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Extract from the Proceedings of the [illegible]
Udalut Under date the 9th May 1807.-

The acting Register lays before the Court the following letter.-

To the acting Register to the Foujdaree Udalut
Fort St. George

Sir,

Para 1 Although we do not concur with the Magistrate of South Canara in his application of the Clause quoted by him to the Case of the Convict Timmapa Munjoo; we fully coincide with Mr. Keate in the propriety of bringing the Circumstances mentioned in his letter/Copy whereof we have the honor to enclose/ to the Notice of the Foujdaree Udalut, the more especially as it is of a nature not provided for, in our Opinion by any Regulation

2 On the Grounds suggested by Mr. Keate we have no hesitation in recommending the Case of Timmapa Munjoo to the favourable consideration of Government.

We have the honor to be &c.

Tellicherry
6th April 1807

/Signed/ J. Stevens — First Judge
Brilby Hodgson — Third Judge

Zilla of Mangalore

To

The Register of the Court of Circuit for the

Division of Malabar,

Sir,

1. Clause Sixth of Section IX Regulation XX. A. D. 1803. provides that the Court of Circuit is to report to the Foujdaree Adalut the Case of any Prisoner who may appear a proper object of mercy and Pardon.-

2. I therefore submit to the Court of Circuit the Case of a Prisoner named Timmapa Munjoo Aº 4. upon the Calendar of 1st Sessions of 1804. who received sentence of Imprisonment for four years by warrant of the second Judge of Circuit bearing date 25th of July 1804:-

3. The said Prisoner Timmapa Munjoo has three times since I took Charge of the jail given intelligence which has led to the discovery of attempts made by certain of the Prisoners to effect their escape, and in the last instance /two days since/ of a plot formed by three Prisoners to effect their purpose by foreign force and Murder

4. The intelligence given by Timmapa Munjoo being Corroborated by the voluntary confessions of Certain others prisoners who either had been engaged or invited by the Conspirators to engage in the said plot, I beg leave to recommend the said Timmapa Munjoo for the report of the Court of Circuit to the Court of Foujdaree Adalut, as a proper object for remission of the remaining period of his Sentence, not merely as a reward for his praise worthy Conduct, but as an example and encouragement to others in Similiar Circumstances.

I have the honor to be &c.

/Signed/ T. M. Heate - Magistrate

Mangalore,
5th April 1807

/A true Copy/

/Signed/ J. H. Pearson - Register

Courts Order 9th May 1807

The Court having duly considered the subject of the above reference from the Provincial Court in the Western Division.-

Resolved, that the Regulations do not any where vest authority to remit a sentence of a Criminal Court - either in whole or in part - execution of which has been awarded.-

That section XXXVI, Regulation VII

A. D

A. D. 1802 empowers the Judges of Circuit to issue order to the Magistrates for the better treatment, &c. of the Prisoners in their Custody -

That under the section quoted the Judge on Circuit may exercise his discretion in directing the Magistrate in the Zilla of South Canara to extend such indulgence to the convict Timmapah Munjoo as the Circumstances of the Case may appear to him to render advisable. -

And that the Matter of the reference before the Court strictly appertains to the peculiar province of the Judge on Circuit, and should have been in the first instance submitted by the Magistrate to him - not to the Judges remaining at the Sudr Station for the performance of the duties of the Court of appeal. -

Extract

Extract from the Proceedings of the Foujdaree Adalut under date the 31st January 1812. -

Read letter dated the 30th Ultimo from the Court of Circuit for the Western Division with extract from their proceedings of that date requesting the opinion of the Court as to the construction of Clause Second, Section XIII Regulation 7 of 1808. which provides a punishment to be inflicted on offenders who may be unable to pay the penalty enacted by the preceding clause - a doubt being entertained by the Magistrate of the Zilla of North Malabar, whether the letter of the said Clause would allow him to commit an offender to jail for any less period than that therein specified. -

To the Register to the Court of
Foujdaree Adalut

Sir,

By orders from the Judges of the Court of Circuit I have the honor to transmit Copy Extract of a Minute of their proceeding under this date together with the documents therein referred to for the purpose of being laid before the Court of Foujdaree Adalut for the opinion of that Court on the Construction of Clause 2 Section XIII. Regulation

= latum 1 A. D. 1808. =

Provincial Court,
Tellicherry
30th December 1811.

I have the honor to be &c.
/ signed/ H. Clephane - Third Judge
for the Register.

To the Magistrate in the Zillah of
North Malabar.

The Judge of Sessions observes in the third Calendar furnished by the Magistrate, that there are several Cases of Conviction in breach of the Provisions of Regulation I. 1808. and that in all he has adjudged against the parties convicted the full amount of the penalty prescribed by Clause first Section XIII of the said Regulation, and in failure of discovering sufficient property belonging to the Offenders to make good the penalty has Sentenced them to imprisonment and hard labour for the term of Six Months pursuant to the provisions of Clause second of the same Section & Regulation. =

Previous to Submitting to the consideration of the Judges of the Circuit Court collectively his ideas on the Modification which he is of Opinion after the maturest reflection on the Subject the said provisions admit of in application to the individual Circumstances of the Offence The Judge of Sessions requires the Magistrate will report whether he was guided in having in the the Cases in question, adjudged the full penalty and commutation thereof in Consideration to the degree of Criminality of the parties convicted, or from a conception that the provisions Contained in Claude first & second Section XIII Regulation I of 1808. were absolute & left no room for the exercise of his discretion in diminishing the Amount of the fine, or abridging the term of Imprisonment and hard labour substituted in lieu thereof

Given under my hand & Seal at Tellicherry this 15th day of November A. D. 1811. =

/ signed/ H. Clephane - Third Judge.
fourth D. Sessions

In pursuance of the exigence of the annexed Precept the Magistrate begs to explain that there are on the Calendar Submitted to the Court of Sessions Six Cases of Convictions in breach of the Provisions of Regulation I A. D. 1808. Viz. Nos 5, 16, 19-20-42-95. on the fine first of which the Magistrate adjudged the full extent of the Penalty prescribed by Clause first and Committed those who did not discharge the penalty to Jail & Hard labour for and during the term of 6 Months. But instances having come before the Magistrate wherein all offenders of this description did not possess the means to pay a fine of one hundred Rupees, and in

in others where they had under Circumstances of great dis-
-tress manufactured and sold a small quantity of arrack
He under date 19th July submitted for the Opinion of
the Judges of the Sudr Foujdaree Court "whether the
"fine prescribed by Claude first, Section XIII Regulation
"7 A.D. 1808. the punishment in failure of payment
"laid down in Claude Second of the same Section, was
"on every Occasion to be enforced, or whether the Magis-
"trate was at liberty to use his discretion in Cases that
"come before him, wherein Numerous mitigating Circumstan
"-ces may render it but just, to remit part of that
"Punishment." to which on the 13th September the Magis-
-trate received their Orders dated 26th July, of which the
following is an Extract "The Magistrate requests to be
"informed whether he is at liberty to use his discretion
"in inforcing the penalty enacted by Section XIII Regula-
"-tion I of 1808." The Section referred to declares that
persons convicted of Manufacturing or Selling Spirituous
liquors without a Licence &ca" shall be fined in a Sum
"not exceeding one hundred Rupees."-

It therefore determines the Sum of one
hundred "Rupees to be the Maximum for any Case coming
within its intendment, and of course the discretion of the
Magistrate ceases at that point. But as Cases must
occur

occur for which a fine to that Amount would be
excessive, and as no Magistrate can be competent to
impose an excessive fine, it follows that that Officer
must exercise a discretion in proportioning the quan-
-tum of Fine to each Case, under reference to all the
"Circumstances, which are on such Occasions to be
"taken into Consideration." The Judges not having
expressed their sentiments on the Second point of
Reference Viz: whether the punishment in failure
of payment laid down in Claude Second Section XIII
was on every occasion to be enforced. The Magistrate
was confirmed in his Opinion that the wording of the
Second Clause would not admit of the same late-
-tude of Construction as the First did, and therefore
concluded that all Persons convicted of Manufactur-
-ing and Selling Spirituous Liquors, not discharging
the penalty imposed on them, must be committed to
Jail and kept to hard labour for and during the
term of Six Months, in which view of the Subject,
as well as in pursuance of the orders of the Judges
of the Sudr Foujdaree Court, the Magistrate has
proportioned the fine to the individual Circumstances
of the Offender and Offence and Sentenced all Persons
Convicted of violating the Provisions of Regulation I.

1808

1808 to the full term of Imprisonment, as appears in
№95. on the Calendar Row before the Judge as well
as all subsequent Cases.

Given under My hand & the Seal of the
Court this 15th day of November A. D. 1811.-

(L.S.) (signed) T. H. Babir

Magistrate

Proceedings of the Provincial Court under date
the 30th December A. D 1811.-

The third Judge lays before the Court
a precept issued by him to the Magistrate in the Zilla
of North Malabar together with the Magistrate's return
thereto in Order that the Opinion of the Judges may
be taken as to the propriety of a reference to the Foujdaie
Adalut, for the purpose of requesting the Opinion of that
Court as to the Construction of Clause Second Section
XIII of Regulation I A. D. 1808.-

The literal tenor of the said Clause
no doubt favors the Construction put upon it by the
Magistrate and which has led him to consider that
no latitude is left him to deminish the period of
Confinement and hard labour to which persons convicted
of a breach of the Regulation in the unlicensed
manufacture or sale of Spirituous liquors and unable to
pay

pay the fine are by said Clause sentenced to undergo

The Court of Foujdaree Adalat
in the expression of their Construction of the first
of the two Clauses of Section XIII Regulation I 1808.
as quoted by the Magistrate in his return to the
Precept of the 3d Judge, denouncing the penalty for
unlicensed Manufacturing and vending of Spirituous
liquors, express their Opinion that the Offence may
admit of extenuation from various circumstances &
Consider the Amount therein mentioned of one hundred
Rupees to be the Maximum of the fine which under
the Regulation the Magistrate is Authorized to levy
and that it invests him with a discretion to deminish
it in view to the Circumstances of the party or to
the Nature of the Case. The same principle of
reasoning seems to lead to the conclusion that the
substitution of the period of 6 Months Imprisonment
and hard labour in the following Clause in default
of Means of payment of the fine, is the Maximum of
commuted penalty also and that a discretion is
equally left with the Magistrate imposing the
fine to fix a period of Imprisonment and hard
labour, such as he may think in view to all the Circum-
stances

stances of the Case equivalent in operation to the fine and Adequate to the attainment of the end in view not exceeding in any Case the period of Six Months, which tho' not so expressed seems consistent with analogy & with the Spirit of the said Section.

The expediency of the Milder Construction of a Clause so highly penal in a mere financial Regulation, will appear the more Striking when it is considered, that in the whole of the convictions by the Magistrate, the quantity Manufactured or Sold is stated to have been extremely trifling, so small in one or two of the Instances as 3.9ths of a quart of liquor and that no grounds have appeared for Supposing that the parties offending had been in the habit of transgressing the provisions of the Regulation and indeed for any thing that appeared to the Contrary it was their first offence.

Whatever may be the opinion of the Foujdaree Adalut on this head, The Court consider it as their duty to bring the question to a final issue as the Magistrate seems to think himself bound to a literal execution of the provisions of the said Section.-

Agreed therefore that Copy of the above Minute together with Copies of the Precept from the third Judge Addressed to the Magistrate of the Zilla of North Malabar and of his return thereto be transmitted to the Court of Foujdaree Adalut with a request for the Opinion of that Court on the different Construction put by the Judge of the Court of Circuit and the Magistrate of the Zillah North Malabar on the enactments in Clauses 1st & 2d of Section XIII Regulation I. 1808.

/True Copies/

/Signed/ H. Stephanie. Third Judge
for the Register.

Courts Order 31st January 1812.

The Court consider that the term of imprisonment fixed by Clause Second is to be held equivalent to the maximum of the penalty stated in the first clause of the Section in question and that the Circumstances of any Case which render-ed it just that the fine should be reduced below that Maximum would also demand a proportionate diminution of the term of imprisonment.-

Extract from the Proceedings of the Foujdaree Adalut under date the 13th October 1812.-

Read letter dated the 16th Ultimo from the Magistrate of the Zilla of Masulipa-tam.-

To

To The Register to the Court of Foujdaree Adalut
Fort St. George.

Sir,

I request you will lay before the Court, the accompanying Copy and translate of proceedings held by me, on the Case of two persons named attooree Venkyah and Adsoomillee Veeranah who are charged with having afforded assistance to the proclaimed dakyt Camadana Venkatrow.—

Reg.r XIII. 1809. Sect. XV.

I beg leave to recommend that a reward of Rupees 500 be offered for the apprehension of each of the two accomplices of Venkatrow, named Chintapullee Seetapatee, and Sareepillee Veeranah, who, it would appear from the accompanying proceedings, were concerned in the Act of cutting of the ears and Noses of the labourers of Shankarampadoo.—

II

I have further to request that you will be pleased to obtain, and Communicate to me with as little delay as possible, the Opinion of the Court upon the subject of the doubt expressed in the Concluding part of the proceedings, as to the application of the XIV.th section XIII.th Regulation 1809, in order that I may know how to act, in regard to a number of other persons of the description of attooree Venkyah and Adsoomillee Veerana who are charged with a similar offence.—

I have the honor to be &c.a

/ signed / J. D. Tod - Magistrate

Masulipatam
Magistrate's office
16.th September 1812.

Translate

Extract from the Proceedings of the Magistrate of the Zilla of Masulipatam, Dated 8.th September 1812.—

Read the following Representation with their accompaniments /N.o 1 to 5/ from the Zemindar of Charmahal, whose country has been the Scene of the depredations of the Freebooter Camadana Venkata =row for the last four Months.—

N.o 1

To The Magistrate of the Zillah of Masulipatam.

The representation of Rajah Camadana Sholavandy=row Zemindar of Vinnacota &c.a Purgunnahs, =composing the Zemindary of Charmahal.—

A greate quantity of water having come into the lands of the low villages of Gondewada Pergunnah, I went to Poleonda in order to encourage the people to =commence plowghing. On the 4.th of September, at 12 Oclock at Night, Six persons belonging to Venkatarow went to the village of Shankarampadoo, distant a quarter of a Cos from Poleonda,

Palconda, and cut off the Ears and Noses of two Labourers, one belonging to Pennamanaynee Janardanoodoo, and one to Pennamanaynee Soomana: Having heard this Circumstance I and my Sibbendi and the Zilla Hircarrahs, Dara Venka-taytha and Nasir Mahumed (who were at Palconda on some business unknown to me) went, in order to trace out who had cut off the Noses and Ears. I will communicate to you hereafter whatever occurrences may take place. In the meantime I write this for your information.—

5th September 1812. (signed) Rajah Shobanadryroo

Chinna Lingala.

No 2.

To the Magistrate of the Zilla of

Masulipatam

The representation of Rajah Camadanah Shobanadryroo Zemindar of Charmahal &ca.

You will have been made acquainted with the proceedings of Camadana Venkatarow's People by my letter of the 5th September I traced those people as far as Peddalingala, taking with me the Court Hircarrahs to make enquiry.— Under charge of the Court Hircarrahs Venkatatha and Nasir Mahumed, I send two Rummah Cast men and three Paria cast men inhabitants of Goodewada Pergunnah (in the Charmahal Zemindaree) who assisted (or joined with) those people, together with four Peons whom

whom I had stationed as a Tannah over the Nose and Ear Cutting Paria Village, as also the depositions given by the above five Persons before the Hircaurahs, and the Deposition of the four Peons. you will do what may seem proper in regard to them.—

I have to represent that in consequence of the inhabitants of this Zemindary concealing the people who come from a far (Freebooters) in their houses, and allowing them to make disturbances, all the measures that I can take for its protection are rendered nugatory.

Besides the persons who have given depositions (confessions) the following persons conceal Venkatarow's Peons in their houses Viz.t—

1 Lutchmyah son of Lingarauze Rajanah	Inhabitants of
2. Poonekelly Narsiah	Z
3. Badravada Narsiah	Peddaveerewada
4 Maha Deevoo Bootcherauzoo	Inhabitants
5 Conda Padmarauze	of
6. Badrawada Venkataramarauze	Dandegoneepoodee
7. Naganah Father of Chintapullee	Seetapullee - Inhabitant of Moodera-pullee
8 Mooneereddee Jugureddee	Inhabitant of Ponnapadoo

These eight persons conceal Venkatarow's Peons in their houses feed them, and by their means have caused all these disturbances. Three or four of Venkatarows People are now endeavouring to make

make disturbances in the following villages of Noonastal
=lum and Veyoreedeima Chaydooteepaudoo, Taylapoloo, Poolla
=goontah Chinna Lingala Coyakoonapadoo Vengerampadoo
and Toomalapaudoo therefore I have made this Representation
some of the inhabitants of the Zemeendaree, Joining with
Venkatarow's people, have begun to cause the Ears and
Noses to be cut off; therefore the labourers are exceedingly
=ly fightened, and some of them have run away. I have
therefore written this for your information.-

6th September 1812.

/signed/ Rajah Sobanadryrow's

No 3.

The Deposition of Mayrooga Sydoo, Cheegoorroo,
patee Teeratha, Bodeegunteee Ramdoo, and Yerreshetta
Narsoo, Inhabitants of Kanookolanoo in the Vennakota
Purgunnah, and Boeea Peons of a Guard (of Zemeendars)
attached to the Villages of Shankarampadoo, and Polconda
in the Perguunah of Goodeevada given in the 6th Sep.
=tember 1812.

On the Night of the 4th September, we were
on Guard on the South side of the Paria houses of the
Village Sankarampadoo, at one jam before day break a Man
accompanied by a Paria was passing on the North side,
when we questioned him "who are you, and whence come you",
he answered. I come from Polconda, I am carrying a Letter from
the Zemindar to the Officer at Ellore, and therefore I have
come for a Man /Guide/. He accordingly took a Man, and
they went away by the west of the Paria houses of Shanka
=rampatee Village. afterwards as we began to have suspe
=cions Among ourselves, considering the time of Night at
which he was travelling, two of us went to the Zemindar
at Polconda, leaving two at that place. Having reported
this Circumstance to the Zemindar, he said that he had
not written any Letter, and that the persons might have
been in disguise. we took leave and returned to the place
of Guard at Shankarampadoo, where having arrived two
Paria men came crying from the west side in Among
the Paria houses one of them had his nose and ear cut
off; and the other had his ear cut off; we questioned
them as follows - Q. who carried you off and where did
they maim you. - They Answered - A. Five men came and
took us to a place between Chinaveerewada and Dan
=baganeepoodee, and Cut off our Noses and ears. - This is
all that we know. -

The witnesses who were present when
this deposition was given are.

/signed/ Bonum Lutchmoodoo.
" Vottagala Achoolanaithdoo

and with their knowledge this was written by Toomala
=pullee Venkanah Inhabitant of Nundapadoo.

The

No 4

The Deposition of Atlooree Venkyah Inhabitant of Vennanah poody a Village in the Goodewadah Purgunnah, (Charmahal Zemindaree) given on the 6th day of September 1812.-

On the 4th of September, at half a gurree before Sun Set, Narree Vallee Veeranah belonging to Venka-tarow, accompanied by two Gentoo cast men came to my house and said "it is almost Sun set, we are men belong-ing to Venkatarow, we are going east ward to Haykaloor, "If you give us something to eat we will proceed." I said very well, stay;" and conducted them to the uninhabited house of Atlooree Soobaraidoo, situated South of my house I then went home and prepared Victuals for them, and after the lapse of one Gurree, took them all three to my house, and set victuals before them.- after they had eaten, I reconducted them to the empty House.- Half a Gurree after-wards Chintapullee Seetapullee, accompanied by a Paria man, came and stood before my Gate- I asked who they were. Seetapullee said we are of Nundeevasa on my as-king who that man was who accompanied him, he said he is my labourer I again demanded on what business he had come, when he Answered that his cattle were missing.- He then called me saying. "I have a word to say "to you privately." "Has any person arrived here?" I answered "three men have come" "where are they." "said he at the House

of

6

"of Atlooree Soobaraidoo". I replied these two having joined the three who first arrived, the whole five departed by the western road, three gurries after Sun set. I asked them where they were going to, and they said to Hykaloor.- after they had departed I was standing before my gate, when Nareepillee Veeranah returned, bringing a man who he said had been Stung by a Scorpion, after they had proceeded a little distance from the Village, and was therefore unable to walk.- He delivered the Man to me and went away to the others who were outside the Village I dont know where they all went to. The man who was delivered to me, recovered a little in the Course of a gurree, and then went away, taking the Paria called Bhutter Ganga-doo with him, and saying that he was going to Jungalar This is all that I know.- I gave those persons victuals for fear lest they should stab me, or burn my house. This is all I know-

The witnesses who were present when this deposition was given, are.

/signed/ Zemovlamadaka Venkya
inhabitant of Ramana-petta in Perganah Dayvaracotah.-
Woopoolooree Veerauze
inhabitant of Hykaloor

and with their knowledge this was written by Toommala-pellee Venkana of Mandapandor-

The mark of Atlooree Venkyah

The

No 5.

The Deposition of Adoorsoomillee Veeranah of Nundeva-
=vada a Village in the Goodewadah Pergunnah, given on
the 6th day of September 1812.-

On the 4th September, while it yet wanted
two gurries of Sun set Seetapullee son of Chintapullee
Nagana inhabitant of Moodenapillee, who belongs to Venka-
=tarow, with two Telinga west country men, came to my house.
Among them they had one Spear and two Swords. They spoke
as follows."- When your Naganah was carried off you exe-
"cuted a Bond to our master for Pags 80.- Our master
"desires that you pay those Pagodas into our hands and for
"this purpose we have come" to this I replied; I am in dif-
"ficulty in five or six days I will give the Money". So saying
I conducted them to the forsaken house of Adoorsoomelee
=soobaraidoo and then went and prepared Victuals for
them.- I carried meat and drink to them in the forsaken
house.- after which they spoke saying "we are going
forwards to Vennakotadeemah, send a Man along with us.
On my asking what they were going to do at Vennakotada-
=mah- they said "It is necessary to collect a Sum of Money
"more or less: If you give us a man, we will send him
"back from Vennamapoody and take another man from there".
I sent my Elder Brother Naganah to call my labourer
Darum Chintadoo who having come I sent him with those
Men- when I gave them the Paria man (guide) the Sun had
set

set as they were setting out they said "If you mention
"this Circumstance any where, we will burn your houses and
"slate you and all your family". I, those three and my
Cultivator went to the limits of the Village together, I left
them there, telling my Cultivator to leave them at Vennana
=poody and return- This is all what I know-

The witnesses who were present when
this Deposition was written are.-

(Signed) Zumula Madaka Venkana.
Inhabitant of Ramana Settah
in Davarakotah Pergunnah-

(Signed) Toomalapillee Jagernaikloo,
Inhabitant of Goodewadah

with their knowledge this was written by Toomalapillee
Ambyah Cirnum of Goodewadah-

(Signed) Veeranah,

(The Depositions of the three Paria =
Cast men which accompanies the Representation of the
Zemindar having no immediate Connection with the pre-
=sent Case they are omitted)

Allooree Venkyah being called before
the Magistrate, and the Deposition No 4 being read
over to him, he is examined as follows in the Telogoo
Language-

No 6.

The Examination of Allooree Venkyah.

2. What is your name, your Fathers Name, your Cast, your
Religion and your age, where is your place of residence,
and

and what is your occupation.-

A. My name is atlooree Venkyah, my Fathers name is Shashaudree, My Cast is Kumma, My Religion is Rama = noojum, My age is 35 Years, I reside at Vennanapoodee and my occupation is Cultivation.-

Q. You have just heard a Deposition read, was that Deposition given by you.-

A. It was given by me,

Q. Is the village of which you are an inhabitant a large Village.- How many house holders are there in it?-

A. It is not a large village. There are two Gentoo famil and ten Parish families in it.-

Q. How many males may there be among the inhabitan of that Village?-

A. There may be about 20 Men in all.

Q. What village is nearest to yours?

A. Toomalapillee, which is distant a quarter Cofs.

Q. How far is the Village of Polcondu from yours?

A. Two Cofs

Q. Was it known to you that there were Sepays there?

A. I did not know

Q. How long is it since you fed those People?

A. On a friday, four days ago.-

Q. What is the reason that you did not give information of this Circumstance to the nearest Sepoy Guard; to the Zemindar or to the Magistrate direct.-

A. They said that if I gave information any where they would Cut off noses and ears and put to death.-

Q. By the confession which you have just now made, you have rendered yourself liable to the penalties prescribed by the XV Section of the XIII Regulation 1809. Have you any thing to state in justification of your Conduct in Addition to what you have already said Viz.t that you were in dread of being stabbed, or of having your nose and ears Cut off?-

A. They said "if you disclose this business, we will kill you" therefore I was afraid and did not speak.-

The Mark of Venkyah

Deposed before me at Masulipatam this 8.th day of September 1812.-

(Signed) J. C. Tod - Magistrate

Adoosoomillee Veeranah being called before the Magistrate, and the Deposition No.5 being read over to him, he is examined as follows in the Telougoo language.-

No.7.

The Examination of Adoosoomillee Veeranah

Q. What is your Name, your Fathers name, your Cast and your religion, what is your age, where is your place of residence and what is your occupation.-

A. My name is Adsoomillee Veeranah, my Father's name is Soondaramdoo, my Cast is Kummah, my religion is Ramanyum

Ramanjum, my age is 30 years, I reside at Nundewada and my Occupation is Cultivation.-

2. You have just heard a deposition read, was that Deposition given by you?-

A. It was given by Me.

2. How long is it since you fed those people?-

A. Four days.

2. Are there any Sepoys in any Village near yours?-

A. There are Sepoys at Goodewadah, distant two Cos

2. What is the reason that you did not give information of this Circumstance to them?-

A. Formerly my house was plundered, and My Elder Brother Nagana was Carried off. They gave him all kinds of bad treatment in the Jungle there, and took a Bond from him, and they said, that if I should disclose the Circumstance of their arrival, they would stab me, therefore I did not give information.-

2. From what you have now Confessed it appears that you have subjected yourself to the penalties prescribed by the XIV. Section of XIII. Regulation 1809.- Have you any Circumstance to urge in justification of your Conduct, in Addition to that which you have stated above, Viz: the fear that the freebooter would stab you or cut off your Nose and Ears.-

A. I have nothing more to say/except it be that/ they said also they would turn our stacks.-

8th. September 1812.-

/Marked/ Veeranah.

Given before me at Masulipatam this 8th day of September 1812.-

/signed/ J. O. Tod- Magistrate.

(Here Venkatah and Adoosoomillee Veeranah having confessed that they afforded lodging and Victuals to certain of the accomplices of the proclaimed Dacoit or Robber Camadana Venkatarow, on the 4th day of Septr. last whereby they enabled those persons to cut off the Noses and ears of two Labourers belonging to the village of Sunkarampadoo in pursuance of the orders of the said Camadana Venkatarow (as the is every reason to believe) he having held out the threat that he would cause to be cut off the Noses Ears of every man who should put a plough in the ground until his demands were complied with.- The Magistrate is of Opinion that the said Adoosoomillee Venkatah and Adoosoomillee Veeranah are liable to punishment under the XIV. Section XIII. Regulation 1809. and do accordingly sentence each of them to pay a fine of Fifty Rupees to Government and to be imprisoned for 6 Months. The fine to be commuted, if not paid to imprisonment for a further period of four Months subject to the approval or otherwise of the Court of Foujdaree Adalut, to whom the proceedings will be submitted.-

A doubt having arisen in the Mind of the Magistrate as to whether the XIV. Section of the

XII

XIII. Regulation 1809 will apply to the Case of Allowee Venkyah and Adoosoomillee Veeranah who are merely Cultivators & do not come within the description of persons specified in the XI. Section of the same Regulation, in order that the Circumstance be particularly noticed to the Court of Foujdaree Adaulut and that the Opinion of that Court on the Matter of doubt be respectfully requested.-

The occasion of doubt is this.- The first part of the XIV. Section has reference to the whole of the preceding Sections including the XI. which requires generally "all persons of whatever discreption to afford every practicable assistance on the apprehendeson of offenders" while the penal part of the same Section, as also the succeeding Section which is intimately connected with it, have express reference to those persons only who are particularly specified in the XII Section.-

/ True Extract /

/ Signed / J. O. Tod.

Magistrate.

Courts Order. 13th October 1812.

The Magistrate refers his proceedings in the Cases of two persons named Allowee Venkyah & Adoosoomillee Veeranah, whom he has adjudged liable to the penalty established by Section XIV, Regulation XIII of 1809.

1809, for affording assistance to the proclaimed dutyt Camadanah Venkatarow, and each of whom he had accordingly sentenced to pay a fine of fifty Rupees to Govt and to be imprisoned for six Months- subject to a doubt which he submits as to whether the Section named be applicable to the said persons, who are described to be merely cultivators.-

The Nature of the assistance which Allowee Venkyah and Adoosoomillee Veeranah are charged will having afforded to the outlaw, consists as appears from their own confessions in their having on the 4th ultimo given victuals at their requisition to Ranee Wallee veeranah and Chintapullee Seetapulty two of his followers- whereby they enabled those persons to cut off the ears and Nosed of two labourers of the Village of Senkaraupandoo, which they are stated to have effected on that Night in pursuance of Camadana Venkataraw's orders. The Justification pleaded, on their being asked by the Magistrate, why they had not reported the Circumstance to the Nearest guard- is, that they apprehended, and probably not without reason,- as had been explicitly threatened,- injury to themselves, if they attempted to give information

=ation of what had passed - and their confessions
are the only evidence against them.-

So far as regards the facts of the
Case.-

But with respect to their liabilety
to punishment under the provisions of regulation
XII of 1809 - the doubt submitted by the Zillah
Magistrate refers to the discription of persons to whom
the rules contained in Section XIV of that regulation
are applicable in the supposition that the penal part
of that Section, as also the succeeding section have
reference to those persons only, who are particularly
specified in Section XII, which declares all proprietors
and farmers of land their officers and the native
revenue officers of Government to be liable to the pu=
=nishment established in Section XII on conviction of
not having given due information of the resort of any
proclaimed dukyt or robber, within the limits of the
estate or farm held or managed by them.-

And the Magistrate is perfectly
correct in considering the penal part of Section XIV
to be applicable to such persons only.- But allow
Ventyah and Adoosoomilla Veeranah being merely
cultivators,

cultivators cannot therefore be subject to the penalty
which the Magistrate has awarded against them under
the XIV Section XII Regulation 1809 and his de=
=cision must in consequence be rescinded.-

And indeed the Court would be dis=
=posed, in Consideration of all the Circumstances
of the Case, to direct their discharge, even tho they
were liable to punishment under the succeeding
Section.-

But whatever doubt to the first part
of the XIV Section in its reference to the preceeding
Sections may appear to suggest as to whether it was
intended to include all the persons mentioned in
Section XI and therefore "generally all persons of whatever
"discription".- it is sufficiently clear from the preamble
of that regulation, which declares it to be one of its
objects "to call forth the active exertions of all persons
"possessing by their situation the means of aiding in
"the apprehension of offenders of that discription"
(gang robbers) as also from the correlative reference to the in=
=dicatory parts of the regulation which "prescribed ade=
=quate pains and penalties for such persons as
"possessing the means of affording assistance towards

the

"the prevention of a crime, they shall neglect to employ
"them to that end." - that "Section XV is applicable only
to the under tenants and Agents of land holders, and
the Native officers of Governments." "The preceeding
Sections" referred to in Section XIV are therefore only
Sections XII and XIII. -

The Magistrate further requests to auth-
-rity, apparently with reference to Section II Regula-
-tion XIII of 1809 to offer rewards of rupees 500 each
for the apprehension of Chintapillee Seetapullee
and Sareepillee Veeranah, stated to be accomplies of
Vencatraw; and who, the Magistrate observes, "it would
"appear from the accompanying proceedings, were con-
-cerned in the act of cutting off the ears and Noses
"of the labourers of Shankarampadoo." -

But after full examination of the
enclosures in the above letter, the Court do not discover
therein, that the persons named were the offenders. -
all that does appear respecting them is that they
were fed by alloore Venkyah and Adoodoomillee
Veeranah, and that they afterwards proceeded onward-
to Kykaloor, as was supposed by the former - to con-
Vinna Kotadeemah according to the latter. The perso-
who

who were married, do not appear to have been examin-
-ed by the Magistrate. and the information at present
before the Court does not appear to warrant the con-
measures prescribed in regulation XIII of 1809 for
the apprehension of Chintapillee Seetapullee and
Sareepillee Veeranah. -

Adverting to the Circumstances con-
brought under their Notice in the above reference, the
Court resolve to communicate for the Magistrate's con-
information the System of police established in the
Zilla of Darapooram, as reported by the Judge
on Circuit in the 2d. Sessions of 1807. - leaving it en-
-tirely to his judgment to determine but recommending
the subject to his serious and early attention - How
far it may be practicable and desirable to introduce
a similar system into the Zilla of Masulipatam,
which, like the former Zilla, borders are the territory
of an ally, and is subject to incursions of plunder-
-ers similar to those, which have been arrested and
almost entirely put a Stop to under the Operation
of the System in Question. -

Extract from the Proceedings of the Foujdaree Adalut
Under date the 31st December 1812. -

Read also again letter dated the
4th

4th August 1809. from the third Judge of the Court of Circuit for the Western Division.-

To the Register to the Court of Foujdaree Adalut

Sir,

A Consideration of the various clauses of Section II Regulation XV A. D. 1803. has produced in my mind a great degree of uncertainty and hesitation in the application in practice of the provisions contained in claude the fourth of the said Section and Regulation.-

The claude in question provides for Cases wherein although the Crime of which the Prisoner may be convicted may not have been specifically provided for by any Regulation, but would subject the prisoner to the specific penalty of Hud or Kessaas provided by the Mussulman Law, if the Sentence against him for such penalty was not barred by some special exception or scrupulous distinction /Shoobuh/ not affecting the Nature or Criminality of the Offence and evidently repugnant to the principles of equal justice - the Regulation goes on to enact that in such Cases the Judge is to call upon the Law Officer for a Second Futwa declaratory of the punishment to which the Prisoner would be liable if the Shoobut/had not existed, and to proceed thereupon to pass Sentence according to such Futwa commuting the punishment of any Regulation require it &c.

Now in trials for thefts these Shoobuh are Constantly stated by the law Officers in bar to a Futwa of Hud - they turn frequently on the point, that although the Prisoner be convicted either in proof of a former Confession, or by the Evidence of witnesses, or strong Circumstantial proofs, Yet as the Prisoner when before the Court has retracted his said Confession, or pleaded an interest in the property stolen, or that the Prosecutor has inadvertently made use of an expression in his deposition implying "taking" instead of stealing" the property a Futwa of Hud is thereby barred.-

The above enumerated Shoobuh, it cannot be denied, are evidently repugnant to the principles of equal Justice - But should the Judge on the grounds of the provisions contained in Claude IV Section II Regulation XV 1803. above quoted, apply for a Second Futwa, that Futwa would in general be Hudd - which would infer a Commuted Sentence of seven Years imprisonment pursuant to the provisions of Section XV Regulation VII. 1802.-

The application of this Rule is of Course clear and liable to no misconstruction but it will often happen that the full term of the said

Commuted

commuted punishment will from Circumstances of alleviation in the particular Case in Question, appear to the Judge excessive since the Mahomedan Law so far as I have had access to know it, makes no distinction or exception in the punishment provided the Amount stolen be the legal Nissaat.-

After the above explanation of what I conceive to be the prescribed rule of proceeding- I proceed to state the points on which my doubts arise; or the form of Queries.-

1st Is the rule of proceeding prescribed by clause fourth Section II Regulation XV 1803. to the Judge in the Case of Shoobuh being urged by the Law Officer in bar to find absolute or discretionary.

2d In the Case of the second Futwah declaring the Offence liable to find, is the Judge compelled to pronounce the full extent of the commuted Sentence by Section XXI Regulation VII. 1802- or has he any discretionary Authority to mitigate the same.-

I trust the Court of Foujdary Adalut will not consider this reference as unimportant or unnecessary- So far as I have had access to know, no opinion has yet been given on the Subject.-

One of the late Judges of this

Division, I have reason to think withheld or proposed the second question to the Law Officer, as he conceived the latitude vested in him under a Sentence of Tazeer, did or did not admit of an adequate punishment for the Offence.-

However desirable for the reasons stated in this letter, it might be that such latitude was left by the Regulations, I cannot coincide in the Opinion that they do leave it- and whilest under this impression I cannot conscientiously adopt that construction as a rule for my practice- and shall be under the necessity of deferring Sentence in such Cases till I am honoured with the Opinion of the Foujdary Adalut.-

On Circuit at Onore 4th August 1809.

I have the honor to be,
Sir &c &c &c
(Signed) H. Stephane,
Judge on Circuit
K.-D.-

Courts Order- 31st December 1812

The third Judge submits his doubts of the application in practice of clause from the Section II, Regulation XV of 1803. which ordains, that where a prisoner may by the futwa of a law officer be declared liable to discretionary punishment- his conviction being

being founded either on full legal evidence or strong
presumptive proof for a crime which would subject him
to the specific penalty of hud or quiessas, provided
such penalty were not barred by some special excep-
tion or scrupulous distinction, the Judge shall
require the law officer to declare by a second futwa
to what punishment the prisoner would have been liable
if such exception or khorbah had not existed, &
proceed thereupon to pass sentence according to
such second futwa.—

The doubts entertained by the third
Judge refer to "trials for thefts" in which the punish-
ment to be inflicted under section XXI Regulation
VII of 1802, in lieu of the Amputation of limb to
which the prisoner would be liable under the
hud awarded by such second futwa, might ap-
pear to him to be excessive.

And he solicits instructions on the
following points— 1st whether the procedure prescribed
by Clause fourth be absolute or discretionary— and
2d whether on the prisoner's being declared liable to
hud by the second futwa, the Judge is compelled
to

to pronounce the full extent of the commuted sentence
or has "discretionary authority to mitigate the same".—

The subject referred in the above
letter having again been brought under the Notice of
the Court, they are called upon to remark that they have
at all times held it to be inconvenient to proceed to
the Consideration of any reference, which is not accom-
panied by a full and explicit representation of all
the Circumstances of the case, out of which the doubts
suggesting it may have arisen.— And in the present
case such explicit and Circumstantial statement
was the more especially necessary.—

The Court, however, proceed to
observe, that larceny being a crime specifically
provided for by the regulations, the rules contained in
all the General clauses of Section II Regulation XV
of 1803 can be applicable only to that description
of it, which is particularly mentioned in clause
first, Section V of the same regulation— If a pri-
soner be declared liable to discretionary punishment
for any description of Sarreaa e Kobra, as defined
in clause first of Section III and the Judge consider
the Crime established against him, he shall either
sentence the prisoner to suffer the punishment, ap-
portioned to the Degree and Criminality of his
offence

Offence - prescribed in Section IV or as the case may be, refer the trial to this Court, and the provisions contained in Section IV are declared to be equally applicable to the Cases specified in Clause Second of Section V.-

With respect to Surnca - e - Soghra as defined in Clause first of Section V. if a prisoner be declared liable to discretionary punishment, the rules contained in Section II are to govern the sentences of the Courts. And if the specific penalty be not remitted by Circumstances which alter the nature and diminish the Criminality of the offence, but barred by some exception or distinction, not affecting its nature and Criminality, and evidently repugnant to the principles of equal justice, the Judge is to demand a second futwa, and proceed thereupon as directed in the preceding Clause.-

But in reference to the points interrogatively stated upon which the third Judge solicits the opinion of the Court, they are led to suppose that the third Judge may not have sufficiently considered what course he would adopt, in case the prisoner in a trial for theft were in the first instance declared by his law officer to be liable to amputation of limb - for which the full term of the Commuted punishment might from circumstances of alleviation in the particular case in question "appear to the judge to be excessive".-

But the Court consider it scarcely necessary to add, that the line of Conduct which the third Judge would deem regular in such case, he might with equal propriety pursue, when the second futwa of his law officer adjudged the prisoner to be liable to the specific punishment which had been declared to be barred by the futwa first delivered in the Case.-

Extract,

Extract from the Proceedings of the Fouzdaree Adalut under date the 3d July 1816.-

Read letter, dated 25th Ultimo, from the Magistrate in the Zillah of Combaconum

To the Register to the Fouzdary Adawlut.
Fort St. George.

Sir,

I request you will be pleased to obtain the opinion of the Judges of the Fouzdary Adawlut whether by the Extract of their Proceedings dated 31st January 1814 it is intended to authorize the Assistant to the Magistrate, in cases referred to him under the Provisions of Section XVII of Regulation XII of 1802 and Section XIV of Regulation IV of 1811 in the event of Perjury happening before him, to quash such cases and to commit the parties & witnesses to take their trials at the Sessions without any reference of his Proceedings to the Magistrate as directed to be made in all other cases.-

Zilla Combaconum
25th June 1816.-

I have the honor to be &c.
(signed) C. Powney
Magistrate

Courts Order. 3d July 1816.

The Magistrate of Combaconum submits in the foregoing letter, whether, as

under the Courts' instructions of the 31st January 1814, the Assistants to the Magistrates be authorized, in the event of Perjury being uttered before them, to stop the proceedings and "to commit the Parties "and witnesses to take their trials at the Sessions "without any reference to the Magistrate as "directed to be made in all other cases."

Section XIV Regulation IV of 1811 to which the Magistrate refers expressly declares that when a case may be referred by a Zilla Magistrate to his Assistant for examination the order of reference shall be recorded on the Magistrates' Proceedings "with instructions whether "to submit the proceedings held upon the examina= "tion for the Magistrates' decision or whether "the determination upon the charge is to be passed "by the Assistant, if it be such as he is authorized "to determine under the Regulations." The Court have quoted this part of the enactment in order to shew the qualification with which the concluding part of the Magistrates' letter is to be admitted.—

The Section then goes on to declare that, as far as the general duties of the Magistrates may admit, they shall "examine the proceedings held by their Assistants in such cases and pass judgment thereupon themselves" and in all instances wherein the "sentence may be passed by an Assistant, if the "the Magistrate, on representation made to him "without unnecessary delay, shall see cause to re= "view the proceedings held by the Assistant and "shall disapprove the judgment given by the "latter, he shall annul the same and pass "such further sentence or order as may appear "just and conformable to the Regulations.—

Thus stand the general legis= lative provisions with regard to proceedings held by the Assistants to the Magistrates, and the Court are not aware that these provisions are affected, either in letter or spirit, by their orders of the 31st January, 1814. It is there observed that in cases of perjury, the Court before which the perjury may be uttered is the proper authority to commit or to direct the commitment of the offender for trial; but the proceedings held upon such commitment by an Assistant to a Zilla Magistrate must of course be always subject, on representation, to the revision and orders of the Magistrate. When the Court assert to the expediency of using the most strenuous caution in making commitments for perjury and to the injurious consequences which are likely to ensue from an inconsiderate resort to prosecutions for this crime, they are further of opinion that the superintendence and control of the Magistrate should invariably be

be exercised in cases of perjury which may arise out of proceedings held before their Assistants and that no person should be finally committed by an Assistant to take his trial for perjury until the whole proceedings in the case have been submitted for the consideration and orders of the Magistrate.-

Ordered that extract of these proceedings be sent to the Magistrate in the Zilla of Combaconum for his information and guidance.-

Extract from the Proceedings of the Foujdaree Adalut under date the 30th. August.- 1816.

Read letter, dated 3d Instant, from the Acting 3d Judge on Circuit in the Centre Division 2d Sessions 1816 Foujdarry Adalut

To the Register to the
Sudr Foujdarry Adalut
Fort St. George

Sir,

Herewith I transmit a copy of the Calendar of Prisoners apprehended in the Zillah of Cuddapah and committed for trial before the Court of Circuit.

Cuddapah, Circuit Court 3d August, 1816.

I have the honor to be, &c.a
/Signed/ W.E. Wright
Act.g 3d Judge on Circuit

Courts

Courts Order, 30th August 1816

On examining the foregoing Calendar, the Court remark several cases in which the Judge on Circuit has directed that the Prisoners should be released on giving security for their future good conduct and appearance when required for seven, five and three years.-

Similar sentences have been recorded in other Calendars which from time to time have been received from Judges proceeding on Circuit and the Court of Judicature Adalut are aware that the practice has been countenanced by the sentences which have been passed in several cases referred for their decision; but on giving the subject the most attentive consideration, the Court are inclined to question the legality of this practice.-

The Court believe that, in most instances, a sentence of the nature here described is tantamount to a sentence of imprisonment for the terms specified which is adverse both to the letter and spirit of Clause sixth, Section II Regulation XV of 1803, under which provision is made for the release of Prisoners on security.- The foregoing Clause directs that the Prisoners therein described shall be released

cleared on giving "security for their future ch
"good behaviour and appearance when required"
and the several clauses of Section XI of the same
Regulation provide for the release of such Prisoners
on Moochulkas without security at the dis-
cretion of the Courts of Circuit, a discretion
which would seem to be virtually taken
away by sentences directing that Prisoners
be detained in custody until they shall
give security for future good behaviour and
appearance when required for a specified
number of years.-

The Court therefore consider it
advisable that all sentences for release on
security intended to have operation for more
than twelve months should be worded generally
"for future good behaviour and appearance
"when required" and they expect that the
several Magistrates and Courts of Circuit
will pay particular attention to the rules
laid down for their guidance in recommending
and permitting the execution of Moochulkas
or penal engagements, taking care to exercise
their discretion in every instance with the
strictest caution and on mature considera-
tion of all the circumstances of the case.-

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

Extract from the Proceedings of the Poydary Adawlut under date the 23d December 1816.-

Read letter, dated 10th instant from the Collector and Magistrate in the Zilla of Canara.-

"To the Register to the Court of Poydary Adawlut

Sir,

Para 1st

A case of unCommonly atro-
-cious robbery attended with burning of a
large dwelling House, and the most cruel
torture on its two owners Brothers, on their
Estate (in the Koolway Village Seersie Mogany
Talook Soonda) has been detailed to me; ch
and from the examination of the miserable
sufferers I have only to record their account
of it- It appears, that on the night of
16th November last the House was entered
by seven or more Villains armed with
Swords- Their faces entirely disguised. They
seized the two Farmers- bound them and
applied Rag dipped in oil to different
parts of their bodies setting fire to it,
and burnt them most horribly, to extort
a confession of where their property was
concealed

concealed- After plundering every thing they could they burnt the house to the ground and made clear off- Not a trace can as yet be discovered of the perpetrators of this atrocious deed- and the poor creatures themselves can give no other than the foregoing account- too amply proved by my personal examination-

Para 2d Section XXI Regulation IX 1816 provides for a reward to the extent of Rupees 100- being offered by the Magistrate for the apprehension, of a Sirdar or leader of a "gang and Rupees 20- for each of the inferior "offenders that may be discovered and appre= "hended in consequence" and the latter part of that section provides, "In any case which "may appear to the Magistrate to require "a large reward, he shall report the same "to the Court of Foujdaree Adaulut, with his "opinion of the reward that should be offered, "and the Court of Foujdaree Adaulut may autho= =rize such reward as shall appear sufficie= =ent, not exceeding the sum of five hundred "Arcot Rupees for a Sirdar or leader, and "one hundred rupees for each of the inferior "offenders."-

The enormity of this case- and the frequency of daring Robberies along the Mahratta boundary often carried on in the heart of Sanda- induced me, to issue a pro= =clamation offering 100 Rupees reward to the person, who should satisfactorily prove before me- so as to enable me to commit- any one or more of the Perpetrators.-

Para 3d In assuming a latitude which that section does not exactly admit of, prior to making my report to the Court, will I hope be favorably received by it- and that their sanction will be transmitted to me- I have spread the proclamation thro' out the talook and the Boundarys It may have one good effect, as a caution to others to be ware of committing excess in a Country, where the liberality of its Rulers provides such strong means of detection.-

I have the honor to be, &c.a
(Signed) J. Harris
Collector and Magistrate

Seerci in Sonda
10th December 1816.

Courts Order 23d December 1816.

The Magistrate of Canara states, in the foregoing letter, that he has issued a "proclamation offering 100 rupees reward to the "person who should satisfactorily prove before "him- so as to enable him to commit- any "one or more of the Perpetrators" of the robbery therein detailed and he expresses a hope that the measure may receive the sanction of the Foujdaree Adalut.-

Section

Section XXI Regulation IX of 1816 expressly limits the offer of rewards on the part of the Magistrate, without reference to the Zuydary Udalut, to a hundred rupees for the leader of a gang, and twenty rupees for each of the inferior offenders, and Section XXII of the same Regulation declares that all specific rewards offered under the preceding section shall be payable on the conviction of the offender or offenders before the Courts of Circuit.-

The Court have considered it necessary to advert to these enactments in order to point out to the Magistrate of Canara the irregularity he has committed in offering, without reference to the Zuydary Udalut, a reward exceeding the limits of his discretion, as also the error into which he has fallen in proclaiming that such reward should be payable to any person "satisfactorily proving "before him - so as to enable him to commit "any one or more of the perpetrators" instead of declaring it to be payable on conviction before the Court of Circuit.-

It is obviously incumpetent to the Court to confirm the proclamation which the Magistrate has issued, in the terms above mentioned; but as the robbery in question appears to have been attended with circumstances of a very aggravated nature, they entirely concur with the Magistrate as to the expediency of offering a reward for the apprehension of the offenders and they accordingly authorize him to offer the sum of a hundred Rupees, payable according to the provisions of Section XXII Regulation IX of 1816, as a reward for the discovery and apprehension of each of the persons concerned in the said robbery.-

Ordered that extract of these proceedings be sent to the Magistrate in the Zilla of Canara for his information and G.

guidance.-

Extract from the Proceedings of the Zuydary Udalut under date the 12th March 1817.-

Zuydary Udalut
First Session A.D. 1817.

To the Register to the Court of Zuydary Udalut
Fort St. George

Sir,

I herewith transmit a Calendar of Prisoners apprehended in the Zillah of Cuddapah and committed for trial before the Court of Circuit.-

I have the honor to be &c.
(Signed) W. Hawkins
3d Judge on Circuit

Court of Circuit,
Gooty
27th February 1817

Courts Order 12th March 1817.

In the Column containing the Abstract of examination before the Criminal Judge with the grounds and date of commitment for trial in No. 38. of the foregoing Calendar the Court find an opinion recorded by the Criminal

Criminal Judge that, as he is prohibited by Section VIII Regulation X of 1816 from taking cognizance of any criminal charge or information except such as may be brought before him by a Magistrate or some Police officer under his authority, he is also "prohibited from commencing proceedings a= "gainst a Prosecutor if, in the judgment of the "Criminal Judge perjury have been committed on "the part of the Prosecution."

The opinion here expressed by the Criminal Judge is in opposition to the true intent and import of the Regulations, according to which the Court before which the perjury may be uttered is the proper authority to commit or direct the commitment of the Offender for trial. The re-enactment in Regulation IX of 1816 of the provisions of Section VIII Regulation I of 1810, whereby Magistrates are prohibited from receiving charges of Perjury which may be pre= =ferred by the Parties in Civil Suits, clearly shews that the Law with regard to commit= =ments for Perjury is not altered in any degree by the recent enactments, and the Court do not understand how a contrary conclusion should have been drawn from the wording of a section which defines the competency of the Criminal Judge to receive or take cognizance of such Criminal charge or information only as may be brought before him by a Magistrate or

or some Police Officer, but which certainly cannot be held to restrict the Criminal Judge from making commitment in any case of Perjury which may arise out of such charges or informations so brought before him.=

In Nos. 47 and 55. of the Calendar the Prisoners, who appear to have been formerly Revenue Officers of the Government, are charged by the Government Vakeel on the part of the Collector, the one with having received a bribe from a Ryot and the other with having concealed the circumstances of a bribe which came to his knowledge while in charge of the Chatwal District. The proceed= =ings in both these cases are stated to have been returned to the Criminal Judge and the Prisoners to have been released under the orders of the Judge on Circuit who considered "the cases not to be amenable to the "jurisdiction of the Court of Circuit, they "being provided for in Clauses seventh and "Eighth Section XII Regulation XII of 1802."

The Regulation here quoted was framed for the appointment of the "Ministerial Officers of the Civil and Criminal "Courts of Judicature" and the provisions of the aforesaid Clauses relate exclusively to charges of corruption or extortion that may be

be prefered against such Ministerial Officers of the Courts of Judicature.-

Such being the nature and object of the Regulation in question, the Court do not understand how its provisions can be quoted in bar of the right of Government or its Representative to prefer before the Criminal Courts charges of corruption or extortion against native Officers employed in the Collection of the Revenue who clearly do not come within the operation of the above Regulation.-

Ordered that extract of these proceedings be forwarded to the Third Judge on Circuit in the Centre Division; that the attention of the Third Judge be particularly called to the latter part of the proceedings and that she be by precept commanded to communicate the whole to the Criminal Judge in the Zillah of Cuddapah for his information and future guidance.-

Extract from the Proceedings of the Foujdary Adawlut under date the 25th June 1817.-

Read letter, dated in April last from the Criminal Judge in the Zilla of Cuddapah submitting for the consideration of the Court, certain doubts to which have occurred to him with respect to the authority vested in the Criminal Judges for the effectual management of the

the Jails placed under their charge.-

To the Register of the Foujdary Adawlut Fort St. George.

Sir,

I deem it to be my duty to represent that there have lately occurred two instances for small complaints of theft committed among the convicts within the Jail of this Zilla and that after a careful consideration of the law expressly established for the guidance of the new office of criminal judge it is better seems to leave the powers, which that function can with legal security exercise on like occasions under some uncertainty. More serious occasions under some uncertainty. Because the rules, which are to be the basis of right economy order and safety in all the Prisons under this Presidency, appear to my comprehension to be, on comparison with any other parts of the criminal code, of eminent importance to the public peace and welfare, I have ventured to believe it prudent to submit the dubious properties, apparent in so essential a portion of the law to the notice of the Foujdary Adawlut, in order that, if in the estimation of the Judges of that high Court those uncertainties should be reckoned of any moment, effectual such

such additional provisions and instructions may be prepared, as to their wisdom appear adequate to render the Magistracy with H which the criminal Judges seem still charged in relation to the Zilla Jails, sufficiently efficacious, and positive, for its meeting with instant energy any cases of sudden danger, which can arise in and about these accumulations of the vitiated and bold: and as the disorderly inclinations of Ireland can never become a matter quite undeserving of apprehension, the wisdom of anticipating any eruption may seem undoubted.-

2 In addition to the declaration of the new law to except "what relates to the preservation of the peace of the district from becoming" applicable "to the new office of "Criminal Judge" the incompetency of that" officer to take original "cognizance of any" "criminal charge or information" whatever, except when he acts as his Majesty's justice of the peace, is very positively enacted by the directly negative force of section VIII Regulation X 1816.

It seems an acknowledged rule in the interpretation of laws that "where words are capable but of one meaning the statute must be" "observed however hard it may bear on particular persons." From the general import of the new

15

new laws their design seems to have been not only the circumscription but the abrogation of many powers before delegated to the Zilla Courts and conferring the influence, essential to many processes, over police, on another department. This import of the new law appears to have rendered it behoven in a Zilla Court to obey the strict letter of this law with diligent vigilance, lest it arrogate powers out of the law; and infringing the limits, which it fixes, interfere with the legal authority of the other departments. The law which has constituted a new office of Criminal judge appears to generally define it to be an office whose Jurisdiction is special for trying cases committed and referred by the Magistrate and the Police; yet after the determinate prohibition of the words shall not "and" any" in the above section a brief enactment declares "the jail "of the Zillah" to "be placed under the exclu"sive charge" of the Zilla judge but it is doubtful whether it includes any words the legible and exact meaning of which is interpretable into a certain repeal of any very material part of the aforesaid incompetency.-

That such a constitution must restrain its Judges to follow the strict letter of the positive laws without their pretending to explain or extend them by which they might be rendered illusory. that new laws be framed for new cases seems strongly affirmed in section 1st of Doctor Sullivan on the laws of England.-

3 The explanation, which the law

law makes of this change it may be argued rather particularias affairs relating to the common economy of a jail, than the right of a Criminal Judge to hold immediate and original cognizance of certains offences committed within, or against the Villa jail, and to punish the offenders. This jurisdiction however seemd to be a very material point of the criminal laws of any country; and writers on the rules of interpreting laws observe that a strict "interpretation should be given to corrective" "statutes." yet without a more scrupulous judgment, as to the strict force of words, than common prudence plainly required of whenever the subject of debate is the right to punish, there have not been discoverable any statutory words which in private study I could presume to convey a power of original cognizance, and punishment, being delegated to the Criminal Judge while either a Magistrate or his Assistant be present at the Chasen station. The title of form N°5 of Regulation X A.D. 1816 expresses it to be designed only for persons "apprehended" and detained to the Criminal Judge.

Thus among the laws against offences by Courts the exemption of customs ascertaining with in one from a jail may be mentioned with the Judge the same sanction.

4

Although in the instance of

of the jail a partial difference should be perceptible between the complete prohibition of Section VIII, and the duties committed to the Criminal Judge by Section XXVII, XXVIII & XXIX and thus the newer part of the law obtain some appearance of becoming "a virtual repeal" by negation of some of the older part; still as the Criminal Judges have never by any former law been in the possession of powers to originate criminal proceedings, there is no written or common law for that office, which such a rescission would "revive" Chief justice Hale does affirm it to be "true that judicial decisions" "though "less than law" yet "being greater evidence of it" "than private opinion have great weight and" "authority in expounding declaring and publishing what the law is." There can however exist as yet few if any judicial decisions for the guidance of Criminal judges in an office so lately originated by a law, which declares it 'special.' Moreover the legislature deems on the grounds of former rules being without "formal declaration" inapplicable to this "special jurisdiction" to have enacted the ordinances in Section V, VI, XXXVIII & XXXIX and other parts of Regulation X A.D. 1816. again under the rule "one part of a "regulation is to be construed by another so

"so that the whole may stand" it might not be amiss for any single judgment to apply a minute difference in the latter part of the same law, as "in true intent" and import" a repeal of the more strongly expressed determination of the former part.-

5 But although the word "exclusive" should be inadequate for delegating original & "cognizance" over "charges or information" when it has been prohibited in a previous part of the same regulation, still in its relation to the office of Roome Magistracy erected by a preceding regulation, it might be argued to convey "a virtual repeal" of the administration of that Magistracy over those spots and although from the after exception of Regulation XI in which a warranty for the Sibidars and Police officers to pursue and seize murderers and all other offenders and to bring them to the Magistrate, declared to be one of the ranks of police, has been enacted without any mention of such jurisdiction being restrained by the before mentioned "exclusive charge" over the offenders imprisoned in a Zillah jail; some denial of total exclusion of the police from the charge over the jails, the safety of which hold or claim a link to the preservation of the peace, be conceivable, a criminal Judge may be censured for presuming the force of the terms

two words to form a sufficient justification for surmising, that the expression was selected, when written by the legislature, because of an intention to add to the authority of the Criminal Judge some police power, through which offences committed directly against the security, quiet, and economy of the public jails, could be encountered by original process from that Court, without any requisiteness for the prosecution, especially when Prisoners or the guards committed the offence, being originated before the Magistracy or the police under the exclusive charge of the latter function.-

6 The expressions relative to "the criminal Judge redressing "all well founded" complaints;" and preventing "immoralities greatly imply that the legislature intended to have armed the criminal Judge with a determinate authority for a direct enforcement of redress, not only by a mere remedy of the wrongs complained of, but of checking the evil by bringing, when the magnitude of the wrong should render strong examples necessary, the wrong doers to punishment, either through the Court of the Zilla Criminal Judge; or the criminal Judges arriving on Circuit. A theft or murder or other felony, though committed in a jail, requires a regular course of legal proceeding, wherein some new charge

"All legal proceedings" "the commitment" "original writ which" "warrant or information"

and

and information are to be received, and taken cognizance of, and a culprit is to be arrested and brought up for trial in the Court like any theft or murder committed out of such an enclosure: and though the Criminal Judge should be legally empowered to take summary cognizance of faults and to ifsue commands for slight penalties during his stated visits to the jail and they might be sufficient to punish "gaming drunkenness" and smaller immoralities. Yet capital or serious offences are liable to occur in Jails, and it may be a caution suitable to jurisprudence for the legal and rightful process for bringing the perpetrators of such crimes before the higher tribunals of justice being distinguishable with certainty, and precision, on reference to the letter of the Criminal Code.

7 The duty of redressing the "ill treatment" of which prisoners complain may as frequently comprehend offensive acts committed by guards on the prisoners without the jail, during the time of convicts being employed at hard labour, as relate merely to acts committed within the walls of the prison. The definition by which the "exclusive charge" is expressed in the law is "the jail of the Zilla; but such words in their strict import only delegate an exclusive charge over a specific enclosure, and might be of no force in legalising or indemnifying original cognizance, and exclusive jurisdiction by a criminal Judge, over offences occurring beyond; though they be perpetrated by convicted felons. It is however presumable that some direct Jurisdiction were intended to be delegated to the Criminal Judge not only over the persons of Prisoners or residents in the Jail; but over those employed to guard and supply the jails with provisions, especially when the acts of the latter have offended against the good regulation of the Prison.—

8 All the guards though serving during their stated hours of attendance either in the jail or in charge of Prisoners, who are taken out of jail for work or other purposes, are still as residents without the jail to be comprehended among the general population of the district, and as such subject to its' police. From its cognizance their private acts can scarcely be excluded. Though a guard or a victualler or a Smith or a native doctor or a whipsper, or other attendant on a Prison should be accused of very harmful practices within the jail, and might not when

when he found his ill. deeds detected, further endeavour to abscond or resist he could soon get beyond the exclusive charge of the Criminal Judge, and some compulsatory process be required to compel his surrender. Though this some collision of authorities might be liable to ensue in regard to the legal manner for arresting his person; and of bringing him before the tribunal empowered to try the offence. If the Criminal Judge, who is not a member of the police, be incompetent to issue process to arrest a person so situated, the Zilla Magistrate may also from the force of the term "exclusive charge" deem himself prohibited from taking cognizance; and although by a later law the criminal Judge and the Magistrate are authorized to keep up a "free" communication, there are no rules which seem to authorise the Criminal Judge after receiving and taking cognizance of any charge or of any disclosure of information to direct any positive order for arrest through the Magistracy; and also no order of the sort is yet to be issued to a Police Officer excepting by the Magistrate

Magistrate of the Zilla or his assistants, when they be "present." At that time the Criminal Judge is only warranted to call for the "required documents and the exercise by him of more positive powers towards any individual of the more numerous body of police could possibly be represented as an arrogation of authority.—

This is the word used in Regul.ⁿ III. A.D 1817 It may admit of a question as to responsibility if not for instant and to the immediate effects of the return and presence of the Magistrate on the competency of a Judge who has commenced interference—

"Drunkenness" can scarcely take place in the jail without the previous perpetration of what is probably a much more aggravated offence against police beyond the local limits of an "exclusive charge" denoted by the words "Zilla Jail" and to prevent drunkenness either by the use of spirituous liquors or the aid of intoxicating drugs as bang and opium, it may generally become necessary to punish (as practice in the Magistracy has before proved liable to happen) some free commission, who seeks an opportunity of throwing these intoxicating articles in the way of his imprisoned friend, while he is employed on the high road or other public works. Thus rescues is a most material offence against the safety of jails, and the allegiance due to the sovereign power over a state, yet is more commonly an offence by persons from

from without - It among other qualities compre-
hends a greatly contemptuous resistance to
process of law; but sections II, III, IV, V, VIII
of Regulation I A.D. 1810 "providing against"
"resistances to the processes of the Zilla Criminal"
"Courts as well as for compelling the appearance"
"of persons charged with acts of a criminal"
"nature," have been rescinded in section II Regula-
tion IX A.D. 1816; and while the written
obligations to obedience have been abolished,
as if no process of importance was entrusted
to the responsibility of the new species of
Zilla Criminal Court, section VII is not noticed
by the edicts in Regulation X. Though escape
be the act of a prisoner the simplest instances
of it can seldom be accomplished except
through criminal neglect or a crime of greater
magnitude in the jail guard; or by the previous
supply of instruments by some person residing
at freedom - On prisoners by night or
day either by scaling the walls or overpowering
a guard getting to a distance from this excludive
charge the chief reliance for their reappre-
hension at some future period must be
on the activity, to which the police of the
district can be urged, in the pursuit of
the runaways on the hue and cry being raised
after the felons; like as is stated in
section

Section XXX Regulation XI. A.D. 1816. The security of
jails and the personal safety of establishments,
on an economical scale, can only be upholden
by the discouragement through severity of the
imprisoned multitude; and their numerous con-
-nexions from attempts of open violence; and
the Regulations have after the example of many
other codes, ancient and modern, providently
denounced escape as an offence of great crimi-
-nality.-

10 Instances have not unfrequently occurred of Prisoners having been confined on slight charges in the Zilla Jail when either by the apprehension of their accomplices in more heinous crimes, or new information ob-
-tainable against them while in Jail, it has been necessary for the safety of the community to bring them up as prisoners on a new and different charge or information from that for which they were apprehended. A Gang may likewise be apprehended and the only counts of robbery traced against them in the forty eight hours during which only the Amlodar is legally authorized to detain them may be those in which the proofs are insufficient for conviction; yet, on the report of robbers having been ap-
-prehended with such and such property spreading over the country, complainants

may

may come forward some times from the very opposite extremity of a Zilla to the police stations, whence the prisoners have been transferred to prosecute on evidence, which the robbers cannot ament: but in such cases or such wherein a notoriously dangerous offender after being acquitted on a charge for being a principal in an atrocious offence, could justly be brought forward as an accessary; if the Criminal Judge should be by the rules "prescribed for his guidance" "in" bringing persons to trial" incompetent" "to receive or take cognizance" of such charge" "and information" because not "brought before" him by the Magistrate or Police, a gang would probably escape with impunity; or with too slight a punishment for effecting the humane result of peacefulness.—

11 I shall not presume to mention in detail the various species of crime and the many instances in which great offences are liable to be traced against people already placed in the exclusive charge of the Criminal Judge or how the criminations referred to in Section XXXIII Regulation XI AD 1816 and confessions relative to the concealment of stolen property about which Section XXXVII has been enacted will as frequently be given during the despondency consequent on commitment for trial or confinement in the Zilla Jail as in the short period of forty eight hours during which prisoners can be lawfully detained by the police. All prisoners apprehended for crimes of importance being sent directly to the criminal Judge's little opportunity can ever occur for the Magistrate personally ascertaining information in their regard.—

The late laws in the instance of this and other forms partake of some Asiatic qualities being directions unaccompanied with commination: the Zilla criminal Courts are not to inflict a penalty though the period has been greatly past and this is another instance of the watchfulness of the legislature in its restrictions of their authority.

12. Of the law against cases of a heinous nature enacted in Section XX AD 1802 is ever to be productive of much advantage in opposing those most atrocious and crimes when they threaten civil polity and society; the full disclosures can seldom, because of the time required for such representations, be obtainable from Prisoners until after they have been delivered over to the exclusive charge of the Criminal Judge: and I hope that it will not appear presumptuous to observe that after any such disclosure the most certain means of leading to the apprehension and commitment of the Principal offenders would be an instant cognizance and expeditious issue of direct process by the Court, to which the disclosure was

was made, to the police of the country in which the Principals are to be found. The proces will be of no avail if their friends can anticipate it by advise to abscond and this would happen if the Judge should be required to communicate the grounds of charge to the Magistrate for that officer to use his discretion in the pursuit of those measures of police, which he may deem appropriate to the occasion. An instance of wherein a charge formerly could be legally preferred against a prisoner not only subsequently to his apprehension but to his conviction is shown in Section X of that very important and efficacious law Regulation XIII A.D. 1806.

13. The charge over Prisoners and their guards when employed beyond the limits of a jail can scarcely be deemed of less moment and peril than that over Prisoners locked up in the Prison but if the words Zilla jail can be dilated so as to admit of this exclusive charge continuing after Prisoners be moved for various and daily purposes out of the specified enclosure, there might after so far quitting the letter of the law, which by its title is to "define the powers" of the Criminal judges follow of some perplexity in resolving a question about the limits unto which the exclusive charge can extend; and whether convicts sent from the Zilla jail for banishment should be accountable as under the exclusive charge of the Criminal Judge, not supposed to have any police functions, or the exclusive charge which the Revenue Magistrate holds as the officer who can alone "order" the services of police peons for such objects as the security of travelling Prisoners. As to any thought of a Criminal Judge being warranted to proceed authoritatively without the intervention of the Magistracy or police to apprehend and take cognizance of a person detected in the act of conveying any offensive weapon a file a ladder or any instrument for breaking jail or any arrack or opium or bang to a convict when out at work because of the office being still charged with a large proportion of such duties in the executive as seem generically types of Magistracy, and with Jurisdiction to be the gratuities which compose the subordinate Magistracy of a state: such an opinion when once established might unsettle the boundaries ordained in section V and VIII: and they create a chief

chief speciality of the "special jurisdiction" for the new Officer; whose constitutional rank as it is pointed out may be called that of judge without Magistracy. Magistracy in this place being taken only to denote a part of either the said ministry or Jurisdiction.-

14 After a strict regard of this law entitled by the legislature a regulation for "constituting the judges of the Courts of Adalut" "of the several Zillas criminal Judges of their res=" "pective Zillahs and for defining their powers" there is not found in the title or in the body of the law any mention of Magistracy having formerly been held by the same officer and therefore no duties before exercised by the former Magistrate, and common to ordinary Jurisdictions in criminal law, can be presumed to be inheritable through this new law except formally enacted. Of this formality too there are as before noticed some observable precedents in several cases as those specified in Section XXXVIII, and XXXIX, Regulation X A.D. 1816, and some of those cases if considered relate to smaller powers than are some of which regard has been taken in this paper. I may therefore be excused for observing that the legislature prescribing "rules for the guidance" of "Criminal Judges" in bringing to trial persons "charged with crimes and offences" has neither

Doctor Sullivan in questioning whether it be a good maxim as Lord Coke says bonæ jurisdictiones officium ampliare curiæ statutum by which the Justiciarius angliæ retained in many instances the exertion of a Jurisdiction when taken from it, makes the "maxim to be "utterly false for surely "if it is the duty of each "Court merely to endeavour "prevent confusion to "keep within their "proper limits."= Section 33.

neither described powers for process issuing in such instances from the newly constituted office to which as not then in being the old law could not relate or has enacted shows perjuries contempts vexations and corruption occurring in front of the special jurisdiction of this new court of justice are to be arrested.-

In regard to whether a material change has taken place in the village tribunals it may be without oath. jurisjurandi contentio relegata ad Damnum ultra tenet mos the Roman law. Perjury was not punished.

14 Had more discretion been permitted to a criminal judge for his pursuing what seemed justice and right to his own conscience I confess that my own capacity of judgment would counsel me not only to pur= sue with energetic process of justice the offender who attempted either to oppress or to rescue prisoners or to convey arms files opium or bangs into the jail but to receive and take expeditious cognizance of charges for perjuries vexation contempts and like forensic offences. In the present state of the law were never urged through abhorrence of such malicious dishonesties to seize a man of influence who dared attempt to invert the law into the means of vexati= =on and mischief through perjury suborna= =tion of perjury maintenance or similar offences and an appeal being made to a higher court a justification of the proceed= =ings were required, on general grounds of

of jurisprudence and former laws it might be easy to show that such acts should be punished but I know no words if the new law to quote in proof of the introduction into this special jurisdiction of powers to execute such justice except on reference.-

15 It may be excusable to confess with all reverence for the superior wisdom and foresight of the legislature that to my own powers of intelligence the process by which all the sentences of the higher Courts are to be executed state Prisoners and dangerous offenders to be kept in close imprisonment for years and to be occasionally even capitally punished, by which Zumindars Poligars and others bailed through friendly sureties for a homicide or other heinous offence which may be bailable and the evidences against people of greater influence are to be compelled to appear before the Courts invested as Courts of Circuit with lawful powers to punish such serious offences are worthy of some obligatory provisions against resistance of process. For like as is unfortunately occurring nearer home Colonel Munro in his police report on the ceded districts mentions a backwardness in giving information from the fear of assassination which was formerly very common since the speciality for preventing the Zilla criminal Courts employing police officers, who may in some respects seem the natural coadjutors of the criminal laws, there remain but very few persons to convey process of any sort from these Courts. Thus it may be also excusable to observe that at the same time as the executive means of the Zilla Criminal Court have been diminished in number of officers to serve summonses & other mandates which may remain indispensable the law which cooperated to cause obedience by communication has been annulled.-

16 The reasoning powers of my mind might dictate were it not restrained by respect a confession in nearly the words of a rescinded law my conviction of "experience" having shewn the necessity of a "provision for" "such" cases both to maintain "the just authority of Magistracy, there used "as a general term to comprehend the "higher as well as lower species or ranks "of executors in the land;" and to "prevent "any evasion of their process by flight con-"cealment or otherwise" but the legislature having formally rescinded the regulation prohibits the executive officer of the new Zilla

Zilla Criminal Court from the guidance of such
thought to and motives. From the same preamble it
may therefore be presumed that "whereas the rules
"have not been extended to the Criminal Courts there"
"is not any rule prescribed for compelling the"
"appearance of persons who may abscond or"
"otherwise evade" its process.-

17 It is not however without some
hesitation that I offer an opinion of the word
"exclusive" containing a decisive denial of any
concurrent process of the Revenue Magistracy
and of its power to take cognizance of any
part of the various crimes and offences which
may occur within the enclosed spots. I am appre-
-hensive of allowing too free a force to this
word exclusive lest as the words are not
expressly confined to the lower departments of
the Magistracy of the land the term should
appear after a full conception of its forming
so absolute a negative to the authority which
the Zilla magistracy holds by Section VIII
and IX Reg. 1816 to be applicable with
a somewhat similar force of language to
superior officers of justice except in as far
as the new law recognizes the rules for the
Circuit Judges issuing orders for "the better
treatment

"treatment accommodation or security of the Pri-
-soners." But the legal authority of that Court
to punish the more serious offences which may
occur in Prison the Guards of which are men
liable to be slain by the desperate in attempts
to escape; an instance of this is now under re-
ference to the Foujdaree Adalut from this Zilla is so radically necessary for the good
patity of the land that I could not venture
to surmise a thought of such authority being
in the slightest degree liable to any doubt.-

18 I venture by this opportunity
to remark that the Commissioners for the
improvement of the Judicial code on commu-
-nicating their instructions for the transfer
of the police observed that a sufficient
number of it for the guard of the jail
might be retained. The Jail guard however
had ever been considered as distinct from
the establishment called Asham or Police-
-No Police officers were therefore retained
and the system hitherto established continues
to be followed for the mention of Police in
these instructions seemed to have rather
occurred casually than to have been intended
as a specific command for any change of
system or for any union of police to the
usual

nical guard neither has the jail Guard been distinguished by the name police and as long as the Prisoners remain under the exclusive charge of the criminal judge some edicts establishing in an after regulation for Police officers might render them very inefficient protectors and become liable to create a collusion with the powers fit to accompany the responsibility with which the Criminal Judge is so exclusively charged.-

19 Thus in Section IV of Regulation XI A.D. 1816 it is written no order shall be issued to any Police officer excepting by the Magistrate of the Zilla or his assistants and so strict had the legislature in this regulation guarded against the Zilla Criminal Court exercising even in concurrence with the Magistrate any police authority over the new general levy of Peace officers in the district that no exception had been laid down for a Criminal Judge, when constituted by duty and oath of qualification to exert an authority as his Majesty's principal conservator of the peace, controling or giving orders to any members of this Police committees but even the Cutwals and constables of

of the large cities where a Criminal Judge is always resident and many European British subjects may dwell, seemed discontinued to the authority of this function even during the months in which the periodical absence of the Zilla Magistrate from these populous places becomes indispensable because of revenue affairs. The Proviso against restriction in Section VIII of a former law might from strict interpretation of the word "this" seem singular and only applicable to the very restriction of which that section before defines rather than provisions against those restrictions which render it inapplicable for the Criminal Judge to take an active part in the preservation of the peace, while a Magistrate from the Revenue department remains at the station.-

20 It seems that the watchfulness of the legislature to restrict interference by the Criminal Courts over the police is also evinced in the Provisions of Section XLIV whereby all police officers accused of extortion oppression and other abuse of authority only before the Magistrate from the revenue department although in most systems of laws and I may mention as an example from

In english law appropriations are more frequently mentions by the name of the crime. Thus if a prisoner die by reason of wrongful or hard usage it is murder. Thus if an officer strike so as to kill a Prisoner though a mistaken fear of escape it is murder. See Law of arrest. It is a maximum subject. There is in statute 5. XIX. Regulation XXVIII A.D. 1802 a severe punishment enacted against one of police and in default such the powers are now themselves police officers.-

from this Code section XXVII Regulation XXIV. A.D.
1802 they were all countable among the greater offen-
ces it being possible for oppressions to reach
murder homicide or other heinous wrongs, and
as such liable to prosecution in ordinary
course of justice before the Courts of Circuit.
The authority of the Magistrate is extended
to punish such cases with a like term of
imprisonment as petty thefts and thus gives
more force to the speciality and it has the
appearance of a privilege excluding extortions
oppressions and abuse of authority by the Police
from the special jurisdiction of the Criminal
Judge. Thus on a Police officer being either
through error or his not having pleaded the
privilege of the office to be tried only by
the Magistrate being brought before a Zilla
Criminal Court for any heinous or wrongful
violence if he then plead that it happened
when acting as a Police officer the case might
seem one coram non judice and a dilemma might
arise as to the means of further trial.

21. In one case not mentioned as an
exception to the aforesaid rule but proceedings
it maltreating a prisoner for a peculiar object
or for obtaining information is formally violent
liable

liable to be delivered over to the cognizance of
the criminal Judge and to be finally brought
before the Court of Circuit. Whenever oppres-
-sion and extortion perpetrated by any mem-
-bers of the now numerous force of police
be cognizable by all Courts of Regulare Adalut
according as the quality of the crime may
shew to be necessary the specific extent of
the punishment and the strict limitation of
time within which only a charge can be
preferred for the first mentioned extortions
oppressions and abuse of authority by any
member of this very general levy of Police
would tend besides the other prohibitions
against control of a Police officer by a
Criminal Judge to render the employ of such
police officers as guards of the jail incon-
-venient, for oppressions of all sorts become
aggravated by being perpetrated in jails
and the criminal intercourse by a jailor
with a female prisoner is in some laws
ranked as a rape Evil practices which
peculiarly ought to be checked in a jail guard
by severe punishment might not be detected
before the expiration of the specified period
of three months after which if the guards
were composed of police officers a ban to
their

their punishment even for serious oppressions might be established under the letter of the newer regulation.-

22 Having thus endeavoured to submit with all respectfulness for the higher authorities those doubts which while they remain undetermined may tend in some degree at least to embarrass the conscience of an officer acting in an extensive though special jurisdiction under such public and solemn responsibility as a criminal judge I venture to solicit any instructions which the judges of the High Criminal Court of Zeyldare Adalut may deem meet for the occasion I trust that there is no need for me to apologize for having been stimulated through a zealous wish to promote a strictly legal yet vigorous and strong policy in the Jurisdiction placed under my charge unto the personal exertion of making a particular representation of these subjects of solicitude to a Criminal Judge and I assure the Zeyldare Adalut that I shall continue as I trust has hitherto been the case to exert myself with all legal energy in upholding the many public interests which are still confided for execution to the Zillah Courts in

in its Criminal department.-

I have the honor to be &c.,

Kuduppah, April, 1817. (signed) Thos. Newnham.
Criminal Judge.

