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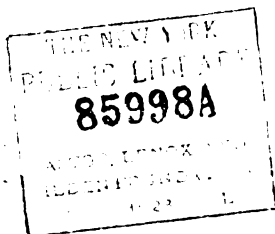
THE
ADMINISTRATION OF JUSTICE
IN
BRITISH INDIA;
ITS PAST HISTORY AND PRESENT STATE:
COMPRISING AN
ACCOUNT OF THE LAWS PECULIAR TO INDIA.

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P R E F A C E.

THE recent disastrous events in India have awakened in the public mind a lively, though somewhat tardy, interest in the affairs of that country, and ere long the whole subject of our Indian Government will be discussed in Parliament. Perhaps no branch of the system for governing any country is more important than that which provides for the Administration of Justice—with regard to British India there is, *certainly, not one*: at the same time it may safely be asserted that no department is less generally understood—I might almost say more universally misunderstood—in England than that relating to the manner in which the Laws have been framed and administered since we took upon ourselves to stand forth as the Ruling Power in India. Every work, tending to afford information on the subject, must therefore be productive of benefit. For several years past I have devoted much of my time, both professionally and as an Orientalist, to the study of the Law of India; and, in the years 1849, '51, and '52, I published an Analytical Digest of the decisions of the Courts in India, and of the Judicial Committee of the Privy Council, to which it is unnecessary to allude more particularly in this place. To this Digest I prefixed an Introduction, which was a separate treatise in itself, on the history and then actual state of the Administration of Justice in our Indian territories. It has lately occurred to me that the publication of a new edition of this Introduction, in a somewhat modified form,

with additions, making it applicable to the present day, might be of use to those who will have to take a part in the approaching discussion, and be at the same time of interest to the public at large; and I accordingly applied myself to the task. The following pages are for the most part a reprint of the Introduction to which I have alluded; but I have somewhat altered the original arrangement, and have spared no pains in endeavouring to make my present work as complete as possible, and to render it a plain and perspicuous account of the past and actual Judicial systems, and of the Laws as administered in India, from the time of Clive to the year 1858. It is to be hoped that all parties will approach the great India-question calmly and dispassionately. It ought not to be a party-question at all—still less ought that portion of it which relates to “Justice” be affected in the smallest degree by party feeling. It is in this spirit that I have tried to write. My work pretends to be nothing more than a mere chronicle—a mere record of Facts—but Facts which should be known to all who wish to ameliorate the condition of our Indian fellow-subjects. I will say yet more—Facts which ought to be, *must* be, studied and understood by those who have to legislate for India, if India is to be preserved to Great Britain for the mutual advantage of both countries. I have abstained from any comment upon the various measures proposed or adopted; except in some very few instances where my own strong conviction has induced me to express opinions which may perhaps be entitled to some weight with those who have not considered the subjects involved so attentively as I have done. I had at first intended to make this treatise more popular, by omitting many of the details, especially in those portions of it which treat of the

laws peculiar to India, and the bibliography of such laws ; but as I have been advised by the most competent persons that my work, in its present form, may possibly be of permanent utility as well as of casual importance, I have, in pursuance of their advice, retained and even added to the details, the omission of which I had originally contemplated. I was the more easily induced to adopt this plan, since the account I have given of the Native Laws, and the bibliographical portions, are the result of the reading of many years ; and, so far as I know, there nowhere exists so ample a direction to the student, pointing out the works by which a knowledge of the Laws peculiar to India can be acquired. The comparatively superficial reader, who may wish merely to gain a practical acquaintance with the judicial systems of British India, can pass over these details altogether, and will, I trust, forgive me for their insertion. In writing on a subject of such paramount importance, it should always be remembered, that it is very easy to say too little ; very difficult to say enough ; but almost impossible to say too much, if all that be said can be vouched for as true.

W. H. M.

25th March, 1858.

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INTRODUCTION.

IN order thoroughly to understand and appreciate the present system for the Administration of Justice in India, and before we can hope to improve upon it, it is obviously necessary to inquire into the history of such system, and the nature of the laws administered by the several Courts.

Scarcely any one of the many intricate subjects connected with our Government of India, offers so many difficulties as the study of the law, as administered in that country.

The laws themselves are so diverse and complicated in their nature, and are spread over such a multitude of volumes, that a long course of laborious investigation and patient study becomes requisite, before the student can see his way through the mass of legislation, which must appear to all, at the outset, an impenetrable chaos.

It is true that the Regulations and the Acts of the Legislative Council of India have been printed and published, and that various treatises on native law, both by European authors and in translations from the works of Hindú and Muhammadan lawyers, have appeared at different times. The Regulations, however, are frequently vague, and not easily to be construed, and from their voluminousness, and the manner in

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which they are framed, are always difficult of reference ; whilst, with regard to the native laws, a difficulty arises, on the other hand, from the paucity of the materials, and still greater obstacles present themselves on the ground of obscurity. The works on native law by European writers are unfortunately few in number ; and those translated from the original languages, though more numerous, are, from their nature, not calculated to be of much assistance to a beginner : the latter class treat of the doctrines of different schools, in many instances totally opposed to each other, without adverting to the distinction ; they abound with subtleties of reasoning supporting contradictory interpretations of the texts of the ancient lawgivers ; and they are in every case couched in terms difficult to be understood, unless after a long acquaintance with the method pursued by the Indian jurists in treating of legal subjects, and some preliminary knowledge of those religious systems with which the laws are intimately connected, and of which, in fact, they form an integral part.

Elementary and practical works on the Law of India are almost entirely wanting. Nearly all the European authors who have written on the subject have principally devoted their attention to theories : each writer dilating upon the course which he conceives ought to be pursued in legislating for India, and neglecting to describe the judicial system which has been adopted and the laws as they now exist.

In the following pages I have endeavoured to supply to some extent this defect, and to set before the reader a concise but comprehensive treatise on the past and present systems for the administration of justice in British India, together with some account of the laws peculiar to that country, as well as of the works from which a knowledge of them may be acquired.

The diversity of the Courts and of the laws themselves, renders it necessary to divide the subject matter of this treatise into several distinct chapters and sections. These will comprise the history of the several Courts of Judicature and

of the judicial systems from their origin down to the present time, and a detailed account of the actual constitution of the Courts, and their powers and jurisdiction, as they now exist. The subject of appeals to England, and the laws peculiar to India will also be treated historically; and in my account of the latter I shall describe, at the risk of prolixity, at some length the sources whence the native laws are derived, and the works from which a knowledge of them may be most readily attained. I shall conclude by enumerating the different collections of reports of decided cases, which now exist in considerable numbers, and which constitute a class of works of the highest value for the ascertainment of the actual practice and doctrines of the Courts in India.

Before entering upon the particular description of the Courts and Laws it will be as well to premise that the inhabitants of India may, for judicial purposes, be classed into:—

1. British-European subjects and their legitimate descendants.
2. Hindús.
3. Muhammadans.
4. Other proper natives of Asia, being neither Hindús, Muhammadans, nor Christians.
5. Portuguese, Armenian, and other Christians, of native or foreign extraction, together with half-casts, or illegitimate children of British subjects by native mothers.

The Courts in which civil and criminal justice are administered to these several classes are of two distinct descriptions, viz.—

1. The Courts established under, and by, the Statutes and Charters of Justice granted by Royal authority, and which are presided over by Judges appointed by Her Majesty. These are commonly called the Queen's Courts. To these may be added Justices of the Peace, Magistrates, and Coroners.
2. The Courts established by the authority of, and presided over by Judges appointed by the Honourable East-India Com-

pany, and which are usually denominated the Sudder and Mofussil Courts, the Company's Courts, or the Courts for the Provinces. The Judges of these Courts are of two orders, covenanted and uncovenanted.

CHAPTER I.

HER MAJESTYS COURTS OF JUDICATURE.

1. THE SUPREME COURTS OF JUDICATURE.

(1) HISTORY OF THE SUPREME COURTS, THEIR POWERS AND JURISDICTION.

THE earliest power emanating from the Crown for the administration of justice in India dates as far back as the reign of James I., who, by Charter granted in the year 1622, authorised the old East-India Company to chastise and correct all English persons residing in the East Indies, and committing any misdemeanour, either with martial law or otherwise.

The first authority, however, for the introduction of British law in India was granted by Charles II., who, by Royal Charter dated the 3rd of April 1661, gave to the Governor and Council of the several places belonging to the Company in the East Indies power "to judge all persons belonging to the said Governor and Company, or that should live under them in all causes whether civil or criminal, according to the laws of the kingdom, and to execute judgment accordingly." And in the subsequent grants to the Company of the islands of Bombay and St. Helena, in the year 1669 and 1674, the Company were empowered to make laws and constitutions for the good government of the islands and their inhabitants; and to impose punishments and penalties, extending to the taking away life or member when the quality of the offence should require it, so that the punishment and penalties were consonant to reason, and not repugnant to, but as near as might be agree-

able to the laws of England. The Governor and Company, or Governor and Committees of the Company, were also authorised to appoint Governors and other agents for the said islands, to be invested with a power of ruling, correcting, and punishing his Majesty's subjects in the said islands, according to justice, by Courts, Sessions, and other forms of judicature, like those established in England, by such Judges and officers as should be delegated for that purpose.

An amended Charter was granted by Charles II. to the Company on the 9th of August 1683, which empowered the Governor and Council to establish Courts of Judicature at such places as they might appoint, to consist of one person learned in the civil laws, and two merchants, and to decide according to equity and good conscience, and according to the laws and customs of merchants.

These provisions were continued in the Charter granted by James II. in 1686; and a similar power was given to the new East-India Company by the Charter of the 10th William III., granted in Sept. 1698.

In the year 1726 the Court of Directors of the United Company¹ represented by petition to King George the First—“That there was great want at Madras, Fort William, and Bombay, of a proper and competent power and authority for the more speedy and effectual administering of justice in civil causes, and for the trying and punishing of capital and other criminal offences and misdemeanours.” Accordingly, the then existing Courts were superseded, and the East-India Company were empowered by Royal Charter, granted in 1726 the 13th year of the reign of King George I., to establish at each of the three settlements a Court, consisting of a Mayor and nine Aldermen, to be a Court of Record, and to try, hear, and determine all civil suits, actions, and pleas between party and

¹ The union of the old or London, and the new or English Companies was effected by the “Charter of Union” of 1702, and was completed under the award of the Lord High Treasurer, Lord Godolphin, in 1708. On the 25th March, 1709, the first General Court of the United Company was held.

party. From these Courts an appeal lay to the Governors and Councils, and thence to the King in Council, in causes involving sums above the amount of 1000 pagodas.¹ This same Charter also constituted Courts of Oyer and Terminer at each settlement, consisting of the Governors and Councils, for the trial of all offences, except high treason, committed within the towns of Madras, Bombay, and Calcutta, or within any of the Factories subordinate thereto, or within ten miles of the same; and the Governors and Councils were constituted Justices of the Peace, and were authorised to hold Quarter Sessions. Under this Charter all the common and statute law at that time extant in England was introduced into the Indian Presidencies.²

The Mayor's Court, which had been established at Madras, was abolished on the capture of that place by the French under Labourdonnais in the year 1746; but the town having been restored to the English in 1749 by the treaty of Aix-la-Chapelle, the Directors of the East-India Company represented to the King in Council that "it would be a great encouragement to persons to come and settle at that place, if a proper and competent judicial authority were established there;" and further, that it had been found by experience that there were some defects in the Charter of 1726.

Under these circumstances, King George II. granted a new Charter in the year 1753, re-establishing the Mayors' Courts at Madras, Bombay, and Calcutta, with some not very material alterations. By this Charter these Courts were limited in

¹ This is the earliest use of the word *pagoda*, applied as a designation of value in money out of the limits of Madras. It afterwards found its way into the Bengal Charter of Justice, although the pagoda is a Madras coin, and was never at any time current in Bengal. The value of the pagoda is about eight shillings English money. The amount appealable to the Sovereign in Council has been altered, and fixed at the sum of 10,000 Company's rupees for all the Courts in India, by the order in Council of the 10th of April 1838.

² Clarke's Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal, Pref. p. iv. 8vo. Calc. 1829.

their civil jurisdiction to suits between persons not Natives of the said several towns ; and suits between Natives were directed not to be entertained by the Mayors' Courts, unless by consent of the parties. The jurisdiction of the Government Courts in criminal cases was also limited to offences committed within the several towns and the Factories or places subordinate thereto, omitting the words, "or within ten miles of the same," contained in the previous Charter. At the same time, and by the same Charter, Courts of Requests were established at Madras, Bombay, and Fort William, for the determination of suits involving small pecuniary amounts. These last Courts will be treated of separately.

The Seventh Report of the Committee of Secrecy, appointed to inquire into the state of the East-India Company, after a detailed description of the Courts of Judicature in Bengal, observes upon the constitution and defects of the Mayors' Court, and remarks, "that although it is bound to judge, at least where Europeans are concerned, according to the laws of England, yet the Judges are not required to be, and in fact have never been, persons educated in the knowledge of those laws by which they must decide ; and that the Judges were justly sensible of their own deficiency ; and that they had therefore frequently applied to the Court of Directors to lay particular points respecting their jurisdiction before counsel, and to transmit the opinion of such counsel to be the guide of their conduct."

Upon this Report the 13th Geo. III. c. 63, was passed. The Bill had met with considerable opposition on the part of the Company, but such opposition was fruitless ; it was carried by an overwhelming majority in the House of Commons on the 10th of June 1773, and on the 20th of June it passed the Lords without opposition, and received the Royal Assent on the following day. The 13th section of this Statute empowered His Majesty to erect and establish a Supreme Court of Judicature at Fort William in Bengal, to consist of a Chief Justice and three other Judges, being barristers of England or

Ireland of not less than five years' standing, to be named and appointed from time to time by His Majesty, his heirs and successors. The same section declared that the said Supreme Court should have full power and authority to exercise and perform all Civil, Criminal, Admiralty, and Ecclesiastical jurisdiction; and to form and establish such rules of practice, and such rules for the process of the said Court, and to do all such other things as should be found necessary for the administration of justice and the due execution of all or any of the powers, which, by the said Charter, should or might be granted or committed to the said Court; and also should be at all times a Court of Record, and should be a Court of Oyer and Terminer, and Gaol Delivery, in and for the said town of Calcutta and Factory of Fort William in Bengal aforesaid, and the limits thereof, and the Factories subordinate thereto. The Governor-General and Council, and the Judges of the Supreme Court, were, by the 38th section of the same Act, authorised to act as Justices of the Peace, and to hold Quarter Sessions.

The Supreme Court of Judicature at Fort William in Bengal was accordingly established under the above Statute, by Royal Charter dated the 26th of March 1774; and it is under this Charter that the Supreme Court is now held. It will be useful here to state shortly some of its provisions. By the 13th section, the Supreme Court at Calcutta was empowered to try and determine all actions and suits arising in Bengal, Behar, and Orissa, and all pleas, real, personal, or mixed, arising against the United Company and the Mayor and Aldermen of Calcutta, and against any of the King's subjects resident in Bengal, Behar, and Orissa, or who should have resided there, or should have debts, effects, or estates, real or personal, within the same, and against the executors and administrators of such subjects, and against any other person who should at the time of such action being brought, or when any action should have accrued, be or have been employed in the service of the said Company, or the said Mayor and Alder-

men, or of any other of the King's subjects, and against all other persons, inhabitants of India, residing in Bengal, Behar, or Orissa, upon any contract or agreement in writing with any of the King's subjects, where the cause of action should exceed the sum of 500 current rupees, and when such inhabitants should have agreed in the said contract, that, in case of dispute, the matter should be determined in the said Supreme Court. The same section limited the jurisdiction thus given as follows; viz. that the said Court should not try any suit against any person who should never have been resident in Bengal, Behar, or Orissa, or against any person who should, at the time of action brought, be resident in Great Britain or Ireland, unless such suit or action against such person so then resident in Great Britain or Ireland should be commenced within two years after the cause of action arose, and the sum to be recovered should not be of greater value than 30,000 rupees. By the 18th section of the Charter the Supreme Court was constituted a Court of Equity, as the Court of Chancery in England. The 19th section constituted it a Court of Oyer and Terminer, and Gaol Delivery, for Calcutta and Fort William, and the Factories subordinate thereto, with power to summon grand and petit juries, and to administer criminal justice as in the Courts of Oyer and Terminer in England, giving it jurisdiction over all offences committed in Bengal, Behar, and Orissa, by any subject of His Majesty, or any person in the service of the United Company, or of any of the King's subjects. The 22d section empowered the Supreme Court to exercise Ecclesiastical jurisdiction in Bengal, Behar, and Orissa, as the same was exercised in the diocese of London, and to grant probates and administrations to the estates of British subjects dying within the said provinces. The 25th section empowered the Court to appoint guardians of infants and of insane persons, and of their estates; and by the 26th section the said Supreme Court was appointed to be a Court of Admiralty in and for the provinces of Bengal, Behar, and Orissa, and to hear and determine all causes and

matters, civil and maritime, and to have jurisdiction in crimes maritime, according to the course of the Admiralty in England. An appeal lay, under sections 30—33, from the decisions of the Supreme Court at Fort William to the King in Council. No appeal was to be allowed except the petition was preferred within six months, and the amount in dispute exceeded 1000 pagodas.

Shortly after the grant of this Charter arose those unfortunate contentions between the Governor-General and Council and the Judges of the Supreme Court at Calcutta, which, whoever may have been in the wrong, were certainly very discreditable to both parties. The unanimity which existed, however, between the disputants in every measure throughout these unhappy disagreements proves that the difference arose, not from personal feelings, or from a desire of an undue extension of their several powers, but from a defect in the law, arising from the obscurity of the Statute, of which it has been well remarked, "that the Legislature had passed the Act of the 18th Geo. III. c. 63, without fully investigating what it was that they were legislating about; and that if the Act did not say more than was meant, it seemed at least to have said more than was well understood."¹

The Legislature accordingly intervened; and, by the preamble to the 21st Geo. III. c. 70, and sections 2, 8, 9, and 10, of that Act, explained and defined the jurisdiction of the Supreme Court, declaring that the said Court had no jurisdiction over the Governor-General and Council for any act or order made or done by them in their public capacity; that if any Natives should be impleaded in the Supreme Court for any act done by order of the Governor-General and Council in writing, the said order might be given in evidence under the general issue, and should amount to a sufficient justification; that the Su-

¹ Letter from the Judges of the Supreme Court at Calcutta, dated Oct. 16, 1830. Fifth Appendix to the Third Report of the Select Committee of the House of Commons, 1831, p. 1284, 4to. edit.

preme Court should have no jurisdiction in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the Regulations of the Governor-General and Council; that no person should be subject to the jurisdiction of the Court by reason of being a landowner, landholder, or farmer of land or of land-rent; that no person should be so subject to the jurisdiction of the said Court by reason of his being employed by the Company or by the Governor-General and Council, or on account of his being employed by a native of Great Britain, in any matter of dealing or contract between party or parties, except in actions for wrongs or trespasses, and also except in civil suits by agreement of parties, in writing, to submit the same to the decision of the said Court. Section 17 of this important Act also reserved their peculiar laws to Hindús and Muhammadans in certain civil matters, as hereafter will be noticed; and the 24th section provided that no action for wrong or injury should lie in the Supreme Court against any person whatsoever exercising a judicial office in the Country Courts, for any judgment, decree, or order of the said Court, nor against any person for any act done by or in virtue of the order of the said Court.

By the 24th Geo. III. c. 25, s. 44, passed in 1784, all His Majesty's subjects, as well servants of the Company as others, were declared to be amenable to all Courts of Justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all criminal offences committed in the territories of any native prince or state, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been committed within the territories directly subject to and under the British Government in India.

By the 29th section of the 26th Geo. III. c. 57, all servants of the East-India Company, and all His Majesty's subjects resident in India, were made subject to the Courts of

Oyer and Terminer, and Gaol Delivery, for all criminal offences committed in any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the Company's trade.

The 30th section of the same Act declared that the Governor or President and Council of Fort St. George, in their Courts of Oyer and Terminer, and Gaol Delivery, and also the Mayor's Court at Madras, according to their respective judicatures, should have jurisdiction, as well Civil as Criminal, over all British subjects whatsoever residing in the territories of the East-India Company on the Coast of Coromandel, or in any other part of the Carnatic or in the Northern Circars, or within the territories of the Soubah of the Deccan, the Nabob of Arcot, or the Rajah of Tanjore.

Section 67 of the 33rd Geo. III. c. 52, re-enacted section 44 of the 24th Geo. III. c. 25. Section 156 of the same Statute extended the Admiralty jurisdiction of the Supreme Court at Calcutta given under the Charter; and the Court was empowered, by means of juries of British subjects,¹ to try, according to the laws and customs of the Admiralty of England, all offences committed on the high seas.

By the 37th Geo. III. c. 142, s. 1, the number of Judges of the Supreme Court at Calcutta was limited to three.

The Mayors' Courts at Madras and Bombay existed until the year 1797, when they were abolished and superseded by Recorders' Courts, established under the 37th Geo. III. c. 142. These Recorders' Courts consisted of the Mayor, three Aldermen, and a Recorder, who was to be appointed by His Majesty; and their jurisdiction extended to Civil, Criminal, Ecclesiastical, and Admiralty cases. They were empowered to establish rules of practice, and they were to be Courts of Oyer and Terminer, and Gaol Delivery, for Fort St. George and Bombay; and their jurisdiction was to extend over British subjects resident within the British territories subject to the Govern-

¹ Natives may now sit on juries.

ments of Madras and Bombay respectively, as well as those residing in the territories of native princes in alliance with those Governments. Their jurisdiction was also brought within the restrictions of the 21st Geo. III. c. 70; the laws of the Hindús and Muhammadans were reserved to Natives; and an appeal lay from their decisions to the King in Council.

The Recorder's Court at Madras was abolished by the 39th and 40th Geo. III. c. 79, and a supreme Court of Judicature was erected in its place, to be a Court of Record, and consist of a Chief Justice and two puisne Judges, who should be barristers in England or Ireland of not less than five years' standing. The powers vested in the Recorder's Court were transferred to, and to be exercised by, the Supreme Court, which was also directed to have the like jurisdiction, and to be invested with the same powers, and subject to the same restrictions, as the Supreme Court of Judicature at Fort William in Bengal. Letters patent, granting a Charter of Justice to the Supreme Court at Madras, were issued on the 26th of Dec. 1801.

By sections 99 and 100, of the 53rd George III. c. 155, all persons whatsoever were authorised to prefer, prosecute, and maintain, in His Majesty's Courts at Calcutta, Madras, and Bombay, all manner of indictments, informations, and suits whatsoever for enforcing the laws and regulations made by the Governor-General and Governors in Council, or for any matter or thing whatsoever arising out of the same. The Advocate-General at each of the several Presidencies was also empowered to exhibit informations in the said Courts against any person or persons whatsoever for any breach of the revenue-laws or Regulations of any of the said Governments, or for any fines, penalties, forfeitures, debts, or sums of money, committed, incurred, or due by any such person or persons in respect of any such laws or Regulations. Section 107 provided that where, by the Regulations, it would be competent to a party to prefer an appeal to the Court of highest appellate jurisdiction in the provinces, British subjects residing or trading, or occupying immoveable property within the provinces, should

be entitled to prefer, instead of such appeal, an appeal to His Majesty's Courts of Judicature at the several Presidencies. This section, however, has been since repealed by Act XI. of 1836; and no such right of appeal to the Supreme Courts now exists. Section 110 of the same Statute, after stating that doubts had been entertained whether the Admiralty jurisdiction of His Majesty's Courts at Calcutta, Madras, and Bombay, extended to any persons but those amenable to their ordinary jurisdiction, empowered the said Courts to take cognizance of all crimes perpetrated on the high seas, by any person or persons whatsoever, in as full and ample a manner as any other Court of Admiralty jurisdiction established by His Majesty's authority in any colony or settlement whatsoever belonging to the Crown of the United Kingdom.

The 4th Geo. IV. c. 71, passed in 1823, authorized the abolition of the Recorder's Court at Bombay, and the establishment of a Supreme Court of Judicature in its stead, to be a Court of Record, to consist of the like number of Judges as the Supreme Court at Fort William in Bengal, who should be barristers of England or Ireland of not less than five years' standing, and to be invested with the same powers and authorities as the said Supreme Court, and to have a similar jurisdiction and the same powers, and to be subject to the same limitations, restrictions, and controul.

The powers of the Supreme Courts at Madras and Bombay were placed upon an equal footing with those of the Supreme Court at Calcutta, in an explicit manner, by the 17th section of this Act, which declared that it should be lawful for the Supreme Court of Judicature at Madras, within Fort St. George, and the town of Madras, and the limits thereof, and the Factories subordinate thereto, and the territories subject to or dependent upon the Government of Madras; and for the Supreme Court of Judicature at Bombay, within the town and island of Bombay, and the limits thereof, and the Factories subordinate thereto, and the territories subject to or dependent upon the Government of Bombay, and the said Supreme Courts

respectively were thereby required, within the same respectively, to do, execute, perform, and fulfil, all such acts, authorities, duties, matters, and things whatsoever, as the Supreme Court of Fort William was or might be authorised, empowered, or directed to do, execute, perform, and fulfil, within Fort William in Bengal, or the places subject to or dependent upon the Government thereof. Letters patent, granting a Charter of Justice to the Supreme Court at Bombay, were issued on the 8th of Dec. 1823.

It may be remarked, that although by the 4th Geo. IV. c. 71, the Supreme Courts at Madras and Bombay are invested with the same powers as the Supreme Court at Fort William, there is no similar provision in any Statute in favour of the latter Court, that it shall exercise the same powers with the Supreme Courts at the other Presidencies.

It is unnecessary to enter more fully into the powers of the Supreme Courts at Madras and Bombay, as the Charters under which they are now held are founded upon that of the Supreme Court at Calcutta, and upon the provisions of the 21st Geo. III. c. 70.

There are some variations, however, in the Charters of the several Courts, that give rise to considerable doubt and difficulty, and these may be shortly alluded to. In the first instance, there is a difficulty with regard to the powers which the Justices of the Courts were to possess in the provinces as conservators of the peace, but this will more appropriately be noticed in another place. Again, the Supreme Court at Bombay is prohibited, by the 30th section of its Charter, from interfering in any matter concerning the revenue, even within the town of Bombay, which is in direct contradiction to the 53rd Geo. III. c. 155, ss. 99, 100. Natives are also exempted from appearing in the Supreme Courts at Madras and Bombay, unless the circumstances be altogether such as that they might be compelled to appear in the same manner in a Native Court; a provision which seems to place the jurisdiction of these Supreme Courts in such cases entirely at the

discretion of the Government, who regulate the Company's Courts as they please. This appears to be inconsistent with the duties assigned to the Courts by the Statutes. Lastly, with regard to crimes maritime, the 54th section of the Bombay Charter of Justice restricts the powers of the Supreme Court to such persons as would be amenable to it in its ordinary jurisdiction ; which is again at variance with the 53rd Geo. III. c. 155, s. 110, if the ordinary jurisdiction, as is to be inferred from the other portions of the Charter, be limited to British subjects.

By the Statute 9th Geo. IV. c. 74, ss. 7, 8, 9, 56, and 70, provisions are made, without any distinction between Native and British persons, for the trial by the Supreme Courts of accessories before or after the fact to any felony, and of any accessory before or after the fact, after conviction of the principal, though the principal be not attainted of such felony ; for the trial of murder or manslaughter, where the death, or the cause of death only, happens within the limits of the East-India Company's Charter ; and for the trial of bigamy, whenever the offender is apprehended or found within the jurisdiction of the Courts, although the offence may have been committed elsewhere.

The Supreme Courts at all the Presidencies are authorised under their Charters to appoint their own ministerial officers, and are also empowered to admit and enrol such and so many advocates and attornies as shall seem meet ; and no other persons but such advocates and attornies are allowed to plead or act for the parties.

By the Charters of the Supreme Courts at Madras and Bombay there were certain restrictions as to the admission and enrolment of advocates and attornies, which did not exist in the Calcutta Court, but these have been abolished by the 3rd and 4th Will. IV. c. 85, s. 115, and Act XIII. of 1845.

An appeal lies from the decisions of the Supreme Courts of Judicature to Her Majesty in Council in all suits where the

amount in dispute is of the value of 10,000 rupees.¹ This subject will be more especially treated of in a separate Chapter. The Supreme Courts are, by their Charters, vested with five distinct jurisdictions, Civil, Criminal, Equity, Ecclesiastical, and Admiralty ;² and they are enjoined to accommodate their process, rules, and orders, to the religion and manners of the Natives, so far as the same can be done without interfering with the due execution of the laws and the attainment of justice.

It would be a difficult task to define exactly the powers and jurisdictions of Her Majesty's Supreme Courts in India, given by the Statutes and Charters above enumerated ; and questions are constantly arising on these important subjects, which can only be reduced to certainty by the repeated decisions of the Courts, or by fresh enactments.

Several years since Sir Charles Grey and Sir Edward Ryan animadverted upon the uncertainty of the legislation with respect to the powers and jurisdictions of the Supreme Courts in the following terms :—" In one way or another," write the learned Judges, " sometimes by the mention of some qualification of the powers of the Court occurring in an Act or Charter, which has been afterwards insisted upon as a recognition ; sometimes by a vague recognition of counter institutions, which have been already set on foot without any express authority, and which afterwards, upon the strength of the recognition, are amplified and extended ; sometimes by the jurisdiction of the Supreme Court being stated in such a way as to leave it to be inferred that the *expressio unius* is the *exclusio alterius* ; sometimes by provisions which, to persons unacquainted with India, may have appeared to be of little consequence, but which in reality involve a great deal ; sometimes when Parliament has provided that new Courts should be established

¹ Order in Council, 10th April, 1838.

² The jurisdictions are technically termed Sides of the Court: as the Crown Side, the Common Law Side, &c.

upon the same footing as the old one, by something finding its way into the constitution of the new Courts which is essentially different from the old, and would be destructive of their efficiency ;—in some or all of these ways the Supreme Courts have come to stand at last in circumstances in which it is a very hard matter to say what are their rights, their duties, or their use.”¹

Many of the doubts and difficulties thus complained of still exist, and I cannot, I believe, conclude the present remarks on the Supreme Courts more appropriately than by quoting the account of their jurisdiction appended to the First Report of the Commissioners appointed in 1853 to consider the reform of the Judicial establishments of India.

“The local jurisdiction of the Supreme Court at Fort William is limited to the town of Calcutta, which for this purpose is bounded on the west side by the river Hooghly, and on the other sides by what is called the Mahratta ditch. Within these limits the Court exercises all its jurisdictions, civil and criminal, over all persons residing within them,² with the exception of its ecclesiastical jurisdiction, which has not been applied to Hindús and Muhammadans beyond the granting of probates of wills.

The persons residing within these limits, and therefore subject to the local jurisdiction of the Supreme Court, are computed, according to the latest information, at 413,182.

2. In like manner the Court exercises all its jurisdictions over all British-born subjects, that is, persons who have been born within the British islands, and their descendants, who are resident in any of the provinces which are comprehended within the Presidency of Bengal,³ or the subordinate Government of

¹ Letter from the Judges of the Supreme Court at Calcutta, dated 16th of Oct. 1830. Fifth Appendix to the Third Report from the Select Committee of the House of Commons, 1831, p. 1296, 4to. edit.

² Charter, s. 19. Stat. 21, Geo. III. c. 70, s. 17.

³ Charter, s. 18.

Agra. The number of persons so subject to the jurisdiction of the Court, including the members of the covenanted services, civil and military, but exclusive of the Queen's troops and their families, was on the 30th March 1851, according to the Parliamentary census returns, 22,387.

3. All persons resident at any places within the said provinces, who have a dwelling-house and servants in Calcutta, or a place of business there where they carry on any trade, through their agents or servants, are held to be constructively inhabitants of Calcutta for the purpose of liability to the common law and equity jurisdictions of the Court.

4. Natives of India, within the said provinces, who have bound themselves upon any contract or agreement in writing with any British subject, where the cause of action exceeds the sum of 500 rupees, to submit to the jurisdiction of the said Court, are subject to its jurisdiction in disputes relating to the said contract.¹

5. In like manner, persons who avail themselves of the Court's jurisdiction for any purpose, are held liable to its jurisdiction in the same matter, even on other sides of the Court than that of which they have availed themselves; as, for instance, persons who have applied for and obtained probates of wills, are held liable to the Court's equity jurisdiction for the due administration of the estate.

6. All persons who, at the time of action brought or cause of action accrued, are or have been employed by, or directly or indirectly in the service of the East India Company, or any British subject, are liable to the civil jurisdiction of the Court in actions for wrongs or trespasses, and also in any civil suit by agreement of parties in writing to submit to the jurisdiction of the said Court;² and all persons who, at the time of committing any crime, misdemeanour, or oppression, are or have

¹ Charter, s. 13.

² Charter modified by Stat. 21 Geo. III. c. 70, s. 10.

been employed, or directly or indirectly in service as aforesaid, are liable to the criminal jurisdiction of the Court.¹

7. The Admiralty jurisdiction of the Court extends over the provinces of Bengal, Behar, and Orissa, and all other territories and islands adjacent thereto, which, at the date of the charter, were or ought to be dependent thereon, and comprehends all causes civil and maritime, and all matters and contracts relating to freights, or to extortions, trespasses, injuries and demands whatsoever between merchants or owners of ships and vessels employed or used within the jurisdiction aforesaid, or other persons, contracted, done, and commenced in or by the sea, public rivers, or creeks, or within the ebbing and flowing of the sea about and throughout the said three provinces and territories.² The criminal jurisdiction extends to all crimes committed on the high seas by any person or persons whatsoever in as full and ample a manner as any other Court of Admiralty in any colony or settlement belonging to the Crown.³

8. The Supreme Courts at Calcutta, Madras and Bombay, have criminal jurisdiction over all British subjects for crimes committed at any place within the limits of the Company's Charter, that is, any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, or for crimes committed in any of the lands or territories of any Native Prince or State, in the same way as if the same had been committed within the territories subject to the British Government in India."⁴

"The local jurisdiction of the Supreme Court at Madras is confined to the town of Madras, which for this purpose is held to be bounded by the sea on the east, the Saint Thomé river on the south, the banks of the Long Tank and the Nungumbaukum

¹ Charter, s. 19.

² Charter, s. 26.

³ Charter explained by Stat. 33 Geo. III. c. 52, s. 156, and 53 Geo. III. c. 155, s. 110.

⁴ Charter, s. 19. Stat. 23 Geo. III. c. 67, s. 29. Stat. 33 Geo. III. c. 52, s. 67.

Tank, with the villages of Kilpaukum and Peramboor on the west, and a line from the latter village to the sea on the north, and to comprise all the lands included in the villages of Chetapet, Kilpaukum, Peramboor, and Tandear. The inhabitants of Madras within these limits are computed at about 720,000.

The British subjects residing within the provinces attached to Madras, and subject to the jurisdiction of the Supreme Court, were on the 30th March 1851, according to the Parliamentary Census Returns, 15,133, including the civil and military members of the covenanted services, but exclusive of the Queen's troops. The Court's civil jurisdiction extends to British subjects within any of the dominions of the Native Princes of India in alliance with the Government of Madras, but the number of these must be very small, and cannot be taken into calculation."

"The local jurisdiction of the Supreme Court at Bombay is confined to the Island of Bombay, the inhabitants of which are computed at 566,119.

The British-born subjects who reside within the provinces comprised in the Presidency of Bombay, including the covenanted servants of the Company, were on the 30th March 1851, according to the Parliamentary Census Returns, 10,704, exclusive of the Queen's troops.

The Supreme Courts at Madras and Bombay have generally the same powers, and their jurisdictions are generally the same within the settlements of Madras and Bombay, as those of the Supreme Court of Judicature at Fort William within the territories attached to the Presidency of Bengal and Sub-presidency of Agra."

(2) LAW ADMINISTERED IN THE SUPREME COURTS.

The law which now obtains in the Supreme Courts at the three Presidencies may be classed under seven distinct heads—

1. The Common law, as it prevailed in England in the year 1726, and which has not subsequently been altered by Statutes

especially extending to India, or by the Acts of the Governor-General in Council.

2. The Statute law which prevailed in England in 1726, and which has not subsequently been altered by Statutes especially extending to India, or by the Acts of the Legislative Council of India.

3. The Statute law expressly extending to India, which has been enacted since 1726, and has not been since repealed, and the Statutes which have been extended to India by the Acts of the Governor-General in Council.¹

4. The Civil law as it obtains in the Ecclesiastical and Admiralty Courts in England.

5. Regulations made by the Governor-General in Council and the Governors in Council previously to the 3rd and 4th Will. IV. c. 85, and registered in the Supreme Courts, and the Acts of the Governor-General in Council made under the 3rd and 4th Will. IV. c. 85.

6. The Hindú law and usages in actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which a Hindú is a defendant.

¹ The Statute law affecting India and the East-India Company is to be found collected in various works. The best collection is entitled, *Charters and Statutes relating to the East-India Company*, from Elizabeth, 1600, to the 56th Geo. III., 1816. 4to. Lond. 1817. The latest work on the subject, but which omits much that is important, is entitled, *The Law relating to India and the East-India Company*. 4to. Lond. 1842. (Third Edit.). This compilation extends to the 5th Vict. c. 5. The student will find a vast quantity of information regarding the Statute law affecting India in Auber's *Analysis of the Constitution of the East-India Company*, and of the Laws passed by Parliament for the government of their affairs both at home and abroad. Together with a Supplement. 8vo. Lond. 1826—1828. Auber's *Analysis* is a most valuable work both for study and reference, and should be in the hands of all who wish to acquire a knowledge of the law of India. A useful tabular statement of the Statutes relating to Indian affairs will also be found appended to Annand's *Brief Outline of the existing system of the Government of India*. 4to. Lond. 1832.

7. The Muhammadan law and usages in actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which a Muhammadan is a defendant.

