unconditional discharge of them all except the 7th. Upon the whole the Court have considered it proper to require that security should be taken from this prisoner previously to his release; but looking to the very suspicious story of Marooday the Court think there is too much reason to believe that this prisoner has been made a mere tool in his hands. The Court trust that unless the reasons assigned for Maroodays' absence from the trial were very satisfactory the Judge on Circuit ordered the forfeiture of his recognizance.

It is right to state that the circumstance of some of the prisoners being old offenders has not escaped the observation of the Court.-

13 Before concluding their proceedings on this trial the Court consider it incumbent upon them to notice the insufficiency of the examination of the witnesses called by the prisoners on their defence. A careful examination of the witnesses for the defence is as necessary as of those for the prosecution. In both cases cross questions are equally requisite for the purpose of ascertaining the degree of credit to which the witnesses are intitled. In this case the witnesses were not subjected to any cross-examination; and the evidence of some of them is in consequence perfectly nugatory

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nugatory, and that of others unsatisfactory. The witnesses for the 4th and 2d prisoners for instance, in answer to questions put by the prisoners respectively, deposed that they went with the prisoners to certain places named, but no date is specified. The Judge, who presided at the trial, should have endeavoured to ascertain the date and other circumstances without which the evidence was clearly of no use.- Other witnesses again gave a simple answer in the affirmative to questions put by the prisoners, specifying places, and dates, and other circumstances which the prisoners wished to prove, and no means were taken to try their veracity. It is hardly necessary for the Court to point out that if these witnesses had stood the test of a strict cross examination, their testimony would probably not only have rebutted the evidence for the prosecution even if that evidence had been more credible than it really is, but would have afforded grounds for committing the prosecutor and the first three witnesses on his behalf for perjury.

Ordered that extract of these proceedings be sent to the Second Judge on Circuit in the Southern Division for his information and future guidance.-

A. Ba

Sent following letter No 7.

Read letter, dated 6th instant from the Second Judge of the Court of Circuit in the Central Division, informing that 1 Quarterly

9th January 1827. Sessions Zilla of Chittore commenced on the 2d Instant.

/Here enter No. 5/

Read letter dated the 5th Instant from the third Judge on Circuit in the Centre Division, Reporting the commencement of the Sessions at Cuddapah on 2d instant.

/Here enter No. 4/

F. R.

At a Court of the Foujdaree Adalut.

Present

Saturday, 13th January 1827. J. A. Grant Esqr. 1st Puisne Judge

James Cochrane Esqr. 2d Puisne Judge

William Oliver Esqr. 3d Puisne Judge

Hl. R. 20 –

Read letter dated 12th November last from the 2d Judge on Circuit in the Southern Division submitting case No. 21 Conlie common Calendar 2d Sessions 1826.

/Here enter No. 674/

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 order the Sentence of Dokoobut declared in the futwa direct the prisoner,

1st Cuntapermaub

to be released on producing good and sufficient Security for his future good behaviour and appearance when required –

And the prisoner,

2d Vengon

to be set at liberty –

/Sent following letter No 10/

The

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The Court have given to this case the most anxious consideration; and although they think the presumption of the Pris.r prisoner's guilt is very strong, they are of opinion that it is not sufficient to warrant his conviction of the murder -

2 The presumption of his guilt arises solely from his declaration before the Criminal Judge, and from what he stated when put on his defence at the trial. It cannot be denied that his account of the manner in which the deceased came by his death is improbable, but it is still possible to be true, and there is no evidence to contradict any part of his statement - The evidence for the prosecution indeed proves nothing against him in addition to what is contained in his own declarations before the Criminal Judge and the Court of Cirent - Now although his stripping the body of the cloths and jewels, his throwing it into the well, his going to the prosecutrix and asking her under a false pretence for the cloths which the deceased had left at his house, and his giving her false information about her Son, are circumstances calculated to excite strong suspicions of his guilt, yet if his confession is made use of against him, it must be all taken together; and he denies

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denies that he was any wise concerned in the murder - Then if his confession is thrown out of consideration altogether, the evidence against him will fall far short of what is necessary for his conviction - The witness to the discovery in his house of the articles belonging to the deceased will then appear of questionable credit, for the prosecutrix and Chidambrum, the prisoner's brother, both distinctly swore before the Criminal Judge that the Police Peon was present at this discovery; the prosecutrix indeed mentioned that some others also were present, but their evidence at the trial goes to shew that they were alone on this occasion; and the Police Peon Chidambrapilly the 5th witness distinctly swears that he does not know where the articles were found, but that the prosecutrix and Chidambrum brought them to him - In ordinary cases, perhaps, this contradiction would not be very material; but in this case it is of the highest importance, inasmuch as the conviction of the prisoner depends exclusively on collateral facts, and it is therefore the more necessary to see that each of those facts is established by clear and unquestionable testimony. Besides from the evidence it appears very doubtful whether the discovery of the articles in the house

J.

of the 1st prisoner was made in consequence of information given by him or by the 2d prisoner Vengon; for although the prosecatrix at the trial said that she went and asked Cheedumbrum for the articles solely from having heard the 1st prisoner's declaration before the Police Officer, yet she admits that the 2d prisoner had told her that they were in the house of her son-in-law. It seems however pretty clear that Vengon was taken into custody before the search was made, and her evidence before the Criminal Judge, which is corroborated by that given by Cheedumbrum, goes directly to shew that Vengon's declaration alone led her to go and ask Cheedumbrum for the articles. Now this is obviously a point of the greatest importance as it affects the 1st prisoner; for unless the discovery was made in consequence of direct information given by him, it does not of itself warrant any inference against him; for the house was occupied by his brother, the witness Cheedumbrum, as well as by himself, and the articles might have been concealed there without his knowledge.

3 The only other facts appearing in the evidence on the trial that can be supposed to tend in any way to implicate the prisoner



prisoner in the murder of the deceased, are that at 3 o'clock in the morning he went to the house of the prosecatrix, and told her that her Son was at the threshing-floor, and had desired him to bring his two cloths; that on being asked by the Prosecatrix why her Son wanted the cloths at such an hour, he said that her Son was going to the Talook Cutcherry at Elipoor early in the morning; that she delivered the cloths to him; and at day-break went to the threshing floor, when she found only the two prisoners; and that on her asking them where her Son was the 1st prisoner said he was gone to Elipoor, and the 2d prisoner said that he did not know where he was gone. But for all that appears in evidence the deceased might have sent the 1st prisoner for his cloths; he might have left the threshing floor intending to go to Elipoor, and the murder might have been committed without the prisoner's knowledge. It must also be observed that the threshing floor, the spot where the murder is supposed to have been committed, was not examined, or if examined, it did not exhibit any suspicious appearance, and there is nothing whatever in the evidence taken by itself, to warrant the presumption that the prisoner committed the murder himself or knew that it had been committed. Upon

13th January 1827.

Upon the whole thereupon the Court have considered it proper to direct the discharge of the 1st prisoner on his giving security for his future good behaviour and appearance when required - The evidence against the 2d prisoner is obviously insufficient for his conviction; and the Court have directed his unconditional release -

Ordered that extract of these proceedings be sent for the information of the Judge Sate on Circuit in the Southern Division -

(Sent following letter No 11)

Read letter dated 4th Instant from the 3d Judge on Circuit in the Western Division, Reporting his arrival and commencement of the Sessions at Mangalore on the 4th Instant -

(Here enter No 8)

F. C.

At a Court of the Foujdaree Adalut.

Present.

Thursday, 18th January, 1827. F. A. Grant Esqre. James Cochrane Esqre. William Oliver Esqre. } Judges.

Read petition presented by Yamalbee complaining of the Murder of her Husband at Burial in Mysore -

(Here enter F. C. Miss. Pet. No 17 of 1826.)

The assault and murder complained of in this petition would appear to have been perpetrated in the territories and by subjects of his Highness the Rajah of Mysoor, where this Court have no jurisdiction - The prayer of the petitioner cannot in consequence be attended to -

Ordered that extract of these proceedings be furnished to the petitioner on her application -

Read petitions presented by Illama and Potty Ammah of the Zilla of Chinglaput.

(Here enter F. C. Misc. Petns No 18 & 19 of 1826)

These are applications for the release of Prisoners in cases No 7 and 20 of the Chinglaput Calendar 1st Session of 1826. in both which the Judge disapproves, and they are consequently

18th January, 1827. be referred; but the records have not yet been received.-

Ordered that the Petitioners be informed accordingly, and that they must await the sentence of this Court on their relatives.-

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

Read petition presented by Mootooveeren of the Zilla of Madura.-

(Here enter P. C. Misc. Pet. No 16 of 1826)

The Petitioner applies for an order to the Magistrate to furnish him with copies of documents connected with a certain case disposed of under Section XXXI Regulation IX of 816, in order that he may present them with a Petition to the Judge on Circuit at the ensuing Sessions.-

Ordered, that the Petitioner be informed that this Court has not power to grant the order applied for, and that a Petition to the Judge on Circuit would be of no use in the case described by him, in which the Proceedings of a Magistrate are subject to no control but that of Government.-

The Court remark that the reason stated by the Petitioner to have been

18th January 1827. been assigned to the Provincial Court of Circuit for his application to them, - viz "lest the Magistrate should change" the documents, which he required, - is a very indecent imputation on the Magistrate which the Circuit Court should have reproved.-

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

Ld. MS.

F. H.

At a Court of the Fayidaree Adalut.

Present,

Thursday 25th January, 1827. } J. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read petition presented by M Pettumby Naick complaining of the acquittal and release by the Court of Circuit of certain individuals charged with the murder of his sisters son named Veerasamie in case No 5 Chingleput Calendar 2d Sessions 1826 and requesting a rehearing of the case before this Court.-

(Hereunto F. H. Misc: Pet. No 15 of 1826.)

Rejected: as the Court of Fayidaree Adalut do not, on reference to the Calendar containing the case aforesaid, perceive any grounds on which to call in question the propriety of the Proceedings of the Court of Circuit.-

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

J. A. H. Reed

25th January 1827.

Read letter, dated the 17th Instant, from the Provincial Court of Circuit in the Centre Division, - with returned warrant for the execution of the prisoner in case No 1 of the Supplimental Calendar of the Zilla of Ballary 2d Sessions 1826.-

(Here enter No 13)

Read letter, dated the 18th Instant, from the 1st Judge on Circuit in the Northern Division, - reporting the arrival of the Court of Circuit at Nellore on the 17th Instant.-

(Here enter No 16)

Read return, dated the 18th Instant, from the late Additional Judge late on Circuit in the Centre Division, - to precept dated 28th Ultimo requiring a warrant to be issued to the Criminal Judge of Chinglaput for the release of the prisoners in No 44 Chinglaput Calendar 2d Sessions 1825.-

(Here enter No 17)

Read letter, dated the 18th Instant, from the 3d Judge on Circuit in the Western Division, reporting the completion of the Jail Delivery at Canara.-

(Here enter No 23)

Read letter dated the 18th Instant, from the 3d Judge on Circuit in the Western Division, - with copy of Canara Calendar 1st Sessions 1827.-

(Here enter No 26.)



At a Court of the Foujdaree Adalut.

Present,

Saturday, 27th January, 1827. — F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter, stated 8th December from the 3d Judge on Circuit in the Northern Division, submitting copy of Chicacole Calendar 2d Sessions A.D. 1826 with reports on certain cases therein specified.-

(Here enter No 738 of 1826)

1. The Court of Foujdaree Adalut having attentively considered the grounds upon which the 3d Judge has recommended that the punishment of the prisoner referred to in his report on case No 7 of the Calendar should be mitigated to three years imprisonment with hard labour, resolve to sanction the mitigation proposed.-

2. In respect to case No 10 the Court of Foujdaree Adalut having maturely considered the circumstances, under which he considered it proper, with reference to the Circular orders of the Court of Foujdaree Adalut, dated 28th November 1821 to discharge the prisoners from the bar without putting them upon their trial regret that he did not order the committal of the

25th 27th January 1827.

the prosecutor and witnesses for perjury.-

3. From the 3d Judge's report on this case, it appears to be unquestionable, that if the facts sworn to by the prosecutor and witnesses, when giving their evidence in this case, were false, the offence of perjury was wilfully and deliberately committed; and therefore the Court of Foujdaree Adalut are of opinion that they should have been committed to take their trial for that offence.-

4. The Foujdaree Adalut direct that the prisoners Dawid alias Timiah, Limabra Sengum Dorah, and Ankapilly Atchanah be transferred to the Zilla Jail at Trichinopoly to undergo the remainder of their imprisonment.-

5. A reply to the Criminal Judge's reference alluded to in paras 9 and 10 of the 3d Judge's letter has been sent.-

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. 20)

Sent.

Ordered, also that copy of paras 6 to 9 of the 3d Judge's letter and extract para 4 of these proceedings be furnished to the Provincial Court of Circuit for the Southern Division for their information and guidance.-

27th January 1827.

(Sent following letter No. 21.

Read letter, dated 6th instant, from the 2d Judge of the Court of Circuit in the Centre Division, submitting copy of Chittoor Calendars 4th Quarterly Sessions 1826.-

(Vide entry No. 7)

1. The futwa in case No. 1 of the Calendar declared the 1st prisoner convicted of Sarikah and liable to Kohoobut-Hudd being barred in consequence of the prisoner and the prosecutor being related to each other and living in the same house under this futwa he was sentenced to five years imprisonment and hard labour in irons in consideration of the above circumstances.

2. On this case the Court have to remark that it appears to them that the circumstance of the 1st prisoner's being a relation of the prosecutor, and living in his house, so far from diminishing the criminality of his offence, greatly aggravates it- In their opinion therefore a second futwa should have been taken under Clause fourth Section II Regulation XV of 1803, and the sentence thereupon should have been 7 years imprisonment with hard labour in irons.-

3. In case No. 5 the 1st prisoner was charged with Burglary and theft, and the 2d prisoner with being an accessary

Extract

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accessary in receiving the property that was stolen.- The Futwa declared that they were convicted of receiving stolen property and liable to Kohoobut- Under which Futwa the 1st prisoner was sentenced to six years imprisonment and hard labour in irons, and the 2d to one and a half year.-

4. The Court have to observe on this and the following case that if the 1st prisoner's confession before the Criminal Court is correctly abstracted he clearly admitted that he aided and abetted the burglary- The same remark is applicable to his confession of the highway robbery in the next case- but the sentence may be allowed to stand.-

5. In case No 12 of the Calendar the prisoners were charged with assaulting and wounding the prosecutor, and declared by the Futwa not convicted and should be released.-

6. The Court observe, that no mention is made of how they have been disposed of- They direct therefore that the 2d Judge be called upon to explain this omission.-

7. In case No 1 of the Supplemental Calendar the 1st prisoner was declared by the Futwa to be convicted upon strong presumption (Zun-i-Ghalib) of Arson and liable to Kohoobut- he was however sentenced to be released the Judge not believing that

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27th January 1827.

strong suspicion existed against him.-

8. On this sentence, the Court of Foujdaree Adalut have to observe that it was not competent to him to direct the release of the 1st prisoner in opposition to the Futwa of Zun-i-Ghalib. If the Judge did not concur in the Futwa he ought to have referred the trial under Section XXII Regulation VII of 1802, which prescribes the reference of all trials, in which the Judge of Circuit may dissent from the Futwa.-

Ordered, that extract of these proceedings be sent to the 2d Judge of the Court of Circuit in the Centre Division for his information and guidance.-

Sent following letter No 22.

J. W.

Sent DH EL

Ex M. 20

Read letter, dated the 24th Instant, from the 3d Judge on Circuit in the Centre Division,- reporting the closing of the 1st Sessions of 1827 at Cuddapah on the 24th Instant.-

(Here enter No 32)

Read letter, dated the 28th Ultimo, from the 2d Judge of the Court of Circuit in the Northern Division,- transmitting copy of Masulipatam Calendar 4th quarterly Sessions 1826.-

(Here enter No 3)

25 27th January 1827

accessary in receiving the property that was stolen.- The Futwa declared that they were convicted of receiving stolen property and liable to Kohoobut- Under which Futwa the 1st prisoner was sentenced to six years imprisonment and hard labour in irons, and the 2d to one and a half year.-

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F. C.
27th January 1827.

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8. On this sentence, the Court of Foujdaree Adalut have to observe that it was not competent to him to direct the release of the 1st prisoner in opposition to the Futwa of Zun-i-Ghalib. If the Judge did not concur in the Futwa he ought to have referred the trial under Section XXII Regulation VII of 1802, which prescribes the reference of all trials, in which the Judge of Circuit may dissent from the Futwa.-

Ordered, that extract of these proceedings be sent to the 2d Judge of the Court of Circuit in the Centre Division for his information and guidance.-

Sent following letter No 22.

Sent
Ex. M.

S. W.

Read letter, stated the 24th Instant, from the 3d Judge on Circuit in the Centre Division,- reporting the closing of the 4th Sessions of 1827 at Cuddapah on the 24th Instant.-

(Here enter No 32)

Read letter, stated the 28th Ultimo, from the 2d Judge of the Court of Circuit in the Northern Division,- transmitting copy of Masulipatam Calendar 4th quarterly Sessions 1826.-

(Here enter No 3)

27th Janu

6

1827

At a Court of the Foujdaree Udalut

Present

Tuesday, 30th January, 1827

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

Read letter, dated the 16th Instno

Jan 24

from the 1st Judge on Circuit in the Centre Division, submitting case No 26 Cuddapa Calendar 2d Sessions A D 1826.-

Dec

Here enter No 725 of 1826.

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 Udalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the sentence of Kissas declared therein adjudge the prisoner,

"Mala Gungaloogadoo"

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

Sent

Sent following letter No 29.

Read letter, dated the 11th Instno

from the 1st Judge on Circuit in the Centre Division, submitting case No 10 Cuddapa Calendar 2d Sessions A D 1826.-

Here enter No 718 of 1826. The

Arrack

27th Janua

6

1827

1827

At a Court of the Foujdaree Adalut

Present

Tuesday,
30th January, 1827

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

Read letter, dated the 17th Instno
from the 1st Judge on Circuit in the Centre
Division, submitting case No 26 Cuddapa
Calendar 2d Sessions A D 1826.

(Here enter No 725 ) of 1826.

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 futwas
of the Cazee ool Coozat and Mooftees
aforesaid and under the sentence of Reyaas
declared therein adjudge the prisoner,

"Mala Gungaloogadoo"

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

(Send following letter No 29.

Read letter, dated the 17th Instno
from the 1st Judge on Circuit in the Centre
Division, submitting case No 10 Cuddapa
Calendar 2d Sessions A D 1826.

(Here enter No 718 ) of 1826. The

25 2/ 30th January 1827. 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 Fouzdaree Adaut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and direct under Clause sixth Section II Regulation XV of 1803 that the prisoners,

1st "Vammnah,"
2d "Boya Buchanadoo,"
3d "Vosa Nagadoo,"
4th "Vudda Ramadoo"
5th "Rama Dasoo,"
6th "Hummentoo,"
7th "Condareddy," and
8th "I. Nagadoo,"

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

Sent. (Sent following letter No 30)

Read letter dated the 5th Ultimo from the 1st Judge on Circuit in the Centre Division, submitting case No 8 Cudapa Calendar 2d Sessions AD 1826.

(Here enter No 716.) of 1826.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before

30th January 1827. before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Coozat and Mooftees of the Fouzdaree Adaut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the latitude given by the Sentence of Cohoobut direct that the prisoner,

"Paulatee,"

be admonished and then set at liberty.-

Sent. 25. (Sent following letter No 31.

At a Court of the Foujdaree Udalut

Present.

Friday, 9th February 1827. } C. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter, dated the 17th August last from the Criminal Judge in the Zilla of Canara, stating that he has received no instructions relative to the disposal of a prisoner sentenced to banishment at the 2d Sessions of 1825.

(Here enter No. 472 of 1826.)

Read also letter dated the 30th Ultimo from the Criminal Judge in the Zilla of Canara, forwarding report of a convict sentenced to banishment at the 1st Sessions 1827 and calling the attention of the Court to his letter of the 17th August last, regarding the prisoner "Purmeshara" who was sentenced to banishment at the 2d Sessions AD 1825, but respecting whose disposal no orders has yet been sent.

(Here enter No. 50 of 1827)

1. On reference to the proceedings of the 19th October 1825 it appears that the Court directed a second Futwa to be taken in the case of the prisoner Purmeshara, and sanctioned his eventual banishment

to

Arrack

to Seringapatam, but by some oversight
9th February 1827. an extract of those proceedings was not
sent to the 3d Judge who presided at the trial.

2 In order to prevent further
delay the Court direct that the prisoner
Purmashard, in No 10 of the Calendar for
the 2d Sessions of 1825 pursuant to the original
sentence passed upon him on the 20th July
1825 and the prisoner Narsimhabhut in
case No 18 of the Calendar for the 1st Sessions
of 1827 pursuant to the sentences passed
upon him on the 18th of January 1827 be
removed to the jail of Seringapatam, 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 Canara, and to the
Acting Criminal Judge of Seringapatam
for their information and guidance
respectively.-

Sent
Ct. Sub.
1

(Sent following letters No 35.

Read letter dated the 29th Instant,
from the Provincial Court of Circuit in the
Centre Division - submitting communications
between

9th February 1827. between the 1st Judge late on Circuit, the Crimi-
=nal Judge and Magistrate of Chingleput
relative to the treatment of the prisoner
in case No 7. Chingleput Calendar 2d
Sessions 1826.-

(Here enter No 43.)

Read letter dated the 3d Instant,
from the 3d Judge on Circuit in the Centre
Division, reporting the arrival of the Court
of Circuit at Bellary.-

(Here enter No 54)

Read letter dated the 5th Instant,
from the 1st Judge on Circuit in the Northern
Division, with copy of Nellore Calendar
1st Sessions 1827.-

(Here enter No 57).

Arrack

At a Court of the Foujdaree Adalut.

Present:

Saturday, 10th February 1827.

F. A. Grant Esqre 1st Puisne Judge

James Cochrane Esqre 2d Puisne Judge

244 U.

Read letter, dated the 7th October last, from the 3d Judge on Circuit in the Northern Division, submitting case No 1 Nellore Calendar 2d Sessions A.D. 1826.— (Decentier No 607)

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 Mooftees of the Foujdaree Adalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the sentence of Tazeer declared in the futwa and in conformity with Clause first Section III Regulation VII of 1811 adjudge the prisoner,

"Faraush Mahommud Causeem
alias Shaik Baday,"

to be publicly exposed in the mode commonly denominated Tushcee and to receive 30 stripes with a rattan and to

to be imprisoned and kept to hard labor in
10th February 1827. iron on the public roads or other public
works for and during the period of three
years and then be released.-

Sent 24th A. M. (Sent following letter No 37.)

A. M.

1. The 1st and 2d Judges deem it ex-
=pedient to record the grounds on which
they have withheld their sanction to the
recommendation of the 3d Judge in favor of the
prisoner in this case.-

2. The considerations urged by
Mr. Tod in support of his recommendation
that a mitigated punishment be awarded
to the prisoner appear to be such as, on an
impartial consideration of the case, operate
rather against the prisoner than in his favor
The only grounds of exculpation are stated
to be that the Commission of the crime, of
which the prisoner has been found guilty, took
place "under the fear that if he refused to
swear as directed the loss of situation
would follow" as well as under the belief
that" by swearing falsely, as he did, he was
rendering an acceptable service to Government"
who were the prosecutors of Mr. J. Oakes
in this case.-

3 If motives such as these were
actually present to the mind of the prisoner
at the moment when he perjured himself
(as

10th February 1827. (as supposed by Mr. Tod) they were unquestionably those which should have warned and deterred him from the commission of so heinous an offence. Their existence in his breast must have placed him sensibly on his guard; and therefore his persisting in the wilful and deliberate commission of the act becomes the more palpable and deserving of exemplary punishment.-

4 Separated from the considerations which have been urged by Mr. Tod as extenuating his offence Guilt such as the prisoners can be viewed as nothing else than the offspring of a wanton or malignant spirit and as such becomes highly obnoxious to justice.-

5 The 1st and 2d Judges have been unable to discover any thing in the case of the prisoner of a palliatory nature. He has been clearly convicted of the crime laid to his charge; and it becomes equally necessary for the sake of example as it is for the correction of a wilful and heinous offence, that he should suffer the penalties prescribed above.-

Ordered that extract of these proceedings be sent to the 3d Judge late on Circuit in the Northern Division for his information. (Sent following letter No 38.)

24th
G.M. A. M.

F. U.

At a Court of the Foujdaree Udalut

Present,

Tuesday
28th February 1827. J. A. Grant Esqre
James Cochrane Esqre } Judges.
William Oliver Esqre

Read letter dated the 10th instant from the 3d Judge on Circuit in the Southern Division recommending that he may be authorized to pass a mitigated sentence on the prisoner "Sence" in case No 12 of the Madura Calendar 1st Sessions 1827.-

(Hereunto No 71)

The Judges of the Court of Foujdaree Udalut having attentively considered the grounds on which the 3d Judge has recommended a mitigation of the punishment in the case of the prisoner referred to in his Report resolve under the provisions of Section III of Regulation I of 1825 to sanction the commutation of the prescribed penalty for Highway Robbery in the case of the prisoner Sence to five years imprisonment with hard labor in irons together with corporal punishment of 24 stripes.-

Ordered that extract of these proceedings

Arrack

28th February 1827. proceedings be sent to the 3d Judge on Circuit in the Southern Division for his information and guidance.-

Sent following letter No 62/

J. A. L.

Read letter, dated 6th Instant, from the 3d Judge on Circuit in the Southern Division,- communicated the opening of the 1st Sessions at Madura for the year 1827 on the 6th February-

(Here enter No 55.)

Read letter, dated the 8th Instant, from the 3d Judge on Circuit in the Centre Division,- with copy of Cuddapa Calendar 1st Sessions 1827.-

(Here enter No 67)

Read letter, dated the 10th Instant, from the Criminal Judge in the Zilla of Canara, reporting the death of a prisoner on the 9th instant.-

(Here enter No 74)

Read letter, dated the 15th Instant, from the 3d Judge on Circuit in the Centre Division, with copy of Bellary Calendar 1st Sessions 1827.-

(Here enter No 79)

7 A.

At a Court of the Foujdaree Adaulut.

Present,

Monday, 26th February 1827. F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter, dated 13th ultimo, from the 2d Judge on Circuit in the Western Division, submitting copy of the Malabar Calendar 2d Sessions A.D. 1826.-

(Here enter No 20)

In case No 3 of the Calendar the prisoner "Parankottil" was charged with having broken into the Prosecutor's house and stolen therefrom property to the value of 47 rupees odd and declared by the Futwa to be convicted and liable to be hoobutchud being barred in consequence of the exact value of the stolen property not having been ascertained under which Futwa sentence was passed upon him of 24 stripes and 4 years imprisonment and hard labor in irons. In this case a second Futwa should have been taken under Clause fourth Section II Regulation XV of 1803, and the prisoner sentenced to 7 years imprisonment unless

Arrack

28th February 1827. unless the Judge considered the punishment too severe, in which case he should have submitted a report of the circumstances, and proposed a mitigated punishment under Section IV Regulation I of 1825. The Court however confirm the mitigated sentence passed in this case, but direct that the Judge will hereafter strictly conform to the provisions of Clause Fourth Section II Regulation XV of 1803.

2. In case No 15 of cases subsequently entered on the Calendar, the prisoners were charged with having murdered the Prosecutor's younger brother, by wounding and beating him. The Futwa declared the 1st prisoner guilty of having beaten the deceased, but not with the premeditated intent to commit murder, and liable to Deyut. and the 2d prisoner with having beaten and stabbed the deceased, but not with intent to commit murder, and liable to Kisas but. Under this Futwa the 1st prisoner was sentenced to six months imprisonment and hard labour in irons and then to be released on producing good and sufficient security for his good behaviour and appearance when required. The 2d prisoner was sentenced

28th February, 1827. sentenced to receive 15 stripes and 2 years imprisonment and hard labour in irons, and then to be released on producing sufficient security for his good behaviour and appearance when required. This sentence so far as it regards security for good behaviour and appearance when required is illegal. The authority of ordering prisoners to be released on giving security is by clause Sixth Section II Regulation XV of 1803 given to the Courts of Circuit only in cases of strong suspicion "not amounting to conviction." but the Regulations do not authorize requisition of security when a prisoner has been convicted and sentenced to a specific punishment. The Court direct that the sentence in this case be amended. The observations made on this case, apply also to case No 19. And the 2d Judge will in respect to the latter case conform to the instructions given above as to the disposal of the former.

3. In case No 9 of the Calendar the prisoners were charged with having severely wounded the Prosecutor. The Futwa declared that the charge was not proved, yet that the prisoners were not free from Tohmut and

Arrack

At a Court of the Foujdaree Adalut,

Present,

Thursday 8th March 1827. } F. H. Grant Esquire, James Cochrane Esquire, William Oliver Esquire, } Judges.

Read letter from the Provincial Court in the Western Division dated the 28th March 1827 (Here enter No. 231 of 1826)

It appears that a prisoner was brought before the late Acting Criminal Judge of Canara charged with Burglary. He had been apprehended, on the Burglary being discovered, solely on the ground of bearing a bad character, and, it was alleged, had confessed the crime before the Native head of Police and shewed where part of the stolen property was concealed. This was all the evidence against him. Before the Criminal Judge he denied the Burglary - but acknowledged that he had received the property knowing it to have been stolen - The Criminal Judge considered the Police confession unworthy of any credit - but submits a question whether the prisoner can be convicted under clause fourth section IV Regulation VII of 1822, because he himself gave the only information where part of the stolen property was concealed and "voluntary confession" is not expressly mentioned in the clause referred to as an authorized ground of conviction -

The late 3d Judge of the Western Provincial Court has truly observed in his minute that "voluntary confession," altho' not expressly

2

of an Arrack

26th February 1827.

and were liable to Cohoobut under which Futwa they were sentenced to receive 39 stripes each and 5 years imprisonment and hard labor in irons - Under the provisions of Clause sixth Section II Regulation XV of 1803 it was not competent to the Judge to inflict any punishment in this case, for the conviction, according to the terms of the Futwa, was not founded on strong presumption, (Zunn-i-Ghalib,) but on suspicion only. The Judges direct that the record of this trial be returned for their final determination -

Ordered, that extract of these proceedings be sent to the 2d Judge late on Circuit in the Western Division by precept directing him to proceed as therein directed -

(Sent following precept No. 43.

Read letter, dated the 20th Instant, from the 3d Judge on Circuit in the Western Division, reporting his arrival at Calicut and commencement of the Sessions on the 20th Instant -

(Here enter No. 89)

Read letter, dated the 16th Instant, from the Provincial Court of Circuit in the Northern Division, stating that measures have been taken for consigning to the charge of his friends one Cheegally Venkadoo, an insane prisoner as directed by the Courts letter of 20th December last -

(Here enter No. 90)

expressly adverted to in clause fourth section IV. Regulation VI of 1822, amounts clearly to legitimate proof: and the Court think that the whole question is disposed of by this remark. The late Acting Judge of Canara himself evidently did not think that information given after apprehension would save the penalty declared in clause fourth section III. Regulation VII. of 1822. There can be no question that, if the confession before the late Acting Criminal Judge was free and voluntary, the Prisoner should be convicted on it.-

3. With regard to the propriety of the late Acting Criminal Judge disregarding the alleged Police confession, the Court believe that few experienced and considerate Judges would ever convict a Prisoner on the sole ground of a confession before the statine Police, however regularly attested, but uncorroborated by circumstantial evidence or subsequent admission. The Court therefore do not agree with the late 3d Judge in thinking that any other good could have arisen from further enquiring into the Police Proceedings than the exposure and reproof of the negligence with which they appear to have been conducted:- His remarks also on the tendency in evidence of the Prisoners' act of producing part of the stolen property are evidently incorrect. This act was just as applicable to the prisoners' confession of knowingly receiving stolen property as to his alleged confession of Burglary and did not corroborate the latter a bit more than it did the former.-

4. In conclusion the Court see no ground for the supposition in the minute of the late Acting Judge of the Western Provincial Court that the late Acting Criminal Judge of Canara considered the confession before himself to have been occasioned by the alleged previous confession before the Police; or that any part of this difficulty arose from supposing such a connexion between the two confessions.-

5. In the event of the accused having been detained in confinement since this reference was submitted the Judges direct that the period between the 7th of April 1826 (the date on which this Court received the reference and the date of these Proceedings be deducted from the period of imprisonment to which the accused may be sentenced. The reference was mislaid and forgotten; and the Court regret this irregularity in a case where the liberty of a human being was probably concerned.-

Ordered that extract of these Proceedings be sent to the Judges of the Provincial Court in the Western Division for their information and guidance.-

/Sent following letter No 48/

Read letter dated 26th Ultimo from the Provincial Court of Circuit in the Centre Division,- With returned warrant for execution of a prisoner in Case No 26 Cuddapa Calendar 2d Sessions 1826.- /Here enter No 114/

Read letter, dated 10th Ultimo, from the 2d Judge of the Court of Circuit in the Centre Division, explaining the omission of mention as to how the prisoners in No 12 of the 4th Quarterly Sessions 1826 have been disposed of as required by the Court's letter of 27th Ultimo.- (Here enter No 66)

Arrack

8th March 1827.

Read letter dated 24th January last from the 3d Judge on Circuit in the Centre Division reporting the closing of the 5th Sessions of 1827 at Cuddapah on the 24th Instant.-

(Here enter No 32)



At a Court of the Fujdaree Adalut

Present,

Wednesday, 14th March, 1827. F. A. Grant Esqre. James Cochrane Esqre. William Oliver Esqre. } Judges.

24
11
250

Read letter from the Register in the Centre Provincial Court dated 19th ultimo submitting with the opinion of the Judges thereon a letter to that Court from the Magistrate in Chingleput referring a correspondence between himself and the Magistrate of Chittoor relative to a refusal on his part to allow the Cutwals of Wallajabad and others to appear before the Assistant Magistrate of Chittoor in obedience to a summons directing their attendance to answer to a complaint preferred against them on oath for the illegal and violent removal of an arrack shop situated in the Chittoor District, urging as a reason that the removal of the arrack shop in question had been authorized by his Assistant Magistrate on grounds of public expediency.-

(Here enter No 81)

1. The Provincial Court have very properly observed that both the Assistant Magistrate and Magistrate of Chingleput committed an error in their respective Proceedings: the Assistant Magistrate in interfering at all in the removal of an

Arrack

14th March 1827. Arrack shop on ground belonging to the jurisdiction of the Magistrate of Chittoor, the Magistrate in preventing the attendance of his Cutwall when summoned by the Magistracy of Chittoor. Both of the reasons assigned by the Magistrate of Chingleput for his conduct are founded upon erroneous principles.

1st It was not competent to him to take into consideration the nature or motives of the charge preferred against his Cutwall, in order to determine whether or not the latter should be allowed to obey the summons to answer to it. The act complained of was committed within the Chittoor jurisdiction, and the circumstance that the Cutwall and others who committed it were servants of the Magistrate of Chingleput did not exempt them from that jurisdiction.-

2. In the 2d of his reasons the Magistrate has prejudged the question. He could not know, on satisfactory grounds, that illegal violence was not committed by his officers, and till the charge had been regularly examined it could not be determined except by the sufferers, whether their conduct was the proper subject for a civil or a criminal prosecution.-

3. From the foregoing remarks the Magistrate will perceive that of the two questions submitted by him the former

14th March 1827. former is to be answered in the negative, the latter in the affirmative.-

4. It is not necessary that this Court should add any thing further to the remarks of the Centre Provincial Court. It only remains for that Court to issue such orders as are necessary for the immediate attendance of the Cutwall and others before the Assistant Magistrate of Chittoor in obedience to the summons now under suspension.-

5. The Centre Provincial Court will also transmit to the Magistrate of Chingleput along with their orders to that effect a copy of these proceedings and of their Registers letter now replied to.-

6. The Judges also fully concur in the suggestion contained in the final paragraph of the latter just read relative to the expediency of some alteration being made in the respective jurisdictions of the Magistrates of Chittoor and Chingleput and with this view will take an early opportunity of bringing the subject to the notice of Government.-

Ordered, that extract of these proceedings be sent to the Provincial Court of Circuit in the Centre Division for their information and guidance

(Sent following letter No 574)

B.M.
Sent 14th.

J.M.C

Feb 1827

F. U.

At a Court of the Foujdaree Adalut.
Present:

Thursday,
15th March, 1827 James Cochrane Esqre } Judges.
William Oliver Esqre }

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50.

Read petition presented by on Chungaliay Nather of Madras praying the Court to call for and examine Case No 21 Chingleput Calendar 1st Sessions of 1826.

(Here enter Misc. Pet. No 3 of 1827)

Ordered that the Petitioner be informed that the trial has not yet been received but has been called for.

D. U.

N.

8th March 1827.

Read letter from the

Friday,
16th March, 1827.

At a Court of the Foujdaree Adalut.

Present,

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

Read letter, dated the 18th Novem-
-ber last from the late Additional Judge later-
on Circuit in the Centre Division,- submitting
case No 4 Chingleput Calendar 2d Sessions 1825.
(Here enter No 681)

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 acquitting the prisoners.
1st "Narumbun" and
2d "Chinnan,"
direct that they be released.-

Sent following letter No 581
to Circuit

Read letter, dated the 9th January
last, from the 2d Judge late on Circuit
in the Western Division submitting case
No 16 Malabar Additional Calendar 2d
Sessions A.D. 1826.
(Here enter No 48)

The

March 1827.

16th March 1827

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 Sudder Adalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under Clause sixth Section II Regulation XV of 1803 direct that the prisoner,

"Pannikollom Illata Vadu Nambidy"

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

Sent following letter No 59.

2d

Sent 21.

2d

×

2 H.

At a Court of the Foujdaree Adalut

Present.

Monday 19th March 1827

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

Read letter, dated the 11th November last, from the late Additional Judge at on Circuit in the Centre Division,— submitting case No 12 Chingleput Calendar 2d Sessions AD 1825.—

(Here enter No 677)

2d M H

20

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 concur in opinion that the proof against the 1st prisoner, Vencataramun, is sufficient to convict him of the crime of murder and under Clause first Section III Regulation I of 1818 adjudge the said prisoner,

1st "Vencataramun,"

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

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

2d

16th M

19th March 1827.

2d "Mottoosawmy,"
3d "Mooniyen,"
4th "Mottoolingum," and
5th "Ponnen,"

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

Sent. 28.

