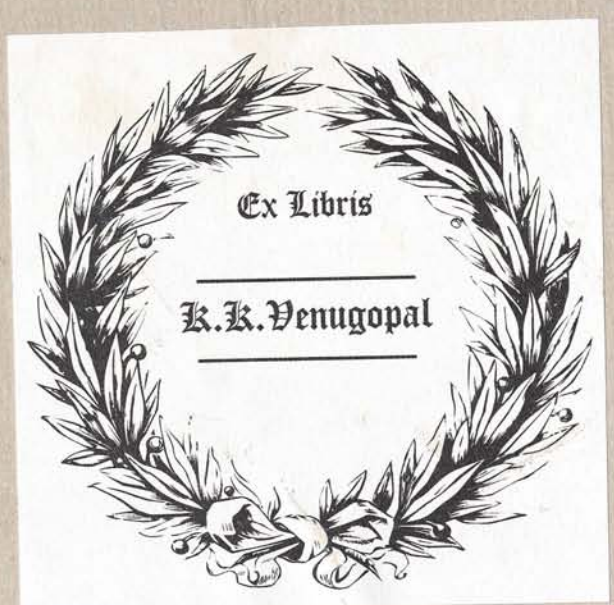
Ex Libris
K.K.Venugopal

JURIES IN INDIA.

RETURN to an Order of the Honourable House of Commons, dated 1 August 1833;—*for*,

COPIES of the several MINUTES OF COUNCIL at the Presidency of *Madras*, by Sir *Thomas Munro*, Mr. *Græme*, and Mr. *Lushington* and others, on the subject of extending TRIAL BY JURY to the NATIVES in CRIMINAL CASES.

East India-House,
9 August 1833.

J. Mill,
Examiner.

(*Mr. Hume.*)

Ordered, by The House of Commons, *to be Printed*,
23 *August* 1833.

CONTENTS.

COPIES of the several MINUTES OF COUNCIL at the Presidency of *Madras*, by Sir *Thomas Munro*, Mr. *Græme*, and Mr. *Lushington* and others, on the subject of extending TRIAL BY JURY to the NATIVES in CRIMINAL CASES.

THE following MINUTE of the PRESIDENT having returned from circulation, is ordered to be recorded. No. 4.

MINUTE.—Sir *Thomas Munro*. (No date.)

Minute by Sir T. Munro; no date.

Judicial Cons. 3 July 1827.

1. I HAVE long been satisfied that criminal cases among the people of the provinces, under this Presidency, ought to be tried by native punchayets or juries, because I am convinced that they are much better able to trace facts from evidence than the Mahomedan law officers, and that much time and useless labour would be saved to the courts, and much delay and inconvenience to the prosecutors and witnesses, and because, what is of no less importance, the character of the people will inevitably be raised by being employed in distributing justice to their countrymen.

2. It is impossible that the criminal justice of a great country can ever be administered to the best advantage when entirely in the hands of strangers, as it is now under this Government; for the Mahomedan law officer is in fact a stranger as well as the European judge among Hindoos. Even if all their decisions were correct, it would not compensate for the evil of the exclusion of the people; it would merely be executing strict justice among men whom we had degraded; for nothing so certainly degrades the character of a people as exclusion from a share in the public affairs of the country, and nothing so certainly raises it as public employment being open to all.

3. We can never expect to make our Government in this country what it ought to be without the co-operation of a public-spirited and intelligent people. A public spirit may be created in all nations, varying of course in degree according to the freedom of their institutions. In order to excite such a spirit in India, we must make the people eligible to all offices. In proportion as we do this, we may be sure that they will qualify themselves for them; that they will endeavour to outstrip their rivals; and that they will seek distinction, not only in offices of profit and honour, but also by serving their countrymen in those of utility, such as members of punchayets or juries, from which they derive no reward.

4. The great object of our Government should be to extend the knowledge, and to elevate the character of the people. No way is so likely to be successful as the bringing them into constant intercourse, and in a great degree assimilating them with ourselves in every department of public affairs. From this confidence they will gradually acquire new habits; they will perceive the advantages of the enlarged views of Europeans, in all matters of government, and will in time seek to learn the knowledge which they have found to be so much more useful than their own.

5. But our views regarding the improvement of the natives cannot be accomplished while we continue the present system, which excludes them from all share in the administration of the criminal justice of their country. Such a system may serve for a time where no other has been established, but it cannot be rendered permanent without excluding the people from a most important part of the internal administration, and destroying every hope of enlarging their knowledge or raising their character. We surely cannot, consistently with any enlarged views of good government for this country, say that such a system ought to be rendered perpetual, or even maintained longer than is absolutely necessary. We ought therefore to lose no time in beginning to introduce another, better calculated to give efficiency to criminal justice.

6. It ought not perhaps to be regretted that the attempt was not sooner made, for there was a strong feeling in favour of the present system on its first establishment, and for some time after, which was adverse to any change, and would have rendered the success of any new measure very doubtful. But the long trial which the system has now had has shown all its defects, and how utterly unsuited it is to its purpose, and has convinced many of our most experienced judges, who were once its zealous supporters, that it cannot be continued with advantage to the country. There cannot be a stronger proof of this change of opinion than the draft of a Regulation for trial by native juries, in criminal cases, which has now been

Minute by Sir T. Munro; no date.

been brought forward by the second and third judges of the Centre Provincial Court; and it appears to me that no time can be more favourable than the present for making the experiment, when it will have the advantage of being superintended by men so well qualified for the task, by their long experience of the present system, and by their knowledge of the language and habits of the natives.

7. The introduction of trial by jury should not be considered as an experiment, which may be abandoned on the occurrence of any unforeseen obstacle, but as a measure which, though local at first, is to be steadily and systematically pursued until it shall be everywhere established. We must make a beginning without being discouraged by any difficulties, whether real or imaginary. If we hold back from the fear of failure, or in the expectation of discovering a plan which shall be efficient at first, we shall never begin: we must not be discouraged by any want of success in our first attempts, but be confident that whatever is defective will be discovered and corrected by time and practice, and that the innate excellence of the institution will gradually carry it through every difficulty. It is undoubtedly an innovation, but not a greater one than the adoption of the Mahomedan criminal law. This law never was formally established in this part of India: a few petty offences in some of the principal towns were occasionally tried by it; but it was unknown as a rule for general practice, and it may well be doubted if it ever existed in its present form as the code of any Mahomedan country.

8. As far as success in the proposed plan may depend upon the qualifications of the natives, we have the strongest reasons to expect it; for having been in former times, and still being in the present, accustomed to sit on punchayets, they are in general sufficiently expert in examining and weighing evidence, and the efficiency of such of them as are employed as district munsifs evinces how well qualified they are to become good jurymen. Most of them will, I believe, be found at least as capable as any Mahomedan law officer of deciding upon the merits of evidence. Nothing can well be worse in all that concerns the useful application of evidence than our present establishment of law officers. From the want in this part of India of Mahomedans learned in the law, we have been obliged to have recourse to Hindoostan for our law officers. These men, as may be supposed, are ignorant of the language of the prisoner and witnesses: they do not wish to learn it, for they avoid mixing with the Hindoos; and even if they had no prejudice of this kind, they are usually too far advanced in years to acquire new languages. They know nothing of what is said in court during a trial except from the Persian translates of depositions. They are no doubt men of learning, and often highly respectable; but these advantages can never compensate the serious defect of their being utter strangers to the character and language of the people. The evil might in time be partly remedied by educating Mahomedans of this country for law officers, but the process would be tedious; the selection would be too limited, and would give us learned men instead of men of business; and we should still be left embarrassed with all the absurdities of the Mahomedan law. This law will, as long as it is suffered to remain, present an insurmountable obstacle to the suppression of crime, because the law officer allows no validity to the official documents of the heads of native police, and rejects the evidence, not only of police servants, but every person in the service of Government. The evidence of persons not in the service of Government who may apprehend robbers is rejected, because they are supposed to be influenced by the hope of reward. The evidence of every villager or other inhabitant, who may have been engaged in a conflict with robbers in defence of himself or his neighbour, provided he has received a blow from a stick or a stone, is also rejected, because he is considered as a prosecutor. It is true that where evidence is objected to on the score of the incompetency of the witness, the muftee may be required to state what his decision would have been had the witness been competent; but this will not meet every case, and is at best but a very unsatisfactory remedy. The case, though within the jurisdiction of the Court of Circuit, must then be referred to the Sudder Adawlut, and much labour and delay be incurred. All this labour might be well bestowed were it calculated to ensure a better decision; but it is not likely to have this effect, because distant judges, who merely read the depositions, cannot be so well qualified to decide on the evidence as the Court of Circuit, which both sees and hears the prisoner and witnesses. The rules of Mahomedan evidence, as applied in our courts, seem better suited to exercise the subtlety of learned muftees than to facilitate the administration of criminal justice.

9. The loss of time is not the only evil which results from the present forms of trial.

Minute by Sir T. Munro; no date.

trial. The attention of the judge and muftee must often be harassed and exhausted and diverted from the merits of the case, while the evidence is taken down in the native language, while the deposition is read over to the witness, while it is translated into Persian for the muftee. It is not in human nature, under such circumstances, in an Indian climate, to keep up the requisite attention during a long trial for a whole day, and sometimes several days; and we accordingly find that in some trials the facts are not so well examined as they would undoubtedly have been had the process been shorter.

10. The jury system will, in all those cases where written evidence is to be dispensed with, be the best remedy for this evil. It will also, by relieving the judges from the duties of clerks and translators, and of preparing many records for reference both to their own law officers and those of the Sudder Court, enable them to give their whole undivided attention to the trials before them. Public curiosity and interest will be raised by native juries; spectators will come to see the trials; the courts will be crowded instead of being empty a great part of the time, and the presence of a native public will excite the jury to attend carefully to the evidence, and to give a true decision.

11. By the trial by jury the innocent will be protected, the guilty be more sure of punishment; and the evil which arises from impunity, and the guilty being let loose on the public, and emboldened in their guilt by the facility of evading conviction, will be greatly diminished.

12. The Regulation for native juries should, I think, be as short and simple as possible at first, leaving it to future experience to add such improvements as may be found necessary.

13. Its operation should be limited for a time to the quarter sessions at Chittoor; but it should be made applicable to the quarter sessions at the stations of all the Provincial Courts whenever it may be deemed advisable by the Governor in Council.

It should in all cases, not referrible to the Sudder Adawlut, dispense with written evidence.

It should in all cases, referrible to the Sudder, record the evidence. But after experience may have shown that the decisions of the juries are sufficiently correct, these cases also should dispense with written evidence, and be no longer referrible to the Sudder Court.

The number of the jury may be 10 or 12, perhaps 12, because, as juries are wanted only for the quarter sessions, this number will be easily found; indeed the point has already, I believe, been ascertained by the magistrate.

A majority should decide; not less than three-fourths should form a majority.

The draft of the second and third judges of the Centre Provincial Court may with some modifications be adopted. I shall state a few that occur to me.

Section II. Cases brought before the quarter sessions at Chittoor to be tried by a native jury.	The proposed limitation to be removed hereafter.
III. The jury to consist of 12.	No objection.
IV. A majority to determine.	The majority not to be less than three-fourths.
V. Each juror to be sworn.	No objection.
VI. Only members of the most respectable, opulent and best educated part of the society eligible to serve as jurors.	Heads of villages sometimes cannot read, but are intelligent and qualified in all other respects, and might perhaps be eligible, at the discretion of the magistrate and courts.
VII. Exemptions from serving on juries.	No objection.
VIII. A book of registry of jurors to be kept.	It will perhaps be enough to enter the names of qualified persons only. It will swell out the book uselessly to enter the names of those who are exempted.
IX. Form of registry.	The form might be a matter of official order. The appeals may become troublesome if extended beyond the judge.
X. The criminal judge to fix the number of jurors to be summoned at each sessions.	No objection.

XI. Manner

Minute by Sir T. Munro; no date.

XI. Manner of returning jurors.

No objection.

XII. Mode of summoning jurors.

The proposed fine of one-fourth of annual income for not attending is too high; one-tenth or one-twelfth would be enough. The journey of 12 might be 15 miles.

XIII. The panel of the jury how to be taken.

No objection.

XIV. Mode of proceeding to trial.

I see no use in allowing 20 peremptory challenges; there should be none allowed without cause assigned. In cases of treason some latitude might be given.

XV. Appointment of foreman.

No objection.

XVI. Verdict to be in writing.

Hardly necessary, but no great objection at first.

XVII. When verdict approved, sentence to be guided by existing rules.

No objection.

Second.

Third.

Fourth. In cases where the verdict is not sufficiently specific, the jury to be remanded to bring in a more special verdict.

The verdict should not embrace notorious bad character, former convictions, &c., but only what is stated in the indictment.

Fifth. The verdicts in larceny to state the amount of the property.

No objection.

XVIII. On verdicts of house-breaking and theft without aggravating circumstances, &c. the presiding judge to pass sentence.

No objection.

XIX. Evidence to be recorded in cases referrible to the Foujdarry Court.

This should only continue for a time, in order to show the Foujdarry how far the verdict is conformable to the evidence.

XX. Questions to the Mahomedan law officer to be in Persian, but no translates of proceedings in that language for him.

No objection.

Second. Translates in the native language.

No objection.

Third. Jury to be allowed to refer to record of proceedings for Foujdarry Adawlut.

The intention of this is not very clear.

Fourth. The record or not of depositions to be optional in cases in which the circuit judge can sentence without reference.

The recording in this case should not be allowed, because the delay thus created tires and diverts the attention of the jury, and leads on the trial to another day, which ought by every possible means to be avoided.

XXI. The religion, sex, office, &c. &c. of persons to be no bar to their competence as witnesses.

No objection.

XXII. The jury when trial continues from day to day to adjourn, but on conclusion to retire to a room and find verdict.

The evil of juries adjourning must continue as long as evidence is taken in writing. One of the great objects of dispensing with written depositions is to get through the trial in one day.

XXIII. The judge may comment on the evidence to the jury if necessary.

No objection.

XXIV. If the verdict be approved, the prisoner to be immediately released.

No objection.

Second. If disapproved, to be referred to the Foujdarry.

All acquittals by the jury should perhaps give release.

XXV. New trial if juror dies.

Hardly necessary, if the full majority concur in the sentence.

XXVI. Jurors

XXVI. Jurors withdrawing themselves liable to fine.	No objection.
XXVII. Corruption in jurors, &c. liable to fine and imprisonment.	No objection.
XXVIII. Indemnity of jurors.	No objection.
XXIX. Special jurors for important trials.	No objection.
XXX. Substance of verdicts to be entered in calendars.	No objection.

Minute by Sir T. Munro; no date.

The draft is somewhat longer and more technical than is desirable, but this is of the less consequence as the inconvenience, whatever it may be, will fall exclusively upon the judge, and will not at all affect the native jury; and the Sudder Adawlut, to whom I recommend that it be sent for revision, will probably be able to improve it.

(signed) *Thomas Munro.*

MINUTE by the Commander-in-Chief, Lieutenant-General Sir *G. T. Walker*; 14 August 1827.

Minute by Sir G. T. Walker; 14 August 1827.

Much as I admire the principles and the kindly feelings towards the natives of India which originated the idea of the trial by jury in the mind of the late Governor, on whose suggestions the proposal to establish punchayets, or more properly juries, is now founded, the monstrous injustice and oppression to which such a system may lead, in practice, among a people which, however advanced beyond the line of barbarism, and to a certain degree in education, have yet acquired no moral or religious principle by which to guide their judgment, induces me to entreat of this Board to pause before it authorizes a plan replete with so much mischief; at all events, that it will not enter upon it with that determined perseverance so strongly recommended.

The theory of juries, as it originated in our happy country, has been so well confirmed by the practice, that in the exultation of freedom, the Briton who enjoys it is naturally desirous of extending to others the blessing he himself possesses; but let him look well that what he intends as a blessing does not rather prove a curse. Let him recollect that it is as a Christian, and under the *fixed* moral principles only to be derived from that *divine* source, that he is enabled to exercise the powers of a juryman, or be protected by the exercise of it in others. To whom then will he entrust such powers in this country? In what caste will he find twelve, eight, or even five people, when wanted, whose religious principles or innate purity would secure them from bribery, perjury, or any other corruption it was their interest, or could be made to appear their interest, to adopt? Let not this Board think it can step before the prudence of the Legislature. The attempt, on the most liberal principles, has been made under the superintendence of all the wisdom of the Supreme Court; its success up to this period, from powerful, though less vital causes, has certainly not answered the kindly intentions of its proposers; and it will surely be time enough, at all events, to commence in the provinces when it has once been clearly ascertained that the plan works well in the capital, where it must have a much better prospect of success, from the characters of men likely to be called on juries being better known in society. Publicity may act instead of moral principle in securing their decisions from any very gross injustice; and others holding offices, or other important situations, may not by misconduct wish to risk the loss of them; though this, even here, is all that can be depended upon.

When the Minute of our late Governor upon this subject was first put into circulation, I was so strongly impressed with the danger of adopting such a system, that I noted down the observations which then occurred to me on each paragraph; and as I have since seen no reason to alter my opinion on the more matured project, I shall here state them in the order they occurred.

To para. 1, I must preliminarily be allowed to observe, that although many lovers of our national institutions have flattered themselves they have found in punchayets a similitude to juries, they actually have no one constituent principle inherent in the latter, but are indeed *arbitrations*, and much of the same character as those sometimes submitted to in England by well-meaning people desirous of avoiding an

Minute by Sir G. T. Walker; 14 August 1827.

expensive law-suit, and their result probably much of the same nature, viz. such a decision as might have been come to by the much less troublesome method of drawing straws; that is to say, provided neither party in this country is bribed. If then the real nature of juries is intended to be understood by the people, they must not be described as punchayets; they are not synonymous, and such a definition would only serve to mislead.

Were a jury of natives, as here stated, practicable, it would no doubt be advantageous "in better tracing evidence from facts, and save much time and labour to the courts;" but as it must be notorious that such a jury never could be free from the suspicion, at least, of bribery and perjury, better is it that the courts be content to bear with a little more labour; and as to the character of the people being raised by this method of distributing justice to their countrymen, it is not so apparent. The character of individual natives may indeed be raised by placing them in the seat of justice; because, placed in the world's eye, that character is necessary to the preservation of a valuable office. It may be well therefore to make the experiment of native judges.

Para. 2 contains very liberal notions, but totally inapplicable to the state of society to which it is addressed. As to the employment of the Mahomedan law officer, the observation is certainly correct; but upon what reasonable principle was such a personage ever introduced, or the law he has to interpret?

Para. 3 states, "that we can never expect to make our Government in this country what it ought to be without the co-operation of a public-spirited and intelligent people: a public spirit may be created in all nations, varying of course in degree *according to the freedom of their institutions.*" These last words must be the key of the reply to this proposition. What is, what can be, the freedom of Indian institutions? Of what is the composition of the "*nation*" to which it is addressed? Is it not a collection of heterogeneous portions of territory, joined, but not united either in language, religion or feeling? What then is the national spirit to be expected?

That there will be many eager "to seek distinction in offices of profit and honour," it must be readily conceded; but what is to render a seat in punchayets or juries desirable is not so clear, as it offers no reward unless in bribery.

Para. 4 expresses enlarged, liberal and just views, and it is much to be regretted that they have not been earlier and more extensively acted upon by the European establishments in this country. Nothing, however, in all this is applicable to the system of punchayets or juries. The conferring offices of trust and confidence indeed might, on a more civilized people, produce some such good effect.

Para. 5 deprecates "excluding the natives from all share in the criminal justice of the country, as destroying every hope of enlarging their knowledge or raising their character." Would it not then be infinitely better, in this view of the case, to establish one or two native judges, who, chosen for their respectability, would be responsible for their acts, in some of the minor districts, at first experimentally, and extend the system if successful?

Para. 6. If the jury system is to be tried, it is certainly a favourable opportunity to put it to the issue under the auspices of those who recommend it. A jury of 12 men would certainly be more difficult to bribe than a punchayet, which I believe seldom exceeds five; but I must still be allowed to doubt the success of the experiment proposed by these two or three judges of the Provincial Court, so long as the darkness of the Hindoo religion blinds the understanding of the people who are to compose juries; and favourable as a parent will ever be to his own offspring, their early reports at least, however promising, ought not to be taken for security.

Para. 7. The last paragraph speaks of the plan as an "experiment fit to be made." The present states that it "should not be considered as an experiment," but as a measure to be persevered in through "all difficulties, whether real or imaginary," and that "its innate excellence will gradually carry it through" all. I must fully admit all the force of this phrase, as applied to a people educated to feel these advantages; but what is the meaning of "the *innate excellence*" of any institution, but by comparison of the nature and studies of the people who are to be governed by it?

It is said not to be a greater innovation than the Mahomedan law! But why compare one bad system with another? If innovation, or rather say change, is necessary, why not at once reject the crude and ill-digested fabric that now renders all justice doubtful, to ensure it by the formation and establishment of a reasonable and just code, formed from all that is good and applicable of the British, Hindoo and Mahomedan together? for which the people would bless the Government, and every neighbouring prince be induced to adopt it. But the perseverance recommended

Minute by Sir G. T. Walker; 14 August 1827.

mended in the beginning of this paragraph, appearing as it does to me to lead to great evil, has been the chief cause of venturing my opinion on a subject out of my sphere as a soldier, but which every Englishman is too much interested in to be totally ignorant of. Earnestly then as a Councillor of this Presidency, and not less for the interests of the Company than the happiness of the people, must I express how strongly I deprecate this recommendation, so unlike the usual caution of the able head from whence it sprung; and I again entreat of the Governor and Council to trust to their own mature judgment before the final adoption of such a system.

Paras. 8 & 9. "The people accustomed to punchayets, and others, are able enough to sift evidence:" how far they may be honest enough to decide justly, is another consideration. I should consider the decision of a moonsiff much more likely to be just than that of a punchayet, or even than a jury, as he is responsible by his office, and has his character at stake. In all the observations on the absurdities of the Mahomedan law, and the more absurd adoption of it in our courts, I most cordially agree with the late President. That it has not long since been superseded by a British code is seriously to be lamented; but should even this not be more applicable to the character of the people than trial by jury, it would be better (as at present) to feel the way in darkness than to lose it altogether.

Para. 10. Publicity is no doubt advantageous in a court of justice: but it is much to be doubted if a punchayet or a jury would effect this; nor would it in any manner alter the objection to the Mahomedan law.

Para. 11. Could the benefits here enumerated be indeed ensured, there could be no doubt of the advantage of trial by jury. But these are the points doubted; nay, more, it is the fear of their opposite evils that are opposed to the system.

Paras. 12, 13 & 14. The Regulation recommended, in case of adoption of the system, appears prudent and judicious. As to the number of jurymen, the highest seems to promise most security, and should be fixed at 12, of which at least three-fourths should agree; and that they should be of the most respectable and opulent classes is much to be desired. In large towns such perhaps may be found, but it is much to be doubted if in the country it will be so easy to collect a sufficient number of people of intelligence enough to form a jury; and when formed, by what moral principle will it be governed?

The subject of juries having of late undergone much discussion in this country, the multifarious objections to the system to be found in the religion and prejudices of the natives of India have been brought so much before the public, that I have purposely avoided touching on any but such as appeared to be necessarily called for by the arguments urged in the Minute of the late Governor. Numerous, however, and forcible as they are, they will not, I trust, be thrown out of the scale in weighing a subject so important to the people.

14 August 1827. (signed) *G. T. Walker*, Lieut.-General.

MINUTE by the President, *H. S. Græme*, Esq.; 18 August 1827.

Minute by H. S. Græme, Esq.; 18 August 1827.

THE important measure proposed by Sir Thomas Munro, of introducing the trial by jury into the Madras territories, was known to me in the progress of his deliberations on the subject, and indirectly upon former occasions, and met my entire concurrence at the time it was proposed. I thought it, however, of more consequence to assist in giving a proper shape to the Regulation for this purpose, that its passage through the usual departments might be facilitated, than to enter an immediate record of my sentiments on the measure, particularly as there were few points connected with it which the experienced mind of the superior person to whom it owes its birth had left untouched. Subsequent events, however, have rendered it desirable that I should state my sentiments at large.