Court's Order. 25th June 1817.

The Court have given the most attentive consideration to the subject of the foregoing letter and it does not appear to them that any difficulties are likely to arise with regard to the management and control of the Zilla Jails which are placed, by the late regulations, under the exclusive charge of the Criminal Judges.-

Sections XXVIII and XXIX of Regulation X of 1816 provide for the redress by the Criminal Judge of all well founded complaints of ill treatment and for the prevention of drunkenness, gaming and other immoralities among the Prisoners confined in the Jail, and the Court are clearly of opinion that whenever a crime or misdemeanor may be committed by any such prisoner, whether he be at the time within the precincts of the jail or employed on the public works under charge of the jail officers, it is competent to the Criminal Judge either to take cognizance of the offence under section VII Regulation X of 1816, or as the case may be, to commit the

the offender to take his trial before the Court of Circuit.-

Ordered that extract of these Proceedings be sent to the Criminal Judge in the Zilla of Cuddapah for his information and future guidance.-

Extract from the Proceedings of the Foujdary Adawlut under date the 21st September 1817.-

Read letter, dated the 11th Instant, from the Second Judge on Circuit in the Western Division,-

To the Register to the Foujdary Adawlut

Sir,

In a case of Gang Robbery tried before the Court of Circuit now holding its Sessions at this Station, the Prisoners were charged with having burnt the Prosecutrix to discover where her property was concealed. No evidence was adduced to prove the act of burning, nor was any mark of burning appa: =rent on the Prosecutrix. This material part therefore of her accusation rested solely on her own Information. This omission was brought to the notice of the Criminal Judge by precept suggesting in all similar cases that evidence of any aggravating circumstance in the Commission of a Robbery should be taken on the spot as soon as possible after the perpetration whether the offenders be or not apprehended, and for this purpose the Criminal Judge was recommended to furnish the Magistrate with a copy of the Precept that he might issue the necessary instructions to his Su- =bordinate Officers.-

My present reference to the Foujdary Adawlut arises from a doubt as to the mode in which a Judge on Circuit should communicate with the Magistrate, whether directly, or through the Criminal Judge, or to confine his Remarks to the latter, & leaving it to him to communicate with the Magistrate under the provisions of & Section II Regulation III of 1817, on matters connected with any case brought to trial before the Court of Circuit. Clause second Section XI of Regulation IX of 1816 applies solely to the Calendars which that Section requires should be delivered by the Ma: =gistrate to the Courts of Circuit.-

I have the honor to be, &c.

On Circuit, - - Mangalore, - - - 11th September, 1817.

Signed T. Warden

Second Judge on Circuit.

Court's Order 24th Sept 1817.

In the foregoing letter the 2d Judge on Circuit expresses his doubt as to the mode in which he should & communicate with the Magistrate" on & "matters connected with any case brought to

"to trial before the Court of Circuit" and he observes that clause second, Section XL Regulation IX of 1816 applies solely to the calendars which that section requires should be delivered by the Magistrate to the Court of Circuit.-

By Section XXI Regulation X of 1816 the Judges of the Courts of Circuit are empowered to call for the proceedings held by the Magistrate or by any Police Officer under him, a power which would be altogether ineffectual did it not imply an authority to issue such orders to the Magistrate in any particular case as the circumstances thereof may appear to require. In thus empowering a Judge on Circuit to call for the proceedings of the Magistrate, it is obviously the intention of the Legislature that the proceedings of the latter officer should be brought, fully and unreservedly, within the cognizance of such Judge.-

It is further observable, that clause third, Section XL, Regulation IX of 1816 contains a provision regarding the obedience of the Magistrates to the orders of the Courts of Circuit generally and not merely to such orders as may be issued by the Judges of those Courts under clause second of the Section aforesaid.-

According to this Interpretation of the law it will be apparent to the 2d Judge on Circuit that he is authorized to communicate directly with the Magistrate on all matters connected with the proceedings of such officers in cases brought before him at the several Sessions of Jail Delivery.-

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

Extract from the Proceedings of the Foujdarry Adalut under date the 7th September 1817.-

Read letter, dated the 13th Instant, from the Criminal Judge in the Zilla of Vendachellum,-

To the Register to the Court of Foujdarry Adawlut

Sir,

a Difference of opinion

opinion upon the Interpretation of Section XXIV Regulation IX A.D. 1816 prevailing between the Officers in charge of the Magis= =sterial office in this Zillah and myself, I request the subject may be laid before the Foujdarry Adawlut for their Instructions.=

Under Section XXXV. Regula= =tion IX A.D. 1816 Magistrates are empowered to annex litigious or vexatious complain= =ants, but no such power is vested in the Criminal Judge. As the law presumes that no litigious charges can be brought before him - for by clause first Section XXIV of the above Regulation, it enacts "that "upon a Prisoner being brought in the "first instance before the Magistrate "charged with any crime or misdemeano "he should enquire into the circumstances "of the charge, and examine the Prisoner, "and also all such other persons &c." and therefore should the charge be of litigious

litigious, the Magistrate would terminate the Proceedings and impose such fine as he may deem necessary.=

A groundless charge of Robbery having been transmitted to me by the Head Assistant Magistrate who had not taken any examination from the Prisoners, I deemed it proper to call his attention to the subject and communi= =cated my opinion and wished in the accompanying copy of a letter dated 26th July 1817. and copy of his reply of conveyed in an Extract from his Pro= =ceedings under date the 7th September 1817. is also transmitted.=

I have the honor to be,
Sir,
Your most obedient Servant
(signed) G. Govan.
Criminal Judge.

Cerdachellum - -
Zilla Court - - -
13th September 1817

To the First Assistant Magistrate in charge of the Office of Magistrate of the Zillah of Cerdachellum.

By clause first, Section XXIV Regulation

Regulation IX. A.D. 1816. Magistrates are required when Prisoners are brought before them in the first instance to enquire into the circumstances of the charge and to &c examine the Prisoners and Witnesses; and to commit their respective depositions to writing; but as two Instances have occurred in charges №. 366 and №. 379 of your Calendar. wherein you have omitted it I request that in future this Process &c may form part of the proceedings. had the prisoners in charge №. 379 been exa= =mined the accusation would have appear groundless. & by Section XXXV. Regulation IX A.D. 1816 you would have been empowered to fine the accuser. but as the prisoners have been brought before me, I have only been able to acquit the offenders. without amercing the Prosecutor for preferring a litigious charge.-

I have the honor to be &c

/Signed/ G. Gowan.
Criminal Judge
Extract

Cerdachellum
Zilla Court
26th July 1817

(22)

Extract from an Extract from the Proceedings of the Court of the 1st Assistant Magistrate in the Zilla of Cerdachellum under date the 8th September A.D. 1817.-

"The 1st Assistant Magistrate &c avails himself of the present opportunity of re= =plying to the letter of the Criminal Judge under date 26th July 1817 and to state, that clause &c 2d Section XXIV, Regulation IX. A.D. 1816, declares 'that it shall not be necessary for the Ma= =gistrate to go further into the Examination, than to satisfy his own mind that there is ground to believe the prisoner guilty of the crime charged against him' this being the case, it alone belongs to the Magistrate to deter= =mine what evidence he shall take, and &c therefore as the 1st Assistant Magistrate be= =lieves the prisoner guilty, he considers it unnecessary to take her deposition."-

Given under my hand and the Seal of the Magistrate at New Town &c Cuddalore this Eighth day of September A.D. 1817.-

/Signed/ M. D. Cockburn
1st Asst. Mag.te

/A true Copy & Extract/
/Signed/ B. Cunliffe
Asst. Crim.l Judge.

The

Circuit Order. 24 September 1817.

The First Assistant Magistrate, in charge, in the Zilla of Cuddachellum, observes, in his answer to a letter from the Criminal Judge of the Zilla, wherein the latter Officer had called the Assistant Magistrate's attention to two cases in which he had neglected to examine the Prisoners, that according to the latter part of Clause second Section XXIV Regulation IX of 1816 it alone belongs to the Magistrate to determine what evidence he shall take and that therefore as the First Assistant Magistrate believed the prisoners to be guilty he considered it unnecessary to take their depositions.-

The First Assistant Magistrate will find, on a perusal of the first clause of the Section to which he has here referred, that on a prisoner being brought before him it is not optional with him but absolutely incumbent upon him to examine such prisoner and also such other persons as are stated to have any knowledge of the alleged crime or misdemeanor. The language in which the rule is here laid down is clear, precise and positive & the qualification introduced at the close of the Section may be understood as restricting the Magistrate from going into a detailed examination of each particular case, but cannot be held to authorize such Officer to dispense with the observance of a rule founded on the simplest principles of Justice & prescribed, for the guidance of the Magistrates in all cases whatsoever, by a positive enactment of the Legislature.-

Ordered, that extract of these proceedings be sent to the Criminal Judge in the Zilla of Cuddachellum to be by him communicated to the First Assistant Magistrate of the Zilla for his information and future guidance.- Extract

Extract from the Proceedings of the Foujdary Adalut under date the 14th February 1818.-

Read letter dated 28th Ultimo from the 3d Judge of the Court of Circuit in the Western Division, forwarding, for the Consideration of the Court, copy of a precept issued by him to the Assistant Magistrate, and Copy of a letter from the Magistrate of Malabar appealing against the injunctions contained in the said Precept.-

To the Register to the Foujdaree Adalut-

Sir,

I have the honor to transmit for the purpose of being submitted to the Court of Foujdaree Adalut Copy of a Precept I had occasion to address on the 30th August last to the Head Assistant Magistrate Mr. Sheffield, to whom the Magisterial duties of the Northern Zilla of Malabar had been delegated, in consequence of certain irregularities in this proceedings, which came under my cognizance during the third Quarterly Sessions of last year.- and Copies of a Communication from the Magistrate of Malabar addressed to the Register of the Court of Circuit dated the 26th December last and presented to the Court on the

the 5th instant, appealing to the Court collectively against my orders to his assistant above adverted to, and stating an explanation of his reason for this extraordinary delay, that he had deferred applying for the opinion of the Court of Circuit until he could have the benefit of a full Court, altho' the Court had regularly met with no other interruptions than the usual vacations, since these orders were issued.- I also forward Copy of the order passed by the Court of Circuit collectively upon that application, under date the 7th instant, and of a communication I have since received from the Magistrate dated the 19th instant, addressed to me as third Judge of the Court of Circuit, requesting me to submit his address to the Provincial Court for the decision of the Tonjedary Adalut, a request I now accordingly comply with, and have the less hesitation in doing so, having again gone over the existing and former Regulations for the guidance of Magistrates, and being more than ever convinced after giving the subject the most attentive consideration in my power of the legality of my orders to the assistant Magistrate, which the Magistrate has now only called into question, as well as of the soundness of the principle upon which they are grounded, and that the opposite mode of proceedure pursued, as avowed by the Magistrate is not more at variance with positive enactments, than unwarranted by the general principles of Judicature.-

My orders, and the occasions which called for them, are sufficiently explained in my Precept without troubling the Foujdary Court with the Cases which gave rise to them; it may be necessary, however, to inform the Court, in reference to the last Para of the Magistrates address to me, that excepting in Cases where Prisoners have made a full confession in the presence of a Magistrate, it has always been the practice, previous to the transfer of the Office of Magistrate from the Zilla Judge to the Collector, to reexamine Parties and their witnesses, precisely in the same way as is observed by the Circuit Judges, and never to read over to them their Depositions before Magistrates or other Police Officers until their examinations had been retaken, and I humbly conceive that the same principle applies equally and perhaps more forcibly under the new system, and that there can be no excuse for its not being followed, now that the Magisterial duties are so much lighter than when the Magistrates had to discharge the duties of Criminal Judge, and to hear and determine upon all trivial Cases, which are now decided by the Heads of Villages.-

I have the honor to be &c.

Tellicherry -
28th January 1818.

(signed) T. H. Baber - 3d Judge.

To

To The Register to the Court of Circuit
for the Western Division
Tellicherry

The Magistrate begs to Submit for the Consideration and Opinion of the Circuit Court the accompanying Copy of a Precept addressed to the Assistant Magistrate at Tellicherry.-

The Line of duty laid down in the Precept for the guidance of the Magistrate he humbly conceives far exceeds either the Spirit or the Letter of the Regulations.-

The Majority of Police Complaints are on the first instance made before the Police Officers who enter minutely into an investigation of them, committing to writing the Depositions of both Parties, they are then forwarded to the Criminal Judge or Magistrate or decided upon by himself according to the Nature of the Case.-

Cases coming under the description of those set forth in Section 27 are sent direct to the Criminal Judge.-

Others of the same nature occur in which the Police officer entertains doubts, they are accordingly forwarded to the Magistrate who after having read the various Depositions to the Parties depositing proceeds

proceeds to take such further questions as occur to him forwarding it ultimately to the higher Courts, dismissing it or inflicting punishment according to Circumstances-

Sec. 14 of the same Regulation admits of the Magistrate in the event of his distrusting the truth of a Complaint causing previous enquiry to be made in such mode as he shall judge proper for the purpose of ascertaining the truth or falsehood of the Complainants' allegations and even if the Complaints appear groundless to dismiss without entering personally into any investigation at all.-

In the first instance there appears to the Magistrate no objection to his taking the examinations before the Police Officers for the ground work of his own going no further into the examination than to satisfy his own mind that there is ground to believe the Prisoner guilty of the crime charged against him, where it is of a nature to be forwarded up to the higher Courts or where it is not, to go no further into it than to satisfy his mind of the innocence of the Party accused, and that taking examinations de Novo was never contemplated by the Framers of the Regulations.-

It is unnecessary to say that when any party that declares the Depositions taken before the Police Officers differs with what he actually deposed

or

or that he has to explain it before the Magistrate the latter conceives himself bound of course to act accordingly and even if he thinks the examinations taken before the Police Officer has been improperly conducted to commence de Novo, all this depending on circumstances and subject in common with all other cases to the Consorial Powers of the Circuit Judges.-

In the second Case quoted the powers of the Magistrate are greatly extended, for it is left to his discretion entirely whether or not to dismiss a Complaint altogether without personally investigating into it himself it therefore appears quite optional with the Magistrate whether to proceed on an Investigation of a Complaint making the previous examination the ground work of his Investigation or to commence upon it de Novo.

Section 28 of Regulation IX is the only one that seems to bear upon the Question at issue but according to the Magistrates interpretation the Separate Papers alluded to merely refers to the Depositions of each individual whether Complainant Defendant or witness being taken on Paper distinct from that of another of the Party which line of conduct is invariably pursued by the Local Revenue Officer.-

The Magistrate has deferred applying for for the opinion of the Court of Circuit until he could have the Benefit of a full Court and should the Court ultimately decide against him, it is his intention to make it the grounds of his applications to Government for an Additional Assistant the duties as at present carried on occupying sometimes 2 or 3 Hours or more a day.-

(Signed) J. Vaughan
Collector & Magte

Calicut.....
26th December 1817.

Extract from the Proceedings of the Court of Quarterly Sessions under date the 30th August 1817.-

Read the Assistant Magistrate's return to the Courts Precept dated the 28th Instant forwarding the Tellicherry Sheristadar's proceedings in the Complaint preferred by Pedikandy Potter against Kodery Chaly Koren charging him with stealing his Cow and Calf, as also his own proceedings consisting of little else than an interrogatory to the Several persons examined to the purport whether what was written in their depositions taken before the Sheristadar was as they had stated or not.-

The Complaint was preferred before the Assistant Magistrate in the first instance and then referred to the Tellicherry Sheristadar for investigation and report, and on inspecting the Assistant Magistrate's proceedings

proceedings sent up with his Calendars, he appears to have intrusted in the same manner to his servants most of the Cases, which it was his duty to have tried and to have determined upon, with little or no investigation by himself. Some of the Complaints appear not to have been deposed to on oath by the Complainants or other credible persons, and in some of the examinations taken by the Assistant Magistrate there is a variation in the dates as written by the Native writers and as certified by himself.-

The Judge of Quarterly Sessions is therefore called upon to notice these irregularities to the Assistant Magistrate, and in particular to desire that in future he determine upon no Case he is authorized to try, but upon a full investigation conducted by himself, and to require in all Cases the truth of the charge to be deposed to by the Complainant, or in the manner required by the Regulations, when satisfactory reason shall be assigned by the Complainant for not attending.-

Ordered, further that the original Complaint preferred to the Assistant Magistrate by Pidekandy Potten be returned to him, with directions to summon and examine the parties and their witnesses, and

and then to pass such orders as may appear to him just and proper, forwarding his proceedings for the information of the Court of Quarterly Sessions.-

/ A true Extract /
/ signed / T. H. Baber
3d. Judge,

/ True Copy /
/ signed / J. Vaughan Collector
and Magistrate,

Provincial Court (L.S.) Western Division

To, the Magistrate in Malabar.

Pursuant to an order of this Court you will herewith receive an Extract from its Proceedings under this date for your information.-

Given under my hand and the Seal of the Court this 7th January 1818.-

/ signed / F. Holland - Register,

Extract from the Proceedings of the Provincial Court of Circuit in the Western Division - under date the 7th January 1818-

Read a communication from the Magistrate in Malabar submitting for the Consideration and Opinion of the Court of Circuit Copy of a Precept addressed by the 3d Judge presiding at the Third Quarterly Sessions of 1817.

The Court does not Consider it to

to be within it's jurisdiction to take Cognizance of any order or Precept which a Judge while on Circuit may deem it proper to issue in reference to the Magistrates Proceedings and which may appear to the Magistrate to be contrary to or not warranted by any existing Regulation. In all instances of such difference of Opinion the Regulation XXII of 1802. points out the Course open to the Magistrate for obtaining the Judgment and Decision of superior authority - and further that the reference in the event of the Magistrate demanding it, should be made by the Judge who issued the order or Precept called in question, and not by the Provincial Court. -

Ordered, that Extract of the Courts proceedings of this date in regard to the above reference be furnished to the Magistrate for his information

/ Above Extract /

/ signed / F. Holland - Registr

To The Third Judge of the Court of Circuit
Western Division
Tellicherry -

Sir,

In consequence of the Opinion passed by the Provincial Court of Circuit on my reference through the Register dated the 26th December last may I request you will have the goodness to submit that reference for the Decision of the Foujdary Adalut with

with Copy of my present communication in which I have only to make the additional observation that my Opinions are founded not only on the Interpretation I put on the Regulations quoted, but the practice I have followed since I have held the situation of Magistrate which has not hitherto been impugned by the Judges on Circuit during the Sessions held here for the above period. -

Calicut -
19th January 1818

I have the honor to be Dear Sir
/ signed / J. Vaughan - Magte

/ True Copies /
/ signed / T. H. Baber - 3d Judge

Courts Order 14th February 1818

It would appear that the attention of the Third Judge of the Court of Circuit was directed, in the first instance, to a Complaint which had been preferred before the Assistant Magistrate of Malabar and by him referred to the Tellicherry Sheristadar for investigation and report, that on inspecting the Assistant Magistrates proceedings sent up with his Calendar, he was found to have entrusted in the same manner to his native Officers the Majority of the Cases preferred before him with little or no investigation by himself that some of the Complaints had

had not been preferred on oath, and that, in some of the examinations taken by the Assistant Magistrate, there was a variation in the dates as written by the Native writers and as certified by himself.-

A precept was issued, in consequence, by the third Judge, on the 30th. of August last whereby the Assistant Magistrate was enjoined not to determine in future upon any Case which he might be authoriz= =ed to try except upon a full investigation conducted by himself, and he was directed to be careful that in each case the charge be deposed to either by the Com= =plainant or in the manner required by the Regulations when satisfactory reason may be assigned for the non attendance of the Complainant. The original complaint which had first attracted the Notice of the Third Judge was also returned to the Assistant Magistrate with directions to summon and examine the parties and their witnesses, and then to pass such orders as might appear to him just and proper, forwarding his proceedings for the information of the Court of Quarterly Sessions.

On the orders which were passed by the Third Judge on the occasion here referred to the Court of Foujdary Adalut consider it sufficient to observe that they appear to have been fully borne out by the Circumstances which gave rise to them and

and that they are obviously consistent, as well with the general provisions of the Regulations in force, as= with the first and Acknowledged principles of Justice

In the letter, however, which was= addressed on the 26th. of December last by the Magis= =trate of Malabar to the Court of Circuit for the Western Division there are certain passages which can= =not be passed over without observation, in as much as they imply an erroneous conception of the intent and meaning of several of the recent Criminal= enactments.-

In the first place the Magistrate ob= =serves that "cases coming under the description of those "set forth in Section XXVII Regulation XI of 1816, are sent "direct to the Criminal Judge," but that "others of the "same nature occur in which the Police Officer entertains "doubts and that they are accordingly forwarded to the Magistrate" &c.

The practice here stated to have been followed by the Police Officers is founded in error and wholly adverse to the provisions in the Section above= quoted which expressly declared that all cases of the Nature therein specified are to be referred to the Criminal Judge who will proceed in each case so referred to him in conformity with the Regulations enacted for his guidance.

Section XIV Regulation IX of 1816, on which

which the Magistrate attempts to justify the practice which called forth the remarks of the Third Judge applies only to Cases where the Magistrate may see cause to distrust the truth of a Complaint preferred to him and it is further to be observed that the enquiry therein contemplated is declared to be only a preleminary measure and that, whenever, the result of such enquiry shall induce the Magistrate to believe the charge well founded it is imperative upon him to enter into an investigation of the same in the Manner pointed out in the Regulations.-

On the remaining part of the Magistrates letter the Court will only observe generally that according to the exposition given in these proceedings the only cases regularly referrible to a Magistrate by a Police Officer are those which the Magistrate is competent to hear & determine under the provisions of Sections XXXII & XXXIII Regulation IX of 1816; that the Course of proceeding enjoined for the observance of a Criminal Judge, in all cases referred to him, whether by a Magistrate or by a Police Officer, must apply a fortiore to the Cases which may be referred by a police Officer for the determination of the Magistrate, and that in every case therefore which may be so referred to the Magistrate by a Police Officer it is the duty of the Magistrate strictly to adhere to the rules laid down in Section XXIV Regulation IX of 1816. with the exception of not making the examinations matter of record in the petty cases specified in Section XXXVII of that Regulation.-

In conclusion the Court desire with reference to the former part of these proceedings that the Magistrate of Malabar will report for their information the nature of the Office of the Tellicherry Serishtadar in virtue of which this person who does not come within the designation of the Officers entrusted with Police authority under Section III Regulation XI of 1816. has been authorized to discharge the duties of Police.-

Extract from the Proceedings of the Fouzdaree Udalut. under date the 2d April 1818.-

Read letter dated the 24th Ultimo from the 2d Judge on Circuit in the Northern Division requesting to be informed whether the power of receiving the Complaints described in Section XXVIII Regulation XI of 1816. be vested in the Tahasildars only or extended to the Peishcard Gomashtas and Peons.-

To the Register to the Court of Fouzdary Adalut
Fort St. George.

Sir,

A difference of Opinion prevailing upon

upon the powers vested in Police Officers under Regulation XI of 1816, I beg to submit the following query to the Foujdary Adalut,

Are the Powers of receiving complaints specified in section XXVII, and of proceeding as directed in the several clauses of that section, confined to the Tahsildars ex Officio, under clause first, section XXV, & section XXXVIII. Heads of Police, or are their Peshcars, Gomastas, and Peons, mentioned in claude second. section XXV, employed under Tahsildars, and Considered Officers of Police, vested with the same power and authority: and further have Cutwals, mentioned in section XXIV of the same Regulation any power to take the Complaints, and Confessions Noticed in the Clauses of section XXVII already referred to?.-

I am the more anxious to receive the orders of the Foujdaree Adalut on this subject, as in the proceedings held before me in this Sessions, two instances have occurred, where Tahasildars have dele=gated those Powers to their Peshcars, and that they Considered themselves under clause Second, section XXV Regulation XI, of 1816. empowered to order not only their Peshcars, but every description of Servant employed under them, in the event of any of them being otherwise engaged

engaged, to proceed as they themselves are authorized to act under the several clauses of section XXVII. Regulation XI of 1816. and one of whom on oath before me declared he had never read the Regulation, and that a relation of his being taken ill during the enquiry so devolved upon him, he again had ordered his as=sistant to carry it on; the accused being kept from their apprehension to the time they were sent to the Magistrate, upwards of 3 Weeks in the Stocks the Prosecutor paying Batta during the whole time, and the distance from the Station of the Criminal Judge, and Magistrate, about 12 Miles, only.-

The Court will observe from the last Para that however wrong I may be in my Opinion I do not consider the Regulation, I have quoted, to place the powers vested in the Tahsildars ex Officio Heads of the Police of their respective Districts, in the hands of Peshcars Gomastas, Peons and Cutwals, if I view the question erroneously, I beg to be set right - I should have deferred agitating this question until the close of the Circuit, did I not observe a variety of Opinions on the Subject to prevail as I advance North, that if I see the question right I may check the present Proceedings, or

Extract from the Proceedings of the Foujdaree Adalut under date the 9th April 1818.—

Read letter, dated the 2d Instant from the Acting Criminal Judge in the Zilla of Bellary— submitting a question relative to the Construction of Section VIII Regulation X of 1816.—

To the Register to the Foujdaree Adalut—

Fort St. George,

Sir,

I do myself the honor to request the favor of you to submit to the Foujdary Adalut for the Consideration and Opinion of the Court, whether the provision of Section VIII Regulation X of 1816, declaring the Criminal Judge of a Zilla to be incompetent to take Cognizance of any Criminal charge or information except such as may be brought before him by the Magistrate or some Police Officer under his authority, imposes on the Criminal Judge an obligation to endict offenders, in Cases of Commitment for trial before the Court of Circuit, in the precise terms of the charges under which they may be transferred to his Jurisdiction by the Magistrate, or whether the Criminal Judge may, notwithstanding the prohibition Contained in the forementioned Section exercise his discretion in defining the crimes of

Extract

or if the Magistrates are right in permitting it, the practise may continue.—

I have the honor to be &c.

Rajahmundry 24th March 1818.

(signed) P. Cherry 2d Judge on Circuit

Courts Order 2d April 1818

The powers described in Section XXVII Regulation V of 1816 are vested exclusively in the Tahsildar or Native Collector by whatever name designated who may be ex officio Head Police officer of the district and with regard to the further question submitted by the second Judge on Circuit regarding the authority of Cutwals, the Court deem it sufficient particularly to direct the attention of the second Judge to section XXIV of the Regulation abovementioned which expressly declares that "Cutwals & "their Peons whenever it may be necessary to employ them "shall be subject to the authority not only "of the Tahsildar" or Police Officer of the District but also of the "Heads of Villages" who are themselves subordinate to the authority of the District Police Officer.

The Court of Foujdaree Adalut trust that the second Judge on Circuit has taken steps in order that the Circumstances attending the alleged illegal exercise of authority referred to in his Communication may undergo such an investigation as is obviously requisite for the ends of public justice.

of which offenders shall be empleaded before the Court of Circuit.-

I am induced to solicit the instructions of the Court on these points inconsequence of two persons having been forwarded to me by the Magistrate, under an accusation of homicide, a charge which, as homicide may be justifiable, does not necessarily imply the Commission of a Crime, and which, if retained in the present Case, should I conceive, be characterized by the term felonious.

I have the honor to be,
Sir
Your Most
Obedient
Humble Servant
(Signed) J. A. Dalzell
Acting Judge.

Zilla Court
Bellary
2d April 1818.

Courts Order 9th April 1818.

The section of the Regulation here quoted relates exclusively to the mode in which Criminal Charges or informations are to be brought before a Criminal Judge, but nothing contained in the aforesaid section is intended to fetter, in any degree, the subsequent proceedings of the Criminal Judge whose duty it is, according to the spirit of the Court's Circular instructions of the 31st January 1814 to frame the indictment against such Prisoners as may be by him Committed to take their trial before the Court of Circuit.-

Received

Received the following letter from the 2d Judge on Circuit in the Northern Division.

To the Register of the Foujdaree Adalut,
Fort St. George.

Sir,

A difference of Opinion existing between the Magistrate of this Zillah and myself on the power of Police Officers receiving Evidence on Oath, I beg to submit the accompanying Precepts with the Original returns of that Officer, and on that particular point I request the orders of the Foujdarry Adalut.-

On this arises two questions, 1st whether a Magistrate under Section XIV Regulation IX of 1816, can direct the enquiry therein authorised to be made by Police Officers or others, to be taken on Oath 2d whether Tahsildars under Clause first Section XXXIII Regulation XI of 1816, can take the examination therein authorised on Oath, I am of opinion that in neither case the Regulations sanction such proceedings being taken on Oath any more than they do in claude second of Section XXVII Regulation XI of 1816 and the Magistrate of this Zilla is the only Officer I have yet had communication with, who presumes they can do so.-

Should any other part of my Proceedings

-ings in the Cases referred to in the Precepts require the orders of the Foujdaree Adalut Irequest to be honored with them for my future guidance.-

I beg the Original Papers accompa-
-nying this address may be returned.-

I have the honor to be

Vizagapatam
23d. May 1818.-

Sir
Your most
obedt. Servt.
(signed) P. Cherry - 2d. Judge.

N. P. C.

Sent in reply the following Letter

To The Second Judge on Circuit in the
Northern Division

Sir.

I am directed by the Judges of the Court of Foujdaree Adalut to acknowledge the receipt of your letter dated the 23d. Ultimo, referring for their con-
-sideration certain instances in which it appears to you that the Magistrate of Vizagapatam has misconstrued the provisions of the subsisting Regulations.-

It appears, from the papers which accompany your communication, that on examining the Calendars submitted by the Magistrate under Section XI Regulation IX of 1816. your attention was excited by certain cases in which it was stated that Sundry charg-
-es originally preferred before the Magistrate had been by him referred to the Police Officers "for the purpose of receiving the oath of the Complainants to the charge of

"of examining the evidence in support of it upon oath, and of "sending for and taking the defence of the accused"; and that proceedings had then been forwarded to the Magistrate for decision who "passed a final order without any "investigation of the several cases before him."-

The previous enquiry prescribed in Section XIV Regulation IX of 1816. is specifically limited to cases in which the Magistrate may see cause to distrust the truth of the complaint preferred before him, and it is declared to be authorized in such cases in order that the Magistrate may be enabled to ascertain the truth or falsehood of the complainant's allegations.-

Hence it appears that the enquiry contemplated in the Section of the Regulation aforesaid is enjoined to be made only in special cases and that it is in it's nature merely preliminary.- To make this particular provision a ground for referring charges generally for the investigation of the Police Officers, and to pass sentence in the manner here described on persons who have in point of fact been tried before another tribunal is a proceeding altogether anomalous and unprecedented.- and the Judges of the Foujdaree Adalut direct me to add, that in requiring the Police Officers to examine parties and witnesses on oath, be required them to exercise an

authority

authority not vested in them by any provision of the Regulations:-

With regard to the orders which you deemed it necessary to issue to the Magistrate, prohibiting the demand of security, the Judges of the Foujdaree Adalut direct me to observe that they were strictly correct, and the Judges do not comprehend on what passage of their proceedings of the 3d October last, the Magistrate of Vizagapatam could have rested the discretionary power which he appears to have exercised in respect to demanding security from persons by him discharged for want of sufficient evidence:-

The original papers which accompanied your letter are returned agreeably to your request.

I have the honor to be &c

Foujdarry Adalut
Register's Office
4th June 1818

(Signed) R. Anderson Depy.
Register

Received the following letter

From the Criminal Judge in the Zilla of Rajahmundry:-

To the Register to the Foujdarry Adalut,
Fort St. George,

Sir,

Para 1. I have the honor to acknowledge the receipt of your letter of the 3d instant transmitting

the opinion of the Foujdarry Court, on the sentence passed in No. 7. of the last quarterly report from this Zillah: and beg leave to state, I was therein guided by the general rule for Cases not provided for, & strengthened by the opinion of the Sudr Adalut Court, communicated in their Proceedings of the 8th April, stating, "To vest in a Court of inferior Jurisdiction any particular power essentially greater in its nature "and operation than that possessed by a Court of higher "Jurisdiction, would be a solecism in legislation; I by "no means presume to question the sense of Section XXV "Regulation XI of 1816. as construed by the Foujdarry Court, but with all submission, am of opinion the application without the utmost care, will be liable to produce that Collision of authorities the Commissioners have been so studious to guard against. For notwithstanding the Communication directed to be made by the Criminal Judge be made in the mildest form, still it will imply a censure for that which is done by a man in his official capacity and he is told it is not well done, can be taken in no other light a difference of Opinion is also thought likely to occur, with regard to the Construction of the Regulations for taking Enquiries before

before the Magistrate, and Heads of Police, the Criminal Judge being of opinion, under their respective Regu=lations / Clause second Section XXVI. Regulation IX and Regulation XI of 1816. / they are too easily satis=fied in their own minds, there is ground to believe the prisoner guilty; and that in many instances without Instructions from the Foujdarry Court, the investigations will be insufficient - In exempli=fication of which, I beg leave to submit - In No. 27 of the Criminal Judges Calendar referred by the Magistrate; the only question put to the Prisoners was Viz.t "you are accused of having beaten Verdanaby "Atchamah and robbed her of her Puttada neck "arnament &c.a valued at 25 Pagodas and for which "you are apprehended, what have you to say to this. "Their answer was, we did not beat, or rob the Prose=cutrix who is a Strumpet, and has made a ground=less Complaint against us. which was all that was asked them - In No. 9. Criminal Judges Cal=ar, two Prisoners were referred by the Assistant Magistrate, who where not interrogated by him, neither were there any witnesses against them, but were simply alluded to in the deposition of another prisoner, as knowing something of the subject matter. In No. 17 also of the Criminal Judges Calendar referred by a Head of Police, the Prisoners were not in the least question=ed: and from the construction of clauses second and third Section XXVII Regulation XI of 1816. in Cases re=ferrible by the Police, when the Prisoner is not in=clined to Confess: it is not clearly mentioned in the Regulation, the prisoner should be interrogated - Under these Circumstances of insufficient inquiry in the first instance, it is not hard to suppose, that ungrounded and false complaints, will find their way to the Criminal Judge -

2:- I have also to solicit the instructions of the Foujdarry Court with regard to Section IX Re=gulation X of 1816. which states - "The Criminal "Judge shall examine the Prisoner and Complain=ant and also such other Persons as are stated to "have any knowledge of the crime or misdemeanor "alledged against the Prisoner. In the Course of strict enquiry it often comes out, that Persons not brought before the Court, whether as Parties, or wit=nesses, have a Knowledge of the subject, and the latter, are sometimes absolutely necessary for proof

proof under these circumstances, is the Criminal Judge authorized receiveng section I.V Regulation XI of 1816, to Command the Head of the Police of a Division, to apprehend the Parties who may be &c Principals, or accessories, to the Crime alledged, and to send the witnesses necessary for proof, or must the requisition pass through the Magistrate, who probably resides in the opposite dorection of the Zillah; or viewing section VIII Regulation X, is the Criminal Judge to issue his own warrant or summons to the Nazer of the Court, to bring before him the persons required. In either of the two last suppositions, &c delay will occur, which may afford the means of escape - First from the circuitous way the Proceſs must be sent, and 2dly for want of establishment.-

3d. In the regulations prior to 1816 with regard to stamps, it is expreſsly stated in section XII Regulation VIII of 1808. that all deeds where Government may be one of the Contracting Parties are excluded from the stamp Regulation but in the modified Rules for 1816, the exemption is merely in favor of Revenue concerns, which are specified and by clause third section XI Regulation XIII on Security Bonds for appearance / Hazur Zamen / and

and engagements of whatever Nature, without any exception of Government's being a party concerned, are &c liable to the stamp regulation. And under the impreſsion of the opinion, conveyed in your letter, I have now the honor of answering, in receiving Hazer Zamen for Prisoners allowed to be on Bail, I have caused them to be written on stamp Paper, for which the Prisoner Ramasawmy, in No. 11. of the Calendar for the 1st Seſsions of 1818. referred to the Foujdary Adalut, paid Rupees 150 should this practise be confirmed by the Foujdarry Adalut, and there is no oversight in the Regulation, I request to be informed, who in future is to furnish the stamp &c paper for the appearance of witneſses before the Court of Circuit, the Prosecutor, the witneſs or Government, and in Case of the latter, that orders may be sent to the Collector to furnish the stamp paper, as requir- -ed by the Criminal Court; keeping an account of the same.-

4. Lastly I beg leave to state In cases for contempt of Court, the former Magistrates were guided by section XXVIII Regulation VIII of 1802, but as this Point is not provided for in the &c Regulations

for 1816, I have to solicit information whether the said section should still continue to guide the Criminal Judge - or what should be the Mode of proceeding -

I have the honor to be &c. &c.

Rajahmundry - - - 3d. September 1818.

/ signed / J. Long. Criminal Judge.

Sent in reply the following letter

To the Criminal Judge in the Zilla of Rajahmundry

Sir,

I am directed by the Judges of the Court of Foujdaree Adalut to acknowledge the receipt of your letter dated the 3d. Instant submitting certain questions for their Consideration and decision -

In answer to the observations contained in the former part of the first paragraph of your letter the Judges of the Court of Foujdaree Adalut deem it sufficient to state to you, that the power to punish persons for preferring frivolous complaints has always been limited to the Cases of the description referred to in sections XXXII and XXXIII Regulation IX of 1816. and that on general principles, it does not appear to be expedient that the power should be extended to Cases of a more

Serious

serious nature in which the measure of punishment here prescribed would be obviously inadequate to the deep malignancy of the offence - The Judges are of opinion that a due observance of the instructions contained in their letter of the 3d. Ultimo will have a tendency to correct the errors and omissions in points of practice to which you advert in the remaining part of this paragraph of your letter -

In the Cases contemplated in the second paragraph of your letter it will be your duty to communicate with the Magistrate in order that he may take the proper steps to ensure the attendance before you of any persons whose presence whether as parties or witnesses you may consider to be necessary -

Clause third Section XII Regulation XIII of 1816. to which you refer in the third paragraph expressly declares that Security bonds for appearance / Hazir Zamineé / are to be written on Stampt paper or Stampt cudjan of the value of 1 Rupee and the Judges do not understand therefore,

under

under what possible construction of the above clause you could have deemed it proper to cause the prisoner Ramasawmy to pay one hundred and fifty Rupees on account of a bail bond for his appearance.- The Judges of the Foujdaree Adalut direct me to observe to you, however, that the provisions of the clause here recited are applicable only to the proceedings in Civil Suits, and that since the rescindment of Section XII Regulation IX of 1808. the only papers relative to Criminal matters which are to be written on Stampt paper are the miscellaneous petitions and applications specified in Section XX Regulation XIII of 1816. It will be your duty to give immediate orders for the repayment of the sum abovementioned as also of any other sums which may have been levied under the like circumstances and you will be careful not to make such unauthorized demands hereafter.-

The question submitted in the concluding paragraph of your letter would have been found to be unnecessary had you consulted Section XXXIX Regulation X of 1816. which renders the provisions of Section XXVIII Regulation VII of 1802. applicable to the Criminal Judge.-

Foujdarry Adalut -
Register's Office -
17th September 1818.

Sam'l Sea
/ Signed / R. Anderson - Deputy Register.

Received

Received the following letter from the 3d Judge of the Court of Circuit in the Centre Division.-

To the Register to the Foujdarry Adalut.
Fort St. George.

Sir.

See Case No. 9 of the Calendar of Chittoor 2d Quarter Sessions. 1812.

Two Prisoners Ramen and Singen were "charged with Burglary" and convicted of Sanika or larceny" and were sentenced by the Judge who "presided at their trial to be imprisoned and kept to "hard labour in irons during the space of nine years "each".-

Proceedings of 7 the Court dated 23d December 1818.-

This case was lately brought to the notice of the Foujdarry Adalut who stated that "the Court are of opinion that the punishment adjudged against the prisoners does not exceed the measure warranted by the Regulations, in as much as the acts of which these prisoners were convicted must be held to subject them to the operation of clause first "Section III Regulation XV of 1803."-

To save the Court the trouble of a second reference to the Clause referred to by them I will transcribe it "Any person or persons who shall "in the day or in the night go forth with any offensive "weapon or in any gang with or without any offensive weapon

"weapon with the Criminal intent of committing robbery
"and shall by force or intimidation rob or attempt to rob
"any person or persons on or near an highway; or on a
"river lake or other water, or in or near a City, town or
"village or in any other place whatever or shall attack
"by open violence and rob, or attempt to rob, any dwelling
"house or other house or building; or any tent, boat, or
"other receptacle of persons or property shall be deemed
"guilty of the crime of robbery by open violence (deno:
"=minated) in the Mohemedan law Suruca i Kobra and
"more commonly Shut Khonee or Duckitee) and on due
conviction thereof whether by free and voluntary Confes:
"=sion, or by the testimony of credible witnesses or by strong
"circumstantial evidence shall be adjudged to suffer on
"such of the penalties declared in the next section
"as may be applicable to the Case, Viz.t according as the
"robbery may be with or without homicide, wounding main:
"=ing or other personal injuries, or with or without other
"circumstances of aggravation.-

4 If this clause were applicable to the case of these Prisoners they would have been liable to fourteen years imprisonment.-

5 It is stated in clause first section V Regulation XV of 1803. that no part of the preceding section

"section which subjects robbers by open violence to
"fourteen years imprisonment shall be considered
"applicable to secret theft or larceny without open violence
(Senuca Sogra) whether accompanied with burglary
(Macut Zunu) or simple theft from the persons or house
"unaccompanied with any aggravating circumstances."-

6 The essential character of the offences made liable to the severe punishment referred to is that they shall be attended with force, intimidation or open violence but in the case in question I conceive a simple burglary only was committed a reference to the Prosecutors declaration will shew that a hole was made in the wall of his house during the night and his property taken away but neither he nor any of his family were acquainted with the fact until the next morning.-

7 It has either, to understand, been very generally considered by Judges of Circuit that the perpetrators of a Burglary, such as was committed by the Prisoners Ramen and Lingen were not liable to more than seven years imprisonment. the question is of great importance and as the opinion which has been given by the Court may affect a numerous class of Offenders. I trust that I shall be excused in bring:
=ing the subject again before them.- I

From the Magistrate of Chittoor to Secretary to Govt. dated 1st July 1812

I remarked several years ago what I then conceived the inadequate powers vested by the Regulations in Circuit Courts for the punishment of Burglary "it is a crime not unfrequent in this Country, is most "ruinous in its effects and exstremely difficult to discover. "I allude to that species of it which is perpetrated "with a little Iron crow, small holes being made in "walls of houses in the night sufficiently large to "admit a man through it is a pursuit which requires "practice and skill to follow with success: in robbing "houses in this manner three or four persons are usually "concerned, it generally happens that these house breakers "are all professional robbers, and it may be pronounced "without a chance of erring that some of them are so if "others are less Criminal it can only be said in their "behalf that they have begun to learn an art by which "they intend hereafter to gain a livelihood, this offence "of house breaking appears to be attended with almost "all the circumstances which are usually considered "to induce severe punishment and it is matter for "Consideration whether the Circuit Courts should "not have the power of Sentencing persons concerned in "it or at least the head of every gang to imprisonment "and hard labour for fourteen years as in Cases of "Highway robbery."-

Ryachooty 11th January 1819.

I have the honor to be &c.
(Signed) W. E. Wright 3d Judge of Circuit

Sent in reply the following letter.

To The Third Judge or Circuit in the Centre Division,

Sir,

I am directed by the Judges of the Court of Foujdaree Adalut, to acknowledge the receipt of your letter dated the 11th instant stating your doubt as to the construction of certain provisions of Regulation XV of 1803.

The doubt entertained by you appears to have arisen from the wording of clause first Section V Regulation XV of 1803. This restrictive clause must be taken to apply generally to cases wherein it may appear that the theft may have been committed by any person or persons not formed into a gang and may not have been attended with any aggravating circumstances, but it cannot be held to supercede the provisions of clause First Section III Regulation XV of 1803. respecting persons who may be proved, as in the case referred to by you, to have gone forth in a gang with or without any offensive weapon, with the Criminal intent of committing robbery may have actually committed such robbery.-

Whenever any cases may occur wherein the offence charged may not have been provided for by any regulation and in which the measure of punishment in your power to adjudge may not appear to be adequate to the guilt of the offender, it will be your

your duty to submit the trial for the sentence of the Court of Foujdarry Adalut.-

Foujdarry Adalut
Register's Office
21st January 1819

I have the honor to be &ca
/signed/ Rt. Anderson
Deputy Register,

Received the following letter from the Criminal Judge in the Zilla of South Malabar.-

Zillah South Malabar

To the Register to the Court of Foujdaree Adalut
Fort St. George,

Sir,

I have the honor to acknowledge the receipt of your letter of the 17th instant regarding two Cases brought to notice in my last quarterly report of persons apprehended in Zilla South Malabar - wherein the Judges of the Court of Foujdarry Adalut have been pleased to point out the mode of proceeding that should have been observed by me in the Case of the prisoners Nos. 351. 352. & 353. and wherein explanation is required by the Judges of the Court of Foujdarry Adalut with respect to the prisoners from Nos. 37 to 45 inclusive and the proceedings being referred back to the Magistrate, as being at variance with the co provisions of Section XXVII Regulation XI of 1816.-

Referring to the first Case mention=
=ed

A. =ed above, the order was passed by me and a Copy of the correspondence that took place regarding it, is herewith transmitted for the information of the Judges of the Court of Foujdarry Adalut. With the opinion of the Court of Foujdarry Adalut now before me in Cases of this kind I shall carefully attend to, as a guide to my future proceedings.-

Adverting to the last Case, I find upon reference, that it was sent back to the co Magistrate by the late acting Criminal Judge, with

B. a letter, the Copy of which is herewith furnished for the information of the Judges of the Court of Foujdarry Adalut, which it is hoped will satisfac=torily explain the proceeding.-

I have the honor to be &ca
Court House Calicut
27th May 1819 ----
/signed/ John Forbes - Ct. Judge,
Zillah South Malabar.

No. 1

To The Magistrate of Malabar,

Sir, According to the spirit of section II Regulation III of 1817 I think I am called upon to co return to you the enclosed case sent here yesterday by the Kotwall of Calicut. The three persons accused are delayers, two belonging to the Collector of Sea Custom Department

Department and one to the Judge's - The Crime alleged co
against them is for Killing a Cow, and from what I have
seen of the Case upon the face of the proceedings, there
appears no proof of such an act - and at all events no
aggravating circumstances attending it - And as it appears
to me that the Kotwall of Calicut was not warranted
in sending this Case to the Criminal Court under Section
XXVII Regulation XI of 1816. I am at a loss to account
for this Stretch of power, except by supposing an ill
will towards the public Servants Mentioned. -

I have the honor to be &c.

Court House Calicut
11th March 1819. } /Signed/ John Forbes Crim.l Judge,

No 2

To The Criminal Judge South Malabar,

Sir,

1 I have the honor to acknowledge the receipt
of your letter of this day's date returning to me a Case,
forwarded by the Cotwall of this Town, in which co
Complaint is laid for Killing a Cow valued at 25 Rupees

2 I confess, I am inebriated to think the
complaint should form the subject of a Civil Suit, as
there was no Breach of the Peace, and as such I shall
dismiss it, leaving it to the Circuit Judge to set me
right if I have erred. -

3 Were the matter in my opinion of a
Police nature, I should conceive, from the value put
upon the Cow, and the Suspicious Circumstances under
which

which the Carcase appears to have been disposed
of, that it was a Case not cognizable by the Magistrate

4 May I beg to be favored with your
reasons for supposing that the Cotawall was biassed in
his Judgment from ill will to the Defendants, who, though
they hold public situation, were, in the acts of which
they were charged, I should conceive to be considered
as private individuals. Should there be any just ground
for suspecting the Cutwal of partiality I shall not
fail to take due notice of it -

I have the honor to be &c.a

Calicut - - - - - -
11th March 1819. } /signed/ J. Vaughan - Magistrate

Received 11th March 1819
/signed/ John Forbes Crim.l Judge
Zilla South Malabar,

No 3

To The Magistrate of Malabar,

Sir, In answer to the fourth paragraph
of your letter of this Date my reason for supposing
the Kotwall had ill will against the three persons alla-
ded to arose from my not being able otherwise to account
for his Conduct, in apprehending and sending to the Crimin-
-al Court the three Dalayets, as if they had been guilty
of a heinous offence. -

I have the honor to be &c.a

Court House Calicut
11th March 1819 - /signed/ John Forbes Crim.l Judge,

True Copies
/signed/ John Forbes
Criminal Judge,

To

Zillah South Malabar.

To The Magistrate of Malabar

Sir,

I have received 9 prisoners / mentioned in the Margin / from the Neddoonganad Talook Tahsildar who appears to have apprehended them knowing that some of them were mentioned as accomplices by Prisoners in deposi-tions taken formerly in the Nuddoogunad talook they deny all guilt and there is no person to accuse them or give information, under these Circumstances, I do not feel Justified in examining them. As they may have been ap-prehended in consequence of orders from your Office, I have directed them to be Conveyed to you, together with the papers sent by the Tahsildar.

I have the honor to be &c.

/ Signed / James Munro. Actg. Cr. Judge.

Court House Calicut
15th January 1819.

/ True Copy /
/ Signed / John Forbes. Crim. Judge.

1 Eapoony Coorpah
2. Pandurakantil
3 Illaramassa Ramen
4. Haurantpuremble Nair
5. Chippayil Kirst Ramen
6 Roomy Koorpa Nair
7 Nalkolombil Ramen
8. Pandarakantil Ramen
9 Pandalambattay Koyin

Sent in reply the following Letter

To The Criminal Judge in the Zilla of South Malabar,

Sir,

I am directed by the Judges of the Foujdaree Adalut to acknowledge the receipt of your letter dated 27th Ultimo forwarding copy of your correspondence with the Magistrate and furnishing an explanation regarding certain cases in your last Quarterly report of persons apprehend-ed in the Zilla of South Malabar.

The Judges direct me to observe that the illegality of the proceeding of the Cutwal of Calicut in transmitting prisoners to the Criminal Judge appears altogether to have escaped your notice, as well as that of the Magistrate.

The powers described in section XXVII Regulation XI of 1816. are vested exclusively in the Taha-sildar Native Collector by whatever name designated, who may be ex-officio Head Police Officer of the District; and with respect to Cutwalls it is declared in section XXIV of the above Regulation, that they "shall be subject to the authority not only of "the Tahsildar" or Police Officer of the District, but also "of the Heads of villages" who are themselves subordi-nate to the authority of the District Police Officer.

The Judges of the Foujdaree Adalut desire, that you will Communicate to the Magistrate of Malabar their Opinion of the incompetency of a Cutwall to exercise the powers described in section XXVII Regulation XI of 1816.—

I am &c.
/ Signed / W. Huddleston. Acting Dy. Register.

Foujdaree Adalut
Register's Office
10th June 1819.

Received the following letter from the Criminal Judge in the zilla of Nellore.

To the Register to the Foujdary Adalut
Fort St. George,

Sir,

I beg to be informed whether the evidence of a Hindu Gosha woman who is a principal witness in a Case of Murder may be taken by Commis-sion. Regulation VII of 1802 framed for the guidance of the Courts of Circuit, empowers the Judges in Cases which admit of it, to take the evidence in the manner prescribed by the Mohommadeen Law but, whether Murder is a Case which does admit of it is the point on which I solicit the instruction of the Foujdary Adalut. As the Sessions are approaching I request an early reply to

to this Letter. I should not have troubled the Court if the Moofty had been here, and a Circumstance of the Kind has never occurred before.-

Zillah Court Nellore,
10th June 1819.

I am &c.a
(signed) H. Lord & Judge

Sent in reply the following Letter,

To the Criminal Judge in the Zilla of Nellore,

Sir,

I am directed by the Judges of the Foujdaree Adalut to acknowledge the receipt of your letter dated 10th Instant, in which you desire to be informed whether the Evidence of a Hindoo Woman, who is a principal wit.
-ness in a Case of murder, may be taken by Commission.

The Judges direct me to observe that as the testimony of a female is not admissible in Cases of Murder under the Mohummedan Law the mode therein prescribed for the examination of a Witness cannot be held to be applicable to this Case.-

By section 11 Regulation 1 of 1818. the Judges of the Foujdaree Adalut are, however invest-
-ed with an unfettered discretion, as to the Admission of evidence and it is their decided opinion that the testimony of a female witness in a Case of Murder is not to be admitted as evidence, unless it be taken vivâ voce in open Court, and in the presence of the accused.-

Foujdaree Adalut
Register's Office
17th June 1819.

I am &c.a
(signed) W. Huddleston - acting Dy. Register

Extract

35

Extract from the Proceedings of the Foujdaree Adalut under date the 31st January 1820.-

Read letter, stated 14th Instant from the Provincial Court of Circuit in the Western Division.-

Provincial Court of Circuit. Western Division

To the Register to the Foujdaree Adalut Fort St. George.-

Sir,

I am directed by the Acting and officiating Judge to transmit to you for the purpose of being submitted to the Judges of the Foujdaree Adalut Copy Ex-
-tract from the Proceedings of this Court under this date, together with Copies and translation of the documents therein

1/
243-

alluded to.-

I have the honor to be, &c.a
(signed) W.B. Anderson
Acting Register

Tellicherry
Register's Office,
14th January, 1820.

Extract from the Proceedings of the Provin-
-cial Court of Circuit in the Western Division under date 14th January 1820.-

Read communication from the Magistrate of Malabar under date 10th Instant forwarding Copy of a Letter with its enclosures received from the Assistant & Criminal Judge of South Malabar, on the Subj-
-ject of a Prosecution for Perjury and Subornation of Perjury, which that Officer is desirous of

of instituting and requesting the opinion of the Court as to the rule of conduct on such occasions.-

Adverting to the urgency of the reference, and to the impossibility of obtaining, at present, the sentiments of a full Court, the Acting and officiating Judge deems it necessary to record his opinion that Section VIII Regulation X A.D. 1816 is absolute, and that under these provisions the only legal course to be pursued, when a Zilla Judge deems it necessary to bring to trial, on a charge of Perjury any person who may appear to have incurred such guilt, whether in matters of Civil or Criminal Cognizance, is to forward the parties to the Magistrate with a statement of the case and the record on which the Perjury is supposed to rest; in order that this Officer may hold the necessary preliminary Proceedings. With reference however to the delay and inconvenience which such Course of procedure (supposing it to be that required by law) might involve, and more particularly to the possibility of a difference of opinion between the Magistrate and Zillah Judge, as to the guilt of the party, or propriety under the positive injunctions of the Sudder and Foujdarry Adalut with respect to the Prosecution for Perjury, of committing the particular case for trial. The officiating Judge has resolved on submitting the question for the opinion and orders of the Sudder and Foujdarry Adalut.-

The Acting and officiating Judge adverting to the particulars examinations taken before the Assistant Criminal Judge, the grounds on which this officer proposes to rest the intended trial, and to the circumstance of no injury having resulted from the false swearing; a consideration which alone has been found sufficient to defeat on former occasions the success of similar prosecutions, deems it necessary to call the attention of that officer to the orders of the Court of Foujdarry Adalut under date 31st January 1814, circulated with the avowed intention of impressing on the minds of all who are authorized to hold judicial proceedings, the indispensable necessity of the utmost caution and circumspection in instituting Criminal Proceedings on a charge of Perjury, and of precluding recourse to such measures, in every instance which will not admit of the most ready and conclusive

conclusive proof.--

Ordered, that extract of these Proceedings be forwarded for the information of the Magistrate and Assistant Criminal Judge of South Malabar, and that a copy of the Magistrates' communication and enclosures together with copy Extract of the Courts' proceedings, be submitted for the opinion and orders of the Sudr and Foujdary Adalut.

/ A true extract /

/ Signed / W. B. Anderson

Acting Register

/ True copy /

/ Signed / W. B. Anderson

Acting Register

To the Register to the Court of Circuit
Western Division
Tellicherry

Sir,

I have to request you will submit for the opinion of the Court the accompanying Documents, received from the Assistant Criminal Judge Zillah South Malabar, as I am quite at a loss how to act.-

From Mr Nicholson to Mr Anderson 8th January 1820 with Enclosures.

The Case is almost synonimous with those committed by the Second Judge on Circuit, and which were tried by the First Judge in the last Circuit, but the regular mode of proceeding in this case, if it is to be considered

considered cognizable by the Magistrate, appears to me likely to be attended with circumstances so incongruous and inconsistent, as almost to cast a shade on the Dignity of a Court of Justice. Imprimis, the Perjury is committed before the Criminal Court - the Court has heard all the evidence, pro, and Con the Perjurer.. is sent to the Magistrate by him to be re examined and again to be sent before the Zilla Court, which I presume must again go through the forms of examination previous to commitment for Trial before the Circuit Court.-

Had a perjury been so committed in the Civil Court, the Court could of itself have committed the offender for Trial. A Circuit Judge has the same powers, but they do not seem to be extended to a Criminal Judge, who also precluded by Section VIII, Regulation X, 1816 from taking cognizance of any Criminal Charge, unless it be brought before him by a Magistrate or Police officer.-

Calicut - - - - -
January 10th 1820.

I have the honor to be &c.
/ Signed / J. Vaughan.
Magistrate
Zillah South Malabar.

To the Magistrate of Malabar

Sir,

A Case in which Thangara Menon

Menon late a Kolkar, is Prosecutor, and Ram=
=dappen Subedar is charged with having broken
open a Box of the Prosecutor and having taken
out a bond executed by the prisoner to the
Prosecutor for 211 fanams, and having torn
the same, in the absence of the Prosecutor, was
forwarded to this Court from your office
on the 13th Ultimo.-

Eight Witnesses for the Prose=
=cutor were examined by the Criminal Judge:
the examinations upon oath of the 2d of these,
Cayettatta Kamah; of the 4th Cayazi Kamah;
of the 7th Puttureni Kandah, and of the
8th Chakumparayath Gouerdah in no way
tend to prove the crime charged against
the Prisoner: the first Witness, Havildar Unni
Purayah, deposes on oath to the fact of the
box being broken open in the Port of Manga=
=lankannam in the presence of a number of
people, and that Tobacco and other accounts
were found in the box. He denies any
knowledge of a bond having been passed
between the prosecutor and the prisoner or
even having heard of such bond from
the Prosecutor, and adds that no bond
at all was either found in the box, or
destroyed by the Prisoner. The 3d Witness
Eurekketta Sankarah was present when the
the box in question was opened by the Sube=
=dar, saw the Subadar take out some ola
from the Box, heard him read 5 or 6 of them
and upon the Subedar taking up a bond
which was passed by the Subedar to the
Prosecutor heard him the Subadar cause to
be read a portion of it and say, "This is
that I wrote and gave" upon which he tore
and destroyed it; The Witness deposes further,
that Havildar, Unni Purayah, was present
when the bond was destroyed and that it
was the Kolkar Kandoo who read the
same to the Subadar, and that Echo and
Govinden were also present. That he was
present when the Prisoner wrote and gave
the Bond to the Prosecutor, that it was in the
hand writing of Kayatta Unnikandah
Menon and that Kalatta Attalaschan
and Kulkampatta Chatta Nayana were also
present at the time with the Prosecutor and
the Subadar. The 5th Witness Pulekal Kunjah
Nayar was present when the Box was
opened by the Prisoner and certain Tobacco
Chits Examined; but neither saw any bond
or did he see any ola destroyed and
never even heard of such a circumstance
having happened. the 6th witness Kunatta
Echu was present when the Prosecutor opened
the Box and took out articles of different
discriptions

descriptions; read over 5 or 6 clau=
=ses, among which was one to the effect, "the
"deed written by Lazutta Kattikkal Kanoan
"subadar in favor of Parambatta Sankara
"Menon," that the subadar then took the
same, tore and destroyed it. Witness deposes
that besides the words "the deed written by
"Lazutta Kattekkal Kanden subadar in fa=
=vor of Parambata Sankara Menon" he read
no more, neither does he know more.-

The proof of the charge against
the Prisoner from certain difference in the
depositions of these Witnesses being considered
doubtfull it was deemed necessary by the
Criminal Judge to have the actual existence
of the bond in question, before the act charged,
proved, and the witnesses to the deed and
the writer of it were summoned to attend
the Criminal Court. these three have been
examined by me in the absence of the Crimi=
=nal Judge.-

Kaygatta Unniskandah exa=
=mined upon oath, speaks doubtfully, and
cannot call to recollection whether he ever
wrote such a bond between the Prosecutor
and Prisoner; does not remember the circumstance
Heard the Prisoner say two or three months
ago, that the subadar owed him 200 and
odd fanams, but never heard the subadar say so.

The Witness Kizkinspatta Chattoo
Nayar does not know of the circumstance of a
Bond being paped between the Prosecutor and
the Prisoner, never saw the Prisoner write and
give a bond to the Prosecutor, and never heard
the Prosecutor say that a bond had been given.

Katata Allalaschan Nayar
deposes on oath that the Prosecutor Sankara
Menon told him in the month of Magarom
last that the Prisoner had given him, the
Prosecutor, a Bond for 200 and odd fanams
and had written his (witness) name as
witness to the bond: that he never saw the
bond in question, and that all he knows
concerning it, is from the Prosecutor himself,
has only heard since his arrival at Calicut,
that the bond was torn and destroyed by
the Prisoner.-

The Criminal Court taking into
consideration the evidence taken before it,
is of opinion that the charge of breaking
open the Box of the Prosecutor and taking a
Bond executed by the Prisoner to the Prosecutor
for 211 fanams and destroying the said bond,
is proved only in part, namely, that the
Prisoner broke open the Box of the prosecutor
His the Prisoners own, and appears that he
committed the act in the execution of his
duty and in the presence of Witnesses; is of
therefore

therefore the Prosecutor considered himself aggrieved by any abuse of authority on the part of the Prisoner, the Criminal Court is of opinion that he should have sought redress for the evil under the provisions of Section III, Regulation III, 1816; of the remainder of the charge the Prisoner is fully acquitted, and he is therefore discharged.-

I have the honor to send to your office the Prosecutor Sangana Menon with a copy of his Deposition on oath, in which he avers that Unni Kondah Menon wrote and Allalaschah Nayar and Chatah Nayar and Chatat Nayar, witnessed the Bond, which is the subject of his accusation against the Subedar; with copies of the examinations on oath of these persons, also a copy of the examinations upon oath of Ennekketta Sankaran and Kannata Eschuh whom I consider to have wilfully perjured themselves in this Court. and also of Havildar Unni Puragah and Pulikal Kunjie Nayar whose evidence will be particularly useful in proving the perjury of the two witnesses Sankaral and Eschuh. There is also every reason to suppose that, that part of the charge of the Prosecutor against the Prisoner, in which he accuses him of destroying his bond, is unfounded and malicious, and that he is guilty of wilful perjury in himself, & and subornation of perjury with regard to two of his witnesses, Viz. Sankara and Eschuh.-

If your opinion of this case is such that you should deem it necessary to be provided with other copies of examinations taken in this Court, or of those taken originally before yourself, Copies of such will be immediately provided.-

I have the honor to be &c

Court House, Calicut - - - - 8th January 1820.

/Signed/ C. M. Whish.
4th Circ. Judge.

/True Copy/
/Signed/ Wm. Mason.
2nd Ast. Magistrate

/True Copies/
/Signed/ W. B. Anderson
Acting Register

Deposition of Prosecutor Vattamparrambata Shangara Menon on oath before the Criminal Judge on the 14th December 1819.-

In the month of Coombhom last I was stationed at the Mangalamkoonoo Post as Naick of the Tobacco Company (Irregulars for

for seizing Tobacco smugglers). The Soobhedar came there in the month of Dhanoo and a person having come and said that a Calyanam Ceremony was to be performed at the Soobhedars wifes house, the Soobhedar told me to go, send a list of the articles required for the occasion and see the ceremony performed. I accordingly went, sent a list of the necessaries, got them in readiness and saw the ceremony performed, to which the Soobedar also came and gave me a chit on the 24th of Magaram for 211 fanams that I had expended for the Calya=nam. After this when the Soobhedar came to Mangalam Koonoo and I demanded the fanams of him, he said he would send them together with the pay. Since which people having come to relieve me for Palghaut I proceeded thither, but after a delay of four days as I had to perform an Ittation to Bhagawathy at a certain Pagada. When I was setting off from Mangalam Koonoo I locked up the Chit aforesaid and my things in a Box and delivered it into the charge of the Naik that came to relieve me. On my arrival at Palghaut the Soobhedar on the plea that I had surreptitiously sold Tobacco put me under a Guard, caused my

my Box to be brought from Mangalam Koonoo to Palgaut, put it first under the Guard and then taking it to his house sent a person to me to forward him the key. On which I sent him word that there were many things in it belonging to me, that he should open it in my presence and that if the search was a business of the Circar it ought to be made in the Kuchuhree. On the 16th or 17th Afternoon he caused a Silver Smith to file open the Pad=lock, opened the Box and took out and tore up the Premannum for 211 fanams which the Soobhedar had executed to me.

To whom and by whom was the Pre=mannum for 211 fanams executed which you say was torn?

It was executed by the Soobhedar to me.

Who was witness to it and who the writer thereof?

It was in the hand writ=ing of Caniatta Pokanda Menon, and Kallata Alla=llasha Nair and Keernat Chatoo Nair are the witnesses thereto.

Were you present when the Box was opened?

I was not present but in confinement in the Kuchuhree.

Did

Did you get the remainder of the Articles that were in the Box with the exception of the Remanumm.?	I got the whole of the remainder.-
Was the box broke open or the Padlock opened without injuring it.?	Not the Box but the Padlock was broke.-
Did you hold a public situation when this occurrence took place.?	I held a situation then but lost it in Edawam.-
On what account did you lose your situation- was it the Magistrate or his Assistant that dismissed you from employ.?	The Magistrate, because I had not given a Calkar his pay.-

Signed.

/True Copy/

/Signed/ Krishna Menon.

Actg Record Keeper.

/Signed/ D. Forbes. Crim. Judge

/True Copy/

/Signed/ C. M. White.

Asst. Crim. Judge.

Examination of Perketta Changaran taken on oath before the Criminal Judge on the 14th December 1819.-

1. Do you know the Prosecutor and the Prisoner.?	I do.-
2. State what you know regarding the complaint preferred by the Prosecutor against	In the month of Meenam 994, the date I am not certain

against the Soobedar for tearing a Remanumm.- certain of, when the Prosecutor was placed under guard at Cuttan Pettah in consequence of the Soobedar sending me to the Prosecutor to ask him for the key of his Box for the purpose of its being opened at the house where the Soobedar lived, I went and asked the Prosecutor for the said key- when he said it should be opened in his presence, that it contained many things belonging to him and that he would not send the key- In consequence I came and related the same to the Soobhedar at his house- The Soobhedar tried to open it with a bayonet but could not. Wherefore he told me to call in a silver Smith, I did so, and he knocked open the lock with a hammer- There were some Pots and a bundle of Ollas in the Box which Echoo, a person of Prosecutors was caused to read- he had read five or six of the ollas when a Chit executed by the Soobhedar to the Prosecutor was discovered, and when a part of it was read the Soobhedar said it was not one that should remain in the Box, that it was one executed by him and then took, tore and threw it into the compound- delivered the remaining things to the Calkar Echoo and told him to

to carry and deposit them at the house where the Prosecutor took his meals.-

3. What other persons were present when the Soobhedar tore and threw away that Olla?

Oony Poo.agan Hauldar, Colkar Chandoo, Echoo who read it, and Gavin=dan were there when it were torn.-

4. Do you know the circum=stance of that Pemanum having been previously ex=ecuted by the Prisoner to the Prosecutor?

I know. I was present at the execution of it.-

5. Was it written on Olla or paper?

It was on a plain Olla.-

6 Were you present when it was drawn out & signed?

I was present when it was drawn out and signed.- The Prosecutor got a Calyanam Ceremony performed at the desire of the Soobhedar, and it was on that account that the Pemanum was executed, which took place at the Tank of the Pagoda called Cengayoor Bhagawathy Callangara.-

7. Who were present when that Pemanam was executed.

Cariat Cony Cunda Menon was the writer of it - Lallata Illath=shan, Peeraka compan Chatoo Nair and the Prosecutor and Prison=ers were there there.-

Signed

/A true Copy/
/Signed/ Krishna Menon
Actg Record Keeper

/Signed/ J. Fyfe
Crim. Judge

True Copy
/Signed/ G. M. Welsh. Asst. Crim. Judge

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Examination of the Witness Coonate Echoo taken on Oath before the Criminal Judge on the 14th December 1819.-

1 Do you know the Prosecutor and Prisoners?- I do.-

2 State what you know regarding the Complaint preferred by the Prosecutor against the Soobhedar for tearing a Pemanum ..... One day, the date I am not certain of, in the month of Meenom 994 after mid=day, when I went to the place where the Prisoner Condapen Soobhedar lived, there was a Box in the Veranda, a Colkar by name Eretkata Shangara brought a silversmith with him and the Soobhedar having told him to open the Box the smith filed open the lock - the Box contained Corley, Kinnam, Talliga, a Lamp, Coriga, Spoons, a bundle of Ollas and Grundhum, which were taken and kept out from among those the Soobhedar took a bundle of ollas and held it in his hands and gave them to me one by one to read. I read five or six Ollas when he gave one which I read the word=ing of as far as "writing from Tayat Kottakel Condapen "Soobhedar to Wattamparambatta Shangara Menon". When the Soobhedar took the olla from me tore and threw it away and having put the whole of the things into the Box told me to carry and keep it at the house where the Prosecutor took his meals. I accordingly carried and kept it at the place where Shangara Menon lived. This is what I know.-

Besides

Examination of Cooery Pooraguem Havildar taken on Oath before the Criminal Judge on the 14th December 1819.

1 Do you know the Prosecutor and the Prisoner?— Ido.

2 State the particulars of what you know of the Complainant preferred by the Prosecutor against the Prisoner the Soobhedar — I know nothing of the Circumstances of a Pram-anum having been execu-ted or torn. In Room-bham last I proceeded to Mangalam Coonoo agreeably to orders to relieve (that Post) and the Prosecutor and Kolkar Coman having received orders to proceed to Palghaut I took charge of the Guard - The Prosecutor on his departure left a Box under my charge - after this I received an order from the Soobhedar that as he had heard that the Prosecutors Box contained Tobacco and Sirkar Accounts I should put a seal on the Box and send it along with the Prosecutor. I accordingly put a seal on it — before the Mookhistanmars and as the Prosecutor had gone away before that I reported the same in Answer to the Soobhedar - after this I received orders from the Soobhedar to send the Box under charge of Colkars what I did by 3 Colkars - This was either on the 12th or 13th Meenom - after this when I went to Palghaut for the pay of the Month of Koombhom, there were on the 17th Meenom at the House where the Soobhedar lived, the Prose-cutor Kellapan Jemedar and a Havildar and Colkars besides-

Besides reading "writing from Tayata Cottakal Candapan to "Soobhedar to Wattam parrambata Shangara Menon" I did not read and make myself acquainted with the remainder of the Contents

How many Months is it since this occurrence took place & at what time?- It was in the Month of Meenom 994 after midday-

Was the Prosecutor present when the Box was opened or what other persons were there?- I did not see the Prosecutor The aforesaid Shangaran a Colkar, Cooery Poorangan Havildar, Polkar Coonjoo Nair and several other persons were there-

Was it an Olla or a paper that was torn and had it a Stamp upon it?- It was an olla but it had no Stamp.—

You have said that you saw the Olla by order of the Soobhedar, say what it contained? Besides the word "Tayata "Kottail Candapan Soobhe-dar to Wattam parambata "Shangara Menon" I neither saw nor knew what else it contained-

Do you know by whose orders the Prosecutor's Box was opened?- I do not know by whose order - I am under the orders of the Soobhedar who is under the Sahibs' orders for looking after Tobacco

/a true Copy/
/Signed/ Kistna Menon - acting Record Keeper.

/Signed/ J. Forbes - Crim.l Judge,

/True Copy/
/Signed/ C. M. Wheith, Asst. Comm.r Judge,

Examination

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Examination of Witness Poollakil Coorjoo Nair taken on oath before the Criminal Judge on the 14th December 1819.

1 Do you know the Prosecutor and the Prisoner? — Ido.

2 Do you know of the Compt. the Prosecutor has preferred against the Soobhedar for leaving a Prumanum — — — In Meenam last or there about when I was Stationed at the Post of Mangalam Koonoo the Kolkar Coman having brought the Soobhedars orders to convey Perooyan Havildar to seal the Prosecutor's Boxe the same was sealed. — after this orders having come from the Soobhedar to take that Boxe to Palyhaut and two Colkars caused 2 Cooleys to carry it to Palyhaut were we delivered it into the charge of the Naik. Two or 4 days after this the Naik and Colkars were directed to take the Boxe to the Soobhedar's lodgings near the Guard where the Soobhedar, Semedar, Havildar and others then were. The Soobhedar said that Colkar Coman had reported that the Boxe contained certain Tobacco Kychets and that he had caused it to be brought for the purpose of inspecting them. Prosecutor then said that the Key was with his attendant. & when the Soobhedar told him to open and shew it the Prosecutor caused a Silver Smith to open it with a file. it contained cooking utensils. ollas of accounts and Moreys (receipts) which a Colkar called Echoo looked into and were found to be accounts of Tobacco seized and receipts of the delivery thereof as those persons said. The

besides. The Soobhedar then told the Jemedar that as the Colkar Coman had reported that there were Sirkar things in the Prosecutors Box he should open the Box make a search and write an arzee to the Sahib. when this was communicated to the Prosecutor he said the Box was under a Guard which was caused to be brought. It was then said that the Key was with the Valeyakaar (an attendant) and that if a Silver Smith was called it might be opened a Colkar then brought a Silver Smith and the Jamedar having Kept the Prosecutor near caused the Box to be opened which contained some Oorleys (Vessels) and bundle of Ollas of accounts which Echoo Colkar the Anandarawan of the Prosecutor was made to read. There were accounts of Tobacco seized but no Tobacco was found. Upon this those things were delivered to the Prosecutor and the Prosecutor and his Anandarawan having put them in the Box took it to the House where he lived.

+ by whom not stated.

3. Did the Prosecutor at any time tell you about a Prumanam what the Soobhedar had executed to him. — Neither know nor did Prosecutor tell me of a Prumanam having been executed to him. —

4 Was any Prumanum executed by the Soobhedar to the Prosecutor discovered or torn at the time the Boxe was opened. — Neither was a Prumanum discovered nor torn at the time. Several persons were there. —

(signed)

(a true Copy)
(signed) Hristna Menon - Acting Record Keeper

(signed) J. Forbes - Crl. Judge.

(True Copy)
(signed) C. M. Whish - Asst. Crim. Judge

The Soobhedar then, told the Prosecutor Nark that he had sent for and examined the Boy because the Colkar Coman said that it contained Tobacco and Certain Kychees relating to that Article, that since Nothing of the Kind had been found he might take it away, which I saw him do- I know nothing more.-

3. Was a Prummanum for 211. fan.s executed by the Soobhedar to the Prosecutor then discovered in that Box and torn? If so state the particulars-

I neither saw the Prummanum nor was it torn. at the time. and I heard nothing of it-

4 Do you know or did you hear at any time of a Chit upon any subject whatever executed by the Prisoner to the Prosecutor,

I neither know nor have I heard of it-

5 On what account and by whose orders did the Soobhedar cause Prosecutor's Box to be opened"-

I heard the Soobhedar say that it contained Kychees and Tobacco and that it was on that account that he was opening it- besides which I do not know by whose order it was opened

(signed)

/ True Copy /

/ signed / Kristna Menon Acg. Asstt. Keeper.

/ signed / J. Forbes- Crim.l Judge

/ True Copy /

/ signed / C. M. Whish Asst. Cr. Judge Examiner

Examination of Witness Kariattil Oorkunda Menon taken on Oath before the Asst. Crim.l Judge on the 23.d December 1819.-

1 Do you know the Prosecutor and the Prisoner?-

I know both of them,

2 Know you aught regarding Prosecutors Compt. against the Prisoner?

I have heard that the Prosecutor has preferred a Complaint against the Prisoner the Soobhedar, and that I am written down as a Witness in the Case- and of I am asked the particulars I shall state what I know

3. Do you know of the Prisoner the Soobhedar having executed any Prummanum to the Prosecutor?

I do not now recollect it.-

4 State truly whether or not within these 12 Months the Prisoner executed to the Prosecutor any Prummanum of which you were the writer?

I do not recollect- I drew out several writings executed by the Soobhedar to the Prosecutor-

5 What may be the reason for your drawing out several writings for the Soobhedar?

When the Soobhedar had occasion for writing Rudhanis for passing Tobacco & his private communications, he would come to Ingayoor Dishum in Pattamby Kobely and get me to write for him- I have heard for these 3 or 4 Months from the Prosecutor that 200 and odd fanams were due him - The Soobhedar told me nothing of it-

6. Did either the Prosecutor or the Prisoner tell you that the latter owed the former a debt?

I

7.

7. Do you not recollect and did not the Prosecutor tell you that the Pumanum for that amount was in your hand writing?- I recollect neither.-

8. Did you hear or do you know of the Soobhedar having torn any document belonging to the Prosecutor?- I heard since this Complaint was preferred.-

/signed/

/True Copy/

/signed/ Kristna Menon, - Acting Record Keeper

" C. M. Whish, - a/s^{t}. Crim^{l}. Judge,

/True Copy/

/signed/ C. M. Whish, assistant Criminal Judge,

Examination of witness Kerakampant Chatoo Nair taken on Oath before the a/s^{t}. Criminal Judge on this 23^{d}. December 1819.

1 Do you know the Prosecutor and the Prisoner?- I do.

2. Do you know aught about the Prisoner Soobhedar having executed any Pumanum to the Prosecutor If so let us hear it?- I know nothing of it.

3. The Prosecutor has stated that the Prisoner executed to him a Pumanum for 211 fan^{m}. executed by Prisoner to the Prosecutor- I do not recollect of a Kuroonam (Bond) for any and that you are a witness to it?