Sent following letter No 61

The Court consider it incumbent upon them to notice the extremely defective manner in which the examinations in this case were taken before the Court of Circuit. The prosecutor, whose evidence was of the utmost importance, inasmuch as he was an eye-witness of the murder, is allowed to tell his story in his own way, and his veracity is not tried by a single question of any kind. Challaperumal, the 10th and Canacasabapathy Chitty the 11th Witness whose evidence was of equal importance for the same reason, were not called upon to state any of the circumstances that took place at the murder; and thus no means are afforded of comparing the evidence of these witnesses one with the other, or with that of the prosecutor, or of determining satisfactorily the degree of credit to which they are intitled.—

From the tenor of the letter accompanying the trial the Court indeed see

19th March 1827.

cause to apprehend that Mr Dacre labours under a great misconception of the rules of evidence. By the manner in which he refers to the depositions before the Criminal Court and the Police Officers he would seem to think that the defects in the evidence before him may be supplied by what the witnesses had previously deposed. At least the Court are at a loss to account otherwise for his omission to obtain from the witnesses above mentioned, and from several others, a full detail of all the facts which it would appear from their previous examinations, were within their knowledge. If this be his opinion, it is necessary that he should be set right. A prisoners conviction or acquittal must depend exclusively on the evidence taken at the trial; and the evidence previously given can be referred to only for the purpose of shewing the consistency or inconsistency of the witnesses, and of thus judging how far their testimony is intitled to credit.—

But though the examinations in this case are not nearly so full and satisfactory as they might have been, the Court are still of opinion that the evidence is sufficient for the conviction of the 7th prisoner Venkatasamen; and he has accordingly been sentenced to suffer death. In respect to the other prisoners, although there is strong reason to believe that they were concerned in the attempt to steal, yet it appears to the Court that the evidence is insufficient for their conviction. Their alleged confessions were taken by an incompetent authority; and are not corroborated by any collateral evidence that

19th March 1827 that can be safely admitted. The Court have there-
=fore directed their discharge on security.-

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 62./

Read letter, dated the 23d December
last from the late Additional Judge late on Circuit
in the Centre Division,- submitting Case No 26 Chingle-
=put Calendar 2d Sessions 1825.-

/Here enter No 744/

The 1st 2d and 3d Puisne Judges hav-
=ing maturely considered the proceedings held be-
=fore the Judge on Circuit the futwa of the Provincial
Law Officer and the futwa of the Cazee-ool-Cozat
and Mooftees of the Foujdaree Udalut confirm the
said futwa of the Cazee-ool-Cozat and Mooftees a-
=foresaid, and acquitting the prisoners,

15th "Mungatayee,"
16th "Moottachee,"
and
17th "Canachee,"

direct that they be set at liberty.-

And under clause sixth Section II
Regulation XV of 1803, direct that the prisoners

1st "Bonnen,"
2d "Varadan,"
3d "Oncatasen,"
4th "Moongalan,"
5th "Carroopun,"
6th "Pungin,"
7th "Chinnapien,"
8th "Coonelan,"
9th "Codeyan,"
10th "Rengun,"
11th "Maurea,"
and
13th "Kistnun,"

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

/Sent the following letter No 63./

Read

P. 16.

19th March 1827.

Read letter, dated the 23d December
last from the Third Judge of the Court of Circuit
in the Centre Division,- submitting Case No 5 Chittoor
Calendar 3d Quarterly Sessions 1826.

/Here enter No 745/

The 1st 2d and 3d Puisne Judges
having maturely considered the proceedings held be-
=fore the Judge on Circuit, the futwa of the Provincial
Law Officer, and the futwa of the Cazee-ool-Cozat
and Mooftees of the Foujdaree Udalut confirm the
said futwa of the Cazee-ool-Cozat and Mooftees
aforesaid, and under the sentence of Corroobut
declared therein, adjudge the prisoners

1st "Vencatachellum,"
2d "Paupee Naic,"
3d "Permalgan,"
4th "Trimengadem,"
and
5th "Christnen,"

to receive 39 stripes with a rattan and to be impris-
=oned 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.-

/Sent following letter No 64/

Read letter, dated 25th October last
from the 2d Judge on Circuit in the Western Division
Submitting Cases Nos 647 Malabar Calendar 2d Sessions
1826.-

/Here enter No 641/

The 1st and 3d Judges having ma-
=turely considered the proceedings held in cases of
Nos 647 before the Judge on Circuit the futwas of the
Provincial

19th March 1827. Provincial Law Officer and the futwas of the Cazy
ool Coozat and Mooftees of the Soudaree Udalut
confirm the futwa of the Cazee-ool-Coozat and
Mooftees aforesaid in Case №6 and under the
sentence of Pokoobut declared therein and under
section XVII. Regulation VIII of 1802 adjudge the
prisoner, 1st "Kuravan Callia Oren",
to suffer death by being hanged at the usual time
and place of execution.-

And the prisoners,
2d "Kuravan Kuppen",
3d "Kuravan Chenia Oren",
and
4th "Kuravan Chemben",
to receive 30 stripes with a rattan and to be im-
=prisoned and kept to hard labor in irons on the
public roads or other public works for and du-
=ring the period of seven years and then be released.
/Sent following letter №65/

Read letter dated 12th Instant
from the Second Judge of the Court of Circuit in the
Centre Division, With Copy of Criminal Calendar
1st Quarterly Sessions 1827.-
/Here enter №122/

Read letter dated 13th Instant
from the Third Judge on Circuit in the Western
Division, Reporting his intention of quitting
Calicut on 14th Instant.
/Here enter №123/

Read letter dated 15th Instant
from

19th March 1827. from the Third Judge on Circuit in the Southern
Division, Reporting the commencement of the Sessions
at Combaconum for 1827 on 15th Instant.-
/Here enter №128/

At a Court of the Foujdaree Adalut

Present,

Thursday, 22d March, 1827. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Rupees 250.

Read letter dated the 9th Ultimo, from the 2d Judge late on Circuit in the Centre Division, submitting case No 1 Bellary Calendar 1st Sessions 1826.

(Here enter No 61.)

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 aforesaid and under the latitude given by the sentence of Acknowledged adjudge the prisoners,

1st "Sungeevoogadoo," and
2d "Nagadoo,"

to receive 20 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 five years and then be released.

It is the Court's following letter No 70.

Read

22d March 1827.

Read letter stated the 15th Instant, from the 2d Judge late on Circuit in the Centre Division, submitting case No 10 Cuddapah Calendar 1st Sessions 1826.

(Here enter No 80)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the petitions of the Provincial Law Officer and the petitions of the Cazeeahl Cazgat and Moofftees of the Zoujdaree Adalut confirm the said petitions of the Cazeeahl Cazgat and Moofftees aforesaid and acquitting prisoners,

1st "Goliabatala Lodoogooroondoo"
2d "Chinnahayanah Yarrecala," and
3d Matelee Venkayandoo

direct that they be set at liberty—

(Vide following letter No 71.

1 After the fullest deliberation the Court are of opinion that it would be extremely dangerous to convict the prisoners on the evidence contained in the record.—

2 & 3 The Court see very strong grounds to distrust the testimony of Mandega Chinnatevadoo, the 4th and Sopacoola Boochumma, the 5th witness. It could not be unknown to Chinnatevadoo that Boochumma was the sister-in-law of Sopacoola Peddanah, the 4th prisoner; and though he states as his reason for making the communication to her, that

22d March 1827.

that she was a friend of the deceased Vencata-Condoo, it seems an extraordinary circumstance that he should entrust her with a message that went so deeply to implicate a person so nearly connected with her. If he attached any importance to the conversation, which he states he overheard between the deceased Paghala Vencatah, the 1st prisoner Loodoogoo-nadoo, and the 4th prisoner Sopacoola Peddanah, it is unaccountable that he should not have made any attempt to communicate it personally to Vencatacondoo, whose house was close to his own, instead of employing a person to make the communication, who had a strong natural inducement to withhold it. His conduct on this occasion seems inexplicable on ordinary principles. Then in Boochumma's evidence there are contradictions which warrant the strongest distrust of her testimony altogether. In answer to the 2d question before the Court of Circuit she says that on receiving the information from Chinnatevadoo she went to Vencatacondoo and communicated it to him, and then returned home. In answer to the 9th question she says that she went, but finding many persons about Vencatacondoo, she sent her son to bring him, when she informed him of the circumstance. Before the Criminal Judge she said that she told the circumstance to her son, and desired him to

mention

22d March 1827.

mention it to Vincatacondoo and bring him to her. that her son returned and told her that "when he gave the information to Vincatacondoo, he said "It is out of their power to kill me; go," and that she then went personally to Vincatacondoo, mentioned the circumstance, and returned. From the information taken by the Police officer it would appear that the message, if delivered at all to Vincatacondoo, was delivered solely by Boochumma's son. The Court think it would be dangerous in the highest degree to place any reliance whatever upon evidence such as this.-

3 Moosaliegadoo, the 3d witness, slept on the same cot with the deceased on the night of the murder, and if his evidence is to be believed, the murderers effected their purpose in a most violent and barbarous manner without disturbing him. He, indeed, does not appear to know how or by what means the murder was effected, but the evidence of those who depose to having inspected the corpse goes to show that it must have been committed with such circumstances of violence as to render it improbable in the highest degree that a person sleeping on the same cot should not have been awakened by it. The dead body too was burnt with a haste that seems perfectly unaccountable

F. H.

22d March 1827.

unaccountable. The station of the District Police Officer is only 9 miles distant from the village of Poonumpullee, and early information of the murder having been despatched to him there could be no reason to suppose that he would not arrive in time to conduct the prescribed inquiry; in point of fact he would appear to have reached the spot within twelve hours after the murder was committed, and yet the body had been burnt some hours before his arrival.-

It appears to the Court, therefore, 4 not only that the alleged confessions of the prisoners before the Police Officer are not corroborated by any collateral evidence, but the evidence in the record is of a nature to induce suspicions of the falsehood of the charge altogether.-

Upon these considerations 5. the Court have acquitted the prisoners, and have directed their unconditional release.-

Ordered that extract of these proceedings be sent to the 2d Judge of Circuit in the Centre Division for his information and guidance.-

Sent following letter No. 72.

Read.

22d March 1827

Mr Grant and Mr Oliver.

Read letter dated the 9th Ultimo from the 2d Judge late on Circuit in the Centre Division, - submitting case No 5 Bellary Calendar 1st Sessions 1826.

(Here enter No 62)

The 1st and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the future of the Provincial Law officer and the future of the Cazee ool Coozat and Mooftee of the Foujdaree Adalut concur in opinion that the proof against the prisoner, "Karcher Nagadoo" is sufficient to convict him of the crime of Robbery by open violence under the provisions of Clause first Section II Regulation I of 1818 adjudge the said prisoner, "Karcher Nagadoo"

to receive 39 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.-

A.M. (Ent. following letter No 73.

Read Petition presented by Tiroo-vattummal of Yarnail, regarding her son Londa-varayen, Prisoner in Foujdaree Adalut Case No 4 Chingleput Calendar 2d Sessions 1826.-

(Here enter of Pet. Petition No 1 of 1827.

The Case of the Prisoner Londavarayen is now under the consideration of the Judges: any representation relative thereto is highly irregular and consequently inadmissible.-

Ordered accordingly that the prayer of the Petition be rejected, and that extract of these Proceedings be furnished to the Petitioner on his application.-

F. 16.

At a Court of the Foujdaree Adalut

Present

Tuesday - - -
27th March 1827

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

Read letter, dated 8th Ultimo from the 2d Judge late on Circuit in the Centure Division, submitting case No. 25 Cuddapa Calendar 1st Sessions 1826.

Vide enter No 64/

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 concur in opinion that the proof against the prisoners 1st "Duffadar Vencataramana," 2d "Sheik Emam," & 3d "Sheik Maznoon," is sufficient to convict them of the crime of cruel oppression and abuse of authority, and under the provisions of clause first section II Regulation I of 1818 adjudge the said prisoners,

1st "Duffadar Vencataramana,"
2d "Sheik Emam,"
and
3d "Sheik Maznoon,"

to receive 20 stripes with a rattan and to be imprisoned and kept to hard labour 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 76.

Read letter, dated 23d December last from the 3d Judge of the Court of Circuit in the Centre Division,- Submitting Case No 1 Chittys Calendar 3d Quarterly Sessions 1826.

Here enter No 743

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 Udalut concur in opinion that the proof against the prisoners, 1st "Yerroogadoo," and 2d "Peddoogadoo," is sufficient to convict them of the crime of Gang robbery with wounding and under the provisions of clause first section II Regulation I of 1818 adjudge the said prisoners,

1st "Yerroogadoo,"

and

2d "Peddoogadoo,"

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

Sent following letter No 77.

Read letter, dated 19th December last from the First Judge on Circuit in the Centre Division,- Submitting Case No 19 Cuddapa Calendar 2d Sessions 1826.-

Here enter No 727

The





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 Udalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and under the sentence of Dorkoobut and Sazeer declared therein, adjudge the prisoner, 1st "Lutchmee,"

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

And the prisoners,

2d "Hoofsany,"

and

3d "Tandaroyen,"

to receive 20 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 No 78.

Read again letter, dated 21st September last from the 2d Judge, late on Circuit in the Northern Division,- Submitting Case No 1 Chicacole Calendar 1st Sessions 1826.-

Here enter No 744

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

F. U.

At a Court of the Foujdaree Adalut.

Present.

Thursday 29th March 1827. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge.
William Oliver Esqre 3d Puisne Judge.

Read letter stated the 9th Instant from the 2d Judge latoon Circuit in the Centre Division,- submitting case No 11 Cuddapa Calendar 1st Sessions A.D. 1826- (Here enter No 63)

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 accordingly acquit the prisoner,

"Chakala Nagadoo,"

of the crime of Highway Robbery by open violence- and being of opinion that the imprisonment which the prisoner has already been subjected to is a sufficient punishment for his escape from jail, of which he has been convicted, direct that he be set at liberty.-

Sent following Letter No 82

27th March 1827. Cazee ool Coozat and Mooftees of the Foujdaree Adalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid, and under the sentence of Reject declared therein, adjudge the prisoner,

"Shaik Hoosain,"

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

Sent following letter No 79.

29th March 1827.

The prisoner in this case was tried on two separate and distinct charges,- 1st for highway-robbery, and 2dly for escaping from jail. These two charges should obviously have formed the subject of two separate trials.- The offence of escaping from jail was cognizable by the Criminal Judge, for it was a simple escape, and unattended with any of the circumstances which would bring it under the provisions of Clause Fourth Section V Regulation VI of 1822.

Ordered that extract of these proceedings be sent to the 2d Judge tato on Circuit in the Centre Division for his information and guidance.-

(Sent following letter No 83.

Read letter, dated the 8th Instant, from the 3d Judge on Circuit in the Southern Division submitting copy of Madura Calendar 1st Sessions 1827.

(Hereunto No 117

Referring to the remarks made on case No 2 it does not appear whether after the exception to the evidence of the witness Mottan had been over-ruled, a second Vakeel was required from the Law Officer. A second Vakeel should have been demanded, and as it would appear that the inadmissibility of that Witness's

29th March 1827.

evidence under the Mohummudan Law was the only obstacle to the prisoner's conviction of the theft charged, he, the prisoner, must have been declared liable to Hudd, in which case the Judge on Circuit was not competent to award any punishment less than seven years imprisonment. The Court, however, under all the circumstances do not see cause for disturbing the sentence passed in this case.-

Respecting cases No 26, 27 & 28 it should have been stated distinctly whether or no the sentences passed in these cases are separate or otherwise- It is to be presumed that the sentence thus repeated is a single one and meant to comprehend the whole punishment adjudicated for the several offences committed by the Prisoners. The wording should have been such as to preclude all doubt as to the meaning.-

The separate charges, all bearing separate dates, included under case No 33 should have formed three distinct cases, and the charge of theft preferred by the 2d Prosecutor in this case being established on strong presumptive proof, a second Vakeel should have been required under the provisions of Clause 3d

29th March 1827. Section II Regulation XV of 1803, in which case a less punishment than imprisonment for seven years could not be awarded by the Judge on Circuit. Under all the circumstances however, the Court resolve not to disturb the sentence passed in this case, but they direct that the attention of the Judge on Circuit be called to the provisions of the Section above referred to.—

The Court are unable to reconcile the acquittal of the prisoner in case No 36 with the conviction of the prisoner in case No 35. The 3d Judge will therefore be pleased to sub=mit the trial in case No 34 for their information

Annd. ..... 4th April 1827 No 156
Ltr Rs ..... 26th May 27

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

Sent.
2d Apl.

Sent following letter No 84/

Read letter, dated 27th Instant from the 3d Judge on Circuit in the Centre Division.— Re=porting the arrival of the Court of Circuit at Chin=glepat on 27th Instant.—

/Here enter No 139/

7. 11.

At a Court of the Foujdaree Adalut.

Present,

Tuesday, 4th April 1827

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

Read letter, dated the 9th Ultimo, from the Provincial Court of Circuit in the Centre Division,— submitting case No 25 Cud=dapah Calendar 2d Sessions A.D. 1826.

(Here enter No 65)

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

"Pullegadoo,"

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

Sent following letter No 86A

Sent.

At a Court of the Foujdaree Adalut.

Present,

Saturday, 7th April, 1827. F. A Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Ff 11
250

Read letter, dated the 16th No-
-vember last, from the Judges of the
Provincial Court of Circuit in the Southern
Division, submitting the reports pre-
-scribed by Section XXXV Regulation X
of 1816 for the 3d Quarter of the year
1826, from the several Criminal Judges
within the Division, together with their
proceedings and correspondence thereon.

(Here enter No. 684. 1826. 3d Div.)

1 In the report of persons
apprehended in the Zilla of Madura,
the Judges observe several instances
of delay, the explanations of which are
very unsatisfactory.-

2 In case No 8. the explanation
of delay admits at first view three
considerable errors. 1st That prisoners
apprehended on information were
not examined for from 7 to 13 days,

nor

7th April 1827. nor till complaints were preferred. Informations were ground enough to proceed against them: the informers were in effect complainants- 2d. The detention of the prisoners from the 25th May to the 19th June, for which no cause is assigned- 3d. The sending them to the Assistant Magistrate whereas they ought to have been sent to the Criminal Judge under Section XXVII Regulation XI of 1816- the offence charged being a heinous one, and not bailable.-

Under this Court's Circular orders 13th September 1824 the cognizance of the 2d. of these errors is left to the Magistrate and he is required to communicate to the Criminal Judge any notice taken by him of it. It is presumed that where no such communication is made, the reasons assigned for the delay have been approved by the Magistrate. If any had been made, it should have been noticed by the Criminal Judge, agreeably to the last part of para 4 of the last mentioned circular orders.-

4 The prisoners in case No 37 were apprehended on the 7th August and detained in custody for a very considerable time beyond

7th April 1827. beyond the period prescribed, their illegal detention is ascribed to the "the Assistant Magistrate at Ramnad having required the case to be sent to him for examination upon the report of the Police Officer of Anoominthagoody." This being a case of gang robbery to the amount of Rupees 702 Annas 4 was one of those cases which clearly came within the scope of Clause first Section XXVII Regulation XI of 1816, it should therefore have been forwarded direct by the Police Officer to the Criminal Judge and the Assistant Magistrate's order was illegal.-

5 The prisoners in case No 30 are stated to have been apprehended on the 29th July and they appear to have been detained until the 13th August which is ascribed to the Prosecutors not having attended till the 4th August and also to the houses of the prisoners not having been searched until the 12th August- The explanation here given is precisely of the kind declared insufficient by this Court's Circular orders 24th January 1822 para 4; and having been passed over by the Magistrate should have been noticed to him by the Court of Circuit under this Court's Circular orders

orders 13th September 1824 para 5.-

6 The foregoing remark applies equally to No 42.

7 In case No 44 it is presumed that there was evidence that the Prisoner knew the Buffaloes to have been stolen. This should have been stated.-

8 The prisoner in No 49 was charged with "having obstructed the prosecutor from "weaving, by having affixed his seal on his "loom, and thereby prevented him from using "his loom for the space of 8 days." This case is said not to have been examined in consequence of a letter having been written to the Magistrate of Tinnevelly, requesting him to state the Regulation under which the prisoner was sent to the Criminal Court- The Criminal Judge should have known that there was no Regulation under which he could take cognizance of this act, and he was not at liberty to detain the prisoner Ramasawmy pending a reference to the Magistrate. It was a Civil offence-

9 In case No 10 of the report of persons apprehended but not disposed of at the date of the last quarterly report the prisoners were sentenced to three months imprisonment, and a fine of 100 Rupees each for Breach of the peace- The specific sort of Breach should have been stated.-

Combaconum. Delay in transmission of Prisoners to the Criminal Court.

10 In No 1 of the Combaconum Report an



interval of 21 days and other lesser intervals between the apprehension of some of the prisoners and their leaving the Talook is accounted for by "the principal offender not having been apprehended; in No 2, an interval of 28 days partly by "the Prosecutor having fallen sick;" in No 9 an interval of 10 days by "the sickness "of some of the witnesses" these excuses are exactly of the kind declared insufficient by this Courts circular orders 27th January 1822, para 4; and as the Magistrate appears to have passed them over without animadversion, the Provincial Court should have noticed them to him agreeably to para 5 of this Courts Circular orders 13th September 1824.

In No 2, 41 and 50 delays are accounted for by references having been made to the Magistrate or Assistant Magistrate. References in doubtful cases are proper and will be admitted as a sufficient cause for a reasonable delay. But all of these were cases of Gang robbery by open violence, in which there is no apparent cause for reference- and all should have been sent up immediately to the Criminal Judge.-

Sentences

12 In case No 6 the 3d Prisoner convicted of buying cattle knowing them to have been stolen, should have been sentenced

7th April 1827. sentenced under Clause fourth Section IV Regulation VI of 1822.-

13. In No 30 the first Prisoner is described to be an old offender and is punished by the Criminal Judge for knowingly having in his possession stolen property. He ought to have been committed under Clause third Section IV Regulation VI of 1822.-

14. The same remark applies to No 33.-

Salem.

Delays in sending persons apprehended to the Criminal Court.

15. In case No 180 of the separate report an interval of 13 days between the apprehension of the Prisoners of their transmission to the Criminal Court is accounted for by a reference to the Assistant Magistrate.- As the case was one of theft to the amount of above 1,300 Rupees there is no apparent ground for this reference.

Sentences.

16. The Criminal Judges explanation to the Provincial Court of his sentence in cases No 115 to 118 inclusive of his separate report is unsatisfactory.- Sentences of two years imprisonment on two of the Prisoners in a case of a joint and petty theft, are accounted for by the severity of the injury sustained by the Prosecutor from the assault. These sentences are illegal

7th April 1827. illegal. Sentence should have been passed under Section VII Regulation X of 1816; and as more than the lawful period of imprisonment has already been sustained, the Court direct the immediate release of the Prisoners Nunjien, Mootoo-gowndien and Vernaul in these numbers.- The punishment of Cooppen, described as an old offender was proper.

17. In case No 180 of the same Calendar a case of theft to the amount of 1365 Rupees is disposed of by the Criminal Judge, and one of the Prisoners sentenced to two years imprisonment with hard labor. This case should have been committed under Section IX Regulation I of 1825, unless the evidence for the prosecution shewed that the value of the property stolen did not exceed 300 Rupees, when that fact should have been stated.-

18. In No 192 the Criminal Judges explanation to the Provincial Court is unsatisfactory sentence should have been passed under Section VII Regulation X of 1816.

19. In No 204 the Criminal Judge must be called upon to explain whether the offence was committed before the prisoners were sentenced in No 146: if it was, the additional sentence in No 204 was illegal

7th April 1827 illegal and must be remitted.-

20. In No 246 the Criminal Judge's explanation is not satisfactory. The prisoner should have been sentenced under Section VII. Regulation X of 1816- and having already suffered more than the authorised period of imprisonment must be immediately released.-

21. In No 259 forcible circumcision is punished with 30 stripes and 2 years imprisonment with hard labor. This act is not a distinct criminal offence under the Mahomedan Law or the Regulations- it is only an assault and as such punishable under Section VII Regulation X of 1816 or committable for trial before the Court of Circuit. This sentence must be amended and the prisoner released.-

22 No 261 and 274 also are only punishable under Section VII Regulation X of 1816- and the prisoners must be released. The explanations are unsatisfactory, in all these cases.-

Ordered that extract of these proceedings be sent to the Provincial Court of Circuit, Southern Division by precept commanding them to make the necessary communications to the several Criminal Judges for their information and guidance.-

(Sent following Precept No 87.

F. H.

At a Court of the Foujdaree Adalut

Present,

Monday 9th April 1827

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

Read letter, dated the 24th Decem.
Mr Cochrane Mr Oliver. - her last, from the 1st Judge late on Circuit in the Centre Division, - submitting case No 4 Chinglaput Calendar 2d Sessions 1826.-

(Here enter No 742 of 1826)

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 Adalut confirm the said futwas of the Cazee ool Coozat and Mooftees aforesaid and acquitting the prisoner,

"Kreway Sondavaroyen,"

direct that he be set at liberty.-

(Sent following letter No 88.)

Read letter, dated the 7th Januar last, from the 2d Judge late on Circuit in the Southern Division, submitting case No 1 Salem Calendar 2d Sessions 1826.-

(Here enter No 9.)

The Cazee ool Coozat and Mooftees

6th April 1827. Moofties of the Foujdaree Adaulut declare in the foregoing futwa that the prisoner, Coopa Coumdan, is convicted on clear & strong presumption of the crime of Murder, and liable to Kissaut. The 2d and 3d Puisne Judges therefore, resolve under the provisions of Clause third Section II Regulation XV of 1803, to call upon their Law Officers to declare by a second futwa to what specific punishment the prisoner would have been liable under the Mohummedan law if he had been convicted of the crime of murder. & by full legal evidence.

Ordered that extract of these proceedings be translated and delivered to the Cazee & Coogat and Moofties of the Foujdaree Adaulut.

R

Read letter from the Provincial Court of Circuit in the Western Division dated the 11th December 1826, forwarding correspondence with the Criminal Judge of Malabar regarding the construction of Section VII, Regulation VII of 1811.

Mr Grant
Mr Cochrane
and
Mr Oliver

(Here enter No 733 of 1826.)

It appears that some Tobacco cultivated without a licence, was discovered

6th April 1827. in a house and seized by a Kolkar; and that, when it was brought into the Court yard to be carried away, it was forcibly rescued by 5 persons. The Criminal Judge doubts, with reference to the maxim that penal enactments must be construed strictly, whether these persons can be committed under Section VII Regulation VII of 1811, because this course of proceeding is prescribed only respecting rescuers of smuggled Tobacco, and because there is no evidence that the Tobacco in question had passed a Chokey without payment of duty, which is the exact meaning of being smuggled according to Johnson's Dictionary.—

The Judges think that the Prisoners ought certainly to be committed under Section VII Regulation VII of 1811 "smuggling" is evidently used in clause second Section VI of the same Regulation as synonymous with "illicit traffic" and "clandestine importation, sale and transit." and the Tobacco in question, having been illicitly ~~cultivated~~, its transit to and deposit in the house was also illicit — in other words it was smuggled.

Ordered, that extract of these proceedings be sent to the Judges of the Provincial

7th

9th April 1827. Provincial Court of Circuit in the Western Division for their information, and also to the Judicial Secretary to Government agreeably to orders of Government dated the 19th October 1824.—

(Cut for following letters No 89 & 90)

2015. Co. Mg. 2 4 U 20

E. U.

F. U.

At a Court of the Foujdaree Adalut.

Present,

Tuesday, 10th April, 1827.— F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter from the Provincial Court Western Division, dated the 23d March submitting the question whether a Magistrate may send a Prisoner brought before him under Section LIV Regulation XI of 1816, in an aggravated case, to the Criminal Judge.

2 4 U 20

(Here enter No 144 of 1827)

1. The Judges think that he may and ought to do so.—

2. Cases brought before a Magistrate under Section LIV Regulation XI of 1816 are thereby required to be proceeded in as directed by Section XXXII Regulation IX of 1816; and the meaning of this Section, taken in connection with Section VII Regulation X of 1816 evidently is that every offence, punishable under the Mohummedan Law and the Regulations for which the punishment which a Magistrate can inflict, is insufficient, is punishable by the Criminal Judge or committable for trial before the

10th April 1827. the Court of Circuit.-

5. In conclusion the Judges think that Section XLV Regulation IX of 1816 is not applicable to this question, as supposed by the Magistrate of Canara and apparently by the Western Provincial Court- The Criminal Judge of Canara is quite right, in restricting the application of the last sentence in that Section to the offences specified in the enactments referred to at the beginning of it.-

Ordered that extract of these proceedings be sent to the Western Provincial Court for their information- and also to the Judicial Secretary to Government agreeably to orders of Government dated the 19th October 1824.-

(Sent following letters No 91. 92/

Thursday, 12th April, 1827.-

At a Court of the Foujdarree Adalut

Present,

C. A. Grant Esqre
James Cochrane Esqre
William Oliver Esqre
} Judges.

Read letter, dated the 21st December last, from the 1st Judge late on Circuit in the Centre Division, referring trial No 27 of the Cuddapah Calendar for the 2d Sessions of 1826.-

(Here enter No 735 of 1826

Before they dispose of this case the Court consider it requisite to refer to the proceedings of the Police officer.-

Ordered therefore that the Judge who presided at the trial be by precept directed to send up English translations of all examinations taken in the case, and any report or reports made, by the Police officer.-

Precept returnable within ten days from and after its receipt.-

(Sent following Precept No 93/

Read letter dated the 3d Instant, from the 1st Judge of the Court of Circuit in the Centre Division,- reporting that he has

12th April 1827. has opened the 2d Quarterly Sessions 1827
at Chittoor.-
(Here enter No 150)
Read letter, dated the 2d Instant,
from the 1st Judge on Circuit in the Northern
Division, reporting his arrival at Chicacole
(Here enter No 154)

L. M.

At a Court of the Foujdaree Adalut.

Present,

Monday,
16th April, 1827.

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

Read letter, dated the 22d February
last, from the 2d Judge Cattoon Circuit
in the Centre Division, submitting Cases
No 20 Cuddapa Calendar and No 5 of the
Supplemental Cuddapa Calendar for the
1st Sessions of 1826.-
(Here enter No 87)

The 1st 2d and 3d Puisne Judges
having maturely considered the proceedings
held in cases No 20 Cuddapa Calendar and No 5
of the Supplemental Cuddapa Calendar
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 acquitting the prisoners
1st Chinna Mancheredy (In No 20) and
2d Pedda Mancheredy (In No 5)
direct

16th April 1827

direct that they be set at liberty.

P.P. (Sent for following letter No 35)

The Court, after the most attentive consideration of the evidence in this trial have acquitted the prisoners. Boochummah the 1st witness, says in effect that being awaked by the crying of her child she saw the 1st prisoner in the yard of her house, that she first asked "who is there?" he returned no answer, but that on her repeating the question, he said "Do not call out Ram Machereddy;" that he then left the yard through the gateway to the road leading to the spot where Mungapatty was sleeping that there was instantly a noise of blows and two Pons cried out that somebody was running off after killing the Curnam and that she then saw the 1st prisoner go along the lane to the South. The 2d witness Goontareddy says in effect that hearing a tumult before the house of Mungapatty he was going to see what it was, when he met the 1st prisoner coming South from Mungapatty's house by the lane that runs between that house and Boochum=mah; that he asked him where he was running off when there was this noise behind

16th April 1827.

him, that he did not answer, but went off.- Both these witnesses agree in stating that the 1st prisoner had an axe, and there is no material difference in their description of his dress.- This is all the evidence that goes directly to bring the murder home to the 1st prisoner, for it is very clear that the sharpening of his axe on the day preceding the murder admits of no unfavorable infer=ence against him, unless there is from other circumstances strong reason to conclude that the murder was committed by that instrument, and in the state of the axe when it was found there was nothing to raise a presumption of this sort. The other evidence in the case tends to raise a presumption of his innocence rather than a suspicion of his guilt, for it clearly appears that about two ghurries after the murder he joined others of the village in search after the perpetrators of it. In the previous examinations, particularly in the examinations before the Police Officer his conduct after the

15th April 1827

the murder is represented in a much more favorable light than in the examinations on the trial. No matter whether the search was active or not, or how it was conducted, it appears that he joined in it and as there is no evidence to the contrary it must be presumed that on this occasion he shewed no symptoms of alarm and agitation. Now if the person seen by Boochummah and Goontaroddy was in reality the 1st prisoner it is hardly possible to believe that he could have acted with so much apparent unconcern. He knew that he had been recognized by Boochummah just before the murder, and that she must have heard him, if she did not see him, in the act of committing it, and he knew that he was recognized by Goontaroddy immediately after he had committed it and was going from the spot. Consistent therefore as the evidence of these two witnesses appears, it would be dangerous in the highest degree to convict the prisoner upon it; and the fact that they did not immediately communicate what they had seen to the people assembled about

F. C.
15th April 1827.

about the dead body tends also to weaken very materially the effect of their testimony. The reason they assign for withholding this information is, under all the circumstances, extremely unsatisfactory. It must be observed also that according to the evidence of Mohummud Hoosyn, the 11th witness there were no marks of blood on the prisoner's cloths, which were sent for from the house of the washerman. Whether they had been recently washed or not does not appear, although that was a point of the highest importance, for if they had not been washed in the interval between the commission of the murder and the production of them before the witness, and no stains of blood were visible upon them, that would have been a strong fact in favor of the prisoner.-

The evidence against the 2d prisoner appears to the Court to be quite insufficient to raise the slightest suspicion against him, and did not warrant his commitment for trial.-

This trial was closed on the 20th February 1828, and was not referred till

18th April 1827. till the 22d February last. The Court consider it incumbent upon them to point out to the 2d Judge the hardship to which the prisoners have been subjected by this delay; and to desire that his future sessions may be made at an earlier period after the conclusion of the trials.

Ordered that an extract of these proceedings be sent to the 2d Judge to be on Circuit in the Centre Division for his information and guidance.-

(Sent following letter No 96)

F. A.

At a Court of the Foujdaree Adalut

Present.

Wednesday 18th April, 1827.- F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter, dated 29th March last from the 2d Judge on Circuit in the Western Division, submitting copy of the Malabar Calendar 1st Sessions A.D. 1827.-

(Here enter No 151)

In case No 15 the prisoner, "Koonhel Mamood" was charged with having stolen from the Prosecutor's garden Betelnuts valued at two rupees, and severely bruised and wounded him with a bludgeon. The futwa acquitted the prisoner of having wounded the Prosecutor - but, declared him convicted of the theft, and liable to "Tazeer," the penalty of "Hud" being barred in consequence of the stolen property not having amounted to the Nisab - under which futwa the prisoner was sentenced to be imprisoned, and kept to hard labour in irons for eighteen Calendar Months.- In this case a second futwa should have been taken under clause fourth Section

18th April 1827 Section II Regulation XV of 1803, and the prisoner sentenced to seven years imprisonment unless the Judge considered the punishment too severe, in which case he should have submitted a report of the circumstances and proposed a mitigated punishment under Section IV Regulation I of 1825 - The Court however confirm the mitigated sentence passed in this case, but direct that the Judge will hereafter strictly conform to the provisions of Clause 2nd Section II Regulation XV of 1803 -

Ans.[illegible] 28th April No 1827.
In No 26th July 1827

Ordered that a Extract of these proceedings be sent to the 3d Judge late on Circuit in the Western Division for his information and guidance -

(Sent following letter No 97.)

Read letter, dated the 13th Instant, from the 2d Judge late on Circuit in the Western Division, - with returned warrant for the execution of a prisoner in case No 64 Malahat Calendar 2d Sessions 1826 -

(Here enter No 164)

Read letter, dated the 13th Instant from the Third Judge on Circuit in the Centre Division, - with returned warrant for the execution

18th April 1827 execution of a prisoner in case No 12 Chinglepet Calendar 2d Sessions 1825 -

(Here enter No 165).

Read letter, dated the 15th Instant, from the 3d Judge on Circuit in the Centre Division - reporting the close of the Sessions of Circuit Court at Chinglepet on the 13th Instant -

(Here enter No 169)

Read return, dated the 14th Instant, from the Judges of the Provincial Court of Circuit in the Southern Division to precept dated 7th instant requiring necessary communications to be made to the several Criminal Judges in the Southern Division relative to the report prescribed by Section XXXV Regulation X of 1816 lately submitted -

(Here enter No 173.)

F. C.

At a Court of the Zuydares Adalat.

Present,

Saturday 21st April 1827. — F. A Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter from the Provincial Court of Circuit in the Western Division submitting for decision four questions referred to them by the Magistrate in Canara regarding the relation between a Magistrate and his Assistant in the exercise of the functions committed to the latter.-

(Here enter No 12 of 1827)

1. The first question is "whether an Assistant Magistrate employed by the Magistrate under Sections V and VI Regulation IX of 1816, is responsible to the Magistrate for his acts as Assistant Magistrate, or only to a higher judicial authority."-

2. In a general sense, an Assistant Magistrate employed under Sections V and VI Regulation IX of 1816 is, under all circumstances, responsible to his Superior, the Magistrate, for his acts. The Regulation makes his duties to depend entirely on delegation from the Magistrate- and Government has declared in a Minute of Council, of which Extracts

21st April 1827. Extracts were transmitted to the Provincial Courts under date the 31st January 1824 for circulation to all Magistrates, that the authority to delegate their duty does not absolve Magistrates from the responsibility of satisfying themselves that it is delegated into none but fit hands, and if Magistrates are thus responsible generally for the acts of their Apistants it follows that their Apistants are in the same general sense responsible to them.—

3. Whether in respect to particular acts of Apistant Magistrates, or their proceedings in particular cases, they are so responsible to the Magistrate that he may revise their proceedings and sentences in the same manner as the Judge on Circuit may his, depends, the Judges think, on the terms in which he has delegated his duties. It has been held by this Court that the Magistrate may reserve to himself the power of revising the acts of his Apistants, and where he has done so it follows that all their particular acts are subject to his revision according to the terms of the delegation. Where he has delegated his duties without such reservation, the Judges think that the particular acts of his Apistants are not subject to his revision — for the same reasons that the sentences of Apistant Criminal Judges to whom the power of passing sentence had been fully delegated were

21st April 1827. were declared in this Court's Circular of the 9th June 1824 not liable to reversal, viz that the practice of such revisions and reversals "must tend to shake the confidence of the people in the administration of justice and to diminish in their estimation the respectability and authority of a regularly constituted officer of government."

2. The 2d question is "Whether an appeal against the acts of an Apistant Magistrate so employed lies to his immediate superior or only to the Court of Circuit."

There can be no doubt that an appeal does not lie in any case to the Magistrate, whether the power of revision has been retained or not — This would be to confer a new right on the people, which the Regulations have not granted, and would be objectionable as tending unnecessarily to multiply business. Where the Magistrate reserves the power of revision, all the good effects of such an Appeal are produced, but then it is only admitted in cases in which he sees occasion for it.—

3. The 3d question is "Whether a Magistrate is empowered to issue instructions for the guidance of an Apistant Magistrate in cases coming regularly before the latter under Sections V and VI Regulation XII 1816 as provided

21st March 1827. provided such Instructions have no reference to the decision to be passed by the Assistant Magistrate.

7. The Judges think that he is.

Sec: V Reg: II of 1827. It has been declared by a recent enactment with regard to a higher class of officers than Assistant Magistrates viz: Subordinate Collectors and Joint Magistrates, that the exercise of their powers in the latter capacity shall be subordinate to the authority of the Magistrate - and it seems inconsistent with the principles of the service as well as with the avowed policy of Government to exempt any subordinate officer from the control of his immediate superior except where the nature of the functions committed to him requires it.

8. The 4th question is whether a Magistrate can suspend the execution of the sentence of his Assistant in any case when he may consider the latter to have acted illegally or to have awarded an excessive fine or imprisonment.