The three last species of law are peculiar to the Courts in India, and will be described in a subsequent Chapter.

2. THE COURT OF THE RECORDER OF PRINCE OF WALES' ISLAND, SINGAPORE, AND MALACCA.

The island of Singapore, and the town and fort of Malacca, were ceded to the British by His Majesty the King of the Netherlands, by treaty, on the 17th of March 1824, and were afterwards transferred to the Honourable East-India Company by the 5th Geo. IV. c. 8. The 6th Geo. IV. c. 85, s. 21, empowered the said Company to annex Prince of Wales' Island to those possessions; and the annexation was accordingly effected, and the whole formed into a Government, entitled "The Governor and Council of Prince of Wales' Island, Singapore, and Malacca."

In pursuance of the 19th section of the last mentioned Act of Parliament, Letters patent were issued, dated the 27th of November, 1826, by which a Court of Judicature was constituted; and it was directed that it should consist of the Governor and Resident Councillor, and one other Judge, to be styled the Recorder.

This Court was to be a Court of Record, and was empowered by its Charter to exercise Civil, Criminal, and Ecclesiastical jurisdiction, and to be a Court of Oyer and Terminer, and Gaol Delivery. The Court was also empowered to reprieve execution of any capital sentence, and to substitute a lesser punishment; and the Judges were constituted Justices of the Peace, and were authorised to hold general and quarter sessions. They were also empowered to appoint by commission covenanted servants of the Company to act as Justices of the Peace within the said settlement.

An appeal lay from the decisions of the Recorder's Court to the King in Council.¹

In addition to the jurisdictions above mentioned, an Admiralty jurisdiction was granted to the Recorder's Court by the 6th and 7th Will. IV. c. 53, and the Letters patent issued in pursuance of that Statute, similar to that exercised by the Supreme Court at Fort William in Bengal.²

Prince of Wales' Island is now, with all the eastern settlements, under the Presidency of Bengal.

3. COURTS OF REQUESTS AND SMALL CAUSES.³

Courts of Requests were established at Madras, Bombay, and Fort William, by the Charter of George the Second, dated the 8th of Jan. 1753, by which they were empowered to determine suits where the debt, duty, or matter in dispute should not exceed 5 pagodas.

The jurisdiction of these Courts of Requests was extended by the 37th Geo. III. c. 142, by the 30th section of which Statute they were authorised to hear and determine all actions, complaints, and suits, in which the matter in dispute should not exceed the value of 80 current rupees, and to award execution thereupon for the debt or sum adjudged to be due. A further extent of the jurisdiction of the Courts of Requests at Calcutta

¹ An abstract of the Charter of the Court will be found in The Law relating to India and the East-India Company, p. 570, *et seq.*

² An abstract of the Admiralty Charter of the Recorder's Court is inserted in Smoult and Ryan's Rules and Orders of the Supreme Court at Fort William in Bengal, Vol. II. App. p. cvii.

³ The Courts of Small Causes do not strictly come within the class of "Her Majesty's Courts," since they were constituted and established by the Act of the Governor-General in Council, and depend upon the Executive Government; nevertheless, as they supersede the Courts of Requests, as the Judges of the Supreme Courts are *virtute officii* also Judges of the Courts of Small Causes, and as such Judges exercise a certain controul over the practice and proceedings of these Courts, I have thought it advisable to range them under the head of Her Majesty's Courts.

and Madras took place under the 39th and 40th Geo. III. s. 17, which, after stating that great inconvenience had resulted from the manner in which the Courts of Requests for the recovery of small debts in the respective settlements of Fort William and Fort St. George were constituted, enacted that it should be lawful for the Governor-General and Council of Fort William, and the Governor and Council of Fort St. George, to extend the jurisdiction of the said Courts to an amount not exceeding 400 sicca rupees, and to frame new rules and orders, and to establish new forms of proceeding, for new modelling, altering, and reforming the constitution and practice of the said Courts; and by their Proclamation to declare and notify such new constitution, rules, orders, and forms of proceeding, and the time from whence they were to have force and effect.

The first Proclamation under this Act was made and published at Fort William on the 18th of March 1802, declaring and defining the jurisdiction, powers, and practice of the Court of Requests. This Proclamation appointed three Commissioners for the recovery of small debts, and extended the jurisdiction of the Court to the sum of 100 sicca rupees. Two other Proclamations were afterwards made, extending the jurisdiction of the Court of Commissioners successively to 250 and 400 sicca rupees. The latter, which also increased the number of Commissioners to four instead of three, was published on the 29th of October 1819.¹

In the year 1839 the Governor-General in Council, by Act XXVII. of that year, authorised the Court of Requests for the town of Calcutta, in certain cases, to execute decrees passed by the Judge of the Dewanny Adawlut of the Zillah Twenty-four Pergunnahs.

In the year 1844 a draft Act was submitted to the Legislative Council for abolishing the Court of Requests at Calcutta, and for substituting in its place a Court for the exercise of civil

¹ For these Proclamations see Smoult and Ryan's Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal. Vol. II. App. p. xi. *et seq.*

jurisdiction in the city of Calcutta, to be called the Subordinate Civil Court for the city of Calcutta;¹ but the proposed Act never received the sanction of Government.

Doubts having arisen as to the powers of the Commissioners of the Court of Requests at Calcutta, Act XII. of 1848 was passed for the better defining the jurisdiction of the said Court. By this Act it was declared that all proceedings had, or to be had, in pursuance of the above-mentioned Proclamations, by the said Commissioners were valid; and all powers and authorities given to the said Commissioners by the first Proclamation were extended to all matters which they were authorised to determine by the other Proclamations. It was further enacted, that the said Commissioners might sit together or apart, and hold one, or two, or three separate Courts sitting at the same time, or at different times; that all rules, forms of procedure, and tables of fees, formerly and then used or established in the said Court, should be valid, notwithstanding the omission to procure the allowance of the Supreme Court, or the non-printing and non-publication of the same; and that all summonses and other process issued by the said Commissioners, or any of them, whether issued before or after the passing of the said Act, should be deemed to be valid and effectual in law, on whatsoever day the same should have been made returnable.

The Courts of Requests at the three Presidencies were, by the Charters of Justice, and by the said Proclamations, made subject to the order and controul of the Supreme Courts, in the same manner as the inferior Courts in England are, by law, subject to the order and controul of the Court of Queen's Bench.

Courts in the nature of Courts of Requests were directed to be established in the Settlement of Prince of Wales' Island, Singapore, and Malacca, by the Charter of Justice under which the Recorder's Court was constituted at that Settlement. These

¹ Special Reports of the Indian Law Commissioners. 1845, p. 45.

Courts were to determine suits not exceeding in value thirty-two dollars, and were to be subject to the order and controul of the Recorder's Court.

By Act IX. of 1850 Courts of Small Causes were established at the three Presidencies, in lieu of the Courts of Requests. They have the same local jurisdiction as the latter Courts and are Courts of Record. The Governor-General in Council is empowered to appoint Judges of these Courts, not exceeding three, one of whom is to be a Barrister-at-Law, or Advocate of one of the Supreme Courts of India, or of the Court of Session in Scotland. Judges of the Supreme Courts may exercise all the powers of a Judge appointed under this Act, and suits may be tried by their sitting in the Supreme Courts as though they were Judges of the Courts of Small Causes. The jurisdiction of these Courts extends to the recovery of any demand not exceeding 500 rupees. All suits brought in the Courts of Small Causes are to be heard and determined in a summary way; and every defence which would be deemed good in the Supreme Courts, sitting as Courts of Equity, is a good bar to any legal demand in the Courts of Small Causes. These Courts have no jurisdiction in any matter concerning the Revenue, or concerning any act ordered or done by the Governor, or Governor-General, or any member of the Council of India, or of any Presidency, in his public capacity, or done by any person by order of the Governor-General or Governor in Council, or concerning any act ordered or done by any Judge or Judicial Officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court, or any such Judge or Judicial Officer, or in any suit for libel or slander. The Judges of these Courts are empowered to make rules of practice and procedure, subject, however, to the approval of the Supreme Courts. No cause can be removed from the Courts of Small Causes into the Supreme Courts by any writ or process, unless the disputed amount exceeds 100 rupees, and then only by leave of a Judge of the Supreme Courts.

4. INSOLVENT COURTS.

The Supreme Courts at Fort William and Madras, and the Recorder's Court at Bombay, were empowered, by the 23rd section of the 39th and 40th Geo. III. c. 79, to make rules and orders, extending to insolvent debtors in India the relief intended by the 32d Geo. II. c. 28, commonly called the Lords' Act; and the 24th section of the same Statute ratified any rules and orders previously made by the said Courts in the three Presidencies for the relief of insolvent debtors, and confirmed the acts done under such rules and orders.

By the 1st and 2nd Vict. c. 100, s. 119, it was, however, enacted, that no prisoner for debt should petition any Court for his discharge under the Lords' Act; nor is any creditor to petition any Court for the exercise of the compulsory powers of that Act against debtors.

Insolvent Courts, separate from the Supreme Courts of Judicature, were established at the three Presidencies by the 9th Geo. IV. c. 73, to be severally presided over by one of the Judges of the respective Supreme Courts. These Insolvent Courts were empowered by the said Statute to administer oaths, and to examine witnesses on oath or affirmation, to issue commissions to take evidence, or to force the attendance of witnesses, and to examine debtors and parties capable of giving information as to their debts and estates; they were also empowered to impose fines in a summary manner, and to commit to gaol for contempt of Court, but not to award costs except under the rules of the Supreme Courts. Under the 4th section of this Act an appeal lay from the Insolvent Courts to the Supreme Courts of Judicature. It was also provided, by the 80th section, that the Supreme Courts might make rules for facilitating the relief of insolvent debtors in cases for which sufficient provision had not been made; and the 81st section declared that the said Act should remain in force until the year 1833.

It was provided by the 2nd Wm. IV. c. 43, that the 9th Geo. IV. c. 73 should be continued and remain in force until the 1st of March 1836; and an extension of the same Statute, to the year 1839, was enacted by the Governor-General in Council by Act IV. of 1836. Certain amendments, which it will be unnecessary to specify, were made by the 4th and 5th Wm. IV. c. 79, which also provided that the schedules of insolvent debtors in India should be transmitted to the Court of Directors of the East-India Company, and be open to the inspection of creditors.

The above-mentioned Acts were all further extended by the 6th and 7th Wm. IV. c. 47, the 3rd and 4th Vict. c. 80, and the 9th and 10th Vict. c. 14, the last Statute extending them to the 1st of March 1847, and thence to the end of the next session of Parliament.

In the month of June 1848 the 11th and 12th Vict. c. 21 was passed to consolidate and amend the laws relating to insolvent debtors in India. This Statute repealed the 9th Geo. IV. c. 73, and the 4th and 5th Wm. IV. c. 79, save as to acts then done and pending under the subsequent Statutes above enumerated. By section 2, the Courts established under the 9th Geo. IV. c. 73, were continued with the same powers as theretofore; the 73rd section enacted that an appeal should lie, as before, to the Supreme Courts; and the 76th section authorised the said Courts to make rules and regulations, and to alter and amend the same, subject to Her Majesty's approval. The schedules of insolvents were directed, by section 85, to be transmitted to England whenever it should appear that any creditors were resident out of the Company's Charter.

The 88th section of the above Statute enacted that a Court for the relief of insolvent debtors should be established at the Settlement of Prince of Wales' Island, Singapore, and Malacca, and the several powers of the said Statute were extended, with certain exceptions, to that Settlement.

5. VICE-ADMIRALTY COURTS.

By section the 25th of the 39th and 40th Geo. III. c. 79, His Majesty was empowered to issue a Commission from His High Court of Admiralty in England for the trial and adjudication of prize causes and other maritime questions arising in India, and to nominate all or any of the Judges of the Supreme Court of Judicature at Fort William in Bengal, or of the Supreme Court of Judicature to be erected at Madras, or of the Court of the Recorder at Bombay, either alone or jointly with any other persons to be named in such Commission, to be Commissioners for the purpose of carrying such Commission into execution.

The 2nd Wm. IV. c. 51, which was passed for the regulation of the practice and the fees in the Vice-Admiralty Courts abroad, and to obviate doubts as to their jurisdiction, enacted that there should be an appeal from such Vice-Admiralty Courts to the High Court of Admiralty in cases of costs ; and their jurisdiction was defined to extend to all cases where a ship or vessel, or the master thereof, should come within the local limits of any Vice-Admiralty Court ; and that it should be lawful for any person to commence proceedings in any suits for seamen's wages, pilotage, bottomry, damage to a ship by collision, contempt in breach of the regulations and instructions relating to His Majesty's service at sea, salvage, and droits of Admiralty, in such Vice-Admiralty Court, notwithstanding the cause of action might have arisen out of the local limits of such Court, and to carry on the same in the same manner as if the cause of action had arisen within the said limits.

A separate Vice-Admiralty Court was established in Calcutta in 1822,¹ but its functions are at present suspended, for

¹ See the Commission in Smoult and Ryan's Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal. Vol. II. App. p. i.

no Marshal or Registrar is appointed by the High Court of Admiralty, and the Chief Justice has no authority to make any such appointments.¹ I am not aware that any Vice-Admiralty Court has ever been established at Madras or Bombay.

¹ Observations on the Judicial Institutions of Bengal, p. 29. 8vo. Lond. 1849.

CHAPTER II.

JUSTICES OF THE PEACE, MAGISTRATES, AND CORONERS.

THE Justices of the Peace in India are of two descriptions, viz. those who, *virtute officii*, are empowered to act in that capacity by the immediate authority of Parliament, and those who are appointed by the local Government under Commissions issued in the name of Her Majesty.

I shall here state shortly the law relating to the Justices of the Peace, and describe their jurisdiction and functions.

Justices of the Peace were first established at Madras, Bombay, and Calcutta, by the Charter of Geo. I., in the year 1726, which appointed the Governors and Councils at those places to be Justices of the Peace with power to hold Quarter Sessions.

The 38th section of the 13th Geo. III. c. 63, enacted, that the Governor-General and Council, and the Judges of the Supreme Court, should be Justices of the Peace for the Settlement of Fort William, and the Settlements and Factories subordinate thereto; and the Governor-General and Council were directed to hold Quarter Sessions within the said settlement of Fort William; such Quarter Sessions to be a Court of Record.

The Charter of Justice establishing the Supreme Court at Calcutta, which followed the Statute, authorised such Court to have controul over the Court of Quarter Sessions and the Justices, for any thing done by them while sitting as a Court of Quarter Sessions, or in their capacity as Justices, in the same manner and form as the inferior Courts and Magistrates in England are by law subject to the order and controul of the Court of King's Bench; and the Supreme Court was empowered to issue to them writs of Mandamus, Certiorari, Procedendo, and Error. By the 4th section of the same

Charter it was ordained that the Judges of the Supreme Court at Fort William should respectively be Justices and Conservators of the Peace, and Coroners, within and throughout the provinces, districts, and countries of Bengal, Behar, and Orissa, and every part thereof; and should have such jurisdiction and authority as Justices of the Court of King's Bench have within England by the Common Law thereof.

The 33rd Geo. III. c. 52, s. 151, after stating that the Governor-General of Fort William, and the Judges of the Supreme Court at Fort William, and the Governor and Council of Fort St. George on the coast of Coromandel, and the Governor and Council of Bombay, were the only persons authorised by law to act as Justices of the Peace in and for Bengal, Behar, and Orissa, the Presidency of Fort St. George, and the Presidency, Island, Town and Factory of Bombay, and the places belonging and subordinate to the two last-mentioned Presidencies respectively, enacted, that it should be lawful for the Governor-General in Council of Fort William to appoint Justices of the Peace from the covenanted servants of the East-India Company, or other British inhabitants, to act within and for the said Provinces and Presidencies, and places thereto subordinate respectively, by commissions to be issued by the said Supreme Court on warrant from the said Governor-General in Council; with a proviso, however, that such Justices should not hold or sit in any Court of Oyer and Terminer, and Gaol Delivery, unless called upon by the Justices of the said Court, and specially authorised by Order in Council. The 153rd section of the same Statute provided that all convictions, judgments, orders, and other proceedings before Justices of the Peace should be removable by Certiorari into the Court of Oyer and Terminer, which should have power to hear and determine the matter of such proceedings, in like manner as the Court of King's Bench at Westminster.

Section 155 also empowered the Governor-General and Governors in Council to call in the Justices of the Peace to sit

in Council to hear appeals from the Provincial Courts; but such appeals have been since abolished. Section 157 of this Statute authorised the Governors of Presidencies to appoint Coroners who should exercise the same powers as Coroners in England. Section 158 provided that the Justices of the Peace for the three Presidency Towns should be empowered to take measures for cleansing, watching, and repairing the streets, and to make assessments to the extent laid down in the Act, to defray the expenses of the same. It would appear that the Courts of Quarter Sessions were held only for the purposes of making this assessment.

The 39th and 40th Geo. III. c. 79, s. 2, and the 8th section of the Charter which followed that Statute, establishing the Supreme Court of Judicature at Madras, appointed the Judges of that Court to be Justices of the Peace, and Coroners, within and for the settlement of Fort St. George, and the town of Madras, and the Factories subordinate thereto, and all the territories subject to, or dependent upon, the Government of Madras. The 19th section of the same Statute provided that the Justices of the Peace in India might convict offenders for breach of the Rules or Regulations made under the 13th Geo. III. c. 53, and order corporal punishment thereon; and that no such conviction should be reviewed, or brought into any Superior Court by Certiorari or appeal.

The Madras Charter of Justice gave the Supreme Court at that Presidency the same controul over the Court of Quarter Sessions and the Justices at Madras, as that exercised by the Supreme Court at Fort William in Bengal.

The 47th Geo. III. sess. 2, c. 68, s. 4, empowered the Governors and Members of Council of Madras and Bombay to act as Justices of the Peace for those towns, and the settlements and Factories subordinate thereto respectively, and to hold Quarter Sessions; and they were further authorised, by the 5th section of the same Statute, to issue Commissions under the seals of the Supreme Court at Madras, and the Court of the Recorder at Bombay respectively, to appoint

covenanted servants of the East-India Company, or other British subjects, to be Justices of the Peace within the said Provinces and the places subordinate thereto respectively; and the said Justices of the Peace were made liable and subject to the rules and restrictions enacted with respect to the Justices of the Peace appointed by the Governor-General of Fort William, whose power of appointing Justices of the Peace for the Presidencies of Madras and Bombay was annulled by the next following section of the same Act.

By the 13th and 47th of Geo. III., above cited, the Governor-General in Council, and the Governors in Council of Madras and Bombay, were respectively empowered to make rules, ordinances, and regulations, for the good order and government of the Presidency Towns, subject to the previous condition of being duly registered and published in the Supreme or Recorder's Court, as the case might be. In the exercise of this power, the Governments of the various Presidencies enacted, from time to time, regulations authorising and empowering Justices of the Peace to take cognizance of, and to punish, certain offences.

Section 105 of the 53rd Geo. III. c. 155, authorised the Magistrates in the Provinces to act as Justices of the Peace, and to have jurisdiction in cases of assault, forcible entry, or other injury accompanied by force, not being felony, committed by British subjects residing without the limits of Calcutta, Madras, and Bombay, on the Natives of India: the convictions by such Magistrates were, however, made removable by Certiorari into the Courts of Oyer and Terminer and Gaol Delivery. And by the next section the said Magistrates were given a jurisdiction in cases of small debts due to Natives from British subjects.

The 4th Geo. IV. c. 71, s. 7, and the 10th section of the Charter of Justice which followed that Statute, establishing the Supreme Court of Judicature at Bombay, appointed the Judges of the said Supreme Court to be Justices and Conservators of the Peace, and Coroners, within and throughout the

settlement of Bombay, and the Factories subordinate thereto, and the territories subject to, or dependent upon, the Government of Bombay.

The Bombay Charter of Justice gave the Supreme Court at that Presidency the same controul over the Court of Quarter Sessions and Justices at Bombay as that exercised by the Supreme Court at Calcutta.

It may be here observed that the jurisdiction of the Supreme Courts, both at Madras and Bombay, is generally restricted to British subjects, and this would seem to limit the power of the Judges to act in the Provinces as Conservators of the Peace.

The first Charter of Justice granted in the year 1826 to the Court of the Recorder at Prince of Wales' Island, Singapore, and Malacca, constituted the Judges of the said Court Justices and Conservators of the Peace within and throughout that settlement, and the places subordinate thereto.

By the 2d & 3d Will. IV. c. 117, the Governor-General in Council at Fort William, and the Governors in Council at Madras and Bombay respectively, were empowered to nominate and appoint, in the name of the King's Majesty, any persons resident within the territories of the East-India Company, and not being subjects of any foreign state, to act within and for the towns of Calcutta, Madras, and Bombay respectively, as Justices of the Peace.

In virtue of the powers vested in them by the above-mentioned Statutes the local Governments at the Presidencies of India appointed Justices of the Peace and Magistrates for the towns of Calcutta, Madras, and Bombay, whose powers and jurisdiction were defined by the Acts of Parliament and by the rules and regulations passed by the Local Government, and registered in the Supreme Court. This continued until the 3d & 4th Will. IV. c. 85, came into operation in the year 1834. By sec. 43, of that Statute, powers of legislation for the whole of India were conferred upon the Governor-General in Council; and by sec. 45, the necessity for the registration

of the legislative provisions for the Presidency Towns was done away with ; and thenceforth the Acts of the Supreme Government of India contain the provisions which regulate the jurisdiction and powers of the Justices of the Peace for the towns of Calcutta, Madras, and Bombay.

It may be remarked that the powers of punishment conferred upon Justices of the Peace at Calcutta under the rules passed previously to the 3d & 4th Will. IV., had for the most part been exercised by two Justices. By Act IV. of 1835, however, it was provided that "all powers whatever in criminal cases which, by virtue of any law now in force, may be exercised by two Justices of the Peace for the town of Calcutta, shall be exercised by one such Justice ;" and by Act I. of 1837, it was declared lawful for one Justice of the Peace to issue a warrant of distress for the recovery of arrears of assessment accruing under the Statute 33d Geo. III. c. 52. Act XXXII. of 1838 makes the same provisions in respect to Justices of the Peace in the Mofussil, and the same were extended to Madras by Act IX. of 1849.

In addition to the Court of Magistrates for the town of Bombay, there is a Court of Petty Sessions, which sits weekly for the despatch of business. Its origin has not been traced, but it arose probably out of a recommendation made to the Government of Bombay by Sir James Mackintosh, in the year 1811.

By Rule, Ordinance, and Regulation I. of 1834, provision was made for the appointment by the Governor in Council of Bombay of two Magistrates, being Justices of the Peace, and for the assembling on Thursday in every week of the Court of Petty Sessions. The Court was to consist of not less than three Justices of the Peace, one of them being a Magistrate, one an European, and one a Native, to be attended by a Barrister as Assessor,¹ being a Justice of the Peace, an Advocate of

¹ So much of the Rule, Ordinance, and Regulation as enacts that the Court of Petty Sessions shall be attended by a barrister as assessor, or by any person as or by way of assessor, has been repealed by Act II. of 1854.

the Supreme Court, and appointed by the Governor in Council. It was to exercise the power of summary conviction and punishment according to the course pursued by two Justices of the Peace in certain cases under authority of Statutes, and a like jurisdiction generally over all acts done in violation of the rules legally passed by the Governor in Council for the good order and government of the Presidency, in respect of which no other jurisdiction was exclusively provided; and was also empowered to levy pecuniary forfeitures and penalties imposed by them by distress and sale of goods and chattels where not otherwise provided.

It was provided by Act IV. of 1843, that an appeal should lie from all sentences passed by any Justice of the Peace acting without the local limits of the Supreme Courts, and from all sentences passed by any Magistrates exercising jurisdiction under the provisions of the 53d Geo. III. c. 155, to the same authority, and subject to the same rules, as are provided by the Regulations and Acts of the Government in the case of sentences passed by Magistrates in the exercise of their ordinary jurisdiction. And cases so made the subject of an appeal were not to be liable to a revision by Certiorari.

Act VI. of 1845 empowered the Supreme Courts at each of the Presidencies, upon the order or warrant of the executive Government, to issue separate Commissions to any persons not named in the then last general Commission of the Peace, to be nominated Justices of the Peace for each respective Presidency. Such Commissions were directed to be issued in the Queen's name, and tested by the Chief Justice of the respective Supreme Courts.

Act VII. of 1853 extends the Statute of the 53d Geo. III. c. 155, and Act IV. of 1843, to cases of assault, forcible entry, or other injury, accompanied with force, not being felony, which may be committed in any part of the territories under the Government of the East India Company, not being within the towns of Calcutta or Madras, or the islands of Bombay or Colaba, or the settlement of Prince of Wales' Island, Singapore, and

Malacca, by any British subject or other person, against the person or property of any person whatever. The powers formerly exercised by the Zillah Magistrate in such cases were given by this Act to Joint Magistrates or other persons lawfully exercising the powers of a Magistrate.

The jurisdiction of Justices of the Peace in India extends over the whole Presidency for which they are appointed, and they can exercise their functions in any part of it: it also extends over the following classes :—

1. All persons whatever, whether British or Native subjects, in respect of offences committed within the limits of the ordinary jurisdiction of the respective Supreme Courts of Judicature.

2. All British subjects resident in any part of the Presidency, except that, as regards crimes and offences triable by jury, and committed by British officers or soldiers at places more than 120 miles from the seat of Government, they are not called upon to interfere, such crimes being cognizable by a Court Martial.¹

3. All persons who may have committed crimes or offences at sea.

Lastly, All persons whatever resident without the jurisdiction of the Supreme Courts and the Court of the Recorder of Prince of Wales' Island, are subject to the jurisdiction of Magistrates and Joint Magistrates acting as Justices of the Peace, under the 53d Geo. III. c. 155, Act IV. of 1843, and Act VII. of 1853, in the cases provided for by the said Statute and Acts of Government.

The functions of a Justice of the Peace are threefold. First, the trial and punishment of offences by summary conviction, and without a jury ; Secondly, the investigation of charges in view to the committal or discharge of the accused person ; and, Thirdly, the prevention of crime, and breaches of the peace.²

¹ 3d & 4th Vict. c. 37, ss. 2—4.

² The powers of the Justices of the Peace and Magistrates of the Presidency Towns, and the offences which they are empowered to take cogni-

CHAPTER III.

THE SUDDER AND MOFUSSIL COURTS.

THE systems for the administration of justice by the Honourable East-India Company now actually existing in the Presidencies of Bengal, Madras, and Bombay, are based upon the Regulations passed by the Governments of those Presidencies respectively in the years 1793, 1802, and 1827 ; the plan introduced into Bengal being the foundation of the other systems. Previously to 1793 Courts of Justice had been established in Bengal by the Governor-General and Council ; and in Bombay similar Courts had been formed so early as 1799, adapted to the local circumstances, from the Bengal system : at Madras there were no Company's Courts until the year 1802.

In the following description of the Sudder and Mofussil Courts, I purpose, though it will necessarily involve some repetition, to treat separately those of each Presidency. I shall, in the first place, after tracing shortly the rise and progress of the three Adawlut systems, describe the Courts of Civil and Criminal Judicature and the Police Establishments, as constituted respectively in the years 1793, 1802, and 1827 ; secondly, taking those years as starting-points, I shall enumerate the modifications and alterations that have since occurred, down to the present time, in a distinct order, under the heads of Civil Judicature, Criminal Judicature, and Police. I shall then state concisely and generally the jurisdiction of the Courts, and the laws administered therein ; and finally, I shall set forth, by way of summary, the actual constitution of the Courts

zance of, and to punish, will be found elaborately set forth in the Appendix B. No. 2, to the First Report of the Commissioners appointed to consider the reform of the Judicial establishments, &c., in India. London, 1856.

of Justice, and of the establishments of Police, as now existing in each Presidency.

The limits of this treatise will not admit of entering into a full detail of the various modifications and alterations above alluded to. I shall therefore confine myself to those which are the most material, before proceeding to the summary account of the present systems.

1. BENGAL.

(1) RISE AND PROGRESS OF THE ADAWLUT SYSTEM.

The great Lord Clive, whose transcendent abilities brought the Empire of India within his grasp, secured that Empire to his country by obtaining the grant of the Dewanny for the East-India Company at the hands of the pageant Moghul Emperor. Previously to this the Nawáb Najm ad-Daulah, on his accession to the Masnad after the death of his father, Núr Jáfar 'Alí Khán, had entrusted the Súbahdári to the management of a Náib, or deputy, to be appointed by the advice and recommendation of the English ; but the Firmán which conferred in perpetuity the Dewanny authority over the Provinces of Bengal, Behar, and Orissa on the East-India Company, constituted them the masters and virtual sovereigns of those Provinces ; the office of Dewan implying not merely the collection of the revenue, but the administration of civil justice.

This Firmán was granted on the 12th of August 1765, and was accompanied by an imperial confirmation of all the territories previously held by the East-India Company under grants from Kásim 'Alí Khán and Jáfar 'Alí Khán, within the nominal limits of the Empire of the descendants of Tímúr. The Nizamut, or administration of criminal justice, was, at the same time, conferred upon the Nawáb Najm ad-Daulah. The Dewanny grant was further recognized, by an agreement dated the 30th of September in the same year, by the Nawáb, who formally accepted his dependent situation by consenting to

receive a fixed stipend of fifty-three laks of rupees¹ for the support of the Nizamut, and for the maintenance of his household and his personal expenses.

In the month of April in the following year the Nawáb held his annual Darbár for the collection of the revenue. The Prince sate as Názim ; and Lord Clive, the President of the Council of Fort William, officiated for the first time as Dewan. From this period the Nizamut, as well as the Dewanny, was exercised by the British Government in India through the influence possessed by the English over the Náib Názim ; the Nizamut comprising the right of arming and commanding troops, and the management of the whole of the Police of the country, as well as of the administration of criminal justice.

For some time subsequent to this assumption of power it was not, however, thought prudent, either by the authorities at home or in India, to entrust the administration of justice or the collection of the revenue to the European servants of the Company ; their ignorance of the civil institutions and internal arrangements of the country rendering them, with a few bright exceptions, totally unqualified for either task. Accordingly, the administration of the provinces included in the Dewanny grant was for the present left in the hands of the native officers, an imperfect controul being exercised over them by an English Resident at the Court of the Nawáb, and by the Chief of Patna, who superintended the collections of Behar. The Zamíndári lands of Calcutta, and the districts of Burdwán, Midnapúr, and Chittagong, as well as the Twenty-four Pergunnahs, which had been ceded to the East-India Company by previous grants from the Nawábs, and which had been confirmed to them by the Emperor's Firmán in August 1765, had been placed under the management of the covenanted servants of the Company

¹ Copies of these Firmáns and Agreements will be found in the Appendices to Bolt's *Considerations on Indian Affairs*, 4to. Lond. 1772 ; and Verelst's *View of the Rise and Progress of the English Government in Bengal*, 4to. Lond. 1772.

ever since their cession, and this was continued ; but at the same time the internal administration was carried on without alteration, as in other parts.

In 1763, when Verelst was Governor of Bengal, Supervisors were appointed for the superintendence of the native officers; and they were furnished with detailed instructions to inquire into the history, existing state, produce and capacity of the provinces, the amount of the revenues, the regulations of commerce, and the administration of justice; they were likewise directed to make reports thereon to the Resident at the Darbár and the Chief of Patna.

These inquiries furnished ample evidence of abuses of every kind. Extortion and oppression on the part of the public officers, and fraud and evasion of the payment of just dues on the part of the cultivators, prevailed throughout our provinces; and with respect to the administration of Justice, it was remarked in a Letter from the President in Council at Fort William, that "the regular course was everywhere suspended; but every man exercised it who had the power of compelling others to submit to his decision."¹ Councils with superior authority were established at Moorshedabad and Patna, in the following year, to superintend the administration of justice and the collection of the revenue, and to exercise the powers before vested in the Resident and Chief.

The glaring abuses above mentioned had continued for seven years unremedied, when, in the year 1772, the Court of Directors announced to the Government of Bengal their intention "to stand forth as Dewan, and, by the agency of the Company's servants, to take upon themselves the entire care and management of the revenues."²

Warren Hastings, who had already acquired a considerable reputation by his talents, and who had served with great credit in Bengal during the administration of Vansittart, and

¹ Fifth Report from the Select Committee of the House of Commons, 1812, p. 5.

² Ibid.

since then on the coast of Coromandel, was now Governor, he having been appointed to that important office in the preceding year. In order to carry into effect their determination, the Court of Directors appointed a Committee, consisting of the Governor and four Members of Council; and Warren Hastings and his coadjutors drew up a Report, comprising plans for the more effective collection of the revenue and the administration of justice.

This Report, which bears witness throughout to the soundness of the views entertained by the illustrious statesman who presided, gave a detailed account of the Muhammadan Law Courts; and after animadverting strongly on their inefficiency, proceeded to set forth a plan for the more regular administration of civil and criminal justice, stated to have been framed so as to be adapted "to the manners and understandings of the people and exigencies of the country, adhering, as closely as possible, to their ancient usages and institutions."¹

This plan was adopted by the Government on the 21st of August 1772; and although the constitution of the Courts was shortly afterwards completely altered, many of the rules which it contained were, and are still, preserved in the Bengal Code of Regulations.

In pursuance of the plan of the Committee, the Exchequer and the Treasury were removed from Moorshedabad to Calcutta, and a "Board of Revenue," as it was styled, consisting of the Governor and Council, with an establishment of native officers, was constituted at the Presidency, for the management, not only of the collections, but many of the most important duties of the municipal Government. The Supervisors appointed under Verelst's system became "Collectors," one of whom presided over each considerable district, assisted by a native officer, and the lands were leased to the highest bidder

¹ Proceedings of the Governor and Council at Fort William respecting the administration of justice amongst the Natives of Bengal, p. 4, 4to. London, 1774.

who could produce the requisite security for rent, for a period of five years. In each Collectorate were established Mofussil Dewanny Adawluts, or Provincial Civil Courts for the administration of civil justice,¹ which were presided over by the Collectors on the part of the Company, in their capacity of King's Dewans, attended by the provincial Dewans and the other officers of the Collector's Court. These took cognizance of "all disputes concerning property, real or personal, all causes of inheritance, marriage, and cast, and all claims of debt, disputed accounts, contracts, and demands of rent;"² excepting, however, questions relating to the succession to Zamíndarí and Talookdarí property, which were reserved for the decision of the Governor and Council.³ A Criminal Court, styled the Foujdary Adawlut was also established in each district, for the trial of "murder, robbery, and theft, and all other felonies, forgery, perjury, and all sorts of frauds and misdemeanours, assaults, frays, quarrels, adultery, and every other breach of the peace or violent invasion of property."⁴ In these Criminal Courts the Kázi or Mufti of each district was directed to sit to expound the law, and determine how far delinquents were guilty of any breach thereof; but it was also provided that the Collector should attend to the proceedings, and see that the decision was passed in a fair and impartial manner, according to the proofs exhibited.⁵ Two Superior Courts were established at the chief seat of Government, to be called the Dewanny Sudder Adawlut and the Nizamut Sudder Adawlut;⁶ the former to be presided over by the President and Members of Council, assisted by native officers,⁷ and to be a Court of Appeal in all cases where the disputed amount exceeded 500 rupees;⁸ and the latter to be presided over by a chief officer, to be called the Dáróghah Adawlut, appointed on the part of the Názim, assisted by native

¹ Plan, Rule I.² Plan, Rule II.³ Plan, Rule II.⁴ Plan, Rule II.⁵ Plan, Rule IV.⁶ Plan, Rule V.⁷ Plan, Rule VI.⁸ Plan, Rule XXIV.

Muhammadan law officers, with a similar controul to be exercised by the Chief and Council, with respect to the proceedings of the Court, as was vested in the Collectors of Districts.¹ The Nizamut Sudder Adawlut was to revise and confirm the sentences of the Foujdary Adawluts in capital cases and those involving fines exceeding 100 rupees,² and to refer the former to the Názim for his sentence.³

In addition to these Courts, there were also subordinate ones of original jurisdiction placed at the chief points of the provincial divisions. The head farmers of each Pergunnah having a final judgment in all disputes not exceeding ten rupees,⁴ and the Collectors and some of the subordinate officers being invested with certain powers, as Magistrates, for the regulation of the Police.⁵

One of the leading features of this plan was, that in the Civil Courts Muhammadans and Hindús were entitled to the benefit of their own laws in all suits regarding inheritance, marriage, cast, and other religious usages and institutions.⁶ I shall recur to this in the Chapter treating of the Native Laws.

Such is the outline of the system first proposed by Warren Hastings, a system unavoidably imperfect, from the limited knowledge possessed at that period, by the English, of the habits and character of the Natives, and indeed of almost all that was requisite for rendering it effectual, but which must, at the same time, excite our admiration when we call to mind the state of confusion into which the country had been plunged by a rapid succession of revolutions, and the consequent uprooting of society, that had scarcely left a vestige of the former institutions, and had most emphatically reduced the law to a dead letter; or when we remember the difficulties which must have surrounded any attempt to form a plan for the restoration of order, at a time when every public function-

¹ Plan Rule VII.

⁴ Plan, Rule XI.

² Plan, Rule XXX.

⁵ Plan, Rule XXXVI.

³ Plan, Rule XXIX.

⁶ Plan, Rule XXIII.

ary had been long accustomed to fill his purse by the grossest extortion, and to convert the decision of disputed claims into an avowed means of self-aggrandisement.