4 Do you know of a Pumanum executed for the Money which Kangara Menon had expended on Account of the Soobhedar for the Ponattawar's Calyanum in Magaram 994?- The Ponat Calyanam took place in Magaram 994 and I saw the Prosecutor come there and manage the business. The Soobhedar had also come on that day I heard that the Prosecutor and the Soobhedar together had got that Calya-nam performed.-

5 On what day was the Calya-nam performed and on what day did the Soobhedar return?- The Calyanam was I believe on the 28th. or there about - when the Soobhedar came and returned the same day.-

6. Can you say positively that when the Soobhedar returned on that day he did not in your presence execute a document to the Prosecutor?- None was executed in my pre-sence nor did I hear Prosecu-tor say so.-

/signed/

/True Copy/

/signed/ Kristna Menon, acting Record Keeper

" C. M. Whish - a/s^{t}. Crim^{l}. Judge,

/True Copy/

/signed/ C. M. Whish - a/s^{t}. Crim^{l}. Judge,

Examination of Callata Allallasha Nair taken on Oath before the assistant Crim^{l}. Judge on the 23^{d}. December 1819.-

1 Do you know the Prosecutor and the Prisoner?- I do.

2. Do you know of the Prisoner having executed a Bond for debt to the Prosecutor, If yes, let us hear the particulars on the 25th. Magaram last had executed to him a Puma-num The Prosecutor told me that the Prisoner Soobhedar

-num for 200 and odd fanams and that my name was written therein as a witness thereto - On that day when I went to the Ponat House in Ingayoor the Prosecutor was there - the Pro: -secutor and others told me that Soobhedar had but that mo: -ment left the place, it was then one Nariga before Sun set - The Prosecutor told me that the Prumanum was executed on that same day. -

3. Was that Prumanum shewn to you and do you know who besides yourself are witnesses thereto? - I was told that Caryat Vony Canda Menon was the writer - That Chatoo Nair was written down as a witness and that the latter also was present but the Prumanum was not shewn to me. -

4 You know on what account such a Prumanum was executed? I heard it was on account of the Money expended for a Calyanam at the Ponat House.

5 Do you know of the Prisoner having since destroyed that Prumanum? - I heard Shangarun say since my coming now to Calicut that it was torn. -

/ signed / &c

(True Copy)
/ signed / Krishna Menon - Actg. Record Keeper
" C. M. Whish - Asst. Cor. Judge.
/ True Copy / signed C. M: Whish - Asst. Ct. Judge.
/ True Copies / signed / W. Mason - 2d. Wd. Asst. Magr.
True Translation -
/ signed / W: B: Anderson - acting Register

Courts order, 31st. January 1820.

It appears by the papers transmitted with the foregoing letter, that the acting Criminal Judge in the Zilla of South Malabar being of opinion, that the prosecutor and two of the witnesses in a Case before him were guilty of wilful perjury in their depositions, &c sent the said prosecutor and witnesses together with &c Copies of the depositions in question to the Magistrate of Malabar. -

The reason for adopting this mode of proceeding is not stated by the Assistant Criminal Judge in his letter to the Magistrate, but the Court of Foujdaree Adalut conclude, that it resulted from the same view of the existing legislative enactments, as that taken by the Magis: -trate of Malabar, who in his letter to the Register of the Provincial Court of Circuit in the Western Division, re: -questing instructions how to act on the occasion observes. "Had a perjury been so committed in the Civil Court, the "Court could of itself have committed the offender for Trial. "Court could of itself have committed the offender for Trial. "A Circuit Judge has the same powers - but they do not "seem to be extended to a Criminal Judge who is precluded "by Section VIII Regulation X of 1816. from taking cognizance "of any Criminal charge, unless it be brought before him "by a Magistrate or Police Officer". -

The Extract of the proceedings of the Provincial Court of Circuit in the Western Division contains the following observations on the question referred by the Magistrate of Malabar. "Section VIII Regulation X of

of 1816. is absolute, and under these provisions the only legal "course to be pursued when a Zilla Judge deems it necessary "to bring to Trial, on a charge of perjury any person, who may "appear to have incurred such guilt in matters of Civil or "Criminal cognizance is to forward the parties to the Magis= "trate with a statement of the Case, and the record on which "the Perjury is supposed to rest, in order that this officer "may hold the necessary preliminary proceedings".—

The Opinion expressed in the above extract by the Acting and Officiating Judge must have been formed without a due consideration of the following provisions.—

By section VIII Regulation III of 1802 which is referred to in Section XXIX Regulation IX of 1816. it is enact= =ed, that "if a witness or any person shall be guilty of wilful "and corrupt perjury in any Cause or matter depending "in a Zilla Court, the Judge is immediately to commit the "offender to close custody to take his trial before the "Court of Circuit.—

It is to this provision, that the Co= Magistrate of Malabar refers in the passage above co= Cited from his letter to the Register of the Provincial Court, and it appears to the Court of Foujdaree Adalut that the words of section VIII Regulation III of 1802 are sufficiently explicit to exclude all supposition of intermed= =ate or as termed by the Acting and Officiating Judge "preliminary" proceedings to be held by a Magistrate, conse= =quent upon the Commission of a Perjury before a Zilla Court and anterior to the Committal of the Offending party for

for trial before the Court of Circuit.—

With respect to the proper mode of pro= =ceeding in a Case of perjury before a Criminal Judge the Magistrate, the assistant Criminal Judge and the Provincial Court have fallen into the same error from not duly considering the peculiar nature of this offence, and have thus been led to apply the provisions of Section VIII Regula= =tion X of 1816. to a Case which is in its own nature, as well as by other provisions of the Code specially excluded from their operation.—

The Section in question declares that "the "Criminal Judge of the Zilla shall not receive or take co= "Cognizance of any Criminal charge or information except "such as may be brought before him by Magistrate or some "Police Officer".—

It is obvious to remark, that a provision determining the mode, in which a "Criminal charge or inform= =ation" is to be "brought before a Criminal Judge cannot by any just analogy be made to apply to an offence, which from its peculiar nature is at the moment of its commis= =sion under his official cognizance.

From Section V Regulation VI. of 1811. it is clearly to be inferred, that all Courts, Civil or Crimℓ, are

are competent and bound to commit persons, whom they may consider to have been guilty of perjury before themselves.

The reasons for the rule appear to be, because the primâ facie case, which must necessarily be made out before a party is committed or held to bail, is already before a competent tribunal because it is at the instance of a Judicial tribunal, and not on the accusation of an interested individual that the trial is to take place, and because it is essential to the pure and effectual administration of Justice, that every Court should protect and vindicate its own dignity, and perjury is the highest species of contempt.-

A modification of the penal enactment with regard to perjury has been made by section XXXV Regulation IX of 1816. the provisions of which are strictly limited to the petty cases specified in sections XXXII & XXXIII of that Regulation, and authority is thereby vested in Magistrates to punish the party instituting a false Complaint in all cases, which those officers are competent to hear and determine.-

The vindication of the dignity of his own Court in this respect is thus immediately vested in the Magistrate, in conformity with the principle above referred to, it being considered that false swearing in charges of so petty a discription did not demand the severest penalties of the law.-

The Court of Foujdaree Adalut having recorded these observations on the general question involved in the present reference, have to observe with respect to the particular Case under consideration, that the remark in the proceedings of the Provincial Court, that "no injury "has resulted from the false swearing" appears to have been made without due reference to the hardship, sustained by a person detained in Custody

and

and subjected to legal investigation on a false and ignominious charge.

The Court deem the present to be a fit occasion for calling the attention of the several Courts of Circuit and Criminal Judges to a defect very generally observable in the Trials for Perjury, which have been referred to the Foujdaree Adalut.—

The statement in the nature of an indictment, directed by the orders of the Court under date 31st. January 1814 to be prepared by the Committing Officer, and adopted by the Judge of the Court of Circuit at the arraignment, is rarely found to contain an averment of the several particulars, the establishment of which is essential to a conviction of the Crime of perjury under the definition of that offence contained in section IV Regulation VII of 1811.—

The endeavours of the Court to introduce correctness in this most important particular, in trials for Perjury having hitherto failed of success, they resolve to circulate the following instructions and direct that they be in all instances conformed to as far as the nature of the Case will admit.—

The indictment should first state that A.B. being a party or a witness in a certain civil suit, or Criminal trial (as the case may be) and being called upon to depose to certain matters of fact, material to the issue of the said suit or trial, did on such a day, and before such a Court, having been sworn to depose truly in the said matter, depose on oath in words to the following effect (Here recite the words on which the perjury is assigned

assigned / Whereas in truth and in fact / Here recite the fact in opposition to the averment of the accused / that it was material to the issue of the said suit or trial to shew that &c. and that the said witness well knew at the time of the said swearing that his deposition so given was false, and that he the said A.B. did therefore commit wilful and corrupt perjury.-

On the establishment of these particulars by evidence must depend the issue of a trial for Perjury; and it is scarcely necessary to observe, that the testimony with respect to the fact, opposed to the deposition of the accused, must in order to his conviction be full and undeniable-

Extract

Extract from the Proceedings of the Foujdaree Adalut under date the 7th. February 1820-

Read letter dated on the 21st. Ultimo from the Provincial Court of Circuit in the Southern Division. Referring two letters from the Criminal Judge and Magistrate of Madura on the subject of a warrant of the latter for the imprisonment of a person with hard labour.-

To the Register to the Foujdaree Adalut.

Fort St. George,

Sir,

I am directed by the Provincial Court of Circuit to transmit Copies of letters received from the Magistrate and Criminal Judge in the Zilla of Madura, and to request the Opinion of the Court of Foujdaree Adalut on the subject.-

From Nos 1 & 3.

I have the honor to be &c.

Registers office
Trichinopoly-
21st. January 1820

signed / G. W. Saunders- Register

To the Register of the Court of Circuit
Southern Division.

Sir,

Agreeably to the orders of the Sudr Foujdarry Adalut, on the subject of references I beg that the following may be submitted, for their consideration and Decision.-

Royapen and Moottoo curoopen, were sentenced by me, for theft, to one Months confinement, with labour, in preference to flogging- the Criminal Judge objects to have the latter part of the sentence executed, as will be seen by the accompanying letter. I therefore wish to be informed if a Magistrate had the power to pass such a sentence, it is true

true the Regulations do not say "with labour neither do they say without labour" and as I do not think the mere simple imprisonment can be considered equal to the punishment of 18 Rattans - especially when Magistrates are Authorized to Confine for the same period, people for the non-payment of fines - I trust I have not exceeded the spirit of the Regulations in my sentence - I moreover must beg to question, the propriety of a Criminal Judge preventing Jailor's obeying a Magistrates warrant - If the legality of such warrant be doubted, a reference should be made to higher authority, when if any misconstruction of the Regulations existed, it could be pointed out, but I submit, if the Warrant should not be executed. -

Madura, - - - -
Mag^te Office - - -
18^th January 1820.

I have the honor to be &c^a.
/signed/ R. Peter, Jn.

Read in Court this 21^st January 1820.
/signed/ G. W. Saunders - Register
/a true Copy/
/signed/ G. W. Saunders - Register

To the Magistrate in the Zilla of Madura.

Sir,

In the Warrant to the Jailor which accompanied your letter of yesterdays date it is specified that Royapen and Moottoocurroopen Convicted of theft, are sentenced to one Months imprisonment and hard labour - I am

I am not myself aware of any existing Regulation, which authorizes a Magistrate to sentence persons guilty of petty thefts, to hard labour on the public Roads, and therefore I feel it a duty incumbent on me to decline carrying on to execution that part of the sentence, until such time as the Case may have been referred, and the question of right decided on by the Foujdaree Adalut. -

Madura - - -
Zilla Court - - -
15^th January 1820.

I have the honor to be &c^a.
/signed/ W. C. Shakespear - Crim^l Judge
/True Copy/
/signed/ R. Peter - Jn.
Received this 21^st January 1820.
/signed/ G. W. Saunders - Register,
/a true Copy/
/signed/ G. W. Saunders - Register,

To the Register to the Court of Circuit for the Southern Division, Trichinopoly

Sir,

The Magistrate of this Zilla having this day furnished me with Copy of his letter addressed to you under date 18^th January 1820. I beg leave to state. -

First — That I am not aware of any Regulation empowering Magistrates to Award such Sentence as imprisonment "to hard labour on the public Roads"

Secondly — Were the prisoners deserving of a severer punishment than one Months Confinement or 18 stripes with the Rattan as prescribed by section XXXIII Regulation IX of 1816. I am of Opinion that they ought to have been sent up to the Criminal Court for trial and

Lastly — As section XXXIV Regulation IX of 1816. most clearly prescribes the forms of warrants to be addressed by Magistrates to the Keeper of the Jail, and as in the present instance that form has not been observed, from the words "imprisonment to

"to hard labour" having been inserted therein rendering the warrant in my Opinion illegal are the grounds on which I declined working in Irons, on the public roads, the persons of Rogapen, and Mootto Curpen and it would indeed, I conceive have been a hardship without remedy, imposed on the persons of Rogapen and Mootto Curpen had the sentence of the Magistrate been first carried into effect and the legality of the measure afterwards made a subject of reference. —

I have the honor to be &c.

Madura — Zilla Court 19th January 1820.

(signed) W. A. Shakespear — Crim.l Judg.

Read in Court this 21st January 1820.

(signed) G.W. Saunders. - Registr.

(True Copy)

(signed) G.W. Saunders — Registr.

Courts Order, 7th February 1820.

The first question submitted for the decision of the Court of Foujdaree Adalut on the above reference, is whether under the Authority vested in a Zilla Magistrate to commit offenders in certain specified Cases to prison, it is competent to that Officer to direct, that the party be kept to hard labour during the period of such imprisonment. —

On the general view of practical expediency it appears to the Court of Foujdaree Adalut to be unquestionable that labour should at the discretion of the committing Officer accompany imprisonment when intended as a punishment: and in the opinion of the Court it is clearly inferrible from the provisions of the Regulations, enacted on the first establishment of the System for administering Criminal Justice, that such was the intention of the Legislature. —

By

By section XX Regulation VII of 1802. the punishment to be inflicted in Cases when a prisoner may be adjudged to suffer amputation by the futwa of the Mohummedan Law Officers, is specially declared to be imprisonment with hard labor, for the periods therein specified. —

By clause second section XV and clause second section XXXIX of the above Regulation imprisonment, at the discretion of the Court, is prescribed in commutation of the penalty of Deyut: and no mention is made of hard labor in addition to the imprisonment. —

The offences incurring the penalty of Deyut under the Mohummedan law include homicide, and the most atrocious acts of personal violence; and amputation of one limb is the stated punishment for a simple theft to an inconsiderable amount. —

It would, therefore, be irreconcileable with every principle of reason or justice, were imprisonment with hard labor to be adjudged only in the Cases referred to in that provision of the Regulation above cited, in which it is specially prescribed. —

The words of Clause third section VIII, and Clause first Section IX, Regulation XV of 1803. are corroborative of the opinion entertained by the Court of Foujdaree Adalut, that imprisonment always implies labor, at the discretion of the Court passing the sentence. —

In the former clause it is declared, that "in all cases of convicts sentenced to imprisonment "for a limited period, the Court by whom the sentence is pas "sed, if it deem the same proper, on consideration of the "prisoners offence, may adjudge him to be banished during

the

"the period of his sentence from the district in which his plai[illegible]
"of abode is situated, and to be kept to hard labor on the public
"roads or other public works in any other district to which he may
"be removed by order of the Foujdaree Adalut."—

In the latter clause provision is made for the punishment of "convicts sentenced to imprisonment who during the "period of their sentences may escape from Jail, or other place of con: "finement, or from the Roads or any other place where they may be "employed."—

In the two clauses here cited reference is made to sentences of imprisonment generally, and it is clear that labor is in both instances contemplated as an adjunct of personal confinement.

The Court of Foujdaree Adalut are therefore of Opinion that it is consistent with the spirit of the Code to Construe the provisions of Regulations IX & X of 1816. which vest in Crimin: al Judges and Magistrates authority to pass sentence of imprison: ment, as conveying to those officers a discretion to Adjudge hard labor, in addition to such imprisonment.—

In dismissing this subject the Court of Foujdaree Adalut deem it proper to observe, that although cases may occur, in which considering the rank or circumstances of the person convicted, imprisonment may be deemed a sufficient punishment the Adjudication to confinement in the Zilla Jail without the impo: sition of labor would if generally adopted, tend rather to the en: couragement than to the suppression of offences.—

The present reference involves the further question of the Competency of a Criminal Judge to prevent the Jailor from carrying into execution a warrant addressed to him by a Magistrate under the provisions of clause first section XXXV Regulation IX. of 1816.—

By the second clause of this section it is prescribed that a paper shall accompany the Magistrate's warrant to the Jailor, for the information of the Judge and the Court of Foujdaree Adalut are of Opinion that the latter Officer, although he may unquestionably communicate to the Magistrate such observations as he may deem necessary on the subject of the warrant is not permitted to exercise any discretion as to the discharge of the prisoner, but that whenever it may appear to him that a sentence passed by a Magistrate is not authorized by the Regulations it will be his duty to make a reference on the subject to the Provincial Court of Circuit.—

Extract

Extract from the Proceedings of the Foujdaree Adalut

Under date the 6th April 1820.

Read letter dated 28th Ultimo

From the Criminal Judge in the Zilla of Bellarree—

Referring with certain papers a question relative to the Construction of Regulation III of 1819.—

Zillah Court of Bellary 28th March 1820.

To The Register to the Foujdaree Adalut

Fort St. George,

Sir,

Para 1 I is with submission I enclose Copy of some correspondence which has arisen in this Zillah between the assistant Magistrate and myself and subsequently continued by the Magistrate after his arrival.—

2 The Difference of Opinion that existed as to the Construction of the Regulations induced me to refer the matter for the Decision of the Governor in Council, but you will perceive by copy of a letter received from the Secretary to Government and now transmitted that I had inadvertently mistaken the proper channel of correspondence I beg leave therefore to rectify my mistake by enclosing the Copies of the letters in question and requesting the opinion of the Court on their Contents.—

3. At the same time I must declare I have no other Motive than that of obtaining better information

information than it appears I profess, in regard to the Construc-
tion, and intent of Section III Regulation III of 1819 and
with a view of defining as minutely as possible the Jurisdiction
of the Court which states that "For extortion oppression or o-
"ther abuse of authority all Native officers of Police, shall
"be liable to be sued in a Zillah Court, or to be prose-
"cuted in a Court of Criminal Judicature". This in my
opinion seems expressly framed, in order that either the Zillah
Court or Criminal Judge should in the first instance be
Competent to entertain a Complaint preferred against any Police
officer for oppression, Extortion, or other Heinous offence, for it
is not in the Course of things that a man being oppressed
by any Tasildar or Amildar, who also is an agent of Police,
that he could expect justice from his enemy, he therefore
naturally flies for protection and redress to an indifferent au-
authority.-

4 The Regulation III of 1819 rescinds Sec XLII
Regulation XI of 1816 for why? It there states, that "Police
"Officers may be prosecuted by the injured party either Crimi-
-nally before the Magistrates or for Damages in the Zillah
"Court" now in Regulation III of 1819 the word Magistrate in
III Sec: clause first is expressly omitted but in clause
second it states "whenever a charge of this Nature may
"be preferred &c &c".-

It is therefore in my opinion according to
the latest Regulation, the intention, that Parties op-
-pressed should have the option of prosecuting criminally
before whichever authority that might be most contigu-
-ous and where they thought the ends of Justice might
be obtained.-

I have the honor to be &c
(signed) Saml. Ibbetson - Cl. Judge

Ameedall 27th Febry 1820.

To The Criminal Judge in the Zilla of
Bellary.

Sir,

I have the honor to furnish for your
information Copy of a letter which I have received from
the Secretary to Government in answer to my reference res-
-pecting the publication of Certain proclamations sent me
by the late Criminal Judge and relating to the Authority
which that Officer conceived he had a right to exercise
over Native Officers of Police.-

2. With reference to the Summons which I
understand has been sent to the Amildar of Adoni I further
beg leave to state that on the Strength of the above letter
from Government I have directed the Amildar not to attend
the Court, and have submitted my reasons to the Government

I have the honor to be &c
(signed) J. T. Anstey
A. C.

To

Zillah Court of Bellary 28th February 1820.

To The Secretary to Government in the Judicial Department Fort St. George.

Sir,

I have the honor to submit for the inform-

Para 1 -ation of the Right Honble the Governor in Council a letter just received from the acting Collector of Bellary referring to the Proclamation issued by my predecessor, and stating his determination to resist the process issued under the Regulation therein alluded to Viz.t Regulation III Section III of 1819. upon a Complaint preferred on oath of illegal Confinement and other grievances.—

Para 2 It would appear that the acting Col-
=lector has formed an Idea, that as he is vested with authority by the same Regulation to entertain, and try any Complaint, brought by the parties before him, that by the same Rule the Criminal Judge is divested of that power and is not competent to entertain and try any Complaint preferred in the first instance in the Zilla or Criminal Court of Judicature for Offences Committed by public Servants of Police for Extortion, oppression or other abuse of authority."—

Para 3 I beg leave therefore humbly to sub-
=mit this our difference of Opinion for the decision of the Governor in Council, but which I should not have thought necessary from my Construction of the Regulation

Regulation had not the process of the Court been decidedly resisted as is acknowledged in the enclosed.—

I have the honor to be &c.

[Signed] S. Ibbetson

Judge.

To The Criminal Judge, Anuntapoor 18th March 1820
in the Zilla of Bellary.

Sir, I beg leave to transmit, for your information, the enclosed copy of a representation addressed to the Head Assistant Collector Mr. Anstey by the Government Vakeel in Civil Court of the Zilla of Bellary.—

As it appears from that document that in a Case of violence [zaburdusty you" as "Criminal Judge" have summoned one of my Native Police Officers, on the personal representation of the Complainant to answer to the same without such charge or Complaint having been brought before you either by me as Magistrate, or by any Police Officer under my authority, and as such a proceeding is expressly prohibited

prohibited by section VIII Regulation X 1816. I beg leave to acquaint you that I have forbidden the accused police Officer to attend, and request that you will refer the Complainant either to me, or to some police officer under me, as being exclusively vested with original Jurisdiction in such Criminal Cases, and alone Competent to investigate them in the first instance.

With reference to section II Regulation III. 1817. I conceive that on all subjects connected with your official duties in the Criminal Department the communications between us should be direct, and I beg leave to remark that the interference of the Government Vakeel, a pleader in the Civil Court on such occasions seems unauthorized by any Regulation, and appears to me highly objectionable on public grounds.-

In resisting the infraction of that authority which for the reasons defined in the preamble to Regulation IX. 1816. is by law vested exclusively in the Magistrate and his Officers of Police I act upon the same principle which dictates to myself and those under me the highest respect and obedience to the distinct, independent, and clearly defined Jurisdiction vested in you, as Criminal Judge, for the support of which, as explained in the Regulations, you may always depend on my most zealous co-operation.

I have the honor to be &c.

/signed/ A. D. Campbell
Magistrate.

No. 122.
Judicial Department.

To
The Criminal Judge of Bellary.

Sir,

Para 1 I am directed to acknowledge the receipt of your letter of the 28th Ultimo referring for the determination of the Governor in Council a difference of opinion between you and the acting Magistrate with regard to the provisions of Regulation III of 1819. as the Governor in Council is not the Authority to whom an appeal lies on the occasion of a difference of Opinion between the Judicial Officers of Government you will understand that the instructions which I am now to convey to you are only intended to inculcate upon you that

that spirit of forbearance and Co-operation between the Officers to whom Criminal Jurisdiction is Committed in the several zillas, which the present System was meant to favour and to promote acting upon that spirit, it is for you to form your own Judgement as to the provi= sion of the Regulations which you are bound to observe.-

2= The regulation to which you refer= states that certain penalties had been found in some instances inadequate to the aggravated nature of the offence and provides that "in all cases wherein the measure "of punishment specified in the preceding clause" which gives Jurisdiction to the Magistrate, shall appear to be insufficient, the party accused shall be forward= =ed to the Criminal Judge to be by him dealt with according to the provisions of the general Regulations" The general Regulations provide that the Criminal Judge shall not receive or take Cognizance of any Criminal charge or information except such as may be

be brought before him by a Magistrate or same Police Officer under his authority. under these provi= sions it would appear that the Jurisdiction in the first instance and the discretion of Judging= whether a higher Jurisdiction should be restored to rest exclusively with the Magistrate of the zilla= you will have to satisfy yourself whether these provisions are over ruled by any others which the regulations may contain but the Governor in= Council has desired me to signify both to you and to the Magistrate of your zilla, his hope that, on the present and every other occasion of the same kind, you will be guided only by the wish to discharge your duty and not by that of extending the Authority Committed to you for that purpose.-

Fort St. George,
13th March 1820.

Jam Mca
/Signed/ D. Hill.
Secretary to Government

/True Copies/
/Signed/ S. Ibbetson - Col. Judge
Ja

Courts Order 6th April 1820.

In the foregoing letter the Criminal Judge states, his opinion that under the provisions of Section III Regulation III of 1819 it is competent to a Criminal Judge to entertain, in the first instance, charges against Native Officers of Police "for extortion oppression or other abuse of authority".-

The above inference is deduced by the Criminal Judge from the wording of clause first Section III Regulation III of 1819 in which it is declared, that for the acts abovementioned Native Officers of Police shall be liable to be "prosecuted in a Court of Criminal Judicature"; whereas under clause first section XLIV Regulation XI of 1816 such prosecution could only be instituted "before the Magistrate".-

The construction given to Regulation III of 1819 by the Criminal Judge is erroneous. The only alteration in the law, produced by the rescession of Section XLIV and XLV Regulation XI of 1816 and the enactment of the provisions, contained in Section III Regulation III of 1819, being the extension of the measure of punishment, in cases in which the penalties, prescribed in Section XLIV Regulation XI of 1816 might be "inadequate to the aggravated nature of the offence".-

Under the provisions of Regulation III of 1819 actions for damages may be brought, in the first instance, in a Zilla Court, against Native Officers of Police "for extortion, oppression or other abuse of authority".- but if the injured party should avail himself of the option of instituting a Criminal prosecution, the charge must in the first instance "be preferred before

"before a Magistrate and can only come before a Criminal Judge when the measure of punishment, spe=cified in clause second of the section of the Regulation above cited shall appear to the Magistrate to be insuffi=cient in which event the Criminal Judge is empowered to dispose of the Case, under the provisions of section VII Regulation X of 1816 or commit the party for trial before the Court of Circuit, should he appear to be deserving of severer punishment than the Criminal Judge is authorized to inflict.-

The Court of Foujdaree Adalut having reason to believe, that differences of opinion on the construction of Regulation III of 1819 are generally prevalent, direct that extract of these proceedings be sent to the four Provincial Courts of Circuit by present commanding them to communicate the same to the Cri=minal Judges and Magistrates within their several Jurisdictions for the information and future guid=ance of those Officers respectively.-

Received

Received the following letter from the Criminal Judge in the Zilla of Chingleput.-

To The Register to the Court of
Foujdaree Adalut
at Fort St. George,

Sir,

A man named William Dudly Highland who held the situation of the Post office writer at St. Thomas's Mount having been forward=ed to me by the Magistrate of this Zilla on a charge made against him by the Collector, of his having been guilty of a Fraud and misdemeanour in having made away with a letter sent to him by George Bruce Esqre. Surgeon, addressed to Lieut. Allon at Masulipatam, which letter contained a Bengal Lottery Ticket No. 1401.- From the evidence &c. produced in support of the charge, it evidently appears that the man must be com=mitted for trial, but tho a Native of this Country from his being a Christian and of the

the protestant persuation I have doubts with re-
spect to how far it will be right to subject him
to trial by the Mahommedan Law and have to re-
quest that you will obtain for my information
the opinion of the Court of Foujdaree Adalut
on the subject.-

The Cause of this reference origi-
nates from an opinion given by Mr. Skinner late
Judge of Circuit for the Centre Division, in
a Case of a similar nature in which the re-
Prisoner was charged with stealing a watch
valued at Pagodas 100. and he then intended
to have made a reference to the Court of re-
Foujdary Adalut, previous to passing sentence
on the Prisoner had not he been fully acquitted.

Chengleput, 4th. August 1820. } I have the honor to be &c.

/Signed/ E. Fullerton
Judge

Sent the following letter,

To The Criminal Judge,
in the Zillah of
Chingleput

Sir,

I am direct by the Judges
of the Court of Foujdaree Adalut to re-
acknowledge the receipt of your letter dated
4th. Instant, intimating your doubts as to re-
how far it may be right to subject to trial
by the Mahommedan Law, a person named
William Dudley Highland, discribed by
you, as being a Native of this Country
of the Protestant persuation.-

Section XXXI Regulation IX of
1816. declares, that "all Europeans not British
"subjects shall be amenable to the Authority of the
Magistrate

"Magistrates the Criminal Judges and the
"Courts of Circuit within whose Jurisdiction
"they may be apprehended in common with the
"Natives of the Country".-

The Religious persuation of any person coming under the discription of those here declared to be amenable to the Authority of the Courts of Circuit can form no bar to the Jurisdiction of those Courts, and under the Circumstances reported in your letter the Individual in question, if not an "European British Subject" must be put in his trial before the Court of Circuit.-

Foujdaree Adalut
Registers Office,
9th August 1820.

I am &c.
/Signed/ W. Hudleston
Deputy Regist

Extract

Extract from the Proceedings of the Foujdaree Adalut.
Under date the 21st August 1820.

Read letter dated the 7th June last from the acting 3d Judge of the Court of Circuit for the Centre Division - Submitting report on the 2d Quarterly Sessions for 1820. at Chittoor.-

To the Register of the Foujdaree Adalut.
Fort St. George.

Sir,

In conformity with the orders of the Judges of the Foujdaree Adalut of the 9th December 1819, I have herewith the honor to submit the report prescribed by Section XXXVII Regulation VII of 1802.-

The comparing of the Calendar of Persons committed for trial at the 1st Quarterly Sessions of 1820, with the Calendar for the Second Quarterly Sessions, would be no just criterion, - as from several changes in the Centre Provincial Court, the 1st Sessions was unusually prolonged, and the Second consequently shortened. By a comparison however of the Magistrate's report for the quarter ending on the 31st December 1819 with the quarter ending the 31st March 1820, there appears a trifling diminution of crime, but by no means of audacity. for in the period alluded to, the Criminal Judge's house was assaulted, and the 2d and 3d Judges of Circuit's houses broken into and robbed without the perpetrators being discovered.-

With regard to the Prisoners nothing particular

particular appears to require remark, but with respect to the Gaol itself, the acting 3d. Judge is of Opinion the Area is far too small, and a disagreeable smell arises inconsequence.—

Having read over the reports of the several Judges from the commencement of 1816, and it not appearing that any inquiry had been made of the Magistrate, if the Provisions of Regulation XI of 1816 had been carried into execution, the Precepts as per Margin, Copies of which are annexed, were issued to that Officer, and by his returns which are also annexed, it appears they have been generally attended to, with the exception as regards to Roads and Weights and measures.—

1st. dated 10th April 1820—
2d. ..... 6th May do.

By Section V Regulation XI of 1816 the Public Roads have been placed under the protection of the Police, but from the Magistrate of Chittoors answer to the question put to him respecting them, the Regulation appears to have remained a dead letter.—In civilized countries however whether for the moving of armies with celerity, the purposes of Trade, the Comfort of Travellers, or general accommodation of the Country, it has from the earliest times been a desideratum with the legislature to have good roads and for which in modern days our own Country is famous.—Nevertheless on the Coast of Coromandel beyond the boundary of Madras, the subject appears to have been very slightly adverted to and the Roads instead of improving with our extended power, have been left to decay.—and the Inhabitants of every village allowed with impunity to turn them this or that way, or that to dig tanks and plant hedges across them, plough them up or make water courses of them at pleasure.—

I would therefore recommend that the Magistrates should receive orders direct from Government, to pay the strictest attention, to prevent their being injured.—also to report what military or high Roads pass through their several districts, with the state of the Public or Charitable Choultries erected for the use of Travellers, and to suggest any means which may occur to them, by which the Roads may be straightened, and improved, and the Choultries repaired.—and to forward their Reports to the Courts of Circuit collectively, for the divisions in which they may be severally placed. The Judges of the Courts of Circuit who have personally the opportunity of seeing the High Roads, in turn might be directed to report if the Magistrates had paid due attention to the orders they had received, as also to suggest any means which in their opinion might assist in obtaining the object in view.—

By Section LIV Regulation XI of 1816 the Magistrates are authorized to receive complaints regarding frauds in using false weights and measures.—From which it might be infered, some general standard for measure and weight, prevailed through the Territories subject to this Presidency, but which is not actually the Case.—And at Chittoor where the weights and measures

Differ

differ from those in use at Madras, it is not known in the Magistrates Office by what standar they are regulated. at the same time, instead of regular weights being in general use, Stones and Pebbles, with a bit of Mud or brick to balance the Scales, is by far more common.

Accordingly I would recommend that the several Magistrates under the Presidency of Fort St. George should be called upon by Government to state the weights and Measures in use in their several districts, with the view at some future period of a General Standard being adopted.- For which purpose none appears more proper, than the Pucka Seer. which is a weight and measure well understood in the Northern Provinces, is common to Bengal and approximates with the English weight of 2 lbs.

In Commercial Countries the use of one General standard, or Rule is considered much to facilitate the objects of Trade or Transactions between Man and man.. It is even a desideratum that the weights and Measures in use Amongst enlightened Nations, should all be reduced to one Standard: and if accounts may be credited - is a Subject which now occupies the attention of the British Ministry.

In reviewing the proceedings of the Magistrate I deemed the remarks necessary as stated in the Precepts

S. 24th April 1820. as Mr. Margin copy of which is hereunto annexed with the Magistrates return.-

The Precepts as Mr. Margin were also dated

4th 6th May 1820. to the Criminal Judge as relating to his proceedings, and

5th 17th May 1820. the Judges of the Foujdaree Adalut will observe from that Officers returns, his with of two questions being referred to them for their decision.-

1st The acting 3d. Judge from the word-ing of Section VII Regulation X of 1816. is of Opinion the authority of a Criminal Judge to inflict corporal punish-ment, is confined in Cases of Theft to the perpetrators, & that in other cases the inflicting of Corporal punishment by a Criminal Judge is illegal.- The Criminal Judge of Chittoor however takes a more expanded view of the Regulation, and is of Opinion that the word theft men-tioned in Section VII. Regulation X a D. 1816, may be "construed to include the accessaries before and after the fact, "the abettors and accomplices, that it may be also construed "to include cheats and frauds all acts of deceit to cozen others "by artful means to defraud another of any valuable goods "by Colour of any false taken Counterfeit letter or false "pretence, all cases wherein a man obtains Money or Goods from "another on false pretences or wherein a man fraudulently "pawns or disposes of anothers goods, all cases of embezzle-ment by the Officers of Government by a Servant in his "Masters accounts all cases of destroying any other persons "property all cases of fraudulent adulteration of Metals "by Goldsmiths, of adulterating of the alimentary food by "Bakers, salt, flower, and other dealers, and all attempts

at

"at such crimes, or any other acts by which a man prin-
"-cipally or by participation by command, advice, or conceal-
"-ment, takes (or destroys) another persons goods, without
"the will of the owner"- and which the Judge endeavours
to support by reasoning founded on English law and the
Bengal Regulations.-

The wording of the Section however is
precise, enacted no doubt with a full knowledge of the
English law, and being subsequent to the Bengal Regulation
quoted; impressed on the mind of the acting 3d Judge, had
the Legislature intended to have armed the Criminal Judg
with the extent of authority claimed, accessaries would have
been mentioned; but which not being done - He has over-
-ruled the opinion of Criminal Judge till the decision of
the Foujdarry Court is known.-

The 2d Question is regarding the relea
of a Prisoner Khan Mohomed, who was acquitted at the
1st Quarterly Sessions of 1817 of the Crime of Phasseghery
alledged against him - but ordered to find Security
for his future good conduct, which to this time he has
been unable to do, to the satisfaction of the Criminal
Judge, and who alth' he does not accuse the Prisoner
of any improper conduct whilst in prison declares he will
never recommend his enlargement, on his own Mooche
Had the question rested here, the acting 3d Judge would
have

have ordered the Prisoner Khan Mohomed to have been released
on the Security tendered, or on his own Moochelka; but it appears
a Petition respecting this Man was presented to the Provincial
Court of Circuit collectively on the 19th of July 1819 a Copy
of which is hereunto annexed, and who on the 31st of the same
Month contented themselves by rejecting the same, on the
grounds that the Security offered was not satisfactory to
the Criminal Judge. With all deference to the Courts
opinion therefore, the acting 3d Judge submits the ques-
-tion of the Prisoner Khan Mohomed's release for the de-
-cision of the Judges of the Foujdarry Court.-

I have the honor to be &c

Chittoor Court of Circuit 7th June 1820.

/signed/ J. Long. acting 3d Judge C. P. C.

Second Quarterly Sessions 1820- 1st

LS.

To the acting Magistrate in the Zillah of Chittoor

Herewith you will receive an Extract from the Proceedings of the Court of Circuit under this date, to the exigence therein contained you are hereby required strictly to conform.-

Given under my hand and the Seal of the Court, this tenth day of April in the year of Our Lord one thousand eight hundered and twenty

/signed/ John Long: actg. 3 Judge C.P.C.

Extract

Extract from the Proceedings of the Court of [illegible] Circuit for the Centre Division under date the 10th April 1820.

To enable the acting 3d Judge presiding at the 2d Quarterly Sessions for 1820, to transmit the Report required by Section XXXVII Regulation VII of 1817 Answers to the following Queries are required from the Zilla Magistrate.-

1st Query. How many Heads of villages are there in the Zilla of Chittoor, as alluded to in Section III Regulation XI of 1816. and described in Section III Regulation IX of 1816, and have they all been furnished with copies of Regulation XI of 1816.-

2d Query How many are there in the Zillah of Chittoor, and what are the Official Designations of the Officers acting as Heads of Police under Section XXV Regulation XI of 1816.-

3d Query What is the Number and the Official Designation of the Officers, if any, who hold the situations of Heads of Police, under Section XXXVIII of Regulation XI of 1816.-

4th Query What is the Number of Ameens and to what towns deputed, if to any which the Magistrate may have appointed under Section XL Regulation XI of 1816. In answering this query the Magistrate will be particular in distinguishing whether the Ameen or Ameens are appointed to act immediately under his own orders, or under the Tahsildar of the District, and whether with the Police powers vested in Heads of Villages, or with those vested in Tahsildars by the Regulation quoted.-

5th Query By Section V Regulation XI of 1816, the public Roads have been placed under the superintendence of the Police - Has there been in consequence any orders issued to the Tahsildars or other Grades of Police to report where Heads of Villages may have neglected, or acted in opposition to their duty.-

6th Query By Section LIV Regulation XI of 1816. Magistrates are authorized to take Notice regarding false weights and Measures. It is accordingly required that the Magistrate does report what are the weights and Measures in use in the Zilla of Chittoor, whether they correspond with the weights and Measures in use at Madras, or by Standard they are framed; and whether any public examination of them has been taken since Regulation XI of 1816. has been enacted.-

7th Query By Section LIII Regulation XI of 1816. Magistrates are authorized to determine the Rates of hire &c. in their respective Districts and the Rates so determined shall be made public by a table authenticated by

by the Signature of the Magistrate, Copies of which shall be kept by the Police Officers at the several Stations in the District for reference. Information is required from the Magistrate, if this Rule has been carried into execution throughout the Zilla of Chittoor.—

Ordered, that an Extract from these Proceedings be transmitted to the acting Magistrate in the Zilla of Chittoor, with precept requiring conformity thereto returnable for arrival within 15 days from and after its receipt.—

/ A true Extract /
/ Signed / J. Long acting 3d Judge
C.C.C.

L.S.

The acting Magistrate has the honor to make the following return to the foregoing precept.—

Answer to Question 1. The Number of Heads of Villages in the Zilla of Chittoor are 2413 and to all of them Copies of the Regulation XI of 1816. have been furnished.—

to Question 2d.— There are 15 Tahsildars, one Peishkar, 4 Ameens and 5 Cutwalls.—

to Question 3d. In the ancient Zemindary of Calasty there is one Police Darogah, appointed by the Zemindar himself. 1

In the Zemindary of Couvettinagarum the Zemindar's Dewan acts as Police Darogah 1

2

2.

In the annee Jagheer the Jagheerdar's Tahsildar is vested with Police authority ..... 1.

The Superintendence of the Police of the Jagheer of Auvulcondah is allotted in seperate portions to the following Tahsildars on whose talooks this Jagheer borders. ---

/ Tirvellum Tahsildar
/ Vellore Tahsildar
/ Sautgad Tahsildar
/ Poloor Tahsildar
} 4

In the Goodeepauttee Polliam the Chittoor Tahsildar acts as Police Darogah 1

Total ---- 8

to Question 4th. The Number of Ameens is at.

1st Chittoor
1d. Cawarapauch
1d. Sautgud
1d. Vellore
} 4

The powers vested in the Police Ameens are the same as those possessed by the Tahsildars at the same time that the Ameens are subjected to the Tahsildars orders and transmit all reports of their proceedings through the Tahsildars to the Magistrate.—

to Question 5th. Such orders have not been issued.—

to Question 6th. The weights and Measures have not in any Case been regulated by the Magistrate except when a Charge may have been brought against a person for having false weights and Measures in his possession—

to Question 7th. A Nerushnamah or table of the rates of hire &c. has been prepared by the Magistrate and made

made public a Copy of the same authenticated by his seal and signature having been furnished to the Police Officers at the different stations.-

The acting Magistrate has the honor to state, that the delay in returning this precept has been occasioned by its having been necessary to issue orders to the Tahsildars to ascertain the exact Number of the heads of Villages and that the whole of the reports from them were not received until this day.-

Given under my hand & the Seal of the Court this fourth day of May, in the year of Our Lord one thousand eight hundred and twenty.-

/ signed / J. Hutt. acting Mag:te

/ True Copy /

/ signed / J. Long. acting 3d. Judge C. P. C.

for the Register,

2d. Quarter Sessions 1820

2d.

L.S.

To the acting Magistrate in the zilla of Chittoor

Herewith you will receive an Extract from the Proceedings of the Court of Circuit of this date, to the orders contained in which you are required to conform, in returning this precept so executed or good and sufficient reason why it has not been executed and what you may have done in pursuance hereof, on or before the 10th. Instant.

/ signed / J. Long. acting 3d. Judge C. P. Court

Chittoor Court of Circuit
6th. May 1820.

Extract from the Proceedings of the Court of Circuit for the Centre Division under date the 6th. May 1820.-

In the acting Magistrate's return dated the 4th. Instant to the Courts Precept of the 10th. Ultimo, in reply to question 5th. it is stated. The orders alluded to have not been issued. The acting 3d. Judge is of opinion such orders should be issued, and that the Magistrate himself should use his best exertions to have them carried into execution; otherwise the Regulation left to itself, becomes a dead letter, and of no avail.-

To question 6th. the acting Magistrate has only answered in part, it is still therefore required to be known "what are the weights and measures in use in "the zilla of Chittoor, whether they correspond with the weights "and measures in use at Madras or by what standard they "are framed".-

Ordered that an extract from these proceedings be transmitted to the acting Magistrate in the zilla of Chittoor, with precept requiring conformity thereto.-

/ A true Extract /

/ signed / J. Long. acting 3d. Judge C. C. Court

In

L.S.

In returning this precept the acting Magistrate has the honor to state that the necessary orders have been issued to the several Tahsildars, injoining them to ascertain that the Heads of Villages perform the duties (especially as regards the roads) prescribed to them in section V Regulation XI of 1816.-

The acting Magistrate has also to state that the Tahsildars have been directed to report regarding the weights and measures used in their respective talooks and as soon as full information on this point can be gained, a further return shall be made to the foregoing precept.-

Given under my hand and the seal of the Court this Ninth day of May in the year of our Lord One thousand eight hundred and twenty.-

/ signed / J. Hull. acting Dag.te

/ True Copies /

/ signed / J. Long - acting 3d. Judge
6.t Court

Second Quarter sessions 1820

3d.

L.S.

To The acting Magistrate of Chittoor

Herewith you will receive an Extract from the Proceedings of the Court of Circuit of this date, to the orders contained in which, you are required to conform in returning this Precept to executed or good and sufficient reason why it has not been executed and what you may have done in pursuance hereof within One week from and after the receipt hereof.-

Chittoor - Court of Circuit } / Signed / J. Long. acting 3d. Judge
24th April 1820 - - - - - - } 6.t Ct.

Extract from the Proceedings of the Court of Circuit for the Centre Division under date the 24th April 1820.

Para 1st. The acting 3d. Judge of Circuit presiding at the 2d. Quarterly Sessions for 1820. having gone over the Calendars of persons punished and released by the Magistrate, has to make the following observations.-

2d. In the Calendar of Persons punished the offenders in Cases 3. 22, 35, 38, 48, 54, 57, 63, 69, and 78. have been adjudged to Corporal punishment, for the Crime of carrying arrack into the Cantonement of Arcot. which offence by Regulation I of 1808. is punishable by Fine not exceeding one hundred Rupees, and should the penalty imposed be not discharged, by committing the Offender to Jail, there to be kept to hard labour for and during the term of six Months. and then to be discharged. As this head the Regulation is explicit, and the punishment inflicted by the Magistrate in the above Cases illegal.

3d. In Case 62. of the same Calendar "For stealing sheep of about 8 Annas value" the Offender is fined 15 Rupees. By section XXXIII Regulation IX of 1816. the Magistrate in Prosecutions brought before him for

for petty theft, is authorized to inflict upon the Offender corporal punishment, not exceeding eighteen rattans, or to commit them to prison for a term not longer than one Month - the acting 3d Judge therefore is of Opinion the levying of 15 Rupees fine is illegal, and directs the same to be returned to the offender Vooddi Goonovan.-

4th

In the Calendar of persons released in Case of Pedda Cuddeeruppah charged with highway robbery, is "released on Security no crime being proved" this sentence is irregular no inferior Criminal Court is authorized to release on Security, except the Court of Circuit and that only under the Circumstances specified in Clause Sixth, Section II Regulation XV of 1803-

5th

In No. 20 of the Criminal Judge's released Calendar it appears one Maleghery acharry was forwarded to the above Officer accused of Perjury before the Assistant Magistrate - The precise words constituting the Perjury are not mentioned, but from what the acting 3d Judge can Collect, it appears the Prisoner Maleghery acharry refused to swear to a charge accusing his own son Seenien of having stolen of their Joint property the sum of Rupees two hundred - This charge on perusal by the Criminal Judge was dismissed without further inquiry, but that the Assistant Magistrate may be more cautious in future in Committing persons for the Crime of Perjury especially

especially when the Parties are so nearly connected, an Extract from the Foujdarry Adalut's proceedings of the 31st January 1814 is herewith transmitted for his guidance.-

6th

During the Sessions it has also fallen under the observation of the acting Judge that a practice obtains with some of the Heads of Police after examining offenders, of sending them with their proceedings, to the Magistrate, who again examines them, and forwards them to the Criminal Judge. By so doing considerable delay occurs, the Parties are unnecessarily harassed, by moving from place to place, and the record swelled by useless repetition, the Regulations never intended - It being clearly stated in Section XXVII Regulation XI of 1816. In cases of a heinous nature so soon as the Tahasildar shall have finished the investigation, which shall be completed within forty eight hours if possible, he shall forward his proceedings with the Prisoner and witnesses to the Criminal Judge - The Custom remarked on therefore, should cease.

7th

On comparing the report of Crimes committed in the Quarter ending the 31st December 1819 with the Report ending the 31st March 1820, it would appear the crimes of Housebreaking and Theft had much decreased the Gangs however are not the less daring, as in the latter quarter the 2d Judge of Circuits house was broken into and robbed; as also the house of the acting 3d Judge but the Perpetrators although a large portion of the Police

are

are Stationed at Chittoor, have not yet been discovered.

Ordered, that an Extract from these proceedings be sent to the Acting Magistrate of Chittoor, with precept requiring conformity thereto, returnable in a week from and after the receipt thereof.—

/True Extract/

/signed/ J. Long
acting 3d. Judge, C.C.C.

Magistrates
Northern Division

L.S.

Court
of Arcot,

In making return to the foregoing proceedings the acting Magistrate has the honor to offer the following explanation of the several acts, as therein remarked upon by the acting 3d. Judge of Circuit Court for the Centre Division.

1.

The practice of punishing persons by flogging, who may be convicted of smuggling arrack into a Cantonement, being declared illegal by the acting 3d. Judge it will be discontinued, at the same time, however, the acting Magistrate has the honor to state, that he was aware of the provisions of Regulation 8 of 1808. whereby it is directed that any person, who may be convicted before the Magistrate of selling or manufacturing spirituous liquors, without having previously obtained a licence shall be fined in the sum of not more than 100 Rupees, or in Default of paying the same, shall be committed to Jail and kept to hard labour during the period of not more than six Months but it

he considered that this regulation, from the very terms of it, had reference to the Cases of such persons only as might set up Shops for the sale of spirituous liquors and not of those, who, as in the present instances, might be convicted of smuggling Arrack into a Cantonement for the purpose of selling it to the Soldiers and who were all of the lowest order, generally Coolies Horse Keepers and Camp followers, from whom it would be impossible and a mere mockery to attempt to collect any fine whatever, the acting Magistrate under these Circumstances and with his view of the Case considered therefore, that he was merely doing his duty and following the dictates of Justice when he awarded the punishment of flogging to people guilty of endangering the health the Morals, the order and the discipline of the Native and European troops a Crime of the most heinous nature, most difficult to be prevented and not specially provided for, in the acting Magistrate opinion, by the Regulations; here the acting Magistrate would be satisfied to stop, and on these grounds solely would be content to rest his justification, but he may perhaps be permitted to observe, that he has not acted without precedents, as it is recorded in the Calendars of the late Criminal Judge Mr. Wright, that persons convicted of this offence suffered punishment by flogging

and

and these Calendars were submitted to the Court of Cir
for the Centre Division and no remark was made up
them.-

2 The Acting Magistrate has to offer in
apology for the mistake, that must have been made in
the fair Copy of the Calendar, transmitted to the acting
3d. Judge, in which the word "rupees" would appear to
have been written for rattans as the thief, who stole the
sheep of 8 Annas value, received 15 strokes with a rattan
instead of being fined 15 Rs.-

3. The Acting Magistrate has to state,
that in taking security from reputed though not proved
thieves, he conceived that he was merely adopting the
best and most approved method of preserving the peace
of his District- since however the practice is declared
to be improper by the Acting 3d. Judge no such security
shall be required hereafter.-

4 The Acting Magistrate begs leave to
observe that the prisoner Malaghirry acharry never was "Convic
"ted" by the Assistant Magistrate for perjury nor was Malaghiry
acharry merely charged with perjury because he would not
swear to an accusation against his own son, but he was
sent up to be examined before the Criminal Judge on a
charge of perjury, because he took an oath most falsely
/and as the Assistant Magistrate strongly suspected to
sworn

screen the late Serpulty Peshkar/ that he did not present
a petition to the said Peshkar against his own sons, charg-
-ing them with having stolen 200 Rupees although the
Petition bore his signature, which he acknowledged and
which was proved by several witnesses.-

5 The Acting Magistrate is not aware,
that cases subsequently submitted to the Criminal Judge
have been at any time sent up to him by the Police Officers
excepting when the latter may have been doubtful in their
own minds of the guilt of the prisoners, and uncertain
how to act, have referred to the Opinion of the higher
authority and the Acting Magistrate more particularly
regrets, that a mode of proceedings should be considered
as censurable by the Acting 3d. Judge, which certainly appears
to the Acting Magistrate to be likely to promote rather than
to retard the ends of public justice.-

6th. The Acting Magistrate has further the
honor to state, that the Cause of the delay in the returning
of this Precept is that he had not when he received
it the records immediately at hand which it was necess-
-sary to refer to.-

Given under my hand and the Seal
of the Court, this third day of May in the year of Our Lo
Lord one thousand eight hundred and twenty.-

/signed/ J. Hutt. Acting Magistrate.

/True Copies/
/signed/ J. Long- Acting 3d. Judge
& P.C. To

L.S.

To the Criminal Judge in the Zilla of Chittoor,

Herewith you will receive an Extract from the Proceedings of the Court of Circuit of this date to the orders contained in which you are required to conform returning this Precept so executed or your and sufficient reason why it has not been executed and what you may have done in pursuance hereof without delay.—

Chittoor Court of Circuit
6th May 1820—.—.—.—

(signed) S. Long. Acting 3d Judge
C.S.C.

Extract from the Proceedings of the Court of Circuit for the Centre Division under date the 6th May 1820.

The acting 3d Judge of Circuit having concluded the 2d Quarterly Sessions for 1820. proceeds to remark on the Calendars and Proceedings furnished by the Criminal Judge.—

On the 18th & 20th Ultimo it was pointed out to the Criminal Judge it was requisite the sentences of persons convicted and released by him and his assistant should accompany the proceedings, duly authenticated by the Officer passing Judgment also that the names of witnesses to Prisoners' confessions should be inserted in column No. 6. mentioned in section XX Regulation X of 1816. this has been complied

complied with, and will be done in future — The acting 3d Judge however has further to observe, it does not appear to be Customary to take Mochilkas from witnesses to the Confessions of Prisoners before the Criminal Judge, to appear at the quarterly Sessions, which is an omission — The Mochilka being the only thing binding on the witness, and without whose appearance, it might be necessary for a Case to lay over to the ensuing Sessions, or finally be the Cause of the acquittal of an offender highly deserving of punishment. Mochilkas should therefore be taken from witnesses to Confessions, to appear at the quarterly Sessions.—

In the Calendar of persons punished by the Criminal Judge, in Cases 2 & 7. the Prisoners are accused of "Purchasing and receiving Stolen property knowing it to be Stolen" In No. 8 the Prisoner is accused of "aiding a Prisoner in melting down Stolen property knowing it to have been Stolen;" and in No. 33. before the Assistant Criminal Judge, the Prisoner is accused of "obtaining property under false pretences by frightening the travellers" In these four Numbers besides imprisonment and hard labour, the offenders have been corporally punished — But by section VII Regulation X of 1816. the authority of Criminal Judges to inflict corporal punishment, is confined to theft. The Prisoners in the above Numbers therefore have been illegally punished should the Criminal Judge be of opinion the Regulations are not sufficiently

sufficiently severe or that a greater latitude should be allowed him, he is at liberty to draft a new Regulation for the consideration and sanction of the Legislature, but so long as the present Regulations exist / section XIII Regulation I of 1802 / it is compellant on him, to act in conformity with them and them only.-

Cases 14, 15, & 16. of the punished Calendar are before the Court of Circuit collectively, from whom final orders will be transmitted.-

Further the acting 3d. Judge transmits Copy of a petition presented by Ameen Sahiba wife of Khawn Mohommed, who is stated to have been acquitted at the 1st. Quarterly Sessions of 1817. of the Crime alledged against him Viz.t. Phasseygherry but ordered to find security for his future good conduct. That the Security Ordered has been considered insufficient, and that her husband still remained in confinement. The Criminal Judge is accordingly requested to state his reasons why the Report alluded to in Section XI Regulation XV of 1808. has not been made and the probable evil consequences which might arise from the release of the Prisoner than Mohommed or his own Mochilka.-

Ordered, that an Extract from these proceedings be transmitted to the Criminal Judge in the Zilla of Chittoor with Precept requiring conformity thereto, returnable on or before the 13th. Instant.

/ A true Extract /

/ signed / J. Long. acting 3d. Judge C.P.C.

(2d.)

To the acting third Judge of the Court of Circuit Centre Division - Chittoor

1. It has never been customary to take moochilkas from witneyses to the Confessions of Prisoners before the Criminal Judge to appear at the Quarterly Sessions, but Moochilkas shall be taken infuture.-

2. The Criminal Judge committed the Prisoners in Cases Nos. 2 and 7. for trial at the last Quarter Sessions for the Crime of "purchasing and receiving stolen property knowing it to be stolen" and the Prisoner in No. 8 for aiding "a Prisoner in Melting down stolen property knowing it to have "been stolen," and the 2d. Judge of Circuit presiding at the 1st. Quarter Sessions returned the Cases back for trial and Judgment by the Criminal Judge, who sentenced the Prisoners to corporal punishment and hard labour and imprisonment, because, he considers the Offence of aiding thieves by receiving or purchasing plundered or stolen property by persons knowing the same to have been so acquired, is an offence which it is as essential to the protection of the persons and property of the community, should be restrained by adequate and exemplary punishment, as the Crime of theft itself - It is an offence for which the Bengal Regulations provide / Regulation I of 1811 / specially, that any person convicted thereof shall be sentenced to imprisonment for the period of seven years, and to corporal punishment not exceeding 39 Stripes of the Corah, or

when

when it may have been known by the receiver purchaser that the property was obtained by robbery or open violence, the same Corporal punishment and 14 Years imprisonment. It is moreover a Crime which the Courts of Circuit in this Division has frequently punished with Corporal punishment.

3. By the Common law of England the receiving of stolen goods was a misdemeanor, but by Statute 3. and 4 W: and M: C: 9 it is enacted "that receivers of "stolen goods knowing them to be stolen shall be deemed accessaries after the fact," and by Statute 4 Geo: I. C. 11. it was enacted "that receivers of stolen goods knowing them to be stolen should on conviction be transported for 14 Years" Statute 21 Geo: 3. C. 69 enacts "that any person who shall buy or receive "any pewter pot, or other Vessels in any form or shape whatso "Knowing the same to be stolen &c &c shall on conviction be "transported for 7 Years or detained in the House of correction "at hard labour for a term not exceeding 3 years, nor less "than one year, and may be whipped not more than three times "though the principal felon has not been convicted".-

4 From various Statutes enacted by the English legislature in England, it is clear that by the Statute law of England the receiver of stolen property is considered as an accessary after the fact, and the prosecutor has two methods in his choice either to punish the receivers for the misdemeanour immediately before the thief is taken or to wait till the felon is convicted and then punish them as accessaries to the felony.-

5 The acting third Judge has stated that the prisoners in the above Numbers have been "illegally punished" because he considers that "the authority of the Criminal Judges "to inflict corporal punishment is confined to theft".-

6. The Criminal Judge is of opinion that the spirit, though not the letter, of the Regulations fully authorized a Criminal Judge to punish with corporal punishment purchasers or receivers of stolen property knowing it to be stolen.-

7 The Judicial regulations under which the Zilla Courts act are not drawn out with the fullness & precision of an English statute, and a greater discretion and latitude is vested in the Judges who administer Justice under them than is necessary or expedient in England. The Criminal Judge is of opinion that the word "theft mentioned in Section VII Regulation X A. D. 1816. may be construed to include the accessaries before and after the fact, the abettors and accomplices that it may be also construed to include cheats and frauds all acts of deceit to Cozen others by artful means to defraud another of any valuable goods by colour of any false taken Counterfeit letter or false pretence, all cases wherein a man obtains money or Goods from another on false pretences or wherein a man fraudulently pawns or disposes of another's goods, all cases of embezzlement by the Officers of Government by a Servant in his Masters' accounts all Cases of distroying any other persons property, all cases of fraudulent adulteration of metals by gold smiths, of adulterating of the alimentary food by Bakers, salt, flower, and

and other dealers, and all attempts at such crimes, or any other acts by which a man principally or by participation by command, advice, or concealment, takes (or destroys) another persons goods, without the will of the owner. The Criminal Judge therefore under section 8 Regulation XXII a.D. 1810 suspends the execution of that part of the Precept of the acting 3d. Judge which regards the point of punishing corporally receivers of stolen property till the receipt of a second.-

8. The Criminal Judge is not acquainted with the Case No. 33 before the acting 3d. Judge in which the prisoner was accused of "obtaining property under false "pretences by freightning Travellers" but the Criminal Judge considers that the assistant Criminal Judge in the principles above stated in the 7th Para of this return was authorized on the conviction of the prisoner of the crime of which he was accused, to punish him in the Manner he did, and that Consequently there was no illegality in his having so punished him.- On this point also of the acting 3d. Judge Precept, the Criminal Judge shall suspend the execution of the acting 3d. Judge's Precept till the receipt of a second.

9. The acting 3d. Judge has transmitted a "Copy of a Petition presented by Ameen last wife of Khan Mohommed who was acquitted at the 1st Quarterly Sessions of 1817 of the Crime alleged against him viz.t "Phaseyghurry"

"Phaseyghurry" and the acting third Judge has called upon the Criminal Judge to state his reasons why the report alluded to in section XI Regulation XV A. D. 1803. has not "been made".-

10 The section in question does not require such report to be made to the Court of Circuit unless the prisoner appear to the Criminal Judge a proper object of release without Security under a penal engagement for his future conduct.-

11 Khan Mahomed was tried in No. 15 of 1st. Sessions of 1807 for highway robbery and by the warrant of the 2d. Judge of Circuit (J. H. D. Ogilvie Esq.re) he was sentenced to five years imprisonment and hard labour.

12. In the 1st. Sessions of 1817 he was tried for Murder and robbery and tho' acquitted was ordered to give Security for his future good conduct.-

13. The following is an extract of a letter addressed by my Predecessor to the 2d. Judge of the Court of Circuit (S. Skinner Esq.re) on the 28th. June 1816 on the Subject of this man and others.-

11. (1) Hoosane Cawn and (22) Shake "Mirullah* were heads of Gangs of Faseegars, these two Persons "do not appear to have left their homes, but it is impossible "that any of the released Prisoners could have absented them- "selves without their Knowledge and instigation, and though "it does not admit of proof, I have no doubt that they "shared in plundered property brought home by the Prisoners who

"who left their Villages".-

12. "The Prisoner (18) Shaik Emam left his
"Village and went to Salem, where he was apprehended by the
"Magistrate of that place. he is an old man, his family lived
"there and he may not have committed any Crimes, since he
"was released - his sons were brought up as Faseegars, and
"one of them I understand has turned informer at Salem".-

13. "A Prisoner in Jail named Cawn Mohd
"Brother of the Prisoner (23) Shaik Munullah was not relea
"ed on Security but he is a well known Faseegar, and was
"tried and sentenced to five years imprisonment at the la
"Sessions 1807 he was seen in company at Calastry with
"some of the Prisoners who left their Villages under sus
"picious Circumstances as to leave no doubt of his gui

14. "From the following circumstances I draw t
"conclusion that the Prisoners who left their Villages (as well
"Cawn Mahomed) did so for the purpose of Committing Dacoi
"and robberies and that they did actually commit the crimes

15. "First - many of the Prisoners contrary t
"their obligation are known to have been twice absent (as
"before stated) from their Villages for considerable period
"without giving the least satisfactory information of the
"purposes for which they left them.-

16. "Second - some of the Prisoners are known
"to have left their Villages the second time were actually ap
"at Calastry in Company with Cawn Mahomed and others

"about the latter end of May when it is known that many
"of the Faseegars were absent from their Villages and about
"that time two Shepherds were murdered and plundered in
"the Jungle near the Village of Soloor pettah in the Co
"Zemindary of Venaalagherry) about thirty miles from Calas
"try".-

17. "Third - Considering it of great importance
"to get correct information respecting the proceedings of the
"Prisoners, I promised to procure a pardon, and wrote to Madras
"for that purpose for any one of them who could confess
"the Crimes they had committed and the Prisoner (Nr. 14) Sied
"Fakaroden make a confession which he afterwards retracted
"though he previously mentioned before me such circumstances
as to have no doubt in my mind of its being generally true.

18. "Fourth - Articles of property (such as are used
"by Hindoos) were disposed of by some of the Prisoners to
"different persons in the neighbourhood of the Villages
"where they resided, these articles the Prisoners could not
"have honestly procured".-

19. "It is not improbable that some of
"the Prisoners were frequently absent from their Villages
"on Phasee business and that all of them (except the two
"head men) (1) Hoossane Cawn (23) Shaik Munullah,
"and perhaps (18) Shaik Emam went at different times.-
"Certainly none of the Prisoners could have left their

Villages

"Villages for this purpose without the Knowledge of those "left behind".-

20. "If any corroborating evidence of the general "character of these men and of the numerous offences they "were guilty of (before they were first apprehended by me) "were wanting it is amply furnished by informers pardoned "by the Magistrate of Salem. Mr. Gregory on transmitting "to me Extracts from their declarations in which these men "are accused of crimes observes" I do not think it aggravated if I state the average will be that each man has been present at twenty murders".-

21. "This explanation will shew to you the "grounds on which I reapprehend the Prisoners and also "the danger of their being again unconditionally released "their former securities declining renewing their obligations "I have not been able to procure sufficient evidence against "the Prisoners to bring them again to trial under these "Circumstances I shall if you consider it authorized by "the Regulations keep the Prisoners in confinement "until they give security for their good conduct and "appearance whenever required".-

14 "Khan Mahomed has not offered the Criminal Judge sufficient security for his good conduct; the Criminal Judge considers his character as far as ascertainable to be very bad, and that great risk is to be apprehended from his being released without security for

for his good conduct, a respite which the Criminal Judge shall never incur by recommending it.-

Given under my hand and the Seal of the Court this 16th May A. D. 1820.-

/Signed/ Joseph Dacre.
Criminal Judge.

/True Copies/
/Signed/ I. Long - acting 3d. Judge & P. Court

Second Quarter Sessions 5th. 1820.

(L.S.)

To the Criminal Judge in the Zillah of Chittoor,

Herewith you will receive an Extract from the Proceedings of the Court of Circuit, under this date to the orders contained in which you are required to conform, returning this Precept so executed or good and sufficient reason why it has not been executed and what you may have done in pursuance hereof on or before the 20th Instant.-

/Signed/ I. Long - acting 3d. Judge & P. C.

Chittoor Court of Circuit 17th May 1820.

Extract from the Proceedings of the Court of Circuit for the Centre Division - under date the 17th May 1820.-

Read return of the Criminal Judge of Chittoor under date the 16th to the Courts Precept of the 6th instant, quoting the law of England and the Bengal Regulations

Regulations as reasons for not adhering to the letter of the Regulations enacted for the Territories subject to the Presidency of Fort St. George - & declining to comply with the Courts Precept as refers to Cases 2. 7. 8. & 23. of the punished Calendar. also stating that the Prisoner Khan Mahommed had not offered the Criminal Judge sufficient security and there would be great risk from his enlargement." a risque which the Criminal Judge shall never "incur by recommending it."—

To which the acting 3d. Judge presiding at the 2d. Quarterly Sessions had to observe. The law of England, is not the law of India, and altho' the Bengal Regulations may be considered preeminently efficient by the Criminal Judge, they cannot be allowed to supersede the Regulations enacted for the Presidency of Fort St. George till formally adopted by that Government. The Criminal Judge therefore as regards Corporal punishment, is directed strictly to conform to Section VII Regulation X of 1816.—

With respect to the Prisoner Khan Mahommed who has been detained in Prison three years subsequent to his acquittal, the acting 3d. Judge is of Opinion he should be released on the Security tendered, or on his own Morchilka. Otherwise the Criminal Judge having declared his opinion that he will not recommend his enlargement, renders his acquittal synonymous with imprisonment for life. A Petition however respecting this man, was presented to the Provincial Court of Circuit Collectively on the 19th of July 1819, and who on the 31st of the same month contented themselves by rejecting the same, on the grounds that the Security Offered was not satisfactory to the Criminal Judge, the acting 3d. Judge therefore will submit the question of the Prisoner Khan Mahommeds release, to the Judges of the Foujdarry Court without farther comment.—

Ordered that an Extract from these Proceedings be transmitted to the Criminal Judge of Chittoor with precept requiring conformity thereto returnable on or before the 20th instant.—

/A true Extract/

/Signed/ J. Long. acting 3d. Judge
6. P. C.

(L. S.)

To The Acting third Judge,
of the Court of Circuit.
Centre Division. Chittoor

The Criminal Judge has the honor to state in return to this Precept, that he will in all future Cases comply with the requisition thereof, as regards Corporal punishment, but as the Precept contains no reasons to induce him to alter his opinion that he is authorized by section VII Regulation X A. D. 1816, to inflict Corporal punishment on the receivers and purchasers of stolen property knowing it to have been stolen, he requests under section VI Regulation

Regulation XXII A. D. 1802. that a reference of the case may be made to the Court of Foujdarry Adalat, and that the acting third Judge will transmit to that Court Copies of his Precepts to him in this case, and of the Criminal Judges returns thereto.-

2 In further reply to this Precept the Crimi-al Judge submits, first, that the acting third Judge is mis-taken in supposing that the Criminal Judge "quoted the "law of England and the Bengal Regulation as reasons for "not adhering to the letter of the Regulation enacted for the "Territories subject to the Presidency of Fort St. George;" and Secondly, that the Criminal Judge was never unaware that "the law of England is not the law of India" and that "the "Bengal Regulations cannot be allowed to supersede the Re-"Regulations enacted for the Presidency of Fort St. George "till finally adopted by the Government."-

3d The acting 3d Judge having declared in his last Precept that the Criminal Judge had "illegally "punished" persons convicted before him of purchasing stolen property knowing it to have been stolen, by having Corporally punished them, the Criminal Judge by referring to the Law of England, the Bengal Regulations, and the practice of the Court of Circuit of the Centre Division, endeavoured to shew first, that receiving and purchasing stolen property knowing it to have been stolen, was a Crime which it was the practice of the Courts in England and in India to punish with corporal punishment; and Secondly, that a purchaser

of

of stolen property is considered, and declared by the (Statute) law of England, an accessary after the fact.- It was ne-cessary for the Criminal Judge to establish these two points in proof of their being no illegality in the punishment inflicted by him in the Cases in question.-

4 In his Justification the Criminal Judge did not consider it sufficient merely to say in reply to the serious charge of having "illegally punished" a man with Corpo-ral punishment, thus,- "Receiving or purchasing stolen pro-"perty knowing it to be stolen is a Crime which the Court "of Circuit Centre Division has often punished with Corpo-"-ral punishment, and consequently it must be a Crime pu-"-nishable under the Mahommedan Law, and Regulations" with corporal punishment.- The Criminal Judge is "empow-"ed in all cases of conviction before him of a Criminal "offence punishable under the Mahommedan Law and Regu-"-lations" (when the punishment which he is authorized "to inflict" may appear to him sufficient) to inflict corporal punishment in Cases of theft.- Receivers or Purchasers of stolen property are accessaries after the fact.- If a Criminal Judge can punish the principal in a Case of theft with corporal punishment, it is to be inferred, (notwithstanding the (Madras) Regulations contain no specific provision for punishing with corporal punish--ment an accessary) can also punish an accessary who by the law and the practice of the Courts of England,

and

and India is liable to Corporal punishment, and is often so punished, and whose offence is as bad, if not worse than that of the Principal - But a Criminal Judge is as fully authorized to punish an accessary as a principal, and consequently he can punish with corporal punishment any purchasers of stolen property knowing it to have been stolen, and who are accessaries after the fact, when the crime committed by them has not been attended with any aggravating Circumstances, or when the persons who have committed it are not of Notorious bad character in which case it would be the Criminal Judges duty to bring them to trial before the Court of Circuit.-

5. With respect to quoting from or referring to the Bengal Regulations the Criminal Judge has to observe that Mr. Harrington's Analysis of the Bengal Regulations was sent up to the Courts by Government for their use, and though, of Course "the Bengal Regulations cannot be allowed to supersede the "Regulations enacted for the Presidency of Fort St. George, "till finally adopted by that Government," yet referring to them in certain Cases is not irregular. The Criminal Judge recollects an instance in which the Sudr Adalut or Chief Court of Judicature under the presidency of Fort St. George, vide their proceedings of the 17th. November 1809, referred to the practice in Bengal regarding the mode of Calculating Pleaders' fees and in the Sudr Courts order of the 30th. January 1810. respecting their "construction of the rule for nonsuits". in Cases of neglect for six weeks, they have partly adopted the very words of Mr. Harrington's analysis - there have also been instances in which in construing the Regulations the law of England likewise has been quoted by the Sudr Adalut, instance in their order of the 7th. November 1809, on the subject of the abatement of suits on the death of the parties, but even without such a high precedent the Criminal Judge should consider himself fully at liberty to quote the law of England & the Bengal Regulations, whenever it became necessary for him to shew that he has not committed so great an error of Judgment as to "illegally punish" persons with corporal punishment.-

6. In conclusion on this subject the Criminal Judge begs leave to point out to the acting Hon. Judge of the Court of Circuit that if he the Criminal Judge "has illegally punished" the prisoners in cases Nos. 2, 7, and 8. he conceives that his sentences in Cases No. 10. "Muagay for aiding and abetting one Dragun "(who was implicated in the Commission of theft and "who has not yet been found) in the disposal of certain stolen property knowing it to have been stolen" another

(another case committed by the Criminal Judge, and returned by the 2d. Judge of Circuit,) and in No. 22 "Coopien," for a "breach of trust by corruptly and felonciously fabricating and "delivering in to the Officers of the revenue false accounts "with the view of defrauding the Government of the revenue of "10 3/16 Cawnies of land." all the papers in which cases were sent up to, and which have been returned by the Acting third Judge, with the rest of the Cases in the Calendar of persons punished by the Criminal Judge,) must, on the same principle, be illegal also; for the ground on which the Criminal Judge punished these two prisoners with 1 Year's imprisonment each was, that he considered them each deserving of 30 rattans and 6 Months Imprisonment, the 1st. Prisoner with 1/ the 2d. prisoner without hard labour; but because the 1st. prisoner was a woman, and the 2d. an old man, whom the Criminal Judge did not think it proper to punish corporally, he commuted the Corporal punishment to 6 Months imprisonment, in addition to the other 6 Months which made the total period of the imprisonment of them both 12 Months; in the same manner as was done in Nos. 1. 4. 5. 9. 11. 18. (other cases which were likewise returned by the 2d. Judge of Circuit at the 1st. Quarterly Sessions) and in Cases Nos. 12. 22. 23. 30. & 31. of the same Calendar 7th.

It will be satisfactory to the Criminal Judge

Judge that the acting third Judge should refer the Case of Khan Mahomed to the Judges of the Foujdarry Adalut.-

8th. A Criminal Judge is not at liberty unless a prisoner in Khan Mahomed's circumstances appear to him a proper subject of release without security under a penal engagement, for his future good conduct, to recommend his enlargement.-

9th. The Criminal Judge will certainly never recommend Khan Mohomed's release on his own Moochelka and Khan Mahomed has never produced any respectable or satisfactory security for his good conduct. It is not indeed likely than any man of respectability would be security for his good conduct of a known Phasseegar brother to one of the heads of the Gangs of Phasseegars in the Zilla, and who would probably on being released, soon resort to his former habits of life.-

Given under my hand and the Seal of the Court this 19th day of May et. D. 1820.

(signed) Joseph Dacres - Ch. Judge,

(True Copies)

(signed) J. Long - act. 3d. Judge,

To Charles Harris Esqre. 1st. Judge and Judges of the Court of Circuit for the C.D.

The respectful Petition of Ameen Saiba wife

wife of Khan Mahomed a Prisoner in the Jail of Chittoor.—

That is to say, In the year 1815, some of your Petitioners Enemies accused your Petitioners husband of being a Phaseegar and he was in the same year committed to take his trial before the Court of Circuit, who acquitted him but directed the Criminal Judge of Chittoor to release him on his giving security. Ever since that time up to the instant your Petitioner has offered several securities to the Criminal Judge but he would not accept them nor release her husband your Petitioner is a Poor woman has several Children both male and female and has no other protection than her husband and is suffering much distress for food and raiment—your Petitioner therefore humbly begs the Court to issue an order to the Criminal Judge to accept the security which your Petitioner may offer and release your Petitioners husband.—

19th July 1819.

Mark of Ameen Sahabah.

/ True translation /

/ signed / J. Long. acting 3d Judge C.C.C.

Extract from the Proceedings of the Court of Circuit for the Centre Division under date the 31st July 1819.—

In Miscellaneous case No. 5 of 1819.

Read again Petition presented by Ameen Sahaba on the 19th instant together with the return made by the Criminal Judge of Chittoor to the Courts Precept of the 21st of the same month, informing that no good and sufficient security having been offered to release Petitioners husband is the cause of his still being detained in confinement.—

The Court are of opinion that the explanation afforded by the Criminal Judge in this case is satisfactory and do therefore reject the petition.—

Ordered that an extract from these proceedings be furnished to the Petitioner on application.—

/ a true Extract /

/ signed / J. Long. Acting Third Judge C.C.C.

Read also letter dated 5th August last, from the Acting 3d Judge of the Court of Circuit in the Centre Division— Submitting Report on the 2d Quarterly Sessions of Jail delivery for 1820. at Chittoor.—

To The Register of the Foujdarry Adalut,
Fort St. George,

Sir,

In conformity with Section XXXVII. Regulation VII of 1802, I have now the honor to report on the last Quarterly Sessions.—

A Copy of the Calendar of persons committed has already been laid before the Foujdarry Court, in which no Case of enormity has been proved. It however appears to the acting presiding Judge, that petty Offences punishable by the Magistrate bear an unusual proportion to former years, and that in the last three Sessions double the Number of Persons have been apprehended and tried, than in the same period in any former year since the transfer of the Duties of Magistrate to the Collector.

Collector, as per annexed abstract. But whether, this apparent increase of offence is actual, or merely the result of increased Vigilance, is hard to say.-

Further, my last report being so very recent, no new matter presents itself for discussion.-

I have the honor to be &c.

Chittoor Court of--- }
Circuit 5th August 1820.- }

/signed/ J. Long. Acting 3d Judge C.C.C.

Statement shewing the Number of Prisoners Committed Punished and released by the Criminal Judge and Magistrate of the Zilla of Chittoor, from 1st Quarterly Sessions of 1816. to 3d Quarterly Sessions of 1820.—

	By the Criminal Judge				By the Magistrate			
	Committed	Punished	Released	Total	Punished	Released	Total	Grand Total
1816								
1st Quarterly Sessions	31	348	29	408	.	.	.	408
2d ——— do. ——— do.	19	299	8	326	.	.	.	326
3d ——— do. ——— do.	18	267	25	310	.	.	.	310
4th ——— do. ——— do.	72	341	39	452	.	.	.	452
1817	140	1255	101	1496	.	.	.	1496
1st Quarterly Sessions	62	210	24	296	30	33	63	359
2d ——— do. ——— do.	35	43	12	90	58	21	79	169
3d ——— do. ——— do.	29	37	28	94	57	64	121	215
4 ——— do. ——— do.	20	83	34	137	45	23	68	205
1818	146	373	98	617	190	141	331	948
1st Quarterly Sessions	11	27	33	71	47	60	107	178
2d ——— do. ——— do.	28	18	26	72	54	33	87	159
3d ——— do. ——— do.	125	19	61	205	66	26	92	297
4th ——— do. ——— do.	21	35	44	100	71	90	161	261
1819	185	99	164	448	238	209	447	895
1st Quarterly Sessions	27	6	64	97	46	74	120	217
2d ——— do. ——— do.	63	28	96	187	46	42	88	275
3d ——— do. ——— do.	46	11	31	88	51	38	89	177
4th ——— do. ——— do.	31	22	38	111	47	279	326	437
1820	387	67	229	483	170	453	623	1106
1st Quarterly Sessions	109	42	86	237	95	294	390	627
2d ——— do. ——— do.	14	50	57	121	140	342	482	603
3d ——— do. ——— do.	26	46	55	127	153	356	509	636
Grand Total—	149	138	198	485	389	992	1381	1866
	857	1932	790	3579	987	1795	2782	6311

/signed/ J. Long - Acting 3d Judge
C. C. C.
Court

59

Court's Order, 21st August 1820.