9. The Judges think that the power of a Magistrate to suspend the execution of a sentence by his Assistant when he considers it to be too severe depends

F 11

21st April 1827. on the terms in which he has delegated his duties to his Assistant. He acts in fact a revision of the Assistant's sentence - and the latter part of the remarks under the first question apply to it.

10. The Judges think that a Magistrate has always power to suspend and revise an illegal sentence. This principle has lately been distinctly asserted by Government in a case which the Regulations left doubtful and a declaratory enactment to the same effect is about to be published. Reg. VII. 1828

Ordered, that extract of these proceedings be sent to the Western Provincial Court of Circuit for their information and also to the Judicial Secretary to Govern-ment agreeably to orders of Government dated the 19th March 1826.

Sent following letters Nos. 100 & 101.

Rec'd 28th inst. Read.

250.

F. C.

At a Court of the Zoyedaree Adalut

Present:

Tuesday
24th April 1827.

F. J. Grant Esqre.
James Cochrane Esqre. } Judges.
William Oliver Esqre.

Read letter from the 1st Judge of the Provincial Court of Circuit in the Centre Division - holding the 2d Quarterly Sessions at Chittoor submitting his construction of Clause second Section II Regulation III of 1826.

(Here enter No 179 of 1827)

1. The question in effect here submitted is whether in a trial for perjury under Regulation III of 1826 it is necessary to take viva voce evidence that either of the contradictory depositions was given on oath when the trial on which the said deposition was given was for murder and the deposition itself is attested by the Magistrate as having been taken before himself on oath.-

2. In the case from which this reference arose the 1st Judge states that he gave directions to the Zillah Judge to procure the necessary evidence to prove that the accused was duly sworn and wilfully and deliberately caused his deposition to be taken down in writing: but in the communications which passed on the occasion

2th April 1827. occasion of which copies are enclosed, the requisition for evidence is solely as to the records having been duly sworn.

3. The Judges think it indispensably necessary that there should be evidence, independantly of the Magistrates attestation that the oath was actually and duly administered to the prisoner when examined as a witness. It is very likely that the witnesses called to prove the evidence given by the prisoner can likewise prove that he was sworn. If they cannot, the evidence of the person who administered the oath, and of the Gomastha who took down the deposition, is requisite.

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 102)

1st Ct. 25. 4 L

F. 11.

At a Court of the Foujdaree Adalut

Present.

Wednesday 25th April, 1827. F. A. Grant Esqre 1st Puisne Judge.
James Cochrane Esqre 2d Puisne Judge.
William Oliver Esqre 3d Puisne Judge.

Read letter, dated the 17th June last from the 1st Judge late on Circuit in the Northern Division, submitting cases Nos 25, 26, and 27 Chicacole Calendar 1st Sessions A.D. 1824.

(Here enter No 377 of 1826)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held in cases Nos 25, 26, and 27 before the Judge on Circuit the futwas of the Moonsiff Law Officer and the futwas of the Cazee ool Coozat and Mooftees of the Foujdaree Adalut confirm the said futwas of the Cazee ool Coozat and Mooftees aforesaid and acquitting the prisoners,

1st "Anuntoo Seetaramdoo"
2d "Mandem Panpiah,"
3d "Akoolah Appiah,"
4th "Chintaloory Samiah,"
5th "Akoolah Bajanah,"
6th "Sahlee Pothah,"
7th "Bandsitty Appana,"
8th "Seevacottee Appiah,"
9th Polepilly Appiah and
10th Potnoor Akoobai.

direct that they be set at liberty (sent following letter No 103)

4 L 25

24

F. A.

At a Court of the Foujdaree Adalut.

Present.

Thursday, 26th April, 1827. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Mr Cochrane and Mr Oliver. Read again letter, dated the 7th January last, from the 2d Judge late on Circuit in the Southern Division, - submitting case No 1 Salem Calendar 2d Sessions A.D. 1826.

(Hereunto No 9)

Read the second futwa delivered by the Cazee ool Cozat and Mooftees of the Foujdaree Adalut.

The 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 futwas of the Cazee ool Cozat and Mooftees of the Foujdaree Adalut confirm the said futwas of the Cazee ool Cozat and Mooftees aforesaid and under the sentence of Kissaas declared thereon adjudge the prisoner,

"Coopa Camdeo,"

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

Sent following letter No 106.

Read

28th April 1827.

Mr Grant
Mr Cochrane
and
Mr Oliver.

Read letter, dated the 21st February last, from the 2d Judge late on Circuit in the Centre Division; - submitting case No 2 Cuddapa Calendar 1st Sessions 1826.-

(Here enter No 84)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the opinion of the Provincial Law Officer and the opinion of the Cazee ool Coozat and Mooftees of the Sudder Adalut confirm the said opinion of the Cazee ool Coozat and Mooftees aforesaid, and under the discretion vested in them by the sentence of Acherabat direct that the prisoner 1st Tudda Lutcheeyandoo, be set at liberty.-

(Sent following letter No 107)

Read petition presented by Dasaee Dhanapola Comara Vencatachella Shetty.

(Here enter F. H. Misc Pet. No 6 of 1827)

This is simply a complaint against a fine imposed by the Magistrate in a case not matter of record under Section VII Regulation IV of 1821. The same complaint was made to the Judge on Circuit, who of course could not interfere.

This Court also has no power to interfere.

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

F.H. 2d V. 20

At a Court of the Foujdaree Adalut.

Present.

Friday 27th April 1827. D. A Grant Esqre. James Cochrane Esqre. William Oliver Esqre. } Judges.

Read letter, dated the 16th Instant, from the Provincial Court of Circuit in the Centre Division, transmitting extract from their Proceedings of 10th instant relative to a case of forgery respecting which the Criminal Judge of Chittoor entertains doubts whether the case is cognizable by his Court to which it had been forwarded by the Police or whether it is cognizable by the Criminal Judge of Chinglepute the forgery having been committed in that Zilla.-

(Here enter N. 176.)

It appears that, in the case in question, the forged letter and receipt were fabricated in the Zilla of Chinglepute and uttered, or made use of, in the Zillah of Chittoor. the question is in which Zillah the offence is cognizable.-

2. It appears that there is evidence to the act of fabricating the forged documents. By the Law of England from which

27th April 1827. which the Regulations have adopted the Idea and definition of forgery, the crime is complete without the forged document being uttered or made use of: provided there was fraudulent intention in the fabricator, the proof of which is drawn from the nature of the document forged.-

3. As the crime charged therefore was completed in the Zillah of Chingleput, the cognizance of it naturally belongs to the criminal jurisdiction of that Zillah.-

Ordered, that extract of these proceedings be sent to the Provincial Court of Circuit in the Centre Division for their information.-

Dated 27th April 1827 (Sent following Letter No 108)

F. C.

At a Court of the Foujdaree Udalut &c.

Present

Tuesday 1st May 1827. J. F. Grant Esqr 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
William Oliver Esqr 3d Puisne Judge

Read letter dated 21st Febry. January
= ary last from the Provincial Court of Cir= int
= cuit in the Western Division, submitting case
case No. 39 and 40 Malabar Calendar
1st Septr 1826.-

(Here enter No 107

The 1st 2d and 3d Puisne Judges
having maturely considered the proceedings held in case No. 39 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 Udalut confirm the said futwa of the Cazee ool Cozat and Mooftees aforesaid and acquitting the prisoner,

"Turk Nuppein"

direct that he be set at liberty

The 1st 2d and 3d Puisne Judges
having maturely considered the proceedings held in case No. 40 before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee ool Cozat and Mooftees

At a Court of the Foujdaree Adalut.

Present,

Friday 4th May 1827. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge.
William Oliver Esqre 3d Puisne Judge.

Read letter, dated the 5th January last, from the 2d Judge late on Circuit in the Western Division, submitting case No 5 Additional Calendar of the Zilla of Malabar 2d Sessions 1826.

(Here enter No 19)

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 and Cozat and Mooftee of the Foujdaree Adalut concur in opinion that the proof against the prisoners, 1st Kolla kandy Chandoo, and 2d Mannichom, is sufficient to convict them of the crime of theft and do therefore under Claude second Section II Regulation I of 1818 require their Law Officers to declare by a second futwa to what specific punishment these prisoners would have been liable under the Mohummedan Law if

they

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1st May 1827

27th Ap

of the Foujdaree Adalut concur in opinion that the proof against the prisoner 1st Cora=ttadata Kristnen alias Tetta is sufficient to convict him of the crime of Murder and under the provisions of clause first Section II Regulation I of 1818 adjudge the said prisoner,

1st To be dated data Kristnen alias Tetta to suffer death by being hanged at the usual time and place of execution.

(Sent following letter No 111.)

Re letter dated 24th Returns from the 2d Judge of the Provincial Court of Circuit in the Northern Division with Copy of Maxulipatam calendar 1st quarterly Sessions 1827.

(Here enter No 184)

24 2/ 4th May 1827. they had been convicted by full legal evidence of the above crime.—

The 1st 2d and 3d Puisne Judges also concur in opinion that the proof against the prisoners, 3d Pookat Chechoo, 4th Hollahandy Conicatoo, and 5th Mookiadatta Patchan, is sufficient to convict them of the crime of having received stolen property and do therefore under Clause first Section II Regulation I of 1818, and Section IV Regulation VI of 1822 adjudge the said prisoners,

3d "Pookat Chechoo,"
4th "Hollahandy Conicatoo," and
5th "Mookiadatta Patchan,"

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.—

Ordered that extract of these proceedings be translated and delivered to the Cazee ool Cozat and Manoftees of the Pongaree District.

The doubts expressed by Mr. Vaughan in the 12th Para of the foregoing letter respecting the construction of Clause ninth Section VI Regulation I of 1820 are without foundation. Whatever is used for the purpose of distilling spirituous

4th May 1827. liquor is a still in the sense of the Regulation, no matter where or how erected. The 5th Prisoner however being already convicted of a heavier offence and adjudged to a severer punishment, cannot be separately punished for having an unlicensed still.—

Ordered that extract of these proceedings be sent to the 2d Judge late on Circuit in the Western Division for his information.—

Do

At a Court of the Foujdaree Adalat

Present.

Monday,
7th May 1827. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read letter, dated the 20th December last from the 1st Judge late on Circuit in the Centre Division, transmitting, in compliance with the orders of this Court, the record of the trial in case No. 2 on the Chinglepet Calendar for the 2d Sessions of 1826.

(Here enter No. 750 of 1826)

1 On the 15th November last a petition was presented to this Court on behalf of Venkatah Naidoo, the prosecutor in the case above mentioned, complaining that Mr. Brown had mistaken the nature of the charge against the prisoners, and after an inadequate investigation had acquitted them in the face of abundant evidence of their guilt, and praying that the Court would call up the trial, and either pass sentence on it themselves, or refer the case for trial to another Circuit Judge.—

2 The prayer of the petition, so far as it regarded a new trial, was of course inadmissible; but with reference to the petitioners statements and to the remarks of the 2d Judge in postponing the trial at the preceding Sessions, the

the Court resolved to call for the record.

3 It appears that in the month of July 1822 the Mootah of Terovoor was transferred to the prosecutor Venkatasa Naidoo; and he alleges that some time in the Month of Margalee in the year Chitrabanoo (December 1822, or January 1823) the late Goontoor Venkataramiah, the preceding proprietor of the Mootah, falsely made a cowl, which purported to have been executed on the 9th Inder of the year Dhatoo (22d July 1816,) granting to the 1st prisoner Rungacharee a lease of the village of Moorcumjaree, forming part of the Mootah, at an annual rent of Pagodas 188 for 20 years, and afterwards in perpetuity; and that this false cowl was substituted for one, which had been granted by Venkataramiah to the said 1st prisoner on the date abovementioned, viz: the 22d July 1816, and which entitled him to a lease of the village for 10 years only at an annual rent of 117 Pagodas for the first five, and of 122 Pagodas for the last five years. And the charge against the prisoners was that they were concerned with the late Goontoor Venkataramiah in the false making and publication of the Cowl for 20 years.

4 In the Calendar presented to Mr Brown by the Zilla Judge were inserted the names of 10 witnesses for the prosecution and of 15 for the prisoners; but on reference to the record of the trial it appears that of the witnesses for the prosecution



only were examined, and that two witnesses were examined on the part of the prisoners. Mr Brown, it is clear, considered that the evidence of the 4 witnesses, whom he examined, was not sufficient to make out the case for the prosecution; and it is not easy to see why he took evidence for the prisoners, or put them on their defence at all; unless, indeed he thought that in the evidence for the prosecution there was something that required an answer from the prisoners and in that case he was clearly guilty of a dereliction of duty in omitting to hear all the evidence, which the prosecutor had to offer in support of his charge. It would be idle to enlarge upon the impropriety of Mr Brown's proceeding in this respect.

5 But the trial before Mr Brown was a mere mockery. Upon some of the points most material to the issue of the prosecution he took no evidence at all, and upon others he examined the few witnesses whom he had up before him in the most negligent and defective manner. Indeed in the 28th paragraph of his letter he says in effect that he endeavored as much as possible to confine the evidence to the fact that the Signature to the Cowl for 20 years was not the Signature of Venkataramiah, but a forgery; and this goes to confirm in a great degree the complaint of the prosecutor in his petition to this Court that Mr Brown mistook

7th May 1827.

mistook the nature of the charge against the prisoners.-

6 If Mr. Brown really did misunderstand the nature of the charge against the prisoners, it is hardly possible to account for his error otherwise than by the supposition that he did not take the trouble to read the previous informations taken, and the previous proceedings held, in the case - It is impossible to conceive that after the perusal of these papers any man could imagine that the issue of the prosecution depended upon proof that the signature to the Cowl for 20 years, was not the signature of Vencataramiah, but a forgery; for Vencataramiah throughout is plainly indicated as the principal, and the prisoners as his accomplices in the fraudulent fabrication of that Cowl - The fraudulent fabrication of the Cowl itself, and not the forgery of his signature to it, was the ground on which the prosecution rested; and before the Criminal Judge there was evidence to shew that this identical Cowl, said to have been granted on a date corresponding with the 22d July 1816 was seen in the hands of Vencataramiah himself so late as the month of Kartigah in the year Chittarabanu (November December 1822), at which time it had not been attested by witnesses; there was evidence to shew the previous existence of another Cowl bearing the same date, under which the 1st & 2d prisoners held

7th May 1827.

held a lease of the village for ten years only at a higher rent than that inserted in the Cowl for 20 years, and his actual payment of the rents up to the time of the transfer of the Mootah to the prosecutor, according to the terms of the Cowl for 10 years; and there was also evidence to several other circumstances, which went to prove the fraudulent fabrication of the Cowl for 20 years. It is quite clear that before the Criminal Judge the prosecutor had made out a good primâ facie case; although it is impossible to say what would have been the issue, if the trial had not been misconducted in a manner so totally unaccountable.-

7 The Court would have been glad, if on this occasion they had nothing more to imputate to Mr. Brown than a misconception of the nature of the charge against the prisoners, unaccountable as that misconception appears, and the too probable failure of justice arising from his misconduct of the trial - But in his remarks on this case in the Calendar, which was transmitted on the 27th and received by this Court on the 28th November, and in his letter accompanying the record of the trial, which was called for on the 30th November, there are gross misrepresentations of the evidence taken by him, which the Court cannot consistently with their

their duty, pass over unnoticed.-

8 In his remarks in the Calendar Mr. Brown, speaking of the Cowl for 20 years, says "neither he (the prosecutor) nor any of the witnesses "attempted to say that they had seen the original" This assertion, so far as it respects the witnesses, is in direct opposition to the fact, if the record of the trial is to be depended upon. The 1st. witness (1) Arnachella Pillay, in his answer to the 6th question put to him, the 2d. witness Cooppan in his answer to the 8th (2) question, and the 4th witness Soobaroydoo in his answer to the 3d (3) question, distinctly depose that they did see this Cowl, and the 4th witness says that he signed it as a witness.

9 In the 29th paragraph of his letter Mr. Brown says "With a view to allow the "prosecutor the fullest satisfaction, however in the "matter adduced by him in the prosecution, though "perfectly irrelevant to the matter in charge against "the prisoners, the point of the period of granting "the 20 years Cowl was investigated" Mr. Brown here takes credit to himself for having, merely with a view to the prosecutor's satisfaction, gone into the investigation of a point, which he considered, most unaccountably indeed, - to be "perfectly "irrelevant to the matter in charge against the "prisoners;" but on reference to the record it will be seen that among the questions put to the witnesses by Mr. Brown there is not a single one that was at all calculated to bring forth information on this most essential point, upon which in fact the issue of the prosecution almost exclusively

(1) See P. 6.

(2) See P. 10

(3) See P. 18.



depended; and that the only evidence that touches upon it is the answer of the 4th witness Soobaroydoo to a question (4) put by the prosecutor. This answer went to shew that so late as the month of Kartigah of the year Chitrabanoo (November or December 822) the Cowl for 20 years, which pretends to have been executed in July 810, was without the names of subscribing witnesses; and therefore it could not have been granted at the time of its pretended date. But Mr Brown, so far from pursuing the investigation of this point, which had been commenced not by himself but by the prosecutor, seems to have taken particular care that no further evidence upon it should be drawn forth: for he immediately closed the case for the prosecution and put the prisoners on their defence, although there was another witness, Daumoodera Naik, the 6th in the Calendar, who according to the deposition which he gave before the Criminal Judge, would have corroborated the evidence of the last witness Looka-royadoo on this most important point as well as others. - Before he put the prisoners on their defence Mr. Brown, as it would appear from a Memorandum entered at page 20, did indeed call the 6th witness into Court; but he was objected to by the prosecutor on the ground, as

4 See Page 20

7th May 1827

as stated in the Memorandum above referred to, that he was a relation of, and sharer in rents with, the 1st prisoner. If in point of fact he had any concern with the 1st prisoner in the lease of the village of Mooroosamjaree, he was clearly not a competent witness, inasmuch as he had a direct pecuniary interest in the issue of the prosecution; but Mr. Brown both in the remarks in the Calendar, and in the 3d paragraph of his letter attempts to infer, from the objections made to the examination of this witness, the prosecutor's consciousness of the badness of his cause. Moreover in the remarks in the Calendar he represents this witness as having been Ameen of the village at the time the Cowl for 20 years was granted, - that is in the year 1810. It is to be presumed that this statement was made for some purpose, and the only purpose it seems calculated to answer is that of shewing that the testimony of this man was intitled to particular credit on account of the situation he held in the village. But the man himself, in his examination before the Criminal Judge, does not pretend to have held that situation at that or any other time; and Soobaroya Pillay the 4th witness in the Calendar, whom Mr. Brown did not examine, would appear to have been Ameen of the village not indeed at the time stated above, but in the year 1820/1 and 1821/2. The evidence of the 10th witness Sreenivasa Ragavachary, if it was

intitled

J.C.
7th May 1827

intitled to credit, was no doubt favorable to the goodness of the Cowl for 20 years; but Mr. Brown alone can account for his anxiety to receive the evidence of this witness in preference to that of so many others, whose examinations he dispensed with, and whose testimony was of the highest importance to a fair trial of the charge against the prisoners.-

10 There are several other passages both in the remarks in the Calendar and in the letter accompanying the record, which appear, to say the least, very disingenuous, and calculated to convey a very erroneous impression of the nature and effect of the little evidence which Mr. Brown was at the trouble of taking in the case.- In his remarks in the Calendar he expresses his fear that "tampering with "the witnesses has caused the faulty state of "the evidence given by them at the trial;" but a reference to the record will shew that "the "faulty state of the evidence" may with infinitely greater appearance of truth be attributed to Mr. Brown himself, who examined a few only of the witnesses on the part of the prosecution, and that in a most negligent and defective manner. In the 3d paragraph of his letter he says "All "the witnesses speak of the 20 years cowl as one "they were intimately acquainted with - they "name the sum, the old balance, the term of "years, and the signature of Vencatarawniah, the

Poochika

"Moochilka granted in return, not as Proved,
"but as matter well authenticated &c" In
the 3d paragraph he attempts to draw a
strong inference in favor of the Cool for 20
years from the evidence of the 4th witness;
and at the end of the 3d paragraph he says
"By the evidence of the 4th witness it is very evident
"that the 20 years Cowl was well known long before
"the death of Venkataramiah by the very people
"who stand up, after his death, to cry it down".
It would be a waste of time to shew how utterly
irreconcileable in any way all this is with the
evidence of the witness, as it appears in the
record; but the Court must remark that the observ-
:ations on the evidence of the 4th witness are
founded upon the supposition of a most material
fact stated by him, viz. that the period when he
saw the Cowl for 20 years was an imperfect state
was in the Month of Karteyah of the year Vibha-
:vasu (November December 1822) a few months
only before Venkataramiahs death, and five or
six Months after his transfer of the Protat to
the prosecutor. It would be useless, however,
to pursue the subject any further.—

II. If the Misconduct of Mr. Brown
on this occasion had been confined to the negli-
:gently and defectiveness of his proceedings on
the trial, it might perhaps have been sufficie-
:ent for the Court to admonish him of his errors,
although, judging from past experience,
they could have little hope that their admonition

would



would produce any effect upon him. But
having before them such extraordinary instances
as are here exhibited, of Misrepresentation on
the part of Mr. Brown, the Court feel that
they would ill perform their duty, if they
did not submit the matter for the considera-
:tion of Government. The Misrepresentations
in the remarks in the Calendar are particularly
to be reprobated, because, the trial having
ended in the acquittal of the prisoners, the
record would not in the ordinary course
come under the review of the Court. The Mis-
:representations in the letter accompanying
the record were, indeed, open to immediate
detection; but they are still in any view of
them little less reprehensible. Besides as the
record was called for merely for the Courts
information it was not necessary that it
should be accompanied with any remarks;
but if Mr Brown thought that his proceedings
on the trial stood in need of any justification,
and this letter was intended for that purpose,
the misstatements in it are open to the most un-
:favorable construction, tending to the inference
that the object of Mr. Brown however unlikely
to be successful, was to blind and mislead
the Court as to the real nature of his proceedings.

Ordered that extract of these
proceedings be sent to Mr. Brown, and that he
be

7th May 1827.

be desired within ten days from his receipt thereof to transmit to this Court such explanation as he may wish to offer on the subject thereof, in order that his explanations may be submitted to the Honorable the Governor in Council together with the other papers in this case.

Sent following letter No 113.

Thursday, 10th May, 1827.

At a Court of the Foujdaree Adalut.

Present,

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

Read the second futwa delivered in case No 5 Additional Calendar of the Zilla of Malabar 2d Sessions 1826 by the Cazee ool Coozat and Mooftees of the Foujdaree Adalut.

The 1st 2d and 3d Puisne Judges agreeably to the second Futwa of the Cazee ool Coozat and Mooftees of the Foujdaree Adalut adjudge the prisoners,

1st "Kolla kandy Chandoo" and
2d "Maunikkom,"

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 letters No 115. & 112.

At a Court of the Foujdaree Adalut.

Present,

Saturday 12th May 1827.- F. A Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read return, dated the 17th Ultimo, from the 1st Judge late on Circuit in the Centre Division to precept dated 12th Ultimo requiring him to send up English translations of the Proceedings before the Police officer in case № 27 Cuddapah Calendar 2d Sessions 1826.-

(Here enter № 175)

Read again also letter dated the 21st December last, from the 1st Judge late on Circuit in the Centre Division submitting case № 27 Cuddapa Calendar 2d Sessions 1826.-

(Here enter № 735)

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 so far as respects the 1st and 2d prisoners and under the discretion

12th May 1827. discretion allowed by the sentence of
Corroboree adjudge the prisoners,
1st "A Ramaroodoo," and
2d "Vamooloogadoo,"
to suffer death by being hanged at
the usual time and place of execution.
The 1st 2d and 3d Puisne Judges also
concur in opinion that the proof
against the prisoner, 2d M. Gungooloogadoo,
is sufficient to convict him of the crime of
murder, and do therefore under the provision
of Clause first Section II Regulation I of 1818
adjudge the said prisoner,
3d "M. Gungooloogadoo,"
to suffer death by being hanged at
the usual time and place of execution.
The 1st 2d and 3d Puisne Judges also confirm
the sentence so far as regards the 4th 5th
and 6th prisoners and under the power
vested in them by Clause sixth Section II
Regulation XV of 1803 direct that the said prisoners
4th "Gurdeegadoo,"
5th "Veeroogah," and.
6th "Ustheegadoo,"
be released on producing good and sufficient
security for their future good behaviour and
appearance when required.—

(Sent following letter No 118.

Read letter, dated the 1st Instant,
12th May 1827. from the 2d Judge of the Provincial Court
of Circuit in the Northern Division,
with returned warrant for the execution
of a prisoner in case No 1 Chicacole
Calendar 1st Sessions 1827.—
(Here enter No 188)
Read letter, dated the 27th Ultimo,
from the 1st Judge on Circuit in the
Northern Division, with copies of Chicacole
Calendars 1st Sessions 1827.
(Here enter No 192)

F. C.

At a Court of the Foujdaree Adalut.

Present,

Thursday 24th May 1827.

F. A. Grant Esqre
James Cochrane Esqre
William Oliver Esqre
} Judges.

Read letter, dated the 4th Instant, from the 3d Judge on Circuit in the Southern Division, - explaining his proceedings in certain cases on the Madura Calendar for the 1st Sessions of 1827. -

(Here enter No. 156.)

1. The explanations of the 3d Judge are perfectly satisfactory on all the points to which the observations of the Court in their proceedings of the 29th March last applied. -

2. With reference to a rule established by the Court of Foujdaree Adalut under date the 9th May 1823, - to which the Court did not before advert, - it is proper to apprize the 3d Judge that in cases of simple theft it will not be necessary to require a Second Tuteea, unless the property stolen amounts to the Nisab. -

3. Under the explanation given by the 3d Judge the reference of the trial in case No 34 on the Madura Calendar is unnecessary. -

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

24th May 1827 for his information.

(Sent following letter No. 125.)

Read letter, dated the 28th Ultimo from the 3d Judge on Circuit in the Western Division, - explaining the grounds on which he omitted to require a second Tuteva in case No 15 on the Malabar Calendar for the 1st Sessions of 1827.

(Here enter No 187)

The explanation afforded by the 3d Judge is perfectly satisfactory. In writing their proceedings of the 18th Ultimo the Court did not advert to the order of the Fouzdaree Adalut under date the 9th May 1823, nor on consideration are they quite satisfied of the principle on which the rule there established is founded. The rule, however, being established, and not being likely to lead to any bad consequences in its practical operation, the Court are not at present inclined to disturb it. It is not abrogated or any wise affected by the provisions of Regulation I of 1825 as seems to be supposed by the 3d Judge.

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

(Sent following letter No. 126.

Read

24th May 1827.

Read letter, dated the 14th Instant, from the 3d Judge of the Court of Circuit in the Centre Division, - with copy of Chingleput Calendar 1st Sessions 1827.

(Here enter No 198)

Read letter, dated the 7th Instant, from the 3d Judge on Circuit in the Southern Division, - with copy of Combaconum Calendar 1st Sessions 1827.

(Here enter No 197)

Read further return, dated the 14th Instant from the Provincial Court of Circuit in the Southern Division, - to precept of 7th Ultimo directing the Criminal Judge in the Zillah of Salem to release several prisoners and explain the sentences passed on others by him as mentioned in the Quarterly Report lately submitted by him -

(Here enter No 206.)

Read letter, dated the 17th Instant, from the 3d Judge on Circuit in the Southern Division, - reporting the arrival of the Court of Circuit at Salem on 17th instant and the commencement of Sessions on the same morning.

(Here enter No 205)

At a Court of the Fojdara Wiatut.
Present.

Friday
25th May 1827.

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

Read the reports prescribed by Section XXXVII Regulation VII of 1802 from the 2d and 3d Judges of the Northern Provincial Court after completing respectively the 1st Circuit of 1825 and the 1st and 2d Circuits of 1826.—

(Here enter No 883 of 1825 & 1 and 141 of 1827)

Read also letter from the Northern Provincial Court forwarding copy of a letter and its accompaniments from the Criminal Judge of Nellore relative to the diet of the prisoners a subject on which he and the Medical Gentleman of that Station differ in opinion.—

(Here enter No 548 of 1826.)

1 In the two former of the foregoing Circuit Reports there is nothing now requiring remark.

2 In the 2d para of the last report, etc. Tod remarks the unwillingness of Criminal Judges to dismiss cases of evidently false complaint for fear of the "grievous censure" of their Superiors who may differ from them in opinion. The Superiors intended must be, it is presumed, the Judges on Circuit; who only, and occasionally the Collective Court of Circuit in the Fojdara Adawlut under Section XXV Regulation X of 1816, can revise the Committals and dismissals by a Criminal Judge — The Court do not

25th May 1827

not call to mind any instance of censure passed by them in a case of the kind; but they think that all animadversions on the proceedings of Subordinates should be expressed in moderate and conciliatory terms and be accompanied with such explanations that the effect may be rather to inform the mind and excite the caution of the person addressed than to hurt his feelings. A Criminal Judge however does wrong who, when his own judgment is clear and decided that a charge is false, continues the accused under durance, or commits him on bail for fear of being censured for acquitting him: his duty is to act according to his own judgment.—

para 3 3 Mr. Tod regrets the removal of the Stamp duty on Wills by Section IV Regulation II of 1825 on account of the prevalence of forging these documents — Suggests some private mark or date on Stamped paper to aid in detecting forgeries — The exemption of wills from Stamp duty originated in the suggestion of the Provincial Court in the Centre Division, grounded on the embarrassment and injury to an intended donee in cases of sudden and dangerous sickness, when no Stamped paper could readily be procured; also on certain customs and ceremonies peculiar to Hindoos The then Judges of this Court adopted the recommendation — and Government declared wills not a fit subject for such a tax as the Stamp duty. Now the subject

Min: Cons: 11th July 1825.—

to



25th May 1827

to be brought again under discussion the present Judges would reconsider the recommendation of a former Court upon it — The prevalence to the extent described of forging wills throughout one whole division of the Territories of the Government, with the Map of ingenuity and litigation consequent upon it, is a very serious evil; though the right of a Hindoo to make a will is denied, that of a Mahomedan is not questioned; and as respects Hindoos, the Judges are not at present prepared to state that that right can absolutely be denied them with respect to all property consistently with their own Law. This subject however will shortly come under express discussion pursuant to the Commands of Government. The Judges would not recommend the reenactment of the former Stamp duty — which was ad valorem of the amount bequeathed; as that amount or its value in Money might often be not ascertainable at the time of making the will; and it would be very hard to invalidate an otherwise legal deed because it was, thro' almost unavoidable ignorance executed on wrong stamped paper — What the Judges would recommend is that all wills should be executed on Stamped paper of one Rupee — In the answers to the Circular reference made before enacting Regulation II of 1825 it was

universally

universally admitted that the Stamp Regulation did not bear laid as a Tax and operated to prevent forgeries or facilitate their detection — The impetus alluded to in the minutes of Council 11th February 1825 was probably the circumstance abovementioned of the uncertainty of the amount bequeathed; but this would be unimportant under a fixed stamp. No stamps are used on wills in England; but there, forged wills are of rare occurrence; and a tax upon wills as an article of revenue, is more effectually supplied by the Legacy tax — Mr Todd's suggestion of a new private mark or date on Stamped paper, if deemed by Government of importance, is properly referible to the Board of Revenue under Section VIII Regulation XIII of 1816.

4 The late Judge of Nellore has in consequence of a representation from the Zilla Surgeon increased the money allowance of the prisoners in the Jail for firewood and condiments from 10 to 15 Cash a day. In Rajahmundry Jail the 3d Judge on Circuit has increased the grain allowance of the prisoners from about 3/4 lbs of a seer of rice to one seer, in consequence of their loud complaints of insufficient food: complaints equally loud were made of their money allowance, 10 Cash a day; but as the late increase of that allowance in Nellore Jail was then under reference to



to this Court, Mr Todd very properly abstained from altering that at Rajahmundry till the orders upon that reference should have been received.—

5 The Court approve the increased allowance in grain above stated; and recommend that it may be sanctioned by Government.—

6 Trial was made at Nellore Jail of 3/4 lbs of a Seer of rice; and it was found insufficient by the consenting opinion of all concerned and increased again accordingly.—

7 With regard to the Money allowance; this allowance varies greatly: in Masulipatam Jail it is 20 Cash; in Rajahmundry 10; in Nellore, now, 15: the Medical Board have fixed about 20 Cash as the proper average; but the opinion of Government has been declared (and the Judges entirely concur in it) that a uniform System either of allowance or diet is not applicable. Mr Dickenson stated in his letter to the Northern Provincial Court 12th August 1826 his opinion, formed after repeated personal observation of the quantity of Chillies, Tamarind, Curry stuff &c actually purchased by the prisoners for 5 Cash, the portion of their allowance left after purchasing firewood) that that quantity "if not abundant for the quantity of rice issued to them is not very far short of being so."

The

25th May 1827. The result of enquiry from Natives was that 10 Cash for condiments, i.e. 15 Cash in all, would be abundant. The late Surgeon, Mr Proop, thought the author of the increased allowance, thought 10 Cash in all ample - Mr Simm, the present Surgeon, alone calls for 20 Cash. Under these circumstances and the repeated reports that have been made of the healthy appearance of the Native prisoners before the increase, the Judges think that, while the allowance should be sanctioned for the time past, i.e. from last August, the present Criminal Judge should be directed to pay attention to the subject; and to reduce the allowance to 12 or 11 Cash, on any proper occasion, if from actual observation he finds the present rate sufficient to procure any sort of luxury or even abundance.-

With respect to the prisoners at Rajahmundry the Court think that the attention of the Judge of Masulipatam under whom they will now be placed, should be directed to the use they actually make of their money allowance; and that he should have authority to increase it if necessary to any amount not exceeding 15 Cash to enable them to procure such condiments as are necessary to their health and no more - Occasional unexpected visits to the Jail at the time

25th May 1827. time the prisoners are actually spending their allowance and receiving their supplies compared with enquiries from the Jailor and others, will furnish the best data.-

Ordered, that Extract of these proceedings with copies of the 3 Reports, be sent to the Secretary to Government in the Judicial Department to be laid before the Governor in Council.-

(Sent following letter No 128.)

No 22 Sent 26:

Ordered, also, that Extract of these proceedings be sent to the Northern Provincial Court, by precept with instructions to Circulate such part of para 2 as they may think fit to the several Criminal Judges and Joint Criminal Judges in their division.-

(Sent following precept No 129.)

Sent 26 Ex. M

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F. 11

At a Court of the Fujdarey Adalut -

Present,

Tuesday,
29th May, 1827.

F. A. Grant Esqre
James Cochrane Esqre
William Oliver Esqre
} Judges.

Read letter, dated the 28th Instant,
from the 1st Judge of the Court of Circuit in
the Centre Division, - submitting explanation
of his proceedings in case № 2 on the Chingleput
Calendar for the 2d Sessions of 1826. -

(Here enter № 215)

1. The Court have perused the fore-
=going letter with the utmost attention, but
the explanations afforded by Mr Brown, - so
far from shewing that the remarks, con-
=tained in their proceedings of the 7th Instant,
were in any respect unfounded, - serve
only to confirm the justice of those remarks
in every important particular. -

2. Mr Brown's attempt at explan-
=nation has, indeed, made his proceedings
on the trial appear more exceptionable
than they did before; for if, as he says at the
close of the 7th paragraph of the foregoing
letter, he considered the question before
him to be "Did Vencataramiah bonâ fide
"sign his name and regularly make over
"the 20 years' Cowle to the 1st prisoner or
"not. 2d Or did the 1st prisoner in conjunction
with

29th May, 1827. with him and the other prisoners falsely "fabricate, forge, and counterfeit &c." he did not so much mistake the nature of the charge as was before supposed; and his total misconception of the nature of the charge,- unaccountable as it appeared,- was the only ground upon which any excuse could possibly be found for his restricting the evidence taken by him to the fact that the signature to the Cowl for 20 years was not the signature of Vencataramiah but a forgery.-

3. That the remarks in the Calendar and in the letter accompanying the record of the trial contain the misrepresentations pointed out in the Courts proceedings of the 7th Instant is in effect admitted by Mr. Brown, and it is for the Honorable the Governor in Council to determine whether under all the circumstances there are sufficient grounds for attributing these misrepresentations to mere inadvertence, and whether inadvertence is a sufficient excuse for them. In respect to that part of his letter (Paragraphs 15 and 16) in which Mr. Brown attempts to shew that his remark in the Calendar,- particularly referred to in the 8th paragraph of the Courts proceedings of the 7th Instant,- could not possibly tend to mislead the Court, because the abstract of the evidence before the Criminal Court

29th May, 1827- Court was inserted in a Column along side of it, the Court have to observe that the Calendar afforded them no other means of knowing what the witnesses deposed before him than his representation of their evidence, and had not their attention been otherwise particularly directed to this case, the Court on their review of the Calendar might for various reasons have not thought it worth while to take special notice of the apparent discrepancy between the evidence before the Criminal Judge and the Court of Circuit. They could not suppose that his representation of the evidence before him was incorrect; but they might have imagined,- giving him credit for the exercise of a sound discretion,- that under all the circumstances of the case,- of which he was best able to judge,- there were not sufficient grounds for the committal of the witnesses for perjury, and therefore it might have appeared very idle and useless for them to agitate the question at all.-

4. In the 9th and 10th paragraphs of his letter Mr. Brown labours to prove ingeniously the goodness of the Cowl for 20 years, and the consequent innocence of the prisoners, but to the question now under consideration the guilt or innocence of the prisoners is a matter of perfect indifference.

25th

29th May, 1827.

indifference. The Court thought, and they think still, that the prosecutor had made out a strong prima facie case before the Criminal Judge; but it is impossible to say what would have been the result, if the witnesses had been carefully examined and the trial fairly conducted. In regard to the exhibits Nos 43, 44 and 45 to which Mr Brown so confidently refers as proving the goodness of the Court for 20 years, it is only necessary to observe that they are signed by Mr Nisbet as Magistrate and not as Collector, that they were produced before the Magistrate for the purpose of letting in evidence to shew that the village accounts had been altered and interpolated in order to make them support the Court for 20 years, a part of the case which Mr Brown did not go into, and that Mr Nisbet, whose signature to these exhibits is considered so conclusive, expressed, in his letter to the Judges of the Provincial Court dated the 24th November 1824 which appears on the record, his "thorough conviction of the guilt of those charged" with the fraudulent fabrication of the Court. This part of Mr Brown's letter certainly goes to confirm the supposition that he did not take the trouble to read the previous proceedings in the case, from which alone he could prepare himself for the due investigation

Ex N.

29th May, 1827.

investigation of it; and indeed there is hardly a passage in his letter which is not open to very unfavorable comments. But the Court will spare themselves the labour of penning and the Honorable the Governor in Council the trouble of reading any further remarks on the subject.—

Ordered, that extract from the Court's proceedings dated the 7th Instant upon the record of Trial No 2 of the Chingleput Calendar 2d Sessions of 1826 together with the reply of the 1st Judge of the Centre Provincial Court and extract of these proceedings as well as the record of the Trial in the above case be sent to the Secretary to Government in the Judicial Department to be laid before the Governor in Council.

