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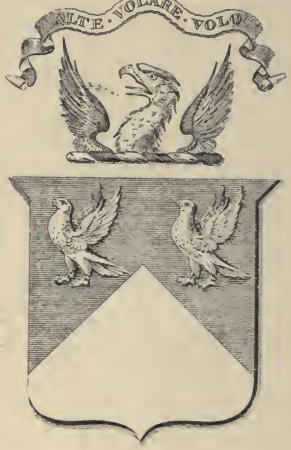

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To G. T. Travers Esqre

with the Author's best
Compliments and regards

17 Devonshire Place
20th January 1836.

Colnl Aidagh from our
old and grateful friend

OBSERVATIONS

ON THE

LAW AND CONSTITUTION

AND

PRESENT GOVERNMENT

OF

INDIA.

OBSERVATIONS

ON THE

LAW AND CONSTITUTION,

AND

PRESENT GOVERNMENT

OF

INDIA,

ON THE NATURE OF

LANDED TENURES AND FINANCIAL RESOURCES,

AS RECOGNIZED BY THE

MOOHUMMUDAN LAW AND MOGHUL GOVERNMENT,

WITH

AN INQUIRY

INTO THE

ADMINISTRATION OF JUSTICE, REVENUE, AND POLICE, AT PRESENT EXISTING IN BENGAL.

By LIEUT.-COL. GALLOWAY,

OF THE HONOURABLE EAST-INDIA COMPANY'S SERVICE.

SECOND EDITION, WITH ADDITIONS.

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CONTENTS.

PREFACE TO THE FIRST EDITION.

It is by no means unusual with writers to commence their Preface by telling the public the motives which induced them to undertake their prefaced work, as if motives alone were a sufficient justification of an author for claiming public attention.

But the public do not believe one-half of what they are told on such occasions. I shall therefore not endanger a moiety of my veracity, by following, in this, the footsteps even of the greatest professors of patriotism.

It is nevertheless right I should intimate, that particular pursuits, both public and private, in which I have been engaged during a very long residence in India, demanded acquirements which, I presume, have given me some advantages in discussing the subjects contained in the following sheets.

sheets. To how small an extent I have exhibited those advantages, without the slightest affectation, I really am perfectly aware. But so much has been already written on the affairs of India, that the reader will not, I trust, expect any very great addition to the general stock of information.

Yet, considering the jarring opinions which have been held, regarding the government of India, by men of the highest reputation as scholars, statesmen, historians, as functionaries both of the oriental and occidental branches of that government, I cannot but think that an attempt to trace the nature of that constitution through the long-prevailing aberrations of the administration of that country to its original place in the ancient system of India, whence the whole was precipitated by the convulsion which produced the decline and ultimate fall of the Moghul government, will not be deemed uninteresting nor void of importance.

Those who have written on India affairs, whether as to the administration of the law or of the revenue, have, generally speaking, got entangled in the jungles (to use an Eastern phrase) both of "*Hindū* and *Mahometan*" antiquity; some looking

ing to *Sanscrit*, some to *Arabic*, to guide them through the labyrinth : sometimes to Hindoo law, known to be obsolete ; sometimes to Hindoo history, known to be fiction ; sometimes to Moohummudan law, not understood ; sometimes to Moohummudan history, not to be believed ; till bewildered, and yet obliged to write, it is no wonder that they have been unable to explain intelligibly the nature of the institutions they attempted to describe, or to fix upon the real source whence those institutions were derived.

The whole fabric of the Moghul constitution must have been supposed, not only to have been demolished, but even the ruins so completely dissipated, that they were irrecoverably lost ; for, otherwise, the humanity of the English government would have induced them to examine its nature and try its value, before it was thrown aside to make way for new laws and regulations, which, with the most benevolent intention, nevetherless overthrew the ancient institutions of the country.

It is consolatory, however, to reflect, that the only irretrievable step of great moment that has yet been taken, is the permanent limitation of the land

land revenue of the Bengal Provinces and districts on the coast permanently settled. In other matters (and elsewhere, with respect to the revenue also), the door of improvement is not yet fully shut.

The recent accession of territory to the British dominions renders the more important what information is contained in the following pages. To those who are entrusted with the administration of India, it is hoped that it may prove useful. In legislating for the future, they have at least the benefit of knowing the effects of the past; and should this volume assist them, it will fulfil the intentions of its author.

PREFACE TO THE SECOND EDITION.

SINCE the period at which the first edition of this work was published, the affairs of India have attracted more attention, in England, than in former times they experienced. The discussion now in progress, relative to the renewal of the Company's Charter, gives to every thing that has been or can be written on the government of our Asiatic dominions, a special importance. The author is far from entertaining an opinion, that his work, even with the additions and corrections which it has received, will be deemed of great value, nevertheless he trusts it will be found not unworthy of the reperusal of that portion of the public who think at all of India.

The author has read with great attention what has been written, both for and against the opinions he has ventured to entertain. That those who take a view of the affairs of India different from

from his have failed to convince him, will be manifest. He hopes for their candour in admitting that his sentiments are as honestly entertained as their own.

In addition to the original work, a chapter on the government of India has been added, to which the author solicits attention. How far it may be deemed of value remains to be seen. The importance of the subject at this particular crisis, however, will be confessed. The author can only say, that the opinions he has ventured to express are such as he has formed after mature reflection, founded on observation extending through a service in India of thirty years; during almost the whole of which period his mind has been more or less directed to the subject on which he has written.

The author entertains no overweening estimate of the opportunities he has had of forming a judgment on the various topics he has attempted to discuss; but this he may venture to say, that a knowledge of India, really valuable, and of the practical effects of our government, is not to be attained by those who have never mixed with the people

people beyond the limits of Calcutta, Madras, and Bombay, or who have traversed the country merely as travellers. On such easy terms, it may be boldly averred, that no accurate notion of the character of any people can be formed by the individual himself; and if he shall nevertheless venture to delineate, he must give the opinion of others, and not his own: in point of fact, he communicates nothing but the second-hand sentiments of other men, of whose accuracy of knowledge he can hardly judge, the same being, moreover, extracted from the informant off hand, perhaps in answer to questions on subjects requiring the exercise both of refreshed memory and serious reflection. The author is far from desiring to misappreciate such information; but he would decidedly wish to discriminate between such, and that which is the result of experience acquired by the acute and discerning practical man.

It is the want of knowledge, experimentally, of India, which betrays many into the egregious error of propounding schemes for the better government of that country: some of them indeed,

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in the abstract, excellent; but inapplicable, perhaps, on account of their very excellence. To produce good fruit, the *soil*, as well as the *seed*, must be suitable. The very best of our English institutions could no more prosper in India, in her present condition, than they could have done in England in the days of Canute the Dane. To fit them for such institutions, the people of India must be carefully *led* out of their present condition, and by degrees; but no nation was ever *driven* out of a state of intellectual darkness.

The ephemeral tenure of our supreme rulers, both in India and in England, is of itself capable of retarding the improvement of India. In India the head of the government is usually withdrawn about the time he has, by personal experience, acquired sufficient knowledge, and sufficient confidence in himself, to do any thing; and in England, the superiors there rest on the fate of the minister of the day. The consequence is that some, and those the very best men, impelled by their very virtues to hasten amelioration, fall upon inappropriate remedies, which rather aggravate than assuage the evils they would remove.

remove. Others again, looking to their transient sojourn, despair of doing much good, and attempt none. But men are too apt to identify every thing with themselves. They are anxious to do good, but it must be done quickly: yet who does not know that, in national affairs, nothing but the most trivial matters can be so managed. For the government of India, he who lays down *one good principle* need hardly require greater praise. The road to the improvement of India must not be precipitous. The acclivity, gentle yet uniform, must be such as to lead the people in the easiest manner out of the cherished track of ancient error. It must commence there, and terminate by the most gradual ascent, in that eminence, both of moral and religious elevation, to which we desire to raise them.

If the government, in principle as it now is, shall be suffered to remain for India—if it shall escape the demolition of visionary reformists—if the affairs of India shall continue to be administered by men who have her welfare so earnestly and sedulously at heart, as even their most bitter enemies accord to them, it is impossible to conceive

conceive but that, under the guidance of the all-wise ruler of nations, such integrity of purpose will lead to the adoption of measures which must ultimately secure the true interests both of India and of England.

January 1*st*, 1831.

OBSERVATIONS,

&c. &c.

CHAPTER I.

On the Law and Constitution of India.

The British Legislature has declared that "the Indian "subjects of Britain shall be protected in their rights "according to the *laws and constitution* of *India.*" But what "laws and constitution" are here meant, the law-givers themselves knew not. It is assumed, indeed, that laws and a constitution do exist; but that a matter so important should remain ambiguous—that the "laws and "the constitution," by which the rights of so large a portion of the human race are here commanded to be protected, should not be known, is truly marvellous.

After so many years of British government of India, one might expect that there had been, at least, no want of endeavour, on the part of its rulers, to discover what "laws and constitution" did exist in India, and to expound the law, for the guidance of their subjects in obeying, and of their judges in administering it; and we accordingly find that some of its greatest governors have been most anxious in the attempt. But, whether the means adopted were inadequate, I know not: certain it is, they have failed; for when we turn for information

to what has been written on the subject, we are forced to lay down the unsatisfactory volumes in profound mortification.

Almost any kind of regular government, following the distracted and tyrannical misrule which pervaded India during the decline and fall of the Moghul empire, could not fail to be hailed as a blessing by the inhabitants of that kingdom; and to this it is, probably, we owe the acquiescence of our Indian subjects in our judicial system, more than to any real excellence of its own. Assuredly, however, it is unworthy of the high character justly maintained by the Indian government in other departments, to rest satisfied, in this, with the mere acquiescence of their people,—a people, too, but little skilled in the affairs of government (or, if informed, only taught in the school of anarchy and corruption); and to suffer them to be governed by laws, and by "regulations and laws," such as those now prevalent in India; enacted, doubtless, with the very best intention, but being founded on no system, have been made to partake of all, and are now become a compound of legislation to which no parallel is to be found.

So long ago as the year 1807, a "Digest of the Re-"gulations and Laws enacted by the Governor-General "in Council for the Civil Government of the Territories "under the Bengal Presidency," was published by Sir J. E. Colebrooke. This "Digest" consists of no less than three ponderous folio volumes. We may conjecture the enormous mass whence so copious a digest was produced.

But the reader will be still more surprised, when he is told that this immense body of "rule and regulation," instead

instead of *defining rights*, is principally taken up with settling forms of procedure and judicial formulæ; and that it contains not one word, or scarcely one, of the law of India, which, indeed, the British Government, in these Regulations, professes to administer to its native Indian subjects: so that, after wading through this waste of legislative wisdom, the student of law, supposing him previously qualified in Arabic and in Sanskrit, has to commence his legal studies of Moohummudan and Hindoo jurisprudence: a field not less extensive, nor perhaps less beset with thorns, than that which he has passed through.

In short, the rules which are to govern so many millions of the natives of India, with our well-known maxim of *ignorantia juris non excusat* staring them in the face, are, if not incomprehensible, certainly unknown. They may be said to be, as laws, totally unintelligible. Existing partly in English, partly in Arabic, partly in Sanskrit, they seem as if enacted to be concealed rather than promulgated; the former language being unintelligible to the governed, and the two latter to the governors. And to increase this chaotic confusion, the codes of Menu and of Moohummud are to be expounded by *native expositors*, who profess, indeed, but do not understand them; and to be administered by *European judges*, who do not even profess to understand either.

This, as a judicial system, can be approved by no intelligent being. So far, indeed, as separating the *expounding* and *administering* functions, I think I can see in it a humble copy of the Moohummudan establishment of a Kazee or judge, with a Mooftee to assist him: the projector forgetting, however, that under the prototypi-

cal system, the Kazee was himself a Mooftee, and equally eminent with his coadjutor, or more so, for his knowledge of the law.

Were the fact unknown, it would appear incredible, that the laws which are administered under the British Government in India should, at this day, remain a mystery, even to the judges who preside over their administration; that there is no establishment under Government, either in India or in England, in which the laws and constitution of India are taught to their servants, destined to sit as judges of the law: nay, that there is no book, treatise, or other work, from which a competent knowledge of the law may be acquired, as yet rendered into our vernacular language.

It is, consequently, not much to be wondered at, if the information of the general reader, relative to the "law "and constitution of India," be extremely limited. Particular pursuits have led me to consider the subject; and although I do not hope to be able to satisfy all my readers, yet I am confident that, whatever my success may be, an endeavour to shew what "law and constitution" formed the law and constitution of conquered India, at the period of the statute in question, and was consequently alluded to in it, will be favourably received.

Although, in strong and unreserved terms, I have exposed imperfections known to exist, let it not be imagined that my design, in the following pages, is only to criticise or condemn. No one can be more fully sensible than I am, how much necessity has been the parent of many defects, and of the difficulty, perhaps impracticability, of remedying them. Most confidently do I believe that there

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is no individual connected with the Indian Government, either at home or abroad, who does not make the welfare of that country, and the prosperity of the British Government over it, the most anxious wish of his heart. I am sure, therefore, that those worthy and patriotic individuals will not deny me the same benevolent motives, but will ascribe my strong, plain, perhaps occasionally unmeasured style and manner of expression, to the anxiety I feel to co-operate with them, as far as my humble talents will go, in the same most worthy cause, by endeavouring to point out to those in power where and how to improve the system of administration as adopted for India. To discover defects is the first step towards improvement: and an important one it is, when, as in this case, those who have the power have also the will to improve.

My first object of inquiry, then, is—What is the "law "and constitution of India?" There are, I apprehend, only two sources whence a satisfactory answer to this fundamental question is to be obtained; namely, the *law of the conquerors*, and the *history of the country*. From these I purpose to draw such information as the compass of my work may enable me to submit.

I am then to inquire into the nature of *tenures*, with reference to the question, so often agitated, "In whom "vests the property of the soil under the British govern-"ment in India; whether in the *Sovereign*, in the *Zu-"meendar*, or in the *Cultivator?*" In doing which, I shall, first, shew the law applicable to the question; and secondly, note such historical records as may serve to explain what, *de facto*, was the nature of such tenures under our predecessor, the Moslem government of India.

I shall

I shall notice, also, the different kinds of tenure recognized by the law: whence it will be seen what are *heritable*, what are *resumable;* how far the ancient tenures in existence at the Moohummudan conquest are good, and what parts and portions of the soil could, at that period, have been matter of *transfer* or *settlement;* or to which a proprietary right could otherwise be *legally* acquired.

I shall then advert to the tenures recognized by the British Government, their *origin* and *nature;* whether *permanent* or *limited*, *free* or *liable to be assessed* towards the revenues of the state.

I shall afterwards shew the *nature* of *taxation*, and *extent* thereof, as recognized by law under a Moohummudan government; what was levied by the Moslems in other conquered countries, as in Syria, Iraak, &c., and held by law as precedents in case of future conquest; what by law was leviable in India; and what *de facto* they did levy.

To these will be added observations on the *permanent settlement*, and on the present *revenue* and *judicial administration*, and *system of police*, as established under the British Government in Bengal; concluding with remarks on the system of government formed by Great Britain for India.

What is the "law and constitution of India," to which the Legislature refers, as above; by which it declares that "the rights of the natives shall be protected?" There are two codes of law or constitutions known to *us* in India, the Hindoo and the Moohummudan; totally distinct, however, in themselves: so that, as they never could have been, and certainly never were, *combined*, either the one or the other

other must be distinctly pointed at. Is it the Hindoo "law "and constitution," then, or the Moohummudan "law and "constitution," that is meant by the Legislature as the law and constitution of India?

I must, however, pause here, and observe, that when we speak of a "Hindoo law of India," we assume the previous existence of a paramount Hindoo government; a fact which ought first to be established. I ask for records, to shew that there ever was a regular Hindoo government established over India. We know that a number of petty states, or Rajahships, existed at a late period, and even now exist. These have been magnified into kingdoms and independent principalities. Independent, indeed, they may have been who held them, as in a rude state of society every head of a family is independent, every chief absolute; but we have no authentic account of a Hindoo paramount monarchy: whilst, on the contrary, Mr. Ward notices the names of "fifty-three separate kingdoms" in India (vol. iii.). *Arrian* tells us, according to Megasthenes, who lived about 300 years before the Christian era, "India was divided into one hundred and twenty-two several nations;" and we are told that, so long ago as 1450 years before Christ, India was conquered by the Persians; and, as Dow states, "paid tribute, and was ever after in some measure de-"pendent on Persia."

"At the era of the war of the Mahabarut, the province "of Bengal Proper formed three separate kingdoms," according to Hamilton. We speak of India as of a single state; but the Indians are not thus indiscriminate. The various European nations are not better known and distinguished, than are the kingdoms of "Dacshen," "Dravira," "Ayodhya," "Pratishthana," "Magadha," "Gour,"

" Gour," &c. by their ancient writers. These had their different laws and their different usages. What were those usages? Who shall define the limits of those ancient states, so as to tell us where those usages began, where they terminated? And, unless this were done, a new law would be no less obnoxious because it might claim to be " Hindoo law;" for all history assures us, that the yoke of the schismatic is not less galling than that of the stranger.

Ferishta declares, that the Hindoos have no written history better than the heroic romance of the Mahabarut; and Wilford says of them, that " with respect to history, the " Hindoos have really nothing but romances—their works, " whether historical or geographical, are most extravagant " compositions, with little regard to truth." It is, indeed, contrary to the analogy of history to believe, if there had been a regular government over India, that in the course of two thousand years, no one prince should have appeared to rescue his country from the Persian yoke; for that is the period between the eras of the Persian and Moohummudan conquest of India by Mahmood.

But supposing that their Persian conquerors suffered the Indians to rule themselves by their own laws, to which of the fifty-three separate kingdoms, according to Mr. Ward, or one hundred and twenty-two several nations, as Megasthenes has it, are we to go for the " constitution of India?" This is a question which must be answered, before those who appeal to the laws of the Hindoos can advance one step; since no extent of concession would satisfy such a multitude of claimants. Is it, then, Hindoo Law of Kingdom No. 1, or of Nation No. 122, we are to call " the Law of India?"

Whether

Whether we look to the laws of the Hindoos (I mean those which have been given to us as such) for more than we reasonably ought to do, I shall not say; but assuredly their real value is not great. Even their *antiquity* has been questioned; perhaps justly. It must be admitted, however, by their most strenuous advocates, that, judging of what may be yet to unfold of the Hindoo law by that which has been translated, no high opinion of it can be entertained. I will not speak irreverently of their code, as a late historian does, who says, the laws of the Hindoos are "puerile, and worse than puerile, stained with brutality" *(Mill.)*; but I am constrained to think that the law of the Hindoos, as given to us, is neither so ancient nor so valuable, "and certainly not so familiar to the people, as "to merit attention."

There is a propensity in man to magnify the value of whatever is rare or unknown that happens to be discovered by himself. Sir William Jones was unquestionably an eminent man, but he was occasionally addicted to the above-mentioned propensity. Many of his followers, too, have been somewhat enthusiastic; and there is little doubt that the fame of the Hindoo law and literature has been augmented thereby. The propensity I advert to runs strongly towards antiquity; and, accordingly, we find that Sir William takes some trouble to raise the value of his Hindoo code in this respect.

"Of the Law of Menu," (or, as it is also written, Munnoo), Sir William Jones tells us, "we have some evidence, "partly extrinsic and partly internal, that it is really one "of the oldest compositions existing." Then he states his *evidence* (which, however, amounts to little more than mere conjecture), that the "original of this book must "have

" have received its present form about 880 years before " Christ:" and then, in a very significant manner, he adds, " whether Menu, or *Menus* in the nominative, *Menos* in " the oblique case, be the same person with *Minos*, let " others determine." But why did Sir William rest satisfied with this? for it would have been just as easy to prove, by etymology, a much higher antiquity for the Laws of *Munnoo*, thus aptly enough: *mun* or *min*, " from," and *Noo*, " Noah;" that is, *Minnoo*, or *Min-noo*, from Noah; meaning that the work was, really, the production of the second father of the human race, whom the Asiatics call *Noo*, but subsequently converted into a proper name, as is not very unusual. Thus, " the law *Men-noo*" may be translated, " the law of *Menu*," or the law *from*, or *of*, Noah. A lawyer ought not to have been satisfied with such *evidence*.

All that Sir William asks, however, though granted, would be very little satisfactory; when, at best, he would only establish the origin of the Hindoo law to be *posterior* to the period when India ceased to be an independent state, and became " tributary to Persia," on the authority of the Mahabarut and of the historian above mentioned; that event having taken place 1450, instead of 880 years before Christ, the date assigned by Sir William to the code of Menu. It is averred, however, by Mr. Colebrooke, that there is no such law as the Law of *Menu*, for that *Menu* never wrote, or delivered, one word of that law. " Thus," says Mr. Colebrooke, " the two principal Codes of Hindu " Law are usually cited as *Menu's* and Yājnyāwālcyā's. " But, in the codes themselves, those are dialogists, *not* " *authors*, and the best commentators expressly declare, " that those Institutes were written *by other persons* than " *Menu* and Yājnyāwālcyā." (Asiatic Res. vol. viii.)

Here

Here then the divine origin is gone, and the antiquity rendered very doubtful!

But according to Ælian (Var. Hist. lib. 4, chap. 1.) and Alex. ab Alex. (lib. 4, chap. 17, quoted by Purchas), "the "laws of the Indians are *not written*:" another difficulty in the way of their antiquity. Sir W. Jones, indeed, at another time, calls the compiler of a digest, who lived a few centuries ago, "the Trebonian of India." The work of this sage, whose name is Raghunundun, Sir William tells us, is the grand repository of all that can be known on the subject of Hindoo Law. (As. Res. vol. i.)

But for the sake of avoiding the discussion of a question of difficult solution and of little consequence to my investigation, and supposing the Hindoos to be in possession of an authentic body of law, the point to be ascertained would still remain: Is it the *Hindoo* "law and constitution," or the *Moohummudan* "law and constitution," which is the "law and constitution of India?"

That it is not the former I have undertaken to prove. All must deem this, at least, *probable*, who advert to the mere fact, that for the last six to eight centuries, the country was ruled by the triumphant and intolerant Moslems. We cannot believe, indeed, that a Moslem, who had the *power*, even the legal power, to exterminate the Hindoos as idolators, would have the *will to adopt* and to *administer* their law and constitution, *and to subject his victorious Moslems to it.* It is impossible to suppose that a Moslem, by exercising, would contribute to the permanence of the laws and constitution of an idolatrous and conquered people. The Moohummudan prince, who should have attempted this, would, by the sacred law of *his* saviour, have subjected himself to the pains of apostacy; and by the ordinary laws of

of the human mind, to the contempt and execration of those in whom alone he was powerful.

During the whole period of the Moohummudan history in India, though we have seen that Hindoos were employed even at the head of other departments, we have never heard of a *Hindoo judge;* and assuredly no Moohummudan Kazee could ever have been found to administer the laws of Menu. We find a Tudur Mull at the head of Akbur's Treasury, but we have yet to hear of a Hindoo judge.

The public law (I mean that publicly administered, as well as that to which the sovereign could be a party, that between the sovereign and the people), I conclude, therefore, was indisputably Moohummudan; and that is the only law with which, in a question of this nature, we have any thing to do. The more tolerant princes may have sanctioned indulgencies in cases of private succession, where the interests of the Hindoos alone were the subject of discussion; but, *in foro justitiæ*, a question of private right, even of inheritance, among Hindoos, could not have been decided except by the Moohummudan law, which accordingly provides for such questions, and declares that "they "are to be determined as between Moslems," with certain limitations, however, which are applicable alike to *all* non-Moslem subjects, as well Hindoos as others. Even on the delicate point of inheritance, the Moohummudan law says, "a non-Moslem subject shall not *take* (inherit) "in virtue of a marriage which by *our law* is illegal." *Zeylaaee*, *Súraúj*, *Moheet*, &c.* It would, indeed, be absurd

* These are celebrated commentaries on the Moohummudan law, as well as the Jaumeaa-oor-rumooz and Zauhedee, mentioned in the following paragraph.

absurd to suppose, that questions of property in lands, of revenue, finance, police, where the rights, interests, or regulations of the sovereign were involved, could ever have been remitted to the decision of any tribunal but that of Islaum.*

Let us see what the *law* of the conquerors is.

By the Moohummudan law, the Daur-ool-Hurb, as a foreign country or province is termed, becomes the Daur-ool-Islaum, that is, becomes annexed to the Moohummudan dominions, "by the *mere act of conquest*, and the "exercise of *even a part* of the law of Islaum in it." "That country is the Daur-ool-Islaum," says the *Jaumeaa-oor Rumooz*, "in which the laws of the Mosle-"meen prevail;" and, adds the same writer, "it is stated "by *Zauhedee*, that according to the unanimous opinion "of the learned, the Daur-ool-Hurb becomes the Daur-"ool-Islaum, by the exercise of even *some* of the laws of "Islaum in it."† Profession of the Moohummudan faith on the part of the inhabitants is not a condition necessary to constitute their country a Moohummudan province. Therefore, by the Moohummudan law, India undoubtedly was the Daur-ool-Islaum: nay, is held by law to be so now; for it is not a necessary condition even that the sovereign be a Moslem.

If

* It has been maintained by a learned orientalist, in a review of the first edition of this work, that the Hindoo Law prevailed among Hindoos during the Moohummudan government. But, if so, how could they be declared amenable to the Moohummudan law too? Yet they are so, by all the Indian lawyers who have written on Moohummudan law.

† Jaumeaa-oor Rumooz, voce "*Seeur*," or the military and political law.

If then, by law, the empire of India, by virtue of the Moohummudan conquest, became the Daur-ool-Islaum, that is, a part of the Moohummudan dominions, it would have been absolutely contrary to law, even an heresy, in its most formidable shape, to have suffered any law or constitution to exist in India but that of Islaum. Every law, even private right and interest, which existed in the country, in the person of an individual even, prior to the conquest, by that act alone perished; and so strong is the Moohummudan law on this point, that supposing even a Moohummudan subject to have previously taken up his abode, and to have acquired lands or houses, in India, by the mere act of subsequent conquest by the Moslems, the lands of their domiciled brother would fall to the conquerors, along with those of the conquered infidel, although his personal property would be secure to him.

"Nay, even (say the learned Zeylaaee and others) if a "Moslem subject went into a foreign country (the Daur-"ool-Hurb), and therein purchased lands, and that country "were subsequently conquered by a Moslem army, such "lands would be held as conquest, like those of the other "subjects who are infidels."

"Nay, if a *Hurbee* (an alien unbeliever) enter the "Moohummudan dominions under a passport, leaving a "wife and children, old or young, and property in trust, "in his own country, whether in the hands of a Hurbee "or of a Moslem therein, and were he to embrace the faith "in the Moohummudan dominions, should a Moslem army "conquer his country, all these (his wife, children, and "property) are prize to the conquerors."*

Here,

* Surauj.

Here, then, we have not only the destruction of all public law, but of all private rights, by the mere act of conquest of an infidel country by a Moslem army. How then can it be imagined, that the Hindoo law can have survived the Moohummudan conquest of India?

The Moohummudan law of conquest is explicit; and the first act of the conqueror is required to be to carry the law into effect, either by partitioning the spoil and lands among the conquerors, or by fixing the *khurauj*, or public revenue, on the lands, and the capitation-tax on the heads of the conquered. The inhabitants are first called to embrace the faith. If they become converts, they enjoy all the privileges of Moslems; if they refuse, they are then called upon to pay the capitation-tax; for if they consent to this and to pay the *khurauj*, it is not lawful to put them to death; but they have no rights which do not, thenceforward, emanate from the Moohummudan law.

The following is the concise and emphatic rule of law applicable to Moslem conquest:

كل ارضٍ فُتِحَت عنوةً وتُرِكَت علي ايدِي اهلِها فالامامُ انَّهُ يضع علي اعناقِهِم الجِزيةَ اذا لم يسْلموُا وعلي اراضِيهِم الخَرَاجَ اسْلَمُوا اَولم يسْلموا

"All land conquered by force of arms and suffered to "remain in the hands of the people, the Imaum shall fix "the capitation-tax upon the inhabitants (*lit.* on their "necks), if they do not embrace the faith; and on their "lands the khurauj, whether they embrace the faith or do "not."

This is the Moohummudan law of conquest; and it is mandatory, and not optional, to establish the law of Islaum within the Moohummudan dominions. Even questions of inheritance among non-Moslem subjects, as I have before stated, are not left to the decision of any other than a Moslem tribunal, but must be decided according to the Moohummudan law, and by Moslem judges; for *every judge must be a Moslem*, as is stated by all writers on the law.

And it is of importance to note that in the "*Futava-ool-Aalumgeeree*, a celebrated work on the Moohummudan law, compiled in India under the patronage of Aurungzebe, expressly for the government of his Indian subjects, the chapter of the Law of Inheritance, entitled "of inheritance among non-Moslem subjects," is preserved entire, as compiled from the original law of Arabia. "They "shall *take*," says this work, "among themselves, by "*blood* and by *compact*, as *Moslems take* among themselves. The *progeny* of a marriage which is legal by "*their sacred books*, though illegal by *our* law, shall not "be debarred from inheriting; but the *parties* to a marriage which is illegal by *our* law, shall not take in virtue "of such marriage." And the test of an illegal marriage, as we find in the *Surauj*, is, "were the parties to become "Moslems would the marriage be legal?" Here, then, the Moohummudan law, on the most delicate point, is maintained, and an exemplary liberality at the same time shewn to the innocent progeny. The same is found in the other works on the Moohummudan law; but I mention this work in particular, on account of the peculiarity of its origin, being, in fact, a code of the law and constitution of India, drawn up and compiled by the Emperor: not enacted

acted as a body of new law, but compiled and promulgated as the old and established law of the land.

This is the written "law and constitution of India," as published under the sanction of the Emperor himself, little more than fifty years before the English power became paramount in Bengal.*

We now come to the historical part of this branch of the subject; and I trust that I shall be able to corroborate, from history, my position, that the "law and constitution "of India" is Moohummudan.

From the time of the conquest of that country by Mahmood the First, or about the year of our Lord 1000, the Moslem power prevailed in India; and we are told by Ferishta, that this said Mahmood "was a virtuous prince, "and reflected glory upon the faith of Islaum." And in the year 1008, after he had destroyed the idols of Nagracote, his answer to Annundpal of Lahore, when he begged him to spare Tannesir, is well known. "I have resolved," said he, "by divine aid, to root out idolatry from India, "and why should I spare Tannesir?" So also may I refer to the congratulatory letter from the Khalif of Baghdad, who was then the Moohummudan Pontiff, to this same prince, on his success against the infidels, in which he confers on Mahmood the title of "Guardian "of

* After this, it was certainly a very gratuitous act of the British government to get up another code for their Indian subjects, which never before had any general currency, and had, at all events, been silent for six hundred years, the revived law being, moreover, utterly worthless in itself.

" of the faith of Islaum." It is not likely that such a conqueror would hesitate to establish his laws.*

We then come to the conquest of Moohummud in the year of our Lord 1192; to the history of his defeat of the Hindoos, when *Candi Rai,* King of Dehly, was slain; of Cutub ood deen having been left as his lieutenant; of the successes of that warrior; of the return of Moohummud from Ghazna; of his defeat of Rai Joy, Prince of Canoge and Benares; of his victorious march to the latter city, where he destroyed above one thousand temples, which he purified and consecrated to the true God. Cutub was then confirmed viceroy of India; and having defeated Himrage, a relative of the King of Ajmere, he proceeded to Goozerat, which he conquered, having defeated Bim Deo. Cutub died in 1210; and we are told by the Moohummudan historian, " that he regulated his kingdom according to " the best laws of policy and wisdom till his death." (Ferishta.)

The successor of Cutub, *Altumsh*, an usurper, marched his army toward Bahar, and Bengal not, however, against the Hindoos, for then Bahar was in the possession of Yeasood-deen, a Moohummudan, and Bengal in the hands of Nasir, also a Moohummudan. He then proceeded to Gualiar, which he took; afterwards to Bilsay and Oojeyn, where he plundered the temple of Makal, carrying from it the image

* " It is evident," says Maurice, " that during the reign of " Mahmood (1022), and through the whole of the Gazneean, Gourjde, " and Charizmian dynasties, India boasted no supreme imperial head. " If the Maharajah sat on the throne of Canoge, or Dehly, his rank " could be only nominal."

image of Bickermajeet, which he ordered to be broken in pieces in front of the great mosque at Dehly. Altumsh died in 1235, esteemed a virtuous Moslem; and, at this time, so great was the influence of the officers of the laws, that the Chief Justice, the Kazee-ool Koozzaut, having first countenanced a conspiracy of the Omrahs, who met at his house, to remove the vizier, was able thereafter successfully to counteract the conspirators.

The youngest son of Altumsh succeeded to the throne, under the title of Mahmood II. He was a virtuous and learned prince, the patron of the learned. Mahmood II. died in 1265, and was succeeded by Balin, a prince of the most eminent virtue; whose court at Dehly was then reckoned the most polite and magnificent in the world. It was, moreover, adorned by the accomplished Shuheed, the heir apparent, whose mansion, in the language of modern times, was every evening thrown open for the reception of the learned of all classes, and where the philosophers, poets, divines, &c. &c. assembled. Balin was, from the office of prime minister, called to the throne by the unanimous voice of the Omrahs. Such was his high character, that his friendship was coveted by the kings of Persia and of Tartary. He took especial care that none but men of merit should be admitted to any of the offices of the state. "The "festivals were kept with wonderful pomp, and he never "forgot that he was the Guardian of the Laws."—"He "prohibited the drinking of wine within his dominions." (Ibid.)

Balin, as Dow tells us, "observed the Moohummudan "law, and ordered the Soobahdar of Badown, Malik, "to be put to death, in retaliation for the murder of a "poor woman's son." Here is the Moohummudan law

observed to the strict letter, in the most severe and exemplary manner; the governor of a province suffering the punishment of the law for the murder of the poorest individual. Is it possible that the sovereign, who had firmness to do this, would want either inclination or nerve to enforce obedience to the laws?

It was about this time (*i. e.* about A.D. 1260) that the Moghul Emperor of the neighbouring kingdom of Persia, Ghazan Khan, having called a diet or assembly of the most eminent sages and principal military commanders, assisted by the learned professors, theologians, Kazies, and superiors of the several religious orders in his empire, ordered them to prepare a code of regulations for his dominions, prefacing his orders with an address full of the most magnanimous sentiments, which proved alike the liberality of the individual prince and the regard of Moslem potentates to their established faith in those times. See Kirkpatrick's Institutes of Ghazan Khan, published in the New Asiatic Miscellany, page 171.

Feroze II., again, in the case of the celebrated Seyud Mullah, prohibited among his subjects the ordeal by fire, "because it was contrary to the Moohummudan law." (Dow.) This was about 1290.

Allah I. was a tyrant; and Ferishta tells us "he broke "through all the laws and customs which were by the "Moohummudan law left to the decision of the courts of "justice: he, however, studied the law himself, under "the tutelage of a Kazee." This was in the year 1300. So we are told that *Moohummud III.* was strict with respect to public and private worship, and ordered the five daily prayers to be read in the mosques. "He sent an em-

"bassy

" bassy to Mecca, to procure the confirmation of his title " to the empire from the Khalif." Reigned from 1324 to 1351.

Timour I. invaded India in 1327. The Soobadars of the provinces had rendered themselves independent during the previous troubles. Timour confirmed all those who submitted to him, and determined to hold possession of the empire.

It is to be observed, that at this time the Soobadars were all Moslems.

Of Guzerat the Soobadar was Azim.

Malwa	Dilawer.
Kenouj, Oude, Khurrah, Juanpore	Khaja Jehaun, who called himself King of the East.
Lahore, Debalpore, Moultan	Khezzar.
Samana	Ghaleel.
Biana	Shums.
Mohabah	Moohummud.
Mewat	Mobarik and Buhadoor.

And it is stated by Timour himself in his Institutes, " that he established his kingdom on the religion and " law of Islaum; that the first of his regulations was to " promulgate the religion and law of Moohummud in every " town, city, and province; and that he regulated his " empire by the Moohummudan religion and law."*

" I appointed,"

* Page 176.

" I appointed," says he, " one of the descendants of " Aalee, a man of talent, to the office of Suddarut (equi- " valent to our Lord Chancellor), to take charge of ap- " propriations by wukf, and to appoint incumbents to " those benefices, and to nominate to every city and pro- " vince Kazees and Mooftees, and police officers, and to " assign *sey-oor-ghaul* (public funds) and maintenance to " the descendants of the Prophet, to the learned, the holy " men, and those to whom the law gives a claim for public " maintenance."

In 1291 the Deccan was conquered by Allah, and Moohummud III. made Dowlutabad the capital of his empire.

" In the reign of Secundur I. a Moohummudan had a " dispute with a Brahmin on the subject of his idolatry, " in which the Brahmin said he believed the same God to " be the object of worship of both, and that the Moohum- " mudan and Hindoo religions were equally good. The " Moohummudan summoned the Brahmin before the " Kazee. The case made a great noise in the country, " and the Emperor called together all the Moohummudan " doctors of fame in the empire to decide the question. " The decision was that the Brahmin should be allowed " the option of the faith or the sword. He chose the " latter and was put to death, A.D. 1499."*

Baber, who settled in India A.D. 1525, assumed the title of *Ghazee*, which signifies fighter for the faith.

Akbar, in 1556, succeeded his father Hoomayoon, the son

* Dow.

son of Baber. This prince, celebrated for his wise government, framed his "Institutes" almost literally after those of his renowned ancestor, Timour; and both institutes, as well as the code of Ghaznan Khan, the Moghul Emperor of Persia, in A.D. 1260, are inall essential points strictly conformable to the Moohummudan law. The whole establishment of a Moohummudan government is clearly seen in those Institutes, combined, however, with other regulations suitable to the times and to the mixed population of the empire: a power which the Moohummudan law expressly recognizes and vests in the sovereign.

The capitation-tax on the Hindoos, the most ignominious lawful impost of Islaum, existed as late as the fortieth of the reign of Akbar, who was the most liberal, if not enlightened, prince of his time. It was remitted by that most tolerant monarch, though contrary to his religion and law, probably at the intercession of his celebrated financial minister Rajah Tudur Mull. It was revived, however, again by Aurungzebe. Akbar died in 1605; and his son, Selim, afterwards Jehaungeer, succeeded him by consent of the nobles, "after having taken the oath to maintain the law of Mahomet."*

Between *Akbar* and *Aurungzebe*, two princes in lineal descent intervene, *Jehangeer* and *Shah Jehan*. *Aurungzebe* deposed his father, Shah Jehan, in 1658, and ascended the throne. He reigned about fifty years: and Orme states "that he may be esteemed one of the ablest princes "who have reigned in any age or country." His devoted attachment to the religion and law of his fathers has procured him from some the appellation of bigot; which opprobious

* Methwold.

opprobrious epithet, however, in its common acceptation, implies a degree of weakness altogether at variance with the character of so great a prince.

The affecting story of his brother, Prince Darashekoh, is well known, and furnishes us with a strong proof of the scrupulous attention paid in those days to the forms of law. In his flight to escape from Aurungzebe, this prince took refuge, by particular invitation, with Malik Juwan (or as the translator of the Seir-ool Mootuakhereen has it, *Malec Djeven*), a Zemeendar on the western confines of India, who had been condemned to die, but was pardoned by Shah Jehan, at the intercession of the young prince, now his guest in distress. The wretched Afghan delivered Darashekoh, with his infant child, into the hands of his brother and persecutor, Aurungzebe; for which most perfidious act he rewarded Malik with the title of Bukhtear Khan, and the rank of commander of a thousand horse. This man made his appearance at court amid the execrations of all. He had the temerity to pass through the streets of Dehli in the day; but having been discovered by the populace, he was pelted with dirt and stones, and an affray took place in which some lives were lost. It might be expected that the Emperor would himself have punished the ringleaders of this riot. No; "so scrupulously was he attached to the forms of law," says this writer, "that he did not, but delivered them over to the "law. They were condemned by the Mooftees and "other law officers, and executed with all the forms of "law."—"Nor did he put to death the prince without a "legal sentence passed upon him, and attested by the "signatures and seals of all the doctors."—"Darashekoh "was condemned and executed for apostacy." This happened about the year 1658.

This

This prince (Aurungzebe), as well as his great progenitors, Abkar and Timour, gave his subjects a code of laws Those of the former were imperfect. Aurungzebe (also called Aalumgeer) collected the most learned lawyers from all parts of India, and employed them for years in preparing a code of law for the use of his judicial and revenue officers, and of his subjects; on which he is said to have expended £500,000. This celebrated work, after his own name, was called the "*Futavah-ool Aalumgeeree*;" the greatest, and certainly the most lasting, monument of his reign. This is, perhaps, the most valuable work on the Moohummudan law extant. It is a collection of decisions on supposed cases of the highest authority in India, and not less so throughout the Turkish dominions, where it is better known by the name of "Futavah-ool Hind," or "Indian (collection of) decisions."

The "*Futavah-ool Aalumgeeree*" is the last work on the law of India promulgated by royal authority; and ought, therefore, to be considered as part of the written law and constitution of that empire.

Aurungzebe died in 1707: only fifty-eight years before the provinces of Bengal, Behar, Orissa, and Benares, were ceded to the Company.

So great was the influence of the law officers under the government of Aurungzebe, that even the governors of the provinces in which they were placed were obliged to court and to succumb to them: a remarkable instance of this is mentioned in the Seir-ool Mootuakhereen, in the case of the governor of Boorhanpoor, an illustrious nobleman, and allied both to the Emperors of Iraun and Hindoostan. "The governor charged two witnesses, on

"the

" the evidence of whom the Kazee had previously de-
" cided a suit, with perjury, which they confessed; on
" which the governor said, ' these are the men on whose
" evidence you have deprived a poor man of his house.'
" The Kazee, in a rage, charged the governor with per-
" sonal enmity, and a desire to make him appear ridi-
" culous; but, added he, ' I inform you that you have
" rendered the law itself ridiculous, and have conse-
" quently fallen under its lash, and merit its punish-
" ment. The credit of these witnesses is not yet affected;
" so far from it, that if those very men were now to
" stand up in court and give evidence that you drank
" wine yesterday, I should sentence you immediately to
" the punishment which the law awards for that offence.'
" The Kazee, however, resigned in disgust; but so strong
" was this kind of influence at court, that the governor of
" the province thought it expedient to visit the Kazee, and
" to beg of him to resume his office, which he did with as
" much overbearance as before."

But this influence of the officers of the law could only exist through the veneration in which the law itself was held, although the will of the monarch did occasionally oppose the judicial authorities; for it is recorded of Aurungzebe, that his chief law officer was obliged to resign his office, and to quit the kingdom, for giving a decision contrary to the wishes of the King, on the question, " how
" far it was lawful for his Majesty to prosecute his con-
" quests and wars against the King of Beejapore and
" Haiderabad" (Moslems). Nevertheless, the successor of the banished judge, Kazee-Abdoolla, pronounced the same opinion, adding, " that the Kings of Haiderabad
" and Beejapore, as well as their troops, were Moslems;
" and that the imperial army being also Moslems, the
" continual

" continual massacre which took place was repugnant to " the sacred law." He also was banished the court, and disgraced. But these facts exhibit in a striking light the estimation in which the law was held by the nation; and shew how vain it is to suppose that such inflexible officers of the law, who declared its precepts in the face of the King, would compromise it for the code of the Hindoos, whom they despised as a degraded people, and detested as idolators!

Ferukhsere continued the capitation-tax; and we are told that, " at the supplication of Adjeet Sing and Rut- " tunchund, his successor, Ruffee-ood-durjaat, relieved the " Hindoos all over the empire from the opprobrium of the " capitation-tax." This was about the year 1720.

And this said Ruttunchund is stated by Ferishta, " in " the reign of Moohummud Shah, to have so usurped the " powers of every office, that he nominated the Moohum- " mudan Kazees of the provinces," 1720.

The capitation-tax seems afterwards to have been levied, as it is stated to have been again repealed at the intercession of Maharaja Jay Sing, " much to the satisfaction of " the Hindoos," by Moohummud Shah, after Ruttunchund was put to death; and Moohummud Shah was the last emperor of Hindoostan who possessed any real authority. He was succeeded, in 1748, by Ahmud Shah, who in 1753 was succeeded by Aalumgeer II., who was in 1760 succeeded by the late emperor Shah Alum.

Thus, I have endeavoured to corroborate the written law, by a chain of historical facts and events, through a period of nearly eight hundred years, from which it is obvious

obvious that no other law but the Moohummudan had any existence within the Moghul dominions in India. No Moohummudan lawyer can read the history of India without conviction on this point; which, had our English historians of India possessed any knowledge of that law, could not now have required any proof. But the fact is, that they were all totally ignorant of the Moohummudan law and constitution, and could therefore not discriminate what usages arose out of it. They could give no distinct account of them, nor explain in intelligible language the nature of the offices under government, of the taxes levied, or tenures by which the lands were held; yet they have not hesitated to give their opinions; and Mr. Mill, even at this day, on the authority of Orme, tells us that "after the "Moohummudan conquest, the Hindoos continued to be "governed by their own laws and institutions."* Dow again says, "the Hindoos are governed by the laws of "the Koran, or by the arbitrary will of the prince."†

But if the Moohummudan law and constitution did not exist in India when the government of that country fell into the hands of the English, let me ask what law and constitution did exist? Was it the law of the Maharattas; for they were, during the decline and fall of the Moghul empire under the successors of Aurungzebe, the most powerful state in India? But their origin is scarcely so early as our own in India.

The first time they were recognized as a power was in the reign of Buhadoor Shah, A. D. 1701 (A. H.) 1121, who made an agreement with Simbajee and his sons, Ram Rajah and Rao Rajah, that they should have a tenth or tithe of the husbandman's share of the crop over the provinces

* Vol. i. p. 437. † Preface, p. 36.

vinces south of the Soobah of the Dukun (*viz.* Poonah, the Conkan, &c.) This they called the *Dus Mukhee*, or tenth handful.*

Or if the Hindoo law is to be maintained, is it to the provincial school of Bengal, as Mr. Colebrooke calls it, or to that of Benares, we are to go for Hindoo law? For the Hindoo law of Benares is different from the Hindoo law of Bengal.

The Edinburgh Reviewers say, and on that point we are agreed, "the Act of Parliament, which enjoined that "the natives should be protected in their rights according "to the laws and constitution of India, meant unques- "tionably such rights as existed when the India Company "obtained possession. It certainly never entered into the "imagination of any one, at home or abroad, (but it "certainly did,) that it was necessary to revert to laws, "institutions, and rights, (meaning Hindoo laws,) which "a lapse of six centuries had obliterated from the minds "of the natives,"† meaning six centuries since the Moo-hummudan conquest. And again, "that the civil and "military institutions, the judicial and financial arrange- "ments of these courts (of the princes of the Deccan), "were formed on the model of those adopted by the Maho- "medan emperors of Dehli. Nearly six centuries have "elapsed since the Hindoos have been accustomed to "those institutions and arrangements of the Mahome- "dans, which have not only superseded, but condemned "to oblivion, the system of justice and taxation congenial "with the ancient habits and prevalent superstition of "the natives."‡ And again: "It is sufficient to observe, "that

* Seir-ool Mootuakhereen. † Vol. xviii. p. 359.
‡ Vol. xviii. Review of Wilks's Mysore.

" that for many centuries all knowledge of those laws " (Hindoo laws) has been effaced from the memories of " the natives."

Finally, in the firmaun, or deed, executed by the late king, Shah Alum, dated the 29th October 1764, conveying to the English Company the province of Ghazeepore and the rest of the zumeendarry of Rajah Bulwaut Sing (Benares), it is expressly stipulated by his majesty, " that " the Company must use their best endeavours to pro- " hibit the use of things of an intoxicating nature, *such* " *as are forbidden by the law of God*, in driving out " enemies, *in deciding causes* and settling matters *agree-* " *ably to the rules of Moohummud and the law of the* " *empire ;*" meaning clearly, agreeably to the law of Moohummud, which is the law of the empire. I have only to add, that universal tradition confirms what I maintain. There is not one native of India, that knows the difference between one law and another, who is not as perfectly aware that the Moohummudan law was the law of India, as that the king of India was a Moohummudan sovereign.*

* I am aware that a late writer, in a review of the first edition of this work, has disputed the point maintained by me, that the Moohummudan law was the law prevalent in India under the Moohummudan government; but he has not supported the assertion by any authority, or proof, whatsoever; and he has been so unguarded as to yield the following concession, which in truth gives up the whole question. He says, " We have no objection to admit, with our " author, that, under the Moslem princes, the Mahomedan was, in " a general sense, the *public law* of India. It was the law which the " conquerors brought with them, and the conquered were supposed " to conform to it." Though, indeed, he afterwards " denies that " no other law had any existence within the Moghul dominions in " India." I dissent from this. But, in the present inquiry, " it is " the

" the *public law*" that is important; it is the " public law of a country which denotes its " law and constitution:" and this is what is here maintained. Let me ask, what Aurungzebe, in 1668, thought, when he issued the following decree: " We have deemed it expedient " to issue our royal edict to all officers intrusted with the manage- " ment of affairs throughout Hindoostan, directing them to levy the " khurauj in the mode and proportion enjoined by the *holy law* and " the tenets of Aboo Huneefah?" Here, then, is a positive edict, as far as the revenue-laws are concerned, declaring that the law of the land is Moohummudan, and according to the tents of the Huneefeeah Soonnees.

But independent of all other proof, is the treaty just adverted to, a document of no importance? It is a common article of treaties, to stipulate for the continuance of the laws of the conquered province; and is such a stipulation not held binding? On what principle, then, are we to deny the same obligation to lie on us, in a treaty with the Moghul Emperor, which we should hold sacred with all other monarchs? Nay, even by the law of England, this doctrine is borne out! For Blackstone, in treating of what countries are subject to the law of England, says: " But in conquered or ceded " countries, *that have already laws of their own*, the king may, in- " deed, alter or change those laws; but *till he does actually change* " *them*, the *ancient laws of the country remain*, unless such as are " against the law of God;" as in the case of an infidel country, *it might so be*, that such laws existed as are against the law of God.

CHAPTER II.

ON THE NATURE OF TENURES, ACCORDING TO THE LAW OF INDIA, UNDER THE MOOHUMMUDAN GOVERNMENT.

THUS I conclude that I have established beyond controversy, that the Moohummudan law and constitution was the established "law and constitution of India," at the time the authority of the British became paramount in that Empire; and that it is that system of laws to which the British Legislature must be held to have alluded, as above, seems to be a necessary consequence.

To the Moohummudan law, therefore, the question of *law*, with respect to the second branch of our inquiry, must be referred, *viz.* What is the nature of landed tenures under a Moohummudan government; more particularly, what is the nature of such tenures under a Moohummudan *Huneefeeah* government? For it was and is the law of the Huneefeeah sect of Soonnee Moslems which, it is universally admitted, prevailed in India.*

In whom does the real and indefeasible right of property in the lands of Bengal vest? In the *sovereign*, or in the *zumeendar*, or in the *cultivator?* This is a question which has puzzled, in no small degree, many who are well "versed "in India affairs."

The learned body (Edinburgh Reviewers), to which I have

* It may be noticed, that the Turks are of this sect of Moslems.

have referred, rest the whole question upon this:—Are these zumeendars, *by the laws of the country*, the proprietors of the soil?* And all must admit that they are right so far; that the law of the country must decide the point: for to what other tribunal can such a question be referred?

It is my intention, believing that I have shewn what law is the law of the country, to point out what that law says on the case.

But before proceeding to discuss a question of this nature, it is necessary we should define what we understand to be the meaning of the terms which are important in it: the *sovereign*, the *zumeendar*, the *cultivator*.

What is meant by a *sovereign* every one knows; but the learned in the East define him to be "that power, than which there is none higher, and to which there is no equal in a state." The word *Zumeendar*, generally rendered *land-holder*, is a relative and indefinite term; and does no more necessarily signify an owner of land, than the word *Poddar* signifies an owner of money under his charge; or an *Aubdar*, the proprietor of the water he serves up to his master; or a *Soobahdar*, the owner of the province he governs, or in military language, the owner of the company of sepoys he belongs to; or *Kellaadar*, the proprietor of the fort he defends; or *Thanadar*, the owner of the police-post he has charge of. On the contrary, I might venture to assert that the affix *dar*, according to the idiom of the Persian language, has more of a *temporary* signification: it imports more an official or professional connexion between the person

* Edinburgh Review, vol. xv., Review of Voyage aux Indes Orientales.

person and thing connected, than a real right in the former to the latter; as *Fojdar*, though the *foj*, or troops, are the king's; *Tehseeldar*, though the rents collected belong to the government; *Amildar*, though the Amil acts for government; *Beldar*, *Tubldar*, though the *spade* or *axe* are the property of the master. I say, the word *Zumeendar* imports nothing more *necessarily*, than that a relation exists between the *person* and the *zumeen*, or land. What that relation is, forms part of the subject to be discussed.

The word *cultivator* I understand to mean the person who, by his own labour, or that of his family or of his hired servants, causes the ground to produce, and reaps the crop; who receives no wages, who has not hired the land, neither borrowed it from any one; or at least, there is no record or tradition, or any existing evidence of his having done so. These are the significations I would be understood to give to the terms defined.

A *cultivator* of the above description stands, as man originally did, "the lord of the earth." All rights claimed over such a man are *incidental;* or, as the eastern logicians term it, حادثاً "*hadesun:*" and upon him who sets up an incidental claim, the burden of proof lies, because his plea sets forth that which is contrary to the radical order, or state, of the subject-matter of claim.

But it will be said, this cultivator *gives* something to another, in name of the lands which he holds, and therefore *he* cannot be the real owner; for *paying* is an acknowledgment of a superior, and the act of a vassal. I apprehend that this is a feodal idea, and that necessarily it has no real foundation. Let it be remembered, that *paying* for

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an equivalent, as in a purchase and sale, or in discharging a debt, is exchanging one commodity for another; that *paying* or *giving without* an *equivalent*, is an act which rather denotes *superiority* in the *giver;* and that only when it is to appease and to avert an evil, which we dread, is giving indicative of inferiority.

But admitting that the giving of something by the cultivator is an acknowledgment of a right existing in another, we shall find that all the claimants, from the cultivator to the sovereign, are equal in this respect. To whom does the cultivator pay? To the zumeendar. But does this constitute him the proprietor? Certainly not. If the zumeendar were actual owner of the lands from which the something is paid, it is clear that he might either retain what he receives or give it to whom he pleases; because the right to the proceeds of actual property must be indefeasible, like actual property itself. But we find, on the contrary, that the zumeendar, in name of those very lands, must pay either all or part of what he receives, also, to another; in this point of view, then, his right is not stronger than that of the cultivator: he receives from one and pays to another; and, therefore, can only be deemed a channel through which the produce of the soil flows from the cultivator to the public treasury of the sovereign. But even here it does not rest. Though we cannot so easily trace it, yet its transmission through the sovereign for the exigencies of the state, is no less certain than its course through the channel by which it flowed to him. If this be true, then it follows that *payment* is as little a test of vassalage as *receipt* is a proof of property.

For whose benefit, then, does this stream flow which contains the produce of the soil? Unquestionably for the

benefit of the *people*. All contribute towards relieving the public wants, all enjoy their share of public prosperity. Some give their aid in one way, some in another. One man serves the state in person, one gives so much from his land, another gives so much from his flock; and it would appear as reasonable to say that the sheep producing wool or lambs are not the property of him who contributes a lamb or a pound of wool (or their equivalent in money), as that the land producing wheat or barley is not the property of him who contributes a bushel of wheat, or a measure of barley, or an equivalent in money.

But as by the Moohummudan law the sovereign is considered only the trustee of the people, we must identify him with them. The *people*, by law, claim only a *portion* of the *produce of the soil* as their right; and as no trustee can have a stronger claim than his constituent, the right of the *sovereign* must also be limited to a *portion* of the *produce*, and a right *in* the *produce* is not a right in the *soil*.

And with regard to the zumeendar, who resembles the sovereign merely in *receiving* and *paying*, if the right of the sovereign on these grounds (of receiving and paying) may not be admitted to the soil, that of the zumeendar must fall of course; for since we have seen that both are merely instruments, or channels, through which its produce is collected, both claiming on the same grounds, if the *greater* fall the lesser cannot stand.

This seems the *natural* state of the case, and of the rights of the parties claimants. Let us see how far it is conformable to the law of the land; and if historical facts should correspond, the corroboration will be so far at least satisfactory.

We

We must not forget that the conquerors of India had *a written law*, by which, in other matters at least, we know and admit they were guided. That law is extremely minute on this particular subject, and particularly specifies the mode of settlement of other conquered countries; might we not therefore assume, even without farther proof, that the settlement of conquered India was influenced by that law?

Hindoostan was subject to a Moohummudan government for more than seven hundred years before that of the English was established over Bengal. The laws which existed during that period were, as I have shewn, Moohummudan, and according to the tenets of Huneefeeah Soonnees. By the doctrine of this sect, therefore, I conclude the question of law must be determined. To appeal to the laws of the Hindoos on this point, would be just as satisfactory as reference would be to the laws of the Britons, administered by the Druids, for the nature of tenures of land now in England.

India was conquered by the Moslems by force of arms. If so, by law, the land must either have been partitioned among the conquerors; in which case every individual who bore arms would be entitled to an equal share without respect to rank, but a horseman to double the share of a foot-soldier, and the land would be subject to a tenth of its produce, and thence termed *ooshree*, or tithe-land, from *ooshr* عشر tenth: or it must have been settled on the conquered inhabitants, and the *khurauj*, or land-tax, imposed on their lands, and the *jizeeah*, or capitation-tax, on their heads, as the Moohummudan lawyers express themselves.

If, then, the land had been divided among the troops, no one

one who is not a Moslem, or who has not purchased from a Moslem, or received by some other legal mode of conveyance, can be a lawful proprietor of land. I say, conveyance; for it could not descend by inheritance from a Moslem to a Hindoo or other non-Moslem. "There is no "inheritance between a Moslem and an unbeliever." The Hindoos admit of no proselytes; and if they did, by the Moohummudan law, the crime of apostasy would occasion forfeiture of property. If the land were settled on the inhabitants, as was done when the Moslems conquered the *sūwaūd* of Irauk, Syria, and Egypt, (and doubtless India also), the land would be termed *khuraujee*, or subject of the *khurauj*; and the law regarding it would be as follows:

"The land of the *suwaud* of Irauk is the property of "its inhabitants. They may alienate it by sale and dis- "pose of it as they please; for when the Imaum conquers "a country by force of arms, if he permit the inhabitants "to remain on it, imposing the *kurauj* on their lands "and the *jizeeah* on their heads, the land is the property "of the inhabitants; and since it is their property, it is "lawful for them to sell it, or to dispose of it as they "choose."—*Sūraūj-ool Vūhaūj*. That is, by any mode of transfer legal by the Moohummudan law.

The word *khurauj*, and almost all the other revenue, judicial, and financial terms, remaining in use at this day in India, throw some light on the subject. *La khurauj* (or as it is more generally written, *lackerage*) is one of those, and denotes a right in the soil, "without any impost." The word is لا خراج not subject to *khurauj*. *Khurauj* خراج, from خروج *khoorooj* "to come out of, or "be out," Heb. הרג *khuruj*,

khuruj, "coming out of a narrow place." Psalms xviii, verse 45.

The meaning of the word *suwaud* سَوَاد *of Irauk*, is "the lands of the province," as the same author informs us; adding, that this province is called *suwaud* "on ac- "count of the verdure of its trees and of its cultivation." "The Hebrews have שד *sud*, also שדה *sudah*, "land, the "ground." The word in the above quotation, translated "property," is in the original مِلْك *milk*, which in law signifies indefeasible right of property; and the word rendered "inhabitants" is in the original اَهْل *ahl*, the import of which is simply that of dwelling, residing on the lands; as they say, اَهْل البَصْرة *ahl-ool-busrah*, the inhabitants of Busrah.

From this we see, that if the inhabitants of India were suffered to remain on their lands on paying the above impost, the right of property in the sovereign is gone at once; and if it was partitioned among the conquerors, the alienation is equally complete. The question at issue, therefore, is shortened by one claim at least. But, in order to determine the other two claims, we must see what persons are meant by the *ahl*, who are thus vested with indefeasible right of property: for it may be said that these were the *former proprietors* of the soil, and that, by this settlement, is meant merely a confirmation of *former rights*. But to show that this is not the case, it is only necessary to say that, by the Moohummudan law, when a Moohummudan army conquers a province by force of arms, every *right* and interest, which the conquered inhabitants before possessed, ceases and determines, by the very act of conquest; that the sovereign has, by law, the power even of

of carrying the conquered inhabitants into captivity, and reducing them to slavery, or of suffering them to remain free as *zimmees*, as was done with the inhabitants of Irauk, abovementioned; or of removing the former inhabitants, and placing another people in it, as zimmees. By suffering the *ahl*, the inhabitants, however, to remain *under the conditions required by law*, *viz.* as *zimmees*, and to pay the *khurauj* and capitation-tax, the property of the soil is *established* in them, not *continued*.

But who are the *ahl* here spoken of? This is the only question now remaining: and I answer, it will appear that they are those who cultivate the land. They, the *cultivators*, pay the *khurauj*, and are termed ربّ الارض *rubb-ool-arz*, or masters of the soil. This would be sufficiently apparent merely by attending to the circumstance above related, *viz.* that the Imaum, when he conquers an infidel province, has the power of removing the *ahl* or former inhabitants, and of placing another people in it as *zimmees*.

But the great Huneefeeah lawyer, Shums-ool-Aymah-oos-Surukhsee, in speaking of *khurauj*, on the question,—what is the utmost extent of khurauj which land can bear?—says, "Imaum Moohummud hath said, regard shall be "had to the cultivator, من زرعه *to him who cultivates*. "There shall be left *for every one who cultivates his land* "as much as he requires for *his own support* till the next "crop be reaped, and *that of his family, and for seed*. "This much shall be left him: what remains is *khurauj*, "and shall go to the public treasury." Here there is no provision made for, no regard paid to, a *zumeendar*, who contributes nothing to the produce of the soil. We have here

here no ten per cent. *malikana* to "recusant zumeen-"dars."

Farther, the rate of *khurauj* leviable from land was fixed; not, however, with reference entirely to the soil, but to the kind of crop which it produced: for instance, by one mode of settlement, a field which produced wheat paid a *kufeez* of wheat and a *dirhum* in money, for every "*jureeb*" of sixty measures square, whatever the quantity of the produce might be; a vineyard or field which produced grapes, paid ten *dirhums;* and so on. But the same author says, "if the cultivator choose to cultivate a more "valuable crop in a field which before produced one "less valuable, he shall pay the khurauj of the *superior* "*crop:*" and again, "when the possessor of khuraujee "land is unable to cultivate it," Aboo Yoosuf hath said, "the sovereign shall lend him, from the public treasury, as "much as will enable him to cultivate, taking from him a "surety, and he shall enter into a bond to cultivate; "and when the grain is ripe, government shall take the "khurauj; but that which was lent him from the public "treasury shall be a debt *against the person* (of the pos-"sessor): or government may sell the land to another "who can and will cultivate it. This, however, only "when such possessor ربّ الارض is unable to cultivate by "being in poverty; for when he is wealthy, the sovereign "shall call him into his presence and say to him, Why "have you not cultivated your land? He shall not, how-"ever, compel him to labour; but he shall take from him "the khurauj, because he left his land uncultivated when "he had the power of cultivating."

Here there is no reference to any one but the cultivator, who is emphatically styled *rubb-ool-arz*, the master of the land,

land, and the Imaum: and what is here meant by the *imaum* is the *sovereign*, or his officers appointed to collect the tax.

The same author adds: "It is proper that the sovereign "appoint an officer for the purpose of collecting the khu- "rauj from the people in the most equitable manner. He "shall collect the khurauj to the best of his judgment, in "proportion as the produce is reaped. When lands "produce both a *rubeeaa* crop and a *khureef* crop, when "the rubeeaa crop is gathered, he shall consider, according "to the best of his judgment, how much the *khureef* crop "is likely to produce; and if he think it will yield as "much as the *rubeeaa* he shall take half the khurauj from "the produce (lit. 'the grain') of the *rubeeaa*, and post- "pone the other half to be taken from the produce of the "*khureef*." Here we see the minutest detail: and who are the parties? the sovereign, or his servant, and the cultivator.

The truth is, that between the sovereign and the *rubb-ool-arz* ربّ الارض (who is properly the cultivator), no one intervenes who is not a servant of the sovereign: and this servant receives his hire, *not out of the produce of the lands over which he is placed*, but from the public treasury, as is specially mentioned by every lawyer.

But should a possessor of land ربّ الارض *rubb-ool-arz*, choose to cease from cultivating the land himself, he may *let* it for hire to another, or *lend* it to him: because, if he had not this power, his right as a proprietor would be defective; but having this power, of giving the lands he cultivated himself to another, without reference to any third party, as a zumeendar for instance, his right in them is complete.

complete. "But though he *let* his lands, or give the use "of them *voluntarily* to another by any contract, the "khurauj is still due by the *lessor*, for *he* is *held* the *culti-* "*vator*, because he has the power of cultivating; which is "proved by the lessee (lit. 'hirer') being able to cultivate. "Should the lands, however, be *seized* by *force* by another "and cultivated by him, then the khurauj is due by the "usurper; for, in this case, the rightful owner did not give "the use of them away *voluntarily*, and he has not the "power of cultivating."

What is above stated, however, it is necessary to repeat, is the law of the Huneefeeahs: that which was, and now is, the law prevalent in Hindoostan. It is almost superfluous to offer proof of the tenets of the Moghuls; but the following introduction to a *firmaun* of Aurungzebe's, dated in 1668, may be quoted: "We have deemed it expedient to "issue our royal edict to all officers intrusted with the "management of affairs throughout Hindoostan, directing "them to levy the khurauj, in the mode and proportion "enjoined by the *holy law* and the tenets of Aboo Hu- "neefah."*

The "Huneefeeahs" are one of the four great Moslem sects, known by the general name of *Soonnees*. The other three sects of Soonnees are the *Shaufaaeeahs*, the *Maulikeeahs*, and the *Humbuleeahs*, the founders of which were Imaum Shaufaaee, Imaum Maulik, and Imaum Ahmud Humbul. These sectaries, though none of them have ever thought of *three* claimants to the property of the soil, yet, with regard to the question whether the right of property in the soil vests in the *sovereign* or in the inhabitants,

* *Meerat Ahemudee.*

tants, they have differed in opinion, not less than the learned gentlemen of our own faith. I shall state shortly the law of the different sects abovementioned on the subject.

Aboo Huneefah, and the Huneefeeahs, hold, that when the Imaum conquers a province by force of arms, first, he may, if he judge it expedient, partition the land among the conquerors, and it becomes their property by partition; or, secondly, he may settle the inhabitants upon it, and it becomes their property by his doing so; or, thirdly, he may remove them, and give it to others, and it becomes the property of those others. But the Imaum has no power to make it (as the Moohummudan lawyers express themselves) "*wukf*" for the use of the Moslemeen. What is meant by *wukf* is, that like lands appropriated by wukf, or endowment, to a particular pious purpose, it remains, according to Aboo Huneefah, the property of the endower, but the *use* thereof is transferred to another as a loan: for example, it may be retracted by the appropriator, according to Aboo Huneefah, at any time *before a judicial decree* has confirmed it, or seisin has been had of it by the incumbent; and if retracted, then it reverts to its former state, and may be disposed of by him like his other property. Or, fourthly, the Imaum may enter into compromise *before conquest*, and settle the land upon the inhabitants, on paying a certain specified sum in money, according to the quality of the land and the state of population.

Shaufaaee, and the Shaufaaeehs, hold it incumbent on the Imaum to *partition* the lands of a conquered province among the conquerors, as it is incumbent upon him thus to partition *all other kinds* of property captured from the enemy, unless the captors forego their right; in which case the

the lands shall be deemed *wukf* for the Moslemeen. That the *conquered* inhabitants have no *right of property in the soil;* but if they hold it, they hold it merely as tenants (lit. 'hirers'), and may not dispose of it, more than an incumbent may of a benefice appropriated by *wukf*.

Maulik, and the Maulikeeahs, hold, according to one report, that the Imaum may not lawfully partition conquered lands among the conquerors; but that, by the mere act of conquest, the lands become *wukf* for the Moslemeen, the inhabitants retaining them, but the right of property vesting in the state.

By another report, however, Maulik holds that the Imaum may either partition the lands among the conquerors, or make them *wukf* for the benefit of the state.

Humbul and his followers are reported to have held three different opinions. By the most authentic report, however, he is said to hold that the Imaum may either partition the lands of a conquered province among the conquerors, or he may make them *wukf* for the Moslemeen, if he deems the latter more advantageous for the state.

Adverting to this difference of tenets among the Soonnee Imaums, the learned Huneefeeah Surukhsee observes that "the learned have differed in opinion with regard to "land conquered by force of arms, on which the Imaum "has suffered the inhabitants to remain on paying the "khurauj and jizeeah. Some say that the lands are the "property of the Moslemeen (*i. e.* of the state), and that "the inhabitants are slaves, عبيد *aabeed*, of the Mosle-"meen, upon whom may be imposed whatever burden the "liege shall determine, as a master may on his slave. But, "according

" according to our law (the Huneefeeah), the inhabitants " are freemen, as zimmees; their lands are their indefea- " sible property, and that which is exacted from them is " khurauj."

This is THE LAW OF INDIA; and besides being an explicit declaration of the law, it will, I hope, throw some more light, if more can be required, on the question of who are the *ahl*, or inhabitants, to which the law alludes, when it says that " the land is the property of the inhabitants." Can it be meant by those who hold the inhabitants of a conquered province " slaves of Moslemeen," that those only shall be slaves who are in that class of society in which we choose to place the persons we call zumeendars? And can it be imagined that those who maintain that " the in- " habitants shall be freemen and their lands their own " property," mean that only those shall be freemen, and own their lands, who are of the rank we choose to confer on our zumeendars? The answer is obvious.

On the whole, then, according to the Huneefeeah law, if a Moslem army conquered a non-Moslem province or kingdom by force of arms, and the conqueror chose to suffer the inhabitants to remain in it, his duty would be, either himself, or by commissioners (as Omr did in settling the khurauj of the province of Irauk), to partition the lands among them, and to fix the land-tax. Those who share in this partition are the proprietors of the soil for ever; and may not be disseised of it, without their consent, so long as they pay the land-tax.

The above is the Moohummudan law of India on the question. I shall now notice a few historical facts connected with it. The reader must, however, avoid an error into which

which many have fallen, *viz.* that of confounding the law of the different sects of Moohummudans. The error is equally great, as quoting the law of France would be to prove the nature of tenures in England, because both the French and English are Christians, and the laws of both nations have the same origin.

The Moohummudan law has been brought forward by the disputants, who favour the claim of the sovereign and of the cultivator, in support of their doctrine. The Edinburgh Reviewers* think they have destroyed the opinion of Sir William Jones, by quoting the law of the *Sheeah Persian* (on the authority of Ibn Haukal and Sir William Ouseley), to prove that of the *Soonnee Moghul.* They are polite enough, indeed, to suggest an apology for Sir William Jones; but I will tell them that, on the subject of either Moohummudan or Hindoo law, that amiable, philanthropic, and learned judge, was less likely to be misinformed than on any other point of oriental research; for it was, above all others, the chiefest object of his pursuit to make himself master of these codes; his highest ambition, as he every where tells his friends, to superintend the compilation and translate digests of Moohummudan and Hindoo law for the use of the judges, "to enable them to control and "to check the opinions of the native law officers," which digests he declares to be "indispensable to the due adminis-"tration of justice to our Asiatic subjects;" and in his endeavour to attain this object he ultimately sacrificed his valuable life.

Sir William Jones, unfortunately, did not live to complete his great undertaking; and the Moohummudan law, which

* See Reviews before noticed.

which is doubtless the law of India, yet remains unknown. But Sir William Jones's authority, on the point in question, is not to be shaken by the opinions of the Edinburgh Reviewers, founded on such documents. Nor will Mr. Jonathan Scott's doctrine avail them much, when he says, in his *note*, vol. ii. page 148 of his "Dekkan," quoted by the Reviewers, "the property of the soil is all in the emperor, "and the landholders are removable at pleasure," till we have some proof of Mr. Jonathan Scott's knowledge of the law and constitution of India.

Mr. Hastings says, "the public in England have of late "years adopted very high ideas of the rights of the "zumeendars in Hindoostan. Our government, on grounds "*which more minute scrutiny may perhaps find at vari-* "*ance with facts*, has admitted the opinion of their right- "ful *proprietorship* of the lands. I do not mean to contest "their right of inheritance to the lands, while I assert the "right of government to the produce thereof. The Moo- "hummudan rulers continually exercised the power of "dispossessing the zumeendars. The zumeendarry of "Rajshay, the second in rank in Bengal, and yielding "twenty-five lakhs of rupees of revenue annually, has "risen to its present magnitude within the last eighty "years, by accumulating the property of a vast number "of dispossessed zumeendars; though the ancestors of the "present possessor had not, by inheritance, a right to a "single village in the zumeendarry."*

The zumeendars may purchase property, like other individuals; but that the name of zumeendar is an official designation there can be no doubt. The commission, or sunnud,

* Hastings' Memoirs of the State of India, 1786.

sunnud, of a zumeendar is quite explicit on this point. A translation of the sunnud of zumeendaree granted to Chytun Sing of the zumeendaree of Bishenpore, which office was held by his grandfather, to whom he was appointed in succession, is well known. As a common work, I refer the reader for it to Patton's Asiatic Monarchies, Appendix No. I. The sunnud is addressed to the mutusuddees, choudries, canoongoes, talookdars, ryots, and husbandmen of Bishenpore, setting forth "that the *office* "*of zumeendar* has been bestowed on Chytun Sing," and certain conditions are specified. He is to pay a peshcush of one hundred and eighty-six mohurs and two anas; to be conciliatory to the ryots, so as to increase cultivation and improve the country; *to pay the revenue of government into the treasury at stated periods;* to keep the high roads in repair and safe for travellers; to be answerable for the property of travellers if robbed; to *render and transmit the accounts required of him to the presence every year, under his own and the canoongoe's signature.* Then the jumma of rent to government is stated:

	Rupees.			
Purgunna of Bishenpore, one mehal,	37,529	4	0	0
Do..... of Shapore, one mehal ...	96,374	9	1	2
Total jumma or gross revenue...	1,29,903	13	1	2

We are then given the muchulcah, or written obligation given in by the nominee. He promises to be diligent in the discharge of his *office*, to be mild and conciliatory to the ryots, to increase the cultivation, to pay the revenue to government regularly into the treasury at the stated periods, to transmit the accounts, signed by himself and the canoongoe, regularly. We have finally the security for his person, of the canoongoe of Bengal, "that the

" office of zumeendar having been bestowed upon Chytun " Sing, I will be security for his person," &c.

So far, therefore, as the holders of large zumeendarees, such as many of the zumeendars of the province of Bengal are, it will probably not admit of dispute, that their tenure was *official*, and that the *bonâ fide milkeeut* (ownership) of the soil did not vest in them.

The Hindoo law is also quoted, to establish or destroy the right of the zumeendar, the cultivator, or the crown. I have no great faith in the purity of what we have given us as Hindoo law. I doubt very much whether the origin of any Hindoo law extant can be shewn to be antecedent to the Moohummudan conquest of India. At all events, after the lapse of eight hundred years since the government of India was wrested from the Hindoos, to quote *Menu* in proof of what the law of India respecting landed tenures was at the English conquest, or even before the dismemberment of the Moghul government, is at least not very satisfactory. Those who have attempted to clear up this noted question, have relied too much upon the Hindoo law and authorities.

How many generations of men have been swept away, since the laws of Menu were held up to execration by the triumphant and intolerant Moslems? The very names of the principal municipal officers, the technical terms and phrases of their law, are forgotten by the Hindoos themselves. The Reviewers, indeed, admit this, as I have before shewn.

In confirmation of this, I beg leave to submit the following

ing names and appellatives of the principal municipal officers of Government in a Hindoo state in the centre of the Company's dominions, as copied from a grant of land engraved on a plate of copper, dated twenty-three years before Christ, and dug up from the ruins at Mongyr in Bengal; translated by Mr. Wilkins in 1781.—(Asiatic Researches, vol. ii. page 131.)

Antient Names, now altogether unknown.	*Modern Names for the same offices.*
Omātyō—Prime minister	Vizier, Deewan.
Rājāstānēēyō—Viceroy	Nuwab, Soobadar.
Bysōpōtēē—Governor of the city...	Ameer, Walee, Nazim.
Māhā-kārātā-krēētēēkō — Chief investigator of all things	Kazee-ool-Koozzat.
Māhā-dōw-Sādhūn-Sādhūnēēkō—Chief obviator of difficulties	Mooftee, Ameerē, Adil.
Dāsārādhēēkō — Investigator of crimes	Kazee.
Māhā-dōndō-Nāyēk — Chief officer of punishments	Kutwal, Mohtussib.
Prōmātrēe—Keeper of the records	Kanoongoe, Putwaree.
Chōw-rōd-dhōrōnēēkō——Thief-catcher	Kutwal.
Dōndō-pāsēēkō—Keeper of the instruments of punishment.....	Koraburdar.
Dāndhēēkō—Mace-bearer	Chobdar.
Māhā-Sāmōntō—Generalissimo	Sepah Sillār, Sirē-Askur.
Kōth-tō-pālō—Commander of a fort	Kellādar.
Kyōtrōpō—Supervisor of cultivation	Amilguzzar.
Sāul-Kēēkō—Collector of customs	Thesildarē amwāl ē Tujarut.
Māhā-kōōmārā-Mātyā—Chief instructor of children.....	Moodurris, Mooillim, Oostād, Mēēājee.
Oōpōrēēkō—Superintendant	Nazir, Sirkar.
Kāndārōkyō—Guard of the ward of a city	Thana, Chokey.
Māhā-protēē-hār—Chief keeper of the gates	Sirdarē, Durbānān.

Antient Names.	*Modern Names.*
Gōwlmēēkō—Commander of a small party	Naek, Thanadar.
Sōrō Chōngō—Patroles	Pasban, Deedban.
Prāntōpālō—Guard of the suburbs...	Chokey, Thana.
Tōdājōōk tōkō—Chief guard of the wards	Kutwalee, Chubootra.
Bēēnēējoōk tōkō—Director of affairs	Karkoon, Goomashta.
Dōōtōprÿsōnēēkō—Chief of the spies	Sirdarē, Gōinda.
Gōōmāgōmēēkō—Messengers.....	Hurkara, Elchee.
Obhēēvōrōmāno—Swift messenger...	Hurkara, Shootrsuwar.
Tōrōpōtēē—Superintendant of rivers	
Tōrēēkō—Chief of the boats	Mulla bashee, mangee.

Here, then, in a long list of public functionaries, not one name is now to be recognized. So complete a proof of absolute annihilation never was before adduced of the whole fabric of the Hindoo government, as this antient record seems to afford. Mr. Colebrooke, I am aware, does not admit so great antiquity to this document; but the less the antiquity, the more powerful must the change have been which produced the effect in the shorter period of time.

But before I have done with the Reviewers, I must take notice of another of their "proofs." Shere Khan, before he usurped the throne of India, on the occasion of a dispute between him and his brothers about their father's *jageer*, when it was proposed to partition it, replied "that "there were no hereditary estates in India among Moo-"hummudans, for that all lands belonged to the king, "which he disposed of at pleasure." This the Reviewers quote, leaving us to believe it the authority of the India historian; while, in fact, it is nothing more than an anecdote, or at most the opinion of Shere himself, who, though a very good soldier, was probably not a very profound

found constitutional lawyer. But this is not all. The land in dispute was a "*jageer*;" which, in fact, by the Moohummudan law is *not* hereditary: and, besides, it so happened, that Shere's opinion here is liable to great suspicion; for he had himself privately got a grant of the jageer from the king. He says, indeed, "that as he "himself had got a personal grant of his estate, his "brothers were out of the question; but he would give "his brother Soleyman a part of the money and moveables, "according to law."*

That the law suffered to exist in this country, on all matters between the sovereign and the people, was Moohummudan, there is, I presume, no doubt. The revisal of the assessment on the lands in Akbar's reign, by Rajah Tudur Mull and Muzuffur Khan, was evidently made on the principle of the Moohummudan law. It was, in some districts, founded on the principle of the settlement known in the Moohummudan law by the name of *mookawsumah*, or a division of the crop between the husbandman and sovereign, from *kismut*, which signifies partition, division, &c. The fractional value of the share was fixed as one-half, two-thirds; but the amount arising therefrom to the revenue varied, of course, with the quantity of produce. "Thus," say the Reviewers, "it (the revenue) was fixed "in principle but varied in amount." The principle adverted to the circumstances and nature of the crop as well as of the cultivator. "We fully admit," say they, "that "the settlement of Tudur Mull was not concluded with "the zumeendars, but with the tenants."† But generally the Mookauteaa settlement prevailed.

That the settlement made by Tudur Mull was according

* Dow, vol. ii. page 164. † Dow, vol. ii.

ing to the Moohummudan law, we must infer from the testimony of Aurungzebe himself, in his firman dated in 1676, in which he directs " that in collecting the revenue, " they shall advert to the settlement in the reign of his " Majesty, when Rajah Tudur Mull was Deewan;" and no one will accuse Aurungzebe of breaking through the law of Islam. In point of fact, he expressly ordered the *Khurauj* to be levied according to the Moohummudan law.

Akbar, who, for liberality of sentiment, has few equals even in this age, was less rigid. He remitted the capitation-tax, which was an infringement of the Moohummudan law. He was particular, however, in other respects. By the Moohummudan law, the revenue is fixed with reference to the coin of Arabia. In order to ascertain the exact weight of the legal coin, by which the revenue was to be fixed, we are told in the *Futawah Mukhtussur Shaufee*, that from the Shureef of Mukkah a *dirhum* and a *miskaul* of the legal standard were brought to Akbar by Khaujah Bhaoo-ood-deen-Abdoolah of Moultan. The dirhum, on trial at the mint of Dehly, was found to weigh three mausha, four and a quarter barley-corns; and the lowest taxable amount of the property tax (which, for silver, is two hundred dirhums) was fixed at fifty-four tolah, five mausha, two jow (though some say fifty-two and a half tolah). Here we see the most minute attention paid to the law. How came it, then, that so much obscurity arose with respect to the most valuable rights, at least in our estimation, the *right in the soil?*

It so happened, in India, that there was infinitely more arable land than there were husbandmen to cultivate. The wants of the husbandman were few, those of the state many.

many. The interest of the sovereign was, therefore, greater to encourage cultivation, than of the cultivator to take the grant and to cultivate. Thus the value of landed tenures in India being extremely small to the ryot, they probably seldom became matter of dispute, or afforded much room for legislation. We ought, consequently, to expect to find in the law, and in the political, fiscal, and financial regulations handed down to us, more of the nature of encouragement from a landholder to cultivate the soil, than of definition of landed tenures so little valued. We accordingly see their wisest princes exert their utmost endeavours to protect the cultivator and to encourage cultivation. "Let the Amelguzzar," says Akbar, "learn "the character of every husbandman, and be the immediate "protector of that class of our subjects. Let him endea- "vour to bring the waste lands into cultivation, and be "careful that the arable lands are not neglected. Let him "promote the cultivation of such articles as will produce "general profit and utility; with a view to which he may "allow some remission from the general rate of collection. "If a husbandman cultivate a less quantity of land than "he engaged for, but produces a good excuse, let it be "accepted. Let him (the Amelguzzar) give no cause for "disgust; but, on the contrary, let him (the Amelguzzar) "transact his business with each husbandman separately, "and see that the revenues are demanded and received "with affability and complacency." And again, "let "him agree with the husbandman to bring his rents him- "self, that there may be no plea for employing interme- "diate mercenaries. When a husbandman brings his rent, "let him have a receipt for it signed by the treasurer."*

When so much encouragement was required to take lands

* Ayeen Akburee.

lands and cultivate them, we can hardly expect to see much on the law of ejectment. But here we see nothing at all: and although the Moohummudan law, which declares the property of lands to vest in the cultivator, allows the sovereign to eject a cultivator who does not cultivate, and give his lands to another, yet there is not a single word on that head in the whole of the instructions of Akbar to his revenue, or judicial, or fiscal officers. No; the soil was the property of the cultivator as much as it could be. Law gave no power, policy gave no motive, to remove or to disturb him, so long as he paid his taxes. When he did not, his lands could be attached; and so can those of the first *peer*, holding by the firmest tenure of the English law.

The Hindoo law, on the contrary, admits the right of *ejectment even for the sake of a higher rent.* "If the "cultivator has no agreement for a specific period to hold "his land, he may be ousted by the king, and the land "given to another who offers a higher rent; for the earth "(land) is held by powerful conquerors, and not by sub-"jects cultivating the soil." *Colebrooke's Digest.*—This was not the law of India, though it be the Hindoo law. The low of India was, therefore, *not* Hindoo law.

The right of the Indian husbandman is the right of possession and of transfer; and *the rate of his land-tax was fixed;* often, indeed, the amount. In what respect, then, is his right of property inferior to that of the English landholder? I answer, instead of the *rate*, the *amount* of *part* of the land-tax of the English landholder is *always* fixed, and so far he has the advantage. I say "part," for his land is subject to tithes and to poor's rates, which are only rateable, as the *whole* of the land-tax was in India. And we have lately seen, that in some parts of England, so burthensome

burthensome were the imposts of tithes and poor's rates, that the value of the landed tenure was in reality as little there as it could ever have been in India. At the period I allude to, in some parts of England, no *cultivator* (that is, farmer) could be found to take the land and to cultivate, paying the poor's rates and tithes, the English *khurauj*.

Had this state of things continued and become general in England, government must either have relinquished the revenue leviable from lands, or have confiscated such lands; and all this, by the laws of England, to pay the revenues of the state; and having done so, they could not have sold the lands, for they would have yielded no rent; they must have employed their officers to give the lands to cultivators and to collect the land-revenue, the *khurauj*. Whoever should have witnessed this state of things, and knew no better, might well have said, "all the lands of Eng- "land belong to the king," &c., as those of our Indian historians, ignorant of the Moohummudan law, have said of India.