The Committee of the House of Commons, in the celebrated Fifth Report, speaking of the Revenue and Judicial Regulations which were made under this system, observe, that they manifest “a diligence of research, and a desire to improve the condition of the inhabitants by abolishing many grievous imposts, and prohibiting many injurious practices which had prevailed under the Native Government; and thus the first important step was made towards those principles of equitable government which it is presumed the Directors always had it in view to establish, and which, in subsequent institutions, have been more successfully accomplished.”¹

Soon after the adoption of this plan by Government, the Regulating Act of 1773 (the 13th Geo. III. c. 63) was passed: but this Statute, the first interference, strictly speaking, of the British Legislature in the administration of Indian affairs, did not materially affect the Government of India at large. The establishment of the Supreme Court at Calcutta, under this Act, created much dissatisfaction at the time, and was, as we have already seen, the cause subsequently of serious contentions; but the restriction and definition of its powers soon followed,² and effectually did away with all cause of complaint. The most important part of the Regulating Act, however, is that in which it provided for the administration of the government of India by the appointment of a Governor-General and Council,³ who were empowered to make Rules and Regulations for the good government of Bengal, and were thus invested for the first time, by Parliament, with a delegated power of legislation.⁴

¹ Fifth Report from the Select Committee of the House of Commons, 1812, p. 6.

² 21st Geo. III. c. 70.

³ 13th Geo. III. c. 63, ss. 7, 8.

⁴ 13th Geo. III. c. 63, ss. 36, 37. And see *infra*, Chapter V. on the Laws peculiar to the Courts in India.

In the year 1774 the European Collectors were recalled, and native 'Ámils appointed instead; and at the same time the superintendence of the collection of the revenue was vested in six Provincial Councils appointed for the respective divisions of Calcutta, Burdwán, Dacca, Moorshedabad, Dinajpúr, and Patna. The administration of civil justice was transferred from the Collectors to the 'Ámils, from whose decisions an appeal lay in every case to the Provincial Councils, and thence, under certain restrictions, to the Governor and Council as the Sudder Adawlut.

After Warren Hastings had presided in the Chief Criminal Court established at Calcutta for about eleven months, he felt himself obliged, from the multiplicity of business, to resign the situation: and accordingly, in October 1775, the Nizamut Adawlut was removed from Calcutta and established at Moorshedabad, under the superintendence of Muhammad Rizá Khán, who was invested with the office of Náib Názim at the recommendation of the Governor-General, and Foujdárs were appointed in the several districts for apprehending and bringing to trial all offenders against the public peace.¹

These arrangements for the administration of justice remained in force, with scarcely any change, until the year 1780, when the Calcutta Government passed Regulations which contained the following provisions: The jurisdiction of the Provincial Councils was confined exclusively to revenue matters;² and in each of the six great divisions above mentioned was established a Court of Dewanny Adawlut, presided over by a covenanted servant of the East-India Company, styled Superintendent of Dewanny Adawlut,³ whose jurisdiction extended over all claims of inheritance to Zamíndáris, Talookdáris,

¹ Fifth Report from the Select Committee of the House of Commons, 1812, p. 6. Bengal Judicial Regulation, XXVI. 1790, Preamble. In the Fifth Report the establishment of Foujdárs and Thanadárs is stated to have taken place in 1774.

² Bengal Judicial Regulation, I. 1780, s. 3.

³ Jud. Reg. I. 1780, s. 1.

and other real property or mercantile disputes,¹ and all matters of personal property, with the exception of what was reserved to the Provincial Courts, who were still to decide on all cases having relation to revenue, as well as on all demands of individuals for arrears of rent, and on all complaints from tenants and cultivators of undue exaction of revenue.² The decision of the Superintendent was to be final in all cases where the sum in dispute did not exceed 1000 rupees, but above that sum an appeal lay to the Sudder Dewanny Adawlut.³

At this time the many avocations of the Governor-General and Council compelled them to give up sitting in the Sudder Dewanny Adawlut, and a separate Judge was accordingly appointed to preside in that Court. The person selected for this high office was Sir Elijah Impey, and his acceptance of it was one of the principal charges from which that much-calumniated Judge so triumphantly cleared himself. He has been accused, by an eminent writer, of having accepted the office as a bribe; but whilst his legal attainments and position sufficiently account for his selection without having recourse to that odious supposition, the self-denial, so rare in India in those days with which he “declined appropriating to himself any part of the salary annexed to the office of Judge of the Sudder Dewanny Adawlut until the pleasure of the Lord Chancellor should be known,”⁴ of itself sufficiently refutes an accusation couched in terms as virulent and unfair, as the statements it contains are themselves partial and unfounded upon fact.

Sir Elijah, in fulfilment of the duties which devolved upon him by virtue of his new office, and without any remuneration, prepared a series of Regulations for the guidance of the Civil Courts, which he submitted to Government in November 1780. They were approved of by that body, and were afterwards in-

¹ Jud. Reg. I. 1780, s. 5.

² Jud. Reg. I. 1780, s. 3.

³ Jud. Reg. I. 1780, ss. 30, 31.

⁴ Extracted from Bengal Consultations in the East-India House, quoted in the Memoirs of Sir Elijah Impey, by his Son, p. 221, 8vo. Lond. 1846.

corporated, with additions and amendments, in a revised Code, passed in 1781, which was translated into the Persian and Bengálí languages.¹ Under these Regulations, all civil causes were made cognizable by the Dewanny Adawluts, which had been increased from six to eighteen, for the sake of rendering the jurisdictions of the individual Judges less inconveniently extensive.² The functions of the Judges of these Courts were entirely severed from the revenue department, four districts being, however, excepted, where, for local reasons, the functions of Civil Judge and Collector were exercised by the same persons, but expressly in distinct capacities, and, as Civil Judge, wholly independent of the Board of Revenue, and subject only to the authority of the Governor-General in Council and of the Judge of the Sudder Dewanny Adawlut.³ An appeal lay from the decisions of the Provincial Dewanny Adawluts, in cases where the amount in dispute exceeded 1000 rupees, to the Sudder Dewanny Adawlut.⁴

In the year 1781 the Foujdárs, instituted in 1775, were abolished, and the Police jurisdiction was transferred to the Judges of the Dewanny Adawluts, or in some cases, to the Zamíndár, by special permission of the Governor-General in Council. The Judges, however, were not empowered to punish, but merely to apprehend offenders, whom they were at once to forward to the Dáróghah of the nearest Foujdary Court; and the Judge of the Dewanny Adawlut, the Dáróghah of the Nizamut Adawlut, and the Zamíndár were to exercise a concurrent jurisdiction for the apprehension of robbers and disturbers of the public peace.⁵ A separate department was established at the Presidency, under the immediate controul of the Governor-General, to receive reports and returns of the

¹ The Persian translation by Mr. W. Chambers was printed in 1782. The Bengálí version by Mr. Duncan was printed in 1785.

² Jud. Reg. III. 1781, s. 1.

³ Jud. Reg. VI. 1781, ss. 2—12.

⁴ Jud. Reg. VI. 1781, ss. 53. 74.

⁵ Jud. Reg. XX. 1781, ss. 6—8.

proceedings of the Foujdary Courts, and lists of prisoners apprehended and convicted by the authorities in the provinces.¹ To arrange these records, and to maintain a check on all persons entrusted with the administration of criminal justice, an officer was appointed, to act under the direction of the Governor-General, with the title of Remembrancer of the Criminal Courts.² The ultimate decision still rested with the Náib Názim at Moorshedabad. In the same year the Provincial Councils were dissolved, and a Committee of Revenue established, to be entrusted with the charge and administration of all revenue matters, to be vested with the powers of the Provincial Councils, and to be under the controul of the Governor-General and Council.³

In 1782 the Court of Directors sent out orders to the Governor-General in Council to resume the superintendence of the Sudder Dewanny Adawlut, which Court had been constituted in the preceding year a Court of Record, by the 21st Geo. III. c. 70, s. 21: and it may be remarked, that thus, although it is generally looked upon as the principal Court of the Honourable East-India Company, it is in reality a Queen's Court. This Statute declared the judgments of the Governor-General and Council in appeal from the Provincial Courts in civil causes to be final, except in civil suits where the amount in dispute was of £5000 and upwards, when an appeal lay to the King in Council.⁴

The progress of the judicial system cannot be traced for the next four years, but no material alteration seems to have taken place.⁵

In the mean time Parliament again interfered, and an Act was passed in 1784, viz. the 24th Geo. III. c. 25, to regulate

¹ Jud. Reg. XX. 1781, ss. 11, 12.

² Jud. Reg. XX. 1781, s. 14.

³ Revenue Reg. I. 1781.

⁴ See *infra* Chapter IV. on Appeals to England.

⁵ Leith's History of the Rise and Progress of the Adawlut System, p. 24. 8vo. Lond. 1822, 2d edit.

the affairs of the East-India Company and of the British possessions in India. Section 39 of this Statute, which may be said to form the basis of the present constitution of British India, commanded the Company to institute inquiries into the complaints that had prevailed that divers Rájahs, Zamíndárs, Polygars, Talookdárs, and other native landholders within the British territories in India, had been unjustly deprived of, or compelled to abandon and relinquish, their respective lands, jurisdictions, rights, and privileges, or that the tributes, rents, and services required of them had become oppressive; and these grievances, if founded upon truth, were directed to be effectually redressed, in such manner as should be consistent with justice and the laws and customs of the country, and permanent rules to be settled and established upon principles of moderation and justice, according to the laws and constitution of India, by which their tributes, rents, and services should be rendered and paid.

This Act also established the Board of Commissioners for the affairs of India; and the attention of that body, and of the Court of Directors, was immediately turned to the important objects comprised in the above requisition.

The Marquis Cornwallis was selected to superintend the measures determined upon, and in the year 1786 he proceeded to India as Governor-General, carrying with him detailed instructions from the Court of Directors, which were dictated by a wise and considerate spirit, stating "that they had been actuated by the necessity of accommodating their views and interests to the subsisting manners and usages of the people, rather than by any abstract theories drawn from other countries or applicable to a different state of things."

In compliance with these instructions, Lord Cornwallis directed the re-union of the functions of civil and criminal justice with those of the collection and management of the revenue; and the Dewanny Adawlut was accordingly, in the year 1787, placed under the superintendence of the Collectors.¹ District

¹ Jud. Reg. VIII. 1787, s. 2.; Rev. Reg. XX. 1787.

Courts were established in Moorshedabad, Dacca, and Patna, presided over by Judges and Magistrates who were not Collectors, that office being unnecessary, as their jurisdiction was circumscribed by the limits of those cities.¹ The proper Collectors' or Revenue Courts were kept distinct from the Dewanny Adawluts, although presided over by the same persons.² From the latter, appeals were allowed, within certain limits, to the Governor-General and Council, in their capacity of Judges of the Sudder Dewanny Adawlut;³ and the decisions of the Revenue Courts were appealable, first to the Board of Revenue, and thence to the Governor-General in Council.⁴ The Collectors also were appointed to act as Magistrates⁵ in apprehending offenders against the public peace; but with the exception of the chastisement of petty offences, they had no power of trial or punishment, and were directed to deliver up their prisoners for that purpose to the Muhammadan criminal officers,⁶ who were not to be interfered with⁷ beyond the influence possessed by the British Government in recommending the mitigation of punishments of unnecessary cruelty.

The administration of criminal justice remained in the hands of the Náib Názim until the end of the year 1790, when the Governor-General, convinced of the inefficacy of the different plans which had been adopted and pursued from the year 1772, declared that, with a view to ensure a prompt and impartial administration of the criminal law, and in order that all ranks of people might enjoy security of person and property, he had resolved in Council to resume the superintendence of the administration of criminal justice throughout the provinces.⁸ Accordingly the Nizamut Adawlut was again removed from

¹ Jud. Reg. VIII. 1787, ss. 2, 11.; Rev. Reg. XX. 1787.

² Jud. Reg. VIII. 1787, s. 19.; Rev. Reg. XXIII. 1787, s. 1.

³ Jud. Reg. VIII. 1787, ss. 53--72.

⁴ Rev. Reg. XXIII. 1787, s. 42.

⁵ Jud. Reg. XXII. 1787, s. 1.; Rev. Reg. XX. 1787.

⁶ Jud. Reg. XXII. 1787, ss. 3--5.

⁷ Jud. Reg. XXII. 1787, s. 14.

⁸ Jud. Reg. XXVI. 1790, Preamble.

Moorshedabad to Calcutta, and was appointed to consist of the Governor-General and members of the Supreme Council, assisted by the Kází al Kuzát and two Muftís.¹ This Court was at once a Court of Criminal Appeal and a Board of Police, as it took cognizance, not only of all judicial matters, but of the general state of the Police throughout the country.² All persons charged with crimes and offences were to be apprehended by the Magistrates, and an inquiry instituted; when, if the charge proved groundless, they were to be acquitted and dismissed; but if the crime were proved, they were to be admitted to bail, except in cases of murder, theft, burglary, or robbery; and in all proved cases they were to be committed for trial by the Court of Circuit. Trivial cases of assault, abuse, or affray were punishable by the Magistrates by limited flagellation or imprisonment.³ Four Courts of Circuit, superintended respectively by two Judges, who were to be covenanted servants of the Company, assisted by Kázís and Muftís as Assessors, were at the same time established, for the trial of such crimes as were not punishable by the Magistrates.⁴ These Judges were required to hold a general gaol delivery every six months,⁵ and, in capital cases, to report their proceedings to the Nizamut Adawlut at Calcutta for confirmation.⁶ In the Regulations for these Courts of Circuit we meet, for the first time, with the provision, that in trials for murder the doctrine of Abú Yúsuf and Muhammad, requiring the evidence of criminal intention alone, was to be applied in regulating the Fatwa of the law officers, in opposition to that of Abú Haní-fah,⁷ which required the actual employment of an instrument of blood: the relations of a murdered person were also debarred from pardoning the offender.⁸

¹ Jud. Reg. XXVI. 1790, ss. 41, 42. ² Jud. Reg. XXVI. 1790, s. 52.

³ Jud. Reg. XXVI. 1790, ss. 3—6. ⁴ Jud. Reg. XXVI. 1790, ss. 20, 24.

⁵ Jud. Reg. XXVI. 1790, s. 31. ⁶ Jud. Reg. XXVI. 1790, s. 32.

⁷ Jud. Reg. XXVI. 1790, s. 33. This distinction of doctrine will be explained in a subsequent section on the Muhammadan Law, Chap. V. *infra*.

⁸ Jud. Reg. XXVI. 1790, s. 34.

In 1791 the Judges of the Courts of Circuit were required to transmit to the Nizamut Adawlut all trials wherein they disapproved of the proceedings held on trial, or of the Fatwa of the law officers.¹ In the same year imprisonment and hard labour were substituted for mutilation,² and the Court of Nizamut Adawlut was empowered to pass sentence of death, instead of granting Díyat to the heir.³

In 1792 the rule that the refusal to prosecute by the relatives of a murdered person was to bar the trial of the offender was abrogated.⁴ In the same year the Government took the management of the Police entirely out of the hands of the Zamíndárs and farmers of land, who were no longer to be held responsible for robberies committed in their estates or farms, and placed it under the controul of the Magistrates, who were required to divide their respective Zillahs into Police jurisdictions of twenty miles square, to be superintended by a Dáróghah and a suite of Police officers, to be paid by the Government.⁵

(2) SYSTEM OF 1793.

The administration of civil justice appears to have remained materially the same from 1787 until 1793, when Lord Cornwallis introduced his celebrated system of judicature, and formed the Regulations into a regular Code, which is the basis of the Regulation Law prevalent throughout India at the present time.

The earliest alteration made by this system was the vesting the collection of revenue and the administration of justice in separate officers; and for this were assigned, amongst others, the following reasons: "It is obvious, that if the Regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and

¹ Jud. Reg. XXXIII. 1791, s. 3.

² Jud. Reg. XXXVII. 1791, s. 3.

³ Jud. Reg. XLIX. 1792.

⁴ Jud. Reg. XXXIV. 1791.

⁵ Jud. Reg. XL. 1792, s. 1.

that individuals who have been aggrieved by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them from administering the laws between the proprietors of land and their tenants.”¹ The Mál Adawluts, or Revenue Courts were accordingly abolished, the Revenue Board was divested of its powers as a Court of Appeal, and all causes hitherto tried by the revenue officers were transferred to the Dewanny Adawluts,² which were now established in each provincial division, and presided over respectively by a covenanted servant, in whose person were united the powers of Judge and Magistrate, and who also had the management of the Police within the limits of his division.

The Courts of Civil Judicature established under Lord Cornwallis’ system formed a regular gradation of Courts of Appeal. The lowest in the series were the Courts of the Native Commissioners, who were to hear and decide in the first instance, where the cause of action did not exceed fifty rupees.³ These Native Commissioners were of three denominations, termed Ameens or Referees, Sálisán or Arbitrators, and Moonsiffs or Native Justices;⁴ and from their decisions an appeal lay to the Zillah or City Judge.⁵ The second description of Courts were those of the Registers, who were covenanted servants attached to the Zillah and City Courts, and who, in order to prevent the time of such Courts being occupied by the trial of petty suits, were, when authorised by the Zillah and City Judges, empowered to try and decide causes for an amount not exceeding 200 rupees. The decrees passed by a Register were not valid unless revised and countersigned by the Judge.⁶ Next in order were the Zillah and City Courts, twenty-six in number, which were each presided over by a single Judge, being a covenanted servant, assisted by Hindú

¹ Reg. II. 1793, Preamble.

² Reg. XL. 1793, s. 2.

³ Reg. XL. 1793, s. 20.

⁴ Reg. II. 1793, s. 2.

⁵ Reg. XL. 1793, s. 5.

⁶ Reg. XIII. 1793, s. 6.

and Muhammadan law officers and a Register, having cognizance of all civil suits in the first instance:¹ their decisions were not final, and were appealable in all cases to the Provincial Courts.² The Provincial Courts of Appeal, which were four in number, were the fourth in the ascending scale, and were each presided over by three European Judges. These were established, one in the vicinity of Calcutta, one at the city of Patna, one at Dacca, and the fourth at Moorshedabad:³ they were provided respectively with a Register, a Kází, a Muftí, and a Pandit, and with a competent number of native ministerial officers. The decision of the Provincial Courts was final in suits where the disputed amount did not exceed the sum of 1000 rupees: above that sum, an appeal lay to the Sudder Dewanny Adawlut.⁴ The Sudder Dewanny Adawlut was established at the Presidency, and consisted of the Governor-General and Members of the Supreme Council.⁵ This Court took cognizance of appeals from the Provincial Courts,⁶ and its judgment was final in all civil suits whatever.⁷ It was also empowered to receive any original suit cognizable in the Zillah Courts, provided the Zillah Judge had refused or omitted to proceed in it.⁸ The Sudder Dewanny Adawlut was also authorised to admit appeals from the decisions of the Provincial Councils, or of the Committee or Board of Revenue.⁹

Criminal justice was administered, under the new system introduced in 1793, in the following manner. The Zillah and City Judges were constituted Magistrates, their jurisdiction being co-extensive with their jurisdiction as Judges.¹⁰ The

¹ Reg. III. 1793, ss. 2, 3. 8.

² Reg. III. 1793, s. 20.

³ Reg. V. 1793, s. 2.

⁴ Reg. V. 1793, ss. 23, 25, 26. 30.

⁵ Reg. VI. 1793, s. 2.

⁶ Reg. VI. 1793, s. 10.

⁷ Reg. VI. 1793, s. 29. This Regulation seems to have been made irrespective of the appeal to the King in Council under the 21st Geo. III. c. 70, s. 21; the defect was, however, subsequently remedied by Reg. XVI. of 1797. See *infra* Chapter IV. on Appeals to England.

⁸ Reg. VI. 1793, s. 4.

⁹ Reg. VI. 1793, s. 9.

¹⁰ Reg. IX. 1793, ss. 2, 3.

Magistrates and their assistants were empowered to apprehend murderers, robbers, thieves, housebreakers, and persons charged with crimes and misdemeanours;¹ and in certain cases, as abusive language, calumny, assaults, and affrays, were authorised to pass final sentence, subject, however, to the controul of the Courts of Circuit and Nizamut Adawlut, and to punish such offenders, within certain limits, by corporal chastisement, fine not to exceed 200 rupees, or imprisonment for a term not exceeding fifteen days.² British subjects charged with offences, and residing in the provinces, were to be apprehended and sent for trial to the Supreme Court at Calcutta.³ Four Courts of Circuit were established, to consist of the Judges of the Provincial Courts of Appeal, and the Kázi and Mufti attached to those Courts.⁴ These were Courts of half-yearly Gaol Delivery for certain Zillahs, and monthly for the cities of Patna, Dacca, and Moershedabad, and certain other Zillahs.⁵ These Courts were empowered to pass sentence of death or imprisonment for life, but were to transmit the proceedings to the Nizamut Adawlut⁶ to await the final sentence of that Court, which being sent back to the Judges, they were to issue an immediate warrant for execution.⁷ The Nizamut Adawlut, or chief Criminal Court, was held at Calcutta, and consisted of the Governor-General and Members of the Council, assisted by the Kází al-Kuzát and two Muftís.⁸ This Court had cognizance of all matters relating to the administration of Criminal Justice and the Police, and was authorised to exercise the same powers as were vested in it when it was superintended by the Náib Názim.⁹ The sentences of the Nizamut Adawlut were, in all cases, to be final; but the Governor-General in Council had a power of pardoning or commuting the punishment awarded.¹⁰ All these Courts administered

¹ Reg. IX. 1793, s. 4.

² Reg. IX. 1793, s. 19.

³ Reg. IX. 1793, ss. 40. 44. 45.

⁷ Reg. IX. 1793, s. 78.

⁹ Reg. IX. 1793, ss. 72, 73.

² Reg. IX. 1793, ss. 8, 9.

⁴ Reg. IX. 1793, ss. 31. 33. 36.

⁶ Reg. IX. 1793, s. 58.

⁸ Reg. IX. 1793, ss. 66, 67.

¹⁰ Reg. IX. 1793, s. 79.

the Muhammadan criminal law as modified by the Regulations.

The Police Regulations introduced in the year 1793 were a re-enactment, with some amendments, of those passed in 1792, already alluded to. The Police was declared to be under the exclusive charge of officers appointed by Government; and the landholders and farmers were prohibited from keeping up their establishments of Police, and exempted from responsibility for robberies committed within their estates, unless their connivance were proved;¹ the division into Police Jurisdictions was retained, and they were each to be guarded, as before, by a Dáróghah, who was directed to maintain a suite of Police-officers at the expense of Government, and to apprehend and send to the Magistrates all persons charged with crimes and misdemeanours, and vagrants.² The Magistrates and Police-officers of the cities were invested with concurrent authority in their respective jurisdictions, and with those of the Zillahs;³ and the cities were to be divided into wards, to be guarded by Dáróghahs, who were to be under the immediate inspection, and subject to the authority of, the Kútwáls of each city.⁴

The reformed system of 1793, of which I have thus attempted a concise description, constitutes the main fabric of the actual administration of justice at the present day, not only in Bengal, Behar, and Orissa, but throughout British India. Various modifications and improvements were gradually introduced; and nowhere has the humane policy of the Government been more distinctly shewn, or more thoroughly successful, than in the increased employment of the Natives in judicial offices, and the confidence placed in them by extending the jurisdiction of the Courts over which they are appointed to preside.

I shall now give a rapid sketch of the more material alterations that have taken place in the judicial system of Bengal

¹ Reg. XXII. 1793, ss. 1—3.

² Reg. XXII. 1793, ss. 4—12.

³ Reg. XXII. 1793, s. 25.

⁴ Reg. XXII. 1793, s. 26.

since the year 1793; and for greater clearness I shall treat of the several departments of Civil and Criminal Judicature and the Police under distinct heads.

(3) ALTERATIONS SINCE 1793.

(a) *Civil Judicature.*

The first alteration of any importance was the giving a final power of decision to the Registers in suits not exceeding 25 rupees in value, above which amount an appeal lay to the Provincial Courts.¹ In the following year the Zillah and City Courts were also empowered to decide finally on all appeals from their Registers or the Native Commissioners.²

The jurisdiction of the Provincial Courts was extended in the year 1797, when they were authorised to take cognizance of, and decide finally, suits to the value of 5000 rupees, above which sum their decisions were appealable to the Sudder Dewanny Adawlut.³ In the same year⁴ rules were also enacted for the conduct of appeals to the King in Council from the Sudder Dewanny Adawlut, requiring that the petition of appeal should be presented within six months, and the judgment appealed against should amount to £5000 sterling.

A material alteration took place in the constitution of the Sudder Dewanny Adawlut during the administration of the Marquis of Wellesley in the year 1801, when it was made to consist of three Judges, to be selected from the covenanted servants of the Company.⁵ The number of Judges was increased in the year 1811; and the Court declared thenceforth to consist of a Chief Judge and of as many Puisne Judges as the Governor-General in Council might deem necessary.⁶ In the year 1801 a summary appeal, whatever might be the value at issue, was directed to be cognizable by the Sudder Dewanny

¹ Reg. VIII. 1794, ss. 6, 7.

² Reg. XII. 1797, s. 2.

³ Reg. II. 1801, ss. 2, 3.

⁴ Reg. XXXVI. 1795, s. 4.

⁵ Reg. XVI. 1797.

⁶ Reg. XII. 1811, s. 2.

Adawlut, the Provincial Courts, or the Courts of the Zillah and City Judges, where the Courts immediately below such Courts respectively had refused to admit a regular appeal on the ground of delay, informality, or other default in preferring it.¹

In 1803 Head Native Commissioners were appointed in the cities and zillahs, for the trial of suits referred to them by the Zillah Judges, not exceeding 100 rupees,² and the jurisdiction of the Registers was increased to 500 rupees, but at the same time their power of final decision was abolished.³ The decisions of the Zillah and City Judges were declared to be final in all appeals from the Native Commissioners;⁴ but an appeal was directed to lie to the Provincial Courts from all decisions of the Zillah and City Judges in causes tried by them in the first instance, that is to say, without a previous trial by their Registers or the Native Commissioners.⁵ The Provincial Courts were also empowered to admit a second or special appeal from all decrees of the Zillah and City Judges in appealed cases from the decisions of the Native Commissioners or Registers, in cases in which a regular appeal would not lie, if such decrees should appear to be erroneous or unjust, or the nature of the cause should be of sufficient importance to require further investigation.⁶ Assistant Zillah and City Judges were appointed in the same year.⁷

In the year 1805 the Sudder Dewanny Adawlut was invested with a like power of receiving special appeals from the decrees of the Provincial Courts in similar cases not open to a regular appeal.⁸ In the same year the Provincial Courts were authorised to admit a summary appeal in cases where the Zillah and City Courts refused to admit or hear original suits on the ground of default, delay, or other informality.⁹

¹ Reg. II. 1801, ss. 8, 9.

² Reg. XLIX. 1803, s. 6.

³ Reg. XLIX. 1803, s. 23.

⁴ Reg. XLIX. 1803, s. 2.

⁵ Reg. II. 1805, s. 11.

⁶ Reg. XVI. 1803, s. 26.

⁷ Reg. XLIX. 1803, s. 22.

⁸ Reg. XLIX. 1803, s. 24.

⁹ Reg. II. 1805, s. 10.

In 1808 the Zillah and City Courts were restricted in their original jurisdiction to suits of the value of 5000 rupees, over which sum they were to be originally cognizable in the Provincial Courts.¹

In the year 1813, by the Statute 53rd Geo. III. c. 155, s. 107, British subjects residing, trading, or holding immoveable property in the provinces, were made amenable to the Company's Courts in civil suits brought against them by Natives, with, however, a right of appeal to the Supreme Court at Fort William, in cases where an appeal otherwise lay to the Sudder Dewanny Adawlut.

In 1814 the office of Assistant Judge was abolished ;² and in the same year Moonsiffs and Sudder Ameens were appointed, the former to try causes not exceeding 64 rupees,³ and the jurisdiction of the latter extending to 150 rupees in original suits referred to them by the Zillah and City Judges. An appeal lay to the Zillah and City Judges, whose decision was final.⁴ The Sudder Ameens were also authorised to try appeals from Moonsiffs, referred to them by the Zillah and City Judges, and in all such referred appeals the decisions of the Sudder Ameens were final.⁵ But neither Moonsiffs nor Sudder Ameens were to take cognizance of any suits in which a British European subject, or an European foreigner, or an American, was a party.⁶ An appeal lay to the Zillah and City Judges from all decisions in original suits passed by Moonsiffs, Sudder Ameens, and Registers.⁷ The Registers were empowered, in this year, to decide original suits referred to them by the Zillah and City Judges, of the value of 500 rupees ; in such suits an appeal lay to the Zillah and City Courts.⁸ The Registers, when specially empowered, were like-

¹ Reg. XIII. 1808, ss. 2, 3.

² Reg. XXIV. 1814, s. 3.

³ Reg. XXIII. 1814, s. 13.

⁴ Reg. XXIII. 1814, s. 68 ; Reg. XXIV. 1814, s. 7.

⁵ Reg. XXIII. 1814, s. 75 ; Reg. XXIV. 1814, s. 7.

⁶ Reg. XXIII. 1814, ss. 13, 68 ; Reg. XXIV. 1814, s. 7.

⁷ Reg. XXIV. 1814, s. 6.

⁸ Reg. XXIV. 1814, s. 8.

wise authorised to try suits referred to them by the Zillah and City Judges, above the value of 500 rupees ; but such referred suits were appealable to the Provincial Courts.¹ They were also, when especially empowered, authorised to try suits in appeal from decisions of Moonsiffs and Sudder Ameens referred to them by the Zillah and City Judges, and their decision in such referred appeals was final.² The Zillah and City Courts were formally authorised to try any civil suits regularly instituted in their Courts, not exceeding 5000 rupees in value.³ In the same year more definite Rules were enacted with respect to the admission of special appeals, which were directed to lie to the Superior Courts only when the judgment should appear to be inconsistent with precedent or some Regulation, or with the Hindú or Muhammadan law, or other law or usage which might be applicable, or unless it should involve some point of importance not before decided by the Superior Courts.⁴ Summary appeals were also directed to lie from the Provincial Courts to the Sudder Dewanny Adawlut, from the Zillah and City Courts to the Provincial Courts, and from the Registers or Sudder Ameens to the Zillah and City Courts, in cases where the lower Courts had respectively refused to admit or investigate any suit, original or in appeal, regularly cognizable by them, on the ground of delay, informality, or other default.⁵

All decisions of the Provincial Courts, which had been increased from four to six in number,⁶ and which, as has already been mentioned, had been empowered to decide finally in cases of the value of 5000 rupees, whether original or in appeal from Zillah or City Judges, were, in 1814, declared to be appealable to the Sudder Dewanny Adawlut.⁷ Early in this year the number of Judges in these Courts had been augmented from three to four.⁸ In the same year an original jurisdiction was

¹ Reg. XXIV. 1814, s. 9.

² Reg. XXIV. 1814, s. 9.

³ Reg. XXIV. 1814, s. 6.

⁴ Reg. XXVI. 1814, s. 2.

⁵ Reg. XXVI. 1814, s. 3.

⁶ Reg. IX. 1795, s. 2, and Reg. IV. 1803, s. 2.

⁷ Reg. XXV. 1814, s. 5.

⁸ Reg. V. 1814, s. 2.

given to the *Sudder Dewanny Adawlut* in suits for the value of 50,000 rupees, when such suits could not be conveniently heard in the Provincial Courts.¹

In the year 1817 the original jurisdiction of the *Zillah* and *City Courts* was extended to 10,000 rupees,² and an appeal was directed to lie to the Provincial Courts from their decisions in all suits, whether original or appealed from the Courts of the *Registers*. In the same year it was directed that special appeals should be allowed where decrees passed by one or more Courts were inconsistent with each other.³

Several extensions and definitions of the grounds for the admission of special appeals which it is unnecessary to specify, had been at various times enacted, when, in 1819, it was further declared to be competent to the Provincial Courts and to the *Sudder Dewanny Adawlut* to admit a second or special appeal whenever, on a perusal of the decree of a lower Court from whose decision the special appeal was desired, there might appear strong probable ground, from whatever cause, to presume a failure of justice.⁴ This provision was, however, subsequently rescinded, and the Courts were directed to conform to the former rules with regard to the admission of second or special appeals.⁵

In the year 1821 the number of *Moonsiffs* was increased, and their jurisdiction extended to suits preferred to them against Native inhabitants of their jurisdictions, of the value of 150 rupees.⁶ *Sudder Ameens* were at the same time, when specially empowered, authorised to take cognizance of claims originally preferred to them, or referred by the *Zillah* and *City Judges*, up to the amount of 500 rupees. An appeal lay to the *Zillah* and *City Judges* in all such referred suits above the value of 150 rupees.⁷

¹ Reg. XXV. 1814, s. 5.

² Reg. XIX. 1817, s. 2.

³ Reg. XIX. 1817, s. 7.

⁴ Reg. IX. 1819, s. 2.

⁵ Reg. II. 1825, ss. 4, 5.

⁶ Reg. II. 1821, s. 3.

⁷ Reg. II. 1821, s. 5.

In 1827 Sudder Ameens, when duly empowered by the Sudder Dewanny Adawlut, were authorised to try original suits of the value of 1000 rupees, and any suits referred to them by the Zillah and City Judges not exceeding the same amount. Appeals from decisions of Sudder Ameens in such referred cases exceeding 500 rupees, were not to be referred to a Registrar, and the decision of the Zillah and City Judges in such appeals was to be final.¹

Many important rules were enacted in the year 1831, most of which are now in force; the jurisdiction of the Moonsiffs was extended to 300 rupees,² and Sudder Ameens were empowered to try original suits referred to them by the Zillah and City Judges, to the amount of 1000 rupees;³ an appeal lay to the Zillah or City Judge, whose decision was final.⁴ Principal Sudder Ameens were also appointed, with power to take cognizance of original suits, referred as above, of the value of 5000 rupees;⁵ a regular appeal lay from their original decisions to the Zillah and City Judges, and a special appeal to the Sudder Dewanny Adawlut.⁶ The Zillah and City Judges were authorised, whenever the number of appeals from the decisions of Moonsiffs and Sudder Ameens was heavy, to obtain permission of the Sudder Dewanny Adawlut, to refer a specified number of the cases for trial by the Principal Sudder Ameens.⁷ Special and summary appeals from decrees and orders in original suits and appeals, tried by Principal Sudder Ameens, were directed to be governed by the Rules previously in force respecting the admission of such appeals.⁸ At the same time the Registers' Courts were abolished, and all suits pending therein were directed to be called in and referred, as the amount might be, to the Sudder Ameens or

¹ Reg. IV. 1827.

² Reg. V. 1831, s. 15.

³ Reg. V. 1831, ss. 17, 18.

⁷ Reg. V. 1831, s. 16.

² Reg. V. 1831, s. 5.

⁴ Reg. V. 1831, s. 28.

⁶ Reg. V. 1831, s. 28.

⁸ Reg. V. 1831, s. 19.

Principal Sudder Ameens.¹ The Provincial Courts of Appeal were also gradually superseded, and the Zillah and City Judges were empowered instead to have primary jurisdiction in all suits exceeding in value 5000 rupees.² An appeal lay from their original decisions to the Sudder Dewanny Adawlut.³

In the same year a Court of Sudder Dewanny Adawlut was constituted for the North-Western Provinces, with the same powers in those Provinces as were vested in the Sudder Dewanny Adawlut at Calcutta.⁴

In 1832 the Governor-General in Council was declared competent to invest European officers presiding in a Civil Court with the power of availing themselves of the assistance of respectable natives in the trial of suits, original or on appeal, in either of the three following ways :— First, by referring the suit, or any point or points in the same, to a Pancháyit of such persons, who would carry on their inquiries apart from the Court, and report to it the result; the reference and its answer to be in writing, and filed in the suit. Secondly, by constituting two or more of such persons assessors or members of the Court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses: the opinion of each assessor to be given separately, and discussed; or, Thirdly, by employing them more nearly as a jury, when they would attend during the trial of the suit, and suggest such points of inquiry as occurred to them, and after consultation deliver in their verdict. In all these cases the decision was vested exclusively in the presiding Judge.⁵

In 1833 the Provincial Courts were finally abolished; all original suits then pending in such Courts were directed to be transferred to the Zillah and City Courts; and all appeals,

¹ Reg. V. 1831, s. 29.

² Reg. V. 1831, s. 27.

³ Reg. V. 1831, s. 28.

⁴ Reg. VI. 1831.

⁵ Reg. VI. 1832.

regular, special, or summary, so pending, were to be transferred to the Sudder Dewanny Adawlut.¹ Additional Zillah and City Judges were also appointed in the same year.²

In 1836 it was enacted that the 53d Geo. III. c. 155, s. 107, which gave to British subjects resident in the provinces a right of appeal from the Company's to the Supreme Courts, should cease to have effect in India; and it was also enacted that no person by reason of birth or descent should be exempt from the jurisdiction of the Company's Courts,³ or be incapable of being a Principal Sudder Ameen, Sudder Ameen, or Moonsiff.⁴

In the year 1837 the powers of the last-named officers were further enlarged, and they were empowered to set aside summary judgments passed by Collectors.⁵ The Principal Sudder Ameens were authorised to take cognizance of suits of any amount referred to them by the Zillah or City Judges;⁶ and also of all original suits so referred, preferred by Proprietors, Farmers, or Talookdárs, for the revenue of land held free from assessment, or claiming to hold lands exempt from revenue.⁷ In suits exceeding in amount 5000 rupees an appeal lay from their decisions direct to the Sudder Dewanny Adawlut;⁸ but in suits referred to Principal Sudder Ameens within the competency of a Moonsiff to decide, their decisions were appealable to the Zillah or City Judges, whose decision was to be final.⁹ The Zillah and City Judges were also, in the same year, authorised to transfer any civil proceeding to a Principal Sudder Ameen; and in such cases an appeal from his order lay in the first instance to the Zillah or City Judge, and specially to the Sudder Dewanny Adawlut.¹⁰

In 1838 the Zillah Courts were authorised to receive a

¹ Reg. II. 1833, s. 5.

² Act XI. 1836.

³ Act XXV. 1837, s. 2.

⁴ Act XXV. 1837, s. 3.

⁵ Act XXV. 1837, s. 6.

⁶ Reg. VIII. 1833, s. 2.

⁷ Act VIII. 1836, s. 1.

⁸ Act XXV. 1837, s. 1.