(Sent following letter No 130)

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Assistant
Gen.

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F.C.

At a Court of the Tsoydaree Udaitat.

Present

Thursday, 3rd. May 1827

J. A. Grant. Esqre. 1st. Puisne Judge

James Cockburne Esqre. 2d. Puisne Judge

William Oliver Esqre. 3d. Puisne Judge

Read petition presented by C. Venca-
=tareddy of the Gilla of Cuddapa-
(Seen enter F.C. Pris: pet. No. 7 of 1827)
Praying for the release of his rela-
=tions, three brothers, in case No. 19 of the Cuddapa
Calendar 1st. Session 1827.- The presiding Judge
having disapproved of the petition in the aforesaid
case it is referrible - The Record of the trial in
question not having been received the petitioner
must await the Sentence of this Court on hear-
=ation.-

Ordered, that Extract of these pro-
=ceedings be furnished to the petitioner on his
application.-

Read petition presented by
Vindabutten of Manipitton regarding his eldest
brother Vencatasabutten Prisoner in case
No. 20 Chingleput Calendar 1st. Session 1827.
(Seen enter F.C. Pris: pet No. 4 of 1827)
The case in which the relation
of the Complainant is a party accused is re-
ferrible from the Court of Circuit for the Centre
Division - Orders having been already issued
for

for its speedy reference the petitioner must await the sentence of this Court.—

Ordered, that Extract of these proceedings be furnished to the petitioner on his application.—

Read letter dated 21st. instant from the 2d. Judge late on circuit in the Southern Division with returned warrant for execution of a prisoner in case No. 1 Salem Calendar 2d Sessions 1826.—

(Here enter No. 214)

Read letter dated 28th instant from the 1st. Judge of the Provincial Court of Circuit in the Centre Division stating that a second petition has been called for in case No. 8 Chittoor Calendar 2d Quarterly Sessions 1826 and transmitting the same.—

(Here enter No. 220.)

F. C.

At a Court of the Zillah Dindigul Adalut

Present,

Monday, 4th June 1827. T. A. Grant, Esqre. } Judges.
James Cochrane, Esqre.
William Oliver, Esqre.

Read letter, dated the 22d. Ultimo, from the 2d Judge on Circuit in the Southern Division, recommending under the provisions of Section III. Regulation I of 1825 a mitigation of punishment in the case of a prisoner convicted in No. 1 Salem Calendar 1st Sessions 1827.—

(Here enter No. 216)

The Court of Zillah Dindigul Adalut having attentively considered the grounds upon which the 2d Judge has recommended that the punishment of the prisoner referred to in his report, should be mitigated to 14 Stripes and seven years imprisonment with hard labor in irons, resolve to sanction the mitigation of punishment proposed.—

Ordered, that extract of these proceedings be sent to the 2d Judge on Circuit in the Southern Division for his information.—

(Sent following letter No. 133)

At a Court of the Fuydaree Adalut
Present

Friday, 8th June 1827 } F. A. Grant, Esqre, James Cochrane, Esqre, William Oliver, Esqre } Judges.

Read letter, dated the 31st Ultimo from the 3d Judge on Circuit in the Southern Division, recommending under the provisions of Section III Regulation I of 1825 a mitigation of punishment in the case of two prisoners convicted in the 1st Session Calendar 1st Sessions 1827.

(Here enter No. 224)

The Court of Fuydaree Adalut having attentively considered the grounds upon which the 3d Judge has recommended that the punishment of the two prisoners referred to in his report, should be mitigated to 24 stripes and seven years imprisonment with hard labor in irons, resolve to sanction the mitigation of punishment proposed.

Ordered, that extract of these proceedings be sent to the 3d Judge on Circuit in the Southern Division

for

8th June 1827.

Ed. Mt
cust.

for his information.-

(Sent following letter No. 137.

Read letter, dated the 30th ultimo, from the Judges of the Provincial Court of Circuit in the Western Division, - transmitting warrant issued for the execution of a prisoner in case No 40 Malabar Calendar 1st Sessions 1826.

(Hereunto No 232.)

Read letter, dated the 4th Instant, from the 1st Judge of the Court of Circuit in the Centre Division, - forwarding a death warrant issued in case No 27 Cuddapah Calendar 2d Sessions 1826.-

(Hereunto No 229)

X

J. G.

At a Court of the Foujdaree Adalat.

Present.

Wednesday
13th June, 1827.

J. A. Grant, Esqre. -----
James Cochrane, Esqre.
William Oliver, Esqre.
} Judges.

24 C
250

Read again letter from the 1st Judge of the Centre Provincial Court of Circuit submitting the whole records of the trials No 9 and 13 of the Bellary Calendar 2d Sessions 1826.-

(Here enter No. 750)

A Report was submitted in these cases and a Mitigation of punishment recommended; the records were called for because the information in the Report was insufficient to enable the Court to decide whether the proposed Mitigation was proper or not.-

After a deliberate consideration of the whole of the proceedings the Court were compelled to differ from the 1st Judge not only as to the propriety of the Mitigation recommended by him, but also as to the innocence of the 1st and 3d Prisoners, whom he has not convicted: and, being in possession of the whole of the proceedings in both cases resolved under Section XXV Regulation X of 1816 to pass Sentence anew. The proceedings were

were referred to the Mahomedan Law Officer of the Court, and their Futwa has been received.-

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 Cozat and Mooftee of the Foujdaree Adalut concur in opinion that the proof against the prisoners, 1st Timmadoo, 2d Vencatagandoo, and 3d Dasaree Caiseegandoo is sufficient to convict them of the crime of robbery by open violence; and do therefore under clause first Section II Regulation I of 1818, clause third Section IV Regulation XV of 1813 and clause fourth Section II Regulation I of 1825 adjudge the said prisoners,

1st "Timmadoo"
2d "Vencatagandoo" and
3d "Dasaree Caiseegandoo,"

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 14 years and then be released.- The 1st 2d and 3d Puisne Judges also concurring in opinion that the proof against the prisoners 4th Cumsalee Chinnaraiah and 5th Letchimpaty is sufficient to convict them



of the crime of purchasing stolen property knowing it to be stolen,- do therefore under clause first Section II Regulation I of 1818 and clause second Section IV Regulation VI of 1822 adjudge the said prisoners,-

4th "Cumsala Chinnaraiah" and
5th "Letchimpaty"

to receive 20 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 5 years and then be released.- The 1st 2d and 3d Puisne Judges concur in the futwa so far as regards the 6th prisoner Talary Rungadoo, and under the discretion allowed by the Sentence of Circuit adjudge the said prisoner,

6th Talary Rungadoo

to receive 20 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 5 years and then be released.-

The remark of the 1st Judge contained in para 26, upon the impropriety of having made two cases of those under consideration, when one trial would have sufficed, is perfectly correct.- The 1st Judge will therefore

13th June 1827.

therefore be pleased to make known his sentiments, to this effect, in the usual manner to the Zilla Judge of Bellary.—

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

(Sent following letter No 1394 1149)

Ex. M. Sent 18

H. M.

20

H.

H.

F. H.

At a Court of the Foujdaree Adalut

Present,

Thursday, 21st June, 1827.

E. A. Grant, Esqre
James Cochrane, Esqre
William Oliver, Esqre
} Judges.

H. M.

20

Read letter, dated the 18th Ultimo, from the 1st Judge of the Court of Circuit in the Centre Division,— forwarding copy of the principal and supplemental Calendars of Chittoor for the 2d Quarterly Sessions of 1827.

(Here enter No 208.)

Apaul Abeygandoo the 2d prisoner in case No 1 of the principal Calendar was directed by the 1st Judge to be released on finding Security for his good behaviour for one year. This was in direct opposition to the circular orders of the Court of Foujdaree Adalut dated the 30th August 1816.— With reference to the abstract of the evidence contained in the Calendar, the Court are by no means satisfied of the correctness of the grounds on which the principal prisoners have been acquitted; but they do not think it necessary to call for the record;— nor— with reference to the provisions of Regulation VI of 1827,— do they think it requisite to direct that the warrant in the case of

21st June 1827.

of the 2d prisoner, should be amended.—

2. In cases Nos 2 and 3 the prisoners are the same, but it does not appear from the Calendar that they were tried in case No 3. The 1st Judge is directed to state specifically whether he did or did not try the prisoners in case No 3. If he did try them, he will repeat the issue of the trial; and if he did not, he will explain the grounds of this extraordinary omission.—

3. The Court are utterly unable to reconcile the acquittal of the prisoners in case No 4 with the abstract of evidence as contained in the Calendar, and they direct that the record of the trial in this case be sent up for their information.—

4. In case No 5 the 1st prisoner was by the Fatwa of the Law Officer declared convicted of the charge of robbery on Zunn-i-Ghalib, or strong presumption; but the 1st Judge directed his release on security for his future good behaviour and appearance when required. It was on a former occasion pointed out to the 1st Judge that he is incompetent to release a prisoner on security when the Law Officer gives a Fatwa of conviction on Zunn-i-Ghalib; and under date the 27th January last a

21st June 1827.

communication to the same effect was made to the 2d Judge. This exhibits another instance of the inattention of the 1st Judge to the instructions of this Court. The grounds which the 1st Judge has assigned for not considering the 1st prisoner in this case convicted of the crime laid to his charge are hardly reconcileable with the abstract of the evidence contained in the Calendar, and the Court direct that the record of the trial be sent up for their information.—

5. The 1st Judge intimates his intention to refer the proceedings of the Court of Circuit in case No 9.— The Court have some reason to apprehend that there has been irregularity in the proceedings both of the Magistrate and of the Criminal Judge in this case and in cases Nos 10, 11, 12, 13 and 14; and in order that the subject may be brought fully before the Court, they direct that a complete record of all these cases be sent for their information.—

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 No 1143 dated 21st June 1827.

Read

13

21st June 1827. Read letter, dated the 15th Instant, from the 3d Judge on Circuit in the Southern Division, - with copy of Salem Calendar 1st Sessions 1827. -

(Hereunto No 237)

F. A.

At a Court of the Fouydarea Ridalut

Present,

Tuesday 26th June 1827. F. A. Grant, Esqre 1st Puisne Judge
James Cochrane, Esqre 2d Puisne Judge.
William Oliver, Esqre 3d Puisne Judge.

Read letter, dated the 14th February last, from the 3d Judge late on Circuit in the Northern Division - submitting case No 12 Chicacole Calendar 2d Sessions A.D. 1826. -

(Hereunto No 88)

Read also letter, dated the 28th Ultimo, from the 3d Judge of the Provincial Court of Circuit in the Northern Division, transmitting copies of two petitions presented by a person representing himself to be son of the 6th and nephew of the 7th prisoner in case No 12 second Sessions 1826 in which he alleges that the Police Officer procured false witnesses to convict the persons in the aboveraid case. -

(Here enter No 222)

Also read letter dated the 28th Ultimo, from the 3d Judge of the Court of Circuit in the Northern Division, reporting the death of a prisoner in No 12 Chicacole No. Calendar 2d Sessions 1826.

(Here enter No 223)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the

further

26th June 1827.

futwa of the Provincial Law Officer and the futwa of the Cazeecol Coozat and Moofties of the Zillahs Dindal confirm the said futwa of the Cazeecol Coozat and Moofties aforesaid, and acquitting the prisoners,

2d "Yendapilly Nauganah,"
3d "Somoo Paupiah"
4th "Amalagunty Rayavaroo,"
5th "Yamekay Kundajee,"
6th "Potoolah Narsimooloo,"
7th "Muntry Gopaularoo," and
8th "Lunkalapilly Venkapah,"

direct that they be set at liberty.-

Cut 30.

(Cut following letter. No. 144.)

1 The Court, after the most attentive consideration of the evidence in this case, fully concur in the view which the 8d Judge has taken of it. It is impossible to doubt for a moment that the charge against the prisoners is the result of a foul conspiracy; and it seems equally impossible to doubt that the Police Officer of the town of Vizianagrum at least knit himself to it, if he was not the author of it.-

2 That the information alleged to have been given by the 1st prisoner, Goorapoo Veeraroo was what led to the Police Officer's apprehension of the other prisoners is clear from the date of their respective

26th June 1827.

respective examinations before him; and from the fact that none of the real or pretended eye-witnesses of the murder pretend to have recognized the said Veeraroo among the murderers. It follows therefore that if, as he says in his report to the Criminal Judge, he went to the house early in the morning after the murder; and examined the dead body, he then received no information as to the particular persons who had perpetrated the murder. He does not indeed expressly say that he then saw either the prosecution or any of the witnesses who could have given him this information; but they must have been either in the house, or at all events within his reach, for they were all inhabitants of the town; and it is impossible to believe that he would have satisfied himself with the mere inspection of the body, and not have extended his inquiries as to the persons capable of giving him information on the subject of the murder.

But it is of very little consequence whether he did or did not see either the prosecution or any of the witnesses on the morning after the murder.

3

26th June 1827.

murder. In either case, unless indeed he is an absolute ideot, - it is utterly impossible that he could have believed they were telling him the truth, when five days afterwards they deposed before him that they actually saw the prisoners, some of them at least, - among the murderers of Chelmiah; and in sending them up in support of the charge against the prisoner he could not but have known that he was palming false evidence upon the Court.

4 The Court desire that the Dy. Judge will bring the conduct of this Police Officer to the notice of the Magistrate, and will suggest to him the expediency of making a strict inquiry into the whole of the proceedings in this case. It is very probable that the investigation, if properly and discreetly conducted, may lead to the discovery of evidence sufficient to warrant the committal of the witnesses for perjury, and perhaps of the Police Officer for suborning them, or upon some other specific charge; and if so it will be the duty of the Magistrate to forward them for committal to the Criminal Judge. That gross perjury has been committed in this

F. H
26th June 1827.

this case does not admit of the slightest doubt; and the interests of justice require that every exertion should be made to bring the delinquents to punishment. -

5. With reference to the Magistrate's letter to the Criminal Judge, dated the 22d July last, the Court direct that in releasing the prisoners the Criminal Judge will particularly caution them against any acts of violence towards the Police Officers. The Court think it very probable that the representation of the Police Officer, on which the Magistrate founded his request that the prisoners might not be released without security, was made in prosecution of the conspiracy of which there is too much reason to believe that these unfortunate persons have been the object; but it is still proper to take notice of the threats which they are alleged to have thrown out, and to warn them against any attempts at revenge.

Ordered, that extract of these proceedings be sent to the Dy. Judge Eastern Circuit in the Northern Division for his information and guidance. -

Ext following letter No 145.

F.H.

F. M.

At a Court of the Foujdaree Adalut
Present,

Thursday 28th June 1827. James Cochrane, Esqre. } Judges.
William Oliver, Esqre. }

Read petition presented in person by Rasiah Naicken of the Zilla of Madura
(Here enter F. Misc. Pet. N. 8 of 1827)

This is an application to this Court to call for the record of a trial before the 3d Judge Eastern Circuit in the Southern Division and overrule his sentence.-

Rejected: the sentence of a Circuit Judge being without Appeal- and no such case being made out as to induce this Court to call for the record.

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

Read petition presented in person by Lyaloo Naicken late Duffadar in the Zilla Zail of Madura-
(Here enter F. Misc. Pet. N. 10 of 1827)

This is a complaint of unjust dismissal from office.- Ordered that the Petitioner be informed that this Court has no power to interfere.-

Ordered that extract of these proceedings

28th June 1827. proceedings be furnished to the petitioner on his application.-

Read petition presented in person by Bheeman Servacaren late Jamadar in the Zillah Jail of Madura.-

(Hereinafter Misc. Pet. No 9 of 1827)

This is a complaint of unjust dismissal from office.- Ordered that the Petitioner be informed that this Court has no power to interfere.-

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

Read petition presented in person by Mootooramalingam Tucatasweren, and Paica Elmon late peons in the Zillah Jail of Madura.-

(Hereinafter Misc. Pet. No 11 of 1827.)

This is a complaint of unjust dismissal from office.- Ordered that the Petitioner be informed that this Court has no power to interfere.-

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

The Court having occasion to revert to their Proceedings of the 24th August 1826, on a return by the 1st Judge of the Centre Provincial Court to their precept of the 28th June preceding requiring

28th June 1827. certain explanations respecting case No 81 of the Cuddapa Calendar 1st Sessions 1825, direct that Paragraphs 4 and 5 of those Proceedings be circulated to the 3 other Provincial Courts of Circuit for the information and guidance of the Judges of the same when on Circuit, and also to the Judicial Secretary to Government agreeably to orders of Government dated the 17th March 1826.-

(Sent following letters No 149. & 150.

211

F. C.

At a Court of the Tongdarce Adalut

Present,

Friday, 29th June, 1827. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter, dated the 23d March last from the 2d Judge late on Circuit in the Centre Division, - submitting case No 7 Cuddapa Calendar 1st Sessions A.D. 1826.

(Here entered No 138)

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 Tongdarce Adalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and acquitting the prisoners,

1st "Hoorsha Honoorao,"
2d "Gotum Panpadoo"
3d "Baya Ramdoo"
4th "Godda Venkatayadoo" and
5th "Bodo Moosaligaudoo"

direct that they be set at liberty. -

(Sent following letter No 151.

The Court after the fullest consideration are decidedly of opinion that the evidence contained in the record

is

29th June 1827. is altogether insufficient for the conviction of the prisoners.

2 Bada Yellaigadoo the 2d witness deposes that the 1st 2d 3d 4th and 5th prisoners were taken into custody on the 3d day after the robbery, that is, on the 22d July, and the other prisoners on the 3d day afterwards, that is, on the 25th July. Syed, the 3d witness, deposes that the 1st 2d 3d and 4th prisoners were seized six days after the robbery, - that is on the 28th July, and the 5th prisoner on the 3d day afterwards, that is on the 31st July. The other prisoners had previously been taken into custody. After the appre= hension of the prisoner who was last seized, - that is, the 5th prisoner, who was taken into custody on the 31st July - they set out for Cumbum which they reached in two days, - that is, on the 2d August. The prosecutor was immediately examined, and the prisoners three days afterwards, that is, on the 5th August. Dasoo, the 4th witness, says that he and others reached the village of Vayaluad three days after the robbery that is on the 22d or 23d July; that he was left as a guard over the 6th and 7th prisoners, and two other persons, that five or six days afterwards, that is about the 30th July the Police Officer Nursoo brought the 1st 2d 3d and

29th June, 1827. and 4th prisoners, that they then seized the 5th prisoner; and that 15 days elapsed from his departure from Cumbum to his return thither, - that is, he returned to Cumbum on or about the 5th August. Nursoo, the 5th witness, says that they reached the village on the 3d day after the robbery, that is on the 22d July; and that they were absent from Cumbum about 10 or 12 days. Lachme= =putty, the 6th witness, says that the prisoners reached Cumbum the 8th day after the robbery that is, on the 27th July; that he arrived at Cumbum on the 4th day after the arrival of the prisoners, - that is on the 31st July; and that he was present at the examination of the prisoners. He recollects well that he left Cumbum before day-break on the day of Andee feast, or 30th that is, on the 18th August. Condapah, the 7th witness, says that the prisoners, who were seized to the westward, were brought to his village on the 27th July; that they reached Cumbum on the 2d Bohoola of Andee that is, on the 31st July; and that on the 15th August he was with the prisoners on the road from Vayaluad to Cuddapah. He witnessed the declaration of the prisoners before the Police officer at Cumbum.

Now if the slightest credit
3 is to be given to the testimony of the
prosecutor

29th June, 1827

prosecutor or the witnesses, it is perfectly clear that he, the prosecutor, did not deliver his complaint to the District Police Officer until after the prisoners were taken into custody and carried to Cumbum. His own evidence and the evidence of the witnesses clearly shew that he did not leave the village till after the arrival of Nurson, three or four days after the robbery, when he set out with Nurson, the Tahsildar Yellogadoo, and the Mahtadg Peon Lyed in search after the robbers, and that he did not leave them until they reached Cumbum with the prisoners. His complaint is dated the 29th July, which sufficiently corresponds with the dates assigned respectively by the witnesses for the arrival of the prisoners at Cumbum. These dates, it is true, vary from between the 27th July to the 5th August, but exactness in this matter was not to be expected, and the Court do not see how it is possible to escape the conclusion that the Police Officer in reporting that the prisoners were apprehended on the 18th and brought to his Cutcherry on the 20th August wilfully reported a false hood. The date assigned to the alleged confessions of the prisoners before the Police Officer is equally irreconcileable with the evidence of all the witnesses who speak to

2/

F. C.

29th June, 1827.

to that fact, and it is perfectly clear either that the date is false, or that the Police officer kept the prisoners for three weeks in his custody before he took their declarations. In the latter case it is impossible to attach the slightest credit to the testimony of the witnesses who pretend to have attested those declarations for on the day those declarations are dated the witnesses according to their own account were not at Cumbum, but on the road to Cuddapah, and if the date is false, it will hardly be doubted that the error was wilful and deliberate, and intended by the Police Officer to answer some iniquitous purpose. In either case it would be repugnant to the first principles of justice to admit these alleged confessions as evidence against the prisoners, and the Court think there are the strongest grounds to believe that these alleged confessions are mere fabrications.

4 Then, the evidence to prove the discovery of the plundered property upon the prisoners, and their alleged confessions on being taken into custody is so intimately connected and interwoven with the evidence to prove the alleged confessions

29th June 1827. confessions before the head police officer of the District, that there is clearly no rational ground of reliance upon it. On a consideration of the circumstances stated above it can hardly be doubted for a moment that there had been management and fabrication in a most material part of the evidence, and suspicion and distrust must necessarily attach to all the evidence in the case.— The Court have therefore acquitted the prisoners.—

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 152)

Read letter, dated the 9th March last, from the Provincial Court of Circuit in the Centre Division,— submitting case No 86 Cuddapah Calendar 2d Sessions 1826.

(Here enter No 118)

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 under the latitude given by the

29th June, 1827. the sentence of Acquittal direct that the prisoner,

Narrasoogandoo,

be set at liberty.—

(Sent following letter No 153.

Ent. 2d
11 20

F. H.

At a Court of the Zoujdaree Adaulut

Present,

Saturday, 30th June 1827

F. A. Grant Esqre
James Cochrane Esqre } Judges.
William Oliver Esqre

F.H. H
S.D.

Read letter, dated the 16th Ultimo, from the 3d Judge of the Court of Circuit for the Northern Division, - forwarding the Masulipatam Calendars for the 2d Quarterly Sessions of 1827.-

(Hereunto No. 219.)

1. The 3d Judge appears to have exercised a sound discretion in discharging from the bar without trial the prisoners in cases Nos. 1, 6 and 7 on the principal Calendar, and the prisoners in the case on the supplemental Calendar.

2. The prosecutors and the witnesses for the prosecution in cases Nos. 2 and 3 on the principal Calendar, having in the opinion of the 3d Judge grossly perjured themselves, have been committed to jail, and he requests to be informed whether they are or are not liable to some other punishment than that which is prescribed for wilful and corrupt perjury. - The 3d Judge appears to have been withheld from committing them

30th June 1827.

them on this charge by the consideration that "the accused persons would have "recourse to subornation of perjury to prove "an alibi," and by its' being almost impossible to establish a charge of perjury against the parties accused "owing to the difficulty of "proving any positive fact sufficient to "outweigh their allegations."

3

The Court are utterly unable to understand how an alibi could possibly be set up in these cases, or how the plea could possibly avail the parties charged. Against a charge of perjury the only possible defence must rest on proof of an averment that the matters of fact sworn to, which are charged to be false, are true, or that the accused party did not give the deposition on which the perjury is assigned. There may no doubt be cases in which an alibi, - referring to the time and place at which the false deposition is alleged to have been given, - might be set up in support of the second mode of defence above mentioned, but in the present cases such a plea would be absurd and preposterous in the highest degree, for the parties must go to the length of denying their own identity; and the

attempt

30th June 1827.

attempt to set up an alibi, - referring to any other time and place than that above mentioned, - must either be totally irrelevant and useless, or afford the most satisfactory proof of the perjury. Mr Tod, however, could hardly mean that these persons would suborn evidence to prove that at the time stated they were at a place different from that at which the facts which they have sworn to occured, for their conviction of perjury would be the inevitable effect of such evidence. -

It cannot be denied that

4

there are instances of perjury, in which it is difficult to find the evidence requisite to disprove the facts sworn to, but the Court are by no means clear that either of the cases under consideration is of this description. - In case No 2 there were 5 and in case No 3 there were 10 witnesses for the defence, and it is very probable that they were able to depose to circumstances totally inconsistent with, and therefore sufficient satisfactorily to negative the facts sworn to by the prosecutors and witnesses. If they could not, the prisoners themselves might have given information which would have led to the discovery

of

27th June 1827. of the requisite evidence, for though the party injured by false evidence cannot be prosecuted in a case of perjury, there is nothing in the Regulations or in reason to prevent his information from being received for the purpose of finding the evidence necessary to support the charge. It is true indeed that great caution must be used on these occasions; the witnesses named by him should be immediately sent for and examined; and care should be taken to prevent the possibility of his communicating or tampering with them previously to their examination. With these precautions which should be rigidly observed, little or nothing could be hazarded by using the party, against whom the false evidence was directed, as an instrument for the conviction of the perjurers: and it is obvious that in numerous cases he alone can point out the particular facts deposed to, which admit of clear and satisfactory contradiction.—

5. M.r Ld alone can determine whether a procedure of this nature is requisite on the present occasion, or

J. M.

27th June 1827. whether at this distance of time and under all circumstances it can be safely resorted to; but the Court trust that he will use his best endeavours to furnish the Criminal Judge with such instructions for his guidance as may enable him without much difficulty to obtain the evidence necessary for the committal of the prosecutors and witnesses in these cases for perjury. There can hardly be a rational doubt of their guilt; and the interests of justice demand that an example should be made of them. Perjury is the crime of which they have been guilty; and the Court do not see how they could be charged with any other specific offence. The punishment prescribed for perjury is therefore the only punishment that can be inflicted upon them. To punish them merely for a contempt of Court, which is always involved in the commission of perjury would be highly objectionable in principle. The minor offence is merged in the greater; and arbitrarily to substitute the light and discretionary punishment of the one for the heavy and determinate penalties of the other would be repugnant to the policy of the law, which has fixed the minimum of the punishment to

30th June 1827.

to be adjudged by a Court of Circuit for this one of the greatest and most odious that can be committed against justice.-

Before dismissing this part of Mr. Todd's letter the Court must express their surprize that he should have hesitated to order the committal of the prosecutor and the 3d and 4th witnesses in case No 3, for it would appear that the falsehood of their evidence in respect to the property brought from the house or houses of the prisoners was satisfactorily established by the testimony of the witnesses on behalf of the prisoners.-

The Court concurr with the 3d Judge in opinion that the full punishment prescribed for high-way robbery would be needlessly severe in the case of Thandavelly Athengadoo, the prisoner in case No 9. and they authorize him to mitigate it to imprisonment with hard labour for the term of seven years.-

Ordered, that extract of these proceedings be sent for the information and guidance of the 3d Judge.-

Sent following letter No 154.

F. C.

At a Court of the Zillah Adaulut

Present,

Tuesday 3d July 1827.

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

Read letter, dated the 15th March last, from the 2d Judge late on Circuit in the Centre Division,- submitting case No 12 Cuddapah Calendar 1st Sessions A.D. 1826.- (Here entered No 125)

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

1st "Nagotum Govindapah,"
2d "Commenany Chinna Venkata," and
3d "Edega Cotegaudoo"

direct that they be set at liberty.-

Sent following letter No 160.

In this case there is evidence to shew 1st that a watchman, named Vencategadoo, ran away with some money entrusted to his temporary charge by the prosecutor at Vayalpaud, and 2nd that the prisoners, when brought before the

3d July, 1827. the Police Officer Krishna Rao on information given by the 4th witness Chakara Channapah confessed in effect that a man, of whom they knew neither the name nor caste, came to their village Conamustoor, six Cos distant from Voyalpandy, that the 2d two prisoners with another since deceased, made him drunk with arrack procured from the 3d prisoner, and that they stole from him a bag containing money to the amount of 270 Rupees, including 70 Quarter Pagoda pieces. The 3d prisoner in his confession says that he thought the stranger was a washer-man; and relates a speech made by the stranger which goes to identify him as the man who had run away with the prosecutor's money. The time at which this transaction is stated by the prisoners to have taken place corresponds sufficiently with the state on which the prosecutor lost his money; and if there had been clear and undoubted evidence to prove that, within a short time after the original theft by Vencategadoo, he or a washerman who from his description might be fairly presumed to be Vencategadoo, had

3d July 1827. had appeared in the village of Conamustoor, and that a bag of money had been stolen from him in the manner stated, such evidence might possibly have been admitted as a sufficient corroboration of the confessions made by the prisoners, but without such evidence or any thing that approaches to it, it is perfectly clear that the confessions of the prisoners are altogether unsupported by collateral evidence of any sort. In point of fact there is no proof, nor any thing to warrant the presumption that the offence with which the prisoners charge themselves, has actually been committed, and if Mr Newnham imagines that without such proof or presumption a man in England would be convicted on his voluntary confession, he misunderstands the rule of the English law granted in the 6th paragraph of his letter.

2 The evidence of the 4th witness Chakara Channapah is rendered negatory by his omission to explain, before the Court of Circuit, how it happened that the 3d prisoner gave him the information which led to the apprehension of the prisoners. According to his account before the Court of Circuit, "the 3d prisoner's information

July 1827.

information to him was completely gratuitous. His account of the matter before the Criminal Judge carries with it a little more of the appearance of probability; but still it is not lightly to be credited that a man on being simply asked by a stranger (for it does not appear that these two persons were previously acquainted) whether he knew of the commission of an offence, in which he happened to be concerned, would communicate information which it so strongly behoved him to keep secret. At all events something more than what appears in the evidence of this witness is requisite to intitle his testimony to implicit credit.

3. From the questions put by the Criminal Judge to some of the witnesses it would appear that he saw the necessity of having evidence to prove that Vinaiagadoo had been seen in the village of Concemnstoor; and it is to be regretted that he did not take steps to procure evidence to this essential point—

4 The prisoners admit that they delivered certain sums of money to the Police Officer, but they aver that this money is their own; and there is nothing to

F. 16

3d July, 1827.

to contradict the averment, which is in some slight degree corroborated by the evidence on their behalf.—

5. In the judgment of the Court there is no ground to presume that the money delivered by the prisoners is the property of the prosecutor, and they therefore direct that it be restored to the prisoners.

Ordered that extract of these proceedings be sent to the 2d Judge late on Circuit in the Centre Division for his information and guidance.—

(Sent following letter No 161.

Read letter, dated the 20th March last, from the 2d Judge late on Circuit in the Centre Division,— submitting case No 28 Cuddapah Calendar 1st Sessions of 1826.

(Here enter No 133.)

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 Adaulut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and acquitting the prisoners,

1st "Parvuttee gaundoo," and

2d "Yerroo gaundoo"

direct that they be set at liberty.—

(Sent following letter No 162.

16

1

4th July 1827. It appears to the Court that the defects and prob irregularities in the proceedings of the Police, which are noticed in the extract of the 2d Judge's proceedings under date the 10th February 1826 ought to have satisfied him that the alleged confessions of the prisoners were altogether undeserving of any attention; and that there were no sufficient grounds for withholding from the prisoners the benefit of their acquittal by the Fatwa of the Law officer.

2 The Court are of opinion that the evidence in the case does not warrant the slightest suspicion against the prisoners, and their unconditional discharge has therefore been directed.

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 163

J. H.

At a Court of the Foujdaree Adawlut

Present

Wednesday 4th July 1827.

J. F. Grant Esqre
James Cochrane Esqre
William Oliver Esqre
} Judges

Read letter dated 15th March last from the 2d Judge late on Circuit in the Centre Division submitting case No 27 Cuddapah Calendar 1st Sessions A. D. 1826

(Here enter No 126)

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 Fatwa of the Cazee ool Cozat and Mooftee of the Foujdaree Adawlut confirm the said Fatwa of the Cazee ool Cozat and Mooftees aforesaid and acquit the prisoners,

1st "Vencategaudoo"
2d "Soonca doo" and
3d Vancamoogadoo

But being of opinion that there are circumstances to warrant a strong suspicion that they were more or less concerned in the offence

4th July 1827.-

offence charged against them, do order and direct that under clause sixth Section II Regulation XV. of 1803 and clause first Section X Regulation VI of 1827. Security be taken for their good behaviour for one year - Each prisoner to produce two ~~securities~~ sureties to be severally bound for the sum of 30 Rupees - On failure to furnish the security, the prisoners to be released at the expiration of one year -

(Sent following letter No 164.)

F. H.

At a Court of the Tonjdaree Adalut

Present.

Thursday 5th July, 1827.- F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter, dated the 17th January last, from the 2d Judge late on Circuit in the Northern Division, submitting in the Nuddeliputam Calendar 4th Quarterly Sessions 1826.-

(Here enter No 36)

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 Tonjdaree Adalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid and under the discretion allowed by the sentence of Acquittal direct that no punishment be inflicted on the prisoner,

"Doobanapar Nagadoo,"

on account of the act for which he has been tried.-

(Sent following letter No 165.

Read

Read letter, dated the 21st Ultimo, from the first Judge on Circuit in the Northern Division, - recommending under the provisions of Section III Regulation I of 1825 a mitigation of punishment in the case of three prisoners convicted in No 2 Chicacole Calendar 1st Sessions 1827.-

(Here enter No 261)

The Court of Foujdaree Adalut having attentively considered the grounds upon which the 1st Judge has recommended that the punishment of the three prisoners referred to in his report should be mitigated to 39 stripes each with a rattan and that the 1st prisoner should be confined and put to hard labor in irons for 10 years, and the 2d and 3d for 8 years and then be released, resolve to sanction the mitigation of punishment proposed.-

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

(Sent following letter No 166.

F. U.

At a Court of the Foujdaree Adalut.

Present.

Saturday, 7th July, 1827.

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

Read letter, dated the 12th September last from the 2d Judge late on Circuit in the Centre Division, - submitting case No 81 Cuddapa Calendar 1st Sessions AD 1826.

(Here enter No 517.)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Cazee ool Cozat and Mooftee of the Foujdaree Adalut confirme the said futwa of the Cazee ool Cozat and Mooftees aforesaid and under the sentence of Cohoolut declared therein adjudge the prisoner,

"Golla Yelloogadoo"

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

(Sent following letter No 168.

All.

F. C.

At a Court of the Poonjaree Adalut

Present.

Monday 9th July, 1827. F. A Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter, dated the 28th February last, from the 2d Judge late on Circuit in the Cutcha Division, - submitting case No 83 Chingleput Calendar 1st Sessions 1826.

(Here enter No 83)

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 Coogat and Mooftees of the Poonjaree Adalut confirm the said Futwa of the Cazee cool Coogat and Mooftees aforesaid and acquitting the prisoner, 1st "Chinnabiddah," direct that she be set at liberty.

And under the latitude given by the sentence of Do hooluit direct that the prisoner, 2d "Vencummah," be set at liberty.-

Sent following letter No 170

The

9th July 1827.

1

The Court have acquitted the prisoners in this case because the evidence on the record appears to them to warrant a suspicion that the charge against the prisoners originated in a spirit of malice on the part of the village Moonsif, the 1st witness for the prosecution; and because they think the evidence to prove the previous pregnancy and actual delivery of the 1st prisoner is defective, and cannot safely be relied on. The testimony of Ranjamah, who, as the 1st witness says, informed him that Chinnakidda was actually in labour, was of the highest importance, and it is extraordinary that no means were taken by the Police in the first instance to secure her attendance. The omission also of the Police Officer to cause an inspection of Chinnakidda's person has occasioned another very material defect in the evidence; and even if the conduct and motives of the village Moonsif had been less open to suspicion, the Court must still have hesitated to convict the prisoners of the crimes laid to their charge.

2.

An information given by the 1st witness, the District Police Officer apprehended and sent up to the Criminal Court two persons named Perda Cutchiah and Chinna Cutchiah on a charge of having attempted to prevail on the Village

9th July 1827.

Village Moonsif to suppress his report of the offences alleged to have been committed by the two prisoners in this case. Perda Cutchiah was also charged with having administered medicine to the 1st prisoner for the purpose of procuring an abortion. These two persons were released by the Criminal Judge, and it would appear that they immediately afterwards sued the village Moonsif in the Zilla Court for damages. It also appears that one of these actions was decided before the trial of the two prisoners in this case was held.

3

It cannot be denied that Perda Cutchiah and Chinna Cutchiah had good cause of action, if they were prepared to prove that the accusation against them originated in malice and was without probable cause, and that the proceedings against them had terminated. But it appeared to the Court to be extremely doubtful whether their release by the Criminal Judge can be considered such a termination of the proceedings against them as to intitle them to recover damages for the false accusation, for under the provisions of Section XXIII Regulation X of 1816 it was competent to the Judge on Circuit, holding the Sessions immediately after the release of these two

9th July 1827.

two persons, to direct a further inquiry into the accusation against them, which inquiry might have led to their conviction, or committal for trial; and on the trial of Chinnabidda and Vencummah, evidence might have appeared to warrant the presiding Judge in directing the revival of the proceedings against Pedda Cutchiah and Chinna Cutchiah. Under these circumstances the Court are of opinion that the actions instituted by these two persons ought not to have been proceeded in, or at all events that the Plaintiffs could not be prepared to shew what was requisite to entitle them to a judgment, until the final conclusion of the trial now under consideration.

But in another point of view this proceeding of the Zilla Judge appears more clearly objectionable. The charge against Pedda Cutchiah and Chinna Cutchiah was intimately connected with that against Chinnabidda and Vencummah; and the evidence in support of the former was collaterally and in some points directly material to the issue of the latter; so that a judgment in favor of the Plaintiffs in

F. R.

9th July 1827.

in the civil actions must have been founded on evidence which went strongly to impeach, if it did not entirely destroy, the credit of some material witnesses for the prosecution against Chinnabidda and Vencummah; and the issue of that prosecution was thus indirectly prejudged in a certain degree. If actions of this nature are allowed to proceed before the determination of the prosecution, out of which they arise, or with which they are so intimately connected as in the present instance, it is to be apprehended that they will often be had recourse to for the purpose of discrediting indirectly and beforehand the evidence to be adduced on the trial of the principal charge; and it is impossible to foresee to what extent the administration of criminal justice may be embarrassed and obstructed, if this underhand proceeding is countenanced by the Civil Courts.

Ordered, that extract of these proceedings be sent to the 2d Judge late on Circuit in the Centre Division by precept and that he be directed to transmit a copy thereof for the information of the Zilla Judge of Chingleput.

(Sent following precept No. 72.

Read

9th July, 1827.

Read again letter dated 22d March 1826 from the 2d Judge of the Court of Circuit in the Centre Division, submitting copy of Bellary Calendar 1st Sessions 1826.

(Here enter No 219)

Read again also letter dated 4th July 1826 from the 2d Judge of the Court of Circuit in the Centre Division, submitting copy of Chingleput Calendar 1st Sessions 1826.

(Here enter No 394)

The records of the proceedings held by the 2d Judge in cases No 8 Bellary Calendar and No 7, 21, and 23 of the Chingleput Calendar which according to the remarks entered in the foregoing Calendars are to be referred to the Foujdaree Adalut, not having been received.