It is obvious to those who have observed the working of the present system of criminal jurisprudence in the interior, that it is cumbersome and uncongenial with the general feelings of the people, and so defective in many respects as to demand an early remedy. The law itself which has been established is strange to the great majority of the population. The cazees and mooftees who expound it are foreigners as regards the religion of the greater part of the inhabitants, and being mostly natives of the Bengal provinces, and of a time of life, and possessing a sense

Minute by H. S. Græme, Esq.; 18 August 1827.

of their own importance, which prevents their adding to their acquirements, they remain obstinately ignorant of the language, the manners and customs of those with whom they have to deal in their public capacities. These are the officers upon whose judgment the niceties of evidence and the guilt of prisoners are left too much to be determined. The general presiding authority over criminal courts, the European judge, is also a foreigner. This inaptitude of the instruments employed has begotten the practice of committing every detail of the trial in writing in the language of the district, and afterwards of its being translated into the Persian and English languages in the Circuit Courts, whenever the trial is referrible to the Sudder Foujdarry Adawlut. The proceedings are in consequence so long in duration, and the writings so voluminous, that the attention of the presiding judge is exhausted during the trial, and the delay which is occasioned by the references and reports necessary to be made to the Foujdarry Adawlut are seriously injurious to the ends of justice. On looking over the accompanying abstract of the trials by the Courts of Circuit in the district of Bellary during nine half-yearly sessions, the first commencing in 1823, I find that out of 60 cases tried, five only, or about eight per cent., have had sentences passed upon them by the Foujdarry Adawlut within three months after the trial has been completed by the circuit judge; 20, or about 33 per cent., have taken between three and six months; 21, or about 35 per cent., have required between six months and a year; and 13, or about 20 per cent., have been between a year and 18 months before the final sentences have been passed after the prisoners had been tried.

In the Cuddapah zillah, during 10 sessions, commencing with 1823, there were 143 cases tried; of which none received their sentences within three months after the trials were ended; 12, or about eight per cent., took between three and six months; 84, or about 58 per cent., six, and within 12 months; and no less than 46, or about 38 per cent., 12, and within 18 months. There was one more than 18 months.

The abstract shows when the sentences were carried into effect in those cases only when the prisoners were capitally punished, the records of the Foujdarry Adawlut not exhibiting others, from no returns being made to them.

This extraordinary tardiness of criminal justice is chiefly ascribable to the defective system which prevails. The correction which it is proposed to apply to this overgrown evil is, to establish punchayets or juries of natives of each district, whose business it will be to hear and to examine the evidence, and to pronounce the guilt or innocence of the prisoner. The power of the Mahomedan law officer will in this respect be superseded, and he will only be required to expound the law on the case; and the presiding European Judge will apply to the Mahomedan law the modifications it has received under different Regulations of this Government.

The concurrent testimony of all those who have had most opportunities of observing the habits of the natives of India leaves little doubt, I think, of the superior qualification of a jury composed of them to sift evidence in cases of intricacy, and of the inferior capacity in this point of an European judge. Their innate knowledge of those peculiarities of language which indicate a particular feeling, whether of innocence or guilt, of ingenuousness or of art, and their congeniality with those habits and weaknesses which influence the minds of their countrymen, must give them a much clearer insight into the springs of action than foreigners can expect to possess. Neither is their natural acuteness nor their education below what the occasion requires. Their business will be of that description which has influenced their feelings all their lives, and their intelligence in matters of evidence has often been called forth in the petty contentions of neighbours. Their steadiness may be called in question, and they may be considered as too liable to be swayed by corrupt motives by many; but the respectable natives of this are like those of other countries, sensible to the value of reputation; the classes of criminals whom their judgments are to affect are generally of a lower order of beings, for whom the intended jurors are unlikely to possess any strong bias; and they are generally incapable, from their poverty, of acting upon the avarice of those who are to judge them; and besides, it will not be known long beforehand who are to be the jurors. Under the respect which is felt by the natives towards the authority of the British Government, and their habitual docility, under the personal influence of the presiding European Judge, and the responsibility which will fall upon him of pronouncing the sentence of the law upon culprits, there can be little doubt that the steady attention of natives as jurors can be obtained to the objects of their joint investigation, and that even prejudices of caste will not interfere with their public duties, relieved as they will be of their odium by a strong intervening power.

When the delinquent to be tried, however, is of a high caste, of exalted rank, or possessed of great wealth, or where there is a violent religious or factious spirit pervading the community, more is not to be expected from freedom from prejudice and impartiality here than in other countries; and special juries present themselves as an available resource; or it may be desirable, in particular cases, that the European judge or a special commission should try the prisoner. But it is seldom that heinous crimes are committed by persons of high caste, or those who are raised to an elevation by rank or property.

Minute by H. S. Græme, Esq.; 18 August 1827.

I am persuaded, from the opportunities I have had of conversing with many of the most respectable and intelligent of the natives in the interior, that among persons of this description the trial by jury will be particularly acceptable. Under different denominations and under various forms it has been known for ages. Its existence cannot be assimilated exactly to any form or constitution of it which can be pointed at in any precise period of British history; indeed, it has assumed different features at different periods, and it has varied in its conditions in different parts of Great Britain at the same period. But the spirit, the objects of the institution, are familiar to the minds of the natives of India. The assembling of persons far and near for the purpose of examining and punishing offences, the assembling of impartial persons for the purpose of taking evidence and settling causes of a civil nature, are readily intelligible to all natives. The offences, indeed, which have come under the cognizance of such meetings have chiefly of late been those connected with caste, but these were of some magnitude, and involved serious punishments: other offences have been considered more against the public, and were as such, in the latter periods of the native governments, taken notice of by the officers of Government. Punchayets in civil cases existed to the latest period. Under the Company's Government they have fallen into disuse, because European judicial courts were everywhere established, which, from the prejudice that for a long time existed against the administration of justice by natives, were considered as superseding the necessity of petty inferior tribunals, and their existence was not consistent with the interested views of the lawyers of the courts. In former times punchayets were called by the nearest local authority, and their proceedings might be brought to an early close by the same authority. The efficiency of punchayets depends in a great degree upon the vigour and the integrity of the existing Government. Under a corrupt Government they may become useless instruments of justice, but they require to be controlled as well as protected. They must not be allowed to wander from the direct point, but be made to bring their proceedings to an early termination. It is because they have not been considered an essential branch of judicial administration, because authorities sufficiently near have not been empowered to summon them in the first instance, and few attempts have been made to render them efficient, that they have fallen into disrepute under the Company's Government.

The trial by jury may be objected to by some from the fear of incurring enmity, and from its taking them away from their own business. These are inconveniences which must be admitted as likely to arise; but the great number of respectable persons who will be found qualified to serve on juries in each district, and the general sense in favour of the institution, on the part of the most influential, will materially divide and lessen the labour and odium of attendance. They will receive countenance from each other. On the whole, I conclude that the trial by jury, far from being considered an innovation, will be hailed by the natives as if it were the revival of a good old custom. Its principle is readily recognisable in the native courts-martial, which have existed throughout the Madras army for so long a period with such good effect, where the members are entirely natives, whose proceedings are in some degree regulated by an European officer officiating as a Judge-advocate. Colonel Briggs, an officer belonging to the Madras army, who, as political agent, had the management of the province of Candeish, states "that he had introduced the system of juries into Candeish, and that from having been in the habit many years of superintending similar courts in the army, it did not occur to him that there was anything strange or novel in the proceeding." Some of the most able and intelligent of the provincial judges of the Centre Division, in which the trial by jury is to be experimentally introduced, men who have had ample experience of the effects of the existing mode of trial, have strongly recommended the substitution of trial by jury; viz. Mr. Charles Harris, first judge; Mr. Wright, third judge, and Mr. A. D. Campbell, third judge. It has lately been more fully brought to the notice of Government by Mr. Newnham, the second, and Mr. Dacre,

Minute by H. S. Græme, Esq.; 18 August 1827.

the third judge of the Provincial Court in the Centre Division, who have submitted a Regulation, which, with some amendments, has received the sanction of Government. These gentlemen, from their very long experience in the judicial line, may be presumed to be well acquainted with the effects of the existing system, and from their abilities, their indefatigable industry, their habits of associating with the natives on easy footing, their more than common kindness to them upon all occasions, they may be supposed to be competent judges of what is conducive to their wishes and their interests, and to be admirable instruments for giving effect to the important measure that has been adopted.

For my own part, I know of no measure more likely to improve the character of the natives, to diffuse the benefits of a knowledge of mankind, to inspire confidence in the openness and purity of the administration of justice, and to create a general interest. The trial by jury will assemble together periodically at the chief station of the district a great many of the most respectable inhabitants of it, who will thus know and become known to the principal European authorities. The proceedings of the court, a knowledge of which is at present almost confined to the public officers attached to the court, will be communicated to residents of every part of the district, who will gain a close insight into the principles of justice, and the impartiality of its administration; into the nature of the crimes most prevalent; the motives which prompt them; the modes in which they are committed; the associates usually employed; the artifices resorted to to evade punishment; the proper preventives, and the most salutary remedies for the prevailing crimes. Their consequence will be raised in their own eyes, and in the estimation of their neighbours; and upon their return to their homes the jurymen will infuse the interest, the confidence and the knowledge with which they are themselves inspired, into their families, friends and circle over which their influence extends; and the information thus extensively embodied will contribute materially to the support of the police, and to the maintenance of the tranquillity of the country.

18 August 1827. (signed) *H. S. Græme.*

MINUTE by *J. H. D. Ogilvie*, Esq.; 29 August 1827.

Minute by J. H. D. Ogilvie, Esq.; 29 August 1827.

I HAVE given all the consideration in my power to the proposed measure of introducing the trial by jury in criminal cases. Every person who is in the least acquainted with our present system of administration of criminal justice must see that it is attended with the greatest inconveniences, and imposes on the judicial officers a degree of labour and responsibility unparalleled perhaps in any other country; and it is extremely desirable that some expedient should be devised for improving the system.

Under the Regulations of 1802, the cazees and the mooftees of the courts were sole judges of the facts, as well as of the law applicable to those facts. Their rejection of the evidence on account of the religious persuasion of the witnesses was indeed overruled, but they were still left to decide upon the facts proved by the evidence, and their judgment was conclusive; for though the judge presiding at the trial, if he disapproved of the futwa, might refer his proceedings to the Foujdarry Adawlut, that court was equally bound by the opinion of their law officers; and the only mode in which the sentence of the law could be mitigated or remitted was by an application to the Governor in Council; but no authority was vested anywhere for overruling an improper acquittal.

Section XXV. Regulation VII. of 1802.

Things continued in this state till the year 1818, when the Foujdarry Adawlut were vested with power to overrule a futwa of acquittal; and in 1825 they were further vested with authority to mitigate or remit the punishment, whenever, from the circumstances of the case, they might think such mitigation or remission proper.

Under these modifications of the law established in 1802, the judge on circuit in the first instance, and ultimately the judges of the Foujdarry Adawlut, became effectually judges of the evidence, and the Mahomedan law officers act merely as assessors, whose opinion in respect to the guilt or innocence of the prisoner is adopted or not, according to the view which the European judges may take of the evidence. I think there cannot be the smallest doubt that this was a very great improvement of the system, inasmuch as the effect of evidence is no longer to be determined solely on the principles of the Mahomedan law, the rules of which, as I see remarked in a late proceeding of the Foujdarry Adawlut, are for the most part absurd and impracticable.

But

Minute by J. H. D. Ogilvie, Esq.; 29 August 1827.

But though the opinion of the Mahomedan law officers on the evidence is no longer conclusive, it is still so far binding upon the judge who presides at the trial, that if he does not concur, he must refer his proceedings for the decision of the superior court. This perhaps is not of much practical importance in cases where the offence charged is one beyond the power of the inferior court to punish; for it very seldom happens that the law officer convicts when the circuit judge would acquit, and few cases of this description are referred solely on the ground of a difference of opinion between the judge and the law officer. But in the other class of cases, that is, those wherein the offence charged is punishable by the circuit judge, the necessity of a reference to the superior court for the purpose of obtaining the reversal of an improper acquittal is an evil of some magnitude. The references on this account cannot but be numerous, and, independently of the labour imposed upon the judges of circuit in preparing the records for reference, a large portion of the time and attention of the Foujdarry Adawlut is occupied on cases of theft, burglary, and highway and other robberies, unaccompanied by any circumstances of aggravation, which it was the original policy of the Legislature to leave at the disposal of the lower courts.

I am by no means confident that the proposed measure will be received with approbation by anything like a majority of the natives who will be liable to be summoned on the jury; and though I admit their natural qualifications for determining the degree of credit due to the evidence of their own countrymen, I entertain considerable doubts of their moral fitness to discharge this duty with integrity and impartiality. The persons who appear at the bar of our courts as criminals are, for the most part, of the lowest class of the people, between whom and the higher and most respectable class there is scarcely the slightest bond of sympathy; and I am afraid that among those liable to serve as jurors few will be found of notions sufficiently enlarged to perceive how much their individual interests are affected by the result of every criminal trial. I apprehend, therefore, that in the first instance, at least, there will be a strong disinclination on the part of most of these persons to make the sacrifice which this duty will impose upon them: they will consider it a great inconvenience and hardship to be called upon to quit their homes, and to neglect their business of trade or cultivation for the performance of a service in which their feelings as men are very little, if at all, interested, and which, to their confined views, will appear almost as a matter of indifference to them as members of the community. My doubts of their moral fitness to discharge the duty refer principally to cases in which their prejudices of caste or of sectarism will tend to influence their conduct. I imagine it would be in vain to expect that a native jury, however constituted, would convict a Brahmin of murder, knowing, as they must know, that his ignominious death will be the inevitable effect of their verdict; and it is I think to be feared that they would feel great reluctance in convicting him of any crime, the punishment of which would expose him to infamy or degradation. It is true, indeed, that Brahmins seldom appear charged with murder, or any of the higher offences except perjury; but instances have occurred, and may be expected to occur again. But perhaps the greatest danger is to be apprehended from the prejudices of sectarism: we all know the inveterate, the almost deadly animosity that subsists between the right-hand and left-hand castes; and whenever the passions and feelings arising from this, or other similar sources, are brought into play, I cannot but question whether there is anything in the moral principles of the natives sufficiently strong and influential to counteract or subdue them. I have no apprehensions on the score of corruption.

It might be expected that, holding these opinions, I should feel adverse to any attempt to introduce the trial by jury; but it appears to me that the proposed measure offers the most efficacious, if not the only means of remedying the defects of the present system; the most material of which is, that the determination of facts is left entirely to the European judges, who, with all their experience and intelligence, can scarcely be supposed fully competent to the task, though infinitely better qualified for it, of course, than the Mahomedan law officers. I consider it therefore of importance that we should try the experiment. The reluctance to serve on juries may be overcome by conciliation on the part of the local officers, and it is possible that in time the minds of the natives may be so far imbued with the principles of moral rectitude as to leave little apprehension from the effect of their prejudices in the discharge of their duties as jurors.

29 August 1827. (signed) *J. H. D. Ogilvie.*

MINUTE by the President, Right Hon. *S. R. Lushington*; 21 December 1827.

Minute by the Right Hon. S. R. Lushington; 21 December 1827.

No. 7.

THE expression in the draft of a letter to the Foujdarry Adawlut, on the subject of trial by jury, induced me to call for the correspondence on this subject, in order that I might be acquainted with the measures which have been already taken to accomplish this most important innovation in the administration of criminal justice, as well as the steps by which it is proposed to proceed in future. The most remarkable feature in this proceeding is the precipitancy with which this great change has been introduced.

Instead of undergoing that patient investigation which its novel and momentous nature demanded; instead of being subjected to mature examination and discussion among the most experienced judicial officers of the Provincial and Sudder Courts, the proposition, recommended by the imperfect argument of two circuit judges, without even having been submitted to the senior judge or to the Foujdarry Adawlut, is at once embraced and framed into a Regulation, in disregard of all those wholesome restraints which the orders of the Company and the experience of successive Governments have imposed upon the too fervent zeal of inconsiderate subordinate officers, and in defiance of the earnest entreaty of the Commander-in-Chief that this Board would "pause before it authorized a plan replete with so much mischief."

In Bengal, where, from a more extended knowledge of its duties and principles, the administration of justice has made greater approaches to perfection than either in this Presidency or in Bombay, this question has not even been agitated.

At Bombay, after a minute inquiry, in the course of which a few opinions favourable to its adoption were expressed, it was rejected in 1823.

As from the great uniformity of the native character, the reasoning which holds good in one part of the country is generally valid in another, the tacit disapproval of the measure in Bengal, and the avowed condemnation of it in Bombay, compel me to pause before I can give my sanction to its commencement. But as it is possible that the institution (excellent in itself) may be less inapplicable to the condition of the inhabitants of the Madras territories than to that of the subjects of the other two Presidencies, and may, in the opinion of the judges in general, be in some way modified so as to be proper for adoption, I propose that the letter of the two judges, who seem to have originated this scheme, together with the questions which I shall annex to this Minute, be circulated among all judicial officers.

Mature deliberation upon their answers will enable us to come to a satisfactory conclusion.

In the meantime I recommend that immediate orders be issued, through the Foujdarry Adawlut, to the judicial officers who have been instructed to commence the experiment, to suspend their operations, and to continue to try all causes which may be brought before them at the ensuing sessions according to the previous established course of proceeding.

Orders of a similar nature should also be sent to all collectors who have been desired to form lists of jurors, and circular orders should, through the same channel, be issued to all courts, announcing that the enforcement of Regulation X. of 1827 is suspended.

21 December 1827. (signed) *S. R. Lushington.*

MINUTE by the Commander-in-Chief, Lieutenant-General Sir *G. T. Walker*; 28 December 1827.

Minute by Sir G. T. Walker; 28 December 1827.

No. 12.

THE Minute I formerly addressed to the Board on this subject must have been so expressive of the sense I then felt (and I yet feel no less) of the serious danger of the innovation attempted on the rules of the jurisprudence of our native courts, that it cannot be doubted how much I must rejoice at any circumstance that may suspend its operation; and most sincerely do I rejoice that the prudence of the Governor has for the present averted so great an evil. The general inquiries now set on foot, and the experience of the working of the measure at the Presidency, will now come in aid of the judgment to be formed of the advantages to be expected from its further extension, and if ultimately adopted, it will at least not be so on partial and premature opinions; though, for my own part, I must still avow my conviction

conviction that, devoid as are the two prevailing religions of this country of all that we acknowledge as moral principle, and bound up as are the natives in adamantine prejudices against each other, no jury formed of them (beyond the capital at least) can ever be expected to do justice, and must therefore only prove a source of deception and of wrong.

Minute by Sir G. T. Walker; 28 December 1827.

28 December 1827. (signed) *G. T. Walker*, Lieut.-General.

MINUTE by *H. S. Græme*, Esq.; 28 December 1827.

I SHALL be prepared to explain, to the satisfaction of the Honourable the Court of Directors, the conduct of the preceding Government in enacting that the trial by jury should be gradually introduced into the territories dependent upon the Madras Presidency, whenever the papers reach me which have passed on the subject, and which are understood to be in the possession of the Right Honourable the President. I am unwilling, however, to lose the opportunity of the first meeting of Council since the Minute of the President was read at the Board to notice a few circumstances that do not appear to me to have been adverted to, and which I should hope would induce Mr. Lushington to suspend his opposition to the progress of a measure which promises to be highly beneficial to the public interests, and which has been introduced with all the caution that its great importance required.

Minute by H. S. Græme, Esq.; 28 December 1827.

No. 10.

The President, in seeming to assume that the measure rested "upon the imperfect arguments of two circuit judges," has apparently overlooked the strong and able reasons for it given in the Minute of Sir Thomas Munro of June 1827. The measure was not the hasty policy of the moment. It had for many years been the serious working of the great mind of Sir Thomas Munro, as I shall be able to show more fully hereafter, but there is some undeniable evidence of it at hand in the 22d, 23d, 26th, 27th, 37th, 38th, 40th, 41st, 42d and 43d paragraphs of his Minute of the 31st December 1824. The measure was, however, withheld from public operation for a favourable season. It was latterly called into action by a happy concurrence of circumstances; two circuit judges, Mr. Newnham and Mr. Dacre, of approved respectability and well-known zeal, as well for the interest of the inhabitants as of the Government, having recommended it, who appeared fit instruments to introduce it successfully.

Judicial Selections, vol. 3.

From the tone of the President's Minute it would appear to be supposed that the trial by jury has been directed to be general in all or in many of the zillahs of this Presidency. The measure, however, is not necessarily general. The Regulation contains indeed within itself the power of expansion, but the exercise of that power, the extension of the measure, depends upon the special sanction of the Government. There is no fear, therefore, of its progress outstripping the intentions of the ruling authority. For the present it has only been proposed to limit the operation of the measure to the single station of Chittoor, at the quarter sessions at which either of the two judges who are favourable to it may preside.

As this experiment will combine practical experience of the effect of the measure with the benefit to be derived from the inquiries which the President proposes to set on foot, it is very much to be desired that it should be allowed to proceed in conjunction with those inquiries; and I trust that the Right Honourable the President will be induced, upon further consideration of the circumstances I have taken the liberty to state, to grant the important aid of his concurrence in a measure of the highest public interest, and that he will cause a lustre to be reflected upon his administration by the ability and rigour with which he will stimulate its operation, and the stability which his steady support will confer upon it.

It is as well perhaps to notice that the judges of the Foujdarry Adawlut have expressed their decided sentiments in favour of the trial by jury, and that the Legislature has sanctioned the admission of the natives of India as petty jurors in the trial by jury at the Presidencies of Bengal, Madras, &c.

Fort St. George, 28 December 1827. (signed) *H. S. Græme.*

MINUTE by the Right Hon. *S. R. Lushington*; 7 January 1828.

Minute by the Right Hon. S. R. Lushington; 7 January 1828.

It had been my anxious desire to abstain from stating any opinion upon the judicial proceedings of this Presidency until I had been enabled to witness the operation of the courts in the interior of the provinces; but the Minute entered by Mr. Græme on the 28th ultimo, and that strong sense of public duty which has compelled me to suspend the important innovation about to be made in our criminal judicature, without any report to the Supreme Government, and without any sanction from the Honourable Court of Directors, render it necessary that I should record a further explanation upon this subject.

It is well known to the Board that the introduction of the present system of criminal judicature into the Bengal provinces by Lord Cornwallis was no sudden or ill-considered undertaking; that it was the last great work of that most wise and practical statesman, in which he was aided by the able and benevolent mind of Sir John Shore, and of many other distinguished servants of the Company. Nor did it come forth until it had been examined by a person endowed with the most ardent English feeling and predilection for the admirable institutions and judicial system of our own free country: it was conceived and matured when Sir William Jones adorned the Board of Calcutta and the age in which he lived.

Is it to be believed that in minds so gifted, experienced and humane, the thought of adopting trial by jury in the administration of criminal justice to our native subjects never entered? but that it should be reserved as a discovery to be made by two circuit judges at Chittoor, in the year 1827, as analogous to the ancient institutions of the Hindoos and Mahomedans, and as "an object so desirable, because of its certain tendency to increase the improvement and happiness of man."

I turn with pleasure from this crude and imperfect Report to the language and sentiments of Sir William Jones and of Lord Cornwallis; the one deprecating the rash application of our English system to the natives of this country, the other abounding in those enlightened and humane views for the real happiness and improvement of our native subjects, which marked the whole course of his just government over them.

Sir William Jones said, "I perfectly agree (and no man of sound intellect can disagree) that such a system is wholly inapplicable to this country, where millions of men are so wedded to inveterate prejudices and habits, that if liberty could be forced upon them by Britain, it would make them as miserable as the cruelest despotism." This was the language of this great man in 1784. It was in this spirit that in 1788 his labours were directed to a complete digest of Hindoo and Mahomedan laws as a work of "national honour and utility;" and in his tenth Discourse to the Asiatic Society, in 1793, little more than a year before his death, and the very year in which Lord Cornwallis brought forward his great judicial work, we have the same sentiments:

"In these Indian territories, which Providence has thrown into the arms of Britain for their protection and welfare, the religion, manners and laws of the natives preclude even the idea of political freedom."

I have purposely made these quotations from the productions of this great lawyer and most accomplished scholar at successive periods of his life after he became a resident of this country; and it is well known that no man ever entertained a more enthusiastic admiration of the form and substance of the trial by jury as the noblest bulwark of the constitution of England.

The language of Lord Cornwallis on that great occasion was in the same spirit, simple, dignified, full of wisdom as respected his own country, full of humanity as regards our native subjects.

Minute of Lord Cornwallis, 1793.