⁹ Act XXV. 1837, s. 4.

¹⁰ Act XXV. 1837, s. 8.

summary appeal from the orders or decrees of the Moonsiffs subordinate to them.¹

In the year 1843 it was enacted that special appeals should lie to the Sudder Dewanny Adawlut from all decisions passed in regular appeals in all subordinate Civil Courts, when it should appear that such decisions were inconsistent with law or usage, or the practice of the Courts, or involved doubtful questions of law, usage, or practice.²

In the year 1844 it was enacted that all suits within the competency of a Principal Sudder Ameen or Sudder Ameen to decide should ordinarily be instituted in their Courts; but that the Zillah or City Judges might withdraw them, and try them themselves, or refer them to any other competent Court subordinate to them. The Zillah and City Judges were also empowered to admit summary appeals from the orders of Principal Sudder Ameen and Sudder Ameen rejecting original suits cognizable by them.³

In 1853 Act III. of 1843 was repealed, and it was enacted that special appeals should lie to the Sudder Court, from any decision passed on regular appeal in any of the Courts below, on the following grounds: viz. 1. A failure to decide all the material points in the case, or a decision contrary to law; 2. Misconstruction of any document; 3. Ambiguity in the decision itself; and, 4. Substantial error or defect in procedure, or in the investigation of the case. No such special appeal was to lie on matter of fact.⁴

(b) *Criminal Judicature.*

The alterations in the system of criminal judicature introduced by Lord Cornwallis in 1793 have kept pace with the improvements in the civil department. A fourth Court of Circuit was established for Benares in 1795,⁵ and subsequently a fifth for the ceded provinces.⁶

¹ Act XXII. 1838.

² Act IX. 1844, ss. 1, 2. 4.

³ Reg. V. 1795.

⁴ Act III. 1843, s. 1.

⁵ Act XVI. 1853, s. 4.

⁶ Reg. VII. 1808.

The Assistants to the Magistrates were granted a limited occasional exercise of judicial powers in the year 1797.¹

In the year 1801 the constitution of the Nizamut Adawlut was altered; the Governor-General and Council no longer presided; and it was declared to consist of three Judges, assisted by the chief Kází and two Muftís.² The number of Judges was afterwards increased, as in the Sudder Dewanny Adawlut.³

In 1807 Magistrates were given an extended jurisdiction, and were empowered to inflict imprisonment not exceeding one year, in addition to fine or stripes:⁴ this power was not to be exercised by Assistant Magistrates,⁵ but they were authorised under certain circumstances to sentence offenders to one month's imprisonment with or without corporal punishment.⁶

In 1808 it was declared that all trials of persons for robbery with open violence, and liable to transportation for life, should, on the conviction of the offender, be referred to the Nizamut Adawlut.⁷

In the year 1810 an important alteration was made, enabling the Government to appoint other persons, not being Zillah or City Judges, to exercise with them the office of Joint Magistrates. Assistant Magistrates were also appointed, with limited powers, for Police and other purposes. The superintendence of the Police, however, remained with the Zillah and City Magistrates, when not placed under the immediate authority of the Joint or Assistant Magistrates.⁸

In the year 1813 the Statute 53d Geo. III. c. 155, s. 105, made British subjects resident in the provinces punishable by the District and Zillah Magistrates for assaults and trespass against the Natives of India; but the convictions of such

¹ Reg. XIII. 1797, s. 3.

³ Reg. XII. 1811, s. 2.

⁵ Reg. IX. 1807, s. 20.

⁷ Reg. VIII. 1808, s. 4.

² Reg. II. 1801, s. 10.

⁴ Reg. IX. 1807, s. 19.

⁶ Reg. IX. 1807, s. 20.

⁸ Reg. XVI. 1810.

Magistrates were removable by Certiorari to the King's Courts.

In 1814 the Judges of the Courts of Circuit were increased to the number of four ;¹ and afterwards, in 1826, the Governor-General in Council was empowered to appoint any number that might be deemed expedient.²

In 1817 all trials where persons were convicted in the Courts of Circuit of robbery or burglary, not within the provisions for robbery by open violence, if accompanied by murder, attempt to commit murder, or wounding, were made referrible to the Nizamut Adawlut.³

In the year 1818 the jurisdiction of the Magistrates and Joint Magistrates was extended, and they were empowered to try offenders charged with burglary, or attempt to commit that crime, and theft : if not attended with murder or violence, they were authorised to sentence to flogging, not exceeding thirty stripes, and imprisonment with hard labour for a term not exceeding two years ;⁴ but otherwise they were to commit the prisoner for trial to the Court of Circuit ; they also had authority to punish, in certain cases, persons convicted by them of buying or receiving stolen property, or of having escaped from gaol.⁵ In 1819 they were further empowered to try offenders for woman-stealing, and for desertion of their wives and families,⁶ and all sentences of Magistrates and Joint Magistrates were declared to be under the controul of the Courts of Circuit.⁷

In 1821 the jurisdiction of Assistant Magistrates was somewhat extended, and they, as well as the law-officers of the Zillah and City Courts, were authorised to try and determine petty thefts and other trivial offences when referred to them by a Magistrate, and to inflict fines, flogging, and imprisonment,

¹ Reg. V. 1814, s. 2.

² Reg. I. 1826.

³ Reg. XVII. 1817, s. 8.

⁴ Reg. XII. 1818, ss. 2, 3.

⁵ Reg. XII. 1818, ss. 4, 5.

⁶ Reg. VII. 1819, ss. 2, 3.

⁷ Reg. VII. 1819, s. 7.

within certain limits ; the Assistant Magistrates, when specially empowered, being authorised to imprison offenders for one year, and the law-officers and Sudder Ameen for the space of one month.¹

Corporal punishment by flogging was limited in the year 1825 ; females were entirely exempted,² and the ratan was substituted for the korah,³ a heavy whip, which had been represented in some instances to have caused injurious effects. The Judges of Circuit were, in the same year, empowered to pass final sentences, and to carry them into execution, without reference to the Nizamut Adawlut on the ground of their want of authority to inflict sufficient punishment, in all cases of culpable homicide not amounting to wilful murder.⁴ This power of passing final sentences was extended in 1825 to persons convicted of robbery by open violence not attended with murder or attempt to murder ; the punishment, however, being restricted to thirty-nine ratans, and imprisonment with hard labour for fourteen years.⁵

In 1829 Commissioners of Circuit were appointed, with the same powers as Judges of Circuit, to hold gaol deliveries twice a year, to perform all duties theretofore discharged by the Superintendents of Police, and to be under the authority of the Nizamut Adawlut.⁶ The Courts of Circuit were at the same time abolished.⁷

The Native officers were invested with an extended jurisdiction in criminal matters in 1831, when it was declared that Magistrates might refer any criminal case to a Sudder Ameen or Principal Sudder Ameen for investigation, though they were not authorised to make any commitment.⁸ In the same year the Zillah and City Judges, not being Magistrates, were empowered to conduct the duties of the Sessions, to try com-

¹ Reg. III. 1821, ss. 2, 3, 4.

³ Reg. XII. 1825, s. 4.

⁵ Reg. XVI. 1825.

⁷ Reg. I. 1829, s. 5.

² Reg. XII. 1825, s. 3.

⁴ Reg. XII. 1825, s. 7.

⁶ Reg. I. 1829.

⁸ Reg. V. 1831, s. 18.

mitments made by Magistrates, and to hold monthly gaol deliveries, and to pass sentence or to refer the trials to the Nizamut Adawlut, under the same rules applicable to Commissioners of Circuit; but they were not to interfere with the management of the Police, and all appeals from the orders of the Magistrates lay to the Commissioners of Circuit.¹

In the same year a Court of Nizamut Adawlut was constituted for the North-Western Provinces, possessing the same powers as were vested in the Nizamut Adawlut at Calcutta.²

In 1832 some important alterations took place. The Principal Sudder Ameens, Sudder Ameens, and law officers, were authorised to sentence persons convicted of theft to labour, in addition to corporal punishment and imprisonment.³ The Commissioners of Circuit and Sessions Judges were authorised to call in the assistance of respectable Natives, either by referring to them as Pancháyits or by causing them to sit during trials as assessors, or by employing them more in the nature of a Jury in like manner as was provided in Civil suits,⁴ but in criminal trials the special authority of Government for granting these powers was not requisite. In all trials thus conducted the Fatwa was declared unnecessary, and might be dispensed with at the option of the Court; but if the Fatwa were dispensed with, and the crime of which the prisoner was convicted were one not punishable under the regulations, sentence was not to be passed, and the case was to be referred to the Nizamut Adawlut. The decision under all these modes of procedure was to be vested exclusively in the presiding officer. Persons not professing the Muhammadan faith were allowed to claim to be exempted from trial by the Muhammadan law, in which case the trial was to be conducted with the assistance of Natives as aforesaid, and the Fatwa was to be dispensed with.⁵ The Nizamut Adawlut was also empowered

¹ Reg. VII. 1831.

² Reg. VI. 1831.

³ Reg. II. 1832, s. 3.

⁴ See *supra*, p. 67.

⁵ Reg. VI. 1832, ss. 1—5.

to exercise an absolute discretion as to requiring a Fatwa from the law officers of the Court.¹

Corporal punishment was absolutely abolished in 1834, excepting where moderate chastisement was necessary for the maintenance of gaol discipline, and imprisonment was ordered to be substituted :² in such cases it was made competent to the Courts or officers to direct an additional term of imprisonment, as follows :—Courts of Nizamut Adawlut or Courts of Sessions or Circuit, two years ; Magistrates or Joint Magistrates, one year ; Assistants, Principal, and other Sudder Ameens, one month :³ labour was also made commutable to fine.⁴ The former provision was, however, afterwards modified, and Magistrates were empowered to inflict not exceeding thirty ratans for theft under 50 rupees, but in such case no other punishment was to be superadded : no female was to be corporally punished.⁵

In 1835 it was enacted that all or any part of the duties and powers of Commissioners of Circuit might be transferred by the Governors of Bengal and Agra respectively to the Sessions Judges.⁶

In the year 1841 it was enacted that crimes against the State should be tried by the ordinary tribunals, and that the Government might issue a commission to the Judges for their trial ; their sentences and proceedings to be reported to the Nizamut Adawlut, who were to report their sentences to the Government for confirmation.⁷ In the same year it was enacted that from every sentence or order in criminal trials or proceedings within the limitations prescribed by Regulation IX. of 1793, passed by Assistants to Magistrates, Sudder Ameens, or law officers, one appeal should be permitted within one month to the Magistrates or Joint Magistrates ; and from

¹ Reg. VI. 1832, s. 6.

² Reg. II. 1834, s. 2.

³ Reg. II. 1834, s. 2.

⁴ Reg. II. 1834, s. 3.

⁵ Act III. 1844, ss. 1. 3.

⁶ Act VII. 1835.

⁷ Act V. 1841.

every sentence or order beyond such limitation, passed by a Magistrate or Joint Magistrate, or Assistant to a Magistrate vested with special powers, one appeal should be permitted within one month to the Sessions Judge; and from every such sentence or order of the latter, there should be permitted one appeal within three months to the Nizamut Adawlut, and that the sentences or orders passed on such appeals should be final.¹ It was, however, also enacted² (and re-enacted in 1848),³ that the Nizamut Adawlut might, whenever it should think fit, call for the whole record of any criminal trial in any subordinate Court, and pass such orders thereon as it should think fit, but not so as to enhance the punishment awarded, or punish any person acquitted, by the subordinate Court.

In 1843 it was enacted that in cases of conviction of British subjects by Justices of the Peace in the Mofussil or Magistrates, under the 53d Geo. III. c. 155, s. 105, an appeal should lie from the sentences of such Justices of the Peace or Magistrates, according to the same rules as are provided by the Regulations and Acts of Government in the case of sentences passed by Magistrates in the exercise of their ordinary jurisdiction, and cases so appealed were not to be afterwards liable to revision by means of a writ of Certiorari.⁴

In the same year the local Governments of both divisions of Bengal were empowered to appoint uncovenanted Deputy Magistrates capable of being employed as Judicial Officers, with limited powers, under Reg. XIII. of 1797, Reg. IX. of 1807, or Reg. III. of 1821, in cases referred to them by the Magistrate, or with the full powers of a Magistrate, or as a Police Officer.⁵

In the year 1845 Assistant Magistrates, vested with special powers, were declared competent to decide cases under Act IV. of 1840 referred to them by the Magistrate.⁶

¹ Act XXXI. 1841, s. 2.

² Act XXXI. 1841, ss. 3, 4.

³ Act XIX. 1848, s. 4.

⁴ Act IV. 1843.

⁵ Act XV. 1843.

⁶ Act XXVII. 1845.

In 1854 Assistants and Deputy Magistrates were empowered to try cases without previous reference by the Magistrate, and Deputy Magistrates vested with special powers were given the same powers as Assistants to try cases under Act IV. of 1840.¹

(c) *Police Establishment.*

The Police establishment in the Bengal Presidency remains at the present day nearly in the same state as when first established by Lord Cornwallis; but some few circumstances and modifications may be remarked.

In the year 1795 the Police of Benares was placed under the management of the Tahsildárs, landowners and farmers, who were made responsible for robberies committed within the limits of their estates, excepting night robberies on the open roads or in woods.² In 1803 the same plan was extended to the ceded provinces,³ and in 1804 to the conquered provinces.⁴

The Tahsildári system being found, however, to be objectionable, all the above places were, in the year 1807, divided into Police jurisdictions, nearly in the same way as had been already adopted throughout Bengal, Behar, and Orissa.⁵ In all these instances the cities and towns were placed under the guard of Dáróghahs and Kútwáls. Ameens of Police were appointed in the same year in all the Bengal provinces, for the apprehension of persons charged with heinous offences.⁶

A Superintendent of Police, being a covenanted servant of the Company, was established in 1808, for the provinces of Bengal and Orissa, but more especially for Calcutta, Moorshe-dabad, and Dacca. This Superintendent was to possess a concurrent jurisdiction with the Zillah and City Magistrates, and to be under the authority of the Nizamut Adawlut in Police

¹ Act X. 1854.

² Reg. XXXV. 1803.

³ Reg. XIV. 1807.

⁴ Reg. XVII. 1795.

⁵ Reg. IX. 1804, s. 9.

⁶ Reg. XII. 1807, and Reg. XIV. 1807.

matters.¹ In 1810 his jurisdiction was extended to Patna, and at the same time a second Superintendent was appointed for Benares and Bareilly.²

The duties of these Superintendents were defined and enlarged in 1816, when, in addition to the management of the whole system of Police being committed to their care, they were directed to submit to the Government annual reports of all Police occurrences and statements of the Police establishments in their respective districts.³

A general revision of the whole system of Police, not, however, effecting any material alteration in the previous establishment, took place in the following year, and a Regulation was passed,⁴ which, as Harington observes, may be called "The Police Officers' Manual in the Provinces subject to the Presidency of Fort William."⁵ This Regulation still further defines the duties of the Superintendents, and the relative authorities and functions of the subordinate officers, who were to preserve the peace within the limits of their jurisdictions, to prevent, so far as possible, all criminal offences, to apprehend offenders, and to report all occurrences connected with the Police to the Magistrates. The Dáróghah was empowered to hold inquests in cases of suspicious death, to search for stolen property, to suppress riots and affrays, to apprehend persons resisting process, to report burglaries, and to direct particular attention to the suppression of Dakaití and illegal Satí. He was to forward all persons apprehended by him, and charged with crimes or offences, to the Magistrate. The Muharrir, who was the second officer of the Tháná, was authorised to exercise the powers vested in the Dáróghah in the absence of that officer, as was also the Jamadár, or third officer, in the absence of the Muharrir and Dáróghah.⁶ The village watchmen were also

¹ Reg. X. 1808.

² Reg. XVII. 1816.

³ Harington's Analysis, p. 464, 2d edit.

⁴ Reg. VIII. 1810.

⁵ Reg. XX. 1817.

⁶ Reg. XX. 1817, s. 4.

enjoined to report to the Tháná all Police occurrences, and to apprehend offenders.¹

No further alteration of importance took place until the year 1829, when the office of Superintendent of Police was abolished, and the duties of the Superintendents were assumed by the Commissioners of Circuit already described.²

In 1831 Tahsildárs in the ceded and conquered provinces were authorised to exercise the same powers as Dáróghahs of Police, and all Officers of Police were to be subordinate to them.³

The Governor of Bengal, or the Lieutenant-Governor of the North-Western Provinces, were empowered, in the year 1837, to appoint Superintendents of Police for the territories under their respective Governments, who were to be guided in the execution of their duties by the rules contained in Regulation X. of 1808; and on such appointment the Commissioners of Circuit were to cease to exercise the powers of Superintendents of the Police vested in them by Regulation I of 1829,⁴ and the said Superintendents were empowered to exercise all the powers exercised by the Commissioners of Circuit, in virtue of the authority vested in them by Section 3 of the last-mentioned Regulation.

Tahsildárs having Police jurisdiction under Reg. XI. of 1831 were, in 1854, granted controul over all Dáróghahs of Police. The said Regulation was also extended to the province of Benares.⁵

2. MADRAS.

(1) ORIGIN OF THE ADWLUT SYSTEM.

The present Madras system for the administration of justice is founded on that introduced during the Government of the

¹ Reg. XX. 1817, s. 21.

² Reg. I. 1829.

³ Reg. XI. 1831.

⁴ Act XXIV. 1837, ss. 1—4.

⁵ Act XVI. 1854.

son of the great Lord Clive in the year 1802, and which was framed upon that of Bengal. Following the plan I have already traced out, I shall describe shortly, in the first place, the system of 1802, and then proceed to mention succinctly the changes that have taken place up to the present time, treating separately of the three departments, Civil, Criminal, and Police.

(2) SYSTEM OF 1802.

The system of 1802 presents little or no variation from that of Lord Cornwallis. It was determined that the offices of Judge and Magistrate, and of Collector of the Revenue, should be held by distinct persons. Native Commissioners were appointed, with power to try suits not exceeding in value 80 rupees: an appeal lay to the Judge.¹ The Registers of the Zillah Courts had jurisdiction to try suits, original or on appeal from the Native Commissioners, referred to them by the Judge, when the property in dispute did not exceed 200 rupees: their decisions were final to the amount of 25 rupees: above that sum an appeal lay to the Zillah Judge.² A summary appeal also lay to the Zillah Judge in cases where the Registers refused to admit or investigate appeals from the decisions of the Native Commissioners on the ground of delay or informality.³ The Zillah Courts, presided over respectively by one Judge, assisted by native law officers, were established in the various districts in which the land revenue had been settled in perpetuity, for the decision of civil suits.⁴ The decisions of the Zillah Courts were final in suits under 1000 rupees in value;⁵ but when above that amount an appeal lay to the Provincial Courts of Appeal.⁶ The Provincial Courts were four in number, and were to try appeals from the Zillah Courts, and

¹ Reg. XVI. 1802, ss. 2, 18.

² Reg. XII. 1802, ss. 6, 9, 10.

³ Reg. IV. 1802, s. 12.

⁴ Reg. II. 1802, ss. 1—3.

⁵ Reg. II. 1802, s. 21.

⁶ Reg. IV. 1802, s. 12.

original suits referred to them by the Sudder Adawlut: their decisions were final in suits where the amount in dispute did not exceed 5000 rupees, but above that sum, and in cases where they refused to admit regular appeals from the Zillah Courts for delay or other informality, a summary appeal lay to the Sudder Adawlut.¹ The Provincial Courts were also empowered to take cognizance of appeals which the Zillah Courts had refused to admit, or dismissed without investigation on the ground of delay, informality, or other default.² The Sudder Adawlut consisted of the Governor in Council;³ and from its decisions in civil suits of the value of 45,000 rupees and upwards an appeal lay to the Governor-General in Council.⁴

The plan introduced for the administration of criminal justice, was much the same as that in Bengal. Magistrates and Assistant Magistrates were appointed, and were directed to apprehend persons charged with crimes or offences, and to bring them to trial; and they had powers of inflicting punishment in cases of abuse and assault, and petty theft, by imprisonment, corporal punishment, or fine, which was in no case to exceed 200 rupees.⁵ British subjects residing in the provinces, and charged with criminal offences, were to be apprehended by the Magistrates, and sent for trial to the Supreme Court at Madras.⁶ Four Courts of Circuit were established for the trial of crimes and offences:⁷ the Judges were to hold half-yearly gaol deliveries,⁸ and they were empowered to pass sentence in capital cases, but such sentences were to be referred for confirmation to the Foujdary Adawlut.⁹ The Foujdary Adawlut, or Chief Criminal Court consisted of the Governor and members of the Council,¹⁰ and had cognizance of all matters

¹ Reg. V. 1802, s. 10.

³ Reg. V. 1802, s. 2.

⁵ Reg. VI. 1802, ss. 8, 9.

⁷ Reg. VII. 1802, s. 2.

⁹ Reg. VII. 1802, s. 27.

² Reg. IV. 1802, s. 12.

⁴ Reg. V. 1802, ss. 31—36.

⁶ Reg. VI. 1802, s. 19.

⁸ Reg. VII. 1802, s. 11.

¹⁰ Reg. VIII. 1802, s. 3.

relating to Criminal Justice and the Police,¹ and the power of passing final sentence in capital cases. The Governor in Council was empowered to pardon convicts, or commute their punishment.² All these Criminal Courts administered the Muhammadan law as modified by the Regulations.

No general system of Police was introduced in the Madras Presidency by the Regulations of 1802. The Police establishments in the several provinces remained of much the same nature as under the Native Governments. In some districts, the Northern Circars for instance, little more than traces of a regular system were discoverable, though almost everywhere village watchers existed, who acted under the superintendence of the head men of the villages.

A Regulation was passed in 1802 for the establishment of a more efficient system in the Zillah of Chingleput (the Company's Jágir), one of the most ancient of the British Settlements on the Coromandel coast. By this Regulation, upon which was based the system in force throughout the Madras Presidency till altered in 1816, the Police of the Zillah of Chingleput, then called Carangooly, was taken out of the hands of the Poligars and Kavilgars, and assigned to officers nominated by the East-India Company's Government. Police Dáróghahs were appointed to superintend and controul entire divisions; Thánádárs, under their orders, to superintend the stations in each division; and Watchers, who were to execute the duties of Police in the roads and villages of each division; the Officers of Police were to be subject to the authority of the Judge and Magistrate of the Zillah.³ The Watchmen were to apprehend offenders, and deliver them to the Thánádárs,⁴ who were also empowered to apprehend offenders and send them to the Dáróghahs:⁵ these latter, in their turn, were likewise authorised to apprehend suspected

¹ Reg. VIII. 1802, s. 8.

² Reg. VIII. 1802, s. 14.

³ Reg. XXXV. 1802, s. 3.

⁴ Reg. XXXV. 1802, s. 8.

⁵ Reg. XXXV. 1802, s. 13

persons, whom they were to convey before the Magistrate, but they were not to inflict any punishment.¹

Such was the original constitution of the Courts of Justice and the Police in the Madras Presidency. I shall now separately enumerate the alterations that have been made in the various departments since the year 1802.

(3) ALTERATIONS SINCE 1802.

(a) *Civil Judicature.*

The first change worthy of notice in the department of Civil Judicature took place in the year 1806, when Zillah Courts were established in the districts to which the permanent settlement had not been extended.² The constitution of the Sudder Adawlut was also altered and new Judges appointed;³ and in the following year⁴ the Governor was declared no longer to be a Judge of the Court. The Court has been since modified, and made to consist, as in Bengal, of such number of Judges as the Governor in Council might deem requisite.⁵

In 1809 a Regulation⁶ was passed for the occasional appointment of Assistant Judges of the Zillah Courts, and for altering and extending the jurisdiction of the Registers of those Courts, whose power of final decision was, however, abolished.⁷ The decision of a Zillah Judge, confirming on appeal the decree of the Register, was final; but if reversing the Register's decree, or disallowing a sum exceeding 100 rupees, a further appeal lay to the Provincial Court.⁸ The appointment of head Native Commissioners or Sudder Ameens was authorised, who were to try referred causes to the amount of 100 rupees.⁹ The decrees of the Zillah Judges were

¹ Reg. XXXV. 1802, s. 21.

² Reg. IV. 1806.

³ Reg. III. 1825.

⁷ Reg. VII. 1809, s. 6.

⁹ Reg. VII. 1809, s. 9.

⁶ Reg. II. 1806.

⁴ Reg. III. 1807.

⁶ Reg. VII. 1809.

⁸ Reg. VII. 1809, s. 8.

declared to be final in all appeals from decisions passed by the Native Commissioners; but an appeal was ordered to lie to the Provincial Courts from the decisions of the Zillah Judges, in all suits tried by them in the first instance.¹ In this year the Provincial Courts were also authorised to admit summary appeals from the orders of the Zillah Courts refusing to admit or investigate original suits on the ground of delay, informality, or other default;² and they were empowered to admit a special appeal in all cases where a regular appeal might not lie to them from the decrees of the Zillah Judges, if such decrees appeared erroneous or unjust, or if the cause appeared to be of sufficient importance to merit further investigation.³ These powers of admitting special appeals by the Provincial Courts were also made applicable to the Sudder Adawlut with respect to decrees passed by the Provincial Courts not open to the regular appeal.⁴ In the same year the Provincial Courts were given original jurisdiction in suits above 5000 rupees, which had been previously cognizable by the Zillah Courts.⁵

In 1816 the Heads of Villages were appointed to be Moon-siffs, with a power to try and finally determine suits not exceeding 10 rupees in value;⁶ and they were also authorised to assemble Village Pancháyits for the adjudication of civil suits of any amount within their village jurisdictions: the majority to decide. On proof of partiality the Provincial Courts were empowered to annul the decisions of the Pancháyits, and to refer to a second Pancháyit; but if so referred to a second Pancháyit, and the second decision should agree with the former one, such decision was final.⁷ The Moonsiffs were also authorised, as arbitrators, to determine suits for sums of money or other personal property not exceeding 100 rupees, when both the parties interested voluntarily agreed to such arbitration.⁸ In the same year District Moonsiffs were

¹ Reg. VII. 1809, ss. 23, 24.

³ Reg. VII. 1809, s. 26.

⁵ Reg. XII. 1809, ss. 2, 3.

⁷ Reg. V. 1816, ss. 2—11.

² Reg. VII. 1809, s. 25.

⁴ Reg. VII. 1809, ss. 28, 29.

⁶ Reg. IV. 1816, ss. 2, 5.

⁸ Reg. IV. 1816, s. 27.

empowered to take cognizance of suits for land and personal property to the amount of 200 rupees, excepting suits for Lákhiráj land, when their jurisdiction was limited to suits where the annual value did not exceed 20 rupees.¹ The decisions of the District Moonsiffs, in suits where the amount in dispute did not exceed 20 rupees, were final; in Lákhiráj suits their decisions were final where the annual value of the land did not exceed 2 rupees: above those sums an appeal lay to the Zillah Courts.² In cases of inheritance, or succession to landed property between Hindú or Muhammadan parties, the District Moonsiffs were directed to obtain an exposition of the laws from the law officers of the Zillah Courts.³ The District Moonsiffs were also empowered to assemble District Pancháyits for the adjudication of civil suits of any amount, their decision to be appealable or final by similar rules to those above mentioned as applicable to Village Pancháyits.⁴ District Moonsiffs were also empowered, as arbitrators, to hear and determine suits voluntarily referred to them for real or personal property of the same amount as their primary jurisdiction: in such suits their decisions were final.⁵ In this year the jurisdiction of Sudder Ameens was extended, in suits referred to them, to the amount of 300 rupees,⁶ an appeal lying from their decisions to the Zillah Judge. The Sudder Adawlut was in the same year empowered to call up from the Provincial Courts, and try in the first instance, suits for 45,000 rupees and upwards,⁷ the then appealable amount to the Privy Council, but which has been since altered, as will be mentioned in Chapter IV. The Sudder Adawlut was also authorised to admit a summary appeal from the Provincial Courts in all cases where such Courts had refused to admit or investigate suits, original or on appeal, on the ground of delay, informality, or other default.

¹ Reg. VI. 1816, s. 11.

² Reg. VI. 1816, s. 62.

³ Reg. VI. 1816, ss. 57, 58.

⁴ Reg. XV. 1816, s. 2.

⁵ Reg. VI. 1816, s. 43.

⁶ Reg. VII. 1816, ss. 2 - 11.

⁷ Reg. VIII. 1816, s. 7.

The Provincial Courts and the Zillah Judges were in like manner, respectively, to be competent to admit summary appeals from the orders of the Zillah Judges or the Registers and Sudder Ameens.¹ The Provincial Courts were also debarred from admitting regular appeals from decisions passed by Zillah Judges, on appeals from their Registers: it was provided, however, that they might admit special appeals from the decisions of the Zillah Judges in regular appeals from original judgments of Registers, Sudder Ameens, and Moonsiffs.² At the same time all original suits tried by Provincial Courts were made appealable to the Sudder Adawlut.³

In the year 1818 the Governor-General formally relinquished his right of hearing appeals from the Sudder Adawlut at Madras; and a Regulation was framed on Beng. Reg. XVI. of 1797, for the conduct of appeals to England from the Sudder Adawlut.⁴ This will be again noticed in another place.

In 1820 the 53d Geo. III. c. 155, was ordered to be in part promulgated at Madras, and translated into the country languages. Under this Statute the Company's Courts were given a jurisdiction in civil suits brought by Natives against British subjects residing, trading, or holding immoveable property in the interior. An appeal lay in such cases either to the Supreme Court or to the Sudder Adawlut.⁵

The jurisdictions of Registers, Sudder Ameens, and District Moonsiffs were, in 1821, extended, respectively, to suits of the value of 1000, 750, and 500 rupees.⁶

In 1825 all decisions by District Moonsiffs, in suits for property in land, were made open to an appeal to the Zillah Courts.⁷

In 1827 Auxiliary Zillah Courts were established, to be superintended by Assistant Judges, who, it may be here

¹ Reg. XV. 1816, s. 5.

² Reg. XV. 1816, s. 6.

³ Reg. II. 1820.

⁴ Reg. V. 1825.

⁵ Reg. XV. 1816, s. 3.

⁶ Reg. VIII. 1818.

⁷ Reg. II. 1821, ss. 2—4.

remarked, have been termed, in succeeding enactments, Subordinate Judges, and not Assistant Judges. Sudder Ameens, being Natives, were also appointed in such Courts, with the same powers as those given to Sudder Ameens by Regulation VIII. of 1816. The Assistant Judges had original jurisdiction to the amount of 5000 rupees; and they were also to try appeals from the decisions of the Moonsiffs. An appeal lay from the decisions of the Assistant Judges in suits exceeding 1000 rupees in value, to the Zillah Courts; but above that amount to the Provincial Courts. An appeal was also directed to lie from the original decisions of the Sudder Ameens, and a special appeal from their decisions on appeals from Moonsiffs, to the Assistant Judges.¹ Native Judges were appointed in the same year to try suits referred to them by the Assistant Judges, but not to have jurisdiction over Europeans or Americans.² Special appeals were also made admissible in 1827 as follows: viz. from the decrees of Assistant or Native Judges, to the Provincial Courts; from decrees of the Provincial Courts on appeals from Assistant or Native Judges, to the Sudder Adawlut.³

In 1833 the jurisdiction of Registers was extended to 3000 rupees, of Sudder Ameens to 2500 rupees, and of District Moonsiffs to 1000 rupees.⁴ Suits for Lákhiráj land were to be cognizable on a reduced scale as before: viz. where the annual value of the land was one-tenth of those amounts.

In 1836 it was enacted that the 107th section of the 53d Geo. III. c. 155, which gave to British subjects in the provinces a right of appeal from the Mofussil Courts to the Supreme Court, should cease to have effect in India; and it was also enacted that no person by reason of birth or descent should be exempted from the jurisdiction of the Company's Courts,⁵ or be incapable of being a Principal Sudder Ameen

¹ Reg. I. 1827, ss. 2—7.

² Reg. VII. 1827.

³ Reg. XI. 1827.

⁴ Reg. III. 1833, ss. 3—5.

⁵ Act XI. 1836.

(as the Native Judges were then directed to be entitled), Sudder Ameen, or Moonsiff.¹

Summary appeals were declared, in 1838, to be admissible from the orders of District Moonsiffs refusing to admit or investigate suits cognizable by them, on the ground of delay, informality, or other default, by the Zillah Judges, Assistant Judges of Auxiliary Courts, and Principal Sudder Ameen.²

In 1843 it was enacted that special appeals should lie to the Sudder Adawlut from all decisions passed on regular appeals in all Subordinate Civil Courts, when it should appear that such decisions were inconsistent with law or usage, or the practice of such Courts, or involved doubtful questions of law, usage, or practice.³ In the same year a most important Act was passed, which placed the administration of justice in Madras on its present footing. By this Act the Provincial Courts of Appeal were abolished, and new Zillah Courts were established, presided over by one Judge, to perform their functions, and to replace the Zillah Courts then existing.⁴ The original jurisdiction vested in the Provincial Courts for amounts of less value than 10,000 rupees, was transferred to the Subordinate Judges and the Principal Sudder Ameen;⁵ and such Courts were to have jurisdiction over Europeans and Americans as well as Natives.⁶ The new Zillah Courts were to entertain appeals from the decrees of the Subordinate Judges and Principal Sudder Ameen, and of Sudder Ameen and District Moonsiffs: they were also authorised to refer appeals from the decisions of District Moonsiffs to the Subordinate Judges or Principal Sudder Ameen; and when these Judges were stationed at places remote from the station of the Zillah Judge, the Sudder Adawlut was empowered with the sanction of Government to order such appeals to be preferred to such Courts direct; but it was also provided that the Zillah Judges

¹ Act XXIV. 1836, ss. 1—5.

² Act XVII. 1838.

³ Act III. 1843, s. 1.

⁴ Act VII. 1843, s. 1.

⁵ Act VII. 1843, s. 4.

⁶ Act VII. 1843, s. 5.

might call up to their own Courts appeals received by such Courts.¹ The Government was authorised to appoint Assistant Judges to the new Zillah Courts, to whom the Zillah Judges might refer any appeals depending before them, excepting appeals from the Subordinate Judges and Principal Sudder Ameens.² Appeals from the new Zillah Courts lay to the Sudder Adawlut.³ No Registers were assigned to the new Zillah Courts, and consequently the Registers' Courts no longer exist. Summary appeals were directed to lie to the new Zillah Courts from the Subordinate Judges and Principal Sudder Ameens,⁴ and from the new Zillah Courts to the Sudder Adawlut.⁵

In 1844 it was enacted that all suits within the competency of Principal Sudder Ameens and Sudder Ameens to decide, should be ordinarily instituted in their Courts; but that they might be withdrawn at the will of the Zillah Judges, who might try them themselves, or refer them to any other competent Subordinate Court. The Zillah Judges were also empowered to admit summary appeals from the orders of Principal Sudder Ameens and Sudder Ameens rejecting original suits cognizable by them on the ground of any default.⁶

In 1853 Act III. of 1843 was repealed, and it was enacted that special appeals should lie to the Sudder Adawlut from any decision passed on regular appeal in any of the lower Courts on the following grounds: viz. 1. A failure to decide all the material points in the case, or a decision contrary to law; 2. Misconstruction of any document; 3. Ambiguity in the decision itself; and 4. Substantial error or defect in procedure or in the investigation of the case. No such special appeal was to lie on matter of fact.⁷

¹ Act VII. 1843, s. 8.

² Act VII. 1843, ss. 8. 52.

³ Act VII. 1843, s. 9.

⁴ Act VII. 1843, s. 8.

⁵ Act VII. 1843, s. 9.

⁶ Act IX. 1844, ss. 1, 2. 4.

⁷ Act XVI. 1853.

(b) Criminal Judicature.

The first alteration in the system of criminal judicature established at Madras in 1802, was in the constitution of the Foujdary Adawlut, which was changed in accordance with the provisions of the Bengal Regulations with respect to the Nizamut Adawlut.¹ In the year 1811 Magistrates were given an extended jurisdiction, and were empowered to inflict punishment on persons convicted by them, by imprisonment not exceeding one year with corporal punishment not exceeding thirty ratans, or by fine of 200 rupees.² This power was not to be exercised by their Assistants.³

In 1816 the offices of Zillah Magistrate and Assistant Magistrate were transferred from the Judge to the Collectors of the Zillahs and the Assistants to the Collectors;⁴ and the Magistrates were empowered to apprehend offenders, and in certain cases to pass judgment, to be referred to the Foujdary Adawlut.⁵ They were also authorised to punish persons guilty of petty thefts, and other minor offences, by stripes not exceeding eighteen ratans, imprisonment not exceeding fifteen days, or fine not exceeding 50 rupees;⁶ in other cases to send them for trial to the Criminal Judge of the Zillah.⁷ In the same year the Judges of the Zillah Courts were appointed to be Criminal Judges of their respective Zillahs, with power to punish offenders, in some cases, with stripes not exceeding thirty ratans; and, in cases of theft, in addition, with imprisonment not exceeding six months; in other cases with fine not exceeding 200 rupees;⁸ but prisoners charged with more serious offences, were to be committed for trial to the Courts of Circuit.⁹ The Criminal Judges were also invested with similar powers to those before exercised by the Zillah Magistrates.¹⁰

¹ Reg. IV. 1806, and Reg. III. 1807.

³ Reg. IV. 1811, s. 13.

⁵ Reg. IX. 1816, s. 18.

⁷ Reg. IX. 1816, s. 34.

⁹ Reg. X. 1816, s. 9.

² Reg. IV. 1811, s. 12.

⁴ Reg. IX. 1816, ss. 3, 4.

⁶ Reg. IX. 1816, ss. 32, 33, 35.

⁸ Reg. X. 1816, ss. 2, 7.

¹⁰ Reg. X. 1816, s. 39.