The Court direct that the 2d Judge of the Court of Circuit in the Centre Division be by precept commanded to send up the records of the proceedings held by him in the cases abovementioned within one month from the date of the receipt of the precept.

(Sent following precept No 173.

Sent
Es. 4th



At a Court of the Foujdaree Adalut.

Present,

Tuesday, 10th July, 1827. F. A. Grant Esqre. James Cochrane Esqre. William Oliver Esqre. } Judges.

Read letter dated the 9th May last, from the Judges of the Provincial Court of Circuit in the Western Division, submitting the reports prescribed by Section XXXV Regulation X of 1816 for the quarter ending the 31st March last, from the several Criminal Judges within the Division, together with their proceedings thereon.

(Here enter No 207

In the Report from the Zilla of Malabar

Prisoner No 26 "charged with having ill-treated Ally Kutty and stolen from his Paramba Beetlenuts to the value of 1 Rupee and 3/4" is committed.

There is nothing in this charge to warrant committal: ill-treating is too indefinite an expression; it might be applied to abusive language - beating with the hand or a stick - a scanthing and wounding with a weapon - in the kind of ill treatment should always be defined by the

use

9th July 1827.

use of specific words.

The Prisoner No 116, charged with having wounded a convict in jail by beating him and ran out of the jail seizing a musket, was punished by the Criminal Judge with 6 months imprisonment and hard labor in Irons. The case appears to be one of attempt to escape attended with wounding or severe personal injury - and should have been committed under Clause fourth Section V Regulation VI of 1822.

Prisoner No 124, charged with having opened a Box with a false key and stolen property worth 35 Rupees is punished with 1 years imprisonment and hard labor. There is nothing in the charge that exceeded the powers of the Judge to punish under Section VII Regulation X of 1816. Opening with a false key is a breaking by construction of law, but a box is not a place used for the custody or preservation of property within the meaning of Clause first Section II Regulation VI of 1822. If any such place was burglariously entered to get at the box, this should have been expressly charged as the offince. If all the circumstances

17th July 1827.

of this prisoners offince are stated, the sentence must be corrected. In this case, as it is unreasonable to punish the receiver more severely than the stealer unless there are particular circumstances aggravating his offence, of which none are stated, the sentence of Prisoner No 125 also should be corrected, tho' not illegal.

The Judges approve of the direction, stated in Para 6 of the Provincial Courts Proceedings dated 9th May 1827 to have been given to the Criminal Judge. They also authorise the Provincial Court to direct the date of sentence to be entered in all the Criminal Judges reports, as suggested in para 8. The conclusion of that Paragraph is not understood by the Judges; the Prisoners referred to are stated to have been released.

In case No 40 of the report from the Zilla of Canara the prisoner charged with Burglary to the amount of Rs 81-2-0 committed in the Zillah of Canara, was apprehended in the district of Darwar and sentenced by the Assistant Magistrate there; afterwards on application by the Assistant

17th July 1827.

Assistant Magistrate of Canara he was delivered up to him and sent by him to the Criminal Judge - who has allowed the sentence of the Assistant Magistrate of Darwar to be carried into execution - The Court cannot pronounce whether the proceeding of the Assistant Magistrate of Darwar was agreeable to the Regulations under which he acts, but it would have been irregular under the Regulations of this Government. The cognizance of a crime depends upon the place of its ~~commission~~ committal if within the territories of this Government and the crime in question is not within a Magistrates' power to punish under the Regulations of this Government - If no part of the punishment had been inflicted, the proper course for the Criminal Judge would have been to call for witnesses and try and sentence de novo: the trial before the Assistant Magistrate of Darwar was Coram non judice, according to the Regulations of this Government within whose territories the crime was committed, and therefore null. The Court however will not disturb the execution of the sentence -

Ordered, that extract of these proceedings be sent to the Judges of

T. U.

17th July 1827.

of the Provincial Court of Circuit in the Western Division by Precept commanding them to make the necessary communications to the Subordinate Tribunals -

Entd. 24th July

(Sent following letter No 178 A. Dk.

Read letter, dated the 9th Instant, from the 1st Judge on Circuit in the Western Division, - reporting his arrival and commencement of the Sessions at Mangalore on 9th Instant.

(Acc enter No 280)

Read letter, dated the 11th Instant, from the 1st Judge on Circuit in the Southern Division, - reporting his having opened the Court of Circuit at Madura on 11th Instant -

(Acc enter No 281.)

F. C.

At a Court of the Tongdaree Division.

Present,

Wednesday, 18th July, 1827.

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

2H 2C 20

Read letter dated the 17th February last, from the 3d Judge late on Circuit in the Northern Division,- submitting case No 2 Chicacole supplimental Calendar 2d Sessions A.D 1826. (Here enter No 103.)

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 Tongdaree Adalut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid,- but being of opinion that strong suspicion tho' not amounting to conviction attaches to the prisoner of breaking and entering the Prosecutor's house for the purpose of stealing, direct that the prisoner,

"Kamishetty Veeramah alias Coormanah,"

be released on finding 2 Sureties in the sum of 50 Rupees each for his good behaviour and appearance when required for one year- and in default

of

18th July 1827. of finding such sureties that he be detained in prison for one year and then be released.-

(Sent following letter No 182.)

F.M.

At a Court of the Faydarce Adalut

Present.

Thursday 19th July 1827 } F. X. Grant Esq.re First Puisne Judge
James Cochrane Esq.re Second Puisne Judge
William Oliver Esq.re Third Puisne Judge.

Read. letter dated the 2d. Ultimo, from the Southern Provincial Court represent-ing the cases of 5 persons detained in con-finement in the Zillah Jail of Salem after the expiration of the term of imprisonment to which they were sentenced, in default of having given security for future good beha-viour.- (Here enter No 226 of 1827)

These persons were sentenced to imprisonment with hard labor for ten years and then to be released on finding security for their good behaviour and appearance when required.-

This sentence is illegal.-

The Regulations no where warrant the demand of security from a prisoner convicted of a specific offence. The Court order that these Prisoners be forthwith set at liberty; and that an Extract of these Proceedings be sent to all the Provincial Courts of Circuit and that they be by

forthwith

precept commanded to call upon all officers in their respective Divisions in charge of Jails to report without delay whether any and what Prisoners under their charge are in confinement under similar circumstances; and to order the immediate release of all that may be found to be so;-

Return to be made to this Court in six weeks from and after its receipt.-

sent following precepts 10th 183.

F. A.

At a Court of the Zuydaree Adalut

Present,

Monday, 28th July, 1827. F. A. Grant Esqre 1st Puisne Judge.
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter, dated the 21st March last, from the 2d Judge late on Circuit in the Centre Division,- submitting case No 3 Chingleput Calendar 1st Sessions A.D. 1826.- (Here enter No 134)

The 1st 2d & 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the future of the Provincial Law Officer and the future of the Cazee ool Coozat and Mooftees of the Zuydaree Adalut confirm the said future of the Cazee ool Coozat and Mooftees aforesaid,- but being of opinion that strong suspicion tho' not amounting to conviction attaches to the prisoner of setting fire to the house of the Prosecutor, direct that the prisoner,

"Mahomed Ally Sah,"

be released on finding 2 Sureties in the sum of 50 Rupees each for his good behaviour and appearance when required for one year, and in default of finding such Sureties that he be detained in prison for one year and then be released.

Sent following letter No 186

23d July 1827.

Read letter, dated the 30th March last, from the 2d Judge late on Circuit in the Centre Division,- submitting case No. 4 Chinglaput Calendar 1st Sessions A.D. 1826. (Hereunto No. 146)

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 Soudaree Adawlut confirm the said futwa of the Cazee ool Coozat and Mooftees aforesaid as far as regards the 1st prisoner and under the latitude allowed by the sentence of Cohoobut adjudge the prisoner,

1st "Sawan,"

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 labour in irons on the public roads or other public works for and during the period of his natural life.- The 1st 2d and 3d Puisne Judges being of opinion that the proof against the prisoners 2d 3d and 4th is sufficient to convict them of the crime of Robbery accompanied by wounding and other severe corporal injury

23d July 1827.

injury so as to endanger life, do adjudge the said prisoners,

2d "Ramsoodoo,"

3d "Moottun," and

4th "Vauthy alias Thomas."

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-

Sent 10th

(Sent following letter No. 187.)

Read letter, dated the 10th April last, from the 2d Judge late on Circuit in the Centre Division- submitting case No. 18 Chinglaput Calendar 1st Sessions A.D. 1826.- (Hereunto No. 168)

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 Soudaree Adawlut concurring in opinion that the proof against the prisoners 1st 2d 3d 4th and 6th is sufficient to convict them of the

28th July 1827.

the crime of Burglary and Robbery, and do therefore under Clause first Section II Regulation I of 1818 and Section II Regulation VII of 1822 adjudge the prisoners, 1st "Vonnumbalum,"

2d "Moottealoogan," and

3d Vucatapuththe alias Kitchegadoo"

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.

The prisoner,

4th "Mooneehy,"

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.

And the prisoner,

5th "Lutchemy,"

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. 10th

(Sent following letter No. 188.)

Read letter, dated the 14th May last, from the 2d Judge late on Circuit in the Centre Division, - submitting cases No. 22 and 24 Chinglepet Calendar 1st Sessions A.D. 1826.-

(Here after No. 209.)

The

2/ J. U.

28th July 1827.

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held in cases Nos 22 and 24 before the Judge on Circuit the futwa of the Provincial Law Officer and the futwa of the Cazee cool Coozat and Mooftees of the Poujdaree Adawlut confirm the said futwa of the Cazee cool Coozat and Mooftees aforesaid as far as regards the 2d prisoner, - but being of opinion that strong suspicion tho' not amounting to conviction attaches to him of having committed the crime of Robbery by open violence, - direct that the prisoner

2d Moorhoondre Cudalan (in No 24)

be released on finding 2 sureties in the sum of 50 Rupees each for his good behaviour and appearance when required for one year - and in default of finding such sureties that he be detained in prison for one year and then be released.-

And the Court having passed sentence on the prisoner,

1st Soobaraya Moodelly (in No 22)

in case No 17. do not record any sentence in this case.-

(Sent following letter No 189)

Sent. 11th

24

U

20

23d July 1827.

Read letter dated 12th May last from the 2d Judge late on Circuit in the Centre Division submitting case No 17 Chingleput Calendar — 1st Sessions 1826.

(See 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 Cozat and Mooftee of the Soudaun Adalut confirm the said futwa of the Cazee ool Cozat and Mooftees aforesaid so far as regards the prisoner,

2d Comaren

direct that he be set at liberty.—

But concurring in opinion that the proof against the 1st prisoner Soobaroya Moodely is sufficient to convict him of the crime of Robbery and wounding do under the provisions of clause first Section II Regulation I of 1818 adjudge the said prisoner,

1st Soobaroya Moodely

to receive 39 stripes with a rattan and to be imprisoned and transported to such place 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 being of opinion that strong suspicion attaches to the 3d prisoner Veera Naick alias Lavony Naic of Robbery and wounding

23d July 1827.

direct that the said prisoner,

3d Veera Naic alias Lavony Naic

be released on finding 2 Sureties in the sum of 50 Rupees each for his good behaviour and appearance when required for one year, and in default of finding such Sureties, that he be detained in prison for one year and then be released.—

(See following letter No 190)

At a Court of the Foujdaree Adaulut.

Present.

Thursday, 20th July, 1827.

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

24 C
50.

Read letter dated 2d April last from the 2d Judge late on Circuit in the Centre Division submitting case No. 21 Chingleput Calendar 1st Sessions A.D. 1826.

(Here enter No. 152)

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 and Coozat and Mooftee of the Foujdaree Adaulut confirm the said futwa of the Cazee and Coozat and Mooftee aforesaid and acquitting the prisoners,

1st Mootoo Vencatachellum
2d Veerawsawmy
3d Soobbee Chitty
4th Vencatachellum and
5th Peddoogan.

direct that they be set at liberty.

(Sent following letter No. 192.)

Sent 10th

In this case, without any reference whatever to the prosecutor's irreconcileable Statements as to the time of the alleged robbery, or to the complete proof which the record contains of the alibi set up by the 1st prisoner, the Court think that the falsehood of the Charge is manifested on the very face of it; and they must express their regret that the prisoners should have been so long detained in confinement in consequence of the 2d Judge's delay in sending up the trial.

Notwithstanding the result of the trial in case No. 5 on the Chingleput Calendar for the 2d Sessions of 1826. wherein Narraina Pillay and 5 others when charged with the murder of Veerasamy and acquitted and the subsequent conviction of Moonyen and Sabhapathy, in case No 5 on the Chingleput Calendar for the 1st Sessions of 1827. for perjury in the evidence given by them in respect to the alleged murder of the said Veerasamy, the Court are by no means satisfied that the prosecution against the prisoners in the present case was not the result of a conspiracy, with a view to prevent them from bringing forward the Charge against the Cutwall Narraina Pillay, and the others; however unfounded that Charge might be; but at this distance of time it would be useless to enter further into the matter.

On



On referring to the Persian translation of the proceedings in this case, the Court to their astonishment discovered that it contained no less than six important questions put to the Prosecutor by the 2d Judge, with the prosecutor's answers, of which no trace is found in the English translation. The omission occurs after the answer to the 5th question, and the parts omitted are as follows viz:

Q. How long after the robbery did you make your complaint?

A. About 20 days after

Q. How long after you had made your complaint were the prisoners taken into custody?

A. They were taken into custody about 15 or 20 days after I had made my complaint.

Q. Are you quite sure that your father died on the 15th Tye (it should be the 11th)?

A. I have no doubt whatever that he died on the 15th Tye (it should be the 11th)

Q. Did you accompany the wounded man Rama-samy to Wallajabad?

A. Yes. I also went with him to Wallajabad; and leaving him there returned to my village.

Q. How long did you remain at Wallajabad?

A. I remained there that night, and in the morning returned to my vill

25th July 1827.

Q. How was the wound? A. In the morning he
=ed man when you (left spoke, desiring that a
him) to go to your Village? powder of black pepper
(مرچ سیاہ) and turmeric
(زرد چوب) should be applied
to his wound. After the
application of the powder
he went to sleep and I
returned to my village.

Upon this occasion the Court think
it necessary only to remind Mr Newnham that it
is his duty to examine translations before he attests
them; and that by the neglect of such duty he incurs
a very heavy responsibility.-

Ordered that Extract of these proceed=
=ings be sent to the 2d Judge late on Circuit in
the Centre Division for his information and future
guidance.-

Sent 10th (Sent following letter No 193.)

A. M. Read letter dated the 10th March
last from the 3d Judge on Circuit in the Southern
Division, submitting case No 9 Madura
Calendar 1st Sessions 1827.-

(Here enter No 121)

The 1st 2d and 3d Puisne Judges
having maturely considered the proceedings held
before the Judge on Circuit the futwa of the Provin=
=cial

F.R.
25th July 1827.

cial Law Officer and the futwa of the Cazee
=ool Cozat and Mooftee of the Tongaree Adalut
concur in opinion that the proof against the
prisoner Mootoo Carpen is sufficient to convict
him of the crime of Murder; and do therefore under
clause Second, Section II Regulation I of 1818 require
their Law Officers to 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 pro=
=ceedings be translated and delivered to the
Cazee=ool Cozat and Mooftee of the Tongaree Adalut.

AM 20

A. M. Read letter dated 12th February last
from the 2d Judge late on Circuit in the Centre
Division submitting case No 14 Cuddapah Calendar
1st Sessions 1826.-

(Here enter No 707)

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 Cozat and
Mooftee of the Tongaree Adalut concur in opinion
that the proof against the prisoners 1st B. Soobadoo
2d Nageredde 3d Shaik Hoosain and 4th Boya
=lum Soobakah is sufficient to convict them

of

of the crime of Burglary and Robbery and do therefore under clause first Section II Regulation I of 1818 and clause fourth Section II Regulation I of 1825 adjudge the said prisoner,

1st "B Soobadoo"

to receive 29 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 five years and then be released.- The prisoners,

2d Nageroodee and

3d Shaik Hoopain

to be imprisoned and Kept to hard labor in irons on the public roads or other public works for and during the period of 3 years and then be released.

Sent 10th

And the prisoner,

4th Bopalum Soobakah

to be imprisoned and Kept to hard labor in irons on the public roads or other public works for and during the period of 2 years and then be released.

(Sent following letter No 194.)

A.M.

Read letter dated the 21st March last from the 3d Judge on Circuit in the Southern Division, submitting case No 8 Madura Calendar 1st Sessions 1827.-

(Vide extra No 130)

The 1st 2d and 3d Puisne Judges



Sent 10th

maturely considered the proceedings held before the Judge on Circuit the Justices of the Provincial Court officiating and the Justices of the Cazee ool Cozat and Moosties of the Zillah and confirm the said Justices of the Cazee ool Cozat and Moosties aforesaid and under the discretion allowed by the Sentence of Regulation adjudge the prisoner,

"Coopee Naicke"

to receive 20 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 five years and then be released.-

(Sent following letter No 195.)

The Court adverting to the flagrant breach of their repeated instructions shewn in this case, and to the fatal consequences arising from it, cannot permit the foregoing sentence to go forth without directing that the Magistrate of the Zillah in which the act took place do give every publicity to its promulgation, in order that the attention of every Native Police officer within his jurisdiction may be attracted to the issue of the trial.-

2 The severity of the law in this case has indeed been mitigated in consequence of a recommendation from the Judge presiding at the trial.- It is however hoped that the punishment adjudged will be found sufficient to warn and deter others from the like

20th July 1827.

like illegal, wanton, and cruel exercise of authority.-

3. It will be the duty of the 3d Judge on Circuit to communicate the foregoing remarks to the Magistrate in the Zilla of Madura in the customary manner.-

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

Sent 11th
34 V
250

A.M. (Stub following letter No 196.)

Read letter dated the 21st Ultimo from the 2d Judge late on Circuit in the Western Division submitting explanation of his doubts regarding the construction of Clause Ninth Section IV Regulation I of 1820, and requesting orders as to the propriety of communicating the opinion of the Sudr Court to the Criminal Judge as well as the terms in which it should be conveyed.-

(Here enter No 250 of 1827.)

1. The Court understood the doubts expressed by the 2d Judge in para 12 of his letter submitting the proceedings held in case No 35 of the Additional Calendar of Malabar 2d Sessions 1826 to be whether any of the various machines used in Malabar for distilling, some of which he described as extremely simple and rude both in construction and use, were to be considered as stills in the Sense

3/ Fl

20th July 1827.

Sense of Clause Ninth Section VI Regulation I of 1820: and to this point only their reply was addressed viz, that whatever is used for the purpose of distilling Spirituous liquor is a Still in the Sense of the Regulation no matter where or how erected.-

2. The explanation of this doubt submitted by him is a return from the Criminal Judge shewing that no conviction had hitherto taken place on the single fact of being found in possession of a Still, without evidence of recent use: from which the Judge concludes that the doubt intended to be conveyed in the former communication was, whether the care possession of a Still of any kind, without proof that it had been used for distilling, amounted to the offence of erecting a Still.-

3. Clause Ninth Section VI Regulation I of 1820 attaches the penalty to the act of erecting "a Still"- The practise of the Zilla Court appears to have been not to apply the penalty to the possession merely of a Still without erection; and to infer that the Still had been erected when there was the appearance of its having been recently used; it is presumed in distilling Spirits of the kind contemplated in Regulation I of 1820- i.e. Spirituous liquors used for drinking- A Still however simple and rude, cannot be used for distilling without being

20th July 1827. being erected in some way or other so that fire can be placed under it and the apparatus for receiving the steam fixed over it.— The practice of the Zilla Court appears to the Judges to be right, provided the appearance of having been recently used or the evidence of that appearance is such as to satisfy the Court that the Still has been recently used.— Penal enactments must be construed strictly, and it would not be construing clause ninth Section VI Regulation I of 1820 strictly to extend the penalty declared by it against the erection of a Still to the bare possession of one without having been erected.—

Ordered, that Extract of these proceedings be sent to the 2d Judge Cuttack on Circuit in the Western Division by precept commanding him to communicate the same to the several Criminal Courts within the Division, and also to the Judicial Secretary to Government agreeably to orders of Government dated the 19th October 1824.—

Sent following Letters Nos 197/198

Tuesday 31st July 1827.

At a Court of the Foujdaree Adalut.

Present

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

Read letter dated 18th April last from the 2d Judge of the Court of Circuit in the Northern Division submitting case No 4 Masulipatam Calendar 1st quarterly Sessions 1827.— (Here enter No 181)

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

"Sudaree Veeranah"

on the ground of insanity direct that he be placed under charge of the Surgeon of the Zilla Court of Masulipatam for the purposes stated in the Court's Circular orders under date 21st February and 20th June 1822.—

(Sent following Letter No 201)

Read

31st July 1827.

Read letter dated 18th April last from the 2d Judge of the Court of Circuit in the Northern Division submitting case No. 5 Rasulcipatam Calendar 4th quarterly Sessions 1826.

(Here enter No. 182)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the futwa of the Provincial Said Officer and the futwa of the Cazee ool Cozat and Mooftees of the Soojdaree Adaulut confirm the Said futwa of the Cazee ool Cozat and Mooftees aforesaid and acquitting the prisoner,

Noona Veerapah

on the ground of insanity direct that he be placed under charge of the Surgeon of the Zilla Court of Rasulcipatam for the purposes stated in this Courts Circular orders under date 21st February and 20th June 1822.

A. M (Sent following letter No. 201)

Read letter dated 15th instant from the 2d Judge on Circuit in the Centre Division reporting the arrivals of the Court of Circuit at Cuddapah and commencement of the Sessions on the 10th Instant.

(Here enter No. 289)

Read letter dated 19th Instant from the 2d Judge on Circuit in the Northern Division reporting

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reporting the commencement of the Said deliveries at Nellore on the 9th Instant.

(Here enter No. 291)

Read letter dated 23d Instant from the 2d Judge late on Circuit in the Centre Division forwarding warrant for the execution of Golla Ye Hooga and in No. 31 of the Cuddapah Calendar 1st Sessions 1820 executed and returned by the Criminal Judge of Cuddapah.

(Here enter No. 297)

Read return dated 10th Instant from the Judges of the Provincial Court of Circuit in the Northern Division to precept of 25th May last requiring certain observations of the Soojdaree Adaulut relative to the report submitted by the 3d Judge under section XXXVII Regulation VII of 1812 to be circulated to the several Criminal Judges and Joint Criminal Judges in the Division.

(Here enter No. 300)

Read return dated 7th instant from the Judges of the Provincial Court of Circuit in the Western Division to precept of 17th Instant requiring certain observations of the Soojdaree Adaulut over the Criminal Judges Quarterly reports ending in March last to be furnished to them for their information and guidance

(Here enter No. 304)

At a Court of the Foujdaree Adalut.

Present,

Wednesday
1st August 1827. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read again returns entered in this Court's Proceedings 12th June 1820 to the circular precept of the 24th April preceding requiring a detailed account in what manner convicts sentenced to hard labor in Irons on the public roads &c were employed.

The Court's attention has been drawn to this subject by a late occurrence at Masulipatam commented upon in their letter to Govt of the 5th ultimo; and they find that in several Zillahs, at the date of the returns above referred to, it was then the practise to send convicts sentenced to hard labor in Irons on the public roads or other public works, to work on the private grounds of the European Civil Officers of Government at the Station; and the Court having reason to believe that the practise still continues in some Zillahs

1st August 1827. Gillaks, resolue that the following circular order be issued to the 4 Provincial Courts.

(Vide Diary letter No 203 / Circular

Ordered that extract of these proceedings and copy of the Circular letter be sent to the Judicial Secretary to Government agreeably to orders of Government dated the 17th March 1826.

(Sent following letter 216.

Read letter, dated the 29th May last, from the 1st Judge of the Court of Circuit in the Centre Division, submitting cases Nos 2 and 3 Chittoor Calendar 2d Quarterly Sessions 1827.

(Here enter No 221)

Read also letter dated the 20th June last, from the 1st Judge of the Court of Circuit in the Centre Division, forwarding proceedings in cases Nos 2 and 3 - 2d Quarterly Sessions of 1827 agreeably to the intimation conveyed in his letter of 29th May last.

(Here enter No 244)

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 Poudaree Adalut confirm the said futwa of the Cazee ool Cozat and

1st August 1827. and Mooftees aforesaid, that being of opinion that strong suspicion tho' not amounting to conviction attaches to the prisoners of high way robbery direct that the prisoners,

1st "Veroomala Condadoo" and

2d "Tonny Chengadoo,"

be released on finding 2 sureties in the sum of 50 Rupees each for their good behaviour and appearance when required for one year - and in default of finding such Sureties that they be detained in prison for one year and then be released.

(Sent following letter No 205)

The impropriety of joining these two cases together is sufficiently obvious - The persons robbed, and the time and places of the robberies are different; and the only connection between the two cases consists in this that the robberies are alleged to have been committed by the same persons.

2 In this trial as in almost all others held by Mr Brown, the witnesses have been very insufficiently examined; and the result is that the evidence before the Court of Circuit is much weaker and more unsatisfactory than that before the Criminal Judge. It is true indeed that in the present instance the defective examination of the witnesses does not appear

1st August 1827. appear of so much importance, because it is very questionable whether their evidence under all the circumstances would have sufficed for the full conviction of the prisoners

3. Upon the whole the Court are of opinion that the evidence warrants nothing more than the requisition of security from the prisoners previously to their discharge.-

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 No. 206.)

Read return dated 31st March last from the 2d Judge late on Circuit in the Western Division to precept dated 20th February last calling for trial No. 9 Malabar Calendar 2d Sessions 1826.

(Here enter No. 159)

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 concur in opinion that the proof against the prisoners, 1st Mapale alias Tottatayata Ramen, and 2d Mapale alias Tottatayata Ponna Cutty is sufficient to convict them of the crime of Wounding and

Ent

1st August 1827. and do therefore under clause second Section II Regulation I of 1818 require their Law Officers to declare by a second futwa to what specific punishment these prisoners would have been liable under the Mohummudan law if they 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 Cozat and Mooftees of the Foujdaree Adalut.

Read letter dated the 16th February last from the 2d Judge late on Circuit in the Northern Division, - submitting case No. 1 Chicacole Supplemental Calendar 2d Sessions 1826. (Here enter No. 102)

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 concur in opinion that the proof against the prisoner Choom=booree Ayapah is sufficient to convict him of the crime of stealing, and do therefore under clause second Section II Regulation I of 1818 require their Law Officers to declare by a second futwa to what specific punishment the prisoner

1st August 1827.

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 the Cazee ool Coozat and Mooftees of the Foujdaree Adalut.-

Ep. M.



At a Court of the Foujdaree Adalut

Present,

Friday, 10th August 1827

F. A. Grant Esquire 1st Puisne Judge

James Cochrane Esquire, 2d Puisne Judge.

William Oliver Esquire, 3d Puisne Judge.

Read again letter, dated the 10th March last from the Third Judge on Circuit in the Southern Division, submitting Case No. 9 Madura Calendar 1st Sessions 1827.

Here enter No 121

Read the second futwa delivered in this case by the Cazee ool Coozat and Mooftees 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 Coozat and Mooftees of the Foujdaree Adalut confirm the said futwas of the Cazee ool Coozat and Mooftees aforesaid, and in commutation of the penalty of decapt adjudge the prisoner,

"Mootoo Curpen,"

to be imprisoned and transported beyond seas to such place 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.-

Sent following letters No 211.

Read

10th August 1827

Read letter dated 7th May last from the Third Judge on Circuit in the Southern Division, submitting Case No 2 Commitment Calendar 1st Sessions 1827.

//Here enter No 196//

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-o'l-Cozat and Mooftees of the Sudder Adalut concur in opinion that the proof against the prisoner "Iyaroo," is sufficient to convict him of the crime of Gang robbery and wounding; and do therefore under clause first section II Regulation I of 1818. & clause second section IV Regulation XV 1803, and clause fourth section II Regulation I of 1825 adjudge the prisoner,

"Iyaroo,"

to receive 39 stripes with a rattan and to be imprisoned and transported beyond seas to such place as the Governor in Council shall appoint 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 his natural life.-

Sentcy. [illegible]

A. Jr. //Sent the following letter No 212.//

Read return dated 1st instant from



10th August 1827

from the Second Judge late on Circuit in the Western Division to precept dated 26th Ultimo intimating that this Courts orders of the 26th July last have been duly made known to the different Zilla Courts in the Western Division.-

//Here enter No 312//

Read letter dated 31st Ultimo from the First Judge of the Court of Circuit in the Centre Division, Reporting the opening of the 3d Quarterly Sessions of 1827 (postponed from the 28th July) at Chittoor on the 31st July.-

//Here enter No 337//

Read letter dated 28th Ultimo from the Acting First Judge on Circuit in the Southern Division.- Reporting the re-opening of the Court of Circuit at Madura for the Second Sessions of 1827.

//Here enter No 306//

F. A.

At a Court of the Poydaree Adalut.

Present,

Monday 13th August 1827. F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter, dated the 12th Ultimo, from the 2d Judge late on Circuit in the Southern Division, with report prescribed by Section XXXVII Regulation VII A.D. 1802 for 2d Sessions 1826.

(Here enter No. 286)

In the 8d and 4th Paras Mr Lushington has pointed out the great expence occasioned to Government by the maintenance of Convicts, and proposed, by employing them in making bricks, to convert this expence into a profit. The Court see no reason to doubt the correctness of Mr Lushington's calculations, but he seems to have forgotten two considerations 1st that there must be a constant demand for the bricks so brought into the market, in order to the profit being made: and 2dly that there would not be this demand unless either the bricks were of better quality than those produced by the professional Brick-makers, which it is unlikely they ever should be, or cheaper of the same quality, which tho' they might be in consequence of convicts' subsistence costing less than the pay of hired labourers, notwithstanding the

the

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the greater quantity of work that the latter perform, yet it would be an unfair and impolitic interference with the natural trade of the country to use this advantage, and the Court are persuaded that Government would never sanction it. The use of any influence to procure the sale of bricks so made would of course be still more out of the question. The Court, however, cannot regard the labor of convicts solely or chiefly in an economical point of view. They have long regarded the system of public labor, that is labor in irons exposed to the public gaze, as a cause of great moral evil in this country as in every other; public opinion has exploded it in many nations, and the Judges have it in contemplation to bring the subject before Government at a future period.

2. With regard to employing convicts in private work, the Circular orders of this Court under date the 1st Instant will if duly enforced put an end to it.-

3 In the remarks contained in paragraphs 5 to 14 of the report Mr. Lushington professes to have had two objects in view,- "first to exculpate himself from the imputed neglect of not having sufficiently examined the evidence on the part of the defence" in case No 7 on the Combaconum Calendar, and secondly, to obtain "instructions from

13th August 1827.

"from the Foujdaree Adalut in the matter "of a like." It is quite clear that both these objects are foreign from the purpose, for which the report prescribed by Section XXXVII Regulation VII of 1802 is intended; and the substance of these paragraphs as well as the spirit in which they are written sufficiently indicates that Mr. Lushington's real object was to bring into question before the Honorable the Governor in Council the propriety of the Courts judgment not only in the particular case referred to but, as it would seem, in all others wherein their view of the evidence happens to differ from that of the Judge who takes it.

4 In the 6th paragraph Mr. Lushington appeals "to the experience of every man in "the service who has had the appointment "of Circuit Judge whether he has not in "many cases been quite astonished at the "acquittal of prisoners by the Foujdaree Adalut "whom he has considered guilty and convicted "upon full and sufficient evidence". If the reasons for the acquittal are not communicated to the Judge, it is easy to imagine that in many cases he may be wholly at a loss to account for it, but in this case Mr. Lushington was not left in any uncertainty as to the grounds upon which the Court acquitted the prisoners. For upwards

of

13th August 1827. of a year it has been the practice of the Court on all occasions of a direct difference in opinion to put the Circuit Judges in possession of the principal reasons of their dissent; and the extract from their proceedings which accompanied the final sentence on this particular trial contained a pretty full explanation of the grounds upon which the Court, in opposition to Mr Lushington, considered the evidence insufficient for the conviction of the prisoners.

5. Mr Lushington asks "whence can this difference of opinion arise? Is it because there is a proneness to convict on the part of the Circuit Judges? Or is it because the Equitares [sic] are prone to acquit?" For the solution of Mr Lushington's difficulty it does not appear to the Court to be at all necessary to suppose a proneness one way or the other either in the Circuit Judges or in the Equitares [sic]. A proneness of the nature suggested would obviously be little consistent with the solemn obligations by which both parties are equally bound in the exercise of the high functions entrusted to them; and the Court are as ready to exonerate the Judges of Circuit generally from any imputation of this sort, as they are unwilling to admit that it is in any shape applicable to themselves, if by "proneness to acquit" is meant

2/ J. U.

13th August 1827. meant any thing more than a just hesitation to convict upon unsatisfactory evidence. Neither do the Court think that this difference of opinion is attributable in any material degree, if at all, to the different effect of written and viva voce evidence. They are by no means inclined to undervalue the advantages of viva voce evidence; but they are quite satisfied that in this country are counting many of the causes which contribute to give it in England such a decided superiority over written evidence in its effect. It will hardly be denied that to estimate correctly the manner and deportment of a witness it is necessary to have some previous knowledge of his general habits, disposition and character. In England this knowledge is commonly possessed by some at least of the Jury before whom the witness appears, but even then it often requires no ordinary degree of skill and discernment to distinguish accurately between the embarrassment which arises from constitutional timidity, and that which is produced by a consciousness of dishonesty, or between the coolness and steadiness of truth, and the assumed confidence of falsehood. Few Europeans in this country have had opportunities

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opportunities of acquiring that knowledge of the infinitely diversified habits, dispositions and characters of the Natives, which can alone qualify them to determine with any degree of certainty the just conclusions to be drawn from the manner and deportment of an individual on his examination; and in most cases, if not in all, it will be far safer for a Circuit Judge, in deciding upon the credit due to testimony, to look more to the matter of the evidence than to the manner of the witness. He all events he will run the greatest risk of falling into error, if he allows the indications of sincerity apparent in the demeanour of the witness to blind him to the defects and inconsistances of his evidence.

6. In the present case the only evidence which went to establish the charge against the prisoners was that of the prosecutor and the first three witnesses, and for the reasons stated in the extract from their proceedings dated the 9th January last the Court were of opinion that their testimony so far as it related to their pretended recognition of the prisoners as being among the robbers was not intitled to the smallest credit. It was not corroborated by proof of any collateral facts, and it is remarkable that



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that although the witnesses pretend to have had a previous acquaintance with some of the prisoners, it was not upon their information that the prisoners or any of them were taken into custody. The record clearly shews that the search after the robbers was not made on specific intelligence as to any particular individuals of the gang, and the manner in which Maroday, a witness not examined by Mr Lushington, apprehended, according to his deposition before the Criminal Judge, to have obtained from the 1st prisoner Adiken the information, which solely and exclusively led to the apprehension of the other prisoners, seemed little calculated to give additional weight to the testimony of the principal witnesses. For the variations pointed out by the Court in the evidence of these witnesses Mr Lushington accounts by observing that a Native's recollection is very easily affected by time. In the justness of this observation the Court most fully concur; but in this particular instance the lapse of time would appear to have affected the recollection of the witnesses in a most unusual way. Their memory seems to have been sharpened and invigorated by the very circumstance which

13th August 1827.

which must be supposed in the ordinary course of nature to have weakened and impaired it. The character of the informer Maroo-doey entered little into the consideration of the Court in forming their opinion of the circumstances under which the prisoners were taken into custody; but if this man instead of being a notorious robber, as represented by the witness Colandy Vahun on his examination by the Criminal Judge, was as he is now represented by Mr Lushington "a "main Cowulgar of a respectable character," it is obvious to remark that the 7th prisoner Mirkoo was far less likely to make to him gratuitously so dangerous a communication. But it would be perfectly useless to discuss the subject any further. Mr Lushington retains his belief of the guilt of the prisoners in this case, and the Court are quite satisfied that his belief, if it arises from the evidence of the witnesses, is not to be justified on any of the ordinary principles which ought to guide his judgment in deciding upon the value of testimony.

7. The insufficient examination of the witnesses for the defence is justified by Mr Lushington on grounds, which will hardly bear scanting. He seems to have been satisfied by their answer to the first

3/

J. H.

13th August 1827.

first and only question put by the ignorant prisoners by whom they were respectively called that they came into Court tutored. That witnesses for the defence are often tutored cannot be denied, and Mr Lushington has been fortunate if, in the course of his experience, he has not met with numerous instances in which the witnesses for the prosecution have received the like preliminary instruction. But looking to the nature of the questions put by the prisoners in this case, the conclusion drawn by Mr Lushington from the answers appears at best to be a very hasty one. Those answers are such as might naturally be expected without any suspicion of dishonesty from persons of the class of those to whom the questions were addressed, and most probably there is not one of the witnesses for the prosecution in this case who would not have returned a similar answer to a question framed in the same way with reference to the particular facts which he was called to prove. But Mr Lushington considers that little credit can be given to witnesses called to prove an alibi, - the defence set up by the prisoners in this case, - and if the Court understand him rightly, it is his opinion that an alibi cannot in this Country be established by any thing like satisfactory evidence. The Court must hesitate to

adopt

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adopt this proposition in its full extent, for if it were true, hard indeed would be the condition of accused persons. Some charges from their nature and others from the nature of the evidence adduced in their support can be met only by a plea of this kind, and in every case it is a sort of defence which, perhaps, most readily suggests itself to the mind of an ignorant and uneducated native. At all events it is most easily intelligible to persons of his confined ideas. For these reasons the Court think that it would be wrong in this Country to draw any unfavorable conclusions against a prisoner from his having recourse to this kind of defence, or to consider his failure to substantiate it as an aggravation of his crime, whatever in this respect may be the practise of the Courts of law in England.

The general incapacity of natives to remember dates is the main ground on which Mr Lushington argues the general insufficiency of the evidence offered to prove an alibi; and undoubtedly in all cases, for an alibi is not the only one, in which precision as to dates, or something very nearly approaching to it, is requisite, this admitted incapacity of the natives operates to diminish very considerably the force of their

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their evidence. But a man is not to be believed simply because he swears to the date on which a fact occurred, neither is he for that reason alone to be disbelieved, for he may be able to account satisfactorily for his recollecting the particular date. In this respect a witness for the prosecution and a witness for the defence stand in the same situation; and the credit of their testimony must be judged of on the same principles, only in the case of a witness for the defence the cause of his recollection of the date requires to be more narrowly scrutinized, inasmuch as the facts to which he is called to depose are commonly of a nature less likely to make an impression on his mind, and to induce him to ascertain and fix the date in his memory, than those to which a witness for the prosecution is called to speak. With this distinction the Court are not aware that there is any difference in the principles upon which the evidence for the prosecution and that for the defence must be weighed, but if witnesses for the prisoners, merely because they are called to prove an alibi, are at once to be discredited, and their examination conducted in a manner so defective as to render their evidence perfectly negatory, it would be far better wholly and peremptorily to exclude this species

13th August 1827.

species of defence. No doubt it is a defence easily counterfeited, and it is therefore the more necessary to sift and examine minutely the evidence brought in support of it; but if the evidence stands this test, the question will then be whether upon the whole it overbalances the testimony on the other side, and the determination of this question must be grounded on a comparison of the character, and respectability of the witnesses on both sides the consistency, and inherent probabilities of their evidence respectively, and in short on all those considerations, which in every case of conflicting testimony must have their weight one way or the other in deciding upon the preponderance of the proofs. The Court never considered that the mere swearing of two or three persons or of twenty was sufficient to prove an alibi, more than it is sufficient to prove any other disputed fact. The veracity of the witnesses in this case as in all others must be tried by cross-examination, and although their number is not to be wholly disregarded, their title to credit must be principally derived from other circumstances Mr Lushington cites the authority of the Futawa-i-Alumgheeree to shew that "in "all cases of alibi the evidence must consider- "ably exceed in numbers and weight the "evidence of the prosecution;" but the Mohummudan

13th August 1827.