"Two of the primary objects which this Government ought to have in view in all its arrangements are, to ensure its political safety, and to render the possession of the country as advantageous as possible to the East India Company and to the British nation. It is a source of pleasing reflection to know that, in proportion as we contribute to the happiness of the people and the prosperity of the country, the nearer we approach to the attainment of these objects. A spirit of industry has been implanted in man, that in seeking his own good he may contribute to the public prosperity. The husbandman and manufacturer will toil incessantly if they are permitted to reap the profit of their labour. They will render a country rich and powerful if the Government under which they live will only afford them protection. This is the firmest basis on which we can build our political safety, and impressed with this consideration, I have directed much of my attention during

during my residence in this country to the improvement of the administration of justice." With this view he raised the administration of justice, which had before been considered a subordinate duty, to that primary rank which its superior importance demanded. He separated the fiscal from the judicial functions, he selected as judges the servants of the Company most distinguished for their integrity, abilities and knowledge of the natives, and he made their allowances proportionate to the greatness of their trust.

Minute by the Right Hon. S. R. Lushington; 7 January 1828.

By this course he established the means of restraining the tyranny and extortion which had been so frequently exercised by the native officers of the revenue, and of protecting the lives and property of the people. The principles of that system have been since subjected to the fullest examination here and at home; they have been applauded and maintained by Lord Teignmouth, Lord Wellesley, Lord Minto, Lord Hastings, Mr. Adam and Lord Amherst, successive Governors-general during a quarter of a century; they have received the warmest sanctions of the ablest and best of the Company's civil servants in Bengal, Mr. Colebrooke, Mr. Edmonstone, Mr. Stuart, Mr. Harington, Sir H. Strachey, Mr. E. Strachey, Mr. Hamilton, Mr. Ernst, &c. &c.; and, in the practical execution of this system, there have arisen in Bengal other men like those whose talents and conduct I have named, doing honour to the British name.

Into these territories this same system was introduced under the auspices of Lord Clive and of two of the ablest and best men that this service has ever boasted, Mr. Josiah Webbe and Mr. Thomas Cockburn. It has since received the praise and sanction of many of their most distinguished successors, Messrs. Fullerton, Alexander, Ravenshaw, Hodgson, Hurdis, Falconer, &c. &c. Fortified by the sentiments and conduct of such an assemblage of authorities in favour of the principles of this system, who all regarded it with admiration and reverence, each in his turn maintaining and strengthening it, it is impossible for me to rush at once to the conclusion that I ought to support a plan framed by two circuit judges at Chittoor, which is so directly and avowedly opposed to it. I am warned by the recollection that it is the infirmity of weak minds to rush on where abler men fear even to tread; and though it be true, I find, that the idea of administering criminal justice in the provinces by native juries did receive the sanction of my distinguished predecessor in the last months of his administration, yet at present I regard this as one of those mistakes of the wise in life's last days, to which he was excited by the importunities of inconsiderate zealots, which we approach with tenderness to lament, but not to imitate. After an attentive perusal of the Minute of Sir Thomas Munro, and of his writings upon this subject at a former period, I still find it impossible to give a blind consent to the commencement of this proceeding without further inquiry. It is possible, as stated by him, (although I think most improbable,) that "the long trial which the system has now had has shown all its defects, and how utterly unsuited it is to its purpose, and has convinced many of our most experienced judges, who were once its zealous supporters, that it cannot be continued with advantage to the country." But before I proceed one step towards the subversion of this system, I must have better proof of this conviction. I desire to see whether such opinions are really entertained by our judges; whether they seriously believe that the proposed Regulation is a fit remedy for any existing evils, and upon what foundations their opinions rest. And I am the more decided in determining upon this delay by the following passage in one of Colonel Munro's papers upon this very subject:—

Answers to Court's Queries, 1813.

"The Hindoos did not employ punchayets in criminal cases. The judge, either alone or with the assistance of his deputies or other public officers, tried and passed sentence." But on one point stated in Sir Thomas Munro's Minute I have no hesitation in declaring at once my unqualified dissent. I can never admit that "there cannot be a stronger proof of this change of opinion (among our judges) than the draft of a Regulation for trial by native juries in criminal cases which has now been brought forward by the 2d and 3d judges of the Centre Division, Messrs. Newnham and Dacre." To my understanding, there is nothing proved in this draft of a Regulation submitted by these two circuit judges but their entire unfitness for the legislative office they thought fit so irregularly to assume; and I feel that any encouragement of their vehement and ill-directed zeal may be attended with disastrous consequences to the public tranquillity, especially as one of them, Mr. Dacre, has, I understand, thought fit to use the very court in which he administers justice for the purpose of preaching in praise of his own and in reprobation of other religious creeds. It is impossible for any man to foresee the consequences of

Minute by the Right Hon. S. R. Lushington; 7 January 1828.

such conduct, when brought to the observation of Mussulmans and Hindoos, collected from all quarters of the province, to serve upon the onerous and to them totally unintelligible duty of jurymen.

Even the modified adoption of the trial by jury, as proposed in this Regulation, would lead to the total subversion of the existing system of judicature. The preamble declares one of the chief prospective advantages of its introduction to be the removal of the necessity for recording written evidence in trials. This notion has proceeded from a blind acquiescence in the excellence of our English forms, without reference either to the manners and habits of the persons to whom justice is to be administered or to the character of the executive officers.

The non-recording of evidence, and the necessity of finishing the trial in one day, does, it is allowed, tend to disencumber the law proceedings in England from a large mass of matter, and to expedite the decision; but let it be remembered that that decision is pronounced by an intelligent jury, guided by the profound learning and long experience of judges, who, versed from their youth in the general theory of law, and exercised through a long period of years in the practice of the courts, are not invested with the executive administration of justice before they are thoroughly qualified to discharge its important functions.

The servants of the Company, on the other hand, however zealous, however endowed by nature with abilities, generally enter upon the performance of their judicial duties with little or no knowledge of the theory of law, and can only arrive at excellence in the administration of justice by long practice.

To obviate the evils which might have resulted from this ignorance of the theoretical, and inexperience in the practical, part of the administration of justice, Lord Cornwallis most wisely and providently established a succession of checks, by which the erroneous judgments of the junior and less practised servants might be corrected by the experience and extended knowledge of the senior judicial officers. From the native commissioner up to the circuit courts, the evidence of every trial, the reasons of every decision, were recorded, and they were finally subjected to the skilful examination of the Sudder Adawlut. To abolish the necessity for recording evidence would be to break the main link of this chain of checks, to leave to the inferior officers an uncontrolled power, and to strike at the very root of the purity of the administration of justice.

In opposition to the statement contained in the Report of the two judges of circuit of the inefficiency of our judicature, I learn from various quarters that the judicial system, wisely established upon the principles of Lord Cornwallis in these territories, has not been fairly tried during these latter years; that it has been discouraged and regarded as a subordinate duty; that unfit persons have been appointed to administer it, and that their defects have been charged upon the system; that during the last 15 years not more than nine of the Company's servants, and that during the last three years not one, has studied the Persian language, in which the records of the judicial courts are kept; and that many of the judges do not understand this language, in which the futwahs of the law officers are written, and are therefore unable to communicate with them, so as to correct any errors in their view of the evidence, and in the application of the law to that evidence. If these statements at all approach the truth, and I regret to say that the half-yearly Report which I have this day received from the College shows that there is not a single Persian student there, I shall not wonder that the system is represented as degraded and unsuited to its purpose by those who are incompetent to discharge its great duties. At this early period I cannot speak with any confidence upon the accuracy of these representations; but, whether true or not, it is a great consolation to me to know that this Board can in time apply a remedy to the progress of these evils, if they really exist, without subverting the system.

Preparatory thereto, I propose that the secretaries of the College should be required to transmit a statement, exhibiting the names of the students of the college from its first institution, the languages they have been severally taught, and the degrees of proficiency or honour they have respectively attained; that the Court of Sudder Adawlut be required to submit a statement of the names of the judicial officers of all ranks now employed under them, showing the languages they understand, and who of them are competent to confer freely with the Mahomedan law officers upon the evidence as written in the Persian language, and upon the principles and dicta of Mahomedan law applicable to the evidence, without which it is obvious they cannot aid, advise, direct or check each other, for the purposes of justice.

In

Minute by the Right Hon. S. R. Lushington; 7 January 1828.

In consequence of the description given in the Report of the two circuit judges, and in Sir Thomas Munro's Minute, of the loss of time, vast labour, and unprofitable issue of our criminal trials, as now conducted, I sent to the Sudder Adawlut for the record of the last trials received from each of the divisions under this Presidency, the Northern, Centre, Southern and Malabar, that I might be convinced with my own eyes of the real nature and process observed in these trials.

I now submit them to the Board, and I recommend that exact copies of them be sent for the examination of the Honourable Court of Directors by the next despatch.

I have read over these trials in the English and in the Persian, and so far am I from concurring in the sweeping condemnation of the existing mode of proceeding, and in the contemptuous degradation of the Mahomedan law officers, that I have been most agreeably surprised to find so much to approve, and so little to reprehend. The forms, as prescribed in the Regulations, are exactly followed, and are simple and intelligible.

The charge of the prosecutor, the depositions of the witnesses, the defence of the prisoner, are all written in the Persian and English languages, and the Teloogoo or Tamil version is retained at the Provincial Court. Every thing is done publicly in open court, and carefully recorded, and all that passes is sent to the Sudder Adawlut in a state for their revision.

The principal animadversion that I should be disposed to make upon these trials would be directed to the Report of one of the very judges, Mr. Newnham, who first proposed the new process of trying criminals by native juries, for the inflated and extravagant rhapsodies with which he has loaded the proceedings, wasting his own and the more valuable time of the Sudder Adawlut.

This trial too is the more worthy of attention, because it demonstrates some of the difficulties which native juries, chosen as prescribed by the existing Regulation, would feel in arriving at any intelligible or just verdict in criminal cases. To correspond with our English notion of a jury, that every man shall be tried by his peers, every Mussulman should be tried by a Mussulman jury, every Hindoo by a jury of the particular caste to which he belongs. Mussulmans would give their verdict according to their law, and they are divided into two sects, Sunnees and Sheeahs, who differ in regard to many traditions of their Prophet, and to some decisions of their lawyers; and both sects bear a mortal hatred to each other on occasions which call these differences into activity. The Hindoos, if tried by their peers, must be tried by Hindoos of the caste to which they belong, and of which there might be as many castes as jurors, each caste regulating its verdict by the Hindoo criminal law as applicable to themselves. In the case in question, the prisoner would most probably have been entirely acquitted by a jury of Mahomedans giving a verdict according to their own laws and customs; slightly punished or entirely absolved by a jury of Hindoos if of high caste, and inevitably condemned to death by a jury of Hindoos if of low caste.

This is the clearest part of Mr. Newnham's report upon the case. It is almost superfluous to remark, that unjust distinctions and partial respect for persons are the very basis of all their customs, laws and religion, and the very reverse of all our notions of conscience, equity and justice. For the present, therefore, I adopt the opinion of Sir H. Strachey: "I cannot conceive British judges administering Hindoo criminal law, or permitting its administration under their superintendence. Amongst the Hindoos not one man in a million knows anything of his law books. The most terrible penalties are denounced against all but those of the highest caste who presume to read their law books. Without hesitation I affirm that the people derive benefit from our system of government, and the best part of it I conceive to be the judicial system, if rightly administered."

The other trials are perfectly clear. The depositions of witnesses and the proceedings of the Court and the futwah of the law officer are written in English and in Persian; thus enabling the judges of the Sudder Adawlut and their native law officers effectually and easily to revise them.

There is nothing on the face of these trials to alarm the idlest examiner; and I can, upon reflection, discover nothing in the labour arising out of them to extinguish the faculties of the least zealous of our judges, *duly qualified*. To see that the judges as well as the law officers are so qualified, appears to me the first practical requisite to the due administration of justice; and after the reports now recommended to be required shall have been received, I shall call the special attention of the Board to this subject.

Minute by the Right Hon. S. R. Lushington; 7 January 1828.

I have already stated, upon the general information which I have at present received in regard to the judges of all descriptions, and the whole body of the civil servants, that not more than nine of them can read and write or understand the Persian language. This Presidency has, if this be true, decidedly receded in this necessary qualification since 1793, for then (10 years before the establishment of the judicial system) there were 18 persons in 154 who had a competent knowledge of this language, and now that the whole number of civil servants is 211, with an extent of territory and of duty requiring this qualification in still greater proportion, I hear with regret and surprise that the whole number who aspire to any knowledge whatever of the Persian language does not exceed nine. It will afford me sincere pleasure to find that I am misinformed in this calculation; but I fear that the solution of this deteriorated state of the service in this respect is to be found in the Regulations of the College, which almost proscribe the study of that language, thus paralysing and rendering abortive all the anxious pains and expense so properly bestowed upon it at Hertford College.

The reasoning upon which this course has been adopted I understand to be the necessity of restraining the superior allurement which the Persian language holds out to the students: that it was, therefore, thought necessary to *compel* them at first to devote their exclusive attention to those more difficult languages, Tamil, Teloogoo, Malayalum and Canarese, and to restrain the study of the Persian language. I have no doubt that the intention of the framers of this Regulation was perfectly good, but the evil consequences which have followed from restraining the inclination of students for the study of Persian, the language most cultivated by the College at Hertford, the language deemed indispensable to a judicial servant in Bengal, and that which I consider to be the most generally useful of all the written languages of these varied and extensive territories, require that it should be changed, and I recommend that the attention of the members of the College be immediately called to the correction of this part of the Regulations. There can be no mistake greater than that which I find to prevail in some quarters, that in a province where the Tamil or Teloogoo or Canarese is the vernacular language, Persian is useless, and that primary attention should be given to the reading and writing of the vernacular languages. From long experience in the most Tamil districts of our provinces, the southernmost part of the peninsula, I know that every duty required of a collector or a judge may be duly performed with a written knowledge of Persian, and no written knowledge of Tamil or Teloogoo. Amildars, tasseldars and sheristadars well qualified in the Persian and in the Tamil languages can be obtained in any number, and since we succeeded to the actual government of the Carnatic and Tanjore these are the very persons most distressed for want of employment. Many of them are the intelligent descendants of ancient and respectable families, Mussulman and Mahratta, and policy as well as humanity require that they should have a fair share of our official service. I always found their representations of the state of the talooks and of the people a salutary check upon the Malabar statement of the monegars and other subordinate officers. The one assisted to restrain and correct the other. It would be easy to enumerate instances in other years in confirmation of this opinion, but I will confine it to a single recent case.

The late Sir Thomas Munro himself could not read or write a single line of Tamil, Teloogoo, Malayalum or Canarese, the four languages prescribed as essential and indispensable in the Regulations of the College. In the Persian language he was an excellent scholar, and no man will contend that he was deficient in any qualification that could be properly expected in a civil servant on this establishment.

For my own part, I deem the knowledge of Persian so much more necessary to the civil servants than any other language in the present state of the duties they have to perform, and their qualifications to perform them, that I shall regard this knowledge as the first to be cultivated, and possession of it the best recommendation they can add to general good character when they seek for promotion in the service.

(signed) *S. R. Lushington.*

MINUTE by *H. S. Græme*, Esq.; 29 January 1828.

Minute by H. S. Græme, Esq.; 29 January 1828.

In my Minute of the 28th ultimo, I gave reason to expect that I would explain, to the satisfaction of the Honourable the Court of Directors, the conduct of the preceding Government in enacting that the trial by jury should be gradually introduced into the territories dependent upon the Madras Presidency. This explanation is made necessary by the terms in which the Right Honourable the President, Mr. Lushington, has stigmatized the mode of introducing trial by jury.

In his Minute of the 21st ultimo, he states that "the most remarkable feature in this proceeding is the precipitancy with which this great change has been introduced. Instead of undergoing that patient investigation which its novel and momentous nature demanded, instead of being subjected to mature examination and discussion among the most experienced judicial officers of the Provincial and Sudder Courts, the proposition, recommended by the imperfect arguments of two circuit judges, without having been submitted to the senior judge or to the Foujdarry Adawlut, is at once embraced and framed into a Regulation, in disregard of all those wholesome restraints which the orders of the Company and the experience of successive Governments have imposed upon the too fervent zeal of inconsiderate subordinate officers, and in defiance of the earnest entreaty of the Commander-in-Chief that this Board would pause before it authorized a plan replete with so much mischief."

In his Minute of the 7th instant, Mr. Lushington asks, "Is it to be believed that it (the trial by jury) should be reserved as a discovery to be made by two circuit judges at Chittoor, in 1827, as analogous to the ancient institutions of the Hindoos and Mahomedans, and as an object so desirable because of its certain tendency to increase the improvement and happiness of man?" and Mr. Lushington further remarks, "It is impossible for me to rush at once to the conclusion that I ought to support a plan framed by two circuit judges at Chittoor, which is so directly and avowedly opposed to it," (the system of criminal judicature introduced by Lord Cornwallis in 1793). "I am warned by the recollection that it is the infirmity of weak minds to rush in where abler men fear even to tread, and though it be true, I find, that the idea of administering justice in the provinces by native juries did receive the sanction of my distinguished predecessor in the last months of his administration, yet at present I regard this as one of those mistakes of the wise in life's last days, to which he was excited by the importunity of intemperate zealots, which we approach with tenderness to lament, but not to imitate."

It is painful to observe throughout Mr. Lushington's Minutes an earnest attempt to make the superior Sir Thomas Munro appear a passive weak instrument in the hands of inconsiderate zealots, who, in his judgment, have proved their entire unfitness for the legislative office they thought fit to assume, in submitting the draft of a Regulation for the trial by jury! To his honourable employers therefore it should be known that Sir Thomas Munro preserved the vigour of his faculties with his ruling passion, the good of the country, strong in death, and there were not many minds to which the vigour of Sir Thomas Munro's quailed.

His general character for forecast, and the innate evidence afforded by his Minute of June 1827, written a month only before his decease, are sufficient to acquit him of precipitancy in the measure in question; but there is proof in the enclosed extract of a letter from him to the Marquis Hastings when he was First Commissioner for that the important subject engaged his serious attention so long ago as the year 1818. In his letter of 12 November 1818, he recommends that natives should be employed in every situation where they are better calculated than Europeans to discharge the duty required; and he expressly states his opinion that in all original suits they are much fitter to investigate the merits than Europeans; that the European judges should be confined almost entirely to the business of appeals; that in criminal cases the fact should be found by a native jury, who are much more competent than either the European judge or his law officers to weigh the nature of the evidence. The principles upon which his principle is founded are explained in the extract; but as they are more amply and more powerfully developed in a Minute which he wrote as Governor of this Presidency on the 31st December 1824, I shall quote largely from that Minute.

Original.

Extract of a Minute of Sir *Thomas Munro*; 31 December 1824.

Minute by H. S. Græme, Esq.; 29 January 1828.

"Para. 22.—It is strange to observe how many men of very respectable talents have seriously recommended the abolition of native, and the substitution of European agency to the greatest possible extent. I am persuaded that every advance made in such a plan would not only render the character of the people worse and worse, but our Government more and more inefficient. The preservation of our dominion in this country requires that all the higher offices, civil and military, should be filled by Europeans; but all offices that can be left in the hands of natives without danger to our power might with advantage be left to them. We are arrogant enough to suppose that we can with our limited numbers do the work of a nation. Had we ten times more we should only do it so much worse. We already occupy every office of importance. Were we to descend to those which are more humble, and now filled by natives, we should lower our character, and not perform the duties so well. The natives possess, in as high a degree at least as Europeans, all those qualifications which are requisite for the discharge of the inferior duties in which they are employed. They are in general better accountants, more patient and laborious, more intimately acquainted with the state of the country and the manners and customs of the inhabitants, and are altogether more efficient men of business. Unless we suppose that they are inferior to us in natural talent, which there is no reason to believe, it is much more likely that they will be duly qualified for their employments than Europeans for theirs, because the field of selection is so much greater in the one case than in the other. We have a whole nation from which to make our choice of natives, but in order to make choice of Europeans, we have only the small body of the Company's covenanted servants. If it be admitted that the natives often act wrong, it is no reason for not employing them; we shall be oftener wrong ourselves. What we do wrong is not noticed, or but seldom and slightly; what they do wrong meets with no indulgence. We can dismiss them and take better men in their place. We must keep the European, because we have no other, or perhaps none better, and because he must be kept at an expense to the public, and be employed some way or other, whatever his capacity may be, unless he has been guilty of some gross offence. But it is said that all these advantages in favour of the employment of the natives are counterbalanced by their corruption, and that the only remedy is more Europeans with European integrity. The remedy would certainly be a very expensive one, and would as certainly fail of success were we weak enough to try it. We have had instances of corruption among Europeans, notwithstanding their liberal allowances; but were the numbers of Europeans to be considerably augmented, and their allowances as a necessary consequence somewhat reduced, it would be contrary to all experience to believe that this corruption would not greatly increase, more particularly as Government could not possibly exercise any efficient control over the misconduct of so many European functionaries in distant provinces, where there is no public to restrain it. If we are to have corruption, it is better that it should be among the natives than among ourselves, because the natives will throw the blame of the evil upon their countrymen; they will still retain their high opinion of our superior integrity; and our character, which is one of the strongest supports of our power, will be maintained. No nation ever existed in which corruption was not practised to a certain extent by the subordinate officers of Government. We cannot expect that India is in this point to form an exception; but though we cannot eradicate corruption, we may so far restrain it as to prevent it from causing any serious injury to the public interests. We must for this purpose adopt the same means as are usually found most efficacious in other countries. We must treat the natives with courtesy, we must place confidence in them, we must render their official situations respectable, and raise them in some degree beyond temptation by making their official allowances adequate to the support of their station in society. With what grace can we talk of our paternal Government if we exclude them from every important office, and say, as we did till very lately, that in a country containing fifteen millions of inhabitants no man but a European shall be entrusted with so much authority as to order the punishment of a single stroke of a rattan? Such an interdiction is to pass a sentence of degradation on a whole people, for which no benefit can ever compensate. There is no instance in the world of so humiliating a sentence having ever been passed upon any nation. The weak and mistaken humanity which is the motive of it can never be viewed by the natives as any just excuse for the disgrace inflicted on them by being pronounced to be unworthy of

trust

Minute by H. S. Græme, Esq.; 29 January 1828.

trust in deciding on the petty offences of their countrymen. We profess to seek their improvement, but propose the means the most adverse to success. The advocates of improvement do not seem to have perceived the great springs on which it depends: they propose to place no confidence in the natives, to give them no authority, and to exclude them from office as much as possible; but they are ardent in their zeal for enlightening them by the general diffusion of knowledge. No conceit more wild and absurd than this was ever engendered in the darkest ages; for what is in every age and every country the great stimulus to the pursuit of knowledge but the prospect of fame or wealth or power? or what is even the use of great attainments, if they are not to be devoted to their noblest purpose, the service of the community, by employing those who possess them according to their respective qualifications in the various duties of the public administration of the country? How can we expect that the Hindoos will be eager in the pursuit of science unless they have the same inducements as in other countries? If superior acquirements do not open the road to distinction, it is idle to suppose that the Hindoo would lose his time in seeking them; and even if he did so, his proficiency, under the doctrine of exclusion from office, would serve no other purpose than to show him more clearly the fallen state of himself and his countrymen. He would not study what he knew could be of no ultimate benefit to himself; he would learn only those things which were in demand, and which were likely to be useful to him, namely, writing and accounts. There might be some exceptions, but they would be few: some few natives living at the principal settlements, and passing much of their time among Europeans, might, either from a real love of literature, from vanity, or some other cause, study their books, and if they made some progress it would be greatly exaggerated, and would be hailed as the dawn of the great day of light and science about to spread all over India. But there always has been, and always will be, a few such men amongst the natives, without making any change in the body of the people. Our books alone will do little or nothing; dry simple literature will never improve the character of a nation. To produce this effect, it must open the road to wealth and honour and public employment. Without the prospect of such reward, no attainments in science will ever raise the character of a people. This is true of every nation as well as of India. It is true of our own. Let Britain be subjugated by a foreign power to-morrow; let the people be excluded from all share in the Government, from public honours, from every office of high trust or emolument, and let them in every situation be considered as unworthy of trust, and all their knowledge and all their literature, sacred and profane, would not save them from becoming in another generation or two a low-minded, deceitful and dishonest race.