The Court proceed to record such

1

observations as appear to be necessary on Certain parts of the Report of the acting 3d Judge, dated 7th June last.-

By a precept dated 10th April last,

2

Copy of which accompanies the report the Acting Magistrate of Chittoor was required to answer several Queries therein propounded relative to the enforcement of certain provisions contained in Regulation XI. of 1816.

In answer to the 4th Query regarding

3

the Number of Police Ameens appointed in that Zilla & the powers with which they are entrusted, the Acting Magistrate, in his return dated 4th May, states that "the powers "vested in the Police Ameens are the same as those pos- "sessed by the Tahseldars at the same time that the "Ameens are subjected to the Tahseldars orders and trans- "mit all reports of their proceedings through the Tahsil- "dars to the Magistrate".—

On this passage in the return of

4

the Acting Magistrate it is obvious to remark, that the description of the powers vested in Ameens as being "the same as those possessed by the Tahseldars is "irreconcileable with the Statement immediately following "that the Ameens are subjected to the Tahseeldars "orders".-

It appears to the Court of Judi-

5

-cature Adalut, that the provisions of Section XI. Regulation

Regulation XI of 1816 are expressed in words perfectly clear and precise, that under those provisions an Amin of Police, if vested with the Police powers of a Tah-seeldar, must be "immediately under" the Magistrate's own orders; and that, if placed under the orders of the Tahsildar of the District, an Ameen can only be vested with the Police powers of a Head of Village.

6 The remarks of the acting 3d Judge, respecting the neglect and injury of the public roads, although too indiscriminately applied, appear worthy of attention, and the practices which he describes fall clearly under the description of the acts declared cog-nizable by the Police in Clause first Section V Regu-lation XI of 1816. the conclusion however, of the acting 3d Judge, that "the Regulation appears to have remain-ed a dead letter," is not necessarily deducible from the acting Magistrate's statement, that no orders had been issued to the Tahsildars to report, when heads of Villages may have neglected the duty therein pres-cribed to them.--

7 Of the advantages of a general Standard of weights and Measures if it could be established throughout the territories subject to this Presidency little doubt can be entertained, but any general scheme of this nature will encounter the objections of local prejudice and its practicability may be reasonably questioned, it does not appear to that the provision contained in Section LIV Regulation XI of 1816, whereby authority is given to Magistrates "to receive complaints regard-ing frauds committed in using false weights and measures" implied the existence of any general standard; the rude substitutes for regular weights which are represented by the acting 3d Judge to be most in use at Chittoor, appear particularly objection-able, as not being susceptible of reference to any local standard, whereby their accuracy might be determined.--

8 The Court of Foujdaree Adalut proceed to notice the precepts and returns, accompanying the Report, which refer to cases in the Calendars laid before the Court of Quarterly Sessions by the acting Magistrate, and the Criminal Judge of Chittoor.--

9 The several orders, issued by the acting 3d Judge to the acting Magistrate in the precept dated 24th April, are considered by the Court of Foujdaree Adalut, to be perfectly correct, with reference to the argu-ments of the acting Magistrate in justification of the sentences to corporal punishment passed by him on Certain

certain persons for the offence of Carrying Arrack into the Cantonment of Arcot the Court have only to observe, that under the provisions of Regulation IX of 1816. Corporal punishment can only be adjudged by a Magistrate in Cases of petty theft. The Court concur in opinion with the Acting 3d. Judge, that the offenders in question come within the scope of the provisions of Regulation I of 1808, and it appears to the Court, that with the sentiments entertained by the Magistrate of the Criminality of persons smuggling arrack into a Cantonment it is his duty to send such offenders to the Criminal Judge of the Zilla.

10 In the 5th. Paragraph of his return to the precept, under consideration the acting Magistrate states, that he is "not aware that cases subsequently submitted to the Criminal Judge have at any time been "sent up to him by the Police Officers, excepting when "the latter may have been doubtful in their own minds "of the guilt of the prisoners, and uncertain how to act "have referred to the opinion of the higher authority".

11 The order of the Acting 3d. Judge for the discontinuance of this practice is in perfect

accordance

accordance with the provisions of section XXVII Regulation XI of 1816. the neglect of which by the District Police Officers in the Zilla of Chittoor has repeatedly excited the observation of the Court of Foujdaree Adalut.

12 The only cases regularly referrible to a Magistrate by a Police Officer are those, which the Magistrate is competent to hear and determine under the provisions of Section XXXII and XXXIII Regulation IX of 1816, and those of which the reference to the Magistrate is specially enjoined in Section XXXI Regulation XI of 1816.

13 A doubt on the mind of a district Police Officer, with respect to the guilt of persons whom, after an investigation of the credit due to the accusation against them, he may have apprehended, - as required by clause first section XXVIII Regulation XI of 1816. forms no ground for a departure from the rule contained in the fourth clause of that section, prescribing the Jurisdiction to which persons charged with offences of the nature described in the first clause, shall be transferred. - And although it is obviously inferrible from the proviso introduced into the first clause

clause of Section XXVII Regulation XI of 1816, that a Police Officer should dismiss such complaints as shall not "appear to be worthy of credit:" yet it is by no means necessary, that all doubt regarding the guilt of a party should be removed before he can be forwarded to the Criminal Judge of the Zilla.-

14 In support of this construction of the intent and meaning of the rules contained in Section XXVII Regulation XI of 1816, it is observable that for the reference of cases to a Criminal Judge it is not requisite, that a Magistrate should Judicially determine on the guilt of the accused, but merely, as declared in clause second Section XXIV Regulation IX of 1816, that the Magistrate "should" "satisfy his own mind, that there is ground to believe the prisoner guilty of the Crime charged against him." The Court are at the same time of opinion, that in Cases where a District Police Officer may entertain doubt, as to the Class of Offences, to which any specific act may belong, he should submit to the Magistrate the Complaint and the result of his enquiries, and await such instructions, as the Magistrate may deem it

15 proper to issue for his future guidance.

Connected with the precepts issued by the acting 3d. Judge to the Criminal Judge in the Zilla of Chittoor two points on which a difference of opinion subsists between those officers are submitted for the decision of the Court of Foujdaree Adalut.-

16 Upon the 1st. which involves the construction of the provision contained in Section VII Regulation X of 1816, authorizing the adjudication of Corporal punishment to a certain extent, the Court coincide in opinion with the acting 3d. Judge, that sentences of corporal punishment can only be passed by a Criminal Judge on persons guilty of theft.- upon the reference to Bengal Regulation I of 1811 made by the Criminal Judge in his return to the precept of the acting 3d. Judge, it may be observed, that the penalty which is therein specially prescribed for the offence of receiving stolen property, knowing it to be stolen can only be adjudged by a Court of Circuit; that a similar power is vested in the Courts of Circuit, under this Presidency, by the provisions

provisions of Clause Seventh Section II Regulation XV of 1803.-

17 The second question submitted for the decision of the Court, regards the release of a certain prisoner confined on a requisition of security under the provisions of Clause 6th Section II Regulation XV of 1803.-

18 On this point the opinion held by the Criminal Judge is perfectly correct, under the provisions of Clause first section XI Regulation XV of 1803. it is not competent to a Court of Circuit to order the release of a prisoner without security, who may have remained in confinement for a year or any longer period under inability to give the security required,"- excepting on the recommendation of the Criminal Judge, and the Court of Toujdaree Adalut are of opinion that the circumstances of the Case of the prisoner, Khan Mahomed, are such as to warrant the Criminal Judge in refusing to make such a recommendation in his favor.-

19 The report of the acting 2d Judge on the 3d Quarterly Sessions for 1820. at Chittoor does not call for any comment from the Court of Toujdaree Adalut.-

Extract

61

Extract from the Proceedings of the Toujdaree Adalut under date the 26th October 1820.

Read letter dated 3d Instant from the 1st Judge on Circuit in the Northern Division, submitting Copy of Rajahmundry Calendar 2d Sessions A. D. 1820.

Courts order. 26th October 1820.

In Case No. 1 of the above Calendar 26 persons were charged "with proceeding in a gang to the "houses of the prosecutors about midnight on 21st January 1820, "forcing the doors, beating Cramurty Moormullah, the "father of the 1st prosecutor, of which ill treatment he "died, and plundering the property of the prosecutors valued "at 1000 Rupees."-

In the marks on this case it is stated, that "the Law Officer gave his Futwah of Cohoobut convict- "-ing the whole of the prisoners, with the exception of the "25th of the Robbery but not of the murder, the latter not "being proved,"- and the 1st Judge proceeded to sentence the prisoners to certain specified terms of imprisonment,- As it "was not ascertained, that the hurts received by the father "of the 1st Prosecutor were the actual cause of his death"- The above being clearly a case coming within

within the description of offences, for which the penalty of imprisonment and transportation for life is specially prescribed by clause second Section IV Regulation XV of 1803.- The sentences passed on the prisoners by the 1st Judge are illegal.

Clause second Section II of the above Regulation declares, that "if the crime for which the prisoner "is declared liable to descretionary punishment by the Futwa "of the Mohomedan Law Officer / shall have been specially "provided for by any subsisting Regulation, denouncing the "penalty to be adjudged on proof of the Commission of such "crime; and the Judge before whom the trial may be held "shall consider the crime to have been established against the "prisoner; - he shall sentence the prisoner to suffer the "punishment for such crime prescribed by the Regulations: "or if the case be reserable under the Regulations for the "sentence of the Foujdaree Adalut, shall transmit the trial "with his opinion thereupon to that Court"

Clause first Section III of the Regulations above cited declares, "that any person or persons, who "shall in the day or in the night go forth with any offensive "weapon, or in a Gang with or without any offensive "weapon with the Criminal intent of committing robbery, and "shall by force or intimidation rob or attempt to rob any "person or persons in any place whatever, or shall attack by "by open violence and rob or attempt to rob any dwelling house "or other house or building &c. shall be deemed guilty of the "crime of robbery by open violence, and on due conviction thereof, "shall be adjudged to suffer such of the penalties declared in "the next Section, as may be applicable to the case viz: "according as the robbery may be with or without homicide, "wounding maiming or other personal injuries; or with or "without other circumstances of aggrevation".-

Clauses first, second, third, and fourth of Section IV of the Regulation prescribe the Judgments to be passed on all persons convicted of the crimes specified therein; - and in clause fifth it is declared that "if from any "extenuating circumstances, which may appear on the trial "before the Courts of Circuit or the Court of Foujdaree "Adalut the stated punishment shall in any particular "instance appear too severe, - it shall be competent to the "Court of Foujdaree Adalut, or to the Court of Circuit, "if the trial be not reperable under the Regulations to "the Foujdaree Adalut, to mitigate the sentence in such "cases as may be deemed just and expedient".-

Clause first Section V of the Regulation above cited declares, that "the Courts of Circuit shall "transmit to the Court of Foujdaree Adalut all trials in "which the prisoner or prisoners may be convicted, and "liable to sentences of perpetual imprisonment or death".-

Clause second of the Section last cited prescribes the Course to be pursued by the Judge of

of Circuit in trials referible to the Foujdaree Adalut;
and in clause third are laid down the rules to be observed
by the Judges of Circuit in referring to the Foujdaree
Adalut the trial of any prisoners, whom they may consider
proper objects of an extension mitigation, or remission
of punishment, under the provisions to that effect
contained in Regulation XV of 1803.

The Court of Foujdaree Adalut attribute
the error committed by the 1st Judge in the case
above noticed to a misconstruction of the provision
in clause fifth Section IV Regulation XV of 1803. wherein
the power of mitigating the prescribed sentence is in
certain cases vested in the Courts of Circuit.

Whenever a prisoner or prisoners may
be convicted of an offence, for which the penalties of
perpetual imprisonment or death are prescribed in the
above Regulation, the trial must be referred for the
decision of the Foujdaree Adalut; and in such cases it
is competent only to that Court to mitigate the prescrib-
-ed punishment.

The discretionary power of mitigating
the prescribed penalty, which is vested in the Courts of
Circuit by the Clause last cited extends only to the
offences for which a less punishment than perpetual
imprisonment

imprisonment is prescribed in Regulation XV of 1803.

Under the above exposition of the
law it will be the duty of the 1st Judge to send up the record
of the proceedings which have been held in the case above mentioned.

The Court of Foujdaree Adalut
desire to have before them copies of the Futwas
delivered in the undermentioned cases.

In Case No. 9 in which certain
prisoners convicted on a charge of proceeding in a Gang
to the house of the prosecutor with offensive weapons
plundering property and wounding several of the
Inmates; for which offences the penalty of imprison-
-ment and transportation for life is specially en-
-nounced in clause second Section IV Regulation
XV. of 1803. have been sentenced "to receive twelve
"stripes with a rattan each and to suffer confine-
-ment and hard labor in irons for 20 Months."—

In Case No. 16 in which the
prisoner, who was convicted on a charge of Burgla-
-ry attended with criminal acts of violence, for
which

which the same penalty is prescribed as in Cases of robbery by open violence,- by Clause Second Section V Regulation XV of 1803.- has been sentenced "to receive "one Dozen Stripes and to suffer confinement and hard "labor in irons for 15 Months".-

In case N:26 in which 3 prisoners were convicted on a charge of highway robbery and attempt to murder,- have been sentenced to "3 years imprisonment "and hard labour in irons.-

In this most heavy Calendar the Court of Foujdaree Adalut have observed with astonish= =ment, that in a great number of cases of Burglary the 1st Judge has passed sentences of 13 Months impri= =sonment so manifestly disproportioned to the offence, that it is to be feared that these Judgments will ope= =rate to the encouragement rather than the suppression of the heinous offences, which appear to be so prevalent in the Zilla of Rajahmundry.-

Under the existing Regulations this offence is punishable according to Circumstances, with as far as fourteen years imprisonment and hard labour; and in the Sentences referred to the Court see but too much reason to question the soundness of the discretion exercised by the 1st Judge in mitigating the punishment.-

In proof of this opinion it is suffi= =cient to notice the Judgment of 20 Months imprisonment, passed on the prisoner, Moologalaty China Mookadoo, who was convicted in two Cases of house breaking and robbery, & against whom a Futwa of Oohoobut on suspecion was passed in a third case of Highway robbery.-

The only remaining Case, which the Court deem it absolutely necessary to notice is N:31, in which 21 persons were tried for gang robbery with violence, for which offence the penalty of fourteen years imprison= =ment, to be extended at the discretion of the Foujdaree Adalut to transportation for life, is prescribed by Clause third Section IV. Regulation XV. of 1803.-

In this case it is stated, that fourteen of the prisoners were convicted - six of whom have been sentenced to 3 years imprisonment and hard labor, with 12 Stripes, 7 to 13 Months imprison= =ment with 4 Dozen Stripes and the 5th prisoner "being a principal and old offender, to 7 Years and "6 Months imprisonment and hard labor with 12 Stripes".-

Here it would appear that the 1st Judge has selected, as a proper object of mitigation of

of the punishment prescribed by the law" a principle and an old offender.-

The court of Foujdaree Adalut will not enlarge upon the inevitable tendency of such a proceeding.-

They deem it essential to the ends of public Justice, that this trial, as well as that above called for, should undergo revision and direct that the Record of proceedings held therein be sent up accordingly.-

In conclusion the court deem it proper to remark, that the 1st. Judge in passing sentence of 4 Dozen Stripes evinced an utter neglect of the provisions of the Regulations on that point and that from the numerous instances in which the prisoners have been sentenced, on suspicion, to be unconditionally released, it would appear that the 1st. Judge overlooked the provisions of Clause Sixth Section II Regulation XV of 1803, by which authority is given for the requisition of Security in such Cases.-

Extract

Extract from the Proceedings of the Foujdarry Adalut.

Under date the 9th. November 1820.

Read Letter dated the 27 October last from the Magistrate in the zilla of Bellary.— Submitting extract of his proceedings and Copy of Correspondence with the Criminal Judge regarding a Case referred to him of imitation of the Custom Stamp.-

Ameedall 27th. October 1820.

To The Register to the Court of
Sudr Foujdarree Adalut.

Sir,

I request that you will submit for the orders of the Court of Sudr Foujdaree Adalut, the enclosed extract from my proceedings under this date.-

I have the honor to be &c.

(signed) A. D. Campbell. Magte.

Extract from the Proceedings of the Magistrate in the zilla of Bellaree, under date the 27 October 1820.-

Read the letter to the Criminal Judge under date the 23d. Instant.-

Read also the letters from the Criminal Judge, under date the 24th. and 25th. Instant.-

Regulation I 1812 establishes a general inland duty, to be levied, amongst other articles, upon all piece goods.- By clause second, section XVII of that enactment, it is declared that "Chokeydars shall be furnished with an "Official Seal." and by clause fourth of the same section, it is further declared, that piece goods on the payment of the established

established duty, shall "be stampt with the official seal of the "Chokeydars", it is further declared by clause eleventh, section XVII, of the same Regulation, that the payment of the duty on piece goods "is ascertainable by the stamp or chop" thus affixed to them, which is to mark them as having paid the duty imposed upon all such goods, and thus distinguish them from goods of the same description, which have not paid that duty;-

By clause third section IV Regulation VI. 1811 it is declared that the penalties for forgery "are meant "to include" amongst other offences", the illicit imitation of any "public stamp, or stampt paper, established by Government

Under the foregoing provisions of the Regulations, the Magistrate has been in the habit of sending to the Criminal Judge, for committal to trial before the Court of Circuit, all persons charged with "the illicit imitation of the "public Custom stamp", established by Government- nor has any objection ever been offered to this course of proceeding, until the present period.-

The Custom stamp, in the regulations is termed a "stamp", a "chop", and an "official seal"; and it clearly comes within the definition of a "public stamp" "esta- "blished by Government"; for it is established by them in a formal legal enactment, and is to be used for a public purpose only; namely, as "the stamp or chop" with which piece goods are to be stamped, "in order to mark them as having paid the duty imposed by the Regulations upon all

all such goods.-

For the same reason that a duty has thus been imposed upon piece goods, Viz.t "for raising a revenue", a duty has also been imposed, by Regulation XIII 1816, upon certain descriptions of papers, such as pleadings, bonds, receipts and wills, and this duty is realized, like the duty upon piece goods, "by means of stamps", which distinguish such papers as have paid the duty, from those which have not,- the stamps with which these papers are to be stamped are, like the public Custom stamps, established by a legal enactment, and are to be used for a public purpose only; both the one and the other are issued from the Madras Mint; both are established by a legislative enactment of the Government; the object and use of both are the same; and the only difference between them is that the one is affixed to a peice of paper, to shew that it has paid the general duty imposed on that descrip- -tion of paper by Government; while the other is affixed to a piece of cloth, to shew that it has paid the distinct duty, imposed by Government, on that description of cloth.-

The Magistrate is of opinion that the stamp used for stamping the one, is a "public stamp" "established by Government", as much as the stamp used for stamping the other is; and that the illicit imitation of either stamp is a crime, to which Clause third, section IV, Regulation VI 1811, expressly extends "the penalties for

"for forgery".

On the other hand, with reference to the Pro-
=ceedings of the Foujdaree Adalut under date the 8th May
1815, the Criminal Judge, in the first of the letters before
mentioned, seems newly to record his opinion that the illicit
imitation of the public Custom stamp, established by Govt,
is not an offence coming under the provisions of Regulation
VI 1811, but only under those of Section XXI Regulation I
1812.-

The Magistrate regrets that he does not
possess any of the proceedings of the Superior Court alluded
to;- If the Criminal Judge has given to them a correct
construction, the Magistrate, under the foregoing examination
of the law, cannot refrain from soliciting a re-consider-
=ation of the subject, from the Superior Court, under
a conviction that his interpretation of the Regulations
is strictly borne out, both by their letter, and spirit: and
that it is the mere construction to be given to the law
that is matter for consideration by the Courts; not the
expediency, or otherwise, of the enactments themselves;
If the Criminal Judge has given to the proceedings
of the Superior Court an erroneous construction, they
will have an opportunity to correct the same; and it
may be for their consideration, whether the former
records of the Magistrates should not be transferred
by the Criminal Judges to the present Magistrates,

or

or some other means adopted to place the present Magis-
=trates in possession of the Circular orders issued by the
Sudr Foujdary Adalut in explanation of any part of the
Regulations.-

In transmitting the correspondence on
the subject in questions for the orders of the Sudr Fouj-
=dary Adalut, the Magistrate regrets that it becomes
his public duty, to call their attention to the extraordinary
proceeding of the Criminal Judge, in having entirely
released, from all Custody or punishment, the Prisoner
Awookapah, whose offence he admits to have been punish-
=able under Regulation I 1812- and who of course immediately
absconded, and has thus entirely eluded the punishment
due to his crime, as will be found stated in the report
from the Serishtadar of Bellarie, sent to the Criminal
Judge by the Magistrate.- It is also the duty of the
Magistrate to direct the attention of the Superior Court to
the call which the Criminal Judge has made upon the
Magistrate, to "alter the charges in two other similar
cases, adding, that otherwise, the examination of the
"cases will be proceeded in on the original Complaint.-

The Magistrate disclaims any desire to
call down censure from the Superior Court upon the Criminal
Judge, for having overlooked, in this case, the provisions of
section XLIV Regulation IX 1816; for, although the over-
=sight is much to be lamented, it is one which, considering
the very voluminous nature of the Regulations, admits

of

of palliation; but the Magistrate apprehends that if that Officer, by such an oversight, deemed the offence brought before him to be matter of cognizance by the Magistrate and not by himself, it was his boundenduty; as an officer of the public, not to release the offender, and let him loose upon Society unpunished, but to have remanded him to the Custody of the Officer by whom he deemed the offence to be cognizable; and the Magistrate must solicit, for the sake of public justice, that, in similar cases hereafter, the Criminal Judge may be directed to adopt this course.—

The Criminal Judge, in this case, not only declared to the public that a crime to which the law attaches "the penalties for forgery" is one not punishable, but he decided that it is a minor offence, punishable under section XX Regulation I of 1812, and though he was himself, the only authority who could punish that minor offence, he not only omitted to try the prisoner, but in the face of his whole Court, released him altogether; and, with what really seems an ill timed mocking of public Justice, from the bench, at the same time told the Vakeel of the propriety of desiring the police to re-apprehend him".—

The Magistrate knows not whether it be the intention of the Criminal Judge, on the Magistrates declining to alter the charges in the other two Cases in question, to release the two offenders in these cases also, in a similar manner, though such would seem the inference to be drawn from the conclusion of his first letter. The Magistrate, under the Construction given by him to the law, declines to alter his proceedings in either case; he has, however, on a former occasion recorded his opinion that it is for the Criminal Judge, and not for the Police to give instructions to the Government Vakeel in cases before the Criminal Court; and conceives that the Criminal Judge is by no means fettered by the Magistrate's proceedings, but is at liberty to decide, on all cases, according to his own construction of the law, and the evidence before him.—

Ordered, that a Copy of these proceedings, and of the correspondence alluded to, be forwarded to the Register to the Court of Sudr Foujdaree Udalut, for their orders.—

Ordered, also that a Copy of these proceedings be sent to the Criminal Judge, that he may have an opportunity to address the superior Court thereon, should he deem it necessary.—

/ A true Extract /

/ signed / A. D. Campbell,

Magistrate,

To

Standall 23d October 1820.

To, The Criminal Judge, in the Zilla of
Bellaree,

Sir,

I lose no time in sending you Copies of the enclosed papers, just received, from which it would appear that a person sent to you, by my Assistant, for the illicit imitation of the public Custom stamp, whose offence you deemed not to come within the provisions of Regulation VI 1811, but to be cognizable by the Magistrate under Regulation I or II 1812. has not only not been made over by you to my Authority, but has been released by you altogether.-

I request that, for the future guidance of my amildars in sending cases to you, and to me respectively, you will favor me with a clear definition of the construction given by you, in this Case, to clause third Section IX Regulation VI 1811, that you will inform me under what section and Regulation of the enactments in 1812. as modified by that of 1816, you considered the Case to be cognizable by me;- and that, if you deemed the Case to be cognizable by me, you will be so good as to state why the prisoner in question was released altogether, instead of being made over to my authority for punishment.-

I am exceedingly anxious to be favored with your reply to this letter, for I apprehend that either the Government Vakeel must have entirely misunderstood your decision on the Case, or the modification of section XXI Regulation I 1812. by section XLIV Regulation IX. 1816

1816, may have been overlooked; in either case, the mistake cannot too soon be rectified, for fraud on the revenue, and extension of the Crime of forgery, must unavoidably be augmented by the Public release from all punishment of this offender, under circumstances which cannot fail to stamp the measure with the full sanction of your Authority, and to give to it every possible publicity throughout the district.-

I have the honor to be, &c.

(Signed) A. D. Campbell. Magistrate.

Zilla Court of Bellaree 24th October 1820.

To The Magistrate in the Zilla of
Bellaree,

Sir,

With reference to a cadee sent in by you-

Cowel
the Circar
Vurdee
Arookapah } for Forgery.-

under clause 3d Section IX Regulation VI of 1811 I beg to acquaint you that the prisoner has been released under that charge, and in perusing the proceedings of the Foujdaree Adalut under date the 8th May 1815 it would appear that his offence was punishable by you under section XXI Regulation I of 1812.

2. This was my view of the Case at that time, but upon a further insight into Regulation IX a.D. 1816 Sec. XLIV, the powers vested in the Magistrate by section XXI Regulation I of 1812. are declared applicable only to the Criminal Judge.-

3. I deem it my duty therefore to acquaint you of the acquittal of the prisoner upon the charge preferred

and against him, under Regulation VI of 1811, that you may if you think proper, re-apprehend and charge him in Regulation I of 1812, and Section XXI.

4 There are two more cases of the same description Viz.t.

Cucer
Ram
Sackaramah } Charge preferred 6.th September 1820

and

Shaik Roofdeen
ward
Luckmah } Charge preferred 15.th October 1820.

in which the prisoners are still in confinement and should you agree with me in the interpretation of the Regulation, I beg you will alter the charges, otherwise the examination of the Cases will be proceeded in on the original Complaint.

I have the honor to be &c.

(Signed) S. Ibbetson 6. Judge,

Zillah Court of Bellary 23.d October 1820.

To
The Magistrate in the Zilla of
Bellary.

Para 1. Sir, I beg to acknowledge the receipt of your letter of the 23.d Instant, and to state that mine of the 24.th will give you the information required in every particular.-

2. I released the prisoners as in my opinion he was not guilty of the Charge, as preferred against him under Reg.n VI of 1811, and at the same time took the Vakeel of the propriety of desiring the police to re-apprehend him under the provisions of Regulation I of 1812.-

I have the honor to be &c.

(Signed) S. Ibbetson - 6. Judge,

(True Copies)

(Signed) A. D. Campbell - Mag.te

Courts Order 9.th November 1820.

From the foregoing correspondence it appears, that a person accused of illicit imitation of the public Custom stamp was sent by the Assistant Magistrate to the Criminal Judge, charged with Forgery under clause 3.d Section IV Regulation VII of 1811, that the Criminal Judge being of opinion with reference to the proceedings of the Foujdaree Adalut under date 8.th May 1815, that the offence was punishable by the Magistrate under section XXI Regulation I of 1812, released the prisoners - and having subsequently adverted to Section XLIV Regulation IX of 1816. by which the provisions of the Section of the Regulation above cited are declared applicable to the Criminal Judge he notified to the Magistrate "the prisoners acquittal upon the charge preferred against him under "Regulation VI of 1811, in order that the latter officer might if "he thought proper, reapprehend and charge him in Regulation "I of 1812 and Section XXI".

The Criminal Judge at the same time requested the Magistrate to alter the charges preferred against certain other persons similarly situated with the individual in question, stating that "otherwise the examinations would be proceeded in on the original complaint".-

The Magistrate in submitting to the Court of Foujdaree Adalut the correspondence connected with the case under Consideration, enters at some length into the question of the applicability of the provisions of clause third section IX Regulation

Regulation X of 1811 to the offence of silent evasion of the Custom House
the Court will not follow the Magistrate into a discussion of this point, nor
recommend to alter the offence recorded in their proceedings under date 9th
May 1815, which they resolve to communicate to the Magistrate for his
information.

The Court of Foujdarry Adaulut will further
observe with respect to the latter part of the Criminal Judge's communica-
tion above cited, that this officer appears to entertain a misconception
of the provision contained in Section VIII Regulation X of 1816 which
prescribes the mode in which Criminal charges or informations are
to be brought before a Criminal Judge.

Nothing contained in the aforesaid Section as intimated
as was remarked by the Court in Answer to a reference from the Acting Criminal
Judge in the Zilla of Bellary under date 2nd April 1817 to alter in any degree
the Proceedings of the Criminal Judge, after the accused party shall have
been transferred to his Jurisdiction. It is obvious to remark with regard
to cases sent to the Criminal Judge by the Native officers of Police, that it
cannot be expected that the charges against persons accused should be framed
with accuracy and precision; and as it is the duty of the Criminal Judge to
frame the indictment against persons committed for trial before the Court
of Circuit, according to the facts in evidence before him, so in order pro-
perly to enable him himself it is his duty to amend the charge, wherever it may
appear to be incorrectly recorded in the preliminary proceedings of the
before the Magistrate or District Police officer.

For the proceedings adopted by the Criminal Judge in the
particular Case under consideration of releasing a prisoner, against whom
there would appear to have been evidence of an offence punishable under the
existing Regulations, the Court of Foujdarry Adaulut are at a loss to ascertain
under the impression that the cognizance of the offence was
specially limited to the Magistrate by a legislative enactment it was manifestly
the duty of the Criminal Judge to have remanded the accused to the Magistrate
Court. The error of the Criminal Judge in overlooking a provision in the Regu-
lations, expressly defining the duties of his office, is surprising in comparison with
the glaring impropriety of releasing a public offender, whose guilt was establish-
ed by the evidence before him.

Received

Received the following letter from the
Register in charge of the Zilla of Canara.-

To the Register to the Court of Foujdarry Adaulut
Fort St. George.

Sir,

I shall feel much obliged by your procuring
for my guidance the orders of the Judges of the Court of Foujdarry
Adaulut as to remitting altogether the provisions of Section VII Regulation
X.A.D. 1816. in favour of the Prisoner Sheik Malick in No. 186,
and 187 on the Criminal File of this Court, or should that be con-
sidered unadvisable of committing the flogging therein prescrib-
ed for the crime of theft for a Certain period of imprisonment.

The Prisoner above named has in his answer to the two foregoing
complaints asserted that he was unwilling to the scene of the
Robberies above alluded to by the artifices of Azamoodeen
Mohidin Sooba, Mudarsham, Perro and Pachate, who actually
committed them, and who concealed their evil intentions from him.
A simple allegation to the above effect is too commonly resorted
to deserve serious attention. Yet connected as it is in the present
instance with corroborative circumstances, I have thought it my
duty to solicit the favourable consideration of the Judges
towards the Prisoner. First because it appears to me from
his subsequent conduct that mercy should be extended to
him - and secondly because the exercise thereof in this case
may have the best effect and tend to secure the peace of so-
ciety by inducing others situated in similar circumstances
to give information calculated to bring the disturbers
thereof to Justice. The Circumstance which gives weight
to the assertion of the Prisoner Sheik Malick to the
effect that he was ignorant of his associates intentions when
they set out and which pleads a remission or mitigation
of

of punishment, is of an uncommon nature, and it may, I think, be inferred with tolerable safety that he never would have resorted to it (in the absence of every necessity) had he not been misled, as he affirms, to the Spot where the Robberies took place, and been induced by a sense of duty to pursue the line of conduct he subsequently adopted. It appears clearly, from the proceedings on the above Case, that he (the prisoner) the Malick) went of his own accord some time after the Commission of the Robberies, and before any Complaints had been preferred, into the presence of the Police officers, & stated what he knew respecting them, nor can the merit of the above voluntary Confession be subjected to any detraction, since no part of the property had been discovered or any Suspicion either entertained against the Prisoner — those whom he accompanied, on the Contrary there is good reason to believe, six Months having elapsed from the Commission of the Robberies to the time of the Confession that the affair was partly forgotten, and that the Perpetrators would, for ever, (but for this confession) have remained undiscovered. It is certainly to be deeply regretted that it was not made at an earlier period, as in that case the guilt of the Persons implicated by him (and who are now at large on Security taken by the Police Officers might from the discovery of property or other corroborative proof then found coming, have been brought home to them, yet I entertain the hope such delay will not, for the following considerations, be allowed to operate to the prejudice of the Prisoner —

First — It appears consistent with humanity that every reasonable allowance should be made in favour of the Prisoner

Prisoner since in all probability the natural dread of some punishment delayed his confession, which it was entirely optional with him to give or not as he thought proper. —

Second — It cannot be supposed that the Prisoner has studied the gratification of malice arising from any quarrel he may have had with the Persons he has implicated in his confession, since the same document equally criminates and exposes himself to punishment, or the other hand if no disagreement between them has obtained his information as to security does not appear open to objection. —

Third — The Prisoner appears deserving such mitigation or remission of punishment as the Foujdarry Court may be pleased to authorize; since with reference to the foregoing Section and the improbability of detection there is reason to believe that the Prisoner gave the information in question to the Police from a sense of duty and regret, also that Clarity in the present instance may induce others situated in similar Circumstances to follow his example. —

2. I have for the above reasons been induced to offer the Prisoner his liberty on Bail, and should earlier have addressed the Foujdarry Court, but for the novelty of the Case having me in doubt as to what steps to pursue. I shall also be much obliged by your procuring for me the Opinion of the Judges as to the legality or otherwise of extending the punishment of flogging to the Receivers and Purchasers of Goods knowing the same to be stolen. The above practice in this Zillah obtains to a most pernicious extent, and calls for exemplary punishment. —

I have the honor to be &c.

(Signed) G. D. Waters. A.C. Judge,
In charge

Zilla Court
Canara 4th
November 1820

Sent

Sent in reply to the following letter,

To The Assistant Criminal Judge in charge of the Zilla of Canara.

Sir,

I am directed by the Judges of the Court of Foujdarry Adalut to acknowledge the receipt of your letter dated 6th Instant desiring their orders "whether remitting altogether the provisions of Section VII Regulation X of 1816 in favor of a Certain prisoner or commuting the flogging therein prescribed for the Crime of theft for a certain period of imprisonment."

2 The Judges direct me to observe to you that by the provisions of that section of the Regulation above cited the infliction of corporal punishment in Cases of theft is left to the discretion of the Criminal Judge, and that the Judicial determination on Cases cognizable by a Criminal Judge under the Regulations is the exclusive province of the Officer and cannot regularly be made a subject of reference to a tribunal who have not the Case before them.

3 Upon the question referred in the latter part of your letter the Judges direct me to state that the authority of a Criminal Judge to inflict corporal punishment is strictly limited to Cases of theft and that whenever a prisoner may appear to be deserving of more severe punishment than the Criminal Judge is authorized to adjudge it is the duty of that Officer to commit him for trial before the Court of Circuit.—

I am Sir
(Signed) W. Hudleston Dy Regr

Foujdaree Adalut
Register's Office
23d November 1820

Extract

67

Extract from the Proceedings of the Foujdaree Adalut under date the 23d February 1821.—

16. By section VII Regulation X of 1816 Criminal Judges are empowered to pass sentence, in cases of theft, of 6 months imprisonment with corporal punishment not exceeding 30 rattans, and whenever a prisoner brought before a Criminal Judge may appear, either from the Commission of any one heinous offence, or the repetition of petty offences, to deserve severer punishment than the Criminal Judge is by that section empowered to inflict, it is his duty to commit the offender for trial before the Court of Circuit.—

Extract from the Proceedings of the Foujdaree Adalut under date the 21st September 1821.—

Read letter, dated 13th Instant, from the Provincial Court of Circuit for the Northern Division.—

To the Register of the Court of Foujdary Adaulut Fort St George.

Sir,

1 Accompanying we transmit for the purpose of being laid before the Court, the Originals and translations of the Proceedings in Cases Nos 1 4 8 15 of the Calendar of persons punished by

by the Criminal Judge and Assistant Criminal Judge in the Zilla of Nellore between the 1st January and 7th July 1821, which cases have been brought under our notice pursuant to a precept from the 3d Judge on Circuit to the Criminal Judge of Nellore, Copy of which is annexed.-

2. In adopting you on this occasion we have two objects in view, viz. to procure a mitigation, or remission, of the punishment to which the prisoner in the above cases has been sentenced by the Assistant Criminal Judge, and to obtain instructions for our guidance in similar cases in future.-

3 We concur in opinion with the 3d Judge that the punishment of confinement with hard labour in Irons, even for four months not six, as the 3d Judge understood it is greater than the offence proved appears to deserve, but we are in doubt whether it is competent to a collective Court of Circuit to mitigate or remit a sentence passed by a Criminal, or Assistant Criminal Judge, on a reference made to them by the Judge on Circuit.-

4. The XXIII.rd Section X.th Regulation 1816, under which the 3d Judge has acted appears to us to authorize one imprisonment in one description of cases only viz. cases which have not been sufficiently investigated, and in which a further inquiry may be practicable and requisite; and the powers vested in the Court by the next Section are not minutely defined, and seem to be restricted to cases where petitions may be presented to us, by or on behalf of, persons conceiving themselves unjustly aggrieved:- these are the grounds of our doubt.-

We have the honor to be &c.

Masulipatam 13th September 1821.

(signed) Rath.e Webb
1st Judge.
" J.A. Jack
Acting Judge.

Courts Order, 21st September 1821.

1 The present reference has arisen from a doubt entertained by the Court of Circuit as to their competency to mitigate or remit a sentence passed "by a Criminal Judge or Assistant Criminal Judge on a reference made to them "by the Judge on Circuit."

2 It appearing to the Court of Foujdaree Adalut to be unquestionably competent to a Provincial Court of Circuit, under the provisions of Sections XXIII and XXIV Regulation X of 1816, to pass such orders as they may deem proper, on all proceedings

proceedings of a Criminal Judge, which may be regularly brought before them,- the Court of Sudder Adalut direct, that the proceedings accompanying the foregoing reference be returned to the Provincial Court of Circuit in the Northern Division to be disposed of by them accordingly.

Sent the following letter.

To the Criminal Judge in the Zilla of Combaconum.

Sir,

1. The prisoners Nos 12, 13, 14 in your last quarterly Report of persons apprehended in the Zilla of Combaconum were charged, the first with "colluring a forged Cobalutnamah in the "Moonsiff's Cutcherry" the second with "being an "accomplice" in that offence, and the third with "having committed Perjury in the Moonsiff's Cutcherry"

2. The case is stated to have been dismissed, "it not having been brought forward "by the proper officers, as prescribed in Section XXIX Regulation IX of 1816."

3. With respect to the charge against the two first prisoners, as also to that against the prisoner No 16 of uttering a forged receipt, the Judges of the Sudder Adalut direct me to observe, that the section of the Regulation cited in your Report is applicable only to charges of Perjury; and with reference to the case of the prisoner No 14 the Judges instruct me to convey to you their opinion, that the restriction contained in Section XXIX Regulation IX of 1816 applies

solely to the Zilla and superior Civil Courts, the provisions of Section VIII Regulation III of 1802, which is cited at the conclusion of that section being obviously limited to perjury committed before the Zilla Judge.-

4. The Judges have had under consideration the expediency of some legislative provision being made for cases of perjury before the inferior Judicatories, and deeming it probable that the proceedings held in the case of the prisoner Veerumapundarum, may afford a practical illustration of some of the inconveniences arising from the want of such provision, they desire that you will transmit an english translation of the whole of the proceedings held in his case.-

5. Soobroya Sastry, prisoner No 29 is stated to have been charged with having carried away 38 Cullums of Paddy valued at Rupees 16 Annas 13 and Rice 11 belonging to Nangasamy Sastry.-

6. A period of 10 months and 22 days appears to have intervened between this persons apprehension and his arrival at the Zilla station, and the only explanation given of the delay is, that it was occasioned by the deficiency of

of General Police officers who had investigated the charges.

7. From the sentence of fine passed in this case it would appear, that the act imputed to the prisoner did not amount to theft.—

8. The Judges desire to be furnished with a distinct explanation of the nature of this case, and that you will ascertain by a reference to the Magistrate and report to them the precise grounds of a delay to examination, and the period, during which the prisoner, Coobroo Tantuy, had been kept in custody before he was sent to the Zilla station.—

I have the honor to be &c
Signed W. Huddleston.
Deputy Register

Foujdaree Udalut,
Registers' Office,
8th March 1822

Extract from the Proceedings of the Foujdaree Udalut under date the 27th May 1822.

Extract of a Letter from the first Judge of the Court of Circuit in the Centre Division under date 30th April 1822.—

4. The first of these cases related to a serious murder by a Trooper of the 5th Regiment of Light Cavalry who destroyed his wife apparently without any cause, at least none appears in Evidence on the Trial.—

5. With reference to this case I beg to call for instructions from Superior authority to ascertain first the simple question, as to the precise manner in which the proceedings should have been conducted in a Military Cantonment on such occasions, keeping in view the provisions of Regulation VI of 1821, and secondly whether the Criminal Judge could with reference to section VIII, Regulation X, 1816, receive or take cognizance of any Criminal matter unless thro' the channel therein laid down.—

With the record of Trial in this case I forwarded copy of my precept to the Criminal Judge of Chittoor on the latter subject, directing him in future, until the receipt of the orders from the Foujdary Adawlut, not to receive such cases except from a Magistrate or a Police Officer; referring all letters addressed to him by Commanding Officers for Instructions to the Magistrate of the Zillah. I have done this, with a view of supporting & enforcing the Regulations, and I request the orders of the Court if in error.—

Vide Precept to the Criminal Judge dated 19th April 1822. No.

6. It is my duty on this occasion to inform the Judges, that in cases which have come before the Court, examined by the Military Cantonments of Ramputtah, the greatest irregularities prevail. as appear by the records with the supplemental Calendar laid before me by the Criminal Judge at this Sessions;

there

there were no less than 3 cases out of 14 which had been received from this description of Police

17. The Court are aware that under Regulation VI, of 1821, the Police of these Cantonments are not under the Magistrate of the Zillah of Chittoor, it must be noticed however, that the Magistrate has a Tahsildar at Arcot proper, not where the Cavalry are stationed, the Cavalry are at Ranipettah under the Division of Cavalry, but the Provisions of clause the first, Section III, Regulation VI, 1821, of having, plans &c if carried into effect, have not yet been furnished to the Courts, so that it is impossible to ascertain their Jurisdiction.

Precept to the Magistrate dated 25th April 1822 that officers return of the 29th (Ult) the correspondence unnecessarily put by the Magistrate which his returns are not transmitted as being already before Government & embrace many points respecting the public Police Boundaries for Military Bazars not connected with the point in question.

18. The circumstances as they appear in the cases before me, will be best explained by the accompanying Copies of Receipts joined hereto as per margin, & they will suggest to the Legislature the necessity of interference on the part of Government with a view to the Establishment of more regularity in the Police duties performed in the Military Bazars.

Vide Receipt to the Criminal Judge of the 29th April 1822 No 6.

19. The only mode that of communicating with the Officer Commanding Ranipettah appears to be thro' the channel of the Criminal Judge leaving it to that Officer to adopt such measures as he might deem necessary to bring the irregularities. I have to complain of, to his knowledge. It was painful to me to see such proceedings from a new

new Establishment, but I was the less surprised when it appeared before me in Evidence that the Cotwals reported to, were furnished with no orders or instructions, that they had never been employed on such duty before, that the servants transferred by the Magistrate had been ejected from Office and that the persons now employed had been without salary since their nomination.

If under the Magistrates themselves it has been necessary to issue so many orders in addition to Regulation XI, 1816, to enforce the necessity of more care on the part of the Police Officers, how much more essential is it to have some fixed forms & rules for the guidance of Police Officers under the System introduced by Regulation VI, of 1821, I feel it my duty to suggest the nomination by the Honorable the Governor in Council of an European Officer to superintend the Police enquiries in the fixed Military Garrisons and Cantonments where the plans of their Jurisdictions are sanctioned by Government.

20. Such a Native Police as now appear to have the entire control at Ranipettah in the uncertainty of continuance unpaid & unmonitored, taking upon themselves to carry persons from their Residence to examine them whether on written charges or not. to carry their self-styled

delegated Powers to the extreme of torture, by suspending them to Beams to extort confession, to issue search Warrants to enter the Houses of persons residing under the protection of the Magistrates of Zillahs, to be opened in any ways to send Peons to carry these search warrants into effect, not under their authority, in fact to act as they please without reference to the Public Officer who appointed them, it may reasonably be expected to create disgust and abhorrence in the minds of our Native Subjects, generally, and especially in the feelings of those Inhabitants residing under the authority of the Jurisdiction of Military authorities.

21. The Prisoner in No 2 of the Supplemental Calendar, the case to which my Precept to the Criminal Judge more particularly refers, was stated in evidence before me, to have had the knots of the Rope by which his hands were tied behind him, wattened for the purpose, that by their becoming tighter round the joints the pressure would add to his torture, & oblige him to confess. It was coir Rope.

22. As I have stated in my Precept that I do not entirely believe the Evidence on the part of the Prosecution, the Court will be prepared to learn that this prisoner has been acquitted; for supposing the Evidence of the torture not to be entirely true, the fact of the Witnesses to the Confession not being present during the whole examinations three in number, would have acquitted the accused; except of the suspicion attaching to him, of having had property found upon him for which he could not satisfactorily account and which the Prosecutor himself has been able to prove by evidence to be his.

23. I have also little doubt in my own mind that had the accused been in the first instance brought before a Magistrate or his youngest Assistant the very reverse of what has been the result of case No 2 & 3. would have been the case, the Prisoners would have confessed their crime in a free & voluntary manner. The Prisoner in No 2 has before been a convict for 7 years, and he must have almost been glad at the force employed against him, as foreseeing his ultimate release, but before an European Officer, when the proceedings are presumed to be generally conducted with regularity, the Prisoners, knowing every circumstance would be regularly traced & their guilt made apparent, would have confessed the charge at once.

No 1.

Extract from the Proceedings of the Court of Circuit under date the 19th April 1822.

The 1st Judge with reference to section VIII, Regulation X, 1816, being of opinion the Criminal Judge of Chittagong was not authorized to receive case No 3 of the

the Calendar of Persons committed for trial at the 2d Quarter Sessions of 1822, direct from the Officer Commanding Arcot and that in his letter of the 2d February 1822 to that Officer address of the 1st February, the Criminal Judge should have referred Lieutenant Colonel Calebrooke to the Magistrate of the Zillah for instructions as to the disposal of the accused, now desires, until further orders, the Criminal Judge in all similar cases to do so.—

2. The instructions of the Foujdary Adawlut have been solicited when referring the Trial of the Prisoner, and the orders of that Court will when received be communicated for the future guidance of the Criminal Judge.

3. Ordered, that an Extract of these proceedings be transmitted to the Criminal Judge of Chittoor for his information.—

/True Extract/

/Signed/ D. Cherry. 1st Judge.

/A.S./

Extract from the Proceedings of the Court of Circuit for the Centre Division under date the 25th April 1822.—

/

With reference to Regulation VII, 1821, the Magistrate is requested to state whether any arrangement has been made by him either for transfer of the Police authority, which the Magistrate must have had at Ramipettah previous to the enactment of that Regulation to the Officer Commanding that Cantonment and

and of what description, whether he has any plan to show the extent of the Encroachments on the Bazars under Military Control;

The 1st Judge has now before the Court of 2d Quarter Sessions 1822 several cases, consisting in the first instance by two individuals styling themselves 1st and 2d Peons of Ramipettah,- neither of these are mentioned in the list of Officers authorized by the Magistrate under the Provisions of Regulation IV, 1821, to examine and take confessions, and their conduct appears in evidence before the Court to have been so highly irregular & improper, indeed so contrary to all established Laws and orders for the conduct of all Police Officers under the Magistrates of Zillahs, that unless immediate measures are adopted to prevent the prevailing abuse, there will be an end to all Justice & prisoners must always escape Punishment, which, had they been properly examined and properly treated would most probably have been the reverse, & society relieved at least for a time of their acts of Villainy.—

2. If the Magistrate transferred any Police Establishment to the Officer Commanding Ramipettah, was he directed to furnish that Officer with any part of

Regulation

Regulation XI. 1816, for his guidance, if so what for
By Regulation VI 1821 the 1st Judge does not observe
any authority vested in Officer Commanding to
grant the Power, the Cutwalls at Ranipettah
have exercised. The Judge after a performance
of his important duties for several years has
never before known such irregular proceedings
in the Police Officers of Government to obtain
confessions and some of these may acts in the
presence of the Witnesses who attested the exa-
=minations shewing at once the ignorance
of the Cutwalls employed and what the Public
might be led to expect from a Police acting
without regular rules for their conduct with-
=out European control, and consequently
with full scope for all the malice their minds
suggested to them.-

3. Ordered, that an Extract from
these proceedings be sent to the Magistrate
of Chittoor, with Precept, requiring conformity
thereto, returnable on or before Monday the
29th instant.-

/A true extract/
/signed/ R. Cherry, 1st Judge
Magistrates Court
Northern Division of Arcot.

(L.S.)

1. In making return to the Precept
of

of the 1st Judge presiding at the Sessions dated
25th Instant the Magistrate begs leave to
transmit Copy of his letter to Government
with its enclosures reporting the transfer
of the Police authority of Ranipettah to the
Officer Commanding that station conformably
with the provisions of Regulation VI
of 1821.-

2. The Magistrate also begs leave
to transmit copies of correspondence with
the Havildar of Canarepank the former
head Police Officer there regarding the
measures adopted by the Commanding
Officer Cossimpaiah, and Cantonment Adju-
tant, at Arcot for assuming the con-
=trol of the bazars &c at that station.-

3. From these circumstances
the Magistrate considered that the Officer
Commanding had received instructions
from Government for assuming the Police
authority of the station and in order
that no obstacle should arise in carry-
=ing the intentions of Government into
effect the Magistrate lost no time in making
the required transfer and reported having
done so as stated in the accompanying
letters.-

4. With regard to the ser-
=vants of the Magistrate formerly employed
on the Police duties at the station these
were

were apprised of the transfer of authority which had taken place but were at the same time left at the disposal of the Commanding Officer and it would appear from the tenor of his letter of 20th October that the Cutwal had been exchanged but that the Peons continued to perform the Police duties.-

5 No direct sanction as regards the transferred limits as laid down in the plan, has been received from Government but such may possibly be implied to have received their assent as on a reference on the subject of the arrack licenses which had been granted previously to the promulgation of Regulation VI 1821, Government were pleased to sanction that the said Licenses should continue in force until the expiration of the period for which the engagements were made that is to the conclusion of the present fusly.-

6 No regulations were requisite nor were any transferred by the Magistrate to the Commanding Officer.-

Given under my hand and the seal of the Court this twenty ninth day of April in the year of our Lord one thousand eight hundred and twenty two.-

(signed) W. Cooke.

No 6 Magistrate.

Extract from the Proceedings of the Court of Circuit for the Outre Division undertaken the 29th April 1822.-

1 The 1st Judge deems it his duty to direct the Criminal Judge to take the necessary measures for communicating to the Officer Commanding at Arcot (Ranipettah) the accompanying Extract from the proceedings of the Court on the 23d & 25th & 27th April 2d Quarter Sessions of 1822, relative to the misconduct of two Cutwalls at the Cantonment presumed to be under the authority of that Officer under the Provisions of Regulation VI of 1821.-

Extract from the Proceedings of the Court of 2d Sessions dated 23d, 25th, 27th April 1822.

2 In the Supplemental Calendar delivered by the Criminal Judge of Chittoor to the 1st Judge presiding at the 2d Quarter Sessions of 1822 there are 3 cases brought before the Court.-

No 2 for Burglary.

" 3 for Do

No 4 for being accessary to the Burglary's which 3 cases had been first examined and enquired into by the two Cutwalls in the Cantonment of Arcot known more commonly by the name of Ranipettah.

3. These servants are named Andiah first Cutwal and Loboy & Moodely second Cutwal.-

In case No 2. The crime is charged to have been committed in the House of

4.

of the Prosecutor a Trooper of the 4th Troop 6th Regiment Light Cavalry, resident of Ramipettah. The accused was apprehended at Wallajahpettah the place of his own residence. He was sized by the Prosecutor and taken to the Cutcherry at Ramipettah, and not to the Tahsildar of the Cauvery Parte in which jurisdiction Wallajahpettah is situated. He was examined by the Head Cutcherry Sheriah on the 17th 18th & 19th January 1822. There is evidence before the Criminal Judge but much more circumstantial before the 1st Judge of considerable cruelty having been practised by the said Cutcherry Sheriah towards the Prisoner to obtain a confession of the crime alledged against him. The 1st Judge in this case does not give full credit to the Evidence of the whole of the Witnesses on the prosecution of their account of the cruelty exercised towards the Prisoner but the Judge entirely believes the irregular manner in which this Prisoner was examined. The following plan would appear to be far more regular for an officer only authorized to examine and to receive a confession from a Prisoner brought before him. He should be that he is not tied in such a manner as to occasion any distress or pain but simply to confine him so as to prevent his escape, that his mind may be free, and that he may be able with all his faculties about him to go on with his examination and

with

with his confession if inclined freely and voluntarily to give one, and in the latter case, the officer authorized to examine him and receive a confession should take special care to have present 2 respectable and credible witnesses before whom the whole confession should be written down, it should be read to the accused and if admitted by him to be correct he should sign it or make his mark upon it, it should then be signed by the witnesses in presence of the officer superintending, and the Prisoner, and finally should be signed by the Officer himself.—

In this case the Prisoner is stated to have been tied with his hands behind him with a Rope long enough to go over a Beam in the Choultry & the witness states that on his hesitating to tell what the Officer thought was the truth (and with reference to the bad character of the accused perhaps he was right) he was hoisted up so as to prevent both legs from touching the ground. That the Beam was so high, a person could not reach it, two Persons took up the Prisoner and two forced the Rope and pulled it, so that the Prisoner could not reach

the ground. It must be recollected that the Prisoner had his hands tied behind him, and it is consequently not difficult to fancy the Pain of the Prisoner who was so suspended. The 1st Cutwal signed the confessions but from the Evidence of one witness, it would appear he was not present, the 2d Cutwall was there. The 1st Judge admits the Evidence is contradictory - but it is his duty to point out the Errors committed and the 1st Judge fails satisfied the confessions were taken in a most improper manner. It further appears by the record and is in evidence before the Court that the Cutwalls or one of them at Ranepattah issued a search warrant to examine the House of the accused at Nallajahpettah, that he or they (for the warrant is not on the record) gave it to 2 Peons, one under the authority of the Cutwal and the other said to belong to Nallajah Pettah, and desired the Prosecutor to accompany them to the House of the Prisoner at Nallajah Pettah (not under the cantonment of Ranepettah) that they did proceed under such warrant and searched and brought away every thing they found there (the evidence of the Peons is not on record). This warrant was illegal, first, as the Cutwal could have no jurisdiction and consequently should not issue such warrant, secondly, he should not

not have allowed and certainly not have ordered the Prosecutor to accompany the Peons. The evidence of the Peons should have been taken and they should have been sent to the Criminal Judge with the rest of the Witnesses for the Prosecution, all this has been omitted and there is only the Evidence of the Prosecutor as to the contents of the House of the Prisoner.-

6. The Witnesses were not all present during the examination of the Prisoner coming in accidently they were desired to attest his confession.-

7. The cases Nos 3 & 4 are nearly similar except that No 3 was more irregularly conducted than No 4. In neither of which were the witnesses together present during the examinations and the treatment of the Prisoners was much the same as in No 2, the Prisoners in No 2 was the same as in No 4. In the last number it appears from the answers of the Coniscopoly of the Cutwals at Ranepettah a witness in No 4 that neither of the Cutwalls or himself have received any salary since their appointments only small advances, that on the Magistrate giving over charge of the Police duties to the Commanding Officer

Officer of Ranepattah, the former Servants of the Magistrate were remanded, and a writer of the Commanding Officer was appointed Head Cutwall and the 2d Cutwal was from Madras. That no orders or Instructions were given by the Officer Commanding at Ranepattah to the Cutwals on their being placed in charge of the Police duties. The ignorance of their Cutwals is the more excusable in their mismanagement of these cases; but nothing can excuse their unnecessary cruelty. It would have been more advisable had the Officer Commanding continued the former Servants in Employ who had been accustomed under the Magistrate to a more regular and legal mode of carrying on the Duty under the Heads of Police, as it is not probable the Magistrate would have authorised a Cutwal to examine and receive confessions from Persons accused.-

8. Ordered that an Extract from these proceedings be transmitted to the Criminal Judge of Chittoor, with Precept, requiring conformity thereto returnable on the 17th Instant next.-

/Attest extract/
/Signed/ C. Cherry
1st Judge

/True Copies/
/Signed/ C. Cherry
/1st Judge.

Courts

Courts Order 27th May 1822.

6. In the fifth paragraph of the report, dated 30th ultimo, the 1st Judge solicits instructions regarding the manner in which the proceedings in a case of murder should be conducted in a Military cantonment with reference to the provisions of Regulation VI of 1821, and also whether it is competent to a Criminal Judge to receive or take cognizance of any Criminal charge excepting through the channel prescribed in Section VIII Regulation X of 1816.-

7. In the 16th and five following paragraphs of the report the 1st Judge notices the irregularity, undue arrogation of authority, and cruelty, exhibited in the proceedings of two persons styled in the Report the "Military Cutwalls of Ranepattah," and urges "the necessity of interference "on the part of the Government with a "view to the establishment of more regularity in the Police duties performed in "the Military Bazaar."-

8. From the statement given in this part of the Report and in extracts of the proceedings of the Court of Circuit, dated 25th and 29th Ultimo, appended thereto, it appears that the Police functions at the station of Arcot have been exercised by two persons, called 1st and 2d Cutwal, appointed

appointed by the Commanding officer, and appointed by a part of the Magistrates' establishment of Peons, that these persons have exercised the authority of apprehending and examining persons suspected of offences and issuing warrants for the search of dwelling houses, not only within the immediate limits of that Cantonment, but also at Nallajah Pattah; and that in their preliminary investigation of certain cases, tried by the Court of Quarterly Sessions, there was evidence of a resort to acts of torture for the purpose of attaining a confession.-

9. The Magistrate in his return to the precept of the 1st Judge, dated 25th Ultimo, in which he was requested to state whether any arrangement had been made for the transfer of the Police authority at Ranespettah to the officer commanding that cantonment, and whether he possessed any plan to shew the extent of the Military jurisdiction, represented that the transfer had taken place "conformably with the "provisions of Regulation VI of 1821," that the Magistrate "considered that the officer command"ing had received instructions from Govern"ment for assuming the Police," and lost no time in making the required transfer, that "the servants of the Magistrate formerly carrying "on the Police duties at the station were appriz"ed of the transfer of authority which had taken "place, but were at the same time left at the "disposal of the Commanding officer;" that "the Cutwall

"Cutwal had been exchanged but that "the Peons continued to perform the Police "duties."-

10. The Magistrate added, that "no direct sanction as regards the transfer"red limits, as laid down in the plan, "had been received from Government," but that such might "possibly be implied to have received their assent "from their having directed that certain arrack licenses granted previously to the promulgation of Regula"tion VI of 1821 should continue in force until the conclusion of the present Fusly.-

11. Clause first section III Regu"lation VI of 1821 declares, that "the Police "authority and maintenance of the peace with"in the limits of Garrisons Cantonments and "stations, (including the Military Bazars attach"ed thereto) plans of which shall with that "view have been first sanctioned and con"firmed by Government, and deposited at "the Cutcherry of the Magistrate of the "District in which they are respectively "situated, may by express authority from "the Governor in Council, be vested in the "officers commanding at such places, who "will in such case take the necessary measures, "by means of the troops under their command for "preventing the commission of crimes within the limits "of the said Cantonments & Military Bazars, & for "the discovery & apprehension of persons guilty of the same.- With

12.

With reference to the provisions of the above section it appears to the Court of Foujdaree Adalut to be clear, that the transfer of the authority by the Magistrate to the commanding Officer at Arcot before the sanction of Government to the plan of the limits of the Cantonment, or any express authority from the Governor in Council for the arrangement had been communicated to him, was altogether irregular and indeed invalid;- the Court not being aware, whether or not the requisite sanction may have been subsequently given, are not prepared to recommend that the Magistrate should temporarily resume the authority heretofore exercised by him within the limits of the Cantonment, but the circumstances brought to their notice on the present occasion appear to the Court to evince the necessity of some orders from Government to establish a regular course of proceeding in cases of offences, committed within the limits of Military Cantonments or bazars, but not cognizable by the Military authorities under the provisions of Regulation VI of 1821.-

13

By the provisions of sections III & VII of the foregoing Regulation it appears to the Court of Foujdaree Adalut to be intended, that persons apprehended on charges of a heinous nature within the limits of Military Cantonments or bazars, where the Police functions may be vested in the Military authorities, should be delivered over to the charge of the civil powers, "in order to their being dealt with according to the Regulations."-

14

In cases of the above description the Court of Foujdaree Adalut are of opinion that the proceedings of the Military authorities should be limited to the seizure of the supposed offender, who together with such persons, as may be stated to have any knowledge of the crime alleged against him, should with all practicable expedition be brought before an officer vested with the authority of a Head of District Police.-

15.

With this view the Court of Foujdaree Adalut would suggest, that the Magistrates should be directed to station an Ameen of Police, vested under the Provisions of section XI. Regulation XI of 1816, and section II Regulation IV of 1821, with the police powers of a Tahaseeldar, at a convenient spot contiguous to the cantonment or bazar, who should be specially charged with the duty of holding the preliminary proceedings in such cases in the mode prescribed by the Regulations.-

16.

When the evidence of any persons resident within the limits of the Military station or bazar may be required by the Criminal Judge, he should apply to

to the Magistrate to take the necessary measures for procuring their attendance.-

17. Sanction is not given by Regulation VII of 1821 for the employment of cutwals and peons of police under the Military authorities, by Section III of the Regulation the discovery and apprehension of criminals is required to be effected by means of the troops under the command of the officer vested with the police authority; and Sections VII and XXI appear to contemplate only the intermediate agency of an European Military officer. The Court of Foujdaree Adalut are, therefore, of opinion that it was not competent to the officer commanding at Arcot to appoint or employ police cutwalls, while the manner in which these persons appear to have acted shews an utter absence of the necessary controul over the proceedings of officers of that description.-

The Court of Foujdaree Adalut concur in opinion with the 1st Judge, that Section VIII Regulation X of 1816 precludes the Criminal Judges from taking cognizance of Criminal Charges referred to them directly by the Military authorities; the arrangement suggested by the Court in paragraph 15 of these proceedings would obviate any infringement of the provisions of the Regulations on this subject.-

Extract

Extract of a Letter from the Second Judge of the Court of Circuit in the Southern Division under date the 26th April 1822.-

14. Under the rules laid down in clause sixth Section II Regulation XV A.D. 1803, I am fearful that I may be regarded as not acting correctly in withholding my sentence of acquittal in favor of the second Prisoner Petitioner, (the first Prisoner Govindacharry having been acquitted and discharged without delay) but as the Prisoner is convicted by the Law officer and entertaining doubts of the power this clause invests the Judge of Circuit with I trust that if wrong I shall stand excused and be favored with instructions for my guidance in future cases of a similar nature.-

15. Under clause sixth Section II of the above Regulation when a Judge before whom a Prisoner may be tried, shall not consider him convicted on presumptive proof recognized in the Mohomedan Law under the denomination of Ghaleboorun Uzm which also includes I apprehend the term of the present Futwah or Zim i Ghalib/ he is forbid to sentence the prisoner to suffer any punishment whatever may be the futwa of the Law Officer.. If my impression of the above

16. Text is correct I am authorized to acquit and

and discharge the Prisoner without security not considering that even strong suspicion attaches to him.—

17 A.D. 1802

Under section XXII Regulation VII whenever a Judge of Circuit disapproves of the futwa of a Law Officer he is forbid to pass any sentence and under this view of the case I entertain a doubt if in opposition to the futwah of Ackroobut I could liberate the Prisoner without referring the case for the consideration of the Sudder Court.—

18.

I am doubtful if cases of the present description are required to be transmitted to the Court of Sudder Adalut for under clause first section VII Regulation XV A.D. 1803 it would appear that in trials when a Judge is empowered by the Regulations to pass a sentence notwithstanding / i.e. in deviation from / the futwah of the Mohomedan Law officer, Copies of them are not required to be transmitted and as by clause sixth section II of this Regulation a Judge is prohibited passing in certain cases a sentence of punishment on presumptive proof, liable to Ackoobut &c by futwah an inference lies, that this Regulation authorizes a sentence to be passed in opposition to, or notwithstanding, the Law Officer's Futwah—

I have the honor to be &c

/ Signed / G. Gowan

2d Judge Presiding

Trichinopoly
2d April 1822

Courts Order. 16th July 1822.

The 2d Judge in his letter re-

2. ferring the trial observes, that as the 1st prisoner was acquitted, it was morally impossible that the 2d prisoner could be guilty of aiding and abetting him, and therefore he ought to be acquitted.—

3. The 2d Judge proceeds to intimate his doubt as to the propriety of the reference of this case, and of his omission to pass a sentence of acquittal under the rules laid down in Clause sixth Section II Regulation XV of 1803; and solicits instructions on the point for his future guidance.—

4. The doubts of the 2d Judge have arisen from a misconstruction of the provisions contained in clause sixth Section II, and clause first Section VI Regulation XV of 1803.—

5. The provisions of the former Clause apply exclusively to cases, in which a prisoner may be declared by the futwa to be liable to punishment on suspicion not amounting "to the degree of strong presumption held sufficient for conviction;" in such cases the Judge of Circuit is prohibited from directing the infliction of any punishment, and may at his discretion order the prisoner to be released conditionally or unconditionally whatever

"whatever may be the futwa of the Law Officer"

6. Clause third of the same section prescribes the course to be pursued, where the evidence may by the futwa be declared "sufficient to convict the prisoner on strong "presumptive proof;" and the Judge may con=cur in the conviction.—

7. The expression contained in clause first section VI of the Regulation regar=ing cases wherein the Judge of Circuit may disapprove of the futwa and may "have been "expressly authorized by that or any other Regulation "to pass sentence notwithstanding such futwa, "either for the punishment of the prisoner or "for his discharge," has reference first to the cases described in the preamble and quoted in clause second section III, wherein provisions of the Mohummedan Law "repugnant to the "principles of public and equal justice" may oppose the punishment of a prisoner, and secondly to the cases described in Clause sixth of section II, where punishment may be awarded on mere suspicion.— In both these cases the Judges of Circuit are by the provisions of Regu=lation XV of 1803 authorized to pass sentence notwithstanding the futwa.—

8. But with these two exceptions the provisions of section XXII Regulation VII of 1802 hold

good, whenever the Judge of Circuit may disapprove of the futwa; and the Judges' reference of the trial was, therefore necessary.—

Extract of a Letter from the second Judge of the Court of Circuit in the Southern Division under date the 26th April 1822.—

18. The investigation and decisi=on of offences of a deeper hue than has hitherto fallen under my observation ha=ving attracted my attention more par=ticularly to the rules enacted in Regulation XV A.D. 1803 I shall avail myself of this occasion to solicit the instructions of the Sudder Adalut on some points in the second clause that do not appear per=fectly clear to my comprehension.—

19. In the preamble to this Regulation it is declared that the Ma=homedan Law vests a power of inflicting discretionary punishment in the sovereign for offences in which no specific Penalty of Hud or Kisaas has been provided for by Law, and section II appears designed for defining the punishment as well as modifying and rectifying such discreti=onary sentences.—

20. The crimes of Burglary and Theft

Theft above a certain value of almost every description of property, are obviously of such a prominent nature that specific penalties have undoubtedly been provided for them by the Mahomedan Law. yet in almost every futwah delivered by the Law Officers, the sentences of Ookoobut or Lazeer are most invariably pronounced arising in general from minute distinctions in the Law calculated probably with a design to protect the limb of an offender. In most cases the Judge on Circuit will be of opinion that the extent of punishment he is authorized to inflict by clause seventh of the Section is fully adequate to the offence.-

21 If the crimes of Burglary and Theft above a certain value are liable to specific penalties of Hud it would seem that in every case of Conviction, and a Futwah of discretionary punishment being pronounced, that by clauses third and fourth of the above section the Judge on Circuit has not the option but is obliged to require a second Futwah provided he considers the accused guilty of the above discription of offences.

22. In the event of this obligation on the part of the Judge on Circuit existing he appears also compelled to pronounce the punishment applicable to the second Futwah of Hud which in almost every case of Theft coming before a Judge of Circuit will incur the penalty of amputation, therefore every convicted thief will be liable to seven years imprisonment unless the sentence should be mitigated by the Soojahee Adalut.-

23. Under clause fifth of this section the Judge is forbid to denounce any punishment under sentence of Ookoobut equal to the specific penalty but if equal to the specific penalty that a sentence of Hud would authorize therefore it appears dubious if a second Futwa under the 3d and 4th Clauses declaring a prisoner liable to incur the punishment of Hud will authorize a sentence to the full extent of the second Futwah.-

24. I avail myself of this opportunity to state that no persian translation of Regulation XV of 1803 has been forwarded to the Provincial Court and to hope it may soon be furnished.-

Courts Order. 17th July 1822.

1. In paragraphs 20, 21, and 22 of the letter accompanying the trial the 2d Judge alludes to certain provisions contained in Section II Regulation XV of 1803, on which the sentiments of the Soojahee Adalut were recorded in their proceedings under date 28th May last.-

The

2.

The only part of the 2d Judges' letter, which appears to the Court to require particular notice, is the observation made by him in his paragraph 23; that with reference to the provisions of Clause fifth of the above Section "it "appears dubious if a second punishment under the "3d" and 4th" clauses declaring a prisoner liable "to incur the punishment of Hud will authorize "a sentence to the full extent of the second Futwa"

3.

The Court of Foujdarry Adaulut are surprized, that the 2d Judge should have overlooked the marked distinction which exists between the cases referred to in Clause fifth, and those described in clauses third and fourth Section II Regulation XV of 1803.-

4.

Clause third refers to cases of conviction on strong presumptive proof, where sentence of Hud may be barred by a special rule of evidence. Clause fourth refers to cases also of conviction, where such sentence may be barred "by some special exception or scrupu= "lous distinction not affecting the nature "and criminality of the offence, and evidently "repugnant to the principles of equal justice" In both these cases a futwa of Hud or Kissaas is required to be taken; and sen= =tence to be passed accordingly.-

5.

Clause fifth has reference to cases, where the Specific penalty of Hud or Kissaas may be barred not by any special rule of evidence, or frivolous exception, or distinction, repugnant to justice, but by "provisions of the Mohum= "medan Law in consideration of circum= "stances which alter the nature and di= "minish the criminality of the offence."- In these cases a sentence equal to the Specific punishment is prohibited; and a second futwa of Hud or Kissaas is not directed to be taken.-

Extract from the Proceedings of the Foujdarry Adaulut under date the 22d November 1822.-

Read letter, dated the 12th Instant from the Secretary to Government in the Judicial Department.-

No. 458

To the Register to the Court of Foujdarry Adaulut

Sir,

I am directed to transmit to you the accompanying copy of a letter from the Criminal Judge at Nellore, with copies of the papers therein referred to, and to desire that the Judges of the Foujdarry Adaulut will be pleased to furnish that officer and the Magistrate of Guntoor with such instructions as

the

the case may require.—

I have the honor to be &c.
/signed/ D. Hill
Sec.y to Govt.

Fort St George.
12th November 1822.

To the Secretary to Government
in the
Judicial Department.
Fort St George.

Sir,

1. In a case lately forwarded to me by the Magistrate of Guntoor, a person named Capereddy Jaggunnada Bauboo, a Zemindar, and others, being charged on oath before me with conspiracy, fraud and forgery, application was made in the annexed letter to the Magistrate of Guntoor for their appearance as prisoners at this Criminal Court.—

2. With the proceedings from the Magistrate only one person was forwarded as a prisoner; but it being evident that this Defendants crime had been in communication with Juggunnada Bauboo, for his especial interests and with his privity, it seemed to me that this last offender should not be at large, nor escape, if he could be apprehended & put upon his trial together with the others accused as his accomplices.—

3. The Magistrate in his subjoined reply declines to send the Zemindar and his accomplices except as witnesses, and as I think there is ground for the objection of the Magistrate, I am not certain whether it is in my power to put them on their defence, in the event of their appearance as witnesses, and that if further enquiry into the case should substantiate the guilt imputed to them by the charge of the Vakeel of the Prosecutrix.—

4. I therefore request the instructions of the Honorable the Governor in Council how to proceed in this matter, and whether Vakeels should file before the Criminal Judges and Circuit Courts fresh Vakalutnamahs, or conduct their prosecutions to a close upon the powers filed before the Magistrates.—

I have the honor to be &c.
/signed/ Thos. Grahagan,
Crim.l Judge

Zillah Court. - - - -
Nellore 26th October,
1822.—

To the Magistrate of Guntoor

Sir,

In the case noted in the margin the appearance before this Court of Chauvully Cipiah, Neerconda Nursiah, Gollapoody Venkiah, and Canneredy Jaggunnadd Bauboo as prisoners, and Cholecanty Jamiah, Pellore Venkataneddy Naidoo, Gollapoody Jaggannadum, Pauboolooy Andeppah and Cheemaram Lankoocaun as witnesses being required, I request you will

Before the Criminal Court
No. 74 of 1822.
Before the Magistrate of Guntoor No. Blank. Mr. Mungiahcharloo Vakeel of Lutchemee Nursiah Widow of late Rajah Sopully Mullaraw Prosecutor.
Versus
P. Banpiah. Prisoner
Crime
Forgery

will adopt the necessary measures for their attend=
=ance before me with the utmost practicable dis=
=patch.—

Gillah Court Nellore
25th September, 1822.

I have the honor to be &c.
/signed/ Thos Gahagan.
Criminal Judge

To the Criminal Judge in the Gillah of
Nellore,

Sir,

After a consideration of your letter of the 25th ultimo, and on referring to the Regulations, I find it will be out of my power to send Chauvelly Cliviah, Neerconda Nuriah Gollapoody Cankeiah and Cauvareddy Suggan=
=nada Bauboo as prisoners - but should their attendance be wanted under Section IX Regulation X of 1816, which requires the Criminal Judge to examine (besides the prisoner and complainant) all such other persons "as are stated to have any knowledge of the crime" I shall take immediate steps to have them forwarded to your Court.—

Guntoor
14th October, 1822.

I have the honor to be, &c.
/signed/ J. C. Whish,
Magistrate

/True Copies/
/signed/ Thos Gahagan,
Criminal Judge

/True Copies/
/signed/ D. Hill.
Sec to Govt
Courts

Courts Order. 22d November 1822.

1. In the foregoing letter the Cri=
=minal Judge states, that in a case lately for=
=warded to him by the Magistrate of Guntoor certain persons were charged on oath before him, (the Criminal Judge,) with conspiracy Fraud, and Forgery; in consequence of which he applied to the Magistrate to cause their appearance as prisoners at the Criminal Court. This the Magistrate declined to do, and the points for decis=
=ion are, first the competency of the Criminal Judge to proceed against them in the event of their appearing as wit=
=nesses, 2dly whether the Clerks of Prose=
=cutors should file before the Criminal Judges and Circuit Courts fresh Cakalutmamahs or conduct their prosecutions to a close upon the powers filed before the Magistrate.

2. The points in issue having reference to the construction of the Re=
=gulations, the Criminal Judge acted irregularly in applying to the Govern=
=ment instead of the Court of Sudder Adalut for instructions.—

3. Under the provisions of Section VIII Regulation X of 1816 the Criminal Judge possessed no authority to

to" receive or take cognizance of the charge, to which he refers, and should have directed the parties to appear before the Magistrate.-

4. The Court of Foujdaree Udalut consider that a Venkatuthamah, conveying authority to conduct the prosecution to a close, if filed in the Magistrates' Court, would be sufficient authority for the appearance of the Prosecutor Vukeel before the Criminal Judge and the Court of Circuit.-

Extract from the Proceedings of the Foujdaree Udalut under date the 20th November 1822.-

Read letter, dated 13th Instant from the Criminal Judge in the Zilla of Masulipatam, submitting for the consideration and orders of the Court copy of a correspondence with the Magistrate regarding the construction of clause fourth section IV Regulation VI of 1822.-

To the Register to the Court of
Foujdaree Udalut
Fort St. George.

Sir,

Having been directed by the Court of Circuit for the Northern Division in the enclosed copy of an Extract to refer the accompanying correspondence for the consideration and orders of the Court of Foujdaree Udalut, I have the honor to forward the same for their instructions.-

Masulipatam, ----
Zilla Criminal Judge's,
Court 13th November 1822.

I have the honor to be &c.
/ Signed / G. F. Cherry
Crim. Judge

Masulipatam Provincial Court Northern Division

To the Criminal Judge in the Zilla of Masulipatam

Herewith you will receive an extract of the Court's Proceedings of this days date for your information.-

Masulipatam
11th November 1822.

By order of the Court
/ Signed / J. Paske
Register

Extract from the Proceedings of the Provincial Court in the Northern Division
Dated 11th November 1822.-

Read letter dated the 5th and received the 8th Instant from the Criminal Judge in the Zilla of Masulipatam, forwarding for the orders of this Court copies of a correspondence between himself and the Magistrate of the said Zilla on a point of the regulations.-

The Court not having authority to expound the Regulations, when a difference of opinion on their meaning and construction may arise, are of opinion that the Criminal Judge should refer the correspondence for-

for the consideration and orders of the Court of Zoujdaree Udalut, for which purpose they direct that it be returned to that Officer.-

Ordered, that extract of these Proceedings be forwarded to the Criminal Judge of the Zilla Masulipatam for his information

Ed.
/ Signed / P. Sharkey
1st. E. A.