Every government, whether despotic, monarchical, mixed, or democratical, must possess *a right*, whatever may be its name, over all the property of its subjects, whether real or personal: I might indeed add, over their lives as well as property. And this is proved by its having the right of depriving them of the one, either partially or wholly, or taking away the other. The subject holds his property, and even his life, by the tenure of his conforming to the will of the laws framed by government, as they may be from time to time promulgated. This right government has: and I say it is a *right*, although the "owner" of the land, &c., as he is termed, has it in his power to prevent its exercise, by his compliance with the will of the law.

How

How very difficult it is then to discriminate precisely, whether the right of property in the soil is the right of government or of the holder! If the paramount authority in a state have the right of imposing a burden upon property, and to levy the sum imposed even by the ejectment of the holder, it seems by no means an easy matter to prove that the right of government is not paramount over that property. Hence the conflicting opinions as to the right of property in the soil.

I must now endeavour to remove a prejudice which I think exists against the doctrine I maintain; namely, that the admission by us of an indefeasible right of property in the soil to exist in any one except the sovereign, would tend to excite dangerous feelings of independence. If their right of property were held indefeasible and absolute, the people might, in time, come to think that there was no absolute necessity for giving away any of it. But no such danger would exist, if we followed the law and constitution and the example of the Moohummudan rulers of India. If a jureeb of land was cultivated, and an ascertained rate was fixed and paid; if fifty were cultivated, fifty times the revenue arose to the crown. The admission of a right of property, with the assertion of the power of increasing taxation of the soil, carries with it nothing likely to engender a feeling of dangerous independence.

But to proceed. Though the law be explicit as to the right of the cultivator, and although it be equally doubtless that the zumeendarry right is official; yet that any given individual may be zumeendar, in the sense in which that word is loosely understood, and also a *malik*, or real owner of the soil, such as I have defined the "cultivator" to be, it is scarcely necessary for me to say, because the original

original tenure of *milkeeut* being transferable, might be purchased by the individual official zumeendar, and thus a large estate might be acquired: and doubtless many considerable properties thus grew up, and many more were unjustly got possession of. But then the difference between two individuals, claiming, the one as a cultivator in possession of the soil, and the other as a zumeendar, just described, claiming the right of a malik over him, is, that the latter must prove his purchase or lawful acquisition, and shew that the cultivator-possessor holds under him; for the law has vested the original or radical right to the soil in the cultivator. Of this right no individual can divest himself legally, but by sale or gift; and *no individual* can acquire it from him, but by gift, purchase, or inheritance. The sovereign may grant to his favourite a sunnud of zumeendaree, or jageerdaree, or altumghadaree over the lands, and the grantee will draw the government revenue, the *khurauj;* but the *property of the soil* remains with the owner, the *malik*, who may nevertheless sell, or let, or give it, to whom he pleases.

But we are told "that all the lands in Bengal, and the "greater part of those of Orissa and Behar, are in the "hands of great zumeendars, who claim to be the owners "of them in absolute right of property." From what has been said, however, it is obvious that the titles of these persons to the right of the soil will not bear investigation by the sure test of the law; nor, indeed, by any other standard whatsoever. On the contrary, it is beyond doubt, and a fact, a matter of undoubted history, that at a comparatively late period there was no such thing as a great zumeendar, either in Bengal or Behar.

"It is not," says the author of the Ayeen Akburee, "customary,

" customary, in the soobah of Bengal, for the *husbandman* " and *government* to divide the crop. The produce of " the lands is determined by *nussuk;* that is, by estimate " of the crop. The ryots (husbandmen) in the soobah " of Bengal are very obedient to government, and pay their " annual rents in eight months, by instalments, *themselves* " bringing mohurs and rupees to the places appointed for " the receipt of the revenue." And of Behar the same author says, " it is not customary in Behar to divide the " crop. The husbandman brings the rent himself; and " when he makes his first payment he comes dressed in his " best attire."*

The date of this authentic record is little more than two hundred years ago; and we have before quoted the edict of Aurungzebe, as late as the year 1668, directing the *khurauj* to be levied *agreeably to the forms,* and in *the proportion,* fixed by the Moohummudan law, throughout all India. How, or by whom, has the right of property in the soil been totally subverted, throughout a country containing twenty-five to thirty millions of people, *in so short a period?* If these, the great zumeendars, have acquired lawful right to the soil, it must have *been subsequent to this.* Let them shew the deeds by which they hold; for except *by inheritance,* a *regular instrument* is required to establish their title. Sunnuds from the *king,* as late *as the middle of the eighteenth century,* are quoted by Lord Teignmouth as establishing *undoubted right in the soil.* One in favour of the zumeendar of Rajshahy was granted, he tells us, " in consequence of the neglect of the " former zumeendar to discharge his revenue." This may be good as a sunnud of zumeendary; but this was *not a grant*

* Ayeen Akburee.

grant of the soil! not more than a commission, after superseding one collector of land-tax by the King of England, would be a grant of the estates within the district specified. So also the "zumeendary of Dinagepore was confirmed by "a firmaun of Shah Jehan about 1650." So the origin of the "Burdwan zumeendary may be traced to the year "1680, when a *very small portion* of it was given to a "person named Aboo." Nuddea and Lushkurpore zumeendaries are of later date, about 1719. See Mr. Shore's minute.

We have seen above, that at the very end of the seventeenth century the "*husbandmen paid their rents to the* "*crown.*" This goes to prove, that whatever be the antiquity of the *families* of the zumeendars just mentioned, they were, at the date of the *Ayeen Akburee*, considered "husbandmen:" and we know that the Viceroy of Bengal, Jaafur Khan, "dispossessed almost all the zumeendars." I would again ask, how this vast accumulation of property has arisen? Some of those zumeendars pay half a million sterling of public revenue. Did they purchase the lands? The value, at ten years' purchase, would be five millions! The malikana of ten per cent. at ten years' purchase, would amount to (four millions) four crores of rupees. Where was the capital to purchase this? It is evident *no purchase ever took place;* that, consequently, *no transfer of the soil was ever made;* and that, therefore, those zumeendars *are not owners of it.*

I shall conclude these remarks on the zumeendary tenure (referring to what I have said on the question of the law) by quoting the authority of an intelligent native, questioned by Mr. Shore (the present Lord Teignmouth), on the received opinion and custom of India with respect to the right

right of a zumeendar in the soil, and of the sovereign to confer such right. This intelligent person was the son of the former Nazim of Behar, and author of the *Seir-ool-Mootuakhereen*, Gholam Hoseyn Khan. *Query.* "How "is a zumeendar appointed?" *Answer.* "According to "the strict right, no person can become the proprietor of "land but by one of the three above-mentioned modes, "*viz.* by *purchase*, by *gift* from the proprietor, or by "*inheritance;* though, by usage, the emperor or his re- "presentative may displace him (a zumeendar) for con- "tumacious and refractory behaviour, and appoint another "by sunnud in his room. The person so appointed is by "usage considered as zumeendar and proprietor of the "soil, though according to strict right he be not so."—*Q.* "Is a zumeendary hereditary?" *A.* "Whatever land a "zumeendar may have become the *proprietor of by any* "*one of the three above-mentioned modes* (*viz.* purchase, "gift, inheritance), descends in the line of inheritance; "but whatever is not *actual property*, is consequently not "of an hereditary nature" (alluding to his official capacity of zumeendar which is not "actual property" doubtless). "If a zumeendary be the *actual property* of any person, "his heir has an undoubted right to succeed without the "sanction of the ruler."

Now here it is evident a distinction is intimated between lands the "*actual property*," which may be called the "hereditary" estate, and lands belonging to the zumeen- daree, not "*actual property.*" For example, by sunnud from the king, the zumeendar might be vested with the management of the revenue of his own hereditary lands, and other lands adjacent, and the charge of the police, &c. (for that was an essential part of a zumeendar's duty); also the care of extending the cultivation of waste land, &c.: and

and it is worthy of remark, that, throughout the whole series of answers to Mr. Shore's queries, Gholam Hoseyn invariably keeps this essential distinction in view; though from the questions, that great distinction seems to be entirely overlooked by Mr. Shore, who appears to take it for granted that an imperial sunnud is a full title to the actual property of the soil, as it is to the official rights of zumeendaree.

But a sunnud, firmaun, or by whatever name a grant from the crown may be called, can convey no right but what is vested in the sovereign; and that is, the collection of the public revenue: I mean over lands held by cultivators, such as I have defined. And let it be observed, that this distinction is marked by the names given to the allowances which government granted to zumeendars, "*malikana*" and "*nankar*:" the former meaning the dues belonging to a "*malik*," or real owner of land, the latter to a *manager*. "*Malikana*," says Gholam Hoseyn, "is the unalienable right of proprietorship; but *nankar* "depends upon fidelity, and a due discharge of the public "revenue. *Nankar* is expressly the reward of *service*. "If a zumeendar is displaced, it would be undoubtedly "taken from him. But *malikana* is the *right* of the "*proprietor* of land, who receives it (malikana) under the "ruler; and, therefore, if he receive it (malikana) under "the ruler, how can an altumghadar, jageerdar, &c. with-"hold it from him?"

Here then, notwithstanding the king's sunnud of altumgha, &c. the owner's right remains entire. The sunnud conveys the king's right, and no more; and that is the *khurauj*. There are, indeed, instances of the sovereign *purchasing land from a zumeendar*. On this point Gholam Hoseyn

Hoseyn is asked: *Q.* "Why did the king purchase lands, "since he was lord of the country, and might therefore "have taken by virtue of that capacity?" *A.* "The "emperor is not so far lord of the *soil* as to be able, con- "sistently with right and equity, to sell or otherwise "dispose of it at his mere will and pleasure. These are "rights appertaining only to such a proprietor of land as "is mentioned in the first and second answers. The em- "peror is *proprietor of the revenue*, but *he is not pro- "prietor of the soil.* Hence it is, when he grants *aymas*, "*altumghas*, and *jageers*, he only *transfers the revenue* "from himself to the grantee." How different this from the Hindoo law; how different from our ordinary notions of sovereign right in India!

It may not be unedifying to note in conclusion, what, in 1772, was the estimation in which the zumeendars and their titles were held by the English government. The government proclamation on this point is dated 11th May 1772, notifying the determination of the English govern- ment to assume the Dewanee, by order of the Court of Directors; and enumerating the several branches of busi- ness appertaining to the Dewanee, among which are: "the "constituting *and dismissing of zumeendars*, with the "concurrence of the Nazim."

They then, 14th May 1772, proceed to divide the country into farms of purgunnahs; but so as not to exceed one lac of rent per annum. In this document the zumeendars appear to be understood merely as government officers. "That in like manner the zumeendars, talucdars, "shicdars, *and other officers of government*, be forbid to "lend money to the ryots."*

How

* Proclamation of 1772.

How far, under the Moohummudan kings, the practice of India coincided with the law, in the system of government generally in matters of revenue and finance, in countenancing the right of the sovereign, or of the zumeendar, or of the cultivator, to the property of the soil, may be farther seen, in addition to what I have already quoted, by referring to the Institutes of Timour, which are formed so closely on the model and principles of the Moohummudan law, that it is impossible to mistake their origin. The Institutes of Akbar, in the *Ayeen Akburee*, are evidently formed from those of Timour; and are, in fact, in their most material parts, a copy of the former.

From the Moohummudan law, down through those two works, the eye of a Moohummudan lawyer has a view of the whole system of Indian government: obscure latterly, it must be confessed, but still sufficiently marked to admit of his tracing the original. There is also the code of the Moghul emperor of Persia, Ghaznan Khan, above mentioned, promulgated about the year of our Lord 1260; all, as indeed might be looked for, scions from the same stock. Where, indeed, at that early period of Moohummudanism, may it be supposed a Moslem prince would go for law, save to the sacred repository of his faith?

But there are other documents extant, of still greater force and of recent date. Among these, I shall again mention Aurungzebe's firmaun, dated in 1668, directed to Moohummud Hashim, containing instructions for collecting the khurauj. These are eighteen in number, and profess to be issued "that the mutusuddees and amils, "from one end of Hindoostan to the other, may be informed in all points regarding the khurauj, as directed

" to be levied in the *enlightened law of the pure and holy* " *religion*, and as approved by the good and authentic " traditions." These rules for the collection of the khurauj are entirely copied from the writers on the Moohummudan law; following the practice adopted by Omar, when he settled the conquered provinces of Irauk and Syria, before alluded to.

There is also another firmaun of Aurungzebe, issued about the year 1676, addressed to Rishuk Doss, containing the minutest orders respecting the collection of the revenue, the encouragement of cultivation, the keeping and transmission of regular accounts, formed after the rules of Akbar; to which he indeed specifically refers: " You are to inform yourself of the usage with regard to " the customs in the time of his majesty, when Rajah " Tudur Mull was Dewan."

This order contains fifteen regulations. It is collected in the *Rumoozat-e Alumgeeree;* and a translation of it and of the former may be seen in Patton's *Asiatic Monarchies*, furnished to that author, I believe, by the present Lord Teignmouth.

" It is proper," says the learned *Shums-ool-Aymah*, " that the sovereign appoint collectors to collect the " khurauj in the most equitable manner from the people." These collectors were called *amil-een* عاملين (the plural of عامل *amil);* and accordingly Akbar appointed a collector over every crore of dams, who was called عامل *amil*, or *amilguzzar;** and the name is preserved to this day in the province of Oude, and other parts of India beyond the Company's territories.

" And,"

* Ayeen Akburee.

" And," says Abkar, " let the amilguzzar agree with " the husbandman to bring his rents himself, that there " may be no plea for employing intermediate merce- " naries."

Here the written law says, the people shall pay to the government-collectors, " and the practice of India was " such." *No intermediate mercenaries shall be suffered*, says Akbar, to come between the sovereign and cultivator.

" There shall be," says the Moohummudan law, " sepa- " rate treasuries established; the first for the *khurauj*, and " the *jizeeah* or capitation-tax; the second, for the *ooshr*, " or tithes, and the *zukaut*, or charitable imposts; the " third, for the *fifth* of captured property, plunder, mines, " and of treasure-trove; the fourth, for *waifs*, *escheats*, " &c. All these shall be kept separate, because these *deeut*, " different branches of the revenue are appropriated by " law to different purposes. The sovereign, however, in " case of necessity, may borrow from one treasury, to " replace the same, if in his power."*

Timour had seven establishments of this kind, " seven " wuzeers or ministers, all under the dewanbegee, to " regulate the affairs of the revenue and to lay them be- " fore him: one for the affairs of the ryots, the state of " cultivation, population, and police; one for the sub- " sistence and pay of the troops, assignments or jageers " granted for this, &c.; one to take charge of the pro- " perty of absentees, defuncts, escheats, customs and " zukat, duties on cattle and pasture ground, &c.; one " for

* Zeylaaee.

" for the expenses of the imperial household, arsenal, " &c. There are three others placed over the frontier " provinces, the khalsah lands, &c., all under the dewan- " begee."*

Akbar established " provincial treasuries to receive the " khurauj from the husbandman, and one grand treasurer " in the capital." There were also " treasuries for pesh- " cush, reversions (or escheats), offerings, charitable " donations, and for money for weighing the king. The " fauzdar, when he captures a place, must act with fidelity " in the division of plunder, a fifth part of which he shall " send to the royal exchequer."

The khurauj, and the jizeeah, or capitation-tax, &c., shall be appropriated, says the Moohummudan law, to the use of the troops, in building and maintaining fortifications, guarding the highways, digging canals, maintaining those who devote their lives to the good of the people (as kazees, mooftees, mooazzins, public teachers); in feeding the poor, paying collectors of the taxes, building and repairing mosques, bridges, &c. " Finally, every mos- " lem in want has a claim on the public treasury, accord- " ing to his exigencies, for himself, wife, and children " under age, for decent food and raiment; but holy men, " and those learned in the law, the descendants of Aalee, " and the nobles, have a claim to a greater share, because " dignifying them, dignifies the sons of Islaum." F. M. S.

" I appointed," says Timour, " as suddur (or chief " priest) a man of holiness and of illustrious dignity, to " watch over the conduct of the faithful, established in " every city and town a kazee and a mooftee, a supervisor " of

* Institutes, 305.

" of markets, also a judge of the army (termed, as in " the Moohummudan law, *kazee-ool-askur*), and sent " into every province an instructor in the law, superin- " tendants to watch over the cultivated lands and the " husbandman, ordered the ruined bridges to be repaired, " new ones to be built, and placed guards to watch the " roads, &c. &c. Also ordered that the descendants of " the Prophet, the oolma, the foozla, the mushauekh, " the durveshes, the gosha nusheen, should have سيّور " غلات *seyoor ghulaut*, and وظيفة *wuzeefah*, and مرسوم " *mursoom*, assigned them; also that the فقرا *fookra*, the " عجزا *aajza*, the مساكين *musakeen*, should have مدد و معاش " *mudduđo maaush*, and that the mausoleums and sepul- " chres of the great should have فرش *fursh*, and آش *ash*, " and روشناي *roshnaee*, allotted them."*

" Four classes of men," says the Ayeen Akburee, " have " land or pensions granted them for their subsistence. " 1st, the learned and their scholars; 2d, those who have " retired from the world, holy men and goshanusheen; " 3d, the needy, who are not able to help themselves; " 4th, the *descendants of great families* [an error in the " translator for *descendants of Alee*], who, from false " shame, will do nothing for themselves; besides the army, " the pay of which amounted to rupees 77,29,652." †

But by the Moohummudan law, the land-tax is assessed by measurement; so much per *jureeb* of sixty measures square. The measure was settled to be the *guz*, or cubit, of the king Nosherwaun, which is said to have been seven hands' breadth including the thumb, or nine hands' without the thumb: " accordingly," says the Ayeen Akburee, " his " majesty, Akbar, adopted Nosherwaun's measurement " of

* Page 359, Institutes. † Ayeen Akburee.

" of sixty squares, which he made to consist of that num-
" ber of *ilahee guz;* settled the *guz*, the *tenaub* and the
" beegah; after which he ascertained the value of the land
" and fixed the revenue accordingly."

Timour ordered this before him. " The khurauj is to
" be settled," say the Institutes, " according to the pro-
" duce of the *cultivated* land. The lands irrigated by
" water constantly flowing should pay one-third; if only
" by rain-water, therefore uncertain, to pay one-third or
" one-fourth. That the land should be measured and
" divided into three classes, an average taken, and to pay
" so much."* The *guz*, or yard, settled by Akbar, was forty-one fingers; and he called it the *ilahee guz*, instead of the *badshahee* (the *guz* of the king, meaning Nosherwaun) as the Arabs did theirs.†

Akbar's beegah, or jureeb, consists of 3600 (or sixty square) guz: the same number specified by the Moohummudan law.

By the Moohummudan law, there are two modes of settlement of the khurauj: the *mookautuaah*, and the *mookausumah*, which will be explained below; but the khurauj of green crop (رطبة *rutbah*, signifying fresh, moist, green; which some commentators have translated by the word بقول *bukool*, green vegetables, pot-herbs) was always paid in money: five dirhums for every jureeb which produced green crop. This crop is explained to be " all kinds of
" green vegetables, flowers, roses, green dates, sugar-cane,
" turmeric, melons, cucumbers, bazunjaun, marygold, and
" the like."‡

" Accordingly,"

* Institutes. † Ayeen Akburee. ‡ Jaumeaa-oor-Rumooz.

" Accordingly," says the Ayeen Akburee, " from dry " crops one-third of the produce from each harvest was " levied as revenue ; but for musk melons, ajwayn, onions, " and other greens, ready money at fixed rates was pay- " able." And again, " the revenue for indigo, kuknar, " pan, turmeric, singarhar, hemp, kutchalu, kuddoo, henna, " cucumbers, badinjan, radishes, carrots, kerelah, tyn- " dus, and ketcherah, was ordered to be paid in ready " money"*

Besides these, an infinite number of examples might be adduced, to shew the identity between the regulations of the India Moohummudan government and the Moohummudan law. What I have quoted, however, must be fully sufficient.

Having, as I am persuaded I have, without doubt, established that the Moohummudan law and constitution is the " law and constitution of India ;" that the Moohummudan law prevailed during the whole period of the Moohummudan government ; that by that law, the right of property in the soil does vest in the cultivator, such as I have above defined, and not in the crown or zumeendar, above described ; that the usages which prevailed, distinctly shew that neither the sovereign, nor the person whom we call zumeendar (not owning land by inheritance, purchase, or gift), was ever understood to have had the shadow of proprietary right in the soil, and that the usages with respect to tenures, taxation, &c., are no where adverse but for the most part conformable, to the principles and rules of the law in their leading features, I shall now notice the different kinds of tenures or modes, by which property in lands can be acquired, as recognized by the Moohummudan law.

These

† Vol. i. page 361.

These are, 1st. *partition* among the conquerors, when the lands are conquered.

2d. By fixing the *khurauj* upon the lands of conquered inhabitants, by specific assessment (and imposing also the capitation-tax), they being suffered to remain upon the lands.

3d. By *compromise* entered into with the inhabitants of a country *before conquest.*

4th. By the *cultivation of waste land,* when with the express sanction of government. These four are the original tenures of land.

5th. Purchase, exchange, or other mutual compact for equivalents.

6th. Dower.

7th. Gift, bequest.

8th. Inheritance.

9th. Wukf, or endowment.

It is unnecessary to notice loan and lease, because these are temporary tenures, further than to state that they not only depend on the time for which they are granted, but are void of themselves by the demise of either party.

The 1st. *viz. Original partition at the conquest of a country.* This is the strongest of all rights. It can, however, only exist in the person of a Moslem, or one who has acquired by purchase, or other legal mode of conveyance, from a Moslem. It cannot descend to an unbeliever by inheritance; for an infidel cannot inherit of a Moslem. Consequently, had the lands of Hindoostan been divided among the conquering soldiers, no Hindoo could be in legal possession, without a formal title from a Moslem; for by the simple act of conquest, as above shewn, every right of a non-Moslem subject ceased and determined.

I say,

I say, right by original partition is the strongest of all tenures, because it conveys a right of which the owner *cannot divest* himself, namely, that of treasure-trove. If a person, says the *Jaumeaa-oor Rumooz*, find hidden treasure in the lands of another, and it is not known to whom it belongs, a fifth shall go to the crown, the remainder to the proprietor of the land. And the proprietor here meant is the *person to whom the Imaum (the sovereign) assigned the lands when first conquered,* or his *heirs;* not the owner to whom the lands may have devolved by purchase from the original proprietor, or his heirs. Such treasure shall not go to a *purchaser*, but shall *rather escheat to the crown.* This is also mentioned in the *Moheet.* The object of this statute is evidently to *create escheat.* Even now, probably, no land is to be found in the possession of an original owner or his heirs; consequently, all treasure-trove escheats to the crown.

2d. *Assessment of khurauj.* The Moslem conqueror has the legal right of suffering the conquered inhabitants to remain on their lands as freemen, but only on condition of their paying the khurauj and the capitation-tax. On the khurauj being fixed (which must be by allotment and assessment), the land becomes the property of the individual, saleable and transferable, in the same way that, in the case of partition among the conquerors, the share of each individual becomes his property, as the law says, *on partition.*

3d. By *compromise;* as the Prophet did with several powerful Arabian tribes *before* conquest, on their paying a fixed tribute; for *after* conquest there can be no compromise.

4th.

4th. A *grant of waste land* to cultivate. The grant is permanent. The sovereign has the power of *making* such grant, on condition that the grantee pay the assessment to which such land is liable for what he does cultivate. The nature of assessment, if the grantee be a Moslem, is regulated by situation as to water for its irrigation. But the crown cannot make any such grant without stipulating for the legal land-tax, seeing that, by law, the sovereign is merely a trustee for the community, whose property the land, before partition, is held to be; and a trustee cannot give away the property of his constituent without an equivalent. If the grantee cultivate within a reasonable period (which the law limits to three years), well; if not, the land may be given to another. Timour allowed the ryot, in this case, the land for the first year rent-free; the second he took what the ryot chose to give; but the third year the full public tax was levied.

5th. *Purchase*, or *exchange* for equivalents, by any of the legal compacts.

6th. *Dower*, on marriage; which is also, by the Moohummudan law, held to be a civil compact, for an equivalent, namely, the connubial society of the bride.

7th. *Gifts*, with seisin, from an owner who is competent to give; and *bequests*. These are compacts without an equivalent. So also is,

8th. *Inheritance*. All unbelievers may inherit among themselves, whatever their creeds may be, but none of them can inherit of a Moslem, nor can a Moslem inherit of a non-Moslem.

The

The 5th, 6th, 7th, and 8th, are all private contracts, and therefore do not weigh in this investigation.

9th. *Wukf*, or endowment, for some charitable or pious purpose. This tenure is absolute as to the *usufruct*, but does not convey the full right of property to the incumbent; though, as the law says, it annuls that right in the endower. The benefice lands, however, *even though the endowment be from the crown*, are liable to the land-tax. This is a most important rule of law as applicable to India; I shall, therefore, give it in the original. The law says, "if tithe-lands, they are liable to the tithe; if khuraujee-lands, to the khurauj:"

ويجب العُشرُ في الأراضي المقوفة انكانتْ عُشريةً وانكانتْ خراجيةً ففيها الخراجُ. *Kazee Khan.*

"The tenth (*ooshr*) is due from all benefice lands, if "*ooshree:* if *khuraujee*, then *khurauj* is due;" that is, according as the *ooshree* or *khuraujee* assessment may have originally been applicable to the lands, so shall the public revenue be continued to be demanded, notwithstanding the endowment.

But an endowment by *wukf* would not be valid, even from the crown, unless granted for the purposes sanctioned by law, and to some one or other of the descriptions of persons or establishments which the law recognizes as the objects of endowment. For example, a grant of lands by *wukf* to an individual who is wealthy, would be null *as a wukf*, according to all the lawyers, though according to some it would be held to be a *gift*. The object or purpose of endowment must be of a permanent, as well

as

as a pious or charitable nature. This is doubtless the sound law; though in some books, it is stated as legal to appropriate, by *wukf*, in favour of individuals, and of people who are not poor. But this is mere difference of terms; for in these cases the grant is, by a legal fiction, held to come under the law of gifts, and not of benefices; and then the law of donation will rule the case, which of course does not cancel any *public* or private demand against the land given; and if a tenure by wukf flowed from a subject, it would *à fortiori* be good, *quoad* the profits only: the land would still be subject to the revenues of the state.

These, together with tenures by *loan* and *lease*, both of which expire with the demise of either party, are those by which landed property may be acquired and held, according to the Moohummudan law.

It will be perceived that none of those tenures convey any right whatever to exemption from the public revenue. There is, however, a power vested in the sovereign by the Moohummudan law, which is too important in its consequences to be omitted here, *viz.*, that of appropriating the khurauj of a man's *own land* to the owner of the land. The sovereign cannot make a *donation* of the khurauj of the lands of an individual to the owner, unless the donee be of those to whom the law assigns a public maintenance (literally "an object of, or one entitled to a share of, the khurauj"). But should the sovereign assign the khurauj to the owner, and leave it with him, the owner, being of those who are entitled by law to share in the khurauj, it is legal, according to Aboo Yoosuf's opinion; and this is decided law, as Kazee Khan states.

Imaum

Imaum Moohummud dissents.* This, however, it is evident, can only be a personal grant; and must, at all events, cease with the existence of the individual to whom it is made, inasmuch as the qualities, or circumstances, which render one individual an *object* entitled to share in the khurauj, *viz.* his being a soldier, kazee, mooftee, teacher, collector of revenue, police officer, or other public functionary of government, a learned or holy man, are altogether personal.

And I may add, more for the purpose of shewing that I have not overlooked it, than on any other account, that in some books on the law (for it is, in its very principle, strongly opposed in the most authentic works), a mode is stated, by which, as some interpret it, the khurauj may be cancelled by the sovereign; and thus an estate would become lakhuraujee, or exempt from the assessment of revenue.

It is this. Lands escheat to the crown by the demise of last heirs, or otherwise. If government should *sell* these lands to any one, it is said by some lawyers, the khurauj would be annulled, and could not thereafter be levied from that land. This I have stated on the authority of some writers: but it is, at best, a mere evasive interpretation; for even these admit that the lands are nevertheless liable to government for *rent*, *oojrut*. It is maintained, however, by all the authentic writers, that escheats *may not be legally sold at all by the crown without extreme necessity;* in the same way as it is unlawful for a guardian

* Aboo Yoosuf and Imaum Moohummud were disciples of Aboo Huneefah, the head of the Huneefeeah Soonnees: their authority therefore is great on points of law.

guardian to sell the property of an orphan ward, without such necessity.

First, then, the sale of escheated land by government is not countenanced; and, secondly, the lands sold are still liable to the public assessment, under the name of *oojrut.*

In the *Futh-ool Kudeer*, after stating, in conformity with other books, that the land of Egypt is khuraujee, the author says, " the revenue collected from the lands of " Egypt, now-a-days is *oojrut* (rent) not *khurauj*, for now " the cultivators are not proprietors of the soil. It so " happened, that for want of heirs it fell without owners, " and thus escheated to the crown; what is paid, therefore, " is not *khurauj*, but *(oojrut)* rent."*

Here then, *if we admit the legality of sale*, is one way by which, technically speaking, the khurauj may be annulled; but then it is, as I have observed, a mere change of terms: " *rent*" is paid. The crown cannot remit the rent; and the only effect, even under a Moohummudan government, which would be produced, is that, in case the government chose it, they might oust the cultivator and give the land to another, or sell the land to another, or release themselves from the legal restraint of appropriating the revenue, received under the name of *rent*, to the purposes specified by law for the appropriation of the *khurauj.*

My object, in dwelling upon this subject, is to shew that there are no legal means of emancipating the soil from

* *Moon. Ghuff.*

from the government revenue *permanently;* and consequently, that the multitude of lakhurauj tenures, which have been trumped up during the imbecility and decay of the Moohummudan government, and the no less imbecile infancy of that of the English, are in themselves illegal, and could not by law have been granted *as permanent rent-free tenures*, and that their ever having been considered as such by our government, must have been the consequence of ignorance on the one hand, and of imposition on the other.

I shall, in this place, take notice of the variety of illegal and fictitious tenures which have been erroneously recognized by the local governments of India.

By the Moohummudan law, the sovereign, as we have seen, has no power to give away public property, of any kind, without an equivalent. He cannot bestow a lakhurauj grant in any other way than that above-mentioned, *viz.* by an appropriation of the khurauj of one's own estate to the owner himself, with the condition attached, of that owner being one of those classes of persons to whom the law assigns a public provision. An appropriation of this kind would be necessary to accompany even a religious endowment, if exemption from revenue were designed; and this would be permanent, if the body or class endowed continued to exist as objects of benefice; but would cease to be so with the existence of the last incumbent, who might come under the description of persons entitled by law to the benefit of a public maintenance.

So little power is, by the Moohummudan law, vested in the sovereign to give away the property of the public, that although, on the eve of a battle, he may hold out special rewards of an additional share of plunder in order to

to encourage the troops, yet, after the battle is over, he cannot give away an atom of prize property, beyond the regular share; except, indeed, from the share of the crown, which is a fifth of prize property.

In the above power, which the Moohummudan law recognizes in the sovereign, of assigning the khurauj of one's own lands to the proprietor, however, I can see the seeds of the variety of anomalous tenures, which are recognized by our government in India as lakhuraujee, or rent-free and permanent, without such tenures having ever been traced to their origin; and, in fact, without their nature ever having been ascertained; to the enormous diminution of nearly three millions sterling, perhaps, of the public revenue, under the Bengal presidency alone.

Setting out, therefore, with this, as a principle of sound law to be kept in view, that no permanent lakhuraujee tenure can, by law, exist in the person of an *individual* under a Moohummudan government, let us examine the India tenures as they are known to our government.

1st. *Altumgha* التمغا. This tenure, I think, owes its rank more to its sound than to its sense. One who has read Latin is immediately reminded of something *high*; and when he is told that it is a "royal grant," he is prepared to believe any thing of it. The truth is, however, that the word conveys no idea of the nature of the tenure. تمغا *tumgha*, or as it is also written طمغا, signifies نشان *nushan*, "a distinguishing mark; a mark they put on the hip of a horse, especially of the royal stud." تمغا *tumgha* signifies نشانِ مُهر *nushané mohur*, the impression of a seal. *Turkish Dictionary.* التمغا *Altumgha* is a compound of آل *ál*,

ál, a crimson colour, سُرخ نیم رنگ and تمغا *tumgha*, a seal; مُہر, in Turkish, مُہر بادشاہ, the seal of the king: and sometimes they drop the word تمغا *tumgha*, and the word ال *al* alone is used to signify the royal seal.*

The meaning which the British Government attaches to an *altumgha* grant is, that it is a royal grant; not only in *perpetuity* to the grantee and his heirs, but that it is a transferable and perpetual *lakhuraujee* or rent-free tenure. It is certain, however, that it by no means necessarily implies either *permanence* or *exemption from revenue*, or *right of transfer*. "And," says Timour, "I ordered that to "twelve of the forty *ouymauk* (heads of tribes of soldiers) "which had submitted to my government, تمغا *tumgha* "should be given, that they might be classed among my "khas servants." Inst. 309. "The other twenty-eight *ouy*- "*mauk*, who had not received *tumgha*, I appointed over "their own tribes; that in time of war they might attend "with their quotas." 313.

2d. *Muddud maaush* مدد معاش: this compound word signifies subsistence (lit. assistance in living), from مدد *muddud*, aid, and معاش *maaush*, living. It is also stated to be a royal grant in perpetuity, to be transferable, and to convey a rent-free tenure; but it was probably nothing more, originally, than the grant of a pension to an individual in distress. "I ordered," says Timour, "that to the poor "فُقَرا *fookra*, the helpless عَجزہ *aajzah*, and the indigent "مَسَاکین *musakeen*, مدد معاش *muddud maaush* should be "fixed." Inst. 357.

3d. *Aeemah.* ایمہ *aeemah* is the plural of امام *imaum*, which

* Furhung Rusheedee, voce آل

which is, I believe, the true etymology. If so, it was probably, nothing more originally than the grant of a small living to maintain a priest, or *imaum*, at the neighbouring mosque, to preside over the people at prayers; the person who guides the people at their public devotion being the *imaum*, or *leader* for the occasion. Or it may have taken its name from the donor, the sovereign, in his capacity of imaum. They are grants to Moohummudans.

The celebrated Bengal financier, Mr. Grant, tells us, that "*aeemah* is the popular general term for all charitable "or religious donations made by the sovereign to Moo- "hummudans in Hindoostan; and, technically, in forms "of sunnud, as well as of the exchequer, always more "particularly distinguished by the words *altumgha*, or "*muddud maaush*."* It (*aeemah*) is always supposed by our government to be a regular form of grant, conveying from the crown a free and perpetual transferable title.

When the prince, the *shahzaadah*, came to Bengal, he took upon himself to give away large grants of land, for charitable or religious purposes, under this appellation; but the grants were so extensive, that the king, though he did not choose not to ratify them, imposed a small land-tax on the lands granted; and they, in consequence, got the appellation of "*aeemah bazyauft*" lands, or *aeemah* resumed lands, from بازیافتن, to get back.

4th. *Jageer*, جاگیر from جا *jau*, a place, and گرفتن *geruftun*, to lay hold of. This is known to be merely a life-rent tenure, but it is stated to convey a rent-free title. A *jageer*, when given in land, is known, in the Moohummudan

* Grant's Analysis.

mudan law, by the name of اقطاعا *auktaa*, from *kutaa*, to cut; signifying a portion cut off for a particular purpose.

Jageer may be said to be a military tenure. Their origin in India may probably be traced to the following practice of Timour. "He ordered the whole of the revenues of "the country to be divided into lots of different amount, "and that these lots should be written on a royal assign- "ment يرليغ *yurleegh*. These assignments were brought to "the Deewan khana (exchequer, to be entered perhaps). "Each of the omrahs and mingbaushees (officers of horse, "who received sixty times the pay of a trooper) received "one of these assignments. If the amount was greater "than his own allowance, he was to share it with another; "if less, he got another to make up the amount." Timour directed, however, "that no ameer or mingbaushee should "collect more from the subject than the *established revenue* "*and taxes:* and for this purpose, and to keep an account "of the jumma, and of the payments and shares of the "ryots, &c. to every province on which royal assignments "were granted, he appointed two wuzeers; one of whom "was to take care that the *jageerdar* should not oppress "the ryots. The jageerdar got the grant first for three "years; at the end of that period the country was in- "spected. If it was found in a flourishing condition, and "the peasantry were contented, the jageerdar was con- "tinued: otherwise, it (the jageer) was resumed, and the "jageerdar was punished, by withholding from him his "subsistence علوفه for the three years following."* Here, then, we see the *jageerdar* received a grant of no more than "the *established revenue;*" no right in the soil. An accurate account was kept with the cultivators. If the jageerdar oppressed

* Inst.

oppressed them, he forfeited his grant. This is utterly inconsistent with permanent property in the soil.

These four are stated by our writers to be the only tenures derived immediately from the crown: and in the province of Behar alone, in the year 1784, the present Lord Teignmouth mentions the amount of the annual produce of rent-free lands held under the above titles to be Rupees 13,08,786 (about £130,000 sterling). Besides which, there are stated to be other alienated lands in the same province to a large amount, under the titles of:—

Nuzzeré durgah نذر درگاہ (lit. an offering at a sacred place), for maintaining places of worship.*

Kharijé jumma خارج جمع (lit. out of, or excluded from, the public revenue), excluded from the revenue, and sold by the zumeendars.†

Maafee مُعافي (lit. exempted, privileged, or revenue exempted lands), exempted on the authority of the nazim or the zumeendar.‡

Sir shikun سر شکن (lit. broken-headed, but stated to be) land broken or separated from the capital or head; granted in charity, by zumeendars, chowdries, canoongoes.§ It is, however, a grant of parcels or portions of land to some public functionary of the village; the priest, or perhaps the village washerman or plough-maker, to induce him to reside there. It is taken a little and little from each zumeendar or head; *i. e.* breaking a little off each head to give for the above purpose: so called سر شکن head-breaking.

Khyrautee خیراتي (lit. alms-meaning, that which is given voluntarily with a good intent), land given in charity by the amil, zumeendar, or nazim.‖

Nankar

* Lord Teignmouth's minute. † Ibid. ‡ Ibid. § Ibid. ‖ Ibid.

Nankar نانکار (lit. bread for work), stated to be land given by the amils or nazim, or the zumeendars, chowdries, talookdars, for some service performed.* It was, however, an allowance received by the zumeendar, while he administered the concerns of the zumeendary, from government, without reference to proprietary right. When he did not administer the affairs of the zumeendary, no nankar was allowed.

Enaam انعام (lit. gift, present), land given by zumeendars or amils as a favour.†

Land held by all these tenures is stated, in the document to which I refer (Lord Teignmouth's minute), to be in practice transferable, except lands held by *nuzzeré durgah* tenure: but as the right of transfer does not appear to be well-founded, even of *altumgha*, *jageer*, and *muddud maaush*, &c. tenures, I shall deem it necessary to inquire into these hereafter.

Besides these, however, there are a variety of other modes known in India, by which lands have been appropriated, and now escape paying revenue, to the great loss of the state. As 1 *chakuran*, 2 *mohteran*, 3 *peeran*, 4 *fukeeran*, 5 *cheraghee*, 6 *burmootur*, 7 *bhoguewitter*, 8 *bhatotur*, 9 *bishnotter*, 10 *dewotter*, 11 *nijjote*.

1st. *Chakuran* چاکران, service lands, from *chakur*, a servant. This grant may be by a Hindoo or Moslem.

2d. *Mohturan* مُہتران, from Sanscrit مَہَت *muhut*, great, and ترانہ *turana*, to cherish; *i. e.* lands set apart for the maintenance of a great or revered person or place. A Hindoo grant.

3d. *Peeran* پیران from *peer*, a confessor or spiritual guide. Lands set apart for a peer. A Moslem grant.

4th.

* Lord Teignmouth's minute. † Ibid.

4th. *Fukeeran* فقيران from *fukeer*, a mendicant (Moohummudan law *fookra* فقرا), to maintain the poor. A Moslem grant.

5th. *Cheraghee* چراغي from چراغ *churaugh*, a lamp: to maintain lamps burned at the shrines of saints. (Inst. Tim. روشناي *roshnaee.*) A Moslem grant.

6th. *Burmootur* برهموتر a compound of *bruhm*, a brahmin, and *oottur*, fit for, belonging to: a grant of land to a brahmin. A Hindoo grant.

7th. *Bhoguewitter* بهوگوتر from *bhogu*, enjoyment, possession, and *oottur*, as above: a maintenance to any person. A Hindoo grant.

8th. *Bhatotur* بهاتوتر from *bhaat*, a class of brahmins: meaning a maintenance for the bhaat brahmins. A Hindoo grant.

9th. *Bishnotter* (should be *Vishnoottur* وشنوتر) from *Vishnoo* and *oottur*, *i. e.* a grant of land for the worship of Vishnoo. A Hindoo grant.

10th. *Dewotter* ديوتر, from *devu*, a god, and *oottur*, as above; translated by my brahmin etymologist "a grant "of land for the expense of a deity." A Hindoo grant.

11th. *Nijjote* نجوت (but I think it ought to be نيچ جوت *neechjote*) from *neech*, under, and *jote*, to *plough*: *i. e.* land reserved by the zumeendar, and excluded from the jumma, for cultivation under himself. Either Hindoo or Moslem grant.

It is evident that these tenures are not, in their nature, necessarily hereditary; and, by law, they are clearly not: nor does it follow that any one of them conveys a rent-free grant.*

For

* The reviewer of the first edition has objected to the etymology of some of these terms, but I do not admit his etymological criticisms. They are, at all events, quite unimportant.

For example, the *altumgha* tenure. "Timour ordered "all the beggars to be collected, and maintenance to be "assigned to them, وایشانرا تمغا کنند *and that they should* "*be distinguished by a mark*, that they might not, there- "after, be permitted to beg any more: و بعد از تمغا *and if* "*after tumgha* they should be found begging, they should "be banished."* We cannot suppose by such *altumgha* grants that his majesty designed to constitute a body of *hereditary* beggars.

The grants of *altumgha*, *aeema*, *jageer*, *muddud maaush*, were by law nothing more than grants of the *khurauj* or revenue, the property of the lands remaining unaffected by them, whether belonging to the grantee or to others; and so far were these grants of altumgha, aeema, jageer, &c. from being considered by the Moohummudan government of India to be grants of a proprietary nature in the soil, that they were generally, perhaps, latterly, universally, made over the lands of *others*, over the lands of a hundred different proprietors, perhaps, whose right, as *bonâ fide* owners of the soil, was never questioned. And thus two distinct interests might exist in the same property: that of the *altumghadar*, or *aeemadar*, or *jageerdar*, to the extent of the *khurauj* or public revenue; and of the *malik*, or real owner, to the surplus collections from the ryots, after paying the khurauj. This constituted the malikana, or malik's (owner's) share; of which the *altumghadar* could not deprive him. And here we have an easy explanation of the fact hitherto, so far as I know, unexplained, *of altumghadars, jageerdars, and aeemadars in Behar, in many instances, paying malikana to zumeendars* (meaning owners of land): a fact adduced by Mr. Shore as a proof of claims of the zumeendars to the ownership of the

* Inst.

the soil, and equally adduced against him as a proof that that right vested in the sovereign; seeing, as they said, an altumgha grant is hereditary and a royal grant, and were the right of property not vested in the crown, the crown could not have granted it. But both parties were wrong. They confounded the real zumeendars, the real owners of the soil, with zumeendars, the managers of the revenue of villages, tracts, &c.; and mistook the grant of the *khurauj*, or revenue, for a grant of the *soil*. For example, suppose A. to have an altumgha grant of the khurauj of B.'s land, and afterwards to get possession of the land from B., on paying him ten per cent. (or any sum) yearly. Here A., an altumghadar, pays B., a malik, for the same land over which he (A.) holds an altumgha title.

If any argument were required to shew the necessity of a patient inquiry into the rights of the people, before final arrangements are completed in fixing the land revenue, it may be assuredly gathered from this.

Mr. Shore, on this subject, had good information, but did not avail himself of it. Gholam Hoseyn Khan, the intelligent and acute author of the *Seir-ool-Mootuakhereen* before-mentioned, being questioned on various points, in answer to Question 19th, "When any land was given "as altumgha, jageer, muddud maaush, &c. out of "the zumeendarry, did the proprietor of the land re- "ceive *malikana* from the person receiving the grant?" says: "*Certainly.* Malikana is the right of the pro- "prietor of land; and if he, the proprietor, received it "(malikana) from the ruler (government), how can an "altumghadar, jageerdar, &c. withhold it?" And this intelligent man again says, in answer to the 29th Question, "The emperor is proprietor of the *revenue* issuing out of "his

" his territory, but he is not the proprietor of the soil. " Hence it is, that when he grants aymas, altumghas, and " jageers, *he only transfers the revenue* from himself to " the grantee." Nothing can be more clear than this, as far as the property of the soil is concerned; that it was never, even in practice, conveyed to an altumghadar or jageerdar, &c. And, by law, even the revenue could not be alienated, except under conditions, as before explained, even by the monarch himself.

It has been above stated, that Lord Teignmouth understood that *lands* held by the tenures of altumgha, jageer, muddud maaush, &c. were *transferable* in *practice;* but we now find that *the lands* were *not understood* to be *conveyed at all* by such grants of the crown, but only the *revenue transferred* by the crown; and a grant of *revenue* (khurauj) is not a grant of *land*, nor is a *grant* of *revenue*, by law, transferable by *the grantee*, though it may be *inherited* under certain conditions. Nor does it appear in *practice* that such grants were understood to be *transferable.* The words of the grant by altumgha, &c. are adverse to the construction put upon them by his lordship. It is not a grant to *assignees*, but *from father to son, in lineal succession:* and the reason of this is, as the answer to the 49th Question of the document just quoted plainly shews, " the clause, *from father to son, in lineal succes-* " *sion*, is inserted in an altumgha sunnud, in order to secure " the grant *to the posterity* of the original proprietor " (grantee)." But the right to *transfer* would be vesting *any individual of that posterity with power to defeat the right of all the rest;* and this would be *defeating the object of government in making the grant*, which was to reward the faithful services of an individual, *by a permanent and certain provision for himself and* HIS OFFSPRING.

We

We have seen that, by the law of India, the right or interest conveyed by an altumgha, jageer, or muddud maaush tenure, is *not transferable* by sale, gift, or bequest, or by any other mode of transfer; and the tenor of the grant, as well as the understanding and practice of the Moghul government, appears to have corresponded with the law. It is scarcely necessary to remark that the admission, by our government, of the altumgha tenure as being *hereditary*, by no means implies a right to *transfer* by sale or otherwise. The altumgha, therefore, may be considered in the light of an entail upon the grantee and his *heirs* for ever. In default of heirs, the lands themselves, if there be no malik, and at all events *the public revenue* of the lands, will revert to the crown. We must conclude, consequently, from these premises, that every estate held by an altumgha, &c. title, that has *ever been transferred by any deed of transfer whatsoever*, is, at this moment, both by the law and the usage of the country, liable to the revenue of the crown, the khurauj.

Mr. Shore himself, indeed, who states the altumgha title to be transferable in *practice*, tells the government distinctly, in his letter to the Committee of Revenue, 29th January 1784, "that the altumgha is a grant to the ori-"ginal grantee and his heirs in perpetuity, *but devolving to* "*government in default of heirs.*"

It is necessary to take farther notice of the *due* here termed *malikana*, so confidently pronounced, in these extracts, the proprietor's right. This is supposed to be a due belonging to the real proprietors of the soil, to which they were entitled though their lands should have been subjected to the right of an altumghadar, jageerdar, &c. by the crown. *Malikana*, however, is a mere innovation, neither

neither authorized by the law, nor was it by the practice of the Moghul government, till the latter days and disorganized state of the empire. It had no existence, probably, till oppression was practised over the *maliks* (owners), by the sovereign granting assignments, under the name of *altumghas*, *jageers*, *muddud maaush*, &c., to an oppressive extent over their lands. We hear nothing of malikana till then: for, during the regular government, *a malik himself* paid his *khurauj* to the officers of government; the residue was his own. This was his. Farther than his *khurauj*, he neither gave nor received from government.

There is, indeed, a way in which a *malikana* might have arisen; but then it would not be at all definite as to rate: nor, in many instances, might there be any at all. If an owner cannot cultivate his land and will not pay the khurauj, government, by law, may give the land to another person to cultivate for hire, or on paying the khurauj. In this case, the surplus, if any, is the right of the owner *(malik)*, and may, agreeably to the Persian idiom, be called *malikana*. But, then, observe that this is not paid from the public revenue or government share, but from the profit, after the khurauj is paid. *There is no possible way by which malikana, be it what it may,* CAN BE DUE BY GOVERNMENT.

The possibility of its being an allowance made in lieu of the wages payable to official collectors (amilguzzars), and to those owners who paid their rents into the treasury, is, strictly speaking, not admissible; because the officers of the revenue are, by law, ordered to be paid, not from the lands, but out of the public treasury. Malikana has, therefore, its origin doubtless in the necessity of providing for the oppressed owners (maliks), whose lands

lands were usurped from them by royal *assignees*, as before described; who, wringing from the ryots the last farthing, would necessarily be compelled to maintain the starving maliks, and to pay them something, which might be called *malikana*, from their own funds; and hence it has been thought to be payable from the government share, or jumma, of the lands.

The *dewanee*, as it is called, of Bengal, Behar, and Orissa, is held by the Company "in perpetuity, as a free "gift and *tumgha*;" but it was not granted "rent-free:" and the words, "from generation to generation, and for "ever and ever," form a clause of it.

So far from being considered a *rent-free* grant, though the deed itself calls it "a free gift," and no mention is made in the body of the instrument of any payment, yet twenty-six lakhs of rupees annually were stipulated to be paid to the king out of the revenues of those provinces, by an agreement expressly referring to (and, in fact, being a part of) the above grant; so that even this celebrated document itself, the tenure of the Company, proves that liability to the payment of the public revenue to the crown is not inconsistent with an *altumgha* tenure; whilst, on the contrary, the existence of such a tenure, without liability to public revenue, is inconsistent with the law of the country, though in practice it may have been otherwise.

The grant to the Company was not perpetual by the mere introduction of the word *tumgha*; nor, as we have seen, was it, in point of fact, *rent-free*. I should rather interpret the meaning of the word *tumgha*, if it be at all significant, to be "special royal favour." "As a mark of "special

" special or royal favour, I, the king, grant to the Com-
" pany the provinces of Bengal, Behar, and Orissa :" subject, however, it must be understood, to the dues of the crown, otherwise the grant would have been by law altogether void and null *ab initio ;* for, as I have repeatedly noticed, the sovereign has no power to give away the property of the Moslemeen without an equivalent.

The equivalent, in this case, was the " twenty-six lakhs
" annually paid into the royal exchequer ;" which, together with the maintenance of the requisite army for the defence of the provinces and other advantages specified, the expense of collecting the revenues and maintenance of the public establishments of Islaum, was probably more than, for many years before, the country yielded to the royal treasury.

So, also, the *muddud maaush* tenures. They are equally non-significant of perpetuity : indeed, I ought to say, are rather *essentially life-rent.* When granted to individuals, they are unquestionably so : and must cease with the life they are granted to maintain.

" I ordered," says Timour, " that the descendants of
" Aalee, the Oolma, the Foozla, the Mushauekh, the Dur-
" vesh, the Goshanusheen, should have سیّور غلات *seyoor*
" *ghullaut*, and وَظیفہ *wuzeefah*, and مَرسوم *mursoom* given
" them, and that the فقرا *fookra* and the عَجزہ *aajzah*
" helpless مساکین *misakeen* should have مدد و معاش
" *muddud o maaush* assigned them."*

" And that, for the support of the shrines and sepul-
" chres

* Inst. p. 357.

" chres of the saints, مَوَاضع lands should be appropriated " by *wukf* (benefice), and that فرش *fursh*, carpeting, آش " *aush* food, and روشناي *roshnaee*, light or lamps, should " be allowed."*

The word سيّور غلات *seyoor ghullaut* is the plural of سيورغال *seyoorghal*, and has the same signification as *muddud maaush*, viz. چيزي كه براي مدد معاش كنند " that " which they appropriate as muddud maaush."†

All the above appropriations of Timour are in strict and literal conformity to the Moohummudan law. How, then, the grant by muddud maaush, the origin and nature of which are here so clearly seen, should have been imposed upon us as a " perpetual rent-free transferable te- " nure," is difficult to be accounted for, unless we ascribe it to the extreme state of anarchy into which the country had fallen immediately preceding our accession to the Dewanee; the enormously valuable " gift," which that conferred, producing on our government a proportionate disregard of minor objects; and, probably, what was then politic, a wish prevailed to leave things as much as possible as they were found, rather than, by strict scrutiny into tenures, to give alarm, and elicit the ill-will of the people.

Aeemah tenures differ in no essential way from muddud maaush; though, in some provinces, as in Bengal, a small rent is paid, as before noticed.

Jageers. The tenure by jageer is recognized by our government as resumable. It is resumable when the grantee ceases

* Inst. † Madar-ool Afazil, Dictionary.

ceases to exist: and so may the altumgha grant, though "from father to son in lineal succession," be strictly said to be resumable, when the series of grantees is at an end. By the law of India, the tenure by jageer would be legal, to the extent of a decent maintenance to the holder, his wife and children *under age*. Beyond that, it is not in the power of the crown to alienate the public revenue; and the grantee must be of the class of persons to whom the law allows public maintenance.

The prevalence of jageers seems to have had its origin in the mode practised by the Moghul government, following Timour, as above noticed, of paying its servants. Men of importance in the state, or who had performed services (or favourites, doubtless also) received titles: but jageers were appropriated peculiarly to military chiefs, called *munsubdars*, who ranked by their commissions for the command of so many horse. For each horse and horseman the munsubdar was allowed, if on full pay, eight thousand dams, or two hundred rupees, yearly. For this the munsubdar, for instance, got an order on the province where he commanded, for the subsistence of his troops. This order is vulgarly called a *tunca* or *tunka;* but the word is تنخواہ *tunkhaw*, that is, "as much as is necessary for the body," from تن *tun*, a body, and خواستن *khuwaustun*, to want or require; so that, in fact, its meaning is nearly synonymous with that of *muddud maaush*, a subsistence.

By the officers of government, this order, or *tunkhaw*, was made more specific; and a particular pergunnah, perhaps, or village, or number of villages, were assessed with this tunkhaw; or the pergunnah, or village itself, given over in lieu of the stipend. The crown became weak,

weak, the assignee powerful; and thus a simple assignment on the revenue for subsistence has grown into an hereditary tenure.

These four are all the tenures existing in India, which were supposed by the English government to flow immediately from the crown. The inferior tenures, as *nuzzuré durgah*, *kharigé jumma*, *maafee*, *sirshikun*, *khyraat*, *nankar*, *enaam*, *peeran*, *fukeeran*, *churaughee*, are all either Arabic or Persian words, doubtless introduced by the Moohummudans, and were grants, by Moslem zumeendars, or talookdars, or chowdries, &c.; but as none of these classes of persons could have, by law, any personal right in perpetuity to rent-free lands, they could, consequently, convey no such right to another; and therefore, in a question referring to the public revenue, such minor grants must be discarded entirely.

Still less can we attend to the residue of this long list, which is composed of grants of a similar nature, made by *Hindoos* for the maintenance of their religious and charitable establishments. It is quite impossible that any of those could ever have flowed from a Moohummudan crown; and, as private grants, they could not have affected the public revenue. *Burmootur*, *bhoguewitter*, *bhatotur*, *bishnotter*, *dewotter*, are grants of this kind: and with respect to the *neejjote*, also *khomar* lands, the former the zumeendar relieved from the revenue, by putting the whole sum of this assessment on the rest of his lands, and cultivating this spot under his own superintendence, as the word signifies; the latter, کھمار *k'homar* in Hindee, in Persian خرمن *khurmun*, probably orignated from the name of a spot near the village, or in the most eligible place, where the corn at harvest time was brought to be threshed and winnowed.

winnowed. This spot was excluded from the revenue by the zumeendars, and probably a considerable appendage adjacent. They are here noticed merely to shew that they are not overlooked.

The intelligent Gholam Hoseyn Khan, before-quoted, was asked, "Can a zumeendar give, sell, or alienate from "the public assessment, any part of his land?" *Answer.* "If he be the *real proprietor*, he may transfer his zumeen-"darry: but *since he is liable for the public revenue*, if a "deficiency in the revenues should be the consequence of "such alienation, he (the zumeendar) must be responsible." He ought to have added, and so is the *land* transferred responsible, and cannot be relieved from that responsibility, into whose hands soever it may be transferred. It is the land, indeed, which is emphatically held to be responsible for the public revenue.

The loss of revenue, which government has thus suffered by sustaining such titles as the above, is beyond all belief enormous. The Moghul government, our predecessors, were not exposed to this; for, besides that they exacted from the persons who might hold rent-free lands services as an equivalent, such as keeping up a force to preserve the peace of the country, and to aid the king when occasion required, police establishments, &c. &c.; when advisable, the crown, knowing its right, stood on no ceremony in resuming such grants.

In the reign of Akbar, the revenue of the province of Bengal, including however Orissa, as far as Rajahmundry, was 1,49,61,482 rupees; and the zumeendars (if they possessed rent-free lands, which doubtless they did) were bound to furnish, in addition to their assessment, 23,330 cavalry,

801,158 infantry, 170 elephants, 4,260 cannon, and 4,400 boats. The revenue of Behar was 55,47,985 rupees, and it furnished 11,415 cavalry, 449,350 infantry, and 100 boats.

Mr. Grant, in his Analysis, says, "it is not to be understood by this, that the zumeendars were bound to furnish that number of troops, &c. in addition to the revenue; but only that the province *was capable* of furnishing them in case they were required." But in this I do not agree with Mr. Grant. The meaning is, that when called upon, the province was bound to furnish that quota, the *capability* being of course implied. The small zilla of Tiprah, *which is within the province of of Bengal*, is stated in the *Ayeen Akburee* to be subject to a chief whose military force is 1,000 elephants and 100,000 infantry; and Coach (Coach Behar) to a chief who commands 1,000 horse and 100,000 foot. The quotation is stated thus: "also" to furnish 23,330 cavalry, &c. Besides, are we to suppose that the whole province of Behar could only furnish 100 boats, its stated quota as above?

The British government has not only relieved the people from such burdens as these, but has continued the old, and admitted a great variety of new, exemptions from revenue; and, moreover, has seldom, if ever, availed itself of the customary exercise of the power of resumption of jageers and other rent-free lands.

The translator of the *Seir-ool Mootuakhereen* pays the English a compliment for their liberality, at the expense of their management, on this point. "In their dominions of Bengal and Behar," says he, "they indeed resumed a number of grants; but it must be allowed that they confirmed

" firmed an infinity of others, *one-half* of which afforded " full grounds for resumption."

How far it is politic, or even just, to continue these exemptions from the public revenue, will, I think, admit of being very seriously questioned. It may be questioned how far it is equitable, whilst a great and increasing public debt has accumulated, so as to embarrass the functions of government, by compelling them to reduce public and necessary establishments, and the hard-earned allowances of public servants, that the revenue should be suffered to remain in defalcation by exemptions from assessment to an enormous extent. It may be affirmed, that whilst this is tolerated, numerically taken, full one-half of the European officers of government are sacrificing their lives for India, on allowances reduced to a bare subsistence without any prospect of ever being able to visit their native country.

It is not where there is no stimulus to exertion that we are to look for improvement; nor should one portion of the people be made to bear the burden of the other in supporting the exigencies of the state. What would the people of England say, were a great portion of the finest lands in their country, with all its inhabitants (for that is in effect the case here, there being no other tangible property to tax), totally exempted from taxation? On this point I do not, however, propose to enter at large; but shall content myself with having shewn the law applicable to such grants, in hopes that the proposition may yet be useful.

In the ceded and conquered provinces of the Dooab, &c. alone, there are now rent-free lands " beegahs 44,95,177,"

as reported by the Board of Commissioners; and stated to be "superior to the average value of the other lands, "and equal to those of the highest rent;" in which case they would yield an annual income of 1,23,61,736 rupees, or pounds sterling, at two rupees per beegah, £1,236,173

and in the lower provinces, exclusive of Cuttack, there is stated by Lord Teignmouth, from the investigation held in 1777, to be beegahs 83,75,942; which, at one rupee and a half per beegah, would be..... 1,256,391

making together the enormous sum of..... £2,492,564

Mr. Colebrooke, in his Husbandry, states "the free "lands in some pergunnahs in Sherefebad and Tajpur, "to have been ascertained to be "more than one half of the whole "productive soil;" thus,.....

	Free Lands. Beegahs.	Cultivated. Beegahs.
	298,275	524,909
"And, again, in other places.....	143,042	301,131
"Total	441,317	826,040*

Here, then, is a grand source whence much might yet be recovered to government. There is another in uncultivated land, which I shall now briefly notice.

The ancient tenures in existence at the Moohummudan conquest, fell, as I have already shewn; consequently no plea of exemption from revenue, founded on them, can be sustained.

By the Moohummudan law, the land revenue of the crown was fixed *on the arable land only.* That alone was given away to the husbandman, who became the owner. All

* Husbandry, p. 18.

All other lands remained the property of the state, and were ready to be given away, on application, to any one who would undertake to cultivate them. If he did cultivate, well; if not, within a reasonable time, which was limited to three years, the land was taken from him, and might be given to another. By *law*, therefore, it is evident that no right can exist, in any individual, or body of individuals, *to any other description of land than that which is cultivated.*

Timour says, "I ordained that the khuraaj should be "levied agreeably to the produce of the *cultivation*, that "the jumma should be fixed on the produce of the land."* The revenue per beegah, by Akbar's settlement, is calculated at one and a half to two rupees. Had the uncultivated land been included, the amount of land-tax, at this rate per beegah, would have far exceeded the value of the whole *produce* of that which was cultivated, and therefore could not have been paid. The produce of a beegah of ordinary land is stated in the *Akburee* at 4 maunds 12 seers wheat-value, 12 dams, that is 12-40ths of a rupee, per maund; or, per beegah, one rupee five annas. A second crop might yield nearly as much; both about two rupees ten annas per beegah. If half the produce, or one rupee five annas, be given for the expense of cultivation, we shall have nothing to spare for uncultivated land.

We see, therefore, that the practice of India corresponded with the written law in this; for in the reign of Akbar it was the cultivated land only that was measured; it was the cultivated land whose value was ascertained, and it was the cultivated land that afforded the datum for making his decennial settlement: and it was from the records

* Institutes, p. 363.

records established on that basis that the revenues of these provinces were limited for ever, by what is called the permanent settlement. Consequently, by the law of India, all the uncultivated land (which is, according to Mr. Colebrooke, "one half, and about half of which is capable of "cultivation, the other half irreclaimable, or in rivers "and lakes")* of the whole of the three provinces still remains the property of government: for without an *express equivalent and specification of revenue*, there existed no power *legally capable* of giving away uncultivated land, by any lawful deed of conveyance, or any legal mode whatsoever.

Nor, in equity, can uncultivated lands be deemed to have been given away, because no equitable value was put upon them by either party to the permanent settlement. It was the productive land, the rent-paying land, that was the subject matter of settlement between the parties; and that rent-paying land consisted of "villages;" for all the land of the country resolves itself into the land of such or such a village. There are larger and smaller divisions; but this is the most definite and best known, and, therefore, I follow the native registers in adopting it.

The quantity of land belonging to every village is stated in beegahs: the boundaries perhaps specified, but probably not well-defined. One of the contracting parties to the permanent settlement, at least, (the zumeendar) was therefore bargaining for a specific quantity of land which he knew. This quantity of land was the land in cultivation, and it must have been so; for the zumeendar had no capital to enable him to offer a rent to government for land that was not immediately productive; nor could government

* Remarks on Bengal.

government have believed that he had, without entertaining the most extravagant fancy. I say, therefore, that not only the law, but even the equity of the case, is against the alienation of the uncultivated land.

But the discussions which took place, on the occasion of the permanent settlement, do not lead us to suppose that all the members of government intended to give away the uncultivated lands. Mr. Shore, in his minute of 8th December 1789, speaking of waste land, says, "the limits of "the villages are left undetermined by any marked boun- "daries. The quantity of land in each, *though stated in* "*beegahs*, is confessedly unascertained (by us, for other- "wise this is a gratuitous confession); the proprietors "may, therefore, extend their possessions and encroach "upon the present waste lands. The boundaries of vil- "lages ought to be, and may be, ascertained; and I think "the government ought to know what it gives, and "the proprietor what he receives. Mr. Law says that "the boundaries of cultivated villages are well ascer- "tained: if so, let them be marked and recorded. If the "plan (the permanent settlement) should be attended with "the improvement expected, the limits of estates will then "become very important; and, some time or other, there "will be a necessity for defining them."

From this it is evident, that Mr. Shore, the only member of the government of that day who displays an accurate knowledge of the subject discussed, did not intend to convey to the proprietor of the village more than the land ascertained to belong to that village; which ascertainment was "by beegahs" (whether measured or by computation matters nothing), to which the jumma, or money-rent, had reference.

Lord

Lord Cornwallis, indeed, in his minute, February 3d 1790, gives us reason to think that his lordship designed to be more liberal than his colleague; for he says, "the "rents of an estate can only be raised (to the profit of "its proprietor) by inducing the ryots *to cultivate the* "*more valuable articles of produce, and to clear the exten-*"*sive tracts of waste land,* which are to be found in "almost every zumeendarry in Bengal." But his lordship, in the preceding paragraph, has just told us, in answer to an argument of Mr. Shore, "neither is prohibiting the "landholder to impose new *abuabs,* or taxes, on the "lands *in cultivation,* tantamount to saying to him he "shall not raise the rents of his estate." But we are not told, if a landholder may not raise the rents of his lands in cultivation, what profit he is to derive from lands paying *money-rent* (or a specific quantity of grain named), by "*inducing ryots to cultivate the more valuable articles of* "*produce.*" And did his lordship intend giving away, for nothing, the whole of the "*extensive tracts of waste land* "in Bengal?" This is not understood by the government, nor by any one; and, therefore, we may fairly mark this as a paragraph conveying no meaning whatsoever.

The act, under the authority of which the permanent settlement was made, gave no power to grant waste land. It is the 24th George III., chap. 25, sect. 39. By this section, the Court of Directors were required to give orders for settling and establishing "upon principles of "moderation and justice, *according to the laws and consti-*"*tution of India,* the permanent rules by which the tri-"bute, rents, and services of the rajahs, zumeendars, "polygars, talookdars, and other native landholders, "should be in future rendered and paid to the United "Company."

Here

Here there is no authority to give away waste land, or uncultivated land, or indeed land at all; nothing in the most remote sense authorizing the giving any *permanent right* to land of any kind. It is "to fix *permanent rules* "for the payment of *rents*, tributes, and services due "from native landholders," such as rajahs, zumeendars, polygars, talookdars, to the Company; affording a presumption, indeed, in direct opposition to the idea of property in the soil existing in any of the classes of persons mentioned. And these "rules for paying rents" were ordered to be fixed "according to the law and constitution "of India." Now the law and constitution of India debars even the Emperor himself from giving away one inch of waste, or any other land, without an equivalent.

It appears, therefore, that by the law and constitution of India, there is no tenure by which land can be held which is capable of exempting it, *permanently*, from the public revenue; yet that, in point of fact, the extent of rent-free land is enormous. It also appears that the extent of waste, but cultivable, land, is very great; and that, by the law of India, such waste can belong to no individual *till it has first been given by the Crown and assessed with the public revenue.*

That government, therefore, possessing those legitimate sources for increasing the public revenue, in the permanently settled provinces of Bengal, Behar, &c., should nevertheless continue to struggle against the burden of an overwhelming debt, whilst many of the zumeendars are in receipt of a surplus revenue equal to that of a petty principality, seems wonderful self-denial. But when, as is now the case, this self-denial involves in it the fortunes and fate of a great proportion of the public servants of the state,

state, many of whom have now a very inadequate recompense, such a line of policy presents itself in a very questionable light.

Let it not be imagined that I desire to oppress the people. I have stated my opinion strongly, in order to excite attention to reform. If there be fiscal oppression in India, it is not the *amount*, but the *inequality* of the assessment, which occasions it. To remedy this is the duty of the local governments—and a more important duty they cannot undertake.

CHAPTER III.

ON TAXATION AND REVENUE UNDER A MOOHUMMUDAN GOVERNMENT.

I NOW come to the sources of revenue available, and taxes leviable by law, under a Moohummudan government: in treating of which I shall endeavour, also, to state what imposts, *de facto*, existed under the Moohummudan government of India. It must, however, be previously remarked, that as the Moohummudan law was framed for a people, nine-tenths of whom were Moohummudans, when it came to be applied to a people, as in India, of whom nine-tenths were not Moslems, it could scarcely be hoped that a very literal adherence to it was practicable, or will now be found. The general principles of the law, however, were no doubt observed; and to shew this must suffice.

By the Moohummudan revenue-laws, a distinction is made between the *Moslem* and the *Zimmee*, or non-Moslem subject, to which it is necessary to attend. This distinction is great with respect to the land-revenue; but it is applicable, only, to the land of *Arabia Proper*, and to conquered provinces, when the lands are divided among the conquerors. There the Moslem pays the *ooshr*, or tithe of his crop; the Zimmee, the heavier impost of khurauj, which by law may amount to, but cannot exceed, half the produce, *i. e.* five tithes. But, on the other hand, the Moslem is liable to several annual and occasional taxes, from which the Zimmee is exempt, amounting to about two

or three per cent. of his property (not of the produce merely), under the name of *sudukah* and *zukaut*, or pious *benevolences*. I use this word because the English reader will recognize it.

But as India was conquered by force of arms, and the inhabitants were suffered to remain in it, and their lands were restored to them on paying the capitation-tax and the khurauj, or land-revenue, by law the whole land of India is khuraujee land, the Hindoo and other inhabitants, unbelievers, are Zimmees, and the land is liable to the khurauj, whether it be in possession of a Moslem or of a Zimmee. This is the law of Moohummudan conquest; and the fact corresponds with the law, for the land of India is known, and universally acknowledged, to have been subject to khurauj. By law, the *ooshr* and *khurauj* cannot both be exacted from the same land; consequently, in India, the land-revenue payable by a Moslem and a Zimmee, by law, would be the same, and so *de facto* it was. The Moslem paid the khurauj, and so did the Hindoo.

The public revenue, by the Moohummudan law, is drawn from the following sources. The *ooshr*, or tithes, from the *produce* of the soil; the *khurauj*, from the produce of the soil, or from the land, if fixed on the latter; *tribute*, of tributary states; the *customs*; the *zukaut* (or tax) on *pasture-cattle*, camels, oxen, goats, sheep, and horses; *zukaut*, on gold and silver coin, bullion, plate, jewels, merchandize and goods; *offerings* at the *eeds* or festivals, *expiatory sin-offerings*, and things offered by vows: all these being exactions from Moslems only. The *capitation*-tax on non-Moslems; the *fifth* of prize or plunder, of the produce of mines, of treasure-trove, of wrecks; *escheats*.

escheats. The sovereign has the power also of raising a *war-tax* from the people in case of war; but this, without necessity, is repugnant to the spirit of the constitution, and therefore held in reprobation, unless in case of emergency.

Timour had, attached to his dewan or exchequer, *seven wuzeers*, or ministers, for the above purpose, as before noticed.*

The first of these Moohummudan imposts, *viz. tithes.* These are termed عُشر *ooshr*, which signifies a tenth-part, or ten per cent. on the produce of tithe-land. This only Moslems paid. The *ooshr*, or tithe of produce, was never levied in India, as already stated, because the country having been subdued by force of arms, and the inhabitants suffered to remain in it as free men, their right to the soil was, on their agreeing to pay the legal imposts, established; and the lands became *khuraujee*, and not *ooshree* lands.

This Moohummudan impost is taken from the Jews, by whom it was called מעשר *maasher* معشر; that is عُشر *ooshr*, or *aasher* with the addition of *m:* in fact, another inflexion of the same word. When the Hebrews were contemplating the possession of Canaan, Moses ordained that they, when they got possession thereof, should, besides the revenues of forty-eight of the most flourishing cities, &c., grant to the priests and Levites a tenth-part of the annual produce of the earth; וכל מעשר הארץ ליהוה " and all the " tithe of the land (whether of the seed of the land or of " the fruit of the tree) is the Lord's."†

Secondly,

* Inst. 305. † Levit. xxvii. 30.

Secondly, the خَرَاج, *khurauj*. The revenue originally fixed on the land of conquered provinces, not inhabited by the conquerors, was called *khurauj*. It is said, in law, to be fixed "on the neck of the land." Meaning, that the land itself is liable for the land-tax, independent of the owner; which liability cannot be affected by any transfer, or other mode of conveyance. For example, the principle of the law is, that the lands of a *Moslem* shall only pay *tithe;* those of a non-Moslem subject, *khurauj*. But though a Moslem purchase the khuraujee land of the Zimmee (non-Moslem), it continues, nevertheless, to pay khurauj; because the law holds the soil liable: the right of government to the khurauj, or, as the law has it, "the right of "the troops (and other public officers to whose use the "khurauj is by law appropriated) must not be defeated."

The khurauj was fixed in two ways: one, on the principle of a share in the produce, as a half (the highest), or a third, or a fifth; the last considered as the lowest extreme. This settlement was termed *mookausumah*, from قِسْمَت *kismut*, division, *i. e.* the cultivator dividing the produce with the state. The principle of this settlement, therefore, is similar to tithing; the rate only is higher: and in this settlement, if there was no cultivation there was no collection.

The other mode of fixing the khurauj (which was the radical mode, so that if the word khurauj simply is used, it is held to mean this mode of settlement) had reference to the quantity of cultivated land possessed, and the kind of crop produced. The rate of khurauj was fixed for the different kinds of crop the land was capable of producing. The land was measured, and each *jureeb* (or, as it is called in

in India, beegah) of sixty squares of nearly yards, if it produced wheat, paid a measure of wheat and a dirhum in money. Other dry crop paid also in kind and in money per jureeb; but all green and perishable crops paid in money only. This mode of settlement was called *mookautuaah*, from قطع *kutaa* to cut or settle, definitely. Thus certain lands produce a certain crop. The quantity of the land is known by measurement; the rate is fixed; consequently the quantum of revenue is fixed. This was a true "*permanent settlement.*" By the former, or mookausumah settlement, the quantum of revenue was not fixed, but depended on the harvest and on the cultivation.

The khurauj was leviable, under the mookautuaah settlement, whether the owner cultivated or not; provided he was not prevented from doing so by some inevitable calamity, as inundation, blast, blight; or if he was deprived of his field by *force*, he was not liable. A cornfield paid the khurauj of corn for each jureeb, a kufees of wheat and a dirhum; a vineyard, the khurauj of a vineyard, *viz.* ten dirhums per jureeb.

The word jureeb جَريب Heb. גרִיב *jureeb*, was, *mensura*, a vessel, a measure, *Buxtorf.* But its use among the Hebrews seems restricted to a measure of capacity, not of quantity or long measure, as understood by the Arabians.

A jureeb of wheat-land, I have stated, paid a kufees (a measure of about nineteen pounds) of wheat, and a dirhum in money; which is six annas and four elevenths, or about ninepence halfpenny sterling: calculating the rupee at two shillings, the intrinsic value of the silver being about two shillings only. The word قفيز *kufeez* is also Hebrew

Hebrew קפיזא قفيزا *kufeeza*, mensura, modius trium logorum, *Buxtorf*. A *log* contained the fourth of a *kab*, a *kab* the one hundred and eightieth part of an *omer*, an *omer* eight bushels. The value of nineteen pounds of wheat might be about two or two and a half dirhums more. In the *Ayeen Akburee*, however, it is stated at three dirhums; so if we take that value for the wheat, the land-revenue or assessment of a jureeb of dry crop is three shillings and a penny sterling, or one rupee nine annas per beegah.

It appears that before the time of Shere Khan, the mookausumah settlement prevailed in Hindoostan. The *Ayeen Akburee* says, "Shere Khan and Selim Khan, who "abolished the custom of dividing the crop and made a "measurement of the cultivated lands, used this guz" of thirty-two fingers. And Akbar seems to have restored the mookausumah settlement, with conversion into money of the government-share, in some of the provinces. Of the fifteen soubahs which composed his empire, *ten* were measured. The remaining *five* soubahs were not measured; but the revenue was settled by *nussuk*, or computation, and valuation of the crop before harvest, and was paid in money. This was the custom in the province of Bengal.

The soubahs not measured were Cashmeer or Cabul, Tatta, Berar, Khandees, and Bengal: those measured were Behar (part at least), Allahabad, Oude, Agra, Malwah, Guzerat, Ajmeer, Dehli, Lahore, and Moultan. The measurement of the cultivated lands thus made, and the ascertainment of the average produce of a beegah, were the data on which the assessment was formed. One-third of the average produce was fixed as the revenue; but in cases of inundation, or other unavoidable calamity, the impost was less for the first four years following it. On the

the above basis, taking the average of ten years, Akbar made a decennial mookautuaah, or *permanent-rate* settlement, which is stated to have given great satisfaction to the people.* This was done under the superintendance of Raja Tudur Mull and Muzuffur Khan. It is the settlement so often alluded to by writers on this question; and the amount assessed is known by the name of the *ussul toomar jumma*, established A. D. 1582.

The Moohummudan law, as I have observed, allows the khurauj to be levied as high as one-half. Some lawyers say, as much shall be left to the husbandman as will maintain his family, servants, and cattle till next crop, and all the remainder shall go to the crown; but one-fifth of the produce is deemed the equitable and commendable portion, being double the *ooshr*, or double tithe. The *Ayeen Akburee* says, "former rulers of Hindoostan took one-"sixth; but then they imposed a variety of other imposts, "equal to the whole quit-rent of Hindoostan, which Akbar "abolished: among these, the capitation-tax." And, according to Pliny, the husbandman paid one-fourth of the *increase.*

Ferishtah tells us, "that Allah the First ordered a tax "of half the annual produce; that he appointed officers "to superintend the collectors, who were ordered to take "care that the zumeendars levied no more from the poor "farmers than in proportion to the estimate of their "estates." The Moohummudan law, in cases of inundation,

* The Ryotwar settlement of Sir Thomas Munro is the *Mookautuaa* settlement; except that we are not distinctly told by him that his *rates* were permanent; and money alone was paid by the Ryotwar system.

tion, or when the crop was blighted or blasted, or otherwise destroyed by unavoidable calamity, granted a remission of the khurauj. It also says, that "if the husbandman is "unable to cultivate the land, government shall lend him "as much as will enable him to do so, taking from him a "surety: the loan to be recoverable by easy instalments, "but to be a debt against the *person* of the cultivator."* We accordingly see that Akbar, in his instructions to his amilguzzars, ordered them "to assist the needy husband-"men with loans of money, and to receive payment at "distant and convenient periods." These advances are known to India at this day under the name of *tuccavi;* and the custom of making them is practised, almost universally, by all land-holders.

It may not be uninteresting to compare the rates of assessment in India, during the Moghul government, with those recognized by the Moohummudan law. In the province of Behar, for instance, the measured land of 138, out of 199 pergunnahs, contained 2,444,120 beegahs. Suppose every beegah to be rated as *dry-crop land*, the very lowest rate, at three shillings, it would give £366,618 sterling (rupees 36,66,180); and we find the jumma of that province stated in the *Akburee* at rupees 43,16,004 (£431,600. 10*s.*); difference, rupees 6,49,824 (£64,982): which if we set off against the superior revenue which would fall to be levied from that part of the lands which produced *green crop*, which paid five shillings, and vineyards as high as ten shillings, the estimate will bring the amount of assessment fixed by Akbar, on the cultivated lands of Behar, as near the rate specified by the Moohummudan law as it is necessary, in an inquiry like this, to trace it.

The remaining sixty-one pergunnahs of the province of Behar,

* Zey laaee.

Behar, the land of which was not measured, were rated at sicca rupees 12,30,940. Total revenue of the province, sicca rupees 55,46,944, *minus* rupees 55,803 of *seyoorghal*, or charitable funds and poor's rates; which, it may be remarked, is one per cent. on the revenue. The province furnished also 11,415 cavalry and 449,350 infantry, and 100 boats.*

Timour exacted from lands irrigated by water from rivers, canals, or rivulets (easy irrigation), one-third of the produce; convertible, at the pleasure of the ryots, into ready money, at the market price: and if the ryots were not pleased with this, the lands were to be measured into jureebs, and classed into first, second, and third classes. The produce of the first class was to be estimated at three kherwars or loads; that of the second at two; that of the third class at one kherwar; average two kherwars, per jureeb: half, or one kherwar, to be taken as wheat, the other half as barley. The settlement or assessment was to be for one-half of this: so that for twenty jureebs of land watered as above, ten kherwars of wheat and ten of barley were payable. The barley was reckoned half the value of wheat. Or if the ryot chose to pay in money, he might, at the rate of five miskauls† of silver (value about four shillings and eightpence sterling) per load, for wheat, and two and a half miskauls per load for barley (two shillings and four-pence value): so that, by this reckoning, the khurauj of a jureeb would be three shillings and six-pence sterling, or one rupee twelve anas, which would be somewhat more than the rate charged by Akbar. But then a tax was levied by His

* Akburee.

† A *miskaul* is equal to $1\frac{3}{7}$ dirhum; a *dirhum* is equal to $6\frac{4}{7}$ anas: so a miskaul is equal to $9\frac{1}{2}$ anas.

His Majesty Akbar, "in return for the cares of royalty, of "ten seers of grain from every beegah of cultivated land "throughout the kingdom." *

This would raise the land-tax of Akbar to about five shillings and sixpence per jureeb. Nor must we forget that Timour levied only a third, or a fourth, from lands which depended on rain for their fertility, which would probably diminish the general rate below those fixed by Akbar.

Since Akbar's time, another impost was, by royal authority, fixed; first upon the southern provinces of the Dukhun, and afterwards it became general over that part of India, to be paid to the Mahrattas, by a treaty of peace made with them, in Bahadoor Shah's reign, in the year of of our Lord 1701. This was called the *dusmuk'hee*, or tenth handful: that is "the tenth of that part of the crop "allowed the farmer." † This was a tenth of two-thirds of the produce, for that was the general share of the farmer (or about 6. 6 dec. per cent.).

Besides this, a fourth of the government-share of the revenue was afterwards accorded to those marauders, apparently, at first, gratuitously and without authority, by Daood Khan Peni, who was left *locum tenens* for Zoolfukar Khan, Soobadar of the Dukhun. This was called the *chout*, or fourth; and has been erroneously supposed, by many, to be a fourth of the produce. It was not confirmed to them till the reign of Ferukhsere, who ratified it by an imperial firman, about the year of our Lord 1715. The *chout* of one shilling and three-pence, or about 8. 3 dec. per cent., making, together with the dusmuk'hee, fifteen per cent.,

* Ayeen Akburee, vol. i. p. 287. † Seir Moot., vol. iii. p. 221.

cent., or about one-seventh of the whole produce of the Soubah of the Dukhun and southern provinces, *viz.* Poonah, &c., was the acknowledged revenue of the Mahrattas on those provinces.

The third source of Moohummudan revenue was *tribute* of tributary tribes or states. This has no limit, but is settled by convention, and is arbitrary. The *Bunne Toghlib*, a tribe in Arabia, paid double *ooshr*, that is, one-fifth, as tribute.

The fourth, the *customs*. This is known in law by the term *ooshr-oot tujaurut*, or tithe on merchandize, when in transit. A *modus*, or taxable amount, *viz.* two hundred dirhums, was fixed, below the value of which no tax was levied. It was to a *Moslem* about two and a half per cent.; to a *Zimmee*, five per cent.; and to a *Hurbee*, or subject of a foreign state, ten per cent., or whatever *his* government charged on the property of Moslems, when that was ascertained. If they charged no duties on Moslem merchandize in their country, then their subjects were exempt in the Moohummudan dominions. The Moslem and the Zimmee paid only once in one year, but the foreign merchant was charged as often as he passed into the Moohummudan dominions.

This is the Moohummudan law, by which their trade with foreign states was regulated; and it must be confessed, that the liberal principle of reciprocity is worthy of a more enlightened age.

The sovereign, by the Moohummudan law, has the sole charge of the customs. They are levied, as is stated, "for "the protection of the roads from robbers and thieves;" and

and it is remarkable that it is the same by the old English law, and that the same reason is assigned by the English lawyers for levying customs, "that they are vested in the "king, and that foreign merchants are to be chargeable "with double customs."*

In India, therefore, five per cent. would be leviable from the merchandize of Hindoos, and other non-Moslem subjects, in transit, and two and a half on that of a Moslem. Timour had his collectors of customs and his minister to receive this revenue: "the duties on the merchandize of comers "and goers, also the taxes on cattle (as below) and on pas-"ture-lands."†

It is stated of Akbar, "that he remitted duties on ex-"ports and imports by sea that would equal the revenue "of a kingdom, and now nothing is exacted but a trifle of "two and a half per cent."‡

The fifth source of Moslem revenue is *zukaut on cattle*, or cattle-tax: that is, on camels, oxen, sheep, and goats. The original signification of *zukaut* is purity; to purify, Heb: זכה *zukah*, "pure, clean," הזכו "wash you, make "you clean," *Isaiah* i. 16. לא זכו *lazukoo*, "they are not "pure," *Job* xv. 15. The word "*zukaut*" has evidently been introduced into finance with the view of creating a belief, that by giving a part "*to the Lord*," the residue, including the donor, of course, becomes thereby more pure, and of a higher value. The giver derives spiritual exaltation from the act; and who is there that would hesitate to purchase so important a benefit on such easy terms?

It is, however, only "for *brood* cattle, which pasture out "of

* Blackstone, b. i, 68. † Institutes, page 303.
‡ Ayeen Akburee, vol. i. 296.