The Zillah Magistrates were, in 1818, empowered to delegate the whole or any part of their authority to their Assistants.¹

By the 53d Geo. III. c. 155, s. 105, which was passed in 1813, and which was ordered to be in part promulgated at Madras in 1820, Zillah Magistrates were given a jurisdiction over British subjects residing in the interior for assaults and trespasses against Natives; their convictions, however, in such cases were removable by Certiorari to the Supreme Court.²

In 1822 the Criminal Judges were authorised to take cognizance of burglary, and if not attended with violence to punish the offenders with thirty stripes and imprisonment with hard labour for two years; but if accompanied with violence, to commit them to the Court of Circuit. On such commitment the Court of Circuit was empowered to punish the offenders by thirty-nine stripes, and imprisonment in banishment for fourteen years, if the burglary were not attended with attempt to murder or wounding; but otherwise, on conviction, the trial was to be referred to the Foujdary Adawlut.³ The Criminal Judges were likewise empowered to punish for theft exceeding 50 rupees, and not attended with attempt to murder or with wounding, by imprisonment with hard labour for two years and thirty ratans; but otherwise to refer the trial to the Circuit Judge.⁴ The Criminal Judges were also authorised in certain cases to try and punish offenders for receiving or purchasing stolen goods,⁵ and convicts escaping from gaol.⁶

Thefts exceeding 300 rupees were, in 1825, declared not to be cognizable by the Criminal Judge, who was to commit offenders in such cases to the Court of Circuit.⁷

The Assistant Judges appointed under Regulation I. of 1827, were constituted Joint Criminal Judges of their Zillahs; and Subordinate Collectors exercising the powers of Magis-

¹ Reg. IX. 1818.

² Reg. II. 1820.

³ Reg. VI. 1822, s. 2.

⁴ Reg. VI. 1822, s. 3.

⁵ Reg. VI. 1822, s. 4.

⁶ Reg. VI. 1822, s. 5.

⁷ Reg. I. 1825, s. 9.

trates were directed to be called Joint Magistrates.¹ The Native Judges appointed under Regulation VII. of 1827 were constituted Native Criminal Judges in the same year, and were ordered to be guided by the same rules as Criminal Judges, and invested with the same powers as Magistrates, but without jurisdiction over any Europeans or Americans;² they were afterwards, in 1836, designated Principal-Sudder Ameens.³ In 1827 a Regulation was also passed⁴ for the gradual introduction of the trial by jury into the criminal judicature, and it was declared to be unnecessary for either the Judge of Circuit, or the Foujdary Adawlut, to require a Fatwa from their law officers as to the guilt of the prisoner, that being established by the verdict of the jury.⁵

In the year 1828 the use of the ratan was abolished, and the cat-of-nine-tails substituted;⁶ and in 1830 the korah was also discontinued, and a like substitution ordered.⁷ Females were exempted from punishment by flogging in 1833.⁸

Magistrates, Criminal, Joint Criminal, and Native Criminal Judges were, in 1832, respectively empowered to adjudge solitary imprisonment in all cases cognizable by them.⁹

In the year 1833 Criminal, Joint Criminal, and Native Criminal Judges were authorised to employ the Sudder Ameens in the investigation and decision of criminal cases, except in cases committable for trial before the Court of Circuit; such Judges to have power to overrule the decisions of the Sudder Ameens, who were, moreover, not to have any jurisdiction over Europeans or Americans.¹⁰

In 1837 the Magistrates were authorised to send persons, not being Europeans or Americans, for trial, commitment, or confinement, to the Principal Sudder Ameens.¹¹

¹ Reg. II. 1827, ss. 2—5.

² Act XXIV. 1836, s. 1.

³ Reg. X. 1827, s. 33.

⁴ Reg. II. 1830.

⁵ Reg. XIII. 1832, s. 4.

⁶ Act XXXIV. 1837.

⁷ Reg. VIII. 1827.

⁸ Reg. X. 1827.

⁹ Reg. VIII. 1828.

¹⁰ Reg. II. 1833.

¹¹ Reg. III. 1833, s. 2.

The Foujdary Adawlut was empowered in 1840 to dispense altogether with the Fatwa, but not with the Muhammadan law.¹

In the year 1841 it was enacted that state offences should be triable by the ordinary criminal tribunals, but the sentences and proceedings in such cases were directed to be reported to the Foujdary Adawlut, who were again to refer their sentences to the Government for confirmation.²

In 1843 sentences passed by Justices of the Peace in the Mofussil, or Magistrates, on British subjects residing in the provinces, for assaults and trespasses against Natives of India, under the 53d Geo. III. c. 155, s. 105, were made appealable in the regular course, according to the Regulations and Acts of Government, in the same manner as ordinary sentences passed in the ordinary exercise of a Magistrate's jurisdiction; and when so appealed, they were no longer to be liable to revision by Certiorari.³ The judges of the new Zillah Courts established in the same year were empowered to exercise all the powers of the Judges of the Courts of Circuit,⁴ which were then abolished; and they were directed to hold permanent sessions, for the trial of all persons accused of crimes formerly cognizable by the Courts of Circuit.⁵ It was made competent to the Sessions' Judge in criminal cases, to avail himself of the aid of respectable Natives, or other persons in either of the two following ways: viz.—1. By constituting them Assessors, or members of the Court, with a view to benefit by their observations, particularly in the examination of witnesses; or, 2. By employing them more nearly as a jury, to attend during the trial, to suggest points of inquiry, and after consultation to deliver in their verdict. The decision was, however, to be passed according to the opinion of the Judge, whether agreeing with the Assessors or Jury, or not; but if in opposition to their opinions, it was to be referred to the Foujdary Adawlut.⁶

¹ Act I. 1840.

² Act IV. 1843.

³ Act VII. 1843, s. 27.

⁴ Act V. 1841.

⁵ Act VII. 1843, s. 26.

⁶ Act VII. 1843, s. 32.

He also had the power of overruling criminal sentences of Sudder Ameen.¹ The criminal jurisdiction of the Zillah Courts constituted by the Regulations was transferred to the Subordinate Criminal Courts established under Regulations II. and VIII. of 1827.² It may be added that the Assistant Judges constituted under Regulation II. of 1827, and who were to take the functions of the Criminal Judges, were, and are now, called Subordinate Judges. The power of the Magistrates was also extended in this year, and they were authorised to exercise the powers vested in Criminal Judges by Regulation X. of 1816 concurrently with the Subordinate Criminal Courts:³ an appeal however was directed to lie from their sentences within one month to the Sessions' Judge.⁴

In the year 1854 District Moonsiffs were given a criminal jurisdiction in petty offences and petty thefts.⁵

(c) *Police Establishment.*

In 1816 the first Regulation was passed for the organization of a general system of Police throughout the territories subject to the Government of Fort St. George. The establishments of Dáróghahs and Thánádárs were abolished; and the duties of Police were directed to be discharged by the Heads of Villages, aided by Karnams or Village Registers, and Talliars and other Village Watchers; the Tahsildárs or Native Collectors, with the assistance of Péshkárs, Gumásh-tahs, and establishments of Peons; Zamíndárs; Ameen of Police; Kútwáls and other Peons; and the Magistrates of Zillahs and their Assistants.⁶ The Heads of Villages were to apprehend offenders, and forward them to the Police Officer of the district,⁷ except in trivial cases of abuse and assault, when they had a limited power of punishment by confinement not exceeding twelve hours.⁸ The Tahsildárs were to be

¹ Act VII. 1843, s. 36.

³ Act VII. 1843, s. 54.

⁵ Act XII. 1854.

⁷ Reg. XI. 1816, s. 5.

² Act VII. 1843, s. 1.

⁴ Act VII. 1843, s. 55.

⁶ Reg. XI. 1816, s. 3.

⁸ Reg. XI. 1816, s. 10.

Heads of the Police of their districts; they were to apprehend persons charged with heinous offences, and after investigation, to forward the prisoners and a report of their proceedings to the Criminal Judge,¹ and in cases of trivial abuse or assault to inflict slight punishment, extending to a fine of one rupee or confinement for twenty-four hours.² Magistrates were in certain cases to invest Zamíndárs with police authority,³ and to appoint Ameens of Police in large towns, to be under their immediate authority or that of the Tahsildárs, and to be invested with the same powers, either as Heads of Villages or Tahsildárs, as might be expedient.⁴ The Magistrates and their Assistants were charged generally with the maintenance of the peace in their respective Zillahs.⁵

In the year 1821 Police Ameens were given a jurisdiction beyond the limits of the towns for which they were appointed;⁶ and the Magistrates were empowered to select subordinate officers to make inquiry into offences, hold inquests, and perform the duties before assigned to Tahsildárs and other head officers of Police, but without any power of inflicting punishment.⁷ The Heads of District Police were authorised to hear and determine cases of petty theft, and to inflict moderate punishment, extending to six stripes, on conviction, or to forward the offenders to the Magistrate.⁸ The power of fining possessed by Tahsildárs was increased to three rupees.⁹ The Heads of Villages were also empowered to punish petty thefts, as well as other trivial offences, by imprisonment for twelve hours.¹⁰

In 1832 the powers of Heads of District Police were extended to imprisonment for ten days, with labour, but they were no longer to inflict corporal punishment.¹¹ And in 1837

¹ Reg. XI. 1816, s. 27.

² Reg. XI. 1816, s. 39.

³ Reg. XI. 1816, s. 47.

⁴ Reg. IV. 1821, s. 3.

⁵ Reg. IV. 1821, s. 5.

⁶ Reg. XIII. 1832, s. 5.

⁷ Reg. XI. 1816, s. 33.

⁸ Reg. XI. 1816, s. 40.

⁹ Reg. IV. 1821, s. 2.

¹⁰ Reg. IV. 1821, s. 4.

¹¹ Reg. IV. 1821, s. 6.

they were also empowered to forward to the Magistrate, for punishment, offenders convicted of any offence cognizable by them, as well as petty thefts.¹

3. BOMBAY.

(1) RISE AND PROGRESS OF THE ADAWLUT SYSTEM.

On the acquisition by conquest, in the year 1774, of the islands of Salsette and Caranja, and their dependencies of Hog and Elephanta, provision was made for the government of the former by the appointment of a Resident, or Chief, and Factors, and for the latter by that of a single Resident, with instructions from the Presidency of Bombay that disputes should be decided by arbitration, until the introduction of a more detailed regulation.

In the year 1794 the Court of Directors transmitted to the Presidency of Bombay a copy of the Regulations proposed by Lord Cornwallis for the internal Government of the Bengal Provinces. To this communication the Government of Bombay replied, in the following year, that they were clearly of opinion it would contribute greatly to the ease and happiness of the Natives if Courts of Adawlut were established in Bombay, Salsette, and Caranja.

Previously, however, to the introduction of these Adawlut Courts it appeared necessary to consult the best legal opinions, and also to have the sanction of the Supreme Government in respect to the competency of that of Bombay to establish rules for the administration of justice in the above-named places, under the same independence, as to the interposition of His Majesty's Court, as the Judicial Regulations of the Governor-General in Council were with regard to the controul of the Supreme Court at Fort William.

The Advocate-General of Bengal having been consulted, gave his opinion that there was no objection to the establish-

¹ Act XXXIII. 1837, s. 1.

ment of the Courts of Justice for the islands above named, by the concurring Authorities of the Supreme Government and that of Bombay; and accordingly, in the year 1797, the Governor-General in Council recommended and authorised the Bombay Government to constitute Courts of Civil and Criminal Judicature, on principles similar to those on which the Courts in the Presidency of Bengal had been established.

In the year 1799, during the Government of Mr. Duncan, a regular Code of Regulations was framed in compliance with these instructions, and in that year, and subsequently, a series of Courts was established on the system introduced by Lord Cornwallis into Bengal, as nearly as local circumstances would admit, with this important distinction, however, in the administration of criminal justice, that whereas in Bengal the Muhammadan criminal law was alone applicable, in the Bombay Presidency Hindús were tried according to their own laws, and Christians and Pársís had the benefit of the English laws in all criminal cases.¹ Judges' and Magistrates' Courts and Courts of Sessions were constituted at Tannah² and Surat;³ the Magistrates were authorised to inflict imprisonment not exceeding fifteen days, or fine extending to 100 rupees, in trivial cases of abuse, assault, or affray, and to inflict thirty ratans, or one month's imprisonment in cases of petty theft.⁴ The Registers of the Civil and Criminal Courts were invested with limited judicial powers to the extent of 200 rupees, but their decisions were not valid unless countersigned by the Judge;⁵ and Native Commissioners were appointed for the trial of referred cases not exceeding 50 rupees in value, and to act as Arbitrators: an appeal lay from their decisions to the Judge.⁶ Over all these Courts the Governor in Council,

¹ Reg. V. 1799, s. 36, and Reg. III. 1800, s. 36.

² Reg. III. 1799, and Reg. V. 1799.

³ Reg. I. 1800, and Reg. III. 1800.

⁴ Reg. V. 1799, ss. 7, 8; Reg. III. 1800, ss. 7, 8.

⁵ Reg. IV. 1800, s. 6.

⁶ Reg. VII. 1802, ss. 2, 20.

in the separate department of Sudder Adawlut, and as Head of Criminal Judicature, had a right of supervision and controul, an appellate jurisdiction,¹ and a power of exercising pardon or mitigation of punishment.²

The decisions of the Register at Surat were, in 1802, made final in suits not exceeding 25 rupees in value, above which sum an appeal lay to the Judge.³

In 1805 a Provincial Court of Appeal and Circuit was established at Baróch, consisting of three Judges and a Register, and the Court of Session at Surat was abolished.⁴ Judges and Magistrates were also appointed for the Zillahs of Baróch and Kaira in the same year.⁵

The great number of civil causes pending in the Adawluts at Surat and Baróch rendered it expedient, in 1807, to appoint an Assistant Judge at the former place, and to allow of reference to the Registers, both at Surat and Baróch, of suits not exceeding 500 rupees in value. The Judges of the same Adawluts were also authorised in 1808 to appoint Sudder Ameens, with a jurisdiction to try referred causes of the value of 100 rupees.⁶ An Assistant Register was appointed in the same year at Surat, with a jurisdiction extending to suits of the value of 200 rupees, as well as Inferior Ameens, to whom petty suits under 50 rupees were to be committed.⁷

The Provincial Court at Baróch was empowered in 1808 to hear appeals from the decisions of the Zillah Courts of Surat, Baróch, and Kaira, in suits of the value of 400 rupees, that being the appealable amount from the decisions of the Tannah Adawlut to the Sudder Adawlut. Parties dissatisfied with the decisions of the Court of Appeal at Baróch were allowed

¹ Reg. III. 1799, s. 19; Reg. I. 1800, s. 19; Reg. VII. 1800, s. 8; Reg. II. 1803, s. 3.

² Reg. V. 1799, s. 53; Reg. III. 1800, s. 53; Reg. III. 1802, s. 9.

³ Reg. I. 1802, s. 6, and Reg. IX. 1802, s. 2.

⁴ Reg. II. 1805, s. 3.

⁵ Reg. II. 1805, ss. 2, 5.

⁶ Reg. II. 1806, ss. 4, 5.

⁷ Reg. II. 1808, s. 4.

to appeal again to the Sudder Adawlut, in suits of not less than 800 rupees in value.¹ It was also provided in the same year that appeals from the decisions of the Registers should lie in the first instance to the Zillah Judges, and thence to the Baróch Court of Appeal, in the event of the Judges' decree reversing the decision of the Register to the ordinary appealable amount from the Zillah Courts.²

In 1810 the Court of Session at Salsette was abolished, and the jurisdiction of the Provincial Court of Circuit and Appeal extended; at the same time this latter Court was removed from Baróch to Surat, and the office of Assistant Judge at the latter place abolished.³

A special Court for the trial of state offences, consisting of three Judges and two Muhammadan law officers, was constituted in 1812, to be under the controul of the Governor in Council.⁴ An Assistant Register and Inferior Ameens were also appointed at Baróch and Kaira, and an Assistant Judge at the latter place, all with the same powers as those exercised by the like officers at Surat.⁵ Subsequently the powers of the Provincial Court of Appeal were more fully defined, and it was declared to extend in its jurisdiction over the Zillahs of Salsette, Surat, Baróch, and Kaira.⁶ In the same year the powers and duties of the Sudder Adawlut, particularly as regarded its jurisdiction as a Court of Appeal from the decisions of the Provincial Court were fully defined.⁷ This, and a previous Regulation passed in this year,⁸ enacted rules for appeals from the Sudder Adawlut to England, which need not here be noticed. The Provincial Court was authorised to admit a summary appeal, whatever might be the amount at issue, in all cases in which the Zillah Court might have refused to admit, or have dismissed without

¹ Reg. II. 1808, s. 6.

³ Reg. III. 1810.

⁵ Reg. V. 1812.

⁷ Reg. VII. 1812.

² Reg. II. 1808, s. 7.

⁴ Reg. I. 1812.

⁶ Reg. VI. 1812.

⁸ Reg. IV. 1812.

investigation, on the ground of delay, informality, or other default, appeals from the decisions of the Registers' Assistants, Registers or Native Commissioners.¹ The Sudder Adawlut was also in this year empowered to receive any appeal, whatever might be the amount in dispute, from the decrees of the Provincial Court, in appealed cases, refused or dismissed without investigation on the like grounds, by such Courts.² At the same period the rules for the Provincial Court of Circuit, and for the Superior Criminal Tribunal of the Governor in Council, were made more comprehensive and definite.³

In the year 1813 the Statute 53d Geo. III. c. 155, s. 105, made British subjects resident in the Provinces punishable for assaults and trespass against the Natives of India, by the District and Zillah Magistrates; but the convictions of such Magistrates were made removable to the Recorder's Court by writ of Certiorari. The same Statute, by section 107, rendered British subjects, residing, trading, or holding immovable property in the Provinces, amenable to the Company's Civil Courts in suits brought against them by Natives. A right of appeal, however, to the Recorder's Court was reserved to them in cases which otherwise would be appealable to the Sudder Adawlut.

In 1815 Assistant Zillah and City Judges were appointed, and the jurisdiction of the Assistant Registers and Native Commissioners somewhat extended.⁴

An alteration deserving of notice took place in the year 1818, when the powers of the Magistrates were modified and defined: the office of Zillah Magistrate was transferred from the Zillah Judge to the Collector, the Assistant Collectors to be Assistant Magistrates,⁵ and the Judges of the Zillah Courts were constituted Criminal Judges of their Zillahs,⁶ with charge

¹ Reg. VI. 1812, s. 12.

² Reg. VIII. 1812, and Reg. IX. 1812.

³ Reg. III. 1818, ss. 3, 4.

⁴ Reg. VII. 1812, s. 10.

⁵ Reg. V. 1815.

⁶ Reg. III. 1818, s. 42.

of the Police at the chief stations. The Magistrates were to apprehend all persons charged with crimes or offences,¹ and were empowered to punish offenders convicted by them of petty offences of abuse, assault, or affrays, by imprisonment not exceeding fifteen days, or fine not exceeding 200 rupees, and to inflict corporal punishment not exceeding eighteen ratans, or imprisonment extending to one month, in cases of petty thefts.² The Criminal Judges were to take cognizance of charges brought before them by the Magistrates or their Police-officers, and to pass sentence of fine not exceeding 200 rupees, and, in cases of theft, of imprisonment not exceeding six months, and corporal punishment of thirty ratans; in cases deserving of more severe punishment they were to commit the prisoners for trial to the Court of Circuit.³ The Superior tribunal had a controul over both Criminal Judges and the Court of Circuit,⁴ and the sentences of the Superior tribunal were to be final in all cases of fine, imprisonment, or corporal punishment.⁵ Assistants to the Criminal Judges were also appointed.⁶

A general system of Police was established throughout the territories subject to the Bombay Government in the same year,⁷ by which the Police, which had theretofore been confided to Foujdárs and Thánádárs, was transferred to the Heads of Villages, aided by the Village Registers and Watchers; Kamavisdárs or native district officers, with an establishment of Police-officers; Zamíndárs; Ameens of Police; Kútwáls and their Peons; Magistrates and their Assistants; and Criminal Judges at the Sudder stations of the Zillah Courts, with their Assistants. This Police system was framed on the same plan as that enacted by Regulation XI. of 1816 of the Madras code already noticed.

¹ Reg. III. 1818, s. 7.

² Reg. III. 1818, ss. 30, 31.

³ Reg. III. 1818, s. 47.

⁴ Reg. III. 1818, s. 65.

⁵ Reg. III. 1818, s. 17.

⁶ Reg. III. 1818, s. 43.

⁷ Reg. IV. 1818.

In 1819 Hindús were granted the benefit of their own law in trials for state offences, the Special Court having previously only administered Muhammadan law.¹

In the year 1820 several important changes took place : the Provincial Court of Appeal was abolished,² and the Sudder Adawlut was transferred from Bombay to Surat, and was made to consist of four Judges,³ a Register, and an Assistant Register, and law officers, and confirmed in all its former powers. It was directed that a special appeal should lie to the Sudder Adawlut from the decisions of the Zillah Courts, in all cases where such decisions were inconsistent with the laws or usages, or with judicial Precedent, or where it might appear that there was a want of jurisdiction, or that there was a failure of justice.⁴ The Sudder Adawlut was also empowered to receive summary appeals from the Zillah Courts, in all cases in which the latter might have refused to admit an original suit or regular appeal, or dismissed it without investigation, on the ground of delay, informality, or other default.⁵ The office of Assistant Zillah Judge was also done away with,⁶ and appeals were ordered to lie to the Zillah Courts from all decisions of their Registers.⁷ The Registers were empowered to try and determine appeals from Sudder Ameens or Native Commissioners, and to try and decide any suits above 500 rupees and not exceeding 1000 in value, referred to them by the Zillah Judges : an appeal lay in such referred suits to the Sudder Adawlut. The Registers were also authorised to try appeals, referred as above, from decisions of other Registers, in suits under 500 rupees.⁸ In certain cases additional Registers were appointed to the Zillah Courts, who were also to be additional senior Assistants to the Criminal

¹ Reg. X. 1819.

² Reg. V. 1820, s. 4.

³ Reg. V. 1820, s. 30.

⁷ Reg. VI. 1820, s. 3.

² Reg. V. 1820, s. 2.

⁴ Reg. V. 1820, s. 29.

⁶ Reg. VI. 1820, s. 2.

⁸ Reg. VI. 1820, s. 6.

Judges.¹ In the same year the powers and functions of the Provincial Court of Circuit and the Superior tribunal were united in a Court to be called the Sudder Foujdary Adawlut, to be established at Surat, to consist of four Judges² assisted by law and ministerial officers, and to be empowered to take cognizance of all matters relating to Criminal Justice and the Police, and to call for the proceedings of the Criminal Judges or Zillah Magistrates.³ The Judges were to go Circuit, and to hold two general gaol deliveries annually, one Judge to go the Circuit of all the Zillahs;⁴ and their sentences were to be final, excepting in sentences of death or imprisonment for life, when they were to be referred to the Sudder Foujdary Adawlut.⁵ The Criminal Judges were authorised to pass sentence of imprisonment, with or without labour, for a term not exceeding seven years; but all sentences of imprisonment for more than two years were to be referred to the Sudder Foujdary Adawlut.⁶

(2) SYSTEM OF 1827.

All the Bombay Regulations passed previously to the year 1827, with the exception of a few relating to customs and duties, were rescinded in that year, and the system of Judicature was entirely re-modelled in the code by which they were superseded; the groundwork, however, still remained the same, the new code being based upon the Bengal Regulations of 1793. The plan for the administration of justice which existed before 1827 had been formed under many difficulties, arising from local circumstances, and was found to be both complicated and insufficient: the new code, therefore, which was introduced by the Honourable Mountstuart Elphinstone, and was almost the closing act of his talented and efficient Govern-

¹ Reg. VI. 1820, s. 8.

³ Reg. VII. 1820, s. 10.

⁵ Reg. VII. 1820, s. 17.

² Reg. VII. 1820, ss. 2—5.

⁴ Reg. VII. 1820, s. 11.

⁶ Reg. VII. 1820, s. 48.

ment, must be regarded as forming an important era in the history of the Bombay Presidency.

The system of 1827, which, with some few alterations, exists at the present time, was substantially as follows :—

Native Commissioners were appointed in each Zillah for trying and deciding civil suits, between 500 and 5000 rupees, where the parties were neither Europeans nor Americans.¹ The Zillah Judges were empowered to refer original suits to the Native Commissioners, according to the amount in dispute.² In all cases an appeal lay to the Judge, whose decision was final;³ but he might refer the appeal to a Senior Assistant Judge, in which case the latter's decision was final if affirming the decision of the Court below; but if otherwise, an appeal lay to the Zillah Judge.⁴ Zillah Courts were established, each to be presided over by one Judge.⁵ An appeal lay from all their decisions in original suits to the Sudder Dewanny Adawlut;⁶ but if the suit in the Zillah Court were against a British-born subject, residing, trading, or occupying immovable property in the Zillah, he might appeal to the Supreme Court, instead of to the Sudder Dewanny Adawlut, as provided by the 53rd Geo. III. c. 155, s. 107.⁷ Special appeals were allowed from the decrees of the Zillah Courts to the Sudder Dewanny Adawlut when such decrees were contrary to the Regulations, or inconsistent with usage, or the Hindú or Muhammadan laws, or when they involved points of general interest not previously decided in the Sudder Dewanny Adawlut. The Sudder Dewanny Adawlut was authorised to admit summary appeals from the decrees of the Zillah Judges, or any inferior Court, which might have been rejected by the Zillah Judge on account of having been presented after the limited period, or on any other ground.⁸

¹ Reg. II. 1827, ss. 37. 43.

² Reg. II. 1827, s. 37.

³ Reg. IV. 1827, s. 72.

⁴ Reg. IV. 1827, s. 72.

⁵ Reg. II. 1827, s. 16.

⁶ Reg. II. 1827, s. 5; Reg. IV. 1827, ss. 72. 74.

⁷ Reg. IV. 1827, s. 72.

⁸ Reg. IV. 1827, s. 97.

Assistant Zillah Judges were appointed ; and where more than one, they were specified as Senior and Junior. The Senior Assistant Judges were to try suits, original or on appeal, referred to them by the Zillah Judge, not exceeding 5000 rupees in amount ; and the Junior Assistant Judges, suits within the limit of 500 rupees.¹ Appeals from the decisions of Junior and Senior Assistant Judges lay in all cases to the Zillah Judge, whose decision was final, with the exception that in case of appeals from original decisions of Senior Assistant Judges, if the Zillah Judge differed in opinion, a further appeal within certain restrictions, lay to the Sudder Dewanny Adawlut.² Where the Senior Assistant Judge affirmed a decision in appeal from a lower Court, referred to him by the Judge, his decision was final ; otherwise an appeal lay to the Judge, whose decision was final ;³ the Zillah Judge was also competent to admit special appeals from decrees passed on appeal by Senior Assistant Judges.⁴ The Chief Civil Court of Appeal, styled the Sudder Dewanny Adawlut, and consisting of three or more Judges, a Registrar, Assistant Registrars, and law officers,⁵ was to hear appeals from the Zillah Courts ; and was also competent to call for all proceedings of the lower Civil Courts.⁶ From the Sudder Dewanny Adawlut an appeal lay to the King in Council,⁷ as will be hereafter noticed. It was also enacted that in any Court in which an European presided, he might derive assistance from respectable Natives, who should be employed as a Pancháyit, or sit as assessors, or more nearly as a jury, the decision being, however, vested in the presiding authority.⁸

The system of criminal judicature introduced at Bombay in the year 1827 comprises the establishment for the administration of Police ; and the two branches are so interwoven one with another, that it becomes difficult to draw a line of separa-

¹ Reg. II. 1827, s. 28.

³ Reg. IV. 1827, s. 72.

⁵ Reg. II. 1827, ss. 1, 2, 11, 13.

⁷ Reg. IV. 1827, s. 100.

² Reg. IV. 1827, s. 72.

⁴ Reg. IV. 1827, s. 99.

⁶ Reg. II. 1827, s. 5.

⁸ Reg. IV. 1827, s. 24.

tion between them. The apprehension of offenders, and the punishment of trivial offences, were given exclusively to the Magistrates and Officers of Police.¹ The Zillah Judges were made Criminal Judges in their respective Zillahs, for the trial of persons committed for that purpose by the Police Magistrates charged with crimes or offences of a less heinous nature than those reserved for the Court of Circuit.² The Assistant Zillah Judges were made Assistant Criminal Judges.³ The Criminal Judges were empowered to inflict solitary imprisonment for six months, or to imprison with hard labour for seven years, and to inflict fifty stripes, or disgrace, fine, or personal restraint: sentences of imprisonment for more than two years were, however, to be referred to the Sudder Foujdary Adawlut. Senior Assistant Criminal Judges were limited in their powers to sentencing to imprisonment with labour for two years, and the infliction of thirty stripes, fines, disgrace and personal restraint: Senior Assistants were sometimes to be vested with the same powers as Criminal Judges. Junior Assistant Criminal Judges were only empowered to imprison, without labour, for two months, and to inflict fines and personal restraint.⁴ The Criminal Judges were authorised to take into their own hands the trial of cases referred to their Assistants, and to mitigate or annul, but not enhance, their sentences. They were also empowered to employ their Assistants in the preparation of cases for trial by themselves.⁵ A Court of Circuit was established, to be held by one of the Judges of the Sudder Foujdary Adawlut in rotation, at the Sudder station of each Zillah, for the trial of heinous offences not being committed against the State: this Court was to hold half-yearly sessions,⁶ and was to pass final sentences, excepting those of

¹ Reg. XII. 1827, s. 9. I have ranged the Magistrates and their subordinates in the Bombay Presidency under the head of Police, because in the Bombay Regulations they are called *Police Magistrates*, which is not the case in the other Presidencies; but the distinction is immaterial.

² Reg. XIII. 1827, s. 7.

³ Reg. XIII. 1827, s. 8.

⁴ Reg. XIII. 1827, s. 13.

⁵ Reg. XIII. 1827, s. 12.

⁶ Reg. XIII. 1827, s. 5.

death, transportation or perpetual imprisonment, in which cases, the sentences required the confirmation of the Sudder Foujdary Adawlut.¹ A Special Court was also established for the trial of political offences, to consist of three Judges, to be selected from those of the Sudder Foujdary Adawlut and the Zillah Courts: their proceedings were to be forwarded to the Governor in Council.² The Sudder Foujdary Adawlut, or Court of Supreme Criminal Jurisdiction, consisted of the same Judges as the Sudder Dewanny Adawlut,³ and was empowered to superintend the administration of Criminal Justice and Police, to revise trials,⁴ and to pass final sentences of death, transportation and perpetual imprisonment. The Governor in Council had a power reserved of granting pardons or mitigation of punishment.⁵ All these Criminal Courts were authorised to call in the assistance of Natives, as in the Civil Courts;⁶ and the law which they administered was set forth in a Regulation defining crimes and offences, and specifying the punishments to be inflicted for the same.⁷

The duties of the Police were, in the year 1827, directed to be conducted by the Judge and Collector of each Zillah, under the respective designations of Criminal Judge and Zillah Magistrate; the District Police-officers; and the Heads of Villages.⁸ The Heads of Villages, with their Police establishments, were to be under the controul of the District Police-officers and Magistrates;⁹ and they were empowered to apprehend offenders and send them to the District Police-officers,¹⁰ to hold inquests,¹¹ and, in cases of abuse or assault, to inflict imprisonment not exceeding twenty-four hours.¹² The District Police-officers were under the immediate controul of the Zillah Magistrates: they were enjoined to apprehend offenders, and forward them to the Magistrate,¹³ to investigate serious offences,

¹ Reg. XIII. 1827, s. 21.

² Reg. XIII. 1827, s. 2.

³ Reg. XIII. 1827, s. 31.

⁴ Reg. XIV. 1827.

⁵ Reg. XII. 1827, s. 48.

⁶ Reg. XII. 1827, s. 52.

⁷ Reg. XII. 1827, s. 3.

⁸ Reg. XIII. 1827, s. 4.

⁹ Reg. XIII. 1827, s. 27.

¹⁰ Reg. XIII. 1827, s. 38.

¹¹ Reg. XII. 1827, s. 1.

¹² Reg. XII. 1827, s. 50.

¹³ Reg. XII. 1827, s. 49.

and to hold inquests;¹ and they also had the power of punishing trivial cases of theft, abuse, assault, or resistance to public officers, by fine not exceeding five rupees, or confinement for eight days.² The Magistrates and their Assistants were empowered to apprehend all persons charged with crimes or offences. If such persons were British subjects residing in the provinces, they were to be sent for trial to the Bombay Court of Judicature; and if offenders against the State, they were to be kept in custody, and the case reported to the Governor in Council;³ all other persons they were authorised to try, and to punish by fine, imprisonment without labour for two months, to be enforced by the Criminal Judge, or flogging not exceeding thirty stripes, or to forward them to the Criminal Judge.⁴ The Police Jurisdiction of the Criminal Judge extended over the town in which the Adawlut was situated, and a certain space around; and to him was given the exclusive superintendence of the Police throughout the Zillah.⁵

The general superintendence of the Police was vested in the Sudder Foujdary Adawlut.⁶

This plan for the administration of justice and the Police was the result of a revision of the former Regulations, and may be considered as the basis on which the present system has been erected. Some alterations have since taken place, which it will be necessary to enumerate.

(3) ALTERATIONS SINCE 1827.

(a) *Civil Judicature.*

The first change of any importance in the system above described was the establishment in 1828 of a Court of Appeal for the Guzerat Zillahs,⁷ subordinate to the Sudder Dewanny Adawlut; and the removal of the latter Court from Surat to

¹ Reg. XII. 1827, s. 44.

² Reg. XII. 1827, s. 10.

³ Reg. XII. 1827, s. 2.

⁴ Reg. VII. 1828, s. 1.

⁵ Reg. XII. 1827, s. 41.

⁶ Reg. XII. 1827, ss. 12, 13.

⁷ Reg. XIII. s. 27.

the Presidency.¹ This Court of Appeal consisted of three Judges, and took the place of the Sudder Dewanny Adawlut in respect of Appeals from the Zillah Courts at Guzerat.² A regular appeal lay from its decisions to the Sudder Dewanny Adawlut, when the decisions of the Zillah Courts were altered or reversed; and where such decisions were confirmed, when the amount at issue, or damages claimed, exceeded 5000 rupees.³ Special appeals were to be open from the decrees of the Provincial Court to the Sudder Dewanny Adawlut, under the rules previously in force respecting special appeals.⁴

This Court of Appeal was abolished in 1830, and the jurisdiction of the Native Commissioners was extended to the cognizance of all original suits, and suits referred to them by the Judge or Assistant Judge at a detached station, excepting where public officers or Europeans or Americans were parties, in which case they were to be tried in the first instance by the Judge, or referred by him to his Assistants.⁵ Senior Assistant Judges at detached stations were empowered to hear appeals from their decisions in suits not exceeding 5000 rupees in value; and the Government was authorised to grant the same powers to try such appeals to the Senior Assistant at the Sudder station when the state of judicial business required it.⁶ Decisions on appeals from the Native Commissioners, tried before the Judge, or the Assistant Judge at a detached station, or before the Assistant Judge at a Sudder station, who might have jurisdiction granted him for trying such appeals, were to be open to appeal to the Sudder Dewanny Adawlut, when if the decree of the Native Commissioner were confirmed, the sum adjudged or at issue exceeded 3000 rupees; or if modified or reversed, the sum disallowed or at issue exceeded 1000 rupees.⁷ A special appeal was also declared to be open to the Sudder Dewanny

¹ Reg. VII. 1828, Preamble.

³ Reg. VII. 1828, s. 19.

⁵ Reg. I. 1830, ss. 1. 5.

⁷ Reg. II. 1830, s. 1.

² Reg. VII. 1828, s. 5.

⁴ Reg. VII. 1828, s. 20.

⁶ Reg. I. 1830, s. 4.

Adawlut in all cases under the rules previously in force with regard to special appeals.¹

In the following year some important alterations were made with regard to appeals. Decisions passed by Assistant Judges at Sudder stations upon appeals from the Native Commissioners were declared to be open to a further appeal to the Zillah Judge, if the decision of the Assistant Judge confirmed that of the Native Commissioner in suits not exceeding 2000 rupees, and altering or reversing it in suits not exceeding 1000 rupees; but above those sums the appeal lay to the Sudder Dewanny Adawlut. The decision of an Assistant Judge at a detached station, if confirming that of the Native Commissioner, was final in suits not exceeding 1000 rupees; but if reversing such decision, it was final only to the amount of 500 rupees. A special appeal to the Zillah Judge was reserved in suits below those amounts: suits above such Assistant Judge's final jurisdiction, but not exceeding 5000 rupees, were re-appealable to the Zillah Judge: if above 5000 rupees, to the Sudder Dewanny Adawlut. The Zillah Judge's decision on cases appealed to him was final, except by means of special appeal to the Sudder Dewanny Adawlut.² Suits tried in the first instance by Assistant Judges, as coming within the exceptions already mentioned respecting the jurisdiction of the Native Commissioners, were made appealable to the Zillah Judge, whose decision was final if confirmatory and in suits not exceeding 5000 rupees; but if otherwise, an appeal lay instead to the Sudder Dewanny Adawlut.³ In the same year the office of Native Commissioner was ordered to comprise three gradations, and the officers holding them were directed to be styled respectively Native Judges, Principal Native Commissioners, and Junior Native Commissioners.⁴ The Native Judges were to have cognizance, in addition to original suits of any amount, of appeals referred to them from original decisions of the two classes of Native

¹ Reg. II. 1830, s. 2.

² Reg. VII. 1831, s. 3.

³ Reg. VII. 1831, s. 4.

⁴ Reg. XVIII. 1831, s. 1.