/ True Extract /
/ Signed / J. Raske. Register

/ A true Copy /
/ Signed / G. F. Cherry.
Crim. Judge

To the Register to the Court of Circuit
in the Northern Division
Sir,
Masulipatam

I have the honor to forward for the orders of the Judges of the Court of Circuit the enclosed copies of a correspondence between the Magistrate of the Zilla and myself on a point of the Regulations.-

2d. I beg leave respectfully to submit for the consideration of the Court, my reasons for interpreting "clause fourth, Section IV Regulation VI A.D. 1822" differently from that, in which the Assistant Magistrate, as well as the Magistrate, appear to consider it, and shall be happy to be informed, if I am in error.-

3d. Regulation VI 1822 commences with a Preamble setting forth that to relieve the Courts of Circuit of part of their hitherto labours, and individual Prosecutors, and witnesses from a loss of time, great distress and inconvenience, it has been deemed necessary to invest the Criminal Judges and Courts of Circuits with certain powers.-

4th Clause 1st Section II of this regulation lays down the rule of guidance to Criminal Judges in the cases therein enumerated "wherein Persons are apprehended "and brought before them" which" cases" must be, I imagine, under clause 2d & Section XXIV Regulation IX. 1816, or, that of Section XXVII Regulation XI 1816 under its' modification.-

5th. Under the existing Regulation "all Petty thefts when not attended with "aggravating circumstances" are declared punishable by the Magistrates and Section VII Regulation IV 1821 for reasons stated in the regulation itself, directs, that Examinations taken before them shall not be reduced into writing.- The Preamble of Regulation IV 1821 sets forth reasons for vesting additional powers in ameens of Police, and by clause 1st Section IV of the same Regulation the Heads of District Police are empowered to

to punish "cases of petty Theft where the Property "stolen may not exceed 5 Rupees," by six strokes of a rattan.-

6th Clause 3d Section III of Regulation VI 1822, as well as clause 4th Section IV of the same regulation, put out the mode in which Criminal Judges are empowered to act.- These two clauses evidently refer, in my opinion, to section II of that regulation which relates to the cases of "Indi= "viduals who may be apprehended and brought "before them," as I conceive," under the existing "regulations."- Clause 3d specifies, that the Crimi= =nal Judges shall hear and determine "all other cases of theft which may be brought before them" (with the exception of the cases mentioned in the preceding clause) and clause 4th section IV likewise directs a similar mode of proceed= on the part of the Criminal Judges, "in cases "of Individuals charged with the offence of buying or receiving stolen property of whatever discription knowing it to have been stolen."- Now it appears to me just as reasonable to construe "the first clause" relative to all cases of Theft, in the same manner, as clause 4th of section IV has been done by the Magistrate and in that event every "Petty case of theft" should be cognizable by the Criminal Judge and not by the Magistrate; but as Regulations IX

IX and XI of 1816 have not been rev= =cinded, I cannot suppose such could be the intention of the legislature.-

7th By the Criminal Code of England receivers of stolen Property are, I believe, "in case of Petty Larceny" punish= =able only for a misdemeanor.- It appears therefore to me that in framing Regulation VI of 1822 for the guidance of the Courts of Circuits and Criminal Judges it was not the intention to deprive the Ma= =gistrate "of the power of punishment in all cases of Petty thefts when connected with that of receiving or purchasing stolen Property" but to lay down cer= =tain rules whereby such a crime might be punished by the several au= =thorities according to the degree of culpability in the offenders.-

8th I beg leave to add that under the literal interpretation put on this regulation by the Magistrate "every case of Petty theft when accompanied by a charge of stolen property being purchased or received," must come before me, should it be, but for "a brass Chembo, or a dubs' value of any other article;" even

ween, from Looney, which on a moderate calcula-
=tion cannot be less than 140 miles from the
Criminal Court.-

Masulipatam,-- / I have the honor to be &c.
Zilla Crim. Judges Court / Signed / G. F. Cherry.
5th November 1822. / Crim. Judge.

Extract from the Proceedings of the Assistant
Magistrate Dated 31st October 1822.-

Section IV clause IV Regulation VI
of 1822 providing for a severer punishment of the
receivers of stolen goods, than any authority was
authorised to inflict under any previous Regu-
=lation, and the section above alluded to not
referring to Magistrates but being restricted
to Criminal Judges, the Assistant Magistrate
thought it proper to forward this case to
the Criminal Judge tho' it otherwise comes under
the description of cases which are cognizable
by him.-

/ True Extract /
/ Signed / J. D. Newbolt
Asst. Magistrate

/ A true Copy /
/ Signed / G. F. Cherry.
Crim. Judge

To the Magistrate of Masulipatam
Sir,

Having received a case lately from
the Assistant Magistrate about a person who was
charged with purchasing a pair of Ear
rings valued at about 5 Rupees, and it
appearing to me, that a literal interpreta-
=tion of Regulation VI 1822, would lead to
much inconvenience to the public service,
as well as great hardship to Individual
Prosecutors, and witnesses, I have the honor
to forward Extract from my Proceedings
under date 2d November A.D. 1822, and
should it appear to you, that every
case of Persons charged with the crime
of receiving or purchasing stolen property
must be sent up to the Criminal Court,
without any exception whatsoever,
I have to request you will submit the
point for the decision of the Court
of Circuit.-

I have the honor to be &c.
/ Signed / G. F. Cherry
Criminal Judge.

Masulipatam Zillah
Criminal Judges Court
4th November 1822.

/ A true Copy /
/ Signed / G. F. Cherry
Criminal Judge.

Extract from the Proceedings of the
Criminal Judges' Court this 2d day
of November A.D. 1822.-

Read the Proceedings
held

held before the Assistant Magistrate of Maculipa=
=tam under date 31st October 1822 respecting the
case of Mulloosee Gopaulkistnamah- Prosecutor

versus.

1st Boeddoo Chintadoo, a boy of 10 years age-
2d Ankala Swamy about 13 years of age-
3d Nostuckee Daymulloo-

The 1st and 2d Prisoners, it would appear, were accused of having clandestinely stolen from a Table in the Sawady of the Prosecutors' house about the hour of 10 O'clock A.M. a purse containing a pair of Ear rings valued at about 5 Rupees. The 3d Prisoner is accused of having purchased the same from the Prisoners, knowing the property to have been stolen.-

The Assistant Magistrate considering that under the provisions of clause IV of section IV Regulation VI of 1822 receivers and purchasers of stolen Property are "only punishable by the Criminal Judge" has forwarded not only the receiver but the two culprits concerned in the Theft.-

The Criminal Judge is of opinion that the 1st and 2d Prisoners ought certainly to have been punished by the Assistant Magistrate, and the purchaser (if a notorious character or one who had been punished at any time before) might (if considered deserving of a severer punishment than what the Magistrate could inflict) be sent up to the Criminal Court; but when purchasers or receivers are not old offenders and not concerned very materially with public robbers or others charged with committing gross acts of Felony the Criminal Judge is of opinion that to forward every individual charged with receiving or purchasing stolen property, (when the amount might be very trifling and the price paid not much under the real value of the Articles) would be attended with great inconvenience to the Public service by taking up the Judges' time in investigating into the charge, and put many individuals to great expence in having to come from a distance and to wait at Court for the purpose of convicting the Prisoners.- In the present case the Criminal Judge having examined the Parties has sentenced the 1st and 2d Prisoners to receive 10 & 12 stripes each of a rattan, and the 3d Prisoner to imprisonment and labour for one Calendar month.-

Should the Magistrate be

be of opinion that under the provisions of Regulation VII 1802 "all cases of this nature without exception must be forwarded to the Criminal Court," the Criminal Judge hopes he will have the goodness to submit the case for the orders of the Court of Circuit together with copy of this Extract.-

/True extract/
/Signed/ Geo: F. Cherry
Criminal Judge.

/A true Copy/
/Signed/ Geo: F. Cherry
Criminal Judge.

To the Criminal Judge in the Zillah of Masulipatam

Sir,

I have the honor to acknowledge the receipt of your letter of 14th Instant with Extract of your Proceedings in a case "not cognizable under the existing Regulations by the Magistrate or his Assistant." In reply I beg leave respectfully to observe that I do not consider myself authorized to enter into any discussion with the Criminal Judge as to the merits of a regulation enacted by the Government.-

Should any doubt arise in your mind regarding the disposal of cases which may come before you it does not appear in my humble judgment to be the duty of the Magistrate to make the reference which you propose.-

Masulipatam -
5th November 1822.

I have the honor to be &c
/Signed/ W. F. Dare,
Magistrate

/A true Copy/
/Signed/ Geo: F. Cherry
Criminal Judge.

Court's Order 26th November 1822.

The point involved in the foregoing reference is whether or not the provisions of the clause above cited require, that every charge of knowingly receiving or buying stolen property should be brought before the Criminal Judge.-

2. The Court of Foujdaree Adaulut are of opinion, that where the purchaser or receiver may appear to be implicated only as an accessary in a petty theft punishable by the Magistrate under the provisions of Section XXXIII Regulation IX of 1816, and not a notorious or common receiver of stolen goods, the case is still cognizable by the Magistrate according to the general spirit of the Regulations, and that the provisions of Section IV Regulation VII of 1822 in no way affect the Jurisdiction of Magistrates under the provisions of Regulation IX of 1816, but apply exclusively to the cases

cases of persons brought before the Criminal Judge under the rules prescribed in Regulations IX and XI of 1816.-

Received the following letter from the Acting Judge on Circuit in the Southern Division.-

To the Register to the Court of
Zoujdaree Adalut
Fort St George.

Sir,

Para 1. I have the honor to request the instructions of the Court of Zoujdaree Adalut on the following subject.-

2. The orders of the Court of Zoujdaree Adalut under date the 9th of October 1820 declare that the situation of Cutwall is incompatible with the appointment of Ameen of Police, whether such Ameen be invested with the powers of head of a Village or of a Tasildar.-

3. Sections II and III of Regulation IV of 1821, authorise Magistrates to extend the powers of Ameens of Police and to select such number of competent Subordinate officers belonging to their District Establishments as may appear to them necessary to perform, in different parts of each Talook, the Police duties assigned to Tasildars and and other Head officers of Police by the sections of Regulation XI of 1816 quoted in the 3d Clause of Regulation IV 1821, and these officers are placed under the orders of the Tahsildars.-

4. According to the provisions of section XXIV Regulation XI A.D. 1816 Cutwalls however are still subject to the authority of Heads of Villages and it appears to me that in consequence thereof, the objection to their appointment either as Police Ameens or as the subordinate officers contemplated by section III Regulation IV 1821 has not been removed.-

5. I have been induced to make this reference in consequence of confessions in two cases on the Combaconum Calendar, appearing to have been taken by the Cutwall of Negapatam and upon pointing out, what I conceived to be an irregularity to the Acting Assistant Criminal Judge in charge, he was of opinion, that, the orders of the Court above alluded to had been superceded by Regulation IV of 1821.-

I have the honor to be &c.
/Signed/ John Bird
Act. Judge of Circuit

Combaconum -
18th January 1823

Sent the following letter-

To the Acting Judge on Circuit in the Southern Division

Sir,

I am directed by the Judges of the Foujdaree Udalut to acknowledge the receipt of your letter dated 18th Instant and to state that they entirely concur with you in opinion that with reference to the provisions of Section XXIV Regulation XI of 1816 persons holding the situation of Cutwall are ineligible to the office of Police Ameen; and that it is not competent to the Magistrates to assign to them the police functions referred to in clause first section III Regulation IV of 1821, the subordinate officers mentioned in that clause being those only who strictly speaking form part of the district police establishment.-

Foujdaree Udalut
Register's Office
25th January 1823

I have the honor to be &c
/signed/ W. Hudleston
Deputy Register

Received the following letter, from the 3d Judge of the Provincial Court in the Northern Division.-

To the Register of the Court of Sudder and Foujdaree Udalut
Fort St George.

Sir,

I have the honor to transmit copy of a letter which has been addressed to me by the Magistrate of Masulipatam, requesting me to obtain for him the opinion of the Judges of the Sudder and Foujdaree Udalut, as to what authority he is to apply, under clause first section II Regulation I A.D. 1823, for permission to defend, at the public expence, a suit which he expects to be instituted against him, for injury alleged to have been sustained in consequence of his official conduct.-

2. I am of opinion that the provisions of Regulation I of 1823 were not intended to apply to Civil suits instituted under section XLIII Regulation IX A.D. 1816; and that the Legislature contemplated the Magistrate defending such suits at his own expence.- The ground of this opinion is, that section VIII Regulation II A.D. 1810, does not declare the provisions contained in section III of Regulation III A.D. 1809 to be applicable to the investigation of Complaints referred for inquiry under the former Regulation.-

Masulipatam
8th March 1823

I have the honor to be, &c
/signed/ J.D. Sod.
3d Judge Residing

To the 3d Judge Presiding at the 1st Quarterly
Sessions of 1823

Masulipatam

Sir,

Para 1. Having received a letter from an European in the Honorable Company's Civil Service threatening to file a Civil suit against me for alleged injury sustained by him in consequence of my official conduct as Magistrate, it will I apprehend shortly become necessary for me to apply to higher authority for permission to defend the suit.—

2. Having some doubts as to what authority it is intended by clause second Section II Regulation I of 1823 that application should be made, I have the honour to request you will obtain for me the opinion of the Judges of the Sudder and Foujdaree Adawlut.—

3. I request also to be instructed, if or not, it will be necessary for me to submit with my application the whole of the Proceedings connected with the case, or merely to offer an explanation of such part of my conduct as gave rise to the complaint.—

I have the honor to be &c.

Masulipatam Magistrates Office, 2d March 1823.—

/ Signed / J. Lane.
Magistrate

/ True Copy / Signed / J. A. Lodd.
3d Judge, Presiding Sent

sent the following letter.

To the Third Judge of the Court of Circuit
in the Northern Division

Sir,

1. I am directed by the Judges of the Foujdaree Adawlut to acknowledge the receipt of your letter, dated 8th Ultimo, transmitting copy of a letter from the Magistrate of Masulipatam regarding the construction of Clause second Section II Regulation I of 1823.

2. With reference to the opinion expressed by you, that the provisions of Regulation I of 1823 were not intended to apply to suits instituted under Section XLIII Regulation IX of 1816, the Judges direct me to observe that the provisions of Regulation II of 1810 apply exclusively to charges of the nature described in Section IV Regulation III of 1809.—

3 Section XLIII Regulation IX of 1816 is an extension of the provisions of Section VII Regulation II of 1802, consequent upon the transfer of the functions of Magistrate to the Collector; and the Judges hold the provisions of Section III Regulation III of 1809 to have been, when in force, applicable to suits instituted under the provisions of both those enactments.—

The Judges being clearly of-

4

of opinion, that the provisions of Section II of Regulation I of 1823 apply to suits against a Magistrate for acts done in his official capacity, I desire that you will inform the Magistrate of Masulipatam, that according to their construction of clause second section II Regulation I of 1823 a reference should be made by him to the Government, under the circumstances stated in his letter, and that he must use his own discretion as to the form in which the circumstances of the case are to be laid before the Honorable the Governor in Council.

I have the honor to be &c.

Foujdaree Adalut,
Register's Office,
28th April 1823.

Signed/ W. Hudleston
Deputy Register

Extract from the Proceedings of the Foujdaree Adalut under date 26th May 1823.

Extract of a Letter from the 3d Judge late on Circuit in the Centre Division under date the 24th March 1823.

Para 1st

I have the honor to submit for the final decision of the Foujdaree Adalut case number 5 of the calendar of the Zillah of Cuddapah. In it a Mahummudan merchant named Hadie Khan prosecuted four persons for having burglariously entered and robbed his house of property of the great value of one thousand five hundred and ninety one Rupees.—

2.

The Gang that committed this robbery may from several circumstances be considered to consist of six persons. Five of those suspected were taken; but one escaped from the police before whom he is represented to have made a confession corroborating those first made by 1st Pri: Chenoogadoo and Goorooveegadoo 2d Pri: The number of prisoners tried before the Court of Circuit were four The two first the said Chenchoogadoo and Goorooveegadoo were convicted by the futwa of the Law officer and declared liable to the amputation of a limb. The two others Cumma Narsuppah and Nulla Ubbee were acquitted without reservation.—

Page 137.

Vide Calendar

3.

In the abstract, the grounds of commitment were "the first prisoner confesses and implicates the rest. The second confessed before the tuhsildar but denies here; 3d and 4th deny. Agreeably to the evidence some property was found on the prisoners and some was traced to them. 2nd Prisoner was formerly five years in prison. In proof of these grounds ten witnesses attended at the Sessions.—

4.

The Court of Circuit having found

found it prudent to call for the attendance of further evidence examined fifteen persons on the side of the prosecution. An extract of the proceedings of the Court of Circuit on the 27th of July will display how in respect to dates, some blemishes were found to exist in the record made in the police office. Among other dates that placed in the column of apprehension is not exact, for the prisoners had been some days (Ramdeng the duffadar says) deprived of their liberty before they were examined by the tuhsildar: and during the time of the tuhsildar having so delegated the duty in a manner that cannot well be reconciled to the ordinance, * investigation shall be completed within forty eight hours if posible, one of the confessing prisoners found means of escape.—

Page 145.

* Clause 4th Sec. XXVII Regulation XI A.D. 1816.

Page 89.

5.

As Dulla Sreenivas Row who now holds the office of head of Police in the talook of Budwhel had before in another instance caused much confusion by adopting an arraignment, during examination as the Head of Police in the Kudree district of a female for murder, that after being used by the Criminal Court was discovered to be wrong, the circumstance of his error in this instance was more particularly pointed out. The greatest error seems however to be the

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Pages 88 & 149.
Page 179.

the date he ascribed to the robbery in the report which he made to the Magistracy, at too late a season to fulfil the directions of Section XXV Regulation XI A.D. 1816. In his report to the Criminal Judge the Head of Police leaves out of the number of months that occurred since the robbery. In the Calendar of the Criminal Court the robbery is stated to have occurred on the 11th October 1821 but during trial before the Court of Circuit the real date was found to be the 20th October. The Head of Talook police in his report made for the month December some time in January to the Magistrate describes the robbery to have occurred on the 24th November 1821.—

6. Finally it is understood that the Head of talook police has acknowledged to the department, under whose superintendance he acted, that the date be ascribed for the robbery is erroneous. His report declared it was Kartigy Amavasee when the robbery happened; and the complaint by Muddoo Khan the son in law, the first received, to be the Seventeenth of December. He complains of the Prosecutor not

D° D°

not having made due report to the Police office; but the Head of Office of talook police and the house robbed, being in the same village he ought to have immediately gained intelligence of the robbery, and as instantly have dispatched officers to the house. It certainly was not politic for him to wait until the robbed attended at the cutcherry of police without putting the protective functions of government in full activity.—

7. The said report of the head of police to the Magistrate may not be altogether capacitated to convey adequate information for manifesting whether there was occasion for the exertion of the + greater powers entrusted to the Magistracy. Moreover whether the robbery happened on the 29th of October, as the prosecutor swears it did, or on the 24th November as the Police officer reported, the report for the month of December was too late a period for the intelligence of so great a robbery being first sent to the Magistrate. This duty had been evidently neglected in the monthly report of the appropriate month. That a great robbery had occurred ought to have been known even if the plundered house holder offered no written complaint at the Cutcherree. It is found by the Magistrates' report that on the 19th December the

+ Sec: XXI Regulation IX A.D. 1816.

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the complaint was not recorded. At present it affords signs, to use the words of Regulation IV A.D. 1821, of the knowledge of offences committed being at times liable to be concealed and suppressed by the Police officers of talooks.—

8. There cannot be a doubt it is thought of the guilt of Chen-choogadoo and Goorooneegadoo the first and second prisoners, who pleaded guilty before the Court of Circuit. They both at first discribed the number of the gang to have been six naming the same persons. The first still declares the two fugitive bards and Mulla Ubbee and Cummene Nanuppah to have formed the party, in like manner as he had before informed the Police and the Criminal Judge. Goorooneegadoo however, although he criminated the two before the police, changed the names before the Court of Circuit declared the gang consisted of five; omitted the name of Sunjeeneraj, one of the bards, who evince a consciousness of guilt by absconding; and substituted for Mulla Ubbee and Nanuppah, whom he first criminated, the

Pages 83 & 85.

the names of Moortee and Chundruppah the two old goldsmiths, who had appeared as the first and fifth witnesses against the prisoner.—

9. The Court sentences Chenchoogadoo to the stated punishment, which is to be pronounced in commutation, upon a sentence of amputation of a hand being declared under the Mohoommudan law. He therefore who does not appear a "notoriously bad character" has been sentenced to seven years imprisonment, and hard labour in irons, the said sentence being left subject to the confirmation of the higher Court. But the guilt of Goorooveegadoo appeared to greatly exceed that of Chensoo. Goorooveegadoo, who belongs to Regelcoonta a Budrukel village, from which robbers have too frequently issued, as was exemplified during the same sessions in No. 1 of the Supplemental Calendar, a case already referred, and by the noted Coorooppa Sunjeevoogadoo being hung in chains near it, is proved to have already evinced himself incorrigible by thirty six stripes and five years imprisonment and hard labour; a punishment that altogether may be said to equal that which on the standard of commutation the Court has pronounced on Chenchoo while even the punishment that has proved so ineffectual a correction of the Regelcoonta

Clause II Sec: II Reg: VII of 1822.

robber Goorooveegadoo, was rendered more weighty, on the principles of Clause five Section IV Regulation XV A.D. 1803, from the "example" made at the same time of several other associates: two of them being sentenced to fourteen years imprisonment. Goorooveegadoo punishment in that case seems to have been mitigated under the before mentioned clause too much to prove sufficient for the ends of public Justice, the amendment of himself and neighbours.—

10. Chenchoogadoo now represented Goorooveegadoo to have been one of the most active of this gang; and says Goorooveegadoo and Narapah were the two, who broke through the wall of the house, and entered in. Since the trial of this case the law has been modified by Regulation VII of 1822. the English copy of it reaching Chittoor on the 17th September. According to clause second Section II. of that law the guilt of Goorooveegadoo is specially declared to be of a sort that is greatly aggravated beyond that of Chensoo; because he Goorooveegadoo appears to have been "before convicted of" a "heinous crime." yet according to clause fifth as the burglary

burglary was "not accompanied with wounding" and so forth, the sentence which a Court of Circuit itself must under this law pronounce, would be equal, though the guilt to be condemned be so conspicuously unequal: but the prohibition against the "enhancement of penalties" except when the crime be "accompanied with wounding", without this clause proceeding on with the list of "aggravating" circumstances found in clause second, unto the words "or any of the prisoners concerned" shall appear to have been before convicted, and so forth, is directed solely to "the" "Courts of Circuit."—

11.

It would on reference to the old Law appear that Goorooneegadoo was in the first instance convicted of the offence defined in clause third section IV Regulation XV. A.D. 1803. so that if his present "repetition" of a great public wrong had amounted to such a crime, he would not only for the last offence, if it were taken singly, have been liable to thirty nine stripes and transportation, had the new law Regulation I of 1822 been promulgated: but under the old law have been subject for the "repetition" to a sentence of "transportation for life."

12.

The words "unaccompanied with any aggravating circumstances" in clause first section V Regulation XV. A.D. 1803 apply directly, it is thought to "simple theft," and are not meant to exclude burglaries with "aggravating circumstances", such as that great one of being done by a gang, from the restrictive force of that clause, the exception as to burglary being mentioned in clause second; and the present is but a case of burglary, although one of a very aggravated nature, because committed in preconcert by a gang, one of whom has before been convicted of a yet more heinous crime; and became a family, resting under the British Government, been reduced to ruin by the sudden loss of much wealth.—

13

If Goorooneegadoo had gone "forth with a gang" with or without any offensive weapon for committing robbery, but been apprehended before he "committed such," he, without even the circumstance of a former conviction for open violence, would have been subjected to equal punishment under clause fourth section IV of the same regulation; as his going forth and committing a robbery to this large amount

amount with the present gang, after forcing a way into the house of Sadir Khan: but the "intimidation" of clause first section III. is the only quality in which the guilt, although unaggravated by repetition, is less, than the gang robbery "committed without homicide, or personal injury or other act of aggravation" in clause third section IV. The assembling in a gang is a quality that under the principles of section III Regulation XV A.D. 1803 is acknowledged to qualify robbers for taking by "force" and "intimidation without the use of offensive weapons.-

4. Chensoogadoo appears to fully deserve to suffer, under the rule to maintain the uniform and adequate punishment of offenders when convicted according to the circumstances of the offence established against them," the full commutation of "seven years imprisonment in irons with hard labour: and it is thought that one uniform sentence on him and Goorooveegandoo might be inadequate for the guilt of the other- That between the punishment of transportation for life, enacted for the repetition of gang robbery with open violence without great personal injury; and seven years for the repetition or second offence being gang robbery, by secret violence to a dwelling house, attended with great injury after the first conviction was for gang robbery, with open violence, the difference would be too great and the last an example, that, like has formerly happened in respect to an equal penalty, would not prove sufficient for the ends of Justice.-

C. S. Sec. IV Reg. XV A.D. 1803.

C. 3 Sec. 6. Reg. XV A.D. 1803

5. I have therefore determined to make a reference on the matter; and I can handly imagine that in as much as his former guilt may have been more heinous, it should so far afford the greater opportunity for merciful treatment by his being, from the small variation in the natures of the two offences, so thoroughly extricated from the consequences of "repetition;" as to be regarded to be only subject to the same penalties as Chensoo, who can plead the extenuating circumstance of this being the first offence; and probably less activity in the commission of this wrong to Sadir Khan.-

Courts Order 26th May 1823.

2. The 3rd Judge in his letter, accompanying the trial adverts to certain of the provisions contained in Regulation VI of 1822, which, as the offence committed by the prisoners in this case occurred previously

previously to the enactment of that Regulation the Court of Foujdaree Adalut would not notice, excepting for the purpose of correcting two errors into which the 3d Judge appears to have fallen in regard to the construction of the provisions which he has cited.-

3 Clause second section II Regulation VI of 1822 enumerates among the circumstances of aggravation, which take cases of the nature described in the preceding clause out of the Jurisdiction of the Criminal Judge, that of "the prisoners or any of the prisoners" appearing "to have been before convicted of burglary, robbery, or other heinous crime.-

4 In such cases it is requisite, that "the whole of the prisoners who may appear "from the evidence adduced to have been concerned "in the offence," be committed for trial before the Court of Circuit.-

5. The Court of Foujdaree Adalut do not find in the provisions of the clause last mentioned any special declaration, as described in the 10th paragraph of the letter, accompanying the trial, that the guilt of a party before convicted is "of a sort greatly "aggravated" beyond that of a person convicted of a first offence, however morally true the observation may be; and it is certain that the provisions of section II Regulation VI of 1822 do not authorize, upon the ground, any enhancement of the penalties declared by the Regulations previously in force for burglary, not accompanied with wounding or other criminal act of violence.-

6. The provisions of clause sixth of the section have made an essential alteration in the Law by giving cognizance to the Criminal Judge of cases of house breaking and theft, "not attended "with any of the circumstances of aggravation specified in clause second." The legislature has, as above remarked, included among those circumstances of aggravation that of any of the prisoners having been before convicted of certain offences; and the case being so brought before the Court of Circuit must be disposed of according to the provisions enacted for the guidance of that Court. Viz. according to the Mohummudan Law with the modifications thereof contained in the Regulations.-

7. The present case falling within the provisions of clause first section V Regulation XV of 1803, should have been disposed of by the 3d Judge accordingly

accordingly; and the Court of Foujdaree Adalut is
conclude, that he would have disposed of it
but from an opinion, which is intimated at
the close of the 10th paragraph of his letter,
that the "prohibition against the enhancement
"of punities except when the crime be accom-
="panied with wounding" is limited to the
Court of Circuit.-

8. It appear to the Court of Foujdaree
Adalut to be manifest, that the prohibitary
enactment quoted by the 3d Judge applies as
well to the Court of Foujdaree Adalut, as to
the Courts of Circuit, it being only the first
part of the clause which is "directed solely"
"to the latter Courts."-

Extract from the Proceedings of the Foujdaree Adalut
under date the 31st May 1823.-

Read letter, dated 19th Instant,
from the Criminal Judge in the Zilla of Bellary.

Zilla Court of Bellary.
19th May 1823.-

To the Register to the Foujdaree Adawlut.
Madras.

Sir,

I have the honor to submit, copy
of a correspondence between the Magistrate of
this Zillah and myself, and feeling doubtful
of my authority to confine and try the person,
who has been sworn as a witness before me;
I solicit you will obtain the decision of the
Judges of the Court of Foujdaree Adawlut
on

Ballavanner.
1067.
1 Gowramah,
2 Chinnavaleh,
3 Venkah,
charged with stealing
property to the Amount
of 556 Rs 4 10 As sent
in by the Sirishtadar
of Adoni on the
2d May 1823

on this point, for my information.-

I have the honor to be &c.
(signed) S. Sibbetson
Criminal Judge.

Zillah Court of Bellary
13th May 1823.-

To the Magistrate in the Zilla of Bellary

Sir,

I have the honor to enclose you copy
of a Deposition of a person in this Court,
and am of opinion that he ought to have
been sent in as a Prisoner instead of a
Witness, he acknowledges that after he found
the stolen property in his House, he did
not acquaint the Circars-

I also send the man should you
think it necessary to commit him.-

I have the honor to be, &c
(signed) S. Sibbetson
Crim Judge.

13th May 1823.

To the Criminal Judge in the Zilla
of Bellary.

Sir,

In reply to your letter under
date this day, I have the honor to return
the person sent therewith, being of opinion
that, under the decision of the Superior
Courts, it is your province, not mine,
to commit or try him, I am not authorized
to interfere in cases sent direct to you
from the Talooks; and the Superior Courts
have decided that you can commit witness
sent

sent to you into Prisoners, if you see cause for the same.-

Court of the Magistrates in the Zillah of Bellary

I have the honor to be &c.
(signed) A.D. Campbell
Magistrate

Zillah Court of Bellary
14th May 1823.

To the Magistrate in the Zillah of Bellary

Sir,

I have the honor to acknowledge the receipt of your letter of the 13th May, returning the man Ramandee to you against whom there appeared from his deposition on oath as a witness, strong suspicion to believe him guilty of concealing the knowledge of stolen property being in his House from the Circar, after he knew it to be stolen property.-

You state also that "the Superior "Courts have decided that you can commit "witnesses sent to you into Prisoners, if you "see cause for the same.-

I beg to say that I do not recollect receiving any such instructions, especially in a similar case to the present, when the man was duly sworn, and you would oblige me by informing me the date of the instructions you allude to, as should there be such in this Court, they have escaped my immediate recollection.

I have the honor to be &c.
(signed) S. Robertson. C. Judge

16th May 1823.

To the Criminal Judge in the Zillah of Bellary.

Sir,

I have the honor to acknowledge the receipt of your letter under date the 14th Instant.-

The incidental remark alluded to by you, as to your power of committing witnesses to trial as prisoners, if you see reason to believe them implicated in the crime on which they come before you to give evidence, was suggested to me by a general recollection of the orders of the Superior Courts, on which I cannot at present lay my hands.- I conceive, however, that if sworn, it cannot be upon his own deposition that you can commit a Witness.- It must be on evidence independent thereof.- This, however, is a point on which my opinion is quite gratuitous; it is for you, and the Superior Courts, to decide in a matter having reference to the proceedings of the Criminal Court; with which a Magistrate has properly no concern.-

The principal object of my letter of the 13th Instant, was to point out to you the irregularity of your sending the witness in question to me.- The proceedings of the Foujdarry Court of the 28th February 1821, para 18 & 19, clearly decide that

that "the reference of cases by a Criminal Judge to the Magistrate is no where permitted by the "Regulations;" and I understand that it is your duty to dispose of every case which comes before you, even should it ramify out into new cases not to refer such matters to me.-

Court of the Magistrate I have the honor to be &c.
in the Zillah of Bellary. /signed/ A.D. Campbell.
Magistrate

Zilla Court of Bellary
17th May 1823.-

To the Magistrate in the Zillah
Sir, of Bellary

Para 1. In reply to your letter of the 16th May, relative to a person against whom I sent you information of his apparently being privy to a Theft. I beg to state before I refer the matter to the Foujdarry Adawlut, that I conceive it a case totally different from those I alluded to, in the 18th para of the Foujdarry Proceedings of the 28th February 1821.-

2. I refer no case to you, sent in to me, nor is there any obstruction of the administration of criminal Justice, as the case sent in to me is disposed of.-

3. This is a case of a person, who having been sworn in this Court, deposes to a matter in my opinion of such a nature as would on proof, subject him to stand a trial for concealing stolen property.-

4. Had he stated the same before me, and had not been sworn, I should certainly have placed him in the situation of a Prisoner, but his being sworn, precluded me from doing so.-

5. The only alternative that appeared to me, was to give you all the information in my power, that you might proceed against him, as against a recently discovered offender, and obtain evidence from the Talook, to prove that he did not discover to the Circar, or any of the Police, the stolen property he found in his house.-

6. I again repeat, that if he had not been sworn, I would not have referred to you, but that being the case, How can I proceed. In my opinion, I am only giving you, as any other person might, information that some one ought to take up.-

7. If, on this view of the case, you will cause an examination of the case, it will save a reference to Madras, especially as I do not think such proceedure would be at all infringing the orders of the Foujdarry Adawlut.-

I have the honor to be &c.
/signed/ J. Sibbetson
Circt Judge

18th May 1823

To the Criminal Judge in the Zillah of Bellary.

Sir,

I have the honor to acknowledge the receipt of your letter, under date the 17th Instant

In the case of Ballah Sawney No. 67 against Gowramah Vth for stealing property to the value of Rupees 556, sent direct to the Criminal Court on the 2d Instant, by the Serishtadar of Adoney, you on the 13th Instant transmitted to me the deposition of one of the witnesses forwarded in that case, and communicated to me your opinion, "that he ought to have been sent in as a Prisoner, instead of as a "Witness." At the same time, you also sent the Witness to me; lest I should "think it necessary "to commit him."

On the same day, I returned this Witness to you; "being of opinion that, under "the decision of the Superior Courts, it was your "province, not mine, to commit, or try him."

On the 14th Instant you requested me to state the date of the orders to which I thus alluded; and, on the 16th Instant, I referred you to those of the Zoydanny Adawlut, under date the 28th February 1822.

You now explain that you deem these orders inapplicable to the case in question; you admit that it merely in consequence of your having sworn this witness that you have referred his case to me; and you wish me to take up the matter against him, as a new case altogether.

I am of opinion that the case is one for your decision, not for mine. If a party implicated in a case sent before you by a Talook Officer is forwarded as a Witness, instead of as a Prisoner, it is for you, with reference to his Talook examination, to defer administering to him an Oath, until his examination before you, shews in what capacity he should properly stand. It is in this way alone that the errors of the Native Talook Officers in such cases can be corrected;- and I believe that an oath administered after an examination is over, as to its truth, will be found, both as regards Hindoos and Mussulmans, to be equally binding, as if administered before it is taken down in writing. Witnesses also often wish to correct inaccuracies, before they swear to their written evidence.

If, as in the present case, you have unfortunately sworn one of the participators in the crime as a Witness; and you find, by his own deposition before you, that he is a party in the crime, I will gladly aid you to

to try, or commit him, by procuring any further evidence which may be forthcoming against him.- But it is for you, not me, to point out and examine the same, & to commit, or try the man. The case is no new case; it is the same that was sent to you by the Aohom Christadar; and if he, from ignorance or design, has sent to you, as a witness, a man who is a party in the crime, it is for you, not me, to proceed against him.-

I will endeavour to procure evidence, should you desire it, to prove that the man you allude to "did not discover to "the Circar, or any of the Police, the stolen "property he found in his House" But it is unusual to call for proof of a negative; and the person in question, if examined a new, not on oath, will I fancy admit this, which would save all further evidence.-

It is true, however, to me, one party only, in a case which has gone from the Talooks direct to yourself, which you have examined, of which I am quite ignorant, and in which the accused ultimately must be forwarded to you for trial, or committal, is to employ usefully the time of the Magistracy; to obstruct the administration of Criminal justice, as alluded to by the Foujdaree Court;- and to refer cases from your Court to the Magistrate, which the Regulations no where permit.-

Under these considerations, I decline any personal examination into this case; but, if you wish it, I will endeavour to obtain for you any further evidence forthcoming in the taluks you may desire; on your communicating to me the names of the Witnesses required, on the specific points upon which new evidence is to be obtained.- I delay this, however, until I know whether you prefer referring the matter to Madras as proposed by you; or entering into an immediate investigation of the same; and whether in that event a new examination of the prisoner may not be deemed sufficient for this end, or other, and what evidence to facts affirmative, or negative, may be required by you.-

I have the honor to be &c.

Court of the Magistrate
in the Zillah of Bellary

/signed/ A.D. Campbell
Magistrate

/True Copies/
/signed/ S. Robertson
Crim[l] Judge.

Courts Order. 31st May 1823.

The question at issue &
between

between the Criminal Judge and the Magistrate in this case is whether or not it is competent to the former officer to proceed criminally against a party, sent into him by the Police Officer in the capacity of a witness.-

2. There does not appear to be any difference of opinion between these officers as to the inadmissibility of the deposition above mentioned as evidence against the party although any matter therein disclosed may legally be made use of for the purpose of obtaining valid evidence against him.-

3. The Court of Poydaree Adalut, having given full consideration to the whole of what is urged by the Magistrate in the above correspondence in support of his opinion, that it is the province of the Criminal Judge to proceed against, and to commit or try a person, sent to him as a witness in a criminal case and subsequently found to be implicated in the offence, are nevertheless of opinion, that the provisions of section VIII Regulation X of 1816 do not admit of such a proceeding; it being their construction of that section, that it does not allow of the Criminal Judge's extension of a criminal charge regularly brought before him to persons, other than those named in such charge, which would be to all intents and purposes tantamount to receiving a charge "not brought before him by a Magistrate or Police Officer under his authority".-

4. The orders of the Poydaree Adalut, cited by the Magistrate, which prohibit a Criminal Judge's referring cases to a Magistrate, apply only to cases regularly before the Criminal Judge; in a case circumstanced like that now under consideration it appears to the Poydaree Adalut, that the only course open to the Criminal Judge is to send the party to the Magistrate, in view to his originating criminal proceedings against him.-

5. The Criminal Judge states in his communications to the Magistrate, that had the individual referred to not been sworn he should have dealt with him as a prisoner; but even under these circumstances it would not, under the construction given by the Court to section VIII Regulation X of 1816, have been competent to him to do so.-

Extract from the Proceedings of the Poydaree Adalut under date the 19th June 1823.-

Read letter, dated 9th instant, from the 3d Judge of the Provincial Court of Circuit in the Centre Division, submitting copy of Chittoor Calendar 2d Quarterly Sessions A.D. 1823.-

In case No. 1 of the Calendar

the

the prisoner stood charged with stealing from a dwelling house property to the value of 412 rupees. The futwa declared the prisoner convicted of Saraka and liable to Sazeer, "And being barred "in consequence of the prisoners being allowed to "frequent the house of the prosecutor."-

2. The 3d. Judge assigns as a ground for not taking a second futwa on the case, that clause fifth section II Regulation VI of 1822 is not mentioned in clause second section III of that Regulation, under which the prisoner was committed for trial; and sentence of twenty stripes and five years imprisonment is stated to have been passed under the discretion allowed by clause fourth section II of the Regulation.-

3. Clause fifth section II Regulation VI of 1822 declares, that nothing in the preceding clause shall be construed "to authorize an "enhancement of the penalties declared by the "Regulations in force for burglary or theft when "not accompanied with wounding or other corpo"ral injury, nor with an attempt to commit "murder by strangling or other means, as des"cribed in clause third of this section."-

4. The rule contained in Section XIX Regulation I of 1802, that "one part of a Regula"tion is to be construed by another so that "the whole may stand," manifestly requires, that the passage in clause second section III "Regulation VI of 1822, which declares that the Criminal Judge shall commit for trial before the Court of Circuit any prisoners, who from certain circumstances therein specified "may appear to him deserving "of a severe punishment than the Criminal "Judge is authorized to inflict under the "following clauses of this section," should be regarded as parenthetical; because with any other reading the concluding words of clause second section III would declare the persons, described in that passage, to be liable to an enhancement of punishment, expressly prohibited by clause fifth section II of the Regulation.-

5. The case of the prisoner in No. 1 of the Calendar coming within the scope of the provisions of clause fourth section II Regulation XV of 1803, the Court direct, that the 3d. Judge be by precept required to proceed in the mode therein prescribed, and revise the sentence accordingly.-

6. The Court deem it also to be proper to circulate to the four Provincial Courts of Circuit their orders on this case, as conveying their construction of clause second section III Regulation VI of 1822.-

Extract from the Proceedings of the Foujdaree Adawlut under date the 18th September 1823.-

Read return, dated 3d. Instant, from the Third Judge late on Circuit in the Centre Division.-

Para 1st. The instructions contained in

in the 3d and 4th paragraphs of the proceedings &
being circular have been sent through the Provincial
Court of Circuit to all the Magistrates and therefore
were not sent by the 3d Judge to the Magistrate of
Ballaree in this instance.-

2. The return of the Magistrate to the
instructions contained in the former part of the
proceedings is now forwarded. The copy of the
return mentioned therein having been introduced
into the Appendix of the report together with
the translate of a Mahratta paper transmitted
by the Magistrate, as the copy of orders issued
to the Heads of talook police, the said copy &
of return is not now sent.-

3. The Magistrate seems to ground
an argument on the tahsildars "investigating
cases of petty theft generally" and observes
that he is "ignorant of what may be the inten-
tion of Government in a law which seems
to admit of two very different constructions".
The only two constructions seem to the Judge
on Circuit to be that the tahsildar under
that rule, which is not the one by which
they received an authority to investigate petty
thefts generally, can either punish cases of
"petty theft" Vide Vide where the value of the
thing stolen shall not exceed five Madras
rupees or refer the papers of that, very descrip-
tion of cases to the Magistrate, if the punish-
ment appears inadequate.-

4. "Investigating under the authority
vested

vested in him by this section" to wit the
authority in clause first of the section is
an expression that has, as will be seen
in the correspondence in the appendix, &
been repeatedly brought to the notice of
the Magistrate of the Zillah of Ballaree;
and there is some difficulty in account-
-ing for the Magistrate who is an able
grammarian not being sensible of the
restrictive nature of such an expression.-

5 Given under my hand and the
seal of the Court, this third day of &
September, in the year of our Lord, &
one thousand eight hundred and twenty
three.-

(Signed) Tho.s Newnham
3d Judge of Circuit

Bangalore Cutcherry
Second Sessions 1822.
No. 39 on the Calendar

L.S.

To the Magistrate in the Zillah of
Bellarie.

Herewith you will receive
an extract from the Proceedings of the Court,
under this date, and to the exigence therein
contained; you are directed to conform-

Given under my hand and
the seal of the Court, this fifteenth day of
August in the year of our Lord one thousand
eight hundred and twenty three.-

(Signed) Tho.s Newnham
3d Judge
Extract

Extract from the Proceedings of the Court of Circuit for the Centre Division under date the 15th August 1823.-

Read again Proceedings of the Tonjadare Adalut on the 26th July 1823 in case No. 39 of the Bellare Calendar.-

The said order requires the third Judge late on Circuit to communicate to the Magistrate the disapproval of the Tonjadare Adalut of the order of the Magistrate by which he causes cases of theft where the property stolen exceed five Madras Rupees and do not exceed twenty rupees to be kept at the Cutcheries of the tahsildars or ex officio Heads of District police.-

Ordered, that extract of these proceedings be together with an extract of the proceedings of the Tonjadare Adalut sent to the Magistrate of the Zilla of Bellary with precept requiring conformity to the exigence thereof and that return be made without delay.-

/A true extract/
/Signed/ Thomas Dawnham.
3d Judge.

Return

L.S.

In reply to this precept, the Magistrate in the Zilla of Bellare returns, that he has issued orders to the heads of district police in his Zilla, cancelling the interpretation given by him to section IV of Regulation IV 1821, and explaining it, as stated in the proceedings of the Tonjadare Court, under date the 26th July 1823.-

From these proceedings, it does not appear that the Tonjadare Court had before them any information respecting the interpretation given to the above law by the Magistrate, except what is contained in a note upon a letter of the Circuit Judge. The Magistrate, therefore, annexes to this return copy of a return made by him under date the 22d October last to that officer - in which his interpretation of the above law is given, with a request that, if not approved, it might be referred to the Tonjadare Court for decision.-

With deference, the Magistrate submits, that there is no restriction whatever imposed, by the law in question, as to the "cases of petty theft" which the Heads of district police are thereby empowered "to hear and determine". The restriction is confined to the punishment alone.- They are allowed, on conviction, to punish, of their own authority, such thefts only as do not exceed five Rupees, and a defined punishment is directed to be inflicted in such cases. But where, (as they are specially empowered) they investigate cases of petty theft" generally; and this

this punishment does not appear adequate to the offence committed, they are directed to refrain from punishment altogether, and to refer the case to the Magistrate for his orders. The Magistrate conceives that clauses second and third of the section alluded to refer, not exclusively to cases of petty theft under five rupees, which alone by the latter part of clause first, heads of district police are restricted to punish; but to the "cases of petty theft" generally which by the previous part of that clause, they are authorized "to hear and determine."-

The Magistrate has obeyed the orders he has received. But he thinks that the law clearly admits of the construction he has given it; and, as it will exempt the parties in all cases of petty theft, from the great inconvenience, loss, and injury of being sent to him; except where, by a previous report of the local police, the case may be deemed by him of sufficient importance to justify personal inquiry by a European officer, whilst the orders now received direct the parties in every case of theft exceeding five rupees however simple in itself, and unattended by any peculiar circumstances to be forwarded to him, he conceives it well worth the consideration of the Zoojdaree Court, whether the Regulation will not clearly bear the construction he had given it; and whether, as to practical good, it would not be preferable to adopt it, in preference to the interpretation which they have put upon it.-

Ignorant what may have been the intention of Government, in a law which seems to admit of two very different constructions, the Magistrate thinks the point worthy of reference to the highest authority; as involving a general question highly interesting to the internal good Government of the provinces.-

The Magistrate begs that the Circuit Court, will submit this return to the Court of Zoojdaree Adalut.-

Given under my hand and the seal of the Court, this twenty seventh day of August in the year of our Lord one thousand eight hundred and twenty three at Ahmuntapoor.-

/signed/ A. D. Campbell
Magistrate

/A true Copy/
/signed/ Thos. Newnham
3d Judge of Circuit.

Courts Order 18th September 1823

With the foregoing return the 3d Judge submits a communication from the Magistrate, wherein that officer argues, that by section IV Regulation IV of 1821

no

no restriction whatever is imposed "as to the cases "of petty theft, which the Heads of district police "are thereby empowered to hear and determine." That "the restriction is confined to punishment alone."- and that "clauses second and third of the section "refer not exclusively to cases of petty theft "under five rupees, which alone by the latter "part of clause first heads of district police "are restricted to punish but to cases of petty "theft generally, which by the previous part "of that clause they are authorized to hear and "determine."-

2. To the Court of Foujdarree Adalut it appears perfectly clear, that the course of proceeding sanctioned by clause second section IV Regulation IV of 1821 is applicable only to cases of theft, "when the value of the property "stolen shall not exceed five rupees." It is only when "a Head of district police investi= =gating under the authority vested in him by "this section, shall be of opinion that the "punishment which he is empowered to inflict "is not adequate to the offence committed," that he is to report the case to the Magistrate and await his orders: and under clause first of the section the Head of police is "empowered to inflict" punishment only for theft of property not exceeding five rupees. The reference in the Magistrates' circular order to Regula= =tion XI of 1816 the Court of Foujdaree Adalut do not understand; nothing, however, can be more clear than that Clause second Section IV Regulation IV of 1821 has no relation to any previous Regulation.-

3 The distinction which the Magistrate attempts to draw between cases of petty theft, which Heads of district police are empowered to "hear and determine," and those in which they have authority to punish, appears to the Court of Foujdaree Adalut to be altogether inadmissible. Such a distinction could in the opinion of the Court be deduced only from a very forced construction of the words of Clause first of the section; but the two clauses interpreted by each other manifestly limit the power to hear and determine, as well as the power to punish, to the same class of offences.-

Received the following letter.

To the Register of the Sudder
Foujdarry Adawlut
Fort Saint George.

Sir,

The Sudder Court having been pleased to order the release of the prisoners in Case No. 7 of the Chingleput Calendar

Calendar 1st Session 1823 under the latitude afforded by a sentence of Zokoobut, I take the liberty to request you will inform me whether the powers of the Circuit Judge are considered to extend to the exercise of a similar discretion, according to the merits of the case which may come before him, under a sentence of Zokoobut given by the law Officer present at the trial of Prisoner coming before the Court of Circuit.-

Chittoor - - -
10th September 1823.

I have the honor to be &c.
(signed) W. Brown. 2d Judge

sent the following letter-

To the second Judge of the Provincial Court of Circuit in the Centre Division

Sir,

I am directed by the Judges of the Foujdaree Adalut to acknowledge the receipt of your letter, dated 10th Instant, requesting to be informed whether it is competent to a Judge of Circuit to direct the release of a prisoner, declared by the futwa delivered on his trial to be liable to Zokoobut.-

2. The provisions of Section XXII of Regulation VII of 1802, which require a reference to the Court of Foujdaree Adalut in all cases wherein the Judge of Circuit may disapprove of the futwa, and the provisions contained in Section II Regulation XV of 1803 relative to futwas of discretionary punishment appear to to the Judges of the Foujdaree Adalut to leave it open to a Judge of Circuit to order the release of a prisoner, against whom a futwa of Zokoobut may have been given, only in cases wherein the offence may neither have been specially provided for by any regulation nor by any stated penalty in the Mohummedan Law, and the Judge of Circuit, concurring in the futwa, may consider that the imprisonment already undergone suffices for the punishment of the prisoners.-

Foujdaree Adalut,
Register's Office,
15th September 1823.

I have the honor to be &c.
(signed) W. Hudleston
Deputy Register

Extract from the Proceedings of the Foujdaree Adalut under date the 12th November 1823.-

Extract of a letter from the 2d Judge late on Circuit in the Northern Division dated 27th October 1823.-

Whether the proceedings of the 10 different Magistrates be or be not conducted conformably to the Regulations, the Judge on Circuit has no opportunity of knowing, or if he had, it has been determined by the Judges of the Foujdaree Court that he has no right to disturb them.- I received a Petition when at Vellore from a Mussulmaun praying to be relieved from

from a fine of 50 Rupees, which he said had been illegally levied by the Magistrate of Guntoor, but when his proceedings were called for, the reply was that he had not recorded any of them.- It was im= =possible therefore for me to know whether the amount of the fine had been proportioned to the offence; or to afford relief if had appeared to be too exorbitant.- Magistrates may punish in any way they please without its ever coming to the knowledge of the Judge on Circuit, provided they take care to have the cases entered in the Calendar according to the Regulations.- But sometimes an oversight in drawing this out, exposes irregularities such as fining for theft, and punishing a prisoner with a dozen strokes of a rattan.- The first of these may be corrected, but the last is irremediable.-

Court's Order 12th November 1823.

6. The observations of the 2d Judge in the 10th paragraph upon the rule laid down by the Foujdaree Adalut in regard to the authority of a Judge of Circuit to overrule the decisions of a Magistrate do not strictly accord with the orders of the Court under date 4th April 1823, referred to in this part of the report.-

7. The Court are of opinion that by the provisions of Regulation IV of 1825 the authority of a Judge on Circuit to proceed on petitions against the orders of a Magistrate on cases legally determinable by him is confined in the first instance to a reference for explanation, and that when acts unauthorized by or in violation of the express enactments of the law may appear from the Magistrate's own showing to have been committed, it is the duty of the Judge on Circuit to refer the case to the Court of Foujdaree Adalut and suspend the operation of any penal sentence unwarranted by Law pending such reference.-

8. Upon the reply which the Magistrate of Guntoor is stated to have given to the 2d Judge's call on him for his proceedings, "that he had not recorded any of them," which the 2d Judge observes rendered it impossible for him to know whether the amount of the fine had been proportioned to the offence, or to afford relief if it had appeared to be too exorbitant," the Court of Foujdaree Adalut must remark that the Magistrate would appear to have disregarded their instructions of 4th April 1823, wherein was pointed out the necessity of keeping a written record of complaints preferred and of the orders passed upon them; to those instructions, therefore, the Court desire that the attention of this officer be again particularly directed.-

Received the following letter from the Criminal Judge in the Zilla of Nellore.

To

To the Register to the Court of Foujdaree Adaulut
Fort St. George

Sir,

I have the honor to acknowledge the receipt of your Deputy's letter of the 24th Ultimo, and attho' I fear that I may be deemed to be troublesome in again addressing you on the subject to which it refers, I feel that in my present state of uncertainty I should experience difficulty in awarding punish=ment in cases which might come before me, and I therefore rely on the indulgence of the Judges of the Foujdaree Adaulut in once more permitting the question to be submitted for their consideration.

The Judges of the Court of Foujdaree Adaulut in the foregoing letter have expressed an opi=nion that where a Prisoner might be convicted before a Criminal Judge of two or more petty thefts, neither of which might have been attended with any of the circumstances of aggravation spe=cified in clause fourth Section III Regulation VI of 1822, he could not be legally sentenced to a punishment exceeding the limitations prescribed in Section VII Regulation X of 1816, but would be considered by the Judges to be a fit object for commitment for trial before the Court of Circuit under the general provision contained in the latter part of clause second Section III of the former Regulations.

It is I suppose to be concluded that the reason why a prisoner who had been guilty of these petty acts of theft should be committed for trial before the Court of Circuit is that the frequent repetition of crimes would bring him under the description of a person of notoriously bad character, and that he therefore ought to receive a greater punishment for his acts than the Criminal Judge would be able to inflict under Section VII Regulation X of 1816.

I would however beg to submit whether his being brought un=der the clafs of persons of notorious=ly bad character who ought to receive a greater punishment than that allowed by Section VII Regulation X of 1816 would be a circumstance that would render it imperative in a Criminal Judge to commit a Prisoner for trial before the Court of Circuit for attho' clause fourth Section III Regulation VI of 1822 in spe=cifying the circumstances of aggravation which shall authorize a Criminal Judge to

to avail himself of the extended powers of punishment thereby vested in him, makes no mention of notoriously bad character, clause second of that section particularly includes it, and states that the commitment for trial before the Court of Circuit shall only be in cases in which the Criminal Judge shall consider the Prisoner to be deserving of a severer punishment than what under the following clauses of the section he is authorized to inflict.-

I would further beg to submit as both clauses second and fourth of the mentioned Regulation specify that a previous conviction of theft &c. renders a prisoner liable to the extended punishment which a Criminal Judge under section fourth is empowered to award, whether, in case a prisoner should be charged with having committed several petty thefts at different times, the conviction on the first charge might not in awarding the measure of punishment on the second or other charges be fairly taken as a previous conviction, and whether a sentence of punishment awarded upon them exceeding the limits prescribed by section VII Regulation X of 1816 would not be in strict conformity with the spirit as well as with the letter of the Law.-

With reference to the letter from the Deputy Register of the Zoydaree Adalut. under date the 5th Instant. I would further beg to be informed, supposing that it is not incumbent upon me to commit a prisoner who has been guilty of a number of petty thefts for trial before the Court of Circuit, but even that the measure of punishment to be awarded on the whole is not to be allowed collectively to exceed what is specified by section VII Regulation X of 1816, how the punishment

punishment ought properly to be adjudged; since I can not completely comprehend the meaning of the opinion expressed in the latter part of that letter, that a Prisoner ought not to be sen=tenced twice to punishment.—

The principal object which the Government had in view in enacting Regulation VI of 1822 having been to relieve prosecutors and witnesses from the great distress and inconvenience of being compelled repeatedly to attend before the Courts in the trial of Prisoners I would certainly feel inclined on all occasions that I might consider that I was legally authorized to do so, and I might think the punishment adequate to the crime, to avail myself of the extended powers reposed in me by that Regulation to prevent the Prosecutors & witnesses from being again harrassed by being compelled to appear before the Court of Circuit. By far the large portion of criminals who are brought before me come from the Guntoor Zilla mostly from the distance of from 160 to 190 miles from the Court, and it is impossible that I should not be averse unnecessarily to compel the Prosecutors and witnesses who have appeared be=fore me again to undertake so long and vexatious a journey from their Families for the purpose of attending the prosecution of the Prisoners before the Court of Circuit. I however beg to assure the Judges of the Sudder Adalut that not even this consideration would induce me to punish a Prisoner whom I thought it was obligatory in me to commit for trial; least of all should I ever be induced to adopt such a course for the sake of my own convenience, which as the defence of the Prisoner must in addition to the evidence

evidence on the part of the Prosecution be in the first place fully entered into by me, could not possibly be promoted by such procedure- All that I desire is to comprehend what is my positive duty, & according to it it will at all times my endeavour to act.-

While on the subject I would beg to be informed whether the words "all cases of cattle stealing mentioned in clause fourth Section III Regulation VI would mean to imply that charges of this description of crime whatever may be their extent must of necessity be punished by the Criminal Judge, or whether he be at liberty to commit prisoners for trial before the Circuit Court for such crimes where he may consider the punishment he is permitted to award to be inadequate for the offence.-

Clause sixth Section II & clause fourth Section IV Regulation VI of 1822 state that previously to awarding the extended punishment a Criminal Judge shall enter into an examination of the defence of the Prisoners.-

Clause

Clause IV Section III of that Regulation does not however prescribe this preliminary I should however imagine that the omission has been accidental, & that it would be equally incumbent in a Criminal Judge to take the evidence in the one as in the other cases.- On this point however would beg that I might also be favored with the sentiments of the Judges of the Foujdarry Adalut.-

I have the honor to be &c

Zilla Court Nellore
14th December 1823

(Signed) H. Dickinson
Crim. Judge

But the following letter.-

To the Criminal Judge in the Zillah of Nellore.

Sir,

1 I am directed by the Judges of the Foujdarry Adalut to acknowledge the receipt of your letter, dated 4th Instant.-

2 The Judges are of opinion, that the provisions of clause fourth Section III Regulation VI of 1822 must be construed strictly, and that in cases of simple theft it is not competent to a Criminal Judge to exercise the extended powers thereby vested in him, unless under the specific

circumstances

circumstances of aggravation therein mentioned;
and that a Prisoner who may be brought before
the Criminal Judge, charged at the same time
with several petty thefts, committed at different
times, cannot, if convicted on the first charge
be punished on the second, as a person, who
had been "before convicted" of theft &c., &c.,
within the intendment of clause fourth Sec=
=tion III Regulation VI of 1822.-

3 In reply to your question, founded on my letter of
5th Ultimo, as to how the punishment ought properly to
be adjudged, when a Prisoner has been guilty of a num=
=ber of petty thefts, & may not be committed for trial
before the Court of Circuit, the Judges of the Foujdaree Adalut
direct me to state, that in such a case, if sentence of punish=
=ment to the extent allowed by Section VII Regulation X of
1816 may have been passed on one charge, no punishment
can be awarded on the others. The sentiments of the
Judges, regarding the propriety of commitment for
trial in such cases, remain unaltered.-

4. The Judges consider that part of clause fourth
Section III Regulation VI of 1822, which relates to cattle
stealing to be subject to the general provision, contained
in the latter part of clause second of the section, autho=
=rizing commitment for trial, whenever the Criminal Judge
may deem the punishment adjudicable by him to be insufficient

5. With reference to the concluding observation in your
latter the Judges direct me to state, that in their opinion it
is incumbent on a Criminal Judge in all cases decided by
him to hear any evidence, which the prisoner may have
to offer in his defence.-

Foujdaree Adalut }
Register's Office 15th December 1823. } I have the honor to be &c.
(signed) W. Hudleston. Dep. Register

Sent following letter.-

To the Secretary to Government in the
Judicial Department

Sir,

1 I am directed by the Judges of the Sudder
Foujdaree Adalut to acknowledge the receipt of
your letter, (No. 2) dated 2d Instant, trans=
=mitting an extract from the Minutes of
Consultation of the same date.-

2. The Judges direct me to annex
for the purpose of being laid before the
Honorable the Governor in Council copy of
a circular letter, addressed by their order
to the Judges of the four Provincial Courts of
Circuit, accompanied by a copy of the
whole of the foregoing Extract from the
minutes of Consultation, with the exception
of that paragraph, which has reference
to the construction of Section LV Regulation
XI of 1816; regarding which the Judges
respectfully beg leave to submit the following
observations for the consideration of the
Honorable the Governor in Council.-

3. It appears to the Judges, that the
provisions of Section LV Regulation XI of
1816, viewed in connection with the pro=
=visions of Regulation III of 1817, will
scarcely admit of a construction, under
which the Foujdaree Adalut could direct
the Magistrates to order their police
Officers to comply with certain requisi=
=tions from the Criminal Judge, and
the

the Court of Circuit: but admitting it to have been the intention of the Legislature to allow such a latitude of interpretation, the Judges beg permission to submit, that as the Court of Foujdaree Udalut have repeatedly ruled in their orders to the Subordinate Courts, that the provisions of Section LV Regulation XI of 1816 do not allow of any direct requisition from the Criminal Judge to a Police Officer, the most eligible mode of giving effect to the intentions of the Honorable the Governor in Council in this respect will be the enactment of a provision, authorizing the Courts of Circuit and of Quarterly Sessions, and the Criminal Judge, to call upon the Heads of police for further evidence, or information, in criminal cases under investigation.-

4. A provision to this effect might in the opinion of the Judges be conveniently introduced into the Regulation, referred for their consideration in your letter, (No 5) dated 6th Instant.-

I have the honor to be &c
(signed) W. Hudleston
Register

Foujdaree Udalut,
Register's Office,
30th January 1824.

Extract from the Proceedings of the Foujdaree Udalut under date the 12th May 1824.-

Read letter, dated 23d Ultimo from the 2d Judge of the Provincial Court of Circuit in the Northern Division,- submitting copy of Calendar of persons punished by the Assistant Magistrate of Masulipatam and of his proceedings thereon dated 7th Ultimo.-

Extract from the Proceedings of the Court of 1st Quarterly Sessions of 1824, dated 6th April 1824.-

Remarks on the Calendar of persons punished by the Assistant Magistrate in the Zilla of Masulipatam.-

By the Records which accompanied the Calendar of persons punished by the Assistant Magistrate, it appears that Coortyuenty Kroostniah the Police Ameen of Ellore, in his Arzee dated 19th September 1823, informed the Magistrate that agreeably to an order dated 24th January A.D. 1823, he had forwarded the case of the prisoners in No 1, and sent the 2d Prisoner, but the 1st Prisoner having been before flogged for Theft, he was detained until the orders of the Assistant Magistrate should be received, because the punishment which the Police Ameen was empowered to inflict was not adequate to the offence committed.- On the 22d September 1823, the Ameen was ordered to send the Prisoner to Masulipatam, on the 23d he was forwarded, and

and on the 1st October, the Assistant Magistrate adjudged the 1st Prisoner to receive 12 stripes and released the other.- The sentence was passed on the police proceedings only.- Clause second section IV, Regulation IV of 1821, under which the prisoners appear to have been sent to the Assistant Magistrate by the Police Officer D directs that "whenever a Head of District Police investigating under the authority vested in him by this section, shall be of opinion, that punishment which he is empowered to inflict is not adequate to the offence committed, he shall report the case to the Magistrate for his final orders and the Magistrate D shall at his discretion, either issue his orders in writing to the Head of District Police to inflict such punishment as the Magistrate may deem sufficient, or shall order the Head of District Police to forward the parties and witnesses to him for further Examination."- It cannot be discovered from the Record whether any D witnesses accompanied the Parties, but it is evident that the Assistant Magistrate did not enter into any "further investigation" for he has sentenced the 1st Prisoner to receive 12 stripes on the Proceedings of the Police D Officer, to which he has simply affixed his initials J. D. N.- The Assistant Magistrate has therefore acted contrary to the provisions of the Regulation above quoted, if he considered the case cognizable by himself, and has further erred, in the opinion of the 2d Judge, in directing the Police Officer to send the Prisoners to his Office.- Section IV and its clauses of Regulation IV of 1821, do not appear to be clearly understood.- The Police Ameen says in his Arzee, which accompanied the Proceedings in this case that in obedience to the orders of the Magistrate under date 24th of January 1823, he had sent the Prisoner to him: because the crime committed merited a severer punishment than he was empowered to inflict, as if all cases of this D nature were to be sent in the first D instance to the Magistrates Office. This is not the intention of that enactment which means only that such persons as deserve a heavier punishment D than an Officer of Police can inflict, but whose guilt comes with in the scope of the Magistrates authority to punish, should be sent direct to him. The clauses of Section XXVII of Regulation XI of 1816, direct that "upon a complaint being

being made to a Tahsildar of any murder, robbery, House breaking, Theft of a considerable amount or attended with aggravating circumstances &c &c, He (the Tahsildar) shall forward his proceedings with the Prisoner and witnesses to the Criminal Judge of the Zilla." The Prisoner therefore in this case should have been sent direct to the Criminal Judge, for having been previously punished for Theft (no matter by whose authority so it was legally inflicted) the case was "aggravated" by the repetition and the prisoner came under the denomination of persons of "notoriously bad character." In conviction of Offenders of this class the Criminal Judge would have passed the sentence denounced by the different clauses of Section IV, Regulation VII of 1822.-

If as in the present instance persons of notoriously bad character were to be sent down to the Magistrate under Section IV, Regulation IV of 1821, and punished only with 15 stripes, because the Head of District Police was authorized to give no more than 6, the provisions of Regulation XI of 1816, and of VII of 1822, would be reduced almost to a Dead Letter.-

The Prisoner in No 2 sent up by Canakah Ramakrishnamah the Police Ameen of Masulipatam is also described as having been formerly punished and has been sentenced to 15 days imprisonment by the Assistant Magistrate on the police proceedings alone, no separate examination having taken place before that Officer.- This Prisoner in the opinion of the 2d Judge, deserved a heavier punishment than the Magistrate is empowered to inflict.- Having been formerly punished for theft, the present case is aggravated by repetition, and he should have been sent to the Criminal Judge in the first instance. Fifteen days imprisonment is a very inadequate punishment for a notorious Thief.-

In No 3, the Prisoner was charged with having stolen a Brass Pot valued at 6 Rupees and sent by Canakah Ramakrishnamah the Police Ameen of Masulipatam.- The Assistant Magistrate sentenced him to receive 7 Rattans on the proceedings held before the Police Officer.- No separate Investigation entered into, the Initials J.D.N. only appearing on the face of the Record. This is directly contrary to the provisions of Clause second, Section IV, Regulation IV of 1821, and of Section XXVII, Regulation XI of 1816.-

Courts

Courts Order. 12th May 1824.-

1 From the proceedings of the 2d Judge which accompany the foregoing letter it appears that the Assistant Magistrate has irregularly and illegally disposed of several cases entered in the Calendar, wherein the prisoners were forwarded to him by the Police Officer under the provi= =sions of clause second section IV Regulation IV of 1821, sentencing the prisoners to punishment merely on the proceedings, which had been held by the Police Officer, without holding any personal investigation; and it would also appear that the provisions in question have been applied to cases, wherein the amount of property stolen exceeded five rupees, and the prisoners were persons of notoriously bad character.-

2. The Court of Foujdaree Udalut concur generally in the observations recorded by the 2d Judge in his proceedings on these cases, but referring to his remark that it is the intention of section IV Regulation IV of 1821, "that such persons "as deserve a heavier punishment than an Officer "of police can inflict but whose guilt comes "within the scope of the Magistrates' authority "to punish, should be sent direct to him," the Court have to observe that the provisions of the section in question apply solely & exclusively to the particular cases, which are by the 1st clause thereof rendered cognizable by a Head of police, and that other cases which it is com= =petent to a Magistrate to hear and determine under the provisions of sections XXXII and XXXIII Regulation IX of 1816 are referrible by the Police Officers to the Magistrate, who is bound to proceed thereon in the mode prescribed by section XXIV of that Regulation, excepting only that the examinations held by him are not under the provisions of clause second section VII Regulation IV of 1821 required to be taken down in writing.-

3. The Regulations have not limited by the specification of any pre= =cise amount the cases of petty theft cognizable by a Magistrate under the provisions of section XXXIII Regulation IX of 1816; the description, however, given in that section of the persons punishable by the Magistrate clearly exclude from his Jurisdiction thefts committed by any, who have been repeatedly convicted of that crime; and by general analogy of Law the cognizance of any cases which with reference either to the value or the par= =ticular description of the property stolen have been made specially cognizable by the Criminal Judge must be taken to be incompetent to the Magistrate; such are cases of cattle stealing;-

The

4. The Court of Sudder Udalut do conclude, that the order of the Magistrate to the officer of police dated 14th January 1823, cited in the proceedings of the 2d Judge, has been recalled agreeably to his directions, as appearing to be manifestly at variance with the provisions of Section XXVII Regulation XI of 1816.

Received the following letter.

Provincial Court of Appeal Western Division.

To the Register to the Sudr Udalut

Sir,

Para 1st I am directed to transmit to you, for the consideration and orders of the Court of Sudder Udalut, the annexed copies of a correspondence which has passed between the Judges of the Provincial Court of Appeal and the Register in charge Zillah Malabar regarding the construction of certain of the provisions of Regulation IX of 1822

2d The first question submitted by the Register in charge, & which arose out of a correspondence with the Principal Collector, was whether the Collector is competent to send to the Zillah Judge for confinement a person fined by him under the provisions of clause Fourth Section V of that Regulation; & if so, whether the Civil prison or the common Gaol should be the place of confinement. This having been answered in the affirmative; the Register in reply explained the grounds of his dissent from the opinion of the Court, and submitted the question again for their further consideration; as also another which had grown out of a subsequent motion on the part of the Principal Collector, viz.t, whether persons sent by Collectors to Zillah Judges under clause second Section XIII (of the same Regulation) for confinement, are to be thrown into the common Jail or secured in the Civil prison. One of the objections urged by the Register to the opinion of the Court on the former question, was, that the judgment (by a Collector) under clause Fourth Section V for offences of the 4th & 5th of the clases specified in clause second Section II appeared to him to be final and conclusive; whereas offences of the 1st, 2d & 3rd of those clases might be committed for Trial by the Court of Circuit & be punished with 5 years imprisonment with or without hard labor on public works in irons.

3. Upon this second reference a Minute (it will be seen) was recorded by the Third Judge, which being concurred in by the Second Judge, was communicated to the Register in charge as the opinion of the Court. In it were stated more fully the

the grounds of the opinion before given on the first question which had been submitted; and in allusion to the arguments of the Register in his second letter, above noticed, it was observed that he was perfectly correct in saying that the "judgment in clause Fourth for offences of the "4th & 5th classes was final & conclusive;" but that he was in error if he supposed that it was only offences of the 1st, 2d, and 3d classes that the Collectors were empowered to bring before Criminal Judges; as was apparent from the wording of that clause and from section XVIII. It should here be remarked that by his last communication the Register in charge would now appear to view this question in the same light with the Court.-

4. The Minute of the Third Judge contained the following further observation: "it is of course to be understood that persons "so accused" (committed under section XVIII) "have not been proceeded against under either "of the clauses of section V by the Collector; "with whom it entirely rests to hear and de= "termine offences cognizable under Regulation "IX of 1822, or to bring the perpetrators of "them before the Criminal Courts."-

5. With respect to the other question propounded by the Register in charge (in his second

second reference), the opinion of the Court was given, that the process prescribed in clause second section XIII, is wholly of a civil nature, & that the Zilla Judge would not be warranted in committing such Offenders to the common Gaol. And in this also (it may here be noticed) the Register in charge would appear to concur.-

6th In acknowledging the letter which conveyed the above opinions, the Register in charge expresses a wish that "the questions be referred to upper "Court, as he cannot reconcile to the "opinion he has formed of the intent of "the enactment (Regulation IX of 1822) "the sentiments of the Provincial Court "that" it "is to be understood that per= "sons accused under section XVIII have "not been proceeded against under either "of the clauses of section V by the Collector; "and that it rests at will with the "Collector to hear and determine offences "cognizable under that Regulation, or "to bring the perpetrators of them before "the Criminal Court." Nor that "persons "on whom Judgment has been passed under

"" under clause Fourth Section V are to be con-
"" fined in the common Jail."" These then it
would seem are the distinct questions on
which this officer is desirous of obtaining
the opinion of the Judges of the Sudr Adalut.

Tellicherry
Registers Office
5th July, 1824

I have the honor to be &c
(signed) W. B. Anderson
Register

To the Register to the Provincial Court
of Appeal Western Division

Sir,

I have the honor to send copy of a correspondence with the Principal Collector of yesterdays date, which Request you will lay before the Judges of the Provincial Court of Appeal with the following questions which arise out of them for their opinion. 1st Whether the Collector is competent to send to the Zillah Judge for confinement a person fined by him under the provisions of Clause fourth, Section V, Regulation IX, 1822; 2do Whether the Civil Prison or the Common Gaol should be the place of confinement in case the Collector is competent as stated in the 1st Question.-

Zillah Malabar,
Calicut, 15th June, 1824.

I have the honor to be &c
(signed) C. M. Whish
Regr in charge.

To the Principal Collector
of Malabar,

Sir,

Para 1st I have just been moved by the Sub Collector of the Southern Division, thro' the Government Cutcherry, to confine a certain person in Jail, who has been sentenced by that Officer under the provisions of Regulation IX of 1822, as you will see by the documents accompanying.-

2do I am of opinion that the Regulation does not authorize the transmitting persons fined under the clause quoted by the Sub Collector where a limited period of imprisonment is ordered in commutation of the fine; I have therefore the honor to return the person to your Cutcherry as being the most expedient in the existing circumstances.-

Zillah Malabar,
Calicut, 14th June 1824.

I have the honor to be &c
(signed) C. M. Whish
Register in charge.

To the Register in charge
Zilla Malabar

Sir,

I have the honor to acknowledge the receipt of your letter of this days' date. The question at issue appears as far as I can comprehend it, whether offenders sentenced under the provisions of Clause 4th Section III, Regulation IX, of 1822, shall be imprisoned in the Zilla Jail, or not. if such is the question, I conceive that an immediate reference will

will be necessary, and request to know whether you will refer the matter, or prefer that I should do it. With regard to myself, I have not the least doubt on the subject, as where the place of imprisonment is not specified, it is reasonable to conclude, that the common Jail is the place intended. I have therefore in the hopes of your reconsidering the matter, returned the prisoner for commitment to Jail, for; otherwise doubts might as well exist upon the place of Imprisonment referred to in clause 1st & 2nd, Section XVIII & XVIII Regulation IX 1822. In the event of your still deeming the measure irregular, I beg the Prisoner may be returned to me.

Calicut - - - June 14th, 1824.

I have the honor to be &c
(signed) J. Vaughan 1st Coll.

True Copies
(signed) C. M. Whish
Register in charge.

Extract from the Proceedings of the Provincial Court of Appeal in the Western Division under date the 21st June 1824.

1st Para. Read a letter dated the 15th Instant from the Register in charge Zillah Malabar submitting copy of a correspondence with the Principal Collector and requesting the opinion of the Court on the following questions which have arisen out of it; viz. whether the Collector is competent to refer to the Zillah Judge for confinement a person fined by him under the provisions of 4th clause Fourth, Section V Regulation IX of 1822; and if so, whether the Civil Prison or the common Gaol should be the place of confinement.-

2. By clause second, Section V Regulation IX of 1822 Persons convicted of any of the offences of the 1st 2d or 3d class specified in clause second, Section II are liable to be confined in the Zilla Jail; and since from the greater enormity of the offences enumerated in the 4th & 5th Class, the Perpetrators are subject to heavier pains and penalties, there can be no doubt, the Court think, that the legislature intended that they also should be confined in the common Jail, subject to the same restraints as other convicts under sentence of a limited period of imprisonment, & assuming that the Judgment passed by the Collector has received the confirmation of the Board of Revenue as prescribed by Section XI. Regulation IX of 1822.-

Ordered, that extracts of these proceedings be transmitted to the Register in charge Zillah Malabar for his information.-

A true Extract
(signed) W. B. Anderson.
Register
to

To the Register of the Provincial Court of Circuit
Sir, Western Division

Para 1st I have the honor to acknowledge the receipt of your letter of the 23rd instant transmitting extract from the Proceedings of the Provincial Court of the same date. The opinion of the Judges, is, that Collectors are authorized to transmit to the Zillah Judges persons against whom the Judgement provided by clause fourth section V Regulation IX, 1822. shall have been duly passed; to be confined by the Zillah Judges in the common Jail; it being presumed that the Judgement has been sanctioned by the Board of Revenue as prescribed by section XI Regulation IX of 1822.-

2d To relieve as much as possible the Jail of Prisoners, but particularly from an ardent desire to carry duly into execution the provisions of the Regulations, I have the honor to state my grounds and again refer the question for the opinion of the Judges of the Provincial Court. More especially do I do so as said section XI Regulation IX, 1822 has been rescinded by clause first section II Regulation III of 1823.-

3d Clause second, section XIII Regulation IX 1822 provides for certain cases in which defaulters or culpable persons may be committed to Jail. By the wording of the enactment I conceived that the case of persons convicted of any of the offences of the 4th and 5th Classes specified in clause second section II of the Regulation in question, was virtually excluded, and under this impression started the first question whether Collectors could transmit to Zillah Judges for confinement persons sentenced under the fourth clause above said; for the words "and afterwards if necessary in the Zillah Jail, as hereinafter provided" in the second, apply particularly to the provisions of the first clause in section V.-

4th With due deference to the opinion of the Provincial Court, I should conceive that the crimes specified in the 4th and 5th Classes in clause second, section II are by no means of greater enormity than of Classes 1st 2d and 3d, and I derive my argument first from my ideas of the nature of the offences themselves, and lastly though the Provincial Court derive the contrary conclusion from this / from the relative measure of punishments or penalty to which the Perpetrators are subjected by the enactment - The Judgment in clause fourth for offences of the 4th & 5th Classes appears to me to be final and conclusive; offences of the 1st 2d & 3d Classes may be committed

committed for trial by Court of Circuit and be punished with 5 years imprisonment with or without hard labour on publick works in irons.-

5th I therefore beg respectfully to submit the question again to the Judges whether it is competent for the Collectors to send to the Zillah Judges for confinement, persons against whom Judgment has been passed under the provisions of Clause fourth Section V Regulation IX, 1822, and also another question arising from a Motion of the Principal Collector to the Court of yesterday, Whether persons sent by the Collectors to the Zillah Judges under clause second Section XIII for confinement are to be thrown into the Common Jail or secured in the Civil prison, having some doubts whether upon consideration of the words Zillah Jail as used in the Regulations, (in Section XLVII Regulation VII 1816 for instance,) the Judges will continue to entertain the opinion that the Collectors' expectation of his defaulters and offenders being confined in the Common Jail, held out in his letter of the 17th current, is reasonable, and such confinement legal.-

Zilla Malabar
Calicut 23d
June 1824.-

I have the honor to be &c
(signed) C. M. Whish
Register in charge

Minute

Minute by the Third Judge.