" of doors for the greater part of the year," that this pious impost is payable. I call it an impost, because it is compulsory. In case of non-payment, the magistrate has the power of compelling the individual to pay it, on pain of imprisonment. The way in which this power is expressed is curious. The lawyers say the judge *shall not force* the person to pay his zukaut; *but he may imprison him till he do pay it.* Moslems, only, are admitted to the privilege of paying zukaut. Unbelievers are not so easily purified; and they were not suffered to attempt it in this way. " Do " not you see," say the grave doctors, " that even hell-" fire itself is incapable of making the unbeliever pure: " how then can they be purified by means so inadequate?" A very conclusive argument, and one, at all events, not likely to be impugned.

Labouring cattle, and cattle fed at home, were exempted; and of pasture cattle a rateable number was fixed, under which no zukaut was payable. The zukaut on camels was thus fixed: on five (the lowest taxable number of camels) one goat was payable; for one hundred camels, two three-year-old camels were paid: about two per cent., supposing a three-year-old to be of the average value. Young and old are reckoned together, of all taxable animals.

Of *kine*, thirty is the lowest taxable number; and for that number a yearling calf was paid. For forty, one two-year-old. Sixty paid two yearlings. One hundred paid two yearlings and one two-year-old; which may be about the same value.

Of *sheep and goats*, forty is the lowest taxable number, and paid *one;* but for one hundred and twenty no more than one was chargeable. From one hundred and twenty-one

twenty-one to two hundred, two were payable; and one per cent. for every one hundred above that number; so that one per cent. may be stated as the zukaut on sheep.

On *horses*, meaning a brood-stud. *Horses* paid nothing if by themselves, nor *mares* if by themselves, but only when they were kept together. The tax on horses was levied either *ad valorem*, paying two and a half per cent.; or if the owner chose, he might pay by number, at the rate of ten dirhums (ten shillings) a head. It was disputed, however, by the lawyers, whether even brood horses were taxable, or whether the law applied only to horses for sale. Mules and asses are also chargeable, but only when they are merchandise.

Timour and Akbar levied a tax on cattle, without reference to the creed of the owner, whether Moslem or Hindoo. "If," says the Akburee, "khuraujee land is kept "for pasture, let there be taken yearly from kine each three "dams, and from buffaloes six dams. Calves shall not "pay; and for every plough the owner shall be allowed "four oxen, two cows, and one buffaloe, that shall not be "taxed."*

By the Moohummudan law, all labouring cattle are exempt.

6th. *Zukaut on gold and silver.* The lowest taxable sum was twenty miskauls of the former and two hundred dirhums of the latter (both the same value), and paid two and a half per cent.; and the same per-centage was levied on bullion, ornaments, and plate made of these metals.

6th. *Zukaut on oorooze*, or goods when merchandise, and not

* Ayeen Akburee.

not in transit. These pay *ad valorem*, yearly, at the same rate as gold or silver. The stock of an artist or tradesman even is liable to this impost. If a dyer, for example, purchase a stock of dye, should its value amount to two hundred dirhums and he keep up this stock for a year, he is liable to zukaut. Every thing that yields a profit or increase is liable to this tax, which may be called a species of excise. The hire of the dyer is the profit or increase which the law here contemplates. Every thing for sale, or which "yields a profit to the owner, or which by his "labour or art enables him to reap a profit, is included "in the word *oorooze*, with the exception of silver, gold, "coin of these, cattle, land, and its fruits," all of which, as above, are liable separately. This tax is two and half per cent.: and *note*, to make up a modus, or taxable amount, the value of goods may be added to money, and the duty levied from the whole.

7th. *Alms at the* eed *of* fetr. This is termed صدقة الفطر *sudukut-ool fetr*. Every Moslem, male and female, sane and of age, who, besides his house, household-furniture, wearing apparel, his horse, his armour and arms, and his labouring slaves, has two hundred dirhums of property, is liable to this tax: "it is incumbent upon him." It is half a sauaa of wheat (about nine pounds and a half), or a whole sauaa of barley, or the same of dates, or of dry grapes, at the option of the *donor*. This eed, or festival, is held on the first day of the month of shuvaal, immediately following the fast of Rumuzaun, the Moohummudan Lent.

Under this head may be classed "expiatory sin-offer-"ings" and "things offered by vows," as they all went to

to relieve the poor, and, consequently, to lighten the burden of them to the state.

To Timour's *third* minister was assigned the duty of receiving religious donations.*

8th. *The capitation-tax.* This is termed جزيه *jizeeah*, and signifies, in law, an equivalent given by the subjects who are unbelievers for protection; or, as some have it, "an equivalent for sparing their lives." The word جزيه *jizeeah* is derived from جزء *jooza*, a part or piece of, جزء *juza*, to give, to break in pieces, تجزيه *tujzeeah*, to be satisfied with, or hold sufficient, جزاء *juzau*, an equivalent, *Soorauh*. Heb. גזז *jooz*, or גז *juz*, abscindere, excindere.

All non-Moslem subjects are liable to this impost, who are males, adult, and *able* to work, whether they work or not. There was an exception, however, to this, in Arabia Proper. The capitation-tax was not accepted of the idolaters of Arabia Proper; their sin of infidelity being aggravated by the birth of the Prophet among them. These had the option of the faith or the sword. The idolaters of all other countries might pay the jizeeah: and in Arabia Proper, even the "kitaubees," اهل القتاب *ahl-ool kitaub* (lit. people of the book; that is those who had a divine revelation, meaning Christians and Jews); also مجوسي the *majoosees*, the Persian majee, and foreign idolaters, عبدة الاوثان من العجم *aabdut-ool aousan min-il aajume*. These are declared to be eligible, even in Arabia, to secure their protection by paying the capitation-tax. The author of

* Institutes, p. 303.

of the Kamoos says the word مجوس *mujoos* is an Arabic corruption of مج گوش *maj gosh*, which signifies "small ear:" a name which the founder of the magi religion got from the remarkable smallness of his ears. The mujoosees are worshippers of fire. "مج *muj*, ماچ *mauj*, the moon;" also "مگ *mug*, مغ *moogh*, fire, a worshipper of fire."* The word "idolater" is عبدة الاوثان *abdut-ool ausaun*, from وثن *vusun*, an idol. The author of the Soorauh says "وثن *visun*, "also واثن *vausun*, signifying firm, perpetual, water which "perpetually flows; also an idol." Hence perhaps the name of the Hindoo god Visunah, or Vishuna. I say "hence," supposing the Hindoos to have borrowed; because the same root is found in the Hebrew with the above meaning אתן *authun*, or *asun*, stetit, constetit, pertinax fuit. "Hence אתון *asun*, *asina*, an ass; because," says the lexicographer, "it goes slow and often stops. It "denotes generally a notion of constancy, also firmness, "strength. It is also said of a sea, because with force "and impetus it goes to and fro; also a torrent."—*Stock.*

The amount of the capitation-tax is, from the wealthy, forty-eight dirhums yearly;† from the middle classes, twenty-four; and from the labouring classes, twelve dirhums, paid by monthly instalments. The owner of ten thousand dirhums (or fifteen thousand, as some say) is held to be in the first of these (the wealthy) classes; the second class consists of those who have property, but are not altogether independent of their labour; the third class requires no explanation.

This

* Farhung e Jehangeeree.

† Each dirhum at six-and-a-half anas: this would be about twenty rupees, as the capitation-tax of the wealthy.

This tax must have been enormously productive in India. An annual tax on adult and able-bodied males, of from two pounds to ten shillings sterling, on a population of eighty or one hundred millions, allowing one-sixth to be Moohummudans, and therefore not chargeable, would be enormous. Take fifteen shillings (seven rupees) as the average amount; and allowing for females, children, &c. take one-sixth, or fourteen millions, as the average taxable number of the non-Moslems, the amount in rupees would be ninety-eight millions, or about ten millions of pounds sterling; more than a twelfth part of the whole land-revenue of India, even in the reign of Akbar, which, for his fifteen soubahs, was rated at about one hundred and sixteen millions sterling, and nearly one-half of the whole revenue of India at this day.

But the capitation-tax was extremely obnoxious to the Hindoos, and was repeatedly abolished in India, and as often revived, till the reign of Moohummud Shah, who, at the intercession of Rajah Jey Sing, repealed it, for the last time, as before-mentioned. This was about the year 1745; twenty years only prior to the grant of the Dewanee of the provinces of Bengal, Behar, and Orissa to the Company: so that, if the tax was then levied, there must be many Hindoos now living who have paid it: all those of the age of ninety and upwards.

This tax, though well known in Europe, has been considered by the Hindoos as a highly ignominious impost. The reason is two-fold; first, being levied only from non-Moslem subjects, it marked an obvious distinction among the people; but, secondly, the very words of the law which imposed it convey the most pointed degradation: it positively

tively enjoins, that the jizeeah shall be paid by the Zimmee in a humble and abject posture. "They shall pay the "jizeeah with their hands و هم صاغرون *vu hoom saugheroon*, "and themselves in a humble posture;" but which words have been interpreted by some to convey a still more degrading meaning. These tell us the receiver of the tax shall call them to him, and say to them, "pay the jizeeah, "you infidel dog;" and when he has paid it, as he retires, he shall be kicked out. This no law-giver could ever have authorized; not even a Moslem. It is the interpretation of a fool and a bigot; but still it is of importance, as it tends to illustrate the remarkable degree of repugnance which the Hindoos evinced to the tax. It was not the amount they objected to: indeed a Moslem, who paid zukaut on his property, paid much more, probably, than the jizeeah. Whenever the question was agitated, it was the total repeal of the tax which the Hindoos solicited. The revival of the jizeeah is a question which need not be discussed; but it cannot fail to be instructive to the Indian financier to know the taxes, and the nature of them, which have heretofore existed in that country. The expediency of imposing a tax, especially on the permanently settled provinces, somewhat analogous, may be fairly considered. With us the capitation-tax should be converted into an income-tax, with reference to property, and not to creed.

9thly. *Fifths.* This is termed خمس *khooms*, signifying a fifth. These are the fifth of prize or plunder taken in war, of the produce of mines, of treasure trove, wrecks. The fifth of prize or plunder, during the conquering days of the Moohummudans, must have been a very productive source of revenue. Of every thing taken in war, a fifth went

went to the exchequer, the remaining four-fifths to the troops "who were present at the affair."

Akbar, in his instructions to his Fojdars, directs them "to act with fidelity in the division of plunder; a fifth "part of which he shall send to the royal exchequer." * The produce of mines of gold, silver, copper, iron, lead (some say quicksilver), paid a fifth; but not limestone nor sulphur, nor precious stones, as rubies, diamonds: metals only were chargable.

Treasure trove. This term was applied to "coin found "hidden in the earth:" it paid a fifth. But if it was of Moslem coinage, it was advertised for the owner; if of Infidel coinage, the fifth was immediately paid, and the remainder went to the original owner of the land wherein it was found; or if in one's own land, or in a desert, or in land belonging to no one, the remainder went to him who found it. The fifth of wrecks, also, went to the treasury.

Treasure trove must also have often escheated. "If "a person find hidden treasure in the lands of another, a "fifth goes to the crown, and the remaining four-fifths go "to the owner of the land (meaning the primitive owner, "to whom the lands were assigned at the conquest of the "country, or his heirs), *not to a purchaser* or owner by "any other tenure; it shall rather escheat to the crown." Timour's third minister had charge of the collection of these duties.

10th. *Escheats.* When property was left without a legal heir it escheated to the crown. In India, where there were frequent instances of conversion to the Moohummudan faith

* Ayeen Akburee.

faith, it is probable that escheats often occurred; for, by the Moohummudan law, difference of religion bars inheritance: that is, if either party be a Moslem. A Hindoo cannot inherit of a Moslem, nor a Moslem of a Hindoo, but a Hindoo may inherit of any other sect of non-Moslems. A son converted to Moohummudanism, consequently, lost the property of his Hindoo parents, which thereby fell to the crown.

The Moohummudan law, as here propounded, involves a point extremely important to all those who have the true welfare of India at heart. It will be seen, here, that the convert to Christianity is, if of a Moslem family, debarred from inheritance. But, if a Hindoo shall embrace the Christain faith, he, by the Moohummudan law, may inherit of his Hindoo parent, &c.: he does not forfeit his inheritance. By the Hindoo law, however, the Hindoo convert is debarred from inheriting: so that suffering the Hindoo law and Moohummudan law both to operate, *no Hindoo* can be baptized, and *no Moohummudan* can be received into the communion of our church, without the sacrifice of every worldly object. I shall probably not be suspected of a wish rashly to deprive the natives of India of their laws; but it must be owned, that, so long as such bars exist to the propagation of the Gospel of Christ, we need hardly wonder at our want of success, however zealous the best of men may be.

To be expelled from one's family, as the proselyte is, surely is no light sacrifice; but to be cast off a beggar, is more than human nature should be expected to bear.

Some modification of the law of inheritance, I think, should therefore be devised, for the sake of ensuring liberty

liberty of conscience to our subjects. The law of inheritance is a civil institution, and ought not to debar any man from following his religious convictions, or be instrumental in hindering him from doing so. I am aware that our English translators of Hindoo law have mixed up the religious rites of *post mortem* oblations, prayers and almsgiving, enjoined by the Hindoo religion, with the law of inheritance; placing the title to succeed, as if it rested on that of having the right, on being under the sacred obligation of performing those ceremonies. Whereas it appears to me, that *neither*, in reality, depends on the other; but that both the duty of oblation, and the right to inherit, depend *on closeness of kindred*, which is the common standard for both titles, and has been probably lost sight of. I am led the more readily to believe this, from observing in the works on Moohummudan jurisprudence similar illustrations of points of law.

If, then, this supposed dependence of right to inherit, on title to perform *post mortem* expiations, shall be found not to exist, the case will be less complex—those heirs who remain in the parental faith may expiate, leaving to the convert only his share of inheritance.

It may be said, that, as the law stands now, a Hindoo dies in peace, knowing that his property will be applied to the performance of the enjoined obsequies. But this is an assumption. He knows no such thing. His property may be lost, or spent in profligacy by his heir; and with infinitely greater probability than its abstraction by apostacy. If he has the disposal of his property in his life-time, and do not avail himself of that power, the fact proves that his mind cannot have been disturbed on this head.

The

The modification of the law should be, to permit all men who have lawful power over their property, to bequeath it. Thus, a parent will have the same power which he now has, of disinheriting the apostate child. But in case that shall not be done, and the person die intestate, the law should not be suffered, as now, to disinherit him. No violence would, in this case, be offered to the feelings of any person, because a father might deprive his apostate child of its birthright. Let him, if he choose. Let the bigoted Hindoo do this: but it is a very different thing, our suffering the law to do it for him. For this there can be no necessity. The Moohummudan law will bear us out in this innovation, as it regards Hindoos. I cannot see so great an objection to the adoption of the Moohummudan law in this case, as there was to the introduction of the Moohummudan criminal law, which has long prevailed to the exclusion of the Hindoo criminal law; and which has brought the Brahmin and the Bhungee within the same scale of punishments.

Timour's third minister was appointed to take charge of the property of absentees, insane persons, and those who had no heirs, and of fines. In the same regulation the following is mentioned اموالِ ایندہ و روندہ *amwal-ē aeeunda va ruvinda* (lit. the property of the comers and goers,) meaning, perhaps, the Moostaumin, or foreign travellers with passport; also وحاصل بادي و هواي *hausil-ē baudee va huwāee*, which the translator does not translate, but which mean, things found without owners, known, in law, by the name of لقطہ *looktu*.

Akbar desired his amilguzzars, or collectors of revenue,

" to take proper care of the effects of absentees, and of " those who die without heirs." *

11th. *War-tax.* This tax is not a constitutional tax, and the sovereign ought not to levy it, unless there be not sufficient funds in the treasury; in which case, however, he may freely levy it. The war-tax might be made, and no doubt was made, a fruitful source of exaction in India, as the occasion for such exaction could seldom be wanting.

The charges of war-establishments form, indeed, a necessary exaction in all countries, India, under the British government, alone excepted; for, in India, borrowing and accumulating debt has, with us, been the very questionable substitute.

I have questioned the policy of borrowing money and accumulating debt, in order to defray the expenses of war-establishments and equipments, instead of levying contributions on the occasion, from those who have a paramount interest in the soil. In no country can the system of illimitable accumulation of debt be defended, because it is throwing the burden of the present measures of government on future generations, who must have the burden of their own government also to bear. But, with reference to India, it is far more objectionable; and if it be fairly considered, quite indefensible. The tenure by which the present government of India exists is precarious; the tenure by which India is held by England is not entirely secure. It is quite different from that security which the natives of a country hold in it. But, who are they from whom the India government, whilst it saves the natives from war-taxes, borrows its funds to carry on its wars? From English

* Ayeen Akburee.

English gentlemen, principally their own servants, who have earned their money in the most hazardous or laborious offices of the state: many of them suffering the severest privations, whilst the wealthy native is enjoying his overgrown fortune in the securest tranquillity. Suppose, then, such a contingency to happen as is above indicated, that a change of government take place, either the English nation must be burdened with the India debt, or the capital, lent by individual British subjects, must be totally lost, to the certain ruin of multitudes. But, in any case, it is quite clear that no exigency, short of absolute necessity, ought to be deemed an excuse for risking the chance, either of burdening England with India debt, or of hazarding the borrowed property of individuals, who are not identified with India, for the purpose of defending or securing that country, for those who have a more direct and superior interest in it. I am aware of the answer, that on individuals there is no compulsion to lend their money; but such doctrine would justify any government in abusing the confidence of its subjects. A war-tax is, therefore, not only the best mode in point of policy, but it is the only equitable way by which extraordinary expenditure can be maintained and defrayed, and ought to have been, and ought to be, had recourse to.

These are all the legitimate sources of revenue under a Moohummudan government; but, *de facto*, under the Moohummudan government of India, there was a great variety of other imposts, which existed down to the reign of Akbar; and, as stated, were remitted by him, to the amount, including the capitation-tax, of the whole quit-rent of Hindoostan. These were the

ميربحري *Meer buhree*, lit. admiralty dues, port-duties.

كريعي

كريعي *Kureeaaee*, tax on convocations assembled to settle business; on each person.

گاوشماري *Gaoshumaree*, tax on kine.

سر درختي *Siré derukhtee*, tax on fruit-trees.

پيش كش *Peesh kush*, introductory presents, as in cases of succession or introduction at court.

فروق اكسام پشه *Furookaksam peshah*, tax on artizans.

داروغانه *Daroghanah*, darogha fees.

تحصيلداري *Teheseeldaree*, tehseeldar's or subordinate collector's dues.

فوطهداري *Fotahdaree*, fotahdar or money-trier's dues.

وجه كرايه *Wujeh kuraeeah*, lodging-charges.

خريطه *Khureetah*, bags for the money-revenue.

صرافي *Suraufee*, shroffage.

حاصل بازار *Hasil-e bazar*, market-dues.

نكاس *Nekaus*, dues on paying up arrears of revenue.

Besides which, a tax on the sale of cattle, and likewise a tax on hemp, blankets, ghee or oil, and on raw hides, and on measuring land, and on weighing; as also a tax for killing cattle, and on tanning; on gambling with dice; on sawing timber; also on rahdaree passports; and one that was called *pug*, a kind of poll-tax, as also hearth-money. There was also a tax on the buyer and seller of houses; also on salt made from earth; one called "bil-"kutty," on the commencement of reaping, also on putty numed (felt), on lime for building, &c., on spirituous liquors, on brokerage, on fishermen, and on storax.

We read in the Institutes of Timour of a سرشماري *sir-shoomaree*, a poll-tax, and also خانه شماري *khanah shoo-maree*,

maree, house-tax, which he prohibited from being levied.* He also says, the impost on herbs and fruit, and the سایر جهات *saueer jehaut*, or dues of the towns and places, should be continued according to ancient custom, if the ryots were satisfied; otherwise they should be settled by هست و بود *hust-o-bood*, that is, by valuation or estimation, on the data of the هست *hust*, "is" or "present," and بود *bood*, "was" or "former" proceeds.

The same regulation also provides, that the dues of watering ابخور, and of القچرا common, and مراعي pasture, are to be levied according to ancient custom; with the above option, however, of valuation by hust-o-bood.

Akbar levied a tax on *marriages*, according to the rank of the parents; each party to the marriage paying the tax. This was, for a son or a daughter of a mun-subdar, of

From	5000	to 1000	horse	10 mohurs
Do.	900	to 500	.....	4 do.
Do.	400	to 100	.....	2 do.
Do.	80	to 20	.....	1 do.
People of condition				4 rupees
Common people.....				1 do.
Poor				1 dam.

Taking the population, and the Indian proportion of marriages, this tax would amount to a large sum.

The mint-taxes were also a considerable source of revenue to Akbar. They amounted to six and a quarter per cent. for gold, besides the expense of assaying and of coinage, which was seven and a half per cent. more, paid by the owner of the bullion. Thus

Materials,

* Institutes, page 349.

	Rs.	As.
Materials, ingredients, &c. cow-dung and charcoal, clay, quick-silver, and lead	5	0
Workmen's wages	2	8
Expense	7	8
Duty to the king	6	4
Total dues of gold coinage ... Rs.	13	12

The expense of coining silver cost the owner about one per cent., and the government-duties were five per cent.; total six per cent.

The expense of coining copper was about six anas per maund; which gave about 1,170 pice, value twenty-nine rupees; and the king's duties were one rupee eight anas, or five per cent. for one hundred rupees; total, one fourteenth, or six rupees nine anas per value of one hundred rupees.*

	Rs.	As.
Total expense of coinage per hundred rupees value	1	14
King's duty.....say	5	0
Total copper coinage ... Rs.	6	14

The coinage, at the present time, in the three mints of Calcutta, Benares, and Furrukabad, is not known to me. For three years ending with 1818-19, it amounted to an average of about three crores; but since that period the coinage has diminished. The revenue arising from this, at five per cent., would be fifteen lakhs annually, exclusive of the cost and charges of the coining, which, as above, was payable by the owner of the bullion.

These

* Ayeen Akburee.

These are the sources of revenue which are recognised by the Moohummudan law, or were made available for the use of the state, under our predecessory Moghul government. If we compare them with the present single impost on the land, the only source of revenue worthy of notice, except the salt and the opium monopolies (and a duty was levied by our predecessors on salt also), and advert to the very low rate of the land-assessment of the provinces of Bengal, under permanent settlement, we cannot fail to see that, under the British government of India, the public exactions are infinitely lighter than they have ever been, and that those who represent them as exorbitant are either themselves misinformed, or desire to misinform others.

Such are the restrictions imposed upon the present government of India, that even of the salt monopoly it is not permitted to realize the highest advantages. The prohibition of European merchants from purchasing salt at the Company's sales,* has thrown the trade in salt into the hands of a few native monopolists, who regulate the price at will. Government receive about three rupees per maund; but the salt is resold, under their eye, at five rupees in Calcutta, by retail, after being adulterated with ten to fifteen per cent. of earth and dirt. The reasons which gave birth to this restriction have long ago ceased to exist. The restriction is obviously adverse to the interest of the Company, and no less so to that of the natives, who are now left to the mercy of a few native dealers. These lately availed themselves of the power which this restrictive law gives them, to such an extent, that in some districts

* This prohibition was abolished in May 1828, but I am not aware that any Europeans have, as yet, entered into the salt trade: nevertheless, the door being open to them, the check to monopoly exists.

tricts the price of salt rose to ten and twelve rupees per maund, so that the poorer classes were compelled to deny themselves the use of it altogether: a circumstance which distressed the government beyond measure; but they were, for the time at least, without the means of affording relief.

Salt.

It will, I believe, be admitted, that the revenue derived from the salt department, or "monopoly" as it is usually termed, is not adequate to the just expectations of those who look to the enormous increase which, within the last thirty years, has taken place in the population of Bengal. So long ago as the year 1793, Mr. Colebrooke gave the average quantity of salt sold by government in Calcutta, for five years, at 35,00,000 maunds; but there was, and is still, beside that, much smuggled salt also used; so that Mr. Colebrooke rates the annual consumption for the two provinces of Bengal proper and Behar, at 40,00,000.

But if, in 1793, the population of the two provinces of Bengal and Behar might be judged to consume forty lakhs of maunds, after the lapse of thirty-seven years, and with a great portion of the province of Orissa added to the circle of consumption by the conquest of Cuttack, together with a vast increase of population and wealth among the inhabitants, it may well be asked of the Bengal financier, whether the increased consumption be in due proportion; and if not, it will follow that there is room, at least, for augmenting that principal branch of the revenue.

Mr. Tucker, in his valuable work on India Finance, has entered at large on the subject of the revenue from salt, which he seems to have thought required to be defended from

from the stigma cast upon it by the appellation of "monopoly:" and it must be allowed that his defence is a powerful one. But Mr. Tucker wrote at a period when the India revenue and expenditure were on a very different footing from that on which they have since stood. A surplus income, then, left to the government the power of improvement in the *mode* of realising the revenue, even at the expense of reducing the public assets, where it could be shewn to be practicable. But when the public expenditure, on the most reduced scale, can hardly be met by the income of the state, the hand of innovation must be sparingly put forth.

It must be remembered, that the whole fiscal system of Bengal, and indeed of India, is identified with the salt revenue. A certain, and very large portion of the public resources has been laid upon, and always derived from, salt, by which other articles and other property have escaped taxation. The *amount* now received from the salt must, therefore, *be levied* in some way; and the only question is, can a better mode be shewn, by which the same net revenue can be securely furnished for the exigencies of the public service? The enhanced price of salt is a tax on the consumer. It is a tax that no one can altogether evade; but it is a tax of the smallest possible amount, to those whose means are in proportion small. It is a tax paid in a manner that is, at least in appearance, voluntary; and levied in a way that is free from inquisition, and without the medium of an excise or a custom-house officer. It is collected, also, with less expense, perhaps, and greater certainty, than any other tax; and consequently, it is more useful, and more profitable to the public, than any other tax, in proportion to the amount paid by the people. These are not defects, but valuable properties of any tax.

But

But the manufacture of the salt is a monopoly; and a "monopoly" is an odious thing. As far as we have yet examined this question, however, the salt-monopoly is one not of a baneful, but beneficial description; and so long as it remains in the immediate hands of government, and so long as the article is brought to public sale, in quantities sufficient to preserve the price at a fair and usual rate,—I say, so long as the manufacture of salt remains in the hands of government, and it is thus brought to sale, there is no reason to apprehend any evil from such a monopoly: unless we are to presume, that the same government which strives to its utmost, in every other department, to secure the welfare of its people, should, in this, forget their interests, and even their own; or we should suppose a government to exist, capable of availing itself of such means to oppress its subjects: and this even the enemies of the Indian government will not assert to be probable. We must, at all events, confess that one consolation does arise from the present system,—namely, that as government has pledged itself to provide one of the essentials of life, the people have better security for its provision than is otherwise to be found. They have thus security, not only for the actual production, but for the moderate and steady price of the article: a fact which may be illustrated by reference to the exorbitant rate, and the enormous fluctuation, constantly experienced in an article still more essential to man, the article of grain, which, though as free as air (whilst salt, except in one year, when it unfortunately fell into the hands of private speculators, has been almost uniform in its retail price, and fluctuating but little in wholesale), has fluctuated to the extent of two hundred per cent. or more; and does fluctuate most materially, and without any apparent cause, repeatedly every season.

Let

Let the salt-monopoly be put on its trial of comparison with the free trade in corn, the staff of life, itself an article free from all restriction as to production or duty of any kind, and if it shall appear that the corn-market is fairly taxable with defects to which that of salt is not obnoxious, the verdict must be for the latter.

But this is by no means the entire case. The whole of the surface of India produces corn: so that, supposing government to interfere in neither case, as far as production goes, there is physically no possibility of creating a monopoly of corn. Not so with respect to salt for the consumption of the Bengal provinces. The limits of the production of salt, in Bengal, are very circumscribed; and may probably not extend beyond the boundaries of a few zumeendarees and talookdarees, which verge on the mouths of the Ganges.

I would ask those who pretend that every change must needs be an improvement, whether a monopoly (or a free trade, if they please to call it so) in the hands or subject to the territorial claims and demands, of native zumeendars, is likely to be carried on with greater advantage to the people, and with less regard to individual interest, than under the immediate control (or monopoly, if it must be so) of the British government?

We have already had experience, which furnishes a most ample answer. In the year 1823, I think it was, the salt was bought up at the Company's sales by a patriotic association of Calcutta Baboos, who succeeded in forming a true monopoly; not a monopoly of production, with sale of the produce to the highest bidders, as is the present salt-system, but a monopoly of sale; of sale, not to any bidder,

der, but at their own price. The consequence was, the salt rose to twelve rupees per maund, where it generally sold for five; and in many places it was not procurable at any price. To prevent this, in future, government established monthly sales.

I hold it, therefore, as certain, that the provision of the article is better secured, and the article more reasonably furnished, by the manufacture of the salt remaining under the immediate superintendance of government agents, than it could be by government's withdrawing from its manufacture: for, under any circumstances, the revenue now realized must be raised; to do which, a heavy duty must be imposed, the consequence of which would be enormous smuggling, excise officers, police to protect them, the commission of every imaginable crime, and boundless expense. Let it be remembered, that it is not from the *sale-price* which government now receive, that the private salt-maker is to look for his profit; but from the *prime cost* now paid by government, which is about one rupee per maund, or about one shilling and eight pence for eighty pounds. The rest he must pay in duty: otherwise the government revenue must suffer, which is not the question at issue; and it will be seen that the trade would have few attractions. But, in point of fact, government do not object to individuals manufacturing salt. Some who had applied have obtained permission to do so, paying the duty, three rupees per maund.

Mr. Tucker has taken a just view of this branch of revenue; which, however, I do not see requires to be spoken of in the tone of apology or justification which he has adopted. "It approaches," he says, "I own, to a poll-tax:" a species of tax, by the by, little less stigmatized than

than a monopoly. The monopoly in the manufacture of salt has the effect of a tax on an article of universal use, indeed; but has the land-tax not the same effect? The *inequality* of a poll-tax is its defect. Every human being within its limits pays a definite sum. But the means of individuals are as various as the individuals themselves; and each person has not the power, of himself, of fixing what he has to pay: whereas, in salt, he can limit his consumption to his income, within, at least, the very lowest bounds, so that his contribution shall be hardly perceptible, and appear, even to himself, almost voluntary; or (as it is possible) he may withhold it entirely. But the poll-tax-gatherer comes, and he must be paid at once: and being payable at once, the tax must, to the poor, however small, be felt as considerable.

Salt has been considered a "necessary" of life, and to tax a necessary of life to a people, heavily, has always excited sympathy: which would not be the case, were the article taxed ranked among the luxuries of the world, as sugar, for example. Yet who can say that salt is not a luxury, and that sugar is? We may pity the poor man, whose table furnishes him with no higher luxury than that which renders savory the humblest fare: but since we find a whole people in every way happy, yet whose luxuries hardly surpass this, but who must be governed by us, to keep them in the enjoyment of this happiness, and since this cannot be done without a revenue, I must confess I see no reason to apologize for levying from them, by the almost imperceptible operation of a tax on this, the lowest, though perhaps the greatest of all manufactured luxuries, a portion of what is required for the service of the state.

We, in England, tax the poor man's sugar without mercy,

mercy, though there sugar is hardly less a necessary of life than salt; and we tax his salt too. Yet the oriental philanthropist has his tears to shed for India, because of the Company's monopoly of salt! We are sure, however, that the poor of India have, in reality, greater enjoyment of life than the poor of England.

Mr. Tucker's description of the "wretched Molungees," the labourers who manufacture the salt, I apprehend is more applicable to the past than to the present. Their state has been improved, he indeed gives us to understand. He forgets that they have also privileges, that their labour is voluntary, and that they are at least not worse off than their fellow villagers, who are woodcutters and fishermen. But when he ascribes to the monopoly the misery which those people are stated to endure, from being employed in situations where they may become victims to ferocious animals and disease, which forms, in his opinion, "the "greatest objection to the salt monopoly," surely he taxes the monopoly too highly; for, in the first place, take the year 1828, out of about fifty-five lakhs of maunds of salt sold, only two to three lakhs were made in places exposed as here described; and within the whole range of the Sunderbunds, only about nine lakhs were manufactured. But were all the salt prepared on the coast, as he suggests, the demands of the state would require a monopoly as much as at present; and for government to give up the manufacture in Bengal, as Mr. Tucker justly remarks, to be taken up by individuals, would certainly not improve the condition of the Molungees.

Mr. Tucker's suggestion of manufacturing salt on the coast is well worthy of attention; if not with the view of relieving the Molungees, at least of increasing the public revenue.

revenue. Indeed, a plan for doing so, taken from Mr. Tucker's valuable book, I presume, was submitted to the supreme government in the year 1827, by an able and very zealous member of their civil service; but it met with no encouragement in India.

The plan was as follows. Salt is manufactured on the coasts, both of Coromandel and Malabar, simply by solar evaporation of the sea-water, which is let into large flats at high spring-tides, and which, when evaporated, leaves the flat covered with salt, adhering to the bottom. In consequence of which it is so much mixed with sand and grit, that though the salt is excellent, it is so disagreeable in masticating the food in which it is used, that it would require to be freed from this and other earthy impurities, before it could command an extensive sale.

Considerable quantities of this salt, however, called "Madras permit salt," have always been imported into Bengal. It is bought at the Company's sales, refined in Calcutta, and sold. The annual import may have averaged perhaps 8,00,000 maunds. But as this quantity might be increased to any extent, as far as depends on mere production, the desideratum was, to render the salt of a consumable quality, by freeing it from the above impurities; whilst, at the same time, the grain was reduced in size, the crystals naturally formed being too large to be conveniently used. This could only be done by refining the salt; that is, subjecting it to boiling, as all the salt manufactured in Bengal is. The wastage and cost of refining were matter of calculation, as well as freight, and original price on the coast.

The original price and freight were known to government; and, for the wastage and cost of refining, reference was

was had to experiment, from which it appeared, that the wastage would not exceed ten to twelve per cent.; and the expense of refining, if performed by government-servants, would not exceed four anas per maund. So that, taking the prime cost rates, about sixty-two rupees per hundred maunds, deducting of course the revenue already paid to the Madras government (of ten Arcot rupees per garce of 120 Bengal maunds), the cost of the refined article would be a trifle less than one rupee per maund: whilst, in purity, it would surpass the Bengal salt, in a degree at least equal to the wastage in refining, or ten to twelve per cent. And, in quality, it would also be superior; which is established by the fact, that the Madras salt, refined by the native refiners, now sells by retail higher than the Bengal salt.

As there would be no difficulty in supplying salt, save in procuring tonnage for its importation from the coast, the only other point to be considered is, the fuel required for refining it. Coal being procurable near Calcutta secures this. But wood is also procurable in abundance; and admitting that 30,00,000 maunds annually were imported, the quantity of firewood required for refining would not exceed 400,000: the price about fourteen rupees per hundred maunds.

The average quantity of salt sold in Bengal for twenty-six years, ending in 1826, was .....Maunds	43,48,019
Of which the Madras salt composed, at an average, ...	7,82,844
Leaving for the produce of Bengal, average, Mds.	35,65,175

The cost of manufacturing the salt in Bengal, for the same period, has been unequal. For the first period of eight years,

years, to 1808, it was per 100 maunds... Sa. Rs. 74 14 4
For the second eight years, to 1816, do. 81 3 5
For the third ... do. ... to 1824, do. 88 0 10
But for the two remaining years, from
1824 to 1826, it was..... 114 7 0

Shewing an increase of charge of upwards of fifty per cent. on the cost of manufacture: a fact which certainly requires explanation.

It appears, also, that the average net revenue drawn in Bengal from the salt monopoly for the above period, including the profit on the Madras salt sold in Bengal, has, per annum, amounted to sicca rupees 110,48,766, of which about fifteen lakhs per annum have accrued on the Madras salt imported.

But here it must strike every one as somewhat extraordinary, seeing that so large a revenue is so easily drawn from the salt consumed in the old provinces of Bengal, and but a small part of Behar and of Orissa (for Bengal salt is hardly to be found beyond Patna, and even there it sells at an exhorbitant rate);—it is, I say, extraordinary, that since within so limited a circle, the large net revenue of 110,48,766 rupees is drawn, the numerous population of the upper and western provinces should not be made available to augment that branch of the revenue.

The net revenue raised on a maund of salt consumed in the province of Bengal is, by the foregoing data, about two rupees ten anas. But on the whole of the consumption of the western provinces the average is not one-fifth of that sum, being about eight anas per maund, levied as a custom-duty on import from independant states.

Mr. Tucker informs us, that an additional revenue was attempted to be raised on salt imported into the Company's western provinces, the produce of neighbouring states. But the attempt was abandoned; and, as he intimates, "in his "judgment with propriety, not only on account of the diffi- "culty of levying an increased duty, but because it checked "a barter trade between the Company's provinces and the "country beyond the Jumna."

Yet as this intelligent writer approves highly, and in my humble estimation very justly, of drawing a revenue from salt, the practicability of increasing the public resources by means of the extensive population of the whole of the Company's provinces to the westward of the centre of the province of Behar, is unquestionably worthy of the utmost consideration, before the object be abandoned.

For, from the whole of that wide extending country, the revenue at present realized from salt does not exceed per annum, ...Sicca Rupees 12,00,000

which would indicate a sale of ..... Maunds 24,00,000
add, however, one-sixth smuggled, for which no duty is received, ... Maunds 4,00,000

Total quantity consumed, say.....Maunds 28,00,000

Could the market, therefore, be supplied by means of the Madras salt, or by a more extended manufacture in Bengal, with the advantage of such inland navigation as the Ganges, Jumna, and other rivers afford, there appears no reason to doubt that a great increase of revenue might be realized, even to the comfort of the people, who are now compelled to eat a bitter and unpalatable rock-salt. Thus supposing,

as

as before detailed, the Madras salt, after being refined, to cost per maund.....Sicca Rupees	1	0	0
Freight from Calcutta to Patna, Benares, Allahabad, Agra, Furrukhabad, at an average, per maund.....	0	4	0
Wastage, 10 per cent.	0	2	0
Commission and Insurance, &c. 10 per cent. ...	0	2	0
Average prime cost, with charges, at the above stations is	1	8	0

Here, then, we have a market for twenty-eight or thirty lakhs of maunds of salt; and we have the means of furnishing that market with the article, at a prime cost and charges not exceeding one rupee eight anas per maund, and there are government-establishnments already at those stations, amply sufficient for the disposal of the salt: for I see no reason why sales of salt might not be established monthly at Patna, Benares, Mirzapore, Allahabad, Cawnpore, Futtygurh, and Agra, under the commercial residents and collectors of customs, as they are in Calcutta under the authorities there. And if the article, at those stations, fetched even the Calcutta rate of about three rupees eight anas per maund, a net profit of two rupees per maund would be realized, instead of eight anas, the average revenue now drawn from salt in the western provinces; thus giving an additional revenue of full forty lakhs of rupees. But since, at present, even as near as Patna, Bengal salt sells often at six rupees per maund, that the additional revenue thus realizable would greatly exceed what is here indicated, cannot be doubted.

The trade in salt in the interior, from Calcutta upwards, appears to be quite in an uncultivated state. Till the year

1828, natives alone were permitted to trade in salt; so that it fell entirely into the hands of a posse of Calcutta monopolists, who appear to have got the government to believe in the necessity of limiting the quantity brought to market. An engagement before the sales, therefore, was entered into, that no more than a certain number of maunds for that season should be brought to sale; so that the supply wast hus kept to meet the demand, in that proportion which suited the views of the great purchasers; rendering, therefore, any effort, on their part, to extend the consumption, quite unnecessary, content with the power of limiting the supply.

Whether, therefore, the object be to afford relief to those engaged in the manufacture of salt along the unhealthy Delta of the Ganges, to furnish the article at a cheap rate to the people with certainty of supply, or to improve the revenue, in my judgment that object can never be effected by the abandonment of the system of government-manufacture, that it may be taken up by individual monopolists; but by continuing the present system in Bengal, and, if necessary, by an active manufacture on, and importation from, the coasts. And, in this, I most heartily agree with Mr. Tucker.*

OPIUM.

* I might have bestowed more pains in exposing the fallacious complaints which, by many writers, some even friendly to the Company, have been made against the Bengal government, for their treatment of the labourers who manufacture the salt for this monopoly. The most doleful lamentations have been uttered by certain philanthropists on behalf of the "miserable Molungees." But the exposition has been more ably managed, in a series of letters which appeared in the Calcutta papers under the signature of "A Covenanted "Salt Officer," since the above was written: which, as they are founded on public records and long-published orders of government,

Opium.

The supply of opium, like that of salt, is also provided by government; and this branch of the revenue, like the other, is termed a monopoly,—the "Opium-Monopoly:" the object, however, in both being to draw, in the easiest and cheapest manner, and with the greatest certainty, a revenue to the state, making those articles the means of doing so, and both articles being brought to public sale and sold *invariably to the highest bidders*, in small quantities. That the one is a deleterious luxury, and the other a wholesome necessary of life, certainly authorizes the distinction drawn by Mr. Tucker, *viz.* that, with equal revenue, *in the latter, production should be encouraged*, so as to reduce the price and extend the consumption; whilst, in the former case, production should be discouraged with the opposite view. Looking upon opium as an intoxicating drug merely, this may be conceded. But its medicinal properties are also valuable; and to the aged it may be doubted whether its use be not highly salutary, though pernicious to the young and middle-aged: nor can its effects on the human constitution, on political grounds, be compared with those of spirituous liquors. The production of opium, therefore, in order to raise a revenue, it would be difficult for those who admit the manufacture of spirits to condemn.

Mr.

are unanswerable. They, however, shew that instead of being an "*oppressed*," the Molungees are a *privileged* class; and that, whilst in Europe they have been pitied as a race of slaves condemned to involuntary labour among the "pestiferous, slimy swamps" of the Sunderbuns, their labour is not only voluntary and well paid, but, in their own estimation, the greatest misfortune which befalls them is the superabundance of salt in the Company's stores, which occasionally prevents them from being employed as much as they desire!"

Mr. Tucker's analysis of the stigmatized opium-monopoly, and his resolution of it into an export duty, payable by the inhabitants of the Archipelago and China, who consume the article, is a happy illustration of the principle of the system: and it has this great advantage over export duties of the usual class—that, whereas they are fixed by the dictum of government, and on a nominal or assumed value, the duty on opium, if it may be so called, is fixed by the purchasers, in competition against one another, at public sale: men whose interest it is to ascertain the true value. So that whilst, on the one hand, the revenue need not be reduced by over-production, arbitrary impost, without accurate reference to price, can never check the trade. In which respect, by the bye, I see no difference between this and the salt-monopoly.

It has been a question which has often attracted the attention of the India financiers, how far production and consumption of opium, as of salt, should, or should not, be encouraged, with the view of augmenting the revenue: and the measure has been long discussed, whether the cultivation of the drug should be allowed, encouraged, or prohibited, in the rival opium province of Malwah, where, from time immemorial, it has been cultivated to a limited, and now to a great extent.

That Mr. Tucker is right, in recommending a diminished supply of opium and high rate, will be admitted by the moralist, and probably it will not long be disputed by the financier. The only limit to this is, that by keeping up the price, we offer a premium to other nations to encourage the cultivation of the article. If this could be avoided, then, assuredly, it is not by boundless supply that the highest profit is to be gained. When the supply is small, the

the system can be better regulated: and what is of greater consequence, perhaps, to be kept in view is, that in the country to which it is principally sent for sale, opium is a contraband article, condemned if seized. To multiply quantity is, therefore, to throw a physical obstacle in the way of consumption; or, in other words, you add to the risk, and consequently to the price of the article. You, therefore, so far defeat the object you have in view.

The question of prohibiting or permitting the cultivation of opium in the newly-acquired province of Malwah, does not appear to me to have been looked at in its proper bearings. When the advocates of cultivation in Malwah tell us, that to prohibit the cultivation of any article the soil and climate will yield is an infringement of the "rights "of property," it may be fairly asked, what are the "rights "of property?" At one time, it was the right of property, in our own country, to be taxed ten per cent.; at another time not to be so taxed. The indefeasible rights of property, in the abstract, might exist, were there only one human being in existence: but, in civilized society, restrictions, and conditions, and burdens, are inseparable from the possession of any thing. To conquer a country, and to place it in a worse condition than it was in, would, indeed, be an act of injustice. But, seeing that no man in Malwah, who ploughed or sowed his field, heretofore, knew by whom it would be reaped, how poor soever might be the produce, to withhold from them the power of destroying one of the principal branches of the whole revenue of the state, hitherto raised by the profitable cultivation of its old provinces, in order that the reclaimed free-booters of Malwah may profit thereby, can hardly be called very iniquitous.

A nation possesses the acknowledged right of preventing even

even an enemy from doing it an injury. Yet some pretend that the British Government of India have no right, and cannot without injustice, forbid the cultivators of Malwah, their own conquered province, from rearing opium, though thereby they may place in imminent danger a branch of the revenue of the state hitherto yielding a crore of rupees per annum! If this be not drivelling in legislation, I really know not what to term it.

But let us see a little farther into the case. The finances will not admit of the loss of a crore of rupees, were Government even disposed to sanction so great a sacrifice, or any part of it, even for Malwah. Then from what other province or provinces shall we exact the defalcation? Which of our old provinces shall we thus make tributary to our newly-conquered province of Malwah, so as to make up the loss of revenue sustained?

This appears to me to be the true state of the question. On no other principle can it be discussed. And since in our old provinces restrictions exist as to the culture of opium, to plead exemption for Malwah is, at least, out of time.

But since it will not be possible for the British territories in India to preserve entirely the monopoly of opium, it appears to me that it is to the quality of the drug, more than the quantity, we must look for due security for that branch of the revenue.

Spirituous Liquors.

In the only quarter of the world, perhaps, where the abominable habit of drunkenness was nearly unknown, to countenance such a vice by public license, is certainly a strange

strange abandonment of the great leading principles on which the British government of India has been conducted.

Whether considered in a moral or in a political point of view, the encouragement afforded to the use of spirituous liquors must be equally condemned. As a strong incentive to vice, its effects are to be deplored; but as the growing root of much political evil, it is no less to be deprecated. It is impossible to conceive that a nation given to habits of intoxication can be so easily governed, as one in which that degrading and disorderly vice is looked upon with abhorrence and disgust. The wisdom of the Moohummudan lawgiver, then, was more conspicuous, when he adopted the counsel of his sagacious friend and follower, in denouncing, by the fear of the wrath of God, the use, or even the touch, of intoxicating liquors, or intoxicating drugs, than have been the deliberations of the Indian Government on this important subject.

It is quite lamentable to see the increase of intoxication which, within even a few years, now, in every quarter in Bengal, forces its horrid victims on the view of the passenger, not only in the towns but on the highways; and when with this is combined that habitual want of respect to the European gentleman, formerly so universally accorded by all classes of natives, it is obvious that no facility for farther disregard, to which the excitement of intoxication so much contributes, can be given, without tending exceedingly to dissolve that moral force with which the European and native have hitherto been held in their relative positions. And if so, as those will not deny who assign so high a value to that feeling, it surely becomes the local Government of India to pause before, for the sake of

of a trifling accession to the revenue, it thus so directly contributes to its own ultimate destruction.

The idea of the present tax upon spirits being a penalty imposed to restrain the drunkard, is, I fear, a fallacy in legislation. If, however, it really were so intended, the tax ought, at all events, to be adequate to the end. But since, for the value of two farthings, as much liquor can be purchased as will intoxicate one person, to suppose that the present tax is a check on drunkenness, is totally groundless.

Were a duty of ten times the amount of the present tax imposed on every distiller of spirituous liquor, some hope of check might be indulged. The want of spirits in a hot climate can be no privation among people who have, till our time, been unaccustomed to such, and who have in so great abundance the purer and more wholesome use of vegetable stimulants. To plead such privation is a specious argument, used merely as an apology for continuing the tax: and let it be remembered, what eventually must be looked for, there will be a defalcation from the receipts to meet the expense of an increased police, which it will assuredly give occasion to keep up. Let those who express abhorrence of the surveillance of the Excise, which is requisite to check the evil, now choose between a peon of excise and a peon of police.

If it must be that luxury shall be taxed, I apprehend tobacco must be deemed a less objectionable medium than intoxicating liqours. Tobacco is an article of universal consumption among the millions of our India subjects; not less, perhaps, than seven-tenths use tobacco.

Sugar,

Sugar, also, might be made the means of increasing the revenue.

But, in matters of revenue and taxation, it ought always to be kept in view by the government of Bengal, that the measure of the permanent settlement has, in reality, produced a permanent and decided distinction between the lower and the upper division of the territory under that presidency; and, consequently, it is impossible that the same fiscal arrangement which may be suitable to the former, can with equity be made applicable to the latter. The zumeendar in the upper and non-permanently settled provinces, who is deemed compensated by ten per cent. on the government-revenue, and the zumeendar of the lower and permanently settled provinces, who, according to Mr. Colebrooke, receives fifty per cent. clear on the government-demand, ought surely not to be required to pay the same rate of extra taxation. There ought to be, if the state require it (and that it does, no one will doubt), a schedule prepared, as applicable to the permanently settled provinces, which would enable government to draw from the overgrown incomes of the landholders there, a due proportion of the funds required for the support of the state.

By the "constitution" and former usage of India, *the land* was charged with the expense of administering justice and supporting the police of the country, as well as the military establishments, for which quotas of men and military equipments were also fixed, as leviable from every district. It is manifest that the permanently settled provinces do not pay their fair proportion of these expenses.

It is manifest, also, that the increased wealth derived from the land has contributed to make, not only the administration

ministration of justice more laborious, but the public establishments more onerous to government, than at the period of 1793; from which time Bengal landholders date their exclusive privileges. I do not *forget* the specific lands allotted for public establishments; but I pay no regard to that; for, be the value of such lands what it may, it is already absorbed, and the public finances are not prosperous.

If, then, the judicial, revenue, and police establishments, in the provinces permanently settled, be more numerous and more expensive to government than in 1793, those who derive wealth from the circumstances which have occasioned this, ought, in equity, to be called upon to defray the charge, and ought not to be allowed to throw the burden of their better government upon their fellow subjects in Upper India, by many degrees more heavily assessed; for it must be clear, that whilst the lands of the lower provinces are held to be exempt from farther impost, and yet the affairs of the people who enjoy them require more administration, that the expense of this charge is in reality a tribute levied by them, or at least on their account, from others. I doubt not that the public establishments, both European and native, now employed in the administration of the permanently settled provinces, are in amount double the number, perhaps, of what they were in 1793, and in expense not less increased, whilst the land contributes nothing more than in former times.

There is not, perhaps, to be found in the whole history of the world, any other instance of a government holding one-half of its subjects, as a privileged class, to be exempted from all future impost, whilst it is itself deeply involved in public debt, straitened for resources, so as not to be able

able to meet its current expenses, even in time of peace, without reducing the allowances of its own servants; in some classes far beyond the limit of adequate reward. No pledge, which any government could come under, can justify the impoverishing of its public servants, the severe exaction of revenue from one portion of its subjects, whilst it exempts another portion of them from their fair share of the public burden. Means ought, therefore, to be immediately adopted to equalize the public demand, so as to relieve the wants of the state.

That it is desirable to increase the revenue of India, and that it may be done, are sufficiently evident. A limited revenue, and boundless expense of indispensable military and civil establishments, have hitherto compelled government to place those establishments on the lowest possible scale, both as to number and allowances. The policy of this is by no means apparent. More attention to the improvement of the revenue would produce many times the amount of saving to be derived by retrenching from the already too scanty income of faithful and zealous military servants.

Upon what principle of good government, as applicable to a foreign province, such as India is of England, ought the public servants of the state, the individuals upon whose energy of mind, talents, virtue, and honour, the country is preserved to England, to be kept, in a foreign land on a bare subsistence?

The situation of the Company's servants in the military branch of the service, at this time, is, I fear, much worse than is believed, even by those in power at home. I say so, because my opinion of their liberality is such, that I feel convinced they would improve the condition of their army,

army, were it fully made known to them, and they were convinced of the incalculable advantages which would result from that improvement. Numbers of their officers, men of family, all of education, and many of them men of talent, after fifteen, even twenty years' service, are now dragging on an idle, and consequently a comfortless life. Might not many of those able and intelligent men be usefully employed, in time of peace, in carrying into effect the measures of government for improving the country, and consequently the revenue, till it should become sufficient to admit of a greater remuneration to themselves and their associates? Thus might all be enabled to maintain the appearance of respectability, even of affluence, so befitting an English gentleman, and, in the eyes of the natives of India, so becoming an officer of the English government: whilst those who preferred the enjoyments of their native country, would have the prospect of returning to it within a reasonable period, if not with riches, yet with a comfortable independence.

Those who consider the influence of our national character to have great weight in the system of our Indian government, will not look with an eye of indifference upon what is here but briefly hinted at. But it is not merely the moral influence that is concerned, The physical powers of man are wonderfully affected by the state of his mind, and it would be just as hopeless to expect the most powerful pitch of tone from an unbraced instrument, as energy of intellect, or vigour of body, from the man whose mind is depressed, by dragging out a life of disappointed hope in a foreign land, with scarcely a chance of visiting his own.

By tables recently published, it appears, that of all the officers who were sent out to Bengal in the Company's service,

service, within the period of twenty-five years from 1796, in the principal branch of the military service, the infantry, only ONE in TWENTY of those who came out were able to retire on their pensions! If this do not show UNDER PAY, the experience of twenty-five years can show nothing. After the attention which, both at home and abroad, has been bestowed on the condition of the army, I cannot have the presumption to think that the expression of my sentiments will be of much value. But surely, where such is the result of a system, something must be wrong in the principle on which it is founded. I am aware that, compared with European armies, the expense of officering that of India is very great; but so is the expense of every thing else in India, in every part of the world, which you must bring from a distance. Yet the question remains, whether there be a real necessity for employing so many officers, if they cannot be paid so high as they should be. For my own part, I think this is a question of great importance. My experience leads me to give the decided preference to *quality*, rather than to *number*. With native troops, especially, I should decidedly prefer to have five distinguished officers with a corps, to having five times that number of an indifferent stamp. We must remember, that besides its European officers, every corps has a full complement of native officers, both commissioned and non-commissioned; and it is more to give a *tone* to them and to the men, by exhibiting to them an elevated example of moral character and of military duty, discipline, and enterprize, than for the ordinary details of regimental service, that I think European officers are chiefly valuable. In this respect, indeed, if really good officers, they are inestimable; on a low standard of qualification, I conceive the European officer utterly worthless in India.

But,

But, then, how is this high bearing to be maintained by the very best of men? The buoyancy of the mind must not be borne down by the continued pressure of pecuniary difficulties. Or if in his youth, in the earlier years of his service, he must be content to struggle against his straitened income, surely a period ought to arrive, when he might see the harvest of his hopes smile upon him, and the reward of his labour within his reach. *Youth* is satisfied with *merit*—he glories in *deserving;* but *age* requires *reward.* The senior ranks of the army are those who feel this. The approach of personal infirmities, the accumulation of family claims, all demonstrate to the veteran the necessity of *already possessing* what he has now no means of commanding. The health of the individual he sacrifices; but the energy, the very vitality of the army, are equally sacrificed. No state can afford to pay highly all ranks of its army: but till the income of officers commanding corps shall be increased, both in pay and in pension, I despair of seeing any amelioration of the condition of the army. This is not the place to enlarge on such a subject:—I may nevertheless remark, that in no country in the world, perhaps, are the resources of the state burdened less than in India with her pensioned military servants. The whole amount of the military pension-list does not, I believe, exceed £80,000 sterling, out of a revenue of twenty-two millions; or about a two-hundred-and-seventieth part of the annual income.

India, as a field for the youth of England, in which they might reap with honour the reward of their services or merit, can never be looked upon but with deep interest. Such a provision as even the military service of the Company has heretofore held out for the sons of English gentlemen, has had more than mere intrinsic value in it, both to England

England and to India. If this field shall become barren, where shall *England* look for such another; and where shall *India* find the generous high-minded youth, which in manhood have hitherto set before her that elevated example of national character, which the world besides cannot command?

To suffer the scale of the European character to fall, especially of the European servants of government, we may rest assured, is very far from being the prudent policy of Britain in governing in India. If, indeed, the influence of individual, and by consequence, of national character, be of any political importance to preserve and maintain that influence, the standard of character must never be suffered to fall back. To maintain our distance we must advance, without which our ascendancy cannot be preserved. To effect this, the respectability of the service in both branches must be upheld. Nor let it be supposed that this would be a misappropriation of the revenue of India. On the contrary, if we attend to the relative situation of India with respect to England, it would be difficult to devise any other mode of application of that fund to the same extent, which would be equally advantageous to both countries.

The advantage of colonization, in respect of furnishing the wished-for market for English manufactures, and ensuring a vast variety of other alleged benefits, has been much expatiated upon. But India is already colonized; that country is full of a peaceable, industrious, and obedient population, living under the protection of the English government, which they acknowledge to be their government: they are subjects of the crown of England in every essential point of view. They are not, it is true, Englishmen, nor the descendants of Englishmen; but if this be

charged against India, the Cape of Good Hope, and other admitted colonies, peopled by Dutch, French, and other foreigners, are liable to the same exception; and surely their complexion will not be held to constitute a real distinction. The colony was not indeed planted by us; we found it full grown; but this does not alter the relation between the countries. It remains not the less, for that, our clear and decided duty to improve India, for the mutual benefit of both countries.

From the state of moral maturity in which our Indian colony was found, we ought to have expected that the inhabitants would with difficulty be made to yield to any change, however advantageous to themselves; and what more than this *have* we experienced? Nay, we have found them tractable beyond the expectation of many; and there is no doubt that the influence of example will in good time realize the hopes of the most sanguine.* It must, therefore

* Some enthusiastic writers on India affairs have charged their opponents with representing the Hindoos to be an inflexible race, immutable in their tastes, as well as in their habits and religious rites: and a late author has written a volume to prove that they are not so primordial as at the era of the *Kings*—"the 122 Kings of India." The truth, I am persuaded, in this, as in many other controversies, lies between the two extremes. As a nation, they are unquestionably much the slaves of habit—their religious ceremonies are so mingled with their customs, and even their domestic duties, that change to them is more than change of fashion; it would not unfrequently be to them a deviation from divine command. But the chief articles of use among the people do not come within this limit; and, therefore, there remains a wide field for the introduction of manufactures; to ensure the consumption of which, cheapness (I mean lowness of price) alone is wanting. A Hindoo asks not by whom the cloth was made which clothed him—nay not even by whom the flour was prepared which feeds him; nor is the *caste* of his sugar, or salt-manufacturer inquired into. The *lootah* he drinks out of is pure, by whomsoever

therefore, be indisputably the policy of England, to afford to her Indian subjects the fairest example for their imitation, as well as the fullest opportunity of profiting thereby. It is not by inundating India with needy adventurers that we shall do this!

In India we have a population to the utmost extent of our wishes. Could we see them model their morals, their minds, and their manners, after the precepts of our holy religion, and the fashion of the best of our own countrymen, I am at a loss to conceive where would be the room left for a wish for colonization. We see, therefore, how idle it is to prescribe colonization, in the acceptation in which that term is applied by those who use it most, as the only means of improving India. For my own part, I believe it to be the worst that could be devised, and the least efficacious; whilst, at the same time, it would be the speediest to sever the connexion between the two countries for ever, and by consequence, as in the case of America, leave both imbued with mutual feelings of animosity, to a degree which even time itself seems incapable of obliterating.

whomsoever made, though it must be brass, and not copper: and so also is the plate pure on which he bakes his humble cake. It is, indeed, idle to suppose that articles of prime utility, or convenience, will not be coveted by man, if he have the means of procuring them. By some nations they are more eagerly sought after than by others: and all we can say, I apprehend, of the Hindoos, is, that as a people, they are perhaps the slowest of all nations in seeking for change—so slow as to escape the observation of some; yet, nevertheless, it would be sure, were the means of accomplishment within their power.

A more extended use of British produce among the servants of the state, by encouraging a more abundant importation, would bring the principal manufactures of our country more within reach of the natives of India. This, I conceive, is the most effectual way of benefiting the English manufacturer, whilst we should incur no risk of destroying the happiness of India, by supplanting her population with the refuse of our own.

CHAPTER IV.

ON THE PRESENT SYSTEM OF REVENUE.

Permanent Settlement.

NOTHING can be more important to the interests of India, than a well-regulated administration of the land-revenue. When we consider not only the great proportion of the population engaged directly in the affairs of husbandry, but that the employment of so many is limited to, and consequently their entire thoughts are engrossed with, the single object of providing the bare necessaries of life, we shall be able, in some degree, to appreciate the vast importance to the happiness of the people, of the regulations which may be adopted for the adjustment of the revenue from the soil. The system authorized for the management of the land-revenue of India, be it what it may, cannot therefore be put in practice without producing effects of the greatest magnitude, on the condition of the people and the prosperity of the country.

Many have been the plans recommended, tried, and abandoned for their defects. The ancient system of India revenue is also defective: it is a human institution, and may well be imperfect. Its imperfections, however, were seen and experienced. Those of the new plans required experience, and that only to shew that they must fail. But the ancient system had one great and decided advantage: it was known to the people, the people were reconciled to it, and, like all political institutions, however bad, what was wrong in it had doubtless acquired practical

practical correctives, of easy and general application, which rendered it at least sufferable to the community.

When the Emperor Akbar approved the settlement submitted to him by his able financial minister, Rajah Tudur Mull, and of which that valuable officer is by many erroneously supposed to be the author, his Majesty well knew the source was more sacred from which it sprung. The law of the land was not altered by his Majesty's Hindoo minister, and his able Moohummudan colleague, Muzuffur Khan: but a settlement was made, having the law for its basis; and the details were ably projected and superintended by those valuable servants of the state, who neither did nor would have dared to depart, in any thing essential, from the law and the usage of the country.

In modern times, conquering statesmen have greater confidence. They do not hold themselves hampered by custom, however sacred, antient, or universal! There is not in the history of the world a more extraordinary instance of disregard of the usages of a people, than is to be found in the conduct of those who swayed the councils of India when the great financial innovation of 1793 swept away the ancient landholders of Bengal, and limited its territorial revenue for ever!

Nor did those celebrated financiers better consult the interests of the British government. They appear to have forgotten altogether the distinction between the people of England, to whom luxuries are become necessaries of life, and may be touched by the tax-gatherer, and the subjects of their Asiatic territories, to whom even the necessaries of life

life are luxuries. What source of revenue did they leave to meet the growing expenditure of the government?

A land-revenue is well adapted to the present state of India; not only on account of the want of other sources, but because of the antiquity of the system, of its being so well understood by, and so familiar to, the people; their being so thoroughly reconciled to it, as to submit, even cheerfully, to heavy exactions from the land, whilst, with reluctance not easy to be overcome, they are brought to pay even a petty tax otherwise laid on.

All are accustomed to pay for their land. It is not a tax upon their industry, but rather a premium to be industrious; for the more they produce by their labour, the lighter will be their public burden. A cultivator pays so much for his field or beegah. If by his exertions it produce much, the less will be the proportion of his assessment to the produce. Not so a tax on the produce of his land: a corn-tax. As the produce is increased, so would be his assessment.

The ease with which men are apt to be imposed upon by words, has never been more successfully exemplified than in the case we are now about to consider. A "permanent settlement of revenue," a "permanent income," sound very imposingly in the ears of an Englishman. It means, he must conclude, something *secure*. A revenue permanently secured, though it should perhaps be not quite so large, is a good thing, he would say; and the old adage, "a bird in the hand is worth two in the bush," would occur to fortify his belief. But when this permanent settlement comes to be inquired into, even very superficially, it

it will be found to be no more than empty sound, so far as security for the revenue goes; and, in truth, to partake no farther of the quality of permanency, than as it is a permanent obligation, on the part of government, to cease for ever from increasing the India revenue, entered into with individuals who never had, indeed never can have, any security to give, beyond what government always did possess without them; namely, the *soil, and the labour, and wants of the people.*

The amount of revenue thus imposed, instead of being fixed, has been, and must be ever, liable to fluctuation, and always by diminution. The want of security for the revenue is inseparable from the state of society in India; but the defect, involving progressive diminution of revenue, is intrinsic, essential, and peculiar to the settlement to which I am adverting. A permanent limitation of land-revenue must necessarily contain within itself the seeds of its progressive decay. There is nothing stationary: by all the laws, both of the moral and physical economy of this world, that which *cannot increase must diminish.*

In fact, instead of being what it professed to be, an engagement entered into with the owners (proprietors) of the soil for a specific revenue from their lands, with all that security for fulfilment which a wealthy landed proprietary necessarily gives, this far-famed "permanent settlement" was nothing more than a species of farming-out of the land-revenue to individuals; men, almost universally speaking, of no wealth or capital, consequently but little interested in the prosperity of the country; men who had no right of property in the estates now conferred upon them, and whose only object was to accumulate wealth, or to enjoy in affluence a mere sluggish repose, regardless even of the ruin

ruin of their tenantry, which this unhappy measure gave them the power of effecting.

It is idle to talk of the *permanency* of the settlement affording *any security* to government for the revenue. This idea must be rejected by every person who reflects a moment on the subject, and knows who the parties are. There is, in truth, no security for a land-revenue in India, but the security of a *moderate assessment, fairly distributed;* a regular and protecting government; protecting not to the zumeendars or farmers of the revenue, but to *the ryots, the cultivators*, whose industry alone is the only source of, and security for, the revenue.

It might have been expected, on the subversion of the Moghul government of India, and the sudden and unexpected acquisition of power and dominion which fell into the hands of a small body of foreigners, in 1765, such as the English in India then were (strangers, it may be said, utterly, if not to the languages, yet to the laws and usages, of the country), that much difficulty would arise in settling, on a fair and equitable basis, the public revenue. Great difficulty was accordingly experienced, augmented by the chicanery of the native revenue officers, the natural disposition of the land-owner to withhold information, suppress and falsify documents, and it must be confessed, in many instances, the want of probity in the European servants of government.

All this was to have been expected, and was really experienced; and it might have been supposed that a prudent regard for the interests of government and of the governed, would have dictated to those in power the high importance of patient investigation. Twenty years, however,

ever, had scarcely elapsed from the cession of the provinces by the Emperor to the Company, before we find both the local government, and the authorities in England, loud in their denunciation of irregularities, which they ought to have expected, and resolute in their determination to terminate them at any sacrifice. The settlement of the revenue, limiting its amount for ever, was gone through with a degree of precipitancy which nothing short of absolute certainty with respect to the rights of the humblest individual concerned, could justify.

An act of the British Parliament is consequently obtained, setting forth "that complaints, abuses, and grievances were made, perpetrated, and endured in India; "and that the native landholders had been unjustly "deprived of, or compelled to abandon, their respective "lands, jurisdictions, rights and privileges;" and by sect. 39, 24 Geo. III. cap. 24, "the Court of Directors were "required to give orders for settling and establishing, upon "principles of moderation and justice, *according to the "laws and constitution of India*, the permanent rules by "which the tributes, rents, and services of the rajahs, "zumeendars, polygars, talookdars, and other native land-"holders, should be in future rendered and paid to the "United Company."

This then is *the text of law* on which stands the validity of the permanent settlement. "The laws and constitu-"tion of India" form the rule by which it was to be regulated; but it is material to observe, that there is not one word in this act authorizing the permanent *limitation* of the revenue of the country. "It is to establish *perma-"nent rules, by which the tributes, rents, &c. shall in "future be paid.*" To fix rules for *paying* a tribute, and

and that too according to the "laws of the country," is not the same thing as *limiting for ever the amount* of that tribute, and that too in a way discordant to all law, as really was done.

On the 12th April 1786, agreeably to the mandate of the act, the Court of Directors issued their orders to the Bengal government; but instead of adhering to the plain words of the statute, they direct the preliminary inquiry to be "what were the real jurisdictions, rights, and pri-"vileges of zumeendars, talookdars, and jageerdars, un-"der the *constitution and customs of the Moohummudan* "OR *Hindoo government.* What tributes, rents, &c. they "were bound to pay to the sovereign; and, in like manner, "those from the talookdars to their liege lord, the zumeen-"dar." They, however, referred to the clause of the act of parliament itself, in which their power was specified, "which they directed the Governor-General in Council to "consider with minute and scrupulous attention, *taking* "*especial care* that all the measures adopted in the admi-"nistration of the revenues *be consonant to* THE SENSE "AND SPIRIT THEREOF."

It is evident, therefore, notwithstanding the inaccurate mode in which their orders are expressed, that the Court of Directors intended to conform to the tenor of the act of parliament, which ordained permanent rules to be framed by which the rights of all native landholders "were to be "settled and established, according to the laws and con-"stitution of India." But how they came to deviate so far from the tenor of the act, when in these instructions they express their opinion "that the spirit of the act "would be best observed by fixing a *permanent revenue*," it is difficult to comprehend. The perpetual limitation of the

the revenue on the lands is, therefore, the gratuitous creation of the Honourable Court of 1786: but by what authority that honourable body referred to the constitution or customs of the "*Hindoo* government," there is no possibility of forming any rational conjecture.

The proclamation, by the Governor-General in Council, 22d March 1793, of the permanent settlement, the ultimate edict of government declaring it, expressly supports the "actual proprietary right in the soil:" article III. "The Governor-General in Council accordingly declares "to the zumeendars, independent talookdars, and other "*actual proprietors* of land, with whom a settlement has "been made under the regulations (18th September and "25th November 1789, and 10th February 1790), that "no alteration will be made in the assessment they have "agreed to pay;" and this proclamation has likewise reference to the amended code of regulations relative to the decennial settlement, approved by the Governor-General in Council 23d November 1791, which is ordered to be translated into all the native languages, and published for general information. The third article states, "that the "settlement, under certain restrictions and exceptions here-"after specified, be concluded with the *actual proprietors* "*of the soil*, of *whatsoever denomination*, whether zu-"meendars, choudries, or talookdars." The restrictions and exceptions are stated to be, to exclude talookdars, who hold by special deeds of a superior zumeendar, and ayamadars, &c. also females, idiots, lunatics, and persons incapacitated on account of contumacy, or notorious profligacy of character.*

It would therefore appear, were we to attend to this alone,

* Article 19, Proclamation 23d November 1791.

alone, that the local government intended to admit to the settlement only the "actual proprietors of the soil," excluding such possessors of land as, *by their own act* were known *not to be actual proprietors*, as talookdars, holding by special deeds, or holders under crown-grants; also persons incapacitated by their sex, or by the hand of God, from entering into such settlement.

Why this intention was departed from it is not easy to imagine. Necessity alone could warrant a proceeding so arbitrary; and it so happened that not only no such necessity existed, but the ablest by far, as well as the best-informed (perhaps the only well-informed) member of the Bengal government at the time, strenuously opposed the precipitancy with which the permanent settlement was urged to a conclusion. I need scarcely add, that the valuable man to whom I allude was Mr. Shore, afterwards Lord Teignmouth; whose minutes of that day evince a wonderful degree of industry in the attainment of information, and of talent, as well as temper, in bringing it to bear strongly, but meekly, on the important question which he and his less-informed colleagues were called upon to discuss and decide.

Lord Cornwallis was an amiable and a virtuous man, and in carrying into effect the permanent settlement, no doubt thought that he was conferring a great blessing upon India. But it was one of those short-sighted benevolent-like acts, which men with good hearts sometimes rush upon, without seeing, in all its bearings, what they are about; and while they effect a partial good, they entail an enormous general evil. Lord Cornwallis, and his concurring colleagues, at home and abroad, of that day, have by their celebrated proclamation of 1793, in spite of their good

good intentions, nevertheless deprived the whole population of the three finest provinces of India of their hereditary, and hitherto undoubted right of property in the soil, the land of their fathers, the only thing which the anarchy of their country had ever suffered them to recognize as property, and vested this sacred right, *not* in the honourable, the benevolent, and humane breasts of the English government, but they transferred the real owners of the soil, like a herd of the inferior creation, into the hands of what we call the zumeendars, a set of men proverbial throughout their country for their tyranny, profligacy, and incapacity. This was the blessing for which India was expected to return thanks to those who were instrumental in bestowing it!

Nor was the measure less objectionable with reference to our own country, since it tied up her hands, for ever, from availing herself, certainly at least of the best, indeed almost the only, mode of increasing the revenue of several of the finest provinces of the finest portion of the world. I say the best mode, because I am persuaded, and I believe with reference to India it is admitted, that a land-tax, laid on fairly, is the best of all modes of raising a revenue; and I say almost the only mode, because in India there are few other sources whence a revenue can be taken.

In Europe, the taste for luxury, which prevails, enables government to raise a large revenue by taxes on the articles of luxury; the necessaries of life form another source of revenue. In India, the luxuries of life are not known, except to a few; consequently, that source of revenue does not exist there. Even the necessaries of life are of so little value that they are scarcely tangible. What can the most expert financier hope to levy from a people who live almost

almost in a state of nakedness, whose habitations cost perhaps a rupee, and where, in many parts of the country, labourers, heads of families, receive no more than five shillings a month? So that the soil, besides being the constitutional source of the revenue of the state, is almost the only one that can be made available.

The land-revenue was, under the Moohummudan government, a source, too, which never failed to increase with the population and prosperity of the country. These have, under our government, unquestionably increased: their tendency is to be progressive. Think then of the temerity of the man, or of the set of men, or of the power, whatever it may be, who did venture, under such circumstances, to set perpetual bounds to the resources of the Indian government, by limiting for ever the land-revenue of the country.

Many exceptions, in point of policy, have been taken to the permanent settlement, as carried into effect; but none, so far as I know, to its *legality*. Yet it may fairly be questioned, whether those who concluded the permanent settlement *had any power so to do*. So far as my judgment goes, nothing short of an express mandate in the act of the British legislature could have conferred that power: but it would be difficult to shew the remotest indication of any such mandate. If this opinion be just, then the local government of Bengal, who are commanded by the charter, from which they derived their own authority, and acts of the British parliament, "to protect his Majesty's Indian subjects in "their rights, *according to the laws and constitution of* "*India*," had no power to make such a settlement; a settlement which deprived nine-tenths of the people of their rights as recognised by the laws and constitution of India.

To

To enter into such a settlement of the land-tax with the real proprietors of the soil, would, I think, have required the express sanction of an act of parliament; but to change entirely the laws and constitution of India which respect landed property, and to deprive of their rights those whom they were bound by an express statute to protect in their rights, appears to be an act altogether contrary to law: an act, however, that never could have been contemplated by those who were concerned in it, but under the fullest persuasion that they were committing no injustice, depriving no one of his property, but granting to the lawful owners of the soil privileges and benefits, not contrary to, but in conformity with, though in benevolence beyond, the law. The consequence has been far otherwise than was anticipated.

I have already given Lord Cornwallis credit for his benevolent intentions, yet it must be admitted there appears throughout the whole of his lordship's measures a precipitancy, and a want of regard for ancient rights, not easy to be accounted for.* This is evident in most of his minutes. I select the following paragraph from that of the 18th September 1789. "Although, however, I am not only of "opinion that the zumeendars have the best right, but "from being persuaded that nothing could be so ruinous "to the public interest as that the land should be retained "as the property of government (never dreaming of the "claim of the people), I am also convinced that, failing "the claim of right of the zumeendars, it would be "necessary

* Mr. Davis, who held a high office in Bengal at the time, tells us that "Lord Cornwallis went out to India under the persuasion that "the land-holders were oppressed. His lordship was surrounded by "theorists," &c.—*Answer to Queries by the Committee of Directors.*

" necessary for the public good, to grant a right of pro-
" perty in the soil to them, or to persons of other de-
" scription. *I think it unnecessary to enter into any*
" *discussion of the grounds upon which their right ap-*
" *pears to be founded.*"

An avowal such as this, was evidently beyond the power of the Governor-General. It was evidently contrary to the law enacted by the parliament of England. He was not to *grant rights*, but to confirm them, and " to protect " the people in their rights existing." It can, therefore, only be interpreted, as a proof that his lordship did not intend that his benevolence should be restrained. The measures adopted at that period have more the appearance of those of a good and well-meaning person, accidentally placed at the head of a new nation, passing his first acts of legislation, than of one charged with the government of a people, the very slaves of method, of rule, of habit, and of their institutions; whose very foibles, even absurdities, deserved consideration, because to them they are neither foibles nor absurdities, but matters of importance. How, then, it so happened that their most sacred, most valuable rights, should have been thus held as nothing, is indeed difficult to conceive. It was a blameable neglect of the interests of the people.

The very first point to be inquired into was the " claim " to the soil," the right of property in which was to be *confirmed*, not *granted*. Mr. Grant argued in favour of the right of government; Mr. Shore, that of the zumeendar. Lord Cornwallis despises all right, and fairly avows " that " he thinks it unnecessary to enter into the discussion of " the right to the soil." But the very first resolution of government, framed by his lordship, bound him to make this

inquiry; for it says, "resolved, that a new settlement "be made *with the actual proprietors of the soil*," &c. Now the act of parliament of 1784 completely recognizes the right of possession by the people, according to the law of India, and that their "tribute and rents" should be fixed agreeably to that law.

Before this final limitation of the revenue was made, however, it might well be supposed that those who did thus most rashly act, had, by the most painful examination, research, and investigation, discovered data sufficient to enable them to make a fair settlement for a limited time. No such thing! Mr. Shore, indeed, urges this in the strongest terms. He says, in his minute of June 1789, "We require, 1st, a knowledge of the rents paid by the "ryots, compared with the produce; 2d, of the collections "of the zumeendars and of their payments to government; "3d, detailed accounts of the alienated lands, shewing the "quantity, the grantor, grantee, dates of grants, the occu-"pant; to see how far resumption can take place. All "the material part of this information is wanting"!!!

The information they possessed was not sufficient to warrant them in settling the bazar-duties of a village. Our knowledge of India was much too limited then, it is so now, to furnish data for an act so important. They knew not the resources of the country. They even discarded the documents that were pressed upon them by the head Record-keeper at the time, Mr. Grant, who had taken great pains to exhibit the sources and the amount of revenue levied by our predecessory governments of the provinces. *They did not even know to whom the lands in property belonged.* Lord Cornwallis, in his minute of 18th September 1789, says, "Mr. Shore has most ably, and in my

" opinion, most successfully argued in favour of the " zumeendars to the right of property in the soil"!! They did not know the nature or the condition of the tenures by which the lands were held, which they thus gave away; they have, consequently, not only constituted, generally speaking, a new race of landed proprietors, but have given away to persons who had no legal claim to them, whole tracts of country of the richest and best cultivated lands, not only in perpetuity, but *rent-free*, and without any consideration whatsoever.

In the small province of Bahar alone, as was before stated, a revenue from lands to the amount of from thirteen to twenty lacs of rupees, or from £130,000 to £200,000 sterling annually, was thus diverted from the Company for ever. In Akbar's time, the pensioners on this province and public establishment (the only possible pretext for relieving the land from assessment) caused a defalcation of revenue of about 55,000 rupees only.

We have seen that the enormous amount of revenue lost, in name of land relieved from the public assessment, in the three lower Bengal provinces, is no less than £1,256,391 sterling, calculating at one rupee eight anas per beegah, exclusive of the province of Cuttack. Most of these lands, and all waste lands, are undoubtedly liable to assessment; they never could have been legally exempted from it; and policy, as well as justice, certainly makes it a question whether they should not still be assessed. Surely it cannot be just, that one portion of a district should alone pay the public burdens.

The value of the cultivable, but uncultivated land, appears to have been entirely overlooked; and instead of proceeding

proceeding in the settlement on the basis of the land in cultivation alone being private property, the government of that day seems to have formed to itself a division of the whole country into great hereditary lordships, under the name of zumeendaries, the extreme boundaries of which were alone worthy of being noticed; forgetting that, in many instances, two-thirds of the circumscribed space had no value assigned to it, as yet, on the financial records of government; nor could it have till brought into cultivation.*

I cannot help seeing, in the permanent settlement of Bengal, a great lesson read to all future governments of India, to hold back their hands from limiting their permanent resources in perpetuity, until they have secured an equally permanent and available substitute.

If government were determined to make a permanent settlement, why did they not limit their settlement to all they could legally settle, the *per-centage on the revenue:* a profit sufficient to call forth the best exertions of the zumeendars, whilst it would have secured the right of the husbandman, and admitted of a progressive increase of revenue to the state, in proportion to the progressive improvement of the country?

Whether it shall ever be deemed the policy of government to modify the permanent settlement, is a point well worthy

* Mr. Colebrooke, in a minute recorded by him as a member of council in Bengal, in 1813, states, "that there are official grounds for "concluding that the *nett* profits of the zemindars in the permanently "settled provinces average *one half* of the public assessment." Some say, equal to the whole.

worthy of consideration. How far it might be possible, in the course of time, to remedy that great political error, by government purchasing the zumeendars' right of estates, as they were brought to sale, I merely suggest as a question. They might then attend to the rights of the real owners; and thus, in time, the whole lands of those provinces would revert to their former state, and would again be available to produce a progressive advance of revenue, as they advance in cultivation and the country in prosperity.

The opportunity of sales would probably not be wanting. In ten years from 1796, Mr. Stuart informs us, lands were sold in the provinces of Bengal, Behar, Orissa, and Benares, on account of arrears of government-revenue, the total amount of assessment of which was rupees 1,21,75,680;* nearly one half of the whole assessment of the lower provinces. The amount of the price these lands brought at the sales was rupees 1,08,55,537, shewing a depreciation below the government-valuation of rupees 13,20,143.

This statement, however, though perfectly correct, it must be admitted, shews a very exaggerated picture of the rapidity with which property in Bengal has changed its owners since our perpetual settlement of it; because, at perhaps one-half, or two-thirds of the number of sales, the owners repurchased their lands. In point of fact, the value of land in Bengal has risen exceedingly since Mr. Stuart wrote. Lands assessed at a lakh and a half, have been sold for ten lakhs and sixty-four thousand rupees. "*Letter to Bengal, 21st March*, 1821."

Were it the object of government to become purchasers, for

* Mr. Stuart's minute.

for the purpose above noticed, the sale of lands for arrears might be encouraged; otherwise, it cannot fail to strike any one, that it must be the interest of government to discourage such sales, not only as they necessarily tend to produce a diminution of revenue, but as being often productive of the greatest hardship and oppression, as well as of much feud and dissention among the people.*

The augmentation of the revenue assessed on the land, in the permanently settled provinces, to meet the expenses of the government, is a distinct point. The confused notions entertained by many, as to the real state of right of property in the soil, have led to very extravagant conclusions. The permanent settlement is looked upon as a grant of land by government, on payment of RENT, specific in amount and fixed in duration. Whereas, in point of fact, the grant was what government could not legally bestow; but if it could, still what was assessed on the lands was not "RENT;" it was a TAX. We easily adopt the notion, that "grants" and "letting" on a fixed "*rent*," limit the payment to be made by the grantee, or lessee, to the amount specified; but we cannot so easily understand, that a permanent grant of land which a *tax* is laid on, should debar government from laying another tax on that land. A permanently fixed "*rent*" is easily conceived by us; and, therefore, we give undue weight to what is called the permanent settlement. But, taken in its proper light of a tax, and coupled with the grant of lands, we

* The Court of Directors have ordered such purchases to be made; and the Bengal government has, in some instances, made them. —*Letter*, 10*th November*, 1824. But sales are now hardly ever had recourse to. "The revenue of the ceded and conquered provinces "is now realized with little or no recourse to public sale."—*Letter from Bengal*, 1*st August*, 1822.

we can in a moment see that the "permanency" might apply to the *grant* of the land, whilst the assessment, *being a tax*, might, like other taxes, be liable to change.

The idea of any government holding the amount of taxation *on one portion* of a country, to be fixed in perpetuity at an unduly low rate, whilst the other is liable to an indefinite assessment, is obviously and clearly unjust. If, however, such an invidious system cannot be disturbed, as regards the land-tax, on what pretext is the government called upon to refrain from levying other taxes from that portion of country unequally taxed? The government which effected the permanent settlement contemplated this. The "growing wealth of the country" they indeed looked to as a certain fund for taxation; and on this they built one of their strongest arguments for the permanent land-revenue settlement. Why, then, should *income* there not be taxed?

The general system of government, since the date of the permanent settlement, has been vastly improved; and at a great expense. Commerce has been extended, both internally and externally; merchandize now circulates through provinces into which, at the date of the permanent settlement, even armed men durst not enter. Of all the inhabitants of India, none derive so much benefit from all this as those of the permanently settled provinces; and I cannot understand on what principle they should be exempted from their fair share of the cost incurred in realizing to them advantages, which, when their permanent compact (if it must be so) was entered into, did not exist, and which they enjoy beyond all other subjects of the state!

We

We want, now-a-days, a little of the nerve which prevailed in 1793, in disposing of *particular* rights when they were supposed to militate against the *general* interests of the country. Far be it from any counsel of mine rashly to interfere even with the permanent settlement; but, certainly, taxation should be imposed, to meet the extra expense of necessarily increased establishments. The land-tax of England is at least as *permanent* as "*the* permanent "settlement;" but does this exempt the English landholder from taxation? Nay, in the permanently settled provinces, a considerable part of the duty of the revenue officers consists in the management of estates the property of minors, and others, under the Court of Wards, which occasions the employment of an additional number of those functionaries: yet, even for this gratuitous and unnecessary charge upon the expenditure of the state, no equivalent is exacted. But the "Nankar," a fair commission on the rental of such property, would defray the expense of a considerable portion of the fiscal establishments in the Lower Provinces. Surely there is something peculiarly inconsistent in keeping up establishments for the benefit of others, whilst we are anxiously reducing our own.

The different modes of settlement, which have been proposed or adopted for the Company's territorial possessions in India, may be reduced to the following. The *permanent zumeendarry settlement*, so well known in Bengal, being essentially the same as the mootahdarry system of the coast, which word is there applied to distinguish the settlement with the zumeendars. *The zumeendarry periodical settlement*, the *mouzawar settlement*, meaning a settlement by villages; and the *ryotwar* or *koolwar* settlement, meaning a settlement with individual cultivators for individual

vidual fields. The two latter may be either permanent or periodical.