"23. Even if we could suppose that it were practicable, without the aid of a single native, to conduct the whole affairs of the country, both in the higher and in all the subordinate offices by means of Europeans, it ought not to be done, because it would be both politically and morally wrong. The great number of public offices in which the natives are employed is one of the strongest causes of their attachment to our Government. In proportion as we exclude them from these, we lose our hold upon them, and were the exclusion entire, we should have their hatred in place of their attachment: their feeling would be communicated to the whole population and to the native troops, and would excite a spirit of discontent too powerful for us to subdue or resist. But were it possible that they could submit silently and without opposition, the case would be worse: they would sink in character; they would lose, with the hope of public offices and distinction, all laudable ambition, and would degenerate into an indolent and abject race, incapable of any higher pursuit than the mere gratification of their appetites. It would certainly be more desirable that we should be expelled from the country altogether than that the result of our system of government should be such a debasement of a whole people. This is, to be sure, supposing an extreme case, because nobody has ever proposed to exclude the natives from the numerous petty offices, but only from the more important offices now filled by them: but the principle is the same, the difference is only in degree; for in proportion as we exclude them from the higher offices, and a share in the management of public affairs, we lessen their interest in the concerns of the community and degrade their character."

"27. There was nothing in which our judicial code, on its first establishment, departed more widely from the usage of the country than in the disuse of the punchayet. When this ancient institution was introduced into our code, in 1816, there was so much

Minute by H. S. Græme, Esq.; 29 January 1828.

much objection to it, both at home and in this country, lest it should become an instrument of abuse, that it was placed under so many restrictions as to deprive it of much of its utility. It was unknown to some of the Company's servants as anything more than a mode of private arbitration; it was known by others to have been employed by the natives in the decision of civil suits, and even of criminal cases, but it was imagined to have been so employed, not because they liked it, but because they had nothing better; and it was opposed by some very intelligent men, on the ground of its form and proceedings being altogether so irregular as to be quite incompatible with the system of our courts. All doubts as to the popularity of punchayets among the natives must now have been removed by the reports of some of the ablest servants of the Company,* which explain their nature, and show that they were in general use over extensive provinces. The defects of the punchayet are better known to the natives than to us; yet, with all its defects, they hold it in so much reverence, that they say, "Where the punj sits God is present." In many ordinary cases the punchayet is clear and prompt in its decision, but when complicated accounts are to be examined it is often extremely dilatory. It adjourns frequently; when it meets again some of the members are often absent, and it sometimes happens that a substitute takes the place of an absent member. All this is, no doubt, extremely irregular; but the native government itself is despotic and irregular, and every thing under it must partake of its nature. These irregularities, however, are all susceptible of gradual correction; and indeed, even now, they are not found in practice to produce half the inconvenience that might be expected by men who have been accustomed to the exact forms of English courts of judicature. They ought not to prevent our employing the punchayet more than we have hitherto done, because its duties are of the most essential advantage to the community, and there is no other possible way by which they can be so well discharged. The natives have been so long habituated to the punchayet in all their concerns, that not only in the great towns, but even in the villages a sufficient number of persons qualified to sit upon it can be found. We ought to avail ourselves of their aid, by extending the range within which the operations of the punchayet are now confined. Its cognizance of all suits within a certain amount, both in the zillah and district moonsiff's courts, should be abolished, and neither party should have the option of declining its jurisdiction. The same rule should hold in all cases tried by the collector. The use of the punchayet in criminal trials has been recommended by several persons, and among others by a very intelligent judicial officer,† who submitted a draft of a Regulation for the purpose. I am persuaded that the measure would be very beneficial, and that until it is adopted facts will never be so well found as they might be. The employment of the punchayet, independently of the great help it affords us in carrying on the business of the country, gives weight and consideration among their countrymen to those who are so employed, brings us in our public duties into better acquaintance and closer union with them, and renders our Government more acceptable to the people."

* Mr. Elphinstone, Sir J. Malcolm, and Mr. Chaplin.

† Mr. Wright, Judge of North Arcot.

"40. There is one great question to which we should look in all our arrangements; what is to be their final result on the character of the people? Is it to be raised or to be lowered? Are we to be satisfied with merely securing our power, and protecting the inhabitants, leaving them to sink gradually in character lower than at present, or are we to endeavour to raise their character, and to render them worthy of filling higher situations in the management of their country, and of devising plans for its improvement? It ought undoubtedly to be our aim to raise the minds of the natives, and to take care that whenever our connexion with India might cease, it did not appear that the only fruit of our dominion there had been to leave the people more abject, and less able to govern themselves than we found them. Many different plans may be suggested for the improvement of their character, but none of them can be successful, unless it be first laid down as a main principle of our policy, that the improvement must be made. This principle once established, we must trust to time and perseverance for realizing the object of it. We have had too little experience, and are too little acquainted with the natives to be able to determine without trial what means would be most likely to facilitate their improvement. Various measures might be suggested, which might all probably be more or less useful; but no one appears to me so well calculated to ensure success as that of endeavouring to give them a higher opinion of themselves, by placing more confidence in them, by employing them in important situations, and perhaps by rendering them eligible to almost every office under the Government.

ment. It is not necessary to define at present the exact limit to which their eligibility should be carried, but there seems to be no reason why they should be excluded from any office for which they were qualified, without danger to the preservation of our own ascendency."

Minute by H. S. Græme, Esq.; 29 January 1828.

" 43. Those who speak of the natives as men utterly unworthy of trust, who are not influenced by ambition or by the love of honourable distinction, and who have no other passion but that of gain, describe a race of men that nowhere exists, and which if it did exist would scarcely deserve to be protected. But if we are sincere in our wishes to protect and render them justice, we ought to believe that they deserve it. We cannot easily bring ourselves to ' take much interest in what we despise and regard as unworthy. The higher the opinion we have of the natives, the more likely we shall be to govern them well, because we shall then think them worthy of our attention.' "

Do these benevolent, these prudently and practically liberal sentiments, which would do honour to any statesman, philosopher or philanthropist, in any age or nation, betray their rise from any but a profound source? Do they indicate any weak dependence upon inconsiderate zealots and unfit legislators? Do they not bear innate evidence of a good mind, possessed of a sound knowledge of human kind? Was it irrationally presumptuous in such a mind, capable as it must have seen itself to be of infusing confidence into others, to entertain such a confidence in its own powers as to attempt carrying into effect a plan of its own conception for improving the moral condition of the people entrusted to its rule? Is it to be a reproach to the energetic character of Sir Thomas Munro, that his successor feels himself unable to enter into his comprehensive views? Is he therefore to be charged with precipitancy? Without a head to concentrate and give form to the loose unconnected particles to be found floating on the surface, no improvement of importance can ever be undertaken.

But Sir Thomas Munro's circumspection did not allow the bent of his original genius to outmarch the feelings of all his contemporaries. Trial by jury among the natives had already been established for the last 15 years in the neighbouring Island of Ceylon. The Legislature had already sanctioned the admission of natives of India into the petty juries at the Presidencies of Bengal, Madras and Bombay. The answers of many intelligent officers acting under the Bombay Government in the Southern Mahratta countries to queries circulated by Mr. Elphinstone, the Governor, were favourable to it. It had already received the concurrence of many whom he considered capable of judging among the old European residents of India. His communications with some of the first characters that ever appeared in India, both personally and by letter, during his long and eventful career, were extensive and intimate. Sir John Malcolm, his old friend, who is as justly celebrated for his knowledge of character and human nature as for the variety of his information on all Indian affairs, and for the happy open manner which has so gained the confidence and attachment of the natives of India, had recommended the use of punchayets in criminal cases in his work on Central India. That able man, Colonel Mark Wilks, also recommends it [*see* note 3, page 502, of 1st volume, first edition of his Historical Sketches of the South of India]. He declares, that "he conscientiously believes that, for the purpose of discriminating the motives of action and the chances of truth in the evidence of such a people, the mature life of the most acute and able European judge, devoted to that single object, would not place him on a level with an intelligent Hindoo punchayet." He says, "that these suggestions" (with others in the same note) "are the consequences of deliberate discussion with some of the most able and efficient instruments of the present system; of a careful and vigilant observation of the conduct and practical operation of a Hindoo court, which has been established within the last five years at Mysore; and of a coincidence with the mature judgment of regular English lawyers free from the trammels of their profession." . . . . "The names of some of them," he adds, "if I were at liberty to adduce them, would give irresistible weight to the opinions which I have attempted to sketch."

Besides Mr. Newnham and Mr. Dacre, two most respectable and able judges of circuit in the Centre Division, it had been recommended by Mr. Wright, zillah judge of Chittoor, in 1812; by Mr. Charles Harris, first judge of the Provincial Court for the Centre Division, in 1816; and by Mr. A. D. Campbell, magistrate in Bellary, in 1822.

Minute by H. S. Græme, Esq.; 29 January 1828.

These examples amply justified the assertion of Sir Thomas Munro, from which Mr. Lushington dissents, that "the long trial which the (present) system has now had has convinced many of our most experienced judges, who were once its zealous supporters, that it cannot be continued with advantage to the country." Sir Thomas Munro adds, "that there cannot be a stronger proof of this change of opinion than the draft of a Regulation for trial by native juries in criminal cases which has now been brought forward by the second and third judges of the Centre Provincial Court." I beg to maintain that few thought more favourably of the system in their early judicial career, and few have to the latest period supported it more effectually by their labours than Mr. Newnham and Mr. Dacre. Mr. Wright was zillah judge of Chittoor for about 12 years, and about two years judge of the Provincial Court for the Centre Division. In the same division, Mr. Charles Harris was first judge of the Provincial Court for about ten years. I beg to subjoin the opinions of the public officers mentioned.

Extract of a Letter from Mr. *Wright* to the Secretary to Government in the Judicial Department, under date the 1st July 1812.

"It has been supposed that the institution of trial by jury is not suited to the genius of the people of India; but if the objection be well examined, it probably will be found not to be true. That the institution would be very acceptable to all descriptions of people who have any opinions on the subject, there can be little doubt; and, so far from appearing novel in its nature, it bears an analogy to some of the customs of the inhabitants, particularly the Hindoos; and the trial by native courts-martial (a sort of jury) has been introduced with great success into the native army: the institution could not indeed be introduced as it exists in England; it would require to be modified and adapted to the capacities of a less enlightened people, and the circumstances of the country."

Extract from the Report of Mr. *Harris*, 1st Sessions, 1816; dated 26 June 1816.

"Para. 15. I do not suppose there can be a European judge in India whose sentiments are not against the Mahomedan law, and the usual interpretations of it, as fit to dictate the sentences in trials. It abounds in absurdity, injustice and cruelty. It has been modified by the Regulations of the English Government, but its evils remain almost entire, and are aggravated by the interpretation of the canzees and muftees. It is said indeed by Montesquieu and other writers, that the domestic laws of every country are the best for it, but they do not maintain that a law to be domestic must be made by a native. Laws made in any part of the world agreeably to justice and local usages must be domestic, though the legislators should be foreign. The Mahomedan law neither was enacted in India, nor is recommended by any general principles of morality. Bad as it is, it perhaps does not come up to the Hindoo law in absurdity, injustice and cruelty, but it must be so far more pernicious than the Hindoo law, as it is contrary to local usages.

"16. In all punchayets the natives of India have their business settled by their peers. It would therefore be perfectly familiar to them to see offenders among them tried in the same manner. A few rules plain and short, and written from experience and a sense of justice in regard to evidence, would constitute a domestic law, and possess in an eminent degree the claim of excellence over every other.

"17. I am therefore thoroughly convinced that an entire relinquishment of the Mahomedan law in the criminal department, and the establishment of punchayets, instead of canzees and muftees, would be the greatest benefit to the country, and mitigation of labour to the Courts of Circuit and Foujdarry Adawlut. The punchayet would deliver their decision. The judge, if he approves of it, would carry it into execution; if he objected to it, refer it to the superior court, who would finally decide. In the whole process, the guilt or innocence, and, in case of conviction, the nature of the crime and the punishment, might be declared according to opinions founded on the established rules and a sense of justice."

Extract of a Letter from Mr. *A. D. Campbell*, Magistrate of Bellary; dated 2 December 1822.

Minute by H. S. Græme, Esq; 29 January 1828.

"Para. 29. A FURTHER means for preventing crimes would be to facilitate the conviction of offenders. The extreme accuracy of proof required by our courts, added to the technicalities of the Mahomedan law, is a cause which all well-informed natives assign as a reason for the frequency of crime under us compared with that under the native government. A criminal, if secured, was then certain of conviction. Under us, even if apprehended, he has strong hopes of escaping condemnation. The motive for our scrupulous conduct on this point is no doubt highly honourable to our national character, and has its origin in the excellent principles of our own constitution; but our imperfect knowledge of the people, their manners, customs, language and mode of giving evidence, added to the forms and laws of evidence required by the Mussulman law, renders it exceedingly difficult at present to obtain the very connected chain of proof now requisite to lead to the conviction of offenders, and forcibly evinces the necessity of removing every hindrance to the prosecution and conviction of prisoners, as far as may be consistent with the scrupulous maintenance of all sound principles of justice or equity.

"30. As regards the great question of guilty or not guilty on a criminal trial, a jury of well-informed natives themselves are, I conceive, much more competent to pronounce correctly than either ourselves or our Mussulman law officers; and the introduction of such juries under the superintendence of a European judge into our courts of circuit in the first instance, would, I think, be a great improvement, against which I am aware of no obstacle or impediment on the part of the people. It already exists in a modified shape in the army on native courts-martial, and among a class of men there whose education by no means fits them so well for this duty as that of many of the reddies, curnums, merchants and other well-educated natives of the provinces. It is also a mere extension of the punchayet system; but, if deemed at present premature, I submit, that so far as the law of evidence goes, and the verdict of guilty or not guilty is concerned, the Mussulman law and its technicalities should be altogether got rid of, and the decision vested exclusively in the breast of the European judge only, according to equity, justice and conscience, subject to the revision in the established cases of the judges in the superior court, guided by the same rule. It may be said that our old Regulations have been so modified by the enactments of late years, as to be nearly tantamount to this already; but this will apply only partially, and to the Foujdarry and Circuit Courts alone, not to that of the criminal judge, who has been newly clogged with the Mussulman law, without power of appeal against it to the circuit or other courts, even though his judgment should be at variance with the futwa of his law officers. The Bombay Government have, I believe, from the first excluded the Mussulman law, as I have suggested, from all consideration of the verdict of acquittal or conviction, and confined it, as it should be confined, and our late Regulations have been annually restricting it, to the province of pronouncing sentence only, after conviction has taken place, subject to the usual commutation of punishment. I do not despair of seeing in time native juries introduced into our criminal courts. But even the adoption of the Bombay system would, I think, be one step towards such improvement, and greatly tend to facilitate the conviction of the guilty."

All the caution that was requisite and desirable was prescribed before the trial by jury should be extended into all the territories of this Presidency. Sir Thomas Munro, in his Minute of June 1827, proposed that "its operation should be limited for a time to the quarter sessions at Chittoor, but that it should be made applicable to the quarter sessions at the stations of all the provincial courts whenever it may be deemed advisable by the Governor in Council." Its extension, of course, was left to depend upon the degree in which it was found to answer, and upon the will of the actual Government. What further security could be required by the most cautious policy? Punchayets in criminal cases may indeed, strictly in name, be admitted to be an innovation in this part of India, though not entirely so, it would appear from the answers of the officers under the Bombay Government, in other parts of India; but the deputies and other public officers who assisted the judge in trying and passing sentence may be considered as a sort of jury, though they might not be very correctly denominated punchayets. The judge, averse to passing

Minute by H. S. Græme, Esq.; 29 January 1828.

sentence upon a prisoner upon his own responsibility, was assisted by the judgment of others in finding the guilt.

As a member of the Government of which Sir Thomas Munro was the respected head, I have felt myself entitled and called upon to enter into a justification of the measure which Mr. Lushington has been pleased to censure for precipitancy. I should otherwise have left his valuable writings, and the impression which his virtuous and useful life have made, to stand unencumbered with my assistance, as a bulwark against hostile imputations.

But for Mr. Lushington's Minute of the 7th instant, I might have hoped, from his Minute of 21st December 1827 alone, that his censure was intended to be aimed exclusively at me; for he speaks in that "of the measure having been embraced and passed into a Regulation, in defiance of the earnest entreaty of the Commander-in-Chief that 'this Board would pause before it authorized a plan replete with so much mischief.'"

The humane and liberal principles towards the natives of India which characterize Sir Thomas Munro's writings, and which practically influenced his conduct towards them, are those which I am proud to acknowledge I imbibed from him at an early period of life, when I was placed under his immediate authority, and which I shall be equally proud to endeavour to observe in my remaining service to the Honourable Company, subject of course in their exercise to the sanction of superior authority, and to the temporary modification which actual circumstances may point out. Reducing the land assessment when the public finances admit of it; administering justice, civil and criminal, in a speedy, cheap and impartial manner; ameliorating the moral character of the people simultaneously by education, by conferring upon them public employments and distinctions, by allowing them a share in the civil and criminal administration of justice, subserviently to our political ascendency, are the means of improvement, without acting steadily upon which, we can expect to do but little solid good.

Impressed with the importance and soundness of these principles, it cannot be a matter of surprise that I hailed with cordiality a proposition for introducing trial by jury among the natives of India. In a visit which I made to the Chittoor district in May last, where the experiment was first to be made, I had ascertained from some very respectable and well-informed natives that it was likely to be very acceptable. Of my three colleagues in the Government, Sir George Walker indeed had objected, and Mr. James Taylor recorded that, as the measure had passed before he came into Council, he thought it unnecessary to offer an opinion. Mr. Ogilvie stated certain obstacles that opposed the immediate success of the measure, but, on the whole, "it appeared to him that it offered the most efficacious, if not the only means of remedying the defects of the present system, and he considered it of importance that we should try the experiment," stating that "the reluctance to serve on juries" (one of the obstacles he had before mentioned) "might be overcome by conciliation on the part of the local officers, and that it was possible that in time the minds of the natives might be so far imbued with the principles of moral rectitude as to leave little apprehension from the effect of their prejudices in the discharge of their duties as jurors." The judges of the Sudder and Foujdarry Adawlut had by their register, in a letter to Government, of the 16th September 1827, informed the Government that in re-drafting the Regulation for the trial by jury, they had, in addition to the best results of their own observation and experience, consulted several highly respectable and native gentlemen, some of them holding high offices under Government, from whom they had derived the readiest and much very useful information. They observe that among the natives it is a common observation that a jury for trying prisoners are mediators between the accused and the judge, and that this idea is expressed by the word sabha, which is Sanscrit, but has been naturalized (the judges believe) in all the vernacular tongues of Southern India; that the jurors individually are called sabha-sathah. They add, that the natives of competent information still speak of the times when criminal justice used to be so administered under their own kings with apparently a measure of the same feeling with which an Englishman dwells on trial by jury. The letter concludes thus: "The judges are, however, distinctly of opinion that the Regulation in its present form will work well in practice. Errors found by experience may be easily corrected, and there is strong reason to believe that trial by jury will be popular and successful beyond perhaps the expectations of Government."

His Minute, 29 August 1827.

These testimonies to the expediency of trial by jury will, I doubt not, be deemed by

by the Honourable Court a sufficient justification of the Government, of which I was the temporary head, against the charge of precipitancy; but it is as well to point out to notice, that the resolution of introducing the trial by jury had actually passed during the government and lifetime of Sir Thomas Munro. (*See* the extract from the Minutes of Consultation, of the 3d July 1827.) It is stated that "the Board fully concur in the sentiments expressed in the President's Minute, (Sir Thomas Munro's, of June 1827,) and are of opinion that the Foujdarry Adawlut should be called upon to prepare the draft of a Regulation for giving effect to the important measure which is therein recommended."

Minute by H. S. Græme, Esq.; 29 January 1828.

Sir Thomas Munro died on 6th July.

The admission of the natives of India into the petty juries has answered the intentions of the Legislature, as far as it has been hitherto tried in Calcutta and Madras, as will be seen by the speeches of Sir Edward Ryan, one of the puisne judges at Calcutta, and of Sir Robert Comyn, one of the puisne judges at Madras. I acknowledge that their speeches do not afford so much a ground of previous justification to the Government as a confirmation of its anticipations of the success of the measure.

In my Minute of the 18th August 1827, I gave my reasons at some length for considering Mr. Newnham and Mr. Dacre, "admirable instruments for giving effect to the measure;" and to Sir Thomas Munro it appeared that "no time can be more favourable than the present for making the experiment, when it will have the advantage of being superintended by men so well qualified for the task, by their long experience of the present system, and by their knowledge of the language and habits of the natives."

See Sir T. Munro's Minute, June 1827.

Mr. Lushington has arraigned the fitness of these two gentlemen for the purpose in very strong terms. Though I am entitled to express surprise and regret that Mr. Lushington should have thought it necessary to call in question this selection of the preceding Government, particularly when it had been resolved to suspend the measure itself, I cannot but the more regret it on account of its extreme injustice to two meritorious public servants. To me it appears that it is not incumbent upon a just, a liberal, an impartial and paternal government to ferret out the secret foibles of individuals, to render more prominent those of a less concealed nature, and to oppress with the weight of authority and ridicule the most defective parts of individual character; it is rather its duty, as it ought to be its anxious wish, to make allowance for slight imperfections; to discover and to encourage the brightest parts of character; to be satisfied with the qualifications of the individual for the particular duties allotted to him; to look, in short, upon every character as a whole. With these reservations, I continue to regard Mr. Newnham and Mr. Dacre as judiciously selected for the duty of introducing trial by jury; indeed I should say conscientiously, that their indefatigable attention to business and their peculiar zeal for their public duties, little distracted by private pursuits, place them very high in the list of judicial servants.

Mr. Newnham's warmest advocates cannot but regret the diffuseness of his style of writing, the frequent and extensive digressions in his public Reports on trials and other matters from the subject it is his immediate duty to explain to his superiors; but a sincere inquirer after truth will find, from among the judicial officers most capable, by their own attention to business, of knowing, that the main points of Mr. Newnham's duties receive an unwearied, a minute and able investigation from his conscientious mind.

The purity of Mr. Dacre's religious life must operate as a beneficial example, both for Christians and heathens, wherever he may be; but there is no reason to be alarmed that he will be hurried by indiscreet zeal to excite the fears or to offend the prejudices of the natives. His knowledge of them, and his respect for the policy of the State, make him look upon them with a more benign indulgent feeling than is to be found in the majority of Europeans. His and Mr. Newnham's pecuniary sacrifices for them in a time of scarcity greatly exceeded the common bounds of charity. Mr. Dacre is reproached by Mr. Lushington with "having thought fit to use the very court in which he administers justice for the purpose of preaching in favour of his own, and in reprobation of other religious creeds;" and "it is impossible," Mr. Lushington adds, "for any man to foresee the consequences of such conduct when brought to the observation of Mussulmans and Hindoos, collected from all quarters to serve upon the onerous, and to them totally unintelligible, duty of jurymen."

See Minute of Mr. Lushington, 7 January 1828.

I conceive it a duty to endeavour to correct a very erroneous impression which appears to have been made upon the mind of Mr. Lushington, and to prevent the further impression which his Minute is calculated to make elsewhere.

 Perhaps

Minute by H. S. Græme, Esq.; 29 January 1828.

Perhaps it may be as well to notice that the established clergy of Madras have often preached in the college, which was taken by Government for the education of natives in different branches of learning; perhaps it is not quite so well known, but the accompanying public correspondence will show that when the Society of Chittoor applied to Government for a church "to be built there for the accommodation of the Christian inhabitants, European and native," they were told in reply, by the Secretary to Government, that it was thought advisable that "the small congregation of Chittoor should assemble in the Provincial Court-house, or in any other building that might be better adapted to the purpose." I was myself a member of the Chittoor Society when this occurred.

Letters from Messrs. Hawkins and Sherwood to Government, 19th November and 27th December 1816. To Ditto from Secretary to Government, 9th December 1816 and 20th January 1817.

As long as there was any regular chaplain at the station, he alone performed divine service, and preached to the congregation in the Provincial Court; these duties are now performed there by a missionary exclusively. When the regular chaplain was removed, different members of the society, and Mr. Dacre among others, read the service and preached in the Provincial Court, but it was only on the Sabbath-day, and before persons professing themselves Christians; and as the court is not open for business on the Sabbath-day, it is not at all probable that jurymen collected from all quarters of the province would come in contact with Mr. Dacre on that day, in the sacred observance of which Mr. Dacre is known to be strict. And though sermons setting forth the doctrines of the Christian religion must often touch upon the idolatries and superstition of other religions, I believe I may venture to say that it is contrary to the practice of Mr. Dacre "to preach in reprobation of the religious creeds" of the natives of this country with any view of exposing them in a pointed manner to ridicule or contempt.