The rescission of Section XI Regulation IX of 1822 which I quite overlooked when I first recorded my view of the point at issue between the Principal & Collector and Assistant Criminal Judge, in no way affects the opinion given by the Court as to the legality of subjecting Persons who have been convicted of any of the offences specified in the 4th and 5th Clauses Second Section II of Regulation IX 1822 to confinement in the Criminal Jail; that opinion was not formed so much from the relative Moral enormity of those offences and those specified in the 1st 2d & 3d Clauses, as from the difference in the wording of the penalties denounced in the three first Clauses, and the last clause of Section V of that Regulation- "shall be kept in custody "first in the Collectors Cutcherry, and "afterwards if necessary in the Zilla "Jail as hereafter provided, is the wording of clause second, and Section XIII defines the nature of the restraint to be imposed upon, and the process to be observed towards offenders of the 1st 2d and 3d Clauses in the event of no property being forthcoming to satisfy the Judgment passed

passed by the Collector under clauses first, & second, and third of section V. Whereas the wording of clause fourth section V is, "the Collector shall "impose such fine not exceeding 500 Rupees and "in default of payment of such fine He, the Collector "shall further sentence the offender to imprisonment "for a period not exceeding 12 Months, or until "the fine shall be paid", thus vesting in the Collector a greater power in regard to the extent of fine than is possessed by a Criminal Judge, in Criminal offences punishable under the Mohummudan Law and Regulations enacted for his guidance - In this view of the question then the word imprisonment can only in my opinion, be construed confinement similar to that of all Culprits upon whom sentence of imprisonment is passed, that is, in the common Jail - and what confirms me in this opinion is, that no provision has been made in regard to the nature of the imprisonment to be imposed upon offenders convicted under clause fourth, as in clauses first, second and third of section V. The Assistant Criminal Judge is perfectly correct when he says "the Judgment in clause fourth for offences of the 4th and 5th classes is final and conclusive", but He is in an error, if he supposes, and such appears to be his opinion from what follows at the conclusion of his 4th Para, that it is only offences of the 1st 2nd and 3rd classes

Vide Section VII Regn X 1816.

classes that Collectors are empowered to bring before Criminal Judges, as will be apparent from the word "any of the persons "mentioned in clause third accused of having "committed any of the offences in clause "second," that is, the five classes enumerated in clause second of section II, and from the following section XVIII which authorizes Criminal Judges to commit parties in cases of an aggravated nature brought by Collectors before them under the foregoing section, that is, any of the persons mentioned in clause third accused of having committed any of the five classes of offences in clause second of section II for trial before the Court of Circuit, and further empowers the latter Court, "on the conviction of any of the offences "enumerated in clause second of section "II, to imprison for a period not less than "one year not exceeding five years". It is of course to be understood that persons so accused have not been proceeded against under either of the clauses of section V by the Collector - with whom it entirely rests to hear and determine offences cognizable under Regulation IX of 1822, or to bring the Perpetrators of them before the Criminal Courts. With respect to the other question propounded by the Assistant

Criminal

Criminal Judge arising from another motion of the Principal Collector to the Court "whether "persons sent by the Collectors to the Zillah "Judges under clause second section XIII for "confinement are to be thrown into the Common "Jail or secured in the Civil Prison," My opinion upon further consideration is, that the process prescribed in clause second section XIII is wholly of a civil nature, and that under the provisions of section XI Regulation II of 1802 the Zillah Judge would not be warranted in committing such offenders to the common Jail nor in subjecting them to greater personal restraints than the Regulations provide for other Defaulters, Public or private, or in other words Civil Debtors.-

/Signed/ T. H. Baber. Third Judge.

Opinion of the Second Judge.

I concur fully in the above Opinion and think that the correctness of the construction put by the 3d Judge in clause II section XIII is fully illustrated by section VI whereby for the recovery of embezzlement "the Collector is authorized to "distrain and sell the Defaulters' property and "if necessary by Imprisonment of the Defaulters' "Person, in the same manner as for the recovery "of arrears of Revenue"; Independently of this process which is exclusively for the recovery of the amount due by the Defaulter, should the Collector be desirous that he should be criminally prosecuted and punished for his act of Embezzlement, the Provisions of section XVII are available for that purpose.-

/Signed/ T. Harderas.
Second Judge.

N.B. The Answer to the Register in charge is omitted, it being merely a communication of the above opinion.-

To the Register to the Provincial Court
Western Division

Sir,

Para 1st I have the honor to acknowledge the receipt of your letter of the 30th Ultimo conveying to me the sentiments of the Judges of the Provincial Court of Circuit on the questions submitted in my letter of the 23d Ultimo for their opinion.-

2d I shall be duly guided by the sentiments of the Judges and carry into effect the Regulation in question according to the meaning and construction they have put upon it, until further orders.-

3d I am thankful to the Court for having pointed out to me a material error into which I had fallen with respect to the limit of punishment of the offences specified in the 4th and 5th Clauses in Clause first, section II Regulation IX of 1822 to which I was, I conclude, led by the misprint of the Margin of Clause first of section XVII, I now see that Judgement in clause fourth, section V is

is not final and conclusive, but only discretionary and finite.-

4th I trust however in being excused in dissenting respectfully dissenting from the opinion expressed by the Judges of the Court on the meaning and construction of Regulation IX, 1822, and in desiring (under the provisions of the orders of the Foujdaree Adawlut dated 26th November 1822) that the questions be referred to the upper Court, as I cannot reconcile to the opinion I have formed of the intent of the enactment, the sentiments of the Provincial Court that "it is to be understood that persons accused under section XVII of the above Regulation have not been proceeded against under either of the Clauses of section V by the Collector, and that it rests at will with the Collector to hear and determine offences cognizable under that Regulation, or to bring the perpetrators of them before the Criminal Court- nor that persons on whom Judgment has been passed under clause fourth, Section V, are to be confined in the Common Jail.-

I have the honor to be &c
(signed) C. M. Walsh
Register in charge

Zillah Malabar
Calicut - -
30 July 1824 - - -

(True Copies)
(signed) W. B. Anderson
Register

To the Judges
Gentlemen,

Sent the following letter of the Provincial Court of Circuit in the Western Division

I am directed by the Judges of the Court of Foujdaree Adalut to acknowledge the receipt of a letter, dated 25th June last, from the Register to the Provincial Court of Circuit, submitting copy of a correspondence between the Assistant Criminal Judge in charge, Zilla of Malabar, the Provincial Court of Circuit and the Principal Collector and Magistrate, and of Minutes recorded by the 2d & 3d Judges of the Provincial Court in respect to the legality of a prosecution in the Criminal Court at the instance of the Sub Collector in charge of the Southern Division against a Gomashtah of the land Custom Department under the provisions of section XXI Regulation I of 1812 upon two charges of having made "fraudulent entry into certain "public accounts or records in regard to "the receipt of certain public Monies."-

2. The Assistant Criminal Judge in his letter addressed to the Principal Collector and Magistrate under date 17th June last expresses his doubts as to "whether clause 1st section XVII and "XVIII Regulation IX of 1822 can be "construed to impose (allow) an alternative "of courses to be pursued by Collectors "so that their provisions may at any time "supersede the application of the summary "process, in fact the primary cognizance "which Collectors are authorized by &c preceding

"preceding sections to take and make against persons
"therein specified for crimes therein claped;- a question
which is not touched upon in the minutes of the 2d
Second and Third Judges accompanying the above
letter, but which being incidentally disposed of
in the papers accompanying the reference under
date 5th Ultimo regarding the construction of
other parts of Regulation IX of 1822, the Judges of
the Court of Foujdaree Adalut direct me to take
the present opportunity of replying to that reference
also.-

3. The opinion of the Third Judge is
that the case above mentioned was regularly
cognizable by the Assistant Criminal Judge under
the provisions of Section XXI Regulation I
of 1812, & that "the Court of the Criminal Judge
"is the only tribunal wherein the prisoner could
"be prosecuted, because Regulation I of 1812
"specially prescribes penalties for frauds in the
"customs and malversation by native officers
"employed in the Custom Department;" and in
the concluding part of his minute the 3d Judge
states an opinion, that Regulation IX of 1822
does not apply to cases of fraud or mal-
=versation in that department.-

4. The Second Judge on the other
hand has declared his opinion, that Regula-
=tion IX of 1822 is "meant to apply indiscriminately
"to any department which may be under the
"Collectors' superintendence, whether land Revenue
Customs

"Customs, Post Office, or stamps;" and that pro-
=vided that construction be correct, the Gomash-
=tah in the case under consideration can only
be prosecuted under the new enactment, "which
"makes provision for the particular offence
"charged against him;" which is specified
"in the 4th" class of offences declared cognizable
by the Collector in clause second Section
II of that Regulation.-

5. And the Second Judge in
support of his opinion, that the provisions
of Regulation IX of 1822 apply to the
department of customs, as well as to other
departments under the Collectors' Superin-
=tendence, observes with reference to the
rescindment of Regulation XXXIII of 1802, that
"if the new Regulation of 1822 be intended
"to apply exclusively to Revenue officers
"connected with the Collection of the Land
"Revenue, and not also to Native Officers
"employed in the Land Custom Department,
"who may be guilty of" the offences speci-
="fied in Section XXV Regulation I of 1812,
"the latter are untangible by any exist-
="ing Law for those two specific offences."-

6. The Judges of the Foujdaree
Adalut concur in the view taken by the
Second Judge of the Scope and effect of the
provisions of Regulation IX of 1822; it
appearing to them manifest, that clause
third Section II of the Regulation applies
without

without reserve to all the native servants of the several public establishments, which at the period of its' promulgation were under the Collectors superintendence: and it being also in their opinion the intention of the Legislature to provide in section II for the punishment of the particular offences, specified in section XXV Regulation I of 1812, which under the rule laid down in section XX Regulation I of 1802 must be taken to be virtually repealed by section XIX Regu= =lation IX of 1822.-

7. And with respect to the further question raised by the Assistant Criminal Judge, which is included among the points referred for the decision of the Judges in the letter from the Register to the Provincial Court dated 5th Ultimo, I am directed to state that they entirely concur in the opinion, which has been conveyed to that officer by the Provincial Court, that it is optional with the Collector "to hear and "determine offences cognizable (by him) under "Regulation IX of 1822, or to bring the perpetra= =tors of them before the Criminal Court:" and that "it is to be understood that persons "accused under section XVII have not been pro= =ceeded against under either of the clauses "of section V by the Collector."-

8. With reference to paragraph 6 of the letter last cited the only remaining point to be decided upon by the Judges of the Foujdaree Adalut is whether or not "persons "on whom judgment has been passed under "clause fourth section V are to be confined "in the common Jail;" and the Judges concur with the Provincial Court in deciding in that question in the affirmative; care being of course taken in such cases to separate these persons from prisoners convicted of heinous offences agreeably to the rule in that respect laid down in section XXIX Regula= =tion X of 1816.-

I have the honor to be &c
(signed) W. Hudleston
Register

Foujdaree Adalut
Register's Office
2d August 1824

Received the following letter.

To the Register to the Court of
Foujdaree Adawlut
Fort St. George.

Sir,

Para 1. I request that you will lay before the Judges of the Foujdarry Court the enclosed petition to my address.

In this paper, it is asserted in

2. that the Petitioner was attacked with an intent to murder, and was wounded; that the case was sent into the Criminal Court; and that, though 17 witnesses were named to prove the charge, it was dismissed by the Assistant Criminal Judge, after the exa= =mination of only three of these witnesses.-

It appeared to me that "it is

3.

"is the duty of the Criminal Court never to dis-
"miss a case, nor to acquit a prisoner, sent in to
"them, until it has examined all the evidence
"sent in, or forthcoming." I therefore referred the
petitioner to the Acting Criminal Judge, concluding
that, if his Assistant has acted contrary to this
rule, he would cause that officer (his Assistant)
to revise his proceedings.-

4 I beg leave to refer to my endorsement
on the petition, and to that of the Acting Crimi-
-nal Judge in reply. The Foujdarry Court's Ob
orders of the 9th June 1824; in my opinion, do
refer to cases in which the Assistant Criminal Ob
Judges shall have fully performed the duty Ob
prescribed to them in the Regulations or to cases
decided, on their merits, after complete enquiry
into all the evidence; and these orders direct
that, where authority to decide has been delegated,
no appeal, founded on erroneous Judgements,
or on the merits of such cases, shall be received
by the Criminal Judge. But they by no means
forbid (as seems understood by Mr. Waters) the
Criminal Judge from directing his assistant
himself to revise his own proceedings, as sug-
-gested by me, where they may appear to the
Criminal Judge irregular, or illegal; much
less do they restrain the Criminal Judge from
exercising, as is his duty, such a supervision
over his Assistant, as to cause him to proceed in a
legal manner, and so to correct any
irregularities in his proceedings, or mis-
-construction of the Regulations on his Ob
part, unconnected with the merits of the
cases referred to him for decision.-

5. It would indeed appear that,
even supposing the complaint justly founded,
Mr. Waters is of opinion, that the Ob
Petitioner must wait for redress until the
arrival of the next Judge on Circuit; and
that his Assistant cannot, until then,
be put right; for he would infer that Ob
I have been irregular in receiving a petition
respecting a case, not included in the
Calendars before me.-

6. Had the appeal to me
been founded on the merits of the case,
I should have declined receiving the
petition; as interfering with the duties
of the Circuit Judge on whose calendar
it will appear, or of my two brother Ob
Judges collectively at Chittoor, who may
be addressed thereon by petition. But,
where irregularity of proceeding only is
complained of, where parties complain
that the Criminal Court, or Magistrate,
do not perform the duties prescribed
to them by law, refuse to inquire into
a case, do not take all the evidence
forthcoming

forthcoming, or omit to observe the forms prescribed by the Foujdaree Court, I have deemed myself at liberty, without referring them to a distant tribunal, to require the subordinate Authorities to give effect to the law, and to the Orders of the Foujdary Adawlut; understanding the regulation to contemplate a reference to the Circuit Court collectively, in those cases only in which a Judgement has been passed on the merits of a case.-

7. It is not, however, improbable, that want of experience in the Judicial Department may have led me to misunderstand my proper duties; I therefore beg to refer the above construction of them, and the enclosed petition, for the orders of the Foujdaree Adawlut.-

I have the honor to be &c.
/signed/ A.D. Campbell. 3d Judge

Cuddapah, Court of Circuit, 3d September, 1824.

sent the following letter.-

To the third Judge on Circuit in the Centre Division

Sir,

1. I am directed by the Judges of the Court of Foujdaree Adalut to acknowledge the receipt of your letter, dated 3d instant, together with the petition therein referred to.-

2. Upon the observations made in the 3d paragraph of your letter the Judges direct me to remark, that when cases are sent to the Criminal Judge by the Magistrate or the officers of police it is expected, that all the procurable evidence against the accused will be sent with them, or reported by those officers to be forthcoming: and that the Criminal Judge after going into such evidence as may have been produced may exercise his discretion in respect to making application for additional evidence.-

3. It may be observed, that Section XXIII Regulation X of 1816 has reference to cases, which may appear to a Judge of Circuit not to have been sufficiently investigated; and the provisions of this section are considered to limit the interference of the Judge to the cases contained in the Calendars submitted to him.-

4. The Judges of the Foujdaree Adalut are of opinion, that the petitioner should have applied to the Judges of the Provincial Court of Circuit, who under the provisions of Section XXIV Regulation X of 1816 are competent at any time to call for and review the proceedings of the Criminal Judge.-

5. And the Judges consider the Acting Criminal Judge to have correctly applied their instructions of 9th June last in the case under consideration.-

I have the honor to be &c.
/signed/ W. Hudleston
Register

Foujdaree Adalut, Register's Office, 17th September, 1824.

Sent

Sent the following letter.

To the Judges of the Provincial Court of Circuit for the Western Division

Gentlemen,

The Judges of the Court of Zoydaree Adalut, during a discussion which has recently taken place in respect to the authority of a Tahseeldar "under the provisions of section XXVII Regulation XI of 1816 to dismiss any case after the prisoner 'has been once apprehended and evidence taken,' have found reason for reconsidering the opinion, recorded in the negative, which was communicated to you in my letter, dated 27th March, and repeated in the proceedings of the Court of Zoydaree Adalut, dated 5th ultimo, upon the 2d Judges' late Circuit report.-

The attention in the opinion of the Judges has been produced by a more particular consideration of section XXVIII of the Regulation above cited, which declares, that "if a prisoner "should in his declaration made before a Tahseeldar criminate another person, the Tahseeldar "shall secure such person, and provided the "accusation be corroborated by any persons who "may appear or be brought by summons before "the Tahseeldar, he shall forward such accused "persons to the Criminal Judge.-

In the cases referred to in the last mentioned section the preliminary enquiry which under clause first of the preceding section is prescribed before the apprehension of the accused, is not enjoined; and in so far the cases contemplated in sections XXVII and XXVIII respectively are differently circumstanced.-

It is nevertheless plain, that a rule prohibiting without any qualification the discharge by a Tahseeldar of a person apprehended by him could not be applied to the latter section; and the 2d Judges are consequently induced with reference to the general rule of construction, that one part of a regulation must be construed by another so that the whole may stand, to be of opinion, that it was the intention of the legislature to allow to this officer a discretion in this respect after proceedings held under section XXVIII, XXVII, as well as under section XXVIII, Regulation XI of 1816.-

In communicating to the Criminal Judges and Magistrates within your Jurisdiction the opinion, which is herein declared, of the competency of a Tahseeldar, after proceedings held under the provisions of clause second section XXVII Regulation XI of 1816, to discharge the accused from custody, if it shall appear that there is no proof of his guilt, the Judges of the Court of Zoydaree Adalut desire, that you will instruct the Magistrates to

to give positive directions to their Tahseeldars to report fully upon every occasion of exercising this discretion the grounds of their proceedings; and the Judges desire that public notification may be given that all complainants, who may be dissatisfied with the Tahseeldars' order for the discharge of an accused party, are to represent the grounds of their dissatisfaction to the Magistrate, by which means the Judges hope, that abuses of this authority may be avoided.-

Foujdaree Adalut,
Register's Office,
30th September 1824

I have the honor to be &c
(Signed) W. Huddleston
Register

Extract from the Proceedings of the Foujdaree Adalut under date the 20th November 1824.-

Extract of a Letter from the Third Judge on Circuit in the Centre Division under date the 9th November 1824.-

4. The case No. 19 was a burglary in the town of Bellary to the value of Rupees 152, in which Seeniah Condadoo and Venkatee above mentioned were the prisoners, together with four others named Govindoo, Vencatega, Hannaary, and Atchemmah. It was clearly proved that the property the instant it was stolen was lodged in Seeniahs house; and thence deposited by him in an empty hand, whence he and Atchemma, on search being about to be made, transferred it to the house of one of the witnesses; thence it was taken by Atchemmah, and

and the whole was subsequently recovered, and found upon the persons of the other five prisoners, of whom Govindoo very slightly wounded the person who attempted to arrest him.-

5. The case No. 20 was one of burglary also in the town of Bellari, to the value of Rupees 16. The prisoners Seeniah and Condadoo in the case No. 19 were clearly convicted of this Offence likewise.-

6. The case No. 24 was a burglary also in Bellary of Rupees 18-8—-; the prisoners were Condadoo and Vencatee both convicted in No. 19. The Crime was not brought home to Condadoo, but it was evidently committed by the same Gang to which he and Venkatee belonged.-

7. The prisoners in these three last cases were all declared by the futwah to be convicted. The prisoner Govindoo, who confessed in the Talook, of Sirkha, and the others of Toohmut-i-Sirkha. the former was declared liable to Dokoobut, the others to Dokoobut Khufeefeh.-

8. Though Hud was declared to be barred against the second prisoner, from his denial, yet as all were convicted, & and declared liable to discretionary punishment, no second futwah was taken, Regulation VI, 1822, appearing to have provided a special penalty for the offence of actual house breaking and theft, by persons

persons of notoriously bad character.-

9. The third Judges construction of this Regulation, was as follows.- Under section II, it is clear that when there is a breaking or attempt to break "with an intent to steal" only, and no actual theft, wounding of some kind must accompany this act, to bring it under clause fourth of that section.-

10. It is indeed added that nothing contained in clause fourth of that section, the whole of which respects merely breaking, or attempt at breaking, with intent to steal only, and not actual burglary or theft, shall enhance the existing penalties "for burglary and theft," when unaccompanied by wounding, or attempt to murder.- But the following section III expressly declares, in clause second, that in cases of theft, (distinguished apparently from mere attempt at theft mentioned in the same clause, and of from breaking or attempt at breaking, with mere intent to steal, mentioned in the preceding section) not only if attended by attempt at murder or wounding, but even when unattended by these aggravating circumstances, if the prisoners be of notoriously bad character, or the peculiar circumstances of the case render them deserving of enhanced punishment, the Criminal Judge shall commit them for trial before the Circuit Court.- It then adds "such persons if convicted on trial before the Circuit Court" will be liable to the penalties prescribed in clause third and fourth section II of this Regulation for the offences therein specified.-

11. Of convicted of what? not of the offence of breaking, or attempt at breaking with intent to steal, attended by attempt at murder, or wounding, mentioned in these clauses of the preceding section; for the said clauses already provide sufficiently for these offences; but ..... of the separate offences newly mentioned in this subsequent section III, one of which is actual theft from the house or person, unattended by attempt at murder, or by wounding perpetrated by persons before convicted of a heinous offence, or of notoriously bad character. There is in this section no restrictive clause such as exists in section II (the fifth) and is confined exclusively to that section.- The crimes are of a distinct nature, not breaking, or attempt at breaking, attended by attempt at murder, or wounding, as in section II, but 1st. theft either from the person, or from a house &c., if either the actual theft, or 2nd. even the attempt at it, be attended with attempt at murder, or with wounding. 3rd. actual theft only, when unattended by these circumstances, if committed by persons before convicted of heinous offences, or of notoriously bad character, or under other peculiar circumstances enhancing the crime.- All persons convicted of such crimes, on trial before the Circuit Court, appear

here

here declared liable to the penalties prescribed in clauses third, and fourth of the preceding section II, for the different offence of breaking, or attempt at breaking with intent to steal, accompanied by attempt at murder, or wounding.-

12. The third Judges' construction of this part of the Regulation is strongly confirmed by its subsequent enactments; for, though theft be unattended by any of the aggravating circumstances stated in sections II and III, if the receiver of the stolen goods be of notoriously bad character, &
and is convicted of receiving them knowing them to be stolen, clause third section IV of the same Regulation expressly declares him liable to &
14 years imprisonment and 39 stripes; and &
this provision of the same Regulation, enhancing the punishment on proof of notoriously bad character, in the case of receivers, confirms the 3d Judges' interpretation of the previous clause which respects the principal, in cases of actual theft, when they also are of notoriously bad character, for it could never be intended to render the principals liable to a less punishment than the receivers; and clause second section III, under the construction the 3d Judge has given to it, by its reference to clause fourth section II, declares principals of notoriously bad character liable to the same punishments as fixed in section IV on receivers of that description, with the addition of banishment from the district,
whether

whether wounding takes place, or not; &
and further liable, under its reference to clause third section II, to increased punish=
=ment, under Regulation I 1822, in cases accompanied by attempt at murder, or &
wounding such as to endanger life. The 4th severe degree of wounding specified in clause fourth section II must no doubt indispensa=
=bly accompany breaking, or attempt at break=
=ing, with mere intent only to steal, to bring that particular crime under the &
increased punishments denounced in this new law; but such does not seem necessary in cases of actual theft, in which either wounding, corporal injury or personal violence of any kind, former conviction of a heinous offence, or notoriously bad &
character, as in clause third section IV respecting receivers, each of itself suffices to bring the principals also under the increased punishments specified in this new Regulation.

13 The prisoners in the three cases before the 3d Judge were clearly of the most notoriously bad character; &
several of them were convicted of different &
house breakings and thefts, from various &
houses, and there was strong ground for believing them implicated in that of &
which they accused others. On the investi=
=gator, Jemiah, sentence for a lighter &
corporal punishment was imposed than

on

on the rest, as left able to bear stripes; in other respects, under the foregoing construction of the law, the four male prisoners were sentenced nearly to the fullest extent of the punishment authorized by clause fourth Section II, as referred to in clause second Section III Regulation VI 1822.-

14. It has however since struck the 3d Judge that he may have given an erroneous construction to the above law, and that the words "such persons" &c., contained in clause second Section III, may have been misplaced, and should have immediately followed the word "Sepoy", so as, in Section III, to restrict the new penalties specified in clauses third and fourth Section II, in the same manner as they are restricted in that preceding section itself, to cases attended with attempt at murder, and maiming; and not to extend them, as is now the case, to thefts committed by persons of bad character, or formerly convicted of a heinous crime, or indeed to any cases unattended by these aggravating circumstances.- This construction would perhaps be more accordant with the restrictive clause fifth in section II; and, if correct, the sentence pronounced in these three cases has been illegal; but the 3d Judge cannot reconcile such a construction of Section III to the obvious and clear enactments contained in Section IV of this law.-

15. In submitting his doubts on this point, for the consideration of the Court of Sudr Dewanee Adawlut, the 3d Judge has to observe that, if the construction he has given to the Regulation be incorrect, and the offences of repeated house breaking by persons of notorious bad character, be liable to no other punishment, under the Mussulman law, than the amputation of one limb, which seems to be the opinion of the Acting Law Officer, he will be obliged, under Section XXI Regulation VII 1802, after taking a second futwa, to commute the same in the instance of the 2d prisoner, to seven years imprisonment in hard labour, without stripes; stripes not appearing, in such case, to be authorized by law;- whilst, under clause seventh Section II Regulation XV 1803, he will be at liberty to impose both stripes and imprisonment for a shorter period on the other prisoners, and can even refer the trial as regards them, which, as regards the 2d prisoner, he will be unable to do.-

16. This seems so incongruous a measure, coupled with the very recent enactments newly made in the Regulation in question respecting receivers of stolen goods, that the 3d Judge is in hopes his construction of the new Regulation will be found not only most consonant with its letter and spirit, taking the whole Regulation together, but with the obvious intention

intention of the legislature in its promulgation.-

Courts Order. 20th November 1824.

1. Concurring in the opinion offered by the 3d Judge in the 11th paragraph of his proceedings, bearing date 6th Instant, that in clause second of Section III Regulation VI of 1822, the words, between "ensuing Sessions," and "such persons," must be taken to be parenthetical, and that clause fifth of the preceding section is directly opposed to any construction of clause second Section III, which would go to authorize an enhancement of the penalties, declared by the Regulations in force for simple Burglary, or theft in any case, "not "accompanied with wounding, or other corporal "injury, nor with an attempt to commit murder", the Court of Foujdaree Adalut do not deem it necessary to follow the 3d Judge through the argument, maintained in the preceding paragraphs of those proceedings, for the purpose of upholding the opposite construction: and will observe only, that they do not concur in the distinction, supposed by the 3d Judge to be intended to be made, between house breaking with the intent to steal, and actual stealing.-

2. In respect to the sentences passed by the 3d Judge on the prisoners in cases Nos 19, 20, and 24 of the Calendar, wherein it would appear that the 2d prisoner was declared convicted of Sarakah, and the remaining prisoners to be liable to Tahmut-i-Sarakah, the Court of Foujdaree Adalut are of opinion, that if none of the circumstances of aggravation, Specified in clauses third and fourth Section II Regulation VI of 1822 were established, the 2d prisoners' case should be disposed of under a second futwa, agreeably to Section XXI Regulation VII of 1802; on which section it is here proper to observe, that the Foujdaree Adalut have ruled, generally "that "the reference therein made to the Mohummudan Law in cases of theft is not intended to preclude the Courts of Circuit "from adjudging stripes not exceeding "39 in addition to imprisonment not exceeding seven years, when such punishment in "aggravated cases may appear just and "proper."-

Received the following letter.

To the Register to the Foujdaree Adawlut
Fort St. George.

Sir,

I am directed by the Provincial Court of Circuit to transmit to you an extract from the proceedings of the Court under this date and to request you will lay the same before the Judges of the Foujdaree Adalut.-

I have the honor to be, &c.
(signed) W. Bushby
Register

Chittoor, Centre, ---
Prov. Court of Circuit,
Register's Office, ---
1st December, 1824

Extract from the Proceedings of the Provincial Court of Circuit for the Centre Division.

Division under date the 1st December 1824.-

Read again letter from the Magistrate in the Northern Division of Arcot, under date 27th October 1824, referring to extract of a letter from his Assistant at Arcot, Mr Chamier, regarding a prisoner who made his escape from custody whilst on his way to the Criminal Court.-

The sentiments of the 1st Judge

dated 23d Ultimo.

The Magistrate appears to have con=
=ceived the question in a right point of view, &
when he considers section XVII, & section XVIII, &
Regulation IX of 1816, and all the several clauses
named in the said sections, not to be applica=
=ble to the case represented to him by his &
Assistant; in as much as those sections evident=
=ly refer to cases of resistance to process or refusing
to attend on a summons being served, and
are explanatory of the penalty annexed to the offence
as prescribed by or assumed under section XVI, &
Regulation IX, of 1816. with which they are con=
=nected.-

The present reference being appli=
=cable to a case after process had been served
it is evident, that the only mode of proceeding
against the party, when apprehended, is by &
enforcing the provisions of section V, Regulation
VII of 1822, as far as the offence of the party in
question may come under its' penalties.-

The Magistrate having requested, that
his letter might be referred to the
Sudder Foujdaree Adawlut the Court
submit copy of the same accordingly, &
with an Extract of these proceedings to
accompany it.-

The sentiments of the 2d Judge.

If the offender were appre=
=hended the question might be one easy to
determine as then the provisions of section
V Regulation VII A.D. 1822, could be enfor=
=ced - at present however they cannot and
therefore may not be an insuperable bar
to the exercise of the powers wherewith
the Magistracy of the land is invested
to secure obedience to its' process.-

The crime wherewith the
person who has now absconded is char=
=ged has not been specified. Therefore the
present opinion is offered as generally appli=
=cable to persons who abscond or &
conceal themselves so that they cannot
be found by the warrant that the
Magistrate has issued and not particu=
=larly applicable to this very case.-

The present offence is not a
bare escape but this escape has been
followed by the accused after his escape
having absconded and concealed him=
=self so that he could not be found
by the warrant that the Magistracy
issued for his apprehension after he
was

was accused of the escape or of a second offence.-

The escaped it appears has real property and therefore the attachments of it may be made instrumental to securing his allegiance to the law and if he continue disobedient furnish a penalty by infliction of which the powers of the law may be vindicated. Ido not see that &
there are any genuine qualities in an escape from a guard that should enable the runaway to &
escape altogether from the penalties that other offenders if they abscond are legally liable to.
Also it does not in the nature of things appear impossible for the accused to be tried on two distinct cases once for the escape from the custody of a guard, the other for disobedience to the process the Magistrate issued for reappre=
=hension of the escaped offender.-

Assuredly if he remained in the country and resisted the bearer of the subse=
=quent warrant he could be made responsible for the resistance and punished if apprehended with a greater severity than the six months of clause third of the aforementioned section that is supposed totally to supercede in cases of escape the law of resisting process or ab=
=sconding from the same. If not apprehend=
=ed he surely could be punished in his & possessions for resistance.- It cannot be the intention of the legislature that resistance is it to be overlooked because escape has been made by one accused of either a small or heinous crime though the man owns & possessions that can be secured when his person cannot.-

In the generality of escape cases the law can only be vindicated by securing the person of the offenders for they are generally of the lowest classes of society very frequently indigent people of vagrant habits but when they are & men of rank in society the poor state & of the generality of offenders may not be ge=
=nuine cause for these men of influence whose successful opposition to an evasi=
=on of the law may have worse results being opposed only by those means & that can be exercised towards the men of no estate. I think the Assistant Ma=
=gistrate correct in deeming the Magi=
=stracy can exert the said provisions of the law in bringing in offenders though they be escaped offenders and that the authority of the Magistracy is too often abandoned by the said provisions of the law being overlooked or not put in due operation.-

/ Signed / Thomas Fawcham

Second Judge

The

The Sentiments of the 1st Judge dated 24th Ultimo.

1 I give my opinion for the orders of the Court as penned on the 23d or yesterday.-

2 The Senior Judge having the casting vote in cases of this kind, his sentiments are considered conclusive and final.-

3. Ordered, that copy of these proceedings be forwarded to the Foujdaree Udalut for the opinion solicited for.-

/ A true extract /

/ Signed / H. Bushby - Register

To the Judges of the Provincial Court of Circuit
in the Centre Division
Gentlemen, Chittoor

Para 1 With reference to the orders of the Foujdaree Udawlut under date 17th February 1824 received with Extract from the proceedings of the your Court of 23d February 1824 I have to request that a reference upon the following case may be submitted for the opinion of the Judges of the Court of Foujdaree Udalut.-

2. The point in question is one which has been referred for my opinion by Mr Chamier Assistant Magistrate in this district and as explanatory thereof I beg leave to annex extract of his letter on the subject.-

3. The case is that of the escape of a party criminally charged after the preliminary examination

examination had been made and while he was under transit to the Criminal Judge.-

"It was my intention to have "addressed you with regard to the course "to be pursued in the event of the accused "in this case not being apprehended or "again appearing before the Magistrate and "I take this opportunity of soliciting instruc="tions on the subject - Immediately on the "escape of the Prisoner I issued warrants "in all directions and caused Proclamation "to be made and affixed as directed in "clause first section XVII and clause 4th "first section XVIII Regulation IX A.D. "1816 as the first step contemplated in the "Regulations on the occasion of a party "absconding or concealing himself after "a warrant has been issued for his ap="prehension although neither of the 4th "sections above cited applies exactly to "the present case." "If the party should "appear his punishment is provided for "by clause third section V Regulation VII "A.D. 1822 as he must be considered to "have been detained in custody under 4th "examination on a charge of a Criminal "nature" when he effected his "escape "which he did, the day after he 4th had

"had been ordered by the Magistrate to be sent
"to the Criminal Judge and the case was of a
"course still under investigation. But if he should
"not appear within the period fixed in the Procla-
=mation. I am doubtful whether any process
"of attachment can issue under clause third of
"Section XVII or any fine be adjudged or pro-
=perty attached on nonpayment under clause
"4th Section XVIII Regulation IX A.D. 1816 and
"on this subject I am anxious to receive instruc-
=tions that I may know how to proceed on the
"expiration of the term limited by the Proclama-
=tion."-

4. In the event of reapprehension the punishment for such offence is provided for in Regulation VI A.D. 1822 as stated by Mr. Chamier and as the it appears highly expedient that persons thus attempting to evade the penalty of a breach of the law should be visited with severity yet I am not satisfied that sections XVII and XVIII of Regulation IX A.D. 1816 are applicable to the case in question nor am I aware that such an instance as the present is elsewhere provided for in the Regulations.-

I have the honor to be &c.
/Signed/ W. Cooke. Magistrate

Magistrates Court
27th October, 1824.-

/A true Copy/
/Signed/ H. Bushby. Register

Sent the following letter.

To the Judges of the Provincial Court
of Circuit in the
Centre Division

Gentlemen,

I am directed by the Judges
of the Court of Faujdaree Adalut to acknow-
=ledge the receipt of your letter, dated
1st Instant, referring a communication
from the Magistrate of Chittoor, in respect
to the applicability of the provisions
of Sections XVII & XVIII Regulation
IX of 1816 to the case of a person, who
has effected his escape while under
transit to the Criminal Judge.-

2. It appears to the Judges
of the Court of Faujdaree Adalut, that upon
the principles of sound analogy the
process, which is prescribed in the
case of a person, who may not attend
before the Magistrate pursuant to
a summons, and may abscond and
conceal himself, applies a fortiori to
the case of a person, who having been
brought before the Magistrate shall
afterwards abscond; and the Judges,
therefore concur in the view taken
of

of this question by the Second Judge; and
desire that this opinion may be notified
for the information and guidance of the
Magistrate.

Foydaree Adalut,
Register's Office,
20th December 1824.

I have the honor to be,

Gentlemen,

Your most Obedient Servant

/Signed/ W. Hudleston

Register

Extracts

Extract from the Proceedings of the Foydaree Adalut under date the 3d January 1825.-

Read return dated the 3d December 1824.-

Foydaree Adalut

L. S.

To the Third Judge of the Court of Circuit in the Northern Division

Herewith you will receive an extract from the proceedings of the Court of Foydaree Adalut of this date, to the orders contained in which, you are required to conform returning this precept so executed, or good and sufficient reason, why it has not been executed, and what you may have done in pursuance hereof, without delay.

By order of the Court of Foydaree Adalut.

Fort St George - -
17th November, 1824.

/Signed/ W. Hudleston

Register

1. In conformity with the exigence of this precept the 3d Judge furnished the late Assistant Magistrate, and Assistant Criminal Judge with copies of the Extract from the proceedings of the Foydaree Adalut of the 17th of November that accompanied it

it, and copies of such parts of his letter therein referred to as had reference to the conduct of those Officers respectively, and called upon them for the explanations required by the Foujdaree Adalut, and the same having been furnished, copies thereof are herewith forwarded.-

2. It does not appear to the 3d Judge that the explanations of Messrs Newbatt and Brown require any particular observation from him. The Judges of the Court of Foujdaree Adalut will at once perceive whether those explanations are satisfactory or otherwise.-

Given under my hand and the Seal of the Court at Masulipatam this 3d December 1824.

L.S.

(Signed) J. C. Todd.
3d Judge - N.P.C.

Masulipatam 3d Quarterly Sessions. 1824.-

Case No. 3 of the Calendar.

L.S.

Complainant - Enoogunty Appiah, Mokhasadar.
Merdus-
Prisoners. 1. Lunka Shayshiah, Sawyer & Police Ameen.
2. Cantaytee Narsiah, Shristadar of the Minor Zemindar of Noozeed
3. Boyavarauze Mulliah Cummum.

To

To C. P. Brown Esqr.
Assistant Criminal Judge
late in charge of the Zillah
Court of Masulipatam.

Herewith you will receive
Copy of an Extract from the Proceedings of
the Foujdaree Adawlut under date the 12th
of November 1824 and copy of that part
of my Letter therein referred to which
has reference to your conduct in the
case in question, and you are hereby directed
to furnish the explanation required by
the Foujdaree Adawlut without any delay.-

Given under my hand and
the Seal of the Court at Masulipatam
this 19th day of November A.D. 1824.

(Signed) J. C. Todd
3d Judge.
N.P.C.

Masulipatam Zillah Assistant Crim Judges Court.

The Assistant Criminal
Judge of Masulipatam, late acting Judge
of the Court, has the honor to make re-
-turn to this Precept by stating the follow-
-ing circumstances.-

2. In the case in question, the
Prosecutor being absent on the alleged
plea

plea of sickness, the acting Judge requested the Acting Magistrate to cause his presence. This was never done. It has long been held, and in particular by the Judge of Circuit, who tried this case, that in commitable cases the Zillah Judge performs the duty only of a Grand Jury, trying the probability of the indictment alone, and not the validity of the defence.-

3. To summon the Nephew would seem unnecessary: for being concerned as a fellow sufferer with the prosecutor he would not be capable under the Mohumedan Law of giving legal evidence.-

4. The third point here questioned regards the circumstance, that the Acting Judge held the third prisoner to bail in 200 rupees, having recorded his opinion that this prisoner had committed nothing Criminal.-

5. It is not improbable that this conduct was incorrect. The point admits of two opinions: and what was here done is certainly not contrary to practice.-

6. In the 56th section of the Circuit Judges' proceedings, it is remarked that under Clause 1 Section IX Regulation X of 1816. it was the Acting Judges' duty to release this prisoner. He has to reply that his conduct was guided by the 3d clause of the same section: the smallness of the sum required in bail sufficiently shews that the mans guilt was not considered probable. But whatever the opinion of the acting Judge might be on this point, it is obvious that the Circuit Judge alone could punish or acquit the accused: who was therefore, as usual, bound over to appear at the Quarterly Sessions. This practice has not hitherto been objected to and it seems correct.-

7. The Assistant Judge therefore submits that no part of his conduct in this matter can be properly considered extraordinary or unreasonable.-

Given under my hand and the Seal of the Court this 20th day of November A.D. 1824.-

/Signed/ C.P. Brown
Asst Judge & Criminal Judge late in charge

/True Copy/
/Signed/ J.P. Tod.
Third Judge N.P.C.-

To J.P. Tod Esquire
3d Judge Northern Provincial Court at Masulipatam

Sir,

Para 1. I have the honor to acknowledge the receipt of a Receipt given under your hand and the Seal of the Court bearing date

date 19th November 1824, I have not a moment to comply with its exigencies, and will give you such information as is in my power respecting the points on which you require it.-

2d But previous to doing this I must premise, that my explanation is necessarily given under great disadvantages. Several months have elapsed since I sent the Case in question to the Criminal Judge, and at the time of my enquiry into it I was involved in a very heavy pressure of business- Having therefore no Records to refer to and being obliged to write entirely from Memory I request your indulgence.-

3d With regard to the first point respecting which you are anxious to receive information Viz.t as to why I dispensed with the Examination of the Nominal Prosecutor, I beg to state that to the best of my recollection the Vakeel who brought a Vakalutnamah from him told me that the prosecutor was too ill to come to Masulipatam, & that on that account I granted him the indulgence which the Regulations in certain cases permit to prosecutors of appearing by Vakeel- With regard to my not having taken official notice of the great length of time that elapsed between the date of the Commission of the offence with which the Accused was charged and the date of the Complaint I can only say, that I considered the case as one of such importance that no informality of Proceeding or suspicious appearance in the conduct of the prosecutor justified me in withholding the matter from the cognizance of the Criminal Judge.

With regard to the letter which you have been informed I received from the Nephew and alledged fellow- sufferer of the Nominal Complainant denying the truth of the Complaint, I must beg to state that the circumstance has entirely escaped my memory- It is possible that I may have objected to receive the letter in question on the ground of the writer being one of the parties in the Case and that I directed the bearer to inform the person who wrote the letter that he must come and state what he had to say himself. I cannot however speak for certain upon this point. I confess that in my private judgement I should think myself justified in not making such a document a matter of Record because I had no evidence of its authenticity. I can only say further that I had not the slightest intention of committing any irregularity in sending the

the prisoners Lanka Shayshiah Vizp to the Criminal Judge and that I sincerely thought that I could not in duty withhold the case from him.-

I have the honor to be Sir

Chicacole 29th November 1824

/signed/ J. D. Newbold late Asst Magistrate of Masulipatam

/True Copy/

/signed/ J. C. Todd 3d Judge N.C.C.

Courts Order 3d January 1825.

The Court of Foujdarie Adalut having had under consideration the explanations submitted by the officers abovementioned, concur in the opinion expressed by the 3d Judge, of the irregularity of the proceedings of the late Assistant Criminal Judge. The omission of that Officer to examine the complainant, is by no means satisfactorily explained, by the cause he has assigned, that "the Acting Judge requested the Acting "Magistrate to cause his presence, this was never "done;" it does not appear that this requisition was repeated, or that any adequate cause was stated for his non attendance. The late Assistant Criminal Judge has evidently been led into the errors manifested in his proceedings, by a mistaken view of his duty, in supposing

supposing, that the mere probability of the truth of a charge, was sufficient ground for the commitment of a prisoner, in contravention of the express terms of clauses second and third Section IX Regulation X 1816, which plainly declare, that no prisoner is to be committed unless there be positive evidence adduced against him.- The requisition of bail from the 3d prisoner was obviously illegal and altogether nugatory, and the reasoning by which Mr Brown attempts to justify the propriety of this proceeding, further indicates the erroneous impression upon his mind of his duty as a Committing Officer.-

Referring to the explanation submitted by the late Assistant Magistrate, the Court are unable to discover any thing in his proceedings to

do 'extraordinary' as to call for particular remark. The duty of the Magistrate in cases not punishable by him, is distinctly laid down in clause second Section XXIV Regulation IX. 1816. to consist, solely "in satisfying his own mind "that there is ground to believe the prisoner "guilty of the crime charged against him" under the view therefore which Mr. Newbolt has stated that he took of this case, "that "he sincerely thought he could not in duty "withold it from the Criminal Judge" the Court are not disposed to impute any blame to that gentleman.-

Ordered that extract of these proceedings be sent to the 3d Judge of the Provincial Court of Circuit in the Northern Division by precept enjoining him to com=municate the same to the late Assistant Criminal Judge and the late Assistant Ma=gistrate of Masulipatam.-

Extract of a Letter from the Provincial Court of Circuit in the Centre Division under date the 28th January 1825.

The Provincial Court submit to the Guidance Adalut that, in respect to prosecutions, it is to be observed that, in the event of their absence altogether, it may frequently be necessary that prisoners sent in by the Police should be prose=cuted on the part of Government; but in respect to the absence of witnesses, if the words of Regulation I A.D. 1814 to wit, 'when attendance may be required "by any Criminal Judge" can be construed to warrant them to issue writs to enforce the attendance of witnesses required on the part of the prosecution, the aforesaid too abundant cause of delay could be obviated by the Criminal Judge being empowered to make witnesses appear, when the attention of the Magistrate being occupied on the various duties that fall to his lot, that Officer may be backward in answering the call of the Criminal Judge to execute such precepts. If the direct call on witnesses from the Criminal Court be still restricted to evidence for the defence, the new law will not remove the delay remarked on. The Provincial Court further observe that

that to inflict punishment on witnesses who do not attend in Civil suits, it is a requisite preliminary that a party swear to the absent witness being material to the cause. This may not be applicable in all Criminal cases, for reasons too obvious to need pointing out.-

Extract of a Letter to the Judges of the Provincial Court of Circuit in the Centre Division dated 17th February 1825.-

2 With reference to para 3d of your proceedings wherein you submit the question, whether, under the provisions of Regulation I 1824, it might not be competent to a Criminal Judge of his own authority, to compel the attendance of witnesses, whose evidence is required in the prosecution of Criminal offences the Judges direct me to observe that the single object of Regulation I 1824 was to remedy a manifest defect in the Regulations, in the omission to define the powers of the Courts of Criminal Judicature in the enforcement of their process for the attendance of witnesses, in cases in which they were authorized to issue such process; and under no principle of construction can it be deemed to vest a Criminal Court with powers which it did not previously possess.-

Extract

Extract from the Proceedings of the Foujdara Udalut under date the 24th March 1825.-

Read letter, dated 12th Ultimo, from the 3d Judge, late on Circuit in the Western Division,-

To The Register to the Foujdara Udalut
Fort St. George

Sir,

Para 1st I have the honor to submit the report required by Section XXXVII Regulation VII of 1802 for the second Sessions 1824.

2 The Calendar of Canara contained 27 Committed Cases, of which the following is an Abstract.

Station	No. of Cases	No. of Prisoners	Convicted	Released on Security	Acquitted	No. of Cases postponed	No. of Prisoners	No. Cases referred to the Foujdary Udalut	No. of Prisoners
Mangalore	27	85 ×	29	2	26	2	3	7	20

× Five of these Prisoners died before Trial.

which cases, with the exception of one, in which the Prisoner died, and of two others, which were postponed, the one on account of the absence of a material witness,

witness, the other on account of the mental derangement of the Prisoner, were tried and dis-
=posed of by the Circuit Court.

3 The offences for which the Prisoners were tried were as follows.

	Cases	Prisoners
Murder	5	13
Gang Robbery with violence and arson	1	6
Gang Robbery with violence	2	13
House breaking, Robbery and violence	2	2
House breaking & Robbery	7	23
Theft	2	2
Violent Assault and Wounding	1	9
Arson	2	6
Forgery	1	1
Robbery, Seduction & injuring Caste	1	2
Robbery, carrying off Prosecutor's daughter and injuring Caste	1	1
Severe illtreatment	1	3
Causing an abortion	1	4
Total	27	85

4 Of the four cases of Murder two were acquitted by the Circuit Court, and three referred to the Foujdaree Court; of these latter, 2 were established, and the prisoners sentenced to different periods of imprisonment, the other was not considered proved, and the Prisoners released. The Case of Gang Robbery with violence and Arson, was also referred to the Foujdaree Court, and 5 of the 6 Prisoners concerned, were sentenced to stripes and transportation for life; the other Prisoner was released by the Circuit Court. Of the two Cases of Gang Robbery and violence, one was referred to the Fouj-
daree Court, and the surviving Prisoner, two in number, sentenced to stripes and transportation for life, the other Case was acquitted by the Circuit Court and the Prisoners discharged.

Of the two Cases of House breaking Robbery & violence, one was referred to the Fouj-
daree Court, and the Prisoner acquitted; the other was established and the Prisoners sentenced

sentenced by the Circuit Court.

Of the Cases of House breaking and Robbery, one was not tried in consequence of the death of the Prisoner, the other 6 Cases were proved, and the prisoners, with the exception of one who was acquitted, and another who was ordered to find security, sentenced by the Circuit Court.

The 2 Cases of theft were established and the Prisoners sentenced by the Circuit Court.

The Case of violent assault and wounding was not proved and the Prisoner released.

Of the 2 Cases of Arson one was returned to the Criminal Lunge the prisoner being deranged, the other was not established, and the prisoner released.

The Case of Forgery was referred to the Foydaree Adalut, and the prisoner sentenced to a mitigated punishment.

The Case of Robbery and Seduction, was not tried a material witness being absent.

The Case of Robbery and carrying off the Prosecutor's daughter was proved and the prisoner sentenced by the Circuit Court.

The Case of severe illtreatment was established and the Prisoner sentenced by the Circuit Court.

The Case of causing an abortion was also proved, and the prisoners sentenced by the Circuit Court.

5 A comparison between this Calendar and that delivered for the 1st Sessions 1824, exhibits the following results.

The Cases of Murder in the present Sessions exceed those in the former by one, but the Prisoners tried in the former exceeded those tried for this offence in the present Sessions, by one individual.

There was no Gang robbery with violence and arson tried the preceding Sessions, but the Gang Robberies with violence for that Sessions exceeded the same description of offence tried the present Sessions,

Sessions, by 7 in the number of Cases, and 65 in the number of Prisoners

+ This is not the number of individuals many of these prisoners having been indicted on several different Cases

The number of Cases of Robbery with violence is the same this Sessions as the last, but the number of Prisoners tried last Sessions, exceed those tried in the present on this charge, by 5 individuals.

The Burglaries of the present Sessions exceeded those of the last, by 4 in the number of Cases, and by 17 in the number of Prisoners tried.

The Thefts in the former Sessions, exceeded those tried in the present Sessions by one Case, and by five in the number of Prisoners.

The Cases of Arson in the present Sessions equalled in number, those tried in the former Sessions, but the Prisoners tried this Sessions for that offence, exceeded by two, the number tried the former Sessions.

There were no Cases of Forgery in the former Sessions, nor were there any of the description of offence exhibited in the remaining Cases of the Calendar for the present Sessions.

The total number of Cases therefore committed

committed in this Sessions exceeded by two, the total number committed in the former, while the number of Prisoners brought to trial in the former, exceeded by 6 the number tried in the present Sessions.

6

The following is an abstract of the Calendar delivered by the Criminal Judge and Magistrate shewing the number of prisoners punished and released, or discharged for want of proof.

	Discharged for want of proof.		Punished and released			Total		
	No of Cases	No of Prisoners	No of Cases	No of Prisoners Punished	No of Prisoners released		No of Case	No of Prisoners
By the Criminal Judge	18	53	77	134	77	211	95	264
By the Magistrate	47	94	34	46	-	46	81	140
Total	65	147	111	180	77	257	176	404

7

The description of Cases and number of Prisoners discharged by the Criminal Judge for want of proof was as follows.

	Prisoners
5 Cases of Murder containing	25
3 ditto Arson	3
	Cases

2 Cases House breaking with violence	5
6 ditto House breaking with theft	22
1 ditto Robbery with violence	1
1 ditto causing abortion	1
	53

18

8 The Magistrates' Calendar of Prisoners discharges for want of proof exhibited

	Prisoners
28 Cases of theft containing	59
3 ditto suspicion of theft	10
3 ditto suspicion of Murder	3
2 ditto of suspicion of Arson	3
1 ditto Forgery	1
1 ditto using false weights	1
1 ditto attempt to rob	2
2 ditto Arson	3
1 ditto Forcibly carrying off the Prosecutors Wife	3
1 Case uttering base Coins	1
1 ditto accessary to theft	1
1 ditto violent Assault	4
1 ditto purchasing stolen property	2
1 ditto attempt to poison	1
	94

47

The Criminal Judges' Calendar

9 of persons punished and released exhibited.

	Prisoners Punished	Prisoners released	Total
24 Cases of House breaking & theft	38	21	59
1 ditto theft with violence	1	"	1
15 ditto Theft	24	9	33
7 ditto wounding	6	4	10
5 ditto carrying off property by force	10	-	10
8 ditto of violence	35	38	73
10 ditto smuggling	12	1	13
2 ditto affixing false impression of seals to Cloths	2	-	2
4 Case of uttering base Coins	1	-	1
3 ditto cutting Sandalwood without Government permit = coin	5	-	5
1 ditto receiving bribes from Sandal Smugglers	-	4	4
	134	77	211

77

10 The Magistrates Calendar of persons punished and released exhibited

	Prisoners Punished	Prisoners released	Total
	43	-	43
32 Cases of Theft	2	-	2
1 ditto Theft & Fraud	1	-	1
1 ditto Attempt to rob	46	-	46

34

A

11 A comparison between the Calen-
=dars of the present and the preceding Sessions exhi-
=bits an excess of 4 in the number of Cases dis-
=charged for want of proof the preceding Sessions,
while the number of Prisoners discharged the
present Sessions, exceeds those discharged the
preceding by 7 individuals. The comparison
exhibits also one more in the number of Cases
punished this present Sessions, while the
number of Prisoners so punished is less by 6
than those who were punished the preced-
=ing Sessions; it exhibits also 37 more Pri-
=soners released in the present, than were
released in the preceding Sessions, mak-
=ing in the aggregate 3 more cases disposed
of the preceding Sessions, by the Magistrate
and the Criminal Judge, while the aggregate
number of Prisoners disposed of the present
Sessions, exceeded the number disposed
of the preceding by 38 individuals.

12 The statement of Heinous
offences ascertained to have been committed
in

in Canara from 1st January to 30th June 1824
was furnished by the Magistrate and when
contrasted with the record of the same des-
=cription for the 6 Months preceding Sept
from 1st July to 31st December 1823 exhi-
=bits the following result.

	In the half year ending 31st December 1823		In the half year ending 31st June 1824		More		less	
	No of Cases	No of Prisoners	No of Cases	No of Prisoners	No of Cases	No of Prisoners	Cases	Prisoners
Robbery & Murder	"	"	"	"	"	"	"	"
Robbery without Murder	56	81	41	74	"	"	15	7
Affrays & violent Assaults with maiming & wounding	20	171	24	93	4	"	"	78
Murder	5	19	10	35	5	16	"	"
House breaking	38	70	43	114	5	44	"	"
Thefts of considerable Amount	14	27	15	36	1	9	"	"
Receiving stolen goods	8	23	4	13	"	"	4	10
Arson	3	8	11	14	8	6	"	"
Forgery	3	9	4	4	1	"	"	5
Gang Robbery	23	230	20	174	"	"	3	56
Killing Cattle & Trees property of Sirkar	"	"	3	7	3	7	"	"
Extortion	"	"	1	4	1	4	"	"
	170	638	176	568	28	86	22	156

The

13 The above comparative statement exhibits a decrease in the last six Months of 15 in the number of robberies, and of 7 in the number of individuals concerned, an increase of 14 in the number of affrays and violent assaults with wounding, and a decrease of 78 in the number of persons so concerned; an increase of 5 in the number of Murders and of 16 in the persons concerned, an increase of 5 in the number of Burglaries, & of 44 in the persons concerned, an increase of 1 in the number of thefts of considerable amount, & of 9 in the persons engaged, a decrease of 4 in the number of Cases of receiving stolen property, and of 10 in the number of receivers, an increase of 8 in the number of Arsons, and of 6 in the number of Prisoners, an increase of 1 in the number, & a decrease of 5 in the persons concerned in Forgery; a decrease of 13 in the number of Gang robberies, & of 56 in the number of perpetrators; this review exhibits therefore, an increase in every description of Crime, & excepting

excepting those of simple, and Gang Robbery, and of receiving stolen property, in which a considerable reduction would appear to have been effected.

14 I received from the Magistrates and the Criminal Judge, a list of persons confined as vagrants & for want of security, but no application was made by them for any relief. Two or three Petitions were presented of other description, relating to Police Cases which had been investigated by the Magistrate or Criminal Judge, on which the necessary orders were passed, but none were of sufficient consequence, to require notice in this report.

15 The Gaol I duly visited, & found it clean, and the prisoners orderly; the objections to this Gaol on the score of local situation, & consequent insalubrity, have been urged repeatedly & at length received that attention which the high importance of the subject demanded, further discussion therefore is

is altogether precluded.

16 The Cases in the Calendar of this Zillah requiring comment are noticed in a subsequent part of this report.

17 The following is an abstract of the committed Cases in the Zillah of Malabar.

Station	Nº of Cases	Nº of Prisoners	Cases finished	Cases to be released on Security	Acquittals	Trials post poned Cases	Trials post poned Prisoners	Referred to the Sudder Adawlut Cases	Referred to the Sudder Adawlut Prisoners
Calicut	63	163	42	2	94	1	1	15	32

⊗ Aggregate number of Prisoners 177

Deduct individuals indicted in several Numbers — 14

Total No. of Persons 163

The whole of these Cases were tried exceptone, in which, a very material evidence was absent, and which was therefore necessarily postponed.

18 The Crimes detailed in this Calendar was as follows.

	Prisoners
2 Cases of Murder & robbery containing	7
9 ditto of Murder	25
1 ditto of accessary to Murder	1
3 ditto of Highway Gang robbery with violence	16
1 ditto of Gang robbery with violence	2
11 ditto of House breaking & robbery	25
1 ditto of breaking into out house & stealing Cattle	1
3 Cases of Cattle stealing	3
6 ditto of stabbing & wounding	9
1 ditto of arson Assault & robbery	40
3 ditto of arson	4
1 ditto of intimidation & taking Money illegally	8
1 Case of cutting down & stealing Mysore Sandal	4
1 Case of Theft	2
6 ditto of Perjury	11
2 ditto of Forgery	2
1 ditto of Fraud	1
1 ditto of Assault, plunder & abuse of authority	1
2 Cases of Illtreatment, illegal restraint & abuse of public authority	6
2 Cases of Escape from confinement	2
1 ditto of Assault & rape	1
3 ditto of Assault & resistance against the officers of Government	13
1 Case of illtreatment of a slave	1
63	177

19 Of the 12 Cases of Murder two were

were acquitted and released by the Circuit Court, of the other 8 Cases, 7 were referred to the Fonjdaree Court, and 3 are now preparing for reference, of the 7 so referred, the final sentences in 4 Cases have been received, in one of which, the prisoners were acquitted and released, in the other 3, the Prisoners were convicted, found guilty, and sentenced, 2 to capital punishment, 2 others to transportation for life, and the remainder to temporary imprisonment.

Of the 3 Cases of Highway Gang robbery with violence, one was referred to the Fonjdaree Court & the Prisoners sentenced to stripes and transportation for life, one Case was established & the Prisoners sentenced by the Circuit Court, the crime having been committed previous to the enactment of Regulation I of 1822, & the other was not proved and the Prisoners released.

The Case of Gang robbery with violence was referred to the Fonjdaree Court the final sentence in which has not yet been received.

Of the 11 Cases of House breaking & robbery, two only were acquitted, and the Prisoners released, the Prisoner in another Case was ordered to be released on security, & the remaining Cases having been all established, the Prisoners were sentenced by the Circuit Court.

The 4 Cases of Cattle stealing were not established, but the Prisoners released by the Circuit Court.

Of the 6 Cases of stabbing and wounding two Cases were not proved, and the Prisoners released, the other 4 Cases were established, and the Prisoners in one sentenced by the Fonjdaree Court, in the other 3 they were sentenced by the Circuit Court.

The Case of arson Assault and robbery was not proved and the Prisoners released.

Of the 3 Cases of Arson one only was established and the Prisoners sentenced, in the other two they were released.

The Case of intimidation and taking Money illegally

illegally was not established and the Prisoners released.

The Case of Sandal cutting & stealing was establish-
-ed, and the Prisoners released, under explana-
-tion afforded in another part of this report.

The Case of Theft was proved and the Prisoners sentenced by the Circuit Court.

Of the 6 Cases of Perjury, one is preparing for reference, to the Foujdaree Court, another was acquitted, a third, was not tried in consequence of the non attendance of a material Witness, the other 3 were proved, and sentence passed upon the prisoners by the Circuit Court.

Of the 2 Cases of Forgery one was not proved and the Prisoners released, the other was referred to the Foujdary Court, with the view of ob-
-taining a mitigation of the prescribed pu-
-nishment.

The Case of Fraud was not established and the Prisoners released.

The Case of Assault Plunder and abuse of authority was not established, the Prisoners released.

Of

Of the 2 Cases of ill treatment, illegal restraint and abuse of authority, one was not established the other was, and the Prisoners sentenced by the Circuit Court.

Of the 2 Cases of escape from confinement one was not established, the other was, and Pri-
-soner sentenced by the Circuit Court.

The Assault and rape was not proved, and the Prisoners released.

Of the 3 Cases of Assaulting and resisting the officers of Government, two were proved and the prisoners sentenced, the other case was not, and the Prisoners released.

The Case illtreating a Slave was established and the Prisoners sentenced by the Circuit Court.

20 A comparison between the Calendars of committed Cases for the first & second Sessions of 1824 exhibits the fol-
-lowing result.

The number of Murder Cases in the present Sessions was less by 3 than the number in the preceding, while the individuals tried

tried for this offence the present Sessions, exceeds in number, those tried the preceding by 3 Prisoners.

In the present Sessions there were 3 Cases of Highway Gang robbery with violence, containing 16 Prisoners whereas no case of this description was tried the preceding Sessions.

The number of Cases of Gang robbery with violence in both Sessions was the same, but 2 more individuals were tried in the preceding, than in the present Sessions for this offence.

The Burglaries exceeds in the present Sessions those tried in the preceding by one Case, but the Prisoners in the preceding exceeds those tried in the present Sessions by 7 individuals

There were no Cases of Cattle stealing tried the preceding Sessions, whereas 4 Cases of this description containing 4 Prisoners were tried the present Sessions for this Offence

The Number of Cases of wounding and maiming tried this present Sessions exceeds that tried the preceding by 4, and the number of Prisoners tried the present Sessions exceeds the number tried in the preceding by 6 individuals.

No Case of Arson was tried the preceding Sessions, whereas 4 Cases containing 4 Prisoners were tried at the present Sessions.

The Cases of Theft in the present Sessions were less in number by 2, and less in the number of Prisoners also by 2, than those tried for this Offence the preceding Sessions.

The Number of Cases of resistance to the public Officers in both Sessions was the same, as was also the number of Prisoners tried for such offence.

The Number of Perjury Cases committed the present Sessions exceeds by 2 the number committed the preceding, and by 2 in the number of individuals tried.

There were no Forgeries tried the preceding Sessions, whereas 2 Cases, containing 2 Prisoners were tried the present.

There was one Case of Stand on the Calendar of each Sessions, but one more Prisoner

Prisoner was tried for this offence the preceding Sessions.

The Crimes detailed in the remaining cases in the Calendar for the present Sessions, are not to be found in the Calendar of the preceding, and some description of Cases again, were re=corded in the latter, which are not to be found in the former Document, the review of the two Calendars exhibiting however, an increase of 18 in the number of Prisoners punished, 51 in the number acquitted, and 20 in the num=ber of prisoners whose trials were referred to the Fouzdaree Court, and of 19 in the number of trials, and 76 in the number of Prisoners, dis=posed of by the Circuit Court during the present Sessions.

25. The following is an abstract of the Calendar delivered by the Criminal Judge and the Magistrate of persons punished and released, & discharged for want of proof.

By

	Discharged for want of proof		Punished & released		Total	
	No. of Cases	No. of Prisoners	No. of Cases	No. of prisoners punish=ed	No. of Cases	No. of Prisoners
By the Criminal Judge	69	215	292	206	669	361	1090
By the Magistrate	25	50	28	43	5	53	98
Total	94	265	320	249	674	414	1188

The Criminal Judge's Calendar of persons discharged for want of proof contained the following description of Cases.

	Prisoners
16 Cases of Murder containing	49
7 ditto of Arson	16
4 ditto House breaking with violence	16
16 ditto House breaking & robbery	43
7 ditto Theft and violence	23
6 ditto carrying off property by force	39
3 ditto wounding	3
1 ditto extortion and intimidation	5
3 ditto Forgery	10
1 ditto of receiving to theft	2
1 ditto releasing a prisoner on being bribed	6
1 Case of uttering base coins	1
	2

2 Cases of smuggling	1
1 ditto ill treatment	1
	215

69

23 The Magistrates Calendar of persons discharged for want of proof contained the following Cases.

	Prisoners
14 Cases of theft containing	24
3 ditto of violence wounding and plunder ing	8
2 Cases of violence	6
2 ditto uttering base Coins	2
1 ditto of Perjury	2
2 ditto of smuggling	7
1 ditto Aiding a robbery	1
	50

25

24 The Criminal Judge's Calendar of persons punished and released contained the following cases inclusive of those punished under section VI Regulation VI A.D. 1822.

	Punished	Released	Total
84 Cases of house breaking and theft	71	123	194
76 of theft	42	172	214
35 of wounding	29	57	86
55 Carrying away property by force	28	198	226
1 selling Spirituous liquors	4	14	18
27 ill treatment	30	100	130
4 Abusive language	2	5	7
	206	669	875

292

25 The Magistrates Calendar of persons punished and released contained the following Cases.

	Punished	Released	Total
15 Cases of theft	23	"	23
4 Violence	10	3	13
2 Violence and plunder	3	1	4
1 Uttering base Coins	1	1	2
1 False contempt	6	-	6
	43	5	48

28

26 A comparison of these Calendars with those of the same description delivered the preceding Sessions exhibits an increase in the present Sessions of 35 Cases, and of 98 Prisoners, in the cases and Prisoners discharged for want of proof of 125 Cases, and 99 Prisoners actually punished, and of 305 Prisoners released, making in the aggregate an increase this Sessions

sessions of 166. in the number of Cases, and 496 in the number of Prisoners actually disposed of by the Magistrate and the Criminal Judge.

27. The statement of Heinous Crimes ascertained to have been committed from the 1st March to 30th September 1824, comprising a period of 7 Months, contrasted with a similar statement from 1st October 1823 to the 28th February 1824, comprising a period of 5 Months gave the following result.

	In the five months ending 28th February 1824		In the seven months ending 30th September 1824		More		Less	
	No. of Cases	No. of Prisoners	No. of Cases	No. of Prisoners	No. of Cases	No. of Prisoners	No. of Cases	No. of Prisoners
Robbery & Murder	1	1	1	5	–	4	–	–
Robbery without Murder	6	7	*6	63	–	56	–	–
Highway robbery	–	–	4	12	4	12	–	–
Affrays, Violent Assault attended with homicide	12	15	25	64	13	49	–	–
maiming or wounding								
Murder	14	27	20	69	6	42	–	–
House breaking	47	87	111	203	64	121	–	–
Thefts to considerable amount or attended with aggravating circumstances	17	39	45	92	28	53	–	–
Receiving Stolen goods	6	11	23	50	17	39	–	–
Arson	4	4	21	36	17	32	–	–
Rape	–	–	2	4	2	4	–	–
Perjury	1	2	3	5	2	3	–	–
Forgery & counterfeiting Coins	4	8	7	19	3	11	–	–
	112	207	268	627	156	426	–	–

Shewing

* State Conclusions of the persons entered in the third Column 12 persons have been seized and made over to the Criminal Court within the Period above specified for crimes entered under the 2, 5, & 6 Commitee in 1823. 1821. 1823 & 1824.

Shewing an increase in the report for the present Sessions, of 14 in the number of persons concerned in robbery and Murder; an increase of 56 in the number concerned in robbery without Murder; an increase of 13 in the number of Cases, and 49 in the persons concerned in affrays and violent assault; of 16 in the number of Murders, and 42 in the persons engaged; of 64 in the number of Burglaries, and 121 in the persons charged; of 28 in the number of Cases, and 53 in the persons charged with thefts of considerable amount; of 17 in the number of Cases of Arson and 32 in the Prisoners accused; of 2 in the number of Rapes and 4 in the Prisoners charged; of 2 in the number of Perjuries, and 3 in the persons concerned; of 3 in the number of Forgeries and counterfeiting the coin, and 11 in the Prisoners concerned; shewing in short an increase in the number of crimes of every description, (which the Magistrate is required to record), in the last 7 Months, when

when contracted with those committed the
5 Months preceding, of 156 in the aggregate num-
=ber of cases and 1126 in the numbers concerned
in the perpetration.

29 The Magistrate and the Crimi-
=nal Judge furnished the Calendars required
by Section III, VII. Regulation II A.D. 1822 &
no remonstrance was made by those confined

30 I visited the Jail at the sta-
=tion and found no cause of complaint.

31 I proceeded to Seringapatam
to deliver the Jails at that station, by the spe-
=cial orders of the Boundary Court, the usual
period for completing the Circuit, having expi-
=red before the whole of the Cases on the Malab-
=bar Calendar were tried. I found on my
arrival, that the Law Officer had died two
days before, which compelled my instant
return to the two stations, to prevent the
interruption in the regular Civil business
of the Court, which must have been occa
=sioned, had I remained at Seringapatam
until the arrival of the deceased Mooftee's
Successor.

32. I visited the Jails at that sta-
=tion, which were clean, and heard no com-
=plaints from any of the Prisoners.

33 Before entering upon any
other matter, it will naturally be expected,
that I should advert to the increase in
the number of trials and convictions before
the Circuit Court, to that also, in the number
of Cases tried & punished by the Magistrate
& the Criminal Judge, and to the great excess
of Crime, which the half yearly statement
of Heinous Offences, delivered by the Ma-
=gistrate of Malabar this Sessions, so
decidedly exhibits; facts, which power-
=fully arrest the attention & demand some
attempt at least at explanation.

34 It is only necessary to turn
to the orders of the Boundary Court, inter-
=dicting the Heads of Offices from exer-
=cising any discretion as to the Criminal
Causes to be forwarded to the Criminal
Judge, and to consider the natural effect
of

of these orders, to find a ready & satisfactory so-
=lution. These orders were dated the 27th March
1824, and continued in full operation until
the 30th September, an interval comprising
(within a few days) the whole period for
which the Magistrates return of heinous
offences was drawn out; Under the operation
of these orders, every case in which the accu
=sed was apprehended, was necessarily trans-
=mitted to the Criminal Court; The Magistrate
also under the orders of the foregoing Court
dated 13th September 1824, was necessarily
apprized of the cases so sent, and as the
half yearly statement of heinous offences
is drawn out from the returns of the
subordinate Officers, most of the cases
transmitted from the Talook to the Cri-
=minal Judge, (many of which under the
licensed exercise of discretion, had doubt-
=less been dismissed by the Police Officers
and unnoticed in his report) would
under the operations of the above orders,
have

have found their way into these half yearly re-
=turns.

35. The same cause may be assign
=ed for the increase in the number of commit
=ment - and for the increase also of the convic-
=tions and punishments - for a larger portion
of the cases being transferred from the subordi-
=nate to the higher authorities, and thereby
subjected to a much closer investigation, than
they could possibly receive at the Talook;
the Judgment also of the higher Authorities,
being more so and experienced than the
other, and far less liable to improper bias;
it follows, that many instances of delin-
=quency would meet detection and punish-
=ment, when discretionary authority, as to
the disposal of Cases, was restricted at the
Talook, which under opposite circum-
=stances might be concealed or overlooked.

If this explanation is ad-
36 =mitted, which goes near to involve the con-
=clusion, that the exercise of discretion
in head Police Officers, as to the Cases to be
sent

sent to the Criminal Court, is incompatible with the full detection of offence, and punishment of criminals, or the faithful estimate of the extent of crime, the expediency of reviewing the orders lately passed, and of reverting to the former practice, may become a question, under regulations, which may render it fully operative towards the guilty, and as innocuous as possible towards others of opposite description.

37 This might be effected in a material degree by recourse to some similar legislative provision as that enacted by Section X and Regulation VI A.D. 1802 and the latter part of Clause third Section XXXII Regulation VII of 1802 & by the enjoined most scrupulous application of such Provisions, the object might be forwarded also by the Criminal Judge or his Assistant being required to examine cursorily every Criminal Case immediately it arrived at Court, and to release on bail, in heinous, as well as in other other description of offence, all whose guilt was not so apparent, as to preclude suspicion of unfounded complaint, these precautions, added to the examples of severity, which the Criminal Judge should be authorized, and even enjoined to make, in all cases where malice and falsehood were distinctly traced, could not fail to divest the measure of much of its injurious tendency, and limit its operations to the attainment of stability and good.

38 Striking features of national character, or other marked distinction or peculiarity in cases tried before the Circuit Courts, constituting under the orders of the Faujdaree Adalut, the subject of enjoined Remark, some cases disposed of this Session must necessarily be brought to notice.

39 Cases No. 24 and 9 on the Calendar came within this description, not however, as exhibiting excess of turpitude in the nature of the crimes, many singular

singular trait in the character or conduct of the Perpetrators, but as betraying extreme misconduct on the part of the Police, & requiring the interposition of the highest authority, for ensuring the suppression of a serious evil in Criminal Administration.

40. The former of these cases No. 24, contained a charge of Gang robbery with violence; the proof in which rested upon the alleged recognition of the prisoners at the time of outrage, and the alleged discovery in one of their houses of part of the stolen effects, the first point failed in consequence of a prior denial by the Prosecutor of this very fact, and the latter in consequence of the suspicious circumstances attendant, and the Prisoners were necessarily released.

41. It is the conduct of the Detail on this occasion that I am now to bring to the notice of the Court. It appears that he employed the complainants relatives to conduct the search, who in spite of the prisoners remonstrances, and the warning he gave, of the probability of resort to imfair practice, were nevertheless allowed to enter the premises alone, whence they shortly returned, with one or two trifling ornaments (part of the alleged stolen property) declared by them to have been found hidden in some rice, and by the prisoners to have been brought by them (the Prosecutor's relatives) and there deposited, for the purpose of giving color to the complaint and affixing upon the prisoners, the guilt of which they were entirely unconscious.

42 This assertion of the prisoners was by no means undeserving of notice, for the house had been previously searched, and the party in the act of leaving the premises, when the Prosecutor pointed out a particular part which he desired might be minutely examined, a task deputed immediately to the relatives (whose persons were examined, perhaps carelessly before entering, in consequence of the

the prisoner calling the Detail's attention to a bag they had about them) and in the performance of which the stolen property was said to have been found.

43 The time at which this proceeding took place is differently stated, the prisoner declaring it commenced in the evening, and finished after dark, the opposite party declaring it was finished before night fall.

44 The particulars of this transaction, I thought it my duty to bring to the notice of the Magistrate, in a Report of which A in the appendix is a transcript, that he might take immediate measures for preventing similar irregularity, which did not appear to have been confined to this case in particular. Case No. 3 of the same Calendar, (not tried on account of the absence of a material witness) exhibiting another instance of a prisoner's house being searched, by others than Officers of Police.

45 The alleged discovery of stolen property in the house of a prisoner, whether forming subsidiary grounds of crimination in a Case of robbery, or constituting a solitary or insulated incident on which the accusation rests, leads so directly to conclusions prejudicial to the accused, and impresses such semblance of validity on any charge of theft, that it is impossible to be too circumspect in the arrangements connected with the search, or too particular in the process by which it is conducted. Indeed the general interests of society imperatively dictate such precaution, for without it, the innocent may be exposed to all the dangers and vexations of unfounded prosecutions, and the guilty may be screened from punishment, by the scruples which irregular or illegal Proceedings in this respect, invariably occasion.

46 It is of the last importance therefore to exercise efficient controul in

in this particular, and as the means of esta-
=blishing a salutary restraint, I suggest that
the following rules, most of which are sup-
=posed to obtain at present, but which ex-
=perience shews are often disregarded, should not
only be circulated throughout the Depart-
=ment, but affixed in writing in the Cutcheries
of all who are entrusted with the duties of
search, that the inhabitant may know, what
is required of the public Officer, and that the
latter may be precluded from urging the
plea of ignorance in palliation of abuses
Viz:-

47. That Police Officers should not
enter any suspected houses, unless the owners
should be present, or known to have ab-
=sconded; and that the search should invari-
=ably be commenced and finished between
the hours of sun rise, and sun set. That the
Police Officers should always summon
and take with them 2 or 3 of the most res-
=pectable inhabitants of the place, and on
no account permit the complainant or
any of his relatives, or others than Police
Officers,

Officers, to interfere in any respect with
the business of the search, or to leave the
presence of the searching Officers, during
the time the party may remain in the
suspected house. That a Certificate in the
form, (entered in the Appendix) B, be in-
=variably given in duplicate by the search-
=ing Officers, signed by the complainant
and the prisoners, and attested by the Inha-
=bitants who attended on the occasion; one
of these certificates to be forwarded direct
to the Magistrate, the other to be inclosed
in the record of the Case, and transmitted
with the prisoners to the Criminal Court.

48 This arrangement if not
sufficient for ensuring in every instance
correct conduct, will at least tend to
check irregularity and intrigue, it has
for its object, the observance of a steady
and well defined rule of conduct, in
an Essential branch of Police duty in
which no uniformity of practice at
present appears to exist, and the prevention

of

of irregularities, of which the Canara Calendar evinces such decided proof.

49 The other Case No 9 was one of murder in which three Prisoners were brought to trial, who there is every reason to suppose were Principals in the Act, the evidence adduced however was so crude and contradictory, that no chance of conviction existed at any period of the Trial, and the Prisoners were necessarily released. The deceased was first discovered on the evening of a Tuesday fastened by the neck to a tree, the feet just touching the ground, the body was covered with the marks of blows and wounds, and every appearance indicated that the Murder had been committed at a little distance from the spot, and the body subsequently suspended to the tree, where it was allowed to remain from the evening of Tuesday to that of Friday when it was taken down and entered.

50 The Tahsildar who resided 3 or 4 Cos from the place was apprized on the Wednesday of the discovery of the corpse, and and contented himself with dispatching a Shanboque and Peon, (persons unauthorized under the Regulations to hold criminal Proceedings) who attended on the spot on the morning of Friday when a second formal inspection of the body took place, without however any exertion either at this, or any other period, to discover the time and place at which the deceased was last seen, or the company in which he then was, or to trace and weigh the Causes, and Considerations, which might have given rise to inimical feeling, or prompt the commission of the crime.

51 C in the appendix is a copy of a precept I thought it necessary to address the Magistrate on the occasion detailing the nature and extent of the exertions made by the local Police, I am decidedly of opinion that the efforts were altogether inadequate, and to their suspiciousness or collusion, may with Justice be attributed the failure in developing the whole particulars of

of the atrocious transaction.

52 The only cases it appears necessary to notice in the Malabar Calendar, are Cases 4 and 5. Cases 17 and 42 and 20, 50, 51, 52, 55, and 56 those in which the Prisoners were committed for Perjury.