The first of these modes of settlement, namely, the permanent zumeendarry, has already been noticed, and will presently be again reverted to. The last, *viz.*, the ryotwar, has been so ably advocated by Sir Thomas Munro, and his powerful coadjutor, Mr. Thackeray, that I think the subject almost completely (and successfully) exhausted. After wading through the crude and meagre reasoning, repeated by one and echoed by another, of the late Bengal financiers,* it is really refreshing to see the accuracy, the minutiæ, and at the same time the extraordinary mass of information and most intimate knowledge of the subject, which their more accomplished brethren on the coast have brought to bear on the question they discuss. The one set of men you see at once are masters of their subject; the other may be said to have but a vague idea of it. The fact will prove to be, that till the cession and conquest of the Western Provinces, the permanent settlement in Bengal deprived the revenue officers there of the means of going into financial details, and consequently few of them have put themselves in possession of that minute knowledge of the state of the country and of its resources, which some of those of the sister presidency possess; and until they do acquire this knowledge, they must be content to talk of generalities, and must continue to

* I have said "*late*" Bengal financiers, because I know that, for some years past, great attention has been paid in Bengal by many able men to the department of revenue, under the guidance and direction of the present territorial secretary in Bengal, Mr. Holt Mackenzie, whose knowledge of the system of India revenue, and of its practical results, both for extent and accuracy, has never, I believe, been surpassed.

to be frightened at the idea of entering into the minutiæ of Indian finance; whilst their better informed brethren smile at the bugbear, and actually tell them that there is "more trouble in managing the petty concerns of a fron-"tier custom-house, than the ryotwar revenue detail of a "whole district."* That experienced and intelligent officer (Mr. Thackeray) declares, that "even here, the "customs in any frontier district require more attention to "accounts, and more intricate details, than the whole "ryotwar detail of land-revenue."

The *ryotwar* settlement is precisely the ancient and constitutional mode of levying the land-revenue in India, according to the Moohummudan constitution, *provided the rate of impost be fixed, and on the cultivated land only;* and being so, it has consequently many advantages. The able officer who introduced it at Madras knew its origin, I doubt not, and doubtless adopted it because he knew it was known: at the same time engrafting such improvements upon the old system as his judgment suggested. It does not appear from the earlier proceedings of Sir T. Munro, that he deemed the *rates* of assessment fixed. He, at least, does not dwell sufficiently on the advantage of this to the people. It is this, however, which forms much of the excellence of the ryotwar system. It is a permanent settlement to the ryot of his *fields*, the value of which he can increase by superior culture. To the state the advantage is, that as cultivation increases, so will the revenue. It will be seen, therefore, that in this mode of settlement are combined the interests, both of the cultivator and of the crown, in the improvement of the country.

When the extent of land (in a given village, for instance) has

* See Mr. Thackeray's Report.

has been assertained by actual measurement, or the extent of a field in it, or of all its fields, and the assessment fixed, the same being at a moderate rate, so as to afford the cultivator not only a comfortable subsistence, but to leave him something which, if a frugal man, he may apply to the purchase of an additional bullock to extend his means of cultivation, or if otherwise disposed, lay out in buying a piece of finer cloth for his wife or favourite daughter,—if such a moderate assessment were fixed, and permanently fixed, property would become valuable, the people would cling to it, the rent-roll of the present year would be the same as that of the preceding, the people would feel proud of their property, easy access to the collector would enable them to resist effectually any attempt at fraud among the inferior servants of government, and thus the revenue would become secure to government, easy of collection, and the people be freed from oppression; for when things thus fell into a regular train, with European revenue officers of ordinary vigilance, I do not think that their inferiors could practice fraud without detection. There would be no insurmountable difficulty in administering such a system as this. The field would represent so much of value on the collector's book as easily as the bank note would do, and would be as easily transferred if there were need to do so.

Though there is in this system no restraint on the tranfer of property, and no artificial impediment to prevent its accumulating in the hands of individuals, yet as property in the soil would then be really valuable (which, under exactions that leave a bare subsistence to the cultivator, it is not), no individual would be able to acquire by purchase so large an estate that he could not himself or by his tenants manage it, while, at the same time, the industrious

trious yeoman might aspire to extend his farm by the acquisition of that of his prodigal neighbour: and, in time, wealthy proprietors would be found in the country, not such as we now see, but men, or the descendants of men, who by their industry and ingenuity had really contributed to enrich their country; efficient proprietors, who would appreciate the value of their possessions, and feel a pride in improving them.

It was the worthlessness of property in the soil that enabled bold and pennyless adventurers to become proprietors, as they call themselves, and we call them, of tracts of country equal to principalities. These were sold for nothing, bought for nothing. In the sales the purchaser promises to pay the revenue. If he succeed in collecting it, however great the oppression, he pays it, goes on in this way till he has pillaged the country, then it is again sold in whole or in part; and so on, till the country is ruined. The jumma, or government-rent, must then be reduced; and government is the ultimate loser. This is a summary view of the case, and of the security we have in our zumeendars for the public revenue.

It has been confidently asserted by the advocates of the permanent zumeendarry settlement, that individual zumeendars will manage their estates better than government revenue officers could do; and this has been held as one of the strongest of their arguments. But I doubt this, and would beg of those who oppose me to name any one zumeendar in India who ever managed his zumeendarry in the style in which Sir T. Munro did the territory under his charge? It is an argument that would be good in England, perhaps; but those who apply it to India forget the difference between Indian zumeendars and English landholders.

landholders. Here is the rock on which all mere theorists and *general principle* men are wrecked.

But then, if we were to grant that zumeendars, having smaller estates than government collectorships, manage them better than government collectors, we must admit, on the same principle, that individual cultivators, whose estates are smaller than those of zumeendars, must manage them better still: and this is really the case; for be it remembered all along, that a zumeendar is not a *manager of cultivation*, but a *contractor of revenue*, whose interest in its realization is not equal to that of government nor of its European servants, who are, in fact, identified with the government. Being, therefore, on the one hand, less competent than the cultivators to produce a revenue, and on the other, less interested than the Company's servants in realizing it, the zumeendar is the least fit person to be employed in superintending either the cultivation of the country, or the realization of its revenue.

I hold it beyond doubt, that the *ryotwar*, or individual proprietary assessment, must be the basis of our land revenue system in India. But as in some parts of Hindoostan the state of village-society is peculiarly formed, where certain casts monopolize and maintain privileges in certain villages, in such cases I would also admit the *mouzawar* or village-settlement; and this, in every case where there existed joint and undivided, or indivisible, rights or immunities: holding in all such cases, however, the whole village coparcenery responsible for the whole village-revenue, both collectively and individually; whilst, at the same time the extent of the land belonging to the village,—every field thereof,—should be known; the separate, as well as the combined interests of every person, ought to be inquired into,

into, and ascertained and registered by the village register, in the same way as in villages under separate and individual tenure, to guard against oppression and usurpation by any individual among them. The names of the individuals who cultivate, and of the fields cultivated by them annually, with the extent of each field and the kind of crop, should be entered; allowing the individuals to adjust among themselves the mode of occupation, and quantum of rent payable by each. The above investigation is necessary, not only to prevent usurpation and injustice among the occupants, but in case circumstances should render it necessary for government to have recourse to individual settlement, the requisite information would be forthcoming.

A judicious combination of the mouzawar with the ryotwar settlement would secure to individuals, and to all classes of the community, not only their absolute rights, but their privileges, even indulgences; often, from habit, more important to them than their rights. I will therefore repeat, that, to my mind, there is no other mode of adjustment of the land-revenue of India, so well suited to the people, or so likely to insure their happiness.

The mouzawar or village-settlement, by itself, appears objectionable, perhaps impracticable; for where the state of the village community is not such as I have adverted to, it would be difficult to get the individuals composing it to assimilate sufficiently, without which the most helpless, and consequently those who most required protection, would be most oppressed.

These are the modes of settlement of the Indian land revenue generally adverted to. But there is the important question of the expediency of making *permanent* or *periodical*

dical settlements still remaining. Whatever mode may be adopted, great difficulties may be suggested to *permanency;* but the ryotwar is the only kind of settlement by which government would not be compelled to make great territorial sacrifices, by giving up such tracts of uncultivated, though arable land, as might be included within the limits of the zumeendarry or the village assessed, without any equivalent; unless, indeed, a reservation and specification of the land uncultivated were made. I say without an equivalent; because there are no capitalists in India who can afford to give any thing for land unproductive on a speculation of future advantage: therefore, though one-half of the arable land of a village, for example, should be uncultivated, were that *mouza*, or village, assessed by mouzawar *permanently*, one-half of the property of government must be given away for nothing.

This alone is, I apprehend, a fatal objection to *permanency*, as applied to all the other modes of settlement. But the ryotwar, being a settlement with individuals of individual fields, is made only on the cultivated fields, and is, therefore, not obnoxious to the above objection. The ryotwar settlement should be made, essentially at least, permanent, by declaring at once the *rate* of assessment fixed. If in money, so much per beegah; or should the cultivator prefer it in kind, a certain share of the produce, as one-fourth or one-third, convertible into money at a price fixed every twenty years on the average rates for the five years preceding the period. Thus the rent-roll would stand of the fields that were assessed. Every additional maund of grain the cultivator caused his field to produce would be an additional reward to his industry, till it enabled him to extend his cultivation; and then he would cultivate the adjoining spot, now a waste, which would

would then fall to be, in like manner, moderately assessed, till the whole arable land of the village produced a profit to the ryot and a revenue to government.

That a system such as this would be attended with inestimable advantages, I cannot doubt. It would restore to the very best of the people that protection, which a closer intercourse with the European officers of government would ensure. It would establish their immediate reliance upon government. The people would claim dependance upon the public functionary, whilst they would, in return, be cherished by him, not only from motives of humanity, but as the means by which alone he could effectuate the success of his own labours.

If we wish the great body of the people to become attached to our government, this is the way to promote that object; and not by divesting ourselves of all connection with them, by the intervention of middle men, who have little sympathy with the people, and none at all with us.

If our system of government be really valuable to the natives, surely we ought not to suffer its excellence to be intercepted from them. It should be seen to follow *directly from us*, and *directly to them*; for it can gain nothing from any medium through which it may pass, but pollution.

Suppose, for the sake of illustration, the whole country to be "permanently settled," and in the hands of zumeendars, in what position should we find ourselves with reference to the great body of the people? The European servants of government would never appear among them but as a mere professional tax-gatherer; represented to them

them as such, in language more or less of exaggerated obloquy, in proportion to the extent of undue exactions which the native landlord intended to wring from his enslaved ryots. If an officer of revenue, this would be the lot of the European functionary; if of justice, he would but personify approaching vengeance or immediate punishment. "*I, lictor, colliga manus! arbore infelici suspende!*"

Surely these are not feelings which we ought to promote in the minds of the natives towards our own government. We cannot thus attach the people to us.

Far otherwise would it be with the *Ryotwar* collector. When he went among the people, it would be to receive from each what he had voluntarily engaged to pay for a specific value; or, in the event of real distress, like an indulgent landlord, to grant the ryot, his tenant, that relief which he would be competent to afford.

The custom and constitution of India have placed the government and the people, in many respects, in the relative situation of landlord and tenant. Why should we, residing among them, establish the reprobated system "of *absenteeism*," by the introduction of middle men, who are nothing but contractors and sub-contractors of revenue?

I shall now proceed to notice the arguments which have been urged in Bengal in favour of the permanent settlement.

Mr. H. T. Colebrooke, late Member of Council in Bengal, one of the best informed of the moderns in Bengal, who have written on the subject of the permanent settlement,

ment, in a minute dated 20th June 1808, as a member of the Bengal government, recommends the extension of the permanent settlement to the Ceded and Conquered Provinces in Bengal, on two grounds: "1st, because he approves of such a settlement intrinsically; and 2dly, because such a settlement had been solemnly promised to the inhabitants of those provinces by the supreme government of Bengal."

But Mr. Colebrooke, in my estimation, destroys at the very outset much of the weight that would be due to his opinion. He refers to the discussions which took place in 1789 and 1790, and says, "he trusts that arguments which were not suffered to weigh against a measure (the permanent settlement) recommended by wise and enlarged views of policy, but not then promised to our subjects, will not be allowed greater weight, at this momentous period, against a similar measure, equally recommended by liberal considerations of policy, and solemnly promised by an express declaration in a legislative act."

But surely it cannot be fairly argued, that because the reasons assigned against the permanent settlement in 1789 were not suffered to weigh against the permanent settlement *then*, that *therefore* they should *now* be discarded. It is remarkable to see the essential difference overlooked between carrying into effect a measure of policy, which, in 1789, was but a matter of mere speculation, and the same measure, after twenty years experience of it. It is not a little surprising, that Mr. Colebrooke should have overlooked the difference there is between what may, or may not, be allowed to weigh in discussing a plausible theoretical speculation, and what ought to be allowed to

have weight in judging of the expediency of a measure after experience.

Had this advocate of the permanent settlement got his opponents to admit, as a postulatum, that the permanent settlement in Bengal, &c. was unquestionably advantageous, and in itself perfect, his mode of arguing for its extension might have some weight. But his opponents would, and indeed must, deny that the Bengal settlement was in itself either advantageous or perfect. On the contrary, they with much earnestness deprecate its being held up as an example.

Mr. Colebrooke tells us, that the objections alleged by several of the collectors, and by the late Board of Commissioners of the Ceded Provinces, against the immediate conclusion of a permanent settlement, are principally the imperfect knowledge yet acquired of the resources of the country, the inequality of the present assessment, the great proportion of uncultivated lands (estimated generally at a fourth of the arable land), the deficiency of population and want of capital to extend the cultivation, the existing restrictions on commerce, the want of opulent consumers, the extent of resumable land yet unascertained, the necessity of continuing certain farmers in the possession of their farms, the general uncertainty with regard to the proprietary right, either at present contested or not ascertained, in respect of extensive tracts of waste land, the doubtful value of the standard coin, the risk of disappointment should the settlement be disapproved by the Court of Directors. " All these circumstances," he adds, " it will be remembered, existed in Bengal. Some were " urged in favour, others against the permanent settle- " ment, though they are all marshalled against me."

And

And, again, he states one of the principal arguments against the permanent settlement of those provinces to be, "that the jumma was then Rupees 2,25,00,000, with "*one-fourth* of the arable land uncultivated." Now, it does appear to me, that the objections "marshalled against" Mr. Colebrooke here, are really formidable; and one would suppose, such as ought to have been met by better argument than reference, for their refutation, to the speculations of 1789.

It so happens, that the Ceded Provinces are in a far more flourishing state than Mr. Colebrooke's opponents anticipated when they wrote; and though little more than ten years have elapsed, the jumma, exclusive of the fourth of uncultivated land, is about three crores of rupees. In the year ending the 30th April 1820, the land revenue of the western provinces (the Ceded and Conquered), according to the printed report submitted to parliament, June 1822, was Sicca Rupees 3,44,16,078, including Benares, which is forty-two lacs. In 1815 it was Sicca Rupees 2,91,76,724; which shews an accession of revenue of about Rupees 66,76,724 in seven years: one of the best practical proofs that can well be adduced, that the proposal for the extension of the permanent settlement was at least premature.

If one-fourth of the arable land was uncultivated, and there were, "as the collectors urged," no capitalists to pay for such land, consequently the rent fixed on the permanent settlement would have fallen to be fixed on the cultivated land only. On what principle of equity could a settlement have been formed to give away this fourth of the whole arable land of the country without an equivalent?

In answer to this it may be stated, as Lord Cornwallis did in 1789, "that government, by reserving to itself the "internal duties on commerce, might at all times appro- "priate to itself a share of the accumulating wealth of its "subjects, *without their being sensible of it;*" and for the certain diminution of land revenue we may look to other sources of taxation, "and thus make the burden "more equal." But it has now been admitted, that the new sources tried have been altogether unsuccessful; and hence the arguments of 1789 must be given up. It must never be forgot, moreover, that it is impossible for government to levy taxes, internal duties, &c. such as are here hinted at, without letting loose on the people myriads of harpies, in the shape of custom-house peons, excise-officers, police-chokydars, &c., which would devour the commerce of the country, and destroy the comfort of the people.

It has been urged, I am aware, by some, on Mr. Colebrooke's side, that the great increase of revenue in the upper provinces, and extension of cultivation, have arisen in a great measure from the expectation of the permanent settlement entertained by the people. I admit, and indeed know well, the great increase of cultivation; but I deny that it has been owing to this cause: and so far as I am able to judge from a long residence among them, and from the opinion of others still better qualified to speak to the fact, I do not think that the people of the Ceded and Conquered Provinces, notwithstanding the promises of government, ever really looked for a permanent settlement.*

The

* This affirmation has been remarkably verified. The present territorial secretary to the Bengal government, who accompanied the late Governor-General to the Ceded and Conquered provinces, remained there for the purpose of inquiring into the operation of the

The additional cultivation, I believe, is entirely owing to the industry of the husbandmen, the cultivators, and real owners of the soil, under the protection of a just and settled government: a class of men of superior pretensions, identified, as it were, with the soil; and who, let it be remembered, have never, save in times of anarchy and oppression, been accustomed to any thing but a *permanent settlement;* that is to say, to permanent possession, on paying a fixed and definitive *rate* of rent for their lands. But let us examine this a little farther.

The increase of land revenue in the Ceded and Conquered Provinces, from 1807 to 1813, six years, was fifty-five and a half lacs of rupees; and all this *after* the permanent settlement promise of the 14th July 1802, 15th September 1804, 11th July 1805, and Regulation X, 1807, had been made, and *as often put off.* And it is remarkable, that previously, to 1807, the date of the last broken promise of a permanent settlement, the increase did not exceed ten lacs: ten lacs in five years! It may therefore, with at least as much plausibility, be maintained, that it was not till the people felt pretty well assured that there would be *no permanent settlement,* that they did heartily set about increasing the cultivation. Nor is it at all necessary to have recourse to a cause so remote, to account for increase of cultivation and of revenue, when we advert to the internal tranquillity of the country, the high prices the husbandman

revenue system. Many hundred petitions were presented to him, complaining of other grievances; but not once was this much-averred promise of a permanent settlement ever mentioned. This was the answer given to me by Mr. Holt Mackenzie, when I put the question to him—and those know little of that invaluable public officer, who can for a moment suppose that he could pass over a point so important, or be misled in the inquiry.

bandman received for the produce of his labour, together with perfect freedom from oppression and undue exaction of every kind.

I have, in many parts of the Ceded and Conquered Provinces, seen grain selling at twenty-five seers per rupee, where we were credibly informed by the natives that three maunds (one hundred and twenty seers) were often, even generally, procurable for that sum. Such prices are better calculated to extend cultivation than promises of a permanent settlement.

If, again, it be insinuated, which it appears to be, that the zumeendars paid a higher revenue to government, to allure government into the grant of a permanent settlement, how did they raise this vast capital of fifty-five and a half lacs of rupees annually: a fourth of the whole rental of the provinces, when Mr. Colebrooke wrote? This is a question that can only be answered in one way.

Mr. Shore's (Lord Teignmouth's) estimate is quoted by Mr. Colebrooke, "that no less than a third of the amount "received from the cultivator is required for the charges "of collection, and intermediate profit between govern- "ment and the raiat."* On this estimate, Mr. Colebrooke says, the permanent settlement in Bengal and on the coast was formed. And Lord Cornwallis, at the same time, estimated no less than a third of the Company's territory to be a jungle, which Mr. Colebrooke confirms, and states that "the researches in which I (Mr. Colebrooke) was "engaged at the time, furnish me with grounds for the "opinion, that the estimate may, with great approxima- "tion to accuracy, be understood as applicable to lands "fit for cultivation, and totally exclusive of lands barren "and

* Vulg. "ryot."

" and irreclaimable." Here, then, we have confessedly one-third of the whole cultivable land, and one-third of the whole " gross collections from the cultivator," avowedly relinquished by the government; and we are told that this should be the basis of the permanent settlement.

Let us apply this principle of a permanent settlement to the Ceded and Conquered Provinces, and exhibit to the world what those advocates for a permanent settlement were prepared to relinquish.

Mr. Colebrooke wrote in 1808, when the jumma of the Ceded and Conquered Provinces was Rs. 2,25,00,000
In 1815, however, it was Rupees 2,91,00,000. It is now (1823) upwards of.....Rs. 3,00,00,000*

Add one-third (the expense of collection) to make up " the gross collections," per Lord Teignmouth's and Mr. Colebrooke's estimate of charge of collection and intermediate profit between the ryot and government	1,00,00,000
	4,00,00,000
Add one-third more for cultivable, but uncultivated lands, on the authority of Lord Cornwallis, corroborated by the writer above alluded to.....	1,33,33,333
Total ultimate gross collections from the ryots, supposing the lands wholly cultivated	5,33,33,333

The

* See printed papers laid before Parliament, June 1822. The land revenue of the western provinces, including Benares forty-two lacs, was 3,44,16,078 sicca rupees.

Brought forward ...		5,33,33,333
The expense of collecting the revenue, as above, is stated by Mr. Colebrooke at one-third. But the Governor-General, in his minute of September 1815, tells us, it did not in 1814 "exceed six per cent. on the jumma." But allow six per cent. *on the gross collections* of Rupees 5,33,33,333, it is.....	31,99,998	
And, on the same authority of the Governor-General, the balances for that year did not exceed three per cent., or	15,99,999	
Deduct expense of collection and balances	———	47,99,997
Total ultimate nett revenue		4,85,33,336
From this take the jumma of 1808, which the advocates for the permanent settlement recommended to be permanently fixed	2,25,00,000	
Deduct expense of collection, six per cent.; loss by arrears of rents, three per cent.; equal to nine per cent.	20,25,000	
Total nett revenue per permanent settlement, if it had been made in 1808, as recommended		2,04,75,000
Total ultimate loss of revenue.....Rs.		2,80,58,336

Or in pounds sterling, at 2*s.* 6*d.* per rupee, £3,507,292.

Thus three millions five hundred and seven thousand pounds

pounds sterling, or at the intrinsic value of the rupee, £2,805,833 sterling, might have been eventually lost to the revenue, had the government in 1808 "conferred so great a blessing upon the people" of the Ceded and Conquered Provinces, as those of the Cornwallis school desired to bestow.

Nor have I, in this estimate, noticed the certain prospect there is that the present *rates* of assessment will, in most districts, experience a rise to a great amount. As a reason for this opinion, let me state, that in the *Moradabad* district of Rohilcund, the average rate per beegah of cultivated land is ..... Rupees 1 12
In the adjacent district of Barrelly it is only 0 8
In Gorruckpore, first division, it is 2 12
In the same district, second division, it is 2 3

If land in Gorruckpore be let at two rupees and twelve anas, it must in Barrelly, which is a populous and fertile district, be worth nore than eight anas. And, in the same district, the difference of nine anas per beegah is perhaps too great; as in Gorruckpore itself, where there does not appear any physical reason for so great discrepancy. The navigable river Gogra is the boundary between the two divisions of the district; and, of course, is equally available to the inhabitants of either side, for irrigation or transport of superfluous produce. And that the general rates are low we may be well assured by reference to the rates of former times, and indeed to the present rates, in other parts of the country. In Guzerat "a general rate of assessment "has been fixed, throughout the greater part of the per-"gunnah, at four rupees per beegah for the better, and "three and a half for the inferior sort of land: but in the "immediate vicinity of the Nerbuddah river the rent "varies

" varies from two to twelve rupees per beegah."* But let us look to facts: Mr. Colebrooke, in his Husbandry of Bengal, states the quantity of land in Bengal and Behar actually under cultivation to be 95,000,000 of beegahs, and the jumma, or revenue, at 25,000,000 of rupees; which is but a fraction more than four anas, or in sterling money, five-pence, per beegah. If land in Gorruckpore and Barrelly be worth from eight anas to two rupees twelve anas, it must surely, in Bengal, be worth more than four anas!

The permanent settlement has been advocated " as an " indispensable step towards the prosperity and solid im- " provement of the country." Lord Cornwallis in 1790 argued, that if you, on the grounds of want of information, delay the permanent settlement, " the commencement of " the happiness of the people and the prosperity of the " country would be delayed for ever."....." I shall think " it," says Mr. Colebrooke, " a duty I owe to them (the " Court of Directors), to my country, and to humanity, to " recommend that no time be lost in carrying it (the per- " manent settlement) into effect, and not to postpone for " ten years the commencement of the prosperity and solid " improvement of the country."

But it remains to be proved that delay of the permanent settlement would have the effect here ascribed to it, or that the progress of improvement is more rapid in the Company's permanently settled provinces than in those that are not permanently settled. There cannot be a doubt, that the very reverse is the case. In the lower provinces of Bengal, where nature performs the labour of irrigation, and

* Revenue Letter, Bombay, 10th January 1810. Report of the Broach Commissioners.

and almost of tillage, the average assessment per beegah is probably not five anas. In the district of Kishennagur, in the vicinity of the great cities of Moorshedabad and Calcutta, the Governor General tells us it is six and a half anas, in Behar five and a half anas: but Mr. Colebrooke gives, as above, an average of little more than four anas for Bengal and Behar: while the cultivators in the upper provinces, generally speaking, have to irrigate their lands by the sweat of their brow, and pay from eight anas to two rupees and twelve anas per beegah: and yet, compared with the lower provinces, the march of improvement did advance, in the upper and non-permanently settled dominions of the Company, with tenfold rapidity.

We can shew this very distinctly in the Ceded and Conquered Provinces by the most satisfactory of all evidence, the increase of fifty-five and a half lacs in the land revenue in six years, or about three and a half per cent. annually.* The same progress of improvement in the lower provinces would, at this day, have made, not indeed the revenue (for that is gone for ever), but the land rents of those provinces just double what the jumma of the permanent settlement was, when fixed thirty years ago. Is it so? Will the advocates for the extension of the permanent settlement admit, that the zumeendars of Bengal do really now pocket two crores and a half of rupees annually, by the "solid improvement of the country" consequent to the permanent settlement?

On the contrary, there is good reason to think that the permanent

* The improvement of the Ceded and Conquered Provinces has, of course, not kept up the pace here indicated. It is impossible; but there is no doubt that the progress will be satisfactory, so long as the assessment is moderate.

permanent settlement has really retarded the improvement of the country. Let us take the district of Benares, one of the finest provinces. I select it because it is that which lies immediately contiguous to the non-permanently settled districts. "The land revenue," says the Marquis of Hastings, "of that district (Benares) appears to fluctuate "in its amount without improving, and was the last year "*half a lac below the rate assessed originally by Mr.* "*Duncan!*"*

Thus, while the adjacent districts, on periodical settlement, were advancing with a rapidity of improvement almost beyond belief, this fine province had long been stationary and was retrograding.

The appeal to humanity, in this discussion, is I apprehend misplaced. If it were "humane" in a handful of conquerors, ignorant of the rights of individuals (and I will for the sake of humanity, declare them to have been so), to deprive the whole population of India of their property, possessions, and privileges, and to throw them, like so many herds of cattle, into the hands and bondage of a class of persons, proverbial throughout India as oppressors and extortioners, I mean the zumeendars; if this be humane, then, indeed, in the name of humanity, let us hasten the permanent settlement.

Lord Teignmouth's description of a Bengal zumeendar will edify us on this point; and then let us say, in the name of humanity, whether such a character be likely to improve the lot of those whom the advocates of the permanent settlement would place for ever under him. "If," says that enlightened and humane person, "a review of the "zumeendars

* Minute, p. 23.

" zumeendars in Bengal were made, it would be found that " very few are duly qualified for the management of their " hereditary lands, and that in general, they are ill-edu- " cated for this task. Ignorant of the common forms of " business and of the modes of transacting it, let a zumeen- " dar be asked what are his rents, and the rules for de- " manding and fixing them in his district, the assessment of " any pergunnah, the produce, whether it has increased or " decreased, what manufactures, &c.; his replies would " probably be the same as if he had never entered it; or " he would refer to his dewan for information. On one " point he is always clear and explicit: the inability of " his lands to pay the assessment, &c. The business, in " general, is exclusively transacted by the zumeendarry " servants; and all that the zumeendar looks to is, a release " from trouble, an exemption from the importunities of " government, and a sufficiency to gratify his wants, either " present or anticipated. But although the power of dis- " mission and appointment of their servants rests with " them, and although this power is employed as a source " of traffic and emolument, the zumeendars are as much " dependant upon their servants as the latter are upon " them. Their ryots have seldom access to them; and " when they are permitted to approach, or force an in- " trusion with complaints and petitions, they are dis- " missed to wait a reference to the dewan, or perhaps " sent back to their homes, with an order in the name of " the zumeendar, which the dewan has dictated: nor is " the sale of justice unusual with them. The avowal of " their hereditary rights, and great regard paid to them " by the British government, has inspired the zumeendars " with an idea that their rights are indefeasable. Its opera- " ation of late years has seldom, I believe, proved bene- " ficial to the country. It has sometimes been attended

" with

" with great evils: that of preventing the ryots from com-
" plaining against exactions, from the fear of future re-
" sentment."*

Is this a character which the dictates of humanity would induce us to place in power over the people? Shall we transfer the duty of the " solid improvement of the country" from ourselves into the hands of a class of persons, such as are here but too faithfully described?

It is a point, I conclude, now fully settled, that the law, as well as the custom of India, gave to the cultivator before described the right of *possession*. To give, therefore, " a " right of property in the soil," as Lord Cornwallis did by the permanent settlement to the zumeendars, was virtually, if not absolutely, depriving the people of their right, and transferring it to others. Yes, I am told; but his lordship did not anticipate that the zumeendars would remove the cultivators; it was not intended that they should have that power. His lordship, in fact, states the supposition as an absurdity. " Why," says he, " should they " remove one man to take in another?" The answer should have been, " Why empower them?" His lordship, indeed, designed to secure the people in one of their most valuable privileges, by enacting that the " landholders should not increase the *pergunnah rates* of rent, as hereto-
" fore established." The zumeendar might, however, *oust* for non-payment of rent: and the amount of that rent might be fixed by the proprietor at any sum, however exhorbitant, because the pergunnah rates were not uniform nor specified; and therefore, were the poor man able to drag his landlord through all the sinuosities of our courts, neither the pergunnah rate nor the exorbitancy could he prove

* Minute, June 1789.

prove against him. Consequently, unless the ryot chose to submit, he must be ousted.

Lord Cornwallis tells us, "that Mr. Shore's proposition, "that the landholders shall be obliged to grant pottahs to "their ryots, in which shall be entered the amount of their "rents, and that no ryot shall be liable to pay more than "is specified in his pottah, if duly enforced by the collec- "tors, will soon obviate the objections to fixed assessment, "founded on the undefined state of the demands of land- "holders upon the ryots."*

But it so happens, that neither the zumeendar nor the ryot are willing to grant or receive pottahs: the former, that he may exact the utmost; and the latter, that he may not be bound beyond what he may be able to perform; both proceeding from the same cause, that want of good faith which is universal, and seemingly the legitimate offspring of the ill-defined situation in which the parties are unhappily placed.

The inconsistency, however, of an enactment not to increase the rents of an estate, with a declaration of a proprietary right, is obvious. But having bestowed the absolute property of the soil, absolute power over it naturally followed, if it did not accompany the grant; and to attempt to control the effects of this by a legislative order, displayed, in no small degree, a want of knowledge of the science of government and of mankind.

Thus, was the system of Lord Cornwallis most manifestly unjust, though the motives which influenced his lordship were undoubtedly benevolent. Surely, those who follow

* Minute, 3d February 1790.

low him, as advocates for the permanent settlement, and who wish to extend it, notwithstanding the experience of thirty years, which his lordship had not, but which they have, to guide their judgment, ought to pause before they sanction so grievous a sacrifice of the rights of a whole nation.

An intelligent person, speaking of the zillah of Juanpore, in 1819, on this subject, writes as follows: " the fact " is, that though the settlement which government made " with the zumeendars is unchangeable, and though these " persons have no right to raise the rents upon tenants who " live on the soil, or to oust them while they pay their rents " regularly; and although there is, *at the very least*, one- " third more land in cultivation now than at the time " of the permanent settlement, the rent of land has risen " *three-fold*, and no zumeendar will accept of rent in kind " (that is half the produce,) who can by any means, fair " and unfair, get his rent in cash. The zumeendar has " various means of evading the right of the resident tenant " to hold his land at a fixed rate, independent of their " power, by the regulations to oust on failure of regular " payment of rent, of which they seldom fail to avail them- " selves. Should a zumeendarry be sold by government for " arrears of revenue, all leases become void (by the regula- " tions); and a very improveable estate is frequently " thrown in arrears to government, that it may be sold to " void the leases, and purchased by the owner. Except " for this purpose, from disputes among joint proprietors, " and intrigues in various departments, I believe estates " are seldom sold. The settlement is so light, that all " arrears of revenue arise from the above causes.

" Now, from three to four rupees are given per beegah " for

" for land to cultivate indigo : formerly, one rupee ten anas " to two rupees eight anas was the usual value. On an " average, it may be fairly stated, that of the land held by " resident tenants on lease, by brahmins and rajpoots, " seven-tenths have risen from ten anas per beegah to one " rupee eight anas; and of the lands held by the lower " casts of cultivators, half has risen from one rupee to two " rupees eight anas, one-fourth from one rupee eight anas " to four rupees, and one-fourth from two to five rupees. " With such an inducement to oust the ancient tenants, it " is not to be wondered at though every landholder should " exert himself to do so," &c.

So much for the question of humanity. Mr. Colebrooke next combats the objections which had been started by his opponents, on the score of our deficiency of information. He says, " the settlement, even if temporary, must (*Q.* why " must?) be made, in the first instance, with the landholders " or farmers. Minute scrutinies would be vainly under- " taken ; they would harass the people with no real benefit " to government ; and without such minute and vexatious " scrutinies and measurements, the same complaints of in- " sufficiency of information, obtained from the general " inquiries or from accounts of doubtful accuracy, would " be made at any future period." This was urged almost in the same terms by Lord Cornwallis, in 1790.

But in answer to these arguments, it may justly be said, that we certainly possess infinitely more information than at that period was possessed ; and after the labours of Colonels Reade and Munro, and many other valuable revenue servants, the Company need not despair of having not only every information, but of being able to profit by it in practice throughout India.

Nor is there any necessity for making a settlement with "farmers," or any class of intermediate personages; because, not only the village-settlement, but even the field-settlement, has been, and may easily be, effected with the husbandman.

I also believe that minute scrutinies might not be "vainly undertaken;" because they have been successfully executed, and it has not been found that the people have felt harassed by them. Nor is it likely that they should; inasmuch as the people are perfectly accustomed to such minutiæ of scrutiny, however much the head zumeendars have been accustomed to be dealt with by the lump, in their transactions with us. Finally, while such minute scrutiny would be of real benefit to government, and I believe not less so to the people, the result of it would obviate all doubts as to accuracy of information.

It is, I apprehend, quite impossible to levy, with common fairness towards the people, even an extensive land revenue, without the most minute scrutiny. Common justice requires it. Unless, indeed, it shall be maintained that we can act towards them, blindfold, more equitably than we could with our eyes open and thoroughly informed. Minute scrutiny is to be deprecated, only when it is made with the view to oppress the people, instead of imposing, equally, a moderate assessment. We must not forget, that the same amount of revenue, as now, must, at all events, be levied. To equalize the burden, therefore, is the question, not relief from all burden.

Next we are told of the policy of the measure. "It is "of the utmost importance, it is essential for the safety of "the state," says Mr. Colebrooke, "to conciliate the great "body

" body of landed proprietors, to attach to the British " government this class of persons, whose influence is most " permanent and most extensive." And again: " the " landholders enjoying their estates under a moderate " assessment, fixed in perpetuity, are not ignorant that a " change of government would be followed by the exaction " of an enhanced assessment, &c. If, on the contrary, the " utmost revenue be exacted, the landholders have nothing " to fear, and every thing to hope from a change."

This also is stated in paragraph 95 of Lord Cornwallis' minute of the 3d February 1790. " In case of a foreign " invasion," says his Lordship, &c. See his Lordship's minute. But the fact is, that the " great body of landed " proprietors," to whom the above does in *reality*, though not intentionally, apply, are just that class of people which the permanent settlement of Bengal has completely destroyed, and instead of conciliating, has blotted out from among the different gradations of society in that province. The village cultivating zumeendars, the best of the people, honest, manly, independent men, that are now to be met with in every village of the upper provinces, the younger branches of whose families crowd our armies and crown them with incessant victory—the permanent settlement has annihilated this class of men in the lower provinces, or totally and entirely changed their character.

It is not only beneficial to, but unquestionably an indispensable obligation upon, every government, to conciliate its subjects; but such men as the real landed proprietors, the most valuable men in the country, require not any particular conciliation. They are satisfied with the possession of their rights and protection in that possession: an act, therefore, which, in the neighbouring province of Bengal, has

in its effects destroyed those rights, ought not surely to be had recourse to as a conciliatory measure, in our adjacent and more recently acquired dominions. That permanent settlement, which is required to effect really any great object, is not the permanent settlement of 1793, but the *permanent-rate* settlement I have recommended.

The remaining part of the proposition will be disputed by no one, *viz.* "that landholders enjoying their estates "under a moderate assessment in perpetuity, would be "satisfied with our government and not wish for a change; "whereas if, on the contrary, the utmost revenue be ex- "acted, they would have nothing to fear and every thing "to hope from a change." That is, a *moderate* rent *in perpetuity* would be preferred to an exaction of the *utmost revenue:* a rack-rent. *True;* and true, also, whether "in perpetuity" or not. A rack-rent, perpetuated, would be no cause for satisfaction. The *moderation* of the assessment is not the question: all agree as to that. It is the question of the *perpetuity* of a *moderate* rent that we are discussing.

The village zumeendars of the upper provinces are not afraid of being turned out: they never have been turned out. The practice of ousting such people was introduced into India only by the permanent settlement; and to tell such men that they shall hold their villages in perpetuity, if understood at all, would be considered by them as a kind of matter of course speech, without value or import.

We are next told that the permanent settlement has secured the tranquillity of the lower provinces; and it is added, "whenever the internal peace of the Ceded and "Conquered Provinces shall be as well secured, nearly the "whole

" whole military establishment will be available for the " purposes of active warfare. No measure would more " essentially contribute to this very desirable end than that " of a permanent settlement."

The fact is, that the upper provinces are really as tranquil as the lower provinces; and I will venture to add, that, if reference be made to dates of conquest and cession, and to events, it will be found, that the upper Conquered and Ceded Provinces became more speedily tranquil without the permanent settlement, than the lower provinces did with it. The circumstance of a greater number of troops being stationed in the upper provinces than in the lower provinces has nothing to do with the internal state of the country, but with its frontier situation; and those very troops, it must not be forgot, tend to preserve the tranquillity of the lower, as well as the upper provinces.

A further reason for concluding a permanent settlement of the Ceded and Conquered Provinces stated is, " that " temporary settlements afford opportunities of frauds; " and the purity of the civil service of the Company on " this establishment, fixed on a basis apparently secure, by " Lord Cornwallis' system, would be inevitably lost in the " long continuance of temporary settlements of the revenue " in the extensive provinces above Benares."

I am not prepared to admit either that Lord Cornwallis' principle of high salaries, here alluded to, did of itself secure the purity of the civil service; far less that temporary settlements of the Ceded Provinces would inevitably destroy the undoubted purity of that honourable class of public servants. But were government put in possession of ample data, founded on minute scrutiny, which has been

so much deprecated, their revenue officers might form the settlement of the districts from such data, on a basis which should render it difficult for any individual to be impure, without being so liable to detection that the risk would over-balance the profit; and government would then, in every case, possess the means of judging themselves whether there were grounds of suspicion. Occasional changes of situation, too, among the revenue officers, would facilitate discovery, both of fraud and of the resources of the country.

Such occasional changes of their charge, among officers of high trust and extensive discretionary power, would, I venture to presume, be beneficial to the public interest. The risk of detection by a successor would prove a strong check to the fraudulent; and of those who are pure, if the individual moved happen to be an able and upright servant, his presence elsewhere would be highly advantageous, where he might relieve one whose qualifications are less estimable: and thus, in time, every district would derive the benefit of the highest order of talents the service afforded, till at length the system would be at least very highly improved.

It may lastly be remarked, that the most sanguine opponents of the permanent settlement do not recommend annual, nor even frequent settlements; but, on the contrary, most of them are advocates for settlements of considerable duration: so that frequency of opportunity to be dishonest would not exist; and consequently, the measure would prove at least less detrimental to the morals of the Honourable Company's civil service. But it by no means follows, were the settlement even frequent, that the assessment should be always altered; the *rates* per beegah, not at all. Any diminution of revenue would immediately call forth

forth investigation; so that the former settlement would limit the power of the corrupt to the narrow field of increased cultivation.

The Bengal government of 1813, however, take at least a more plausible view of the permanent settlement than those who would have that settlement even at the expense of a great diminution of revenue. In their general letter of the 17th July 1813, which state paper was considered, probably, by those who framed it, to exhaust the subject,—in that letter, the Bengal government say, that "if the "permanent settlement were calculated to reduce the pecu-"niary resources of the government below the means which "might otherwise be drawn from the country, they must "have hesitated to recommend it: but in our judgment, "taking any period of years, government will derive a "greater revenue, within that period, from the Ceded and "Conquered Provinces, than could, with any sort of "reason, be expected to be drawn from those territories "under temporary assessment."*

This is a very plausible introduction to such a subject; and, the high authority whence the opinion comes must give it more than ordinary weight. I do not say more against it, than merely to state that, at the very time this letter was composed, commencing with 1807, "the re-"sources of the government" were increasing at the rate of three and a half per cent. per annum; in 1814 they had increased fifty-five and a half lacs, and in 1820, seven years only after the date of the above letter, seventy-five lacs of rupees, under temporary assessments.

How different the nature of a permanent settlement! It is

* Paragraph 2.

is essential to the nature of a permanent settlement, or limitation of the land revenue of a country, that its amount shall *diminish;* not merely from the depreciation of currency. Nothing can remain stationary, every thing is liable to change; but no change can operate to the advantage of government. That which *cannot increase, must decrease.* You cannot, under permanent settlement, raise the rent *of any one estate;* but many estates, by neglect or mismanagement of owners, or even by unavoidable calamity, must become depreciated. The jumma cannot be realized; the owner is ruined; the estate is sold; nobody will buy it. What is the consequence? The jumma must be reduced; government are the losers; and the permanent settlement has shut up every mode of reimbursement. A neighbouring estate has perhaps gained as much, by partial alluvion, or by increased value of its productions, to supply the neighbouring town before supplied by both: yet no reimbursement accrues to government. The permanent settlement, therefore, is a system of finance, which carries within itself the seeds of destruction of the resources of the government; and therefore, on their own principle, the government ought to have "hesitated to recommend it."

The letter then goes on, professing to reply to (refute) the objections stated by the Honourable Court of Directors to the immediate conclusion of a permanent settlement. But the objections of the Honourable Court are not so easily refuted. They are stated to be,

First. Defective information. Bengal has been thirty years in our possession, and yet imperfectly known.

Secondly. The disappointment experienced in Bengal in being unable to augment the other branches of revenue.

Thirdly. The inexpediency of such a settlement, with reference

reference to the peculiar character of the natives of the upper provinces.

Fourthly. Loss from the depreciation of the precious metals.

To the *first* the answer of the Bengal government is, "you think our information must be in proportion to our "length of possession of the country: but there can be no "grounds for this, if the nature of the accounts and sources "of information are considered. These are the accounts "deposited in the offices of the collectors themselves, or "what are usually called the *sudder serishta*, the zumeen-"dars' accounts, and the accounts of the canoongoes and "putwaries. The three latter descriptions of accounts "may be fabricated; but this objection must apply equally "whether the settlement be permanent or temporary." True: but in the one case, the errors may be corrected next settlement; in the other, never! and moreover, these are not by any means the only sources of information attainable.

"If, again," they continue, "those documents cannot be "relied upon, the idea of a permanent settlement must be "abandoned; for, generally speaking, there are absolutely "no other documents which can be applied to the object "in view." Now this is precisely what the Court say; that government are, as yet, in possession of no documents or information on which to form the settlement. But surely government did not mean to say that no better data or information *can* be obtained than the collectors' *sudder serishta*, or "falsifiable, if not fabricated, zumeendars' or "canoongoes' accounts?" These accounts are good for as much as ought to be required of them; namely, as a guide through a more minute investigation, to which a long period of years must be devoted.

The

The government, in 1790, also asserted the extent and accuracy of *their* information, and their own superior capability to carry into effect the permanent settlement. Lord Cornwallis says, "I must declare that I am clearly of "opinion, that this government will never be better qua-"lified, at any given period whatever, to make an equitable "settlement of the land revenue."* But, probably, his Lordship's followers and disciples in the permanent settlement controversy would prove apostates on this point.

"It may be urged," continues this letter, "that this "want of information furnishes a strong argument for "those local surveys and valuations your honourable court "recommends. We, however, are adverse to them. They "may have answered at Madras or Bombay. We know "not that they have; but the experience in Bengal for-"merly is adverse to them. The chicanery and cor-"ruption practised by the large body of natives necessarily "employed, and the heavy expense, have led to their "being relinquished; and we are satisfied that the most "experienced and capable of the revenue officers would "deem the revival of it an evil."

Here I may observe, that the revival of the practice of chicanery and corruption would indeed be an evil; but I cannot see how the minute ascertainment of the resources of the country could be deemed an evil by any set of men whatever: a practice, too, either really observed, or supposed to have obtained for ages and ages throughout all India. Formerly corruption and chicanery were very prevalent in every department of our Indian government. Times are vastly changed, I am happy to say, for the better; nor do I see the necessity of confiding implicitly in native agency,

* Minute, 3d February 1790.

agency, in any department: and there can be no doubt, were government rigidly to adopt as a rule to employ none but able men in this department, that the most efficient control might be, and would be, established by the European officers over all natives that should be employed under them.

I have only farther to notice, on this point, the expression of government as to the opinion of the most experienced and capable of their revenue officers against surveys. Allowing the individuals alluded to credit for an ample share of talent, their opinions could be formed only on conjecture, aided perhaps by the perusal of the official records of the time when such surveys were attempted. None of them could speak from actual experience; whereas we have actual experience to speak against them, in recent times, in other quarters of India.

Those surveys, &c. are stated as "being peculiarly unsuited to the Ceded and Conquered Provinces, where the lands are generally parcelled out into small properties, the joint-owners being themselves the cultivators. A minute scrutiny into the resources of estates, is, consequently, far more difficult than when the lands are held by tenants, under a superior zumeendar; the measurement there ascertaining the rents payable to the zumeendar preparatory to the fixing of the public demand."

Now, as such scrutiny is admitted to affect all, both cultivators and zumeendar, as it must be evident that a superior zumeendar would, at least, be as unwilling to have his estate subjected to this scrutiny as an inferior owner and cultivator would be, I cannot see how the absence of the

the difficulties which a superior zumeendar would be able to throw in the way (and assuredly he would be disposed to do so) of such a scrutiny ought to render it "far more "difficult," where there are only small proprietors cultivators. The effect of the survey, &c., to the cultivator, in either case, would be the same, because it would develope the resources of his lands: the intervention of a superior zumeendar would, in no way, save him from this. But, at all events, the argument is only good to shew the *difficulty*, not the impracticability, of the measure.*

Colonel Munro does not state any great difficulty he experienced, nor any disposition on the part of the people to withhold information: or if they did, he took measures for obtaining it from disinterested neighbours. He tells us, "he made them their own assessors." To measure and assess by whole villages, in many cases, would be found sufficient. The joint-coparcenary proprietors would equalize the assessment among themselves, according to their several shares, if amicably disposed to one another; if not, there would be no fear of want of information from the conflicting interests of parties.

Whether such surveys, and minute scrutiny into the resources of the country, have answered at Madras and Bombay, as they were carried into effect there, I will not pretend to say; but this I will maintain, that, until it shall be established that good information is less likely to lead to happy results in practice than bad information, until knowledge shall be proved to be less useful than ignorance, such minute scrutiny must be beneficial. But at Madras

* It is now ascertained, that no difficulty exists in effecting surveys, —no impediments whatever; many extensive surveys having been actually made in the Ceded and Conquered Provinces.

Madras and Bombay, and in Bengal, the best measures may be attended with baneful concomitants, which may convert their good into evil. If accurate investigation be only a prelude to rack-rent and extortion, I would call it an evil, as I should the knowledge of anatomy to an executioner, who applied his knowledge only that he might torture his victim with greater accuracy of excruciation; but, possessed by the intelligent, able, and benevolent officer of government, who applied his accurate information to the *equalization of the moderate burden of the state* among an industrious people, who were all of them willing to bear his fair and just proportion, but no more, such information must be a blessing to the country generally, and to the individuals concerned particularly; who, instead of opposing, would doubtless forward its attainment. The late lamented Surveyor-General of India, Colonel Colin Mackenzie, has often told me, that in his extensive surveys on the coast, he found the natives extremely willing to afford every kind of information. And I believe it will be found universally, where the Ryotwar settlement has not been attended with success, that over-assessment has been the cause.

The expense of such investigation is, of course, a fit subject for consideration, But, as that is a matter of calculation, the question is not very intricate. Colonel Munro's survey and analysis of the resources of the Ceded Districts under him, he calculated would cost four per cent. on the revenue of one year; but, in consequence of his attention having been taken from it to other public duties, he took nearly five years to complete it; and, instead of four, it cost five per cent. At four per cent. on the revenue of the Ceded and Conquered Provinces of Bengal, the expense would amount to about twelve lacs of rupees.

Colonel

Colonel Munro's report of the method he adopted in forming the Ryotwar settlement of the Ceded Districts is highly interesting. The following extracts will shew his plan of procedure. The first is the description of the *survey*.

" It (the survey)," says he, " was begun in June 1802, " by four gomastahs of my cutchery, who were, at that " time, the only persons in the Ceded Districts who under- " stood land-measuring. It proceeded very slowly at first, " from the want of hands; but, several of the inhabitants " being instructed every month, the number of surveyors, " by the end of the year, amounted to fifty, and was, in " the course of the following one, augmented to a hundred. " The surveyors were at first formed into parties of six, " but afterwards of ten; to each of which a head surveyor, " or inspector, was appointed. With the exception of " hills and rocks, all land, of whatever kind, was measured. " All roads, sites of towns and villages, beds of tanks and " rivers, wastes and jungles, were included in the survey. " Ancient wastes were usually measured in extensive lots, " to be subdivided hereafter as they may be occupied: " but, when it could be conveniently done, they were also " frequently divided into fields of the ordinary size. As " all fields that have ever been cultivated have names, they " were distinguished in the survey registers by these names, " and also by a particular number affixed to each, in the " order in which it was measured. The surveyors used " everywhere the same standard-measure: a chain of " thirty-three feet, forty of which made an acre. They " were paid by the acre, at such a rate as it was supposed " would enable them, with diligence, to earn about six " pagodas monthly. They were encouraged to be expe- " ditious by the hope of gain; and deterred, at the same " time,

" time, from being inaccurate through haste, by the fear " of dismission; for no false measurement beyond ten per " cent. in dry land, and five per cent. in wet,* whether " proceeding from negligence, from haste, or design, was " ever excused: and the frequent instances of loss of em- " ployment, on this account, that occurred during the early " part of the survey, soon rendered the surveyors so cau- " tious, that their measurement was afterwards, in general, " sufficiently correct. The vacancies that were continually " happening among them from dismission, and more fre- " quently from sickness, were at all times easily filled up, " from among a number of persons who always attended " them with the view of being instructed and employed; " but these persons, on being appointed, were, in order to " guard against partiality, sent to the party of a head sur- " veyor, different from that by whom they had been re- " ported as qualified.

" The head surveyors, or inspectors, examined the mea- " surement of the surveyors placed under their charge. " They were paid by the month. To have paid them by " the acre would have defeated the end of their appoint- " ment, by preventing them from examining carefully and " deliberately the operations of the under surveyors. But, " to guard against remissness, and to leave them at the " same time sufficient leisure for investigation, they were " required to measure monthly one-tenth of the quantity " of land fixed for a surveyor. They were not permitted " to make this measurement all at once, in the course of a " few days, but were obliged to make it gradually and " uniformly throughout the month, by taking a few fields " every day. The whole of the inspectors were frequently " removed from one party to another, because by remaining " too

* *i. e.*, Where the lands have access to water for irrigation.

" too long with one party, they were apt to entertain par-
" tialities and enmities, and to pass over the false measure-
" ment of some surveyors, while they exaggerated the
" trifling errors of others; and, for these causes, many in-
" spectors were at different times dismissed. Both inspectors
" and surveyors were, at first, allowed a share of the pro-
" duce of all extra-collections and unauthorized enaums
" which they brought to light; but as they often earned
" more in this way than by the survey, and with less
" labour, it was soon found that the survey was impeded
" by these investigations, and it therefore became necessary
" to confine them to the single object of measuring the
" land.

" The surveyors were followed by assessors; two of
" whom were allotted for the assessment of the land mea-
" sured by each party of ten surveyors. The assessor, on
" arriving in a village, went over the land with the *potail*,
" *curnum*, and ryots, and arranged it in different classes,
" according to its quality. In all villages, the land, both
" wet and dry, had rom ancient custom been divided into
" first, second, and third sorts, agreeably to their supposed
" respective produce; but these divisions not being suffi-
" ciently minute for a permanent assessment, the classes
" of wet land in a village were often increased to five or
" six, and those of dry to eight or ten. The classification
" was made rather by the potail, curnum, and ryots, than
" by the assessor; for he adopted their opinion, unless he
" saw evident cause to believe that it was wrong, when a
" reference was made to the head ryots of any of the
" neighbouring villages, who fixed the class to which the
" land in dispute should belong. The quality of the land,
" where all other circumstances were equal, determined its
" class; but allowance was made for distance from the
" village,

" village, and every other incident, by which the expense " of cultivation was augmented. The ryots were directed " to be careful in classing the land, as the whole of any " one class would be assessed at the same rate; but they " were not told what that rate would be, because it was " apprehended that they would be induced, by such infor- " mation, to enter a great deal of the better sort of land " in the inferior classes. It was discovered, however, after " a trial of a few months, that, by following this mode, the " potail and ryots not seeing immediately the effects of " classification, were not sufficiently impressed with its im " portance; and sometimes by entering too much land in " the higher classes, and sometimes in the lower, the as- " sessment of some villages became more than they could " possibly pay, and that of others much less than they had " ever paid before. To obviate this mischief, the lands " were both classed and assessed at the same time; by " which means the ryots, perceiving at once the effect of " classification in raising or lowering their own individual " rents, felt the necessity of making it with care. After " this principle was adopted, the classification was in general " sufficiently accurate; except that, in some instances, the " land of potails, curnums, and a few head ryots, were in- " serted in too low a class. These irregularities, however, " were usually corrected, either on the spot by the assessor, " with the advice of the ryots of the adjacent villages, or " afterwards, by persons appointed to revise his assessment.

" As the assessor did not always rectify fraudulent clas- " sification, but sometimes remained ignorant of it from " negligence, or connived at it from bribery, and as it was " impossible to ensure from so many individuals a punctual " observance of the same method of proceeding, it was " thought advisable, for the sake of preserving uniformity

" and of checking abuses, to appoint five head assessors,
" selected from the most intelligent of the ordinary assessors.
" Each head assessor had four ordinary ones under him:
" his business was to review their classification and assess-
" ment, and to correct them when wrong. He looked par-
" ticularly to the classification of the lands of such persons
" as he suspected might have been favoured by the as-
" sessors; and when he was convinced, both from his own
" opinion and that of the principal ryots of the neighbour-
" ing villages, that partiality had been shewn, he trans-
" ferred such lands to higher classes; and, in the same
" manner, when he found that the lands of any ryots were
" classed too high, he removed them to their proper classes.
" If he saw no occasion for changing land from one class to
" another, he examined whether whole classes were not
" assessed too high or low, and raised or depressed them to
" different rates, wherever it appeared that an alteration
" was necessary; but he was not permitted to make any
" alterations in the accounts of the ordinary assessor. Such
" alterations as he thought requisite were entered in those
" accounts, in columns left for that purpose; so that when
" the settlement came to be finally made in the collector's
" cutchery, all alterations might be seen, and the reasons
" examined upon which they were grounded. As an in-
" terval of one or two months usually elapsed between the
" investigation of the ordinary assessor and that of the head
" one, there was full time for every ryot to ascertain
" whether his own land was properly classed; and, if he
" thought that it was not, he had an opportunity of stating
" his objections to him on his arrival in the village: and
" as the ryots of all the neighbouring villages were
" assembled, the head assessor, by means of arbitrators
" from among them, easily determined all complaints of
" this nature.

" If

" If entire dependence could have been placed on the " judgment and impartiality of the head assessors, nothing " more would have been required, in fixing the assess- " ment, than to have adopted their estimates; but as " these estimates were sometimes incorrect, and as they " would have been still more so had the assessors been " relieved from the fear of a future examination, the whole " of the classification and assessment underwent a com- " plete investigation, in the collector's cutchery. On this " occasion, all the potails, curnums, and principal ryots of " every village in the district to be settled, were assembled " at the cutchery. The business was begun *by fixing the* " *sum which was to be the total revenue of the district.* " This was usually effected by the collector in a few days, " *by comparing the collections under the native princes,* " *under the Company's government from its commence-* " *ment*, the estimates of the ordinary and head assessors " and the opinions of the most intelligent natives; and, " after a due consideration of the whole, adopting such a " sum as it was thought would *be the fair assessment of* " *the district in its present state*, or what the inhabitants " in similar circumstances, under a native government, " would have regarded as somewhat *below* the usual stan- " dard. The amount fixed by the collector was usually " from five to fifteen per cent. lower than the estimates of " the assessors; for it is the nature of assessment, pro- " ceeding from single fields to whole districts, and taking " each field at its supposed average produce, to make the " aggregate sum greater than what can be easily realized. " *After fixing a certain sum for the district, it next re-* " *mained to determine what share of this sum was to be* " *imposed on each village.** Had the detailed assessment " been

* The reader is requested to attend to what is here marked by me in Italics. It appears to have been entirely overlooked by the op-

" been perfectly correct, it might have been done at once " by an uniform remisson of five or ten per cent. to every " field; but, as this was always objected to by many of " the inhabitants, who thought their lands were not so " favourably assessed as those of their neighbours, either " in the same or other villages, it therefore became neces- " sary to examine again the assessment of every village. " Such villages as claimed more than the average remis- " sion were investigated by the principal ryots of other " villages; and each claim was admitted, either fully, or " with such modification as both parties agreed upon. " The extra remission thus granted to one set of villages " was to be deducted from another; and it was effected in " the same manner, by employing the ryots of other vil- " lages. After settling what proportion of the whole re- " mission was to be allowed to each village, it was still " necessary to ascertain whether or not any alteration was " requisite in the classification of lands. In some villages, " where none appeared to be necessary, and where no ob- " jections were made, the classification of the head assessor " was confirmed, and the rent of each class, and conse- " quently of each field, determined at once, by lowering " the assessment by the rate of remission granted to the " village. In those villages where complaints were made " of the classification, the objections were examined; and, " if they were allowed to be just by ryots not interested in " the matter, the necessary alterations were made. Com- " plaints of whole classes being rated too high or too low, " were much more frequent than those of particular fields " being entered in a wrong class, because each ryot, " knowing

ponents of Sir T. Munro who advocated "village settlements," the " Mouzāwār" system, that in fixing the *amount* of assessment, the Mouzāwār settlement was *one* of the data which Sir T. Munro assumed for fixing the revenue on the land.

" knowing the produce of his own and his neighbours' " lands, took care to see, where their qualities were equal, " that his own were not placed in a higher class by the " assessors; but he was not so anxious about the rate at " which the class was assessed, as he considered that, " whatever it was, it would be as favourable to him as to " others. Where some classes were rated too high or too " low, it was usually owing to the potail and curnum of the " village contriving to make the assessor underrate the class " which contained most of their own land, and overrate " some other one, composed principally of the land of the " inferior ryots. But as the collector's cutchery always " inquired minutely into the assessment of the lands of " the leading men in each village, and as the whole district " was present at the discussion, and every man ready to " prevent another from obtaining an advantage in which " he did not himself share, no fraudulent assessment of " any consequence could possibly be concealed.

" The classification and assessment of the land having " undergone three several investigations, by the assessor, " head assessor, and collector's cutchery, and all objections " having been heard and admitted when well founded, " nothing remained but to ascertain and register the rent " of every field. This was an easy operation; for as each " class of land had been already rated according to its " quality, it only remained to calculate the number of acres " in the field by two, three, or four fanams, as the rate of " the class might happen to be to which it belonged. As " this was a mere arithmetical process, it was performed by " persons hired for the purpose, who were paid at the rate " of one and a half cantary fanams for a hundred fields. " They were superintended by two gomastahs from the " cutchery: and when they had made out two copies of

" the

" the register of fields, one for the collector and the other " for the tehsildar, the survey of the district was closed for " the time. It still, however, remained to ascertain, by ex- " periment, whether the assessment might not be too high " in some cases. In the course of collecting the first year's " survey-rent, a list was made of such fields as were " asserted by the cultivators to be overrated. Their rent " was, at the end of the year, again examined, in the " presence of the principal inhabitants, and either lowered " or confirmed, as circumstances appeared to require. This " was the last operation of the survey; and it usually oc- " casioned a reduction of from one-half to one and a half " per cent. on the assessment. The equivalent might " easily have been made up from lands which had been " underrated, for the assessment was as often below as above " the proper point; but it was thought better, in this case, " to make no alterations, lest it should weaken the con- " fidence with which it was wished to impress the inhabi- " tants in the permanency of the survey-rent. The final " correction, abovementioned, has been made in all the dis- " tricts which were settled by the survey-rent in 1215; but " in those districts where the survey-rent was not estab- " lished till 1216, and in those where it will not be intro- " duced till 1217, the correction cannot be effected until " 1217, in the one case, or till 1218 in the other. It will " occasion a decrease of about ten thousand pagodas in " the total assessment of the land inserted in the state- " ment. The mode of measuring and assessing the land " has been explained at so much length, that it can hardly " be necessary to say more upon the subject; but should " any further information be required, it will be more easily " gathered from the accompanying copies (Nos. 1. 2. 3. 4.) " of instructions to the surveyors and assessors, than from " any description whatever."

What

What remains of these interesting documents will be seen in the Appendix, being much too long for insertion here, yet much too valuable to be entirely omitted.

The above is the outline of the plan, by which the Ryotwar assessment, or settlement of the *Ceded Districts* of the presidency of Fort St. George, was effected by Colonel Sir Thomas Munro. I think the document so valuable, that however reluctant to make long extracts, I could not omit any part of it.

It will be seen, that the data assumed for fixing the total amount of assessment, in any given district, or division, or purgunnah, as it is called in Bengal, were "*the collections* "*under the native governments*," *under the Company's government from its commencement*, the *estimates of the assessors and of intelligent natives*, and *a comparison of the whole*, attending to present cultivation; so that the duty of the assessors was chiefly *the allotment of the total revenue of each village* on the different fields, verifying, it must be observed however, former assessments in the most satisfactory manner, by shewing the quantity of land cultivated and the rent paid.

In concluding this extract, it is pleasing to mark the result of the labours of this invaluable officer, and to see that his services were appreciated, and ultimately rewarded. Mr. Petrie, a member of the Madras government at the time, gives a summary view of the result of what had been effected. "He reviewed the services of Colonel Munro "in the Ceded Districts, where he had raised the revenue "from twelve and a half to eighteen lacs of star pagodas "per annum, and the manners and habits of the people in "amelioration and improvement had kept pace with the "increase

" increase of the revenue. From disunited hordes of law-
" less plunderers and freebooters, they are now as far ad-
" vanced in civilization and in submission to the laws, as
" any subjects under this government. The revenues are
" collected with facility, every one seems satisfied with his
" situation, and the regret of the people was universal on
" the departure of Colonel Munro."

And again: " The example, we believe, is unparalleled
" in the revenue annals of this presidency, of so extensive
" a tract of country, with a body of inhabitants little ac-
" customed to submit to the ruling authority, reduced
" from confusion to order, and (in eight years) a mass of
" revenue, amounting to no less than 1,19,90,419 star
" pagodas, being regularly, and at length readily collected,
" with a remission on the whole of only 3,415 pagodas,
" being one fanam and twenty-two cash per cent."*

In opposition to this, what weight can we give to all the arguments of the Bengal government without a trial of the measure?

I avail myself of this edition, adverting to certain late publications, to remark, that Sir T. Munro's mode of carrying into effect the Ryotwar system of collecting the land revenue has appeared to me to have been much misinterpreted, perhaps rather misunderstood; for it must be allowed, that he has not sufficiently laid open the *principle* of the measure. If he had, I cannot think that he would have met with such opposition from his able opponents, who advocated the " village" or " *Mouzawar* settlement." It has, I imagine, been concluded by some that Sir T. Munro, having measured the field of every ryot, fixed an *arbitrary*

* Madras General Letter.

arbitrary rent on it, perhaps at a high valuation. But this was not Sir T. Munro's system. His mode of settlement can be considered in no other light than as the most equitable mode which that valuable officer could devise, of fairly distributing the assessment: for the *amount*, he plainly tells us, was first fixed *on the district;* and then *on each village.* "The business was *begun* by fixing the sum "which was to be the total revenue of the district." "And "this was done by comparing *what was levied under the* "*native Princes*, under the Company's government from "its commencement, the estimates of the assessors, *and the* "*opinions of the most intelligent natives;*" and "it was "fixed *at what the inhabitants, under a native govern-*"*ment*, would have regarded as *somewhat below the usual* "*standard.*"

Let those who object to Sir Thomas Munro's system, and would proceed on the grand scale of settling at once whole provinces, with one man, or, at least, a few individuals, to whom all his or their countrymen shall be subordinates, if not slaves;—let those who object to Sir T. Munro's system, say, *on what other data* they would proceed that would be more equitable than the above. Sir T. Munro has been charged with the oppression of the ryots; with the levelling principle of requiring the ryot "to make good "the deficiencies of his neighbour, to the extent of ten "per cent.; that is, to the extent, probably, of his whole "*surplus earnings.*" "A. must pay the debt of B." Mr. Tucker is one of Sir T. Munro's opponents; and quotes from the writings of Sir Thomas Munro the following passage: "If the crops are bad, and it appears that some of "the poor ryots must have a remission, the loss or part "of it is assessed *upon the lands* of the rest, where it "can be done without causing any material inconve-

"nience.

" nience. This assessment never exceeds ten or twelve " per cent., and is much oftener relinquished than carried " into effect."

To this it is first to be observed, that *in* 1819 this exaction was ordered to be discontinued by the Court of Directors. But were it not, it may still be said, it is here positively declared that such a measure was to be had recourse to only when it could be done " without *causing material* " *inconvenience;* and was *much oftener relinquished than* " *carried into effect.*" But we must remember, that in the case of " *village* settlements," the total revenue assessed on the village must be made good by the *whole* cultivators. If, therefore, the original assessment had been effected, as above described, at first, on the capability of the *whole* village; and no over-assessment, if A.'s crop be worse than it ought to be, B.'s and C.'s, and D.'s, *with ordinary management*, would be better than they were expected to be. They have probably got the better share. Where then, was the injustice of equalizing the assessment by relieving A.? And if it be just to hold villagers, on *joint occupancy*, liable, *collectively*, for the whole revenue assessed on the entire village, where is the injustice in Sir T. Munro's system? Every community is responsible, more or less, for the acts, even misfortunes, of its individual members. In England the *hundred* is held liable for the property destroyed by mobs and rioters; and in the case before us, if such security were not taken against defalcation of revenue, it is manifest that the assessment *on the whole village* must needs be *permanently* increased, in order to meet occasional defalcation: a mode of settlement, indeed, less obnoxious to such remarks as Sir Thomas Munro's plan has elicited; but whether better, is a different question. In either case, the payment must come from the same individuals; for, be

it

it never forgotten, the government revenue must be realized, to meet the wants of the public service.

We must also remember what the constitution of an Indian village is. It is not a body of individuals whose interests and connections are distinct, perhaps opposed to one another. No; the Indian village contains a tribe, a natural corporation, connected by ties of blood, caste, or vicinage; actuated by one and the same motives, the collective interest of the inhabitants: judging, from experience, that, by such means, they are more certain, than any other, that each must individually secure his own advantage. The joint responsibility, therefore, instead of being deemed onerous, would not only in reality be light, but it would afford to the whole a direct interest in the prosperity of each individual; and thus tend to promote those kindly feelings throughout the community, which total independence, every man of his neighbour,—who he may deem his rival but whose aid in the hour of need he cannot claim,—could never inspire.

In point of fact, the Ryotwar settlement of Sir Thomas Munro, carried into effect as above described by himself, differs from the village settlement of his opponent only in so far as it stipulates only for the land actually cultivated; and goes beyond the village settlement, in so far as the collector himself registers, and concurs in, the internal allotment to each individual, instead of leaving this to be done by the potail, or headman of the village, who at least cannot be equally disinterested.

Now this seems to me to be clearly advantageous to the ryot; for he knows before he sows his field, what he has to pay; he knows that he is sure of retaining *his own field*, and of reaping the benefit of his improved husbandry, without

without being liable to periodical allotment, to compulsive exchange with a less industrious neighbour of his own fertile croft, for the field of the sluggard, as in the Mouzawar and in the joint-occupancy system he would be. He is, moreover, sure that the *maximum* rate of assessment is fixed: a point of high value in Sir Thomas Munro's system, as latterly more fully, yet not sufficiently, explained by himself. So that by the Ryotwar settlement it may be said that every individual is really an independent man.

The village settlement is, in its nature, a hard system compared with this; for it places every individual, more or less, in the power of the engaging zumeendar, whose engagement with the government officers is his *Magna Charta* for every abuse short of the absolute ruin of his non-engaging neighbours. The very fact of his appearing as the general representative of the whole, though with their consent, implies his superiority; and where a superior exists, there must be inferiors. In Sir T. Munro's system, in this respect at least, all are equal: none are raised, none are degraded.

Since the above was written, farther proof of the superiority of the ryotwar system over the village or Mouzawar settlement is found in the evidence taken before the Parliamentary Committees in 1830, to the extent, indeed, that the Madras government was compelled to abandon the village settlements and return to the Ryotwar—the ryots having been subjected by the renters (the engaging zumeendars) to great oppression. "The ryots were subjected to "very great exactions; and the Collector (European), being "shut out from any intercourse with the ryots, had no "power to afford them redress."*

The

* Evidence before Lords' Committee, 30th March 1830—Mr. Chaplin's Evidence.

The General Letter of the Bengal government, to which I have been adverting, farther admits that there were errors committed in the settlement of Bengal; and it notices also, "the warning given to them by the Court of Directors, by "holding up to them the permanent settlement of Din-"digul, which failed entirely and compelled the govern-"ment of Madras to have recourse to village leases."

To the former (the admitted errors of the Bengal settlement) they oppose the regularity, propriety, and care of individual interests, with which the preparatory settlement of the Ceded and Conquered provinces was made; and to the latter, the success with which the revenue was realized, even to a balance in some districts as low as nine anas and five pice per cent. The jummas thus realized were, by Regulation X of 1807, to become the permanent assessment. "Thus," they conclude, "there can be little error and no "danger of a failure."

But the measure of a permanent Zumeendaree settlement, applied to the Indian possessions at all, is, in my estimation, essentially erroneous; and no regularity, propriety, or care of individual interest, can purge it of error. That the revenue, if fixed at a low rate, might doubtless be realized, in spite of great error, impropriety, or disregard of private or public interests, is sufficiently proved by the permanent settlement of Bengal: at least until the inherent tendency in a permanent settlement to diminish the government revenue, as above noticed, shall have operated sufficiently; and then will end the realization of the revenue: for it is impossible that every estate, permanently settled, can be kept at its original amount of assessment.

The second point at issue in this letter is the Court's observation,

servation, " that the hopes entertained, at the period of the " permanent settlement in Bengal, of raising a revenue " from other sources have failed." The reply to this is: " It is impossible to say to what extent such hopes went; " but, if you compare the produce of the different branches " of revenue stated in the margin, (*viz.* salt, opium, spiritu- " ous liquors, customs, stamps), you will find great in- " crease."

Surely this is no answer to the observation of the Court. All these branches of revenue (except, indeed, the stamps, which netted in 1811 about four lacs), were in existence before the permanent settlement. The hopes held out at the permanent settlement, here alluded to by the Court, must evidently refer to sources *other* than those then existing; to new sources. We do not talk of " raising a " revenue" from sources in being, but of augmenting, improving, or increasing it; and it would not have been matter of *hope*, but of certainty, that as the government became more regular, as our experience increased, and good management prevailed, and moreover as conquest extended, the sources of the revenue then existing would become more productive, would improve, its amount increase, even without any reference to the talismanic operation of the permanent settlement. Good management, wonderful increase of territory, great increase of trade, both among the European and the native population, are fully sufficient to account for the increase in the branches of revenue alluded to; and would be so, indeed, were the increase much greater than it really is.

The letter says, " the population will keep pace with the " increasing improvement of the country; consequently, " a greater demand for salt, opium, spirits and drugs; " customs

" customs and stamp duties, will increase :" but so far from realizing the hope of profiting by any new source of revenue, the letter under review goes on to state, " But " we confess that we rely more on the improvement of the " present resources than on imposing new taxes, which is " attended with great, and in the present state of the " country, insuperable difficulties." This alludes doubtless, to the house-tax, which occasioned considerable riots throughout the country, as well in Bengal, Behar, and Benares as elsewhere, and was ultimately abolished.

It must be confessed, that in all this there is not much encouragement given to the Honourable Court to sanction the permanent limitation of the land-revenue; the principal and constitutional resource of the state. The stamp-duties were then a mere trifle: they were instituted in lieu of fees on law-proceedings, and might perhaps be well laid out in ameliorating the administration of justice. The customs as yet are not great. In 1810-11 they did not realize above twenty-seven lacs of rupees."*

The salt monopoly is productive. In 1810 the amount of sales exceed the amount of charges by Current Rupees 1,31,00,000, as appears in the accounts for that year laid before parliament.† Mr. Hastings is entitled to the chief merit

* In 1819-20 the customs and town duties in the lower and upper provinces amounted to..... Sicca Rupees 65,42,953
Charges..... 8,97,705

Nett..... 56,45,248

See printed statement, June 1822.

† In 1819-20, the amount of sales exceeded the charges, Sicca Rupees 1,11,82,222. *Ibid.*—The average nett annual revenue from salt for twenty-six years ending in 1826, was Sicca Rupees 1,10,48,766.

merit of the formation of this source of revenue. While yet in its infancy, in 1785, the sales are stated by him to amount to Sicca Rupees 53,00,000; and so rapid was the progress of its advancement, that the sum realized for that year exceeded that estimated by no less than 23,00,000: and all this without the influence of a permanent settlement. Mr. Colebrooke states the average quantity of salt sold for five years, ending with 1793, at thirty-five lacs of maunds; but he calculates the quantity consumed in Bengal and Behar alone at forty lacs of maunds, exclusive of Benares.*

The opium monopoly has been also productive. In 1810 the amount of sales exceeded that of the charges by about eighty-three lacs of current rupees, and exceeded the estimated amount, for the same year, about twenty-four lacs.† This rapid increase, I apprehend, would rather exceed the power of the permanent settlement, great as it may be. But I may remark, in this place, that giving that settlement the most unlimited credit for "increasing the population of "the country," and by consequence, as the letter states, "the consumption of opium and drugs," yet that children born of parents united since 22d March 1793, the date of the permanent settlement of Bengal, on the strength of the celebrated proclamation of that date, could not, in 1813, have been great consumers of *opium* or of drugs!

But in 1785 Mr. Hastings states the sale of opium to amount to about seventeen lacs. In 1799, six years after the permanent settlement, it fell to about eight lacs; and, on an average of four years ending with 1811, under different management, it netted about sixty lacs.‡ In fourteen

* Husbandry of Bengal.

† In 1819-20, the excess in the amount of sales was Sicca Rupees 60,40,648.—See printed statement, June 1822.

‡ Fifth Report.

teen years, from 1785 to 1799, it fell eight lacs. In about the same space of time since that period it has risen nearly eighty. And is all this fluctuation the effect of the permanent settlement? If so, it is but a very changeable consequence of so permanent a cause.

The letter of the Bengal government of 1813, in question, goes on farther to state, that "although the zumeen-"dars in Bengal have derived very considerable advantages "from the improvement of their estates, government has "suffered no loss whatsoever:" and "for this plain "reason; because, without such settlement (permanent set-"tlement), such improvements, generally speaking, would "not have taken place."

But, I ask, is it no loss, after twenty years of the greatest exertion, the greatest and most strenuous efforts to administer the government of the country, and to preserve its tranquillity, at enormous expense, that no part of this enormous expense has been or can be reimbursed; and that, after twenty years of this, we shall be content to receive a no greater, but rather a less, return than at the commencement? Does such exertion, toil, and improvement, in every other branch of administration, require no return? and is it "no loss," that no advantage can be derived from the "considerable advantages of the zumeendars," to those who have been the means of securing to them those considerable advantages? Is it no loss, that the revenue of India does not pay the expenses of its government?

Suppose no farther conquest had been effected beyond the three provinces permanently assessed, that the revenue could not have been increased from the land, and that no new sources were available, as the government now admit,

what would have been the situation of the Company's affairs in Bengal at this moment? What is the situation of their affairs at this moment? Here the effects of a permanent limitation of revenue will shew themselves.*

They continue: "You speak of a sacrifice in Bengal. "Let us inquire what can be justly called a sacrifice? In "fixing assessments, the usual process is to deduct from "the gross resources about five per cent. on account of "charges of collection, to set apart ten per cent. for the "support of the zumeendar and his family, and to consider *the remainder* as the public assessment: that is, "to take the largest possible share for the state. Can any "country be expected to improve under this, unless it be "counteracted by an assured prospect to the land-holders "of future advantages from the gradual improvement "of their lands?"

This mode of making a settlement I do not clearly understand. How are the "gross resources" ascertained? Is there no inquiry into them? It is impossible that this is, or can be, the way of making a settlement. But passing over the mode of making settlements described, let us fairly examine this passage. First, "the improvement of "estates." From this an English gentleman would be led to suppose, that the great landed proprietors of India laid out immense capital on the improvement of their estates. Perhaps in facilitating irrigation in the higher lands, in embanking and in draining the lower, in enclosing and manuring

* We are assured by Mr. Colebrooke that the *nett profits* of the zumeendars of the permanently settled provinces is equal to half the revenue paid to government by them. This would be about Sicca Rupees 1,60,00,000, or £1,600,000 sterling; but now their profits must be much more.

manuring their fields? No such thing is known among them! Mr. Colebrooke himself, who published his Husbandry in 1804, shall answer for them. He says, "Reser- "voirs, ponds, water-courses, and dikes, are more generally "in a progress of decay than of improvement." Indeed, "that there is no capital in Bengal employed in improving "agriculture." It is quite evident that there is no such thing as improving estates; except, indeed, by the simple operation of extended cultivation, the necessary consequence of increased population, which has its origin in nature itself, and not in the permanent settlement. If, then, the zumeendars have done nothing to improve their estates, which is really the fact, and they have nevertheless derived very considerable advantages, these advantages must be derived at the expense of government, and to which the zumeendar has no apparent right, being himself in no way instrumental in their production.

The reason assigned which induces the engaging zumeendar to agree to give, "so high and oppressive rates," namely, "the assured prospect of future advantages from the gradual improvement of their lands," I consider as altogether fanciful. First, when we know that the assessment is fixed on the cultivated land only, and that in Bengal and Behar, the average jumma does not exceed four to six anas (about six to nine-pence sterling) per beegah, and that nine to twelve maunds even of rice (unhusked) are not more than the usual produce of a beegah, which will yield from seven to eight maunds of clean rice, worth from eight to nine rupees (sixteen to eighteen shillings), at the very lowest price; thus (allowing one-third for the expense of cultivation) affording the cultivator a profit of twelve shillings on what cost him nine-pence: knowing this, we are not to give the zumeendar much credit for looking only to futurity to reimburse him.

Secondly, where, it may be asked, are the funds, the capital of the zumeendar, to bear his immediate losses, or to support him under such "heavy exactions?" And lastly, under such supposition, where is the capital to arise from, that shall enable him to improve his lands?

The truth is, the "heavy exactions" here mentioned are altogether fanciful: they have no existence. It may not be amiss to give here the result of the opinion of an able and industrious writer on the resources of Bengal, who wrote nearly forty years ago (Mr. Grant), notwithstanding the opinions which have been maintained against him. Let us see what the following table of Mr. Grant, shewing the resources of the now permanently settled territory of the Company in Bengal, Behar, and Orissa, proves with respect to "heavy exactions."

ABSTRACT

ABSTRACT of the NETT ANNUAL REVENUE, Mehal and Sayer, of the several British Provinces in Hindoostan, Dimensions 180,000 British Square Miles, as rated at different Periods, from the Original Assessment of Turrul Mull, A.D. 1582, to the present time, ending in 1784, by Mr. Grant. (Fifth Report).

PROVINCES.	Ausil Jumma Toomary, or original Rent Roll of Turrul Mull, established A.D. 1582.	Akber Jumma Toomary, or improved Crown Rent, to the death of Moohummud Shah, A.D. 1747.	Gross and Nett Revenue as found established in 1765, the period of Territorial Acquisition to the Company.			Gross and Nett Revenue actually realized to the Company in 1784, after sixteen years Financial Administration.			Total Nett Revenue estimated as collected by the zumeendars, and due to the sovereign, after deducting twenty per cent. for charges.
			Gross Rent.	Charges of Management as then established.	Nett Revenue.	Gross Rent.	Charges paid from the Treasury, besides Sebundy, &c.	Nett Rent.	
BENGAL.	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.	Rupees.
Dewanny lands	1,06,93,152	1,08,65,285	2,29,21,097	3,35,822	2,25,85,275	1,37,20,683	47,75,284	89,45,399	3,09,00,000
Ceded lands		27,05,826	41,17,105	65,454	40,51,651	62,86,955	11,93,064	50,93,891	55,00,000
Salt lands		5,45,000	22,05,000	deducted.	22,05,000	54,50,000	19,50,000	35,00,000	39,00,000
Total of the Soubah	1,06,93,152	1,41,16,111	2,92,43,202	4,01,276	2,88,41,926	2,54,57,638	79,18,348	1,75,39,290	4,03,00,000
Behar, the Soubah ...	55,47,984	95,56,098	84,33,856	10,72,030	73,63,826	53,33,492	9,50,745	43,82,747	76,00,000
Orissa, Midnapore ...	9,09,934	11,43,878	14,33,657	2,75,010	11,58,647	8,73,355	2,10,000	6,63,355	14,00,000
Allahabad, Benares ...	14,07,475	25,36,837	71,26,114	22,23,373	49,02,741	51,07,955	11,07,955	40,00,000	50,00,000
Total Bengal Provinces	1,85,58,545	2,73,52,924	4,62,38,829	39,71,689	4,22,67,140	3,67,72,440	1,01,87,048	2,65,85,392	5,43,00,000
Hyderabad, the Five Northern circars	39,45,348	52,07,700	78,93,243	19,68,000	59,25,243	74,62,468	25,68,000	48,94,468	83,00,000
Total British Territory	2,25,03,893	3,25,60,624	5,91,32,072	59,39,689	4,81,92,383	4,42,34,908	1,27,55,048	3,14,79,860	6,26,00,000

Defalcation from what the Nett Revenues were in 1765, ...Rupees 1,67,12,523.
Defalcation from what they are or ought to be in 1781, ...Rupees 3,11,20,140.

Here then, instead of "heavy exactions," Mr. Grant, from original documents which he translated and laid before government, and on the authenticity of which he pledges his character, estimates the revenue of the Company's lower Bengal provinces, including Benares, deducting twenty per cent. for collection, at about five crores and a half of rupees. It is now, including Benares, which is forty-two lacs, about three crores. In 1813 it was Rupees 3,15,33,947: it was in 1765, when transferred to the Company, Rs. 4,62,00,000. In 1784, after twenty years' management, it fell off to Rs. 3,67,00,000, exclusive of the salt and opium revenue, shewing a defalcation of a crore of rupees; and since 1784 there appears a farther defalcation of sixty-seven lacs, exclusive of the expense of collection, which amounted, in 1811, to twenty-four lacs, including pensions and charitable allowances.

Colonel Sir T. Munro, in his report of the 15th August 1807, proposing a plan for settling the Ceded Districts on the coast, says, "if by fixing the government rent at one-
" third of the gross produce of the land, the ryot were
" allowed to enjoy the remainder, and all such future
" increase as might arise from his industry, he would never
" quit his farm. If more than one-third is demanded as
" government rent, there can be no private landed property.
" It is also found by experience, that one-third of the pro-
" duce is the rate of assessment at which persons who are
" not themselves cultivators can rent (hire) land from
" government without loss. The present assessment of
" these districts is about forty-five per cent. of the pro-
" duce. To bring it to the proposed level would re-
" quire a deduction of twenty-five per cent. of the produce.
" Thus,

" Total

" Total gross produce of lands	100
" Government's share by present assessment.....	45
" Deduct twenty-five per cent. of produce or " of the assessment per cent.....	$11\frac{1}{4}$
" Remains Government's share of produce per " cent.	$33\frac{3}{4}$ *

If, therefore, Sir T. Munro actually collected forty-five per cent. of the gross produce of the soil from the Ceded Districts, as above, it is absurd to talk of "heavy exac- " tions" in Bengal, when the whole land revenue under that presidency was in 1813 only Rupees 5,94,54,352: little more, perhaps, than one rupee per annum for each individual of the population. If you take this as a basis to get at the gross produce, and add to it the two-thirds, or two rupees for the ryot's share, you will have a gross produce equal only to the value of three rupees per annum, for the subsistence for a year of each individual, exclusive of cattle. But not even in Bengal can man be supported at three rupees per annum of land produce. Twelve rupees even is too low an estimate; but at twelve rupees the gross produce would be quadrupled, and by consequence ought to give to government, at one-third assessment, four times the present land revenue, or Rupees 23,78,17,408. Mr. Colebrooke reckons the annual consumption of grain for man at nine maunds a head, besides cattle:† and Colonel Sir T. Munro, in his statistical account of the Ceded Districts, states the average expense of subsistence of one-fourth of the population at forty shillings: of one-half or two-fourths at twenty-seven shillings; of one-quarter, at eighteen shillings

* Fifth Report. † Husbandry.

lings; general average, twenty-eight shillings, which is equal to about fourteen rupees. But let it not be forgot that one-third of the produce of the soil is the ancient rate of assessment. "Of dry crops," says the Ayeen Akbury, "*one-third* of the produce was levied; but for green crops, "*ready money*, at fixed rates, was levied." And it is remarkable, that in every essential point that able officer, of whom I have just spoken, appears to have conformed to the ancient practice of the country, exercising of course, in so doing, the discretion of a man of research, experience, and sound judgment.