I cannot agree that the trials from each of the divisions under this Presidency, which have been laid before the Board by the President, give a correct idea of the bulk of papers which so frequently come before the Sudder Foujdarry Adawlut. These are very simple trials, with few witnesses on either side, and in which only a single prisoner is concerned. From my own observation, when I was a judge of the Foujdarry Adawlut, I know them to have been very voluminous, but their numbers, as well as their bulk, require to be taken into the account. I need only refer to the greater experience in the judicial line of one of my colleagues, Mr. Ogilvie, who was himself a circuit judge. He declares that "every person who is in the least acquainted with our present system of administration of criminal justice must see that it is attended with the greatest inconvenience, and imposes on the judicial officers a degree of labour and responsibility unparalleled perhaps in any other country, and it is extremely desirable that some expedient should be devised for improving the system." Add to this respectable proof of the unsuitableness of the present system the actual delay which has taken place between the termination of trials and the carrying of sentences into effect, and let any one examine the facts which I have stated in my Minute of 18th August 1827, on the authority of a statement received from the office of the Sudder Adawlut, therein enclosed, that in the district of Bellary during nine half-yearly sessions, the first commencing in 1823, "that out of 60 cases tried, five only, or about eight per cent., have had sentences passed upon them by the Foujdarry Adawlut within three months after the trial has been completed by the circuit judge; 20, or about 33 per cent., have taken between three and six months; 21, or about 35 per cent., have required between six months and a year; and 13, or about 20 per cent., have been between a year and 18 months before the final sentences have been passed after the prisoners had been tried." That "in the Cuddapah zillah, during 10 sessions, commencing with 1823, there were 143 cases tried, of which none received their sentences within three months after the trials were ended; 12, or about eight per cent., took between three and six months; 84, or about 58 per cent., six, and within 12 months; and no less than 46, or about 38 per cent., 12, and within 18 months. There was one more than 18 months."

Original.

After this statement, it is not easy to dissent from the opinion of Colonel Mark Wilks, that really an enormous amount of technical labour and skill and expense, and the application of most respectable talents, terminates in performing the proposed operation very ill or not all; that the component parts are clogged by their own complexity and misapplication; and that the machinery of an Arnold's chronometer has been applied to perform the work of a smoke-jack.

The corrections of translations of the proceedings of the trial from the native into

into the English language, which the circuit judge is generally obliged to make, and sometimes the translation itself, is alone a considerable drudgery.

Minute by H. S. Græme, Esq.; 29 January 1828.

Of the actual system for the administration of justice to the native subjects of British India, I, with Colonel Wilks, wish "to speak with respect, because it originated and has been continued in the purest motives;" but it would be a profanation of the names of the justly celebrated personages who introduced this bold and benevolent innovation, to say that they would withhold the influence of their decision and humanity in substituting what they might conceive to be a better upon longer experience. If a blind adoration of the criminal jurisprudence of England had continued to cloud the intellects of the nation, Mr. Peel would have been unable to effect his late valuable improvements. Is there anything very alarming in substituting a jury to determine the evidence composed of the countrymen of the prisoners and the witnesses, and understanding their language and customs, for a foreigner who is deficient in these qualifications? and as the Mahomedan law officer continues, by the Regulation, to expound the law on the case, does not the jury furnish additional security for the correctness of the proceedings? and is it not therefore calculated to invigorate rather than weaken the present system? for the presiding judge retains as much power as he ever possessed.

The objections to the trial by jury most likely to make an impression are those stated by Mr. Lushington in the 12th, 13th, 14th and 15th paragraphs of his Minute of 7th January 1828. They are founded upon the imperfect knowledge of the civil servants of the Company of the theory of law, as contrasted with the profound learning and long experience of judges in England, and the consequent inconveniences to be apprehended from the non-recording of evidence which is proposed by the Regulation. Mr. Lushington is of opinion that the "modified adoption of the trial by jury, as proposed in this Regulation, would lead to the total subversion of the existing system of judicature." He states that the preamble declares "one of the chief prospective advantages of its introduction to be the removal of the necessity for recording written evidence on trials." But the act of the Government must be considered the Regulation which it actually passed, (*vide* that of X. A. D. 1827,) and the intention of Government must be gathered from that Regulation, and not from the draft of Messrs. Newnham and Dacre. The preamble then of the actual Regulation states, that "the more extended employment of the natives of India in the administration of criminal justice to their countrymen is calculated to shorten trials, by dispensing with the record of much of what is at present required to be reduced into writing in several languages."

It is only in cases where the Regulations have already vested the circuit judge with the discretion of passing final sentence without referring to the Foujdarry Adawlut, that written depositions are dispensed with.

In cases of graver offences referrible to the Foujdarry Adawlut, the usual course of proceeding directed to be observed is for the evidence to be taken down in the current language of the district, and, with that caution which characterizes the whole measure, as soon as experience should demonstrate that the system worked well, that the correctness and intelligence of the judges and the juries might be depended upon, then the Foujdarry Adawlut is "vested with a discretion to dispense therewith, and to admit in lieu thereof the notes of the presiding judge of circuit whenever they shall deem the same to be expedient;" but the section referred to is transcribed at full length.

Section 20. "It shall not be requisite to reduce any of the evidence into the Persian language. In trials not referrible to the Foujdarry Adawlut, the presiding judge may dispense altogether with written depositions, and in lieu thereof place upon record his own notes of the evidence. In cases referrible to the Court of Foujdarry Adawlut, the evidence for the present shall be taken down in the current language of the district, but a discretion is hereby vested in that court to dispense therewith, and to admit in lieu thereof the notes of the presiding judge of circuit, whenever they shall deem the same to be expedient."

In all referrible cases, therefore, the checks upon the proceedings of the circuit judges remain the same till time shall show them to be unnecessary. The final sentence rests as before with the Foujdarry Adawlut, and not with the judges of circuit, as it does with the judges in England. It is very seldom that a civil servant attains a circuit judgeship before he has been 15 years in the country; a period of service affording a tolerable security for a knowledge of his duty.

It was not intended, as would appear to be supposed by Mr. Lushington, (para. 22, Minute, 7th January 1828,) that the native jury should be made to correspond

Minute by H. S. Græme, Esq.; 29 January 1828.

respond with our English notion of a jury, that every man should be tried by his peers, that every Mussulman should be tried by a Mussulman jury, every Hindoo by a jury of the particular caste to which he belongs, but it was meant to conform to the common practice of the country, which in a punchayet admits of a mixture of castes; Hindoos and Mussulmans join in the same jury. At the Presidencies of Calcutta and Madras Christians we see serve on the jury with Hindoos and Mussulmans, but it was apprehended that in the interior this union might create alarm, and the Regulation therefore expressly confines the eligibility to serve on juries to "residents of the Hindoo or Mahomedan persuasion." There is not, I think, much cause to fear that the jurors will be perplexed by the intricacies of the Mahomedan or the Hindoo criminal law, which the law officers alone are fond of displaying, but it is to be expected that they will be guided by the dictates of plain common sense, assisted by the advice of the presiding judge, in determining whether the prisoner has or has not committed the crime with which he is charged.

Sec. 3, Reg. X. A. D. 1827.

There does not appear to me any necessary connexion between Sir William Jones's observations on the liberty and political freedom of the natives of India and the institution of a tribunal for the more impartial and speedy administration of criminal justice, or that those observations referred specially to trial by jury; and at all events, the Legislature could not have perceived the connexion, or were not alarmed at the consequences, when they lately enacted that the natives of India should be admitted on the petty juries; nor could the judge at Calcutta have entertained any alarm, who declared a short time ago publicly his wish that they should be authorized to serve also on grand juries.

Sir E. Ryan.

The moral character of the people; the various religions and sects into which they are divided, which, on particular occasions, must prevent their being dispassionate and impartial; the onerous nature of the duty to be imposed upon them; and the expediency of waiting the result of the experiment at the Presidency, are the objections made against the introduction of trial by jury in the interior, or the reasons given for postponing it.

I conceived that there would be obstacles to the immediate success of the experiment at the Presidency, from Christians being intermixed with Hindoos and Mussulmans, from the judges being unacquainted with the language of the native jurors, and from the jurors being but too imperfectly acquainted with the English language to understand the addresses of the judges; but I believe I may safely say that Sir Edward Ryan at Calcutta, Sir Ralph Palmer and Sir Robert Comyn at Madras, are pleased with the progress of the experiment, and the sessions of Madras have closed within these two days with the expression, I understand, of Sir George Ricketts's satisfaction at the conduct of the native jurors. I am persuaded that nothing but a wish for its success is necessary to ensure it in the interior. Every public servant who has been in the habit of frequent communication with natives on public affairs must feel that their moral character, though often embarrassing, does not present an insuperable barrier to their employment, and that, notwithstanding their vices, he has been able to realize large revenues or to do a great deal of good through their instrumentality. "Those who speak of the natives as men utterly unworthy of trust, who are not influenced by ambition, or by the love of honourable distinction, and who have no other passion than that of gain, describe a race of men that nowhere exist."

The natives are not to be expected to be more free from sectarian disputes and party feelings than Europeans have been; but an easy remedy for this difficulty is provided by clause 2, section 2, of the Regulation, which says, that "the judges so authorized," (to cause juries to be assembled for the trial of all criminal cases,) "shall have liberty to try any particular case under the Regulation heretofore in force, and not by a jury."

The onerous nature of the duties of jurors will, I am sure, appear to be much mitigated when, upon referring to the Regulation, it is found that an allowance of a rupee a day is made for the journey to and from the court, at the rate of 15 miles a day, and from the time of their attendance to their discharge, and that provision is also made by the same Regulation, that "no man, except in case of necessity, shall be summoned to serve on a jury oftener than once in two years."

Sec. 12, Reg. X. A. D. 1827.

Sec. 8, Reg. X. A. D. 1827.

Para. 16, Minute 7 January 1828.

Mr. Lushington has stated, that "he learns, from various quarters, that during these latter years unfit persons have been appointed to administer the judicial system, and that their defects have been charged on the system."

I therefore

Minute by H. S. Græme, Esq.; 29 January 1828.

I therefore beg leave to submit a statement of all the servants who have been appointed to the judicial line these last seven years, on which it is only necessary to remark, that with three or four exceptions, which particular circumstances rendered expedient, the persons selected possessed the necessary experience in the judicial line, and though a very small portion of these might have given cause for disapprobation of their conduct on certain former occasions, a further protraction of the promotion, to which their length of service gave some claim, would have been a punishment exceeding the necessity of the cases.

But it is inferrible that Mr. Lushington considers the unfitness of these persons to be attributable partly to their ignorance of the Persian language. It is a matter of very serious regret that Mr. Lushington attaches so much importance to this acquisition as to declare that he deems the knowledge of Persian "so much more necessary to the civil servants than any other language in the present state of the duties they have to perform, and their qualification to perform them, that he shall regard this knowledge as first to be cultivated, and possession of it the best recommendation they can add to general good character when they seek for promotion in the service." Persian is no doubt an accomplishment, the possession of which, in the opinion of a Mussulman gentleman, confers a certain degree of superiority, and it gives a great command over the Hindostanee language, which abounds in Persian terms. As a court written language, it is only used in one of the four durbars of the Nabob of the Carnatic, the Rajah of Mysore, the Rajah of Tanjore and the Rajah of Travancore, whose alliance connects them with the Madras Presidency. In all the rest, Canarese, Mahrattas, Tamul and Malyalim are in use. It is not often spoken with ease and elegance, even by the higher classes of Mussulmans, not excepting the Nabobs of the Carnatic and their courtiers. It is manufactured, indeed, with a sort of artificial precision, very different from the colloquial freedom of the Hindoostanee, and more like the manner in which Latin would be spoken in England by those who had studied it in the universities from books alone. It is certainly not in the present day the language of business in the Judicial, the Revenue or the Commercial departments among the public servants, with the exception of the two Mahomedan law officers of each Provincial Court, and the Persian moonshees, who are obliged to be employed to supply their ignorance of the languages of the district by translating for them into Persian. It is unnecessary as a language of communication with the zemindars, rajahs, and poligars, with whom we have to deal. It is not the language of the common people. I will not venture to say that English is a language quite as much known in the provinces at this moment as Persian; but I venture to think that its encouragement would be more beneficial, because in English there are books which convey a correct knowledge of the arts and sciences, and because business would be practically accelerated by the improvement which might be expected in copying, translating, and even composing; but it would not answer to make English a paramount qualification for a public native servant better than it would to give Persian the preference. Neither language can be expected to be the language of the common people within any definite period, and if either in the mean time is made the usual medium of communication in business, official influence will inevitably be thrown into the hands of a few native servants. The European officer will be further removed from any direct intercourse with the common people, whose grievances it ought to be his principal duty to redress, and the execrated Dubash system will certainly be revived, which it has been the aim of Government and the civil service for the last twenty years to extirpate. I trust, therefore, that the study of one of the vernacular languages of the different districts, viz. Tamul, Teloogoo, Canarese and Malyalim, will still be a primary consideration. The knowledge which is necessary to read the futwah or sentence of the law officer in the Persian language, which in general consists of a few short lines, and the meaning of which it is easy to obtain at leisure, either from the law officer himself, by means of the Hindoostanee language, or by translation into English, can never be seriously placed in competition with the useful knowledge of what prisoners and witnesses depose in judicial cases, and of what the common classes of people say when they appeal to a revenue officer against over-assessment, oppression and fraud.

Sir Thomas Munro's intimate knowledge of the subject of his public duties, his experience in the manners and customs of the natives, might well enable him to dispense with some acquirements in languages which younger men would require; but I speak on the authority of three respectable native servants, who were officially attached

Minute by H. S. Græme, Esq.; 29 January 1828.

attached to him, and partly upon the impression I had when serving under him in the Ceded Districts, that, besides Persian and Hindoostanee, he knew both Mahratta, Hindowi, and Teloogoo as a written language; that he could speak Persian and Hindoostanee, and understood Mahrattas, Teloogoo, Canarese and Tamul, sufficiently to detect inaccuracies of interpretation when spoken to him, and that he sometimes, though rarely, used to converse in Tamul, Teloogoo and Mahrattas. These acquirements afforded good security against imposition.

If the present system of criminal jurisprudence does not otherwise deserve to be supported, I hope the trial by jury will not be withheld in order to give encouragement to Persian.

I have thought it desirable to enter into a vindication of the administration of which I was the temporary head, and of the preceding administration of which I was a member, from the charges of precipitancy in enacting the trial by jury, of a wrong selection of the instruments to carry it into effect, and of appointing unfit persons to administer the judicial system. Those charges of Mr. Lushington, coupled with his mistrustful proceeding towards me individually, which I found myself obliged to record on the 8th instant, and which remains unexplained by Mr. Lushington, have a direct tendency to throw discredit upon my short administration, and to injure me in the estimation of my honourable employers; but I look with confidence to their justice and liberality to relieve me from reproach. The Court will judge whether anything more was necessary on this occasion than for Mr. Lushington to record his wish that he should have further time to consider of the Regulation for the trial by jury before it was carried into effect.

I request that this Minute, the printed Regulation, and the correspondence with the Foujdarry Adawlut respecting the trial by jury, may be transmitted to the Court without delay.

29 January 1828. (signed) *H. S. Græme.*

(A true copy.)
(signed) *R^d. Clive*, Chief Secretary.

Extract MINUTE of the Right Honourable *S. R. Lushington*, dated 19th April 1828.

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

I STATED in my Minute of the 7th January, that it had been my anxious desire to abstain from expressing any opinion upon the judicial proceedings of this Presidency until I had been enabled to witness the operation of the courts in the provinces.

It was with great reluctance therefore that I saw the necessity very soon after my arrival of departing from this intention. But the gentleman who had by law succeeded to the temporary charge of the Government thought himself justified, in the short interval between the lamented death of Sir Thomas Munro and my arrival, in ordering the execution of an innovation too serious and important to be disregarded when officially forced upon my attention. I was compelled either to stay its instant execution or to become an active party in subverting that system of justice which was introduced into these territories by Lord Clive in 1802, with the sanction of the Honourable Court of Directors, and upon the great example of the system established by Lord Cornwallis in Bengal, which has continued in that vast portion of the Company's dominions unchanged in its principles to the present time.

When I found that no opinion upon the good or evil effects of this great innovation had been sought from the judges in the provinces or of the Sudder Adawlut; that no reference or even communication had been made to the Supreme Government; that no authority or sanction of the measure had been received from home; and when I learnt, moreover, that the majority of the Council here had been really adverse to this innovation, I felt that the order which Mr. Græme had given for effecting so great an inroad upon the established system was precipitate, if not illegal, and ought not to proceed one step further without better knowledge and a higher sanction. I therefore recommended that it should be immediately suspended, and that we should collect every information calculated to lead ourselves and those whose duty it would be to pass a final decision to a more satisfactory conclusion.

Having

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

Having ascertained from a cursory view of the papers that the Council were divided upon the subject, I thought it better to refrain from all communication with the members until we met at the Council Board, when I delivered my Minute of 21st December, recommending the suspension of the jury Regulation for further inquiry and consideration. At this time I had not seen Sir Thomas Munro's opinions in favour of this innovation. His Minute had not been included amongst the papers sent to me by the Secretary; my determination was therefore formed principally upon the arguments of the two judges of Chittoor, who, passing by their immediate superiors (the Sudder Adawlut), had thought fit to transmit directly to the Government the draft of a Regulation for introducing the use of juries in criminal cases throughout these territories, in a Report, which for crudity and obscurity has no parallel, I hope, on the Company's records.

But if I had then seen the Minute of Sir Thomas Munro it would have made no change in my determination to seek for further information; and I mention this merely to prove that the person charged by me with precipitation was Mr. Græme alone, and could have no reference to Sir Thomas Munro, and that this precipitation is not to be protected by the sanction of so great a name.

Whatever sentiments Sir Thomas Munro might entertain of the measure, it is quite clear he would not have pursued the same headlong manner of passing by all the local and superior judicial officers, the Supreme Government, and the authorities at home, and have attempted the destruction of the existing system without asking any other opinion. Of Sir Thomas Munro's former predilections for punchayets in civil cases there can be no doubt. His opinions upon this point are fully detailed on the records of this Presidency, together with those of Mr. Fullarton, Mr. Alexander, Mr. Hodgson and Mr. Falconar, expressing their preference of the established courts. Ample experience had shown Sir Thomas Munro how decidedly the people disliked and rejected this mode of administering justice to them, compared to that established through the courts for their protection: for, notwithstanding all the countenance that his administration gave to this system, only 237 causes have been so settled during the last four years out of 263,990 civil causes decided. This must have extinguished all hope in his mind, as it has the necessity of any further argument upon this branch of the subject. Although Sir Thomas Munro's first desire had upon its failure been succeeded by a wish to try the experiment of native juries in criminal cases, and although he might himself have felt some confidence in the ultimate success of the experiment, his reply to the Court's observations upon the abolition of certain zillah judgeships is an ample earnest of his future determination to consult the local and superior judges before he made any further alterations, as will be abundantly manifest by reference to his Minute on that occasion. I am therefore satisfied that he would have circulated the amended Regulation amongst the judges, and referred the whole for the decision of the Court, before he had determined of his own authority to subvert the established system.

My own early affection and reverence for this institution would have led me, independent of the Court's orders, to adopt this course, and in this instance I should have been specially incited to it from entirely doubting the accuracy of the grounds upon which this great innovation was proposed. From all my recollections of the native character, and of the way in which justice was administered, or rather denied to the people, before the courts were established, I did not believe it possible that the most experienced of the judges could think the existing system "utterly unsuited to its purpose," or be in favour of the change proposed.

It is therefore with much gratification that I now call the attention of the Board to the answers of the several judges of the courts of circuit in the provinces, and of the Sudder Adawlut at the Presidency. The Board will bear in their recollection that the questions circulated amongst the judges cannot have misled them to give opinions adverse to the experiment from a belief that this Government was hostile to it; the tendency of all the questions purposely indicated a favourable disposition to it on the part of the Government, [more so perhaps than was prudent,] and therefore the firm and honest sentiments of the judges have in my estimation additional value.

I have read their Reports with an interest corresponding with the magnitude of this great question. No concern of higher importance can well be presented to the consideration of this or of any Government than the entire change of the principles of that system of criminal justice which has stood the test of conflicting opinions for many years, in Bengal and at this Presidency, and has during this eventful period been applauded, maintained and strengthened by succeeding Governments and Parliaments.

Cordially

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

Cordially sharing in these feelings of reverential affection for this institution, and for the founders of it, I contemplated the alleged necessity for subverting it with unfeigned sorrow. But if what had been stated as the opinions of our most experienced judges had proved really true; if "the long trial which the system had undergone had shown all its defects, and how utterly unsuited it was to its purpose, and had convinced many of our most experienced judges that it could not be continued with advantage to the country," it would have become our solemn duty to inquire and consider what changes or amendments might be desirable and necessary to be recommended. In discharging a duty so mortifying and painful I should have approached this temple of justice, hallowed by the hands of its noble founder, not as a destroyer, but with the greatest tenderness and circumspection. It was in this spirit that the Honourable Court considered it in 1814, "with a deep impression of the fitness and wisdom of proceeding with due care and caution in the adoption of any material alterations in existing systems, and of the mischiefs which too often result from innovations in matters of such important and delicate concern."

It is therefore with the highest satisfaction that I find myself wholly relieved from this necessity by those Reports "of our most experienced judges," to which I shall now call the attention of the Board.

There are three judges of the Sudder Adawlut, and 12 judges of circuit for the Northern, Centre, Southern and Western Divisions, to whom the proposition of Messrs. Newnham and Dacre and the Regulation of Mr. Græme were referred, to whom it would have fallen to superintend the execution of that Regulation.

The following were the questions transmitted for their consideration, and I think it impossible that the subject could have been stated with more candour, or more favourably for Mr. Græme's view of it.

Questions.

1st. What would, in your opinion, be the general effects of appointing jurymen from among the natives, for the purpose of assisting in the trial of criminal cases?

2d. Would the evil effects, if any, which you apprehend might result from them, be likely in the course of time to diminish, or the reverse?

3d. Would the measure be agreeable to the natives?

4th. Would it not have the effect of increasing the confidence of the natives in our administration of criminal justice, by gradually rendering them better acquainted with the principles on which it is conducted?

5th. Would it not tend gradually to interest them more in the public administration of the country, and the punishment of offenders?

6th. The sentences of our criminal courts are understood in too many instances to be regarded with great indifference by the community, and considered to affect but little the character of the offender; would not the verdicts of juries have a tendency to remove this evil, and to make the natives view the convicted criminal as a person most seriously and justly degraded?

7th. What would be the best mode, in your opinion, of constituting a native jury, with the view particularly of guarding against prejudices arising from caste, either against the prisoner or in his favour?

8th. What degree of power would you recommend to be entrusted to juries in the commencement of the plan, if it should be adopted?

9th. Would it be possible, and if so, would it be desirable, in your opinion, that jurymen should be appointed from all castes of Hindoos, and sit indiscriminately?

10th. If not, what castes would, in your opinion, be eligible for this service?

11th. Would it in any case be practicable to place Mahomedans and Hindoos on the same jury, and would it be desirable to do so?

12th. If, upon the whole, the appointment of jurymen should appear to you to be likely to be attended with advantage, would the following mode of employing them accord with your sentiments, or would you recommend any material alteration? The judge, after the evidence on both sides had been heard, to sum up the case, and remark upon the evidence adduced; the jury to deliver their verdict, with an explanation of the grounds of it, stating particularly their reasons for believing or disbelieving evidence, where that belief or disbelief has occasioned their verdict. The judge on receiving the verdict, if his own sentiments coincided with it, to pronounce sentence accordingly; if they differed from it, to refer the case, with his opinion, to the Sudder Adawlut.

13th. Does

13th. Does anything occur to you relative to the mode of constituting juries, the powers which should be entrusted to them, the tendency of the measure, and, generally, its practicability and advisability, or the reverse, which is not particularly borne or comprehended in the foregoing questions? If so, state your sentiments at large.

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

The senior judge of the Sudder Adawlut says, "The proposed measure of appointing jurymen from among the natives would, in my opinion, be the means of greatly impeding, instead of facilitating, the trial of criminal cases; because, in the present state of the religious principles and moral feelings of the Hindoos generally, it would be scarcely possible to expect from them anything like a fair and unbiassed discharge of such judiciary functions."