53 The records of this, or indeed of any other Province, will scarce afford a more decided instance of hardened depravity, or determined desperation, than the conduct and the character of the prisoner in Cases Nos 4 and 5 presents. The whole of the circumstances under which this determined enemy of society was brought to trial, were fully detailed in my letter accompanying the case, and formed the especial grounds of a recommendation under section IV Regulation XI of 1803, that he should be sentenced to suffer capital punishment, in atonement for the manifold injuries he had committed, in vindication of the laws he had so frequently and flagitiously violated, and in solemn proof of the signal vengeance that awaited those, whose lives, like his, were devoted to rapine, and spent in the violation of every moral and social obligation.

54 The essential service rendered the public by the private individuals who seized and secured this dangerous and determined ruffian, and the injuries they sustained on the occasion, formed the grounds also of my soliciting for them a reward.

55 Had the first proposal been approved as was the second, an example of severity towards the guilty, (which the excesses in Malabar might be said to have provoked) had been happily contracted with an act of bounty and indulgence towards the well disposed, which could not have failed to deter from the commission of crime while it encouraged attachment to the public interests.

56 In case No 17 a Peshcar and two Kolcars were brought to trial on a charge of excessive abuse of authority, in causing chillies to be rubbed in the

the Eyes of a female and her thighs to be pinched, in causing also others, who appeared as prosecu-
-tors to be exposed to the rays of the sun, and to be beaten. The public servants had been dis-
-patched by the Tahsildar, after the close of an examination of a Case at the Talook, (No 2 on the Calendar) for the purpose of prosecuting still farther the enquiry into the circumstances of that Robbery, and were accused of having had recourse, during the proceedings to these acts of violence, with the view of eliciting full information as to the circumstances of the robbery, & Com-
-pelling a disclosure of the place where the plundered property was concealed; the alleged illtreatment of the female was not esta-
-blished to the full extent set forth in the complaint, the prisoners were however fully convicted of acts of outrage & violence towards the whole party, and were punish-
-ed according to their grades of guilt.

57 In case 42 the Defendants in number four were committed for cutting Sandalwood in the Mysore Jungles, and brought to trial by the orders of the Ho-
-norable the Governor in Council under the Provisions of Regulation XI A.D. 1879. The prisoners were found guilty, but as the Re-
-gulations of Government did not recognize or provide for the offence, I did not consider myself competent to inflict any punish-
-ment, the more especially as the act for which the prisoners were brought to trial, was considered by the Magistrate in his report to Government as one for the pu-
-nishment of which (with reference to the extent of the transaction and the value of the Sandalwood so cut), his own pow-
-ers were sufficiently extensive, and as the prisoners had been detained in confine-
-ment previous to their trial, a period exceeding seven times that, which, under the Regulations the Magistrate is au-
-thorized to imprison.

58 I bring the subject to the notice of the Foujdary Court, with the view of

of urging the necessity of some legislative en=
=actment with respect to scandal. In the
Calendar of Canara, I observed some few cases
of this description tried and sentenced by the
Criminal Judge, which I understood had at=
=tracted the attention of the Foujdary Court.
I refrained therefore from noticing these
cases, determining to make the matter a
subject of reference in this report; and to
suggest that if the Government thought
it expedient to reserve to themselves the
exclusive right in this particular descrip
=tion of property, that the fact should
be promulgated by Regulation as in the
cases of other Monopolies, in order that the
subject may be fully apprized of the risk
he runs in invading the right, and the
Courts of Justice be armed with legal pow=
=ers for punishing the aggression.

59 The Cases Nos. 20, 50, 51, 52, 55, and
56, the prisoners in which were committed
for the crime of perjury require notice only,
as they present an opportunity of adverting
to a fact, which appears deserving of serious
attention.

The crime of Perjury, so des=
6 tructive of private right, and subversive
of the fundamental Principle of Justice, is
now constantly found among the crimes
recorded in the Malabar Calendars, which
until lately (however replete in other of=
=fence), was singularly free from cases
of this description. During the last
ten years, the total number of Perjuries
committed for trial in Malabar was 80
Cases, containing 80 Prisoners - Of which
10 Cases containing 20 prisoners (being ex=
=actly one fourth of the number of cases,
and one fourth of the number of prisoners
for the whole ten years), were committed
in the last year, 1824.

The greater prevalence of the
61 crime cannot therefore be doubted, ex=
=ceed the propensity to depart from
truth, is now traced in every Depart=
=ment in which native evidence is taken,
and is distinctly visible even in the
testimony

testimony delivered before the Circuit Court;
so much so, as to have rendered it incumbent
latterly on the Judges presiding, to order com-
=mitments for this offence, a necessity,
which, until this late period, had not ex-
=isted, and was never more apparent than
in the present Sessions, during which I
found myself compelled to order the com-
=mitment of six persons (out of many
others) whose perjuries were more legally
complete, and afforded stronger hopes
of successful prosecution.

62 Having adverted to the ca-
=ses tried during the 2nd Sessions of 1824
which appear to me to require remark,
I proceed to offer some observations on
general subjects, connected immediately
with the object of the Circuit Reports.

63 The first important sub-
=ject which presents itself, has already
been urged with much solicitude by
others, but has failed to attract that
regard

regard, which its paramount interests in my
opinion imperatively demand. I allude to the
custom of wearing the Peeshanculty, a knife,
in size, and shape, resembling a chicken
carver, carried in a sheath at the waist; a
custom, universal amongst the inhabi-
=tants of this Province, and which may be said
to have familiarized the community to
scenes of horror and of blood, and to have
introduced guilt and misery into families,
where these curses had otherwise remained
unknown.

64. A reference to the Calendars
of Malabar, will establish, that Murder
and homicide are more prevalent in this,
than in any other of the Madras Provinces;
a further examination of these records
will also evince, that these crimes are not,
for the most part, deliberately planned,
or systematically effected, but frequently
the unpremeditated act of the moment,
committed when the reason is subdued
by

by intoxication, or the passions inflamed by other violent excitation, the knife, the constant companion of every class of inhabitant, affords the ready means of instantaneous and fatal gratification, and the relative, the stranger, or the friend, are indiscriminately sacrificed, perhaps without the slightest cause or provocation, and even when least conscious of the blessing of existence.

65. Such is the evil attendant on the custom, which will not be found exaggerated in the outline, or heightened in the colouring.

66. To suppress an evil so serious and extensive, cannot be thought an unnecessary interference with native privilege, or a wanton invasion of any private right, and respect for the general interest of a Province, which clearly dictates resistance to innovation on matters of harmless tendency, when the project promises inadequate or equivocal advantage or is to be effected by means objectionable or unjust, dictates more imperatively concurrence in a measure, which has for its object, the preservation of existence, and prevention of the highest description of crime, and which ensures such paramount advantage, without requiring the exercise of illegal authority for its introduction, or relying on any contingency for success.

67. I beg leave earnestly to recommend that the custom of wearing the Cheshancutty, be abolished throughout the Province of Malabar, the Custom with whomsoever originating, is confined at present to no particular description of people, and consequently forms no distinguishing characteristic of caste, the prohibition therefore, cannot infringe any particular immunity, but merely restricts the public in a privilege, experience has shewn they cannot enjoy without abuse. The subject will be remunerated the privation, by the additional security the measure affords, and the Government will find

find their recompense in the reflection of
having removed a powerful incentive to the
commission of the worst description of crime,
and in having rescued the Judicial records
of the Province, from the reproach too just
=ly cast upon them, of being recorded in
characters of blood.

68 As a measure connected
with the general health of those confined
in the Zillah Jails, I suggest that all pri=
=soners tried and convicted before the
Circuit Courts, whose trials are referred
under the Regulation to the Foujdaree Adaw=
=lut, should be ordered out to Work, pending
the reference, in common with other
convicts. The measure appears to me cal=
likely to prove conducive to health, and
is not that I am aware repugnant to any
principle of Justice.

69 At the close of the last
Sessions (2nd Sessions of 1824) there were
several prisoners in Jail at Calicut cal=
who had been tried by the Circuit Court
one year before, whose final sentences cal=
however

however, had not up to that late period been
received. All these prisoners had remained
perfectly idle and inactive from the time
of their first apprehension, probably some
months before their trial, most had been
accustomed from their infancy, to habits
of severe labor, and to a subsistence fre=
=quently scanty and precarious, and ge=
=nerally coarser than that they enjoyed
in Jail. so sudden a change from seve=
=rest daily labor to perfect idleness and
clothe, and from coarse and scanty sub=
=sistence, to comparatively rich and
plentiful diet, necessarily produces
repletion and disease, and fully accounts
for the mortality to which this class of
prisoner is so much liable.

70 On the score of health
therefore the present suggestion can=
=not but be approved, and little or ob=
=jection will be urged on the score of
Justice, when it is remembered that the
prisoners, whose cases are referred to

Madras

Madras, have for the most part been tried for the highest description of offence, and for the most part, been considered guilty by the highest Court in the province.

71 I propose therefore that the Judges on Circuit may be authorized at the close of every referrible trial, to direct the employment on the public roads, of all prisoners who tried and found guilty at the Sessions, at which such Judges may preside, may be considered proper subjects for hard labor

72. I proceed to bring to notice a practice which I believe prevails more or less in every Zillah, than which nothing, when abused, can be more repugnant to Justice, or revolting to the feelings of humanity. I allude to the mode in which prisoners are occasionally secured on apprehension, or rather during examination, which is generally effected by tying the arms with cloths, ropes, or other thing that presents, some times both arms being tied above the elbow, and drawn together behind the back, some times one arm only, probably as the culprit may be found more or less communicative.

73. It is obvious that this practice is liable to serious abuse, and may be made the means of extorting confessions for the arms may be so pinioned as to occasion much greater pain than the infliction of blows, and indeed be carried to such an extreme, as to compel acquiescence in any thing that might be required, in order to save the body from agony, nature was unable to endure.

74 I am led to the immediate consideration of the subject from it having been adverted in evidence, in a case of Murder in the Malabar Calendar for the last Sessions, that the Officer of Police who took the Examination, had resorted to this measure of pinioning the arms

arms of the Prisoners for the purpose of making them confess, that he tightened the binding during the period of examination, and reda= =ed the degree of tightness after the crime was admitted and the object had been ob= =tained. The assertions in this particular instance were not in my opinion entitled to credit, but the records of the province afford undoubted proof of instances of such abuses, one, (in which the binding causing mortification and proving fatal to the sufferer) called forth lately the ob= pointed animadvertions of the Foujdary Court, and evinces the necessity of some ob= provision, for precluding the possibility of converting a measure of ostensible pre= =caution into an engenie of torture.

75. To deprive therefore the Police Officers of the means of abuse in this particular, I beg leave to suggest that they be prohibited under the penalty of instant dismissal from Office, and disqualification for future employ from tying the arms of prisoners behind them, or otherwise with Cloths, ropes, or other description of binding. The necessity of such practice on the score of precaution can seldom exist, and may be always obviated, by the use of an iron ring with a joint on one side and a skrew or rivet on the other, to which a rope might be fastened, which would effec= =tually prevent escape, without admitting of the possibility of it's being employed in so objectionable a manner.

76 I suggest that the Magistrate should be directed to supply their Police Of= =ficers with a sufficient number of these rings for ordinary use, which might be made up in the Zillah Jails by the pri= =soners accustomed to this description of labor, and thus save every other expence but that required for the purchase of the raw material.

77. The various subjects ob= requiring

requiring remark having now been noticed it remains for me to submit the following question on which I am very desirous of obtaining the sentiments of the Foujdaree Court.

Question.

78. "Whether under the Regulations two, or more, Judges at the Head "station, are, or are not, competent to revise and modify the sentences of a Criminal Judge when it may appear to them, "that such sentence adjudges a Penalty inadequate to the offence committed."

79 The question arises out of a reference I thought it my duty to make to the Collective Court, in consequence of it appearing to me when on Circuit at Canara, that the Judge of that Zillah had punished a prisoner inadequately, who had been brought three times before him for the same description of offence, and had been punished once previous to the present conviction. The Crime was

was that of entering a house during the night, and forcing off the ear ornaments of females, by tearing through the lobe of the ear, the former punishment adjudged was 8 stripes, the punishment, the immediate subject of reference, was 6 Weeks imprisonment.

80 The Collective Court in reply to this reference observed, that "the Regulations gave no power to the Circuit Judges "at the head station to scrutinize the "adequacy or otherwise of sentences passed "by the Criminal Judge or his Assistants" "and that "the Court of Foujdary Adalat on "receiving the last quarterly returns from "the Criminal Judges called for explanation of, and animadverted on certain sentences which had been passed by the Criminal authorities at Seringapatam and "in Canara, and particularly on the inadequacy of certain sentences passed by the "Assistant Criminal Judge at the former "station. The Judges must therefore question their

"their competency to pass any opinion on the refu-
"rence of the acting Judge on Circuit in this Case."

81 Section XXIII Regulation X
A.D. 1816 expressly provides for two cases only
of irregularity in the decisions of the Criminal
Judge, viz. cases in which this Officer may have
released without any punishment, and cases
in which he may have sentenced on insuf-
ficient grounds. The intermediate cases of in-
adequate punishment, not having been
expressly included in these Provisions, have
given rise, in part, it would appear to the
opinion expressed by the Collective Court.
It does not however appear to me, that al-
tho' this section is silent as to sentences of
inadequate punishment, that all interference
of the Circuit Courts is necessarily precluded,
the very next section (Section XXIV) expres-
-ly provides that "two or more Judges of a
"Court of Circuit, forming a Court at the sev-
"station, are hereby declared competent on
"all occasions when it may appear neces-
"-ary upon petitions presented to them, or
"relative to the proceedings of any Criminal
"Judge, or of an Assistant to a Judge, within their
"their Jurisdiction to call upon the Judge for
"his proceedings or those of his Assistant in
"the case, and to pass such orders thereupon
"as they may deem proper & consistent with
"the Regulations."

82 These provisions admit of an
appeal; in every possible case of objection
or dissent, they allow the prosecutor as well
as prisoner to bring under review of the ap-
-pellate Jurisdiction, decisions in which
disproportionate punishment forms the
ground of discontent, and if in such ap-
-peals the decision is palpably erroneous
or inadequate, the powers granted to two or
more Judges to pass such order as they may
deem proper, cannot be more judiciously
or advantageously exercised, than in rec-
-tifying the error on whatever side it
should have occurred.

83. It may be urged that in the
case of excessive punishment the hardship
falls directly on an individual, whereas
none by the opposite error and personally
aggrieved

aggrieved, and that hence the more immediate necessity of appellate Jurisdiction in the one, than in the other case. To this it may be answered, that the Interests of society are in each instance of inadequate punishment in some degree invaded; for the obvious tendency of such decisions is to disarm the laws of their terror, and to render the possession of property much less secure, than if every act of trespass met its full and appropriate correction.

8th. It appears to me that the general control vested in the Circuit Courts, necessarily imbraces cases of inadequate punishment as well as those of an opposite description, and that this authority having the full supervision of the Criminal administration, legal cognizance extends to every act which contravenes, or infringes the spirit or letter of the Criminal code.

I have the honor to be &c

Signed J. Wilson

J. Judge Court

Tellicherry
12th February
1825.

Court of Circuit (L.S.) Western Division

To The Magistrate Zillah Canara

1. In Case No. 24 of the Canara Calendar of the present Sessions wherein the Prisoners Anajee, Doer Cumpty, Kesawa Meerattee, Maria Hebar and Menjoo Shetty, are charged by Soolvay Shetty the Vakeel of Doogapah Shetty with having entered his house, beaten his Family, and stolen the whole of his property. the following facts appear in evidence before the Circuit Court. That the Potails Veruppa Heggada, and Antiah Chitty, Potails of the Cherade Gram, Neelawur Mogany, Karcoor Talook, (the Gram in which the robbery was committed) proceeded with a party consisting of several of the Prosecutors relations & others to the House of the first Prisoner Anajee apprehended on suspicion, for the purpose of instituting a search, that the Premises were generally examined, and nothing discovered which could lead to the presumption of guilt, that the Prosecutor then begged that a further search might be made in a

a certain part of the Premises which he par-
-ticularly pointed out, to which the Detailed
Assented & directed two of the Prosecutors re-
-latives to proceed immediately to the search,
that the Prisoner objected to this measure,
observing that one of the persons delegated
had a bag about him, which probably con-
-tained property brought for the purpose of
dropping or depositing in (his) the Prisoner's
house, with the view of giving an air of truth
to the Complaint, which objection being too
strong to be overruled, another relation of
who had accompanied the Prosecutor was
substituted and these two persons having
been examined were sent forthwith into the
house, unaccompanied by any public Officer
connected with the Police, or indeed by any other
persons whatever, the Details remaining at
another part of the house during the whole
time the search was made, that shortly after
-wards those two persons returned with 3 small
articles declared by them and by the Prosecutor
to be part of the stolen effects and said to have

have been found concealed in this particular part
of the Prisoner's house, under some moodies of fact,
a fact denied by the prisoner who insists on
that the articles were brought by the Prosecu-
-tor's own people, and placed by them in that
particular spot.

Such are the facts disclosed
2
on evidence on which the acting Judge is call-
-ed upon to make a few remarks. The discovery
of stolen property in the house of a Prisoner
is always a point material to the issue of a
trial and ought ever to be effected by means
too cautious and legitimate to admit of any
cavil and under circumstances too open and
notorious to admit of any doubt. The delegate-
-on of the duties of search to any but to those
the law considers competent must always
involve a breach of public duty, & when
committed as in the present instance solely
and exclusively to the Relatives of a com-
-plainant who always have an interest
in the Prosecution, and sometimes a feeling
of enmity against the accused, becomes
a

a serious offence, which is aggravated by the
fact of the person delegating such duties being
distinctly apprized of the existence of evil design
in those employed, and warned of the consequence
which might probably result.

3 The circumstances of the case
were therefore more than sufficient to excite
the doubts of the most unsuspicious, and to
render it incumbent on the Potails to con-
-duct the search in person under the obser-
-vance of every precaution and formality, in
order to prevent on the one side the resort
to undue means which they had been appri-
-zed might be expected, and to preclude on the
other the plea of unfair practice, which if
even suspected might prove fatal to the
suit.

4 The acting Judge considers
the Potails guilty of gross neglect of public
duty if not of wicked collusion with the Ex-
-ecutor on his designs against the accused,
and has brought the facts to the notice of the
Magistrate that he may adopt such
measures as he may think necessary to mark
his disapprobation of the present instance
of misconduct, and to guard hereafter against
the recurrence of such an evil.

Given under my hand and the
Seal of the Court this 29th day of September
A.D 1826.

Signed A. Wilson
acting Judge on Circuit
Western Division

Court of Circuit (L.S)

To The Magistrate of Canara

Para 1st Herewith you will receive
Extract, from the examination of the Potails
Venkatsetty and Gouda Poonja Potails of the
Villages of Erada and Koriady and Witnesses
for the prosecution in Case No 9 wherein
Bogana, Appeak and Marsetty are charged
with the crime of Murder.

2d You will perceive by these
examinations that a report was made to
these Officers who are heads of Villages, on
the night of Tuesday the 24th February, that
a body was found suspended to a tree, the
hour

hour at which the report was so made is differently stated by these Witnesses the one declaring it was at 10.to Guilgh after sun set (10.o'Clock at night) the hour mentioned in his report, the other at 3 guilgh after sun set about 7 o'Clock in the evening (the latter of which assertion is corroborated by the evidence of other Witnesses in the case and that on thes evening nothing was done in the way of enquiry, some persons having been merely sent to watch the body

3.rd You will also perceive that on the following morning the 25.th the Inhabitants assembled under the Tree, & having agreed, from the appearance of the body and the unequivocal marks of blows & wounds it bore, that the deceased had met with a violent and untimely end, a report was sent to the Tahsildar residing 4 kerdaries from the scene, upon which the party separated

4.th The period this party remained on this spot, and the proceedings held on the occasion are differently described by these two Witnesses, the one declaring that they remained assembled until midday, the other that they separated at 8 O'Clock; the one that enquiry was made of all the neighbours as to their Knowledge of the facts, or of the persons who had committed the violence, the other that nothing of the kind was done, but that the body was merely inspected, and the report above alluded to drawn out, and dispatched, which latter would appear the correct statement, the other Witnesses on the case deposing to this effect and the report itself forwarded to the Amildar on the occasion, merely mentioning that the body had been examined, the relations of the deceased sent for, and the Potails in the neighbourhood apprized.

5.th The next day Thursday the 26.th is said, by one of these Potails, to have transpired without any enquiry whatever, the other declares that on this day, the two

two first Prisoners were questioned Verbally, but that he cannot recollect if any thing else was done, on referring however to the record it would appear, that two short depositions, bearing date the 27.th (which have evidently been missdated for the 28.th a similar error with respect to date appearing in every other Documents sent in by the Patail) were actually taken from Rungo Dosti, and Mooda, two persons residing immediately in the neighbourhood to the purport that having heard of the body being suspended to a Tree, they went to see it, but knew not how the death was occasioned, or who had inflicted the blows, these were the first written depositions as taken by the Patail.

6.th The Proceedings held on the succeeding day (Viz.t Friday) that on which the enquiry in the village where the murder was committed closed, & which the Parties concerned in the act were forwarded to the Talooka - are also differently described

described by the two Patails a reference however to the written documents of the record will evince the degree of attention paid to the subject, and the nature of the exertion made.

7.th The documents dated on this day consists.

First. Of a complaint from the Brother of the deceased in which the names of two of the Prisoners and a third person are mentioned as those suspected of the crime, in consequence of their having carried the deceased 8 days before that on which his body was found, from the house where he resided, to which he never again returned.

Secondly. Of two Depositions the one of the Wife, the other of the master of the deceased residing in the house whence the deceased was taken in support of the Complainants assertion.

& Thirdly Of four Depositions relating exclusively to the state of the body &

& extent and nature of the wounds.

8th These with the two short depo-
-sitions taken the day before comprise the
whole of the written evidence forwarded to
the Tahsildar by the Potail by orders ex-
-pressly received from this Officer on the
occasion.

9th Such appear to have been
the proceedings of the local Police, on an
occasion where the evidence of an atrocious
murder was clear and unequivocal, and
published to all the world by the exposure
for three days of the disfigured Corpse.

10th It is evident from the con-
-tradictory statements of these Potails them-
-selves, and indeed from the testimony of al-
-most every witness in the case that from
the night of the Tuesday on which the body
was discovered, until the morning of the
Friday the day on which it was buried, com-
-prising a period of two days and 3 entire
nights, no measures were taken to trace
the perpetrators of the murder, no exertion
made

made to obtain any evidence in the case. It
is equally evident that on this latter day the
measures taken were too feeble in the nature
and limited in their extent to meet the seri-
-ous exigence of the moment, or to promise
any ultimate success.

11th In the opinion of the Acting
Judge presiding the Potail was culpably
remiss on the occasion a remissness which
from his prevarication and discordant
statements before the Zillah and the
Circuit Courts bears but too much the ap-
-pearance of having arisen in collusion
and design. The Tahsildar is also by no
means free from blame, his residence is
distant only 4 kerdaries from the spot,
and his report acknowledges the receipt
of the Potails' communication on the 25th
the very day it was dispatched, Viz^t that
immediately succeeding the commission
of the crime, notwithstanding which,
(as established in evidence) he neither
attended

attended in person or ensured the attendance of a Chanbony and Peon (the persons he thought it necessary to dispute on the occasion and who it may be observed were not under the Regulations competent to conduct the enquiry) until the morning of the 27th. the second day after he had been duly appriged and the third day after the commission of the crime up to which period the body remained suspended in the same state as found on the evening of the 24th.

12th. Section XIII Regulation XI A.D. 1806 prescribes that the head of the Village on receiving information of the discovery of the body of a person supposed to have been murdered, shall immediately proceed to the spot with the Curnum and two or three respectable inhabitants, in whose presence he shall examine every person who may be able to afford any information regarding the discovery of the body and its appearance when discovered or regarding the murder of the deceased, if the body should have been deprived of life by murder - and there can be but little doubt that had these injunctions been followed with all the zeal and earnestness the case required and at the time when the workings of conscience were most powerful, and the confusion of guilt was at its height that all the circumstances attending the mysterious transaction would have been developed, and punishment and not impunity awaited the Perpetrators of the Crime.

Given under my hand and the Seal of the Court this 4th. day of October A.D. 1824.

(Signed) A. Wilson
acting Judge on Circuit

(True Copies)
(Signed) A. Wilson
Third Judge

We the undersigned Cutails, Deshadigaries or others of the Village having been called upon by

of

by Inhabitant of the Villge
of to search the house
of suspected of having
stolen property in his possession re-
-paired in company with

Inhabitants of the said Villege
to the house of the suspected and after
appriging the parties of our intention
and requiring them to witness our Proceedings
commenced on the business of the search,
where we discovered in their immediate pre-
-sence concealed in the roof, buried in the
ground, hid amidst some grain, as the
case might be, the following articles de-
-clared by the complainant to have form
part of the stolen goods and to be his pro-
-perty. This certificate to be signed by the
Officers conducting the search, the pro-
-secutor, and the prisoner, (or a Memo-
-randum to be entered in case of any demur)
to be attested also by the Inhabitants
who accompanied and the hour at & which

which the search commenced and finish-
-ed to be particularly noted.

Signed J. A. Wilson
3d Judge

Court's Order dated 24th March 1825

The 23d paragraph of the report
contains a list of cases, in which the prisoners
were discharged by the Magistrate of Malabar
for want of proof. Among these the Court
of Foujdary Adalut observe a case of perjury in
which two prisoners were inflicted.

Referring to the provisions
2. of Section XXIX Regulation IX of 1816, and Sec-
-tion VIII Regulation II of 1822, the Court of Fou-
-jdary Adalut direct, that an explanation
may be obtained from the Magistrate in res-
-pect to the circumstances, under which cogni-
-zance was taken of the charge in this case.

In the 36th paragraph of the
3 report the 3d Judge intimates an opinion,
"that the exercise of discretion in head police
"Officers, as to the cases to be sent to the
"Criminal Court, is incompatible with the
"full detection of offence, and punishment

F

"of Criminals; as the faithful estimate of the
"extent of Crime." and he suggests the revision
of the orders of the Court of Foujdaree Adalut, dated
30th. September last, declaring it competent to a
Tahsildar to discharge persons, after their
apprehension under the provisions of Section
XXVII Regulation XI of 1816.

4. In the 3d. paragraph measures
are suggested for obviating the injurious
consequences, which are considered to result
from that interpretation of the provisions
of the above section, which made it obliga-
tory on the heads of District Police to send
to the Criminal Judge all persons, apprehended
on charges of a heinous description.

5 The orders of the Court of Fouj-
-dary Adalut, cited by the 3d. Judge, were found-
-ed upon a mature consideration of the in-
-tention of the legislature in the enactment
of the provisions, contained in Sections
XXVII, and XXVIII, Regulation XI of 1816. The Court
are of opinion, that the power, vested in
the Heads of District Police, of dismissing
cases

cases of a heinous nature, is liable to serious
abuse, the prevention of which must require
the greatest vigilance on the part of the
Magistrate: the opinion of the Government
having, however, been recently unequivocally
declared, that the exercise of such a dis-
-cretion on the part of these officers is ex-
-pedient, the Court do not deem it proper
further to agitate the question.

Paragraphs from 40 to 48
6. inclusive are occupied in remarks upon
a case, in which it appeared that the
house of a prisoner was searched by two
relations of the prosecutor, unaccompanied
"by any public Officer, connected with the
"Police;" and in the 47th. paragraph the 3d.
Judge suggests the adoption of certain
rules for the prevention of abuses of the
provisions of Sections XI, and XXVII, Re-
-gulation XI of 1816.

The Court of Foujdary Adalut
7 concur entirely with the 3d. Judge in opinion,
that none but Police Officers should be
permitted to search houses for stolen
property

property; and consider, that such is the mani-
-fest intention of the above provisions of the
law on this subject. The rule, suggested by
the 3d Judge, accord with provisions, enacted
with the same view, in Section XVI Bengal
Regulation XX of 1817; the introduction of
which into the Madras code would, in the opi-
-nion of the Court, be beneficial.

8 The 6th and two following para-
-graphs of the report have reference to a case
of murder, in which on the part of the Sub-
-ordinate, and of the village Police, was exhibited
a most culpable disregard of the provisions
contained in Sections XIII and XXXVI Regulation
XI of 1816.

9 The Court of Foujdaree Adaulut
regret to observe, that the provisions of the
law, regarding the immediate inquest to be
held in cases of Murder, are very generally neg-
-lected: and they deem the present to be a fit
opportunity for directing that the attention
of the officers of District, and Village, Police
be particularly called to this subject
by the Magistrates, whose duty it is to
use every exertion for enforcing the ob-
-servance of rules, so essential to the due
investigation of cases of the most heinous
crime.

10 Paragraph 57 contains
a notice of a case, No. 42 in the Malabar
Calendar, in which four persons were
brought to trial by order of the Honora-
-ble the Governor in Council under the co-
-provisions of Regulation XI of 1809 for
cutting Sandalwood in the Mysore co-
-jungles.

11 The fact was brought home
to the prisoners: but the 3d Judge did not
consider himself competent to inflict
any punishment upon them, "as the
Regulations of Government do not re-
-cognize, or provide for, the offence."

12 In the 58th paragraph
the 3d Judge suggests, that if the co-
-Government

Government deem it expedient "to reserve to themselves" "the exclusive right in this "particular description of property, the "fact should be promulgated by a Regula- "tion, as in the case of other Monopolies".

13 The Court of Foujdaree Adawlut concur in the view taken by the 3d. Judge, of this case, and in the propriety of the sug- gestion, offered in the 5th. paragraph of the report on the subject.

14 The question seems to be a- nalogous to that, discussed in the 96th pa- ragraph of the report of the late 3d. Judge of the Court of Circuit in the Western Di- vision upon the D. Sessions of 1825, sub- mitted to the Government by the Court of Foujdaree Adawlut, under date 15th August 1822 - In the present case, as in the case there noticed, no person appeared as the own- er of the property to complain of theft, and without a regulation for the esta- blishment of a monopoly of the [illegible] sandalwood the Court are of opinion, that it is not competent to the Judicial tribu- nals, with reference to the provisions of Section II Regulation I of 1802, to take cognizance of a charge of this nature on the prosecution of the Government.

15 The 13d. and five following paragraphs of the report have reference to the custom, in the province of Malabar, of wearing a knife, designated Peeshan cutty; the abolition of which the 3d Judge strongly recommends.

16. This subject has been so frequently brought under the considera- tion of the Government, that the Court of Foujdaree Adawlut consider, that any obser- vations from them regarding it would be quite superfluous: there appears no rea- son to doubt the injurious effect of the custom, but the question of its suppression involves considerations of state policy, the discussion of which does not appertain to the province of the Judicial tribunals. In

17 In the 68th. paragraph the 3d. Judge suggests, that "all prisoners tried and "convicted before the Circuit Courts, whose ap- "trials are referred under the Regulation to "the Foujdaree Adalut, should be ordered out "to work, pending the reference, in common "with other convicts." and in the 69th. paragraph the 3d. Judge alludes to the cases of several "prisoners in jail at Calicut, who had been "tried by the Circuit Court one year before, "whose final sentences however" had not at the close of the last Sessions been received.

18 The delay in the final disposal of the cases, particularly referred to by the 3d. Judge, arose from the extraordinary number of trials, referrible at the 2d. Sessions of 1823 under the provisions of Regulation I of 1822, the transmission of which to the Court of Foujdaree Adalut was not completed by the 2d. Judge until the end of November last. The legislative provisions now under the consideration of the Government

Government, will so greatly diminish the number of referrible trials that no material delay need in future be apprehended in their finial determination. An objection to the measure, proposed by the 3d. Judge, suggests itself in its being uncertain, that the reference of the trials to the Foujdaree Adalut will result in the conviction of the prisoners

In the 72d. paragraph of

19 the report the 3d. Judge notices in terms of strong reprehension the "mode in which "prisoners are occasionally secured "on apprehension, or rather during exa- "mination, which is generally effected "by tying with Cloths, ropes or other thing "that presents;" and in the 75th. paragraph he suggests, that the Police officers "be "prohibited under the penalty of instant "dismissal from office, and disqualifi- "cation for future employ from tying the

"the arms of prisoners behind them, or otherwise
"with Cloths ropes, or other description of bind-
-ing" The 3d. Judge observes that "the necessity
"of such practice on the score of precaution
"can seldom exist, and may be always obvi-
-ated, by the use of an iron ring with a joint
"on one side and a screw or rivet on the other,
"to which a rope might be fastened, which
"would effectually prevent escape." and he
suggests, that the "Magistrates be instructed
"to supply their Police Officers with a suf-
-ficient number of these rings for ordinary
"use, which might be made up in the
"Zilla Jails by the prisoners, accustomed to
"this description of labor, and thus save
"every other expence, but that required
"for the purchase of the raw material".

20 The Court of Foujdaree Ad-
-lut consider it proper to call the par-
-ticular attention of the Magistrates
to the practice, noticed by the 3d. Judge
in this part of his report, in order that
measures may be taken for preventing
the infliction of pain, and injury, on
prisoners with the view, or under the pre-
-text, of ensuring their safe custody. The
use of rings of the description, recom-
-mended by the 3d. Judge, as of a wooden
hand-cuffs should be substituted for
ligatures, which from intention, or ca-
-relessness, may be so tightened, as to oc-
-casion torture, and permanent injury,
and the officers of district Police should
be strictly enjoined to subject priso-
-ners under examination to no greater
restraint, than may be absolutely ne-
-cessary as a measure of precaution.

In the 78th. paragraph of the
21
report the 3d. Judge submits for the decision
of the Court the following question: viz "Whether
"under the Regulations two or more Judges at
"the Head station are, or are not, competent
to

"to revise and modify the sentences of a Criminal
"Judge, when it may appear to them, that such
"sentence adjudges a penalty, inadequate to the
"offence committed."

22 The Court of Enquiry therefore
are of opinion, that such power cannot be
deduced from the provisions of Section
XXIII Regulation X of 1816. the only cases,
in which the Judge of Circuit is authorized
by that Section to direct additional en-
=quiry, and a reference to the Judges of the
Provincial Court of Circuit, are when
the accused may appear to him to
have been discharged, under the pro-
=visions of Section IX of the Regulation,
or to have been punished under the pro-
=visions of Section VII "on insufficient
"grounds." No interference appears to be
intended by this Section in respect to
cases, wherein the grounds for the
discharge, or the punishment, of the
prisoner may appear to have been
insufficient.

23 Section XXIV of the
Regulation vests the Judges of the
Provincial Court of Circuit with
authority to call for the proceed-
=ings of any Criminal Judge, when-
=ever it may appear necessary, on
petitions presented to them relative
thereto, and "to pass such orders
"thereupon, as they may deem proper
"and consistent with the Regulations."

24. In the 82d paragraph
of the report the 3d Judge construes
this latter provision, as allowing
"the prosecutor as well as the prisoner
"to bring under review of the appel-
"late jurisdiction decisions, en
"which he disproportionate punishment
forms

"forms the ground of discontent," and the
"3d Judge observes, "if in such appeals
"the decision is palpably erroneous,
"or inadequate, the power granted to two,
"or more, Judges to pass such orders, as they
"may deem proper, cannot be more judi
"-ciously, or advantageously exercised, than
"in rectifying the error, or whatever
"side it should have occurred."

The Court of Foujdaree
Adaulut do not concur with the 3d
Judge in thinking, that it is intended
by the provisions of Section XXIV
Regulation X of 1816 to vest in prosecu
-tors, before the Criminal Judge, the
privilege of bringing cases, disposed
of by him, before the Provincial Court
of Circuit in appeal, on the ground
of the inadequacy of the punishment
awarded.

If

It appears to the Court
to be the intention of this provision
to authorize a revision of the proceedings
of the Criminal Judge in all cases, where
-in those proceedings may appear
to have been irregular, or defective,
and of all sentences, which may be
contrary to Law: but though the
Court consider it to be unquestiona
-bly competent to the Provincial
Court of Circuit to advise the Criminal
Judge, for his future guidance, of the
insufficiency of any punishment,
adjudged by him in cases, brought
under their cognizance, they are of opini
-on, that where sentence has been pass
-ed on the prisoner, under a discretio
-nary power, vested in the Criminal
Judge by the Regulations, it would be
inconsistent with established
principles

principles for that Court to interpose for the purpose of enhancing the punishment.

27 The Court of Foujdaree Adalut are further of opinion, that the Judges of the Provincial Court of Circuit would not be acting in accordance with the intention of Section XXII Regulation X of 1816, were they to call for the proceedings of a Criminal Judge, merely on the ground of the prisoners complaint of the severity of his sentence, if such sentence appeared to be legally adjudicable on conviction of the offence charged.

28. It is obvious to remark that were appeals of this description entertained, they would be preferred by every offender sentenced to punishment by the Criminal Judge, and the object of vesting this officer with discretionary power, in apportioning punishment, would be liable to be altogether defeated.

Extract

Extract from the Proceedings of the Foujdaree Adalut under date the 14th April 1825.-
Read return dated 6th Instant.-

Foujdaree Adalut

L.S.

To the Second Judge on Circuit in the Southern Division

Herewith you will receive an Extract from the proceedings of the Court of Foujdaree Adalut of this date to the 4th orders contained in which you are required to conform returning this precept so executed or good and sufficient reason why it has not been executed and what you may have done in pursuance hereof within five days from the date of its receipt.-

By order of the Court of Foujdaree Adalut
Fort St George
18th March 1825

Signed W. Thackeray
Register

2d Para 1. - - - - - - - - In conformity to the exigence of this Precept the 2d Judge has the honor to submit Copies and English Translations of the Futwahs delivered in Nos 3 & 6 of the Madura Calendar - and also to submit the explanations called for by the Proceedings of the Foujdaree Adalut relative to the 2d Futwah delivered in Case No 16.-

The

2. The Case in Abstract was as follows.-

The Prisoner was charged with wilful and corrupt Perjury committed before the Court of Circuit at the last Sessions- The Perjury consisted in the Prisoner having sworn before the Circuit Court that he was not present when a certain Murder was perpetrated- Whereas before the Criminal Judge, he had previously deposed on Oath that he was present. To prove that the Perjury was committed before the Circuit Court, there were witnesses who heard him depose before that Court that he was not present- and others to prove that when the Murder was committed the Prisoner actually was present.-

3. The Law Officer gave in a Futwah stating that the fact of Perjury was proved against the Prisoner, but that he could not be punished because the Circar was the Prosecutor, and the witnesses who proved the Prisoners deposition before the Circuit Court were Police Officers

4. ..... Considering this Shoobah or Exception as similar to that mentioned in Section XXV. Regulation VII. A.D. 1802 and "that "it was a scrupulous distinction not affecting "the nature and Criminality of the offence and "evidently repugnant to the principles of Equal Justice "Justice", a second question was proposed to the Law Officer" requiring him to declare "what would have been his Futwa suppo= "sing such witnesses had not been Circar "Servants."

The Law Officer then declared

5. that had not this Shoobah existed the Futwah would have convicted the Prisoner of the Crime of Perjury and that he would have been liable to Sokoobut- Under this 2d Futwah, the Prisoner was sentenced to receive the punishment provided for, by the Perjury Regulation.-

6. The 2d Judge would submit that he did not overrule the Futwah but by analogy of proceeding laid down in Section XXV Regulation VII A.D. 1802, he demanded a second Futwah- It is true that after the Futwah is so obtained the latter part of Section XXV Regulation VII 1802 directs that the trial shall be sub= =mitted to the Foujdaree Adalut but this has hitherto never been put into practice in this division as will be evident by referring to Rs. 20 on the Combaconum Calendar 2d Sessions 1819. Rs 15 on the Dharapooram Calendar and Rs 2 on the Tinnavelly Calendar 2d Sessions 1820 and Rs 18 on the Tinnavelly Calendar 2d Sessions 1821 and

and also in numerous other cases- And as the Crime of Perjury if proved is punishable under the Regulations by the Circuit Court without referring the case to the Foujdaree Udalut- The 2d Judge did not deem it necessary to submit it to their consideration.-

7 If however the 2d Judge has misunderstood the provisions of the Regulations, he requests the instructions of the Foujdaree Udalut on the subject for his future guidance in similar cases.-

Given under my hand & seal of the Court this 6th day of April A.D. 1825.-

(Signed) C.M. Lushington
2d Judge on Circuit

Courts Order. 14th April 1825.

1 In the futwa on Case No 16 of the Calendar the Mohummudan Law Officer rejected the evidence of the 1st 2d 4th and 5th witnesses, on the ground of their being Servants of the Sirkar, whereupon the 2d Judge required a second futwa, and the prisoner being thereby pronounced to be duly convicted, passed sentence upon him.-

2. In the foregoing return the 2d Judge explains, that he considered this Shoobah, or exception," as similar to that mentioned in "section XXV Regulation VII A.D. 1802;" and that by analogy of proceeding he demanded a second futwa; and he proceeds to observe, that the rule contained in section XXV Regulation VII of 1802, prescribing a reference to the Court of Foujdaree Udalut in cases of this description, "has never been put into practice" in the Southern Division, in proof of which remark he refers to cases in certain former Calendars.-

2 The Court have referred to the cases, mentioned by the 2d Judge; and finding that none of the prisoners tried therein were of the Mohummudan persuasion must attribute the above observation to mistake.-

3 The provisions of section XXV Regulation VII of 1802 only empowered the Judge of Circuit to over-rule objections, taken to a witness's testimony on the ground of his religious persuasion, and authority to proceed in the mode, adopted by the 2d Judge in this case, was not vested in the Courts of Circuit, until the enactments of Regulation I of 1825.-

4. Under these circumstances it is necessary, that the record of the proceedings, held in this case, should be submitted to the Court of Foujdaree Udalut for their final judgment.-

Ordered, that extract of these proceedings be sent to the 2d Judge on

on Circuit in the Southern Division by precept requiring him to transmit English and Persian translations of the proceedings held in case of No 16 Madura Calendar 1st Sessions AD 1825 within one month from the date of the receipt of the precept.-

Extract from the Proceedings of the Foujdaree Adalut under date the 27th April 1825.-

Read letter, dated 13th Instant from the Judges of the Provincial Court of Circuit in the Northern Division.-

To the Register of the Foujdaree Adalut
Fort St George

Sir,

The Criminal Judge of Chicacole having transmitted the accompanying address to the Judges of the Foujdaree Adalut, in explanation of certain circumstances relative to the case No 10 in that Calendar, which he has thought it necessary to submit, in reply to their orders of the 11th March last, We have the honor to forward the same to you accordingly.-

We have the honor to be &c.
(Signed) Kath. Webb
1st Judge N.P.C.
" James Taylor
Acting 3d Judge
N.P.C.

Masulipatam -
Northern Prov. Court
13th April 1825.---

To the Register to the Foujdaree Adalut
Fort St George.

Sir,

Para 1st The Prisoner Mylapilly Gurrugandoo, charged with murder, in case No 10 of the Chicacole Calendar, 2d Sessions of 1824; and regarding whom, I have just received the Foujdaree Adalut's Proceedings, under date 14th March 1825 sentencing him to transportation for life, and corporal Punishment was acquitted of the crimes, before the Court of Circuit, and discharged from Jail, on the 26th November 1824, by warrant of the Circuit Judge - a copy of which is enclosed No 1. but received again into Jail, on the 28th January 1825 by a second warrant, Copy of which is also enclosed No 2. The injunctions of clause second, Section XV Regulation VII of 1802 appear to me to be clear and distinct The words are "If the Law Officer shall "declare the Prisoner to be not guilty, the "Judge shall pass an immediate sentence "of acquittal, and orders him to be dis- "charged; unless he shall see cause "to disapprove such opinion, in which "case he is to refer the proceedings on the "Trial for the sentence of the Foujdaree Adalut.

The

The Circuit Judge therefore was vested with full powers, to discharge the Prisoner here: = in alluded to - but there appears nothing in the enactments, which authorizes a Circuit Judge, after his Warrant of acquittal, has been car= =ried into effect, to issue a second Warrant for a Prisoners reapprehension, and upon altered sentiments of the opinion given by the Law Officer, to refer the Trial for the sentence of the Poydaree Adalut.-

2ly Having always been given to bvliene that it was a general Principle of Law, in all nations; that an accused person having been once fully acquitted, of the crime of which he stood charged; and set at liberty by a competent Tribunal; can= =not afterwards be legally reapprehended, and punished upon the proceedings already held upon him - I am induced to bring the circumstances of this case to the consideration of the Judges of the Poydaree Adalut, trusting that my doubt of the le= =gality of the Punishment now awarded to this Prisoner - however erroneous it may be, and my anxiety to be on the safe side in the execution of the Warrant, will be considered considered a sufficient justification for my making this reference.-

I have the honor to be &c.
/signed/ W. G. Monk.
Judge.

Chicacole Zillah Criminal Office - 6th April 1825.

No 1.
2d Sessions of 1824.
No 10 of the Calendar.

To the Criminal Judge in the Zillah of Chicacole

Whereas at a General Jail delivery for the Zillah of Chicacole holden at Chicacole on the 8th day of No= =vember 1824 the Prisoner Mylapilly Gerregandoo charged with murder having been tried and acquitted before the Court of Circuit is ordered to be released from confinement It is hereby ordered accord= =ingly and that you do return this war= =rant with an endorsement attested with your Official Seal and Signature certifying the same having been done as commanded by Section XIII Regula= =tion VIII passed by the Governor in Council on the 1st day of January A.D. 1802. Herein fail not.

Given under my hand and the Seal of the Court at Chicacole this

this 26th day of November A.D. 1824.-

/signed/ W. Lord.
2d Judge N.D.C.

To the exigency of the foregoing Warrant the Prisoner Mylapilly Yerreganoo has been released.-

Given under my hand and the seal of the Zillah Court at Chicacole this 26th day of November A.D. 1824.-

/signed/ W. G. Monk.
Judge

/True Copy/
/signed/ W. G. Monk. Judge

No 2

2d Sessions of 1824.

To the Criminal Judge in the Zillah of Chicacole

You are hereby Ordered and directed to receive from the Magistrate of the above Zillah, Mylapilly Yerreganoo / Prisoner in No 10 of your 1st Calendar 2d Sessions of 1824 / and detain him in confinement in the Gail until further Orders shall be issued regarding him.-

Given under my hand and the seal of the Court at Masulipatam this 11th day of January A.D. 1825.-

/signed/

/signed/ W. Lord.
2d Judge N.D.C.-

Received
25th January 1825

/True Copy/
/signed/ W. G. Monk.
Judge.

Courts Order. 27th April 1825.

1. The Criminal Judge appears to consider the reference of this prisoner's trial, and the judgment, passed in the case by the Court of Foujdaree Adalut, to be illegal with reference to the provisions of clause second Section XV Regulation VIII of 1802, he having been discharged by order of the 2d Judge, in confirmation of the futwa of acquittal, delivered by the Mohummudan Law Officer of the Court of Circuit,-

2. The Court of Foujdaree Adalut must conclude, that the Criminal Judge was not aware that the reapprehension of the prisoner, and the reference of the trial took place by their Special orders, or the Criminal Judge would not have taken upon himself to suspend execution of the sentence, passed by the Court.-

3 The Court may be presumed to have fully considered the question of law, and to have satisfied themselves of their

their authority to set aside the proceedings of the 2d Judge in this case before their orders were issued upon it: the provisions of Section XXV Regulation X of 1816 are sufficiently com= =prehensive to uphold the legality of the Pa proceeding; the Court, however, have before them in the case of Boyana Appiah, pri= =soner in case No 17 Masulipatam Calendar of Sessions A.D. 1805, a precedent strictly in point; this prisoner having been released on acquittal by the Judge of Circuit, and the Courts of Foujdaree Udalut having had before them the proceedings, and set aside the acquittal, it was determined to be necessary that a pardon should be obtained from the Governor in Council to exempt him from execution of the sentence of death, which on the revision of the trial had been passed upon him.-

4 The Court of Foujdaree Udalut have no doubt of the correctness of the proceeding, adopted in the case last mentioned, or of the authority of the Court, under their general controuling powers, to interfere in this manner, whenever it may appear to them, that such interference is requisite for the ends of public justice.-

Ordered, that extract of these proceedings be sent to the Provincial Court of Circuit in the Northern Division by precept en= =joining them to command the Criminal Judge in the Zilla of Chicacole forthwith to obey the enquire of the warrant issued to him for carrying into effect the sentence of transportation, passed on the prisoner, Mylapilly Gungadoo.-

Extract from the Proceedings of the Foujdaree Udalut under date the 19th May 1825.-

Read return, dated 6th Instant.-

Foujdaree Udalut

L.S.

To the 2d Judge of the Provincial Court of Circuit in the Centre Division

/Herewith you will receive an extract from the proceedings of the Court of Foujdaree Udalut of this date, to the orders contained in which you are required to con= =form returning this precept so executed or good and sufficient reason why it has not been executed and what you may have done in pursuance hereof within five days from the date of its receipt.-

By order of the Court of Foujdaree Udalut

/Signed/ W. Hudleston

Register

Fort St George.
30th April, 1825.

L.S.

Para 1 In conformity to this precept received by the Second Judge at Chittoor yesterday evening and directing him be= =cause one Sunjeevoogadoo was only convic= =ted liable to imprisonment, when the

Judge

Judge deemed him a fit subject for stripes, to explain what provision of the law was considered to bar such punishment "the Court of Sudder Adalut having" "ruled that stripes are legally adjudicable under the provisions of Section XXI Regulation VII. of 1802" the second Judge has to observe that he was not aware of this interpretation of the law until several days after sentence had been passed and taking the words "nothing shall be construed to empower the Courts of Circuit to authorize an enhancement of the penalties declared by the Regulations for burglary or theft when not accompanied with the wounding" and so forth in clause fifth Section II Regulation VII of 822 in their strict sense and also strictly construing the words "shall in lieu of such punishment be imprisoned and kept to hard labour for seven years" of Section XXI Regulation VII of 1802 deemed this imprisonment as (as had been his invariable practice hitherto) the full extent of the punishment which he could inflict in such a case. The calendar explains why the old convict again convicted in two cases was thought a fit subject for stripes. It may be added his conduct appeared to manifest that he entertained little fear of the punishments by imprisonment. He heard the sentence without any perceptible sign of compunction.-

2. The power of so far enhancing when the stated punishments of the Moohummudan law is that a prisoner lose one limb, the specific measure of commutation prescribed in Section XXI aforesaid would remove several objections found in practice to be ascribable to clause second Section II Regulation VII A.D. 1822. The preamble of Regulation XV A.D. 1803 reasons on the propriety of a determined measure being fixed for even those instances in which the Moohummudan law allows a discretion to the Judges, and the object is to "maintain the uniform as well as adequate punishment of offenders when convicted according to the criminality of the offence." But maintaining one measure of punishment under clause second Section II Regulation VI. on those before convicted of burglary or persons of notoriously bad character or perfidious watchmen and guards when "property be stolen of which the value or amount shall "be below" one hundred Madras Rupees;" and on those new and inferior offenders whom the aforesaid have induced to aid in their misdeeds, may not be fulfilling the principle so proposed. Undoubtedly the criminality of the first is in every moral respect the greatest and so the law admits; for it is the guilt of

of the notarious or the formerly convicted offender and of the treacherous watchman, that makes the case amenable to a Court which in lieu of the stated punishment of the Mohummudan law can pronounce the prescribed penalty of seven years imprisonment. For otherwise the penalty could not, on following the old maxim of strictly construing a penal law be more than an "imprisonment with hard labor for a term not exceeding two years and corporal punishment not exceeding thirty stripes of the rattan"

3. If the sentence be uniform in the cases before mentioned it may not be adequate or if adequate to the greater guilt of the principal offender or offenders be more than adequate to the smaller guilt of the offenders whom the law, as touching themselves alone, would admit into the inferior class of criminals. The uniformity in respect to penal force may also be rather specious than sterling in its quality. Sunjeevoogadoo the man convicted in cases 11 and 12 having become accustomed to a jail life and having already past the ordeal is hardened to its disgrace; so feels little for a sentence of seven years. whereas such a sentence would rend the heart of a less hardened offender, say his brother Changadoo should he have been convicted; a peril to which he was exposed.

4 The remark in the calendar was made from a thought that was disposed to have sentenced Sunjeevoogadoo to suffer the stripes had the second Judge not been at the time persuaded that stripes, not being expressed in the prescribed measure of commutation; and the discretion of the Judges of Circuit defined and determined, he might subject himself to a charge of overstepping the restrictions which the law promulgates against the "enhancement of the penalties declared by the regulations in force for burglary" It was on hearing that the Higher Court had ruled in a precept to the third Judge that stripes could be given that this exception was used; intending to denote some regret that the 'conduct' which the Foujdary Adalut had under section III Regulation XXII A.D. 1802 prescribed for the observance of the "Courts of Circuit" "agreeably to their constitution of the case as provided for by the regulations" had not been sooner known, so that this construction of the law might have been used, when so fit an object for it as the old convict Sunjeevoogadoo, a stout and healthy man, was to receive adequate correction from the laws the bar to such punishment in this case" being that the construction, which the second Judge had strictly given to the penal law, comprehended

comprehended such notions of uniformity and determination of discretion in such matters as to occasion a thought of "the true meaning and import" of the "regulations" by which as Judge of a Criminal Court of Justice he was to be by section XIII Regulation I. A.D 1802 " guided in his " proceedings and decisions" leaving to no Judge the discretion to adjudicate stripes, when they were not prescribed in lieu of the punishment, which according to the Mookum=mudan Law was specific and not discretionary.-

5. The third Judge to whom this construc=tion of the law was sent did not it appears deem it necessary to communicate it under the idea that it was the usual practice a subject of which it is believed he treated when the point of law was submitted.- The second Judge regrets he did not take a copy of the order of the Higher Court immediately and deferred this measure until he was proceeding again on Circuit.- For now he has to depend on memory since the vacation of the Court has in some degree separated the two Judges. The second Judge had no anticipation of his having so early to treat of the subject nor thought that he should be called on to ex=plain within five days what provision of the law was considered to bar such punishments.-

6. The 2d Judge owns that now by treating of the precept of the Higher Court by memory he does not recollect whether the Higher Court when they prescribed & this conduct to be observed by the Courts of Circuit pointed it out as a case depend=ing on any other provisions of the law than those mentioned in the present precept or "the provisions of section XXI. Regulation VII of 1802" The second Judge most respect=fully and obediently acknowledges that the power of the Higher Court to prescribe "in all cases provided for by the regulations agreeably to their construction thereof." is to be "held finial and conclusive" and should the second Judge fail in recollecting all the regulations by which this con=struction was proved to be agreeable to the law this unintentional error, may be held pardonables-

7 The second Judge has on former occasions repeatedly submitted to the Higher Court opinions respecting the necessity of sentencing notorious offenders, whose greater guilt is the operating aggravation under clause second section II Regulation VII A.D. 1822, only to the same punishment as those who have no character of being thus incorrigible; and among other expedients proposed that

that the greater criminals should be subjected to stripes at the discretion of the Judge; with which the doctrine of no discretion, for the strict maintenance of uniformity, seemed to preclude: and more especially that yet many years never rule or regulation for prohibiting "enhancement;" the regulation indeed which formed the nisab of 100 Madras rupees. In this disposition of mind the second Judge hailed the said construction of the law as a great improvement, which by the discretion which it allowed, dissipated several scruples touching the punishment of greater and lesser criminals by an equal measure of penal pain, and not in proportion to their respective demerits: for even the capital argument of the preamble of Regulation XV A.D. 1803 is reprobative of each prisoner not being punished "according to the degree of guilt and criminality of the act established against him."

8. The second Judge is aware of the difficulty of providing in law against all contingencies and of there being many strong arguments for the system of specific punishments for each offence, to be pronounced by all the Courts of Justice without exceeding or mitigating them. This was the system followed in respect to burglaries and in respect to other crimes in the said regulation of 1803. In it the system was left open to remark as it did not like clause second section II Regulation VI. A.D. 1822 acknowledge a greater and lesser class of offenders, the last of whom might, as touching their own guilt in the robbery charged against them, be adequately punished by less than one third of the imprisonment, to which they might be subject, in respect to the guilt of associates, provided these associates in the offence, being formerly convict or notorious or treacherous malcontents were apprehended; and thus reduced to the condition of being "prisoners concerned in the offences" and so forth.

But though the said law of 1803 did not pursue the same principle in respect to larceny even when accompanied with burglary it did acknowledge the aggravating effect of repetition in highway robbery; and without conviction previously to the last offence. It did not make their punishment all the same or as the present law promote

promote the inferior offenders because of the greater guilt of a companion into another class when they should be uniformly punished with him; thus in effect enhancing their own guilt: but enacted a severer punishment for the greater culprit; and left the others to suffer that fixed for their own respective offences had not such greater guilt appeared to justify the enhancement of punishment on one of their imprisoned companions. Nor by strict construction of the present law it may be necessary that the watchmen or notorious character engaged should be made a prisoner to confirm the aggravation for if he renders himself still more notorious by escape, and open hostility to the peace of the society, he may not reach the literal condition of the said clause; unless the term prisoner be used as Dydee (prisoner) is very generally throughout this division from ignorance of the purport of the term for robber, that is for any one of the gang taken or not likely to be so.-

10.

But this is a rude practice which it is hoped will terminate ere long though it has hitherto continued in opposition to repeated efforts to stop it and in the construction of the law, more especially the penal statutes, no doubt ought to "be entertained" as regulation I of 1802 acknowledges of their "true meaning and import" but things be uniformly described by the same designations throughout the Judicial code." By the revival of clause third section IV. Regulation XV of 1803 the principle of repetition subjecting the very prisoner guilty of the repetition to greater punishment than an associate tried for a first offence is revived in the code. The Bengal code from which Regulation XV of 1803 was taken did not make robberies aggravated by such persons as police officers being engaged in them: but this omission was soon remedied and their guilt declared in some degree like clause second section II. Regulation VI of 1822 to aggravates the offence.-

11.

The said law did however continue to distinguish between the punishment of the said aggravated offenders and common robbers. It did not proceed by promoting the last to a rank wherein they were deemed to be equally subject to the vengeance of the offended laws and make them

them participate in the punishment which the aggravated condition of one criminal occasioned to him; but dealt out to this one a much se= =verer measure of penal pain; leaving the other in the same condition to which his own guilt rendered him subject. The Bengal code also con= =mminated stripes against the offences of Villag watchmen on the principle that though stripes were necessary they could not be inflicted either by Magistrates, or Judges, without an express recognition of the punishment in the letter of the law. It is admitted that these Village watchmen when they rob ought in justice to severely suffer and probably, now village Moon= =siffs and watchmen and other members of the village police are found to so often offend, an addition to the penal force of the code against them might be prudently made by denouncing a greater punishment against all such who con= =nive at robbery or assist in it.

12. But touching the point of new offenders who are caught robbing with police officers being under the law liable to be involved in the same degree of punishment, it may be noticed that the pariah or heden Taliar is a favored part of the present system of police. Indeed an indispensable portion of the Foujdary power

power of police for whose discipline in order to promote good government stripes, a com= =mon military punishment, might be allow= =able and be very efficacious. It must be recollected that whenever this and indeed other clases of village police shake off good discipline they offer the greatest temptation to the youth of the neighbourhood to ad= =venture out to offend against the laws. Indeed tatiars and sometimes Moonsiffs & will not only tempt but even forcibly cause those over whom they exercise con= =trol to aid in plans of robbery. Local influ= =ence is powerful.-

It is admitted that seven

13

years imprisonment is a light commutation in lieu of amputation of a limb to a police officer or watchmen convicted of a robbery by breaking; though not quite one hundred Madras rupees of property be taken. They are public servants who betray their trust but they are agents of the police and invested with local influence. So morally doubtful may be held of the equity of subjecting their deluded associates to an equal punish= =ment with them and of a youth, whom the taliar as an executive police officer of the village, when he gets out of discipline can find many means of entrapping in guilt being

being punished the more severely because of the public office by which such temptation acquired the predominating influence, and the means of misusing it.-

14. The second Judge under like opinions hailed with joy a precept that seemed to invest him with a discretion of giving a greater punishment to the notorious, or chief profligates of the country; to the formerly convicted prisoners, and perfidious watchmen than to the youth - whom the second, after too early a release from the common Gaols, or the first by escape through too feeble a police in the state, or the last by the ineffectual discipline of their employers, had entrapped into crime - On sitting down to explain the bar to the punishment by stripes of Sunjeevoogadoo the second Judge intended to be very brief; to give only a statement of his regret at his own erroneous construction of the regulations not having been corrected in time for the law being in its entire state, applied to the correction of Sunjeevoogadoo and to express congratulations about a late modification with due authenticity of the law.-

15. For not having hitherto found it necessary to see the relations which the provisions of clause fourth Section II Regulation XII A.D. 1825 hold in regard to larceny or burglary, a misconception of it generally acknowledging the Courts of Circuit to have authority at their discretion to adjudge prisoners sentenced by them to imprisonment to receive corporal punishment was, it may be pardonable under the circumstance of its late promulgation to acknowledge, entertained. Whereas on more strictly examining how this case is provided for by the regulation the discretion granted in the said clause to adjudge corporal punishment in addition to the imprisonment prescribed by former provisions of the regulations is confined to clause third Section IV Regulation XV. of 1803 which relates to the punishment of Highway robbery or robbery by open violence.-

16. "If the regulations do not sufficiently provide for the case" are words found to immediately follow in the case the enactment declaring the "final and conclusive" authority to which the second Judge has taken an early opportunity of subscribing his respect - The second Judge has also premised the difficulty under which he is placed by not being able to get the authentic copy of the conduct the Higher Court prescribed to the third Judge, in the "instance wherein" he made his "reference" so as to be certain of the sentences on which the construction of the Higher Court rests - But the second Judge placing confidence on the

the well known anxiety of the Higher Court to give the most authentic construction to the letter of the law will venture with great deference to disclose some scruples which a review of regulation I A.D 1825, in order to answer the precept, that this forenoon occasioned.-

17. In the present precept it is observed that "the Court of Foujdaree Udalut having ruled that stripes are legally adjudicable under the provisions of Section XXI Regulation VII. A.D 1802. desire that it may be explained what provision of the law was considered to bar such punishment." This word adjudicable the Second Judge understands to mean discretion; the number of stripes being supposed to be 39 the usual number of the law for the Courts of Circuit when stripes are to be inflicted though this number is not without exception as witness the thirty stripes of Regulation VII. A.D 1811.-

18. The opinion of the Foujdaree Udalut extends it is believed no further than to rule that any portion of these stripes, not to exceed thirty nine in number, may be at the discretion of the Judge added to the seven years legible in the law: not that like a stated punishment they must be inflicted equally as the seven years.- This is indeed the circumstance with the stripes the new regulation in Section II permits the

the Judges to add to the imprisonment literally denounced in clause third Section IV Regulation XV A.D 1803; and still when clause second and third Section III mentions the prescribed punishment of Clause third Section IV Regulation XV A.D 1803 aforesaid as one which cannot be mitigated without leave it seems to mean the imprisonment which that law prescribes as a stated punishment.-

19. The new regulation then proceeds to treat of the punishments prescribed in Section XXI Regulation VII of 1802 for cases wherein a fatwa awards amputation. Were the mitigation, not to be ordered without leave, of too great severity would it is supposed likewise apply to the seven years of imprisonment to be given in lieu of amputating one limb not to the stripes the Foujdaree Udalut have ruled to be adjudicable- The new regulation then proceeds to the punishment prescribed in Section III Regulation VI of 1811 for perjury forgery &c but here the thirty stripes, then the number to which the Court of Circuits are restricted, but required to pronounce in the whole, are intended and can only be mitigated & under such rules.-

20. The first part of Section XXI Regulation

Regulation VII of 1802 touching the case of a Prisoner adjudged to lose two limbs and in lieu thereof to be imprisoned for fourteen years seems to be manifestly modified by clause fourth Section II of the new law declaring that "the Courts of Circuit shall have hereafter authority at their discretion to adjudge all persons sentenced by them to im= =prisonment under the provisions of Clause third Section IV Regulation XV of 1803 to re= =ceive corporal punishment for this includes those cases of Sirka-i-Kobza or Gharatgherre in conviction of which the Moohummudan law adjudges the stated punishment of loss of two limbs and, if there can be exceptions, it is yet unnecessary here to lengthen the discussion by their introduction.—

21. When the new law therefore allows to instances in which the prescribed punishment or penalty adjudicable to use the language of the preamble for amputation may be too severe it means the cases of persons adjudged to lose one limb in lieu of which punishment, to a) nearly copy the stated punishment of the law letter by letter, the convicted is to "be impri= =soned and kept to hard labor for seven years"

22. It is only the mitigation of the sentence prescribed in Clause third Section V Regulation XV A.D. 1803 that is expressly treated of in the preamble of the new law but clause fourth and even clause third Section II of the law seems to re= =cognize the principle that stripes cannot be inflicted without the authority be literally expressed in the law, or to use the words of Clause third Section VII Regulation XV A.D. 1803 without an ex= =press denunciation of such penalty "this maxim will apply to Magistrates and to Criminal Judges.—

23 If contemplation be held under clause second Section II of the same regulation of the provisions on any subsisting regulation denouncing the penalty to be adjudged when the futwah declares a thief or common burglary to lose one limb in cases the Court of Circuit can hear and determine a reference to the express words of Section XXI Regulation VII A.D. 1802 only guides to a measurement of imprisonment— It may be difficult in respect to the last of the laws, the one that repeals all former law differing with it, to construe it "so that the whole of this" regulation may stand" and to acknowledge it required an

an express act of the legislature to add stripes to the term of imprisonment which a remised and therefore subsisting regulation expressly denounced against a greater crime and yet to allow that an equal quantity of corporal punishment could be added to the imprisonment the subsisting law expressly denounces against a crime but of half the same magnitude estimating them by the proportions of seven and fourteen used by the legislature from the commencement of the code.-

24. The Higher Court have desired the Second Judge to explain what provision of the law was considered to bar such punishments. The Second Judge in compliance with that order has explained the law as it operated on his conscience before he was aware of the Higher Court who are to prescribe the conduct in all cases provided for by the regulations having, on a reference of the third Judge, prescribed any departure from what the Second Judge had considered to be the invariable practice. He has also shown how the modification conforms to his own ideas of Jurisprudence and the Higher Court will no doubt reassure him if his contemplation of the law this day, while executing their orders, has given birth to scruples which he has found it his duty not to conceal. If they be authentic in law he is assured of the approval of the Higher Court. If he have erred from not having their better exposition of the law before him he places great confidence on the higher Court excusing his failing, and deeming it sufficient to correct the mistaken notions of law on the point, in which his early explanation was demanded.-

25. The Higher Court have indeed before in several instances very gently treated a like mistaken notion of the law. The Second Judge has like others erred in sentencing prisoners such as those who by clause second section II Regulation VI of 1822 are not held to be aggravated offenders, unless confederated with some other prisoner who had been already convicted or notorious as a police offender when the offence was committed; but are as respects their self guilt to be alone amenable to the Criminal Court, under the discretionary punishments declared by the Moohummudan Lawyers to a measure of punishment more similar to what they were subject under the denunciations of the

the law had the Criminal Judge himself determined the case, being two years and thirty stripes: Some sentences by him of such prisoners to smaller terms of imprisonment and to stripes have been reproved for being at variance from the letter of the law and he has been directed to act according to the second futwah and the stated commutation for amputation of one limb.-

26. In some returns to these cases he has represented the irretrievable state of the error because stripes have been already inflicted, so that a sentence of seven years imprisonment would exceed the standard of commutation by the stripes. In these cases the Higher Court have leniently to the prisoner; and to his erring Judge, allowed the sentence to remain as first pronounced. So if it be a mistaken notion for the Second Judge to believe that the provisions of the law bar him from adding stripes to the standard duration of imprisonment promulgated to constitute the full and legal commutation for the amputation of one limb the Second Judge reverently observes that he has been confirmed in this notion by the assent given by the Higher Courts to the suggestions in the returns before alluded to.

But if it be not a mistaken notion and the letter of the regulations do not to use the some words of Section IV Regulation XXII of 1802 sufficiently provide for the case he would suggest the propriety of a new regulation being framed in explanation of the point of law; being himself very doubtful of the policy of the Judges of Circuit being under the provisions of the law, barred from inflicting such a punishment as stripes on to use nearly the expression of Clause Second Section II Regulation VI of 1822 those prisoners concerned in breaking into and robbing a dwelling house or other buildings after they have been convicted of burglary robbery or other heinous crimes or become persons of notoriously bad character or while employed in the office of watchmen Guards or Police Officers.-

Given under my hand and the seal of the Court this sixth day of May in the year of our Lord, one thousand eight hundred and twenty five.-

Signed Tho.s Newnham.
3d Judge

Court's Order. 19th May 1825.

In the 1st paragraph of the foregoing

foregoing return the 2d Judge states, that he was not aware of the interpretation of the foregoing provision of the law, given in the precept of the 30th Ultimo, until after sentence had been passed in the case, therein referred to.-

2. The 2d Judge will find this interpretation of the Law stated in the 19th paragraph of the proceedings of the Court of Foujdaree Udalut, dated 28th October 1823, upon his report on the 2d Sessions of 1822; which proceedings were furnished to him for his information and guidance.-

3. The Court of Foujdaree Udalut have given full consideration to the arguments, avowed by the 2d Judge in the foregoing return, in support of the view taken by him of this question. They observe, that the provision in the Bengal Code, cited in their proceedings of 28th October 1823, declares that the reference to the Mohummudan Law made in clause first Section V. Regulation LIII of 1803 (corresponding with clause first section V Regulation XV of 1803) "was not intended to preclude the Courts of Circuit from adjudging stripes, "not exceeding 39 in addition to imprisonment not "exceeding seven years, when such punishment in "aggravated cases may appear just and proper."

4. Referring to the words of clause first section V. Regulation XV of 1803 it is sufficiently manifest, that this exposition of the intent and meaning of the Law applies to section XXI Regulation VII of 1802, which contains the modification of the Mohummudan Law in cases of theft, therein alluded to.-

5. And the Court of Foujdaree Udalut, having the authority of a declaratory clause in the Bengal Code for ruling, that "it was "not intended" by the words of this provision to preclude the adjudication of stripes, are perfectly satisfied of the correctness of that construction thereof.-

6. The 2d Judge will in future keep in view this construction of section XXI Regulation VII of 1802 in passing sentence under a futwa of Mudd-i-Zanakah-tuse i-Sogia.-

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

Extract from the Proceedings of the Foujdaree Udalut under date the 7th June 1825.-

Read letter, dated 25th Ultimo from the Criminal Judge in the Zilla of Chicacole, forwarding a letter addressed by him to the Secretary to Government in the Judicial Department, impugning the legality of the Court's proceedings in case No. 18 Chicacole Calendar 2d Sessions A.D. 1824, which he requests may be laid before the Honorable the Governor in Council.-

Courts

In the latter, addressed by the Criminal Judge to the Secretary to Government in the Judicial Department, he states that the proceedings of the Court of Foujdaree Adalut in this case is not known to British Law, & is he believes not recognized by the Mohummudan Law; & he observes, that by the law of England he would stand criminally & answerable for carrying an illegal sentence into effect, and should therefore if he were to receive a sentence of death, passed under similar circumstances, be under the unpleasant necessity of declining its execution, a measure which he believes was "adopted by a late Judge of Masulipatam, Mr. "William Thackeray, in the case of Boyena Appiah "in 1805, referred to by the Judges of the Foujdaree Adalut "but, whose remonstrances against the legality of "the warrant of reapprehension and execution, it is "very probable alone led to the necessity of applying "to Government for the pardon of that person".-

The Criminal Judge proceeds to observe that "the Judges of the Foujdaree Adalut refer to section "XXV Regulation X of 1816 for the extent of the authority "exercised in this novel case - at the same time they "quote a case of 1805 as a Precedent; & since the whole of "the powers vested in the Foujdaree Adalut emanate from "the Government" he trusts, that his "anxiety to obtain "the sentiments of Government upon the legality of so "delicate and tender a point, as touching the "immediate duties of" his "office, will not be construed into "into any intended disrespect towards the Judges "of the Foujdaree Adalut, as nothing can be further "from" his "intention".-

In proposing an appeal to the Governor in Council from the construction given by the Court of Foujdaree Adalut to the Regulations, the Criminal Judge would appear to have lost sight of the provisions of Regulation XXII of 1802, whereby their determination upon such points is made "final "and conclusive".-

In proceeding under the provisions of Section XIII Regulation VIII of 1802 the Criminal Judge acts in a capacity, merely ministerial. The Notion, apparently entertained by the Criminal Judge of Chicacole, of his being personally responsible for the legality of sentences, passed by the Court of Foujdaree Adalut, is preposterous: when there might be reason to apprehend any oversight or mistake in the mode of drawing up a sentence, transmitted to him for execution, it would certainly be proper for him to bring the circumstance respectfully to the notice of the Court; but in entering into a discussion of the lawfulness of a deliberate act of the Court the Criminal Judge has travelled entirely out of the line of his duty, and apparently overlooked the obligation, imposed upon him by Section XIII Regulation I of 1802, to

to yield implicit obedience to the Regulations, which as above intimated enjoin the acquiescence of the Subor= =dinate Courts in the exposition of the intent and meaning of the Law, as declared by the Court of Sudr and Foujdaree Adalut.-

The Criminal Judge is altogether in an error regarding the grounds, upon which an application was made in Case No 17 Masulipatam Calendar Sessions of 1805 for the grant of a pardon to the individual, mentioned in the proceedings of the Court under date 27th April. No communication regarding that case was addressed to the Court of Foujdaree Adalut by the Judicial Officer, named by the Criminal Judge; nor was the application to the Government founded upon any question in respect to the legality of the sentence which was distinctly affirmed by the Court in ma= =king the application, and by the Right Honble the Governor in Council in acceding to it.-

The Court of Foujdaree Adalut do not deem it necessary to go into any further discussion of this case upon the present occasion. To comply with the request, preferred by the Criminal Judge in the letter before the Court, would involve an aban= =donment of the functions vested in them by law, and in fact amount to participation in an irre= =gularity, which it is the proper duty of the Court to correct.-

Ordered, therefore, that the inclosure in the foregoing letter from the Criminal Judge be re= =turned to him; & that he be furnished with Extract of these proceedings for his information and future guidance.-

Extract

Extract from the Proceedings of the Foujdaree Adalut,

Under date the 8th July 1825.

In his letter referring this trial,

the 3d Judge has recorded the following observation,

upon the rule laid down by the Court of Foujdaree &

Adalut under date the 15th April 1819: that an infant is

in no case to be admitted as an evidence without oath:

"That in India where many especially amongst the females

"of the lower casts are lamentably ignorant often at an advanced

"age of even the existence of God a strict adherence to the English

"law of evidence in this respect seems of doubtful expediency."—

In respect to the deviation from the rule

2

of the Court, which the 3d Judge would appear to consider

expedient, it is sufficient to observe, that the Regulations

do not recognize the validity of any testimony in Trials before

the Court of Circuit not delivered under the sanction of an

oath. The cautionary admonition directed in clause fifth

Section XVIII Regulation VII of 1802, to be given to the witnes=

=ses before the Court of Circuit, points to no exception:

it is not therefore competent to the Court of Foujdaree

Adalut to authorize the admission of evidence, where

the witnesses have not been sworn; nor do they think a

modification of the law desirable.-

It appears to the Court that the 3d

3

3d. Judge has mistaken the law of England, in respect to the admission of evidence upon oath. it is only necessary by the law, that the witness shall profess a religion that will be a tie upon him, and that he be sworn according to the ceremonies of that religion, or, in the words of the Regulation, by such oath as may be most binding on his conscience. this the Court conceive to be strictly applicable to the cases of females or other ignorant persons in India, and their evidence is equally admissible under the English law, with that of more enlightened persons.

4 The ground upon which the law of England excludes the evidence of persons of tender age, as their want of skill and discernment to apprehend the nature of an oath, and the consequences of delivering false testimony. It would have been proper, in the particular case under consideration, and conformable to the practice in the English Courts of Law, as well as to the intentions of the Court of Foujdaree Adalut in their circular orders of the 15th April 1819. had the 3d. Judge after ascertaining that the child was insensible of the nature of an oath, directed her parents or some other competent person, to have instructed her in the evil and the penal consequences of perjury, and if upon examination by the Court after receiving such instruction it appeared that the child possessed sufficient discernment to apprehend the evil of perjury, she should have been sworn, and her evidence recorded.

The Court direct that the 3d. Judge

5. do call the attention of the Criminal Judge to the irregularity of his proceeding, in admitting the evidence of the child Yellama without oath.

Extract from the Proceedings of the Foujdaree Adalut

Under date the 11th July 1825.

Read letter, dated 1st Instant, from the Secretary to Government in the Judicial Department.

To the Register to the Court of Foujdaree Adalut,

Sir, The Criminal Judge of Chicacole having

Para 1. transmitted directly to Government, in consequence of the refusal of the Foujdarry Adalut to forward it, his letter of the 25th of May last, relative to the case of Mylapilly Yerregaudu, together with a Copy of his correspondence on the subject with the Foujdarry Adalut, I am directed to state to you, for the information of that Court, that the Honorable the Governor in Council has had those papers under consideration.

The Governor in Council does not perceive

2. that

that the Criminal Judge, conscientiously impressed with the opin and fealings which are expressed in his letter, could with propriety have refrained from laying his sentiments before the Government nor does it appear either that his conduct in doing so is at all irregular, or that the Foujdarry Adalut, by forwarding his representation would have abandoned any function vested in them by law. The Criminal Judge seems never to have disputed the authority of the Foujdarry Adalut, to decide finally with respect to the meaning of any part of the Regulations. It is evident however, that his objections to their proceedings in the case of Mylapilly Yerregaudoo are very far from being such as would admit of being entirely resolved into a mere difference of opinion as to the right construction of the language of the law. Even the question con= cerning the legality of the Foujdarry Adalut's proceedings embraces other considerations than that of the sense of any= part of a Regulation. But supposing the Foujdarry Adalut to be certainly vested by the Regulations with the power which they have exercised, the law may require alteration, on this ground, even though the Criminal Judge had en= tertained no scruples as to the part which he might= himself be called on to perform, the Governor in Council thinks

thinks that he would have been justified in bringing the subject under the consideration of Government.

It appears from the papers submitted
3.
by the Criminal Judge that the Foujdarry Adalut have ordered the re apprehension and punishment of a person, who was tried before the Judge on Circuit in the Northern Division, at the second Sessions of 1824. on a charge of Murder, and was acquitted and released under Section XV. Regulation VII of 1802. The Governor in Council is certain= ly not aware of any thing in the Regulations that in his Judgment warrants such a measure, and in particular it appears to him that it is only by an enormous latitude of construction that Section XXV Regulation X of 1816 can be understood to authorize it. But before forming any conclusive opinion, either as to the proceedings in this particular case, or as to the expediency of leaving to the Fouj= darry Adalut the exercise of the power which they have employed in it, the Governor in Council wishes to receive from them a distinct account of all the different steps that have been taken in the case, and of the grounds on which they considered themselves authorized to issue orders for the re-apprehension & punishment of the person who had been

tried

tried. The papers before Government do not shew in what manner the case came under the review of the Foujdaree Adalut.