Commissioners, in suits not exceeding 100 rupees; and the jurisdiction of the Principal and Junior Native Commissioners was limited to the cognizance by them of suits original, or referred to them, to the amounts respectively of 10,000 and 5000 rupees.¹

The right of appeal from the Mofussil Courts to the Supreme Court, vested in British subjects by the 53d Geo. III. c. 155, s. 107, was abolished in 1836; and it was also enacted that no person, by reason of birth or descent, should be exempt from the jurisdiction of the Company's Courts,² or be incapable of being a Principal Sudder Ameen, Sudder Ameen, or Moon-siff, as the Native Judges and Principal and Junior Native Commissioners were then ordered to be designated.³

All suits in regard to tenures, and the interest connected therewith, and all suits respecting the right to possession of lands, or of the Watans of hereditary district or village officers, were, in the year 1838, directed to be brought in the Courts of Adawlut, and not in the Revenue Courts; and the Sudder Dewanny Adawlut was empowered to refer to the proper Court, proceedings which might have been taken in any Court not having jurisdiction.⁴

It was enacted in 1843 that special appeals should lie to the Sudder Dewanny Adawlut from all decisions passed on regular appeals by the subordinate Civil Courts, when inconsistent with law or usage, or the practice of such Courts, or involving doubtful questions of law, usage, or practice.⁵

In 1844 it was enacted that all suits within the competency of a Principal Sudder Ameen or Sudder Ameen to decide should ordinarily be instituted in the Courts of those officers; but that they might be withdrawn at the discretion of the Zillah Judges, who might try them themselves, or refer them to any competent subordinate Court. The Zillah Judges were also authorised to admit summary appeals from the

¹ Reg. XVIII. 1831, s. 3.

² Act XI. 1836, ss. 4, 5.

³ Act XXIV. 1836, ss. 2, 3.

⁴ Act XVI. 1838.

⁵ Act III. 1843, s. 1.

orders of Principal Sudder Ameens and Sudder Ameens rejecting original suits cognizable by them.¹

Joint Zillah Judges were appointed in 1845, to have the same powers and concurrent jurisdiction with the Zillah Judges, in cases received by them from those Judges.²

In 1853, Act III. of 1843 was repealed and it was enacted that special appeals should lie to the Sudder Court from any decision passed on regular appeal in any of the inferior Courts on the following grounds: viz. 1. A failure to decide all the material points in the case, or a decision contrary to law; 2. Misconstruction of any document; 3. Ambiguity in the decision itself; and, 4. Substantial error or defect in procedure or in the investigation of the case. No such special appeal was to lie on matters of fact.³

(b) Criminal Judicature.

In 1828 a Provincial Court of Circuit was established for the Zillahs in the Province of Guzerat, to have the same powers and duties as, but to be subject to, the Sudder Foujdary Adawlut,⁴ which was removed to the Presidency. Sentences of death, transportation or imprisonment for life, passed by the Court of Circuit, were to be referred to the Sudder Foujdary Adawlut.⁵

This Provincial Court of Circuit was abolished in 1830, and the powers of Sessions Judges and Court of Circuit were given to the Criminal Judges,⁶ and the Assistant Criminal Judges were appointed Assistant Sessions Judges.⁷ Visiting Commissioners of Circuit were at the same time appointed, for holding State trials, and trials of a peculiar and aggravated nature,⁸ with all the powers of the Court of Circuit and of the

¹ Act IX. 1844, ss. 1, 2, 4.

³ Act XVI. 1853.

⁵ Reg. VIII. 1828, s. 15.

⁷ Reg. III. 1830, s. 6.

² Act XXIX. 1845.

⁴ Reg. VIII. 1828, s. 8.

⁶ Reg. III. 1830, ss. 1, 2, 3.

⁸ Reg. III. 1830, ss. 9, 10.

Special Court.¹ In the same year the Criminal Judges were directed to be styled Sessions Judges.²

An additional Judicial Commissioner of Circuit was appointed in 1833.³

Appeals from the Special Court for the trial of political offences, which formerly lay to the Governor in Council, were, in 1837, transferred to the Foujdary Adawlut, whose sentence was, however, required to be confirmed by the Government.⁴

In 1839 all sentences passed by Assistant Sessions Judges, whereby convicts became liable to imprisonment for more than two years, were directed to be confirmed by the Sessions Judges, and a reference to the Sudder Foujdary Adawlut was not to be necessary.⁵

In the year 1841 it was enacted that crimes against the State should be cognizable by the ordinary tribunals; but that the sentences and proceedings of the Courts in such trials should be reported to the Sudder Foujdary Adawlut, who again were to refer their sentences to the Government for confirmation.⁶

In 1845 it was enacted that any person convicted of adultery by any of the East-India Company's Courts in the Bombay Presidency should be sentenced to fine or imprisonment, or both, at the discretion of such Courts: no woman to be prosecuted for such offence but by her husband; and no person to be admitted to prosecute any man but the husband of the woman with whom such man was alleged to have committed adultery.⁷

Joint Sessions Judges were appointed in 1845, to have the same powers and concurrent jurisdiction with the Zillah

¹ Reg. III. 1830, s. 11.

³ Reg. VIII. 1833.

⁵ Act XIX. 1839.

⁷ Act II. 1845.

² Reg. IV. 1830, s. 2.

⁴ Act XXXVII. 1837.

⁶ Act V. 1841.

Sessions Judges, excepting that they should not receive original complaints, but transact such criminal business only as they might receive from the Sessions Judges.¹

In the year 1852 the Governor in Council was authorised to empower any one of the Judges of the Sudder Foujdary Adawlut to exercise all the powers of a Judge on Circuit, or of a visiting or Judicial Commissioner, and all or any of the powers or duties now vested in, and exercised by the Court of Sudder Foujdary Adawlut.²

(c) *Police Establishment.*

In the year 1828 the Assistant Criminal Judges stationed elsewhere than at Sudder Stations were invested with Police powers, and the Zillah Magistrates were directed to refer cases to them, instead of to the Criminal Judge.³

Several important changes took place in 1830. The Criminal Judges were divested of their Police powers, which were transferred to the Magistrates, with an exception, however, of the Judge of the City and Sudder station of Surat;⁴ the penal jurisdiction of the Magistrates and their Assistants was extended to fine and imprisonment with hard labour for one year; all sentences of Assistant Magistrates of imprisonment above three months were, however, to be confirmed by the Magistrate, who was also to have a power of revision of all their sentences.⁵ District Police-officers were empowered to punish petty offenders by fine not exceeding fifteen rupees, and confinement not exceeding twenty days.⁶ Subsequently Sub-Collectors were given the same Magisterial powers and penal jurisdiction as Collectors;⁷ and they were afterwards, in 1831, directed to be entitled in such capacity Joint Magis-

¹ Act XXIX. 1845.

³ Reg. XII. 1828.

⁵ Reg. IV. 1830, s. 3.

⁷ Reg. V. 1830, s. 2.

² Act XXIX. 1852.

⁴ Reg. IV. 1830, s. 1.

⁶ Reg. IV. 1830, s. 5.

trates.¹ In the same year Zillah Magistrates were authorised to punish by solitary imprisonment for one month;² and the visiting Judicial Commissioners were empowered to annul any sentence passed by a Zillah Magistrate.³

Joint Police-officers were appointed in the year 1833 in certain large towns, who were invested with a similar authority and jurisdiction to that of the District Police-officers, and were made subordinate to the Native Collectors.⁴

In 1835 the Governor of Bombay was authorised to appoint any military officer to be a Magistrate in one or more Zillahs, and to confer on Assistant Magistrates any of the powers of a Magistrate.⁵

Mahálkarís, or other officers exercising their functions, were, in the same year, made eligible to be invested by the Governor in Council with the same police powers within the towns and villages under their charge, as District Police-officers.⁶

In 1843 sentences passed by Magistrates on British subjects residing in the provinces for assaults and trespasses against Natives of India were made appealable, in the same manner as sentences passed by them in their ordinary jurisdiction; and when so appealed, they were no longer to be removable by Certiorari to the Queen's Court.⁷

In the year 1846 the Police jurisdiction of the City and Sudder station of Surat was vested in the Magistrate of the Zillah, in the place of being under the controul of the Judge and his Assistants.⁸

In 1851 the authority given to the Governor of conferring the powers of Magistrates on Assistant Magistrates was abolished, and he was empowered to appoint to any Zillah, uncovenanted Deputy Magistrates, either to exercise the

¹ Reg. VIII. 1831, s. 1.

³ Reg. VIII. 1831, s. 5.

⁵ Act XIV. 1835.

⁷ Act IV. 1843.

² Reg. VIII. 1831, s. 2.

⁴ Reg. III. 1833, s. 1.

⁶ Act XX. 1835.

⁸ Act V. 1846.

powers of a covenanted Assistant under Regulation XII. of 1827, Regulation IV. of 1830, and Regulation VIII. of 1831, of the Bombay Code, and Act XXV. of 1839; or the full powers of a Magistrate, or as an officer of Police.¹

In the year 1852, the Governor in Council was authorised to empower Patéls and other Heads of Villages to try minor offences.²

In the same year the Sudder Foujdary Adawlut was relieved from the superintendence of the Police, and it was vested in the Governor in Council, who might appoint such persons as he might think fit.³

In 1855 the appointment of Joint Police-officers was no longer restricted to certain towns, but they were to be appointed to any district the Governor in Council might think fit.⁴

Having thus traced the progress of the Judicial systems at the three several Presidencies, from their origin to the present time, I shall, in the following division of this Chapter, describe shortly the past and present jurisdiction of the Sudder and Mofussil Courts, and enumerate the various laws therein administered, concluding the account of these Courts by a summary statement of their actual constitution.

4. JURISDICTION OF THE SUDDER AND MOFUSSIL COURTS, AND THE LAWS ADMINISTERED THEREIN.

(1) CIVIL JURISDICTION.

The civil jurisdiction of the Courts established by the Honourable East-India Company originally extended over Natives only, British subjects never then residing in the provinces, except in their official capacities.

¹ Act IV. 1851.

² Act XXVII. 1852.

³ Act XXVIII. 1852.

⁴ Act XV. 1855.

In the year 1787, however, it was declared, that whenever British subjects and others, "not being amenable to the jurisdiction of the Dewanny Courts," should institute a suit in such Courts against any person duly amenable to them, they should enter into a bond declaring themselves to be subject to their jurisdiction in respect of such suits, and binding themselves to abide by their award or decree.¹

By Regulations subsequently passed, it was enacted that the jurisdiction of the Company's Courts should extend over all Natives and other persons not British subjects,² and also over such British subjects (excepting King's officers, and the covenanted civil servants of the Company and their military officers) as were suffered to reside at a distance from the seat of Government, on entering into a bond rendering themselves amenable to the Company's Courts in civil suits instituted against them by Natives or others, not British subjects, in which the amount claimed did not exceed 500 rupees.³

In the year 1813 it was enacted by Act of Parliament⁴ that British subjects residing, or trading, or holding immovable property at a distance of more than ten miles from the Presidencies, should be subject to the jurisdiction of the Courts of the East-India Company in civil suits and matters of revenue, in like manner as the Natives of India, except that, in cases where an appeal would lie to the Company's Court exercising the highest appellate jurisdiction, such British subjects were to be allowed to appeal instead to the King's Courts at the Presidencies. The same Statute also gave a jurisdiction to Magistrates in cases of small debts not exceeding 50 rupees due from British subjects to Natives, and contracted without

¹ Beng. Jud. Reg. VIII. 1787, s. 38.

² Beng. Reg. III. 1793, s. 7. Mad. Reg. II. 1802, s. 4. Bomb. Reg. III. 1799, s. 6; Bomb. Reg. I. 1800, s. 6; Bomb. Reg. II. 1827, s. 21.

³ Beng. Reg. III. 1793, s. 9; Beng. Reg. XXVIII. 1793, s. 2. Mad. Reg. II. 1802, s. 6. Bomb. Reg. III. 1799, s. 8; Bomb. Reg. I. 1800, s. 8.

⁴ 53d Geo. III. c. 155, s. 107.

the jurisdiction of the several Courts of Requests established at Calcutta, Madras, and Bombay respectively.¹

The Native Judicial Officers at all the Presidencies, previously to the year 1836, had no jurisdiction over Europeans or Americans in any civil suits, such persons being amenable only to the Courts presided over by European Judges.²

In the year 1836 Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, who might be British-born subjects or their descendants, were declared to be subject to the jurisdiction of the Company's Courts for all acts done by them as such, and to be liable to the same proceeding as though they were not of British birth or descent.³

In the same year, and afterwards in 1839, 1843, and 1850, Acts were passed which caused great dissatisfaction at the time, but the justice and good policy of which will hardly be questioned by any but those actuated by interested motives. The right of appeal to the Supreme Courts of Judicature, which had been previously reserved to British subjects under the 53d Geo. III. c. 155, s. 107, was abolished,⁴ and it was enacted, in comprehensive terms, that thenceforth no person whatever should, by reason of place of birth, or by reason of descent, be, in any civil proceeding whatever, excepted from the jurisdiction of any of the Company's Civil Courts.⁵

¹ 53d Geo. III. c. 155, s. 106. By the 4th Geo. IV. c. 81, s. 57, and the 3d & 4th Vict. c. 37, s. 54, officers and soldiers, being British subjects, were excepted from the operation of this rule.

² Beng. Reg. XXIII. 1814, ss. 13. 68; Beng. Reg. XXIV. 1814, s. 7; Beng. Reg. II. 1821, ss. 3. 5; Beng. Reg. V. 1831, ss. 15. 18. By Beng. Reg. IV. 1827, s. 2, Sudder Ameens had been given a jurisdiction over European subjects, European foreigners, and Americans, in suits in which they might be parties, when such suits were referred to them by the Zillah or City Judges; but this section was rescinded by Reg. V. 1831, s. 15. Mad. Reg. VII. 1827, s. 7. Bomb. Reg. II. 1827, ss. 37. 43; Bomb. Reg. I. 1830, s. 5.

³ Act VIII. 1836, s. 2; Act XXIV. 1836, s. 4.

⁴ Act XI. 1836, s. 1.

⁵ Act XI. 1836, s. 2; Act XXIV. 1836, s. 5; Act III. 1839, ss. 1. 3;

In the year 1850 it was enacted that no Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, should be liable to be sued in any Civil Court for any act done by him in the discharge of his judicial duty; and that no Officer of any Court or other person bound to execute the warrants of any such Judges, Magistrates, Justices, Collectors, or others acting as aforesaid, should be liable to be sued for the execution of warrants which he would be bound to execute, if within the jurisdiction of the person issuing the same.¹

(2) CRIMINAL JURISDICTION.

The criminal jurisdiction of the Company's Courts was originally limited to Natives and Europeans not British subjects; and when British subjects committed, or were charged with committing, any acts, at a distance from the King's Courts, which rendered them liable to prosecution in those Courts, the Magistrates were enjoined to apprehend them, and having made inquiries into the circumstances, to despatch them to the Presidency for trial.²

The 53d Geo. III. c. 155, s. 105, which was passed in the year 1813, enacted, however, that it should be lawful for any Native of India resident within the British territories without

Act VI. 1843, s. 7; Act VII. 1843, s. 5; Act III. 1850. It may be here remarked, that, by a Construction of the Sudder Dewanny Adawlut of Bengal, relative to Act XI. of 1836, it was declared that the said Act did not take away any exemption to which any person might be entitled by virtue of his office, and that consequently judicial functionaries who were not liable to civil actions in the Courts specified in the Act on account of alleged injuries committed by them in their official capacities before the passing of the Act, were not thereby rendered liable. See Construction S. D. A. No. 1051.

¹ Act XVIII. 1850.

² Beng. Jud. Reg. XXII. 1787, s. 12; Beng. Jud. Reg. XXVI. 1790, s. 12; Beng. Reg. IX. 1793, s. 19. Mad. Reg. VI. 1802, s. 19; Mad. Reg. IV. 1809, ss. 2, 3. Bomb. Reg. V. 1799, s. 18; Bomb. Reg. III. 1800, s. 18; Bomb. Reg. III. 1818, s. 29; Bomb. Reg. XII. 1827, s. 10.

the towns of Calcutta, Madras, and Bombay, in case of any assault, forcible entry, or other injury accompanied with force, not being a felony, alleged to have been done against his person or property by a British subject, to complain to the Magistrate of the Zillah or district where the alleged offender resided, or the offence had been committed; and that the Magistrate should have power to take cognizance of such complaint, and to acquit or convict the person accused, and in case of a conviction, to punish the offender by fine not exceeding 500 rupees; but all such convictions were declared to be removable by writ of Certiorari into the King's Courts of Oyer and Terminer, and Gaol delivery.

Uncovenanted Criminal Judges at Madras have no jurisdiction over Europeans or Americans, such persons being amenable only to those Courts which are presided over by European Judges.¹

In 1836 British-born subjects or their descendants, who might hold the appointment of Principal Sudder Ameen, Sudder Ameen, or Moonsiff, were made liable for acts committed by them as such to the same proceedings, and amenable to the same tribunals, as though they were not of British birth or descent.²

By a late Act of the Government of India, the removal by Certiorari of the convictions of British subjects in the provinces by the Zillah Magistrates under the 53d Geo. III. c. 155, was restricted to cases in which no appeal had been made against the sentences of the Magistrates to the Superior Courts of the East-India Company.³

The criminal jurisdiction of the Courts of the East-India Company extends also over native subjects of the British

¹ Mad. Reg. VIII. 1827, ss. 4, 5; Mad. Reg. III. 1833, s. 2; Act XXXIV. 1837, s. 2; Act VII. 1843, s. 43.

² Act VIII. 1836, s. 2; Act XXIV. 1836, s. 4.

³ Act IV. 1843.

120 LAWS ADMINISTERED IN THE COMPANY'S COURTS.

Government in India, charged with crimes committed in places out of the limits of the British territories.¹

(3) LAWS ADMINISTERED IN THE SUDDER AND MOFUSSIL COURTS.

The law administered in the Courts of the Honourable East-India Company may be classed under five distinct heads.

1. The Regulations enacted by the Governments at the three Presidencies previously to the 3d and 4th Will. IV. c. 85, and the Acts of the Governor-General in Council passed subsequently to that Statute.

2. The Hindú Civil Law in all suits between Hindú parties regarding succession, inheritance, marriage, and cast, and all religious usages and institutions.²

3. The Muhammadan Civil Law in similar suits between Muhammadan parties.³

4. The Laws and Customs, so far as the same can be ascertained, of other Natives of India not being Hindús or Muhammadans, in similar suits where such other Natives are parties.

5. In cases for which no specific rule may exist the Judges are to act according to justice, equity, and good conscience.

* 6. The Muhammadan Criminal Law as modified by the Regulations. It must be remembered, however, that this law is confined to the Criminal Courts in the Bengal and Madras

¹ Mad. Reg. XI. 1809; Mad. Reg. II. 1829; Mad. Reg. XII. 1832. Bomb. Reg. III. 1809; Bomb. Reg. IV. 1818.

² In cases where the parties are Hindús the law of Contract, Family customs, and the customs of particular parts of the country are, in practice, commonly recognised in modification of the Hindú law as reserved by the Regulations.

³ In practice the Muhammadan law has been applied to a variety of cases, which may be arranged under the following heads: viz. Inheritance, Sale, Pre-emption, Gift, Wills, Marriage, Dower, Divorce, Parentage, Guardians and Minority, Slavery, Endowments, Debts and Securities, Claims, and Judicial matters.

Presidencies, being superseded at Bombay by a regular code. In Bengal, too, persons not professing the Muhammadan faith are, on claiming exemption, excepted from trial under the Muhammadan law for offences cognizable under the general Regulations.¹

These laws will be severally treated of in a subsequent Chapter.

From the above accounts of the Courts of Judicature established by the Honourable East-India Company, it will be seen that the gradual changes which have taken place from the earliest period up to the present time, have tended in almost every instance to improve and simplify the constitution of the Courts; to extend our confidence in the Natives by admitting them to a considerable share in the executive department; and to reduce, so far as possible under the circumstances, the plans for the administration of justice adopted at the three Presidencies to one uniform system.

The following summary will exhibit at one view the actual constitution of the several Company's Courts in each Presidency, and will at once present to the reader the slight differences which exist between the three systems.

5. SUMMARY ACCOUNT OF THE COMPANY'S COURTS. *

(1) BENGAL.

(a) *Civil Courts.*

1. Moonsiffs are empowered to try and determine suits when the amount in dispute does not exceed 300 rupees.² A regular appeal lies from the decisions of the Moonsiffs to the Zillah and City Judges, whose decisions are final.³ A summary appeal lies to the Zillah and City Judges, from the orders of Moonsiffs rejecting suits.⁴

¹ Beng. Reg. VI. 1832, s. 5.

³ Beng. Reg. V. 1831, s. 28.

² Beng. Reg. V. 1831, s. 5.

⁴ Act XXII. 1838, s. 1.

2. Sudder Ameens are authorised to try and determine suits which do not exceed in value 1000 rupees.¹ An appeal lies from decisions in these Courts to the Zillah and City Judges, whose decisions are final.² A summary appeal from their orders rejecting suits also lies to the Zillah and City Courts.³ A further or special appeal from their decisions in regular appeals lies to the Sudder Dewanny Adawlut.⁴

3. Principal Sudder Ameens are empowered to try and determine all suits, whether originally instituted in their Courts, or suits, original and on appeal from the lower Courts, referred to them by the Zillah or City Judges, whatever may be the amount in dispute.⁵ An appeal lies from their decisions to the Zillah and City Judges; but where the suit involves a sum exceeding 5000 rupees the appeal lies direct to the Sudder Dewanny Adawlut.⁶ A summary appeal from their orders rejecting suits lies to the Zillah and City Courts;⁷ a second or special appeal also lies to the Sudder Dewanny Adawlut from their decisions on regular appeals.⁸

¹ Beng. Reg. V. 1831, s. 15; Act IX. 1844, s. 1. The primary jurisdiction of the Sudder Ameen is stated in the Appendix B, No. 3, to the first report of the Indian Law Commissioners appointed in 1853, to *commence* in suits *above* 300 rupees in value. In *practice* this is no doubt the case; but in *fact* the original jurisdiction of Sudder Ameens established by Reg. V. of 1831, s. 15, in suits referred to them by the Zillah and City Judges remains intact.

² Beng. Reg. V. 1831, s. 28.

³ Beng. Reg. XXVI. 1814, s. 3; Act IX. 1844, s. 4.

⁴ Act XVI. 1853, s. 4.

⁵ Act XXV. 1837, ss. 1. 3; Act IX. 1844, s. 1. In the Appendix B, No. 3, to the first Report of the Indian Law Commissioners, appointed in 1853, the primary jurisdiction of Principal Sudder Ameens is stated to *commence* in all cases *above* 1000 rupees. In *practice* this is doubtless correct; but Act IX. of 1844, which enacts that all suits within the competency of Sudder Ameens to decide shall be *ordinarily* instituted in their Courts, does not do away with the primary jurisdiction of Principal Sudder Ameens, established by Act XXV. of 1837 in all suits, whatever may be the amount in dispute, referred to them by the Zillah and City Judges.

⁶ Beng. Reg. V. 1831, s. 28; Act XXV. 1837, s. 4.

⁷ Beng. Reg. V. 1831, s. 19; Act IX. 1844, s. 4. ⁸ Act XVI. 1853, s. 4.

Moonsiffs, Sudder Ameens, and Principal Sudder Ameens, are uncovenanted Judges.

4. The Zillah and City Courts have an original jurisdiction to an unlimited amount, commencing at 5000 rupees.¹ The Zillah and City Judges, when appeals from Moonsiffs and Sudder Ameens are so numerous as to encumber their files, can refer a specified number of cases by permission from the Sudder Dewanny Adawlut to the Principal Sudder Ameens.² They are also empowered to withdraw any cases from the files of the Sudder Ameens and Principal Sudder Ameens, for sufficient reason, and to try them themselves, or refer them to a subordinate Court.³ An appeal lies from their original decisions to the Sudder Dewanny Adawlut.⁴ A summary appeal from their orders rejecting suits lies to the Sudder Dewanny Adawlut,⁵ and a second or special appeal also lies to the same Court from their decisions on regular appeals.⁶

5. The Sudder Dewanny Adawlut,⁷ or highest Civil Court of Appeal, may call up from the Zillah or City Courts, and try in the first instance, suits exceeding 10,000 rupees in value.⁸

¹ Beng. Reg. V. 1831, s. 27.

² Beng. Reg. V. 1831, s. 16.

³ Act IX. 1844, s. 22. In the Appendix B, No. 3, to the first Report of the Indian Law Commissioners appointed in 1853, it is said that, with the exception of these withdrawn cases, the jurisdiction of the Zillah and City Courts is *wholly appellate*. In *practice* this is quite true, because suits of unlimited amount are by Act IX. of 1844 directed *ordinarily* to be instituted in the Courts of the Principal Sudder Ameens. But the original jurisdiction of the Zillah and City Courts in all suits above the value of 5000 rupees, established by Reg. V. of 1831, s. 27, remains unaltered.

⁴ Beng. Reg. V. 1831, s. 28; Beng. Reg. II. 1833, s. 5.

⁵ Beng. Reg. XXVI. 1814, s. 3; Beng. Reg. II. 1833, s. 5.

⁶ Act XVI. 1853, s. 4.

⁷ There is also a Court of Sudder Dewanny Adawlut for the North-Western Provinces, established at Agra, which has the same powers in those Provinces as are vested in the Sudder Dewanny Adawlut at Calcutta. Beng. Reg. VI. 1831.

⁸ Beng. Reg. XXV. 1814, s. 5, reserves the original jurisdiction of the Sudder Dewanny Adawlut in suits instituted in the Provincial Courts amounting to 50,000 rupees, the then appealable amount to the King in

The judgments of this Court are final, excepting where the amount in dispute exceeds 10,000 rupees, in which case an appeal lies to Her Majesty in Council.¹

(b) *Criminal Courts.*

1. The Law officers of the Zillah and City Courts, Sudder Ameens, and Principal Sudder Ameens, have a limited criminal jurisdiction in cases of petty theft and trivial offences referred to them for trial by the Magistrates: their powers of punishment extend to fines of 50 rupees, and imprisonment with or without labour for one month.² An appeal lies from their sentences within one month to the Magistrate or Joint Magistrate, in cases within the limitation prescribed by sections 8 and 9 of Regulation IX. of 1793.³

2. Deputy Magistrates have a limited criminal jurisdiction extending to imprisonment for one month, with an additional period of one month's imprisonment in lieu of corporal punishment:⁴ in offences requiring more severe punishment, the case is to be forwarded to the Magistrate or Joint Magistrate.⁵ When specially empowered, Deputy Magistrates have a power of imprisonment not exceeding one year.⁶ Deputy Magistrates may also be invested with full magisterial powers by the local Government, and they may then punish to the same extent as Magistrates: viz., two years' imprisonment with hard labour, and an additional term of imprisonment for one year in lieu of corporal punishment.⁷ An appeal lies from the sentences of Deputy

Council, and has not been repealed. This amount having been since altered, and the Provincial Courts superseded by the Zillah and City Courts, the original jurisdiction of the Sudder Dewanny Adawlut is as stated in the text.

¹ See *infra*, Chapter IV. on Appeals to England.

² Beng. Reg. III. 1821, ss. 3, 4; Beng. Reg. V. 1831, s. 18; Beng. Reg. II. 1832, s. 3.

³ Act XXXI. 1841, s. 2.

⁴ Beng. Reg. XIII. 1797; Beng. Reg. IX. 1807; Beng. Reg. III. 1821, s. 2; Beng. Reg. II. 1834, s. 2; Act XV. 1843; Act X. 1854, s. 1.

⁵ Beng. Reg. III. 1821, s. 2.

⁶ Beng. Reg. III. 1821, s. 2; Act X. 1854, s. 2; Act XV. 1843.

⁷ Act XV. 1843, s. 3.

Magistrates within one month to the Magistrate or Joint Magistrate, in cases within the limitations prescribed by sections 8 and 9 of Regulation IX. of 1793.¹

The Law officers of the Zillah and City Courts, the Sudder Ameens, the Principal Sudder Ameens, and the Deputy Magistrates are uncovenanted Judges.

3. Assistant Magistrates have exactly the same jurisdiction and powers as Deputy Magistrates, the latter being vested with all the powers of the Assistants by Act XV. of 1843. Assistants however cannot be invested by the Government with full magisterial powers.

4. The Zillah, City, and Joint Magistrates have a limited criminal jurisdiction, and are empowered to sentence offenders convicted by them to imprisonment with hard labour for a term not exceeding two years: in cases requiring heavier punishment, they are to forward the prisoner to the Sessions Judge.² An appeal lies from their sentences within one month, in all cases beyond the limitation prescribed by sections 8 and 9 of Regulation IX. of 1793, to the Sessions Judge.³

5. The Sessions Judges are empowered to hold monthly gaol deliveries, and to try and sentence prisoners committed and forwarded to them by the Magistrates and Joint Magistrates.⁴ All sentences of perpetual imprisonment and death, and in trials for offences against the State, are, however, to be confirmed by the Nizamut Adawlut.⁵ They also try appeals from all convictions and original sentences of the Magistrates and their subordinates.⁶ An appeal lies within three months from the sentences or orders of the Sessions Judges to the Nizamut Adawlut.⁷

¹ Act XXXI. 1841, s. 2; Act X. 1854, s. 1.

² Beng. Reg. XII. 1818, s. 2; Act II. 1834, s. 2.

³ Act XXXI. 1841, s. 2.

⁴ Beng. Reg. VII. 1831, s. 4; Act VII. 1835.

⁵ Beng. Reg. IX. 1793, s. 58; Beng. Reg. IV. 1797, s. 13; Beng. Reg. I. 1829; Beng. Reg. VII. 1831, s. 6; Act VII. 1835; Act V. 1841.

⁶ Act XXXI. 1841, s. 2; Act X. 1854, s. 1. ⁷ Act XXXI. 1841, s. 2.

6. The Nizamut Adawlut¹ is the Chief Criminal Court, and takes cognizance of all matters relating to criminal justice and the Police ; it has alone the power of passing final sentences of death or perpetual imprisonment, and in other referrible cases.² Its sentences in crimes against the State are, however, to be reported to the Government, whose orders are to be awaited for three months before such sentences are carried into execution.³ It is also empowered to annul or mitigate sentences of the lower Courts, and to call for the whole record of any criminal trial in any subordinate Court.⁴

(c) *Police Establishment.*

1. The Superintendents of Police have the same powers of punishment as those vested in the Zillah and City Magistrates.⁵

2. The Police Dáróghahs and the inferior Police-officers have no power given to them of adjudging imprisonment or inflicting punishment of any kind : their duties merely extend to the apprehending of persons charged with crimes and offences, and forwarding them to the Magistrates.

(2) MADRAS.

(a) *Civil Courts.*

1. Village Moonsiffs are authorised to try and finally determine suits for personal property preferred to them, where the amount in dispute does not exceed ten rupees.⁶ They may also refer suits for personal property of any amount

¹ There is also a Court of Nizamut Adawlut for the North-Western Provinces, which has the same powers in those Provinces as the Nizamut Adawlut at Calcutta. Beng. Reg. VI. 1831.

² Beng. Reg. IX. 1793, ss. 72. 77.

³ Act V. 1841, s. 5.

⁴ Act XXXI. 1841, ss. 3, 4 ; Act XIX. 1848, ss. 2—4.

⁵ Beng. Reg. X. 1808 ; Beng. Reg. XVII. 1816 ; Beng. Reg. XX. 1817 ; Beng. Reg. XII. 1818, s. 6 ; Act XXIV. 1837, s. 1—4.

⁶ Mad. Reg. IV. 1816, s. 5.

to a Village Pancháyit, both parties agreeing to such reference, the majority of the Pancháyit to decide, and the decision to be final.¹ They are further empowered to try and determine, as arbitrators, suits for personal property not exceeding 100 rupees, when voluntarily referred to them by the parties. In all these cases their decisions are final.²

2. District Moonsiffs are authorised to try and determine suits for Lákhiráj property of an annual value not exceeding 100 rupees, and for other land and personal property where the amount in dispute does not exceed 1000 rupees. Their decisions in all suits for land and for other property of a value over twenty rupees, are appealable to the Zillah Court,³ but for personal property under that amount they are final.⁴ They may refer suits for real and personal property of any amount to a District Pancháyit, both parties agreeing to such reference, for final decision.⁵ They are also authorised to hear and determine suits as arbitrators, when voluntarily referred to them by both parties, for Lákhiráj lands, not exceeding in annual value 100 rupees, and other suits not exceeding 1000 rupees in value. Their decisions in such cases are final.⁶ A summary appeal from their orders rejecting suits lies to the Zillah Judges, the subordinate Zillah Judges or Principal Sudder Ameens.⁷

3. Sudder Ameens have jurisdiction in suits for Lákhiráj lands not exceeding in annual value 250 rupees, and in all other suits where the amount in dispute does not exceed 2500 rupees.⁸ An appeal lies from their decisions to the Zillah Courts.⁹ A summary appeal from their orders rejecting suits also lies to same Courts.¹⁰

4. Principal Sudder Ameens are empowered to try and

¹ Mad. Reg. V. 1816, ss. 2—11.

³ Mad. Reg. V. 1825, s. 2; Act VII. 1843, s. 8.

⁵ Mad. Reg. VII. 1816, ss. 2—11.

⁷ Act XVII. 1838.

⁹ Act VII. 1843, s. 8.

² Mad. Reg. IV. 1816, s. 27.

⁴ Mad. Reg. VI. 1816, s. 43.

⁶ Mad. Reg. VI. 1816, s. 57.

⁸ Mad. Reg. III. 1833, s. 4.

¹⁰ Act IX. 1844, s. 4.

determine suits where the amount in dispute does not exceed 10,000 rupees;¹ and also any appeals from District Moonsiffs referred to them by the Zillah Judges.² An appeal lies from their decisions to the Zillah Courts.³ A summary appeal from their orders rejecting suits also lies to the Zillah Judges;⁴ and a second or special appeal lies to the Sudder Adawlut from their decisions in regular appeals.⁵

Village Moonsiffs, District Moonsiffs, Sudder Ameens and Principal Sudder Ameens, are uncovenanted Judges.

5. Subordinate Judges have primary jurisdiction to the extent of 10,000 rupees.⁶ They may also try and determine appeals from decisions of District Moonsiffs referred to them by the Zillah Judges.⁷ An appeal lies from their decisions to the Zillah Courts.⁸ A summary appeal also lies to the Zillah Courts from their orders rejecting suits;⁹ and a further or special appeal lies to the Sudder Adawlut from their decisions in regular appeals.¹⁰

6. Assistant Judges are empowered to try, under the same rules as the Zillah Judges, any appeals referred to them by such Judges, excepting appeals from the Subordinate Judges and Principal Sudder Ameens.¹¹

7. The Zillah Courts have an unlimited original jurisdiction commencing at 10,000 rupees, to the exclusion of all other Courts.¹² Zillah Judges may, when they see sufficient reason, withdraw any suits from the files of Sudder Ameens and Principal Sudder Ameens, and try them themselves or refer them to any Subordinate Courts.¹³ They may also refer appeals from District Moonsiffs to Sudder Ameens and to the Subordinate Judges and Principal Sudder Ameens,¹⁴ and

¹ Act VII. 1843, s. 4.

³ Act VII. 1843, s. 8.

⁵ Act XVI. 1853, s. 4.

⁷ Act VII. 1843, s. 8.

⁹ Act VII. 1843, s. 8.

¹¹ Act VII. 1843, s. 52.

¹³ Act IX. 1844, s. 2.

² Act VII. 1843, s. 8.

⁴ Act VII. 1843, s. 8.

⁶ Act VII. 1843, s. 4.

⁸ Act VII. 1843, s. 8.

¹⁰ Act XVI. 1853, s. 4.

¹² Act VII. 1843, s. 3.

¹⁴ Act VII. 1843, s. 8.

appeals from the two latter to the Assistant Judges. Appeals, regular and summary, lie from the decisions and orders of the Zillah Courts to the Sudder Adawlut;¹ and a second or special appeal lies to the same Court from their decisions in regular appeals.²

8. The Sudder Adawlut, which is the Chief Civil Court of Appeal, has a power of calling up from the Zillah Courts, and trying in the first instance, suits in which the disputed amount exceeds 10,000 rupees.³ The decisions of the Sudder Adawlut are final, except in suits where the disputed amount exceeds 10,000 rupees, when an appeal lies to Her Majesty in Council.⁴

(b) *Criminal Courts.*

1. District Moonsiffs have a limited criminal jurisdiction in petty offences and petty thefts, and may fine offenders 200 rupees, corporally punish them not exceeding 90 lashes of the cat-of-nine-tails, or imprison them, not exceeding one month. The Sessions Judges may overrule all their decisions.⁵

Moonsiffs are uncovenanted servants.

2. Magistrates, and Joint and Assistant Magistrates, are directed to apprehend persons charged with crimes or misdemeanours and send them for trial to the subordinate Courts:⁶ they have a limited criminal jurisdiction, and are

¹ Act VII. 1843, s. 9.

² Act XVI. 1853, s. 4.

³ Mad. Reg. XV. 1816, s. 2, reserves the original jurisdiction of the Sudder Adawlut in suits exceeding 45,000 rupees, the amount appealable at that time to the Governor-General in Council, instituted in the Provincial Courts, and has never been repealed. But as the new Zillah Courts have been substituted for the Provincial Courts, and the appeal and the appealable amount have been altered, the original jurisdiction of the Sudder Adawlut is as above stated.

⁴ See *infra* Chapter IV. on Appeals to England.

⁵ Act XII. 1854, ss. 1. 6.

⁶ Mad. Reg. IX. 1816, ss. 9. 24.

empowered to inflict corporal punishment not exceeding 90 lashes of the cat-of-nine-tails; fines not exceeding 200 rupees, and to imprison for a term not exceeding one month.¹ Magistrates are also authorised to send offenders for trial, commitment, or confinement, to the Principal Sudder Ameens.² Magistrates may exercise the powers vested in Criminal Judges by Regulation X. of 1816, concurrently with the Subordinate Criminal Courts: *i. e.*, to imprison for one year and to inflict corporal punishment not exceeding 150 lashes with the cat-of-nine-tails; but from all their sentences, when exercising such additional powers, there is an appeal to the Sessions Judge within one month.³

Magistrates are covenanted servants.