He thinks it absurd "to attempt to justify the adoption of the proposed measure by any comparison between the actual state of society in India and of that in England, and, if possible, still more so to draw any parallel between the habits and moral feelings of the people respectively; for in contemplating the present condition of the population in these provinces, it is obvious that to whichever caste or sects our attention is directed, the fiery elements of fanaticism, discord and contention, as well as a conviction of the sinister, corrupt and selfish habits of all, instantly rise up in judgment against them, and at once suggest insuperable obstacles to the useful employment of either Hindoos or Mahomedans in the capacity of jurymen."

The whole of Mr. Grant's Report is in the same decided rejection of this measure, which he thinks "would be a denial of justice to the people, most unsatisfactory to all their feelings of preference for European to native agency in the settlement of all matters in dispute between them, of a civil nature, and by analogy he infers, that a similar policy of superior respect for the European character would be equally predominant amongst them, as regards the adjudication of all matters of criminal import."

All the questions referred to Mr. Grant are answered with great intelligence, the fruit of his long experience in the country, and will be best appreciated by an attentive perusal of his Report. Mr. Grant has satisfactorily shown that there is no resemblance between the institutions and people of these territories and Ceylon, and therefore that any arguments founded upon the success of the experiment there are wholly inapplicable to the Hindoos and Mussulmans of the Company's dominions.

Another of the judges of the Sudder Adawlut, Mr. Oliver, and than whom there is not on this coast a servant of more judicial ability and experience, sees insuperable obstacles to the success of trial by jury, "so long as the prejudices of the natives in matters of religion and caste maintain their present influence," and "so long as the vices and imperfections of their moral character prevail to their present extent. Those who estimate their character most highly are still constrained to admit that it is debased by a general disregard of truth and of the obligations of an oath, and by proneness to bribery and corruption. A community infected throughout by vices of this description seems to me as little fitted as can well be imagined to receive an institution which requires truth and honesty as the indispensable qualifications of its members.

Mr. Oliver, third judge of the Sudder Adawlut.

"Owing to the almost total want of veracity and integrity among the natives, evidence in this country must be received with a degree of distrust and suspicion wholly unknown elsewhere. This distrust and suspicion would attach to each individual composing the jury, if placed in the witnesses' box; and I am unable to discover any rational principle in which confidence can be placed in them in the one situation more than in the other. The fitness of the natives to discharge the duties of jurymen has been argued from the success which has attended their employment as moonsiffs or judges; but a moonsiff and a juror are very differently circumstanced. The misconduct of a moonsiff is punishable on detection by the loss of his situation and the pay attached to it; and it cannot be doubted that this operates more strongly than anything else to restrain him from flagrant breaches of his trust. A juryman, on the contrary, has nothing to lose but the good will of his associates and neighbours, and that perhaps would be most endangered with all those whose opinion is of any value to him by an honest verdict, more particularly in cases where the prejudices of religion and of caste are concerned.

"These prejudices extend their influence through all classes of the community, and in many instances are the cause of the most acrimonious feelings. The followers of Vishno and of Shevva, if they do not hate or despise each other, are

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

still actuated by a prejudice in favour of their respective sects. What are called the right or left-hand castes, which include a very large proportion of the people on this coast, bear a deadly hatred towards each other. The same remark applies in all its force to the Nairs and Masselahs on the western coast, and is in some measure applicable to the followers of the Hindoo and Mahomedan religions all over the country.

" A jury of natives would only add to the embarrassments of the judge who presides at the trial. The principal obstacle which he has now to contend with is the dishonesty of the witnesses; that may be overcome, partly at least, if he brings to the task an ordinary share of patience and intelligence, but it is to be feared that, with all his care and vigilance, he will be too often baffled in his endeavours to do justice by the partial or perverse verdict of a jury."

Mr. Oliver then shows distinctly, that in the trial of a guilty Brahmin, of a right or left-hand casteman, of a notorious robber, burglar or thief, no reliance could be placed upon the verdict of any native jury, and that the institution, " if it should at first possess any portion of public esteem and confidence, would soon sink into utter contempt;" that it would " rather retard than accelerate the moral improvement of the people, by forcing upon them an institution they are unfitted to receive, and which would too probably be perverted to the indulgence of their worst passions.

" To the most respectable part of the community," Mr. Oliver thinks, " the measure would be disgusting, as imposing upon them troublesome duties, in which they would feel no interest, and that it would diminish their present confidence in the purity of the decisions of our courts;" and he is firmly convinced " there is not one in a thousand of which they now question, in the slightest degree, the propriety and justice."

He thinks the measure, " under the present circumstances of the people, not calculated to attain any of the objects proposed by it;" that " it would be extremely dangerous to employ them as jurymen; for it is plain that we could not exercise anything like an efficient control over them in the discharge of their functions as jurors, without striking at the root of the institution itself, and defeating the very purpose of its establishment."

The senior judge of circuit in the Northern Division states his conviction, that " the institution of trial by jury is not adapted to the religion, manners, habits and customs of the natives, at least in the Northern Circars; that many years will elapse before they are qualified to appreciate the value of the gift; and that they are perfectly satisfied with the administration of criminal justice as it is at present administered." He thinks that " in nine out of ten trials the verdicts would be given by juries in opposition to the evidence, the trials consequently referred, and the delay in bringing them to a close proportionate.

" The evil resulting from an introduction of the system might, in the lapse of time, diminish; that is, when men's minds have become more enlightened, and when, after reflection, they may be enabled to appreciate the benefit extended to them; but constituted as native society now is, the improvement is at a hopeless distance.

" If any judgment can be formed from the reluctance shown by natives either to submit to the decision of a punchayet or abide the award of arbitrators, I should say that most unquestionably the trial by jury would not be agreeable to them. It may be observed that those summoned to serve would probably be compelled to travel a long way from their families, their cultivation, or any other employment they might have; they would not like to work without remuneration; they might be exposed to distraint during their absence for default in payment of their revenue, which, if they had not been summoned down to the court, might possibly not have occurred; and it would be difficult for them to know the period of their return. These would all be positive evils, which the most ignorant would feel, whilst the probable good would be beyond the comprehension of the wisest among them." Nor does he see how the bulk of the natives are to become acquainted with our administration of criminal justice, or the principles on which it is conducted, " until education shall have been more widely extended among them, and they have thereby become capable of reasoning and reflecting on the subject. With all their present ignorance on this head, they are better satisfied with our mode of administering either civil or criminal justice, than they would be with the best selected jury of their caste or countrymen that ever assembled."

The third judge of the Northern Circuit says, " I had given the subject some consideration

consideration on reading the Bombay Judicial Selections in the fourth volume of Selection of India Papers, received by this Court early in December last; but I conceive it my duty to found my opinion on my own observations regarding the natives in this Northern Division, discarding from my mind the arguments of the advocates for either side of the question, and retaining only one general impression, that those who are in favour of the introduction on that side of India appeared to me to have derived their opinion of its efficacy from residing amongst a more intelligent population than this part of India can boast of.

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

"When I consider the nature of the people in this division, it does not appear to me that any good effects would arise from the appointment of jurymen from among them for the purpose of assisting in the trial of criminal cases. The evil effects which I apprehend might result from the measure would be the escape of the guilty prisoner, if possessed of wealth or influence, owing to his jurors having hearts and hands open as the day to bribery.

"As to whether the measure would be agreeable to the natives in this division, I have not the slightest doubt of their being perfectly apathetic on the subject. Pay the jurors well, much above their necessary expenses, and they would have no objection to the measure, but they would have no more idea of an unpaid jury than of an unpaid magistracy. I believe them to be well satisfied with the present mode of administering criminal justice by the Courts of Circuit, and if they are so, a change should not be made without cogent reasons.

"It would not, I think, tend to interest them more in the police administration of the country and the punishment of offenders than at present.

"The unanimous conviction of a prisoner by a jury ought indeed to appear a greater confirmation of his guilt, but I am not disposed to think that it would have that effect on the minds of the common people, who are not prone to much reflection, nor that it would operate with particular force on the mind of the convict, unless he were condemned by a jury of his own peers, which would seldom be the case, most of the prisoners being of a grade which it could never be in the contemplation to put upon a jury, and who would be as well satisfied to be tried by their present judges as by their countrymen of a superior caste. Should a difference of opinion arise among the jury, and the prisoner be declared guilty by a majority only, it might, amongst the few who would concern themselves about the matter, occasion doubts and discussions as to whether he were actually guilty.

"I think a difficulty would arise in the trial of a Brahmin or a Mussulman. If the jury, or a majority of it, is composed of the prisoner's caste, I think he will in almost every case be acquitted; and if the Regulation were to provide otherwise, it would be promulgating a doubt of impartiality and integrity. A jury of Brahmins would not declare a Brahmin guilty, if death would be the necessary result, nor a jury of Mussulmans a Mussulman, on any charge on the testimony of Hindoos.

"If it be advisable to alter the present system of administering criminal justice, the present respectable Mussulman law officers might be otherwise provided for; a code of laws established; the quarter sessions held by the two judges at the provincial station, with the reference, as at present, of certain cases to the Foujdarry Adawlut; and some public functionary in each zillah appointed to assist the judge on circuit at each jail delivery.

"Although the trial by jury answered among our rude ancestors, I do not see why it must necessarily work equally well amongst the natives of India, and advance them in the scale of morality and intelligence. With them it must be the child, not the parent, of civilization; and indeed our present system has not been the work of a day; and if we now hear nothing about the misconduct of juries, yet their corruption in former days occasioned many a heavy penal enactment. But I do not understand why, because it answers with the most enlightened people of the world, all of the same customs, language and religion, it should be equally adapted to another on the other side of the globe, divided and subdivided into a variety of tribes and sects, and ridden by a debased and debasing priesthood. When a diffidence in my own discernment would incline me to subdue my scruples, and to accede to the opinion of men of superior judgment to myself, that the natives of India are qualified to appreciate and partake of our admirable institutions, I am checked by the confession of Solon, that 'he had not given his countrymen the best of all possible laws, but the best they were capable of receiving.'

"If the jury system answer well at the several Presidencies, the time will arrive when

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

when its merits will become known to the natives in the provinces, and can be introduced amongst them when they show a desire to have it; and the able plan which has lately been adopted of introducing or accelerating education and knowledge amongst them will doubtless have the effect of exciting a greater interest than they at present evince in what passes amongst their neighbours, and in the general welfare, though I suspect that even when that period shall have arrived, the trial by jury will for years continue to be by the natives of India in general a *nec spretus nec speratus honor*."

The senior judge of the Centre Division says, "The qualities requisite for those who are to decide ultimately on the guilt or innocence of persons brought to trial, no one can deny, are intelligence, judgment and justice. In these qualities it is notorious the natives are very deficient. They have strong powers of investigation, retentive memories and invincible patience, enabling them fully and accurately to collect and settle in their minds the circumstances of the most difficult case; but, having proceeded so far, there is danger of their forming upon it either a wrong or an unjust decision; such is their insensibility, and such the numerous motives by which they are led away from truth, equity and humanity. To make them understand, to prevent their confusing a case, however plain, to obviate their selecting as ground for decision the most trifling facts, and to guard against their misestimating the strength and legality of the evidence, would be to the judge a most difficult and sometimes a hopeless task; constant vigilance and precaution would be required to deter them from receiving bribes. The Hindoo would be friendly to the high caste, rank and wealth of a prisoner, and hostile to his low caste, humble condition and poverty. The Mahomedans also would favour the rich and great, and always evince that partiality to people of their own religion which they never cease to feel, and which their very law prescribes. The judge in his charge would have to surmount the difficulty, not only of making the jury perceive the strong and proper ground for decision, but of concealing his own opinion, for, if unswayed by any other more powerful interest, they would deliver the verdict appearing to them likely to please him most, being utterly destitute of every feeling of independence and regard for the public, and inveterately disposed to conform with the judgment of a superior, even in defiance of his injunctions to the contrary. In this respect those of the natives who are law officers, both Hindoo and Mahomedan, differ from the rest. Proud of their learning, confined and barbarous as it is, they are inflexible in their decisions, however absurd. The cauzees and mufties of the criminal courts are striking examples of the low degree held by the natives on the scale of judgment. In the first place, their law abounds with violations of common sense, and in the next, their futwahs, in additional folly, are often violations of their law. The great and leading objection against them is, that, let a prisoner be ever so clearly and atrociously guilty, they seem to do their utmost, by the most unjust and unreasonable exclusion of evidence, to prevent his conviction. Scarcely anything but confession or ocular proof will draw from them a declaration against him. The reasons which occurred for introducing these men into the Company's courts, to decide on charges and to prescribe punishments, are unknown to me; but it is very certain that from the very period when they were first employed, to render their code tolerable, all the exertions of Government have been made in vain. Our Regulations gradually went on correcting it, until they annihilated it; yet, from an unaccountable attachment, we preserve and adhere to its shadow. The Foujdarry Adawlut, when a futwah can be moulded by the Regulations somewhat to the shape of reason, adopt it, otherwise they are authorized to set it aside and to pass a final sentence according to their own opinion; but a judge of circuit has not this power. When he disapproves of the futwah, he must refer the trial to the superior court; that is to say, as often as the law officer delivers a decision revolting to a mind of any feeling, and which the Regulations do not enable the judge to get over, a heavy load of papers must be prepared, sent to Madras, and there read. It consists of the proceedings in the district, in the criminal court, and in the court of circuit. It is written in the local language, and translated into Persian and into English. The original is kept in the office, and the translations alone form the packet. They must be copied, examined, arranged, and paged by the writers, under the superintendence of the judge, and the English translation must be corrected by himself. He must also write a letter to the Foujdarry Adawlut, analyzing the whole, and giving his opinion on the guilt or innocence of the accused. Sometimes the number of prisoners being great, the record is swelled to an enormous bulk. A single reference thus occasions vast labour to the servants and to all the judges, and a serious

a serious expense to the Company. How great then must be the evil of numerous references, arising not only from the cases of death and perpetual imprisonment, which legally and properly belong to the jurisdiction of the Foujdarry Adawlut, but from those in which the law officers by futwahs, contrary to all reason and justice, suspend and destroy the powers of the presiding judge? Hence it appears that the attendance of a cauzy or mufty is useless in the Foujdarry Adawlut and baneful in the Court of Circuit. A jury employed on the proposed plan instead of a law officer would possess, what he does not, the power of ultimate decision; this, to be given to them, must be taken from the Foujdarry Adawlut; the judgment of Europeans would be overruled by that of natives, and we should await the final sentences no longer of Englishmen, but of Hindoos and Mahomedans. I therefore think the pernicious effects would be, corrupt practices fatal to the high character of our courts, much mischief to the good part of the community and impunity to the bad, and perpetual representations to the Right Honourable the Governor in Council, which, under the guise of solicitations for pardon to the guilty, would, in reality, most of them, be applications for the rescue of the innocent.

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

"I do not think that an innocent person at the bar would derive more benefit from a jury than he does from the present mode of trial. As there could be no confession of guilt, no eye-witness to the offence named in the indictment, and probably not very strong circumstances of evidence against him, the Mahomedan law officer would instantly acquit him; and I believe I may say, from the extreme caution and regard generally shown to the accused, that the presiding judge would do the same; but if, unfortunately, the depositions were to make such an impression on his mind as to induce him to refer the trial, and thus so far establish an erroneous conviction, the scrutiny and scrupulous care of the Foujdarry Adawlut in rejecting evidence at all doubtful, would not fail to lead to a full acquittal. Therefore trial by jury would, in regard to liberty and life, be to the people apprehended as offenders no blessing and no benefit.

"All natives look upon the Government as their master, whose business it is to try and to punish offenders. I am inclined to an opinion that the measure would not be agreeable to those intended to serve as jurors. They would dislike quitting their homes, travelling and residing in foreign places, and be animated with no idea that the evil to themselves would be a good to the public. The mass of the people would not receive from Government the trial by jury as a blessing, or hereafter claim it and boast of it as a national right, but, with few exceptions, remain in carelessness or utter ignorance of its existence.

"I do not think that the confidence of the natives in the British administration of criminal justice can be increased. Those who sometimes reflect on it, and speak of it, hold it in high estimation for its intention, its scrupulous care and its lenity.

"The projected appointment of juries, by relinquishing to the Indian population a power which they have ever viewed as belonging to the sovereign and his delegates, might tend to lessen the extreme respect in which they hold the British Government. Considering comparatively, on one side, their numerousness, their bodily strength, their health, from being in their own country, their local knowledge and their patience, and on the other, the fewness, delicacy and intellectual excellence of Europeans, it should, I think, be an invariable rule with us, in the whole business of the country, to leave to them the work, but to reserve to ourselves the control. This would, I think, be a good criterion whereby to judge of any proposition similar to the one before us. It is very perceptible that to give to the natives the privilege of final decision in our courts would be so far to abandon to them the reins of authority. The measure surely cannot be advisable in India, where the innocent prisoner lives under an administration whose interest it can never be to deprive him of life or liberty, and where, if the reverse were the case, an assembly of his peers would have but little ability and integrity, and no independence and public spirit to defend him. Moreover, in any country, most unquestionably it is not the form of an institution, but the manner in which it is conducted, that constitutes its goodness, and whether intelligence, judgment and justice be in a jury-box or on the bench, for the guilty to be tried by them, is a most important advantage to the community, and to be tried by them is a blessing to the innocent."

Mr. Harris has added some propositions for improving the mode in which criminal justice is now administered, which, proceeding as they do from an able and upright mind, deserve and shall receive my best consideration. For the pre-

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

sent I will only observe, that I think the evil of the present system which weighs the heaviest in his mind, the inefficiency of the Mahomedan Bengal law officers, is one easy of correction, and that this Board will be able to apply the remedy to that, as well as to other causes of delay, without at all changing the principles of the system.

The second judge of the Centre Court says, that "the effects of appointing jurymen from among the natives, for the purpose of assisting in the trial of criminal cases, would be, that the natives would lose that confidence they now have of obtaining substantial justice. I feel fully persuaded that decisions passed under the present mode of administering criminal justice are considered to be influenced by a conscientious discharge of public duty; whereas opinions advanced by a jury, the propriety of which might not be immediately recognised, would very generally be imputed to interested motives."

To the question, "would the measure be agreeable to the natives?" he says, "I feel no hesitation in replying to this question in the negative, having since the receipt of Mr. Secretary Chamier's letter had frequent conversations with the natives on this subject. They are generally so sadly deficient in that national feeling which operates on European nations, that an individual will rarely be found willing to make any personal sacrifice for the public good; consequently the most respectable proportions of the native society will use their utmost endeavours to escape being empanelled, and this they will have little difficulty in effecting, as their places will too readily be supplied by a numerous race of needy adventurers, ever at hand to engage in any undertaking by which they may gain an immediate advantage. This fact was strongly impressed on my mind by a conversation I had with a very intelligent native of this district in the village of Sholingur on my way to this station, who told me that he had seen the list which had been prepared, under the orders of the principal collector, Mr. Roberts, by the tasildar, of persons qualified to act as jurymen, and that among them scarcely one was to be found to whom the batta to be allowed would not be an object; that very few of them were men of any education, while others were palpably incompetent to perform the duties. It is not to be conceived therefore that men of education and conscientious feelings would willingly act with the description of individuals who must very generally constitute the majority of a native jury.

"It would not have the effect of increasing the confidence of the natives in our administration of criminal justice. The parties to be tried, if persons of any consideration, would, through their influence, endeavour to bias the jury, and those members whose integrity could not be shaken they would challenge, and thus render the trial by jury nugatory.

"In answer to the 13th question, I respectfully beg leave to state, that it does not appear to me that any possible advantage is likely to result by deviation from the present practice of the courts and the introduction of trials by jury. The natives are already well satisfied with the justice they obtain, and I cannot consequently see the expediency of any change of system."

The senior judge of circuit in the Southern Division says, "The generality of the people are not sufficiently cultivated in honesty and good faith to appreciate the merits of such an institution.

"Most of the jurors must quit their houses to their detriment, and it would be no longer acceptable than it is likely to become advantageous to those engaged; for it is to be feared that the good of the public weal would not actuate the native character, though many would serve merely for the rupee per diem as batta.

"The trust reposed in juries ought certainly to stimulate all classes to attain that distinction; but it is my firm belief that natives possess greater confidence in the adjudication of the Company's servants than any other tribunal, except the wealthy, who anticipate the accession of influence over their countrymen, and thereby escape condign punishment. Their punchayets in civil cases prove often corrupt, and now are seldom resorted to.

"Mahomedans and Hindoos can never form a consistent or united jury. Their habits, ideas, prejudices and modes of life are all at direct variance; nor would it be expedient to make the attempt, because, supposing the inquest to be 8 or 12, in equal portions, a majority of three-fourths never could be had against Mussulman prisoners on the testimony of (Zummies) Hindoos, being contrary to the creed of the Koran, and ends of justice thus defeated. Original.

"The existing law, framed according to Mahomedan precepts, is tempered by the lenity of Bitish jurisprudence. It does not appear that the attempt at such an innovation

innovation has been made in Bengal, whence the statutes for this part of India emanated; and any reform of the kind is likely to be visionary until reason and virtue supplant idolatry and immorality in the East.

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

"The difficulty of empanelling juries composed of unbiassed and disinterested persons of a certain education and pretensions seems to be a paramount obstacle to the introduction and success of the system, because most of the literate classes of the inhabitants are excluded from serving, owing to official obligations, religious pursuits and other disabilities (whilst any public servants who may have been discarded from responsible situations would be objectionable); and few of the other classes would comprehend the meaning of such an institution or important duties as to be competent to weigh and form a judgment on the evidence; to say nothing of their liability to corruption, from the intrigues of the wealthy, whenever such may come within the pale of the law.

"One of the objects stated is, the abbreviation of trials by dispensing with recorded testimony; but there would be no means of detecting perjury, the commission of which would pass with impunity, and render the enactment against that crime generally null and void; nor would it compensate for the time gained, for other more serious sources of delay would occur, viz. the process being subject to innumerable challenges of prosecutors and prisoners, the latter of whom oft consist of large gangs*; the licence to jurors of putting questions; the task of summing up the evidence to adapt it to their understanding; the retirement of the jurors; remanding them; with an ultimate reference for a second jury; and the casual absence of a single juror, which renders it necessary to swear in an entire new jury; thus imposing the necessity of a rehearsal of the trial. These contingencies appear more likely to protract than to facilitate the operation of a circuit.

* An instance occurred of three score being transported for gang-robbery.

"The collection of an efficient set of jurors as far as 72 out of the inhabitants of every district on the jail delivery, half-yearly, and the uncertainty of regular attendance of the inquest during a session, may be apprehended to fail in practice, from a variety of domestic and superstitious ceremonies to which they must conform, and the existing order of things be adhered or reverted to; whilst the sacrifice and penalty of fine, in default of appearance, would make the more respectable rather shun than court the privilege, notwithstanding the batta of one rupee per day might be a temptation to others to offer their services; nor does the restriction in regard to their being summoned only once in two years seem calculated to teach them their duty.

"Under all these circumstances, if they are worthy of consideration, little hope exists of attaining accuracy of judgment, purity of conscience, or freedom from bribery in juries upon the principles proposed, the best of whom are ill-fitted to be trusted with the power of life and death, acquittal or condemnation; for it is a melancholy well-known fact that rectitude of mind forms no attribute of the native character; that perjury is reckoned no crime, but a virtue, when contrasted with the preservation of a Bramin or a cow; and is scarcely a culpable act, but a fair artifice, if not found out.

"The general esteemed idea is entertained that a jury of Hindoos, however classified, would never consent to convict a culprit of the Bramin caste, and according to their own laws, the life of such offenders never can be forfeited on any account; a Bramin killing another is even exempt from punishment, beyond, I believe, a certain fine.

"In fine, for the reasons above adduced, as the present system of jurisprudence has existed for a quarter of a century, which seems and is acknowledged to have 'worked well', I cannot but be of opinion that it is better 'to let well alone' until time and education may infuse intellectual knowledge, just notions and correct conduct amongst the eastern kingdoms, as to render them sensible of the worth and blessing of that noble institution of trial by jury."

The second judge of the Southern Circuit says, "In all cases where the parties tried could afford to bribe the jury, the unvarying result would be, in my opinion, acquittal.

"The lapse of time would, in my opinion, only increase the evils inseparable from the institution. It was an axiom of Lord Bacon's 'that knowledge is power;' under the jury system this principle would be limited to the power of doing harm.