4. The Foujdaree Adalut in their proceedings under date the 27th of April last refer to the case of Boyenah Appiah, prisoner in case No. 17 of the Masulipatam Calendar for the Second Sessions of 1805, as a precedent strictly in point. It certainly is not literally a precedent of the exercise of Authority under Section XXV Regulation X of 1816. If any similar provision was in force when that case occurred, the Foujdaree Adalut will be pleased to point it out. The Foujdaree Adalut are also requested to report, for the information of Government, all the different steps of the proceedings relative to Boyena Appiah, in like manner as is required to be done with respect to the case of Mylapilly Yerregaudoo. The only information before Government respecting the former case is contained in an extract from the Proceedings of the Foujdarry Adalut under date the 22d January 1806. It is imperfect, but, as far as it goes, seems rather to afford an argument against, than in favor of, the act, to justify which the case has been cited. Boyena Appiah is described by the Foujdarry Adalut as a person "condemned to die by their Sentence

"Sentence of the 10th December last, but who was released "by the then Judge of Circuit previously to the receipt "of the final sentence" The release is ascribed to the "Circuit Judge's "want of knowledge of the law." And the grant of an unconditional pardon is recommended "because it appears to the Sudr Court that the re-appre- "hension and punishment of a convict situated as Boyena "Appiah is might have a dangerous effect on the minds "of the Natives."

I have the honor to be &c.

Fort St. George, 1st July 1825.

(signed) J. M. Macleod. Secry to Govt

Court's Order - 11th July 1825.

The Court of Foujdarry Adalut having under date 13th December last had before them the Calendar of persons committed, or held to bail to take their trial before the 2d Judge on Circuit at the 2d Sessions of Jail delivery for 1824 in the Zilla of Chicacole, consider- -ed it necessary to call for a copy and English transla- -tion of the fatwa, delivered in case No. 10. of the Calendar with a particular "explanation from the 2d Judge of his grounds for concurring in the acquittal of the prisoner, and adverting to the ulterior instructions which they might eventually

eventually deem it their duty to issue thereupon, the Court directs the 2d. Judge to issue a precept to the Magistrate to take Mylapillay Yerregaudoo into custody, and detain him till further orders.-

2 On the 30th. December last the Court, having attentively considered the futwa, and the explanation given by the 2d. Judge of his reasons for concurring therein deemed it proper, in exercise of the authority vested in them by Section XXV Regulation X of 1816, to direct, that english and Persian translations of the proceedings held in this case should be submitted for their consideration and final orders.-

3 And on the 14th. March last the Court, having maturely considered the proceedings held before the Co. Judge on Circuit, adjudged the prisoner to be convicted of Murder in the prosecution of a robbery, and under the discretionary authority vested in them by clause fifth Section IV Regulation XV of 1813, passed a sentence upon him of 39 Stripes and imprisonment and transportation for life.-

4 The proceedings above cited shew the manner, in which this case came under the review of the Court of Foujdaree Udalut. It is upon examination of the Calendars of prisoners brought to trial before the Courts of Circuit, that the Foujdaree Adalut for the most part found the orders, issued to those Courts under the provisions of Section XXV Regulation X of 1816. the Standing orders of the Court require, that these Calendars shall exhibit, in addition to the particulars specified in the form No. 4 of the appendix to Regulation X of 1816, an abstract of the futwa delivered by the Mohummedan Law Officer of the Court of Circuit, and the Sentence passed by the Court of Circuit thereupon: and whenever it appears to the Court of Foujdaree Adalut, that the futwa is at variance with the Mohummedan Law, or the Sentence not warranted by the Regulations, the proceedings are called for, if necessary, or a revision of the Sentence directed so as to render it conformable to Law.

5 This general review of the proceedings held by the Courts of Circuit at each Sessions of Jail delivery enables the Court of Foujdaree Adalut to correct mistakes of the Law and irregularities of proceeding, and to enforce uniformity of practice, and decision.-

6. The present is the first instance of proceedings under the provisions of Section XXV Regulation X of 1816, in which the Court have deemed it necessary to set aside an acquittal by the Court of Circuit

Circuit and it was not without the most mature consider-
-ation, that they satisfied themselves of their authority to do
so.-

7 The opinion of the Honorable the Governor
in Council is declared in the foregoing letter against such
a construction of the abovementioned section, as would
authorize this measure: the Court, however, contemplated
that provision as confirmatory of a power, which they found
to have been distinctly asserted apparently as being inherent
in the constitution of the Court, in a case, which occurred
previously to the enactment of that section, or of section
XVII Regulation IV of 1811, from which it was taken.-

8 As observed in the 4th paragraph of the
foregoing letter from the Secretary to Government in the Judi-
-cial Department, the case of Boyana appiah is not literal-
-ly a precedent of the exercise of authority under the particular
provision of the Regulations here cited: but it appears to
the Court of Foujdaree Adalut to be strictly a precedent of the
exercise of the authority employed by them on this occasion,
inasmuch as an erroneous acquittal by the Court of Circuit
was therein set aside, the prisoner having been released
under the provisions of Clause Second section VI Regulation
XV of 1803. which declares the power of the Court of

of Circuit in regard to the acquittal and release of persons
not convicted in terms equally strong with those used in sec:
tion XV Regulation VII of 1802.-

9 The only difference in the two cases con-
-sists in the mode, by which they were brought under the
review of the Court of Foujdaree Adalut. The authority of
the Court to call for the proceedings held on the trial of
Chicacole Calendar 2d Sessions of 1824, has not been
called in question: it remains to be seen how far the
proceedings in case No. 17 Masulipatam Calendar
2d Sessions of 1805 bear them out in their disposal of
the former case.-

10 Boyena pillee Appiah and Copah
Seetiah were charged with having been concerned in the
murder of Joopilly Venkataramah Narsimha Row, by the
futwa of the Law Officer of the Court of Circuit the former
was acquitted and the latter found guilty; the Judge of Circuit,
concurring in the futwa, released the prisoner, Boyena pillee
Appiah, and referred the trial to the Court of Foujdaree
Adalut, which Court, having taken the proceedings into
consideration, deemed both those persons to be fully convict-
-ed, and in confirmation of the futwa to that effect, deliver-
-ed by the Cazee-ool Coozat and Mooftees of the
Foujdaree

Fouzdaree Adalut adjudged them, under date 12th November 1805, to suffer death.-

11 On the 29th November a letter was addres-
=sed to the Court by the Judge to whom the finall sentence has been transmitted, in which he stated his doubt if "it "would be proper to cause a Man, who has been publickly "acquitted and discharged, to be again apprehended and "executed, and whether such a proceeding might not make "a very unfavorable impression on the minds of others."-

12 The Court on the 10th December in reply to this communication commented upon the insufficiency of the grounds, on which the acquittal of the prisoner had been pronounced; and the consideration of the case of Boyena Appiah was resumed on the 22d January 1806. when the Court resolved to recommend the grant to him of an uncon-
=ditional pardon on the grounds, that the re apprehension and punishment of a person, so situated might have a dangerous effect on the minds of the Natives.-

13 The compliance of the Right Honble the Governor in Council with this recommendation was notified in a letter from the Secretary to Government in the Judicial Department, dated 13th February 1806.-

The

14 The Court of Fouzdaree Adalut in their proceedings of the 7th Ultimo observed, that the legality of the Sentence on Boyena Appiah was distinctly affirmed by the Court in making the above mentioned application to the Government, and by the Right Honble the Governor in Council in acceding to it: and no argument appears necessary to show, that such was the effect of an application for a pardon upon the grounds stated, the circumstances of the case had already been fully before the Right Honble the Governor and the other Members of the Government, by whom it had been tried in their capacity of Judges of the Fouzdaree Adalut.-

15 The Court, having detailed the inform-
=ation particularly called for by the Honble the Governor in Council on the present occasion, deem it necessary in vindication of a proceeding, so seriously called in question, to submit the following observations, upon the general principles of Law which appear to bear upon it, with the View of placing in the clearest light the question of the compatibility of their exercising the Authority of over-ruling an acquittal by the Court of Circuit with the due and effectual administration of Criminal Justice.-

The

16 The general maxim of the Law of England, that a man once acquitted shall not again be brought to trial for the same offence, which does not hold as good as will hereafter be shewn, in cases of murder, has been alluded to, as opposed to the proceeding of the Court of Foujdaree Adalut in this case: but to the Court it does not appear to be so.-

17 The constitution of our Criminal Courts, as well as the mode of trial prescribed to them, differs in many important particulars from that established by the Laws of England.-

18 The Court of Foujdaree Adalut are vested with a general superintendence over the proceedings of the lower Courts, and it is their duty to see, that those proceedings are uniformly conducted agreeably to the Law, which they are appointed to administer. They are the constituted expounders of the Law, and are assisted in the exposition of the Mohummedan Criminal Code by three assessors, selected from the most learned persons, procurable for the office.-

19 In clause first Section XV Regulation VII of 1802. it is assumed, that the Judge of Circuit possesses an acquaintance with the provisions of the Mohummedan Law, and it is clear, that this knowledge is essential to uniformity of practise, when the Judge is prohibited from passing sentence, unless the futwa appear conformable to that Law.-

20. It, however, unavoidably happens, that the officers holding this station are frequently altogether ignorant of the Mohummedan Law, and the most effectual remedy for the inconveniences, which might arise from their inability to detect the errors of the Law Officers of the Court of Circuit, is to be found in the general supervision, exercised by the Court of Foujdaree Adalut.

21. There is no analogy between a trial, held by the Court of Foujdaree Adalut, and a second trial of a person for the same offence, such as is contemplated under that name by the Law of England. The proceedings of the Foujdaree Adalut form only a continuation of the trial by the Court of Circuit, and the prisoner is not, as would be the case on a second trial, subjected to the disadvantage of an anticipation of his defence against the charge in a case, like that now under consideration, the accused is merely tried by the tribunal, considered most competent correctly to apply the law to his case, which appears to be in no respect inconsistent with the intention of the

the Regulations. such must have been the proceeding, had the Judge presiding at the trial disapproved of the fulwa-

22 Areason for the establishment, and observance of the rule, prohibitory of putting an individual twice on his trial for the same offence may be found in the institution of the trial by Jury, under which the deter-=mination, first passed on the charge, must be taken to posses equal authority with any, that can subsequently be obtained.-

23. But as above intimated the English Law does, at the present day, admit of a second trial after acquittal upon indictment in cases of murder; & until a late period it was allowed in all cases of felony.

24 It is observed with reference to the provisions of the law on this subject in Blackstone Vol: IV p: 315, that "if a man be acquitted on an indictment "of murder or found guilty, and pardoned by the King "still he ought not /in strictness/ to go at large, but be "imprisoned or let to bail till the year and day be past, by "virtue of the Statute 3 Henry VII. C. 1, in order to be forth-coming to answer any appeal for the same felony not "having as yet been punished for it: though if he hath "been found guilty of manslaughter on an indictment,

"and hath had the benefit of clergy, and suffered the Judg-"ment of the law, he cannot afterwards be appealed, for it is "a maxim in law, that "nemo bis punietur pro eodem delicto".-

And in Hawkins's pleas of the crown

25. Vol: IV p: 321. it is stated, after a recital of the Statute of Henry 7th above mentioned, that "it seems agreed, that this Statute shall "not be construed to extend to any other appeal but that of "death, nor to any other acquittal but upon an indictment; "from whence it follows, that an acquittal on an indictment, "or appeal, for any other felony except death, may still be "pleaded in bar of an appeal for the same crime, and that "an acquittal on an appeal of death may still be pleaded "in bar of an indictment, in the same manner as by the com-"common law."-

The law of appeal, being "an accusation

26. "by a private subject against another, demanding punishment "on account of the particular injury suffered," which in cases of murder is brought by "the wife or next heir to him "slain", assimilates strongly with the provisions of the Mohummedan Law, the principle of which is still so far preserved in our code, that it is in all cases of murder assumed, that all the heirs of the slain entitled to prosecute the prisoner for Kissas, have attended and prosecuted him, at

at an age competent to demand Kifsaas, and have demanded Kifsaas.

27. It is obvious to remark, that in the proceedings on such appeals the accused is subject to all the disadvantages of a second trial, and the Court of Foujdaree Adalut observe in the cases of this nature, cited in Sir John Strange's reports, that the law has on these occasions taken it's course exactly in the same manner, as if no previous acquittal had occurred.-

28. The Court of Foujdaree Adalut have referred to these provisions of the law of England for the purpose of shewing, that under that Law, which is so deservedly celebrated for it's jealous regard of the liberty of the subject, an acquittal does not necessarily bar a further trial: and it has been noticed, that the revision of the proceedings held by a Court of Circuit in such a case does not subject the accused to the disadvantages, incidental to a new trial.-

29. The Court, therefore seeing nothing in the fundamental principles of Justice at variance with a proceeding of which a recorded precedent was found, did not, as they would have done if the Law of England had clearly stigmatized that proceeding, hesitate to adopt it in a Case, where it appeared to them, that for the ends of public justice their interference was absolutely necessary.-

The Court are of opinion, that it is

30. expedient, that the power of setting aside an acquittal by a Court of Circuit, in confirmation of a futwa at variance with the Mohummedan Law, or clearly contrary to the evidence, should be vested in the Foujdaree Adalut, as calculated to promote the effectual administration of public Justice, and being perfectly consistent with the most humane and equitable consideration for the accused: and they consider, that in citing the provisions of section XXV Regulation X of 1806, viewed in connection with the precedent of 1805, in support of their authority to exercise this power, under the law as it now stands, they have not adopted an indefensible latitude of construction.-

In conclusion the Court deem it

31. proper to intimate, that the present acting Judge of the Court of Foujdaree Adalut has taken no part in these proceedings, which respected a trial, held before him as Judge of Circuit.-

Extract from the Proceedings of the Foujdaree Adalut,
Under date the 2d. August 1825.

Read letter dated 8th. Ultimo from the 2d. Judge late on Circuit in the Western Division-

To

To
The Register to the Foujdaree Adalut,
Fort St. George,

Sir,

Herewith I have the honor to trans-
=mit Copies of the Calendars of the zilla of Malabar
for the First Sessions of 1825. with the Additional parti-
=culars—

I have the honor to be &c.

Tellicherry—
8th July 1825.

(signed) Thos Warden — second Judge.

Court's Order. 2d August 1825.

1 In case No. 11 of the Calendar the prisoner,
"Manary Chayee" was charged with cutting and wounding the
prosecutor, and declared by the fulwa to be convicted and
liable to Cohoobut-i-Shudeed under which fulwa sentence
was passed upon him of 39 Stripes and 14 Years imprisonment
and hard labor in irons in any Jail out of the Zillas of
Malabar and Canara, "as the Court of Foujdaree Adalut
"may direct."—

2 The crime of which the prisoner was con-
victed, and for which he was declared liable to discretion-
=ary punishment, not being specially provided for by any
Regulation, or by any stated penalty in the Mohummedan
Law, this case falls within the scope of the provisions
of Clause Seventh Section II Regulation XV. of 1803. The

3 The sentence, therefore, past on the prison-
=er by the 2d Judge was not authorized by the Regulations,
and the warrant for it's execution must be recalled, And
as it appears, that in the opinion of the second Judge
the punishment, prescribed in the provision above cited
is insufficient, it will be necessary that the trial should
be referred for the final Judgment of the Court of
Foujdaree Adalut.—

4 The warrant, issued to the Criminal Judge,
for the banishment of the prisoner to any Jail out of the Zillas
"of Malabar and Canara" is irregular. It being open to the
Court of Foujdaree Adalut under the provisions of Clause third
Section VIII Regulation XV of 1803. to direct the banishment
of prisoners to "any district" other than that in "which their place
"of abode is situated," sentences of banishment passed by the
Court of Circuit should merely direct such removal.—

In case No. 16. the first prisoner, "
5 "Volloly Kadoongony Panikar," was convicted of forgery: and
sentence was passed upon him of "4 Years" imprisonment
"and hard labor without irons from the date of commitment."

This sentence is at variance with the
6 provisions of Clause first Section III Regulation VII of 1811.

But

But as the trial took place subsequently to the promulgation of Regulation I of 1825, it will be necessary only that the 2d. Judge should make the reference described in Section V of that Regulation, should he consider imprisonment with hard labor for the period of 4 years to be too severe a punishment for the offence.-

7 The prisoners in Nos. 21. and 22. were convicted on two charges of house breaking and theft, and the 2d. and 3d. Prisoners are stated to have been sentenced under the provisions of Clause fourth Section II Regulation VII of 1822. to receive 24 Stripes and 9 years imprisonment and hard labor in irons.-

8 Clause fourth Section II Regulation VII of 1822. is applicable only to cases of house breaking and theft, or attempt to commit the same, which "may have been attended with wounding or other corporal injury in a less degree" than to endanger life. And clause fifth of the section distinctly exhibits "an enhancement of the penalties declared by the Regulations in force for burglary or theft, when not accompanied with wounding, or other corporal injury, nor with an attempt to commit murder."

Extract from the Proceedings of the Foujdaree Adalut. Under date the 14th. September 1825.-

Read Return dated 11th. Ultimo from the 2d. Judge late on Circuit in the Western Division.-

L.S.

To The Second Judge late on Circuit in the Western Division,

Herewith you will receive an Extract from the proceedings of the Court of Foujdaree Adalut of this date, to the orders contained in which you are required to conform, returning this precept so executed, or good and sufficient reason why it has not been executed, and what you may have done in pursuance hereof within 10 days from and after it's receipt.-

By order of the Court of Foujdaree Adalut,

/signed/ J. F. Thomas.
Deputy Registr.

Fort St. George,
2d. August 1825.-

In making return to the annexed Receipt, received this day, which accompanied Extract from the proceedings of the Court of Foujdaree Adalut under date the 2d. August 1825 on the Malabar Calendar Sessions 1st. A. D. 1825. The 2d. Judge late on Circuit, has the honor, to state, in answer to the 1st.

1st 2d & 3d Paras relative to the Prisoner "Manary Choyee" in Case No. 11, that the said Prisoner has lately been reported by the Criminal Judge to have died in Gaol; which renders execution of the orders of the Court of Foujdaree Adalut regarding him unnecessary.-

2. The 4th Para notices an irregularity in the warrants issued to the Criminal Judge on certain Prisoners sentenced to suffer the period of their imprisonment in ba- =nishment, which directed that they shall be banished "to any Gaol out of the Zillahs of Malabar and Canara", "while the Regulations leave it open to the Court of Co "Foujdarry Adalut to select any District "other than that in "which the place of abode of the Prisoners is situated". Ad- =mitting this irregularity, the 2d Judge begs to explain, that similar warrants had by him been frequently before issued that he did at one time issue such warrants, drawn out in Co conformity with the letter of the Regulations, but, was induced to adopt the more recent practice in consequence of the Fouj- =daree Courts Remarks in their Proceedings under date the 2d March 1818. on certain observations made by the 2d Judge in his Circuit Report dated 19th February 1818. wherein he objected, in the particular Case therein noticed, to the Zilla of Canara having been selected as the place of Banishment - the Foujdaree Court remarked, that "had the original "communication respecting the case of those 4 Prisoners been "accompanied by any suggestion of the 2d Judge as to the "expediency of directing them to be banished to separate Zillas "the Court of Foujdaree Adalut might have taken the same "into consideration before they issued their orders for the "Banishment of the Prisoners in question."-

3. The 5th 6th and 10th Paras notice No. 16 and 26, in which the Prisoner in the first case, on a conviction of Forgery was sentenced to 4 years imprisonment and hard labor without irons "from the date of commitment, & in the "second case, to "4 years "imprisonment with hard labor in "irons", which the Foujdarry Court consider to be at variance with the provisions of Clause First Sect. III Regulation VI of 1811. but direct, as the trial took place subsequently to the promulgation of Regulation I of 1825. "to make the "reference described in section V of that Regulation, should "he" (the 2d Judge) "consider imprisonment with hard labor "for the period of 4 years to be too severe a punishment "for the offence". As the 2d Judge has sentenced the Prisoner to "4 years imprisonment with hard labor" & deems no Co mitigation of that punishment to be necessary he is not aware what part of this sentence is deemed by the Court of

of Fouzdarce Adalut to be at variance with the provisions
of Clause first Sect: III Reg: VII of 1811.* The remarks of the
Fouzdarry Adalut might have been erroneously copied, but
they are, as above quoted. In two Cases of conviction for
Perjury and Forgery (Nos. 44 on the Calendar and 1 Addl. Calendar)
the Prisoners were sentenced to 5 years imprisonment with
hard labor in Irons, which have not been noticed by the
Court of Fouzdarry Adalut as being at variance with the
Regulations.-

*Enclosure to Foujdaree Courts Precept is herewith returned to be referred to.

4 The 7th Para: of the Proceedings of
the Court of Fouzdaree Adalut commenting on the Sentence
passed on the 2d and 3d Prisoners in Nos. 21 and 22 who
were convicted on two charges of House breaking and
theft and sentenced to receive 24 stripes and 9 years
imprisonment and hard labor in irons.-

5. The Court of Fouzdaree Adalut, remark
"that Clause fourth Section II Regulation VI of 1822. is
"applicable only to Cases of House breaking and theft, or
"attempt to commit the same which may have been attended
"with wounding or other corporal injury in a less degree than
"to endanger life", and that Clause fifth of the Section distinctly
inhibits an enhancement of the penalties declared by the
Regulations in Force for Burglary or Theft, when not
accompanied
with wounding, or other corporal injury nor
"with an attempt to commit Murder"

The Court of Fouzdaree Adalut therefore
6.
direct the Sentence on these Prisoners to be recalled as not
being authorized by the Regulations and a new Sentence to
be passed in conformity with the Provisions of Sect: XXI Reg:
VII of 1802.-

In Para 12th of the Fouzdaree Adalut's
7.
Proceedings the above observations and instructions are
declared applicable to Nos. 36. 37. 38. and 41.-

The 2d Judge in explanation of the
8.
Sentences passed in the above Cases, has the honor to
remark, that the Prisoners are all notoriously bad cha-
racters, having frequently before been tried and punished
without producing any salutary effect on their subsequent
conduct. For the exemplary punishment of such incorrigible
offenders, the legislature has, by clause second Sect: III Reg:
VII of 1822. very widely provided the very same penalties,
as are prescribed in Clause fourth Section II of that Regula-
tion for the specific offences therein described. In the
body of the Calendar the notorious characters of the Prisoners
are particularly noticed in distinct Memoranda. It was
under this second Section, of Regulation VII of 1822. which
appears

appears to have escaped the observance of the Court of Foujdary Adalut, and which the 2d. Judge ought perhaps to have noticed in his Remarks to the Calendar, that the Sentence on the Pri-soners in the above Cases were regulated by the penalties prescribed by clause 4th Sect. II of that Regulation - were it not for Section III which thus provides for an enhanced punishment on notoriously bad Characters, beyond that which is prescribed by Section XXI Regulation VII of 1802, the 2d. Judge would have deemed it an incumbent duty to refer the trials of these Prisoners to the Court of Foujdarry Adalut under the latter part of Clause third Section IV Regulation XV of 1803, with the view of effectually prevent-ing their future depredations.-

9. The 2d. Judge trusts that this explanation will justify him in postponing execution of the orders of the Court of Foujdaree Adalut regarding the Sentences which have been passed in Nos. 21. 22. 36. 37. 38 & 41.-

10. In the 11th Para. of the Proceedings of the Court of Foujdarry Adalut it is remarked that "the Sentence passed "on the second Prisoner in Case No. 32. being for a punishment "less than that prescribed in Section XXI Regulation VII of "1802" the warrant should be recalled and the reference for mitigation made as required by Section IV Regulation I of 1825. The

11. The 2d. Judge has referred to the original draft of the remarks on the Calendar and finds that the putwa of the Law Officer awarded the 2d. Prisoner in No. 32. to "Hudd Sirka Sogra" which the 2d. Judge understands to be loss of one Limb - and accordingly Sentenced the Prisoner to 7 years imprisonment with hard labor as prescribed in Section XXI Regulation VII of 1802. The 2d. Judge is therefore induced to conjecture if his interpretation of the above term be correct, that they have been erroneously transcribed in the fair copy of the Remarks.-

Given under my hand and the Seal of the Court this 10th day of August 1825.

(Signed) Thos. Warden,
Second Judge,

L.S.

Courts order. 16th Sept. 1825.

In the 3d. Paragraph of the foregoing return the 2d. Judge states that he is not aware what-part of the Sentences passed by him in cases Nos. 16 and 26. Malabar Calendar 1st Sessions A. D. 1825" is deemed "by the Court of Foujdaree Adalut to be at variance with "the provisions of clause first Section III Regulation VI of "1811".

Under the clause cited it is not competent

competent to the Judge of Circuit to pass sentence of impri-
=sonment for a less term than four years, with hard labor.

3 In each of the cases abouementioned
the Sentences, as entered on the Calendar are made to run
from the date of commitment in No. 16. the prisoner is certified
to have been committed for trial on the 21st December 1824,
and the warrant for his imprisonment under the sentence
of conviction is stated to have been issued on the 31st May
1825: in No. 26. the 21st January 1825. is given as the date
of commitment, and the 31st May as that of the warrant.

4 The Court of Foujdaree Adalut, being clearly
of opinion, that it was not competent to the 2d Judge under the
provisions of clause first Section III Regulation V of 1811. thus
to abridge the prescribed period of imprisonment with hard
labor by the terms of his warrant to the Criminal Judge, direct
that he be referred to the 6th paragraph of their proceedings
dated 2d Ultimo for his guidance in disposing of Cases
Nos. 16 and 26. Malabar Calendar 1st Sessions A. D. 1825.

5 In the 8th Paragraph of the return the
2d Judge explains the grounds, on which he continues to be
of opinion, that the Sentences passed by him in cases Nos. 21.
22. 36. 37. 38. and 41. of the Calendar are conformable to law,
deducing this inference from the provisions of Section III.
Regulation VI of 1822, the 2d Clause of which, as construed
by the 2d Judge, "provides for an enhanced punishment
"on notoriously bad characters beyond that, which is
"prescribed by section XXI Regulation VIII of 1802".

6 According to the construction given
by the Court of Foujdaree Adalut to clause second Section
III Regulation VI of 1822, the words of that clause, between
"ensuing Sessions", and "such persons", must be taken to be
parenthetical clause, fifth Section II of the Regulation
being directly opposed to any construction of clause second
Section III, which would go to authorize an enhancement
of the penalties, declared by the Regulations in force for
simple Burglary, or theft in any case "not accompanied
"with wounding or other corporal injury nor with an attempt
"to commit murder".

7 The Court of Foujdaree Adalut, therefore
adhere to the opinion, given in their proceedings of the 2d
Ultimo, regarding the illegality of the Sentences passed by
the 2d Judge in cases Nos. 21. 22. 36. 37. 38. & 41 of the
Malabar Calendar 1st Sessions A. D. 1825, and refer that
Officer to the orders given therein for his information and
guidance

guidance in disposing of the said six cases.—

8 The 8th paragraph of the return under consideration concludes in the following words "were it not for "Section III, which thus provides for an enhanced punishment "on notoriously bad characters, beyond that which is prescribed "by section XXV Regulation VII of 1802, the 2d Judge would "have deemed it an incumbent duty to refer the trials of these "prisoners to the Court of Foujdaree Adalut under the latter "part of Clause third Section IV Regulation XV of 1803, with "the view of effectually preventing their future depredations".—

9 Clause third Section IV Regulation XV of 1803 has reference exclusively to persons convicted of robbery by open violence: and no part of the Clause could in the opinion of the Court of Foujdaree Adalut be applied to cases such as Nos. 21. 22. 36. 37. 38. and 41. of the Malabar Calendar 1st Sessions A. D. 1825.

10 The illegality pointed out in the 11 Paragraph of the proceedings of the Court of Foujdaree Adalut of the Sentence passed on the 2d prisoner in case No. 32 of the Calendar, arises from its being made to run "from the date of commitment", to the errors on this case given in the proceedings of the Court of Foujdaree Adalut, dated 2d Ultimo, returned

by the 2d Judge under a supposition of their having been erroneously copied, and herewith retransmitted to him, the 2d Judge is referred for his information and guidance.—

Extract from the Proceedings of the Foujdaree Adalut, under date the 17th September 1825.

Read letter dated 14th Instant, from the 1st Judge late on Circuit in the Centre Division—

To the Register of the Sudr Foujdarry Adalut, Fort Saint George,

Sir,

I have had the honor to receive the letter and Proceedings of the Court of Foujdarry Adalut, under date the 6th Instant, containing the opinion and decision of the Judges on the Case No. 56. of the Cuddapah Calendar, 1st Sessions 1825. which condemns the Prisoners in that Case, to a Mitigated Sentence of four Years hard labor in irons.

In this Case, I am induced, rather than

2

resort to the latitude afforded me of referring the Trial for the Sudr Court's inspection, respectfully to represent, that, although strictly speaking the Crime committed by the Prisoners was no doubt a robbery on the high road, it was of a very trifling nature, the whole robbery consisting of a little grain on a bullock not worth more than 2 Rupees 12 Annas, that the bullock itself was

was left to the Prosecutor to take on with him - that the Stones thrown were evidently not intended to hurt any one, nor did to hurt any one, and that the Prosecutor was in company of three other travellers, each with his bullock, who were not molested; so that, it was undoubtedly and self evidently a robbery committed by persons who were in search of food, and did not go forth armed, for that is not charged against them, nor with any other evil intent or purpose of committing indiscriminate plunder against any one.-

3. I am led to suppose, from the State of the Country at the time this robbery occurred, that parties of Village people sallied out in various directions, both into Towns and on the high ways, to satisfy their hunger by plunder- It seems to have been a temporary phrenzy that seized otherwise very inoffensive and quiet people, whom the calls of hunger deprived of reflection and prudence and left no discrimination, to discover what were the proper steps to choose in accomplishing their purpose.-

4 I am not, however, of opinion that an example would not be expedient, beyond that of the imprisonment they had already experienced, in cases where the crime can bear the character of robbing on the highway but, but under the Circumstances of the very trifling theft pass committed on the present occasion, as far as any violence or preparation for violence in question, I should hope the Court will consent to reduce the punishment from four to one years imprisonment in irons and to hard labor on the roads and public Works and that they may then be discharged.

I have the honor to be &c.

Chittoor -----
14th September 1825.

(signed) W. Brown, 1st Judge,

Court's Order 17th Sept. 1825.

In their proceedings of the 6th Instant the Court of Foujdaree Adalut directed, that in the event of the 1st Judge's continuing of opinion that a less punishment than 5 Years imprisonment should be adjudged, the trial should be referred to the Court of Foujdaree Adalut.-

2 This order was founded on the provisions of clause third Section X Regulation I of 1825, which is couched in the following terms: "It shall be competent to "the Court of Foujdaree Adalut on receiving such report "from the Judge of Circuit to sanction a mitigation of the "prescribed penalty, if it appear to them proper but should "they not see sufficient grounds for the proposed mitigation "of punishment, they shall direct a reference of the trial for "their final Judgment."-

This clause the Court construed to require,

3

require, that if the precise degree of mitigation recommended by the Judge of Circuit, should not in the opinion of the Foujdaree Adalut be proper, the trial must necessarily be referred.-

4 In adopting this construction of the clause cited the Court of Foujdaree Adalut were influenced by observ-ing the different mode of expression used in clause third Section III of the Regulation, the operation of which was exclusively prospective, while to Section X was given a retrospective operation.

5 It was considered by the Foujdaree Adalut, that the difference between the provisions of clause third section III, and those of clause third Section X. Regula-tion I of 1825, arose from the care of the Legislature, that accused, or convicted, persons should not be placed by an enactment, operating retrospectively, in a worse situation than they were in, previously to its promulgation, and such the Court of Foujdaree Adalut still hold to have been the intention of the Legislature.-

6 But on mature deliberation it appears to the Court, that this view of the intent and meaning of clause third Section X Regulation I of 1825 does not, as they at first thought, require, that in Cases, where the report of the Judge of Circuit may satisfy them, that the specific punishment, prescribed in clause third section IV Regulation XV of 1803, ought to be mitigated, the trial must be referred, if the Foujdaree Adalut do not concur in the precise degree of mitigation which the Judge of Circuit may recommend.-

7 In the present case taking the 1st Judge's own account of all the circumstances on which he founds the recommendation; that sentence of imprisonment for one year should be passed on the prisoners, the Court of Foujdaree Adalut are clearly and most decidedly of opinion that less than 4 years imprisonment cannot be awarded to them without a glaring compromise of the ends of public Justice.-

8 It is plain, that if the Court consider-ed the offence of the prisoners to require punishment to the full extent of the provisions of clause third section IV Regulation XV of 1803. the trial must, in order to the adjudica-tion of that specific penalty, be referred for their consideration, and final Judgment.

9 The Court, however, after fully considering all the bearings of the question have come to the conclusion, that the words of clause third section X Regulation I of 1825. do not bind them to a confirmation of the mitigated sentence propose[d],

proposed, and that their concurrence in the recommendation of a mitigation is alone requisite to authorize their dispensing with the reference of the trial.-

10 Under this view of the power vested in them, the Court direct, that the 1st Judge late on Circuit in the Centre Division be by precept commanded forthwith to issue his warrant to the Criminal Judge for the imprisonment of the prisoners in case No. 56 Cuddapah Calendar 1st Sessions A. D. 1825. for 4 years with hard labor:-

Extract from the Proceedings of the Foujdaree Adalut, under date the 20th September 1825.

Read letter dated 2d Instant from the 3d Judge of the Provincial Court of Circuit in the Centre Divis

To The Register to the Court of Foujdarry Adalut, Fort St. George,

Sir,

1 I have the honor to transmit herewith the Calendar for the 3d Sessions of 1825 held by me at Chittoor.-

2. Having delivered the Jail at this place for the two last Sessions, it also became my duty to submit the report prescribed by section XXXVII Regulation VII of 1822.-

3. The following abstract will shew the results of these two Sessions.-

	Number of Cases	Number of Prisoners for trial	acquitted and released	Held to Security	Sentenced & punished	Referred to Madras	Trial Deferred
2d Sessions 1825	7	12	4	"	3	4	1
3d " "	30	76	9	6	26	13	22
Total	37	88	13	6	29	17	23

4 The Number of cases committed for trial has not been great during the six months in question; but the effect of Regulation I 1825. has greatly tended to diminish the number of references to the Presidency during the last two Sessions. In my trials, no cases of any peculiar interest have occurred; during the scarcity, some instances of homicide in the protection of property from private theft are observable, and since then, the more remarkable trials have been those in which, previously to theft, intoxicating ingredient had been used. In the latter cases, I have inflicted what appeared to me severe sentences, in order to check this insidious crime.

The following was the State of the Chittoor

5. Jail when visited by me at these two Sessions.-

	2d Sessions	3d Sessions	Increase	Decrease
Under Sentence of the Foujdarry & Circuit Court	512	503	"	9
Ditto --- of the Criminal ——— Do	762	633	"	134
Held to Security by the Circuit ——— Do	10	9	"	1
Ditto ——— by the Criminal ——— Do	35	35	"	"
Under reference to Madras ———	126	111	"	15
Insane prisoners ———	2	2	"	"
Committed for trial at the next Sessions ———	12	51	39	"
Not examined ———	126	147	21	"
Vagrants ———	18	19	1	"
Total ———	1608	1510	61	159
			Net decrease	98

The

6. The number of unexamined prisoners seems in both cases considerable- The acting Criminal Judge states this to arise from the great difficulty of obtaining the attendance of witnesses and prosecutors, and I conceive that, without disturbing the unity of authority over the police vested in the Magistracy, after a case has once been sent in to the Court by the Magistracy or the police under them, there exists no objection in the case of Regulations against the Judge summoning additional evidence required by him, or absent witnesses, by a direct process from his own Court, as in the case of witnesses required by the Circuit Courts who do not attend.- This could not, more than a similar process in Civil suits, interfere with the police or the Magistracy, and it appears to me calculated to facilitate materially the business of the Criminal Department, and to prevent the unnecessary detention of innocent persons in the Zilla Jail.- I am aware that it is not the present authorized practice; but as it involves no order to the police, I see no objection against it in the Case.

7. Being informed that some new additions to the present Jail have received the sanction of Superior authority, I have not deemed them to call for remark from me- But some necessaries, in the neighbourhood of the Jail, had been dug outside in trenches, as an experiment, I believe, by the Criminal Judge Mr. Dacre.- These appear to me public nuisances, and the acting Judge, concurring in this opinion I have advised that they should be filled up.-

I have brought to the notice of the Magistrate

8. the prevalence of irregularity, amongst his native police, in taking confessions. In several instances, the attesting witnesses were not present when the prisoners were examined, but only affixed their signatures on the prisoners subsequent confirmation of a confession, previously taken from him in their absence.-

In concluding this report, in which I am aware of nothing further requiring observation from me, I beg to bring to the notice of the Higher Court the great aid I have derived from the services of the acting Mooftee Mahomed Hoossain.- His acquaintance with all the vernacular languages spoken in this Division has in an eminent degree facilitated my labours; the promptitude of his decisions has been very remarkable, and, with one exception, they have invariably met my concurrence.- His pay is only one third of that attached to the office which he temporarily holds, and as well on account of its labour, as of his individual merits, it would be satisfactory to me if the Higher Court should deem it proper to grant him a more adequate salary, whilst he holds his present arduous

arduous and responsible employment.—

I have the honor to be &c.

Chittoor }
2d September 1825. } (signed) A. D. Campbell 3d Judge,

Courts Order. 20th Sept. 1825.

1 In the 6th paragraph of the report the 3d Judge states the number of unexamined prisoners before the Criminal Court to have been attributed by the acting Criminal Judge to "the great difficulty of obtaining the attendance of "witnesses and prosecutors", and the 3d Judge offers his opinion that "without disturbing the unity of authority over the police "vested in the Magistracy, after a case has once been sent in to "the Court by the Magistracy or the Police under them, there exists "no objection in the case of Regulations against the Judge "summoning additional evidence required by him, or absent wit= "=nesses by a direct process from his own Court, as in the "case of witnesses required by the Circuit Court, who do not "attend".

2 The Court of Foujdaree Adalut in their proceedings dated 28th October 1823. submitted to the Government a recommendation, that authority should be given to the Criminal Judge to call on the heads of Police for further evidence required in Cases sent up by them, and for additional evidence required by the Court of Circuit, when the Magistrate may

may be absent from the Zilla Station: and in an extract from the minutes of consultation, dated 2d January 1824, the concurrence of the Honorable the Governor in Council was declared in the opinion offered by the Court, "that it is very desirable that "in any case in which further evidence, or information, may be found necessary the Criminal Judge, and the Court of "Circuit, should have authority to apply for it to the Tahsil= "=dar".—

3 "Such authority", it was on that occasion observed, "is peculiarly requisite when as is liable to happen "the Magistrate and his assistants may be absent from the "Zilla Station". And a construction of section IV Regulation XI of 1816. was proposed, under which communications might be made by "the Criminal Judge, and Circuit Court, "to the Police officers", for the purpose of obtaining the required evidence.—

4 In a letter, No 11, dated 30th January 1824, were submitted for the consideration of the Honorable the Governor in Council the grounds on which the Foujdaree Adalut were of opinion, that the most eligible mode of giving effect to the intentions of the Honorable the Governor in Council in this respect would be "the enactment of "a provision, authorizing the Courts of Circuit, and of

Quarterly

"quarterly Sessions, and the Criminal Judges, to call upon
"the Heads of Police for further evidence, or information, in
"Criminal cases under investigation".-

5. The Court of Foujdaree Adalut continue to hold the opinion, declared in the letter above cited. Having before them the sentiments of the Government, as recorded in the Minutes of consultation under date 2d. January 1824 in respect to the prevention of any collision of authority between the Criminal Judge and the Magistrate, the Court have felt precluded from giving to Section II Regulation I of 1824 a construction, which should vest the Criminal Judge, and the Courts of Circuit, with power to command the services of the officers of police on these occasions. The authority, instanced by the 3d. Judge as vested in the Criminal Judge, of obtaining by a direct process from his own Court witnesses, required by the Court of Circuit, is given by Section XVII and XXII Regulation X of 1816, which refer exclusively to persons, bound over under the provisions of clause third Section IX of that Regulation to attend at the Sessions of the Court of Circuit.-

Extract from the Proceedings of the Foujdarry Adalut

under date the 14th. November 1825.

Read again return dated the 21st. September last

55

last, from the 2d. Judge late on Circuit in the Western Division

To The (2d.) Second Judge late on Circuit
in the Western Division,

Herewith you will receive an extract from the proceedings of the Court of Foujdaree Adalut of this date to the orders contained in which you are required to conform returning this precept to executed or good and sufficient reason why it has not been executed and what you may have done in pursuance hereof within five days from the date of it's receipt.-

By order of the Court of Foujdaree Adalut.

Fort St. George,
14th. September 1825

/ signed / W. Hudleston - Register.

Be it known, that the extract from the proceedings of the Court of Foujdary Adalut, which accompanied the annexed precept was received this day.-

1 ...

2. In the 4th. Paragraph of those Proceedings the 2d. Judge is informed, that the error in the sentences passed in Pt. 16. D. No. 26. on the Calendar of Zillah Malabar, Sessions 1st. of 1825, consists in the Prisoners having been awarded to 4 years imprisonment with hard labour in Irons from the date of commitment, whilst under clause First Section III Regulation XI of 1811. it is not competent to the Judge of Circuit to pass Sentence of imprisonment for a less time than

than four years with hard labor.-

3. The Second Judge deeming it unnecessary to recommend a mitigation of the prescribed Sentence, he will forthwith issue fresh warrants, in the above cases, directing the Prisoners to suffer imprisonment with hard labor for the full period of 4 years-

4 The 3d. and following Paragraphs of the Proceedings of the Court of Foujdarry Adalut refer to the 2d. Judge's explanation of the grounds on which the Sentences passed by him in Nos. 21. 22. 36. 37. 38. and 41 of the Malabar Calendar appear to him to be conformable to Clause Second, Section III. Regulation VI of 1822, which according to his construction, provides for an enhanced punishment on Notoriously bad Characters convicted of simple thefts or Burglary, beyond that which is prescribed by Section XV Regulation VII of 1802.-

5. The 2d. Judge feels satisfied that the Court of Foujdaree Adalut will receive, without displeasure, any further observations he may have to submit to their consideration, in elucidation of his construction of the above Clause, which under the opposite interpretation given by the Court of Foujdarry Adalut, founded on the opinion that the words of that clause, between "ensuing Sessions and" such persons", must be taken to be parenthetical, evinces, at least, the existence of an ambiguity, that ought to be removed, if it be capable of removal, by further discussion-

7 The Court of Foujdaree Adalut conclude that the passage of the clause alluded to by him, must be taken parenthetically because clause fifth, Section II of the Regulations is directly opposed "to any construction of "Clause Second, Section III, which would go to an enhancement "of the Penalties declared by the Regulations in force for simple "Burglary or theft in any Case" "not accompanied with "wounding, or other corporal injury, nor with an attempt to "commit Murder"."-

8. The Second Judge admits that the application of clause fifth of Section II to simple Burglary or Theft in any Case, not accompanied with wounding or other corporal injury, nor with an attempt to commit Murder, would operate in opposition to clause second of Section III, were the crime, of which the Prisoner may have been convicted, his first offence, - but, if the Prisoner be of "notoriously bad character, or had been before "convicted of a heinous offence" this constitutes such an enhancement, or aggravation of his offence, that the application to him of the Penalties prescribed by clauses third and fourth, cannot,

cannot, in the 2d. Judge's opinion, be viewed as opposing the inhibitory Provisions of clause fifth, section III.

9. The connection that exists, between the first and second sentence of clause second section III, describing the crimes which the Criminal Judge shall commit for trial before the Court of Circuit, renders it difficult to apply the concluding part of that clause (containing the penalty) to the first, and not to the second. The second sentence begins with "The Criminal Judge shall also commit for Trials &c." The conjunction "also" connects this sentence so intimately with the first, that the concluding sentence, commencing with the words "such Persons" according to Grammatical construction must apply to the Persons described in both the preceding sentences.

10. But the Court of Foujdaree Adalut will have no difficulty in expounding this clause, of the Regulation in question, by another part of it, which prescribes the Penalties to be inflicted on Prisoners convicted of "buying or receiving "stolen goods", wherein, the same enhancement of Punishment, as in Cases of simple Burglary or Theft, is distinctly provided for, against the convicted Prisoner who shall have been before "convicted of the offence of buying or receiving Stolen property, "or of Robbery, Burglary, Theft, or other heinous Crime or shall appear to "to be an habitual and professional receiver of Stolen property, "or a person of notoriously bad character". Clause third, sec: IV, declares that such prisoner "upon being duly convicted "before the Court of Circuit shall be liable to such Punish: "=ment within the limitation prescribed in the preceding "clause as the Court of Circuit may judge proper to direct, "on a consideration of all the Circumstances of the Case". The punishment limited by the preceding clause "is imprison: "=ment not exceeding fourteen years and corporal Punish: "=ment not exceeding thirty Nine Stripes of the Rattan" according to the Penalties prescribed in these clauses for "receiving and buying Stolen goods" (a Crime certainly not greater than simple Theft or Burglary), the 2d. Judge is of Opinion that no doubt can be entertained that a Prisoner convicted before a Court of Circuit of simple Burglary or Theft, unattended with maiming or an attempt to commit Murder, but of notoriously bad Character or who may have been before convicted of a heinous offence, is liable to the same enhanced punishment, as notorious offenders convicted of buying and receiving Stolen goods.-

12. Under this further exposition of the Law, the 2d. Judge trusts the Court of Foujdarry Adalut will consider him justified in delaying the execution of their

their orders regarding the sentences passed in Cases Nos. 21. 22. 36. 37. 38. & 41. until he is favored with their further instructions.-

Given under my hand & the Seal of the Court this 21st. day of Sept.r A. D. 1825.

(L.S.) signed/ Tho.s Warden
Second Judge

Courts Order 14th. November 1825.

In the foregoing return the 2d. Judge offers in elucidation of the construction given by him to clause second Section III Regulation VI of 1822. namely that "it provides "for an enhanced punishment on notoriously bad characters "convicted of theft or burglary, beyond that which is prescribed "by section XXI Regulation VII of 1802. the following observations

2. In reference to the Opinion declared by the Court of Foujdaree Udalut in their proceedings of 14th. September last, that "clause fifth section II of the Regulation is "directly opposed to any construction of clause second section "III, which would go to an enhancement, of the penalties, declared "by the Regulations in force for simple burglary or theft in "any case not accompanied with wounding or other corporal "injury, nor with an attempt to commit murder," the 2d. Judge states, that he admits "that the application of clause fifth "of Section II to Simple Burglary or theft in any Case not "accompanied with wounding or other corporal injury nor with "with an attempt to commit murder would operate in opposition "to clause second of Section III, were the crime, of which the "prisoner may have been convicted his first offence; - but if "the prisoner be of notoriously bad character, or had been "before convicted of a heinous offence, it constitutes such "an enhancement or aggravation of his offence, that the applica- "tion to him of the penalties prescribed by clauses third "and fourth cannot in the Second Judge's opinion, be viewed "as opposing the inhibitory provisions of clause fifth Section "III" (I)

3. The 2d. Judge proceeds to remark that "the connection that exists between the first and second sentences "of clause second Section III, describing the crimes, which the "Criminal Judge shall commit for trial, renders it difficult "to apply the concluding part of that clause / containing the "penalty / to the first and not to the second. The second sentence "begins with, the Criminal Judge shall also commit for trial &c.; "the conjunction also connects this sentence so intimately with "the first, that the concluding sentence, commencing with the "words such persons, according to grammatical construction, "must apply to the persons described in both the preceding "sentences".

The 2d. Judge goes on to remark that the

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"the Foujdarry Adalut will have no difficulty in expounding
"this clause of the Regulation in question, by another part
"of it, which prescribes the Penalties to be inflicted on Prisoners
"convicted of buying or receiving stolen goods", wherein the
"same enhancement of Punishment, as in Cases of simple
"Burglary or Theft, is distinctly provided for, against the
"convicted Prisoner, who shall have been before convicted
"of the offence of buying or receiving stolen property, or of
"Robbery Burglary Theft, or other heinous crime, or shall appear
"to be an habitual and professional receiver of stolen
"property, or a person of notoriously bad character". Clause
"third, section VI, declares, that such Prisoner upon being
"duly convicted before the Court of Circuit shall be liable
"to such Punishment, within the limitation prescribed in
"the preceding clause as the Court of Circuit may judge
"proper to direct, on a consideration of all the circumstances
"of the case". The punishment limited by the preceding
"clause is imprisonment not exceeding fourteen years and
"corporal Punishment not exceeding thirty nine stripes
"of the Rattan".

5. And the 2d Judge concludes the Argument in the following words, "Adverting to the Penalties prescribed in
"these clauses for receiving and buying stolen goods
"certainly not greater than simple Theft or Burglary, the 2d Judge
"is of opinion that no doubt can be entertained that a Prisoner
"convicted before a Court of Circuit of simple Burglary or
"Theft, unattended with maiming or an attempt to commit
"Murder, but of notoriously bad character or who may have
"been before convicted of a heinous offence, is liable to the
"same enhanced punishment, as notorious offenders convicted
"of buying and receiving stolen goods".

6. In the Circular orders of the Court of Foujdaree Adalut, dated 19th June 1823, their construction of Clause second Section III Regulation VI of 1822. is thus explained.-

"Clause fifth Section II Regulation
7. VII of 1822. declares, that nothing in the preceding clause
"shall be construed" to authorize an enhancement of the
"penalties declared by the Regulations in force for burglary
"or theft, when not accompanied with wounding or other
"corporal injury, nor with an attempt to commit murder
"by Strangling or other means, as described in Clause third
"of this section".-

"The rule contained in Section XIX Regu-
8. -lation I of 1802. that one part of a Regulation is to be construed

"construed by another so that the whole may stand," manifestly
"requires that the passage in clause second Section III Regu-
"-lation VII of 1822, which declares that the Criminal Judge
"shall commit for trial before the Court of Circuit any prisoners,
"who from certain circumstances therein specified "may appear
"to him deserving of a severer punishment than the Criminal
"Judge is authorized to inflict under the following clauses
"of this Section" should be regarded as parenthetical, because
"with any other reading the concluding words of clause second
"Section III would declare the persons described in that pas-
"-sage to be liable to an enhancement of punishment expressly
"prohibited by clause fifth Section II of the Regulation".-

9 The Court of the Foujdaree Adalut have had
repeated occasions since the promulgation of Regulation VII of
1822 to weigh with deliberation the provision expounded in
the Circular order here recited, and they have been, and are
still unable to come to any other decision upon it than that,
which is there given-

10. It has appeared, and does still appear
to the Court that there is in the determination of the question
greater difficulty than the 2d. Judge of the Court of Circuit
in the Western Division imagines. his remarks upon the
the grammatical construction of the words of clause third
Section III contain nothing but what must strike any person
on the first perusal of it. But in those remarks the
Court of Foujdaree Adalut have looked in vain for a
solution of the difficulty shewn in their circular orders of
19th June 1823. to stand in the way of his construction of
this clause.-

11 According to the 2d Judge's argument the
provisions of clause fourth Section II of the Regulation
are applicable to the cases of all persons committed for
trial by the Court of Circuit under clause second Section
III on the grounds of their notoriously bad character, their
having been before convicted of a heinous offence or "any other
"peculiar circumstances" which may appear to the Criminal
Judge to render the Criminal deserving of a severer punish-
-ment than he is authorized to inflict.-

12 No doubt can exist as to the accordance
of this construction with the grammatical sense of the words
of this clause.-

13. But of clause fourth Section II it is
said in clause fifth of the same Section, that nothing therein
contained shall be construed "to authorize an enhancement
of

"of the penalties declared by the Regulations in force for
"burglary or theft, when not accompanied with wounding or
"other corporal injury, nor with an attempt to commit murder
"by strangling or other means, as described in clause third of
"this section".-

14 The very same circumstances of aggravation, as are made in clause second Section III to require commitment for trial before the Court of Circuit, are particularized in clause second Section II. So that unless it be contended, that all persons brought to trial under Clause second, Section II, are liable to the penalties of clause fourth of that Section, if of notorious-ly bad character, notwithstanding the restrictive provision contained in the concluding words of clause fifth, it must follow, that persons committed for theft under clause second Section III, are liable on conviction to double the penalty, which can be awarded to persons of the same "character" com-mitted for house breaking under clause second Section II of the Regulation.-

15. The general rule for expounding penal laws strictly need scarcely be cited in aid of a construction, which alone can obviate so gross an anomaly.-

16. It must be admitted, that clause second Section

Section III Regulation VII of 1822. is unskilfully drawn, and the Court of Foujdaree Adalut concur with the 2d. Judge in opinion, that a declaratory enactment for the purpose of removing all doubt on this question is desirable.-

17. Before the Court dismiss the subject, they deem it proper, as it is their intention to lay these observations before the Government, to advert to the opinions on this point, which have been submitted by the present 2d. and 3d. Judges of the Provincial Court of Circuit in the Centre Division, the former officer in the 124th paragraph of his report on the Second Sessions of 1822, dated 10th June 1823, remarks on this subject, after observing that the provisions referred to are some what ambiguous, that "uniformity of punishment "in due proportion to the guilt incurred would lead in "equity to the thought, that when such restrictions to the "enhancement by the Courts of Circuit of punishment, "even in Cases of burglary, be acknowledged as a clear rule "of the constitution, the restriction should exist in respect "to the punishment of the subordinate guilt of theft, or "subordinate guilt of house breaking, or ware house breaking and

"and so forth in the time of day". In paragraph 126. of the report this Judge observes, that "after a case of simple theft be referred "back to clause fourth /section II/ by clause second of the fol: "lowing section it probably is the intent of the law from the "language of clause fifth to prohibit enhancement of the "penalties for theft, although the said subsequent clause "second does not allude to it, and the word theft in it points "to the Regulations before in force, and not to the rules which "follow about theft". And prosecuting the argument in paragraph 128, Mr. Newnham observes, that "although notoriously bad "character and employment as watchmen, guards, or police officers, "be so plainly avowed by the letter of the Law to form aggravations "of Crime, they do not seem to render the punishment of such "persons greater than the punishment of accomplices of less aggravated guilt" and he there upon offers a suggestion, that "persons convicted of a repetition of the offences, provided for in "Section II, be made liable to 14 Years imprisonment.

18 This suggestion was renewed by Mr. Newnham in his report, dated 24th December 1823, submitted by the Court of Foujdaree Adalut to the Government under date 10th February 1824, and in the Extract from the Minutes of Consultation of 28th April 1824 is stated the concurrence of the Governor in Council in the opinion, expressed by this officer, "that the Circuit Court should "be authorized to pass sentence of imprisonment for fourteen "years or of transportation, upon persons convicted of being "habitually or professionally guilty of the crime of burglary."

19. The opinion of Mr. Campbell, which has been referred to above upon the construction of clause second Section

Section III Regulation VI of 1822, is contained in a reference made by that officer to the Foujdaree Adalut under date 9th November 1824, wherein after proposing to construe the provisions of Section II of the Regulation, as applicable to "a breaking or attempt to break with an "intent to steal only and no actual theft", and thence arguing, that as Clause second Section III provides for actual theft, the Circumstances of aggravation, particularized in the latter part of Clause fifth Section II might not in these Cases be necessary in order to the infliction of the enhanced penalties of clause fourth Section II, Mr. Campbell stated, that it had struck him, that he might "have given an erroneous construction to the Law, and that the words "such persons &c. contained in Clause second Section III may have "been misplaced and should have immediately followed the word "Section, so as, in Section III to restrict the new penalties, specified "in clauses third and fourth Section II, in the same manner as "they are restricted in that preceding Section itself to cases attend= "ed with attempt at Murder, and wounding and not to extend them, "as is now the Case, to thefts committed by persons of notoriously "bad Character, or formerly convicted of a heinous crime or &c. "indeed to any cases, unattended by these aggravating Circum= "stances. - This construction" Mr. Campbell added would "perhaps be more accordant with the restrictive clause fifth "in Section II".-

20. The construction here suggested is exactly that declared in the Circular order of the Court of Foujdaree Adalut, dated 19th June 1823. As the Court have pointed out above, its adoption seems necessary in order to avoid a gross anomaly, and in defence of its reasonableness it may be observed, that it involves the infliction of the punishment of 7 year's imprison= =ment, when the aggravating Circumstances particularized in Clause second

second Section III may appear in the case, instead of 2 Years, the penalty to be inflicted for thefts under 50 Rupees upon persons of the same description by the Criminal Judge under clause fourth of the Section, the enhancement of punishment, which thus follows the commitment of a prisoner for trial under the discretionary authority in that respect reserved in clause second Sect: III to the Criminal Judge, appears sufficient in degree when it is recollected, that the offence is the same and the difference in the penalty the result merely of a shade of distinction in character.—

21. To the argument, drawn by the 2d Judge of the Court of Circuit in the Western Division from the provisions of Section IV Regulation VI of 1822, the Court of Foujdaree Adalut are not disposed to attach much weight. The Crime of receiving stolen goods is, as remarked in the extract from the Minutes of Consultation, dated 30th April 1824, above quoted "the fruitful "parent of the other crimes of theft, robbery, and burglary with their "attendant acts of violence": it is too a crime less easily proved than theft, and more generally practised professionally with impunity.—

22. Viewed in this light it appears to the Court of Foujdaree Adalut, that the infliction of severer penalties on the receiver than on the Stealer involves no such anomaly, as the 2d Judge would seem to imagine and they are unable, therefore, to follow him to the conclusion, which he has deduced from the opposite hypothesis.—

23. The Court direct, that the 2d Judge do forthwith carry into effect the orders, which he has received regarding the sentences, passed in Cases Nos 21. 22. 36. 37. 38. and 41. Malabar Calendar 1st Sessions A. D. 1825.—

Extract

Extract from the Proceedings of the Foujdaree Adalut under date the 3d January 1826.

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

2. The Court consider it to be unnecessary to determine the particular question, whether, in the instance of the Taker of a village, or, village Officer of any particular denomination, being concerned in the offence specified in clause first Section II Regulation VII of 1822 the case should be committed. They are of opinion, that the Criminal Judge must be left to exercise his discretion in each case; and that if it appears evident that the person concerned, be his denomination what it may, was bonâ fide exercising those police functions, which constitute him an officer vested with authority for the

the prevention of crime; and that a gross breach of trust, and malversation in office, are involved in his commission of the offence designated in clause 1st first section II Regulation VII. 1822, then, the Court are clearly of opinion, that it will be the duty of the Criminal Judge to commit the case for trial before the Court of Circuit. But if this aggravation be wanting, though the accused may bear an official title, it will not be sufficient to take the case out of the jurisdiction of the Criminal Judge.-

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

Extract from the Proceedings of the Zoydaree Adalut under date the 9th February 1826.

Read letter, dated 21st. Ultimo from the Provincial Court of Circuit in the Northern Division on.-

To the Register to the Court of Zoydaree Adalut
For Ft. St. George.

Sir,

1 I am directed by the Judges of the Northern Provincial Court to transmit the accompanying copy of a correspondence between the Register of the Zilla Court of Masulipatam, and the Magistrate of this Zilla; and between the Criminal Judge and the Register.-

2. The present reference is made at the request of the Register, who wishes to ascertain whether section XXVII, Regulation XXVII of 1802 is to be considered applicable to the Magistrate; - and whether the Register of the Court is to receive letters transmitted to him by the Magistrate for the Government Cabeel, "as the means of communicating with the Criminal Judge."

I have the honor to be &c.
(signed) Edwd. B. Wray
Register

Masulipatam,
Northern Prov. Court,
Register's Office - - -
7th. January 1826

To the Magistrate in the Zilla
of Masulipatam

Sir,

1 I have the honor to return the accompanying letter to the Government
Cabeel

Vakeel received from you under a cover to my address.-

2. The letter to the Government Vakeel appears to contain a communication to be made to the Criminal Judge respecting the appointment of a Police Officer - This mode of communication on the part of the Magistrate with the Criminal Judge is irregular and not authorized by the Regulations or the orders of the Foujdaree Adawlut. The Magistrate ought to correspond on every subject connected with the duties of office directly with the Criminal Judge and not thro' the medium of the Government Vakeel.-

3 The Magistrate appears to have acted in this instance on a misconstruction of Section XXVII Regulation XXVII of 1802, which points out the mode in which Collectors are to transmit to the Government Vakeels their instructions respecting suits in Courts to which they are parties, but this rule does not apply to Magistrates who do not appear to have authority to communicate in any way with the Government Vakeels.-

4. Under these circumstances I decline delivering your letter to the Government Vakeel, and beg to suggest that you should communicate by letter your information to the Criminal Judge, a mode which I have invariably seen practised by other Magistrates.-

Masulipatam Zillah Criminal Judge's Court 7th December 1825

I have the honor to be &c
Signed J. Paternoster. Register.

Magistrate's Department.

No. 183 of 1825.

To the Criminal Judge in the Zillah of Masulipatam

Sir,

Para 1. I have the honor to enclose Copy of a letter received from the Assistant Criminal Judge, returning to me an order (herewith forwarded) addressed by me to the Government Vakeel in your Court directing him to communicate to you the appointment of a Police Ameen in the Division of Chintalapoody.-

2. Your Assistant has taken upon himself to be a Censor of the mode in which communications are to be made between the Judge and Magistrate, and to decide upon points which had he a correct knowledge of his duties, he would not have infringed upon;- as he has quoted Section XXVII Regulation XXVII of 1802 he might have read, that "The Register of the Court shall deliver such Instructions (as are communicated by Collectors) sealed to the Government Vakeel," and have drawn the inference, if doubt existed, that it was not his duty to ascertain the contents of those communications.-

3 Your Assistant's gratuitous communication

communication, on the subject under review, is to be made as appears from his signature, in his Capacity of Register, this Conceive to be an inadvertence; it is not unlikely that whilst imputing error to others, he should have committed one himself.-

4. Your Assistant has been so kind as to afford me the benefit of his experience, in the mode, which he states, he has "invariably "seen practised by other Magistrates", it is no doubt very extensive, but he has yet to learn that a system which has the effect of facilitating the execution of duties, and which has been acted upon by his superior in Office, is to be regarded by him as the preferable mode, and that it is not committed to his discretion.-

5. Communications on such subjects as the accompanying refers to, appears to have been addressed by my Predecessors in the mode to which the Assistant Criminal Judge objects, and as it is the most convenient Method, and renders the employment of English Writers unnecessary, I have continued to adopt it, in the same manner the monthly statements of Punishments inflicted in the Criminal Courts, is to be transmitted by you to me through the Government Cakeel, and is attended I should suppose with similar convenience to your Department.-

6. It is unnecessary for me to refer to the reasoning of the Assistant Criminal Judge, that, because a Regulation of 1802, upon one subject does not apply to a Regulation of a more recent period upon a very different point, the Judge and Collector cannot correspond, but in the mode which the Assistants Judgment suggests to him; I will however observe that I shall be happy at all times to meet your wishes, in the mode of carrying on business, whether upon arrangements hitherto prevailing or any modification of them.-

I have the honor to be &c.
/Signed/ C. Roberts.
Magistrate

Masulipatam,
Magistrate's Court
3d December 1825

Compared
(Signed) G. A. Smith
1st Asst Mag.te

To the Register of the Zillah Court of Masulipatam

Sir,

Para 1.--- I have the honor to enclose a letter received from the Magistrate of Masulipatam dated 3d December 1825, in reference to yours to him of the 1st of the same month objecting to the delivery of a Communication addressed by him to the Government Cakeel, under envelope, as prescribed by Section XXVIII Regulation XXVII of 1802.-

2. ..... After a patient consideration of

of the Motives that appear to have influenced you in declining to become the medium of a Correspondence between the Collector and Magistrate and the Government Agent, I am free to confess, I cannot coincide in the correctness of your conclusion on the occasion - Had the forms laid down in Section XXVII Regulation XXVIII of 1802 been disregarded, you would have been clearly justified in your opposition, but those were rigidly observed; the letter in question ought not to have been diverted from its intended destination.-

3 The Provisions contained in Regulation III Section II of 1817 cannot be construed as militating against the practice hitherto observed in carrying on the correspondence between the two offices in points of minor importance.- It is thereby enacted that the communication shall be full and free, but there is no positive injunction as to the precise form to be observed in conducting it, but leaves it entirely optional with the authorities to select that which may be found best Conducive to convenience and the dispatch of Public business. That province should be extant for every trifling Contingency that may arise cannot reasonably be expected in any Code however minute and precise - There must always something be left to discretion.-

4. I do not here mean to insinuate that

that it was imperative on you not to question the regularity of the plan pursued, that right you undoubtedly had, and if considered illegal in your estimation, to state your objections, but in so protesting to have left the rejection or acceptance of the Document to the discretion of the Officer to whom the Contents were to be submitted.-

5. Not being convinced of the utility of deviating from the rule which has been so long established, and from which no possible inconvenience can result, I have to request you will desist from throwing obstacles in the way of a free communication between the Magistrate and Government Agent attached to the Zillah Court.-

I have the honor to be Sir
/Signed/ H. Vibart
Judge

Zillah Court
Masulipatam
7th December 1825

To the Criminal Judge in the Zillah of Masulipatam

Sir,

I have the honor to acknowledge the receipt of your letter of the 7th Instante, enclosing a letter from the Magistrate of Masulipatam to your address under date the 3d of December, and I hope that I shall be pardoned for

for offering a few observations in explanation of the Motives which caused me to take the step which has excited the indignation of the Magistrate and drawn from him an Angry and Sarcastic letter censuring my Conduct.-

2. The Magistrate appears to me to confound the Offices of Collector and Magistrate Offices, which altho at present united in the same person are in themselves separate, and distinct.- The Magistrate in the second Para of his letter quotes Section XXVII Regulation XXVII of 1802 as authority for transmitting letters to the Government Cakeel.- I beg to observe that Regulation XXVII of 1802 is purely a Revenue Regulation, and Section XXVII referring to the preceding Sections relating to Suits instituted against the Collector for acts committed by him in his official Capacity, points out the mode in which that officer is to transmit his instructions to the Government Cakeel in those Suits to which he is a party.- It certainly does not appear to me that this Section or any part of the Regulation has any reference to the Magistrate, or that it even authorizes the Collector to communicate with the Court thro' the Government Cakeel in any other case than that which I have mentioned.-

3 The Magistrate in the 6th paragraph of his letter in support of the mode of correspondence which he has pursued mentions as a precedent the practice of former Magistrates, and further advances the instance of the monthly reports of Criminals punished, by the Court being transmitted to the Magistrate thro' the Government Cakeel.- I certainly do not mean to put my experience in Comparison with that of the Magistrate, but I think that I also may be allowed to quote precedent in justification of my conduct.- During the time that I have filled the situation of Register to a Zillah Court I do not recollect a single instance of the Magistrate transmitting thro' me to the Government Cakeel any communication to be made to the Criminal Judge, All correspondence has been carried on direct with the Criminal Judge by letter addressed to him and the monthly reports have been sent direct to the Magistrate accompanied with a letter in the same manner that reports are transmitted to the Superior Courts.- I beg to observe also that the monthly reports from this Court are not transmitted thro' me, altho' they may be delivered to the Government Cakeel.-

4 With reference to the 3rd Paragraph of the Magistrates' letter in which he attributes my signing myself as

as Register to inadvertence- I beg to observe that I consider my signature under the Official appellation of Register perfectly correct- The Cover enclosing the Magistrates' letter (which was sent Open) to the Government Cabeel was addressed to me as Register under section XXVIII Regulation XXVIII of 1802, and as I declined receiving it, addressed my letter to him in that Capacity; I should have committed an impropriety had I signed myself Assistant Criminal Judge.-

5. I beg to assure the Criminal Judge that it was far from any intention to throw obstacles in the way of a free Communication between the Magistrate and the Government Cabeel. or to question the right of the Criminal Judge to use his discretion in receiving such Communication Not considering section XXVII Regulation XXVII of 1802 applicable to the Magistrate, and that the Register of the Court was the proper Channel of Communication with the Criminal Judge I returned the Magistrates' letter leaving him to transmit it in any other way that he might deem proper.-

6. As a difference of opinion exists regarding the construction of section XXVIII Regulation XXVIII of 1802 I most respectfully request that the question whether the abovementioned section is to be considered applicable to the Magistrate;- and the Register of the Court is to receive letters transmitted to him by the Magistrate for the Government Cabeel, may be submitted to the Judges of the Sudder Adawlut for their decision.-

7 I am more particularly induced to make this request in consequence of the Judges of the Sudder Adawlut having with a view to promote that full and free communication between the Departments of Criminal Judge and Magistrate, which it is the intention of the Legislature to maintain, expressed a desire in their letter of the 28th July 1814, that an uniformity in the mode of correspondence should be established in the different Criminal Courts.-

I have the honor to be &c.
/ signed / J. Paternoster
Register

/ True Copies /
/ signed / H. Vibart. Judge

/ True Copies /
/ signed / Edw.d B. Wray
Register

Masulipatam, Zillah Court, 22nd December 1825

Courts Order 9th February 1826.

The object of the foregoing reference is to obtain the opinion of this Court whether the mode adopted by the Magistrate of Masulipatam in notifying to the Criminal Judge the appointment of a Police Aumeen, viz by a letter to the Government Cabeel in

in the Zilla Court enclosed under cover to the Register; is or is not the proper one.-

2. The Magistrate and the Criminal Judge both defend it on the ground of usage and facility to public busines; as also by reference to section XXVII Regulation XXVII of 1802: while the Register doubts its propriety because it differs from the practice of other Courts and because the Regulation and section above quoted applies exclusively to Collectors & only to one specific act of theirs.-

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

4. The Circular orders of this Court dated 26th July 1814 have reference to communications from Criminal Judges to Magistrates; & the object of them was to cause the discontinuance of precepts on these occasions uniformity of the mode of communication being however noticed in them as desirable, they very naturally and properly occurred to the Register with the knowledge he possessed of a different practice in other Courts.-

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

Extract from the Proceedings of the Foujdaree Adalut under date the 29th May 1816.-

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

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

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

5. Under the first head the Court observe that excess of Jurisdiction is not one of the grounds of reference specified in section XXIII Regulation X of 1816; nevertheless the Court think that under a

a sound and liberal construction of that section the Judge on Circuit might refer such cases or any others in which error was apparent and remedi= =able- the spirit of the enactment being to obtain correction of error where practicable.-

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

7. The Court has no hesitation in deciding this question in the negative. The fact that a Judge has passed sentence in a case which he had not lawful power to try has nothing to do with the guilt or innocence of the accused: which is the only circumstance on which the Regulations make their release or punishment to depend: and the fact that prisoners have been sentenced without being heard in their defence calls for further trial not for their re= =lease- because the exparte examination that has been taken is no trial at all under the Regulations and the accused if released would be released without trial which is contrary to the Regulations. It is consistent with the Regulations to quash the proceedings for either reason- but not to release the prisoners but place them regularly on their trial which they have not yet had. This Court however has in several cases allowed a prisoner the benefit of a trial before an incompetent tribunal the sentence of which was lighter than the regular tribunal would have awarded, both as being in favor of the prisoner and saving a 2nd trial which is repugnant to the humane spirit of British Indian Law- and they are disposed to maintain the precedents, but this only in cases in which the trial has been complete and regular in every other respect.-

9 With respect to the 2nd question the Court are of opinion that under section II Regulation XV of 1802 it was the regular course for the Register to have forwarded the order proposed by the 1st Judge.-

10 As however the 2nd Judge thought the order improper, and the case was one of importance, the Court think that he would have done right to have appealed immediately to the Sud= =dare Adalut.-

Extract

Extract from the Proceedings of the Foujdaree Adaulut under date the 15th June, 1826.-

Read letter, dated 20th Ultimo, from the Judges of the Provincial Court in the Southern Division,-

To the Register to the Court of Foujdaree Adaulut
Fort St George.

Sir,

We have the honor to submit for the orders of the Foujdaree Adaulut a reference which has been made to us by the Acting Criminal Judge of Salem in consequence of the Magistrate of Coimbatore having sent up for trial, on a charge of having perjured themselves before the Court of Circuit, certain witnesses who gave evidence for the Prisoners in Case No 8 of the Salem Calendar for the 2d sessions of 1825.-

Vide 15th Para of 2d the Report of the 3d Judge at on Circuit under date the 3d January & a letter dated 19th January 1826 from that Officer.-

2. The circumstances of this case as well as the view taken of the evidence given by the witnesses in question have already been submitted to the Foujdaree Adaulut and we entirely agree in opinion with the Acting Criminal Judge that according to the provisions of Section VIII Regulation II of A.D. 1822 the witnesses are not liable to a prosecution for perjury at the instance of the Magistrate, who is expressly prohibited even from receiving a charge of that nature.-

3. We entertain some doubts however relative to the manner in which a Magistrate is authorized to proceed in case of this description and we are desirous of obtaining the opinion of the Foujdaree Adaulut, for the benefit of the Magistrate on this occasion as well as for future guidance, whether he is authorized to bring the case before the Judge who presided at the trial for his orders, or whether there is no remedy, save a prosecution for a conspiracy which in the case in question might certainly be preferred.-

We have the honor to be Sir
Signed J. Taylor
for Judge
" C. M. Lushington
2d Judge
" John Bird 3d Judge

Court House,
Trichinopoly,
20th May 1826.

To the Register to the Provincial
Court of Circuit for the
Southern Division
Trichinopoly

Sir,

Para 1st I have the honor to state for the information of the Judges of the Provincial Court of Circuit for the Southern Division that the Magistrate of Coimbatore has sent up to the Criminal Court four persons upon a charge of having committed perjury before the 3d Judge on Circuit for the 2d Sessions of 1825 in case No 8 of the Calendar.-

It

2d. It appears to me that the course thus adopted is at variance with the provisions of Section VIII Regulation II of 1822, which I conceive to exclude from the cognizance of the Magistrate cases of this description; and that I ought therefore to hold no proceedings in the matter. But being unwilling to act in opposition to the opinion of an Officer of so much experience as the Magistrate of Coimbatore, without the sanction of Superior authority, I have the honor very respectfully to solicit the instructions of the Provincial Court of Circuit for my guidance upon this occasion.

I have the honor to be &c.

/Signed/ C. A. Thompson.
Acting Crim. Judge

Salem
Criminal Judges Office
14th May 1826.

Received 17th May 1826.

/Signed/ R. Rogers.
Register

/A true Copy/

/Signed/ R. Rogers.
Register

Courts Order 15th June, 1826.

1. The circumstances which gave rise to this reference are as follows.

2. In case No. 8 of the Salem Calendar the Circuit Court saw strong ground to believe that certain of the Police Officers of the Magistrate of Coimbatore had extorted confessions from some of

of the prisoners. The Court apprized the Magistrate of this belief and its opinion that the parties suspected should be sent up for committal to the Criminal Judge. The Magistrate upon this caused his Assistant to prosecute an enquiry, the result of which was a full belief that the witnesses on whose evidence the Circuit Judge's opinion had been formed were guilty of conspiracy and perjury and he sent them to the Criminal Court for committal for the latter offence. The Acting Criminal Judge was of opinion that under Section VIII of Regulation II of 1822 he could not hold any proceeding in the case - and applied for instructions to the Southern Provincial Court - who expressing their concurrence in his opinion submit the general question to this Court.-

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

4. Section XXIX Regulation IX of 1816, the provisions of which are extended by

by Section VIII Regulation II of 1822 is copied verbatim from Section VIII Regulation I of 1810; and the preamble of that Regulation must therefore be referred to for the cause and object of the restriction established by those Sections upon prosecutions for perjury and suborination of perjury. On reference to that preamble it will be seen that the mischief which the legislature intended to suppress arose from a practice which had been found to prevail for parties to prefer unfounded charges of this nature against their own witnesses and those of their opponents, and against their opponents themselves; and the remedy proposed was to take away altogether from parties the right of bringing forward such accusations. The Magistrates were accordingly prohibited from receiving charges of this kind from parties, and it was declared that parties and witnesses should not be liable to any prosecution of this description unless committed to take their trial by the Zilla Judge under the authority vested in him by Section VIII Regulation III of 1802.-

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

6. There could have been no doubt or difficulty in expounding the enactment if it had gone no farther than simply to prohibit the Magistrates from receiving charges of this kind from parties; but the concluding part of the Section seems at first sight to countenance the construction put upon it by the Provincial Court, and to extend to individuals, whether parties or witnesses, absolute exemption from all prosecutions for perjury and subornation of perjury, unless the offence be detected, and the offender be immediately proceeded against by the Court before which the perjury was committed. It formed, however, no part of the legislatures intention, either express or implied, to exempt these offences from punishment under any circumstances; and an interpretation which

which leads to this consequence must, if possible, be avoided.

7. It appears to the Court then that to the latter part of the Section no greater operation must be allowed than is necessary to effectuate the intention of the Legislature, as it is declared in the preamble to Regulation I of 1810. What that intention was has already been stated, and the end and object of the enactment will be fully and effectually accomplished by interpreting the latter part of the Section as referring solely to proceedings on charges preferred by parties in Civil and Criminal cases. The Court are satisfied that this is the true construction. It is fully borne out by the context, for the first part of the Section relates exclusively to charges of this kind made by the parties, and not to proceedings originating with the Magistrates or any other authority, which in point of fact were not within the contemplation of the Legislature, and cannot be supposed likely to produce any of the evils, which it was intended to suppress.

8. The Court are therefore of opinion that it is the duty of the Acting Criminal Judge of Salem to proceed in the case sent up to him by the Magistrate of Coimbatore.

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

10. It was no doubt the duty of the Magistrate, on receiving the extract from the proceedings of the Judges on Circuit, which imputed a high degree of criminality to the Police Officers under him, to enter into an investigation of the charge; but a more effectual method of defeating the object of the investigation could hardly be imagined than that of entrusting the conduct of it to one of the parties accused. No other result than that which has been produced in this case could reasonably be expected. The Court are satisfied that the Magistrate on reflection will see that no credit whatever is to be attached to evidence taken in the manner in which a great part of the evidence in this case appears to have been taken, although subsequently confirmed on oath before the Assistant Magistrate; and that the measure of allowing one of the parties accused to take any of the depositions which were to establish his own guilt or innocence was in the highest degree objectionable, as

as it afforded him the means, of which it is hardly possible to suppose that he failed to avail himself, to intimidate the witnesses, and to make the evidence tend only to his exculpation. There is but too much reason to apprehend the most mischievous consequences from this irregular measure, which (though apparently the immediate act of the Assistant Magistrate has been sanctioned and confirmed by the Magistrates' adoption of it as the ground of his proceedings against the parties whom he has sent up to the Acting Criminal Judge for committal, but the Court trust that the notice here taken of it will prevent the Officers from falling into the like error again.

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

/True Copies/

C Morris
Esq.

G Masamejor
Register.