3. Sudder Ameens have a limited criminal jurisdiction when granted to them by the Subordinate Judges and Principal Sudder Ameens, and they are to exercise the powers of those officers, but they are not empowered to take cognizance of cases committable for trial by the Sessions Judge, who is authorised to overrule all sentences passed by Sudder Ameens.⁴

Sudder Ameens are uncovenanted Judges.

4. The Subordinate Judges, Magistrates exercising their powers, and Principal Sudder Ameens, are empowered to try cases which are not of so heinous a nature as to require to be sent to the Sessions Judge, and are authorised to inflict corporal punishment not exceeding 150 lashes with the cat-of-nine-tails, and to imprison with hard labour for a term not exceeding two years.⁵ In other and more serious cases they are enjoined to commit the prisoner for trial by the Sessions

¹ Mad. Reg. IX. 1816, ss. 32, 33, 35; Mad. Reg. XIII. 1832, s. 8.

² Act XXXIV. 1837, s. 1.

³ Act VII. 1843, ss. 54, 55.

⁴ Mad. Reg. III. 1833, s. 2; Act VII. 1843, s. 36.

⁵ Mad. Reg. VI. 1822, s. 2.

Judge.¹ Their sentences are liable to revision by the Sessions Judge and the Foujdary Adawlut.²

Subordinate Judges are covenanted, the Principal Sudder Ameens uncovenanted Judges.

5. The Sessions Judges are empowered to hold permanent sessions for the trial of persons committed for trial by the Subordinate Judges or Principal Sudder Ameens.³ Cases in which the Sessions Judges differ from the Fatwa of the law officers are to be referred to the Sudder Foujdary Adawlut ;⁴ as are also all sentences in capital cases,⁵ and in trials for offences against the State.⁶

6. The Sudder Foujdary Adawlut is the Chief Criminal Court, and has cognizance of all matters relating to criminal justice and the Police ;⁷ it has alone the power of passing final sentences in capital and other referrible cases ;⁸ but its sentences for offences against the State are to be reported to the Government, whose orders are to be awaited for three months before such sentences are carried into execution.⁹ It has also the power of revising, annulling, or mitigating the sentence of the lower Courts, and of calling for the whole record of any criminal trial in any subordinate Court.¹⁰

(c) *Police Establishment.*

1. The Heads of Villages are enjoined to apprehend and forward to the District Police-officers persons charged with crimes and offences ;¹¹ they also have a limited criminal jurisdiction, and are authorised to punish offenders by confinement

¹ Act VII. 1843, s. 29.

² Mad. Reg. VI. 1822, s. 6.

³ Act VII. 1843, ss. 27. 37.

⁴ Mad. Reg. VII. 1802, s. 22.

⁵ Mad. Reg. VII. 1802, s. 27.

⁶ Act V. 1841.

⁷ Mad. Reg. VIII. 1802, s. 8.

⁸ Mad. Reg. VII. 1802, s. 15 ; Mad. Reg. VIII. 102, s. 11.

⁹ Act V. 1841, s. 5.

¹⁰ Mad. Reg. I. 1825, s. 6 ; Act VII. 1843, s. 33 ; Act XIX. 1848, ss. 2—4.

¹¹ Mad. Reg. XI. 1816, s. 5.

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not exceeding twelve hours in trivial cases of abuse and assault, and petty theft.¹

2. The Heads of District Police and Tahsildárs, besides being directed to apprehend and forward to the Subordinate Judges persons charged with crimes or offences,² are authorised to try and determine trivial cases of abuse and assault, and petty theft, and to punish the offenders by a fine not exceeding three rupees, or imprisonment without labour for three days.³

3. Ameens of Police may be appointed, with the same powers as Tahsildárs or heads of Villages.⁴

(3) BOMBAY.

(a) *Civil Courts.*

1. Moonsiffs take cognizance of all suits, original or referred to them by the Zillah Judges, or Assistant Judges at detached stations, where the disputed amount does not exceed 5000 rupees.⁵ An appeal lies from their decisions, if in the principal divisions of the Zillahs, to the Zillah Judges; or, if in the other divisions, to the Senior Assistant Judge at the detached station.⁶ A summary appeal lies to the Zillah Courts from their orders dismissing suits.⁷

2. Sudder Ameens are empowered to try and determine original suits, where the amount in dispute does not exceed 10,000 rupees.⁸ An appeal lies from their decisions, if in the

¹ Mad. Reg. XI. 1816, s. 10; Mad. Reg. IV. 1821, s. 6.

² Mad. Reg. XI. 1816, s. 27; Act VII. 1843, s. 1.

³ Mad. Reg. XI. 1816, s. 33; Mad. Reg. IV. 1821, ss. 4, 5; Mad. Reg. XIII. 1832, s. 5.

⁴ Mad. Reg. XI. 1816, s. 40; Mad. Reg. IV. 1821, s. 2.

⁵ Bomb. Reg. XVIII. 1831, s. 3; Act XXIV. 1836, s. 2.

⁶ Bomb. Reg. I. 1830, s. 4; Bomb. Reg. VII. 1831, ss. 2, 3; Act XXIV. 1836, s. 2.

⁷ Bomb. Reg. IV. 1827, s. 21.

⁸ Bomb. Reg. XVIII. 1831, s. 3; Act XXIV. 1836, s. 2; Act IX. 1844, s. 1.

principal divisions of the Zillahs, to the Zillah Judges; or if in other divisions, and not exceeding 5000 rupees in amount, to the Senior Assistant Judge at the detached station.¹ A summary appeal lies to the Zillah Courts from their orders dismissing original suits.²

3. Principal Sudder Ameens are empowered to try and determine original suits, whatever may be the amount in dispute; and also appealed suits referred to them by the Zillah Judges from the decisions of Sudder Ameens and Moonsiffs, where the disputed amount does not exceed 100 rupees.³ An appeal lies from all their decisions to the Zillah Judges.⁴ A summary appeal also lies to the Zillah Courts from their orders dismissing original suits;⁵ and a second or special appeal lies to the Sudder Dewanny Adawlut from their decisions in regular appeals.⁶

Moonsiffs, Sudder Ameens, and Principal Sudder Ameens, are uncovenanted Judges.

4. Assistant Judges at Sudder stations try such original suits as are excluded from the jurisdiction of the lower Courts, when referred to them by the Zillah Judges.⁷ Such original suits are appealable to the Zillah Judge, whose decision is final if confirmatory of the original decision, and the amount in dispute do not exceed 5000 rupees; but otherwise they are appealable to the Sudder Dewanny Adawlut.⁸ They also, when specially empowered by the Government, and the state of judicial business requires it, hear appeals from the decisions of the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, when the amount in dispute does not exceed 5000 rupees.⁹ An appeal lies from their decisions on such

¹ Bomb. Reg. I. 1830, s. 4; Bomb. Reg. VII. 1831, ss. 2, 3; Act XXIV. 1836, s. 2.

² Act IX. 1844, s. 4.

³ Bomb. Reg. I. 1830, s. 5; Bomb. Reg. XVIII. 1831, s. 3; Act XXIV. 1836, s. 2.

⁴ Bomb. Reg. I. 1830, s. 4; Bomb. Reg. VII. 1831, s. 2; Act XXIV. 1836, s. 2.

⁵ Act IX. 1844, s. 4.

⁶ Act XVI. 1853, s. 4.

⁷ Bomb. Reg. I. 1830, s. 5.

⁸ Bomb. Reg. VII. 1831, s. 4.

⁹ Bomb. Reg. I. 1830, s. 4.

appeals, to the Zillah Judges, if confirming the judgment of the lower Court, and the amount in dispute should not exceed 2000 rupees; or if reversing or altering it, and it should not exceed 1000 rupees; above which sums respectively the appeal lies to the Sudder Dewanny Adawlut.¹ Senior Assistant Judges at detached stations try such original suits, referred to them by the Judges, as are excepted from the jurisdiction of the lower Courts. Such original suits are appealable in the same manner as suits of a like description referred to the Senior Assistants at Sudder stations. They are also authorised to hear such appeals from the decisions of the lower Courts as do not exceed 5000 rupees in value.² If their decision on such appeals confirm the decree of the lower Court, and the amount in dispute should not exceed 1000 rupees, or if it alter or reverse it, and it should not exceed 500 rupees, it is final; above which respective sums the suit may be re-appealed to the Zillah Judges, if the disputed amount do not exceed 5000 rupees; but if above that sum, the appeal lies to the Sudder Dewanny Adawlut.³ Summary appeals, from their orders rejecting suits, lie to the Sudder Dewanny Adawlut;⁴ and second or special appeals lie to the same Court.⁵

5. The Courts of the Zillah Judges have jurisdiction in original suits of unlimited amount. Appeals lie from their original decisions and decisions on appeal, to the Sudder Dewanny Adawlut.⁶ Summary appeals from their orders rejecting suits, and second or special appeals, also lie to the Sudder Dewanny Adawlut.⁷ Joint Judges, where appointed, have similar powers, and are subject to the same rules as the Zillah Judges in all cases received by them from the latter.⁸

6. The Sudder Dewanny Adawlut, or Chief Court of Appeal in civil suits, has no original jurisdiction. The deci-

¹ Bomb. Reg. VII. 1831, s. 3.

² Bomb. Reg. I. 1830, s. 4.

³ Bomb. Reg. VII. 1831, s. 3.

⁴ Bomb. Reg. IV. 1827, s. 97.

⁵ Act XVI. 1853, s. 4.

⁶ Bomb. Reg. II. 1827, s. 5; Bomb. Reg. IV. 1827, s. 72.

⁷ Bomb. Reg. IV. 1827, s. 97; Act XVI. 1853, s. 4.

⁸ Act XXIX. 1845, s. 1.

sions of this Court are final, except in suits where the amount in dispute exceeds 10,000 rupees, when an appeal lies to Her Majesty in Council.¹

(b) *Criminal Courts.*

1. Assistant Sessions Judges at the Sudder stations of the Zillahs, are empowered to try offenders committed for trial by the Magistrates or their Assistants when the cases are referred to them by the Sessions Judges,² to inflict fines, disgrace, and personal restraint, corporal punishment not exceeding thirty stripes (for theft only), and ordinary imprisonment with hard labour for a period not exceeding two years.³ Their powers, however, may be enlarged by Government to the extent of adjudging imprisonment for seven years with hard labour, solitary imprisonment for six months, or flogging with fifty stripes;⁴ but when a sentence is passed extending the ordinary limit, the confirmation of the Sessions Judge is necessary before execution.⁵ Senior Assistant Judges at detached stations have like powers with Assistants at the Sudder stations,⁶ which may be similarly extended by Government, in which cases their sentences also require the confirmation of the Sessions Judges; but they proceed at once to the trial of all cases occurring within their local jurisdiction that are committed to the sessions by the Magistrates or their Assistants,⁷ without needing that they be referred specially by the Sessions Judges, reserving only such for trial at the half-yearly sessions held by the Sessions Judges at the detached stations as require a graver punishment than they themselves are authorised to adjudge.

2. The Sessions Judges are empowered to try all persons

¹ See *infra* Chapter IV. on Appeals to England.

² Bomb. Reg. XIII. 1827, ss. 7. 12, 13; Bomb. Reg. III. 1830, s. 6.

³ Bomb. Reg. XIII. 1827, s. 13.

⁴ Bomb. Reg. XIII. 1827, s. 13.

⁵ Act XIX. 1839.

⁶ Bomb. Reg. III. 1830, s. 6.

⁷ Bomb. Reg. XII. 1828.

committed for trial by the Magistrates or their Assistants for any offence, and to pass sentence for the same; but sentences of death, transportation, ordinary imprisonment exceeding seven years, or solitary imprisonment exceeding six months, or sentences in cases of perjury committed before themselves, and in trials for offences against the State, are to be referred for confirmation to the Sudder Foujdary Adawlut before execution.¹ The Sessions Judges have authority to take into their own hands the trial of cases which may have been delegated to their Assistants, and to mitigate or annul, but not enhance, their sentences. They are also empowered to employ their Assistants in the preparation of cases for trial by themselves.² The Sessions Judges are to hold half-yearly Sessions at the detached stations where their Assistants may be fixed.³ They are also empowered, when the Judicial Commissioner is not on circuit within their Zillahs, to call for and amend the records of any case or proceeding of the Magistrates or their Assistants, when special reason may appear for so doing.⁴ In Zillahs where Joint Judges have been appointed, the Sessions Judges refer cases to them for trial, as they do also suitable cases to their Assistants.⁵

3. The Judicial Commissioners of Circuit are empowered to hold trials of a peculiar or aggravated nature, which from any circumstance, Government may wish to be reserved for that purpose; and they are vested with powers of controul, inquiry, and general supervision, over the judicial administration of the Zillahs comprised in their tours.⁶ They are also authorised to annul any sentence passed by Magistrates or their Assistants.⁷

¹ Bomb. Reg. XIII. 1827, ss. 12, 13, 21; Bomb. Reg. III. 1830, s. 3; Bomb. Reg. IV. 1830; Bomb. Reg. VIII. 1831, s. 4.

² Bomb. Reg. XIII. 1827, s. 12.

³ Bomb. Reg. III. 1830, s. 5.

⁴ Bomb. Reg. VIII. 1831, s. 3.

⁵ Act XXIX. 1845.

⁶ Bomb. Reg. III. 1830, ss. 10, 11.

⁷ Bomb. Reg. VIII. 1831, s. 5. The duties of Judicial Commissioners of Circuit appear to be in practice confined to the controul and supervision of the judicial administration and the revision of sentences. ■

Their sentences of death, transportation, or perpetual imprisonment, and in trials for offences against the State, are to be referred to the Sudder Foujdary Adawlut.¹

4. The Sudder Foujdary Adawlut is the Chief Criminal Court, and is vested with the chief superintendence of criminal justice and Police, and with power to revise all trials in the lower Courts. It has alone the power of passing final sentences of death, transportation, or perpetual imprisonment, and in other referrible cases.² Its sentences, however, in trials for offences against the State, are to be reported to the Government, whose orders are to be awaited for three months before such sentences are carried into execution.³ It is also empowered to call for and inspect the records of the lower Courts, and to mitigate or annul the sentences of such Courts, when brought before it in the course of any official proceeding.⁴ The Governor in Council is authorised to empower any one of the Judges of the Sudder Foujdary Adawlut to exercise all the powers of a Judge on Circuit, or of a visiting or Judicial Commissioner, and all or any of the powers or duties now vested in and exercised by the Court of Sudder Foujdary Adawlut.⁵

(c) *Police Establishment.*

1. The Heads of Villages, besides being authorised to apprehend offenders and forward them to the District Police-officers, have a limited power of adjudging imprisonment not exceeding twenty-four hours, in trivial cases of abuse or assault.⁶

2. The District Police-officers, Mahákarís, and Joint Police-officers are enjoined to apprehend persons charged with crimes and offences, and forward them to the Magis-

¹ Bomb. Reg. XIII. 1827, s. 21 ; Bomb. Reg. III. 1830, s. 11 ; Act V. 1841.

² Bomb. Reg. XIII. 1827, s. 27.

³ Act V. 1841, s. 5.

⁴ Bomb. Reg. XIII. 1827, ss. 29, 30 ; Bomb. Reg. VIII. 1831, s. 7.

⁵ Act XXIX. 1852.

⁶ Bomb. Reg. XII. 1827, ss. 49, 50.

trates.¹ They are also empowered to punish petty offenders by fine not exceeding 15 rupees, or confinement not exceeding twenty days.²

The Heads of Villages, District Police-officers, Mahálkarís, and Joint Police-officers are uncovenanted servants.

3. Assistant Magistrates are empowered to try and sentence offenders to imprisonment for one year with hard labour, or solitary imprisonment for one month; but sentences for more than three months, or of solitary imprisonment, are to be confirmed by the Magistrate, who has, moreover, the power of revising all their sentences.³ They have also the power of committing cases for trial before the Sessions Judges; and the Government can confer on them, by special authority, any of the powers of a Magistrate,⁴ but their sentences are still subject to the revision of the Magistrates.

4. The Zillah Magistrates, Magistrates, and Joint Magistrates are empowered to apprehend persons charged with crimes and offences, and to punish them on conviction by fine, imprisonment, and stripes, the power of imprisonment to extend to one year with hard labour, or solitary imprisonment for one month.⁵ In cases worthy of heavier punishment, the offender is to be committed for trial to the Sessions Judge.⁶

¹ Bomb. Reg. XII. 1827, s. 43; Bomb. Reg. III. 1833, s. 1; Act XX. 1835.

² Bomb. Reg. IV. 1830, s. 5; Bomb. Reg. III. 1833, s. 1.

³ Bomb. Reg. IV. 1830, s. 3; Bomb. Reg. VIII. 1831, s. 2.

⁴ Act IV. 1851, s. 4.

⁵ Bomb. Reg. XII. 1827, s. 9; Bomb. Reg. IV. 1830, s. 3; Bomb. Reg. VIII. 1831, s. 2.

⁶ By the printed interpretation, dated 31st May 1830, on Bomb. Reg. III. 1830, s. 3; Bomb. Reg. IV. 1830, s. 4; and Bomb. Reg. XII. 1827, s. 13, the Magistrates generally, possess authority to commit to the Sessions Courts as part of their ordinary duties.

CHAPTER IV.

APPEALS TO HER MAJESTY IN COUNCIL.

THE first right of appeal to the Sovereign in Council from the judgments of the Courts in India was granted by the Charter of Geo. I. in the year 1726, establishing the Mayors' Courts, from the decisions of which Courts, as we have seen, an appeal lay, first to the Governors in Council at the respective Presidencies, and thence to England, where the amount in dispute exceeded the sum of 1000 pagodas.

The right of appeal from the decisions of the Supreme Courts was first granted in the year 1773, by the 13th Geo. III. c. 63, the 18th section of which Statute enacted, that any person thinking himself aggrieved by any judgment or determination of the Supreme Court of Judicature at Bengal, should and might appeal from such judgment or determination to his Majesty in Council.

In the following year the Charter of Justice establishing the Supreme Court at Bengal was issued, and by its 30th section a right of appeal was reserved to suitors in civil causes, on their petition to the said Court.

No appeal was allowed under the Charter in suits where the value of the matter in dispute was under the sum of 1000 pagodas. This amount has since been altered, as will presently be noticed.

The 37th Geo. III. c. 142, empowering the King to establish the Recorders' Courts at Madras and Bombay, and being generally for the better administration of Justice at Calcutta, Madras, and Bombay, by section 16 provided that an appeal should lie to the King in Council from such Recorders' Courts.

By the Charter of the Supreme Court at Madras, a right of appeal was reserved from its decisions to dissatisfied

litigants; and the provisions regulating such appeal were similar to those contained in the Charter of the Supreme Court at Bengal. The value of the matter in dispute was required to be in excess of 1000 pagodas, for an appeal to be allowable.

The Charter of the Supreme Court at Bombay also reserved a right of appeal to the Sovereign in Council; with the difference, however, that the value of the disputed matter was to exceed 3000 Bombay rupees.

In all cases, by the provisions of each Charter of Justice of the Supreme Courts, a reservation is made of the power of the Sovereign in Council, upon the Petition of any person aggrieved by any decision of the Supreme Courts, to refuse or admit the appeal, and to reform, correct, or vary¹ such decision, according to the royal pleasure.

An appeal from the decisions of the Courts of the East-India Company to the Sovereign in Council was first allowed to suitors in such Courts in the year 1781, by the 21st Geo. III. c. 70, s. 21, under the provisions of which Act the Governor-General and Council, or some Committee thereof, or appointed thereby, were authorised to determine on appeals and references from the Country or Provincial Courts in civil causes. This Statute enacted, that the said Court might hold all such pleas and appeals, in the manner, and with such powers, as it theretofore had held the same, and should be deemed in law a Court of Record; and that the judgments therein given should be final and conclusive, except upon appeal to His Majesty, in civil suits only, the value of which should be of £5000 and upwards.

The limitation as to amount being the only restriction imposed by the 21st Geo. III. c. 70, and no rules having been made by His Majesty in Council for the conduct of the

¹ See Smoult's Collection of Orders of the Supreme Court at Fort William in Bengal, p. 68. 12mo. Calc. 1834.

Indian Courts in dealing with the applications of appellants, it became necessary to declare by Regulation the time within which the petition of appeal was to be presented, to require security for costs, and to make divers other rules, by which suitors were to be bound. Regulation XVI. of 1797 of the Bengal code was accordingly passed, enacting that the previous Regulation,¹ which declared that the decrees of the Sudder Dewanny Adawlut were final, had no reference to the appeal to His Majesty in Council allowed by the 21st section of the Statute 21st Geo. III. c. 70: the same Regulation enacted certain rules for the conduct of appeals. The amount of the judgment appealed against was to exceed £5000 sterling, exclusive of costs, ten current rupees to be considered equivalent to £1 sterling. This amount has since been altered, as will be seen in the sequel.

In 1801² the constitution of the Sudder Dewanny Adawlut at Bengal was entirely changed, and the Governor-General was declared no longer to be a Judge of the Court, as has already been mentioned. Although, however, the Governor-General had thus divested himself of the power of administering justice in Bengal, he for some time exercised an appellate jurisdiction in cases decided by the Sudder Adawlut at Madras, such appeal having been expressly reserved by the Regulations of 1802.³

In the year 1818 the Governor-General relinquished the authority, theretofore exercised by him, of receiving appeals from the decisions of the Sudder Adawlut at Madras; and all the rules relating to such appeals to the Supreme Government were rescinded. At the same time a provision was made that an appeal should lie from such decisions to the King in Council, and rules were framed for the conduct of the appeals, similar to those contained in Regulation XVI. of 1797 of the

¹ Beng. Reg. VI. 1793, s. 29.

² Beng. Reg. II. 1801.

³ Mad. Reg. V. 1802, ss. 31—36.

Bengal code.¹ No restriction, however, as to the appealable amount was fixed; and accordingly, in many instances, the appeals from Madras were for sums below £5000.

At Bombay, by the Regulations passed previously to the year 1812 for the establishment of the general Courts of Justice at Salsette, Surat, Baróch, and Kaira, for the trial of civil suits, an appeal from the decisions of either of those Courts, and from that of the Provincial Court of Appeal, was allowed to the Sudder Adawlut at Bombay, but to no other ultimate tribunal.² No reservation had been in any instance made of an appeal to the Governor-General and Council, or to the King in Council under the provisions of the Statute 21st Geo. III. c. 70, s. 21. By a Regulation passed in the above year, however, rules were enacted for regulating appeals from the Court of Sudder Adawlut to His Majesty in Council, in suits of the value of £5000, exclusive of costs.³

In the same year a Regulation was also passed for defining the powers and duties of the Sudder Adawlut, and the rules contained in the previous Regulations were re-enacted;⁴ in the year following, however, all these rules were rescinded, doubts having arisen as to the legal competency of the Government

¹ Mad. Reg. VIII. 1818. This Regulation, declaratory that appeals should in future be transmitted from the Madras Sudder Adawlut to the King in Council, arose from the recognition that the Governor-General had no power to decide appeals in the last resort. An appeal from the decision of the Sudder Adawlut seemed of right to lie to the King in Council. A question on this subject was referred to the Advocates-General of the three Presidencies, who were of opinion that the appeal would lie of right to the King in Council, from Madras and Bombay, from any final decision, for any amount. The reference, it appears, arose on a case of some magnitude, which had been appealed to the Governor-General in Council; and the result was, that his Lordship in Council declared that the appeal was no longer to be made to him, and directed the Madras Government to publish the above Regulation.—See Mr. R. Clarke's Evidence before the House of Lords in 1830, No. 1543, p. 180, 4to. Edit.

² Bomb. Reg. IV. 1812, Preamble. ³ Bomb. Reg. IV. 1812, ss. 2–7.

⁴ Bomb. Reg. VII. 1812, ss. 31–36.

of Bombay to admit of appeals from the Sudder Adawlut to the King in Council under the Statutes of the realm.¹

Regulation V. of 1818 of the Bombay code was passed to remedy the defect in the legislature caused by the improvident rescission of the rules above mentioned. This Regulation provided for the reception and transmission of appeals from the Court of Sudder Adawlut to His Majesty in Council, and certain rules, similar to those already noticed, were enacted, regulating the same: the restrictive clause as to the appealable amount was, however, omitted.

The Governor of Bombay relinquished the judicial authority in 1820,² and the Sudder Adawlut was reconstituted as in the other Presidencies: the right of appeal to the Sovereign in Council, established by Regulation V. of 1818, however, remained untouched.

In the year 1827, when the new code of Bombay Regulations was promulgated, fresh provisions were made for appeals from the judgments of the Sudder Dewanny Adawlut; the provisions, however, were, in fact, the same as those already in force, and the restriction as to the value of the matter in dispute was again most unaccountably omitted.³ Thus, from the year 1818, there was no restriction in this particular, and the consequence was, that a large number of appeals were forwarded to this country from Bombay, involving such trivial amounts as to become a source of great grievance to the respondents.

In all the Presidencies reservation was made by the respective Regulations, of the Sovereign's right to reject or receive all appeals, notwithstanding any provisions in the said Regulations.

Having thus far considered historically the several provisions of the Statutes, Charters, and Regulations, it becomes requisite to inquire into their efficiency when brought into

¹ Bomb. Reg. II. 1813.

² Bomb. Reg. V. 1820.

³ Bomb. Reg. IV. 1827, s. 100.

operation. At the very outset we find that these enactments, especially as applied to the appeals from the Adawlut Courts, were almost totally useless: not that they were unskilfully framed, or that they were inapplicable to the furtherance of justice; but the ignorance of the natives of the steps necessary to be taken to bring an appeal before the Privy Council, and the very slight intercourse with Europeans enjoyed by many of the appellants, prevented the enactments relating to appeals from being either profitably or extensively applied.

The appellants from the decisions of the Supreme Courts, never laboured under the disadvantages which pressed upon the suitor considering himself aggrieved by the decree of a Court of Sudder Dewanny Adawlut. Rules for appeals were laid down in the Charters of Justice, and in the Rules and Orders of the Courts themselves, which had received the sanction of his Majesty in Council. The native suitors were, almost in every case, in the habit of close intercourse with Europeans; the proceedings of the Supreme Courts resembled those in England; and the suits were carried on in those Courts by English Counsel and Attornies, the latter of whom, in a case of appeal, appointed a Solicitor in this country, under whose management the appeal was conducted. On the other hand, the appellants from the Sudder Dewanny Adawluts, who were generally natives of rank and wealth, living in the Mofussil, and who, having but little intercourse with Europeans, were conversant more or less only with their own respective laws and the Regulations enacted by the Company's Government, entertained but vague notions of the laws and constitution of this country; and, until lately, their legal advisers, and the practitioners in the Courts, were natives equally ignorant with themselves. The papers in an appeal from the Supreme Courts were obtained by the Attorney who conducted the case in India, and forwarded by him to an agent in England: the Supreme Court Attorney was thus a link of connexion between the appellant and the Privy Council. No such connecting link existed in the case of the appellants from the Sudder

Dewanny Adawluts: the transcript records were prepared by the Government, and transmitted to England; and when once placed in the hands of Government, the Vakeels of the appellants were of no further use; and they themselves being ignorant that agents were requisite in England, or that any other steps were necessary to be taken, the appeals in consequence stood still. The parties in India having conformed, to the utmost of their ability, to the Regulations of the Government, concluded, that when the documents under the seal of the Court were transmitted through the Indian Government to this country, the Court of the Sovereign in Council would take the case into consideration, and return a decision thereon. Such expectation was clearly in conformity with the practice that obtained, as regarded Madras, up to the year 1818, before which time, as we have seen, an appeal was admitted from the Madras Sudder Adawlut to the Governor-General in Council at Calcutta. When the documents, properly attested, &c., were sent to Calcutta, a decree was in due time returned, confirming or reversing that of the Sudder Adawlut at Madras, without any thing being required to be done by the parties. Thus, when appeal cases were transmitted to England, the parties patiently waited for a decision, but in vain; and in many instances the property in dispute became eaten up by public and private debts, and the litigants were either ruined or greatly impoverished.¹

Whilst things remained in this state, the right of appeal was in fact productive of harm instead of benefit, inasmuch as the parties made deposits, which were not released, even in cases where the suits had been compromised. Mr. R. Clarke, in his Evidence before the House of Lords in 1830,² mentions four cases in which the parties had compromised their suits in

¹ See Mr. R. Clarke's Evidence before the House of Lords in 1830, No. 1524, p. 178, 4to. Edit.

² See Mr. R. Clarke's Evidence before the House of Lords in 1830, No. 1522, p. 177, 4to. Edit.

India: they sent notice of their compromise to England, through the same channel by which they had forwarded their appeals. In one case the total amount litigated was held in deposit, and in the others the sum deposited for fees, which amounted to about £1000, was in the same predicament. The restoration of the deposits was refused to the parties in India, because the Courts there had no knowledge of what had been done by the Court appealed to in England with regard to the suits.

From the year 1773, when, as we have seen, the power of appeal from the Supreme Courts in India was originally allowed, until the year 1833, when the Statute 3d and 4th Will. IV. c. 41, was passed, about fifty appeals were instituted, the first being in 1799.

It was about the year 1826 that the late Sir Alexander Johnston, while engaged in some antiquarian researches,¹ discovered that there were a large number of cases involving questions of native law of great importance, which had been in appeal from the Courts in India before the Privy Council for a great many years, and that they had not been heard in consequence of the ignorance of the parties as to the proceedings necessary to be taken in this country. Subsequently to this an application was made by the Court of Directors to the Privy Council for permission to bring forward appeals on behalf of suitors; and the transcripts of the proceedings in India, accumulated in the Privy Council Office, were sent to the East-India House, for the purpose of being examined, and a report drawn up. The East-India Company's Solicitor accordingly sent in a report to the Honourable Court, stating the cause of action, the names of the parties, the amount sued for, and all other requisite particulars respecting each appeal, of which the records had been received at the office of the Privy Council: the report was forwarded to the Board of

¹ Transactions of the Royal Asiatic Society, Vol. III. Appendix 2, p. x. note.

Controul for the purpose of being laid before the Privy Council.

It appeared, on examination of this report, that the earliest appeal from Bengal was from a decision that was pronounced in the year 1779. Twenty-one appeals in all were pending from Bengal, ten from Madras, and seventeen from Bombay. None of those from Madras and Bombay were of earlier date than the year 1818, according to the provisions of the Regulations;¹ no appeals having been instituted from Bombay whilst the Regulations of 1812, allowing the right, were in force.

The Honourable Court of Directors, having thus taken the first step in the right direction towards remedying the failure of justice, several learned persons were consulted as to the best means of forwarding the appeals. Accordingly, in the year 1832, Sir James Mackintosh, Sir Edward Hyde East, and Sir Alexander Johnston, were requested by the Board of Controul to report on the best course to be adopted in order to cause all the old appeals to be put in train for decision, and Mr. Richard Clarke, formerly of the Madras Civil Service, was engaged to arrange all the papers connected with the different appeals; and a report was drawn up and submitted to the Court of Directors, of all the appeals which were then lying in the Privy Council Office, and in which no proceedings were being taken by the parties.

The attention of the legislature had now been called to the subject, and the 3rd and 4th Will. IV. c. 41, was passed on the 14th August, 1833. This important Act provided that the President for the time of His Majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of His Majesty's Privy Council as should from time to time hold any of the Offices following, that is to say, the Office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief

¹ Mad. Reg. VIII. 1818; Bomb. Reg. V. 1818.

Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court in Bankruptcy, and also all persons members of His Majesty's Privy Council, who should have been President thereof, or held the Office of Lord Chancellor of Great Britain, or should have held any of the other Offices above mentioned, should form a Committee of His Majesty's said Privy Council, and should be styled, "The Judicial Committee of the Privy Council:" provided, nevertheless, that it should be lawful for His Majesty, from time to time, as and when he should think fit, by his Sign Manual to appoint any two other persons, being Privy Councillors, to be members of the said Committee. It was also enacted by the 8rd section of the same Act, that all appeals, or complaints in the nature of appeals, which by virtue of any law, statute, or custom, might be brought before His Majesty in Council, from or in respect of the determination, sentence, rule, or order, of any Court, Judge, or Judicial Officer, and that all such appeals then pending or unheard, should be referred by His Majesty to the said Judicial Committee, and a report or recommendation thereon should be made to His Majesty in Council for his decision thereon, as theretofore had been the custom in references of a like nature. By the 22nd Section of the same Act, it was provided, that as various appeals had been admitted by the Courts of Sudder Dewanny Adawlut at the three Presidencies, and the transcripts of the proceedings had been from time to time transmitted to the Privy Council Office, but the suitors had not taken the necessary measures to bring on the same to a hearing, His Majesty in Council might direct the East-India Company to bring appeals from the Sudder Dewanny Adawluts of the three Presidencies to a hearing, and to appoint Agents and Counsel for the different parties in such appeals,

and make such orders for the security and payment of costs as His Majesty in Council should think fit; and that such appeals should be heard and reported to His Majesty in Council, and determined in the same manner, and the decrees of His Majesty in Council were to have the same force and effect, as though the same had been brought to a hearing by the direction of the parties appealing in the usual course of proceeding. It was, however, provided, that such last-mentioned powers should not extend to any appeals from the said Courts of Sudder Dewanny Adawlut, other than appeals in which no proceedings had been or should thereafter be taken in England, on either side, for a period of two years subsequent to the admission of the appeal by such Court of Sudder Dewanny Adawlut. This 22nd section was repealed by the 8th and 9th Vict. c. 30, as will be presently seen. The 24th section empowered His Majesty in Council to make rules and orders for regulating the mode, form, and time of appeal to be made from the decisions of the Sudder Dewanny Adawluts, and any other Courts of Judicature in India, and for the prevention of delays in making or hearing such appeals, and as to the expenses and the amount of the property in respect of which the appeal might be made. By the 30th section it was enacted that two members of the Privy Council, who should have held the office of Judge in the East Indies or any of His Majesty's dominions beyond the seas, might attend the sittings of the Judicial Committee of the Privy Council as Assessors, but without votes, at a salary of £400 a year. These appointments are at present vacant.

By this Statute parties in appeals from India were insured a certain and speedy hearing; and efficiency was given to the pre-existing Laws and Regulations, which had, by long experience, been found wholly ineffective, and indeed, as we have seen, productive of something more than a mere failure of justice. The appointment of retired Indian Judges under this Act as Assessors of the Court, brought an amount of knowledge and experience to bear upon most of the questions

arising in Indian appeals, which could not by any other means have been rendered so readily available.¹

Three Orders in Council were made in the year 1833, under the 24th section of the preceding Act. By the first, dated the 4th September, it was ordered that the East-India Company should bring to a hearing before the Judicial Committee of the Privy Council all the cases of appeal mentioned in a list appended to the said order, the same being appeals from Courts of Sudder Dewanny Adawlut in the East Indies, in which no proceedings had been taken in England, on either side, for a period of two years subsequent to the admission of the said appeals respectively. The list referred to contained eighteen cases from Bengal, ten from Madras, and fifteen from Bombay. The second Order, dated the 18th November, gave further directions in pursuance of the said Act, and ordered

¹ It is surprising that the Government of this country should never have thought it necessary to appoint any of the retired Judges of the East-India Company's Service to sit in the Judicial Committee of the Privy Council as Assessors in Indian appeal cases, since, in appeals from the decisions of the Company's Courts, the peculiar experience of the Judges of the Queen's Courts is necessarily applicable to such cases only as involve points of Hindú or Muhammadan law. A large proportion of the suits in the Courts of the East-India Company, including almost all those which relate to landed property in the Mofussil, are connected with the revenue; but the Statute 21st Geo. III. c. 70, s. 8, expressly forbids the Supreme Court at Calcutta from having jurisdiction "in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the Regulations;" and the Charters of the Supreme Courts at Madras and Bombay contain similar prohibitory clauses (Mad. Chart. s. 23; Bomb. Chart. s. 30). Again, all other questions which turn upon the Regulation Law applying to persons and things without the jurisdiction of the Supreme Courts can obviously only be determined by the Courts of the East-India Company. It follows then, of course, that in every one of these instances the subject matter of an appeal from the decision of a Company's Court is necessarily as foreign to Assessors appointed from the retired Judges of the Supreme Courts, as to the other members of the Judicial Committee, whilst a Judge of the Chief Courts of the East-India Company would at once be able to remove the doubts and difficulties by which such questions are usually surrounded.

that the said East-India Company should appoint Agents and Counsel, when necessary, for the different parties in the appeals mentioned in the said list, to transact and do all things as had been usual by Agents and Counsel for parties in appeals to His Majesty in Council, from the colonies or plantations abroad. The third Order, of the same date as the preceding one, directed that the said Company should be entitled to demand payment of their reasonable costs of bringing appeals to hearing by virtue of the said Act, to such an amount and from such parties, and should have such lien for the said costs upon all monies, lands, goods, and property whatsoever, and upon all deposits which might have been made, and all securities which might have been given in respect of such appeals, as the Judicial Committee of the Privy Council should direct.

Under the same Act His Majesty did, by his Order in Council, dated the 16th January 1836, approve certain Rules for the regulation and conduct of appeals, and amended a portion thereof by another order of the 10th August in the same year; the Rules contained in these Orders, were, however, never acted upon, and they were cancelled and rescinded by Her present Majesty in Council, by an Order dated the 10th April 1838, which substituted other Rules and Regulations applicable to Indian appeals.