Mohummudan Law is the worst authority that can be appealed to on a question of evidence Mr Lushington cannot be ignorant that its rules of evidence, in criminal matters particularly, are for the most part absurd and impracticable.

In the 11th paragraph of his letter Mr Lushington refers to a case tried by the late Mr Higginson, in which the prisoner or prisoners were convicted by him, but ordered to be released by the Foujdaree Adalut. In that case it is said that the instructions to the witnesses for the defence were subsequently found in their houses. That witnesses are often tampered with and suborned is a fact which must be well known to every man who has had the least experience in the administration of justice; and Mr Lushington could not have considered it necessary to adduce a particular instance of it in order to satisfy the Court on this point. But, as the Court think, it is abundantly evident from the manner in which Mr Lushington refers to this case that his purpose was not so much to shew "the little credit that can be "given to witnesses in alibi," as to exhibit what he considers a gross and glaring instance of error in the judgment of the

13th August 1827 the Foujdaree Adalut, for otherwise he would hardly have noticed so particularly the circumstance that the prisoners were acquitted by the Foujdaree Adalut though convicted by Mr Higginson.— The case, however, is so loosely referred to that the Court have been unable to find it, and they are consequently unable to ascertain the grounds upon which the acquittal took place, without a knowledge of which it is obviously impossible to say whether the discovery alleged to have been subsequently made in the houses of the witnesses for the defence warrants the conclusion that the acquittal was wrong.

10. The Court are quite unable to account for the angry feelings which seem to have dictated these paragraphs in Mr. Lushingtons letter. Upon twelve of the fifteen references made by him during his last Circuit the Court entirely concurred with him in opinion. Upon one case,— No 6 on the Combaconum Calendar,— he professed his inability to come to a satisfactory conclusion one way or the other, and the Court, though they considered the evidence not sufficient for the conviction of the prisoners, still thought that there were such grounds of suspicion against them as to warrant the requisition of security

previously

13th August 1827 previously to their discharge. In another case,— No 21 on the Combaconum Calendar,— his opinion seemed not quite decided, but he appeared on the whole inclined to think the prisoners guilty, particularly the 1st and the Court for the reasons very fully detailed in their proceedings transmitted to Mr Lushington considered the evidence insufficient for the conviction of either of the prisoners, although they thought the presumption of the 1st prisoner's guilt was very strong, and accordingly directed that security should be taken from him. The only case therefore upon which there was a direct difference of opinion between him and the Court was No 17 on the Combaconum Calendar; and the Court cannot discover that in their proceedings upon that case there was any thing calculated to wound or irritate his feelings.

11. The doubts expressed by Mr Lushington, in the concluding paragraph of his letter, as to the correctness of the construction put upon Clause Third Section XI Regulation IX of 1816, and as to the intention of the legislature in enacting that Clause, are obviously unfounded. But the subject has been so repeatedly under the consideration of Government, and the Government has so strongly expressed its opinion as to the inexpediency of vesting the Circuit Court collectively

13th August 1827. collectively with the authority to receive complaints, now confined to the individual Judge on Circuit, that all further discussion of the matter is unnecessary.

Ordered that extract of these proceedings together with a copy of the above report, and also the Original trial No 17 Combaconum Calendar 2d Sessions 1826 and the Court's proceedings thereupon dated the 9th January last, be sent to the Secretary to Government in the Judicial Department to be laid before the Governor in Council.-

9 No 37. Ans. 24th Aug. No 349.
Encl 1 to 107 ... 6th Sept. 1827.

(Sent following letter No 213)

Ordered also that extract of these proceedings be sent to the 2d Judge late on Circuit in the Southern Division for his information and guidance.

(Sent following letter No 214)

Fl.

At a Court of the Foujdaree Udalut,
Present,

Saturday 18th August 1827

F. S. Grant Esquire, ---1st Puisne Judge
James Cochrane Esquire,--2d Puisne Judge.
William Oliver Esquire,-3d Puisne Judge.

Read letter dated the 4th April last from the 3d Judge on Circuit in the Southern Division, submitting case No 13 Combaconum Calendar 1st Sessions 1827.-

(Here enter No 158)

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 Udalut confirm the said futwa of the Cazee-ool-Cozat and Mooftees aforesaid, and under the ~~[illegible]~~ sentence of Pokootut declared in the futwa, and in conformity with clause first section III Regulation VI of 1811 adjudge the prisoner, "Nullooposary"

to be publickly exposed in the mode commonly denominated Tuchee and to be imprisoned and kept to hand labor in irons on the public roads or other public works for and

18th August 1827

and during the period of seven years and then be released.-

/Sent following letter No 217./

Read letter dated the 4th April last from the Third Judge on Circuit in the Southern Division, submitting Case No 12 Com=
=bacoonum Calendar 1st Sessions 1827.-

/Here enter No 157/

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 Zeylaxe Adalut confirm the said futwa of the Cazee=ool=Coozat and Mooftee aforesaid, and under the ~~[illegible]~~ sentence of Rokoobut decla=
=red in the futwa and in conformity with Claus. first section III Regulation VI of 1811 adjudge the prisoner,

"Coobramaneapillay",

to be publickly exposed in the mode com=
=monly denominated Tasher and to be impri=
=soned 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 218/

The prisoner in this case was charged with perjury in his examination as prosecutor on the trial of Mootooneerapillay and

18th August 1827

and Narrainsamy for the forgery of a bond, purporting to have been executed by him to the said Moottooneerapilly.-

It is an established rule that, in a prosecution for forgery, the party by whom the instrument purports to be made is not a competent witness to prove it forged, if he would either be liable to be sued upon the instrument, supposing it genuine, or be thereby deprived of a legal claim against another. In this case the objection to Coobramaneapilly's competency could not be removed by a release, because the bond purported to be made to, and was held by, one of the persons tried for forging it; and it is therefore evident that he ought not to have been examined on that trial.-

It became a question, there=
=fore, whether Coobramaneapilly, not being a competent witness to prove the forgery, but having been examined on the trial by mistake or inadvertence, was liable to a prosecution for perjury in his examination; and the Court, having had recourse to the best information within their reach, have sa=
=tisfied themselves that he was liable. They have accordingly confirmed the futwa of their Law Officers; and have adjudged the prisoner to suffer the full punishment prescribed by the Regulations.-

In the present instance the question, as it affected the prisoner, was of=

and during the period of seven years and then be released.-

/sent following letter No 217./

Read letter dated the 4th April last from the Third Judge on Circuit in the Southern Division, submitting Case No 12 Commitment Calendar 1st Session 1827.-

/Here enter No 157/

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 Zeylanee Adalut confirm the said futwa of the Cazee-ool-Cozat and Mooftee aforesaid, and under the ~~sentence~~ sentence of Roskoobut declared in the futwa and in conformity with clause first section III Regulation VI of 1811 adjudge the prisoner,

"Soobramanea pillay",

to be publickly exposed in the mode commonly denominated Tasheer 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 No 218/

1 The prisoner in this case was charged with perjury in his examination as prosecutor on the trial of Mootooneera pillay and



and Narrainsamy for the forgery of a bond, purporting to have been executed by him to the said Moottooneera pilly.-

2 It is an established rule that, in a prosecution for forgery, the party by whom the instrument purports to be made is not a competent witness to prove it forged, if he would either be liable to be sued upon the instrument, supposing it genuine, or be thereby deprived of a legal claim against another. In this case the objection to Soobramanea pilly's competency could not be removed by a release, because the bond purported to be made to, and was held by, one of the persons tried for forging it; and it is therefore evident that he ought not to have been examined on that trial.-

3 It became a question, therefore, whether Soobramanea pilly, not being a competent witness to prove the forgery, but having been examined on the trial by mistake or inadvertence, was liable to a prosecution for perjury in his examination; and the Court, having had recourse to the best information within their reach, have satisfied themselves that he was liable. They have accordingly confirmed the futwa of their Law Officers; and have adjudged the prisoner to suffer the full punishment prescribed by the Regulations.-

4 In the present instance the question, as it affected the prisoner, was of-

18th August 1827

of little importance; because if he had been intitled to an acquittal on the trial for perjury, he would still have been liable to a prosecution for subornation of perjury, and must have been convicted, and sentenced to the same punishment.-

Ordered that extract of these proceedings be sent for the information of the 3d Judge late on Circuit in the Southern Division.-

/sent following letter No 219/

Read again return, dated the 31st March last from the 2d Judge late on Circuit in the Western Division to precept dated 26th February last calling for trial No 9 Malabar Calendar 2d Sessions 1826.-

/Here enter No 159/

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

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 futwas of the Cazee-ool Coozat and Mooftees of the Sudder Adalut, confirm the said futwas of the Cazee-ool Coozat & Mooftees aforesaid and under the sentence of Regulation declared therein adjudge the prisoners,

1st "Mapale alias Sattatayata Ramen,

and

2d "Mapale alias Sattatayata Ponna Cutty"

to receive 30 stripes with a rattan and to be imprisoned and kept to hard labor in irons

Sent 25

No.

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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 220/

Read again letter dated the 15th February last from the 3d Judge late on Circuit in the Northern Division, submitting Case No 1 Supplemental Chicacole Calendar 2d Sessions 1826.

/Here enter No 102/

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 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 & Mooftees aforesaid and under the provisions of Section XXI Regulation VII of 1802 adjudge the prisoner,

"Choomboree Ayapah,"

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 & then be released.-

/sent the following letter No 221/

Read letters, dated the 30th June last, and 4th Ultimo, from the 1st Judge of the Court of Circuit in the Centre Division.-

(Here enter No 262 & 273)

In the first of the foregoing letters

of little importance; because if he had been intitled to an acquittal on the trial for perjury, he would still have been liable to a prosecution for subornation of perjury, and must have been convicted, and sentenced to the same punishment.-

Ordered that extract of these proceedings be sent for the information of the 3d Judge late on Circuit in the Southern Division.-

Sent following letter No 219

Read again return, dated the 31st March last from the 2d Judge late on Circuit in the Western Division to precept dated 26th February last calling for trial No 9 Malabar Calendar 2d Sessions 1826.-

Here enter No 159

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

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 futwas of the Cazee-ool-Coozat and Mooftees of the Foujdaree Adalut, confirm the said futwas of the Cazee-ool-Coozat & Mooftees aforesaid and under the sentence of Acts declared therein adjudge the prisoners,

1st "Mapale alias Sottatayata Ramen,"

2d "Mapale alias Sottatayata Ponna Cutty"

to receive 30 stripes with a rattan and to be imprisoned and kept to hard labor in irons

F.C.

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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 220

Read again letter dated the 16th February last from the 3d Judge late on Circuit in the Northern Division, submitting Supplemental Calendar 2d Sessions 1826. Case No 1 Ahmacole.

Here enter No 102

Read the second futwa delivered in this case by the Cazee-ool-Coozat and Mooftees 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-Coozat and Mooftees of the Foujdaree Adalut, confirm the said futwas of the Cazee-ool-Coozat & Mooftees aforesaid and under the provisions of Section XXI Regulation VII of 1802 adjudge the prisoner,

"Choombooree Ayapah,"

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 & then be released.-

Sent the following letter No 221

Read letters, dated the 30th June last, and 9th Ultimo, from the 1st Judge of the Court of Circuit in the Centre Division.-

(Here enter Nos 262 & 273)

In the first of the foregoing letters

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letters Mr Brown explains the grounds of his proceedings in certain cases of the Chittoor Calendar for the 2d Quarterly Sessions of 1827; and in the second he requests to be informed whether "in case of considering the prisoner "not guilty of the crime, but labouring under "strong suspicion of being concerned in it, "the Judge is not warranted in taking "Security, though Cohroot but be the punish= "ment assigned by the Law Officer."

2

The explanation given by Mr Brown in respect to case No 4 on the Calendar is not considered to be at all satisfactory; and the Court desire that the record in that case may be sent up with as little delay as possible, as directed in their proceedings of the 21st June last.

3.

In the 11th paragraph of his letter dated the 30th June last Mr Brown states that he has never received any instructions relative to his incompetency to discharge the prisoner on security, when declared by the Futwa convicted on strong presumption (Zunn-i-Ghalib) and liable to Cohroobut; and in his letter of the 9th ultimo he states that he is not aware of any such instructions of a date prior to the 27th January last. This appears to the Court to be perfectly unaccountable. Under date the 30th November 1825 Mr Brown was informed that if the prisoners

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in cases Nos 1 and 2 of the Chittoor Calendar for the 4th Quarterly Sessions of 1825 were declared convicted on strong presumption, his order for their release on security was illegal: and he was required to send up Copies and English translations of the Futwas in those cases. He was also directed to explain his proceedings in case No 11 on the Calendar. His return was stated the 19th December 1825; and on the 7th February 1826 the Court distinctly pointed out the course which it was his duty to pursue in the cases referred to, and animadverted in strong terms upon the reasons which he had assigned for omitting to conform to the plain and intelligible provisions of the law. On the 18th March 1826 Mr Brown submitted a further explanation of his proceedings in these cases; but the Court considered it quite unnecessary to prolong the discussion of a point so clear, and no answer was returned to Mr Brown's letter

4.

That Mr Brown received the extracts from the Courts' proceedings of the 30th November 1825 and the 7th February 1826 is proved beyond all manner of doubt by his returns thereto, and it remains for him to account, if he can, for his having forgotten them. And if they are not to be found among the records of the Court of Circuit it must be concluded that

18th August 1827.

that Mr. Brown, in violation of the circular order dated the 6th September 1821 neglected to deposit them with the Register-

5. For the purpose stated in the 5th paragraph of their proceedings dated the 21st June last the Court repeat their direction that a complete record of cases Nos 10, 11, 12, 13 and 14 of the Chittoor Calendar for the 2d Quarterly Sessions of 1827 be sent up with as little delay as possible-

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 No. 222)

Read return, dated the 17th Instant, from the 2d Judge late on Circuit in the Centre Division, - to precept dated 9th Ultimo ordering communication to the Criminal Judge of Chingleput of the Court's observations on case No. 1 Chingleput Calendar 1st Sessions 1826.

(Here enter No. 320)

Read return, dated the 17th Instant, from the 2d Judge of the Court of Circuit in the Centre Division, - to precept stated the 9th ultimo ordering him to send up the records of trials in certain cases Bellary and Chingleput Calendars 1st Sessions 1827.

(Here enter No. 322)

F. H.

18th August 1827.

Read letter, dated the 3d Instant, from the 1st Judge of the Provincial Court of Circuit in the Northern Division, - reporting the death of the prisoner in case No. 1 1st Supplemental Chicacole Calendar 1st Sessions 1827.-

(Here enter No. 319)

Read return, dated the 8th Instant from the Judges of the Provincial Court in the Southern Division, - to precept dated the 19th Ultimo, communicating the release of all Prisoners in Jail who are confined on requisition of security subsequent to the expiration of sentence passed upon them.

(Here enter No. 329)

J. M.

At a Court of the Fouzdaree Adalaut

Present.

Friday 14th September 1827.

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

Read letter dated the 8th Instant from the Acting First Judge on Circuit in the Southern Division transmitting copy of the Abstract Calendar for the 2d Sessions of 1827.

(Hereunto No 377)

244 M

20

1. In cases Nos 1 and 3 the prisoners were charged with gang robbery, attended with the circumstances of aggravation specified in Clause Second Section IV Regulation XV of 1803. The Futwa of the Law Officer declared them convicted on Zunn-i-Ghalib, or strong presumptive proof, and liable to Kohoobut; and the Acting 1st Judge sentenced them to imprisonment and hard labor for the term of 14 years. - If the acts of aggravation charged in these cases were established, the prisoners were clearly liable to a sentence of transportation for life, which should have been passed upon them by the Judge, and the trials referred to the Court of Fouzdaree Adalut. If the alleged acts of aggravation were not proved, or if the personal injuries inflicted were of a trifling nature, the fact should have been stated in order to account for the sentence which it was

14th September 1827. not competent to the acting 1st Judge to pass, unless the offence proved came within the provisions of Clause Third, Section IV Regulation XV of 1803. Under all the circumstances, however, the Court do not consider it necessary to disturb the sentences passed in these cases; but they particularly direct the attention of the acting 1st Judge to the provisions of the Clauses above cited.

2. The sentence passed on the prisoner in case No 18 requires explanation. The offence charged against the prisoner would appear to come within the provisions of Clause second Section IV Regulation XV of 1803, and the Futwa declares the prisoner "convicted on strong presumption of having "beaten and robbed the prosecutor as set "forth in the charge." But if the beating inflicted on the prosecutor was of a trifling nature, and the offence proved was consequently brought within the provisions of Clause Third Section IV Regulation XV of 1803, it was incumbent upon the Acting 1st Judge, in the event of his considering the punishment prescribed by that Clause to be too severe, to report the circumstances of the case to the Court of Vanjdarce & not under the provisions of Clause second Section III Regulation I of 1825. It was not competent to him of his own authority to mitigate the

14th September 1827. the stated punishment. The acting 1st Judge will with as little delay as possible report the circumstances of this case and explain the grounds on which he considers a mitigation of the prescribed punishment to be proper.

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

Sent. 14. Do. Sent following letter No 240

Ent. 14. Do.

Read letter, dated the 15th Ultimo, from the 1st Judge late on Circuit in the Northern Division, - communicating the death of the prisoner in case No 1 of the 2d Supplemental Calendar of the Zillah of Chicacole 1st Sessions 1827.

(Here enter No 335.)

Read return, dated the 15th Ultimo, from the Judges of the Provincial Court in the Western Division, to precept dated 19th July communicating the release of all prisoners in Gaol who are confined on requisition of Security subsequent to the expiration of sentence passed upon them.

(Here enter No 336)

Read

4th September 1827.

Read letter, dated the 28th ultimo, from the 2d Judge on Circuit in the Centre Division, - informing that the departure of the Court of Circuit from Cuddapa for Bellary would take place on the 24th Instant.

(Here enter No. 338)

Read letter, dated the 24th ultimo, from the 1st Judge on Circuit in the Western Division, - reporting his completion of the Jail delivery at Mangalore on the 21st August 1827.

(Here enter No. 345)

Read returns, dated the 24th ultimo, from the Judge of the Provincial Court of Circuit in the Northern Division, - to precept dated 19th July last reporting that there is not any prisoner in confinement on regulation of security subsequent to the expiration of sentence passed upon him.

(Here enter No. 357)

Read return, dated the 30th ultimo, from the 1st Judge of the Court of Circuit in the Centre Division, - to precept dated 19th July last, submitting returns to Provincial Courts precept certifying that there is not any prisoner in Jail under the sentence therein specified.

(Here entered No. 361.)

Read letter, dated the 29th ultimo, from the 1st Judge on Circuit in the Western Division

F. R.

4th September 1827.

Division, - reporting the commencement of the 2d Sessions 1827 at Honore.-

(Here enter No. 366.)

Read letter, dated the 4th Instant, from the Acting 1st Judge on Circuit in the Southern Division, communicating the opening of the 2d Sessions 1827 at Combaconum.-

(Here enter No. 370)

Read letter, dated the 5th Instant, from the 2d Judge on Circuit in the Centre Division, - reporting the commencement of the 2d Sessions 1827 at Bellary on the 5th Instant.-

(Here enter No. 373.)

Read letter, dated the 4th Instant, from the 1st Judge on Circuit in the Western Division, - reporting the completion of the Jail Delivery at Honore on the 4th Instant.

(Here enter No. 379)

Read letter dated the 13th ultimo, from the Provincial Court in the Southern Division reporting the death of an insane prisoner Chegully Venkadoo.

(Here enter No. 341.)

Read letter, dated the 20th ultimo, from the 1st Judge on Circuit in the Centre Division, with copy of

14th Sept. 1827. of Cuddapah Calendar 2d Sessions 1826.-

(Here enter No. 1837)

Read letter, dated the 5th Instant, from the 1st Judge of the Court of Circuit in the Centre Division, - reporting certain circumstances connected with case No. 6 Chittoor Calendar 3d Quarterly Sessions 1827.

(Here enter No. 3691)

F. C.

At a Court of the Foujdaree Adaulut

Present,

Friday 25th September 1827 } F. A. Grant Esq.re 1st Puisne Judge
James Cochrane Esq.re 2d Puisne Judge
William Oliver Esq.re 3d Puisne Judge.

The Report prescribed by section XXXV Regulation X of 1816 not having been received from the Zillahs of Chingleput, Chittoor, Bellary, and Cuddapah for the 2d Quarter of 1827.-

Ordered that the Provincial Court of Circuit in the Centre Division be by precept directed to forward the said reports without further delay.-

(Sent following precept No. 247.)

The Report prescribed by section XXXV. Regulation X of 1816 not having been received from the Zillas of Nellore, Masulipatam, and Chicacole for the 2d Quarter of 1827.-

Ordered that the Provincial Court of Circuit in the Northern Division be by precept directed to forward the said reports without further delay.-

(Sent following precept No. 248.)

changes from their nature, and some
25th September 1827. from the nature of the evidence adduced
in their support can be met only by a
plea of this kind, and in every case it is
a sort of defence which perhaps most
readily suggests itself to the mind of a native.
At all events it is more easily intelligible
to him than any other mode of defence;
and probably the frequent resort to this
attributable fully as much to this as to
any other cause. But be this as it may it
is perfectly clear that a Judge is not
warranted in discrediting witnesses, or rejecting
their testimony altogether, merely because
they are called to prove an alibi. No doubt
this a plea very easily counterfeited, and
is set up often falsely, and often very
foolishly, when the party had a better
defence, or at least one not so open to
distrust and suspicion. But then if true,
it is the most conclusive defence that
can be made against a charge, and the
Court are persuaded that if Mr Todd will
examine the matter more narrowly he
will see that, notwithstanding the suspicion
and distrust to which this plea is too
often liable, the most dangerous consequence
would ensue from excluding the admission

of it altogether, or - which is tantamount
25th September 1827. to the same thing, - from treating the evi-
dence brought in support of it as if it
were from its very nature and object
intitled to no degree of credit whatever.

Ordered, that extract of
these proceedings be sent for the infor-
mation and guidance of the 3d Judge
of the Court of Circuit for the Northern
Division -

Sent following letter No 253.

Read letter dated the 19th Instant
from the Acting 1st Judge on Circuit in
the Southern Division, acknowledging
the receipt of an extract from Sayders
proceedings dated 11th Instant respecting
case No 8 Madura Calendar -

/Here enter No 390/

F. M.

At a Court of the Foujdaary Adawlut.

Present.

Friday 28th September 1827. J. H. Grant Esqr. 1st Puisne Judge.
James Cochrane Esqr. 2d Puisne Judge
William Oliver Esqr. 3d Puisne Judge

Read letter dated 19th March last from the 3d Judge on Circuit in the Western Division submitting case No 6 Malabar Calendar Sessions 1827.

(Here enter No 145)

Read also letter dated 3d instant from the 3d Judge late on Circuit in the Western Division forwarding persian translation of the trial in the above case.

(Here enter No 370)

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 Foujdaary Adawlut confirm the said Futwa of the Cazee ool Cozat and Mooftee aforesaid and acquitting the prisoner

"Arien Bagawathe paramba late Thekoo Nair"

on the ground of insanity direct that he be placed under charge of the Surgeon of the Zillah Court of Calicut for the purposes stated in this Court Circular orders under date 21st February and 26th June 1822.

(Seat following letter No 260)

Read

28th September 1827.

Read letter dated 14th Ultimo from the 1st Judge on Circuit in the Western Division submitting Case No 14 Canara Calendar 2d Sessions 1827.

(Here enter No 337)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held upon the Judge on Circuit the future of the Revenue Law Officers and the future of the Cazee or Cozgat and Shroffs of the Zillah Court confirm the said future of the Cazee or Cozgat and Shroffs aforesaid; and in the Sentence of Perkonkut declared in the future and in conformity with Clause third Section VII Regulation XV of 1810 acquit the Prisoner,

Atolay

to receive 30 Stripes with a rattan and to be imprisoned and kept to hard labour in irons on the public roads or other public works for and during the period of 14 years and then be released.

(Sent following letter No 261)

A. Maclean

F. H.

At a Court of the Zillah Court.

Present.

Wednesday, 3d October 1827 — F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letters, dated the 19th Ultimo, from the 1st Judge on Circuit in the Western Division, — transmitting the Canara and Honore Calendars for the 2d Sessions of 1827.

(Here enter No 401 & 402)

Under the provisions of Section XXV Regulation X of 1810 the Court direct that an English translation of the record in case No 2 on the Canara Calendar — Dasa Prabhoo, versus Ramsing alias Danappa and Budoo, — be transmitted to them with as little delay as possible.

2. The Judge on Circuit has exercised in four cases the power vested in him by Clause Second Section X Regulation XI of 1827, viz in cases Nos 3, 7 and 17 on the Canara Calendar, and in case No 1 on the Honore Calendar. The prisoner in case No 7 on the Canara Calendar is represented as "a person of notoriously bad character and "without ostensible means of honest "livelihood," and though a simple theft was

2d October 1827.

was the specific offence charged against him, yet the notorious badness of his character combined with other circumstances would seem to have warranted the order passed by the 1st Judge. But in the other cases mentioned the propriety of the order appears to be very questionable. The 2d prisoner in case No 3 is represented indeed to have been formerly tried for robbery, but he was acquitted; and against the 2d prisoner in the same case, the 5th prisoner in case No 7 and the prisoner in case No 1 on the Honore Calendar, there appeared, as far as the Court can find from the Calendars, nothing to warrant the severe measure of subjecting them to indefinite confinement and hard labor in irons, in default of their giving the security required. The 1st Judge therefore is directed to explain the grounds of his proceedings in these cases, and unless there was evidence before him to shew that the four prisoners Ummapa, Narrapa Dooga and Narandra Bussya are of characters so notoriously bad and dangerous as to render their release without substantial security evidently unsafe and improper he will release

2d October 1827.

Ans. 20th Oct. No 452.
to the 15th Nov. 1827.
Ent.

the warrants issued by him in these cases.

Ordered that a 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 264.

Read letter, dated the 25th Ultimo, from the 2d Judge on Circuit in the Northern Division, with copies of Nellore Calendars 2d Sessions 1827.

(Here enter No 410)

Read letter, dated the 24th Ultimo, from the 3d Judge of the Court of Circuit in the Northern Division, with copy of Masulipatam Calendar 3d Quarterly Sessions 1827.

(Here enter No 411.

Ord. Read letter, dated the 12th Ultimo from the 2d Judge on Circuit in the Centre Division, with copies of regular and supplemental Calendar of Prisoners apprehended Zilla of Cuddapa 2d Sessions 1827.

(Here enter No 385.)

F. H.

At a Court of the Toungdaree Adalut

Present,

Tuesday, 23d October, 1827. — F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter, dated the 20th Ultimo, from the Judges of the Provincial Court of Circuit in the Western Division, transmitting for the Court's consideration certain papers connected with the case of Chickaya Chitty charged with robbery by open violence in case No 3 Canara Calendar 2d Sessions 1827.

(Here enter No 350)

Read also letter, dated the 18th Instant, from the 1st Judge on Circuit in the Western Division relating to the Zilla Judge of Canara's refusal to carry into execution a certain sentence passed by the 1st Judge on Circuit until the orders of the Toungdaree Adalut have been passed on the subject.

(Here enter No 388)

1. It appears that the Judge on Circuit in the course of his proceedings on case No 3 of the Calendar seeing reason to consider that a person who was brought forward as a witness was in fact an accessary

18th

23d October 1827.

accessary, directed the Criminal Judge to commit him. This person had been examined by the Criminal Judge and released for want of sufficient evidence and his name had been entered in the Calendar of persons released presented to the Judge on the preceding Circuit, who had passed over the case without remark.

2. In case N.17 also the Judge on Circuit directed 2 persons to be committed whom the Criminal Judge had examined and considering the proof against them insufficient for conviction but sufficient to establish strong suspicion, had confined under Clause first Section IV Regulation II of 1822 under a demand of security. In both these cases the Criminal Judge doubted the power of the Judge in Circuit to issue such a direction of his own authority and suggested that the orders of the Collective Court of Circuit might be obtained under Section XXIII Regulation X of 1810. The cases were accordingly referred to the Collective Court. In the former instance that Court gave their orders on the merits of the case and at the same time expressed their opinion that the occasion of the reference was one to which Section II Regulation XII of 1802 applied, that it was proper for the Judge on Circuit himself to originate in such

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cases, and the duty of the Criminal Judge implicitly to obey them, subject to a reference to the Sudder Board if he doubted their propriety. In the latter case the reply of the Collective Court of Circuit has not been submitted, but from the conclusion of the 2d paragraph of the proceedings of the Judge on Circuit dated the 28th August it would appear that they passed no orders on the merits of the case but referred to and confirmed the opinion expressed in answer to the former reference.

3. In this latter case the Prisoners were charged with Gang robbery with violence, and had been committed by the Criminal Judge, in order to save time without awaiting for the Collective Courts orders: but when, on the trial being completed, they were ordered by the Judge on Circuit to be confined in Irons, the Criminal Judge delayed obedience to this order and requested that it might be suspended till the orders of the Collective Court of Circuit were obtained on the case. The Judge on Circuit refused to suspend his order and transmitted to the Criminal Judge an extract of the Collective Courts reply to the first reference containing the opinion before mentioned. The Criminal Judge upon this changed the order stating as his reason that

the

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the execution of it involved no irreparable injury to the Prisoners and that he was anxious to shew every deference to the orders of the Judge on Circuit consistent with his sense of other duties: at the same time he submitted his opinion that Regulation XXII of 1812 could not be construed to give a superior Court power to enforce obedience to an order which was contrary to an express provision of the Regulations and he observed that tho' he quoted the Regulation on which his opinion of the necessity of the Collective Court's orders was founded the Collective Court did not oppose that opinion by quoting any countervailing provision of the Regulations He then continues- "While there are rumours "(and many there are) of the subserviency of "Mahomedan Law Officers, to the opinions "of Judges, and as infallibility is not an "attribute of any single man the Criminal "Judge feels himself bound to make this "appeal on behalf of persons in whose behalf "there appears ground for doubt." This return of the Criminal Judge the Judge on Circuit pronounced to be a combating of the opinion of the Judges "with insolent arrogance, even to impugning the honor and integrity of the Circuit Judges" and declares that

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"to argue the question any further with an "Officer who had so lost sight of the respect "due to those put an authority over him, "would have only subjected them to further "insult."

4. The prisoners were convicted and sentenced to receive each 30 Stripes with a rattan and to be imprisoned with hard labor in irons for 14 years- On receiving the warrant, the Criminal Judge declined to execute it on the ground that the Trial was irregular without the previous orders of the Collective Court of Circuit on the case; and urged a reference of the question at issue to the Foujdaree Adalut- The Judge on Circuit in reply sent peremptory orders for the full execution of the Sentence within 24 hours. The Criminal Judge upon this put the prisoners to labor in Irons, alledging the same reason as for obedience to the former order for confining them in Irons- but still declined to inflict the Stripes as that part of the sentence was indelible and irreparable. Thereupon the Judge on Circuit has reported his conduct to the Foujdaree Adalut as disobedience of orders under Section XXX Regulation VII of 1802.

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Court have recorded their express opinion
to this effect; and in the other three cases
in opinion with the Judge on Circuit is plain
inferable, although they do not appear to
have passed a specific order on the merits
of that case. The prisoners therefore have
been no wise prejudiced by Mr Baker's
proceeding to their trial without the previous
orders of the Collective Court, and consequently
there is no sufficient ground for granting
the trials, and annulling the sentences pass
upon them.

II

With regard to the 2d point
Judges think that the Criminal Judge did
wrong in questioning the orders of the
Collective Court in the manner he did.
Those orders were virtually the 2d Precept
mentioned in Section II Regulation XXII of
which the Criminal Judge is not allowed
to question, that he may request a reprieve
to the Governor in Council.

III

The Criminal Judge also was
wrong in declining on any account whatever
in any possible case, to obey a Precept from the
Judge on Circuit sanctioned by the Collective
Court; without having first respectfully
requested him to suspend his order. But
the Criminal Judge done this, and his request
been refused by the Judge on Circuit, the
Judges would not have blamed him

F. U.

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for suspending his obedience, in a case like
the present: a reference was still open,
under Regulation XXII of 1802, to the Governor
General in Council, and it was possible, that the proceedings
might be declared illegal, in which case,
if the order had been obeyed, the error could
not have been retrieved. It is probable
that Regulation XXII of 1802 did not contemplate
a code of the kinds nor human law-foresees
and provides for all cases - but in regula-
tions for the reciprocal conduct of men,
right dispositions in the parties concerned
will supply most defects. In acting under
Regulation XXII of 1802 the disposition of
the subordinate should always be to
obedience; that of the superior to explanation
and reference for the others satisfaction,
and to suspension of the order objected
to till the final decision should be known.
The Judges observe with approbation that
these dispositions appear in the conduct
of both the Criminal Judge and the Judge
on Circuit to some extent: had they been
carried one step further, the Criminal Judge
would have respectfully solicited the
suspension of the Judge on Circuit's order,
instead of declining at once to obey it,
the Judge on Circuit would have suspended
it, as he might have done without

Compromising

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5.

The foregoing is the substance of the case submitted for the orders of the Court of Enquiree [illegible]. Three points for consideration arise out of it:

1st. The course pursued by the Judge on Circuit and sanctioned by the Provincial Court respecting the Prisoners.

2d. The conduct of the Criminal Judge in questioning the orders of the Collective Court of Circuit and refusing to obey a precept of the Judge on Circuit under them.

3d. The style of the extracts above quoted from the Precepts of the Judge on Circuit and of the returns of the Criminal Judge.

6.

With respect to the first point, the Judges think that Mr. Baker erred in passing orders regarding these persons on his own authority, instead of referring the cases for the orders of the Collective Court.

7.

In these cases the Judge on Circuit was clearly bound to act in conformity with the provisions of Section XXIII Regulation X of 1810 so far as those provisions were applicable. It would appear that he did not consider further evidence requisite to warrant the commitment of these persons for trial; and in his view of the matter therefore it would have been an idle waste of time to direct further evidence to be taken. But this

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circumstance made no difference in the course to be pursued for the purpose of rectifying the error committed by the Criminal Judge. The cases as they then stood, were ripe for the immediate orders of the Collective Court, and to that Court it was clearly his duty to refer them.

8.

Both the Judge on Circuit and the Collective Court would seem to have considered Section XXIII Regulation X of 1810 not applicable to these cases: and they must therefore have regarded the proceedings against the parties as held under the general powers of a Judge on Circuit. But in using general powers, which are no where defined, one caution is indispensable, viz to use them so as not to be inconsistent with any prescribed rule. This caution was not observed in the proceedings under review. If these cases were supposed not to come within the provisions of Section XXIII Regulation X of 1810 yet they are strictly analogous to those for which that Section expressly provides, and they should therefore have been dealt with on the same principles.

9.

There does not appear any reason to doubt that the persons in question ought in the first instance to have been committed for trial by the Criminal Judge. In one of the cases the collective

Court

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Court have recorded their express opinion to this effect; and in the other their concurrence in opinion with the Judge on Circuit is plainly inferable, although they do not appear to have passed a specific order on the merits of that case. The prisoners therefore have been no wise prejudiced by Mr Baker's proceeding to their trial without the previous orders of the Collective Court; and consequently there is no sufficient ground for quashing the trials, and annulling the sentences passed upon them.

II With regard to the 2d point the Judges think that the Criminal Judge did wrong in questioning the orders of the Collective Court in the manner he did. Those orders were virtually the 2d Precept mentioned in Section II Regulation XXII of 1802 which the Criminal Judge is not allowed to question, tho' he may request a reference to the Foujdaree Adawlut.

III The Criminal Judge also was clearly wrong in declining on any account, in any possible case, to obey a Precept of the Judge on Circuit sanctioned by the Collective Court, without having first respectfully requested him to suspend his order. Had the Criminal Judge done this, and his request been refused by the Judge on Circuit, the Judges would not have blamed him

F. U.

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for suspending his obedience, in a case like the present: a reference was still open, under Regulation XXII of 1802, to the Foujdaree Adawlut; and it was possible, that the proceeding might be declared illegal, in which case, if the order had been obeyed, the error could not have been retrieved. It is probable that Regulation XXII of 1802 did not contemplate a code of the kinds no human law-forsees and provides for all cases but in regulations for the reciprocal conduct of men, right dispositions in the parties concerned will supply most defects. In acting under Regulation XXII of 1802 the disposition of the subordinate should always be to obedience; that of the superior to explanation and reference for the others satisfaction, and to suspension of the order objected to till the final decision should be known. The Judges observe with approbation that these dispositions appear in the conduct of both the Criminal Judge and the Judge on Circuit to some extent: had they been carried one step further, the Criminal Judge would have respectfully solicited the suspension of the Judge on Circuit's order, instead of declining at once to obey it, the Judge on Circuit would have suspended it, as he might have done without

compromising

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compromising a particle of his authority
22d October 1827. on public duty, and the present unpleasant
reference would have been avoided.

12. With regard to the 3d. point the Judges think that nothing can excuse the impropriety of the passage quoted from the return of the Criminal Judge: it is not only a libel upon a whole class of public officers of Government of high rank, but a direct personal reflection upon his immediate Superior, the Judge on Circuit, but thereby disguised by the general terms in which it is couched.

13. The passage quoted from the Precept of the Judge on Circuit is little less open to censure: it is not a rebuke, as it ought to have been, but a retort, which is inconsistent with the dignity of a Judge on Circuit in addressing a Criminal Judge, and it savours much more of personal, than of public feeling.

14. It remains for the Judges to remark on a very erroneous proceeding and opinion incidentally mentioned in the papers which have now been reviewed.

15. It appears that the Criminal Judge held out hopes of pardon to the two Prisoners in May, to induce them to confirm a former confession and retract their present denial.

16. Every kind and degree of persuasion, as well as of compulsion, to obtain a confession, is contrary to the Regulations, and vitiates the confession for every purpose of conviction or accusation. In cases of a conditional offer of pardon under Section XX Regulation VIII of 1802, the Circular orders of this Court dated 29th January 1820 direct that the declaration of the party of his own guilt and of his desire to accuse his accomplices, should be received in the mode prescribed for the admission of the confessions of persons accused, the very essence of which is that they must be free and voluntary, and the Judge who receives them must satisfy himself that they are so.