"I never yet proposed this question to the consideration of any native of experience and intellect without discomposing the gravity of his muscles. I am under the necessity, however, of saying that every professional, notorious and successful robber in the country would rejoice at this (to him) most convenient institution,

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

institution, and he would chuckle over the infatuated delusion which induced the Government to adopt it. Corruption would ensure impunity, and no property in the country would be safe. The very fruits of spoliation would be employed to enable the offender to escape punishment. It was the dying regret expressed by Appoo and Cautan, on their way to execution, that they had omitted to plunder the most wealthy native in Tanjore. While referring to these two notorious offenders, I would ask the most zealous advocate of native juries, whether he thinks it possible a native jury could have been convened at Combaconum who would have convicted these men? I would beg of him first to recollect that the very crime of which they were convicted, under the present stigmatized system, was a barbarous murder committed on the person of a police officer sent to apprehend them. That these offenders could and would have paid any sum to ensure their acquittal is quite clear; and I believe it is equally certain that no jury in the provinces of Tanjore or Trichinopoly could have been found who would have dared to have given a verdict against them.

"That the jury system would excite those honest feelings of interest and pride in the police administration of the country, which we have been taught to feel for that institution in our native land, I have not the remotest hope or belief.

"I believe the natives at present give us credit for honesty of intention in our sentences. Apathy, it is true, is a very striking feature in the native character; but how the jury system is to remove this, more able logicians than myself must determine. I think, however, the assumption that the sentences of our courts are regarded with great indifference is altogether too broad; and the frequent allusions made in our pleading and petitions, even to commitment (whenever the party possesses what he considers so great an advantage over his adversary), proves, I think, beyond all question, the converse of the proposition.

"As I cannot conceive the possibility of employing native jurors with advantage under any circumstances, and as I conceive the institution, if carried into effect, would be replete with every kind of evil, I am unable to offer any suggestions contemplated in Questions 7, 8, 9, 10, 11 and 12.

"At the conclusion of this question I am directed to state my sentiments at large. I proceed to do so. One of the striking features of the new system is, that it is one of those innovations almost prophetically described by Sir Thomas Munro. 'The ruling vice of our Government is innovation, and its innovations have been so little guided by a knowledge of the people, that though made after what was thought by us to be mature discussion, must appear to them as little better than the result of mere caprice.'

"How forcibly does this apply to the present impracticable scheme!

"The first advantage set forth in Regulation X. of 1828, is the facility with which jurors would trace facts; and it is argued that they would be more likely to arrive at the real merits of the case, and sift the evidence better than the Mussulman law officer and the European judge. I will admit this for the sake of argument, though I firmly believe the assertion to be totally unfounded. But I would ask, supposing this to be the case, supposing the jurors would dive into the latent motives of the human mind, and pronounce with the faculty even of Omniscience itself on the guilt or innocence of the accused, it is necessary first to prove, before the system is at all benefited by the argument, that the jury would give a conscientious and just verdict as the result of that discrimination; in other words, unless the correct tracing of facts be followed up by an upright decision, the ends of justice would be more shamefully defeated than they would have been by the most stupid supine investigation. Should I be told that a native jury is as likely to give as just and conscientious a verdict as the European judges and Mussulman law officers, supposing them to agree in opinion, then I say, whoever that man may be, that his conscience is telling tales of his own opacity, and that he is not justified in judging other men by his own standard.

"With a view, however, of shortening the administration of criminal justice, it has been proposed by section 20, Regulation X. of 1827, in certain cases to dispense with written evidence altogether. I cannot suppose it possible for any circuit judge in possession of his senses to avail himself of this permission. Unless the evidence is recorded there can be no safety either to the judge or prisoner: the former would be liable to the charge of partiality, and unable to refute it by producing the record, and the latter might be punished in the most arbitrary manner, without any means of redress; add to which, the Foujdarry Adawlut would be unable to call for the record of any particular trial, and one of those

necessary

necessary checks to the wanton exercise of illegal power would be entirely destroyed.

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

"I have ever been of opinion that the dispensing with the written record of the trial in any stage of the investigation, whether before the magistrate or criminal judge, was highly objectionable; but to vest this power in a circuit court, which from its very constitution ought to be a court of record, would strike at the root of all justice. To dispense with the Persian record would also, in my opinion, be equally objectionable. How is a Bengal mooftee, for instance, to judge of the force of the evidence unless the trial is given to him in Persian? and if it be argued that the law officer is of no use in a trial, I entirely disagree with those who suppose so. I have ever found the law officers* extremely intelligent and useful in this particular, and were the Mahomedan law divested of its peculiarities (as indeed it virtually is by the power lodged in the Foujdarry Adawlut), I am persuaded that it is better adapted than any other law to the trial of natives.

* "Mahomedan gentlemen of respectable character and upright principles like the Cauzee, and others of them men of indigenous qualities in addition to the above virtues."

"But was the Mahomedan law adopted as our criminal code without discussion and advice, or was it forced upon our native subjects without due deliberation? certainly not. 'The Mahomedan criminal law,' as observed by Lord Wellesley, 'was the rule of the administration of justice throughout the Mogul empire. Although that law was often ill administered, and in some places probably never administered at all, it was nevertheless the avowed law of the country, as applicable to criminal cases, in the Northern Circars, the Jaghire, and all the countries ceded by Tippoo Sultan or conquered from that prince.' His Lordship further observes, 'That having found this law established as the rule for the trial of offences when this country came into our possession, it will now form the most natural basis of our criminal code.'

"Hence it will be seen that the adoption of the Mahomedan law as our criminal law was no new unripe expedient, but a recurrence to the established law† of the land, under such modifications as experience suggested. On the contrary, to introduce juries, as Lord Wellesley beautifully expresses it, would be the 'introduction of an entirely new code of criminal law, calculated to excite serious alarm throughout our possessions, and repugnant to the fundamental principle of our policy in India, which has been to administer to the natives their own laws in the mild and benevolent spirit of the British Constitution.'

† "In the criminal courts the Mussulman law had been fully established previously to the introduction of the British power, and it was suffered by Mr. Hastings to retain its authority, subject to the interposition of the Government, or of the subordinate British functionaries, in cases where it authorized flagrant injustice."—Grant's Sketch, page 354.

"When his Lordship determined upon this measure he did not evade the question of introducing the English criminal law; on the contrary, he met the argument fairly, and disposed of it in this able and conclusive manner.

"The introduction of the English criminal law, under whatever modifications, would, we are confident, be equally disgusting to every class of our subjects. It would be in vain to expect that either Mahomedans or Hindoos would ever become acquainted with the law, or that they would ever be attached to its principles; independent of these objections, insurmountable obstacles would arise to the due administration of that law, from the want of persons competent to its administration.

"The advocates of the jury system have also endeavoured to fortify their cause by the circumstance of its having answered in Ceylon. Look fairly and without prejudice at the institution as it exists there, take into consideration the wide dissimilarity between the natives of Ceylon and the natives of this part of India, and it will not at all prove its practicability at our Presidency. Besides, in Ceylon there are checks to keep the jury honest which are not to be found here: the power of the judge in all cases, where he may suspect combination, to desire the sheriff to call a burgher jury; or in still more serious cases, where collusion is apprehended, a jury of Europeans is summoned to try the cause. Now, in these most salutary checks the jury system, if put into action here, would be entirely deficient. The essential difference between Ceylon and Madras is this: in Ceylon the jury system was a law assimilated and adapted to the people; in Madras it would be an attempt to assimilate a people to the law.

"The more I reflect on the jury system, and the arguments which have led to the supposition of its being applicable to the natives of this Presidency, the more strongly

strongly I feel convinced of its absurdity, folly and mischievous tendency.* Is it possible for one moment to conceive that the immutable feelings of superstition and caste, or the long-cherished principles which have been instilled into the mind by perverted education, can at once be eradicated or destroyed? Will the Shaster cease to be the guide of the Hindoo, or the Koran of the Mahomedan? But as facts speak more forcibly than arguments, however sound, I subjoin the following recorded cases, which have already occurred in the Supreme Court."

* "If a man speaks falsehood for the benefit of a Brahmin, it is allowable; and wherever a true evidence would deprive a man of his life, in that case if a false testimony would be the preservation of his life, it is allowable to give such false testimony."—Code, pages 129 and 130.

He then details the three cases.

"To sum up these three cases, we find in the first a compromise of justice; in the second we find a steady persevering determination to defeat her ends; and in the third we find a native jury justifying murder, under the plea that the person murdered was the slave of the murderer.

"The above cases were tried in the Supreme Court, where one-half of the jurors were Europeans. If there the honest part of the jury were defeated by the dishonest part, if the integrity of the Europeans sunk under the infamous combination of the natives, is it within the scope of credulity to believe that in a jury composed entirely of natives an honest verdict could be looked for? Without meaning to prejudge the present scheme of the native juries in the Supreme Court, or pretending to foresee events further than the experience of the past has taught me, I have not the slightest doubt in my own mind that whenever the Supreme Court has to try a cause of sufficient interest to the native community to excite those feelings which existed in the cases I have quoted, the inconvenience of native juries will be again felt in all its force; but however this may be in that tribunal, the constitution of juries there, and the constitution of juries in the provinces, as contemplated by Regulation X., is so entirely and essentially different, that no inference of success can be drawn from the Supreme Court, even supposing native juries shall be found to answer there. The cases I have cited are stubborn facts, and of more value to the cause of truth than all the speculative theories of enthusiasts put together."

Messrs. Bird and Woodcock, two judges of the Southern Circuit, have given their conjoint opinion as follows:

"The effects of the trial by jury upon the plan proposed in Regulation X. of 1827, would, in our opinion, be an increase of perjury, of bribery and of corruption. The measure would considerably impede, rather than facilitate, the administration of criminal justice; and when the verdict of a jury could not be overruled, as in cases of a second trial, the acquittal of the guilty, and the conviction of the innocent, would in many instances be the result.

"One of the objects proposed by the Jury Regulation is to dispense with written depositions in cases which are not referrible to the Foujdarry Adawlut. It would be almost impracticable to convict of perjury a man who had not given any deposition, and should this rule be acted upon by the courts of circuit, almost the only check which at present exists against perjury would be removed, and the crime would become more prevalent even than it is at present.

"There cannot be a doubt that in every case where the means are at hand, and interest has been excited, attempts will be made to bribe the jury. There are cases brought before a court of circuit at every sessions in which it is quite impossible to conclude the trial in one day. It frequently happens that many days are exclusively occupied in a single trial; in such cases the opportunity for bribery will not be wanting, and who that knows anything of the general character of the natives can say that it will not, in most instances, be successfully practised?

"In the formation of the jury, in particular cases, there will be difficulties which will impede the proceedings; it will frequently take up considerable time in attending to the challenges of prosecutors and prisoners, especially in cases which are common in this part of the country, where a rancorous spirit exists between the parties; and the impediments which will naturally arise, and which will intentionally be thrown in the way when a trial is continued for several days, will often occasion confusion and delay, and not unfrequently put a stop to the proceedings altogether. We do not believe that in trials by jury there would be fewer references than there are at present; on the contrary, we think it less likely that the judge and jury should agree in opinion than that the judge and the law officer should be of the same mind. In such cases a new trial would in general be the result; but such trial could not take place before a judge who had already made up his mind on the case, and it would of necessity lie over until the following sessions,

to

to the great inconvenience of all parties concerned; and this alone we consider a most serious objection to trial by jury, constituted as at present proposed.

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

"But the greatest objection which arises in our minds to the trial by jury is the utter disregard of the natives to the obligation of an oath, and their lamentable deficiency of principle. It is provided in the Regulation that jurors shall not be selected, but that they shall be taken by lot from all persons of reputed intelligence and respectability of competent age. We do not believe that any confidence can be placed in such persons; they would be found seldom or ever to give an unbiassed judgment. In cases where no interest was excited they would conform to the opinion of the presiding judge, whenever they could ascertain it, whatever that opinion might be; and in cases where prejudices of caste or motives of interest prevailed, they would be guided exclusively by those feelings, without the slightest regard to the obligations of their oath.

"Believing, as we do, that the proposed measure is an innovation anything but desirable, there is one other objection which will attend it, which ought not to be overlooked, namely, a very considerable addition to the charges of the judicial establishments.* The remuneration to be given to each juryman is fixed by Regulation X. at one rupee per diem; supposing that 50 jurymen are called at each sessions, and we think that a smaller number will not be sufficient, we calculate that, at a very moderate computation, the cost will amount to 10,500 rupees per annum for the Southern Division, and allowing each of the other Divisions to equal the expenditure of this, the total cost will amount to 42,000 rupees per annum.

* Madura and Tinnevelly, five weeks, or 35 days, at *Rs.* 50 per day — *Rs.* 1,750
Combaconum, four weeks, or 28 days - at ditto ditto — 1,400
Salem and Coimbatore, six weeks, or 42 days - - - — 2,100
— 5,250
Sessions - - - - 2
— 10,500
Circuit Courts - - - 4
Rs. 42,000

"We consider that no good effects could be derived from the system until a total change shall have taken place in the principles and morals of the people, and that some of the evil effects will increase rather than diminish.

"We do not think that it would be agreeable to the natives. Those who happened to reside in the vicinity of the court, and had no particular employment to occupy their time, would have no objection to serve as jurors, partly from curiosity, but chiefly for the sake of the emoluments to be obtained for their services. Those who are liable to be called from a distance would consider it a great hardship, and nothing but the remuneration would reconcile them to it at all.

"To the community at large the measure would not be satisfactory; they place infinitely more confidence in the judgment and integrity of an European judge than in their own compeers.

"We are inclined to think that it would not increase the confidence of the natives in our administration of criminal justice. Perfectly aware of the little confidence to be placed in their fellow men, they would view with suspicion each verdict of a jury which did not accord with their view of the case.

"The natives, of the Southern countries at least, have no confidence in punchayets in civil matters, and therefore we cannot imagine that the introduction of similar institutions in those of a criminal nature would be at all popular. In the Southern Division, during the last four years and a half, from the 1st July 1823 to the 31st of December 1827, 66,730 civil suits have been filed in the different courts, amongst which there were no more than 56 cases brought before punchayets.

"The natives are utterly indifferent respecting the punishment of any offenders, excepting those from whom they may have personally suffered, or where the spirit of revenge is in operation; even in cases where they have suffered loss of property, provided restitution be made to them, they had rather a thief be allowed to escape than be at the trouble of a prosecution. They consider it exclusively the province of the circar to perform the business of police, and they would think it a hardship to be called upon even to assist in bringing offenders to punishment.

"The sentences of our criminal courts are, generally speaking, certainly regarded with great indifference by the community; when they apply to the poor and lowly they excite no interest whatever, but it is often quite the contrary when a man of caste or of property is concerned. This indifference is entirely attributable to the character of the people, and we do not see that any alteration in the system of administering criminal justice can have much effect in remedying the evil. We do not think that in the eyes of the community there would be the least difference in

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

in respect to the degree of degradation attached to a person whether he were convicted by a jury or by the Court of Circuit, as at present constituted.

"We are entirely averse to the introduction of the trial by jury, and consider it an innovation unsuitable to the state of the natives of these countries and undesired by them, and that it would be productive of evil effects rather than of good."

The second judge of circuit of the Western Division states, that ever since he received the papers respecting the introduction of trial by jury he has been so deeply and exclusively engaged in the heavy and responsible duties attached to a judge on circuit, that he has yet found it impossible to commit his sentiments to writing with that care which the importance of the subject requires. Mr. Vaughan adds, "I have, however, arrived at a conclusion with respect to the jury question decidedly adverse to its present introduction, as being, in my humble opinion, very premature, as far as regards the provinces in which I have had the honour to serve."

Mr. Shakespeare, 3d judge of circuit in the Western Division, says, "I am adverse to the introduction of trial by jury in criminal cases until the moral habits of the native community are improved, and the integrity of their characters has undergone a progressive state of amendment, tending to give them settled notions of rectitude. Illiterate and prone to corruption as the generality of natives are of the present day, I do not conceive that the introduction of trial by jury, in criminal cases, would in any way tend materially to facilitate or improve the administration of criminal justice; the acknowledged want of integrity and principles of all classes; the difficulty that would often be experienced in empanelling natives of sufficient ability and judgment, so essentially requisite in enabling them to comprehend the nature of the duties required of them, (in themselves extremely intricate;) the probability of their decisions being frequently influenced by an undue resort to interested motives, as regards the prisoner's high station in life, his caste, or the good will some might bear towards the accused; the remote probability apparent of procuring natives willingly to perform such duties, I may almost say gratuitously; would all, more or less, tend to bias the decisions of many, and thus render the measure objectionable; and with those moral defects, it can hardly, I presume, be expected that its introduction would be attended with any advantageous, beneficial or permanent effects.

"To say that time might not work reform, would be saying more than I can vouch for; yet I must confess I look upon that time to be very, very far distant; and with the known fact, that natives of almost every description, high and low, take little or no interest in anything which does not immediately concern themselves, or indeed for which they are likely to receive but a trivial remuneration, would, I must say, be viewed by many in the light of an imposed hardship, and which, even with the most continued perseverance on the part of the local and ruling authorities, would scarcely, with the aid of time, be able to surmount.

"Natives of rank, or otherwise independent, have the greatest possible aversion to appearing in a court of justice, and to other classes it would, I conceive, be far from agreeable, on the score of the inconvenience and expense attending their leaving their pursuits, their families and their homes, added to the dread natives have of being exposed to sickness, change of climate, water, &c. &c. on any occasion, save and except when their own immediate interests are concerned."

Mr. Cochrane, the 2d judge of the Sudder Adawlut, says, "The introduction of any system which differs from that which has been in operation for a series of years must be expected to give rise to speculation and discussion amongst the people of the country, and the popularity of the proposed measure of trial by jury, in criminal cases, must depend in a great degree on the real objects in view being really comprehended and justly appreciated.

"The general character of the natives of India is that of great apathy, and an unwillingness to promote improvement, or to do anything which does not yield them some pecuniary return, and it is not therefore improbable that the more uninformed part of the community may, at first, be rather adverse to the plan. It surely, however, is highly desirable that every endeavour should be used to do away this feeling, which opposes improvement; and as regards the arrangement in contemplation, I think there is every reason to hope that it will become most acceptable to the bulk of the people when the benefits which will result from it shall have been well understood.

"Under the jury system the facts of the cases which come under trial will, I am of opinion, be more fully brought forward, and the evidence be better sifted than at present.

present. The law officers of the courts come generally from the Bengal Provinces. They are but little acquainted with the manners and customs of the people of this part of India, and perhaps totally ignorant of the languages in which the Hindoo witnesses give their depositions. It is remarkable also to observe the few questions which they put during the trial to the witnesses, and the little pertinence which even these few have towards eliciting information in the circumstances on which the guilt or innocence of the prisoner must chiefly depend.

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

"The futwahs given by them are likewise in numerous instances a mere nullity, being constantly set aside by the superior court, which must of course be guided in passing final sentence by the evidence adduced on the trial. It is obvious therefore that it must be of the greatest importance that the witnesses should be thoroughly examined, and that every possible information should be brought forward, in order to enable the superior court to form a just opinion on the trials referred to it for final decision.

"The execution of this duty in a satisfactory manner must always in a great measure depend upon the ability and attention of the presiding judge, and although it is now well performed in some cases, there are still a great many instances in which the record of the trial is much less satisfactory and complete than it might have been, which most probably will not be the case under the jury system.

"The measure cannot, I think, fail being highly agreeable to the natives, particularly as it assimilates with the system laid down in their own most eminent law books*, in which provision is made for a great variety of sabhahs (assemblies), to be convoked by the ruling power, for the investigation and decision of all sorts of cases, both civil and criminal. It is difficult to trace the precise period when these sabhahs may have been in actual operation, but it is perfectly well known that such provision is made in these law books, which are looked upon by the natives with the highest veneration.

* Vegyanaswaeyam, Mahabaradam, Senroote, Chandrika. In this last book provision is made for 15 different kinds of sabhahs.

"The jury system will, I have no doubt, be agreeable, even at the outset, to the higher classes of the community, and the rendering it so to the middle and inferior classes will greatly depend upon the judgment shown on its introduction, and the pains taken to make the people acquainted with the real objects of the measure and the benefits which will flow from it.

"The length to which the prejudices of caste amongst the natives of India is carried is proverbial, and there is reason to apprehend that a jury composed entirely, or by a considerable majority, of one caste, would be severe against a prisoner of an opposite caste; while, on the other hand, they would be likely to favour a prisoner of the same caste with themselves. It seems therefore to be absolutely necessary that the jury should not be formed indiscriminately; and I would propose that in constituting it the following mode should be adopted:

"That all persons summoned to attend as jurymen should be separated according to their respective castes; viz. right-hand caste, left-hand caste, Brahmins, bukalls or shopkeepers, Jains, Mahomedans, &c. &c. &c.

"That, on this separation being made, the names of the persons of each caste be put into separate bags.

"That if the prisoner be of the right or left-hand caste, two names be drawn from each of the bags containing the names of the jurymen of these castes, and that the remaining eight jurymen be drawn from the other bags at the discretion of the presiding judge.

"That if the prisoner be of any of the other Hindoo castes, two jurymen be drawn from the bag containing the names of the jurymen of the same caste as the prisoner, and that the remaining 10 jurymen be drawn from the other bags at the discretion of the presiding judge.

"That if the prisoner be a Mahomedan, one-half (but not more) of the jurymen be drawn from the bag containing the names of the Mahomedans, and that the remainder of the jurymen be drawn from the other bags at the discretion of the presiding judge."

It will be seen from the above that Mr. Cochrane is favourable to the experiment of trial by jury, but, aware of the unconquerable feelings and prejudices of people in matters of caste and religion, has suggested a scheme for the trial of natives, which he thinks would correct the evil effects of their acrimonious influence.

But a jury constituted after his scheme would be nothing like a jury of equals. He proposes that where the interests of a right or left-hand caste man are concerned, that the jury of 12 shall have no more than two of each caste; but as the right and

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

and left-hand castes constitute about seven-eighths of the Hindoo population of these territories, the result of the scheme would be to place in the hands of the Brahmins, Jains and Mussulmans the administration of criminal justice to the great bulk of the people; than which there could be nothing more odious to them, or more pregnant with corruption and intrigue.

The thorough discredit into which the punchayet in civil cases has fallen renders superfluous all reasoning upon the ancient sabhah, "known in the Indian law books," and known no otherwise in these territories, for no record has yet been obtained of the meeting of any such body, or of the manner of their proceedings.

The opinions of all the other judges, and experience, which is better than all opinions, have manifested that the people so entirely mistrust the honesty of their fellow-countrymen, and so confidently rely on the integrity and honour of English judges, that more than a thousand causes are submitted to their decision for one that goes before a punchayet.

The opinion of Mr. Tod, the only circuit judge favourable to the experiment, has evidently been given in great haste, as indeed his accompanying letter explains. It shows that he has not understood the intention of the framers of the Regulation, for his two suggestions strike at the very root of it. The reasoning taken from the Edinburgh Review, illustrating the effect of the jury upon English society and manners, has convinced him that this institution, the noble bulwark, as well as the fair fruit of a long state of freedom, is "likely enough" to answer amongst a people who have been for ages in bondage to a dominant and crafty priesthood, and are now under the government of a foreign European power.

It is however quite manifest, from the reports of the judges, that there has been no change in the moral, intellectual or religious condition of the people, that would justify the introduction of that primary part of English criminal law, or that has in any manner lessened the force of those reasons which induced Lord Cornwallis to reject the notion of introducing it in Bengal in 1790, and which equally determined Lord Wellesley, in 1800, to declare that it would be disgusting to every class of our subjects here, from the want of persons competent to its administration.

It is of this want that the judges speak so decidedly. They see no hope of obtaining fair and honest jurors whilst the prejudices, the morals and the religion of the people remain as they are, and they regard as premature and pernicious any attempt to force this measure until education and knowledge shall, under the blessing of Providence, have enabled them to comprehend and practise the duties expected from them.

The Jury Regulation is, in fact, an attempt to effect an entire change in the moral condition of a people by the arbitrary enactment of a law, or, in other words, making a people for the law, instead of adapting the laws to the people. When we can perceive that the superstitious Hindoos and bigotted Mussulmans of these territories have made some progress in the lofty and independent feelings and faculties which belong to those who adorn and sustain this noble institution in our own country, an experiment may be made with less danger to the purity of justice and the public tranquillity.