By this last-mentioned Order it was provided, amongst other things—

“1. That from and after the 31st day of December next, no appeal to Her Majesty, her heirs and successors in Council, shall be allowed by any of Her Majesty's Supreme Courts of Judicature at Fort William in Bengal, Fort St. George, Bombay, or the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, or by any of the Courts of Sudder Dewanny Adawlut, or by any other Courts of Judicature in the territories under the Government of the East-India Company, unless the petition for that purpose be presented within six calendar months from the day of the date of the judgment,

decree, or decretal order complained of, and unless the value of the matter in dispute in such appeal shall amount to the sum of 10,000 Company's rupees at least; and that, from and after the said 31st day of December next, the limitation of £5000 sterling heretofore existing in respect of appeals from the Presidency of Fort William in Bengal, shall wholly cease and determine.

"2. That in all cases in which any of such Courts shall admit an appeal to Her Majesty, her heirs and successors in Council, it shall specially certify on the proceedings that the value of the matter in dispute in such appeal amounts to the sum of 10,000 Company's rupees or upwards, which certificate shall be deemed conclusive of the fact, and not be liable to be questioned on such appeal by any party to the suit appealed.

"3. Provided nevertheless, that nothing herein contained shall extend, or be construed to extend, to take away, diminish, or derogate from the undoubted power and authority of Her Majesty, her heirs and successors in Council, upon the petition at any time of any party aggrieved by any judgment, decree, or decretal order of any of the aforesaid Courts, to admit an appeal therefrom upon such other terms, and upon and subject to such other limitations, restrictions, and regulations, as Her Majesty, her heirs and successors, shall in any such special case think fit to prescribe."

In the month of July 1843 was passed the 6th and 7th Vict. c. 38, intituled "An Act to make further Regulations for the facilitating the hearing Appeals and other matters by the Judicial Committee of the Privy Council." This Act relates principally to appeals from the Ecclesiastical and Admiralty Courts; but it also enacted generally as regards appeals, that they might be heard by not less than three members of the Judicial Committee, and that they should be conducted with reference to manner and form, subject however to the Rules from time to time made by the Judicial Committee, as if appeals in the same causes had been made to the Queen in

Chancery, the High Court of Admiralty, or the Lords Commissioners of Appeals in Prize Causes.

The 7th and 8th Vict. c. 69, was passed in the year 1844, for the purpose of amending the 3d and 4th Will. IV. c. 41, and extending the jurisdiction and powers of the Judicial Committee. This Act made no alteration of note as regards Indian appeals.

Nothing was specially provided in these two last Acts for the regulation of Indian appeals, and all the earlier proceedings were taken according to the 3d and 4th Will. IV. c. 41, and the Order in Council of the 16th April 1838; but when the old appeals had been for the most part heard, it was determined to take the matter out of the hands of the East-India Company, and, in appeals from the Sudder Dewanny Adawluts, admitted by such Courts after the 1st January 1846, to leave the appellants in India to appoint Agents and Counsel in England to conduct their causes. For this purpose the 8th & 9th Vict. c. 30, was passed in 1845, and it is under this Act that appeals are now instituted, reserving of course with regard to their admission and the procedure, such portions of the previous Statutes and orders as are not repealed,¹ and relate generally or specifically to appeals from India.

I give this Act verbatim, as it is important and of no great length.

“An Act to amend an Act passed in the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for the better Administration of Justice in His Majesty's Privy Council*.

[30th June 1845.]

“WHEREAS by an Act passed in the Session held in the third and fourth years of the reign of His late Majesty King *William* the Fourth, intituled *An Act for the better Administration of Justice in His Majesty's Privy Council*, after reciting that

¹ The 8th & 9th Vict. c. 30, specially repeals the 22d section of the 3d & 4th Will. IV. c. 41.

various appeals to His Majesty in Council from the Courts of Sudder Dewanny Adawlut at the several Presidencies of *Calcutta*, *Mudras*, and *Bombay*, in the *East Indies*, had been admitted by the said Courts, and the transcripts of the proceedings in appeal had been from time to time transmitted under the seal of the said Courts through the *East-India* Company, then called the United Company of Merchants of *England* trading to the *East Indies*, to the Office of His Majesty's Privy Council, but that the suitors in the causes so appealed had not taken the necessary measures to bring the same to a hearing, it was enacted that it should be lawful for His Majesty in Council to give such directions to the said Company and other persons, for the purpose of bringing to a hearing before the Judicial Committee of the Privy Council the several cases appealed or thereafter to be appealed to His Majesty in Council, from the several Courts of Sudder Dewanny Adawlut in the *East Indies*, and for appointing Agents and Counsel for the different parties in such appeals, and to make such Orders for the security and payment of the costs thereof as His said Majesty in Council should think fit, and thereupon such appeals should be heard and reported on to His Majesty in Council, and should be by His Majesty in Council determined, in the same manner, and the Judgments, Orders, and Decrees of His Majesty in Council thereon should be of the same force and effect, as if the same had been brought to a hearing by the direction of the parties appealing, in the usual course of proceeding : provided always, that such last-mentioned powers should not extend to any appeals from the said Courts of Sudder Dewanny Adawlut, other than appeals in which no proceedings then had been or should thereafter be taken in *England* on either side for a period of two years subsequent to the admission of the appeal by such Court of Sudder Dewanny Adawlut : And whereas by certain Orders in Council made under certain powers contained in the said Act, provision is made for registering in the Council Office the arrival in this country of the transcripts of the proceedings in appeals

from the said Courts : And whereas it is considered advisable that the said Act should be amended in manner hereinafter mentioned : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the hereinbefore recited provisions of the said Act shall not apply to the case of an appeal which shall be admitted by any of the said Courts of Sudder Dewanny Adawlut after the first day of *January* one thousand eight hundred and forty-six.

“ II. And be it enacted, that any appeal to be admitted by any of the said Courts of Sudder Dewanny Adawlut after the said first day of *January* one thousand eight hundred and forty-six shall be considered and be held to be abandoned and withdrawn by consent of the parties thereto, unless some proceedings shall be taken in England in the same by one or more of the parties thereto within two years after Registration at the Council Office of the arrival of the transcript ; and any such appeal as aforesaid shall be held to be abandoned and withdrawn in like manner under any other circumstances which Her Majesty in Council may from time to time by any Orders or Rules in that behalf direct to be taken and considered as a withdrawal thereof ; and the *East-India* Company are hereby required from time to time to ascertain and certify to the proper Courts in the East Indies all appeals which may from time to time become abandoned and dropped under the provisions of this clause.”

Certain other Orders in Council have been since passed, but as they relate exclusively to rules of practice it is not necessary to notice them in this place.

CHAPTER V.

THE LAWS PECULIAR TO INDIA.

THE Laws which are peculiar to India are—

1. The Law enacted by the Regulations passed by the Governor-General and Governors in Council previously to the 3d and 4th Will. IV. c. 85, and the Acts of the Governor-General in Council passed subsequently to that Statute. This Law is the existing general law of all the British territories in India, excepting such portions as are subject to the jurisdiction of the Supreme Courts, and is administered in the Courts of the Honourable East-India Company, both to Natives and Europeans; British subjects being, however, excepted so far as relates to the criminal law. The Supreme Courts also take judicial notice of such of the Regulations as have been registered in such Courts, and alter the Common Law of England, together with such Acts of Government as alter the same Law, or are specially applicable to the same Courts, or to matters within their jurisdiction.¹

2. The Native Laws. These may be divided into :—

(1.) The Hindú Civil Law so far as the same is reserved to the Hindú inhabitants of India, by the Statutes, Charters, and Regulations. This law is administered both in the Supreme Courts, and in those of the Honourable East-India Company.²

(2.) The Muhammadan Civil Law as reserved by the same Statutes, Charters, and Regulations, which is administered to Muhammadan inhabitants of India in both the Queen's Courts and the Sudder and Mofussil Courts;³ and the Muhammadan

¹ *The Queen v. Ogilvy*, 1 Fulton, 364. *Woodubchunder Mullick v. Braddon*, ib. 402.

² See *supra*, p. 120, note 2.

³ See *supra*, p. 120, note 3.

Criminal Law, which is administered, under certain restrictions, in the Company's Courts of Criminal Judicature in the Presidencies of Bengal and Madras, but has been superseded by a written code in the Criminal Courts of the Bombay Presidency.

(3.) The Laws and Customs of those Natives of India who are neither Hindús nor Muhammadans. These laws and customs, so far as they can be ascertained, are administered in some civil matters in the Sudder and Mofussil Courts, in suits between such native parties, by a liberal construction of the wording of the Regulations.

1. THE LAW ENACTED BY THE REGULATIONS AND ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Sir James Mackintosh says, "There is but one way of forming a civil code, either consistent with common sense, or that has been ever practised in any country; namely, that of gradually building up the law, in proportion as the facts arise which it is to regulate."¹ This remark is especially applicable to British India, where it would at any time have been utterly impossible at once to have formed or adapted a code which would have been suited to its requirements.

From the date of the battle of Plassey in 1757, down to the subjugation of the Punjáb in our own times, new provinces and new nations have constantly and successively been brought under British rule, either by cession or conquest. They have been found to possess different laws and customs, and distinct and various rights of property; and they have consequently presented new facts requiring the introduction of fresh laws into our Codes for their government. These fresh laws were in many instances rendered inapplicable by the gradual introduction of civilization and the amelioration of the condition of the natives, and they were in such cases abolished accordingly;

¹ Discourse on the Study of the Law of Nature and Nations.

and this is one of the principal causes why the Codes of Regulation Law seem, at first sight, to be an incongruous and indigested mass.

The apparent defects of the Regulation Law will, however, in a great measure disappear on a closer examination ; and, if we except some sweeping enactments of the earlier Indian legislators, who cut the Gordian knot instead of solving the riddle, the Regulations will be found to have been formed, modified, and abrogated, according to the peculiar circumstances of time and place, with an ability and moderation which reflects equal honour on the lawgivers themselves and the country which gave them birth.

The gradual "building up of the law" which has taken place in India, together with the variety of rights to be provided for, the diversity of the people to be governed, and of the laws to be administered, has unavoidably rendered the study of the Regulations both intricate and difficult ; and on this account some hasty and thoughtless persons have been induced to pass an indiscriminate censure upon a system which they, possibly, wanted time or industry to acquire, or capacity to understand. It is nowhere pretended that the Codes enacted by the Governments of India are perfect ; but the candid inquirer will pause and examine before he condemns them for obscurity or insufficiency, and will rather admire how, under such a complication of difficulties, a system of laws could have been formed providing so admirably for contingencies which apparently no human forethought could have anticipated, that has worked so well in practice, and that has resulted in the prosperity and good government so eminently conspicuous throughout the vast territories of our Indian Empire.

Many years ago that great statesman the Marquis of Wellesley spoke of the code of Bengal Regulations, upon which those of Madras and Bombay are based, in the following words :—" Subject to the common imperfection of every human institution, this system of laws is approved by practical experience, (the surest test of human legislation,) and

contains an active principle of continual revision, which affords the best security for progressive amendment. It is not the effusion of vain theory, issuing from speculative principles, and directed to visionary objects of impracticable perfection; but the solid work of plain, deliberate, practical benevolence; the legitimate offspring of genuine wisdom and pure virtue. The excellence of the general spirit of these laws is attested by the noblest proof of just, wise, and honest government; by the restoration of happiness, tranquillity, and security, to an oppressed and suffering people; and by the revival of agriculture, commerce, manufacture, and general opulence, in a declining and impoverished country."¹

This is high praise. It is true that it was bestowed comparatively but a few years after the foundation of the Bengal Code by Lord Cornwallis; but an opinion from so great an authority must always command our respect; and it has been fully justified by a lengthened application of the test alluded to by the noble orator: practical experience has shewn us that the system was well conceived and well applied: through a long series of years it has been marked by progressive improvements; and British India exhibits at the present day, though on a grander scale, the same prosperous results that called forth Lord Wellesley's admiration nearly half a century ago.²

I shall now give a short statement of the Statutes under which the Regulation law generally was founded and formed.

Until the year 1793 no general Code of Regulations was enacted for the government of India, though long previously

¹ Discourse delivered by the Marquis of Wellesley on the 11th February 1805, at the annual meeting for the distribution of prizes to the students of the College at Fort William.

² This was written in 1850, but I see no reason to alter a single word. The recent mutiny, being entirely military, is wholly independent of our systems for the administration of justice; and the Kingdom of Oude has been so lately annexed that the perhaps more general rebellion in that province cannot be considered as in any way connected with our system of Laws.

to that time, and as early as 1772, when Warren Hastings was appointed Governor of Bengal, many rules and orders had been made by the Government of that Presidency.

The Regulating Act, the 13th Geo. III. c. 63, which was passed in 1773, first laid down specific laws for the Government of Indian affairs, and for the appointment of a Governor-General and Council. Sections 36 and 37 of that Statute empowered the said Governor-General and Council to make and issue such Rules, Ordinances, and Regulations, for the good order and civil government of the United Company's Settlement at Fort William in Bengal, and all places subordinate thereto, as should be deemed just and reasonable, and not repugnant to the laws of the realm; and to enforce them by reasonable fines and forfeitures: with a proviso, however, that such Regulations should not be valid unless registered in the Supreme Court of Judicature to be established under the said Statute.

An appeal lay from these Regulations to the King in Council; and even without an appeal His Majesty was empowered to set them aside by his sign manual.

By a subsequent Statute, the 21st Geo. III. c. 70, s. 23, passed in 1781, the Governor-General and Council were empowered to frame Regulations for the Provincial Courts and Councils, which were to be of force and authority to direct the said Provincial Courts, subject to revision by the executive Government of England.

Several Regulations were accordingly passed, under the authority of these Statutes, for the administration of justice and the collection of the revenue; the first receiving the sanction of the Bengal Government on the 17th of April 1780. Many of these, however, existed only in manuscript; and although others were printed, and some translated into the native languages, still these were chiefly on detached papers not easy of reference even to the officers of Government, and of course difficult to be obtained in a collected form; whilst such as were not translated into the languages of the country were quite inaccessible to the natives.

The three systems of Regulation law which are now current throughout India may be said to owe their origin to the political wisdom of the Marquis Cornwallis, during whose first government¹ was passed the celebrated Regulation XLI. of 1793,² entitled, "A Regulation for forming into a regular Code all Regulations that may be enacted for the Internal Government of the British Territories in Bengal." The preamble to this Regulation states, that "It is essential to the future prosperity of the British territories in Bengal, that all Regulations which may be passed by Government, affecting in any respect the rights, persons, or property of their subjects, should be formed into a regular Code, and printed, with translations in the country languages; that the grounds on which each Regulation may be enacted should be prefixed to it; and that the Courts of Justice should be bound to regulate their decisions by the rules and ordinances which those Regulations may contain. A Code of Regulations framed upon the above principles, will enable individuals to render themselves acquainted with the laws upon which the security of the many inestimable privileges and immunities granted to them by the British Government depends, and the mode of obtaining speedy redress against every infringement of them; the Courts of Justice will be able to apply the Regulations according to their intent and import; future administrations will have the means of judging how far Regulations have been productive of the desired effect, and, when necessary, to modify or alter them as from experience may be found advisable; new Regulations will not be made, nor those which may exist be repealed, without due deliberation; and the causes of

¹ The Members of the Bengal Council at this period deserve to be honourably recorded; these were Peter Speke, Esq., William Cowper, Esq., and Thomas Graham, Esq.

² Extended to Benares by Beng. Reg. I. 1795, s. 4, and re-enacted for the ceded and conquered provinces by Beng. Reg. I. 1803, and Beng. Reg. VIII. 1805, s. 2.

the future decline or prosperity of these provinces will always be traceable in the Code to their source."

The tenour, and for the most part the very terms of this important Regulation, were afterwards adopted into a Statute which was passed in 1797, confirming the power of making local laws already vested in the Governor-General in Council. This Statute, the 37th Geo. III. c. 142, by section 8 enacted that all Regulations which should be issued and framed by the Governor-General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives, or of any other individuals who might be amenable to the Provincial Courts of Justice, should be registered in the Judicial Department, and formed into a regular Code, and printed, with translations in the country languages; and that the grounds of each Regulation should be prefixed to it; and all the Provincial Courts of Judicature should be bound by, and regulate their decisions by, such rules and ordinances as should be contained in the said Regulations. The same section also enacted, that the said Governor-General in Council should annually transmit to the Court of Directors of the East-India Company ten copies of such Regulations as might be passed in each year, and the same number to the Board of Commissioners for the affairs of India.

The 18th and 19th sections of the 39th and 40th Geo. III. c. 79, passed in 1800, empowered the Governor-General and Council to order corporal punishment for breach of the Rules and Regulations made under the 13th Geo. III. c. 63; and the 20th section of the same Statute rendered the Province of Benares, and all provinces or districts thereafter to be annexed or made subject to the Bengal Presidency, subject to such Regulations as the Governor-General and Council of Fort William had framed or might thereafter frame.

At Madras, Regulations were made under the authority of the 39th and 40th Geo. III. c. 79, the 11th section empowering the Governor in Council at Fort St. George to frame Regulations for the Provincial Courts and Councils at that

Presidency ; and Regulation I. of 1802, ordering the formation of a regular Code according to the plan adopted in Bengal, was framed upon the Bengal Regulation XLI. of 1793.

The right of the Bombay Government to make Regulations had been held to stand inferred from, and to be recognized by, the 11th section of the 37th Geo. III. c. 142;¹ but it was more formally conferred by the 47th Geo. III. sess. 2, c. 68, s. 3, passed in 1807. Under the inference above mentioned, and by the recommendation of the Governor-General and Council, Regulations were made at Bombay, commencing in the year 1799 ; Regulation I. of which year provided for the formation of a Code, and was taken with but little alteration from Regulation XLI. of the Bengal Code.

Section I. of the 47th Geo. III. sess. 2, c. 68, empowered the Governors in Council to make regulations for the good order and government of the towns of Madras, Bombay, and their dependencies.

The 53d Geo. III. c. 155, s. 66, enacted that copies of all Regulations made under the 37th Geo. III. c. 142 ; the 39th & 40th Geo. III. c. 79 ; and the 47th Geo. III. sess. 2, c. 68, should be laid annually before Parliament ; and sections 98, 99, 100, empowered the Governor-General and Governors in Council, in their respective Presidencies, with the sanction of the Court of Directors and the Board of Controul, to impose duties and taxes within the towns of Calcutta, Madras, and Bombay ; for the enforcing of which taxes Regulations were to be made by the Governor-General and Governors in Council in the same manner as other Regulations were made ; and all such Regulations were directed to be taken notice of, without being specially pleaded, in His Majesty's Courts at Calcutta, Madras, and Bombay ; and all persons were empowered to proceed in such Courts for the enforcement of such Regulations.

The powers given by the above Statutes are not very well

¹ Bomb. Reg. III. 1799 ; Bomb. Reg. II. 1808.

defined. To use the words of Sir Charles Grey, C. J.—“The exercise of one of them has been extensive beyond what seems to have been at first foreseen by the Legislature ; and it is not that which in 1773 was designed to be the only one, which has in fact been the most considerable. That which was established by the 13th Geo. III. c. 63, has been almost a barren branch ; and that which was given in 1781, expressly for the purpose of making limited rules of practice for Provincial Courts, has produced a new and extensive system of Laws, for a large portion of the human race.”¹

With regard to the translations of the Regulations into the country languages, the principle of which was actually opposed in sober seriousness by the notorious Francis, in his recommendation to *oblige* the natives of India to *learn English*,² it would be unnecessary to point out the wisdom or utility. Justinian himself published in Greek because it was the most generally understood language.³ No reasonable person will refuse to admit the absolute necessity of such translations, previously to the enforcement of the laws which were framed for the government of the natives in the earlier stages of our administration, whatever may be the case at the present time.

According to the provisions above recapitulated, Regulations were successively enacted at the three Presidencies of Bengal, Madras, and Bombay, from the years 1780, 1802, and 1799 respectively.

These Regulations, where not repealed, are still in force, and form three separate codes ; First that of Bengal, commencing

¹ See Minute of Sir C. Grey, C. J., dated the 2d October 1829. Fifth App. to the Third Report from the Select Committee of the House of Commons, 1831, p. 1126, 4to. edit. And see Sir E. Ryan's Minute of the same date, *ib.* p. 1183.

² “Every man then would be able to speak for himself, and every complaint would be understood.”—Letter to Lord North, p. 49. London, 1739.

³ “Nostra constitutio quam pro omni natione Græca lingua composuimus.”—*Instit. lib. III. tit. viii. 3.*

in 1793; Secondly, that of Madras, first formed in 1802, before which time no Regulations were passed in that Presidency; and Thirdly, the Bombay Code, which dates its origin, as it now stands, from the year 1827, when all the previous Regulations passed for the Bombay Presidency, from 1799 up to that period, were rescinded, and the present Code originated. Since the month of August in the year 1834, when Regulation II. of the Madras Code of that year received the sanction of the Governor-General in Council, no further Regulations were passed, their place being supplied by the Acts of the Governor-General in Council under the requirements of the 3d and 4th Will. IV. c. 85: these Acts apply to the whole of the British territories in India, unless otherwise specified. It must, however, be remembered that they do not supersede or abolish the old Codes of law, except in specified instances, and that they are expressly passed *in continuation* of the Regulations of the Supreme Government.

By the 39th section of the 3d and 4th Will. IV. c. 85, the superintendence, direction, and controul, of the whole civil and military Government of the British territories and revenues in India became vested in the Governor-General and Councillors, to be styled "the Governor-General of India in Council;" and by the next following section it was provided that the said Council should consist of four ordinary members, instead of three as formerly; and that of such four, three should be, or have been, servants of, or appointed by, the East-India Company; and that the fourth should be appointed, from amongst persons who should not be servants of the said Company, by the Court of Directors, subject to the approbation of His Majesty; and that such member should not sit or vote in the said Council, except at meetings thereof for making Laws and Regulations. The 43d section of the same Statute empowered the said Governor-General in Council to legislate for India, by repealing, amending, or altering, former or future Laws and Regulations, and by making Laws and Regulations "for all persons, whether British or Native, foreigners or others, and

for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever, within and throughout the whole and every part of the British territories in India, and for all servants of the said Company within the dominions of Princes and States in alliance with the said Company." The next section enacted that such Laws and Regulations should be repealed, if disallowed by the Court of Directors at home. The 45th section provided, that until such Laws should be repealed by the home authorities, they should be operative; so that Laws for taxation no longer require the previous sanction of the Court of Directors. It was also declared by the last-mentioned section, that such Laws and Regulations should have the force of Acts of Parliament, and that their registration and publication in any Court of Justice should be unnecessary. By the 51st section it was enacted that nothing in the said Statute should affect the right of Parliament to legislate for India; and all Laws and Regulations made by the Legislative Council were required to be transmitted to England, and laid before both Houses of Parliament.

The restriction of the legislative power to a Council at the chief Presidency is undoubtedly a great improvement on the former plan, inasmuch as it secures uniformity in the system of legislation, and renders unnecessary the constant re-enactment of different Laws at the several Presidencies, when such Laws are applicable to the whole of British India. The principle which governs the present system is, however, essentially the same that has prevailed throughout the formation of the three Codes of Regulations.

A further alteration was made in the legislative system of India by the 53d section of the last-mentioned Statute; and as it is nearly connected with the Acts of the Governor-General in Council, it may properly be noticed in this place. This section enacted, that a Law Commission should be appointed by the Governor-General in Council to inquire into the jurisdiction, powers, and rules, of the existing Courts

of Justice and Police Establishments, and into the nature and operation of all Laws prevailing in any part of the British territories in India ; and to make reports thereon, and suggest alterations, due regard being had to the distinction of casts, difference of religion, and the manners and opinions prevailing among different races and in different parts of the said territories.

In pursuance of the powers thus conferred an Indian Law Commission was appointed in the year 1834, consisting of the Legislative Councillor, another English barrister, and three Civil servants of the Company, one from each of the three Presidencies. Lord Macaulay, then Mr. Macaulay, was the first Legislative Councillor. After a lapse of about two years the Indian Law Commission published a proposed Penal Code for all India, known now as "Macaulay's Code," but it was *not* adopted ; it was recast afterwards by Mr. Drinkwater Bethune, who subsequently held the office of Legislative Councillor, but this second edition was not more successful than the first, and "Macaulay's Code" has never received the sanction of the Government. After Mr. Macaulay's departure from India the Law Commission gradually died away, and though subsequently revived in the persons of the Members of Council ; to use the words of Mr. Campbell, "No codification, consolidation, or general emendation and completion of the laws and customs of the country, nor any of the objects of the Law Commission whatsoever, has yet been effected."¹

This language, though correct in the main, is perhaps a little too severe, for although the Law Commission, appointed as above stated, was a total failure so far as concerned its anticipated results, it has been productive of considerable benefit in another way. Up to a certain time the Commissioners published reports, upon which, in many instances, the Acts of the Governor-General in Council have been based. Their reports were printed periodically by order of the House

¹ "Modern India." By G. Campbell, Esq., 8vo. London, 1852, p. 187.

of Commons, and fill several large folio volumes ; and although they contain a vast amount of matter which is speculative and unimportant, their perusal will amply repay the student for the trouble of wading through some thousands of pages, since they comprise numerous communications from the most learned and experienced persons in India in every department, embodying their opinions on many topics of the highest interest, which probably would otherwise never have been recorded. These Reports, of necessity, offer all the inconveniences attendant upon the textual reproduction of official correspondence ; but the publication of comprehensive Indices, printed by order of the House of Commons in 1847, has obviated, in a great measure, the difficulty of reference.

In the year 1853, the 16th and 17th Vict. c. 95 was passed, and as yet its provisions are in force. Section 21 of this Statute repealed so much of the 3rd and 4th Will. IV. as provided that the fourth ordinary Member of Council should not be entitled to sit or vote in the said Council except at meetings thereof for making Laws and Regulations. By the following section six additional members were added to the Council ; they are distinguished as Legislative Councillors thereof. Of these, four are to be appointed from the Civil servants of the Company of ten years' standing—two representing Bengal and the North-Western Provinces and appointed by the Lieutenant-Governors, and two representing Madras and Bombay, selected by those Governments. The two remaining members are the Chief Justice and one puisne Judge of the Supreme Court at Calcutta. Two other Legislative Councillors may be appointed by the Governor-General, being Civil servants of the Company of ten years' standing, but it does not appear that the power of making these additional appointments has as yet been exercised. None of these Legislative Councillors are entitled to sit or vote in the said Council except at meetings thereof for making Laws and Regulations : seven form a quorum. The assent of the Governor-General is necessary to the validity of Laws made by the said Council.

The Legislative Council now holds its sittings in public, and its debates are regularly reported and published.

Section 28 of the same Statute provided that Her Majesty might appoint Commissioners in England to consider and report upon the reforms proposed by the Indian Law Commissioners appointed under the 3rd and 4th Will. IV. c. 85. In pursuance of such powers a Commission was issued under the royal Sign Manual, dated November the 9th 1853, appointing eight Commissioners who have since presented four reports, the last of which is dated the 20th of May 1856. These reports recommended the amalgamation of the Queen's and Company's Courts, and proposed the most sweeping alterations in the whole judicial system. The Commissioners were, however, not unanimous, and one of them, the late Sir John Jervis, C. J., absolutely refused to sign the third and fourth reports, and after their presentation, formally, and it may be perhaps said, somewhat petulantly declined to take any further part in the proceedings of the Commission. The four reports of the Commissioners were sent out to India: the first on December the 12th 1855, the second on the 20th of February 1856, and the third and fourth on June the 25th 1856. They are now under the consideration of the Legislative Council at Calcutta.

In conclusion of the present division of this Chapter, I shall enumerate those works which tend to facilitate the study of the Law enacted by the Regulations and the Acts of the Governor-General in Council: the unrepealed Regulations of the three Presidencies remaining in force, as has been already mentioned, within the limits of the respective Presidencies, and forming, together with the Acts of the Governor-General in Council, and the unrepealed Statutes, the general subsisting Law throughout the British territories in India.

The Regulations themselves have been published at different times, and in various forms, both in India and in this country; those passed at each Presidency having been printed sepa-

rately, by order of the Governments in India or of the Honourable Court of Directors. From the year 1814, the Regulations of all the three Presidencies, passed in, and subsequently to, that year, appeared concurrently, printed by order of the House of Commons. Various translations of the Regulations in the native languages were from time to time published by order of the Governments in India, but these it will be unnecessary in this place to mention more particularly.

In 1807 Sir James E. Colebrooke published a Digest of the Civil Regulations of the Presidency of Bengal from the years 1793 to 1806, in two folio volumes, together with a Supplement forming a third volume.

In 1807—1809 appeared the admirable analysis of the Bengal Regulations by Mr. John Herbert Harington, formerly Chief Judge of the Sudder Dewanny Adawlut at Calcutta; and in the year 1821 a second edition of the first volume, comprising the first and second parts of the work, and enriched with copious Notes and additions, was published in London under the patronage of the Court of Directors. It is scarcely possible to speak too highly of this analysis, and it justly occupies the very first place as an authority. The arrangement throughout the work is clear and simple, and the Notes which are added afford, in every instance, the greatest assistance to the student in the elucidation of the subject-matter of the text. In no instance, probably, has the patronage of the East-India Company been more worthily bestowed than upon Mr. Harington's work; and it is only to be regretted that the second and revised edition of the two latter volumes was never published. Imperfect though it be, however, and though it extends no later than the year 1821, no one who is desirous of obtaining a knowledge of the law of Bengal should omit to peruse it with the utmost attention. A Persian translation of Mr. Harington's analysis was made by Major Ouseley, and published at Calcutta in the year 1840 :¹

¹ كتاب ذخيرة العمل ترجمه ميجر جوسف اوزلي 2 vols. 4to. Calcutta, 1840.

it is a most useful publication so far as it goes, as it affords to those natives who are ignorant of our language the means of gaining a perfect insight into the history and constitution of our system of legislation for India, and a knowledge of a large body of the Laws themselves.

An Abstract of the Regulations enacted for the Provinces of Bengal, Behar, and Orissa, in four 4to. volumes, originally compiled by Mr. Blunt, and continued by Mr. H. Shakespear, was printed at Calcutta in 1824—1828.

Mr. Dale's alphabetical Index to the Regulations of Government for the territories under the Presidency of Bengal was published, with an Appendix, in 1830: it is a useful work, but has been superseded by Mr. Fenwick's more recent publication of the same nature, mentioned below.

Mr. Richard Clarke is the author of a concise Abstract of the Bengal Regulations from 1793 to 1831, which forms the sixth Appendix to the Minutes of Evidence taken before the Judicial Sub-Committee of the House of Commons in the year 1832.

The same gentleman also published, in 1840, a collection of the Bengal Regulations respecting Zamíndarí and Lákhiráj property. This collection, which was printed by the authority of the Honourable Court of Directors, is of the highest interest, as it brings together, arranged under separate heads, such of the enactments of the Bengal Government as affect the possession and transfer of revenue property, or, as it is ordinarily termed in the Regulations which established the permanent settlement, property in land. Mr. Clarke published the present work chiefly for reference upon appeals to the Queen in Council, the right to Zamíndarí property, forming the subject of many of the most important appeals from the Courts of the East-India Company, especially those from Bengal.

An Abstract of the Bengal Civil Regulations was published by Mr. Augustus Prinsep. I have never met with a copy of this work, but it is stated to be a very valuable and well-

executed compilation.¹ A Hindí translation of Mr. Prinsep's Abstract was published at Dehlí in 1843.²

In the year 1840 Mr. Marshman produced his Guide to the Civil Law of the Presidency of Fort William, which contains all the unrepealed Regulations,³ Acts, Constructions, and Circular Orders of Government relating to the subject. This is a most useful and comprehensive work, but it is to be regretted that it has not the advantage of an Index. A Hindí translation of this work, by the Professors of the Dehlí College, was published in 1843, comprising all the Regulations, abstracts of Constructions, and Circular Government Orders, contained in Mr. Marshman's work, and continued to November 1843; abstracts of some of the Acts of the Legislative Council, and of the Regulations relative to the resumption of rent-free tenures; together with an Epitome of the Hindú and Muhammadan Laws, from the works of Sir W. H. Macnaghten.³ Mr. Marshman also published a Guide to the Revenue Regulations in the year 1835.

Mr. Fulwar Skipwith's Magistrates' Guide, which is an abridgement of the Criminal Regulations and Acts, and contains the Circular Orders and Constructions of the Court of Nizamut Adawlut in Bengal up to August 1843, is a most useful book in the criminal department.

In the year 1840 Mr. A. D. Campbell published at Madras a collection of the Regulations of the Madras Presidency from the year 1802, with a Synopsis and Notes on the Code, and mentioning all those Regulations that have been partially or wholly rescinded. This collection was republished in 1843, together with an enlarged Synopsis and a copious Index.

A work not unworthy of notice was published at Madras in

¹ Shore on Indian affairs, Vol. I. p. 224.

² خلاصۃ قوانین دیوانی Abstract of the Civil Law, by A. Prinsep, Esq., continued from 1828 to March 1843, translated by Moonshee Hossceinee, 4to. Dehli, 1843.

³ کلیات قوانین دیوانی Guide to the Civil Law of Bengal and the Upper Provinces, 4to. Dehli, 1843.

1843. It is entitled "The Civilian's Vade Mecum, or a Guide to the Knowledge of the Practice and Precedents of the Sudr and Foujdaree Udalut in the year 1835."

A digest of the Criminal Law of the Presidency of Fort William, by Mr. Beaufort, of the Bengal Civil Service, was published at Calcutta in the year 1846 : it is spoken of in the highest terms by several writers, but I have not been able to discover any copy of it in this country.

In 1846 the Acts of the Supreme Government for 1834, 35, and 36, applicable to the Bengal Presidency, were edited in English and Urdú by the Rev. J. J. Moore, and published at Agra.

In the year 1848 Mr. Baynes, the Civil and Sessions Judge of Madura, published a treatise on the Criminal Law of the Madras Presidency, as contained in the existing Regulations and Acts. This work is preceded by a concise tabular statement of crimes and punishments; and contains, in addition, the Circular Orders of the Foujdary Adawlut from 1805 to February 1848.

An edition of the Acts passed from the 1st of January 1843 to the 30th of June 1848, with special reference to the Madras Presidency, was published at Madras in the latter year, by Mr. William Grant. This edition comprises some of the principal Acts of Parliament relating to India, and is illustrated with notes and other elucidatory matter. It is intended as a continuation of the Code edited by Mr. Campbell.

Mr. Richard Clarke, whose works on the Regulation Law have been already mentioned, has lately published an edition in 4to. of the Regulations for the three Presidencies, and the Acts of the Governor-General in Council relating to each Presidency, arranged separately. In this edition Mr. Clarke has omitted all enactments which are no longer in operation, "except in a very few instances, where a section or clause, though rescinded or superseded, has been referred to in a subsequent Regulation or where a provision in force during a certain period might occasionally require to be consulted in order to establish

the admissibility of evidence.”¹ Mr. Clarke has added classified lists of Titles, and copious Indices. This edition of the *Regulations*, which is published by the authority of the Honourable Court of Directors, offers an uniform and compact collection of the whole body of the Laws enacted in India. The addition of the Indices, so generally wanting, or imperfect, in former editions, renders easy of access, in a commodious form, the contents of a number of bulky volumes, many of which are not easily to be procured. Mr. Clarke is entitled to the best thanks of the Indian community for his useful and important labours: the difficulties of the task, and the utility of the result, can only be appreciated by those whose duty or inclination has led them to study the Regulation Law of India.²

Mr. R. Clarke has also prepared a valuable Digest or consolidated arrangement of the Regulations and Acts of the Bengal Government from 1793 to 1854. This work was compiled by order, and for the use of, the Honourable Court of Directors of the East-India Company, and was not published.

In 1849 Mr. Fenwick published at Calcutta an Index to the Civil Law of the Presidency of Fort William, from 1793 to 1849 inclusive: it is formed on the plan of Dale's Index, already mentioned, which it may be said to have superseded. The second part of Mr. Fenwick's Index, containing the unrepealed Enactments of the Government of India, with reference to the Criminal Law, was published at Calcutta in 1851.

In 1849 an Edition in 8vo. of the Code of Bombay Regulations was published in London, by Mr. Harrison of the Bombay Civil Service: the Editor has added Notes shewing the alterations made by the enactments subsequent to 1827, together with a number of valuable interpretations, and an

¹ See Clarke's *Madras Regulations*—Prefatory Note.

² The Code of Regulations and Acts of the Governor-General in Council, for the Madras Presidency, was published in 1848: that for the Presidency of Bombay appeared in 1853: the Bengal Code, extends to the year 1853.

Epitome of the Acts of Government: he has also given a very full Index. The arrangement of Mr. Harrison's work renders it peculiarly convenient of reference. He has retained the original division of the Code into five branches, and has entered the Supplements to each Regulation immediately after it; so that the whole Bombay Law on any given subject, as it stood in the year 1849, is presented to the reader in a connected form.

The Acts of the Governor-General in Council were originally printed in India so soon as passed, and every publicity was given to them: they were also printed in England by order of the House of Commons.

Mr. Theobald has published at Calcutta a collection of the Acts of the Governor-General in Council, together with an Analytical Abstract prefixed to each Act, and copious Indices. The first part of this collection appeared in 1844, and the learned Editor has since continued his work, issuing an annual part containing the Acts of each year.

An Index to the Acts of the Governor-General in Council from 1834 to 1849, by Mr. Small, appeared at Calcutta in 1851.

The Acts and Orders for the North-Western Provinces for the year 1844 were published at Agra in 1846.

The most important work that has yet appeared respecting the actual working of the system for the administration of justice in India, by the Company's Courts, is Mr. Macpherson's treatise on the Procedure of the Civil Courts in Bengal.¹ The author has followed the method adopted by the writers of books of practice in this country, and has executed his task with great ability and judgment. The acumen with which he deduces principles from the decisions of the Courts, and the lucidity of arrangement throughout the work, are remarkable, whilst the mass of authorities quoted in the margin bear witness to his untiring industry and deep research. Mr. Macpherson is an

¹ The Procedure of the Civil Courts of the East-India Company in the Presidency of Fort William in regular suits. By William Macpherson, of the Inner Temple, Esq., Barrister-at-Law. 8vo. Calcutta, 1850.