Moreover, as before stated, we find that in England one-third of the produce is reckoned ample to defray the expense of cultivation. If so in England, surely in India the same allowance must be equally ample. Out of this third share the cultivator and his family are of course maintained. There is a surplus of two-thirds, to be divided as rent and government dues.

In 1811 the "rental of land in England and Wales was "£29,476,852 sterling, the population 10,150,150: nearly "£3, or 30 rupees, a head. The number in a square mile "175, of which 36 were agricultural."

Now, if there were fifty-nine millions of people under the Bengal Government, and each consumed nine maunds of grain per annum, the produce would be five hundred and thirty-one millions of maunds, worth as many rupees. The government revenue, at one-third of the produce, would be in rupees, 1,77,000,000, instead of 59,454,352, as above: exactly three times as much as it is now. None of these facts and data shew "extreme exaction."

Under

Under the third head is considered the remarks of the Court of Directors as to the "necessity of attending, not "only to the principles of political economy, but to the "character and manners, the habits and prejudices, of "the natives." The answer is: "We have invariably at- "tended to the manners, prejudices, &c. of the people; "but we cannot see how a permanent settlement can be "contrary to their prejudices."

No government on earth, most certainly, ever more anxiously wished to attend to the feelings and habits of the people than our Indian government, both at home and abroad, has invariably done. But their great anxiety to do the people good led to the greatest of errors; and so far from the permanent settlement, as carried into effect, being conformable to the constitution of society in India, its effects have not only opposed the manners, habits, and prejudices of the natives, but have produced a total revolution in the frame of society, both political and social.

In Bengal, where shall we look for the constitution of an Indian village? The "brotherhood," all independant of, but all interested about one another; giving and receiving mutual aid, mutual kindnesses, sympathizing with, and receiving consolations from, one another; confident and secure in their possession, on the simplest of all tenures, the easiest, perhaps, of all terms, a definite and moderate share of their labour, as a return to the state for protection. If sickness overtook one, he relied on the help of his brother: if death left a widow or an orphan, in every house had the fatherless a father, the widow a protector. The accumulated bones of generations were mingled in the same cemetery, or consumed at the same funeral pile; and the pious peasant

sant fancied that the pure spirit of his father yet hovered around his peaceful abode.*

How different the picture now to be seen in the lower provinces of Bengal! The abject slavery of the cultivating classes could only spring from the necessity of absolute submission; submission, not to the revered representative of an ancient family, but to the upstart of the hour, the Bengal Baboo, the *new malik*, the absolute lord of the soil, who has no feelings in common with the people, whom he fancied he had purchased with his estate; whose knowledge of the regulations told him he could, not only without violation, but with all due conformity to the words (not indeed to the intent) of them, destroy the happiness of his slave for ever, by banishing him from the village of his birth, the companions of his youth, the associates of his manhood, the support of his old age. Those ephemeral lords of English creation were not, indeed, vested with the power of life and death, not with the power of tormenting the body; but the happiness of the people was placed entirely at their mercy, and their minds were subdued. Instead of the manly spirit of former times, which a very small portion of independence will nourish, the native of Bengal knows now that even the privilege of residing in his native village he owes to his subjection alone.

May it then not be asked, whether such a state of things as

* Mr. Fortescue, in his report on the Delhi Territory, on 28th April 1820, gives a description of the village community; which, as it corresponds with the above, leads to the belief that, as yet, the demolition of the ancient frame of society is limited to the permanently settled districts of the lower provinces. "If," says that intelligent officer, "a "*sharer* (of the village) die, the other sharers are bound, by an ac- "knowledged principle of morality and duty, to take care of the "widow and children; especially to get daughters married." "The "widow may occupy the land, and the other sharers will assist her."

as this has been produced by "attending to the character, "manners, habits, and prejudices of the people of India?"

We are further told, that to the efforts made for the better administration of justice, and to the limitation established in regard to the demand of government on the lands, is attributable a change in the character of the Bengalese; from being, like the inhabitants of the upper provinces, owing to the vices of former governments, more refractory subjects, they have found it more advantageous to cultivate the arts of peace.

But is there really such limitation to the demand on the land? This limitation, whatever limits government may have set to the *government demand*, has no existence in regard to the people! The "demand on the lands," *quoad* the people, has no "limitation," but that which the rapacity of the proprietor may set to it. The demand of government from the zumeendar is certainly fixed; not so the demand of the zumeendar from the ryot; except, indeed, by the laws and regulations, which, on this point, have been accused of the very great absurdity of first granting absolute property in the soil, and then restricting the grantee in the management of his property: and this not by any specific rules, but by the general term of *the custom*. He is to levy his rents "according to the custom to the pergunnah rates;" which custom, being different, in every different place, was necessarily left for the owner to dictate. The *dictum*, therefore, of the zumeendar is the *custom*. The contrary cannot be established against him, were the poor man, as I have before noticed, with barely enough to exist upon, able to carry his opulent oppressor into court, to attempt so hopeless a cause.

Yet,

Yet, notwithstanding all this, which is now seen and admitted by every one, are we told in the letter under consideration, "that whatever be the character of the "people in the upper provinces, the universal principle of "self-interest must render the permanent settlement more "satisfactory to them than temporary assessment."

"More satisfactory" to whom? Let us examine this, and we shall see that the "universal principle of self-in-"terest" cannot apply to the "*people*;" were it even applicable to the comparatively few who might be parties to the permanent settlement. The *people* in the Ceded and Conquered Provinces may be estimated at twenty-three millions; nearly twenty millions of whom would have no "self-interest" in the question, because they are neither zumeendars not "engaging cultivators:" nearly three millions more would be *interested* in *opposing* it. I mean the cultivating ryots, whom I estimate at 2,978,383, on the datum of allowing an average of twelve beegahs for each cultivator (the known number of beegahs in cultivation, by the report of the Board of Commissioners, being 35,740,598 beegahs), and 45,000 persons might peradventure be the number to whom "the universal principle of self-interest" in favour of the permanent settlement might be made to apply; that number being "the number of village zu-"meendars under engagements to government" throughout the Conquered and Ceded Provinces, as stated by the same unquestionable authority. Forty-five thousand persons, then, out of twenty-three millions, might thus possibly be supposed friendly to the permanent settlement, "from the "universal principle of self-interest;" three millions would oppose it, "from the same universal principle of self-in-"terest;" and twenty millions of "*people*" would either not care about it, or if they did, they would oppose it from the

the "universal principle" of dislike to all innovation, which prevails among the people of the upper provinces and of all India.

We now come to the fourth head, "Loss of revenue from the depreciation of the precious metals;" an argument of the Court of Directors against the permanent settlement.

Whatever the Bengal government may have said, this is unquestionably an admissable argument against the permanent settlement, even although such depreciation cannot as yet be made very apparent; nay, though it could be shewn, that the precious metals are as yet less abundant than they have been. But, before I notice the reply given to the objection of the Court, the following remarks occur to me on the point. The extraordinary waste of the precious metals in India by their universal use, not only in coin and in plate, but in cloth and in personal ornaments, reduces them more nearly to a level with the ordinary perishable articles of commerce, in India than in Europe. There is scarcely a living creature of the human species, on the whole continent of India, from the moment of its birth, that does not contribute directly to the destruction of the precious metals. A hundred millions of people may be aiding in this consumption; and if we allow them to possess ornaments to the average value of a rupee each, the actual wastage of the metals, even by wear, will be immense. The constant conversion of their ornaments, by melting them down and making them up into other kinds or fashions (a propensity well known, and which may be established by adverting to the extraordinary number of silver and gold-smiths to be found all over the country, whose livelihood depends on this alone), adds amazingly to this source of waste

waste. There is also the wear and tear of an immense metallic currency, the loss of money by secreting it and otherwise. When all these sources of consumption are considered, the increase of the precious metals must, I think, be very slow; but nevertheless, however slow, if progressive, as an argument against the permanent settlement it is good; and those who, overlooking these sources of destruction of gold and silver, attend only to the rate of depreciation of these metals in our own country, will hold this argument as invincible against the permanent limitation of the revenue, in currency of the present, or of any definite value.*

The following prices of the most common necessaries of life and rates of labour are taken from the Ayeen Akburee, and will afford some ground for conjecture on this subject. If it should appear that the quantity of those articles *then* procurable for a given quantity of the precious metals was nearly what is now to be procured, the apprehensions of the Honourable Court would be relieved; but then the importation of gold and silver has been great, and there has been no paper currency to check that importation.

* In point of fact, there is no doubt that the precious metals have diminished in quantity. There is indeed, in Bengal, no such thing as a gold coin now in circulation. The gold Mohur is sold as bullion, at a premium of twelve per cent.; and in Calcutta, even silver is but little circulated, the medium being almost entirely paper, either Bank notes or Government securities. The scarcity of coin will raise its value; and that most rapidly in India, where it is in so great demand for other purposes besides coin. The consequence of this will be a diminished revenue. This is a point to which the attention of Government is immediately required; yet I perceive, that within fourteen years after the renewal of the present Charter, £3,566,927 sterling in bullion had been remitted by Government from India.—*Evidence before Lords' Committee*, Feb. 1830.

Former Price.					Present Calcutta Weight.			
	Md.	Seer.			Md.	Seer.		
Wheat	3	13	per rupee	...	2	0		
Barley	5	0	per do.	.....	3	2		
Dal	2	10	per do.	.....	1	16		
Atta Flour	1	36	per do.	.....	1	0		
Ghee	0	16	per do.	.....	0	10		
Milk	1	24	per do.	.....	0	36		
Sugar-candy	0	7½	per do.	.....	0	6		
Chenee or Raw Sugar	Rs. 1	A. 6	P. 0	per maund ...	Rs. 2	A. 6	P. 6	per Calcutta maund.
Salt	0	5½	0 per do.	.....	0	2	0	
Dry Ginger	0	1	10 per seer	.....	0	2	9	
Huldee	0	0	9 per do.	.....	0	1	1	
Round Pepper...	0	6½	0 per do.	.....	0	10	0	
Mangoes, per 100.	1	0	0					
Sheep, each	1	8	0					
Geese, each	0	8	0					
Ducks, each	1	0	0					
Mutton	1	10	0 per md.	.....	2	8	0	

RATES OF LABOUR.

	Rs.	As.		Rs.	As.	
Bricklayers, four classes, from ...	5	4	to	3	0	per month.
Carpenters, do.	5	4	to	1	8	
Sawyers	1	8				
Belders	2	12	to	2	4	
Grammies	2	4				
Coolies	1	8				
Bheesties	2	4	to	1	8	
Soldiers	6	4	to	2	12	
Porters	3	0	to	2	12	
Attendants Mewattees	3	0	to	2	8	
Bearers, Surdars, ...	9	8	to	4	12	
Bearers, common	4	0	to	3	0	

Note.—

Note.—The seer is stated at 28 dams, each dam being 1 tolah, 8 mashas, 7 ruttees. 12½ mashas make 1 rupee, 8 ruttees make 1 masha; each dam is therefore 21½ masha. So 21½ masha multiplied by 28 dams=602 masha, which at the rate of 12½ per sicca rupee weight, gives a seer equal to the weight of 50 sicca rupees.

The seer here specified is equal to fifty Calcutta sicca rupees weight. The Calcutta bazar seer is equal to eighty sicca rupees weight; the Lucknow and Allahabad seer equal to ninety-six sicca weight; in some other parts it is ninety-eight sicca weight; which makes one maund equal to two maunds of the Akburee weight. When I was in the vicinity of Dehlee, in 1804, I was informed that gram had been known to sell there at four maunds ten seers, and wheat at three maunds and thirty seers, per rupee: so that holding the report we received to be correct, since the days of Akbar, two centuries and a half nearly, we do not find any great change in the value either of the necessaries of life or in the wages of the labourer: the only criteria by which the value of the currency can be appreciated. But then it must be remarked, that of late years the importation of bullion into India has been exceedingly small.

Mr. Colebrooke says, in 1804: "A cultivator entertains "a labourer for every plough, and pays him wages which "on an average do not exceed one rupiya (rupee) per "mensem: and in a cheap district he himself had found "the monthly hire as low as eight anas (half a rupee)."

Lord Teignmouth positively says, "it is obvious to any "observation that the specie of the country is much di-"minished."* To this I may add, that as commerce with the western world has increased, and the demand for European

* Minute, June 1789, par. 142.

European goods has become augmented, the balance of trade no longer continues to be in favour of India; it must necessarily follow, that the precious metals will decrease there. Nothing can prevent the acceleration of this to a great extent, and to the great derangement of the permanent settlement, indeed the whole system of revenue, but the capability of India to produce articles of commerce in demand in Europe (or in other countries where specie abounds), not only equal to the value of goods received in exchange, but, beyond that value, to the extent of the consumption of the precious metals in India.

It may be said, that the scarcity will raise the value of money in India, and that again will ensure a supply of specie from other countries. But it is to be noticed, that another substance, paper, has been forced into the place of coin, and without some production of India to take in return, who will bring specie? The high interest of money, consequent on scarcity, will indeed tempt a few monied men connected with India to send specie there to be put to interest; but the loss in remitting both interest and capital, and the limited extent of such speculations, will by no means preserve the equilibrium.

It appears by various statements, that from the year 1700 to 1793, the amount in value of bullion remitted by the Company alone to India, including, as I calculate, ten or eleven millions to China, was £42,680,859
and we are told by Mr. R. Grant, that the Americans, in ten years, from 1795 to 1805, "imported into India in bullion," no less than 26,720,470

Making together..... £69,401,329

It does not appear whether Mr. Grant includes in his account the bullion carried to China by the Americans: but at all events, we have to take into the account the bullion and specie brought by the other European states, and that imported by the Company since 1793, and by the Americans since 1805, which at present I have no means of ascertaining: and then, after making the most ample allowance for the share which China has received, the importation into India Proper will remain enormous, and impress us with an idea of the extraordinary consumption of the precious metals, that has swallowed up so much without making the slightest impression on the value of the currency, which is still higher by twenty-five per cent. than in England, and, as I have shewn, has undergone but little change, in point of value, since the days of Akbar, compared, I mean, with the rates of wages, prices of grain, &c.

The reply given in the letter now under consideration is: "the specie may have been increased, but the population "and consumable commodities have increased also, and "the proportions may be still equal." It does not appear to me that this bears upon the question. Besides, the precious metals are not the only currency in India. Copper, tin, lead, even shells,—the first and last in great abundance. In several districts, the government-rents are paid in shells alone.

"But," continue the advocates of the permanent settlement, "the effects of the deterioration of value of the "precious metals might be obviated, as proposed by Mr. "Colebrooke, by changing the engagements from specie "into the market value of a specific quantity of corn, to "rise and fall accordingly; but this is objectionable," they add, "because of the difficulty of adjusting the value."

But

But a settlement "for the market value of a specific "quantity of corn" is, essentially, neither more nor less than fixing by limitation the government share of the crop. A zumeendarry, for example, is let for one thousand maunds of corn, or its market value in specie; or rather for the market value in specie of one thousand maunds of corn. Unless some standard has been previously fixed for ascertaining the market value, as the payer and receiver would unquestionably differ, the corn itself would become the demandable article, and thus the settlement would be virtually that which I have stated.

In India, however, when a settlement of this kind is made, agreeably to the native system, no difficulty is experienced. It is common to make such settlements; and when they are made, the conversion into money is settled, not annually, but periodically, or rather at the will of the lessor, with reference, of necessity, to the capability of his ryots, and the produce of the soil. A field (zumeendarry, if you please) is let for so many maunds of wheat: the price (if converted into cash) at so much per maund. This rate continues, perhaps, for half a century; but if the price of grain should rise (that is, if the *difference* between a given weight of grain and a given weight of precious metal should decrease, to the depreciation of the latter), the landlord requires more metal per beegah for his land to restore the original difference, and says the conversion must now be made at one rupee four anas per maund, instead of one rupee as before. There is no *difficulty* in this: but it would not obviate the objections to a permanent settlement.

It is, therefore, attempted to combat the suggestions of the Honourable Court of Directors, "to establish a vari-

" able land-tax, that shall enable government to participate " in the growing resources of the country, as by revising " the settlement at given periods, or on the accession of " every new proprietor."

It must be confessed, that the pretensions of the Honourable Court " to participate in the growing resources of the " country," are not very unreasonable; yet they are told, with little ceremony, in the letter to which I advert, that both the plans suggested " have unsurmountable diffi- " culties."

Let us see the difficulties. First, it is said, in the precise language of 1790: " It would be to the advantage of the " proprietors to deteriorate their estates during the latter " years of the assessment, in order to get them valued low " at the succeeding settlement." But this appears to me an assumption altogether gratuitous, and not very liberal. It, in fact, implies not only universal fraud on the part of the zumeendars, but relentless oppression on the part of government. But admitting, for the sake of illustration, the truth of the assumption, may it not be asked how the zumeendars are to effect this deterioration of their estates? They cannot legally remove the cultivators. The land in India requires, at least receives, with little exception, no manure, that by withholding it the crops should fail. The land is annually under some crop; and are the *people* to cease from cultivating their fields, and to starve, " during " the latter years of the assessment," that the *zumeendars* may procure " a low valuation at the succeeding settle- " ment?" Are the zumeendars to give up the *certainty* of their rents " for the latter years" of their leases, for the *chance* of being required to pay *a little advance* (though but a fair value) for their estates, for the next lease, which they

they may not live to enjoy? This is neither probable, nor is it conformable to the genius of the people, were it practicable and the success certain, to act with so much regard to futurity. But let the rates per beegah be fixed, and the objection will be destroyed.

In a subsequent paragraph, the district of Goruckpore is given as an example of this deterioration of estates, There was, in 1813, a balance, "in the latter years of the "assessment, of 6,02,869 rupees; owing chiefly to the "landholders, who are most part village zumeendars, "throwing their lands out of cultivation to obtain a light "assessment." But was the collector of Goruckpore at this time mindful of his duty, and a competent person? for in 1815 (but two years afterwards) we find that the Governor-General states the balance due by this district at only upwards of "two lacs;" and this is considered great, "owing to the incomplete state of the new settlement."*

To the next proposition, of revising the settlement on the accession of every new proprietor, "the unsurmountable "difficulty" is *joint tenancy*. "It would be unfair," they say, "to revise the settlement at the death of one of "the tenants; and this would hold *ad infinitum*." But we may ask, why unfair? The revisal might occur more frequently, but there would be nothing unfair in it; and a revisal does not necessarily imply an additional impost. Or if this were objectionable, why not make the revisal to take place on the demise of the last of every *series* of co-partners, and then the argument is reversed? It would fall to be made at longer intervals, and would be advantageous, instead of being unfair, to such estates.

"But,"

* Governor-General's Revenue Minute, 21 Sept. 1815.

" But," it is added, " exclusively of this, estates would " be of little value when exposed to sale for arrears of rent, " if the jumma were to remain fixed only during the life of " the former proprietor." But why *former proprietor?* It is the incumbent proprietor's demise that is supposed to give occasion to the revisal of the settlement; and the in- " cumbent proprietor," at a government sale for arrears, would be the purchaser.*

" It is," they continue, " the *permanency of the settle-* " *ment alone,* that renders the lands substantial security " for the public demand." Now this is plainly an error, and an error but too well calculated to mislead. It is not surely the *permanency* of the settlement, but the actual value of the property, the difference between the jumma, or government demand, and the receipts from the ryots, that makes an " estate valuable when exposed to sale for " arrears of rent;" and which alone affords any security whatever to government. It is only when the thing *fixed* is good, is valuable, that *permanency* of the possession is advantageous. It is no advantage to be saddled for ever with a valueless commodity of any kind. Government can have no security for their revenue, but that which a moderate assessment gives them, leaving those who are assessed, and those who cultivate, a valuable consideration for the parts they take, the labour they bestow, in realizing the dues of the state. Who would give any thing for a rack-rented estate, however permanent the tenure might be?

The fact is as clear and as obvious as noon-day, that, settle the country as you please, there is no security for the revenue but that of the industry of the cultivators of the land

* This argument has been shewn to be of no force, since the sale of lands for arrears of revenue is now but little known.

land whence the revenue is derived: and the more middlemen between them and the government, the less sure the security becomes, because the channels of embezzlement are multiplied.

A zumeendar is a *drone:* an unproductive animal, of the worst kind, too, that must have his drones also about him; all a burden upon the industry of the cultivators. Government employ and pay these drones as agents to collect the revenue. This saves their European servants the trouble: but however paradoxical it may seem, it is nevertheless true, that *government* is, in fact, *security for the zumeendars*, instead of the zumeendars being security for the government revenue; for if the zumeendar mismanage his estate, government must pay the defalcation, that is, suffer the loss.

The Honourable Court suggested, "that a variable settle-"ment induced government to look more to the cultivation "of the lands: and doing so, if they dug canals for irri-"gation and made roads, it would be difficult to deny their "right to indemnification for the expense of such." The answer to this is remarkable. "If," say the Bengal government, "a variable land-tax cannot be established "without discouragement to agriculture, it would be pre-"ferable to limit such improvements to works that are "indispensable than to check agriculture." This hypothetical reply is, in fact, a postulate of the question at issue; otherwise, at best, it amounts to this: "it is better "to make only such improvements as may encourage agri-"culture, than to make such improvements as will check "it." The court maintain, that a variable land-tax may be established, and would not check, but improve agriculture. Government assume, that a variable land-tax would discourage agriculture; and *therefore*, say they, it is better for

for your Honourable Court not to persist in your plan of digging canals, and other projected or contemplated improvements.

Another argument in support of the permanent settlement, which is expected, seemingly, to have great weight, is given us. "The great difficulty, it is stated, of administering the government of the Ceded and Conquered "Provinces, is the refractory spirit of the zumeendars, "their resisting government and harbouring robbers. These "zumeendars are bound, under the penalty of confiscation "of their estates, not to harbour such; but if they have "no permanent interest in the estate, the penalty is nugatory." But why *permanent* interest? If the zumeendar had, indeed, *no* interest in his estate, the penalty would truly be nugatory. But whether "permanent" or not, if he had *an* interest, the penalty would not be nugatory. May we not, however, be permitted to remark here, how much the premises differ from the conclusion of this paragraph? The zumeendars are stated to be ungovernable, refractory, so independent even as to resist government; *therefore*, we, this government, though resisted by them, recommend that they shall be made still more independent, by confirming them in their estates for ever!

It must be admitted, however, that the penalty of confiscation, above specified, suspended over the heads of refractory and government-resisting zumeendars, is indeed nugatory, and must be, on whatever condition their tenure may be held. But, on the other hand, it is pleasing to think that the Ceded and Conquered Provinces are administered with as great ease as the more favoured permanently settled districts of Bengal, and that the zumeendars are as good and peaceable subjects as any in the Honourable

able Company's dominions. It will be remembered, moreover, as before noticed, that the revenue is realized with little balance; and whether we look at the files of the courts, or the calendar of crimes, the comparison will fall greatly in favour of the subjects of the provinces *that are not permanently settled.*

The permanent settlement, we are told, would improve the police, in proportion to the stake held by each zumeendar; "which might be extended to the support of govern-"ment against external and internal enemies."

God forbid that the government should ever be obliged to trust to such support against enemies of either description. But if such a case of necessity did occur, I doubt not that the zumeendars of the Upper Provinces would prove equally loyal with those of the lower; and, as I believe, if they have any wish, it is not for a change of governors, but for their own independence of all government. I am persuaded, if they had the means they would support our government against any other power that should pretend to the privilege of ruling over them in our stead.

Another reason advanced in favour of the permanent settlement, in this letter also, *viz.* "that variable settle-"ments keep alive a spirit of intrigue and corruption, both "among the native and European servants of government," has been already noticed, in reply to the same stated before by Mr. Colebrooke.

In a subsequent despatch, of date 2d October 1813, we are told by the government of Bengal, "that they do not "dispute Colonel Munro's opinions on matters that have "come

" come under his own observation at Fort St. George re-
" specting ryotwaree settlements, but do not think them
" applicable to Bengal;" and they place the opinions of Sir E. Colebrooke, Mr. Rocke, Mr. Lumsden, and Mr. Deane, in opposition to Colonel Munro; adding, " but
" the great extent of the collectorships, and the paucity
" of revenue officers, render it absolutely impossible in
" Bengal."

Now this is nothing more than adding the opinions of the members of government, or the majority of them who wrote the despatch, to those of Sir E. Colebrooke, Mr. Rocke, Mr. Lumsden, and Mr. Deane, upon a point and subject of which they, none of them, had any experience, against the opinion of Colonel Munro and his colleagues on the coast, who have had very great experience of the measure in question; to whom we may add the opinion of Colonel Wilks, who speaks of the permanent settlement of Bengal thus: " With unfeigned deference to the great
" men who applaud the *permanent* and *unalterable* landed
" assessment of Bengal, I must still be permitted to doubt
" the expediency of the irrevocable pledge. It is not in-
" tended to discuss whether those provinces (Bengal) have
" flourished in *consequence* of the present system, or in
" *spite* of it. I admit, any thing was better than our in-
" cessant fluctuation; but there is a wide difference be-
" twixt capricious innovation and such an irrevocable law.
" To terminate abuses by shutting out improvement, to
" prohibit the possibility of increasing the land-tax, to
" render probable, nay certain, its decrease, this is the
" system which has succeeded to former errors."*

Objections to ryotwar settlements have been made, " that
" they

* Wilks' Mysore.

"they require a personal acquaintance with every culit-
"vator and an estimate of produce every year."* The ryotwar settlement is a settlement of every *field* with its proprietor, which may be made every twenty years instead of annually.† But why a mode of collecting the revenue that answers well (if the ryotwar do so) at Madras should fail in Bengal; why there should be larger districts, and fewer revenue officers in Bengal, than at Madras, I can see no reason. None of these are substantial objections to the continuance of periodical settlements.

Nor, indeed, after having gone through and now noticed all the reasons for the introduction of the permanent settlement in the Upper Provinces, urged in the minute and despatches to which I have adverted, can I fix upon one that is at all satisfactory, *without first assuming that the permanent settlement is essential to the tranquillity and the prosperity of the country and to the security of the public revenue.* And this is contrary to all experience; for the country is tranquil, the country is highly prosperous, the revenue has increased nearly a crore of rupees since the permanent settlement of the Ceded and Conquered Provinces was urged upon the Court of Directors by the Bengal government; and it is secured in the best of all possible ways, by the free, unrestrained, and protected industry of the people.

Finally, the permanent settlement, as carried into effect by

* Lord Hastings' Minute, 21st September 1815.

† When a district is once measured by fields, and the rates fixed, each field has its value. It then represents a known sum of money, as a Bank note does, and may be let to a ryot with as much ease, and more celerity, than the Bank note could be changed for inferior currency.

by us in Bengal, I have shewn if not contrary to "the law "of England, is at least contrary to the law and constitu- "tion of India." It is contrary to the custom and universal practice of that country; consequently contrary to the manners, habits, and prejudices of the people. It is not, in my humble opinion, calculated in the slightest degree to ameliorate the condition of our native subjects, but, on the contrary, it has proved itself to be highly instrumental in their debasement; and by its necessary tendency to throw and to keep the great mass of the respectable yeomanry of the country at an immeasurable distance from us, it will prove itself to be no less instrumental in perpetuating that debasement, which a closer intercourse, the necessary consequence of occasional agricultural and official dealings, would, in God's good time, probably have removed.

The permanent settlement has lost to government, in fact, all knowledge of the country and of its resources. There are revenue officers in Bengal, I doubt not, that cannot even tell you the number of villages in their districts, far less give the slightest information as to the state of cultivation, of population, description of people, their employment, trades, manufactures, stock, as cattle, ploughs, horses, sheep, the improvability, or otherwise, of the country.

The permanent settlement has not tended, in any degree, to accelerate the improvement of the country, either in cultivation or in commerce; but on the contrary, it must tend to check both, inasmuch as it must take away from government, if not the obligation, certainly the means, of making any great or expensive improvements: leaving them no prospect of advantage that would even prove a bare reimbursement for so doing, and throwing such task of amelioration

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tion upon the short-sighted and careless India land-holder, who will assuredly neglect it.

The permanent settlement has all these, and innumerable other disadvantages, referable to the people of India and the improvement of the country; whilst, with respect to the interests of the British nation, it must be attended with every *baneful*, and not one beneficial effect. I may conclude this part of the subject by referring the reader for information to the opinion of Lord Teignmouth on the subject, as expressed in his minute of the 8th December 1789.*

Let us, in conclusion, inquire, with reference to the permanent settlement of the Lower Provinces, admitting it to be held as valid, how far any and what relief can be granted by government, under that settlement, to the cultivating ryots? The permanent settlement was formed with a condition, *reserving to government the power of preserving the rights of the cultivators.* "The Governor-General "in Council will, *whenever he may deem it proper*, enact "such regulations as he may think necessary for the pro- "tection and welfare of the dependant talookdars, ryots, "and other cultivators of the soil; and no zumeendar, "independent talookdar, or other actual proprietor of land, "shall be entitled, on this account, to make any objection "to the discharge of the fixed assessment which they have "agreed to pay."†

This is a very broad clause, and if fully acted upon, government would doubtless be at liberty to introduce any regulations which the government might deem necessary, to effect

* See Fifth Report.

† Governor-General in Council, 1st May, 1793.

effect this "protection of the cultivators of the soil." If the zumeendars did not choose to comply with these regulations, their tenures might be of course set aside; for it was on this condition that they were granted and accepted.

The right of the cultivator is possession of his field, at the rate, per beegah, at which it was assessed, *AT OR PRIOR to the permanent settlement.* It never was contemplated by the grantor, that the zumeendar should be at liberty either to eject or to raise the rate of rent on the cultivator *ad libitum.* Lord Cornwallis says:—

"Mr. Shore observes, that this interference (on the part "of government in effecting an adjustment of the demands "of the zumeendars upon the ryots) is inconsistent with- "out proprietary right; for it is saying to him that he "shall not raise the rents of his estate, and that if the "land is the zumeendar's it will only be partially his pro- "perty whilst we prescribe the quantum he is to collect, or "the mode of adjustment between the parties. If Mr. "Shore means, that after having declared the zumeendar "proprietor of the soil, in order to be consistent, we have "no right to prevent his imposing new abwabs, or taxes, "on the lands in cultivation, I must differ with him in "opinion; unless we suppose the ryots to be absolute "slaves of the zumeendars. Every beegah of land pos- "sessed by them must have been cultivated under an ex- "press, or implied agreement, that a certain sum should "be paid for each beegah of produce and no more. Every "abwab, or tax, imposed by the zumeendar, over and "above that sum, is not only a breach of that agreement, "*but a direct violation of the established laws of the* "*country.* I do not hesitate to give it as my opinion, that "the zumeendars, neither now nor ever, could possess a

"right

" right to impose new taxes, or abwabs, on the ryots; and " that government has an undoubted right to abolish any " such, and to *establish such regulations as may prevent* " *the practice of like abuse in future.* Neither is the " privilege which the ryots in many parts of Bengal enjoy, " of holding possession of the spots of land they cultivate " so long as they pay the revenue assessed upon them, by " any means incompatible with the proprietary right of the " zumeendars. Whoever cultivates the land, the zumeen- " dar *can receive no more than the established rent.* To " permit him to dispossess one cultivator, for the sole pur- " pose of giving the land to another, would be vesting him " with a power to commit a wanton act of oppression. " Neither is prohibiting the landholder to impose new " abwabs, or taxes, on the lands in cultivation, tantamount " to saying to him that he shall not raise the rents of his " estate, &c. *No zumeendar claims a right to impose* new " taxes on the lands in cultivation, although it is obvious " that they have clandestinely levied such. The rents of " an estate can only be raised by inducing the ryots to " cultivate the more valuable articles of produce, and to " clear the extensive tracts of waste land which are to be " found in almost every zumeendary in Bengal,"* &c. &c.

The above is a pretty full account of the conditions, relative to the right of the cultivator, on which the proprietary title of the zumeendars was granted by his lordship: from which the power of government to protect the ryots in their rights is sufficiently evident, at least by law. How different the fact is! What a different situation the poor ryot is now in, from that contemplated for him by the good, the benevolent, but in this case, shortsighted Cornwallis! How far it would be practicable, peremptorily to enforce this right

* See Lord Cornwallis's Minute, 3d Feb. 1790.

right of interference here reserved, is a point worthy of the most serious consideration: but, to my humble comprehension, it does appear that his lordship's ideas of proprietary right, and of restrictions to limit the exercise of such right, are not a little confused.

Be that, however, as it may, it seems abundantly certain, that the Marquess Cornwallis did never intend to convey, by the permanent settlement, many powers now assumed by the Bengal zumeendars, highly obnoxious, and no less oppressive to the people; and it does, therefore, seem to be the sacred duty of that government, to inquire into, and to afford the people such relief and protection against such usurped powers, as may be practicable.

The utmost extent of right of a zumeendar, as conferred by Lord Cornwallis, when analyzed, is nothing more than that of collecting the revenue from the ryots, *at the established rates*, on the land then in cultivation. If he reclaim waste land, he may not levy on it even what rates he chooses, though he may let it to whom he pleases. The ryot by established usage, for example, paid a rent equal to half the produce. If the zumeendar can induce him to cultivate a valuable crop, by aid or otherwise, the zumeendar's right to half gives him thus an additional profit. If he dig tanks or wells, or throw up embankments, and thus assist the cultivators to improve their lands, the returns will be great; the zumeendar's share will increase; the government demand is limited, and does not extend perhaps beyond a tenth or twentieth of the produce; the difference is the right of the zumeendar. But here, again, the zumeendar's profit from increase of, or more valuable kind of produce, is restricted to farms paying in *kind*. Where the rent is a money-rent, the zumeendar has no immediate interest

interest in the nature of the crop. This is all the right which the permanent settlement appears to have conveyed to the zumeendars: beyond this, they have absolutely no right whatever. We call this proprietary right; and so it is, because it is a right *proper* to the individual, which he may exercise or dispose of; but it is different from that of an English proprietor of land, and ought not to be confounded with it. The application of the same technical terms to rights, interests, and immunities, which are similar, but not the same, has thrown obscurity over this, and over every subject that has been discussed relative to India.

Should the Bengal government be disposed to adopt measures for extending to the cultivators in the permanently-settled districts the benefits which that permanent settlement contemplated for them, the means must be immediately adopted. It is late, but not yet too late. These means are, to institute one or more commissions in each of the provinces of Bengal and Behar. These must be composed of men of talent and undoubted qualifications for that duty, in whatever line or branch of the Company's service they may be found; and they must be sought for and obtained immediately, because there is no room for delay: every day that the investigation is put off incurring the loss of oral evidence, and other information, as yet to be obtained from living witnesses. The several commissions will be furnished with instructions and powers to call for and collect evidence of all kinds, to shew what the rates of land-rent, in different pergunnahs, zumeendaries, and villages, were, at the period of the settlement which was afterwards declared permanent (that is, between the years 1789 and 1793), and to ascertain in what mode these rates were paid—whether in produce, as reaped, in any given species of produce as in grain (rice, wheat, barley, the

different kinds of pulse, &c.), or in any specific kind of grain, or in money, or in grain convertible into money at a given quantity per rupee; and, in short, every information necessary to exhibit the payments, services, and immunities, received and rendered by the cultivators to and from the zumeendars, including pasturage, fisheries, wood and water, fruit-trees, &c. Connected with this indispensably will fall to be ascertained the price of the grain and other produce at that time, including even some species of manufactures, as cloth of all kinds, which it is usual for zumeendars to receive in lieu of money, at a valuation agreed upon at the time between the parties; as also the value of cattle, ghee (the produce of the dairy), oil, &c.; for without the general prices of produce, the rents of the zumeendar, paid partly in kind, cannot be estimated.

The sources whence this information is to be obtained will be various. In many pergunnahs, the putwarees' accounts may be forthcoming; many of the cultivators of the more respectable class, especially the remnants of the hereditary agricultural ryots, will be able to produce their books and other written documents. Old ousted canoongoes, putwarees, and public functionaries, will be found either able to produce or to procure written evidence, and to give oral testimony as to facts, which will either be sufficient to convince, or to lead to other sources where information may be obtained, to satisfy the commission in doubful cases: at all events, to the extent of inducing the present owners to produce conflicting testimony, in all cases in which relief to the ryots may be contemplated to an extent unjust or injurious to the owner, by means of which conflicting evidence an approach to the truth may be attained.

There are also the records of the different collectorships, and

and especially of the old suddur serishtah office, and of the old revenue or dewannee department, all of which ought to be examined by the commissions, assisted by an establishment of expert natives conversant with the revenue records and accounts to be employed for the purpose.

To guide the commissioners and to correct the erroneous evidence, there is the general jumma of the pergunnah, of the zumeendaree, of the village, to which the rents paid by the ryots must necessarily have had some relation. In short, there are yet extant the means of attaining the information here pointed out: and there must necessarily be so, because the period of thirty years is not sufficient to obliterate the sources both of living testimony and documentary evidence, which judicious investigation would be able still to bring to bear upon a point of infinite interest, not only to government, but to the whole body of the people, whose aid in facilitating the investigation would accordingly be at command.

The information required is not of a rare or abstruse nature, known only to the wise and the learned native. The agricultural economy of a village is the constant and daily subject of conversation and of discussion among all. All are engaged in it, either as principals or as assistants; and it would be idle to suppose that so great a change in their condition, as that of unlimited increase of rent exacted by the zumeendar, should so soon be forgotten.

It would be difficult to enumerate the beneficial effects of such an investigation, judiciously and ably conducted. The first object, however, in view, was the relief of the cultivating ryots from the oppression of undue exactions and disproportioned land rents; and this object would unques-

tionably be attained. As a reasonable consequence, we might expect from the establishment of moderate, even very low rates of rent, a great extension of cultivation; for the cultivation or waste of many a field must, in India as elsewhere, depend on the rate of rent demanded for it. The little theatre of each individual's exertions would become enlarged, because the rent, now exacted from him for one acre, would then give him two, which he is now able to cultivate, but afraid to engage for: and here the zumeendar would also derive advantage, and the aggregate wealth of the country be augmented.

The general cultivation being thus increased and the rents low, the cultivation of export produce may be immediately extended: an object of the most vital importance both to India and to England; but more important, perhaps, to England than even to India.

It is matter of infinite wonder, that a country like India, producing with less labour than in any other quarter of the world almost every thing in nature and in great abundance, should at this moment be in a state in which it is incapable of exporting a ton of its produce, either raw or manufactured, except the single article of indigo, to any part of the world, with a profit to the exporter; though the cost of conveyance may scarce exceed a shilling, and sometimes not a sixpence, per hundred miles. Even to England, the whole freight does not average more than four shillings and sixpence per hundred-weight. At the time I am writing, although the interest of money in Calcutta is lower than in London, even less than three per cent.,* indicating thereby a super-

* This low rate of interest, however, was not of long duration: for several years the interest of money has been very high in Calcutta. It is needless to add, that exportation has become still more profitless.

superabundance hitherto unknown, no man can invest capital in any kind in India produce, for exportation to any part of the world, to return even a small profit.

Now it is sufficiently obvious, that unless India can be brought to export to England more than she does, she cannot increase her imports from England. It is thus that the manufacturers of England are excluded from "one "hundred millions of customers," as the free-trade parliamentary petitioners of former days humbly set forth, and not so much by the effects of restrictive laws, as is now made manifest to them. I say, therefore, that England is no less interested than India in promoting the agricultural prosperity of her Asiatic dominions; and that to create a market for British manufactures in Asia, the very first step to be taken is to create a surplus exportable produce there to pay for them.

Not a forced exportation, such as took place in the article of cotton a few years ago, which drained India, raised the price there to more than double what it was ever known before, and which has yet not subsided; but a regular, increased, and increasing supply, to meet the augmented and augmenting foreign demand, and to enter the markets of Europe and elsewhere, so as to compete not merely with the produce of other countries, when those countries labour under the extraordinary embarrassments of war or of crooked policy, but in ordinary times, on ordinary occasions, and under their wisest regulations.

To say that India is incapable of this, would be to suppose that the most productive soil in the universe, abounding with a population of free men, fond of agricultural pursuits, is nevertheless incapable of being brought to yield

a produce

a produce equal to that of those countries which are less luxuriant, are thinly-peopled, or which depend for their cultivation on careless and compulsory labour. But this cannot be; and we may therefore rest assured of the most extensive capability of India.

But to avail ourselves of this capability, India must not be left, as she has been, almost to nature; for nature deals not in exports. The local governments of India are deeply responsible to their superiors at home, and to their country, for what they may do or omit in this respect. They have every encouragement which the prevailing taste of their countrymen for improvement can secure to them, and they have both the power and the means, in India, to do what certainly "eye hath not seen," but even what it is not easy to conceive, for the mutual benefit of both countries.

Wise regulations, having for their object the encouragement of the agricultural classes, as well, however, as the security of the capitalist, whether native or European, who may advance his funds, are the very first object. The Indian cultivator is poor; and to extend his cultivation he must borrow, or take "advances," to render his crop at a price fixed on before it is reaped. The regulations of government give the person whose money is advanced no power over the crop;* the temptation is therefore so great, and

* Since the first edition was published, a "Regulation" has been issued, which gives the person who supplies the advances for indigo security on the crop; and, subsequently, the government of Bengal has passed a farther Regulation, permitting Europeans to hold lands, by *lease*, in their own names. This may, by some, be considered a concession to the clamour of those who have advocated the policy of colonization. It must, however, be deemed an equitable measure; for we can hardly conceive a more irksome restriction, than that which subjected Englishmen to the incapacity of holding, even by

and the opportunity so enticing, that were that class of persons not the most virtuous of the people, there would be no possibility of dealing with them at all; and even with all their honesty, it is only in indigo, now, where the chance of high profit is so great, that any capitalist can prudently venture to engage in the cultivation of exportable produce. Sugar, at present, cannot be ventured upon, because the certainty of loss, by advances, would do more than balance the gain. But were it practicable, by an equitable law, to diminish the risk in aiding the cultivator, which the capitalist would then gladly incur, I have no doubt,

lease, land in his own right, in a country conquered and kept by the arms of England. Yet, when the point is fully looked into, though occasional inconvenience, and even loss, may have been sustained by the Planters, there is little doubt that the restriction has rather operated favourably for them. It has saved them from the dead weight of a capital sunk in acquiring a permanent right to land, which, in fact, they permanently had, without such a sacrifice; and which, as in the West-Indies, must in the end have proved destructive to every effort of industry, especially in a country where the interest of capital is so high as it is in India.

Even before this Regulation existed, when there was nothing really purchased except a few acres of land, on which the buildings of the planter were erected, sufficient to contain the manufacturing implements and apparatus, indigo factories have been known to sell for 40,000 rupees for every hundred maunds of indigo they were capable of producing; without one inch of cultivation land being bought, but merely the good-will of the land of the surrounding cultivators. To this, if fifteen years' purchase of the cultivation land were added, and the common rate for land, at the rent of two rupees per beegah, it will be seen that the capital required to set out with would be so great, that, at the high rate of interest for money, and other charges, to which those who have to borrow money in India are subjected, scarcely any scale of profit would meet the outlay.

I should say, therefore, of this Regulation, that it is just, and right, and equitable, but that it was hardly called for; whilst, in many cases, it will rather embarrass than benefit the European planter.

doubt, that almost in spite of the protecting duties at home, sugar to any extent might be exported with a profit. I mention this point, and that particular article of produce, merely as an illustration; but the idea of his Majesty's government at home keeping his Eastern colonies fettered and manacled by an unequal impost, is so exceedingly unjust towards India, that it cannot be much longer entertained. Singular, that the planter of the Mauritius, in the very bosom of the Company's possessions, shall have the same privileges as those of the West-Indies, as to reduced duties on his sugar, which however are denied to the Indian peasant! Is he not also a subject of the crown of England? Or is it only "*Slave Sugar*;" is it only because the sugar of this petty island is the produce of the labour of slaves, as in the West-Indies, that it too shall be favoured by protecting duties? This, indeed, is the *reductio ad absurdum*. But thus it is that England, the nucleus of the freedom of the world, is nevertheless truly holding out a premium for perpetuating slavery, paid by the oppression of her people in India! This, at least, is not the misgovernment of "monopolizing merchants;" it is the act of the British parliament, the act of the British nation.

We now come to the improvements in the interior of the country which might be made. These consist of public works, such as roads of communication, canals with the same view, and for the additional purpose of irrigation. There is nothing that tends so much and so rapidly to the improvement of a country, as facility of communication. By effecting this, you bring virtually, at least, the various parts and provinces nearer to one another; the whole becomes more compact, more vigorous; the circulation, before languid and sickly, now grows rapid and healthy. You

can

can exchange commodities in an *hour*, which before required a *week*. The expense will be a *farthing*; it was before a *pound*. Thus every thing is brought every where at the cheapest possible rate, and may consequently be exported with an advantage which at present cannot be obtained.

Notwithstanding the innumerable water-tracks which pervade the lower portions of the Bengal province, there is no part of India where communication by means of good roads or navigable canals is so much wanted. There are few nullahs navigable even for the lightest craft, except in the rains, and no roads; so that it is only whilst the country is inundated that any thing like free intercourse prevails between one quarter and another. Every place is consequently left almost entirely to its own resources for four-fifths of the year, like a beleaguered city suffering every privation, whilst a general superabundance reigns perhaps throughout the country.

Then, again, canals for irrigation. In Bengal irrigation is scarcely known; yet there cannot be a doubt of the incalculable advantage to agriculture which it would produce. The soil of the lower parts of Bengal is not refreshed in the moderate degree congenial to cultivation. It is either inundated, or parched almost to absolute sterility, like the effects of intoxication on the human frame: for having been the more drunk it becomes the more dry. And the soil is of that nature, that as soon as the moisture is evaporated, which a few days after the waters subside are sufficient to accomplish, the face of the earth becomes so indurated, that it resembles a surface of rock intersected by fissures, its miniature ravines, which no tender plant can perforate. It requires no more to convince one of

of the advantage which the command of refreshing moisture would give to the cultivator of such a soil. The more elevated parts of the province of Bengal, and all the other parts of the Company's dominions, are equally in want of the means of easy irrigation. At the same time, it must be confessed that the inhabitants stand no less in need of some stimulus, to induce them to use the means now within the scope of their exertion; for the Bengalese most fully verify the observation, that wherever nature has been found to do most for man, there man has ever been found to do least for himself.

The Bengal husbandman awaits the vernal showers before he can deposit the seed of some of his most valuable crops. But the vernal showers are sometimes very scanty; sometimes they do not come at all, and often so late that the periodical inundation finds his crop on foot, and levels it to the ground. An artificial sprinkling of water, two or three times repeated, would have secured his seed-time and his harvest, and a certain, perhaps superabundant crop; for nature rejects not the aid of man, but delights in it, and assuredly rewards his labour.

It is difficult to estimate with any precision the value of irrigation in a tropical climate. Even in Spain, Italy, and the southern parts of Europe, access to water for irrigation raises the value of land to three, nay four times that which the same land would fetch without water for irrigation. It enables the husbandman to keep the ground constantly under crop, without impoverishment or diminution of produce. Whoever will take the trouble of pursuing Mr. Arthur Young's Tour, will at once be satisfied of the importance of the aid which government ought, and undoubtedly will give, in facilitating this all-powerful process of the practice of

of agriculture. I say the aid which government "ought "to give," because in India, among the natives, there are neither the energy to undertake, nor the means to accomplish improvements, on a scale so extensive as that contemplated here.

If government should think fit to admit participation in attempting such undertakings, it is not to be doubted that the co-operation of individuals might be obtained among the wealthy and enterprizing European population. In our own country, many highly valuable public works have been executed by private associations; and there is at least one advantage attending this mode of proceeding, which is by no means unimportant; the ultimate expense of the work is exceedingly reduced, and the public may consequently be accommodated with its use on proportionately easy terms.

In all countries government pay more for work than individuals do; and I believe India is no exception. Instead of diligence and economy, neglect and peculation more frequently prevail in the execution of government works in all quarters of the world. The expense is increased beyond the most ample estimate; delay and disappointment necessarily follow, till the patrons and warmest supporters of the work are disgusted. The consequence is, that no man loves to be deceived, whether intentionally or otherwise; the most patriotic governments and individuals get tired of proposing and supporting schemes, however valuable they may seem, which are nevertheless in the end so likely to "let them in" for a share of the well-merited obloquy attached to the execution of them.

The Bengal government has lately appropriated a large fund,

fund, from the town-duties of the several cities and towns, for the internal improvement of the adjacent country. But until some better plan be devised, than has hitherto prevailed in the *Moufussil*, for controlling the disbursement of public improvement-funds, I will venture to say that the amount, whatever it may be, will be spent to very little purpose. Great virtue is required of those who have the expenditure of such money. But virtue alone, even virtue, will not do here. Science, and judgment, and practical abilities are indispensable in those who have the direction of permanent public works.

With every disposition to praise this premature benevolence, I think government "have begun at the wrong end." Who can approve entirely of voting away money without any specific object, without even having a competent body qualified to direct the liberality of the state to the object in view?* The first thing to be done on an occasion of this kind is to fix upon one or more individuals, men of science, and possessed of that species of practical knowledge which will enable them to appropriate the funds in the best possible mode, for the substantial improvement of the agriculture and commerce of the country. Such men ought to be employed, first in the business of investigation and inspection, with the view of pointing out to government specific plans of improvement. It would then be the time to vote funds and to appropriate them; and government would then have the security of these men for their due application, as far as able superintendence went, strengthened by the universal feeling which every one possesses to promote the success of his own plans.

This subject, however, is altogether of so great importance,

* This order of government was rescinded by the Court of Directors.

ance, as it relates to the welfare both of India and England, that to touch it in the casual manner in which I am permitted here to do, is in fact, I fear, rather doing it an injury.

CHAP. V.

On the Judicial Administration.

I HAVE endeavoured to shew, and I trust with success, that the "constitution" of India is purely Moohummudan; and although the Hindoo code has been recognized by "the "laws and regulations" of the Governor-General in council, yet the Moohummudan law is the only public written law of India. It appears to follow, therefore, that if it was not designed by us to abrogate the existing law, as successors to the Moohummudan monarchy of India, or rather administrators of it, the Moohummudan law is the only law which the British government was legally authorized to recognize.

The ashes of the Hindoo law have indeed been raked up by the curiosity of individual research; but they have certainly not been found worthy of the pains bestowed on their exhumation: and although the Hindoo law has found a place in the laws and regulations of the English government, in my judgment it may fairly be questioned whether it be worthy of that distinction. From Mr. Halhed downwards, we may certainly be permitted to say that no one has yet discovered any thing of value in that code: and the only value, perhaps, of the research of the Hindoo lawyer is, that of letting us know that there is really nothing valuable to be found. This has its value; and that I do not mean to depreciate. But of the law, as expounded by them, who can say any thing favourable? far less can it be admitted to supersede the constitutional law of the Indian empire,

empire, as promulgated and administered throughout India for so many ages.

It would be, in my opinion, as profitable to search for the laws of the Angles or more early Britons, and to revive them as the laws of England, as it is now to search after and to introduce the meagre fragments of the Hindoos as the law of India.

Nothing but intrinsic excellence in the Hindoo code, or its former universal and uniform administration throughout India, could justify so great an innovation as its re-adoption. The very reverse of this, however, is the fact. The Hindoo law, as a body of jurisprudence, has no intrinsic value; and instead of having been universally and uniformly administered throughout India, what there is of it is different in almost every soubah. Even the law of succession, wherein uniformity in the same state is generally found, whatever usages may in other matters be suffered to prevail —even the Hindoo law of succession is found to differ essentially in different districts. We find Mr. Colebrooke, the translator of tracts on the law of inheritance, talking of the "Bengal school" and the "Benares school" holding different laws; as if the question were one of taste or of the fine arts.*

With respect to comparative merit, the superiority of the Moohummudan over the Hindoo law, so far as the latter is yet known, cannot be doubted. Some, indeed, suspect that what

* The power to sell ancestral property, without the concurrence of next heirs, is one of the points in dispute between the Benares and the Bengal Hindoos;—the former holding that it cannot be sold without the concurrence of heirs: thus adjudging all real property to be under entail. The Bengal jurists maintain the right of sale.

what there is of worth in the code of the Hindoo is taken from the Moohummudan law; but this is an unnecessary conjecture, for the laws of the Jews were open to them, whence the Moohummudans borrowed still more freely, as well as from the code of the Romans; the jurisprudence of those ancient people being the common sources of the laws of so many nations of the world.

A late writer on Indian history (Mr. Mill) enters into the question of comparative merit of the two Indian judicial systems apparently with considerable information, though not without a tinge of severity. After treating the Hindoo law with the utmost contempt, he adds, "from "the above delineation of these great outlines it will appear, "that a much higher strain of intelligence runs through "the whole of the Moohummudan law, than is to be found "in the puerilities, and worse than puerilities of the (law "of the) Hindoos."* And again: "this indicates a con- "siderable refinement of thought, &c. far removed from "the brutality which stains the code of the Hindoo."† Farther: "there are some absurdities in the Moohum- "mudan law, in the reasons assigned for rejecting the evi- "dence of *women* in criminal cases;‡ but there is nothing "in it to compare with the many absurdities of the Hin- "doo system, which make perjury, in certain cases, a "virtue."

* Vol. I. page 639. † Ibid. page 640.

‡ Mr. Mill is here partly mistaken, and his error has been followed by the author of a late work on the administration of justice in India, Mr. Miller. It is only by the Moohummudan *statute law* (the severity of punishments under which has occasioned the utmost strictness of interpretation) that the evidence of women is rejected by lawyers, generally, though not universally. The *common law* does not reject the evidence of women: and by the common law, even capital punishment may be inflicted for atrocious crimes—such as murder, robbery, &c. The error here noticed is almost universal.

" virtue."* " The law of the Hindoos could not originate " in any other than one of the weakest conditions of human " intellect. The Moohummudan law is defective, indeed, " as compared with any very high standard of any exist- " ing system, with the Roman law for instance, or the law " of England, and you will find its inferiority not so re- " markable as those who are familiar with these systems " (the Roman and English), and led by the sound of vulgar " applause, are in the habit of believing."†

This is high praise bestowed by Mr. Mill on the Moohummudan law, and ought assuredly to rescue it from ever being again put upon its trial of comparison with the " puerile code of the Hindoos."

Again; with the intention of raising in estimation the Moohummudan law to a level with the laws of the Romans and English, speaking of the necessity of strict and accurate definition, to secure rights by laws, he says, " in " affording strict and accurate definitions of the rights of " the individual, the three systems of law, the Roman, " English, and Moohummudan, are not very far from " being on a level."‡

Now, Mr. Mill has fallen far short of the truth here; for if there be any point in which the Moohummudan law particularly excels, it is in its remarkable accuracy and strictness of definition; which, however, is not so perceptible in an English translation, because of the difference of idiom, and because the English language is not so well formed for strictness of definition as the Arabic, the structure of which is more perfect and better fitted for grammatical

* Vol. I. page 644. † Ibid. page 636. ‡ Ibid. page 636.

grammatical and logical reasoning; and in this, perhaps, the chief excellence of that ancient language consists. Had Mr. Mill read the Moohummudan law in the original, this superiority would not have escaped him.

Nor would he have failed to see, that although many of its laws are defective, perhaps worse than defective, yet, as a body of jurisprudence, as a system of law, it has no equal. I do not now speak of its intrinsic merit, or the excellence of its political regulations, but of the singular and systematic mode in which it has been digested, arranged, and subjected to the government of rules and principles, for the purpose of guiding its application in practice; and I am persuaded that, as a body of logical and analogical reasoning, shewing on the one hand, the real similitude of things, and on the other, the minute shades of distinction which the human mind is capable of perceiving, in cases apparently similar, yet different, it must leave certainly the English law very far behind.

My opinion of the Moohummudan law may possibly be biassed.* Be that as it may, the rank it holds as the basis of the constitution, as indeed the written law of India, raises

* Mr. Miller, in his work above-mentioned, has classed me among, if not at the head of, the enthusiastic admirers of the Moohummudan law. It will be nearer the sentiments I entertain on that point to say, —that, as a basis of a code for India, I think the Moohummudan law far preferable to any other; and that I admire it as a system of jurisprudence, which admits easily of modification, so as to be more fully applicable to the state of society in India than any other law with which I am acquainted. Moreover, I trust there is some ground for such preference, seeing that the Moohummudan law has actually been the national law of the country for many ages. My knowledge of the Moohummudan law enables me to appreciate its qualities; and to see that it is free from many imperfections usually ascribed to it.

raises the value of that code to an extent that must be fully admitted. An exposition of the Moohummudan law is a desideratum of infinite importance; and I shall be glad to find that any thing I may be able to say here may induce those who have the power, to adopt the measures necessary for cultivating a knowledge of it, so truly indispensable both to those who legislate for, and those who administer the laws to, the people of India. Were it, indeed, of no other use but as an exercise for the intellect, the study of the Moohummudan law would be intrinsically valuable. I will venture to say, that no one can study with attention a good treatise on the Moohummudan law, without having his reasoning faculties improved.

With respect to the English law, and its fitness to be either made a part of or to supersede entirely the ancient law of India, it is necessary for me to say something. In Mr. Mill's estimation, the law of England has very much suffered in comparison with the Moohummudan code. But Mr. Mill is not the first that has expressed an unfavourable opinion of the English law. It has often been censured by Englishmen of the greatest wisdom and experience. What encouragement, then, have we to transplant it into India? The English have, in fact, no regular code of law. A multiplicity of statutes they have, indeed; but they are unintelligible to many, most of them altered or partially revoked, many altogether rescinded, so that an English gentleman knows not where to look for law.* He is, therefore,

* Let those who advocate the introduction of English law into India, look at the demolition it is undergoing at home. Are we to take for India what the people of England are so eagerly rejecting? At all events, let us see what is suffered to remain of English law, *in England*, before we import it into India!

fore, compelled on every occasion to refer to a practitioner; and this practitioner refers not to any standard authorized by the *constitutional* legislature of England, but to a body of decisions on particular cases, which have been passed from time to time in the courts, by men, some of whom were wise, and some perhaps not so "full of wisdom," but whose said decisions have, in fact, now become the law of England.

Such law being founded upon no general principles, but piled up, as it were, upon particular cases as they arose, must ever be uncertain, because there can be no two cases, occurring at different periods, precisely similar in every point of view: and, at best, it is but a crude mode of law-making. It is a kind of *ex post facto* manufacture, which must ever have been influenced, in some degree, by the peculiar circumstances of the parties to the case on which the decision was passed, as well as by the sentiments and feelings of the times.

This mode of legislation is completely reversing the order of things. The duty of a judge is to explain and to administer, not to make laws.

The English criminal law is by a Moohummudan lawyer esteemed barbarous in the extreme. It certainly has ever been found inadequate to the purpose for which it was designed. It has failed to check crime; and only by the permission of Providence has it succeeded in peopling the wilds of America and New Holland. Its severity has become latterly the means of rendering it in many cases a dead letter. The feelings of the people are inimical to it; and the officers of the Crown have often failed, notwithstanding

standing the clearest evidence, to get the constitutional tribunals to convict under it.*

A Moohummudan lawyer would naturally ask, upon what principle is it that the life of a human being should be taken away for stealing the value of a few pieces of silver, when the most notorious adulterer and seducer, the destroyer, perhaps, not of the life, but certainly of the honour, peace, and happiness, not only of the individual more immediately injured, but of whole families, is suffered to pass unpunished by the law,—nay, to live openly in the sin of adultery, in the face of all mankind?

He would also ask, on what principle is the severity of the law of forgery founded? Why is a man to suffer death for making an imitation of one thing which has no *real* value (a scrawl or engraving upon a bit of worthless paper), when he may imitate every thing else of value which the same person possesses? He may imitate even his best invention, and utter it with the intention of defrauding the inventor. If the inventor has obtained a protection for his invention, the imitator is at most liable only to a fine. If no protection has been obtained, the imitator has acted legally, though he has defrauded the other perhaps of thousands: but if he thus imitate and sell, that is, issue his note for twenty shillings, he is hanged. This is, probably, the mode of reasoning which a man, ignorant of the feelings prevalent in our commercial country, would advance.

The Moohummudan lawyer will think farther. He will refer to his own law, and there he will find that it is the duty

* It will be recollected, that since the first edition of this work was published, many important alterations have been introduced into the law of England.

duty of every owner of property to adopt proper and effectual means of a physical nature, sufficient (generally speaking) to secure his property. If he have not done this, its abstraction from him, though a misdemeanor, is not theft, under the statute. Analogy would therefore immediately suggest to a Moslem, that if an individual, or body of individuals, shall choose to create a property on a bit of worthless paper, and that that property shall be found from experience not to be under that degree of protection which is required by law over all other property, but to be constantly exposed as the easiest prey, as notes are, by being so easily forged, he would immediately conclude that such property is not sufficiently guarded by its owner, and consequently is without the protection of the law.

Forgery, in its effects with reference to him whose name is forged, is a wicked attempt to ruin his credit. This is done every day in fifty different ways, and the law awards damages only. With reference again to the person to whom the forged paper is tendered, it is an attempt to defraud him of his property wilfully, by giving him in lieu of it that which has no value. I say wilfully, because the act of giving him the true note of a bankrupt would be an equal fraud and injury, *quoad* the person imposed upon. A nefarious act certainly, but, essentially, not in any uncommon degree atrocious.

These are the elements of this great crime. It is prosecuted by the party whose credit is attacked, not by him who is defrauded of his property; and instead of damages, his due, he procures the death of the defendant.*

Nor

* It is maintained that, in a commercial country like England, paper currency must be protected. But those who issue paper, and profit thereby, should be the first to afford such protection. In every

Nor could a Moslem lawyer admit (and all India will agree with him), that the having more wives than one is a crime meriting capital punishment: nor that it is felony to go about on a high road, or to hunt deer, with a black face (9th Geo. I. c. 22). Nor would he think it a felony without benefit of clergy, for a soldier or mariner to wander about the realm without a testimonial, or pass, from a justice of the peace; but yet it is so by 39th Eliz. c. 17. Nor that it is criminal to ride or go about with arms. Nor would he think it a felony to solemnize a marriage in any other place than a church, except by licence from the archbishop of Canterbury (26th Geo. II. c. 33). Nor that he was liable to suffer death for having carnal connexion with a female under ten years of age, whether with or without her consent.

A Moohummudan lawyer, were he to sit down and compare his own law with ours, would no doubt pay us home, by developing all our legal deformities, as we have with very great pains done the foibles of his law. Nor would he estimate, perhaps, so highly as we do its excellencies. Even its two great and pre-eminent towers, the *habeas corpus* and the *trial by jury*, might not extract any uncommon eulogium. He would approve of the former, because, by his own law, every judge is not only empowered to inquire into the state of prisons, and into the case of all prisoners, but he is strictly enjoined, above all things, to visit the jails, and to enquire personally of *every individual* the grounds of his confinement and nature of his case, and to give him relief according to law. A most merciful law it is too, compared with the English. I say he would approve

case of forgery, therefore, it should be left to the jury to say whether sufficient precautions were used by those who issue the paper to prevent forgery, to render the imitation difficult.

prove of the *Habeas Corpus* (if it did not indeed give his wives the power of relieving themselves from the incarceration of his zunanah); but he would tell us that but for this statute, of which we boast so much, we should be no better than slaves, who might, at the nod of our master, be imprisoned, to remain during his pleasure; and that, after all, it was no great matter to boast of, that we were not slaves.

Of the trial by jury, which we so fondly cherish, the Moohummudan lawyer might think differently from us. Its advantages, though highly extolled, and certainly in *England* very manifest, have often been questioned even in England. In other countries it has not been so highly valued. It was introduced into the French criminal code by Bonaparte; and if we credit the Edinburgh Review, it required the introducer to apologize to the people for its introduction, though the whole criminal code, and the mode of procedure of the jury, are, in the estimation of those writers, far superior to our own. Men of the lower orders in France are not allowed to sit on juries.

By "the code d'instruction criminelle" of Bonaparte, juries can only be formed from seven classes of persons, all of the age of thirty and upwards.

1st. Members of electorate colleges.

2d. From the three hundred domiciliated persons who pay the highest amount of taxes.

3d. Functionaries of the administrative order, nominated by the emperor.

4th. From doctors or licentiates of the four faculties, members of the Institute or of learned societies recognized by government.

5th.

5th. Notaries.

6th. Bankers and merchants taking out a licence, of one of the two highest classes.

7th. From among the agents (query deputies?) of the administrative authorities, who have a salary of four thousand francs.

On special application or recommendation of the minister of justice, individuals, though not of the above orders, "eminently qualified," may be put on the list of jurymen.*

From sixty summoned, thirty-six are *chosen*, and from thirty-six the twelve are balloted who are to sit; and the accuser and accused, equally, each may challenge peremptorily. No questions asked; but twelve of these thirty-six *must* be taken. They are to decide: have you a clear conviction that the accussed is guilty of the matter charged in the indictment? The reviewers say of a jury: "Is a "jury, in its best state, the best possible instrument of judi- "cature? We have often frankly acknowledged that our "estimate of its utility is very far from raising it so high "as a very great proportion of our countrymen hold it." Vol. xvii. p. 110.

The Mooftee, also, might perhaps find some difficulty in comprehending the advantages of jury-trial, as it is carried into effect in practice. If he were sure that he had not offended against the law, he would prefer being tried by judges who knew the law that must acquit him, and could of their own knowledge tell that he had not transgressed it. He would prefer this to the horrid uncertainty of depending upon the chance verdict of ignorant men, biassed perhaps by the eloquence of a pleader, more eager to shew his powers of oratory than to elicit the truth, and treating

* Edin. Rev.

treating (as the honourable compeers in the box are sometimes accustomed with us in England to treat, occasionally) the opinions of the judges with "*proper* contempt."

The Moohummudan Mooftee would agree with the Chief Justice of Bengal, in thinking "that in this country the "people are totally disqualified for exercising the duty of "a juror." The Mooftee would be surprised to be told that the jury are "to judge of the law as well as of the "fact;" and would naturally ask, how can a man judge of the law who does not know the law? And if juries are to judge of the whole issue, not knowing the law, where is the use of your laws? Call your trial by jury, arbitration; or, he might add, if you choose, a *punchayet* (as our Indian peasantry call their village-courts; and from which your trial by jury is perhaps descended, from times when there was no, or very little, written law among you); but it is absurd to talk of being tried by the laws of one's country, and after all to have for your judges men who know nothing of those laws, and will not be instructed unless they please.*

These, would the Mooftee say, are some of the objections I would submit; but still, he would add, probably, if you will assure me that you have never had innocent individuals condemned, or guilty culprits acquitted, by the influence of vulgar error or of popular clamour, I shall not urge the point farther, but admit that I have been out-theoried. You must not, however, commend this law for leaning to the side of *mercy*, till you have first shewn that the acquittal of a criminal *is mercy*. Remember that every instance of such *mercy* is an allurement to the commission of crime. It gives

* It is to be observed, that trial by jury in India, except in criminal cases, has scarcely been tried.

gives the vicious the hope of one more chance of escape, and perhaps casts the trembling balance, which before indicated to him to refrain, I cannot think this *mercy;* but rather that mercy in a law consists in the certainty of its procuring the punishment of the guilty, and the certainty of its ensuring the acquittal of the innocent.

The punishment of every crime, by every law, is a greater evil to the individual who commits the crime, than the advantage that could arise to him from its commission. Every person who is sane will balance consequences, and choose that which is least irksome: therefore he will choose to refrain from crime, rather than incur the certainty of punishment. Consequently, as an absolute certainty of punishment, which you may call cruelty if you please, would put an end to all crime, and an absolute certainty of acquittal would promote every species of transgression, your mercy would be cruelty, and my cruelty *mercy.*

Upon the whole, the learned Moslem would add, permit me to say, that although our law, having been framed for a state of society now no more, is doubtless defective, it is nevertheless not inferior to yours; and farther (which is of greater importance), it contains principles which will admit of its improvement and extension, so as to become applicable to the change of the times; and which principles, if judiciously applied, might, without destroying or even injuring its original fabric, be made the basis of a code that should hold a high place even in your own estimation: a far more perfect code than those who know it not can believe. If you desire to legislate for this empire, forget not this! Do not despise the wisdom of our God and yours; of our prophet, of our holy men, of our forefathers, which has been the guide of our actions here, and is the source of our hopes hereafter, the standard by which our ideas,

our

our morals, and those of our fellow-subjects (though religious foes) have for ages of ages been formed,—the very bond which unites society. If you take away this, we shall no longer know in what relation we stand to one another. A father will not know the propinquity of his child, nor the child that of his father; a husband that of his wife, a wife that of her husband: a law which age has rendered venerable, both to the believer and the unbeliever. As you are humane, you will preserve and reverence it, for its own sake and ours; as you are wise, you will preserve and improve it for your own.

You cannot change the law of any country for that of any other, even for a better, without offering great violence to the people: to the people of India above all others. The following will illustrate this and the subject I am adverting to. That it may suffer as little as possible by translation, it shall be told as near as can be in the manner in which a venerable and grave personage might be supposed to narrate it

" We all, men of my age, I mean," said the venerable Aabd-ool Waez, " remember when the English law was " administered to us by the English judges of the King's " Supreme Court: but, poor ignorant people, our fathers, " not knowing the intention of those great judges, had " never taught us to read English nor to understand Eng- " lish law. When a man came to us to deliver an order " to appear before the Supreme Court of Calcutta, many " knew not how to act. The distance was great, and we " had no means of defraying the expense of so long a " journey. In the midst of this dilemma, we were per- " haps seized, and some have been dragged to the great " court of Calcutta, where they were told, that they were " to be sent to prison for contempt of court.

" Respectable

" Respectable men have been carried to Calcutta, the " distance of five hundred miles, on the affidavit of some " miscreant, perhaps, the truth of which had not been in- " quired into; and there, removed from all their friends, " in the land of strangers, ordered either to find bail or to " go to prison, to the everlasting disgrace of their family. " The alternative of bail was nugatory; for removed from " all who knew them, who would be their bail? They " were, therefore, obliged to go to prison till the sessions: " perhaps for six months. They knew not whether they " were to be made innocent or guilty; for they were pro- " bably not rich, to be able to employ attorneys and lawyers " to tell their tale to the Lord Justey Saheb, who did not " understand their language; and although there were " doubtless gentlemen in attendance to explain, yet every " one knows how much the spirit of discourse vanishes in " passing through the mouth of an interpreter: the mental " communion, indeed, which exists between the speaker and " hearer, in earnest and direct communication, being alto- " gether lost, and cannot be interpreted.

" You will scarcely believe me," continued the old man, " for you was not born till more favourable times, when I " relate to you the following story of the great judge's " court, and of the English law of Calcutta.* In the " year 1192 of our era, Meer Moohummud Jaafur died at " Patna, leaving considerable property but no children. " His heirs, by the Moohummudan law (which was then " administered by a kauzee and two mooftees under the " Provincial Court of Patna), were his widow, who took " her share, and his nephew, who took the residue. The " distribution

* This is the famous Patna cause of 1777. The statement of it given by Mill has lately been questioned by an anonymous writer; but Mill's account of it is substantially correct.

" distribution was made, by order of the Company's Court, " according to our own law; but the widow, instigated by " base persons, produced a forged will and claimed upon it. " The forgery was detected. She then absconded, carry- " ing away with her the title-deeds belonging to the estate, " and the female slaves, and went to live among a gang of " fakeers in the neighbourhood, refusing to give up the " title-deeds and slaves. The nephew complained to the " Provincial Court that she had disgraced the family, by " thus absconding, and prayed that she might be ordered " to return, and also to give up the slaves and deeds be- " longing to the estate. His prayer was granted; and the " kauzee issued his order to call upon the widow to con- " form. She declined to do so, and watchmen were ordered " to watch her: a species of constraint which the Moo- " hummudan law and customs of the country authorize. " She still refused, and at the end of six weeks the guard " was withdrawn.

" The widow, instigated as before mentioned, brought an " action against the nephew and the kauzee and mooftees " in the Supreme Court of Calcutta, on the ground of their " proceedings, and she laid the damages at six lakhs of " rupees. The nephew pleaded that he was not amenable " to the King's court; but the judges said that he was: " how, I know not, as he had never been nearer Calcutta " than Monghyr (three hundred miles) in his life. They " said, however, that he was a zumeendar, and that every " zumeendar is a servant of the Company. But to be " servants of the Company, without receiving any wages, " only to be dragged to Calcutta jail, was what we did not " before know; and we were all so greatly alarmed at this, " that many of the most respectable zumeendars and talook- " dars in Bahar petitioned the most excellent Governor " Hastings

" Hastings (whom we all knew did not wish for such " service from us) to protect them from this great court; " or if this protection could not be granted, entreating " him to take their zumeendaries back, and to suffer them " to depart in peace to another country.

" The kauzee and mooftees pleaded that they acted " under the orders and authority of a competent court, and " that a judge and his law officers, thus acting, could not " be responsible in damages to those who might complain " of his decrees. The great Lord Justey Saheb, however, " would not hear of this, but declared them liable in " damages; and after entering minutely into the case, and " holding voluminous proceedings, they sentenced those " helpless *becharrahs* to pay three lakhs of rupees in da- " mages, and nine thousand two hundred and eight rupees " expenses.

" The defendants, especially the kauzee and the moof- " tee, had never seen so much money in their lives (for " with us the law is not the road to riches), and were " utterly unable to pay. They were therefore seized and " dragged to Calcutta; but the kauzee, who was an old " man, who had been chief kauzee of the province for " many years, was unable to endure so much vexation and " dishonour, and he expired by the way. The rest were " carried to Calcutta and lodged in the common jail, where " they remained till they were released by the interference " of the King and Parliament of England (whom God " preserve!) in 1781; who ordered a large sum of money " to be given them to soothe them for their disgrace and " sufferings, and to be not only reinstated in their offices, " but to be raised to the office of Moohummudan coun- " sellors to the court of Patna.

" The

" The Governor-General, the protector of the poor and " the justifier of the just, did indeed order that those " becharrahs (helpless persons), as they had acted under " legal authority, and only in discharge of their duty, " should be indemnified by government. But, at that " time, as I have since heard, the Lord Justey Saheb said " that the Governor himself was amenable to their court. " Nay, I have been credibly informed, that the Governor " and Council themselves were summoned to appear in the " Supreme Court, in an action, to answer at the instance " of Causseenaut Baboo: till at length, the wisdom of " government made them set at nought the vain and pre- " sumptuous pretension of this court, and to issue a pro- " clamation, telling all their subjects in the provinces to " do the same, unless those who were really servants of the " Company, or who had agreed to answer in that court; " which relieved the whole of the provinces from the " greatest consternation. And thus, by the blessing of " God, we were released from the jaws of this monster, " whose head we had only yet seen, whose size no man " could fathom, but which threatened the inhabitants of " these provinces with destruction, and the provinces them- " selves with desolation."

" This," added my venerable friend, " was long before " your time, Sir, and you may not believe my word; but " no doubt your historians, who leave nothing unrecorded, " have not forgot so great an affair."

This case will shew, in a striking point of view, the extreme misery to which the extension of the jurisdiction of the King's courts would expose the natives of India. The government of that day, in their letter to the Court of Directors, dated 15th January, 1776, thus state the conduct

duct of the judges: "that Mr. Justice Lemaistre de-
"clared, in his address to the late grand jury, that a very
"erroneous opinion had been formed by the Governor-
"General and Council, distinguishing between the situa-
"tion of the East-India Company, as Dewan, from the
"common condition of a trading company. He (the
"justice) made no scruple in avowing a decided opinion,
"that no true distinction, in reason, in law, or justice,
"can, or ought to be made, between the East-India Com-
"pany as a trading company, and the East-India Com-
"pany as Dewan (or sovereign) of these provinces; and
"that, in matters of revenue, the management of govern-
"ment was not exclusive, but subject to the jurisdiction of
"the King's Court; to disobey the orders and mandatory
"process of which would be equally penal for the Company,
"or those acting for them, in matters of revenue, as in all
"other matters whatsoever; and that the said court held
"out *in terrorem* over them the penalties of high treason, in
"refusing obedience to their court. That under pretext
"of requiring evidence, this court had demanded the produc-
"tion in court, of papers liable to contain the most secret
"acts of government. That the secretary to government
"had been served with a writ, called *subpœna duces tecum:*
"and attending the court without the papers, he was told
"that he had brought upon himself all the damages of
"the suit. That upon his representing the impossibility
"of his producing the records in court, having been for-
"bidden so to do by government, he was ordered to
"declare which of the members of Council voted for the
"refusal of the records, and which (if any) for their pro-
"duction. He demurred, but was made to answer; and
"every member of the Council who concurred in the
"refusal was declared liable to an action."

In forwarding this statement to his Majesty's government, the Court of Directors themselves most justly state: "that the penal law of England was utterly repugnant to "those laws and customs by which the people of India "had been hitherto governed; that nevertheless Maha "Rajah Nuncomar was indicted, tried, convicted, and ex- "ecuted, for an offence (forgery) which is not capital by the "laws of India; that the judges seem to lay it down as a "general principle, in their proceeding against this Rajah, "that all the criminal law of England is in force in India "upon all the inhabitants."

They ask: "shall all the species of felony created by "the black-act be introduced? Shall a man convicted for "the first time of bigamy (which is allowed, nay, almost "commanded by their law), be burnt in the hand if he "can read, and hanged if he cannot? These are only "some of the consequences we hint at. If it were legal "to try, convict, and execute Rajah Nuncomar for for- "gery, on the statute of George II., it must, as they con- "ceived, be equally legal to try, convict, and punish the "Viceroy of Bengal, and all his court, for bigamy, under "the statute of James I.!"

I have, I am aware, dwelt on this topic longer perhaps than might be deemed necessary. The question of the introduction of the English law into India, however, it must be admitted, is one of great importance; it cannot, therefore, be without its use to exhibit, even in this way, what may be part of the consequences of such introduction, by shewing what distress and universal dismay it did really occasion, when, though erroneously, the zumeendars and others were supposed to be amenable to the English law.

Since

Since the first edition of this work appeared, the state of the king's courts in this country has attracted notice; I will therefore avail myself of this edition to submit a few remarks on the subject. The extent of jurisdiction of the King's Courts in India has been often made a question; but the recent occurrence at Bombay has brought it to a crisis. The decision cannot be doubted. It is so natural for bodies, as well as individuals, vested with power, to endeavour to seek its extension, that when a collision, such as that in question, arises, one is surprised that it was not foreseen, and the limits of authority on both sides better defined.

The judges of Bombay claimed the right of bringing before them, by *habeas corpus*,—"the prerogative writ," as it was called,—the body of any person whomsoever, within the limits, not of the ordinary jurisdiction of the King's Court, but within the limits of the Company's territory of Bombay. They insisted that the jurisdiction of their Court, as to this "the prerogative writ," was more extensive than in cases of ordinary process of the court, and subject to no limits, but those of the territory over which the government of Bombay, and the King's Court, as they alleged, ruled; and that all those who resided within that territory were bound to obey the writ of the king.

Sir John Malcolm, the Governor in Council, demurred, and would not allow that such an extended interpretation could, fairly, be given to the charter of the court. At all events, he contended that their holding the natives of the provinces amenable to their court, would occasion such a commotion as would endanger the tranquillity of the country, and prove ruinous to the stability of our eastern empire. He would, therefore, beg of the Court to desist from enforcing their orders, in the mean time, till a reference should be

made to the superiors of both parties in England: if not, he should be compelled, however reluctantly, to order resistance — a spectacle highly unbecoming, and no less injurious to the interests of the nation.

Death deprived the bench of the senior judge before he had an opportunity of expressing his sentiments publicly on the question; and the second judge also died, but not before he had declared, in the strongest language, for the jurisdiction claimed by the Court. The ultimate proceedings were left in the hands of the third judge, Sir J. P. Grant.

This judge took occasion to express his opinions in very strong and decided terms; and as the government would not yield to him, and, as he said, he could not yield to them, he closed the court entirely, till instructions should be received from England; alleging, that being opposed by force which he could not resist, his court was no longer in possession of independence; that he did not know what might next be done, and that he, therefore, thought it better to shut up the court altogether.

An act of parliament explanatory of the jurisdiction of the Supreme Courts in India, defining their powers in the case of natives, will doubtless be obtained on the occurrence of the second collision between those courts and the local government being known. In the mean time, Sir John Malcolm's conduct has been approved in England, and the Advocate-general, in concurrence with whom the measures of Sir John Malcolm were taken, has been appointed judge, and promoted to the situation of chief justice of Bombay, to the supersession of Sir J. P. Grant: from all which we may conclude, that it is by no means the intention of the British

British government that their native Indian subjects should be amenable to a law of which they are utterly ignorant, and to a jurisdiction which, in Bengal, they could not reach the seat of, without a journey of many months.

By those who have formed very high ideas of the superior excellence of the English law and of his Majesty's courts, as possessing, more than all other tribunals, an aptness for the due, speedy, and impartial distribution of justice, we can easily conceive, that any thing which circumscribes the jurisdiction of the Supreme Courts in India, may be deemed an evil of the first magnitude. But that jurisdiction is unquestionably limited, both by space, and by classification of the individuals who are, and who are not, amenable to it; and to me it appears no less extraordinary in a judge of Bombay claiming jurisdiction over natives of India, beyond the local jurisdiction of his court as fixed by act of parliament, and not alleged to be answerable to it personally, than it would be in a judge of the Court of King's Bench to bewail his want of power beyond the Tweed. The Provincial Courts in India are as much recognized by the British legislature as the King's Courts are. They are distinct, the system admitting of no amalgamation: there is no connexion between them; so that, as far as the reason of the thing goes, I see not why the courts of Suddur Adawlut might not, with as much right, claim jurisdiction over the king's courts, as the king's courts claim interference within the jurisdiction of the Moufussil courts.

But it is amazing, that the proceedings of the Calcutta judges of 1777, and the sense of the English government and legislature of that day, did not convince the judges of Bombay that they would not be supported. The very

very question of jurisdiction in writs of *habeas corpus* was then agitated; and it was declared, by act of parliament, that natives, beyond the local limits of Calcutta, merely as natives of India, or even as zumeendars, were not liable to the jurisdiction of the king's courts. In the "Patna cause," the English provincial judges, against whom damages were awarded by the King's Court of Calcutta, appealed to the King in council; and the decision of the Calcutta judges against them was reversed. In the same cause, the natives, against whom damages to the amount of three lakhs of rupees were also awarded, by some oversight as to time, lost their right of appeal; but by a special act of the British Parliament, their privilege of appeal was re-established, and the East-India Company's government was directed, by the same act, to grant security on behalf of those natives for the damages awarded, for the very purpose of having the judgment of the court tried on appeal; and of course, like the other, reversed. The Bengal government, in consequence, granted security to the extent of five lakhs of rupees: a proof that an appeal was alone wanted to have the judgment of the King's Court against the natives also reversed, as it had been against the European functionaries of the same court, both being alike amenable, or not amenable, for their conduct, as judges and officers of an established court. Nay, one of the native defendants, *not a member of the Patna court*, but the nephew of the deceased native, whose property was the subject of dispute, was included in the act, and in the security; and as his defence was, that he was not amenable to the jurisdiction of the King's Court, holding no situation under government, as far as he was concerned, the question was one of simple jurisdiction. It will probably be thought, therefore, that the very fact of an act of parliament directing the East-India Company's government to grant security for the

the damages awarded against those natives, ordering their enlargement at the same time, is so clear an indication of the opinion of the British parliament being against the king's judges, then, that no judge, aware of the fact, ought again to have hazarded a collision with government, on the same or similar grounds.

It would be exceedingly difficult to conceive a power to exist in any human tribunal, which might be attended with more iniquitous consequences than that claimed by his Majesty's courts of Bombay. The right of decimating, at pleasure, the whole of the inhabitants of India, would, in its effect, be less grievous than this; because human nature could not be brought to exercise it. But the power of dragging those helpless people from one end of the country to another, and there placing them at the mercy of needy and rapacious practitioners of the law (for, be it remembered, the honest and honourable portion of that body would not be engaged in such practices), would be such a monstrous violation of humanity, that, as there is no possibility of such power being accorded by Britons, it is needless farther to exclaim against what has taken place. The natives of India may rest assured, that they are in no danger of having the bodies of their wives, or their daughters, or their wards, exposed to the indignity of being lawfully gazed at by the bar and the bench of his Majesty's courts of justice.

But in what way is relief proposed to be given to those who might be brought up by this prerogative writ? Is it by English law? This cannot be, because natives are amenable only to their own law, Moohummudan or Hindoo; and these laws, surely, the king's judges do not pretend to understand better than the judges of the provinces. But

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if they did, as there is nothing in the Hindoo law or Moohummudan law, which authorizes the issuing, by a king's judge, of a writ of *habeas corpus*, we should have one law for compelling appearance, and another for deciding the question at issue. I cannot, therefore, see the utility of the English law in this, more than in other cases, as a code for the natives of India.*

Whether, therefore, we view the English law with reference to its intrinsic worth, or to its fitness for the people of India, forming our opinion of it from the experience the unfortunate inhabitants of these provinces had of it during the short, but eventful, period they were cruelly held amenable to it, we can only come to one rational conclusion; and that is, that its introduction into India would be equally iniquitous and impolitic; that, however suitable it may be, in an enlightened country, among people who have made it, and who have been formed by it, administered by judges, certainly as upright and independent as our India judges are, but still acting under the eye of a thinking and a searching public, yet it requires no great stretch of thought to be convinced, that where none of these circumstances and correctives exist, the administration of it might be very pernicious.

Speaking of the reformation of the courts of justice of Bengal, the author of "Plans for the Government of India" says: "The hints of Lord Clive discover to us, that how-
"ever simple the principles of natural justice may be, and
"however

* Since the above was written, it has been decided by the unanimous opinion of the law authorities in England, that the Bombay judges exceeded their power, and that his Majesty's courts have no jurisdiction over the natives of India beyond the local limits of the courts.