17. The Judge on Circuit quotes* Clause second Section VIII Regulation VI of 1827 as expressly vesting in the Judge on Circuit a controlling authority over all requisitions of Security by the Criminal Judge, and he evidently means such a controlling authority as warrants the Judge on Circuit to order the commitment for trial of persons detained by the Criminal Judge on requisition

* para 6 of his letter to the Collector time Court 16th Sept.

of Security— Clause second Section VIII
28th October 1827. Regulation VI of 1827 makes no alteration
in the authority which the Judge on Circuit
already had in such cases by Clause third
Section IV Regulation II of 1822; it only relieves
him from the necessity of exercising
it except on petitions being presented
by the persons so detained.—

18. The Judges must further
remark that the case in No 22 on which
the Judge on Circuit dwells as a precisely
similar one to those of the Persons ordered
to be committed in Nos 3 and 17, is not
the least in point; in that, the Criminal
Judge immediately admitted that by some
error of a Gomashta he had remained
ignorant of one of the depositions, which
if he had seen, he should before have
committed the man. No inconsistency there-
fore is imputable to the Criminal Judge
for acquiescing in the order of committal
in that case, while he objected to it in the
two others.

Ordered, that extract of these
proceedings be sent to the Judges of the
Provincial Court in the Western Division
for their information and guidance; and
desiring them to communicate the same
to the Criminal Judge in the Zilla of Canara
for his information and guidance.

(Sent the following letters No 273 [illegible]

F. M.

28th October 1827. Read return, dated the 1st Instant,
from the Provincial Court of Circuit in
the Centre Division, to precept dated 21st
ultimo calling for reports prescribed by
Section XXXV Regulation X of 1816.—

(Here enter No 418)

Read letter dated the 1st Instant
from the 1st Judge on Circuit in the Western
Division reporting his commencement
of the Sessions at Calicut on the 1st Instant.

(Here enter No 418)

Read letter dated the 10th Instant,
from the 2d Judge on Circuit in the
Centre Division,— reporting the departure
of the Court of Circuit from Bellary
for Chinglepet on the 10th instant.—

(Here enter No 424)

Read letter, dated the 15th Instant,
from the Acting 1st Judge on Circuit in the
Southern Division, reporting the opening
of the 2d Sessions of 1827 at Salem on the
above date.—

(Here enter No 438)

Read letter, dated the 15th Instant,
from the 2d Judge on Circuit in the
Northern Division reporting the opening
of the Court of Circuit at Rajahmundry
on the above date.—

(Here enter No 438.)

Read letter, dated the 15th Instant

28. 28th October 1827. From the 3d Judge of the Provincial Court of Circuit in the Northern Division, in explanation of his opinions in a case of alleged alibi remarked upon in this Court's proceedings under date 25th September last.-

(Here enter No 439)

Read return, dated the 1st Instant, from the Judges of the Provincial Court of Circuit in the Northern Division, to precept dated 21st Ultimo calling for reports prescribed by Section XXXV Regulation X of 1810 for the 2d Quarter 1827.-

(Here enter No 420.)

F. 16.

At a Court of the Foujdaree Adalut,

Present,

Wednesday 7th November 1827 } F. A. Grant Esquire, First Puisne Judge
James Cochrane Esquire, Second Puisne Judge
William Oliver Esquire, Third Puisne Judge

Read letter dated the 23d Ulto from the 1st Judge on Circuit in the Western Division, submitting copy of communication made by him to the Criminal Judge and Principal Collector of Canara regarding petitions presented against certain Servants of their establishments with translation and copy of one of the petitions.-

(Here enter No 348)

Read letter, dated the 24th August last from the Criminal Judge in the Zilla of Canara complaining of improper interference on the part of the Judge on Circuit in matters concerning the integrity of the Zilla Court thereinstadar.-

(Here enter No 350)

Read also letter, dated the 20th Ultimo from the 1st Judge on Circuit in the Western Division with copies and translations of the petitions alluded to in his letter of the 23d August 1827, respecting certain Servants of the Court and Cutcherry at Mangalore.-

(Here enter No 403)

Read also letter from the 3d Judge on

on Circuit in the Western Division dated 5th ultimo submitting further returns from the Joint Magistrate and Criminal Judge of Cavára, and further petitions, respecting the charges of corruption and oppression against the Darogahs.-

/Here enter No. 433/

It appears from these Papers that Eleven petitions were presented to the Judge on Circuit charging the Sheristadar of the Zillah Court and the Deputy Sheristadar and Head Treasury Servant in the Collector's Cutcherry with bribery and illicit interference in suits and other matters in their respective offices by which they were enriching themselves and greatly oppressing many of the inhabitants: that the Judge on Circuit received these Petitions and answered each by an endorsement stating that copies had been sent to the Collector, and Magistrate, and Criminal Judge. but that the Petitioners must themselves present petitions to those authorities, to whom they were distinctly referred for redress; the proceedings were described which would be held under the Regulations, and the Petitioners warned of the punishment which awaited them if their complaints were found to be false and malicious. The Judge on Circuit transmitted the petitions to the Criminal Judge and the Collector and Magistrate, for their information with an Extract from his proceedings containing some remarks upon them, also a copy of the general endorsement. The Collector and Magistrate returned his thanks to the Judge on Circuit for this



his communication and expressed his intention to attend immediately to the subject of it; in pursuance of which he referred the petitions to his Sub Collector for examination under Regulation IX of 1822.-

2

The Criminal Judge complained of it to this Court as an irregular interference. There is no regulation empowering a Judge on Circuit to receive charges against the public servants of a Zillah Court or of a Collector and Magistrate; and his receiving the petitions in question against the Court servants, without proof that they had been first presented to the Court itself and not received, was inconsistent with Section XII Regulation XII of 1802 which is in force.- The Judge however cannot perceive any sufficient ground for the offence which the Criminal Judge appears to have taken or for the representation made by him to this Court under date the 7th August. It appears to the Judge that the communication from the Judge on Circuit is not in the tone of authority - and that, so far from having any tendency to draw away the confidence of the people from the local tribunals or diminish their respect for the local officers of Government, the proper intention and effect of the endorsement on the petitions must have been to uphold the credit of both and repulse any disposition in the Petitioners to look elsewhere for redress.-

On the 6th September, after he had

3

left the Station and opened another Sessions, the Judge on Circuit received by Tappall a petition

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from the wife of one of the persons who had been cited as a witness before the Sub Collector, complaining of harsh and illegal treatment of her husband by that officer. An extract of this petition be sent to the Magistrate on the 13th by a precept requiring such explanations as his subordinate might have to offer, also that the Magistrate himself would enquire and report upon certain points and call upon the Joint Magistrate for his original proceedings in the case in question.

4 This proceeding was irregular and indiscreet. The Judge on Circuit should have known that he had no authority to give an order in the case at all: the enquiry was one under Regulation 9 of 1822 and was being conducted, not by the Joint Magistrate but by the Sub Collector whose proceedings under that Regulation are not subject to the Cognizance of the Circuit Court. Even if the Judge in Circuit had the power, it would have been indiscreet to use it while the enquiry was going on, because it was a public expression of distrust in the officer who conducted the enquiry and was liable to weaken his hands in prosecuting it.

5 The Magistrate replied to the Precept by explaining that the proceedings were being held in the Revenue Department; and waving their exemption from the Judge on Circuit's cognizance, he stated that the petitioners husband had been committed to jail under Clause Second Section III Regulation IX of 1822, because, after admitting that

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that he had instigated the writing of several of the petitions and dictated their contents, which he had been informed were true, he persisted in refusing to give up the names of his informers. The Magistrate gave also further information as to the state and probable result of the proceedings.

6 The Judge considers this return of the Magistrate as proper a one as could have been made. He afforded information sufficient to have satisfied the Judge on Circuit as to the principal point of his enquiry; while, by avoiding to make an exact and full return to his demands, he meekly asserted the independence of his function as Collector.

7 The Judge on Circuit however did not consider so: he persisted in his demand — pronounced the return of the Magistrate irrelevant declared the imprisonment of the petitioner's husband illegal, inasmuch as he had offered abundant bail and the question was one tending to his own condemnation — and ordered that both he and any other person who might have been confined on account of the petitions presented to the Judge on Circuit should be immediately discharged and all further proceedings arrested pending a reference to this Court.

8 The Judges are deeply concerned to remark so many and serious errors, both in opinion and practice, in one single precept of a Circuit Judge of such high standing and long

husband was, not only legal, but obligatory said is inadmissible on such occasions — the question was material and indispensable to the case — and tended not to condemn the witness, but to clear him; for the answer would have shifted the responsibility for the truth of the accusation from him to his informers — the order to discharge the prisoner and arrest further proceedings, was beyond the Judge on Circuits power to give, or the Magistrates to obey! —

9 The return to the last precept was drawn by the Sub Collector and Joint Magistrate in charge, the principal collector and the Magistrate (it appears) having left the Station on leave. It contains a respectful but firm refusal to obey the Judge on Circuits precept; and enters into some further explanations of the proceedings with a view to satisfy him that they had been conducted with fairness towards the petitioner.

10 This return has the full approbation of the Foujdaree Adalut. With it the communications between the Judge on Circuit and the Collector and Magistrates department close.

11 The Judge on Circuit sent a copy of his precept addressed to the Magistrate on the 13th September and its accompaniment to the Criminal Judge for his information — by a precept to bail, unless he was charged with any crime expressly declared not to be bailable and also immediately to forward his proceedings in the case.

12 The Criminal Judge made return that

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that the person in question had not been delivered to his charge.—

13 The Judge on Circuit replied by a precept observing on the inconsistency of the Criminal Judge's return with that of the Magistrate and desiring the Criminal Judge to report specifically whether the person in question was in the Gillah Jail or not; and also to send a copy of the Warrant under which he or any other had been committed on account of the petitioner presented to the Judge on Circuit respecting the Court and Collectors public servants.—

14 The Criminal Judge in reply submitted that the Judge on Circuit, having concluded the Sessions and left the Station, before the person was committed, had no right to make such a requisition, even in a Criminal case; that being reserved to the Collective Court by Section XXIV Regulation X of 1810, still less in a civil case as the one in question was.—

15 The Judge on Circuit issued another precept confirming his former ones declaring the confinement of any person on account of the Petitioner illegal and commanding their release.—

16 The Criminal Judge in reply requested that the Judge on Circuit would point out the authority in the Regulations under which he commanded the release of a civil prisoner — and till that was done, declined

to

to obey the order:— and here the communications closed.—

17 The Judges approve, with one slight exception, the conduct of the Criminal Judge throughout these proceedings. His making return to the Judge on Circuit that the person enquired after had not been delivered to his charge, can hardly be considered correct; as the Jail of the Zillah (not only the Criminal Jail) is declared to be under his charge; and such a return respecting a Civil prisoner was liable to mislead: but it cannot be for an instant supposed that the Criminal Judge intended to misrepresent a fact.—

See: XXVII Reg: I of 1810.

18 The Judges are compelled to express their entire disapprobation of the conduct of the Judge on Circuit throughout these proceedings: his precepts betray confusedness of apprehension as to persons being in confinement on account of the petitions, as if they had been imprisoned for presenting those petitions; and that, after the real cause of the imprisonment of the only one who had really been committed to Jail had been explained— he no where (tho' respectfully requested) refers to any Regulation but merely reiterates the orders objected to as unwarranted, without either authority or explanation. This is an abuse of the power conferred by Section II Regulation XXII of 1802; under that Section whenever the Subordinate officer who receives the



the precept thinks it "unwarranted" by the Regulations and doubts its legality on other general grounds, he has a right to have the Regulation, which, in the opinion of the Superior, authorises it, pointed out to him and the principle upon which it is founded explained. The Criminal Judge has correctly understood and properly stated this point in his last return. The second precept it is true, must be implicitly obeyed: but this second precept is evidently intended to contain something more than a mere repetition of the first one, or it could have no chance of satisfying the inferior, which the words of Section II shew that it is designed to do.—

VI

19 It is a great mistake to suppose that Judges, or Collective Courts, of Circuit have a general power of controuling the Courts subordinate to them, as, for instance, the Board of Revenue has over Collectors, and Collectors over their Subordinates and Assistants. The subjects and occasions on which the Superior Court may issue orders to the inferior, as well as the nature of the orders which they are to issue, are for the most part defined; and tho' a Judge on Circuit must issue some orders, under his general powers as such, for which there is no express authority in the Regulations— yet, if the inferior Judicial Officer to whom those orders are addressed

addressed should doubt their legality in general grounds, he is at liberty to suspend obedience and request a reference agreeably to Section II Regulation XXII of 1802.-

20 With respect to the Petitions themselves - they contain charges against the Judge, the Sub Collector and Joint Magistrate, and the servants of the Court and Cutchery.-

21 With charges against the Sub Collector and his servants the Courts of Circuit and Foujdaree Adalut have nothing to do - Neither have Judges on Circuit any thing to do with charges against Magistrates or Joint Magistrates unless they arise out of cases contained in the Calendar delivered under Section XL Regulation IX of 1810.-

22 Charges of corruption against a Zillah Judge should be presented either to the Provincial Court or Sudr Adalut - Charges against the Law or Ministerial officers of the Court to the Judge or Judges of the Court - charges against district Moonsiffs to the Civil or Criminal Court of the Zillah - and charges of any kind against any person may be preferred by petition to the Governor in Council.- There are therefore sufficient means of making known corrupt and oppressive practices without of the official interference - Neither the Judge on Circuit nor the people of Canara can have forgotten that Mathapah and Potthapah were opposed and brought to punishment thro' petitions



petitions to the Court of which they were the principal servants, notwithstanding a nearly universal combination of the Natives in office to support them; and the influence of the Collector cannot well be greater than that of Mathapah and Potthapah was.-

23 The Judges see no ground for attaching credit to the charge in the petition of the Merchants and Ryots dated the 25th September against the Zillah Judge of Canara of suspecting his Shereestadar in corrupt practices in consideration of a loan of 10,000 Rupees from him: but as such conduct would be corruption in opposition to his oath of office, the petitioners have only to present the charge to the Provincial Court of Appeal in the regular manner, when that Court will no doubt proceed according to Section X Regulation IV of 1802 - as this Court will according to Section VIII Regulation V of 1802 if the petitioners choose to present their charge in the Court of Sudr Adalut - If the Zilla Judge will not receive the charges against the Ministerial officers of his Court, when regularly presented, the Provincial Court or Sudr Adalut will receive them under Section XII Regulation XII of 1802 on proof of his omission or refusal.-

24 Since closing the foregoing proceedings the following letters have been received and laid before the Court.-

Read letter dated the 15th Instant from

7th November, 1827. from the Criminal Judge in the Zillah of Canara questioning the propriety of the 1st Judges conduct in having sent to him to be delivered to the parties concerned 2 sealed letters being the Circuit Courts answer to their petitions.—

(Here enter No. 442)

Read letter dated the 25th ultimo, from the 1st Judge on Circuit in the Western Division,— forwarding original petitions with translations received from Cherada Vencapah and Kristnaya Shanbogue in the Zillah of Canara.—

(Here enter No. 458)

25 The Judges think that the Judge on Circuit's sending to the Criminal Judge to be delivered sealed answers to petitions was an unreasonable demand on the courtesy of the latter. The Criminal Judge was not the proper channel for such communications, and was under no obligation, to have them delivered.— The Court order that the two sealed packets be sent to the Provincial Court with these proceedings, to be returned to the First Judge.—

20 With regard to the petitions of Kristnaya Shanbogue and Cherada Venca-paya, transmitted in the letter dated the 25th October, the Court have only to refer to the 2nd paragraph of these proceedings

Ordered that Extract of these proceedings be sent to the Provincial Court in

J. H.

7th November 1827. in the Western Division for the information and guidance of the 1st Judge; and that they be directed to transmit a copy of paras 1, 2, 3, 11, to 25 inclusive for the information and guidance of the Criminal Judge of Canara.—

(Send following letter No. 293) J

List. E. M. H. H. 25

F. H.

At a Court of the Foujdaree Udalut

Present

Thursday 8th November 1827.

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

Read the following letter, dated 15th ultimo from the 1st Judge on Circuit in the Western Division relative to certain property claimed by the Prosecutrix in case No 5 additional Calendar Malabar 2d Sessions 1826.-

(Here enter No 5 bis)

1 It appears that certain persons were prosecuted at the 2d Sessions in Malabar for 1826 by one Mariana Widow for a theft of 3,000 Rupees and some ornaments from the house in which She lived with several of her children by one Charles Dempel, deceased, a German by birth, to whom She had not been married.-

2 The Judge on Circuit called for the will of Charles Dempel; by which all his property was left to his four sons by Mariana Widow, to be divided equally between them, or the survivors, when they came of age; with remainder to their Mother, and, after her, their Sisters and their issue; and the interest of all his cash and Bonds to be appropriated to the maintenance and education of the Mother and Children till the latter came of age.- Two dwelling houses and two gardens

gardens were left to the mother and four sons conjointly during the life of the former but without power to her to alienate, and with remainder to the sons and after them the daughter and their issue. The Mother was appointed guardian of the children and to live with them during their minority; on the ex parte ground that the Testator had no friend whom he could trust as guardian to his children or Executor of his will. The Judge on Circuit finding that this will had not been proved nor any Executors appointed in it, also that one of the sons, a lad above eighteen years of age had made a complaint on the same subject and did not appear to require in his Mother's right to manage the family property, directed the prosecution to be carried on by the Government Fiscal, the Prosecutrix and her eldest son to be admitted as witnesses - and the part of the stolen property recovered to be kept in deposit in the Court till the right of possession or management was decided.

3 The recovered property has remained in deposit ever since; and Mariana Sidowe petitioned the Judge over on Circuit for its restoration to her. The Judge on Circuit has referred the case; not feeling authorized to interfere with an order of his predecessor; and expresses his opinion that Mariana Sidowe is entitled to receive the amount recovered without reference to the will on the ground that the property was in her custody when



stolen; and also that Section XVI Regulation III of 1802 applies to the will, the Testator having been a German, and subject (with his heirs) to the jurisdiction of the Zillah Court.

4 The Judges think that if the right to receive the recovered property was disputed or otherwise doubtful, the mere custody of the property, when stolen, was not sufficient ground to restore it to the person who had the custody of it - because that custody might not have been lawful - or might have been temporary and have terminated. In such a case the Judge on Circuit, not being competent to decide on civil pleas, had no alternative but to order the amount to be kept in deposit till the disputed right to receive it was decided before the proper tribunals.

5 It was not requisite however for the heirs to take out a probate of the will. Clause Second Section XVI Regulation III of 1802 no doubt applies to the case, altho' no Executors were formally appointed; because it was evidently the Testator's intention that Mariana Sidowe herself should perform the office of Executor: and whoever of the family disputed her right to manage the property might have instituted the regular complaint against her provided for in that clause; the decision on

which

8th November 1827.

which would have settled to whom the recovered property should be made over.

The Judges think that the petitioner should be informed accordingly:

Ordered that Extract from the proceedings be sent to the 1st Judge on Circuit in the Western Division for his information.

(Sent following Letter No 284)

Sent. 11/11/27
Extd. 20

7th

III

IV

5

J. A.

At a Court of the Foujdaree Adalut.

Present.

Thursday, 15th November 1827. F. A. Grant Esqre, James Cochrane Esqre, William Oliver Esqre } Judges.

Read letter dated the 20th Ultimo from the 1st Judge on Circuit in the Western Division, explaining the grounds of his proceedings in respect to four prisoners tried by him in cases No 3 and 4 of the Cuttack Calendar, and case No 1 on the Honore Calendar.

(Here enter No 452)

The reasons assigned by Mr. Baber for exercising the powers vested in him by Clause Second Section X Regulation VI of 1827 in the cases of the four prisoners Unnapa, Narrapa, Doraja, and Narendra Busija appear to the Court to be altogether insufficient. In the circumstances stated by him there is nothing to shew that these persons are of characters so notoriously bad and dangerous as to render their release without substantial security evidently unsafe and improper, and in the Court's proceedings of the 3d Ultimo it was distinctly intimated to him that evidence

to

15th November 1827.

to this effect could alone warrant his exercise of the powers in question. If the principles, on which he professes to have acted, were generally adopted the consequences would be most strong and persons acquitted of the specific charge against them would often be subjected to as great or a greater punishment than would have followed their conviction. This is exemplified in the case of the prisoner Narandra Booya. The offence for which he was tried was a simple larceny, unattended with any circumstances of aggravation, and if he had been convicted his punishment would not have exceeded seven years imprisonment, while under the warrant issued by Mr. Baker, he is liable to imprisonment for an indefinite term, if he fails to give the security required, and he is little likely to furnish this security, as he appears to be a foreigner. The order respecting this prisoner is in another respect illegal, as it directs that he shall be imprisoned in Irons and kept to hard labor on the public roads or other public works" till he shall find the security required — Section XIII Regulation VI of 1827, under which alone Courts of Circuit have the power to order prisoners detained on requisition of security to

15th November 1827.

to be made to work in Irons does not give the power of ordering that work to be performed on the public roads, but leaves the execution of it to the discretion of the Criminal Judge and expressly provides that it shall be performed separately from Convicts.

2. It is a gross mistake to suppose, as Mr. Baker seems to have supposed, that suspicion of the specific offence charged, however strong that suspicion may be is of itself sufficient to justify the exercise of the powers granted by the Clause above mentioned. The very words of the Clause shew that a great deal more is requisite. It is true, indeed, that the conduct of a man in the commission of the specific offence, may, independantly of other circumstances, shew him to be of a dangerous or desperate character, but in the present instances there appears nothing to warrant such an inference.

3. The Court therefore direct that the 1st Judge be by precept commanded forthwith to recal and cancel the warrants issued by him in the case of these prisoners, and to issue other warrants under the provisions of Clause first Section X Regulation VI of 1827.—

Precept

5th November 1827.

Precept returnable within Seven days from and after its receipt.
(Sent following Precept No 293)

Read letter, dated the 2d Instant from the 2d Judge on Circuit in the Northern Division reporting his intention to proceed to Chicacole on the 2d Instant.

(Here enter No 470)

Read letter dated the 3d Instant from the first Judge on Circuit in the Western Division, Disclaiming any personal feeling towards the Zilla Criminal Judge of Cuttack during the late discussions.

(Here enter No 476)

Read letter dated the 2d Instant from the Second Judge on Circuit in the Northern Division, With Copy of Rajahmundry Calendars 2d Sessions 1827.

(Here enter No 480)

Read letter, dated the 12th Instant from the 2d Judge on Circuit in the Cuttack Division reporting the arrival of the Circuit Court at Chinglepat on the 11th & the commencement of the Sessions on the 12th Instant.

(Here enter No 484)

J. H.

At a Court of the Foujdaree Adalut

Present

Thursday 22d November 1827.

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

Read letter dated 15th June last from the 3d Judge on Circuit in the Southern Division, submitting case No 24 Combeconum Calendar 1st Sessions A.D. 1827.

(Here enter No 240)

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 so far as regards the prisoners No 1st 2d and 3d and under the sentence of Burkundauz declared in the said futwa adjudge the prisoners

1st Canapiel
2d Maroosen and
3d Moonoglea Moosen

to receive 20 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 10 years and then be released.

N.B. But concurring in opinion that the proof against the 5th prisoner is sufficient to convict him of the crime of Robbery do under the authority vested in them by Clause first Section III Regulation I of 1818, adjudge the said prisoner 5th

22d. November 1827.-

4th. Soobbun

to receive 20 stripes with a cattan 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 10 years and then be released.-

(Sent following letter No. 306.)

Read letter dated 6th. August last from the Second Judge late on Circuit in the Centre Division submitting case No. 23 Chingleput Calendar 1st. Session 1826.-

(See entry No. 315)

The 1st. 2d. and 3d. Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Justices of the Provincial Law Officer and the Justices of the Cazee adCogat and Mooftee of the Zillah dated confirm the said Justices of the Cazee adCogat and Mooftees aforesaid and acquitting the prisoner,

Soobboo Gaicken

direct that he be set at liberty.-

A. he (Sent following letter No. 307.

The offence charged against the prisoner is stated to have been committed on the 21st. February 1826; and the complaint was not preferred till the 17th. March. On his examination before the Court of Circuit the prosecutor pretends that the delay originated in his waiting for the Magistrate, he being unwilling to make his complaint to the Tahsildar, because he had twice before complained to that officer against the prisoner, when due enquiry was not made.- The reason which he assigns for his unwillingness to complain to the Tahsildar, even if it were

22d. November 1827.-

true, would afford a very insufficient explanation of this delay in making his complaint in this case; but he himself has furnished evidence of its falsehood in his agree to Mr. Drury, and in his examination by the Criminal Judge - on his own shewing the Tahsildar on previous occasions had not failed to do him justice; and in this he is confirmed by the evidence of his pet. before the Court of Circuit.-

The charge therefore was brought forward under circumstances which on the face of them justify a strong suspicion of its untruth, and the improbability and inconsistency of the prosecutor's statement are by no means calculated to diminish that suspicion - The Court, however, will spare themselves the trouble of going into a detailed examination of his evidence or that of his witnesses. The Judge, who presided at the trial, if the Court rightly understand him, considers the evidence for the prosecution and that for the defence to be nearly, if not quite, on an equality and the Court, after the most attentive consideration are of opinion that the evidence would not have warranted the requisition of security from the prisoner previously to his release, even if there had not existed such strong grounds to suspect that the charge is without foundation.-

Ordered, that Extract of this proceedings be sent to the 2d. Judge late on Circuit in the Centre Division for his information.

(Sent following letter No. 308.)

8th Nov.

22d November 1827.

Read letter dated 8th August last from the 2d Judge Cutcherry Circuit in the Centre Division submitting cases Nos. 7 and 20 Chingleput Calendar 1st Sessions 1820.

(Here enter No. 320)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held in cases Nos 7 and 20 before the Judge on Circuit the fouzdary of the Provincial Law Officer and the fouzdary of the Cazee of Cogat and Moofties of the Sungaum Adalut confirm the said fouzdary of the Cazee of Cogat and Moofties aforesaid and acquitting the prisoners

1st Jeroomala Naik (1st in No. 7 1st in No. 20)
2d Kistnamanaidoo and
3d Venkatasom } in No. 20

direct that they be set at liberty.

(Sent following letter No. 309.)

The offence charged against the prisoner Jeroomala Naik in case No. 7 is stated to have been committed on the 27th April 1825; and the complaint, according to the report of the Police officer, was not made till the 25th July. In case No. 21 of the Chingleput Calendar for the 2d Sessions of 1823 several other persons were tried for the same offence; and the 3d Judge, who presided at the trial, inserted the following remark in the Calendar.

"Though the prosecutor, who is stated to be a rich "weaver, and an agent to the proprietor of the Frontal "of Polumbaukum, and his several witnesses, among "whom, are the village Moonsiff, and Poligar or "Cavilgar of the village, state that they saw the prisoners

F. H.

22d November 1827. "prisoners on the night of the alleged robbery, they "never complained on the subject, nor took any steps "to seize the prisoners, and the 3d prisoner (Narayana "Naidoo) who lives close to them, never discontinued "his intercourse with them". It is manifest that little credit is due to a prosecution brought forward under these circumstances, which in fact, coupled with other facts disclosed in the 3d Judge's remarks in the Calendar go far not only to discredit in toto the evidence against the persons charged with the robbery, but to justify a suspicion that the alleged robbery never took place. The Court therefore would have had no difficulty in acquitting the prisoner Jeroomala Naik in this case, without reference to the evidence which he has produced to prove an alibi.

Case No. 20 appears under circumstances somewhat different, but still such as to warrant strong suspicion of the evidence for the prosecution, so far as it goes to criminate the prisoners as accomplices in the robbery charged. As the evidence of the two witnesses brought to prove the confession of the 1st prisoner before the Police officer cannot be the slightest doubt that he, the prisoner, had been grievously ill treated before the alleged confession was made. That confession must therefore be thrown out of consideration altogether. The evidence of the 2 witnesses appearing against the 1st prisoner before the Court of Circuit is in direct contradiction to that which he had previously given before the Criminal Judge in respect to the Tumbler No. 2 which is stated to have been discovered upon information given by the 1st prisoner; and therefore

22d November 1827.

on this point no reliance whatever can be placed upon his testimony.- The only remaining evidence against the 1st prisoner is that of the two prosecutors, and of the 3d and 4th witnesses, who swear that they saw him among the robbers.- The two prosecutors and the 4th witness say that they never saw him before, nor after, until he was taken into custody, which was upwards of five months subsequent to the robbery and notwithstanding the positive manner in which they swear, it is obviously impossible that they should be able to identify him with any certainty.- The 3d witness did know him before; but it would be dangerous on his testimony to convict the prisoner, who has brought strong though not quite satisfactory evidence to prove an alibi.-

The 1st prosecutor and the 3d witness would appear to have known the 2d prisoner before the robbery; but the 1st prosecutor in his evidence before the Court of Circuit does not distinctly state that he saw him among the robbers, although he no doubt meant it to be inferred that he did see him. In a case of this kind, however a matter of so much importance must not be taken upon inference; and against this prisoner there is nothing but the unsupported evidence of the 3d witness; for the evidence of the 4th witness is not intitled to any credit on account of his prevarication on this point.-

The proof against the 3d prisoner consists in the evidence of the 2d prosecutor who knew him before, and swears that he saw him among the robbers and 2dly of the evidence

22d November 1827.- of the 8th witness Subdar Roopain, who deposes that on information given by the 1st prosecutor he took the prisoner into custody, with a Tumbal which is sworn to belong to the said prosecutor.- The evidence of the 1st prosecutor and the 4th witness against this prisoner is open to the same objections as their evidence against the 2d prisoner. On behalf of the prisoner there is evidence to prove that he was at Pondicherry at the time of the robbery, and that the Tumbal belongs to him. A Tumbal is an article which can hardly be sworn to with any degree of certainty, unless, which is not pretended in the present case, it happens to bear some peculiar mark, and on this point the evidence on both sides appears equally worthless.- For obvious reasons no weight can be given to this prisoner's alleged confession before the Police officer, and the evidence against him, taken at the best is quite insufficient for his conviction.-

But if the evidence for the prosecution in this case, taken by itself, had appeared much more conclusive and satisfactory than it really does, a remark made by the 3d Judge in case No. 37 of the Calendar for the 2d Session of 1825, would have induced the Court to receive it with the greatest distrust.- From that remark it would appear that this robbery was in the first instance charged on the oath of the 1st prosecutor's brother against persons totally different from those included in that number, of whom the prisoner

prisoners in the present case are stated to be the accomplices - The inference clearly is that the perpetrators of the robbery were unknown at the time; and there is too much reason to believe that in this case as in many others that have come under the observation of the Court, the charge against the prisoners rests merely on vague suspicion, and that in undertaking to identify them as persons present with the gang the prosecutors and their witnesses have sworn to that, which, though it might be true, was not within their knowledge -

One of these trials was concluded on the 4th and the other on the 10th May 1826. They were not referred till the 8th August 1827; and neither the bulk of the record nor the nature of the cases affords the slightest shadow of an excuse for Mr Newnham's unreasonable delay in making the reference. The Court consider it proper to intimate to Mr Newnham that on a repetition of similar delay it will be their painful duty to bring his conduct to the notice of the Governor in Council

The Court take this opportunity of recalling Mr Newnham's attention to the communications made to him under date the 16th November 1824 the 2d July 1825 and the 12th January 1827. of the two last he has not thought proper to take any notice whatever; and it behoves him to give an explanation if he can, of his apparently contemptuous disregard of their orders, and also of his omission to transmit within a reasonable time, the reports prescribed by Section XXXVII Regulation VII of 1802 - The Judge's last





last mentioned is one, which the Court are bound however unwillingly to bring under the notice of the Governor in Council; and if Mr Newnham wishes to offer any explanation on this point, he will forward it so as to reach this office on or before the 15th proximo -

Ordered that a Extract of these proceedings be sent to the 2d Judge late on Circuit in the Centre Division for his information and guidance -

(Sent following letter No 310)

Read letter dated 3d August last from the 3d Judge late on Circuit in the Southern Division submitting case No 4 Salem Calendar 1st Sessions 1827 -

(Here enter No 314)

Read letter dated 29th August last from the Acting Criminal Judge in the Zillah of Salem reporting the death of a prisoner (Vella Tauden) in case No 4 Salem Calendar 1st Sessions 1827 -

(Here enter No 353)

Read letter dated 31st August last from the 3d Judge late on Circuit in the Southern Division reporting the death in jail of the prisoner Vella Tauden in case No 4 of the Salem Calendar 1st Sessions 1827 -

(Here enter No 356.)

Read letter dated the 10th Instant &c from the 1st Judge on Circuit in the Western Division with copies of Malabar Calendars for the 2d Sessions of 1827 -

(Here enter No 493.)

F. H.

At a Court of the Foujdaree Adaulut

Present

Saturday
24th November 1827. J. H. Grant Esqre 1st Puisne Judge
James Cochrane Esqr 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read letter dated 25th July last
from the 3d Judge late on Circuit in the Cuttack Divi-
sion submitting case No 10 Cuttack Calendar
1st Sessions 1827.

(Reg entered No 299)

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 and Cooft and
Mooftee of the Foujdaree Adaulut confirm the sentence
of the Cazee and Cooft and Mooftee aforesaid; and order
the sentence of Ekpsaar declared in the futwa to be
the prisoner

"Khadoo"

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

(Sends following letter No 311.)

Read letter dated 10th August last
from the 2d Judge of the Court of Circuit in the Cen-
tre Division submitting case No 5 Chittoor Calen-
dar 1st quarterly Sessions 1827.-

(Reg entered No 324)

The 1st 2d and 3d Puisne Judges
having maturely considered the proceedings held
before the Judge on Circuit the futwa of the Provin-
cial Law Officer and the futwa of the Cazee and
Cooft

Cogat and Mostles of the Soujdaree Adaulut concur in opinion that the proof against the prisoners 1st and 2d is sufficient to convict them of the crime of Robbery by open violence and under the provisions of clause first Section II Regulation I of 1818 adjudge the said prisoners,

1st Kaulatteegadoo and

2d Veeramdotee

to receive 20 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 10 years and then be released.—

(Sent following letter No. 312.)

Read letter dated 28th August last from the 1st Judge late on Circuit in the Northern Division submitting case No. 7 Nellore Calendar 1st Sessions 1827.—

(Here enter No. 343)

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 of Cogat and Mostles of the Soujdaree Adaulut confirm the said futwa of the Cazee of Cogat and Mostles aforesaid so far as against the prisoner,

2d Domdee Vaiadoo

and direct that he be set at liberty.

But being of opinion that strong suspicion attaches to the 1st prisoner of Gang robbery and wounding, direct that the said prisoner



prisoner,

1st Conchala Mootegalon

be released on producing 2 sureties in the sum of 50 Rupees each, for his good behaviour and appearance when required, for two years and in default of finding such sureties, that he be detained in prison for two years and then be released.—

(Sent following letter No. 313.)

At a Court of the Vujdarees Stated

Present

Wednesday 25th November, 1827. } J. A. Grant Esqre. James Cochrane Esqre. William Oliver Esqre. } Judges.

Read letter dated 20th July last from the Provincial Court in the Western Division, submitting correspondence with the Criminal Judge of Canara regarding a case of commitment by the acting Joint Magistrate of Canara.

/Here enter p. 302/

It appears from the papers submitted to the Court that on the 20th May last the Acting Joint Magistrate of Canara, on the report of the Tahsildar of Ankola issued orders to him to punish a certain individual for two assaults, by fining him; the fine not being paid, the Tahsildar (or head of District Police) sent the man up to the Joint Magistrate who committed him to prison for 5 days only, taking into consideration that the offender had undergone a long journey. The prison to which he was sent was the Jail of the Zillah of Canara the offence having been committed at a place within the jurisdiction of the Auciliary Court and the offence specified in the warrant of commitment was

was "knocking down the wall and cutting
28th November 1827. a tree from the prosecutor's compound.

2. The Criminal Judge on receiving the prisoner, and looking at the warrant of commitment, entertained a doubt of its legality, and accordingly made a reference on the subject to the Provincial Court. It does not appear very distinctly in this letter that he looked upon the sentence passed by the Acting Joint Magistrate as illegal, the sending the prisoner to the Zillah Jail, instead of the Jail of the Auxiliary Court, is the proceeding which he chiefly noticed, but it would appear that the Provincial Court supposed he commented upon both at least they take both into their consideration.

3. After requiring the Acting Joint Magistrate to state his reason for sending prisoner to the Zillah Jail, which he does in a manner satisfactory the Provincial Court wrote to the Criminal Judge to censure his conduct as an unlawful exercise of authority to control the acts of the Joint Magistrate and stated that in their opinion the order passed by the Joint Magistrate was in strict conformity with the provisions of clause second Section IV Regulation II of 1824.

4. The Criminal Judge then submits to the Provincial Court that their censure is unmerited and begs the matter may be

be referred for the consideration of the
28th November 1827. Sudder Court.

5. The Judges are of opinion that the reference made by the Criminal Judge of Canara to the Provincial Court was in every respect conformable to the instructions which he alludes to, under date the 7th February 1820. that it cannot with any fairness be viewed as an assumption of authority and therefore that the censure passed upon him by the Provincial Court was not merited. It only remains for the Judges to observe first that the Joint Magistrate overstepped the bounds of his authority when he issued orders to the Head of District Police to inflict a more severe punishment for an assault than a Head of District Police can inflict under the Regulations - and secondly that the Provincial Court, on referring to the clause they have quoted in support of their affirmation that the proceedings of the Acting Joint Magistrate were legal will find that it has reference solely to cases of "petty theft not attended with aggravating circumstances nor committed by persons of notoriously bad character." and that it does not contain any thing to warrant the construction they have put upon it; a construction which has already been condemned as unwarranted in the

Extract

Extract from Minutes of Consultation of the
28th November 1827. 2d January 1824, which was sent to the 4
Courts with the Tanjore Vakeels circular
of the 30th January 1824.

Ordered, that extract of these
proceedings be sent to the Western Provincial
Court for the information of that Court
and of the Criminal Judge of Canara.

Ltr. 2th Cir
Extd. 20. W. (Sent following letter No 315

Read letter, dated the 15th Instant,
from the Acting 1st Judge on Circuit in the
Southern Division, reporting that he has
opened the Circuit Court at Coimbatoor on
the 15th instant for holding the 2d Sessions
and Jail Delivery for 1827.-

(Here enter No 492)

Read letter dated the 20th Instant,
from the 2d Judge on Circuit in the Northern
Division, reporting the opening of the Sessions
of Jail Delivery at Chicacole on the 21st Instant.

(Here enter No 506.)

Read return, dated the 23d Instant,
from the 1st Judge on Circuit in the Western
Division, to precept dated 15th Instant
requiring him to cancel his warrants in
cases Nos 3 & 17 Canara Calendar and
Honore Calendar 2d Sessions 1827.-

(Here enter No 509)

F. U.

At a Court of the Tanjore Adalut.
Present.