Of the three opponents of these opinions, I have noticed briefly the arguments of two. To the reasoning of the other, Mr. Græme, my former Minutes contain, I think, sufficient answers, except upon two points, "the extraordinary tardiness of the present system," as stated by Mr. Græme, and the opinion of that learned judge, Sir Robert Comyn, (as referred to by Mr. Græme,) favouring the course he has taken to subvert it.

Mr. Græme, in his Minute of the 18th of August 1827, founds his recommendation of the Jury Regulation upon "the extraordinary tardiness of criminal justice, chiefly ascribable to the defective system which prevails." In support of this argument, he refers to the trials which have taken place during nine half-yearly sessions in Bellary, commencing in 1823, and to 10 sessions in Cuddapah, in 1823, in proof of the extraordinary length of time before the sentences of the Foujdarry Adawlut were passed on the several cases.

When I read this Minute I naturally concluded that there had been great delay on the part of the Foujdarry Adawlut, or that it had arisen from some unavoidable circumstances connected with the system itself. With a view therefore of ascertaining where "this over-grown evil" did really lie, I directed a return to be made by the Foujdarry Adawlut of all trials transmitted to that court from the Centre Division during the period referred to by Mr. Græme. Appended to this Minute is the Return* in detail.

* *Vide* (A.)

Instead

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

Instead of finding the delay attributable either to the Foujdarry Adawlut or the system, I find it solely ascribable to the tardiness of those very circuit judges who were selected by Mr. Græme to introduce the new system of criminal law.

The average time taken by Mr. Newnham to submit his trials, after their conclusion, to the Foujdarry Adawlut, is something more than nine months; in some instances he delayed the transmission of a case (No. 5, of 1827) upwards of two years and a half, and many others for 12, 13, 14 and 15 months.

I hope and believe that the judicial records afford no instance of similar delay.

The statement shows how little time was occupied by the Foujdarry Adawlut in these several cases.

Several of Mr. Dacre's trials were also delayed for months.

I was anxious also to compare this result with the proceedings in other courts; I therefore directed a Return to be sent of the cases referred during the same period in the Northern and Southern Divisions: the result is stated in the margin.* My early attention was drawn to this subject by the attempt that was made at Combaconum to rescue the notorious offenders, Appoo and Cautan, after they had been tried some months, and although the attempt was rendered abortive by the laudable activity of Mr. Drummond, yet I deemed it necessary to draw the attention of the Foujdarry Adawlut to the propriety of inquiring into the delay which had arisen in the transmission of the trial by the circuit judge.

* The time taken by the judges of circuit in the Southern Division between the conclusion of their trials and the report of them to the Foujdarry Adawlut: Mr. Bird, one month; Mr. C. M. Lushington, one month eight days; Mr. Grant, one month; Mr. Higginson, one month; Mr. Oliver, four months. The average of the whole of the judges is one month and twenty days.

I shall shortly propose an arrangement to facilitate the despatch of criminal trials; but the tardiness complained of by Mr. Græme is clearly not ascribable to the delay experienced in the Foujdarry Adawlut, or to the system itself, but to those very presiding circuit judges upon whom he has wasted so much unmerited praise.

Having great respect for the opinion and legal abilities of Sir R. Comyn, I was naturally most anxious to learn his sentiments upon this important subject; at the same time it was difficult to understand how any arguments in favour of Mr. Græme's Provincial Jury Regulation could be drawn from the institution of juries at the Presidency, and which had been introduced by the Legislature here with the greatest precaution and circumspection. On referring to the enclosure mentioned by Mr. Græme, instead of finding, as I supposed, an opinion of Sir Robert Comyn in favour of native juries, and which had only existence in the imagination of Mr. Græme, I found the following paragraph from the Madras Courier:

Extract from the *Madras Courier*, Tuesday, October 9, 1827.

"Supreme Court.—The Quarterly Sessions of Oyer and Terminer and General Gaol Delivery commenced yesterday before Mr. Justice Comyn and Mr. Justice Ricketts.

"We observe that a number of natives have been summoned to serve on the petty jury for the first time, and that three very respectable Hindoos sat upon all the trials yesterday; they appeared to feel all the awful responsibility of the office they were called on to perform. We give a list of those who have been summoned."

Not one word from Sir Robert Comyn.

I mention this fact to prove to the Board and to the Honourable Court the entire disregard Mr. Græme heedlessly shows to the accuracy of the data upon which his conclusions are frequently and dogmatically drawn.

There now remains to me only the gratifying task of stating briefly the result of this reference to "our most experienced judges." Of the three judges of the Sudder Adawlut there are two, and of the 12 judges of the courts of circuit there are 10, who reject the proposed innovation as utterly unsuited to its purpose; as affording no hope of improvement in the administration of justice, or of amendment in the morals of the people, but, on the contrary, as holding out temptations to native corruption that would be pernicious to both.

Against the Regulation.	In favour of it.
Mr. Grant, Mr. Oliver, Sudder Adawlut. Mr. Lord, Mr. Money, Mr. C. Harris, Mr. Oakes, Mr. Taylor, Mr. Lushington, Mr. Bird, Mr. Woodcock, Mr. Vaughan, Mr. Shakespear, Circuit Judges.	Mr. Cochrane, Sudder Adawlut. Mr. Tod, Circuit Judge.

Far from thinking, with Mr. Græme, that "the present system of criminal justice is cumbersome and uncongenial with the general feelings of the people, and so defective as to demand an early remedy," they render to that system great honour;

Extract Minute of the Right Hon. S. R. Lushington; 19 April 1828.

honour; they declare that it is, upon the whole, most acceptable to the people, and they appeal to the known fact of the general disuse of the native punchayet in civil cases as an undoubted proof of the mistrust which the natives have of the moral feeling and justice of their fellow-countrymen, contrasted with their increasing confidence in British integrity and honour. They state that what is wanting to the complete success of Lord Cornwallis's system is a strenuous support of the principles and regulations on which it was instituted, and due care in appointing, aiding and encouraging those who are selected to administer and to watch over it. Upon this last point I quote with pleasure the following extract from the answers of the 2d judge of the Southern Circuit. In an able Report he has fairly met every part of this subject, and long experience in the Judicial and Revenue lines, extensive knowledge of several of the native languages, and of the characters of the people in different parts of the Company's territories, entitle his opinions to the greatest respect.

Mr. Charles May Lushington thus concludes his able Report:

"I have endeavoured to prove (with what success my superiors must determine) the following points: that the trial by jury is, with their present feelings, most unsuitable to the natives; that if introduced, it would be an innovation; that when the experiment was formerly made in the Supreme Court it was discontinued from corruption; that instead of a blessing it would prove a curse; that the judicia system, as established by Lords Cornwallis and Wellesley, has not latterly been fairly tried; that if any system has failed, it is not their system which has failed, but the incongruous anomaly of later years; that the cogent reasoning of Lord Wellesley why the Mahomedan law ought to form the basis of our criminal code is unanswerable; and, finally, that the reasons assigned for the abolition of the Mahomedan law (so far as they can be understood) are nugatory and absurd.

* Marquesses of Cornwallis and Wellesley, Lord Teignmouth, Mr. Edmonstone and Mr. Adam.

"When I reflect on the mighty minds* which were employed in framing our criminal code, and the experience and talents of those men who approved and carried it into effect; when I consider the doubtful data upon which its subversion is recommended, and the reasoning, if such it can be called, upon which such recommendation is founded, I confess I feel both astonishment and disgust at the temerity of the attempt. Hitherto the task of legislation has been allowed to require the most clear comprehensive intellect, and that its enactments should be defined in the most perspicuous and measured language. Let any unbiassed person refer to the convincing reasoning of Lord Cornwallis and of Lord Wellesley, and compare with it the Regulation and letter of our modern legislators†, then let him say (if conscientiously he can say) that nature ever intended the latter gentlemen for legislators, or that England could have produced men more competent to the task of Indian legislation than Lords Cornwallis and Wellesley. Of their Lordships it may with justice be said that their views were large, comprehensive, connected; they knew the nature and the state of man, and they saw what it would admit, and what it could not bear. When they proposed some amendment, or some institution which did not then exist, it was in the way of suggestion, and not of dogmatical imposition. They never moved through the state with the sword and the scythe in their hands. What they saw was with the eye of a well-instructed mind, long prepared by experience, and exercised in discernment."

†Messrs. Newnham & Co.

I can add no force to this just eulogy upon the founder and supporters of the existing judicial system. It will be my pride and duty to foster it in the way stated in my Minute of the 7th of January, as the best bulwark of the people's happiness and safety, and the proudest monument of the Company's benevolence and justice. Any further observations upon the merits of the Regulation avowedly intended for its subversion must be quite superfluous. Enough has now been written to satisfy the Honourable Court of Directors, and I should think Mr. Græme himself, of the great precipitancy with which this important change was attempted. I am sufficiently gratified in the reflection that I arrived in time to prevent the consummation of this pernicious change.

JURIES IN INDIA.

RETURN to an Order of the Honourable House of Commons, dated 1 August 1833;—*for*,

COPIES of the several MINUTES of COUNCIL at the Presidency of *Madras*, by Sir *Thomas Munro*, Mr. *Græme*, and Mr. *Lushington* and others, on the subject of extending TRIAL BY JURY to the NATIVES in CRIMINAL CASES.

(Mr. Hume.)

Ordered, by The House of Commons, *to be Printed,*
23 *August* 1833.

RAJAH OF TRAVANCORE.

HUTCHINSON'S CLAIM.

REPORT

FROM THE

SELECT COMMITTEE

ON THE

PETITION

OF

MR. BURY HUTCHINSON.

Martis, 7° die Augusti, 1832.

Ordered, That leave be given, that the Report from the Select Committee on Mr. Bury Hutchinson's Petition may be printed at the expense of the Parties.

LONDON:

Printed by James & Luke G. Hansard & Sons,

PRINTERS TO THE HONOURABLE HOUSE OF COMMONS.

1832.

Martis, 10° *die Aprilis*, 1832.

Ordered,

THAT a Select Committee be appointed to inquire into the Allegations contained in the Petition of Mr. Bury Hutchinson, presented to The House on the 15th day of December 1831, complaining of the interference of the East India Company in preventing the payment of a Debt due from the Rajah of Travancore to Mr. John Hutchinson's Estate, and to report their observations thereupon to The House: And a Committee was appointed of—

Mr. William Brougham.
Mr. Mackinnon.
Sir John Malcolm.
Mr. O'Connell.
Mr. James Grattan.
Mr. Stuart Wortley.
Mr. Granville Vernon.
Lord Viscount Acheson.
Mr. Horatio Ross.
Mr. Marshall.
Sir H. Willoughby, Bart.
Mr. Josias Duprè Alexander.
Mr. Edward Lytton Bulwer.
Mr. Sadler.
Sir Robert Harry Inglis, Bart.
Mr. Briscoe.
Lord Porchester.
Mr. Thomas S. Duncombe.
Mr. Balfour.
Lord G. Bentinck.
Mr. Samuel White.

Ordered,

That the Committee have power to send for Persons, Papers and Records.

Ordered,

That Five be the Quorum of the Committee.

REPORT.

The SELECT COMMITTEE appointed to inquire into the Allegations contained in the PETITION of Mr. BURY HUTCHINSON, presented to The House on the 15th day of December 1831, complaining of the interference of the EAST INDIA COMPANY in preventing the Payment of a Debt due from the Rajah of *Travancore* to Mr. JOHN HUTCHINSON's Estate, and to report their Observations thereupon to The House; and to whom the Petition of the United Company of Merchants of England trading to the *East Indies* was referred:—HAVE examined the Matters to them referred, and have agreed to the following REPORT:

YOUR Committee have investigated the facts alleged in the Petition, and after a very lengthened and attentive consideration of the Evidence laid before them by the Petitioner in support of his Petition, consisting partly of the oral Testimony of individuals, who from the situation which they held, and the period during which they served in India, were most capable of affording information on the subject referred to Your Committee, and partly of a large mass of Correspondence bearing on the matter in question between the Parties interested in the Petition and the Governments of the East India Company and its dependants in India, and the Court of Directors of the said East India Company at home, have come to the conclusion, that the following Allegations of the Petition have been proved and established to the satisfaction of Your Committee by the Evidence and Correspondence before alluded to. (*That part of the Petition between the Brackets* [ ] *had not been proved to the satisfaction of the Committee.*)

" That Your Petitioner is the Son and representative of *Bury Hutchinson*, late of Bloomsbury-square, deceased, who was son and executor of James Hutchinson, of the same place, the father and administrator of John Hutchinson, Esquire, formerly in the service of the East India Company; that Your Petitioner is also the Administrator *de bonis non* of the said John Hutchinson:

" That the said John Hutchinson, from the year 1782 to the year 1797, filled the office of Commercial Resident at Anjengo:

" That during such Commercial Residency, a large debt became due to the said John Hutchinson, for money advanced by him to the Rajah of Travancore; and that all such money was advanced before the passing of the Act 37th George III. c. 142, by which loans from British subjects to Native Princes were prohibited, unless made with the consent and approbation of the Court of Directors of the East India Company, or the Governor in Council, or one of the Company's Governments in India:

" That all such advances were made in trade [at a period of unusual pecuniary difficulty and distress to the affairs of the East India Company], *bonâ fide* and without concealment, [and in great part for the purpose of enabling the said Rajah to perform his political engagements and commercial contracts with the Company:]

" That

"That during the period of the said John Hutchinson's transactions with the said Rajah, the Court of Directors of the East India Company, [as well as the then Governors General of India] and the Government of Bombay, [frequently] expressed themselves satisfied with the conduct of the said John Hutchinson:

"That in the year 1795 [the claims of the said John Hutchinson against the Rajah were inquired into, and examined at Travancore by] Mr. Duncan, then appointed Governor of Bombay, [who expressed himself fully satisfied with the justice of such Claims; and] by the desire of the Rajah, and in part payment of the balance due to the said Rajah from the Bombay Government, paid Mr. John Hutchinson, in 1796, upwards of four lacs of rupees, by bills of exchange drawn on the Honourable Company in his favour:

"That the said Rajah died in the year 1797, and the said John Hutchinson died a little earlier in the same year; after which event certain officers of rank belonging to the nephew and successor of the said Rajah, were appointed by and on behalf of that Prince to investigate the matter of the aforesaid debt, in conjunction with George Parry, Esquire, the Company's then Resident at Anjengo, who acted, [with the permission of the Governor of Bombay], on behalf of the said John Hutchinson:

"That the Accounts were fully gone into by the said Referees who, after a lengthened examination of the vouchers and other proofs, finally declared, on the 13th March 1800, that a balance then was due to the estate of the said John Hutchinson, deceased, of the sum of Rupees 4,89,734. 3 qrs. 80 reas, and directed the payment thereof by instalments of the several amounts, and at the times mentioned in a written Paper or Certificate, dated the said 13th March 1800, and signed by the said Referees, and which Certificate the Rajah confirmed:

"That payments on account of the said balance to the amount of about R^{s} 2,80,000 were made through the hands of the Company's Commercial Resident at Anjengo for the time being, [and, as Your Petitioner verily believes, with the sanction of the East India Company expressed by the proper authorities in India of the said Company:]

"[That the Debt so due from the Rajah to the said John Hutchinson as aforesaid was, in consequence of the repeated and vexatious interference of the Company's Political Resident at Travancore, subsequently inquired into and examined by the Marquis of Wellesley in 1804, by Sir George Barlow in 1806, and by Lord Minto in 1809, who were successively Governors General of India, and all of whom not only declared themselves fully satisfied with the justice of the said Debt, but sanctioned and directed its payment:]

"That [notwithstanding such repeated recognitions of the justice of the said John Hutchinson's Claims against the Rajah] the Directors, in a Letter of the 7th of September 1808, [not only unrequired] thought fit to interfere in the concerns of the said John Hutchinson, deceased, and the said Rajah, by directing that their then Political Resident in Travancore should not render any assistance towards the recovery of the then remaining balance, but took upon themselves also to recommend the Rajah to decline any further payment until the justice of the Claim was established to the satisfaction of Government; and they likewise declared in the same Letter that they expected to receive from the Governor and Council at Bombay (with whom the Madras Government were to communicate upon the matter) a satisfactory Statement as to their having been uninformed of the transaction. On this recommendation, as might have been expected, the said Rajah (who was then bound by Treaty to submit the disposal of his Revenues to the advice of the East India Company) promptly acted, and declined to proceed in the liquidation of his said Debt, and no further payment has ever been obtained:

"[That although the settled Account and Certificate signed by the Rajah and his Ministers, was transmitted by the Political Resident through the Madras Government to the Directors of the East India Company, sometime in the year 1810, yet the said Directors have not taken any steps whatever for further ascertaining the justice of the said Claim; or suggested any doubts of the settlement having taken place in the year 1800; or questioned the competency or integrity of the Referees;

or

or disputed any one item of the Account then settled; or required from the Representative of the said John Hutchinson any explanation of the subject; or given any reason for the interdict they had issued; though frequently and urgently solicited to bring forward their objections to the Claim advanced:]

"That after frequent Memorials to the Court of Directors, all of which were unavailing, the Petitioner's Father submitted the subject of these present Claims to the consideration of the President and Commissioners for the Affairs of India, and [in consequence of their decision in the Petitioner's and Father's favour] the Petitioner's said Father was informed in 1824, by the Chairman of the Court of Directors, that that Court were disposed to modify their instructions of the 7th of September 1808, which had recommended the Rajah to decline any further payment, until the justice of the Claim was made out, and that the wish of the Court of Directors was to leave the parties entirely to themselves, abstaining from all further interposition in the matter, and leaving the Ranee or Queen of Travancore to pay or not as she might think proper:

"That Your Petitioner believes that a Dispatch to the above purport was forwarded to the Company's Government at Madras, and that the said Resident received instructions accordingly. [But Your Petitioner humbly conceives that the step so taken, could in no degree conduce to the attainment of justice, as the Company were at that time, and had been for years, notoriously in possession of the territory of Travancore, and in receipt of the revenues derived therefrom; and the then Ranee was an aged and infirm Princess, under the entire control of the said Company, but not amenable to the jurisdiction of any of His Majesty's Courts, either in England or India;] and the Petitioner has since been informed, and believes, that the Resident at Travancore was instructed by the Honourable Company, in their Dispatch of 1824, to discountenance the payment of the said debt, as being a pretended claim, a direction which (as the Ranee was bound to act only under the advice of the Resident,) could not but operate as an insuperable bar to the settlement of the Petitioner's claims. That the Petitioner and his agents were and still are restricted by the Court of Directors from applying direct to the Ranee, or to the Government of Travancore for payment; and that all applications made through the medium of the Company's Political Resident have proved fruitless, in consequence of his having been instructed to treat the debt due to the said John Hutchinson as a pretended claim:

"That the Petitioner having failed in his repeated endeavours to obtain justice from the East India Company, again presented a Memorial to the President and Commissioners for the Affairs of India, in the month of August 1829; but their Lordships declined to renew the discussion, or by reviewing their former decision, to interfere further between the Petitioner and the Honourable Court of Directors:

"That the Petitioner is informed and believes, that the debt which was due to the said Company from the Government of Travancore, and on account of which they had possessed themselves of the revenues of that country, is now completely discharged; [that the above-mentioned Ranee is dead, and that another Prince, who is only nineteen years of age, is the present Ranee of Travancore:]

"That the said Company, by their interference in the year 1808 to prevent the discharge of the debt then remaining due to the Representatives of the said John Hutchinson, did in justice and honour become bound to make immediate and effective inquiry into the fairness of said debt, and come to a decision without more waste of time, and instantly to withdraw their interdict, if the account stood unimpeached. But the Petitioner submits that the Despatch of May 1824 must be taken as an admission that no reasonable doubt could be raised respecting it; that the debt must be still considered as due only from the Government of Travancore, and that the Company virtually adopted it when they took possession of the [territories and] revenues of that country:

"That the said Company have acted unjustly and oppressively; First, in interfering to prevent the payment of a just debt due from a Native Prince to a British Subject; Secondly, in preventing the payment of the said debt [after it had been fully investigated and sanctioned by the Government of the said Company in India, and] at a time when the Rajah was able and willing to discharge it; [Thirdly, in refusing all information as to the reasons for such a proceeding; Fourthly, in withholding

holding payment of it after the territories and revenues of Travancore fell under their control and disposal]; Fifthly, by instructing the Resident to discountenance the debt, after having pretended that they had caused their interdict to be removed, and now refusing to sanction the Claim in such a way as will amount to an effective interference with the present Ranee or Rajah in the Petitioner's behalf, after having unjustly interfered, in the first instance, to prevent the payment of the debt, and thereby and by virtue of their Treaty of 1805 [and the possession of the country of Travancore] rendered their sanction and assistance the only means of obtaining its payments; And now, lastly, in treating his just claim as a state demand, and reproaching him and his predecessors with that delay which their own unjustifiable conduct has alone produced.

" That the Petitioner is advised that he is without remedy, either in any Court of Law or Equity in the premises, and can obtain redress only through the aid and interposition of Parliament."

Your Committee, in addition to the facts as stated and proved by the Petitioner, think it not unimportant to observe, as showing the peculiar and singular situation in which Mr. John Hutchinson stood as Commercial Resident, that it appears from the Evidence adduced by the Petitioner, that the benefits and advantages arising to Mr. Hutchinson, from his privilege and right of trading as Commercial Resident, constituted, with the exception of a small and trifling sum of 130 rupees per month, the sole emoluments of his official situation, and that it was not till after Mr. Hutchinson's death that a new arrangement was made by the East India Company's Government, of allowing the Commercial Resident of Anjengo a per centage on the pepper and other contracts annually effected and completed between the Rajah and the East India Company.

Your Committee, under the circumstances of this case, have come to the conclusion, That, though it appears the advances on which these Claims were founded, were made in the way of trade, yet one of them is described as a Loan (vide No. 21), to the Rajah, and that it does not appear that such advances were made at a period of unusual distress to the East India Company, nor for the purpose of enabling the said Rajah to perform his political engagements and commercial contracts with the Company:

That it does not appear in evidence, that the Claims of Mr. John Hutchinson were ever examined by Mr. Duncan, then appointed Governor of Bombay in 1795, nor that Mr. Duncan ever expressed himself satisfied with the said Claims:

That nevertheless a debt to a large amount, and arising out of a course of fair and honourable transactions, was due from the Rajah or Government of Travancore to Mr. John Hutchinson, at the time of the death of Mr. Hutchinson in the year 1797, and that such debt was admitted by the Rajah his nephew in the year 1800, when he could have had no other motive for such admission but a conviction of its justice:

That the payment of this debt, after it had been in part liquidated by the Rajah, was impeded and prevented by the interference of the Political Resident of the East India Company in the year 1803:

That after such interference in the year 1803, and after the declared opinion of the Governor General in India in 1807, " That as the late Rajah has acknowledged " the balance claimed by the Representatives of the late Mr. Hutchinson to be due, " he, the Governor General, did not deem it equitable to impede an application to " the Rajah for payment on the part of the Representatives," the East India Company, by their renewed interference in 1808, continued further to impede and prevent the payment of such debt:

That in consequence of such their interference, the Representatives of Mr. John Hutchinson were prevented and still are prevented from obtaining payment of the said Debt from the Travancore Government, although such Government may be in the possession of surplus revenues amply sufficient to discharge and satisfy such debt.

Your

Your Committee are of opinion, that although the debt in question can only be considered a debt due from the Government of Travancore to Mr. John Hutchinson, yet that the Petitioner (as the representative of Mr. Hutchinson) has an equitable claim on the East India Company, to be replaced by them in the same situation with regard to this debt as he was before their interference, and that the East India Company are therefore bound to exert their influence with the Government of Travancore to obtain payment of the debt, agreeably to the terms of the Rajah's engagement in March 1800, and the custom of that country; and that on failure of their obtaining such payment within a reasonable time, the East India Company ought to be held answerable to the representatives of Mr. Hutchinson for the amount.

Your Committee therefore suggest to The House the equitableness of affording relief to the Petitioner in regard to the said debt, and that a Bill should be brought in, in the ensuing Session, in furtherance of such object.

7 *August* 1832.

RAJAH OF TRAVANCORE.

HUTCHINSON'S CLAIM.

REPORT

FROM THE

SELECT COMMITTEE

ON THE

PETITION

OF

MR. BURY HUTCHINSON.

Martis, 7° die Augusti, 1832.

Ordered, That leave be given, that the Report from the Select Committee on Mr. Bury Hutchinson's Petition may be printed at the expense of the Parties.

LONDON:

Printed by James & Luke G. Hansard & Sons,

PRINTERS TO THE HONOURABLE HOUSE OF COMMONS.

1832.