" however perfectly it may have been copied in the laws of " England, yet it was impracticable to introduce those " laws as the measure of right and wrong in Hindoostan. " The laws of that country, as well as the courts of justice, " proceed from a government perfectly opposite in its spirit " to that of England; and the application of them had " become familiar to the people through customs not less " dissimilar to ours. Time has shewn us, that we may im- " prove, but cannot alter the India jurisprudence. Though " the laws of Rome furnished a fine system of jurisprudence " to our ancestors, they preferred their own common law " to this model; and yet the one had sprung from the re- " fined maxims of the Stoics, and the other from the mili- " tary establishments of the Goths."* And again: " The " experiments which have been made to engraft the laws " and practice of England upon the jurisdiction of India, " have proved to us that the most laudable efforts we have " been able to make have not answered the beneficial ends " intended."† " The conclusion is, that we must go on " gradually to improve the courts of justice known in that " country, till time and habit shall give them such a degree " of perfection as the prejudices and manners of the people " admit."‡

Yet, have we heard of judges of his Majesty's court of Calcutta who have spoken with unqualified opinion of the great advantage which the introduction of the English law would prove to India; and I have been informed that some of them have gone the length of recommmending, in writing to the government, the introduction of the English law into India. But when we consider the education of these men, we ought not to be altogether surprised at their partiality. Their intimate knowledge of the law, as well as of its practice,

* Vol. I. page 70. † Ibid. page 404. ‡ Ibid. page 406.

practice, makes them insensible of the intricacies of its ways; or they may believe even its defects have their redeeming qualities, though they are doubtless destructive in experience to those to whom they are less familiar. There is, moreover, at present, a perfect anarchy of law (if I may so express myself) in India; which, to a systematic lawyer, must appear the worst of all evils.

I have heard the same doctrine broached by individuals of the Company's service. But, in justice to the service, I must say, that I never knew such a sentiment entertained by any one whose knowledge of the people, or of either law, rendered his opinion valuable; and should such an opinion be hazarded in England by any one, who from having been in India, or even having held a judicial situation there, may be thought qualified to judge, let me tell the reader that there have been, and still may be, judges in India, who understand but little of any law, and who have probably never taken the trouble to think on this subject. That a knowledge of the law, or of any law, is not a qualification always found in an English India judge, must be allowed; the Indian government are indeed constrained to place men in judicial situations who have no previously acquired knowledge of the law. Mr. James Stuart, lately a member of the Bengal government, on this point observes: "The courts have no fixed principles of jurisprudence to "direct their investigations and govern their decisions; "and the judges are not only destitute of legal knowledge, "but, from circumstances beyond control, cannot be se-"lected for discretion and knowledge of business."*

Lord Clive, in his celebrated plan for the government of India, declared "that the attempt to introduce the English "laws

* Minute on Judicial System of India, page 12.

" laws throughout our possessions in India, would be ab-
" surd and impracticable."*

The question then is, what law ought to be introduced? I answer, at once, the Moohummudan law, modified so as to suit the changes of the times and the mixed population of the country; and my opinion is corroborated by many: among others, the author of the sensible work last quoted, *Plans for India*. " First," says he, " it is proposed that " the Moohummudan law shall, in general, be held the rule " of conduct for all authorized native courts."†

The Moohummudan law is, I have said, that which ought to prevail. It is the law which has prevailed throughout India for seven or eight hundred years; the law of the government to which we succeeded; the law which, in one instance, at least, we became bound to administer, by the acceptance of the solemn grant which gave us the country from the fallen emperor, whom we now chuse to represent.‡ I do not say, however, that the Moohummudan law should be introduced blindly, with its obvious defects. Take that law, properly understood, adopt it as far as can be done, revise it, improve it, adhering to it in every case where practicable; and I venture to say, we shall find that there are few points in their code, where justice and sound sense have not been advocated, by eminent jurists among themselves:

* Plans, page 67. † Ibid. page 414.

‡ Mr. Miller quotes the opinion of some individuals, to shew " that " the Moohummudan law is unknown to the body of the people." But this may be said of the English law in England. Yet we may ask, are those in India, who are ignorant of Moohummudan law, acquainted with *any other law?* Do the Hindoos know the Hindoo law? Taken as a body, the same thing must be said of them; they are utterly ignorant of the Hindoo law.

selves: and being so, the sentiments of such men may be, agreeably to their own principles of law, lawfully adopted by us; and being thus declared to be the law, they must ever after be followed as declared law. This is a principle of the Moohummudan law which cannot be disputed, and it is one of the highest value to us, because it authorizes reform: and which reform, when once made by supreme authority, will, and must, be recognized as law by every native lawyer.

If, as I have said elsewhere, government abandon the laws which for ages prevailed, which of necessity have greatly influenced the habits of the people, and which the British legislature has in fact guaranteed to them, for laws and regulations of its own, however good and equitable as we may think, we can hardly expect the people to go along with us. We must be prepared for opposition, in the hearts at least, not only of our subjects, but of our own native law officers. And, at best, it is but a rude way of repairing a fabric, to neglect the symmetry of the ancient building, or to demolish it. How much more masterly, how much more becoming so great a government, how much more beneficial, effectual, to carry with it the minds of its subjects and the strenuous efforts of its own public officers, by engrafting whatever may be approved of our own more enlarged system of justice on the ancient stock of their venerated laws! a measure equally desirable and practicable; for it does not admit of doubt, that there is no point of importance to be met with in the Moohummudan code, on which sound sense and reason have not had their respectable and (by themselves) respected advocates; and if government would but thus proceed, they would unquestionably get the native learning, both of the dead and of the living, to co-operate with them in the formation of a system

system of jurisprudence, which should not only prove the greatest blessing they could bestow on the people, but be a lasting monument of the wisdom, and not less so of that rarest but greatest of all qualities of a government, that of being able to rule its subjects by means of their own prejudices and affections.

It has been said by a great man, that "there is some- "thing else than the mere alternative of absolute destruc- "tion or unreformed existence;" and "that a true poli- "tician always considers how he shall make the most of "existing materials. A disposition to preserve, and an "ability to improve, taken together, would be my standard "of a statesman."*

All innovations introduced into the laws of India, in any other way, must tend, in their very lowest degree of inconvenience, to set at variance the European judges and their native advisers; and thus obstruct, instead of advancing, the public service, create endless references, produce partial or equivocal answers from the native lawyers, and, in the end, mutual disregard.

The introduction of a code of laws, such as are here alluded to, would unquestionably be the greatest blessing that could be conferred on the people of India. It is indispensable in my estimation. If we desire to elevate them one step in moral improvement, it is the fulcrum on which they must be raised.

On this point I find the following passage in Mr. Tucker's valuable work, which I think so much to the purpose, that I will avail myself of the opportunity afforded by this edition

* Burke.

edition of introducing it. "Will it be contended then," says Mr. Tucker, "that we ought not to have written laws? "that we ought not to have courts of justice to administer "and enforce those laws? or that the people of England "are so ignorant of general principles, have made so slight "advances in knowledge and the science of legislation, as "to be incapable of improving the institutions and juris- "prudence of India, in which revenue, religion, and law "all take their places together? Simple, suitable, and "sufficient as these institutions are represented to be, they "are not all alike entitled to our admiration and sup- "port; and although they ought not, in any case, to be "hastily subverted, they must be accommodated to the "altered condition of the people and the peculiar situation "of their rulers; and it should be the study of the govern- "ment, as it unquestionably is its duty, to give to its "native subjects, not merely the most perfect institutions "which may be compatible with the existing state of "society among them, but to model those institutions in "such a manner, that they may operate towards improving "the moral, intellectual, and social condition of the people "of India." p. 162.

There is no doubt that the British government ought to give a written law to their Indian empire; and there is as little doubt, that the task might be, without great difficulty, accomplished; but only by those who have attained a complete knowledge of the law at present existing, can that task be in the happiest manner performed. On this subject the able writer, Mr. Miller, to whom I have before referred, has expressed himself very strongly; and, in my opinion, with great judgment. "No where," says this author, "do "such urgent motives exist for presenting the law in a "clear and compact form as in India; and no where do "fewer

" fewer difficulties obstruct the attainment of so desirable " an object."—" The dispensation of justice would then " be less laborious to the judges, and access to it more " easy to the people"....." It is a conviction, that a careful " consolidation of the Hindoo, Moohummudan, and Eng- " lish laws, would secure most of the benefits here pointed " out," &c....." No price, which could be paid for a com- " plete and accurate digest of the law could be regarded " as excessive. It would put a stop to that perpetual, " partial, petty legislation now going on, would stop two- " thirds of that voluminous, vexatious correspondence now " carried on between the Directors and their officers abroad, " and encourage them to extend the same thorough revi- " sion to other parts of their administration"....." That the " attempt at a consolidation of the Moohummudan, Hindoo, " and English civil and criminal laws, now in force in " India, is neither impracticable nor dangerous, what has " already taken place at Ceylon abundantly testifies."

This is an allusion to the orders of his Majesty's government in 1811, who, at the suggestion of Sir A. Johnston, directed that the natives of the island of Ceylon should be governed, " as nearly as circumstances will admit, according " to their ancient customs; and that the Chief Justice do " prepare, for their use, a short and simple code of laws, " founded upon those customs, and divested of all technical " language."

I do not mean to say that the task here alluded to would be so easily performed for India as for Ceylon; or that a chief justice would be the proper person to perform it. But, as Mr. Miller justly observes, if it would be more difficult, the Company possess more than the comparatively adequate means of having it performed.

Be

Be the system, however, what it may, the law must be thoroughly understood by the judges; for, without this, vain will be all our efforts. The purity of its administration depends on this. At present, as Mr. Stuart says, they have no fixed law; the judges are ignorant; and he might have added, we profess to administer the Moohummudan and Hindoo codes through our native lawyers, whom we can neither trust for their knowledge or their integrity. Surely this system will not be continued.

We strive to moralize the people: but, let me ask, is it possible to conceive a more prolific source of depravity in any country, than that which is laid open by the bare chance, the bare possibility of success, in corrupting the courts of justice?

How vain is it for those good men who spend their lives, and build their hopes, through immortality, on their exertions to inculcate the principles of morality into the minds of the Indians, to hope for success, when their pupils, by looking around them, see that morality itself has no real existence, that even the highest and the most sacred are yet the most demoralizing of our institutions, and that the shrine of justice herself is to be approached by the hand of corruption. We cannot expect the natives to distinguish accurately between those members of our courts who may be corrupted, and those who may not. They do not inquire, probably; and, to say the truth, it is not much worth their while to do so. The effect to them is the same, whether the English judge be pure or not, or whether he partake of the plunder of his corrupt *aamla*. The general impression is that which is most to be thought of; and that is, that in our courts there is enormous expense, enormous delay; that every thing else is uncertain, and that there is nothing more terrific

terrific to an honest native, under the sun, than our courts of law; excepting perhaps the Supreme Court of his Majesty in Calcutta, wherein they say suits are not unfrequently ended only with the means of one or other of the parties to carry them on.*

If

* I observe that Sir E. H. East, late Chief Justice in Bengal, in his evidence before the Lords' Committee in 1830, states his belief, "that the natives of India are of opinion, that being placed under the "jurisdiction of the Supreme Court (King's Court) would be advan- "tageous to them." Quest. No. 1314. And, in Appendix No. 3 to his evidence, that judge has thus expressed himself: "I have been "informed by persons of intelligence, that the Hindoos of the upper "provinces had lately expected the extension of the English mode "of administering their law, as it prevails in Calcutta, to all parts of "Hindostan, and were much disappointed that it did not take place." Not, however, that Sir E. East proposed to introduce English law entirely. He would leave to the Hindoos their own laws of "title, in- "heritance, succession, marriage, adoption, caste;" but he would introduce "the English common and statute law of evidence, of con- "tracts, of trespasses, costs and damages, together with the substance, "or real sense, of all manner of pleadings, stripped of their techni- "cality; and also of all criminal matters, together with the substance "of pleadings therein; with such necessary exceptions to local cha- "racter, in respect to the English criminal code, as the judges of the "Moufussil courts might deem inapplicable to this people and to the "institutions of the country."

Sir E. East was a very popular judge, and was, I believe, much and justly esteemed by the natives of Calcutta; beyond which small circle, however, his personal acquaintance with the natives' feeling could hardly have extended: and as the sentiments expressed by Sir E. East are so different from those which we in India, not connected either with the King's or Company's courts, are accustomed to hear from the natives, I much fear that Sir Edward has not made sufficient allowance for the difficulty which a native would labour under in expressing sentiments unfavourable to the extension of courts of justice as administered by the esteemed judge, who had done him the honour of condescending to ask his opinion. The Hindoos are a polite people.

If we would impress on the minds of the natives of India the precepts of morality, it must be exhibited to them practically, not only by ourselves, but by every one holding important or confidential situations under us They must be shewn that we are not only willing, but able, to detect as well as to discard the wicked.

The manners of the people of India are extremely artificial. There is no openness and plainness of dealing among them: they are always, as it were, *acting*, even in their common intercourse with one another. Truth, therefore, has not that value among them, which it is allowed to possess among a people who practise a plainer and more undisguised intercourse. Thus the people of India scruple not to lay aside what they do not much esteem; and, along with it, every regard to justice and integrity. They are, therefore (generally speaking, I mean, for doubtless there are exceptions), not in their present state to be safely trusted with the exercise of power, without a very efficient control; and certainly not with power under the cloak of laws, which at present they must think mysterious to us, seeing that they rarely meet with any judge who possesses a competent knowledge of them.

I have

How could a native of India tell a chief justice of Bengal that they did not desire him to administer justice to them?

It is apparently more the English *mode of procedure*, the English *mode of "administration"* of law, than the law itself, which is recommended by Sir E. East to be observed in India. Now, to my mind, it is the form and *method of procedure* and administration which is so objectionable, not only in India but in England. The law of England, and indeed of every civilized country, is essentially just and equitable: it is the *mode of administering* it, and the quirks and quibbles which have been made to rise out of it, that have been so much deprecated even in England. Let us not have this for India.

I have already submitted a few remarks on the question, as to how far the natives may be employed in situations of trust, with a reasonable hope of integrity of conduct. Sir W. Jones informs us, that his experience justifies him in declaring that he could not implicitly rely on the decision of native lawyers, if they had the remotest reason for misleading the court. If Sir W. Jones came to this conclusion, I can conscientiously say, from much intercourse with natives who have made the law their study, that I have never met with a more respectable class of natives than they are. If not, then, and, if ever they are not trustworthy, according to Sir W. Jones's testimony, I at least know not where to look for honest natives. We fancy that by high salaries we can bribe the natives of India to be honest. But the revenue of the empire would not suffer for this, since we see every day that neither extent of trust, nor of emolument, has any other effect than to extend the sphere of corruption around them. Till their moral character, as a nation, shall be raised, we shall look in vain for integrity; and until that has been accomplished, we must be content to employ them under vigilant control. They are misguided children in morals, and vigilant and severe discipline are the only means, humanly speaking, by which a reformation can be expected. To discourage vice, one would not furnish the means of being more vicious.

Again; it is said we are instructing the natives in European science; and knowledge is power. You must provide a safe method of employing this power, or it will be dangerously applied. True. But let those who give them this power, provide also for them that which, we know, will regulate such power. The rudder ought to be shipped before the sails are bent, and the anchor on board. Let

their hearts be instructed as well as their heads: it is in this way alone that we can add to their happiness as a nation. We can then, with confidence, employ them. They will then not shrink, as they now do, from being ruled by one another.

To instruct the judicial servants of the Company in the Moohummudan law, has been an object most anxiously desired by the greatest men who have ever governed India, and by many illustrious characters in inferior stations. Their motive for this is so apparent, that it requires no illustration, to those who know that, though all profess to administer the Moohummudan law of India, there has seldom been, so far as I know, any judge in the Company's service who has had a competent knowledge of that law. But as this is almost incredible, and as the fact is, I apprehend, not generally known, it is right, and I trust it will be useful, to notice it. It is but just, as well as necessary, however, at the same time to state, that there is no work in any language, except the Arabic, whence a competent knowledge of the law can be attained. The Arabic language, till lately, was unknown, and is even now known to so few, that these scarcely form an exception; and when of these few we inquire how many know the law, the answer may generally be given, not one! for the Moohummudan law is not to be acquired without laborious study, more than the laws of other nations.

When the great oracle of the English law said, "should "a judge, in the most subordinate jurisdiction, be de- "ficient in knowledge of the law, it would reflect infi- "nite contempt upon himself and disgrace upon those "who employ him," how little could he have anticipated, that half a century should not elapse, when one hundred

dred millions of people should be governed by Britain, under laws administered by judges really deficient in legal knowledge!

Among those governors of India who have zealously endeavoured to procure to the people a pure administration of their law, I may mention the illustrious names of Clive, Verelst, Mr. Hastings, Marquess Cornwallis, Lord Teignmouth, the Marquess of Wellesley, and the Earl of Minto; and of the many individuals of inferior station, I must distinguish, as pre-eminent, the learned, amiable, and philanthropic Sir William Jones, whose professional knowledge and experience, himself an English judge in India, and well acquainted with the Moohummudan as well as Hindoo law, combine to render, not his opinions merely, but his extraordinary efforts to diffuse a knowledge of the law, stronger testimony of the necessity and importance of its cultivation than is generally attainable in matters of a similar kind. He had founded the Asiatic Society of Calcutta, and may therefore be called the parent of the systematic pursuit of Oriental knowledge. "But my great object," says he, "is to give our country a complete digest of Hindoo "and Mussulman law, &c. I would write on the subject "to the Minister, Chancellor, the Board of Control, and the "Directors, were I not apprehensive that they who know "the world, but do not fully know me, would think I "expected some advantage, by purposing to be made the "Justinian of India; whereas I am conscious of desiring "no advantage but the pleasure of doing general good."* And again: "Sanscrit and Arabic will enable me to do "this country more essential service than the introduction "of arts, by procuring an accurate digest of Hindoo and "Mussulman laws, which the natives hold sacred, and by "which

* Sir Wm. Jones to the Governor-General, 1786.

" which both justice and policy require that they should " be governed."*

Sir William Jones suggested a plan for completing the digest here alluded to; and in his letter to the Marquess Cornwallis, then Governor-General, on the subject, he thus expresses himself: " Perpetual references to native lawyers " must always be inconvenient and precarious; and, at " best, if they be neither influenced nor ignorant, the court " will not, in truth, *hear and determine the cause*, but " merely pronounce judgment *on the report of other men.* " For these reasons, it appears indubitable that a know- " ledge of Moohummudan jurisprudence is essential to a " complete administration of justice in our Asiatic terri- " tories," &c. And again: " For the Hindoo and Mus- " sulman laws are locked up for the most part in two very " difficult languages, the Sanscrit and Arabic, which few " Europeans will ever learn, because neither of them " leads to any advantage in worldly pursuits; and if " we give judgment only from the opinions of native " lawyers and scholars, we can never be sure that we " have not been deceived by them. It would be absurd " and unjust to pass an indiscriminate censure on so con- " siderable a body of men; but my experience justifies " me in declaring, that I could not, with an easy con- " science, concur in a decision, merely on the written " opinion of native lawyers, in any cause in which they " could have the remotest reason for misleading the court. " Nor, how vigilant soever we might be, would it be " very difficult for them to mislead us; for a single ob- " scure text, explained by themselves, might be quoted " as express authority, though perhaps, in the very book " from which it was selected, it might be differently ex- " plained,

* September, 1787.

" plained, or introduced only for the purpose of being " exploded."

It was an object of the highest ambition of this benevolent judge, to put government in possession of a code of the ancient laws, by which he presumed they were to govern the people of India; improving of course those laws where necessary. He undertook to superintend the compilation of, and to translate, the digests above mentioned. His letter to the Governor-General, Marquess Cornwallis, will be read with no small interest, when it is known that so much at heart had he the laborious undertaking, that for it alone, with an infirm constitution, he suffered himself to be separated, alas, for ever! from a beloved wife, who was compelled by sickness to return to England; and that, in a short time afterwards, his own life fell a sacrifice to his great design.

The translation of the Hidayah, a celebrated work on Moohummudan law, from the Arabic, both into Persian and into English, were projected by Mr. Hastings and effected under his government. The foundation of the Moohummudan college at Calcutta, for the express purpose of affording the natives an opportunity of learning that law, exclusive of the often-expressed sentiments of that great man, affords us the strongest and most unequivocal proof of his desire to promote the knowledge of that law. " Mr. Hastings," said Lord Teignmouth, " with the view " of promoting a knowledge of Moohummudan law, as " essential to the due administration of justice to the na- " tives of India, established a college in Calcutta."*

" Fully sensible," says Lord Teignmouth, " of the uti- " lity

* Life of Sir William Jones.

" lity of a digest of Hindoo and Moohummudan law, in " facilitating, what he was ever anxious to promote, the " due administration of justice to the native subjects of " the British empire of Hindoostan, the Marquess Corn- " wallis considered the accomplishment of the plan (the " digest above-mentioned by Sir William Jones) as calcu- " lated to reflect the highest honour upon his administra- " tion."*

Lord Teignmouth, when Governor-General, employed Lieutenant-Colonel (then Lieutenant) Baillie to translate this digest of the Moohummudan law. A translation of one volume of it was made; and the Marquess of Wellesley (who in the interim had established a professorship of Moohummudan law in the college of Fort William, and bestowed the professorship upon the translator), when the volume was printed, which was done at the expense of government, presented Captain Baillie with a reward of 20,000 rupees.

The Earl of Minto held in no less estimation the cultivation of the Moohummudan law than the greatest of his predecessors had done; and although he made no display of the patronage and encouragement he gave invariably to those who dedicated their time and acquirements to the advancement of useful literature, yet we have had no one in the high station which he filled, who cherished them with more real sincerity than this lamented nobleman.

Notwithstanding several tracts on the Moohummudan law had been translated, a complete exposition of that code, by compilation, translation, and explanation, rendered into our vernacular tongue, was still a desideratum to the Indian government.

* Life of Sir William Jones.

government. A work of the nature here described was in the year 1809 undertaken, and patronized, in the fullest and most earnest manner, by his Lordship's government, and subsequently by the Honourable Court of Directors; but as a new government did not enter into the views of the Earl of Minto, the publication was, of course, suspended. Justice to a former government of India, and to the Court of Directors, who readily patronized the work, required that it should be noticed; and it is but justice to them and to the author, to state the cause which has suppressed its publication.

The patronage which the Bengal Government had invariably shewn to those who had endeavoured to expound the Moohummudan law, ceased with the government of the Earl of Minto; but no accession to the opinions of that lamented nobleman, and his illustrious predecessors, is either required, or indeed could add weight to their sentiments. We are, therefore, fortunately relieved from the necessity of wishing for farther testimony, as to the necessity and the importance of the study of the Moohummudan law to those servants of the Company whose duty it is to administer the law of India.

The best means of promoting and of ensuring the attainment of a knowledge of that law becomes the next object of inquiry.

There are only two modes of doing this. If the Company's servants cannot be brought to learn the Arabic language, in order to study the law in the original, that law must be rendered into their own language, that they may study it in English. The experience of more than half a century has fully shewn that we cannot trust to the former; the

the latter alternative must therefore be adopted. An ample, clear, and faithful exposition of the Moohummudan law, rendered into English, is therefore as essential to its cultivation, as a knowledge of that law is to the due administration of justice to our Asiatic subjects.

But this is not all. The Moohummudan law, though rendered into English, would not be more easily acquired than are the laws of other nations, which are written in their vernacular tongue. All those who have benefited by the advantage of public instruction must fully acknowledge its utility, not only in directing the student in the proper path of his research, but in furnishing a field for that emulation which, when duly cherished, tends so strongly, not only to the advancement of particular talent, but to raise, throughout the whole, the general standard of acquirement. I need scarcely add, that it would be worthy of the rulers of India to revise the establishment formed by the wisdom of the Marquess of Wellesley in the college of Fort-William for instructing their servants in the Moohummudan law; that it would be worthy of the enlightened governors of eighty or one hundred millions of their fellow-creatures, to instruct their servants in the law which they are called upon to administer to them. It would be quite incredible, if we ourselves were not an instance of it, that a civilized nation should profess to administer a law to eighty millions of people, without having one institution for teaching that law to those whom they ordain to superintend the administration of it. Government pays upwards of a million and a half to its European civil servants, and about £600,000 sterling to those in the judicial department alone. I cannot but think, that two or three thousand a-year, towards teaching them the sacred duties of their profession, might well be added to this large sum.

Government

Government must not think that their covenanted servants are, by a little elementary knowledge of the Persian language, or peradventure, in a few instances, by reading one or two elementary works in Arabic, to be converted into Moohummudan lawyers, competent judges of the Moohummudan law. Must a man be instructed in the meanest occupation of life, and shall he step to the bench, where he has to administer a foreign law, without any previous education?

Thus it is, that our Indian judges, I fear, most of them, do really answer Mr. Stuart's description, "that they are "ignorant of the law."

Nor do the regulations of government admit of Europeans to officiate as counsel or advocates, even before the Sudder Dewannee Adawlut, the Supreme Native Court. If the counsel were learned in the law, they would, as in Europe, take care that the law was at least unfolded to the judge; so that even ignorance on his part would be less felt; and, at all events, there would be greater security against corruption.

There does not seem to be any good reason for such exclusion: and there is now a considerable body of well-educated young men, the offspring of European gentlemen, who might, perhaps, with advantage, be admitted to the privilege of practising at the bar of the sudder and provincial courts. It is impossible that any valid objection can be urged to the admission of respectable persons, properly qualified, of whatever breed or colour, whether natives of Europe or of Asia.

A course of lectures delivered in English to those who could

could not be prevailed on to learn Arabic, accompanied by translations from different authors on the most important points of law, would be the necessary course to be pursued, generally, in instructing the civil servants of government; together with copious explanations of the technical terms, phrases, and language of the law; and for the more accurate understanding of which, a comparative elucidation of the similitude or difference between such, and the technical language and terms of our own or of the Roman law, should be given: noticing, if required, at the same time, where the government regulations affected the law, where they did so with good cause, and where unnecessarily, as in many cases he would discover to be the case.

Blackstone somewhere laments the enormous load which ignorance of the law has unnecessarily added to the Statute-Book. What would he have thought, had he seen the "Laws and Regulations" of the Indian government, and been equally capable of appreciating their application?

Encouragement, at the same time, must be given to those few (and some there would be), who would attempt to master the original law in its primitive tongue. These ought, by all means, to be cherished; for from these alone could be looked for the propagation of the science.

The difficulty of procuring a professor sufficiently qualified might at first be experienced; but, as it would be an object worthy of pursuit, so the qualifications would be deemed worthy of acquirement, and would soon be found.

The expense of an establishment of £3,000 or £3,500 a-year, is too trifling to be named, as worthy of the least consideration in such a case.

The

The next and last point to be considered is, the mode of administering the laws; or in other words, of ensuring the administration of justice to the people, and protection to their persons and property. How, by whom, and by what courts, can justice be best administered in the British provinces in India.

The object of law, in every country, is to protect the individuals, and the community of that country, in the enjoyment of what they hold estimable. This definition is very comprehensive: it includes questions of property, usually so called, of person, of civil and religious liberty, of contract, succession, the public revenue; for, to the community, the public revenue is matter of concern and of value, and it is the property of the state.

This protection is afforded in two ways: first, by measures which are calculated to prevent aggression; secondly, by laws duly administered.

Under the former of these heads will fall to be considered what is usually termed *police;* under the latter, the *administration of justice.* But as the administration of the law is more immediately connected with what has gone before, I shall reverse the order of discussion, and in this place offer such remarks as I have to make on the judicial system of India, considered executively, reserving for a separate chapter what I may have to submit on the subject of police.

However trite the observation, yet as it serves to collect our wandering thoughts, I must remind the reader, that there is nothing perfect under the sun; that in entering upon the consideration of this, as well as of every other practical

practical question, he must divest his mind of every ideal standard, and meet the case attended by its concomitant circumstances, and like every wise man, instead of aiming at perfection, be satisfied with endeavouring to discover what is the best of expedients; for it is only a choice of these, as has been well observed, that we are permitted to realize in human affairs.

The Company's judicial establishment of Bengal (to which I shall restrict myself) consists of one supreme native court, called the Sudder Dewannee and Nizamut Adawlut (lit. chief, civil and criminal court), of four judges; six courts of circuit, of four judges each, and one judge in every zillah or district; besides a judge in each of the four cities of Moorshedabad, Dacca, Patna, and Benares. There are, likewise, some assistant-judges; and the registers of the zillahs who hold courts: and besides all these, many native petty judges, under the names of sudder ameens and moonsifs. The former appellation signifying "chief arbitrator," and the latter "a justice," or one who distributes justice.

From the inferior courts lie appeals to the zillah judges, and from the zillah courts appeals lie to the courts of circuit, and from the courts of circuit to the Sudder Dewannee Adawlut, in all civil causes of any considerable amount, in questions of real property, and even in personal actions amounting to 5,000 rupees: and from the courts of circuit to the sudder a reference is necessary in all criminal convictions involving life or transportation. Thus, in fact, except in matters of comparatively trivial importance, it may be said that there is only one court of justice for the whole of the Bengal provinces; every cause appealed coming loaded with the rubbish of the records of two inferior chambers through which it has passed.

No

No wonder, then, that the judges of the Sudder Dewannee and Nizamut Adawlut complain of having too much to do, and that the administration of justice has been represented as, in fact, at a stand. The other presidencies have each its sudder; and thus it is, that eighty millions of people, like pilgrims at a scanty fountain, are left to scramble for justice.

Mr. Stuart, above-mentioned, who was himself one of the judges of the Calcutta Sudder Adawlut, in a minute which has been printed, proposed a remedy for the "oppression "of business" under which the court laboured: namely, to have *another* sudder court instituted for the Upper Provinces: and to improve the administration of justice, he proposes instituting also *nine* different tribunals in every district; some composed of natives as judges, others of Europeans: all, however, linked together by *threes*, in the old way of appeal, and ultimately falling into the sudder courts.

Mr. Stuart's avowed object was to relieve the present sudder from part of the "overwhelming press of business" on their rolls. He divides the provinces into districts (very large ones, however); puts those districts under the entire management of *one* person, to whom he gives the title of "*resident*;" and this resident is not only to hold several courts himself, but to exercise a control over all the other nine courts in his district, and to receive appeals from them all, and the sudders are to hear appeals again from him. The resident is, moreover, to superintend the affairs of the district revenue, justice, and police. The former residency of Benares is Mr. Stuart's model; but he desires to modify it, "so as to combine the principles of native administration "with order, stability, and justice."

Mr.

Mr. Stuart's formidable list of tribunals consists of,

1. *Minor Maal Adawlut*, under a native darogah.
2. *Major Maal Adawlut*, under the Sudder Dewannee Adawlut and board of commission.
3. *Minor Dewannee Adawlut*, under a native judge.
4. *Major Dewannee Adawlut*, under the resident.
5. *Cazee's Court.*
6. *Punchayets.*
7. *Fouzdary Major*, under control of resident and assistants.
8. *Fouzdary Minor*, under a moulovee and pundit.
9. *Resident's Criminal Court.*

What meaning Mr. Stuart attaches to the word *maal*, applied to the adawlut, he has not told us; nor has he said why the old designation of the Benares resident's court, which was called the "Moolkee Adawlut," has been changed. There was a "Moolkee Dewannee" and a "Mool-"kee Fouzdary Adawlut" in 1788. Mr. Stuart's *maal* is probably meant to represent the word مال māl, which signifies property; but, in technical language, *moveable* property only: and yet he gives his "maal adawlut" cognizance of rejection, boundaries, water, and premises, landed estates. The old "moolkee adawlut" was no doubt intended as a translation for "country court" or "provincial court," from *moolk*, in one sense, a country; but it is not a happy translation.

Nor does it appear how Mr. Stuart was "to combine the "principles of native administration" by the institution of tribunals such as he specifies; none of which were known under any native administration that I am acquainted with.

But Mr. Stuart in his preface suggests another arrangement

ment, which he seems to prefer: an objection to the former being the difficulty of finding any one individual qualified to be *a resident*. This plan is to empower the collectors to hold *maal adawluts*, with assistants, European and native, and a native judge; with cognizance to the amount of 1,600 rupees; that there shall also be six European judges formed into two courts of circuit and appeal, and to try all great causes; but the three frontier districts of Bundelkund, Saharunpore, and Gorruckpore, to be made residencies.

It is, however, much easier to point out defects in the plans of others than to form better ones; and I may observe, that after what has been written on the subject already, by such men as Lord Clive, Mr. Verelst, Mr. Hastings, Mr. Francis, Sir William Jones, Lord Teignmouth, Sir William Chambers, and many enlightened servants of government, it is not easy to find much new matter to communicate. Mr. Stuart was one of the most distinguished servants of the Company, and, as such, his sentiments can not but be valuable. But I may take leave to say, that to *simplify*, and not to render more complicate, is, in my estimation, the more likely way to improve the present judicial system of India.

The first object of all governments ought to be to diminish, as much as may be, the sources of contention among their people, and thus to render an appeal to the laws as seldom as possible necessary. This is to be done by a vigilant police with reference to criminal matters, and by municipal regulations and precautions in civil affairs.

In Bengal, it has often been said, that a great majority of questions of civil litigation and cases of criminal prosecu-

tion arise out of disputed boundaries. Contention arises, affrays follow, which often end in the commission of atrocious crimes, as murder, arson, and destruction of property of all kinds.

Here, then, much might be done, as I have already noticed, by obtaining minute surveys of every purgunnah and every village of the country, by keeping correct purgunnah-registers of the lands of individuals, every transfer or division thereof to be entered into such registers. The marriages, births, and deaths, which occur in the families of every landholder and principal inhabitant of the purgunnah, might be registered, and a body of record obtained, which, if it did not altogether prevent litigation, would assuredly facilitate its termination when instituted. A record of boundaries, alone, would be of the utmost importance.

All this might be done in the strictest conformity with the usages of the country; and thus, not Mr. Stuart's "*principles* of native administration," but the *practice* of native administration, might be combined with order, stability, and justice. And could our government but only re-establish, what they at one time took pains to demolish, the ancient purgunnah canoongoe and village putwaree records, on the basis of these, a system of regular record of principal events, and even minor occurrences, might be founded (to be abridged periodically, and the abridgment kept at the principal town of the district), which should not only aid in no common degree the administration of justice between individuals, but afford such an insight into the state of society and the transactions of the people, as would guide the active and discerning magistrate of police through his most intricate investigations. A simple list of the records kept by the canoongoe (as given by Mr. Davis), and of

of the putwarees' accounts (as noted lately by Mr. Newnham, an active and intelligent Bengal revenue officer of the present day), will shew the mass of information collected, or which might be collected, by these provincial officers.

Records of the Canoongoe.

دستور العمل *Dustoor-ool uml.* The orders of government for the guidance of its officers and the customs of former governments.

عملالدستور *Uml-i dustoor.** Customs or orders, in opposition to, or in addition to, the above, or practice of the present times.

فہرستِ دہات *Ferhest-é dehaut.* Account of the villages.

سیاہہ امدنی *Sehahy amdany.* A daily treasury-account of payments from ryots.

اوارجِ جمع خرچ *Awargy.* A running account of receipts, remittances, &c. made annually, or oftener.

دول نشخیص بندوبستِ *Doul tushkhsees bundobust.* Nett settlement rent-roll, or estimates of receipts for the year, whether paid by muzkoory talookdars, or ryots, to the zumeendar.

جمع بندي خاص *Jummabundy khas.* Special rent-roll.

جمع ساير *Jumma sayer chubootra cutwally o' chokeyaut o' guzoore ghaut.* Sayer and town duties.

جمع محال میر بحري *Jumma mahal-e-meer behry.*†

جمع پچوترہ *Jumma patchoutra.*†

جمع محال بدرقي *Jumma mahal budderky.*†

اسمنویسي

* It will be seen that Mr. Davis's orthography is not very accurate.

† These are land, sea, and transit custom-house duties.

اسمنويسي زميندارن *Ism nuveesy zumeendaran.* List of names of zumeendars.

حقيقات بعضي زمين *Hukkeekaute baze zumeen.* State of rent-free lands.

جمع مقرري و استمراري *Jumma mokurrery o' istumrary.* An account of permanent or fixed payments.

واصل باقي *Wassul bakee.* Collections and balances.

حقيقات روزينه داران *Hukkeekaute rozeendaran.* State of public pensioners.

The records of the putwarees are as follow :—

1st. The *Mouzeenah* or *Rukbah bundee.*—An account of the total quantity of land belonging to the village, stating that which pays revenue, that which is rent-free, that which is appropriated, that which is cultivated, and that which is incapable of cultivation.

2d. *Nuklé puttahjaut.*—An abstract copy of agreements with every ryot, containing the number, as Nos. 1, 2, 3, and so on, the name of the ryot, the quantity of land and gross rent, in one line. In the next, the name of the field, its extent in beegahs, the rate per beegah, the total rent of each field. This is made out in June and July. Puttahs are not always executed; but this account protects the ryot from undue exactions.

3d. The *Tukmeenah* or *Kusserah.*—This is an annual inspection-statement of the quantity of land, the crops in kind, and in which harvest produced. First, the name of the ryot, extent of field, in which harvest cultivated, species of produce, name of the field and quarter (har) of the village; exhibiting at the end an abstract of the whole, under

under the heads of rent-free, jageer, fallow, payable in kind, ketwaree. This is of great consequence, as it may check all others. It contains the mauzenah in abstract at the bottom of it. This is partly made out after the Dussarah (October) for the khureef (winter) crop, and in April for the rubbeea (summer) crop; and at the end of the year (June), both accounts of inspection are united. This account exhibits the total cultivation by its different parts and kind of produce.

4th. *Mehr kuttee*, called also *Lugtewar*, also *Mehbawan*. —This is a kind of ledger, exhibiting (like No. 2) the number and name of the ryot, the number of the beegahs and his total rent. Under this, the harvests, as khureef and rubbeea, are entered. Under the head khureef are entered the name of the field, extent thereof, species of crop, rate per beegah, and total rent of the fields reaped in the khureef harvest: the same for such fields as are cultivated and reaped in the rubbeea harvest.

The difference, therefore, between this and the *Nukl-e puttahjaut* is, that it specifies the kind of produce and the harvest in which it is reaped; and thus it is useful to shew when the ryot can best pay, to ascertain the real value of the field, to enable the zumeendar to prohibit the repetition of searching or injurious crops.

5th. The *Tukavee account*, or account of advances.— This contains the names of the ryots who receive, the amount (and date) given, the interest at two anas per mensem, the total.

6th. The *Bhoalee*, *Buttaee*, or *Kunkoot:* that is, the account when the rent is paid in kind, *or in kind convertible*

ble into money.—The *Bhoalee* account contains, first, the name of the ryot, the number of beegahs, the name of the field, the kind of grain, the total produce in maunds, the assl (original) share of the ryot, the assl share of government, the deduction taken from the ryot on account of charges. This added to the government share makes the total taken by government. Lastly, the total in money. Then, at the bottom, the total quantity of each kind of grain is taken at its own valuation, which makes up the total sum paid in money.

7th. The *Putthur*, or *Futthur*, or general *Toujhee*, or the *Jumma wassul bakee.*—This is an account containing the names of every ryot; opposite which the quantity of land, the amount of rent, the rusooms or extra dues, as d'hnanee nemannee (half an ana) batta on rupees, tuccavee, former balance, total rupees, sum recovered, total balance. The names of such of those ryots as owe balances, who are dead or fled, are kept in this account till their balances are paid.

8th. The *Roz namah*, or day-book.—It is a cash account of receipts and disbursements, of whatever kind, whether of expenditure, or of payment of rent to government, balanced every day, and the balance only brought forward to the following day. This account also contains entries of produce in kind, thus: "received from A, five maunds of "barley, at two maunds per rupee, two rupees eight anas."

9th. The *Khutteeounee.*—This is an account of cash received from every ryot, containing a separate entry for each name and number, as "No. 20, sunkarsing;" the date of the payment, and total.

10th. *An abstract account of receipts and disbursements;* containing,

containing, on one side, the total received under general heads, and on the other, the general items of disbursement, and balanced.

The canoongoes keep, as a check over the putwarees' or village-accounts,—

1st. The *Mauzeenah.*

2d. The *Tuccavee account.*

3d. *Seeah*, daily or account of receipts from the malgoozars.

4th. The *Futthur*, or *Jumma wassul bakee*, shewing the demands, receipts, remissions, nankar, and balances.

From the nature of these accounts, it is obvious, I think, that, if regularly kept, little room for dispute could exist. But these officers, to be efficient, must be considered officers of government. It has been objected to this, that "when the putwaree ceases to be a servant of the zumeen-"dar, he will cease to be the depository of the village-ac-"counts. Now the putwaree is often not entrusted with "the accounts of the neechjote and chakeran lands; so he "might remain unemployed, or only get his information "from the under-proprietors."*

But there is no reason to fear these. Were those officers under the control of the collectors, and a regulation made holding the canoongoes' and putwarees' accounts legal evidence in courts of justice, the zumeendars and cultivators, and all persons concerned, would soon find it for their interest to inspect and preserve their correctness. Those who feared oppression and undue exaction, would doubtless not decline giving information and employing these

* Minute of Governor-General, Lord Hastings, 21st Sept. 1815.

these accountants; and this would necessarily compel the zumeendar to do the same, and to see that the accounts were correctly kept. The establishment of such a body of *written evidence* (witnesses that could not lie) would, in the present state of morals in India, be of incalculable utility. This would be making the native system of administration available to some good purpose.

"The tepeekchy," says the Ayeen Akburee, "shall write "down whatever agreements are made with the husband- "man, keep separate accounts of the boundaries of each "village, draw out statements of the waste and arable "lands; to which he is to subjoin the names of the munsif "(appraiser), the land-measurer, the thanadar, the hus- "bandman, the naeks or head-men of the villages, the "articles of cultivation, villages, purgunnah and harvest." The putwaree, or village-accountant, "kept the accounts "of the husbandman's receipts and payments, of the quan- "tity of land cultivated by each villager: no village was "without one. That is, the advances which the ryot re- "ceived, the rent he promised to pay, the quantity of land "he agreed to cultivate, the kists he paid, and the balances "either for or against every ryot of the village; a memo- "randum of which he is to furnish in writing to every in- "dividual to whom it concerns."

Would not all this, imperfect as it is, almost stifle litigation? Where boundaries are defined, where accounts are regular and clear, there can be no dispute: at least none that may not be speedily and readily settled, both to the satisfaction of the judge and of the parties.

But the servants of government, it must be confessed, though they transact the whole of the business of the state, are,

are, almost universally speaking, but too little informed of the customs of the people and of their ancient usages; so that the bare suggestion of any thing like minute detail, in the affairs of government, presents first to their minds the immense extent of country to which such minutiæ must be applied, and they look upon the attempt in the same light as if they were desired to reckon every particle of sand on the sea-shore. It appears to them a vast expanse, full of unknown, perhaps unheard-of objects; and they treat the idea as visionary.

They forget, however, that by division and judicious classification, it is scarcely possible to conceive any thing that may not be investigated and subjected to regular and systematic control; that each, of themselves, will have only to act his own proper part in the general scene; and that before we can attain any thing like true knowledge, either in the moral or physical world, we must first decompose, and reduce our materials to their primitive state, to ascertain the nature of the elements we are to act upon. When this is done, we can combine them at will, and make the most advantageous uses of them.

But that what I have suggested may not be deemed impracticable, even by Englishmen, we have only to recollect, as before stated, that much more *was* done by our own countryman, whom I shall again mention, being the first to accomplish the undertaking. The able and distinguished officer I allude to was Colonel Reade, in whose school was bred the no less distinguished manager of the Ceded Districts, Colonel Sir T. Munro, both of the Madras establishment; besides several distinguished civil servants who were educated under them.

Colonel

Colonel Reade was put in charge of the Baramahal, a district consisting of no less than twenty-five purgunnahs, which paid a rent to government of 7,12,530 pagodas, or about twenty-five lacs of rupees. He first ordered the actual measurement of the district, ascertained the dimensions of its purgunnahs, villages, and farms, the quality of the different soils producing various articles of cultivation; classed these, and valued the yearly crops, which he divided according to the established rates of division, by means of the puteels or mukuddums, between the government and cultivator. The superficial extent of the district was 6,259 square miles; which, deducting 1,262, the area of unproductive hills, &c., left 4,997 miles, or 3,195,000 acres of plain, consisting of twenty-five purgunnahs, of 4,865 villages, peopled by 612,871 inhabitants; of which 85,227 were shudrs, or government farmers, and 17,314 possessing charity lands or private proprietary holdings, officially, or by inheritance, or by grant. They had in the district 51,198 ploughs, 564,730 head of cattle, 63,339 sheep; cultivated acres only 1,125,025, little more than one-third of the superficies, which yielded in gross produce, chiefly in rice and other grain, annually, at the average of the local markets, 19,39,054 pagodas, deducting of seyur 57,425 pagodas. There was, besides, 140,593 acres capable of cultivation, but not cultivated. The rent paid to government was rather more than one-third, *viz.* 712,530 pagodas, or about five shillings per acre.

In the Ceded Districts, under Colonel Munro, the whole was measured and assessed, "village by village, field by "field. A census of the people was taken, shewing the "different castes; statistical tables were formed, shewing "the price of labour, subsistence, &c. The price of agri-

"cultural

" cultural labour was from four to five shillings per month;
" the cost of subsistence of the first class (about one-fourth
" of the whole), per head forty shillings per annum; of
" the second class (about one-half of the whole), twenty-
" seven shillings; of the third class, consisting of the re-
" sidue, eighteen shillings per annum, for food, clothing,
" and every requisite."*

Even in Bengal we have had individuals who have collected information of some importance. Mr. Colebrooke, in his Husbandry of Bengal, mentions an actual "census,
" which gave, in 2,784 *mouzas*, or villages, occupying
" 2,531 square miles, 80,914 husbandmen holding leases,
" 22,324 artificers paying ground rent. The size of the
" villages was estimated from knowing that 21,996 of them
" stood on an area of 18,023 square miles, or about nine-
" elevenths of a square mile to each. Estimates of the
" population were attempted from a census of inhabitants
" found in a few villages; the result gives 197 as the
" average, *viz.* 92 males and 87 females. The whole num-
" ber of *mouzas*, or villages, in Bengal and Behar, is not
" less than 180,000."† So 180,000 × 197 would give a
" population for those two provinces of 35,460,000 souls.

But Mr. Shakespear, superintendent of police in the Lower Provinces, gave in a statement to government, in the end of the year 1815, of the number of villages within the provinces of Bengal and Behar -not including Benares, but *including* 10,298 villages in Orissa (Cuttack), which Mr. Colebrooke did not, of course, reckon, because that province then belonged to the Marhattas. This statement was made on the authority of the police darogahs, as ascertained by them. The total is 150,748 villages in twenty-eight zillahs:

* See Minutes of Evidence, 1813 † Colebrooke.

zillahs: giving an average of 5,383 villages to each zillah. So, taking Mr. Colebrooke's rate of population, *viz.* 197 per village, 150,748 × 197 would give 29,697,356; from which deducting the proportion for Cuttack, 10,298 × 197 = 2,028,706, leaves for Bengal and Behar 27,668,650: exhibiting a difference between those two authorities of about eight millions in the estimate of two provinces!

Mr. Bayley, again, in his statistical sketch of Burdwan zillah, states the square miles at 2,400; the *mouzas*, or villages, at 3,496. The average number of houses in each village, seventy-five; and the average of persons in each family, at five and a half; Hindoos to Moohummudans, as five to one; males, 100 to 95⅝ females; the population at 1,444,487; number of inhabitants to a square mile, about 600. Now, 75 houses × 5½ persons = 412½ total in each village, exceeding Mr. Colebrooke's average by 215½ persons per village: in fact, being eighteen persons more than double. But, in number of villages, Mr. Bayley falls far short of Mr. Colebrooke's and of Mr. Shakespear's average; though Mr. Shakespear states the number of villages in the zillah of Burdwan itself, of which Mr. Bayley speaks, to be the same number which Mr. Bayley makes it, *viz.* 3,496.

These instances, notwithstanding that their discrepancy shews inaccuracy, prove sufficiently the *practicability* of obtaining the most satisfactory information on every point required. There is no country in the world, perhaps, in which revenue and commercial transactions are more regularly and minutely recorded than in India. The poorest shopkeeper has his books; and may be seen, in every bazaar in India, bringing them up regularly every night. The Hindoo is proverbial for regularity of habit in every way. We must presume that information regarding agricultural and

and statistical matters is obtainable from him, these being his daily concerns and the most important matters of his life.

In the Baramahal and Ceded Districts we have seen the minutest survey and information obtained in the course of a very few years, proceeding entirely after the custom of the country; and, I may add, precisely as an officer of a Moohummudan government, following the principles and practice enjoined by his law, would have done. In proof of which I beg to refer the reader to the Moohummudan law itself, and to the instructions given by the Emperor Aurungzebe, in 1668 and 1676, to his governors and others, respecting the collection of the *khurauj* and the management of the accounts of the districts before noticed.

The great impediment, in all countries, to the decision of causes, is the difficulty of procuring satisfactory and clear evidence. In this country that difficulty is amazingly increased by the notorious want of credibility in oral testimony. Where prevarication is so prevalent, and there are even professional perjurors, the judge has not only to discriminate, as in other countries, what parts of evidence bear upon the question, but here, when he has done this, it will require infinitely more discrimination and infinite practical experience, to satisfy himself what part of it is true, what part is at all founded in truth but exaggerated, what is altogether false.

The necessity of written documents is therefore obviously greater in India than in our own country; and any expedient suggested with the view of multiplying them ought of all things to be encouraged.

Our Indian judges, both of the King's and of the Company's courts, have long invariably and loudly complained of

of the prevalence of perjury in their courts. To so great an extent does it exist, that they fairly declare they have no faith in oral testimony.

This want of veracity is a vice among the Asiatics which it was not left for us to discover. Although under our government its effects have been felt more severely than during that of our predecessors, because the English government admits, as equally good and equally credible witnesses, persons of all descriptions, of all castes, of all denominations, following the maxims of the English law. But even in England, where the standard of morals is so much higher than it is in India, so much higher than we can expect to raise it for ages in India, the necessity of cross-examination is so great, and so much is the talent for it in a lawyer prized, that he who excels is universally celebrated for it. Our Indian judges, from their imperfect knowledge of the multitude of dialects, and of the customs, manners, and ideas of the natives, are peculiarly ill-qualified for cross-examination, and rarely succeed in effecting any thing by it. But this is a proof only of the necessity of obtaining more perfect knowledge.

If with English law we could introduce English morals, the maxims of that law, which are founded upon them, might be maintained in India. In India, with so low a standard of morals for all ranks, and where, if I may so express myself, whole classes of society are, in the eyes of the people, and even in their own estimation, infamous by birth, it appears to me quite a solecism in government to make no distinction between the veracity of one individual and that of another. There is, however, in reality, an immense difference, and will continue to be till a notable change take place in the state and condition of society.

In

In such a state of society as exists in our Asiatic dominions, it was a good precaution, perhaps, as established by the Moohummudan law, to take care that the character and credibility of a witness should be *first* certified; and really it seems to be not very unreasonable, when a man's life or property is at stake upon the word of another, that the person whose word is taken shall be *known* to be credible.

At all events, whether we follow the law of our predecessors and practice of India, in the mode laid down by them for ascertaining the credibility of witnesses in every case, it certainly ought to be done when practicable. No judge ought to receive the testimony of a person in an inferior or degraded class of society, when other evidence is procurable; and with such witnesses it would be highly desirable to have others to speak to their probity. No objection could be made to such scrutiny, because it is conformable to the law and usage of the country; and I should think every upright man sitting in judgment would anxiously desire to see established the character of the witnesses whose testimony was to guide his decision. Professed perjurors could not maintain themselves, as they now do, about our courts, were they liable to have their credibility called upon for certification by credible and respectable persons.

The Moohummudan law of evidence provides for the depravity of society; and although the provisions it contains are not altogether satisfactory, yet the principle, being admitted, might be improved upon; and I have no doubt that some of those provisions might be made available with advantage. The Moohummudan law, with deference be it spoken, is not so absurd as the English law, which admitted

mitted of compurgators to swear to the truth of the testimony *after* it was given: but it requires that the general character for credibility of the witnesses be vouched by persons themselves credible, *before* the evidence be received.

With such preventive measures as a body of registered facts, such as that above pointed to, available as evidence when required, and such precautions as I allude to, to secure the most upright oral testimony procurable, I cannot but think that litigation would be not only greatly diminished, but that judicial proceedings would be greatly simplified, for it is the conflict between suspicious testimony for both sides, that constitutes the chief intricacy of most causes that come before our courts.

It remains now to notice the mode of administering the law. But before I suggest any expedient for its more effectual administration, I must premise, that in what I am to say, when I speak of a judge, I do not understand an officer "destitute of all legal knowledge,"* but a man who is really acquainted with the law he administers. It is, indeed, a perfect solecism in language to speak of any other as a judge. A personal knowledge of the law he administers is an indispensable qualification of a judge: without this, it is idle to talk of courts, or of any amendment in the administration of the laws.

Holding the judges, then, to possess a competent knowledge of the law, I should think it highly desirable that the pleaders be also men who are educated lawyers, and that none should be suffered to practise in any court till their qualifications as lawyers, as well as their moral character, have been duly certified.

In

* Mr. Stuart's Minute.

In India, the native pleaders have little or no knowledge of the law. They are, indeed, a distinct class of persons from the native judges. I believe no instance was ever known in India of a promotion from the bar to the bench: of a pleader becoming a mooftee or a kazee.

Having, as briefly as the subject would admit, carried my remarks through the preliminary, yet essential requisites, I now come to the actual administration of justice: "What is the best mode of carrying into effect the due "administration of justice to our Asiatic subjects?" This question involves two points, *viz.* first, the most perfect; secondly, the speediest mode of its administration.

The tardiness with which the law is administered has been hitherto the subject of complaint, more than the want of a just and perfect administration: not, as I believe, that tardiness is the only or the principal ground of complaint, but because it is a defect open to the eyes of the most humble in point of intellect; the intrinsic justness, or otherwise, of a decision is only known to the individuals whom it concerns.

The stability of our government, the character of our country, however, are at stake, more upon the former (the intrinsic justness of decision) than upon the latter of these two grand desiderata in our Indian government.

It will tend to throw considerable light on this subject, to advert to the number of causes which are decided or disposed of by the different courts, European and native. It appears, from a report of the judges of the Sudder Dewannee and Nizamut Adawlut, dated the 9th March 1818, that the number of regular civil suits depending before the different European and native tribunals, on the 1st of January 1817, was as follows:

	No. on the Files, Year 1816.	No. decided in 1816.
Sudder Dewannee Adawlut	442	108
Provincial Courts of Appeal and Circuit.....	3,581	1,131
Zillah and City Courts	12,387	6,618
Registers' Courts	8,339	12,066
Sudder Ameens } Native Courts	29,041	38,922
Moonsifs ..... } Native Courts	38,730	72,055
Total number of causes depending in the courts of the Bengal Presidency on the 1st Jan. 1817, and decided in 1816	92,520	130,900

The following statement, from the same authority, shews the number of causes disposed of by decision, adjustment, or nonsuit, for four years, ending December 1816.

Years.	Courts.	Causes.
1813.	Sudder Dewannee Adawlut	72
	Provincial Circuit Courts	1,128
	Zillah ..... do.	8,208
	Registers' ..... do.	7,585
	Sudder Ameens	22,602
	Moonsifs	136,200
	Total.....	175,795
1814.	Sudder Dewannee Adawlut	69
	Provincial Circuit Courts	1,096
	Zillah ..... do.	6,070
	Registers' ... do.	7,833
	Sudder Ameens	22,671
	Moonsifs	127,471
	Total.....	165,210

Sudder

Years.	Courts.	Causes.
1815.	Sudder Dewannee Adawlut	85
	Provincial Circuit Courts	1,106
	Zillah	5,744
	Registers'	8,953
	Sudder Ameens	26,702
	Moonsifs	93,947
	Total.....	136,537
1816.	Sudder Dewannee Adawlut	108
	Provincial Circuit Courts	1,131
	Zillah	6,618
	Registers'	12,066
	Sudder Ameens	38,922
	Moonsifs	72,055
	Total.....	130,900

Average Number of Causes decided annually by the different Courts for Four Years.

By European Judges:

Sudder Dewannee Adawlut.....	84	
Provincial Circuit Courts.....	1,116	
Zillah	6,660	
Registers'	9,108	
		16,968

By Natives:

Sudder Ameens	27,724	
Moonsifs 107,418		
		135,142
Total annual average.....		152,110

The average of 1815 and 1816 shews the number of criminal trials referred to the Court of Sudder Dewannee and Nizamut Adawlut to be.....	378
Average civil suits disposed of annually in four years.....	84
Total trials and civil causes decided in the Sudder Dewannee and Nizamut Adawlut yearly	462

But the average number of civil appeals to the Sudder Dewannee Adawlut, for sixteen years ending in 1814, was only 66 yearly, according to Mr. Stuart's statement. Of these the average number decided was $50\frac{3}{4}$ yearly. The average number of criminal trials submitted during those sixteen years was $311\frac{1}{2}$ yearly; and the average number decided was $296\frac{3}{16}$ yearly. But on 8th January 1818, "the court had the satisfaction of reporting, that at the "beginning of the present year, 1818, not a single criminal "trial was depending before the court."*

From these statements it appears, that four, and occasionally five judges in the Sudder Dewannee and Nizamut Adawlut, have been occupied in deciding about seventy civil causes annually, on an average of eighteen years, and in revising about from three hundred to three hundred and fifty criminal trials. I call it *revising*, for there are really no trials conducted in that court. The trials are conducted in the courts of circuit; and only the capital and long transportation cases, where conviction has been adjudged, are submitted to the revisal of the Nizamut court.

The business before this court has been stated by many, and

* Report of the Sudder Dewannee Adawlut, p. 58.

and particularly by Mr. Stuart, to be so heavy, as to render the institution of another similar one absolutely necessary to the due administration of justice.

To facilitate the administration of justice, however, instead of multiplying such courts as the Sudder Dewannee and Nizamut Adawlut, I am of opinion that the one now in existence ought to be abolished, and the expense attending it distributed in another way, to secure to the people immediate, instead of protracted justice, administered in their vicinity, instead of making them go, in fact, to a foreign country in quest of it; for to an inhabitant of Dehlee, or of the Himalayah mountains, Calcutta may well be called a foreign country.

In my humble apprehension, the principle on which our Indian courts are established, that progressive system of appeal from the lowest upwards, is erroneous. It holds out a temptation to litigate, by multiplying the chances of success; and to the wealthy litigant, with a bad cause, it furnishes the means of distressing his opponent, though he himself may be but hopeless of ultimate success.

This system of eternal appeal, this ordeal, through the different courts, consumes justice itself, and renders it a perfect *caput mortuum*, at last not worth having: engendering, however, a spirit of litigation, unknown in India till our time. Thus our most benevolent intentions have been attended with the very reverse of success. A long purse and a bad cause, doubtful issue, "no fixed principles of decision" (as Mr. Stuart says), and delay, chiefly occasioned by the power of going through so many courts, are the great parents of litigation. He whose cause is good will

will never *choose* to become a litigant. Make the decision speedily attainable, and thus take away from the wealthy litigious the power of prolonging his repast, and you diminish his pleasure so much, as to render it scarcely worth his while to desire it. To admit of appeal from one court to another, whose principles of decision are avowedly the same as those of the court appealed from, supposes not only error but incapacity in the inferior court; and, forsooth, neither error nor incapacity in the superior. It is not always so.

It is not by multiplying courts, but by simplifying the system, and by selecting fit persons for judges, I apprehend, that justice can be best administered to our Asiatic subjects.

To be particular. I hold the principle of revisal, in criminal convictions, not only quite unnecessary, but contrary to the best established maxims of criminal jurisprudence. To try a criminal in his absence, and in the absence also of his accusers and witnesses, on proceedings held, and on evidence taken, in the absence of the judges, who never see either the accused, the accuser, or the witnesses, is no improvement, certainly, in judicial administration.

It is true, the Nizamut Adawlut cannot condemn those whom the circuit court has acquitted, because the acquittals are not referred to them. But they may still affirm a sentence of conviction which they would not have originally passed; and they may acquit some whom they would have condemned, had the trial been held in their presence; and thus again let loose upon the people the atrocious disturber of the peace of society.

It

It ought never to be forgot, especially in the dispensation of criminal law, that no human being is capable of representing to another the impression made upon himself by a third person, either in asserting his innocence if the accused, or in giving his evidence if a witness. When persons communicate with one another *vivâ voce*, besides the words that are uttered, the eyes and the ears have their share in the converse. The countenance, the voice, the colour, the action, the manner, have so great a share in communication between man and man, that the most accurate account that can be written of it must fall far short of the original, supposing the language uttered to be the same as that written. How little satisfactory, then, must be the proceedings and evidence transmitted to the Nizamut Adawlut through the medium of a foreign language, the Persian, which neither the accused nor witnesses used! nor was the language they did use perhaps sufficiently understood by the interpreter and recorder, or the language transmitted fully known by those to whom it was transmitted. I may also add a doubt, whether the liability to revisal may not often render the inferior judge less careful on the trial than he would be, did he know that the life of a fellow-creature rested, at the last resort, on his own judgment alone.

I hold it, therefore, to be indisputable, that the power of revisal of criminal trials by the Nizamut Adawlut may be dispensed with, with advantage to the due administration of justice; and that the judges of the courts of circuit, being competent persons, may be safely entrusted with the conduct of such trials, reporting to government through the judicial secretary, and if deemed proper, receiving warrants for the execution of sentences through him. The revisal of criminal trials is calculated by Mr. Stuart to take up one-third

one-third of the time of the court. Here, then, is an easy, and, in my estimation, an advantageous, mode of lightening the labour of that court.

And with respect to appeals in civil causes, we have seen that the whole number brought annually does not exceed seventy or eighty. A proportion of these are doubtless to that extent (*viz.* above £5,000 sterling value), which by act of parliament, are appealable from the sudder to the King and council; and consequently, as to them, the decree of the Sudder Dewannee Adawlut can only be considered as interlocutory. Whether the parties abide by it or not, it matters not, as to the point now before us. If the parties are satisfied with the decree, it being the decree of the highest tribunal in this country, though not the last resort, their being so satisfied would afford an argument to shew that the decree of a provincial court, were there no higher tribunal in this country, would be equally satisfactory.

Suppose the causes appealed to the Sudder Dewannee Adawlut annually to be seventy, and that thirty of these are appealable from the decision of that court to the King, the appeal to his Majesty might be made to lie, with equal advantage, I presume, from the provincial court, the judges of both being equally competent. The remaining forty causes are all which are annually decided by the sudder *in the last resort.* To this number we shall speak.

We are not to conclude that all those forty causes are erroneously decided in the inferior courts; nor are we to presume that all those which may be reversed by the sudder are rightly decided. We shall suppose, therefore, three-fourths of the appeals to be affirmed; so that thirty of the forty

forty causes might, so far as the advancement of justice is concerned, as well not have been appealed. The remaining ten causes may be put down as doubtful. If six are reversed rightfully, four will probably be reversed wrongfully; leaving, on the whole, a balance in favour of justice of *two causes* annually, on decisions *of the last resort.*

So much for decisions of the last resort; and if we allow the same proportion to the thirty interlocutory decrees, *viz.* two-fortieths, that will give one and a half, and the whole will amount to three and a half causes yearly; so that we can scarcely raise the maximum of advantage to the cause of justice obtained by the existence of the Sudder Dewannee and Nizamut Adawlut beyond the decision of three or four causes annually.

Here, then, for the sake of affording the people of India another chance of a more just decision of three or four suits annually, a court is maintained, to which, in principle, I have stated the above objections, and at an expense to the state of £50,000 or £60,000 sterling annually.

But supposing that a few of the seventy causes appealed annually to the sudder were erroneously decided in the lower courts, it may be fairly questioned whether prompt justice, easily obtained in all the other causes, would not be far more than an equivalent to the people.

I am, however, of opinion, that the chances are much in favour of the local courts for justness of decision. Local knowledge, recency of the transaction, matter of decision, oral and *vivâ voce* testimony, the appearance of the parties and witnesses, the selection of the individuals who are to give evidence, selected for their respectability of character;

racter; these, and many other most essential circumstances, in fact, cast the balance much in favour of the local courts.

What is called the "miscellaneous business" of the present Sudder Dewannee Adawlut is the third and last branch of the duty of that court. Mr. Stuart calculates that this business occupies a third of the time of the court. It is composed chiefly of a species of general superintendence of judicial matters and police, answers to references from the subordinate courts. But as much of this business must, after all, be referred by that court to the decision of government, through the judicial secretary, that officer might as well receive it from the referring-court direct; and thus, as I doubt not, he would be perfectly competent to relieve the sudder of all the anomalous correspondence here alluded to.

Taking all these circumstances into full consideration, therefore, it appears to me by no means impossible that the present Sudder Dewannee and Nizamut Adawlut might be, with great advantage, totally abolished.

Secondly, I would also suggest, that no criminal trials be referred by the provincial courts, except to the Governor-General in council, and then only in cases of convictions; the judges stating when they may see grounds for mitigation of punishment or pardon.

Thirdly, That in civil causes, no appeals be received from the provincial courts, where the subject matter of litigation does not amount to Sicca Rupees 100,000; and that those appeals shall be made to the Governor-General in council, and not, as at present, to the King in council.

That

That no references of any cause from the native courts shall be made to his Majesty and council; a tribunal which neither can itself be supposed to know any thing of the law by which its decision ought to be guided, nor can it have the means of deriving a knowledge thereof from others, as it always has in appeals, in cases of English law; whereas the local government of the country, having several of its members servants of the Company in India, may be supposed to be acquainted with the laws of India: at all events, have every opportunity of consulting those who are known to possess that knowledge.

The intelligent and candid author of the work on the "Administration of Justice in India," which I have before quoted, maintains a different opinion. He thinks it would be better, both for the Colonies and the Mother Country, that the court of ultimate appeal should be fixed, as now, in England. "Two of the chief objects to be "attended to, in any system of appeal," he says, "are, "that causes should be heard with as little delay, and at "as moderate an expense, as possible." In these respects, he thinks, the Privy Council either is, or might be made to answer. The delay of a voyage to England, and the superior knowledge of local usages and institutions obtainable in India, he admits, are objects, but perhaps not of so great importance as is often imagined; and the lapse of a single year allowed for the voyage, after the great delay already endured, cannot be important. The case has been so prepared by the pleadings, that there cannot be so great difficulty in deciding in England. The principles of law would be, moreover, examined, and applied with more calmness and correctness there, than they would have been on the spot. But the consideration which Mr. Miller principally attends to, is, that the causes which come before the Privy

Privy Council would be likely to be argued and decided with greater industry and ability in England, than by those lawyers and judges who might be found in India. "However great the advantages of a local court might be," says he, "they never could counterbalance the inferiority "of its judgments, either in the eyes of its European or "native population."

If it were really the case that English judges would decide questions of Moohummudan or Hindoo law in a superior manner to those who have studied and practised (or at least ought) those laws in India, then Mr. Miller's argument would be good. But this is the main question, and cannot be conceded. No doubt there are abler pleaders, abler judges, in England than in India; but then it is as pleaders in *English* law, and judges of *English* law, that they are able, and not as Moohummudan or Hindoo lawyers. Even the learned, the indefatigable, the venerable Earl of Eldon, would make but an indifferent kazee at Constantinople; and this, and the distance, and the delay, and the undoubted cost of carrying on proceedings at so great a distance, leave me still of opinion, that as the government of England, or a branch of it, is the ultimate resort there, so there is nothing in the case of our Indian subjects, which should make them unwilling to abide by the decision, in the last resort, of the local governments of India.

The political reason assigned by Mr. Miller for preferring the appeal to England, I apprehend, he gives more than due weight to. "No sort of connexion," he says, "tends more effectually to bind a colony to the mother "country, than a conviction that, in all emergencies, they "can rely upon it for prompt, impartial, and enlightened "administration of justice. If India should ever cease "to

" to look to England as its supreme judge, it would gra-
" dually cease to respect it as its sovereign; and the esta-
" blishment there of a tribunal of ultimate appeal, could be
" regarded in no other light than as the first step towards
" a termination of its political dependence."—p. 24.

But Mr. Miller, I apprehend, is mistaken in supposing that in the estimation of the natives of India, the vitality of our power lies materially in the notion supposed to be entertained by the natives, of our superior administration of justice in England. Were they sufficiently grateful for the advantage they possess, in having a superior power to appeal to in the event of *public oppression*, we might have some idea that they would care more for the privilege of having the King of England, and his Majesty's Privy Council, to settle their *individual disputes*. But were the people of India consulted, I much doubt whether they would deem a debt even of five thousand pounds and upwards (the appealable amount) claimed by Kaleepersaud, and disputed by Daveedoss, to be a matter of such importance as to demand the decision of the Lords of his Majesty's Council; and I should also doubt, whether they would conceive the dignity of his Majesty to be much magnified by such occupation being assigned to him. Not that either they, or I, would willingly decry the sacred duty of dispensing justice. But in the sentiments of those who, without sufficiently attending to widely differing circumstances, would follow every thing they are used to, or that may even be good, at home, in legislating for a foreign people, there is a fallacy, which he who knows the peculiar views, feelings, and sentiments of those people, is bound to point out. It is a more kingly office to make laws; and if his gracious Majesty would deign to promulgate, for the guidance of his Indian subjects, a clear and systematic code of

of law, founded on their own ancient jurisprudence, but modified where necessary, so as to suit the circumstances of the times, he might safely place the distribution of justice in the hands of those to whom, for so many years past, the nations both of England and of India are so deeply indebted for the pure and able administration of our eastern dominions.

Neither the number, I believe, nor the importance of the appeals to the King and Council, warrant a very special or an expensive provision for their ultimate decision; and I must confess, it appears to me not a little of a solecism in our judicial system, to permit our local governments to make laws for the whole people; yet when any two of them shall choose to dispute about those laws, you will not suffer those governments to interpret the laws they have made, but compel the disputants to go to a far country for judgment, from those who neither made nor know aught of their laws.

Fourthly, In the event of the abolition of the Sudder Dewannee Adawlut, the judicial secretary to government should possess, as an indispensable qualification, an intimate knowledge of the law of India; and, if found necessary, that an officer be added to the establishment of government, as an Indian law adviser, who shall be known also to possess the above qualification.

The provincial courts come next under consideration. These courts are in number six, and consist of four judges each. Before them all criminal trials are brought. Their jurisdiction extends to all civil suits, and their decision is final in causes not exceeding Sicca Rupees, 5,000. In criminal matters they may acquit indefinitely; but all convictions involving life or perpetual imprisonment, or transportation, must be referred to the Nizamut branch of the Sudder Adawlut.

Under

Under the Bengal presidency, there are six provincial courts, four of which are for the Lower Provinces below Benares, and the other two for the Upper Provinces, including Benares, *viz.* Calcutta, Dacca, Moorshedabad, Patna, Benares, Barelly.

The average annual number of civil suits decided by those six courts, for four years, ending with 1816, was, as above, 1,116, averaging about 178 causes in every court annually.

But this average does by no means exhibit the proportion of business before any given court.

The following table will tend to shew this; and it will be observed to exhibit, in a striking degree, the spirit of litigation that prevails in the Lower Provinces.

On the first January 1815, the number of appeals depending before the Sudder Dewannee Adawlut, from the several provincial courts, was respectively as follows, shewing also the number received within the last six months of 1814, from each:

COURTS.	Appeals depending.		Appeals received between 1st July 1814, and 1st Jan. 1815.	
Upper Provinces:				
From Barelly	22		4	
..... Benares	52		13	
		74		17
Lower Provinces:				
From Patna	130		23	
..... Moorshedabad	45		7	
..... Dacca	77		15	
..... Calcutta	85		14	
		337		59
Grand Total		411		76

Average in each, 68½.*

* Mr. Stuart, p. 44.

Thus it appears, that whilst the revenue (and probably the population) of the Upper, to that of the Lower Provinces, is, as in the above-mentioned report, stated as 2,63,67,368 to 2,88,19,069 rupees (now three lacs of rupees), the proportion of appeals shews that government is burdened with litigation in the Lower Provinces, more than in their newly-acquired possesions, in the proportion of 337 to 74, or nearly as five to one.

*Table shewing the Number of Regular Suits depending before the whole of the Courts, both of European and Native Judges, under the Bengal Presidency, on 1st Jan. 1817, in the Lower and Upper Provinces respectively.**

COURTS.	Upper Provinces.	Lower Provinces.	Total of each Court.
European Judges:			
Provincial	603	2,978	3,581
Zillah and City Judges	2,668	9,699	12,367
Registers	1,294	7,045	8,339
	4,565	19,722	24,287
Native Judges:			
Sudder Ameens	4,114	24,927	29,041
Moonsifs	3,700	35,030	38,730
Total	12,379	79,679	92,058†

Exclusive of 442 appeals depending in the Sudder Dewannee

* Printed Accounts laid before Parliament, 1812.

† In 1821, the number of suits pending in the above courts was as follows:—

Provincial	2,429	decreased.
Zillah and City	13,875	increased.
Registers	11,745	ditto.
Sudder Ameens	30,489	ditto.
Moonsifs	44,579	ditto.
Total	1,03,117	ditto.

wannee Adawlut;* exhibiting a proportion of litigation in the Lower, compared with the Upper Provinces, of upwards of *six* in the former to *one* in the latter: a fact which, I fear, does not exhibit a very flattering proof of the progressive improvement of our judicial system.

The grand stock whence this odious spirit of litigation sends forth its ramifications is situated in his Majesty's good city of Calcutta; and I have no doubt that the parent tree is sufficiently healthy to extend itself in good time over the whole of our Indian dominions.

The habit of litigation (for it has now become a habit) among the natives in, and in the vicinity of, Calcutta, is prevalent beyond all belief.

The following statement will shew this; whilst it will afford some consolation to those who, contemplating the enormous number of ninety-two thousand suits depending in the courts of the provinces, may be inclined to despair of ever attaining any thing like a regular administration of justice for India, by shewing how easily a very long file may be got over.

In the Court of Requests of Calcutta, consisting of three commissioners, a court having jurisdiction (only within the limits of the town of Calcutta) in debts and demands to the amount of 250 rupees only, the number of causes instituted in one month, the month of January 1819, was 3,672. So $3{,}672 \times 12 = 44{,}064$ annually, equal to about half the whole litigation of the Bengal presidency. Of

* In 1821, the number of appeals pending before the Sudder Dewannee Adawlut was reduced to 337; and so it appears that the provincial courts had reduced the number on their files from 3581 to 2429, leaving about 400 causes to each of the six courts.

	Causes.
Of these	3,672
there were compromised or adjusted, before decision	2,416
or two-thirds.	
Remained for adjudication or one-third.	1,256
Decrees, defendants having absconded 111	
Nonsuits, plaintiffs not appearing 155	
Judgmnts for plaintiffs on confession 97	
Deduct on proceedings held, but without litigation	363
Total litigated	893
These were disposed of as follows:	
Exparte judgments for plaintiffs 167	
Judgments for ditto, on issue joined* 449	
Judgments for defendants 252	
Total decided	868
Remain undecided for cause shewn (1st August 1819)	25

Note.—By proclamation, in November 1819, the jurisdiction of the Court of Requests has been extended to 400 rupees.

If of the 92,058 causes on the files of the courts beyond the metropolis, especially if of the 67,771 causes of small amount depending before the native commissioners throughout the country, the same proportion of them, *viz.* three-fourths, are so easily adjusted as the above on the files of the Court of Requests, the rolls of the courts would not be so

* Of these, 210 were founded on bonds, notes of hand, and written documents, other than open accounts.

so formidable. So, also, if the judges of the Calcutta Court of Requests are able to decide, justly, so great a number of litigated causes as 868 monthly, or 10,416 annually, that is, 3,472 to each judge in the capital, or about eleven causes daily, we might look with less dismay upon the files of the courts in the provinces. The number of courts held by European judicial officers, zillah judges, registers, joint registers, and magistrates, exceed one hundred; which, if we take the whole number of causes annually depending before all our provincial courts, both European and native, at 92,000, laying aside the native judges altogether, would leave about 900 for each European judicial officer's court to decide annually, or about three per day; whereas, eleven are, as above, decided by each judge of the Calcutta Court of Requests daily. But if we take the whole of the Company's European judicial servants, about one hundred and eighty, the above number of suits will give only 511 annually to each, or daily about one and three-fourths, instead of eleven, as above.

The country under the Bengal presidency may extend to about 260,000 square miles.*

	Square Miles.
Bengal, Behar, and Benares, and Midnapore	162,000†
Bundlekund	10,000
Upper Dooab, and Agra and Dehlee	25,000
Cuttack	10,000
Allahabad, Rohilkund, Lower Dooab	53,286
Total ..... Square Miles	260,286

Take the population, per Mr. Colebrooke's estimate and census,

* This calculation was made before the late conquests.

† Rennell.

census, at 203 per square mile, it would give a total number of inhabitants of 52,830,000, exclusive of the inhabitants of cities and considerable towns, as those were excluded by Mr. Colebrooke.

Suppose then the population is, in even numbers, fifty-three millions under the Bengal presidency. There are forty-five zillah and city judges, which for 260,000 square miles gives one judge to a space of 57×100 miles, or 5,700 square miles, and to 1,177,777 of population.* But suppose there are forty-two zillah judgeships, and that six of these judgeships (exclusive of the cities) are put into one circuit, it would give seven circuits, each of an area of 150×250 square miles, 37,000 only; not four times the extent of one English county, Yorkshire, which is 10,350 square miles. So that were the local position of the courts judiciously selected, their distance from the extreme limits of their jurisdiction need not exceed from 70 to 125 miles, or from 35 to 60 coss: a distance, in India, short enough to render courts of appeal sufficiently easy of access.

There are, at present, under the presidency of Bengal, six district or provincial courts of appeal and circuit. Of these there are four in the Lower Provinces, *viz.* Calcutta, Dacca, Moorshedabad, Patna, each of which contains the following cities and zillahs; and, according to the police returns, they have the following number of villages under their jurisdiction:

Calcutta:

* The extent of England and Wales is stated at 57,960 square miles, and the population at 10,150,615 souls, giving 175 inhabitants to the square mile.

	No. of Villages.	
Calcutta:		
Burdwan	3,496	
Hoogly	4,934	
Jungle mehals	4,241	
Midnapore	10,675	
Cuttack	10,298	
Nuddea	4,784	
Twenty-four pergunnahs	2,907	
Suburbs of Calcutta	763	
		42,098
Dacca:		
City of Dacca	2,594	
Dacca Jelalpore	2,713	
Mymen Sing	8,667	
Shylet	9,800	
Tipperah	6,203	
Chittagong	1,307	
Backergunge	2,051	
Jessore	4,775	
		38,110
Moorshedabad:		
Moorshedabad, zillah and city	2,855	
Purneah	4,785	
Dinagepore	12,315	
Rungpore	5,788	
Ragashye	8,710	
Beerboom	5,129	
		39,582
Patna, inclusive of Ramgurh:		
Patna, zillah and city	1,069	
Behar	5,541	
Shahabad	4,507	
Tirhoot	7,223	
Carried forward	18,340	119,790

Sarun

	No. of Villages.	
Brought forward	18,340	119,790
Patna, &c.—(continued.)		
Sarun	7,051	
Bajulpore	5,567	
Add for Ramgurh the average of the whole	5,383	36,341
Total number of villages in the four Lower Provinces		156,131
Average villages under one provincial court...		39,032¾

I have here added Jessore to the Dacca division, and Bagulpore to that of Patna, to make the average number of villages in each circuit more equal than they are as at present settled.

The criminal trials at the circuits of the four courts of the Lower Provinces, for five years ending with 1807, averaged annually 5,831: about 1,400 for each circuit, or 700 half-yearly; one-half of which may be convictions.*

And with respect to civil suits, it is to be observed that in a population such as that of India, where so many exist upon the precarious earnings or collections of the day, and where so small a proportion of the people have any property, no estimate of the probable amount of litigation can be formed on the basis of population. Property alone is the subject of litigation. The number of persons that may become litigants must therefore depend on the amount of those who possess property, and may therefore be guessed at from what follows.

Mr.

* Fifth Report.

Mr. Colebrooke* states, that by an actual census, 80,914 husbandmen holding leases, and 22,324 artificers paying ground-rent, were found in 2,784 villages. So, if we take these two classes together in round numbers at 100,000, the number per village will be about $35\frac{3}{4}$; and the total number of villages in the above four provinces being 156,131, will give us about 5,600,000 persons in the Lower Provinces below Benares, who may be considered to possess property, that may become the subject of litigation, or to each of the four provincial courts, 1,400,000 persons who may become litigants.

That this number, however, is much too high may be shewn thus. We must suppose all leaseholders and artificers paying ground-rent to be heads of families; and if we allow even five persons to a family, it would give $5 \times 5{,}600{,}000 = 28{,}000{,}000$: a population of twenty-eight millions of these two classes of society alone, *viz.* of husbandmen and artificers paying ground-rent, leaving out even artificers who do not pay ground-rent, labourers and servants of all descriptions, merchants, shopkeepers, and all the other denominations of the people. Mr. Colebrooke's calculation we must therefore lay aside.

In the Ceded and Conquered Provinces, the number of persons holding engagements for land directly from government was, in the year 1815, forty-five thousand. Colonel Reade's census of the Baramahal gives of husbandmen, shudurs, or government-farmers 85,227

Carried forward..... 85,227
besides

* Husbandry of Bengal.

Brought forward.....	85,227
besides possessors of charity-land and private property lands	17,314
Total husbandry class	102,541
to a population of 612,871, about one-sixth of tenantry. To which, if we add one-fourth for artizans, as above	25,635
will give a total of.....	128,176

There were 4,865 villages, however, so that the number for each village will be about 26⅓; which for the above number of villages in the four provinces, 156,131, will reduce the number of persons of the above description from 5,600,000 to 4,105,000 (which is still far too many), or to each of the four provincial courts, 1,026,250 persons who may become litigants. But if we deducted one-fourth from this, the number would be nearer the truth; and it would give, by the above calculation of five to each family, a population of 15,393,750 persons of those two classes of society alone. If we take this, we shall then have about 770,000 persons who may be litigants for each of the four provincial circuit courts of the Lower Provinces.

For the Upper Provinces, including Benares, three courts of appeal and circuit would perhaps suffice; to be fixed at the following places, *viz.* Allahabad, Furrukhabad, Meerut; and the whole circuits, both of the Lower and Upper Provinces, would stand thus:

First Circuit.

First Circuit.

	No. of Villages in each Zillah.	No. of Villages in each Circuit.
Calcutta:		
Calcutta, twenty-four pergunnahs and suburbs	3,670	
Hoogly	4,934	
Nuddeah	4,784	
Burdwan	3,496	
Jungle mehauls	4,241	
Midnapore	10,675	
Cuttack	10,298	
		42,098

Second Circuit.

Dacca:		
Dacca and Dacca Jelalpore	5,307	
Mymun Sing	8,667	
Shylet	9,800	
Tippera	6,203	
Chittagong	1,307	
Backergunge	2,051	
Jessore	4,775	
		38,110

Third Circuit.

Moorshedabad:		
Moorshedabad, zillah and city	2,855	
Purneah	4,785	
Dinagepore	12,315	
Rungpore	5,788	
Ragashye	8,710	
Beerbhoom	5,127	
		39,582

Fourth Circuit.

Patna:		
Patna, zillah and city	1,069	
Behar	5,541	
Carried forward	6,610	119,790

	No. of Villages in each Zillah.	No. of Villages in each Circuit.
Brought forward.....	6,610	119,790
Patna—*(continued.)*		
Shahabad	4,507	
Tirhoot.....	7,223	
Sarun	7,051	
Baglepore	5,567	
Ramgurh, take at average.....	5,383	
		36,341
Fifth Circuit.		
Allahabad:		
Allahabad	6,329½	
Benares (not known, but take average of Lower Provinces)	5,383	
Mirzapore (not known, take average)	5,383	
Juanpore (not known, take average)	5,383	
Goruckpore	11,617	
		34,095½
Sixth Circuit.		
Futtyghur:		
Furruckabad	2,880¾	
Caunpore	3,439	
Banda or N. Bundlekund	2,493	
Barelly (not known, but take average of Upper Provinces)	4,760	
Etayah	4,014	
		17,585¾
Seventh Circuit.		
Meerut:		
Agra (not known, but take average of Upper Provinces).....	4,760	
Allyghur	4,529½	
Moradabad.....	9,052¾	
Carried forward.....	18,342¼	207,812¼

North

	No. of Villages in each Zillah.	No. of Villages in each Circuit.
Brought forward.....	18,342¼	207,812¼
Meerut—*(continued.)*		
North Suharanpore	1,753	
South Suharanpore	1,495	
Dehlee (not known, but take average of Upper Provinces)	4,760	
		26,350¼
Grand total villages.....		234,161½

Thus it would seem that seven courts, having jurisdiction as above, would be fully sufficient for the dispensation of justice in the first resort, in important causes in appeal, and for holding the criminal courts of sessions and of circuit throughout the whole of the Bengal Presidency. But for the better performance of the business of the circuit, to ensure the presence of three judges in court for the decision of civil causes, for the review of criminal matters, and the general superintendence of the police, five judges should be the number attached to each court of circuit, instead of four as at present: two of whom to take the circuit in opposite directions, which would give each the circuit of three zillahs, and render the business sufficiently easy to be performed without any risk of want of consideration from too great hurry to get over a tedious and heavy duty.

One thing, which contributes to make the circuits in India so irksome, is the extremely tedious mode of travelling. The journey from one seat of court to another, at the rate of twelve, or at most sixteen miles a day, makes what in England would be termed a very short circuit, in India a very long one.

I have

I have already suggested that the provincial courts ought to be the courts of last resort, unless in very special and important causes; and for these, that an appeal should lie to the Governor-General in Council. These courts ought also to be vested with special power with respect to the police, in preserving the tranquillity of the country; and might be expected to bring to the notice of government all circumstances which should come to their knowledge relative to the good government of their district, in whatsoever department such circumstances might arise.