Tuesday 4th December, 1827. F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

2th U
20

Read letter, dated the 6th October
last from the 1st Judge late on Circuit
in the Northern Division, submitting
case No 12 Nellore Calendar 1st Sessions 1827

(Here enter No 427)

The 1st 2d and 3d Puisne Judges
having maturely considered the proceedings
held before the Judge on Circuit the finding
of the Provincial Law Officer and the finding
of the Cazee ool Coozat and Moofties of
the Tanjore Adalut confirm the said
finding of the Cazee ool Coozat and Moofties
aforesaid and acquitting the prisoner,
"Mullala Suchmegadoo, alias Badegadoo,"
direct that he be set at liberty.-

2th U
20 Ltr. W. (Sent following letter No 319

J. H.

At a Court of the Foujdaree Adalut

Present

Friday
7th December 1827. J. A. Grant Esqre 1st Puisne Judge

James Cochrane Esqre 2d Puisne Judge

William Rees Esqre 3d Puisne Judge

Read letter dated 10th July last from the 3d Judge late in Circuit in the Southern Division submitting case No 35 Comberconum Calingan 1st September 1827.

(Reg entry No 284)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge in Circuit the futwa of the Provincial Law Officers and the futwa of the Cazee ool Cozat and Mooftee of the Foujdaree Adawlut confirm the said futwa of the Cazee ool Cozat and Mooftees aforesaid and under the sentence of the Court declared in the futwah, do in conformity to clause second and fifth Section IV Regulation XV of 1803 adjudge the prisoners.

1st Poonen "
2d "Chinnamootoo Cattan"
3d "Vummayapen
4th "Pulle Tolun" and
5th "Motaen"

to be imprisoned for life, and do further, under clause third Section VIII Regulation XV of 1803, adjudge the said prisoners to be banished during

7th Decr 1827.

during the period of their sentences from the districts in which their places of abode are situated; and to be kept to hard labor on the publice roads or other public works, in the Zilla of Masulipatam.

(Sent following letter No 324.)

Read letter dated 28th August last from the 3d Judge of the Court of Circuit in the Northern Division submitting case No 1 Masulipatam Calendar 2d quarterly Sessions 1827.

(Here enter No 303)

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 ul Cozat and Mooftees of the Sumpaunee Adalut confirm the said futwa of the Cazee ul Cozat and Mooftees aforesaid, and acquitting the prisoner Chellen Kala Sroniah direct that he be set at liberty.

(Sent following letter No 325.)

Read letter dated 12th October last from the 1st Judge late on Circuit in the Northern Division submitting case No 9 Chicacole Calendar 1st Sessions 1827.

(Here enter No 429)

The 1st 2d and 3d Puisne Judges on deliberate consideration of the circumstances of the case the evidence before them concur in opinion

7th Decr 1827.

opinion that the proof against the prisoner Goommadoboony Jagadoo is sufficient to convict him of the crime of murder and under the authority with which they are vested by clause first Section II Regulation I of 1818 do convict the said prisoner and sentence him to receive 20 Stripes with a rattan and to be transported to such place beyond sea as the Governor in Council shall appoint, there to be imprisoned and kept to hard labor in irons on the publice roads or other publice works for and during the period of his natural life.

(Sent following letter No 326)

25.

At a Court of the Tongidares Ordalat

Monday 11th December 1827.

Present.

J. A. Grant Esqre. 1st Puisne Judge

James Cochrane Esqre. 2d Puisne Judge

William Oliver Esqre. 3d Puisne Judge

Read letter dated 6th July last from the 1st Judge of the Provincial Court of Circuit in the Centre Division submitting case No 6 Chittoor Calendar 2d quarterly Session 1827 and stating that the report and other papers from the Talook had not been received translated from the Criminal Judge.

(See enter No 275.)

The Judges are of opinion that the conviction of certain prisoners in this case depends greatly upon the circumstances which led to, & accompanied their apprehension, which circumstances do not clearly appear on the record in its present state.

Ordered, therefore that the 1st Judge of the Provincial Court of Circuit for the Centre Division be by precept commanded to call for and send up translations of the Police Proceedings in this case without delay.

(Sent following precept No 327.)

Read

10th December 1827.

Read letter, dated 30th November last, from the 3d Judge of the Provincial Court in the Centre Division, with its enclosures, soliciting the instructions of the Court with regard to the disposal of the prisoner James Clifton Calender 4th Quarterly Sessions 1827.

(Here enter No. 514.

The prisoner is charged under Clause first Section II Regulation III of 1827 with wilful and corrupt perjury, in giving two contrary depositions on oath on a matter of fact material to the issue of a judicial proceeding. But the Court of Bundarees Adawlut are of opinion that the contradiction between the two depositions given by the prisoner is not direct and positive, which it ought to be to warrant a commitment under the enactment above mentioned. They therefore direct that the 3d Judge be by precept required to cause the prisoner to be immediately discharged from the bar.

Ordered that extract of these proceedings be sent to the 3d Judge of the Provincial Court of Circuit in the Centre Division by precept returnable without delay.

(Vide following Precept No. 328.)

10th December 1827.

Read letter dated 27th Ultimo from the 2d Judge on Circuit in the Northern Division reporting his intention to quit Chicacole on the 27th November.

(Here enter No. 518.)

Read letter dated 5th Instant from the 2d Judge on Circuit in the Centre Division, in explanation of certain delay in sending up Criminal Trials referrible to the Foujdaree Adawlut.

(Here enter No. 521.)

J. C.

At a Court of the Zoujdaree Udalut

Thursday, Present

13th December, 1827 J. A. Grant Esqre 1st Puisne Judge

James Cochrane Esqre 2d Puisne Judge

Wm River Esqre 3d Puisne Judge

Read letter dated 10th August last from the 1st Judge of the Court of Circuit in the Division, submitting case No 5 Chittoor 2d quarterly Sessions 1827.

(Here enter No 317)

The Court called for the proceedings in this case because the grounds which the 1st Judge had assigned for not considering the 1st prisoner convicted of the crime laid to his charge appeared to them hardly reconcileable with the abstract of the evidence contained in the Calendar.

In this case there is the clearest proof that the 1st prisoner on being taken into custody on suspicion denied the theft; that he afterwards delivered up a purse containing pearls, which he pretended had been thrown near his bullock-stall; and that subsequently, having been examined by the Police officer at Arnee, he produced a further quantity of pearls from the roof of his house. The plea that he found the property, if it had been substantiated

substantiated would have been of no avail to him; for his dividing the pearl into separate parcels, his secreting them, and his non-delivery in the first instance of the whole, which was obviously an actual stealing of the portion with him, could leave no rational doubt of his felonious intention; and the prisoner ought clearly to have been convicted.

The Court too have little doubt that if the case had been properly investigated, evidence would have been discovered to convict the other prisoners; but it would be useless to enter further into the matter

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

(Sent following letter No. 335.)

Read petition presented by Barrain Moodely of the Gillat of Chingleput.

(Stamp under Div. Pet: No. 12 of 1827)

The Petitioner states that a Moodiy having with others, fired his straw of thatch, he complained to the Tahsildar, who being bribed by the said Moodiy neglected his complaints - whereupon he complained to the Collector, who ordered the Tahsildar to make enquiry, which the latter still neglected to do - whereupon he complained to the Criminal Judge, who referred him to the Collector whereupon his brother complained to the Judge on Circuit, in May

13th December 1827. May 1826, who has yet passed no order.

The Court resolve the Judge who received the petition being now on Circuit) that the Provincial Court be by precept commanded to ascertain and certify to this Court whether any and what proceedings were held by the 2d Judge when on Circuit in May 1826 on the petition presented by Ponga Sawy on the 8th of that Month.

(Sent following precept No. 336.)

Read letter dated 14th August last from the 3d Judge of the Court of Circuit in the Northern Division submitting case No. 4 Masulipatam Calendar 2d Quarterly Sessions 1827.

(Here enter No. 302)

The 1st 2d and 3d Puisne Judges having maturely considered the proceedings held before the Judge on Circuit the Justices of the Provincial Court Officers and the Justices of the Cazee ool Cozaat and Mosulmen of the Tribunal do not confirm the said sentence of the Cazee ool Cozaat and Mosulmen aforesaid and under the provisions of Section X. Regulation VIII of 1802 adjudge the prisoner

"Pasupulaytee Chena Bauspaniah"

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

(Sent following letter No. 337.)

Read petition presented by Putcha, brother of Bamaiah, prisoner in case No. 3 Chingleput Calendar

Calendar 2d. Sessions 1827. praying that her daughter may be directed to be released.

(See entry Mis: pet: No 2 of 1827)

Ordered, that the Petitioner be informed that her daughter has been released.

Friday 14th December 1827.

Present

J. A. Grant Esqre. 1st. Puisne Judge

James Cochrane Esqre. 2d. Puisne Judge

William Oliver Esqre. 3d. Puisne Judge

Read letter dated 31st. October last from the 2d. Judge on Circuit in the Centre Division submitting a copy of the Bellary Calendar for the 2d. Sessions of 1827.

(See entry No. 461.)

On inspection of this Calendar the Court perceive that in several of the cases the dates are quite irreconcileable. — Thus, in No. 6, the date of the Commission of the crime is November 30th 1826, the date of the charge, December 15th 1820, and the date of apprehension November 15th 1825. In No. 7 the date of the offence is June 17th 1826, that of the charge March 4th 1827. and the date of apprehension January 27th 1827. — in No. 8 the date of the charge is February 25th 1827. and that of apprehension February 17th 1827; in this number moreover no trial took place, yet the dates of the commencement and close of the trial are the same as in No. 7 and 10 the date of charge before the authorities is not entered. and in No. 10 it appears from the Jailor's that prisoner acknowledged before the Court of Circuit to have given a declaration dated

dated February 15th 1827 before the Assistant Criminal Judge, while the date set down for the charge preferred in the Criminal Court is March 21st 1827. — in No. 13, the date of the charge is February 25th 1827; while that of apprehension is February the 18th 1827 — Moreover the date of the offence is December 26th 1824 and no reason is assigned for the long delay in making the complaint. — in No. 14 the date of the offence is December 20th 1824, that of the charge February 25th 1827 and that of apprehension February 18th 1827. — in No. 16 the date of the offence is April 28th 1827, that of the charge March 9th 1827 — in No. 17 the date of the offence is April 27th 1827 that of the charge March 9th 1827 — in No. 18 the date of the charge is May 21st 1827 — that of the apprehension April 27th 1827 — in No. 19 the date of preferring the charge before the Police authorities is not entered.

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It is very possible that these discrepancies admit of being reconciled, and some of them probably are attributable to clerical errors; but it is manifest that the Calendar should not have been sent up in a state so faulty and defective.

Ordered, that Extract of these proceedings be sent to the 2nd Judge in Circuit in the Centre Division, who will submit the explanation required

14th Decr 1827

required by the Court with as little delay as possible.

(Sent following precept No. 339.)

Read letter, dated the 21st July last from the 3rd Judge late on Circuit in the Southern Division, submitting case No. 13 Calendar 1st Sessions 1827.

(Sent Entry No. 294.)

The 1st 2nd and 3rd Puisne Judges on a deliberate consideration of the circumstances of the case in evidence before them concurring in opinion that the proof against the prisoner "Shaik Emaun" is sufficient to convict him of the crime of Culpable homicide, do under the authority with which they are vested by Clause first Section II Regulation I of 1818 convict the said prisoner of the crime aforesaid, and in conformity with the provisions of clause second of the said Section do hereby require their Law Officers to declare by a second petition to what specific punishment the prisoner would have been liable under the Mahomedan Law if he had been convicted by full legal evidence of the crime aforesaid.

Ordered that Extract of these proceedings be translated and delivered to the Cazee and Mooftee of the Tribunal.

Read letter dated 17th October [illegible] from

14th Dec. 1827.

from the 1st Judge late on Circuit in the Northern Division submitting case No. 5 Chicacole Calendar 1st Sessions 1827.-

(How entered No. 428)

The 1st 2d and 3d Puisne Judges on a deliberate consideration of the circumstances of the case in evidence before them, concurring in opinion that the proof against the prisoner

"Adapak Coomanak"

is sufficient to convict him of the crime of wounding, do under the provisions of Section II Regulation I of 1808 require their Law Officers to declare by a second fatwa to what sentence the prisoner would have been liable under the Mohumedan Law if he had been convicted by full legal evidence.-

Ordered, that Extracts of these proceedings be translated and delivered to the Legal Cogat and Shroffee of the Foujdaree Adalut.

J. H.

At a Court of the Foujdaree Adalut

Present

Wednesday 17th December 1827.- J. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read letters dated respectively the 21st May, 17th and 20th September, 13th and 15th October last, from the 1st Judge of the Court of Circuit in the Centre Division, submitting case Nos. 9, 10, 11, 12 and 13 Chittoor Calendar 2d Quarterly Sessions 1827.-

(How entered No. 212, 395, 404, 425 and 430)

The 1st Judge in his remarks upon case No. 9 of the Calendar intimated his intention to submit the proceedings of the Court of Circuit in that case for the information of the Foujdaree Adalut; and the Court seeing reason to apprehend that there had been irregularity in the proceedings both of the Magistrate and of the Criminal Judge in that case and also in cases Nos. 10, 11, 12 and 13 directed that a copy of the record of all those cases should be transmitted to them.-

2 The cases were all commitments for perjury under the provisions of Regulation III

14th Dec 1827.

from the 1st Judge late on Circuit in the Northern Division, submitting case No 8 Chicacole Calendar 1st Sessions 1827.

(Seen entered No 428)

The 1st 2d and 3d Puisne Judges on a deliberate consideration of the circumstances of the case in evidence before them, concurring in opinion that the proof against the prisoner

"Adapak Coomanak"

is sufficient to convict him of the crime of wounding, do under the provisions of Section II Regulation I of 1808 require their Law Officers to declare by a second futwa to what sentence the prisoner would have been liable under the Mahomedan Law if he had been convicted by full legal evidence.

Ordered, that Extracts of these proceedings be translated and delivered to the Cojee vol Cogat and Mooftees of the Foujdaree Adalut.

Fo. 11.

At a Court of the Foujdaree Adalut

Present

Monday 17th December 1827.

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

Read letters dated respectively the 21st May, 17th and 25th September, 13th and 15th October last, from the 1st Judge of the Court of Circuit in the Central Division, submitting cases Nos 9, 10, 11, 12, and 13 Chittoor Calendar 2d Quarterly Sessions 1827.

(Seen entered Nos 212, 395, 404, 425 and 430)

The 1st Judge in his remarks upon case No 9 of the Calendar intimated his intention to submit the proceedings of the Court of Circuit in that case for the information of the Foujdaree Adalut, and the Court seeing reason to apprehend that there had been irregularity in the proceedings both of the Magistrate and of the Criminal Judge in that case and also in cases Nos 10, 11, 12 and 13 directed that a copy of the record of all those cases should be transmitted to them.

2 The cases were all commitments for perjury under the provisions of Regulation III of

of 1820 for contradictory depositions in a case wherein Seekaram, Chengadoo and others were charged with the murder of one Tutha Sookaroyda, Son of the prosecutor Veellaammah

3 In case No 9 the charge against the prisoner Appavoo was in substance that on being examined by the Magistrate he deposed that on a certain occasion he heard a great noise at the distance of 30 Fathoms from the place where he was; that on his calling out "who are there?" the persons threatened him saying "Chey! go away" and that the voice he heard resembled Chengadoo's, one of the prisoners; and that afterwards on another occasion he over heard a conversation between one Singiachar-loo and his brother-in-law in which Singiachar-loo stated that a certain procession was made on account of the Saivanatha feast, and on account of one Tutha Sookaroyda having been put to death; whereas on his examination by the Criminal Judge he deposed that hearing a noise near the house of Veeda Siddoyan he called and asked Siddoyan what occasioned the noise, and he answered "it is nothing"; and that he did not hear the sound of the voice of any of the prisoners; and, in respect to the alleged conversation between Singiachar-loo

(and



and his brother-in-law he did not hear the said Singiachar-loo say that the procession was held on account of Cannsala Sookaroyda having been caused to be put to death by the Gentlemen Gumandar.

4 On reference to the prisoner's deposition as a witness before the Magistrate it must be observed that in the first instance he did not mention that the voice he heard was that of Chengadoo. That was extracted from him by a question most improperly framed and put to him by the Magistrate, which directly suggested the answer; viz "Do you have heard the voice of the person who threatened you saying "Fy the off" Look at Chengadoo now present "Is the same person?" The question clearly should have been whether he knew the voice of the person who threatened him.

If the time and place of the noise appeared to correspond with the time and place of the alleged murder there can be no doubt that the fact deposed to by the prisoner was material to the issue of the charge but looking to the manner in which this part of his evidence was extracted from him, it is quite clear that his contradiction of himself

on

on this point ought not to have formed the ground of his commitment for perjury.

In respect to the alleged conversation between Singia chalo and his brother-in-law it is impossible to understand how that could be a matter relative to the issue of the charge under investigation.

In case No 10 the prisoner Aru. Poopillay was committed on the grounds of his contradictory depositions relative to a disclosure alleged to have been made to him by Ristnadoo, who appears to have been one of those brought up on the charge of murdering Sootaroydoo. According to his deposition before the Magistrate the said Ristnadoo made to him a disclosure, respecting the circumstances which led to the murder, but before the Criminal Judge he denied that Ristnadoo had ever made to him such a disclosure. It certainly would appear that this fact deposed to was material to the issue of the case inasmuch as it went to shew a Ristnadoo's knowledge of the murder, if it did not implicate him as an accessary to it, and the contradiction, no doubt, was direct and positive, but from circumstances which will hereafter be noticed, the corrupt intention of the witness seems very questionable.

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The charge against the prisoner Chinnapien in case No 11 is founded on a complete misconception of his deposition before the Magistrate, if that deposition is correctly recorded. He did not tell the Magistrate that on the occasion referred to he heard the voice of Teckanam and of Chengaliya Pillay but only said, in answer to a question by the Magistrate referring to the contents of his deposition before the Police Officer, that he had caused it to be so written in that deposition.

Nothing can be more groundless than the charge against Pullee Mootten, the prisoner in case No 12. Before the Magis. trate he deposed that one Goroovum, Talian of Teelagarum came and told Chengaliya Pillay that a person was lying dead murdered; and that Chingaliya Pillay answered him "go away". Before the Criminal Judge he deposed that the Talian informed Chengaliya pillay that the people of the village were saying that a dead body was lying in the road; and that Chingaliya pillay made no answer. It is utterly impossible that it could be material whether the Talian made the deposition on his own knowledge or on information received from

from the village; or whether [illegible] did or did not make an answer - Neither is the contradiction direct and positive, nor is there the slightest ground to presume a corrupt intention. The commitment of this prisoner was preposterous in the extreme -

The commitment of the prisoner Sefany Mootien in case No 13 was scarcely less preposterous. Before the Assistant Magistrate he deposed that on Tuesday Khan mentioned to him and others that a corpse was lying in the Jungle, and that some body had cut him down, and that he and his companions in answer stated that they never intermeddled in such matters. Before the Criminal Judge he deposed that "he neither observed the corpse, nor heard any body say any thing upon the subject"

It appears then that of these five commitments four were manifestly improper, and it cannot escape observation that some of them betray a most extraordinary misapprehension on the part of the Criminal Judge, of the nature & embracery of the requisites for warranting a prosecution for perjury under Regulation III of 1820 - He seems to have considered either that every fact deposed to by a witness was material, or that the materiality of the fact was of no consequence



19th Dec. 1827

consequence, as that the witness contradicted himself upon it - It is impossible otherwise to account for some of these commitments -

In respect to Bhoopillay the prisoner in case No 10, it certainly would appear that there were good prima facie grounds for his commitment; but the Court think his acquittal was proper because there is reason to doubt the correctness of his intention - If his deposition before the Magistrate was not wilful and deliberate it cannot be pretended that a corrupt intention is fairly imputable to him - Now it appears in evidence that this witness with several others was kept in confinement for several days before he was brought up for examination before the Magistrate - It is very possible that under the circumstances it was expedient & perhaps necessary to place his person under restraint in order to prevent his being tampered with by the party accused; but the mischief is that this measure, while it prevented one evil, opened the door to another, for being confined longer than it ought to have been, it left him exposed to improper influence on the other side - It matters little however, whether any direct attempts were or were not made during his confinement to bias him in the testimony which he was to give to the Magistrate; he had already committed himself on his examination before

19th Dec 1827.

before the Police Officers; and the evidence which appears in these cases affords too much reason to suspect that unwarrantable means were taken to procure testimony tending to implicate particular persons as parties concerned in the murder. Under these circumstances his protracted confinement was calculated to impress his mind with the belief that his liberty depended upon his confirming the evidence he had previously given; and it is impossible to estimate the extent to which fear and apprehension might have influenced his deposition before the Magistrate. It is expressly provided by Regulation III of 1820 that there must be clear and satisfactory proof that the two contradictory depositions were wilfully and deliberately given; but in this case the evidence bears neither way, so far as regards the deposition before the Magistrate. The result would of course, have been different, if there had been evidence upon which to ground a presumption of the truth of that deposition, because that would have repelled the presumption, which upon the whole circumstances seems to be warranted, that the evidence on that occasion was influenced by a motive other than that of a wilful and deliberate design to deceive as to the matter of fact.—

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19th Dec 1827. 13

The Court by a Circular order dated the 23d November 1820 prescribed the form of indictment to be used in all prosecutions for perjury under this Regulation; but in all these cases Mr Brook has thought proper to deviate from this form,— thus giving another instance of his inattention to the instructions conveyed to him. The examination of the Government Pleader in all these cases was perfectly superfluous; and several of the questions put to him seem intended to elicit from him information, which Mr Brown could have found in reference to the indictment drawn up by the Criminal Judge, or to the proceedings lying before him.—

Ordered that a transcript of these proceedings be sent to the 1st Judge or Circuit in the Centre Division, and that he be by precept required to transmit copy thereof, except the last paragraph, for the information and guidance of the Criminal Judge of Chittoor.—

Sent following precept No 344.

S. St.

At a Court of the Supreme Court held at

Sitting

Present

Friday 21st December 1827 — J. A. Grant Esqre. 1st Puisne Judge
James Cochrane Esqre. 2d Puisne Judge
William Oliver Esqre. 3d Puisne Judge

Read letter dated 22d June last from the 1st Judge of the Court of Circuit on the Centre Division, Submitting Case No. 10 Chittoor Calendar 2d quarterly Sessions 1827.

(Vide entry No. 254)

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 Zillah Court confirm such part of the said futwa of the Cazee ool Cozat and Mooftee aforesaid as acquits the prisoners,

1st Comara Ramdo
2d Venkatasadoo and
3d Comara Apparoo

and direct that they be set at liberty. And concurring in opinion that the prisoner,

4th Gulla Pottygadoo"

is not convicted on presumptive proof or on the evidence of credible witnesses or on his own confession, notwithstanding the futwa of

of their Law Officers, do accordingly under the provisions of Clause Sixth Section II Regulation XV of 1810 direct that the prisoner,

1st Golla Pottygaroo

aforesaid be set at liberty.—

(Court following letter No 348.)

1

After the most attentive consideration it has appeared to the Court that the evidence in this Case is insufficient for the conviction of the prisoners or either of them.—

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The evidence of the 1st and 2d witnesses before the Court of Circuit proves that the deceased Condama Naid was called from a field, in which he was engaged in sowing, by the 3d Prisoner, and the 2d witness says that the 3d Prisoner told Condama Naid that the 1st prisoner wanted him. The 3d witness says that about half a glurry before sun set he saw the 1st prisoner and Condama Naid walking together along the road leading to Mamm Kaukum; that he asked Condama Naid whither he was going, and he said he was going to Chertany to attak in hearing. The 4th witness says that about a glurry and half before sun set he saw the 1st prisoner and a person unknown going to the eastward through the street of his village Saventee pooroom; that on the next morning he saw the prisoner returning westward alone; that he asked whither he had been, and the 1st prisoner told him that he had been to Chertany



Chertany; and that on asking why he was returning alone without his companion whom he had seen with him the day before the 1st prisoner said to both him the day before he went in company with one Condama Naid. The 5th witness says that on Tuesday she went to the 1st prisoners house for some grain due to her; that on asking for him she was told that he had gone to some other place; that on her return she met him on the road coming from the eastward; that he asked her where she had been, and she told him; that upon this the 1st prisoner said that as he was going to Chertany in company with Condama Naid he had been to her house and told her boys that he would on his return give the grain due to her; and he asked why she went again to his house and he further said that Condama Naidoo had gone to some of his debtors and would return either that night or the following morning.—

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This is the only circumstantial evidence elicited on the trial against the prisoners; and the evidence before the Criminal Judge was hardly more satisfactory. It amounts to no more than this that the 1st prisoner about the time of the murder was seen going with the deceased towards Chertany, and that the 1st prisoner returned the next morning alone, saying that he had been at Chertany and had left the deceased

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deceased there, collecting a debt. Now the deceased is stated in Notes to have told the 3d witness that he was going to Chintang on business; and for all that appears to the contrary the 1st prisoner's statement as to his having left him there may be perfectly true. It is to be observed also that the 2d witness Chinganak, in his examination before the Criminal Judge stated that he heard the people of the province cutcherie say that Cindama had proceeded to Chintang to collect a balance; though he was not asked nor did he specify the time when he was told this. If it had been ascertained that in point of fact the deceased and the 1st prisoner had not been seen at Chintang, or that having been there they had left it together, the falsehood of the 1st prisoner's representation in his return alone might have warranted the strongest suspicion against him. But neither the Criminal Judge nor the Judge in Circuit appear to have seen the importance of this fact, without which the circumstantial evidence against this prisoner is utterly worthless. Against the 2d and 4th prisoners there is not the slightest circumstantial evidence of any sort; and all that appears against the 3d is that he called the deceased away from his field.

The 1st and 3d prisoners were subjected to two examinations by the Police Officers

the

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21st December 1867. The 1st prisoner was on the 31st January and the 1st February and the 3d Prisoner on the 31st January and the other on the 2d February. On their first examination they both denied any knowledge of the murder; but on their second they confessed. The confessions of the 2d and 4th prisoners were both taken on the 2d February. The circumstance of the 1st prisoner having been last seen in company with the deceased seems to have led to his being taken into custody; but what led to his second examination as by no means apparent; and a proceeding of this sort certainly requires explanation. Once explained it affords cause of suspicion that undue means were resorted to to induce him to confess. It is pretty evident however that the disclosures made or alleged to have been made by the 1st prisoner in his second examination led to the apprehension of the 2d and 4th prisoners; for, as far as can be gathered, there was nothing to connect them with the 1st and 3d prisoners in any way. It is very possible that the confessions of the prisoners before the Police Officers may be substantially true; but it is obvious that it would be dangerous in the highest degree to ground their conviction of the murder on such confessions alone without circumstantial evidence to corroborate them; and there is no such evidence on the record.

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The 4th Prisoner in his declaration before the Criminal Judge and on his trial positively denies that he assisted, or was a party concerned, in the Murder; and according to his own statement his offence is nothing more than that of concealing the murder, of which he had been an eye witness - Of course his crimination of the other prisoners cannot be received as evidence to convict them. The Court think it is to be regretted that measures were not taken for the admission of this prisoner as a witness for the prosecution, although even with his evidence the Court would still have considered the trials very defective and unsatisfactory, without other testimony to facts tending to confirm the truth of this story.

Ordered that Extracts of these proceedings be sent for the information of the 3d Judge of the Court of Circuit in the Central Division.

(Sent following letter No 349.)

Read letter dated 5th July last from the 3d Judge late on Circuit in the Southern Division submitting case No 3 Salem Calendar 1st Sessions 1827.-

(See entry No 207)

The 1st 2d and 3d Prisoners Gizzo having attentively considered the proceedings held by the Judge on Circuit the Letters of the Criminal Law Officer and the petition of the Cazique of Cogat



Cogat and Neighbours of the Toupaue Estates concur in opinion that the prisoner,

"Palany Coenden"

is not convicted on presumptive proof or on the evidence of credible witnesses or on his own confession, notwithstanding the pretext of their Law Officers, and accordingly under the provisions of Clause Sixth Section II Regulation XV of 1813 they direct that the prisoner

Palany Coenden

aforesaid, be set at liberty.-

(Sent following letter No 350)

In this case the Judges of the Toupaue Estates have over ruled the pretext delivered by their Law Officers and have acquitted the prisoner altogether of the charge upon which he was tried. But as it would appear that the prisoner confessed before the Criminal Judge that he had been guilty of theft the Court direct that the Criminal Judge be required to dispose of the prisoner in this respect in conformality to the Regulations.-

Ordered, that Extracts of these proceedings be sent for the information of the 3d Judge late on Circuit in the Southern Division.-

(Sent following letter No 351.)

At a Court of the Vendue Udalat,

Present,

Monday 24th December 1827 } F. A. Grant Esq.re First Puisne Judge
James Cochrane Esq.re Second Puisne Judge
William Oliver Esq.re Third Puisne Judge

Copies of the Combaconum and Salem Calendars for the 2d Sessions of 1827 not having been received,

It is ordered that the Acting First Judge on Circuit in the Southern Division be by precept commanded to send up Copies of the aforesaid Calendars with as little delay as possible.-

Sent following precept No 354

At a Court of the Zoupdaree Adalut

Present:

Monday, 27th December 1837 F. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge

Read letter, dated the 24th October last from the Western Provincial Court submitting correspondence with the Joint Criminal Judge in the Gillah of Malabar respecting the propriety of their mode of designation of that officer.

[Here enter No 403]

The point at issue is decided at once by an inspection of the Regulations quoted by Mr Walsh. Clause first Section III Regulation I of 1827 requires that the officer superintending an Auxiliary Court established under that Regulation be denominated, in his Civil capacity "Assistant Judge of the Gillah" in which it may be stationed and Clause first Section II Regulation II of 1827 enacts that the said officer shall also be "Joint Criminal Judge of the Gillah" in which he is stationed, and of course, in his criminal capacity, be so denominated. The Provincial Court have no authority to

4th December 1877 to depart from the above forms.

The Inspection Assistant Judge in charge of the common Gaol visited and examined.

The Judges observe with regret the style of parts of Mr. Wicks letter: they are persuaded that that Gentleman will see the importance of invariably possessing a respectful and courteous style in his address to the Superior Courts.

Ordered, that a extract of these proceedings be sent to the Provincial Court in the Western Division for their information and guidance.

Sent following letters No 39/

Read letter dated the 22nd ult from the Third Judge late on Circuit in the Southern Division submitting case No 6 Salem Calendar 1st Sessions 1877.

/Here enter No 266/

The 1st 2nd and 3rd Puisne Judges on a deliberate consideration of the circumstances of the case in evidence before them concurring in opinion that the proof against the prisoners

1st "Ayyadorai Marakkayar"

2nd "Sinnatamby Kanagaratnam"

3rd "Sinnatamby Sinnathamby"

4th "Sinnatamby Sinnappu"

5th "Sinnatamby Sinnatamby"

6th "Sinnatamby Sinnatamby"

7th "Sinnatamby Sinnatamby"

8th "Sinnatamby Sinnatamby"

9th "Sinnatamby Sinnatamby"

10th "Sinnatamby Sinnatamby"

11th "Sinnatamby Sinnatamby"

12th "Sinnatamby Sinnatamby"

13th "Sinnatamby Sinnatamby"

14th "Sinnatamby Sinnatamby"

15th "Sinnatamby Sinnatamby"

16th "Sinnatamby Sinnatamby"

17th "Sinnatamby Sinnatamby"

18th "Sinnatamby Sinnatamby"

19th "Sinnatamby Sinnatamby"

20th "Sinnatamby Sinnatamby"

21st "Sinnatamby Sinnatamby"

22nd "Sinnatamby Sinnatamby"

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27th "Sinnatamby Sinnatamby"

28th "Sinnatamby Sinnatamby"

29th "Sinnatamby Sinnatamby"

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42nd "Sinnatamby Sinnatamby"

43rd "Sinnatamby Sinnatamby"

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58th "Sinnatamby Sinnatamby"

59th "Sinnatamby Sinnatamby"

60th "Sinnatamby Sinnatamby"

61st "Sinnatamby Sinnatamby"

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818

At a Court of the Fouidarce Vidarcot

Present.

Monday, 31st December, 1827 — E. A. Grant Esqre 1st Puisne Judge
James Cochrane Esqre 2d Puisne Judge
William Oliver Esqre 3d Puisne Judge.

Read letter dated 22d August last from the Criminal Judge in the Zilla of Cauvery with its enclosures — Vide enter No 347

It appears that the Judge on Circuit at the 2d Sessions at Cauvery for 1827, released the prisoner in Case No 6 on the Calendar, without trial, and on an extract from his proceedings dated 18th August last which were sent by him to the Criminal Judge, he communicated his reasons for deeming a trial unnecessary the insufficiency of the grounds of commitment, and the fact that the Case was one which ought to have been decided by the Principal Collector under Regulation IX of 1822.

2. When this the Criminal Judge concerning that he would be informed by reported of to the Fouidarce Adawlut dated under date the 18th of August, a justification of his conduct in committing the prisoner for trial, defending the sufficiency of the evidence against the prisoner, and affirming that as the

crime of robbery with open violence do
under clause first Section II Regulation IV of
1818 convict them therefore and sentence them
severally to receive 20 stripes with a rattan
and to be imprisoned and kept to hard labor
in irons on the public roads or other public
works for fourteen years as prescribed
by clause third Section IV Regulation XII of
1818, and clause fourth Section II Regulation
I of 1825 — And concurring in opinion that
strong suspicion attaches to the prisoner,

"Nyna",

they direct under clause sixth Section II
Regulation XII of 1818 that he be detained
in custody for one year unless he finds
two sureties in Sicca Rupees each for his
future good behaviour and appearance
when required.

Ditto following letter No 361

Read the second letter referred
in case No 13 on the Calendar of the Zillah of
Salem 1st Sessions 1827 by the Agent
and Members of the Fouidarce Adawlut.

In commutation of the punishment
of Death declared in the foregoing letter of
the 1st 2d and 3d Puisne Judges to sentence
the prisoner

"Thirta Iman"

to be imprisoned and kept to hard labour in
irons on the public roads or other public
works for the period of fourteen years

Ditto following letter No 362

[illegal] 21st December 1827

[illegal] 21st December 1827

that the communications of the Criminal Judge does savour too much of a comment on the proceedings and remarks of the Judge on Circuit, but that the latter would far more effectually have vindicated the respect due to his opinions and orders by simply reminding the Criminal Judge that he should have confined himself to explaining his own conduct and abstained from commenting on that of the Judge on Circuit, than by regarding to record her return in a manner unusually harsh and ungracious.

It remains for the Court to record their opinion that although the prisoner in the case which has led to this reference had not charge of the public money, which he was accused of embezzling, he was clearly liable under section II Regulation IX of 1822 to the primary cognizance of the Principal Collector, being a Native Servant of one of that officers public establishments.

Ordered that extract of these proceedings be sent to the Criminal Judge in the Zilla of Cuttack for his information and guidance.

That the following letter No 365 Read letter, dated the 9th July last, from the 1st Judge of the Court of Circuit in the Central Division

[illegal] he was not responsible for the safety of the [illegal] and therefore not liable to the [illegal] of Regulation IX of 1822.

The Judge on Circuit on the 18th August returned the communication, refusing to allow it to remain on the records of his Court and directing the Criminal Judge not to presume again to question the propriety of orders left to the discretion of the Court of Circuit. The Criminal Judge submits to this correspondence to the Register until this letter under consideration, and requests that his address to the Court of Circuit was written solely by way of justification of himself without any disrespect intended and further enquiring in defence of the reference of his being allowed to discuss the merits of the proceedings of the Court of Circuit.

The Register has to remark that if a subordinate judicial officer proceeding be animadverted upon by higher authority, he is beyond all doubt at liberty to submit such explanation as he may have to offer in defence of himself, but it is equally clear that he possesses no right whatever to comment upon the proceedings and opinions of [illegal] Superiors. In the present [illegal] the Register submits to them that

31st December 1827 Leipsic 1827

Submitting case 1407 Chitoor Calendar 2d Quarter

Here enter 1407

Read also letter dated the 29th September
from the Judge of the Court of Circuit in the Northern
reporting the death of the prisoner in case 1407 Chitoor
Calendar 2d Quarterly Sessions 1827.

Here enter 1407

The 1st and 2d Puisne Judges

having maturely considered the proceed-
ings held before the Judge on Circuit
the Sentence of the Criminal Law Officer
and the Sentence of the Court of Cazee and
Mooftee of the Zillah Court confirm
the said Sentence of the Court of Cazee
and Mooftee aforesaid, and the prisoner
Mohummud Shufee Khan, holden
being now dead. They acquit the prisoner
and direct that he be discharged from
the following letter No 366.

The charge against the prisoner
Mahummud Shufee Khan is
that having fired the retaliatory
which is not mentioned in the Calendar
before the Magistrate that one Fatima
Sahiba, about 6 months informed him
of the death of a female
name Mahurun Bee, and that he
instigated one Ghoolam Khan and
Muhabee to depose before the Magistrate
that the said Mahurun Bee had
committed suicide although he knew her to be

It is not clear whether it
was or was not intended to charge the
prisoner with perjury and subornation
of perjury through the Criminal Judge
on the 21st February 1827 distinctly intimated
to him that these were the specific charges
in which he was committed for trial,
and Mr Brown in his letter referring
the trial deals with it as a trial for
perjury and subornation of perjury.
As respects the crime of perjury the
charge is not drawn up in the form
prescribed by the circular order of the
31st January 1827 and this ought to have
excited Mr Brown's attention to the
specific offence which it was intended
to impute to the prisoner. In respect
to the offence of subornation of perjury
there was no ground for trying the prisoner
on this charge, for it is not pretended
that the persons named actually took
the false oath, which the prisoner is
alleged to have incited them to take.

It appears that the prisoner
by an Arzee dated the 15th January 1827
represented to the Collector certain
frauds and malpractices in the Courts
of Justice, and that the Collector
on the 17th January took the Magistrate
the deposition which he had so changed to
the

3rd December 1827

3rd December 1827

legal claim against another

1st December 1827

Ordered that an extract of the
proceedings be sent for the information
of Mr Brown, and that he be
commanded to send a copy thereof for
the information of the Criminal Court

Sent following Precept to

Read the second futwa dated
in case No 5 on the Calendar of the Zilla
of Cuttack for Sessions 1827 by the Cazee
or Law Officer and Moofties of the Sudder Court

In conformity with the
going futwa the 1st 2d and 3d Prisoners must
adjudge the prisoner

To suffer Corporal
to receive 15 stripes on the naked back and
be imprisoned and kept to hard labor in
irons on the public roads or other public
works for two years and

Sent following Precept to

Read return dated 15th Instant from the
Judge of the Provincial Court of Circuit in the Cuttack Division to precept
dated 10th instant stating that the prisoner in case No 15 Calendar
for Sessions has been discharged on the Bail
(Here enter No 555)

Sent the under mentioned precept to
Judge Cuttack Circuit in the Cuttack Division dated 5th
execution of the prisoner in case No 5 Calendar for Sessions
(Here enter No 556)

Read return dated 27th Instant to precept dated 21st
last from the Provincial Judge of Circuit in the Southern Division calling
for Cuttack canoon and Balasore Calendars for 2d Session 1827
(Here enter No 557)