At present, the provincial courts are, I fear, held in very little estimation, either by the natives or by the judicial branch of the service generally. The reason seems plain: they are really vested with very little power: none at all, indeed, unless in cases of a comparatively trivial nature. The more severe punishments are beyond their jurisdiction, and the more important causes are appealable from them: *quoad these*, therefore, the courts of appeal are little better than offices for the transmission of such causes to a higher authority. The respect accorded to courts so constituted must be secondary. A dernier resort jurisdiction given them, equal to that now belonging to the Sudder Adawlut, would raise the provincial courts in the estimation of the people, and give them a degree of weight in the provinces, which would render them instruments highly valuable in the administration of the government in every department, generally; and would be attended with the most beneficial effects, in improving and facilitating the administration of justice in particular.

I would therefore suggest:

1st. That the present courts of appeal and circuit be abolished.

2dly.

2dly. That the Conquered and Ceded Provinces, the province of Benares, Behar, Bengal, and Orissa, be divided into seven separate and distinct jurisdictions.

3dly. That a court, denominated a Dewannee and Nizamut Adawlut, consisting of one chief judge and four puisne judges, be established in each province.

4thly. That the jurisdiction of these courts be limited to their own province, respectively: in which they shall be supreme, both in civil and in criminal matters, except in very peculiar or important causes, when an appeal shall be admitted to the supreme government; who might, besides the opinion of their own legal advisers, call for that of any number of the ablest judges, selected from the different courts above mentioned, to assist them in the decision: but that in all personal actions, where the amount disputed is under 100,000 sicca rupees, their decision shall be final.

5thly. That causes of an important nature, or of the value of 20,000 rupees, or upwards, be instituted in these provincial courts only; and that appeals be received from the inferior courts, if of a special nature, whatever the amount in dispute may be; and in all other causes of the value of 5,000 rupees or upwards.*

6thly. That these courts, in their nizamut department, hold a sessions, at regular and short intervals, for the trial of all criminal offences committed in any zillah, the court of which is situated within the distance of thirty miles. The sentence of the court at sessions to be final in capital cases of conviction; reporting for the orders and warrant of the Governor-General in Council previous to execution; and submitting for the consideration of that high authority, any circumstances which might be deemed extenuatory of the offence, tending to mitigate punishment or to call forth clemency.

7thly.

* This might be raised from 5,000 to 10,000 rupees.

7thly. That the puisne judges of each court shall perform the duties of the circuit twice a year, or oftener if necessary, two going on their respective circuits.

8thly. That those courts be vested with the control of the police within their respective jurisdictions; or the chief judge of the court only, should this be deemed more expedient: the magistrates reporting to him, and through him to government.

I am persuaded that this establishment and distribution of the courts, provided they were filled with competent judges, would be fully equal to the due administration of justice in criminal matters, in appeals, and in important causes.

The constant chain of appeals from one court to another, combined with the deficiency in legal knowledge and of business in general, which prevails in the judicial department, and not the want of judicial officers, is, I apprehend the great cause of that inefficiency which appears, and which has been so often and so much lamented, in the administration of justice. Innumerable difficulties must, on very trivial occasions, arise to a person who is but ill-informed of his duty; and it is thus that, besides very unsatisfactory decisions, the most precious of all things, the time of the court, falls a sacrifice to the ignorance of the judge. Proceedings are heaped upon proceedings, delay follows delay; a desire on the part of government to remedy obvious defects occasions establishments to be multiplied upon establishments, equally inefficient perhaps with the original; and it is thus that no advantage is gained, and no result appears but disappointment, and enormous expense to government.

I now come to speak of the inferior courts. The next in

in gradation to the provincial courts of appeal are the courts of the zillah and city judges and magistrates; the judicial and magisterial offices being at present combined in the same person.

To all of those zillah and city courts there are judicial officers, called registers, attached, who are assistants to the judges, but who also hold courts of their own for the decision of minor causes. There are also, in gradation inferior to the registers, junior civil servants, called assistants to the judges and magistrates, to whom the judge assigns a portion of the business of his court. All these are subordinate to the judge: but the number is not fixed.

There are in some zillahs a higher class than the last-mentioned, of judicial officers, that have been termed "joint magistrates," and also, "additional registers," whose jurisdiction is co-ordinate with that of the zillah judge. In fact, a judge of part of the zillah, or perhaps part of two zillahs, the limits defined: in short, as Mr. Stuart designates them, "judges on worse pay" than the regular zillah judges. These situations are filled by civil servants younger than the class of regular judges. There may thus be about four Europeans to administer the law and to superintend the police in every zillah. There are, at the moment I am writing, about one hundred and eighty civil servants employed in the judicial department, employed as functionaries, mostly invested with judicial power, holding courts and passing decrees, and not, as in England it would be, with a part of them performing the inferior offices of the law.

The number of causes disposed of in the zillah and city courts, by decision, adjustment, or nonsuit, for four years, ending

ending in December 1816, exhibit an annual average of decisions by the zillah European judges, &c. as follows:—

By the zillah and city judges..... ..	6,660
By ... do. ..... do. registers	9,108
Total annually	15,768

which, if we reckon the *judges* at forty-five, will give for each, to decide annually, about one hundred and forty-eight causes; and reckoning about sixty registers who officiate as judges, and about fifteen additional or second registers, who are deciders of causes, in number altogether about seventy-five, we have for them each about one hundred and fifty decisions annually; or it gives (making allowance for Sundays and holidays) about two days to a judge, and as many to those inferior officers, for every cause they decide; and if we take the whole number of 15,768 causes, and divide them among the above number of one hundred and eighty judicial officers, we shall have for each to decide annually about eighty-seven causes.

We can scarcely allow, then, that the judicial branch of the duty of those officers, in civil matters, is very heavy; though to what I have stated, falls to be added, in their capacity of magistrates, criminal jurisdiction in the lighter offences. The chief part, however, of the duty which the zillah and city judges have to perform, is in their capacity of magistrates, or police officers. But as those duties are at present united, the proportion of time required for the performance of each branch has not been ascertained; and hence the combined duty being too laborious, it is doubtful whether the police or the judicial department of government has suffered most.

In

In my estimation, it would be wise to separate the two functions. The guardianship of the police, and the magisterial duties of a zillah, would undoubtedly be quite enough for the labour of any one individual, even of the most active and zealous of the Company's servants; and I think that one judge, however active and zealous, might also be fully employed in performing the duty of judge in a zillah; though, under the proposed arrangement of the courts of circuit, it might perhaps be found that thirty, instead of forty-five zillah judges, might be sufficient for the whole of the Bengal provinces.

Many reasons might be assigned for separating the magisterial office from that of the judge. Justice requires that every judge should enter upon a cause he is to decide free from all bias. The duty of a magistrate renders him liable to prejudice. The nature of a judge's duty requires him to investigate patiently, and to decide deliberately; that of a magistrate requires him to be prompt and decisive. He must act quickly, though he should act sometimes erroneously. A judge ought to possess a complete knowledge of the law. The same degree of knowledge is not necessary in a magistrate and police officer. The habits likely to form the one, are not calculated to perfect the other; and hence it must seldom happen that the two-fold qualities of a good judge and a good magistrate are united in the same person.

The zillah judges have original jurisdiction in causes to the amount of 10,000 rupees. There should be no limit to this. Their decisions might with advantage be held *final* in mere personal actions, in demands, debts, and matters of account, involving merely a definite sum of money, or value of goods or chattels, to a very large amount: probably

4,000 or 5,000 rupees might not be too high. But, on the other hand, in cases of real actions, questions of inheritance, of landed property, and generally, in every cause involving an indefinite amount, or question of general importance, an appeal to the provincial courts ought to lie, whatever the value of the subject-matter in dispute may be. Special appeals to be received in all, even of the former class of causes, should the inferior judge see reason; or should the judge of circuit, on a petition from the party desiring it, see grounds for admitting an appeal to the provincial court.

The same principle with respect to appeals from the decision of the assistant judges and registers to the judges should prevail; and, in that event, the limit, in point of extent, of their final decisions, in cases of personal actions, debts, and demands, &c., might be raised to 800 rupees: their jurisdiction to extend to 25,000 rupees. But no cause of any description exceeding 400 rupees, to be brought before them in the first instance; and those under that sum, only in matters of debt, demands, and personal actions as above; all other causes to be instituted before the judge, who will *remit* to his deputies and assistants, for investigation and adjudication, such of them as he may deem proper; exercising, in this respect, a judicious discretion as to the complicated or simple nature of the case remitted.

Three essential points would be effected by this. The nature of all suits, except simple demands of a trifling amount, could be known to the judge, his power reserved of deciding all such causes as should appear important or complex, and every assistance attained from his inferior officers, which they may appear to him capable of affording.

Thus, I apprehend, an ample provision would exist for the

the distribution of civil justice; or if it should be found to be still deficient, notwithstanding the full adoption of all the precautionary means, for the prevention of litigation, and for the speedy adjustment of disputes, which I have above suggested, a few natives of acknowledged respectability, and of tried character, might be employed in each district in further aid of the judge: men of family, of education, and of irreproachable reputation and habits of life. A respectable salary of 300 rupees per mensem should be allowed them; and the ancient and constitutional appellation of "*kazee*" would raise them in the estimation of the people, and remind themselves of the sacred character they ought to maintain and the high duties expected of them. Two or three of these in each zillah, placed in eligible situations throughout the zillah, would be as many as would be required or ought to be employed.

The extent of jurisdiction of the kazee might be limited to demands and personal actions, to the extent of 800 rupees; and their decisions to be final to the amount of 40 rupees, exclusive of costs.*

The Court of Directors have wisely authorized the employment of persons, such as are here described, with liberal salaries, instead of paying their native judges, as at present, by taxes, and per-centage on the causes they decide: which holds out a strong temptation to these people, not only to promote litigation, but to decide hastily, and to prevent

* The extent of cognizance of the kazee might be raised, *in personal actions*, to a large amount, if the power and the ready means of appeal were afforded, even to 10,000 rupees; and the decision of the kazee might be, in such cases, made final, to the extent of 100 or even 200 rupees, under a watchful superintendence of such courts.

prevent amicable adjustment, which, by the Regulations, would deprive them of their fees.

The number of sudder ameens and moonsifs, or native petty judges, now employed, is not limited, but is very great in the district of Burdwan, which I mention here, knowing the number of thanahs in it: holding each thanah to be furnished with its little judge, there may be no less than sixteen, perhaps twenty, of these gentlemen of the bench in that zillah; assuming which number as an average, it would give for the Bengal provinces about nine hundred persons invested with judicial powers, in causes under 150 rupees, in the courts of the sudder ameens, and 64 rupees in the courts of the moonsifs. But if we take the average number of villages in each thanah, as in Burdwan, at about two hundred and eighteen, and estimate the number of villages under the Bengal presidency at 400,000 or at the least at 360,000, as assumed by the court of Sudder Dewannee Adawlut, in their report of the 9th March 1818, the number of moonsifs would exceed 1,800, instead of 900. This estimate of villages, however, is known to be incorrect.

My own experience of the natives of these provinces, makes me adverse to employing them in situations of power and of trust without efficient control. To multiply, then, the number of individuals who have power, is only to increase the sources of oppression to the people. As, however, we must have tribunals of some sort, rather than multiply these, I would recommend that the respectability of the individuals, thus vested with authority, should be increased, and their numbers greatly diminished. Nay, adverting to the state of society in India, and to the moral condition of the people, till that has been improved, I would

would strongly recommend that native agency in situations of responsibility, should be dispensed with entirely, *unless in situations over which there is a most efficient European control.* With such control, however, they are valuable servants, and may be employed with the greatest advantage to government, and with benefit to themselves. If we desire to elevate them beyond this, we shall succeed only, in general, in affording them the means of evincing, in a more prominent manner, that as yet they are unfit for such advancement. I speak generally; for among so many there must be found some honourable persons: but the few of this description, I fear, will only prove the force of the rule, by appearing as exceptions from it.

I am well aware that I shall have to combat the opinions of many abler and more experienced men than myself on this point. Many recommend the employment of the superior classes of the natives, in order to keep up the respectability of what they term the aristocracy of the country, and to make what they are pleased to call the gentry subservient to our views in the government. Nothing is more apt to mislead than the use of terms, highly significant in our own country, as descriptive of persons or things in another. The great value to the executive government of the enlightened aristocracy of England, stamps a high significance on the word; but people forget that, if there be an aristocracy in India, it is an aristocracy distinguished from the people by no moral quality, by no superiority of education, by no strength of mind, by no power of communicating the ideas the individual may chance to possess, superior, often indeed not equal, to the husbandman that turns up the soil on his estate.

The fashionable opinion of the day would lead us to believe,

believe, that pagan morality in India is, at least, equal to that of our Christian countrymen in Europe, and very great men are quoted in affirmation of that persuasion; but in opposition to my own senses, with experience equal to many of those who dissent from my opinion. I care not for names. The authority of Sir T. Munro, of Sir John Malcolm, of Bishop Heber, is quoted in support of the integrity of the native character. The sentiments of the two great men first mentioned, on this point, are of the highest value; but the opinion of Bishop Heber, formed during the short period of his residence in India, notwithstanding his acknowledged acuteness, can hardly be relied on. Moreover, the intercourse of a man of high rank with the natives of any country must be very limited: and what is still more likely to disqualify Bishop Heber from being an accurate judge is, that he could never have seen them but in a fictitious character, acting a higher part on the stage of civilization than, in their dealings with their equals or inferiors, they really occupy. Who would shew the cloven foot before a bishop? And with respect to the other eminent men above-mentioned, an exception may also be taken to their testimony, though on very different grounds. Sir T. Munro and Sir John Malcolm could hardly be deceived by a native with impunity. The control, the check, which the great sagacity and experience of those valuable servants of the Company enabled them to exercise over those under them, secured to them a degree of integrity in their subordinates, which, I apprehend, may be rated far above the standard of Indian morality. These men may be said to be, by their own superior energy, absolutely disqualified from forming a fair opinion on this point. The wolf is a lamb before the lion. It does by no means follow that the same men, who would be honest under the vigorous control of Sir John Malcolm or

Sir

Sir T. Munro, would be trustworthy under less rigid management; much less so under no direct control at all. But even Sir T. Munro did not find his opinions verified. Let us see what the native officers were found to be even under the eye of such a master as Sir Thomas Munro himself, who informs us "that of about one hundred *principal* division "and district servants who have acted under me, during "the last seven years, there have not been more than five "or six against whom peculation, to a greater or smaller "extent, has not been *proved*" (Judicial Selections, vol. ii. p. 231, Sir T. Munro's Report, April 1806). Here is a statement of fact which outweighs a thousand opinions. If but five or six in one hundred escaped *conviction* by *proof*, how many were really pure? Probably not one. I consider this, from Sir Thomas Munro, worth all the evidence which the records even of the Indian administration could furnish, and proving that, as yet, the native of India has not reached that point at which he can be safely intrusted with power, except under efficient control. But, as I have before said, I am still of opinion, that with such control they are valuable servants, and ought to be so employed.

It is in this way, in my humble estimation, that the ultimate end of those who most strenuously advocate the employment of the natives, will be best, and even speediest attained. The people will thus gradually become convinced of the advantage of upright conduct; and we shall find that many, by such superintendence, will escape from temptation, to which, were greater confidence reposed in them, they would assuredly fall victims: and, thus saved, they may become valuable assistants in the administration of the government. We forget that, in our own country, there is hardly any individual in authority, whose acts are not subject to some species of control. Every man in England has

has an eye over public functionaries, who consequently have no security, except they keep themselves entrenched behind the impregnable bulwark of unshaken integrity. In England, there is no disposition to conceal, but rather an alacrity in proclaiming, any laxity which may be perceptible. In India the case is quite the reverse. Disappointed revenge may sometimes bring to light delinquency; but there is an habitual apathy which abhors trouble of every sort, and even disqualifies the people for acting; whilst the practice of exacting undue gain is so universal among them, that it not only excites no emotion, and has long ceased to be disreputable, but the exposure of it is a rare occurrence, a marked event; and is indeed execrated as a barbarous act, inasmuch as it subjects to punishment a man who, in their eyes, has committed nothing of a crime.

The legislator, therefore, who should entrust the administration of India to the people, would in fact be acting on the principle, that to secure integrity you have only to confide. The feelings of nations are different on different points. If a Hindoo eat with an inferior, he becomes a marked and a degraded man; his equals will not associate with him: but he may persecute the poor, or plunder a province, without any such degradation. The legislator for India, has, therefore, in this respect, not the same security as he would have in England against oppression.

Much has been said of the benefit which is to be derived by the Hindoos to their morals from the exertions which have, for some years past, been made to introduce European education among them. For my own part, I know of no species of education, except that of a sincere Christian, which

which can be fully relied on for producing a favourable change in the moral character of any people. It is the heart, and not the head, that must be educated. Science, and mere philosophical knowledge, are no national security against immorality. Such knowledge may even prove worse than useless; "for in much wisdom there is much grief, "and he that increaseth knowledge increaseth sorrow." I believe some of those who have been the most active in promoting this species of education, are not altogether satisfied as to the consequences. They have been feeding the fire, and "getting up the steam;" and now comes the necessity of looking out for a safety-valve by which it may have vent. This safety-valve, they tell us, is public employment; and it is daily repeated, that, in our administration of *their own country*, "we pass over the natives; "whereas, it cannot be denied, that it is both reasonable "and politic to employ them, especially the higher classes, "in the service of the state, for that it is only in this way "that they can feel any interest in the stability of our "government." I think these are very doubtful positions. I think, were it possible for us to succeed in administering *our* government of India by means of the natives, that the natives of India would then prefer that the government should be *their own* government, and not *ours*. No country, however, can afford to employ every idle scion of the aristocracy. In our own country, if we except the army and navy, there are not a great many of the higher orders in public employment. But the state must have men *qualified* for public employment; and if the higher classes in India were so qualified, unquestionably they would be employed. Then, has it been ascertained that there are really so few situations in India for respectable natives? I apprehend, if we set aside those of the higher classes who are disqualified, either by their prejudices, their indolence,

or

or their unfitness, it will be found that the proportion of those employed, who are qualified, is not small; and that, if we take their avowed, and unavowed income, they are by no means pitiable in point of emolument.

We must never forget, that it is to *the great body of the people* we owe our special care, and *not* to any *particular class, high or low.* In selecting individuals for office, we are, therefore, bound to look for those who will, most surely and successfully, manage public affairs, without regard to rank, creed, or colour. If we imagine that the natives of India will become attached to our government by our employing their countrymen to rule over, though they should rob them, we shall deceive ourselves. I believe the feeling among the natives, from one end of India to the other, is (and I am sure that the testimony on public record is almost universal), that the people of India have more confidence in our integrity than they have in that of their countrymen.

A mild and a just government, brought more closely among the people, by the system of revenue which I have followed more able men in venturing to recommend, would, I am persuaded, be the most direct means of acquiring for us that popularity we shall vainly seek for through the medium of native agency; which, be it remembered, can never, in the estimation of the people, elevate the character of *our* government: for, if that agency be good, it is their own; and they will hardly rob themselves of the merit, to give us the praise we aspire to. They cannot hope for that purity of function from their countrymen, which they experience from the able and intelligent European servant of the state. All their experience is opposed to such an expectation. Let us look at what is passing around us every day.

day. At the moment I am writing, I find the natives of India, and of Calcutta in particular, lauded in the British parliament for their moral character, their integrity, and respectability; but when I go to Calcutta, I see that many of those very men, who have heretofore moved in the highest circles of native society, who have associated with the first orders of Europeans in that city, have been convicted, accused, or suspected of the most atrocious frauds, and that no one will have any dealings with them.

Far be it for me to affirm that honesty and integrity are nowhere to be found among the natives of India: what I have stated applies to the character of the nation generally. That individuals may be found worthy of confidence, I am far from denying; but the question under discussion is a general one, and must be answered generally: that, as yet, their state of morals, and their notions on particular points, are such as render the employment of the natives of India, in situations of trust and responsibility, hazardous to the happiness of the community, and to the welfare of the country, *except under efficient control.* I am farther of opinion, that integrity cannot be secured by any degree of confidence, or scale of allowances, however large. Cass Chitty was no less a character than treasurer, holding a situation of high trust and emolument, yet the extent of his nefarious peculation, say the government of Fort St. George, in 1812, in one district (Coimbatore), in seven years, was upwards of six lakhs of pagodas, about 21,00,000 rupees: "he had made fraudulent collections to the ex-"tent of 3,00,000 pagodas, which the ryotwar settlement "of 1816 enabled government to discover." So that the maxim, of high salary and great confidence securing honesty, was precisely reversed. The magnitude of his depredations corresponded with the extent of trust reposed in him.

And

And let us look to more modern times, to the late enormous delinquency, under the Bengal government, in the opium department, first, and then in that of the salt; by which the revenue has sustained a heavier loss than is known, or can well be imagined. By connivance of the native Aamla of the opium agent, the Bengal opium was adulterated, so that it not only lost its name and its sale in China, and by consequence fell enormously in price at the Calcutta sales; but government was under the necessity of indemnifying purchasers of spurious opium to the amount of 14,00,000 rupees. So in the salt department. The head native of that department, a man in whom the utmost confidence was placed, whose opinion was highly valued if not implicitly relied on, who had been upwards of thirty years in his situation, was the principal organizer of a system of false entries of money deposits, which enabled him and his associates to effect the delivery of salt without payment; by which government, at one time, it was expected, would lose sixty lakhs of rupees, and the actual loss, I believe, was very great.

I mention these instances, not because it is necessary to support the opinion I have advanced; for, I believe, the assent of most of those who have had sufficient knowledge of the people is with me; but only because they have been very prominent, and attended with very serious consequences, both to the government and the public. I am of opinion, therefore, that as a general principle, the employment of natives in the administration of the government, without corresponding control, cannot be safely extended. But as natives must be employed, and may be, under control, with eminent advantage, let us see what number of select men would probably be sufficient for the subordinate administration of justice.

Allowing

Allowing three provincial kazees to each zillah, or about one hundred and twenty for the whole of the Bengal provinces, and supposing they had to decide as many causes as the sudder ameens and moonsifs now do (though I presume the number might be greatly reduced), let us see how many suits would fall to the file of each kazee. On the 1st of January 1817, as above, the number of suits on the files of the sudder ameens and moonsifs was 67,771.* The kazees being 120, the average gives to each 564¾ causes annually; or, allowing for holidays, not two a day.

Were the number of kazees, therefore, limited to two in each zillah, their business would be light indeed. But then I am told the distance from the courts would, in that case, be so great, that the people would be thereby deterred from seeking justice, and every facility ought to be given them. This requires consideration.

I am one of those who think that very great facility to litigation is not desirable, but, on the contrary, very objectionable. I am of opinion, that the principle of forbearance with one another ought to be inculcated among the people, and that disputes in matters of small amount and trivial quarrels should be left, as much as possible, to be adjusted by the people themselves; and to this end, I conceive, ready access to courts of law by no means conducive. The most ignorant of mankind know very well how to balance inconveniences; and if they find it less irksome to put up with a trifling loss than to go a journey to court to complain, they will refrain from going, and have their dispute adjusted by their village peers, their punchayet; who, besides administering justice, will make a point of reconciling the parties, which no court will or can do, but which nevertheless is, in most

* See Sudder Dewannee Report, March 1818.

most cases of the nature here alluded to, of far greater consequence to the good and peace of society, than the mere decision of the matter in dispute, even though just.

Nor, were it possible, do I think it incumbent upon a government to provide for the decision of minor causes, so as to ensure to them the same minuteness of investigation as in important questions. It is not sound doctrine to tell us, as some do, that the greatest cause and the smallest are precisely the same in the eye of justice, and that the law-giver and the judge ought to make no distinction between them: that the poor man's mite is as much to him as the bushel of the rich. They forget, however, the relative situation of individuals in society. The importance of a thing is precisely in proportion to the power or influence it is capable of exerting, or of being made to exert, in the sphere in which it may be placed. The loss of the poor man's mite, though perhaps his all, is felt by himself only; that which affects the rich, extends its influence over hundreds who depend upon him. The decision of any one small matter of dispute, though wrong, provided it be unbiassed, cannot be attended with important consequences to the community, more than the accidental demolition of a petty hovel could affect a city; and, therefore, such disputes may, and indeed must, be left to the decision of inferior persons, and must be decided in a summary manner.

What I should desire to see established in India are able European judges; the courts open to all, ready of access, but by no means inviting to the litigant; prompt decision; not that every hamlet should have its lawyer, every village its judge. The temple of justice, though open, should be made approachable only with reverence; not

not on trifling occasions, nor even without some anxiety, if not difficulty: let no one linger therein.

I cannot omit expressing my humble opinion, in this place, that great advantage might be derived, by investing with judicial, as well as magisterial power, European gentlemen, not in the Company's service, resident in the interior, who are known to have an intimate knowledge of the customs of the country, of the people around them, and by whom they are respected. Many most worthy, intelligent, and highly respected gentlemen are to be found all over the country, to whom jurisdiction to a certain extent might be given in civil disputes,—such as those of boundaries, of right to water, to fish, to pasture, to wood; disputed rents between the cultivators and landlords; differences between these about pergunnah rates of rent, and every matter having reference to husbandry. It often happens, that men carry on disputes for want of a person to whom they can appeal, which at first are trifling, but in the end become very serious. The natural respect accorded to such a man as I have described would at once point him out as the fountain of justice between them, and they would submit to his decision.

In criminal matters, to what extent it would be advisable to empower the zillah judges to sit, and to sentence on conviction, next requires our consideration.

In the trial and conviction of criminals, the duty of the magistrate and public prosecutor is, generally speaking, the most intricate and difficult to perform. These have the proof, the grounds of conviction to search for and to display before the judge. It seldom happens, in criminal matters, that a case of great intricacy in regard to decision occurs.

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But supposing it were otherwise, as the law by the Regulations now stands, the selection is between an individual zillah judge and an individual circuit judge. The experience of the latter may, generally, be greater than that of the former; but, on the other hand, he is more likely to be pressed for time: and several other disadvantages attend an itinerary judge to which a fixed court is not liable.

I would, therefore, admit the jurisdiction of the zillah judge, in criminal cases, to every extent; but direct that he should postpone all trials which may involve life, or transportation, or imprisonment for life or for more than one year, until he should be joined by the judge of circuit, who would sit along with him, and preside on capital, and perpetual or more than one year's punishment trials; their unanimity to be required to convict. All trials before the zillah judge alone, involving imprisonment for one year, to be reviewed by the circuit judge, in presence of the prisoner, with power to call witnesses; and if he coincided with the zillah judge, sentence to be executed. If he differed from the zillah judge, the prisoner to have the benefit, and the lighter punishment to be awarded. So, if the united judges did not agree in all trials at which they both sat, the prisoner should have the benefit of their difference of opinion, and be acquitted, if they differed as to guilty or not guilty. If their difference related to extent of punishment, the lesser to be inflicted.

Thus the circuit judge would both prove a check over, and himself have the benefit of, the local information of the zillah judge; and justice would be benefited by the combined wisdom and united exertions of both, in matters of the higher importance.

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I have not the means of ascertaining what proportion of the criminal business of the courts would thus be dispatched by the zillah judges, and consequently, how much most harassing and tormenting, and I may add highly obnoxious, duty, the public would escape from, of repeated and tedious attendance as prosecutors and witnesses at the courts; nor how much money, for the maintenance of accused persons and witnesses, would be saved to government. But, unquestionably, in all points of view, the relief here contemplated would be desirable.

The crimes and offences that would come under the sole jurisdiction of the zillah judge would be libel, defamation, adultery, fornication (including seduction), all of which are criminal offences by the Moohummudan law; theft, shoplifting, housebreaking in the day or by night, furtively, and not by force or by gangs; and, generally, all offences which are not usually accompanied with a breach of the peace, unless they be attended with dangerous violence against the *person:* excluding, however, perjury and forgery, unless these happen in cases in which decisions and sentences of the zillah judges are held to be final, as above.

The combined judgment of the circuit and zillah judges would be made available in trials for the greater crimes, as murder, homicide of all descriptions, maiming, wounding, rape, highway robbery, dakoity, burglary, larceny, attended by force and terror, arson, burning or destroying of cornfields or crops, cattle stealing, perjury and subornation of perjury; in the more important causes, forgery, fabrication or falsification of deeds or other documents, riot, rebellion, destruction of public records or registers; and, generally, all heinous and aggravated crimes and offences, involving

the security or peace of society, or of the government, or of individuals.

The native judges ought not to be entrusted with criminal jurisdiction at all, unless perhaps in light affrays and abusive language, where a fine of five rupees or so might be the award.

How far the scale and degrees of punishment, as at present established in Bengal, are suited to the nature of offences and to their prevalence, I very much doubt. One thing, however, is certain, that in fixing a scale of punishment, it is of the highest importance to attend to the feelings and ideas of the people. The *Moohummudan law* recognizes this as a principle, and does not, in cases of mere misdemeanor, award the same punishment to all ranks of society. It is impossible to feel that the pillory, some time ago awarded in the case of a noble lord guilty of a frolic, though a legal fraud, the high-minded and gallant partizan of the Spanish Independents, and in the case of the grovelling wretch pilloried and pelted for perjury or a more abominable crime, are in degree or in essence the same punishment.

I have, lastly, on this head, to notice a subject which seems to have given rise to great difference of opinion among the Company's civil servants in the revenue and judicial branches of the service, *viz.* whether it would or would not be desirable to give the collectors and revenue officers jurisdiction in questions connected with the revenue, rents, disputed boundaries, &c.

The judicial officers, as appears from the opinions of those who have been consulted, generally, almost universally,

sally, indeed, have shewn a disinclination to give up any part of their judicial authority; while, on the other hand, the opinions of the collectors, who have been consulted, and revenue officers, are pretty generally in favour of this additional power being conferred upon themselves. The Board of Commissioners for the Ceded Provinces, in their Report, 25th April 1817, state their opinion to be, "that "all questions between landlord and tenant will be adjusted "more speedily, more satisfactorily, and with more con- "sistency, in the principles of decision, by the revenue au- "thorities. A right decision," they allege, "in cases of "summary process for arrears of rent, &c. must depend on "an intimate knowledge of village accounts, and on the "minutiæ of revenue *operations*, which the courts of judi- "cature cannot possess." Why not possess?

The principal reason assigned by the collectors is, that they are, generally speaking, better informed on such subjects than gentlemen who have been only in the judicial line of the service.

The judges, again, say, "that a zealous collector has no "time; and if he had, that there is not that confidence "subsisting between the collector and the people, who "look upon him as a person whose situation places him "in direct opposition to them and their interests; and "moreover, that most cases of controversy, among the "people even, are more or less connected with, if they "do not arise out of, the acts of the collector himself, or "of his officers; whereas the judge is looked upon by "them, if not as their protector, at least as a disinterested "person."

With respect to the point of superior qualification pos-

sessed by the collectors, I think we may doubt its admissibility, because it would go to the extent of proving total disqualification for the judicial office; and from having already made ample provision for the administration of justice, the reader will, I conclude, infer that I am not an advocate for employing the revenue officers as judges, in any matters whatsoever. I am, however, of opinion, that they may be employed, and with great advantage, as magistrates and justices of the peace; but of this in its proper place. I shall farther remark, that most of the writers, on both sides of the question, have taken too extensive a view of the proposition submitted by the Court of Directors for their sentiments upon it. The suggestion of the Court of Directors, to which the whole is referable, is "whether the collectors, "and other revenue officers, might not be employed in "settling disputes respecting land-rent between land-"holders and their immediate under-tenants, and between "the latter and the ryots, including complaints of the latter "for undue exactions, subject to the revisal of the regular "courts of justice, by way of appeal, in cases of sufficient "importance; also in disputes respecting boundaries."*

In all these cases, there seems nothing in the official duty of a collector to disqualify him, on the ground of partiality, from being a judge. But how far the number of collectors in the permanently settled provinces of Bengal, &c. (in which advocates of the permanent settlement have so often told us the revenue is so fully and easily realized), might admit of their performing more duty than they now do, I am not competent to say. If, however, their duty be too light, their numbers might be diminished. But were the mode which I conceive to be the most approved, of collecting the land revenue of India introduced, I cannot hesitate

* General Letter, 9th November, 1817.

hesitate to think that no collector, who performed his duty, would have leisure for other employment.

Were I to propose that the zillah judges, supposing them to have leisure, should be empowered to collect part of the revenue, I should expect to be told that the proposition could not be listened to, for many and substantial reasons. But still it would in no way essentially differ from that of those, who propose to empower the collectors to sit as judges.

The collectors, however, and revenue officers, might in one way be employed, in a most essential and satisfactory manner, as the Court suggest, in the settlement of disputes respecting land-rent between landholders and their tenants; or rather in preventing such disputes, by attending to the village and pergunnah records, which might with propriety be put under them; and if they executed that branch of their duty carefully, there would seldom, indeed, be any room for dispute between "the landholders and their under-"tenants, and between these and the ryots," because those records are intended to register every transaction between these classes of the people; and where accurate accounts are kept there can seldom be room for dispute.

We may further remark, that every decision relating to disputed boundaries involves in it the interest of government; and it is not to be doubted that the courts of justice have often been made the blind instruments of defrauding the state. By the mode of settlement in Bengal, every zumeendaree has a fixed jumma or rent; but, generally speaking, the boundaries are but ill-defined. It is evident that if the boundaries are disputed by one zumeendar, and by fraud he establishes his right to part of his neighbour's

neighbour's estate, or if two neighbouring landholders should collusively effect this through a decree of a court, the estate, robbed of part of its lands, though less valuable, being still liable to the same jumma, will probably be in the first instance confiscated for arrears of revenue, and ultimately government will be obliged to reduce the revenue demandable from it, whilst the fraudulent neighbour enjoys his additional village, or villages, at the old rate of jumma; and thus, either by fraud on one side, or by collusion on both, the court is made the instrument of defrauding government of part of its just revenue. The collector, therefore, whatever be the mode of adjusting a disputed boundary, ought to be made a party to it, in order to watch the interests of government; and how far their acting as judges in the same cause would be consistent, may be questioned.

The question, how far punchayets are useful, or might be made available to the administration of justice, is worthy of attention. A punchayet is an assemblage of persons for the purpose of settling disputes between parties of the same caste or class of society with themselves. This is essential; but in matters relating to caste, it is not essential that the disputants should be assenting to the arbitration of the punchayet. This very ancient and self-created tribunal will pass its decrees and proceed against the parties, to the extent of excommunication, if they are not obeyed. From the very nature of the tribunal, therefore, the high with the low, the rich with the poor, could but seldom, if at all, be brought before it; and these classes, for the most part, form the oppressors and the oppressed. Neither could persons of different sects, though in other respects equal, be brought before the punchayet. Its efficiency, I apprehend, could therefore not be relied upon; though it would be highly

highly advisable to encourage it, as well as every species of arbitration, by every means practicable.

The idea of *authorizing* persons to be arbitrators, of vesting individuals with the powers of arbitration, as suggested by some, appears to be very unnecessary, if not superfluous. May I ask, is there any objection to allowing parties to settle their disputes themselves? If there be not, can there be any objection to allow them to refer the adjustment to *any* third person *they may select*, whether such third person be an authorized arbitrator or not? The law and usage of India, and I believe of every country, authorize voluntary submission to the decree of an upright and disinterested arbiter; and I cannot see on what principle it can be disallowed. All that is required of the law, in cases of arbitration, is to authorize judges to execute the written decrees of arbitrators, unless fraud can be established against them.

But, as much has been said on the subject of introducing such village arbitrators, as well as the trial by jury, into the public administration of justice in India, I will, in this edition, submit the following further considerations on these questions. Many have fancied they saw in the Hindoo punchayet every thing which constitutes the essence of the English jury. The punchayet has also been called the "common law of India." But the punchayet is no law: it is a village tribunal, guided by no law, voluntarily assembled, by the consent and at the request of the parties (unless indeed in cases of caste), to settle a particular dispute between them, specifically submitted. It is, therefore, purely an assemblage of arbiters, called upon to decide a dispute, on the broad principles of equity and the custom of the community; utterly useless to government, because

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it requires the voluntary institution of the parties in every individual case. As a tribunal, punchayets cannot be ordered by government, so as to be available for the administration of justice. They should, however, be encouraged, and the way to do this is, by government giving ready effect to their unimpugned awards. Wherever more has been expected from punchayets, or more authority attempted to be combined with them, the scheme has utterly failed.

The trial by jury has been introduced at Ceylon, and we are told, with success. Sir A. Johnston, who was there the originator of that system, gives the most favourable account of the advantages which have resulted from it, not merely in the administration of justice: he ascribes to it the happiest results "in reforming the morals of the natives." But that enlightened and benevolent judge was probably too sanguine. The difficulties previously experienced at Ceylon, in the administration of justice, were those which are experienced in every other part of India: "Our ignorance of the laws and customs, manners and "language, of the natives, their apathy, and their want of "veracity."—"The obvious way," he says, "of remedying "these evils, was first to give the natives a direct interest "in the system, by imparting to them a considerable share "in its administration: to give a proper value for veracity, "by making it a condition on which they were to look for "respect from their countrymen, and to *hope for promotion* "*in the service of government.*" But how their being jurymen necessarily led to this "promotion," we are not told. "Every native of Ceylon and permanent resident, "who was a freeman and twenty-one years of age, was "qualified to be a juror; and they were assembled thus: "As soon as a criminal sessions was fixed, a considerable "number

" number of jurymen, of *each caste*, was summoned: taking " particular care that none was summoned out of his turn, " that no interference should occur with any of his agri- " cultural or manufacturing pursuits, or religious cere- " monies." Now these conditions appear to me to render the jury system quite impracticable, as there is certainly no possibility of finding " a considerable number of persons of " *each* caste" thus disengaged, unless in large cities, or if they were disengaged, willing to quit their homes, for the honour even of sitting on a jury; and the more especially, if such a jury should be expected to give a verdict faithfully, even to the extent of hanging a Brahmin. And here, by the way, we may just note this, as one example of the difficulty of introducing English laws and institutions into India.

Then we are told, " the jury are assembled to hear the " charge delivered by the judge." Whether they understand it or not, we are left in much doubt; as he afterwards says, " the prosecution being closed, the judge " (*through an interpreter* when necessary) recapitulates the " evidence to the jury from his notes, adding such obser- " vations as he may deem right." Now, with every desire to pass over trivial errors, this does appear to me to be any thing but an improvement in the administration of justice. Again: " The judge declares the *law*, and the jury judge " of the fact." Thus, we have the exploded law of England transplanted into Ceylon; with the addition of the explanation of that law being given from the mouth of a judge, whose language the jury is made to understand through an interpreter. But the law of England is rather an intricate subject for such an operation. We have yet to discover in India interpreters of such a stamp as those whose services would here be required.

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We are then told that "no man, whose character for "honesty or veracity is impeached, can be enrolled on "the list of jurymen;" and the consequence has been, that "the right of sitting upon juries has given the natives of "Ceylon a value for character which they never before "felt, and has raised, in a very remarkable manner, the "standard of their moral feelings." These are the natives who were, before, stated "to attach little value to a cha-"racter for veracity." But it would, indeed, be miraculous if, within so short a period, so great a national change had been produced by such means. It is very natural that an amiable individual, anxious to promote the welfare of his fellow creatures, should take, if not an exaggerated, at least a very favourable view of the result of his own efforts. But those, who desire to follow in his footsteps, have not the excuse, when they heedlessly act upon such information.

It is probable that Mr. Wynn in his late Jury Bill for India, may have had too prominently in view the picture drawn by the Ceylon judge. But whether he had or had not, there are few in India, it is believed, who are not disposed to think that it is too early in the day for the adoption of such measures; and that, instead of the privilege, as it is called, of sitting on juries being desired by the natives of India generally, they would much prefer the privilege of sitting at home. Nor is it likely, that what Europeans deem to be an irksome duty, should be long cherished as a privilege by the Hindoos.

But the question of popularity is of little importance. The natives of India are, as yet, from their imperfect knowledge of the English language, absolutely incompetent to perform the duty of a juror. Many natives of the towns of Calcutta, Madras, and Bombay, speak the com-

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mon colloquial English with tolerable fluency; but, beyond the language used in conversing on the ordinary topics connected with their several professions, they have little knowledge, and of the idiomatic signification of the English language they are utterly ignorant. Yet on that very often hinges the essence of what in most cases they are called upon to decide, as to the matter of fact, and much oftener does the question of law require such an acquaintance with our language. On this head we may derive further information from what was said by the chief justice of Calcutta, on the 14th of August 1828, in his address, in deciding the stamp cause: "I am induced," says Sir Charles Grey, "to draw your attention to this "period (shortly after the Norman conquest, when proceed-"ings in the courts were carried on in the Norman lan-"guage), because there was in it something which bears a "resemblance to our present situation in this country. The "English law and language have been partially intro-"duced: Hindoo and Mahometan jurors are already ad-"mitted to assist in the administration of the English law. "Would it not be an absurdity that these jurymen should "solve doubts arising out of the maxims of Littleton and "Staunford?" But who has created this absurdity? And again: "But if we look to the extension of the system of "trial by jury, it is manifest that it cannot take place at "present amongst the natives, if it is to carry with it the "right of determining the law. *Without imputing to* "*them, as a people,* any thing *more than inability to inter-*"*pret our laws,* it is not too much to say, *that no man's* "*life or property* would be sure. But who will say that "instances would not occur of *something worse than* "*inability?* My mind will not bear to contemplate "the anticipation that *English* jurors could be brought "to this state of corruption; but can we be equally sure "of

" of all other persons in this conflux of nations, amongst " people of every origin, every habit, and every superstition? If such apprehensions should not entirely prevent the extension of the trial by jury, they may subject it to restraint and modification."

Here is the opinion of a King's judge, and that judge Sir Charles Grey: an opinion which can derive no weight from any thing that can be said by me. I may observe, however, that when the jury has the power of returning a verdict of *not guilty*, and if it is, as Sir Charles states, " absurd to suppose such jurors capable of solving questions of law," why was such an " absurdity" introduced " as the institution of such juries; and now, why is such an " absurdity" permitted to exist?

It is very natural for judges, especially in criminal trials, to wish for a jury to intervene between them and the conviction of a fellow creature. But the legislator has to look beyond personal feelings. He has to see that justice is administered *fully*, *faithfully*, and with integrity, and by competent means. The natives of India do not, at present, possess qualifications whence these conditions may be looked for, nor is the measure a popular one among them. The jury-act cannot be said to be popular: and it is, no doubt, a glaring instance of that precocity of legislation, which has not unfrequently been inflicted upon India, both by her western and eastern legislators.

The intelligent author I have before alluded to, Mr. Miller, after some just observations on the introduction of juries, remarks, that the measure appeared to him to be premature; yet says he, " the reasoning of Colonel Briggs, " and the success of it in Ceylon, have certainly shaken

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" that opinion," (p. 133.) But I doubt whether Colonel Briggs has given a decided opinion on this question. The court of which Colonel Briggs speaks, as having himself instituted, he describes as *a species of court-martial*, " having been, for years, in the habit of superintending " similar courts in the army." The number of jurors was never less than five: sometimes seven or nine; commonly Brahmins, who accompanied the cutchery on business of their own, usually selected from among the zumeendars of the purgunnah where the criminal was to be tried. " At " the close of the examination of each witness, the pun- " chayet (jury) was asked if they wished to put any ques- " tion; and the prisoner was likewise asked if he wished " to put any question to the witness." " It was in this " stage," says Colonel Briggs, " I frequently derived " assistance from an intelligent juryman: when, from the " mode in which the evidence was given, a farther exami- " nation by him has led more clearly to elucidate an obscure " fact." " After the prisoner's defence, the punchayet, or " jury, was then required to give its opinion as to the " prisoner's guilt; upon which the *shastree* was called on " to pronounce the law on the case, which was promul- " gated, and sentence was pronounced accordingly."

I am not fully satisfied of the advantage of all this, nor even of that on which Colonel Briggs appears to found the chief value of the punchayet or jury system: the extreme difficulty Europeans have to encounter in eliciting properly, and giving its proper weight to, native evidence. " It is from our deficiency in this respect," says he, " I am " disposed to attach considerable importance to the criminal " trial by punchayet or jury." Now I much doubt whether the natives employed by Colonel Briggs were competent to weigh native evidence more " properly" than that experienced

experienced officer was himself; and I also much doubt whether the difference, if any, may not have consisted in this; not that the natives were *more competent*, but only *less scrupulous*, as to the weight they gave!

But notwithstanding what Colonel Briggs may have said in favour of juries, I rather incline to think that what he has said against them is of greater weight than his reasons *for that species of trial* in India. He says, "restricted, "as juries must be, by rules, it is new. If introduced, "the duty must fall light on the people, who must be re- "munerated; and to render them just, jurors betraying "their duty must be liable to severe punishment as exam- "ples." These are requisites, in Colonel Briggs' opinion, "indispensable, if we would have juries in India." Now, I conceive all these difficulties, but especially the necessity of this last condition, of liability to "punishment," quite fatal to the proposed system. Who would undertake such a duty, were he to be subjected to severe punishment; inflicted, as those on whom it was inflicted would think, unjustly, or in ignorance, by an English judge? Then, as a precedent for the jury, Colonel Briggs states the military law, which protects the native soldier and meanest camp-follower. But I doubt much whether camp-followers (and these are the only class that can escape from it) are particularly partial to our martial law. I believe it is considered by them an abomination.

Colonel Briggs states his opinion, that both civil and criminal punchayets were constantly had recourse to under native governments. I am rather surprised to see this stated by Colonel Briggs; and no less so his description of a punchayet. "The punchayet," says Colonel Briggs, "was a select jury, appointed by the chief civil authority.

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" It sat, exhausted the evidence, and pronounced its de-
" cision on the guilt of the prisoner; the shastree was then
" consulted as to the law, and the prince, or chief, passed
" sentence."

This is not the description of a punchayet given by Mr. Colebrooke; nor, indeed, by Mr. Fullerton, quoted by Mr. Miller (p. 92); nor by any writer within my knowledge. On the whole, therefore, I do not think that Colonel Briggs speaks with any confidence on this subject. The opinion of an intelligent and practical man, like Colonel Briggs, is of great value; but, in this case, Colonel Briggs appears to me to stand, like the Rhodian Colossus, with a leg on both sides of a difficult question.

It is a great error in those who write on this class of Indian affairs, to suppose that natives would always succeed in eliciting truth, where the European finds difficulty. Compared with European youth on the bench, void of experience, and with little or no knowledge of business, the native may be allowed, reasonably, to have the preference. But compared with the European functionary of experience and intelligence, such as no man on a judicial bench ought to lack, I must protest against the alleged superior capability of the native. And it is not to be forgotten, that the European judge has all along the benefit of acute natives, men educated through life among judicial investigations, to aid him should he require assistance. Acquaintance with the manners of the people is doubtless valuable; but it is not the *sine quâ non* in this case. We are, at all events, sure that every intelligent and experienced judge in the Company's service has such knowledge; and we are not to fancy that, because others *get through* with duty which we find difficult or laborious, that therefore they

they are more competent than we are to perform it. *The termination* of a task is no proof of its *superior execution.*

I have recorded the above opinions of Colonel Briggs, quoted by Mr. Miller, for the purpose of shewing how easily acute observers, as well as intelligent writers, who have themselves had no experience, may be misled. Colonel Briggs' opinion is here quoted by Mr. Miller, not only as being favourable to the jury system, but as that which has shaken his own sentiments, which were before adverse to it. But Colonel Briggs appears, by greater experience of punchayets, to have altered his opinion. In his report of 31st May 1822, he tells us, " that he must pronounce the " punchayet, wholly inefficient, unless in a country reduced " to the lowest ebb of poverty, for deciding civil causes; " because," says Colonel Briggs, " I feel every day, that " the power of deciding civil causes by punchayet becomes " weaker and weaker, and seems to threaten a total stagna- " tion of justice." And again: " the decisions by pun- " chayet in Candeish have become extremely tardy, and " the system so clogged, as to threaten the very overthrow " of all substantial justice." These are the altered opinions of the same individual; and Mr. Elphinstone, in his minute, 14th January 1823, says: " the judicial arrange- " ments have not been successful. Few causes have been " decided; and those with considerable delay and dis- " satisfaction to all concerned. The punchayet system, " on which so much depends, has shewn all the incon- " veniences ascribed to it by me in 1819. The causes de- " cided by punchayet have been few; and most of the " gentlemen who have had opportunities of observing them " are unfavourable to that mode of trial. No native will " bring a cause before them, if he can enter it on the file " of the European officer's court."

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This is the result of jury trial in India; for it had already failed at Madras. Those who choose may maintain its fitness in the administration of criminal justice. A criminal has no option; he, poor wretch, must submit to the tribunal fixed by supreme power. But there does not appear any reason for assuring ourselves of the excellence of such a system, either in the administration of civil or of criminal law, whilst, to my mind, there is something sadly repugnant to all justice, in our compelling an unfortunate offender against our criminal statutes to be tried by a tribunal, which all those who are not in irons are now acknowledged to spurn! Is it possible for any one to maintain, that if those punchayets or jury-courts were deemed by the people good in themselves, they would be systematically avoided by those who are at liberty to shun them? The truth probably is, that the natives have less confidence in one another than they have in the European character; and this is the universal opinion of all those who have been questioned on that point.

It will be seen, therefore, I doubt not, that the state of society in India, as yet, is not fit for all our English institutions, however excellent they may be in England.

The trial by jury has not been attempted, as yet, to be introduced into Bengal in the provinces: and the ill success, which has elsewhere attended it, will probably retard, if not prevent, its adoption.

Nor do I imagine that any advantage could arise from giving heads of villages, such as choudries, munduls, mokuddums, judicial authority. To have a court of law in every village would be of itself a nuisance. It would, besides, generally occur, that these persons would have, directly or indirectly, an interest in the issue, or at least

a bias. The influence of the zumeendar among a village community, and the part he has to act in most of the disputes which occur, render highly doubtful the propriety of investigating persons with judicial authority so much under his power; so that, although, like other respectable individuals, they might be highly useful as arbitrators, I should think encouragement, as such, preferable to conferring upon them any direct judicial authority whatsoever.

Thus, on a review of what is here suggested, the judicial divisions in Bengal would be,

7 circuits or provinces,
42 zillahs and cities;

and the establishment for the administration of justice would be as follows:

ESTABLISHMENT *of* JUDGES *and others having Judicial Authority, proposed for the Bengal Presidency; shewing the Extent of Jurisdiction and of Final Decision of the several Courts in Money Demands and Personal Actions.*

DESIGNATION.	No. in each Province.	Total in Seven Provinces.	JURISDICTION in MONEY DEMANDS, &c.		
			Minimum.	Maximum.	Decision, Final.
			S. Rupees.	S. Rupees.	S. Rupees.
Judges of Provincial Courts	5	35	20,000	No limit.	100,000
Judges of Zillahs and Cities ...	6	42	No limit.	No limit.	5,000
Assistant Judges, Zillah & City	12	84	No limit.	25,000	800
Total Europeans...	23	161	—	—	—
Kazees	12	84	No limit.	10,000	100
Total, European and Native ...	35	245			

The present edition has furnished me with an opportunity of considering the effect of a most important change which by a late regulation has been made in the administration of the government, by which so much power is placed in the hands of individual functionaries.

If the Marquess Cornwallis has been justly celebrated for any particular act of his government, to the establishment of regular courts of justice, throughout the provinces, the highest praise has usually been accorded to that beneficent statesman. The provincial courts of circuit and appeal have generally been deemed the bulwark of the whole judicial system; and many, I believe, as well as myself, have rather desired that the powers, respectability, and efficiency of those courts should be augmented; feeling quite assured, that, with a body of intelligent and independent judges in the centre of each district, ready and willing to hear and to redress grievances, it is not likely that any individual could long be denied essential justice. It might, indeed, be true, that in detail, the existing system was far from being perfect. This was a reason for improving, not for demolishing it. In matters of government, change is itself an evil; in the government of India, in this department, it is a grievous calamity, affecting the people not merely as in other countries they would be affected by it, but as tending to diminish their confidence in the stability of all our institutions.

The Marquess Cornwallis has been thought to have conferred many blessings upon India: among these, the following have always held a high rank. First, by amply rewarding the public servants of the state, he secured their zealous exertions in the public service, rescued them from the temptation of undue emolument, and thus protected

the people from the consequences of corrupt administration. And secondly, by the establishment of regular courts, in lieu of individuals having paramount authority within their respective provinces as before, under the title of "chiefs" of districts, his lordship laid a foundation for the purity and upright administration of the government generally, and of justice in particular, which could not be shaken, because, in both these important points, his lordship's system was fixed with due regard to the principles which actuate, or the failings which influence, the conduct of men.

By the Regulation I. of 1829, the system of Lord Cornwallis has been materially changed. The provincial courts, though as yet left for the adjudication of civil causes, have lost their criminal jurisdiction; the whole of the Bengal provinces have been parcelled out into twenty divisions of separate and independent jurisdiction; and the people placed under the entire control of a single individual in each division, from whose decision there is indeed an appeal allowed; but, in most cases, the privilege of appealing to Calcutta, to a native in a remote province, is, I fear, in practice merely nominal.

The regulation above noticed in its title is termed a "regulation for constituting commissioners of revenue and "circuit; for establishing a sudder board of revenue, for "MODIFYING the *constitution of provincial courts*, for "transferring to the said commissioners the functions now "exercised by superintendants of police, and those of the "Mofussul special commissioners, and otherwise for pro- "viding for the better administration of civil and criminal "justice."

In the preamble to this Regulation it is set forth—1st, That

That the system, established for superintending the police and the executive revenue officers has been found defective: 2d, That the provincial courts of appeal and circuit, partly from extent of country under them, and partly from their having both civil and criminal duties to perform, have failed to afford that prompt administration of justice which it is the duty of government to secure for the people, and a great arrear of causes under appeal have accrued in all the courts. 3d, That the judges of circuit, on circuit, do not possess sufficient powers; nor have they the opportunity of acquiring sufficient local knowledge, to enable them adequately to control the police or protect the people. To remedy the defects enumerated, it is deemed expedient to place the magistracy, and police, and the collector, and other executive revenue-officers, under commissioners, to be called "com- "missioners of revenue and circuit," who shall also have confided to them the powers now vested in the courts of circuit, together with those also which belong to the boards of revenue. They are likewise to possess the powers heretofore vested in the Mofussul special commissioners by Regulation I. of 1821. They are, in like manner, to exercise the powers now possessed by the courts of wards; and finally, in matters of law and police, the said commissioners are to act under the authority of the Nizamut Adawlut; and, in revenue and fiscal affairs, under a sudder board of revenue, both in Calcutta.

For the above purpose, the whole of the territory under the Bengal presidency is divided into twenty divisions, containing from three to five zillahs in each division.

Here, then, we have one individual, who is to be responsible to government for the police of three, four, or five zillahs; for the conduct of the magistracy therein; for the

the realization of the revenue, whether from the land, from the customs, or excise; for the revenue officers, all of whom are to be under his control. He is to have the power of the board of revenue; he is to have the powers, and to perform the duties, of the courts of circuit; "to hold "regular jail deliveries at all the stations twice in each "year, and oftener if need be." He is to perform the duties for which heretofore special commissioners were required; he is to hold courts of wards; and he has, moreover, to obey all the orders he may receive from two distinct authorities, the Court of Nizamut Adawlut and the Sudder Board of Revenue.

Thus, one individual commissioner is charged with the whole civil government of a division, averaging about 15,000 square miles, containing about 13,000 villages, and a population of about 2,640,000 inhabitants, being about the average number for each of twenty divisions. If one of the ten belonging to the Lower Provinces, he will have to conduct about six hundred criminal trials yearly; the number of such trials, even in 1807, being in the Lower Provinces, 5,831; and as the population has since increased, so doubtless has crime kept pace with it.

The above is the alarming catalogue of duties imposed on the "commissioner of revenue and circuit" of 1829. Were the due fulfilment of those duties within the power of every man in the service of the Company, that such power should be given, permanently, to any individual, under control so imperfect, is in itself an insuperable objection. As a system of government for India, it cannot deserve approbation. No individual can safely be intrusted with great power under imperfect responsibility. It is in this that the great error lies. To place a whole province under

under a single individual, at the mercy of his native Aamlah, with no alternative for the oppressed but that of going many hundred miles to seek a doubtful redress, is a system of government surely which cannot succeed.

While the courts of circuit remained, although it be true that an individual judge only went the circuit, yet it is to be recollected that the same individual did not always go the same course; that, consequently, the native Aamlahs were not always the same; that of the five judges attached to a circuit-court, no one knew to which individual his circuit would fall; so that there was neither time nor opportunity for tampering with his native establishment. At all events, if redress was denied on circuit, a journey of moderate extent brought any one who had a complaint to make, against whomsoever it might be, into the presence, not of one and the same European functionary, with the supreme power of commissioner, but of a collective body of European judges, from whom it was impossible but that he should find a hearing, if not ample redress. The native establishment of no individual could prevent his being heard, or could quash his complaint.

I should apprehend, therefore, from this arrangement, the possibility of a recurrence of those scenes of corruption, which the history of the last century indeed records, but which those of us of the present day were beginning to fancy to have been fabulous. That the high-minded integrity of the public officers of government will long resist temptation, I earnestly hope and believe; but it is impossible to contemplate the influence gained over many of them by confidential natives, and not view with much anxiety the consequences of the power they will necessarily possess.

CHAPTER VI.

On the Police.

I NOW come to the next proposed branch of the subject, the Police.

To protect those who obey, and to bring to justice those who break the laws, I consider to be the immediate object of a police establishment. The former part of the definition, indeed, may be said to be included in the latter; for as there is no crime for which the punishment, when inflicted, is not a greater evil to the offender than the advantage he can derive from the commission thereof, so, if all criminals were sure of being brought to punishment, all would refrain from crime. Thus perfect security of person and property would follow; and this is the ultimate object of police, as well, indeed, as of all criminal laws.

Police has been divivided into *two* branches: *preventive*, or that which is intended to prevent crime; and *detective*, or that which is designed to discover and bring to punishment the criminal.

The first branch is necessarily the most important. But to *coerce* an immense, idle (generally speaking) and immoral population, as that of India is, and to restrain such from committing offences, must be allowed to be a task of no ordinary difficulty. If we look at such an undertaking, and the population in the aggregate, we must at once declare

clare it impossible; yet if we ask ourselves, could we restrain the inhabitants of a small village from crime, or detect the offenders, we should answer in the affirmative, and think the task by no means arduous. We see, then, that to attain the object is possible, perhaps practicable; and the first step towards it is indicated, *viz.* by *division*. It is in this, as in every undertaking, physical or moral, there must be a regular well-defined mode of conveying the impetus from the mover to the body moved or influenced. The intermediate instruments, or agents, must be distinct, that they may not clash, and that each may perform just what is expected of it.

After this subdivision, the processes of classification and combination are to be adopted. So many of the smallest divisions must be combined into a larger one, and so many of these into a still larger one, and so many of these again into one larger still, under their several designations, till the whole are united into grand districts, each under a chief superintendent, who shall be in direct communication with the supreme government. The movement of one thousand men, or of one hundred thousand, in military array, is a practical demonstration of the wonderful effects of such division, and classific combination, and assures us that methodical arrangement of a similar nature, alone, is wanting to give us the most extensive command in this department also.

For example; take, as a grand district, a district of circuit before specified in speaking of the administration of justice. Such a district is composed of towns and of villages. Suppose the lowest police division to be formed on an average of two hundred houses; and that this were established throughout the district, as well in cities and towns as in the country.

country. Thus the Lower Provinces, as before, are stated to contain villages 156,000
and the Upper Provinces may be rated at 78,000

Making together 234,000

If we assume the average of houses in each village, both in the Lower Provinces and the Upper Provinces, to be forty-five, the number would be 10,530,000

These formed into police divisions of two hundred houses, give divisions 52,650

Formed into seven circuit districts, give for each district, police divisions 7,521

And for each of the six zillah magistracies in the district police divisions of two hundred houses, each division 1,253

Or number of houses 250,600
which, at the average of forty-five per village, would give ..... Villages 5,568

These placed under charge of the zillah magistrate, with his assistants, European and native, under him, would form the basis of the police arrangements.

It is impossible for any government to keep up an establishment in regular pay sufficient for the purposes of an efficient police, independent of the people. Could it be done, it would be highly objectionable. All that is or ought to be requisite, is an establishment sufficient to conduct the details of the duty, and to afford the people a rallying point, when their more active exertions are required to preserve the peace or to apprehend offenders. This is sufficient: for, as the peaceable and well-disposed in every community, must far out-number those who are disturbers of the peace, the latter must always be overpowered, whenever

ever it is found necessary to call forth the other part of the community against them.

To discover, then, what individuals of a community are evil-disposed, is an essential, indeed indispensable step, in the formation of an efficient system of preventive police. This only can be done through the medium of the individuals that compose that community; and only with safety through the respectable part of them. The hired officers of government are not sufficiently admitted into the confidence of the people to be competent to give this information; nor could their information always be safely relied upon. They would be apt to attempt extortion by threats of informing, or to exaggerate the information they gave, in order to enhance their own importance and the value of their services. A respectable individual, or individuals, residing among the people, one of themselves, I mean one of those that are good among them, would have the welfare and the reputation of his village or community at heart; and these honourable, yet somewhat opposite feelings, would make him loth to accuse, but just in his accusations. Thus the worst effects of *espionage* would be avoided; and the certainty of discovering, not perhaps all minor offenders, but all criminals, would be effected. For I take it to be impossible that any individual, an offender to the extent of *crime*, could reside in a small community or subdivision, such as I have before noticed, without being known to the community to be a "*bud maash*" as he would be called, or one who procures his livelihood by unlawful means. This would become still less possible, were a respectable person among them, one in the confidence of his neighbours, specially appointed, and expected to be informed, and to give information, of the mode of life of suspected characters.

This

This special nomination, is, however, necessary; for it is that only which rescues the person nominated from the odium attached, in all countries, to an informer, makes the people among whom he resides, as well even as those against whom he informs, or whom he may detect, respect, obey, or submit to him.

When thus I have wished, as far as possible, to avoid the system of espionage, I would by no means be understood to reject, or to under-rate the value of, secret intelligence. For, procure it how you will, in fact, it is indispensable. No efficient system of preventive police can possibly exist without it. The machinations of wicked persons are necessarily secret; and to discover them, secret means must be had recourse to. It is, however, an arm of immense power in the hands of the police; and ought, therefore, to be used with great caution and discretion, and to be confined entirely to its own proper object; which, indeed, it is likely to be in India, where breaches of the peace have no reference to political principles or purposes.

The system of espionage, when it embraces politics as well as police, as it has done in neighbouring countries, perhaps in our own, has been justly execrated, because it exposes all, indeed the most zealous promoters of the public good, to injury from those in power, even for their opinions. Limiting, therefore, police to its legitimate end, the individuals who are objects of its watchfulness are, thank God, few in number, and are found, indeed sought for, only among persons of bad fame. It may nevertheless happen, that an innocent individual may be accused, I will not say convicted, because of the rigid strictness with which the evidence of such persons, I mean of spies, is received; but, as human society is constituted, no great general good can be

be attained without some partial inconvenience or evil; and, in my mind, it would be but a liberal sentiment of such an individual to overlook his temporary suffering, and the temporary injury his character might receive, considering these the price which some of the community must occasionally pay for the protection and security of the whole.

It is not merely the actual fitness of such a system for the discovery and apprehension of offenders, that renders it so powerful, but the moral effect it produces on the minds of the wicked, who can never be sure of not being detected, even deceived by their accomplices, or those in whom, to make their crime successful or profitable, they must place confidence.

It would, perhaps, be impossible to place this part of the system of preventive police in a more favourable point of view, than by contrasting the horrid murders and assassinations, which have of late years been perpetrated in our own country, even in London and its vicinity, some of them without detection, on unoffending virtuous families, by which the whole of the metropolis, and indeed of England, were thrown into the utmost consternation, unable to retire to their chambers without apprehension for the safety of themselves, their families, and property. I say the value of such a system cannot be better appreciated, than by contrasting this horrid state of insecurity with the system of police which Monsieur de Sartine had established at Paris before the French Revolution, as exemplified by the well-known anecdote told by Colquhoun.

" A Bordeaux merchant came to Paris on commercial " business, with bills and money to a large amount. He " was stopped at the gate of the city by a genteel-looking " man,

" man, who told him he had been waiting for him; that " according to his notes he was to have arrived at this " hour; that as his person, his carriage, and portmanteau, " exactly answered the description he held in his hand, " he begged permission to have the honour of conducting " him to Monsieur de Sartine, declaring at the same time " to the traveller, his ignorance of the cause of his deten- " tion. After some conversation, the gentleman suffered " himself to be conducted to the lieutenant-general of " police, who received him politely; and after requesting " him to be seated, to his great astonishment described " his portmanteau, the exact sum in bills and money it con- " tained, where he intended lodging, and a number of " other circumstances, which the gentleman thought were " known only to himself. Monsieur de Sartine, after thus " exciting his astonishment, put this extraordinary ques- " tion to him. ' Sir, are you a man of courage?' After " his surprise had subsided, he answered that his courage " had never been doubted. ' Well, Sir,' said Monsieur de " Sartine, ' you are to be robbed and murdered this night. " ' My object is to prevent this, and to lay hold of the " ' assassins. If you are a man of courage, you must go " ' to your hotel, and retire to rest at your usual hour, put " ' your portmanteau in the place you intended it, and dis- " ' cover no suspicion: leave the rest to me. But if you " ' do not feel your courage sufficient, I will get another " ' person to personate you and go to bed in your stead.'

" The gentleman, who had acquired confidence from " what he had seen and heard, refused being personated, " went to bed at his usual hour, eleven o'clock. At half- " past twelve, the time mentioned by M. de Sartine, the " door of the bed-chamber burst open, and three men en- " tered, with a dark lantern, daggers, and pistols. The

" gentleman,

" gentleman, who was of course awake, perceived one of " the robbers to be his own servant. They rifled his port- " manteau undisturbed, and settled the plan of murdering " him; when, at the moment the villains were preparing " to commit the horrid act, four police officers, who were " concealed under the bed and in the closet, rushed out " and seized the criminals."

Who is there, after reading this anecdote, but would wish for such efficiency in the police of his own country? This able superintendant of police is stated by Mr. Colquhoun to have had, at that time, on his register, the names of not less than twenty thousand suspected and depraved characters, whose pursuits were known to be of a criminal nature; yet crimes were much less frequent than in England, and security to person and property infinitely greater.

The Indian Society is already organized to our hands, and may be formed, I think, into the most efficient police. There is no community without its head; no *mouza* or hamlet without its *mundul*, *mukuddum*, or by whatever denomination he is known; no profession without its *sirdar* or *choudry;* and, what is still more advantageous to this purpose, there is no village without its regular watchman or *passee*, or *g'horaeuyt*, or *chokedar*. It would indeed be wonderful, if such a state of society did not afford much facility to the formation of a regular system of police; towards the accomplishment of which these institutions seem evidently to have been designed.

It is, besides, a general principle of the law of India, that it is a duty incumbent upon every individual member of society to *prevent*, by their personal interference and efforts, the commission of crime and offences of all kinds, whether

whether public or private. The practice of India, during the Moohummudan government, corresponded with this. There was an establishment of government officers, who received regular salaries; but every town was divided into its several *mohullahs*, or wards; and one, the most respectable, or at least competent, of its inhabitants, was appointed its head. This *meeré mohullah*, or head of the ward, was expected to know or make himself acquainted with every individual in his ward, his mode of life and means of living; to note if any or what strangers were seen in it, together; in short, with every unusual circumstance that occurred within his limits. The heads of crafts or professions were also responsible; and the officers of government collected the reports of these masters of divisions and of trades, and communicated the same to the chief police officer of the town. Can we make nothing of all this?

Let us see Akbar's instructions to his police officers.

"The office of *kutwal* requires one who is courageous, "experienced, active, and of quick comprehension. He "must be particularly attentive to the night patroles, that, "from a confidence in his vigilance, the inhabitants of the "city may sleep at ease, and every attempt of the wicked "be prevented or frustrated. It is his duty to keep "a register of all houses and frequented roads; and he "shall cause the inhabitants to enter into engagements to "aid and to assist, and to be partakers in the joy and "sorrow of each other. He shall divide the city into "*mehals*, wards, and nominate a proper person to the superintendence thereof, under whose seal he shall receive a "journal of whoever and whatever comes in or goes out "of that quarter (mohullah), together with every other "information regarding it. He shall also appoint, for "spies

" spies over the conduct of the *meeré mehal*, a person of " that mehal, and another who is unknown to him; and " keeping their reports in writing, be guided thereby. " Travellers, whose persons are not known, he shall cause " to alight at a certain *seraee*, and he shall employ intelli- " gent persons to discover who they are. *He must care-* " *fully attend to the income and expenses of every man*, " and he must make himself acquainted with every trans- " action. Out of every class of artificers he shall select " one to be at their head, and appoint another their broker " for buying and selling, and regulate the business of the " class by their reports: they shall regularly furnish him " with journals attested by their respective seals. He shall " endeavour to keep free from obstruction the small avenues " and lanes, fix barriers at the entrances, and see that the " streets are kept clean; and when night is a little ad- " vanced, he shall hinder people from coming in and going " out of the city. The idle he shall oblige to learn some " art. He shall not permit any one forcibly to enter the " house of another. He shall discover the thief and the " stolen goods, or be himself answerable for the loss. He " shall see that the market prices are moderate, and not " suffer any one to go out of the city to purchase grain " (forestalling); neither shall he allow the rich to buy more " than is necessary for their own consumption: examine " the weights, prevent making, selling, buying, and drink- " ing of spirituous liquors; but need not take pains to dis- " cover what men do in secret (in this way). He shall not " allow private persons to confine the person of any one, " nor admit of people being sold as slaves. *He shall not* " *suffer a woman to burn herself with her husband's* " *corpse, contrary to her inclination.** Let him expel " from

* We gather from this, that the atrociously superstitious practice of the Hindoos, now happily abolished by the wisdom and firmness of

" from the city all hypocritical mullungees and kullunders " (sturdy mendicants), or make them quit that course of " life; but he must be careful not to molest recluse wor- " shippers of the Deity, nor offer violence to those who " resign themselves to poverty from religious principles."*

In villages again, and throughout the country, it is well known that each zumeendar was held responsible for the police; that is, for the safety of person and property within his zumeendaree. This was an essential condition of his tenure. His lands were granted to him subject to this burden; and there were, besides, allotments of land set apart for the maintenance of a regular force; and having under his immediate orders the village watch, and other individual members of the village community, whose services, either occasionally or permanently, were available for such purpose, he found no difficulty in affording the protection required. The zumeendar, by his sunnud, is bound " to keep the highways in such a state that travellers may " pass in the fullest confidence and security; to take care " that there be no robberies or murders committed within " his

Lord William Bentinck, existed in a more deplorable form in the days of Akbar. Some newspaper discussion has taken place, and a petition has been forwarded to parliament by certain Hindoo inhabitants of Calcutta and its vicinity, against the abolition of the *Suttee*, lately enacted; and a petition in favour of its abolition has been carried to England by a distinguished Hindoo, Rammohun Roy, signed likewise by a considerable number of his countrymen. The body of the people appear indifferent; and the time will assuredly come, when, even among themselves, it will hardly be believed that such human sacrifices were reluctantly abandoned. If Lord W. Bentinck has, in any instance more than another, deserved the gratitude of this people for his anxious endeavours to benefit them, it is in having, by this act, rescued them from what, in the eyes of the whole world, was a stain and a reproach upon them as a nation.

* Ayeen Akburee.

" his boundaries; but (which God forbid!) should any " one, notwithstanding, be robbed or plundered of his pro- " perty, he shall produce the thieves, together with the " property stolen. If he fail to produce the parties offend- " ing, he shall himself make good the stolen property."*

Mr. Holwell, in speaking of Bishenpore, says, " The " equity and strictness of the ancient Hindostan govern- " ment remain. Property and liberty of the people are " inviolate; no robberies are heard of. The traveller, on " entering the district, becomes the immediate care of go- " vernment, which allots to him guards free of expense, " to conduct him from stage to stage; and these are " accountable for the accommodation and safety of his " person and effects."†

But this was not peculiar to Bishenpore. It was, in fact, the custom of the country: and when we consider the means they possessed, it will not be thought more than a necessary and reasonable obligation placed on the zumeendar.‡

Timour says, " And I commanded that on the highways, " at the distance of one stage from another, seraees should " be built, and that guides and guards should be stationed " on the roads. And at every seraee I established a village, " and charged the people thereof with the protection of " the travellers, holding them answerable for what might " be stolen from the unwary traveller."§

Here,

* Firmaun of zumeendaree to the zumeendar of Bishenpore.

† Holwell's Historical Events, part ii. page 198.

‡ In Hurrianah, now under the Company's government, the zumeendaree villages are held responsible for robberies committed within their limits.

§ Institutes.

Here, then, we have discovered two things: first, how the police establishments were formed; and secondly, we have proof of its efficiency. But the state of society is changed; the condition of the zumeendars is altered.

How, then, under these circumstances, is the police establishment now to be organized, so as to be efficient? We have already judges and magistrates in the different zillahs. I have before expressed my opinion in favour of separating these offices. The magistrate would remain, then, at the head of the police, with his European assistants of the Company's servants under him. But as these official persons cannot be every where present, it will be admitted that it would be desirable to have others to co-operate with them, provided such coadjutors were really trust-worthy and capable persons.

In almost every zillah in Bengal, there are now respectable English gentlemen, settled as planters or in business of various kinds; men, many of them, who, from their long residence in the country, and their intimate and unreserved communication with the zumeendars, cultivators, muhajuns, and in short every class of society, seem to me peculiarly well qualified for giving the most efficient assistance in the department of police.

The unreserved intercourse of those gentlemen with the natives gives them a knowledge of the people, and of their real national and individual character, which no officer of government can ever acquire. No native ever approaches either a revenue or a magisterial officer of government in his real character. If he go to either without being called, it is only when his case becomes extreme: he dare not approach them with his little ailments; they have not leisure, indeed,

indeed, to listen to these. There is a kind of official repulsion between them; not from any fault in the officer, probably, but because he is a direct servant of government, and his office is one of check and control over the people, or of pure exaction from them: and, moreover, it is not improbable that the very grievance by which they are affected, has been caused or occasioned by the crime or neglect of the inferior servants of the official person, to whom the complaints would fall to be made.

I would, therefore, recommend that European gentlemen, such as I have alluded to, be requested by government to accept of commissions of the peace, and be vested with power over the thanahs and village police in their neighbourhood, so far as to receive reports from the thanadars and heads of the village police, who should be directed to obey all such orders as they may issue; in concert, of course, and communication with the magistrate, so as not to interfere, however, with any orders he (the magistrate) may choose to send, nor in any way to interrupt the regular reports such officers are ordered to furnish to the magistrate direct.

The presence of such gentlemen, if vested with authority, would prove a most salutary check, it is believed, over the provincial native officers of government, both of police and of revenue, in their vicinity. They would doubtless also be of great service, by their personal exertions, in the prevention and detection of crime: and what would be of no less importance, such men, from their local knowledge, from their personal acquaintance with the people, the attachment between them, and their influence over the middling classes of society,—such men, I say, would be able to get the people to become more zealous in the cause than they

they now are, or can ever be brought to be by any other means. The people would unite with these gentlemen, and act with them, partly as neighbours and equals. If they now act, it is under the police, by compulsion, and in the degraded state of inferiors; and to whom? to a petty police darogah, perhaps a peon.

It may be thought by some, that the regular magistrates would look upon a division of their authority with such gentlemen with an eye of jealousy. My answer is, it does not appear to me that any real ground exists for such a feeling. The division of authority is to assist, not to control the magistrate, who ought to be jealous lest the police of any other district be better managed than his own; and if he be so, he will gladly avail himself of every species of aid accessible to him. I believe, universally, no one conscious of his own ability and attention to his duty, will ever be jealous of any interference, save that which counteracts him and impedes the service he has to perform.

The danger of oppression might also be urged; but I conceive there is no such danger. The respectable gentlemen whom I have in view (and certainly none other but the most respectable ought to be thought of) are not in the habit of oppressing the natives. It is their interest not to do so, but, on the contrary, to treat them with the utmost tenderness, which they almost universally observe towards them; and which highly praiseworthy conduct, no advantage (for indeed there would be none) arising out of their new situation would ever compensate them for discontinuing. They accordingly make a point of conciliating the people; their very style and language to them is different from ours of the Company's service. Commercial dealings have a decided and direct tendency to humanize the intercourse of mankind.

mankind. They are founded on mutual and reciprocal advantages. These, with known respectability of character, form as perfect security as any government can desire against the danger here anticipated.

But, then, would such gentlemen accept of such authority? I think they would. It would be a mark of the confidence of government, and consequently a distinction, not only in the eyes of the natives but of their own countrymen. It would, moreover, enable them to do much good in their neighbourhood; and thus they would become more active contributors towards the general welfare of mankind than stations in life altogether private admit of: a motive of itself far too strong, and a feeling laudable, and far too general among such men, to admit the want of candidates.

Under the magistrates, we have now the *thanahdaree* system; that is, there are, on the highways and most frequented parts of every district and in towns, guards placed at convenient distances and situations, for the protection of the people and of travellers, each under a police officer called a thanahdar, also darogah. In 1815, Mr. Stuart, whom I have before mentioned, states, "the number of "thanahs under the Bengal presidency at 901, and the "number of peons attached to them, in the immediate pay "of government, at 22,000;"* which would give about twenty thanahs or police posts to each zillah including the cities, and about twenty-four men to each post. There are doubtless, however, many more now; so that, if we estimate the number at one thousand thanahs and 25,000 men, peons, we shall still be within the mark probably.

Is this a constitutional mode of forming a police establishment?

* Report.

blishment? and if so, is it efficient? The former question is asked, not on account of its own consequence, but because it has been thought by some to be entirely new and unknown in the country, and therefore those who dislike innovation may object to it. The Marquess of Hastings, though he approves of it, calls the thanahdaree establishment "a sudden and violent innovation on all existing in- "stitutions." But it must be evident, by merely changing the name, the word *thanahs* into *guards*, that it is as old as the constitution of India itself. Indeed, if there was occasion for magistrates at all, I do not see how some such establishment could have been entirely dispensed with. To place a magistrate in a district to preserve its tranquillity, without some sort of organized force to be immediately and instantly ready to obey his orders, would be placing an officer in a situation of great responsibility and of equally great inefficiency.

There is no doubt of the necessity of such establishments; and I think as little that they ought to be placed directly under the officers of government, who are themselves directly responsible to government for the police of their districts. To commit the charge of the police to the zumeendars, as some have proposed, and to hold them alone responsible for it, I should consider as almost tantamount to a declaration, that in that department of government there shall be no responsibility. It would be shifted from one individual to another, and would become so dissipated as to be totally untangible and altogether lost. Are the zumeendars worthy of such a trust?

It might be asked, too, seeing that government retains the immediate guidance and control in their own hands, and in those of their immediate servants, in every other department,

partment, why this department should be an exception; a department, too, on which the safety and happiness of the people so much depend?

A regular establishment, then, I conclude, we must have, properly distributed, and under the immediate orders of the magistrate. But, as I have before said, that establishment cannot be made so extensive as to be of itself sufficient. The question, therefore, comes to be, what is the most efficient mode of combining with it the voluntary aid of the people, and the ancient police establishments already existing throughout the country?

There is no village without its watch. We have before stated the number of villages at 234,000! Here is an imperial army of watchmen: allowing but one watchman to each village it would give, for one thousand thanahs, to every thanah 234 men! The magistrate of the zillah of Rajahshaye stated, that the landholders of that zillah reported that 9,852 pykes, or chokedars, that is, watchmen, were employed in 10,571 villages.

It would be no great hardship, either to the individuals composing this watch, or to the community who pay them (receiving other trifling services from them), were they made to perform, annually, each one month's service *under the orders of the thanahdar*, who would thus always have an efficient force of twenty men under him, in addition to his regulars. Thus not only would the efficiency of the thanahs be greatly increased, but, I conclude, the whole system would be much improved.

Many collateral advantages would result from this measure. The means would be afforded to the thanahdar, through

through his personal intercourse with the village watchmen when on duty with him, of ascertaining the character of individuals resident in their villages. This would not be one of the least advantages. He would discover also the characters of those very individuals themselves, who have, not unfrequently, been supposed to abet, as well as to check crime, if not even to be principals in its commission; and none probably possess better information of this sort to give than those very men. A small additional allowance should be made them, by the village to which they belong, for the month they are on *regular* duty.

At present, there is no bond of union between the regular police establishment and the irregular police of the villages. I conclude it impossible for government to maintain the latter on the same footing with the former; indeed, to maintain them at all: and I see no practicable mode more likely to promote a similarity of feeling, and unity of exertion among them, than being thus employed together on the same service.

This immense acquisition to the disposable force of a thanah would, in many parts of the country, enable government to reduce the present very heavy regular establishment; and every where it would give the thanahdar the power of sending out patroles on the highways and into villages. These patroles ought to be ordered to proceed as far as the nearest thanah in the direction in which they are sent: by doing so, besides the actual protection they would give to solitary travellers, other material objects would be gained; an assurance that the patroles did not loiter by the way and return, having neglected their duty; a constant direct communication kept up between all the thanahs; and general and mutual intimation given

given of all occurrences that take place in the neighbourhood.

The services regularly obtained of this local police, even of twenty men per thanah, might perhaps enable government to dispense with 10,000 of the 25,000 peons they have now in regular pay, at an expense of 4,80,000 rupees per annum, without any real innovation or the imposition of any additional burden on the people.

We are now to inquire what description of persons ought we to prefer for the command of these police posts? That they ought to be persons of respectability as well as of capacity, is obvious enough: but it is suggested that every fifth thanahdar, at least, should be selected particularly for his qualifications and respectability, to whom (for it would be impossible to pay all high) a considerable addition of pay might be given. We would expect to derive advantage from the exertions of such a man, even without investing bim with any great authority, if any at all, over the neighbouring thanahs, were that objectionable. The necessary ascendancy of mind over matter would ensure this; and, besides, the superior allowances would furnish an object of ambition, and consequently a motive for exertion and good conduct, to those who held the inferior situations.

Besides the above obvious grounds of preference, it occurs to me that, as a general rule for the selection of thanahdars, men ought to have the preference who reside in the vicinity of the post they are to command; and on the same principle, should the preference be given in the choice even of the peons. I am aware of the usual objection of local and personal prejudices: but I conceive that personal knowledge of the country around and of the people, is of infinitely

nitely greater importance in a police officer. If good men, these have an additional interest in the peace of their neighbourhood; if bad men, they are unfit for the situation any where. But confidence must be placed in men in such situations; and I do not think that men of fair character would be more apt to abuse such confidence, and to forfeit their character among their friends and countrymen, than they would before strangers, among whom they should hold a similar appointment.

But if, from necessity, strangers be sent in charge of thanahs, they ought to be made to traverse the country in all directions, until they become intimately acquainted with every part of it, and every part of every village within many miles of their post. Many supplementary orders and regulations touching this subject will occur to every intelligent and zealous magistrate; but an intimate knowledge of the people and of the country around are primary and essential qualifications, indispensable to every good officer of police; who moreover ought to take care that the spot selected for his post is such as to be itself secure, with the smallest possible number of men to defend it.

It has been suggested to employ intelligent Europeans, *military* officers, in the police department on frontier stations. There can be no objection to this, provided the individuals selected are, in a superior or at least equal degree, qualified for the duty. Indeed, until the whole system of government of India, in every department, whether revenue, judicial, police, or political, has by the talents of eminently qualified individuals been fully and completely organized and brought into perfect regularity, it seems wonderful self-denial on the part of government, that they hesitate for one moment to avail themselves

themselves of talent, in whatever line of their service it may be found.

The village watch, above noticed (called chokedars, pasbans, passees, ghoraeyut, &c. &c.), are now to be more particularly considered. They are maintained by the village community; and their duty is to guard the village, and every thing belonging to it, even to the corn-fields. They are paid in the way easiest to those who pay them, namely, by a few beegahs of land taken from the jumma of the village, and the amount of rent allotted on the whole of the other inhabitants; that is, by *sirshikun*, formerly explained; a tenure by which lands set apart as a remuneration for the services of a person useful to the community are held; or the watchman receives a small quantity of grain from each ryot, or he is paid partly in both ways. He has other occasional perquisites at births, marriages, festivals, &c.

It has been stated of these men, that they are employed often by the zumeendars in the collection of their rents, and on other duties, out of their line; and, moreover, that they are otherwise inefficient: and it has been consequently proposed to take them into the regular pay of government; a fund being set apart for that purpose by the resumption from the zumeendars of the "*chakeran*" lands in the permanently settled districts, and by setting apart so much as "*deh khurcha*," or village expenses, in those provinces not permanently settled. This might be done certainly, because in the permanent settlement there is a reservation of power to the Governor-General in Council to resume these lands: but when the enormous establishment of 234,000 men, allowing but one for each village, and the enormous sum of one million and a half sterling, their pay, at four rupees

rupees a month each, are considered, the scheme must be abandoned.

But supposing the whole *chakeran* lands in the Lower Provinces to be resumed. They may be about twenty lacs of beegahs (see investigation of 1777), and, making allowance for districts not investigated, might be worth thirty lacs of rupees, or about £375,000 sterling. It is forgot, however, by those who make this proposal, that the *police* establishments are entitled to little, if any, of the proceeds of *chakeran* lands: these are set apart to defray various charges of collection of the revenue. But to take the village watch into the pay of government would moreover entirely change the nature of that establishment, without increasing its efficiency; for the moment they became stipendiary, the situations would be filled up with strangers, who would want local and personal knowledge, both of which now make up, in a great measure, for other very great defects in that system.

It is indispensable, however, that government see that these men do really receive a competent subsistence: for this they are entitled to, and the community are consequently obliged to pay this. About three rupees twelve anas per mensem may be the hire of a village pasban. This should be secured to him in money, or in grain already reaped, and not in land, which is now often the mode of payment, because of its cultivation interfering with his duty. An accurate register of the individuals should be kept by the magistrate and by the thanahdars; which, indeed, will be necessary to enable him to bring them regularly on the roster for monthly duty.

To combine the services of the village-watch with those of

of the regular police, then, seems to be the desideratum. I have already suggested employing a portion of the former, by turns, on regular duty under the thanahdars. So, occasionally, the thanahdars might be directed to send some intelligent individuals of their regular peons, to mix with the village-watch in the villages, to pick up what *news* they could, and to see, besides, that the village police was really employed in the regular line of its duty.

The village-watch, I conclude, must be made to report to the head man of the village, be he the zumeendar or mundul, or by whatever name he may be called, the occurrences of the night; and to acquaint him instantly when any extraordinary occurrence take place, or when he has intimation of any meditation of crime. But the duty of the watchman ought not to be allowed to terminate here, because that would be getting rid of responsibility too easily, and in a mode by far too clandestine not to be very liable to abuse. When any unusual occurrence happens, he must not be allowed to have done his duty fully, until he has made the nearest officer of regular police acquainted with the circumstance.

The responsibility of the head of the village must also be continued; and ought to be enforced, not only to the extent of giving the very earliest possible intimation of crime, but to the extent of apprehending the criminals, if obviously within his power, and of reporting to the police officers the names of any persons of bad repute who may reside within, or be seen within, the limits of his village. The same with respect to the head men of wards in towns; for it is only by information of this kind that any thing like preventive police can exist.

It

It might perhaps be desirable, also, to select a respectable and intelligent head man for every five or ten villages, to whom a control over the village-watch of those villages might be given, so far as to see that they did their duty, and to forward *monthly* (weekly if necessary) reports, himself, direct to the magistrate, altogether independent of the regular police. This would form a check over the minor heads of villages, as well as over the thanahdars and regular police; and it is thought, did those persons receive the countenance and confidence of the magistrate, together with a small *annual* salary of from fifty to one hundred and fifty rupees (I make it annual that it may seem the larger), they might be made available, with great advantage, in affording information, and in checking abuses of every description. The salary would be a general source of emulation among the whole class of village chiefs, who might be expected to shew themselves active, in hopes of succeeding to the situation.

Every zumeendar, and every person under direct engagements to government for land or other property, ought to be bound, by a special clause of his engagement, not only to discover breaches and breakers of the peace, but to afford their personal aid, and that of their dependants, in apprehending offenders, whenever the commission of an offence is made known to them, either by the village or regular police.

The Board of Commissioners for the Ceded and Conquered Provinces state the number of zumeendars, in the provinces under their management alone, who have entered into direct engagements with government, at 45,900. The immediate dependants of these may be three times that number at the least. We have here, then, near 200,000 men,

men, that might unquestionably be made available, to a great extent, for the purposes of police.

The physical power, I conceive, then, to be even now completely at the command of government: it requires only to be systematically applied. Nor is there a country in the world, perhaps, where the government, and the European officers of government, have so great a moral influence over the people. The power of forming them as their own will may direct is, therefore, in that proportion; and although, at first sight, it may appear difficult, I can see no real obstacle in the way of establishing a very efficient system of police throughout our Indian possessions.*

The

* But whilst we establish a police adequate to the protection of the people, let us take care to secure them from the oppression of their protectors; for many and loud complaints have been made against the native officers of police. To such an extent have those complaints reached, that it has by some been doubted, whether the security enjoyed against the greater crimes, which of course are seldom perpetrated, be a compensation for the vexatious petty oppression, to which, by the police, the people are daily exposed.

This petty oppression, however, which has been, I believe, much exaggerated, consists in being subjected occasionally to undue exactions, enforced, no doubt, frequently by maltreatment. The extortion of money is the object; but it must be obvious that no people on earth would, in this way, endure any very great degree of misery, from the hands of persons residing among them, and against whom they well know that they have only to establish, by indisputable evidence, any one act of oppression, in order to procure their condign punishment. That the poor do suffer long without resistance is very true; yet to the poor, pecuniary oppression cannot but be sparingly applied: and, at all events, they have the power of escaping from it by the exercise of a little combined firmness in complaining. This would enable government completely to give them redress. It is the want of this, the want of firmness of character, which alike tempts their oppressors to

The detective branch would now come to be treated of. But as it will be readily admitted, that if a preventive police, such as I have suggested, be efficiently organized, there will be little difficulty in the management of the detective branch of the establishment, it is unnecessary for me to say much on this part of the subject.

It must be obvious, however, that a direct and constant communication, and by the most rapid means of conveyance, between the police posts, is indispensable to the detection of crime; whilst with this it is thought that, in most cases, the culprits might be seized before they got to their resting places.

Suppose, for example, a crime is committed in a given place, that the fact is known to the police on the spot almost immediately, as is generally the case when the crime is of magnitude. Suppose it were possible to communicate the intelligence instantly to the circumjacent posts, the chances

aggrieve them, and renders it almost impracticable for government to relieve them.

Is there, then, no remedy? I apprehend, where this species of tyranny exercised by the native police prevails to any considerable extent, the fault will be found, in no small degree, to rest with the European magistrate. The active magistrate, found occasionally in every part of his district, and perfectly accessible to the people, could hardly fail to discover such abuses. In this he would, at all events, find able coadjutors in the body of private English gentlemen to whom I have before adverted. Were these encouraged, as well as the more wealthy of the native population, through them, to hear and inquire into alleged grievances, it is impossible that such grievances could exist to any extent. In *no* country can the police be popular: whilst vice prevails, they will ever be charged with doing *more* or *less* than their duty. Their superiors, and those who are prone to accuse them, should think of this.

chances of apprehending the perpetrators would be very much increased, because the first step taken by those, now on their guard, would be (standing on the alert) to see whether all the suspected persons within their jurisdiction were at home that night, are then at home, and of those who were not suspected who are absent.

This immediate intelligence might be communicated, by night as well as by day, by signals; as by rattles in towns, drums in populous countries, and lights, &c.: and when the signal "to be on the alert and to see who are abroad" is made, were it promptly obeyed, it would be extremely difficult for criminals to escape detection. The rattle used by the watchmen in large towns is a species of this useful telegraphic mode of communicating intimation of an offence being committed; and the large *nukkara* is yet used in India.

But in India, where crime is very generally committed by professional criminals, and where the profession of thief or robber is regularly established, like that of the artizan, under their sirdars, choudrees, or heads, the most effectual mode of apprehending offenders is by means of their associates; some of whom, of every gang, are to be found, convicts, in every gaol in the country near the residence of the gang.

Where gangs of robbers thus exist, the leaders of the gang are, of course, the principal objects of capture; and the way their convicted associates should be employed for this purpose is this: the magistrate should endeavour to find out among the convicts the shrewdest fellow he can pick out belonging to the gang. He has been in gaol, and in irons on the roads, perhaps for years. His restrained

gait, hardened skin of his ankles, &c. have sufficiently marked him, to render it difficult, if not impossible, to abscond without detection. He is, perhaps, as is the case with many, perfectly satisfied with his lot; or he may have but a short period of his imprisonment to endure; so that there is little or no doubt of his fidelity in executing his undertaking for a moderate recompense.

He goes to his village, or the rendezvous of his quondam friends, and is welcomed by them as "a good man," whose period of service is expired (for they call themselves "*Company ka nokur*," Company's servants) and ready, with every advantage of experience, to recommence his former career. He spends a day or two among them, till he is fully informed of their intended plans; he then leaves them, on the pretext of fetching his clothes and such things as he may have, or may pretend to have, left at his late place of captivity, and promises to meet them on the night, and at the place appointed for their next excursion. He keeps his word, indeed; but conducts along with him an armed force to lay hold of them: or less resolute, but equally depraved, he gives the necessary information to the magistrate, who adopts measures accordingly for securing the culprits.

The plan adopted in war throughout India, of employing persons to obtain intelligence of an enemy, may be resorted to by police magistrates with equal advantage. Those persons go in disguise, live for days perhaps in the enemy's camp, as mendicants, or suttlers, or artizans, till they have obtained the wished-for information. They are apt, however, to deceive; not so much from design, as from a wish to exaggerate their services; or they were too timid to trust themselves within the enemy's limits. By employing persons unknown to one another, taking down in writing their

their information, cross-questioning without evincing suspicion of them, asking irrelative questions, so as to throw them off their guard and to break the thread of their fictitious story, questioning them at intervals, and comparing what each says with his own as well as with the intelligence received from others, observing all along, notwithstanding suspicion of falsehood, perfect equability of temper towards them, and even the face of credulity itself, the experienced officer, whether military or police, will be able to form an opinion sufficiently strong to enable him to act, and will seldom act wrong.

As connected with this branch of the subject, I will avail myself of this opportunity to notice the obstruction to which the local governments of India are exposed by the law as it now stands (and by the powers which it appears by a recent decision of his Majesty's court of Calcutta that court possesses), in carrying into effect measures of police, which may nevertheless be of vital importance to the interest, if not even to the stability of the government. The disability to which even the Governor-General in Council is subjected by the legislature, in being incompetent to make any regulation to affect the inhabitants of Calcutta (that is, those residing within the jurisdiction of the King's court), even of a political nature, without the concurrence of that court, is obviously a defect in the constitution of the local government of India. In a remote province, to plant half a million of people, of all nations and descriptions, in the capital thereof, under the very eye of its government, and yet to deprive that government of the power, even in political matters, of control over the actions of such a body of men, holding the government at the same time responsible for the peace and security of the country, appears to

to be a solecism in legislation to which no parallel can be found.

Yet such is the state even of the supreme government of India with respect to the inhabitants of Calcutta. The English nation confide to the Governor General the government of eighty millions of the native Indian subjects of Britain, and yet they will not suffer him to rule the native inhabitants of their petty factory of Fort William without the concurrence of the King's court of Calcutta. It is wonderful that the great men who framed the British part of the constitution for India, should not have perceived so great an inconsistency.

The King's court is useful, in so far as the administration of English law to British subjects extends; but I cannot but think it very much out of its element, in the remote region of India, when it is made to interfere in the slightest degree with the government in political matters. It is totally incompetent to judge of the extent of any one case of political delinquency that can be brought before it; not from any inability in the individuals as judges of the law, but there is a want of public information in India; and the King's judges coming to India late in life, having no intercourse generally with the people, are consequently ignorant of their habits, feelings, and prejudices; and without an intimate knowledge of the sentiments, feelings, and habits of the people, no accurate judgment can be formed of what may or may not be politically injurious to the state.

But the government is in possession of information of all kinds. One-half of its members, at least, have a perfect acquaintance with the people: and with these incalculable advantages, it is difficult to imagine that they might not be intrusted

intrusted with the same power over the residents of Calcutta, which is vested in them over all the other subjects of their government, in every matter whatsoever; subject always to the strictest responsibility, in case of the abuse of that power.

The legislature, it would seem, foresaw, in part at least, the inconvenience if not danger to which the governments of India would probably be exposed, by the incapacitating fetters which they put upon the Governor-General in Council through the medium of the supreme court; and the Governor-General is consequently vested with the power of transmitting to England, in the most summary manner, any European subject of Britain whose conduct may be deemed hostile to the government: the Governor-General so acting, however, being, on his return to England, liable to an action at the instance of the individual supposed to have been aggrieved.

But with an absence of foresight altogether amazing, it has been entirely overlooked, that other classes and descriptions of the people might arise, if they did not then exist, fully as able and as willing to evince hostility to the government as Europeans; and no provision whatever is contained in the act for such a contingency. The Governor-General may, by his warrant, remove any European subject of Britain from India in an hour; but an illegitimate son of that European by a native woman, an *Anglo-Indian*, or a native wholly indigenous, so long as they remain within the Honourable Company's factory of Fort-William and town of Calcutta, may set "his Lordship in Council" at defiance, being amenable only to his Majesty's court. They may sit down under the nose of government, frame, promulgate, and disseminate the rankest sedition, whilst the government must

must remain patient spectators of the destruction of their own power and the ruin of the interests of their country, till the delinquents are brought to answer for their conduct, before the supreme court, by due process of law: there to be tried before an English judge and by an English jury (consisting, moreover, of the lower classes of tradesmen and mechanics residing in Calcutta), and by the English law.

But to measure sedition by the same standard in India as in England, is to confound all the distinctions of time, place, and circumstance; evincing a want of discrimination nothing short of that which should perceive no difference in the degree of guilt or folly between taking a lighted taper into a magazine of grain or gunpowder.

If the public incendiary be dangerous to the government of England, whose stability, from the intrinsically permanent materials of its constitution, has no equal, how much more formidable must such a description of public enemies be to the government of India! Is it expedient, then, that the latter government should not be suffered to defend itself, but be forced to be content with the same defence that but barely protects the otherwise well-guarded government of England? The inexpediency of all this may be enlarged upon; but nothing, I think, can place it in a more obvious light than the bare statement, that as the law now stands, the power of the government of India, in matters even of the highest political importance, is liable to be impeded, or intercepted entirely, by the interference of a court or the fiat of a judge, wholly irresponsible for, and equally incapable of accurately appreciating, the consequences.

The cases of Mr. Buckingham and Mr. Arnott elucidate what

what is above stated. The former gentleman was sent to Europe for publishing in the Calcutta Journal what was deemed a libel on government. The latter gentleman, who afterwards conducted the same paper, also laid himself open to similar treatment. But Mr. Arnott was not to be "transported without trial," as Mr. Buckingham had been. He applied to the King's court to have his *habeas corpus*, which was granted; and Mr. Arnott was brought up, heard by his counsel, and, in defiance of the government, *discharged*, after a long speech delivered by the presiding judge, in which he declared his court to be really supreme, as it was called; and that the Governor-General, though he was permitted by the act of parliament to send home individuals, and to arrest them for that purpose, had no power to imprison them; for that the words of the act were, "to "arrest," and not to "imprison;" that to imprison and to arrest were not the same thing; and that the statute, being penal, must be strictly interpreted, and so forth.

It is foreign to my purpose to enter into the question of the legality of this decision. The fact of its having been passed, so that any individual, though declared to be dangerous to the government of India, and arrested by a warrant from the Governor-General, might thus be set at liberty in spite of the supreme government, and so given a farther opportunity, if he should chuse, of disseminating seditious and inflammatory libels for months, perhaps, until a ship (a Company's ship, too, by the act) should arrive from England and be ready to return, on which to send him, is altogether so monstrous a state of imbecility to leave a remote government in, that it sets all comment at defiance.

But over the *native* population of Calcutta it is not quite

so

so easy to arm the supreme government with summary power, retaining to the King's court superior jurisdiction. That class of our subjects, however, more especially the Anglo-Indians, have grown up both in number and in wealth, and consequent importance in society, far beyond what could have been anticipated by the legislature when the act was passed arming government with power over Europeans; and we have seen that they are no less capable of disturbing the peace of society and the tranquillity of government, indeed far more so, than the European, from their mixing more with, and their more intimate acquaintance with, the people in general. Not that they are, themselves, naturally turbulent, or disaffected to government; they are, however, little able to discriminate in political matters, and therefore easily misled.

The regulation for licensing the press was so far effectual; and as a temporary measure may be approved. But it is imperfect, being applicable to the press alone; leaving the evil-disposed every other means of committing the offence intended to be suppressed. It is partial in its operation, and consequently wanting in that dignity of character which a general legislative measure would possess. It is directed, moreover, so immediately against the press, that besides subjecting government to the misconstrued imputation of timidity with respect to the freedom of discussion, which they neither feel nor fear, it must be extremely unpopular even in India; but especially in England, where it will be attacked by its enemies, without being defended by its friends: for, on the subject of the liberty of the press, or rather its licentiousness, there is a degree of political cowardice predominant in England, which suppresses the real sentiments of certainly a very great body of the ablest men in the nation, who doubtless do not see that thereby they evince

evince a great dereliction of their duty towards the inferior orders of the people, who look up to them as an example, and who take their silence, or their indifference, only as a confirmation of the doctrine which political demagogues more zealously maintain.

In every country, free and fairly represented in its legislative assemblies, the freedom of the press (which, however, means the power of publication only) is indispensable. India does not come under this definition. It cannot be so represented even from the incompetency of the people; and therefore the government of India must be a *commanding government*, and the people an *obeying* people. Were they free to do so, they are incapable of governing themselves so well as we govern them. They are farther separated from their rulers than the people in states where there are popular representatives. But even in representative governments, and where the people are competent judges of public measures, the press, at liberty, is a powerful, and often a dangerous weapon. All government is essentially restraint: restraint is irksome to all. The extreme want of identity between the governors and governed, is of itself sufficient to distinguish our Indian government from all others; and if it be so essentially different, no argument in favour of a free press for India can be supported by the fact, even if admitted, of its being beneficial elsewhere.

The liberty of the press in India has of late years, indeed, been in reality enjoyed; and on some occasions has been exercised even to licentiousness. In the hands of discreet persons, the Indian press, I feel assured, would be encouraged by government, to every extent of rational freedom. In this state, it is hardly possible to conceive a powerful instrument to be of greater utility. But, instead of this,

this, our liberty of the press in India has virtually been enchained, by the indiscretion of men who were not satisfied with bringing to light the defects of our administration, or the abuses of public functionaries, that they might be remedied and corrected by the government. The government itself was their game; and in the face of the universally admitted confession, that as far as good intention goes, intention zealously acted upon too, no government in the world deserves more commendation than that of India, both at home and abroad, our advocates for a free press disdain to consider that of India free, till they shall be at liberty to libel the local authorities, and to hold up those at home to the contempt of the millions of their subjects here, who by a mere handful of men are nevertheless constrained to submit to their vituperated domination: a lamentable proof of the perversion of human reason, which insanity itself could hardly sanction.

That mode of regulating the press will be the best, which, whilst it vested government in cases of emergency with ample power, should at the same time infringe as little as possible on the present system. It therefore occurs to me, that the analogy of the law, as it now stands, with reference to Europeans, presents us with a suitable remedy for all the evils inseparable from the present restrictions imposed upon government. Let the law, as it now stands, be made applicable to the *whole population of Calcutta* indiscriminately, native as well as European, and the remedy is attained. Let but the legislature vest the Governor-General with the power of transmitting the native offender beyond the limits of the Company's factory of Fort-William and town of Calcutta, under the same circumstances, and, if deemed proper, subject to the same responsibility, as in the case of Europeans whom he is empowered

ered to transmit to England, and the paramount authority of government will be complete: for once beyond the limits of Calcutta and the jurisdiction of the King's court, they become at once subject to such regulations as the Governor-General in Council may from time to time enact.

So long, indeed, as this power is withheld from the supreme government of India, the British legislature are guilty of the strange absurdity of laying supreme responsibility upon one functionary, but establishing another to counteract him who is wholly irresponsible.

Nor, let it be observed, is it in its executive capacity only that the Indian government is subjected to this control. The law as it now stands, imposes upon the government an absolute disqualification from legislating for its subjects, without the previous concurrence, not of the paramount authorities in England, but of a *court of law* established within its own capital.

Now it must be confessed, that the very idea of this local court being vested with the power of dictating to the government what regulations it shall not frame for the better government of the country, is not a little repugnant to every notion entertained of the proper province of a court of justice: such a power is as foreign from the proper province of a court of law as it must ever be hostile to that dignity, in which every distant government, the government of India of all others, stands so much in need of being supported.

It is, therefore, not to be doubted, that an early opportunity will be embraced of obviating so great a defect in the system of our Indian government. The remedy proposed

posed seems simple, and cannot be severe in its effects; for it can scarcely be called a hardship to an individual to be removed from the capital, who cannot be content to reside in it without endeavouring to overturn the government of his country.

CHAPTER VII.

ON THE GOVERNMENT OF INDIA.

The loss of America was trivial, compared with that which Britain would now sustain if deprived of her dominions in India. Not that those dominions have proved to us that fountain of wealth which had been vainly imagined, and credulously believed. But the whole question of the value of India to England cannot be made up of pounds, shillings, and pence. Riches and power are not convertible terms; but extended dominion is an ingredient of the latter: and as extended dominion is not possessed by Great Britain within herself, so the acquisition of India happily supplies to our country, and in a transcendent degree, the only requisite she stands in need of to make her a powerful nation.

No less happy has it been for the destiny of India, that it has pleased the Ruler of Nations to place that country under the dominion of England: no less happy, I say, for India; for without any overweening opinion of our own countrymen, we may safely affirm, that from no other nation could India hope to derive benefits of a higher stamp, whether moral, political, or physical, than from England.

If our eastern subjects were fully sensible of the advantages they enjoy in this respect, we might assure ourselves that

that the conviction would be to them as strong a bond of attachment to us, as the relative position in which we stand is a motive to us to bestow on them the blessings of a good government.

Much has been said against the British government of India, both by those who are systematically opposed to every established system in which they themselves or their party do not participate, either in the institution or the administration of. Others, again, from ignorance, and others from less excusable motives, are its opponents. Nevertheless, its most bitter enemies are forced to confess that it has secured to the inhabitants of India the most important benefits. For my own part, I have no objection to this species of stigmatized government; for I always think, since the good is admitted, the evil must be problematical.

Without being a partizan of any party, and merely an observer for thirty years, I have come to the conclusion, that although in practice many and great improvements may be made in the administration of India, yet on the whole it is wonderfully faultless; whilst, in the theory of its constitution, the government framed by Great Britain for her Asiatic dominions is, perhaps, as perfect as any human institution, under such circumstances, can be. It has, moreover, the vital benefit of being administered by those who have themselves been trained under the British constitution, who have been nurtured in the very bosom of justice, honour, and liberty.

Nothing can be more fallacious than to apply the maxims of government, recognized by an enlightened and a polished people, as a standard for the government of India. To attempt improvement on such principles, you might as well attempt

attempt to improve the kraal of a Hottentot by adding to it a Corinthian column. Your remedies, whatever they are, must not only be suitable to the disease, but to the constitution that is to profit by them. I take it, therefore, that whatever may be the benefit which shall be conferred upon India, that benefit will emanate not from mere speculative theorists, but from men who have had experience of the manners, customs, and even moral obliquities of the people.

What is wanted, then, as a government for India, is one which, whilst it possesses the full energy of the executive, and is open to the benefits derivable from the deliberative branches of the government of England, shall also contain within itself that ample share of local and practical knowledge, without which the affairs of a remote colony, and a peculiar people, can never be successfully administered.

If we cannot yet admit the Hindoo to a share in the administration of his country in the higher departments of the state, we can do what is next best; we can surely take care that that administration shall be guided by the counsel of those who, from experience, have become acquainted with his peculiarities, his habits, his prejudices, even his defects, in order that his condition may be ameliorated by the most congenial, which indeed will prove the most effectual, remedies.

In 1783, Mr. Fox's bill, the main object of which was nothing more than to destroy the charter and privileges of the Company, and to vest the government and patronage of India in the Crown, was described by himself even, as a "strong measure." Now it would not be remarkable; but it was then denounced by others "as pregnant with the "utmost danger to the constitution of England." "Let

" the right honourable secretary beware," said Mr. Pitt, " whilst he secures to the Gentoos their natural rights, " that, in doing so, he does not destroy the liberties of " Britons." And even Mr. Fox himself, but a few months before his attempt to become supreme dictator for India, declared " that he could not, consistently with his regard " for the constitution of his country, approve the taking " away from the East-India Company, and placing under " the Crown, the entire management of our territorial " possessions in the East: this would afford to government " such ample means of corruption and undue influence, " as might in the end overthrow the whole constitution. " The Company ought, therefore, to be left to appoint " their own servants."

These were the sentiments of our greatest statesmen on a question of vast importance; to which I shall add those of Mr. ~~Wyndham~~ Grenville, afterwards Lord Grenville. Speaking of Mr. Fox's scheme, Mr. ~~Wyndham~~ Grenville declared, " that it aimed " at nothing less than to erect a despotic system which " might crush the constitution of England." Yet it passed the Commons. In the Lords, however, it met with a different fate. It was denounced by Lord Thurlow " as " a most atrocious violation of private property, a daring " invasion of chartered rights, and a direct subversion of " the first principles of the British constitution." Yet this bill was but little different from the notions and wishes of many of the present day, who would transfer the government of India entirely to the Crown.

In 1784, Mr. Pitt brought forward his bill, which may be considered as the draft of the modern constitution for India. But so far was it from being deemed fully adequate to the end in view, that we find the King, on that occasion, thus

thus expressing himself to Mr. Pitt: "I trust that this "measure may lay a foundation for correcting, by degrees, "those shocking enormities in India which disgrace human "nature,* and if not put a stop to, threaten the expulsion "of the Company out of that wealthy region. I have the "more confidence of success, from knowing Mr. Pitt's "good sense, which will make him not expect that the "present experiment shall, at once, prove perfect; but, by "an attentive eye, and an inclination to do only what is "right, he will, as occasion arise, be willing to make such "improvements, as may, by degrees, bring this arduous "work to some degree of perfection."

We have had experience of those imperfections, and it is from a conviction arising out of that experience, that I venture to submit the impressions existing in my own mind, as to the mode in which I conceive some of those imperfections may be mitigated or removed. But whatever progress we may suppose we are making in the amelioration of the government of India, we may rest assured that nothing great, or permanent, can ever be effected, which is not equally calculated to establish the prosperity of England, and to prolong the connection which subsists between the two countries.

The highest branch of the India government is the board of his Majesty's ministers, commonly called "the Board of "Control." What can be more advantageous to the India government, than that it should be placed under the control of those who constitute the government of England? With reference to British interests only, the impossibility of so important

* It is astonishing to see the weight of prejudice which, at that time, lay upon the servants of the Company; need we wonder, then, at the rigor of the restrictive enactments to which they were subjected?

important a portion of the British dominions being excluded from such control, is too manifest to require further observation; whilst, with reference to the interests of India, that very control is the bond which identifies them with those of his Majesty's other dominions, over which his ministers possess both the executive and the superintending power. But for this, in the minds of the ministers of the Crown, the interests of India might be deemed distinct from, if not rival to, those of England.

But as the British dominions in the East have grown to their present magnitude suddenly, and after the constitution of England had, by means of countervailing powers and checks, been so accurately balanced as not to admit of so great a weight of political influence being made, especially to that of the Crown, without endangering the whole system, an intermediate body was aptly found in that of the Court of Directors, in whom the principal business of the executive government, and the whole patronage of India, was designed to be vested.

It will be seen, therefore, that instead of the Indian government being, in any way, really and essentially distinct from that of England, it is, in fact, but a department of that government, under special regulation, by which it is open to the benefit of whatever wisdom there may be in the British councils, or energy in the measures of her executive; whilst, by the intervention of the Court of Directors, in whom is vested the India patronage, the balance of the constitution of England is preserved from preponderating in favour of the Crown.

It is impossible to conceive that the influence arising out of the government and patronage of India, if wholly in the

the hands of the ministers of England, could be inoperative. Patronage is essentially power. When in the hands of the government, it becomes *political* power; and *political* power *concentrated*, ready to be applied to any purpose. Whereas, vested in the numerous body of Directors, the patronage even of India is so distributed, so dissipated, so dispersed, that like the rays of the sun in the arctic regions, it is seen but hardly felt.

A late President of the Board of Control lamented his want of patronage, as if it were a defect in the constitution of that Board, which disqualified him from performing in the best manner the duties of his office. But to a controlling authority, that authority being the English ministry, patronage cannot be otherwise than inimical to the due discharge of duty. On the whole, we may conclude, therefore, I am persuaded, if India be not well governed, that the fault does not lie in the *theory* of its constitution in the home department.

How far, in practice, we can arrive at the same conclusion, is another question, and one of more difficult solution. The great practical innovation, it is alleged, consists in this: that, contrary to the intent of those by whom it was instituted, the Board of Control has, of late years, exercised more than its due share of power in the executive government. If so, then India is altogether deprived of the benefit of any real control over the executive, the Board, established for that purpose, having itself become in fact the executive;—and the effect which this practical deviation from the true constitution of the India government is calculated to produce is, that the Court of Directors will not give that supreme attention to the affairs of India, which,

which, with a greater share of power and true responsibility, they would bestow.

Then the question is, whether is the Board of Control, or the Board of Directors, likely to be the most competent to exercise the reality of power in governing India? Were this question put to me, I should be constrained to say, that as we have frequently seen the minister selected for India, commonly called the President of the Board of Control, and the whole of that Board, composed of individuals who were not before distinguished for any knowledge of India affairs,—since we have seen this, I should not hesitate to say that the superiority of qualification is likely to be with the Directors, among whom many have always possessed that knowledge—and this is indeed where it ought to be found.

I hold it as an axiom, which cannot fairly be questioned, that to those who govern, a knowledge of the country to be governed is indispensable,—a knowledge of the people, of their manners, customs, religion, laws, peculiarities, prejudices, virtues, vices: that is, if we look for qualifications of the first order. We should hardly admit that a Russian, Frenchman, or Spaniard, would be a competent member of the British Cabinet, even did we know him to be a man of talent, and were we sure of his loyalty and integrity. Yet we scruple not to place the government of India, certainly not less foreign to an Englishman than England is to Russia, France, or Spain, in the hands of those who are as great strangers to that country, as the inhabitant of Moscow is to our own metropolis.

If we inspect the list of Commissioners for India, from the

the period of their institution to the present time, we shall find but few in it who have possessed any local knowledge of India. It so happened (such indeed is the state of parties in England) that no ministry can afford to employ those in that Board who are known merely for their distinguished services or eminent qualifications, as connected with India. Nor would this be requisite, perhaps, if the Board confined its functions within their legitimate bounds of control over an able Board of Directors.

That the control of the government of India, as of every part of the British empire, should be vested in his Majesty's ministers, is indispensable; but, for that purpose, the necessity of the apparatus of a Board is by no means so obvious, whilst it is, at the same time, a source of considerable expense. The control of the government of India, as connected with the government of England, is more of a political than of a general nature. A single minister at the head of the India department, as of other departments of the state, would be fully as efficient for every valuable purpose: whilst the authority of a single functionary would naturally be modified by increased responsibility; and by that diffidence which, even with great talent, is the legitimate consequence of inadequate experience: and thus the reality of power would be restored to the Court of Directors, who *ought* at least to be infinitely better qualified for the government of India, than any Board which the political exigencies of the British ministry may suffer, even the best of governments, to assemble.

We now come to the constitution of the Honourable Court:—and before we proceed, it is but bare justice to premise, that making every allowance for the hostility which of late years has been evinced towards corporate bodies generally,

generally, none has been more, or more unjustly, reproached than the Court of East-India Directors. Were we, indeed, to shut our eyes and our ears to the beneficial effects of their government abroad, where alone they can be appreciated, and look merely to the periodical and pamphlet writers of the day, who, through ignorance or design, have slandered the Honourable Court, we should be forced to conclude that they are a body of tyrant sovereigns, exercising with unshackled sway the most audacious system of oppression. The very fact of their being a Company, but especially a Company of Merchants, is held as a demonstration of their utter incapacity for governing any country. India is declared to be in a most miserable condition; and the whole misery of India is conclusively traced to the fact of its being ruled by a corporation of mismanaging merchants. Then a change is loudly called for. India must no longer remain under the Company's government; it must be transferred to the Crown: till which time, to ensure anything approximating to good government is quite impossible. But to those who really know a little, even a very little, of things as they are, all this is extremely ludicrous. They are certain that, whether India has hitherto been ruled by the Court of Directors or by the King's Ministers, in point of fact, since any regular government was framed for India (that is, for these last fifty years), India has been governed with moderation, justice, and success; but that, were the contrary true, they are equally sure that the Honourable Court cannot fairly be charged with the whole misgovernment of India. It is to be regretted, that the two distinct authorities, which at home govern India, are not made more publicly responsible for the share they actually take in the government respectively. At present, all orders being passed in the name of the Court of Directors, the acts of the controlling and subordinate power

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are unknown to the public. I conceive that public responsibility is defective, when those who possess supreme power exercise that power in the name of another ostensible body, and not in their own.

His Majesty's ministers are anxiously alive to the welfare of India; but since, in the estimation of the people of England, there is a constituted body between the ministry and full responsibility for India affairs, and their own country demands their chiefest care, India, to them, cannot be the primary, but the secondary object of concern. To the Directors, on the other hand, the interests of India are the ALPHA and the OMEGA, the first and the last, the beginning and the end of their duty; and it is idle to suppose, unless we first assume that the superior board shall contain also superiority of individual talent, acquirement, and experience, that where the greatest interest lies, there there will not be the best security for the most zealous exertion. I apprehend, therefore, that the true system for the practical government of India will be found in this, that whilst the right of control shall remain in his Majesty's ministers, India shall nevertheless be virtually and really governed by the Body of Directors; the Board of Control being modified so as to become a chain of connection between the controlling and the executive power, keeping up an active communication of the proceedings of the Court: the duty which the institution of the superior board was probably designed chiefly to perform. By the establishment of a full board, the thing was overdone. Instead of denying themselves the exercise of power, except on important questions, that board has drawn to itself the whole authority of the government.

The object of Mr. Pitt, in forming the constitution of the government

government for India, he declared to be, to constitute "a "new establishment at home with powers extending over "the *general concerns* of the Company." "The Board of "Control, Mr. Pitt desired to be, strictly speaking, a board "of control and superintendence, *interfering upon points* "*only* of which his Majesty's ministers and the privy "counsellors might be supposed to be more competent "judges than a company of merchants, however respectable "and intelligent in the concerns of trade." *(Life of Pitt.)* But the fact is not so now. The Court of Directors is not "a body of merchants," but many of them are men peculiarly qualified for their duty; so that a less, and not a greater degree of control, in that board, might perhaps now suffice than was then deemed requisite.

But whilst we should wish to see a more ample share of the government of India left in the hands of the Court of Directors, we cannot fail also to see an equal necessity for securing, by some means, a select body for the due discharge of that important trust. A mere English merchant, we must concur with Mr. Pitt in admitting, has no peculiar qualifications for the government of India. The designation of "the United Company of Merchants trading to "the East-Indies," is an antiquated and a mischievous misnomer. But a distinguished English merchant is, for the most part, a distinguished man: at all events, care should be taken to secure able men, possessed of local and practical knowledge of the affairs of India, who ought to possess real power, under due responsibility, that the Court of Directors may maintain that elevation of character which is commensurate with the magnitude of the trust reposed in them.

I know not that any benefit would be derived by altering the

the mode of electing Directors. Men in all situations are influenced by their own interest, and by other impulses which are often equally exceptionable. But by raising the standard of qualification for candidates (I mean not the money but the mental standard), and subjecting it to certain conditions, a body of men undoubtedly well qualified to perform the duty of the governors of India might be obtained. They should be principally men who have distinguished themselves in the country they will have to govern; and who, by a long residence among the people of India, have acquired a competent knowledge of every thing that is important to be known of them: without, however, excluding those in England who may have special pretensions.

The Court of Directors may be considered as the representatives of India in England; surely then the representative should, at least, know and understand the character of those he represents: and with a court thus selected, we could hardly desire, for that or for any other country not ruling itself, a fairer representation.

But something more is wanted, to enable the court to bring to the highest bearing the qualifications they would then collectively possess for the government of India. It not unfrequently happens, as we find the most imperfect system ameliorated by habitual correctives, that so we, in like manner, observe the best institutions vitiated by practical errors: and certainly no error, in practice, was ever greater than that, by which the Directors of the East-India Company are raised, by mere seniority, through a set of consecutive committees, to the performance of the most important and responsible part of their duty. The whole of the business of a Director, which has any reference to the

the government of India, is restricted to the nine senior Directors and the *Chairs*.* But to get within the magical number of nine requires half a life-time of an Indian; and when he does obtain admittance, he finds, as those before him have done, that India now is not the India of his day; and that his knowledge of that country is, like himself, by a quarter of a century too old. Surely, if experience be valuable, it is the experience of things as they are that is so. Why then, should not the favourite system of ballot be resorted to for committee-men, by the Directors themselves? This would render it, at least, within the power of that body to secure for the public good such superiority of talent and other acquirements as their number afforded.

But we are told, it requires training to become acquainted with the business of the India-House and government. No man can be fit for the duty of a Director if he is not a man of business. But surely the knowledge obtained in the inferior Committees of Directors,† can give him no peculiar aptitude for the government of India.

Another more obnoxious and impolitic regulation exists, and on higher authority, that of the legislature itself,—namely, that which not only prohibits the Company's servants, so long as they remain in their service, from being chosen Directors; but "all those who have been employed "in any civil or military station, office, or capacity in "the East-Indies, or claiming or exercising any power, "authority, or jurisdiction therein, are prohibited from "being chosen Directors till they have been two years "resident

* The Chairman and Deputy-Chairman.

† Such as "the buying and warehouse"—"the shipping and private-trade," &c. Committees.

" resident in England." Never was a law, made to suit a particular end, less called for, than, for many, many a day, this has undoubtedly been. In that anomalous state in which the affairs of India stood in the latter part of the last century, it cannot be wondered at, although we should find, in the legislation of India, a corresponding portion of expedientiary enactments; but why, of all those who sojourn in India, the Company's servants alone should be held to this official quarantine and disqualification, it is difficult to comprehend. Whatever the reason, in former times, may have been for the exclusion of the Campany's servants recently from India, certain it is, that the affairs of that country are now on a foundation far too solid to be shaken by any possible contingency arising out of the admission of the Company's servants into the Direction, however early that admission could possibly be obtained by them.

But why disqualify the servants of the Company from holding a seat in the Direction? The servant of the Crown, returning from its other colonies, is not so disqualified. He is not bound, even although he resign the service of his Majesty, to sink two years of his political existence, but may be called to the cabinet, should his sovereign require his services, from the remotest corner of his dominions. The Company's servants deem it impolitic and unjust that their services abroad should disqualify them from serving at home; and with corresponding confidence, they claim to be admitted to those unrestricted privileges, in this matter, which are denied to no other class of his Majesty's subjects. That the fact of their being servants to the Company in India, should of itself exclude them by law* from serving in

* The reason assigned for their exclusion, I believe, was the danger of the people from India, as agents for native powers, by corrupt

in the Direction of the government of that country, whilst, in reason, the very same fact stamps their peculiar qualification, is an inconsistency in India legislation, which it is believed will be removed the moment it is brought to notice.

With respect to the patronage of India, provided it be at all events withheld from the Crown, whether it should, as at present, remain in the hands of the Directors, or, as has been mooted, be partly distributed among the other bodies corporate, and others, is a question of greater interest, I think, and importance, to those whom it is proposed to be taken from and given to, than to the public in general, or to the general advantage either of England or of India. Where no political danger is to be feared from its possession, who can say that official patronage is not a legitimate remuneration for official services? It may be fairly considered as the only remuneration to which a Director looks. The duty of a Director, if fully performed, is one of great labour and responsibility. There is, therefore, something so radically cool in the idea of taking from him who labours his recompense, and giving it to others who labour not, neither are responsible, who would have no interest whatever in the affairs of India, but its patronage,—there is something so extremely cool in this, that the proposition appears quite ludicrous. If any of the East-India Directors abuse their patronage, let it be taken from those of them who do so; but you are not to turn out the whole House of Commons,

means, getting into the Direction, for the purpose of effecting objects inimical to the interests of the Company. If this danger ever existed, certainly times are exceedingly altered. Now, at least, its existence is utterly impossible. But, if this be doubted, why not substitute a declaration abjuring such agency, and a penalty in the event of its being discovered? Any test is better than odious exclusion.

Commons, because some members may occasionally have got their seats by corruption. Let those who propose such distribution of patronage point out the bodies corporate, or others in England, whose purity of patronage they will warrant to be of a higher touch than that of the East-India Directors! Are we to look to the rotten boroughs, or the hustings of Westminster, for purity of public principle? If the patronage of India must be taken from the Directors, in the name of common sense let it not be thrown away: let the appointments be sold, as in the King's military service; and let the proceeds be funded for the benefit of their Indian servants. But, then, who will be a Director, without patronage, on £300 a year? I may be told, many would be glad to be employed at half that price. But I should not desire to employ a cheap Director, more than I should a cheap physician. Certainly the direction of the affairs of India ought not to be sunk to that grade of office, to which common men, only, would aspire.

It is fortunate for India, in my estimation, that she possesses patronage such as to command the services of elevated and talented men; and debarred as it is from being the subject of mercenary traffic, surely patronage is a purer object of pursuit than mere pecuniary ambition. I am unable, therefore, to discover any grounds, of justice or of policy, that would warrant interference in the question of patronage; and I know not that I can better conclude this part of my subject, than in the forcible words of the founder of the modern constitution for India. "I feel "assured," said Mr. Pitt, "that the patronage inseparable "from the possession of these immense territories may be "placed with greater safety in the Directors than in the "hands of any set of political men." (Pitt's Introduction to his India Bill.)

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It is, indeed, a question, how far the present regulations for the admission of candidates for the India service, especially in the civil branch, might not be beneficially revised. How far the extreme youth of those who are sent to India contributes to the welfare even of the individuals who are sent, must be doubtful to others: to me there is no doubt. I am of opinion that it is iniquitous alike to them and to the public interest. I am persuaded that both the servant and the state would profit exceedingly, were those sent to India suffered to attain greater maturity, both in body and mind, before they quitted England. From long observation, I am myself satisfied that those, whose constitutions are completely formed before they reach India, retain in that climate the greatest share both of mental and bodily vigour; and I should, therefore, on every account, without altering the minimum standard of age for admission, strongly recommend that the maximum be extended at least to the age of twenty-five years. This would afford a more extensive field for selection, whilst the individuals selected will have enjoyed the incalculable benefit of the latter years of a systematic education, when the mind begins to consolidate into proper form the materials it has been collecting, and without which the most promising attainments of the youth are so often acquired in vain.

What I should wish then, with great deference, to submit, regarding the home branch of the Indian government, is:—

1st. That the Board of Control should be so modified as to admit of a more ample share of the government of India being really administered by the Court of Directors.

2d. That the members of that court should be selected with reference to the experience and knowledge of the affairs of India, as well as to talent and general competency; and

and that, instead of the Company's servants being excluded from the direction, either for a time or totally, during the period of their service, as at present, that service of the Company in India, especially service recently performed, shall be deemed a special qualification for the office of Director.

3d. That, in the distribution of the business of the court, the individuals chosen for the several departments, or as they are termed, committees (if there must be such), be selected by ballot; the avowed principle of fitness, and not mere seniority, to regulate the choice.

4th. That the patronage remain, as at present, in the hands of the Directors, or the appointments be sold; but that the patronage shall, by no means, be placed at the disposal of any other body or individual whatsoever; and,

5th. That the maximum age, at which the servants of the Company may be sent to India, both civil and military, be extended to twenty-five years.

On the government abroad, the following observations are submitted, with that deference which the importance of the subject calls for. In India, the paramount authority is vested in a supreme goverment, whose chief, the Governor-General, may, in important affairs, on his own responsibility, exercise absolute power. He is furnished with a council, in Bengal, consisting of three members, who are supposed to advise him; and would be expected to remonstrate, should circumstances require such opposition. This is the theory of the supreme government; to which, in political matters, the governments of the other Presidencies are subordinate. And it must be confessed, if we consider the extent of dominion, the population, both in amount and in peculiarity of character and the distance from the mother country, we can hardly say that any degree of dis-

cretionary power can be excessive to bestow on the man who shall be entrusted with so arduous a charge. This is the theory; but, in practice, I believe, it will be allowed, that the Governor-General has more power really than the theory of the government strictly confers upon him.

The members of the supreme council (the Commander-in-Chief with two of the Company's civil servants) have seldom, I believe, been all found disposed to maintain their opinions in opposition to those of the Governor-General; and any one of the three coinciding, gives him a majority in council. But the great check on the measures of the government, as well as of the Governor-General, I conceive to be in the ample system of record, and of written documentary proceedings, which are kept in all the departments, and regularly transmitted to the Courts of Directors, not only by the government, but by the subordinate boards at the different presidencies. The regular preservation and transmission of such records, I conceive to be the very essence of what is valuable in the constitution of a remote colonial government. It is like publicity, and the liberty of the press, to the people of England, the very fulcrum of their freedom; and, as a safeguard, hardly less perfect, because those records form a picture, under the hands of all who are actors, of what has really taken place, in every one of their proceedings; and although, occasionally, such proceedings may be twisted to suit particular views, yet in general, I believe, the record will be found not inaccurate. It is true, those documents are not made public at home; but they are always liable to be so: and since they are open to the inspection of the authorities at home, to whom the government abroad is fully responsible, it must be confessed that the check exists; and if it be not exercised,

exercised, the blame must attach to those who have the power, but neglect the duty.

The government of India is an office far too arduous to be in great danger of being filled by persons very incompetent. In some instances, however, liberties have been taken with it by the minister of the day; but the penalty has been so great, that such freedom of choice is not likely often to occur. We have consequently had in India a succession, but little interrupted, of the most distinguished men at the head of the supreme government: the power of such men, under full personal responsibility, ought not to be circumscribed by any co-existing authority in India.

The Governor-General always will be, and always ought to be, sent from England: but I know of no other functionary who might not be advantageously found among the servants of the Company: not even excepting the Commander-in-Chief, although there can be no objection to the selection being made for that office from the King's service also.

For the situation of members of council, officers *from both branches* of the Company's service ought to be *equally eligible*. On what principle, may I not ask, are the *military servants* of the Company excluded from being *members of council* at the several presidencies? They are not disqualified from holding the superior offices of Governor, or Governor-General. To exclude them, then, from council, is a solecism, which is not easily comprehended. But the Company's army has furnished men capable of filling the highest offices with eminent success; and the whole history of India will bear me out in affirming, that in no other service, in no other branch of the same service, can it be

more truly boasted, that men of suitable attainments are more likely to be found.

I think too highly of the civil servants of the Company, generally, to be suspected of offering any disparagement to them, whilst I place their brethren of the military service in competition with them, for a share in the councils of the state. It is only a small number from either service that can ever look for the distinction; but it will probably be admitted, that at no period has the council, at any of the presidencies, been so ably filled, that for one or more of the members a substitute might not have been advantageously found from the military branch of the service; whilst, on the other hand, periods of our history have often existed, nay must be within the recollection of many who may read these pages, when there was more than need for that knowledge and forecast in military affairs, as connected with India, which are familiar to men of professional experience, and to them alone. There are, indeed, few questions of very great moment that can arise at the supreme council in India, which do not, directly or indirectly, involve matter of military import, or demand a knowledge of the habits, disposition, and feelings of the people; to know and to respect which, are essential to the good government of India, and peculiarly requisite in a council, the head of which can seldom, if ever, possess such qualifications. But on all such points, military men are especially competent to judge, from their more extended and less reserved intercourse with all classes of natives, than the official duties of the other branch of the service admit of.

But I am told it is necessary that experience in the civil administration of the government should be found at the council board. In the regulating of important affairs, I am,

am, indeed, an advocate for experience, but that is the reason why I deprecate the exclusion of military men, whose experience must always be needed, and, when needed, always important. Certainly it is not necessary to exclude, possibly, the ablest servant of the state, though he be a military man, and yet admit into council the commonest individual, whose experience in the affairs of government may not extend beyond the ordinary superintendence of a public office.

I do not state this in disparagement of those who may be so employed; but it is not mere operative experience in conducting the details of a government that is of value. What the councillors of a great state require to know is, how the measures of government are felt, or are likely to be felt, by the people, what effects they produce on those who have to bear with them; and to suggest such as may have a tendency to promote the security, happiness, and prosperity of the country. Research, observation without preconceived theoretical notions, the habit of reflecting with candour on facts and circumstances as they arise, extensive acquaintance with the country and with the people, are qualifications of a superior stamp, and I will venture to say, are as likely to be found in the one branch of the service as in the other; whilst such as have been distinguished in the army, and who, to other qualifications, add a complete knowledge of business, appear to possess advantages which cannot but render them fit for the highest employment. Surely the exclusion of such men from the council of the state is equally impolitic and unjust. That system for the government of India cannot be judicious which would admit to its council the most ordinary person in its civil department, and would yet exclude a Munro or a Malcolm, a Laurence or a Clive! And what inconsistency

is

is that which, after all, would receive men as chief of that very council, from which, as members, they are excluded!

The truth is, that men of the highest talents have appeared in both branches of the service; but, nevertheless, if we are to be guided by the annals of British India, it must be admitted that the military servants of the Company have been eminently distinguished, not merely by their services in the field, but for the share they have taken (and during the most perilous times) in the most important measures of the government, whether in the intricate path of political arrangements, in the development of the resources of the state, or in the eluciation of the history, antiquities, manners, customs, sciences, arts, languages, and laws of the people.

The subordinate government of the minor presidencies are part of the machinery for the general government of India; but whether they are indispensable is another question. That of Penang has just been abolished. There remain those of Madras and Bombay.

The population of the Madras Presidency was stated by the governor, Sir T. Munro, in 1824, to amount to thirteen millions and a half; and that of Bombay is rated at something more than five millions. So that, for a population of between eighteen and nineteen millions, and a revenue at Madras of about five millions sterling, and at Bombay of little more than three millions, we have two distinct governments, two armies, two commanders-in-chief, two councils, and all the appurtenances of government, such as are found in Bengal for the supreme government of India, and for governing also a local population of sixty millions, with fourteen millions sterling of revenue.

The

The position of Bombay, with reference to foreign invasion, confers a degree of importance on that presidency, in a military point of view, which, otherwise it could not claim. Madras, on the other hand, from having been for many years the scene on which was contested the supremacy of India against both our European and Indian enemies, was raised to a degree of artificial importance, which can no longer be maintained. Till the late war even, the Marhatta States formed a cordon round a great portion of the Madras presidency, which, however crippled the power of those states had been, yet gave the contiguous provinces the semblance of a frontier territory. But the result of that war has deprived the dependencies of Fort St. George of that claim to political importance. The hostile cordon is now our own, and Madras is laid in the lap of the sister presidencies.

The distance from Calcutta, westward, to the farthest extremity of British India, including within it the whole of the Madras and Bombay provinces, is not much greater than that of the extreme north-west boundary of the Bengal territory from Calcutta. The system of separate governments for the same country is, in itself, I apprehend, intrinsically defective. In India, although the supreme authority may mitigate, yet it can only extenuate the evil. Discordant views, tenacity of power, jealousies, suspicion, rivalry, conflict of authority, or constrained obedience, are not unfrequently the result; and, at all events, multiplied expenditure. Whatever disunites a people who are under the same head must be injurious to the common good. In our own country, Ireland is a stupendous illustration of what I advance. To the separate government of Ireland may be traced many of the calamities which she has either suffered or inflicted on our country. That there is any advantage

advantage in having three separate governments for India, instead of delegated authority at both, at least at one of the subordinate presidencies, might well be questioned. In the present state of the India finances, I know not that there are any establishments which might be more advantageously dispensed with, than those of at least one of the two minor governments.

If reduction of expenditure be really desired, here, I apprehend, is a favourable and a salutary opportunity. Whether we advert to comparative extent of country, to population or revenue, it must be admitted that those provinces are profusely governed. The consolidation of the three presidencies, and the abolition of the consequently superfluous establishments, would extensively relieve the finances, and in a mode as little injurious, I believe, to national interests as any that can be devised. Were the two minor presidencies to be united even, this would afford considerable relief.

As a government having pretensions to territorial importance, that of Madras has become so within our own memory, small as its territory is; and, in that respect Bombay is but of yesterday. Yet there is no department of state existing under the supreme government, which, however costly, is not to be found at those tiny dependencies. By the act 13th Geo. III. c. 63, in 1773, the presidencies of Madras and Bombay were subject to Bengal, and it was not till 1784, that the administration of those settlements was vested in a governor and three councillors, by 24th Geo. III. c. 25.

"The northern circars (which anciently belonged to "Bengal)," say the Madras Board of Revenue in 1815, "and

"and the jaghire, which is now called the zillah of "Chingleput, and a small extent of land annexed to the "settlements of Madras, Cuddalore, Nagore, and Nega-"patam, formed, till 1792, the only territorial possessions "of the Honourable Company on this side of the penin-"sula. In 1792, the ceded districts of Salem, Barrah-"mahl, and Dindigul, were added from Mysore. In 1802, "courts of civil jurisdiction, and in 1803, criminal courts, "were first introduced."*

The reannexation of the "Northern Circars" to Bengal would relieve the southern presidency of a strip of territory and coast, sufficiently contiguous to be administered by the supreme government, whilst the whole of the ceded districts above-mentioned lie towards the territories of Bombay, and are some of them more contiguous to that presidency than to Madras.

A single government for India has been thought of by some, with lieutenant-governors for the provinces. Central India, at one period, was pointed out as a seat of government highly desirable. But it is not unfrequently the case that such propositions arise out of peculiar circumstances. If the able manager and historian of Central India had not brought that impoverished country into notice, we should very probably never have thought of a governor for it. Even lieutenant-governors are too expensive machinery for ruling over desert provinces. Were the finances in a prosperous state, no one would more willingly see the surplus so expended. But so long as the army, which has conquered, and must keep, India, remains in its present reduced condition, when even the other branches of the service are suffering severe reductions, I cannot see the necessity

* Revenue Selections, vol. ii. p. 391.

necessity of more governments, whatever may be their designation, when the same functions have been, and may be again exercised, under the less costly appellation of "agent for the governor-general," or "political resident." Set up new governments, and you create so many separate interests; for besides the general welfare, each distinct government will invariably have its own individual jealousies, its own individual interests, and these it will always prefer, in spite even of its own desire to promote the general good. I am aware that difference of character, manners, customs, and language, between the inhabitants of the provinces belonging to the several presidencies, has been assigned as the reason for maintaining separate governments; but more weight is attached to this than there need be; for were the reason good, it would prove the like necessity for having separate governments in every province of India. The province of Bengal Proper contains inhabitants as little resembling those of other provinces under that presidency, as the inhabitants of any two or more provinces of India can differ from one another.

The civil expenses of the India government are already enormous. To confer costly titles (for every high functionary is a costly one) is not the way to reduce expense. Many think our functionaries are already too high-priced; that the implements with which we work the work of government are of gold and of silver; and we are naturally asked, why should we use none but those of the most expensive material, when those of an equally good description are obtainable on easier terms, and on the spot? This is certainly well worthy of consideration. There are few situations in the civil administration of India which might not be filled from the army, fully as well as from the civil list, and at a much less expense. It appears to me to be wonderful

wonderful self-denial on the part of government, considering the embarrassed state of the finances, in time of peace, to deny themselves the services of so many valuable men, in the prime of active life, with much local experience and valuable acquirements, as might well be selected from their army, and whose energies, talents, and even lives, are wasting for want of employment.

The usual objection to this is, the inexpediency of abstracting officers from their military duties. But in time of peace, what are military duties, that it should be important for all the officers of a corps to be present to perform them?

If, in time of war, the complement of officers be sufficient, when corps are complete, surely when, as at present, half the men nearly are disbanded, the same number of officers can hardly be required for the men who remain. And in answer to those who advocate the necessity of keeping office for their own sakes, with their regiments, that the polish of the parade may not rust upon them, I am of opinion that such men as would be competent to take an efficient share in civil administration, would, at the period of life to which I have adverted, stand in need of no farther *elementary discipline*, which *however essential to be known*, does not require unceasing practice; for such practice is not that which alone makes a valuable officer.

There is therefore, I apprehend, no good reason why the government should not avail itself more extensively of the services of their military officers, which they might do to the number of three or four from every regiment; and with great advantage both to the army and to the country. I think no error can be greater, than to suppose that

that this would disqualify them for military duty. Active employment is the very life of a human being, it fits him for turning his energies in every direction, and into whatever channel may be opened to him. Two of the most distinguished men who have served in India, in modern times, have been equally remarkable both for their military and civil service.

The limits I have prescribed for myself will not permit me to enter on the subject of the subordinate branches under the supreme government, I may notice, however, with reference to Bengal, that in my judgment, the principal of those are the Board of Revenue and the Military Board. I exclude the sudder, or supreme native court, for courts of justice do not act *under* government; and I pass over the commercial department, because it is now of minor importance. The two great subordinate organs of government, then, are the Revenue and the Military Board: the Military Board having, however, no power in regard to the discipline of the army, which of course rests entirely with the Commander-in-Chief. The duty of the Board of Revenue chiefly consists in superintending the collection of the revenue, to secure a competent amount of resources; whilst that of the Military Board is to see that those resources be properly and economically applied, in the extensive and multifarious departments under their control. When, therefore, on the one hand, the incalculable importance to the people of a well-regulated system of revenue is considered, when it is considered that the affairs of the revenue are brought home to the very hearths of the poorest cottager in the country, and, on the other, when it is known that, with the exception of mere personal allowances, almost every item of the public expenditure, both civil and military, is placed under the control of the Military Board, the

the paramount necessity will be obvious, for having both those subordinate organs of the executive placed on the most efficient footing.*

Finally,

* A late English writer on finance, Sir H. Parnell, has eulogized the constitution of the East-India Company's military board, meaning that of Bengal; and the Board of Ordnance, in England, has been described by very high authority as "a model for boards." There is, however, this obvious objection to the former board, that it is composed of official men who are already oppressed with the heavy duties of their own special offices, for which they are individually responsible; and who, therefore, have hardly a fraction of their time, and no portion of their thought at all, to bestow on the duty of the board, which, in point of fact, has fallen principally, often almost entirely, upon the irresponsible inferiors and assistants. But the business of the Bengal Military Board, as it affects the finances of the state, is far too important to be left in such hands. Government find the utmost difficulty in raising resources to meet the wants of the service; they employ numerous and costly functionaries on the duty of collecting the *income* of the state; and is its *expenditure* a matter of less moment? Surely no eulogium is due to the system which places public property, to the amount of many millions, and immense expenditure in every department, under the control of a body of men otherwise fully occupied, and therefore altogether irresponsible to government, who must be content to receive just as much, or as little, of their gratuitous services as they may choose to bestow. It is a hard matter to hold the head of the government responsible for the economical management of its resources, if it must yet work with such machinery as this!

As to the English Board of Ordnance, when we consider how impossible it is that *any thing military* could be mismanaged under the Duke of Wellington, we shall not be so much surprised at the approbation expressed of the constitution of the Board of Ordnance by its illustrious chief. I think, however, it was principally to the *executive efficiency* of that board that his Grace spoke; and, if I rightly remember, the Finance Committee of the House of Commons bore witness to the extreme profusion of expenditure which, during the war, pervaded every branch of that department. "Each member of "the board is individually responsible," we are told, "for his own "department," "and they meet once a week in board for general

Finally, I may advert to a scheme which, we are told, has been suggested for the formation of a supreme government and council for India.

The plan is, as I understand, to have a Governor-General, with

" control;" that is, the individuals themselves meet to control one another, " in their capacities as members of the board." Where duty is merely *executive*, there is no doubt that individual function is the most efficient; but, with great deference to such high authority, as an organ of government for the purpose of controlling public establishments and expenditure, I should conceive the constitution of the Board of Ordnance in England highly defective. I conceive that no body of individuals, *laying all of them under individual responsibility to one another*, ought to be intrusted *collectively* with control over themselves. It appears to me that " individual responsibility" is destructive of that independence of mind, and singleness of purpose, which are indispensable to the conscientious exercise of such power. The idea of a number of responsible agents meeting to check one another's accounts, would be considered a very extravagant solecism in the science of economy; yet in what other point of view can we consider the constitution of the Board of Ordnance, when we are told that " each member is responsible for his own depart- " ment; and that all those members meet in board for general control ?" Is it not to be feared, that instead of adequate control, such a system may degenerate into a mutuality of forbearance, which cannot be exercised but by a corresponding sacrifice of the interests of the state ?

There is no way, I apprehend, of constituting a really efficient board either for the Ordnance in England, or for the like description of duty in India (which is precisely that of the Military Board of Bengal), or indeed for any purpose whatsoever, except by employing as members of that board men who are really men of business, scientific, as well as practical men, who have had experience in the several branches of the service, who have been distinguished in its departments, and whose whole attention shall be entirely devoted to the performance of their duty; without which, that forecast, and circumspection, and continuity of reflection on the important duty committed to their charge, so essential to perfect efficiency and economy, can never be obtained.

with a supreme council for India, of which the justices or chief justice of his Majesty's court of Calcutta are to be members; and it is proposed to add, besides the usual members from the Company's service, and the Commander-in-Chief, one or more individuals from the mercantile community, or other inhabitants of Calcutta not in the service either of the Company or the King.

Here we have a cast of the Canadian "legislative council," with a little infusion of the representative in it. But taking the list as above, and looking to the professions, and to the official functions, of the proposed members, or the qualifications which they may be supposed to possess, I can see nothing in the scheme which does not call for unqualified disapprobation. I am at a loss to know what qualifications a justice of the King's court of Calcutta, merely as such, can pretend to for the government of India. To make law for India, and to administer therein the law of England, are very different callings; and if the English judge have no special qualification, then it is clear that his judicial functions are totally irreconcileable with the situation of member of government. The supreme court is formed to protect British subjects in their rights and liberties, even against government; what confidence, then, could any Englishmen have in the decision of the chief-justice member of government in any case in which government might have an interest? Ought we to volunteer to place a man on the bench to judge in an appeal against his act at the council board? Ought we, by way of improving the administration of justice, to unite the legislative with the judicial functions? Is this the way to maintain the liberty, such as it is, of Englishmen in India? Such an amalgamation of the King's court with the Company's council would, in fact, annihilate the court entirely.

We

We are, moreover, to keep in view that one chief object of the government of India, if not the chiefest, is the welfare of the people. Now, until it can be shewn that the education and pursuits of the projected members are such, that they must, of necessity, qualify them in a pre-eminent degree for ruling India; unless, indeed, it can be shewn that men are better qualified for the government of a country for being strangers to the people, to their language and laws, I shall take leave to submit, that out of the great body of the Company's servants, a council may be found for India, without the aid of the King's justice or a free-merchant. Have the men who have distinguished themselves in India been King's judges or free-merchants? Is it to the actions, or to the writings, of either class that we are to appeal for their competency? I am far from wishing to disparage the valuable classes of men now in question, but to bring them forward, on such an occasion, and for such a purpose, is a glaring and an obvious disparagement to the whole of the public servants of the state. The government of India is not, cannot be, representative. In comparison with the *general* welfare, the classes to which those men belong would, at all events, be too insignificant to warrant representation. As yet, if they have separate interests, it is in England, and not in India, that they can be represented. But, to found the contemplated change on the assumption that the whole service of the Company, consisting of men who have devoted their lives to the acquirement of every species of knowledge which is essential to the good government of the country, cannot furnish an efficient council of government, without the aid above-mentioned, is one of those extravagant notions, which, even in this speculative age, are seldom propounded. The local government of India will not admit of such a mixture as this, of such an admixture of discordant

cordant elements. If real power were given to such a council, the whole nature of the government would be changed; no governor-general could stand against them for a day. If they had not power, then they would be mere lumber, impeding the action of the machine they were intended to improve.

APPENDIX.

COLONEL SIR THOMAS MUNRO'S SURVEY.

The accompanying statement contains an abstract of every thing that seems necessary in an agricultural survey. It shews the population, the number of cattle and sheep, and the extent and value of all land, cultivated and waste; and though unavoidably somewhat long, it is so plain that it may be easily understood from the slightest inspection; and I shall, therefore, have occasion to make only a few remarks upon the principal heads.

The following instructions were issued by Colonel Munro to the Surveyors, &c.

Instructions to Surveyors.

1. All your measurements, of every description of land, wet and dry, are to be made with a chain of thirty-three feet.

2. Your accounts are to be kept in acres, goontas, and anas. One square chain is one goonta, and forty such goontas are one acre.

3. When you arrive in a village, you will, previously to beginning the measurement, take a muchulka from the potail and curnum, according to the form which has been delivered to you.—N.B. This form states that the curnum's account of cirkar and enaum land, house and shop-tax, and every article of revenue, is true; and that, if it is found to be false in any point, he will forfeit his office.

4. The curnum and potail of the village must attend you during the measurement, and you must give timely notice to the ryots, in order that they may be present at the measurement of their own fields.

5. In measuring a village, you will begin at one side and proceed regularly on, making the field first measured No. 1, the next No. 2, &c. These numbers will serve to distinguish fields, when there are several of the same name in one village. After measuring the dry, you will measure the wet land, and number the fields in the same manner, beginning again at No. 1, 2, &c.; and the same rule must be observed with respect to baghayet or garden land.

6. The

6. The name of every field must be entered in your accounts. Where fields, whether cultivated, uncultivated, or waste, have a name, you will insert that name: where they have none, you will, in concert with the potail and curnum, give them one.

7. In the account of the measurement of every field, whether wet or dry, you will always specify the names and numbers of the fields by which it is bounded.

8. In dividing fields of red land, you will mark the division by a bank of earth or stones; but in black land, you will always mark the division by setting up boundary stones, because the polli, or bank of earth, would injure the black by overrunning it with long-rooted grass.

9. You will pay the hire of the coolies employed in marking boundaries either by stones or banks of earth.

10. If a field, not being larger than may be cultivated by one plough, is ploughed in part only and the rest waste, you will not divide it, but measure it as one field.

11. If a field is too large to be cultivated by one plough, you wil. divide it into two or three fields, as may be necessary. As the extent of land cultivatable by one plough depends upon the nature of the soil, you will be guided by the custom of the village, and the opinion of the potail, curnum, and principal ryots, in regulating the size of fields.

As the subdivision of a large cultivated field is ordered to be made solely upon the supposition that if thrown up by the present occupant it may be left waste, from there being few ryots in the village who have the means of cultivating it; yet if, from the state of agriculture in the village, there is no danger of its being left uncultivated, it will not be necessary to divide it, even though it should be too large for one plough.

12. In the measurement of dry land, you will class black and red land separately.

13. If a quarter only of a field is cultivated, enter the whole field as waste; if half only is cultivated, enter half as cultivated and half as waste; and if three-quarters are cultivated and one-quarter waste, enter the whole as cultivated.

14. In measuring uncultivated land, you will divide it according to the old marks or bounds: should you meet with waste (anade) having no such marks, you will direct them to be made. You will class uncultivated lands into fallow of one, two, three, four, and five years; waste from five to ten, ten to fifteen, and fifteen to twenty years; and

as anade, or waste, which has either never been cultivated, or not been cultivated within twenty years.

It is only when waste is divided into fields, or found in small pieces, that it is to be measured by separate fields. When lying in large undistinguished tracts, it is to be measured in the gross; but whether found in small fields or in extensive commons, it is to be named and numbered.

If, after measuring twenty cultivated fields numbered 1, 2, 3, to 20, a piece of waste follows, it will be numbered 21, and the cultivated field, which comes after, 22, and so on, as often as waste intervenes; but as the largest piece of waste is usually surveyed after all the rest of the village is finished, it will, of course, be the last number. Suppose that this number is 50, then if at any future period it should, from the extension of cultivation, become necessary to divide it into fields, these fields will be numbered in succession No. 51, 52, &c. But this cannot be done in the case of the waste No. 21, because it is already followed by No. 22: when, therefore, No. 21 comes to be divided into fields, these new fields must be numbered No. 1 in 21, No. 2 in 21, &c.

15. When a field contains a few tamarind, kikar, or other productive trees, you will make no deduction for the land under their shade, because the ryot derives a profit from them; but where there is a beher tree, or several other unproductive trees together, forming a shade, you will measure the land occupied by it, and deduct it from the field.

16. In measuring "purrempoke," or land that cannot be cultivated, you will specify the extent of forts, of pettahs, of open villages, of the court-yards of houses, with the number and kinds of trees in such yards, of the banks of tanks, rivers, nullahs, ravines, hillocks, roads, kullar or barren land, wells, salt mounds, and of topes, stating the numbers and species of trees. You will also specify the purrempoke in the fields of ryots and deduct it from their land.

17. In tarbunds, or palmirah topes, you will insert the number of trees, and class them into male and female, young, productive, and old or past bearing. You will also measure separately the divisions or parts of the tope occupied by different ryots.

18. You are not to measure hills or beds of rivers.

19. You will consider as garden, or baghayet, all lands, in whatever manner they may be watered, that do not yield rice, but produce raggy,

raggy, juware, tobacco, red pepper, &c., and you will enter as garden so much only as can be watered.

20. In measuring wet land, you will specify whether it is watered by large tanks, by great nullahs such as those of the Toombuddra and Pennah, by kumple or draw-wells, or by kushems or nullahs, proceeding from springs.

21. You will enter as wet land all gardens having a constant supply of water, and containing cocoa-nut and other fruit-trees. You will specify the quantity of waste land between the rows of trees of land cultivated, where the trees are thinly scattered; and of cultivated land where there are no trees. You will note the number of plants, of young trees, if productive, and of old or unproductive trees, and specify whether they are cocoa-nut, soopari, tamarind, jamoon, lime, or orange, &c. You will also enter as wet land plantations of betel and sugar cane, and likewise land producing tobacco and red pepper, &c. provided there is water enough for rice.

22. In wells and river kumples, where the land, having formerly produced rice, is now, from some cause or other, cultivated with dry grain, you will enter as wet land all that land which is marked out as ateh kutt or rice fields, and which can be watered; but if from the scarcity of water such land is in particular years only cultivated as wet, you will measure it as dry.

23. When fields of garden or wet land are too large, they must be subdivided in the same manner as those of dry.

24. You will measure the beds of tanks, and class the lands included in them according to the nature of the soil.

25. You are to enter as cultivated land the cultivation of the last Fusly only, that is to say, of the year previous to that in which the survey takes place; for if lands cultivated in former years, but waste last year, or cultivated in the last, but not in the present year, are entered in the survey as cultivation, the account will not exhibit a true statement of the cultivation of any one year.

27. When boundaries are disputed, if the lands in dispute are cultivated, and have been annexed to one village since the year Kelah, or the establishment of the Ahkam Namah, enter them in that village: if the lands are anade, or old waste, enter them in the village which agrees to walk along the boundary.—(*Sic in orig.*)

28. To prevent the survey from being retarded by indolence, you must measure daily, whether cirkar or enaum land, as follows:—

Of

Of dry land.

If cultivated ..... 5,000 chains.
If uncultivated, but divided into fields ..... 6,500 do.
If undivided waste or common..... 25,000 do.

Of wet land.

If cultivated ..... 1,500 do.
If uncultivated ..... 2,500 do.

This will give you at the rate of six pagodas, or about twenty rupees monthly.

31. As the chain is frequently broken, and some of its links lost. you will compare it from time to time with the standard which you have received for that purpose.

32. If, on trial by the examiner, your measurement is found to be false, you will be discharged if it has proceeded from negligence, and punished if from design.

33. You will inquire into unauthorized new enaums and concealed lands. If you discover any not entered in the accounts of the curnum, you will receive, on proof, one-half the amount (*qy ?* of rent); and the persons through whose information you make the discovery, one quarter of your half.

34. You will be allowed two chain-bearers, and one-quarter of a cantaray fanam for each, daily. You will pay them, and also the coolies employed in making the boundary marks, daily, in presence of the potail and curnum, and take their receipts.

35. You will receive half a pagoda monthly for oil and stationery.

36. You will let the curnums enter the account of the measurement, and you will compare your abstract with theirs, daily.

37. You will deliver both your rough and fair accounts of measurement to the examiner.

Note.—The word "field" is here used, as it appears, to mean as much land as can be cultivated by one plough, where the boundaries are not definite.

Instructions to Examiners of the Survey.

1. As you are appointed to the superintendence of a party of ten surveyors, you will regulate their survey as follows:—

2. When a village has eight or ten large mujerahs, you will send two surveyors to each; but if the mujerahs are small, only one.

3. When there is a large mouzah without any mujerah, you will mark out by flags the portions to be surveyed by each surveyor, and let them

them compare their accounts of boundaries with each other, so as to prevent any land from being omitted in their respective limits.

4. When a mouzah is small, and you think that the survey will be accelerated by employing only a part of the surveyors in it and sending the rest to another mouzah, you will do so.

5. If the mujerahs of a mouzah have old boundaries, you will adopt them: if they have no visible boundaries, you will set up stones in order to distinguish them.

6. You will take care that no land is omitted between the respective limits of your own surveyors, or between their limits and those of other parties of surveyors.

7. You will take the rough accounts (the kham chitah, or field-book, *qy?*) from the surveyors, and make by them all your comparisons of measurement.

8. In your examinations of measurement, you will attend particularly to the fields of potails, curnums, and khoodbash inhabitants.

9. You will examine by remeasurement daily as follows:—dry, 500 chains, or wet, 150 ditto; and transmit your examination report in the following form:—

Marguz, a tree-field, belonging to R. R., cirkar land to the north of G. G.'s field, measured by A. B., 4 acres 18½ chains.

Viz. East to West 15
North to South ... 11½
—— 178=4 18½

But by azmayest, or trial ..... 5 acres, 1 chain.

Viz. East to West 16¾
North to South ... 12
—— 201=5 1

10. You will transmit your trials with the rough accounts to the cutcherry, and give the fair ones to the accountants (awurdah now is).

11. In examining the measurement, if the excess of the land on trial is above twelve and a half per cent. in dry, or ten per cent. in wet, you will add the difference to the field. If the deficiency is more than ten per cent. in dry, or five per cent. in wet, you will deduct it.

12. If in any village you find the measurement of the whole, or the greater part of the fields, incorrect, and that a new survey is required, you will state the circumstance and obtain leave before you begin.

13. If

13. If any ryot complains that the measurement of his field is not fair, you will measure it again.

14. You will enquire into new unauthorized enaums, extra collections on land, and articles of the village, taxes suppressed in the accounts. Of all such discoveries you will receive one-half, as a reward, and one-quarter of your half will be paid to the person from whom you may have received your information.

15. As the chains are frequently broken, you will compare them occasionally with the standard measure.

16. You will get two chain-bearers from the tollies or tallaries of the village. You will pay them one-quarter of a cantaray fanam each, daily, in the presence of the potail and curnum, and take their receipt, and you will send a statement of the expense with your monthly account.

17. You will divide all the villages that fall to your share according to the number of surveyors, write the different shares on an equal number of papers, and let the surveyors draw lots, and measure the villages which their respective lots contain.

18. Your party is to measure only such villages as may be allotted to it. If, in the hopes of getting more pay from black land, your surveyors measure the lands allotted to another party, they will receive no pay for them, and be fined.

19. After finishing the measurement of the villages allotted to your party in any district, if there is any party which has not begun its measurement in that district, you will measure its villages; but if there is no party which has not commenced, you will proceed to the next district.

20. You are not to measure in four or five days the number of acres prescribed to you for the month, but to measure daily; except on those days when you are on your way to another district. The measurement may be more in some days and less in others; but the prescribed quantity for the month must be completed.

21. You are not to try the measurement of a part of the surveyors in one month, and that of the rest in another; but you are in each month to try the measurement of all the surveyors.

22. You are not to remain behind the surveyors; because, unless you are with them, you cannot compare with them the false measurement which you may discover. If you are not always in the same district with them, you will be dismissed.

23. With your monthly abstracts you will send a list of the surveyors

veyors and peons, present and absent. You will give your rough accounts of measurement examined to the aumildar, who will forward them to the collector's cutcherry, and you will take the aumildar's receipts for the accounts.

Instructions to Assessors or Terrim Muttaseddies.

1. You are to class the land surveyed by ten surveyors according to their rate or terrim. In settling the terrim, you are to assemble the potail, curnum, and ryots of the village, and also the heads of the neighbouring villages, and do it with their advice.

2. You are to class the lands of the whole mouzah into first, second, third, &c. according to their rates. If the best land is in the cusbah, you will enter it in the first rate. If the first land of any of the mujerahs is only equal to the second of the cusbah, you will enter it on the second rate. If, on the contrary, the first land of the cusbah is equal only to the second of the mujerah, you will enter it in the second rate; for the rates are to be for the whole village, generally, and not for each mujerah separately.

3. In fixing the rates, the ryot who occupies the land must be present. You are to consider the condition of the land, and not of the ryot, for the one is permanent but the other is not: and you are to be careful not to enter the first rate as second, or the second as first, &c.

4. You are to mention the colour of the land, in order that in fixing the rent, the class to which it belongs may be the better known. The colours are as follow :—

Regur.

1 Black, mixed with stones.
1 Black ..... chunam stones.
1 Black ..... white earth.
1 Black ..... sand.
1 Black ..... pebbles (gargatt).
1 Black mould.

6

Red.

1 Red, mixed with stones.
1 Red ..... sand.
1 Red earth.

3

5. You

5. You will inform the ryots that the whole land of each class will be assessed at the same rate, and caution them to class the fields according to the real quality.

6. In classing the lands you will proceed as follows:—

Dry, at half a cantaray fanam difference for each rate.

Rate.	Acres.	Rate per Acre.
1	100	1 0 0
2	50	0 9 8
3	40	0 9 0
4		0 8 8
5		0 8 0
6		0 7 8
7		0 7 0
8		0 6 8
9		0 6 0
10		0 5 8

And so on to the twentieth rate.

Bagayet, at five cantaray fanams between each rate.

Rate.	Acres.	Per Acre, Can. Pag.
1	10	10 0 0
2	15	9 5 0
3		9 0 0
4	40	8 5 0
5	50	8 0 0
6		7 5 0

And so on to the twentieth rate.

Wet, at five cantaray fanams difference between each class.

Rate.	Acres.	Per Acre, Can. Pag.
1	10	6 0 0
2		5 5 0
3		5 0 0
4		4 5 0
5	40	4 0 0
6	50	3 5 0
7		3 0 0
8	20	2 5 0

And so on to the twentieth rate.

The above is given as an example for your information. You are not, however, to enter the money rates, but only to take care that the lands

lands are correctly classed. The classes may be as numerous as the different kinds of land are; but in one mouzah you are not to make more than six of garden, eight of wet, and ten classes of dry.

7. In regulating the proportions of the decrease of rent between each class, you will be guided by the quality of the land, and make it in some villages for dry, one-half a cantaray fanam; and in other villages, where the rent is low, one-fourth of a cantaray fanam.

For garden, 5 and 2½ cantaray fanam.
For wet, ... 5 and 2½ ditto.

If in a village you find that the difference between any two classes of land should be one-half of a cantaray fanam, you will make the same difference between every other class; and in the same manner, if the difference between any two is one-fourth of a cantaray fanam, you will continue that difference through all the other classes; and in garden and wet, if the difference between two classes is two and one-half, or five cantaray fanams, you will make one of these rates the difference between all the other classes; but you must not have both rates of difference in the same village.

N.B. The rent of dry land in some of the western districts was found to be so low, that the rate of decrease (oottar) could not be restricted to one-fourth of a cantaray fanam without great inconvenience: it was therefore extended to one-eighth of a cantaray fanam, or two anas, and the following additional articles were inserted in the instructions: —

8. Though you were formerly directed to restrict the rate of decrease (oottar) in dry land to one-fourth of a cantaray fanam, yet as the accounts must be regulated by the land, and not the land be made to suit the accounts, and as the usual rent is in some places only from one-fourth to one cantaray fanam per acre, if there are seven or eight classes rising one-fourth of a cantaray fanam each, it will make the rent too high: you will therefore, if there are only three or four classes, keep the oottar at one-fourth of a fanam; but if there are more, you will make the oottar two or three anas of a cantaray fanam, according to the custom of the village.

9. In writing the abstract of the village, you will state at the head of the column of dry, wet, and garden, the oottar, or rate of decrease between the different classes—if dry, one-eighth, one-fourth, or one-half of a cantaray fanam; if garden or wet, two and one-half, or five cantaray fanams.

10. In

10. In classing the land, you will consider both the nature of the soil and the expense of labour: for instance, if one field is near the village and another of the same quality at a distance from it, the distant field must be rated lower, because it requires more labour to watch and also to plough it (but then it is exempt from other disadvantages of proximity to the village, as cattle, goats, birds destroying it, and people passing through it and going into it, *qy?*). You will make allowance for the additional expense and lower the rate accordingly, so that it may be cultivated with the same ease as the land of the same kind near the village. You will also, in garden and wet land, make allowance for the deficiency of water; and where there are nullahs and wells, for the extra labour, and reduce the class.

11. You are to class the land not merely by its intrinsic quality, but also by its actual state of cultivation. Thus, if two adjoining fields of the same quality with respect to soil are held, the one by a poor and the other by a substantial ryot, you will not enter them in the same class, but you will place the field of the poor ryot in such lower one as its unimproved state may render necessary.

12. If in one field, whether dry, wet, or garden, there are two or three different kinds of soil, you will not class the kinds separately, but take the average of the whole and make one class.

13. In classing wet and garden, observe the following detail:—Divide the lands of tanks and nullahs into one-crop and two-crop land. In well-land, consider whether the well has water for one or two crops, and make the class higher or lower accordingly.

14. In classing betel and cocoa-nut, &c. gardens, you will enter the land in the same class as land of the same kind on which there are no fruit-trees, without making it either higher or lower on account of the trees.

15. In garden, you will enter as garden only what is now cultivated; and you are not to add to it any of the neighbouring dry land, on the supposition that there is water enough to convert it hereafter into garden.

16. In garden, which is now waste (anade), you will examine whether, when last cultivated, the crop was a dry or a wet one. If dry, you will class the land as dry; and if wet, as garden.

17. In classing dry waste (anade) you will proceed as follows:—If it is divided into fields by old boundaries and has been so measured, you will class each field separately: if there are no old boundaries or land-

marks

marks, you will class it by the divisions into which the surveyors may have formed it.

18. In classing the lands, you will take the rough account of the survey, and class according to the order of the numbers in that account; after which you will separate the cirkar and enaum, and the cirkar cultivated and uncultivated and waste land, and class the whole according to their respective rates. You will not add up the fields ryotwar, for it is not necessary to shew what each ryot occupies; but in enaum lands you will add up the fields both in their classes, and under the name of the person to whom they belong.

19. You are to class the lands, dry, garden, and wet, as they are distinguished by the surveyors. You are not to alter their classification, but you may note where you think it is wrong.

20. You are to class monthly three thousand cantaray pagodas of land cultivated by the rent of the preceding year, for which you will receive ten star pagodas monthly. If you class a smaller quantity your pay will be reduced in the same proportion, *viz.*

For cantaray pagodas	2,750,	pay star pagodas	9
Do.	2,500		8
Do.	2,260		7
Do.	2,000		6

If you class a smaller quantity than two thousand, you will be dismissed; but you will receive no increase above ten pagodas pay, whatever quantity you may class. If, however, in the course of the year, you class more in one month and less in another, the difference will be allowed, provided it does not on the whole exceed ten pagodas monthly.

21. You are to examine if fields have been concealed or articles in the village taxes suppressed, but you are not to enquire into differences of rent or extra collections.

22. You will not enter the land forming the beds of tanks, and barren or useless, purrempoke; but you will enquire how it is cultivated when the tank is dry, and class it accordingly.

23. You are to compare your accounts with the curnum daily, and let him take a copy of them on the spot. You may carry him and the potail to the neighbouring villages, to give their opinion on classing the lands of them, but not to write the account of any but of their own villages. If you make out your accounts without letting the curnum take a copy, your pay will be stopt every month in which this is done.

24. In

24. In making out your abstract of the land in classes (kessemwar goshwarah), you are not to enter as cultivated the cultivation of two or three years, but only that of the preceding year. If more is entered you will be dismissed.

25. As the surveyors, in order to get more pay, make out their accounts hastily and give false additions, you will make your gomastahs compare them, and send a list of all errors monthly to the treasury, showing the dates of measurement, and the differences of the number of acres.

26. The land classed by you will be examined by the head assessor (sirterrim), and if any material error is discovered, you will be dismissed.

27. You will make out the accounts of each village according to the forms, and when the district is completed give the whole to the aumildar. You are not to keep the accounts after the district is finished, nor to carry the curnums to another district.

28. You are not to wait for the (sirterrim) head assessor, but as soon as you finish one village proceed to another.

29. You are not to dismiss or employ gomastahs or peons without reporting and obtaining authority.

Instructions to Sirterrimdars or Head-Assessors.

1. As you are appointed to superintend and correct the assessment of five (terrimdars) assessors, you will divide your share of each district into five divisions, and give one to each terrimdar; and you will give him, at the same time, the survey accounts, which will be delivered to you by the aumildar.

2. You will examine the classification of the lands, and you will fix the rates of assessment in conjunction with the potails, curnums, and principal ryots; and if you wish for the assistance of any intelligent persons formerly employed in the revenue, the aumildar will send them to you on your application.

3. In making the assessment, you must examine all circumstances that may assist in enabling you to form a right judgment. You must consider the ahkam namah, or assessment of Tippoo Sultan, the present extent of cultivation, the condition of the ryots, and the nature of the soil. You will then fix the rate of assessment of each class of land in dry, garden, and wet. You will explain it to the ryots and obtain their consent to it, and you will take care that it is not so high as to impede cultivation hereafter. You will also examine well the kamil

rent

rent of each village, the detail of the ahkam namah and of the rent of the last twenty years, and enter them in your statements.

4. If you find that any of the terrimdars have classed the lands wrong, whether from ignorance or corrupt motives, you will report in order that they may be dismissed.

5. Where you find that the terrimdars have entered two or three kinds of land in the same class, you will transfer each kind to its proper class.

6. As the classing the fallow and waste lands at too low a rate might induce the ryots to occupy them and throw up their cultivated lands, to the injury of the revenue, you will therefore keep in view, that waste lands are to be so classed as not to discourage their cultivation, and at the same time as not to give them any advantage over the old cultivated lands.

7. As your assessment is regulated by the quality of the land and its actual state of cultivation, and as the Brahmins and other Tyargar, or privileged castes, and the cullgoottah shatrium and guddad landholders, have always held, and must still be permitted to hold their lands at a reduced rent, and as this remission must be deducted from your assessment and thereby reduce its amount, you must be careful, in comparing your assessment with that of former periods, to deduct the remission previously.

8. You will ascertain whatever has been allowed by the custom of the village as cullgoottah (low rent to different castes) shatrium, enaum, and low-rented villages to Brahmins, and guddad (quit-rent for levelling rugged land), and show the amount of each separately in your abstract.

9. You are not to detain the terrimdars until you arrive yourself to examine their assessment, but let them, as soon as they have finished one village, proceed to another.

10. If a part of your terrimdars have finished their divisions, while another part is still behind in a different district, they will also finish the divisions which have not been begun before they proceed to new district.

11. You will send the pay abstract of terrimdars and peons monthly to the aumildar, who will get the amount from the treasury, and you will issue it and send a receipt.

12. When the assessment of a district is finished, you will deliver all the accounts to the aumildar and take his receipt.

13. You

13. You will class and assess monthly 15,000 cantaray pagodas of land cultivated by the rent of the preceeding year, and in case of any deficiency, your pay of fifteen pagodas will be reduced in the same manner as that of the terrimdars.

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